

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Petition for  
Incorporation of Rice Lake Township  
(MBAU Docket I-71)

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND ORDER**

This matter came on for hearing before Administrative Law Judge Barbara Case on November 21, 2014, at the Rice Lake Township Hall, 4107 W. Beyer Road, Duluth, Minnesota. Approximately 75 people attended the public testimony portion of the hearing, and 13 people offered comments on the record.

Michael C. Couri, Couri & Ruppe, P.L.L.P., appeared on behalf of Rice Lake Township (Township).

Rice Lake Township submitted Proposed Findings of Fact, Conclusions, and Order and a Post-Hearing Brief on January 12, 2015. The record closed on January 15, 2015.

**STATEMENT OF ISSUE**

Have the relevant factors defined in Minn. Stat. § 414.02 (2014) been established such that incorporation should be granted?

**SUMMARY OF CONCLUSION**

The Administrative Law Judge concludes that Rice Lake Township has established the relevant factors by a preponderance of the evidence and therefore Rice Lake Township's petition for incorporation is granted.

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

**FINDINGS OF FACT**

**Procedural History**

1. On June 10, 2014, Rice Lake Township adopted Resolution No. 14-06-18, titled "In the Matter of the Petition of Rice Lake Township for Incorporation Pursuant to Minnesota Statutes § 414.02", and thereby indicated its intent to incorporate from a township into a city form of government.<sup>1</sup>

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<sup>1</sup> In the Matter of the Petition of Rice Lake Township for Incorporation Pursuant to Minnesota Statutes § 414.02 (July 25, 2014) (Incorporation Petition).

2. On or about June 11, 2014, Rice Lake Township served Notice of Rice Lake's Intent to Incorporate on each municipality and township contiguous to Rice Lake Township.<sup>2</sup>

3. On July 25, 2014, Rice Lake Township petitioned the Office of Administrative Hearings for incorporation.<sup>3</sup>

4. Rice Lake Township is located in St. Louis County (County), Minnesota.<sup>4</sup>

5. At the time of the Incorporation Petition's filing, the legal description of Rice Lake Township was:

All of that property located in Township 51 North, Range 14 West, St. Louis County, Minnesota, described as follows:

All of Sections 1 through 30, all of Sections 32, 33, and 34, and that part of Section 31 described as follows:

All of the southeast quarter.

AND

The east half of the northeast quarter of the northeast quarter,

AND

That part of the southeast 1/4 of the northeast 1/4 described as follows: Commencing at a point 495 feet north of the southeast corner running thence due north 495 feet thence due west 880 feet, thence due south 495 feet, thence due east 880 feet to the point of beginning.

AND

That part of the southeast 1/4 of the northeast 1/4 described as follows: commencing at the southeast corner of the southeast 1/4 of the northeast 1/4 running thence due north 495 feet, thence due west 880 feet, thence due south 495 feet thence due east 880 feet to the point of beginning.

AND

The west 1/2 of the west 1/2 of the north 1/2 of the north 1/2 of the southeast 1/4 of the northeast 1/4.

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<sup>2</sup> Notice of the Town of Rice Lake's Intent to Incorporate (June 11, 2014).

<sup>3</sup> Incorporation Petition; see also Minn. Stat. § 414.02.

<sup>4</sup> See Incorporation Petition. 240 acres of this legally-described land has since been annexed to the City of Duluth.

AND

The east 3/4 of the north 1/2 of the north 1/2 of the southeast 1/4 of the northeast 1/4.

AND

The northeast quarter of the Northwest quarter;

AND

The west 1/2 of the northwest 1/4 of the northeast 1/4;

AND

The west 1/2 of the west 1/2 of the east 1/2 of the northwest 1/4 of the northeast 1/4.<sup>5</sup>

6. An initial hearing was convened by the Office of Administrative Hearings on September 11, 2014 and continued for further proceedings.

