

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MUNICIPAL BOUNDARY ADJUSTMENT UNIT

In the Matter of D-496 Gilbert/Fayal
Township

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

The above-entitled matter came on for an evidentiary hearing on July 29, 2013, before Administrative Law Judge Amy J. Chantry. On August 12, 2013, the record closed upon receipt of the parties' post-hearing summations.

Mitchell J. Brunfelt, Colosimo, Patchin, Kearney & Brunfelt, appeared on behalf of the City of Gilbert (City).

Kelly Klun, Klun Law Firm, appeared on behalf of Petitioners Roy and Jodi Pontinen, James and Julie Jarvi, Tom and Jennifer Nemanich (Petitioners).

STATEMENT OF THE ISSUES

1. Should the Petitioners' Petition for Detachment should be granted based on the criteria set forth in Minn. Stat. § 414.06, subd. 3?
2. How should the costs associated with this matter be allocated between the parties?

SUMMARY OF CONCLUSION

The Administrative Law Judge concludes that the Petitioners were unable to demonstrate that the detachment would not unreasonably affect the symmetry of the City, and that the property sought to be detached is not needed for future development under Minn. Stat. § 414.06, subd. 3. As a result, the Petition for Detachment is denied. In addition, the Administrative Law Judge, with the concurrence of the Chief Administrative Law Judge, finds that the costs associated with this proceeding should be split evenly between the City of Gilbert and the Petitioners.

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

FINDINGS OF FACT

Procedural Background

1. On July 3, 2012, the Petitioners in this matter filed a Petition for Detachment of 104.22 acres of land (Subject Area).¹ The Petitioners' Petition (Petition) indicated that there are eight property owners in the area proposed for detachment and that six property owners signed the petition. The Subject Area proposed for detachment is described as follows:

Property 1: 060-0055-00200 owned by Robert and Mary Nanti (Nanti Parcel)

Section 35 Township 58 Range 17

SW1/4 OF SE1/4 EX COMM AT NE COR OF FORTY THENCE S02DEG54'39"E ALONG E LINE 41.99 FT TO SWLY R.O.W. LINE OF CO HWY 97 AND PT OF BEG THENCE CONT S02DEG54'39"E ALONG E LINE 614.67 FT THENCE S87DEG05'21"W 250 FT THENCE N02DEG 54'39"W 669 FT TO N LINE OF FORTY THENCE N89DEG54'34"E ALONG N LINE 218.63 FT TO SW R.O.W. LINE THENCE S38DEG54'46"E ALONG R.O.W. 53.83 FT TO PT OF BEG & EX COMM AT NE COR OF FORTY THENCE S02DEG54'39"E ALONG E LINE 656.66 FT TO PT OF BEG THENCE CONT S02DEG54'39"E ALONG E LINE 118.38 FT THENCE S87DEG00'27"W 250 FT THENCE N02DEG54'39"W 118.74 FT THENCE N87DEG05'21"E 250 FT TO PT OF BEG **38.70 acres**

Property 2: 060-0055-00193 owned by Roy and Jodi Pontinen (Pontinen Parcel)

Section 35 Township 58 Range 17 PART OF NW1/4 OF SE1/4 LYING ELY OF WLY 370 FT & SWLY OF SWLY RW LINE OF CTY RD 97 INC PART OF VAC OLD CTY RD 97 ADJ **11.71 acres**

Property 3: 060-0055-00190 owned James and Julie Jarvi (Jarvi Parcel)

Section 35 Township 58 Range 17 NW1/4 OF SE1/4 LYING NELY OF HWY R.O.W. **13.81 acres**

Property 4: 060-0055-00180 owned by Tom and Jennifer Nemanich (Nemanich Parcel)

Section 35 Township 58 Range 17 NE1/4 OF SE1/4 **40.00 acres**²

2. Robert and Mary Nanti did not sign the Petition. Notwithstanding this fact, the Petitioners are still proposing that the Nanti Parcel be detached from the City.³

