OAH 84-0330-32284

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

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| In the Matter of the Detachment of Certain Real Property from the City of Hutchinson | **AMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER GRANTING DETACHMENT** |

Following the April 21, 2014 filing of a Property Owner Petition for Detachment of Property from a City (Petition for Detachment) and an initial hearing on June 19, 2014, this matter came on for hearing before Chief Administrative Law Judge Tammy L. Pust on March 19, 2015. Pursuant to the terms of an Order Regarding Supplementation of Hearing Record and upon receipt of the parties' submissions, the hearing record closed on April 15, 2015.

Marc Sebora, Hutchinson City Attorney, appeared at the hearing on behalf of the city of Hutchinson (City). Scott W. Exsted (Petitioner) appeared on his own behalf and without legal counsel. Jon Christensen, Township Supervisor, appeared on behalf of Hutchinson Township (Township) without legal counsel.

## STATEMENT OF ISSUE

Are the factors of Minn. Stat. § 414.06, subd. 3 (2014) met such that detachment of the subject property from the city of Hutchinson should be granted?

## SUMMARY OF CONCLUSIONS

The Chief Administrative Law Judge concludes that Petitioner has established, by a preponderance of the evidence, that the factors of Minn. Stat. § 414.06, subd. 3, are met and so the Petition for Detachment from the city of Hutchinson must be granted.

Based on the evidence in the hearing record, the Chief Administrative Law Judge makes the following:

## FINDINGS OF FACT

### Procedural Findings

1. On April 16, 2014, Petitioner Scott W. Exsted executed a Petition for Detachment whereby he seeks to detach the Subject Parcels from the City pursuant to Minn. Stat. § 414.06 (2014) and, by operation of law, allow them to become part of the Township.[1]

[1] Petition for Detachment, received by the Office of Administrative Hearings, Municipal Boundary Adjustment unit (OAH-MBAU), on April 21, 2014.

2. The Petition for Detachment seeks detachment from the City and reattachment to the Township of two separate parcels (hereinafter "Parcel 1" and "Parcel 2" and collectively referred to as the "Subject Parcels") constituting 41.37 acres of land.[2] The legal descriptions of the Subject Parcels are as follows:

> Parcel 1 - PID R23.249.0020 is 25.87 acres legally described as: Seltz Subdivision Lot-002, Block-001 located in the SE 1/4 of the SE 1/4 of Section 32 of Hutchinson Township and the SW 1/4 of the SW 1/4 of Section 33 of Hutchinson Township;
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> and
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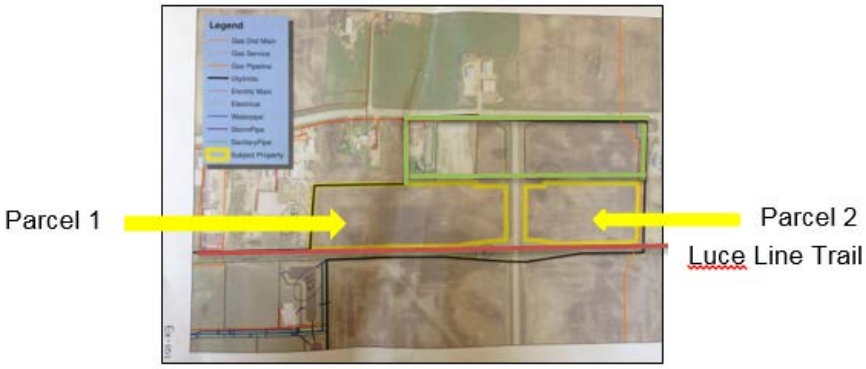
> Parcel 2 - PID R23.249.0040 is 15.5 acres legally described as Seltz Subdivision Lot-002 Block-002 located in the SE 1/4 of the SW 1/4 of Section 33 of Hutchinson Township.[3]

3. As individually outlined in yellow in the illustration below, the Subject Parcels are located in McLeod County in an area that is:

a. Immediately north of the Luce Line State Trail[4] (marked in red in the illustration below); and

b. Immediately south of the combination of properties made up of: Block 1, Lot 1 and Block 2, Lot 1, Seltz Subdivision; Lot 5, Schmelling's Subdivision; and two unplatted parcels of land bounded by Parcel 1 on the south and Minnesota State Highway 7 on the north (altogether and collectively outlined in green in the illustration below and referred to herein as the "Northern Properties".)




[2] Id.; Exhibit (Ex.) 6.
[3] Ex. 101.
[4] The Luce Line State Trail, a 63-mile long former railroad grade now developed for recreational purposes under the authority of the Minnesota Department of Natural Resources, is not accessible by motor vehicles other than, in some areas, by snowmobile.

4. Petitioner provided a copy of the Petition for Detachment to the Township[5] and the City,[6] and filed it with the Office of Administrative Hearings on April 21, 2014.[7]

5. The Board of Supervisors of Hutchinson Township adopted a resolution supporting the proposed detachment on May 9, 2014.[8]

6. Petitioner perfected his filing of the Petition for Detachment upon payment of the statutorily required fee with the Office of Administrative Hearings on May 12, 2014.[9]

7. On May 13, 2014, the City Council for the city of Hutchinson adopted Resolution No. 14278 whereby the City opposed the Petition for Detachment.[10]

8. After proper notice,[11] the Office of Administrative Hearings convened an initial hearing in the matter on June 19, 2014, at which time Deputy Chief Administrative Law Judge Tim O'Malley issued an Order requiring the parties to proceed to mediation.[12]

9. The parties unsuccessfully mediated the matter on February 23, 2015.[13]

10. On February 24, 2015, this matter was assigned to Chief Administrative Law Judge Tammy L. Pust,[14] and scheduled for hearing on March 19, 2015.[15]

11. A prehearing conference was conducted by the Chief Administrative Law Judge on March 6, 2015.[16]

12. Notice of the evidentiary hearing was published in the *Hutchinson Leader* on March 11, 2015 and March 18, 2015.[17]

13. A hearing was held in the matter on March 19, 2015 at the Hutchinson Event Center, 1005 Highway 15 South, Hutchinson, Minnesota.

14. At the hearing, Exhibits 1 through 5 and Exhibits 100 through 113 were admitted into evidence without foundational objection.

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[5] Township Resolution Responding to a Petition Initiated by Property Owner(s) for Detachment of Property from a City, dated May 9, 2014 and received by the OAH-MBAU on May 12, 2014 (Township Resolution).
[6] City Resolution No. 14278 dated May 13, 2014, noting that Petition for Detachment was received by the City on April 22, 2014 (City Resolution).
[7] Petition for Detachment.
[8] Township Resolution.
[9] Internal records of the OAH-MBAU.
[10] City Resolution.
[11] Affidavit of Publication, undated but received at OAH on June 13, 2014.
[12] Record of hearing noticed pursuant to Notice of Hearing dated May 27, 2014.
[13] Correspondence dated February 24, 2015 from Marc Sebora, Hutchinson City Attorney, to OAH-MBAU.
[14] Notice of and Order for Prehearing Conference and Hearing dated March 3, 2015.
[15] Notice of Hearing dated March 4, 2015.
[16] Record of prehearing conference noticed pursuant to Notice of and Order for Prehearing Conference and Hearing dated March 3, 2015.
[17] Affidavit of Publication dated March 18, 2015.

15. Pursuant to an Order Regarding Supplementation of Hearing Record issued on March 30, 2015, the hearing record remained open until April 15, 2015, pending submission of additional requested evidence and argument.

16. The following exhibits were submitted after the hearing, marked and received into the record as identified: Affidavit of Scott Exsted, received as Exhibit 6; Affidavit of Julie Fillbrandt regarding the ownership of a 66-foot strip of property adjacent to Parcel 2, received as Exhibit 114; Affidavit of John Webster regarding the City's purchase of a pipeline easement, received as Exhibit 115; Affidavit of Kent Exner regarding the City's access to identified property, received as Exhibit 116; and Affidavit of Jeffrey R. Rausch regarding location of the 66-foot strip of property with regard to City boundaries, received as Exhibit 117.

