OAH 71-0330-37967

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Detachment of Certain Real Property from the City of Breezy Point to Ideal Township (MBAU Docket D-634)

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER DENYING DETACHMENT

This matter came before Administrative Law Judge Jessica A. Palmer-Denig for a hearing on January 26 and 27, 2022, at the Breezy Point City Hall in Breezy Point, Minnesota. The hearing was also streamed to the public via Microsoft Teams. The parties engaged in post-hearing motion practice and filed closing briefs. The last filing was received on March 15, 2022, and the record closed on that date.

Jon Parrington appeared on behalf of property owners seeking detachment (Petitioners). Joseph J. Langel, Ratwik, Roszak & Maloney, P.A., appeared on behalf of the City of Breezy Point (City). The Ideal Town Board (Township) made no appearance.

STATEMENT OF THE ISSUES

1. Should portions of Petitioners' post-hearing filings be stricken from the record or deemed untimely?

2. Should the Petition for Detachment be granted or denied based on the factors established in Minn. Stat. § 414.06 (2020)?

SUMMARY OF CONCLUSIONS

The Administrative Law Judge concludes that exhibits attached to Petitioners' closing briefs should be stricken, and that other materials in Petitioners' final submission were untimely, as explained in the accompanying Memorandum. Further, Petitioners have not established that the property proposed for detachment is rural in character and not developed for urban residential purposes, and that the undeveloped land within the Subject Parcels is not needed for reasonably anticipated future development. Additionally, the City would experience undue hardship in carrying on the functions of government if the Petition for Detachment were granted. Therefore, the Petition for Detachment must be denied under Minn. Stat. § 414.06.

Based upon the files and record in this case, the Administrative Law Judge makes the following:

FINDINGS OF FACT

I. The Parties

1. The City is located in Crow Wing County, Minnesota.[1]

2. The City has a land area of 13.2 square miles,[2] and it borders Pelican Lake and Lake Ossawinnamakee.[3] The City is home to the Breezy Point Resort on Pelican Lake.[4]

3. According to census data, the City has 2,574 residents.[5] During the summer months, the population of the City can increase to over 5,000 residents.[6]

4. Petitioners are landowners in the City.[7]

5. Petitioners filed a Petition for Detachment of Certain Land from the City of Breezy Point, Minnesota (Petition for Detachment) on November 29, 2021.[8]

6. Petitioners seek to detach 89 parcels of land (the Subject Parcels) from the City, totaling approximately 83.97 acres.[9]

7. There are 135 property owners in the Subject Parcels.[10] 122 property owners signed the Petition for Detachment.[11] The Petition for Detachment was subsequently amended to include two additional property owner signatures.[12]

8. The City adopted Resolution 05-2022 on January 3, 2022, which opposes the Petition for Detachment.[13]

9. The Township adopted Resolution 2021-10 as of December 15, 2021, determining that it would remain neutral regarding the Petition for Detachment.[14] Therefore, the Township is not a party to this proceeding.

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[1] Exhibit (Ex.) 19 at 89.
[2] *Id.*
[3] Ex. 7; Ex. 101 at 6.
[4] Testimony (Test.) of Jerome Bohnsack.
[5] Ex. 111 at 261.
[6] Ex. 19 at 89.
[7] Petition for Detachment (Nov. 29, 2021); Test. of Ronald Engblom.
[8] Petition for Detachment (Nov. 29, 2021).
[9] *Id.*
[10] *Id.*
[11] *Id.*
[12] Hearing Digital Recording (Jan. 26, 2022) (on file with the Minn. Office Admin. Hearings); Signature Page for Parcel 10040838 (Nov. 20, 2021).
[13] City Resolution 05-2022 (Jan. 3, 2022).
[14] Township Resolution No. 2021-10 (Dec. 15, 2021).

