

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Petition for the
Detachment of Certain Land from the
City of Trosky, Minnesota (D-520)
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 Jim Mortenson on November 17, 2014, at the Trosky City Hall, 220 Broadway Street S, Trosky, Minnesota. The record closed on that date. At the hearing, Exhibits A-V were received into evidence.

Marc Manderscheid, Briggs & Morgan, appeared on behalf of the city of Trosky (City). Damain Sandy, O'Neill, O'Neill & Barduson, appeared on behalf of Joann M. Pederson, Anthony L. Pederson, Laura A. Vatnsdal, John M. Hinz, James G. Hinz, and Debra D. Jorgenson (Petitioners). Elmer Township did not appear at the hearing.

The following witnesses testified at the hearing: Joann Pederson, Petitioner; Jeff Carstenson, City Mayor; Theresa Klumper, Acting City Clerk and Treasurer; and Donald Walhof, City Council Member.

ISSUE

Should the Petition for Detachment be granted?

SUMMARY OF CONCLUSION

The Administrative Law Judge finds that the Petitioners are entitled to relief.

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

FINDINGS OF FACT

1. On March 17, 2014, Clara Hinz filed a Petition for Detachment.¹
2. The petition seeks to detach 154.07 acres from the City pursuant to Minn. Stat § 414.06 (2014).
3. The property proposed for detachment (Subject Area) is described as:

¹ Findings of Fact 1 through 16 are all stipulated facts. (See Stipulation, dated November 17, 2014.)

The Northeast Quarter (NE $\frac{1}{4}$) of Section Twenty (20), Township One Hundred Five (105) North, Range Forty-five (45) West of the Fifth P.M., EXCEPTING THEREFROM that portion of the East one-half (E $\frac{1}{2}$) of the Northeast Quarter (NE $\frac{1}{4}$) of Section Twenty (20), Township One Hundred Five (105), Range Forty-five (45) which lies easterly of a line running parallel with and distant 75 feet westerly of the following described line: Beginning at a point on the North line of Section Twenty-one (21), Township One Hundred Five (105), Range Forty-five, (45), distant 15.9 feet east of the Northwest corner thereof; thence running southerly on a line which intersects the east and west quarter line of said Section Twenty-one (21) distant 12.7 feet east of the west quarter corner thereof for a distance of 2800 feet and there terminating; excepting therefrom a strip of land 25 feet in width lying immediately adjacent to and easterly of the westerly boundary of the above described strip: Beginning at the North line of the above described tract and extending southerly for a distance of 131.7 feet (when measured along the above described line); excepting therefrom the right of way existing highways; said exception containing 1.60 acres, more or less, heretofore taken for state highway; AND ALSO EXCEPTING THEREFROM the North 495 feet of the East 528 feet of the Northeast Quarter (NE $\frac{1}{4}$) of Section Twenty (20), Township One Hundred Five (105) North, Range Forty-five (45) West of the Fifth P.M., said exception consisting of 6.0 acres, more or less, County of Pipestone, State of Minnesota.

4. Clara Hinz was the owner of the Subject Property when the petition was filed.

5. The current Petitioners were substituted as parties because they are successors in interest to Clara Hinz following the death of Ms. Hinz. The Petitioners obtained their interests under a transfer on death deed.

6. The Subject Property is agricultural land used for crop production.

7. The Subject Property has no buildings on it.

8. No person lives on the Subject Property.

9. In 2011, the City cleared brush and widened the field approach along a roadway and ditch located on the north boundary of the Subject Property, at the request of Joann Pederson.

10. The City was incorporated under the laws of the State of Minnesota in 1893.

11. The Subject Property lies within the City and has been in the City for over 110 years.

12. U.S. Hwy. 75 runs along the eastern-most boundary of the detachment property.

13. The Hinz family owned 160 acres of land, which included the Subject Property, for many decades. The Subject Property was part of the original City of Trosky, Minnesota. Louis Hinz and his wife Clara farmed the land and raised their children in the house on the northeast corner of the 160 acres of land. In 1974, the Hinzes retired from farming.

14. In 1993, Louis and Clara Hinz sold approximately six acres at the northeast corner of their land, adjacent to U.S. Highway No. 75, to David and Wendy Mohlenkamp, who were then renting the remaining 154 acres for farming.

