

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Detachment of
Certain Real Property from the City of
Lanesboro to Holt Township
[MBA D-562, D-563]

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

Following the filing of Petitions for Detachment on March 29, 2016, these consolidated matters came before Chief Administrative Law Judge Tammy L. Pust for a hearing on July 8, 2016. The record closed on August 8, 2016, upon the receipt of post-hearing submissions.

Thomas M. Manion, Attorney at Law, appeared at the hearing on behalf of the City of Lanesboro (City). Greg Schieber, Nethercut Schieber Attorneys, PLLP, appeared at the hearing on behalf of Philip Dybing and Heidi Dybing (Petitioners). No one appeared on behalf of Holt Township (Township), Fillmore County Minnesota.

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

FINDINGS OF FACT

Procedural Findings

1. On March 24, 2016, Petitioners executed two Petitions for Detachment (Petitions) whereby they seek to detach certain described real property (Subject Parcels) from the City pursuant to Minn. Stat. § 414.06 (2016) and, by operation of law, have the Subject Parcels become part of the Township.¹

2. On April 4, 2016, the City opposed the Petitions by adoption of a City resolution.²

3. On May 13, 2016, the Chief Administrative Law Judge issued an Order Regarding Consolidation, Prehearing, Mediation and Hearing, whereby the two

¹ Petitions for Detachment (Mar. 29, 2016).

² City Resolution (Apr. 4, 2016).

separately filed Petitions were consolidated for all purposes, the parties were required to proceed to mediation, and the matter was set for a hearing on July 8, 2016.³

4. The parties mediated the matter on June 24, 2016, but were unsuccessful at resolving the matter.⁴

5. The Township took no position on the Petitions and did not participate in the proceedings.

6. Notice of evidentiary hearing was published in the *Fillmore County Journal* on June 20, 2016 and June 27, 2016.⁵

7. A hearing was held in the matter on July 8, 2016 at Lanesboro City Hall, 202 Parkway Avenue South, Lanesboro, MN 55949.

8. At the hearing, Petitioner's Exhibits 1 through 24 and City Exhibits 100 through 115 were admitted into evidence without foundational objection.

9. The record in the matter closed on August 8, 2016 pursuant to the Post-Hearing Scheduling Order issued on July 11, 2016.

City of Lanesboro

10. The City of Lanesboro is a municipal corporation organized under the laws of Minnesota.⁶

11. According to the 2010 Census, the City has a population of 738.⁷

12. The City's 2015 General Fund Operating Budget was \$1.15 million, 49 percent of which was raised through property taxes.⁸

13. The City is home to a variety of social, cultural, recreational, educational, employment and economic assets including theaters, restaurants, schools, businesses, and the Root River State Recreational Trail.⁹

14. Although the majority of the City's business and residential development is located on various intersecting street branching out from Parkway Avenue and edged by the South Fork of the Root River, the City's street grid gives way, at its southeast corner, to Auburn Avenue and then to Zenith Street, both of which wind through a series of low

³ Order Regarding Consolidation, Prehearing, Mediation and Hearing (May 13, 2016).

⁴ Testimony (Test.) of Philip Dybing.

⁵ Printer's Affidavit of Publication (June 28, 2016).

⁶ Test. of Michele Peterson.

⁷ Test. of M. Peterson.

⁸ *Id.*

⁹ *Id.*

rolling hills and provide access to a series of larger-scale residences located on large, partially or fully wooded lots.¹⁰

15. In its 1998 Comprehensive Plan, the City identified this Auburn Avenue/Zenith Street area as the community's "newest residential development area" characterized by "large lot development."¹¹

16. From the point that Zenith Street branches off of Auburn Avenue and before a driver reaches the Subject Parcels, there exist approximately 27 residential structures, nine of which are clustered in the Southern Hills Subdivision and the rest of which are located on lots that appear to equal or exceed one acre in area. Many of the homes are screened by wooded land. Approximately 19 access Zenith Street off of at least partially paved driveways; the remaining 8 are accessed off gravel driveways in areas where Zenith Street itself is unpaved.¹²

Holt Township

17. In relevant part, the Township is located adjacent to the City in Fillmore County.

18. Under the land use controls of Fillmore County, Township lots are buildable at a standard of 2.5 acres per residential structure.¹³