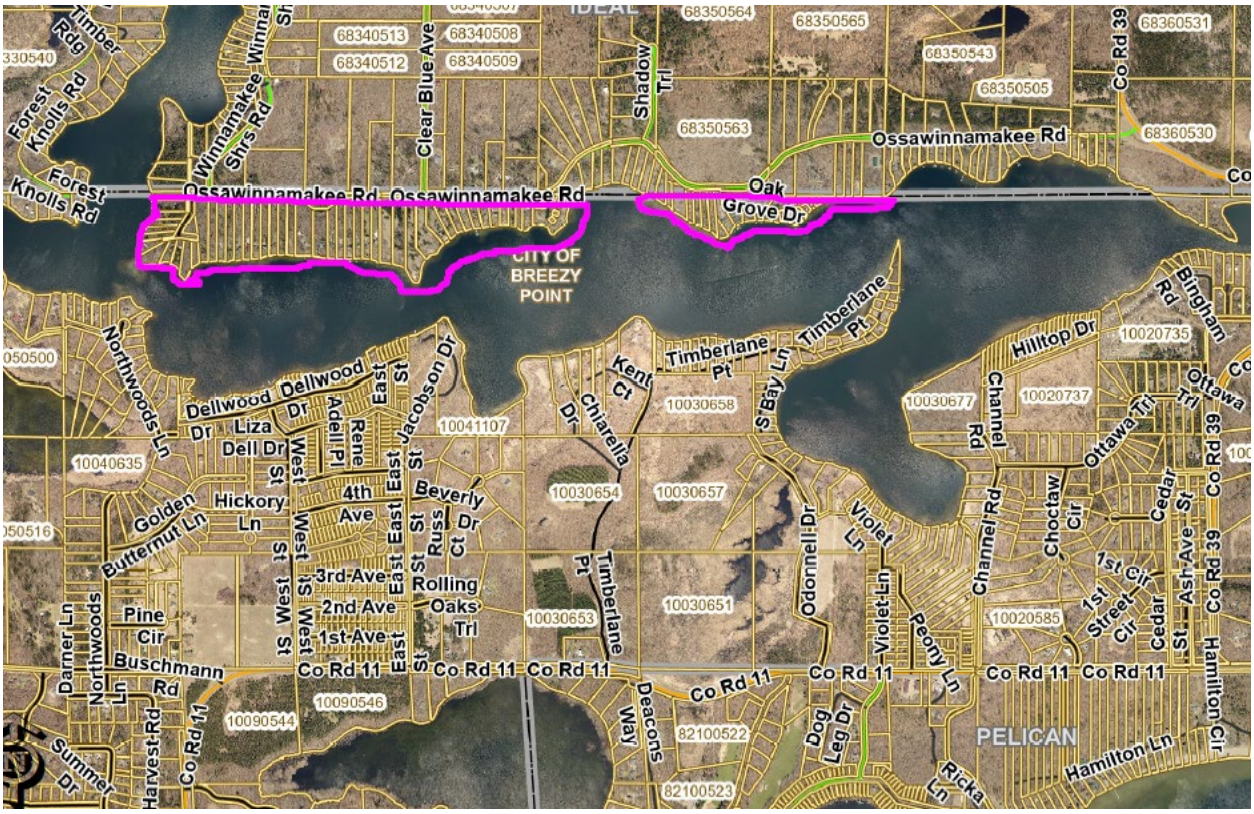
II. The Subject Parcels

10. The Subject Parcels are located in the City and in Crow Wing County.[15] To the north, the Subject Parcels are bordered by the Township.[16]

11. The Subject Parcels are legally described as follows:

> All of Government Lots 1, 2, and 3 in Section 4, and all of Government Lots 1 and 2 in Section 3, all in Township 136 N Range 28 W.[17]

12. The map below depicts a portion of the City containing the Subject Parcels, which are highlighted in pink:[18]



13. The Subject Parcels are separated from the rest of the City by Lake Ossawinnamakee.[19] The Subject Parcels are not contiguous to any other land areas

[15] Petition for Detachment (Nov. 29, 2021).
[16] Test. of J. Bohnsack.
[17] Petition for Detachment (Nov. 29, 2021).
[18] Ex. 2.
[19] *Id.*; Test. of R. Engblom.

within the City.[20] To reach the Subject Parcels, a person would need to drive through the Township.[21]

14. The Petition for Detachment avers that there are 51 single family homes, two townhome buildings consisting of two attached units, two townhome buildings consisting of four attached units, and 62 garage and storage buildings located on the Subject Parcels.[22]

15. All of the Subject Parcels have been platted into lots.[23] The properties within the Subject Parcels are nearly fully developed, with very few lots that do not have residential buildings on them.[24]

16. The dwellings on the properties within the Subject Parcels are occupied part-time, or seasonally, or are year-round homes.[25] In the area of the Subject Parcels, there are currently no properties developed for business purposes.[26] Current development projects in the Subject Parcels are largely oriented to rehabilitation of older structures and development of more substantial year-round homes.[27]

17. Some of the properties within the Subject Parcels have portions of their land located within the City and other portions that are located in the Township.[28]

18. The area in which the Subject Parcels are located is densely wooded.[29] Other areas of the City also have dense tree cover.[30]

19. Wildlife, such as eagles, foxes, deer and bear, are often present on the properties that comprise the Subject Parcels.[31] It is common to see wildlife in other areas of the City as well.[32]

20. Some of the properties among the Subject Parcels have gravel driveways and some have long driveways.[33]

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[20] Ex. 2.
[21] Test. of J. Bohnsack.
[22] Petition for Detachment (Nov. 29, 2021).
[23] Test. of J. Bohnsack; Ex. 120.
[24] Test. of R. Engblom; Test. of J. Bohnsack. As of the hearing, there were four platted lots without finished structures on them. Test. of J. Bohnsack.
[25] Test. of R. Engblom; Test. of J. Bohnsack.
[26] Test. of R. Engblom. In the past, some properties within the Subject Parcels were developed as resorts, but the resorts no longer exist. Test. of J. Bohnsack; *see* Ex. 119.
[27] Test. of J. Bohnsack.
[28] *Id.*; *see also* Ex. 4 at 7.
[29] Test. of J. Bohnsack.
[30] Ex. 8.
[31] Test. of R. Engblom.
[32] Test. of Patrick Wussow.
[33] Test of R. Engblom.

21. Many of Subject Parcels are long rectangular lots with the houses built near to Lake Ossawinnamakee.[34]

22. Within the area of the Subject Parcels, Ossawinnamakee Road and Graf Road were recently repaved,[35] and a gravel segment of Graf Road was paved.[36] The City converted Sunset Strip from gravel to pavement.[37] Oak Grove Drive, another road within the area of the Subject Parcels, is a private easement road which the City is not obligated to pave or maintain.[38]

23. The City has adopted a Zoning Ordinance.[39] The Subject Parcels are zoned R-2, which is the category for Medium Density Residential.[40] Properties with the R-2 designation are residential properties for which agricultural and manufacturing uses are not permitted.[41]

24. The Subject Parcels have been developed for single-family dwellings, except for one parcel that was developed as multi-family housing.[42]

25. The City has adopted a Comprehensive Plan, most recently updated in 2020.[43] The Comprehensive Plan's Existing Land Use Map and Future Land Use Map both designate the Subject Parcels as Low Density Residential.[44]

26. Under the Comprehensive Plan, a designation of Low Density Residential refers to uses that include predominantly single-family homes with some twin homes and other low-density attached housing.[45] A designation of Medium Density Residential applies to uses that accommodate a mix of housing types including single-family detached dwellings, twin homes, townhomes, row houses, apartments, and senior housing.[46]

27. The Comprehensive Plan explains that zoning districts are not consistent with land use districts.[47] According to the Comprehensive Plan, land use refers to the existing or future end result of development, while zoning refers to current preferred and

[34] Ex. 116.
[35] Ossawinnamakee Road runs along the border of the Township and City in the area of the Subject Parcels. Test. of J. Bohnsack. The City partnered with the Township to engage in a road improvement project in that area. Test. of Joe Zierden.
[36] Test. of R. Engblom; Test. of J. Zierden.
[37] Test. of R. Engblom; Test. of J. Zierden.
[38] Test. of R. Engblom; Test. of J. Bohnsack.
[39] Ex. 102.
[40] *Id.* at 103-105; Ex. 104.
[41] Test. of J. Bohnsack.
[42] *Id.*
[43] Exs. 21, 101.
[44] Ex. 21 at 124, 129.
[45] *Id.* at 127.
[46] *Id.* at 128.
[47] *Id.* at 124.

