

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MUNICIPAL BOUNDARY ADJUSTMENT UNIT

In the Matter of the Petition for
Detachment of Certain Land from
the City of Winnebago D-497
Pursuant to Minn. Stat. § 414.06

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

The above-entitled matter came on for hearing before Administrative Law Judge M. Kevin Snell (ALJ) at 10:00 a.m. on August 1, 2013, in the Winnebago City Council Chambers, 140 Main Street South, Winnebago, Minnesota. The record closed on the same day. At the hearing, Exhibits A-F and 1-9 were accepted as evidence.

David F. Frundt, Frundt & Johnson, L.T.D., appeared on behalf of Douglas K. Meyer, Petitioner. Douglas L. Johanson, Johanson Law Firm, appeared on behalf of the City of Winnebago (the City).

The following witnesses testified at the hearing: Douglas K. Meyer, Petitioner; John L. Thompson, Faribault County Auditor and Treasurer; Christian M. Ziegler, City Administrator for the City of Winnebago; Darold Neinhaus, City Building Official, Planning Commission Member, and Member of the Economic Development Authority (EDA); Jean Anderson, City Council Member and EDA Member; and Richard Johnson, City Council Member.

STATEMENT OF THE ISSUES

The principal issue in this proceeding is whether the Petition for Detachment should be granted based on the factors set forth in Minn. Stat. § 414.06.

The second issue is how the costs associated with this matter should be allocated between the parties.

SUMMARY OF DECISION

The ALJ finds that the Petition should be granted, and that the costs of this proceeding should be allocated equally between the Petitioner and the City of Winnebago.

Based on the evidence in the hearing record, the ALJ makes the following:

FINDINGS OF FACT

1. On July 16, 2012, Petitioner filed a Petition for Detachment of property from the City. The Petition, filed by the property owner, seeks to detach 38.61 acres from the City pursuant to Minn. Stat. § 414.06.¹

The Subject Property (the Tract)

2. The legal description of the property proposed for detachment is:

"North Tract" described as follows:

The Northeast Quarter of the Northeast Fractional Quarter (NE 1/4 of NE Fr. 1/4), Section Two (2), Township One Hundred Three (103) North, Range Twenty-eight (28) West, Faribault County, Minnesota.

TOGETHER WITH: The Northwest Quarter of the Northeast Fractional Quarter (NW 1/4 of NE Fr. 1/4) of Section Two (2), Township One Hundred Three (103) North, Range Twenty-eight (28) West, Faribault County, Minnesota.

EXCEPTING THEREFROM: That part of the Northwest Quarter of the Northeast Quarter (NW 1/4 of NE 1/4) of Section Two (2), Township One Hundred Three (103) North, Range Twenty-eight (28) West of the Fifth Principal Meridian in the County of Faribault and State of Minnesota, described as follows: Commencing at an iron pipe monument designating the North Quarter corner of said Section Two (2); thence North 90 degrees 00 minutes 00 seconds East (assumed bearing), along the North line of the Northeast Quarter (NE 1/4) of Section Two (2) a distance of 381.27 feet to the point of beginning; thence continuing North 90 degrees 00 minutes 00 seconds East, along said North line, 279.85 feet; thence South 00 degrees 55 minutes 13 seconds East, 538.45 feet; thence South 85 degrees 20 minutes 54 seconds West, 284.13 feet; thence North 00 degrees 32 minutes 30 seconds West, 561.45 feet to the point of beginning. Said parcel contains 3.56 acres, subject to an easement for County Highway No. 109 purposes over and across the Northerly boundary; ALSO subject to any other easements of record.

TOGETHER WITH: A tract commencing at a point 50 rods South of the Northeast corner of the Northwest Quarter (NW 1/4) of Section Two (2) in Township One Hundred Three (103) North, Range Twenty-eight (28) West of the Fifth Principal Meridian in the County of Faribault and State of Minnesota and running thence South 110 rods to the Southeast corner of

¹ Petition; Testimony of Douglas K. Meyer.

said quarter section, thence West along the South line of said quarter section to the Southwest corner of the Southeast Quarter of the Northwest Quarter (SE 1/4 of NW 1/4) of said Section Two (2), thence North 110 rods, and thence East to the point of beginning, EXCEPTING THEREFROM the Southeast Quarter of the Northwest Fractional Quarter (SE 1/4 of NW Fr. 1/4) thereof.²

