

STATE OF MINNESOTA

OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Petition for the  
Incorporation of Empire Township  
(MBAU Docket I-74)

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

This matter came before Administrative Law Judge Jessica Palmer-Denig for a hearing on the Amended Petition for Incorporation (Amended Petition) of the Empire Town Board (Township), on June 2, 2022, at the Empire Public Works Building in Empire Township, Minnesota. The evidentiary hearing was followed by a public information and comment meeting, held in person on the same date. The record closed upon receipt of the Township's final filing on August 29, 2022.<sup>1</sup>

Michael C. Couri and Robert T. Ruppe, 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 (2022), such that the Amended 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 Amended 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 April 7, 2022, the Township filed Resolution No. 2022-2B entitled In the Matter of the Petition of Empire Township for Incorporation Pursuant to Minnesota Statutes § 414.02, requesting an order of incorporation granting its petition.<sup>2</sup> On May 13, 2022, the Township filed the Amended Petition as Resolution 2022-5A entitled In the

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<sup>1</sup> The Township filed its closing brief and proposed findings on June 9, 2022, but supplemented the record on August 29, 2022, at the invitation of this tribunal to provide a revised proposed finding as to the process for election of the mayor and city council.

<sup>2</sup> Exhibit (Ex.) 5; see also Minn. R. 6000.0100, subp. 3 (2021).

Matter of the Amended Petition of Empire Township for Incorporation Pursuant to Minnesota Statutes § 414.02.<sup>3</sup> The Amended Petition revises the legal description contained in the original petition.

2. As required by Minn. Stat. § 414.02, subd. 1a(a), the Township served notice of intent to incorporate on all cities and townships abutting the Township more than 30 days prior to filing its original petition.<sup>4</sup>

3. The Administrative Law Judge held a prehearing conference by telephone on April 19, 2022,<sup>5</sup> and subsequently issued a Prehearing Order setting this matter for an evidentiary hearing and public information and comment meeting on June 2, 2022, and extending the evidentiary hearing to June 3, 2022. if an additional day of testimony became necessary.<sup>6</sup>

4. The Administrative Law Judge issued a Notice of Hearing to provide the public with notice of the evidentiary hearing and public comment meeting.<sup>7</sup>

5. As required by Minn. Stat. § 414.09, subd. 1(c)-(d) (2022), the Notice of Hearing was published for two successive weeks in the Dakota County Tribune, and the notice was served on the Township, the Metropolitan Council, Dakota County, and all cities and townships abutting the Township.<sup>8</sup>

6. The Notice of Hearing also set a deadline of May 31, 2022, for submission of written public comments prior to the hearing. No written comments were received. Four commenters spoke at the public comment meeting.<sup>9</sup> All commenters expressed support for incorporation of the Township and no commenters expressed opposition to the Petition.<sup>10</sup>

7. At the evidentiary hearing, the Township offered sworn testimony from six witnesses and the Administrative Law Judge received into the record Exhibits 1-56 offered by the Township.<sup>11</sup> The Administrative Law Judge also received into the record an informational submission provided by the Metropolitan Council (Met Council)

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<sup>3</sup> Ex. 6.

<sup>4</sup> Kathleen Budish Affidavit (Aff.) of Service by Mail (Jan. 25, 2022).

<sup>5</sup> Order for Prehearing Conference (Apr. 12, 2022).

<sup>6</sup> Prehearing Order (April 26, 2022). All testimony and public comment concluded on June 2, 2022, and the second day of proceedings was canceled.

<sup>7</sup> Notice of Hearing (May 13, 2022).

<sup>8</sup> Karen Nelson Affs. of Publication dated May 20, 2022, and May 27, 2022; Certificate of Service (May 13, 2022); Certificate of Service (May 16, 2022).

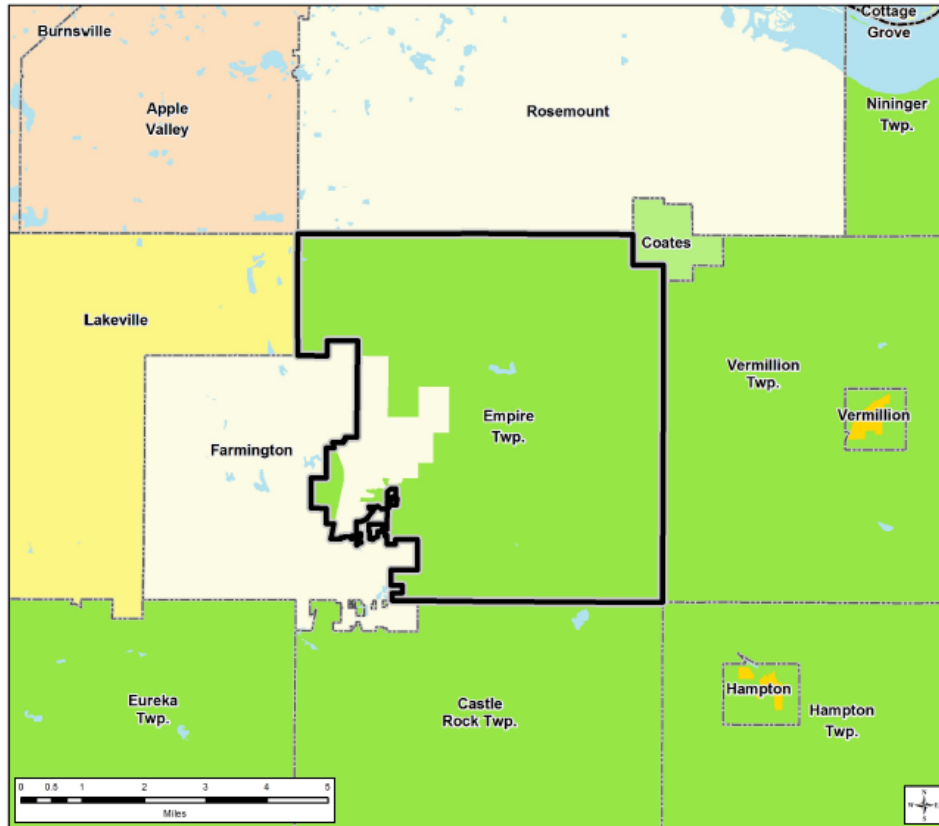
<sup>9</sup> Comments of Jared Sachs, Jessica Boelan, Wendy Wustenberg and William Wustenberg (Public Meeting Digital Recording (June 2, 2022) (on file with the Minn. Office Admin. Hearings)).

<sup>10</sup> Public Meeting Digital Recording (June 2, 2022) (on file with the Minn. Office Admin. Hearings).

<sup>11</sup> Exhibits 1 through 55 were pre-filed. Amended versions of Exhibits 7 and 10 were received at the hearing and entered into the record. Exhibit 56 was offered in connection with the testimony of Township Chairperson Terry Holmes.

submitted pursuant to a memorandum of understanding between the Met Council and the Office of Administrative Hearings.<sup>12</sup>

8. The Township is located in Dakota County, Minnesota. The Township is bordered on the north by the City of Rosemount; at its northwest corner by the City of Apple Valley; on the west by the Cities of Lakeville and Farmington; on the south by the City of Farmington and Castle Rock Township; on the east by Vermillion Township and the City of Coates; and at its southeast corner, by Hampton Township,<sup>13</sup> as indicated on the map below.<sup>14</sup>



9. The Cities of Farmington, Lakeville, and Rosemount adopted resolutions supporting the Township's Amended Petition.<sup>15</sup> Castle Rock Township also adopted a resolution supporting the Amended Petition.<sup>16</sup> The Mayor of the City of Coates notified the Township by email that it has no concerns regarding the Township's incorporation.<sup>17</sup>

<sup>12</sup> See Memorandum from Met Council to Star Holman, Municipal Boundary Adjustments Unit (May 31, 2022) (Met Council Submission).

