

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MUNICIPAL BOUNDARY ADJUSTMENTS UNIT

In Re Petition for Incorporation of
Burns Township pursuant to Minnesota
Statutes § 414 (I-70)

**FINDINGS OF FACT,
CONCLUSIONS
AND ORDER**

The above-entitled matter came on for hearing before Administrative Law Judge Raymond R. Krause on February 28, 2008, at the Burns Township Hall, 19800 Nowthen Boulevard, NE, Anoka, Minnesota. Public testimony was heard on the evening of February 28, 2008, at the same location. Approximately 25 people attended the hearing. Seven persons offered comments on the record: Harvey Greenberg; Dale Ames; Harlan Meyer; Carl Nelson; Debbie Mahutga; Melanie Kern; and Perry Olson.

Burns Township (Township) received the transcript on March 13, 2008, and submitted Proposed Findings of Fact and Conclusions of Law, and a Post-Hearing Brief on April 11, 2008. The record closed on that date.

Christian R. Peterson, Burns Township Attorney, of the law firm of Randall & Goodrich, Anoka, Minnesota, and Michael A. Couri, of Couri, MacArthur & Ruppe, P.L.L.P., St. Michael, Minnesota, appeared on behalf of the Township.

STATEMENT OF THE ISSUE

Whether the Petition for Incorporation of Burns Township should be granted or denied based on the factors set forth in Minn. Stat. § 414.02.

The Administrative Law Judge concludes that the Petition for Incorporation of Burns Township (I-70) should be granted.

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

Background and Procedural History

1. On December 12, 2007, the Township filed a Petition with the Office of Administrative Hearings, Municipal Boundary Adjustments (OAH-MBA) requesting the incorporation of Burns Township.

2. The hearing on the Incorporation Petition was opened on January 30, 2008, and continued to an indefinite date pending completion of the agency review and delegation for further evidentiary hearing.

3. Christine M. Scotillo, the Executive Director of OAH-MBA set the Petition on for hearing on February 28, 2008, at 9:00 a.m. in front of Chief Administrative Law Judge Raymond R. Krause.¹

4. Burns Township is located in Anoka County, Minnesota. The Township is bordered on the north by the City of St. Francis; on the east by the City of Oak Grove; on the south by the City of Ramsey; and on the west by the City of Elk River. A portion of the Township's northeastern border touches Livonia Township.²

5. Its boundaries are legally described as: All of sections 1 through 36, Township 33 North, Range 25 West, Anoka County, Minnesota.³

Factors for Incorporation, Minn. Stat. §414.02

Present population and number of households, past population and projected population growth for the subject area

6. In 2006, the Township had a population of 4,308 people, consisting of 1,386 households. From 1970 to 2000, the population of the Township grew from 1,129 to 3,557 people. The number of households grew from 281 in 1970 to 1,123 in 2000.⁴

7. The Metropolitan Council projected in the 2006 Development Framework that the Township population will grow to 4,480 by 2010; 4,990 by 2020; and 5,800 by 2030. The Council projected that the number of households will grow to 1,530 by 2010; 1,820 by 2020; and 2,120 by 2030.⁵

8. The Township's population growth has consistently outpaced Metropolitan Council predictions. For instance, the Township surpassed the Council's 2020 population estimate in 2000. In the Township's estimations, it will grow to a population of 5,049 by 2012, and the number of households will increase to 1,649.⁶

9. The population in the Township has increased by 215% from 1970 to 2000, compared to a 93% increase in Anoka County, and a 41% increase in the Twin Cities metropolitan area. The number of households in the Township has increased by 300% compared to a 168% increase in Anoka County and 78%

¹ Notice of Hearing, Dec. 18, 2007.

² See Burns Township Resolution No. 2007-24, Ex. E.

³ Burns Township Resolution No. 2007-24, Ex. D.

⁴ Ex. 1; Ex. 67, p. 6.

⁵ Ex. 69.

⁶ Ex. 69; Ex. 67, p. 7.

increase in the Twin Cities metropolitan area during the same period. The population and household forecasts for the Township are projected to outpace those of Anoka County and the Twin Cities metropolitan area from 2010 to 2030.⁷

10. In 2000, the Township was the 18th most populous township of 1771 townships in the State, and ranked in the 99th percentile of township populations. The Township had a larger population than 692 of 853 cities in the State, and ranked in the 81st percentile of city populations. The Township's 2006 population exceeds that of 59 cities in the seven county metropolitan area, five of which are in Anoka County.⁸

11. In 2006, the townships of Columbus and New Scandia were incorporated. The 2006 population of the Township exceeded the 2006 population of both new cities.⁹

Quantity of land within the subject area; the natural terrain including recognizable physical features, general topography, major watersheds, soil conditions and such natural features as rivers, lakes and major bluffs

12. The Township consists of 22,524 acres or approximately 36 square miles. The landscape is moderately rolling, with a few areas of steep slope. Wetlands and surface waters account for approximately 6100 acres or 27% of the Township area. There are 11 Minnesota Department of Natural Resources (DNR) classified lakes in the Township and one DNR-protected stream (Ford Brook).¹⁰

13. All of Burns Township is located in the Upper Rum River Watershed. The Upper Rum River Watershed is subject to a joint powers agreement between the Township and the cities of East Bethel, St. Francis, and Oak Grove.¹¹

Present patterns of physical development, planning and intended land uses in the subject area including residential, industrial, commercial, agricultural, and institutional land uses and the impact of the proposed action on those uses

14. The Township has two commercial-industrial parks located at the intersections of County Roads 22 and 5 ("the 22/5 Commercial Park") and

⁷ Ex. 67, p. 6-7.

