

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MUNICIPAL BOUNDARY ADJUSTMENTS UNIT

In the Matter of the Petition for the
Detachment of Certain Lands from the City
of Florence pursuant to Minnesota
Statutes Chapter 414

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

A petition for detachment was filed by the Petitioners on March 27, 2012, seeking to detach approximately 40 acres from the City of Florence to Shelburne Township in Lyon County, Minnesota. On May 24, 2012, the Municipal Boundary Adjustment Unit convened a preliminary hearing on the Petition. On February 13, 2013, the hearing was reconvened before Administrative Law Judge Barbara L. Neilson at the Lyon County Government Center in Marshall, Minnesota. Glen Petersen, Attorney at Law, Petersen Law Office, appeared on behalf of the City of Florence, Minnesota (City). Paul E. Stoneberg, Attorney at Law, Stoneberg, Giles & Stroup, P.A., appeared on behalf of Laureen and Randy Thooff (Petitioners). No one appeared on behalf of Shelburne Township.

At the outset of the hearing, the City and the Petitioners stipulated to the admission of the City's Exhibits 1 through 9 and Petitioners' Exhibits A through MM. The City and the Petitioners also stipulated that:

- a. The requisite number of property owners signed the petition for detachment;
- b. The property sought to be detached is rural in character and not developed for urban residential, commercial or industrial purposes;
- c. The property sought to be detached is within the boundaries of the City of Florence and abuts the westerly and southerly boundaries of the City; and
- d. The property sought to be detached is not needed for reasonably anticipated future development.

The sole remaining issues for determination by the Administrative Law Judge are whether detachment of the property would unreasonably affect the symmetry of the detaching municipality; and whether the detachment should be denied because the remainder of the municipality cannot continue to carry on the functions of government without undue hardship.

STATEMENT OF ISSUES

This case presents the following issues:

1. Would the proposed detachment unreasonably affect the symmetry of the City within the meaning of Minn. Stat. § 414.06, subd. 3?
2. Should the detachment be denied under Minn. Stat. § 414.06, subd. 3, because the remainder of the municipality cannot continue to carry on the functions of government without undue hardship?
3. How should the costs associated with this matter be allocated between the parties?

The Administrative Law Judge concludes that the Petition for Detachment should be granted. Detachment of the property would not unreasonably affect the symmetry of the City, and there has not been an adequate showing that the detachment should be denied because the remainder of the municipality cannot continue to carry on the functions of government without undue hardship. In addition, the Administrative Law Judge, with the concurrence of the Chief Administrative Law Judge, finds that the costs associated with this proceeding should be split evenly between the City of Florence and the Petitioners.

Based upon all of the files, records and proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. The City of Florence, Minnesota, is located in Lyon County, approximately 20 miles southwest of Marshall, Minnesota. It is situated along the south side of U.S. Highway 14 and just west of the intersection of U.S. Highway 14 with Minnesota Highway 23. The City currently has a population of 39 people living in approximately 14 households. Most residents are adults who work elsewhere. The average market value of property in the City is approximately \$50,000.¹

2. On March 27, 2012, the Petitioners (Property Owner Laureen Thooft and Randy Thooft, Ms. Thooft's husband) filed a Petition for Detachment with the Municipal Boundary Adjustment Unit of the Office of Administrative Hearings. In their initial Petition, the Petitioners stated that they wish to detach 39.19 acres from the City of Florence (City).² In subsequent filings and during the hearing, the Petitioners indicated that the total acreage of the two parcels they seek to detach is 40.15 acres.³

¹ Testimony (Test.) of Shirley Pagel (City Clerk).

² Petition for Detachment.

³ Factual Information Form submitted by Petitioners to the Municipal Boundary Adjustment Unit on May 31, 2012; Test. of Laureen Thooft. The Parcel Report and Property Tax Statements relating to the property at issue also indicate that the total acreage of the two parcels sought to be detached is 40.15. Exhibits (Exs.) J-N, P, R-V, and X.

