

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MUNICIPAL BOUNDARY ADJUSTMENTS UNIT

In the Matter of the Petition by Mary
Ebnet *et al.* for the Detachment of
Certain Land from the City of Breezy
Point Pursuant to Minnesota Statutes
Chapter 414

**FINDINGS OF FACT,
CONCLUSIONS AND
DECISION**

The above-entitled matter came on for hearing before Administrative Law Judge Barbara L. Neilson at 9:00 a.m. on September 9, 2009, at the City Hall, 8319 County Road 11, Breezy Point, Minnesota. The hearing continued on September 10, 2009. This matter was consolidated for hearing with another petition for detachment from the City of Breezy Point which was filed by Doug Rach *et al.*, OAH Docket No. 11-0330-20499-BA. This Report addresses only the Petition for Detachment filed by Mary Ebnet *et al.*

The Ebnet Petitioners appeared on their own behalf, without counsel. Mary and Patrick Ebnet were their primary spokespersons. The Rach Petitioners also appeared on their own behalf, without counsel. Douglas Rach was their primary spokesperson. Andrew MacArthur, Attorney at Law, Couri, MacArthur & Ruppe, P.L.L.P., appeared on behalf of the City of Breezy Point. Gerald J. Brine, Attorney at Law, P.O. Box 720, Crosslake, MN 56442, appeared on behalf of Ideal Township. Bruce Galles, Chair of the Pelican Town Board, appeared on behalf of Pelican Township, without counsel.

The parties filed initial post-hearing briefs on October 20, 2009, and reply briefs on November 10, 2009. The hearing record closed on November 16, 2009, upon receipt of the last submission from the parties in the consolidated hearing.

During the consolidated hearing, the following exhibits were received into evidence: Joint Exhibits 1 - 10; Ebnet Exhibits E1 – E9 and E11; Rach Exhibits R102, R104, R106, and R110 – R116; and City Exhibit 1. The Affidavit of Kathy Millard regarding the City's bonded indebtedness submitted after the hearing has been marked and received into the record as City Exhibit 2. The September 17, 2009, response of the Ebnet Petitioners to the Millard affidavit has been marked and received into the record as Ebnet Exhibit E12.

STATEMENT OF THE ISSUES

The issue in this proceeding is whether the Petition for Detachment filed by Mary Ebnet *et al.* should be granted based on the factors set forth in Minn. Stat. § 414.06.

The Administrative Law Judge finds that the Ebnet Petition should be granted.

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

Procedural Findings

1. On January 20, 2009, Petitioners filed a Petition for Detachment of property from the City of Breezy Point, Minnesota (hereinafter referred to as "the Petition" or "the Ebnet Petition"). The Petition was filed by three property owners/spouses (Mary Ebnet; her son, Ted Ebnet, and his wife, Kimberly Ebnet; and another son, Patrick Ebnet, and his wife, Kelli Ebnet). The Petitioners seek to detach approximately 248 acres from the City of Breezy Point pursuant to Minn. Stat. § 414.06.¹

2. The property proposed for detachment (subject area or detachment area) in the Ebnet Petition is described as follows:

Lots 1 and 2, S½ NE¼, Sec. 6, Twp. 136, Rge. 28; and

Government Lots 3 and 4, Except that part of Government Lot 4 lying North of Township Road, Section 6, Township 136, Range 28.

3. A separate petition for detachment from the City of Breezy Point was also filed on January 20, 2009, by a group of property owners on the southwest side of the City (Doug Rach *et al.*, hereinafter referred to as the Rach Petition).

4. At its meeting in January, 2009, the Breezy Point City Council referred the Ebnet Petition to the City's Planning Commission. On February 2, 2009, the Breezy Point City Council referred the Rach Petition for Detachment to the City's Planning Commission.²

5. Jim Perry, the City's Associate Planner, prepared reports regarding the Ebnet and Rach Petitions and provided them to the Planning Commission on or about February 10, 2009. In his report pertaining to the Ebnet Petition, Mr. Perry noted, "The property appears to be rural in character, and not developed for Urban Residential purposes. Staff interpretation of Urban Residential would include City services such as road, sewer and water." He noted that the "properties do have documented

¹ Petition, in MBA file.

² Testimony ("Test.") of Jo Ann Weaver, Jim Perry; Jt. Exhibit ("Ex.") 3 at 9; Ex. E4 (Feb. 10, 2009, Memorandum from J. Perry to Planning Commission re Ebnet Petition; also contained in Jt. Ex. 4).

Commercial/Industrial Uses including a gravel pit/processing plant, a game farm/game processing plant, and a construction company associated with the gravel operation." Mr. Perry outlined several issues for consideration by the Planning Commission, such as whether the change in boundary would create an unreasonable change in symmetry, the impact that the loss of commercial operations may have on the City, use of City roads by Petitioners' gravel business, the tax revenue that would be lost if detachment were granted, and the precedent that would be set for additional detachments "given the character of the community."³

6. At its February 10, 2009, meeting, the City's Planning Commission discussed the Ebnet and Rach Petitions. The Planning Commission unanimously recommended to the City Council that it oppose the Rach petition. The Commission recommended by a 4-2 vote that the City Council support the Ebnet petition on the condition that the City also petition for the detachment of the Minnrath/Anderson parcels which adjoin the Ebnet properties on the south and west. Gerald Smieja, who was one of the Planning Commission members who voted "no," stated that he could support the detachment but could not support the City petitioning for the detachment of additional parcels.⁴

7. With respect to the Ebnet Petitioners, the Planning Commission's findings noted that the property meets the definition of agricultural use; game farms are an agricultural use and gravel pits are allowed in agricultural districts and are more suitable for governance by a county or township than by a city; Crow Wing County has the ability to enforce the existing conditional use permits on the property and has adequate staff and resources to do so; the adjacent property in Ideal Township is similar in nature with agricultural and gravel pit uses; the reduction in street maintenance costs associated with Wild Acres Road would offset the loss of tax base caused by detachment; detachment would consolidate the operations of Wild Acres Farm under one governing body; access to the property is not dependent on City roads; the effect on the symmetry of the City boundary is minimal since the long side of the petitioned area borders Ideal Township; there are no plans for future development or change in the use of the property; and the proposed detachment is similar to the detachment approved in the City of Rockville case.⁵

8. On March 2, 2009, the City Council decided to oppose both the Rach and Ebnet Petitions.⁶

9. On March 6, 2009, the Executive Director of the Municipal Boundary Adjustment Unit (MBA) conducted a brief preliminary hearing in the City of Breezy Point regarding both detachment petitions. Notice of the hearing was published in *The Northland Press* on February 17, 2009, and February 24, 2009.

³ Ex. E4.

⁴ Jt. Ex. 5 at 3, 4.

⁵ Test. of J. Perry; Jt. Ex. 5 at 5. The decision to which the Planning Commission referred is that issued in a 2008 case, *In the Matter of the Petition for the Detachment of Certain Land from the City of Rockville*, OAH Docket No. 2-0330-19711-BA (Oct. 30, 2008).

⁶ Jt. Ex. 6 at 11-12.

10. On April 27, 2009, the Chief Administrative Law Judge issued an Order consolidating the Rach and Ebnet Petitions for hearing.

11. On April 28, 2009, the Director of MBA determined that this matter should be referred to an Administrative Law Judge for hearing and final decision.

12. A prehearing conference was conducted by the Administrative Law Judge on June 3, 2009, and the evidentiary hearing was scheduled for September 9-10, 2009.

13. Notice of the evidentiary hearing was published in The Northland Press on August 4, 2009, and August 11, 2009. The notice indicated that members of the public interested in this matter could submit written data, statements or arguments by mail or email to the Administrative Law Judge by September 10, 2009. No public comments were received.

14. An additional prehearing conference was held on September 2, 2009.

15. The Administrative Law Judge, accompanied by two of the Ebnet Petitioners, made a site visit to the subject properties on September 8, 2009. The City was offered the opportunity to have its counsel attend the site visit, but declined to do so and indicated that it had no objection to having the visit proceed without a City representative being present.⁷

16. At the end of the hearing, the City offered testimony relating to its bonded indebtedness through a witness who had not calculated the balance. The Administrative Law Judge ordered that an affidavit explaining the calculation be prepared and provided to all parties by September 16, 2009. It was further ordered that the Petitioners notify the Administrative Law Judge by September 23, 2009, if they wished to reconvene the hearing to address the bonded indebtedness issue. The Petitioners responded in writing but did not request that the hearing be reconvened.

17. Although the Ebnet and Rach Petitions for Detachment were consolidated for hearing, the properties involved in each of the Petitions are not adjacent to each other and the issues involved in each are not identical. Accordingly, separate decisions have been issued with respect to each Petition.

City of Breezy Point

18. The City of Breezy Point covers approximately 16 square miles. Its population in 2008 was 1,774 people.⁸ According to the Minnesota State Demographer, the City's population in 2007 was 1664, with 731 households.⁹ During the last ten years, the City's population has tripled.¹⁰

⁷ See Sept. 4, 2009, letter to the ALJ from Mr. MacArthur.

⁸ Test. of J.A. Weaver.

⁹ MBA File.

¹⁰ Test. of J. Perry.