3. There are 38.61 acres and one property owner within the property proposed for detachment (the Tract). The property owner of the Tract, Douglas K. Meyer, signed the Petition to Detach.³

4. The exception to the legal description of the Tract (the Exception), consists of 3.26 acres, and abuts State Highway 109 on the north.⁴ The Exception is not owned by Petitioner, and is located approximately in the center of the Tract.⁵ Detachment of the Tract will leave the Exception within the boundaries of the City.⁶

5. The requisite number of property owners have signed the Petition.⁷

6. The Tract is currently located within the municipal boundaries of the City.⁸ Verona Township borders a southerly boundary of the City.⁹

7. In addition to the Tract, the properties to the East and South of the Tract in Verona Township are owned by Petitioner. The Tract and Petitioner's adjacent property are all utilized as farmland, currently planted with soybeans.¹⁰

8. The Tract is rural in character and not developed for urban residential, commercial or industrial purposes.¹¹

9. The Tract abuts the municipal boundary of the City.¹² The Tract is bordered to the west, south, and east by Verona Township. If the Tract is detached, it will become part of Verona Township.¹³

10. The Tract is within the boundaries of the City and abuts a present boundary of the City on the East, South and West.¹⁴

² *Id.*

³ *Id.*

⁴ Exs. 1 and B.

⁵ *Id.*; Test. of D. Meyer.

⁶ Ex. B.

⁷ Stipulation made by the Parties upon commencement of the hearing (Stipulation).

⁸ *Id.*; Exs. C, D, and F.

⁹ Petition; Test. of John L. Thompson.

¹⁰ Exs. 6-8; Test. of D. Meyer.

¹¹ Stipulation.

¹² *Id.*

¹³ Petition; Exs. 2, 3 and F.

¹⁴ Stipulation; Ex. 2.

11. Petitioner has no plans to develop the Tract or his other adjacent property. He intends to pass it on to his children to continue farming all of his land.¹⁵

12. No one, including any representatives of the City, has approached Petitioner to discuss any possible future development of the Tract.¹⁶

13. The Tract has been zoned by the City as a B-1 District.¹⁷ A B-1 District is intended for a wide variety of business and commercial activities.¹⁸ The agricultural use of the Tract, as well as of the property to the west of the Tract that has a single family residence on it, are non-conforming uses under the City Zoning Ordinance.¹⁹

14. The City does not provide sewer or water to the Tract.²⁰ The nearest sewer and water connections are approximately 500 feet north of the Tract, across State Highway 109.²¹ State Highway 109 runs along the north boundary of the Tract. Electricity is available to the northwest portion of the Tract because the City has an electricity distribution line along State Highway 109 from the northwest corner of the Tract to the Exception.²²

15. Solid waste collection and disposal, fire protection, law enforcement, and administrative and recreational services are available to the Tract from the City.²³

16. Petitioner has not utilized any available City services for the Tract.²⁴

The City of Winnebago

a. Shape and Zoning of the City

17. The City's current population is 1,435 individuals. It consists of 1,408 total acres. The City has not established separate "Urban and Rural Taxing Districts." The City's current tax levy is \$516,097.85.²⁵

¹⁵ Test. of D. Meyer.

¹⁶ *Id.*

¹⁷ Ex. 4.

¹⁸ Ex. E at 42.

¹⁹ Test. of Christian Ziegler, City Administrator, Clerk, and Treasurer; Ex. E, at 28.

²⁰ Test. of D. Meyer and Darold Neinhaus, City Building Official/Planning Commission Member, Member of the Economic Development Authority, and Waste Water Supervisor; OAH Municipal Boundary Adjustment Unit Factual Information Form completed by the City on September 11, 2012 (OAH MBAU Form) at 4.

²¹ Exs. 1, 3, and D-5; Test. of D. Meyer and D. Neinhaus.

²² Exs 6, 7; Test. of D. Neinhaus and D. Meyer.

²³ OAH MBAU Form at 4.

²⁴ Test. of D. Meyer.

²⁵ OAH MBAU Form.

