

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Concurrent
Detachment and Annexation of
Certain Real Property from the City
of Baxter to the City of Brainerd
(MBA D-580/A-8078)

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

The above-entitled matter came on for hearing before Administrative Law Judge James E. LaFave on November 3, 2017, in the Crow Wing County Land Services Building, 322 Laurel Street, Brainerd, Minnesota. The hearing was continued to December 6-7, 2017. The parties filed written findings and post-trial briefs on January 16, 2018, and reply briefs on January 31, 2018. The hearing record closed on that date.

Joseph J. Langel and Nathan B. Shepard, Ratwik, Roszak & Maloney, P.A., appeared on behalf of the City of Brainerd (Brainerd). George Hoff and Shelley Ryan, Hoff Barry, P.A., appeared on behalf of the City of Baxter (Baxter).

STATEMENT OF THE ISSUE

Is the Property's concurrent detachment from Baxter and annexation to Brainerd in the best interests of both municipalities and the property owner, pursuant to Minn. Stat. § 414.061 (2016)?

SUMMARY OF CONCLUSIONS

The Administrative Law Judge concludes that the Property's concurrent detachment from Baxter and annexation to Brainerd is not in the best interests of both municipalities and the property owner and, therefore, the Petition must be denied.

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

FINDINGS OF FACT

Background and Procedural History

1. On August 8, 2017, Brainerd signed a Property Owner Petition for Concurrent Detachment and Annexation (Petition) concerning certain real property

(Property).¹ The Property, owned by Brainerd, is located in Baxter and consists of seven parcels of land totaling 99.51 acres.

2. Also on August 8, 2017, the Brainerd City Council approved Resolution No. 43-17 (Resolution) supporting the Petition.²

3. On August 28, 2017, Brainerd filed the Resolution and Petition with the Municipal Boundary Adjustment Unit of the Minnesota Office of Administrative Hearings.³ This matter was originally assigned to Chief Administrative Law Judge Tammy L. Pust. Chief Pust reassigned the matter to the undersigned Administrative Law Judge on October 11, 2017.

Subject Property

4. The legal description of the Property, as contained in the Petition, is as follows:

Parcel 1

The N ½ NE ¼, Section 17, Twp. 133, Range 28 West,

Except that portion of the above described tract lying North and West of County Highway Number 48 and;

Except the West 66 feet of the above described tract lying South of the Southeasterly Right of Way line of County Highway Number 48, and;

Except the East 33 feet lying North of a line described as follows: Commencing on the East line of the N ½ of the NE ¼ at a point 871.91 feet south of the Northeast corner, then on a bearing of North 66 degrees 17 minutes 50 seconds West a distance of 36.27 feet more or less to a point on a line 33 feet West of and parallel to the East line of the N ½ of the NE ¼ and there ending, and;

Except that portion of the above described tract lying southeasterly of a line described as follows: Commencing on the east line of the N ½ of the NE ¼ at a point 74.33 feet North of the Southeast corner, then on a bearing of South 61 degrees 48 minutes 18 seconds West a distance of 161.63 feet more or less to a point on the South line of the N ½ of the NE ¼ located 143.52 feet West of the Southeast corner, and there ending.

Parcels 2 and 3

That part of Government Lot 1 and Government Lot 2, Section 17, Township 133, North, Range 28 West, Crow Wing County, Minnesota, described as follows:

¹ Property Owner Petition for Concurrent Detachment and Annexation (Aug. 8, 2017).

² *Id.*

³ *Id.*

Commencing at the northeast corner of said Government Lot 1; thence South 87 degrees 17 minutes 01 seconds West, bearings are based on the City of Baxter Coordinate system, 1762.89 feet along the north line of said Government Lot 1 and along the north line of said Government Lot 2 to an iron monument, on the westerly line of the tract described in Document Number 402922 on record in the Crow Wing County Recorder's Office; thence South 39 degrees 54 minutes 55 seconds East, a distance of 171.04 feet along said westerly line of the tract described Document Number 402922 to an iron monument, said point being the point of beginning; thence reversing course North 39 degrees 54 minutes 55 seconds West, a distance of 171.04 feet, along said westerly line of the tract described Document Number 402922 to an iron monument on the north line of said Government Lot 2; thence North 87 degrees 17 minutes 01 seconds East, along the north line of said Government Lot 2 and along the north line of said Government Lot 1, a distance of 1576.88 feet; thence South 61 degrees 48 minutes 18 seconds West, a distance of 43.81 feet; thence southwesterly 199.14 feet along a tangential curve concave to the southeast, said curve having a radius of 430.00 feet and a central angle of 26 degrees 32 minutes 05 seconds; thence westerly and southerly 234.94 feet along a non-tangential curve concave to the southeast, said curve having a radius of 80.00 feet, a central angle of 168 degrees 15 minutes 54 seconds and a chord bearing of South 35 degrees 48 minutes 00 seconds West; thence South 34 degrees 11 minutes 30 seconds West, not tangent to the last described curve, a distance of 346.79 feet; thence South 31 degrees 22 minutes 34 seconds East, a distance of 544 feet, more or less, to the northwesterly bank of the Mississippi River; thence southerly, westerly and northwesterly along said bank of the Mississippi River to the intersection with a line that bears South 03 degrees 05 minutes 05 seconds West from the point of beginning; thence North 03 degrees 05 minutes 05 seconds East, a distance of 929 feet more or less to the point of beginning.

