OAH 84-0330-32407

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Petition for the Detachment of Certain Real Property from the City of Trosky to Elmer Township, MBAU Docket D-545	**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER DENYING DETACHMENT**

Following the filing of a Petition for Detachment on or about April 6, 2015, this matter came on for hearing before Chief Administrative Law Judge Tammy L. Pust on August 17, 2015. The hearing record closed on August 17, 2015.

Kevin K. Stroup, Stoneberg, Giles & Stroup, P.A., appeared at the hearing on behalf of the Petitioners, John and Sharon K. Haag (Petitioners). Marc J. Manderscheid, Briggs and Morgan, P.A., appeared at the hearing on behalf of the City of Trosky (City). No one appeared on behalf of the Township of Elmer (Township), Pipestone County, Minnesota.

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 Trosky should be granted?

SUMMARY OF CONCLUSIONS

The Chief Administrative Law Judge concludes that detachment of the subject property would unreasonably affect the symmetry of the City and would cause undue hardship to the remainder of the municipality such that the Petition for Detachment must be denied.

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

FINDINGS OF FACT

Procedural Findings

1. On January 2, 2015, Petitioners John Haag and Sharon K. Haag executed a Petition for Detachment (Petition) whereby they seek to detach certain

described real property (Subject Parcels) from the City pursuant to Minn. Stat. § 414.06 (2014) and, by operation of law, become part of the Township.[1]

2. On April 7, 2015, the Trosky City Council opposed the Petition by adoption of a City resolution.[2]

3. On April 15, 2015, the Chief Administrative Law Judge issued an Order requiring the parties to proceed to mediation and set the matter for hearing on May 22, 2015.[3]

4. The parties mediated the matter on May 13, 2015[4] and reached a tentative agreement, which later proved unsuccessful at resolving the matter.[5]

5. The hearing was reset for May 20, 2015,[6] subsequently for May 18, 2015,[7] and finally for August 17, 2015.[8]

6. On May 12, 2015, the Township adopted a resolution whereby it took a position of neutrality in the matter.[9]

7. Notice of the evidentiary hearing was published in the Pipestone County Star on July 30, 2015 and August 6, 2015.[10]

8. A hearing was held in the matter on August 17, 2015, at the Trosky City Hall, 220 Broadway Street in Trosky, Minnesota.

9. At the hearing, Petitioner's Exhibits 100 through 113 and City Exhibits 1 through 19 were admitted into evidence without foundational objection.

10. The record closed on August 17, 2015.

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[1] Petition for Detachment (Exhibit (Ex.) 100).
[2] City Resolution Responding to a Petition Initiated by Property Owners for Detachment of Property from a City (Apr. 7, 2015) (Ex. 16).
[3] Notice of and Order for Prehearing Conference and Hearing, and Order to Participate in Mediation Session.
[4] Correspondence from Keven Stroup, counsel for Petitioners (May 14, 2015).
[5] Correspondence from K. Stroup (July 15, 2015).
[6] Amended Order for Hearing (Apr. 23, 2015).
[7] Second Amended Order for Hearing (Apr. 30, 2015).
[8] Third Amended Order for Hearing (May 14, 2015).
[9] Resolution of Elmer Township Concerning Detachment of Certain Land Pursuant to Minnesota Statutes § 414.06 (May 12, 2015).
[10] Printer's Affidavit of Publication (Aug. 6, 2015).

Subject Parcels

11. The Subject Parcels, made up of Parcels A, B, C and D, are legally described as follows:

PARCEL A:

Commencing 53 rods South of the Northwest corner of the Northeast Quarter (NE¼) of Section Twenty-one (21), Township One Hundred Five (105) North, Range Forty-five (45) West of the Fifth P.M.; thence East 80 rods; thence South 27 rods; thence West 80 rods; thence North 27 rods to the point of beginning, containing 13½ acres more or less, EXCEPT that part thereof described as follows: Commencing 80 rods South of the Northwest corner of the Northeast Quarter (NE¼) of Section Twenty-one (21), Township One Hundred Five (105) North, Range Forty-five (45) West of the Fifth P.M.; thence East 150 feet; thence North 230 feet; thence West 150 feet; thence South 230 feet to the point of beginning.