19. Prior to November 7, 1991, the Subject Parcels were part of the Township.¹⁴

City's 1991 Annexation

20. On or about October 17, 1991, the City and Township executed an orderly annexation agreement wherein they agreed that the City would annex 120 acres of property, including the Subject Parcels.¹⁵

21. As part of the orderly annexation agreement, the City and Township agreed that the properties "are presently urban or suburban in nature or are about to become so."¹⁶

22. The orderly annexation agreement was approved by the Minnesota Municipal Board effective November 6, 1991.¹⁷

¹⁰ Exhibit (Ex.) 1; Tour of Property on July 8, 2016 (Property Tour).

¹¹ Ex. 115.

¹² Property Tour.

¹³ Test. of P. Dybing.

¹⁴ Ex. 100.

¹⁵ *Id.*

¹⁶ Joint Resolution for Orderly Annexation, City of Lanesboro and Holt Township, October 17, 1991. See OAH Docket No. OA-247-1. The Chief Administrative Law Judge takes judicial notice of this public filing pursuant to Minn. R. Evid. 201.

¹⁷ Ex. 100.

23. The City assumed jurisdiction over Zenith Street on December 3, 1991.¹⁸

24. In 2006, the City approved the plat of a new Benson Subdivision, an area intended for residential development. The Benson Subdivision contains five platted lots and a dedicated public roadway known as Woodview Avenue.¹⁹

25. In approximately 2006, the developer of the Benson Subdivision built, and occupied as a “spec home”²⁰ to aid in the marketing and eventual development of the Benson Subdivision, a residential structure on an unplatted parcel of property located immediately across Woodview Avenue from Lot 5 of the subdivision.²¹

Subject Parcels

26. Petitioners are the record owners of the Subject Parcels, having purchased Parcel B in 2011 and Parcel A in 2013.²²

27. The Subject Parcels are legally described as follows:

Parcel A:

Lot 5, Block 1, Benson Subdivision, City of Lanesboro.

Parcel B:

That part of the Northwest Quarter of the Southeast Quarter of Section 19, Township 103 North, Range 9 West, Fillmore County, Minnesota, described as follows: Commencing at the northwest corner of said Northwest Quarter of the Southeast Quarter of said Section 19; thence on an assumed bearing of South 00°07'29" East a distance of 786.64 feet along the west line of said Northwest Quarter of the Southeast Quarter to the centerline of a township road; thence south 64°59'59" East 43.36 feet along said centerline; thence south 75°47'25" East 85.87 feet along said centerline; thence South 83°09'11" East 295.49 feet along said centerline; thence South 76°59'14" East 154.17 feet along said centerline; thence South 72°28'17" East 123.21 feet along said centerline; thence South 68°44'57" East 110.71 feet along said centerline; thence South 68°10'51" East 106.53 feet along said centerline to the point of beginning; thence continuing South 68°10'51" East 480.77 feet along said centerline to the East line of said Northwest Quarter of the Southeast Quarter; thence South 00°10'35" East 113.97 feet along said east line to the southeast corner of said Northwest Quarter of the Southeast Quarter; thence South 89°20'42" West 474.54 feet along the south line of said Northwest Quarter of the Southeast Quarter; thence North 03°30'57" East 194.32

¹⁸ Ex. 101.

¹⁹ Ex. 105.

²⁰ Test of P. Dybing. A “spec home,” short for “speculation home,” is “a residence built without a particular buyer in mind or under contract, but designed to appeal to the maximum market possible.” Denise L. Evans & O. William Evans, *The Complete Real Estate Encyclopedia* (2007).

²¹ Test. of P. Dybing.