3. On May 24, 2012, the Municipal Boundary Adjustment Unit convened a preliminary hearing on the Petition. Notice of the preliminary hearing was published in the *Tyler Tribute* on May 9 and 16, 2012. The hearing was continued indefinitely at that time.

4. The hearing was reconvened on February 13, 2013, in Marshall, Minnesota. Notice of the reconvened hearing was published in the *Tyler Tribute* on January 30 and February 6, 2013.

5. The Petitioners live in Balaton, Minnesota, which is located several miles east of the City. They are not eligible to vote in the City's local elections.⁴

6. The property proposed for detachment (Subject Area) is described as follows:

TRACT I

All that part of the South Half of the Northwest Quarter (S½NW¼) of Section Twenty (20), Township One Hundred Nine (109) North, Range Forty-three (43), West in Lyon County, Minnesota, described as follows: Commencing at the West quarter corner of said section 20 and running thence east and along east and west quarter line to the westerly right of way line of the Great Northern Railroad; thence in a northeasterly direction and along the westerly right-of-way line to its intersection with south line of Block 2 of Sanden's 1st Addition to the Village (now City) of Florence; thence west and along the South line of Block 2 to the southwest corner of said Block 2, thence north 222 feet to the southwest corner of Block 1 of Sanden's 1st Addition; thence west and parallel with south line of Blaine Street to the west line of said section 20; thence south along said section line to the place of beginning.

(Parcel No. 23-020002-0)

AND

TRACT II

Lots 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25 and 26, in Block One (1) of Paul K. Ronnings Addition to the Village (now City) of Florence.

AND

Commencing at the northeast corner of the Southwest Quarter of the Northwest Quarter (SW¼NW¼) of Section Twenty (20), Township One Hundred Nine (109), Range Forty-three (43) Lyon County, Minnesota; running thence West 80 rods; running thence South 152 feet, running thence east 80 rods and thence running north to point of beginning, EXCEPTING the east 150 feet by 152 feet, all in the Village (now City) of Florence.

⁴ Test. of L. Thooft.

(Parcel No: 23-020003-1)⁵

7. The Subject Area abuts the City's south and west boundaries. County Road 52 runs along the north side of the property and County Road 51 runs along the west side of the property. The property sought to be detached is bordered by Shelburne Township on the south and west.⁶

8. The Subject Area has always been used solely for agricultural purposes. The Petitioners purchased the property at a land auction in 2002. They farm the Subject Area themselves, and the land is currently under the Farm Program.⁷

9. Although Tract II was platted as lots in 1915, neither Tract I nor Tract II has ever been developed. No one lives on the property, and there are no structures or improvements on either Tract.⁸

10. The market value of residential property in Lyon County has remained the same or increased only slightly in recent years. In contrast, the market value of tillable agricultural land in Lyon County has increased significantly in recent years (approximately 23 percent last year and likely 35- to 40-percent next year). The increase in the market value of agricultural land is one of the primary reasons for the Petitioners' increased tax assessments in recent years.⁹

11. Between 2009 and 2013, the estimated market value of Tract I has increased 85.7 percent (from \$90,500 in 2009 to \$168,100 in 2013), and the City's property taxes on Tract I have increased 227 percent (from \$877 in 2009 to \$2,872 in 2013). During the same period of time, the estimated market value of Tract II has increased approximately 84 percent (from \$6,900 in 2009 to \$12,700 in 2013), and the City's property taxes on Tract II have increased 255 percent (from \$61 in 2009 to \$217 in 2013).¹⁰

12. Other significant taxpayers in the City include the Burlington Northern Railroad, which paid the City \$1,907 in property taxes for 2011 and is expected to pay \$2,696 for 2012; and Northern States Power Company (NSP), which paid the City \$1,181 in taxes for 2011 and is expected to pay \$1,576 for 2012.¹¹

⁵ Petition for Detachment, Ex. A.

⁶ Test. of L. Thooft, Ex. II. A separate petition filed by other property owners to detach approximately 24 acres of agricultural land from the City was granted by another Administrative Law Judge in early 2012. See *In the Matter of D-482 Florence/Shelburne Township*, OAH Docket No. 46-0330-22363 (Feb. 6, 2012). The property detached in that proceeding is located to the east of the Petitioners' property, on the other side of Minnesota Highway 23.