PARCEL B:

Commencing 53 rods South of the Northwest corner of the Northeast Quarter (NE¼) of Section Twenty-one (21), Township One Hundred Five (105) North, Range Forty-five (45) West of the Fifth P.M.; thence West 80 feet; thence South 27 rods; thence East 80 feet; thence North 27 rods to the point of beginning, containing 1½ acres, EXCEPT that part thereof described as follows: Commencing 80 rods South of the Northwest corner of the Northeast Quarter (NE¼) of Section Twenty-one (12), Township One Hundred Five (105) North, Range Forty-five (45) West of the Fifth P.M.; thence West 80 feet; thence North 230 feet; thence East 80 feet; thence South 230 feet to the point of beginning.

PARCEL C:

Commencing 718 feet South of the Northeast corner of the Northwest Quarter (NW¼) of Section Twenty-one (21), Township One Hundred Five (105) North, Range Forty-five (45) West of the Fifth P.M.; running thence West 80 feet; thence South 160 feet; thence East 80 feet; thence North 160 feet to the point of beginning.

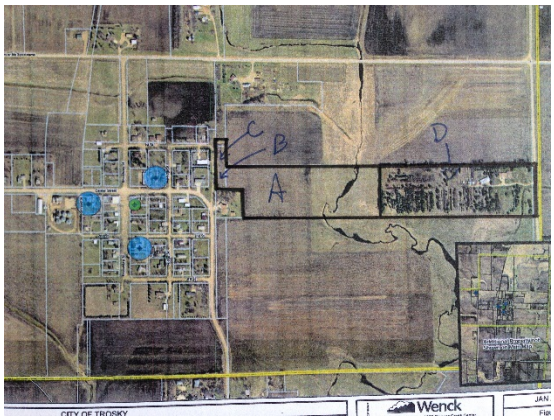
PARCEL D:

A tract of land in the Northeast Quarter (NE¼) of Section Twenty-one (21), Township One Hundred Five (105) North, Range Forty-five (45) West of the Fifth P.M. described as follows: Commencing at a point 53 rods South of the Northeast corner of said Section Twenty-one

(21), thence West 80 rods, thence South 27 rods, thence East 80 rods, thence North 27 rods to the point of beginning, containing 13½ acres, more or less..

12. Petitioner Sharon K. Haag is the sole record owner of the Subject Parcels.[11]

13. As illustrated below, the Subject Parcels are located within the boundaries of the City of Trosky. The easternmost border of Parcel D, part of the Subject Parcels, shares a border with the City of Trosky and is immediately adjacent to Elmer Township.[12]



14. The Subject Parcels abut land used for agricultural purposes to the south, north, and east. [13]

15. Parcels A, B, and C are unimproved with buildings of any sort and are used exclusively for agricultural purposes.[14] Parcel D is improved with one residential structure, where the Petitioners live.[15]

16. The Subject Parcels are rural in character and are not developed for urban residential, commercial, or industrial purposes.[16]

17. Petitioners have no plans to subdivide or build on the Subject Parcels, and the City has not approached them to propose development. The property is not needed for reasonably anticipated future development.[17]

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[11] Warranty Deed (Apr. 26, 1993) (Ex. 101).
[12] Map (Ex. 102).
[13] Testimony (Test.) of Sharon Haag.
[14] *Id.*; Ex. 102.
[15] Test. of S. Haag; Ex. 102.
[16] Test of S. Haag.
[17] *Id.*; Test. of John Haag.

Municipal Services

18. One of the four sides of Parcel D abuts 110th Street, a roadway used to access Parcel D and other property owned by Petitioners but located within the Township.[18]

19. One of the four sides of Parcels B and C front on East Street in the City.[19]

20. At present, the Subject Parcels are accessible to vehicular traffic via 110th Avenue as well as from East Street in the City.[20]

21. The City and the Township split the costs of plowing the access streets in the winter and grading them in the summer, as necessary.[21]

22. With the exception of the maintenance of the aforementioned roadways, neither the City nor the Township provides any municipal services directly to the Subject Parcels.[22]

Symmetry

23. The City was symmetrical, comprised of 16 quarter sections, when it was incorporated in the 1890s.[23]

24. Following several detachments throughout the City's history and its latest detachment effective in January 2015, the City now consists of approximately five and a half quarter sections, including the Subject Parcels.[24]

25. The City is currently configured in two chunks: one consists of four quarter sections which together make up a square; the other consists of one and one-half quarter sections which together make up a hexagon-shaped parcel. The two chunks share one point in common, as illustrated in green below.