Said tract contains 42.3 acres, more or less, and is subject to all restrictions, reservation and easements of record, if any.

Parcels 4, 5 and 6

Lots 11, 12, and 13, Block 1 of Wildwood Addition, Section 17, Township 133, North, Range 28 West, Crow Wing County, Minnesota.

Parcel 7

Outlot A, Norway Hills, City of Baxter, Minnesota Section 17, Township 133, North, Range 28 West, Crow Wing County, Minnesota.

5. The Property is tax exempt.⁴
6. The Property is located on the southwestern edge of Brainerd and the eastern edge of Baxter.

⁴ Testimony (Test.) of C. Hillman.

7. The Property consists of two distinct groups of parcels. Parcels 1, 2, 3, and 7 abut property in Brainerd and property owned by the Department of Natural Resources (DNR) to the northeast and east.⁵ Parcels 1, 2, 3, and 7 also abut the boundary with Brainerd along the southern edge, which is formed by the Mississippi River. The second group, Parcels 4, 5, and 6, abuts the boundary of Brainerd for its entire length along the Mississippi River to the south and east.⁶

8. The Mississippi River is the boundary between Baxter and Brainerd south of the DNR site.⁷ To the north, the river is within Brainerd.

9. Brainerd is adjacent to 27 percent of the outer perimeter of Parcels 1, 2, 3, and 7.⁸

10. Parcel 1 is approximately 53.22 acres.⁹ Parcel 1 is generally triangle shaped, with the eastern edge formed by Eagle Drive and the northwestern edge formed by County Road 48.¹⁰ Parcel 1's northern border adjoins Parcel 7.¹¹ Parcel 1's southern border primarily adjoins Parcels 2 and 3.¹² Roughly the western third of Parcel 1's southern border abuts a private parcel in Baxter.¹³

11. Since approximately 1981, Brainerd, through its Public Utilities Commission (Brainerd Public Utilities or BPU) has operated a wastewater treatment facility (Facility) on Parcel 1.¹⁴ The Facility treats non-septic-system sewage from all Brainerd and Baxter residents.¹⁵ In addition to the Facility, BPU provides potable water and electricity to nearly all Brainerd citizens and a small number of Baxter residents.¹⁶

12. Since approximately 1997, Parcel 1 has also contained the BPU Service Center, an office, a customer service facility for BPU customers, a maintenance facility, as well as indoor and outdoor storage. The storage and maintenance areas are used for all of BPU's utilities (water, sanitary sewer, and electrical).¹⁷

13. The Facility, service center, and storage facilities are on the eastern portion of Parcel 1. The western third of Parcel 1 is undeveloped forest land. Along the eastern edge of Parcel 1 is additional forest land. Parcel 1 is relatively flat, though it is higher on the east end, with some ravines and ditches on the western portion.¹⁸

⁵ Test. of M. Ostgarden.

⁶ *Id.*

⁷ *Id.*

⁸ Test. of J. Doty.

⁹ Exhibit (Ex.) 51.

¹⁰ *Id.* County Road 48 is also known as Highland Scenic Drive.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ Test. of S. Magnuson.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Ex. 49; Site Visit.

14. Potlatch Corporation donated Parcel 1 to Brainerd by deed dated October 22, 1976.¹⁹

15. Parcel 1 can only be accessed from County Road 48.²⁰ There is no road access to Parcel 1 from Eagle Drive. There are two entrances to Parcel 1 from County Road 48; the northeast entrance is a public or customer entrance, while the southwest entrance is primarily for maintenance workers and BPU employees.²¹

16. Parcel 2 is approximately 9.67 acres.²² Parcel 2 is oriented north-south. Parcel 2 abuts Parcel 1 on the north and Parcel 3 on the east. On the west, Parcel 2 abuts a private parcel in Baxter. The southern border of Parcel 2 is formed by the Mississippi River, which is also the border with Brainerd. The majority of Parcel 2 is in the Mississippi River's flood plain.²³

17. Parcel 3 is approximately 32.38 acres.²⁴ Parcel 3 is oriented north-south. Parcel 3 abuts Parcel 1 on the north and Parcel 2 on the west. Approximately the northern half of Parcel 3's eastern border abuts one or more private parcels that are in Baxter. The southern half of Parcel 3's eastern border, and its southern border, is formed by the Mississippi River, which is also the border with Brainerd. The majority of Parcel 3 is in the Mississippi River's flood plain.²⁵

18. Parcels 2 and 3 have a small, relatively flat, area on their northern edge, adjacent to Parcel 1, and then drops significantly to a flat flood plain area that makes up the majority of their acreage.²⁶

19. Parcel 2 is undeveloped, but contains the outflow pipe that delivers excess water from the Facility to the Mississippi River.²⁷ Parcel 3 previously contained one residence, which was on the northern edge of the property.²⁸ This house was removed after Brainerd purchased the parcel. Parcel 2 formerly contained a portion of a driveway to this residence, but the driveway is presently unused. BPU does not have any plans to develop Parcels 2 or 3.²⁹

20. Parcels 4, 5, and 6 contain .79, .82, and .84 acres, respectively.³⁰ Parcels 4, 5, and 6 are contiguous with one another and form a rectangle oriented on a northeast to southwest axis. Parcel 4 is the southernmost parcel, Parcel 5 is adjacent to Parcel 4 to the northeast, and Parcel 6 is adjacent to Parcel 5 to the northeast.

