OAH 68-0330-32004

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Petition for the Detachment of Certain Land from the City of Wabasha	**ORDER ON CITY'S MOTION FOR SUMMARY DISPOSITION**

On April 10, 2015, the City of Wabasha filed a Motion for Summary Disposition and Memorandum of Law in Support of its Motion. On April 23, 2015, the Petitioners filed a Memorandum of Law in Opposition to the City of Wabasha's Motion for Summary Disposition. This matter came before Administrative Law Judge Jeanne M. Cochran on May 1, 2015, for oral argument on the City of Wabasha's Motion.

Robert Scott, Flaherty & Hood, P.A., appeared on behalf of the City of Wabasha (City). Michael Couri, Couri & Ruppe P.L.L.P, appeared on behalf of the Petitioners.

Based on the submissions of the parties, the oral argument, and the file in this matter:

IT IS HEREBY ORDERED THAT:

1. The City's Motion for Summary Disposition is **DENIED**.

2. The hearing scheduled for **May 28, 2015** shall proceed as scheduled.

3. The provisions of the First Prehearing Order and the Second Prehearing Order remain in effect.

Dated: May 15, 2015

s/Jeanne M. Cochran
JEANNE M. COCHRAN
Administrative Law Judge

MEMORANDUM

Legal Background

Chapter 414 (2014) of Minnesota law governs municipal boundary adjustments. Section 414.06 sets forth a procedure by which land owners can petition to have their property detached from a municipality and attached to an adjoining township. Pursuant to that statute, the Administrative Law Judge can only grant the petition if: (1) the requisite number of land owners have signed the petition; (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) detachment would not unreasonably affect the symmetry of the detaching municipality; and (5) the land is not needed for reasonably anticipated future development.[1]

Factual Background

On July 15, 2014, a group of land owners (the Petitioners) filed a petition pursuant to Minn. Stat. § 414.06 requesting that certain property described in the petition be detached from the City and attached to Greenfield Township. The Property in question is located on the northernmost tip of Teepeeota Point in the City and abuts property in Greenfield Township.[2]

The Property is approximately 4.6 acres in size, and consists of eight platted lots.[3] Each lot has a residence, and five of the lots have detached garages or outbuildings. There are a total of eight homes and six garages or outbuildings on the Property.[4] Eight people reside in the area proposed for detachment.[5]

As shown in the attached map,[6] the Property is located approximately 1.25 miles across Robinson Lake, which is a backwater of the Mississippi River, from the primary residential and business areas of the City of Wabasha.[7] The shortest vehicle access from the Property to the nearest contiguous land in the City is approximately four miles.[8] It is approximately six miles from the Property to the central business district of the City of Wabasha.[9] Much of the land between the Property and the developed part of the City consists of agricultural land.[10]

The Property is part of a larger platted subdivision, known as Teepeeota Point Subdivision. Teepeeota Point Subdivision has over 30 platted lots.[11] Immediately

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[1] Minn. Stat. § 414.06, subd. 3 (2014) (emphasis added).
[2] Petition at ¶ 1; Affidavit (Aff.) Chad Springer at ¶ 3 (attached to the City's Memorandum of Law).
[3] Petition at ¶¶ 4-5.
[4] *Id.* at ¶ 5.
[5] *Id.* at ¶ 6.
[6] Aff. of Wendy Busch, Ex. 15 (attached to the City's Memorandum of Law).
[7] Springer Aff. at ¶ 3, Ex. 2; *see also*, Busch Aff., Exs. 11, 15.
[8] Springer Aff. at ¶ 3; Aff. of Dean Johnson at ¶ 5.
[9] Johnson Aff. at ¶ 5
[10] *Id.* at ¶¶ 3, 5.
[11] Aff. of Wendy Busch at ¶ 4, Exhibit (Ex.) 13 (attached to the City's Memorandum of Law).

