

BEFORE THE MUNICIPAL BOARD
OF THE STATE OF MINNESOTA

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|----------------------|-------------------|
| Paul B. Double | Chair |
| Lea De Souza Speeter | Vice Chair |
| Andrew Hultgren | Vice Chair |
| Ralph Malz | Ex-Officio Member |
| Art Bannerman | Ex-Officio Member |

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|---------------------------------|-------------------------------|
| IN THE MATTER OF THE PETITION) | <u>FINDINGS OF FACT</u> |
| FOR INCORPORATION OF THE) | <u>CONCLUSIONS OF LAW</u> |
| TOWN OF SPRING LAKE PURSUANT) | <u>AND ORDER</u> |
| TO MINNESOTA STATUTES 414) | <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 July 7 and 8, 1997 in the Prior Lake Senior High School auditorium in the City of Prior Lake, County of Scott. The hearing was conducted by Lea De Souza Speeter, Vice Chair, pursuant to Minnesota Statutes 414.01, Subdivision 12. Also in attendance were Paul B. Double, Chair; then member Robert J. Ferderer, Vice Chair; and County Commissioners Art Bannerman and Ralph Malz, Ex-Officio Members of the Board.

The petitioners appeared by and through Douglas Kempf, Attorney at Law; the Town of Spring Lake appeared by and through Andrew MacArthur, Attorney at Law; the City of Prior Lake appeared by and through Suesan Pace and Matthew Brokl, Attorneys at Law; the Prior Lake-Spring Lake Watershed District appeared by and through James D. Bates, Attorney at Law, and Orlin Schafer; Deerfield Development Company appeared by and through Bryce Huemoeller, Attorney at Law; Citizens Opposed to

Incorporation of Spring Lake Township appeared pro se; Metropolitan Council appeared by and through Jeanne K. Matross, Attorney at Law. Testimony was heard and records and exhibits were received.

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

FINDINGS OF FACT

1. On May 15, 1997 a copy of a petition by 172 property owners for incorporation of Spring Lake Township, hereinafter referred to as "Town," was filed with the Minnesota Municipal Board pursuant to Minnesota Statutes Section 414.02, Subd.

1. The petition contained all of the information required by statute, including a description of the territory for incorporation, which is as follows:

All of the Town of Spring Lake, Scott County, Minnesota.

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

3. In 1996, the Town had a population of approximately 3,415 and an estimated number of households of 1,092; in 1990 the population was approximately 2,853 and the number of households was estimated at 899.

4. The area subject to incorporation is unincorporated and is approximately 20,796 square acres in size. The Town abuts the Cities of Prior Lake and Shakopee, and the Towns of Louisville (at a single point), Sand Creek, Helena (at a single point), Cedar Lake, New Market (at a single point), and Credit River.

5. Waterways in or adjacent to the Town include Spring Lake, Crystal Lake,

Fish Lake, Kane's Lake, and portions of McMahon and Cynthia Lakes, and other protected waterways as classified by the Department of Natural Resources, (hereinafter referred to as "DNR"), including numerous wetland areas as identified by the DNR and the National Wetland Inventory.

6. Soils and terrain in the Town include water masses, agricultural lands and glacial lakes and basins. The surface soil is gray calcereous shale-rich clayey till.

7. As of 1994, the Town had approximately 14,247.7 acres, or 68.5%, in agricultural use; approximately 5,781.1 acres, or 27.8%, in combined residential uses; approximately 86.2 acres, or .4%, in commercial use; approximately 18.8 acres, or .1%, in industrial use; and approximately 665.7 acres, or 3.2%, devoted to open space and public uses.

8. The Scott County Assessor's Office indicates approximately 12,552.86 acres in current agricultural uses as of July, 1997. Even though the Town has lost approximately 1,700 acres of farm land in the last three years, over half of the Town's total acreage is still devoted to agricultural land uses.

9. Transportation serving the Town includes State Highways 13 and 282; County State Aid Highways 17, 81, 10, 12, 23; and, county roads 79, 81, 68, 87, as well as township roads. The Town has approximately 32.138 miles of township roads.

