

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Petition for the
Annexation of Certain Land to the
City of St. Paul Park Pursuant to
Minnesota Statutes 414 (A-7212)

**FINDINGS OF FACT,
CONCLUSIONS OF LAW
and ORDER**

The above matter came on for hearing before Administrative Law Judge George A. Beck on Tuesday, April 22, 2008 at the City Hall in the City of St. Paul Park, Minnesota. The hearing concluded on that date and the parties were directed to file written memoranda after the hearing, the last of which was received on May 20, 2008. The record closed on that date.

R. Gordon Nesvig, Esq., Cottage Grove, Minnesota 55016, appeared representing himself. James F. Shiely, Jr. Esq., Gearin & Shiely PA, 325 Cedar Street, Suite 500, St. Paul, Minnesota 55101-1015 appeared representing the City of St. Paul Park. David T. Magnuson, Esq., Magnuson Law Firm, 333 N. Main St., Suite 202, P.O. Box 438, Stillwater, Minnesota 55082 appeared representing Grey Cloud Island Township.

NOTICE

This Order is the final administrative decision in this case under Minn. Stat. §§ 414.031 and 414.12. Any person aggrieved by this Order may appeal to the Washington County District Court by filing an application for review with the Court Administrator within 30 days of the date of this Order. An appeal does not stay the effect of this Order.¹

Any party may submit a written request for an amendment of these Findings of Fact, Conclusions of Law and Order to the Administrative Law Judge within seven days from the date of mailing of the Order.² If a request is submitted, other parties have seven days from the date of the service of the request to respond. A request for amendment does not extend the time for appeal to the District Court from the Order of the Administrative Law Judge.³

¹ Minn. Stat. § 414.07, subd. 2.

² Minn. Rule pt. 6000.3100.

³ Minn. Rule pt. 6000.3100.

STATEMENT OF THE ISSUE

The issue in this proceeding is whether or not annexation should be granted for the parcels of land described at Finding of Fact No. 2 based upon the factors set out in the statute.⁴

Based upon all of the testimony, exhibits, and the full record in this proceeding, the Administrative Law Judge makes the following:

FINDINGS OF FACT

Procedural History

1. In a decision dated July 31, 2007, the Minnesota Court of Appeals reversed a portion of the November 2, 2005 Order of the Administrative Law Judge in this matter and remanded the case for proceedings consistent with its opinion.⁵ The Court determined that notice provided in the prior proceeding was inadequate for the Nesvig homestead property and certain "island lots".

2. The legal description for the Nesvig Homestead property is set out at Finding of Fact No. 14 of the November 2, 2005 Order and Exhibit A of the May 2, 2008 Stipulation of Settlement executed by the parties. The legal description of the "island lots" was set out in Finding of Fact No. 15 of the November 2, 2005 Order and in Exhibit A of the Stipulation.

3. A Notice of the April 22, 2008 hearing, including the legal description cited in the preceding Finding of Fact, was published in the South Washington County Bulletin for two consecutive weeks on April 9, and April 16, 2008, as required by statute.⁶ Additionally, the Notice of Hearing was served by mail on the Washington County Assessment/Taxpayer Services and Elections Director, Washington County Planning and Zoning, the City of St. Paul Park, Grey Island Township, the City of Inver Grove Heights, Independent School District No. 833, the League of Minnesota Cities, the Metropolitan Council, the State Demographer, the Minnesota Department of Health, the Minnesota Pollution Control Agency, the Minnesota Department of Revenue, the Minnesota Department of Agriculture, and all attorneys involved in this proceeding. The Notice was also posted at the City of St. Paul Park City Hall and the Grey Island Township Town Hall. A Grey Island Township newsletter dated April 19, 2008 contained notice of the hearing and was mailed to residents.

4. No Notices of Appearance were filed by any property owner or other person in order to acquire party status under Minn. Stat. § 414.12 subd. 4(4).

⁴ Minn. Stat. § 414.031.

⁵ Town of Grey Cloud Island v. Nesvig, (Minn. Ct. App. July 31, 2007) (Unpublished Opinion - A06-1738)

⁶ Minn. Stat. § 414.09, subd. 1(d).

Statutory Factors

5. Findings of Fact No. 1-207 of the prior Order dated November 2, 2005 are incorporated into this Order.

6. The Nesvig homestead property is presently surrounded by the City after the 2005 annexation. The owner of the property supports its annexation into the City of St. Paul Park and believes that it presently meets all of the statutory requirements for annexation.⁷

7. Island Lots No. 1 consists of approximately 14 residences and is surrounded by the City after the 2005 annexation. Two property owners in this area testified at the hearing that they oppose annexation.

8. Island Lot No. 2 is a parcel located midway between Island Lots No. 1 and the Nesvig homestead and is surrounded by the City after the 2005 annexation. It consists of approximately 1.2 acres of land. The owner of this property opposes annexation at the present time.

9. The parties to this proceeding, namely Mr. Nesvig, the City of St. Paul Park, and the Township of Grey Cloud Island have entered into a Stipulation of Settlement which is attached to this Order and incorporated by reference.

10. The parties have all agreed to the immediate annexation of the Nesvig homestead property into the City of St. Paul Park.

11. The parties have all agreed to the annexation of the Island Lots described above at a point in the future, but not immediately, as set out in detail in the attached Settlement Agreement.

12. The parcels that are the subject of this proceeding are within the Mississippi River Critical Area and therefore the City must amend its Comprehensive Plan to accommodate the parcels and have those amendments approved by the Metropolitan Council and the Minnesota Department of Natural Resources.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. The Administrative Law Judge has jurisdiction in this matter under Minn. Stat. §§ 414.031 and 414.12.

⁷ See attached map for location of the parcels described in these findings.

2. That proper notice of the hearing in this matter has been given.
3. That the subject area described in Finding of Fact No. 2 is about to become urban or suburban in character.
4. That municipal government in the area described in Finding of Fact No. 2 is required to protect the public health, safety and welfare.
5. That annexation to the City of the area described in Finding of Fact No. 2 is in the best interest of the subject area.
6. That the remainder of the Township can continue to carry on the functions of government without undue hardship.
7. That annexation to another adjacent municipality would not better serve the residents of the subject property.
8. That the remainder of the Township would not suffer undue hardship due to annexation.
9. That the Memorandum attached to the Order dated November 2, 2005 at pp. 40-47 is incorporated into this Order by reference.
10. Minn. Stat. § 414.031, subd. 6, provides that "The annexation shall be effective as of the date fixed in the annexation order or on a later date fixed in the annexation order."
11. Minn. Stat. § 414.063 provides that "After notice and hearing as provided in section 414.09, the director may include provisions of joint agreements between political subdivisions in the orders."
12. That the Stipulation of Settlement, executed by the parties on May 2, 2008 and attached hereto, is incorporated into this Order and given full force and effect.
13. That these Conclusions of Law are arrived at for the reasons set out in the Memorandum that follows and which is incorporated into these Conclusions of Law by reference.

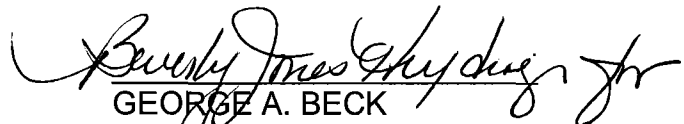
Based upon the foregoing Conclusions of Law, the Administrative Law Judge makes the following:

ORDER

IT IS HEREBY ORDERED THAT the property described as the "Nesvig Property" in Exhibit A attached to the Stipulation of Settlement is immediately annexed, as of the date of this Order, to the City of St. Paul Park.

IT IS FURTHER ORDERED THAT the property described as "Island 1" and "Island 2" in Exhibit A attached to the Stipulation of Settlement may be annexed to the City of St. Paul Park under the terms of the Stipulation of Settlement.

Dated this 11 day of June, 2008.


GEORGE A. BECK
Administrative Law Judge

Reported: Tape Recorded.
One Tape.

MEMORANDUM

The Minnesota Court of Appeals affirmed the annexation of the land which was described in the original Petition in this matter into the City of St. Paul Park. It reversed the annexation of three smaller parcels (the "island lots") because they had not been included in the published notice as required by statute. That notice has now been provided in this proceeding. The "island lots" are completely surrounded by the City.

The record compiled in 2005 and the testimony of Gordon Nesvig in this reconvened proceeding fully supports a conclusion that the statutory requirements for annexation of the Nesvig homestead property have been met. The homestead property is surrounded by the City after the 2005 annexation, which was approved by the Court of Appeals. Furthermore, the parties have stipulated and agreed in their Stipulation of Settlement that the Nesvig property may be immediately annexed by the City. Mr. Nesvig supports annexation and testified that he believed his property met the statutory requirements for annexation. No one opposed annexation of the Nesvig homestead and its annexation to the City is ordered effective immediately.

Three property owners within the "island lots" area testified at the hearing that they opposed annexation, at least at the present time. They could see no advantage to annexation for the property owners. One testified that the septic systems were working properly and another that road improvements were unneeded. However, the record does support a conclusion that the "island lots" do meet the statutory prerequisites for annexation. And no evidence or argument was advanced that would provide a basis for distinguishing treatment of the "island lots" from the surrounding area.

The Township was also opposed to the *immediate* annexation of the island lots, but entered into a stipulation of settlement with the City that allows annexation to proceed at such time as the City decides it is necessary to proceed with a public improvement project in that area. The Township recognizes that annexation will happen, but agrees with the property owners that it should not be imposed until there is a need to do so, in order to provide public improvements. The Stipulation of Settlement executed by the City, Township and Mr. Nesvig provides that the City may annex the "island lots" when it orders preparation of a report to study the feasibility of a public improvement project impacting that area. The annexation is accomplished by the filing a resolution with the Chief Administrative Law Judge who then must order the annexation if it is consistent with the parties' Stipulation of Settlement and this Order.

A memorandum from an Assistant Attorney General, requested by the parties, expressed a concern about the authority to implement the proposed settlement in the context of a § 414.031 proceeding since that statute focuses on the conditions existing at the time of a decision and the statute does not specifically authorize a deferral of the annexation. The memorandum also expresses a concern that adoption of the stipulation would mean that this Order would be dictating the outcome of a separate subsequent proceeding. The memorandum suggests that a more appropriate way of accomplishing annexation of the "island lots" would be by a joint resolution of the City and Township under Minn. Stat. § 414.0325. The parties have resisted this suggestion because it requires initiation of a separate process that requires additional newspaper publication, an informational meeting, and additional legal fees. They believe that their agreement accomplishes the same goal without additional process.

This Order *does* focus on the conditions that exist in the Nesvig homestead and the "island lots" at present, however. The record supports a decision that those areas presently satisfy the statutory requirements for annexation. Speculation that five or ten years from now the areas will be less urbanized is not consistent with the facts in this record. The effect of the parties' agreement merely delays the annexation date consistent with the Township's desire to allow its residents to remain in the Town until public improvements are required. Minn. Stat. § 414.031, subd. 6, does provide that an annexation may be ordered to be effective on a later date fixed in the annexation order. While the

agreement does not provide a specific date, it is consistent with the apparent legislative recognition that a delay may be appropriate and that an annexed area is unlikely to become less urban in nature. A delay in implementation is clearly sanctioned in §414.0325 which suggests that the legislature does not disapprove of an agreed upon delay. No cogent reason has been advanced that suggests why the authority in §414.0325 would preclude a similar outcome by agreement under §414.031.

Concern was also expressed that the agreement might restrict the City's statutory right to pursue annexation. However, the final Stipulation of Settlement provides that any challenge to the City's annexation of the "island lots" under the terms of the agreement will release it from the agreement and allow it to pursue any process of annexation authorized by statute.

The use of the Orderly Annexation statute to implement an agreement of this nature, at least outside of a §414.031 proceeding, has apparently been common in the past. In this case, however, the matter has been contested through a full hearing procedure. As the parties point out, the proposed annexation has been at issue for almost ten years. They seek to put an end to that battle through their stipulation. As the Township newsletter stated:

It is hoped that the long going and costly annexation of a total of 600 acres to St. Paul Park will be terminated by a settlement agreement proposed by our township. It will allow those households on Third, Fourth and Fifth Streets between Fourteenth and Fifteenth Avenues to remain in the township until actual development commences.

The adoption of a stipulation by the parties also seems to be encouraged by the legislature through Minn. Stat. § 414.063 which specifically provides that joint agreements between political subdivisions may be incorporated in orders after notice and hearing under section 414.09, the statute that governed the hearing in this case.

The parties' agreement to put an end to a ten year battle without further process should be respected. It is consistent with statute, and, in fact, the procedure they propose is similar to that under §414.0325, the Orderly Annexation statute. Under either that statute or this Order, the Office of Administrative Hearings retains the authority to finally order the annexation as agreed to by the City and Township. The Stipulation of Settlement is therefore incorporated into this final Order.

G.A.B

A7212 St. Paul Park

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

File No. 1-2900-16529-2

IN THE MATTER OF THE PETITION FOR THE)
ANNEXATION OF CERTAIN LAND TO THE)
CITY OF ST. PAUL PARK PURSUANT TO)
MINNESOTA STATUTES 414)

**STIPULATION OF
SETTLEMENT**

WHEREAS, this matter has, or will, come on for public hearing on Tuesday, April 22, 2008, beginning at 9:30 a.m. at the St. Paul Park City Hall, 600 Portland Avenue, St. Paul Park, Minnesota, before Administrative Law Judge George A. Beck.

WHEREAS, at the Hearing, the parties have, or will, inform the Administrative Law Judge that they have reached a settlement of all issues pending in this matter, and have incorporated their agreement into the following Stipulation, which they present to the Administrative Law Judge for his consideration and approval.

NOW THEREFORE, the parties hereby agree upon the conditions for the annexation of the lands described in Exhibit A, and hereby set forth their agreement in this Stipulation as follows:

1. That the Notice of Hearing dated March 21, 2008, was duly published, served, and posted pursuant to Minn. Stat. §414.09 and the decision of the Minnesota Court of Appeals in this matter (A06-1738).
2. That the Administrative Law Judge may incorporate the terms of this Stipulation into his final Order.

3. That immediately upon the entry of an Order by the Administrative Law Judge that incorporates the terms of this Stipulation, the Nesvig Property, as described in Exhibit A, is annexed to the City. Following annexation of this property, the City shall receive the taxes levied on this property as set forth in Paragraph 6 hereof.

4. That the remainder of the property described in Exhibit A (hereafter referred to as the subject property) is surrounded by the City, and the annexation of said property, as outlined in this Stipulation, will better serve both the City and Town, and the Property owners.

5. At any time after the City orders the preparation of a report, pursuant to Minn. Stat. §429.031, Subd. 1(b) to study the feasibility of a public improvement project that will impact any area within the subject property, the City may annex all of the subject Property by filing a Resolution with the Chief Administrative Law Judge declaring that the subject property is annexed to the City, and that said Resolution is brought pursuant to this Agreement. Thereafter, the Chief Administrative Law Judge must order annexation of the subject property upon finding the annexation to be consistent with this Stipulation and the Order of the Administrative Law Judge.

In the event that any person, firm, corporation, the Town, or any other entity, takes legal action of any kind, including, but not limited to, objection, motion, summons and complaint, Order to show cause, or any other proceeding to contest or delay the annexation of the subject property by the resolution and order process as set forth in this Stipulation of Settlement and the Order of the Administrative Law Judge incorporating this Stipulation of Settlement, the City may, in its sole discretion, dismiss this proceeding as to the subject property, and thereafter proceed immediately with any statutory procedure to annex the subject property, including, but not limited to, annexation by ordinance.

6. In the years between this Stipulation, and the year of annexation, the Town shall retain 100% of the property taxes levied on the subject property by the Town. In the year of annexation, the Town shall retain 100% of the property taxes payable in the year of annexation (levied by the Town the previous year). After the year of annexation, the City will receive all of the taxes levied by the City on the subject property, and any taxes levied by the Town in the previous year. If the annexation occurs so late in the year that the state and the county can not get the records changed in time, resulting in the Town receiving the taxes on the subject property in the year after annexation, the Town will forward those taxes to the City.

7. Since no special assessments, charges or debts have been or will be assigned to the Property by the Town, no payments to the Town are or will be required to be reimbursed by the City to the Town.