¹⁹ Ex. 4.

²⁰ Site Visit.

²¹ Test. of S. Magnuson.

²² Ex. 51.

²³ Ex. 50.

²⁴ Ex. 51.

²⁵ Ex. 50.

²⁶ Ex. 49; Site Visit; Test. of S. Magnuson.

²⁷ Test. of S. Magnuson.

²⁸ *Id.*

²⁹ *Id.*

³⁰ Ex. 51; Test. of S. Magnuson.

21. The western border of Parcels 4, 5, and 6 is formed by Eagle Ridge Drive, a residential street.³¹ The southern border of Parcel 4 and the northern border of Parcel 6 are private parcels in Baxter.³² The eastern border of Parcels 4, 5, and 6 is formed by the Mississippi River, which is also the border with Brainerd.³³ Parcels 4, 5, and 6 drop away from the residential street they abut, have a small relatively flat area in the middle, and then drop precipitously to the east towards the river.³⁴

22. Parcels 4, 5, and 6 contain underground pipes used to deliver wastewater from the east or south side of the Mississippi River to the Facility. The pipes were installed in 1980.³⁵ The pipes ascend from below the river on Parcel 6, which also contains an underground vault related to those pipes. Other than a small area of concrete on top of the vault, these parcels contain no visible development and look like undeveloped land.³⁶ BPU staff drives past Parcels 4, 5, and 6 once a month to visually inspect them, but do not otherwise access these parcels.³⁷ BPU does not have any plans to develop Parcels 4, 5, and 6 beyond their historical use as the location of underground wastewater pipes. Parcels 4, 5, and 6 are not suitable for residential development due to these pipes.

23. Parcel 7 is approximately 1.79 acres. Parcel 7 is generally triangle shaped. The entire southern border of Parcel 7 adjoins Parcel 1.³⁸ The eastern edge is formed by Eagle Drive, and the north and western edge is formed by County Road 48. Parcel 7 is relatively flat.³⁹

24. Parcel 7 contains one structure, which was formerly a racquetball club.⁴⁰ Parcel 7 also contains a parking lot, accessible from Eagle Drive. The racquetball facility has been unused since at least 2007.

25. Brainerd purchased Parcel 7 in 2015.⁴¹ Brainerd acquired this parcel as a buffer for the Facility and for potential cold storage.⁴² The building on Parcel 7 is occasionally used by Brainerd police as a training facility, but is otherwise unused.⁴³ BPU contracted for a feasibility study regarding the potential to repurpose the racquetball club into cold storage, but this has not been completed. As of the date of the hearing, no specific plans for this facility had been created.⁴⁴ If the building is not rehabilitated for cold storage, it will be demolished.

³¹ Ex. 51.

³² *Id.*

³³ *Id.*

³⁴ Ex. 49; Site Visit; Test. of S. Magnuson.

³⁵ Test. of S. Magnuson.

³⁶ *Id.*

³⁷ *Id.*

³⁸ Ex. 51.

³⁹ Site Visit.

⁴⁰ Test. of S. Magnuson.

⁴¹ *Id.*; Test. of J. Doty.

⁴² Test. of S. Magnuson. "Cold storage" refers to unheated indoor storage.

⁴³ *Id.*

⁴⁴ *Id.*

26. The northern and western edges of Parcels 1 and 7 abut County Road 48. The majority of the eastern edge of Parcels 1 and 7 abuts Eagle Drive, a residential street.

27. Parcel 1 is presently in the Public Benefit zoning classification in Baxter. Parcel 2 is partly zoned for Office Services and partly for R-1 residential, while Parcel 3 is zoned R-1. Parcels 4, 5, and 6, are presently in the R-1 zoning classification in Baxter, a low-density residential zoning district. Parcel 7 is presently in the Neighborhood Commercial zoning classification in Baxter.⁴⁵

28. Other than those noted here, these parcels do not contain any pertinent natural features.

29. There are no residents or residences on the Property.⁴⁶ There is no reasonable expectation that this will change.⁴⁷

30. There is a small residential neighborhood containing Eagle Drive and Eagle Ridge Drive to the east of Parcel 1.⁴⁸ This area is zoned by Baxter for low-density residential.⁴⁹

Property Use

31. BPU provides wastewater (sanitary sewer) services to both Brainerd and Baxter, electricity to Brainerd and a small number of Baxter commercial properties, and water service to Brainerd.⁵⁰

32. The Facility began operating in 1981. BPU substantially upgraded the Facility in 2007.⁵¹ The former plant included open-air treatment of sewage.⁵² The current plant is sealed and does not include any outside storage or treatment of sewage.⁵³ BPU has received no odor complaints since the expansion and upgrade of the Facility.⁵⁴

33. Baxter required a Conditional Use Permit (CUP) in 2007 based on the upgrade and expansion of the Facility.⁵⁵ The CUP remains binding, but only applies to Parcel 1.⁵⁶

⁴⁵ Ex. 41.