<sup>13</sup> Ex. 4 at Figure (Fig.) 1, 7; Ex. 20; Met Council Submission at 1.

<sup>14</sup> Met Council Submission at 8.

<sup>15</sup> Ex. 7.

<sup>16</sup> *Id.*

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

10. No community bordering the Township expressed opposition to the Township's Amended Petition.

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

**All of the following Sections: 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 25, 26, 27, 28, 33, 34, 35, 36.**

AND

Those portions of the following described sections:

**All of Section 1**, Township 114, Range 19, Dakota County, Minnesota, EXCEPT therefrom the Northeast Quarter of said Section 1.

**All of Section 7**, Township 114, Range 19, Dakota County, Minnesota, EXCEPT therefrom the South Half of the Southeast Quarter of said Section 7.

**That part of Section 19** described as follows:

That part of the Northeast Quarter of Section 19, Township 114, Range 19, Dakota County, Minnesota, lying easterly of the westerly right-of-way line of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company (now Union Pacific Railway), and lying southerly of the southerly line of FAIRHILL OUTLOTS, according to the recorded plat thereof, said Dakota County and its westerly extension across said Chicago, Milwaukee, St. Paul and Pacific Railroad Company (now Union Pacific Railway).

AND

That part of the Southeast Quarter of Section 19, Township 114, Range 19, Dakota County, Minnesota, lying easterly of the westerly right-of-way line of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company (now Union Pacific Railway).

BUT EXCLUDING that area described in MBAU Docket OA-607-2.

**That part of Section 29** described as follows:

That part of the Southwest Quarter of Section 29, Township 114, Range 19, Dakota County, Minnesota, lying northerly and northwesterly of TAMARACK RIDGE, according to the recorded plat thereof, said Dakota County.

AND

All of the Northeast Quarter of Section 29, Township 114, Range 19, Dakota County, Minnesota, EXCEPTING therefrom the following described parcels of land:

That part of the West 750 feet of the West 1/2 of the Northeast 1/4, Section 29, Township 114, Range 19, lying South of the North 906.6 feet and lying North of the center line of C.S.A.H. No. 66; EXCEPT that part thereof described as follows:

commencing at a point on the North quarterline of said Section 29 which bears South 180 degrees, 1709.07 feet from the North quarter corner of said Section 29; thence North 77 degrees 50 Minutes East a distance of 511.33 feet; thence South parallel with the NorthSouth 1/4 line of said Section 29, 201.00 feet to the center line C.S.A.H. No. 66; thence Westerly along said center line to the NorthSouth quarterline of said Section 29; thence North to the North quarter corner and there terminating.

Also EXCEPT the following described parcel:

commencing at a point on the North quarterline of said Section 29 which bears South 180 degrees, 906.6 feet from the North quarter corner of said Section 29; thence North 90 degrees East a distance of 311.38 feet; thence Southwesterly a distance of 381.92 feet to a point in the North quarterline of said Section 29 which bears South 180 degrees, 1134.34 feet South of the North quarter corner of said Section 29; thence North along said North quarterline to the point of beginning.

Also EXCEPT any part thereof which lies within the following tract:

That part of the SW 1/4 of the NE 1/4 of Section 29, Township 114, Range 19 East Dakota County, Minnesota described as follows:

Commencing at a point on the North quarter line of said Section 29, which point bears South 180 degrees 00 minutes, 1709.07 feet from the North quarter corner of said Section 29; thence North 77 degrees 50 minutes East a distance of 413.51 feet to the point of beginning of the tract to be described; thence South and parallel with said North quarter line a distance of 208.00 feet more or less to the center line of C.S.A.H. No. 66; thence North 77 degrees 50 minutes East along said center line a distance of 110.00 feet, thence North at

right angles a distance of 204.00; thence in a Westerly direction 98.00 feet more or less to the point of beginning.

Also EXCEPT land already within the City of Farmington.

AND

That part of the Northeast Quarter (NE 1/4) Section 29, Township (114), Range (19) described as follows; beginning at the centerline of County State Aid Highway number 66 and the West Line of the Northeast Quarter of Section 29; thence Southerly 650 feet along the West line of the Northeast Quarter of Section 29; to a point 60 feet North of the South line of the Northeast Quarter of Section 29; thence at right angles east 133 feet; thence North 295 feet parallel with the West line of the Northeast Quarter; thence 690 feet East parallel with the South line of the Northeast Quarter; thence North 490 feet more or less parallel with the West line of the Northeast Quarter to the centerline of CSAH 66; thence Southwesterly along the centerline of CSAH 66 to the point of beginning and there terminating.

AND

All of the Northwest Quarter of Section 29, Township 114, Range 19, Dakota County, Minnesota. EXCEPT that part thereof lying southeasterly of the centerline of County State Aid Highway No. 66 (Vermillion River Trail), and EXCEPTING therefrom the following described parcel of land:

Beginning at a point on the South line of the Northwest Quarter (NW1/4), Section Twenty-nine (29), Township One hundred fourteen (114), Range Nineteen (19), one thousand sixty and four tenths (1060.4) feet East of the Southwest corner of said Northwest Quarter (NW1/4); thence East along the South line of said Northwest Quarter (NW1/4) to its intersection with the centerline of Vermillion Road (C.S.A.H. No. 66) a distance of four hundred seventy-seven and seventy-three hundredths (477.73) feet; thence Northeasterly along the centerline of said Vermillion Road to its intersection with a line parallel with and one hundred fifty (150) feet North of the South line of said Northwest Quarter (NW1/4), thence West along said line parallel with and one hundred fifty (150) feet North of the South line of said Northwest Quarter (NW1/4), a distance of six hundred twenty-six and ninety-three hundredths (626.93) feet to a point one hundred fifty (150) feet North of and perpendicular to the point of beginning, thence South one hundred fifty (150) feet to the point of beginning, Dakota County, Minnesota, subject to C.S.A.H. No. 66, according to the Government Survey thereof.

AND EXCEPTING land already within the City of Farmington.

**That part of Section 30** described as follows:

That part of the Northeast Quarter of Section 30, Township 114, Range 19, Dakota County, Minnesota, lying easterly of the westerly right-of-way line of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company (now Union Pacific Railway).

AND

That part of the Southeast Quarter of Section 30, Township 114, Range 19, Dakota County, Minnesota, lying easterly of the westerly right-of-way line of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company (now Union Pacific Railway), EXCEPTING therefrom the following described parcels of land:

That part of the Southeast Quarter of Section 30, Township 114, Range 19, Dakota County, Minnesota described as follows:

Beginning at the intersection of the south line of said Southeast Quarter and the north extension of the west line of 5<sup>th</sup> Street in the Town of Farmington, said Dakota County; thence north along said north extension, a distance of 150.00 feet; thence east parallel with said south line of the Southeast Quarter, a distance of 290.40 feet to the intersection with the herein described Line 1; thence southerly along said Line 1, a distance of 150.00 feet to said south line of the Southeast Quarter; thence westerly along said south line of the Southeast Quarter, a distance of 290.40 feet to said point of beginning.