15. In 2000, the Mohlenkamps sold the six acre homestead parcel to Ronald and Amy Pietz, who continue to live there today. The Pietz property is not included within the land which is subject to the detachment petition.

16. The Mohlenkamps own and reside on the parcel across the gravel road to the north from the Subject Property. The Mohlenkamps continue to rent the Subject Property for farming purposes.

17. The City is not currently symmetrical.² The City was symmetrical, comprised of 16 quarter sections, when it was incorporated in the 1890s.³ It now consists of just over six and a half quarter sections, including the Subject Property.⁴

18. The Subject Property is bordered by Elmer Township on the north, west, and southern boundaries of the property, except for the six acres in the northwest corner of the original parcel that are not part of the Subject Property.⁵ The aforementioned six acre parcel is part of and contiguous with the City.⁶

19. Petitioners have no plans to subdivide or build on the Subject Property and the City has not approached them to propose development.⁷ Petitioners intend to continue to use the property for agriculture.⁸

20. The City does not provide sewer or water to the Subject Property and there are no other utilities on the Subject Property.⁹

21. The real estate taxes payable on the Subject Property have increased significantly over the past several years.¹⁰ The total real estate taxes payable in 2005

² Exhibits E and F.

³ Ex. B.

⁴ Ex. F.

⁵ Ex. F; Testimony of Joann Pederson.

⁶ Ex. F.

⁷ Test. of J. Pederson.

⁸ *Id.*

⁹ *Id.*; Test. of Jeff Carstenson.

¹⁰ Ex. I.

was approximately \$1,676; for 2014 that amount was approximately \$7,647.¹¹ Approximately \$3,596 of that \$7,647 went to the City.¹²

22. The City's total receipts for 2014 were budgeted for \$48,500¹³ The City real estate taxes for the Subject Property in 2014 of \$3,596 constitutes approximately 7.4 percent of the City's total budget and approximately 16 percent of general property tax receipts.

23. The City has the second lowest property tax rate in Pipestone County.¹⁴

24. The City voted to oppose the detachment on April 1, 2014.¹⁵

25. The City lacks wastewater treatment and homes are putting sewage directly into a nearby creek or onto the ground.¹⁶

26. The City is required to correct its sewage problem and the capital investment to manage wastewater, based on the alternative selected, may be from \$505,000 to \$2,527,500.¹⁷

27. The City is attempting to secure state and federal funds for completing a wastewater treatment system.¹⁸ Water users in the City will pay fees for the cost of the wastewater treatment system that are not paid for with other funds.¹⁹

28. The City can make up the difference in its budget when it no longer receives tax receipts from the Subject Property.²⁰

29. The Subject Property has been, in recent years, rented for agricultural purposes for \$185 per acre per year.²¹ The market rental value of the Subject Property is over \$300 per acre.²²

30. Elmer Township supports the detachment petition.²³

31. Notice of the hearing on the detachment petition was duly published in the *Pipestone County Star* on April 24, 2014 and May 1, 2014, and again on October 30, 2014 and November 6, 2014.²⁴

¹¹ Ex. K; Test. of Theresa Klumper.

¹² Test. of T. Klumper; Ex. K at 8.

¹³ Ex. L.

¹⁴ Test. of T. Klumper.

¹⁵ Ex. T.

¹⁶ Test. of J. Carstenson; Ex. S.

¹⁷ *Id.*

¹⁸ Test. of J. Carstenson.

¹⁹ *Id.*

²⁰ Test. of T. Klumper.

²¹ Test. of J. Pederson.

²² Test. of Donald Walhof.

²³ Resolution of Elmer Township Concerning Detachment of Certain Land Pursuant to Minnesota Statutes § 414.06, dated April 2, 2014.

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

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

CONCLUSIONS

1. This matter is properly before the Administrative Law Judge pursuant to Minn. Stat. §§ 414.01, .06 (2014).

2. Proper notice has been given in this matter.

3. 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.²⁵

4. There was one owner of the property in question who signed the Petition for Detachment, thereby fulfilling the first requirement for a detachment. This owner was replaced, following her death, by the six current owners who moved for substitution for the original owner. The motion was not opposed and was granted by Order of the Administrative Law Judge on September 22, 2014.

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

6. The Subject Area is within the boundaries of the City and abuts a boundary, thereby fulfilling the third requirement for detachment.

7. Detachment of the Subject Area from the City would not unreasonably affect the symmetry of the City, thereby fulfilling the fourth requirement for detachment.

