

JUN 27 A.M.

ORDERBEFORE THE MUNICIPAL COMMISSION
OF THE STATE OF MINNESOTAIN THE MATTER OF THE PETITION FOR THE DETACH-
MENT OF PROPERTY FROM THE VILLAGE OF PRESTON,
FILLMORE COUNTY, MINNESOTA

On the Petition and amended petition of the requisite freeholders of the Village of Preston, Fillmore County, Minnesota to detach certain lands from said Village which came regularly on for hearing before the Municipal Commission of the State of Minnesota on August 7th, 1961 at the Village Hall in Preston, Minnesota at which time evidence was taken, testimony heard, and exhibits received, and upon all the files and records herein, and the Commission being fully advised in the premises;

IT IS ORDERED: That the following described lands lying and being in the County of Fillmore and State of Minnesota, described as follows, to wit:

The East 90 acres of the West 115 acres of the Southeast Quarter of Section 31, Township 103 North of Range 10 West, except a parcel described as follows: Beginning at a point which is 19.65 chains East of the Northwest corner of the Southeast Quarter, Section 31, Township 103 North of Range 10 West, thence running South 28 degrees 30 minutes West 132 feet, thence South 31 degrees 30 Minutes West 66 feet, thence South 38 degrees West 66 feet, thence South 48 degrees West 132 feet, thence South 54 degrees 30 minutes West 66 feet, thence South 69 degrees West 66 feet, thence South 85 degrees West 100 feet, thence North 378 feet, thence East 452 feet to the place of beginning; also, except the following described parcel: Beginning at a point which is 25 rods East of the Northwest corner of the Southeast Quarter of Section 31, Township 103 North of Range 10 West, thence South 445 $\frac{1}{2}$ feet, thence Northeasterly 338 feet, thence North 378 feet, thence West 432 $\frac{1}{2}$ feet to the place of beginning; also except the following described parcel: Commencing 24 feet East of the Southwest Corner of the East 90 acres of the West 115 acres of the Southeast Quarter of Section 31, Township 103 North of Range 10 West, thence East 311 feet, thence North 235 feet, thence West 285 feet, thence in a straight line running in a southwesterly direction to the place of beginning; also except the following described parcel: Beginning at the Southwest corner of the East 90 acres of the West 115 acres of the Southeast Quarter, Section 31, Township 103 North of Range 10 West, thence North to South line of highway, thence following said south line of highway in a southeasterly direction to a point on the West line of George Hopp's land, thence southwesterly to a point on the Township line which is 24 feet East of point of beginning, thence West 24 feet to place of beginning.

Also the East 45 acres of the Southeast Quarter, Section 31, Township 103 North of Range 10 West.

Also, commencing at a point 24 feet East of the Southwest corner of the East 90 acres of the West 115 acres of the Southeast Quarter of Section 31, Township 103 North of Range 10 West, thence East 311 feet, thence North 235 feet, thence West 285 feet to the point of beginning of the land hereby conveyed, thence running in a Southwesterly direction on the West line of George Hopp's land 72 feet, thence in a North-easterly direction 190 feet to a point on the North line of George Hopp's land which is 175 feet East of the point of beginning of the land herein described, thence West in a direct line 175 feet to the point of beginning .

Excepting therefrom all of that property which lies 300 feet North of and abutting U. S. Highway No. 16 and 52 which highway constitutes the South boundary line of the aforementioned real estate.

be detached from the Village of Preston, Fillmore County, Minnesota, to become a part and parcel of Carrolton Township, Fillmore County, Minnesota.

IT IS FURTHER ORDERED: That the following described lands lying and being in the County of Fillmore and State of Minnesota, described as follows, to wit:

All of that property which lies 300 feet North of and abutting on U. S. highway No. 16 and 52 which highway constitutes the South boundary line of the aforementioned real estate,

be and remain part and parcel of the Village of Preston, Fillmore County, Minnesota.

Dated this _____ day of June, 1962.

MINNESOTA MUNICIPAL COMMISSION

F. Robert Edman, Secretary

MEMORANDUM OPINION

Section 6, Subdivision 1 of the Minnesota Municipal Commission Act provides that, "Property which is situated within the corporate limits of and adjacent to the municipal boundary, unplatted, and occupied and used exclusively for agricultural purposes may be detached from the municipality" by petition of all of the land owners if the area is less than 40 acres and by 75% of the owners if over 40 acres.

The sole question involved is whether or not the land is "used exclusively for agricultural purposes."

Section 6, Subdivision 4 directs that, "the Commission shall grant the petition for detachment if it finds that the requisite number of property owners have signed the petition if initiated by the property owners, that the property is unplatted and used and occupied exclusively for agricultural purposes, that the property is within the boundaries of the municipalities and is adjacent to a boundary, that the detachment would not unreasonably affect the symmetry of the settled municipality, and that the land is not needed for reasonably anticipated future development."

The Commission has expressed its reluctance in the past to grant detachment except where it is clearly obligated by the statute to do so. The obvious reason is that the Commission favors strengthening existing municipalities and is reluctant to deprive them of needed taxpayers from lands which have always been included within their limits. We, therefore, strictly construe the law against detachment except where a clear and convincing case is made that the land is used and occupied exclusively for agricultural purposes and there is no reasonable prospect that it will be used for community development within the municipality. In such cases we have no choice under the statute but to order detachment.

We are aware that we can deny detachment which would unreasonably affect the symmetry of the settled municipality, but, if the other reasons for detachment exist, the municipality would be obligated to show by evidence that its symmetry would be unreasonably affected.

While it is not necessary to decide here what would constitute unreasonable effect upon the symmetry in the absence of such a claim by the Village of Preston, the Legislature no doubt intended that the use of this provision is restricted to such situations as where property owners seek to detach land completely surrounded by the remaining municipality, or where strips of land which run a substantial length into the municipality and are surrounded on three sides which requires crossing the detached property to get from one part of the municipality to another, or other situations which unduly distort village boundaries. The application of the symmetry provision will have to rest on the individual facts in detachment proceedings.

The crucial question here is whether or not the subject land is used and occupied exclusively for agricultural purposes and is needed for reasonably anticipated future development.

The answer is unquestionably in the affirmative. There is no evidence that the land will be used within the predictable future for residential or commercial purposes to extend the settled portion of the Village of Preston. We are, therefore, left without choice but to issue an order detaching the subject land from the Village of Preston.

MINNESOTA MUNICIPAL COMMISSION


Irving R. Keldsen
S e c r e t a r y