

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 Cosmos D-500 Pursuant to  
Minnesota Statute, 414.06

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

The above-entitled matter came on for hearing before Administrative Law Judge James E. LaFave on August 16, 2013, at the Cosmos Learning Center, 320 Saturn Street North, Cosmos, Minnesota. The record closed on August 30, 2013, upon the filing of post-hearing submissions. At the hearing, Exhibits A-K and 1-26 were received into evidence.

Steven Besser, Dolan & Besser, appeared on behalf of the City of Cosmos (City). Hugh T. Nierengarten, Nierengarten & Hippert, Ltd., appeared on behalf of Randy Schiro and Judy Schiro (Petitioners).

The following witnesses testified at the hearing: Randy Schiro, Petitioner; Kathy Blackwell, City Clerk/Treasurer for the City of Cosmos; John Douville, a local government consultant retained by the City of Cosmos; Charles Lietzau, a resident of the City of Cosmos; and Barry Glienke, Civil Engineer.

**STATEMENT OF THE ISSUE**

Whether the Petition for Detachment should be granted based on the factors set forth in Minn. Stat. § 414.06?

**SUMMARY OF CONCLUSION**

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

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

## FINDINGS OF FACT

1. On August 6, 2012, Petitioners filed a Petition for Detachment of property from the City. The Petition, filed by the property owners, seeks to detach approximately 64.14 acres from the City pursuant to Minn. Stat. § 414.06.<sup>1</sup>

2. The property proposed for detachment (Subject Area) is described as:

The South Half of the Northwest Quarter of the Northeast Quarter (S1/2 of NW1/4 of NE1/4) of Section Twenty-two (22), Township One Hundred Seventeen (117) North, Range Thirty-two (32) West, excepting therefrom the following tract: Commencing at the south line thereof 178 feet East of the Southwest corner thereof, thence West to the Southwest corner thereof, thence North 134 feet, thence Southeasterly to the point of beginning.

The South Half of the Northwest Quarter (S1/2 of NW1/4) of Section Twenty-two (22), Township One Hundred Seventeen (117) North, Range Thirty-two (32) West, excepting that part thereof heretofore platted and except those parts previously conveyed by deeds recorded in Book 107 of Deeds at page 169, Book 291 of Deeds at pages 15-16, in Book 294 of Deeds at pages 279-280, in Book 94 of Deeds, pages 293-294, in Book 296 of Deeds at pages 415-416 and in Book 299 of Deeds, pages 43-44; and except the following tract: Beginning 76.4 feet East of the Southwest corner of said Southwest Quarter of the Northwest Quarter (SW1/4 of NW1/4), thence North 565 feet to the South line of South Street, thence East 500 feet, along the South line of said South Street, thence South 565 feet to the South boundary of the said Southwest Quarter of the Northwest Quarter (SW1/4 of NW1/4), thence 500 feet West along the South boundary of said Southwest Quarter of the Northwest Quarter (SW1/4 of NW1/4), to the point of beginning. Excepting any Land that is already in Cosmos Township. 19.75 Acres.<sup>2</sup>

3. There are 64.14 acres and two (2) property owners within the Subject Area. Both of the property owners of the Subject Area signed the Petition for Detachment.<sup>3</sup>

4. The Subject Area is currently located within the municipal boundaries of the City.<sup>4</sup> Cosmos Township surrounds the City. If the Subject Area is detached, it will be a part of Cosmos Township.<sup>5</sup>

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<sup>1</sup> Petition, Ex. 2.

<sup>2</sup> Prehearing Stipulation and Ex. 2.

<sup>3</sup> Petition, Ex. 2.

<sup>4</sup> Ex. B.

<sup>5</sup> Prehearing Stipulation.