⁴⁶ Test. of S. Magnuson.

⁴⁷ *Id.*

⁴⁸ Exs. 160-61. This is referred to as the Eagle Drive Neighborhood herein.

⁴⁹ Ex. 41.

⁵⁰ Test. of S. Magnuson.

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ Test. of S. Magnuson; Test. of T. Wicklund.

⁵⁵ Test. of S. Magnuson; Test. of T. Wicklund.

⁵⁶ Test. of S. Magnuson.

34. Baxter owns a lift station on Parcel 1, near the southern service entrance to the Facility. Baxter also owns pipes that run from the lift station to the headworks building near the center of the Facility.⁵⁷

35. BPU has received one complaint about noise since the Facility's upgrade.⁵⁸ BPU staff met with the complaining party.⁵⁹ The party could not hear the noise at that time, so BPU staff asked the party to notify them if the noise reoccurred. BPU staff has not received any further communication from this party.⁶⁰

2007 Capacity Agreement

36. Brainerd and Baxter entered into a Sewer Use and Capacity Agreement in 2007 (2007 Agreement).⁶¹ This agreement memorializes the financial relationship between the two cities regarding the expanded Facility and its capacity. The parties entered into the 2007 Agreement because Baxter's need for capacity had increased. Baxter, therefore, purchased capacity through the 2007 Agreement.⁶²

37. Recital A of the 2007 Agreement states that "Brainerd owns and operates a Wastewater Treatment Plant."⁶³ This refers to the Facility on Parcel 1.⁶⁴

38. The 2007 Agreement further states that "Baxter will purchase and own one-third share of the Expanded WWTP's Capacity, and Brainerd will own and operate the Expanded WWTP and own two-thirds of the Expanded WWTP's Capacity."⁶⁵ This also refers to the Facility on Parcel 1.⁶⁶

39. Both cities have complied with the 2007 Agreement.⁶⁷

40. There is no set termination date for the 2007 Agreement; it may be terminated by mutual agreement of the parties.⁶⁸

2009 Finance Agreement

41. In 2009, Brainerd and Baxter entered into a Finance Agreement.⁶⁹ This agreement allocates the cost of the Facility and dictates payment for capacity use.⁷⁰ In

⁵⁷ *Id.*; Test. of T. Walter.

⁵⁸ Test. of S. Magnuson; Test. of T. Wicklund.

⁵⁹ Test. of S. Magnuson.

⁶⁰ *Id.*

⁶¹ Ex. 30; Test. of T. Wicklund.

⁶² Test. of T. Wicklund.

⁶³ Ex. 30 at 1.

⁶⁴ Test. of T. Wicklund.

⁶⁵ Ex. 30 at 2.

⁶⁶ Test. of T. Wicklund.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ Ex. 31; Test. of T. Wicklund.

⁷⁰ Test. of T. Wicklund.

a general sense, Brainerd owns two-thirds of the capacity of the Facility and, therefore, two-thirds of the cost is allocated to Brainerd.⁷¹ In addition, the ongoing operational costs of the Facility are generally allocated to the cities based on the relative flow amounts from each city.⁷²

Joint Wastewater Management Board

42. The 2007 Agreement states that the two cities “have established a Joint Wastewater Management Board with representatives from the two Parties to oversee the financial operations of the Expanded WWTP and its expansion by the Brainerd Public Utilities.”⁷³

43. The 2009 Finance Agreement states that “[t]he Parties have established a Joint Wastewater Management Board, representing the Parties, to oversee the expansion and financial operations of the Expanded WWTP.”⁷⁴

44. The CUP Baxter issued for the upgrade of the Facility in 2007 states that “the Joint Wastewater Management Board, established by the pending contract between the Cities of Baxter and Brainerd, provide[s] a mechanism for ongoing review of any non-compliance with the CUP conditions.”⁷⁵

45. This Joint Wastewater Management Board (Board) has never met, as Baxter, Brainerd, and BPU have never requested a meeting.⁷⁶

46. Following communication from BPU Finance Director Todd Wicklund in October 2016, Baxter appointed members to the Board for the first time in December 2016. Brainerd also appointed members in 2017.⁷⁷

Administration

47. Baxter and Brainerd each maintain a police department.⁷⁸ Baxter provides police protection to the Property.

48. The Brainerd police headquarters is located approximately two miles away from these parcels; Baxter’s police headquarters is located approximately four miles away.⁷⁹

49. Brainerd is able to provide police service to the Property.

⁷¹ *Id.*

⁷² *Id.*

⁷³ Ex. 30 at 2.

⁷⁴ Ex. 31 at 1.

⁷⁵ Ex. 123 at 2.

⁷⁶ Test. of S. Magnuson; Test. of T. Wicklund.

⁷⁷ Ex. 26; Test. of T. Wicklund.

