

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Petition for the
Incorporation of Credit River Township
(MBAU I-72)

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

This matter came before Administrative Law Judge Jessica Palmer-Denig for a hearing on the Petition for Incorporation (Petition) of Credit River Township (Township), on November 16, 2020, at the Credit River Town Hall in Prior Lake, Minnesota and via telephone and video conference through GoToMeeting. The evidentiary hearing was followed by a public information and comment meeting, held in person and via GoToMeeting, on the same date. The record closed upon receipt of the Township's final filing on January 28, 2021.

Robert T. Ruppe and Michael C. Couri, Couri & Ruppe, P.L.L.P., appeared on behalf of the Township.

STATEMENT OF THE ISSUE

Has the Township established that it meets the criteria provided in Minn. Stat. § 414.02 (2020), such that the Petition should be granted and the Township incorporated?

SUMMARY OF CONCLUSION

The Township has established by a preponderance of the evidence that it meets the criteria for incorporation found in Minn. Stat. § 414.02, and that its Petition should be **GRANTED**.

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

FINDINGS OF FACT

I. Procedural History

1. On October 5, 2020, the Township filed Resolution No. 2020-11 entitled Petition of Credit River Township for Incorporation Pursuant to Minnesota Statutes § 414.02, requesting an order of incorporation granting its Petition.¹

¹ Exhibit (Ex.) 1; see also Minn. R. 6000.0100, subp. 3 (2019).

2. The Administrative Law Judge held a prehearing conference by telephone on October 9, 2020,² and subsequently issued a Prehearing Order setting this matter for an evidentiary hearing and public information and comment meeting on November 16, 2020.³

3. As required by Minn. Stat. § 414.09, subd. 1(c)-(d) (2020), the Notice of Hearing was published for two successive weeks in the Prior Lake American and Lakeville Sun ThisWeek, and the notice was served by mail on the Township, the Metropolitan Council, Scott County, and all cities and townships abutting the Township.⁴

4. The Notice of Hearing provided instructions for members of the public to access the evidentiary and public comment hearings via GoToMeeting and set a deadline of November 10, 2020, for submission of written public comments prior to the hearing. One written comment was received after that deadline, but the comment was then offered into the record at the public comment meeting on November 16, 2020.⁵ Additionally, three other commenters spoke at the public comment meeting.⁶ Three commenters were in favor of incorporation and one commenter offered comments in opposition to incorporation.⁷

5. At the evidentiary hearing, the Township provided sworn testimony from five witnesses and received into the record Exhibits 1-57 offered by the Township. The Administrative Law Judge also received into the record, as Exhibit 58, an informational submission provided by the Metropolitan Council.⁸

6. The Township is located in Scott County, Minnesota. The Township is bordered on the north by the Cities of Savage and Burnsville; on the east by the City of Lakeville; on the south by New Market Township; and on the west by Spring Lake Township and the City of Prior Lake. A portion of the Township's southwestern border touches Cedar Lake Township.⁹

7. All abutting cities and townships have adopted resolutions supporting the Township's Petition.¹⁰

² Order for Prehearing Conference (Oct. 6, 2020).

³ Prehearing Order (Oct. 12, 2020).

⁴ Affidavit (Aff.) of Publication Southwest News Media (Nov. 9, 2020); Aff. of Publication STW Lakeville (Nov. 6, 2020); Certificate of Service (Oct. 23, 2020); *see also* Ex. 1 at Ex. A.

⁵ Written Statement of William D. Markert (Nov. 13, 2020); Comment of William Markert (Public Meeting Digital Recording (Nov. 16, 2020) (on file with the Minn. Office Admin. Hearings)).

⁶ Comments of Steve Wolf, Jay Saterbak, Carolyn Schulte (Public Meeting Digital Recording (Nov. 16, 2020) (on file with the Minn. Office Admin. Hearings)).

⁷ Comment of W. Markert; Comment of S. Wolf; Comment of J. Saterbak; Comment of C. Schulte (Public Meeting Digital Recording (Nov. 16, 2020) (on file with the Minn. Office Admin. Hearings)).

⁸ *See* Ex. 58.

⁹ *See* Ex. 1 at Ex. C.

¹⁰ Ex. 6.

8. The legal description of the area to be incorporated is as follows:

Sections 3, 4, 5, 6, 7, 8, 9, 10, 15, 16, 17, 18, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33 and 34, all being in Township 114, Range 21, Scott County, Minnesota.

EXCEPT

That part of the Northwest Quarter of Section 5, Township 114, Range 21, Scott County, Minnesota lying northerly of the centerline of a branch stream of Credit River (the same being the north line of the plat of Creekwood 2nd Addition) and easterly of the following described line:

Commencing at the northwest corner of said Northwest Quarter; thence north 88 degrees 33 minutes 09 seconds east (assumed bearing) along the north line of said Northwest Quarter a distance of 661.47 feet to the point of beginning of the line to be described; thence south 00 degrees 41 minutes 28 seconds east a distance of 125 feet more or less to the centerline of said branch stream and there terminating.

