

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MUNICIPAL BOUNDARY ADJUSTMENT UNIT

In the Matter of the Petition for the
Detachment of Certain Land from the City
of Babbitt, Minnesota, Pursuant to Minn.
Stat. § 414.06 D-492

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

The above-entitled matter came on for hearing before Administrative Law Judge Bruce H. Johnson (ALJ) at 9:00 a.m., on April 4, 2013, at the Babbitt City Hall, 71 South, Drive, Babbitt, Minnesota. The record closed on May 17, 2013, when all of the parties' written post-hearing memoranda were received.

James Vollstaedt, Attorney at Law, Sipila Law Office, LLC, appeared on behalf of the Petitioners. Mitchell Brunfeldt, Attorney at Law, Colosimo, Patchin, Kearney & Brunfeldt, Ltd., appeared on behalf of City of Babbitt (City).

At the hearing, Exhibits 1 through 47 and 500 through 507 were received as evidence. The ALJ has also included in the hearing record the following documents that were filed prior to the hearing:

(Exhibit 48) Affidavit of Cathy Klegstad, dated February 13, 2013, and filed by the City in Support of its Motion for Dismissal/Summary Disposition;

(Exhibit 49) Affidavit of Pamela Berens, dated February 22, 2012, and filed by the Petitioners in opposition to the City's Motion for Dismissal/Summary Disposition;

The following witnesses testified at the hearing: Pamela Berens, Shawn Gillen, Leroy Aho, Gloria Niebuhr, Cathy Klegstad, James Lassi, and Chad Loewen.

STATEMENT OF THE ISSUE

The issue in this proceeding is whether the Petition for Detachment¹ should be granted based on the criteria set forth in Minn. § 414.06.² The ALJ concludes that the Petition does not comply with those criteria and therefore must be denied.

¹ Petition for Detachment of Property from a City (Petition) filed on May 2, 2012, in the Municipal Boundary Adjustment Unit (MBAU) Docket File.

² Because proceeding was initiated on May 18, 2012 when the Notice of Hearing was filed, all references to Minnesota Statutes are to the edition in effect on May 17, 2012.

FINDINGS OF FACT

Procedural Background

1. On May 2, 2012, the Petitioners filed a Petition for Detachment of property from the City. The Petition, which was signed by 150 property owners, seeks to detach a tract of approximately 5,675 acres from the City pursuant to Minn. Stat. § 414.06.³

2. The property proposed for detachment (Subject Area) is described as: Sections 4, 5, 6, 7, 8, 9, 17, 18, and 19 Township Sixty (60) North, Range Thirteen (13) West, County of St. Louis.⁴

3. On May 18, 2012, the MBAU issued a Notice of Hearing in this matter, setting it for hearing at 9:00 a.m. on June 11, 2012, at the Babbitt Municipal Center, 71 South Drive, Babbitt, Minnesota. The evidentiary part of the hearing was continued indefinitely.⁵

4. On January 22, 2013, the ALJ conducted a telephone prehearing conference with counsel for the parties for the purpose of determining the course of further proceedings.⁶

5. On January 23, 2013, the ALJ issued the First Prehearing Order that established the course of further proceedings. The Order scheduled the evidentiary hearing for 9:00 a.m., on April 4, 2013, at the Babbitt City Hall, 71 South Drive, Babbitt, Minnesota.⁷

6. On February 15, 2013, the City filed a Motion for Dismissal/Summary Disposition, and on February 28, 2013, the Petitioners filed their Response to that motion. The parties filed affidavits and exhibits to support their positions on the motion.⁸

7. On March 13, 2013, the ALJ issued an Order denying the City's Motion for Dismissal/Summary Disposition.⁹

8. Notice of the evidentiary hearing was published in the *New Babbitt Weekly News* on March 22 and 29, 2013.¹⁰

9. On April 4, 2013, the ALJ conducted an evidentiary hearing in this matter at the Babbitt City Hall, 71 South Drive, Babbitt, Minnesota. Immediately after the hearing, the ALJ and counsel for the parties conducted an onsite inspection of the Subject Area.

³ Contained in MBAU Docket File.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

The Argo Cemetery

10. Some years ago, the City established a cemetery, commonly known as the Argo Cemetery, on land within the Subject Area.¹¹

11. City Ordinance No. 161, dated June 8, 2001, established regulations for the use and maintenance of the Argo Cemetery. On June 3, 2002, that ordinance was amended by City Ordinance No. 165. On December 4, 2006, City Ordinance No. 161, as amended, was repealed and replaced by City Ordinance No. 188, which remains in effect.¹²

12. City Ordinance No. 188 generally provides for the administration and maintenance of the Argo Cemetery. Among other things, it contains the following specific provision regarding the sale and conveyance by the City of cemetery lots to individuals:

The Prices of Cemetery Lots shall be subject to change from time to time and set by Resolution by the City Council. Any person paying the price thus fixed for any lot shall be entitled to a deed conveying the same, which deed shall be executed by the Mayor and the City Clerk. *Such deed shall give the purchaser only the right of burial therein and shall be considered an easement privilege or license that restricts the use of the lot so conveyed to burial purposes.*¹³

13. The Cemetery Deeds issued by the City to purchasers of cemetery lots all contain the following provision:

Know all by These Presents: that the Argo Cemetery of the City of Babbitt in the County of St. Louis and State of Minnesota, in consideration of the sum of Five Hundred (\$500.00) dollars, to them in hand paid by [name of purchaser(s)] hereby grant, bargain, sell and convey (sic) until said party (sic) their heir and assigns forever the following described piece of land *as a place for the burial of the dead,*

* * *

To have and to hold the same, subject to the laws of this State, now or hereafter enacted for the management and regulation of Cemeteries, and *also subject to all rules and by-laws of the Cemetery now or hereafter made, for the regulation of the affairs of the same or any part thereof.* [Emphasis supplied.]

It is hereby covenanted, that said hereby granted premises are free from all encumbrances, and that the title now conveyed is perfect, and that said

¹¹ Ex. 48 at ¶ 2.