Line 1

Commencing at the intersection of said south line of the Southeast Quarter and said north extension of the west line of 5<sup>th</sup> Street; thence easterly along said south line of the Southeast Quarter, a distance of 290.40 feet to a point hereinafter referred to as Point A; thence easterly along said south line of the Southeast Quarter to a point which lies 940 feet West of the southeast corner of said Southeast Quarter; thence North and parallel to the east line of said Southeast Quarter, a distance of 200.00 feet; thence West and parallel to said south line of the Southeast Quarter to a point which lies 200.00 feet North of the herein described Point A being the point of beginning of the line to be described, thence southerly along said Line 1, a distance of 200.00 feet to said Point A and said Line 1 there terminating.

AND EXCEPTING

That part of the Southeast Quarter of the Southeast Quarter (SE 1/4 of SE 1/4) of Section Thirty (30), Township One Hundred Fourteen (114), Range Nineteen (19), described as follows:

Beginning at the intersection of the West line of the 5th Street, City of Farmington, extended and the section line between Sections Thirty (30) and Thirty-One (31), Township One Hundred Fourteen (114), Range Nineteen (19), thence Easterly along the South line of said Section Thirty (30) a distance of 290.4 feet which is the point of beginning; thence Easterly along the South line of said Section Thirty (30) to a point which lies 940 feet West of the Southeast corner of said Section Thirty (30), thence North and parallel to the East line of said Section Thirty (30) a distance of 200 feet; thence West and parallel to the South line of said Section Thirty (30) to a point which lies 200 feet North of the point of beginning, thence South 200 feet to the point of beginning, except any portion of the above described property lying within all that part of the S 1/2 of SE 1/4 of Section 30, Township 114, Range 19, described as follows, to-wit; Commencing at a point 40 feet North and 80 feet West of the NW corner of lot 5 in Block 2 of Bung's Addition; thence West 80 feet, thence North 200 feet, thence East 80 feet, thence South 200 feet to the place of beginning, Dakota County, Minnesota.

AND EXCEPTING

All that part of the South Half of the Southeast Quarter of Section 30, Township 114, Range 19, Dakota County, MN described as follow:

Beginning at a point 40 feet North and 160 feet West of the northwest Corner of Lot 5, Block 2, BUNG'S ADDITION, according to the recorded plat thereof, Dakota County, Minnesota; thence North 200 feet; thence East 480 feet; thence South 200 feet to the south line of said South Half of the Southeast Quarter; thence West 480 feet along said south line to the point of beginning.

AND EXCEPTING

That part of the SE 1/4 of the SE 1/4 of Section 30, Township 114, Range 19, described as follows:

Commencing at a point on the South line of said Section 30, due North of the Northwest corner of Lot 4, Block 1, Bung's Addition; thence North Two Hundred Sixty-Seven (267) feet;



thence east on a line parallel to the South line of said Section 30, to the West line of State Trunk Highway No. 3; thence Southerly along said highway right-of-way to the South line of said Section 30; thence West along the South line of said Section 30 to the point of beginning.

12. Certain portions of the land within the Township's current boundaries are the subject of an orderly annexation agreement between the Township and the City of Farmington.<sup>18</sup> The agreement provides that upon issuance of an order incorporating the Township, all properties designated under the agreement that have not been previously annexed shall be annexed to the City of Farmington.<sup>19</sup> These properties are not addressed herein, and disposition of those properties shall be made by issuance of a separate order.

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

13. Under Minn. Stat. § 414.02, subd. 3(a), a petition for incorporation must be evaluated using thirteen factors. Those factors are:

- (1) present population and number of households, past population and projected population growth for the subject area;
- (2) 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;
- (3) 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;
- (4) the present transportation network and potential transportation issues, including proposed highway development;
- (5) 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;
- (6) 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,

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<sup>18</sup> See Exs. 9-10.

<sup>19</sup> Ex. 10.

administrative services, and recreational facilities and the impact of the proposed action on the delivery of the services;

(7) existing or potential environmental problems and whether the proposed action is likely to improve or resolve these problems;

(8) 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;

(9) relationship and effect of the proposed action on affected and adjacent school districts and communities;

(10) whether delivery of services to the subject area can be adequately and economically delivered by the existing government;

(11) analysis of whether necessary governmental services can best be provided through the proposed action or another type of boundary adjustment;

(12) degree of contiguity of the boundaries of the subject area and adjacent units of local government; and

(13) analysis of the applicability of the State Building Code.<sup>20</sup>

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

14. In 2020, the Township had a population of 3,177 residents and 1,021 households.<sup>21</sup>

15. As of 2019, the Township had the twenty-second highest population out of 1,781 townships in Minnesota, placing the Township in the upper 98<sup>th</sup> percentile of all Minnesota townships when ranked by population.<sup>22</sup>

16. By the year 2040, the Township's population is projected to grow another 52 percent to 4,830. The Township is one of the top 20 growth areas in the Twin Cities

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<sup>20</sup> Minn. Stat. § 414.02, subd. 3(a)(1)-(13).

<sup>21</sup> Ex. 4 at 6.

<sup>22</sup> *Id.* at 8.

Metropolitan Area, and it is expected to experience the highest percentage of projected population growth of any jurisdiction in Dakota County.<sup>23</sup>

17. If incorporated as a city, the Township would have a higher population than over 657 of the 868 existing cities in Minnesota, based on 2020 population estimates. The Township's population would rank in the upper 75th percentile of all Minnesota cities.<sup>24</sup>

**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.**

18. The Township's land area is approximately 20,154 acres, spanning approximately 33 square miles.<sup>25</sup>

19. The Township originally included 36 sections of 640 acres each. Over time, portions of the Township's original land area were annexed to neighboring cities, reducing the Township's area to its current acreage.<sup>26</sup>

20. The Township's natural terrain is moderately rolling with elevations ranging from 880 to 950 feet above mean sea level, with some lower elevations in an area of the Township that is mined for gravel.<sup>27</sup>

21. The Township lies entirely within the Vermillion River Watershed.<sup>28</sup> Dakota and Scott Counties formed the Vermillion River Watershed Joint Powers Organization (VRWJPO) in 2002, and the VRWJPO adopted its current watershed management plan in 2016.<sup>29</sup> The Township adopted the watershed management plan in 2018, and it enforces the plan's standards by ordinance.<sup>30</sup> By adopting the plan, the Township agrees to submit proposed plans for review and comment by the VRWJPO if those plans impact surface water interactions.<sup>31</sup>

22. There are no lakes located in the Township.<sup>32</sup> The Vermillion River and its tributaries run through the Township, however, resulting in some flood plain areas within the Township's borders.<sup>33</sup> The Township has ceded authority for flood plain management to Dakota County.<sup>34</sup>

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<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 8-9.

<sup>25</sup> *Id.* at 9.

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

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

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

<sup>29</sup> *Id.*

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

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* at 9-10.