⁷⁸ Test. of C. McQuiston.

⁷⁹ *Id.*

50. Brainerd provides fire protection services to Baxter.⁸⁰ Baxter pays Brainerd approximately \$3,300 for this service relative to the Property.⁸¹

51. There are no underground stormwater facilities connected to the Property.⁸² The Property is not connected to Baxter's stormwater system.⁸³

52. Brainerd provides potable water service, electricity, and wastewater service to Parcel 1.⁸⁴

53. There are no public roads on the Property.⁸⁵

54. The State Building Code applies in Baxter and Brainerd.⁸⁶

Fees

55. Baxter charges stormwater fees, franchise fees, and permitting fees to BPU. The funding for these fees is billed to BPU customers in both Brainerd and Baxter.⁸⁷

56. BPU pays approximately \$4,600 in stormwater fees annually to Baxter for two parcels.⁸⁸

57. BPU pays seven dollars a month for each of three parcels for being nominally connected to gas service from Xcel Energy within Baxter.⁸⁹

58. Brainerd pays Baxter approximately \$2,000 in yearly franchise fees.⁹⁰

59. BPU paid a building permit fee of \$147,000 and a conditional use permit fee of \$400 during the construction of the expanded Facility.⁹¹ The Facility expansion cost approximately \$25 million for construction and approximately \$5 million in engineering costs.⁹² BPU has also paid Baxter for several other building permits and permitting fees.⁹³

⁸⁰ Test. of C. Hillman; Ex. 35; Test. of S. Magnuson.

⁸¹ Ex. 36; Test. of C. Hillman.

⁸² Test. of T. Walter.

⁸³ Test. of S. Magnuson; Test. of T. Wicklund; Ex. 164.

⁸⁴ Test. of S. Magnuson.

⁸⁵ *Id.*

⁸⁶ Test. of C. Hillman.

⁸⁷ Test. of T. Wicklund; Exs. 32-33.

⁸⁸ Test. of T. Wicklund.

⁸⁹ Ex. 33.

⁹⁰ Test. of J. Vacinek.

⁹¹ Test. of T. Wicklund; Exs. 32-33.

⁹² Test. of T. Wicklund; Ex. 32.

⁹³ Exs. 37, 109, 110-11, 117.

60. Baxter charges building permit fees to its own governmental departments and to other governmental units.⁹⁴

61. Baxter would no longer be able to collect stormwater fees, building permit fees, and franchise fees on these parcels if they are within Brainerd.⁹⁵ By extension, these fees would no longer be charged to BPU's utility customers in Brainerd and Baxter.

Future Use Plans

62. Both cities have a right of first refusal for the sale of the Facility, Parcel 1, or their interests under the 2007 Agreement.⁹⁶

63. The record lacks any evidence that Brainerd intends to change the use of the Property. Brainerd must communicate with Baxter regarding any change to the Facility pursuant to the contractual requirements.⁹⁷

64. Brainerd has never indicated to Baxter that it has any intention of selling the Facility or doing anything with the Property other than continuing to operate the Facility as it is currently operated.⁹⁸

65. There are no current plans to expand the Facility. Unless the Minnesota Pollution Control Agency (MPCA) alters regulations related to wastewater treatment, no need will exist to expand the Facility in the foreseeable future. Less than half of the Facility's current capacity is being used, so exponential growth would be needed to require expansion.⁹⁹

Eagle Drive Neighborhood Road and Utility Project and Cyprus Drive Construction Project

66. Eagle Drive and Eagle Ridge Drive are in poor to failing condition. In 2007, Baxter conducted a feasibility study regarding the reconstruction of these roads and installation of water and sewer utilities. Baxter obtained an updated study in 2017.¹⁰⁰

67. Baxter assesses each property owner based on the amount of equivalent residential units that could be constructed on each parcel. This is true even if the property had never been used for residential purposes.¹⁰¹

⁹⁴ Test. of J. Vacinek.

⁹⁵ *Id.*

⁹⁶ Ex. 30; Test. of J. Doty; Test. of J. Vacinek.

⁹⁷ Test. of J. Doty.

⁹⁸ Test. of J. Vacinek.

⁹⁹ Test. of S. Magnuson.

¹⁰⁰ Test. of T. Walter.

¹⁰¹ *Id.*

68. The feasibility study for the Eagle Drive Neighborhood proposes an assessment on Parcels 1, 4, 5, 6, and 7 of between \$150,000 and \$500,000, depending on the type of road construction used and utility connections needed.¹⁰²

69. If the Petition is approved, Baxter could not assess BPU for the road project.¹⁰³

70. Baxter has also begun planning for construction of a new street that would extend north and west from the western end of Parcel 1. This proposed new street would be called Cypress Drive and would exist entirely in Baxter.¹⁰⁴

71. For the Cypress Drive project, Baxter intends to use a small portion of Parcel 1 to construct part of a roundabout.¹⁰⁵ Baxter has not communicated with BPU regarding using its property in this manner.¹⁰⁶

72. Baxter plans to assess all property owners in this broader area for the Cypress Drive construction project, including the BPU.¹⁰⁷

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

CONCLUSIONS OF LAW

1. This matter is properly before the Administrative Law Judge pursuant to Minn. Stat. §§ 414.01, .061, .12 (2016).

2. The Petition for Concurrent Detachment and Annexation was properly filed and notice given pursuant to Minn. Stat. § 414.09, subd. 1(c) (2016). The hearing date was published pursuant to Minn. Stat. § 414.09, subd. 1(d) (2016).