7. On or about October 13, 2014, Rice Lake Township and the City of Duluth (Duluth) adopted a Joint Resolution of Township of Rice Lake and City of Duluth Designating 240 Acres Within the Township as Appropriate for Annexation and Approving an Orderly Annexation Agreement.<sup>6</sup> The parties also executed an Orderly Annexation Agreement By and Between the Town of Rice Lake and the City of Duluth (First OA Agreement).<sup>7</sup> The 240 acres covered by the 2014 OA Agreement is legally described as the Southeast Quarter and the South Half of the Northeast Quarter of Section 25, Township 51 North, Range 14 West, St. Louis County, Minnesota.<sup>8</sup> The First OA Agreement stated that “[u]pon incorporation of any part of the Town of Rice Lake, the [240 acres] shall be annexed to the City of Duluth with no further action required by either the City or the Town.”<sup>9</sup>

8. The parties filed the First OA Agreement with the Office of Administrative Hearings on October 30, 2014, requesting that the 240 acres be annexed to the City of Duluth pursuant to Minn. Stat. § 414.0325 (2014).

9. On November 20, 2014, the Township adopted Resolution No. 14-11-29, Resolution Amending the Town of Rice Lake Incorporation Petition to Request the Annexation of a Portion of the Town of Rice Lake to the City of Duluth upon

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<sup>5</sup> See Incorporation Petition.

<sup>6</sup> Exhibit (Ex.) 24.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

Incorporation of the Town,<sup>10</sup> and provided notice of this action to the proper parties on or about February 5, 2015.<sup>11</sup>

10. After proper notice, the Administrative Law Judge reconvened the hearing on Rice Lake Township's Incorporation Petition on November 21, 2014.

11. At the hearing, Rice Lake Township filed an Amended Incorporation Petition reflecting the terms of the First OA Agreement and also offered the First OA Agreement into evidence.<sup>12</sup>

12. On February 11, 2015, the Office of Administrative Hearings dismissed the pending orderly annexation proceeding due to lack of compliance with statutory notice provisions.<sup>13</sup>

13. On February 24, 2015, Rice Lake Township and Duluth executed a second Orderly Annexation Agreement (Second OA Agreement) whereby the parties again agreed that 240 acres would be annexed by the City, without any necessary action by Rice Lake Township or Duluth "simultaneous with the granting of the Town's Incorporation Petition by the OAH" and "[u]pon incorporation of any part of the Town of Rice Lake."<sup>14</sup> The parties filed the Second OA Agreement with the Office of Administrative Hearings on or about March 2, 2015.

14. On April 15 and 30, 2105, Rice Lake Township and the Duluth executed a third Orderly Annexation Agreement (Third OA Agreement) whereby the parties agreed that the 240 acres would be "immediately annexed to the City of Duluth" with no condition related to the timing of the granting of the Town's Amended Incorporation Petition.<sup>15</sup>

15. On May 30, 2015, Chief Administrative Law Judge Tammy Pust issued an Order of Annexation approving the annexation of the 240 acres legally described above to Duluth.<sup>16</sup>

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<sup>10</sup> Ex. 55.

<sup>11</sup> See Affidavit of Service (Feb. 5, 2015).

<sup>12</sup> Ex. 55.

<sup>13</sup> Correspondence from the Office of Administrative Hearings (Feb. 11, 2015).

<sup>14</sup> Orderly Annexation Agreement by and between the Town of Rice Lake and the City of Duluth (Feb. 24, 2015).

<sup>15</sup> Orderly Annexation Agreement by and between the Town of Rice Lake and the City of Duluth (Apr. 30, 2015).

<sup>16</sup> Order Approving Annexation (May 30, 2015).

## Incorporation Factors

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

16. In 2013, Rice Lake Township had a population of 4,082 residents and 1,623 households.<sup>17</sup>

17. Rice Lake Township's population is projected to grow between 18.8% and 29.5% by the year 2040.<sup>18</sup>

18. Rice Lake Township is the third largest community, measured by population, in the Duluth metropolitan area and the sixth largest in St. Louis County.<sup>19</sup>

19. After incorporation, the City of Rice Lake will rank in the top 20th percentile in population among Minnesota's cities.<sup>20</sup>

20. Rice Lake Township is expected to lead other Minnesota townships within the Metropolitan Interstate Council (MIC) area in growth over the next 20 years.<sup>21</sup>

### ***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***

21. The incorporated area will consist of 20,464 acres (approximately 32 square miles).<sup>22</sup>

22. The northern portion of Rice Lake Township contains two large wetland complexes which have inhibited development in the northern portion of the Township and effectively kept this area rural in nature.<sup>23</sup>

23. There are two lakes within Rice Lake Township: Wild Rice Reservoir and Antoinette Lake.<sup>24</sup>

24. The eastern half of Rice Lake Township is drained by Tischer Creek, Amity Creek, the East Branch of Amity Creek, the East Branch of Chester Creek, and the Lester River, all of which flow through the City of Duluth to Lake Superior. The Beaver River, the headwaters of Miller Creek, and several smaller waterways drain the western portion of Rice Lake flowing through Hermantown and Duluth and into Lake

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<sup>17</sup> Ex. 33.