⁷ Test. of L. Thooft; Ex. I (Personal Representative's Deed); Exs. A-H (photographs of the Subject Area); Exs. Y – HH (contracts with the U.S. Department of Agriculture Commodity Credit Corporation under the Direct and Counter-Cyclical Program for 2003-2012).

⁸ Test. of L. Thooft; Ex. Q.

⁹ Test. of Dean Champine (Lyon County Assessor); Test. of S. Pagel.

¹⁰ Exs. J-M, R-V, and MM; Test. of L. Thooft.

¹¹ Test. of S. Pagel.

13. The City's tax levy in 2009 was \$10,000. Its proposed levy for 2013 is \$16,500, which represents a 65% increase over a five-year period.¹²

14. One of the reasons for the increase in the City's tax levy is its purchase in 2010 of a new tractor and snow blower to use for snow removal on City streets. The City borrowed \$28,000 for the purchase. It made total payments of \$6,800 on the tractor loan during 2010, and payments of \$6,100 per year during 2011 and 2012. The City's proposed budget for 2013 includes loan payments of \$6,100. The City Clerk projects that the loan payments will continue during the next four years. The balance that is currently due on the loan is less than \$19,000.¹³

15. The City maintains some paved and gravel City streets, including Roosevelt Street. Roosevelt Street is a narrow road (approximately 16 feet wide) that dead-ends near the eastern border of the Subject Area. It has a single layer of pavement approximately 2" deep. The City also provides snow removal on roads other than the County Roads, including Roosevelt Street.¹⁴ During 2010, 2011, and 2012, the cost of repairs to City streets averaged \$270 per year.¹⁵

16. The Petitioners use Roosevelt Street approximately two days per crop year, when they bring a combine to the Subject Area and when they haul grain out of the Subject Area to County Road 51. When hauling the grain out, they use a semi with a gross axle weight of 80,000 lbs. Although the Subject Area has direct access to County Road 51, the Petitioners use Roosevelt Street when moving equipment to and from the Subject Area in part due to safety concerns about the configuration of the existing access and the 55 mph speed limit on County Road 51, and in part because of the tax burden imposed on them by the City.¹⁶

17. If the detachment is allowed, the Petitioners will no longer use Roosevelt Street and will agree that the City can block off that street. The Petitioners intend to seek approval from the County to put in a driveway that would allow them to access County Road 52 directly from the Subject Area.¹⁷

18. Rural water service is available to residents of the City, Shelburne Township, and surrounding area in Lyon County through the Lincoln-Pipestone Rural Water System. The City of Florence manages its own water connections to that system and charges a flat rate of \$16 to connect City residents. Residents monitor their own water use and read their own meters. The City bills residents for their water usage, and the City then pays the Lincoln-Pipestone Rural Water System. Although the City does

¹² Ex. 1; Test. of S. Pagel.

¹³ Ex. 1; Ex. 3 at 11; Ex. 6; Test. of S. Pagel.

¹⁴ Test. of S. Pagel.

¹⁵ Ex. 1.

¹⁶ Test. of L. Thooft.

¹⁷ *Id.*

not own the water system, the City does pay for repairs to the line within its boundaries. During 2010, 2011, and 2012, the cost of the repairs averaged \$370 per year.¹⁸

19. Some individuals who live along Roosevelt Street to the east of the Subject Area have water lines to their property.¹⁹ However, the Subject Area does not receive water service, and there is no evidence that water lines have been stubbed into the vicinity of the Subject Area.²⁰

20. The City does not provide sanitary sewer or garbage service to the Subject Area.²¹

21. The City calls the Lyon County Sheriff's Department for police emergencies. It does not pay for this service. The City has a contract with the nearby city of Tyler for fire protection and pays \$247 per year for that service.²²

22. The City's tax receipts were \$19,760 in 2009; \$21,864 in 2011; and \$24,742 in 2012. Local government aid was \$9,643 in 2010 and has remained at \$9,193 since that time.²³