⁸ Ex. 67, p. 8-9.

⁹ Ex. 67, p. 8.

¹⁰ Ex. 67, p. 9; Ex. 63; Tr. 251-52.

¹¹ Ex. 44.

County Road 22 and Highway 47 ("the 22/47 Commercial Park"). The remainder of the Township is zoned "rural residential."¹²

15. The Township developed the 22/5 Commercial Park after it purchased rural residential land and rezoned it for commercial development. The Park contains 28 private businesses. Eight lots in the Park have been sold but remain undeveloped. Two lots in the Park remain unsold. The Burns Town Hall is located in the Park, and the Township plans to construct the Burns Town Center behind the current Town Hall. The proposed development includes a Community and Senior Center, an expanded Town Hall, and additional parking facilities.¹³

16. The Township developed the 22/47 Commercial Park after it rezoned rural residential land for commercial use. The 22/47 Commercial Park is home to a number of local businesses such as Burns Auto Sales, and Offices on 47.

17. The remaining land in the Township consists of suburban residential development. Approximately 69% of the Township, including the commercial-industrial property, has either been developed or is undevelopable because of wetland or water-related restrictions. Approximately 90% of the land that has been developed consists of residential lots that are 20 acres or smaller. The average residential lot size in the Township is 5 acres. Some higher density lots exist in a planned unit development in the northeastern corner of the township. Most of the homes built on residential lots are single-family dwellings, with four or five bedrooms and an average value between \$300,000 and \$600,000. These homes are generally new construction, built by homebuilding companies from surrounding cities such as Andover and East Bethel. There are no multi-family dwellings in the Township. Most of this development is located in the southern part of the Township.¹⁴

18. Residential development in the Township has increased each decade, with an exponential increase in development since 2000. The Township has platted 340 new residential lots since 2000, and 674 new homes have been constructed since 1992. This residential growth is expected to continue.¹⁵

19. The residential development in the township is similar to that in the cities of East Bethel and Oak Grove.¹⁶

20. The Township currently has little commercial agricultural development. There are two dairy farms and a few cattle farm operations in the

¹² Ex. 49.

¹³ Ex. 46; Ex. 53.

¹⁴ Tr. 74, 218-19, 250-52; Ex. 64.

¹⁵ Ex. 50; Ex. 52.

¹⁶ Tr. 83-86; 262-63.

Township.¹⁷ The remainder of the commercial farm land in the Township is used largely for hay and corn production. Because the Township is mostly developed, the majority of the agricultural land has been subdivided into lots that are too small to be farmed.¹⁸ The increased demand for residential properties has caused land values and property taxes to rise, which is another factor that makes farming impractical within the Township.¹⁹

The present transportation network and potential transportation issues, including proposed highway development

21. There are approximately 59 miles of roads in the Township, including state highways, and county and township roads.²⁰

22. State Highway 47 runs north along the eastern border of the Township, through the neighboring City of Oak Grove to Aitkin, Minnesota. Proceeding south, it runs through the neighboring City of Ramsey to Minneapolis, Minnesota.

23. The Township is also serviced by three State-Aid Anoka County Roads: County Road 22 runs east-west through the center of the Township; County Road 5 runs north-south through the center of the Township; and County Road 24 runs east-west through the northern portion of the Township. Other Anoka County Roads in the Township include County Roads 64, 65, 67, 69, 70, 82, and 163.²¹

24. The Township's Capital Improvement Plan includes a road maintenance and development schedule through the year 2017. Between 2013 and 2017 the Township plans to spend approximately \$1.95 million to reconstruct and pave Township roads.²² A significant proportion of that \$1.95 million is slated to come from Municipal State Aid road funding, which the Township is not eligible to receive unless it incorporates.²³

25. Upon incorporation, the Township will lose approximately \$17,260.00 in county road aid, but it will receive approximately \$26,000 in Local Government Aid from the State of Minnesota.²⁴ In addition, when the Township reaches a population of 5,000 (estimated to occur in 2012), it will become eligible to receive approximately \$200,000 to \$300,000 in Minnesota State Aid road funding.²⁵ Therefore, upon incorporation and upon reaching a population of

¹⁷ Tr. 81-82.

¹⁸ Tr. 82-83.

¹⁹ Tr. 83-84.

²⁰ Ex. 67, p. 13; Tr. 194.

²¹ Ex. 67, p. 13.

²² Ex. 56.

²³ Tr. 199.

²⁴ Tr. 182-83.

²⁵ Tr. 182-83; Ex. 67, p. 7.

