

BEFORE THE MUNICIPAL BOARD  
OF THE STATE OF MINNESOTA

Robert J. Ferderer      Chair  
John W. Carey          Vice Chair  
Dorothy E. Kobs        Commissioner

IN THE MATTER OF THE PETITION FOR THE	)	<u>FINDINGS OF FACT</u>
DETACHMENT OF CERTAIN LAND FROM THE	)	<u>CONCLUSIONS OF LAW</u>
VILLAGE OF RUSHFORD VILLAGE AND	)	<u>AND ORDER</u>
ANNEXATION TO THE CITY OF RUSHFORD	)	<u>AND MEMORANDUM OPINION</u>
PURSUANT TO MINNESOTA STATUTES 414	)	

The above-entitled matter came on for hearing before the Minnesota Municipal Board pursuant to Minnesota Statutes 414, as amended, on November 3, 1993 and November 16, 1993 at Rushford, Minnesota. The hearing was conducted by Terrence A. Merritt, Executive Director, pursuant to Minnesota Statutes 414.01, Subdivision 12. Also in attendance were Robert J. Ferderer, Chair, Dorothy E. Kobs, Commissioner. The City of Rushford, hereinafter referred to as "City," appeared by and through Diane Schmidt Koebele and Todd Guerrero, Attorneys at Law, and the City of Rushford Village, hereinafter referred to as "Village," appeared by and through James A. Schultz, Attorney at Law. Testimony was heard and records and exhibits were received.

After due and careful consideration of all evidence, together with all records, files and proceedings, the Minnesota Municipal Board hereby makes and files the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. On July 28, 1993, a copy of a petition for concurrent detachment and annexation by all of the property owners was filed with

the Minnesota Municipal Board. The petition contained all of the information required by statute, including a description of the area proposed for concurrent detachment and annexation, hereinafter referred to as "the subject area," which is as follows:

The property proposed for detachment and annexation is described as follows:

That part of the NW1/4 SE1/4 of Section 11, Township 104 North, Range 8 West of the Fifth Principal Meridian lying NE'ly of the West side of Minnesota Trunk Highway No. 43, excepting therefrom the following parcel: beginning at the SE corner of the NW1/4 SE1/4; running thence North 394.5 feet; thence West to the centerline of Minnesota Trunk Highway No. 43 running across said 40 acre tract; thence in a SE'ly direction along the centerline of said Highway No. 43 to the South boundary line of said 40 acre tract; thence East along the said South boundary line to the point of beginning, said lands containing 23.5 acres more or less.

Commencing at a point 36 rods South from the NE corner of the NW1/4 SW1/4 of Section 11, Township 104 North, Range 8 West; thence West 16 rods; thence North 36 rods to a point 19.75 rods West from the 1/8 line; thence West .25 rod; thence North 14.5 rods; thence East 20 rods; thence South 50.5 rods to the place of beginning;

The NE1/4 SW1/4 of Section 11, Township 104 North, Range 8 West, excepting therefrom the following premises:

- A. All that part of the NE1/4 SW1/4 that lies Northeasterly of State Highway #43.
- B. The East 340 feet of the NE1/4 SW1/4 of Section 11 lying South of Minnesota State Highway #43.

That part of the SE1/4 NW1/4 of Section 11, Township 104 North, Range 8 West lying West of the East side of Minnesota State Highway #43 except beginning at a point 14.5 rods North of the SW corner thereof; thence East to the public highway; thence Northwesterly along the Southwest line of the highway to a point on the West line of the SE1/4 NW1/4, 38 rods North of the point of beginning.; thence South 38 rods to the point of beginning.

That part of the NW1/4 SE1/4 of Section 11, Township 104 North, Range 8 West of the Fifth Principal Meridian lying NE'ly of the centerline of Minnesota Trunk Highway No. 43, excepting therefrom the following parcel: beginning at the SE corner of the NW1/4 SE1/4; running thence North 394.5 feet; thence West to the centerline of Minnesota Trunk

Highway No. 43 running across said 40 acre tract; thence in a SE'ly direction along the centerline of said Highway No. 43 to the South boundary line of said 40 acre tract; thence East along the said South boundary line to the point of beginning, said lands containing 23.5 acres more or less.