19. The average lot size in the City is approximately one acre. The City has some smaller lots and some areas with 40-acre parcels. Approximately fifty percent of the lots in the City are 5 acres or more. Another sizable portion of the lots in the City are either 1 acre or 2½ acres.¹¹

20. The last Comprehensive Plan with respect to the City was drafted in 1997 and was formally adopted by the City Council in January 1998. Among other things, the 1998 Comprehensive Plan noted as an overall community goal that the City would “work to protect and preserve the natural ‘north woods’ character of the lakes area” and identified “[l]oss of ‘Up-North’ feeling” as a potential threat to the community.¹²

21. Since May of 2007, the City has been in the process of drafting a new Comprehensive Plan. One public input meeting was held in September 2007, and a series of public meetings were held in May 2008. The City expects to adopt a new Comprehensive Plan during the next year. By the date of the hearing, an 11-member subcommittee of the City’s Planning Commission had held three meetings with a consultant hired to assist in the process.¹³

22. The City does not have a water distribution system.¹⁴

23. The City provides sewer service to approximately 50% of the residential units in the City. However, only approximately 20% of the parcels in the City receive sanitary sewer service from the City, and only approximately 30% of the total area encompassed in the City receives such service.¹⁵

24. The City does not have a Sewer Comprehensive Plan.¹⁶ Because the City has upgraded its lift stations during the last five years, the statement in the 1998 Comprehensive Plan that “several of the pumping stations are near or at capacity” is no longer accurate.¹⁷

25. The City adopted a Five Year Road Plan in 2006.¹⁸ The Plan is fluid in nature. Some of the roadwork anticipated by the Plan has been accelerated, and other work has been delayed. About 30% of the work under the Plan has been completed. The City set aside the roadwork it expected to perform in 2009 due to economic conditions.¹⁹

26. The City’s zoning ordinance was last updated on May 21, 2007. The zoning districts established under the ordinance include, among others, agricultural districts, wooded residential districts, low density residential districts, and commercial

¹¹ Test. of J. Perry.

¹² Jt. Ex. 1 at 4, 6.

¹³ Test. of J. Perry.

¹⁴ Test. of T. Polipnick, J. Perry, O. Schmid.

¹⁵ Test. of J. Perry.

¹⁶ Test. of T. Polipnick.

¹⁷ Test. of T. Polipnick (see also Jt. Ex. 1 at 24).

¹⁸ Jt. Ex. 8.

¹⁹ Test. of T. Polipnick, J. Perry.

districts. The zoning ordinance indicates that the purpose of the agricultural district is "to establish and maintain a land use district that is rural in character and to prevent the occurrence of premature scattered urban development while encouraging agricultural and land uses which promote or foster forestry." The purpose of the wooded residential district is "to establish and maintain a low density wooded district, preserving the character of the City, serving as a buffer between ag/forestry and residential uses, and providing a rural single family setting with limited ag/forestry uses." The purpose of the low density residential district is "to establish and maintain an off lake shoreland or similar land use district with density controlled either by the lake classification or quasi rural standards." The purpose of the commercial district is "to establish and maintain a district consisting of offices, stores, retail fuel sales, restaurants, bars, storage facilities, repair shops, and other commercial businesses needed to support the community and provide for the general commerce."²⁰

27. Under the City's zoning ordinance, a game farm with hunting is permitted as an interim use in agricultural and wooded residential zoning districts, and is excluded in all other zoning districts.²¹

28. According to the City's zoning ordinance, an "extractive use" (such as the surface or subsurface removal of gravel) is permitted only in agricultural zoning districts as an "interim use" (i.e., if it meets the criteria required under a conditional use permit and has a specific ending date). Extractive uses are "excluded" in all other City zoning districts.²² The City recently denied a Conditional Use Permit to a gravel pit applicant on property zoned wooded residential.²³

29. The zoning ordinance includes a section pertaining to extractive use standards. The ordinance specifies that, in all districts where permitted, mining shall be permitted only by Conditional Use Permit. Under the ordinance, such permits are to be reviewed for compliance by the City's Planning Commission on an annual basis. The ordinance further requires that Conditional Use Permits include a site plan, a completion plan, and a haul route plan with provisions for road restoration. The ordinance allows the City to impose other conditions in connection with the issuance of a Conditional Use

²⁰ Jt. Ex. 2 at 4-6, 4-7.

²¹ Jt. Ex. 2 at 4-8.

²² Jt. Ex. 2 at 4-6, 4-8; Test. of M. Ebnet, J. Perry; see also Jt. Ex. 2 at 3-5 for definition of extractive use. The ordinance defines an "interim use permit" at 3-7 to involve the "[s]ame criteria as a Conditional Use Permit, but with a specific ending at a certain date or when a specific sequence of events take place." A "conditional use permit" is defined at 3-4 as "[a] land use or development as defined by Ordinance that would not be appropriate without restriction, but may specifically be allowed with appropriate restrictions or conditions as determined by the Planning Commission upon a finding that (a) the use or development is an appropriate conditional use in the land use zone and (b) the use or development with conditions conforms to the comprehensive land use plan and (c) the use with conditions is compatible with the existing neighborhood and (d) the use with conditions would not be injurious to public health, safety, welfare, decency, order, comfort, convenience, appearance or prosperity."

²³ Test. of J.A. Weaver, J. Perry.

Permit, such as requirements that the permit holder maintain and refurbish the haul roads or furnish material for repair and maintenance.²⁴

30. There are approximately 5,000 – 6,000 platted lots in the City that have not been developed.²⁵

31. At the present time, at least eight to ten City streets are used to access property that is not within City boundaries.²⁶

32. The City has some irregular borders at the present time, including some diagonals and zigzags due to property lines, lakes, and land uses. It has historically had a primarily straight boundary along its western and northern edges.²⁷

33. The City has annexed property from Pelican Township on at least four occasions in the past fifteen years (involving approximately 80 acres, 60 acres, 58 acres, and 5 acres). These annexations caused the City's boundary to become less symmetrical.²⁸ Three of the four annexations were opposed by the Township. During the hearings on those annexations, the City did not raise any concern about symmetry. Due in part to these annexations and the configuration of Pelican Lake, the border between the City and Pelican Township has historically been something other than a straight line.²⁹

Area involved in Petition for Detachment

34. There are approximately 248 acres (less than 4/10 of a square mile) in the area that is the subject of the Ebnet Petition. The subject area constitutes approximately 2.4% of the City's total area.³⁰

35. All three of the property owners and two of the spouses of the property owners within the subject area signed the Petition to Detach. Three adults and two children reside in the subject area.³¹

36. The subject area is currently within the boundaries of the City of Breezy Point and abuts a boundary of the City as well as a boundary of Ideal Township. The requisite number of property owners signed the Petition for Detachment.³²

²⁴ Jt. Ex. 2 at 6-17, 6-20.

²⁵ Test. of T. Polipnick.

²⁶ Test. of T. Polipnick,.

²⁷ Test. of J. Perry; Jt. Ex. 7.

²⁸ Test. of M. Ebnet, Bruce Gallas, J. A. Weaver; Ex. R114.

²⁹ Test. of B. Gallas; Ex. R114.

³⁰ The Feb. 10, 2009, Memorandum to the Planning Commission from J. Perry regarding the Ebnet Petition (Ex. E4, also contained in Jt. Ex. 4) arrived at a slightly different estimate of this percentage (2.3%) based upon the assumption that the proposed detachment involved 240 acres rather than 248 acres.

³¹ Petition; Ex. E1 (Factual Information provided by Petitioners (Feb. 18, 2009)) at 1; Test. of M. Ebnet.

³² Stipulation of Parties.

37. Excluded from the petition for detachment is a narrow parcel containing approximately one acre of forfeited tax land. This property, which is approximately 25 feet wide, is located just north of a dip in Wild Acres Road in the furthestmost northwestern parcel of the subject area (described as "All of Lot 4 lying N of Twp Road"). This property was offered at public auction in 1997 and was valued at that time at \$1,100. No bids were received.³³ As of September 4, 2009, Crow Wing County placed the market value of that parcel at \$700 and estimated that tax payable to the City for that property would be \$6.47, and tax payable to the Township would be \$4.19.³⁴

38. In their Petition and the Factual Information, the Petitioners indicated that they were requesting detachment because their land is very rural in nature, meets the detachment criteria, and is more similar to the Township's farming and agricultural properties. The Petitioners also stated that they have not received any City amenities for the taxes paid, and noted that their taxes went up 30 to 80% over the last three years.³⁵

39. The subject area is located in the northwest corner of the City, east of Nelson Road and south of Wild Acres Road. The buildings in the subject area consist of two residences, one garage, one storage shed, four poultry barns, one shop, one hatchery, and cleaning facilities.³⁶

40. The subject area is bordered by the City of Breezy Point to the east and south, Ideal Township to the north, and the City of Pequot Lakes to the west. Approximately 58% of the perimeter of the subject area is bordered by the City of Breezy Point, 33% is bordered by Ideal Township, and 8% is bordered by the City of Pequot Lakes.³⁷

41. There are a total of six parcels in the subject area. The average parcel size in the subject area is 41 acres. According to the City's 2006 Official Zoning Map, all six parcels are zoned as agricultural. The 1997 Land Use Plan incorporated in the existing Comprehensive Plan also guides this area as agricultural.³⁸

42. The Petitioners own property both in the City and in Ideal Township. They began farming in 1972, when only 33 people lived in the community.³⁹

43. The subject area has a population of 5. The subject area thus involves approximately .28% of the City's population.

³³ Test. of M. Ebnet; Ex. E8.

³⁴ Test. of M. Ebnet; Ex. E11.

³⁵ Petition at 1; Ex. E1 at 6, 7. See also Ex. E6 (Proposed 2009 Property Tax statements showing taxes increased 81.4% on one of Petitioners' parcels, increased 29.3% on another parcel, increased 3.2% on two parcels, and decreased 2.9% on one parcel).

³⁶ Test. of J. Perry; Petition.

³⁷ Factual Information provided by Ideal Township (in MBA file).

³⁸ Test. of J. Perry; Jt. Ex. 10 (last updated Aug. 3, 2006).

³⁹ Test. of M. Ebnet.

