

12-2900-15004-2

**STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS**

FOR THE OFFICE OF STRATEGIC AND LONG RANGE PLANNING

In the Matter of the Petition of Dawson Grain Coop, Inc., for the Detachment of Certain Land from the City of Dawson Pursuant to Minn. Stat. Ch. 414

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

The above-entitled matter came on for hearing before Administrative Law Judge Steve M. Mihalchick at 10:00 a.m. on January 29, 2003 at the Dawson City Hall, Dawson, Minnesota. The hearing was concluded, argument was presented, and the hearing record closed on that date.

Richard Stulz, Swenson, Nelson & Stulz, PLLC, 214 Sixth Avenue, Madison, MN 56256, appeared representing Petitioner, Dawson Grain Coop, Inc. John M. Tollefson, Tollefson Law Office, 677 Pine Street, PO Box 269, Dawson, MN 56232, appeared representing the City of Dawson. David M. Gilbertson, Nelson, Oyen, Torvik, 221 North First Street, PO Box 656, Montevideo, MN 56265, appeared representing the Township of Riverside.

NOTICE

This Order is the final administrative decision in this matter under Minn. Stat. § 414.12 and the delegation to the Office of Administrative Hearings by the Director of the Office of Strategic and Long Range Planning.¹ Any person aggrieved by this Order may appeal to the Lac qui Parle County District Court by filing an application for review with the Court Administrator within 30 days of the date of this Order. An appeal does not stay the effect of this Order.²

Any party may submit a written request for an amendment of these Findings of Fact, Conclusions of Law and Order within seven days from the date of the mailing of the Order.³ However, no request for amendment shall extend the time of appeal from these Findings of Fact, Conclusions of Law and Order.

STATEMENT OF ISSUES

Whether, under Minn. Stat. § 414.06, the property Petitioner seeks to have detached from the City is rural in character and not developed for commercial or

¹ The Office of Strategic and Long Range Planning is referred to as Minnesota Planning.

² Minn. Stat. § 414.07, subd. 2.

³ Minn. R. 6000.3100.

industrial purposes. The Administrative Law Judge concludes that the property is not rural in character and has been developed for commercial or industrial purposes.

Whether, under Minn. Stat. § 414.06, detachment of the property would render the remainder of the City unable to carry on the functions of government without undue hardship. The Administrative Law Judge concludes that it would not.

Whether, under Minn. Stat. § 414.06, the property should be detached from the City. The Administrative Law Judge concludes that it should not.

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

FINDINGS OF FACT

1. On February 19, 2002, Petitioner filed a Petition for Detachment of certain property it owned (the Subject Property) from the City of Dawson (the City).⁴ The Petition contained the items required by Minn. Stat. § 414.06, subd. 1. The Petition contained an abbreviated property description from a tax statement that described the boundaries of the Subject Property adequately for notice purposes. Petitioner filed an Amended Petition for Detachment at the hearing on January 29, 2003, containing the full legal description of the Subject Property.⁵ The property is slightly more than five acres,⁶ is situated in Lac qui Parle County, and is described as follows:

A tract or parcel of land located in the Southeast Quarter (SE ¼) of Section Seventeen (17), Township One Hundred Seventeen (117 N) North, Range Forty-Three (43 W) West of the Fifth Principal Meridian, described as follows, to-wit: Commencing at the Southwest corner of the Southeast Quarter of the Southeast Quarter (SE ¼ SE ¼) of said Section 17, thence running westerly on and along the south line of said Southeast Quarter (SE ¼) of Section 17, for a distance of Two Hundred (200) feet, thence running Northerly on a line parallel with the west line of said Southeast Quarter of the Southeast Quarter (SE ¼ SE ¼) of Section Seventeen (17), to the South right-of-way Line of the Chicago and Northwestern Railway Company, formerly the Minneapolis and St. Louis Railway Company, thence running Southeasterly along the South right-of-way line of said railway company, to a point of intersection with the West line of said Southeast Quarter of the Southeast Quarter (SE ¼ SE ¼) of Section 17, thence running Southerly on and along the said west line of said Southeast Quarter of the Southeast Quarter (SE ¼ SE ¼) of Section

⁴ Minnesota Planning Record, Tab 1.

⁵ Ex. 1.

⁶ The Petition and Amended Petition describe it as 5.14 acres, which is the taxable area from the tax statement. Ex. 4. The factual statement filed by Petitioner describes it as 5.32 acres. MP Record, Tab 27. The higher number appears more accurate from measuring the zoning map, Ex. 13, and includes a right of way easement for Highway 212. Presumably that area is not taxed.

Seventeen (17) to the place of beginning, subject to easements and reservations of record, if any.