Commencing at a point 36 rods South from the Northeast corner of the NW1/4 SW1/4 of Section 11, Township 104 North, Range 8 West; thence West 16 rods; thence North 36 rods to a point 19.75 rods West from the 1/8 line; thence West .25 rods; thence North 14.5 rods; thence East 20 rods; thence South 50.5 rods to the place of beginning;

The NE1/4 SW1/4 of Section 11, Township 104 North, Range 8 West, excepting therefrom the following premises:

- A. All that part of the NE1/4 SW1/4 that lies Northwesterly of the centerline of Minnesota State Highway #43.
- B. The East 340 feet of the NE1/4 SW1/4 of Section 11 lying South of the centerline of Minnesota State Highway #43.

That part of the SE1/4 NW1/4 of Section 11, Township 104 North, Range 8 West lying West of the centerline of Minnesota State Highway #43 except beginning at a point 14.5 rods North of the SW corner thereof; thence East to the public highway; thence Northwesterly along the Southwest line of the highway to a point on the West line of the SE1/4 NW1/4, 38 rods North of the point of beginning.; thence South 38 rods to the point of beginning.

Due to an inadvertent error it was stipulated to by council for both the City and the Village that the subject area is more appropriately described as:

That part of the NW1/4 SE1/4 of Section 11, Township 104 North, Range 8 West of the Fifth Principal Meridian lying NE'ly of the centerline of Minnesota Trunk Highway No. 43, excepting therefrom the following parcel: beginning at the SE corner of the NW1/4 SE1/4; running thence North 394.5 feet; thence West to the centerline of Minnesota Trunk Highway No. 43 running across said 40 acre tract; thence in a SE'ly direction along the centerline of said Highway No. 43 to the South boundary line of said 40 acre tract; thence East along the said South boundary line to the point of beginning, said lands containing 23.5 acres more or less.

Commencing at a point 36 rods South from the Northeast corner of the NW1/4 SW1/4 of Section 11, Township 104 North, Range 8 West; thence West 16 rods; thence North 36 rods to a point 19.75 rods West from the 1/8 line; thence West .25 rods; thence North 14.5 rods; thence East 20 rods; thence South

50.5 rods to the place of beginning;

The NE1/4 SW1/4 of Section 11, Township 104 North, Range 8 West, excepting therefrom the following premises:

A. All that part of the NE1/4 SW1/4 that lies Northwesterly of the centerline of Minnesota State Highway #43.

B. The East 340 feet of the NE1/4 SW1/4 of Section 11 lying South of the centerline of Minnesota State Highway #43.

That part of the SE1/4 NW1/4 of Section 11, Township 104 North, Range 8 West lying West of the centerline of Minnesota State Highway #43 except beginning at a point 14.5 rods North of the SW corner thereof; thence East to the public highway; thence Northwesterly along the Southwest line of the highway to a point on the West line of the SE1/4 NW1/4, 38 rods North of the point of beginning.; thence South 38 rods to the point of beginning.

2. Due, timely and adequate legal notice of the hearing was published, served and filed.

3. The subject area is presently within the Village and abuts the City. The perimeter of the subject area is approximately 24.37% bordered by the City.

4. The Village has a population of approximately 607. The number of agricultural residences have been declining in the Village, and that loss of population has been replaced by rural residential development.

The City's current population is approximately 1,600. The City's population was 1,318 in 1970 and 1,478 in 1980.

5. The Village is approximately 21,562 acres in size.

6. The City is approximately 1,118 acres in size.

7. The subject area is approximately 62 acres in size.

The subject area consists of three separate parcels, two of which are located west of Minnesota Highway No. 43. One parcel is land owned by the City, which is approximately 10 acres in size. Immediately

north of the City property and northwest of the City is the Larson property, which is approximately 29 acres in size. The third parcel is the Himlie property, which is approximately 23 acres and east of Minnesota Highway No. 43 and north of the City.