²² *Id.*

feet; thence northeasterly a distance of 20.95 feet along a tangential curve concave to the east, having a radius of 87.00 feet, a central angle of 17°55'07" , and the chord of said curve bears North 12°28'30" East; thence North 21°26'04" East, tangent to said curve, 81.99 feet to the point of beginning.²³

28. Parcel A contains 1.39 acres²⁴ and is one of the five lots platted within the Benson Subdivision.²⁵ It abuts the Township on the lot's southern boundary.²⁶

29. Parcel A is covered in field grasses, which Petitioners mow twice during the growing season. The area is not improved with any buildings and no one resides on the property.²⁷

30. Parcel B contains 2.21 acres and is the unplatted property upon which the Benson Subdivision spec home is located, in which Petitioners now reside.²⁸ Parcel B abuts the Township on the parcel's northern, eastern and southern sides.²⁹

31. Together the Subject Parcels total 3.60 acres of land.³⁰

32. Petitioners have no plans to build additional buildings on the Subject Parcels.³¹

33. The Subject Parcels are bordered to the north by Zenith Street, which is unpaved in the area immediately adjacent to the Subject Parcels. Zenith Street is paved from its genesis within the City to approximately 0.20 mile from the Subject Parcels.³²

34. The Subject Parcels are separated by Woodview Avenue.³³

35. The Petitioners own another parcel of land, located in the Township and directly south of Parcel B, containing 0.40 acres. That parcel is outlined in blue below; the Subject Parcels are collectively outlined in red and individually outlined in green (Parcel A) and orange (Parcel B).³⁴

²³ Petitions for Detachment (Mar. 24, 2016).

²⁴ Test. of P. Dybing; Exs. 2-3.

²⁵ Ex. 105.

²⁶ Exs. 1-3.

²⁷ Test. of P. Dybing; Exs. 6-8, 14-18.

²⁸ Test. of P. Dybing; Exs. 2, 3, 105.

²⁹ Exs. 1, 2, 3.

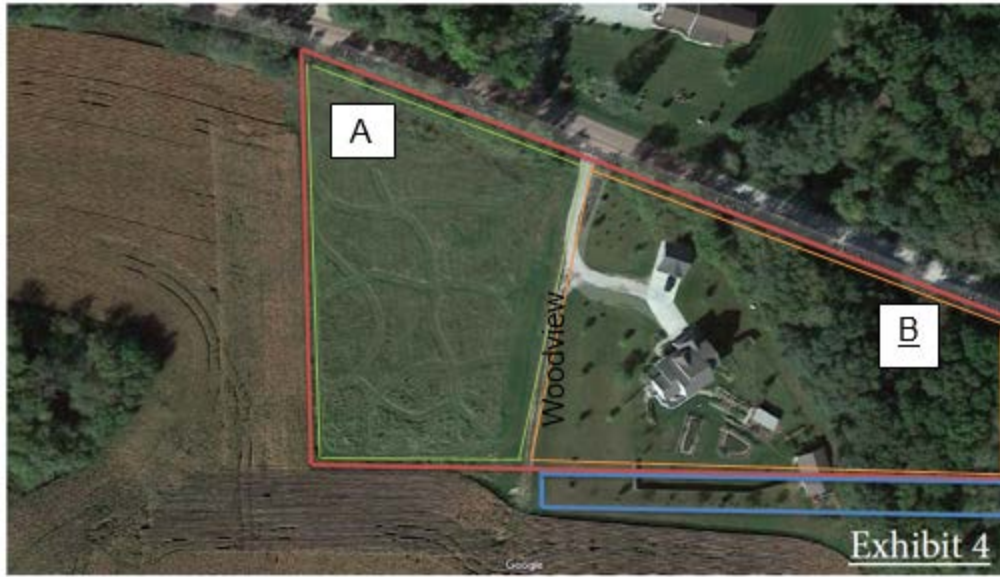
³⁰ Exs. 2, 3.

³¹ Test. of P. Dybing.

³² Test. of M. Peterson; Ex. 105.

³³ Test. of P. Dying; Ex. 105.

³⁴ Test. of P. Dybing; Ex. 4.



36. As illustrated above, the Subject Parcels (collectively outlined in red) are located within the boundaries of the City of Lanesboro.³⁵ Approximately 0.3 acres of Parcel B, as legally described above, are located within the Township.³⁶

37. The Subject Parcels are zoned Rural Agricultural under the City's zoning controls.³⁷

38. The properties surrounding the Subject Parcels have various current uses:

a. The land south of the Subject Parcels and south of the parcel outlined in blue in Finding 35 above is located in the Township and is used for agricultural purposes.³⁸

b. The land abutting the Subject Parcels to the west is platted and within the Benson Subdivision, but is currently unimproved and used for agricultural purposes.³⁹

c. The property located immediately north of the Subject Parcels across Zenith Street (Wagner Property) is wooded and contains one residence.⁴⁰

d. The land abutting Parcel B to the east is wooded and contains one residence.⁴¹

³⁵ Ex. 4.