2. Petitioner seeks detachment from the City because it feels it receives no services from the City, because its property taxes would be reduced, and because it would avoid a City-wide storm sewer district assessment.⁷

3. The City opposes the Petition. Dawson is in the center of Riverside Township.⁸ If the Petition is granted, the Subject Property would become a part of Riverside Township. Riverside Township is neutral on whether the Petition should be granted.⁹

4. On March 18, 2002, the Office of Strategic and Long Range Planning (OSLRP) issued a Notice of Hearing setting an OSLRP hearing for April 10, 2002, in Dawson. On the date of the hearing, the parties appeared, evidence was read into the record without objection, and the parties were ordered to meet at least three times over the following sixty days to discuss resolution of this matter. The hearing was continued to an indefinite date.

5. In a letter dated May 22, 2002, the parties advised OSLRP that an agreement had not been reached, and that the main point of contention was the definition of the term "developed" as it pertained to the property.

6. By agreement of the parties and a letter dated July 15, 2002, the Director of OSLRP referred this case to the Office of Administrative Hearings for appointment of an Administrative Law Judge pursuant to Minn. Stat. § 414.12, subd. 2. The matter was set for a hearing on September 13, 2002. At the request of the parties the hearing was reset for October 14, 2002, and then again for January 29, 2003, after further settlement negotiations failed.

7. The City is a basically a square, a mile on each side, contiguous with Section 21 of Riverside Township. U.S. Highway 212 runs across its northern edge and a railroad line run through the City from its northwest corner east, southeasterly to its east edge. Most of the developed area of the City is in the north half of Section 21. Very generally, the area along Highway 212 is zoned commercial and the area along both sides of the railroad track is zoned industrial or commercial. The City also includes a few areas that extend beyond Section 21. One is along the north side of Highway 212 in Section 16 that goes up to several hundred feet back from the highway and is zoned commercial. Another is a rectangular area that extends from the west side into Section 20 slightly more than a quarter mile that is zoned residential and mixed use. Another follows the railroad track for about a mile to the southeast where it expands to an area of about 100 acres between the tracks and an airport. That area is zoned industrial.¹⁰

⁷ Testimony of Mark Willand, Petitioner's General Manager.

⁸ Map attached to Petition.

⁹ Representations of David Gilbertson, counsel for the Township, presented at the hearing.

¹⁰ Ex. 13.

8. The Subject Property is located in another area located to the northwest of the northwest corner of Section 21 in Section 17 of Riverside Township (the Northwest Area). The Northwest Area runs westerly along the north side of Highway 212 one quarter mile to the quarter section line, then another 200 feet. That additional 200 feet is the front of the Subject Property. The railroad track runs across the Northwest Area from northwest to southeast. The property east and north of the track is about 600 feet deep, the property to the west and south of the track runs from the highway to the track, although there is a narrow judicial ditch along the south side of the track in that area. The Northwest Area is zoned industrial.¹¹

9. The Subject Property is the west 200 feet of the Northwest Area. It extends north from Highway 212 to the ditch and railroad right of way. That is about 1060 feet on its east edge and 1260 feet on its west edge. The diagonal north edge is some 260 feet long.¹² Thus, the east edge, which borders the rest of the City, constitutes about 38 percent of the Subject Property's perimeter. The other three sides are bordered by Riverside Township.

10. Petitioner is engaged in the receiving, shipping, buying, and selling of grain and feed. It operates a feed mill in the center of town in the industrial area along the railroad tracks where several large mills and elevators are located. In 1980, it apparently saw a need to expand its storage capacity and obtained the Subject Property. It then filed a Petition for Annexation of the Subject Property to the City. That petition stated that the Subject Property was "suitable for commercial development adaptable to urban government," and would be in need of City services including sewer to aid and facilitate commercial development of the property, and that it was in the best interest of the City and Riverside Township that the Subject Property be annexed to the City. On June 3, 1980, the Dawson City Council adopted an ordinance approving the requested annexation.¹³

11. Petitioner built its first grain storage bins on the Subject Property in 1981 and added more over the years through 1999. There are now seven steel-corrugated bins with a storage capacity approximately 750,000 bushels, a "receiving leg" to receive the grain from the trucks and trailers, and a truck scale and scale building. There are no current plans for further expansion and there is limited space remaining on the Subject Property to do so. There are no residences or cropland on the Subject Property. Petitioner uses the Subject Property to receive and store grain from farmers, which it buys from the farmers or stores for later purchase, and to load trucks for shipment of the grain when it is sold to grain terminals or other buyers. Petitioner has one full-time employee at the Subject Property, which it calls its "West Complex," who oversees the grain in the bins and the shipping and receiving of the grain.¹⁴

12. Within the City and immediately east of the Subject Property is a row of trees, then a fertilizer plant. East of that are a cement plant, the railroad tracks, and a

¹¹ Ex. 13; Testimony of Mark Willand.

¹² Ex. 13.

