

12-6050-16746-2

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR MUNICIPAL BOUNDARY ADJUSTMENTS UNIT

In the Matter of the Petition of Edward A.
Jonas and Danny K. Burman for the
Detachment of Certain Land from the City
of Effie Pursuant to Minn. Stat. Ch. 414

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

The above-entitled matter came on for hearing before Administrative Law Judge Steve M. Mihalchick September 22, 2005, at the Itasca County Courthouse, Grand Rapids, Minnesota. The final brief was received on December 2, 2005, and the hearing record was closed on that date.

John P. Dimich, Dimich, Swanson, and Sterle, 102 NE 3rd St, Suite 120, Grand Rapids, MN 55744, appeared representing Petitioners Edward A. Jonas and Danny K. Burman. Kent E. Nyberg, Effie City Attorney, 20 NE 4th St., Suite 101, Grand Rapids, MN 55744, appeared representing the City of Effie (the City).

NOTICE

This Order is the final administrative decision in this matter under Minn. Stat. § 414.12 and the delegation to the Administrative Law Judge by the Director of the Municipal Boundary Adjustments Unit of the Office of Administrative Hearings. Any person aggrieved by this Order may appeal to the Itasca County District Court by filing an application for review with the Court Administrator within 30 days of the date of this Order. An appeal does not stay the effect of this Order.¹

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.² However, no request for amendment shall extend the time of appeal from these Findings of Fact, Conclusions of Law and Order.

STATEMENT OF ISSUES

Whether, under Minn. Stat. § 414.06, the property that Petitioners seek to have detached from the City is rural in character and not developed for residential urban, commercial, or industrial purposes. The Administrative Law Judge concludes that the property is rural in character and has not been developed for residential urban, commercial, or industrial purposes.

¹ Minn. Stat. § 414.07, subd. 2.

² Minn. R. 6000.3100.

Whether, under Minn. Stat. § 414.06, detachment of the property would render the remainder of the City unable to carry on the functions of government without undue hardship. The Administrative Law Judge concludes that detachment would render the remainder of the City unable to carry on without undue hardship.

Whether, under Minn. Stat. § 414.06, the property should be detached from the City. The Administrative Law Judge concludes that it should not.

Based upon all of the testimony, exhibits and the record in this proceeding, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On May 16, 2005, Petitioners filed a Petition for Detachment of property they own (the Subject Property) from the City of Effie. The Petition contained the items required by Minn. Stat. § 414.06, subd. 1. However, it contained an error in the property description. Therefore on May 23, 2005, petitioner filed a revised first page containing a corrected property description.³

2. On July 8, 2005, the Executive Director of the Municipal Boundary Adjustments Unit conducted a brief preliminary hearing in Grand Rapids. On July 13, 2005, the Director of the Municipal Boundary Adjustments Unit reviewed the file and determined that this matter should be referred to an Administrative law judge for hearing and final decision. On July 18, 2005, the Director referred this matter to the Chief Administrative Law Judge for Assignment of an Administrative Law Judge. The matter was assigned to the undersigned Administrative Law Judge. A prehearing conference was held August 4, 2005, by telephone. It was determined that the hearing would be held September 22, 2005, in Grand Rapids, Minnesota.

3. On September 22, 2005, prior to the hearing, the Administrative Law Judge visited the City and viewed the entire area in general and Petitioners' properties in particular.

4. Petitioners seek detachment from the City because they feel the majority of their land is fields or low land and not likely to be developed, because they receive no services from the City, and because they wish to avoid a City-wide sewer assessment for a planned sewer system.⁴

5. The City opposes the detachment because it believes that participation of Petitioners in the planned sewer system is essential to the health and safety of the other residents of the City.

6. The City is basically a square, two miles on a side, consisting of Sections 22, 23, 26, and 27 in Township 62 North, Range 26 West, in Itasca County. A 200 acre irregular parcel in the southwest corner (Section 27) of the City was previously detached

³ Items 1 and 5 in Municipal Boundary Adjustments Unit file.