8. This Stipulation will be in full force and effect immediately upon the document being fully executed by all parties hereto, and approved by the Administrative Law Judge. If the annexation of the remainder of the subject property does not occur by the year 2020, the Order will terminate on January 1, 2021 as to the subject property. Thereafter, the City may pursue any statutory procedure to annex the subject property.

The Grey Cloud Island Town Board of Supervisors this 22 day of APRIL, 2008.

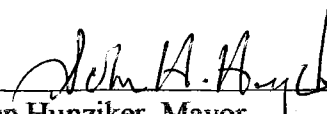
BY: TOWN OF GREY CLOUD ISLAND

By Richard C. Adams
Richard Adams, Chair
Board of Supervisors

ATTEST:
Richard E. Mullen
Richard Mullen, Town Clerk

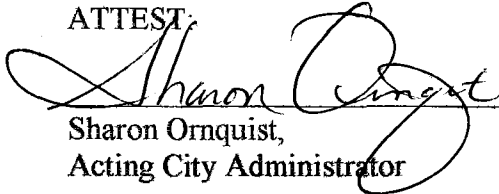
The City of St. Paul Park, this 24 day of April, 2008.

BY: CITY OF ST. PAUL PARK



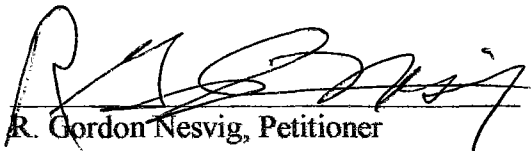
John Hunziker, Mayor

ATTEST:



Sharon Ornquist,
Acting City Administrator

May 2, 2008



R. Gordon Nesvig, Petitioner

EXHIBIT A

Nesvig Property

The Northwest Quarter of the Northwest Quarter (NW $\frac{1}{4}$ of NW $\frac{1}{4}$) Section Twenty-four (24), EXCEPT that part of the Northwest Quarter of the Northwest Quarter (NW $\frac{1}{4}$ of NW $\frac{1}{4}$) in said Section Twenty-four (24) lying on Grey Cloud Island, consisting of ten (10) acres, more or less, Washington County, Minnesota. All in Township Twenty-seven (27) North, Range Twenty-two (22) West.

Island 1

Lots 1 through 7, inclusive, Block 115, Wertheimer's First Addition, Washington County Minnesota;

Lots 1 through 11, inclusive, and Lots 21 through 30, inclusive, Block 116, St. Park Division No. 4, Washington County Minnesota;

Lots 1 through 30, inclusive, Block 117, St. Park Division No. 4, Washington County Minnesota;

Lots 1 through 30, inclusive, Block 118, St. Park Division No. 4, Washington County Minnesota;

Including all streets and alleys, and vacated streets and alleys, adjacent to all of the above described Lots.

Island 2

A tract of land in the Northeast quarter (NE $\frac{1}{4}$) of the Southwest quarter (SW $\frac{1}{4}$) of Section Thirteen (13), Township Twenty-seven (27) North, Range Twenty-two (22) West, described as follows, to-wit:

Beginning at the intersection of the East and West Quarter line of said Section Thirteen (13) with the center line of County Road No. 75 as now established; thence West along the East and West Quarter line 401.94 feet to an iron stake; thence South 7° East 254.90 feet to an iron stake; thence East 159.94 feet to an iron stake; thence North 220 feet to an iron stake; thence East 214.89 feet to the center line of County Road No. 75; thence North 7° West along the center line of County Road No. 75 a distance of 33.25 feet to the point of beginning. Subject to rights of County Road No. 75. Containing 1.2 acres more or less.

Paul Park

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HERITAGE PARK
LIBRARY &
ARC BLDG.

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14-027-22-11-0001
14-027-22-14-0001
14-027-22-41-0001

Island #1

Island #2
13-027-22-31-0003
Warren Islands

Homestead
8590
24-027-22-22-0002
Grey Cloud



13-027-22-33-0001

13-027-22-31-0005

13-027-22-31-0004

13-027-22-13-0002

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OAH DOCKET NO. 1-2900-16529-2

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Petition for the
Annexation of Certain Land to the City of
St. Paul Park Pursuant to Minnesota
Statutes 414 (A-7212)

**FINDINGS OF FACT,
CONCLUSIONS
OF LAW and ORDER**

The above matter came on for hearing before Administrative Law Judge George A. Beck at 9:30 a.m. on Monday, July 25, 2005 at City Hall in the City of St. Paul Park, Minnesota. The hearing continued on three subsequent days and concluded on July 28, 2005. The transcript of the hearing was filed with the Administrative Law Judge and the parties on August 3, 2005. The Petitioners (R. Gordon Nesvig and D. R. Horton, Inc.) and the City of St. Paul Park ("the City") filed their initial brief on August 23, 2005. The Respondent, Grey Cloud Island Township ("the Township"), filed its brief on September 22, 2005. The Petitioners and the City filed a reply brief on October 7, 2005 and the record closed on that date.

Laurie J. Miller, Esq., Fredrikson and Byron, P.A., 4000 Pillsbury Center, 200 South Sixth Street, Minneapolis, Minnesota 55402 appeared representing Co-Petitioner D. R. Horton, Inc. R. Gordon Nesvig, Esq., Box 255, Cottage Grove, Minnesota 55016, a Co-Petitioner, appeared representing himself. James F. Shiely, Jr., Esq., Gearin and Shiely, P.A., 500 Degree of Honor Building, St. Paul, Minnesota 55101, appeared representing the City of St. Paul Park. David T. Magnuson, Esq., Magnuson Law Firm, 333 North Main Street, Suite 202, P.O. Box 438, Stillwater, Minnesota 55082, appeared representing Grey Cloud Island Township.

NOTICE

This Order is the final administrative decision in this case under Minn. Stat. §§ 414.031 and 414.12. Any person aggrieved by this Order may appeal to the Washington County District Court by filing an application for review with the Court Administrator within 30 days of the date of this Order. An appeal does not stay the effect of this Order.¹

Any party may submit a written request for an amendment of these Findings of Fact, Conclusions of Law and Order to the Administrative Law Judge within seven days from the date of the mailing of the Order.² If a request is submitted, other parties have seven days from the date of the service of the request to respond. A request for

¹ Minn. Stat. § 414.07, subd. 2.

² Minn. Rule pt. 6000.3100.

amendment does not extend the time of appeal to the District Court from the Order of the Administrative Law Judge.³

STATEMENT OF ISSUE

The issue in this proceeding is whether or not the Petition for Annexation should be granted or denied based upon the factors set out in statute.⁴ The decision is set out at page 39.

Based upon all of the testimony, exhibits, and the full record in this proceeding, the Administrative Law Judge makes the following:

FINDINGS OF FACT

Procedural History

1. On December 21, 2004, R. Gordon Nesvig filed a petition with the Office of Municipal Boundary Adjustments to annex certain property he owns in Grey Cloud Island Township to the City of St. Paul Park. The property consists of approximately 308 acres located immediately to the south of St. Paul Park on the Mississippi River.⁵ The Co-Petitioner on the Petition for Annexation is D. R. Horton Inc., a developer that owns an option to purchase the property in question.

2. The area proposed for annexation is described in the Petition (as amended) as follows:

Block 121; of Division No. 4 of St. Paul Park, as surveyed and platted and now on file and of record in the office of the Register of Deeds Washington County, Minnesota; and,

Block "D"; Lots 2 and 3, Block 122, of Division No. 4 of St. Paul Park, as surveyed and platted and now on file and of record in the office of the Register of Deeds of Washington County, Minnesota; Government Lots 1 and 2 of Section 14, Township 27 North, Range 22 West, and those portions of the North Half Section 13 lying West of County Highway 75, and lying South of the South line of 15th Avenue extended easterly and westerly, which avenue is a platted and dedicated street in said Division No. 4 of St. Paul Park; all of the land described in this paragraph being subject to an easement for flowage purposes by the United States of America as set forth in that certain judgment made and entered in the District Court of the United States, District of Minnesota, Third Division, on

³ Minn. Rule pt. 6000.3100.

⁴ Minn. Stat. § 414.031.

⁵ See Figure 1, attached to this decision.

October 30th, 1935, a certified copy of which was recorded in the office of the Register of Deeds of Washington County, Minnesota, on November 1st, 1935, in Book 128 of Deeds, page 295

That part of Government Lot 1, Section 14, and the North One-Half of Section 13, Township 27 North, Range 22 West, lying South of Blocks 122 and D of Division No. 4 of St. Paul Park and Westerly of the East line of said Block D extended Southerly to the South Line of 15th Street, County of Washington, State of Minnesota;

Government Lot 3 of Section 14, Township 27 North, Range 22 West;

The North Half of the Southwest Quarter ($N\frac{1}{2}$ of $SW\frac{1}{4}$) lying West of County Road 75, and the Southwest Quarter of the Southwest Quarter ($SW\frac{1}{4}$ of $SW\frac{1}{4}$), Section Thirteen (13); All in Township Twenty-seven (27) North, Range Twenty-two (22) West;

EXCEPTING all of the following: A tract of land in the Northeast quarter ($NE\frac{1}{4}$) of the Southwest quarter ($SW\frac{1}{4}$) of Section Thirteen (13), Township Twenty-seven (27) North, Range Twenty-two (22) West, described as follows, to-wit: Beginning at the intersection of the East and West Quarter line of said Section Thirteen (13) with the center line of County Road No. 75 as now established; thence West along the East and West Quarter line 401.94 feet to an iron stake; thence South 7° East 254.90 feet to an iron stake; thence East 159.94 feet to an iron stake; thence North 220 feet to an iron stake; thence East 214.89 feet to the center line of County Road No. 75; thence North 7° West along the center line of County Road No. 75 a distance of 33.25 feet to the point of beginning. Subject to rights of County Road No. 75. Containing 1.2 acres more or less.

Together with any roads streets or alleys adjacent to the above property, and also those roads streets or alleys within the above property which have been vacated, or may be vacated which accrue to any of the above described property by reason of such vacation.

County Highway 75 will remain a County Highway

The area bounded on the North by the City of St. Paul Park, on the East by Lots 2 and 3, Block 122, of Division No. 4 of St. Paul Park, and Government Lots 1, 2, and 3 of Section 14, Township 27 North, Range 22 West, on the South by Section 23, Township 27 North, Range 22 West, and on the West by the West line of Washington

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County, is included in the area annexed to the City of St. Paul Park.⁶

3. The property in question is bordered on the north and east by the City of St. Paul Park, on the west by the Dakota County line, and on the south by the Township of Grey Cloud Island. The mid-point of the Mississippi River as it flows by the subject property serves as the boundary line both between the cities of St. Paul Park and Inver Grove Heights as well as the boundary line between Washington and Dakota Counties.⁷

4. On October 18, 2004, the City Council of the City of St. Paul Park adopted a resolution supporting the Petition for Annexation.⁸

5. The Petition for Annexation was served upon the cities of Cottage Grove, St. Paul Park and upon Grey Cloud Island Township on October 19, 2004.

6. On January 7, 2005, the Executive Director of Municipal Boundary Adjustments issued a Notice of Hearing setting a hearing on the Petition for February 1, 2005.

7. The Notice of the Hearing was published in the South Washington County Bulletin on January 19, and January 26, 2005.

8. The hearing was opened by the Executive Director of the Office of Municipal Boundary Adjustments on February 1, 2005 and then adjourned.

9. By a letter dated February 28, 2005, the Deputy Commissioner of the Department of Administration delegated a final decision in this matter to the Office of Administrative Hearings, as allowed by Minn. Stat. § 414.12, subd. 2(a).

10. On February 14, 2005, the Township moved the Ramsey County District Court for a temporary injunction prohibiting the Petitioners from proceeding with this Petition for Annexation on the grounds of res judicata. The Court denied the motion in an order dated April 26, 2005.

11. In an order dated April 12, 2005, the Administrative Law Judge set the hearing in this matter to commence on July 25, 2005. The Executive Director of Municipal Boundary Adjustments issued a Notice of Reconvened Hearing on July 13, 2005 which was published in the Stillwater Gazette on July 15, and July 22, 2005.

12. Prehearing conferences were conducted by the Administrative Law Judge on April 11, 2005 and July 14, 2005.

13. The hearing commenced on July 25, 2005 and concluded on July 28, 2005. It concluded with a viewing of the property by the ALJ and the parties.

⁶ Exhibit 1; Exhibit 3.

⁷ Exhibit 4.1; Tr. 32-34 [Nesvig].

⁸ Exhibit 1, Exhibit 2; Tr. 32-34 [Nesvig].

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14. At the hearing, Mr. Nesvig proposed that his homestead, which is located immediately to the south of the area originally proposed for annexation, be included with the property annexed. The legal description for his homestead is as follows:

The Northwest Quarter of the Northwest Quarter (NW $\frac{1}{4}$ of NW $\frac{1}{4}$) Section Twenty-four (24), EXCEPT that part of the Northwest Quarter of the Northwest Quarter (NW $\frac{1}{4}$ of NW $\frac{1}{4}$) in said Section Twenty-four (24) lying on Grey Cloud Island, consisting of ten (10) acres, more or less, Washington County, Minnesota.⁹

15. Mr. Nesvig also proposed including certain "island" lots located between the property proposed for annexation and the City of St. Paul Park as suggested by Metropolitan Council staff.¹⁰ The legal description for that property is as follows:

["Island" 1]

Lots 1 through 7, inclusive, Block 115, Wertheimer's First Addition, Washington County Minnesota;

Lots 1 through 11, inclusive, and Lots 21 through 30, inclusive, Block 116, St. Park Division No. 4, Washington County Minnesota;

Lots 1 through 30, inclusive, Block 117, St. Park Division No. 4, Washington County Minnesota;

Lots 1 through 30, inclusive, Block 118, St. Park Division No. 4, Washington County Minnesota;

Including all streets and alleys, and vacated streets and alleys, adjacent to all of the above described Lots.

["Island" 2]

A tract of land in the Northeast quarter (NE $\frac{1}{4}$) of the Southwest quarter (SW $\frac{1}{4}$) of Section Thirteen (13), Township Twenty-seven (27) North, Range Twenty-two (22) West, described as follows, to-wit: Beginning at the intersection of the East and West Quarter line of said Section Thirteen (13) with the center line of County Road No. 75 as now established; thence West along the East and West Quarter line 401.94 feet to an iron stake; thence South 7° East 254.90 feet to an iron stake; thence East 159.94 feet to an iron stake; thence North 220 feet to an iron stake; thence East 214.89 feet to the center line of County Road No. 75; thence North 7° West along the center line of County Road No. 75 a

⁹ Exhibit 33.

¹⁰ Tr. 131 [Uttley]

distance of 33.25 feet to the point of beginning. Subject to rights of County Road No. 75. Containing 1.2 acres more or less.

County Road No. 75 shall remain a County Highway¹¹

Prior Annexation History

16. In November of 1999, Mr. Nesvig filed petitions for the annexation of approximately 600 acres that he owned in the Township.¹² He sought to annex a portion of the land to St. Paul Park and a portion to the City of Cottage Grove. Subsequent to the hearing on these petitions, in October of 2000, the City of St. Paul Park entered into a joint resolution for orderly annexation with Grey Cloud Island Township that provided for annexation of the property east of County Road 75 into the City of St. Paul Park.

17. On December 29, 2000, and as amended on January 11, 2001, Administrative Law Judge Beverly Jones Heydinger issued an Order dividing the 600 acres into eastern and western portions, using County Road 75, which runs north and south through the property, as a dividing line. The Order granted annexation of all of the property east of County Road 75 to the City of St. Paul Park, but denied annexation as to all of the property west of County Road 75, leaving that portion under the jurisdiction of the Township.¹³

18. Mr. Nesvig then appealed that Order to Washington County District Court. In an Order dated February 8, 2002, the District Court remanded the matter to the Administrative Law Judge to consider the best interests of the subject property and for specific findings regarding the financial ability of St. Paul Park. In a Memorandum the Judge observed that the designation of the property west of County Road 75 as a critical area cannot be a compelling factor in the annexation decision.¹⁴

19. The parties then sought, and the Administrative Law Judge granted, an extended continuance to allow the parties to negotiate an agreement. This resulted in a Settlement Agreement under which the Township and the City agreed to participate with the owner and developer in jointly developing the property on both sides of County Road 75, with both the Township and the City agreeing to support "the urban development of the entire Subject Property under a single master plan. . . ."¹⁵

20. After entering into the Settlement Agreement, the Township decided that it was no longer interested in supporting development of the subject property at the agreed densities.¹⁶ The Township wanted a unit count of 1,000 instead of 2,400.¹⁷

¹¹ Exhibit 34.