18. The boundaries of the City are not symmetrical.²⁶ The shape of the City is as follows:

A core rectangle with a two quarter section portion protruding on the north, a one quarter section portion protruding on the west, a one quarter section missing from the northeast corner, a one quarter section portion protruding east on the southeast corner, and two large asymmetrical peninsulas in excess of eight quarter sections extending from the southwest corner of the basic rectangle.²⁷

19. The one quarter section protrusion from the southeast corner of the City was created by the City through an annexation process to acquire property to be zoned I-1 for development of the CornPlus ethanol plant.²⁸

20. The most southwesterly asymmetrical peninsula consists of approximately three quarter sections extending southwest from the southwest part of the basic rectangle, together with a portion best described as an anvil that is in excess of three one-quarter sections.²⁹ The anvil portion has been zoned R-A by the City.³⁰ An R-A District is intended primarily for farming and agricultural purposes, while providing for the logical expansion of residential development.³¹

21. The other asymmetrical peninsula is located northeast of the anvil peninsula, and is also a protruding section of the City pointing southwest along Highway 169.³²

22. An R-1 District is intended primarily for residential purposes.³³ A B-1 District is intended for a wide variety of business and commercial activities.³⁴ An I-1 District is intended for a variety of general industrial activities that, due to their nature and size, would not be appropriate in a B-1 District.³⁵

b. City Development

23. The City had a development plan in the 1960s, but no current City official has seen it or knows what might have been contained in it.³⁶

24. The City's current "development plan" consists of waiting for individuals or business entities that want to place their businesses in the City, and having as much

²⁶ Exs. 2, 4, A; Test. of C. Ziegler.

²⁷ Exs. 2, 4, A.

²⁸ Testimony of D. Neinhaus.

²⁹ Ex. 4.

³⁰ *Id.*

³¹ Ex. E at 32; Test. of C. Ziegler.

³² Ex. 3.

³³ Ex. E at 32; Test. of C. Ziegler.

³⁴ Ex. E at 42.

³⁵ Ex. E at 52.

³⁶ Test. of C. Ziegler, D. Neinhaus, and Jean Anderson.

land zoned for business and industrial purposes as possible.³⁷ The principal reason for this approach is similar to most small cities in Minnesota: limited resources. The City does not have a person either employed or under contract to actively market the City to potential businesses.³⁸

25. The City has no current plans for development of the Tract, and has had no discussions with anyone, including within the EDA and the Planning Commission, about anticipated development for the Tract.³⁹

26. The City is participating with Faribault County (the County) and other municipalities in the County in the development of a County-wide Comprehensive Development Plan.⁴⁰ There have been five meetings in which the City has participated. There is a County Plan in the drafting stage, but there is no final plan at this time.⁴¹

27. The land along both sides of the State Highway 169 corridor that runs through the center of the City from the north to the southwest is the most desirable location for business, commercial, and industrial development.⁴²

28. The 169 corridor land is presently zoned R-A, B-1, I-1, and a small amount of R-1.⁴³

29. The R-A zoned land within the City is as attractive for future development as the B-1 zoned Tract.⁴⁴

c. Financial Consequences of Detachment

30. Detachment of the Tract would result in the City having to redistribute \$798.00 in real estate taxes that it would otherwise receive from Petitioner for the Tract, among the remainder of the City's tax base.⁴⁵

31. \$798.00 represents approximately 0.15% of the City's tax base of \$516,097.85.⁴⁶

32. The City is in the process of developing separate "Urban and Rural Taxing Districts." When and if approved, the Tract would be in the Rural Tax District. Under the proposal, the City's share of Petitioner's real estate taxes would be \$276.00.⁴⁷

Procedural Findings

³⁷ *Id.*; Test. of Rick Johnson.

³⁸ Test. of C. Ziegler.

³⁹ *Id.*; Test. of Rick Johnson, D. Neinhaus, and J. Anderson.

⁴⁰ Ex. 1.

⁴¹ Test. of C. Ziegler.

⁴² *Id.*

⁴³ Ex. 4.

⁴⁴ Test. of C. Ziegler.

⁴⁵ Test. of John L. Thompson.

⁴⁶ OAH MBAU Form

⁴⁷ *Id.*

33. The Petitioner requested a resolution of the City seeking to detach the Tract. The request was denied.⁴⁸

34. Verona Township has taken no position on the merits of this detachment Petition, and did not appear at the hearing.

35. Notice of the initial hearing on the detachment Petition was duly published in the Faribault County Register on August 20, 2012, and again on August 27, 2012. The Notice of Reconvened Hearing was duly published in the Faribault County Register on July 15, 2013, and again on July 22, 2013.⁴⁹

36. The parties did not agree to a division of the costs of this proceeding between the City and the Petitioner.

Based on these Findings of Fact, the ALJ makes the following:

CONCLUSIONS OF LAW

1. The ALJ 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.

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

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

4. The City has the burden of proof to demonstrate by a preponderance of the evidence that it would be unable to carry on the functions of government without undue hardship if detachment was allowed.

