

MINNESOTA MUNICIPAL BOARD
STATE OF MINNESOTA

~~REC'D BY~~ ~~MMB~~ ~~APR 30 1990~~
REC'D BY **APR 18 1990**
MMB

In the Matter of the Petition of Emerson Property Company
for Detachment Pursuant to Minnesota Statutes Section 414.06

PETITION FOR DETACHMENT

The undersigned Petitioner hereby petitions the Board for an Order of Detachment of property from the City of Wayzata pursuant to the procedure described in Minnesota Statutes Section 414.06 and states and alleges alternative Articles 1 and 2 as follows:

ARTICLE 1

1. The property which is the subject of this proceeding is described on the attached Exhibit A (and is hereinafter referred to as the property to be detached).
2. This petition is submitted by the fee owner of the property to be detached.
3. The property to be detached is presently within the municipal boundary of the City of Wayzata.
4. The property to be detached abuts the municipal boundary of the City of Wayzata.
5. The boundaries of the property to be detached are as described in Exhibit A (Description) and Exhibit B (Map), and the boundaries are in length about 76 feet on the north, 1,110 feet on the west, 66 feet on the south and 1,055 feet on the east.
6. The property to be detached has an approximate area of 2 acres.
7. The property to be detached is rural in character notwithstanding the fact that State Highway 101 crosses over the property. Said highway right of way is 33 feet either side of the center line thereof and the paved asphalt surface of the highway is approximately 24 feet wide.
8. The property to be detached has no buildings thereon.

9. The property to be detached has no resident population.
10. The property is purportedly zoned R1A (residential-large estate) by the City of Wayzata and cannot be used for anything other than residential purposes. Yet the City of Wayzata has insisted that the lot has no buildable area and cannot have a residence built on it. This is illogical, unfair and arbitrary.
11. The City has gone further in limiting the owner's use by bringing a criminal prosecution for the storage of a single boat on the property. Yet there is sufficient land area on the property to safely accommodate storage of a boat well clear of the state highway right of way.
12. The City has also threatened to prosecute the owner for having more than a single boat offshore. However the property has approximately 2,165 linear feet of shoreline on Lake Minnetonka, has riparian rights, and readily accommodates multiple car parking and multiple docks and boat moorings. Furthermore under current Lake Minnetonka Conservation District (LMCD) Ordinances, this shoreline would be entitled to accommodate anywhere from 43 to 216 boat slips.
13. The owners of this shoreline will pay \$3,268.18 in 1990 real estate taxes for this property. Nevertheless the City's regulation, if successful, will render the property valueless.
14. The property to be detached is not developed for urban residential, commercial or industrial purposes, although there is an asphalt driveway thereon giving access to State Highway 101 and although rip rap rocks protect the shoreline in an area thereon.
15. The property to be detached has no municipal improvements thereon; it is not served by city sidewalks, city sanitary sewer, city storm sewer, city water, city sanitation or other municipal improvements; it is not served by electricity, telephone, gas, cable, other utilities; it has no postal address and is not currently served by postal service.
16. The property to be detached is subject to a right of way for highway purposes as described in the attached deed dated September 24, 1887.

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17. The detachment of the property to be detached would not unreasonably affect the symmetry of the City of Wayzata; and alternatively, as applied in this matter the effect on the symmetry of the City of Wayzata is insignificant if not irrelevant.
18. The property to be detached is not needed by the City of Wayzata for reasonably anticipated future development.
19. The City of Wayzata can continue to carry on its functions of government without undue hardship notwithstanding the detachment.
20. Not granting the detachment order causes the petitioner an undue economic hardship and deprives the petitioner of the reasonable economic use of the property.

ARTICLE 2

Alternatively, the Petitioner restates and realleges the facts as stated in Article 1 with the exception of paragraphs 1, 5, and 6 thereof and in addition states and alleges the following additional paragraphs:

1. The property which is the subject of this proceeding is described on the attached Exhibit C (and is hereinafter referred to as the property to be detached), and is the same as the property described on Exhibit A, except excludes the land under the paved asphalt surface of the State Highway which is approximately 24 feet wide.
2. The boundaries of the property to be detached are as described in Exhibit C (Description) and Exhibit B (Map).
3. The property to be detached has an approximate area of 1.4 acres.

Wherefore the undersigned Petitioner respectfully asks the Board to make its Findings of Fact as stated above and to issue its Order of Detachment.

