

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Detachment of Certain  
Real Property from the City of Balaton to  
Rock Lake Township {MBA D-582}

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

The above-entitled matter came before Administrative Law Judge Jessica A. Palmer-Denig for a hearing on February 9, 2018, in Balaton, Minnesota. The parties submitted a post-hearing stipulation on February 15, 2018, and the record closed on that date.

Kyle O'Dwyer, Runchey, Louwagie & Wellman, P.L.L.P., appeared on behalf of Willis and Joan Wendland (Petitioners). James L. Garvin, James L. Garvin, Chtd., appeared on behalf of the City of Balaton (City). Angela Johnson, Township Clerk, appeared on behalf of the Rock Lake Town Board (Township).

**STATEMENT OF THE ISSUES**

Should the Petition for Detachment be granted or denied based on the factors established in Minn. Stat. § 414.06 (2016)?

**SUMMARY OF CONCLUSION**

Based on the evidence in the hearing record, the Administrative Law Judge concludes that the Petitioners have not established that: (1) the proposed detachment would not unreasonably affect the symmetry of the City; and (2) that the property proposed for detachment is not needed for reasonably anticipated future development.

**FINDINGS OF FACT**

**Procedural History**

1. Petitioners Willis and Joan Wendland filed a Petition for Detachment of Certain Land from the City of Balaton, Minnesota (Petition for Detachment) on December 15, 2017.<sup>1</sup> Petitioners submitted the required filing fee on December 21, 2017,<sup>2</sup> making the filing complete.

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<sup>1</sup> Petition for Detachment (Dec. 8, 2017) (received by the Office of Administrative Hearings, Municipal Boundary Adjustment Unit (OAH-MBAU), on Dec. 15, 2017).

<sup>2</sup> Letter from Robert L. Gjorvad to Starlene Holman (Dec. 19, 2017) (on file with the Minn. Office Admin. Hearings).

2. On December 21, 2017, the Administrative Law Judge issued an Order scheduling a prehearing conference and the hearing, and ordering the parties to proceed to mediation.<sup>3</sup>

3. On December 26, 2017, the Administrative Law Judge continued the prehearing conference at the City's request.<sup>4</sup>

4. On January 8, 2018, the City adopted a resolution opposing the Petition for Detachment.<sup>5</sup>

5. On January 9, 2018, the Administrative Law Judge held a prehearing conference by telephone.<sup>6</sup>

6. The parties participated in mediation, but were not able to resolve their dispute.<sup>7</sup>

7. Notice of the evidentiary hearing was published in the Marshall, Minnesota Independent on January 25, 2018 and February 1, 2018.<sup>8</sup>

8. A hearing was held on February 9, 2018, at the Balaton Community Center, 134 3rd Street, Balaton, MN 56115.<sup>9</sup>

9. At the hearing, sworn testimony was admitted into the record from several witnesses, and Petitioners' Exhibits 1 through 8 and the City's Exhibits 100 through 108 were admitted into the record, without objection.

10. At the hearing, Petitioners withdrew their request to detach a 7.2-acre portion of a parcel located to the north of the properties at issue in this case, while affirming their request to detach the two parcels addressed herein.<sup>10</sup>

11. The parties submitted a Stipulation for Petition Amendment on February 15, 2018, noting the amendment made orally at the hearing, and confirming the correct legal description of the properties Petitioners seek to detach.<sup>11</sup> The Stipulation for Petition Amendment was provided to the Township and the Lyon County Recorder.<sup>12</sup>

12. The record closed on February 15, 2018.

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<sup>3</sup> Order Regarding Prehearing Conference, Mediation and Hearing (Dec. 21, 2017).

<sup>4</sup> Order for Continuance and Prehearing Conference (Dec. 26, 2017).

<sup>5</sup> Resolution (Jan. 8, 2018).

<sup>6</sup> Prehearing Conference Digital Recording (Jan. 9, 2018) (on file with the Minn. Office Admin. Hearings).

<sup>7</sup> Statements of Counsel for Petitioners and the City, Hearing Digital Recording (Feb. 9, 2018) (on file with the Minn. Office Admin. Hearings).

<sup>8</sup> Affidavit of Publication (Feb. 2, 2018).