23. The soils within a particular area determine the type and extent of possible development, as soil strength, drainage, and frost characteristics may limit the development of buildings or the installation of septic systems.<sup>35</sup> The largest soil association in the Township is the Waukegan Series, which consists of very deep, well drained soils that formed in 50 to 100 centimeters of loess or silty glacial alluvium and in the underlying sandy or sandy-skeletal glacial outwash. The slope of these soils ranges from 0 to 12 percent. Other soil associations in the Township are similar in character to the Waukegan Series.<sup>36</sup>

**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.**

24. The Township contains a mix of land use types, including single-family residential neighborhoods, single family homes on small acreages, commercial property, regional parks and other open spaces, institutional properties, extraction uses, and agricultural properties.<sup>37</sup>

25. Agricultural/undeveloped land is the largest use in the Township at 65.6% of the Township's land area, followed by park, recreation, or preserve at 22.1%, mineral extraction at 4.3%, single family residential at 2.7%, mixed residential at 1.9%. The remainder of the property within the Township has a variety of other uses, such as land used for an airport, highways, and golf course, and open water.<sup>38</sup>

26. Significant portions of the Township's land are publicly-owned, and have been designated as parks or open space, including Dakota County Whitetail Woods Regional Park, the Vermillion Highlands owned by the Minnesota Department of Natural Resources, and UMore Park owned by the University of Minnesota.<sup>39</sup> The UMore Park property consists of several square miles of land along the northern boundary of the Township that is used for agricultural and research uses.<sup>40</sup> The Metropolitan Council owns and operates a Wastewater Treatment Facility in the Township, and Dakota County owns and operates a Public Works Facility in the Township.<sup>41</sup>

27. The Township operates municipal water and sanitary sewer services; currently 850 homes are connected to sewer services and 840 homes are connected to the water service.<sup>42</sup> Many of the Township's lots served with municipal sewer and water are platted lots located in subdivisions within the Township.<sup>43</sup> These lots are generally

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<sup>35</sup> *Id.* at 9.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.* at 10.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.* at 12-13, 15; Testimony (Test.) of Jane Kansier.

<sup>40</sup> Test. of J. Kansier.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*; Ex. 2 at 1, 13, 19.

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

10,000 to 15,000 square feet in area, are considered reasonable density for lots being served by municipal utilities, and are suburban in character.<sup>44</sup>

28. Other areas of the Township are served by private wells and individual or subsurface sewage treatment systems (ISTS and SSTS).<sup>45</sup> The Township and Dakota County have a cooperative system for ISTS/SSTS monitoring and maintenance.<sup>46</sup> Dakota County regulates private wells, and the Township must authorize construction, reconstruction, permanent sealing, and initial annual maintenance.<sup>47</sup>

29. The Township's public water distribution system currently utilizes three wells and a single storage unit elevated water tower that was constructed in 1999.<sup>48</sup>

30. The Township expects residential development of parcels of land in the northwest portion of the Township that have either finished mining aggregate, or will finish mining aggregate in the next few years. The Township anticipates these parcels will be platted residential lots at a density of approximately 3 residences per acre with municipal sewer and water services.<sup>49</sup>

31. Although these areas are not currently served with water and sanitary sewer service, the Township has completed a number of studies to determine how these areas may be served.<sup>50</sup>

32. The Township will need to construct a new water tower to serve properties in the northwest portion of the Township, and it will need to extend a sewer trunk main to serve these properties.<sup>51</sup> Overall, the Township anticipates that sewer and water improvements could cost approximately \$10,000,000.<sup>52</sup>

33. The Township anticipates it will issue bonds to pay for sewer and water improvements to serve new development in the Township, and will likely use a combination of connection charges and user fees from the properties served by these improvements to repay the bonds.<sup>53</sup> In order to ensure that it can collect sufficient funds to pay off the bonds, properties that will connect to and use these facilities must remain in the Township so that the Township can collect these user fees and connection charges.<sup>54</sup>

34. Incorporation of the Township will clearly establish its borders and prevent annexation of developable areas within the Township by another community. Annexation

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<sup>44</sup> *Id.*

<sup>45</sup> Ex. 2 at 14, 19.

<sup>46</sup> *Id.* at 14.

<sup>47</sup> *Id.* at 19.

<sup>48</sup> Ex. 2 at 19-20.

<sup>49</sup> Test. of J. Kansier.

<sup>50</sup> Ex. 2 at 13; Ex. 4 at 14-15.

<sup>51</sup> Test. of Brian Hilgardner.

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

<sup>53</sup> Test. of Jean McGann.

<sup>54</sup> *Id.*

of these properties by another community would deprive the Township of sewer and water connection fees and rate revenues needed to repay debt issued for projects to extend water and sanitary sewer service.<sup>55</sup>

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

35. A network of County and Township roads serve the Township, along with State Trunk Highway 3 (TH3) which runs north-south.<sup>56</sup> Dakota County Highways 46, 66, and 50 provide east-west minor collector access throughout the Township.<sup>57</sup> U.S. Highway 52 abuts the Township at its northeast corner.<sup>58</sup>

36. The Township has approximately 30 miles of roads for which it is responsible, of which approximately 50% are paved and the remainder are gravel roads.<sup>59</sup> Much of the Township's gravel road mileage is in areas with lower population densities or traffic volumes that are currently too low to justify paving.<sup>60</sup>

37. The Township's road system provides inter-connectivity within the community and to neighboring communities.<sup>61</sup> Dakota County has conducted several studies of the Township's roadway system and has identified additional needs related to east-west connectivity and intersection improvements.<sup>62</sup>

38. The Township has sidewalks and local trails throughout its area.<sup>63</sup> The Township has implemented policies requiring sidewalks and trails in roadway improvement and maintenance projects.<sup>64</sup>

**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.**

39. The Metropolitan Council has designated the Township as both an "Emerging Suburban Edge" and an "Agricultural" Community.<sup>65</sup>

40. Emerging Suburban Edge Communities are in the early stages of transitioning from rural land uses to more developed, suburban uses and provide a buffer

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<sup>55</sup> *Id.*; Test. of J. Kansier; Ex. 2 at 26.

<sup>56</sup> Ex. 4, Fig. 11.

<sup>57</sup> *Id.*

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

<sup>59</sup> Test. of Charles Seipel-Teng.

<sup>60</sup> *Id.*

<sup>61</sup> Ex. 2 at 3.

<sup>62</sup> *Id.*; Ex. 19 at 39-40.

<sup>63</sup> Ex. 2 at 3.