17. The record in the matter closed on April 15, 2015 pursuant to the Order Regarding Supplementation of Hearing Record issued on March 30, 2015.

**City of Hutchinson**

18. The city of Hutchinson is a municipal corporation organized under the laws of the state of Minnesota.

19. The City's 2015 General Fund Budget includes $11,180,444 in total revenues, $4,491,446 of which is attributable to property tax collections. The City's tax revenue has remained stable since at least 2012.[18]

20. In 2010, the City entered into an Electric Service Territory Agreement, by its Hutchinson Utilities Commission, with McLeod Cooperative Power Association, whereby the parties agreed on terms that would govern the transfer of and payment for electric service territory rights for all property added to the City's boundaries from neighboring municipalities.[19]

21. According to the 2010 United States Census, as reported by Maxfield Research Inc., the City had a population of 14,178 in 2010. The City's population has grown approximately 8.4 percent since 2000.[20]

22. Both Minnesota State Highway 7 and Minnesota State Highway 22 are primary arterial highways that support traffic moving in and out of the City. According to a December 2012 traffic analysis, State Highway 7 bears an average of between 7,800 and 8,600 vehicle trips per day in the immediate vicinity of the Subject Parcels, while State Highway 22 bears an average of 3,650 vehicle trips per day in the area.[21]

23. The record contains no evidence regarding police or fire protection services provided to any properties by the City.

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[18] Ex. 1.
[19] Ex. 110.
[20] Ex. 113.
[21] Ex. 108; Testimony (Test.) of John Rodeberg.

24. The City's Comprehensive Plan was not introduced into evidence and is not in the record in this matter.

25. The record contains no evidence regarding the City's average platted lot size or the amounts of platted versus unplatted properties located within the City.

26. Other than with respect to the zoning designation for the Subject Parcels, the record contains no evidence regarding zoning designations elsewhere in the City.

27. The record contains no evidence regarding the City's existing bonded indebtedness.

**Hutchinson Township**

28. If the Petition for Detachment is granted, the Subject Parcels will become a part of Hutchinson Township.

29. According to the 2010 United States Census, as reported by Maxfield Research Inc., the Township had a population of 1,220 in 2010. The Township's population has grown approximately 8.9 percent since 2000.[22]

30. The record contains no evidence regarding police or fire protection services provided to any properties by the Township.

31. The record contains no evidence regarding the Township's existing bonded indebtedness.

**City's 2001 Annexation of Subject Parcels and Other Properties**

32. Prior to December 27, 1999, the Subject Parcels were part of Hutchinson Township and were owned by Frederick H. Seltz and Rosewitha R. Seltz. Frederick Seltz and others approached the City to inquire about annexing property (made up of the Northern Properties and the Subject Parcels) into the City to support the planned development of a Hennen's furniture store on the property to the immediate north of Parcel 2. The property owners wanted city utilities and infrastructure in order to make the planned development economically viable.[23]

33. At that time, the properties being considered for annexation were not adjacent to the City's boundaries and so were not eligible for annexation under existing statutory requirements.[24]

34. To make the properties statutorily eligible for annexation, the City asked the property owners to approach the Minnesota Department of Natural Resources (DNR) and inquire about the possibility of including a small segment of the DNR's Luce Line State

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[22] Ex. 113.
[23] Test. of Scott Exsted; Test. of Jon Christensen; Test. of J. Rodeberg.
[24] Map of City boundaries attached to Petition for Annexation by Ordinance, OAH-MBAU Docket No. A-6211, received January 4, 2000.

Trail (Trail) in any proposed annexation proceeding, thus ensuring that the properties proposed for annexation would abut the City boundary in the area of a 100 foot portion of the Trail.[25]

35. On December 27, 1999, Frederick and Rosewitha Seltz, plus seven other individuals and entities with ownership interests in approximately 95.68 acres made up of the Subject Parcels, the Northern Properties and now Lots 1 through 4 of Schmeling's Subdivision in the City, executed a Petition for Annexation by Ordinance (1999 Petition for Annexation) seeking to detach the identified properties from the Township and annex them to the City pursuant to the authority of Minn. Stat. § 414.033, subd. 5 (1998) for the purpose of "commercial development in need of municipal services."[26]

36. The 1999 Petition for Annexation was filed with the Minnesota Office of Strategic and Long Range Planning's Municipal Boundary Adjustments Unit on January 4, 2000.[27]

37. The Township opposed the 1999 Petition for Annexation by its adoption of a Resolution dated March 9, 2000.[28]

38. As directed by the MBAU, the parties eventually engaged in mediation, which process resulted in a tentative agreement memorized in a draft Orderly Annexation Agreement in March 2001. Because the parties failed to execute the draft Orderly Annexation Agreement prior to the expiration of the statutory jurisdiction of the MBAU, the Petition for Annexation was eventually denied.[29]

39. Effective in September 2001, the City and the Township executed a Joint Resolution of the City of Hutchinson and the Township of Hutchinson as to the Orderly Annexation of Property (2001 O/A Agreement), whereby the City and the Township

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[25] Test. of J. Christensen; Test. of J. Rodeberg.

[26] Petition for Annexation by Ordinance, OAH-MBAU Docket No. A-6211, received January 4, 2000.

[27] MBAU internal records. Note: In 1959, the legislature created the Minnesota Municipal Commission "to carry out the legislature's constitutional duty to provide for 'the creation, organization, administration, consolidation, division * * * (and) change of boundaries' of local government units" as required by Minn. Const. art. 11, s 1. *Town of Stillwater v. Minnesota Mun. Comm'n*, 300 Minn. 211, 216, 219 N.W.2d 82, 86 (1974). *See* 1959 Minn. Laws ch. 686, sec 1. The Minnesota Municipal Commission was legislatively renamed the Minnesota Municipal Board (MMB) in 1975. See 1975 Minn. Laws ch. 271, sec 3(27). In 1997, the MMB was legislatively terminated effective December 1, 1999 and its powers transferred to the Office of Strategic and Long-Range Planning. In 1999 Minn. Law ch. 243, art. 16, sec 24, the 1999 Legislature advanced that termination and transfer to June 1, 1999. Upon the dissolution of the Office of Strategic and Long-Range Planning, effective on April 23, 2003, these functions were transferred to the Minnesota Department of Administration by virtue of Reorganization Order No. 188, dated March 13, 2003. And finally, effective March 8, 2005, the functions were transferred to the Office of Administrative Hearings pursuant to Reorganization Order No. 192, dated February 2, 2005, and the authority for determinations under chapter 414 was vested in the Chief Administrative Law Judge. *See* Minn. Stat. §§ 414.01–.12 (2008). Herein, pre-OAH actions of the municipal boundary adjustment unit are denoted "MBAU" and post-OAH actions are denoted "OAH-MBAU).

[28] Township Resolution received by the Minnesota Office of Strategic and Long Range Planning's Municipal Boundary Adjustment unit, the predecessor to OAH-MBAU, on March 16, 2000, as memorialized in OAH-MBAU Docket No. A-6211.