¹² Ex. 49, at Exhibit 1.

¹³ *Id.*

City of Babbitt, Argo Cemetery will warrant and defend the same to said grantee, their heirs and assigns.¹⁴

14. Excluding the Argo Cemetery, there are 194 property owners in the Subject Area.¹⁵ Seventy-five percent (75%) of that number is 146 fee owners.

15. Approximately 413 burial plots in the Argo Cemetery have already been conveyed to grantees.¹⁶ Approximately 186 of those grantees are deceased.¹⁷ If all of the grantees of burial plots are considered to be property owners in the Subject Area, the total number of property owners would be approximately 607 property owners, and 75 percent of that number would be 456 property owners.

16. Detachment of the Subject Area from the City will not affect the City's ability to operate and maintain the Argo Cemetery, nor will it adversely affect the rights of cemetery lot owners.¹⁸

The City and Its Relationship to the Subject Area

17. The City currently contains 707 households with a total of 1,475 residents.¹⁹ The Subject Area has approximately 75 households with about 130 residents.²⁰ The Subject Area therefore contains about 10.6 percent of the City's households and 8.8 percent of the City's residents.

18. The City contains approximately 63,360 acres, and the Subject Area contains about 5,675 acres.²¹ The Subject Area therefore contains approximately 9 percent of the City's land area.

19. The Subject Area is currently located within the City's municipal boundaries and consists of a roughly triangular tract of land in the City's northwest corner. The southern and eastern boundaries of the Subject Area abut the municipal boundaries of the City. The western boundary of the Subject Area abuts Waasa Township, and the northern boundary of the Subject Area abuts unincorporated property of St. Louis County.²²

20. If detached, the Subject Area will not become part of an adjacent township but will become unincorporated property within St. Louis County.

¹⁴ Ex. 48 at ¶ 5 and Exhibit B.

¹⁵ Petition at p. 2.

¹⁶ Ex. 48 at ¶ 5.

¹⁷ Ex. 48 at ¶ 3.

¹⁸ Oral Stipulation of the City in the hearing record.

¹⁹ Factual Information Form filed by the City on June 28, 2012 (City's Factual Information Form), Item 1 (contained in in MBAU Docket File).

²⁰ Factual Information Form filed by the Petitioners on June 14, 2012 (Petitioners' Factual Information Form), Item 1 (contained in in MBAU Docket File).

²¹ City's Factual Information Form, Item 2A (contained in in MBAU Docket File).

²² Ex. 500.

Local Economy

21. The economy of Babbitt and adjacent areas have been supported primarily by the resource-based industries of taconite mining, timber production, and, tourism, and on the transportation infrastructure required to support those industries. For that reason, Babbitt's economy has been subject to "cycles of boom and bust."²³

22. Babbitt was founded by a mining company to serve as a housing and commercial center for workers at a nearby taconite mine. The City continues to be the home of Northshore Mining Company's Minnesota office and taconite mine.²⁴

23. In 2009, because of a decline in the overall economy, all six of the state's taconite mines and processing plants, including the mine in Babbitt, were shut down. Workers employed in rail transportation associated with taconite production were also laid off. Those layoffs adversely affected Babbitt's economy and its population, which declined from 1,670 in the 2000 census to 1,475 in the 2010 census.²⁵

24. However, in 2010, growing demand in Asian markets caused taconite production to rebound from 17 million tons in 2009 to 37.5 million tons.²⁶ Additionally, after being delayed by the recession, progress has resumed on several large-scale industrial projects in mining, steel production, paper milling, and energy production that have been proposed for the Iron Range region. Those projects have the potential of adding 8,400 temporary construction jobs and 2,125 permanent jobs to the economy of the Iron Range region.²⁷ Those developments have created potential for increased economic activity and population growth within the City.

25. In the 1970s, exploration began for deposits of non-ferrous metal ore bodies in the areas of the City zoned for mineral mining (MM). Some deposits were found, but the economics of extraction did not justify active mining. Those economics have changed, and exploration for deposits of non-ferrous metals within the City have resumed.²⁸ Those explorations also create potential for growth of the City's economy and population.²⁹ Since 2011, there has also been some planning for actual mining of non-ferrous metal ores located within the region;³⁰ however, no specific non-ferrous mining projects have yet been proposed.

26. Currently, no specific residential, commercial, or industrial projects are being proposed or planned for land within the City's municipal boundaries, and the City

²³ Ex. 3 at p. 10.

²⁴ *Id.* at 10; Testimony (Test.) of James Lassi.

²⁵ Ex. 3 at p. 8.

²⁶ *Id.* at p. 10.

²⁷ Ex. 3 at 11-12, 33.

²⁸ Test. of J. Lassi.

²⁹ Ex. 3 at pp. 11-12.

³⁰ *Id.*

and the Petitioners stipulated that the Subject Area is not needed for “reasonably anticipated” future development.³¹

Planning and Zoning, and Land Use

27. In 2011, the Babbitt Planning Commission prepared a Comprehensive Plan pursuant to the Municipal Planning Act.³² The purpose of the Comprehensive Plan was to establish the City’s land use policies and to form a legal foundation for the City’s land use controls and zoning ordinances.³³

28. On November 21, 2011, the City Council adopted the 2011 Babbitt Comprehensive Plan to replace the earlier 1998 City Comprehensive Plan.³⁴

29. There are two areas within the City’s boundaries that have been zoned for residential development. The first is what is commonly known as the “City Proper.” It is an oblong area extending for approximately one mile along the northern borders of Townships T60 N, R12W, and T60 N, R 13W. The City Proper is roughly one-half mile deep along that east-west axis.³⁵

30. The City Proper is the City’s main urban area and contains most of its R-2 (Single Family Residential), R-3 (Two Family & Townhouse), R-4 (Multiple Family), and BD/SBD (Business District and Special Business District) zones.³⁶

31. Only a few buildable lots remain in the portions of the City Proper that are currently zoned for Single-Family Residential (R-2) uses.³⁷

32. The Subject Area is mainly zoned as R-1 (Rural Residential).³⁸ It consists primarily of large parcels of generally flat and rolling land that are a mix of high and low land.³⁹ However, the Subject Area also contains a 40-acre tract that was platted in 1957 as the “Benville” subdivision.⁴⁰ That platted tract is zoned R-2 and is subdivided into about three dozen lots, most of which are 125 feet by 75 feet in size. Some of those lots are currently occupied by single family residences. Another portion of platted Benville, which abuts County State Aid Highway 21 (Highway 21), is zoned as a Business District and contains a few small businesses.⁴¹

³¹ Stipulation dated April 24, 2013.