3. A petitioner bears the burden of proof to demonstrate by a preponderance of the evidence that the petition meets the statutory requirements.¹⁰⁸

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

5. Based on an analysis of the factors contained in Minn. Stat. § 414.02, subd. 3(a)(1)-(13) (2016), Brainerd has not met its burden of proving that the Property's concurrent detachment from Baxter and annexation to Brainerd is in Brainerd's best interests.

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ Test. of S. Magnuson; Test. of T. Walter.

¹⁰⁷ Test. of T. Walter.

¹⁰⁸ Minn. R. 1400.7300, subp. 5 (2017).

6. Based on that same analysis, the Property's concurrent detachment from Baxter and annexation to Brainerd is not in Baxter's best interests.

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

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

ORDER

1. The Petition for Concurrent Detachment and Annexation is **DENIED**.
2. The Office of Administrative Hearings' costs are to be divided equally between Baxter and Brainerd.¹⁰⁹ An itemized invoice for costs will be sent under separate cover.
3. This Order is effective upon issuance.

Dated: March 2, 2018


JAMES E. LAFAVE
Administrative Law Judge

Reported: Digitally recorded
No Transcript Prepared

¹⁰⁹ Minn. Stat. § 414.12, subd. 3 (2016).

NOTICE

This Order is the final administrative decision in this case under Minn. Stat. §§ 414.061, .07, .09, .12 (2016). Pursuant to Minn. Stat. § 414.07, subd. 2, any person aggrieved by this Order may appeal to Crow Wing 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.¹¹⁰

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.¹¹¹ A request for amendment shall not extend the time of appeal from these Findings of Fact, Conclusions of Law, and Order.

MEMORANDUM

I. Introduction

This is not a typical concurrent detachment and annexation case. Here, the Property contains a fully-developed wastewater treatment plant located on approximately 100 acres within Baxter. However, the owner of the Property, Brainerd, is also the petitioner seeking annexation to its own municipality.

Baxter adamantly opposes Brainerd's Petition for concurrent detachment and annexation. It articulates three main reasons for its position. First, Baxter asserts the Petition is fatally flawed because Baxter is also an owner of the Property, but did not sign the Petition. Because the law requires all "owners" to sign the petition, Baxter maintains the Petition must be dismissed. Second, Baxter argues that the Petition constitutes an amendment to the 2007 Sewer Agreement between Baxter and Brainerd, and the Office of Administrative Hearings lacks jurisdiction to amend that agreement, necessitating dismissal. Finally, Baxter maintains that Brainerd failed to demonstrate that detachment and annexation is in the "best interests" of both municipalities. These arguments will be addressed in turn.

II. The Sufficiency of the Petition

The concurrent detachment and annexation of property is governed by Minn. Stat. § 414.061. That statute provides:

Property owners may initiate proceedings for the concurrent detachment of their property from one municipality and its annexation to an adjacent municipality by a petition signed by all of them ... [and] accompanied by a resolution of the city council of at least one of the affected municipalities.¹¹²

¹¹⁰ Minn. Stat. § 414.07, subd. 2 (2016).

¹¹¹ Minn. R. 6000.3100 (2017).

¹¹² Minn. Stat. § 414.061, subd. 5.

“Property owner’ means the owner of any fee interest of land, or the beneficial owner of land whose interest is primarily one of possession and enjoyment. The term includes, but is not limited to, vendees under a contract for deed and mortgagors.”¹¹³

Baxter correctly notes that the definition of “property owner” is not limited to an owner of a fee interest in the land, but more broadly includes beneficial owners with the rights of possession and enjoyment. Baxter argues that because it owns one-third of the Facility’s capacity and owns, and operates, a below-grade lift and pipes necessary to connect the lift to the Facility, it is a “property owner” within the meaning of the statute.

The Administrative Law Judge must “construe [a] statute’s word[s] and phrases according to their plain and ordinary meaning.”¹¹⁴ “[T]echnical words and phrases and such others have acquired a special meaning, or are defined in this chapter, are construed according to such special meaning.”¹¹⁵ “A statute must be construed as a whole and the words and sentences therein ‘are to be understood . . . in light of their context.’”¹¹⁶

With that in mind, the crux of the analysis here is whether Baxter is a “beneficial owner of land whose interest is primarily one of possession and enjoyment” within the context of the statute. A “beneficial owner” is “one recognized in equity as the owner of something because use and title belong to that person, even though legal title may belong to someone else; esp., one for whom property is held in trust.”¹¹⁷ The mere fact that Baxter owns one-third of the Facility’s capacity and owns, and operates, a below-grade lift and pipes necessary to connect the lift to the Facility does not give it “equity as the owner” of the Property. Baxter, therefore, does not meet the statutory definition of “beneficial owner.” Further, Baxter’s interest in the Property is not “primarily one of possession and enjoyment.” Hence, Baxter does not meet the definition of “property owner” under Minnesota law and was not required to sign the Petition.