[29] Order Denying Annexation, OAH-MBAU Docket No. A-6211 (October 22, 2001).

indicated their intent to designate approximately 134 acres of property as an Orderly Annexation Area pursuant to the authority of Minn. Stat. § 414.0325, subd. 1 (2000).[30]

40. The 2001 O/A Agreement categorized the properties within the Orderly Annexation Area into two components via legal descriptions titled Exhibit B and Exhibit C, and provided that: (1) the Exhibit B properties would be immediately annexed to the City; and (2) the Exhibit C properties would be annexed to the City upon the future occurrence of various identified criteria.[31]

41. The Subject Parcels and the Northern Properties, plus a 100-foot deep and approximately 3,400-foot long[32] length of the Luce Line State Trail at the southern border of the Subject Parcels, made up the whole of the properties included as Exhibit B to the 2001 O/A Agreement.[33]

42. In the 2001 O/A Agreement, the City and Township agreed that the Exhibit B properties were "in need of immediate annexation"[34] for the purpose of "commercial development."[35]

43. In accordance with the 2001 version of the orderly annexation statute and by executing the 2001 O/A Agreement, the City and the Township agreed that the Exhibit B properties, including the Subject Parcels, were or were about to become "urban or suburban in character and that the annexing municipality [was] capable of providing the services required by the area within a reasonable time…."[36]

44. In the 2001 O/A Agreement, the City and the Township agreed, in relevant part, as follows:

a. The City is authorized to provide municipal waste water, storm sewer and water services to the relevant properties, but the 'timing, design and scope of such services remains within the sole discretion of the City.'[37]

b. The provisions of the Minnesota State Building Code are extended to all designated property, and all required permits

[30] Ex. 112; Test. of J. Christensen.
[31] *Id.*
[32] The stated length is approximate as estimated from the scale embedded into Ex. 104. The actual length of the Trail segment annexed by the City pursuant to the 2001 O/A Agreement is measured as between "the southerly prolongation of the east line of KIMBERLYS COUNTRY ESTATES, according to the recorded plat thereof" and a defined point on the "east line of [the] Southwest Quarter [of Section 33, Township 117 North, Range 29 West, McLeod County, Minnesota." *See* Ex. 112.
[33] Ex. 112.
[34] Ex. 112, p. 2, ¶ 3.
[35] October 30, 2001 filing by Julie Wischnack, Director of Planning/Zoning/Building for the city of Hutchinson, OAH-MBAU Docket No. A-6211, received November 6, 2001.
[36] Minn. Stat. § 414.0325, subd. 3(a) (2000).
[37] Ex. 112, p. 3, ¶ 5.

must be obtained from the City before commencing improvements.[38]

c. If the City installs municipal water, storm sewer and wastewater services and infrastructure to the Exhibit B properties, including the Subject Parcels, the property owners must contract with and post bond to reimburse the City for all costs related to installation of services.[39]

45. The 2001 O/A Agreement further specifically provided as follows: "The City and the Township mutually state that no alteration by Minnesota Planning to the boundaries as described on Exhibit A ("the orderly annexation area") is appropriate or permitted."[40]

46. The City and the Township submitted the 2001 O/A Agreement to the MBAU for statutorily limited review and comment only pursuant to the following authority:

> If a joint resolution designates an area as in need of orderly annexation, provides for the conditions for its annexation, and states that no consideration by the chief administrative law judge is necessary, the chief administrative law judge may review and comment, but shall, within 30 days, order the annexation in accordance with the terms of the resolution.[41]

47. By Order dated November 19, 2001, the MBAU approved the orderly annexation of the Subject Parcels and the Northern Properties as required by the applicable statute.[42]

48. As part of the annexation effort and to require high quality construction and amenities to match what the Hennen's store planned to build,[43] in March 2002 the City adopted Ordinance 154.071 and thereby established the Gateway District, a zoning district with regulations which were "designed and intended to promote commercial development along major thoroughfares which are characterized by high quality permanent construction, strong economic viability and a pleasing aesthetic appearance" for properties "in the gateway areas of the city…."[44]

49. Following the annexation, Frederick H. Seltz and Rosewitha R. Seltz had their real property platted as Seltz Subdivision,[45] the plat of which was approved by the City Council's adoption of Resolution No. 12013 on August 27, 2002.[46]

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[38] Ex. 112, p. 3, ¶ 6.
[39] Ex. 112, pp. 3-5, ¶¶ 7-10.
[40] Ex. 112, p. 6, ¶ 14; Test. of J. Christensen.
[41] Minn. Stat. § 414. 0325, subd. 5 (2000).
[42] November 19, 2001 OSLRP Order in MBAU Docket No. OA-785-1/A-6211.
[43] Test. of J. Rodeberg.
[44] Ex. 105.
[45] Ex. 104.
[46] Ex. 105.

50. The planned Hennen's furniture store was never built in the area as proposed because the City did not install water infrastructure and other municipal services to the area within the timeframe expected by the petitioning landowners and interested developers.[47]

**Subject Parcels: Description, Location, and Proximity**

51. The Subject Parcels do not abut each other, but are instead separated by a piece of property, the use of which is dedicated to the state of Minnesota for public roadway purposes and improved as Minnesota State Highway 22.[48]

52. Since their annexation in 2001, the Subject Parcels have been included within and have abutted the boundaries of the City, generally denoted by the black outline in the illustration below.[49]

53. The Subject Parcels are the last two properties along the eastern border of that part of the City, which runs concurrent with the eastern boundary of Parcel 2.[50] The Subject Parcels plus the Trail form the southern boundary of the City in the relevant area.

54. The Subject Parcels adjoin other property within the City on their southwestern-most corner, connecting through a 100-foot portion of the Luce Line State Trail which the City annexed into its boundaries in order to meet the statutory requirement that the properties included in the 2001 O/A Agreement would abut the City boundary.[51]

55. There is a 66-foot strip of property used for access by property owners in the area, which strip of property runs adjacent to the easternmost boundary of Parcel 2. This 66-foot strip of property is not included in the City limits and provides no right of access to the Subject Parcels or the Northern Properties by the City in that the 66-foot strip of property is privately owned and not platted or otherwise dedicated for public use.[52]

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[47] Test. of J. Christensen.
[48] Ex. 6.
[49] Ex. 101.
[50] Affidavit of Julie Fillbrandt; Affidavit of John Webster.
[51] Ex. 101; Test. of J. Christensen.
[52] Affidavit of Kent Exner; Affidavit of Jeffrey R. Rausch.

56. Minnesota State Highway 22 abuts the eastern boundary of Parcel 1 and the western boundary of Parcel 2.[53]

57. The Subject Parcels are accessible to vehicular traffic via Minnesota State Highway 22.[54]

58. The Subject Parcels are not directly accessible via any City streets, roadways or rights-of-way other than with respect to State Highway 22.[55]

59. At present, the Northern Properties are accessible to vehicular traffic via Minnesota State Highway 7 and, with respect to Lot 1, Block 1 and Lot 1, Block 2 of the Seltz Subdivision, by State Highway 22.[56]

60. The Subject Parcels are platted as part of the City's Seltz Subdivision.[57]

61. The Subject Parcels are unimproved with buildings of any sort.[58]

62. Petitioner is the sole owner of the Subject Parcels, having purchased them from Frederick H. Seltz and Rosewitha Seltz on March 29, 2012.[59]

63. The vast majority of the Subject Parcels, 38 of their 41.37 acres, are maintained and used as agricultural land; Petitioner plants them with corn and soybeans.[60]

64. No one resides on the Subject Parcels.[61]

65. The Subject Parcels are not currently developed for urban residential, commercial or industrial purposes.[62]

66. Various properties that surround the Subject Parcels within one quarter-mile in distance are developed for the commercial or industrial purposes, as identified below:

a. Properties to the west of the Subject Parcels (outlined in orange below) consist of a row of commercial operations, including AG Systems, Quade Electric, Nordic Components and other commercial

[53] Ex. 101.
[54] Ex. 101; Test. of S. Exsted.
[55] *Id.*
[56] Ex. 104.
[57] *Id.*
[58] Petition for Detachment; Test. of S. Exsted.
[59] Ex. 111.
[60] Petition for Detachment; Test. of S. Exsted.
[61] Petition for Detachment.
[62] Test. of S. Exsted; Test. of J. Christensen; Test. of J. Rodeberg.

and industrial operations.[63] These properties are outside the City boundaries and located within the Township.[64]

b. The property adjacent to the southwest corner of the Subject Parcels, via the 100-foot portion of the Luce Line State Trail, is operated by a wholesale potato child manufacturer located in the City's industrial park (outlined in blue below). This property is within the City boundaries.[65]

c. Immediately to the north of Parcel 1 is property operated as a Factory Direct Furniture store (outlined in red below). This property is located within the City.[66]

d. Across State Highway 7 from the Northern Properties is a commercial lumber operation (outlined in brown below). This property is located within the Township and outside the City[67]

e. Property to the northeast of Parcel 2, located in the Township and outlined in black on the illustration below, constitutes a cluster of small commercial and industrial interests including a lawnmowing repair operation, a woodworking shop and a cluster of other commercial and industrial operations.[68]

f. A residential development located within the City and containing approximately 25 homes (outlined in orange) is located within approximately 1,200 feet of the westerly border of the Subject Parcels.[69]

[63] Test. of J. Christensen; Test. of Dan. Joacim; Ex. 101.
[64] Test. of S. Exsted; Ex. 101.
[65] Test. of D. Joacim; Ex. 101.
[66] Test. of D. Joacim; Ex. 101.
[67] Test. of D. Joacim; Ex. 101.
[68] *Id.*
[69] Ex. 101.

