

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Petition for the  
Detachment of Certain Land from the  
City of Wabasha (MBAU Docket D-533)

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

The above-entitled matter came on for hearing before Administrative Law Judge Jeanne M. Cochran on May 28, 2015, at the Wabasha County Courthouse, Room 108, 625 Jefferson Avenue, Wabasha, Minnesota.

Michael C. Couri, Couri & Ruppe, P.L.L.P., appeared on behalf of the Petitioners. Christopher M. Hood and Robert T. Scott, Flaherty & Hood, P.A., appeared on behalf of the City of Wabasha (City). Greenfield Township did not appear at the hearing.

The Petitioners and City submitted their Post-Hearing Briefs and Proposed Findings of Fact, Conclusions of Law, and Order on June 26, 2015. Both parties submitted reply briefs on July 17, 2015. On July 22, 2015, after receiving supplemental information from the parties, the Administrative Law Judge issued the Order Supplementing the Record. The record closed on that date.

The following witnesses testified at the hearing on May 28, 2015: Charles Springer, one of the Petitioners; William Allaire, one of the Petitioners; Dean Johnson, expert witness for the Petitioners; Chad Springer, Wabasha City Administrator; Jim Warren, Wabasha Police Chief; and Kristi Clarke, expert witness for the City. Exhibits 1-34, 37-42, 44-47, 50-51, 501-527, and 529-547 were received into evidence at the May 28, 2015 hearing. In addition, Exhibit 52 was received on July 22, 2015, pursuant to the Order Supplementing the Record.

**STATEMENT OF THE ISSUE**

The issue in this proceeding is whether the Petition for Detachment filed by the Petitioners should be granted or denied based on the factors set forth in Minn. Stat. § 414.06 (2014).

**SUMMARY OF CONCLUSION**

Because the property that the Petitioners seek to detach is not rural in character as required by Minn. Stat. § 414.06, the Petition is **DENIED**.

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

## FINDINGS OF FACT

### I. Procedural Findings

1. On July 15, 2015, the Petitioners filed their Petition for Detachment of Certain Land from the City of Wabasha, Minnesota Pursuant to Minnesota Statutes § 414.06 (Petition). The Petition was signed by all of the owners of the property that is the subject of the Petition: Charles Springer, Mary Kay Springer, Charles S. Evans, Judith A. Evans, William R. Allaire, Sandra K. Allaire, Thomas L. Peyla, Patricia D. Peyla, Helen J. Coffman, Elizabeth Lofgren, Karl E. Lofgren, Mary C. Schumacher, Kenneth W. Schumacher, Peter Wallerich, Terese Wallerich, Stephen L. Kopecky, and Linda F. Kopecky (collectively Petitioners).<sup>1</sup>

2. The property proposed to be detached (Properties or Petitioners' Properties) is described as follows in the Petition:<sup>2</sup>

All described property is located in Section 35, Township 111, Range 10 in Wabasha County, Minnesota:

That part of Lot 6, Block 1, Teepeeota Point Subdivision located in Section 35, Township 111, Range 10 in Wabasha County, Minnesota;

AND

That property located in Section 35, Township 111, Range 10 in Wabasha County, Minnesota described as follows: that part of Government Lot 2 located in the Northeast Quarter (NE ¼) and that part of the Southeast Quarter (SE ¼) of the Northwest Quarter (NW ¼) all in Section 2, Township 110 North, Range 10 West, described as follows: beginning at the Northwest corner of said Government Lot 2 in the Northeast Quarter (NE ¼) of Section 2-110-10; thence bear East along the North line of said Government Lot 2 for a distance of 145.3 feet; thence bear South 40° 04' East for a distance of 82.8 feet; thence bear South 49° 56' West for a distance of 185.8 feet; thence bear North 51° 56' west for a distance of 287.9 feet to a point on the North line of said Southeast Quarter (SE ¼) of the Northwest Quarter (NW ¼) of Section 2- 110- 10 for a distance of 170.6 feet to the point of beginning and there terminating. EXCEPTING THEREFROM a strip of land 66 feet wide measured at right angles from the North line of said property. The above also being described as Lot One (1), Block Three (3), Wilcox Whistling Pines Subdivision.

AND

That part of Lot 5, Block 1, Teepeeota Point Subdivision located in Section 35, Township 111, Range 10 in Wabasha County, Minnesota;

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<sup>1</sup> Petition (filed on July 15, 2015).

<sup>2</sup> *Id.*

AND

Lot 4, Block 1, Teepeeota Point Subdivision

AND

Lot 3, Block 1, Teepeeota Point Subdivision

AND

Lot 2, Block 1, Teepeeota Point Subdivision

AND

Lot 1, Block 1, Teepeeota Point Subdivision

AND

That part of Outlot 1, TEEPEEOTA POINT SUBDIVISION, according to the plat thereof on file at the County Recorder Office, Wabasha County, Minnesota, described as follows:

Commencing at the Southeast corner of said Outlot 1; thence Northeasterly on an assumed azimuth from North of  $30^{\circ} 53' 50''$  along the Southeasterly line of said Outlot 1, a distance of 206.20 feet; thence Northwesterly  $300^{\circ} 53' 50''$  azimuth 120.00 feet; thence Northwesterly  $303^{\circ} 47' 30''$  azimuth 22.00 feet to the point of beginning; thence Southwesterly  $225^{\circ} 21' 30''$  azimuth 147.71 feet; thence Southwesterly  $206^{\circ} 57' 46''$  61.09 feet to the Northerly right-of-way line of the platted street; thence Westerly 65.12 feet along said Northerly right-of-way line on a nontangential curve concave Southerly having a central angle of  $14^{\circ} 27' 08''$ , a radius of 258.18 feet and a chord azimuth of  $275^{\circ} 45' 02''$  to the Westerly line of said Outlot 1; thence Northerly  $348^{\circ} 02' 50''$  azimuth along said Westerly line 237 feet more or less to the low water mark of the Mississippi River; thence Easterly along said low water mark 293 feet more or less to its intersection with a line that bears  $30^{\circ} 53' 50''$  azimuth from the point of beginning; thence Southwesterly  $210^{\circ} 53' 50''$  azimuth 70 feet more or less to the point of beginning.

AND

That part of Outlot 1, Teepeeota Point Subdivision according to the plat thereof on file at the County Recorders Office, Wabasha County, Minnesota, located in Section 35, Township 111, Range 10 in Wabasha County, Minnesota and described as follows:

Commencing at the southeast corner of said Outlot 1; thence northwesterly on an assumed azimuth from north of 31 4 degrees 56 minutes 00 seconds along the northerly right of way line of the platted street 20.66 feet to the point of beginning; thence northeasterly 30 degrees 53 minutes 50 seconds azimuth 201.14 feet; thence northwesterly 300 degrees 53 minutes 50 seconds azimuth 50.00 feet; thence southwesterly 221 degrees 00 minutes 43 seconds azimuth 193.45 feet to the northerly right of way line of said platted street; thence southeasterly 72.00 feet along said right of way line on a nontangential curve concave to the south having a central angle of 15 degrees 58 minutes 42 seconds, a radius of 258.18 feet and a chord azimuth of 126 degrees 56 minutes 39 seconds; thence southeasterly 134 degrees 56 minutes 00 seconds azimuth along said right of way line 12.95 feet to the point of beginning. The above described property is also known as PARCEL B.

AND

That part of Outlot 1, Teepeeota Point Subdivision, according to the plat thereof on file at the County Recorders Office, Wabasha County, Minnesota, described as follows: Commencing at the southeast corner of said Outlot 1; thence northeasterly on an assumed azimuth from north of 30 degrees 53 minutes 50 seconds along the southeasterly line of said Outlot 1 a distance of 206.20 feet; thence northwesterly 300 degrees 53 minutes 50 seconds azimuth 20.00 feet to the point of beginning; thence continuing northwesterly 300 degrees 53 minutes 50 seconds azimuth 50.00 feet; thence northeasterly 30 degrees 53 minutes 50 seconds azimuth 94 feet more or less to the low water mark of the Mississippi River; thence easterly along said low water mark 5.3 feet more or less to its intersection with a line that bears 30 degrees 53 minutes 50 seconds azimuth from the point of beginning; thence southwesterly 210 degrees 53 minutes 50 seconds azimuth 100 feet more or less to the point of beginning. The above described property is also known as PARCEL D.