<sup>9</sup> Hearing Digital Recording.

<sup>10</sup> Statement of Petitioners' Counsel, Hearing Digital Recording.

<sup>11</sup> Stipulation for Petition Amendment (Feb. 15, 2018).

<sup>12</sup> Email from K. O'Dwyer to Star Holman (Feb. 15, 2018 12:02 PM CST) (on file with the Minn. Office Admin. Hearings).

## Subject Parcels

13. Currently Petitioners own a total of 110 acres within the City.<sup>13</sup>

14. Petitioners seek to detach two parcels of land (the Subject Parcels) from the City, totaling 70 acres.<sup>14</sup> The eastern parcel is 40 acres and the western parcel is 30 acres.<sup>15</sup>

15. Petitioners are the only owners of the property identified in the Petition for Detachment, and both Petitioners signed the Petition for Detachment.<sup>16</sup>

16. The Subject Parcels are located within the City and in Lyon County, Minnesota.<sup>17</sup>

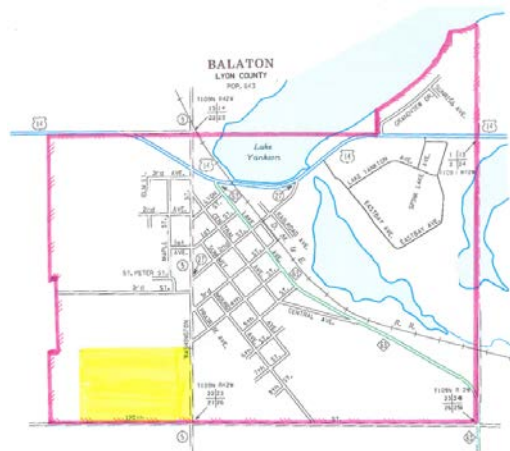
17. The Subject Parcels are legally described as follows:

The East Half of the Southwest Quarter of the Southeast Quarter (E½SW¼SE¼) and the East Half of the West Half of the Southwest Quarter of the Southeast Quarter (E½W½SW¼SE¼) all in Section Twenty-two (22), Township One Hundred Nine (109) North, Range Forty-two (42) West.

And

The Southeast Quarter of the Southeast Quarter (SE¼SE¼), all in Section Twenty-two (22), Township One Hundred Nine (109), Range Forty-two (42).<sup>18</sup>

18. The map below depicts the City's current boundaries, with the Subject Parcels identified in the highlighted area:



<sup>13</sup> *Id.*

<sup>14</sup> Testimony (Test.) of Willis Wendland; Stipulation for Petition Amendment (Feb. 15, 2018).

<sup>15</sup> Test. of W. Wendland; Ex. 1 (Map of the City of Balaton).

<sup>16</sup> Test. of W. Wendland.

<sup>17</sup> *Id.*

<sup>18</sup> Stipulation for Petition Amendment.

19. Petitioner Willis Wendland (Wendland) has lived within the City since 1964.<sup>19</sup>

20. The Subject Parcels have been a part of the City for Wendland's entire lifetime.<sup>20</sup>

21. The Subject Parcels are located in the southwestern portion of the City.<sup>21</sup>

22. The Subject Parcels are located entirely within the City and abut the City's boundary with the Township.<sup>22</sup>

23. The Subject Parcels do not contain any buildings, no one lives on the Subject Parcels, and the Subject Parcels have never been platted for residential development.<sup>23</sup>

24. The City does not furnish any utility services to the Subject Parcels.<sup>24</sup>

25. Petitioners reside on property to the north of the 40-acre portion of the Subject Parcels.<sup>25</sup>

26. The Subject Parcels are bordered on the east by County Road 5, also known as Washington Avenue.<sup>26</sup>

27. The Subject Parcels are bordered to the south by a gravel Township road.<sup>27</sup>

28. The Subject Parcels are bordered to the west by property owned by another landowner.<sup>28</sup> Except for the presence of guidewires attached to a nearby radio tower, the property on the Subject Parcels' western edge is undeveloped and used for agricultural purposes.<sup>29</sup>

29. Petitioners' son owns the property located to the south of the Subject Parcels, across the boundary with the Township.<sup>30</sup>

30. The Subject Parcels are cropland used for agricultural purposes.<sup>31</sup>

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<sup>19</sup> Test. of W. Wendland.

