

RESOLUTION NO. 6169

A RESOLUTION OF THE CITY OF BEMIDJI INITIATING DETACHMENT OF CERTAIN LAND IN THE CITY PURSUANT TO MINNESOTA STATUTES SECTION 414.06

WHEREAS, the City previously requested the annexation of certain lands in Bemidji Township ("Township") pursuant to a Joint Resolution for Orderly Annexation ("Joint Resolution"); and

WHEREAS, pursuant to an Order ("Annexation Order") dated May 8, 2012, a copy of which is attached to this Resolution as Exhibit 1, the Minnesota Office of Administrative Hearings ("OAH") approved a City request and ordered the annexation of certain lands ("Phase I Properties") from the Township into the City; and

WHEREAS, after the Annexation Order was issued, the Township commenced a lawsuit against the City with respect to the enforceability of the Joint Resolution; and

WHEREAS, pursuant to a Mediated Settlement Agreement ("Settlement Agreement") between the City and Township, dated May 31, 2013, a copy of which is attached to this Resolution as Exhibit 2, and Resolution Number 5910 (City Resolution) a copy of which is attached to this Resolution as Exhibit 3, which City Resolution was passed in support of a Petition for Detachment (Original Petition) filed by the Township pursuant to Paragraph II.B.2 of the Settlement Agreement, the Minnesota Office of Administrative Hearings ("OAH") issued an Order dated January 30, 2015 (Original Order), a copy of which is attached to this Resolution as Exhibit 4, approving the detachment of the agreed upon Phase I Properties listed in the Original Petition; and

WHEREAS, on September 30, 2017, an owner of Phase I Property (Property) not detached by the Original Order, approached the City requesting that their property be detached, claiming that the property was eligible for detachment but was mistakenly not included in the Original Petition; and

WHEREAS, pursuant to an Arbitration Order ("Arbitration Order") dated June 11, 2018, a copy of which is attached to this Resolution as Exhibit 5, the Arbitrator in the Settlement Agreement determined the Property to be eligible for detachment and that the City must approve detachment of the Property, and ordered that the City and Township cooperate in all steps necessary to seek and obtain approval of detachment of the Property by the Municipal Boundary Adjustment Unit – Office of Administrative Hearings; and

WHEREAS, pursuant to the Arbitration Order, the City has received a Petition for Detachment (Detachment Petition) signed by the property owner, a copy of which is attached to this Resolution as Exhibit 6; and

WHEREAS, the City desires to implement the decision in the Arbitration Order.

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BEMIDJI, MINNESOTA:

1. Pursuant to the Arbitration Order and in accordance with Minnesota Statutes, Section 414.06, the City requests that the Office of Administrative Hearings-Municipal Boundary Adjustment Unit order the detachment of the Property, which is described in Exhibit 6 of this Resolution and depicted on the map attached as Exhibit 7, from the City of Bemidji and make it a part of the Township of Bemidji.
2. Because the detachment of the Property requested herein is supported by the City of Bemidji, and by a petition of the property owner, and Bemidji Township has not submitted a resolution opposing the detachment, under Minnesota Statutes, Section 414.06, subdivision 2 "no hearing is necessary and the chief administrative law judge shall grant the petition."

3. The Property to be detached is situated within the City of Bemidji, abuts the City's south boundary and is located in the County of Beltrami.
4. The number of acres in the Property proposed for detachment is 0.95 and is described as follows:

That part of the Southwest Quarter of the Northeast Quarter (SW $\frac{1}{4}$ of NE $\frac{1}{4}$), Section Twenty-two (22), Township One Hundred Forty-six (146), Range Thirty-three (33), described as follows: Beginning at the intersection of the east line of Miles Avenue in Larson's Addition to Nymore with the north line of said SW $\frac{1}{4}$ of NE $\frac{1}{4}$; thence running south along the east line of Miles Avenue as extended a distance of 265 feet; thence at right angles to the east a distance of 208.4 feet; thence at right angles to the north a distance of 265 feet, more or less, to the north line of said SW $\frac{1}{4}$ of NE $\frac{1}{4}$; thence West along said north line to the point of beginning, except the North 66 feet thereof, Beltrami County, Minnesota.

5. The character of the building on the Property to be detached is a single family residential home.
6. The number of residents of the Property proposed for detachment is approximately two (2).
7. The Property to be detached is not served by municipal improvements, other than being bordered by public roads.
8. Upon receipt of the Order of Detachment, the City Clerk shall provide a copy of the Order to the Beltrami County Auditor as required under Minnesota Statutes Section 414.06, Subd. 5.

