

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MUNICIPAL BOUNDARY ADJUSTMENT UNIT

In the Matter of the Petition to Detach
Certain Land from the city of Maplewood,
Minnesota and the Concurrent Annexation
to the city of North St. Paul, Minnesota,
D-515/A-7862

**ORDER ON REQUEST FOR
AMENDMENTS**

The above-entitled matter came on for an evidentiary hearing before Administrative Law Judge Raymond R. Krause on June 30 and July 1, 2014 at the Maplewood City Hall, Maplewood, Minnesota. The record closed upon the filing of post hearing briefs on July 29, 2014. The Administrative Law Judge issued Findings of Fact, Conclusions of Law, and Order on August 21, 2014, denying the petition for concurrent detachment and annexation.

On August 29, 2014, Diane Longrie, Attorney for the Petitioners, filed a request for amendments to the Findings of Fact, Conclusions of Law, and Order pursuant to Minn. R. 6000.3100.

On September 3, 2014, H. Alan Kantrud, Attorney for the city of Maplewood, filed a response to the Petitioners' request for amendments.

Based upon all of the files, records, and proceedings herein, and for the reasons set forth in the accompanying Memorandum, the Administrative Law Judge makes the following:

ORDER

IT IS HEREBY ORDERED:

1. That the request by the Petitioners for amendments to the Findings of Fact, Conclusions of Law, and Order is **DENIED**.

Dated: September 11, 2014



RAYMOND R. KRAUSE
Administrative Law Judge

MEMORANDUM

Minn. R. 6000.3100 provides that a request for amendment "shall specifically set forth the reasons for the amendment, any claimed errors, and any proposed amendments to the findings of fact, conclusions of law, and order." The Petitioners have proposed amendments to the finding by the Administrative Law Judge (ALJ), that the petition is not in the best interests of the Petitioners or the city of Maplewood. Petitioners also request that the allocation of cost between the parties be amended.

Petitioners suggest that because they allege in their Petition and in their testimony that detachment is in their best interest, that allegation should be given the same deference that was given to the city of North St. Paul's vote supporting the petition. The ALJ disagrees. The Petitioners sole reason for detachment was based on claims relating to public safety. This basis was established by the unequivocal testimony of the Petitioners. The record is clear that their public safety has not been compromised by their being in the city of Maplewood and would not be enhanced in any meaningful way by annexation to the city of North St. Paul.

Detachment and concurrent annexation must be based on interests of some substance not merely the wish or whim of the parties. Here, the alleged basis for detachment was not substantiated by any facts that support the allegation. Therefore, there is no substantive basis to make a finding that detachment is in the best interests of the Petitioners.

Petitioners also argue that the ALJ should find that turning over the portion of the sanitary sewer line that services the subject properties to the city of North St. Paul would create efficiencies that make detachment to be in the best interests of the city of Maplewood. The record and testimony at hearing does not support Petitioners' allegation. Furthermore, the city of Maplewood strongly argues that the sewer issue does not change its position that detachment is not in its best interests.

With respect to the cost issue, the Chief Administrative Law Judge allocated the cost equally between the parties. No cost was allocated to the city of North St. Paul because it did not actively participate in the hearing. The only relevant activity by the city of North St. Paul was to pass its resolution indicating its willingness to accept the subject properties should they be detached. This alone was not sufficient involvement to warrant the 20 percent cost allocation suggested by the parties.

R. R. K.

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

This matter came before Administrative Law Judge Raymond R. Krause (ALJ) pursuant to a referral from the Municipal Boundary Adjustment Unit (MBAU) dated November 22, 2013 and signed by Timothy J. O'Malley, Assistant Chief Administrative Law Judge, Municipal Boundary Adjustment Unit.

H. Alan Kantrud, City Attorney, appeared on behalf of the city of Maplewood (Maplewood). Diana Longrie, Attorney at Law, appeared on behalf of the Petitioners. No appearance was made by the city of North Saint Paul (N. St. Paul).

A hearing was held on June 30 and July 1, 2014, at the Maplewood City Hall. The Petitioners' Exhibits 1-6 and 8-15 were accepted into evidence. Maplewood Exhibits 1-8 were also accepted into evidence. The record closed upon the filing of post-hearing briefs on July 29, 2014.

STATEMENT OF THE ISSUES

When the factors in Minn. Stat. § 414.02, subd. 3 are considered, is the detachment of the subject property from the city of Maplewood and the concurrent annexation of that property to the city of North Saint Paul in the best interests of both municipalities and the property owners?