ALSO EXCEPT

That part of the Northwest Quarter of Section 5, Township 114, Range 21, Scott County, Minnesota, described as follows:

Commencing at the northwest corner of said Northwest Quarter; thence north 88 degrees 33 minutes 09 seconds east (assumed bearing) along the north line of said Northwest Quarter a distance of 344.53 feet to the point of beginning of the land to be described; thence continuing north 88 degrees 33 minutes 09 seconds east along said north line a distance of 316.94 feet; thence south 00 degrees 41 minutes 28 seconds east a distance of 125 feet more or less to the centerline of a branch stream of Credit River (the same being the northerly line of the plat of Creekwood 2nd Addition); thence southwesterly along the centerline of said branch stream to its intersection with a line drawn south 01 degrees 25 minutes 15 seconds west from the point of beginning; thence north 01 degrees 25 minutes 15 seconds east a distance of 437 feet more or less to the point of beginning.

ALSO EXCEPT

The South 1391.13 feet of the West Half of the Southwest Quarter of Section 6, Township 114, Range 21, Scott County, Minnesota lying West of the East 366.00 feet thereof, except the West 375.75

feet of the East 741.75 feet of the South 1391.13 feet of the West Half of the Southwest Quarter of Section 6, Township 114, Range 21, Scott County, Minnesota.

ALSO EXCEPT

The West 919.00 feet (as measured at right angles) of that part of the North Half of the Northwest Quarter (N½ of NW¼) of Section 7, Township 114, Range 21, Scott County, Minnesota, lying North of the Northerly right of way line of Eagle Creek Avenue, Scott County, Minnesota.

II. Relevant Incorporation Factors Under Minn. Stat. § 414.02, subd. 3.

A. The present population and number of households, past population and projected population growth for the subject area.

9. In 2019, the Township had a population of 5,639 residents and 1,798 households.¹¹

10. The Township is the fifth most populous township in Minnesota, out of 1,790 townships.¹²

11. The Township's 2019 population exceeds that of 61 existing cities in the seven-county metropolitan area: seven cities in Anoka County, seven cities in Carver County, nine cities in Dakota County, sixteen cities in Hennepin County, four cities in Ramsey County, one city in Scott County, and seventeen cities in Washington County.¹³

12. By the year 2040, the Township's population is projected to grow another 13.27 percent.¹⁴

13. If incorporated as a city, the Township would have a higher population than over 700 existing cities in Minnesota, based on 2019 population estimates, placing it in the 84th percentile of all Minnesota cities ranked by population.¹⁵

¹¹ Ex. 5 at 6; Ex. 7.

¹² Ex. 5 at 8.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

B. The 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.

14. The subject area to be incorporated consists of approximately 15,253 acres, or just under 24 square miles of land.¹⁶

15. The Township is smaller than a typical township, as it contains 24 sections of land instead of 36 sections.¹⁷

16. The natural terrain within the Township is moderately rolling with few areas of steep slopes, with elevations ranging from 1080 feet above mean sea level in the southwest corner of the Township to 880 feet elevations in the north.¹⁸

17. The Township lies almost entirely within the Credit River watershed, though its extreme southwest corner is within the Sand Creek watershed and the extreme southeastern corner is within the boundary of the Vermillion River watershed.¹⁹ The Township falls within the Scott Watershed Management Organization.²⁰

18. The Credit River runs the length of the Township in a north-south direction.²¹ There are several lakes in the Township, including Cleary Lake in Cleary Lake Regional Park and Murphy and Krenz Lakes, which are part of the Murphy Hanrehan Park Reserve.²² There are also many tributaries and wetlands within the Township's boundaries.²³ These natural features contribute to the area's aesthetics and provide recreational opportunities, and these features also function as stormwater management basins, providing natural filtration for storm water runoff.²⁴ The majority of the Township's lakes, wetlands, and streams are within the Federal Emergency Management Agency's 100 Year Floodplain boundaries.²⁵

19. There are a range of soil types within the Township's land area.²⁶ The majority of the soil within the Township is from the Hayden-Lester-Caron Association, which has a high available water capacity, a wide range of fertility, and presents some concerns with erosion on slopes.²⁷

¹⁶ *Id.* at 9.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* at 10.

²⁰ *Id.*

²¹ *Id.* at 11.

²² *Id.* at 10-11.

²³ *Id.* at 10.

²⁴ *Id.* at 11.

²⁵ *Id.*

²⁶ *Id.* at 9.