44. Wild Acres Road is a dirt and gravel road that runs east-west for approximately one mile along the northern edge of the subject area. It can be accessed from the west by County Road 16 or Nelson Road, and it dead ends on Petitioners' property to the east.⁴⁰ The City and Ideal Township have joint jurisdiction over this road. The City and the Township have agreed that the City will plow, grade, and conduct routine maintenance on the road, and that, by mutual consent, the cost of major repairs on that road will be split 50/50.⁴¹

45. Petitioner Patrick Ebnet breeds, hatches, raises, and processes birds, including chickens, ducks, turkeys, and pheasants, on his property in the subject area. He hatches approximately 52,000 – 54,000 birds each year. His operations include a hatchery, grow-out barns and pens, and a processing plant used to process the poultry raised on the farm. The hatching operation and processing plant are licensed and regulated by the Department of Agriculture.⁴² Mr. Ebnet delivers the processed birds to more than sixty accounts located in Minnesota. While some members of the public come to the property to purchase a bird, such purchases amount to no more than \$2,000 a year and are not a significant portion of his revenues.⁴³

46. The Petitioners also operate a game farm/shooting preserve for members of the public who pay a fee. In addition, the Petitioners have a dog kennel which held five dogs at the time of the hearing for the use of those who come to the property. The Petitioners no longer board dogs for other people.⁴⁴

47. Under the City's zoning ordinance, a game farm with hunting is permitted as an interim use in agricultural and wooded residential zoning districts, and is excluded in all other zoning districts.⁴⁵

48. A large gravel reserve exists in the subject area. During the 1990's, the Petitioners added a gravel extraction operation.⁴⁶

49. At some point during the 1990's, the City issued a Conditional Use Permit to the Petitioners approving a gravel extraction operation in the subject area. The conditional use permit issued by the City requires the Petitioners to refurbish Wild Acres Road and supply material at their cost.⁴⁷ To the extent that the Conditional Use Permit was issued to the Petitioners prior to adoption of the extractive use standards section of the zoning ordinance, the terms of the Conditional Use Permit and not the ordinance

⁴⁰ Test. of M. Ebnet; see Jt. Ex. 8 and 9. Mr. Perry agreed that Jt. Ex. 10 is inaccurate to the extent that it suggests that Wild Acres Road is longer than it actually is.

⁴¹ City Ex. 1 (refers to Wild Acres Road as "Ebnet Road"); Jt. Ex. 4 (Feb. 10, 2009, Memorandum to Planning Commission from J. Perry re Ebnet Petition).

⁴² Jt. Ex. 5 at 2; Test. of M. Ebnet, Patrick Ebnet.

⁴³ Test. of P. Ebnet.

⁴⁴ Test. of M. Ebnet; Wild Acres Farm website included in Jt. Ex. 4.

⁴⁵ Jt. Ex. 2 at 4-8.

⁴⁶ Test. of M. Ebnet, P. Ebnet.

⁴⁷ Ex. E4; Test. of T. Ebnet, T. Polipnick, J. Perry.

control Petitioners' operations.⁴⁸ The City has also issued Conditional Use Permits with respect to the Petitioners' game farm and the game processing plant.⁴⁹

50. In the event that the petition for detachment is granted, Crow Wing County has stated that it would enforce any Conditional Use Permits on the Petitioners' properties.⁵⁰

51. The Petitioners' property is a reasonably appropriate location for a gravel pit based upon surrounding land uses.⁵¹

52. The current gravel pit in the subject area is approximately ten acres in size. The equipment used in the gravel extraction operation is portable. Once the gravel has been extracted from the current area, the Petitioners intend to move their extraction equipment, reclaim that land, and harvest gravel from other locations on the property ten acres at a time. The Petitioners also currently operate another gravel pit about ¼ of a mile away on property they own in Ideal Township.⁵²

53. Petitioner Ted Ebnet is in charge of the gravel operation in the subject area and in Ideal Township. He has four trucks and one employee. The gravel pit in the subject area is not staffed but is run on an honor system. Customers simply drive in, load and weigh their trucks, and are invoiced later by Mr. Ebnet. Mr. Ebnet runs a company (Ebnet Supply d/b/a Lakeshore Construction) which occasionally makes bids to supply gravel to various road or resurfacing projects. Mr. Ebnet has also sold salt and sand to the City to use on roads.⁵³

54. After leaving Wild Acres Road, trucks hauling gravel from the pit located on the subject property or the pit located on Petitioners' Ideal Township property would typically travel on Buschmann Road, Nelson Road, Crow Wing County Roads 3, 11, or 16, U.S. Highway 371, and other area routes. There are other gravel pits in the area, including several in Ideal Township, and trucks hauling gravel from those pits also use the same roads, including Nelson and Bushmann Roads.⁵⁴

55. The City maintains Buschmann Road and splits the cost of maintenance of Nelson Road (a paved road that is ¼ mile long) evenly with the City of Pequot Lakes. Semis weigh approximately 82,000 pounds when empty, and dump trucks weigh approximately 72,000 pounds. Gravel trucks from all of the gravel pits in the area, including the one in the subject area, have contributed to the deterioration of the City roads.⁵⁵

⁴⁸ Test. of J. Perry.

⁴⁹ Ex. E4.

⁵⁰ Ex. E4.

⁵¹ Test. of J. Perry.

⁵² Test. of T. Ebnet.

⁵³ Test. of Theodore Ebnet.

⁵⁴ Test. of T. Ebnet, J. Perry.

⁵⁵ Test. of T. Polipnick, J. Perry.

56. Ted Ebnet estimated that, at most, 200 truckloads of material are typically hauled on City roads from both of the gravel pits he operates during the 5-month period when there are no road restrictions (May 15 - October 15). The three tri-axel trucks used by Ebnet Supply can each haul approximately 57,000 pounds of material. Ebnet Supply also has one quad truck that can haul approximately 65,000 pounds of material.⁵⁶

57. Petitioner Ted Ebnet has placed a significant amount of material on Wild Acres Road over the years. For example, he placed approximately 2,000 tons of Class 5 (worth roughly \$19,000) on the road during 2008. Mr. Ebnet supplied the material and trucking, and the City supplied a grader for that work. Mr. Ebnet has also purchased and placed chloride on Wild Acres Road approximately three times.⁵⁷

58. According to the City's Firearms Restrictions map, shooting is permitted in the subject area with the landowners' permission. Only a small percentage of the City has no restrictions on the use of shotguns.⁵⁸

59. The City's total tax receipts in 2008 were \$1,453,182. The total market value of property in the City was \$501,276,000.⁵⁹ Petitioners' estimated 2008 tax payments (including assessments) for the parcels were \$2,660. The estimated market value of their property was \$1,133,900.⁶⁰

60. Property owners in the subject area were responsible for paying approximately .18% of the City's 2008 tax receipts. The subject area comprises approximately .23% of the City's market value. The tax loss to the City that would be caused by detachment would be approximately \$2,660.⁶¹

61. The City's current Comprehensive Plan does not identify the subject area as an area of future need.⁶²

62. The City's 2006 Five Year Road Plan indicated that Wild Acres Road was expected to be rebuilt in 2011, but only 30% of the work under that plan had been completed by the time of the hearing.⁶³

63. City sewer and water services are not provided in the subject area, and the City does not have any plans to bring such services to the area. The homes located

⁵⁶ Test. of T. Ebnet.

⁵⁷ Test. of T. Ebnet, T. Polipnick.

⁵⁸ Test. of J. Perry, J.A. Weaver; Ex. R102.

⁵⁹ Ex. E4.

⁶⁰ *Id.*

⁶¹ Test. of J. Perry, J.A. Weaver; Ex. E4. Mr. Perry's Feb. 10, 2009, memorandum to the Planning Commission indicated that the Petitioners paid .19% of the City's 2008 tax receipts. However, it appears that the correct number is .18% (Petitioners' 2008 tax payment of \$2,660 divided by total 2008 tax receipts of \$1,453,182 = 0.0018).

⁶² Test. of T. Polipnick.

⁶³ Jt. Ex. 8.

on the subject property use private wells and private septic systems.⁶⁴ The closest City sewer trunk line to the subject area is located at the intersection of County Road 11 and Ranchette Drive, approximately three miles away from the closest point of the subject property.⁶⁵ If detachment occurs, there was no evidence of any adverse impact on the City's sewer lines.

64. The City's sewage treatment facility is at 55% capacity. The City would have the capacity to serve the subject area, but has no plans to do so.⁶⁶

65. The current City assessment for municipal sewer is typically \$4,000 per unit, plus a \$1,000 hook-up charge.⁶⁷

66. The Petitioners have a non-domestic septic system (a Class V injection well) on their property in connection with the poultry processing plant. When Pat Ebnet designed the septic system for the processing plant, he worked with an intern at the Department of Health. The Department was enthusiastic about the design of Mr. Ebnet's solids catch and told him that it would extend the life of the system. Mr. Ebnet cleans out the catch three to four times a year depending on volume and recently had a new filter installed. He also ensured that the drain field he built complied with City code requirements.⁶⁸

67. There are additional sites for domestic sewage areas on the Petitioners' property. If there were an emergency with one of the private septic systems in the subject area, it is likely that the best way to handle the emergency would be to have the property owner take care of the problem on site. It is unrealistic to expect that the City could build a line to the Petitioners' properties quickly enough to resolve an emergency. The Petitioners also have plans in place for the use of an additional site for non-domestic sewage, if necessary. If the non-domestic system were to fail, Mr. Ebnet has already dug and set a pond. He plans to line it and, in the event of an emergency, will obtain the necessary approval from the Minnesota Pollution Control Agency.⁶⁹

68. By virtue of federal Environmental Protection Agency requirements and a mandate by the Minnesota Pollution Control Agency, the code applicable to both domestic and non-domestic sewage systems will become stricter in the near future. The cost of a domestic septic system (currently around \$4,000) may double once the new code requirements are in place. Crow Wing County will be required to adopt the changes in the code by February 2010. Ideal Township relies upon the County's ordinances, so Township residents will fall under the County code as of February 2010.

⁶⁴ Ex. E1 at 5; Test. of M. Ebnet.