<sup>18</sup> Ex. 1, at 7.

<sup>19</sup> *Id.* at 5.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at 7.

<sup>22</sup> *Id.* at 9.

<sup>23</sup> Testimony (Test.) of John Powers.

<sup>24</sup> Ex. 1, at 14.

Superior or the Duluth Harbor.<sup>25</sup>

***Present pattern 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***

25. Approximately 43% of Rice Lake Township's land area has been developed for residential uses.<sup>26</sup>

26. The southern tier of the Township has been developed at suburban densities for many years, with over 1,100 lots of less than 2.5 acres in size.<sup>27</sup>

27. The middle tier of the Township is currently undergoing suburbanization with the recent platting of residential subdivisions and an increasing number of lots less than 5 acres in size.<sup>28</sup>

28. New building permits averaged more than 30 per year in the 2000s prior to the economic downturn; the number of permits have recently begun to rise.<sup>29</sup>

29. Portions of the southern part of Rice Lake Township have been designated as urban based on census data.<sup>30</sup>

30. The MIC, the area planning organization for local, state and federal transportation planning, has designated nearly the entire southern one-third of the Township as urbanized area.<sup>31</sup>

31. The Western Lake Superior Sanitary District has included more than one-third of the Township within its Urban Service Boundary, designating this as land to which sanitary sewers should be extended.<sup>32</sup>

32. The Duluth Urbanized Area Growth Impact Study performed by MIC indicates that the Township will develop predominately as residential, with a major commercial growth corridor up the entire length of County Highway 4 (Rice Lake Road).<sup>33</sup>

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<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at 17.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at 17, Table 3.3; Ex. 57; Test. of J. Powers.

<sup>29</sup> Ex. 1, at 19.

<sup>30</sup> *Id.* at 21.

<sup>31</sup> *Id.* at 19-21.

<sup>32</sup> *Id.* at 20, 22.

<sup>33</sup> Ex. 9, at 47, Map 5.

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

33. Rice Lake Township has approximately 83 miles of roads, 22 miles of which are Township roads. The remainder are county roads.<sup>34</sup>

34. The Township has undertaken an extensive road reconstruction program, upgrading all but four miles of its roads over the past eight years.<sup>35</sup>

35. The main commercial corridors through the Township are County Highway 4 (Rice Lake Road) and East Cavalry Road.<sup>36</sup> Both are collector roads that funnel commuter traffic into the City of Duluth. Most other collector roads in the Township are also county roads, which provide a good transportation network for future growth.<sup>37</sup>

36. Abutting the Township on its southwest border is the Duluth International Airport (DIA). As the second largest airport in Minnesota after the Minneapolis-St. Paul facility, it employs 2,300 people and generates 4,400 jobs for the area.<sup>38</sup> DIA is an international port of entry into the U.S. and is home to the 148<sup>th</sup> Fighter Wing of the Air National Guard.<sup>39</sup> DIA is also home to significant industrial manufacturers and service operations, including Cirrus Aircraft Corporation (manufacturer of private airplanes), AAR Corporation (commercial jet refurbishing operations), and UPS and FedEx air cargo operations.<sup>40</sup>

37. DIA is a major employer in the area and is expected to be an important source of commercial and residential growth in the Township.<sup>41</sup>

***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***

38. The Township has had a zoning ordinance in place since 1960.<sup>42</sup>

39. The Township has established a planning commission.<sup>43</sup>

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<sup>34</sup> Ex. 1, at 25.

<sup>35</sup> *Id.* at 27; Test. of Joan Jauss.

<sup>36</sup> See Ex. 1, at 26-27.

<sup>37</sup> *Id.*

<sup>38</sup> Ex. 1, at 27-28.

<sup>39</sup> *Id.* at 28.

<sup>40</sup> *Id.*; Test. of J. Powers.

<sup>41</sup> Test. of John Werner; Test. of J. Powers.