<sup>20</sup> *Id.*

<sup>21</sup> Ex. 108 (Detachment map).

<sup>22</sup> Test. of W. Wendland; Ex. 2 (USDA Property Map); Ex. 108 (Detachment map).

<sup>23</sup> Test. of W. Wendland.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*; Ex. 2 (USDA Property Map).

<sup>26</sup> Test. of W. Wendland.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

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

31. The Subject Parcels contain a small triangular area designated as wetland.<sup>32</sup> The Subject Parcels also contain waterways.<sup>33</sup>

32. Portions of the Subject Parcels are designated as Conservation Reserve Program acreage and a living snow fence is planted along a section of the Subject Parcels' border.<sup>34</sup>

33. Both of the Subject Parcels have a "hilly" terrain.<sup>35</sup>

34. Water from the Subject Parcels flows via drainage tile within the City limits to the City's storm sewer, or across the City and into a slough<sup>36</sup> south of Lake Yankton that drains into Lake Yankton.<sup>37</sup> Water from the Subject Parcels also drains to the south of the property.<sup>38</sup> Petitioner has installed a terrace to slow the draining of water into the City.<sup>39</sup>

### **Property Taxes**

35. Petitioners seek detachment of the Subject Parcels to reduce the amount of taxes they pay.<sup>40</sup>

36. The proposed property tax for 2018 for the 30-acre parcel of the Subject Parcels is \$1,188.00, of which the City's tax accounts for \$826.95.<sup>41</sup>

37. The 2018 proposed property tax for the 40-acre parcel of the Subject Parcels is \$1,350.00, of which the City's tax would be \$939.03.<sup>42</sup>

38. Petitioners own property in the Township located to the southeast of the Subject Parcels, joining the Subject Parcels at the corner.<sup>43</sup> This property in the Township consists of 112.95 acres.<sup>44</sup> The 2018 proposed property tax for the property within the Township totals \$1,440.00, and the Township portion of that amount would be \$268.74.<sup>45</sup>

39. Petitioners' son's property south of the Subject Parcels in the Township is 150 acres.<sup>46</sup> The 2018 proposed property tax for this land totals \$2,032.00, with Township taxes of \$379.27.<sup>47</sup>

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<sup>32</sup> *Id.*; Ex. 2 (USDA Property Map).

<sup>33</sup> Test. of W. Wendland; Ex. 2 (USDA Property Map).

<sup>34</sup> Test. of W. Wendland.

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

<sup>36</sup> This body of water is officially unnamed, but is locally called "Breening's slough." Test. of Kent Henkel.

<sup>37</sup> Test. of W. Wendland

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> Petition for Detachment; Test. of W. Wendland.

<sup>41</sup> Ex. 4 (Proposed Taxes 2018).

<sup>42</sup> Ex. 5 (Proposed Taxes 2018).

<sup>43</sup> Test. of W. Wendland.

<sup>44</sup> Ex. 6 (Proposed Taxes 2018).

<sup>45</sup> *Id.*

<sup>46</sup> Ex. 7 (Proposed Taxes 2018); Test. of W. Wendland.

40. In 2017, Petitioners paid a total of \$2,708.00 in property taxes for the Subject Parcels.<sup>48</sup>

41. Wendland consulted the Township regarding the taxation of the Subject Parcels if the properties were detached.<sup>49</sup> Wendland was informed that the estimated taxes for 2017 for the Subject Parcels, had they been located in the Township, would have been \$990.<sup>50</sup>

42. The Subject Parcels are located in a rural service district, reducing the taxes paid related to these properties.<sup>51</sup> The rural service district rate is 30% of the total tax levy on the properties.<sup>52</sup> The Subject Parcels have been included in the rural service district for approximately 25 to 30 years.<sup>53</sup>

43. The City incurred indebtedness on bonds related to a development, Eastbay, located on the eastern side of the City.<sup>54</sup> The debt levy related to the bonds cannot be reduced for any taxpayers within the City.<sup>55</sup> The amount of the annual bond payment attributable to each property varies depending on the amount of the payment due.<sup>56</sup>