permitted uses.[48] The Zoning Ordinance is the legal designation for properties, while the Comprehensive Plan is a guiding document.[49]

III. Municipal Services

28. The City maintains the Breezy Point Police Department.[50] The Police Department employs six full-time officers, including the Police Chief, and one part-time officer who covers shifts when he can and accommodates officer vacation time.[51]

29. The Police Department responds to medical calls.[52] Three of the full-time officers are paramedics, who are equipped with heart rate monitors, cardiopulmonary resuscitation devices, and narcotics; their equipment is equivalent to that found on an advanced life support ambulance.[53] The Police Department is the only department in Crow Wing County that employs police officer paramedics.[54] The officers have take-home squad cars and are able to respond to medical calls directly from their homes, and even when off duty, if necessary.[55]

30. The Police Department is able to perform fingerprinting and is one of only two police forces in Crow Wing County with forensic phone dumping capabilities.[56] The Police Department has an all-terrain vehicle equipped to perform rescues in snowmobile accidents.[57]

31. A police officer from the City's Police Department regularly patrols Ossawinnamakee Road.[58] Ossawinnamakee Road is patrolled one to two times, or more, per day.[59]

32. Between January 1, 2020, and December 31, 2021, the City's Police Department responded to eleven calls for service to properties within the Subject Parcels on Ossawinnamakee Road, Graf Road, and Sunset Strip.[60] Among the calls were incidents in which police responded to a domestic issue, a gas leak, a fire, a burglary, and a call for emergency medical services, as well as performing a welfare check and providing traffic enforcement.[61]

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[48] *Id.*
[49] Test. of J. Bohnsack.
[50] Test. of Brian Sandell.
[51] *Id.*
[52] *Id.*
[53] *Id.*
[54] *Id.*
[55] *Id.*
[56] *Id.*
[57] *Id.*
[58] *Id.*
[59] *Id.*
[60] Ex. 122.
[61] *Id.*

33. If the Subject Parcels were detached, law enforcement officers with the Crow Wing County Sheriff's Department would respond to law enforcement issues in the area of the Subject Parcels.[62]

34. The City contracts for firefighting services with the Pequot Lakes Fire Department.[63] The Pequot Lakes Fire Department maintains two fire stations, one in Pequot Lakes and the other in the City's Public Safety Building.[64] Crow Wing County is the dispatching entity for the Pequot Lakes Fire Department, and the department dispatches from both fire stations for every call.[65] There are 24 paid-on-call firefighters with the Pequot Lakes Fire Department, eight of whom live in Breezy Point.[66] All but three of the firefighters on the force are first responders, and one firefighter is certified as an EMT, though Pequot Lakes does not respond to active medical calls.[67] Depending on where a call comes from, some firefighters may respond directly to the site, while others may report to the fire station before responding.[68]

35. If the Subject Parcels are detached to the Township, the Subject Parcels would receive firefighting services from the Township's fire department.[69] The Township's main fire station is closer to the Subject Parcels than the fire station in the City.[70] The Township's fire department provides medical response services as well as firefighting.[71] Currently, pursuant to a mutual aid agreements, the Township's fire department will respond to calls within the City if requested to do so by the fire department with primary responsibility.[72]

36. The City has adopted the State Building Code.[73] The City contracts with a designated Building Official to enforce the State Building Code within the City's borders.[74] The Building Official acts as the chief Building Code compliance and enforcement official.[75] Following an assessment of zoning compliance, the Building Official reviews plans to check for compliance and for licensing of the proposed contractors.[76] Once a permit is issued, 12-14 inspections are performed during the construction process, including as to the framing, plumbing, and insulation.[77] In the Township, only the septic system and electrical system would be inspected when a new home is constructed.[78]

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[62] Test. of B. Sandell.
[63] Test. of Tom Nelson.
[64] *Id.*
[65] *Id.*
[66] *Id.*
[67] *Id.*
[68] *Id.*
[69] Test. of Robert Birkeland.
[70] *Id.*
[71] *Id.*
[72] *Id.*
[73] Ex. 105.
[74] Test. of Scott Sadusky.
[75] *Id.*
[76] *Id.*
[77] *Id.*
[78] *Id.*

37. The City has a Public Works Department that provides road maintenance and snow plowing, operates the City's wastewater treatment plant, and performs parks maintenance and burials, among other responsibilities.[79] The City has five public works staff members.[80]

38. The City has entered into a Public Works Services Joint Powers Agreement with the Township under which the Township provides road maintenance and repair services to roads serving the Subject Parcels, while the City provides such services to certain roads within the Township.[81] The City and Township determined that the Joint Powers Agreement would allow for efficient maintenance of those roads, but the City could service the roads serving the Subject Parcels and identified in the agreement if necessary.[82] The City has performed maintenance services on Graf Road, Sunset Strip, and Ossawinnamakee Road in response to resident calls and to address major issues.[83]

39. The Subject Parcels do not receive water and sewer service from the City.[84]

40. The City's wastewater plant is located on the south side of the City.[85] The cost for extending sewer services to the area in which the Subject Parcels are located would be extremely high, and the benefitted parcels would be assessed a portion of those costs by the City.[86] The City does not plan to extend sewer services to the Subject Parcels, or to build a new treatment plant to serve the area of the Subject Parcels.[87]

41. The City provides election services, maintains building permit records, and issues licenses, including for dog ownership and liquor sales.[88] The City allows the public to rent space for events at City Hall, has a public beach and dock, and has a municipal cemetery.[89] The City also maintains public parks and playgrounds.[90]

42. The area in which the Subject Parcels are located does not have street lights, sidewalks, curbs or gutters, or fire hydrants.[91]

43. The City has only one street light; that street light was installed to address safety concerns.[92] The City has not received requests for street light installation over the four years preceding the hearing in this case.[93]