<sup>42</sup> Ex. 1, at 32.

<sup>43</sup> Test. of J. Jauss.

40. The Township has adopted and updated its Comprehensive Plan (1998 and 2007, respectively) and adopted a subdivision ordinance in 2014.<sup>44</sup>

41. The Township adopted the State Building Code in 1992.<sup>45</sup>

42. The Township has the planning and zoning infrastructure needed to operate as a city under Minnesota Statutes, chapter 462 (2014).<sup>46</sup>

43. The Township has significant existing commercial and industrial development, and has planned for additional commercial growth along the Rice Lake corridor.<sup>47</sup>

44. The Township's Comprehensive Plan more closely resembles the comprehensive plan of a city than a township, particularly given the amount of planned commercial development.<sup>48</sup>

45. Rice Lake Township is a member of MIC and the Joint Powers Airport Zoning Board, which oversees critical zoning around DIA.

46. Under Minn. Stat. § 394.33 (2014), the Township's zoning ordinance must be consistent with, and at least as restrictive as, the County's zoning ordinance.

47. Although the Township enforces its own zoning ordinance, the Township's zoning map and classifications are different than those last employed by the County for property in Rice Lake Township.<sup>49</sup>

48. The County's enforcement of its zoning ordinance in Rice Lake Township could cause confusion and uncertainty for the Township's property owners.<sup>50</sup> The Township's incorporation will eliminate this problem because cities, unlike townships, are not required to have their zoning consistent with the county's zoning.

***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***

49. Rice Lake Township employs three full-time staff, including a town clerk-treasurer, an administrative assistant, and a road maintenance person, and ten part-time employees.<sup>51</sup>

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<sup>44</sup> Ex. 1, at 29, 34.

<sup>45</sup> *Id.* at 35.

<sup>46</sup> Test. of J. Powers.

<sup>47</sup> Ex. 1, at 16, Map 3.1, at 31, Map 5.1.

<sup>48</sup> Test. of J. Powers.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> Test. of J. Jauss.

50. As part of her duties, the town clerk-treasurer administers the affairs of the Township. This is an appointed position. The Township's office staff maintains regular business hours (7:30 a.m. to 4:30 p.m.) five days a week. It is uncommon for a township to have a full-time clerk.<sup>52</sup>

51. The Township provides the following services to its residents:
- a. Road reconstruction program
  - b. Road maintenance including repair, grading, snowplowing, ditch mowing, brush cutting
  - c. Comprehensive planning
  - d. Zoning
  - e. Subdivision approval
  - f. Building inspection
  - g. Animal control
  - h. Fire and emergency services
  - i. Additional police services (via contract with the St. Louis County Sheriff's Office)
  - j. Airport mutual aid
  - k. Administrative services (burning permits, park reservations, special assessment searches, web page for information, local Township-produced newspaper, notary service, faxing service, dog licenses, pool filling services, fire code compliance inspection, neighborhood night out)
  - l. Park services
  - m. Recycling
  - n. Liquor licenses in conjunction with the County
  - o. Shoreland ordinance enforcement
  - p. Election services
  - q. Absentee ballot processing (Rice Lake is the only Township in St. Louis County to do so at its Town Hall rather than at the County)
  - r. Ordinance Enforcement
    - i. Fire arms
    - ii. Flood plain management
    - iii. Animal control
    - iv. Right of way
    - v. Sewer use regulations
    - vi. Bow hunting
    - vii. Water
    - viii. Fat, oils, grease
    - ix. Illicit discharge connection
    - x. Roads
    - xi. State Building Code
  - s. Storm water management
  - t. The Township has its books audited every year, a requirement for most cities but not for most Townships

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<sup>52</sup> *Id.*

- u. Fair housing program
- v. Municipal water services
- w. Municipal sewer services<sup>53</sup>

52. The breadth of services provided by the Township are similar to those normally found in a city and are a reflection of the level of suburbanization that has occurred in the Township.<sup>54</sup>

53. Municipal water and sanitary sewer services have been provided by the Township for nearly 30 years.<sup>55</sup> The Township has recently expanded its water and sewer systems to accommodate the growth that has been occurring in the Township.<sup>56</sup>

54. The Township's independent fire department, the oldest rural independent fire department in the state, responded to 192 calls in 2013, the majority of which were medical calls.<sup>57</sup> Calls have increased approximately 32% since 2009.<sup>58</sup>