⁶⁵ Test. of T. Polipnick.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ Test. of P. Ebnet, T. Polipnick.

⁶⁹ Test. of T. Polipnick.

The City will have twelve months after that date to either adopt the same changes or make its code even stricter.⁷⁰

69. The subject area receives police protection from the City and Crow Wing County and receives fire protection under a joint agreement between the City and Pequot Lakes.⁷¹

70. The subject area consists primarily of agricultural, wooded, and rolling terrain. It is rural in character.⁷²

71. The Petitioners have no plans for future development or changes in the use of the property in the subject area.⁷³

72. The subject area has not been developed for urban residential purposes.

73. Petitioners' game farm/shooting preserve, dog kennel, and game processing operation are consistent with agricultural and rural uses and do not constitute commercial developments.

74. Although Petitioners' gravel extraction operation and gravel supply business have some attributes that may be associated with commercial or industrial activities, these operations are more consistent with agricultural and rural uses and are clearly more appropriate in a rural setting than an urban environment. In fact, the City's zoning ordinance permits extractive uses only in areas that are zoned agricultural. Moreover, since the equipment used in the gravel extraction operation is movable and not permanently installed, the Petitioners intend to reclaim the land and move the equipment to new areas within their property, and there are no structures on the property that serve as an office for Mr. Ebnet's gravel supply business, it does not appear in any event that the property has been "developed" for commercial or industrial purposes.

75. There are no other activities that occur in the subject area that can properly be characterized as commercial or industrial activities, and it has not been developed for such purposes.⁷⁴

76. There is no evidence that the City has any plans to develop the subject area for urban residential, commercial or industrial purposes.

77. Although the boundaries of the City in the northwest corner where the subject area is located have historically been straight,⁷⁵ much of the City's other boundaries are irregular in shape. If the detachment petition is granted, the northwest boundary would change somewhat as a result of excluding the 4-parcel rectangle and

⁷⁰ *Id.*; see Minn. Rules Chapters 7080 and 7082.

⁷¹ Ex. E4; Jt. Ex. 5 at 2; Test. of T. Ebnet.

⁷² Test. of M. Ebnet, J. Perry, J.A. Weaver, O. Schmid; Ex. E1 at 2; Site Visit.

⁷³ Test. of M. Ebnet.

⁷⁴ Test. of J.A. Weaver, J. Perry, Bruce Gallas.

⁷⁵ Test. of J. Perry, O. Schmid; Jt. Ex. 7.

adjoining 2-parcel rectangle encompassed in the subject area. Granting the petition for detachment would not have an unreasonable effect on symmetry.

Ideal Township

78. If the Petition is granted, the subject area will consolidate with Ideal Township. Ideal Township is neutral regarding the petition for detachment of the subject area from the City.⁷⁶

79. Ideal Township covers approximately 35 square miles.⁷⁷ According to the Minnesota State Demographer, the population of Ideal Township in 2007 was 990, with 481 households.⁷⁸

80. Property in Ideal Township is used for residential, industrial, and agricultural purposes. The Crow Wing County fire code and zoning, subdivision, and sanitation ordinances apply to Township residents.⁷⁹ The Township's 2004 Community-based Comprehensive Plan indicates that .5% of Township workers over the age of 16 work in farming, fishing, and forestry occupations; 39% work in construction, extraction, and maintenance occupations; and 36% work in production, transportation, and material moving occupations. The Comprehensive Plan further notes that "[a]gricultural land is sporadically located throughout Ideal Township."⁸⁰

81. A number of gravel pits are located in Ideal Township.⁸¹

82. As noted above, the Petitioners operate a second gravel pit on property they own in the Township, on the north side of Wild Acres Road. Detachment would consolidate the Petitioners' gravel extraction operations under one governing body.⁸²

83. Ideal Township has snowplow equipment but it is unclear whether it has a road grader. If the detachment petition is granted and the Township lacks a grader, Ted Ebnet will purchase one to help maintain Wild Acres Road.⁸³

84. Ideal Township does not provide water, sanitary sewer, or storm sewer service to its residents. Township residents thus rely on private wells and private septic systems. The Township does provide solid waste collection and disposal, street maintenance, street improvements, and administrative services to Township residents.⁸⁴ Property tax services are provided through the State and the County.⁸⁵

⁷⁶ Test. of B. Gallas.

⁷⁷ Factual Information provided by Township at 1 (Feb. 12, 2009).

⁷⁸ MBA File.

⁷⁹ Factual Information provided by Township at 2, 3 (Feb. 12, 2009).

⁸⁰ Ex. E9.

⁸¹ Test. of T. Ebnet, M. Ebnet.

⁸² Test. of M. Ebnet, T. Ebnet; Jt. Ex. 5 at 5.

⁸³ Test. of T. Ebnet.

⁸⁴ Factual Information provided by Township at 4, 6 (Feb. 12, 2009).

⁸⁵ Test. of B. Gallas, T. Polipnick.

85. Ideal Township does not provide law enforcement services to Township residents. Such services are provided by the Crow Wing County sheriff. Ideal Township does provide fire protection services to Township residents through a volunteer fire department.⁸⁶ Petitioner Ted Ebnet is one of the Township's volunteer fire fighters. If the detachment petition is granted and there later was a fire in the subject area, the Petitioners would not be billed.⁸⁷

86. Ideal Township's net tax capacity is \$9,186,920. Its current levy is \$750,000. The Township is purchasing a new piece of fire equipment. Its total bonded indebtedness will be \$270,000.⁸⁸

87. According to the Factual Information provided by the Township in connection with the petition, no new services would be necessary for the subject area and the Township would not suffer any undue hardship if the petition for detachment is approved.⁸⁹

Economic Repercussions of Detachment

88. The City is currently growing faster than it is losing residents. Between January 2009 and September 2009, the City issued approximately five permits for the construction of new homes, and expects approximately \$1 million in new tax base.⁹⁰

89. The property owners in the subject area were responsible for paying .18% of the City's 2008 tax receipts. The City would lose approximately \$2,660 in tax revenue if the subject area detaches.⁹¹ That revenue loss would be offset to some extent by service cost savings associated with the City no longer having to plow, grade, and maintain Wild Acres Road⁹² and no longer having to provide police and fire protection services to the subject area. The amount of the likely savings was not quantified in the record.

90. If the subject area were to be detached, there would be some financial impact on the City, but the City would be able to adapt. The City does not anticipate having to lay off any City staff if the property is detached.⁹³

91. The 2009 projected budget for the City is \$1,881,485.⁹⁴ The projected loss of tax revenue from detachment, approximately \$2,660, is .14% of the City's 2009 budget.

⁸⁶ Test. of M. Ebnet, T. Ebnet; Factual Information provided by Township at 4, 5 (Feb. 12, 2009).

⁸⁷ Test. of T. Ebnet, M. Ebnet.

⁸⁸ Factual Information provided by Township at 6, 7 (Feb. 12, 2009).

⁸⁹ *Id.*

⁹⁰ Test. of J. Perry.

⁹¹ *Id.*; Jt. Ex. 4 (Feb. 10, 2009, Memorandum to Planning Commission from J. Perry re Rach Petition).

⁹² See City Ex. 1 and Jt. Ex. 5 at 3.

⁹³ Test. of J. Perry, O. Schmid.

⁹⁴ Ex. R112.

92. There is no evidence that detachment of the subject property from the City will cause changes in service levels provided to the remainder of the City community.

Allocation of Indebtedness

93. The total bonded indebtedness of the City as of the date of the hearing was \$4,825,000, based upon the following bond issuances:⁹⁵

- a. \$1,490,000 remaining indebtedness on a May 1, 2004, general obligation capital improvement plan bond;⁹⁶
- b. \$975,000 in remaining indebtedness on a May 24, 2005, general obligation improvement bond originally issued in the amount of \$1,150,000 for the purpose of making road improvements to Eagle Lane/Sparrow Drive;⁹⁷
- c. \$1,900,000 in remaining indebtedness on a July 15, 2007, general obligation improvement bond for 2006 Breezy Point Drive improvements and 2007 road and utility improvements;⁹⁸ and
- d. \$460,000 in remaining indebtedness on a June 15, 2008, general obligation improvement bond for 2008 road improvements.⁹⁹

94. Each of these bonds is backed by the full faith and credit of the City. If the City defaulted, the balance would be spread among City residents.¹⁰⁰

95. Based upon the payment and debt service schedules provided by the City, it appears that the City was to make additional principal and interest payments on December 15, 2009, of \$159,047.50 on the 2007 general obligation improvement bond, and \$34,045 on the 2008 general obligation improvement bond.¹⁰¹ Assuming that these payments were in fact made, \$4,631,907.50 in bonded indebtedness will remain outstanding after the end of 2009. At a tax capacity of .18%, the subject area's share of the outstanding bonded indebtedness is \$8,337.43.

Hearing Costs

96. The parties did not agree to a division of the costs of this proceeding.

97. It is appropriate to allocate the costs of the proceeding relating to the Ebnet Petition to the parties on an equitable basis.

⁹⁵ Test. of Kathy Millard; City Ex. 2, Attachment B.

⁹⁶ City Ex. 2, ¶¶ 4, 5.

⁹⁷ *Id.* at ¶¶ 6, 7.

⁹⁸ *Id.* at ¶¶ 8, 9.

⁹⁹ *Id.* at ¶¶ 10, 11.

¹⁰⁰ Test. of Kathy Millard; City Ex. 2 (Affidavit of K. Millard), ¶ 12.

¹⁰¹ Attachments to City Ex. 2.

Based on these Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge has jurisdiction in this matter under Minn. Stat. §§ 414.06 and 414.12 and by the assignment by the Director of the MBA to the Office of the Administrative Hearings.

2. Proper notice of the hearing was given and this matter is properly before this Administrative Law Judge.

3. Petitioners have the burden of proof to demonstrate by a preponderance of the evidence that the statutory criteria for detachment have been met.