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[79] Test. of J. Zierden.
[80] *Id.*
[81] Ex. 107.
[82] Test. of J. Zierden.
[83] *Id.*
[84] Test. of R. Engblom.
[85] Test. of J. Bohnsack.
[86] Test. of R. Engblom; Test. of J. Bohnsack.
[87] Test. of J. Bohnsack.
[88] Test. of P. Wussow.
[89] *Id.*
[90] *Id.*
[91] Test. of R. Engblom.
[92] Test. of P. Wussow.
[93] *Id.*

44. The area of the Subject Parcels has not needed curbs and gutters to deal with water runoff.[94]

45. Garbage pick-up and recycling services in the City are handled by contract between property owners and the hauling service provider.[95] The City does provide a brush and grass clippings drop-off site.[96]

46. The Subject Parcels receive rural carrier mail delivery, rather than door-to-door mail service.[97] U.S. mail delivery is provided by the Pequot Lakes Post Office, as there is no post office located within the City.[98]

IV. Taxes and City Finances

47. The Subject Parcels generated $110,845.40, in property taxes paid to the City in 2021.[99]

48. The total amount received by the City in 2021, from property taxes was $2,747,401.00.[100] Property taxes from the Subject Parcels represent around four percent of the City's current levy.[101]

49. The property tax revenue associated with the Subject Parcels is equivalent to funding for two public works employees or one police officer.[102] The City would be required to assess a greater amount against remaining properties in the City to make up for the lost revenues in order to continue providing the same level of services.[103]

50. In January 2022, the City used a portion of its levy and reserve funds to make an advance payment on the amount owed on its general obligation bonds in order to pay off the bonded indebtedness early, and to obtain lower overall interest costs.[104] As of the hearing, the City was debt free.[105]

51. The City does not impose a lodging tax to generate revenue for the City.[106]

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[94] Test. of R. Engblom.
[95] *Id.*
[96] *Id.*
[97] Test. of R. Engblom.
[98] *Id.*
[99] Ex. 109.
[100] *Id.*
[101] Test. of P. Wussow.
[102] *Id.*
[103] *Id.*; Test. of Todd Roggenkamp.
[104] Test. of P. Wussow; Test. of T. Roggenkamp.
[105] Test. of P. Wussow.
[106] *Id.*

V. Stipulations of the Parties

52. Prior to the hearing, the parties entered into a stipulation as to certain issues.[107] The parties stipulated as follows:

a. The required number of property owners signed the Petition.

b. The Subject Parcels are located within the boundaries of the City and abut a boundary of the Township.

c. Detachment of the Subject Parcels to the Township would not unreasonably affect the symmetry of the City's boundaries.

d. If the Subject Parcels were detached from the City, any property owners who are obligated to make payments related to a special assessment for roads would remain obligated to pay the full amount of the assessment following detachment.[108]

53. At the hearing, the parties further stipulated that the Subject Parcels are not developed for urban commercial or industrial purposes.[109]

VI. Procedural History and Statutory Requirements

54. The Petition for Detachment was filed on November 29, 2021.[110] Petitioners submitted the required filing fee on December 3, 2021, making the filing complete.[111]

55. On December 3, 2021, the Administrative Law Judge issued an Order scheduling a prehearing conference for December 10, 2021.[112]

56. On December 10, 2021, the Administrative Law Judge held a prehearing conference by telephone.[113]

57. On December 13, 2021, the Administrative Law Judge issued an Order scheduling the hearing and ordering the parties to proceed to mediation.[114]

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[107] Hearing Digital Recording (Jan. 26, 2022) (on file with the Minn. Office Admin Hearings); Email string between Jon Parrington and Joseph Langel (Jan. 22 and 24, 2022).
[108] Hearing Digital Recording (Jan. 26, 2022) (on file with the Minn. Office Admin Hearings); Email string between J. Parrington and J. Langel (Jan. 22 and 24, 2022).
[109] Hearing Digital Recording (Jan. 26, 2022) (on file with the Minn. Office Admin Hearings).
[110] Petition for Detachment (Nov. 29, 2021).
[111] Letter from J. Parrington to Star Holman (Dec. 3, 2021) (on file with the Minn. Office Admin. Hearings).
[112] Order for Prehearing Conference (Dec. 3, 2021).
[113] Prehearing Conference Digital Recording (Dec. 10, 2021) (on file with the Minn. Office Admin. Hearings).
[114] Prehearing Order (Dec. 13, 2021).

58. Pursuant to Minn. Stat. § 414.06, subd. 2, the parties were required to participate in mediation. The parties participated in mediation but were not able to resolve their dispute.

59. Notice of the evidentiary hearing was published in the Echo Journal on January 5 and 12, 2022.[115]

60. The Administrative Law Judge conducted the hearing in this matter on January 26 and 27, 2022.[116] The hearing was held in the county where the Subject Parcels are located.

61. At the hearing, sworn testimony was admitted into the record from several witnesses. Further, Petitioners' Exhibits 1-11, 17-19, 21-30,[117] and the City's Exhibits 101 through 122 were admitted into the record.[118]

62. On January 28, 2022, the City's Amended Exhibits 102 and 120 and City Resolution 05-2022 opposing the detachment were filed.

63. The parties filed post-hearing briefs on February 18, 2022.

64. On March 2, 2022, the City submitted a letter requesting that attachments to Petitioners' post-hearing brief be stricken.

65. The Administrative Law Judge issued an Order and Amended Order[119] on March 3, 2022, allowing the Petitioners to respond to the City's objections by March 15, 2022.

