

1-2900-12546-2

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE OFFICE OF STRATEGIC AND LONG-RANGE PLANNING

In Re the Petition of the Residents of the
Town of Forest Lake for Annexation of the
Unincorporated Property to the City of
Forest Lake, Minnesota (A-6091)

In Re the Petition of I.S.D. No. 831 for
Annexation of Unincorporated Adjoining
Property to the City of Forest Lake
(A-6083)

ORDER AMENDING
FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER
DATED MARCH 23, 2000

In Re the Petition of the Township of
Forest Lake for Incorporation (I-66).

The following parties filed requests for amendments to the Order dated March 23, 2000, and responses to the requests, as allowed by Minn. Rule pt. 6000.3100: ISD No. 831, One Great Forest Lake, the Town of Forest Lake and the City of Forest Lake. The last reply was filed on April 6, 2000.

Jay T. Squires, Esq., of the firm of Ratwick, Roszak and Maloney, P.A., 300 Peavy Building, 730 2nd Avenue South, Minneapolis, MN 55402, represented Petitioner Independent School District No. 831. Dale G. Swanson, Esq., 407 West Broadway, Forest Lake, Minnesota 55025, represented petitioning residents of the Town, aka One Great Forest Lake (OGFL). Kevin K. Shoeberg, Esq., 600 Woodbury Business Center, 1890 Wooddale Drive, Woodbury, Minnesota 55125, represented Petitioner Town of Forest Lake. David K. Hebert, Esq., of the firm of Hebert, Welch and Humphries, P.A., 20 North Lake Street, Suite 301, Forest Lake, Minnesota 55025, represented the City of Forest Lake.

Based upon the filings of the parties, and for the reasons set out in the following Memorandum,

IT IS HEREBY ORDERED: That the Order portion of the Findings of Fact, Conclusions of Law and Order dated March 23, 2000 is amended to read as follows:

ORDER

1. IT IS HEREBY ORDERED that the petition of ISD No. 831 to annex its land to the City of Forest Lake, (Petition A-6083), is granted.

2. IT IS FURTHER ORDERED that the petition of the Township residents (Petition A-6091) is granted and the Town of Forest Lake is annexed to the City of Forest Lake.

3. IT IS FURTHER ORDERED that the annexation referenced in paragraph No. 2 of this Order shall be effective May 16, 2000. However, annexation of the School District land, referenced in paragraph No. 1, shall be effective as of the effective date of this Order as set out in paragraph No. 10.

4. IT IS FURTHER ORDERED that the form of government shall be "Optional Plan A." An election shall be held on May 16, 2000 to elect a mayor and four council persons at large who shall serve until January 1, 2001. Charles P. Robinson shall be the acting clerk for the election and he shall prepare the ballot. Affidavits of candidacy shall be filed not more than four weeks and not less than two weeks before the date of the election. The polling place shall be Forest Lake City Hall and the Election Judges shall be appointed equally from among those serving in the last election of the Town and of the City. The hours of the election shall be from 7:00 a.m. to 8:00 p.m.³¹⁰

5. IT IS FURTHER ORDERED that an election of a mayor and four council members shall be held on November 7, 2000. The mayor shall be elected for a two year term commencing January 1, 2001. Two council members shall be elected for two year terms commencing January 1, 2001. Thereafter, they shall be elected for four year terms. Two council members shall be elected for four year terms. Thereafter, they shall be elected for four year terms.

6. IT IS FURTHER ORDERED that in all other respects, the elections shall be conducted in conformity with the provisions of the Minnesota Statutes concerning the conduct of municipal elections insofar as applicable.

7. IT IS FURTHER ORDERED that the ordinances of the Town of Forest Lake, as well as the Land Use and Planning Controls and other ordinances, and all license privileges including the number of liquor licenses already authorized by the State of Minnesota, shall continue in effect within the former boundaries of the town of Forest Lake, until repealed or replaced by the new governing body of the City of Forest Lake.

8. IT IS FURTHER ORDERED that the petition of the Township to incorporate as a City (Petition I-66) is denied.

9. IT IS FURTHER ORDERED that the population of the post-annexation City of Forest Lake is approximately 15,050 and that the Office of

³¹⁰ The annexation statute does not specifically provide for an election. However, all parties appear to support an election in recognition of the fact that a combination of the Town and the City in this case is similar to a merger or consolidation where an election is required.

Strategic and Long Range Planning retains jurisdiction for the purpose of determining the population of the new municipality, if the present population determination is found to be incorrect.

10. IT IS FURTHER ORDERED that the effective date of this Order is March 23, 2000.

IT IS FURTHER ORDERED that all other requests for amendment are denied.

Dated this 7th day of April 2000.



GEORGE A. BECK
Administrative Law Judge

MEMORANDUM

Each party, except for Mr. Knaak¹, filed a request for amendment of the Order issued on March 23, 2000. The School District asked that its petition be specifically ruled on in the Order and that the ruling be made effective as of the date of the original Order. The requests were supported by OGFL and the City of Forest Lake. In its response the Town argued that the School District presented no evidence that it needed to be annexed prior to May 16, 2000. It is appropriate to grant both requests for amendment. Conclusions of Law Nos. 3 – 7 make it clear that the School District proved its case in this proceeding. However, as the School District points out, a failure to specifically grant or deny its petition could be deemed to be a denial by lapse of time under Minn. Stat. § 414.07. The School District has justified its request that its annexation be effective March 23, 2000 because it needs to proceed immediately to ensure that the junior high will be ready to receive students this fall. The Town has not presented any convincing reason why the effective date should be delayed.