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

Upon completion of the hearing, the chief administrative law judge may order the detachment on finding that the requisite number of property owners have signed the petition if initiated by 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 chief administrative law judge may deny the detachment on finding that the remainder of the municipality cannot continue to carry on the functions of government without undue hardship.

5. The Petitioners have shown by a preponderance of the evidence that the detachment criteria set forth in the first sentence of Minn. Stat. § 414.06, subd. 3, have been met in this proceeding:

a. The proceeding was properly initiated by a Petition for Detachment signed by all ten of the property owners in the subject area;

b. The subject area is rural in character, and it has not been developed for urban residential, commercial or industrial purposes;

a. The subject area is within the boundaries of the City and abuts a boundary of the City;

d. The detachment of the subject area would not unreasonably affect the symmetry of the City; and

e. The subject area is not needed for reasonably anticipated future development.

6. Because the detachment of the subject area would not affect the City's ability to continue to carry on the functions of government and the City would not suffer undue hardship, the Petitioners have also satisfied the criterion set forth in the second sentence of Minn. Stat. § 414.06, subd. 3.

7. Minn. Stat. § 414.06, subd 3, provides for allocation of debt between the entities as follows:

The detached area may be relieved of the primary responsibility for existing indebtedness of the municipality and be required to assume the indebtedness of the township of which it becomes a part, in such proportion as the chief administrative law judge shall deem just and equitable

8. Minn. Stat. § 414.067, subd. 1, provides as follows for the allocation of outstanding debt to a divided municipality:

Township or municipality divided. Whenever the chief administrative law judge divides an existing governmental unit, the chief administrative law judge, or other qualified person designated by the chief administrative law judge with the concurrence of the parties, may apportion the property and obligations between the governmental unit adding territory and the governmental unit from which the territory was obtained. The apportionment shall be made in a just and equitable manner having in view the value of the existing township or municipal property located in the area to be added; the assets, value, and location of all the taxable property in the existing township or municipality; the indebtedness, the taxes due and delinquent, other revenue accrued but not paid to the existing township or municipality; and the ability of any remainder of the township or municipality to function as an effective governmental unit. *The order shall not relieve any property from any tax liability for payment for any bonded obligation, but the taxable property in the new municipality may be made primarily liable thereon.*

(Emphasis added.)

9. After consultation with and approval by the Chief Administrative Law Judge, it is appropriate for the subject area to remain responsible for its share of the City's outstanding bonded indebtedness in the amount of \$8,337.43.

10. Minn. Stat. § 414.12, subd. 3, specifies that, if the parties do not agree to a division of the costs before the hearing, the costs "must be allocated on an equitable basis by the . . . chief administrative law judge."

11. After consultation with and approval by the Chief Administrative Law Judge, it is appropriate to allocate the costs of this proceeding that are attributable to the Ebnet Petition as follows: to the City 75%, to the Petitioners 25%.

12. The attached Memorandum explains the reasons for these Conclusions and is incorporated by reference in these Conclusions.

Based upon these Conclusions, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

ORDER

IT IS HEREBY ORDERED that:

1. The Petition for the Detachment of the Subject Area from the City of Breezy Point is **GRANTED**.
2. The subject area shall remain responsible for its share of the City's outstanding bonded indebtedness in the amount of \$8,337.43, as calculated in Findings of Fact 93-95.
3. The Executive Director of the Municipal Boundary Adjustments Unit shall cause copies of this Order to be mailed to all persons described in Minn. Stat. § 414.09, subd. 2.
4. Pursuant to Minn. Stat. § 414.12, subd.3, the cost of these proceedings shall be divided as follows: to the City, 75%, to Petitioners, 25%.
5. This Order shall become effective on January 22, 2010.

Dated: January 15, 2010



BARBARA L. NEILSON
Administrative Law Judge

Approved as to the Allocation of Outstanding Bonded Indebtedness and Division of Costs:



RAYMOND R. KRAUSE
Chief Administrative Law Judge

Dated: January 15, 2010

Reported: Digitally Recorded; No Transcript Prepared.

NOTICE

This Order is the final administrative decision in this case under Minn. Stat. §§ 414.06, 414.09, and 414.12. Any person aggrieved by this Order may appeal to District Court by filing an Application for Review with the Court of Administrator within 30 days of the date of this Order. An appeal does not stay the effect of this Order.¹⁰²

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.¹⁰³ A request for amendment shall not extend the time of appeal from these Findings of Fact, Conclusions of Law, and Order.

MEMORANDUM

This is a detachment proceeding under Minn. Stat. Chapter 414 to consider a petition filed with the Municipal Boundary Adjustment Unit. All of the property owners of six parcels located in the northwestern corner of the City of Breezy Point seek to detach from the City and become part of Ideal Township. The Petitioners contend that the subject area is rural and therefore is better suited to governance by the Township than the City.

I. Does the Subject Area Meet the Initial Statutory Factors?

As set forth in the first sentence of Minn. Stat. § 414.06, subd. 3, a petition for detachment may be granted if: 1) the requisite number of property owners signed the petition; 2) the property is rural in character and not developed for urban, residential, commercial or industrial purposes; 3) the property is within the boundaries of the municipality and abuts a boundary; 4) the detachment would not unreasonably affect the symmetry of the detaching municipality; and 5) the land is not needed for reasonably anticipated future development.

The parties stipulated at the hearing that the requisite number of property owners within the subject area signed the petition and that the subject area is within the boundaries of the City of Breezy Point and abuts a boundary of the City as well as a boundary of Ideal Township. Accordingly, the first and third criteria are satisfied.

The dispute in this case revolves around whether the second, fourth, and fifth criteria are met, i.e., whether the property is undeveloped and rural in character; whether the detachment would unreasonably affect the symmetry of the City; and whether the land is needed for reasonably anticipated future development. Each of these factors is discussed below.

¹⁰² Minn. Stat. § 414.07, subd. 2.

¹⁰³ Minn. R. 6000.3100.

A. Is the Subject Area Rural in Character?

The Petitioners have the burden of showing that the property "is rural in character and not developed for urban residential, commercial, or industrial purposes" ¹⁰⁴ The term "rural" is not defined in Minnesota Statutes Chapter 414 or in the rules issued by the MBA Unit.

In construing statutes in Minnesota, the Legislature has indicated that "words and phrases are construed according to rules of grammar and according to their common and approved usage; but technical words and phrases and such others as have acquired a special meaning, or are defined in this chapter, are construed according to such special meaning or their definition."¹⁰⁵ The term "rural" is not defined in Minnesota Statutes Chapter 645 and cannot properly be regarded as a technical word that has acquired a special meaning. Accordingly, it is appropriate to look to the common definition of the term when applying it in this case. The Merriam-Webster On-Line Dictionary defines "rural" as "of or relating to the country, country people or life, or agriculture."¹⁰⁶ Similarly, the Oxford Dictionary defines "rural" as "relating to or characteristic of the countryside rather than the town,"¹⁰⁷ and the American Heritage College Dictionary defines "rural" as "of, relating to, or characteristic of the country; of or relating to people who live in the country; of or relating to farming, agricultural."¹⁰⁸

The Legislature has further indicated that legislative intent controls in interpreting state statutes:

The object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature. Every law shall be construed, if possible, to give effect to all its provisions.

When the words of a law in their application to an existing situation are clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit.

When the words of a law are not explicit, the intention of the legislature may be ascertained by considering, among other matters:

- (1) the occasion and necessity for the law;
- (2) the circumstances under which it was enacted;
- (3) the mischief to be remedied;
- (4) the object to be attained;
- (5) the former law, if any, including other laws upon the same or similar subjects;
- (6) the consequences of a particular interpretation;
- (7) the contemporaneous legislative history; and

¹⁰⁴ Minn. Stat. § 414.06, subd. 3.

¹⁰⁵ Minn. Stat. § 645.08(1).

¹⁰⁶ <http://www.merriam-webster.com/dictionary/rural>.

¹⁰⁷ http://www.askoxford.com/results/?view=dev_dict&field-12668446=rural&branch=13842570&textsearchtype=exact&sortorder=score%2Cname.

¹⁰⁸ *The American Heritage College Dictionary* (3d ed. 1993) at 1195.

(8) legislative and administrative interpretations of the statute.¹⁰⁹

At the time that Chapter 414 of the Minnesota Statutes relating to municipal boundary adjustments was enacted, the Legislature included explicit findings that shed light on the manner in which it envisioned the statute would be applied. In those findings, the Legislature indicated that municipal government “most efficiently provides governmental services in areas intensively developed for residential, commercial, industrial and governmental purposes.”¹¹⁰ Conversely, the Legislature found that township government “most efficiently provides governmental services in areas used or developed for agricultural, open space, and rural residential purposes.”¹¹¹

When the common meaning of “rural” and the explicit findings of the Legislature are applied to the facts of this case, it is evident that the subject area qualifies as “rural in character and not developed for urban residential, commercial, or industrial purposes” The subject area consists of approximately 248 acres and is zoned agricultural. Its terrain is primarily agricultural, rolling, and wooded in nature. The Petitioners began farming on the property in 1972. Their operations include breeding, hatching, raising, and processing birds, including chickens, ducks, turkeys, and pheasants; delivering the birds to Minnesota accounts and selling a relatively small proportion to customers who come to the property; operating a game farm/shooting preserve for members of the public who pay a fee; maintaining a kennel with five dogs for the use of those who come to the property; and operating a 10-acre gravel pit.

The subject area lacks many of the traditional indications of urban character. In contrast to much of the rest of the City, there are no firearm restrictions in the subject area, and a game farm/shooting preserve is operated there. Apart from fire and police protection, and shared maintenance of Wild Acres Road, no City services are provided to the subject area. There are only two residences in the subject area; as a result, the average density is just one residential unit per 124 acres. The Petitioners have their own septic systems. The closest City sewer line is 3 miles away, and there is no evidence that the City has any plans to extend City sanitary sewer to the area. The City does not currently provide water to any portion of the City.