5,000, the Township will receive a net annual increase in State aids of approximately \$237,000.²⁶

Land use controls and planning presently being utilized in the subject area, including Comprehensive Plans, policies of the Metropolitan Council; and whether there are inconsistencies between proposed development and existing land use controls

26. The Township has had land use controls in place since 1957.²⁷

27. The Township has established a planning commission.²⁸

28. The Township adopted its Comprehensive Plan in 1980 and updated the Plan in 1993 and 1999. It is currently updating it again, as required by the Metropolitan Council.²⁹

29. The Comprehensive Plan sets forth a strategy that allows the Township to retain its rural character while planning for the continuing urbanization of the Township. The Plan's strategy allows the Township to preserve a desirable community identity and character.³⁰ The Township has effectuated this goal by centralizing commercial development to deter annexation by neighboring cities.³¹

30. The Township has a Zoning Ordinance and a Subdivision Ordinance.³² The Township administers these Ordinances, and reviews all applications for subdivisions, plats, conditional use permits, and variances.

31. Anoka County currently has a Shoreland Ordinance, which regulates the zoning of parcels in shoreland districts. The Township does not have its own shoreland ordinance, but it administers portions of the County's Shoreland Ordinance under a joint powers agreement between the Township and the County.³³ Under the agreement, the Township issues shoreland permits on behalf of the County, but it does not issue shoreland variances or conditional use permits. If the Township incorporates, it will assume the administration of shoreland variances and conditional use permits from the County. The County does not foresee any difficulties in conveying these duties to the Township.³⁴

²⁶ Tr. 182-84.

²⁷ Ex. 67, p. 13.

²⁸ Tr. 15.

²⁹ Ex. 67, p. 16.

³⁰ Ex. 34, p. 26.

³¹ Tr. 138-39.

³² Ex. 35, Ordinances 2 and 3.

³³ Ex. 39.

³⁴ Tr. 36.

Existing levels of governmental services being provided to the subject area, including water and sewer service, fire rating and protection, law enforcement, street improvements and maintenance, administrative services, and recreational facilities and the impact of the proposed action on the delivery of the services

32. The Township exercises limited urban powers granted to it by Chapter 157 of the 1963 Minnesota Session Laws, Chapter 1098 of the 1970 Session Laws, and Chapter 586 of the 1973 Session Laws. These laws granted townships many of the powers currently held by cities, including full city zoning and subdivision authority, and the power to enact ordinances, create township departments and advisory boards, levy special assessments, adopt a building code, establish a fire department, and establish streets without a citizen petition.³⁵

33. The Township employs three full-time office staff, including a Town Clerk-Treasurer, an Administrative Assistant, and a Building Official.³⁶ As part of his duties, the Town Clerk-Treasurer administers the affairs of the Township and prepares the budget. The Town Clerk-Treasurer is an appointed position. The Administrative Assistant provides general secretarial and receptionist duties. The Building Official enforces the Township's ordinances and conducts all building and septic inspections. The Township's office staff maintains regular business hours, weekdays from 8:00 a.m. to 4:00 p.m. It is uncommon for a township to have any full-time staff.³⁷

34. The Township provides several administrative services to its residents. It issues dog licenses, and licenses for the sale of tobacco and liquor. It issues voter registration cards, and absentee ballots, and administers primary, general, and township elections. It performs special assessment and parcel search services. The Township also maintains a website and publishes a Township newsletter.³⁸

35. The Township employs three part-time maintenance workers. The workers maintain the Township streets, buildings, parks, playground equipment, recycling center, vehicles and equipment. The Township has several pieces of maintenance equipment, including a grader, a pull-behind packer, a 12' snow plow, a 9500 tandem dump truck, a general-purpose maintenance truck, a skid loader with trailer, a ditch mower, a wood chipper, and a brush cutter.³⁹

36. The Township has a five-person Town Board, consisting of four board members and one chairperson. The Township also has four commissions and committees, including a nine-member Planning and Zoning Commission; a

³⁵ Ex. 2; Ex. 4; Ex. 6.

³⁶ Tr. 12-14.

³⁷ Tr. 7-12.

³⁸ Ex. 9.

³⁹ Ex. 8; Tr. 12-14.

seven-member Road and Bridge Committee, a seven-member Parks and Recreation Committee, and a five-member Architectural Review Committee. Upon incorporation the city council would continue to be a five-member governing body, consisting of four councilpersons and a mayor. The constituents would elect the mayor. Currently, the Town Board elects its chairperson.

37. The Town Clerk-Treasurer prepares a tentative annual budget for the Township after reviewing the income and expenses for the prior year and taking into account any upcoming projects. That tentative budget is reviewed by the Town Board. Between 2000 and 2008 the Township budget has grown from \$474,657 to \$1.3 million.

38. The annual budget is presented to the Township residents for approval at the annual meeting in March. Any eligible voter who attends the meeting can vote on the proposed budget. There are approximately 2,678 eligible voters in the Township. At the meeting, the residents vote on the amount of money that will be levied by the Township to support its proposed budget. The March meeting is typically reconvened to August because of the difficulty in forecasting expenses so far in advance. Approximately 35 people attend the March meeting. Approximately five people attend the August meeting and vote on the levy after a brief half-hour review and discussion of the budget. The low participation of Township electors makes the budget approval process inconsistent from year to year, which makes it difficult for the Township to engage in long-term financial planning. Upon incorporation, the budget would be developed and approved by the City Council.⁴⁰

39. The Township currently manages wastewater with individual sewer treatment systems (septic systems). The Township has a septic system ordinance that sets standards for the design, location, construction, and operation of these systems. The ordinance requires septic tank inspections and pumping every three years.⁴¹ The Township Building Official is responsible for tracking compliance with the ordinance.

