

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF ADMINISTRATION

In the Matter of the Petition of Chisago
City for Annexation of Unincorporated
Property in Wyoming Township (A-6996)

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

The above-entitled matter initially came on for hearing before Christine Scotillo, Executive Director, Municipal Boundary Adjustments, on January 23, 2004, at the Chisago County Government Center, 313 North Main Street, Center City, Minnesota. The hearing was continued to allow for the gathering of additional evidence.¹

The hearing was reconvened before Administrative Law Judge Kathleen D. Sheehy at 9:30 a.m. on November 8, 2004, in the Chisago City Council Chambers, Chisago City Hall, Chisago City, Minnesota, and continued through November 15, 2004. Public testimony was heard on the evening of November 11, 2004, at the Chisago City Community Center. The record closed on December 21, 2004, upon receipt of the parties' reply memoranda.

Christopher M. Hood, Esq., and Brandon M. Fitzsimmons, Esq., Flaherty & Hood, P.A., 525 Park Street, Suite 470, St. Paul, Minnesota 55103, appeared for the City of Chisago City (the City).

Michael C. Couri, Esq., Couri, MacArthur & Ruppe, P.L.L.P., 705 Central Avenue East, St. Michael, Minnesota 55376, and Thomas Fitzpatrick, Esq., Randall, Dehn, and Goodrich, 2140 Fourth Avenue, Anoka, Minnesota 55303, appeared for Wyoming Township (the Township).

NOTICE

This Order is the final administrative decision in this case under Minn. Stat. § 414.031, and the delegation by the Assistant Commissioner, State and Community Services, Department of Administration, dated July 26, 2004, pursuant to Minn. Stat. § 414.12, subd. 2(a). Any person aggrieved by this Order may appeal to Chisago County

¹ Pursuant to Minn. Stat. § 414.07, subd. 1, this Order must be issued within one year from the date of the first hearing thereon. When the last day of the period falls on a Sunday, that day shall be omitted from the computation of time. See Minn. Stat. § 645.15. This Order is accordingly due on January 24, 2005.

District Court by filing an Application for Review with the Court Administrator within 30 days of the date of this Order. An appeal does not stay the effect of this Order.²

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.³ No request for amendment, however, shall extend the time of appeal from these Findings of Fact, Conclusions of Law, and Order.

STATEMENT OF ISSUE

At issue in this proceeding is whether the City's Amended Petition for Annexation of a portion of Wyoming Township should be granted based upon the factors set out in statute.⁴

The Administrative Law Judge concludes that the City's Amended Petition should be granted, except for that portion seeking annexation of U.S. Highway 8 running from the west edge of section 26 to the east edge of section 33 of the Township (the "sliver" of U.S. Highway 8).

Based upon all of the testimony, exhibits and the record in this proceeding, the Administrative Law Judge makes the following:

FINDINGS OF FACT

Procedural History

1. On November 26, 2003, the City filed a petition with the Minnesota Department of Administration, Office of Strategic and Long Range Planning (OSLRP), seeking annexation of approximately 11,103 acres of unincorporated property located in the Township. The area proposed for annexation was described as follows:

Lands in Township 33 North, Range 21 West. All of Sections 2, 3, 11, 13, 14, 22, 23, 24, 25, 26, 27, 33, 34, 35, and 36 in Township 33 North, Range 21 West, Chisago County, Minnesota; and also all of that part of Section 1 and of Section 12, in Township 33 North, Range 21 West, Chisago County, Minnesota, except the City of Chisago City, Chisago County, Minnesota; and also all of that part of Section 10 and Section 15, in Township 33 North, Range 21 West, Chisago County, Minnesota, except the City of Wyoming, Chisago County, Minnesota. And also that part of the Northeast Quarter of Section 4 in Township 33 North, Range 21 West, Chisago County, Minnesota lying Easterly of the Carlos Avery Wildlife Management Area. And also that part of the East Half of the Southeast Quarter of Section 4 in Township 33 North, Range 21 West, Chisago

² Minn. Stat. § 414.07, subd. 2.

³ Minn. Rule pt. 6000.3100.

⁴ Minn. Stat. § 414.031.

County, Minnesota, lying East of the Carlos Avery Wildlife Management Area.⁵

2. On December 29, 2003, the Director of the OSLRP set the City's petition on for hearing on January 23, 2004. Notice of the hearing was published in the Chisago County Press on January 8, 15, and 22, 2004.

3. On December 30, 2003, the Director of the OSLRP ordered the City and Township to meet at least three times over a period of sixty days to address the resolution of contested issues as presented by the City's annexation petition.

4. The hearing was opened on January 23, 2004, and was immediately continued to an indefinite date.

5. The City and Township failed to resolve the contested issues.

6. On March 8, 2004, the City held a public informational meeting to provide information and take input on the proposed annexation from residents in the City and Township.⁶

7. On March 12, 2004, the City filed an Amended Petition with the OSLRP, seeking to reduce the proposed annexation area to approximately 5,000 acres of property located in the Township. The subject area proposed for annexation is described as follows:

Lands in Township 33 North, Range 21 West: All of Sections 2, 11, 13, 14, 23, 24, 25, and 26 in Township 33 North, Range 21 West, Chisago County, Minnesota; and also all of that part of Section 1 and of Section 12, in Township 33 North, Range 21 West, Chisago County, Minnesota, except the City of Chisago City, Chisago County, Minnesota; and also all of that part of Interstate Highway No. 8, Chisago County, Minnesota, from a point beginning at the west edge of the Northwest Quarter of the Southwest Quarter of Section 26, in Township 33 North, Range 21 West, Chisago County, Minnesota, then continuing generally southwesterly in Section 27 and Section 34 in Township 33 North, Range 21 West, Chisago County, Minnesota, to a point ending 2,800 feet west of the east edge of Section 33 in Township 33 North, Range 21 West, Chisago County, Minnesota, as said Interstate Highway No. 8 exists in Section 27, Section 34, and Section 33 in Township 33 North, Range 21 West, Chisago County, Minnesota.⁷

⁵ Ex. 3 at 5.

⁶ Ex. 5.

⁷ Ex. 4. This description improperly identifies U.S. Highway 8 as Interstate Highway 8. U.S. Highway 8 is the major regional east-west corridor between Interstate 35 and the Wisconsin border. There is virtually no likelihood that any person was misled by this errant description. See Tr. 8-10.

8. The OSLRP amended the petition as requested by the City.⁸

9. The subject area is unincorporated and abuts the City on the City's westerly boundary, and none of the property is presently a part of any incorporated city or an area designated for orderly annexation.⁹

10. On July 26, 2004, the Assistant Commissioner, State and Community Services, Department of Administration, delegated this matter to the Office of Administrative Hearings.

11. The Administrative Law Judge conducted prehearing conferences on August 13, 2004, and October 15, 2004.

12. The Office of Administrative Hearings issued a Notice of Reconvened Hearing on October 15, 2004, which was published in the Chisago County Press on October 26, 2004, and November 3, 2004.¹⁰

Background

13. The City and the Township are located in southern Chisago County, approximately 35 miles north of the Twin Cities Metropolitan Area. Chisago County is part of the 13-county Twin Cities Metropolitan Statistical Area as determined by the U.S. Census. It is one of the "collar counties" ringing the seven-county metropolitan area, located just north of Anoka and Washington Counties. It is one of the fastest-growing counties in the five-state region and in the top 100 of the fastest-growing counties in the country.¹¹

14. The Township is located east and west of Interstate 35 just north of the City of Forest Lake, about 35 miles from the Twin Cities Metropolitan Area. The Township abuts the City of Stacy, the Carlos Avery Wildlife Management Area (about 2,900 acres of which are located in the Township) and Lent Township on the north; it abuts Chisago City and Chisago Lakes Township on the east and south; and it abuts the City of Forest Lake and Washington County on the south. The City of Wyoming is located in the central part of the Township along Interstate 35; another portion of the City of Wyoming, an island of approximately 600 acres, is located in the north-central portion of the Township.¹²

15. The City is located on U.S. Highway 8 between the Township and the City of Lindstrom. The City is shaped like an inverted "L" and is surrounded by School Lake, Wallmark Lake, South Lindstrom Lake, Chisago Lake, Little Green Lake, and Green Lake. The City has developed all but about 200 to 250 acres of land within its

⁸ Ex. 5.

⁹ Ex. 4.

¹⁰ Ex. 80.

¹¹ Ex. 72 at 1-4; Tr. 744-45.

¹² See Ex. 4 (map attached hereto).

boundaries. Although it has grown steadily and has the infrastructure to support additional development, without annexation the City's ability to accommodate growth will be significantly limited.¹³ The City seeks annexation of the subject area to plan for commercial and residential growth that would allow for the efficient and cost-effective extension of municipal services, including sewer and water service; to increase and diversify its tax base; and to increase jobs in the area and reduce the amount of outbound/commuter traffic.¹⁴

16. The area proposed for annexation abuts the westerly edge of Chisago City, and is about two sections wide and five sections deep. It includes shoreline around the west side of Green Lake and the southern tip of Comfort Lake. The proposed annexation area is located within one to two miles of Chisago City, the City of Wyoming, the City of Forest Lake, and the City of Stacy.¹⁵

17. The City of Forest Lake, the City of Wyoming, the Township and Chisago City have grown significantly in the past 15 years. The Township has grown more than Chisago City because it is larger and closer to the highway. The Township's pattern of development has been generally to grow out from Interstate 35. It has grown substantially to the south and the east, toward Chisago City. The Township's development has been almost entirely residential, on one-, two-, and five-acre lots using individual wells and individual sewage treatment systems (ISTS).¹⁶ There is tremendous pressure from developers to turn the remaining open land in Chisago County into residential subdivisions.¹⁷

18. The Township is not opposed to growth and has planned to develop the remainder of its land, including the area proposed for annexation, for residential use on mostly one- and two-acre lots without public infrastructure.¹⁸ The Township's 2004 Comprehensive Plan, adopted in September 2004, provides that until the 1980s, the Township functioned primarily as an agricultural community. Since then population has increased steadily, and "*this growth has contributed to the transformation from a rural community to a small town and upwards towards a metropolitan suburb.*"¹⁹ The issue in this case is not whether the area proposed for annexation will grow; the issue is whether it will grow in the manner envisioned by the City, or in that envisioned by the Township.

¹³ Ex. 26, § 1 at 11; Tr. 784-85.

¹⁴ Tr. 30-31, 40; Ex. 11.

¹⁵ Ex. 72 at 12-15.

¹⁶ Ex. 27.

¹⁷ Ex. 14, Chisago County Request for Proposals to increase availability of land for commercial development (with rising prices and residential growth pressure, these areas should be preserved through zoning and comprehensive plan amendments that will allow for future commercial development and prohibit residential developments).

¹⁸ See generally Ex. 27.

¹⁹ Ex. 27 at A-8 (emphasis added).