AND

That part of Outlot 1, Teepeeota Point Subdivision, according to the plat thereof on file at the County Recorders Office, Wabasha county, Minnesota, described as follows: Commencing at the SE corner of said Outlot 1; thence Northeasterly on an assumed azimuth from North of 30 deg. 53' 50" along the Southeasterly line of said Outlot 1, a distance of 206.20 feet; thence Northwesterly 300 deg. 53' 50" azimuth 20.00 feet to the point of beginning; thence continuing northwesterly 300 deg. 53' 50" azimuth 50.00 feet; thence northeasterly 30 deg. 53' 50" azimuth 94 feet more or less to the low water mark on the Mississippi River; thence Easterly along said low water mark 53 feet more or less to its intersection with a line that bears 30 deg. 53' 50" azimuth from the point of beginning; thence Southwesterly 210 deg. 53' 50" azimuth 100 feet more or less to the point of beginning. The above described property is also known as PARCEL D.

AND

That part of Outlot 1, TEEPEEOTA POINT SUBDIVISION according to the plat thereof on file at the County Recorder's Office, Wabasha County, Minnesota located in Section 35, Township 111, Range 10 in Wabasha County, Minnesota and described as follows:

Commencing at the Southeast corner of said Outlot 1; thence Northeasterly on an assumed azimuth from North of  $30^{\circ} 53' 50''$  along the Southeasterly line of said Outlot 1, a distance of 206.20 feet; thence Northwesterly  $300^{\circ} 53' 50''$  azimuth 20.00 feet to the point of beginning; thence Southwesterly  $210^{\circ} 53' 50''$  azimuth 201.14 feet to the Northerly right-of-way line of the platted street: thence Northwesterly  $314^{\circ} 56' 00''$  azimuth along said Northerly right-of-way 12.95 feet; thence Northwesterly 67.05 feet along said Northerly right-of-way line on a tangential curve concave Southwesterly, having a radius of 258.18 feet and a central angle of  $14^{\circ} 52' 48''$ ; thence Easterly  $36^{\circ} 36' 17''$  azimuth 191.32 feet; thence Northeasterly  $30^{\circ} 53' 50''$  azimuth 88 feet more or less to the low water mark of the Mississippi River, thence Easterly along said low water mark 64 feet more or less to its intersection with a line that bears  $30^{\circ} 53' 50''$  azimuth from the point of beginning; thence Southwesterly  $210^{\circ} 53' 50''$  azimuth 103 feet more or less to the point of beginning.

AND

That property located in Section 35, Township 111, Range 10 in Wabasha County, Minnesota and described as follows:

Lot Fifteen (15) in Block Two (2) and that part of Lot Sixteen (16) in Block Two (2) described as: Commencing at the Southeast corner of said Lot 16; thence Northeasterly to a point on the Northerly line thereof 30 feet Northwesterly of the Northeast corner thereof; thence Southeasterly along the Northerly line thereof 30 feet to the Northeast corner thereof; thence Southwesterly along the Easterly line thereof to the place of beginning, all in Teepeeota Point Subdivision, according to the plat thereof on file and of record in the office of the County Recorder in and for Wabasha County, Minnesota.

AND

That property located in Section 35, Township 111, Range 10 in Wabasha County, Minnesota and described as follows:

Beginning at the most northerly corner of Lot 15 Block 2 of Teepeeota Point Subdivision; thence North 45 deg. 04' 00" West, assumed bearing along the northeasterly line of Lot 16 of said Block 2 of Teepeeota Point Subdivision, a distance of 30.00 feet; thence North 67 deg. 50' 21" East, a distance of 77.08 feet; thence South 57 deg. 36' 52" East, a distance of 62.61 feet to the

northeasterly extension of the southeasterly line of Lot 15 of said Block 2 of Teepeeota Point Subdivision; thence South 39 deg. 00' 00" West, along said extension, a distance of 83.00 feet to the most easterly corner of said Lot 15; thence northwesterly along the northeasterly line of said Lot 15, a distance of 69.8 feet to the point of beginning, containing 0.14 acres, more or less, Wabasha County, Minnesota.

AND

That property located in Section 35, Township 111, Range 10 in Wabasha County, Minnesota and described as follows:

Lot 16, Block 2, Teepeeota Point Subdivision, less that part described as follows: Commencing at the SE corner of said Lot 16; thence Northeasterly to a point on the Northerly line thereof 30 feet Northwesterly of the NE corner thereof; thence Southeasterly along the Northerly line thereof 30 feet to the NE corner thereof; thence Southwesterly along the Easterly line thereof to the place of beginning, being situated in Gov. Lot 2 in Sec. 35, Township 111 North, Range 10 West and Gov. Lots 3 and 4 in Section 2, Township 110 North, Range 10 West.

3. The Petitioners' Properties abut property in Greenfield Township, and would join Greenfield Township if the Petition is granted.<sup>3</sup>

4. In response to the Petition, Greenfield Township passed a resolution on July 31, 2014, stating that the Township is neutral to the Petition.<sup>4</sup> On August 5, 2014, the City passed a resolution stating that it opposes the Petition.<sup>5</sup>

5. On August 13, 2014 and August 20, 2014, notice was published in the Wabasha County Herald that a public hearing on the Petition would be held beginning at 9:00 a.m. on September 4, 2014, at the Wabasha City Hall. The notice indicated that an evidentiary hearing would be held at a later date.<sup>6</sup> Notice of the hearing was also provided to local officials in accordance with Minn. Stat. §§ 414.06 and 414.09 (2014).<sup>7</sup>

6. By a letter dated August 25, 2014, the Petitioners requested to amend the Petition to: A) add a signature page clarifying the signatures of the Petitioners; and B) clarify the properties that are included in the Petition. Specifically, the Petitioners' requested to amend the legal description to read as follows:

Those portions of Lots 1-6, Block 1, Lots 15 and 16, Block 2, Outlot 1 and the platted road of Teepeeota Point Subdivision located in Section 35, Township 111 North, Range 10 West, Wabasha County, Minnesota, but excluding that part of Outlot 1, Teepeeota Point Subdivision which lies in Government Lot Two (2), in

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<sup>3</sup> *Id.*

<sup>4</sup> Greenfield Township Resolution No. 2014-03 (received August 4, 2014).

<sup>5</sup> Wabasha City Resolution No. 34-2014 (received August 6, 2014).

<sup>6</sup> Affidavit of Publication of Gary Stumpf, Wabasha County Herald (August 20, 2014).

<sup>7</sup> Certificate of Service of Star Holman (August 7, 2014).

Section 35, Township 111 North, Range 10 West, lying between the Northeasterly lot lines of Lot 15 and Lot 16, Block 2, Teepeeota Point Subdivision and the low water mark of the Mississippi River; and between the Northwesterly lot line of said Lot 16 as extended to the low water mark of the Mississippi River, and the South line of said Outlot 1, as extended to the low water mark of the Mississippi River, Wabasha County, Minnesota;

and

The Easterly 20 feet of Outlot 1 of Teepeeota Point Subdivision, located in Government Lot 2, said 20-foot strip running parallel to the Westerly line of Lot 16, Block 2, Teepeeota Point Subdivision, according to the plat thereof on file and of record in the office of the Wabasha County Recorder, Wabasha County, Minnesota.<sup>8</sup>

7. On September 4, 2014, the initial hearing on the Petition was held at Wabasha City Hall as previously noticed. During the hearing, the parties were ordered to engage in mediation. After the mediation was conducted, the parties informed the Office of Administrative Hearings (OAH) that mediation did not resolve the matter. Thereafter, the Chief Administrative Law Judge assigned this matter to the undersigned Administrative Law Judge.<sup>9</sup>

8. A prehearing conference was held by telephone on December 23, 2014. As part of the prehearing conference, the Administrative Law Judge scheduled the evidentiary hearing for May 28, 2015.<sup>10</sup>

9. On April 10, 2015, the City filed a Motion for Summary Disposition and Memorandum of Law in Support of its Motion.<sup>11</sup> On April 23, 2015, the Petitioners filed a Memorandum of Law in Opposition to the City's Motion for Summary Disposition.<sup>12</sup>

10. After hearing oral argument on the City's motion, the Administrative Law Judge denied the City's Motion for Summary Disposition by an Order dated May 15, 2015.<sup>13</sup>

11. An additional prehearing conference was held by telephone on May 19, 2015 to discuss hearing logistics and the timing of a site visit. The parties and Administrative Law Judge agreed to conduct a site visit at 8:00 a.m. on the morning of May 28, 2015, prior to the start of the reconvened hearing.