¹² MBA File No. A-6186.

¹³ Tr. 32-33 [Nesvig]; see Exhibit 15 at p. 2.

¹⁴ Exhibit 15.

¹⁵ Exhibit 6, Appendix B at p.2.

¹⁶ Tr. 768-69 [Adams]; 834-36 [Bell].

¹⁷ Tr. 755 [Adams].

21. The Township proposed a number of changes to the Settlement Agreement, which would have significantly reduced the permitted density of housing development and would have given the Township the ability to plan separately from the City, to enact differing official controls, and to tax differentially the portion of the Rivers Edge project that was to remain within the Township.¹⁸ The other parties refused to agree to the Township's proposed changes to the Settlement Agreement and the Settlement Agreement was allowed to expire on August 31, 2004.¹⁹

22. On October 1, 2004, Mr. Nesvig filed a withdrawal of request for further review of the Administrative Law Judge's Order for Annexation and, with the agreement of the other parties, the Administrative Law Judge issued an order dated December 17, 2004 that made her earlier order of December 29, 2000 (as amended on January 11, 2001) the final decision in that proceeding.²⁰

23. On March 3, 2003, the City and the Township adopted resolutions ordering that an alternative urban area wide review ("AUAR") be prepared for the environmental review of Mr. Nesvig's property both east and west of County Road 75. A draft AUAR was completed on May 1, 2003, was submitted to the appropriate government agencies, and was the subject of a series of open houses, workshops and meetings held by the City as the responsible governmental unit ("RGU"). After comments were received, a draft of the final AUAR was completed on November 6, 2003. It was submitted to the Environmental Quality Board and all other entities that commented. The Minnesota Department of Natural Resources ("DNR") submitted an objection letter on March 31, 2004. After meetings between the DNR and the RGU and revisions to the final AUAR, the DNR withdrew its objection in a letter dated May 4, 2004. The RGU adopted the final AUAR on May 17, 2004.²¹

24. The Minnesota Center for Environmental Advocacy filed suit in Washington County District Court against the City, Mr. Nesvig and D. R. Horton Inc. on June 14, 2004. It contended that the final AUAR was inadequate and that it failed to analyze real alternatives. The District Court concluded that there was substantial evidence to support the final AUAR and that its adoption by the RGU was not arbitrary or capricious. The court therefore dismissed the complaint in an order dated April 20, 2005.²² MCEA has appealed this decision to the Minnesota Court of Appeals.²³

25. After petitioners filed the current annexation petition, the Township filed a lawsuit to challenge their right to do so.²⁴ The Township's action sought a declaratory judgment prohibiting the further processing of the petition for annexation. On April 26, 2005, Judge Teresa R. Warner of the Ramsey County District Court denied the

¹⁸ Tr. 768-70 [Adams].

¹⁹ Tr. 77-78, 80 [Nesvig], 773 [Adams].

²⁰ Tr. 81 [Nesvig].

²¹ Exhibit 16.

²² Exhibit 16.

²³ Exhibit 37.

²⁴ Tr. 81-82 [Nesvig].

Township's motion to prevent further adjudicatory hearings on this annexation petition, and dismissed the Township's action.²⁵

STATUTORY FACTORS

I. Population of Subject Area and Adjacent Units of Government

26. The present population of the subject area is less than 10 people, in 3 rental households all owned by Petitioner Nesvig.²⁶

27. The past, present, and projected population of the Township and of the City are reflected in the Metropolitan Council's 2030 Regional Development Framework ("the 2030 Framework"), adopted January 14, 2004.²⁷

28. Revisions made by the Metropolitan Council to its 2000 framework forecasted population figures were presented at the hearing. For the City, slight modifications were made to more closely reflect trends in population per household. For the Township, the revisions were more substantial, to reflect that the previous annexation removed some 300 acres of land from the Township's jurisdiction.²⁸ The earlier projected Township increases reflected the anticipated development of all 600 acres of Mr. Nesvig's property, and the revised projections recognize that some 300 acres of that property has previously been annexed from the Township to the City. The Metropolitan Council has not yet, however, revised the City's projections to incorporate the expected development of the previously-annexed 300 acres, as it awaits the City's submission of a Comprehensive Plan Amendment application for that property.²⁹ The growth estimates were not specifically projected to occur in the subject property.³⁰

29. In the 2030 Framework, the Township is listed, based on census data, as having a 2000 population of 307 residents in 117 households. In the 2030 Framework, the Metropolitan Council forecasted that by 2010, the Township's population would increase to 4,900 residents in 1,800 households, and by 2020 it would have 6,800 residents in 2,500 households.³¹ Those projections, as revised in July, 2005, to take account of the prior annexation of 300 acres of the Nesvig property to the City, forecasted that by 2010, the Township's population would increase to 1,100 residents in 370 households, and by 2020 it would have 3,300 residents in 1,110 households.³² In making these forecasts, the Metropolitan Council "anticipate[d] that considerable growth is expected to occur on lands presently in Grey Cloud Island Township's jurisdiction."³³

²⁵ Tr. 82 [Nesvig]; Exhibit 17.

²⁶ Tr. 36-37 [Nesvig].

²⁷ Exhibit 10 at pp. A-9, A-16.

²⁸ Tr. 123-24 [Uttley], Exhibit 36 at p. 1.

²⁹ Tr. 124 [Uttley].

³⁰ Tr. 142-144 [Uttley].

³¹ Exhibit 10 at pp. A-9, A-16.

³² Exhibit 36 at p. 2.

³³ Exhibit 36 at p. 1.

Other than the subject property, there is nowhere else in the Township where significant residential development is anticipated between now and 2020.³⁴

30. In the 2030 Framework, the City is listed, based on census data, as having a 2000 population of 5,070 residents in 1,829 households. In the 2030 Framework, the Metropolitan Council forecasted that by 2010, the City's population would increase to 5,800 residents in 2,200 households, and by 2020 it would have 6,400 residents in 2,500 households.³⁵ Those projections, as slightly revised in July, 2005, forecasted that by 2010, the City's population would increase to 5,700 residents in 2,160 households, and left the 2020 projection unchanged.³⁶ The Metropolitan Council has not yet, however, revised the City's projections to incorporate the expected development of the previously-annexed 300 acres.³⁷

31. The current concept plan prepared by the owner and developer proposes to build approximately 653 units of housing on 106 acres of the subject property, leaving the rest of the subject property (approximately 200 acres) natural.³⁸ The proposed development is within the 740 additional units projected by the Metropolitan Council to be built on this property in the next fifteen years.³⁹ The Metropolitan Council has been involved in the planning processes for the subject property, including the environmental review and visioning processes. It has not yet made a determination as to whether the proposed development is consistent with Metropolitan Council plans or projections.⁴⁰

II. Quantity of Land and Natural Terrain

32. The subject property consists of approximately 300 acres of land, currently zoned as rural residential, located in Grey Cloud Island Township.⁴¹ The subject property is bounded on the west by Dakota County, on the north and east by the City of St. Paul Park, and on the south by the Township.⁴² County Road 75 separates the property from the City on the East.⁴³

33. The Township, aside from the subject property, consists of around 1,400 acres.⁴⁴ The City currently consists of about 1,600 acres.⁴⁵

34. Two farmsteads, including numerous outbuildings, exist in the central portion of the site.⁴⁶ The western portion of the site consists of forests, bluffs, floodplain

³⁴ Tr. 39 [Nesvig].

³⁵ Exhibit 10 at pp. A-9, A-16.

³⁶ Exhibit 36 at p. 2.

³⁷ Tr. 124 [Uttley].

³⁸ Tr. 264-68 [Schlichting], see also Exhibit 9 at Map 10.

³⁹ Tr. 284-85 [Schlichting]; Exhibit 36 at p. 2.

⁴⁰ Tr. 286-87 [Schlichting]; see Exhibit 11.

⁴¹ Tr. 32 [Nesvig].

⁴² Tr. 33-34 [Nesvig]; Exhibit 5.1.

⁴³ Exhibit 5.1.

⁴⁴ Tr. 42-43 [Nesvig]

⁴⁵ Tr. 43 [Nesvig].

⁴⁶ Exhibit 6, Appendix H at p. 6.

forests, and the Mississippi River. A gravel road extends from County Road 75 through the central and southwestern portions of the site. A drainage pipe extends from the former stockyard area of the property toward the Mississippi River. The area surrounding the site consists of roads, residential development (mostly to the north and northeast), agricultural land (mostly to the southeast), and an industrial facility to the east in Cottage Grove.

35. The subject property has limestone bluffs along the Mississippi River and its backwaters which rise between 20 to 50 feet above the river and are characterized by a combination of exposed limestone cliffs and mesic oak savanna.⁴⁷ Throughout the subject property, the limestone bedrock is close to the surface, ranging from zero to nine feet below the surface.⁴⁸ The same limestone is found further south in the Township, where it is the subject of ongoing mining activities by Aggregate Industries.⁴⁹

36. The subject property above the bluffline is relatively flat to rolling, consisting primarily of old pastures used in long-abandoned feedlot operations.⁵⁰ This portion of the subject property ranges between 730 and 753 feet of elevation.⁵¹ The bluffline itself is forested, and the majority of the existing deciduous forest and the oak savanna extend 100 feet or less from the edge of the bluff.⁵² The portion of the subject property below the bluffline includes backwaters of the Mississippi River, which at this point the Army Corps of Engineers maintains at 687 feet of elevation except in times of flooding, and several islands, which are roughly five feet above the river, except when they are occasionally flooded.⁵³

37. The major waterway adjacent to the subject property is the Mississippi River.⁵⁴ The main channel of the river is to the west of the subject property, and the subject property includes islands and backwaters of the Mississippi, which typically are three to five feet deep.⁵⁵

38. There is a shallow bay, or natural harbor, near the mid-point of the western edge of the subject property's mainland.⁵⁶ Historically the bay was a seepage wetland area, but with the raising of Pool 2 of the Mississippi River in conjunction with the damming of the river, what was once a wetland has been inundated with water.⁵⁷ There are seeps and springs present in the bay which, historically, were above the water, and are now largely below water.⁵⁸

⁴⁷ Tr. 41 [Nesvig], Exhibit 6 at pp. 3-4 and Appendix H at pp. 23-24.

⁴⁸ Tr. 43 [Nesvig].

⁴⁹ Tr. 43, 61-62 [Nesvig].

⁵⁰ Tr. 40-42 [Nesvig].

⁵¹ Tr. 44 [Nesvig]; Exhibit 32.

⁵² Tr. 276 [Schlichting]; Exhibit 5.2.

⁵³ Tr. 44 [Nesvig].

⁵⁴ Tr. 45 [Nesvig].

⁵⁵ See Exhibit 5.1, Tr. 45 [Nesvig].

⁵⁶ Tr. 43 [Nesvig], see *a/s/o* Exhibit 5.1, Exhibit 6 at p. 4.

⁵⁷ Tr. 515-16 [Apfelbaum].

⁵⁸ Tr. 516 [Apfelbaum].

39. North of the bay, there is an old sewage/manure lagoon.⁵⁹ It was formerly used to drain manure and wastes from the livestock operations when they were operational in the eastern part of the property, through the drainage pipe referenced above.⁶⁰ Although the livestock operations have long been discontinued, the lagoon still holds from three to five feet of rotted manure and other agricultural materials.⁶¹ The lagoon is contained by a rock dike wall, apparently quarried long ago from nearby rock, but there is a partial breach in the dike that may allow material to go into the river during higher flood flows.⁶²

40. The subject property has areas where plant material and topsoil have been removed from the surface of the bedrock.⁶³ It also has old farmsteads containing old agricultural equipment.⁶⁴

41. In the north portion of the property, a temporary wood recycling facility is currently in operation, that grinds up wood debris into mulch.⁶⁵

42. Aside from the floodplain at the base of the bluffs, there are no wetlands on the subject property.⁶⁶

43. The subject property is part of a forested Mississippi River fringing vegetative system that is used by warblers and other migratory birds to migrate up and down the River.⁶⁷ It supports nesting bald eagles that nested on the property in 2002 and 2003.⁶⁸

44. The most significant native plant communities on the site are the flood plain forest, seepage areas, and cliff communities associated with the River, as mapped by the Minnesota County Biological Survey. There is also an area of intact dry oak savanna near the mapped cliff communities on the north side of the proposed river access site, just above the river. This area includes burr oaks and northern pin oaks with open-grown savanna forms and an understory of relatively diverse dry oak savanna native plants, including pussytoes, starry false Solomon's seal northern bedstraw, wild lily of the valley and rock cress.⁶⁹

45. The natural resources inventory performed as part of the Alternative Urban Areawide Review ("AUAR") process for the subject property determined that a majority of the ecological settings on the property were moderate to very poor in

⁵⁹ Tr. 516 [Apfelbaum].

⁶⁰ Tr. 516-17 [Apfelbaum].

⁶¹ Tr. 517 [Apfelbaum].

⁶² Tr. 517-18 [Apfelbaum].

⁶³ Tr. 518 [Apfelbaum].

⁶⁴ Tr. 518 [Apfelbaum].

⁶⁵ Tr. 40 [Nesvig], 518-19 [Apfelbaum].

⁶⁶ Exhibit 6 at p. 34; Tr. 45 [Nesvig].

⁶⁷ Tr. 554-555 [Apfelbaum].

⁶⁸ Tr. 554 [Apfelbaum].

⁶⁹ Exhibit 6, Appendix J. -Minnesota DNR letter July 16, 2003.

condition, or very highly degraded.⁷⁰ The portion of the property which formerly had been in agricultural and pasture use, was found to have herbicide residuum and the perennial weedy plant species associated with highly altered soil chemistries, and no significant native plant communities or plant species.⁷¹ No portion of the subject property may be characterized as pristine.⁷²

46. The forested bluffs along the river itself were found to be highly degraded in most locations.⁷³ The natural resources inventory found very high levels of erosion around the trees' root systems, with in some cases 50-80% of the root system exposed to air, which is associated with a 20-30 % mortality rate per year.⁷⁴ Beyond the bluff edge down to the river edge, rill erosion and gully erosion is omnipresent.⁷⁵ Several erosion gullies and bedrock ravines are also present.⁷⁶

47. Invasive species growing up beneath the trees, including Tartarian honeysuckle and European buckthorn, cause erosion by reducing the light available to the native ground cover vegetation that normally holds and stabilizes the soil.⁷⁷ As the ground cover vegetation collapses, the soil erodes, as seen in a number of places at the subject property.⁷⁸ The invasive species also prevent acorns from germinating and growing, and thereby prevent the existing oak forest from replacing itself.⁷⁹ Petitioners propose to correct and improve these conditions.

III. Degree of Contiguity.

48. The northern and eastern boundaries of the subject property are adjacent to the City, except for Block 118, which is still within the Township. The southern boundary of the subject property is adjacent to the Township. On the west, the subject property is bounded by the Mississippi River, which serves as the municipal boundary line between the Township and the City of Inver Grove Heights, as well as the county boundary line between Washington and Dakota Counties.⁸⁰ Because of the boundary lines running through the river, the only municipality that, as a practical matter, is in a position to annex the subject property is the City of St. Paul Park.⁸¹

⁷⁰ Tr. 502, 513, 519 [Apfelbaum].

⁷¹ Tr. 502-03 [Apfelbaum].

⁷² Tr. 519 [Apfelbaum].

⁷³ Tr. 503-04 [Apfelbaum].

⁷⁴ Tr. 504-05 [Apfelbaum].

⁷⁵ Tr. 514 [Apfelbaum].

⁷⁶ Tr. 514-15 [Apfelbaum], see Exhibit 6, Appendix A at Figure 10-1 (showing ravines) and Exhibit 6, Appendix H at pp. 23-24.

⁷⁷ Tr. 505-06 [Apfelbaum].

⁷⁸ Tr. 506 [Apfelbaum].