66. Petitioners filed a response to the City's objections on March 15, 2022, and the record closed on that date.

VII. Public Comments

67. The Notice of Hearing advised the public that interested persons could submit written data, statements, or arguments concerning this matter prior to the hearing.[120] The Notice of Hearing requested that public comments be submitted by 4:30 p.m. on January 21, 2022.[121]

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[115] Affidavit of Publication (Jan. 18, 2022).
[116] Hearing Digital Recordings (January 26-27, 2022) (on file with the Minn. Office Admin. Hearings).
[117] The exhibit originally labeled as 20 was withdrawn. Exhibits 12-16 were excluded based on objections by the City. Hearing Digital Recording (Jan. 26, 2022) (on file with the Minn. Office Admin. Hearings).
[118] Exhibits 102 and 120 were amended on the record and refiled as amended exhibits. Hearing Digital Recording (Jan. 26, 2022) (on file with the Minn. Office Admin. Hearings); Exs. 102, 120.
[119] Amended Order (Mar. 3, 2022).
[120] Notice of Hearing (Dec. 29, 2021).
[121] *Id.*

68. The Office of Administrative Hearings received eleven written statements from members of the public prior to the deadline,[122] and one written comment after the deadline.[123]

69. All twelve written public comments were received into the record without objection by the parties.[124]

70. Witness Ronald Engblom, who is one of the Petitioners, also made a statement on the record at the hearing.[125]

71. All of the public comments favor the Petition for Detachment. In particular, commenters supported detachment because the Township's fire station is closer to the Subject Parcels than the fire station in the City, some properties are bisected by the line dividing the City and Township, tax rates are higher in the City than in the Township, and some residents feel more a part of the Township than the City.[126]

VIII. Incorporation by Reference

72. Any Conclusion of Law more properly considered to be a Finding of Fact is adopted herein.

73. Any portion of the accompanying Memorandum that is properly considered to be a Finding of Fact is incorporated as such.

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 (2020).

2. The Petition for Detachment was properly filed and notice given pursuant to Minn. Stat. § 414.09, subd. 1(c) (2020).

3. The hearing date was published in compliance with Minn. Stat. § 414.09,

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[122] Comment of Terry and Sue Gruenhagen; Comment of Robert and Rebecca Boyd; Comment of Susan and Mark Strauser; Comment of Steven and Durene Nelson; Comment of Kelvin and Bev Kittleson; Comment of Sharon L. Engels-Chupurdia; Comment of Jenny and Blake Spillers; Comment of Reed and Tammy VanHove; Comment of Scott and Cynthia Hemmer; Comment of Brian C. McConnville; Comment of Brady Becker.

[123] Comment of Anthony Sandeen.

[124] Hearing Digital Recording (Jan. 26, 2022) (on file with the Minn. Office Admin. Hearings).

[125] Test. of R. Engblom.

[126] *See, e.g.*, Comment of T. and S. Gruenhagen; Comment of S. and M. Strauser; Comment of S. and D. Nelson; Comment of S. L. Engels-Chupurdia; Comment of R. and T. VanHove.

subd. 1(d) (2020).

4. Petitioners bear the burden of proof and must establish by a preponderance of the evidence that the statutory criteria for detachment have been met.[127]

5. Minn. Stat. § 414.06, subd. 3, provides 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.

6. Detachment may be denied upon a finding that the remainder of the municipality cannot continue to carry on the functions of government without undue hardship.[128]

7. Based upon the parties' stipulation and the evidence in the record, Petitioners have established by a preponderance of the evidence that:

a. the requisite number of property owners signed the petition;

b. the property is within the boundaries of the municipality and abuts a boundary; and

c. detachment would not unreasonably affect the symmetry of the detaching municipality.

8. Petitioners have not demonstrated by a preponderance of the evidence that the Subject Parcels are rural in character and not developed for urban residential purposes.

9. Petitioners have not demonstrated by a preponderance of the evidence that land within the Subject Parcels is not needed for reasonably anticipated future development.

10. Because detachment would reduce the amount of property tax revenue obtained by the City by four percent, the City would experience undue hardship in carrying on the functions of government if the Petition for Detachment were granted.

11. 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

[127] Minn. R. 1400.7300, subp. 5 (2021).
[128] Minn. Stat. § 414.06, subd. 3.

on an equitable basis.

12. As the parties did not make an agreement on the record as to the costs of this proceeding, it is equitable to allocate the costs related to proceedings on the Petition for Detachment evenly between the Petitioners and the City.

13. Any Finding of Fact more properly considered to be a Conclusion of Law is adopted herein.

14. Any portion of the accompanying Memorandum that is properly considered a Conclusion of Law is incorporated as such.

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

ORDER

1. Exhibits A and B to Petitioners' written closing briefs are **STRICKEN** from the record.

2. Petitioners' objection related to Exhibit 116 and factual assertions contained in Petitioners' final filing on March 15, 2022, are **UNTIMELY** and have not been considered.

3. The Petition for Detachment is **DENIED**.

4. Pursuant to Minn. Stat. § 414.12, subd. 3, the costs of this proceeding are allocated 50% to the Petitioners and 50% to the City. An itemized invoice for costs will be sent to the parties under separate cover.

Dated: June 10, 2022

JESSICA A. PALMER-DENIG
Administrative Law Judge

NOTICE

This Order is the final administrative order in this case under Minn. Stat. §§ 414.06, .07, .09, .12 (2020). Pursuant to Minn. Stat. § 414.07, subd. 2, any person aggrieved by this Order may appeal to Crow Wing 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 (2021). However, no request for amendment shall extend the time of appeal from this Order.

MEMORANDUM

I. Introduction

This matter involves a request to detach a group of parcels located on the northern border of the City. Minn. Stat § 414.06, subd. 3, provides that detachment may be ordered if:

(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.

The parties entered into stipulations addressing several of these issues. As a result, the issues that remain in contention are whether the Subject Parcels are rural in character and not developed for urban residential purposes, and whether the Subject Parcels are needed for reasonably anticipated future development. Beyond those factors, this Order also considers whether, if the Subject Parcels were detached, the remainder of the municipality could continue to carry on the functions of government without undue hardship.[129]

[129] Minn. Stat. § 414.06, subd. 3.