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<sup>8</sup> Letter from Michael Couri, Couri & Ruppe, P.L.L.P, to Star Holman, OAH (August 25, 2014).

<sup>9</sup> Notice of and Order for Prehearing Conference (November 14, 2014).

<sup>10</sup> First Prehearing Order (January 5, 2015).

<sup>11</sup> City of Wabasha Motion for Summary Disposition and Memorandum of Law in Support of Motion (April 10, 2015).

<sup>12</sup> Petitioners Memorandum in Opposition to Motion for Summary Disposition (April 23, 2015).

<sup>13</sup> Order on City's Motion for Summary Disposition (May 15, 2015).

12. Notice of the evidentiary hearing was properly and timely published in the Wabasha County Herald on May 13, 2015 and May 20, 2015 in accordance with Minn. Stat. §§ 414.06, 414.09.<sup>14</sup>

13. Shortly before the evidentiary hearing, the Petitioners renewed their request to amend the Petition to add a signature page clarifying the signatures of the Petitioners and to clarify the Properties subject to the Petition.<sup>15</sup>

14. On the morning of May 28, 2015, the Administrative Law Judge made a site visit to the area proposed for detachment. The Administrative Law Judge was accompanied by counsel for each of the parties and one representative of each party. The group drove from the Wabasha County Courthouse, which is located in downtown Wabasha, to the Petitioners' Properties.

15. The hearing in this matter was reconvened as scheduled at 9:00 a.m. at the Wabasha County Courthouse, Room 108, 625 Jefferson Avenue, Wabasha, Minnesota.

16. At the reconvened hearing on May 28, 2015, the Administrative Law Judge inquired as to whether the City had any objection to the Petitioners' request to amend the Petition. There being no objection, the Administrative Law Judge granted the Petitioners' request to amend the Petition to clarify the signatures and the legal description of the Properties that the Petitioners seek to detach from the City.<sup>16</sup>

17. On July 22, 2015, the Administrative Law Judge issued an Order Supplementing the Record. Pursuant to that Order, Exhibit 52 was received into the record.<sup>17</sup> Exhibit 52 provides the acreage measurements for each parcel that the Petitioners seek to detach from the City, and the acreage measurement for any adjacent parcel located in Greenfield Township under common ownership with the city parcel, as applicable.<sup>18</sup>

## **II. City of Wabasha**

18. The City of Wabasha is located on the Mississippi River in southeastern Minnesota, and is the county seat of Wabasha County.<sup>19</sup>

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<sup>14</sup> Affidavit of Publication of Daniel Stumpf, Wabasha County Herald (May 20, 2015).

<sup>15</sup> Letter from Michael Couri, Couri & Ruppe, P.L.L.P., to Hon. Jeanne M. Cochran (May 4, 2015).

<sup>16</sup> See Order Granting Request to Amend and Setting Briefing Schedule (June 2, 2015).

<sup>17</sup> Order Supplementing the Record (July 22, 2015).

<sup>18</sup> *Id.*; Exhibit (Ex.) 52.

<sup>19</sup> Ex. 1 at 9; Ex. 2; Testimony (Test.) of Chad Springer, City Administrator.



19. The City was incorporated in 1858.<sup>20</sup> The City has a current population of 2,507, according to the most recent (2013) population estimate from the State Demographer.<sup>21</sup>

20. The City's workforce is integrated with that of the southeastern Minnesota region. City employers draw a majority of their employees from outside the City's municipal boundaries, and many City residents commute to larger communities in the region, such as Lake City, Rochester and Winona, for work.<sup>22</sup>

21. The City serves as the hub for a larger area than is contained within its municipal boundaries, including Greenfield Township and other portions of Wabasha County located outside the City.<sup>23</sup> The services and amenities offered by and found within the City serve a greater population than is contained within the City's municipal boundaries.<sup>24</sup>

22. Among the attractions, services and amenities found in the City are: parks; a city-owned and operated outdoor swimming pool; a city-owned and operated campground; a municipal library; an 18-hole golf course; Coffee Mill ski area; two marinas; the National Eagle Center; health care facilities; and a full range of businesses.<sup>25</sup>

### **III. Properties Included in the Petition**

23. Petitioners' Properties are located on the northernmost tip of Teepeeota Point, a peninsula that juts out into the Mississippi River and is surrounded by water on three sides.<sup>26</sup>

24. As shown on the attached map,<sup>27</sup> the Petitioners' Properties are the only properties on Teepeeota Point that are located in the City. The remainder of the properties on Teepeeota Point are located in Greenfield Township. The Petitioners' Properties abut Greenfield Township on the south.<sup>28</sup>

25. Petitioners' Properties are physically separated from the remainder of the City by Robinson Lake, a backwater of the Mississippi that is approximately 1.25 miles wide.<sup>29</sup>

26. Because there is no road access across Robinson Lake, the shortest route by road from the Petitioners' Properties to the closest boundary of the City is

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<sup>20</sup> Ex. 1 at 9.

<sup>21</sup> Test. of Chad Springer.

<sup>22</sup> Ex. 1 at 5; Test. of Chad Springer.

<sup>23</sup> Test. of Charles Springer; Test. of Chad Springer; Test. of Kristi Clarke.

<sup>24</sup> Test. of Chad Springer; Test. of K. Clarke.

<sup>25</sup> Ex. 1; Test. of Chad Springer.

<sup>26</sup> Ex. 2; Test. of Charles Springer.

<sup>27</sup> Ex. 50; *see also* Exs. 47, 542.

<sup>28</sup> Ex. 50.

<sup>29</sup> Ex. 15; Test. of Chad Springer.

approximately four miles.<sup>30</sup> It is approximately 6.5 miles from the Petitioners' Properties to the City's business center by road.<sup>31</sup>

27. Petitioners' Properties are located on County Road 76.<sup>32</sup> Petitioners access the main part of the City by driving south on County Road 76, west on County Road 24, and then north on County Road 30.<sup>33</sup>

28. The Petitioners' Properties consist of 11 parcels.<sup>34</sup> The ownership and size of the 11 parcels that the Petitioners seek to detach from the City are set forth below:

- a. Stephen and Linda Kopecky Lot – 8598.74 square feet (with an adjacent lot in Greenfield Township that measures 17,942.36 square feet and contains a home);
- b. Karl E. Lofgren Lot – 15,089.18 square feet (with an adjacent lot in Greenfield Township that measures 1,842.58 square feet);
- c. William and Sandra Allaire – 15,028.20 square feet;
- d. Thomas and Patricia Peyla – 15,699.02 square feet;
- e. Charles and Judith Evans – 14,766.84 square feet;
- f. Elizabeth Lofgren – 18,608.83 square feet;
- g. Helen Coffman - 49,924.11 square feet;
- h. Charles and Mary Springer – 22,611.99 square feet;
- i. Mary Schumacher – 19,976.61 square feet (with an adjacent lot in Greenfield Township that measures 1,067.22 square feet);
- j. Charles Springer – 5,815.26 square feet (with an adjacent lot in Greenfield Township that measures 984.45 square feet);
- k. Peter and Therese Wallerich – 10,136.41 square feet (with an adjacent lot in Greenfield Township that measures 7,792.88 square feet).<sup>35</sup>

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<sup>30</sup> Test. of Charles Springer.

<sup>31</sup> *Id.*

<sup>32</sup> Ex. 15.

<sup>33</sup> Test. of Charles Springer; Exs. 15, 46.

<sup>34</sup> Ex. 52.