Several of the City’s witnesses agreed that the Petitioners’ property is rural in character and has not been developed for urban residential purposes. For example, in his initial report to the Planning Commission on the Petition for Detachment, Associate City Planner Jim Perry noted, “The property appears to be rural in character, and not developed for Urban Residential purposes. Staff interpretation of Urban Residential would include City services such as road, sewer and water.”¹¹² Moreover, Mayor JoAnn Weaver and Council Member Otto Schmid both agreed in testimony at the hearing that

¹⁰⁹ Minn. Stat. § 645.16.

¹¹⁰ Minn. Stat. § 414.01, subd. 1a(2); *see also* Ex. R 104 (League of Minnesota Cities Handbook).

¹¹¹ *Id.*

¹¹² Ex. E4 (Feb. 10, 2009, Memorandum from J. Perry to Planning Commission at 3) (also contained in Jt. Ex. 4). At the hearing, Mr. Perry testified that he would no longer take the position he took in his Feb. 10, 2009, report to the Planning Commission, because he now believes that the subject area is no different from a majority of the areas in the City.

the subject area is rural in nature. However, the City argues that the Petitioners must prove that the property is rural in character and not developed for urban residential purposes “*in the context of its location.*”¹¹³ According to the City, the subject area “is not truly rural” when viewed in the context of the City of Breezy Point and the surrounding area.¹¹⁴ The City maintains that the City of Breezy Point is generally a rural, “up North” community and asserts that the Petitioners’ property is “residential and potential residential property that is similar to most of the rest of the City of Breezy Point and similar to large portions of the nearby cities of Crosslake and Pequot Lakes.”¹¹⁵ Although the City acknowledges that the petitioned property might be considered rural in some areas of the state, the City asserts that, “in the City of Breezy Point, it is no more ‘rural’ than the rest of the City.”¹¹⁶

The Administrative Law Judge is not persuaded by the City’s argument. The plain language of Minn. Stat. § 414.06 allows detachment to be ordered as long as the property is rural in character and not developed for urban residential, commercial or industrial purposes; the other statutory factors are also satisfied; and detachment would not result in undue hardship for the municipality. There is absolutely no suggestion in Minn. Stat. § 414.06 (or, for that matter, anywhere else in Chapter 414) that the definition of “rural in character” or “developed for urban residential purposes” should be construed to mean different things in different communities, or that detachment should only be allowed from cities that have been extensively developed. Interpreting the statute in the fashion urged by the City could dramatically restrict its applicability in out-state Minnesota. Moreover, the legislative findings set forth in Minn. Stat. § 414.01, subd. 1a(2), support the view that a determination of whether a boundary adjustment is appropriate involves consideration of broader distinctions between “areas intensively developed for residential, commercial, industrial and governmental purposes” in which municipal government “most efficiently provides governmental services,” and “areas used or developed for agricultural, open space, and rural residential purposes” in which township government “most efficiently provides governmental services.” Accordingly, the Petitioners are not required to show that the subject area is rural in character or undeveloped when compared to the remainder of the City in order to qualify for detachment.

The City further contends that the Petitioners’ property does not meet the requirements of Minn. Stat. § 414.06, subd. 3, because it has been developed for urban residential use. The City maintains that “a planner’s definition of rural would include the entire community, and therefore any area developed as residential should be considered developed as urban residential under the statute.”¹¹⁷

The Administrative Law Judge also does not find this argument to be convincing or consistent with the statute. Because only two residences exist on the property involved in the detachment petition, it is evident that the principal current use of the

¹¹³ City’s Initial Post-Hearing Brief at 5.

¹¹⁴ *Id.*

¹¹⁵ *Id.* at 5.

¹¹⁶ *Id.*

¹¹⁷ *Id.*

parcels in the subject area is not residential. The detachment statute does not require that the land that is the subject of a detachment petition be used exclusively for agricultural purposes. Even if there were such a requirement, scattered residences are common on farms, and it is evident that the Petitioners engage in many classic agricultural activities, such as the breeding and raising of turkeys, ducks, chickens, and pheasants. Moreover, the statute does not prohibit the detachment of property that merely has the *potential* for development. Rather, the statute permits detachment if the property at issue *is not* developed for urban residential purposes. The term “developed” is not defined in the statute. However, according to the common dictionary definition, the term “develop” in the context of land development means “to make suitable for commercial or residential purposes”¹¹⁸ or “to cause (a tract of land) to serve a particular purpose.”¹¹⁹ The current situation—two residences on 248 acres, with no City sewer or water—clearly does not meet that requirement, and the Petitioners testified that they have no plans for future development or changes in the use of the property in the subject area. Finally, despite Mr. Schmid’s testimony to the contrary, the Administrative Law Judge does not agree that any property of any size that has a single residence on it must be deemed to have been developed for “urban residential” purposes. The legislative findings that underlie the boundary adjustment statute clearly distinguish between “areas intensively developed for residential . . . purposes” and “areas used or developed for . . . rural residential purposes.” Based upon the guidance provided by those findings, it is appropriate to find that the parcels in the subject area have not been developed for urban residential purposes, but rather, at most, for rural residential purposes.

The Associate City Planner testified that there is a possibility that the area involved in the petition will be guided as “urban residential” when the next Comprehensive Plan is issued. However, it is unclear when the City will issue its updated Comprehensive Plan and there was no evidence that there has been any specific discussion in any of the subcommittee meetings about the Ebnet properties. In addition, Mr. Perry acknowledged that he did not know whether the City would see a need to re-zone the property. Mr. Perry’s testimony was speculative in nature and does not change the conclusion of the Administrative Law Judge that the subject area has not been developed for urban residential purposes.

The City further contends that the subject area is not eligible for detachment under the statute because it has been developed for commercial and industrial purposes. The City asserts that the game farm/shooting preserve, the game processing facility, and the gravel pit and contracting activity all constitute commercial or industrial uses of the property. In making this argument, the City points out that members of the public enter the property to use the shooting preserve and to purchase some processed birds. The City also emphasizes that Pat Ebnet makes deliveries of birds to over 60 different accounts in the state. While the City concedes that the processing operation “may be agriculture related,” it contends that it is a large business run “on an industrial scale” to “earn a profit, a commercial use.” The City further maintains that Ted Ebnet’s

¹¹⁸ <http://www.merriam-webster.com/dictionary/developed> .

¹¹⁹ *The American Heritage College Dictionary* (3d ed. 1993) at 380.

gravel supply operation is a commercial activity that provides services to the public at large. Finally, the City argues that a gravel pit “is a large scale industrial type use” and stresses the truck traffic and presence of equipment at the site. The City claims that the gravel¹²⁰

The detachment statute does not define the terms “commercial” or “industrial” or otherwise provide guidance regarding the requirement that the petitioned property not be developed for commercial or industrial purposes. The City’s zoning ordinance defines “commercial use” as “[t]he principal use of land or buildings for the sale, lease, rental, trade of products, goods or services”¹²¹ and “industrial use” as “[t]he use of land or buildings for the production, manufacture, warehousing, storage, or transfer of goods, products, commodities or other wholesale items.”¹²²

The subject area is zoned agricultural in its entirety. The City’s zoning ordinance defines “agricultural use” as “[t]he use of land for the growing and/or production of crops or livestock products for the production of income, including incidental retail sales of produce and animal products.”¹²³ The definition of agricultural use thus incorporates some expectation that the land will be used to produce income, suggesting that those using land for agricultural purposes may engage in “for profit” activities. The use of the subject area for the breeding, hatching, and raising of game birds involves the growing of livestock products and, as such, clearly falls within the zoning ordinance’s definition of “agricultural use.” Although some of the animals produced by the Petitioners are of a less common nature, the overall activity in which they engage is similar to that of a typical cattle or grain farm operation. The use of a small portion of the property for the processing of the birds that have been produced on the farm and the subsequent delivery of the processed birds to customers is closely related to this agricultural activity. The processing facility is only used for birds produced on the property; there is no evidence that Petitioners use the facility to conduct a processing business for other area farmers. The ordinance explicitly recognizes that those engaged in agricultural uses of land are seeking to grow and produce crops or animals *for the production of income*, and the sales to customers are consistent with that premise. The ordinance also contemplates that incidental retail sales of animal products may properly occur on land used for agricultural purposes, which would encompass the occasional sale of a bird to individuals who come to the property.¹²⁴

The Administrative Law Judge also concludes that the use of a portion of the subject area for a game farm/shooting preserve and associated dog kennel does not mean that the property has been “developed” for commercial use. In fact, the use of property as a game farm requires that the property be maintained to the extent possible

¹²⁰ City’s Initial Post-Hearing Brief at 8.

¹²¹ Jt. Ex. 2 at 3-3.

¹²² *Id.* at 3-7.

¹²³ *Id.* at 3-1.

¹²⁴ Based upon the testimony of Mayor Weaver and Ms. Ebnet, it appears that Ms. Ebnet catered a dinner for Mayor Weaver as a friend during the 1980’s and also mailed a product to Mayor Weaver in Nebraska that came from the Ideal Township property and not the subject area. This does not provide additional evidence of a commercial enterprise.

in its natural condition, *without* development. The City's zoning ordinance specifies that a game farm with hunting is only permitted in agricultural and wooded residential zoning districts. And the City's firearms map restricts the use of firearms in the City to the Petitioners' property and other areas in the northwest and southwest corners of the City. Accordingly, it is concluded that the game farm/shooting preserve and associated dog kennel are consistent with the agricultural or rural character of the property.