⁷⁹ Tr. 506-07 [Apfelbaum].

⁸⁰ Exhibits 4.1, 5.1; Tr. 46 [Nesvig].

⁸¹ Tr. 46-47 [Nesvig].

IV. Present Pattern of Development and Intended Land Uses.

49. The subject property presently is undeveloped. As described above, the portion of the property above the bluffline consists largely of a narrow band of forested area along the bluffline and a number of former pastures used in long-abandoned feedlot operations. Mr. Nesvig owns the three existing houses on the subject property, and leases part of the property to the operator of the wood-chipping facility. None of the pastures or farmsteads currently are being operated in a farming operation.⁸²

50. Urban and industrial uses are found throughout the Mississippi River corridor in the immediate vicinity of the subject property. There is urbanization to the north within the City, mining to the south in the Township, and urbanization across the river to the west in Inver Grove Heights.⁸³

51. Immediately north of the subject property, the City has residential uses, (aside from an auto salvage yard on the northern border of the subject property), which is zoned for multifamily residential use and may be the subject of a future urban renewal project.⁸⁴ To the east of the subject property, the City is planning for imminent residential development at urban densities of the 340 acres that were annexed in the previous proceeding.⁸⁵ To the west, across the river, Inver Grove Heights has an air strip, a sea plane operation, and a marina.⁸⁶

52. Farther north of the subject property, within the City, there is an oil refinery.⁸⁷ Directly south of the subject property, the Township has residential development along County Road 75 and along Grey Cloud Trail.⁸⁸ The southwest portion of the Township has a large, ongoing mining operation which extends to the banks of the Mississippi River, where the mine has its own barge loading facility.⁸⁹ The mine is eventually expected to extend northward and eastward, right up to the boundary lines of the existing residences within the Township.⁹⁰ Mining operations are expected to continue for some 40 years or more.⁹¹ Eventually, after the mining operations are completed, the Township has planned for future residential development of the mining area by zoning it as rural residential.⁹²

⁸² Tr. 47 [Nesvig].

⁸³ Tr. 572-773 [Apfelbaum].

⁸⁴ Tr. 48 [Nesvig], 386; see also Exhibit 6 at p. 4.

⁸⁵ Tr. 34, 55-57 [Nesvig], 189-90 [Greenfield]; see also Exhibit 7.

⁸⁶ Tr. 33-34 [Nesvig].

⁸⁷ Tr. 34 [Nesvig], Exhibit 5.3.

⁸⁸ Tr. 33 [Nesvig].

⁸⁹ Tr. 62 [Nesvig].

⁹⁰ Tr. 33, 59-61 [Nesvig]; see Exhibit 14.

⁹¹ Tr. 61 [Nesvig]; 757 [Adams].

⁹² Tr. 60 [Nesvig], 756 [Adams]; Exhibit 14.

53. The City, together with D.R. Horton and Mr. Nesvig, has been engaged in planning for development of the subject property for several years.⁹³ At the annexation hearing, all of the Township's current board members acknowledged that the subject property is ripe for residential development at some level of density.⁹⁴

54. The City has determined that it would be advantageous to plan for development of the Nesvig property, including both the 340 acres previously annexed to the City and the 300 acres now being proposed for annexation, as a single unit on both sides of County Road 75, in part because of the importance to the City of maintaining its connection to the Mississippi River, and of providing a public gathering site connecting the new development to the River.⁹⁵

55. The developer and owner have worked with the City in planning the proposed development of the subject property and a concept plan has evolved to meet the concerns expressed by the parties to the planning process. The current concept plan is the fourteenth iteration of the plan that has been continually revised over the course of the past three years.⁹⁶

56. The current concept plan proposes a total of 1,920 units to be built on the Nesvig property, which is known as the "Rivers Edge" project.⁹⁷ Of those, 653 units would be built in the current proposed annexation area, consisting of 83 single-family houses, 22 twinhomes, 24 detached townhomes, 116 attached townhomes, and 408 multi-family units, including condominiums for senior housing.⁹⁸ The Rivers Edge project also includes some commercial space for neighborhood retail uses, such as coffee shops and dry cleaners, and also a community center, parks, and open space where people could gather.⁹⁹ The developer anticipates that complete build-out of the Rivers Edge project will take approximately ten years.¹⁰⁰ The developer wants to begin construction on both sides of County Road 75 at the outset of the project.¹⁰¹ It is important to the developer, from both a marketing and liability standpoint, that development be allowed to proceed on both sides of the road.¹⁰²

57. In the Township's existing comprehensive plan, the subject property is zoned as rural residential, with permitted densities of no more than one unit for every ten acres.¹⁰³ A "clustering" proposal, under the Township's current zoning ordinance,

⁹³ Tr. 54-56 [Nesvig]; 377-79 [Mullenbach]; 434-35 [Sittlow].

⁹⁴ Tr. 764 [Adams][a residential cluster development would be "very appropriate for the site"], 802-02 [Schoenecker][agreeing that the subject property is ripe for residential development]; 851-54 [Bell][acknowledging that urbanization is in the process of coming south along County Road 75 from St. Paul Park].

⁹⁵ Tr. 184-88 [Greenfield]; 271-73 [Schlichting], 385-86 [Mullenbach].

⁹⁶ Tr. 269 [Schlichting].

⁹⁷ Tr. 266 [Schlichting], see Exhibit 9 at Map 10.

⁹⁸ Tr. 267 [Schlichting]; 366 [Mullenbach].

⁹⁹ Tr. 264-65 [Schlichting].

¹⁰⁰ Tr. 371 [Mullenbach].

¹⁰¹ Tr. 372 [Mullenbach].

¹⁰² Tr. 385 [Mullenbach].

¹⁰³ Tr. 51 [Nesvig]; Exhibit 14.

would permit a 50% increase in density, if 50% of the land were dedicated as open space.¹⁰⁴ Thus, under current Township land use regulations, no more than 45 units may be built on the subject property.¹⁰⁵ This would be less than the Metropolitan Council's current projections of urban development for this property.¹⁰⁶ The Township's current bluffline setback requirement is 40 feet.¹⁰⁷

58. In the City's existing comprehensive plan, the property immediately north of the subject property (the City's "Southwest Quadrant") is zoned as parks and recreation, multi-family residential, and single-family residential.¹⁰⁸ Several new multi-family housing developments have been constructed within the Southwest Quadrant recently, with densities ranging from 7.0 to 9.7 units per acre.¹⁰⁹ Approximately 110 new units have been built in the last 15 to 18 months, and about 280 total units have been approved thus far for the Southwest Quadrant, with more developers interested.¹¹⁰

59. The land currently being developed in the City's Southwest Quadrant is very similar to the buildable portion of the subject property, in that it abuts the Mississippi River next to a steep bluff, with islands in the river, and high bedrock underlying the property.¹¹¹

60. As described above, the City began in January, 2003, and completed on May 17, 2004, an extensive environmental review of the entire Rivers Edge project area, including the portions both east and west of County Road 75, through the Alternative Urban Areawide Review ("AUAR") process as established by the Minnesota Environmental Quality Board.¹¹²

61. The AUAR examined three development scenarios: one at the densities permitted within the Township's existing Comprehensive Plan (52 units), one at the initial proposed plan of the developer (2,400 units), and one at the minimum densities a community would be obligated to have, to be consistent with the Metropolitan Council's expectation of three to five plus units per acre for urban services (1,800 units).¹¹³

62. After the City adopted the final AUAR, the Minnesota Center for Environmental Advocacy ("MCEA") sued the City, the Township, and petitioners in Washington County District Court, challenging the adequacy of the AUAR. On April 20, 2005, the District Court granted summary judgment, upholding the adequacy of the AUAR and dismissing the MCEA's complaint with prejudice.¹¹⁴

¹⁰⁴ Tr. 762 [Adams].

¹⁰⁵ Tr. 762 [Adams].

¹⁰⁶ Exhibit 10.

¹⁰⁷ Tr. 778 [Adams].

¹⁰⁸ Exhibit 12 at Figure 9.

¹⁰⁹ Tr. 198-200 [Greenfield], Exhibit 5.4.

¹¹⁰ Tr. 437-38, 445 [Sittlow]; see Exhibit 21.

¹¹¹ Tr. 200 [Greenfield].

¹¹² Tr. 159-77 [Greenfield], Exhibit 6.

¹¹³ Tr. 160-61 [Greenfield]; Exhibit 6 at pp. 5-10; Exhibit L-2.

¹¹⁴ Tr. 78 [Nesvig]; Exhibit 16.

63. After completion of the AUAR, the City began a visioning process, to gather input from the community into the eventual land planning of the Nesvig property.¹¹⁵ The visioning process began in June of 2004 and continued for 10 months, until April 18, 2005.¹¹⁶

64. The developer, D.R. Horton, participated in the visioning process, and received feedback from the community on a variety of topics related to the proposed development, including generally tying the Rivers Edge development into existing city neighborhoods, and also more specific things such as street widths, housing styles, density, and lot sizes.¹¹⁷

65. In the visioning process, the City consistently requested that the developer keep the Rivers Edge project together as a single project, including both the east and west sides of County Road 75.¹¹⁸

66. At the conclusion of the visioning process, the City came up with a vision for how the entire Nesvig property, including the property both east and west of County Road 75, should be developed.¹¹⁹ The booklet prepared to document the conclusion of the visioning process contains ten guiding principles developed by the visioning workshop participants.¹²⁰ Both the AUAR and visioning processes looked at the entire Nesvig property as a whole.¹²¹

67. D.R. Horton's planners provided a concept plan incorporating what they heard from workshop participants over the course of the visioning process.¹²² The current concept plan has been designed to meet all of the guiding principles resulting from the City's visioning process.¹²³

68. Following completion of the visioning process, the next step in the City's planning process was preparation of a comprehensive plan amendment.¹²⁴ The City has presently under consideration a proposed Comprehensive Plan Amendment Application for the property immediately east of the proposed annexation area, which would guide development of that property at urban densities.¹²⁵

69. At the completion of the visioning process, the City asked the developer to prepare a Growth Area Study, to accompany the Comprehensive Plan Amendment application, because the City hopes to see the Nesvig property developed as a whole, and therefore desired to understand how development of each side would fit into the

¹¹⁵ Tr. 180 [Greenfield].

¹¹⁶ Tr. 180-81 [Greenfield].

¹¹⁷ Tr. 368-70 [Mullenbach].

¹¹⁸ Tr. 385-86 [Mullenbach].

¹¹⁹ Tr. 182 [Greenfield], Exhibit 9.

¹²⁰ Tr. 182 [Greenfield].

¹²¹ Tr. 184 [Greenfield], 269-70 [Schlichting].

¹²² Tr. 185 [Greenfield]; Exhibit 9, Map 10.

¹²³ (Tr. 270-71 [Schlichting].

¹²⁴ (Tr. 188 [Greenfield].

¹²⁵ Exhibit 7; Tr. 188-89 [Greenfield].

whole.¹²⁶ D.R. Horton complied, and submitted to the City a Growth Area Study for the entire Nesvig property at the same time as it submitted the Comprehensive Plan Amendment application for the portion which had already been annexed to the City.¹²⁷

70. The Growth Area Study assumes that the proposed development plan extends the City's existing pattern of development into the subject area.¹²⁸

71. If the property west of County Road 75 is annexed to the City, the Growth Area Study will assist with the comprehensive plan amendment process for that property as well and will allow the development of Rivers Edge as a single project.¹²⁹

V. Present Transportation Network and Transportation Issues.

72. In connection with the AUAR, a traffic study was prepared to examine the traffic impacts of the three development scenarios for the Nesvig property.¹³⁰

73. The principal connection between the City of St. Paul Park and the metropolitan freeway system is State Trunk Highway 61.¹³¹

74. Highway 61 is in the final stages of an ongoing reconstruction process, which includes upgrading the highway to freeway status, rebuilding the I-494 Wakota Bridge over the Mississippi River, and constructing or upgrading various interchanges along the highway.¹³²

75. Near the annexation area, the major elements of the Highway 61 project include the complete reconstruction of the St. Paul Park interchange and ancillary construction work on St. Paul Park Road to create a bridge over the railroad tracks near the refinery, to allow travelers to avoid existing at-grade crossings, and to allow truck refinery traffic to have access to the highway without going through downtown St. Paul Park.¹³³ The St. Paul Park Road construction was completed in the summer of 2005, and the St. Paul Park interchange is due to open in the fall of 2005.¹³⁴

76. The Highway 61 improvements will result in a substantial increase in roadway and intersection capacity in the area and a substantial increase in safety factors as well.¹³⁵

¹²⁶ Tr. 190-92 [Greenfield]; 278-79 [Schlichting].

¹²⁷ Tr. 190 [Greenfield], Exhibit 8.

¹²⁸ Tr. 282-84 [Schlichting]; Exhibit 8, Figure 6.B.

¹²⁹ Tr. 194-96 [Greenfield], 281 [Schlichting].

¹³⁰ Tr. 389-90 [Klugman]; Exhibit 6, Appendix F.

¹³¹ Tr. 35-36, 49 [Nesvig]; see Exhibit 6, Appendix F at Figure F-2.

¹³² Exhibit 6, Appendix F at p. F-3.

¹³³ Tr. 391-92 [Klugman].

¹³⁴ Tr. 391 [Klugman].

¹³⁵ Tr. 392 [Klugman].

77. The City has an existing grid system of streets, in which certain streets serve as collector streets.¹³⁶ It is anticipated that a large percentage of the traffic that will be generated by the Rivers Edge project will access the site via Third Street.¹³⁷ Currently, there are no traffic signals in the City; traffic is controlled by stop signs and pavement markings.¹³⁸ The two biggest intersection volumes in the City are the intersection of Broadway and Third Street and Broadway and Summit.¹³⁹

78. The subject property is bordered on the east by County Road 75, which runs generally north and south. At 14th Avenue, which is the northern boundary between the subject property and the City of St. Paul Park, County Road 75 becomes Third Street.¹⁴⁰ Third Street is a major collector road running north and south through the City.¹⁴¹

79. The traffic study of existing conditions included collecting hourly traffic count data on the City's major streets and also collecting turn movement counts at the two major intersections during rush hour periods.¹⁴² Based on that data, the traffic study determined that all of the major links in the area within the City's transportation system are currently functioning at a good level of service, with no particular problems or congestion spots, including the two key intersections.¹⁴³

80. After examining existing conditions, the traffic study analyzed how much traffic will likely be generated by the new proposed development.¹⁴⁴ The traffic study looked at both of the AUAR's urban development scenarios, and estimated the number of trips that would be generated by the new residents of either 2,400 or 1,800 units of housing, and by those who might use the proposed 83,000 square feet of commercial space.¹⁴⁵

81. The traffic study then estimated what the dispersion pattern would likely be for trips to and from the studied area, based upon data obtained from the Metropolitan Council's Transportation Division.¹⁴⁶ Using that data, the traffic study created a traffic assignment pattern for the project, and then added that pattern to the existing traffic counts and other anticipated growth, to arrive at a forecast of total future traffic in the area.¹⁴⁷

¹³⁶ See Exhibit 6, Appendix F at Figure F-3.

¹³⁷ Exhibit 6, Appendix F at p. F-2.

¹³⁸ Tr. 394 [Klugman].

¹³⁹ Tr. 395 [Klugman].

¹⁴⁰ Tr. 49 [Nesvig].

¹⁴¹ Exhibit 6, Appendix F at Figure F-3.

¹⁴² Tr. 393-94 [Klugman].

¹⁴³ Tr. 395, 406 [Klugman]; Exhibit 6, Appendix F at p. F-2.

¹⁴⁴ Tr. 396 [Klugman].

¹⁴⁵ Tr. 397, 405-06 [Klugman]; Exhibit 6, Appendix F at pp. F-4 – F-6.

¹⁴⁶ Tr. 397-98 [Klugman].

¹⁴⁷ Tr. 398-99 [Klugman]; Exhibit 6, Appendix F at pp. F-6 – F-12.