²⁷ *Id.*

C. The 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.

20. The Township contains a mix of land use types, including single-family residential neighborhoods, commercial property, regional parks and open spaces, and agricultural land.²⁸

21. Approximately 48 percent of the Township's land area has been developed for residential uses.²⁹

22. The majority of the Township's land area has been converted to residential development and other uses, leaving only around 30 percent of the land area as agricultural land.³⁰

23. The northern third of the Township is preserved for "urban reserve" and is slated for connection to the nearby regional sewer service.³¹ The Township has entered into an agreement with the City of Savage for the interconnection of water and wastewater systems, and the systems have been designed to accommodate sewer flows from the Township.³²

24. The southern two-thirds of the Township is a mix of rural-residential neighborhoods and farms.³³ Agricultural areas of the Township are under market pressure to develop for housing due to the proximity of the area to I-35 and because adjacent cities are building out their vacant land.³⁴

25. The Township expects that development of vacant and agricultural areas will continue in the future, along with redevelopment of larger lot residential areas into more compact or dense urban development, with the extension of water and sanitary sewer services into the Township.³⁵

26. Due to the Township's location within the metropolitan area on the southern emerging suburban edge, the anticipated growth and development will occur with or without incorporation because of market demand for additional housing production in this area.³⁶ However, incorporation will provide greater certainty to the Township by clearly establishing its borders and preventing annexation of areas within

²⁸ *Id.* at 12.

²⁹ *Id.*

³⁰ *Id.* at 12, 14.

³¹ Ex. 5 at 14.

³² *Id.*; Ex. 4 at 13; Ex. 18.

³³ Ex. 5 at 14.

³⁴ *Id.*

³⁵ *Id.* at 23.

³⁶ *Id.*

the Township by another community, which would leave the Township with a smaller tax base to service debt for water and sanitary sewer projects.³⁷

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

27. The Township has approximately 68 miles of roads.³⁸ Of those, 52 miles or 76 percent are paved, and the remainder are unpaved.³⁹ The majority of the Township's gravel road mileage is in areas with lower population densities, including containing parks and horse facilities.⁴⁰

28. A network of County and Township roads serve the Township. I-35 parallels the Township's eastern border and is located just over one mile to the east of the Township in the City of Lakeville.⁴¹ County Highway 21 crosses the Township's northern portion, which is planned for future urban services, connecting this area to downtown Prior Lake, Minnesota and I-35.⁴² County Highway 8 also provides runs east and west through the Township, and provides direct access to I-35.⁴³ County Highways 68 and 44 also provide east to west collector road corridors.⁴⁴ County Highway 27 is the primary north to south corridor providing access to the City of Savage.⁴⁵ County Highway 91 also provides north to south collector road access.⁴⁶

29. Scott County plans to improve County Road 27 in 2021-2022 by expanding it to four lanes.⁴⁷ The Township plans to extend Hampshire Avenue, which is an existing collector road in the City of Savage, through the Township to 175th Street to coincide with development of the northern portion of the Township.⁴⁸

E. 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.

30. In September of 2020, the Township adopted its 2040 Comprehensive Plan, which was approved by the Metropolitan Council.⁴⁹ The Township's plan is consistent with the Metropolitan Council's Thrive MSP 2040 plan as well as the

³⁷ *Id.*

³⁸ Testimony (Test.) of Shane Nelson; Ex. 4 at 3.

³⁹ Test. of S. Nelson.

⁴⁰ *Id.*

⁴¹ Ex. 5 at 24.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.* at 24-25.

⁴⁹ *Id.* at 12; Ex. 19; Ex. 20.

comprehensive plans adopted by adjacent communities.⁵⁰ The Township's plan anticipates the development of an urban growth pattern with municipal services necessary to serve that growth.⁵¹

31. Consistent with its Comprehensive Plan, the Township drafted ordinances and scheduled the adoption of standards for zoning, subdivision regulation, and the state building code for its Town Board meeting on December 7, 2020, with a planned effective date for implementation of January 1, 2021.⁵²

32. The Township has been the wetland, stormwater and road authority for decades, and has engaged the services of a Town Engineer, Town Planner, and Town Attorney to provide professional expertise regarding these responsibilities, and to coordinate with Scott County regarding land development proposals for subdivisions, variances, conditional use permits, interim use permits, and building permits.⁵³

33. The Township's adoption of its own zoning ordinance and subdivision regulations will eliminate the duplication and overlap of services provided by the Township and Scott County related to the review of subdivision plats and development applications.⁵⁴

34. The Township's Comprehensive Plan and its zoning ordinance provide for the full range of uses normally found in a suburbanizing city: single and multi-unit residential, commercial, and light industrial uses.⁵⁵ As noted above, the Township anticipates development and connection to regional sewer service in the northern third of the Township.⁵⁶ The Township anticipates that the 30 percent of its land area that currently remains agricultural will face market pressure for development.