That portion of the subject area known as the Himlie parcel, abuts the City by approximately 32.7% of its border. The Larson/City parcel abuts the City by approximately 18.69% of its border.

8. There are no waterways in the subject area. The southwest corner of the Larson property in the subject area, is approximately 150 feet from the Rush Creek Floodway. That same property is approximately 1100 feet from Rush Creek itself. The subject area is north and northeast of Rush Creek.

9. The subject area contains soils identified as plainfield and sparta loamy fine sands slightly or moderately eroded at two to six per cent slopes. The Himlie property in the subject area, contains soils identified as Fayette silt loam, terrace at two to six per cent slope. Plainfield and sparta soils are located within that part of the subject area owned either by the City or by the Larsons. The Himlie property is bisected by bluff elevation from the northwest corner to roughly the southeast corner with an elevation of 800 feet; this elevation continues roughly along the northern border of the Larson City parcel of property which is west of the Himlie property. The bluff elevation from the Himlie property then proceeds east into the City and then just north of the City boundary prior to heading into the portion of the northwest corner of the portion of the City which is the subject of a separate concurrent detachment and annexation proceeding.

The Village has the Root River, Rush Creek, and various other

waterways and bluffs exceeding elevations of 1,235 feet and valleys, along with some wetlands. The Minnesota Memorial Hardwood Forest is located within the Village. The Village is immediately west of the Richard J. Dorer Memorial Hardwood State Forest.

That portion of the Village known as South Rushford has an elevation between 700 and 800 feet.

The City has Rush Creek flowing through it from the northwest, through the center, to the southeast. The Root River flows along the City's southern border into the southeast section of the City.

The City has bluffs with elevations up to 1,000 feet on the eastern side of the City. There is a bluff range in the west, and west central portion of the City with elevations up to 1,100 feet. There are bluffs north of the City roughly 800 feet or more in height.

10. The subject area has land in agricultural production, vacant land and garden.

The Village has approximately 19,300 acres in agricultural production (approximately 99% of the area of the Village), land in residential use, approximately 1,805 acres in institutional use, and land zoned for commercial and industrial use.

The City has land in agricultural use, commercial use, industrial use, single-family residential use, multiple family use, and institutional use.

Significant portions of the City's west central, south central and east central area are presently used either for ponding or are vacant and undevelopable. The City has land zoned for agricultural use, commercial use, industrial use, and residential use. The majority of the land in the City is zoned agricultural, and residential is the

next largest zoned land.

Only a few parcels of land in the City are available for industrial development that are not presently either used or under some form of constraint such as being within the floodway or subject to severe elevation issues.

11. Both the Larson/City parcel of land and the Himlie parcel abut existing industrially used and zoned land within the City. The City anticipates the Larson/City parcel to be zoned industrial and used industrial. The owners of the Himlie parcel are seeking a similar zoning classification and use for their property.

12. The City contains state, federal, county and city roads. All but approximately two city streets have curb and gutters.

The Village has approximately 33 miles of roads. In some developments, the Village allows for a minimum roadway of 24 feet.

The subject area abuts Minnesota State Highway No. 43 and contains a portion of the Village of Rushford Road. It is located approximately nine miles south of Interstate 90.

There are presently no transportation changes proposed in the subject area.

13. The Village is in the process of developing a comprehensive plan. The Village has a zoning ordinance and subdivision regulations.

The City is in the process of amending and upgrading its existing comprehensive plan. The City has a zoning ordinance and subdivision regulations consistent with the existing comprehensive plan. The City has residential, commercial, and industrial zoning districts.

14. The Village has zoned the subject area as follows: City land is industrial, Larson parcel is industrial and the Himlie parcel is industrial.

presently zoned agricultural.

15. If the subject areas are concurrently detached and annexed, it is anticipated that the zoning for the City and Larson parcels would be industrial, while it has not been determined from the City's perspective what zoning would be applied to Himlie parcel. The property owners wish either a commercial or industrial zoning for the Himlie parcel.

