

2-0330-16690-BA

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGSIn the Matter of the Petition for the
Detachment of Certain Land from the
City of Lanesboro (D-419)**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER**

The above-entitled matter initially came on for hearing before Christine Scotillo, Executive Director of the Municipal Boundary Adjustments Division of the Office of Administrative Hearings, on March 24, 2005. The hearing was continued to allow for the gathering of additional evidence, and reconvened before Administrative Law Judge Raymond R. Krause at 10:00 a.m. on Tuesday, August 2, 2005, in the Council Chambers of the City of Lanesboro, 202 Parkway Ave. S. Lanesboro, Minnesota. The hearing concluded that day. Interested persons were encouraged to submit additional information for the record. The hearing record closed with the receipt of the Petitioner's and the City's final letters on August 11, 2005.

Thomas Manion Jr., Attorney at Law, 600 Kenilworth Ave. S. Lanesboro, MN 55949, appeared on behalf of the City of Lanesboro. Petitioner, James Wagner, 851 Zenith Ave., Lanesboro, MN 55949, appeared on his own behalf.

NOTICE

This Order is the final administrative decision in this case under Minn. Stat. § 414.031, and the Order of the Acting Director of the Office of Strategic and Long Range Planning dated November 8, 2002. Any person aggrieved by this Order may appeal to Fillmore 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.¹

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.² However, no request for amendment shall extend the time of appeal from these Findings of Fact, Conclusions of Law, and Order.

¹ Minn.Stat. §414.07, subd. 2.

² Minn. Rule pt. 6000.3100.

STATEMENT OF ISSUE

At issue in this proceeding is whether or not the Petition for Detachment should be granted or denied based upon the factors set out in statute. The Administrative Law Judge concludes that the Petition for Detachment should be granted.

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

FINDINGS OF FACT

Procedural History of this Proceeding

1. On July 19, 2004, Mr. James Wagner, property owner of a parcel within the City of Lanesboro (City) petitioned the Lanesboro City Council.³ The petition sought detachment of approximately 12.86 acres of property along the City's southwestern border. The area proposed for detachment (the "Subject Property") consists of one parcel and is described as follows:

That part of the Northwest Quarter of the Southeast Quarter of Section 19, Township 103 North, Range 9 West, Fillmore County, Minnesota, described as follows:

Commencing at the northeast corner of the Northeast Quarter of the Southeast Quarter of said Section 19: thence on an assumed bearing of South 89 degrees 27 minutes 47 seconds West a distance of 1311.59 feet to the northeast corner of said Northwest Quarter of the Southeast Quarter and the Point of Beginning; thence South 00 degrees 00 minutes 21 seconds East a distance of 1200.27 feet along the east line of said Northwest Quarter of the Southeast Quarter; thence North 67 degrees 59 minutes 02 seconds West a distance of 566.63 feet; thence North 03 degrees 38 minutes 00 seconds East a distance of 242.43 feet; thence North 00 degrees 00 minutes 21 seconds West a distance of 741.14 feet to the north line of said Northwest Quarter of the Southeast Quarter; thence North 89 degrees 27 minutes 47 seconds East a distance of 509.92 feet to the point of beginning. Containing 12.86 acres.

The grantor for himself, his heirs, and assigns, reserves a perpetual easement for ingress and egress over and across the south 315 feet of the west 66 feet of the above described property.

³ City Council Minutes, Attachment C to Petition.

2. On July 19, 2004, the City Council approved a motion to support the petition to detach the Subject Property.⁴

3. On August 2, 2004 a motion was made to reconsider the approval of detachment. The City Council approved the motion to reconsider.⁵

4. On August 16, 2004 the City Council voted to reverse its earlier determination and not support the detachment.⁶

5. On February 3, 2005 the owners of the Subject Property, Mr. and Mrs. Wagner, filed a petition with the Municipal Boundary Adjustment Division (MBA) requesting detachment pursuant to Minn. Stat. § 414. Both owners signed the petition for detachment.

6. On March 10, 2005 the parties were directed to engage in local meetings pursuant to Minn. Stat. § 414.01, subd. 16. They were due to report back to MBA on May 13, 2005.⁷

7. No response was timely received. MBA contacted the attorney for the City and was informed that no progress toward settlement had been made, nor was any likely. MBA requested that information in writing but did not receive any written communication.⁸

8. The MBA set the annexation petition on for hearing on March 24, 2005. Notice of the hearing was published prior to the hearing. The hearing was opened on March 24, 2005 and immediately continued indefinitely pending completion of the agency review process and delegation to the Minnesota Office of Administrative Hearings (OAH).