5. The Subject Area abuts the easterly and southerly municipal boundaries of the City.<sup>6</sup>

6. The City is not currently symmetrical. Historically it had been. When the City was formed in 1926, it occupied one square mile. In 1997, the City annexed certain property lying adjacent to and immediately south of Minnesota Highway 7 and abutting the easterly boundary of the City. That annexed land contains sewage ponds used by the City and an area for commercial development currently being platted as "Cosmos Industrial Park."<sup>7</sup>

7. The City Code of Ordinances contains a zoning ordinance.<sup>8</sup>

8. The Subject Area is rural in character, not developed for commercial, industrial or urban residential purposes and is zoned as an "agricultural district."<sup>9</sup>

9. The bulk of the Subject Area is farmland, currently planted with soybeans, with the southwest corner of the property being wooded.<sup>10</sup>

10. There is no urban residential, commercial or industrial development on the Subject Area.<sup>11</sup> Petitioners have no plans to develop the Subject Area for any use beyond those currently existing.<sup>12</sup> Petitioners intend to farm the Subject Area as long as they are able.<sup>13</sup>

11. The City does not currently provide sewer or water to the Subject Area. Sewer and water are available to the Subject Area along its westerly and northerly boundaries.<sup>14</sup>

12. Access to the Subject Area may be had through adjacent lands owned by the Petitioners or through Draco Avenue and Orion Avenue, which are maintained by the City.<sup>15</sup> Petitioners only use the streets maintained by the City to access the Subject area approximately six times a year.<sup>16</sup>

13. The City offers police and fire protection to the Subject Area. A mutual aid agreement for fire protection exists between the City and Cosmos Township.<sup>17</sup>

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<sup>6</sup> Prehearing Stipulation and Ex. 2.

<sup>7</sup> Testimony of Kathy Blackwell and Charles Lietzau; Exs. 3, C and K.

<sup>8</sup> Test. of K. Blackwell.

<sup>9</sup> Prehearing Stipulation, Exs. 21 and E.

<sup>10</sup> Test. of Randy Shiro; Exs. 3 and K.

<sup>11</sup> Test. of R. Shiro.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> Test. of Barry Glienke.

<sup>15</sup> Test. of R. Shiro; B. Glienke; and K. Blackwell and Ex. 3.

<sup>16</sup> Test. of R. Shiro.

<sup>17</sup> Test. of K. Blackwell.

14. The City would still provide police and fire protection to the Subject Area if it were detached.<sup>18</sup>

15. There have never been any police calls or fire calls to the Subject Area.<sup>19</sup>

16. The population of the City was 473 in 2010.<sup>20</sup> The population had been 610 in 1990.<sup>21</sup>

17. In 2012, the City's K-12 school closed. The school building is now being used to serve children with special needs and has been renamed the "Cosmos Learning Center." There may ultimately be up to 40 people employed in the building, but there was no evidence this would lead to any further development within the City.<sup>22</sup>

18. The City is seeking to attract a data center to the City. It has hired a consultant to assist in this project. This project, however, is in its infancy. The City has not filed the requisite application with the Minnesota Department of Employment and Economic Development and there has been no contact with actual developers of data centers.<sup>23</sup>

19. Six homes were built in the City between 2000 and 2006. No homes were built in the City between 2006 and 2011.<sup>24</sup>

20. The median household income in 2011 inflation-adjusted dollars was \$39,375.00.<sup>25</sup> The City tax property levy for the year 2013 was \$271,793.00.<sup>26</sup> Property taxes account for approximately 50 percent of the City's revenue by source.<sup>27</sup>

21. The real estate taxes payable on the Subject Area, attributable to the City, have increased significantly over the past several years. That portion of the real estate taxes payable in 2011 attributable to the City was \$1,771.34; in 2012 that amount was \$3,239.38; and in 2013 the portion of real estate taxes attributable to the City was \$4,932.77.<sup>28</sup>

22. The City's total budget for 2013 is \$421,862.00.<sup>29</sup> The City real estate taxes for the Subject Area in 2013 of \$4,932.77 constitute approximately 1.2 percent of the City's total budget.<sup>30</sup>

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<sup>18</sup> *Id.*

<sup>19</sup> Test. R. Shiro.