south of Teepeeota Point Subdivision are a number of other platted, residential subdivisions. Together the platted subdivisions in the Teepeeota Point area contain at least 414 residential lots, most of which are smaller than one-half acre. The lots in these subdivisions have been largely built out with residential homes.[12] With the exception of the eight lots that are the subject of the Petition in this case, the remainder of the lots in the Teepeeota Point area are located in Greenfield Township.[13]

Procedural Background

As noted above, on July 15, 2014, the Petitioners filed their Petition with the Office of Administrative Hearings (OAH) seeking detachment from the City and attachment to Greenfield Township.[14] In response, Greenfield Township passed a resolution on July 31, 2014, stating that the Township is neutral to the Petition.[15] On August 5, 2014, the City passed a Resolution stating that it opposes the Petition.[16]

An initial hearing on the City's Petition was held on September 4, 2014 at 9:00 a.m. at the Wabasha City Hall. Prior notice of the hearing was provided to local officials and published in the local newspapers in accordance with Minn. Stat. §§ 414.06, 414.09.[17]

At the hearing held on September 4, 2014, the parties were ordered to engage in mediation. After the mediation was conducted, the parties informed the Office of Administrative Hearings (OAH) that mediation did not resolve the matter. Thereafter, the Chief Administrative Law Judge assigned this matter to the undersigned Administrative Law Judge.[18]

On December 23, 2014, a prehearing conference was held where the parties and the Administrative Law Judge agreed to a schedule in this matter. That schedule set a filing date of April 10, 2015 for dispositive motions, and an evidentiary hearing date of May 28, 2015.[19]

On April 10, 2015, the City filed its Motion for Summary Disposition and Memorandum of Law in Support of its Motion. On April 23, 2015, the Petitioners filed a Memorandum of Law in Opposition to the City's Motion for Summary Disposition.

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[12] *Id.* at ¶ 11, Exs. 15-33.
[13] *Id.* at ¶¶ 6-7, Ex. 15.
[14] Petition at 1.
[15] Greenfield Township Resolution 201-03 (received August 4, 2014).
[16] Wabasha City Resolution 34-2014 (received August 6, 2014).
[17] Certificate of Service of Star Holman (August 7, 2014); Affidavit of Publication of Gary Stumpf (August 20, 2014).
[18] Notice of and Order for Prehearing Conference (November 14, 2014).
[19] First Prehearing Order (January 5, 2015).

The Positions of the Parties

A. The City's Position

The City argues that the undisputed facts show that the Property in question is not "rural in character" and therefore, the Petitioners cannot meet the criteria in Minn. Stat. § 414.09 for detachment. In support of its Motion, the City provided affidavits from Chad Springer, Wabasha City Administrator, and Wendy Busch, City Planning and Zoning Assistant, with attached exhibits.

The City maintains that the Property is not "rural in character" because the Property and surrounding area have been developed for urban or suburban residential purposes.[20] The City points to the undisputed facts that each of the lots comprising the Property has a home built on it, and each lot measures less than one-half acre in size with one exception.[21] The City also notes that the land immediately adjacent to the Property has been developed for residential purposes.[22] Moreover, the City states that one of the owners of the Property has described the area as a "suburban type development."[23]

The City argues the phrase "rural in character" as used in Minn. Stat. § 414.06 does not include property that has been developed in such a manner. Based on its reading of the statute as a whole, the City argues that only land that has "not yet been developed, or which, at most, has been developed sparsely such that it could be productively redeveloped more intensively in the future" qualifies as "rural in character" under Minn. Stat. § 414.06.[24] The City maintains that to allow detachments of property with "suburban type development" (as the City claims exists in this case) would undermine and render meaningless the requirement in Minn. Stat. § 414.06, subd. 3 that the property not be "needed for reasonably anticipated future development."[25]

In addition, the City argues that related statutes suggest that land in a suburban development is not eligible for detachment because it does not meet the requirement that it be "rural in character." The City points to Minn. Stat. § 414.031, which allows for annexation of unincorporated property that "is now, or is about to become, urban or suburban in character."[26] Similarly, the City notes that Minn. Stat. § 414.033 allows for annexation by statute of land platted after August 1, 1995 with residential lots that average one-half acre or less and that is located within two miles of the municipal limits. The City claims this statute indicates that the legislature views such areas as more urban than rural, and "evidences the Legislature's general view that platted subdivisions are inconsistent with rural land uses…."[27]

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[20] City's Memorandum of Law in Support of its Motion (City's Memorandum) at 1-22.
[21] *Id.* at 3.
[22] *Id.* at 4.
[23] *Id.* at 5.
[24] *Id.* at 10.
[25] *Id.*
[26] *Id.* at 11.
[27] *Id.* at 12.