II. Standard of Proof

Petitioners must establish that the Subject Parcels should be detached under Minn. Stat. § 414.06 by a preponderance of the evidence.[130] Under this standard, to establish a fact, it must be more probable that the fact exists than that the contrary exists.[131] Put another way, Petitioners bear the burden to establish that the "greater weight of the evidence" supports the detachment of the Subject Parcels.[132] If the evidence in the record as to a fact or issue is equally balanced, then that fact or issue has not been established by a preponderance of the evidence.[133]

III. Analysis

A. Petitioners' Post-Hearing Submissions

Before turning the detachment factors, the Administrative Law Judge must address a preliminary issue. Along with their closing brief, Petitioners submitted additional Exhibits A and B as attachments. Exhibit A is identified as an aerial photograph of land related to a prior decision by this tribunal, *In re the Detachment of Certain Land from the City of Wabasha*.[134] Exhibit B is a list of property owners and parcels labeled "parcels with acreage."

The City objects to consideration of Exhibits A and B and requests that they be stricken from the record. The City argues that Minn. R. 1400.7300, subp. 2, 6000.1700 (2021), require all factual information to be offered and made a part of the record, and provide that no factual information outside of the record may be considered in the determination of a case. The City argues that Petitioners failed to submit Exhibits A and B during the hearing and that this additional factual information cannot now be considered.

The City is correct. If Petitioners wished to rely on additional factual information and exhibits, they could have submitted such evidence over the course of the two-day hearing in this case. The Administrative Law Judge offered the parties an opportunity to submit closing argument following the hearing, but did not suggest that entirely new factual submissions would be permissible. Therefore, the City's request that these documents be stricken from the record is granted. The Administrative Law Judge has not relied on these documents in considering the case.

There are two additional issues that must also be addressed. First, the Administrative Law Judge extended the close of the record to allow Petitioners to respond to the City's objection to Exhibits A and B. Petitioners' response to the City's request contained, for the first time, an objection to Exhibit 116. This exhibit was received into the

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[130] Minn. R. 1400.7300, subp. 5.
[131] *City of Lake Elmo v. Metro. Council*, 685 N.W.2d 1, 4 (Minn. 2004)
[132] *State v. Curtis*, 921 N.W.2d 342, 347 n.6 (Minn. 2018).
[133] *Lake Elmo*, 685 N.W.2d at 4.
[134] *In re the Detachment of Certain Land from the City of Wabasha*, OAH 68-0330-32004, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER (Minn. Office Admin. Hearings Aug. 20, 2015).

record without objection at the beginning of the hearing. Petitioners' objection related to Exhibit 116 is untimely.

Further, Petitioners' response also contained new factual assertions from Mr. Parrington, who is one of the Petitioners and who served as the Petitioners' representative at trial. Mr. Parrington did not testify under oath and was not subject to cross examination. As a Petitioner, Mr. Parrington could have made a statement at the hearing, but did not do so. Instead, somewhat ironically, Mr. Parrington made a representation regarding his intent as to the development of a parcel of property in Petitioners' response to the City's request to strike other improper post-trial material. Because Petitioners' response was the last submission made in the case, the City had no opportunity to test or counter this new assertion, or to offer argument as to its import. The Administrative Law Judge has not considered Mr. Parrington's untimely and unsworn factual representation in her consideration of this case.

B. Are the Subject Parcels Rural in Character and Not Developed for Urban Residential Purposes?

A key issue in this case is whether the Subject Parcels are "rural in character" and whether they have been developed for "urban" residential purposes.[135] These terms are not defined in Chapter 414, and past cases decided by this tribunal have relied on commonly understood definitions of the terms "rural" and "urban."[136] The word "rural" is defined to mean "of or relating to the country, country people or life, or agriculture."[137] "Urban" means "of, relating to, characteristic of, or constituting a city."[138] Prior cases have also considered the use of the property, zoning restrictions, the proximity of the area proposed for detachment to other uses, density, and access to or use of city services, in determining whether property is rural or urban.[139]

Petitioners argue for the use of definitions from Minn. R. 8810.4100 (2021) addressing rural districts and urban districts in relation to Minnesota's trunk highway system. However, Minn. R. 8810.4300, subp. 1 (2021), provides that the "purpose of parts 8810.4100 to 8810.5600 is to establish certain optimum design specifications for driveways providing a means of ingress to and egress from private property located along and adjacent to the right-of-way of the trunk highway system of the state of Minnesota." Minn. R. 8810.4300, subp. 2 (2021) specifically limits the scope of these regulations, stating that "[t]he scope of parts 8810.4100 to 8810.5600 is confined within the framework of and intended to be consistent with Minnesota Statutes 1965, section

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[135] Minn. Stat. § 414.06, subd. 3.

[136] *See* Minn. Stat. § 645.08(1) (2020) (directing that undefined and nontechnical "words and phrases are construed . . . according to their common and approved usage"); *see also In re the Detachment of Certain Land from the City of Wabasha*, OAH 68-0330-32004, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER at 23 (Minn. Office Admin. Hearings Aug. 20, 2015).

[137] *Rural*, MERRIAM WEBSTER, https://www.merriam-webster.com/dictionary/rural.

[138] *Urban*, MERRIAM WEBSTER, https://www.merriam-webster.com/dictionary/urban.

[139] *In re the Detachment of Certain Real Property from the City of Lanesboro to Holt Township*, OAH 84-0330-33365, OAH 84-0330-33366, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER REGARDING DETACHMENT at 13-14 (Minn. Office Admin. Hearings Mar. 31, 2017).

160.18, subdivision 3." Minn. Stat. § 160.18, subd. 3 (2020), governs the right of access to private property abutting public highways. The definitions urged by Petitioners are inapplicable to an analysis under Minn. Stat. § 414.06.