Annexation History

19. In April 1994, the City of Wyoming and the Township began discussions of a merger of the two communities and appointed a joint committee to study the effects of consolidating the City of Wyoming and the Township. In a 1997 report, the committee recommended that the Township Board and the City Council of the City of Wyoming place the question of consolidation on the November 1997 ballot.²⁰ The Township Board did not agree to place the consolidation issue on the ballot.²¹

20. In the fall of 1996, the Township and Chisago City began discussing the possible annexation by the City of a portion of the Township for the purpose of creating a 200-plus acre business park that would generate jobs and increase the tax base for the community.²² The Township and City formed a business park committee that met through 1998 to plan the development of a business park, which was to be located in the vicinity of County Roads 36 and 22.²³ The Township and the City passed a joint resolution acknowledging that establishment of a joint commercial/business park would be a public benefit to their citizens.²⁴ The City planned to annex the area so that it could provide water and sewer services to the proposed business park.²⁵

21. The committee developed and lobbied for legislation to share revenue indefinitely for the planned business park. The legislation sought a \$500,000 appropriation from the State of Minnesota, and the budget included other costs of \$237,000 to be shared equally by the City and Township.²⁶ The efforts to develop the business park were encouraged by the Minnesota Association of Townships.²⁷ The legislature passed the revenue-sharing legislation, but the Governor vetoed it for budgetary reasons.²⁸

22. In 1999 and 2000, the Township and Chisago City renewed discussions concerning a joint business park in the same area. The Township, Chisago City, Chisago County, and the Chisago County Housing and Redevelopment Authority (HRA) and Economic Development Authority (EDA) were members of the committee.²⁹ Before proceeding with the effort, the Township Board and City Council passed a joint resolution committing to the project, which was strongly supported by the County.³⁰ This time, the funding to purchase the land was planned to come from the County and

²⁰ Ex. 17; Tr. 77, 82.

²¹ Tr. 78-83.

²² Ex. 6.

²³ Ex. 7.

²⁴ Ex. 8.

²⁵ Exs. 7 & 9.

²⁶ Exs. 8-9.

²⁷ Ex. 10.

²⁸ Tr. 51-52.

²⁹ Ex. 11.

³⁰ Ex. 12.

other sources, including participation by the affected landowners. Committee members agreed that a short timeline was important and that the area in question needed to be preserved by zoning to protect it from residential development.³¹ In 2001, the legislature passed the revenue-sharing legislation.³²

23. On December 22, 2001, after a citizens group in the Township called Neighbors Assisting Proper Planning (NAPP) expressed opposition to the project, the Township sent a letter to the legislative author asking her to withdraw the legislation.³³ One of the leaders of NAPP was Larry Parker, the current chair of the Township Board. NAPP recommended to the Board that the Township proceed on its own with a business park located within the Township, and further recommended that the Township engage in no further discussions about annexation with Chisago City.³⁴ Parker became a member of the Township Board in December 2002.³⁵

24. In March 2002, after the collapse of these two proposals for a joint business park, the City formed its own working group to develop a business park. The group recommended that the City annex approximately 336 acres of land within the Township for the business park, which would include some commercial development.³⁶

25. Substantial portions of the Township have been annexed by the City of Wyoming. The City of Wyoming annexed a portion of the Township through an orderly annexation agreement to construct the Fairview Regional Hospital near the intersection of Highway 61 and County Road 22.³⁷ In 2003, the City of Wyoming and the Township adopted a joint resolution for orderly annexation of approximately 611 acres of land to construct a new site for a Polaris Industries research and development facility, which is presently under construction. This annexed area does not abut, nor is it contiguous to, the City of Wyoming; it is an island within the Township, formerly used for the City of Wyoming's wastewater treatment facility.³⁸

26. In connection with the development of the Polaris site annexed by the City of Wyoming, Chisago City and the City of Wyoming agreed to finance a major extension of the sanitary sewer pipeline to serve the site. The pipe will run from the City of Wyoming through the Polaris site, through the Township, through what is now the proposed annexation area along County Roads 84 and 36 to U.S. Highway 8, before traversing Chisago City and ending at the wastewater treatment facility operated by the

³¹ Ex. 11.

³² Tr. 65.

³³ Ex. 15; Tr. 68.

³⁴ Ex. 15; Tr. 66-69, 1008-1010.

³⁵ Tr. 959. Parker lives in the proposed annexation area about a half mile from the Chisago City border. The proposed business park would have been within a mile or two of his home. See Tr. 1014-15.

³⁶ Ex. 16.

³⁷ Tr. 987-89.

³⁸ Ex. 18.

Chisago Lakes Joint Sewer Treatment Commission (CLJSTC).³⁹ Chisago City will invest \$1.27 million to purchase capacity in the new sewer line.⁴⁰

27. Chisago City requested that the Township permit annexation of the right of ways along County Roads 36 and 84 to U.S. Highway 8 and allow property owners adjacent to the new sewer pipeline to choose whether to annex into the City for purposes of receiving sewer and water service from this pipeline. The Township refused to permit such an arrangement.⁴¹

28. On November 25, 2003, the City Council of Chisago City passed a resolution approving the first annexation petition, seeking annexation of approximately 11,000 acres of the Township.

29. After filing the annexation petition, the City and Township engaged in voluntary discussions and mediation in an effort to settle the disputed issues.

30. Chisago City and the City of Wyoming also engaged in discussions concerning the proposed annexation. The City of Wyoming objected to the size of the proposed annexation, on the basis that it intended to seek annexation of portions of this area into the City of Wyoming in the future. In or about March 2004, Chisago City and the City of Wyoming reached an informal agreement that the future border between the two entities would lie along sections 3, 10, 15, 22, and 27 of the Township.⁴² Shortly thereafter, Chisago City filed its amended petition, seeking to reduce the proposed annexation area to about 5,000 acres based on its agreement with the City of Wyoming.

31. On June 22, 2004, the City of Wyoming submitted a letter to the Township seeking a merger between the two entities.⁴³

32. Between October 12, and October 26, 2004, Chisago City received 14 petitions for annexation into the City from property owners owning about 730 acres in the annexation area. Their property is located at or near the intersections of U.S. Highway 8 and County Roads 22 and 36 (the area proposed for the business park); U.S. Highway 8 and County Road 23; along Pioneer Trail; and along Green Lake. Except for those along Green Lake, these properties are some of the last larger parcels in the area that are not developed.⁴⁴ The owners seek annexation for the purpose of receiving municipal sewer and water services.

³⁹ Ex. 44; Ex. 62, Fig. 4.

⁴⁰ Ex. 44.

⁴¹ Tr. 90, 990-91.

⁴² Ex. 4; Tr. 37-38.

⁴³ Ex. 22; Tr. 94.

⁴⁴ Tr. 102; Exs. 23 & 24.

Physical Features

33. The City has an area of approximately 1,253 acres.⁴⁵ The Township has an area of about 20,000 acres, about 2,800 of which are in the Carlos Avery Wildlife Management Area.⁴⁶ There are approximately 5,000 acres in the area proposed for annexation.⁴⁷

34. The City and the Township are located in an area of great natural beauty. The area's terrain stems from the glaciation of the area. As the glaciers receded, gently undulating till plains, lakes, streams, and wetlands remained.⁴⁸ The area contains numerous lakes including North Lindstrom Lake, South Lindstrom Lake, Wallmark Lake, Lake Mattson, School Lake, Lake Martha, Little Green Lake, Green Lake, Chisago Lake, Sam Lake, White Stone Lake, Little Comfort Lake, and Comfort Lake.⁴⁹

35. The area proposed for annexation contains two lakes, the western shore of Green Lake and a small portion of the southeastern side of Little Comfort Lake. Water quality tests of these lakes have indicated that the quality of Green Lake has improved, while Comfort Lake has deteriorated in recent years. There are approximately 253 classified wetlands in the annexation area, covering about 2,190 acres. The wetlands are located within mixed land use settings of agricultural and residential.⁵⁰

36. Of the 5,000 acres in the proposed annexation area, about 2,827 acres, or 48% of the area, is suitable for development. Development limitations within the annexation area include existing urban or suburban residential lots, wetlands, and lakes.⁵¹

37. The soils in the annexation area are either somewhat or very limited for the use of individual sewage treatment systems (ISTS). The northern portion of the annexation area and areas along the lakes are very limited for septic system use. These soil conditions make it difficult to site a septic system because of slow percolation rates, steep land slopes, insufficient separation between groundwater and the bottom of the treatment bed, and potential for flooding.⁵²

38. The proposed annexation area includes areas within the Comfort Lake Forest Lake Watershed District, in particular the southern tip of Comfort Lake. The watershed district boundaries are drawn on hydrologic, as opposed to political,

⁴⁵ Ex. 26, § 1, at 8.

⁴⁶ Ex. 27 at 16, Table 1; *id.* at B4.

⁴⁷ Ex. 4.

⁴⁸ Ex. 26, § 1, at 8.

⁴⁹ Ex. 26, § 1, Fig. 1-4.

⁵⁰ Ex. 62 at 22.

⁵¹ Ex. 62, App. C at 1; Ex. 72 at 26-28.

⁵² Ex. 62 at 4; *id.* at Fig. 1; Ex. 345.

boundaries. The district covers portions of the Cities of Forest Lake and Wyoming and the townships of Chisago Lakes, Wyoming, and New Scandia. Comfort Lake marginally supports swimming and is considered impaired because of excessive phosphorus concentrations. This impairment is likely a result of disparate and uncoordinated storm water management, planning, and zoning by the various political entities with authority over the area. Recommendations made to decrease the phosphorus loads in Comfort Lake have not been implemented.⁵³

39. The area proposed for annexation abuts the City on the west side. The annexation area extends south of the City's west side along Green Lake, which also abuts the City. The amended petition identifies the proposed annexation area primarily by section numbers, as opposed to a road or natural boundary, but the area does correspond on the east side to the natural boundary of Green Lake's shoreline. It corresponds on the west side to no easily identifiable physical feature, but it does correspond to the western boundaries of the property whose owners are seeking annexation into the City. On the south side, the annexation area runs approximately one section below County Road 23 and includes other property whose owners seek annexation.⁵⁴

40. The City also seeks to annex a "sliver" of land corresponding to the U.S. Highway 8 right-of-way, from the western edge of section 26 to "a point ending 2,800 feet west of the east edge of Section 33." There is little evidence in the record as to why the City seeks annexation of this two and one-half mile sliver of U.S. Highway 8. There are no adjacent property owners seeking annexation in this area.⁵⁵

41. The Township and the City have a network of state and U.S. highways, county roads, local city streets, and township roads to serve the transportation needs for residents. U.S. Highway 8 is a major regional route serving both the City and the Township. It connects western Wisconsin with Interstate 35 and the Twin Cities Metropolitan area. Other major roads include County Roads 22, 23, 24, 36, and 84 and U.S. Highway 61.⁵⁶ The City maintains approximately 16.2 miles of city streets, and the Township maintains approximately 13.1 miles of Township roads in the annexation area. The Township roads primarily provide access to private property.⁵⁷

42. The Department of Transportation already deems Chisago County part of the Metropolitan District for transportation planning. Forest Lake and Lindstrom-Chisago City are each ranked as Trade Centers of the Upper Midwest by the Department of Transportation, which means they have the potential to become

⁵³ Ex. 506.

⁵⁴ Ex. 24.

⁵⁵ The City's planning expert testified that the City seeks annexation of this sliver of highway to take in an existing business that would need services. See Tr. 883-84. This business was not identified in the record, nor is it apparent how the City would assess or provide services to a business that is not located within the City's geographic boundaries.

⁵⁶ Ex. 62 at 17-18.