40. The Township does not have plans to convert to a municipal sewer treatment system in the foreseeable future. The large lot sizes that are common in the Township are well suited to individual sewer treatment systems, and these systems are more economical than municipal sewer systems.

41. All of the land in the Township is located outside of the Metropolitan Urban Service Area ("MUSA").⁴² The Metropolitan Council does not plan to extend metropolitan sewer services to any part of the Township before 2030. The closest MUSA sewer line is located approximately five miles from the Township border. The closest sewer line that could provide service to the Township is located in the southern portion of the City of Ramsey approximately

⁴⁰ Tr. 30-31, 192-93; Ex. 56.

⁴¹ Ex. 35, Ordinance 1.

⁴² Ex. 62.

two-and-a-half miles from the Township border.⁴³ This sewer is not large enough to service wastewater for any properties located in the top one-third of the City of Ramsey. Both sewer lines would need to be extended to serve the Township. Even if those sewer lines were extended, the pipes would not be large enough to carry the wastewater from the expanded service area. To provide sewer services to the Township, both sewer lines would need to be entirely replaced with larger pipes to accommodate the increased capacity. Such a replacement would be prohibitively expensive.

42. The Township has a newly constructed fire station. Fire services are provided to the Township through a joint powers agreement with the City of Ramsey.⁴⁴ Under that agreement both Ramsey and the Township have their own fire stations, firefighters, and equipment. Each station provides fire services to their own jurisdiction. The City of Ramsey provides fire services to the southern portion of the Township, and the Township provides fire services to the northern portion of Ramsey. The Township currently has six firefighters, a fire hall and a grass rig. The Township plans to obtain additional fire apparatus within the next year. The Township has budgeted \$56,000 for fire personnel and equipment in 2008. The Township will need to purchase a Class A Rated Engine and a Tanker to become a fully functioning fire station.

43. Although the Township has plans to purchase fire equipment over the next ten years, the possibility of annexation and the corresponding reduction in Township tax base makes it difficult for the Township to commit to long-term asset expenditures for the fire department. Incorporation would stabilize the Township's borders and its tax base, and make it easier to fund necessary fire fighting equipment.

44. The Anoka County Sheriff's Office provides police services for the Township.⁴⁵ Several witnesses testified that although many people in the community believe that the Township should contract for regular patrol service with the Anoka County Sheriff's Office, the electors at the annual meeting have so far refused to fund such a contract, effectively prohibiting the Town Board from providing additional police services to the Township.⁴⁶

45. The Township operates two parks: Twin Lakes Park and Nowthen Park. Twin Lakes Park is a 63-acre park offering a softball field, soccer field, fishing pier, boat launch, swimming beach, concession stand, and five picnic shelters with picnic tables and restroom facilities.⁴⁷ Nowthen Park is an 11-acre park offering baseball and softball fields, a soccer field, volleyball and basketball courts, horseshoe pits, a concession stand, one picnic shelter with tables,

⁴³ Ex. 60.

⁴⁴ Ex. 45.

⁴⁵ Tr. 93.

⁴⁶ Tr. 145-151; 50-52.

⁴⁷ Ex. 10.

restroom facilities, and a walking path.⁴⁸ The Township has a park plan whereby additional parks will be constructed in various areas of the Township when residential development attains a certain threshold.

46. The Township owns and operates a 24-hour recycling center located near the Town Hall. The recycling center allows individuals to recycle paper, plastic, metal, appliances, and tires free of charge. The Township also sponsors a semi-annual clean-up day where the Township collects recyclables, appliances and electronics.

47. The Township effectively operates as a city. It administers its own zoning and subdivision regulations and conducts its own planning. It furnishes most of the services of a city, including fire protection, street improvement and maintenance, administrative services, parks and recreation services, and community waste disposal services. The Township will continue to perform these services upon incorporation.

48. Upon incorporation, the Township will need to provide certain additional services to its residents that are currently provided by Anoka County. The Township will need to contract with a law firm for prosecution of misdemeanors and gross misdemeanors committed within their jurisdiction. The Township estimates that this service will cost the Township \$12,000 per year.

Existing or potential environmental problems and whether the proposed action is likely to improve or resolve these problems

49. The Township is not presently experiencing any environmental problems.⁴⁹ The Township regulates the use of septic systems via a septic system ordinance which is consistent with or more stringent than MPCA standards, and requires all property owners to have their septic systems inspected every three years.⁵⁰

50. The Township is party to several joint powers agreements drafted to protect the Township's natural resources. These joint powers agreements include the Anoka Conservation District Joint Powers agreement, which provides for environmental conservation within the Township's community planning; the State Trunk Highway 47 agreement, which provides for environmental assessment and mapping of Highway 47; the joint powers agreement to administer the County Shoreland Ordinance; and the Upper Rum River Watershed Management Organization agreement.⁵¹ The protection of natural resources is a primary goal of the Township's Comprehensive Plan.

⁴⁸ Ex. 11.

⁴⁹ Ex. 67, p. 21.

⁵⁰ Ex. 35; Ex. 67, p. 21; Tr. 75-76.

⁵¹ Ex. 39; Ex. 40; Ex. 41; Ex. 44.