Finally, the City argues that prior OAH decisions and case law precedent support its position. The City notes that the Court of Appeals has interpreted the term "rural" in Minn. Stat. § 414.06, subd. 3 to mean "[o]f, or relating to, or characteristics of the country …," the definition found in the *American Heritage Dictionary*.[28] The City also points to case law interpreting Minnesota's homestead exemption statute, Minn. Stat. § 510.02 (2014), where the courts have said that rural property is property where buildings on the land are ancillary to the use of land itself, and urban property is property for which the land is ancillary to the use of the buildings and houses.[29] The City maintains that the undisputed facts in this case show that the Property does not meet the definition of "rural" because the land is being used for urban (or suburban) residential purposes and land is ancillary to the use of the homes.[30]

B. The Petitioners' Position

The Petitioners oppose the City's Motion for Summary Disposition on two grounds. First, the Petitioners argue that the Administrative Law Judge lacks the authority under Minn. Stat. § 414.06 to decide the City's Motion for Summary Disposition.[31] The Petitioners maintain that Minn. Stat. § 414.06 requires an evidentiary hearing because it provides that OAH "shall designate a time and place for a hearing in accordance with section 414.09…." Based on this language and the absence of language specifically authorizing summary disposition, the Petitioners argue that an evidentiary hearing is required in all detachment proceedings.[32]

Alternatively, the Petitioners argue that even if the Administrative Law Judge has the authority to decide the City's Motion, the Motion should be dismissed and a hearing should be held because a genuine issue of material fact exists as to whether the Property is "rural in character."[33] In support of their position, the Petitioners filed the affidavit of Dean Johnson, a municipal planner with the firm of Resource Strategies Corporation. Mr. Johnson has been working in the municipal planning field for approximately 37 years and has testified as an expert witness on a number of occasions. Mr. Johnson states that, in his professional opinion, the Property is "rural in character" because it is located approximately four miles or more from the closest border of the City, is approximately six miles from the City center, and most of the land between the Property and the City center "consists of agricultural land."[34]

The Petitioners cite the Minnesota Supreme Court decision in *National Bank of the Republic of New York v. Banholzer*, 71 N.W. 919 (Minn. 1897), in further support of their position that the Property is "rural in character."[35] The *Banholzer* case concerned the proper analysis for determining a homestead exemption. In that case, the

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[28] *Id.* at 15 (citing *City of Lake Elmo v. Nass*, 2013 WL 3491161 at *8 (Minn. Ct. App)).
[29] *Id.* at 18-19.
[30] *Id.* at 20, 22; Busch Aff. at ¶ 5, Ex. 14 (pictures of three of the houses).
[31] Petitioners' Memorandum of Law in Opposition to the City of Wabasha's Motion for Summary Disposition (Petitioner's Memorandum) at 2-3.
[32] *Id.*
[33] *Id.* at 5-9.
[34] *Id.*, Johnson Aff. at ¶ 5.
[35] Petitioners' Memorandum at 5-6.