Petitioners argue that the Subject Parcels are rural, rather than urban. Petitioners elicited evidence at the hearing that the area of the Subject Parcels is heavily wooded and is home to wildlife that ordinarily would not be present in an urban area.[140] They offered testimony comparing their properties to the lots sizes of urban lots in the cities of Robbinsdale and Minneapolis.[141] Witness Ronald Engblom, one of the Petitioners, testified that he believes his property is rural.[142] Petitioners also pointed out at the hearing that the City's Mayor, Todd Roggenkamp, remarked publicly that the City has a "country feel,"[143] and they offered other evidence that suggests that the City may be eligible for aid to rural areas.[144] Further, Petitioners noted that they do not receive certain city services, in that they lack water and sewer service, and that there are no street lights, curbs and gutters, or sidewalks in their area.[145]

The City disputes that the Subject Parcels are rural and maintains that they have been developed for urban residential purposes. The City notes that the property within the Subject Parcels is platted land that is nearly fully developed, including some multi-family housing.[146] The City argues that the Subject Parcels are urban within the context of the area. The City is a small city in outstate Minnesota in a region with extensive outdoor recreation and lakes, and it pointed out that much of its land area has tree cover and a wildlife presence.[147] The City contends that the Subject Parcels are consistent with urban, lakeshore, residential development in its area of Minnesota. At the hearing, the City provided evidence that the Subject Parcels and their owners receive extensive City services. While the Subject Parcels do not have municipal water and sewer service, the City suggested at the hearing that they do not need these services, as their existing wells and septic meet the properties' needs.[148] The City identified other municipal services available to the Subject Parcels and the Petitioners, including: public works services related to road and parks maintenance, a municipal cemetery, and parks; public safety services provided by police and firefighters, including for medical calls; enforcement of the State Building Code; and elections services.[149]

Viewing the record as a whole, the Administrative Law Judge determines that the Subject Parcels are not rural in character and have been developed for urban residential purposes. The Subject Parcels are platted land and almost all of the lots have been developed with residential structures. While these properties may be larger and more

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[140] Test. of R. Engblom.
[141] *Id.*
[142] *Id.*
[143] Ex. 18 at 87; Test. of T. Roggenkamp.
[144] *See* Exs. 28-29.
[145] Test. of R. Engblom.
[146] Test. of J. Bohnsack.
[147] *Id.*; Test. of P. Wussow.
[148] Test. of R. Engblom.
[149] Test. of J. Zierden; Test. of P. Wussow; Test. of B. Sandell; Test. of S. Sadusky; Test. of T. Nelson.

wooded than urban lots in bigger cities, this is not an apt comparison. As noted in *In re the Detachment of Certain Land from the City of Lanesboro to Holt Township*, properties are deemed "urban" and "suburban" even in the smallest cities of Minnesota.[150] The Administrative Law Judge agrees with the City that the context matters and that the Subject Parcels are urban within the context of a small city in a lakes district of outstate Minnesota. Further, one of the Subject Parcels has been developed to include multi-family housing units,[151] which are not consistent with rural character.

While the Petition for Detachment contends that the Subject Parcels receive no, or only minimal, City services, the record does not support such a finding. The City provides full-time police services, including three officers who are also paramedics.[152] The Police Department patrols the area of the Subject Parcels daily and has responded to a variety of calls for service in that area.[153] The City contracts for firefighting services with the Pequot Lakes Fire Department.[154] The City has provided public works services related to road maintenance, upgrading, and repair, directly to the area of the Subject Parcels.[155] While the Township provides mowing and snow plowing to that area, it does so under an agreement between the City and Township.[156] The City has contracted with a Building Official to enforce the State Building Code, including by providing inspections and compliance services to Mr. Parrington, one of the Petitioners, as to a house he was constructing on one of the Subject Parcels at the time of the hearing.[157] The City provides zoning and land use controls to the area of the Subject Parcels.[158] The City also provides services that are generally available to all residents, including parks, a public beach and dock; facility rental of City Hall, and a municipal cemetery.[159]

Petitioners would prefer not to receive some of these City services, and to receive services from the Township instead. Petitioners provided evidence that there are property uses that are permissible directly across Ossawinnamakee Road in the Township, that are not permitted under the City's Zoning Ordinance.[160] Petitioners noted that the Township provides firefighting services as well, and that the fire station there is closer to the Subject Parcels than the one in the City.[161] Petitioners also contend that the Township

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[150] OAH 84-0330-33365, OAH 84-0330-33366, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER REGARDING DETACHMENT at 14 (Minn. Office Admin. Hearings Mar. 31, 2017).
[151] Test. of J. Bohnsack.
[152] Test. of B. Sandell.
[153] *Id.*; Ex. 122.
[154] Test. of T. Nelson.
[155] Test. of J. Zierden.
[156] *Id.*; Ex. 107.
[157] Test. of S. Sadusky.
[158] Test. of J. Bohnsack.
[159] Test. of P. Wussow.
[160] Test. of R. Engblom.
[161] Test. of R. Birkeland. Petitioners devoted extensive portions of the hearing to questions and assertions related to the residence location, training, and response time of one particular firefighter with the Township's fire department. Essentially, Petitioners made the argument that if the Subject Parcels were served by the Township's fire department, this individual could respond more quickly to that area from his home than firefighters with the Pequot Lakes Fire Department. The individual identified by Petitioners did not testify, making some of this information highly speculative. More importantly, this information ultimately is not relevant under Minn. Stat. § 414.06, which does not consider the residential location or training of any

maintains a transfer station for waste disposal.[162] The Petitioners' preference for the Township over the City is not a factor contemplated by Minn. Stat. § 414.06, however.

Some of the properties within the Subject Parcels are divided by the boundary line between the City and Township, meaning that some properties have land located within the boundaries of both governmental entities.[163] While this may at times cause confusion, and the Administrative Law Judge understands that property owners with such parcels might prefer to be entirely within one jurisdiction, this issue also is not identified as a factor under Minn. Stat. § 414.06. Further, properties with a portion of their land in the Township are not automatically deemed to be rural.

Finally, Petitioners point to a property nearby the Subject Parcels that was previously detached from the City, known as the "Ebnet property." In that case, the property owners sought to detach 248 acres from the City; three adults and two children resided in the detachment area, the property was used for agricultural purposes and had four poultry barns and a hatchery in which over 50,000 birds were hatched each year; the property owners operated a game farm on the land; and the property to be detached also had a gravel extraction operation.[164] The property was zoned as agricultural land.[165]

The property detached from the City in that case is not comparable to the Subject Parcels. The Subject Parcels are zoned as R-2, which is a classification for Medium Density Residential development.[166] All of the developed properties in the Subject Parcels are used for residential dwellings and no other use, including for agricultural purposes, is permissible.[167] Further, there are 135 property owners within less than 85 acres of the Subject Parcels, and there are only a few undeveloped parcels left within the area.[168]

Given all of the evidence in the record, the Administrative Law Judge finds that the Subject Parcels are not rural in character and have been developed for urban residential purposes. Therefore, detachment of the Subject Parcels must be denied.