⁵⁷ Ex. 62 at 18-19.

shopping centers that fall within the primary focus of the Department of Transportation.⁵⁸

43. Approximately 19,000 vehicles per day travel on U.S. Highway 8. The Minnesota Department of Transportation has developed and approved a scoping study that details several alternative routes and improvements to ease congestion on Highway 8, including widening the highway to four lanes. One of the alternative routes proposed to ease congestion on Highway 8 was an upgrade of County Road 23, in the southern portion of the proposed annexation area south of Green Lake. County Road 23 is currently under construction. In addition, improvements to U.S. Highway 8 through Chisago City have started, and major construction will commence in 2005.⁵⁹

44. As development takes place in the subject area, the opportunity will exist to provide access to County Roads 36, 22, or 23 with a street system, rather than connecting neighborhoods directly to U.S. Highway 8. With these county road connections to Stacy, Wyoming, south Chisago City, and Lindstrom, the subject area will have good access to regional destinations as well as U.S. Highway 8 and Interstate 35.⁶⁰

Population

45. Between 1990 and 2000, Chisago County's population grew from 30,521 to 41,101.⁶¹ The County expects a population of 61,170 by 2020 and 69,540 by 2030.⁶² Between 2000 and 2030, the number of households is expected to double from 14,454 to 27,620.⁶³

46. The County has significantly underestimated its growth in the past. For example, in its 1995 comprehensive plan, the County projected, based on data from the U.S. Census and Minnesota Planning, that its population would reach 40,090 by 2020.⁶⁴ As noted above, that growth was achieved within five years, as opposed to twenty-five years.

47. In 1970, Chisago City and the Township had about the same population, but since then the Township has grown much faster than the City. Between 1970 and 2000, the Township grew from a population of 1,262 to 4,379, with the highest rate of growth occurring between 1990 and 2000.⁶⁵ In the same time period, Chisago City grew from a population of 1,068 to 2,622.⁶⁶

⁵⁸ Ex. 506.

⁵⁹ Ex. 62 at 18.

⁶⁰ Ex. 62 at 18.

⁶¹ Ex. 72 at 21.

⁶² Ex. 388.

⁶³ Ex. 72 at 9.

⁶⁴ Ex. 28 at 8, Table 2.

⁶⁵ Ex. 28 at 8, Table 1; Ex. 72 at 21, Table 2.1. The Township's 2004 Comprehensive Plan notes a large discrepancy between housing units tracked by the U.S. Census and the Township's building permit records. Based on the Township's records, the Township's population in 2000 could have been as high

48. As of April 1, 2003, the Township had a population of 4,551 with 1,512 households; the City had a population of 2,961, with 1,183 households.⁶⁷ It is not easy to precisely estimate the population in the area proposed for annexation because census data is not broken down along section lines.⁶⁸ Based on census tract data, the population in the annexation area is estimated to have been 1,644 as of April 1, 2003.⁶⁹

49. As of the time of the hearing in November 2004, the current population of the Township is estimated to be 4,610, and the City population is estimated to be 3,084. The population in the annexation area is estimated to be 1,665.⁷⁰

50. Wyoming Township has been and is currently the fastest growing township in Chisago County. The State Demographic Center currently projects that the Township's population will reach 6,320 by 2020 and 7,265 by 2030, making it by far the most populated township in Chisago County. By 2030, Chisago Lake Township is projected to have a population of 4,050. The remaining townships in the County are projected to have populations in 2030 ranging from a low of about 700 (Shafer) to about 3,000 (Lent, Nessel, Fish Lake, and Sunrise).⁷¹

51. The City's population is expected to grow less dramatically than the Township's, assuming there is no annexation. By 2030, the City's population is predicted to be 4,372.⁷²

52. Using conservative projections, the Township must plan to accommodate 2,888 additional people by 2030, and the City must plan to accommodate 1,750 people by 2030.⁷³

53. It is likely that there will be more growth in the Township and Chisago City than is reflected in the above numbers. The construction of the Polaris plant and improvements on Highway 23 make it likely that growth will occur faster than it has in the past. If the annexation takes place and municipal services are extended in the annexation area from the pipeline serving the Polaris plant, additional growth will also likely occur.⁷⁴

as 5,213. The Plan recommends that the Township should use its best judgment as to what is actually occurring in the community versus U.S. Census estimates. See Ex. 27 at A-8.

⁶⁶ Ex. 28 at 8, Table 1.

⁶⁷ Ex. 301; Ex. 1.

⁶⁸ Tr. 1446.

⁶⁹ Ex. 70 at 26.

⁷⁰ Ex. 72 at 22.

⁷¹ Ex. 72 at 23.

⁷² Ex. 72 at 24, Figure 2.3.

⁷³ Ex. 72 at 24.

⁷⁴ See Ex. 27 at A-4 (construction of new roads on U.S. 8/23, extension of sewer facilities will attract new business and residential development). In addition, an employer's decision to locate a new facility will draw employees to live in that area and encourage new growth pressures. *Id.*

54. If the annexation were to take place, the City’s population in 2005 would be 4,898 (current population of 3,084 plus 1,665 from the annexation area, plus average growth rates from 2000-2003) and 2,983 in the Township (current population of 4,610 minus 1,665 from the annexation area, plus average growth rates from 2000-03). Using the same methodology, populations for 2006 would be 5,053 in the City and 3,021 in the Township; and for 2007, 5,213 in the City and 3,060 in the Township.⁷⁵

Land Use

55. As of 2002, the City’s existing land uses were apportioned by percent of total acreage as follows:

Single family residential	26.8%
Townhomes/Attached single family	5.3%
Apartments	2.9%
Mobile Home Park	0.2%
Commercial	3.3%
Industrial	0.5%
Agriculture—Rural	11.6%
Public/Quasi-Public	2.5%
Park and Open Space	2.8%
Wetlands	17.8%
Lake Shore/Open Water	9.4%
Right of Way	9.1%
Vacant	7.8% ⁷⁶

56. Approximately 1,000 acres, or 80% of the City, is developed. Of the remaining 250 acres of the City, there are constraints on development such as size and location of the lots.⁷⁷ The vacant land is located mainly in the Liberty Lane industrial park area and west of there, with scattered vacant parcels along U.S. Highway 8.⁷⁸ The lack of large parcels of land has hindered the City’s ability to develop business and commercial land uses requiring 80- to 100-acre sites.⁷⁹ In addition, there is a shortage of land suitable for residential development.⁸⁰

57. The City’s residential development areas generally extend from the northern portion of the City and extend from U.S. Highway 8 south between Chisago Lake and Green Lake. The City has one industrial area near School Lake and commercial areas along the U.S. Highway 8 corridor.⁸¹

⁷⁵ Ex. 70 at 26.

⁷⁶ Ex. 26.

⁷⁷ Ex. 26, § 1, at 8; Tr. 785-86, 1466.

⁷⁸ Tr. 1466.

⁷⁹ Exs. 35-39; Tr. 177-86.

⁸⁰ Ex. 26, § 3 at 6.

⁸¹ Ex. 31; Ex. 72 at 30.

58. The City zoning ordinance has four residential districts ranging from large lot single family (two units per acre) to apartments (up to 12 units per acre); an agricultural district; two commercial land use designations; and four office and industrial districts. The City has an environmental protection program that addresses forest protection, stormwater management, and grading. It has floodplain and shoreland regulations. The zoning code allows for planned unit developments.⁸²

59. Wyoming Township remained predominantly rural even as late as the 1980s, providing support to the agricultural community. However, expansion of the Twin Cities Metropolitan Area led to eventual conversion of farmland and forests to residential subdivisions and business parks. The most dramatic changes in land use from 1990 to 2004 have been a reduction of agricultural land use (five-acre lots) with increases in Rural Residential I (one-acre lots), Rural Residential II (two-acre lots), Commercial, and Industrial uses.⁸³

60. Most of the new residential development is located in the southern half of the Township and is adjacent to the City of Wyoming, Comfort Lake, and Green Lake. Highway business and limited industrial are along Highways 8 and 61 in the southern part of the Township.⁸⁴

61. The Township's 2004 Comprehensive Plan does not break down existing land uses by percentage of total acreage, as does the City's, but it does provide information based on percentages of estimated market values. About 13% of the Township's tax base is farm-related; 84% is residential; 0.69% is apartment buildings; 2.55% is commercial land and buildings; and 0.15% is industrial land and buildings. Of the Township's total area (20,480 to 20,800 acres), 43% is deemed farmland, but this category includes lowlands, wetlands, and other unbuildable lands; 18% is deemed tillable farmland.⁸⁵

62. The dominant residential pattern in the Township is single-family detached housing at low densities. Rental units comprise less than 1% of the housing stock. Rental units in the area are highly concentrated in neighboring municipalities.⁸⁶

63. Within the proposed annexation area, the 2,827 developable acres include parcels greater than five acres in size that could potentially be further subdivided and provided with municipal services. Approximately 790 acres have been developed as more urban residential uses (many with lots smaller than one acre). These neighborhoods are located along County Road 36, U.S. Highway 8, and along the shoreline of Green Lake, Little Green Lake, Whitestone Lake, and Little Comfort Lake.⁸⁷

⁸² Ex. 72 at 43

⁸³ Ex. 27 at 2.

⁸⁴ Ex. 27 at 2.

⁸⁵ Ex. 27 at A-13.

⁸⁶ Ex. 27 at A-9.

⁸⁷ Ex. 72 at 26, 28, Fig. 3.2.

64. The Township's zoning code has the agricultural and residential districts described above. It has a highway commercial district and an industrial district. The code also contains shoreland and floodplain regulations.⁸⁸

65. In areas zoned agricultural, the Township's zoning code permits cluster developments on less than one-acre lots if the one unit per five-acre density requirements are met through reserved open space. The Township recently approved such a development on a 223-acre site that will have 70 lots of three acres each, including wetlands, in the area of U.S. Highway 8 and Heath. Another development, The Preserve at Birch Lake, spans Wyoming and Chisago Lakes Townships in the southern portion of the Township. The development covers approximately 600 acres; it will have 101 or 102 lots, some of which are less than one acre. Lots will have frontage of about 150 ft, to make street improvements less expensive. Approximately 500 acres, not including right of ways, will be designated as open space consisting of the lake and wetlands. A community sewage treatment system for this development will be located in that portion lying within Chisago Lakes Township.⁸⁹

Planning

66. Chisago County has not updated its comprehensive plan since 1995, and as noted above the plan is badly out of touch with the current and projected populations in the County. It contains designations for Urban Residential use (one-half acre lots), Rural Residential I (one-acre), Rural Residential II (two acres) and agricultural (five acres). In Rural Residential I and II areas, public sewer services are neither available nor are they planned.⁹⁰

67. The City has for many years planned for growth, extension of municipal services, and expansion into the annexation area.⁹¹ The City adopted comprehensive plans in 1997 and 2002, and in both plans, the proposed annexation area was substantially included in the study areas. The City's 2002 plan noted that sewer extension to the south end of Chisago Lake and Green Lake would soon be needed to protect the lakes.⁹²

68. In its 2002 plan, the City proposed the following residential land uses in the annexation area: low density with large and small lot sizes in the range of 12,000 to 20,000 sq. ft. along Green Lake and Little Green Lake, Highway 8, and County Road 22; medium density with developments such as townhouses and duplexes located around the intersections of County Road 23 and U.S. Highway 8; and high density, with developments such as apartments and condominiums located within the current boundaries of the City.⁹³

⁸⁸ Exs. 354-55, 358.

⁸⁹ Tr. 1228; Tr. 1288-91.

⁹⁰ Ex. 28 at 36-38.

⁹¹ Exs. 26; 423 at 14; & 424.

⁹² Ex. 26, § 2 at 6.

⁹³ Exs. 26 & 32.

