

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MUNICIPAL BOUNDARY ADJUSTMENTS UNIT

In the Matter of the Petition for the
Detachment of Certain Land from the City
of Lake Elmo

SECOND PREHEARING ORDER

TO: All Persons on the Attached Service List

This matter came before Kathleen D. Sheehy, Administrative Law Judge, on the motion of the Petitioners to amend the Petition to include property owned by Thomas M. Bidon and Patricia M. Bidon. The motion to amend was filed on May 13, 2011; the City of Lake Elmo filed an objection to the proposed amendment on May 18, 2011. The motion record closed at that time.

Jessica Rivas, Larkin, Hoffman, Daly & Lindgren, 1500 Wells Fargo Plaza, 7900 Xerxes Avenue South, Minneapolis, MN 55431-1194, appeared for the Nass and Buberl Petitioners and for Patricia and Thomas Bidon.

David Snyder, Eckberg Lammers, 1809 Northwestern Avenue, Suite 110, Stillwater, MN 55082, appeared for the City of Lake Elmo.

Based on the files, records, and proceedings herein, and for the reasons contained in the attached Memorandum, the Administrative Law Judge makes the following:

ORDER

1. The motion to amend the Petition is GRANTED; and
2. The Petitioners shall, within ten business days of receipt of this Order, file an Amended Petition that contains the signatures required by Minn. R. 6000.0700, along with affidavits of service affirming that all parties entitled to the original notice have received notice of the amended Petition.

Dated: May 25, 2011

s/Kathleen D. Sheehy

KATHLEEN D. SHEEHY
Administrative Law Judge

MEMORANDUM

The Petitioners seek to amend the Petition to include a 6.45-acre parcel owned by the Bidons that is located between the two parcels owned by Bernard and Loella Nass. The parcel owned by the Bidons is zoned for agricultural use. The proposed Amended Petition asserts that the entire property proposed for detachment is situated within the City of Lake Elmo; abuts the municipal boundary of the City of Lake Elmo and the boundary of Stillwater Township; is rural in character and not developed for urban residential, commercial, or industrial purposes; is not served by any municipal improvements; and is better suited for Stillwater Township.

In opposing the amendment, the City asserts that the Bidons do not actually wish to be detached from Lake Elmo and that they have not personally or specifically requested to be detached; the City provided no evidence, however, to substantiate its assertion that the Bidons do not wish to have their property detached. The City also maintains that the proposed amendment is defective because it has not been signed by either the Bidons or the original property owners. In addition, the City asserts that the petition fails to state a claim, in that it alleges no facts in support of its position that the property is better suited for Stillwater Township.

Amendments to a petition for detachment are governed by Minn. R. 6000.0700, which provides:

A petition may be amended at the discretion of the board at any time before the board has rendered a final decision on the petition. Notice is required to all parties entitled to original notice. Amendments may be proposed and granted at public hearings. Where the petition is by property owners, the petition cannot be amended to include an area different than the one described in the petition signed by the property owners unless the amendment or a waiver is signed by all the property owners who signed the original petition.

This proceeding was recently initiated, and the amendment would require no change to the existing schedule. Counsel for Petitioners have represented that the Bidons wish to participate in this matter and have filed a notice of appearance to that effect. The City's assertion to the contrary is not supported. More importantly, the City has not established that it will be prejudiced in any way by the proposed amendment. The motion to amend the Petition is accordingly GRANTED; however, within ten business days the Petitioners must file an Amended Petition that contains the required signatures, along with affidavits of service to substantiate that notice of the amendment has been provided to all persons entitled to notice of the original petition.¹

K.D.S.

¹ In addition, the Municipal Boundary Adjustments Unit has advised the Administrative Law Judge that an additional filing fee will be required.