35. The Township's anticipated future development is not consistent with Scott County's zoning and subdivision regulations, which are designed to serve a land base that is primarily agricultural rather than one with a suburban pattern of development.⁵⁷ Under Minn. Stat. § 394.33 (2020), the Township's zoning ordinance must be consistent with and at least as restrictive as the County's zoning ordinance. Incorporation of the Township will eliminate concerns about inconsistencies between the Township's ordinances and those of Scott County, as cities are not required to have zoning consistent with a county's zoning under Minn. Stat. § 394.33.

⁵⁰ Ex. 5 at 12; Ex. 20.

⁵¹ Ex. 5 at 26.

⁵² *Id.*; Exs. 21-24; see also Minn. Stat. §§ 462.357, .358 (2020) (authorizing ordinances related to zoning and regulation of subdivisions).

⁵³ Ex. 5 at 26.

⁵⁴ *Id.*

⁵⁵ *Id.* at 17; Ex. 19 at 2-19-2-22.

⁵⁶ Ex. 5 at 14.

⁵⁷ *Id.* at 26.

F. The 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.

36. The Township currently provides, either directly or through service contracts, all of the municipal services considered by this factor that are necessary for its residents and the area considered for incorporation.⁵⁸ The Township does not anticipate significant changes to the services it provides if it is incorporated.⁵⁹

37. The Township currently provides the following services:

- Road reconstruction program;
- Road maintenance including repair, grading, snowplowing, ditch mowing, brush cutting;
- Comprehensive planning;
- Zoning;
- Animal control;
- Fire and emergency services;
- Additional police services through a contract with the Scott County Sheriff's Office;
- Administrative services, including burning permits, park reservation, special assessment searches, and a web page for information;
- Park services;
- Liquor licenses in conjunction with Scott County;
- Shoreland ordinance enforcement;
- Election services;
- Ordinance Enforcement, including the following:
 - Nuisance;
 - Junk car;
 - Recreational Vehicles;
 - Special Vehicles;
 - Sump Pump;
 - Cable Franchise;
 - Peddlers and Solicitors;
 - Parking;
 - Driveway Permits;
 - False Alarms;
 - Right-of-Way Management;
 - Community Sewage Treatment System Ordinance;
 - Animal control;

⁵⁸ Ex. 3 at 6, 8.

⁵⁹ *Id.* at 6.

- Illicit discharge connection; and
- Roads;⁶⁰
- Storm water management;
- Annual financial audits; and
- Municipal sewer services.⁶¹

38. For general governmental functions, the Township employs a Town Clerk and Town Treasurer.⁶² The Town Clerk oversees public notices, elections, and clerical duties serving the Town Board.⁶³ The Town Treasurer oversees all budget and finance-related activities.⁶⁴ The Township maintains a Town Hall and budgets for routine maintenance, Board of Supervisor activities, publication costs, legal services, assessing, auditing, and other administrative items.⁶⁵ When the Township needs less routine administrative services, it engages independent contractors as needed.⁶⁶

39. The Township contracts with the Scott County Attorney's Office to handle prosecution of crimes committed in the Township, and that office also collects any fees and fines associated with these matters.⁶⁷ Upon incorporation, the Township will contract with the Scott County Attorney's Office for prosecution of misdemeanors and gross misdemeanors, in the same manner as other cities within Scott County, with the Scott County Attorney's Office receiving all revenue from fines imposed in connection with these matters in compensation for its services.⁶⁸

40. All roadways within the Township fall under the jurisdictional responsibility of either Scott County or the Township.⁶⁹ The Township maintains all local collectors and local streets and their connections with the minor arterials and collectors overseen by Scott County.⁷⁰

41. The Township does not have a public works department.⁷¹ The Township currently budgets for street maintenance (including snow plowing, sanding, sweeping, repair and mowing), park maintenance and utility maintenance to be performed on an as-needed basis by independent contractors.⁷²

42. The Township engages in annual capital planning for an active street reconstruction and pavement management program designed to maintain its roads.⁷³

⁶⁰ See Exs. 26-56 (containing the Township's slate of ordinances).

⁶¹ Ex. 3 at 8-13; Test. of Chris Kostik.

⁶² Ex. 3 at 8.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*; Ex. 17.

⁶⁸ Test. of C. Kostik.

⁶⁹ Ex. 3 at 10.

⁷⁰ *Id.*

⁷¹ Test. of C. Kostik.

⁷² *Id.*; Ex. 3 at 10.

⁷³ Ex. 3 at 10.