Minnesota Supreme Court held that a five acre tract of land that was 2.5 to 3 miles from the city business center and that had a "brewery, boiler house, ice house, store house, stable, carriage house, and two dwelling houses" was not conclusively urban in character. The Court further noted that the determination of whether the property in question was rural or urban is "a question of fact to be determined in each case." The Court then went on to uphold the lower court's determination that the property was rural in character.[36] The Petitioners argue that the Property at issue in this case is similar to the tract at issue in the *Banholzer* case, and the Court's decision in *Banholzer* supports Mr. Johnson's opinion that the Property is rural in character.[37]

Legal Analysis

A. OAH Authority to Consider the City's Motion for Summary Disposition

Detachment petitions are governed by Minn. Stat. § 414.06. That statute provides that the Administrative Law Judge "shall designate a time and place for a hearing" on a petition for detachment where, as here, the city opposes the detachment petition and the abutting township is neutral on the petition.[38] While the plain language of the statute requires that a hearing be scheduled, nothing in the statute precludes the Administrative Law Judge from canceling the evidentiary hearing where there are no genuine issues of material fact to be resolved at hearing as demonstrated by a motion for summary disposition.[39] Where appropriate, judicial economy allows for the resolution of such matters without a formal evidentiary hearing.[40] Conducting an evidentiary hearing where it would serve no purpose would lead to an absurd result the legislature could not have intended.[41]

The rules governing hearings pursuant to Minn. Stat. § 414.06 confirm that the Administrative Law Judge has the authority to rule on motions for summary disposition in detachment proceedings. Minn. R. 6000.1150 (2014), adopted pursuant to Minn. Stat. § 414.01 to implement chapter 414, authorizes the Administrative Law Judge to hold a prehearing conference according to the procedures of Minn. R. 1400.6500 (2013).[42] Pursuant to that rule, Administrative Law Judges typically authorize the parties to file motions for summary disposition. In fact, summary disposition is an established

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[36] *Banholzer*, 71 N.W. 919, 920-921.
[37] Petitioners' Memorandum at 8.
[38] Minn. Stat. § 414.06, subd. 2.
[39] *Id.*
[40] *See* Minn. Stat. § 414.01, subd. 1 (authorizing the Chief Administrative Law Judge "to conduct proceedings, make determinations, and issues orders" in matters involving the alteration of a municipal boundary); *see also*, *McGrath v. Minnesota Secretary of State*, 2011 WL 58229345 at *5 (Minn. Ct. App., *review denied* Feb. 14, 2011) (holding the OAH had the authority to decide a motion for summary disposition in a complaint brought pursuant to the Help America Vote Act, which requires a hearing; stating it is "mistaken to interpret 'hearing' to prevent the ALJ's termination of proceedings and disposition of the case when there is no showing of cause to proceed further….").
[41] *See* Minn. Stat. § 645.17(1).
[42] Minn. R. 6000.1150.

procedure observed in proceedings before the OAH.[43] For these reasons, the Administrative Law Judge concludes that the authority to rule on the City's Motion for Summary Disposition may be fairly drawn from the authority granted the OAH under Minn. Stat. §§ 414.01, 414.06; Minn. R. 6000.1150.[44]

Finally, the Administrative Law Judge notes that this conclusion is consistent with OAH precedent. In *In the Matter of the Petition of the City of Pine River for Annexation of Unincorporated Property in the Township of Wilson pursuant to Minnesota Statutes, Section 414.031*, then Chief Administrative Law Judge Raymond Krause rejected an argument similar to that made by the City in this case. In that case, Chief Judge Krause ruled that the requirement for a "hearing" set forth in Minn. Stat. § 414.031 did not preclude OAH from ruling on a motion for summary disposition. Chief Judge Krause noted that "nowhere in the statute is the option for disposition by motion expressly forbidden" and requiring an evidentiary hearing where there are no disputed facts would be contrary to principles of judicial economy. Similarly, in *In the Matter of the Petition for the Detachment of Certain Land from the City of Babbitt, Minnesota, pursuant to Minn. Stat. § 414.06*, Administrative Law Judge Bruce H. Johnson ruled on the City's Motion for Summary Disposition.[45] While Judge Johnson did not directly address the issue of OAH authority to consider such a motion in a detachment proceeding, Judge Johnson implicitly ruled that such authority exists when he heard the motion and ruled on the merits of the motion.[46]

B. Analysis of the City's Motion for Summary Disposition

Having determined that the Administrative Law Judge has the authority to consider the City's Motion for Summary Disposition, the next issue is whether the City has demonstrated that it is entitled to summary disposition in this matter.

