

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>
CITY OF RUSHFORD AND ANNEXATION TO THE	)	<u>AND ORDER</u>
CITY OF RUSHFORD VILLAGE PURSUANT TO	)	<u>AND MEMORANDUM OPINION</u>
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 August 19, 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:

S1/2 of the SW1/4 of Section 12, Township 104 North,  
Range 8 West  
EXCEPT:  
Parcel A (L. Rue)  
AND  
Parcel B (L. Dahl)  
Lying North and East of Pine Meadow Lane.

**BOUNDARY DESCRIPTION for Loren Rue, Rushford, MN.**

A part of the Southwest Quarter of Section 12, Township 104 North, Range 8 West, Fillmore County, Minnesota, described as follows:

Commencing at the southwest corner of the Southwest Quarter of said Section 12; thence North 01 degree 44 minutes 09 seconds West (NOTE: all bearings are in relationship with the west line of said Southwest Quarter) along the west line of said Southwest Quarter for a distance of 156.33 feet to a point in the centerline of a described 60 foot wide Street; thence North 78 degrees 44 minutes 20 seconds East along said centerline for a distance of 492.94 feet; thence North 00 degrees 22 minutes 16 seconds West for a distance of 30.55 feet to the north right of way line of the 60 foot wide Street; thence continue North 00 degrees 22 minutes 16 seconds West along the east line of a 60 foot Future Street Easement for a distance of 279.48 feet to the POINT OF BEGINNING of the Parcel to be described; thence continue North 00 degrees 22 minutes 16 seconds West along said east Street Easement line for a distance of 39.17 feet; thence Northerly along said east Street Easement line and along a tangent curve, concave southwesterly, radius of 195.48 feet, central angle of 07°01'24", for an arc distance of 23.96 feet; thence South 88 degrees 39 minutes 27 seconds East for a distance of 203.76 feet to the west line of a 60 foot wide Roadway Easement; thence South 03 degrees 37 minutes 05 seconds East along said west Roadway Easement line for a distance of 339.41 feet to a point

in the northerly right of way of the 60 foot wide Dedicated Street; thence westerly along said northerly right of way line and along a Non-tangential curve, concave southerly, radius of 405.00 feet, central angle of  $07^{\circ}44'57''$ , for an arc distance of 54.77 feet, chord bearing of North 78 degrees 06 minutes 53 seconds West; thence North 00 degrees 22 minutes 16 seconds West for a distance of 265.24 feet; thence North 88 degrees 39 minutes 27 seconds West for a distance of 168.00 feet to the POINT OF BEGINNING. Containing 0.58 Acres, more or less.

BOUNDARY DESCRIPTION for Roger Olson, Rushford, MN. (Parcel sold to Larry Dahl)

A part of the Southwest Quarter of Section 12 and a part of the Northwest Quarter of Section 13, all in Township 104 North, Range 8 West, Fillmore County, Minnesota, described as follows:

Commencing at the southeast corner of the Southwest Quarter of said Section 12; thence South 88 degrees 50 minutes 41 seconds West (NOTE: All bearings are in relationship with the south line of the Southwest Quarter of said Section 12) along the south line of the Southwest Quarter of said Section 12 for a distance of 1023.00 feet to the POINT OF BEGINNING of Parcel to be described; thence North 01 degree 09 minutes 19 seconds West, at right angles, for a distance of 202.00 feet; thence South 88 degrees 50 minutes 41 seconds West for a distance of 50.00 feet; thence South 01 degree 09 minutes 19 seconds East for a distance of 202.00 feet to the south line of said Southwest Quarter; thence North 88 degrees 50 minutes 41 seconds East along said south line for a distance of 50.00 feet to the POINT OF BEGINNING.

ALSO, Commencing at the northeast corner of the Northwest Quarter of said Section 13; thence South 88 degrees 50 minutes 41 seconds West (NOTE: all bearings are in relationship with the north line of the Northwest Quarter of said Section 13) along the north line of the Northwest Quarter of said Section 13 for a distance of 1023.00 feet to the POINT OF BEGINNING of the Parcel to be described; thence South 03 degrees 12 minutes 14 seconds East for a distance of 240.00 feet; thence North 48 degrees 20 minutes 39 seconds West for a distance of 70.49 feet; thence North 03 degrees 12 minutes 14

seconds West for a distance of 192.06 feet to the north line of said Northwest Quarter; thence North 88 degrees 50 minutes 41 seconds East along said north line for a distance of 50.00 feet to the POINT OF BEGINNING. Both above parcels together contain 0.48 Acres, more or less.