9. A Notice of Reconvened Hearing in this matter was issued by MBA on July 13, 2005 and duly published.

10. The reconvened hearing was conducted on August 2, 2005. The hearing concluded that day and the hearing record closed with the receipt of the last posthearing brief on August 11, 2005.

Physical Features

11. The Subject Property is characterized as rural in appearance. Approximately 1.4 acres of the total 12.86 acres is devoted to a dwelling and pole barn.

⁴ Id.

⁵ Id.

⁶ Id.

⁷ Transmittal Letter from MBA Dir. to OAH.

⁸ Id.

Approximately 1.3 acres is agricultural field producing hay and oats.⁹ The remainder is heavily wooded and contains ravines, which make it unsuitable for development.¹⁰

12. The Subject Property is classified as agricultural-homestead by the county assessor.¹¹

13. The Subject Property is within the boundaries of the municipality of the City of Lanesboro. The Subject Property abuts the border with the Township of Holt ("the Township"). The Subject Property is at the northeastern end of a finger of City territory projecting into the Township.¹²

14. The Subject Property is on Zenith Street. Zenith St. begins as a paved road but becomes gravel before it reaches the subject property. Zenith St. continues on beyond the Subject Property and beyond the City limits into the adjoining Township. The City maintains Zenith St. for City residents as well as Township residents. Maintenance of the gravel portion of the road includes snow plowing, weed cutting, gravelling, grading and dust control.¹³

15. Maintenance of Zenith St. by the City beyond City limits is as a result of an agreement between the City and the Township stemming from a 1991 annexation of Township land by the City.¹⁴

16. In addition to road maintenance, the Subject Property receives fire, police, ambulance service as well as City water. No City sewer service is provided to the part of Zenith St. fronting the Subject Property. Sewer service to the Subject Property is not, at this point, economically feasible since a lift station would be required to adequately service this area.¹⁵

17. Other properties within the municipal boundaries and near the Subject Property on Zenith St. are flatter and more suitable to development.¹⁶

18. Electricity is provided through the municipal utility, Tri-County Electric.¹⁷

19. The Petitioner paid \$2000.00 toward the cost of the extension of the water line to the subject property. The total cost of the extension was unable to be determined by the City.¹⁸

⁹ Tape at 778.

¹⁰ Tape at 42, and 822.

¹¹ Attachment B to Petition.

¹² Attachment A-2 to Petition.

¹³ Tape at 61, 314, 319, and 438.

¹⁴ Tape at 580.

¹⁵ Tape at 70, 387, and 399.

¹⁶ Tape at 729.

¹⁷ Tape at 486.

¹⁸ Tape at 344, 370, and 538.

20. Fire and ambulance service to the Subject Property would continue in emergency situations regardless of whether the Subject Property was part of the City or the Township. Police service would transfer to the County Sheriff from the City.¹⁹

21. Whether road maintenance of Zenith St. in front of the Subject Property would continue per the 1991 agreement with the Township if detachment occurs is unresolved.

22. The Subject Property is a small parcel that has minimal impact on the economic or functional aspects of the City's overall well being.

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. §§ 414.01, 414.02, 414.031, 414.11-12 and the Order of the Acting Director of the Office of Strategic and Long Range Planning, dated November 8, 2002.

2. Proper notice of the hearing in this matter has been given.

3. Municipal government of the Subject Property proposed for detachment in the Petition is not required to protect the public health, safety and welfare.

4. Detachment will not adversely affect the ability of the remainder of the municipality to carry on the functions of government.

5. The Subject Property comports with all the factors set out by Minn. Stat. § 414.06, subd. 3 for detachment.

6. Citations to transcripts or exhibits in these Findings of Fact do not mean that all evidentiary support in the record has been cited.

7. These conclusions are arrived at for the reasons set out in the Memorandum which follows and which is incorporated into these conclusions by reference.

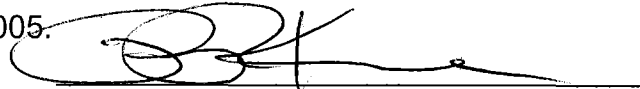
Based upon the foregoing Conclusions of Law, the Administrative Law Judge makes the following:

ORDER

IT IS HEREBY ORDERED that the Petition for Detachment filed by the Petitioner is GRANTED.