Fiscal impact on the subject area and adjacent units of government, including present bonded indebtedness; local tax rates of the County, School District and other governmental units, including, where applicable, the net tax capacity of platted and unplatted lands in the division of homestead and nonhomestead property; and other tax and governmental aid issues

51. The Township would suffer a net loss of approximately \$3,000 in the first few years after incorporation, comprised of the additional expense of approximately \$12,000 per year in prosecution costs and a loss of County gas tax money in the approximate amount of \$17,000, and a gain of approximately \$26,000 in Local Government Aid.⁵² After five or six years, when the Township is expected to reach a population of 5,000, the City could expect to receive Municipal State Aid money in the approximate amount of \$240,000 annually, resulting in a net fiscal gain of \$237,000 annually.⁵³

52. At the end of 2007, the Township had outstanding debt in the amount of \$1,145,000.⁵⁴

53. The Township has an A3 bond rating from Moody's based on its conclusion that the Township was well-managed and has strong future growth potential. It is uncommon for townships to have bond ratings, but the rating is common for a city with a population between 4,000 and 5,000.

54. The Township is not currently able to engage in tax increment financing ("TIF").⁵⁵ Upon incorporation, the Township could utilize tax increment financing to encourage economic development and redevelopment.⁵⁶

55. Incorporation would allow the Township to stabilize its tax base by solidifying its borders. Therefore, the Township would be in a better position to engage in budgeting for long-term project planning.

56. There is no evidence that Incorporation would have any impact upon the local tax rates of Anoka County, any of the school districts serving Burns Township, or any other governmental unit.

Relationship and effect of the proposed action on affected and adjacent school districts and communities

57. The Township is served by three school districts: Elk River, St. Francis, and Anoka. There is no evidence to indicate that Incorporation would have any impact upon these three school districts.

⁵² Tr. 182-83.

⁵³ Tr. 182-85.

⁵⁴ Ex. 23, p. 17.

⁵⁵ Tr. 178.

⁵⁶ Tr. 179-80.

58. The adjacent cities and townships that could be impacted by the incorporation are the cities of Elk River, St. Francis, Oak Grove, Ramsey, and Livonia Township. There is no evidence to indicate that Incorporation will affect these cities. All of these communities have expressed support for the Township's incorporation.⁵⁷

Whether delivery of services to the subject area can be adequately and economically delivered by the existing government

59. The Township cannot adequately and economically deliver the necessary services to its residents. The threat of annexation and the limited electorate participation in the budgeting and levy process lead to an instability in funding. The instability prevents the Township from making long-term capital investments, such as the acquisition of fire fighting equipment. The decentralized decision making authority of the Town Board also prevents the Township from contracting for regular police patrol services. The Township is an inadequate form of government and it cannot efficiently deliver the services necessary to the Township residents.

Analysis of whether necessary governmental services can best be provided through the proposed action or another type of boundary adjustment

60. After incorporation, the Township will be able to deliver the necessary governmental services to the thirty-six square miles within its jurisdiction. The Township is an urban township currently operating as a city. It furnishes most of the services of a city, including fire protection, street improvement and maintenance, administrative services, parks and recreation services, and community waste disposal services. It has a professional administrative staff. It has adopted and administers its own zoning and subdivision ordinances. It prepares and administers its budget. Incorporation will allow the Township financial stability because it will no longer be subject to annexation by adjacent cities, or the uncertainty of the budget adoption process at the annual meeting, and it will have the benefit of economic development tools such as tax increment financing.⁵⁸

Degree of contiguity of the boundaries of the subject area and adjacent units of local government

61. The Township's boundaries have remained the same since its organization nearly 150 years ago.⁵⁹ The boundaries consist of four straight lines, each six miles in length on the Township's north, south, east and west

⁵⁷ Exs. 26-30.

⁵⁸ Tr. 203, 212-17.

⁵⁹ Tr. 259-60.

boundaries, respectively, forming a perfect square.⁶⁰ The current boundaries are easily identified, easy to administer, and all located on section lines.

62. Annexation of any portion of the Township to a neighboring city would disrupt the current contiguity established nearly 150 years ago, and would serve no purpose supported in the record.

Analysis of the applicability of the State Building Code

63. The State Building Code is currently enforced by the Township. The Township employs a building official to administer the Code.⁶¹ The Township will continue to be subject to the Code after incorporation.⁶²

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

CONCLUSIONS

1. The Administrative Law Judge has jurisdiction in this matter through the Office of Municipal Boundary Adjustments, pursuant to Minn. Stat. §§ 414.01, 414.02, 414.031 and 414.12, and by the assignment of the Director of Municipal Boundary Adjustments Unit to the Office of Administrative Hearings.

2. All of the jurisdictional prerequisites have been met and the petition is properly before the ALJ for disposition.

3. Proper notice of the hearing in this matter has been given.

4. Burns Township is urban or suburban in character. The Township furnishes a full array of municipal services and has experienced significant residential and commercial development. Incorporation is necessary to protect the community's boundaries from encroachment and to enable the Township to better provide services to its residents.⁶³

5. Incorporation is required to protect the public health, safety and welfare of Burns Township.⁶⁴

6. Incorporation is in the best interests of Burns Township.⁶⁵

⁶⁰ Ex. 64.

⁶¹ Ex. 35; Tr. 67.

⁶² Minn. Stat. § 414.02, subd. 3(h).