The City of Forest Lake asked that the annexation of the Township be made effective May 16, 2000 rather than on the date of the election of a new City Council. It points out that a legal challenge to the election might create an indeterminate effective date and uncertainty as to how the City and Town should

¹ By a filing Mr. Knaak indicated he was not waiving any appeal rights.

proceed. OGFL supported this request and suggests that a challenge to the election will be less likely if the effective date is not linked to the election. The Town opposes this request since it separates annexation from an election and because the Town believes that the request would deny it the ability to appeal the order. Given the questions raised concerning the authority for an election after annexation it is prudent to separate the election from the effective date so that persons needing to rely on municipal decisions, such as developers, will have some certainty. This amendment does not inhibit an appeal by the Town since the Town could apply to the district court for a stay of the March 23, 2000 order.

The City, OGFL, and the School District all pointed out the inadvertent deletion of a sentence from paragraph No. 4 of the original Order. That sentence set a two year term for two of the council members elected in the November, 2000 election. It is included in this amended Order.

The Town filed a request for amendment that seeks to have the record reopened to take additional evidence and argues that the March 23rd Order should be amended to order incorporation of the Township, since the evidence supports incorporation rather than annexation². The Town asks that additional testimony be taken on post-hearing comments of an OGFL leader concerning development within the Township. It also believes testimony is needed on the City's DNR water appropriations permit. These requests were opposed by the School District, the City and OGFL. The DNR permit question was the subject of testimony and argument at the hearing. As the City suggested, there is reason to believe that any restrictions in the permit can be successfully negotiated so as to allow the City to proceed as intended. Additionally, the comments of one supporter of merger in the newspaper do not justify a reopening of the record. Any decision on growth in the community will be made by the elected representatives of the entire community. The City points out that the Town had the benefit of a voluminous production of documents followed by an eight day hearing. Hundreds of exhibits were introduced and this matter was extensively briefed. A reopening of the record has not been justified. It should also be noted that Minn. Rule pt. 6000.3000 only authorizes the taking of additional testimony prior to a final decision.

The Town's argument that the evidence does not support the findings and conclusions appears to reargue the themes relied upon by the Town in this proceeding. The Town reargues the issues of fiscal impact, police services, employees and water and sewer service, in its request for amendment. These matters have already been considered and ruled upon.

The Town also suggests that the Order granting annexation is legally infirm in that it applies the wrong legal standard, exceeds the decisionmaker's

² Technically, the Town's submission failed to comply with Minn. Rule 6000.3100 that requires it to supply any proposed amendments to the order.

authority and orders a *de facto* consolidation. These are issues that the Town is entitled to have considered in district court should it choose to do so. However, the March 23, 2000 order did consider the impact upon the Township as required by statute and contains numerous findings and explanation directed towards that issue. The impact on the City was also analyzed.

The Town suggests, in its *de facto* consolidation argument, that the Order directs matters to be done that are only authorized under the incorporation or consolidation statute. It argues that the appropriate way to arrive at this result is to first incorporate the Town and then order consolidation proceedings. As the City and OGFL point out, this proceeding is brought under the annexation and incorporation statutes rather than those governing consolidation. Therefore, consolidation cannot be ordered. City and Town leaders were unable to continue along the path to merger or consolidation. If the annexation order were not to include provisions concerning zoning in the Town or a prompt election of a city council, it would not be fair to the residents of the Township. This was recognized by the City and OGFL in their continued support of an early election.

The Order sought to create a practical path towards a successful combination of the communities while recognizing that the petitioners had proved their case for annexation. The alternative would be to allow the existing City Council to control zoning and other matters in the Town until a fall election, a result that does not reflect the reality of the Town's present status as an urban Township. Furthermore, it is reasonable to conclude that the broad authority granted by the legislature to the decisionmaker under Chapter 414 does encompass the authority to order an election after total annexation of a town, where it is necessary to achieve the overall goals set out in Minn. Stat. § 414.01 and elaborated upon in the remainder of the chapter, including the consolidation provisions.

Finally, the Town argues that the legislation abolishing the Municipal Board and transferring its authority to the Office of Strategic and Long Range Planning is unconstitutional under the Supreme Court's recent decision in Associated Builders and Contractors v. Ventura _____ N.W. 2d _____ (Minn. March 31, 2000). A decision on that question is a matter reserved exclusively to the judicial branch.³

³ Neeland v. Clearwater Memorial Hospital, 257 N.W. 2d 366, 368 (Minn. 1977); In Re Rochester Ambulance Service, 500 N.W. 2d 495 (Minn. Ct. App. 1993).

The Town requested oral arguments on the requests for amendment. The request was opposed by the School District. In light of the short timelines involved for appeal and the provision for an early election, further delay is not desirable. Furthermore, having reviewed all of the filings of the parties, and the nature of the arguments, an oral argument does not appear to be necessary to a complete record.

G.A.B.