<sup>35</sup> *Id.*

29. The 11 parcels that make up Petitioners' Properties average 17,841 square feet in size.<sup>36</sup> An acre is equal to 43,560 square feet.<sup>37</sup>

30. Eight of the 11 parcels that make up Petitioners' Properties have been developed with single family homes and, in some cases, accessory structures have also been constructed on the parcel.<sup>38</sup>

31. There are three parcels that do not contain a residence. First, the parcel owned by the Kopeckys (Kopecky Lot) abuts a parcel in Greenfield Township, which is also owned by the Kopeckys and contains a single family residence; the Kopecky Lot provides a yard area for the home. Second, the parcel owned by the Wallerichs is improved with a cement pad and storage area. Third, the parcel owned by Charles Springer, without his wife, is a narrow strip of land that is used for access to the Mississippi River; it is not wide enough for a residence of any type.<sup>39</sup>

32. The primary use of Petitioners' Properties is for single family residential purposes, with the exception of the long narrow lot owned by Charles Springer that is used for access to the Mississippi River and the lot owned by the Wallerichs that is used for storage and parking purposes.<sup>40</sup>

33. Four of the eight residences are permanently occupied, and the other four homes are currently used on a seasonal basis. The homes that are currently used seasonally could be converted to year round use at any time, with the possible exception of one.<sup>41</sup>

34. The Petitioners' Properties total approximately 4.5 acres, resulting in a density of approximately 1.7 homes per acre (8 homes/4.5 acres).<sup>42</sup>

35. There are no agricultural areas or large tracts of undeveloped land within the area that the Petitioners seek to detach.<sup>43</sup>

36. The Petitioners' Properties are not served by municipal water or sewer service. The homes on these properties have individual septic systems and private wells.<sup>44</sup> The City currently has no plans to extend City sanitary sewer or municipal water service to the Petitioners' Properties.<sup>45</sup>

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<sup>36</sup> See Ex. 52. When the adjoining lots in Greenfield Township that are under common ownership are included, the average lot size is 20,534.97 square feet. See Ex. 52.

<sup>37</sup> See <https://en.wikipedia.org/wiki/Acre>.

<sup>38</sup> Ex. 503; Ex. 14; Ex. 52.

<sup>39</sup> Ex. 503; Ex. 13 at 6; Ex. 52; Test. of Charles Springer.

<sup>40</sup> Exs. 14, 52; Test. of K. Clarke; Observations by Administrative Law Judge during site visit.

<sup>41</sup> Test. of Charles Springer.

<sup>42</sup> Exs. 52 and 503 (providing number of acres and number of homes). See *also* Petition at 1.

<sup>43</sup> Exs. 13, 14, 52; Ex. 504; Test. of K. Clarke; Observations by Administrative Law Judge during site visit.

<sup>44</sup> Test. of Charles Springer; Exs. 543-545.

<sup>45</sup> Test. of Chad Springer.

37. The Properties that the Petitioners seek to detach have been within the City borders since at least 1920.<sup>46</sup>

38. Petitioners' Properties are part of the Teepeeota Point Subdivision, a residential subdivision which was originally platted in 1964.<sup>47</sup> The Teepeeota Point Subdivision contains 52 residential lots, including Petitioners' Properties,<sup>48</sup> and exhibits a typical urban or suburban "lot and block" development pattern.<sup>49</sup> Nearly all of the 52 lots in the plat are smaller than one half acre (21,780 square feet) in size.<sup>50</sup> The Petitioners' Properties are the only lots in the subdivision that are within the City boundaries. The remainder of the Teepeeota Point Subdivision is located in Greenfield Township.<sup>51</sup> If the Petition is granted, the Petitioners' Properties would become part of Greenfield Township.

39. Many of the Petitioners have chosen to own homes on Teepeeota Point because of the scenic and recreational opportunities that the Mississippi River affords.<sup>52</sup>

40. Petitioners Charles Springer and William Allaire, who live in homes on the Properties, frequent the main portion of the City to buy groceries, eat at restaurants, and use other services and facilities.<sup>53</sup> The closest grocery store to the Petitioners' Properties is located within the main part of the City.<sup>54</sup>

41. In correspondence with the City, Petitioner Charles Springer described the area that the Petitioners seek to detach as a "suburban type development."<sup>55</sup>

#### **IV. The Area between Petitioners' Properties and the Main Part of the City**

42. As noted above, the Petitioners' Properties are part of the Teepeeota Point Subdivision, which contains 52 platted residential lots. The vast majority of the lots in the Teepeeota Point Subdivision have been developed with single family residences.<sup>56</sup> These lots are within walking distance of each other.<sup>57</sup>

43. Directly to the south of the Teepeeota Point Subdivision are numerous other residential developments.<sup>58</sup> There are at least 18 platted residential subdivisions

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<sup>46</sup> Ex. 3; Test. of Chad Springer.

<sup>47</sup> Ex. 13.

<sup>48</sup> Ex. 13 at 1-5; Ex. 15.

<sup>49</sup> Test. of K. Clarke; Ex. 38.

<sup>50</sup> Ex. 13 at 1, 5; Test. of K. Clarke.

<sup>51</sup> *Id.*

<sup>52</sup> Test. of Charles Springer; Test. of William Allaire.

<sup>53</sup> Test. of Charles Springer; Test. of W. Allaire.

<sup>54</sup> Test. of Charles Springer.

<sup>55</sup> Ex. 4 at 1 (letter from Charles Springer to Peter Ekstrand, Attorney for City of Wabasha, dated December 7, 1992, regarding request that the Petitioners' Properties be treated as a "rural service district" for tax purposes).

<sup>56</sup> Ex. 47; Ex. 38 at 2; Test. of K. Clarke.

<sup>57</sup> Ex. 47; Ex. 542; Observations of the Administrative Law Judge during the site visit.

<sup>58</sup> Exs. 16-33.

in the area directly south of the Teepeeota Point Subdivision and north of County Road 24 in Greenfield Township.<sup>59</sup> Together, these platted subdivisions contain at least 414 residential lots, almost all of which are smaller than one-half acre.<sup>60</sup>

44. These subdivisions have largely been built and completed with residential homes.<sup>61</sup> These subdivisions have been developed as close to the main part of the City as possible while still maintaining access to the Mississippi River.<sup>62</sup>

45. Based on 2010 census data, the City's expert estimates that approximately 775 people reside in the subdivisions north of County Road 24.<sup>63</sup>

46. At the southern end of Teepeeota Point, just north of County Road 24, is the Greenfield Township public works building and a home heating business. Near the juncture of County Road 76 and County Road 24 is some agricultural land. This agricultural land is over a mile away from the Petitioners' Properties.<sup>64</sup>

47. As one heads west along County Road 24, towards County Road 30, the area features undeveloped countryside, wetlands, and farms.<sup>65</sup>

48. From County Road 24, one heads north on County Road 30 to the main part of Wabasha. That area is rural to start and becomes increasing urban as one gets closer to the business district of Wabasha.<sup>66</sup>

49. There is one commercial business, and no retail businesses, between the Petitioners' Properties and the nearest City boundary, which is located approximately 4.1 miles away from the Petitioners' Properties. There are, however, retail businesses located between the City boundary, at 4.1 miles, and the City center.<sup>67</sup>

## **V. City and County Land Use Plans and Regulations**

50. The City has adopted a zoning ordinance to promote "public health, safety, morals, prosperity, aesthetics, and general welfare, of the City of Wabasha." The ordinance includes six different residential zones: (1) Residential Conservancy; (2) Rural Residential/Limited Agriculture; (3) Rural Residential Growth/Transition; (4) R-1

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<sup>59</sup> *Id.*; see, e.g., Ex. 15; Ex. 542.

<sup>60</sup> Exs. 16-33; Test. of K. Clarke; Ex. 542.

<sup>61</sup> Test. of K. Clarke; Ex. 47.

<sup>62</sup> Test. of K. Clarke; Ex. 47.

<sup>63</sup> Test. of K. Clarke (noting that the estimate is adjusted to exclude seasonal properties).

<sup>64</sup> Ex. 15; Ex. 47; Test. of Charles Springer; Test. of Dean Johnson; Observations of the Administrative Law Judge during the site visit.

<sup>65</sup> Ex. 15; Test. of Charles Springer; Observations of the Administrative Law Judge during the site visit.

<sup>66</sup> Ex. 15; Test. of Charles Springer; Observations of the Administrative Law Judge during the site visit.

<sup>67</sup> Test. of Charles Springer; Test. of D. Johnson; Observations of the Administrative Law Judge during the site visit.