⁶³ Minn. Stat. § 414.02, subd. 3(b)(1).

⁶⁴ Minn. Stat. § 414.02, subd. 3(b)(2).

⁶⁵ Minn. Stat. § 414.02, subd. 3(b)(3).

7. No part of Burns Township would be better served by annexation to an adjacent municipality.⁶⁶

8. No adjustment of Burns Township boundaries is necessary or appropriate.⁶⁷

9. These Conclusions are arrived at for the reasons set forth in the following Memorandum, which is incorporated into these conclusions by reference.

Based upon these Findings of Fact and Conclusions, and for the reasons set forth in the accompanying Memorandum, the Administrative Law Judge makes the following:

ORDER

IT IS HEREBY ORDERED THAT:

1. The Petition for Incorporation of Burns Township (I-70) is GRANTED.

2. Burns Township shall hereby be incorporated as the City of Nowthen.

3. The Incorporation shall be effective upon the election and qualification of the new City Council as set out in Paragraph 4 of this Order.

4. The form of government for the City shall be the "Optional Plan A" form. An election of a mayor and four council members shall be held not less than 45 days nor more than 60 days from the effective date of this Order. Corrie LeDoucer shall be the acting clerk for the election and 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 the Burns Township Hall. The election judges shall be appointed from those serving in the last Town election or previous Town elections. The hours of the election shall be 7:00 a.m. to 8:00 p.m. Candidates shall be permitted to file for the position of Mayor whose term shall expire on December 31, 2008, a Council Member seat whose term shall expire on December 31, 2010, or a Council Member seat whose term shall expire on December 31, 2008. The two candidates filing for the Council Member seats expiring on December 31, 2010 who receive the most votes shall be elected to terms ending December 31, 2010. The two candidates filing for the Council Member seats expiring on December 31, 2008 who receive the most votes shall be elected to terms ending December 31, 2008. As the aforementioned terms begin to expire, elections shall be held during the November general elections of the year preceding the

⁶⁶ Minn. Stat. § 414.02, subd. 3(c).

⁶⁷ Minn. Stat. § 414.02, subd. 3(d).

above-referenced term expiration dates, commencing with the general election to be held on November 4, 2008. Thereafter, the terms for City Council Members and the Mayor shall be for four years and two years respectively, as provided in Minnesota Statutes Section 412.02, and municipal elections shall be held during the November general election in even years. The position of Mayor and all Council Member positions shall be at-large positions.

5. In all other respects, the election shall be conducted in conformity with the provisions of the Minnesota Statutes concerning the conduct of municipal elections.

6. The Ordinances of Burns Township, as well as all other land use and planning controls, and all licensing privileges, shall remain in effect within the boundaries of the City of Nowthen until repealed or replaced by the new governing body of the City of Nowthen.

7. Upon incorporation, all money, claims, or properties including real estate owned, held or possessed by the former Burns Township, and any proceeds or taxes levied by Burns Township, collected and uncollected, shall become the property of the City of Nowthen with full power and authority to use and dispose of for such public purposes as the City Council deems best, subject to claims of creditors. This will include cash reserves and fund balances of the Township and all public property and equipment held by Burns Township.⁶⁸

8. Burns Township's outstanding debt will become the financial obligation of the City of Nowthen.⁶⁹

9. This Order is effective May 16, 2008.

Dated: May 1, 2008



RAYMOND R. KRAUSE
Chief Administrative Law Judge

Reported: Transcript Prepared
Shaddix & Associates

NOTICE

This Order is the final administrative order in this case under Minnesota Statutes §§ 414.02, 414.07, and 414.09. Any person aggrieved by this Order may appeal to the Anoka County District Court by filing an Application for Review

⁶⁸ Minn. Stat. § 414.067, subd. 2.

⁶⁹ Minn. Stat. § 414.067, subd. 2.

with the Court Administrator within 30 days of the date of this Order. An appeal does not stay the effect of this Order.

Any party may submit a written request for an amendment of these Findings of Fact, Conclusions of Law and Order within seven days from the date of the mailing of the Order pursuant to Minnesota Rules 6000.3100. No request for amendment shall extend the time of appeal from these Findings of Fact, Conclusions of Law and Order.

MEMORANDUM

The Township's Petition for Incorporation is governed by Minn. Stat. § 414.02. Section 414.02, subdivision 3(a), specifically directs that the ALJ must consider thirteen factors when reviewing the Petition. Under Minn. Stat. § 412.02, subdivision 3(b), the ALJ may order incorporation, after review of the enumerated factors, if the ALJ finds that: 1) the property to be incorporated is now, or is about to become, urban or suburban in character; 2) the existing township form of government is not adequate to protect the public health, safety and welfare; or 3) that the proposed incorporation would be in the best interests of the area under consideration.⁷⁰ Here, after review of the statutory factors, the ALJ concludes that incorporation should be ordered because the Township is suburban in character; the township form of government is inadequate to protect the public welfare; and because incorporation is in the Township's best interests.

Consideration of Statutory Factors – Minn. Stat. § 414.02, Subdivision 3(a)

Population and projected growth

The population and household evidence in the record demonstrates that the Township has grown dramatically in the past thirty years. The Township's population has increased 215% from 1970 to 2000, and the number of households has grown 300% in the same time period. The population will likely be 5,000 by 2012 or 2013. The Township's population is larger than 81% of the State's cities, and ranks in the 99th percentile for Townships. The rate of platting has increased since 2000; 29 plats have been approved since then. The increase in population over the past few decades demonstrates the Township's transition from rural to suburban within the Metropolitan Area.