³² Minn. Stat. §§ 462.351–365.

³³ Ex. 3 at pp. 1-2.

³⁴ Ex. 3.

³⁵ Depicted as a yellow rectangle on Ex. 500; see *also* Ex. 46 and in Ex. 3 at pp. 17-19 (City of Babbitt, Minnesota – Zoning Maps).

³⁶ Ex. 3 at pp. 17-19.

³⁷ Ex. 3 at 30.

³⁸ Ex. 3 at pp. 16-17, Ex. 46.

³⁹ City’s Factual Information Form Item 2E.

⁴⁰ Ex. 47. Test. of J. Lassi. The subdivision of Benville is depicted as an inset on the Zoning Map in Ex. 3, p. 16.

⁴¹ Test. of J. Lassi.

33. Although the remainder of the Subject Area is currently zoned as R-1, it is suitable for future rezoning and development for urban residential, commercial, and industrial uses.⁴²

34. A large tract of land surrounding the City Proper and also extending south and east of the Subject Area is zoned CD (Conservancy District). No development is permitted in CD-zoned land without a special use permit.⁴³

35. An even larger tract of land, extending throughout the City on a northeast-southwest axis and located southeast of the Conservancy District, is zoned MM. The MM-zoned acreage encompasses more than half of the City's total 63,360 acres. Northshore Mining Co., which is engaged in taconite production, owns much of that property, and its offices and taconite mine are located there.⁴⁴

36. Two other large tracts of land, located in the southeast corners of Townships T60 N, R12W, and T59 N, R 13W have been zoned FMR (Forest and Recreation).⁴⁵ The City restricts lot size in those tracts to minimum 80 acre lots.⁴⁶

37. All City land zoned FMR lies within the Superior National Forest, which is managed by the United States Forest Service (Forest Service) of the U.S. Department of Agriculture. Persons desiring to occupy or use any of the City lands zoned FMR must therefore obtain a special use permit from the Forest Service, as well as comply with City zoning ordinances.⁴⁷

38. Because persons seeking to develop property in the City zoned FMR must also comply with federal use restrictions, the City's ability to rezone and develop those lands for residential, commercial, or industrial purposes is significantly limited.

39. In the 1950s, the City acquired a lease on a swimming beach on a lake located south of Highway 70 and east of the City's municipal boundaries. Thereafter, the City developed and has operated a public beach there for the use of its residents. Subsequently, the City acquired ownership of a 40 acre tract immediately south of its beach leasehold and incorporated that tract into the City. That tract is not contiguous with City lands,⁴⁸ and is not zoned.⁴⁹

⁴² Test. of J. Lassi.

⁴³ *Id.*

⁴⁴ Ex. 3 at pp. 17-18; Ex. 46; Test. of J. Lassi.

⁴⁵ Ex. 3 at pp. 16-17.

⁴⁶ Test. of J. Lassi.

⁴⁷ See Conclusions 9 through 11 below.

⁴⁸ Test. of J. Lassi.

⁴⁹ Ex. 3 at pp. 17-19.

40. The total City acreage suitable for and currently zoned for residential, commercial, and industrial development is roughly 6,085 acres.⁵⁰ That represents approximately 9.6 percent of the City's total of 63,360 acres.

41. If there is insufficient land within the City's municipal boundaries to allow future residential, commercial, or industrial development, the City will consider annexing surrounding lands.⁵¹

Symmetry

42. With the exception of the 40 acre tract adjacent to the City operated swimming beach, the City is currently symmetrical, comprising two contiguous Townships (T60 N, R12W, and T60 N, R 13W) and 27 sections of a third Township (T59 N, R13W) to form an L-shape.⁵²

43. The Subject Area is a triangular 5,765 acre tract of land consisting of nine (9) contiguous sections in T60 N, R 13W (Sections 4, 5, 6, 7, 8, 9, 17, 18 and 19) in the northwest corner of the City.⁵³

Roads and Highways

44. The City has limited transportation connections to the regions. The City's primary transportation connection with other cities in the region is Highway 21. To the north, Highway 21 proceeds from the City of Ely approximately seventeen (17) miles and intersects the northern boundary of Babbitt near the eastern edge of the City Proper. Highway 21 then proceeds due west along the City's northern boundary approximately 1.5 miles when it turns southwest and enters the Subject Area.⁵⁴ The Subject Area includes approximately four (4) miles of frontage on both sides of County Road 21.⁵⁵

45. The City's Comprehensive Plan provides that the City will be involved in economic development by "[c]learing and assembling adequate land for business" through "zoning, redevelopment, and similar devices."⁵⁶ Because Highway 21 is the primary transportation connection with the rest of the region, the Comprehensive Plan indicates that any future City industrial development should occur where primary access to Highway 21 is possible.⁵⁷

⁵⁰ Based on testimony and the maps in evidence, the City Proper appears to comprise one-half square mile, that is, a half-section of 320 acres.

⁵¹ Ex. 3 at p. 22.

⁵² Exs. 46 and 500.

⁵³ Ex. 46.

⁵⁴ Exs. 46 and 500.

⁵⁵ Ex. 500.

⁵⁶ Ex. 3 at 33.

⁵⁷ Ex. 3 at 31.

46. The Subject Area also contains several miles of secondary County roads (CR)⁵⁸ and Township roads (TR)⁵⁹ that provide transportation access to property owners and connect directly or indirectly with Highway 21.⁶⁰

47. Currently, St. Louis County (County) is directly responsible for maintaining Highway 21. If the Subject Area is detached from the City, the County will continue to be directly responsible for maintaining Highway 21.