<sup>64</sup> *Id.*

<sup>65</sup> Ex. 4 at 10; Met Council Submission at 2.

between rural and urban land uses.<sup>66</sup> These areas are part of the Metropolitan Urban Service Area (MUSA) and have access to regional sewer.<sup>67</sup> Emerging Suburban Edge Communities are expected to develop at densities between three and five units per acre.<sup>68</sup>

41. Agricultural communities are areas with prime agricultural soils that are planned for long-term agricultural use or other natural resource protection.<sup>69</sup> Development is discouraged in these areas to preserve community assets.<sup>70</sup> Communities are expected to manage land uses to prevent the premature demand for extension of urban services to these areas, so that existing service levels will meet a community's need.<sup>71</sup> Residential development in these areas is expected to be no more than one unit per 40 acres.<sup>72</sup> The majority of the non-publicly owned land in the Township is zoned Agricultural.<sup>73</sup>

42. The Township approved its first comprehensive plan in 1981 and has continued to adopt comprehensive plans every ten years since then.<sup>74</sup> The Township follows the Metropolitan Council's planning guidelines, including limiting residential development to one house per 40 acres where municipal sanitary sewer and water are not available and approximately 3 residential units per acre where municipal sewer and water are available.<sup>75</sup>

43. The Township has also followed the Metropolitan Council's planning guidelines by placing a significant portion of the Township containing sand and gravel minerals into a Mining Overlay District that allows only mining and agricultural uses while the minerals remain in the ground.<sup>76</sup> Once the minerals are mined, the Township plans to rezone the properties to permit development.<sup>77</sup>

44. The Township has adopted and enforces Zoning and Subdivision Ordinances.<sup>78</sup>

45. The Township has planned for long-range urbanization of the community in its previous comprehensive plans and the current 2040 Comprehensive Plan, with the plan that it would seek incorporation.<sup>79</sup> The Township has prepared a Staging Plan<sup>80</sup>

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<sup>66</sup> Ex. 4 at 10; Met Council Submission at 2.

<sup>67</sup> Ex. 4 at 10.

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*; Met Council Submission at 2.

<sup>70</sup> Ex. 4 at 10.

<sup>71</sup> Met Council Submission at 2.

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

<sup>73</sup> Test. of J. Kansier.

<sup>74</sup> Ex. 4 at 14.

<sup>75</sup> Test. of J. Kansier; Met Council Submission at 2.

<sup>76</sup> Test. of J. Kansier; Ex. 4 at 14.

<sup>77</sup> Test. of J. Kansier.

<sup>78</sup> Test. of C. Seipel-Teng; Exs. 20, 43, 45.

<sup>79</sup> Test. of J. Kansier; Test. of Terry Holmes.

<sup>80</sup> Ex. 4, Fig. 6.

which contemplates the orderly installation of municipal sewer and water facilities as properties are ready for development.<sup>81</sup>

46. Several properties in the Mining Overlay District are either mined out or expected to be mined out in the near future.<sup>82</sup> The Township is studying how to best provide municipal sewer and water service to these properties in anticipation of development.<sup>83</sup>

47. The Township does not expect the uses of publicly-owned park and open space properties within its borders to change in the near future.<sup>84</sup> The Township is unable to predict how or when the UMore Park property in the northern portion of the Township could be developed by the University of Minnesota.<sup>85</sup>

48. The Township's Comprehensive Plan and its Zoning Ordinance provide for the full range of uses normally found in a suburbanizing city: single family residential, high density residential, commercial, and industrial uses.<sup>86</sup>

49. The Township's Comprehensive Plan contemplates additional residential housing needs of 874 units between 2020 and 2040; the Township has planned for this growth and its Staging Map indicates where the Township believes this residential growth will occur.<sup>87</sup> The Township anticipates connecting these additional households to municipal sanitary sewer and water.<sup>88</sup>

50. The Township has been designated as a Municipal Separate Storm Sewer System (MS4) community by the Minnesota Pollution Control Agency (MPCA).<sup>89</sup> It is unusual for a Township to be designated as an MS4 community.<sup>90</sup> The Township has been implementing its MS4 program for over 15 years.<sup>91</sup>

**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.**

51. The Township currently provides, either directly or through service contracts, all of the municipal services that are necessary for its residents and the area

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

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

<sup>83</sup> *Id.*; Test. of B. Hilgardner.

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

<sup>85</sup> *Id.*

<sup>86</sup> Ex. 4, Fig. 7; Ex. 19 at 10-13.

<sup>87</sup> Ex. 19 at 24, Fig. 4.

<sup>88</sup> Test. of J. Kansier.

<sup>89</sup> Test. of B. Hilgardner; Ex. 2 at 8.

<sup>90</sup> Test. of B. Hilgardner.

<sup>91</sup> Ex. 2 at 8.



proposed for incorporation.<sup>92</sup> The Township does not anticipate significant changes to the services it provides if it is incorporated.<sup>93</sup>

52. The Township currently provides the following services:

- a. Sanitary sewer service;
- b. Municipal water service;
- c. Road capital improvement program;
- d. Road maintenance including repair, grading, snowplowing, ditch mowing, brush cutting, etc.;
- e. Comprehensive planning;
- f. Land use planning, including zoning and subdivision administration;
- g. Fire and emergency services through contract with the City of Farmington;
- h. Administrative services, including a web page for information for the public;
- i. Park services;
- j. Liquor licenses, in conjunction with the County;
- k. Election services;
- l. Ordinance enforcement;
- m. Storm water management;
- n. Building inspection services by contract; and
- o. Police patrol by contract with the Dakota County Sheriff's Office.<sup>94</sup>

53. Since 1977, the Township has been exercising limited city powers granted to it by the Legislature by Special Legislation.<sup>95</sup> The Township was granted authority to exercise municipal powers including municipal planning authority, eminent domain, the creation of departments and boards, and specific powers to regulate public ways, parks, water works, and nuisances, among others.<sup>96</sup>

54. For general governmental functions, the Township employs a full-time Town Clerk/Treasurer and a Deputy Clerk/Treasurer.<sup>97</sup> The Town Clerk's duties include preparing the budget, keeping financial records, keeping and maintaining Township records, overseeing elections, ordinance and website maintenance, and Township communications with the public.<sup>98</sup>

55. Currently all crimes in violation of Minnesota law occurring in the Township are prosecuted by the Dakota County Attorney's Office.<sup>99</sup> Upon incorporation, the new

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<sup>92</sup> Test. of C. Seipel-Teng; Test. of J. Kansier; Test. of J. McGann; Test. of B. Hilgardner.

<sup>93</sup> Test. of C. Seipel-Teng; Test. of J. McGann.

<sup>94</sup> Test. of C. Seipel-Teng; Test. of J. McGann; Test. of J. Kansier; Test. of Sheriff Tim Leslie.

<sup>95</sup> Ex. 4 at 4; Ex. 8.

<sup>96</sup> Ex. 4 at 4.

<sup>97</sup> Test. of T. Holmes; Test. of C. Seipel-Teng.

<sup>98</sup> Test. of C. Seipel-Teng.

<sup>99</sup> Ex. 3 at 8.

City of Empire will prosecute all misdemeanor crimes.<sup>100</sup> The Township estimates the cost of contracting with an attorney to perform prosecution work will be \$18,000 annually.<sup>101</sup>

56. All roadways within the Township fall within the jurisdictional responsibility of the State of Minnesota, Dakota County, or the Township.<sup>102</sup> The Township maintains all local collectors and local streets and their connections with the minor arterials and collectors.<sup>103</sup>

57. The Township has a public works department with one full-time maintenance manager and two full-time maintenance personnel. These employees are responsible for street maintenance, and municipal sewer and water operations.<sup>104</sup>

58. The Township engages in annual capital planning for an active street reconstruction and pavement management program designed to maintain its roads.<sup>105</sup> The Township is currently engaged in preparing a capital improvement plan for planned municipal water and sanitary sewer expansion, including a new water tower, sewer and water trunk lines, and possibly a water treatment plant, to serve properties in its northwest area that the Township expects will be developed soon.<sup>106</sup>

59. The Township currently receives approximately \$31,400 in road maintenance funding from Dakota County; it will no longer receive this amount if it is incorporated.<sup>107</sup> If incorporated as a city, however, the Township will gain access to Dakota County's Small Cities Assistance funding for roads in the amount of \$79,000, resulting in a net revenue gain of \$47,600.<sup>108</sup> If incorporated, the Township will not be eligible for the state Municipal State Aid (MSA) program that provides transportation funding until its population reaches 5,000, which is anticipated to occur around 2040.<sup>109</sup>

60. The Township contracts with the City of Farmington for fire and ambulance services, and it expects no change in fire service if the Township is incorporated.<sup>110</sup>

61. The Township contracts with the Dakota County Sheriff's Office for public safety police protection and 911 emergency response, including the provision of a full-time deputy patrolling in the corporate limits of the Township.<sup>111</sup> The Sheriff's Office has 87 sworn officers and 109 licensed vehicles, and all-terrain vehicles, watercraft, and

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<sup>100</sup> *Id.*; Test. of C. Seipel-Teng.