The Township primarily funds the street reconstruction and pavement management program with local resources, to some degree in partnership with Scott County which provides the Township with annual local road aid.⁷⁴

43. Incorporation as a city is not expected to impact the Township's public works expenditures, as new demands stemming from growth will be funded as part of new residential development.⁷⁵ However, incorporation is expected to enhance the Township's financial capacity to meet its long-term public works needs.⁷⁶

44. If incorporated as a city, the Township will gain access to the Municipal State Aid (MSA) program, providing two new resources to the Township: (1) a net increase of approximately \$36,216, in additional funding for road maintenance beyond the amount currently received from the State of Minnesota through Scott County, which amounts to \$50,700, resulting in a total funds availability of \$86,916; and (2) an annual infusion of an estimated \$260,749, in new dedicated funding for road reconstruction of MSA streets.⁷⁷ If incorporated as a city, the Township will no longer receive local road aid from Scott County, but the loss will be offset by the additional MSA funds, resulting in a net increase in funding.⁷⁸

45. The Township utilized Scott County for all planning and zoning services through 2019, but in 2020, the Township took steps to begin exercising planning and zoning controls for itself consistent with its adoption of its own 2040 Comprehensive Plan.⁷⁹ The Township will take responsibility for planning and zoning pursuant to its new land use ordinances, which were scheduled for adoption in December 2020, and it has budgeted to fund these activities through permit fees.⁸⁰

46. The Township contracts with the City of Prior Lake for fire and rescue services, and this contract was renewed in October 2020.⁸¹ The contract for fire and rescue services covers the entirety of the proposed incorporation area.⁸² Incorporation is not expected to alter the Township's fire service requirements and the Township anticipates that these services will continue without need for additional facilities.⁸³

47. The Township contracts with the Scott County Sheriff's Office for public safety police protection and 911 emergency response.⁸⁴ These duties are consistent with those ordinarily provided by municipal police departments and the services

⁷⁴ *Id.*

⁷⁵ *Id.*; Test. of Nick Anhut.

⁷⁶ Ex. 3 at 10; Test. of N. Anhut.

⁷⁷ Ex. 3 at 31-32.

⁷⁸ *Id.* at 10, 31-32.

⁷⁹ Ex. 3 at 11; Ex. 5 at 12, 26; Exs. 21-24.

⁸⁰ Ex. 3 at 11.

⁸¹ Ex. 3 at 9; Ex. 15; Test. of C. Kostik.

⁸² Ex. 3 at 9.

⁸³ *Id.*

⁸⁴ *Id.*; Ex. 16.

provided have served the Township adequately for many years.⁸⁵ Due to the Township's population growth, however, the Township has contracted for additional patrol hours and began receiving services from a full-time deputy starting January 4, 2021.⁸⁶ The cost of this service is funded through the Township's levy.⁸⁷ Upon incorporation, the Township will be led by a city council and this elected body will approve the budget, allowing for greater certainty in the funding for this service.⁸⁸ The Township also receives first response to emergency calls from neighboring police departments in the Cities of Prior Lake, Savage, Burnsville and Lakeville depending on the need and proximity of local patrols.⁸⁹

48. Incorporation will provide the Township with additional economic development powers, including tax increment financing (TIF) authority.⁹⁰ TIF is often used by cities as an economic development tool to help bring commercial and industrial development to a city.⁹¹

49. The Township has used bonding in the past to finance road construction and the Township has a AA+ rating from Standard and Poor's Global Ratings.⁹² This is the second highest rating grade used by Standard and Poor's and indicates the Township is financially stable, making it easier for the Township to obtain credit.⁹³ Only 27 Minnesota cities have obtained the highest rating of AAA.⁹⁴

50. The Township must levy taxes to pay the debt service on its outstanding bonds.⁹⁵ Incorporation will stabilize the tax levy used to pay the debt service because portions of the Township could not be annexed by a neighboring municipality, a circumstance that would reduce the tax base upon which the levy is spread.⁹⁶

51. The Township will likely issue additional debt to pay for installation of planned water and sewer utilities, using rate revenue to repay the bonds.⁹⁷ If property within the Township was annexed to another municipality after the utilities are installed and the bonds issued, a portion of the Township's revenue source would be eliminated and the Township would need to seek another source of funds to repay the bonds.⁹⁸

52. Incorporation will solidify the Township's tax base and create certainty that the tax base will remain in the city from one year to the next. This fiscal certainty will

⁸⁵ Ex. 3 at 9.

⁸⁶ *Id.*; Test. of C. Kostik; Test. of Luke Hennen.

⁸⁷ Ex. 3 at 9.

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.* at 33.

⁹¹ *Id.*

⁹² Test. of C. Kostik; Ex. 3 at 24, 26; Ex. 13 at 2.

⁹³ Ex. 3 at 26.

⁹⁴ *Id.*

⁹⁵ Ex. 3 at 24-25.

⁹⁶ *Id.* at 25.

⁹⁷ Test. of N. Anhut.