Respectfully Submitted,

PETITIONER
EMERSON PROPERTY COMPANY

Dated: March 28 1990

By [Signature]
President

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EXHIBIT A

Description of the Property to be Detached:

DESCRIPTION:

All that part of the below-described property which lies westerly of the shore line of Gray's Bay of Lake Minnetonka and northerly of the shore line of Wayzata Bay of Lake Minnetonka which was annexed to the City of Wayzata pursuant to Petition dated June 29, 1956, to-wit: The Northerly 661.3 feet as measured down the center line of the road thereon as it existed on September 12, 1959 as shown by the survey prepared by Carlisle Madsen dated April 18, 1959 of Government Lot 7, Section 8, Township 117 North, Range 22 West of the 5th Principal Meridian which lies South of Carpenter's Point, Hennepin County, Minnesota, including the land under the right of way for highway purposes as described in that certain deed dated September 24, 1887 recorded at Book 232 of Deeds, Page 432 as Document No. 25030.

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EXHIBIT C

Alternate Description of the Property to be Detached:
(Excludes land under paved Highway 101)

DESCRIPTION:

All that part of the below-described property which lies westerly of the shore line of Gray's Bay of Lake Minnetonka and northerly of the shore line of Wayzata Bay of Lake Minnetonka which was annexed to the City of Wayzata pursuant to Petition dated June 29, 1956, to-wit: The Northerly 661.3 feet as measured down the center line of the road thereon as it existed on September 12, 1959 as shown by the survey prepared by Carlisle Madsen dated April 18, 1959 of Government Lot 7, Section 8, Township 117 North, Range 22 West of the 5th Principal Meridian which lies South of Carpenter's Point, Hennepin County, Minnesota, including the land under the right of way for highway purposes as described in that certain deed dated September 24, 1887 recorded at Book 232 of Deeds, Page 432 as Document No. 25030, except the land within twelve feet of either side of the center line of Highway 101.

W. M. Garpenter

The Board of 1887 25, 30.

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John Madrone, Under the 24th day of September in the year of our Lord one thousand eight hundred and eighty seven between Robert M. Garpenter & wife M. Garpenter his wife of the County of Hennepin State of Minnesota

part of the first part, and The Board of County Commissioners of the County of Hennepin and State of Minnesota part of the second part,

Witnesseth, That the said part of the first part, in consideration of the sum of \$1000.00 DOLLARS to them in hand paid by said part of the second part, the receipt whereof is hereby acknowledged, do hereby release and assign forever to be used as and for a public road for no other purpose all the following piece or parcel of land lying and being in the County of Hennepin and State of Minnesota described as follows, to-wit:

Filed 30 Sept 1887 at 11:30 AM

Unimpeded right of way over and across a strip of land four rods wide extending from the north line of lot eight (8) hereafter described to the southerly point of lot seven (7) more fully described being from the channel between Wazgata Bay and Grafs Bay a strip of land being two rods wide on each side of the center line of said road as delineated upon a map or plat thereof certified by A. H. Rose, deputy County Surveyor and filed in the office of County Auditor of said County to which for complete description reference is hereby made said strip of land extends across government lots seven (7) and eight (8) in section eight (8) township one hundred seventeen (17) north of range twenty two (22) west, reserving however to grantors their heirs executors administrators assigns all grantors present rights powers or privileges as riparian owners with full power right of authority to project docks into said Bays along the shores thereof and to fill up said Bays along said shores as he or they may desire also reserving full right powers authority to excavate a culvert canal of sufficient width and depth from Wazgata Bay to said Grafs Bay and said road to admit the free passage of row boats said culvert or canal to cross said road between stations three (3) and seven (7) as designated on said plat. It being understood and agreed by acceptance hereof that said grantors agree to construct forever maintain a culvert or bridge over said canal of sufficient height and breadth to allow the free passage of such boats and that said grantors may for the purpose of constructing said road remove earth from said canal free of charge to the width of twenty feet.

Filed 30 Sept 1887 at 12:45 P.M.

To Have and to Hold: The above Gull-Claim premises together with all and singular the hereditaments and appurtenances thereto belonging or in anywise appertaining to the said part of the second part here and assigns forever its successors forever as and for such public road.

In Testimony Whereof, The said part of the first part has hereunto set their hands and seals the day and year first above written.

Signed, Sealed and Delivered in Presence of Lucy May Camp James W. Lawrence

Robert M. Garpenter (Seal) Kate M. Garpenter (Seal)

STATE OF MINNESOTA, County of Hennepin

I a Notary Public within and for said County do hereby certify that On this 30th day of September, 1887

before me, personally appeared Robert M. Garpenter & Kate M. Garpenter his wife to me personally known to be the same persons described in and who executed the foregoing and acknowledged that they executed the same for the purposes and purposes therein expressed of their free act and deed. James W. Lawrence Notary Public

VERIFICATION AND ACKNOWLEDGEMENT

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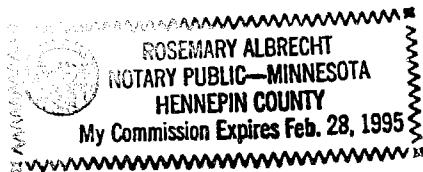
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STATE OF MINNESOTA)
COUNTY OF HENNEPIN)

On this 28 day of MARCH, 1990, before me, the undersigned officer, personally appeared W. Thomas Wheeler, who acknowledged himself to be the President of Emerson Property Company, a corporation, and being duly sworn deposes and says that he has read the foregoing petition, knows the contents thereof, has knowledge of the facts therein stated and declares that the statements within said petition are true, and that he, as such President being authorized to do so executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as President.

