

BEEFORE THE MUNICIPAL COMMISSION
OF THE STATE OF MINNESOTA

Thomas J. Simmons
Robert W. Johnson
Gerald J. Isaacs

Chairman
Vice Chairman
Member

IN THE MATTER OF THE PETITION FOR)
THE DETACHMENT OF CERTAIN LAND FROM)
THE CITY OF BIG LAKE, SHERBURNE)
COUNTY, MINNESOTA)

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER

The above matter came on for hearing before the Commission at the City Hall in the City of Big Lake, Minnesota, on September 11, 1974, upon the petition of E. Albert Danielson, James Wessel, Ernest Danielson Marlene Danielson, Duane L. Skoog, Paul Tracy and Grace A. McDowall for the detachment of certain lands from the City of Big Lake, Minnesota, pursuant to the provisions of Minnesota Statutes, Section 414.06. James C. Erickson, Esq., appeared for the petitioners, and in support of the petition. James G. Metcalf appeared for the City of Big Lake, and in opposition to the petition.

The Commission, after having considered the evidence adduced at the hearing and having viewed the affected land, and upon all of the files, records and proceedings herein, makes the following:

FINDINGS OF FACT

1. That petitioners are all of the property owners of the land proposed for the detachment, which land is more than forty (40) acres and legally described as follows, to-wit:

Owner: E. Albert Danielson

That part of Northwest 1/4, Southeast 1/4 lying East of Road and West 1/2 of Northeast 1/4 of Southeast 1/4 except 2.4 acres sold to Wessel and that part of North 1/2 of Southwest 1/4 of Southeast 1/4 lying East of Road and North 1/2 of Southeast 1/4 of Southeast 1/4, Section 18, Township 33N, Range 27W.

Owner: James Wessel

That part of North 1/2 of Southeast 1/4 described as follows: Commencing at the intersection of Easterly right of way of CAR number 5 with the North line of said Southeast 1/4, said point being 1,191.09 feet East from the Northwest corner of Southeast 1/4 thence East along said North line a distance of 313.81 feet, thence South at right angles to said North line a distance of 390 feet, thence West parallel with said North line thereof a distance of 247.24 feet more or less to its intersection with the Easterly right of way line of CAR number 5, thence Northerly along said Easterly right of way line to point of beginning, Section 18, Township 33N, Range 27W.

Owner: Ernest and Marlene Danielson

East 1/2 of Northeast 1/4 of the Southeast 1/4 of Section 18, Township 33N, Range 27W.

Owner: Duane L. Skoog

South 273.56 feet of South 1/2 of Northeast 1/4 lying between center line of Road and center line of River, Section 18, Township 33N, Range 27W.

Owner: Paul Tracy

All of Government Lot 2, Section 18, Township 33N, Range 27W, Sherburne County, Minnesota including all that part thereof platted as A REVISED PLAT OF COZY PARK, according to the map or plat thereof on file and of record in the office of the Register of Deeds in and for said Sherburne County; Block 11 of said plat, excepting therefrom all that part described as follows: Beginning at the most Westerly angle point in the Southwesterly line of said Block 11, thence Northwesterly along the Southwesterly line of said Block 11 for a distance of 271.8 feet, more or less, to the shore of Lake Mitchell; thence Northeasterly along said shore line a distance of 40.19 feet; thence Southeasterly in a straight line to the point of beginning; All of the Northwest 1/4 of the Southeast 1/4 of said Section 18, except a tract described as follows: Beginning at the South 1/16th corner of the Southeast 1/4 of said Section, Town and Range, and running thence North on the east line of the West half of the Southeast 1/4 aforesaid, to the Northeast corner thereof, thence West on the North line of said tract 93 feet to the center line of the Big Lake and Orrock Road extended, thence in a Southerly direction along the center line of said Road to the point where said center line crosses the South line of the said West half of the Southeast 1/4 of said Section 18, thence East on the South line of said tract 43 feet to the point of beginning; The North 17 rods of the Southwest 1/4 of the Southeast 1/4 lying West of County State Aid Highway No. 5

(also known as County Road No. 5, the Eagle Lake Road, and the Big Lake and Orrock Road). Subject to and together with that part thereof taken for said County State Aid Highway No. 5, and for a Township Road along the Northerly boundary of said property.

Owner: Grace A. McDowall

South 233 feet of Southeast 1/4 of Northeast 1/4 West of County Road No. 5, Section 18, Township 33N, Range 27W.

South 233 feet of Southwest 1/4 of Northeast 1/4, Section 18, Township 33N, Range 27W.

Lot 1, except North 900 feet, Section 18, Township 33N, Range 27W.