⁹⁸ *Id.*

allow the Township to make long-term investments to improve services that it has been hesitant to undertake, such as the extension of municipal sanitary sewer and water to the northwestern portion of the Township, for fear that annexation of its tax base will result in a severe financial hardship on the remaining property in the Township.⁹⁹

53. Incorporation will preserve the Township's financial stability and its bond rating, allowing it to meet budgetary metrics and provide services necessary to protect the public health, safety, and welfare of its residents.¹⁰⁰

G. Any existing or potential environmental problems and whether the proposed action is likely to improve or resolve these problems.

54. There are no known existing environmental problems in the Township.¹⁰¹

55. A potential environmental problem exists in four neighborhoods within the Township due to inadequate septic and disposal systems in those areas.¹⁰² Two subdivisions, Casey and Country Court, are targeted for connection to municipal sanitary sewer within the next three to eight years.¹⁰³ Incorporation will increase the Township's ability to install municipal water and sanitary sewer to these areas to address this potential environmental hazard.¹⁰⁴

H. The fiscal impact on the subject area and adjacent units of local 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 and the division of homestead and nonhomestead property; and other tax and governmental aid issues.

56. The Township is financially strong and has a history of stable and steady financial management.¹⁰⁵

57. The Township currently manages the administration of its finances in a manner that is in line with the financial operations of cities. In particular, the Township has obtained a AA+ bond rating from Standard and Poor's Global Ratings, issues general obligation debt, oversees debt administration, undertakes special assessments for road improvements, engages in budgeting and long-range financial planning, and prepares a consolidated annual financial report with audited financial statements.¹⁰⁶

⁹⁹ Ex. 3 at 34; Test. of C. Kostik; Test. of N. Anhut.

¹⁰⁰ Ex. 3 at 34; Test. of C. Kostik; Test. of N. Anhut.

¹⁰¹ Ex. 5 at 31.

¹⁰² *Id.*; Ex. 4 at 9-13.

¹⁰³ Ex. 4 at 9-13.

¹⁰⁴ Ex. 5 at 31.

¹⁰⁵ Ex. 3 at 16.

¹⁰⁶ *Id.*; *see also* Ex. 13 at 2 (noting that the Township's bond rating is based upon its strong management and institutional framework and very strong budgetary flexibility and liquidity).

58. If incorporated, the Township anticipates a small permanent increase in administrative and governance costs totaling \$75,510, which is 7% of the Township's general fund expenses.¹⁰⁷

59. Although the Township's financial operations mirror those of cities, it has a significantly lower tax rate than the cities surrounding it.¹⁰⁸ The Township does not expect its tax rates to change as a result of incorporation, and incorporation is anticipated to allow the Township to preserve a low tax rate in the foreseeable future.¹⁰⁹

60. There is no evidence showing that incorporation will have any material impact upon the tax capacity, tax rate, or credit ratings of Scott County, the two school districts that serve the Township, or any other governmental unit.¹¹⁰

61. The Township has bonded indebtedness of \$2,410,000.¹¹¹

62. The Township anticipates it will need to incur future debt in 2021 and beyond to finance its road reconstruction program within its long-term Capital Improvement Plan and to meet potential municipal utility needs.¹¹²

63. Incorporation will assist the Township by ensuring a stable tax base, free from concerns that properties within the Township will be annexed by adjacent municipalities, thereby reducing its tax base. Such stability will allow the Township to manage its debt and to fund future capital improvements.¹¹³

64. Upon incorporation, the Township could also utilize TIF funding to encourage economic development and redevelopment.¹¹⁴

65. The Township's annual levy is presented to Township residents for approval at a continued annual meeting in September of each year.¹¹⁵ Any eligible voter who attends the meeting may vote on the proposed levy.¹¹⁶ Approximately five to ten residents typically attend the annual meeting and vote on the levy after approximately 10 to 15 minutes of budget review and discussion.¹¹⁷ The current process results in inconsistencies from year to year, making it difficult for the Township to engage in long-term financial planning.¹¹⁸ Upon incorporation, both the budget and the levy would be

¹⁰⁷ Ex. 3 at 23, Appendix A.

¹⁰⁸ *Id.* at 23.

¹⁰⁹ Ex. 3 at 24.

¹¹⁰ *Id.* at 24, 28-29.

¹¹¹ *Id.* at 24-25.

¹¹² *Id.* at 25.

¹¹³ *Id.* at 8, 26.

¹¹⁴ *Id.* at 33.

¹¹⁵ Test. of C. Kostik.

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.*

developed and approved by the newly formed city council, providing more stability and accountability.¹¹⁹

I. The relationship and effect of the proposed action on affected and adjacent school districts and communities.

66. The Township is served by two school districts: Prior Lake-Savage (Independent School District No. 719) and Lakeville (Independent School District No. 194).¹²⁰ School district boundaries overlay and are independent of municipal boundaries in this area.¹²¹ There is no evidence in the record to indicate that the incorporation of the Township would have any impact upon the two school districts serving the Township.