44. The indebtedness attributable to the Subject Parcels related to the City's bond obligations is approximately \$1,333 per year,<sup>57</sup> though the exact number will fluctuate.<sup>58</sup>

45. The City's unaudited financial figures for 2017 were: (1) total revenue of \$794,505.88; (2) revenue related to bond debt of \$145,948.96; (3) general tax revenue of \$204,869.22; and (4) City generated revenue of \$443,687.70.<sup>59</sup> Local government aid accounted for a little over \$200,000 of the City generated revenue figure.<sup>60</sup>

### **The City's Symmetry**

46. The City's current boundaries are not entirely square.<sup>61</sup>

47. In 2005, the City annexed property to the north of US Highway 14 and along the section line forming the City's eastern boundary.<sup>62</sup>

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<sup>47</sup> Ex. 7.

<sup>48</sup> Test. of W. Wendland; Ex. 4 (Proposed Taxes 2018); Ex. 5 (Proposed Taxes 2018).

<sup>49</sup> Test. of W. Wendland.

<sup>50</sup> *Id.*; Test. of Roberta Joehnck.

<sup>51</sup> Test. of W. Wendland; Test. of R. Joehnck; Ex. 100 (City Taxation of Wendland Detachment Lands).

<sup>52</sup> Test. of R. Joehnck; Ex. 100 (City Taxation of Wendland Detachment Lands).

<sup>53</sup> Test. of W. Wendland.

<sup>54</sup> Test. of R. Joehnck; Ex. 1 (Map of the City of Balaton); Ex. 101 (Bond Schedule).

<sup>55</sup> Test. of R. Joehnck.

<sup>56</sup> *Id.*

<sup>57</sup> Test. of W. Wendland.

<sup>58</sup> Test. of R. Joehnck.

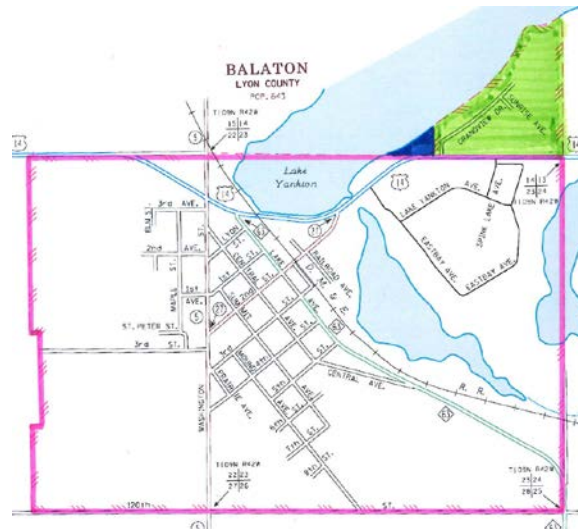
<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

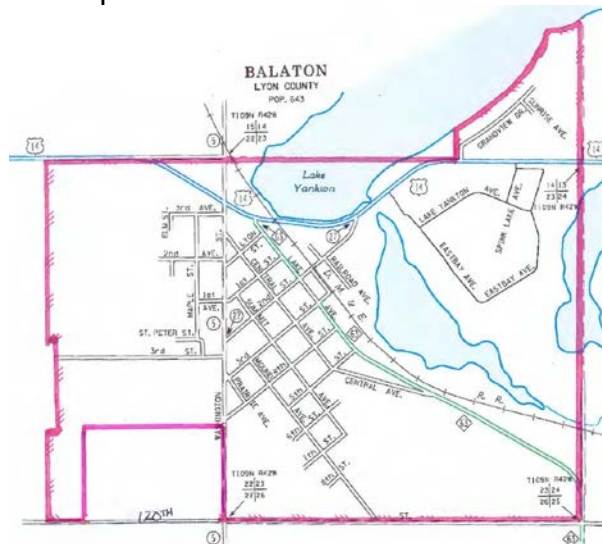
<sup>61</sup> Ex. 1 (Map of the City of Balaton).

