

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MUNICIPAL BOUNDARY ADJUSTMENTS UNIT

In the Matter of the Petition by Doug  
Rach *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 an evidentiary 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 Mary Ebnet *et al.*, OAH Docket No. 11-0330-20498-BA. This Report addresses only the Petition for Detachment filed by Doug Rach *et al.*

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

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 Doug Rach *et al.* should be granted based on the factors set forth in Minn. Stat. § 414.06.

The Administrative Law Judge finds that the Rach 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 from the City of Breezy Point, Minnesota (hereinafter referred to as "the Petition" or "the Rach Petition") with the Municipal Boundary Adjustment Unit (MBA). The Petition was filed by ten property owners (Douglas and Billie Jo Rach, Lou Ann Owens, Joseph Zwack, Thomas and Mavis Thompson, Jodell Rau, John Berry, Larry Rasmussen, and Diane Cleveland Airhart). The Petitioners seek to detach approximately 312.79 acres from the City of Breezy Point pursuant to Minn. Stat. § 414.06.<sup>1</sup>

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

a. Rach Property:

Parcel ID # 100192100A00009: N. 1/2 OF N1/2 OF NE1/4 OF NW1/4, Section 19, Township 136, Range 28 (OR THE E. 1/2 OF N. 1/8 OF NW1/4 SEC. 19) SUBJECT TO EASEMENTS OF RECORD. (10 acres)

Parcel E (access road) That part of the East 33.00 feet of the E 1/2 of the SW 1/4, Section 18, Township 136, Range 28. Which lies southerly of a line drawn from a point on the east line of said NW 1/4 of the SW 1/4 distant 1230.66 feet southerly of the NE corner of said NE 1/4 of the SW 1/4 as measured along the said east line to a point on the north line of said NE 1/4 of the SW 1/4 distant 1103.71 feet westerly of the NE corner of said NE 1/4 of the SW 1/4 as measured along said north line. Subject to power line easement and subject to easements, reservations and restrictions of record, if any.

Parcel ID # 101580020460009: Lot 46, Blk 2, Whitebirch Six. (1 acre)

Parcel ID # 101580020450009: Lot 45, Blk 2, Whitebirch Six. (1 acre)

Parcel ID # 101580020440009: Lot 44, Blk 2, Whitebirch Six. (1 acre)

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<sup>1</sup> Petition, in MBA file.

Parcel ID # 101580020430009: Lot 43, Blk 2, Whitebirch Six. (1 acre)

b. Owens Property:

Parcel ID # 100183203000009: Government Lot 3, Section 18, Township 136, Range 28. (36.95 acres)

Parcel ID # 100183304A00009: N. 1/2 OF GOV. LOT 4 Section 18, Township 136, Range 28. SUBJECT TO EASEMENTS, RESERVATIONS, OR RESTRICTIONS OF RECORD. (18.3 acres)

Parcel ID # 100183400B00009: (PARCEL B) THAT PART OF THE SE1/4 SW1/4, SECTION 18, TOWNSHIP 136, RANGE 28. DESC AS FOLLOWS, COMM AT THE SE CORNER OF SAID SESW, THEN S 89 DEG 16 MIN 51 SEC W, ASSUMED BEARING ALG THE S LINE OF SAID SESW, 33.01 FT TO THE W LINE OF THE E 33 FT OF SAID SESW, THEN N 00 DEG 52 MIN 48 SEC E ALG SAID W LINE 33.01 FT TO THE N LINE OF THE S 33 FT OF SAID SESW AND THE POINT OF BEG OF THE TRACT OF LAND TO BE DESC, THEN S 89 DEG 16 MIN 51 SEC W ALG SAID N LINE 367.14 FT TO THE W LINE OF THE E 400 FT OF SAID SESW, THEN N 00 DEG 52 MIN 48 SEC E ALG SAID W LINE 810.38 FT TO THE N LINE OF THE S 843.06 FT OF SAID SESW, THEN S 89 DEG 16 MIN 51 SEC W ALG SAID N LINE 932.85 FT TO THE W LINE OF SAID SESW, THEN N 00 DEG 42 MIN 51 SEC E ALG SAID W LINE 465.69 FT TO THE NW CORNER OF SAID SESW, THEN N 89 DEG 56 MIN 35 SEC E ALG THE N LINE OF SAID SESW 1301.00 FT TO SAID W LINE OF THE E 33 FT OF SAID SESW, THEN S 00 DEG 52 MIN 48 SEC W ALG SAID W LINE 1261.06 FT TO THE POINT OF BEG. (20.5 acres)

Parcel E (access road) That part of the East 33.00 feet of the E 1/2 of the SW 1/4, Section 18, Township 136, Range 28. Which lies southerly of a line drawn from a point on the east line of said NW 1/4 of the SW 1/4 distant 1230.66 feet southerly of the NE corner of said NE 1/4 of the SW 1/4 distant 1103.71 feet westerly of the NE corner of said NE 1/4 of the SW 1/4 as measured along said north line. Subject to power line easement and subject to easements, reservations and restrictions of record, if any.

c. Zwack Property:

Parcel ID #100183100A00009: (PARCEL C) THAT PART OF THE NE1/4 OF SW1/4, SECTION 18, TOWNSHIP 136, RANGE 28. WHICH LIES SW'LY OF A LINE DRAWN FROM A POINT ON THE E LINE OF SAID NESW DIST 1230.66 FT S'LY OF THE NE CORNER OF SAID NESW AS MEASURE-ED ALG THE SAID E LINE TO A POINT ON THE N LINE OF SAID NESW DIST 1103.71 FT W'LY OF THE NE CORNER

OF SAID NESW AS MEASURED ALG SAID N LINE, EXCEPT THE E 33 FT THEREOF. (24.25 acres)