69. In its 2002 plan the City has proposed highway commercial uses with retail office development primarily along Highway 8; industrial or light industrial with office, warehouse, distribution, light manufacturing, and assembly located south of School Lake; a business park with office-type development, professional buildings, light manufacturing, and distribution located west of Highway 8 between County Roads 22 and 36.⁹⁴

70. The City has also proposed public and other land uses in the annexation area for public open spaces and parks. In addition, the City has proposed a conservation greenbelt with low impact uses or open space located in the north central and west central portions of the area in which there are large wetlands.⁹⁵

71. The Township's first comprehensive plan was done in 1990. The Township worked on a revised plan between 1998 and 2003, without approving one. In July 2003, the Township contracted with the Center for Rural Design at the University of Minnesota for help in assembling its plan. The 2004 Plan, adopted on September 28, 2004, substantially shifts the planned use away from agriculture and toward residential uses.⁹⁶ The 1990 plan called for 14,290 acres of agricultural use; the 2004 plan provides for 5,953 acres. Rural Residential I uses shift from 5,523 to 8,989 acres; Rural Residential II uses shift from 660 to 4,001 acres. Within the proposed annexation area, the areas that roughly correspond to sections 1, 12, 13, and the portions of 23 through 26 that surround Green Lake are proposed to be Rural Residential I; the remainder is proposed to be Rural Residential II or agricultural.⁹⁷ As noted above, areas zoned agricultural can be developed as residential subdivisions if the five-acre density requirements are maintained through reserved open space. There are two areas proposed for Rural Business Centers, one just east of where the City desires to build a business park and another at the intersection of U.S. Highway 8 and County Road 23.⁹⁸ The Rural Business Centers are intended to accommodate the community and traveling public with retail and service businesses.⁹⁹

72. The Township's 2004 plan does not call for the provision of sewer and water services in any areas. The plan recommends that "community wastewater treatment systems" be used. The plan does not define such a system, but it appears to mean a system in which each residence or business has a septic tank that is connected to a communal drainfield.¹⁰⁰

⁹⁴ Exs. 26 & 32.

⁹⁵ Ex. 26 & 32.

⁹⁶ Ex. 27.

⁹⁷ In 1990, the Township comprehensive plan designated 2,155 acres within the proposed annexation area as agricultural; in 2004, the number dropped to 886. Rural Residential I lots (formerly designated as Urban Residential) increase from 484 to 785 acres; Rural Residential II lots increase from 188 to 994 acres. Approximately 163 acres within the proposed annexation area are designated as Rural Business Center. See Ex. 72 at 41.

⁹⁸ Ex. 27 at 16, B4.

⁹⁹ Ex. 27 at 17.

¹⁰⁰ Tr. 418.

73. The Township's zoning ordinance cannot be less restrictive than Chisago County's.¹⁰¹ Implementation of the Township's 2004 plan would require amendment of the Township's zoning ordinance and amendment of Chisago County's zoning ordinance.¹⁰²

Water and Sewer--City

74. The Metropolitan Urban Service Area (MUSA) is the area within which wastewater is collected, treated, and disposed of for the Twin Cities and surrounding communities that are governed by the Metropolitan Council. The MUSA line is in the City of Forest Lake, approximately one mile south of the southern edge of the area proposed for annexation. The Metropolitan Council does not provide wastewater collection or treatment or have authority to plan for those services north of the MUSA line.¹⁰³

75. The City provides sanitary sewer service to its residents through the Chisago Lakes Joint Sewer Treatment Commission (CLJSTC). The City has been a member of the Commission since 1985, but it has partnered with other communities to provide sanitary sewer service since the 1940s.¹⁰⁴ The CLJSTC facility is being expanded and upgraded to increase its capacity and to meet environmental standards that are expected to become more stringent in the future.¹⁰⁵

76. Each member city purchases capacity in the facility. Currently, the City is apportioned 668,000 gallons of wastewater per day, or 27% of the facility's total flow capacity. The City has a flow reserve capacity of 208,000 gallons per day, which can be used to accommodate future growth, including growth of the annexation area. The City is apportioned 868 lb per day, or about 25%, of the facility's carbonaceous biochemical oxygen demand (CBOD) capacity, and it has a reserve capacity of 246 lb per day. The City is apportioned 908 lb per day, or 24.6%, of the facility's total suspended solids capacity, and it has a reserve capacity of 257 lb per day. The City's current reserve capacities could serve between 1,000 and 2,100 additional people. To accommodate growth beyond these levels, the facility could be expanded or the City could purchase capacity from other member cities.¹⁰⁶

77. The City's sanitary sewer collection system consists of gravity and force mains, lift stations and pumps, and main trunk sewer lines for the collection and transport of wastewater to the CLJSTC facility. The City's system is currently being

¹⁰¹ See Minn. Stat. § 394.33.

¹⁰² Tr. 1272; Ex. 356.

¹⁰³ Ex. 62 at 10. The Metropolitan Council recently indicated its intention to discourage rural residential development at densities of one dwelling per two- to two and one-half acres or less within the MUSA, when there are no plans to provide urban infrastructure such as centralized wastewater treatment. See Ex. 386 at 10.

¹⁰⁴ Ex. 21; Tr. 47, 199.

¹⁰⁵ Ex. 43.

¹⁰⁶ Ex. 62 at 14; Ex. 44; Tr. 441-45.

upgraded to add several long sewer trunk lines in the area. One major extension is the trunk running from the City of Wyoming to the Polaris site, through the proposed annexation area and Chisago City, and to the treatment facility. Another new trunk line is being constructed from the City of Stacy, along County Road 19, to the treatment facility. The expansion of the system is intended to accommodate the cities of Wyoming and Stacy and to increase the capacity to serve other areas, including the annexation area, as municipal sewer service is extended.¹⁰⁷

78. The City has adopted a municipal sewer system ordinance that defines sewer system terms, regulates use and control of the sewer system, provides time frames for connection to the sewer system, and regulates the type of material that can be discharged into the system.¹⁰⁸

79. A municipal wastewater collection and treatment system is less sensitive than soil-based septic systems to harmful products and large variations in flow. A municipal system is better equipped to handle wastewater having different pollution strengths and flows associated with urbanization.¹⁰⁹

80. The City provides municipal water service to residents through three wells, a water main, and an elevated storage tank. The City provides treatment and testing of the water system in compliance with Minnesota Department of Health regulations. The City's elevated storage tank has a capacity of 500,000 gallons. The City's water system has a total water production capacity of 2,425 gallons per minute and a firm capacity, or reserve capacity, of 1,125 gallons per minute (69% of capacity). The City's water system has adequate capacity to accommodate growth and expansion.¹¹⁰

81. The City has adopted a municipal water system ordinance that governs access to and charges for using the system. It has also adopted a water emergency and conservation plan approved by the Department of Natural Resources and a wellhead protection plan.¹¹¹

Water and Sewer—Township

82. The Township does not provide municipal wastewater treatment or sanitary sewer collection service, but relies exclusively on ISTS. According to the Township's 2004 Comprehensive Plan, there are about 1,791 septic systems in the Township, but the Township's zoning administrator believes there are about 1,900.¹¹² It is difficult to tell precisely how many systems there are because the Township does not keep an inventory of its septic systems, nor is such an inventory required under state law. In 2002 the County reported to the Minnesota Pollution Control Agency (MPCA)

¹⁰⁷ Ex. 62, Fig. 4.

¹⁰⁸ Ex. 48.

¹⁰⁹ Tr. 1163-64; Ex. 378 at App. B.

¹¹⁰ Ex. 62 at 16.

¹¹¹ Ex. 49-50; Tr. 461.

¹¹² Ex. 27 at A-22; Tr. 1196.

that there were 1,905 full-time residences, 19 seasonal residences, and 41 “other establishments,” or a total of 1,965 properties using ISTS in the Township.¹¹³ Within the proposed annexation area, there are approximately 504 septic systems and nine holding tanks (above ground systems).¹¹⁴

83. The Township has assumed responsibility for administering state ISTS regulations, including issuing construction permits and inspecting systems pursuant to the requirements of Chapter 7080 of the MPCA Water Quality Rules. Pursuant to these rules, the Township conducts inspections of septic systems only at the time a property is sold or a permit to build or expand a home is obtained.¹¹⁵ The Township does not require routine compliance inspections or monitor the frequency with which septic systems are pumped.¹¹⁶ The Township board passed a resolution in August 2004 to begin development of some type of maintenance monitoring program, but it has taken no action to organize or implement such a program.¹¹⁷

84. A failing septic system is one that does not provide adequate treatment of wastewater and may contaminate ground or surface water. A failing system may have been designed or installed improperly or may lack sufficient unsaturated soil between the treatment zone and ground water. Septic failures that could cause acute harm to people are considered an imminent threat to public health (ITPH), such as situations in which sewage backs up into a home or discharges to the ground surface or surface water.¹¹⁸ In the Township, property owners must upgrade, repair, or replace failing septic systems that constitute an ITPH within 60 days; other failing systems must be repaired or replaced within ten months.¹¹⁹ The impacts of a septic system that fails include contamination of the water supply (private wells located near such systems); seepage to the surface that is a public health nuisance to children, pets, and others that come into contact with seepage; sewage backing up into basements; and untreated effluent seeping into groundwater.¹²⁰

85. In a 2004 report to the legislature, the MPCA has estimated that 144,000 septic systems, or 27% of the total number in the state, are failing; in addition, 64,000, or 12%, are classified as ITPH. The combined rate of failing/ITPH systems in the state is 39%.¹²¹

86. In 2002, the County reported to the MPCA that there were 96 failing septic systems in the Township, and 19 of them were classified as ITPH.¹²² In contrast, the

¹¹³ Ex. 62A, App. B at 9.

¹¹⁴ Tr. 1198.

¹¹⁵ Ex. 62 at 4; Ex. 63 at 2-3.

¹¹⁶ Ex. 62 at 6-7.

¹¹⁷ Ex. 360; Tr. 1301.

¹¹⁸ Ex. 62A at 24.

¹¹⁹ Ex. 63 at 2.

¹²⁰ Ex. 62A at 7.

¹²¹ Ex. 62A at 3.

¹²² Ex. 62A, App. B at 9.

Township records for the four years from 2000 to 2004 document inspections of 43 failing septic systems, six of which were classified as ITPH.¹²³

87. Twenty-six of the failing systems documented by the Township were in the proposed annexation area, including six classified as ITPH.¹²⁴ On the southwestern side of Green Lake, where development has resulted in small lots (50- to 75-ft widths) of less than one acre, the terrain is flat and low-lying. The soil types in this area have very limited potential for use of ISTS, yet each lot has one. Many of the failing septic systems are on or near Green Lake. There is no space for a secondary septic system or proper setbacks from surface waters and private wells on many of these lots.¹²⁵

88. Because the Township inspects existing septic systems only if there is a complaint or at the time of sale, and because the soils in the area are either somewhat or very limited for use of ISTS, it is likely that the Township's records understate the number of failing septic systems in the area proposed for annexation.

89. The Township does not have a public water system but relies on private individual wells for drinking water. The Township does not have a program for testing or tracking the water quality of individual wells. Chisago County records indicate that two wells in the proposed annexation area, both near Green Lake, have tested positive for fecal coliform. Another well, also in the proposed annexation area, had elevated levels of nitrate.¹²⁶

Surface Water Management

90. The City has a storm sewer system that complies with National Pollutant Discharge Elimination System (NPDES) standards for storm water. It collects snow melt and rainwater from city streets and other impervious areas and conveys it to a treatment locale before it is discharged. The City has a storm water management ordinance in the zoning code and requires that all development proposals be reviewed and approved by an engineer to ensure compliance with surface water management guidelines. The City's storm water management utility collects fees that are used to repair, maintain, and upgrade the system. The City also has a floodplain management ordinance.¹²⁷

¹²³ Ex. 344. The Township's list does not contain the date of the inspection, but does contain a column entitled "replaced by" that appears to be the date by which systems must be replaced. According to this record, two of the failed systems took three to four years to replace, including one that was an ITPH; four took about two years to replace, including one that was an ITPH; three took about a year; and about 18 were replaced within a year. For ten of the failing systems, there is no record to document when a new system was installed; however, the Township's witness testified that all but two of the failing septic systems have been repaired or replaced. See Tr. 1209.