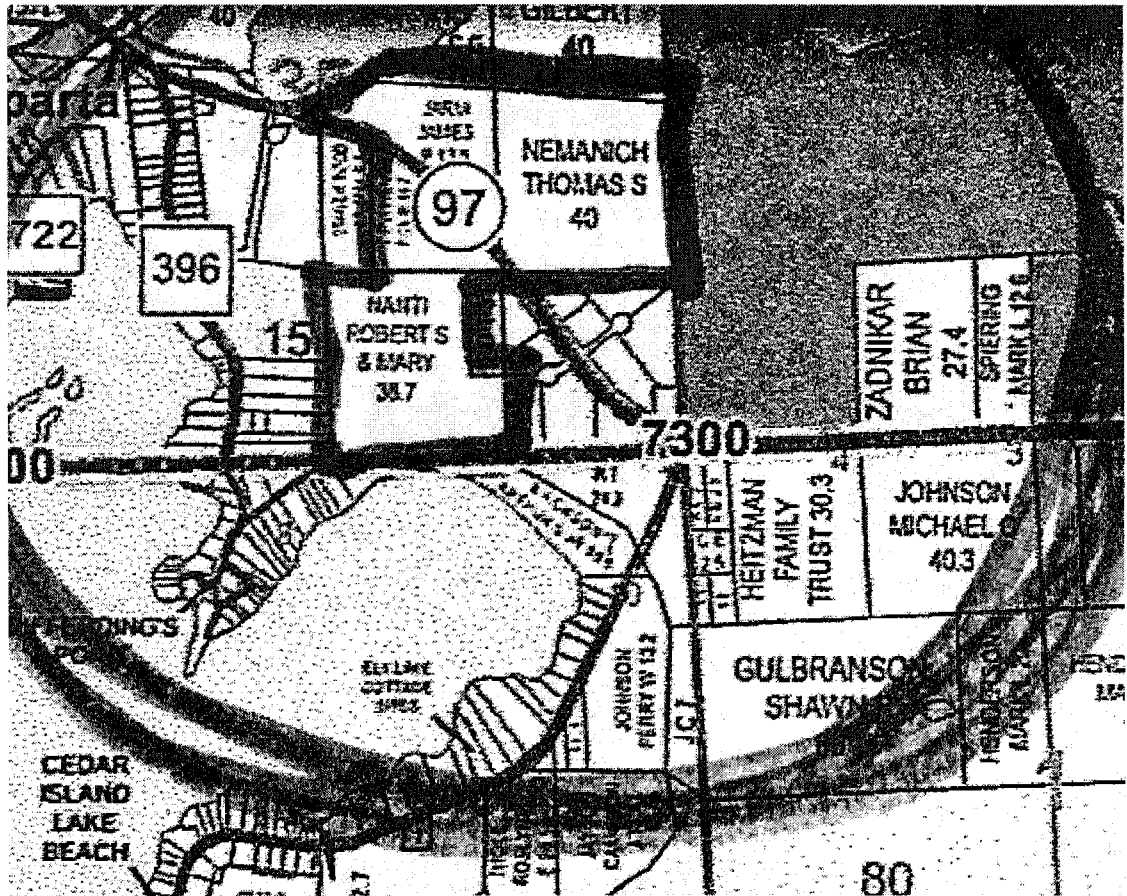
¹ PROPERTY OWNER PETITION FOR DETACHMENT OF PROPERTY FROM A CITY, filed July 3, 2012.

² *Id.*

³ *Id.*

3. The Nantis are also owners of a second parcel of land in Wuotila Estates, located west of their property in the Subject Area. This parcel is not proposed for detachment.⁴

4. The Subject Area is depicted as an irregular dodecagon⁵ on the following map:



5. On July 25, 2012, the City filed an objection to the Petitioners' Petition.⁶

6. On August 2, 2012, the Municipal Boundary Adjustment Unit (MBAU) issued a Notice of Hearing in this matter. A hearing was set for August 30, 2012, at 11:30 a.m. in the Conference Room, Gilbert City Hall, 16 South Broadway, Gilbert, Minnesota. The evidentiary part of the hearing was continued indefinitely.⁷

⁴ Ex. 1; Ex. 2.

⁵ A dodecagon is any polygon with twelve sides and twelve angles.

⁶ Correspondence dated July 25, 2012.

⁷ Contained in Minnesota Boundary Adjustment Unit Docket File.

7. On January 11, 2013, the first Pre-Hearing Conference was conducted.⁸

8. On February 25, 2013, a Notice of Reconvened Hearing was issued setting the matter on for a hearing on March 28, 2013. The Notice was duly published.⁹

9. On March 8, 2013, the City requested that the March 28, 2013, hearing be continued to another date because the Gilbert City Clerk-Treasurer, Susan Harper, had resigned from her position. Ms. Harper would be one of the City's primary witnesses at the hearing.¹⁰

10. On March 14, 2013, a second Pre-Hearing Conference was conducted to address the City's continuance request. The Petitioners agreed to the continuance on the condition that they did not have to pay for publishing the Notice of Reconvened Hearing in the paper. The hearing was continued to May 2, 2013.¹¹