SUMMARY OF CONCLUSIONS

The Administrative Law Judge concludes that detachment of the subject property from the city of Maplewood and the concurrent annexation of that property to the city of North St. Paul are not in the best interests of both municipalities and the property owners and, therefore, the Petition must be denied.

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

FINDINGS OF FACT

1. The subject properties consist of two residential lots with homes totaling four acres of land wholly contained within the boundary of Maplewood. The addresses are 2587 Lydia Avenue East (Johnson property) and 2573 Lydia Avenue East (Berwald property). The property descriptions are:¹

That part of the East 620 feet of the Northwest ¼ of the Northeast ¼ of Section 1, Township 29, Range 22, as described as follows: Beginning on the North line of Lydia Avenue distant 185 feet East of the West line of said East 620 feet; thence East on the North line of Lydia Avenue a distance of 85 feet; thence Northeasterly a distance of 150 feet to a point 310 feet East of the West line of said East 620 feet; thence West and parallel with the South line of point 185 feet East of the West line of said East 620 feet; thence South 145 feet to the point of beginning.(Johnson property)

And

The South 303.8 feet of the East 620 feet of the Northwest ¼ of the Northeast ¼ of Section 1, Township 29, Range 22, except the East 455.75 feet thereof. (Berwald property)

Subject to and together with any valid easements, restrictions, and reservations.

2. The subject properties are accessed from Lydia Avenue.² Lydia Avenue is a county road maintained by Ramsey County and would not be affected by detachment.³ Ramsey County has no known plans to turn Lydia Avenue over to Maplewood.⁴

3. Both subject properties were purchased by their current respective owners in October 1997. Petitioners occupy their respective properties as residences. The subject properties are next door to each other and share a common property line.⁵

4. The subject properties are wholly within the Maplewood boundaries. They are, however, the last two residences along the eastern border of that part of Maplewood. The subject properties have other Maplewood residences to the west of the Berwald property, Maplewood Wetland Preserve (Preserve) lands to their north and

¹ Petitioners' Ex. 5 (Petition) p. 1.

² Pet. Ex. 5, Testimony of David Johnson.

³ Test. of Melinda Coleman, Asst. City Manager of Maplewood.

⁴ Test. of Michael Thompson, Maplewood Public Works Director.

⁵ Test. of D. Johnson, Laurie Ehlers-Johnson, and Anthony Berwald.

Preserve land to the east of the Johnson property. A Maplewood park (Joy Park) is to the south and southeast of the subject properties, across Lydia Avenue.⁶

5. The Berwald property touches the boundary of N. St. Paul at a point where the northeast corner of that part of N. St. Paul touches the southwest corner of the Berwald property.⁷

6. Approximately 93 years ago, prior to the incorporation of the city of Maplewood, the subject properties were part of N. St. Paul.⁸

7. In October of 1999, Petitioners, along with 22 other property owners in the immediate area, filed a petition (the 1999 Petition) with the Municipal Boundary Adjustment Unit.⁹ Two property owners within the area subject to the 1999 Petition refused to sign the petition. The 1999 Petition did not receive any formal action because the two non-signing property owners would not agree to sign. Public safety concerns were the motivating factor for the 1999 Petition for detachment.¹⁰

8. Petitioners' only reason for wishing to detach from Maplewood and be annexed to N. St. Paul is their concern for public safety. They do not feel that the public safety services provided by Maplewood adequately protect their properties. They believe that N. St. Paul can better protect them.¹¹

9. The subject properties fall within the coverage area of responsibility of the Maplewood Police Department and the Maplewood Fire Department.¹² Calls to 911, however, go through the Ramsey County Dispatch Center before being referred to the appropriate police or fire department for response. Ramsey County Dispatch protocol is that the dispatch operator takes the call, gets relevant information, makes a determination about what service, if any, is needed, sets a priority on the action and if necessary, contacts the appropriate emergency service. Both Maplewood and N. St. Paul participate in this cooperative 911 dispatch service.¹³

10. Ramsey County 911 Dispatch assigns a priority number to calls it receives. Priority #1 is the most serious, usually involving an officer down and in danger. Priority #2 usually involves a serious crime in progress. Priority #3 is a situation requiring police attention but not a life-threatening situation.¹⁴ Priorities #4 and #5 are for less serious issues that need attention but not of immediate urgency. An individual police department does not know what calls dispatch gets unless dispatch notifies the department. Police are dispatched on the basis of the priority assigned to the call by dispatch and the availability of an officer to respond. The operating protocol allows the

⁶ *Id.* and Pet. Ex. 11.