55. The Township owns and operates a park.<sup>59</sup>

56. Police service is provided to the Township via contract with the St. Louis County Sheriff's Office.<sup>60</sup>

57. Incorporation will provide Rice Lake Township with additional economic development powers, including tax increment financing (TIF) authority which is commonly used by cities as an economic development tool to help bring industrial development to a city.<sup>61</sup>

58. The existing sewer and water mains have been positioned to allow for the extension of sewer and water services to additional properties as demand for these services arises.<sup>62</sup> The Township has invested millions of dollars in sewer and water infrastructure to serve its existing and future suburban development.<sup>63</sup>

59. The Township has several pieces of maintenance equipment, including a road grader, a mini-excavator, several pick-up trucks, lawnmowers, plows, and a sander.<sup>64</sup>

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<sup>53</sup> *Id.*

<sup>54</sup> Ex. 1, at 36, 44.

<sup>55</sup> Test. of J. Werner.

<sup>56</sup> *Id.*

<sup>57</sup> Ex. 1, at 39, 40.

<sup>58</sup> *Id.* at 40.

<sup>59</sup> Test. of J. Jauss.

<sup>60</sup> Test. of Ross Litman.

<sup>61</sup> Test. of Tammy Omdal; Test. of J. Powers.

<sup>62</sup> Test. of J. Werner.

<sup>63</sup> *Id.*

<sup>64</sup> Ex. 39.

60. The Township has a three-person Town Board, consisting of two board members and one chairperson. The Township also has a Planning and Zoning Commission, a Park Commission, a Board of Equalization, and a Board of Adjustment.<sup>65</sup>

61. Incorporation will not reduce the quality, quantity, or scope of any of the services currently provided by the Township.<sup>66</sup>

62. 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 sanitary sewer and municipal water, fire protection, street improvement and maintenance, administrative services, and parks and recreation services. The Township will continue to perform these services after incorporation.

63. Following incorporation, the Township will need to provide certain additional services to its residents that are currently provided by the County. The Township will need to contract with a law firm for prosecution of misdemeanors and gross misdemeanors committed within its jurisdiction. The Township estimates that this service will cost between \$10,000 and \$15,000 per year.<sup>67</sup>

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

64. There are no known environmental problems in the Township which affect the incorporation analysis.<sup>68</sup>

***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***

65. Incorporation will have a net neutral financial effect upon the Township.<sup>69</sup>

66. There is no evidence in the record to show that incorporation will have an impact upon the local tax rates of the County, the school districts serving Rice Lake Township, or any other governmental unit.

67. Incorporation is not expected to affect tax rates.<sup>70</sup>

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<sup>65</sup> Test. of J. Jauss.

<sup>66</sup> Ex. 1, at 44.

<sup>67</sup> Test. of J. Jauss.

<sup>68</sup> Ex. 1, at 45.

<sup>69</sup> Test. of T. Omdal.

<sup>70</sup> *Id.*

68. The Township will incur a small increase in city council member expenses, an increase of approximately \$10,000 to \$15,000 in annual prosecution costs,<sup>71</sup> a decrease of approximately \$18,000 in state gas tax money,<sup>72</sup> and an estimated \$30,000 increase in local government aid from the state as a result of incorporation.<sup>73</sup>

69. The Township had bonded indebtedness of \$8,240,706 as of December 31, 2013.<sup>74</sup>

70. The Township has an A1 bond rating from Moody's based on the Township's sound financial operations and strong reserves.<sup>75</sup> This is a good bond rating.<sup>76</sup> It is uncommon for townships to have bond ratings, but the rating is common for a city with a population similar to the Township's population.<sup>77</sup>

71. The Township is in sound financial condition.<sup>78</sup>

72. The Township is not currently able to engage in TIF. After incorporation, the Township could utilize TIF to encourage economic development and redevelopment.<sup>79</sup>

73. Incorporation would allow the Township to stabilize its tax base by solidifying its borders, thus putting the Township in a better position to engage in budgeting for long-term project planning.<sup>80</sup>

74. The Township has the necessary resources to provide for its economical and efficient operation as a city.

75. The Township's budget has increased from \$315,000 in 2000 to \$1,185,000 in 2015.<sup>81</sup>

76. The annual levy 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 2,600 eligible voters in the Township.<sup>82</sup> At the meeting, the residents vote on the amount of money that will be levied by the Township to support its proposed budget. Approximately 20 to 25 people typically

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<sup>71</sup> Test. of J. Jauss.