48. Maintenance of the County secondary and Township roads in the Subject Area is governed by a Maintenance Agreement between the County and the City.⁶¹ Among other things, that agreement provides that:

a. The City is responsible for providing summer grading maintenance on CR 698 and CR 593.

b. The County is responsible for providing snow plowing and icing control on TR 6301, TR 6302, TR 6303, TR 6304, and TR 6305 during the winter months and for providing brushing and dust control in the summer months.

c. In the summer months, the County is also responsible for general maintenance on CR 698 and 593.

d. For purposes of the Maintenance Agreement, the term "general maintenance" consists of cleaning culverts and ditches and making major road repairs.

49. Because the Subject Area, if detached, will not become part of an adjacent township but will become unincorporated property within the County, the County will have sole responsibility for all road maintenance within the Subject Area if it is detached.

Police, Fire, and Ambulance Services

50. The City has a Police Department that employs a Chief of Police and three (3) other full-time and five (5) part-time officers. The Chief and two other full-time officers are certified as Emergency Medical Technicians (EMTs); the remaining full-time officer is certified as a First Responder.⁶²

51. The City's police officers normally patrol every road and street in the City, including the Subject Area, at least once every shift.⁶³ They also respond to every police or emergency call made by residents of the City, including fire and medical emergency calls. Because the Police Department conducts patrols twenty-four hours

⁵⁸ CR 698 and CR 593.

⁵⁹ TR 6301, TR 6302, TR 6303, TR 6304, and TR 6305.

⁶⁰ Exs. 43 and 46.

⁶¹ Ex. 43.

⁶² Test. of Chad Loewen.

⁶³ *Id.*

per day, seven days per week (24/7), City police officers are usually the first responders at the scene for all 911 calls made by City residents.⁶⁴

52. The City also has a mutual aid agreement with the County, under which City police officers respond to police calls originating in adjacent townships and unincorporated property in the County when the County specifically requests the City Police Department to respond. Under the mutual aid agreement, City police officers are not the primary first responders to any police calls outside the City's boundaries. Rather, their role is to assist County deputy sheriffs when requested.⁶⁵

53. Between 2008 and 2012, the City Police Department received 4,763 police calls. Eight hundred seventy-nine (879) police calls -- or 18.5 percent of the total -- were made by residents of the Subject Area.⁶⁶

54. In 2009, there were cuts in the state's local government aid to the City, and it was necessary for the City to cut costs. As a cost-saving measure, the City Council ended 24/7 police patrols. They were replaced with patrols during daylight hours, with only on-call coverage after hours.⁶⁷ In response to a petition signed by City residents, the City Council subsequently restored 24/7 police patrols. Thirty-one (31) residents of the Subject Area signed that petition.⁶⁸

55. If the Subject Area is detached from the City, the County will have sole responsibility for providing police protection for residents of the Subject Area. City police officers will only respond to emergency calls within the Subject Area when they are requested to assist a responding deputy sheriff.⁶⁹

56. Currently, the County Sheriff's Department maintains one deputy sheriff on duty to cover the townships and unorganized property bounded by the Cities of Tower, Babbitt, and Ely. The three patrol deputies who share that coverage live in Mountain Iron, Soudan, and Ely. During summer months, there is one deputy sheriff on patrol in that area 24 hours a day. During the winter months patrol coverage is reduced to 16 hours a day, with a deputy sheriff on call at home during the remaining 8 hours.⁷⁰

57. The City also maintains a volunteer fire department and a volunteer ambulance service. Neither is staffed 24/7, and both utilize volunteer firemen and ambulance EMTs.⁷¹

58. If the Subject Area is detached from the City, the County will have sole responsibility for providing fire protection and ambulance services to residents living in unorganized property within the County. Currently, the County does not directly operate

⁶⁴ Test. of C. Loewen.

⁶⁵ *Id.*

⁶⁶ Ex. 31.

⁶⁷ Test. of Cathy Klegstad.

⁶⁸ *Id.*; Exs. 30 and 32.

⁶⁹ Test. of C. Loewen.

⁷⁰ *Id.*

⁷¹ Test. of C. Loewen.

a fire department or an ambulance service. Rather, it contracts with city and township fire departments and ambulance services and assesses residents of unorganized property for the cost of those contract services.⁷²

Other City Services

59. The City provides water and sewer services to some of its residents. The City Council determines whether and where to extend water and sewer lines to residents who do not have those services. It also determines how to pay for the capital cost of extensions. The City conducts operation of water and sewer lines as enterprise activities. In other words, residents must pay the City for hook-up to those services and then pay the City for their monthly operational costs.⁷³

60. Currently, City water and sewer lines do not reach into the Subject Area.⁷⁴ The record is silent on whether there have been any requests by residents of the Subject Area for such extensions.

61. The City provides solid waste collection and recycling services to its residents, including those living in the Subject Area. Residents do not have the option of opting out of those services. City solid waste collection and recycling services are also conducted as enterprise activities; that is, the City contracts with a private commercial hauler and bills residents for the actual cost of those services.

62. The County does not provide solid waste collection and recycling services. Therefore, if the Subject Area is detached, those residents will be responsible for arranging and paying for their own solid waste collection and recycling services.⁷⁵

63. The City also provides a security street light and a civil defense siren in the Subject Area and maintained them in 2012 at a cost of \$1,202.33 and 566.35 per year, respectively.⁷⁶ If the Subject Area is detached, the residents will be responsible for making alternative arrangements and paying for those services.

64. The City also maintains a library, an ice arena, baseball fields, parks and trails, and a City beach at a nearby lake for the use of its residents. Those facilities represent budgeted costs in the City's annual budget and are paid for by property taxes and other general revenues.⁷⁷ Those services are being used by residents of the Subject Area.⁷⁸ If the Subject Area is detached, current City policy is to allow nonresidents to use those facilities and services without charge.

⁷² Test. of C. Klegstad.