<sup>20</sup> Ex. J.

<sup>21</sup> Ex. 15.

<sup>22</sup> Test. of K. Blackwell.

<sup>23</sup> Test. of J. Douville.

<sup>24</sup> Ex. 14.

<sup>25</sup> *Id.*

<sup>26</sup> Ex. F.

<sup>27</sup> Ex. H.

<sup>28</sup> Exs. 9 and 10.

<sup>29</sup> Ex. 25.

<sup>30</sup> Exs. 10 and 25.

23. On January 19, 2012 and April 12, 2012, the Petitioners requested that the City consider the amount of property taxes paid on agricultural land through the establishment of a special taxing district. The request was considered by the City and denied on June 14, 2012.<sup>31</sup>

24. The City has a below average tax base, low Government Aid funding and low median household income.<sup>32</sup>

25. The City Clerk/Treasurer stated that she spoke with two other land owners who are monitoring this detachment proceeding and are considering detachment.<sup>33</sup>

26. The City opposed the Petition for Detachment because it believes that if the detachment is approved it may set a precedent for five additional property owners of land zoned agricultural within the City limits.<sup>34</sup>

27. The City believes detachment would adversely affect the physical integrity of the City limits and drastically reduce the general property tax revenue resulting in undue hardship on the City.<sup>35</sup>

28. In response to the fear of “copycat” petitions for detachment by other owners of property lying within the agricultural district, on May 9, 2013, the City passed Ordinance 2013-1 establishing rural and urban service districts within the municipal limits of the City.<sup>36</sup> The ordinance provides a reduction of the tax rate for lands lying within the rural service district to 14.48 percent of the tax rate applicable to lands lying within the urban service district.<sup>37</sup>

29. The City’s passage of Ordinance 2013-1, establishing rural and urban service districts within the municipal limits of the City of Cosmos, will result in an estimated decrease in available revenue (or a saving to the affected landowners) of \$20,157.84 which represents approximately 7.4 percent of the City’s annual property tax levy.<sup>38</sup> It’s estimated that the portion of the real estate taxes payable on the Subject Area attributable to the City’s levy will be reduced from \$4,932.77 to \$714.27.

30. The City believes passage of Ordinance 2013-1 will keep other property owners in the rural service district from seeking detachment.<sup>39</sup>

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<sup>31</sup> Ex. D.

<sup>32</sup> Test. of K. Blackwell; Ex. G.

<sup>33</sup> Test. of K. Blackwell.

<sup>34</sup> Test. of K. Blackwell; Test. B. Glienke; Ex. 1.

<sup>35</sup> Test. of K. Blackwell; Test. B. Glienke; Exs. 1, B and F.

<sup>36</sup> Test. of K. Blackwell; Exs. 21 and E.

<sup>37</sup> *Id.*

<sup>38</sup> Test. of K. Blackwell; Exs. 23 and F.

<sup>39</sup> Test. of K. Blackwell.

31. The money saved by the affected property owners in the rural service district as a result of Ordinance 2013-1 will be made up by taxing the property owners in the urban tax district.<sup>40</sup>

32. Ordinance 2013-1, by its terms, authorizes the City Council to amend it, changing the ratio of taxes paid by the rural tax district and the urban tax district.<sup>41</sup>

33. Despite the adoption of the ordinance, the Petitioners still desire to detach the Subject Area from the City.<sup>42</sup>

34. The City believes the detachment of the Subject Area will result in an undue hardship because of the additional loss of property tax revenue. It believes that loss is further magnified in light of the passage of Ordinance 2013-1, and the increased tax burden on the other property owners in the urban district who, by and large, have low median income.<sup>43</sup>

35. The City believes that the Subject Area is needed for reasonably anticipated future development.<sup>44</sup>

36. The City believes that the Subject Area is the most suitable property lying within the City boundaries for future urban development as it is level, well-drained, and of suitable soil type with city street access and municipal utilities available.<sup>45</sup>

37. The City did not show that the loss of \$714.27, which it is scheduled to receive in property taxes from the Subject Area, would impede the function of the City government without undue hardship.