<sup>72</sup> *Id.*

<sup>73</sup> Test. of T. Omdal.

<sup>74</sup> Test. of J. Jauss.

<sup>75</sup> Ex. 40.

<sup>76</sup> Test. of T. Omdal.

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> Test. of J. Jauss.

<sup>82</sup> *Id.*

attend the annual meeting and vote on the levy after approximately an hour to an hour and one-half review and discussion of the budget.<sup>83</sup>

77. The low participation of Township electors makes the budget approval process inconsistent from year to year, such that it is difficult for the Township to engage in long-term financial planning.<sup>84</sup> After incorporation, both the budget and the levy would be developed and approved by the city council.

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

78. There is no evidence in the record indicating that the Township's incorporation would impact the three school districts serving the Township.

79. All adjacent townships have passed resolutions supporting the Township's incorporation.

80. The City of Duluth is the only city abutting the Township. Duluth has agreed not to oppose the Township's incorporation.<sup>85</sup>

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

81. While the Township is currently delivering cost-effective services to its residents, a change in the form of government would allow the Township to deliver those services more economically.<sup>86</sup>

82. The threat of annexation and the limited electorate participation in the budgeting and levy process led to an instability in funding. This instability hinders the Township's ability to make long-term capital investments, such as the acquisition of a new fire hall or the replacement of a deficient water main in East Calvary Road.<sup>87</sup>

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

83. After incorporation, the Township will be able to deliver the necessary governmental services to the approximately 32 square miles within its jurisdiction. The Township is urban and currently operating similarly to a city. It furnishes many city services, including sanitary sewer, municipal water, fire protection, street improvement and maintenance, administrative services, and parks and recreation services. It has a professional administrative staff. It has adopted and administers its own zoning and

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<sup>83</sup> Test. of J. Werner.

<sup>84</sup> Test. of J. Powers.

<sup>85</sup> Ex. 24, ¶ 7.

<sup>86</sup> Ex. 1, at 48-49.

<sup>87</sup> Test. of J. Werner.

subdivision ordinances. It prepares and administers its budget. Incorporation will provide financial stability because the Township will no longer be subject to annexation by adjacent cities, or the uncertainty of the budget adoption process at the annual meeting. The Township will also have the benefit of economic development tools such as tax increment financing.

84. There is no evidence in the record demonstrating that governmental services could best be delivered by another type of boundary adjustment.

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

85. The Township's boundaries have remained the same for approximately 100 years, with the exception of small annexations of land for use by DIA and the recent orderly annexation of 240 acres to the City of Duluth. The current boundaries are easy to identify and administer.

86. The evidence in the record fails to indicate that annexation of any portion of the Township would serve a purpose.

***Analysis of the applicability of the State Building Code***

87. The State Building Code (Code) is currently enforced by the Township.<sup>88</sup> The Township employs a building official to administer the Code.<sup>89</sup> The Township will still be subject to the Code after incorporation.<sup>90</sup>

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

**CONCLUSIONS OF LAW**

1. The Administrative Law Judge has jurisdiction in this matter under Minnesota Statutes, chapter 414 (2014) and Minnesota Rules, part 6000 (2015).
2. The jurisdictional prerequisites have been met and the petition is properly before the Administrative Law Judge for disposition.
3. Proper notice of the hearing was given.
4. Rice Lake Township has the necessary resources to provide for its economical and efficient operation as a city under Minn. Stat. § 414.01, subd. 1a(3).

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<sup>88</sup> Ex. 38; Test. of J. Jauss.

<sup>89</sup> Test. of J. Jauss.

<sup>90</sup> See Minn. Stat. § 326B.121 (2014).

5. Rice Lake Township is suburban in character.<sup>91</sup> The Township furnishes a full array of municipal services and has experienced significant residential and commercial development.