67. All adjacent cities and townships adopted resolutions supporting the incorporation of the Township.¹²²

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

68. The Township is currently delivering cost-effective services to its residents, but a change in the form of government from township to city would allow the Township to more economically deliver the services it currently provides.

69. The Township's current system of governance relies upon the Town Board to make day-to-day decisions and establish a budget, and upon residents of the Township to attend the annual meeting to vote on the tax levy.¹²³ If the Township is incorporated, decision-making authority would be centralized in an elected city council with statutory terms of office of four years for council members and two years for the mayor.¹²⁴ A city form of government will enable the city council to better plan for and fund large expenditures over several years.¹²⁵

70. Incorporation will lend certainty and solidity to the Township's tax base, from which it derives the vast majority of its operating funds.¹²⁶

71. As noted previously, incorporation will prevent the annexation of a significant portion of the Township's tax base by a neighboring city.¹²⁷ Ensuring that the Township lands remain within the Township's tax base will allow the newly formed city

¹¹⁹ *Id.*

¹²⁰ Ex. 5 at 34.

¹²¹ *Id.*

¹²² Ex. 6.

¹²³ Test. of C. Kostik.

¹²⁴ Minn. Stat. § 412.02 (2020).

¹²⁵ Test. of C. Kostik.

¹²⁶ Ex. 3 at 24.

¹²⁷ *Id.* at 26.

to plan and implement long-term, big-ticket investments such providing sanitary sewer and water services to the northern third of the Township.¹²⁸

72. In particular, incorporation will allow the Township to move forward with its plans to provide sanitary sewer and water services to the Casey and Country Court subdivisions, which have inadequate septic systems, as well as planning for and implementing other larger-scale projects to improve service delivery to its residents.¹²⁹

73. Incorporation will allow the Township to use TIF authority that is currently available to cities, and not to towns, to incentivize industrial investment in the newly incorporated city, enlarging its tax base.¹³⁰

K. An analysis of whether necessary governmental services can best be provided through the proposed action or another type of boundary adjustment.

74. The Township is an urban or suburban township currently operating in a manner similar to a city.¹³¹ It furnishes most of the services of a city, including sanitary sewer, fire protection, street improvement and maintenance, administrative services, and parks and recreation services.¹³² It has staff and receives professional services via contracts.¹³³ It has adopted a Metropolitan Council approved 2040 Comprehensive Plan and will be administering its own zoning and subdivision ordinances beginning in January of 2021.¹³⁴ It prepares and administers its budget.¹³⁵ Incorporation will allow increase the Township's financial stability by providing certainty about its tax base, greater certainty regarding the adoption of the annual levy, and access to economic development tools such as TIF.

75. All cities and townships surrounding the Township support its incorporation.¹³⁶

76. There is no evidence in the record to demonstrate that governmental services could best be delivered by another type of boundary adjustment other than incorporation of the Township.

¹²⁸ *Id.*; Ex. 4 at 12-14.

¹²⁹ Test. of C. Kostik; Ex. 3 at 34; Ex. 4 at 12-13.

¹³⁰ Ex. 3 at 33.

¹³¹ *Id.* at 3.

¹³² *Id.* at 8-13.

¹³³ Ex. 5 at 26; Test. of C. Kostik.

¹³⁴ Ex. 5 at 26; Exs. 21-24.

¹³⁵ Test. of C. Kostik.

¹³⁶ Ex. 6.

L. The degree of contiguity of the boundaries of the subject area and adjacent units of local government.

77. The Township was settled in 1854 and incorporated in 1858.¹³⁷ The Township's land area is mostly rectangular, and its boundaries have remained largely the same since shortly after the approval of Minnesota's statehood.¹³⁸

78. There have been only three small annexations of the Township lands, including a small undevelopable parcel annexed to the City of Savage and two properties annexed to the City of Prior Lake.¹³⁹

79. The current boundaries are easily identified well recognized and incorporation will preserve those boundaries.

M. An analysis of the applicability of the State Building Code.

80. The Township planned to adopt the State Building Code at its December 2020 meeting, to become effective on January 1, 2021, coinciding with the effective date of zoning regulations.¹⁴⁰ The Township will contract with a building official to administer the State Building Code.¹⁴¹

81. Previously Scott County provided Building Code enforcement in the Township, but by taking over this function the Township will provide a "one stop shop" for building inspections, planning and zoning.¹⁴²

82. Upon incorporation, the Township's ordinances, including its adoption of the State Building Code, will continue in force.¹⁴³

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

CONCLUSIONS OF LAW

1. The Administrative Law Judge has jurisdiction in this matter pursuant to Minn. Stat. ch. 414 (2020), Minn. R. ch. 6000 (2019).

2. The jurisdictional prerequisites in this matter have been met and the Petition is properly before the Administrative Law Judge for disposition.

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

¹³⁷ Ex. 5 at 37.