Low Density Residential; (5) R-2 Medium Density Residential; (6) R-3 High Density Residential.<sup>68</sup>

51. The City's zoning ordinance provides that the Residential Conservancy zone is designed to allow "limited development in areas of the City where topography or natural resources require careful alterations to the land and placement of structures and infrastructure." Permitted uses in the Residential Conservancy zone include: single-family detached residential; non-dwelling accessory structures and uses; accessory apartments; public or private parks; agricultural crop farming; limited livestock raising; agricultural buildings and accessory structures; and agricultural stands.<sup>69</sup> The ordinance provides for a maximum of two dwelling units per acre in this zone and requires a minimum lot size of 20,000 square feet if the lot has a private septic system.<sup>70</sup>

52. The Rural Residential/Limited Agriculture zone is designed to allow for "the use and limited development of areas within City limits that will retain a rural type development pattern due to the fact that the City infrastructure such as sewer and water services are not available currently or in the foreseeable future." Permitted uses include: single-family detached residential; non-dwelling accessory structures and uses; home occupations; private guest cottages or accessory apartments; public or private parks; agricultural crop farming; limited livestock raising; agricultural buildings and accessory structures; agricultural stands; and essential utility and public service facilities limited to 600 square foot structures.<sup>71</sup> The ordinance provides for a maximum of one dwelling unit per 40 acres in this zone.<sup>72</sup>

53. The Rural Residential Growth/Transitional zone is designed to allow for "the use and limited development of areas that are within City limits, do not have practical access to City sewer or water facilities, but will likely have such access in the future." Permitted uses include: single-family detached residential; non-dwelling accessory structures and uses; public or private parks; agricultural crop farming; agricultural buildings and accessory structures; agricultural stands; and essential utility and public service facilities limited to 600 square foot structures.<sup>73</sup> The ordinance provides for a maximum of one dwelling unit per 2.5 acres in this zone.<sup>74</sup>

54. The R-1 Low Density Residential zone is designed to "allow for the use and development of residential structures, yards, and directly related complimentary uses at a lower density than traditionally developed in the originally platted City of Wabasha." Permitted uses include: single-family detached residential; non-dwelling accessory structures and uses; public or private parks; essential utility and public service facilities limited to 600 square feet structure; and some planned use

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<sup>68</sup> Ex. 534.

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

developments (PUDs).<sup>75</sup> The ordinance provides for a maximum of four dwelling unit per acre in this zone.<sup>76</sup>

55. The R-2 Medium Density Residential zone is designed to “allow for the use and development of a mix of uses typical in the traditional Wabasha community including single-family and multi-family residential structures and accessory uses, yards and associated uses, small service and retail businesses, and institutional and recreational uses serving the residents of the community.” Permitted uses include: single-family detached residential; single-family attached residential dwellings of two dwellings units per structure; non-dwelling accessory uses and structures; public or private parks; essential utility and public service facilities limited to 600 square feet structure; and certain PUDs.<sup>77</sup> The ordinance provides for a maximum of seven dwelling units per acre in this zone.<sup>78</sup>

56. The R-3 High Density Residential zone is designed to “allow for the use and development of a mix of multi-family and single-family housing, associated residential accessory uses, yards and outdoor recreational spaces, small service and retail businesses, and institutional uses serving the residents of the neighborhood.” Permitted uses include: single-family detached residential; single-family attached residential dwellings; multi-family dwellings of up to eight units per structure; non-dwelling accessory structures and uses; public or private parks; essential utility and public service facilities limited to 600 square feet structure; and certain PUDs.<sup>79</sup> The ordinance provides for a maximum 10 dwelling units per acre in this zone.<sup>80</sup>

57. The Petitioners’ Properties are zoned as Residential Conservancy.<sup>81</sup> Of the eight parcels that have homes on them, five do not meet the minimum lot size requirement of 20,000 square feet for homes with a private septic system.<sup>82</sup> These properties are legal non-conforming uses because they were platted and developed before the City’s more restrictive zoning regulations took effect.<sup>83</sup>

58. The Petitioners’ Properties comprise the most densely developed properties in a Residential Conservancy area in the City; the other areas in the City that are zoned as Residential Conservancy are less developed.<sup>84</sup>

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<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> Ex. 542.

<sup>82</sup> Exs. 52, 534.

<sup>83</sup> Test. of K. Clarke.

<sup>84</sup> *Id.*; Ex. 5

59. The City's most recent Comprehensive Plan (Plan) was adopted in 2005.<sup>85</sup> The purpose of the Plan is to guide growth, development, and change in the community of Wabasha.<sup>86</sup> The City is in the process of updating its Plan.<sup>87</sup>

60. The current Plan does not expressly address the Petitioners' Properties, and there is no indication in the Plan that the City expects any further development in the area that the Petitioners seek to detach.<sup>88</sup> The Plan does indicate that the City has designated certain undeveloped land as available for future residential development.<sup>89</sup>

61. Wabasha County (County) also has a Comprehensive Land Use Plan. The County's plan allows for continued residential development and encourages clustering of residential developments.<sup>90</sup>

62. The residential developments to the immediate south of the Petitioners' Properties are zoned as R-1 by the County.<sup>91</sup> The purpose of the R-1 district is to "provide areas for rural low-density housing in agricultural areas on land that is not capable of supporting long-term agricultural activities and to allow the continuation and limited expansion of existing residential development in the small unincorporated urban communities of the County."<sup>92</sup> The County's zoning ordinance provides a minimum lot size of two acres for lots with individual septic systems and private wells.<sup>93</sup>

63. The typical lot size in the existing developments in Greenfield Township on Teepeeota Point, just south of Petitioners' Properties, is much smaller than the two-acre minimum lot size currently required in the County's R-1 zone.<sup>94</sup> The existing homes on these lots, which predate the County ordinance, are legal non-conforming uses.<sup>95</sup>

## **VI. Rural in Character**

64. Both the parties called expert witnesses to provide opinions on whether the Petitioners' Properties are rural in character.

65. The Petitioners called Dean Johnson as their expert witness. Mr. Johnson has been a municipal planner for over 35 years. Mr. Johnson worked for the City of Rosemount from 1977 to 1991. Since 1991, Mr. Johnson has been a municipal planning

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<sup>85</sup> Ex. 537.

<sup>86</sup> Ex.

<sup>87</sup> Test. of K. Clarke.

<sup>88</sup> Ex. 537.

<sup>89</sup> *Id.*; Ex. 11.

<sup>90</sup> Ex. 41 at 22.

<sup>91</sup> Ex. 46.

<sup>92</sup> Ex. 44.

<sup>93</sup> *Id.*

<sup>94</sup> See Exs. 15-33, 44.

<sup>95</sup> Test. of K. Clarke.



consultant with the firm of Resource Strategies, Inc., which he owns. Mr. Johnson has worked for a number of cities, townships, and counties in the state.<sup>96</sup>

66. In Mr. Johnson's view, whether property is urban, suburban, or rural depends on a number of factors. According to Mr. Johnson, property that is developed for urban residential purposes typically has a number of characteristics including: sanitary sewer and municipal water service; varying densities of residential development; transit facilities; significant employment opportunities; cultural opportunities; and a full range of services and facilities to meet consumer needs such as grocery stores, gas stations, churches, schools, and parks.<sup>97</sup>

67. Mr. Johnson also stated that, in his view, property is suburban if it has some but not all of the characteristics of an urban area. He also noted that, in general, suburban areas are attached to urban areas but acknowledged that suburban areas can arise through "hopscotch" or "leapfrog" development.<sup>98</sup>

68. Based on these criteria, Mr. Johnson stated that in his view the Petitioners' Properties are rural in character because the Properties are located on the Mississippi River, are used primarily for recreational purposes, and lack a number of the characteristics listed above that are typically associated with an urban area such as municipal sewer and water, stores, churches, and schools. With regard to the size of the Petitioners' lots, Mr. Johnson stated that it is possible for properties located on a waterbody to have small lot sizes and still be rural in character given their location.<sup>99</sup>

69. The City called its own expert witness, Kristi Clarke. Ms. Clarke is a Land Use Planner with the firm of Bolton & Menk. Ms. Clarke is certified by the American Institute of Certified Planners. She has been a municipal planner for over 20 years and has been consulting for the City since 2014.<sup>100</sup>

70. In Ms. Clarke's opinion, the actual use of the property and the density of development in the area are the most important considerations in determining whether a given property or group of properties is rural in character.<sup>101</sup>

71. Ms. Clarke stated that in her view, the Petitioners' Properties are *not* rural in character because the Properties average less than .5 acres in size and are used primarily for residential purposes. Ms. Clarke also noted that the area immediately to the south of Petitioners' Properties has also been extensively developed for residential purposes, with over 400 lots averaging less than a half-acre in size.<sup>102</sup> Further, Ms. Clarke pointed to the fact that there are no agricultural uses on the Properties or nearby. In addition, Ms. Clarke stated that municipal planners typically have a two-acre

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<sup>96</sup> Test. of D. Johnson.

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

<sup>100</sup> Test. of K. Clarke; Ex. 37.

<sup>101</sup> Test. of K. Clarke.