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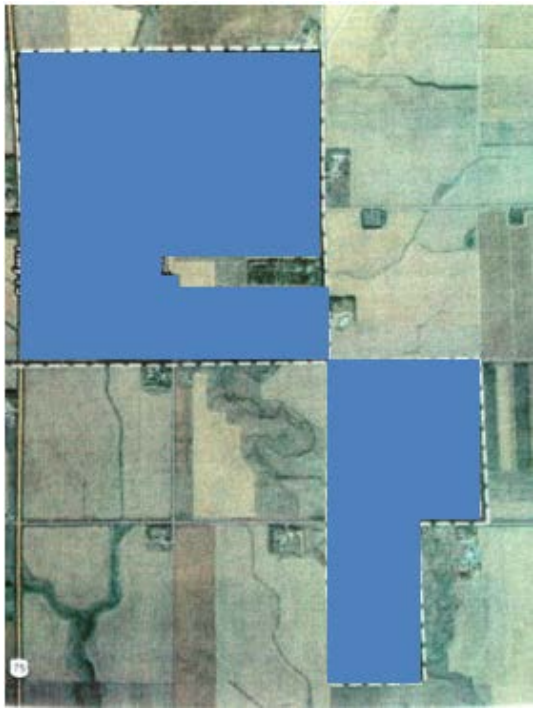
[18] Test. of S. Haag.
[19] *Id.*
[20] Map (Ex. 105).
[21] Test. of J. Haag; Test. of Jeff Carstensen.
[22] Test. of J. Haag; Test. of Jeff Carstensen.
[23] Ex. 111, at 3, Finding 17.
[24] Exs. 2-6.

26. If the Subject Parcels were detached from the City, the City would have the shape illustrated in blue below.



Undue Hardship

<u>Wastewater Treatment Facility Project</u>

27. The City has approximately 80 residents.[25]

[25] Test. of J. Carstensen.

28. The City has never had a centralized wastewater collection and treatment system. It is the last unsewered municipality in Pipestone County.[26]

29. In approximately 2009, the City was directed by the Minnesota Pollution Control Agency to address its lack of a legally-compliant sewage treatment system and so began a process designed to investigate the scope of the problem and identify fiscally viable solutions.[27]

30. As part of this process, the City hired consultants to conduct a Community Assessment Report. The City's consultants conducted a visual inspection of the 54 properties within the City's boundaries to identify the type of individual wastewater treatment system in use at each property and to categorize each as either legally compliant or in violation of applicable environmental regulations and constituting either: (1) an "imminent threat to public health or safety (ITPHS);"[28] or a categorical "failure to protect groundwater."[29]

31. The Community Assessment Report was completed in February 2011 and found as follows:

> "[T]here are currently 25 properties that create an ITPHS with a straight pipe discharge to a tributary of Poplar Creek. An additional 23 ISTS are currently failing to protect groundwater. . . . A majority of the existing wastewater systems in Trosky are a threat to surface water and groundwater as well as public health. Of the existing 54 properties that were evaluated and generate wastewater, 89% (48 parcels) are estimated to be in non-compliance [with Minnesota law].

32. Parcel D, the Petitioners' residential property labeled as such in the illustration below, was classified by the City's consultants as creating an imminent threat to public health or safety.[30] Like 24 similarly-labeled properties identified in the Community Assessment Report, Parcel D of Petitioners' property is served by a septic system "with a straight pipe discharge to a tributary of Poplar Creek[; the system] does not have a mound, drain field, or other treatment system downstream of the septic

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[26] *Trosky Tackles Sewer Issues*, Pipestone County Star Online (Dec. 19, 2012) (Ex. 12).