⁷³ Test. of C. Klegstad.

⁷⁴ Petitioners' Factual Information Form, Item 7.

⁷⁵ Test. of C. Klegstad; Ex. 30.

⁷⁶ Exs. 34-37.

⁷⁷ Test. of C. Klegstad; Ex. 10.

⁷⁸ Test. of C. Klegstad, J. Lassi, and Pamela Berens.

City Finances

65. The City's total general fund revenues in 2012 were \$1,974,259.81.⁷⁹
66. The City receives most of its annual revenues from the following sources:
- a. Real estate and personal property taxes paid by City residents;
 - b. Local Government Aid (LGA) payments, appropriated and allocated to municipalities by state law;
 - c. Taconite Production Tax payments assessed, appropriated, and allocated to eligible municipalities by state law;
 - d. Taconite Municipal Aid payments appropriated and allocated to eligible municipalities by state law;
 - e. Mining Effects Aid payments, appropriated and allocated to eligible municipalities by state law; and
 - f. Taconite Railroad Aid payments, appropriated and allocated to eligible municipalities by state law.⁸⁰

67. In 2012, the City received approximately \$1,974,260 in revenues from the sources identified in Finding 61⁸¹ and from miscellaneous revenue, as follows:

Real estate and personal property taxes	\$813,827	41.2%
Local Government Aid payments	\$299,542	15.2%
Taconite Production Tax	\$102,896	5.2%
Taconite Municipal Aid payments	\$171,846	8.7%
Mining Effects Aid payments	\$172,186	8.7%
Taconite Railroad Aid payments	\$166,768	8.4%
Miscellaneous Revenues ⁸²	\$247,195	12.5%
TOTAL	\$1,974,260	100%

68. LGA, Taconite Production Tax payments, Taconite Municipal Aid payments, Mining Effects Aid payments, and Taconite Railroad Aid payments are all distributed to eligible municipalities like Babbitt, in accordance with complex formulas established in statute and rule. The amounts distributable in a given year can vary with changes in the economy, tax revenues, and legislative appropriations. Additionally, the

⁷⁹ Ex. 18.

⁸⁰ Ex. 5; Test of Shawn Gillen.

⁸¹ Ex. 5.

⁸² In 2012, the City also has a number of minor sources of annual revenue, such as permit fees, fines, etc. See Ex. 18.

formulas used to determine the amounts distributable to specific municipalities are subject to legislative change. Therefore, the extent to which detachment of the Subject Area might affect the amounts of those payments to the City in future years is speculative.⁸³ The miscellaneous revenues that the City receives can also vary widely from year to year.

69. The only major source of City annual revenue which is relatively predictable, and subject to City control, is property tax revenue.

70. Based on real estate taxes paid by City residents in 2012, if the Subject Area had been detached in that year, there would have been a \$77,062.69 reduction in the City's property tax revenues. That would have represented a 9.5 percent reduction in those property tax revenues and the City's property tax base.

71. A \$77,062.69 reduction in the City's 2012 property tax revenues would have represented a 3.9 percent reduction in the City's total revenues for 2012.

72. A 1 percent increase in the City's property taxes generates approximately \$8,000 in additional property tax revenues for the City.⁸⁴

73. Nearly a 9.6 percent increase in the City' property tax rate would have been required in 2012 to enable the City to replace the property tax revenues that the City would have lost if the Subject Area had been detached in that year.

Other Findings

74. These Findings are based on all of the evidence in the record. Citations to portions of the record are not intended to be exclusive references.

75. To the extent that the Memorandum that follows explains the reasons for these Findings of Fact and contains additional findings of fact, including findings on credibility, the Administrative Law Judge incorporates them into these Findings.

76. The Administrative Law Judge adopts as Findings any Conclusions that are more appropriately described as Findings.

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

CONCLUSIONS OF LAW

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

⁸³ Test. of S. Gillen.

⁸⁴ Test. of C. Klegstad.

2. Proper notice was given for the hearing in this matter, and this case is properly before the Administrative Law Judge.

3. The 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. 1, provides:

Property which is situated within a municipality and abutting the municipal boundary, rural in character and not developed for urban residential, commercial, or industrial purposes may be detached from the municipality according to the following procedure. The proceeding may be initiated by submitting to the chief administrative law judge a resolution of the municipality to which the land is attached or by submitting to the chief administrative law judge a petition of all of the property owners of the land to be detached if the area is less than 40 acres or of 75 percent of the *property owners* if over 40 acres.

(Emphasis supplied.)

5. The term “property owner” is further defined in Minn. Stat. § 414.011, subd. 5:

‘Property owner’ means the fee owner of land, or the beneficial owner of land whose interest is primarily one of possession and enjoyment. The term includes, but is not limited to, vendees under a contract for deed, and mortgagors. Any reference to a percentage of property owners shall mean in number.

6. Owners of cemetery lots in the Argo Cemetery, which is located within the Subject Area, are not “fee owners” within the meaning of Minn. Stat. § 414.011, subd. 5. They are therefore not “property owners” within the meaning of Minn. Stat. § 414.06, subd. 1, and they need not be counted in determining whether 75 percent of the owners of property to be detached have signed the Petition, as required by that subdivision.⁸⁵

7. The Subject Area is more than 40 acres, and more than 75 percent (75%) of the owners of the property to be detached signed the Petition, as required by Minn. Stat. § 414.06, subd. 1.

8. The Subject Area is not entirely rural in character and has been partially developed for urban residential and commercial use. The Subject Area therefore does not comply in its entirety with the second requirement of Minn. Stat. § 414.06, subd. 3.

9. Minn. Stat. § 414.06, subd. 3, provides that “[t]he chief administrative law judge may decrease the area of property to be detached and may include only a part of the proposed area to be detached.”

⁸⁵ See also Part I of the Memorandum that follows.

