

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Petition for Detachment
of Certain Real Property from the City of
Waconia to Waconia Township
(MBAU Docket D-578)

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

Pursuant to Minn. Stat. § 414.06 (2016), a Petition for Detachment by all Property Owners and a supporting resolution adopted by the City of Waconia were filed with the Office of Administrative Hearings on or about April 21, 2017.

Based upon a review of the filings, the Chief Administrative Law Judge makes the following:

FINDINGS OF FACT

Annexation by Ordinance

1. In or about June 2014, the City of Waconia (City) received an inquiry regarding the provision of municipal sewer and water services to property located at 9660 Somerwood Drive, Waconia Township. In response, the City advised that the property owners would need to petition for annexation and pay certain identified fees.¹

2. On March 2, 2015, the City adopted Ordinance No. 689 (Annexation Ordinance) whereby it sought to annex the following described property, then located in Waconia Township (Township) at 9660 Somerwood Drive (Property), into the City:

Commencing at the southeast section corner of Section 24-116N-25W and running North along the East section line of said Section 24 a distance of 846.97 feet to the place of beginning; thence continuing North along said East section line a distance of 407.49 feet to a point on the southerly right of way of a two rod roadway; thence deflecting left 120 degrees 03 minutes and running southwesterly along said southerly right of way line a distance of 238.47 feet to a point on the easterly right of way line of Carver County State Aid Highway No. 10; thence deflecting left

¹ Pet. for Detachment (Apr. 18, 2017), e-mail from Angie Perera to Paula Schooley (June 16, 2014).

95 degrees 31 minutes and running southeasterly along said easterly right of way line of said County Highway a distance of 354.35 feet to the place of beginning.²

3. The Annexation Ordinance recites the following relevant assertions made by the City: (a) the matter resulted from a petition for annexation filed by the Property owners; (b) the Property was “urban or suburban in character,” unserved by public waste water facilities, and “an appropriate area to be subject to municipal government.”³

4. The City filed the Annexation Ordinance with the Office of Administrative Hearings effective April 2, 2015.⁴

5. Relying upon the City’s assertions and the lack of any filed objections, as required by Minn. Stat. § 414.033 (2016) the Office of Administrative Hearings issued an Order of Annexation dated April 8, 2015.⁵

Petition for Detachment

6. On April 21, 2017, Luke A. and Shonda L. Vettel (Property Owners) filed with the Office of Administrative Hearings a Petition for Detachment of the Property from the City to the Township, pursuant to Minn. Stat. § 414.06.

7. The Petition for Detachment recites the following relevant assertions:

- a. The Property measures at approximately 0.98 acre.
- b. The Property is “rural in character and not developed for urban residential, commercial, or industrial purposes.”⁶
- c. The Property Owners requested detachment for the following reasons: “[W]e requested annexation based on extensive research of cost estimates obtained from the city offices to connect to city sewer and water. The city dramatically and unreasonable changed the cost making it prohibitive for us to hookup to sewer and water. We are now asking for a detachment so we can remain on our current well and septic system.”⁷

² *In re the Matter of the Annexation of Certain Real Property to the City of Waconia from Waconia Township (MBAU Docket A-7925)*, No. 84-0331-32402, ORDINANCE NO. 689 (Minn. Office Admin. Hearings Mar. 2, 2015).

³ *Id.* at Sections 1, 3.

⁴ *In re the Matter of the Annexation of Certain Real Property to the City of Waconia from Waconia Township (MBAU Docket A-7925)*, No. 84-0331-32402, Letter from J. Michael Melchert (Minn. Office Admin. Hearings Mar. 31, 2015).

⁵ *In re the Matter of the Annexation of Certain Real Property to the City of Waconia from Waconia Township (MBAU Docket A-7925)*, No. 84-0331-32402, ORDER APPROVING ANNEXATION ORDINANCE (Minn. Office Admin. Hearings Apr. 8, 2015).

⁶ Pet. for Detachment at 2 ¶ 4.

⁷ *Id.* at ¶ 5.