82. Based upon the standard capacities of the roadways in the vicinity, the traffic study then determined whether the forecasted traffic exceeded the rated capacity of any particular roadway, and developed a traffic mitigation plan in response.¹⁴⁸

83. With respect to the Rivers Edge project, the traffic study determined that the existing Third Street would not have capacity to handle the future forecast at full development at 2,400 units.¹⁴⁹ Accordingly, the traffic engineer worked with the city engineer and arrived at a design solution. They recommended upgrading Third Street from a two-lane to a three-lane roadway, with the center lane set up as a continuous two-way left-turn lane.¹⁵⁰ The addition of a third lane would be sufficient to serve the added traffic needs that would be generated by completion of the Rivers Edge project.¹⁵¹

84. The traffic study also looked at the City's two busiest intersections, to determine whether the existing controls (stop signs) would be adequate after full development of Rivers Edge.¹⁵² The study concluded that both intersections would need signals by the time of full development, and recommended that the City periodically monitor the situation to determine exactly when the intersections have become busy enough to justify a signal.¹⁵³

85. In addition to the Third Street upgrade and the addition of signals, at completion of full development of 2,400 units and 83,000 square feet of commercial space, the traffic study recommended pursuit of the future extension of 95th Street in Cottage Grove and a bridge over the railroad tracks, also in Cottage Grove.¹⁵⁴ The 95th Street extension would connect the southern end of the previously annexed portion of the Nesvig property to the City of Cottage Grove.¹⁵⁵ The traffic study was recently updated in connection with the preparation of the Growth Area Study and the Comprehensive Plan Amendment application.¹⁵⁶

86. In an update to the study, the traffic engineers used the revised unit count of 1,920 units, and the lower estimated commercial space of 40,000 square feet, and then used the same procedures and methodology to prepare a new traffic forecast.¹⁵⁷ Based on the decreased unit count and lower estimate of commercial space, the projected traffic volumes decreased as well.¹⁵⁸ As a result, the revised traffic study concluded that all of the mitigations proposed for the AUAR remain more than sufficient for the currently proposed level of development.¹⁵⁹

¹⁴⁸ Tr. 399-400 [Klugman]; Exhibit 6, Appendix F at pp. F-12 – F-13.

¹⁴⁹ Tr. 399-400 [Klugman].

¹⁵⁰ Tr. 401 [Klugman].

¹⁵¹ Tr. 401-02 [Klugman]; see also Exhibit 6 at Figure 21-2.

¹⁵² Tr. 402 [Klugman].

¹⁵³ Tr. 402 [Klugman]; Exhibit 6, Appendix F at pp. F-10 – F-11.

¹⁵⁴ Tr. 416 [Klugman]; Exhibit 6, Appendix F at p. F-12.

¹⁵⁵ Tr. 416-17 [Klugman].

¹⁵⁶ Tr. 418 [Klugman]; see Exhibit 7 at Appendix B; Exhibit 8 at pp. 25-32.

¹⁵⁷ Tr. 419-21 [Klugman].

¹⁵⁸ Tr. 421 [Klugman].

¹⁵⁹ Tr. 421 [Klugman].

87. The proposed mitigation plan addresses and resolves all traffic or transportation issues identified in the AUAR's traffic study.¹⁶⁰

VI. Present Land Use Controls and Planning

88. The subject property is presently subject to the jurisdiction of the Township, which has a Comprehensive Plan and a zoning ordinance that governs the subject property.¹⁶¹

89. Under the Township's current Comprehensive Plan, the subject property is zoned as rural residential, which allows one dwelling unit per ten acres, as an interim use.¹⁶²

90. The Township's Comprehensive Plan specifically mentions the possible future urban development of the subject property, by stating: "The Nesvig Property will be retained at one dwelling per 10 acres. . . . Longer range possibilities could include annexation by a neighboring community and extension of the Metropolitan Sewer Service and city water system into this area of the Township."¹⁶³

91. The Township Comprehensive Plan also states as follows: "Grey Cloud Island Township does not desire nor can it assume the responsibilities associated with urban development and the related urban services."¹⁶⁴ Other existing regulations and plans in effect for the subject property are listed in the AUAR.¹⁶⁵

92. The Metropolitan Council's current regional planning document, the 2030 Framework adopted in January of 2004, anticipates urban development of the subject property.¹⁶⁶ A planning analyst for the Metropolitan Council described the 2030 Framework as "really a regional Comprehensive Plan . . . or vision for the metropolitan area in terms of future land use."¹⁶⁷ The annexation would have no adverse impact on regional systems.¹⁶⁸

93. The 2030 Framework, as revised on July 22, 2005, projects an increase in population in the Township from 307 in 2000 to 1,100 in 2010 and 3,300 in 2020, to occur in the annexation area.¹⁶⁹ The Metropolitan Council's forecasts anticipate that considerable growth is expected to occur within the Township.¹⁷⁰ The only area within

¹⁶⁰ Tr. 422 [Klugman].

¹⁶¹ Tr. 51 [Nesvig]; Exhibit 14.

¹⁶² Tr. 51 [Nesvig]; Exhibit 14 at p. 12.

¹⁶³ Tr. 53 [Nesvig], 828 [Wanberg]; Exhibit 14 at p. 12.

¹⁶⁴ Tr. 54 [Nesvig], Exhibit 14 at p. 12.

¹⁶⁵ Exhibit 6 at Appendix E, p. 5, 10.

¹⁶⁶ See Exhibits 10, 35.

¹⁶⁷ Tr. 117, 120 [Uttley].

¹⁶⁸ Ex. 35, p. 10.

¹⁶⁹ Tr. 123-24 [Uttley], Exhibit 36.

¹⁷⁰ Tr. 125 [Uttley].

the Township where residential development of the magnitude forecast by the Metropolitan Council could occur is the subject property.¹⁷¹

94. The 2030 Framework identifies the subject property as part of a "Developing Community," in which the Metropolitan Council expects residential development at densities of at least "3 to 5 units, plus, per acre."¹⁷² Development at lower densities would result in less use of the capacity in the Metropolitan Council's wastewater treatment system.¹⁷³

95. The Metropolitan Council currently considers the portion of the Township included in this annexation proceeding to be in transition from diversified rural to urban.¹⁷⁴ The Metropolitan Council anticipates that such urbanization will take place before 2010.¹⁷⁵

96. Current Metropolitan Council policy generally supports the concept of urbanization in the St. Paul Park and Grey Cloud Island Township area.¹⁷⁶ The Council has taken no position on this annexation. Washington County has not taken a position on the proposed annexation.¹⁷⁷ Development that flows in a contiguous manner from an existing urbanized area into a contiguous unincorporated area, and that does not leapfrog over undeveloped territory, is the type of development the County and the Metropolitan Council generally support.¹⁷⁸ Development from the City into the annexation area would not be leapfrog growth, but would be a natural growth southward from the existing city urban boundaries.¹⁷⁹

97. The subject property is also presently subject to the jurisdiction of Washington County, which has a Comprehensive Plan and a Zoning Ordinance that includes the subject property.¹⁸⁰

98. The Washington County Comprehensive Plan was last amended on March 26, 2002 and the amendment incorporated recommendations of the Mississippi River Critical Area Corridor Plan and incorporated by reference the Standards of the Critical Area Program, the Shoreline Program of the Minnesota DNR and the Mississippi National River and Recreational Program.¹⁸¹

¹⁷¹ Tr. 39 [Nesvig].

¹⁷² Tr. 254-55 [Schlichting], see Exhibit 10 at pp. 22, 23.

¹⁷³ Tr. 255 [Schlichting].

¹⁷⁴ Tr. 125 [Uttley].

¹⁷⁵ Tr. 126 [Uttley].

¹⁷⁶ Tr. 126 [Uttley].

¹⁷⁷ Tr. 689 [Harper].

¹⁷⁸ Tr. 682, 690-91 [Harper], 726-27 [Dupre].

¹⁷⁹ Tr. 727 [Dupre].

¹⁸⁰ Tr. 685 [Harper]; Exhibits A and H.

¹⁸¹ Tr. 683-685 [Harper]; Exhibits A and H.

99. Under Washington County Comprehensive Plan and Zoning Ordinance the subject property is zoned Rural Residential, which allows one dwelling unit per 10 acres.¹⁸²

100. The Petitioner's concept plans for the subject property are not consistent with the Zoning Ordinance and the Comprehensive Plans of both the Town and Washington County.¹⁸³

101. The City has a Comprehensive Plan, adopted in July of 1999.¹⁸⁴ The City has been planning for the proposed urbanization of the subject property by completing an environmental review, through the AUAR process described above, and by completing a visioning process also described above.¹⁸⁵ The City currently has under consideration a Comprehensive Plan Amendment application addressing the portion of the Nesvig property which was previously annexed to the City, and a Growth Area Study addressing the entire Nesvig property, including the current annexation area.¹⁸⁶

102. The City's existing Comprehensive Plan recognizes and has plans to protect the portion of the City which falls within the Mississippi River Critical Area and the Mississippi National River and Recreation Area (MNRRA).¹⁸⁷

103. The City also has a zoning ordinance for development along the river portion of the City.¹⁸⁸

104. One of the major goals of the City's Comprehensive Plan is to keep its population above 5,000, in order to remain eligible for Municipal State Aid funding for roads.¹⁸⁹ The Rivers Edge development would ensure that the City's population will remain above 5,000.¹⁹⁰

105. If annexation occurs, both the Township and the City will need to amend their Comprehensive Plans to take into account the transfer of jurisdiction over the subject property.¹⁹¹ Both also need to amend their Comprehensive Plans to address the previously-annexed area, in any event.

106. The subject property is designated as part of the Mississippi River Critical Area, under Executive Order 79-19.¹⁹² The Mississippi River Critical Area runs continuously for 72 miles along the Mississippi River through the entire seven-county

¹⁸² Exhibits H.

¹⁸³ Exhibits A and H.

¹⁸⁴ Tr. 154 [Greenfield]; Exhibit 12.

¹⁸⁵ Tr. 54-56 [Nesvig]; Exhibits 6, 9.

¹⁸⁶ Tr. 54-55 [Nesvig]; Exhibits 7, 8.

¹⁸⁷ Tr. 127 [Uttley].

¹⁸⁸ Tr. 201-02 [Greenfield]; see Exhibit 13.

¹⁸⁹ Tr. 203 [Greenfield].

¹⁹⁰ Tr. 273 [Schlichting].

¹⁹¹ Tr. 128-89 [Uttley], 716-17 [Dupre].

¹⁹² Tr. 288 [Schlichting]; Exhibit B-2, Exhibit D.

metropolitan area.¹⁹³ It encompasses every use that is found within the metropolitan area, from heavy urban development, to industrial areas, to residential development.¹⁹⁴ The subject property is designated as a Rural Open Space District.¹⁹⁵ The subject property will remain part of the Critical Area whether or not it is annexed.¹⁹⁶

107. The Washington County District Court stated in 2002 that the subject property's Critical Area designation "cannot be a compelling factor in the denial of the annexation from Grey Cloud Island Township."¹⁹⁷

108. Executive Order 79-19 contains standards and guidelines that apply to the different use designations of property within the Critical Area, but it does not set permitted or prohibited uses.¹⁹⁸ The subject property is within the Critical Area's Rural Open Space use district.¹⁹⁹ The Executive Order does not prohibit residential development in a Rural Open Space District.²⁰⁰

109. The portion of the City immediately north of the subject property is also part of the Critical Area. The Critical Area use districts within the City are Urban Diversified and Urban Developed.²⁰¹ The entirety of Grey Cloud Island Township is also in the Critical Area.²⁰² The Executive Order contemplates that there may be changes in use district boundaries and allows local units of government to seek to modify use district boundaries.²⁰³

110. Natural resources can be protected in urban as well as rural areas.²⁰⁴ Urban development and protection of river resources can occur together.²⁰⁵

111. Executive Order 79-19 states that lands in the Rural Open Space use district are to be used and developed to preserve their open, scenic, and natural characteristics and ecological and economic functions.²⁰⁶ The urban development scenarios and mitigation plan set forth in the AUAR are designed to use and develop the subject property in such a way as to meet these goals by preserving its open, scenic, and natural characteristics and ecological and economic functions.²⁰⁷

112. If the City prepares a proposed amendment to its Comprehensive Plan after annexation that includes land within the Mississippi River Critical Area, the

¹⁹³ Tr. 631 [Fecht].

¹⁹⁴ Tr. 631, 638 [Fecht].

¹⁹⁵ Tr. 604 [Fecht].

¹⁹⁶ Tr. 826 [Wanberg].

¹⁹⁷ Exhibit 15 at p. 6; see also Tr. 74 [Nesvig] and Finding of Fact No. 18.

¹⁹⁸ Tr. 288 [Schlichting]; Exhibit D.

¹⁹⁹ Tr. 288 [Schlichting].

²⁰⁰ Tr. 301-02, 316-17 [Schlichting], 641, 671 [Fecht], 827-28 [Wanberg].

²⁰¹ Tr. 605 [Fecht].

²⁰² Tr. 640 [Fecht]; Exhibit 14.

²⁰³ Tr. 289-90, 308 [Schlichting], 667-68 [Fecht].

²⁰⁴ Tr. 640-41 [Fecht]; 825-26 [Wanberg].

²⁰⁵ Tr. 311 [Schlichting].

²⁰⁶ Tr. 642 [Fecht].

²⁰⁷ Tr. 312-13 [Schlichting], 521-26 [Apfelbaum], 642-47 [Fecht].

proposed amendment will be forwarded to the Department of Natural Resources ("DNR") for its review and approval.²⁰⁸ The City cannot prepare such an amendment or seek DNR approval until after annexation, however, because prior to annexation the City has no jurisdiction over the subject property.²⁰⁹

113. The Metropolitan Council recognizes that the area proposed for annexation is within the Mississippi River Corridor Critical Area and is a regional system and resource.²¹⁰

114. The Metropolitan Council is often faced with resolving conflict between its own policy goals such as the conflict between the preservation of rural and open space and forecasts for the urbanization of the same space.²¹¹

115. In order to provide guidance to the Metropolitan Council and its staff, a committee of the Council recommended that a policy be adopted that, when conflicting policies are applied to land within the Mississippi River Corridor Critical Area and then shown as urban reserve in the Council's regional blue print, that the staff put the emphasis on reviewing plans on the protection of the River Corridor resources.²¹²

116. No Comprehensive Plan amendments have yet been submitted to the Metropolitan Council for the annexation area. The Metropolitan Council would need to amend its current Plan for the annexation area before urbanization of the annexation area could occur.²¹³

117. If the property is annexed and a Comprehensive Plan amendment is submitted that includes a change in the Critical Area Plan that permits the Petitioner to develop the property according to its concept plan, urban development could not occur until the Minnesota Department of Natural Resources approves the requested changes to the Critical Area Plan.²¹⁴

118. In 1988 the Congress created MNRRA as a unit of the national park system. The law incorporates 72 miles of the Mississippi River through the Twin Cities from the mouth of the Crow River in Dayton to the Goodhue/Dakota County line downstream of Hastings. Geographically MNRRA is identical to the Mississippi Critical Area that was designated by executive order of the Governor.²¹⁵

119. Each of the 388 units of the National Park System all contain unique and nationally significant resources.²¹⁶

²⁰⁸ Tr. 130 [Uttley].

²⁰⁹ Tr. 130-31 [Uttley]; 722 [Dupre].

²¹⁰ Tr. 137 [Uttley].

²¹¹ Tr. 138 [Uttley].

²¹² Tr. 138 and 139 [Uttley].

²¹³ Tr. 141 [Uttley].

²¹⁴ Tr. 143[Uttley].

²¹⁵ Tr. 735 [Johnson].

²¹⁶ Exhibit B.