6. Incorporation is necessary to protect the public health, safety, and welfare of Rice Lake Township.<sup>92</sup>

7. Incorporation is in the best interests of Rice Lake Township.<sup>93</sup>

8. No part of Rice Lake Township would be better served by annexation to an adjacent municipality.<sup>94</sup>

Based on the Conclusions of Law, the Administrative Law Judge makes the following:

### ORDER

#### IT IS HEREBY ORDERED THAT:

1. The Amended Petition for Incorporation of Rice Lake Township (1-71) is **GRANTED**.

2. Rice Lake Township shall be incorporated as the City of Rice Lake.

3. The incorporated City of Rice Lake shall consist of all property within Rice Lake Township.

4. The incorporation shall be effective upon the election and qualification of the new city council as set out in Paragraph 5 of this Order.

5. The form of government for the city shall be "Optional Plan A." An election of a mayor and four council members shall be held on October 13, 2015. Joan Jauss 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 Rice Lake 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, 2016; a Council Member seat whose term shall expire on December 31, 2016; or a Council Member seat whose term shall expire on December 31, 2018. The two candidates filing for the Council Member seats expiring on December 31, 2016 who receive the most votes shall be elected to terms ending

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<sup>91</sup> See Minn. Stat. § 414.02, subd. 3(b)(1).

<sup>92</sup> See *id.*, subd. 3(b)(2).

<sup>93</sup> See *id.*, subd. 3(b)(3).

<sup>94</sup> See *id.*, subd. 3(c).

December 31, 2016. The two candidates filing for the Council Member seats expiring on December 31, 2018 who receive the most votes shall be elected to terms ending December 31, 2018. As the aforementioned terms begin to expire, elections shall be held during the November general elections of the year of the above-referenced term expiration dates, commencing with the general election to be held on November 8, 2016. Thereafter, the terms for City Council Members and the Mayor shall be for four years and two years respectively, as provided in Minn. Stat. § 412.02. 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.

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

7. The ordinances of Rice Lake 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 Rice Lake until repealed or replaced by the new governing body of the City of Rice Lake.

8. Upon incorporation, all money, claims, or properties including real estate owned, held, or possessed by the former Rice Lake Township, and any proceeds or taxes levied by Rice Lake Township, collected and uncollected, shall become the property of the City of Rice Lake 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 Rice Lake Township.<sup>95</sup>

9. Rice Lake Township's outstanding debt will become the financial obligation of the City of Rice Lake.<sup>96</sup>

10. This Order is effective August 20, 2015.

11. Pursuant to Minn. Stat. § 414.12, subd. 3, the cost of these proceedings shall be 100 percent the responsibility of Rice Lake Township.

Dated: August 20, 2015

s/Barbara J. Case  
BARBARA J. CASE  
Administrative Law Judge

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<sup>95</sup> See Minn. Stat. § 414.067, subd. 2.

<sup>96</sup> See *id.*

## NOTICE

This Order is the final administrative order in this case under Minn. Stat. §§ 414.02, .07, .09, .12. Pursuant to Minn. Stat. § 414.07, subd. 2, any person aggrieved by this Order may appeal to St. Louis County District Court by filing an Application for Review with the Court Administrator within 30 days of this Order. An appeal does not stay the effect of this Order.

Any party may submit a written request for an amendment of this Findings of Fact, Conclusions of Law, and Order within seven days from the date of the mailing of the Order pursuant to Minn. R. 6000.3100 (2015). However, a request for amendment shall not extend the time of appeal from this Order.

## MEMORANDUM

At the November 21, 2014, hearing, the Township filed an Amended Incorporation Petition requesting that approximately 240 acres of property within the Township be excluded from the incorporation and instead be annexed to Duluth following the incorporation of the Township.<sup>97</sup> But the Administrative Law Judge does not have jurisdiction to address matters of orderly annexation in the incorporation proceeding.<sup>98</sup> And, under the plain language of the statute, the City cannot annex an area that has been incorporated.<sup>99</sup> It was therefore necessary for the annexation to occur before the incorporation. This was effectuated by the parties' Third OA Agreement.

It is also worth acknowledging the Township's admirable sense of community which was pronounced throughout the public hearing. Although the southern portion of the Township is more developed, while the northern portion continues to be largely rural, the Township's residents have indicated their desire to remain a unified Rice Lake throughout these proceedings. This dynamic further supports incorporation of Rice Lake Township in its entirety.

**B. J. C.**

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<sup>97</sup> Ex. 55.

<sup>98</sup> See Minn. Stat. §§ 414.02, .0325.

<sup>99</sup> Minn. Stat. § 414.0325, subd. 1.