⁴ Testimony of Jonas and Burman.

from the City, so it is no longer a full, regular square.⁵ The area around the City is not organized, so no township government is involved in this matter.⁶

7. State Highway 1 runs east and west across the middle of the City along the section line. A short portion of the highway on the east side of the City, about 2000 feet long, dips slightly to the south about 250 feet. Along the north-south section line, a city street, Summit Avenue, extends north and south from Highway 1. That intersection is at the section corner of the four sections and is the physical center of the City. West of Summit Avenue, about 990 feet, County Road 5 runs north from Highway 1 and State Highway 38 runs south. There are two or three other short streets in the City.

8. The 1990 population of the City was 130, the 2000 population was 91, the 2003 population was 86, and the 2004 population was 84. At the same points in time, the number of households in the City was 47, 36, 35, and 34. Currently, there are about 52 households in the City, counting 20 seasonal homes.⁷

9. A majority of the homes (roughly 25 to 30) and businesses in the City are on small parcels of land located within a quarter-mile (1320 feet) of the center of the City at the intersection of Highway 1 and Summit Ave. It appears that about 15 to 20 homes are located along County Road 5 to the north of Highway 1, and a few are located along Highway 38 south of Highway 1. The remaining five to 10 households are spread out throughout the City, mostly on 20, 40, or 80 acre parcels.⁸

10. Only the area located within a quarter-mile of the center of the City may be described as residential urban. The remainder of the City is rural. It is forest land or wetland with a few dwellings, outbuildings, or business structures. Much of the land is state or tax forfeited county land, or owned by lumber and paper companies, and has few roads or trails. Much of the timber has been cut and there is a regrowth of trees in some areas.⁹

11. The City had an ordinance prohibiting hunting within the City that dated back to the 1960s. In 2003, the ordinance was modified to allow hunting and shooting beyond one half mile from the intersection of Highway 1 and Hwy 38. There were several complaints about that and a public hearing was held. No one at that hearing voiced support for allowing hunting anywhere within the City, so the ordinance was changed to again prohibit it.¹⁰

12. The Jonas property is two side-by-side 40 acre quarter-quarters, or "40s," located on the north side of State Highway 1 on the eastern edge of the City. The Jonas property is 80 acres situated in Itasca County described as follows:

⁵ The previously detached property is labeled as the John & Meryl Ostendorf property in Section 27 on Exhibit 2.

⁶ Testimony of Matt Nyberg and others.

⁷ Items 19 and 21 in MBA file; State Demographer website.

⁸ Exhibit 1.

⁹ Exhibit 1; testimony of several witnesses.

¹⁰ Testimony of Matt Nyberg.

The Southeast Quarter of the Southeast Quarter (SE $\frac{1}{4}$ SE $\frac{1}{4}$) and the Southwest Quarter of the Southeast Quarter (SW $\frac{1}{4}$ SE $\frac{1}{4}$) of Section 23, T 62 N, R 26 W.

The Burman property consists of the 40 acre quarter-quarter west of the Jonas property and a 3.09 acre triangular piece of land south of that in Section 26 where State Highway 1 curves to the south and back. The Burman property is 43.09 acres situated in Itasca County described as follows:

The Southeast Quarter of the Southwest Quarter (SE $\frac{1}{4}$ SW $\frac{1}{4}$) of Section 23, T 62 N, R 26 W and that portion of the Northeast Quarter of the Northwest Quarter (NE $\frac{1}{4}$ NW $\frac{1}{4}$) of Section 26, T 62 N, R 26 W, lying north of State Highway 1.