38. Cosmos Township has taken no position on the merits of this detachment petition.<sup>46</sup>

39. Notice of the hearing on the detachment petition was duly published in the *News Mirror* on July 31, 2013 and again on August 7, 2013.<sup>47</sup>

40. Any conclusion more appropriately denominated a finding of fact is adopted as such.

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

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<sup>40</sup> Test. of K. Blackwell.

<sup>41</sup> Ex. 21.

<sup>42</sup> Test. of R. Schiro.

<sup>43</sup> Test. of K. Blackwell; Exs. 14, 26, G and J.

<sup>44</sup> Test. of K. Blackwell; B. Glienke; J. Douville and C. Lietzau.

<sup>45</sup> Test. of B. Glienke.

<sup>46</sup> Prehearing Stipulation.

<sup>47</sup> Affidavit of publication in file.

## CONCLUSIONS

1. This matter is properly before the Municipal Boundary Adjustment Unit (MBAU) and the Administrative Law Judge pursuant to Minn. Stat. §§ 414.06 and 414.12.
2. Proper notice has been given in this matter.
3. Petitioners have the burden of proof to demonstrate by a preponderance of the evidence that the statutory criteria for detachment have been met.
4. The chief administrative law judge may order a detachment on finding that: (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; (3) the property is within the boundaries of the municipality and abuts a boundary; (4) that the detachment would not unreasonably affect the symmetry of the detaching municipality; and (5) the land is not needed for reasonably anticipated future development. The 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.<sup>48</sup>
5. There are two owners of the property in question and those owners signed the Petition, thereby fulfilling the first requirement for a detachment.
6. The Subject Area is rural in character and not developed for urban residential, commercial or industrial use, thereby fulfilling the second requirement for detachment.
7. The Subject Area is within the boundaries of the City and abuts a boundary, thereby fulfilling the third requirement for detachment.
8. Detachment of the Subject Area from the City would not unreasonably affect the symmetry of the City, thereby fulfilling the fourth requirement for detachment.
9. The Subject Area is not needed for reasonably anticipated future development, thereby fulfilling the fifth requirement for detachment.
10. Detachment of the Subject Area from the City would not prevent the City from continuing to carry on the functions of government without undue hardship.
11. The Petition for Detachment has met all the criteria for approval.
12. Any finding of fact more properly denominated as a conclusion is adopted as such.

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<sup>48</sup> Minn. Stat. §414.06, subd. 3.

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

### ORDER

**IT IS HEREBY ORDERED** that:

1. The Petition for the Detachment of the Subject Area from the City of COSMOS 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 Petitioners, 50 percent.
4. This Order becomes effective October 3, 2013.

Dated: October 3, 2013



JAMES E. LAFAVE  
Administrative Law Judge

Reported: Digitally recorded

### 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 Meeker 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 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

#### Background

An administrative law judge may grant an order for detachment upon finding that:



1. the requisite number of property owners have signed the petition;
2. the property is rural in character and not developed for urban, residential, commercial or industrial purposes;
3. the property is within the boundaries of the municipality and abuts a boundary;
4. the detachment would not unreasonably affect the symmetry of the detaching municipality; and
5. the land is not needed for reasonably anticipated future development.<sup>49</sup>

An administrative law judge “may deny the detachment on finding the remainder of the municipality cannot continue to carry on the functions of government without undue hardship.”<sup>50</sup>

In this case, prior to the hearing the parties entered into a Prehearing Stipulation that resolved the factors listed in 1, 2 and 3 above. The parties have stipulated that:

- the requisite number of property owners have signed the petition;
- the property is rural in character and not developed for urban, residential, commercial or industrial purposes; and
- the property is within the boundaries of the municipality and abuts a boundary.