11. A Notice of Reconvened Hearing was issued and duly published.¹²

12. On March 22, 2013, a third Pre-Hearing Conference was conducted.¹³

13. On May 2, 2013, the matter was reconvened for a hearing. At the hearing, the City made an oral Motion to Dismiss the Petition. The City argued that the Petitioners failed to have 75 percent of the property owners in the Subject Area sign the Petition as required by Minn. Stat. § 414.06.¹⁴

14. On July 1, 2013, the City's Motion to Dismiss was denied and the matter was set for hearing on July 29, 2013.¹⁵

15. A Notice of Reconvened Hearing was issued and duly published.¹⁶

16. A hearing was held on July 29, 2013.

Proposed Detachment Area

17. The Subject Area proposed for detachment is made up of four separate parcels of land on the southern boundary of the City. It consists primarily of large parcels of generally flat, wooded land.¹⁷

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Ex. 1; Ex. 2.

18. All of the parcels contain single family residences, except for the Nanti Parcel, which is a vacant lot.¹⁸

19. The Nanti Parcel abuts the City's southern boundary and the Pontinen Parcel shares a boundary with the Nanti Parcel. The Pontinen Parcel then abuts the Jarvi Parcel, which abuts the Nemanich Parcel.¹⁹

20. The Subject Area is zoned Low Density Residential and is not platted.²⁰

21. The City proper is zoned Medium Density Residential and is platted.²¹

22. The Subject Area is currently located within the City's municipal boundaries.²²

23. If detached, the Subject Area would become part of Fayal, the adjacent township.²³

The Stanek Parcel

24. The Stanek Parcel is not part of the Subject Area proposed for detachment.²⁴

25. The Stanek Parcel abuts the Pontinen Parcel on its east side and ²⁵the Nanti Parcel on its south side.

The City of Gilbert

26. The City is a political subdivision of the State of Minnesota, and a charter city. The charter was adopted on November 6, 1941, and amended January 1, 1978, and December 17, 2002.²⁶

27. The City is governed by elected officials and operates under a council-mayor form of government.²⁷

28. The City has a total population of 1,799 people.²⁸

¹⁸ Test. of Jodi Pontinen; Site Visit Observations by the Administrative Law Judge.

¹⁹ *Id.*

²⁰ Testimony of J. Pontinen.

²¹ Test. of J. Pontinen.

²² Test. of J. Pontinen; Ex. 1; Ex. 2.

²³ *Id.*

²⁴ Ex. 1; Ex. 2.

²⁵ *Id.*

²⁶ Ex. H. at 23.

²⁷ *Id.*

²⁸ Ex. 3.

29. The City owns 40 acres of lakeshore property on Deep Lake, which is located immediately north of the Jarvi and Nemanich Parcels.²⁹

30. The City also owns the public access on Deep Lake that is off of County Road 97.³⁰

Joint Resolution for Orderly Annexation Agreement

31. There is a Joint Resolution Agreement between the City and Fayal for Orderly Annexation (Orderly Annexation Agreement).³¹

32. In the Orderly Annexation Agreement, the City and Fayal have agreed that:

The future annexation of the Town of Fayal to the City of Gilbert holds the potential for increased ability of the municipal government to solve existing or potential environmental problems associated with four lakes within the boundaries of the Town of Fayal. The future annexation of the Town of Fayal to the City of Gilbert also holds the potential for increased ability to meet other public health, safety and welfare needs of the Town of Fayal.³²

33. Pursuant to the terms of the Orderly Annexation Agreement, the annexation of Fayal by the City must be approved by a majority of registered voters on or before January 1, 2020.³³

34. The only issue to be placed before eligible voters would be: "Shall the Town of Fayal [or any portion thereof] be annexed to the City of Gilbert?"³⁴

35. If a majority of either municipality's citizens reject the annexation, the Orderly Annexation Agreement would be null and void and no party may file an Initiating Resolution.³⁵

36. If approved, the annexation would become effective January 1, 2023.³⁶

²⁹ Ex. 1; Ex. 2.

³⁰ Site Visit Observations by the Administrative Law Judge.

³¹ Test. of Steve Kniefel; Ex. 4.

³² Ex. 4.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.* (defining Initiating Resolution to mean a resolution of the Town of Fayal which will certify that all of the terms and conditions of this orderly annexation agreement have been fulfilled, and which pursuant to Minn. Stat. § 414.0325, subd. 1 (1998), the submission of said Initiating Resolution to the Minnesota Municipal Board will cause the Minnesota Municipal Board to order the annexation of the Town of Fayal, or a portion thereof, to the City of Gilbert).