The foregoing resolution was offered by Councilmember Hellquist, who moved its adoption, and on due second by Councilmember Larson, was passed by the following vote:

Ayes: Albrecht, Meehlhause, Hellquist, Johnson, Lehmann, Erickson, Larson
Nays: None
Absent: None

Passed: August 6, 2018

ATTEST:


Michelle R. Miller, City Clerk

APPROVED:


Rita C. Albrecht, Mayor

CERTIFICATION

I certify that the above Resolution is an accurate copy of the Resolution adopted by the Council of the City of Bemidji at an authorized meeting held on the 6th day of August 2018, as shown by the minutes of the meeting in my possession.

(Seal)


Michelle R. Miller, Bemidji City Clerk

STATE OF MINNESOTA

OFFICE OF ADMINISTRATIVE HEARINGS

IN THE MATTER OF THE ORDERLY ANNEXATION)
AGREEMENT BETWEEN THE CITY OF BEMIDJI,) FINDINGS OF FACT
BEMIDJI TOWNSHIP, AND NORTHERN TOWNSHIP) CONCLUSIONS OF LAW
PURSUANT TO MINNESOTA STATUTES 414) AND ORDER

The city resolution for orderly annexation submitted by the City of Bemidji was reviewed for conformity with applicable law. By delegation, the Chief Administrative Law Judge hereby makes and files the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. A joint resolution for orderly annexation was adopted by the City of Bemidji, Northern Township, and Bemidji Township pursuant to Minnesota Statutes § 414.0325 and duly filed with the Office of Administrative Hearings-Municipal Boundary Adjustment Unit.

2. A resolution adopted and submitted by the City of Bemidji, requests annexation of part of the designated area described as follows:

South one-half (S 1/2) of Section 33, Township 147N, Range 33W, less previously annexed tracts.

AND,

Southeast Quarter (SE 1/4), Section 7, Township 146N, Range 33W, less previously annexed tracts.

Southwest Quarter (SW 1/4), Section 14, Township 146N, Range 33W.

Northeast Quarter (NE 1/4), Section 18, Township 146N, Range 33W, less previously annexed tracts.

That part of the Southeast Quarter (SE 1/4), Section 18, Township 146N, Range

33W, lying northeasterly of Trunk Highway 2 and 71.

That part of Section 20, Township 146N, Range 33W, lying northeasterly of US Trunk Highway 2 and 71.

Northwest Quarter (NW 1/4), Section 21, Township 146N, Range 33W.

North one-half of the North one-half of the Southwest Quarter (N 1/2 of N 1/2 of SW 1/4), Section 21, Township 146N, Range 33W, less previously annexed tracts.

South one-half of the Northeast Quarter (S 1/2 of NE 1/4), Section 22, Township 146N, Range 33W.

That part of the Southeast Quarter (SE 1/4), Section 22, Township 146N, Range 33W, lying northeasterly of the BNSF Railroad right-of-way.

That part of the Northeast Quarter (NE 1/4), Section 27, Township 146N, Range 33W, lying northeasterly of the abandoned former M&I Railroad right-of-way.

3. Minnesota Statutes §414.0325, subd. 1(h) states that in certain circumstances the Chief Administrative Law Judge may review and comment, but shall within 30 days order the annexation pursuant to the terms of a joint resolution for orderly annexation.

4. The joint resolution contains all the information required by Minnesota Statutes §414.0325, subd. 1(h).

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

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has duly acquired and now has jurisdiction of the within proceeding.

2. An order must be issued by the Chief Administrative Law Judge or authorized designee annexing the area described herein.

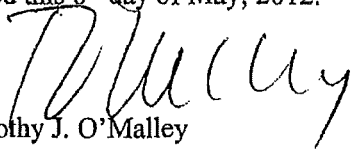
Based upon these Conclusions of Law, and for the reasons explained in the attached Memorandum, which is incorporated herein by reference, the Administrative Law Judge makes

the following:

ORDER

1. The property described in the Findings of Fact 2 is annexed to the City of Bemidji, the same as if it had originally been made a part thereof.
2. Pursuant to Minnesota Statutes §414.036, Bemidji and Northern Township will be reimbursed by the City of Bemidji in accordance with the terms of Joint Resolution No. 5655/2010-7/2010-8 signed by the City of Bemidji on December 21, 2010, Bemidji Township on March 16, 2011, and Northern Township on December 13, 2010; and City Resolution No. 5758.
3. Pursuant to Minnesota Statutes §414.035, the tax rate of the City of Bemidji on the property herein ordered annexed shall be increased in substantially equal proportions over a period of four years to equality with the tax rate of the property already within the city.

Dated this 8th day of May, 2012.