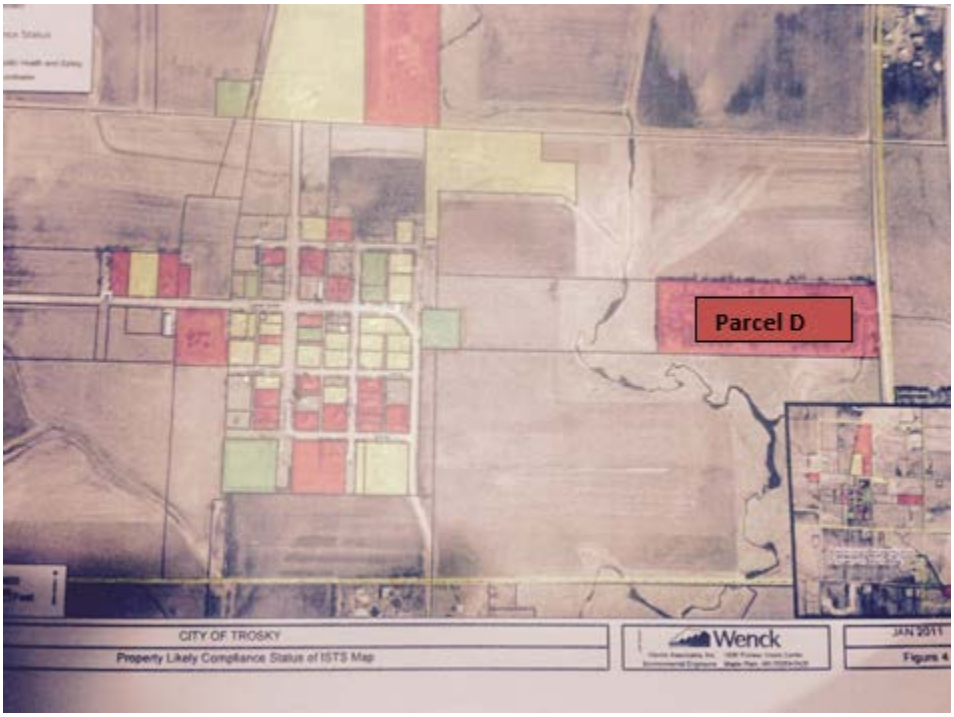
[27] Ex. 12; Test. of J. Carstensen.

[28] ITPHS is defined in applicable rule as follows: "At a minimum, a system that is an imminent threat to public health or safety is a system with a discharge of sewage to the ground surface, drainage systems, ditches, or storm water drains or directly to surface water; systems that cause a reoccurring sewage backup into a dwelling or other establishment; systems with electrical hazards; or sewage tanks with unsecured, damaged, or weak maintenance hold covers." Minn. R. 7080.1500, subp. 4A (2015).

[29] "At a minimum, a system that is failing to protect groundwater is a system that is a seepage pit, cesspool, drywell, leaching pit, or other pit; a system with less than the required vertical separation distance described in items D and E; and a system not abandoned in accordance with part 7080.2500." Minn. R. 7080.1500, subp. 4B (2015).

[30] February 2011 City of Trosky Community Assessment Report, Figure 4.

tank."[31] Specifically, the septic system on Parcel D was found to include a noncompliant seepage pit[32] which allows for the discharge of sewage into Poplar Creek and/or its unnamed tributary located on the property.



33. Eighty-nine percent of the City's residents' individual wastewater treatment systems have created an imminent threat to public health or safety and/or a failure to protect groundwater through the repeated discharge of sewage and other wastewater directly into the nearby creek or onto the ground, which is a threat to public health through the contamination of surface and ground water.[33]

34. As of December 12, 2012, the City of Trosky ranked 33 on the Minnesota Pollution Control Agency's *Clean Water Revolving Fund's Project Priority List*, an itemization of over 300 projects in the state requiring prioritized attention to protect the state's waters.[34]

35. The capital investment needed to construct a legally compliant municipal wastewater treatment facility in the City, most likely a lagoon system rather than a

[31] Ex. 14, at 16.
[32] Ex. 14, Appendix B, first page, entry number 1 (PID 20.021.0500).
[33] Test. of J. Carstensen; Ex. 11, at 1-1.
[34] Test. of J. Carstensen; Ex. 14, Appendix D-2.

mound or other system, is estimated to cost between $1.97[35] and approximately $2.6 million, plus annual maintenance costs.[36]

36. The City is attempting to secure state and federal funds for completing a wastewater treatment system.[37] The City has raised approximately $2.2 million in grants for this purpose.

37. If the City does not raise the full cost of the system through grants, it will seek to fund the remaining costs through a rural development loan, payments on which would be made through the imposition of tax assessments and/or usage fees on City residents.[38]

38. The City's current plans do not include laying wastewater treatment pipe directly to Petitioners' residence on Parcel D given the distance of the one residential structure from the bulk of the residences in the City. The City plans to assist the Petitioners' efforts to come into compliance with environmental regulations as part of its commitment to serving the community's needs.[39]

39. In an April 2014 revised Wastewater System Facility Plan prepared for the City by Banner Engineering, three areas were identified as potential sites for the installation of a municipal wastewater treatment system. One of the options noted as a potential treatment site is located on portions of Parcels A and B, owned by the Petitioners and constituting approximately five acres of the Subject Parcels.[40]

40. The construction of a municipal wastewater treatment facility would benefit Petitioners' property to the extent that it reduces or eliminates the discharge of raw sewage flowing across or through Petitioners' land via Popular Creek and/or its unnamed tributary.[41]

41. Detachment of the Subject Parcels would cause an undue hardship on the remainder of the municipality in that it would allow the Petitioners' septic system, already creating an imminent threat to public health and safety, to remain uncorrected and to continue to contaminate the community's ground and surface water through the non-compliant discharge of sewage into Poplar Creek and/or its unnamed tributary.