48. This annexed property, used for a development called Grandview Beach, is bounded on its southern edge by US Highway 14, on the eastern edge by the section line, and along the northwestern edge by Lake Yankton.<sup>63</sup> A small triangular-shaped parcel located along Lake Yankton to the west of Grandview Beach was not annexed.<sup>64</sup>

49. The annexed property is highlighted in green in the map below. The small portion along Lake Yankton that was not annexed is highlighted in blue.



50. If the Petition for Detachment were granted, the City's boundaries would appear as depicted in the map below:



<sup>62</sup> Test. of W. Wendland; Test. of K. Henkel; Ex. 1 (Map of the City of Balaton); *In re the Orderly Annexation Agreement Between the City of Balaton and the Town of Rock Lake Pursuant to Minnesota Statutes 414*, No. OA-1114-1, ORDER (Feb. 11, 2005).

<sup>63</sup> Ex. 1 (Map of the City of Balaton).

<sup>64</sup> Test. of W. Wendland; Ex. 1 (Map of the City of Balaton).

## Reasonably Anticipated Future Development

51. The City has not approached Wendland regarding development of the Subject Parcels.<sup>65</sup>

52. Wendland has not considered developing the Subject Parcels.<sup>66</sup> Wendland does not wish for the Subject Parcels to be developed, preferring to maintain the property as agricultural land.<sup>67</sup>

53. The Subject Parcels are zoned AG, for agricultural use.<sup>68</sup> To use these properties for commercial development, rezoning would be required.<sup>69</sup>

54. Other sites within the City have been developed.<sup>70</sup>

55. The City developed Eastbay on the eastern side of the City.<sup>71</sup> Eastbay was initially developed as residential property.<sup>72</sup> As the City began to need commercial properties, five lots in Eastbay were re-zoned R3, meaning that they are residential properties but can be used for businesses under a special use permit granted by the City.<sup>73</sup>

56. One conditional use permit was granted for a lot in Eastbay for construction of storage sheds.<sup>74</sup> The storage sheds were not built within the one-year window permitted by the permit, so reapplication was necessary.<sup>75</sup> At that time, residents objected and the permit was not granted.<sup>76</sup>

57. At this time, one lot within Eastbay is zoned for potential commercial use.<sup>77</sup>

58. In 2008, property sales in Eastbay declined due to the recession.<sup>78</sup> Approximately 20 to 30 residential lots remain available in Eastbay.<sup>79</sup> Property sales have been increasing in recent years.<sup>80</sup>

59. The City extended water and sewer service to the annexed property developed as Grandview Beach.<sup>81</sup> Over 20 lots are platted within this development,<sup>82</sup>

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<sup>65</sup> Test. of W. Wendland.

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> Test. of K. Henkel.

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

<sup>70</sup> Test. of W. Wendland; Test. of R. Joehnck; Test. of K. Henkel; Test. of Tara Onken.

<sup>71</sup> Test. of R. Joehnck; Test. of K. Henkel.

<sup>72</sup> Test. of K. Henkel.

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

<sup>74</sup> Test. of K. Henkel; Test. of T. Onken.

<sup>75</sup> Test. of K. Henkel; Test. of T. Onken.

<sup>76</sup> Test. of K. Henkel; Test. of T. Onken.

<sup>77</sup> Test. of K. Henkel.

<sup>78</sup> Test. of R. Joehnck.

<sup>79</sup> Test. of W. Wendland; Test. of T. Onken.

<sup>80</sup> Test. of T. Onken.



and three lots have been built on.<sup>83</sup> None of the lots in Grandview Beach are available for commercial development.<sup>84</sup>

60. There are few properties suitable for commercial development in the City.<sup>85</sup>

61. Companies interested in establishing themselves in the City seek properties that are already prepared for development.<sup>86</sup> If properties do not meet their needs immediately, they move on to another location rather than wait for a suitable property to become available.<sup>87</sup> The City has lost opportunities for commercial development due to the absence of commercial properties.<sup>88</sup>

62. Certain properties within the City's downtown area are vacant, but the lots are narrow or the buildings older.<sup>89</sup> These properties would require capital investment to become viable for business uses.<sup>90</sup>

63. The City considers the properties in its western section, where the Subject Parcels are located, to be most amenable for commercial development.<sup>91</sup>