23. The City's disbursements in 2012 were \$25,480.38. They included costs related to salary and fees for the Mayor, City Clerk, and City Council members; election costs; auditor and assessor expenses; attorneys' fees; electricity; mowing; supplies and repairs to the City park; snow removal; tractor-related costs; tank rent; street repairs; water-related costs and repairs; and fire protection.²⁴

24. During the past two or three years, the City has been involved in litigation with Dale Peterson. The matter is currently pending before the U.S. Court of Appeals for the Eighth Circuit. The City is represented in the case through the League of Minnesota Cities. Once the case is concluded, the City will be responsible for paying a deductible and a portion of the legal expenses. The League notified the City in November 2012 that its share of the litigation costs thus far was \$8,112 (including the amount of the deductible). It is unusual for the City to engage in litigation or incur legal fees of this size.²⁵

25. The City's assets include approximately \$12,000 in savings. The City also owns six tax parcels: the parcel on which the City Hall and shop are located; the parcel on which the City park is located; and four other parcels that do not have any

¹⁸ Ex. 1; Test. of S. Pagel; Test. of L. Thooft; Test. of Diana Slyter (City resident and City Council member).

¹⁹ Test. of D. Slyter.

²⁰ Test. of L. Thooft.

²¹ *Id.*; Test. of S. Pagel.

²² Test. of S. Pagel.; Ex. 1.

²³ Ex. 1; Test. of S. Pagel.

²⁴ *Id.*

²⁵ Ex. 7; Test. of S. Pagel.

improvements. The City Clerk was not aware of the market value of those parcels. She does not believe that the City has considered selling any of these properties.²⁶

26. Diane Wixon, a former City Clerk who was convicted of the theft of approximately \$65,000 from the City, has paid the City approximately \$10,000 in restitution thus far. She continues to owe the City more than \$60,000.²⁷

27. The City's net tax capacity rate in 2011 was 121.758, the third highest in Lyon County (the cities of Garvin and Tracy were higher). In contrast, Shelburne Township's net tax capacity rate in 2011 was 7.365. Townships tend to have much lower net tax capacity rates than municipalities because their responsibilities are generally limited to road maintenance.²⁸

28. The total estimated market value for all properties in the City in 2011 was approximately \$957,000. The estimated market value of the Subject Area in 2011 was approximately \$130,200, which was about 13.6 percent of the total City value. If the Subject Area is detached, the County Assessor estimated that the City's net tax capacity rate would likely need to increase by a corresponding amount. If that occurs, the City would probably have the second highest net tax capacity rate in the County.²⁹

29. In August of 2012, the City adopted an ordinance establishing a rural service taxing district within the City. The two parcels involved in this proceeding are identified in the ordinance as qualifying for the rural service taxing district. The City ordinance specifically states that it may be amended to remove lands from the rural service district or to change the benefit ratio between parcels of land situated in the rural service taxing district and those situated in the urban service taxing district. If the Petitioners remained in the City and took advantage of the rural service taxing district, the portion of their tax assessment attributable to the City would be decreased by approximately 40 percent.³⁰ The ordinance does not affect the amount of any of the other taxes imposed by the County, School District, or Watershed District.³¹

30. Despite the passage of the ordinance, the Petitioners continue to request that they be permitted to detach the Subject Area from the City.³²

31. If the detachment is allowed, it is clear that the loss of tax revenues from the Subject Area will have a financial impact on the City's tax revenues. However, the evidence presented was insufficient to demonstrate that the remainder of the City would be unable to carry on the functions of government without undue hardship if the detachment is allowed. It is likely that the City could continue to function by increasing the taxes assessed to its remaining taxpayers.

²⁶ Test. of S. Pagel.

²⁷ Test. of S. Pagel.

²⁸ Ex. KK; Test. of D. Champine. The City also had the third highest net tax capacity rate in the County in 2009. Ex. LL; Test. of D. Champine.

²⁹ Test. of D. Champine.

³⁰ Ex. 2; Test. of S. Pagel.

³¹ Test. of D. Champine.

³² Test. of L. Thooft.