120. The property subject to annexation is unique to the Mississippi River Corridor in the metropolitan area in that a section of the shoreline contains a cliff that drops directly in the water, from that bay near the northern part of the property in an area commonly referred to as "Robinson's Rock." It is the only area upstream of Pool 11 (which is just a little bit upstream of Dubuque), where there is a cliff that drops directly into the river.²¹⁷

121. The Comprehensive Management Plan for the MNRRA was adopted after a study of alternative and environmental impacts.²¹⁸

122. The Mississippi Critical Area Program is a land use management program that is one of the key elements of implementation of the Comprehensive Management Plan for MNRRA. Rather than developing a new land use management program as the management plan was being prepared, it was concluded the appropriate process would be to use that existing vehicle, which is administered by the State.²¹⁹

123. The vehicle for implementation of the Comprehensive Management Plan for MNRRA with respect to the subject property is the State Critical Area Program. The Management Plan created a partnership between the State of Minnesota and the Federal government wherein the State's implementation of its Critical Area Program is the first step in implementing the MNRRA Comprehensive Management Plan. Congress found that the property proposed for annexation is of national importance and the goals and policies of the Minnesota Critical Areas Act have been adopted. The National Park Service is committed to ensure that rural open space remains that way or, as close as is feasible.²²⁰

124. A key part of the Management Plan is to recognize that economic development will continue to occur within the corridor, but that the most intense development should occur in areas that are already fairly intensely developed, recycling some of the industrial wasteland in the River Corridor in the center cities, but preserving the natural features of the River in the more rural areas.²²¹

VII. Existing Levels of Governmental Services

A. Township

125. The Township currently provides minimal governmental services to the subject property. The Township has two paid employees – a part-time clerk and a part-time treasurer.²²² It has no public works department, no parks department, no police

²¹⁷ Tr. 736 [Johnson].

²¹⁸ Exhibit B-2.

²¹⁹ Tr. 738-739 [Johnson].

²²⁰ Tr. 741 [Johnson].

²²¹ Tr. 742 [Johnson].

²²² Tr. 54 [Nesvig], 774-75 [Adams].

department, and no fire department.²²³ The Township contracts with the County for snowplowing, and with the City of St. Paul Park for both fire and police protection.²²⁴ The Township does not and could not provide municipal water or sewer services to the subject property.²²⁵ The Township does not provide any parks or recreation, aside from a tennis court by the town hall, which is not used because it is not repaired.²²⁶

126. Fifteenth Avenue, which borders the northern edge of the property, has become completely blocked by junk from the neighboring junkyard.²²⁷ While the junkyard is currently in the City limits, 15th Avenue, which separates the junkyard from the Nesvig property, is a Township street.²²⁸ The current Town Board has not taken any action to clear the public right-of-way and open the road for traffic.²²⁹

127. The Township does not desire to assume the responsibilities associated with supporting urban development and providing urban services to the subject property.²³⁰

B. City – Administration

128. The City has a City Administrator, whose responsibilities include supervising an administrative staff of four people, preparing the City's annual budget, preparing reports and agendas for the City Council, responding to City Council and citizen requests, and coordinating all of the activities that occur day to day at the city office.²³¹ All of the City's department heads, including its fire, police, and public works departments, report to the City Administrator.²³²

129. The City's administration has planned extensively for the development of the Rivers Edge project.²³³ The City has hired one additional employee in its administrative offices and believes that it will need to hire another one as the development proceeds.²³⁴

C. City – Police Protection

130. The City has a Police Department with eight full-time police officers.²³⁵ The City's police force provides police protection seven days a week, 24 hours a day.²³⁶

²²³ Tr. 54 [Nesvig], 775 [Adams].

²²⁴ Tr. 65-57 [Nesvig], 775 [Adams].

²²⁵ Tr. 57 [Nesvig], 292 [Schlichting].

²²⁶ Tr. 57 [Nesvig], 775 [Adams].

²²⁷ Tr. 84 [Nesvig].

²²⁸ Tr. 85 [Nesvig].

²²⁹ Tr. 86, 114 [Nesvig].

²³⁰ Tr. 54 [Nesvig]; Exhibit 14 at p. 12.

²³¹ Tr. 427-29 [Sittlow].

²³² Tr. 428 [Sittlow].

²³³ Tr. 433-34 [Sittlow].

²³⁴ Tr. 435 [Sittlow].

²³⁵ Tr. 474 [Monahan].

²³⁶ Tr. 474 [Monahan].

131. In addition to serving the City, the City's Police Department also provides police protection to the Township.²³⁷

132. The City's Police Department has a mutual aid agreement with all law enforcement agencies in Washington County and also uses state and federal services when needed.²³⁸

133. The City's current average response time to a call for police services is three minutes.²³⁹

D. City – Fire Protection

134. The City has a Fire Department, with 35 volunteer firefighters.²⁴⁰ The City's Fire Department provides fire protection seven days a week, 24 hours a day.²⁴¹

135. The City's current ISO fire rating is 4.²⁴²

136. In addition to serving the City, the City's Fire Department also provides fire protection to the Township.²⁴³

137. The City's Fire Department has a mutual aid agreement with other local fire departments, which allows access to additional manpower or services when needed.²⁴⁴

138. The City's current average response time to a call for fire services is just under five minutes.²⁴⁵

E. City – Public Works Department – Park System and Street Maintenance

139. The City has a Public Works Department, with 6 full-time employees, and several seasonal part-time employees.²⁴⁶

140. The City's public works department is responsible for the City's park system, street system, water system, sewer system, buildings and equipment.²⁴⁷

141. The City's Public Works Department does not provide any services to the annexation area or the Township.²⁴⁸

²³⁷ Tr. 474 [Monahan].

²³⁸ Tr. 474-75 [Monahan].

²³⁹ Tr. 475 [Monahan].

²⁴⁰ Tr. 477-78 [Lee].

²⁴¹ Tr. 478 [Lee].

²⁴² Tr. 478 [Lee].

²⁴³ Tr. 479-80 [Lee].

²⁴⁴ Tr. 478-79 [Lee].

²⁴⁵ Tr. 480 [Lee].

²⁴⁶ Tr. 463 [Flandrich].

²⁴⁷ Tr. 459-60 [Flandrich].

²⁴⁸ Tr. 460 [Flandrich].

142. The City's current average snowplowing time to clear all streets, parking lots, and skating rinks in the City is four to five hours.²⁴⁹

143. The City has an existing park system which includes eight parks, providing a full range of active and passive recreational activities.²⁵⁰

F. City – Sanitary Sewer System

144. The existing sanitary sewer system in the City discharges into a 30-inch interceptor line on the corner of the Broadway and 1st Avenue, which is a facility owned by Metropolitan Council Environmental Services.²⁵¹

G. City – Water System

145. The City has an independent water system, which includes three primary wells and one standby well.²⁵² The system has the capacity to pump 220 million gallons of water a year. The City has two elevated tanks that are used to provide fire protection, maintain the pressure in the system, and provide for system fluctuations.²⁵³

VIII. Existing Environmental Problems and the Impact of Annexation

146. The AUAR for the Rivers Edge project reviewed the anticipated environmental consequences of developing the subject property under three scenarios: (1) based on the adopted Comprehensive Plan of the Township, (2) based on the then known plans of the owner and developer, and (3) based on the minimum densities required by the Metropolitan Council for urban development.²⁵⁴

147. The AUAR technical team included a number of consultants with expertise in all the different areas required to be studied in the AUAR process.²⁵⁵

148. Applied Ecological Services, Inc. ("AES"), was retained to perform a complete natural resources inventory of the property included within the scope of the AUAR, to characterize the existing and historic ecological conditions, and to inject that information into the AUAR process.²⁵⁶ AES addressed all ecological or environmental issues that were identified as important or material for this development.²⁵⁷ Based upon its review of existing data and its own field studies of the subject property, AES determined that the majority of the ecological settings on the property were moderate to

²⁴⁹ Tr. 460 [Flandrich].

²⁵⁰ Tr. 460-62 [Flandrich].

²⁵¹ Tr. 324 [Roos].

²⁵² Tr. 326 [Roos].

²⁵³ Tr. 326-27 [Roos].

²⁵⁴ Tr. 160-61 [Greenfield], 252-54 [Schlichting]; Exhibit 6 at p. vii.

²⁵⁵ Tr. 244-45 [Schlichting]; Exhibit 6 at p. vi.

²⁵⁶ Tr. 496 [Apfelbaum], Exhibit 6 at Figure 10-1 and Appendix H.

²⁵⁷ Tr. 540-41 [Apfelbaum].

very poor in condition, or very highly degraded, and that even the higher quality areas were severely at risk.²⁵⁸

149. Specifically, the forested bluffs along the river itself were found to be highly degraded in most locations, due to erosion and the invasion of exotic species, including Tartarian honeysuckle and European buckthorn.²⁵⁹ The invasive species contribute both to erosion, by depriving the native ground cover vegetation of the light it needs to survive, and by preventing new oak seedlings from germinating, again because of the inadequate light.²⁶⁰

150. North of the river bay, an old sewage manure lagoon, which was used long ago when stockyards were in operation at the subject property, still remains and still contains rotted manure and other agricultural materials.²⁶¹ It is surrounded by a rock dike eight to ten feet high, but there is a partial breach in the dike that may allow communication of material from the lagoon to the river during floods.²⁶²

151. AES concluded that the subject property, while degraded, had high recuperative potential, and that its ecological conditions could be improved and restored.²⁶³

152. The AUAR includes a mitigation plan, as required by state rules, which is designed to mitigate any potential environmental impact of developing the subject property.²⁶⁴ AES contributed to the mitigation plan by identifying the locations where the ecological conditions could be improved, and by preparing a storm water management plan.²⁶⁵ For example, AES recommended removing the remaining manure from the manure lagoon, removing much of the rock dike, and restoring that area to be used as a biofiltration wetland in rare storm events when runoff would exceed system design and be conveyed to the river.²⁶⁶

153. Through the AUAR process, several significant changes were made to the proposed development plans and the mitigation plan for the subject property in response to comments made by those who participated in the process.²⁶⁷ For example, the initial draft AUAR proposed to adhere to the Township's existing 40-foot bluff line setback for development along the river. But in response to comments received during the AUAR process, the plans were changed to require a 100-foot setback from the bluffs to mitigate impacts to the environment.²⁶⁸ Among other things, the increased setback will provide a continuous green space and a buffer zone for wildlife along the

²⁵⁸ Tr. 502, 519 [Apfelbaum].

²⁵⁹ Tr. 504-05; 511-12 [Apfelbaum].

²⁶⁰ Tr. 506-07 [Apfelbaum].

²⁶¹ Tr. 516-17 [Apfelbaum].

²⁶² Tr. 533, 518 [Apfelbaum].

²⁶³ Tr. 512, 522 [Apfelbaum].

²⁶⁴ Tr. 157-58 [Greenfield]; Exhibit 6 at Item B, pp. 99-116.

²⁶⁵ Tr. 522-25 [Apfelbaum].

²⁶⁶ Tr. 536-37 [Apfelbaum].

²⁶⁷ Tr. 242 [Schlichting].

²⁶⁸ Tr. 246-47 [Schlichting]; 526-27 [Apfelbaum].

river corridor.²⁶⁹ It will also protect the majority of the existing deciduous forest and oak savanna on the subject property.²⁷⁰

154. Comments received on the draft AUAR also raised the issue of storm water management, and the resulting final AUAR and mitigation plan include AES's proposal of a storm water management plan, which will minimize both the rate and the volume at which storm water from the subject property will reach the Mississippi River.²⁷¹ The proposed storm water plan will infiltrate 70 to 80 percent of the normal rainfall, and as a consequence, less storm water will reach the river, and at a lower rate. As a result, AES predicts that with the proposed storm water system, after full development of the subject property at urban densities, less storm water will reach the river from the subject property than is the case in the property's current, undeveloped state.²⁷² The infiltration process also will serve to clean contaminants out of the storm water before it reaches the river.²⁷³

155. The initial draft AUAR stated that the developer planned to have boat access ramps, docks, and development at the river's edge near the bay, but in response to comments during the AUAR process, the plans were changed to eliminate boat ramps, docks, and active access to the bay in an effort to mitigate any potential impact that development would have on the water's edge.²⁷⁴

156. The buildable portion of the subject property has high bedrock. As a result the construction of septic systems poses potential environmental issues.²⁷⁵

157. Development of the subject property with city sewer instead of septic systems would be preferable from an environmental standpoint.²⁷⁶ It would eliminate the environmental hazard posed by the construction of multiple additional septic systems in the bedrock.²⁷⁷

158. The forested part of the subject property has become infested with undesirable invasive species, including European buckthorn and Tartarian honeysuckle.²⁷⁸

159. The City has, since 1999, received a series of grants, totaling approximately \$83,000-85,000, from the National Park Service to eradicate invasive species in the City's Riverside Park, which is immediately north of the subject property.²⁷⁹ The predominant invasive species in that area are buckthorn and

²⁶⁹ Tr. 247 [Schlichting]; 526, 553-56 [Apfelbaum].

²⁷⁰ Tr. 276 [Schlichting]; see Exhibit 5.2.

²⁷¹ Tr. 246 [Schlichting]; 527-29 [Apfelbaum].

²⁷² Tr. 531-32 [Apfelbaum].

²⁷³ Tr. 537-38 [Apfelbaum].

²⁷⁴ Tr. 247 [Schlichting], 553 [Apfelbaum].

²⁷⁵ Tr. 58 [Nesvig], 291-92 [Schlichting].

²⁷⁶ Tr. 562-65 [Apfelbaum], 780-81 [Adams].

²⁷⁷ Tr. 58 [Nesvig].

²⁷⁸ Tr. 505 [Apfelbaum].

²⁷⁹ Tr. 447 [Sittlow], 463-65 [Flandrich]; see Exhibit 22.

honeyuckle.²⁸⁰ The City also makes in-kind contributions and uses labor from Washington County's Sentence to Serve Program to assist with its program to eradicate the invasive species from the park.²⁸¹ The National Park Service believes the City has done a good job of working to eradicate the invasive species from its park, and views the City as taking seriously its role as a steward of the Mississippi River Critical Area.²⁸²

160. The Township has never applied for or received a grant from the National Park Service.²⁸³ The Township once applied for a grant from the National Park Foundation to try to reopen the flow of water through Upper Grey Cloud channel, but the application was not successful.²⁸⁴

161. The ecological and environmental restoration proposed in the AUAR's mitigation plan would be more likely to be achieved through the proposed urban development of the subject property than through low density development under the Township's existing Comprehensive Plan because it is difficult to get individual rural landowners to agree on a restoration plan or to commit money to the process.²⁸⁵ The effort needed to restore the subject property will be an expensive effort.²⁸⁶ The urban development proposed by the developer and owner can provide the economic engine needed to fund the restoration outlined in the AUAR's mitigation plan.²⁸⁷

162. If the subject property is left undeveloped, or is developed under the Township's existing Comprehensive Plan, the natural resources will likely continue to decline in the same manner as they have historically.²⁸⁸

IX. Plans by the Annexing Municipality to Provide Governmental Services

163. The City of St. Paul Park is preparing and planning to provide full urban services to the subject property, if annexation is granted.²⁸⁹ Earlier this year, the City requested its City Engineer to prepare a Feasibility Report regarding the infrastructure extensions that would be needed in the City's existing systems to serve the Rivers Edge project.²⁹⁰ The Feasibility Report has three elements: sanitary sewer, water, and transportation.²⁹¹

A. Sanitary Sewer Plans

²⁸⁰ Tr. 447 [Sittlow].

²⁸¹ Tr. 448 [Sittlow], 464 [Flandrich].

²⁸² Tr. 743-44 [Johnson].

²⁸³ Tr. 744 [Johnson], 776 [Adams].

²⁸⁴ Tr. 744-45 [Johnson].

²⁸⁵ Tr. 557-65 [Apfelbaum].

²⁸⁶ Tr. 559-60 [Apfelbaum].

²⁸⁷ Tr. 292-93 [Schlichting], 561-62, 590-91 [Apfelbaum].

²⁸⁸ Tr. 560-61; 590 [Apfelbaum].

²⁸⁹ Tr. 335 [Roos], 434-35 [Sittlow].

²⁹⁰ Tr. 322 [Roos]; Exhibit 23.

²⁹¹ Tr. 323-34 [Roos].