<sup>102</sup> *Id.*

minimum lot size requirement for rural residential developments. Given the density and scale of development in Teepeeota Point, Ms. Clarke concluded that the Petitioners' Properties cannot be considered rural.<sup>103</sup>

72. While the parties' experts disagree about whether the Petitioners' Properties are rural in character, both experts agree that the determination of whether a particular property is rural in character depends on the context of where the property is located.<sup>104</sup>

## **VII. Symmetry**

73. As noted above, the Petitioners' Properties are physically separated from the remainder of the City by the Mississippi River and are approximately 1.25 miles to the west of the City by water.<sup>105</sup>

74. Detachment of the Petitioners' Properties would make the City boundaries more symmetrical.<sup>106</sup>

## **VIII. Municipal Services**

75. The City currently provides police protection, fire protection, 24-hour ambulance and emergency medical services, street lights, street sweeping, zoning and other administrative services to all residents of the City.<sup>107</sup>

76. In addition, the City provides parks and recreation services, including a municipal swimming pool and a municipal campground. The City also operates a municipal library.<sup>108</sup> The pool and library are both open to City residents and other residents of the County, including residents of Greenfield Township.<sup>109</sup> Property taxes collected by the City subsidize the use of the pool and library by County residents who do not reside in the City.<sup>110</sup>

77. The City provides sanitary sewer and central water services in most of the developed areas within the Cities borders.<sup>111</sup> The City funds these services through user fees, and not through property tax receipts. As a result, land owners, like the Petitioners, who have individual septic systems and wells do not fund the City's sanitary sewer and water systems, which serve other areas of the City.<sup>112</sup>

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<sup>103</sup> *Id.*

<sup>104</sup> Test. of D. Johnson; Test. of K. Clarke.

<sup>105</sup> Ex. 542.

<sup>106</sup> *See id.*

<sup>107</sup> Test. of Chad Springer.

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

<sup>111</sup> Ex. 544-545; *see also* Ex. 504.

<sup>112</sup> Test. of Chad Springer; Exs. 6-7.

78. If the Petitioners' Properties are detached from the City, the Wabasha County Sheriff's Office would provide police protection to the Properties and the City fire department would provide fire protection via a contract with Greenfield Township.<sup>113</sup>

## IX. Taxes

79. The City's property tax rate is approximately five times the property tax rate of Greenfield Township.<sup>114</sup>

80. As a result, the Petitioners pay substantially higher property taxes than their neighbors, who own similarly-valued property in the Greenfield Township portion of the Teepeeota Point Subdivision.<sup>115</sup> These neighbors are within walking distance of the Petitioners.<sup>116</sup>

81. The Petitioners feel it is unfair that they pay a much higher tax rate than their neighbors for essentially the same services.<sup>117</sup>

82. In March 2014, prior to filing the Petition, the Petitioners requested that the City establish a rural service taxing district that would include the Petitioners' Properties and asked that their Properties be taxed at the "same level as the neighboring properties in Greenfield Township."<sup>118</sup> In 1992, some of the Petitioners made a similar request of the City.<sup>119</sup> On both occasions, the City denied the request to establish a rural service taxing district based on the City's view that the Properties are not rural in character as required by Minn. Stat. § 272.67, subd. 8.<sup>120</sup> Because their request for a rural service taxing district was denied, the Petitioners' filed the current Petition in July 2014.

83. The Petitioners together paid less \$25,000 in property taxes to the City for the Petitioners' Properties in 2014.<sup>121</sup> This amount represents less than one percent of the City's total 2014 revenues of \$4,691,835.<sup>122</sup>

84. Loss of the tax revenues from the Petitioners' Properties would not result in a hardship to the City.<sup>123</sup>

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<sup>113</sup> See Ex. 547; Test. of Jim Warren.

<sup>114</sup> Test. of Chad Springer.

<sup>115</sup> See, e.g., Exs. 505, 515.

<sup>116</sup> *Id.*; Test. of Charles Springer; Test. of W. Allaire.

<sup>117</sup> Test. of Charles Springer; Test. of W. Allaire.

<sup>118</sup> Ex. 10.

<sup>119</sup> Ex. 4.

<sup>120</sup> Test. of Chad Springer.

<sup>121</sup> Exs. 505-513 (providing property tax information for nine of the Petitioners' lots which totaled \$21,612 in 2014; no property tax records were introduced for two of the Petitioners' Properties – the lot owned by Stephen and Linda Kopecky or the narrow lot owned by Charles Springer on Teepeeota Point); Test. of Chad Springer (stating that the City would need to replace approximately \$25,000 per year in tax revenue if the Petitioners' Properties are detached).

<sup>122</sup> Ex. 6 at 18.

<sup>123</sup> Test. of Chad Springer.

**X. Allocation of Indebtedness**

85. There was no evidence introduced into the record demonstrating that the City incurred any debt specifically benefiting the Petitioners' Properties.

**XI. Population**

86. Detachment would reduce the City's current population count by seven.<sup>124</sup>

**XII. Hearing Costs**

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

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

Based on these Findings of Fact and for the reasons set forth in the attached Memorandum, the Administrative Law Judge makes the following:

**CONCLUSIONS OF LAW**

1. The Administrative Law Judge has jurisdiction in this matter pursuant to Minnesota Statutes, chapter 414 (2014) and Minnesota Rules, part 6000 (2015).

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

3. The hearing date was published in accordance with Minn. Stat. §§ 414.06, subd. 2 and 414.09, subd. 1(d).

4. Petitioners have the burden of proof to demonstrate by a preponderance of the evidence that the statutory criteria for detachment have been met.<sup>125</sup>

5. Minn. Stat. § 414.06, subd. 3, provides in part:

Upon completion of the hearing, the chief administrative law judge may order the detachment on finding that the requisite number of property owners have signed the petition if initiated by property owners, that the property is rural in character and not developed for urban residential, commercial or industrial purposes, that the property is within the boundaries of the municipality and abuts a boundary, that the detachment would not unreasonably affect the symmetry of the detaching municipality, and that 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.

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<sup>124</sup> Petition; Test. of Charles Springer.

<sup>125</sup> Minn. R. 1400.7300, subp. 5 (2015).

6. Because the Petition was signed by all of the persons owning property within the area proposed for detachment, the requisite number of property owners signed the Petition.<sup>126</sup> Therefore, the Petitioners have met the first requirement of Minn. Stat. § 414.06, subd. 3.

7. The Petitioners have failed to demonstrate by a preponderance of the evidence that the Properties proposed for detachment are rural in character. The area in which the Petitioners' Properties are located exhibits a neighborhood-style, residential development typically found in urban and suburban areas, not rural areas. The density of development in and around the Petitioners' Properties precludes a finding that the Properties are rural in character. The Properties, therefore, do not meet the second requirement of Minn. Stat. § 414.06, subd. 3.

8. The Petitioners' Properties are within the boundaries of a municipality, the City of Wabasha, and abut the boundary of Greenfield Township. The Petitioners have met the third requirement of Minn. Stat. § 414.06, subd. 3.

9. Detachment of the Petitioners' Properties would improve the symmetry of the City. The Petitioners have met the fourth requirement of Minn. Stat. § 414.06, subd. 3.

10. The Petitioners' Properties are not needed for reasonably anticipated future development. The Petitioners have met the fifth requirement of Minn. Stat. § 414.06, subd. 3.

11. The Petitioners' Properties cannot be detached from the City pursuant to Minn. Stat. § 414.06 because the Petition fails to satisfy the requirement that the property be "rural in character."

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

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<sup>126</sup> Minn. Stat. § 414.06, subd. 1.

## ORDER

### IT IS HEREBY ORDERED that:

1. The Petition for Detachment of Certain Land from the City of Wabasha, Minnesota Pursuant to Minnesota Statutes § 414.06 filed by Petitioners is **DENIED**.
2. Pursuant to Minn. Stat. § 414.12, subd. 3, the cost of these proceedings shall be divided as follows: to the City, 50%; to Petitioners, 50%.

Dated: August 20, 2015

s/Jeanne M. Cochran  
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JEANNE M. COCHRAN  
Administrative Law Judge

Reported: Digitally Recorded; No Transcript Prepared.

## NOTICE

This Order is the final administrative decision in this case under Minn. Stat. §§ 414.06, 414.09, and 414.12 (2014). Any person aggrieved by this Order may appeal to Wabasha 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.<sup>127</sup>

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.<sup>128</sup> A request for amendment shall not extend the time of appeal from these Findings of Fact, Conclusions of Law, and Order.