³⁶ *Id.*

37. If approved, the tax rate of the City will apply to Fayal upon the effective date of the annexation. Prior to the effective date of the annexation, the tax rate as established by the Fayal Town Board of Supervisors will apply to Fayal.³⁷

City Services

38. In 2007, the City completed installation of sewer and water systems in the Sparta Area. There were approximately 45 connections made to the system at that time.³⁸

39. The Sparta Area is located east of the parcels proposed for detachment.³⁹

40. In 2007, sewer and water were installed to the residents of Differding Point at an average cost of \$8,000.⁴⁰

41. The Differding Point sewer and water connection is within one-fourth of a mile to the south of the Pontinen Parcel.⁴¹

42. The City 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 operates its water and sewer lines as "enterprise activities." Residents receiving these services must pay the City for hook-up to those services and then pay the City for their monthly operational costs.⁴²

43. Currently, City water and sewer lines do not reach into the Subject Area.⁴³

44. Prior to building their home in 2003, the Pontinens verbally requested that the City extend water and sewer to their property. The request was denied because of the high costs associated with such extensions.⁴⁴

45. The City provides solid waste collection to its residents, including those living in the Subject Area.⁴⁵

46. The City also maintains a library, parks, hockey arena, outside rinks, and City beach at a nearby lake for 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.⁴⁶

³⁷ *Id.*

³⁸ Test. of John Jamnick.

³⁹ Test. of John Jamnick; Ex. 1.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² Test. of S. Kniefel.

⁴³ Test. of J. Pontinen.

⁴⁴ Test. of J. Pontinen.

⁴⁵ Test. of J. Pontinen; Ex. 5.

⁴⁶ Ex. 5; Ex. 7; Ex. 9.

47. The City levies over \$60,000 per year for recreational activities.⁴⁷

48. The City levies over \$100,000 per year for library services.⁴⁸

49. County Road 97 is maintained by St. Louis County. The Petitioners maintain each of their own driveways that are located off County Road 97.⁴⁹

50. The City's police officers normally patrol every road and street in the City, including the Subject Area, twice each shift. 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 every day, seven days per week, City police officers are usually the first responders at the scene for 911 calls.⁵⁰

51. Between January 8, 2013, and February 27, 2013, city police officers responded to 19 police calls near the Subject Area.⁵¹

52. If the Subject Area is detached from the City, the County will have sole responsibility for providing police protection for residents in 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.⁵²

53. The St. Louis County Sheriff's Department does not respond to emergency medical calls.⁵³

2013 Taxable Market Value of the Subject Area

54. The Nemanich Parcel has a 2013 taxable market value of \$304,900.⁵⁴

55. The Jarvi Parcel has a 2013 taxable market value of \$205,300.⁵⁵

56. The Pontinen Parcel has a 2013 taxable market value of \$291,500.⁵⁶

57. The Nanti Parcel has a 2013 taxable market value of \$38,900.⁵⁷

⁴⁷ Ex. 5.

⁴⁸ *Id.*

⁴⁹ Test. of J. Pontinen.

⁵⁰ Test. of Ty Techar.

⁵¹ Ex. K.

⁵² Test. of T. Techar.

⁵³ *Id.*

⁵⁴ Test. of Debra Erickson; Ex. 39.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

58. The total 2013 taxable market value of all of the Petitioners' parcels is \$840,600, which is 1.669 percent of the estimated market value of the real property located in the City.⁵⁸

2013 Property Tax Bills for the Subject Area

59. The Nemanich Parcel was assessed \$4,633.34 in taxes in 2013. The City's share of the tax bill is \$2,978.17.⁵⁹

60. The Jarvi Parcel was assessed \$3,105.20 in taxes in 2013. The City's share of the tax bill is \$1,960.31.⁶⁰

61. The Pontinen Parcel was assessed \$3,940.60 in taxes in 2013. The City's share of the tax bill is \$2,502.28.⁶¹

62. The Nanti Parcel was assessed \$651.58 in taxes in 2013. The City's share of the tax bill is \$457.03.⁶²

City Finances

63. The 2013 projected budget for the City is \$5,274,892.05.⁶³

64. The City's total general fund revenues in 2012 were \$830,913.⁶⁴

65. The City receives most of its annual revenues from the following sources:

- a. Real estate and personal property taxes paid by City residents;
- b. Taconite Production Tax payments assessed, appropriated and allocated to eligible municipalities by state law;
- c. Mining Effects Aid payments, appropriated and allocated to eligible municipalities by state law;
- d. Taconite Homestead credit payments appropriated and allocated to eligible municipalities by state law;
- e. Taconite Municipal Aid payments appropriated and allocated to eligible municipalities by state law;

⁵⁸ *Id.*

⁵⁹ Ex. 6; Ex. 39.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ Ex. 19; Ex. S.

⁶⁴ Ex. 8.