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[35] *Longevity Trumps Cost in Trosky Wastewater Decision*, Pipestone County Star Online (May 8, 2014) (Ex. 15).
[36] Test. of J. Carstensen.
[37] *Id.*
[38] *Id.*
[39] *Id.*
[40] Ex, 14, Figures 5.2, 5.3, 5.4, at 36-38 (identified as Treatment Site Option #1).
[41] Test. of S. Haag.

Fiscal Viability

42. In the context of the ongoing community discussion regarding the shared costs of a municipal wastewater treatment system, Petitioners seek detachment to avoid continued City taxes, which are assessed at a higher tax rate than is utilized by the adjoining Township.[42]

43. The City's actual fiscal receipts for 2014 totaled $49,680, of which $21,375 was raised from property taxes.[43]

44. The four combined Subject Parcels are assessed as two separate parcels for tax purposes. As of the issuance of the Petitioners' 2014 Property Tax Statements, the two component tax parcels had a combined estimated market value of $290,500 ($51,600 + $238,900) and a combined taxable market value of $269,300 ($51,600 + $217,700).[44]

45. According to the Petitioners' 2014 Property Tax Statements, the two component tax parcels had a combined tax liability of $2020 ($148 + $1,872), of which $691.90 ($73.48 + $618.42) was the City's property tax assessment.[45]

46. The City's $691.90 property tax assessment for the Subject Parcels constitutes approximately 1.3 percent of the City's total receipts and approximately 3.2 percent of its general property tax receipts.

47. Loss of the Subject Parcels' tax revenue, measured at historical levels, would not unduly burden the City's provision of services to the remaining portions of the municipality.[46]

48. 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 bonded indebtedness.

Hearing Costs

49. The parties did not agree to a division of the costs of this proceeding.

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

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[42] *Id.;* Ex. 112.
[43] Ex. 7.
[44] Exs. 107, 108.
[45] Exs. 107, 108.
[46] Test. of J. Carstensen.

Based upon these Findings of Fact, the 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 and 414.12 (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. Petitioners bear the burden of proof to demonstrate by a preponderance of the evidence that the statutory criteria for detachment have been met.[47]

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

> [T]he 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.

6. The Petitioners have established, by a preponderance of the evidence, the following criteria set forth in Minn. Stat. § 414.06, subd. 3:

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;

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

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

[47] Minn. R. 1400.7300, subp. 5 (2015).

7. The Petitioners have not established, by a preponderance of the evidence, that detachment of the Subject Parcels would not unreasonably affect the symmetry of the City, as required by Minn. Stat. 414.06, subd. 3, and so detachment is denied on this legally-sufficient basis.

8. Given the City's ongoing efforts to rectify the environmental contamination and degradation caused by residents using substandard septic systems resulting in the discharge of raw waste directly onto the ground and into area groundwater, detachment of the Subject Parcels would cause the City undue hardship in its efforts to carry on a core function of government: protecting the health, safety and welfare of the public. As such, the Chief Administrative Law Judge additionally and alternatively denies the detachment pursuant to the authority granted in the second sentence of Minn. Stat. § 414.06, subd. 3.

9. Given the Petitioners' failure to establish all necessary statutory criteria for detachment, it is unnecessary to reach a conclusion of law related to allocation of debt between the City and the Township.

10. 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."

11. As the Township submitted a resolution of neutrality with respect to the Petition for Detachment, which was opposed by the City, the Township is not subject to the statutorily required distribution of costs.[48]

12. It is equitable to allocate the costs of this proceeding as follows: 50 percent to the Petitioners; 50 percent to the City.

13. 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:

ORDER

1. The Petition for Detachment of the Subject Parcels from the City of Trosky is **DENIED.**

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

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[48] Minn. Stat. § 414.06, subd. 1a.

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 Petitioners and 50 percent to the City.

4. This Order becomes effective upon issuance.

Dated: September 30, 2015

s/Tammy L. Pust

TAMMY L. PUST
Chief Administrative Law Judge

Reported: Digitally recorded

NOTICE

This Order is the final administrative order in this case under Minn. Stat. §§ 414.06, .07, .09, .12 (2014). Pursuant to Minn. Stat. § 414.07, subd. 2, any person aggrieved by this Order may appeal to Pipestone County District Court by filing an Application for Review with the Court Administrator within 30 days of this Order. An appeal does not stay the effect of this Order.