- d. There is one single-family dwelling, one detached double-stall garage, and one shed located on the Property.⁸
- e. Four people reside on the Property.⁹
- f. There have been no public improvements made to the Property.¹⁰

8. On October 29, 2016, the City adopted Resolution 2016-205 supporting the Petition for Detachment and remaining silent with regard to whether the Property is urban or suburban in character or rural in character.¹¹

9. The City filed its resolution with the Office of Administrative Hearings on April 21, 2017.

10. The Township remains neutral in the proceeding, having chosen not to file any resolution of support.¹²

11. There are two parties in this matter: the Property Owners and the City. There are no facts in the record indicating that either party should bear more of the resulting costs than the other. Both of the parties have requested and/or assented to the municipal boundary adjustment change. Likewise, both parties shared equally in the effort to have the Property annexed a short two years ago. Therefore, the Chief Administrative Law Judge finds that it is equitable to require both the Property Owners and the City to split the invoiced costs equally.

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

CONCLUSIONS OF LAW

1. The Chief Administrative Law Judge has jurisdiction in this matter pursuant to Minn. Stat. §§ 414.06 and .12 (2016).

2. Based on the unrefuted assertions of the Property Owners, the Petition for Detachment meets all statutory requirements of Minn. Stat. § 414.06, and as such detachment is ordered.

3. Pursuant to Minn. Stat. § 414.12, subd. 3, the Chief Administrative Law Judge must apportion the Office of Administrative Hearings' costs of contested case proceedings in boundary adjustment matters to the parties in an equitable manner if the parties have not otherwise agreed to a division of the costs.

⁸ *Id.* at 3 ¶ 8.

⁹ *Id.* at ¶ 9.

¹⁰ *Id.* at ¶ 10.

¹¹ City Resolution No. 2016-205 (Oct. 29, 2016).

¹² E-mail from Tom Notch to Shonda Vettel (Dec. 21, 2016) (on file with Minn. Office Admin. Hearings).

ORDER

1. Pursuant to Minn. Stat. § 414.06, the Property is **DETACHED** from the City.
2. The costs of this matter, billed as required by law at the approved hourly rates of the Office of Administrative Hearings, are ordered paid by the parties in the following percentages: 50% by the Property Owners; and 50% by the City. Invoices for the billed amounts will be sent under separate cover.

Dated: June 12, 2017



TAMMY L. PUST
Chief Administrative Law Judge

NOTICE

This Order is the final administrative order in this case under Minn. Stat. §§ 414.06, .07, .09, .12 (2016). Pursuant to Minn. Stat. § 414.07, subd. 2, any person aggrieved by this Order may appeal to Carver 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 this Order within seven days from the date of the mailing of the Order pursuant to Minn. R. 6000.3100 (2015). However, no request for amendment shall extend the time of appeal from this Order.

MEMORANDUM

Two years ago, the City held a public hearing before its constituents in which it voted on and passed a City Ordinance declaring, among other assertions, that the subject Property was “urban or suburban in character,” or about to become such. The City did so, presumably, to meet the requirements for annexation by ordinance spelled out in Minn. Stat. § 414.033. The only factual basis for that assertion, as evidenced in the file of record, is the expectation that the City would extend public water and sewer services to the Property in the immediate future.

No services were extended. The record indicates that the reason for the lack of service extension was cost.

Two years later, the City now apparently agrees with the Property Owners, as evidenced by its lack of contrary assertion, that the Property is now “rural in character.” Again, the obvious reason for the City’s action is an intent to seek relief pursuant to the detachment statute, which only allows detachment of property that is rural and not urban or suburban in character.

The Chief Administrative Law Judge finds this ping-ponging of factual assertions troubling. Surely, the character of property can change from rural to urban/suburban, or vice versa. That change typically takes some amount of time, generally more than the two years that expired in this case.

By taking diametrically opposed positions in a short timeframe with respect to the same Property, the City has indicated that it considers one lone fact – the provision of public water and sewer – to be a sufficient basis upon which to identify the character of property at issue. In essence, the City determined that if property has City water and sewer it is urban/suburban, and if the property does not receive those municipal services it is rural in character. While the City has the power to make whatever determinations it deems appropriate in each situation it encounters, it should be advised that the Office of Administrative Hearings views the distinction between the urban/suburban or rural character of property to be dependent upon many more factors and to require a more thorough and probing analysis than is evident in the City’s position(s) taken with respect to the Property at issue.

T. L. P.