Easement description for Roger Olson (Access easement to Larry Dahl property)

ALSO, together with a temporary Non-exclusive easement for ingress and egress purposes to the above described parcels, being an easement 35 feet wide, 30 feet on the north side and 5 feet on south side of the following described Section line;

BEGINNING at a point in the south line of the Southwest Quarter of said Section 12 which is 1073.00 feet westerly of the southeast corner of said Southwest Quarter; thence westerly along said south line to the east right of way line of the 60 foot wide street owned by the City of Rushford and there terminating, lengthening and shortening the side lines of said easement to terminate at the west line of the above described parcels and the east right of way line of said City Street.

By stipulation of counsel for the parties, the property description was amended as follows and is the "subject area" for the remainder of the Findings of Fact, Conclusions of Law and Order and Memorandum Opinion:

BOUNDARY DESCRIPTION FOR LOREN RUE, RUSHFORD, MN:

A part of the SW1/4 SW1/4 of Sec.12-104-8, Fifth Principal Meridian, Fillmore County, Minnesota, described as follows: Commencing at the SW Corner of the SW1/4 SW1/4 of said Sec. 12; thence North 01 degrees 44' 09" West (NOTE: All bearings are in relationship with the West line of the SW1/4 of said Section 12) along the West line of said SW1/4 for a distance of 156.33 feet to a point in the centerline of a described 60 foot wide Street; thence North 78 degrees 44' 20" East along said centerline for a distance of 492.94 feet; thence North 00 degrees 22' 16" West for a distance of 30.55 feet to the North right of way line of the 60 foot wide Street and the Point of Beginning; thence north 78 degrees 44' 20" East along the North line of said Street for a distance of 33.02 feet; thence Easterly along a tangential curve, concave Southerly, radius of 405.00 feet, central angle of 19 degrees 15' 59", for an arc distance of 136.19 feet; thence North 00 degrees 22' 16" West for a distance of 265.24 feet; thence North 88 degrees 39' 27" West for a distance of 168.00 feet to a point in the East line of a proposed 60 foot wide Street and

marked by a found 1/2" iron pipe; thence South 00 degrees 22' 16" East along the East line of said proposed Street for a distance of 279.48 feet to the Point of Beginning. Contains 1.03 acres, more or less.

ALSO, a part of the Southwest Quarter of Section 12, Township 104 North, Range 8 West, Fillmore County, Minnesota, described as follows: Commencing at the southwest corner of the Southwest Quarter of said Section 12; thence North 01 degree 44' 09" seconds West (NOTE: all bearings are in relationship with the west line of said Southwest Quarter) along the west line of said Southwest Quarter for a distance of 156.33 feet to a point in the centerline of a described 60 foot wide Street; thence North 78 degrees 44' 20" East along said centerline for a distance of 492.94 feet; thence North 00 degrees 22' 16" West for a distance of 30.55 feet to the north right of way line of the 60 foot wide Street; thence continue North 00 degrees 22' 16" West along the east line of a 60 foot Future Street Easement for a distance of 279.48 feet to the POINT OF BEGINNING of the Parcel to be described; thence continue North 00 degrees 22' 16" West along said east Street Easement line for a distance of 39.17 feet; thence Northerly along said east Street Easement line and along a tangent curve concave southwesterly, radius of 195.48 feet, central angle of 07 degrees 01' 24", for an arc distance of 23.96 feet; thence South 88 degrees 39' 27" East for a distance of 203.76 feet to the west line of a 60 foot wide Roadway Easement; thence South 03 degrees 37' 05" East along said West Roadway Easement line for a distance of 339.41 feet to a point in the northerly right of way of the 60 foot wide Dedicated Street; thence westerly along said northly right of way line and along a Non-tangential curve, concave southerly, radius of 405.00 feet, central angle of 07 degrees 44' 57", for an arc distance of 54.77 feet, chord bearing of North 78 degrees 06' 53" West; thence North 00 degrees 22' 16" West for a distance of 265.24 feet; thence North 88 degrees 39' 27" West for a distance of 168.00 feet to the POINT OF BEGINNING. Contains 0.58 Acres, more or less.

BOUNDARY DESCRIPTION FOR ROGER OLSON, RUSHFORD, MN (PARCEL SOLD TO LARRY DAHL).