10. Decreasing the area to be detached by removing the portions of the Subject Area that are zoned R-2 and CD would create an isolated "island" of City land in a large tract of unincorporated County land and, therefore, unreasonably affect the symmetry of the City.⁸⁶

11. The City zoning code does not allow residential and commercial development on the property that the City has zoned as CD, MM, or FMR, nor is that property suitable for future development as either R-1 or R-2 zoned property.⁸⁷

12. Congress has delegated to the Secretary of Agriculture authority to regulate the uses of land within a national forest. 16 U.S.C § 551 provides in relevant part:

The Secretary of Agriculture shall make provisions for the protection against destruction by fire and depredations upon the public forests and national forests which may have been set aside or which may be hereafter set aside under the provisions of section 471 1 of this title, and which may be continued; and he may make such rules and regulations and establish such service as will insure the objects of such reservations, namely, to regulate their occupancy and use and to preserve the forests thereon from destruction;

13. 16 U.S.C § 551a provides:

The Secretary of Agriculture, in connection with the administration and regulation of the use and occupancy of the national forests and national grasslands, is authorized to cooperate with any State or political subdivision thereof, on lands which are within or part of any unit of the national forest system, in the enforcement or supervision of the laws or ordinances of a State or subdivision thereof. Such cooperation may include the reimbursement of a State or its subdivision for expenditures incurred in connection with activities on national forest system lands. This section shall not deprive any State or political subdivision thereof of its right to exercise civil and criminal jurisdiction, within or on lands which are a part of the national forest system.

14. Because the Secretary therefore exercises his jurisdiction to regulate the occupancy and use of the National Forest lands within the City's boundaries concurrently and cooperatively with the City, persons seeking to develop the City's CD-, MM-, or FMR-zoned lands lying within the Superior National Forest must obtain a special use permit from the Forest Service, as well as comply with the City's zoning ordinances.

⁸⁶ See also Part III of the Memorandum that follows.

⁸⁷ Findings 34 through 38.

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

[T]he chief administrative law judge may order the detachment on finding that the requisite number of property owners have signed the petition if initiated by the property owners, that the property is rural in character and not developed for urban residential, commercial or industrial purposes, that the property is within the boundaries of the municipality and abuts a boundary, that the detachment would not unreasonably affect the symmetry of the detaching municipality, and that the land is not needed for reasonably anticipated future development. The 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.

16. The Subject Area is within the boundaries of the City and abuts the boundaries of the City, thereby satisfying the corresponding requirement for detachment in Minn. Stat. § 414.06, subd. 3.

17. As proposed, the detachment would not unreasonably affect the symmetry of the City, thereby satisfying the corresponding requirement for detachment in Minn. Stat. § 414.06, subd. 3.⁸⁸

18. Detaching the Subject Area would therefore eliminate approximately 9.6 percent of the City's property tax base.⁸⁹

19. The Subject Area is not needed for reasonably anticipated future development, thereby satisfying the corresponding requirement for detachment in Minn. Stat. § 414.06, subd. 3.

20. However, virtually all of the City property suitable for residential, commercial, and industrial development lies within the Subject Area. Detachment would therefore eliminate virtually all of the City's future development potential and, therefore, prevent the City from continuing to carry on the functions of government without undue hardship. The petition fails to satisfy the corresponding requirement for detachment in Minn. Stat. § 414.06, subd. 3.⁹⁰

21. The parties did not agree to division of the costs prior to the hearing. After consultation with and approval of the Chief Administrative Law Judge, it is appropriate to allocate 50 percent (50%) of the costs of this proceeding to the Petitioners and the other 50 percent (50%) to the City.

22. Any Finding of Fact more properly termed a Conclusion is adopted as such. Any Conclusion more properly termed a Finding of Fact is adopted as such.

⁸⁸ See also Part III of the Memorandum that follows.

⁸⁹ See also Part IV of the Memorandum that follows.

⁹⁰ See also Part V of the Memorandum that follows.

23. The Memorandum that follows further explains the basis for these Conclusions. To that extent, the Memorandum is hereby incorporated into these Conclusions.

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

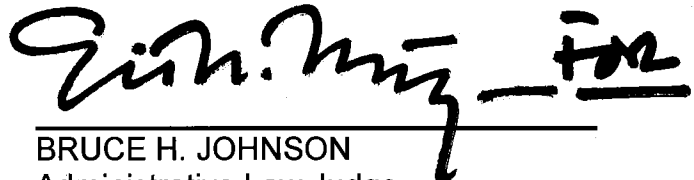
ORDER

IT IS ORDERED:

(1) The Petition for Detachment of the Subject Area from the City of Babbitt is **DENIED**; and

(2) Pursuant to Minn. Stat. § 414.12, subd. 3, the cost of these proceedings shall be divided as follows: to the City, 50 percent (50%) and to Petitioners 50 percent (50%).

Dated: June 10, 2013



BRUCE H. JOHNSON
Administrative Law Judge

Reported: Digitally recorded; no transcript prepared.

NOTICE

This Order is the final administrative order in this case under Minn. Stat. §§ 414.06, 414.09, and 414.12. Any person aggrieved by this Order may appeal to the St. Louis County District Court by filing an Application for Review with the Court Administrator within 30 days of the date of this Order. An appeal does not stay the effect of this Order.⁹¹

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 pursuant to Minn. R. 6000.3100. However, no request for amendment shall extend the time of appeal from this Order.

⁹¹ Minn. Stat. § 414.07, subd. 2.

MEMORANDUM

I. Owners of Burial Plots in the Argo Cemetery Are Not “Property Owners” Within the Meaning of Minn. Stat. § 414.06, subd. 1.

Minn. Stat. § 414.06, subd. 1, requires that a petition for detachment of over 40 acres be signed by “75 percent of the property owners if over 40 acres.” The term “property owner” is further defined in Minn. Stat. § 414.011, subd. 5, as “the fee owner of land, or the beneficial owner of land whose interest is primarily one of possession and enjoyment.”