<sup>101</sup> Ex. 3 at 8.

<sup>102</sup> Ex. 4 at 23, Fig. 11.

<sup>103</sup> Test. of B. Hilgardner; Ex. 2 at Fig. 1.

<sup>104</sup> Test. of T. Holmes; Test. of C. Seipel-Teng.

<sup>105</sup> Ex. 25; Test. of B. Hilgardner; Test. of C. Seipel-Teng.

<sup>106</sup> Test. of B. Hilgardner; Test. of C. Seipel-Teng; Test. of J. Kansier; Ex. 2 at 26; Exs. 24-25.

<sup>107</sup> Ex. 3 at 12.

<sup>108</sup> Ex. 3 at 12.

<sup>109</sup> Ex. 2 at 2; Test. of B. Hilgardner; Ex. 3 at 9.

<sup>110</sup> Test. of C. Seipel-Teng.

<sup>111</sup> *Id.*; Ex. 12.

snowmobiles.<sup>112</sup> Police services provided by the Sheriff's Office will not change upon incorporation of the Township.<sup>113</sup>

62. Incorporation will provide the Township with additional economic development powers, including tax increment financing (TIF) authority.<sup>114</sup> Cities often use TIF as an economic development tool to help bring commercial and industrial development to a city.<sup>115</sup> Townships are not authorized to create TIF districts and are at a disadvantage compared to cities that can use TIF to attract industrial development.<sup>116</sup>

63. The Township's finances are audited every year.<sup>117</sup> The Township maintains reserves to cover a 12-month operating budget, which is in excess of the State Auditor's recommendation to hold a reserve of at least five months of operating expenses.<sup>118</sup>

64. The Township has used bonding in the past to finance road construction and the Township has an AA+ rating from Standard and Poor's.<sup>119</sup> This is the second highest available rating, and it indicates the Township has been judged to be financially stable, making it easier for the Township to obtain credit at lower interest rates.<sup>120</sup> The Township expects that incorporation will preserve the Township's standing under the bond rating criteria, because it will prevent annexation from destabilizing the tax base.<sup>121</sup>

65. The Township levies taxes to pay the debt service on its outstanding bonds.<sup>122</sup> Incorporation will stabilize the tax levy because portions of the Township could not easily be annexed by a neighboring municipality; in the alternative scenario, losing territory to annexation would reduce the tax base across which the levy is spread, increase the tax burden on the remaining properties, and present challenges regarding the Township's ability to repay its bonds.<sup>123</sup>

66. The Township anticipates it will likely issue additional debt to pay for installation of planned water and sewer utilities, using rate revenue and connection charges to repay the bonds.<sup>124</sup> If property within the Township was annexed to another municipality after the utilities are installed and the bonds issued, the rate revenue and

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<sup>112</sup> Test. of Sheriff T. Leslie.

<sup>113</sup> Test. of C. Seipel-Teng.

<sup>114</sup> Test. of J. McGann.

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*; Ex. 3 at 21.

<sup>117</sup> Test. of J. McGann.

<sup>118</sup> Ex. 3 at 12.

<sup>119</sup> Test. of J. McGann; Test. of C. Seipel-Teng; Ex. 17 at 2.

<sup>120</sup> Test. of J. McGann; Test. of C. Seipel-Teng; Ex. 3 at 21; Ex. 17 at 2.

<sup>121</sup> Ex. 3 at 21.

<sup>122</sup> *Id.* at 20.

<sup>123</sup> *Id.*; Test. of J. McGann.

<sup>124</sup> Test. of J. McGann.

connection charges from the annexed properties would be eliminated and the Township could have trouble repaying the bonds.<sup>125</sup>

67. Under the township form of governance, annual levies necessary to support services provided by the Township are subject to approval by limited electorate participation.<sup>126</sup> At the Township's continued annual meeting in 2021 to set the levy, only three electors attended to vote on the levy, and those three Township citizens were the three Town Board Supervisors.<sup>127</sup>

68. This system results in financial uncertainty for the Township, because it is unable to predict or rely on the number of electors who will attend the annual meeting to set the levy or the amount that could be set for collection.<sup>128</sup> For example, the cost of a full-time deputy to patrol within the Township is calculated as part of the levy.<sup>129</sup> If the levy were not approved as planned, the Township could find itself unable to pay for this service.

69. Upon incorporation, the Township will be led by a city council. This elected body will approve the budget, allowing for greater certainty in the funding for services.<sup>130</sup> Placing the levy decision-making process in the hands of an elected city council representing a city with stable borders will provide greater financial stability to ensure both current and long-term service needs are addressed.<sup>131</sup>

70. Incorporation will preserve the Township's financial stability, protect its bond rating, and protect and enhance the future adequacy of services required to protect the public health, safety, and welfare of its residents.<sup>132</sup> Incorporation would also allow the Township to utilize additional financial tools for economic development and redevelopment, such as TIF, which are not available to the Township.<sup>133</sup>

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

71. There are no known existing environmental problems in the Township.<sup>134</sup> The Township has adopted ordinances regulating storm water management and to prevent erosion and sedimentation.<sup>135</sup> The Township and Dakota County jointly regulate

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<sup>125</sup> *Id.*

<sup>126</sup> Test. of T. Holmes.

<sup>127</sup> *Id.*

<sup>128</sup> *Id.*; Test. of C. Seipel-Teng.

<sup>129</sup> Ex. 14.

<sup>130</sup> Test. of T. Holmes.

<sup>131</sup> Ex. 3 at 21; Test. of J. McGann.

<sup>132</sup> Ex. 3 at 21; Test. of J. McGann.

<sup>133</sup> *Id.*

<sup>134</sup> Test. of J. Kansier; Ex. 2 at 14; Ex. 4 at 27.

<sup>135</sup> Test. of J. Kansier.