It is projected that it will take less than ten years to fully develop the Larson and City parcels, assuming that development does not increase over the pace presently occurring. The inclusion of the Himlie property within the City, will give the City additional land to address any increased commercial/industrial development interest.

16. The City has adopted the Minnesota State Building code.

17. The Village provides its residents with fire protection and ambulance through a contract with the City. Police protection is provided through agreement with the City and by the Sheriff through the normal course of County patrolling. The Village provides water service to that portion of the Village known as South Rushford, which is located approximately 3/4 mile south of the central portion of the City. The Village provides administrative services, road maintenance and improvements, garbage collection and animal control to its residents.

There is presently no central waste-water treatment facility within the Village. There exists a contract between the Village and the City for the provision of municipal sewer and water from the City to the Village. Legitimacy of that contract is presently in question. The Village has no present plans to construct its own waste-water treatment plant.



The City provides water to approximately 80% of the City residents, sanitary sewer and waste-water treatment to approximately 98% of all the City residents; the City's waste-water treatment facility has a capacity of approximately 150,000 gallons of flow per day, and is presently operating at approximately 130,000 gallons per day. The City provides its residents with fire protection, police protection, street improvements and maintenance, administrative services, ambulance service, public library, municipal swimming pool, municipal airport, recreational facilities and electricity to almost all of the City residents.

In the subject area, there are no existing sewer or water services. The parcel owned by the City has water stubbed into it, the parcel owned by Himlie has water and sewer immediately south and stubbed into it so that it could be extended into the property. The Larson parcel is less than 150 feet from existing water service. Sewer service to the City parcel is approximately 300 feet away in the City and a total distance of approximately 700 feet through the City parcel to the Larson parcel.

Fire service is provided to the subject area by contract with the City. Electrical services are provided by Tri-County Electrical Cooperative. The City provides police protection to the subject area as does the County Sheriff's Department.

The City is willing to provide the subject area with all of the services it presently provides its residents.

18. There are no existing environmental problems in the subject area. To avoid potential environmental problems extension of municipal sewer for waste-water treatment service would prevent pollution to the

area from failing on-site septic systems.

The City is not experiencing any environmental pollution at this time.

In the Village, the area of South Rushford is experiencing on-site septic system failure. The reason for the failure may include the following factors: improper septic system installation, soils, and low elevation near a higher water table. The projected primary cause is improper system installation. The Village is presently exploring options to solve the waste-water treatment problem in South Rushford. In the 1980's, the Village and City explored various proposals to address the on-site problem. The Village installed a water system to serve South Rushford to avoid the use of wells that may have experienced contamination.

19. The subject area would receive services from the City if it were annexed, through the extension of municipal service lines adjacent to or near the subject area.

The subject area could receive municipal sewer service from the City, and the City would still have additional capacity in its treatment plant, depending upon the type of industrial or commercial development in the area.

20. The Village had a 1993 market value of approximately \$17,409,500. The Village tax capacity is approximately \$225,398. The Village had a total bonded indebtedness of approximately \$85,000.

The City had a 1993 assessed valuation of approximately \$31,300,000. The City's net tax capacity is approximately \$607,037. It had a total bonded indebtedness of approximately \$1,300,000. The City has a tax increment financing district which contains approximately 22%

of the City's value. The district has been experiencing a positive cash position and may have significant development funds available for use by the City to improve other commercial/industrial areas.

The City's tax rate in 1993 was approximately 1.1952. The Village's tax rate was approximately 5% less than the City's, at approximately 1.16.

21. The Himlie and Larson parcels in the subject area had an assessed value of approximately \$42,800. The estimated market value of the City's parcel of land was \$50,000. The subject area pays approximately \$1,483.00 in taxes, with a market value of \$117,300.

22. It is not anticipated that the concurrent detachment and annexation of the subject area would have any impact on the area school district since both the City and that area of the Village are served by the same school district. Increased commercial/industrial development in the subject area could increase the school district's tax base.