¹²⁴ Tr. 1208.

¹²⁵ Ex. 62 at 6.

¹²⁶ Ex. 62, App. B.

¹²⁷ Ex. 62 at 17; Ex. 33, § 7; Ex. 51; Tr. 278.

91. The Township has a floodplain management ordinance and a shoreland protection ordinance in the zoning code.¹²⁸ It has a Surface Water Management Plan providing that the ultimate development condition for the Township is full residential land use corresponding to a minimum lot size of one acre. The Plan assumes that future development of the Township will not take place in the northernmost portion of the Township, because the extent of existing wetlands and difficult access will make development there unattractive. In contrast, the southern portion of the Township will most likely lead the development, due to established transportation corridors, proximity to Forest Lake, and the established urban areas.¹²⁹ The Township's storm water system consists of ponds and ditches to filter runoff. There is stormwater piping in some new developments.¹³⁰ The Township's 2004 Comprehensive Plan makes reference to the residents' concern about maintaining water quality, but makes no recommendations for improvements in the Surface Water Management Plan because these areas require planning in cooperation with neighboring communities and through the Comfort Lake-Forest Lake Watershed District.¹³¹

92. There are five subwatersheds in the Comfort Lake watershed, one of which is a significant source of phosphorous. This site is located in the southern portion of the Township between the City of Wyoming and Comfort Lake (not in the proposed annexation area). Stormwater runoff from impervious surfaces there has increased the saturation in the Shallow Pond wetland area, which in turn releases phosphorus into the lake.¹³²

Police and Fire

93. The City provides law enforcement services through the Lakes Area Police Department (LAPD), which is a combination of the merged Chisago City and Lindstrom police departments. A Police Commission composed of the mayor, one city council member, and the city administrator from each community governs the Department.¹³³

94. The LAPD consists of 11 full-time police officers, seven part-time officers, two school resource and community service officers, and secretarial staff. The school resource officers are assigned to the high school and the middle school and answer calls at other schools in the district as well.¹³⁴ The LAPD provides 24-hour, seven day per week patrol of the City and Lindstrom; parking and traffic control; criminal code enforcement; city ordinance enforcement; emergency medical response; animal control; and tactical response. The Department provides coverage in an area of approximately 4.3 square miles to about 6,500 people.¹³⁵

¹²⁸ Ex. 358; Tr. 1279-80.

¹²⁹ Ex. 27 at A-24.

¹³⁰ Tr. 1415.

¹³¹ Ex. 27 at A24-25.

¹³² Ex. 346.

¹³³ Ex. 58-59; Tr. 317.

¹³⁴ Ex. 58.

¹³⁵ Ex. 58.

95. The LAPD also provides community services and programs, including neighborhood watch, DARE, Project Charlie, workplace violence training, snowmobile safety training, firearm safety training, driver training, Operation ID, and many others.¹³⁶

96. The Department has ten marked squad cars, a marked pick-up truck, a community policing care, motorcycle, snowmobiles, a speed trailer, traffic classifier, speed board, Intoxilyzer, and forward-looking infra-red. Each squad car is equipped with a digital camera, tape recorder, automatic external defibrillator, preliminary breath tester, portable oxygen tank, medical supplies, firearms, fingerprinting kits, evidence collection kits, and radar units.¹³⁷

97. Between January 1, 2004, and October 5, 2004, there were 3,771 calls to the police department.¹³⁸

98. The City spends \$118 per capita for police services. Its proposed budget for police services and capital equipment for 2005 is \$380,411.¹³⁹

99. The Township has no police department, and it does not contract with any entity for law enforcement services. The Township receives services through the Chisago County Sheriff's Department, which patrols the county at large, and through the County Sheriff's response to public safety-related calls. This is the lowest level of services for law enforcement available.

100. The Sheriff's Department provides law enforcement services in an area of approximately 418 square miles throughout the county, to approximately 46,000 people. Between January 1, 2004, and July 31, 2004, there were 12,068 calls to the sheriff's office.

101. In 2003, the LAPD and the Sheriff's Department arrested five persons in connection with a methamphetamine laboratory located in the Township.

102. The City has a volunteer fire department consisting of 25 firefighters. The fire department provides fire suppression and prevention, vehicle extraction, and general fire education. The department owns and operates nine fire trucks, jaws of life, a fire breathing apparatus for each firefighter, generators, fire suppression equipment, an antique fire truck, tanker trucks, and a variety of other equipment.¹⁴⁰

103. The City has adopted the Minnesota Uniform Fire Code. The City currently has an ISO fire insurance rating of 5 (out of 10).¹⁴¹

¹³⁶ Ex. 58.

¹³⁷ Ex. 58.

¹³⁸ Ex. 58, App. A.

¹³⁹ Ex. 70 at 10.

¹⁴⁰ Ex. 41; Tr. 218-19.

¹⁴¹ Tr. 219.

104. The Township has no fire department. It contracts with Chisago City, Forest Lake, and the City of Wyoming for fire services.¹⁴² Chisago City provides fire services by contract to all but a small portion of the proposed annexation area. The City is also a party to a mutual fire assistance agreement with the cities of Wyoming, Forest Lake, Stacy, Center City, and Lindstrom, and Lent Township.¹⁴³ The City provides fire services to an area of approximately 24 sq. miles.¹⁴⁴

105. The City receives revenue for fire services from taxes and from the contracts for fire services it has with other communities. The fire department currently has a budget of \$140,293.

School District

106. The School District for the City and Township is the Chisago Lakes School District, ISD No. 2144. The school district includes all or parts of Center City, Chisago City, Lindstrom, Shafer Township, Taylors Falls, and the townships of New Scandia, Shafer, and Wyoming. Approximately 3,538 students are enrolled in the district. There is one high school in Lindstrom, one middle school in Lindstrom, and three elementary schools (two in Chisago City and one in Taylors Falls).¹⁴⁵

107. The school district receives 85% to 90% of its funding from the state on a per pupil basis, and about 10% to 15% from local property taxes.¹⁴⁶

108. In the event that the district determined to build a new school, it would only build on a site connected with municipal water and sanitary sewer service.¹⁴⁷

109. There would be no immediate impact from annexation on tax rates or debt service for the school district. If development caused increased enrollment, the district would require an increase in state aid funding and the local property tax base.¹⁴⁸

Administration

110. The City is organized as a statutory plan A city, with a weak mayor form of City Council. The City is governed by a City Council consisting of a mayor and four council members, all of whom are elected at large.¹⁴⁹ The next regularly scheduled election in Chisago City is November 2006, at which time the Mayor and two council members must run for re-election.¹⁵⁰ The City Administrator is responsible for day-to-

¹⁴² Ex. 318, 322.

¹⁴³ Ex. 56.

¹⁴⁴ Ex. 55.

¹⁴⁵ Ex. 70.

¹⁴⁶ Ex. 70 at 22.

¹⁴⁷ Ex. 70 at 23.

¹⁴⁸ Ex. 70 at 22-23.

¹⁴⁹ Tr. 141-42.

¹⁵⁰ Tr. 142.

day operations. The City has an administration department, License Bureau, Finance Department, and Planning Commission. In 2005, the City's proposed budget for administration or general government, excluding the building inspector's costs, is \$297,539. The City spends \$92.66 per capita for general government services.

111. The governing body of the Township is an elected town board with five supervisors and a clerk-treasurer. Elections of the Township Board of Supervisors and clerk-treasurer are held every March. On average, between 50 and 100 people attend annual meetings. In 2004, between 300 and 400 people attended.¹⁵¹ The supervisors elect the chair of the town board each year.¹⁵² The Township has a clerk-treasurer, an administrative position, a building official, and a zoning clerk. It also has a Planning Commission. In 2005, the Township's budget for administration or general government, excluding park maintenance expenses, is \$260,962. The Township spends \$55.89 per capita for general government services. This amount would be lower if the Township's 2005 budget did not include \$165,000 in legal expenses for this annexation proceeding.¹⁵³

112. The City's public works department provides maintenance and operation of the City's infrastructure, including plowing and sanding city streets, repair and maintenance of city streets, sanitary sewer and water lines, park maintenance, and other services. It owns a variety of equipment to perform these services, including pickup trucks, dump trucks, a front-end loader, a bobcat, riding lawn mowers, etc.¹⁵⁴ In 2005, the City's budget for public works for road operation and maintenance is \$238,453. The City spends approximately \$14,710 per mile to maintain and improve City streets.¹⁵⁵

113. The Township has a public works department that is staffed similarly to the City's. In 2005, the Township's budget for public works for road operation and maintenance is \$442,592. The Township spends approximately \$8,014 per mile to improve and maintain roads within the Township.¹⁵⁶

114. The City has a Park Board and also employs staff for parks and recreation. The City's parks have skating rinks, a skateboard park, swimming beaches, play structures, picnic facilities, pavilions, general open space, trails, and ball fields. Township residents use the parks for recreation. The City has a comprehensive park plan adopted in 2002. In 2005, the City's budget for parks and recreation is \$157,742, excluding capital costs. The City spends approximately \$49.12 per capita on parks and recreation services.

¹⁵¹ Tr. 941.

¹⁵² Tr. 926.

¹⁵³ Ex. 70 at 21.

¹⁵⁴ Tr. 227-28,

¹⁵⁵ Ex. 70 at 14.

¹⁵⁶ Ex. 70 at 15.

115. The City is also a member of the Chisago Lakes Regional Library Commission. It contributed funding for the acquisition of a site for a new regional library, located partially in the City and partially in Chisago Lakes Township. It will also contribute annually to the operation of the library.

116. The Township has a Park Board and several parks that provide more passive recreation than the City's. There is one park located in the proposed annexation area, on the southern tip of Comfort Lake. In 2005, the Township's budget for park services is \$18,310, which is primarily used to support the Park Board. The Township spends \$3.92 per capita on parks.¹⁵⁷

117. The Township has contributed \$20,000 to the funding of the regional library in the past, but it is not a member of the Chisago Lakes Regional Library Commission. In 2005, the Township approved a \$1,000 line item for the library.¹⁵⁸

Fiscal Matters

118. The City receives local government aid (LGA) each year from the state. LGA is intended to support the provision of municipal services by reducing the property taxes of City residents. If annexation were ordered, the City's LGA would increase by \$138,185 in 2006 and every year thereafter, according to a projection by the Minnesota Department of Revenue.¹⁵⁹

119. If annexation were to occur, the City's population would reach 5,000 by 2007. At that time, the City would be eligible to receive Municipal State Aid (MSA) in the amount of \$169,481 to help fund street improvements.¹⁶⁰

120. The Township is not eligible to receive LGA or MSA funding directly from the state. The Township receives county state-aid highway system (CSAH) funding for county road improvements. If annexation were granted, the Township's CSAH funding would decrease by \$6,184 in 2006 and 2007 as a result of annexation.¹⁶¹

121. The City also receives police and fire aid from the state. In 2004 the City received about \$45,000 in state aid for these services.¹⁶²

122. In 2005 the City's general fund budget is \$1,137,237; the Township's adopted budget is \$1,129,614. The City and Township budgets for general fund purposes are not significantly different; the City, however, has a higher budget for capital expenditures, overall higher budget, and spends more per capita than the Township on services for its residents. If annexation were granted, in 2006 and

¹⁵⁷ Ex. 70 at 18.