³⁶ Exs. 2, 3.

³⁷ Test. of P. Dybing.

³⁸ Test. of P. Dybing; Ex. 9.

³⁹ Test. of P. Dybing; Ex. 14, 15.

⁴⁰ Test. of P. Dybing; Ex. 4.

⁴¹ Test. of P. Dybing.

39. Petitioners do not actively farm the Subject Parcels or rent them out for agricultural purposes. Petitioners grow vegetables and raise chickens on Parcel B for the family's use, but do not keep other animals or raise crops for remuneration.⁴²

40. The Subject Parcels are zoned rural agricultural under the City's Zoning Code.⁴³

41. Based upon the type and frequency of the services it provides coupled with the contextual location of the Subject Parcels, the City considers the Subject Parcels to be "close to being urban"⁴⁴ and a "suburban residential area."⁴⁵

Wagner Detachment

42. On or about February 3, 2005, the owners of the Wagner Property, consisting of 12.86 acres of property improved with one residence and a 48-foot by 48-foot pole barn, petitioned for detachment from the City and annexation into the Township.⁴⁶

43. Though the City initially supported the proposed detachment, it eventually passed a resolution in opposition.⁴⁷

44. The property owner had paid \$2,000 to the City for the cost of infrastructure necessary for the Wager Property to receive City water. The property was not served by City sewer facilities.⁴⁸

45. By Order dated August 16, 2005, the Wagner Property was granted detachment to the Township because the land was rural in character and not anticipated necessary for future development.⁴⁹

Anticipated Plans for Development in the Area

46. There are no homes constructed in the Benson Subdivision. Lots 1, 2, 3 and 4 in the Benson Subdivision are currently being used for agriculture.⁵⁰

⁴² Test. of P. Dybing.

⁴³ *Id.*

⁴⁴ Test. of Jerod Wagner.

⁴⁵ Test. of M. Peterson.

⁴⁶ *In the Matter of the Petition for the Detachment of Certain Land from the City of Lanesboro (D-419)*, No. 2-0330-16690-BA, PETITION FOR DETACHMENT (Minn. Office Admin. Hearings Jan. 25, 2005).

⁴⁷ *In the Matter of the Petition for the Detachment of Certain Land from the City of Lanesboro (D-419)*, No. 2-0330-16690-BA, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER (Minn. Office Admin. Hearings Aug. 16, 2005).

⁴⁸ *Id.*

⁴⁹ *Id.*; Test. P. Dybing.

⁵⁰ Test. P. Dybing.

47. In 2011, one home was constructed along Zenith Street. In the last two years, the City has issued two building permits for properties located in the Southern Hills Subdivision along Zenith Street, which is within 0.30 mile of the Subject Parcels.⁵¹

48. Petitioners have no present intention to build upon or otherwise improve the Subject Parcels.⁵²

Municipal Services

49. Woodview Avenue is a gravel road owned by the City.⁵³

50. Petitioners utilize Woodview Avenue to access their home on Parcel B; the driveway to the home connects to Woodview Avenue.⁵⁴

51. Zenith Street is paved from its intersection with Auburn Avenue to approximately Maple Drive, a residential street located 0.3 miles from the Subject Parcels. Zenith Street is surfaced in gravel immediately adjacent to the Subject Parcels.⁵⁵

52. The City provides snowplowing, dust control and vegetation management services for Zenith Street past the Subject Parcels.⁵⁶

53. The City provides snowplowing on Woodview Avenue.⁵⁷

54. The City provides fire protection to the Subject Parcels⁵⁸ via a fire hydrant located in the Township at the end of Woodview Avenue.⁵⁹

55. Via a contract with the City of Preston, the City provides police services to its residents, including Petitioners.⁶⁰ The police officers patrol Zenith Street past the Subject Parcels.⁶¹

56. The City provides fire and ambulance services to its residents, including Petitioners, and to the residents of nearby townships via charges assessed on a per capita basis.⁶²

57. During the relevant timeframe, the City has always provided municipal water to the Subject Parcels through a water line installed within Woodview Avenue.⁶³ In 2015,

⁵¹ *Id.*

⁵² *Id.*

⁵³ Test. of Andrew Drake; Ex. 105.