Timothy J. O'Malley
Assistant Chief Administrative Law Judge
Municipal Boundary Adjustment Unit

MEMORANDUM

In November 2004, the City of Bemidji and the Townships of Northern and Bemidji entered into a Joint Resolution for Orderly Annexation (Bemidji Township Resolution No. 04-29; Northern Township Resolution No. 04-04; City of Bemidji Resolution No. 04-5189) pursuant to Minn. Stat. § 414.0325.

The Joint Resolution states, in part, that:

“4.C. ... Upon receipt of an annexation Resolution as provided herein, Minnesota Planning may review and comment, but shall within thirty (30) days of receipt of said resolution and copy of this Joint Resolution, order the annexation of the area designated in the Annexation Resolution in accordance with the terms and conditions of this Joint Resolution. The City and Townships agree that no alteration of the stated boundaries as described in the Joint Resolution is appropriate, that no consideration by the Minnesota Planning is necessary and that all terms and conditions for annexation are provided for in this Joint Resolution. Upon receipt of the Annexation Order, the City shall provide a copy to the Beltrami County Auditor.”

and

“10. **Term of Joint Resolution/Amendment:** This Joint Resolution shall be in full force and effect immediately upon the document being fully executed by all parties hereto, and shall terminate upon annexation of Phase III properties in the OAA. ... The orderly annexation agreement memorialized in this Joint Resolution may be terminated earlier by mutual, written joint resolution of the City and Townships. Similarly, this Joint Resolution also may be amended or changed upon mutual, written agreement of all the parties. City and Township representatives agree to meet from time to time and no less than at least once annually, to discuss requested or necessary modifications and amendments to this Joint Resolution. Participation of other townships within the Greater Bemidji Area, may be joined under this Joint Resolution upon mutual written agreement by all the parties.”

and

“15. **Resolution of Disputes:** If there is a disagreement as to the interpretations or implementation of the Joint Resolution, the City and Townships shall implement the below-outlined dispute resolution procedures in the following sequence:

A. **Negotiation:** Representatives of the City and Townships will meet a minimum of one (1) time at a mutually convenient time and place to attempt to resolve the dispute through negotiation.

B. **Mediation:** If negotiation is not successful, parties shall participate in a minimum of one (1) mediation session with a mutually agreed upon mediator to resolve the dispute.

C. Binding Arbitration/Adjudication: If mediation is not successful, the parties may agree to submit their respective grievances to binding arbitration or may seek relief through initiation of an action in a court of competent jurisdiction, which may include, but not be limited to specific performance to compel the performance as outlined in this Joint Resolution. In addition to the remedies afforded to the parties through law and equity, the Court shall have the authority to award reasonable attorney fees, costs and expenses to a party found to be in violation of the terms of this agreement.”

On April 9, 2012, the Municipal Boundary Adjustment Unit (MBAU) of the Office of Administrative Hearings (OAH) received City Resolution No. 5758. Additionally, the MBAU has received the following correspondence regarding this matter.

- Counselor John J. Steffenhagen’s letter dated April 13, 2012;
- Counselor Alan R. Felix’s letter dated April 28, 2012;
- Counselor John J. Steffenhagen’s letter dated May 1, 2012; and
- Counselor Alan R. Felix’s letter dated May 3, 2012.

The Administrative Law Judge has considered the above correspondence and all documents attached thereto prior to the issuance of the attached Order.

Minn. Stat. § 414.0325, Subd. 1(h) states:

“If a joint resolution designates an area as in need of orderly annexation, provides for the conditions for its annexation, and states that no consideration by the chief administrative law judge is necessary, the chief administrative law judge may review and comment, but shall, within 30 days, order the annexation in accordance with the terms of the resolution.”

The Joint Resolution contains language in Paragraph 4.C. that satisfies the requirements of Minn. Stat. § 414.0325, Subd. 1(h). Therefore, the OAH has a duty imposed by law to order the annexation.¹

In the correspondence considered by the undersigned, the parties indicated that they have met regarding the annexation at issue. Bemidji Township characterizes those meetings as being held in accordance with Paragraph 15 of the Joint Resolution.² The City of Bemidji characterizes those meetings as being held in accordance with Paragraph 10 of the Joint Resolution.³ Under the facts of this case, the OAH is statutorily required to order the annexation for the reasons set forth above. Therefore, the nature of the meetings between the parties is not an issue to be decided by the OAH. Further, any disputes regarding the Joint Resolution should be addressed under the terms of that agreement, which does not provide for any role by the OAH.

T.J.O.

¹ See *City of Waite Park v. Minnesota Office of Administrative Hearings*, A05-1888 (Minn. App., July 18, 2006).

² John J. Steffenhagen’s letter dated May 1, 2012.

³ Alan R. Felix’s letter dated May 3, 2012.

