

BEFORE THE MUNICIPAL BOARD
OF THE STATE OF MINNESOTA

Kenneth F. Sette	Chair
Robert J. Ferderer	Vice Chair
John W. Carey	Commissioner
Sally Evert	Ex-Officio Member
Donald Scheel	Ex-Officio Member

IN THE MATTER OF THE PETITION FOR THE)	<u>FINDINGS OF FACT</u>
INCORPORATION OF THE TOWN OF FOREST)	<u>CONCLUSIONS OF LAW</u>
LAKE PURSUANT TO MINNESOTA STATUTES 414)	<u>AND ORDER</u>
	<u>AND MEMORANDUM OPINION</u>

The above-entitled matter came on for hearing before the Minnesota Municipal Board pursuant to Minnesota Statutes 414, as amended on November 8, 1990 in the Forest Lake Town Hall, Forest Lake, Minnesota. The hearing was conducted by Terrence A. Merritt, Executive Director, pursuant to Minnesota Statutes 414.01, Subdivision 12. Also in attendance were Shirley J. Mihelich, then Commissioner, and County Commissioner Donald Scheel, Ex-Officio Member of the Board. The Town of Forest Lake appeared by and through Gregory Galler, Attorney at Law. There were no other appearances of record. Testimony was heard and records and exhibits were received.

Prior to a determination by the Board, Donald Scheel withdrew from the Municipal Board, to avoid any appearance of impropriety.

After due and careful consideration of all evidence, together with all records, files and proceedings, the Minnesota Municipal Board hereby makes and files the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. On September 7, 1990 a copy of a petition for incorporation by the Forest Lake Town Board was filed with the Minnesota Municipal Board. The petition contained all of the information required by statute, including a description of the territory for incorporation, which is as follows:

The property proposed for incorporation is all of the Town of Forest Lake, Washington County, Minnesota.

2. Due, timely and adequate legal notice of the hearing was published, served and filed.

3. The area subject to incorporation (hereinafter referred to as Town) is unincorporated, and approximately 21,192 acres in size including approximately 2500 acres platted and approximately 18,500 acres unplatted. The Town abuts the City of Hugo, the City of Lino Lakes, the Towns of New Scandia, May, Wyoming and Columbus. The Town encircles the City of Forest Lake (hereinafter referred to as City.)

4. The Town has glacial moraines or knolls which form a gently rolling topography containing a wide variety of soil types. The Town's comprehensive plan analyzed that the soils for the most part are not conducive to the long term operation of on-site systems or for agricultural production. Approximately 90% of the Town has soils with severe limitations for the installation of an on-site septic system. Slopes in excess of 13% are scattered throughout the Town. The soils with only moderate limitations for on-site septic systems exist along the southeastern edge and the northwestern corner of the Town. Prime agricultural production soils are generally located in the southern half and the northeastern corner of the Town.

Large wetland areas exist in the southeastern portion of the Town, as well as in the north central and northeastern portions of the Town.

The combined surface area of the three Forest Lakes and Clear Lake is approximately 2,560 acres. There are numerous smaller lakes, ponds and wetlands scattered throughout the Town. The Town contributes water to the Sunrise Watershed and to the Rice Creek Watershed, with a very small portion of the southeastern corner of the Town draining into the Big Marine Lake area.

5. In 1970 the Town had a population of 2,990, in 1980 a population of 5,331, and the 1989 population estimate is approximately 6,439.

6. The City has a current population of approximately 5,300.

7. The Town has approximately 12,230 acres which are primarily agriculturally zoned, land in residential development; minimal land in commercial development; minimal land in industrial development; with most of it consisting of the Forest Lake Airport, a private airport; approximately 2,781 acres in wetlands; and some institutional use.

In the upcoming years it is anticipated that there will be an influx of residential single family homes and perhaps some industrial development.

8. That part of the Town in the Metropolitan Urban Service Area (hereinafter referred to as MUSA) includes all of the Town that is part of the Forest Lake Freestanding Growth Center designated by the Metropolitan Council. The Forest Lake

Freestanding Growth Center includes all of the City as well as that portion of the Town within the MUSA.

The Metropolitan Council considers freestanding growth centers as detached portions of the MUSA, which accommodate regional population and employment growth that might otherwise occur in unserved areas. The Metropolitan Council in its Metropolitan Development and Investment Framework (hereinafter referred to as MDIF) divides the region into urban and rural service areas.

Additionally, the MDIF indicates where additional land is needed to accommodate growth, freestanding growth center communities should extend municipal services in a staged and contiguous manner that is consistent with their ability to provide such services. If the additional land is in an unincorporated area, annexation through an orderly annexation agreement is the preferred alternative.

9. Both the Town and the Metropolitan Council are forecasting additional new development served by central sewer and water service will occur in the community between 1990 and 2000. In 1988 the Metropolitan Council estimated the potential demand for and supply of vacant urban land in the Town in the MUSA. For the period between 1980 - 2000 the Metropolitan Council indicated that there is a need for 218 acres of additional land to be included within the MUSA to serve potential urban area growth. In 1980 the supply of vacant land was estimated to be 358 acres. The Town has not requested any expansions of the MUSA. The Town presently provides its residents with parks, road maintenance (which prior to January 1990 had been performed by the county), police, through a contract with the county for 40 hours a week at

a cost of approximately \$50,000 per year, fire protection through a joint powers agreement with the City, storm sewer, garbage service through a private hauler and sewer service.