⁷ Test. of A. Berwald and Pet. Ex. 11.

⁸ Test. of Robert Cardinal, Pet. Ex. 3.

⁹ Pet. Ex. 4.

¹⁰ Test. of D. Johnson.

¹¹ Test. of D. Johnson, L. Ehlers-Johnson and A. Berwald.

¹² *Id.*

¹³ Test. of Police Chief Schnell and Fire Chief Lukin.

¹⁴ Test. of Police Chief Schnell.

dispatcher to hold a Priority #3 call up to 15 minutes before calling a police department if other situations are more serious.¹⁵

11. Petitioner Laurie Ehlers-Johnson is an educator. She is frequently at home and usually sits in the living room in a chair looking out the front window at Lydia Avenue. She sees N. St. Paul police cars drive by her home but rarely sees a Maplewood police car drive past her home. She does not often see a Maplewood fire truck or ambulance drive past her home. It is her opinion that the Maplewood police do not adequately patrol the area around her home. She is also of the belief that the Maplewood police are not adequately responsive to calls made by her for incidents happening at her home or in her neighborhood.¹⁶

12. Mr. Johnson has made several calls to police regarding his property or disturbances at the Preserve or Joy Park. He does not feel that Maplewood police adequately patrol his neighborhood or Joy Park. He also has seen two to three times fewer Maplewood police cars drive past his home than N. St. Paul police cars. He has complained to the Maplewood City Council at a council meeting about his perception of the lack of police protection in his neighborhood. Maplewood Police Chief Schnell told Mr. Johnson at that meeting that if he feels an officer is needed at his home, he should specifically request one from 911 dispatch. If he does not do so, dispatch may not tell the police department that the caller feels the need to speak to an officer.¹⁷

13. Mr. Johnson feels that he would be more adequately protected by the N. St. Paul police department because he is closer to their police headquarters.¹⁸

14. Maplewood police and N. St. Paul police are generally not sent to calls from headquarters. Instead, they are sent from whatever location they are at when the call comes in. Since most officers are patrolling somewhere at any given time, the proximity of the police headquarters to a call location is of limited relevance. The Maplewood Police Department employs about 52 sworn officers and generally has four squad cars deployed at any given time. Maplewood police cars patrol all areas of the city but concentrate on "problem areas." This priority for patrols is based on studies which demonstrate that this method of deployment is more effective than random patrols. The police department budget is the largest budget expenditure for the city of Maplewood. The N. St. Paul Police Department has 18-19 sworn officers.¹⁹

15. On January 21, 2011, the Johnson's garage was broken into by an unknown person. Mrs. Ehlers-Johnson called 911. Ramsey County 911 Dispatch received the call at 16:39:57 and dispatched two Maplewood squad cars at 16:42. The officers arrived at the Johnson's residence at 16:49. The officers investigated and found

¹⁵ *Id.*

¹⁶ Test. of L. Ehlers-Johnson.

¹⁷ Test. of D. Johnson and Chief Schnell.

¹⁸ Test. of D. Johnson.

¹⁹ Test. of Chief Schnell.

that although the garage had been broken into, the home had not, checked the surrounding area and cleared the scene at 17:34.²⁰

16. On September 9, 2013, an unknown man appeared at Ms. Ehlers-Johnson's home. He was banging on the front door. She called her husband, Mr. Johnson who answered the door. He attempted to get the man to go away while she called 911. Mr. Johnson gave her a description of the man while she was on the phone with 911 dispatch. The 911 dispatcher said that the Maplewood police would be called to investigate. Ms. Ehlers-Johnson did not specifically request that an officer check in with them.²¹ Just prior to the man appearing at the Johnson's door, the same or a similar man appeared at the home of another resident in the same neighborhood. That resident also called 911 at 21:05, prior to Ms. Ehlers-Johnson. Ramsey County 911 dispatch did call the Maplewood police and set this call as a #3 priority. Three Maplewood police squad cars were dispatched at 21.06 and arrived on the scene of the first call at 21:11. Two officers investigated and found that the person creating the disturbance had already left the area. The incident was cleared by the officers at 21.24.²²

17. The officers investigated the disturbance of September 9, 2013, filed a report, and checked in on the first caller. They did not come to the Johnsons' home to let them know of the results of their investigation.²³ The Johnsons did not make a second call to 911 to determine why no officer came to check in with them.²⁴

