

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

In Re Petition for Incorporation of  
Columbus Township (I-68)  
and  
Petition by Forest Lake to Annex  
Certain Portions of Columbus  
Township (A-7371)

**AMENDED ORDER  
AND  
ORDER DENYING REHEARING,  
RECONSIDERATION, AMENDMENT  
AND STAY**

Appearances: John J. Steffenhagen, Esq., William C. Griffith, Esq., and Scott A. Johnson, Larkin Hoffman Daly & Lindgren, Ltd., 1500 Wells Fargo Plaza, 7900 Xerxes Avenue South, Minneapolis, MN 55431-1194, appeared on behalf of Columbus Township (Columbus).

Christopher M. Hood, Esq., and Brandon M. Fitzsimmons, Esq., of the firm Flaherty & Hood, P.A., 525 Park Street, Suite 470, St. Paul, MN 55103, appeared on behalf of Forest Lake (Forest Lake).

On July 6, 2006, the Findings of Fact, Conclusions and Order ("Order") was issued in this matter. As required by rule, the parties were given seven days from the date of the mailing of the Order to request amendment.<sup>1</sup>

On July 11, 2006, Columbus requested that paragraph three of the Order be amended to set a specific date for the special election required to implement incorporation. A telephone conference was held with the parties on July 12, 2006, to address Columbus's request. Forest Lake had no objection to an amendment to set the date for the special election, and to reissuing the Order on July 21, 2006, to implement the change.

On July 13, 2006, Forest Lake filed a Motion for Rehearing; Motion for Reconsideration; Motion for Amendment of the Findings of Fact, Conclusions, and Order; and Motion to Stay, with supporting affidavits and Memorandum of Law. Specifically, it requested:

1. Rehearing pursuant to Minn. R. 1400.8300 for the purposes of reopening the record to allow the submission in the record of the minutes of the Town of Columbus Regular Town Board Meeting of June 14, 2005;

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<sup>1</sup> Minn. R. 6000.3100.

2. Reconsideration of the Order pursuant to Minn. R. 1400.8300 for the purposes of modifying the Order and issuing an amended Order;

3. An amended Order pursuant to Minn. R. 1400.8300 and 500.3100, specifically, to amend Findings of Fact 102, 103, 108, 111, 141, and 143, amend Conclusions 3 through 10 and add a new Conclusion 4, and to amend the Order accordingly.

On July 20, 2006, Columbus filed its Memorandum in Opposition to Forest Lake's Motions for Rehearing, Reconsideration, Amendment of the Findings of Fact, Conclusions and Order, and A Stay. In summary, Columbus asserted that the hearing record supports its position that Columbus has done the necessary planning and arranged the necessary financing to move ahead with implementation of its water system.<sup>2</sup>

Based upon the record herein, and for the reasons set forth in the accompanying Memorandum, the Administrative Law Judge makes the following:

### **ORDER**

#### **IT IS HEREBY ORDERED THAT:**

1. Columbus Township's request for an amended order to set a date for election is GRANTED. Paragraph 3 of the Order dated July 6, 2006 is amended to state:

The form of government shall be "Optional Plan A." An election shall be held on September 12, 2006, to elect a mayor and four council persons at large who shall serve until January 1, 2007. Elizabeth Mursko shall be the acting clerk for the election and she shall prepare the official 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 Columbus Township Hall and the Election Judges shall be appointed from those serving in the last Town election. The hours of the election shall be 7:00 a.m. to 8:00 p.m.;

2. In all other respects, the Order and accompanying Memorandum dated July 6, 2006 is reaffirmed and incorporated herein.


3. Forest Lake's Motion for Rehearing, Motion for Reconsideration, Motion for Amendment of the Findings of Fact, Conclusion and Order and Motion for Stay are DENIED.

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<sup>2</sup> Exs. 56, 58, 428.