32. The parties did not reach agreement prior to the hearing on a division of the costs of this proceeding.

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

CONCLUSIONS

1. The Administrative Law Judge has jurisdiction in this matter under Minn. Stat. §§ 414.06 and 414.12 and by assignment from the Chief Administrative Law Judge of the Office of Administrative Hearings.

2. Proper notice was given for the hearing in this matter, and this case is properly before the Administrative Law Judge.

3. The Petitioners have the burden of proof to demonstrate by a preponderance of the evidence that the statutory criteria for detachment have been met.

4. Under applicable law, detachment of property from a municipality may be ordered if the following criteria are met:

- (1) the requisite number of property owners have signed the petition if initiated by the property owners;
- (2) the property is rural in character and not developed for urban residential, commercial or industrial purposes;
- (3) the property is within the boundaries of the municipality and abuts a boundary;
- (4) the detachment would not unreasonably affect the symmetry of the detaching municipality; and
- (5) the land is not needed for reasonably anticipated future development.³³

The statute further specifies that the 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.³⁴

5. This proceeding was initiated by a Petition for Detachment signed by all of the property owners of the subject area. The Petition complies with Minn. Stat. § 414.06, subd. 1, and the first criterion set forth in Minn. Stat. § 414.06, subd. 3.

³³ Minn. Stat. § 414.06, subd. 3.

³⁴ *Id.*

6. The subject area is rural in character and has not been developed for urban residential, commercial or industrial purposes, as required by the second criterion set forth in Minn. Stat. § 414.06, subd. 3.

7. The subject area is within the boundaries of the City of Florence and abuts a boundary, as required by the third criterion set forth in Minn. Stat. § 414.06, subd. 3.

8. The detachment would not unreasonably affect the symmetry of the City of Florence, as required by the fourth criterion set forth in Minn. Stat. § 414.06, subd. 3.

9. The subject area is not needed for reasonably anticipated future development, satisfying the fifth criterion set forth in Minn. Stat. § 414.06, subd. 3.

10. The detachment of the subject area would not render the remainder of the municipality to carry on the functions of government without undue hardship, within the meaning of Minn. Stat. § 414.06, subd. 3.

11. The parties did not agree to a division of the costs before the hearing. After consultation with and approval by the Chief Administrative Law Judge, it is appropriate to allocate 50 percent of the costs of this proceeding to the Petitioners and the other 50 percent to the City.

12. The attached Memorandum explains the reasons for these Conclusions and is incorporated herein.

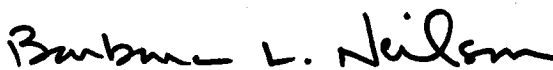
Based upon the foregoing Conclusions and for the reasons set forth in the Memorandum below, the Administrative Law Judge makes the following:

ORDER

IT IS HEREBY ORDERED as follows:

1. The Petition for the Detachment of the Subject Area from the City of Florence is GRANTED.
2. Copies of this Order shall be mailed to all persons described in Minn. Stat. § 414.09, subd. 2.
3. The costs associated with this proceeding shall be divided equally between the parties.

Dated: May 8, 2013



BARBARA L. NEILSON
Administrative Law Judge

Reported: Digitally recorded (no transcript prepared)

NOTICE

This Order is the final administrative decision in this case under Minn. Stat. § 414.06, 414.09, and 414.12. Any person aggrieved by this Order may appeal to the 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.³⁵

Any party may submit a written request for an amendment of the Findings of Fact, Conclusions of Law, and Order within seven days from the date of the mailing of the Order.³⁶ A request for amendment shall not extend the time of appeal from these Findings of Fact, Conclusions of Law, and Order.

MEMORANDUM

This is a detachment proceeding under Chapter 414 of the Minnesota Statutes to consider a petition filed with the Municipal Boundary Adjustment Unit. The City stipulated that all but two of the requirements of the detachment statute are satisfied in this case. Based upon the two disputed requirements, the City argues that the detachment should be denied, in whole or in part.