2. That said land is situated within the City of Big Lake in the County of Sherburne and State of Minnesota, and abuts the municipal boundary of the City of Big Lake.

3. That the property owned by E. Albert Danielson, James Wessel, Ernest and Marlene Danielson, Duane Skoog and the following described property owned by Grace A. McDowall is unplatted, used and occupied primarily for agricultural purposes, not necessary for reasonably anticipated future development of the City of Big Lake and its detachment would not unreasonably affect the symmetry of the city:

The South 233 feet of the South Half ($S\frac{1}{2}$) of the Northeast Quarter ($NE\frac{1}{4}$) of Section 18 lying West of County Road No. 5, Township 33 N, Range 27W.

4. That the property owned by Paul Tracy and the following described property owned by Grace McDowall is not used and occupied primarily for agricultural purposes:

Lot 1, except the North 900 feet thereof, Section 18, Township 33N, Range 27W.

This property is necessary for reasonably anticipated future development of the City of Big Lake and its detachment would unreasonably affect

the symmetry of the city.

CONCLUSIONS OF LAW

1. That the area proposed for detachment should be decreased by excluding the property owned by Paul Tracy and the following described property:

Lot 1, except the North 900 feet thereof, Section 18, Township 33N, Range 27W.

2. That the remainder of the area proposed for detachment can and should be detached.

O R D E R

IT IS HEREBY ORDERED: that the following described real property be, and the same hereby is, detached from the City of Big Lake and made a part of the Township of Big Lake, Sherburne County, Minnesota, the same as if it had originally been made a part thereof:

That part of Northwest 1/4, Southeast 1/4 lying East of Road and West 1/2 of Northeast 1/4 of Southeast 1/4 except 2.4 acres sold to Wessel and that part of North 1/2 of Southwest 1/4 of Southeast 1/4 lying East of Road and North 1/2 of Southeast 1/4 and Southeast 1/4, Section 18, Township 33N, Range 27W; and

That part of North 1/2 of Southeast 1/4 described as follows: Commencing at the intersection of Easterly right of way of CAR number 5 with the North line of said Southeast 1/4, said point being 1,191.09 feet East from the Northwest corner of Southeast 1/4 thence East along said North line a distance of 313.81 feet, thence South at right angles to said North line a distance of 390 feet, thence West parallel with said North line thereof a distance of 247.24 feet more or less to its intersection with the Easterly right of way line of CAR number 5, thence Northerly along said Easterly right of way line to point of beginning, Section 18, Township 33N, Range 27W; and

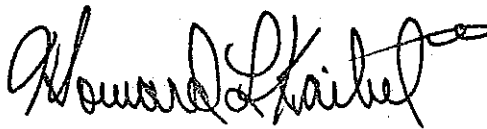
East 1/2 of Northeast 1/4 of the Southeast 1/4 of Section 18, Township 33N, Range 27W; and

South 273.56 feet of South 1/2 of Northeast 1/4 lying between center line of Road and center line of River, Section 18, Township 33N, Range 27W; and

The South 233 feet of the South Half ($S\frac{1}{2}$) of the
Northeast Quarter ($NE\frac{1}{4}$) of Section 18 lying West
of County Road No. 5, Township 33N, Range 27W.

Dated this 17th day of December, 1974

MUNICIPAL COMMISSION
304 Capitol Square Building
St. Paul, Minn. 55101

A handwritten signature in cursive script, reading "Howard L. Kaibel, Jr.", with a stylized flourish at the end.

Howard L. Kaibel, Jr.
Executive Secretary

MEMORANDUM

Upon considering the testimony and viewing the property, the Commission is satisfied that the premises herein detached do meet the requirement of M.S.A. 414.06 that they be used and occupied primarily for agricultural purposes. The remainder of the property does not meet this statutory requirement. The Commission denies the detachment of the remaining property for four additional reasons. First, the city should control all property adjacent to Lake Mitchell to control development and to eventually furnish municipal services such as water and sanitary sewer. Second, the east-west road on the northerly end of Lake Mitchell should be under one jurisdiction. Third, the portion of the McDowall property located northerly of that road, approximately several hundred feet, should be under the jurisdiction of the city in order that potential development of that road frontage can be reasonably controlled. Finally, detachment of this property would unreasonably affect the symmetry of the city.

Considerable testimony concerned the liquor license fee established by the city regarding the petitioner, Paul Tracy. While the commission can appreciate Paul Tracy's concern, it has no statutory authority to consider whether that fee is appropriate or reasonable and, therefore, makes no determination concerning that matter, except that the existence of the license indicates that the premises are not used for agricultural purposes.