4. This Amended Order shall be effective upon issuance.

Dated this 21st day of July, 2006

  
BEVERLY JONES HEYDINGER  
Administrative Law Judge

### MEMORANDUM

Forest Lake has requested rehearing and reconsideration in order to reopen the record to allow submission of the minutes of the Columbus Regular Town Board Meeting of June 14, 2006. Forest Lake asserts that this is newly discovered evidence that could not have been found and produced at the hearing since it occurred following completion of the hearing. It also claims that the Order is contrary to law and not supported by the evidence. In support of its Motion, Forest Lake relies upon the language of the applicable rule, Minn. R. 1400.8300:

[i]f it appears that to deny [the motion] would be inconsistent with substantial justice and any one of the following has occurred:

C. material evidence newly discovered that with reasonable diligence could not have been found and produced at hearing; ...

F. the decision is not justified by the evidence, or is contrary to law...

A motion may be granted for the limited purpose of reopening the hearing record for introducing newly discovered evidence. Forest Lake asserts that recent information about the Columbus water system provided to the Town Board at its meetings on June 14, 2006 and July 12, 2006, is not consistent with the information that Columbus presented about the water system at the hearing. In particular, it claims that Columbus is now aware that one of its wells will have lower capacity than anticipated, and that one of the test wells did not prove to be a viable well location. Forest Lake asserts that this information could affect the cost and effectiveness of the Columbus water system.

Even if the evidence that Forest Lake seeks to add to the record supports its claim, it would be insufficient to change any of the critical findings and conclusion or the ultimate order granting incorporation. Although the water system was an important factor, Columbus demonstrated at the hearing that it had plans and financing in place to develop a water system for the I-35 Corridor and Forest Lake did not. The details may have changed, and the costs may rise because of the results from the early tests, but Forest Lake does not claim that

the newly discovered evidence would show that Columbus has lost its ability to plan or finance implementation of the water system.

Forest Lake also claims that the evidence and testimony at the hearing and the newly discovered evidence clearly demonstrate that Forest Lake, not Columbus, could better provide services, water service, in particular, to the I-35 Corridor. Thus, Forest Lake claims, the prior Order was contrary to law and not justified by the evidence. Such a conclusion is not consistent with the evidence, and does not comport with the statutory criteria. The findings of fact demonstrate that Columbus is capable of supplying municipal services to the I-35 Corridor and that Forest Lake does not have a plan in place at this time to do so. It is true, as Forest Lake asserts, that Forest Lake has indicated a willingness to extend its water system into the I-35 Corridor, and may be able to amend its plans to do so at some time in the future. It is also true that Forest Lake has no current plans to do so because it has focused its efforts on the provision of services elsewhere within its municipal limits.<sup>3</sup> These facts are reflected in the findings and no amendment is needed. In essence, Forest Lake is requesting that the ALJ reconsider whether Forest Lake is in a better position in the long run to develop and deliver municipal services to the I-35 Corridor. That argument was addressed and rejected in the Order.

Forest Lake also argues that the Minnesota Court of Appeals has addressed a similar issue when it concluded that annexation to Oakdale was the appropriate approach to providing water and sewer to land near its border, in Lake Elmo.<sup>4</sup> However, the facts of that case clearly differ from the facts presented here. Lake Elmo opposed the property owners' efforts to detach from Lake Elmo and attach to Oakdale. But Lake Elmo had no plans to provide municipal services to the property and planned to impose the costs of any such services on the developers. That situation is quite different from the facts of this case where Columbus has done the planning and begun to implement the installation of municipal services to the I-35 Corridor. Also, the adjoining land in Oakdale was zoned for development. In this case, although the classifications could be changed, the adjoining land in Forest Lake is planned as conservancy or urban reserve, not for development.

The balance of Forest Lake's argument is that the Order was incorrect because the law was misapplied to the facts. The Order stands for itself and sets forth the bases for the decision.

In light of the decision to deny the motions for rehearing, reconsideration, and amendment of the Order (except to clarify the date of the election), there is no necessity to stay entry of this Amended Order.

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<sup>3</sup> See Forest Lake's proposed amendments to Findings of Fact number 111 and 143.

<sup>4</sup> *City of Lake Elmo v. City of Oakdale*, 468 N.W.2d 575 (Minn. App. 1991).

## Setting the Election

In order to assure that the election of new city officers comports with all provisions of the governing statutes, the Order will be amended to set a date certain for the election. In addition, the date of issuance of this Amended Order will be the effective date of the Order, and the appeal period will run from this date, which was the same date as the effective date of the prior Order.

**B. J. H.**