Parcel E (access road) That part of the East 33.00 feet of the E 1/2 of the SW 1/4, Section 18, Township 136, Range 28. Which lies southerly of a line drawn from a point on the east line of said NW 1/4 of the SW 1/4 distant 1230.66 feet southerly of the NE corner of said NE 1/4 of the SW 1/4 as measured along the said east line to a point on the north line of said NE 1/4 of the SW 1/4 distant 1103.71 feet westerly of the NE corner of said NE 1/4 of the SW 1/4 as measured along said north line. Subject to power line easement and subject to easements, reservations and restrictions of record, if any.

d. Thompson Property:

Parcel ID # 100183100000009: (PARCEL D) THAT PART OF THE NE1/4 OF SW1/4, SECTION 18, TOWNSHIP 136, RANGE 28. WHICH LIES NE'LY OF A LINE DRAWN FROM A POINT ON THE E LINE OF SAID NESW DIST 1230.66 FT S'LY OF THE NE CORNER OF SAID NESW AS MEASURD ALG THE SAID E LINE TO A POINT ON THE N LINE OF SAID NESW DIST 1103.71 FT W'LY OF THE NE CORNER OF SAID NESW AS MEASURED ALG SAID N LINE. (15.6 acres)

Parcel E (access road): That part of the East 33.00 feet of the E 1/2 of the SW 1/4, Section 18, Township 136, Range 28. Which lies southerly of a line drawn from a point on the east line of said NW 1/4 of the SW 1/4 distant 1230.66 feet southerly of the NE corner of said NE 1/4 of the SW 1/4 as measured along the said east line to a point on the north line of said NE 1/4 of the SW 1/4 distant 1103.71 feet westerly of the NE corner of said NE 1/4 of the SW 1/4 as measured along said north line. Subject to power line easement and subject to easements, reservations and restrictions of record, if any.

e. Rau Property:

Parcel ID # 100183400000009: (PARCEL A) THAT PART OF THE SE1/4 OF SW1/4, SECTION 18, TOWNSHIP 136, RANGE 28. DESC AS FOLLOWS; COMM. AT THE SE CORNER OF SAID SESW, THE S 89 DEG 16 MIN 51 SEC W, ASSUMED BEARING ALG THE S LINE OF SAID SESW, 33.01 FT TO THE W LINE OF THE E 33 FT OF SAID SESW AND THE POINT OF BEG OF THE TRACT OF LAND TO BE DESC, THEN N 00 DEG 52 MIN 48 SEC E, ALONG SAID W LINE, 33.01 FT TO THE N LINE OF THE S 33 FT OF SAID SESW, THEN S 89 DEG 16 MIN 51 SEC W, ALG SAID N LINE 367.14 FT TO THE W LINE OF THE E 400 FT OF SAID SESW, THEN N 00 DEG 52 MIN 48 SEC E ALG SAID W LINE 810.38 FT TO THE N LINE OF THE S 843.06 FT OF SAID SESW, THEN S 89 DEG 16 MIN 51 SEC W, ALG SAID N LINE 932.85 FT

TO THE W LINE OF SAID SESW, THEN S 00 DEG 42 MIN 51 SEC W ALG SAID W LINE 843.32 FT THE SW CORNER OF SAID SESW, THEN N 89 DEG 16 MIN 51 SEC E ALG THE S LINE OF SAID SESW TO THE POINT OF BEG. (18.3 ACRES)

Parcel E (access road): That part of the East 33.00 feet of the E 1/2 of the SW 1/4, Section 18, Township 136, Range 28. Which lies southerly of a line drawn from a point on the east line of said NW 1/4 of the SW 1/4 distant 1230.66 feet southerly of the NE corner of said NE 1/4 of the SW 1/4 as measured along the said east line to a point on the north line of said NE 1/4 of the SW 1/4 distant 1103.71 feet westerly of the NE corner of said NE 1/4 of the SW 1/4 as measured along said north line. Subject to power line easement and subject to easements, reservations and restrictions of record, if any.

f. Berry Property:

Parcel ID # 100183304B00009: S 1/2 OF GOV. LOT 4, SECTION 18, TOWNSHIP 136, RANGE 28, EXCEPT THE S'LY 33 FEET OF GOV. LOT 4. SUBJECT TO EASEMENTS, RESERVATIONS OR RESTRICTION OF RECORD. (17.71 acres)

Parcel ID # 100192400B00009: W 1/2 OF SE 1/4 OF NW 1/4, SECTION 19, TOWNSHIP 136, RANGE 28. (20 acres)

Parcel ID # 100192400A00009: E 1/2 OF SE 1/4 OF NW 1/4, SECTION 19, TOWNSHIP 136, RANGE 28. (20 acres)

g. Rasmussen Property:

PARCEL ID # 100192100B00009: S 1/2 OF N 1/2 OF N1/2 OF NW 1/4, SECTION 19, TOWNSHIP 136, RANGE 28. SUBJECT TO AN EASEMENT OF RECORD. (19.04 acres)

Parcel ID # 101580020420009: LOT 42, BLOCK 2 WHITEBIRCH SIX. (1 acre)

Parcel ID # 100192201B00009: N 1/2 OF S 1/2 OF N 1/2 OF NW1/4, SECTION 19, TOWNSHIP 136, RANGE 28. SUBJECT TO AN EASEMENT OF RECORD. (19.04 acres)

Parcel ID # 100192201C00009: S 1/2 OF S 1/2 F N 1/2 OF NW 1/4, SECTION 19, TOWNSHIP 136, RANGE 28. SUBJECT TO AN EASEMENT OF RECORD. (19.05 acres)

Parcel ID # 100192302B00009: W 1/2 OF GOV. LOT 2, SECTION 19, TOWNSHIP 136, RANGE 28. (20 acres)