MEDIATED SETTLEMENT AGREEMENT

THIS MEDIATED SETTLEMENT AGREEMENT ("Agreement") is made between Bemidji Township and the City of Bemidji.

**I.
RECITALS**

A. The parties are involved in a lawsuit in the Beltrami County District Court, Court File No. 04-CV-12-2601.

B. The parties heretofore have submitted the matters in dispute to mediation pursuant to an Agreement and Acknowledgment of Mediation Ground Rules dated May 1, 2013

C. The parties have settled all outstanding claims between them on the following terms and conditions, as a mediated settlement.

D. All parties have been represented by counsel in these proceedings and the Mediation, except: None.

**II.
AGREEMENT**

The parties mutually agree as follows:

A. Binding Agreement. This Mediated Settlement Agreement is acknowledged and it is agreed by each party. Each party knowingly and voluntarily has entered into this Agreement with the advice of their attorney. This Agreement is binding upon each party. Each party also acknowledges that they have been informed and advised by the Mediator as follows:

- (1) The Mediator has no duty to protect any of the parties' interests or provide them with information about their legal rights;
- (2) Signing a Mediated Settlement Agreement may adversely affect each parties' legal rights;
- (3) Each party should consult with an attorney before signing this Mediated Settlement Agreement; and
- (4) A written Mediated Settlement Agreement is not binding unless it contains a provision that it is binding and a provision stating substantially that the parties were advised in writing of (a) through (c) above.

B. Settlement Terms.

1. Subject to the approvals noted below, the Orderly Annexation Agreement and the Joint Powers Agreement will be amended to release Bemidji Township as a party.

2. Subject to approval by the Municipal Boundary Adjustments Unit-Office of Administrative Hearings, Phase I properties not currently served by municipal sanitary sewer and water may be detached from the City of Bemidji to Bemidji Township. The City and Township will mutually agree on which Phase I properties may be so detached. Property owner consent to detachment will be required. In that case, the City will not contest the detachment. The City and the Township will equally share costs imposed by the Office of Administrative Hearings associated with the detachment proceeding.
3. Until June 1, 2018, the City of Bemidji will not initiate any annexation of Bemidji Township property unless initiated by a property owner petition and the property must be contiguous to the City at the time of the Petition. Consent by Bemidji Township is not required.
4. This Mediated Settlement Agreement is conditioned on approval by the Bemidji City Council and Bemidji Town Board.
5. Any approvals needed by Northern Township to effectuate this Mediated Settlement Agreement must be obtained in order for this agreement to be effectuated.
6. Any property taxes received by the City of Bemidji in 2013 from Phase 1 properties shall be paid to Bemidji Township.
7. Properties previously detached from the City as part of Phase 1 Annexation shall remain under the jurisdiction of Bemidji Township.

C. Non-Liability. Nothing in this Mediated Settlement Agreement is intended to be, nor will be deemed to be, an admission of liability by any party that it or any of its officers, directors, shareholders, agents, representatives, or employees has violated any state or federal statute, local ordinance, or principle of common law, or that it has engaged in any wrongdoing. The parties understand that this Mediated Settlement Agreement is a compromise of doubtful and disputed claims and that the execution of this Mediated Settlement Agreement is not to be construed as an admission of liability on the part of any of the parties hereto, and that such parties expressly deny liability therefor, and intend merely to avoid litigation with respect to such claims.

D. Entire Agreement. This Mediated Settlement Agreement constitutes the entire agreement between the parties with respect to the matters which have been the subject of the mediation, and it supersedes any and all prior agreements, oral or written, with respect hereto.

E. Invalidity. In case any one or more of the provisions of this Mediated Settlement Agreement should be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained in this Mediated Settlement Agreement will not in any way be affected or impaired thereby.

F. Voluntary and Knowing Action. Each party acknowledges that the party has had an opportunity to consult with an attorney prior to signing this Mediated Settlement Agreement, has read and understands the terms of this Mediated Settlement Agreement, and that the party has voluntarily entered into this Mediated Settlement Agreement to resolve their disputes.

G. Governing Law. This Mediated Settlement Agreement will be construed and interpreted in accordance with the laws of the State of Minnesota.

H. Dismissal of Action. Each party's attorney shall promptly file with all courts and agencies having jurisdiction, an executed copy of this Agreement or otherwise cause all claims, charges and matters to be dismissed or withdrawn with prejudice, and each party shall execute and deliver in addition all other forms of separate written dismissal and withdrawal as may be required.