164. The City is currently using about a third of the regional wastewater treatment capacity that has been allocated to it in the existing 30-inch sanitary sewer line.²⁹² The anticipated long-term demands of the Rivers Edge project will use a little more than another third of that capacity.²⁹³

165. The Feasibility Report includes plans to install a trunk sewer line to connect the Rivers Edge project to the 30-inch line.²⁹⁴

166. There is more than adequate capacity in the existing 30-inch sanitary sewer line for the anticipated urban development of the subject property.²⁹⁵ If that capacity is not extended to the Rivers Edge project and to the Township beyond, it may not be used.²⁹⁶

B. Water System Plans

167. The Feasibility Report includes plans to install a looped system, bringing the existing water main down to the Rivers Edge project.²⁹⁷

168. The proposed water main extension will be sufficient to provide to provide water to the entire Rivers Edge project, including the annexation area.²⁹⁸

C. Street Plans

169. The Feasibility Report also includes plans for street and storm sewer improvements.²⁹⁹ The street improvements include widening Third Street to accommodate future traffic needs.³⁰⁰ The design for the Third Street expansion accommodates all the construction within existing rights-of-way and will not require displacement of existing homes within the City.³⁰¹

170. In addition to planning for the infrastructure extensions necessary for the Rivers Edge development, the Feasibility Report includes local improvements that are not for the Rivers Edge project.³⁰² The Feasibility Report was designed to maximize benefits to existing areas within the City at the same time as infrastructure is extended to the Rivers Edge project.³⁰³ As a result, existing city taxpayers will benefit by receiving city services to their property at a reduced cost from what they would incur if

²⁹² Tr. 327-28 [Roos].

²⁹³ Tr. 328 [Roos].

²⁹⁴ Tr. 334 [Roos]; see Exhibit 23 and attached map entitled "Proposed Sanitary Sewer Improvements."

²⁹⁵ Tr. 328 [Roos].

²⁹⁶ Tr. 328 [Roos].

²⁹⁷ Tr. 332-33 [Roos]; see Exhibit 23 and map attached entitled "Proposed Watermain Improvements."

²⁹⁸ Tr. 333 [Roos].

²⁹⁹ Tr. 335-36 [Roos]; see Exhibit 23 and attached map entitled "Proposed Street and Storm Sewer Improvements."

³⁰⁰ Tr. 335-36 [Roos].

³⁰¹ Tr. 343 [Roos].

³⁰² Tr. 331 [Roos].

³⁰³ Tr. 336 [Roos].

the projects were done in isolation, because of the level of participation by the developer in helping to defray the costs.³⁰⁴

171. D.R. Horton is prepared to make the developer contribution for the infrastructure improvements planned within the existing City to bring water and sewer lines to the boundary of the Rivers Edge project, as set forth in the Feasibility Report.³⁰⁵ In addition, D.R. Horton is prepared to pay the required costs to expand Third Street in the City from two to three lanes from Broadway Avenue to Pullman Avenue, in accordance with the recommendations of the traffic study discussed above.³⁰⁶ D.R. Horton is also committed to pay for the additional infrastructure that will need to be built within the Rivers Edge project itself, in stages, as the development goes forward.³⁰⁷

D. Police Department Plans

172. The City's Police Department has estimated that approximately two more police officers may need to be hired, assuming the subject property is annexed and 653 new housing units are developed there.³⁰⁸ The City expects that it will be capable of adding the additional officers as they are needed over the course of development.³⁰⁹

E. Fire Department Plans

173. The City's Fire Department has estimated that approximately eight more volunteer firefighters may be needed, assuming the subject property is annexed and 653 new housing units are developed there.³¹⁰ The Fire Department also anticipates that it will need a new ladder truck for the high buildings proposed in the subject property's commercial area, and it has taken that into consideration in its future budgeting.³¹¹ The City expects that it will be capable of adding the additional firefighters as they are needed over the course of development, and that the response time for fires will not change from its present level.³¹²

F. Public Works Department Plans

174. The City's Public Works Department has estimated that approximately seven more employees may be needed for full development of the Rivers Edge project, but no additional equipment should be necessary.³¹³ The City expects that its Public Works Department has the ability to serve the annexation area, if the proposed development takes place.³¹⁴

³⁰⁴ Tr. 337-41 [Roos].

³⁰⁵ Tr. 374 [Mullenbach].

³⁰⁶ Tr. 376-77 [Mullenbach].

³⁰⁷ Tr. 374-75 [Mullenbach].

³⁰⁸ Tr. 475-76 [Monahan].

³⁰⁹ Tr. 476 [Monahan].

³¹⁰ Tr. 481 [Lee].

³¹¹ Tr. 482-83 [Lee].

³¹² Tr. 480-81 [Lee].

³¹³ Tr. 466 [Flandrich].

³¹⁴ Tr. 466-67 [Flandrich].

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X. Fiscal Impact on the Annexing Municipality and Adjacent Township

175. The financial condition of the City of St. Paul Park is very good.³¹⁵

176. The current net tax capacity of the City is \$3,148,497.³¹⁶ The current market value of all the real estate in the City is approximately \$355 million.³¹⁷ The estimated market value for purposes of calculating the City's statutory debt limit is approximately \$285 million, which yields a debt limit of about \$5.7 million.³¹⁸

177. The current bonded indebtedness of the City that is subject to the statutory debt limit is only \$780,000.³¹⁹ The City also currently has bonded indebtedness which is not subject to the debt limit of approximately \$4.2 million relating to section 429 assessments, \$155,000 in water revenue bonds, and \$780,000 in equipment certificates.³²⁰

178. As of April of 2005, the City had approximately \$5.5 million in cash and investment reserves.³²¹ The City's 2005 budget projects revenues of approximately \$2.45 million, and expenses of approximately \$1.85 million.³²² The City's current bond rating is A-2, an upper middle ranking, based upon the City's good financial management, ample cash reserves, and moderate debt limit.³²³

179. To date, the City has been fully reimbursed by the developer, D.R. Horton, for expenses it has incurred for consultants who have done work in regard to the subject property and the proposed development, including the city engineers, city planner, and city attorney.³²⁴

180. The City anticipates that it will continue to be reimbursed by the developer for its costs associated with this development in the future.³²⁵

181. The City anticipates that any increased costs of its police, fire, and public works departments associated with development of the subject property will be taken care of by the increased property tax revenues that will be generated by the development.³²⁶

³¹⁵ Tr. 453 [Sittlow]; see Exhibit 31.

³¹⁶ Tr. 441-42 [Sittlow]; Exhibit 19.

³¹⁷ Tr. 449-50 [Sittlow].

³¹⁸ Tr. 450 [Sittlow].

³¹⁹ Tr. 450 [Sittlow].

³²⁰ Tr. 450-51 [Sittlow].

³²¹ Tr. 451 [Sittlow].

³²² Tr. 451-52 [Sittlow].

³²³ Tr. 452-53 [Sittlow].

³²⁴ Tr. 431-32 [Sittlow].

³²⁵ Tr. 432 [Sittlow].

³²⁶ Tr. 434 [Sittlow].

182. The City expects that the fiscal impact of the proposed development of the subject property if annexation is approved will be positive, because it will generate substantial property tax revenues, which in the long run, will help keep tax increases to current residents as stable as possible.³²⁷

183. The current net tax capacity of the Township is \$390,678.³²⁸ In 2004, it was \$341,789.³²⁹

184. The total taxable market value of property in the Township in 2004 was \$31,921,300.³³⁰ The Township's total gross taxes in 2004 were \$110,638.25, and its net taxes were \$103,972.54.³³¹ In addition to its property tax revenue, the Township also has income from investments, a gravel tax, and a cell tower on Township property.³³² With the additional revenue, the Township's current net annual income is nearly \$150,000.³³³

185. The gross Township tax for 2004 on the 11 tax parcels which make up the subject property was \$1,866.62.³³⁴

186. The Township will be able to survive financially if the subject property is annexed to the City, because the taxes generated by the subject property represent an insignificant portion of the Township's total annual income, and annexation would relieve the Township of the financial obligation to provide services to the subject property.³³⁵

187. As long as the mining operations in the southern part of the Township continue, the Township will be able to continue its existence, with or without the subject property.³³⁶

XI. Effect on Adjacent School District

188. The subject property is located in the South Washington County School District, which encompasses the cities of Cottage Grove, Newport, St. Paul Park, approximately 85% of Woodbury, portions of Afton, and the entirety of the townships of Grey Cloud Island and Denmark.³³⁷ Those boundaries have remained, for the most

³²⁷ Tr. 453-54 [Sittlow].

³²⁸ Tr. 441-42 [Sittlow].

³²⁹ Exhibit 20.

³³⁰ Exhibit 20.

³³¹ Tr. 64 [Nesvig]; Exhibit 20.

³³² Tr. 65 [Nesvig].

³³³ Tr. 65 [Nesvig], 776 [Adams].

³³⁴ Tr. 65 [Nesvig].

³³⁵ Tr. 65 [Nesvig], 776 [Adams].

³³⁶ Tr. 71-72 [Nesvig]; 777-78 [Adams].

³³⁷ Tr. 345-46 [Vogel].

part, constant for more than a decade.³³⁸ The proposed annexation would not change any of those boundaries.

189. The current population of the School District is approximately 90,350, and the current student population is approximately 16,400, in grades K-12.³³⁹ The School District estimates that about 30,000 to 31,000 households exist within its boundaries.³⁴⁰

190. The School District presently has 14 elementary schools, four junior high schools, and two high schools.³⁴¹

191. The student population in the School District has been steadily increasing for more than a decade, and it is currently increasing at a rate of 1% to 1-1/4% per year.³⁴² The School District projects that its enrollment will grow to 17,300 students in five years and to 18,000 students in ten years.³⁴³

192. The School District is aware of the proposed Rivers Edge development, with approximately 650 new units proposed to be built in the annexation area west of County Road 75.³⁴⁴ The School District projects that such development in the annexation area would yield between 100 and 150 additional students over the course of the completed development, or approximately 10-15 children annually.³⁴⁵

193. The proposed urban development of the subject property would not significantly impact the School District's growth plans, as it is already contemplated within those plans.³⁴⁶

194. The School District would assign elementary school students from the Rivers Edge development either to Pullman Elementary or Pine Hill Elementary. Both schools have existing capacity, and were also constructed with the capability of adding on four to six classrooms, if necessary.³⁴⁷

195. The School District expects that students from the Rivers Edge development would attend Oltman Junior High in St. Paul Park and Park High School in Cottage Grove. Both currently have capacity to accommodate additional students.³⁴⁸

196. To distribute students among schools with spare capacity, the School District may change its attendance boundaries, which it typically does every five to seven years.³⁴⁹ The School District expects to examine its attendance boundaries for

³³⁸ Tr. 347 [Vogel].

³³⁹ Tr. 346 [Vogel].

³⁴⁰ Tr. 348 [Vogel].

³⁴¹ Tr. 346 [Vogel].

³⁴² Tr. 347 [Vogel].

³⁴³ Tr. 348 [Vogel].

³⁴⁴ Tr. 350 [Vogel].

³⁴⁵ Tr. 352-53 [Vogel].

³⁴⁶ Tr. 353 [Vogel].

³⁴⁷ Tr. 354 [Vogel].

³⁴⁸ Tr. 357-58 [Vogel].

³⁴⁹ Tr. 355 [Vogel].

the 2007-2008 school year, regardless of what happens with the pending annexation proceeding.³⁵⁰

197. New students generated by development of the subject property would contribute to the School District's financial resources, because the school funding formula is tied to the number of students.³⁵¹

198. The School District anticipates that the growth in the market value of the district from a development such as Rivers Edge should have the effect of driving down the overall School District tax rate for all of the residents in the community.³⁵²

199. The School District expects to be able to accommodate all of the new students that would be generated by the proposed development of the subject property.³⁵³

XII. Adequacy of Township to Deliver Services to Subject Area

200. In its current Comprehensive Plan, the Township has stated that it "does not desire nor can it assume the responsibilities associated with urban development and the related urban services."³⁵⁴

201. In its Joint Resolution dated October 24, 2000, agreeing to the City's annexation of the Nesvig property east of County Road 75, the Township stated that "the Township form of government is not adequate to protect the public health, safety and welfare within said area."³⁵⁵

202. If the subject property were to be developed within the Township, the development would have to be served by private wells and septic systems. Municipal water and sanitary sewer is not available in the Township.³⁵⁶

XIII. Whether Services Can Best be Provided Through the Proposed Annexation

203. No viable annexation alternative exists for the subject property aside from the proposed annexation to the City of St. Paul Park.³⁵⁷ The subject property is bounded entirely by the City, the Township, and the Mississippi River.³⁵⁸ Annexation across the River and the County line to the City of Inver Grove Heights is not feasible,

³⁵⁰ Tr. 355-56 [Vogel].

³⁵¹ Tr. 357 [Vogel].

³⁵² Tr. 357 [Vogel].

³⁵³ Tr. 358-59 [Vogel].

³⁵⁴ Exhibit 14 at p. 12.

³⁵⁵ Tr. 69 [Nesvig]; Exhibit 25 at p. 1.

³⁵⁶ Tr. 57 [Nesvig], 292 [Schlichting].

³⁵⁷ Tr. 70 [Nesvig].

³⁵⁸ Exhibit 4.1.

because Inver Grove Heights could not manage the property from across the river, nor could it provide services.³⁵⁹

204. The proposed annexation will leave two islands of Township land completely surrounded by the City. These two properties were not included in the pending petition, because Mr. Nesvig does not own them.³⁶⁰

205. The Metropolitan Council has suggested that the islands be included in any annexation order.³⁶¹

XIV. Ability of Remainder of Township to Continue, if Annexation Occurs

206. The Township will be able to survive financially if the subject property is annexed to the City, because the taxes generated by the subject property represent an insignificant portion of the Township's total annual income, and annexation would relieve the Township of the financial obligation to provide services to the subject property.³⁶²

207. As long as the mining operations in the southern part of the Township continue, the Township will be able to continue its existence, with or without the subject property.³⁶³

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. The Administrative Law Judge has jurisdiction in this matter under Minn. Stat. §§ 414.031 and 414.12 and the order of the Deputy Commissioner of Administration dated February 28, 2005.

2. That proper notice of the hearing in this matter has been given.

3. That the subject area described in the Petition for Annexation is about to become urban or suburban in character.³⁶⁴

4. That municipal government in the area proposed for annexation in the petition is required to protect the public health, safety and welfare.³⁶⁵

³⁵⁹ Tr. 47 [Nesvig].

³⁶⁰ Tr. 71 [Nesvig].

³⁶¹ Tr. 71 [Nesvig], 131 [Uttley]; Exhibit 35.

³⁶² Tr. 65 [Nesvig], 776 [Adams].

³⁶³ Tr. 71-72 [Nesvig]; 777-78 [Adams].

³⁶⁴ Minn. Stat. § 414.031, subd. 4(b)(1).

³⁶⁵ Minn. Stat. § 414.031, subd. 4(b)(2).

5. That annexation to the city of the area described in the petition is in the best interest of the subject area.³⁶⁶

6. That the remainder of the Township can continue to carry on the functions of government without undue hardship.³⁶⁷

7. That the increase in revenues for the City bear a reasonable relationship to the monetary value of the benefits conferred upon the subject area.³⁶⁸

8. That annexation to another adjacent municipality would not better serve the residents of the subject property.³⁶⁹

9. That the remainder of the Township would not suffer undue hardship due to the annexation.³⁷⁰

10. That the area to be annexed should be increased from that set out in the original petition so as to include the area described in Findings of Fact Nos. 14 & 15 so as to improve the symmetry of the area.³⁷¹

11. That the citations to the transcript or to exhibits in the foregoing Findings of Fact do not mean that all evidentiary support in the record has been cited.

12. That these Conclusions are arrived at for the reasons set out in the Memorandum which follows and which is incorporated into these Conclusions of Law by reference.


Based upon the foregoing Conclusions of Law, the Administrative Law Judge makes the following:

ORDER

IT IS HEREBY ORDERED that the property described in Findings of Fact Nos. 2, 14 and 15 is annexed to the City of St. Paul Park.

IT IS FURTHER ORDERED that the effective date of this Order is November 2, 2005.

Dated this 22 day of November, 2005.


 GEORGE A. BECK
 Administrative Law Judge

³⁶⁶ Minn. Stat. § 414.031, subd. 4(b)(3).

³⁶⁷ Minn. Stat. § 414.031, subd. 4(c).

³⁶⁸ Minn. Stat. § 414.031, subd. 4(d).

³⁶⁹ Minn. Stat. § 414.031, subd. 4(e)(1).

³⁷⁰ Minn. Stat. § 414.031, subd. 4(e)(2).

³⁷¹ Minn. Stat. § 414.031, subd. 4(f).