## MEMORANDUM

This is a detachment proceeding under Minn. Stat. ch. 414. All of the owners of the Properties included in the Petition seek to detach from the City and become part of Greenfield Township. The Petitioners seek to detach because they contend that their Properties are rural in character and are unfairly subject to higher property taxes than neighboring properties of similar value located in Greenfield Township.

### I. The Statutory Factors

As set forth in the first sentence of Minn. Stat. § 414.06, subd. 3, a petition for detachment may be granted if: 1) the requisite number of property owners signed the

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<sup>127</sup> Minn. Stat. § 414.07, subd. 2.

<sup>128</sup> Minn. R. 6000.3100.

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.

There is no dispute that the first, third, fourth, and fifth criteria have been met by the Petitioners. The dispute in this case revolves around the second criteria: whether the Petitioners' Properties are "rural in character" and "not developed for urban residential, commercial or industrial purposes."<sup>129</sup>

## **II. Are Petitioners' Properties Rural in Character?**

### **A. The Meaning of "Rural in Character"**

The Petitioners have the burden of showing that their Properties are "rural in character and not developed for urban residential, commercial, or industrial purposes . . ."<sup>130</sup> The phrase "rural in character" is not defined in Minn. Stat. ch. 414 or in applicable rules.

When statutory terms are not defined, the legislature has directed that such terms are to be construed "according to their common and approved usage . . ."<sup>131</sup> Accordingly, it is appropriate to look to the common definition of the term "rural" when applying it in this case. The Merriam-Webster On-Line Dictionary defines "rural" as "of or relating to the country, country people or life, or agriculture."<sup>132</sup>

In addition, legislative intent controls when interpreting state statutes. At the time that Chapter 414 of the Minnesota Statutes was enacted, the legislature included explicit findings that shed light on the manner in which it envisioned the statute would be applied. In those findings, the legislature indicated that municipal government "most efficiently provides governmental services in areas intensively developed for residential, commercial, industrial and governmental purposes."<sup>133</sup> Conversely, the legislature found township government "most efficiently provides governmental services in areas used or developed for agricultural, open space, and rural residential purposes."<sup>134</sup>

Case law and prior Office of Administrative Hearings' decisions help to clarify the distinction between property that is rural in character and property that is urban or

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<sup>129</sup> Minn. Stat. § 414.06, subd. 3.

<sup>130</sup> *Id.*

<sup>131</sup> Minn. Stat. § 645.08(1) (2014).

<sup>132</sup> *Rural*, Merriam-webster.com, <http://www.merriam-webster.com/dictionary/rural> (last visited August 18, 2015); see also, *City of Lake Elmo v. Nass*, No. A12-2008, 2013 WL 3491161, \*1, 8 (Minn. Ct. App. Sept. 25, 2013) (unpublished) (stating that "rural" is commonly defined as "[o]f, or relating to, or characteristics of the country ...." and citing *The American Heritage Dictionary of the English Language* 1580 (3<sup>rd</sup> ed. 1992)).

<sup>133</sup> Minn. Stat. § 414.01, subd. 1a(2).

<sup>134</sup> *Id.*

suburban in character for purposes of Chapter 414.<sup>135</sup> These decisions reveal that judicial and administrative courts have examined the following characteristics: the property's use; zoning restrictions; density; uses of surrounding properties; and provision of city services to determine whether a specific property is "rural in character" or is the opposite, "urban or suburban in character."<sup>136</sup>

## B. Analysis

Applying these criteria, the Administrative Law Judge concludes that the Petitioners have failed to demonstrate by a preponderance of the evidence that the Properties they seek to detach are rural in character. The record shows that the Petitioners' Properties are part of a 52-lot residential subdivision with a traditional neighborhood design.<sup>137</sup> The Petitioners' Properties average less than a half-acre in size and are used primarily for residential purposes.<sup>138</sup> The residences take up much of the land on the parcels, with the remaining land being used for ancillary purposes such as a yard or storage. The Petitioners' Properties do not contain any agricultural area or large tracts of undeveloped land.<sup>139</sup> Instead, the Petitioners' Properties are in close proximity to each other. The Petitioners can easily walk to their neighbors' homes, including those in the Greenfield Township portion of the Teepeeota Point Subdivision.<sup>140</sup>

Immediately surrounding the Petitioners' Properties are numerous other subdivisions. Together, these subdivisions create a community consisting of over 400 homes, with a population of approximately 775 people.<sup>141</sup> Given the level of residential development and the density in the surrounding area, the Administrative Law Judge concludes that the Petitioners' Properties do not exhibit sufficient characteristics of the country life and, therefore, are not rural in character.

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<sup>135</sup> See *City of Lake Elmo v. Nass*, No. A12-2008, 2013 WL 3491161, \*1, 8 (Minn. Ct. App. Sept. 25, 2013) (unpublished); *State ex rel. Town of White Bear v. City of White Bear Lake*, 255 Minn. 28, 36-38, 95 N.W.2d 294, 300-301 (1959); *In the Matter of the Petition of the City of Pine River for Annexation of Unincorporated Property in the Township of Wilson Pursuant to Minnesota Statutes, Section 414.031 (A-7593)*, Docket No. 2-0330-19393-BA, FINDINGS OF FACT, CONCLUSIONS AND ORDER at 10, 26 (January 13, 2009); *In the Matter of the Petition of Dawson Grain Coop., Inc., for the Detachment of Certain Land from the City of Dawson Pursuant to Minn. Stat. ch. 414*, Docket No. 12-2900-15004-2, FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER at 8, ¶ 5; *In the Matter of the Petition for Detachment of Certain Land from the City of Babbitt, Minnesota, Pursuant to Minn. Stat. § 414.06*, Docket No. 40-0330-23084, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER at 6, 14, 20-21 (June 10, 2013) (*Babbitt* case);

<sup>136</sup> Because Chapter 414 uses these two terms as definitionally related, it is appropriate to consider both in an effort to ascertain what the legislature intended when it referenced property that is "rural in character." See *JME of Monticello, Inc. v. Comm'r of Revenue*, 848 N.W.2d 505, 510 (Minn. 2014) (noting appropriate practice of interpreting one portion of statute in light of relevant language in related statutory provisions) (internal citations omitted).

<sup>137</sup> Ex. 13 at 1-6.

<sup>138</sup> Ex. 52; Ex. 503; Test. of K. Clarke; Observations by Administrative Law Judge during the site visit.

<sup>139</sup> Ex. 503; Observations by Administrative Law Judge during the site visit.

<sup>140</sup> Ex. 15; Ex. 503; Observations by Administrative Law Judge during the site visit.

<sup>141</sup> Exs. 15-33; Test. of K. Clarke.



Instead, the Petitioners' Properties are more properly characterized as "suburban." In fact, Petitioner Charles Springer has himself described the area that the Petitioners seek to detach as a "suburban type development."<sup>142</sup> Charles Springer is not only a Petitioner who resides in a home on one of the Properties, but also is a real estate appraiser.<sup>143</sup> The characterization of Petitioners' Properties as suburban is also consistent with the definition of "suburban" specified by the Minnesota Supreme Court.<sup>144</sup> In *State ex rel. Town of White Bear*, an annexation case, the Court described suburban property as:

Land which is in the process of being presently, or in the foreseeable future, overflowed with the expanding population of nearby urban areas, as indicated by the existence of a more or less scattered development of small tracts and homes primarily used or intended for residential living, as distinguished from dwellings which are primarily accessory to the operation of bona fide farms, is suburban.<sup>145</sup>

The Petitioners' Properties fit this definition. The Petitioners and their neighbors on Teepeeota Point live in subdivisions that have "small tracts and houses primarily used or intended for residential living," which are a relatively short (six mile) drive to center of Wabasha.<sup>146</sup> The Petitioners consider themselves part of the Wabasha community and travel to the main part of Wabasha for groceries, to go restaurants, and for other services and facilities.<sup>147</sup> Given the nature and scale of residential development on Teepeeota Point and its reliance on the main part of Wabasha for goods and services, the Petitioners' Properties are properly characterized as suburban rather than rural.

The Petitioners' arguments to the contrary are not persuasive. Petitioners argue that their Properties should be considered rural in character because they have no municipal water or sewer service, they are physically separated from the rest of the City, and there is agricultural property between the main part of the City and the Petitioners' Properties.<sup>148</sup> When considered in isolation, these factors may indicate that a particular piece of property is rural in character. As Petitioners' own expert acknowledged, however, a property must be considered in context to determine whether it is rural or urban.<sup>149</sup>

When the Petitioners' Properties are considered in the context of surrounding area within which they are situated, it is clear that the Properties are not rural in

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<sup>142</sup> Ex. 4 at 1 (letter from Charles Springer to Peter Ekstrand, Attorney for City of Wabasha, dated December 7, 1992, regarding request that the Petitioners' Properties be treated as a "rural service district" for tax purposes).