Any party may submit a written request for an amendment of these Findings of Fact, Conclusions and Order within seven days from the date of the mailing of the Order pursuant to Minn. R. 6000.3100 (2015). A request for amendment shall not extend the appeal period.

MEMORANDUM

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; the Subject Parcels are rural in character and undeveloped for the specified purposes; the Subject Parcels are located within and abut the City's boundaries; and the land is not needed for reasonably anticipated future development. Accordingly, four of the five required statutory criteria are clearly satisfied.

Detachment Would Unreasonably Affect the City's Symmetry

The detachment statute also requires consideration of whether the detachment

would "unreasonably affect the symmetry of the detaching municipality."[49] 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."[50]

Following the latest detachment in January 2015, the City is currently more symmetrical than it has been in the past. Though it consists of two distinct portions, these portions are relatively balanced in shape and are located on opposite sides of a dividing point or approximate median plane.

If detachment were granted, however, the symmetry that exists today would be unreasonably affected. As the illustration on page six above indicates, a sizeable slice would be removed from the City, commencing on one side of the City's boundary and continuing over one-half of the east-west diameter of the City's larger existing portion. The resulting municipal boundary would be irregular and uneven in nature.

The statute does not require a finding that an unreasonable change in symmetry causes any specific negative result in the City, and the Chief Administrative Law Judge does not attempt to identify such. Under the current statutory language, it is legally sufficient to deny a petition for detachment if any one of the required criteria are not established by a preponderance of the evidence. As the Petitioners in this case failed to meet their evidentiary burden to establish that detachment "would not unreasonably affect the symmetry of the detaching municipality,"[51] the Petition is lawfully denied.

Detachment Will Cause Undue Hardship

Even if all of the initial statutory factors had been met, the Petition for Detachment would still be denied on the basis of the finding that the remainder of the municipality cannot continue to carry on the functions of government without undue hardship. While the evidence clearly established that the requested detachment would not unduly affect the City's ongoing tax base established to support its historical municipal services, Minn. Stat. § 414.06 does not mandate any link between the finding of undue hardship and the City's resulting fiscal viability for tax purposes. Instead, the statute directly allows the Chief Administrative Law Judge to "deny the detachment on finding that the remainder of the municipality cannot continue to carry on the functions of government without undue hardship,"[52] whether or not the five identified criteria in the preceding sentence of the statutory section have been

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[49] Minn. Stat. § 414.06, subd. 3.
[50] *Symmetry Definition*, MERRIAM-WEBSTER.COM, http://www.merriam-webster.com/dictionary/symmetry (last visited June 17, 2015).
[51] Minn. Stat. § 414.06, subd. 3.
[52] *Id.*

established.

In this case, the Trosky community has spent over six years studying the extent of its groundwater contamination and seeking solutions to remedy that problem. The community's elected officials have gathered citizen input, retained expert consultants, applied for and received grants of financial resources, and made preliminary decisions regarding the type, size, and location of the necessary infrastructure improvements required to effectively address the environmental conditions caused by the residents' substandard environmental practices over the years. In so doing, the City has been pursuing one of the "most clearly accepted governmental functions[:] . . . 'the preservation of the public health.'"[53] Allowing Petitioners to detach their property from the City will result in their remaining part of the community's problem; their property would continue to constitute an imminent threat to public health and safety, as groundwater contamination does not respect City versus Township maps. Allowing the detachment would also prevent Petitioners from being part of the community's solution, whether that is necessarily funded through the residents' representative's decisions to explore taxes, fees, or eminent domain. For these reasons, the Chief Administrative Law Judge finds that allowing the detachment of the Subject Parcels would cause the remainder of the Trosky community to suffer undue hardship in their continuing efforts to carry on core governmental functions. As such, the detachment is denied.

T. L. P.

[53] *Minnesota Hous. Fin. Agency v. Hatfield*, 297 Minn. 155, 166, 210 N.W.2d 298, 305 (1973) (quoting *Rippe v. Becker*, 56 Minn. 100, 117, 57 N.W. 331, 335 (1894)) (citing *Lipinski v. Gould*, 173 Minn. 559, 218 N.W. 123 (1938); *Moses v. Olson*, 192 Minn. 173, 225 N.W. 617 (1934); *Schulte v. Fitch*, 162 Minn. 184, 202 N.W. 719 (1925)).