Topography

The Township consists of 36 square miles, or approximately 22,524 acres of land. There are approximately 6,100 acres of wetland within Burns Township, constituting approximately 27% of the Township area. The majority of the Township consists of soils that are well-drained and suited for urban use.

Pattern of physical development

The present pattern of physical development and intended land uses are largely suburban in nature. Two commercial-industrial parks have been developed in the Township since 2000. Over 200,000 square feet of new commercial space has been built since 2000 in Burns Commercial Park. Currently 26 businesses are located within the Township. Only about 7,000 acres within the Township remain developable; approximately 69% has been

⁷⁰ See generally, *McNamara v. Office of Strategic and Long Range Planning*, 628 N.W.2d 620 (Minn. App., 2001); *Town of Forest Lake v. Minnesota Mun. Bd.*, 497 N.W.2d 289 (Minn. App., 1993).

developed. Residential development is similar to that which has occurred in the nearby cities of East Bethel, Oak Grove and Columbus. New home values in the Township generally range from \$300,000 to \$600,000. The small lot size and the high land prices make farming impractical within the Township. The pattern of development demonstrates the Township's urbanization.

Present transportation system

The Township is served by a network of approximately 45 miles of State and County roads, and approximately 59 miles of Township roads. The State has identified County State Aid Highway 22 as a future principal State arterial trunk highway for use as a primary east-west corridor through Anoka County. Upon reaching a population of 5,000, the Township will be eligible for Municipal State Aid (MSA) road funding. The Township will receive an estimated \$240,000 per year in MSA funds for use in improving Township roads. These funds represent a ten-fold increase over the Township's current road construction budget.

Land use controls and planning

The Township has had land use controls in place since 1957. These controls currently consist of a subdivision ordinance, a zoning ordinance and a storm water ordinance. The Township has also established a planning commission. The Township first prepared its Comprehensive Plan in 1980, and updated it in 1993 and 1999. It is currently updating the Plan again. The Metropolitan Council's Development Framework classifies Burns Township as "Diversified Rural," which is a classification that includes 21 other cities in the metropolitan area. There are no inconsistencies between the Township's current development controls and planned uses, and the Comprehensive Plan is consistent with the Metropolitan Council's Development Framework. The Township has all of the planning and zoning infrastructure to operate as a fully functioning city under Minnesota Statutes, Chapter 462.

Existing levels of governmental services and whether the Township can adequately and economically provide necessary services

Burns Township provides nearly a full range of governmental services, including fire rating and protection, law enforcement, street improvements and maintenance, administrative services, and recreational facilities. The Township does not provide sanitary sewer or municipal water service. The Township employs six full-time staff, three of whom work as administrators. Day-to-day administration of services would remain essentially unchanged upon incorporation, but the Township will have to provide additional prosecution and shoreland zoning services. The Township recently entered into a joint powers agreement with the City of Ramsey under which the two entities jointly provide fire protection to the Township and a portion of the City of Ramsey. Police services are provided by the Anoka County Sheriff's Office. Some citizens

testified that they believe the Township should contract with Anoka County for regular patrol service, but the Town Board has never agreed to fund such a contract. After incorporation, the city council will be able to contract for regular patrol hours within the Township, if the council believes it is in the best interest of the citizens of Nowthen.

Incorporation will allow the Township to more efficiently execute its capital improvement plan. Under the township form of government, it is unpredictable whether the Township electorate who appear at the annual meeting will vote to fund the improvement plan. After incorporation, the city council will have the ability to stabilize the plan funding. Incorporation will centralize decision making authority in an elected city council with two-year or four-year statutory terms of office.⁷¹ As a city, the Township will be better able to plan and fund major expenditures over several years, which will result in more consistent delivery of services to the Township's residents. Incorporation will not diminish the level of services currently provided.

Environmental Problems

There are no known environmental problems in Burns Township.

Fiscal impact on the Township

Incorporation is expected to have a net negative financial effect upon the Township in the first few years of incorporation. It is expected that the Township will incur an additional expense of \$12,000 per year in prosecution costs, and lose County gas tax money in the amount of \$17,000. The Township will receive approximately \$26,000 in local government aid, for a net loss of approximately \$3,000 a year for the first four years. After five or six years, when the Township reaches the 5,000 population level, it could expect to receive \$240,000 annually in Municipal State Aid, which would result in a net fiscal gain of \$237,000 annually. The Township currently has a bonded indebtedness of \$1,145,000. Incorporation will help ensure that the Township has a stable tax base from which to repay this debt.

Effect of the proposed action on adjacent communities

All of the surrounding cities, Livonia Township, and the Anoka County Board have passed resolutions supporting the incorporation of the Township. There is no evidence that the incorporation will adversely impact any of the surrounding communities. None of the surrounding communities have suggested that they can better provide necessary governmental services, such as sewer, water, or police services, to the residents of the Township.

⁷¹ See Minn. Stat. § 412.02.