While the gravel and supply operation may be viewed as having some commercial attributes, the Administrative Law Judge concludes under the circumstances presented here that it is more consistent with rural or agricultural use. Because of the noise and dust associated with such an operation, it is an activity that is clearly more appropriate in a rural environment than an urban environment. In apparent recognition of this fact, the City's zoning ordinance permits extractive uses only in areas that are zoned agricultural. The gravel extraction operation is limited to ten acres, and thus represents only a very small portion of the subject area. In light of the actual use and zoning of the property, the Administrative Law Judge cannot agree with the City's characterization of this operation as a large scale industrial use.

The situation here is distinguishable from that presented in a 2003 detachment case involving the City of Dawson.¹²⁵ There, the property proposed for detachment was zoned industrial and held seven corrugated steel grain storage bins, with limited space remaining for further expansion. The Administrative Law Judge found that this was a large commercial operation and not merely an adjunct to a farming operation as would more typically be found in a rural location. Although the business was agriculture-related, the Judge concluded that "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."¹²⁶ The petition for detachment was denied because the subject area was not rural in character and was found to have been developed for commercial or industrial purposes. In contrast, the gravel operation involved here is only a small portion (10 acres) of the subject area (248 acres) and is zoned agricultural, like the remainder of the property. There are no permanent structures that have been built in the gravel pit area and nothing that serves as an office for Mr. Ebnet's gravel supply business; in fact, the equipment used in the operation is portable in nature and the Petitioners eventually intend to reclaim the property in the current location and move the equipment to a different area of the property. Under these circumstances, it does not appear in any event that the property has been "developed" for commercial or industrial purposes.

The Administrative Law Judge concludes that the subject area is rural in nature and has not been developed for urban residential, commercial, or industrial purposes.

B. Would Detachment Unreasonably Affect the Symmetry of the City?

¹²⁵ Findings of Fact, Conclusions of Law and Order in *In the Matter of the Petition of Dawson Grain Coop, Inc., for the Detachment of Certain Land from the City of Dawson*, OAH Docket No. 12-2900-15004-2 (2003).

¹²⁶ *Id.* at 8.

One of the factors to be considered under the detachment statute is whether the detachment would “unreasonably affect the symmetry of the detaching municipality.” The term “symmetry” is not defined in the detachment statute or in any other portion of the Minnesota statutes. The common definition of “symmetry” includes “balanced proportions” and “the property of being symmetrical; especially: correspondence in size, shape, and relative position of parts on opposite sides of a dividing line or median plane or about a center or axis.”¹²⁷

The City argues that the detachment would have an adverse effect on the symmetry of the City’s boundaries. The City asserts that the northwest boundary of the City would go from a straight line and 90 degree corner to “an uneven boundary with the Township protruding into the City,” and points out that this section of the City’s boundary has not been changed since the City was created. It also emphasizes that the subject area borders the City of Breezy Point on the south and east and merely borders the Township on the north.

If granted, the detachment would carve out of the City’s northwest corner a rectangle containing a row of 4 parcels (approximately 168 acres), as well as an adjacent rectangle located south of the easternmost portion of the first rectangle containing 2 parcels (approximately 80 acres). This would shift the City’s border in the eastern portion of that area to the south by approximately ½ mile, and the City’s border in the western portion of that area to the south by approximately ¼ mile. The new boundary would not be meandering or irregular in nature, nor would it include complex or excessive angle changes. If the detachment is granted, Wild Acres Road would be completely encompassed within Ideal Township. In addition, the portion of Nelson Road abutting the eastern portion of the detached area would become the responsibility of the Township.

It is evident that the northwest boundary of the City would change somewhat if the detachment petition is granted. However, much of the City’s boundaries are irregular in shape, including irregularities caused by annexations sought by the City itself. Since the shape of the City is already asymmetrical, symmetry is not a significant issue.¹²⁸ Moreover, because no City services will be provided in the subject area after detachment and the area is located in the northwest corner of the existing City, it will not be necessary for the City to cross the area after detachment to provide any City services to others.¹²⁹

¹²⁷ The Merriam-Webster On-Line Dictionary, <http://www.merriam-webster.com/dictionary/symmetry> .

¹²⁸ *Accord Findings of Fact, Conclusions of Law and Order in In the Matter of the Petition of Dawson Grain Coop, Inc., for Detachment of Certain Land from the City of Dawson*, OAH Docket No. 12-2900-15004-2 at 8 (Feb. 12, 2003) (ALJ concluded that the detachment would not unreasonably affect the symmetry of the City because “[t]he shape of the City is already asymmetrical and symmetry is not an issue there”).

¹²⁹ See, e.g., *Findings of Fact, Conclusions of Law and Order in In the Matter of the Petition of Edward A. Jonas and Danny K. Burman for the Detachment of Certain Land from the City of Effie*, OAH Docket No. 12-6050-16746-2 at 6 (Jan. 6, 2006) (ALJ concluded that detachment would not unreasonably affect the symmetry of the city even though detachment would create a slot from the edge of the city three quarters of the way to the center of the city, emphasizing that no services are being provided in that area and “[i]t

In its post-hearing brief, the City also asserted that the Petitioner's failure to obtain consent from the State under Minn. Stat. § 414.065¹³⁰ regarding the small strip of state owned tax-forfeited property located "in the middle of the petitioned area" would result in "an island of City remaining within the Township" if the area is detached. The tax-forfeited land at issue is not in fact located in the middle of the subject area, but rather is located just north of Wild Acres Road, in the western-most parcel involved in the detachment petition.¹³¹ It is not clear whether or not Petitioners formally asked the State to consent to detachment of the tax-forfeited land. Petitioner Mary Ebnet testified that she spoke to Crow Wing County officials about the tax-forfeited property and offered into evidence the County's estimates of the very limited value of this property. No City services are provided to this piece of land, and its dimensions and proximity to Wild Acres Road make it extremely unlikely to be able to be used for any purpose. The Administrative Law Judge is confident that the State, the City, and the Township will be able to resolve any issues relating to maintenance of this property.

The Administrative Law Judge concludes that granting the petition for detachment would not have an unreasonable effect on the symmetry of the City of Breezy Point or interfere with the provision of City services in any way.

C. Is the Subject Area Needed for Reasonably Anticipated Future Development?

Under Minn. Stat. § 414.06, subd. 3, a petition for detachment may be granted if the land is not needed for reasonably anticipated future development. The City admittedly has no plans to build municipal water facilities to benefit the subject area or, for that matter, any portion of the City. The City also has no plans to extend municipal sewer to the subject area. The City has not identified the subject area as an area of need for future development or growth in its current Comprehensive Plan or any other planning document. There was no evidence that any development of the property has been discussed in connection with the on-going effort to update the City's Comprehensive Plan. Moreover, 5,000 to 6,000 platted but undeveloped lots currently exist in the City.

In its post-hearing brief, the City acknowledges that the "petitioners made clear that they intended to retain the property and continue its current uses" but asserts that "they failed to acknowledge what could happen in the future." It argued that the City "is likely to expand in the future, and someday the petitioned property may be necessary for that development." While the City admits that it has no current plans to extend sewer or water to the subject area, it nevertheless maintained that "the petitioned property may eventually be needed for the development of a City water system or the expansion of the sewer or road systems." Council Member Schmid generally testified that the area is a desirable area for people to consider as a residence, and predicted

does not appear that it would be necessary to cross the area to provide any City services to the north or south").

¹³⁰ That statute specifies that the State's Executive Council may consent to any boundary adjustment action involving state-owned land partly or wholly within the area involved in the petition if it determines that such action is in the best interests of the state.

¹³¹ Ex. E8.

that the City will start seeing an influx of baby boomers coming into the area. The City also broadly contends that the City must be assured of the integrity of its boundaries in order to effectively plan for the future.

The City's vague, speculative, and general assertions do not justify the conclusion that the subject area is needed for reasonably anticipated future development. Accordingly, the Administrative Law Judge has concluded that the fifth criterion set forth in Minn. Stat. § 414.06, subd. 3, has also been satisfied.

II. Would Detachment Cause Undue Hardship?

Even if all of the initial statutory factors are met, the petition for detachment may still be denied if the remainder of the municipality cannot continue to carry on the functions of government without undue hardship.¹³²

Associate City Planner Perry testified that the detachment would create a hardship because the City Council would need to give more thought before allowing additional items to come into the budget. However, Mr. Perry, Mayor Weaver and Council Member Schmid all admitted during the hearing that the City would be able to adapt to the loss of tax revenues.

As discussed above, property owners in the subject area were responsible for paying .18% of the City's 2008 tax receipts. The City projected that it would lose approximately \$2,660 in tax receipts if the subject area is allowed to detach. That loss amounts to only .14% of the City's 2009 budget, which approaches \$1.9 million. Moreover, the City will realize some cost savings if detachment occurs because it will no longer have to provide police and fire protection to the subject area or share the costs of maintaining Wild Acres Road or the portion of Nelson Road abutting the subject area. The Administrative Law Judge concludes that the minimal loss in tax revenue attributable to detachment is insignificant and will not cause the City to suffer undue hardship.

Although the City's 2006 Five Year Road Plan indicated that Wild Acres Road was expected to be rebuilt in 2011, only 30% of the work under that plan had been completed by the time of the hearing. It thus is unlikely that the presence of Wild Acres Road on that list delayed work on other roads or prejudiced the City in any way. The City will have ample opportunity to make necessary revisions to the Road Plan if detachment is granted.

The City argued that other hardships will result from detachment. First, the City asserted that a hardship would be caused if the City lost control of the Conditional Use Permit applicable to the gravel pit in the subject area because the City would no longer be able to exert any control over the gravel operation's use of City roads, would not be able to assess that property when it repairs or replaces those roads, and would not have any way to directly address sewer, water, noise, and dust issues that "could" arise.

¹³² Minn. Stat. § 414.06, subd. 3.