Together, the Jonas property and the Burman property make up the Subject Property. The Subject Property extends from the eastern edge of the City three quarters of the way to the center of the City, a distance of three quarters of a mile.¹¹

13. Mr. Jonas has owned his property since 1997. He has a home and garage on the south edge of the property with a driveway to Highway 1. The west 40 is mostly peat land or wetland and is not developable. It had a stand of black spruce on it, which Mr. Jonas had logged-off in early 2001, along with some aspen. The logged-off areas have been reseeded with evergreens that now have several years of growth. The east 40 is mostly pasture to the south and trees to the north. The pasture is used for horses, and Mr. Jonas intends to continue to use it as such. The property to the east of the Jonas property, outside the City, is a farm that has several horses on it. Those are apparently the horses that are pastured on the Jonas property.¹²

14. Mr. Jonas' 2004 property taxes were \$932. He feels he receives no services from the City because fire protection services are provided by the Big Fork Fire Department, police services are provided by the county sheriff, and he has his own well and septic system. He is unaware of any problem with his septic system. He expressed some frustration with the fact that a community sewer system has been under consideration for many years, but without any apparent progress. He is also unhappy with the City's current prohibition on hunting because his property is good hunting land and he would like to use it as such.¹³

15. Mr. Burman bought the 3.09 acre parcel along Highway 1 in 1987. His home is there along with a large garage that he built in which he can work on the semi truck and trailer that he owns and operates. The front small parcel is mostly lawn and trees. He bought the 40 acre parcel in 2002. It is about half low wetland with some spruce trees and about half higher ground with aspen regrowth and other vegetation. Mr. Burman would like to use the land for hunting, but is unable to do so because of the current ordinance.

¹¹ Exhibit 2; Petition (Item 1 in MBA file).

¹² Testimony of Edward Jonas; exhibits 1, 2, and 30-35.

¹³ Testimony of Edward Jonas.

16. Mr. Burman's 2004 property taxes were \$366. Mr. Burman does not believe that the City provides him any services because his fire services are provided by the Big Fork Fire Department, police protection is provided by the county sheriff, the road is maintained by MnDOT, and he has his own well and septic system.¹⁴

17. The City is in the process of designing and installing a sewer system. Construction is expected to occur in 2006 or 2007. The sewer system is necessary because dangerously high levels of fecal coliform bacteria have been found in the creeks that run through the City and the source of the bacteria is the failing septic systems in over 90 percent of the homes and businesses in the City. The situation is made worse by the fact that much of the ground is a heavy clay that has a high water table and many springs. On May 28, 2003, a Waste Treatment Specialist surveyed the sewer systems at 72 sites in the City, eight of which were commercial business sites with employees. Four of the sites had passing mound systems, 62 had failing systems that discharged sewage to the ground surface, and six sites had no sewer system at all. The 62 failing sites were labeled as "creating an imminent threat to public health" by the Waste Treatment Specialist, but no individual systems were written up or ordered to be corrected. The Jonas and Burman septic systems both discharge sewage to the ground surface and were considered failing systems. They both contribute to the pollution of the City's groundwater.¹⁵

18. The City has obtained two \$400,000 grants from the USDA Rural Development and Midwest Assistance Programs to fund the sewer system. The City was able to obtain the grants because the water pollution problem was so serious. The currently estimated cost of the system is \$1.1 million to \$1.3 million. If there is any shortfall in the funding, it is expected that additional grant money will be provided. Residents of the City will be required to make payments at a rate determined by the medium household income in the City. It has been determined that the rate will be approximately \$44 per unit per month for 20 to 30 years. Residences such as the homes on the Jonas property and the Burman property are considered single units. Thus, Petitioners will each be paying \$44 per month.¹⁶

19. City officials fear that if the Petition is granted, additional costs will be passed on to the remaining citizens and it is likely that more citizens will seek detachment, creating further financial problems and affecting future growth of the City. In addition, failure of the Petitioners to hook up to the new sewer system will increase the health hazards to the other citizens.¹⁷

20. The City pays for fire protection under a contract with the Big Fork Fire Department. It also provides some public facilities, including a community center and parks. It maintains the city streets, but not Highway 1 in front of the Subject Property. The City's proposed tax levy for 2006 is \$15,000.

¹⁴ Testimony of Danny Burman; exhibits 1, 2, 5-29a, and 32.

¹⁵ Testimony of Matt Nyberg and William Hastings; City's Factual Information Packet (Item 21 in MBA file).