⁵⁴ Test. of P. Dybing; Ex. 4.

⁵⁵ Test. of M. Peterson.

⁵⁶ Test. of P. Dybing; Test. of M. Peterson; Test. of A. Drake.

⁵⁷ Test. of A. Drake; Test. of J. Wagner.

⁵⁸ Test. of M. Peterson; Test. of A. Drake.

⁵⁹ Test. of P. Dybing; Test. of A. Drake.

⁶⁰ Test. of M. Peterson.

⁶¹ Test. of Sgt. Blaise Sass.

⁶² Test. of M. Peterson.

⁶³ Test. of J. Wagner.

the City installed a new well which now services various properties in the area including the Subject Parcels.⁶⁴

58. The City provides electric services to the Subject Parcels through a preexisting electric distribution system built by the Tri-County Electric Co-op and acquired by the City.⁶⁵

59. The Subject Parcels are not served by City sewer services. Parcel B is improved with a private septic system.⁶⁶

60. City sewer services are provided to the Southern Hills Subdivision located 0.30 mile from the Subject Parcels in a westerly direction further along Zenith Street.⁶⁷

61. To date, the City has not extended sewer services to the Benson Subdivision or further along Zenith Street due to high costs associated with the area's topography.⁶⁸

62. The City has recently reiterated its intent to allow private septic systems in the Benson Subdivision in conformity with existing City Code, which provides that private wastewater disposal systems are allowable where public sewer services are not available within the City.⁶⁹

Character of the Subject Parcels

63. From the City center, the Subject Parcels are accessed, generally, via Zenith Street. Zenith Street commences in the center of the City and traverses a mere 1.75 miles to reach the Petitioners' driveway off Woodview Avenue. Throughout this length, Zenith Street is fronted on both sides by small commercial and residential structures which then taper to large lots improved with residential structures. As one travels along Zenith Street to its end at the intersection with Fox Road, the density of structures decreases and the view of agricultural fields and wooded areas increase.⁷⁰

64. Although it is currently unimproved with buildings and used for agricultural purposes as are the other four lots that make up the Benson Subdivision, Parcel A is a platted City lot.⁷¹

65. Parcel B hosts a large, suburban-looking home in which the Petitioners reside, located at 100 Woodview Avenue. The residence is a three-level structure improved with an attached two-car garage, a bay window, porches in both the front and

⁶⁴ *Id.*

⁶⁵ Test. of J. Wagner; Ex. 108.

⁶⁶ Test. of P. Dybing.

⁶⁷ Test. of J. Wagner.

⁶⁸ Test. of M. Peterson; Test. of J. Wagner; Exs. 104, 106.

⁶⁹ Test. of M. Peterson. The Chief Administrative Law Judge takes judicial notice of City Code Sec. 51.035 pursuant to Minn. R. Evid. 201.

⁷⁰ Property Tour.

⁷¹ Ex. 105.

back, and manicured lawns improved with decorative plantings as well as concrete driveways and walkways.⁷² Parcel B is also improved with a detached, two-stall garage with outside finishing that matches the residence, a chicken coop, a workshop and other storage, as well as at least two large gardens.⁷³

66. Parcel B is surrounded: to its north and east by additional properties improved with residential structures; to its south by agricultural land; and to its west by Parcel A.⁷⁴

Undue Hardship

67. The Petitioners paid \$4,778 in 2015 for property taxes for the Subject Parcels.⁷⁵

68. Under the Township's jurisdiction, the Subject Parcels would have been assessed \$2,826.00 in 2015 property taxes.⁷⁶

69. If the Subject Parcels were detached the City would lose revenue from property taxes.⁷⁷

70. The record does not establish that the City would suffer an undue hardship if the detachments are granted.

Symmetry

71. The Cities current boundaries are inconsistent and irregular.⁷⁸

72. Detachment of the Subject Parcels would not make the City's borders appreciably less symmetrical than they are at present.

Hearing Costs

73. The parties did not agree to a division of the costs of these proceedings.

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

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

⁷² Property Tour.

⁷³ Test. of P. Dybing.

⁷⁴ Ex. 3.

⁷⁵ Ex. 107.