67. The Subject Parcels abut land used for agricultural purposes to the south, north, and east, as noted in purple in the illustration above. These properties are located within the Township and outside the City. [70]

**Anticipated Plans for Development in the Area**

68. The Subject Parcels are located within the City's Gateway District.[71]

69. Gateway District zoning restrictions do not allow for typical industrial or commercial development but instead require a higher quality construction aesthetic for incoming development, which could increase the cost of development of the Subject Parcels.[72]

70. Location near primary arterials, providing visibility and access to the traveling public, is generally considered a positive characteristic for property seeking commercial development.[73]

71. Being located within municipal limits and therefore eligible to request municipal services, and being included within a filed plat, are both considered positive criteria for property seeking commercial development.[74]

72. All recent, significant commercial development in and around the City has been located near the southern portion of the City around Minnesota State Highway 15 and not in the City's Gateway District served by State Highways 7 and 22.[75]

73. In the last year, 22 new homes were constructed throughout the City.[76]

74. The City's last updated Comprehensive Plan focuses the City's plans for growth on areas within its borders rather than any properties to be acquired by virtue of annexation.[77]

75. The only significant construction in the immediate area of the Subject Parcels, located to the north on State Highway 7, is an AmericInn Hotel & Suites operation built at least 11 years ago.[78]

76. Petitioner and the Township testified that the City has not upheld the agreements it made to the Township in the 2001 O/A Agreement in that it has not installed

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[70] Test. of S. Exsted; Test. of J. Christensen; Test. of J. Rodeberg.
[71] Test. of J. Rodeberg.
[72] *Id.*; Test. of Miles Seppelt.
[73] Test. of J. Rodeberg; Test. of K. Exner.
[74] *Id.*
[75] Test. of K. Exner; Test. of J. Christensen.
[76] Test. of D. Joacim.
[77] *Id.*
[78] Test. of S. Exsted; Test. of K. Exner.

municipal water, wastewater and sewer services to the annexed property and so has impeded the potential for commercial or industrial development of the area.[79]

77. In furtherance of its plans to support commercial development in the general area of the Subject Parcels, the City obtained property in approximately 2009 and constructed an industrial park in an area immediately adjacent to the southwestern corner of the Subject Parcels.[80]

78. Only one of the seven lots in the industrial park is currently occupied, that being the wholesale potato chip factory located adjacent to the southwestern corner of Parcel 1 in the area of the 100-foot portion of the Trail annexed to the City in 2011.[81]

79. In approximately 2003, the City installed electric and natural gas transmission lines on the north side of the Seltz Subdivision at a cost of approximately $25,000. These services are located within 500 feet of the Subject Parcels.[82]

80. Beginning in 2009 and completed in 2010, the City extended a 12-inch diameter trunk water main and a 24-inch diameter sanitary sewer main to and beyond a newly created industrial park to a point located within 100 feet of the southwest corner of Parcel 1.[83]

81. As envisioned by the City's updated Comprehensive Plan, the City installed these services beyond the industrial park at a size necessary to eventually provide water, storm and sanitary sewer service to properties located to the east and north, including the Subject Parcels and the Northern Properties.[84]

82. The City's cost for installing the water, storm and sanitary sewer infrastructure past the industrial park to within 100 feet of the Subject Parcels was approximately $80,000.[85]

83. With some exceptions, the City does not generally install public utilities outside City boundaries due to its inability to assess property owners for associated costs, which is the means by which the City finances utility infrastructure improvements.[86]

84. It is the City's general practice not to extend sewer and water services to unoccupied land, even if located within the City boundaries, unless and until the property owner requests such and thereby acquiesces to the resulting assessments necessary to allow the City to recoup some or all of its costs.[87]

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[79] *Id.;* Test. of J. Christensen.
[80] Test. of J. Christensen; Test. of J. Rodeberg; Test. of K. Exner.
[81] Test. of K. Exner.
[82] Test. of David Hunstad; Ex. 101.
[83] Test of K. Exner; Test. of J. Rodeberg.
[84] Test of K. Exner; Test. of M. Seppelt.
[85] Test of K. Exner.
[86] Test. of. J. Rodeberg; Test. of K. Exner; Test. of D. Hunstad.
[87] *Id.*

85. To date, the City has not extended sewer, storm, or water service to the Northern Properties.[88]

86. Petitioner has not requested that the City extend sewer, storm, water, electric or natural gas service to the Subject Parcels, and no services have been extended.[89]

87. Upon the Petitioner's request, the City could extend electric and natural gas service directly to the Subject Parcels within 24 hours after required permissions were obtained.[90]

88. If the Subject Parcels are detached, the McLeod Cooperative Power Association has a right to provide requested service subject to the terms of the Electric Service Territory Agreement executed between it and the Hutchinson Utilities Commission.[91]

89. While the City has hopes of commercial development affecting the area, the evidence at hearing did not identify that the City or any private developer has any specific or pending plans to develop the Subject Parcels, the Northern Properties or any properties in the immediate area.

90. Detachment of the Subject Parcels from the City would not alter their current or reasonably foreseeable planned use.

**Rural Character of Property**

91. The City testified that it considers the Subject Parcels to be urban in character for the following reasons: (1) the parties to the 2001 O/A Agreement agreed that they were urban in character when they were originally annexed to the City; (2) they are located within the City boundaries; and (3) they are located in close proximity to other properties that are, or about to become, urban in character.[92]

92. In 2013, the City, through its Economic Development Authority, owned property located within the City boundaries at 765 Railroad Street (Railroad Street Property).[93] At all relevant times, the Railroad Property was undeveloped, unimproved bare land prepared for agricultural use. The property was adjacent to and surrounded on at least three sides by properties used for agricultural purposes.[94] While it owned the Railroad Street Property, the City rented it out for use in agricultural production.[95]

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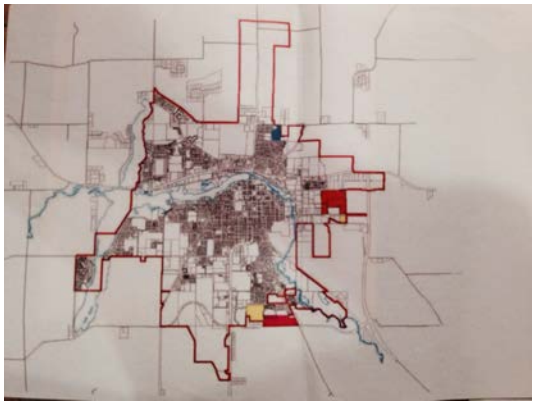
[88] Test. of S. Exsted; Test. of J. Christensen; Test. of K. Exner.
[89] Test. of S. Exsted; Test. of J. Rodeberg.
[90] Test. of D. Hunstad.
[91] Test. of D. Hunstad; Ex. 110.
[92] Test. of D. Joacim.
[93] Ex. 2; Ex. 4.
[94] *Id.*
[95] Test. of M. Seppelt.