I. Complete Release. It is the specific intent of the parties to release and discharge the other from any and all claims and causes of action of any kind or nature whatsoever, whether known or unknown, asserted or unasserted, and whether specifically mentioned herein or not, which may exist or might be claimed to exist, at, prior to or subsequent to the date hereof by reason of any matter or thing arising out of or in connection with the claims in this mediation, and any matter relating thereto. The parties specifically waive any right to assert that any claim has been, through oversight or error, or intentionally or unintentionally omitted from this Mediated Settlement Agreement.

J. Counterpart Copies. This Mediated Settlement Agreement shall be executed in counterpart copies, each of which shall constitute and be effective as an original hereof.

K. The May 1, 2013 Mediated Settlement Agreement is hereby vacated.

III. ARBITRATION

Any dispute(s) and/or questions of any kind or nature regarding this Settlement shall be decided by Binding Arbitration before the Mediator, who shall be the sole Arbitrator.

PARTIES:

BEMIDJI TOWNSHIP

By [Signature]

Its Chair

Dated: May 31, 2013

By [Signature]

Its Board Member

Dated: May 31, 2013

CITY OF BEMIDJI

By [Signature]

Its Mayor

Dated: 5-31, 2013

By [Signature]

Its Council Member

Dated: 5-31, 2013

By Ben K. Manselmann
Its Board Member
Dated: May 31, 2013

By J. R. Thompson
Its Council Member
Dated: 5-31, 2013

By _____
Its Board Member
Dated: _____, 2013

By Michael Mullhans
Its Council Member
Dated: 5-31, 2013

By _____
Its Board Member
Dated: _____, 2013

By _____
Its Council Member
Dated: _____, 2013

By _____
Its Council Member
Dated: _____, 2013

By _____
Its Council Member
Dated: _____, 2013

By _____
Its Council Member
Dated: _____, 2013

David J. Meyers
David J. Meyers, Mediator

ATTORNEYS

HELLMUTH & JOHNSON, PLLC

By John Steffenhagen
John Steffenhagen
Attorney for Bemidji Township
8050 West 78th Street
Edina, MN 55439
952-641-4005

Dated: May 31, 2013

KENNEDY & GRAVEN

By Jim Thomson
Jim Thomson
Attorney for City of Bemidji
470 U.S. Bank Plaza
200 South Sixth Street
Minneapolis, MN 55402
612-337-9209

Dated: 5-31, 2013

RESOLUTION NO. 5910

EXHIBIT 3

A RESOLUTION OF THE CITY OF BEMIDJI INITIATING DETACHMENT OF CERTAIN LANDS IN THE CITY PURSUANT TO MINNESOTA STATUTES SECTION 414.06

WHEREAS, the City of Bemidji ("City") previously requested the annexation of certain lands in Bemidji Township ("Township") pursuant to a Joint Resolution for Orderly Annexation ("Joint Resolution");

WHEREAS, pursuant to an Order ("Annexation Order") dated May 8, 2012, a copy of which is attached to this Resolution as Exhibit 1, the Minnesota Office of Administrative Hearings ("OAH") approved the City's request and ordered the annexation of certain lands ("Phase I Properties") from the Township into the City;

WHEREAS, after the Annexation Order was issued, the Township commenced a lawsuit against the City with respect to the enforceability of the Joint Resolution;

WHEREAS, the City and the Township entered into a Mediated Settlement Agreement ("Settlement Agreement") dated May 31, 2013, a copy of which is attached to this Resolution as Exhibit 2.

WHEREAS, pursuant to Paragraph II.B.2 of the Settlement Agreement, the City and the Township agreed that Phase I Properties that were not currently served by municipal sanitary sewer and water could be detached from the City to the Township with the consent of the affected property owners and subject to approval by the OAH;

WHEREAS, the City has received petitions from the owners of 155 parcels that are eligible for detachment pursuant to Paragraph II.B.2. of the Settlement Agreement; and

WHEREAS, the City will perform maintenance tasks for the roads located within the detachment area in the same manner as the City did before the parcels were annexed into the City, plus 100% of the maintenance tasks for Lake Avenue; and

WHEREAS, the City and Bemidji Township desire to implement Paragraph II.B.2 of the Settlement Agreement.