⁷⁶ Ex. 24.

⁷⁷ Test. of M. Peterson.

⁷⁸ Ex. 1.

CONCLUSIONS OF LAW

1. The Chief Administrative Law Judge has jurisdiction in this matter pursuant to Minn. Stat. §§ 414.01, 414.06; .12 (2016).
2. The Petitions for Detachment were properly filed and notice given pursuant to Minn. Stat. § 414.09, subd. 1(c) (2016).
3. The hearing date was published pursuant to Minn. Stat. § 414.09, subd. 1(d) (2016).
4. Petitioners bear the burden of proof to demonstrate by a preponderance of the evidence that the statutory criteria for detachment have been met.⁷⁹
5. Minn. Stat. § 414.06, subd. 3, provides in relevant part:

[T]he chief administrative law judge may order the detachment on finding that the requisite number of property owners have signed the petition if initiated by the 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.
6. The Petitioners have established, by a preponderance of the evidence, the following criteria set forth in Minn. Stat. § 414.06, subd. 3:
 - a. The proceeding was properly initiated by Petitions for Detachment signed by all of the property owners;
 - b. The Subject Parcels are within the boundaries of the City and abut a boundary of the City;
 - c. Detachment of the Subject Parcels would not unreasonably affect the symmetry of the City; and
 - d. The Subject Parcels are not needed for reasonably anticipated future development.
7. The preponderance of the evidence at hearing failed to establish that the Subject Parcels are rural in character and have not been developed for urban residential, commercial, or industrial purposes, and therefore detachment is not appropriate pursuant to the requirements of Minn. Stat. § 414.06, subd. 3.

⁷⁹ Minn. R. 1400.7300, subp. 5 (2015).

8. Minn. Stat. § 414.12 subd. 3, specifies that if the parties do not agree to a division of the costs of the proceeding before the hearing, the costs “must be allocated on an equitable basis by the ... chief administrative law judge.”

9. It is equitable to divide the costs of this proceeding as follows: 50% to the Petitioners and 50% to the City.

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

ORDER

1. The Petitions for Detachment of the Subject Parcels from the City of Lanesboro are **DENIED**.

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 (2016).

3. Pursuant to Minn. Stat. § 414.12, subd. 3, the Office of Administrative Hearings’ costs are to be divided between the parties as follows: 50 percent to the Petitioners and 50 percent to the City.

4. This Order becomes effective upon issuance.

Dated: March 31, 2017



TAMMY L. PUST
Chief Administrative Law Judge

Reported: Digitally Recorded
No transcript prepared

NOTICE

This Order is the final administrative order in this case under Minn. Stat. § 414.06. Pursuant to Minn. Stat. § 414.07, subd. 2 (2016), any person aggrieved by this Order may appeal to Fillmore County District Court by filing an Application for Review with the Court Administrator within 30 days of this Order. An appeal does not stay the effect of this Order.

Any party may submit a written request for an amendment of these Findings of Fact, Conclusions of Law and Order Regarding Detachment within seven days from the date of the mailing of the Order pursuant to Minn. R. 6000.3100 (2015). A request for amendment shall not extend the time of appeal from this Order.

MEMORANDUM

This case turns on whether the Subject Parcels are, or are not, “rural in character and not developed for urban residential, commercial or industrial purposes.”⁸⁰ Judicial and administrative courts have examined factual circumstances in various statutory contexts to determine whether specific property is urban or rural in character.⁸¹ Under Chapter 414, these same courts have examined the subject properties’ use, zoning restrictions, proximity to other uses as a harbinger of impending development, density and access to or use of city services to determine whether a specific property should be considered to be “urban or suburban” or “rural in character” for purposes of the Municipal Boundary Adjustment Act, Minn. Stat. Ch. 414 (Act).⁸²

⁸⁰ Minn. Stat. § 414.06, subd. 3 (2016).