93. Although the City originally purchased the Railroad Street Property for use in expanding the municipal industrial park, it found the improved infrastructure costs too high and so sold it in favor of purchasing other property for that purpose.[96] As an inducement to purchasers, the City offered the Railroad Property for sale with the condition that it would be detached from the City and become part of Hassan Valley Township, thus increasing the value of the property to potential purchasers given the lower property tax rate the property would bear upon detachment.[97] In January 2013, the City, through its Economic Development Authority, filed a petition for detachment attesting that the property was "rural in character and not developed for urban residential, commercial, or industrial purposes."[98]

94. As unimproved land used only for agricultural production, adjacent to and surrounded on several sides by land similarly used for agricultural purposes, located in an area where there has been no commercial or urban development for over a decade, the Subject Parcels are rural in character.

**Symmetry**

95. The City's current boundaries are inconsistent and irregular, as illustrated below.[99]



96. Detachment of the Subject Parcels would not cause the Northern Properties to be left as unattached islands, separated from all other property contained within the City's borders. The Northern Properties would remain within contiguous City borders through the 100-foot portion of the Trail together with the State Highway 22 right-of-way, both of which are now and would remain part of the City upon detachment.

97. Upon detachment, the City borders in the area of the Subject Parcels would form a T-shaped protuberance extending to the north of the 100-foot wide strip of the

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[96] *Id.*
[97] *Id.*
[98] Petition for Detachment, OAH-MBAU Docket No. D-507, signed by the EDA on January 2, 2014 and filed February 19, 2013.
[99] Ex. 109 Test. of K. Exner.

Luce Line State Trail currently contained within the City borders. The property illustrated in red below would remain a part of the City.

98. Given the lack of current symmetry of the City's borders, detachment of the Subject Parcels would not make the City's borders appreciably less symmetrical than they are at present.

**Access to Properties**

99. Vehicular access to the Northern Properties via State Highway 7 and State Highway 22, by the City, Township or others, would be unaffected by detachment of the Subject Parcels.[100]

100. Detachment of the Subject Parcels would not leave the Township, City or others without access to the Subject Parcels; same would remain accessible to vehicular traffic via State Highway 7 and State Highway 22.[101]

101. In order to provide City utilities to the Northern Properties in the future following detachment of the Subject Parcels, the City would need to obtain access rights, through the purchase or granting of title or easement rights, from Petitioner, landowners north of the City's current industrial park, the DNR or the Minnesota Department of Transportation with respect to State Highways 7 or 22.[102]

**Economic Repercussions of Detachment**

102. As noted in the Petitioner's 2014 Property Tax Statements, Parcel 1 had an estimated market value and a taxable market value of $190,400 and a tax liability of $3,186. Of this total tax liability, $1,418.82 was attributable to the City.[103]

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[100] Ex. 104.
[101] *Id.*
[102] Test. of J. Rodeberg; Test. of K. Exner.
[103] Ex 5.

103. As noted in the Petitioner's 2014 Property Tax Statements, Parcel 2 had an estimated market value and a taxable market value of $113,700 and a tax liability of $1,820. Of this total tax liability, $847.27 was attributable to the City.[104]

104. As of the issuance of the Petitioner's 2014 Property Tax Statements, the Subject Parcels were subject to special assessments for a county ditch in the following amounts: Parcel 1 - $356.67; and Parcel 2 - $129.86.[105]

**Allocation of Indebtedness**

105. In relevant part, the Petitioner identified the following reason supporting his requested detachment of the Subject Parcels: [t]he property taxes on this property are more than double the amount per acre than other property I own in the near vicinity."[106]

106. The City's property tax budget for 2014 was $4,491,446.[107]

107. The City share of property taxes on the Subject Parcels in 2013 and 2014 was as follows: Parcel 1 - $1,111.63 (2013) and $1,418.82 (2014); Parcel 2 - $663.46 (2013) and $847.27 (2014).[108]

108. Loss of the Subject Parcels' tax revenue would not unduly burden the provision of services by the City to the remaining portions of the municipality.[109]

109. Petitioner calculated the City tax rate on the Subject Parcels as follows: Parcel 1 - $123.15 per acre; and Parcel 2 - $117.41 per acre.[110]

110. Petitioner calculated the non-City tax rate on the Railroad Property as $36.05 per acre.[111]

111. The City has not provided any improvements to the Subject Parcels that resulted in assessments to the property. No evidence at hearing indicated that the City holds the Subject Parcels responsible for any part of the City's bonded indebtedness.

112. No evidence at hearing indicated that the Township seeks to hold the Subject Parcels responsible for any existing indebtedness.

113. It is appropriate to relieve the Subject Parcels of responsibility for any existing indebtedness of the city of Hutchinson.

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[104] *Id.*
[105] *Id.*
[106] Petition for Detachment, ¶ 5.
[107] Ex. 1.
[108] Ex. 5.
[109] Test. of S. Exsted; Test. of D. Joacim; Ex. 5.
[110] Test. of S. Exsted.
[111] *Id.*; Ex. 2.

**Hearing Costs**

114. The parties did not agree to a division of the costs of this proceedings.

115. It is appropriate to allocate the costs of the proceeding to the parties on an equitable basis.

Based on these Findings of Fact, the Chief Administrative Law Judge makes the following:

## CONCLUSIONS OF LAW

1. The Chief Administrative Law Judge has jurisdiction in this matter pursuant to Minn. Stat. §§ 414.06, subd. 3; .12 (2014).

2. The Petition for Detachment was properly filed and notice given pursuant to Minn. Stat. § 414.09, subd. 1(c) (2014).

3. The hearing date was published pursuant to Minn. Stat. § 414.09, subd. 1(d) (2014).

4. Petitioner bears the burden of proof to demonstrate by a preponderance of the evidence that the statutory criteria for detachment have been met.[112]

5. Minn. Stat. 414.06, subd. 3, provides in relevant part:

> Upon completion of the hearing, the chief administrative law judge may order the detachment on finding that the requisite number of property owners have signed the petition if initiated by the property owners, that the property is rural in character and not developed for urban residential, commercial or industrial purposes, that the property is within the boundaries of the municipality and abuts a boundary, that the detachment would not unreasonably affect the symmetry of the detaching municipality, and that the land is not needed for reasonably anticipated future development.

7. The Petitioner has shown by a preponderance of the evidence that the detachment criteria set forth in the first sentence of Minn. Stat. 414.06, subd. 3, have been met:

a. The proceeding was property initiated by a Petition for Detachment signed by the sole property owner;

b. The Subject Parcels are rural in character, and have not been developed for urban residential, commercial or industrial purposes;

[112] Minn. R. 1400.7300, subp. 5 (2013).

c. The Subject Parcels are within the boundaries of the City and abut a boundary of the City;

d. Detachment of the Subject Parcels would not unreasonably affect the symmetry of the City; and

e. The Subject Parcels are not needed for reasonably anticipated future development.

8. Detachment of the Subject Parcels would not affect the City's ability to continue to carry on the functions of government or cause the City to suffer undue hardship and, as such, the Petitioner has satisfied the criterion set forth in the second sentence of Minn. Stat. 414.06, subd. 3.

9. Minn. Stat. 414.06, subd. 3, provides for allocation of debt between the City and the Township as follows:

> The detached area may be relieved of the primary responsibility for existing indebtedness of the municipality and be required to assume the indebtedness of the township of which it becomes a part, in such proportion as the chief administrative law judge shall deem just and equitable.

10. There being no evidence presented related to any outstanding bonded indebtedness of the City, it is fair and equitable for the Subject Parcels to be determined not responsible for any City bonded indebtedness that is currently outstanding.

11. Minn. Stat. § 414.12, subd. 3, specifies that if the parties do not agree to a division of the costs of the proceeding before the hearing, the costs "must be allocated on an equitable basis by the … chief administrative law judge."

12. As the Township submitted a resolution of support for the Petition for Detachment, which was opposed by the City, the Township is subject to the statutorily required distribution of costs.[113]

13. It is equitable to allocate the costs of this proceeding as follows: 50 percent to the Petitioner; 25 percent to the City; and 25 percent to the Township.