- f. Franchise payments appropriated and allocated to eligible municipalities by state law; and,
- g. Local Government Aid (LGA) payments appropriated and allocated to municipalities by state law.⁶⁵

66. The City expends most of its financial resources on: general government; public safety; public works; sanitation; culture and recreation; and economic development. Property taxes and state and federal grants and aids finance most of these activities.⁶⁶

67. On December 11, 2012, the City levied \$945,913 to cover its debts. The City noted as part of its budget that the amount levied was less than the amount it budgeted because the City had \$1.7 million on hand.⁶⁷

City Development

68. In 2000, the City Council adopted a Comprehensive Plan/Land Use Plan (Comprehensive Plan) to guide the City's future development.⁶⁸

69. The City planned for a total of 1,225 acres of single family residential homes, while working on maintaining its traditional neighborhoods.⁶⁹

70. According to the Comprehensive Plan the strategies for preserving existing neighborhoods were to: (1) enhance the public center of the neighborhood with a park or school; (2) provide increased lighting; (3) maintain density levels for the development for the existing neighborhoods; (4) promote infill housing; (5) create a homeowner maintenance program; and (6) create an urban forest program for street tree replacement.⁷⁰

71. As part of its Comprehensive Plan, the City aimed at promoting upscale housing on Lake Ore-Be-Gone.⁷¹

72. The City has recently completed Phase One of the Lake Ore-Be-Gone development and is beginning work on Phase 2.⁷²

73. Phase 2 involves more development of the more desirable lake lots, and is based on the assumption that as the housing market and economy continue to improve more people will build homes.⁷³

⁶⁵ Ex. H at 51.

⁶⁶ Ex. H. at 5.

⁶⁷ Ex. 8.

⁶⁸ Test. of J. Pontinen; Ex. N.

⁶⁹ Ex. N.

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² Test. of J. Jamnick.

74. The City could develop its 40 acres on Deep Lake into residential lots.⁷⁴

75. It would be financially feasible for the City to bring infrastructure into the area of Deep Lake in the future if it connected up with the ten lots from Woutila Estates. The more connections that are run, the more financially feasible it becomes for the City to install sewer and water.⁷⁵

76. In order to run the sewer and water systems into the 40 acres on Deep Lake, the City would need to run the lines under the Jarvi and Nemanich Parcels.

77. Without consent of the Jarvis and Nemanichs, the City would have to exercise its power of eminent domain to obtain the needed easements.⁷⁶

Hearing Costs

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

79. It is appropriate to allocate the costs of the proceeding to the parties on an equitable basis.

80. 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.

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

Based on the 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.

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. Under applicable law, detachment of property from a municipality may be ordered if the following criteria are met:

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

- (a) the requisite number of property owners have signed the petition if initiated by the property owners;
- (b) the property is rural in character and not developed for urban residential, commercial or industrial purposes;
- (c) the property is within the boundaries of the municipality and abuts the municipal boundary;
- (d) the detachment would not unreasonably affect the symmetry of the detaching municipality; and
- (e) the land is not needed for reasonably anticipated future development.

The statute further specifies that the detachment may be denied if the Administrative Law Judge finds that the remainder of the municipality cannot continue to carry on the functions of government without undue hardship.⁷⁷

5. This proceeding was initiated by a Petition signed by seventy-five (75) percent of the property owners of the Subject Area. The Petition complies with Minn. Stat. § 414.06, subd. 1, and thus the first criterion set forth in Minn. Stat. § 414.06, subd. 3 has been met.⁷⁸

6. The Subject Area is rural in character and has not been developed for urban residential, commercial or industrial purposes, as required by the second criterion set forth in Minn. Stat. § 414.06, subd. 3.

7. The Subject Area is within the boundaries of the City and abuts a boundary, as required by the third criterion set forth in Minn. Stat. § 414.06, subd. 3.

8. The detachment of the Subject Area would unreasonably affect the symmetry of the City, and thus fails to satisfy the fourth criterion of Minn. Stat. § 414.06, subd. 3.

9. The Subject Area is needed for reasonably anticipated future development. The proposed detachment fails to satisfy the fifth criterion set forth in Minn. Stat. § 414.06, subd. 3.

10. The detachment of the Subject Area would render the remainder of the municipality unable to carry on the functions of government without undue hardship, within the meaning of Minn. Stat. § 414.06, subd. 3.

⁷⁷ Minn. Stat. § 414.06, subd. 3.

⁷⁸ July 1, 2013, Order Denying the City's Motion to Dismiss.

11. The parties did not agree to a division of the costs before the hearing. It is appropriate to allocate 50 percent of the costs of this proceeding to the Petitioners and the other 50 percent to the City.