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BEMIDJI, MINNESOTA:

1. Pursuant to Paragraph II.B.2 of the Settlement Agreement and in accordance with Minnesota Statutes, Section 414.06, the City requests that the Office of Administrative Hearings-Municipal Boundary Adjustment Unit order the detachment of the parcels, which are described in Exhibit 3 of this Resolution and depicted on the map attached as Exhibit 4, from the City of Bemidji and make them a part of the Township of Bemidji.
2. Because the detachment of the parcels requested herein is supported by City of Bemidji, and by a petition of all of the property owners, and Bemidji Township has not submitted a resolution opposing the detachment, under Minnesota Statutes, Section 414.06, subdivision 2 "no hearing is necessary and the chief administrative law judge shall grant the petition."
3. The property to be detached is situated within the City of Bemidji, abuts the city's east, south, and west boundaries and is located in the County of Beltrami.
4. The number of acres in the property proposed for detachment is 596 and is described as follows:

See attached Exhibit 3, which are the Petitions by all affected property owners containing the legal descriptions of the parcels to be detached and attached Exhibit 4, which is a map depicting the parcels to be detached

5. The character of the buildings on the parcels to be detached is primarily residential in nature.
6. The number of residents in the area proposed for detachment is approximately 266.
7. The parcels to be detached are not served by municipal improvements, other than being bordered by public roads, in some cases.
8. Upon receipt of the Order of Detachment, the City Clerk shall provide a copy of the Order to the Beltrami County Auditor as required under the Joint Resolution and Minnesota Statutes Section 414.06, Subd. 5.

The foregoing resolution was offered by Councilmember Thompson, who moved its adoption, and on due second by Councilmember Hellquist, was passed by the following vote:

Ayes: Albrecht, Hellquist, Meehlhause, Johnson, Olson, Erickson, Thompson
Nays: None
Absent: None

Passed: October 6, 2014

ATTEST:


Kay M. Murphy, City Clerk

APPROVED:


Rita C. Albrecht, Mayor

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

EXHIBIT 4

In the Matter of the Detachment of
Certain Real Property from the
City of Bemidji

**ORDER APPROVING
DETACHMENT**

A petition for detachment (Petition) was signed by all of the property owners requesting detachment of certain real property (Property) legally described in Attachment A.

The City of Bemidji (City) adopted Resolution Number 5910 (City Resolution) supporting the Petition on October 6, 2014. Bemidji Township (Township) did not file a resolution concerning the Petition.

Based upon a review of the Petition and City Resolution, and finding that the detachment would be in the best interests of the Property, the Chief Administrative Law Judge makes the following:

ORDER

1. Pursuant to Minn. Stat. § 414.06 (2014), the Petition and City Resolution are deemed adequate in all legal respects and properly support this Order.
2. Pursuant to this Order, the Property described in the 54 pages of Attachment A is detached from the City of Bemidji.

Dated: January 30, 2015



TAMMY L. PUST
Chief Administrative Law Judge

Attachment A

80.06311.00	80.06447.00	80.06393.00	80.06495.00
80.06313.00	80.06334.00	80.06518.00	80.06496.00
80.06314.00	80.06445.00	80.06370.00	80.06497.00
80.06317.00	80.06333.00	80.06374.00	80.06498.00
80.06321.00	80.06332.00	80.06482.00	80.06512.00
80.06326.00	80.06446.00	80.06485.00	80.06506.00
80.06328.00	80.06450.00	80.06486.00	80.06419.00
80.06324.00	80.06444.00	80.06372.00	80.06395.00
80.06325.00	80.06449.00	80.06487.00	80.06440.00
80.06354.00	80.06443.00	80.06373.00	80.06500.00
80.06529.00	80.06337.00	80.06377.00	80.06499.00
80.06530.00	80.06462.00	80.06483.00	80.06509.00
80.06525.00	80.06463.00	80.06484.00	80.06508.00
80.06526.00	80.06464.00	80.06488.00	80.06507.00
80.06551.00	80.06465.00	80.06479.00	80.06405.00
80.06547.00	80.06341.00	80.06387.00	80.06416.00
80.06531.00	80.06340.00	80.06379.00	80.06417.00
80.06550.00	80.06460.00	80.06385.00	80.06398.00
80.06546.00	80.06461.00	80.06394.00	80.06442.00
80.06549.00	80.06367.00	80.06397.00	80.06406.00
80.06545.00	80.06331.00	80.06478.00	80.06399.00
80.06548.00	80.06472.00	80.06384.00	80.06428.00
80.06544.00	80.06477.00	80.06404.00	80.06430.00
80.06527.00	80.06473.00	80.06410.00	80.06436.00
80.06534.00	80.06475.00	80.06510.00	80.06441.00
80.06543.00	80.06336.00	80.06415.00	80.06422.00
80.06532.00	80.06468.00	80.06489.00	80.06420.00
80.06351.00	80.06390.00	80.06502.00	80.06431.00
80.06533.00	80.06335.00	80.06492.00	80.06437.00
80.06535.00	80.06389.00	80.06491.00	80.06400.00
80.06536.00	80.06388.00	80.06381.00	80.06438.00
80.06538.00	80.06376.00	80.06493.00	80.06439.00
80.06356.00	80.06522.00	80.06494.00	80.06401.00
80.06350.00	80.06521.00	80.06411.00	80.06421.00
80.06539.00	80.06523.00	80.06511.00	80.06435.00
80.06537.00	80.06524.00	80.06490.00	80.06429.00
80.06541.00	80.06517.00	80.06414.00	80.06432.00
80.06339.00	80.06520.00	80.06409.00	80.06433.00
80.06338.00	80.06519.00	80.06503.00	

In the Matter of the Arbitration between:

City of Bemidji,

and

ARBITRATION ORDER

Bemidji Township.