¹⁵⁸ Ex. 303; Tr. 1033.

¹⁵⁹ Tr. 592; Ex. 70 at 27.

¹⁶⁰ Tr. 595; Ex. 70 at 28.

¹⁶¹ Ex. 70 at 29.

¹⁶² Tr. 153.

thereafter the City's expenses would increase by \$654,354 per year, and the Township's expenses would be reduced by approximately \$132,000. This is about a 15% decrease in the Township's total budget.¹⁶³

123. For taxes payable in 2005, the City's tax capacity is \$2,091,570; the Township's tax capacity is \$4,670,342.¹⁶⁴ The Township has more residents and more property than the City, but the City's per capita tax base is higher because the City has more commercial property.¹⁶⁵ The 2005 tax capacity in the annexation area is \$1,120,389. If annexation were granted, the City's tax capacity would increase by 53% to \$3,211,959. The Township's tax capacity would decrease 24% to \$3,549,953.¹⁶⁶ This would be an adequate tax base for the remaining 3,000 people in the Township, given the low level of services the Township provides.¹⁶⁷

124. The increase in the City's tax base attributable to annexation is about \$500,000, which represents the approximate tax revenue the City would receive from the annexation area.¹⁶⁸ In exchange, the City will provide \$654,000 in services to the area. The increases in state aid due to annexation, projected to be about \$300,000, will serve to reduce the level of local taxes for all City residents.¹⁶⁹ The City's increase in revenues from annexation bears a reasonable relationship to the value of benefits conferred upon the annexation area.

125. In 2005, the City's tax rate will be 47.662% based on its proposed budget; the Township's tax rate will be 19.904%. The Township's budget includes \$165,000 for legal expenses incurred in this annexation proceeding. Without the legal expenses, the Township's tax rate would have been 16.436%.¹⁷⁰

126. Homestead properties in the City and Township pay local property taxes, as well as school district and county taxes. Homestead properties in both communities pay the same tax rate for school district and county taxes.

127. The City could not levy a tax on homesteads in the proposed annexation area until tax levy year 2006, so the tax impacts of annexation would not be realized until 2007.¹⁷¹

128. In 2004, a homestead valued at \$200,000 in the City paid \$757 more for local property taxes than a home of the same value located in the Township, with total property taxes being \$2,874 and \$2,116, respectively, for the City and Township.¹⁷²

¹⁶³ Tr. 569-72; Ex. 70 at 10-18; *id.* at 24, Table 2.9; *id.* Exs. C & D.

¹⁶⁴ Ex. 70 at 31.

¹⁶⁵ Tr. 531, 534-35.

¹⁶⁶ Ex. 70 at 31.

¹⁶⁷ Ex. 70 at 30.

¹⁶⁸ Ex. 70 at 37, Table 4.5.

¹⁶⁹ Tr. 648-50.

¹⁷⁰ Ex. 70 at 35.

¹⁷¹ Tr. 1377-78, 1387-88.

¹⁷² Ex. 70 at 36.

129. In 2005, a homestead valued at \$200,000 in the City is projected to pay \$953 for local property taxes, whereas a home of the same value in the Township will pay \$398 in local taxes.¹⁷³

130. If annexation were granted, a \$200,000 home in the City is projected to pay \$890 for local taxes in 2007, or \$63 less as a result of annexation. A home of the same value in the Township is projected to pay \$449, an increase of \$51 as a result of annexation. A home of that value in the annexation area would pay the City's local tax of \$890, or an increase of \$492 as a result of annexation.¹⁷⁴

131. The City may choose to increase tax rates proportionally over a period of six years for homes in the annexation area. The City may also establish a rural service district within the annexation area that would provide the City with flexibility in applying either the entire tax rate or a portion of the tax rate to properties within the district. The City is considering making unplatted properties over 20 acres a part of a rural service district if annexation were to occur.¹⁷⁵

132. The City has available a variety of tools for encouraging economic development that are not available to the Township, including an EDA and the ability to establish tax-increment financing (TIF) districts.¹⁷⁶ The City also has programs for tax abatement and commercial rehabilitation. The City has greater flexibility to issue bonds without referendums for a variety of services and capital needs. The City has greater authority to issue general obligation bonds for housing purposes.¹⁷⁷

133. The City currently has an A-3 bond rating and can borrow money at a lower interest rate than the Township.¹⁷⁸

134. Both the City and the Township are financially well managed. In 2003, the City had a general fund balance of \$576,516, which was 59% of general fund expenditures. The Township had a general fund balance of \$332,220, or 117% of general fund expenditures.¹⁷⁹

135. As of June 2004, the City had \$2,245,000 in outstanding general obligation debt and an additional \$651,158 in lease obligations. None of the City's debt is purely supported by property taxes and is therefore not counted against the City's statutory debt limit.¹⁸⁰ As of December 31, 2003, the Township had approximately

¹⁷³ Ex. 70 at 38.

¹⁷⁴ Ex. 70 at 37-38.

¹⁷⁵ Tr. 1377-78, 1387-88.

¹⁷⁶ Ex. 70 at 41. The City has four TIF districts consisting of a townhouse development, a grocery store and bowling alley, a manufacturing facility, and an extension of the industrial park. The Township has one TIF district established by Chisago County. See Tr. 1392.

¹⁷⁷ Ex. 70 at 41.

¹⁷⁸ Ex. 70 at 32.

¹⁷⁹ Ex. 70 at 34-35.

¹⁸⁰ Ex. 70 at 32.

\$475,000 of debt attributed to four general obligation bonds. These bonds are being paid through special assessments on properties benefiting from improvements.¹⁸¹ The Township has about \$45,717 in outstanding assessments for road paving in the area proposed for annexation, and additional assessments in the amount of \$103,757 will be made in 2005 for recently completed paving projects.¹⁸² The County Auditor could continue to collect and pay these assessments directly to the Township.¹⁸³

136. The City is in good financial health and can plan adequately for the costs that would be incurred with annexation. The Township is in good financial health and would be able to carry on the functions of government without undue hardship if annexation were granted.¹⁸⁴

Extension of Services to Subject Area

137. If annexation were granted, the City would immediately provide fire, police, and administrative services. The City budgeted in 2005 for additional administrative help in the zoning area and anticipates hiring a full-time planner in the long term.¹⁸⁵ The City already provides fire service in the area, except for a small portion in the south. The LAPD would have to hire two additional full-time police officers and purchase the vehicles and equipment necessary to keep response times at current levels. The City anticipates that the police department could obtain approval for this additional funding and equipment in 2005.¹⁸⁶

138. The City has a building official certified by the Minnesota Pollution Control Agency as a septic system inspector and another employee who will become certified upon completion of the program. Although the City has had little need for a septic inspection program in the past because few properties in the City rely on septic systems, it plans to implement a maintenance and inspection program to address existing systems if annexation is granted.¹⁸⁷

139. Annexation would require the City to hire two to four more persons for its public works department. The City has already budgeted for 1.5 positions in its 2005 budget, and it has also included capital expenses to purchase a new plow truck and possibly a road grader.¹⁸⁸ The City would also have to increase its building inspector from a part-time to full-time position.¹⁸⁹

140. The City plans to extend sewer, water, and storm sewer service to the annexation area as growth and development occur or upon request by residents. The

¹⁸¹ Ex. 70 at 33.

¹⁸² Tr. 910.

¹⁸³ Tr. 1358.

¹⁸⁴ Ex. 70 at 33-35.

¹⁸⁵ Tr. 239.

¹⁸⁶ Tr. 334, 363; Ex. 58.

¹⁸⁷ Tr. 203; Ex. 62 at 6-7.

¹⁸⁸ Tr. 229.

¹⁸⁹ Tr. 233.

City has already funded its portion of the expansion of the CLJSTC for this purpose, and it has purchased capacity in the new sewer trunk line being constructed through the annexation area. The new sewer line will be completed in October 2005.¹⁹⁰ In addition, the City has proposed a new elevated storage tank and well in the general location of the proposed business park.¹⁹¹

141. The City would follow its assessment policies in assessing residents for sanitary sewer and water service. The cost of the improvement would be determined by a feasibility study conducted by the City's engineer at the time a development is proposed or a request is made for service. The study would be presented to the City Council to determine if the sewer project were feasible. After a public hearing, the residents would be charged for the cost of the improvement. When a property owner decides to connect to the system, associated costs would be a sewer access charge, area charges or sub-trunk rates, charges associated with the amount of developable land on the parcel, and quarterly billing for treatment of wastewater. These charges would be assessed on a project-by-project basis. The property owners would pay the assessments over a timeframe of ten to 15 years, as determined by the City Council.¹⁹²

142. The City estimates based on previous engineering reports that it would cost between \$4,000 and \$12,000 to extend sanitary sewer service, depending on the conditions and number of users in the area.¹⁹³ Its engineer estimated that the total cost, including sewer access charges, an area charge and lateral charges, for a half-acre lot with 110 feet of front footage would be between \$11,000 and \$12,000.¹⁹⁴ It would cost between \$3,000 and \$11,000 for extension of water service, along with water access and area charges.¹⁹⁵

143. The City allows for deferred assessments on large properties, whereby the assessment would be deferred until a property owner hooked into the system. At that time the owner would pay a portion of the assessment for the portion of the property on which the dwelling is located; the remaining assessment would not be paid until the property is developed further.¹⁹⁶

144. In addition, developers of properties in the annexation area may pay the costs or a portion of the costs related to extension of sewer and water service.¹⁹⁷

Public Support for Annexation

145. It is difficult to gauge the level of support for annexation in the Township. The Township Board in the past has clearly supported annexation for purposes of

¹⁹⁰ Exs. 44, 62, Fig. 4.

¹⁹¹ EX. 26, § 8, at 2-4; Ex. 62 at 16.

¹⁹² Tr. 204-06.

¹⁹³ Tr. 273.

¹⁹⁴ Ex. 62 at 3.

¹⁹⁵ Tr. 210, 256, 289.

¹⁹⁶ Tr. 293-94.

¹⁹⁷ Tr. 1426.

establishing a business park, passing two resolutions acknowledging the benefit to the community of diversifying the tax base and bringing employment opportunities to the area. The owners of large parcels of property who petitioned for annexation did so to obtain municipal services.

146. Approximately 189 persons attended the public hearing in this matter, and 51 persons spoke. With a few exceptions, most of the speakers opposed annexation. About 30 written comments were received at the public hearing, and 39 were received afterward. Many wanted the right to vote for or against annexation, which the statute does not permit. Many expressed the view that they did not need or want additional services from the City, and that they do not want their taxes to increase. Some opposed development in general on the basis that it would change the rural characteristics they value in the Township. Some expressed concern about increased traffic on U.S. Highway 8. Others supported the township form of government and expressed fear of being disenfranchised if they were not able to vote for elected representatives until 2006. It is clear that annexation has been a divisive issue that has been a matter of concern for the City and the Township for many years.¹⁹⁸

147. Those who spoke or submitted written comments in favor of annexation did so on the basis that sewer and water services were needed around the lakes; that annexation was inevitable, given that the Township is surrounded by three cities within a few miles of each other; and that annexation was necessary to protect the natural beauty and resources of the area.

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

CONCLUSIONS OF LAW

1. The Administrative Law Judge has jurisdiction in this matter through the Minnesota Department of Administration under Minn. Stat. §§ 414.01, 414.02, 414.031, 414.11-12 and the Order of the Assistant Commissioner of the Department of Administration, dated July 26, 2004.