10. The Town is included in Scott County's comprehensive plan and subject to its zoning and subdivision ordinances. The Town and the City of Prior Lake have an orderly annexation agreement which dates back to 1972 and which designates approximately 5,760 acres of township land for annexation to the City of Prior Lake.

11. Planning in the area of the Town included in the 1972 orderly annexation

agreement between the Town and the City of Prior Lake is directed by a three member planning board which includes one member each from Scott County, the City of Prior Lake and the Town.

12. The Town Board submitted a resolution of nonsupport for the incorporation petition.

13. The Town is also within the planning jurisdiction of the Metropolitan Council.

14. The Regional Blueprint, as established by the Metropolitan Council, is the comprehensive development guide for the metropolitan area. The regional growth strategy designates three planning areas: (1) the current Metropolitan Urban Service Area (MUSA); (2) an illustrative 2020 urban service area designed as the starting point for discussions with local governments about the staging of urban development through 2020; and (3) a 2040 urban reserve boundary as the maximum area for regional services through 2040. Area outside the 2040 urban reserve boundary is designated as permanently rural.

15. The Town has no land within the current MUSA or the illustrative 2020 urban service area. About one third of the Town, adjacent to the City of Prior Lake, is included within the 2040 urban reserve boundary. The remainder of the Town is designated as permanently rural.

16. The area designated as post-2020 urban reserve is considered by the Council as temporarily rural. No urban scale development should be planned by the Town for this area before 2020. The Town is not now urban nor is it planned to be urban before 2020.

17. The Town currently does not receive any regional system services and no such services are planned for the Town.

18. Metropolitan Council policy does not provide for regional sewers or transportation facilities with urban service levels to areas outside the urban reserve boundary before 2040, if ever.

19. The City of Prior Lake has planned for extension of local sewers to portions of the Town through its orderly annexation agreement with the Town.

20. The Municipal Board reduced the area under consideration for incorporation by accepting an amendment to the existing joint agreement, previously submitted to the Board and pending at the time of this hearing, thereby annexing approximately 261.25 acres out of the area designated for orderly annexation agreed to by the Town and the City of Prior Lake.

21. The Town receives fire protection through a joint powers agreement with the City of Prior Lake, and police protection from the Scott County Sheriff. If incorporated, the Town would renegotiate its fire contract or obtain fire services from other surrounding communities and contract with Scott County for police protection.

Town roads and parks are served on a contract basis.

22. Properties within the Town have individual sewage systems and wells. The Town has no immediate plans to provide sewer or water services.

23. Spring Lake, located in the Town, is an important recreational resource. However, the magnitude of algal blooms during the growing season places the lake in the worst 33% of lakes in the Central Hardwoods Region.

24. The Prior Lake-Spring Lake Watershed District (hereinafter "the District")

is a watershed of the Minnesota River. The watershed is located entirely in Scott County and is adjacent to the Credit River and Sand Creek watersheds. The direct watershed area to Spring Lake encompasses 13,250 acres.

25. The District is currently implementing a Watershed Management Plan that includes a six year Comprehensive Water Quality Improvement Project focusing on Prior-Spring Lakes improvement. The Comprehensive Water Quality Improvement Project promotes upland conservation practices and water quality protection efforts.

26. Citizens Opposed to Incorporation of Spring Lake Township presented substantial evidence as to failing on-site septic systems along South Shore Drive of Spring Lake. A majority of these failing on-site systems were installed prior to 1975 and pose a potential risk to the health, safety and welfare of the residents of that area.

In addition, these failing systems are endangering the water quality of the lake.

27. The lot size of most of these properties precludes alternative options to address these failing systems.

28. By letter dated July 2, 1997, the Minnesota Pollution Control Agency recommended that waste water treatment be provided through the City of Prior Lake at the Metropolitan Council's Blue Lake Regional Wastewater Treatment Facility in Shakopee due to the high percentage of noncomplying on-site systems in the area of South Shore Drive near Spring Lake.

29. At the request of the citizen group opposed to incorporation, the Municipal Board initiated annexation proceedings for approximately 80 acres along South Shore Drive area to the City of Prior Lake. This area is also within the orderly annexation area

and will require additional hearing by the Board.