12. The attached Memorandum explains the reasons for these Conclusions and is incorporated herein.

Based upon the foregoing Conclusions and for the reasons set forth in the Memorandum below, 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 Gilbert is **DENIED**.

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

3. Pursuant to Minn. Stat. § 414.12, subd. 3, the cost of these proceedings shall be divided equally between the City and the Petitioners.

Dated: August 29, 2013


AMY J. CHANTRY
Administrative Law Judge

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 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.⁷⁹

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 this Order.⁸⁰ A request for amendment shall not extend the time of appeal from these Findings of Fact, Conclusions of Law and Order.

⁷⁹ Minn. Stat. § 414.07, subd. 2.

⁸⁰ Minn. R. 6000.3100.

MEMORANDUM

The Joint Resolution for Orderly Annexation between the City and Fayal

In its post-hearing summation, the City asserts that the Petitioners' detachment request is barred by the Orderly Annexation Agreement between the City and Fayal. The Administrative Law Judge does not agree. First, there is nothing in the Orderly Annexation Agreement that pertains to detachments. The Orderly Annexation Agreement only pertains to the annexation of Fayal by the City.

According to the Orderly Annexation Agreement, the effective date of the annexation will be January 1, 2023. In addition, before Fayal could be annexed a special election must be held on or before January 1, 2020, in which the eligible voters will decide: "Shall the Town of Fayal [or any portion thereof] be annexed to the City of Gilbert?" If a majority of eligible voters in both Fayal and the City do not approve the annexation, the Orderly Annexation Agreement will be null and void.

The Administrative Law Judge agrees with the City that if the detachment was granted and the annexation of Fayal by the City occurred in 2023, the Subject Area would revert back to the City. However, this is not a proper legal basis to deny the Petitioners' Petition. At this point, it is unknown whether or not the annexation of Fayal by the City will be approved by a majority of eligible voters in each municipality. It would be imprudent of the Administrative Law Judge to rely on a purely speculative argument in denying the detachment.

Petition for Detachment

In this detachment proceeding under Minn. Stat. ch. 414, six property owners seek to detach from the City and become part of Fayal. Robert and Mary Nanti did not sign the Petition, but the Petitioners are nonetheless seeking detachment of the Nanti Parcel, which is located south of the Pontinen Parcel. The Petitioners contend that they have met all of the criteria required for detachment under Minn. Stat. § 414.06, subd. 3. They also contend that the taxes they pay are five times higher than they would have to pay to Fayal, and there would be no change in services if the detachment were granted.

Statutory Factors

Under 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 the municipal 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.

Based upon the Administrative Law Judge's July 1, 2013, Order Denying the City's Motion to Dismiss, the City did not dispute that the requisite number of property owners signed the Petition for Detachment. Accordingly, the first criterion of Minn. Stat. § 414.06, subd. 3, is satisfied.

The dispute in this case revolves around whether the Subject Area is undeveloped and rural in character; whether the property is within the boundaries of the municipality and abuts a boundary; whether the detachment would unreasonably affect the symmetry of the City; and whether the land is needed by the City for reasonably anticipated future development. Each of these factors is discussed below.

Rural 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" ⁸¹ The term "rural" is not defined in Minn. Stat. ch. 414 or in the applicable ch. 6000 rules. 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." ⁸²

The term "rural" is not defined in Minn. Stat. ch. 645 and nor can it 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." ⁸³ Similarly, the Oxford Dictionary defines "rural" as "relating to or characteristic of the countryside rather than the town," ⁸⁴ 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." ⁸⁵

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

⁸¹ Minn. Stat. § 414.06, subd. 3.

⁸² Minn. Stat. § 645.08 (1).

⁸³ *Rural Definition*, MERRIAM-WEBSTER.COM, <http://dictionary/rural> (last visited August 26, 2013).

⁸⁴ *Definition Rural*, ASKOXFORD.COM, <http://dictionary/results/?view=dev> (last visited August 26, 2013).

⁸⁵ THE AMERICAN HERITAGE COLLEGE DICTIONARY 1195 (3rd ed. 1993).

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
- (8) legislative and administrative interpretations of the statute.⁸⁶

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."⁸⁷ 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."⁸⁸

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 104.22 acres and is zoned Low Density Residential property. Its terrain is flat and wooded in nature.

Moreover, the Subject Area lacks many of the traditional indications of urban character. The Subject Area contains three residences and a vacant wooded lot. The Petitioners have their own septic systems. The closest sewer line is one-fourth mile away at Differding Point and there is no evidence that the City has any plans to extend sanitary sewer to the Subject Area. The City does not provide water to the Subject Area. Instead, the Petitioners are serviced by private wells. The City does not have any plans to provide water to the area.