Parcel ID # 100192201A00009: N 1/2 OF N 1/2 OF GOV. LOT 1, SECTION 19, TOWNSHIP 136, RANGE 28 (OR THE W 1/2 OF N 1/2 OF N 1/8 OF NW 1/4 SECTION 19). (9.05 acres)

Parcel ID # 100183304BA0009: THE S'LY 33 FEET OF THE S 1/2 OF GOV. LOT 4, SECTION 18, TOWNSHIP 136, RANGE 28. TOGETHER WITH AN EASEMENT OF RECORD. (.91 acres)

h. Cleveland Property:

Parcel ID # 100192302A00009: E. 1/2 OF GOV. LOT 2, Section 19, Township 136, Range 28. (20 acres)

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 northwest side of the City (Mary Ebnet *et al.*, hereinafter referred to as the Ebnet 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.<sup>2</sup>

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 Rach 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 outlined several issues for consideration by the Planning Commission, such as the tax revenue that would be lost if detachment were granted, precedent that would be set for additional detachments "given the character of the community," and the use of City streets to access the properties included in the petition.<sup>3</sup>

6. At its February 10, 2009, meeting, the City's Planning Commission discussed the Ebnet and Rach Petitions. The Commission recommended that the City Council support the Ebnet petition on the condition that the City also petition for the detachment of the Minnrath/Anderson parcels. The Planning Commission further recommended to the City Council that it oppose the Rach petition. With respect to the Rach Petitioners, the Planning Commission's findings noted that the property is primarily residential, the agricultural zoning of the property is not supported by its use,

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<sup>2</sup> Testimony ("Test.") of Jo Ann Weaver, Jim Perry; Jt. Exhibit ("Ex.") 3 at 9.

<sup>3</sup> Jt. Ex. 4 (Feb. 10, 2009, Memo to Planning Commission from J. Perry re Rach Petition). At the hearing, the parties stipulated that the Rach Petition does include a 33' wide parcel owned by Larry Rasmussen (PIN 100183304BA0009) and that the indication to the contrary in Mr. Perry's report to the Planning Commission should be disregarded.

access to the property is gained through City streets, and the property includes platted land and borders platted subdivisions.<sup>4</sup>

7. On March 2, 2009, the City Council decided to oppose both the Rach and Ebnet Petitions.<sup>5</sup>

8. 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.

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

10. 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.

11. 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.

12. 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.

13. An additional prehearing conference was held on September 2, 2009. At that time, the Administrative Law Judge orally denied the Motion for Summary Disposition that had been filed by the Petitioners on August 11, 2009. A written decision with respect to the Motion was issued on September 5, 2009.

14. The Administrative Law Judge, accompanied by two of the Rach 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.<sup>6</sup>

15. 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 did not request that the hearing be reconvened.

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<sup>4</sup> Test. of J. Perry; Jt. Ex. 5 at 3, 4.

<sup>5</sup> Jt. Ex. 6 at 11-12.

<sup>6</sup> See Sept. 4, 2009, letter to the ALJ from Mr. MacArthur.

16. 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**

17. The City of Breezy Point covers approximately 16 square miles. Its population in 2008 was 1,774 people.<sup>7</sup> According to the Minnesota State Demographer, the City's population in 2007 was 1664, with 731 households.<sup>8</sup> During the last ten years, the City's population has tripled.<sup>9</sup>

18. 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.<sup>10</sup>

19. 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.<sup>11</sup>

20. 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.<sup>12</sup>

21. The City does not have a water distribution system.<sup>13</sup>

22. 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.<sup>14</sup>

23. The City does not have a Sewer Comprehensive Plan.<sup>15</sup> Because the City has upgraded its lift stations during the last five years, the statement in the 1998

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<sup>7</sup> Test. of J.A. Weaver.

<sup>8</sup> MBA File.

<sup>9</sup> Test. of J. Perry.

<sup>10</sup> *Id.*

<sup>11</sup> Jt. Ex. 1 at 4, 6.

<sup>12</sup> Test. of J. Perry.

<sup>13</sup> Test. of T. Polipnick, J. Perry, O. Schmid.

<sup>14</sup> Test. of J. Perry.

<sup>15</sup> Test. of T. Polipnick.



Comprehensive Plan that "several of the pumping stations are near or at capacity" is no longer accurate.<sup>16</sup>

24. The City adopted a Five Year Road Plan in 2006.<sup>17</sup> 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.<sup>18</sup>

25. 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 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."<sup>19</sup>

26. There are approximately 5,000 – 6,000 platted lots in the City that have not been developed.<sup>20</sup>

27. 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 edge.<sup>21</sup>

28. 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.<sup>22</sup> 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

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<sup>16</sup> Test. of T. Polipnick (see also Jt. Ex. 1 at 24).

<sup>17</sup> Jt. Ex. 8.

<sup>18</sup> Test. of T. Polipnick, J. Perry.

<sup>19</sup> Jt. Ex. 2 at 4-6, 4-7.

<sup>20</sup> Test. of T. Polipnick.

<sup>21</sup> Test. of J. Perry; Jt. Ex. 7.