¹³ Ex. 2.

¹⁴ Testimony of Mark Willand.

Jenni-O processing plant, all in the City. North and west of the Subject Property are farm fields and farm homes in Riverside Township. To the south across Highway 212, is a golf course to the southeast; a farm field to the south and southwest, and an implement dealer west of that, all located outside the City and in Riverside Township. South of the golf course and farm field is the residential and multiple use district that juts out from near the center of the west edge of the City.¹⁵

13. In 1975 water had been installed to the Northwest Area at the request of the three business then located there or their predecessors. The closest point of the City water supply to the Subject Property is at a fire hydrant located in front of the fertilizer plant, about 350 feet from the structures on the Subject Property.¹⁶ It would cost roughly \$5000 to extend the water service to the Subject Property. The nearest sewer connection is about a half mile east on the north side of Highway 212. It would cost much more than \$5000 to extend sewer service to the Northwest Area and the Subject Property, particularly since a lift station would be needed.¹⁷

14. Water usage on the Subject Property is minimal, it is needed only for a toilet and sink in the scale house. Water is provided to the property by a private well installed by the Petitioner in 1992. Petitioner also installed a private sewer/septic system to service the property. Petitioner will retain its private water and sewer systems regardless of whether the Petition is granted.¹⁸

15. In 1978, Lac qui Parle County had zoned the quarter-quarter containing the Subject Property and the farmland to the west and north as industrial. If the property is detached, it will still be in an industrial zone. If any additional grain bins were built, they would require a special use permit from the county.¹⁹ No one at the hearing was aware of any plans to develop the farmland to the west and north of the Subject Property.

16. There is curb and gutter along both sides of Highway 212 through the City up to the east property line of the Subject Property. From there west there is no curb and gutter and there are fog lines painted on the highway. Access to the property is by gravel driveway off of Highway 212. There is no frontage road, curb, or gutter in front of the Subject Property.²⁰

17. The City provides street sweeping services along Highway 212 up to and in front of the Subject Property.²¹ The property is also serviced by the City's Heartland bus service, a dial-and-ride service that has never been used by anyone there.²² The City does not provide garbage pick-up at the property because Petitioner hauls its trash

¹⁵ Exs. 5-13: Testimony of Mark Willand.

¹⁶ Testimony of Jeffery Olson, Fire Chief for the City of Dawson.

¹⁷ Testimony of Brent Powers, City Maintenance Superintendent.

¹⁸ Testimony of Mark Willand.

¹⁹ Testimony of Darrell Ellefson, Lac qui Parle Planning/Zoning Administrator..

²⁰ Exs. 9 and 10; Testimony of Mark Willand.

²¹ Testimony of Brent Powers.

²² Testimony of Mark Willand and Dave Bovee, Dawson City Manager.

to its site in the center of the City for pick-up there.²³ The closest street light is across Highway 212 near the golf course approximately 600-1000 feet away and does not provide light for the Subject Property.²⁴

18. The City presently provides police protection to the Subject Property by routine day and evening patrols several times per day. In 1993, the Dawson Police Department investigated and made arrests regarding fraud and theft taking place on the property by employees and accomplices. Ultimately, Petitioner received restitution from the criminals of the \$19,000 that had been stolen. If the Subject Property is detached from the City, the Lac qui Parle County Sheriff's Office would take over police protection to the property, resulting in less coverage and protection of the property and slower response times in case of emergency. However, because the Dawson Police Department provides support to the Sheriff's deputies in nearby areas around the City, the Dawson Police Department would still be providing some service to the Subject Property.²⁵

19. The Dawson Fire Department is a totally volunteer fire department independent from the City. It operates under contracts to provide fire protection to the City, Riverside Township, and six other nearby townships. The City provides about 50 percent of the funding for the Dawson Fire Department. The City built and provides the fire station and pays the Fire Department's workers' compensation and pension contribution obligations. The City has purchased equipment for the Fire Department in the past, but recently the townships have also contributed to equipment purchases. The Dawson Fire Department owns a special snorkel device used for fighting tall fires, such as those in tall grain storage bins like Petitioner's. It was purchased at the request of the elevators in the City and makes them eligible for reduced insurance rates.²⁶

20. The Dawson Fire Department now provides fire protection to the Subject Property under its contract with the City. The hydrant that would be used to serve the property is the one located approximately 350 feet to the east in front of the adjacent fertilizer plant. That hydrant provides excellent water output. The Dawson Fire Department will continue to provide the same service to the property if it is detached from the City, but it would do so under its contract with the Riverside Township. That contract requires payment of a minimum \$350 fee for each call. There is no fee for calls to fires on City property.²⁷

21. The total property tax payable in 2002 on the Subject Property was \$17,362.00, of which \$7,557.82 was paid to the City.²⁸ If the Subject Property had been detached, the total property tax would have been \$12,068.00, of which \$1,071.00 would have been paid to Riverside Township. That would have been a \$5294.00 tax savings for Petitioner and a \$6486.82 loss for the City. The difference arises because tax

²³ Testimony of Mark Willand.