The factors that remain to be analyzed are whether:

- detachment would unreasonably affect the symmetry of the City;
- the land is needed for reasonably anticipated future development; and
- the detachment would pose an undue hardship on continuing to provide services as a City.

In addition, the City raises a concern that does not appear in the statute. It fears that if this detachment is approved, others will want to detach as well.

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<sup>49</sup> Minn. Stat. § 414.06, subd. 1.

<sup>50</sup> *Id.*

## **I. Symmetry**

The statute requires the Administrative Law Judge to consider whether the proposed detachment would unreasonably affect the symmetry of a municipality.

The City of Cosmos is not symmetrical. Historically, the City of Cosmos was the definition of symmetry. In 1926, when the City was formed, it was one square mile. However, in 1997 the City annexed land east of the City along Highway 7 to be used as a sewage treatment pond and industrial development. That annexation changed the symmetry of the City.

The Subject Area is a 64.14 acre rectangle in the southeast corner of the City. It is undisputed the detachment would change the boundaries of the City. The change, however, would not create an unusual configuration. The new boundary would not create a "balloon," "bubble" or "string" configuration. The new boundary would follow the natural edges of the Subject Area's farmland and carve a "notch" out of the southeast corner of the City.

Also, there will be no negative effects on the City as a result of this new boundary. No services are currently being provided to the Subject Area. The City does not need to cross the Subject Area to provide services to others. No evidence was introduced indicating the detachment would create any other logistical problems. Other than, perhaps, the costs of new maps, the detachment will not add expense to the City government.

The real question is whether detachment of the Subject Area *unreasonably* affects the symmetry of the City boundary. It does not. The statute does not prohibit any asymmetrical change. It only requires that the change be not unreasonable. In this case, the symmetry has already been disturbed by the City of its own volition. This "notching" of the corner is not unreasonable in light of the compelling reasons for detachment.

## **II. Future Development**

The City has no plans to develop the Subject Area in the foreseeable future. The population in the City has dropped from 610 in 1990 to 473 in 2010. No new homes were built in the City from 2006 to 2011. Building in the City has been almost non-existent. The City's school closed in 2012.

The Petitioners have no plans to develop the land either. They are a farming family and intend to farm the land as long as they are able. Even though sewer and water are available to the Subject Area, no one has approached the Petitioners seeking to develop the land.

The City bought land in Cosmos Township, east of the rest of the City, in part, for the purpose of future development. That land is not yet fully developed and represents the anticipated future development needs of the City. The City is also attempting to attract a data center to the City, but that project has just begun and it is far too early to

determine what the needs will be. The evidence does not support a conclusion that the Subject Area is needed for reasonably anticipated future development.

### **III. Undue Hardship**

A small city with a shrinking population will always be faced with budget problems. After the adoption of Ordinance 2013-1, the loss of property tax revenue to the City from the Subject Area is projected to be \$714.27 or 0.17 percent of the approved City budget. There was no evidence or testimony on the effect that the loss of \$714 would have on a budget of over \$420,000. The City Clerk/Treasurer testified that the "loss of any money would be a hardship."<sup>51</sup> That, however, is only a conclusory statement. No evidence was presented that demonstrated any actual fiscal hardship would occur as a result of detachment.

### **IV. Copycat Petitions**

The City argues that if this detachment is approved, other property owners within the rural service district in the City will follow suit. However, the City also believes that by passing Ordinance 2013-1, they have addressed this issue. In any case, the likelihood of future petitions is not one of the statutory criteria for consideration and is not a statutory reason for denying the petition. The Administrative Law Judge cannot deny a petition that meets all the statutory requirements on the speculation that others might be encouraged to also file petitions. The statute makes no judgment about possible future petitions. If other petitions are filed, they will be measured against the statutory criteria and judged on their own merits. While this may be a legitimate concern of the City officials, it is not a basis for denial of a petition that meets the requirements of statute.

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

**J. E. L.**

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<sup>51</sup> Test. of K. Blackwell.