The Subject Area is also zoned Low Density Residential as compared to the City proper, which is zoned Medium Density Residential. The City proper is the main urban area of the City. The parcels of land within the City proper are much smaller than those in the Subject Area. The Subject Area is also more wooded than the City proper. The Subject Area is rural in nature and exemplifies country living. The City proper is also platted, which is more typical of urban residential areas. The Subject Area is not platted. Also, the roads leading into the parcels of the Subject Area are unpaved, while

⁸⁶ Minn. Stat. § 645.16.

⁸⁷ Minn. Stat. § 414.01, subd 1(a)2.

⁸⁸ *Id.*

all of the roads are paved within the City. Each of the Petitioners is responsible for maintaining their own driveways, while St. Louis County maintains County Road 97. The Petitioners' Parcels are located off County Road 97. The City maintains the roads within the City proper.

Prior to building their home, the Pontinens requested that the City provide sewer and water to the Subject Area. The Pontinens' request was denied because of the high costs associated with the extension of such services.

The Petitioners also do not receive any of their electrical service from the City. Lake Country Power provides electrical service to the Petitioners with a \$35 surcharge, while residents of the City only pay a \$3.50 surcharge.

The Administrative Law Judge concludes that the Subject Area is rural in nature and has not been developed for urban, residential, commercial, or industrial purposes. Therefore, the second criterion of Minn. Stat. § 414.06, subd. 3, is met.

The Subject Area is Within and Abuts Municipality's Boundary

The third requirement under Minn. Stat. § 414.06, subd. 3, is that the Subject Area be located within the City and abut a boundary of the City from which the Petitioners seek to detach. There is no dispute that the Subject Area is located totally within the boundaries of the City. The City argues, however, that because the Nanti Parcel is the only parcel that abuts the municipal boundary and they did not sign the Petition, the detachment should be denied.

There is no requirement under Minn. Stat. § 414.06, subd. 3, that each separate parcel comprising the total land proposed for detachment must abut the municipal boundary. There is also no requirement that in order for a detachment to be granted, the property owner whose land abuts the municipal boundary must sign the Petition. Instead, Minn. Stat. § 414.06 only requires that 75 percent of the property owners sign the petition, if the subject area is over 40 acres.

In this case, the Nanti Parcel abuts the City's southern boundary and the Pontinen Parcel shares a boundary with the Nanti Parcel. The Pontinen Parcel then abuts the Jarvi Parcel, which abuts the Nemanich Parcel. Therefore, the Subject Area as a whole meets the statutory criteria that the land proposed for detachment abuts a municipal boundary under the third criterion of Minn. Stat. § 414.06, subd. 3.

Symmetry

Another factor to be considered under the detachment statute is whether the detachment would "unreasonable affect the symmetry of the detaching municipality."⁸⁹ The term "symmetry" is not defined in Minn. Stat. § 414.06, subd. 3. The common definition of "symmetry" includes "balanced proportions" and "the property being

⁸⁹ Minn. Stat. § 414.06, subd. 3.

symmetrical; especially: correspondence in size, shape, and relative position of parts on opposite sides of dividing line or median plane or about a center or axis."⁹⁰

In examining the physical boundaries of the City, it is evident that the detachment of the Petitioners' parcels would unreasonably change the shape and location of a portion of the east-west and north-south boundary of the City. The current east-west boundary between the City and Fayal is a straight line. However, if the detachment were allowed, it would carve out of the center of the City' southerly boundary line an upside-down "L" shaped wedge containing the four parcels. The new boundary would be very irregular and uneven in nature.

The detachment would also shift the City's border and leave the Wuotila Estates parcels as a square shaped parcel that protrudes into Fayal. Wuotila Estates would be surrounded by Fayal on three sides and an undeveloped wooded area within the City, on its eastern side. This area would be isolated from any developed areas within the City.

Moreover, if the detachment were granted, the Stanek Parcel would be bordered by Fayal on the south and east, Deep Lake on the north and Penobscot Iron Ore, LLC, located within the City, on the west. The boundary to the west of the detached parcels would be meandering or irregular in nature with an excessive angle.

The shape of the City's east-west border with Fayal is currently symmetrical, so symmetry is a significant issue. Moreover, the City may want to provide City services to the Subject Area after detachment and it would be necessary for the City to cross the area to provide City services to others, especially those living in Wuotila Estates and Deep Lake. There is no benefit to either the City or Fayal in this irregular layout.

Thus, the Administrative Law Judge concludes that the granting of the Petitioners' Petition would have an unreasonable affect on the symmetry of the City and interfere with the future provision of City services.