<sup>22</sup> Test. of Bruce Gallas, J. A. Weaver; Ex. R114.

between the City and Pelican Township has historically been something other than a straight line.<sup>23</sup>

### **Area involved in Petition for Detachment**

29. There are approximately 313 acres (less than half a square mile) in the area that is the subject of the Rach Petition. All ten of the property owners within the subject area signed the Petition to Detach. Seven individuals reside in the subject area.<sup>24</sup>

30. 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 Pelican Township. The requisite number of property owners signed the Petition for Detachment.<sup>25</sup>

31. The subject area is located in the southwest corner of the City. The buildings in the subject area consist of four residences, four accessory buildings, and one barn. The average parcel size in the subject area is 15 acres.<sup>26</sup>

32. The subject area is bordered by the City of Breezy Point to the east and north, Pelican Township to the south, and the City of Pequot Lakes to the west. The area immediately to the west includes more than 1,000 acres owned by one individual who has told the Petitioners that he will never develop the land.<sup>27</sup>

33. In the Petition, the Petitioners indicated that they were requesting detachment because the property is zoned agricultural and is rural in character, and the Petitioners receive no tangible benefits from the City for the taxes paid annually.<sup>28</sup>

34. There are a total of 21 or 22 parcels in the subject area. According to the City's 2006 Official Zoning Map, all but 5 of the parcels are zoned as agricultural. The 1997 Land Use Plan incorporated in the existing Comprehensive Plan also guides this area as agricultural.<sup>29</sup> The 5 platted lots located along Navaho Trail which are included in the subject area are zoned low density residential. Each of these lots is approximately one acre in size. None of these lots has been developed, and much if not all of the land is presently used as a pasture.<sup>30</sup>

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<sup>23</sup> Test. of B. Gallas; Ex. R114.

<sup>24</sup> Petition.

<sup>25</sup> Stipulation of Parties.

<sup>26</sup> Test. of J. Perry; Petition.

<sup>27</sup> Test. of John Berry; Factual Information provided by Petitioners at 2 (March 6, 2009).

<sup>28</sup> Petition at 1; see also Factual Information provided by Petitioners at 7.

<sup>29</sup> Test. of J. Perry; Jt. Ex. 10 (last updated Aug. 3, 2006).

<sup>30</sup> Petition; Jt. Ex. 4 (Feb. 10, 2009, Memorandum to Planning Commission from J. Perry re Rach Petition); Jt. Ex. 10; Test. of B. Gallas, J. Perry, T. Polipnick; Site Visit. In his Memorandum to the Planning Commission, Mr. Perry asserted that the 5 platted lots were "zoned R-1, Medium Density Residential." Jt. Ex. 4. However, according to the City's Official Zoning Map (Jt. Ex. 10), the R-1 designation applies to *Low Density Residential*, and the color coding on the map indicates that the area in which the platted lots are located is, in fact, zoned *Low Density Residential*.

35. Approximately 50% of the total area of the parcels in the subject area involves wetlands delineated on the National Wetland Inventory Map.<sup>31</sup>

36. The subject area consists of less than one-half square mile and has a population of 7. The subject area thus involves 3% of the City's geographic area and .39% of the City's population.

37. 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.<sup>32</sup>

38. Petitioners' estimated 2008 tax payments (including assessments) for the parcels were \$2,820. The estimated market value of their property was \$1,004,900.<sup>33</sup>

39. Property owners in the subject area were responsible for paying .19% of the City's 2008 tax receipts. The tax loss to the City that would be caused by detachment would be approximately \$2,820. The subject area comprises .20% of the City's market value.<sup>34</sup>

40. None of the property owners in the subject area intend to sell their land for residential use.<sup>35</sup>

41. The City's current Comprehensive Plan does not identify the subject area as an area of future need.<sup>36</sup>

42. The subject area consists primarily of open, wooded, and rolling terrain and wetland areas. It is rural in character.<sup>37</sup>

43. The subject area includes a 5-acre parcel of pine trees that was planted approximately 60 years ago. Two of the Petitioners (John Berry and Larry Rasmussen) engage in some logging on the property every year to thin the trees and preserve the stand of pines. Many hundreds of cords of wood have been taken off the property over the years Mr. Berry has lived in the subject area.<sup>38</sup> According to the City's zoning ordinance, one of the purposes of an agricultural district is to encourage land uses which promote or foster forestry.<sup>39</sup>

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<sup>31</sup> Test. of J. Perry.

<sup>32</sup> Jt. Ex. 4 (Feb. 10, 2009, Memorandum to Planning Commission from J. Perry re Rach Petition).

<sup>33</sup> *Id.*

<sup>34</sup> Test. of J. Perry; Jt. Ex. 4 (Feb. 10, 2009, Memorandum to Planning Commission from J. Perry re Rach Petition).

<sup>35</sup> Test. of Gerald Zwack.

<sup>36</sup> Test. of T. Polipnick.

<sup>37</sup> Test. of J.A. Weaver, O. Schmid; Factual Information provided by Petitioners at 2 (March 6, 2009); Site Visit.

<sup>38</sup> Test. of J. Berry; Ex. R113.

<sup>39</sup> Jt. Ex. 2 at 4-6.

44. Petitioner John Berry has some chickens on his property and has kept other animals in the past.<sup>40</sup> Petitioner Larry Rasmussen plans to keep cows and chickens in the future, after he finishes building a house on his property.<sup>41</sup>

45. 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.<sup>42</sup> Many of the Petitioners hunt on their property.<sup>43</sup>

46. On one occasion in July 2008, the City faced an emergency situation when some cattle were running loose on City streets. The City had no knowledge of who owned the cattle. Brad Scott, the former City Administrator, contacted Mr. Rach and asked if the cattle could be taken to Mr. Rach's property after they were rounded up. Mr. Scott made this request because Mr. Rach's property is rural in nature, had pasture and watering facilities, and had the capability to shelter and feed the animals until they were claimed by their proper owner.<sup>44</sup>

47. The property owners access the edge of the subject area by using City streets (Dove Street or Navaho Trail), but no City roads run through the subject area. Once on the property, the owners access their lands by private roads and easements.<sup>45</sup> One of the Petitioners obtains a snowplow to clear a pathway for Petitioners to use to access their properties.<sup>46</sup>

48. Dove Street (a dead-end City street) was improved from a gravel road to a blacktop road in recent years, and the Petitioners participated in the cost of that improvement.<sup>47</sup> The City's 2006 Five Year Road Plan indicated that Dove Street and Navaho Trail were expected to be rebuilt in 2011, but only 30% of the work under that plan had been completed by the time of the hearing.<sup>48</sup>

49. At the present time, at least eight to ten City streets are used to access property that is not within City boundaries.<sup>49</sup> Because most of Pelican Township is sandwiched between the City of Nisswa and the City of Breezy Point, numerous Pelican Township residents have to use roads maintained by the City of Breezy Point or other municipalities to access their properties. On occasion, Pelican Township has participated in the cost of maintaining or improving certain City roads.<sup>50</sup>

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<sup>40</sup> Test. of J. Berry.