18. Although not a requirement, the officers should have reported back to the Johnsons as a matter of good practice.²⁵

19. Since 2005, the Maplewood police have received nine other calls from the Johnsons. Mrs. Ehlers-Johnson agrees that each has been responded to by Maplewood police.²⁶ The response times for arrival on scene after notification by dispatch have ranged from one to nine minutes for Priority #3 calls; 4 to 13 minutes for Priority #4 calls; and 14 minutes for Priority #5 calls. Maplewood police do not know if any calls to 911 from the Johnsons were not referred to their department by dispatch.²⁷

20. Since the call on September 9, 2013, the Johnsons have not made any 911 calls.²⁸

21. The Berwalds have not made any 911 calls since 1997.²⁹

²⁰ Test. of L. Ehlers-Johnson and City Ex. 3.

²¹ Test. of L. Ehlers-Johnson and D. Johnson.

²² City Ex. 8.

²³ Test. of L. Ehlers-Johnson, D. Johnson, and Chief Schnell, and City Ex. 8.

²⁴ Test. of L. Ehlers-Johnson.

²⁵ Test. of Chief Schnell.

²⁶ Test. of L. Ehlers-Johnson and City Ex. 3.

²⁷ City Ex. 3 and Test. of Chief Schnell.

²⁸ Test. of L. Ehlers-Johnson.

²⁹ Test. of A. Berwald.

22. Mr. and Mrs. Johnson also do not feel adequately protected by the Maplewood Fire Department. They cite two reasons. First, they believe that the Maplewood fire station is farther from them than is the fire station in N. St. Paul. They believe, therefore, it will take longer for a fire truck or emergency medical service to reach them. The second reason is that in their observation of traffic passing in front of their home, they rarely see Maplewood emergency vehicles pass by, but do see N. St. Paul emergency vehicles.³⁰

23. Chief Steven Lukin is the Fire Chief for Maplewood. Since 2009, there have been no calls for fire or ambulance service from either of the subject properties. The response times to locations near the subject properties averages 5.04 to 6.43 minutes. Chief Lukin estimates that the additional time it would take to get to the subject properties from the locations comprising the foregoing estimate would be 1 to 2 minutes.³¹

24. Chief Lukin is not surprised to hear that the Johnsons report seeing few emergency vehicles drive past their home. Emergency vehicles do not patrol areas like police cars. They respond as needed. Since there have been no calls to the subject properties and because the subject properties lie on the outside edge of Maplewood, it is unlikely that there would be a reason to drive past the subject properties on a regular basis.³²

25. Scott Duddeck is the Fire Chief and Public Works Director for N. St. Paul. N. St. Paul maintains a fire hydrant along Joy Road, near the subject properties. N. St. Paul Fire Department would be able to adequately serve the subject properties if detached. There would be no degradation of service to other N. St. Paul locations or significant burden on the N. St. Paul Fire Department if the subject properties were detached.³³

26. The Maplewood Fire Department has full and part-time firemen. Stations are staffed 24 hours a day. N. St. Paul Fire Department's firemen are not fulltime. They are on call and the stations are not manned 24 hours a day. The Maplewood and N. St. Paul fire departments are part of a mutual aid pact that permits one department to aid the other if the need arises. Other neighboring cities also participate in this mutual aid ensuring that there is always adequate service to the area regardless of demands on one particular department.³⁴

27. Emergency medical services coverage areas are controlled by state statute and the Minnesota Emergency Medical Services Regulatory Board.³⁵ If the subject properties were detached from Maplewood and annexed to N. St. Paul, the Maplewood Fire Department would continue to be responsible for coverage of the

³⁰ Test. of L. Ehlers-Johnson and D. Johnson.

³¹ Test. of Chief Lukin and City Ex. 5.

³² Test. of Chief Lukin.

³³ Test. of Chief Scott Duddeck.

³⁴ Test. of Chief Lukin.