14. The attached Memorandum explains the reasons for these Conclusions of Law and is incorporated by reference herein.

Based upon these Conclusions of Law, and for the reasons explained in the accompanying Memorandum, the Chief Administrative Law Judge makes the following:

[113] Minn. Stat. § 414.06, subd. 1a.

## ORDER

1. The Petition for Detachment of the Subject Parcels from the city of Hutchinson is **GRANTED.**

2. The Office of Administrative Hearings - Municipal Boundary Adjustment Unit shall cause copies of this Order to be mailed to all persons described in Minn. Stat. § 414.09, subd. 2 (2014).

3. Pursuant to Minn. Stat. § 414.12, subd. 3, the Office of Administrative Hearings' costs are to be divided between the parties as follows: 50 percent to the Petitioner; 25 percent to the City; and 25 percent to the Township.

4. This Order becomes effective upon issuance.

Dated: June 22, 2015

TAMMY L. PUST
Chief 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 (2014). Any person aggrieved by this Order may appeal to McLeod County District Court by filing an Application for Review with the Court of Administrator within 30 days of the date of this Order. An appeal does not stay the effect of this Order.[114]

Any party may submit a written request for an amendment of these Findings of Fact, Conclusions of Law, and Order Granting Detachment within seven days from the date of the mailing of the Order.[115] A request for amendment shall not extend the time of appeal from these Findings of Fact, Conclusions of Law, and Order Granting Detachment.

[114] Minn. Stat. § 414.07, subd. 2 (2014).
[115] Minn. R. 6000.3100 (2013).

## MEMORANDUM

Minn. Stat. § 414.06 dictates the necessary criteria for detachment or property from a municipality. The preponderance of evidence at hearing established that the required statutory criteria are met in the present case.

### I. The Subject Parcels Meet the Initial Statutory Factors

As set forth in Minn. Stat. § 414.06, subd. 3, a petition for detachment may be granted if: (1) the requisite number of property owners 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) the detachment would not unreasonably affect the symmetry of the detaching municipality; and (5) the land is not needed for reasonably anticipated future development.

In this detachment proceeding, the preponderance of evidence at hearing clearly established that the requisite property owner signed the Petition for Detachment and that the Subject Parcels are within and abut the City's boundaries. Accordingly, the first and third statutory criteria are satisfied. As the parties dispute whether the three remaining criteria are met, each is discussed separately below.

#### A. The Subject Area Is Rural in Character

The Petitioner has the burden of showing that the property "is rural in character and not developed for urban residential, commercial, or industrial purposes . . . ."[116] There is no dispute that the Subject Parcels are not developed for urban residential, commercial or industrial purposes.[117] Instead, the dispute focuses on whether they are "rural in character."

Petitioner argues that the Subject Parcels are rural in character based on the following facts: (1) they are and have always been bare land used for agricultural purposes; (2) there are no buildings on the properties; (3) they benefit from no City services; (4) they are adjacent to other agricultural land; and (5) the City has no immediate plans for development of the properties.[118] At hearing, the City argued that the Subject Parcels are not rural in character because they are, or were in the relevant timeframe: (1) urban in character in 2001 when they were annexed with the agreement of the Township, which characterization is unchangeable as memorialized in the 2001 O/A Agreement; (2) presently zoned for commercial development as part of the City's Gateway District; (3) prepared for quick access to City utilities upon request for connection to the City's existing infrastructure; (4) surrounded on several sides by commercial and industrial properties; and (5) primed for development given their location

[116] Minn. Stat. § 414.06, subd. 3.
[117] Test. of S. Exsted; Test. of J. Christensen; Test. of J. Rodeberg.
[118] Petition for Detachment; Test. of S. Exsted.

in relation to two primary arterial roadways which lead to the Twin Cities metropolitan area.[119]

The term "rural in character" is not defined in Minnesota Statutes Chapter 414 (2014) or in the applicable rules. When statutory terms are undefined, the legislature has indicated that "words and phrases are construed according to rules of grammar and according to their common and approved usage...."[120] Accordingly, it is appropriate to look to the common definition of the term "rural" when applying it in this case. The Merriam-Webster On-Line Dictionary defines "rural" as "of or relating to the country, country people or life, or agriculture."[121] Similarly, the Oxford Dictionary defines "rural" as "relating to or characteristic of the countryside rather than the town,"[122] and the American Heritage College Dictionary defines "rural" as "of, relating to, or characteristic of the country; of or relating to people who live in the country: rural households; of or relating to farming; agricultural."[123]

Legislative intent controls in interpreting all state statutes.[124] Therefore, it is necessary to consider the common usage of the term "rural in character" as guided by the legislature's explicit findings embedded in Chapter 414. These findings shed light on the manner in which the legislature intended the statute would be applied. In relevant part, the statute provides that city government is the most efficient form for "areas intensively developed for residential, commercial, industrial, and governmental purposes," for which reason the statute allows cities to annex such properties – identified as those that are or about to become "urban or suburban in character."[125] Correspondingly, the statute provides that townships are the most efficient form of government for "areas used or developed for agricultural, open space, and rural residential purposes,"[126] and so allows these properties – identified as those that are "rural in character" - to detach from a city and become part of a township.

Judicial and administrative courts have examined factual circumstances in various statutory contexts to determine whether specific property is rural or urban in character.[127]

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[119] Test. of J. Rodeberg; Test. of D. Joacim; Test. of K. Exner; Test. of M. Seppelt.

[120] Minn. Stat. § 645.08(1) (2014).

[121] *Rural,* Merriam-webster.com, http://www.merriam-webster.com/dictionary/rural (last visited June 15, 2015).

[122] *Rural,* Oxforddictionaries.com, http://www.oxforddictionaries.com/definition/english/rural (last visited June 15, 2015).

[123] *Rural,* Ahdictionary.com, https://www.ahdictionary.com/word/search.html?q=Rural (last visited June 15, 2015).

[124] Minn. Stat. § 645.16 (2014); *Amaral v. Saint Cloud Hosp.,* 598 N.W.2d 379, 385-86 (Minn.1999).

[125] Minn. Stat. § 414.031, subd. 4(b)(1).

[126] *Id*.

[127] While the interpretation of the terms "rural," "urban," or "suburban" in other statutory contexts cannot be deemed controlling in the present matter, courts' identification of relevant criteria used to define these terms is instructive for their consistency with the typical Chapter 414 analysis. Outside Chapter 414, courts generally consider the agricultural versus other uses of the property, the low density of development in the area, and the lack of improvements or access to municipal services in determining that property is "rural" for purposes of the statutes identified below.

- Minn. Stat. § 273.13, subd. 23(c) (2014), part of the Minnesota Tax Code, identifies real property as "Class 2b rural vacant land" if the property consists "unplatted real estate, rural in character and

Under Chapter 414, these same courts have examined the subject properties' use, zoning restrictions, proximity to other uses as a harbinger of impending development, density and access to or use of city services to determine whether a specific property is "rural in character" or is the opposite: "urban or suburban in character."[128] While there will always

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not used for agricultural purposes, … that is not improved with a structure." The following cases are illustrative of typical judicial analysis under this statute: *Minn. Power & Light Co. v. Carlton County*, 145 N.W.2d 68, 70 (Minn. 1966) (finding property improved with four cabins met the required classification in that it received no municipal services, was located three miles from the nearest town and was largely inaccessible, being surrounded by Jay Cooke State Park); *Staples v. State*, 46 N.W.2d 651, 653-54 (Minn. 1951) (finding property is urban for tax purposes if "the land partakes of the character of city property and is occupied for residential purposes only by persons engaged in city pursuits" and is rural for tax purposes if it "is in the general neighborhood of farms, where it is devoted to rural rather than urban uses, or is readily adaptable to rural though not necessarily agricultural uses . . . even though the property be within the corporate limits of a municipality.").