1. Summary Disposition Standard

Summary disposition is the administrative law equivalent to summary judgment.[47] A motion for summary disposition may be granted when there is no genuine issue regarding any material fact, and the moving party is entitled to judgment as a matter of law.[48] The OAH follows the summary judgment standards developed in the state district courts when considering motions for summary disposition of contested case matters.

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[43] *McGrath v. Minnesota Secretary of State*, 2011 WL 58229345 at *5.

[44] *Peoples Natural Gas Co. v. Minn. Pub. Utils. Comm'n*, 369 N.W.2d 530, 534 (Minn. 1985) ("[W]hile we need not give an agency's express statutory authority 'a cramped reading,' any enlargement of powers by implication must be 'fairly drawn and fairly evident from the agency's objectives and powers expressly given by the legislature.")

[45] ORDER ON MOTION FOR SUMMARY DISPOSITION (March 13, 2013).

[46] *Id.*

[47] *Pietsch v. Minnesota Bd. of Chiropractic Exam'rs*, 683 N.W.2d 303, 306 (Minn. 2004); *see also* Minn. R. 1400.5500(K) (2013).

[48] *See Sauter v. Sauter*, 70 N.W.2d 351, 353 (Minn. 1955); *Louwagie v. Witco Chemical Corp.*, 378 N.W.2d 63, 66 (Minn. Ct. App. 1985).

The function of the Administrative Law Judge on a motion for summary disposition, like a trial court's function on a motion for summary judgment, is not to decide issues of fact, but to determine whether genuine factual issues exist.[49] In other words, the Administrative Law Judge does not weigh the evidence; instead, the judge views the facts and evidence in a light most favorable to the non-moving party.[50]

The moving party has the initial burden to show the absence of any genuine issue regarding any material fact.[51] A fact is material if its resolution will affect the outcome of the case.[52] If the moving party meets the initial burden, then the burden shifts to the non-moving party to prove the existence of any genuine issue of any material fact.[53] A genuine issue is not a "sham or frivolous," and a material fact is one that will affect the outcome of the case.[54] The non-moving party cannot rely on mere allegations or denials to create a genuine issue of material fact. Instead, a genuine issue requires presentation of specific facts demonstrating a need for resolution in a hearing or trial.[55]

Ultimately, summary disposition cannot be used as a substitute for a hearing or trial on the facts of a case.[56] Thus, summary disposition is only proper when no fact issue needs to be resolved.[57]

2. The City's Motion

Viewing the evidence in the light most favorable to the Petitioners, as is required, the Administrative Law Judge concludes that the Petitioners have demonstrated that a genuine issue of material fact exists and the City's Motion must be denied. While many of the underlying facts set forth in the parties' filings are not in dispute, there is a material fact dispute regarding whether the Property is "rural in character."

The City maintains that the Property is not "rural in character" because the Property is comprised of lots in a platted subdivision that generally are less than one-half acre in size and have houses on them. The City also points to the fact that the there are other residential subdivisions in the immediate vicinity. The City argues that these underlying undisputed facts demonstrate that the Property is urban or suburban in character, not rural.

In response, the Petitioners point to the facts that the Property is approximately four miles by road to the closest border of the City, approximately six miles from the City

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[49] *See e.g., DLH, Inc. v. Russ*, 566 N.W.2d 60, 70 (Minn. 1997).
[50] *See Ostendorf v. Kenyon*, 347 N.W.2d 834, 836 (Minn. Ct. App. 1984).
[51] *See Thiele v. Stich*, 425 N.W.2d 580, 583 (Minn. 1988).
[52] *See O'Malley v. Ulland Bros*., 549 N.W.2d 889, 892 (Minn. 1996) (citing *Zappa v. Fahey*, 245 N.W.2d 258, 259-260 (Minn. 1976)).
[53] *See Thiele,* 425 N.W.2d at 583.
[54] *See Highland Chateau, Inc. v. Minnesota Dep't of Pub. Welfare*, 356 N.W.2d 804, 808 (Minn. Ct. App. 1984) (citing *A & J Builders, Inc. v. Harms*, 179 N.W.2d 98, 103 (Minn. 1970)).
[55] *See* Minn. R. Civ. P. 56.05.
[56] *See Sauter*, 70 N.W.2d at 353.
[57] *See id*.