³⁵ Minn. Stat. § 144E.

subject properties until a re-formulation of the agreement with the Minnesota Emergency Medical Services Regulatory Board could be made and approved.³⁶

28. Maplewood owns two pieces of property that partially surround the subject properties. The first is a wetland preserve and the second is a public park called Joy Park.³⁷ The Preserve abuts both subject properties and is subject to a wetlands preservation ordinance (Ordinance 928) approved by the Maplewood City Council in 2013. Ordinance 928 strictly controls the uses and any activities or modifications to the Preserve.³⁸ The Valley Branch Watershed District also has regulatory authority over the Preserve.³⁹ The Valley Branch Watershed District regulations provide the same protection as Ordinance 928.⁴⁰

29. The Preserve is designated as park or open space in the Maplewood land use and comprehensive plan documents.⁴¹

30. In May of 2012, Mr. Johnson noticed some trucks and equipment in and around the Preserve. He investigated and found a significant amount of brush and tree cutting had been done and damage to the surface of the Preserve's terrain. He also noticed what appeared to him to be an oily fluid on the surface of puddles in the disturbed area.⁴² He took photos and sent them to Peter Fisher who sat on the Maplewood Parks Commission.⁴³

31. DuWayne Konewko has been the Maplewood Parks and Recreation Director since 2006. He or his staff investigated Mr. Johnson's information about the disturbance to the Preserve. The investigation disclosed that the brush cutting was done by BP Corporation pursuant to their pipeline easement. The easement predates Maplewood's Ordinance 928 and Maplewood's ownership of the Preserve land. The easement runs through the Preserve and allows BP to do whatever it deems necessary to maintain its pipeline. Maplewood ordinances, state regulations and watershed district rules cannot prohibit or limit BP's right to maintain its easement.⁴⁴

32. Following up on Mr. Johnson's concern, Maplewood met on site with officials from BP. The BP officials agreed to contact Maplewood before conducting future activities in the Preserve. Maplewood had the Valley Branch Watershed District conduct tests on the "oily sheen" found by Mr. Johnson. The results of the test showed that the "oily sheen" was a natural substance created by decomposition of materials in the subsurface muck. No contamination was found.⁴⁵

³⁶ Test of Chief Lukin and City Ex. 4.

³⁷ Test. of M. Coleman and M. Thompson.

³⁸ City Ex. 1.

³⁹ City Ex. 2.

⁴⁰ Test. of DuWayne Konewko.

⁴¹ Pet. Exs. 9 and 15.

⁴² Test. of D. Johnson.

⁴³ Pet. Ex. 13.

⁴⁴ Test. of D. Konewko.

⁴⁵ *Id.*

33. If the subject properties were detached, the Preserve would continue to be regulated by Maplewood ordinances and watershed district regulation. The subject properties would continue to be subject only to watershed district regulation since N. St. Paul has no ordinances governing wetlands. Regulation by the watershed district is slightly less efficient than having Maplewood regulate the subject properties.⁴⁶

34. Joy Park was for many years a Ramsey County property. Ramsey County had not put many resources into maintaining the park and had just left it as "open space." Ramsey County deeded Joy Park to Maplewood either in 1994 or 1996.⁴⁷ In the years immediately after the transfer of Joy Park it was considered a "problem area." The park needed improvements and a significant amount of low-level criminal activity and vandalism occurred there. Some of that spilled over to adjacent properties including the neighborhood of the subject properties.⁴⁸

35. Citizens in the area of Joy Park complained about the crime, vandalism and unwholesome nature of activities going on in Joy Park. The police chief at the time and the parks director at the time took actions to clean up and better patrol the park area. Maplewood hired a fulltime ranger for Joy Park,⁴⁹ and the park authorities cleared out brush and foliage to discourage people from using the park for illegal purposes.⁵⁰

36. Since taking possession of Joy Park, Maplewood has made improvements to the park and safety is a major priority. In the last five years, Maplewood has invested between \$340,000 and \$750,000 in improvements to Joy Park. An additional \$175,000 has been approved for spending on the park in the next two years.⁵¹ Maplewood has 36 parks and 14 preserves. This has been a major expenditure for one park out of the parks and recreation budget of Maplewood.⁵²

37. Based on the number of calls to the Maplewood Police Department, the area around Joy Park is now considered a "safe area" in Maplewood. There have been no recent calls to police about illegal sexual activity at Joy Park. Although Joy Park is no longer considered a "high crime area," police do patrol it.⁵³ Joy Park is "a nice little park now ... not an area of concern ... [and] cleaner than it was."⁵⁴

⁴⁶ *Id.*

⁴⁷ There is a discrepancy between the written Petitioner Exhibit 6 and the testimony of Mr. Konewko as to exactly when Joy Park was transferred to Maplewood. The discrepancy is not material.

⁴⁸ Test. of Marvin Koppen, former Maplewood City Council Member, Chief Schnell, A. Berwald and D. Konewko, Pet. Ex. 6.

⁴⁹ Maplewood no longer has a fulltime ranger patrol the park. It is now the responsibility of the police department.