First, the City contends that the detachment would “unreasonably affect the symmetry of the detaching municipality,” within the meaning of Minn. Stat. § 414.06, subd. 3. The City did not provide any detailed explanation of its concerns and no witnesses testified about any administrative or other difficulties that would result if the detachment was allowed. The Petitioners denied that the detachment would leave the City with odd boundaries or otherwise have an unreasonable effect.

The term “symmetry” is not defined in the detachment statute or in any other portion of the Minnesota Statutes. The common definition of “symmetry” includes “balanced proportions” and “the property of being symmetrical; especially: 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.”³⁷

It is evident that the detachment of the Petitioners’ agricultural land, which is currently located in the southwest corner of the City, would change the shape and location of a portion of the southern boundary of the City. The current southern boundary of the City follows a straight line between County Road 51 on the west and State Highway 23 on the east; then angles to the northeast along the east side of Highway 23 to a location south of Blaine Street; and finally jogs to the east a short distance in a straight line to rejoin the City’s eastern boundary. Should the detachment of the Petitioners’ property be granted, the southern boundary of the City would follow a straight line along the south side of Blaine Street (County Road 52) for a distance; proceed at right angles in a descending stair-step pattern to the south and to the east to

³⁵ Minn. Stat. § 414.07, subd. 2.

³⁶ Minn. R. 6000.3100.

³⁷ Merriam-Webster On-Line Dictionary, <http://www.merriam-webster.com/dictionary/symmetry>.

the Burlington Northern Railroad right-of-way; and then follow the railroad right-of way in a southwesterly direction until rejoining the current southern boundary of the City.

The Administrative Law Judge concludes that granting the petition for detachment would not have an unreasonable effect on the symmetry of the City or interfere with the provision of City services in any way. As a result of the 2012 approval of the detachment of the agricultural land located across Highway 23 from the Subject Area, the City's southern boundary is already irregular in shape. As a result, symmetry is not a significant issue.³⁸ In addition, the southern boundary of the City after the proposed detachment would not involve complex angles or meandering borders, and the new boundaries would logically follow the edges of the Subject Area's farmland and the railroad right-of-way. Finally, there would be no need for the City to cross the Subject Area after detachment to provide any City services to others, and the City has not provided any evidence to support the existence of other logistical problems that would result from allowing the detachment.³⁹

Second, the City contends that the detachment petition should be denied in whole or in part because "the remainder of the municipality cannot continue to carry on the functions of government without undue hardship" within the meaning of Minn. Stat. § 414.06, subd. 3. The City points out that a significant portion of the City's tax revenues are derived from the taxes assessed to the Subject Area. For example, the City emphasizes that the City's total proposed levy for 2013 is \$13,500 and the Subject Area was assessed \$2,300 in property taxes for 2012.⁴⁰ In addition, the City alleges that detachment would pose a hardship because the City will need to continue maintaining the hard surface City street used by Petitioners to access the Subject Area (Roosevelt Street) without the ability to recoup the costs of maintaining the road through taxes.

The Petitioners argue in response that the City's arguments fall far short of showing that the detachment of their property will render the remainder of the municipality unable to carry on the functions of government without undue hardship. The Petitioners contend that, to show undue hardship under the statute, the City must

³⁸ Accord Findings of Fact, Conclusions of Law and Order in *In the Matter of the Petition of Dawson Grain Coop., Inc. for Detachment of Certain Land from the City of Dawson*, OAH Docket No. 12-2900-15004-2 at 8 (Feb. 12, 2003) (ALJ concluded that the detachment would not unreasonably affect the symmetry of the City because "[t]he shape of the City is already asymmetrical and symmetry is not an issue there").

³⁹ Accord Findings of Fact, Conclusions of Law and Order in *In the Matter of the Petition for Detachment of Certain Lands from the City of Lake Elmo*, OAH Docket No. 3-0330-21901 at 23 (Jan. 3, 2012) (ALJ concluded that a detachment did not have an unreasonable effect on the symmetry of the city's boundaries despite the fact that the detachment "create[d] a bit of a job around the Hauth property" and resulted in a "remnant parcel extending south of Highway 36"); Findings of Fact, Conclusions of Law and Order in *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*, OAH Docket No. 12-6050-16746 at 6 (Jan. 6, 2006) (ALJ concluded that detachment would not unreasonably affect the symmetry of the city even though detachment would create a slot from the edge of the city three quarters of the way to the center of the city, emphasizing that no services are being provided in that area and "[i]t does not appear that it would be necessary to cross the area to provide any City services to the north or south").