ISTS/SSTS systems.<sup>136</sup> The Township's regulations are consistent with or are more stringent than those required by the Minnesota Department of Health.<sup>137</sup>

**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.**

72. The Township is financially strong, and it has a history of stable and steady financial management.<sup>138</sup>

73. The Township currently manages the administration of its finances in a manner that is in line with the financial operations of cities.<sup>139</sup> In particular, the Township has obtained a AA+ bond rating from Standard and Poor's, issues general obligation debt, oversees debt administration, engages in budgeting and long-range financial planning, and prepares a consolidated annual financial report with audited financial statements.<sup>140</sup>

74. The Township anticipates that incorporation will increase its annual revenues by the net amount of \$47,600, because it will receive \$79,000 in additional Dakota County Small Cities aid and will lose \$31,400 in Dakota County Road Maintenance funding. It anticipates its total expenses will increase by \$22,000 to \$24,000 annually, with an additional \$18,000 in prosecution expenses and \$4,000 to \$6,000 in additional expenses related to the addition of two City Council members.<sup>141</sup> Factoring in all of these amounts, the Township expects a net gain of approximately \$23,600 annually.<sup>142</sup>

75. Although the Township's financial operations mirror those of cities, it has a lower tax rate than the cities surrounding it and a higher tax rate than the townships surrounding it.<sup>143</sup> The Township's movement toward a tax rate higher than surrounding townships, but still lower than surrounding cities, reflects the Township's transition from a rural township to a suburban community offering services consistent with the operations of a city.<sup>144</sup>

76. By incorporating, the Township will clearly establish its borders and existing tax base, and can preserve the Township's lower tax rate into the foreseeable future.<sup>145</sup> There is no evidence showing that incorporation will have any material impact upon the

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<sup>136</sup> Ex. 2 at 14.

<sup>137</sup> Ex. 4 at 27.

<sup>138</sup> Ex. 3 at 11; Test. of J. McGann.

<sup>139</sup> Test. of J. McGann.

<sup>140</sup> *Id.*; Ex. 3 at 11.

<sup>141</sup> Ex. 3 at 8-9, 13.

<sup>142</sup> *Id.* at 13.

<sup>143</sup> *Id.* at 19; Test. of J. McGann.

<sup>144</sup> Test. of J. McGann.

<sup>145</sup> Ex. 3 at 19.

tax capacity, tax rate, or credit ratings of Dakota County, the two school districts that serve the Township, or any other governmental unit.<sup>146</sup>

77. The Township currently has bonded indebtedness of \$2,790,000.<sup>147</sup> The Township anticipates it will need to incur future debt to finance the extension of municipal water and sewer service to areas of the Township that are expected to develop in the near future.<sup>148</sup>

78. Incorporation will assist the Township by providing certainty as to its tax base, and will allay concerns that annexation of land from the Township to other communities will reduce its tax base.<sup>149</sup> Such stability will allow the Township to better manage its debt and to fund future capital improvements.<sup>150</sup>

79. 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 the services it provides.<sup>151</sup> The Township currently holds a reserve of approximately \$2.5 million, in order to ensure that it will be able to meet its obligations and fund various services regardless of the outcome of the levy.<sup>152</sup> This balance is in excess of the State Auditor's recommendations.<sup>153</sup> If incorporated, the new city could reduce the amount that it holds in reserve because it will have greater certainty as to its budget.<sup>154</sup>

80. Upon incorporation, the Township could also utilize TIF funding to encourage economic development and redevelopment.<sup>155</sup>

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

81. Empire Township is served by two different school districts: Farmington (ISD 192) and Rosemount-Apple Valley-Eagan (ISD 196).<sup>156</sup> School district boundaries overlay and transcend municipal boundaries. Incorporation of the Township will have no impact on the school districts serving this area.<sup>157</sup>

82. The Cities of Lakeville, Rosemount, and Farmington, as well as the Township of Castle Rock, adopted resolutions supporting incorporation of the Township.<sup>158</sup> The City of Coates, which borders the Township's northeast corner, advised

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<sup>146</sup> Test. of J. McGann.

<sup>147</sup> Ex. 3 at 20.

<sup>148</sup> Test. of B. Hilgardner; Test. of J. McGann.

<sup>149</sup> Test. of J. McGann.

<sup>150</sup> *Id.*

<sup>151</sup> Test. of T. Holmes.

<sup>152</sup> Test. of J. McGann; Ex. 3 at 13.

<sup>153</sup> Test. of J. McGann; Ex. 3 at 12.

<sup>154</sup> Test. of J. McGann.

<sup>155</sup> *Id.*; Ex. 3 at 18.

<sup>156</sup> Ex. 4 at 27.

<sup>157</sup> *Id.*

<sup>158</sup> Ex. 7.

the Township via email that the city has no concerns regarding the incorporation of the Township.<sup>159</sup>

83. The Township and the City of Farmington agreed upon what the two communities describe as their “permanent boundaries” in a 2008 Orderly Annexation Agreement, as amended in 2022.<sup>160</sup> In 2008, the parties agreed that the City of Farmington would support a petition for incorporation brought by the Township, and by amendment in 2022, the parties agreed that certain designated portions of the Township would be annexed to the City of Farmington upon issuance of an order for incorporation.<sup>161</sup>

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

84. The Township currently delivers cost-effective services to its residents, but a change in the form of government from township to city would allow the Township to deliver these services more economically and efficiently.

85. 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.<sup>162</sup> Upon incorporation, governmental decision-making authority will be centralized in an elected city council with statutory terms of office of four years for council members and two years for the mayor.<sup>163</sup> A city form of government will enable the city council to better plan for and fund large expenditures over several years.<sup>164</sup>

86. Incorporation will create certainty as to the Township’s tax base, from which it derives the vast majority of its operating funds.<sup>165</sup> Incorporation will prevent another community from annexing portions of the Township’s tax base.<sup>166</sup> Ensuring that the Township’s lands remain within the Township stabilizes the tax base, permitting planning and implementation of long-term, big-ticket investments such as extension of sanitary sewer and water services to newly developing properties,<sup>167</sup> as well as a new water tower to serve such properties in the northwestern area of the Township.<sup>168</sup> Incorporation will also provide greater certainty as to the collection of rate revenue and connection fees for extended utility services by preventing the annexation of properties connected to these services to other communities.<sup>169</sup>

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<sup>159</sup> *Id.*

<sup>160</sup> Exs. 9, 10.

<sup>161</sup> Ex. 10.

<sup>162</sup> Test. of T. Holmes.

<sup>163</sup> See Minn. Stat. § 412.02 (2022).

<sup>164</sup> Test. of T. Holmes; Test. of J. McGann.

<sup>165</sup> Ex. 3 at 19; Ex. 14 at 1.

<sup>166</sup> Ex. 3 at 19; Test. of J. McGann.

<sup>167</sup> Test. of J. McGann.

<sup>168</sup> *Id.*; Test. of J. Kansier.

<sup>169</sup> Test. of J. McGann.

87. Incorporation will allow the Township to use TIF authority that is currently available to cities but not to towns, and to incentivize industrial investment in the newly incorporated city, thus enlarging its tax base.<sup>170</sup>

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

88. The Township is an urban or suburban township currently operating in a manner similar to a city.<sup>171</sup> It furnishes most of the services of a city, including sanitary sewer, municipal water, fire protection, police protection, street improvement and maintenance, administrative services, ordinance enforcement, and parks and recreation services.<sup>172</sup> It has full-time administrative and maintenance staff and receives professional services via contracts.<sup>173</sup> It has adopted a Metropolitan Council approved 2040 Comprehensive Plan and administers its own zoning and subdivision ordinances.<sup>174</sup> It prepares and administers its budget.<sup>175</sup>

89. Neither Rosemount nor Lakeville plan to provide any municipal services to land in the Township, according to their recently revised Comprehensive Plans.<sup>176</sup> The City of Farmington's Comprehensive Plan only contemplates serving land within the Township that has already been designated for annexation to Farmington, as described above.<sup>177</sup>

90. As noted previously, several communities adjacent to the Township either support the Township's incorporation or expressed that they have no concerns.<sup>178</sup> None of the adjacent communities entered this proceeding as a party to address this factor.