⁵⁰ Test. of M. Koppen.

⁵¹ Pet. Exs. 10 and 12, and Test. of D. Konewko.

⁵² *Id.*

⁵³ Test. of Chief Schnell.

⁵⁴ Test. of A. Berwald.

38. Detachment of the subject properties would not affect the plans of Maplewood for continued development of Joy Park.⁵⁵

39. According to the 2010 census, Maplewood had a population of 38,000. It is 19 square miles in size and was incorporated in 1957.⁵⁶ N. St. Paul has an area of approximately 3 square miles and a population of 11,618.⁵⁷

40. The general area is mixed upland, wetland, wooded and grass. The subject properties are relatively flat but slightly sloping downward toward the neighboring wetlands and lake.⁵⁸

41. Maplewood has a Comprehensive Plan adopted in 2010. The Comprehensive Plan designates the subject properties as “park” or “open land.”⁵⁹ The Comprehensive Plan is in error because the subject properties should be designated as low density residential.⁶⁰ The error in coding of the Comprehensive Plan map had not previously been brought to the attention of Maplewood officials. Maplewood plans to undertake the process required for altering the Comprehensive Plan to correct the error.⁶¹

42. The subject properties are properly zoned for residential use. The color coding mistake on the Comprehensive Plan map will in no way affect the current use of the properties for residential purposes.⁶²

43. Detachment of the subject properties from Maplewood and annexation to N. St. Paul would not alter their current or planned use.⁶³

44. Municipal water service for the citizens of northern Maplewood, including the subject properties, is provided by N. St. Paul.⁶⁴

45. Sanitary sewer service for the citizens of Maplewood, including the Petitioners, is provided by N. St. Paul.⁶⁵ If detached, N. St. Paul would bill the subject properties directly rather than through Maplewood. There would be no cost to Maplewood with respect to sanitary sewer if the subject properties detach.⁶⁶

⁵⁵ Test. of D. Konewko.

⁵⁶ Test. of M. Coleman.

⁵⁷ Minn. State Demographer estimate for 2012.

⁵⁸ Test. of M. Coleman and observation of ALJ during site visit.

⁵⁹ Pet. Exs. 8 and 9.

⁶⁰ Test. of M. Coleman and Michael Martin, Planner with the city of Maplewood.

⁶¹ *Id.*

⁶² Test. of M. Martin and Pet. Ex. 15.

⁶³ Test. of M. Coleman.

⁶⁴ Test. of M. Coleman and M. Thompson, Pet. Exs. 1 and 2, City Ex. 6.

⁶⁵ City Ex. 6 and Test. of M. Thompson.

⁶⁶ Test. of M. Thompson, Pet. Exs. 1 and 2.

46. Ramsey County maintains the storm sewer culvert along Lydia Avenue. Storm sewer maintenance would be unaffected by detachment.⁶⁷

47. There would be no significant impact on Maplewood's provision of public works services to its citizens if detachment were to occur.⁶⁸

48. N. St. Paul provides electrical services to areas of Maplewood and the city of Oakdale, including to the subject properties. Detachment would not affect the provision of electric service to the area.⁶⁹

49. Maplewood's share of the property tax bill for the Berwald property was \$775 for 2014.⁷⁰

50. Maplewood's share of the property tax bill for the Johnsons' property was \$1,216 for 2013.⁷¹

51. Maplewood has an annual general fund budget of \$38 million. Loss of the subject properties' property tax revenue would not unduly burden the provision of services by Maplewood to the remaining portions of the city. Because the subject properties do not face a Maplewood city street, they do not participate in any debt for street reconstruction.⁷²

52. The proposed detachment and concurrent annexation would have no impact on school districts or adjacent communities because the subject properties would remain in the same school district.⁷³

53. Both cities have the capacity to economically provide services to the subject property. The joint powers agreements, contracts, and mutual aid pacts already determine what jurisdictions are responsible for what services.⁷⁴

54. Because the joint powers agreements, contracts and mutual aid pacts will cover the provision of services to the subject properties, neither the proposed action nor another type of boundary adjustment will significantly alter the provision of services to the subject properties.⁷⁵

⁶⁷ Test. of M. Thompson and City Ex. 6.

⁶⁸ Test. of M. Thompson.

⁶⁹ Test. of S. Duddeck, Pet. Exs. 1 and 2.

⁷⁰ Test. of A. Berwald and Pet. Ex. 1.