30. The petitioners testified that the newly incorporated City of Spring Lake could provide an urban level of municipal services more cost-effectively than could the City of Prior Lake. No competent fiscal data or expert testimony was presented to support this statement.

31. The total bonded indebtedness of Spring Lake Township is \$129,000. The tax capacity rate for the Town is 9.280. The tax capacity rate for Scott County is 41.683; the City of Prior Lake is 37.721; and the Prior Lake School District is 60.710.

32. Incorporation of the Town would effectively preclude, and is contrary to, the existing orderly annexation agreement in effect between the City of Prior Lake and the Town.

33. In the absence of any credible evidence to demonstrate how the Town, as an incorporated city would be able to address the issue of failing septic systems, around Spring Lake in particular, the extension of municipal services through annexation of at least some of the subject area to the adjacent municipality of Prior Lake may be more appropriate.

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 petitioners, the Town of Spring Lake or the City of Prior Lake.

3. Municipal government through incorporation of the Town of Spring Lake is not presently required to protect the public health, safety and welfare of the entire town.

4. The Town of Spring Lake has portions of land that are presently urban or suburban or about to become so that are adjacent to a municipality that is providing or is capable of providing 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.

ORDER

1. IT IS HEREBY ORDERED: That the petition for incorporation described in Findings of Fact No. 1 herein, is denied.

2. IT IS HEREBY ORDERED: That the effective date of this order is October 10, 1997.

Dated this 16th day of October, 1997.

MINNESOTA MUNICIPAL BOARD
Suite 225 Bandana Square
1021 Bandana Boulevard East
St. Paul, Minnesota 55108

A handwritten signature in cursive script, reading "Christine M. Scotillo".

Christine M. Scotillo
Executive Director

MEMORANDUM

During the hearing on this matter, a former Board member characterized a long day of hearing testimony in an inappropriate manner. The Board regrets that incident occurred and has taken upon itself a renewed effort to be sensitive to all issues and concerns presented to the Board.

It was unfortunate that as a result, the petitioners left the hearing, thereby leaving the record incomplete as to the factual justification for their petition. The evidence of record did not demonstrate that the petitioners met their burden of establishing the necessity of adopting municipal powers to protect the health, safety and welfare of the entire Town. Nor did the evidence demonstrate that the entire Town was urban or suburban, or about to become so, thereby triggering the need for municipal government.

On the contrary, the little evidence presented by petitioners indicated that the whole thrust of their case was to prevent the City of Prior Lake from annexing areas out of a preexisting orderly annexation agreement with the Town which dates back to 1972. This agreement, while it may need some adjusting, is evidence that the elected officials of the two jurisdictions have had a basis for an ongoing working relationship over the years - something the Municipal Board will not disturb lightly - particularly when both parties to the agreement opposed the incorporation petition and supported prior annexations in the designated area.

Approving the petition for incorporation not only would negate the annexation

agreement in place between the Town and the City of Prior Lake, but would also disrupt the regional planning and infrastructure of the area as directed by the Metropolitan Council.

There may come a time when sufficient urbanization of the Town occurs so as to justify the adoption of municipal powers. Until then, the Municipal Board encourages the property owner petitioners in the present case to continue to work with their elected officials so that future boundary changes reflect the best interest of the entire community.

In the interim, the Municipal Board now has before it the annexation petition for 80 acres along South Shore Drive of Spring Lake. Prior to hearing this matter the Board has directed the City of Prior Lake, the Town of Spring Lake, the Citizens Opposed to Incorporation and the residents of the area who oppose the annexation (but supported the incorporation in the present case) to meet at least three times over a period of sixty days to try to resolve the issues. The Board is hopeful that a local resolution to the health and environmental dangers of the failing on-site systems can be achieved.

The Municipal Board urges the groups involved to put this incorporation effort behind them and to proceed to work together to address the protection of not only Spring Lake but the surrounding area so that as the community grows it will do so in a planned fashion, consistent with the orderly annexation agreement.

A handwritten signature in cursive script, appearing to be 'Cms'.