⁸¹ Outside Chapter 414, courts generally consider the agricultural versus other uses of the property, the low density of development in the area, and the lack of improvements or access to municipal services in determining whether property is rural or urban for statutory purposes. See *In re Engstrom*, 370 B.R. 205, 213 (Bankr. D. Minn. 2007); *In re Kyllonen*, 264 B.R. 17, 30-31 (Bankr. D. Minn. 2001); *Minn. Power & Light Co. v. Carlton Cnty.*, 145 N.W.2d 68, 70 (Minn. 1966); *Staples v. State*, 46 N.W.2d 651, 653-54 (Minn. 1951); *Stees v. Bergmeier*, 91 Minn. 513, 516-17, 98 N.W. 648, 650 (1904); *Kiewert v. Anderson*, 65 Minn. 491, 492, 67 N.W. 1031, 1032 (1896).

⁸² *City of Lake Elmo v. Nass*, No. A12-2008, 2013 WL 3491161, at *1, *8 (Minn. Ct. App. Sept. 25, 2013); see also *State ex rel. Town of White Bear v. City of White Bear Lake*, 255 Minn. 28, 36-38, 95 N.W.2d 294, 300-01 (1959); *State ex rel Copley Twp. v. Village of Webb*, 250 Minn. 22, 25-30, 83 N.W.2d 788, 793-94 (1957); *In re Exsted v. City of Hutchinson*, No. 43-CV-15-1048 (Minn. Dist. Ct. June 13, 2016); *In re the Detachment of Certain Real Property from the City of Cambridge to Isanti Twp.*, OAH Docket No. 84-0330-32927, FINDINGS OF FACT, CONCLUSION OF LAW, AND ORDER DENYING DETACHMENT (May 11, 2016); *In re the Petition for the Detachment of Certain Land from the City of Wabasha*, OAH Docket No. 68-0330-32004, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER (Aug. 20, 2015); *In re the Detachment of Certain Real Property from the City of Hutchinson*, OAH Docket No. 84-0330-32284, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER GRANTING DETACHMENT (June 18, 2015); *In re the Petition for Annexation to the City of Oslo A-7886*, OAH Docket No. 82-0330-31515, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER (Mar. 16, 2015); *In re the Petition of the City of Pine River*, OAH Docket No. 2-0330-19393-BA, FINDINGS OF FACT, CONCLUSIONS AND ORDER at 10, 26 (Jan. 13, 2009); *In re the Petition of the City of Bovey*, OAH Docket No. 2-0330-18032-BA, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER at 5 (July 5, 2007); *In re the Petition of Dawson Grain Coop., Inc.*, OAH Docket No. 12-2900-15004-2, FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER at 8 (Feb. 12, 2003).

As established in all cited cases, the necessary determinations turn on the specific facts of each case. Those facts always include consideration of the overall structure and economy of the relevant communities. Properties are deemed “urban” and even “suburban” even in the smallest cities in Minnesota, as these communities contain “areas intensively developed for residential, commercial, industrial, and governmental purposes.”⁸³ The intensity of development is scrutinized relative to the community at issue; the categorizations of “urban” and “suburban” are not restricted to the large metropolitan areas within the state.

Parcel A is a platted lot. It is served by two City streets, Zenith Street and Woodview Avenue. It has access to City water, electricity, police and fire services, which should have a positive effect on its market value. Like other lots in the area, it has no access to municipal sewer services. Parcel A is not yet developed. It is not used for commercial agricultural purposes but is covered in field grasses, which Petitioners mow twice during the growing season.

Parcel B is bounded on two sides by City streets, which the City plows, controls and otherwise maintains in order to provide convenient access to the property. It is served with electricity provided through the municipal utility. Parcel B benefits from City water and public safety services. It does not receive City wastewater service, but instead relies on a private septic system as allowed by the City Code.

All of these facts suggest that the Subject Parcels are not rural in character. They are located immediately adjacent to a major roadway in an area dominated by large lot residential structures. They receive the vast majority of the services provided by the City to its 738 residents, with the exception of public wastewater services.

More determinative to the outcome of the case is the fact that Parcel B is “developed for urban residential, commercial or industrial purposes.”⁸⁴ The term “developed” is not defined in the statute. According to the common dictionary definition, the term “develop” in the context of land development means “to make suitable for commercial or residential purposes” or “to cause (a tract of land) to serve a particular purpose.”⁸⁵

Parcel B was part of the property annexed into the City in 1991 at the request of the owner, who sought to avoid the 2.5-acre-per-residence land use control operable in the Township in order to allow the area to develop into large lot residences under the City’s land use controls. Parcel B was later developed, specifically, as a residential structure within the City; it has been used solely for that purpose for over ten years. The parcel is improved with a three-story, high-end finished home, plus similarly finished accessory structures, all located on a 2.21 acre lot. It is located within an area of the City designated for large lot residential development, as are over 20 of its neighboring

⁸³ Minn. Stat. § 414.01, subd. 1a(2).