Anticipation of 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. Here, there would be additional negative effects on the City's future development if the detachment was granted. The City owns 40 acres of lakeshore property on Deep Lake. Deep Lake is located immediately to the north of the Jarvi and Nemanich Parcels.

In order to develop this property in the future, the City would need to cross the Jarvi and Nemanich properties with infrastructure in order to bring in services like sewer, water, and electricity. The utilization of eminent domain or condemnation powers to acquire property and rights-of-way that are necessary for the extension of

⁹⁰ Merriam-Webster On-Line Dictionary, <http://www.merriam-webster.com/dictionary/symmetry>.

municipal infrastructure is a standard function of municipal government.⁹¹ If the detachment were granted, the City would lose its ability to use eminent domain and condemnation to develop the properties to the north and east of the Subject Area parcels. The City would no longer have jurisdiction over the Subject Area to acquire property or rights-of-way for extensions of municipal infrastructure for future development.

Up until this point, the City has been promoting the development of residential homes on Lake Ore-Be Gone. The City is only on Phase 2 of the project, with more future development and more desirable lake lots to be developed in the next phase. Once this area is fully developed, it is reasonable to anticipate that the City will seek to develop the 40 acres it owns on Deep Lake. There is already one private home on the lake. The City also owns the public access on the lake that is near County Road 97. Civil Engineer, John Jamnick, noted at the hearing that if the housing market and economy continue to improve, more people will build homes on the lake.

There are five homes located in Wuotila Estates and there are still five vacant lots. The area also encompasses a park area in keeping with the City's Comprehensive Plan/Land Use Plan of 2000. At this time, each of the five homes utilize private wells and septic systems because of the high costs associated with bringing in sewer and water to so few homes. However, the City maintains that this is an area ripe for future development. The Administrative Law Judge agrees. The area is about three miles from the City, and encompasses large wooded lots. As the City's population continues to grow, it is reasonable to anticipate that more people will seek out lots here to build their homes in the future. It is also likely that the residents will request that the City connect them to City sewer and water. For all of these reasons, the Administrative Law Judge concludes that the Subject Area is needed for reasonably anticipated future development. Thus, the Petitioners have failed to satisfy the fourth criterion of Minn. Stat. § 414.06, subd. 3.

Undue Hardship

Even if all of the initial statutory criteria had been met under Minn. Stat. § 414.06, subd. 3, a 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.⁹² The City is approximately 8,064 acres in size. If the detachment were granted, the loss of 104.22 acres would have minimal impact on the size of the City.

In addition, the detachment would not cause any financial hardship on the City. The 2013 projected budget for the City is \$5,274,892.05. The Nemanich Parcel has a 2013 taxable market value of \$304,900. The Jarvi Parcel has a 2013 taxable market value of \$205,300. The Pontinen Parcel has a 2013 taxable market value of \$291,500. The Nanti Parcel has a 2013 taxable market value of \$38,900. The total taxable market

⁹¹ Minn. Stat. § 465.01, Chapter 117.

⁹² Minn. Stat. § 414.06, subd. 3.

value of all of the parcels is \$840,600, which is 1.669 percent of the estimated market value of the real property located in the City.

On December 11, 2012, the City levied \$945,913 to cover its debts. Yet, the City noted that the amount it budgeted to cover its debts was more than the levy amount because the City had 1.7 million dollars on hand. The Petitioners owe a combined total of \$7,897.79 in property taxes for tax year 2013. The property taxes paid by the Petitioners only make up 1.669 percent of the revenue for the City. Considering the 1.7 million dollars that the City had on hand in 2012, it is clear that the City would not be unduly burdened by the loss of \$7,897.79 in tax revenue if the detachment were granted.

Based on the record as a whole, the Administrative Law Judge concludes that there has been a sufficient showing that the City would be unable to carry on the functions of government without undue hardship if the detachment is granted.

Costs

When the parties are unable to agree to the division of the costs for a proceeding under Minn. Stat. § 414.12, the costs are to be assigned by the Chief Administrative Law Judge.⁹³ In this case, the Petition for Detachment was brought by the Petitioners and opposed by the City. Fayal has played no real role in the proceedings and has taken no position other than to state that it would accept the Subject Area, should the detachment be ordered. Therefore, the costs of this proceeding shall be divided equally between the Petitioners and the City.

Conclusion

All of the criteria of Minn. Stat. § 414.06, subd. 3, must be met in order for the Administrative Law Judge to approve the detachment. The Petition filed by the Petitioners does not meet the criteria for symmetry and anticipated future need for development. Therefore, the Petition is denied.

A. J. C.

⁹³ Minn. Stat. § 414.12, subd. 3.