THE UNDERSIGNED ARBITRATOR, having been designated in accordance with the Arbitration Agreement entered into by the parties dated May 31, 2013, and having heard the arguments, proofs and allegations of the parties, ORDERS, as follows:

FINDINGS OF FACT

1. On May 31, 2013, the City of Bemidji (“City”) and Bemidji Township (“Township”) signed a Mediated Settlement Agreement (“Agreement”), which included an Arbitration Clause appointing me as the sole Arbitrator for any disputes arising out of the Agreement. Both governing bodies subsequently approved the Agreement.
2. Enforcement and interpretation of the Agreement has been the subject of prior Arbitration Orders and District Court and Court of Appeals decisions. The Orders and decisions are known to both parties.
3. In April, 2017, the Township was released from the Orderly Annexation Agreement by a Joint Resolution adopted by the City, the Township and Northern Township.
4. As required by the Agreement, the City and Township worked together to identify parcels of land for detachment from the City. On January 30, 2015, the State Office of Administrative Hearings issued an Order approving the detachment of an agreed upon list of parcels from the City to the Township.

5. On September 13, 2017, Marty Svare and Maria Svare, husband and wife, requested that their property in the City be detached and returned to the Township under the Agreement.

6. According to the November 20, 2017 Minutes of the Bemidji City Council, Council Members stated that they would be willing to consider the Svare's request if Svares could provide written proof that they requested detachment in 2012 or 2013, with the initial parcels that were detached.

7. The parties agree that the Svare parcel was eligible for detachment in 2012-2013, and that it was not included with the list of parcels sent to the State for detachment. Both the City and Town agree that the Svare parcel would have been detached had it been included with the original group.

8. Svare claims that their parcel was erroneously not included in the earlier detachment filing. Svare does not state who made the error or the nature of the error. Both counsel stated at the hearing in this case that the nature of the error and party responsible for the error were not at issue in this Arbitration Proceeding.

9. The Township requests that I compel the City to cooperate with the Svare's request for detachment. The Township argues that there is no time limit under Article II.B.2 for a party to request and be granted detachment. The position of the Township is that this Article was negotiated word by word and because no time limit is stated detachment is available at any time.

10. Article II.B.2 does not unambiguously express an intent to form a contract of perpetual duration. Therefore it is not perpetual, but instead a contract of indefinite duration. Glacial Plains Cooperative v. Chippewa Valley Ethanol Company, LLLP, No. A16-1626 (Minn. Sup. Ct. June 6, 2018).

11. A contract of indefinite duration is terminable anytime by either party with reasonable notice to the other. Glacial Plains Cooperative, Id. See also: Legred v. Smeal Pork Co., C9-02-619 (Minn. App. December 17, 2002), at Note 4, citing: Hayes v. Northwood Paneldoor Co., 415 N.W.2d 687, 691 (Minn. App. 1987).

12. The position that the City has taken in this case is reasonable notice to the Township to terminate Article II.B.2 after a reasonable time has passed. See: Glacial Plains Cooperative, Id.

13. The City claims that it has fully performed its responsibilities under Article II.B.2. The City argues that contract law implies that when there is no duration stated in a contract the duration is for a reasonable time. The City's position is that Article II.B.2 is five years old and a reasonable time has passed. The City maintains that it performed all of its responsibilities under Article II.B.2 in the prior detachment proceeding.

14. Article II.B.3 provides a turning point in the relationship between the City and Township. Under this Article, as of June 1, 2018, the City may annex property without the Township's consent.

15. Five years is a reasonable period of time or duration for the parties to exercise their rights under Article II.B.2.

16. The Agreement by implication included a provision that there was a reasonable to request detachment. That reasonable time expired June 1, 2018, as provided in Article II.B.3.

17. Facts known to parties at a time the Contract is made are admissible to determine a reasonable time for performance. American Bridge Co. of New York v. American Dist. Steam Co., 107 Minn. 140, 144, 119 N.W. 783, 785 (1909).