<sup>41</sup> Test. of Larry Rasmussen.

<sup>42</sup> Test. of J.A. Weaver; Ex. R102.

<sup>43</sup> Test. of J. Berry, G. Zwack, L. Rasmussen.

<sup>44</sup> Test. of Brad Scott.

<sup>45</sup> Test. of J. Perry, T. Polipnick, J.A. Weaver, Lou Ann Owens, J. Berry.

<sup>46</sup> Test. of G. Zwack.

<sup>47</sup> Test. of T. Polipnick, J. Perry.

<sup>48</sup> Jt. Ex. 8.

<sup>49</sup> Test. of T. Polipnick, B. Gallas.

<sup>50</sup> Test. of B. Gallas.

50. 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 four homes located on the subject property use private wells and private septic systems. The closest City sewer trunk line to the subject area is located at the intersection of Dove Street and Eagle, approximately 1½ miles away from the edge of the subject property.<sup>51</sup> If detachment occurs, there was no evidence of any adverse impact on the City's sewer lines.

51. A campground and trailer park with 385 sites located on the north side of Dove Street and east of the subject area has a private septic system that is not winterized. The campground septic system has a seasonal connection to the City sewer system. The City provides contract water treatment services to the campground, but does not provide sewer maintenance services of any kind.<sup>52</sup>

52. 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.<sup>53</sup>

53. It would take the City at least 3-4 months to extend the City line to the closest property in the subject area, and it would cost approximately \$100,000 to build a collector line. The current assessment is typically \$4,000 per unit, plus a \$1,000 hook-up charge. Some of the Petitioners whose properties are located further away (such as Lou Ann Owens and John Berry) would have to obtain easements from other property owners and would incur significantly higher costs.<sup>54</sup>

54. 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.<sup>55</sup>

55. By virtue of federal Environmental Protection Agency requirements and a mandate by the Minnesota Pollution Control Agency, the code applicable to 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. Pelican Township relies upon the County's ordinances, so Township residents will fall under the County code as of February 2010. The City will have twelve months after that date to either adopt the same changes or make its code even stricter.<sup>56</sup>

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<sup>51</sup> Test. of J. Perry, T. Polipnick; Factual Information provided by Petitioners at 5 (March 6, 2009).

<sup>52</sup> Test. of T. Polipnick, J. Perry.

<sup>53</sup> Test. of T. Polipnick.

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*; see Minn. Rules Chapters 7080 and 7082.

56. The subject area receives police protection from the City and receives fire protection under a joint agreement between the City and Pequot Lakes.<sup>57</sup>

57. There are no commercial or industrial activities that occur in the subject area, and it has not been developed for such purposes.<sup>58</sup> The area also has not been developed for urban residential purposes.<sup>59</sup>

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

59. Although the boundary of the City in the southwest corner where the subject area is located has historically been a straight line,<sup>60</sup> much of the City's boundaries are irregular in shape. If the detachment petition is granted, the southwest boundary would no longer be a straight line, but would exclude the rectangle containing most of the subject area along with the adjoining smaller five-acre rectangle containing the platted lots. Granting the petition for detachment would not have an unreasonable effect on symmetry.

### **Pelican Township**

60. If the Petition is granted, the subject area will consolidate with Pelican Township. Bruce Gallas, the Town Board Chair of Pelican Township, attended the hearing in this matter. He indicated that Pelican Township is neutral regarding the petition and is neither encouraging nor discouraging detachment of the subject area.<sup>61</sup>

61. According to the Minnesota State Demographer, the population of Pelican Township in 2007 was 464, with 198 households.<sup>62</sup>

62. Pelican Township does not provide water or sewer service to its residents. Its planning and zoning functions are done through Crow Wing County, and property tax services are provided through the State and the County.<sup>63</sup>

63. Pelican Township includes a significant amount of platted land. Some property owners have lots as small as 50 feet wide.<sup>64</sup>

64. Pelican Township contracts with the City police department to patrol the Township approximately 1,000 hours per year, at a cost of \$34,000 to \$35,000. Under a joint mutual aid agreement, the Crow Wing County Sheriff also provides police protection to the area as well. Whoever is most available will respond to a police call. If

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<sup>57</sup> Factual Information provided by Petitioners at 4 (March 6, 2009); Jt. Ex. 4 (Feb. 10, 2009, Memorandum to Planning Commission from J. Perry re Rach Petition).

<sup>58</sup> Test. of J.A. Weaver, J. Perry, Bruce Gallas.

<sup>59</sup> Test. of B. Gallas; Site Visit.

<sup>60</sup> Test. of J. Perry, O. Schmid; Jt. Ex. 7.

<sup>61</sup> Test. of B. Gallas.

<sup>62</sup> MBA File.

<sup>63</sup> Test. of B. Gallas, T. Polipnick.

<sup>64</sup> Test. of B. Gallas.

the subject area is detached and consolidated with the Township, no change in the police contract is anticipated by the Township. The Township would not have difficulty covering the subject area.<sup>65</sup>

65. Pelican Township contracts with three different entities for fire protection (the City of Nisswa, the City of Pequot Lakes, and Mission Township). If detachment is granted, the Township would add the subject area to the Pequot Lakes contract, resulting in additional cost to the Township and reduced cost to the City.<sup>66</sup>

### **Economic Repercussions of Detachment**

66. 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.<sup>67</sup>

67. The property owners in the subject area were responsible for paying .19% of the City's 2008 tax receipts. The City would lose approximately \$2,820 in tax revenue if the subject area detaches.<sup>68</sup> That revenue loss would be offset to some extent by service cost savings associated with the City 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.