64. The City has only two roads suitable for heavy traffic, one of which is County Highway 5, which borders the eastern edge of the Subject Parcels.<sup>92</sup>

65. Commercial property development is being considered for property in the City's northwestern portion, south of US Highway 14.<sup>93</sup>

66. trū Shrimp Company (trū Shrimp) has established a research and development facility in the City at the site of the City's former high school.<sup>94</sup> This property is located along County Road 5 at 2nd Street and 3rd Street.<sup>95</sup>

67. trū Shrimp has 17 employees in the City and anticipates adding additional staff there in the next six months.<sup>96</sup>

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<sup>81</sup> Test. of K. Henkel.

<sup>82</sup> Ex. 1 (Map of the City of Balaton).

<sup>83</sup> Test. of T. Onken.

<sup>84</sup> *Id.*

<sup>85</sup> Test. of K. Henkel; Test. of T. Onken.

<sup>86</sup> Test. of T. Onken.

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> Test. of K. Henkel.

<sup>92</sup> *Id.* The record contains contradictory testimonial evidence regarding whether County Road 5 is posted with a weight limit for traffic in the spring. *Id.*; Test. of W. Wendland. In the absence of other evidence regarding this fact, the Administrative Law Judge does not make a specific finding as to whether the road has been posted.

<sup>93</sup> Test. of Kenneth Holm; Test. of K. Henkel.

<sup>94</sup> Test. of Robert Gervais.

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

<sup>96</sup> Test. of R. Gervais.

68. trū Shrimp is considering additional development in the City because it is nearing capacity at its current property.<sup>97</sup> It wishes to develop property as close to its current facility as possible, looking to the west and northwest of the current site.<sup>98</sup>

69. The Subject Parcels are located to the southwest of the current trū Shrimp facility.<sup>99</sup>

70. trū Shrimp is building another facility in Luverne, Minnesota.<sup>100</sup> The company has considered development in Marshall, Minnesota for its processing facility, but does not believe a currently available facility can be renovated feasibly for its needs.<sup>101</sup>

71. trū Shrimp represents the largest commercial development opportunity that the City has had in around 30 years.<sup>102</sup>

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

### **CONCLUSIONS OF LAW**

1. The Administrative Law Judge has jurisdiction over this matter pursuant to Minn. Stat. §§ 414.01, .06, .12 (2016).

2. The Petition for Detachment was 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 to prove by a preponderance of the evidence that the statutory criteria for detachment have been met.<sup>103</sup>

5. Minn. Stat. § 414.06, subd. 3, establishes the criteria for detachment, stating that detachment may be ordered 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.

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

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

<sup>99</sup> Ex. 1 (Map of the City of Balaton).

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

<sup>102</sup> Test. of K. Henkel.

<sup>103</sup> Minn. R. 1400.7300, subp. 5 (2017).

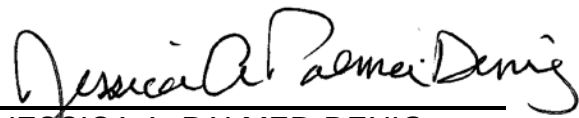
6. Petitioners have established by a preponderance of the evidence that:
  - a. the proceeding was properly initiated by a Petition for Detachment signed by all property owners of record;
  - b. the Subject Parcels are rural in character and not developed for urban residential, commercial or industrial purposes; and
  - c. the Subject Parcels are within the boundaries of the City and abut a boundary of the City.
7. Petitioners have not demonstrated by a preponderance of the evidence that:
  - a. detachment of the Subject Parcels would not unreasonably affect the symmetry of the City; and
  - b. the Subject Parcels are not needed for reasonably anticipated future development.
8. Under Minn. Stat. § 414.12, subd. 3, if the parties do not agree to a division of the costs of the proceeding before a hearing commences, the costs must be allocated on an equitable basis.
9. It is equitable to allocate the costs of this proceeding evenly between Petitioners and the City.

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

### ORDER

1. The Petition for Detachment is **DENIED**.
2. Pursuant to Minn. Stat. § 414.12, subd. 3, the costs of this proceeding are allocated 50% to Petitioners and 50% to the City. An itemized invoice for costs will be sent to the parties under separate cover.