A. Owners of Burial Plots in the Argo Cemetery Are Not “Fee Owners.”

Minnesota statutes do not further define the term “fee,” as it is used with reference to real property. In fact, however, “fee” has a technical meaning in real property law, and Minn. Stat. § 645.08(1) provides 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.*

(Emphasis supplied.) Black’s Law Dictionary defines “fee,” as that term is used in real property law, as

[a]n inheritable interest in land, constituting maximum legal ownership; esp. a fee simple absolute.⁹²

“Fee simple” is further defined as:

[a]n interest in land that, being the broadest property interest allowed by law, endures until the current holder dies without heirs.⁹³

Rather than conveying “maximum legal ownership” or “the broadest property interest allowed by law,” the deeds conveying interests in the Argo Cemetery expressly limit the holders from using the lots for any purpose other than burial of the dead. In short, the limited property interests that holders of Cemetery Deeds to lots in the Argo Cemetery receive do not meet the special technical meaning of “fees,” as that term is commonly understood in real property law.

⁹² BLACK’S LAW DICTIONARY 629 (7th ed. 1999).

⁹³ *Id.* at 630.

B. Owners of Burial Plots in the Argo Cemetery Are Also Not “Beneficial Owners.”

Minn. Stat. § 414.011, subd. 5, provides that a “property owner” can also be a “beneficial owner of land whose interest is primarily one of possession and enjoyment.” The Merriam-Webster Online Dictionary defines “enjoyment,” in the legal sense, as “possession and use.”⁹⁴ It further defines “use” as “the legal enjoyment of property that consists in its employment, occupation, exercise, or practice.”⁹⁵ Thus, in order to meet the definition of “property owner” in Minn. Stat. § 414.011, subd. 5, the holder of an interest must not only have “possession,” but must also be able to engage in some kind of *active* employment and use of the land.

Here, burial plot deeds convey the land solely as “as a place for the burial of the dead” with the right:

To have and to hold the same, subject to the laws of this State, now or hereafter enacted for the management and regulation of Cemeteries, and *also subject to all rules and by-laws of the Cemetery now or hereafter made, for the regulation of the affairs of the same or any part thereof.*⁹⁶

(Emphasis supplied.) Thus, the owners of Argo Cemetery plots, particularly those who are deceased, have only acquired “possession” of the subsurface of the land for the passive use of burial. They have not acquired active “enjoyment” of the land in the legal sense of that word. The ALJ therefore concludes that owners of Argo Cemetery plots are also not “beneficial owners” within the meaning of Minn. Stat. § 414.011, subd. 5, and therefore not “property owners” within the meaning of Minn. Stat. § 414.06, subd. 1.⁹⁷

II. The Petitioners Are Receiving the Same City Services as Other City Residents.

In the Petition, the Petitioners assert that the reason for seeking detachment of the Subject Area from the City is that they are paying the same percentage of their property taxes as other City residents but are not receiving the same City services. However, the evidence established otherwise.⁹⁸

As with its other residents, the City is providing the Petitioners with police, fire protection and emergency medical and ambulance services on a 24/7 basis. If detachment occurs, the County will be responsible for providing those services to residents of the Subject Area and will assess them separately for those services. Moreover, it is also likely that upon detachment, residents of the Subject Area will be

⁹⁴ THE MERRIAM-WEBSTER ONLINE DICTIONARY (2013).

⁹⁵ *Id.*

⁹⁶ Finding 13.

⁹⁷ If the holders of Argo Cemetery plots were considered to be “beneficial owners” and therefore “property owners,” the Petition would have to be denied for failure to comply with Minn. Stat. § 414.06, subd. 1. In other words, the ultimate result in this proceeding would not change.

⁹⁸ Petition at ¶ 6.

receiving lower levels of some or all of those services. For example, the City currently provides police protection 24/7, and City policemen actually patrol the Subject Area at least once every eight-hour shift. Additionally, all of the City's full-time policemen are certified either as EMTs or first responders. They normally are the first to respond to the scenes of fire and other emergency calls and are in a position to render aid to victims until other on-call emergency services arrive. On the other hand, if detachment occurs, police protection will be provided by a deputy sheriff who has a large adjacent area of the County to patrol. In fact, during winter hours, a deputy sheriff will only be available on an on-call basis much of the time, and there is no assurance that a deputy sheriff will respond to fire calls and some other types of emergency calls in the Subject Area. If detachment occurs, the County will also have to contract with a fire department or ambulance and assess the residents of the Subject Area separately for those costs, and there is no assurance that those contract services will be as close to residents as the City's fire department and ambulance service.

The Petitioners also asserted in the Petition that the City does not provide them with road maintenance. That is incorrect. Although the County provides road maintenance to the Subject Area, the County provides those services under a Maintenance Agreement between the County and the City. The City pays the County for road maintenance services in the Subject Area from sums in the City's general fund; it does not specially assess residents for those costs. If detachment occurs, the County will assess residents directly for the cost of road maintenance. The City also provides residents of the Subject Area with a security street light and a Civil Defense siren, and pays for the operating costs of those items. Upon detachment, the residents of the Subject Area will be responsible for obtaining those services and paying for the operating costs. The City also provides the residents of the Subject with all of the amenities that it provides to other City residents, including use at no cost of a library, an ice arena, baseball fields, parks and trails, and a City beach at a nearby lake.

In fact, there are only two services which are now being provided to some other City residents which are not being provided to residents of the Subject Area—namely, water and sewer services. The City Council would have to approve extension of water and sewer lines into the Subject Area, and the City would have to pay for the capital cost of line extension, most commonly with bonded debt, but there is no evidence that residents of the Subject Area have ever requested extension of City water and sewer lines to their property. Moreover, water and sewer services are operated as enterprises, therefore residents, and not City taxpayers, must pay for the cost of hooking up and the cost of monthly service.

III. The Subject Area Contains Property That Has Already Been Developed for Urban Residential and Commercial Purposes.

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

[T]he chief administrative law judge may order the detachment on finding that ... the property is rural in character and not developed for urban residential, commercial or industrial purposes

The statute does not explicitly address the situation where part of the property to be detached has been developed for urban residential, commercial or industrial purposes. Yet, at a minimum, the statute expresses a strong legislative policy discouraging detachment of property not developed for urban residential, commercial or industrial purposes. Moreover, Minn. Stat. § 414.06, subd. 3, explicitly provides for a method for avoiding detachment of property partially developed for urban uses:

The chief administrative law judge may decrease the area of property to be detached and may include only a part of the proposed area to be detached.