A part of the Southwest Quarter of Section 12 and a part of the Northwest Quarter of Section 13, all in Township 104 North, Range 8 West, Fillmore County, Minnesota, described as follows: BEGINNING at the southeast corner of the Southwest Quarter of said Section 12, marked by a sq.-headed iron bolt; thence South 88 degrees 50' 41" West (NOTE: All bearings are in relationship with the south line of said Southwest Quarter of Section 12) along the south line of said Southwest Quarter for a distance of 1023.00 feet; thence North 01 degree 09' 19" West at right angles to said south line for a distance of 202.00 feet; thence North 88 degrees 50' 41" East for a distance of 1020.74 feet to a point in the east line of said Southwest Quarter; thence South 01 degree 48' 08" East along said east line for a distance of 202.01 feet to the southeast corner of said Southwest Quarter and the POINT OF

BEGINNING. Contains 4.74 Acres more or less.

ALSO, BEGINNING at the northeast corner of the Northwest Quarter of said Section 13; thence South 01 degree 50' 19" East (NOTE: all bearings are in relationship with the north line of said Northwest Quarter of Section 13) along the east line of the Northwest Quarter of said Section 13 for a distance of 239.86 feet; thence South 88 degrees 50' 41" West for a distance of 1017.28 feet; thence North 03 degrees 12' 14" West along an existing fence for a distance of 240.00 feet to a point in the north line of said Northwest Quarter; thence North 88 degrees 50' 41" East along said north line for a distance of 1023.00 feet to the POINT OF BEGINNING. Contains 5.62 Acres more or less.

Both above described parcels together contain 10.36 Acres more or less.

ALSO, a part of the Southwest Quarter of Section 12 and a part of the Northwest Quarter of Section 13, all in Township 104 North, Range 8 West, Fillmore County, Minnesota, described as follows: Commencing at the southeast corner of the Southwest Quarter of said Section 12; thence South 88 degrees 50' 41" West (NOTE: All bearings are in relationship with the south line of the Southwest Quarter of said Section 12) along the south line of the Southwest Quarter of said Section 12 for a distance of 1023.00 feet to the POINT OF BEGINNING of Parcel to be described, thence North 01 degree 09' 19" West, at right angles, for a distance of 202.00 feet; thence South 88 degrees 50' 41" West for a distance of 50.00 feet; thence South 01 degree 09' 19" East for a distance of 202.00 feet to the South line of said Southwest Quarter; thence North 88 degrees 50' 41" East along said south line for a distance of 50.00 feet to the POINT OF BEGINNING.

ALSO, Commencing at the northeast corner of the Northwest Quarter of said Section 13; thence South 88 degrees 50' 41" West (NOTE: all bearings are in relationship with the north line of the Northwest Quarter of said Section 13) along the north line of the Northwest Quarter of said Section 13 for a distance of 1023.00 feet to the POINT OF BEGINNING of the Parcel to be described; thence South 03 degrees 12' 14" East for a distance of 240.00 feet; thence North 48 degrees 20' 39" West for a distance of 70.49 feet; thence North 03 degrees 12' 14" West for a distance of 192.06 feet to the north line of said Northwest Quarter; thence North 88 degrees 50' 41" East along said north line for a distance of 50.00 feet to the POINT OF BEGINNING. Both above parcels together contain 0.48 Acres, more or less. Easement description for Roger Olson (Access easement to Larry Dahl property).

ALSO, together with a temporary Non-exclusive easement for ingress and egress purposes to the above described parcels, being an easement 35 feet wide, 30 feet on the north side and 5 feet on the south side of the following described Section line: BEGINNING at a point in the south line of the Southwest Quarter of said Section 12 which is 1073.00 feet westerly of the southeast corner of said Southwest Quarter; thence westerly along said south line to the east right of way line of the 60 foot wide street owned by the City of Rushford and there terminating, lengthening and shortening

the side lines of said easement to terminate at the west line of the above described parcels and the east right of way line of said City Street.

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

3. The subject area is presently within the City and abuts the Village. The perimeter of the subject area is approximately 42.8% bordered by the Village; the City would have a more irregular northeast boundary if the subject area were detached and annexed to the Village.

4. The Village has a population of approximately 607. The number of agricultural residences has been declining in the Village, and that loss of farm 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.

The subject area has an estimated population of approximately eight.

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 70 acres in size. It is located in the northeast section of the City. There are three individual properties, the Johnson property which is approximately less than 1.5 acres, the Rasmussen property which is approximately 1.5 acres in size, and the Olson property which is the remainder of the area under consideration.

8. There are no waterways in the subject area. The southwest corner of the subject area is approximately 675 feet from the Rush Creek Floodway and is approximately 1350 feet from Rush Creek itself. The subject area is north and northeast of Rush Creek.