Dated: March 19, 2018

  
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JESSICA A. PALMER-DENIG  
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, .07, .09, .12 (2016). Pursuant to Minn. Stat. § 414.07, subd. 2, any person aggrieved by this Order may appeal to Lyon 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 (2017). However, no request for amendment shall extend the time of appeal from this Order.

## MEMORANDUM

### I. Standard of Proof

As the party seeking detachment of the Subject Parcels, Petitioners bear the burden to prove by a preponderance of the evidence that the statutory criteria have been met.<sup>104</sup> Under this standard, to establish a fact, Petitioners must show it is “more probable that the fact exists than that the contrary exists.”<sup>105</sup> “If evidence of a fact or issue is equally balanced, then that fact or issue has not been established by a preponderance of the evidence.”<sup>106</sup>

### II. Analysis

Minn. Stat. § 414.06, subd. 3, establishes the factors to be considered. The statute states, in relevant 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 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.<sup>107</sup>

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<sup>104</sup> See Minn. R. 1400.7300, subp. 5 (2017) (“The party proposing that certain action be taken must prove the facts at issue by a preponderance of the evidence, unless the substantive law provides a different burden or standard.”).

<sup>105</sup> *In re Source Code Evidentiary Hearings in Implied Consent Matters*, 816 N.W.2d 525, 539 (Minn. 2012).

<sup>106</sup> *City of Lake Elmo v. Metro. Council*, 685 N.W.2d 1, 4 (Minn. 2004).

<sup>107</sup> The statute also indicates that detachment may be denied if the judge finds that the “remainder of the municipality cannot continue to carry on the functions of government without undue hardship.” Minn. Stat. § 414.06, subd. 3. None of the parties addressed this issue during the hearing. Therefore, the Administrative Law Judge determines that this factor is not relevant to a determination in this case.

Petitioners have established three of the statutory factors are met. First, Petitioners are the only owners of the Subject Parcels and both signed the Petition for Detachment.<sup>108</sup> Second, the Subject Parcels are located within the City and abut a municipal boundary.<sup>109</sup> Third, the Subject Parcels are rural and not developed for urban residential, commercial or industrial purposes. The evidence clearly establishes that the Subject Parcels are zoned and used exclusively for agricultural purposes, and they contain no buildings and have no residents.<sup>110</sup> Some water from the Subject Parcels drains into the City's storm sewer and a slough located across the City from the Subject Parcels.<sup>111</sup> Notwithstanding the benefit of this drainage to the Subject Parcels, this is insufficient to transform the rural character of the property.

Two issues remain in dispute. The first issue is whether Petitioners have established that detachment of the Subject Parcels would not unreasonably affect the symmetry of the City. The second issue requires determining whether Petitioners have shown that the Subject Parcels are not needed for reasonably anticipated future development.

### **A. Symmetry**

Petitioners argue that detachment of the Subject Parcels would not unreasonably affect the City's symmetry. Petitioners contend that the City already lacks symmetry due to the 2005 annexation of the Grandview Beach parcel. Prior to the annexation, the City's boundaries were essentially a rectangle. Now that the City includes this additional land, Petitioners note that the two sides of the City no longer mirror each other.

Minn. Stat. § 414.06, subd. 3, does not contain a definition of symmetry. Petitioners argue in favor of the dictionary definition of symmetry, which is the "correspondence in size, shape, and relative position of parts on opposite sides of a dividing line or median plane or about a center or axis."<sup>112</sup>

Even with the addition of the Grandview Beach area, the City remains largely symmetrical, with the vast majority of the City within its original boundaries. The Grandview Beach area, while not within that rectangle, follows along Lake Yankton, a natural boundary at the City's northern border, and the section line to the east that was already the City's eastern boundary.

The City's southern border, on which the Subject Parcels are located, retains the original squared character of the City's boundaries. The southwestern and southeastern portions of the City are currently symmetrical.

Further, the Subject Parcels do not extend all the way to the City's southwestern corner. Detachment of the Subject Parcels would leave a portion of land

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<sup>108</sup> Test. of W. Wendland.