5. This matter is properly before the Minnesota Municipal Boundary Adjustment Unit (MBAU) and the ALJ pursuant to Minn. Stat. § 414.06.

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

- (1) the requisite number of property owners have signed the petition if initiated by the property owners;
- (2) the property is rural in character and not developed for urban residential, commercial or industrial purposes;

⁴⁸ OAH MBAU Form, at its attachments of: Minutes of the Winnebago Planning Commission of August 28, 2012; and City Resolution 56-2012, adopted September 11, 2012.

⁴⁹ Affidavits of publication in file.

- (3) the property is within the boundaries of the municipality and abuts a boundary;
- (4) the detachment would not unreasonably affect the symmetry of the detaching municipality; and
- (5) the land is not needed for reasonably anticipated future development.⁵⁰

The statute further specifies that the detachment may be denied if the ALJ finds that the remainder of the municipality cannot continue to carry on the functions of government without undue hardship.⁵¹

7. There is only one owner of the Tract and that owner signed the Petition, thereby fulfilling the first requirement for a detachment.

8. The Tract is rural in character and not developed for urban residential, commercial or industrial use, thereby fulfilling the second requirement for detachment.

9. The Tract is within the boundaries of the City and abuts a boundary, thereby fulfilling the third requirement for detachment.

10. Detachment of the Tract from the City would not unreasonably affect the symmetry of the City, thereby fulfilling the fourth requirement for detachment.

11. The Tract is not needed for reasonably anticipated future development, thereby fulfilling the fifth requirement for detachment.

12. Detachment of the Tract from the City would not prevent the City from continuing to carry on the functions of government without undue hardship, within the meaning of Minn. Stat. § 414.06, subd. 3.

13. By declining to appear in this proceeding, Verona Township is deemed to be in a position of neutrality with regard to the Petition for detachment.⁵²

14. The Petition for detachment has met all statutory criteria for approval.

15. After consultation with and approval by the Chief ALJ, it is appropriate to allocate 50 percent of the costs of this proceeding to the Petitioner and the other 50 percent to the City.

⁵⁰ Minn. Stat. § 414.06, subd. 3.

⁵¹ *Id.*

⁵² Minn. Stat. § 414.06, subd. 1a.

16. Any conclusion more properly denominated as a finding is adopted as such.

Based on these conclusions and for the reasons explained in the accompanying memorandum, the ALJ makes the following:

ORDER

IT IS HEREBY ORDERED that:

1. The Petition for the Detachment of the Tract from the City of Winnebago is **GRANTED**.
2. The Municipal Boundary Adjustments Unit shall cause copies of this Order to be mailed to all persons described in Minn. Stat. § 414.09, subd. 2.
3. Pursuant to Minn. Stat. § 414.12, subd.3, the cost of these proceedings shall be divided as follows: to the City, 50 percent; and to Petitioner, 50 percent.
4. This Order becomes effective September 13, 2013.

Dated: September 13, 2013



M. KEVIN SNELL
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, 414.07, 414.09, and 414.12. Pursuant to Minn. Stat. § 414.07, subd. 3, any person aggrieved by this Order may appeal to Winnebago County District Court by filing an Application for Review with the Court Administrator within 30 days of this Order. An appeal does not stay the effect of this Order.

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.

MEMORANDUM

The parties have stipulated to facts that fulfill the first three requirements of Minn. Stat. § 414.06 for detachment. Argument is essentially limited to whether detachment would unreasonably affect the symmetry of the City, whether the land is needed for reasonably anticipated future development, and whether detachment would pose an undue hardship on the City's ability to continue providing governmental services.

Symmetry

The statute requires the ALJ to consider whether the proposed detachment would unreasonably affect the symmetry of a municipality. The term "symmetry" is not defined in the detachment statute or in any other portion of the Minnesota Statutes. The common definition of "symmetry" includes "balanced proportions" and "the property of being symmetrical, especially: correspondence in size, shape, and relative position of parts on opposite sides of a dividing line or median plane or about a center or axis."⁵³

The City of Winnebago is not symmetrical. The City admits this fact. Although it has a rectangular core, there are significant protrusions to the west, north, east, south and southwest. Significantly, the City annexed the easterly protrusion of 40 acres of land in Prescott Township for the CornPlus ethanol plant. If the City is concerned about symmetry, the annexation of this land certainly does more to affect the symmetry than having the three acre Exception remain in the north center of the Tract.