<sup>143</sup> Statement of Charles Springer.

<sup>144</sup> *State ex rel. Town of White Bear*, 255 Minn. at 38, 95 N.W.2d at 300.

<sup>145</sup> *Id.*

<sup>146</sup> See Ex. 15; see also Exs. 13, 16-33.

<sup>147</sup> Test. of Charles Springer; Test. of W. Allaire.

<sup>148</sup> Petitioners' Post-Trial Brief at 3-9.

<sup>149</sup> Test. of D. Johnson.

character due to the nature and scope of the development. This conclusion is confirmed by the fact that five of the eight parcels with homes do not meet the minimum lot size requirement of 20,000 square feet for homes with a private septic system currently required in the City's Residential Conservancy zone.<sup>150</sup> Similarly, land use planners typically require a two-acre minimum for rural residential lots with individual septic systems.<sup>151</sup> These facts indicate that Petitioners' Properties are more similar to an urban residential use than a rural residential use even though they have their own individual septic systems and wells.

In addition, the fact that Petitioners' Properties are physically separated from the rest of Wabasha does not make the Properties rural in character. As discussed in detail above, the Petitioners' Properties are part of a neighborhood with lots that average less than a half-acre in size.<sup>152</sup> In addition, their neighborhood is surrounded by a number of other similar residential developments on Teepeeota Point.<sup>153</sup> Once one goes beyond these residential developments, there is some agricultural land between Teepeeota Point and the center of Wabasha.<sup>154</sup> However, the agricultural land is not close enough to the Petitioners' Properties to influence the character of the Petitioners' Properties.<sup>155</sup>

Finally, the Petitioners suggest that their properties should be considered rural in character because many of the properties are used for seasonal, recreational purposes. The Petitioners note that people buy homes on Teepeeota Point to enjoy the Mississippi River. While the Mississippi River is undoubtedly a draw for the Petitioners, the record shows that the properties are developed primarily for residential purposes. That remains true whether the homes are used for part of the year or for the entire year. As noted above, the homes are in close proximity to each other and the area is a neighborhood-type development. The remainder of the space on the Petitioners' lots is ancillary to the residential use.<sup>156</sup> Based on the site visit, the facts in the record, and for the reasons set forth above, it is clear to the Administrative Law Judge that the Petitioners' Properties are not properly characterized as "rural in character."<sup>157</sup>

The Administrative Law Judge recognizes that the Petitioners believe they should be allowed to detach from the City because they are physically separated from the rest

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<sup>150</sup> Ex. 52; Ex. 534 at 22.

<sup>151</sup> Test. of K. Clarke; see *also* Ex. 44 at 12-3 (minimum lot size in the County's R-1, Rural Residential District, is 2 acres for a lot with an individual sewage treatment system and well).

<sup>152</sup> Ex. 13.

<sup>153</sup> Ex. 15.

<sup>154</sup> Ex. 47; Ex. 504; Observations by the Administrative Law Judge during site visit.

<sup>155</sup> Ex. 47; Ex. 504; Observations by the Administrative Law Judge during site visit.

<sup>156</sup> The Administrative Law Judge does recognize that the Charles Springer Lot is used for river access and the Wallerich Lot is used for parking and storage purposes, rather than residential purposes. However, both lots are small in size and, in the view of the Administrative Law Judge, neither could be characterized as rural in character.

<sup>157</sup> *Babbitt* case, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER at 4, 6, 11, 14 and Ex. 46 (concluding that an area containing a residential development, with lots 125 feet by 75 feet in size, was "urban" even though the residences did not have City water and sewer, the area was several miles from the main part of Babbitt, and the area was separated from the city center by large tracts of undeveloped property.)

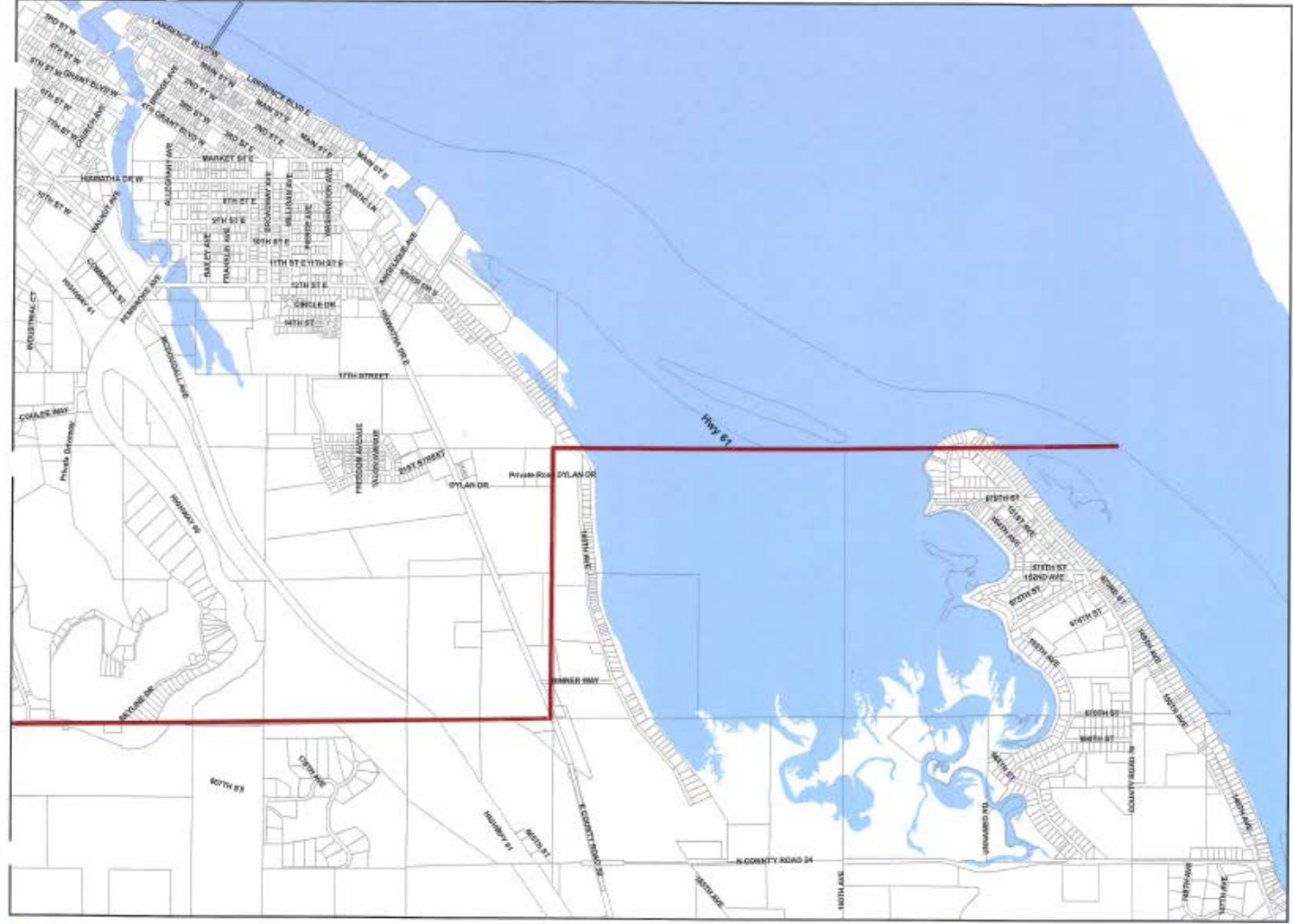
of the City by the Mississippi River and they pay substantially more in property taxes than their neighbors in Greenfield Township with similarly valued properties. The Administrative Law Judge, however, does not have the authority to grant the Petition on those grounds. The statute is clear that property cannot be detached from a city unless it is rural in character and meets other specified criteria.<sup>158</sup> The record in this case shows that the Petitioners' Properties are not rural in character. Therefore, the Administrative Law Judge must deny the Petition.

**J. M. C.**

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<sup>158</sup> Minn. Stat. § 414.06, subd. 3.

### EXHIBIT 15



### Parcel Map

- City Boundary
- Mississippi River

