STATE OF MINNESOTA
IN COURT OF APPEALS
A12-2008

City of Lake Elmo,
Appellant,

vs.

Bernard Nass, et al.,
Respondents.

Filed July 15, 2013
Affirmed
Larkin, Judge

Washington County District Court
File No. 82-CV-12-726

David K. Snyder, Christopher D. Johnson, Johnson and Turner, Forest Lake, Minnesota (for appellant)

Paula A. Callies, Callies Law, PLLC, Minneapolis, Minnesota (for respondents)

Considered and decided by Worke, Presiding Judge; Halbrooks, Judge; and Larkin, Judge.

U N P U B L I S H E D O P I N I O N

LARKIN, Judge

Appellant challenges the district court's affirmance of an administrative-law judge's (ALJ) order granting respondent property owners' petition for detachment. We affirm.

FACTS

Respondents Bernard and Loella Nass, and Robert Buberl petitioned for detachment of their real property from appellant City of Lake Elmo to Stillwater Township under Minn. Stat. § 414.06 (2010).[1] The petition was later amended to add respondents Thomas and Patricia Bidon. The Lake Elmo City Council objected to respondents' petition, and the matter was assigned to an ALJ. The ALJ held a two-day evidentiary hearing at which the ALJ heard the testimony of several witnesses and received 46 exhibits.

The evidentiary record establishes that the subject property is comprised of four separate parcels of land and has a total acreage of 57.17. The Nasses own two parcels, which they purchased as a hobby farm in the 1980s. The northern parcel is approximately 16 acres, and it is subject to an easement for high-voltage transmission lines owned by Xcel Energy. This parcel was formerly used as a horse pasture because the power lines did not interfere with this activity. The southern parcel is approximately 11 acres and heavily treed with pines. A home and horse barn are located on the southern parcel. The parcels do not have municipal water or sewer services.

[1] Respondents petitioned for detachment on November 15, 2010, and the ALJ granted the petition on January 3, 2012. Because the current version of chapter 414 went into effect on August 1, 2012, and differs substantively from the version in effect at the time of the ALJ's decision, we cite the 2010 version, unless otherwise specified. *See* Minn. Stat. § 645.02 (2012) ("Each act, except one making appropriations, enacted finally at any session of the legislature takes effect on August 1 next following its final enactment, unless a different date is specified in the act."); *McClelland v. McClelland*, 393 N.W.2d 224, 226-27 (Minn. App. 1986) (indicating that the current version of a statute will be used unless it changes or alters a matured or unconditional right of the parties or creates some other injustice), *review denied* (Minn. Nov. 17, 1986).

In recent years renters have shown little interest in leasing the Nasses' northern parcel for use as a horse pasture. The property has been for sale for two years, and the Nasses have received no offers. They have talked to developers about the possibility of developing their property, and all of the developers opined that the Nasses' parcels are not suited for residential development because of the power lines running through the northern parcel, the proximity of Trunk Highway 36, and the location of commercial warehouse buildings and a parking lot directly east of the southern parcel in the City of Oak Park Heights.

Thomas and Patricia Bidon own a parcel of land located between the Nasses' northern and southern parcels. The Bidons have a house and pole barn on their property, which is served by a well and septic system. No agricultural activity occurs on the land. On at least two occasions, developers expressed interest in the Bidon property, but that interest dissipated when the developers concluded that Lake Elmo would not rezone the property to permit higher-density residential or commercial development.

Robert Buberl owns a triangular shaped parcel, which is east of the Nass and Bidon parcels. Buberl's property is divided diagonally along the length of a creek. The property east of the creek and west of Trunk Highway 5 previously was annexed from Baytown Township to Oak Park Heights. In that same annexation proceeding, the property west of the creek and south of Highway 36 was annexed from Baytown Township to Lake Elmo. Buberl operates a composting/recycling facility on his property. The composting activity occurs on the portion of his property that was located in Lake Elmo, as a permitted agricultural use under a conditional-use permit. The recycling

activity takes place on the portion of Buberl's property that is located in Oak Park Heights.

The current and planned future zoning designation for the subject property is agricultural (AG). Under Lake Elmo's comprehensive plan for 2005-2030, the existing and future land-use designation for the subject property is rural agricultural density (RAD). The RAD classification allows low-density, semi-rural residential development. Working farms, agricultural uses, and single-family detached residences are also allowed under this classification. RAD is a common land-use designation that exists in large quantities throughout Lake Elmo. Lake Elmo's RAD classification and zoning regulations would permit each of the four parcels in the subject property to have a single house; however, if respondents combined their property, up to 18 homes potentially could be constructed on 40 contiguous acres under the open-space regulations in the zoning ordinance.