business district, and much of the land in between is agricultural in nature.[58] The Petitioners have also provided the Affidavit of Dean Johnson, an experienced municipal planner, who has viewed the area and concluded that the Property is rural in character.[59] Mr. Johnson's expert opinion is evidence that the Administrative Law Judge can consider in determining whether the Property is in fact "rural in character" as used in Minn. Stat. § 414.06.[60]

Because the term "rural" is not defined in statute, it is necessary to apply its ordinary meaning in determining whether the Property is "rural in character."[61] As noted by the Court of Appeals, "rural" means "[o]f, or relating to, or characteristics of the country …."[62] In addition, it is necessary to interpret the phrase "rural in character" in light of the legislature's finding that: "municipal government most efficiently provides governmental services in areas intensively developed for residential, commercial, industrial, and governmental purposes; and township government most efficiently provides governmental services in areas used or developed for agricultural, open space, and rural residential purposes."[63] Thus, the determination of whether a particular piece of property meets the definition "rural in character" can only be made on a case-by-case basis.

While a platted area comprised of one-half acre lots usually would not be considered rural in character, there are circumstances where such a platted area could be considered rural such as if the area was sufficiently far from the city center and there was sufficient undeveloped property between the property and the city center.[64] Here, viewing the facts in the light most favorable to the Petitioners, the non-moving party, there is a genuine issue of material fact as to whether the Property is rural in character. In order to make the determination in this case, the Administrative Law Judge concludes it necessary to conduct a site visit and hold an evidentiary hearing. Accordingly, the City's Motion is denied and the matter will proceed to a hearing on May 28, 2015.

J. M. C.

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[58] Petitioners' Memorandum at 8; Johnson Aff. at ¶5.

[59] Johnson Aff. at ¶ 4.