III. The 2007 Sewer Agreement

Baxter next argues that the Petition constitutes an amendment to the 2007 Agreement between Baxter and Brainerd. Baxter asserts that the Petition seeks to undo a term Brainerd deems inequitable (land use control), a determination that can only be made by the district court. It reasons that the Office of Administrative Hearings lacks jurisdiction to amend that agreement, so the Petition must be dismissed. The Administrative Law Judge disagrees.

¹¹³ Minn. Stat. § 414.011, subd. 5 (2016).

¹¹⁴ *In re the Fin. Responsibility for the Out-of-Home Placement Costs for S.M.*, 812 N.W.2d 826, 829 (Minn. 2012); see Minn. Stat. § 645.08 (1) (2016) (“[W]ords and phrases are construed according to rules of grammar and according to their common and approved usage.”).

¹¹⁵ Minn. Stat. § 645.08 (1).

¹¹⁶ *In re Schmidt*, 818 N.W.2d 523, 527 (Minn. 2012).

¹¹⁷ Black’s Law Dictionary 1214 (9th ed 2009).

Brainerd properly filed the Petition under the laws governing concurrent detachment and annexation.¹¹⁸ The legislature granted the Administrative Law Judge jurisdiction to conduct a hearing and issue an order in this case pursuant to Minn. Stat. § 414.09.¹¹⁹ Any determination regarding whether the relief sought in the Petition constitutes an amendment to the 2007 Agreement is beyond the jurisdiction of this Tribunal. That issue is more appropriately addressed in another forum.

IV. Best Interests

In order to approve a petition for concurrent detachment and annexation, the Administrative Law Judge must conclude that it is in the best interests of the municipalities and the property owner.¹²⁰ To make this determination, the Administrative Law Judge is statutorily required to analyze 13 factors.¹²¹ The factual underpinnings for these factors are set forth in the Findings of Fact. And although the Administrative Law Judge has considered each of those factors, in this case, the factors are largely inapplicable to the concurrent detachment and annexation. Therefore, for the sake of clarity and brevity, the inapplicable factors will not be discussed individually or in detail.¹²²

The essential point requiring resolution in this case is whether the proposed action is in the best interests of both Brainerd and Baxter.¹²³ As the petitioner, Brainerd must prove by a preponderance of the evidence that the Petition is in the best interests of both cities.¹²⁴

a. Brainerd's Best Interests

Brainerd contends the concurrent detachment and annexation is in its best interest. First, it points out that Baxter charges BPU certain fees that Brainerd would not charge. Specifically, Baxter charges stormwater fees, franchise fees, and permitting fees to BPU. Those fees are ultimately paid by BPU customers in both cities.

Baxter charges BPU \$4,600 annually for stormwater fees and \$2,000 annually in franchise fees. These fees, given the size of the cities and their operating budgets, are not significant.

In addition, when the need arises, Baxter also charges BPU permitting fees. For instance, during the construction of the expanded Facility, Baxter charged a permit fee of approximately \$400 and a building permit fee of \$147,000. Again, those fees were

¹¹⁸ See Minn. Stat. § 414.061, subd. 5.

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*; see also Minn. Stat. § 414.02, subd. 3 (listing the statutory factors to be considered).

¹²² See Minn. Stat. § 414.061, subd. 5 (stating that the administrative law judge “shall set forth the factors which are the basis for the decision”). Factors (1), (2), (5), (7)-(9), (11)-(13) are not applicable to this case. The other factors are discussed generally throughout the Memorandum.

¹²³ As Brainerd is the Property owner, there will be no separate analysis of the “best interests” of the property owner in this Memorandum.

¹²⁴ Minn. R. 1400.7300, subp. 5.

passed on to BPU customers in both cities. Brainerd argues that if the Property were in Brainerd, Brainerd would not assess BPU any permitting fees. Notably, however, Baxter has not charged BPU any permitting fees since the Facility was expanded in 2007 and there are currently no plans to expand the Facility.¹²⁵ Therefore, Brainerd's "benefit" regarding permit fees is avoiding an unknown fee at some undetermined time in the future. This speculative benefit is insufficient to warrant annexation.

Brainerd also argues it will benefit by achieving "non-financial efficiencies in the administration of government services" to the Property.¹²⁶ Brainerd notes that its police headquarters is half as far from the Property as Baxter's. But Brainerd's Police Department is a mere two miles closer to the Property. And the record lacks any indication that the Property is frequently utilizing police services or that Baxter police have been somehow ineffective in protecting the Property. Mere proximity does not establish best interests.

Brainerd also maintains that it should not have to pay another city for services it can provide for itself, it should not have to work through another city's staff and subject itself to that city's regulations for property that it owns and operates. Brainerd contends that bringing the Facility and the BPU within its boundaries substantially reduces the bureaucracy involved in the routine operation of the Facility and promotes operational efficiency.¹²⁷ There is a commonsense appeal to Brainerd's argument. But Brainerd did not articulate, specifically, how annexation would substantially reduce bureaucracy. And Brainerd did not introduce facts, beyond the police department's proximity, indicating that annexation would lead to non-financial efficiencies in the administration of government services that would accrue to Brainerd's benefit.