Whether governmental services could better be provided through an alternative boundary adjustment

The Township can best deliver the necessary governmental services to its residents. All the surrounding communities passed resolutions in support of the Petition for Incorporation and none suggested they could better provide governmental services to the Township. The Township has a long history of planning for and providing services throughout its jurisdiction.

Degree of contiguity of the boundaries

The Township boundaries have remained the same since its organization nearly 150 years ago. The boundaries consist of four straight lines, each six miles in length, on the north, south, east, and west boundaries, forming a perfect square. The boundaries are easily identified, easy to administer, and all located on section lines. They need not be adjusted for incorporation purposes.

State building code

The Township has adopted and enforces the State Building Code, and Incorporation will have no effect on the enforcement thereof.

Statutory Conclusions – Minn. Stat. § 414.02, Subdivision 3(b)

Here, after review of the statutory factors, the ALJ concludes that incorporation should be ordered because the Township is suburban in character; the township form of government is inadequate to protect the public welfare; and because incorporation is in the Township's best interests.

Suburban Character

The Township is currently suburban in character. As noted, the Township has undergone substantial population growth in the past thirty years. Approximately 69 percent of the Township land either has been subdivided for single family use, or cannot be subdivided because of wetland restrictions. Twenty-nine plats have been approved since 2000. The community, which once largely consisted of farms, has developed into a suburban community of single family homes. The Township is surrounded by cities. The Township's budget has grown from \$474,657 in 2000, to \$1,282,000 today. The Township has developed two commercial-industrial parks, and 26 businesses are located within the Township. The ALJ concludes that the Township is suburban in character, and therefore, suitable for incorporation.

The Metropolitan Council has suggested, based largely on population projections, that the Township is not now, and is not about to become, suburban

in nature.⁷² The actual population growth and residential development of the Township, however, demonstrate its suburban character.⁷³

Public Health, Safety and Welfare

The statutory limitations restrict the Township's ability to adequately protect its residents. The Township's annual budget has grown to almost \$1.3 million. Under Minnesota law, each year the Town Board presents a budget to the electorate at the Township annual meeting. The electors review the budget and vote on the amount the Township may levy to fund the budget. The Township may not levy more than the electors approve at the meeting.⁷⁴ There are 2,678 eligible votes in the Township, but typically only five residents vote on the Township tax levy, after they spend about one-half hour considering the budget. This cursory review by whichever electors appear at the budget meeting makes it difficult for the Township to commit to long-term capital expenditures, such as a fire truck.

In addition, by statute the Town electorate sets the amount of money to allot for police and fire protection. The Town Board cannot decide how much money should be spent for these services.⁷⁵ Burns Township remains the only community in Anoka County that does not have its own police force or contract for police patrol services. Town Board member Dennis Berg believes the reluctance of some of the electors to allocate money for police services is not representative of the Township, and that a city council would better represent the citizens' desire for public safety and additional police patrols. These statutory spending restrictions have hindered the Township's ability to protect the public health, safety and welfare. Incorporation will allow the Township to receive Local Government Aid and Municipal State Aid, and will also solidify the Township's borders and protect the tax base from loss through annexation. In short, incorporation will enable the Township to better provide for the public welfare.

Best Interests

Incorporation is in the best interests of the residents of the Township and the surrounding area. Incorporation will allow the Township to unify the budget and levy powers in one single entity, the city council. Given the size of the population and the operating budget, the city form of government will allow the Township to operate more effectively and efficiently.

Incorporation will also allow the Township to exercise greater economic development powers. Townships are not allowed to use tax increment financing (TIF). Upon incorporation, the Township will be able to use TIF to provide economic development assistance to the vacant industrial lots.

⁷² See Ex. 68.

⁷³ See Township Brief, Apr. 11, 2008, p. 14-16.

⁷⁴ See Minn. Stat. § 365.431.

⁷⁵ See Minn. Stat. § 365.15.

Once incorporated, the Township will obtain greater police powers. For instance, townships cannot require a vacant house to be boarded; cities can.⁷⁶ In general, cities are able to exercise greater police powers than townships and incorporation will provide the Township with more police powers.

None of the adjacent municipalities can better serve any part of Burns Township. No part of the Township should be annexed to any other jurisdiction. Incorporation is the best alternative for the continued provision of services to the residents of the Township.

Conclusion

In conclusion, Burns Township's Petition to Incorporate should be granted. The Township has rapidly grown and developed in the last thirty years, and the governmental services it provides are akin to those delivered by a small city. It is suburban in character and incorporation will allow the Township to better provide for the public welfare. The legislature has expressly stated that townships should form municipalities when they have the necessary resources to operate economically and efficiently.⁷⁷ Burns Township has developed the resources to function as a municipality, and the Petition should be granted.

R. R. K.

⁷⁶ See Minn. Stat. § 463.251.

⁷⁷ See Minn. Stat. § 414.01, subd. 1(a)(3).

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
ADMINISTRATIVE LAW SECTION
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CERTIFICATE OF SERVICE

In Re Petition for Incorporation of Burns Township pursuant to Minnesota Statutes § 414 (I-70) OAH Docket No.: 2-0330-19411-BA

Denise Collins, certifies that on the 21st day of March, 2008, she served a true and correct copy of the attached **FINDINGS OF FACT, CONCLUSIONS AND RECOMMENDATION** by placing it in the United States mail with postage prepaid, addressed to the following individuals:

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