¹³⁸ *Id.*

¹³⁹ *Id.* at 37-38.

¹⁴⁰ *Id.* at 39.

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ Minn. Stat. § 414.02, subd. 3(h).

4. The Township has the necessary resources to provide for its economical and efficient operation as a city as contemplated by Minn. Stat. § 414.01, subd. 1a(3).

5. The Township is suburban in character.¹⁴⁴ The Township furnishes a full array of municipal services and has experienced significant residential development. The Township anticipates such residential development to continue and expand. Incorporation is necessary to protect the Township's boundaries from encroachment and to enable the Township to better provide services to its residents consistent with that growth.

6. Incorporation is required to protect the public health, safety, and welfare of the Township.¹⁴⁵

7. Incorporation is in the best interests of the area proposed to be incorporated.¹⁴⁶

8. No part the Township would be better served by annexation to an adjacent municipality.¹⁴⁷

9. These Conclusions of Law are reached for the reasons explained in the following Memorandum, which is incorporated into these conclusions by reference.

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

ORDER

1. The Petition for Incorporation of Credit River Township (I-72) is **GRANTED**.

2. Credit River Township shall hereby be incorporated as the City of Credit River.

3. The incorporated City of Credit River shall consist of all property within the Township of Credit River as legally described in Finding No. 8 above.

4. 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 the "Optional Plan A" form. An election of a mayor and four council members shall be held on May 11, 2021.¹⁴⁸

¹⁴⁴ *Id.*, subd. 3(b)(1).

¹⁴⁵ *Id.*, subd. 3(b)(2).

¹⁴⁶ *Id.*, subd. 3(b)(3).

¹⁴⁷ *Id.*, subd. 3(c).

Karen Donovan 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 Credit River Township Hall. The election judges shall be appointed from those serving in the last Township election or previous Township 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, 2022, a Council Member seat whose term shall expire on December 31, 2022, or a Council Member seat whose term shall expire on December 31, 2024. The two candidates filing for the Council Member seats expiring on December 31, 2022, who receive the most votes shall be elected to terms ending December 31, 2022. The two candidates filing for the Council Member seats expiring on December 31, 2024, who receive the most votes shall be elected to terms ending December 31, 2024. 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, 2022. 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. 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 Credit River 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 Credit River until repealed or replaced by the new governing body of the City of Credit River.

7. Upon incorporation, all money, claims, or properties including real estate owned, held or possessed by the former Credit River Township, and any proceeds, special assessments or taxes levied by Credit River Township, collected and uncollected, shall become the property of the City of Credit River 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 Credit River Township.

8. Credit River Township's outstanding debt will become the financial obligation of the City of Credit River.

9. Pursuant to Minn. Stat. § 414.12, subd. 3, the cost of these proceedings is the obligation of Credit River Township and shall be paid in their entirety by Credit River Township.

¹⁴⁸ See Letter from Robert T. Ruppe to Administrative Law Judge (Jan. 28, 2021) (on file with the Minn. Office Admin. Hearings).

10. This Order is effective as of the date listed below.

Dated: January 29, 2021


JESSICA A. PALMER-DENIG
Administrative Law Judge

Reported: Digitally Recorded
No transcript prepared

NOTICE

This Order is the final administrative order in this case under Minn. Stat. §§ 414.02, 414.07, 414.09, 414.12. Pursuant to Minn. Stat. § 414.07, subd. 2, any person aggrieved by this Order may appeal to Scott 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 these 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. However, no request for amendment shall extend the time of appeal from this Order.

MEMORANDUM

The record in this case demonstrates that the Township currently functions in a manner consistent with the operations of a city, including in its provision of services, access to bonded debt and status as a credit rated entity, and its current and anticipated growth and development. While the Township has been successful in providing many services to its residents, the Township has outgrown its current governmental model. Incorporation is now necessary to solidify the Township's tax base,¹⁴⁹ add consistency to the adoption of a budget and tax levy, and to assist it in addressing its current growth and planning for the future. Therefore, considering all of the factors in Minn. Stat. § 414.02, subd. 3(a), and pursuant to Minn. Stat. § 414.02, subd. 3(b)-(c), the Township's Petition is **GRANTED**.

The Administrative Law Judge commends the Township's counsel, staff, witnesses, and residents for their cooperation with in-person pandemic protocols and

¹⁴⁹ Even though the cities around the Township currently support incorporation, which somewhat mitigates the risk of annexation of portions of the Townships' lands, such positions are not necessarily static, and property owners within the Township could themselves seek annexation to a bordering municipality. See Minn. Stat. §§ 414.031, .033.

their willingness to use a web platform to provide broader public access to the hearing. These actions allowed the hearing to be held in person within the Township, in accordance with Minn. Stat. § 414.09, subd. 1(b), and are greatly appreciated.

J. P. D.