8. The Subject Area is not needed for reasonably anticipated future development, thereby fulfilling the fifth requirement for detachment.

9. 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.

²⁴ Affidavits of publication dated May 5, 2014 and November 6, 2014.

²⁵ Minn. Stat. § 414.06, subd. 3.

10. The Petition for Detachment has met all the criteria for approval.
11. Any finding of fact more properly denominated as a conclusion is adopted as such.

Based upon 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 Trosky is **GRANTED**.
2. The Office of Administrative Hearings shall cause copies of this Order to be mailed to all persons described in Minn. Stat. § 414.09, subd. 2 (2014).
3. Pursuant to Minn. Stat. § 414.06, subd.7, the cost of these proceedings shall be divided as follows: to the City, 25 percent; to the Township, 25 percent; and to Petitioners, 50 percent.
4. This Order becomes effective January 26, 2015.

Dated: January 26, 2015



JIM MORTENSON
Administrative Law Judge

Reported: Digitally recorded

NOTICE

This Order is the final administrative order in this case under Minn. Stat. §§ 414.06, .07, .09, .12 (2014). Pursuant to Minn. Stat. § 414.07, subd. 2, any person aggrieved by this Order may appeal to Pipestone 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 (2013). However, no request for amendment shall extend the time of appeal from this Order.

MEMORANDUM

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.²⁶

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.”²⁷

In this case the single owner of the property had signed the petition. This owner died and the current Petitioners were substituted. There was no dispute about this, and so the first required finding is satisfied.

The property is land used only for agricultural purposes. It has no buildings or utilities on it. Therefore, it is rural in character and not developed for urban, residential, commercial or industrial purposes. Thus, the second required finding is satisfied.

The property is within the boundaries of the City and abuts the boundary. Thus, the third required finding is satisfied.

The City’s symmetry has dissolved over the years, with over half of its original land now beyond its boundaries. There is even a portion of the City that is not contiguous, except for a corner. The Subject Property is not part of that portion of the City and its detachment will not affect it. The detachment of the Subject Property, which currently juts from the western boundary of the City, will arguably improve the symmetry of the City. It will reduce the extension from the western boundary from 160 acres to just six acres. Thus, the detachment will not unreasonably affect the symmetry of the City, and the fourth required finding is satisfied.

²⁶ Minn. Stat. § 414.06, subd. 3.

²⁷ *Id.*

There is no evidence the land is needed for any anticipated future development. Thus, the fifth required finding is satisfied.

The City argues that the detachment would pose an undue hardship on continuing to provide services as a City. However, the evidence does not support this argument. The City Clerk testified that even with the loss of the revenue the Subject Property currently provides, approximately \$3,500 annually, the City will be able to make up that difference and continue to provide services. Thus, there is no undue hardship on those grounds.

The City must invest in a wastewater treatment system. The City's current budget will not accommodate such an investment. The City is looking for outside funding to assist it in building a wastewater treatment system. The loss of the Subject Property will not impact or otherwise affect the City's wastewater treatment plans. Thus, there is no undue hardship on those grounds.

The City argues that the Petitioners are under-charging for rent for the Subject Property. The City argues that this should be considered since their reasons for seeking detachment are based on the Subject Property's tax burden. While the Statute requires petitioners to state their reasons for seeking detachment, it does not require those reasons to be considered as a factor for permitting detachment.²⁸ This is not to say the reasons could never be considered. The Administrative Law Judge is not persuaded that there is a justification to consider the Petitioners' reasons for seeking detachment. Thus, the rent Petitioners charge for their property is irrelevant.

Finally, the City argues that the Administrative Law Judge should defer to the judgment of the City Council in this instance. The City voted to reject the detachment of the Subject Property. The Statute addresses a municipality's discretion in two situations. First, when the municipality agrees with the property owner, and there is no objection from the township, that the petition be granted and no hearing held.²⁹ Second, when a municipality and township agree that detachment should not occur, no hearing is necessary and the petition will be denied.³⁰ In this case the city and the property owners disagree and a hearing was held. The City has presented no evidence or argument to consider factors not otherwise required to be considered by statute, including simply relying on the fact the City objects to the detachment.

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

J. R. M.

²⁸ Minn. Stat. § 414.06, subs. 1, 3.

²⁹ Minn. Stat. § 414.06, subd. 2.

³⁰ *Id.*