The Administrative Law Judge is not persuaded that a loss of control over the Conditional Use Permit will create an undue hardship for the City. The City's Planning Commission expressly found that Crow Wing County had the ability and adequate staff and resources to enforce any Conditional Use Permits on the Petitioners' properties in the event that the petition for detachment is granted. The Associate City Planner agreed in testimony at the hearing that this was an accurate statement of the Commission's findings. Council Member Schmid's testimony that he doesn't have a lot of confidence in the County's ability to monitor the CUP and believes that the County's capacity and ability to follow up on CUP enforcement has been diminished was vague in nature and was not sufficiently detailed to cast doubt on the County's competence to handle the CUP. Certainly, the City would remain free to bring any concerns to the attention of the County for follow up. Moreover, there is no evidence that the Petitioners have failed to comply with the conditions imposed by the CUP in the past and no reason to believe future compliance will be lacking.

The City offered testimony relating to the amount of material delivered from one or both of the Petitioners' gravel pits in connection with the County Road 3 project and a separate City road project during the past several years. However, because the City was uncertain whether this material had come from the gravel pit located in the subject area, this evidence was of limited utility in evaluating the impact of the truck traffic associated with the pit in the subject area. It is apparent that the Petitioners' gravel operations in the subject area do use City roads at times, and there is no doubt that trucks from Petitioners' two gravel operations as well as pits operated by numerous other individuals have contributed to the deterioration of City roads.

If the detachment petition is granted, the City will no longer be able to assess the Petitioners when it repairs those roads. However, the same is true for numerous other Township residents who engage in gravel extraction and travel City streets. In addition, if the detachment is granted, the City will experience cost savings by no longer having to bear the costs of maintaining and repairing Wild Acres Road and a portion of Nelson Road. Under these circumstances, the City has not established that its inability to assess the Petitioners constitutes an undue hardship for the City.

Finally, the City argued that "the precedence of granting this detachment will create a hardship for the City."¹³³ It fears that, if the Petition is granted, other property owners in the City will be encouraged to also seek to detach from the City. The City contends that the petitioned property is "similar to 50% to 75% of the property in the City," and is concerned that the City will be susceptible to additional detachment petitions. The City asserts that if it loses too much area, it will be unable to effectuate the planning and zoning goals set forth in its Comprehensive Plan. Council Member Schmid testified that he was concerned that the granting of the detachment petition would open the door for others to go through a hearing and opt out of the City, and indicated that he "doesn't want to see the City disappear."

¹³³ *Id.*

The focus of the detachment statute is on the particular property that is the subject of the petition.¹³⁴ Apart from the two pending petitions, there is no evidence that any other City residents have expressed an interest in detachment. It is concluded that the City's speculative fear that other City residents may petition for detachment under the statute and the resulting impact would adversely affect its ability to plan for future City-wide development does not provide a valid basis to deny the present petition when all of the statutory factors have been met.

The City accurately points out that the Legislature has supported land use planning in municipalities and unincorporated areas to protect the public interest in efficient local government.¹³⁵ However, the Legislature has also expressly stated its view that rural, agricultural land is better suited to township, rather than municipal, government.¹³⁶ The detachment of the Petitioners' property furthers the legislative preference for township governance of rural land.¹³⁷

Accordingly, it is concluded that detachment would not render the remainder of the City unable to carry on the functions of government without undue hardship within the meaning of the statute.

III. Other Contentions

The City asserts that detachment is not appropriate for several other reasons. For example, the City alleges that the Petitioners were unable to articulate why they filed their petition and lack valid reasons for seeking detachment. The City argues that the Petitioners' fears about changes in zoning or City interference with hunting rights are not well founded and, in any event, arose after the petition was filed. The City also faults the Petitioners for not discussing any of their concerns with the City prior to filing their petition for detachment and contends that it would not be fair to grant the petition without first affording the City an opportunity to address the Petitioners' issues.

The Petitioners did provide some indication of their motivation for seeking detachment in their underlying Petition and supporting information, and in testimony provided at the hearing.¹³⁸ However, in any event, the detachment statute does not

¹³⁴ See, e.g., Findings of Fact, Conclusions of Law and Order in *In the Matter of the Petition of Brian and JoAnn Sprino for the Detachment of Certain Land from the City of Cambridge*, OAH Docket No. 1-2900-14926-2 (2002) at 9 (after noting the City's concerns that other properties would have a similar argument for detachment, the ALJ found that "[t]he statute appears to focus upon a Petitioners' property without incorporating a consideration of what else might happen in the future. And no evidence of any interest in detachment elsewhere in the City was submitted.")

¹³⁵ Minn. Stat. § 414.01, subd. 1b(3).

¹³⁶ Minn. Stat. § 414.01, subd. 1a(2).

¹³⁷ Accord Findings of Fact, Conclusions and Decision in *In the Matter of the Petition for the Detachment of Certain Land from the City of Rockville*, OAH Docket No. 2-0330-19711-BA (2008), at 12.

¹³⁸ In their Petition for Detachment and the Factual Information provided in connection with the Petition, the Petitioners indicated that they were requesting detachment because their land is very rural in nature, meets the detachment criteria, and is more similar to the Township's farming and agricultural properties. The Petitioners also stated that they have not received any City amenities for the taxes paid, and noted that their taxes went up 30 to 80% over the last three years. In their testimony at the hearing, the Petitioners reiterated these reasons and expressed fear that the City would change hunting rights in the

precondition the granting of a petition for detachment on a showing of a valid underlying reason, nor does it require that the Petitioners provide any evidence at all of their motivation. The statute also does not specify that a petitioner for detachment must first approach the city to discuss his or her concerns. After the Petition for Detachment was filed, the parties were directed into local discussions under Minn. Stat. § 414.01, subd. 16, and the parties met on approximately three occasions in an attempt to resolve this matter.

The City admitted that it has no current plans to provide the subject area with City sewer, and the City's system is three miles away from the edge of the subject area. Nevertheless, the City contends that it is in a better position than the Township to provide any needed sewer services to the subject area, and pointed out that standards for domestic and non-domestic sewer systems are becoming stricter and the Petitioners may find the cost of private sewer repairs in the future prohibitive. However, the Petitioners expressed confidence in the sufficiency of the systems they have installed and their ability to make any necessary repairs, and it is evident that there is ample room in the subject area for additional private septic systems. The speculative evidence offered by the City concerning potential costs of septic systems in the future does not compel denial of the petition for detachment where the property currently meets the criteria set forth in the statute.

Accordingly, the Administrative Law Judge finds that the Petition should be granted because the subject area is rural in character and not developed for urban residential, commercial, or industrial purposes, the property is not needed for reasonably anticipated future development, detachment would not unreasonably affect the symmetry of the City or result in undue hardship, and all other statutory factors are met.

IV. Allocation of Debt

Minn. Stat. § 414.06, subd.3, gives the ALJ the discretion to relieve the detached area of the primary responsibility for the existing indebtedness of the municipality as is equitable. In this case, the Administrative Law Judge has determined that it is not appropriate to entirely relieve the detached area from its share of the municipality's indebtedness. As calculated in the Findings above, the subject area's portion of the City's outstanding bonded indebtedness totals \$8,337.43.

In their submission in response to the City Clerk's affidavit regarding bonded indebtedness, the Petitioners asserted that the Petitioners should not bear any

subject area. They testified that they believed that the Township would embrace the type of operations they have in the subject area. The Petitioners also alluded to past difficulties and disagreements with the City. For example, the Petitioners asserted that it took them 2½ years and cost them \$20,000 to obtain a conditional use permit from the City for their gravel operation. The Petitioners also disagreed with the City's decision to establish a cartway easement over their property despite its proximity to the shooting preserve.

responsibility for the on-going bond performance and contend that they did not benefit from any of the improvements that were made.¹³⁹ However, the property that is the subject of the detachment was part of the City when the debt was incurred and was part of the tax base that the City depended on for repayment. It is fair, therefore, to allocate an appropriate portion to be retained by the Petitioners.

It is unclear what effect Minn. Stat. § 414.067, subd. 1, has upon the allocation of preexisting indebtedness in a detachment proceeding. Minn. Stat. § 414.067 absolutely prohibits the Chief Administrative Law Judge from relieving any liability for bonded indebtedness, whereas Minn. Stat. § 414.06 gives the Chief Administrative Law Judge the discretion to relieve some or all indebtedness. Since this Order does not relieve the Petitioners from their share of the bonded indebtedness, the possible conflict between these two provisions need not be resolved.

V. Division of Costs

The parties did not agree to a division of the hearing costs between themselves. The Ebnet Petitioners asserted that the City should bear 100% of the costs attributable to their Petition because they contend that they showed that all of the statutory requirements for detachment were met and the City Council opposed the detachment despite the recommendation of the City's Planning Commission. The City contended that it had no obligation to support the detachment petition by resolution and urged that the costs of the consolidated hearing be borne 1/3 by the City, 1/3 by the Rach Petitioners, and 1/3 by the Ebnet Petitioners.

Minn. Stat. § 414.12, subd. 3, specifies that, if the parties do not agree to a division of the costs before the hearing, the costs "must be allocated on an equitable basis by the . . . chief administrative law judge." In cases where no agreement is reached between the parties, a larger proportion of the costs are generally assigned to the non-prevailing party (here, the City). It is concluded that the City shall bear 75% and the Petitioners shall bear 25% of the cost of the proceedings attributable to the Ebnet Petition. Because Ideal Township was neutral with respect to the Petition and did not play an active role in the proceedings, no costs should be allocated to it.

The strength of the Petitioners' presentation, coupled with the absence of persuasive facts and legal argument by the City, leads the Administrative Law Judge to conclude that a greater portion of the cost should be borne by the City. The City did cooperate with the Petitioners by entering into a stipulation relating to undisputed statutory factors and by identifying and presenting several joint exhibits, and that conduct has been factored into the cost allocation.

B. L. N.

¹³⁹ Ex. E12.