<sup>109</sup> *Id.*; Ex. 1 (Map of the City of Balaton); Ex. 108 (Detachment map).

<sup>110</sup> Test. of W. Wendland; Test. of K. Henkel.

<sup>111</sup> Test. of W. Wendland; Test. of K. Henkel.

<sup>112</sup> *Merriam Webster Dictionary*, available at <https://www.merriam-webster.com/dictionary/symmetry>; see also *City of Lake Elmo v. Nass*, No. A12-2008, 2013 WL 3491161, at \*8 (Minn. Ct. App. Jul. 15, 2013).

within the City limits dangling down along the Subject Parcels' western edge, rendering it difficult for the City to develop, or extend services to, that parcel in the future.

In light of these facts, the Administrative Law Judge concludes that detachment of the Subject Properties would unreasonably affect the City's symmetry. As a result, Petitioners have not met their burden as to this factor.

## **B. Needed for Reasonably Anticipated Future Development**

Petitioners contend that the Subject Parcels are unsuitable for development.<sup>113</sup> Petitioners also argue that other properties within the City could be used for development. The evidence shows that the Grandview Beach and Eastbay developments are not completely built out.<sup>114</sup> Further, land in the northwestern portion of the City south of US Highway 14 is being considered as a potential site for a commercial enterprise.<sup>115</sup> Petitioner argues that the Subject Parcels are not needed for reasonably anticipated future development.

The City disagrees. The City contends few areas within its boundaries are suitable for commercial development. The Grandview Beach development does not contain lots for commercial use.<sup>116</sup> Few lots within Eastbay were zoned for possible commercial use, and the lots have not been used in that manner, in part due to opposition from residents.<sup>117</sup> Lots in the City's downtown are narrow or contain older buildings that require investment, making these properties unappealing.<sup>118</sup> The City offered evidence that it has had difficulty attracting businesses to the community due to the lack of suitable properties and that it has lost opportunities for its residents as a result.<sup>119</sup>

The City contends that its western area, where the Subject Parcels are located, represents the most viable land within its boundaries for commercial development. The City offered evidence that the roads accessing that area are the most appropriate for commercial traffic.<sup>120</sup> The City also showed that its western properties are the site of its most recent and significant commercial development, through trū Shrimp's acquisition and build-out of the former high school property, and because additional parcels to the northwest are being actively considered for development.<sup>121</sup>

Wendland believes that the Subject Parcels are not suitable for development, but did not offer evidence beyond his own personal opinion. He testified that other properties are available for development, but the existence of other parcels, by itself, is not sufficient to show that the Subject Parcels are not needed given the other evidence in the record.

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<sup>113</sup> Test. of W. Wendland.

<sup>114</sup> *Id.*; Test. of K. Henkel; Test. of T. Onken; Ex. 1 (Map of the City of Balaton).

<sup>115</sup> Test. of W. Wendland; Test. of K. Henkel; Test. of K. Holm.

<sup>116</sup> Test. of T. Onken.

<sup>117</sup> *Id.*; Test. of K. Henkel.

<sup>118</sup> Test. of T. Onken.

<sup>119</sup> *Id.*

<sup>120</sup> Test. of K. Henkel.

<sup>121</sup> *Id.*, Test. of K. Holm; Test. of R. Gervais.

While the City has not approached Petitioners regarding development of the Subject Parcels, Wendland made clear that he does not wish to develop the land and prefers to maintain it for agricultural use.<sup>122</sup> As a result, the Subject Parcels are not available for development, requiring the City to look elsewhere for the time being. Further, the burden of proof regarding this factor still rests with Petitioners. This factor is not an affirmative defense requiring that the City establish a current plan to develop the Subject Parcels. Additionally, this factor would become meaningless if a property owner could meet it simply by showing an unwillingness to permit development.

In light of all of the evidence in the record, the Administrative Law Judge concludes that Petitioners have not established that the Subject Parcels are not needed for reasonably anticipated future development.

### **III. Conclusion**

Petitioners have not met their burden to show all of the statutory factors under Minn. Stat. § 414.06, subd. 3, have been met in this case. Therefore, the Petition for Detachment is **DENIED**.

**J. P. D.**

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<sup>122</sup> Test. of W. Wendland.