CONCLUSIONS OF LAW AND ORDER

1. Article II.B.2 is an Agreement of indefinite duration.
2. The detachment procedure outlined in the Agreement at Article II.B.2 expired on June 1, 2018, as a reasonable time for performance based upon a reading of the Agreement as a whole.
3. The City has given the Township in this proceeding reasonable notice to terminate Article II.B.2 after a reasonable period of time has passed. Termination was effective on June 1, 2018.
4. Detachment of the Svare parcel was requested prior to June 1, 2018, and prior to the City's notice to terminate Article II.B.2 of the May 31, 2013 Agreement. The City must approve detachment of the Marty Svare and Maria Svare parcel. The City and Township shall cooperate in all steps necessary to seek and obtain approval of the detachment of that Svare parcel by the Municipal Boundary Adjustment Unit – Office of the Administrative Hearings.
5. I retain jurisdiction and authority as Arbitrator under the May 31, 2013 Mediation Agreement for any and all matters that may fall within that Arbitration provision.
6. The Arbitrator's compensation and expenses shall be equally borne by the parties.
7. This Order is in full settlement of all claims submitted to this Arbitration. All claims not expressly granted herein are hereby denied.

DATED: June 11, 2018

SIGNED:



David J. Meyers, Arbitrator

IN THE MATTER OF THE PETITION FOR DETACHMENT OF
CERTAIN LAND FROM THE CITY OF BEMIDJI, MINNESOTA
PURSUANT TO MINNESOTA STATUTES § 414.06

TO: Office of Administrative Hearings
Municipal Boundary Adjustment Unit
P. O. Box 64620
St. Paul, MN 55164-0620

PETITIONERS STATE: The number of petitioners required by Minnesota Statutes § 414.06, Subd. 1, to commence this proceeding is: all of the property owners if the area is less than 40 acres; or 75% or more of the property owners in number if the area is more than 40 acres.

It is hereby requested by:

all of the property owners, the area is less than 40 acres; or
 75% or more of the property owners, the area is more than 40 acres;
to detach certain properties described herein from the City of **Bemidji** and make a part
of the Township of **Bemidji**.

1. There are **Two (2)** property owners in the area proposed for detachment.
2. **Two (2)** property owners have signed this petition. (If the land is owned by both the husband and wife, both must sign the petition to represent all owners.)
3. The property is situated within the City of **Bemidji**, abuts the municipal boundary, and is located in the County of **Beltrami**.
The petitioned area abuts on the city's N E W (circle one) boundary(ies).

4. The property proposed for detachment is rural in character and not developed for urban residential, commercial, or industrial purposes.
5. The reason detachment is requested is: **The property was not detached when the Bemidji Township annexation was undone in 2013 because the City of Bemidji erroneously believed that the property was ineligible. However, through mediation in June 2018, it was determined that the property was in fact eligible for detachment and should have been included.**
6. Summarize what efforts were taken prior to filing this petition to resolve the issues: **There was a mediation hearing between the City of Bemidji and Bemidji Township. The Mediation Judge ruled that the property should have been detached in 2013.**
7. The number of acres in the property proposed for detachment is **0.95** and is described as follows:
That part of the Southwest Quarter of Northeast Quarter (SW $\frac{1}{4}$ of NE $\frac{1}{4}$), Section Twenty-two (22), Township One Hundred Forty-six (146), Range Thirty-three (33), described as follows: Beginning at the intersection of the east line of Miles Avenue in Larson's Addition to Nymore with the north line of said SW $\frac{1}{4}$ of NE $\frac{1}{4}$; thence running south along the east line of Miles Avenue as extended a distance of 265 feet; thence at right angles to the east a distance of 208.4 feet; thence at right angles to the north a distance of 265 feet, more or less, to the north line of said SW $\frac{1}{4}$ of NE $\frac{1}{4}$; thence West along said north line to the point of beginning, except the North 66 feet thereof;
8. The number and character of buildings on said property is: **One (1) Single Family Home.**
9. The number of residents in the area proposed for detachment is **Two (2)**.
(The number of residents is not necessarily the same as number of owners.)
10. Public improvements on said property are: **None.**

Date: 7-9-18

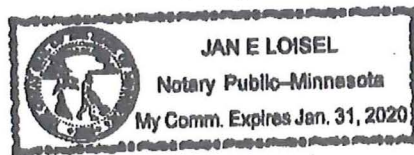
Marty Swan
Property Owner

Maria L. Dure
Property Owner

July 10, 2018

Jan E Loisel

County: Beltrami
State: Minnesota



Svare Detachment Request



- Boundaries**
- Detachment Request
 - Parcels
 - Current City Limits
- Roads**
- State
 - CSAH
 - County
 - Township
 - Municipal
 - Township Min Maint
 - Forestry
 - Private
 - Other

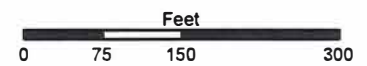


EXHIBIT 7