68. 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.<sup>69</sup>

69. The 2009 projected budget for the City is \$1,881,485.<sup>70</sup> The projected loss of tax revenue from detachment, approximately \$2,820, is .15% of the City's 2009 budget.

70. 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**

71. The total bonded indebtedness of the City as of the date of the hearing was \$4,825,000, based upon the following bond issuances:<sup>71</sup>

- a. \$1,490,000 remaining indebtedness on a May 1, 2004, general obligation capital improvement plan bond,<sup>72</sup>

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<sup>65</sup> Test. of B. Gallas.

<sup>66</sup> *Id.*

<sup>67</sup> Test. of J. Perry.

<sup>68</sup> Test. of J. Perry; Jt. Ex. 4 (Feb. 10, 2009, Memorandum to Planning Commission from J. Perry re Rach Petition).

<sup>69</sup> Test. of J. Perry, O. Schmid.

<sup>70</sup> Ex. R112.

<sup>71</sup> Test. of Kathy Millard; City Ex. 2, Attachment B.

- 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;<sup>73</sup>
- 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,<sup>74</sup> and
- d. \$460,000 in remaining indebtedness on a June 15, 2008, general obligation improvement bond for 2008 road improvements.<sup>75</sup>

72. 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.<sup>76</sup>

73. 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.<sup>77</sup> 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 .19%, the subject area's share of the outstanding bonded indebtedness is \$8,800.62.

### Hearing Costs

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

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

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.

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<sup>72</sup> City Ex. 2, ¶¶ 4, 5.

<sup>73</sup> *Id.* at ¶¶ 6, 7.

<sup>74</sup> *Id.* at 8, 9.

<sup>75</sup> *Id.* at ¶¶ 10, 11.

<sup>76</sup> Test. of Kathy Millard; City Ex. 2 (Affidavit of K. Millard), ¶ 12.

<sup>77</sup> Attachments to City Ex. 2.



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;
- c. 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 \$8,800.62.

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 Rach Petition as follows: to the City 70%, to the Petitioners 30%.

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:

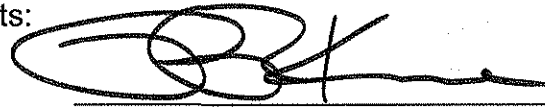
1. The Petition for the Detachment of the Subject Area from the City of Breezy Point is **GRANTED**.
2. The subject area shall remain responsible for its share of the City's outstanding bonded indebtedness in the amount of \$8,800.62, as calculated in Findings of Fact **71-73**.
3. The Executive Director 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, 70%, to Petitioners, 30%.
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.<sup>78</sup>

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.<sup>79</sup> 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 ten of the property owners of the parcels located at the southwestern corner of the City of Breezy Point seek to detach from the City and become part of Pelican Township. The Petitioners seek to detach because they contend that the subject area is rural and therefore better suited to township governance.

### **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 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 Pelican 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.

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<sup>78</sup> Minn. Stat. § 414.07, subd. 2.

<sup>79</sup> 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 . . . .”<sup>80</sup> 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.”<sup>81</sup> 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.”<sup>82</sup> Similarly, the Oxford Dictionary defines “rural” as “relating to or characteristic of the countryside rather than the town,”<sup>83</sup> 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.”<sup>84</sup>

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

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<sup>80</sup> Minn. Stat. § 414.06, subd. 3.

<sup>81</sup> Minn. Stat. § 645.08(1).

<sup>82</sup> <http://www.merriam-webster.com/dictionary/rural>.

<sup>83</sup> [http://www.askoxford.com/results/?view=dev\\_dict&field-12668446=rural&branch=13842570&textsearchtype=exact&sortorder=score%2Cname](http://www.askoxford.com/results/?view=dev_dict&field-12668446=rural&branch=13842570&textsearchtype=exact&sortorder=score%2Cname).

<sup>84</sup> *The American Heritage College Dictionary* (3d ed. 1993) at 1195.

(8) legislative and administrative interpretations of the statute.<sup>85</sup>

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.”<sup>86</sup> 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.”<sup>87</sup>

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 313 acres and is zoned agricultural. Approximately 50% of the subject area consists of wetlands, and the remainder is primarily wooded in nature. The Petitioners were drawn to the area because of the quiet, private, wooded surroundings.<sup>88</sup> They have seen otters, bald eagles, deer, and a cougar on the property. While the Petitioners do not farm in the traditional sense, some logging occurs on the property, and some of the Petitioners keep farm animals (chickens and horses) or intend to do so in the future. In contrast to much of the rest of the City, there are no firearm restrictions in the subject area, and many of the Petitioners hunt on their property.

The subject area lacks many of the traditional indications of urban character. Apart from fire and police protection, no City services are provided to the subject area. There are only four residences on the 22 parcels in the area; as a result, the average density is just one residential unit per 78.25 acres. Although City streets lead up to the subject area, there are no City streets contained within the area. The Petitioners plow and maintain the private easements that allow them to travel to and from their respective properties. The Petitioners have their own septic systems. The closest City sewer line is 1½ 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. 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.”<sup>89</sup> Moreover, Mayor JoAnn Weaver and Council Member Otto Schmid both

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<sup>85</sup> Minn. Stat. § 645.16.

<sup>86</sup> Minn. Stat. § 414.01, subd. 1a(2); see also Ex. R 104 (League of Minnesota Cities Handbook).

<sup>87</sup> *Id.*

<sup>88</sup> See, e.g., Test. of L.A. Owens, J. Berry, G. Zwack.