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

3. The subject area described in the City's Amended Petition, except for the "sliver" of U.S. Highway 8, is about to become urban or suburban in character.

4. Municipal government in the subject area described in the City's Amended Petition, except for the sliver of U.S. Highway 8, is required to protect the public health, safety and welfare.

¹⁹⁸ The Township submitted a petition opposing annexation that contains signatures gathered since January 2004, before the size of the proposed annexation area was reduced. It contains about 141 signatures; 45 of the signatures were from persons who identified their residence as Chisago City, Forest Lake, or Lindstrom. See Ex. 332.

5. Annexation of the subject area described in the City's Amended Petition, except for the sliver of U.S. Highway 8, is in the best interest of the subject area.

6. The increase in tax revenues for the City bears a reasonable relationship to the monetary value of the benefits conferred upon the subject area.

7. The remainder of the Township will not suffer undue hardship by virtue of the annexation of the subject area.

8. It is equitable to require a municipal election of two City Council members under Minn. Stat. § 414.031 so that persons in the annexation area will have the opportunity to elect City Council members to represent their interests.

9. Citations to transcripts or exhibits in these Findings of Fact do not mean that all evidentiary support in the record has been cited.

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

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

ORDER

1. IT IS HEREBY ORDERED that the subject area described in the Amended Petition as:

Lands in Township 33 North, Range 21 West: All of Sections 2, 11, 13, 14, 23, 24, 25, and 26 in Township 33 North, Range 21 West, Chisago County, Minnesota; and also all of that part of Section 1 and of Section 12, in Township 33 North, Range 21 West, Chisago County, Minnesota, except the City of Chisago City, Chisago County, Minnesota

is annexed to the City of Chisago City.

2. IT IS FURTHER ORDERED that the subject area described in the Amended Petition as:

that part of Interstate Highway No. 8, Chisago County, Minnesota, from a point beginning at the west edge of the Northwest Quarter of the Southwest Quarter of Section 26, in Township 33 North, Range 21 West, Chisago County, Minnesota, then continuing generally southwesterly in Section 27 and Section 34 in Township 33 North, Range 21 West, Chisago County, Minnesota, to a point ending 2,800 feet west of the east edge of Section 33 in Township 33 North, Range 21 West, Chisago County, Minnesota, as said Interstate Highway No. 8 exists in Section 27,

Section 34, and Section 33 in Township 33 North, Range 21 West,
Chisago County, Minnesota

is not annexed to the City of Chisago City.

3. IT IS FURTHER ORDERED that the population of the post annexation City of Chisago City is approximately 4,749 and that the Office of Strategic and Long Range Planning retains jurisdiction for the purpose of determining the population of the new municipality, if the present population determination is found to be incorrect.

4. IT IS FURTHER ORDERED that an election shall be held not less than 45 days nor more than 60 days after the effective date of this order to elect two persons at large to fill the two City Council positions, not including the Mayor, whose terms are currently set to expire on December 31, 2006. The two persons receiving the two highest number of votes for councilperson will be elected to terms commencing 14 days after the election, and ending December 31, 2006. Thereafter, elections for city council members and the mayor shall be held during the November general elections of the year preceding each position's term expiration date. The acting clerk shall prepare the 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 Chisago City Hall, and the Election Judges shall be appointed equally from among those serving in the last election of the Town and of the City. The hours of the election shall be from 7:00 a.m. to 8:00 p.m. In all other respects, the election shall be conducted in conformity with the provisions of the Minnesota Statutes concerning the conduct of municipal elections insofar as applicable.

5. IT IS FURTHER ORDERED that the effective date of this Order is February 24, 2005.

Dated this 24th day of January 2004.

/s/ Kathleen D. Sheehy
KATHLEEN D. SHEEHY
Administrative Law Judge

Reported: Shaddix & Associates. (Six volumes for evidentiary hearing and one volume for public hearing).

MEMORANDUM

Legislative Direction

The legislature has determined in Minnesota Statutes Chapter 414 that (1) sound urban development and preservation of agricultural land and open spaces through land use planning is essential to the continued economic growth of this state; (2) municipal government most efficiently provides governmental services in areas intensively developed for residential, commercial, industrial, and governmental purposes, and township government most efficiently provides governmental services in areas used or developed for agricultural, open space, and rural residential purposes; (3) the public interest requires that municipalities be formed when there exists or will likely exist the necessary resources to provide for their economical and efficient operation; (4) annexation to existing municipalities of unincorporated areas unable to supply municipal services should be facilitated; and (5) the consolidation of municipalities should be encouraged.¹⁹⁹

In promoting and regulating municipal development, the director of the Office of Strategic and Long-Range Planning is to provide for the extension of municipal government to areas which are developed or are in the process of being developed for intensive use for residential, commercial, industrial, institutional, and governmental purposes or are needed for such purposes; protect the stability of unincorporated areas which are used or developed for agricultural, open space, and rural residential purposes and are not presently needed for more intensive uses; and protect the integrity of land use planning in municipalities and unincorporated areas so that the public interest in efficient local government will be properly recognized and served.²⁰⁰

In arriving at a decision as to whether an annexation petition should be granted, the legislature directed that a list of 14 specific factors is also to be considered. The Findings of Fact address these factors in detail, and this Memorandum addresses the parties' lengthy arguments as they relate to these factors.

Present population and number of households, past population and projected population growth of the subject area and adjacent units of government.

The Township's planning expert relied for all his relevant opinions on a density analysis that provides a misleading picture of the area's past and future growth and cannot be relied on. Despite the fact that about half of the Township is wetlands or lakes, and another large portion is within the Carlos Avery Wildlife Management Area, he relied on density figures calculated using the Township's total area, which has the effect of spreading the population over about twice as much land as would be physically

¹⁹⁹ Minn. Stat. § 414.01, subd. 1a.

²⁰⁰ *Id.*, subd. 1b.

possible to develop. Given the geography in this area, it would be extraordinarily difficult to reach population densities that he classified as urban or suburban.²⁰¹

He also focused on discrete areas that unreasonably limited the factors relevant to his analysis. For example, he predicted growth in the annexation area and in Chisago City based on the number of new homes built, and he averaged the household growth rates over 15 years. For the annexation area, he predicted an increase of only 176 housing units and 1,833 people through 2020, based on building permits issued in the annexation area, which generated a density number of only 204 persons per square mile.²⁰²

The record reflects that new home construction has not been uniform throughout the Township. It has been highest in the areas to the south and west of the annexation area. According to Township building permit records, 996 new homes were constructed in the Township from 1989 to 2003; of those, 169 were in the proposed annexation area.²⁰³ This means that only 16.5% of the new construction has occurred in the annexation area. Use of this method to forecast future growth in the annexation area ignores the fact that the trend in the Township is growth away from Interstate 35 and toward the annexation area.

In projecting the populations for Chisago City, the Township's planner opined that based on the City's growth rate and patterns it could accommodate all of its projected growth on 223 acres within the City, or at most, with an additional 350 acres in the annexation area. His calculations do not appear to be a realistic assessment of growth, and his opinions fail to address existing development limitations, growth trends outside the annexation area and the City, and the geography of the area. The record substantiates that there will be substantial growth in the area. This factor weighs in favor of annexation.

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

The area proposed for annexation is large in comparison to the City's area, but half of it is wetlands and lakes that are not suitable for development. The annexation area is surrounded by incorporated cities: the City of Wyoming, the City of Stacy, Chisago City, and the City of Forest Lake, all of which provide municipal services to their residents. Soil conditions and the water table make intensive development with ISTS and private wells unsuitable in much of the annexation area. The oldest septic

²⁰¹ Based on classifications obtained from the Rutgers University Center for Urban Affairs, he proposes defining rural areas as those with a density of 100 persons or fewer per square mile; suburban areas are those with 500 to 1,000 persons per square mile; and urban areas are those with 2,000 or more persons per square mile. See Ex. 385 at 19-20.

²⁰² Ex. 385 at 8-9.

²⁰³ Ex. 361.

systems appear to be in the small-lot areas platted around Green Lake many years ago, and they are the systems that appear to be at highest risk of failing and polluting the lake and groundwater.

The Comfort Lake Forest Lake Watershed District submitted testimony pointing out the difficulty of coordinating all the different political entities with authority over the district. The Watershed District appears to be asking that the annexation boundary be drawn to exclude the southern tip of Comfort Lake, consistent with the boundary of the Watershed District. It is not feasible in this case to draw annexation boundaries along the Watershed District lines; these lines are no more apparent to residents than section lines, but at least section lines have legal meaning to property owners. In addition, drawing the annexation boundary line along the Watershed District boundaries would exclude some of the property owners who have petitioned for annexation because they desire municipal services. The City's stormwater management practices should in fact improve the management of runoff toward Comfort Lake.

Degree of contiguity of the boundaries between the annexing municipality and the subject area.

While the quantity of land sought is substantial, it includes the amount necessary to diversify the City's tax base through development of a business park; to protect the shoreland around Green Lake; and to bring in the owners who seek annexation for the purpose of receiving municipal services. There are no natural terrain features that would interfere with the proposed annexation.

The sliver of U.S. Highway 8 is not contiguous to the City, and the City has failed to demonstrate why annexation of the sliver is necessary. In contrast to the remainder of the proposed annexation area, the record generally does not support annexation of this sliver of highway right-of-way.

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

The Township proposes to continue, and in fact to expand, its present pattern of development, which is almost exclusively residential on one- and two-acre lots with continued reliance on ISTS and private wells. If the Township's pattern continues, it will preclude the efficient and cost-effective delivery of municipal services in the future. This factor weighs in favor of annexation.

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

The present transportation network and good access to the metropolitan area have contributed substantially to the growth in the area. The improvement of County

Road 23 will increase development in the area. The City has demonstrated by its efforts to improve U.S. Highway 8 within the City that it is equipped to work with the Department of Transportation concerning improvements to U.S. Highway 8 to accommodate future growth.

Land use controls and planning presently being utilized in the annexing municipality and the subject area, including comprehensive plans for development in the area and plans and policies of the Metropolitan Council, and whether there are inconsistencies between proposed development and existing land use controls and the reasons therefore.

The Township's 2004 comprehensive plan, as noted above, would continue and expand its present pattern of development, which is almost exclusively residential on one- and two-acre lots with continued reliance on ISTS and private wells. These proposed uses are not consistent with the Chisago County Comprehensive Plan. In addition, the plan fails to address the extension of the sewer trunk line that is currently being constructed through the Township.

The Township's 2004 comprehensive plan raises many other issues that are not resolved, and the plan provides no roadmap for resolving them in the future. The plan encourages community or cluster septic systems to accommodate future growth; it does not, however, define or describe how such systems would be regulated, monitored, or operated. The Township did not address sewage treatment for proposed commercial districts; these sources of wastewater are usually greater in volume and have different pollution strength characteristics than residential wastewater. These types of sources usually require an oversized septic system; they more easily clog the soil bed, lead to scum accumulation, and potentially pollute the soil and water. A municipal sewer system would be better able to accommodate the waste from these uses, as municipal systems are better able to handle variations in flow and pollution characteristics. This factor weighs in favor of annexation.

Existing levels of governmental services being provided in the annexing municipality and 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 said services.

The Township's main argument with regard to this factor is that the City must show a current need for additional services, or a deficiency in the way the Township is providing these services, to demonstrate that annexation is appropriate. It also contends that the City must show there is a demand for these services, in the form of a survey of some sort, before one could conclude that the monetary value of such services would be reasonable in relation to the increased tax revenues the City would receive. Ultimately, the Township argues that without such showings the City cannot demonstrate that it would be in the public interest to order annexation.