⁸⁴ Minn. Stat. § 414.06, subd. 3.

⁸⁵ *The American Heritage College Dictionary* (3d ed. 1993) (available at <http://www.merriam-webster.com/dictionary/developed>).

residences. Unlike those structures, Parcel B was built not only to serve as a residence but also as a “spec home” for the commercial purpose of attracting buyers for the eventual development of Parcel A and the other lots in the Benson Subdivision. All of these facts support the conclusion that Parcel B is “developed for urban residential, commercial or industrial purposes” and therefore not eligible for detachment pursuant to the terms of the Act.

Petitioners suggest that their home is used for rural residential purposes rather than urban residential purposes. The facts in the record do not support that conclusion. While the Petitioners raise a small number of chickens on the Property, they do so for their own use and not for commercial gain. They have a large vegetable garden, the products of which they also use for their own “personal enjoyment, personal agrarian usage.”⁸⁶ The record indicates that Petitioners have never worked the land for commercial agricultural purposes, nor have they ever relied upon the agricultural output of the land for financial resources.

These facts distinguish the present case from the detachment matter involving the Wagner Property located on the other side of Zenith Street. In that action, the Minnesota Municipal Board ordered the detachment of 12.86 acres, finding it to be “rural in character and not developed for urban residential, commercial or industrial purposes” under the Act. The Board specifically found that the Wagner Property was:

“rural in appearance. Approximately 1.4 acres of the total 12.86 acres is devoted to a dwelling and pole barn. Approximately 1.3 acres is agricultural field producing hay and oats. The remainder is heavily wooded and contains ravines, which make it unsuitable for development.”⁸⁷

Unlike the Wagner Property, Parcel B is only 2.21 acres in size and is improved with one large residential structure and various accessory structures finished in the same style. It is suburban in appearance: a large, multilevel home situated on well-maintained lawns. While Parcel B is surrounded by corn fields, those agricultural properties are not part of the Subject Parcels and do not evidence the specific use made of Parcel B. As the application of the Act’s requirements vary with the facts of each boundary adjustment matter, the detachment of the Wagner Property does not require the detachment of the Subject Parcels.

In most if not all cases involving municipal boundaries in outstate areas, typical development patterns will reveal larger lots and fewer residences as one leaves a city center and approaches the municipal boundary. The Subject Parcels at issue in this case are the last properties within the City’s boundary on a major municipal roadway. It is true that the size of residential lots appears to increase from the beginning of Zenith Street to its terminus at Fox Road, and so a visitor gets the clear impression that she is leaving the urban area, traveling through a suburban area, and eventually entering the more rural

⁸⁶ Test. of P. Dybing.

⁸⁷ *In the Matter of the Petition for the Detachment of Certain Land from the City of Lanesboro* (D-419), No. 2-0330-16690-BA, 2005 WL 2009293, at *2 (OAH Aug. 16, 2005).

country-side at some point. Pinpointing where those differentiations are apparent remains a matter of judgment. In the judgment of the Chief Administrative Judge as evidenced by the preponderance of the record, Parcel B is not is “rural in character and not developed for urban residential, commercial or industrial purposes.”⁸⁸

Reaching that conclusion with respect to Parcel B leads to a similar conclusion with regard to Parcel A. In isolation, the description of Parcel A - as unimproved and covered in field grasses - suggests that it is more rural than is Parcel B. But examined in context, that distinction falls apart. Petitioners mow Parcel A, not continually but often enough that it appears more similar to the mown lawns of Parcel B than the rows of planted corn that border Parcel A to the west.⁸⁹ It was platted for urban and/or suburban residential purposes, and maintains access to all the municipal benefits available to Parcel B. As such, the Chief Administrative Law Judge finds that Parcel A is not “rural in character” and therefore not appropriate for detachment.

T. L. P.

⁸⁸ Minn. Stat. § 414.06, subd. 3.

⁸⁹ See Ex. 15.