⁴⁰ It should be noted that the amount of the Petitioners' assessment would be reduced by 40 percent to \$1,407 under the rural taxing district ordinance.

demonstrate more than a mere loss of tax revenue or an increase in the taxes assessed to remaining property owners in the City. The Petitioners point out that two other cities in Lyon County (Garvin and Tracy) currently have higher net capacity tax rates than the City and, even if the City's net tax capacity rate increased by 13.6 percent due to the detachment, the City still would not have the highest net tax capacity rate in the County. The Petitioners also assert that the passage of the rural taxing district ordinance demonstrates that the City was confident that it could still function if it reduced the taxes of the Petitioners and other agricultural land-owners by 40 percent and contend that this undermines the City's contention that the detachment will cause undue hardship.

Based on the record as a whole, the Administrative Law Judge concludes that there has not been a sufficient showing that the City would be unable carry on the functions of government without undue hardship if the detachment is granted. For the most part, the evidence offered by the City focused only on the tax revenues that would be lost should the detachment be granted and the need to increase the taxes of the remaining taxpayers. Chapter 414 does not suggest that the mere loss of tax revenue constitutes undue hardship; the focus in the statute is on the hardship to the municipality, and not the hardship to other taxpayers.

There was no convincing evidence that the remainder of the City would be unable to carry on the functions of government without undue hardship in the event the detachment was granted. For example, City Council Member Diana Slyter merely testified that it was "iffy" whether the City could continue to operate without the Petitioners' property and questioned whether the City would start seeing tax forfeitures in the future if residents' taxes increased. Such speculative statements, without more, do not rise to the level of showing undue hardship. Moreover, the City Clerk indicated that the City could continue to function without the Petitioners and simply noted that other individuals would have to pay more. Although she expressed concerns about certain expenses the City will incur at some point in the future, such as the cost of street signs and payment of the invoice that will be issued by the League of Cities when the Peterson lawsuit is concluded, the City Clerk testified that the City is "okay right now" and essentially breaking even.

Apart from their minimal use of Roosevelt Street, the Petitioners receive no services from the City. The Petitioners have paid ample taxes in past years to cover any required past maintenance of the street. In addition, if the detachment is approved, they are willing to discontinue using Roosevelt Street altogether and seek County approval of a driveway leading to Highway 52 from the Subject Property. Moreover, because Roosevelt Street also provides access to Ms. Slyter's residence and is presumably used at times by others traveling the City roads, it cannot fairly be said that that street only benefits the Petitioners. Under the circumstances, the Administrative Law Judge does not agree that the City's maintenance of Roosevelt Street without tax revenues from the Subject Area constitutes undue hardship within the meaning of the statute.

Accordingly, the Administrative Law Judge finds that the City has not made a sufficient showing that it will be unable to carry on the functions of government without

undue hardship if the detachment is granted. Moreover, allowing the detachment of the Subject Area is consistent with the Legislature's view that municipal government "most efficiently provides governmental services in areas intensively developed for residential, commercial, industrial, and governmental purposes" while township government "most efficiently provides governmental services in areas used or developed for agricultural, open space, and rural residential purposes."⁴¹

The parties did not reach agreement prior to the hearing on a division of costs associated with the proceedings in this matter. Under Minn. Stat. § 414.12, subd. 3, the costs "must be allocated on an equitable basis" by the Chief Administrative Law Judge in such instances. In this case, the City assisted in narrowing the issues for hearing and streamlining the proceeding by stipulating that certain of the statutory factors were not disputed. After consulting with the Chief Administrative Law Judge, the Administrative Law Judge believes that it is appropriate to require that the costs associated with this proceeding be equally divided between the City and the Petitioners.

B. L. N.

⁴¹ Minn. Stat. § 414.01, subd. 1a(2).