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November 2, 2018

Martha Lavrenz-Johnson
City of Federal Dam
222 Main Street
Federal Dam, MN 56641-6766

Via e-mail and U.S. mail

RE: *Zion Harbor Road*
Our File No. 4030-0007

Dear Ms. Lavrenz-Johnson:

You requested information on the process for possible detachment of the territory encompassing the Isle Harbor development. Presumably, detachment would also include the parcels annexed in 1962 that are either owned by the state or the federal government. There would be no purpose served in keeping those parcels within City limits. The only other parcels that were included in the 1962 annexation are the two parcels currently owned by Lorina Campbell. Those two parcels can remain within the City as they are contiguous with the rest of the City to the east. Enclosed is a map showing the annexed area and those areas owned by the state, federal government, and the Isle Harbor on Leech Homeowners Association.

If the Association wants to detach from Federal Dam, it would need to initiate a detachment proceeding pursuant to Minnesota Statutes section 414.06, which requires a petition with signatures of 75% of the property owners in the area. That petition must be filed with the chief administrative law judge. *Minn. Stat. § 414.06, subd. 1.* The filing fee for doing so would be approximately \$600. A copy of the petition must be provided to the City, Gould Township (because it abuts the property) and Cass County. If the City supports the detachment, it could pass a resolution to that effect, which the Association would then file with the State. Normally, the township that would receive the detached property would also be involved, but all of the land at issue is outside of any organized township. It is unclear if the County would have the right to be involved instead, meaning it could actively support or oppose the detachment. The statute does not address situations involving unorganized townships. If the City (and the County if they have the right) do not oppose the detachment, it would be approved without a hearing. *Minn. Stat. § 414.06, subd. 2.*

If Federal Dam opposes detachment, the Association would have to show that the detachment satisfies the required statutory factors:

1. The detached land abuts the City's boundary.
2. The detachment would not unreasonably affect the symmetry of the City.
3. The land is not needed for "reasonably anticipated future development."
4. The land is "rural in character and not developed for urban residential, commercial or industrial purposes." *Minn. Stat. § 414.06, subds. 1, 3.*

There is no question that the land to be detached abuts the City boundary; the City line surrounds it. As for symmetry, detaching would actually improve the symmetry of the City quite a bit. The land is also not needed for future development because it is either developed already (Isle Harbor) or it is not able to be developed (government owned bog land). That leads into the final criteria concerning the status of development. The Isle Harbor portion is clearly already developed for residential purposes and does not appear to be "rural in character." That fact cuts against detachment. Normally, only rural areas are detached.

It may not be that clear cut, however. The Court of Appeals has defined "rural in character" as "[o]f, relating to, or characteristic of the country." *City of Lake Elmo v. Nass*, No. A12-2008, 2012 WL 3491161 (Minn. Ct. App. July 15, 2013). In that case, the court considered that Lake Elmo provided no services to the property subject to detachment and that, while Lake Elmo itself had high density areas, the subject property was zoned for agriculture uses. The court found that, under these factors, the subject area was "rural in character."

Other administrative decisions have looked at this issue as well. In one case, the City of Wabasha argued a platted subdivision could not detach because it was developed for urban or suburban residential purposes, with one-half acre lots. *In re Petition for the Detachment of Certain Land from the City of Wabasha*, OAH 68-0330-32004, 2015 WL 3372456 (OAH May 15, 2015). The administrative law judge ("ALJ") noted that "[w]hile a platted area comprised of one-half acre lots usually would not be considered rural in character, there are circumstances where such a platted area could be considered rural such as if the area was sufficiently far from the city center and there was sufficient undeveloped property between the property and the city center." *Id.* at *7. The ALJ also cited *National Bank of the Republic v. Banholzer*, which upheld the lower court's determination that a property to be detached was "rural in character" when it was about 3 miles from the city center, even though the property was platted and had urban characteristics, including a brewery, stable, and carriage house. *Id.* at *4, *7 and n.64 (citing *Banholzer*, 71 NW. 919 (Minn. 1897)). The ALJ stated that it was unclear from the record whether the property was "rural in character" and ordered a site visit and evidentiary hearing to make the decision. It is unclear how this matter was resolved.

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This case is similar to the *City of Wabasha* and *Banholzer* case. As in *City of Wabasha*, and *Banholzer*, the area to be detached is far away from the city center (~3 miles) and includes platted land. Also, Federal Dam does not provide services to the property. See *City of Lake Elmo v. Nass*, No. A12-2008, 2012 WL 3491161 (Minn. Ct. App. July 15, 2013) (detachment approved, in part, because city provided no services). Under *Banholzer* an ALJ would have wide discretion in determining whether to allow the detachment, particularly the Isle Harbor portion. If the City contests the detachment, it is not clear what the outcome would be.

Before any decision is made by the City on a proposed detachment, however, the Zion Harbor road easement must be transferred to the Association. It would make no sense to retain the easement but have the entire area detach from the City. Transfer of the easement should be a quid pro quo for the City's support on the detachment so as to avoid a contested hearing. If the Association seeks to leave the easement with the City, then the City would be better off contesting the detachment.

Let me know if you have any questions.

Very truly yours,

A handwritten signature in black ink, appearing to read "J. J. Langel". The signature is fluid and cursive, with a large initial "J" and "L".

Joseph J. Langel

Timothy S. Christensen

JJL/tsc

RRM: #305727