¹⁶ Testimony of Matt Nyberg.

¹⁷ Testimony of Matt Nyberg and Gino Anselmo.

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

CONCLUSIONS OF LAW

1. The Administrative Law Judge has jurisdiction in this matter under Minn. Stat. §§ 414.06 and 414.12 and the assignment by the Director of the Municipal Boundary Adjustments Unit to the Office of Administrative Hearings.

2. Petitioners have the burden of proof to demonstrate all facts at issue by a preponderance of the evidence.

3. Minn. Stat. § 414.06, subd. 3 provides, in pertinent part:

Upon completion of the hearing, the director 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. The director may deny the detachment on finding that the remainder of the municipality cannot continue to carry on the functions of government without undue hardship. The director may decrease the area of property to be detached and may include only a part of the proposed area to be detached.

4. This proceeding was properly initiated under Minn. Stat. § 414.06, subd. 1, by a Petition for Detachment signed by all the owners of the Subject Property.

5. The Subject Property is rural in character; it has not been developed for urban residential, commercial, or industrial purposes.

6. The Subject Property is within the boundaries of the City and abuts a boundary of the City.

7. The detachment of the Subject Property would not unreasonably affect the symmetry of the City. Detaching the Subject Property would create a slot from the edge of the City three quarters of the way to the center of the City, which would significantly change the shape of the City. But there are no services being provided in that area and no roads to other facilities to be maintained. It does not appear that it would be necessary to cross the area to provide any City services to the north or south.

8. The Subject Property is needed for reasonably anticipated future development, namely, the planned a citywide sewer system.

9. If the Subject Property were detached, the remainder of the City could not continue to carry on the functions of government without undue hardship. Installation of

a citywide sewer system is a function of government. In this case, the sewer system is necessary to protect the health and safety of all the residents of the City. If the Subject Property is detached and Petitioners are not required to connect the sewer system, their existing systems will continue to add to the pollution of the groundwater in the City. Detachment of the Subject Property would increase the financial burdens on the remaining citizens and would negatively affect the health and safety of the remaining residents and visitors to the City. That is an undue hardship.

10. Because the Subject Property is needed for reasonably anticipated future development, and because the remainder of the City could not continue to carry on the functions of government without undue hardship, the Petition must be denied.

11. Any conclusion more properly denominated a finding is adopted as such.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

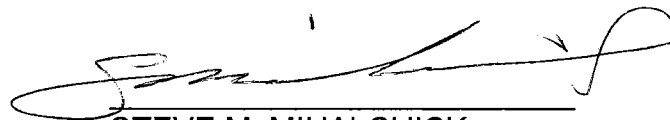
ORDER

IT IS HEREBY ORDERED that:

1. The Petition of Edward A. Jonas and Danny K. Burman for the detachment of the Subject Property from the City of Effie is **DENIED**.

2. The Executive Director of the Municipal Boundary Adjustments Unit shall cause copies of this Order to be mailed to all persons described in Minn. Stat. § 414.09, subd. 2.

Dated: January 6, 2006



STEVE M. MIHALCHICK
Administrative Law Judge

Tape recorded (two tapes) not transcribed

MEMORANDUM

The septic systems on both the Jonas property on the Burman property are like over 90 percent of the septic systems in they City: they are failing systems that do not meet current requirements for individual sewage treatment systems. Mr. Berman did not dispute that his system discharged to the ground, he disagreed as to where the discharge took place. Mr. Jonas has two tanks that he has pumped, but he has no drain field. He had no knowledge as to when the tanks were installed and did not claim that his tanks have been approved to be used as holding tanks. If they do not hook up to the City's sewer system, Petitioners will eventually be required to upgrade their

systems. That would likely cost them several thousand dollars each. The \$44 per month sewer fee is significant, but not excessive when compared with the cost of upgrading an individual system.

Petitioners' desire to use their land for hunting is significant and is a common issue among citizens in areas that are sparsely populated. It is not an issue that is a factor in a detachment proceeding. It may be an issue that could be brought before the City Council again.

S.M.M.