Thus, one reasonable interpretation of the statute is that detachment may be granted where the portion of the property that has been developed for urban residential, commercial or industrial purposes can be subtracted from the subject area without violating the statutory requirements for detachment.

But in this case, the ALJ concludes that subtraction is not possible. Removal of the developed 40 acres from the Subject Area would create an isolated island of City property within a large area of unincorporated County property and unreasonably affect the symmetry of the City.

This situation differs from the recreational beach property that the City owns on a lake located outside the City's municipal boundaries. That property represents an amenity that is neither developed nor developable for urban residential, commercial or industrial purposes. There, the existence of the recreational property does not unreasonably affect the City's symmetry, nor is it integral to the functions of City government.

IV. Detachment of the Subject Area Will Reduce the City's Property Tax Base by About 9.5 Percent (9.5%).

The evidence established that, based on 2012 data, detachment of the Subject Area would have reduced the City's property tax revenues by about 9.5 percent. Although it would only have reduced the City's total revenues by about 3.9 percent, property taxes are the City's largest source of revenue, accounting for 41.2 percent of its total revenue in 2012. LGA revenues can and do vary with the state's biennial budgets, and the various taconite-related revenues can vary widely with business cycles. Property tax revenues are therefore the only revenue source largely within the City's control. Thus, although 3.9 percent is a relatively small amount of the City's total revenues, losing 9.5 percent of the City's property tax base has a significant effect on the City's ability to budget for and maintain core services. It is also the only revenue source that has a direct impact on City residents.

The evidence established that about a 9.6 percent increase in the City's property tax rate would have been required in 2012 in order for the City to replace the \$77,062.69 in property tax revenues that the City would have lost as the result of detachment of the Subject Area. In short, detaching the Subject Area from the City

would have made it difficult for the City to maintain services without imposing considerable hardship on the City's remaining residents.

V. Detaching the Subject Area Will Deprive the City of Virtually All of Its Future Development Potential.

Although there are 63,360 acres within the City's municipal boundaries, the Town Proper and the Subject Area contain the only acreage suitable for, and currently zoned for, residential, commercial, and industrial development. Together they comprise approximately 6,085 acres or only about 9.6 percent of City acreage. In fact, at about 320 acres, the Town Proper comprises only about 0.5 percent of the City's developable land, and it is already completely developed, with only a few buildable lots remaining.

The City's remaining land—about 57,275 acres—is zoned as a CD, for MM, and for FMR purposes. Most of that land also lies within the Superior National Forest. The City itself limits development of CD-zoned lands by requiring a special use permit and limits FMR-zoned lands by limiting development to minimum 80 acre lots. In exercising joint jurisdiction over the national forest lands, Congress has given the Secretary of Agriculture the statutory responsibility to “regulate their occupancy and use and to preserve the forests thereon from destruction.”⁹⁹ All the City land lying within the Superior National Forest therefore requires an additional special use permit from the Forest Service. The City land zoned for MM is currently being used for taconite production or is being held for future production. It is also being actively explored for deposits of non-ferrous metals. In other words, mineral production is the highest and best use of land zoned as MM. Additionally, Highway 21 is the only major transportation connection between the City and the rest of the region, and the City's Comprehensive Plan recognizes that land fronting Highway 21 is therefore most suitable for commercial and industrial development. However, virtually all of the City land with frontage along Highway 21—some four miles of highway frontage—lies within the Subject Area. Thus, development of City land zoned as a CD, for MM, and for FMR purposes is very restricted and not suitable for residential, commercial, and industrial purposes.

The parties stipulated that the Subject Area is not needed for reasonably anticipated future development, and the evidence established that no specific residential, commercial, or industrial projects are currently being proposed or planned for land within the City's municipal boundaries. However, that does not mean that the City will never have development potential. The evidence also established that several large-scale industrial projects within the Iron Range region, which were delayed by the recession, have now resumed. They include mining, steel production, paper milling, and energy production projects. As a group they have the potential of adding 8,400 temporary construction jobs and 2,125 permanent jobs to the economy of the Iron Range region. Those projects could potentially stimulate the growth of many Iron Range communities, including Babbitt, as long as they have land available for further residential, commercial, and industrial development. As discussed above, detachment

⁹⁹ 16 U.S.C § 551.

of the Subject Area will deprive the City of virtually all the land that has future potential for residential, commercial, and industrial development. It will therefore severely limit the City's ability to compete with other regional communities for future growth opportunities. There is also potential for developing large-scale non-ferrous mining projects within the region. In fact, current exploration suggests that such projects may be developable within the City's boundaries. Although detachment of the Subject Area might not prevent mining of non-ferrous metals within the City, it would severely limit the City's ability to take advantage of related residential and commercial development opportunities.

In summary, virtually all of the land within the City's municipal boundaries that is reasonably available to realize the City's future urban residential, commercial, and industrial development potential lies within the Subject Area that the Petitioners propose to detach. Its absence would place the City at significant disadvantage in competing with other Iron Range communities for future growth opportunities. The ALJ therefore concludes that detachment of the Subject Area would create undue hardship for the City by depriving it of virtually all of its potential to take advantage of future development opportunities.

VII. Conclusion

The Subject Area contains land which has already been developed for urban and commercial purposes and which cannot be removed from the area to be detached without unreasonably affecting the City's symmetry. Detaching the Subject Area will also result in nearly a 10 percent reduction of the City's property tax base. Moreover, the detachment is likely to create undue hardship for the City by depriving it of virtually all of its future residential, commercial, and industrial development potential. Even if these factors may not individually support denial of the Petition, the ALJ concludes that in the aggregate they would result in the inability of the remainder of the municipality to continue to carry on the functions of government without undue hardship. The ALJ therefore concludes that the Petition must be denied.

B. H. J.