<sup>89</sup> Jt. Ex. 4 (Feb. 10, 2009, Memorandum from J. Perry to Planning Commission at 3). At the hearing, Mr. Perry testified that he would no longer take the position he took in his Feb. 10, 2009, report to the

agreed in testimony at the hearing that 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.*”<sup>90</sup> According to the City, the subject area “is not truly rural” in the context of the City of Breezy Point and the surrounding area.<sup>91</sup> 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.”<sup>92</sup> Thus, the City “does not dispute that if the petitioned property was located elsewhere, for example in Ramsey or Hennepin Counties, it could be considered rural” but asserts that, “in the City of Breezy Point, it is no more ‘rural’ than the rest of the City.”<sup>93</sup>

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 is not agricultural in nature and has been developed for urban residential use, and thus does not meet the requirements of Minn. Stat. § 414.06, subd. 3. The City maintains that, regardless of the Petitioners’ current intentions, it “must view this property in terms of its potential development.”<sup>94</sup> In this regard, the City emphasizes that five of the lots have been platted, and asserts that normally lots are platted for residential or commercial use. The City further argues that the principal current use of the parcels in the subject area is

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Planning Commission, because he now believes that the subject area is no different from a majority of the areas in the City.

<sup>90</sup> City’s Initial Post-Hearing Brief at 4.

<sup>91</sup> *Id.*

<sup>92</sup> *Id.* at 5.

<sup>93</sup> *Id.*

<sup>94</sup> City’s Initial Post-Hearing Brief at 5.

residential, not agricultural, and points out that it is unlikely that substantial agricultural activities could be sustained on the property given the large number of wetlands. Although there are currently only four residences in the subject area, the City contends that it is likely that there are building entitlements on all of the lots except the ones used for access. Mr. Perry initially testified that these properties could be sold by the owners at any time, and the subject area could have up to 25 residences on it. He also contended that the Petitioners or subsequent property owners could further subdivide the existing lots to create additional lots with additional building entitlements, and develop those lots at any time. However, during cross examination, Mr. Perry acknowledged that the wetlands in the area might limit the potential to subdivide the subject area.<sup>95</sup>

The Administrative Law Judge also does not find these arguments to be convincing or consistent with the statute. The detachment statute does not require that the land that is the subject of a detachment petition be used for agricultural purposes. Even if there were such a requirement, it is evident that some agricultural activities do occur on the subject property, such as timber harvesting and the keeping of farm animals. Moreover, the statute does not prohibit 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”<sup>96</sup> or “to cause (a tract of land) to serve a particular purpose.”<sup>97</sup> The current situation—four residences on 313 acres, with no City roads, sewer, or water—clearly does not meet that requirement. Moreover, the Petitioners testified that they do not intend to develop the subject area in the future or sell it for urban residential purposes. 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.

Mr. Perry believes, based upon discussions with the City's consultant, that there is a possibility that the subject area 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. Moreover, Mr. Perry admitted that there had been no specific discussion in any of the subcommittee meetings about the area that is the subject of the Rach Petition, and further acknowledged that he did not know whether the

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<sup>95</sup> Mr. Perry indicated that, unless a variance is received, City ordinances require that subdivided property in a wooded residential zoning district be split into lots that are five acres “high and dry” (i.e., excluding wetlands).

<sup>96</sup> <http://www.merriam-webster.com/dictionary/developed> .

<sup>97</sup> *The American Heritage College Dictionary* (3d ed. 1993) at 380.



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.

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

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."<sup>98</sup>

The City argues that the detachment would have an adverse effect on the symmetry of the City's boundaries. In particular, Associate City Planner Perry reported to the Planning Commission and testified during the hearing that the detachment, if granted, would create "11 additional angles" in the southwest corner of the City instead of the current 90 degree angle. The contention that the detachment would create 11 angles appears to be based in part on the fact that a 33-foot strip of property that had been sold by John Berry to Larry Rasmussen was inadvertently excluded from the detachment petition when it was initially filed. When that was brought to the attention of the Petitioners, the petition was corrected to include that area. During the hearing, the parties agreed that this strip of land was, in fact, included in the petition.

The City argues that granting the detachment "would result in a large indentation of Township land" between the Cities of Pequot Lakes and Breezy Point, and would "create awkward boundaries" for the City of Pequot Lakes, the City of Breezy Point, and the Township.<sup>99</sup> The City also maintains that the subject area would be subject to potential annexation by Pequot Lakes in the future. The City further complains that detachment would attach the subject area to the smallest governmental unit that it abuts.<sup>100</sup> While the Township remained neutral with respect to the Petition, Bruce Galles, Chair of the Pelican Town Board, testified that the detachment would not cause an unreasonable effect on symmetry from the Township's perspective. No one from the City of Pequot Lakes testified or provided any written comments in opposition to the detachment.

If granted, the detachment would carve out of the City's southwest corner a rectangle containing approximately 308 acres, as well as a smaller five-acre rectangle to the east containing the platted lots located just south of Dove Street. This would shift the City's border in that area to the north by approximately 1 mile. Rather than the 11

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<sup>98</sup> The Merriam-Webster On-Line Dictionary, <http://www.merriam-webster.com/dictionary/symmetry> .

<sup>99</sup> City's Initial Post Hearing Brief at 9; Reply Brief at 4.

<sup>100</sup> Mr. Perry indicated in his report to the Planning Commission that approximately 16% of the subject area abuts Pelican Township, 33% abuts Pequot Lakes, and 50% abuts the City of Breezy Point. The Petitioners indicated in their Factual Information that 20% abuts Pelican Township, 35% abuts Pequot Lakes, and 45% abuts the City of Breezy Point.

angles claimed by the City, it appears that a total of 6 angles would result by virtue of the detachment (4 of which would be caused by the slight protrusion of the area containing the 5 platted lots). The new boundary would not be meandering or irregular in nature, nor would it include complex or excessive angle changes.