Reported: Barbara J. Carey, RPR
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Transcript Prepared – 4 volumes

MEMORANDUM

A petition for the annexation of the unincorporated property abutting a city is governed by Minn. Stat. § 414.031. In this case, the petition was filed by the property owner with a resolution of the City supporting the petition.³⁷² The legislature has set out with specificity each of the factors to be considered in arriving at a decision and each is discussed below. The statute also states the conclusions that must be made if a petition is to be granted. They are recited in the foregoing Conclusions and are also discussed below.

Statutory Factors

The area proposed for annexation is approximately 300 acres, one-third of which is buildable. The developer proposes to build 653 units of housing on 106 acres leaving about 200 acres undeveloped. The present population is negligible. The projections for the Township and the City by the Metropolitan Council forecast population growth. The Township is forecasted to increase from 307 residents in 2000 to 1100 residents by 2010. The Township points out that this growth was not specifically forecasted to happen in the subject property, however, there does not appear to be any other area where this growth could realistically be expected to occur. The City is forecasted to increase from 5,070 residents in 2000 to 5800 residents in 2010, without consideration of the development east of County Road 75. The present and projected population growth of the subject area and adjacent units of government suggests a trend towards urbanization.

Without the subject property the Township would consist of 1400 acres, and the City currently has about 1600 acres. The area has limestone bluffs overlooking the Mississippi River and the limestone bedrock is close to the surface throughout the property. The limestone bluffs are forested. The property consists mostly of old pastures used in abandoned feedlot operations. A manure lagoon survives from this operation. The environmental inventory for the property found the condition of the property to be moderate to very poor. Honeysuckle and buckthorn are present. These factors suggest that the quantity of land is not significant to a decision and that the property is in need of protection from further degradation. The bedrock will likely present a problem for development of the property through septic systems.

The third factor is degree of contiguity of the boundaries between the city and the subject area. Because they are adjacent, the Township has conceded that this factor

³⁷² Minn. Stat. § 414.031, subd. 1(a)(3) and (c).

supports annexation. It also appears that if St. Paul Park is to grow, the subject property would be the most practical area for its expansion.

The present pattern of physical development includes the City to the north and east, with a new development at urban densities planned to the east. The Township to the south has some residential development as well as a commercial mining operation that is expected to continue for approximately 40 years. The City, the developer and the owner have engaged in extensive planning for the area, including the land owned by Mr. Nesvig to the east of County Road No. 75. The proposed development is not consistent with Township zoning, which allows only an average residential rural density of one residence per ten acres and would allow only 45 units of housing to be built on the property.

The Township agrees that development is appropriate for the area, but at lower densities than that suggested by the developer. The developer's current concept plan represents a number of compromises it has made during a visioning process to accommodate community concerns. The City completed an Alternative Urban Areawide Review to consider environmental factors. All objections were resolved and the process was upheld in district court. The City is preparing comprehensive plan amendments for the property east of County 75 and has required the developer to prepare a growth area study that includes the subject property. The development in the southwest area of the City is similar to that proposed for the subject area. These factors suggest that extensive planning supports the proposed annexation and that annexation would be necessary to proceed with the proposed development.

The conversion of Highway 61 to freeway status is nearing completion. The project includes reconstruction of the Wacouta Bridge over the river and reconstruction of the St. Paul Park interchange. The City has prepared a traffic study that recommends upgrading Third Street and the addition of traffic signals at two intersections to accommodate the proposed development. The eventual extension of 95th Street was also suggested. The Township pointed out that there was no fixed timetable or fiscal component in the study. However, a determination on those items could reasonably follow an annexation decision. The upgrade to Highway 61 is a positive factor for annexation as is the City's planning in this regard.

The Township's main objection to the proposed annexation relates to land use controls in the area and what the Township believes are inconsistencies between the proposed development and Metropolitan Council policies and existing federal and state land use controls. The subject property is within the Mississippi National River and Recreation Area (MNRRA). This federal protection program is administered in Minnesota through the Minnesota Critical Area Act, which has been implemented by Executive Order 79-19. The Mississippi Area Critical Area runs for 72 miles along the river through the seven county metropolitan area. The subject property is within Critical Area's Rural Open Space use district. Development is allowed within this district but its guidelines envision protection of open space and natural characteristics. Any amendment to the City's comprehensive plan to allow the proposed development would have to be approved by the Department of Natural Resources for compliance with the

Critical Area Act, after a recommendation by the Metropolitan Council. The Township argues that this approval will not be forthcoming because the density of the proposed development is not compatible with the requirements of the Act and the Rural Open Space district. The Township believes that the Metropolitan Council will give priority to protection of the Critical Area over development.

However, the subject property will remain in the Critical Area whether or not annexation occurs. And, as the petitioners point out, approval of a plan amendment by the DNR cannot be obtained until annexation is approved and the plan is proposed to be amended. Disapproval of a development cannot be presumed in light of the withdrawal by the DNR of its objections to the AUAR after modifications were made. It appears that the Metropolitan Council expects growth in the subject area, and it generally supports growth that occurs into a contiguous area. The Washington County District Court came to the conclusion that the Critical Area designation of the subject property should not be a compelling factor in an annexation decision. A determination as to whether the proposed use of the subject property is consistent with the Critical Area Act is outside the purview of this administrative proceeding.³⁷³ Likewise, consideration of the amendment of the comprehensive plans of the City and the Township by the Metropolitan Council will follow and are not part of the annexation decision.

The record contains evidence of the existing level of governmental services being provided by the Township and the City. The Township does not provide police or fire protection, but contracts with the City for those services. It does not have public works, water or sewer, or a parks department. The City provides all of these services to its residents, and the Township conceded in its post-hearing brief that the City was capable of providing these services to the subject property. While Township services are adequate at present, municipal services will be required for development.

Another factor that must be examined is present or future environmental problems and the impact of annexation on them. The natural resources inventory prepared for the AUAR process provided an analysis that disclosed a number of problems including erosion of the forested bluffs, invasion by exotic species and the presence of an old manure lagoon adjacent to the river. The study concluded that the property was degraded but that it could be restored. A mitigation plan was prepared to address the problems that incorporated public suggestions such as an increased setback from the bluffs, elimination of boat access and a storm water management plan. The City makes the case that the development it proposes is needed to provide adequate funding for the implementation of the mitigation plan. There is no evidence in the record to indicate that the Township would be interested in or capable of mitigating the present problems. The record also indicates that development of the property with septic systems would be undesirable due to the existence of bedrock near the surface of the property. The use of a sewer system appears likely to minimize environmental problems. Although a more dense development of the property would usually increase

³⁷³ This was acknowledged by the Commissioner of Natural Resources in withdrawing the agency's objection to the AUAR, Ex. No.16.

the possibility of environmental problems, the Petitioners have taken steps to minimize the problems and to address existing conditions.

The City has demonstrated that it has plans to provide needed service to the area proposed for annexation. It has considered what would be required by preparation of a feasibility report that analyzes what would be needed for sewer, water, and streets. The developer will support improvements financially. The City has also made plans and estimates for expansion of its police, fire and public works services to meet the needs of the subject property. The Township did not challenge this planning effort in its brief.

The Petitioners have submitted evidence to permit an analysis of the fiscal impact on the City, the Township and the subject area. The record indicates that the City is in good financial condition with a low bonded indebtedness. It has adequate cash and investment reserves and a good bond rating. The City has been fully reimbursed by the developer for the costs associated with the proposed development and expects that this will continue. It appears that the development would increase tax revenues to the benefit of all residents. The Township argues that there was no analysis of the long term impact on the City. However, the evidence points to a conclusion that the City is capable fiscally of annexing the property, and the Township presented no evidence to the contrary.

The testimony of a representative of the South Washington County School District established that the development would be expected to add 10-15 students each year to the school district. The schools in the district have the existing capacity to absorb the new students, and the district notes that additional students will increase its state funding. The Township did not dispute the school district testimony or estimates.

The Township maintains that its level of services is adequate to support development permitted by its comprehensive plan. It is clear that the Township does not wish to support urban development in the subject area, and it is not able to do so. If the area is to be developed at a higher density, municipal services will be required. Additionally, there is some doubt that the area can be developed with septic systems, and the Township is not able to offer a sewer system. Accordingly, although the Township acknowledges that some type of development is appropriate, it may not be able to support the services needed.

The statute also requires a consideration of whether another type of boundary adjustment other than annexation would be a better solution. In this case, there is no other realistic possibility since St. Paul Park is the only adjacent municipality.

Finally, the legislature has required a consideration of whether the Township can continue to function if annexation is approved. The record indicates that the taxes generated by the subject property are not a significant part of the Township's revenues. The taxes derived from the mining operation in the Township will permit it to continue, and the Township agrees that this is the case.

Statutory Conclusions

Two of the statutory criteria to be considered in an annexation proceeding relate to the effect upon the township that would lose territory. The decisionmaker must consider whether the remainder of the township that is not annexed can continue to carry on the functions of government without undue hardship, and the decisionmaker is authorized to deny the annexation on finding that the township would suffer undue hardship. As stated in the preceding discussion, the record in this matter demonstrates that the Township will not suffer hardship since it derives only a small amount of its revenue from the subject property. The Township will be able to continue financially due to the presence of a mining operation within its boundaries from which it derives tax revenue. The Township conceded that it will be able to continue its functions if the annexation is approved.

The legislature has also directed that an annexation must be denied if the increase in revenues for the city would bear no reasonable relationship to the monetary value of the benefits conferred upon the property annexed. This criterion appears to be aimed at a situation where a city seeks to annex valuable revenue producing property and bestow few benefits to annexed land. The evidence in this proceeding makes it plain that such is not the case here. The subject property is presently undeveloped and in need of ecological restoration. The City proposes to extend significant benefits to the property such as water and sewer, road improvements, environmental improvements and road upgrades.

There is no likely alternative for the subject property to be annexed to any other municipality. It is bounded on the west by the Mississippi River, on the north and west by St. Paul Park and on the south by the Township. If the property is to receive municipal services, annexation to the City would be necessary.

There are three main criteria to be applied when considering whether an annexation petition should be granted. Either it must be shown (1) that the subject property is now, or is about to become, urban or suburban in character, or (2) that municipal government is required to protect the public health, safety and welfare, or (3) that annexation would be in the best interest of the subject area. Only one criterion must be proved; however, it is appropriate to consider each in arriving at a decision.

Several of the factors discussed above point to a conclusion that the subject property is about to become urban or suburban in character. The property's contiguity with St. Paul Park to the north and east and the City's extensive planning aimed at developing the land at urban densities suggests that annexation is a logical progression for the subject property. The planning is supported by the owner and, of course, by the developer of the property to the east. The evidence shows that the available population projections by the Metropolitan Council point to the development of the property at more than rural densities to take advantage of the infrastructure supported by the Council. The proposed plan avoids a "leapfrogging" type of development.

The level of planning completed to date, that includes the subject property, also supports a determination that the area is about to become urban. This includes the AUAR process, including the mitigation plan, as well as the visioning process, the City's feasibility planning, the developer's concept plan and its growth study. This demonstrates that St. Paul Park is capable of and interested in supporting the proposed development. This conclusion is also supported by the major upgrade of the transportation system in the area through the work on Highway 61 and the Wacouta Bridge. The Township suggests that urbanization is unlikely to occur "near in time" and therefore the petition should be denied. However, considering the level of planning already accomplished, it must be concluded that the Petitioners have shown that it is more likely than not that the subject property is about to become urban or suburban in character.

The second criterion is whether municipal government is needed to protect the public health, safety and welfare in the property proposed to be annexed. The present population level on the property does not necessarily suggest that municipal services are required, however the City makes the case that annexation will allow it to address the environmental problems on the property that the Township is not equipped to combat, such as the presence of invasive species and a manure lagoon. Annexation will also allow the implementation of a storm water infiltration system that will decrease runoff to the Mississippi River even with urban development. Another significant factor is the anticipated difficulty in developing this property with septic systems due to the high fractured bedrock on the property. It seems likely that the environment will be better protected by a sewer system if development is to occur, and both the Township and the City anticipate development at some level. The Township notes that it believes that township services are sufficient to maintain the status quo on the property. But the Township anticipates development, and the record supports a conclusion that municipal services will be required to protect the public health, safety and welfare for development to occur.

The Township also contends that annexation is not in the best interest of the subject property. The owner of the property is, of course, a petitioner in this proceeding. And, as discussed above, annexation may allow environmental problems to be addressed through the mitigation plan that has been developed with public input. However, testimony presented by the Township indicated that the property is part of a vegetative system used by migratory birds and has an oak savanna at the edge of the river. A hydrologist with the DNR indicated that approval of the City's amendment of its comprehensive plan would not be automatic since the question of whether the proposed development was consistent with the Open Rural Space District designation would need to be considered. A manager with the National Park Service saw the cliff area on the property as unique and believes that urban development as proposed is not appropriate for a Rural Open Space District. However, those decisions are yet to be made and are outside the scope of this proceeding. The evidence in the record demonstrates that this property is not pristine and is in need of ecological restoration. Based upon the record as a whole, it is more likely than not that annexation is in the best interest of the subject property. The question of whether the proposed development is consistent with

Metropolitan Council planning and state and federal statutory requirements will no doubt be carefully considered in the future.

At the hearing in this matter, the Petitioners proposed that some additional parcels be included in the property proposed to be annexed. The owner of the subject property asked that his 30 acre homestead, which is adjacent to the subject property, be included. The Metropolitan Council suggested that two "islands" of Township lots located between the subject property and the City be included since the Township would find it difficult to serve the area after annexation. Mr. Nesvig testified that some of the owners want sewer and water and would like to develop the property. The statute seems to recognize the addition of property to that set out in the petition by allowing annexation boundaries to be adjusted to improve symmetry. It is concluded that inclusion of these parcels is supported by the record and authorized by statute.

It is fundamental that the object of all statutory interpretation is the implementation of legislative intent. The legislature has provided a statement of its intent to assist in the application of Chapter 414, which must be carefully considered:

Subd. 1a. **Legislative findings.** The legislature finds that:

- (1) sound urban development and preservation of agricultural land and open spaces through land use planning is essential to the continued economic growth of this state;
- (2) municipal government most efficiently provides governmental services in areas intensively developed for residential, commercial, industrial, and governmental purposes; and township government most efficiently provides governmental services in areas used or developed for agricultural, open space, and rural residential purposes;
- (3) the public interest requires that municipalities be formed when there exists or will likely exist the necessary resources to provide for their economical and efficient operation;
- (4) annexation to existing municipalities of unincorporated areas unable to supply municipal services should be facilitated; and
- (5) the consolidation of municipalities should be encouraged.

Subd. 1b. **Goals in promoting, regulating municipal development.** The director may promote and regulate development of municipalities:

- (1) to provide for the extension of municipal government to areas which are developed or are in the process of being developed for intensive use for residential, commercial, industrial, institutional, and governmental purposes or are needed for such purposes; and

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(2) to protect the stability of unincorporated areas which are used or developed for agricultural, open space, and rural residential purposes and are not presently needed for more intensive uses; and

(3) to protect the integrity of land use planning in municipalities and unincorporated areas so that the public interest in efficient local government will be properly recognized and served.³⁷⁴

As the Township points out, the legislative findings reflect conflicting concerns about urban growth and recognize not only the extension of municipal government for residential development where appropriate, but also the protection of unincorporated areas used for open space and rural residential purposes.

The legislature expressed its intent in the declaration that the public interest requires that municipalities be formed when resources necessary for their efficient operation exists, and the unincorporated area is unable to provide municipal services. These statements were given full consideration in arriving at a decision. The legislature also indicated that municipal government should be extended to areas in the process of being developed for intensive residential use.³⁷⁵ The record fully supports the conclusion that the subject property is about to become urban or suburban, and in need of municipal services, due to its proximity to an urban area, the availability of water and sewer, the upgrade of the highway infrastructure, and the detailed planning by the adjacent City. In balancing the legislative interest in also preserving land for agricultural, rural residential and open space against the intent described above, it is concluded that the record established in this proceeding requires a determination that annexation should be approved. The proposed development will allow for some open space along with urban densities. The Petitioners have proved by a preponderance of the evidence that the statutory prerequisites have been met.

G.A.B.

³⁷⁴ Minn. Stat. § 414.01

³⁷⁵ See also, Village of Farmington v. Minnesota Municipal Commission, 284 Minn. 125, 170 N.W.2d 197 (1969).