Although the Township made it clear that its Board and some part of its population do not want additional services, this is not the test. The Township has functioned with very low levels of services; the issue is whether, given the projected growth in the area, these services will be required in the future. The legislature has already made the determination that the public interest requires that municipalities be formed when there exists or will likely exist the necessary resources to provide for their economical and efficient operation, and that annexation to existing municipalities of areas unable to supply municipal services should be facilitated.²⁰⁴ Furthermore, there is a demand in the area for municipal services, by the petitioning property owners.

In addition to the environmental and public health protection offered by municipal sanitary sewers, the City's municipal water system provides public health benefits that the Township's reliance on individual wells does not, including monitoring, testing, and reporting of water quality and bacterial issues; control and regulation of the water supply; chlorinated and fluoridated water; and reserve capacity. The storage component of the system enables the system to provide water for fire suppression far above and beyond the capacity of a private individual well system.²⁰⁵ Furthermore, dedicated law enforcement services will be an improvement over the current situation. There is no evidence in the record showing that calls for outside assistance have not been responded to by the Sheriff's office in a timely fashion; however, the possibility of delayed response makes reliance on the City's law enforcement arrangement a positive benefit to the subject area. This factor weighs in favor of annexation.

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

Development at the densities permitted in the Township, with no plans to provide urban infrastructure such as centralized wastewater treatment, will increase the potential for damage to the environment from many ISTS located close together, and will preclude the provision of urban infrastructure in cost-effective and efficient ways in the future.²⁰⁶ This factor weighs in favor of annexation.

Plans and programs by the annexing municipality for providing needed governmental services to the subject area.

The City has not undertaken this annexation lightly and has planned for years to provide services to the subject area. It has already funded expansion of its portion of the CLJSTC at a cost of \$2.37 million and has purchased capacity in the new sewer trunk line that is being constructed through the annexation area. It is clearly capable of providing needed services. Without annexation, the new sewer trunk line would be a wasted investment.

²⁰⁴ Minn. Stat. § 414.01, subd. 1a.

²⁰⁵ Ex. 62 at 10.

²⁰⁶ Tr. 1597; Ex. 386 at 10.

The Township's engineer offered the limited opinion that the City's estimate of costs to install sewer and water service was not a feasibility study that would serve as a basis for special assessment. The Township argues that without a feasibility study documenting to the penny what extension of these services to the annexation area would cost, there is no basis for concluding the City could provide these services. The extension of the sewer trunk line is clearly feasible, as the project is under construction. The Township's engineer also admitted that he would recommend use of municipal sewer, if a sewer line was in place and a gravity connection could be made in a cost-effective manner; he further agreed that it appeared lateral lines could be extended in the annexation area without traversing wetlands or other high-cost areas. The City has established that it is more likely than not that it has the ability to provide governmental services that will be needed in the area.

An analysis of the fiscal impact on the annexing municipality, the subject area, and adjacent units of local government, including net tax capacity and the present bonded indebtedness, and the local tax rates of the county, school district, and township.

Although the analyses of the Township's and City's fiscal experts were very different, their conclusions on important issues are remarkably similar. The Township's fiscal expert predicted a tax increase of \$488 on a \$200,000 home in the annexation area; the City's expert predicted a tax increase of \$492 on a home with the same value.²⁰⁷ Both projected reduced expenses by the Township in the range of \$132,000 to \$141,000 as a consequence of annexation. After annexation, the tax capacity of the Township will be about \$3.5 million, which is still larger than the City's post-annexation tax capacity of \$3.2 million. The fiscal impacts do not weigh against annexation.

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

No adverse impacts on adjacent school districts and communities have been identified.

Adequacy of town government to deliver services to the subject area.

The Township's government has been adequate to serve its residents in the past. Given the growth projected, the City will be better able to deliver services in the future.

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

No other type of boundary adjustment has been proposed.

²⁰⁷ Tr. 1364-65;

If only a part of a township is annexed, the ability of the remainder of the township to continue or the feasibility of it being incorporated separately or being annexed to another municipality.

The Township will still have a population of approximately 3,000 persons, with a substantial tax base. Annexation will not impair its ability to continue providing services at the minimal levels provided in the past and projected for the future.

Annexation Standard

Minn. Stat. § 414.031, subd. 4(b) allows for annexation if “the subject area is now, or is about to become, urban or suburban in character.” The statute does not define “urban” or “suburban,” nor does it define what “residential” and “rural residential” mean in the statute’s enabling provisions. The parties proposed several different definitions.

The City proposed a variety of definitions contained in a report to the legislature by Minnesota Planning.²⁰⁸ These criteria are detailed and practical, and the facts in this case satisfy several of them²⁰⁹; but they were not adopted do not have the force of law. The Township has proposed definitions based on the density calculations used by the Rutgers University Center for Urban Affairs. These definitions are not contained in the statute either.

The Township also argues that the definition of “urban and suburban” in Minn. Stat. § 414.033 should provide guidance. That section governs annexation by ordinance, a different proceeding entirely. It deems the following types of properties as urban or suburban in character or about to become so: (1) land that is owned by the municipality; (2) land that is completely surrounded by land within the municipal limits; (3) land that abuts the municipality, and the area to be annexed is 60 acres or less, not presently served by public sewer facilities, and all affected property owners petition for annexation; and (4) land that has been approved after August 1, 1995, by a preliminary plat or final plat for subdivision to provide residential lots that average 21,780 square feet or less in an area and the land is located within two miles of the municipal limits.²¹⁰ Again, the legislature could have made this definition applicable in contested annexation cases, but it did not.

²⁰⁸ Exs. 73 & 74.

²⁰⁹ For example, areas considered “urban or about to become urban” are those zoned for residential use within one mile of cities of less than 5,000 population (Chisago City) and within two miles of cities of more than 5,000 population (Forest Lake); has existing residential uses that are contiguous with the city that either need or will need city services; has existing residential parcels of two and one-half acres or less and subdivisions that are within one mile of cities of less than 5,000 population and two miles of cities of more than 5,000 population; has land identified in a comprehensive plan deemed necessary to accommodate future city growth based on reasonable projections of population and economic conditions that are well-documented in a comprehensive plan; or has cluster residential developments with lot sizes comparable to those existing within the corporate limits and are within one mile of cities of less than 5,000 population and two miles of cities of more than 5,000 population.

²¹⁰ Minn. Stat. § 414.033, subd. 2.

More helpful are the dictionary definitions of these terms. The *American Heritage Dictionary* defines a suburb as a usually residential area or community outlying a city, or the perimeter of country around a major city.²¹¹ The *New Webster's Dictionary and Thesaurus* defines a suburb as one of the residential or industrial districts on the edge of a big town or city.²¹²

The Township is no longer a rural agricultural community. It is mainly a residential community on the outskirts of the metropolitan area. It is being intensively developed for residential purposes.²¹³ The Township's own 2004 comprehensive plan documents its growing transition into a metropolitan suburb.²¹⁴ It plans to continue this trend in the future by increasing residential development substantially. The record overwhelmingly supports the conclusion that portions of the annexation area are already "urban or suburban," and the rest is destined to become so.

Annexation is also allowed if "municipal government in the area proposed for annexation is required to protect the public health, safety, and welfare."²¹⁵ The City has shown that annexation is required to protect the public health and environment, particularly in the areas around Green Lake.

The third standard permits annexation if it "would be in the best interest of the subject area."²¹⁶ As the Findings of Fact and the foregoing discussion set out, there are many factors that support annexation, and there are no factors that weigh against annexation. The extension of municipal sanitary sewer and water service, enhanced police service, additional administrative services, and park and recreation programming are in the best interests of the residents of the annexation area. In addition, the City has the tools available to attract new businesses and provide quality jobs in the area, so that residents will not have to commute to the Twin Cities for employment. The record as a whole supports a conclusion that annexation would be in the best interest of the subject area.

Election

Wyoming Township argues that waiting until November 2006 for an election will disenfranchise residents of the annexed area. The Township points out that the Legislature amended Minn. Stat. § 414.031, subd. 4a.(a) to authorize the ordering of elections when less than the entire township is being annexed, if doing so would be equitable.

²¹¹ *American Heritage Dictionary of the English Language* (1980).

²¹² *New Webster's Dictionary and Thesaurus* (1991).

²¹³ See Minn. Stat. § 414.01, subd. 1a(2); *id.*, subd. 1b.

²¹⁴ Ex. 27 at A-8.

²¹⁵ Minn. Stat. § 414.031, subd. 4(b).

²¹⁶ *Id.*

Minn. Stat. § 414.031, subd. 4a. (a) provides, as follows:

Any annexation order under this section for annexation by a single municipality of an entire township shall include a provision for the election of new municipal officers in accordance with section 414.09. The director of the Office of Strategic and Long-Range Planning, or the director's designee, may also order an election of new municipal officers in accordance with section 414.09 as part of any other annexation order under this section if the director or the director's designee determines that such an election would be equitable.

The City argues that an earlier election is not required because the annexed residents will immediately be represented by the five existing City Council members and will immediately be able to participate in City government. The City also argues that an earlier election is not equitable because the City would be required to expend significant money and administrative time to hold an election in March 2005.

The City suggests two alternatives: first, establish a ward system in the City that would include one or two wards encompassing the annexation area pursuant to Minn. Stat. § 414.031, subd. 4a(d); or second, expand the City Council to include two additional positions. The City argues that if either of these alternatives is chosen, that the elections be held as scheduled in November 2006 to allow the City time to establish ward boundaries. If an election is to be held earlier than November 2006, the City requests that the Administrative Law Judge order the earlier elections for only two of the City Council positions whose terms are set to expire on December 31, 2006.

Annexation will add approximately 1,600 persons to a city of 3,000. People in the annexation area will constitute one third of the City's population on the effective date of this Order. The City Council will be making important decisions about how and when municipal services should be extended in the area, how the residents will be assessed, and how these costs will be financed over the next ten to fifteen years. Residents of the annexation area are entitled to a reasonable opportunity to elect council members to represent their interests during this process.²¹⁷

Given that the City just conducted a general election in November 2004 and that the two representatives elected therein have barely served for one month, the Administrative Law Judge does not believe it would be equitable to require them to run again so soon. Nor does the Administrative Law Judge believe it would be equitable to require the Mayor of Chisago City to run for election before his term expires, because this process began under his leadership, and he should be allowed to complete his term before running again. Requiring an election of the two council members, other than the Mayor, whose terms are to expire on December 31, 2006, strikes a reasonable balance between the interests of residents in the annexation area in obtaining representation on

²¹⁷ See *McNamara v. Office of Strategic and Long Range Planning*, 628 N.W.2d 620 (Minn. App. 2001), rev. denied (Minn. Aug. 22, 2001).

the council and the interests of Chisago City residents, who just paid for an election of two council members.

K.D.S.

**AMENDED
PROPOSED
ANNEXATION**

CHISAGO CITY

MUNICIPALITIES

- Chisago City
- Wyoming
- Forest Lake

ANNEXATION AREA

Area in Wyoming Township
Proposed for Annexation
to Chisago City

PARKS AND LAKES

- Carlos Avery State
Wildlife Management Area
- Open Water

OTHER

- Wyoming Township Boundary
- County Boundaries
- 32** in Wyoming Township
- U.S. Highways / Interstates
- Other Main Roads

4000 0 4000 Feet



March 8, 2004