¹⁹ Tape at 507.

Dated this 16th day of August 2005.



RAYMOND R. KRAUSE
Administrative Law Judge

Reported: Taped. One tape. No transcript prepared.

MEMORANDUM

This is a proceeding under Chapter 414 to consider the Petition for detachment of a 12.86-acre parcel of land within the City of Lanesboro. The parcel would, if detached, revert to governance by the Township of Holt.

Statutory Factors for Detachment

Minnesota Statutes, § 414.06, subd. 3, sets out five affirmative factors to be considered when determining whether or not a petition for detachment should be granted or denied. One additional discretionary criterion is also set out.

(3) Order

“Upon completion of the hearing, the director may order the detachment on finding that the requisite 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 director may deny the detachment on finding that the remainder of the municipality cannot continue to carry on the functions of government without undue hardship.”

The first factor requires that the property owners have signed the petition. In this case, there is only one parcel with two owners. Both owners have signed the petition. This factor is therefore satisfied.

The second factor is that the land be rural in character and not developed for urban uses. The testimony of the Petitioner was that the Subject Property is rural. Most of the land is wooded and cut through with ravines that make it unsuitable for development. Part of the remainder is in active agricultural production, planted in hay and oats. Only 1.4 acres is given over to the homestead and pole barn. A single homestead and pole barn is consistent with a rural character and does not by itself force

a conclusion that the property is developed for urban use. Petitioner testified that there are no plans to develop any portion of his property in the future.²⁰

In support of Petitioner's testimony is the classification by the Fillmore County Assessor of the Subject Property as "Agricultural-Homestead". The testimony provided by the City was mixed on this issue but the preponderance of the testimony by the City Administrator was that the Property had a rural look or character; "It is kind of an agricultural, rural looking area."²¹; "From the cemetery up, you're looking at a mainly more rural setting...".²² In any case, the City did not provide sufficient evidence to controvert the Petitioner's testimony with regard to its rural character. The second factor is therefore satisfied.

The parties do not dispute that the Subject Property is within the municipal boundaries and abuts the boundary with the Township on the north and east. This satisfies the third factor.

The fourth factor deals with symmetry of the municipality. The location of the Subject Property is at the northeastern end of a finger of municipal land jutting into Holt Township. Detachment would result in that finger of land being slightly shorter and in that sense the municipality would be more symmetrical rather than less. The City raised no concern in this regard during the hearing and this ALJ finds no issue to prevent satisfaction of the fourth factor.

The fifth and final factor is that the detaching property must not be needed for reasonably anticipated future development. The testimony of the Petitioner and the City Administrator was that there are several parcels of land between the Subject Property and the main part of the City that are more suited to development than the Subject Property. Although water service has been extended to the Subject Property, no sewer service is available or anticipated in the near future because of the costs involved in adding a lift station. Other developable properties, closer to the City, can be served by sewer without a lift station. The other properties mentioned were also more topographically suited to development than the Subject Property. The City made no claim that the Subject Property was in any way essential to future development. This ALJ therefore finds that the fifth factor is also satisfied.

The discretionary criterion in Minn. Stat. § 414.06 subd. 3 states that a detachment may be denied upon a finding "that the remainder of the municipality cannot continue to carry on the functions of government without undue hardship." This detachment concerns one small parcel at the far end of the municipal boundary. It is in no way essential to the functions of government and the loss of its relatively small tax value will not pose an undue hardship on the community at large.

All five statutory factors for detachment having been met and finding no compelling reason to prohibit detachment, the petition is granted.

²⁰ Tape at 737 and 822.

²¹ Tape at 240.

²² Tape at 365.

Costs

The parties were unable to agree upon a division of costs pursuant to Minn. Stat. §414.12, subd. 3(c). The Chief Administrative Law Judge, therefore, allocates the cost of the hearing. In cases where no agreement is reached between the parties, a larger proportion of the costs are generally assigned to the non-prevailing party. In this case, the City is the non-prevailing party. Also, because the City did not make a reasonable attempt to agree with the Petitioner on stipulated facts, as directed by the Prehearing Order, the hearing was longer than necessary. In view of this and the outcome, the City is assigned 80 percent of the cost and the Petitioner 20 percent of the cost.

R.R.K.