- Early interpretations of the state's original homestead exemption under Minn. Stat. §§ 510.01-.02 resulted in courts engrafting a "rural in character" or "urban in character" distinction into the statute, and applying that analysis to the area surrounding the subject property rather than focusing on the subject parcel itself. *See Nat'l Bank of the Republic of New York v. Banholzer*, 69 Minn. 24, 29, 71 N.W. 919, 920 (1897) (finding "[t]he existence of a collection of houses, with a factory or a shop or two, far out in the rural or agricultural portion of the city, is very common" in a rural area, while noting that the rural or urban distinction turns on the facts of each case); *Kiewert v. Anderson*, 65 Minn. 491, 492, 67 N.W. 1031, 1032 (1896) (property used as vegetable farm was rural and not urban); *In re Engstrom*, 370 B.R. 205, 213 (Bankr. D. Minn. 2007) (applying 110-year old *Banholzer* principles to find 5-acre improved lot to be located in rural area where "[t]here is nothing more than houses in an interspersed pattern of low to very low density, with some agricultural use (pasture, meadow, and some cultivation of cropland) likely taking place a half-mile or more to the west"); *In re Kyllonen*, 264 B.R. 17, 30-31 (Bankr. D. Minn. 2001) (property is suburban where "characterized by very large lots occupied by people who have principal occupations off the land…").
- Examining the distinction between rural and urban property in the context of landlord tenant law in *Stees v. Bergmeier*, 91 Minn. 513, 516-17, 98 N.W. 648, 650 (1904), the Minnesota Supreme Court noted, "The distinction between urban property and rural property is well understood. Urban real estate is that situated in a city, or a town resembling a city, while rural real estate is that located in the country, in an agricultural district. The common law recognizes the distinction, and so does the fundamental law of our state (Const. art. 1, § 15), and it has also been noticed in the opinions of this court (*Johnson v. Albertson*, 51 Minn. 333, 53 N. W. 642*; Kiewert v. Anderson*, 65 Minn. 495, 67 N. W. 1031, 60 Am. St. Rep. 487)."

[128] The following cases, all determined under Chapter 414, reflect the criteria courts typically find determinative in characterizing property as either "rural" or "urban or suburban" in character. Because Chapter 414 uses these two terms as definitionally related, it is appropriate to consider both in an effort to ascertain what the legislature intended when it referenced property that is "rural in character." See *JME of Monticello, Inc. v. Comm'r of Revenue*, 848 N.W.2d 505, 510 (Minn. 2014) (noting appropriate practice of interpreting one portion of statute in light of relevant language in related statutory provisions) (internal citations omitted).

- *City of Lake Elmo v. Nass*, No. A12-2008, 2013 WL 3491161, *1, 8 (Minn. Ct. App. Sept. 25, 2013) (unpublished) (affirmed finding that property was rural in character given its agricultural zoning designation, the fact that only two households existed on the property, and the fact that the property lacked city water, sanitary sewer, storm sewer, solid waste collection or disposal or law-enforcement services.).
- *State ex rel. Town of White Bear v. City of White Bear Lake*, 255 Minn. 28, 36-38, 95 N.W.2d 294, 300-301 (1959) (noting that land may be rural in character even if it does not qualify as agricultural for tax purposes, and describing suburban property as follows: "Land which is in the process of

be some overlap between the interpretations of the two terms related to the types of uses which may be evident in particular circumstances, the density and rate of development appear to be the most determinative factors, as described below:

> The essence of an area becoming urban or suburban in character is about growth in development. Rural land becomes urban or suburban when the density of development begins to burden the existing infrastructure of the area. When that development occurs, a balance must be struck between the desires of individual property owners and the cost of infrastructure development needed to support an increasing population. … [R]easonable anticipation of growth and the manner in which that growth conforms to the planned utilization and development of property is at the core of the determination as to whether an area is becoming urban or suburban.[129]

In the present case, the Subject Parcels are unimproved and used for agricultural purposes, and have always been so. They are surrounded on over two sides by other

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being presently, or in the foreseeable future, overflowed with the expanding population of nearby urban areas, as indicated by the existence of a more or less scattered development of small tracts and homes primarily used or intended for residential living, as distinguished from dwellings which are primarily accessory to the operation of bona fide farms, is suburban.").

- *State ex rel Copley Twp. v. Village of Webb*, 250 Minn. 22, 25-30, 83 N.W.2d 788, 793-94 (1957) (finding land was not suburban in character with a population density of 0.4 persons per acre, the "vast percentage" of which "is uninhabited, being either timberland or unworked fields" without roads other than a U.S. highway featuring "a general store, a motel, a concrete-block company, a lumberyard, a gas station with a restaurant, which operates six months of the year, an auto-wrecking yard, and a trailer parking area," yet has "no schools, churches, libraries, post offices, drugstores, clothing stores, banks, or civic organizations.").
- *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 (A-7593)*, Docket No. 2-0330-19393-BA, FINDINGS OF FACT, CONCLUSIONS AND ORDER at 10, 26 (January 13, 2009) (noting that houses built on 2.5-acre lots or larger are not typically considered urban due to expense of providing City utilities; further noting businesses "are of a type (ready-mix concrete, garbage truck storage, a lumberyard and a MNDOT operations and storage site) that are more sensibly located in a rural environment….").
- *In the Matter of the Petition of the City of Bovey for the Annexation of Certain Land pursuant to Minnesota Statutes 414.031 (A-7431)*, Docket No. 2-0330-18032-BA, *FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER* at 5, ¶ 19, 7 ¶¶ 37, 38, 42 (July 5, 2007) (property contains no businesses or houses, is "filled with mine pits, tailings piles and wetlands, rendering the land unsuitable for development," and City has no plans for suburban or urban use).
- *In the Matter of the Petition of Dawson Grain Coop., Inc., for the Detachment of Certain Land from the City of Dawson Pursuant to Minn. Stat. ch. 414*, Docket No. 12-2900-15004-2, FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER at 8, ¶ 5 (Office of Administrative Hearings, February 12, 2003) (property not rural in character where it is zoned "industrial," developed with a grain coop and surrounded by industrial structures.).

[129] *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* (A-7593), 2009 WL 314187, at *17, FINDINGS OF FACT, CONCLUSIONS AND ORDER, OAH Docket No. 2-0330-19383-BA (noting that industrial development area improved with sewer and water had only two of seven lots built out; expected growth of 10 people per year in over 11,000 improved acres of municipality did not constitute an area become "urban or suburban in character.")

agricultural land.[130] While there is also some commercial and industrial development in the area, it is important to note that the commercial and industrial development in the area has been static for over a decade. No new enterprises have been constructed, and no new development has been introduced into the area in over a decade. As a result, there is no relevant burden on existing municipal infrastructure and there is no significant, new demand for infrastructure development. As such, the properties cannot be said to be "becoming urban or suburban in character" under the statutory scheme of Chapter 414.

That is not to say that the area may not develop further in the future. As the City witnesses testified, the area is well served by primary arterial highways, being located on the routes that increasing numbers of residents travel into the nearby metropolitan area. It should be, and someday may be, an attractive site for commercial development given its current zoning and near access to municipal services. Even with these attributes, however, the evidence does not support a finding that the Subject Parcels are currently "intensively developed for residential, commercial, industrial, and governmental purposes"[131] such that they are in need of the efficiencies of City government. Instead, the preponderance of evidence at hearing supports a finding that the Subject Parcels "are not presently needed for more intensive uses."[132]

The City resists the determination that the Subject Parcels are rural in character by noting that it and the Township agreed 15 years ago that the Subject Parcels and surrounding property was then, or was about to become, "urban or suburban in character." The City argues that, as the 2001 O/A Agreement foreclosed the Minnesota Office of Strategic and Long Range Planning (OSLRP)[133] from challenging the parties' characterization of the annexed property, so does the parties' 2001 O/A Agreement foreclose the Township from challenging the Subject Parcel's current characterization in this proceeding.