Because the boundaries of the City in the southwest corner where the subject area is located have historically been straight lines, the shape 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.<sup>101</sup> Moreover, because no City services are currently provided in the subject area and the area is located in the southwest 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.<sup>102</sup>

The City's concern that Pequot Lakes may seek to annex the subject area at some time in the future is not a reason to deny detachment if the statutory criteria are met at the present time. Moreover, the detachment statute requires that property detached from a municipality become part of the adjoining township, and attaches no significance to what percentage of the property borders the township.<sup>103</sup>

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

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<sup>101</sup> 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").

<sup>102</sup> 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 does not appear that it would be necessary to cross the area to provide any City services to the north or south").

<sup>103</sup> Minn. Stat. § 414.06, subd. 3.

Comprehensive Plan. Moreover, 5,000 to 6,000 platted but undeveloped lots currently exist in the City.

In its post-hearing briefs, the City emphasizes that the subject area has four residences at the present time and 21 lots, including platted lots, which “could be developed at any time” and could potentially be further subdivided. While the City acknowledges that the Petitioners have shown that they personally do not want the property to change, it nevertheless argues that the petitioned property “may eventually be needed” for the development of a City water system or the expansion of sewer and road systems. Council Member Schmid generally testified that the area is a desirable area for people to consider as a residence, and predicted 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.<sup>104</sup>

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 .19% of the City’s 2008 tax receipts. The City projected that it would lose approximately \$2,820 in tax receipts if the subject area is allowed to detach. That loss amounts to only .15% of the City’s 2009 budget, which approaches \$1.9 million. Moreover, the City will realize some cost savings by virtue of not having to provide police and fire protection to the subject area. The Administrative Law Judge concludes that the minimal loss in tax revenue attributable to detachment is insignificant will not cause the City to suffer undue hardship.

The City further argues that it will lose funding options for improving and maintaining its road system if the property is detached. It emphasizes that the subject area can only be accessed via City roads and points out that, if the area is detached,

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<sup>104</sup> Minn. Stat. § 414.06, subd. 3.

the City will no longer be able to issue special assessments to the Petitioners when it maintains or improves Dove Street or Navajo Trail in the future.<sup>105</sup>

Dove Street (a City street that ends at the edge of the subject area) was improved from a gravel road to a blacktop road in recent years, and the Petitioners did, in fact, participate in the cost of that improvement. Although the City's 2006 Five Year Road Plan indicated that Dove Street and Navaho Trail were 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 possible that those improvements will not occur as scheduled. In any event, the City will have ample opportunity to revise the Road Plan if necessary and consider requesting that the Township participate in the costs of any improvement to those roads. It is concluded that the limited impact of the detachment on special assessments for road improvements does not render the remainder of the City unable to carry on the functions of government without undue hardship within the meaning of the statute.

The City also argued that "the precedence of granting this detachment will create a hardship for the City."<sup>106</sup> 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."

The focus of the detachment statute is on the particular property that is the subject of the petition.<sup>107</sup> 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

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<sup>105</sup> Minn. Stat. § 429.051 authorizes the City to assess property benefited by an improvement for the cost of any improvement based upon the benefits received, regardless of whether or not the property abuts the improvement.

<sup>106</sup> City's Initial Post-Hearing Brief at 11.

<sup>107</sup> 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.")

efficient local government.<sup>108</sup> However, the Legislature has also expressly stated its view that rural, agricultural land is better suited to township, rather than municipal, government.<sup>109</sup> The detachment of the Petitioners' property furthers the legislative preference for township governance of rural land.<sup>110</sup>

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 detachment is not appropriate because 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. In particular, the City maintains that the petition was politically motivated and was prompted by Mr. Rach's failure to win the City's mayoral election in November 2008. 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 Factual Information filed by the Petitioners stated that they filed a petition because the property "is zoned agricultural and is rural in character" and they "receive no tangible benefits from the City for taxes paid annually."<sup>111</sup> The Petitioners also provided some additional testimony at the hearing relating to their motivation for seeking detachment.<sup>112</sup> However, in any event, the detachment statute does not 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

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<sup>108</sup> Minn. Stat. § 414.01, subd. 1b(3).

<sup>109</sup> Minn. Stat. § 414.01, subd. 1a(2).

<sup>110</sup> 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.

<sup>111</sup> Factual Information provided by Petitioners at 7 (March 5, 2009).

<sup>112</sup> For example, Lou Ann Owens testified that she was concerned about how high City taxes were. Larry Rasmussen stated that he was interested in detachment because of the tax benefits and the ability to preserve his land as it is. Gerald Zwack (who lives on Ms. Owens' property and also represented his brother, Joseph Zwack, a Petitioner who is in National Guard and lives in Hawaii) indicated that he was concerned about a potential City initiative to extend the Paul Bunyan Trail through Petitioners' property. Ms. Owens, Mr. Zwack, and John Berry all expressed concern that the City might extend Dove Street onto their property. Mr. Berry testified that his property is more appropriately part of the township and that it would be to his advantage to be outside the City. Ms. Owens and Mr. Zwack were worried that the City would subject their property to zoning changes. Mr. Zwack also expressed concern about the City's ability to change hunting rights in the subject area.

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.

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 purposes (or for 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 Administrative Law Judge 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 \$8,800.62. The detachment area 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 Rach Petitioners asserted that the City should bear 100% of the costs attributable to the Rach Petition because the City continued to fight detachment even though the Rach Petitioners showed that all of the statutory requirements for detachment were met during the three mediation sessions. 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 70% and the Petitioners shall bear 30% of the cost of the proceedings attributable to the

Rach Petition. Because Pelican 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.**