²⁴ Testimony of Mark Willand who further stated that Petitioner provides its own lighting for the property.

²⁵ Testimony of William Stock, Chief of Police for the City of Dawson.

²⁶ Testimony of Jeffery Olson.

²⁷ Testimony of Jeffery Olson.

²⁸ Ex. 4.

payments to the county and the school district would both increase several hundred dollars due to the detachment.²⁹

22. The \$6,500 tax loss to the City represents approximately two percent of its total tax levy. The City's total general fund budget is approximately \$1.3 million; the total cost to run the City is approximately \$2 million. In addition to its tax levy, the City's other main source of revenue is local government aids from the State. Those aids will be reduced substantially for at least the next two years due to the State's budget crisis. Loss of the property tax from the Subject Property would constitute a hardship for the City, which is already run on a tight budget, but in the words of the City Manager, the City would "make due."³⁰

23. The City has two large storm water drainage areas that need upgrading. The City has formed a City-wide storm sewer district with taxing authority to make the required improvements. The district will assess the cost against all property in the City and allow payments over seven years. No estimate of the cost of that assessment to the Subject Property was given.³¹

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

CONCLUSIONS OF LAW

1. The Administrative Law Judge has jurisdiction in this matter under Minn. Stat. §§ 414.06 and 414.12 and the delegation of the Director of the Office of Strategic and Long Range Planning to the Office of Administrative Hearings.

2. Petitioner has the burden of proof to demonstrate all facts at issue by a preponderance of the evidence.

3. Minn. Stat. § 414.06, subd. 3 provides, in pertinent part:

Upon completion of the hearing, the board may order the detachment if it finds that the requisite number of property owners have signed the petition if initiated by the property owners, that the property is rural in character and not developed for urban residential, commercial or industrial purposes, that the property is within the boundaries of the municipality and abuts a boundary, that the detachment would not unreasonably affect the symmetry of the detaching municipality, and that the land is not needed for reasonably anticipated future development. The board may deny the detachment if it finds that the remainder of the municipality cannot continue to carry on the functions of government without undue hardship.

²⁹ Ex. 3.

³⁰ Testimony of Dave Bovee.

³¹ Testimony of Dave Bovee.

4. This proceeding was properly initiated under Minn. Stat. § 414.06, subd. 6, by a Petitioner for Detachment signed by the sole owner of the Subject Property.

5. The Subject Property is not rural in character, rather, it has been developed for commercial or industrial purposes. Most important among the facts listed above, there is a large commercial operation there, developed by Petitioner itself. While it is an agriculture-related business, the number and size of the grain bins create an industrial appearance and are larger than what would be located on all but the very largest farms. It has customers that deliver their grain there. It has one full-time employee assigned there and two others that provide support from the main location in the nearby center of the City. The property is presently zoned industrial and has been since 1978. While there is farmland to the east and north of the Subject Property, the curb stops, and the tree line creates a partial screen to the east, the structures on the property and its use are more like the structures and uses of the adjoining industrial properties to the east. The property is also consistent with the commercial and industrial properties along Highway 212 farther to the east and the implement dealer to the west. The use of the Subject Property is the same as that of the elevators located in the center of the City. In a rural area, grain storage is an adjunct to a farming operation. On the Subject Property, it is a principal offering of the business.

6. The Subject Property is within the boundaries of the City and abuts a boundary of the City.

7. The detachment of the Subject Property would not unreasonably affect the symmetry of the City. The shape of the City is already asymmetrical and symmetry is not an issue there.

8. The Subject Property is not needed for reasonably anticipated future development. It is already fully developed by Petitioner and no further development in the area is currently anticipated.

9. If the Subject Property were detached, the remainder of the City could continue to carry on the functions of government without undue hardship. While the City currently operates on a tight budget and is run frugally, the amount of the property tax revenue lost would create only a limited hardship and the City could still function adequately.

10. Because the Subject Property is not rural in character and has been developed for commercial or industrial purposes, the Petition must be denied.

11. Any conclusion more properly denominated a finding is adopted as such.

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

ORDER

IT IS HEREBY ORDERED that:

1. The Petition of Dawson Grain Coop, Inc., for the detachment of the Subject Property from the City of Dawson is **DENIED**.

2. The Executive Director of Municipal Boundary Adjustments shall cause copies of this Order to be mailed to all persons described in Minn. Stat. § 414.09, subd. 2.

February 12, 2003



STEVE M. MIHALCHICK
Administrative Law Judge

Reported: Tape Recorded: 2 Tapes,
No Transcript Prepared