The statute does not prohibit any asymmetrical change. It only requires that the change be not unreasonable. The asymmetry created by the Exception protruding on the southeast boundary is *de minimus*, particularly when compared to the other, significant asymmetrical protrusions. The ALJ concludes that granting the Petition would not *unreasonably* affect the symmetry of the City boundaries.

Finally, there will be no negative effects because of this slight departure from symmetry. Delivery of City services will not be hampered because there are no services actually being provided. The City has not provided any evidence to support the existence of any material logistical problems that would result from allowing the detachment.⁵⁴

⁵³ "Symmetry." *Merriam-Webster.com*. Merriam-Webster; n.d. Web. 10 Sept. 2013.

⁵⁴ *Accord FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER in In the Matter of the Petition for Detachment of Certain Lands from the City of Lake Elmo*, OAH Docket No. 3-0330-21901 at 23 (Jan. 3, 2012) (ALJ concluded that a detachment did not have an unreasonable effect on the symmetry of the city's boundaries despite the fact that the detachment "create[d] a bit of a jog around the Hauth property" and resulted in a "remnant parcel extending south of Highway 36"); *FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER in In the Matter of the Petition of Edward A. Jonas and Danny K. Burman for the Detachment of Certain Land from the City of Effie*, OAH Docket No. 12-6050-16746 at 6 (Jan. 6, 2006) (ALJ concluded that detachment would not unreasonably affect the symmetry of the city even though detachment would create a slot from the edge of the city three quarters of the way to the center of the city, emphasizing that no services are being provided in that area and "[i]t does not appear that it would be necessary to cross the area to provide any City services to the north or south.")

Future Development

Petitioner has shown, by a preponderance of the evidence, that the Tract is not needed for reasonably anticipated development. The City argues that, because the Tract is zoned B-1 and abuts State Highway 109, it is needed for whatever business or commercial development may come that way in the future. The City further argues that it must preserve the B-1 zoned land that it has for possible future development.

The City's development "plan" is a reactive hope that development will come in the future. A "hope" for development is not "reasonably anticipated" development. Rather, it demonstrates a lack of anticipated development.

The City has a substantial amount of undeveloped B-1 zoned land west and southwest of the Tract. In addition, the asymmetrical peninsulas of undeveloped land that protrude to the southwest that are zoned R-A and I-1 are approximately eight times the acreage of the Tract and are located along State Highway 169. The City admits that the 169 corridor is the most desirable location for future business and commercial development. Should more B-1 zoning be necessary, the City need only rezone the necessary land that is now I-1 and/or R-A along the 169 corridor, both on the northerly end and the southwesterly end.

The evidence, as a whole, does not support a conclusion that the Tract is needed for reasonably anticipated future development.

Undue Hardship

No evidence was presented that would demonstrate material fiscal hardship as a result of the detachment of the Tract. The loss of property tax revenue to the City would be \$798.00, or 0.15% of the City's tax base of \$516,097.85.

Allowing the detachment of the Tract is consistent with the legislature's view that municipal government "most efficiently provides governmental services in areas intensively developed for residential, commercial, industrial, and governmental purposes" while township government "most efficiently provides governmental services in areas used or developed for agricultural, open space, and rural residential purposes."⁵⁵

In addition, the City is in the process of developing separate Urban and Rural Taxing Districts, which would reduce the City's taxes on the rural Tract from \$798.00 to \$276.00. This proposed tax framework also suggests a lack of hardship.

Based on the record as a whole, the ALJ concludes that there has not 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. Chapter 414 does not suggest that the mere loss of tax revenue constitutes undue hardship. The focus in the statute is

⁵⁵ Minn. Stat. § 414.01, subd. 1a(2).

on the hardship to the municipality, and not the hardship to other taxpayers to whom the loss of \$798.00 would be reallocated.

Allocation of Costs

The parties did not reach agreement prior to the hearing on a division of costs associated with the proceedings in this matter. Under Minn. Stat. § 414.12, subd. 3, the costs “must be allocated on an equitable basis” by the Chief Administrative Law Judge in such instances. In this case, the City assisted in narrowing the issues for hearing and streamlining the proceeding by stipulating that three of the five statutory factors were not disputed. After consulting with the Chief Administrative Law Judge, the ALJ believes that it is appropriate to require that the costs associated with this proceeding be equally divided between the City and the Petitioner.

This petition meets the statutory requirements and is, therefore, approved.

M. K. S.