In witness whereof I have hereunto set my hand and official seal.

Rosemary Albrecht
NOTARY PUBLIC

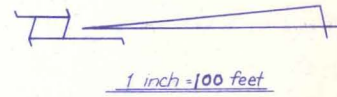


SURVEY FOR:

EMERSON PROPERTY COMPANY

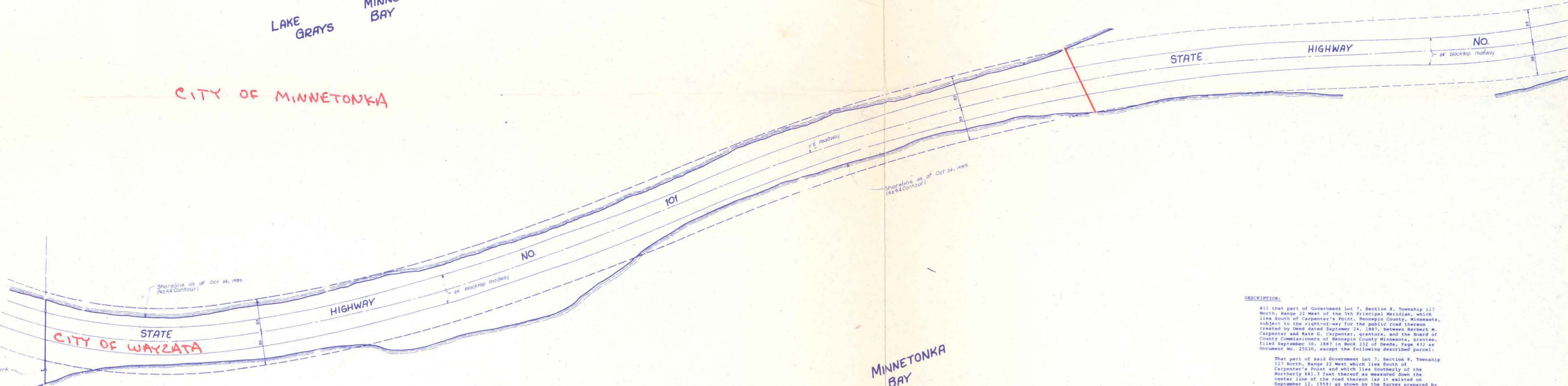
EXHIBIT "B"

PREPARED BY:
SCHOELL & MADSON, INC.
ENGINEERS · SURVEYORS · PLANNERS
MINNETONKA



LAKE GRAYS
MINNETONKA BAY

CITY OF MINNETONKA



CITY OF MINNETONKA

MUNICIPAL BOARD
3/28/90

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DESCRIPTION:
All that part of Government Lot 7, Section 8, Township 117 North, Range 22 West of the 5th Principal Meridian, which lies South of Carpenter's Point, Hennepin County, Minnesota, subject to the right-of-way for the public road thereon created by deed dated September 24, 1887, between Herbert W. Carpenter and Kate C. Carpenter, grantors, and the Board of County Commissioners of Hennepin County Minnesota, grantees, filed September 30, 1887 in Book 212 of Deeds, Page 412 as Document No. 25036, except the following described parcel:
That part of said Government Lot 7, Section 8, Township 117 North, Range 22 West which lies South of Carpenter's Point and which lies Southerly of the northerly 661.3 feet thereof as measured down the center line of the road thereon (as it existed on September 12, 1959) as shown by the Survey prepared by Carlisle Madson dated April 18, 1959, except the road thereon.

GENERAL NOTES:
1) Lineal feet of shoreline in Grays Bay = 1855 feet.
2) Lineal feet of shoreline in Waysata Bay = 1110 feet.
3) Total lineal feet of shoreline = 2165 feet.
4) Limits of property owned by Emerson Property Company.
5) Revised this 23rd day of March, 1990 to show proper town location.
I hereby certify that this survey was prepared under my supervision and that I am a Licensed Land Surveyor under the laws of the State of Minnesota.
Theodore D. Egan
Theodore D. Egan
Date: 11 November 1985 License No. 17004