In this argument, the City inflates the legal effect of the terms of the 2001 O/A Agreement. The provision in question simply mirrors the applicable statute's directive to the state administrative agency: when a municipality and a township agree to allow the annexation of identified property, the state agency may review and comment upon whether the action meets all statutory criteria but may not issue an order designed to prevent the annexation.[134] In accordance with this requirement, the OSLRP did in fact review the parties' annexation plan and, in its Order approving the annexation, commented on the parties' failure to comply with Minn. Stat. § 414.0325, subd. 5.[135] However, this provision of the 2001 O/A Agreement does not purport to, and legally could not, limit the right of either of the governmental parties to change their position with respect to the appropriate characterization of the Subject Parcels, subject to whatever legal claims which such a change might engender. As development trends and municipal

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[130] These exact same attributes caused the City to determine in 2012 that the Railroad Street Property was "rural in character."
[131] Minn. Stat. § 414.01.
[132] Minn. Stat. § 414.01, subd. 1b(2).
[133] *See* Ex. 112, p. 6, ¶ 15.
[134] Minn. Stat. § 414.01, subd. 1a(2).
[135] MBAU Order Docket No. OA-785-1 (November 19, 2001.)

growth patterns change, so can the Chapter 414 characterization of specific parcels of property change. The terms of the 2001 O/A Agreement do not alter this fact.

It is interesting to note that while the City argues that the Township should not be allowed to change its position on the appropriate character of the Subject Parcels, it does not hold itself to that same standard. To the contrary, the City argues that Chapter 414 allows it, and any other parties to an uncontested detachment case, to arbitrarily determine the character of property, no matter how often or how recently it has made an opposite determination. As an example, the City's annexation of the Railroad Street Property in 2004 was initially commenced with the filing of a property owners' petition for annexation by ordinance attesting that the property "[was] or [was] about to become urban or suburban in character,"[136] which petition was supported by the City through its Economic Development Authority (EDA). When it wanted to detach that same property nine years later, in January 2013 the City, through its EDA, filed a petition for detachment attesting that the property was "rural in character and not developed for urban residential, commercial, or industrial purposes."[137] In response to the Petitioner's assertion that these actions evidence the City's inconsistency with regard to boundary adjustment matters, the City characterizes its 2013 assertion as merely a "blanket statement in the State's sample detachment form" rather than a binding averment of fact submitted to a fact-finding tribunal.[138] The City argues that the statute does not limit it from applying whatever descriptor suits its purposes so long as no party to a detachment action disagrees. It goes so far as to note that it could describe property as rural in character, and thus seek detachment, even if the property "contain[ed] the Mall of America," explaining that in an uncontested detachment action "the land is what the parties say it is – not what it actually may be."[139]

The Chief Administrative Law Judge questions whether the Minnesota legislature would agree. Chapter 414 sets forth a set of procedures allowing for the adjustment of municipal boundaries in certain circumstances. By statute, detachment is allowed with respect to property that is rural in character if, and only if, specified criteria are met. Nothing in the statute directs, or allows, local governments to create fictions that suit specific municipal purposes with respect to specific properties and irrespective of the actual facts at issue. Doing so would seem to be in direct contradiction of the statute's direction to the Chief Administrative Law Judge to regulate municipal boundary adjustments "to protect the integrity of land use planning in municipalities and unincorporated areas so that the public interest in efficient local government will be properly recognized and served."[140]

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[136] Petition for Annexation, Docket No. A-7050 (received by MBAU on or about March 25, 2004).
[137] Petition for Detachment, Docket No. D-507, signed by the EDA on January 2, 2014 and filed with the OAH-MBAU on February 19, 2013.
[138] City's Response to Order Regarding Supplementation of Hearing Record, at 3.
[139] *Id*.
[140] Minn. Stat. § 414.01, subd. 1b.

### B. Detachment Would Not Unreasonably Affect the City's Symmetry

The detachment statute requires consideration of whether the detachment would "unreasonably affect the symmetry of the detaching municipality."[141] The term "symmetry" is not defined in the detachment statute or elsewhere in state 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."[142]

The City is currently more asymmetrical than not. The most significant of its irregular protuberances result from annexation proceedings pursued by the City itself. Given the City's lack of symmetry overall, the Chief Administrative Law Judge finds that detachment will not appreciably increase the irregularity of the City's boundaries.[143]

### C. The Subject Parcels Are Not Needed for Reasonably Anticipated Future Development

Parcel 1 abuts on the north and on the west, and Parcel 2 is diagonally adjacent to, properties used for commercial or industrial purposes. Relying on these facts, the City argues that the Subject Parcels are necessary for future development of the Northern Properties and other properties in the area.

The preponderance of evidence at hearing established that neither the City nor any other entity has any current plans for development of the Subject Parcels, or even any guided or planned development to which the Subject Parcels could contribute. The statute does not allow property to be held hostage for over a decade to a city's hopes for private development. Instead, the statute provides that detachment is appropriate if "the land is not needed for *reasonably anticipated* future development."[144] The evidence at hearing did not establish that there is, currently, any future development of the property that is "reasonably anticipated."

The City argues that the Subject Parcels are needed for the future development of the Northern Properties, noting that the cost of City services is too high to be borne by the Northern Properties alone. Chapter 414 does not identify negative economic impact on surrounding properties as a basis to deny detachment. As such, even if this claim is

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[141] Minn. Stat. § 414.06, subd. 3.

[142] *Symmetry,* Merriam-Webster.com, http://www.merriam-webster.com/dictionary/symmetry (Last visited June 17, 2015).

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

[144] Minn. Stat. § 414.06, subd. 3 (emphasis added).

true it provides an insufficient legal basis to refuse Petitioner the requested detachment of the Subject Parcels.[145]

## II. Detachment Will Not Cause Undue Hardship

Even if all of the initial statutory factors are met, a petition for detachment may still be denied if the remainder of the municipality cannot continue to carry on the functions of government without undue hardship.[146]

Petitioner argues that there is no evidence that the City would be subjected to undue hardship if the Subject Parcels are detached. The Petitioner points out that the 41.37 acres of land proposed for detachment is very small in comparison to the thousands of acres that make up the City. In addition, the contribution of the detached property to the City's overall budget is minimal. The City's property tax budget for 2014 was $4,491,446.[147] The Subject Parcels contributed only $2,266.09 to that total.[148] The loss of acreage and tax revenue attributable to the detachment is minimal. Therefore, the Chief Administrative Law Judge finds that detachment of the Subject Parcels will not render the remainder of Hutchinson unable to carry on the functions of government without undue hardship within the meaning of the statute.

## III. Allocation of Debt

Minn. Stat. § 414.06, subd. 3, gives the Chief Administrative Law Judge the discretion to relieve the detached area of the primary responsibility for the existing indebtedness of the municipality as is equitable. The City has not contended that any existing indebtedness should be assigned to the Subject Parcels. The Administrative Law Judge concludes that it is appropriate to relieve the Subject Parcels of responsibility for any existing indebtedness of the city of Hutchinson.

## IV. Division of Costs

The parties did not agree to a division of the hearing costs between themselves. Minn. Stat. § 414.12, subd. 3, specifies that, if the parties do not agree to a division of the costs before the hearing, the costs "must be allocated on an equitable basis by the . . . chief administrative law judge." The Chief Administrative Law Judge concludes that the Petitioner shall bear 50% and the City and the Township shall each bear 25 percent of the cost of the proceedings attributable to the Petition for Detachment.

**T. L. P.**

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[145] *Village of Goodview v. Winona Area Indus. Dev. Ass'n,* 289 Minn. 378, 380, 184 N.W.2d 662, 664 (1971); *In re Miller*, 169 Minn. 406, 211 N.W. 578 (1926); *Jones v. City of Red Lake Falls*, 116 Minn. 454, 134 N.W.121 (1912).
[146] Minn. Stat. § 414.06, subd. 3.
[147] Ex. 1.
[148] Ex. 5.