91. Though no neighboring community currently has plans to annex property within the Township, other than through the Orderly Annexation Agreement with the City of Farmington, the Township has experienced contested annexation disputes in the past. These disputes caused concern about the Township's ability to maintain its borders, preserve the character of its community, and ensure its financial stability.<sup>179</sup> Incorporation will permit it to meet those needs, while positioning it for anticipated growth and development over the next several decades.<sup>180</sup>

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<sup>170</sup> Ex. 3 at 18.

<sup>171</sup> *Id.* at 4; Test. of J. McGann; Test. of J. Kansier.

<sup>172</sup> Test. of C. Seipel-Teng; Test. of J. McGann; Test. of B. Hilgardner; *see also* Exs. 27-52.

<sup>173</sup> Test. of C. Seipel-Teng; Test. of J. McGann; Test. of J. Kansier.

<sup>174</sup> Test. of J. Kansier; Test. of C. Seipel-Teng; Ex. 4 at 25; Exs. 20, 43, 45.

<sup>175</sup> Test. of C. Seipel-Teng.

<sup>176</sup> Test. of J. Kansier; Ex. 4 at 18-19, and Figs. 9, 10.

<sup>177</sup> Test. of J. Kansier; Ex. 4, Fig. 8.

<sup>178</sup> Ex. 7.

<sup>179</sup> Test. of T. Holmes.

<sup>180</sup> *Id.*; Test. of J. McGann; Test. of J. Kansier.



92. 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.

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

93. The Township was settled in the 1850s and organized in 1858.<sup>181</sup> The Township's land area is mostly rectangular, with the exception of a small portion that was annexed to the City of Coates, and several square miles that were annexed to Farmington over the years.<sup>182</sup> The north, east and south boundaries of the Township have remained the same since the Township's founding.<sup>183</sup> The western boundary with the City of Farmington changed over the years as property was annexed to that city, including a 1999 orderly annexation of more than 1,000 acres west of TH 3 and north of 194<sup>th</sup> Street and selected smaller annexations that have occurred under the 2008 Orderly Annexation Agreement.<sup>184</sup>

94. The Township and the City of Farmington mutually agreed on the boundaries that would best serve the two communities in their 2008 Orderly Annexation Agreement.<sup>185</sup>

95. There is no boundary adjustment possible that will improve the contiguity of the current boundaries of the Township and its neighbors.<sup>186</sup> Incorporation will maintain and preserve the contiguity of the current boundary of the Township, which is in the Township's best interest.<sup>187</sup>

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

96. The Township originally adopted the State Building Code by reference in 2004, with an update in 2011.<sup>188</sup> The Township contracts with a Building Official to administer the State Building Code throughout the entire community.<sup>189</sup> Under Minn. Stat. § 326B.121 (2022) cities with populations greater than 2,500 that adopted the State Building Code prior to 2008, must administer and enforce the State Building Code.<sup>190</sup>

97. Upon incorporation, the Township's ordinances, including its adoption of the State Building Code, will continue in force.<sup>191</sup> Incorporation will strengthen the applicability and implementation of the State Building Code in the proposed City of Empire, as the

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<sup>181</sup> Ex. 4 at 28.

<sup>182</sup> See Ex. 4, Fig. 5; Test. of J. Kansier.

<sup>183</sup> Ex. 4 at 28.

<sup>184</sup> *Id.*; Test. of J. Kansier.

<sup>185</sup> Ex. 4 at 29; Ex. 9.

<sup>186</sup> Ex. 4 at 29.

<sup>187</sup> *Id.*

<sup>188</sup> *Id.*

<sup>189</sup> *Id.*

<sup>190</sup> Minn. Stat. § 326B.121, Subd. 2(a).

<sup>191</sup> Minn. Stat. § 414.02, subd. 3(h).

new city will be required by statute to continue enforcement of the Building Code.<sup>192</sup> No other boundary adjustment will improve the enforcement of the State Building Code currently provided by the Township.<sup>193</sup>

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 (2022), Minn. R. ch. 6000 (2021).

2. All 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 was given.

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.<sup>194</sup> 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.<sup>195</sup>

7. Incorporation is in the best interests of the area proposed to be incorporated.<sup>196</sup>

8. No part the Township, other than those areas already designated under the Township's Orderly Annexation Agreement with the City of Farmington, would be better served by annexation to an adjacent municipality.<sup>197</sup>

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

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<sup>192</sup> Ex. 4 at 29.

<sup>193</sup> *Id.*

<sup>194</sup> Minn. Stat. § 414.02, subd. 3(b)(1).

<sup>195</sup> *Id.*, subd. 3(b)(2).

<sup>196</sup> *Id.*, subd. 3(b)(3).

<sup>197</sup> *Id.*, subd. 3(c).

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 Amended Petition for Incorporation of Empire Township (I-74) is **GRANTED**.
2. Empire Township shall hereby be incorporated as the City of Empire.
3. The incorporated City of Empire shall consist of all property within the Township of Empire as legally described in Finding No. 11 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 "Optional Plan A." An election of a mayor and four council members shall be held on February 14, 2023.<sup>198</sup>

Charles Seipel-Teng 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 Empire Public Works Building located at 2577 Vermillion River Trail, Empire Township. The election judges shall be appointed in the same manner as the Township has appointed election judges for prior State General 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, 2024, a Council Member seat whose term shall expire on December 31, 2024, or a Council Member seat whose term shall expire on December 31, 2026. 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. The two candidates filing for the Council Member seats expiring on December 31, 2026, who receive the most votes shall be elected to terms ending December 31, 2026. 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 5, 2024. 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 Empire Township, as well as all other land use and planning controls, and all licensing privileges, shall remain in effect within the boundaries

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<sup>198</sup> See Minn. Stat. § 205.10, subd. 3a(a) (2022) (establishing uniform election dates for city special elections).

of the City of Empire until repealed or replaced by the new governing body of the City of Empire.

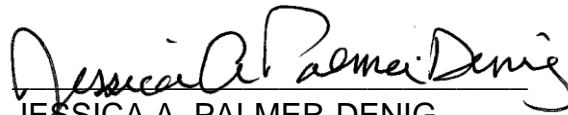
7. Upon incorporation, all money, claims, equipment and property, including real estate owned, held or possessed by the former Empire Township, and any proceeds, special assessments or taxes levied by Empire Township, collected and uncollected, shall become the property of the City of Empire with full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

8. The Township's outstanding debt will become the financial obligation of the City of Empire.

9. Pursuant to Minn. Stat. § 414.12, subd. 3, the costs of this proceeding are the obligation of the Township and shall be paid in their entirety by the Township.

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

Dated: August 31, 2022

  
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 Dakota 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 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 successfully provided services to its residents, it will be better served by moving to a city government model. By incorporating, the Township will solidify its borders and tax base, and provide certainty as to its budgeting process, allowing it to pursue infrastructure investments and provide additional services necessary to address the needs it anticipates as it continues to grow. 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**.

**J. P. D.**