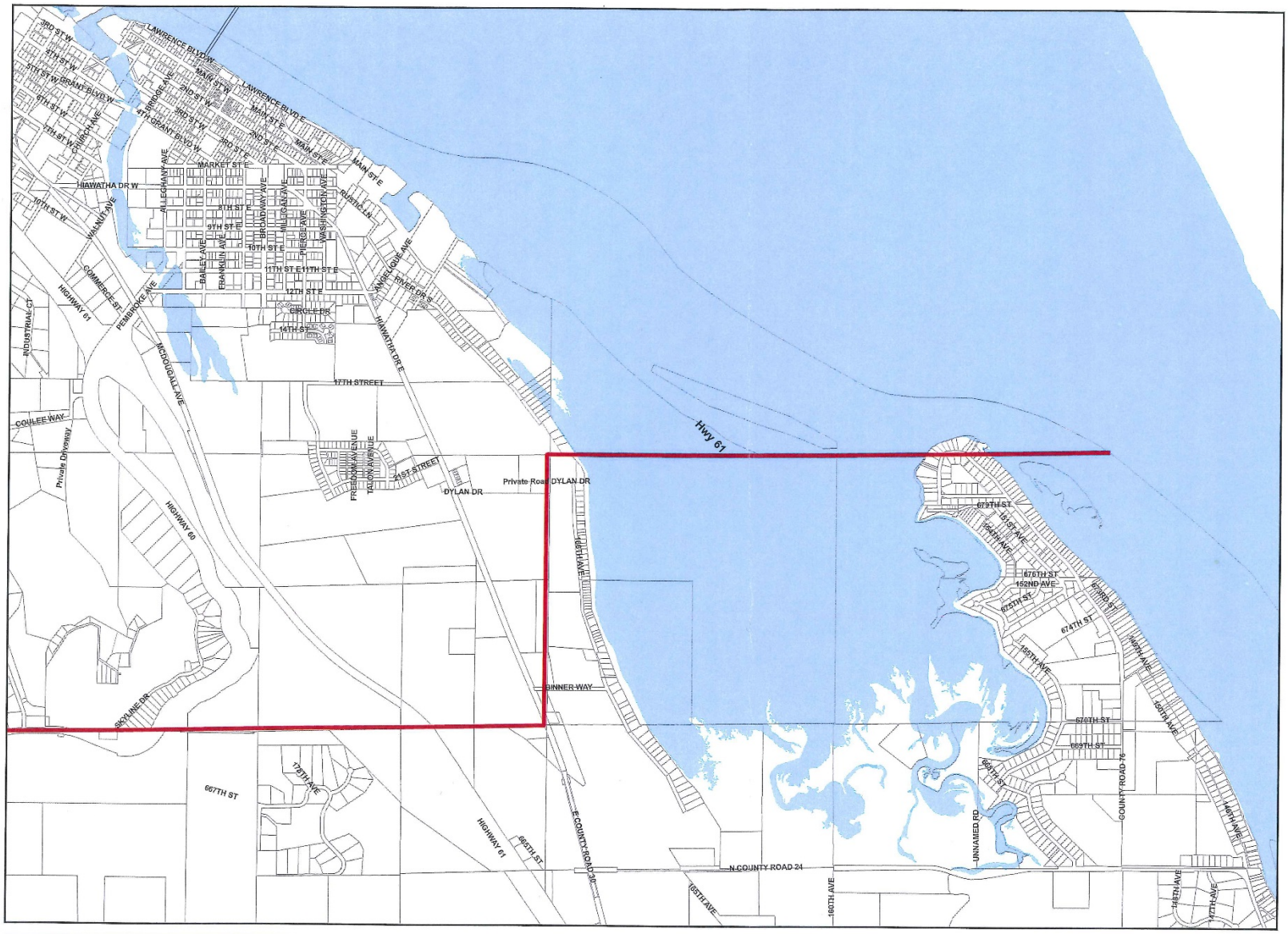
[60] *See Howe v. Hauge*, 766 N.W.2d 50, (Minn. Ct. App. 2009) (holding that an affidavit of Washington County Surveyor is properly considered in determining whether to grant summary disposition where the affidavit is based on personal knowledge, sets forth facts that would be admissible in evidence and shows that the affiant is competent to testify) and Minn. R. Ev. 702; *see also*, *In the Matter of the Petition of the City of Pine River for Annexation of Unincorporated Property in the Township of Wilson pursuant to Minnesota Statutes, Section 414.031*, Docket No. 2-0330-19383-BA, ORDER ON MOTION FOR SUMMARY DISPOSITION at 5 (holding an expert witness opinion on a material issue of fact in an annexation proceeding under chapter 414 creates a fact dispute that precludes granting a motion for summary disposition).

[61] *City of Lake Elmo v. Nass*, 2013 WL 3491161 at *8 (Minn. Ct. App).

[62] *Id.* at 15 (citing *City of Lake Elmo v. Nass*, 2013 WL 3491161 at *8 (Minn. Ct. App)).

[63] Minn. Stat. § 414.01, subd. 1a(2).

[64] *See Banholzer*, 71 N.W. 919, 920-921; *see also*, *City of Lake Elmo*, 2013 WL 3491161 at * 7 (noting that "[a]lthough Minn. Stat. § 414.06, subd. 3, historically only allowed detachment for property that was 'unplatted, and used and occupied primarily for agricultural purposes,' this language was removed in 1978. 1978 Minn. Laws. (sic) ch. 705, § 24, at 639. Currently, the property need only be 'rural in character and not developed for urban residential, commercial or industrial purposes.'").



CITY OF WABASHA

Parcel Map

City Boundary

Mississippi River

0 500 1,000 2,000 Feet

EXHIBIT 15