Finally, Brainerd argues bringing BPU within the boundaries of Brainerd would alleviate confusion. Brainerd stated this reason in the Petition for initiating the concurrent detachment and annexation.¹²⁸ But again, Brainerd points to no specific facts demonstrating confusion regarding BPU's presence within Baxter's boundaries, and the Administrative Law Judge found none.

In sum, scant evidence exists showing the proposed concurrent detachment and annexation is in Brainerd's best interests. The Brainerd Police Department is a mere two miles closer to the Property than Baxter's Police Department. Stormwater and franchise fees charged by Baxter are de minimis. Possible permitting fees are speculative. Brainerd provided no evidence regarding confusion about BPU being in Baxter and no evidence proving that granting the Petition would lead to non-financial efficiencies in the administration of governmental services.

¹²⁵ The Facility is currently operating at 50 percent of capacity. It seems unlikely that expansion would be necessary in the foreseeable future.

¹²⁶ Petitioner City of Brainerd's Post-Trial Brief at 11 (Jan. 16, 2018) (Brainerd's Post-Trial Brief).

¹²⁷ *Id.* at 10-11.

¹²⁸ Petition at 1 ("to **clarify** for customers, businesses and governed entities that this municipal function (that of the Facility), is indeed within and a function of the City of Brainerd." (emphasis added)).

As previously mentioned, there is a strong surface appeal to Brainerd's argument that because it owns the Property and runs the Facility that the Property should be within its city limits. But the benefits Brainerd identifies are almost entirely intangible. The statute requires more. Brainerd must prove by a preponderance of the evidence that the proposed concurrent detachment and annexation is in the "best interest of the municipalities."¹²⁹ "The analysis required by the statute does not involve a "de minimis' standard."¹³⁰ Brainerd was only able to show a de minimis value to it if the Petition is "best interests."

b. Baxter's Best Interests

Even if Brainerd could show the concurrent detachment and annexation is in its best interests, it must also prove it is in Baxter's best interests. Brainerd argues elimination the stormwater fees, franchise fees, and permitting fees Baxter charges the BPU is a benefit to Baxter because Baxter's citizens will be spared their portion of those costs. As previously mentioned, the stormwater fees and franchise fees are nominal and the permit fees are speculative. Also, Brainerd's argument fails to acknowledge that Baxter will lose the \$6,600 in revenue from those fees.

Brainerd also maintains that Baxter will no longer be required to pay Brainerd for fire service protection, saving Baxter \$3,300 annually. That amount, however, is just over one percent of the entire amount Brainerd annually assesses Baxter for fire services.¹³¹ And net, based on the fees discussed above, Baxter will lose \$3,300 in fee revenue.

Brainerd also argues that "Baxter has no evidence that it will suffer any detriment as a result of annexation."¹³² It claims Baxter's concern that it will lose zoning enforcement authority is illusory. And, according to Brainerd, the contracts between the cities contemplate ongoing joint oversight of the Facility, regardless of the outcome of this proceeding. Even assuming this is true, that is not the applicable standard. The mere fact that Baxter will not suffer any significant detriment if the Petition is granted does not mean granting the Petition is in Baxter's best interests. Moreover, as noted above, Baxter will lose \$3,300 in fee revenue and potential assessments related to future road projects that impact the Property.¹³³ Therefore, Brainerd has failed to demonstrate this concurrent detachment and annexation is in Baxter's best interests.

¹²⁹ Minn. Stat. § 414.061, subd. 5.

¹³⁰ *In re the Petition to Detach Certain Land from the City of Wyoming*, No. 15-0330-22439-BA, 2012 WL 6568257 at *6 (Minn. Office of Admin. Hearings, May 2, 2012).

¹³¹ \$3,300 is 1.07 percent of the \$308,332.92 that Baxter paid Brainerd in 2017 for fire services. See Ex. 36.

¹³² Petitioner City of Brainerd's Reply Brief at 2 (Jan 31, 2018).

¹³³ The Administrative Law Judge notes that these proposed projects are mostly speculative at this stage. However, contrary to Brainerd's argument, it does provide some evidence of potential detriment.

V. Conclusion

Brainerd's primary motivation for this annexation is civic pride.¹³⁴ That is understandable. But Brainerd submitted only minimal evidence that granting the Petition would be in its best interest, and no evidence that the proposed concurrent detachment and annexation is in the best interests of Baxter. The law contemplates that a property's status quo must be maintained unless *all* parties benefit from its concurrent detachment and annexation. The Petition must, therefore, be **DENIED**.

J. E. L.

¹³⁴ See Brainerd's Post-Trial Brief at 11 ("moving it (the Property) is not just a matter of pride"); Ex. 24 at 2 (Letter from The Honorable Edwin L. Menk, Mayor to Mayor Darrel Olson and Baxter City Council Members, Sept. 8, 2016) ("[T]he Brainerd City Council and the BPR do have civic pride in their ownership of the facility and the fact that its location in Baxter's jurisdiction causes some concern.")