9. The subject area contains the following soils identified as: plainfield and sparta loamy fine sands slightly or moderately eroded with

two to six per cent slopes; escarpments; chelsea and boone loamy fine sands, slightly or moderately eroded with seven to eleven percent slopes, chelsea and boone loamy fine sands with twelve to seventeen percent slopes, plainfield and sparta loamy fine sands eroded with seven to eleven percent slopes, and steep rocky land.

Bluffs bisect the subject area from the northwest corner to the southeast corner with additional bluffs in the eastern portion of the subject area. The subject area includes elevations in excess of 800 feet in the center of the subject area and northwest corner. The northwest corner has an elevation of 833 and there is a ridge along the eastern portion of the area, with an approximate elevation of 900 feet.

The Village has the Root River, Rush Creek, various other waterways and some wetlands. The Village has bluffs exceeding elevations of 1,235 feet and valleys. 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 the center, from the northwest, 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 portions 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 presently being left in grass since it was previously over grazed. Some of the Olson property is used for cash rent crops and some of the Olson property is used for a tree farm. Also,



in the subject area there is a single family residence as well as a residence that is used for a bed and breakfast.

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.

11. The subject area is approximately 330 feet north of Tyroll Hills Addition, which is a residential development area in the City.

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 a minimum roadway of 24 feet.

Access to the subject area is exclusively through the City on Pine Meadow Lane.

The City requires curb, gutter and asphalt surface. The Village does not require as wide a road nor does it require curb and gutter in some of its developments.

The only other possible, but not presently existing access to the subject area would be if a road was extended from Trunk Highway No. 43,

which is north and west of the subject area, eastward through a portion of the Olson property and other properties, then southward into the subject area. There may be constraints on whether the road can be built because of bluffs and elevations since some of that area varies from 800 to 1,000 feet in elevation.

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.

14. The City is zoning the subject area agricultural.

15. If the subject area is concurrently detached and annexed, it is anticipated that the zoning would be some type of residential.

Mr. Olson proposes to develop the subject area and land he owns north of the subject area into a large lot type residential development.

The City's subdivision regulations allow for the type of development that property owner Olson is considering. Presently, there has been no preliminary plats submitted by the property owner to the city for development of the subject area as required by city subdivision regulations.

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, with one "as needed" employee, 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 with a three member staff, 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 subject area receives the remainder of services other City residents receive. There is sewer and water service approximately 300 feet south of the subject area in the Tyroll Hills development. Additionally there is water service west of the subject area on Highway 43, which, if extended easterly and then southerly on Pine Meadow Lane, would result in the looping of the water service to Tyroll Hills.

Electrical service to the subject area is provided by Tri-County Electrical Cooperative.

The Village 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. The soils in the subject area can cause difficulty for on-site septic systems. To avoid potential environmental problems extension of municipal sewer for waste-water treatment service would prevent pollution to the area from failing 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, poor soils for septic systems, and low elevation near a higher water table. The possible 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 not receive either central sewer or water from the Village, since it presently does not have either of those services.

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 subject area had an estimated market value in 1993 of approximately \$27,500.

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.

#### 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 not in the best interest of that portion of the City consisting of the subject area.

3. The City of Rushford Village cannot 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 not be required to provide utility service and other municipal services to the subject area, or on-going monitoring to insure compliance with wastewater treatment mandates to avoid pollution.

5. The concurrent detachment and annexation will not benefit the municipalities and is not in the best interests of the municipalities.

6. The Minnesota Municipal Board should issue an order denying the petition for the concurrent detachment and annexation of the subject

area from the City to the Village.

O R D E R

1. IT IS HEREBY ORDERED: That the petition for the concurrent detachment and annexation of the area described in Findings of Fact 1 is hereby denied.

2. IT IS FURTHER ORDERED: That the effective date of this order is September 30, 1994.

Dated this 30th day of September, 1994.

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

  
Terrence A. Merritt  
Executive Director

M E M O R A N D U M

The Board commends the City of Rushford Village and the City of Rushford for their efforts in the meetings the Municipal Board directed under Minnesota Statutes 414.01, Subdivision 16. The efforts in looking at the big picture are to be commended. The Board urges the parties to continue looking at the big picture as the issues they began addressing in these meetings deal with the larger community and are not limited to each individual city.

There is a strong overall community of interest! Should future consolidation occur, area citizens and future developers would have one entity to work with instead of two, resulting in a more focused approach for planning and community development with possible economies of scale and efficiency. An increase in the size of a city increases the issues that one is empowered to address. Neighbors can work together on common matters, not separated by jurisdictional boundaries. It is agreed that this area is beautiful and the environment can be fragile, which may best be protected through a single entity. TAM 1-30-94