C. Are the Subject Parcels Needed for Reasonably Anticipated Future Development?

The statute governing detachments requires consideration of whether the land proposed for detachment is needed for reasonably anticipated future development.[169] Here, this is a less significant factor because the vast majority of the Subject Parcels are

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individual person as a factor in determining whether property should be detached from a city.

[162] Test. of R. Engblom.

[163] Test. of J. Bohnsack.

[164] *In re the Petition by Mary Ebnet et al. for the Detachment of Certain Land from the City of Breezy Point*, OAH 11-0330-20498-BA, FINDINGS OF FACT, CONCLUSIONS AND DECISION at 7, 9-10 (Minn. Office Admin. Hearings Jan. 15, 2010).

[165] *Id.* at 8.

[166] Test. of J. Bohnsack.

[167] *Id.*

[168] *Id.*; Petition for Detachment (Nov. 29, 2021).

[169] Minn. Stat. § 414.06, subd. 3.

already fully developed. Notwithstanding that, the City opposes the Petition for Detachment based on this factor.

There is conflicting evidence in the record on this point. The City's Planner, Jerome Bohnsack, testified at the hearing that the Subject Parcels are nearly fully built out and, as a result, land within the Subject Parcels is not needed for future development.[170] The record, however, reflects that Mr. Parrington was in the midst of constructing a home on one of the Subject Parcels at the time of the hearing.[171] Further, the record shows that there has been strong growth in the City, as 58 building permits for new residential construction were issued in 2021, which is more than twice the number issued two years before.[172]

Petitioners have the burden to establish by a preponderance of the evidence that the Subject Parcels should be detached. Therefore, Petitioners must show that the undeveloped Subject Parcels are not needed for reasonably anticipated future development. Examining the record as a whole, Petitioners have not met their burden as to this factor.

D. Can the City Carry on the Functions of Government Without Undue Hardship?

Under Minn. Stat. § 414.06, subd. 3, the Subject Parcels may not be detached from the City if it would be subjected to an undue hardship in carrying out municipal services due to the loss of tax revenue. The record reflects that the Subject Parcels yield property tax payments to the City of $110,845.40, representing four percent of the City's total property tax levy of $2,747,401.[173]

The revenue that would be lost if the Subject Parcels are detached is equivalent to two public works employee positions or one full-time police officer.[174] If the City were required to reduce services, this would account for 40 percent of the public works staff serving the City.[175] The City's Public Works Department provides road maintenance and repair, performs snow plowing and mowing, operates the wastewater treatment plant, and maintains parks and the municipal cemetery. A reduction of 40 percent of the labor force doing this work would represent a hardship for the City in continuing to provide these services. The City's Police Department currently employs six full-time officers including its Chief of Police.[176] During the summer months, the City's population swells to over 5,000 people.[177] The loss of one police officer would leave only one officer per thousand residents during the summer months, which are an active time for police calls.[178] Further,

[170] Test. of J. Bohnsack.
[171] Test. of S. Sadusky.
[172] *Id.*; Ex. 112.
[173] Ex. 109.
[174] Test. of P. Wussow.
[175] *Id.*; Test. of J. Zierden.
[176] Test. of B. Sandell.
[177] Ex. 19 at 89.
[178] Test. of B. Sandell.

there are three full-time police officers trained as paramedics who respond to medical calls in the City.[179] The loss of one of these police officers would negatively impact public health and safety in the City, while a loss of one of the other officers would further strain the resources available to respond to other types of calls. Alternatively, to continue maintaining the same level of services, the City would be required to increase the levy on the remaining properties in the City.[180]

This tribunal has previously considered this factor in a number of cases. In *In re the Matter of the Petition for the Detachment of Certain Real Property from the City of Trosky to Elmer Township*,[181] detachment was denied where the area proposed for detachment was assessed approximately 1.3 percent of the City's total receipts and 3.2 percent of its general property tax receipts, because the City needed to remediate faulty septic systems that caused an environmental hazard and public safety and health concern, and the City would experience an undue hardship in addressing that issue if the parcels were detached. In contrast, in *In re the Matter of the Petition of Dawson Grain Coop, Inc., for the Detachment of Certain Land from the City of Dawson*,[182] the lost revenue amount of $6,500 for the property proposed for detachment represented two percent of the total tax levy; while the city would experience hardship as a result of the loss of that revenue, it was not an "undue" hardship.

In this case, the City's loss of 4 percent of its levied property tax total would create an undue hardship in carrying out the functions of the municipality related to public works services and policing. As a result, this is an independent basis for denying the request for detachment.

IV. Conclusion

The Administrative Law Judge concludes that Petitioners have not established that the Subject Parcels are rural in character and not developed for urban residential purposes. To the extent there are undeveloped properties remaining within the Subject Parcels, Petitioners have not established those parcels are not needed for reasonably anticipated future development. Finally, detachment of the Subject Parcels would cause an undue hardship for the City in carrying out the functions of government. As a result of these determinations, the Petition for Detachment is **DENIED**.

J. P. D.

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[179] *Id.*

[180] Test. of P. Wussow; Test. of T. Roggenkamp. At the hearing, Petitioners noted that the City paid down its bonded indebtedness in advance, requiring an additional outlay of funds. Instead, even without the revenue from the Subject Parcels, the City could have made only the required payment, or it could have made an advance payment in a lesser amount. At this time, the City has fully paid off this debt as has no other debts. As a result, the availability of funds to pay down bonds or other debt is not at issue related to this factor.

[181] OAH 84-0330-32407, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER DENYING DETACHMENT (Minn. Office Admin. Hearings Sept. 30, 2015).

[182] OAH 12-2900-15004-2, FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER (Minn. Office Admin Hearings. Feb. 12, 2003).