#### CONCLUSIONS OF LAW

1. The Minnesota Municipal Board duly acquired and now has jurisdiction of the within proceeding.

2. Concurrent detachment and annexation of the subject area is in the best interest of that portion of the Village consisting of the subject property.

3. The City of Rushford can provide the subject area with the necessary governmental services.

4. The remainder of the Village can continue to survive without the subject area and will be relieved of the need to provide utility service and other municipal services to the subject area, as well as on-going monitoring to insure compliance to avoid pollution.

5. The concurrent detachment and annexation will provide for more effective or economic delivery of services by the affected municipalities.

6. The concurrent detachment and annexation will benefit the municipalities and is in the best interest of the municipalities.

7. The concurrent detachment and annexation will have no impact on the building code applicability or transportation network.

8. The concurrent detachment and annexation will have no impact on the area school district.

9. The Minnesota Municipal Board should issue an order approving the concurrent detachment and annexation of the subject area from the Village to the City.

O R D E R

1. IT IS HEREBY ORDERED: That the following described property, be and the same hereby is, detached from the Village of Rushford and annexed to the City of Rushford, Minnesota, the same as if it had been originally a part thereof:

That part of the NW1/4 SE1/4 of Section 11, Township 104 North, Range 8 West of the Fifth Principal Meridian lying NE'ly of the centerline of Minnesota Trunk Highway No. 43, excepting therefrom the following parcel: beginning at the SE corner of the NW1/4 SE1/4; running thence North 394.5 feet; thence West to the centerline of Minnesota Trunk Highway No. 43 running across said 40 acre tract; thence in a SE'ly direction along the centerline of said Highway No. 43 to the South boundary line of said 40 acre tract; thence East along the said South boundary line to the point of beginning, said lands containing 23.5 acres more or less.

Commencing at a point 36 rods South from the Northeast corner of the NW1/4 SW1/4 of Section 11, Township 104 North, Range 8 West; thence West 16 rods; thence North 36 rods to a point 19.75 rods West from the 1/8 line; thence West .25 rods; thence North 14.5 rods; thence East 20 rods; thence South 50.5 rods to the place of beginning;

The NE1/4 SW1/4 of Section 11, Township 104 North, Range 8

West, excepting therefrom the following premises:

A. All that part of the NE1/4 SW1/4 that lies Northwesterly of the centerline of Minnesota State Highway #43.

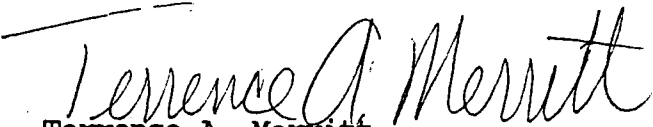
B. The East 340 feet of the NE1/4 SW1/4 of Section 11 lying South of the centerline of Minnesota State Highway #43.

That part of the SE1/4 NW1/4 of Section 11, Township 104 North, Range 8 West lying West of the centerline of Minnesota State Highway #43 except beginning at a point 14.5 rods North of the SW corner thereof; thence East to the public highway; thence Northwesterly along the Southwest line of the highway to a point on the West line of the SE1/4 NW1/4, 38 rods North of the point of beginning.; thence South 38 rods to the point of beginning.

2. IT IS FURTHER ORDERED: That the effective date of this order is March 29, 1994.

Dated this 29th day of March, 1994.

MINNESOTA MUNICIPAL BOARD  
Suite 475, McColl Building  
St. Paul, Minnesota 55101

  
Terrence A. Merritt  
Executive Director



MEMORANDUM

In approving the concurrent detachment and annexation of the subject area, the Board notes with concern that there are near islands of land adjacent to the Larson, City and Himlie parcels that include Highway 43 right-of-way and individual property owners that should be included within the City. To orderly provide services to them, the Board suggests that concurrent detachment from the Village and annexation to the City should occur for those parcels.

The Board also urges the parties to work together to look at the overall picture for the community at large, and not just as two individual cities. The Board is confident that the communities can put their mind to it and provide service to the larger community more effectively. *JAM 3-29-94*