⁷¹ Test. of L. Ehlers-Johnson and Ex. 2.

⁷² Test. of M. Coleman.

⁷³ See Minn. Sch. Dist. 622 website.

⁷⁴ Test. of M. Coleman and Pet. Ex. 14.

⁷⁵ *Id.*

55. Maplewood does not have very symmetrical borders.⁷⁶ Detachment and annexation of this subject property would not make the borders appreciably less symmetrical than they already are.

56. Because both cities are similarly covered, there would be no impact on the state building code.

57. The Petitioners, as owners of the subject properties, believe the proposed detachment and concurrent annexation to be in their best interests.⁷⁷

58. N. St. Paul passed a resolution in support of detachment and concurrent annexation of the subject properties.⁷⁸ N. St. Paul declined to participate in the hearing on this matter. However, based on the resolution passed by N. St. Paul, it finds the proposed detachment and concurrent annexation to be in its best interests.

59. The Maplewood City Council voted on the proposed detachment and concurrent annexation petition and declined to support the Petition.⁷⁹ The city of Maplewood does not find the proposed detachment and concurrent annexation to be in the best interests of the city.⁸⁰

60. Petitioners filed a petition with the Municipal Boundary Adjustment Unit on September 27, 2013. The Petition contained all signatures of owners of property subject to the Petition.⁸¹

61. On November 21, 2013, a hearing on this matter was convened and continued.

62. On November 22, 2013, this matter was assigned to Administrative Law Judge Barbara Neilson.

63. On June 24, 2014, this matter was reassigned to the undersigned ALJ for hearing.

64. The parties did not agree on how to divide the Office of Administrative Hearings cost of the hearing among the two municipalities and the property owner.⁸²

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

⁷⁶ Pet. Ex. 15.

⁷⁷ Test. of A. Berwald, L. Ehlers-Johnson and D. Johnson.

⁷⁸ Pet. Ex. 14.

⁷⁹ Test. of M. Koppen and Robert Cardinal, Member of the Maplewood City Council and Mayor of Maplewood 1999-2005 and City Ex. 7.

⁸⁰ *Id.*

⁸¹ Pet. Ex. 5.

⁸² Representation by counsel, post hearing.

CONCLUSIONS OF LAW

1. This matter is properly before the Municipal Boundary Adjustment Unit and the Administrative Law Judge pursuant to Minn. Stat. §§ 414.061, subd. 5 and 414.12.

2. The Petition for Detachment and Concurrent Annexation was properly filed and notice given pursuant to Minn. Stat. § 414.09, subd. 1(c). The hearing date was published pursuant to Minn. Stat. § 414.09, subd. 1(d).

3. A petitioner bears the burden of proof to demonstrate by a preponderance of the evidence that the petition meets the statutory requirements.⁸³

4. The Petitioners did not prove by a preponderance of the evidence that the proposed detachment and concurrent annexation meets the requirements of statute for approval.

5. Based on an analysis of the factors contained in Minn. Stat. § 414.02, subd. 3 (a) (1)-(13), detachment of the subject property from the city of Maplewood and the concurrent annexation to the city of North Saint Paul is in the best interests of the city of North Saint Paul.

6. Based on that same analysis, the detachment of the subject property from the city of Maplewood and the concurrent annexation to the city of North Saint Paul is not in the best interests of the city of Maplewood or the Petitioners.

7. The Petition does not meet the requirements of Minn. Stat. § 414.061, subd. 5, because it is not in the best interests of both municipalities and the property owners and, therefore, must be denied.

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

ORDER

Based upon these Conclusions, the Administrative Law Judge hereby ORDERS:

1. The Petition for Detachment and Concurrent Annexation be and hereby 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 Office of Administrative Hearings' costs are to be divided equally between the city of Maplewood and the Petitioners.

⁸³ Minn. R. 1400.7300, subp. 5.

4. This Order becomes effective upon issuance.

Dated: August 21, 2014


RAYMOND R. KRAUSE
Administrative Law Judge

Reported: Digitally recorded

NOTICE

This Order is the final administrative decision in this case under Minn. Stat. §§ 414.061, 414.09, and 414.12. Any person aggrieved by this Order may appeal to Ramsey County District Court by filing an Application for Review with the Court of Administrator within 30 days of the date of this Order. An appeal does not stay the effect of this Order.⁸⁴

Any party may submit a written request for an amendment of these Findings of Fact, Conclusions and Order within 7 days from the date of the mailing of the Order.⁸⁵ A request for amendment shall not extend the time of appeal from these Findings of Fact, Conclusions and Order.