10. The Town had a 1989 sewer flow of approximately 135,000,000 gallons per year.

The Metropolitan Council's 1988 systems information statement indicated a plan 1990 flow range in between 161,000,000 - 167,000,000 per year, within a planned year 2000 flow range of between 172,000,000 - 188,000,000 per year.

11. The Town and City sewage flows are each treated by the same waste water treatment facility.

The only public water system within the Town is a private system located at the Castlewood Golf Course area.

There are presently no plans by the Town to develop a central water system.

12. There was no testimony indicating any existing environmental problems in the Town.

13. The Town has approximately 23 miles of blacktopped road and approximately 50 miles of gravel road.

U.S. Hwy 61 travels north and south through the Town. Interstate 35 is a north and south freeway west of the Town. Additionally there are numerous county roads throughout the Town.

14. The City's industrial park is virtually full, it has limited commercial land available and for residential development there are generally only scatter lots within the southeast quadrant.

In recent years the City has not actively sought annexation to expand its tax base, but rather has allowed property owners to request annexation, for municipal services, in particular water.

15. Presently Washington County, (hereinafter referred to as the county) oversees the Towns zoning ordinance and septic system enforcement and construction.

16. The Town has a comprehensive plan enacted in 1982.

In 1988 the Metropolitan Council sent the Town a system statement for the management of waste water, which the Town has not formally responded to. The deadline for response was January 10, 1990.

The Town is attempting to amend its comprehensive plan to include the ability to designate land in the agricultural preserves program. The density of development for agricultural preserves is one housing unit per 40 acres. There are at least 70 acres of land currently being farmed and more than one land owner would benefit from the inclusion of the agricultural preserves program in the Town's Comprehensive Plan.

17. The Town has a zoning ordinance, a subdivision ordinance as well as a shoreline ordinance. The Town is active in the Forest Lake Watershed Management Organization.

18. The Town presently surrounds the City. Incorporation of the Town would result in the City becoming the hole in a donut of the Town.

Presently development seeking City services focus upon the need for additional police protection and water service.

19. Parks in the Town are provided either through land received from developers or money in lieu of land when new development occurs.

20. The proposed name of the new City would be Forest Shores.

21. The Town has a tax capacity of 14.003.

The school district has a tax capacity of 43.164.

The Town has a market value of approximately \$214,136,820.

The Town has a debt of approximately \$3,388,051.

The Town has a gross tax capacity of \$4,224,062.

22. The county has a gross tax capacity of \$130,000,000.

The county has a tax capacity of 24.934.

23. The school district has a tax capacity of 43.164.

The Town and the City are in the same School District.

The incorporation or denial of the proposed incorporation of the Town would not have any direct impact on the School District.

24. The Town has levied special assessments for improvements within the Town.

25. Presently the City and that portion of the Town within the MUSA are considered a single freestanding growth center.

Approving incorporation of the Town into a City, will create two municipal entities within a single freestanding growth center, which is presently only one.

26. There was no testimony as to insurmountable differences between the Town and the City that would prevent the merging of the two communities.

CONCLUSIONS OF LAW

1. The Minnesota Municipal Board duly acquired and now has jurisdiction of the within proceeding.
2. Incorporation is not in the best interests of the Town of Forest Lake or the City of Forest Lake.
3. Municipal government through incorporation of the Town is not presently required to protect the public health, safety, and welfare in Forest Lake.
4. The Town of Forest Lake has portions that are presently urban or suburban or about to become so and is adjacent to a municipality capable of providing the additional necessary services to those portions of the Town.
5. The best interests of the area will not be furthered by incorporation.
6. The Minnesota Municipal Board should issue an order denying the petition for incorporation.

O R D E R

1. IT IS HEREBY ORDERED: That the petition for incorporation described in Findings of Fact 1 herein, is denied.
2. IT IS FURTHER ORDERED: That the effective date of this order is November 13, 1991.

Dated this 13th day of November, 1991.

MINNESOTA MUNICIPAL BOARD
165 Metro Square Building
St. Paul, Minnesota 55101


Terrence A. Merritt
Executive Director

M E M O R A N D U M

Minnesota Statutes 414.02, Subdivision 3, states "based upon these factors, the board may order the incorporation...." (emphasis added). "The board may deny the incorporation if the area, or a part thereof would be better served by annexation to an adjacent municipality. "(emphasis added) The board is not required by statute to incorporate urbanizing areas or to annex those areas to adjacent municipalities. The board is given the discretion to balance the needs of a town and the needs of a city. There is no compelling health safety or welfare reason to support the incorporation. The Board in denying the incorporation must balance the potential harm to the City of Forest Lake against the needs of the environment for the general protection and welfare of the Town of Forest Lake.

The Board invoked Minnesota Statutes 414.01 Subdivision 16, and required the Town, the City and the County to meet at least three times to discuss the proposed incorporation, the possibility of the merger of the City and the Town and other matters of mutual interest. The meetings were conducted and the parties were able to more fully articulate their present positions. Those talks can now serve as a foundation for future discussions.

The Board is hopeful that the parties will move on from the incorporation request and work together towards a possible merger. It is necessary in these times of shrinking budgets to insure the most efficient and effective delivery of service. Additionally, as this area continues to grow and expand by merging instead of landlocking in the City of Forest Lake, there will be no need for a duplication of

services such as police or water service. The larger Forest Lake community can focus development that needs such services within an area that can economically and efficiently provide them.

The communities have already worked together to avoid pollution of Forest Lake. The Board is confident that the communities can build on this cooperation to ensure that the citizens of the community are served most efficiently and effectively.

JAM 11-14-91