MEMORANDUM

In this case the Petitioners own two parcels of property that are near the edge of Maplewood. They are requesting that their petition for detachment from Maplewood and concurrent annexation to N. St. Paul be approved solely for reasons of what they believe will be enhanced public safety.

In order to approve a petition for detachment and concurrent annexation, a petition must be found to be in the best interests of the municipalities and of the property owner. To determine whether the petition is in the best interests of the parties, the ALJ is directed by statute to analyze 13 factors. Those factors are addressed in the Findings of Fact. In this case, many of the factors do not argue for or against detachment and concurrent annexation. For the sake of clarity and brevity those factors will not be discussed further.

⁸⁴ Minn. Stat. § 414.07, subd. 2.

⁸⁵ Minn. R. 6000.3100.

One factor that does require analysis is the provision of governmental services to the subject property. The evidence presented demonstrates that fire and police protection of the subject properties have not been deficient and have not placed the Petitioners in jeopardy. Response times have been short and calls to 911 that have been forwarded to Maplewood Police have been responded to by the Maplewood Police Department. The Maplewood Police Department has no control over the priority placed on a call by Ramsey County 911 dispatchers. Because both cities participate in the county 911 dispatch system, there would be no difference in the priorities set or the time for dispatch to contact a police car in N. St. Paul if the Petition were approved.

The fact that more N. St. Paul police cars appear in front of Petitioners' homes does not necessarily prove that N. St. Paul police will be better equipped to deal with calls. The Maplewood police chief testified that their policing strategy is to concentrate on problem areas rather than randomly patrol all areas equally. He further testified that the area Petitioners live in is a relatively crime free area. That does not mean that there are no patrols in the area. The testimony was that the Joy Park area is an area that is patrolled, though not the priority it once was. There was no evidence that Maplewood is unable to provide sufficient officers to cover its territory. In any case, the two municipalities have a joint powers agreement that is designed to provide coverage of the others jurisdiction if needed.

The evidence demonstrates that Maplewood has made concerted efforts to improve conditions at Joy Park. A significant amount of money has been spent and the evidence indicates that the efforts to make Joy Park safe have been successful. Moreover, Joy Park and the Preserve would remain with Maplewood if detachment were approved for the subject properties. Therefore, should anything occur in those areas that requires police, fire or rescue, it would still be Maplewood that would have to respond. None of the Johnson's concerns about police patrols of these areas would be addressed by detachment.

There have never been any calls for fire or medical emergency services from the Petitioners location. Since fire and ambulance personnel and vehicles do not patrol areas looking for emergencies, the fact that Petitioners have not seen Maplewood fire trucks or ambulances very often does not indicate a deficiency of protection. The response times for these services to the general area of the subject properties are short. No evidence was provided to demonstrate any real safety concern regarding these services.

Petitioners did not establish by a preponderance of the evidence that their safety would be enhanced by detachment from Maplewood and annexation by N. St. Paul. An analysis of this factor does not demonstrate that detachment would appreciably enhance Petitioners' safety and, therefore, be in their best interests.

The controlling statute, Minn. Stat. § 414.061, subd. 5, requires that a detachment and concurrent annexation proposal, originating at the request of a property owner, must be in the best interests of the municipalities and the property owner. There is no question that the Petitioners in this case believe it is in their best interest to have

the property detached and concurrently annexed to N. St. Paul. They have not, however, met the burden of proving that it will improve their safety. Safety is, by their testimony, the only reason for the Petition.

The action of the N. St. Paul City Council, adopting a resolution in support of detachment and concurrent annexation, demonstrates that N. St. Paul has decided that such action is in their best interest. Although no reason is given for this position, it must be assumed to be so.

No evidence has been submitted to demonstrate that the proposed detachment and concurrent annexation is in the best interests of Maplewood. There was testimony that detachment would not be of significant financial harm to Maplewood. There was also testimony that detachment would not significantly affect Maplewood's ability to provide services to its remaining residents. While this may be true, the analysis required by statute does not involve a "no appreciable harm" standard or a "breakeven" standard. The detachment must be in the "best interests" of both municipalities.

The fact that the city of Maplewood would lose a portion of its residential tax base when there is no compelling reason for it to do so, no corresponding gain to Maplewood, or any advantage to the citizens of Maplewood or adjacent communities, demonstrates that this is not in the best interests of Maplewood. The Petition must therefore be denied.

R. R. K.