The subject property lies within Lake Elmo's boundaries. It abuts Lake Elmo's boundary on the east and partially abuts Lake Elmo's boundary on the north. Fifty-five percent of the perimeter of the subject property is bordered by Lake Elmo, 23% is bordered by Stillwater Township, and 22% is bordered by Oak Park Heights. Lake Elmo provides no water, sanitary sewer, storm sewer, solid-waste collection or disposal, or law-enforcement services to the subject property. But Lake Elmo provides fire protection, street improvements and maintenance, as well as administrative and recreational services.

The subject property contains .4 miles of Highway 36 and .2 miles of Manning Avenue. Manning Avenue runs south from Highway 36 and is paved for approximately

two blocks to 58th Street, which is the entrance to the St. Croix Sanctuary, a development of large homes. The remainder of Manning Avenue, from 58th Street to 55th Street, is a gravel road that ends at Lake Elmo's well house #2. Well house #2 was constructed to service the Sanctuary and another housing development, Carriage Station.

The ALJ granted respondents' petition for detachment on January 3, 2012. Lake Elmo appealed the ALJ's decision to the district court, and the parties brought cross-motions for summary judgment. The district court granted respondents' motion, thereby affirming the ALJ's detachment determination. This appeal follows.

D E C I S I O N

The detachment of property from a municipality is governed by Minn. Stat. § 414.06. The chief ALJ[2] is empowered to "conduct proceedings, make determinations, and issue orders" in a detachment action under section 414.06. *See* Minn. Stat §§ 414.01, subd. 1 ("The chief administrative law judge shall conduct proceedings, make determinations, and issue orders for the creation of a municipality, the combination of two or more governmental units, or the alteration of a municipal boundary."), .06, subd. 1 (providing that a detachment proceeding may be initiated by submitting a resolution or petition to the chief ALJ) (2010).

[2] Proceedings under chapter 414 were previously determined by the Minnesota Municipal Board (MMB). Minn. Stat. §§ 414.01-.11 (1998). The MMB was terminated effective June 1, 1999, and its authority was transferred to the Minnesota Office of Strategic and Long Range Planning. Minn. Stat. § 414.11 (Supp. 1999). Later, the legislature vested authority for determinations under chapter 414 in the chief ALJ. Minn. Stat. §§ 414.01-.12 (2008). Thus, caselaw regarding proceedings under chapter 414 address decisions of the MMB, the Office of Strategic and Long Range Planning, as well as the chief ALJ.

The chief ALJ may order detachment so long as "the requisite number of property owners have signed the petition if initiated by the property owners, . . . the property is rural in character and not developed for urban residential, commercial or industrial purposes, . . . the property is within the boundaries of the municipality and abuts a boundary, . . . the detachment would not unreasonably affect the symmetry of the detaching municipality, and . . . the land is not needed for reasonably anticipated future development."[3] Minn. Stat. § 414.06, subd. 3. The ALJ may deny detachment "on finding that the remainder of the municipality cannot continue to carry on the functions of government without undue hardship." *Id.*

Any person aggrieved by an order under section 414.06 may appeal to the district court on the following grounds: "(1) that the order was issued without jurisdiction to act; (2) that the order exceeded the [issuer's] jurisdiction; (3) that the order is arbitrary, fraudulent, capricious or oppressive or in unreasonable disregard of the best interests of the territory affected; or (4) that the order is based upon an erroneous theory of law." Minn. Stat. § 414.07, subd. 2 (2010). Section 414.07 provides the exclusive remedy in an appeal of detachment proceedings. *See Township of Thomastown v. City of Staples*, 323 N.W.2d 742, 744 (Minn. 1982) ("Section 414.07 provides the exclusive remedy on appeal of annexation proceedings requiring the [MMB's] approval"); *City of Lake Elmo*

[3] The current version of the statute also provides that "[i]n making the findings, the chief administrative law judge shall consider all applicable comprehensive plans, land use regulations, and land use maps of the affected municipality, town, and county that have been adopted at the time the petition was submitted." Minn. Stat. § 414.06, subd. 3. The statute did not contain this language when the ALJ ruled in this case.

v. City of Oakdale, 468 N.W.2d 575, 577 (Minn. App. 1991) (discussing appeal of order allowing concurrent detachment and annexation under section 414.061).

"The district court on review may not assume legislative functions or substitute its views for that of an administrative agency." *Thomastown*, 323 N.W.2d at 744. "In turn, this court must determine whether the record supports the [district] court's review of the [ALJ's] findings." *City of Lake Elmo*, 468 N.W.2d at 577 (citing *Thomastown*, 323 N.W.2d at 745). The ALJ's findings of fact are reviewed under the substantial evidence test, which requires an independent examination of the record. *Id.* Substantial evidence is defined as "such that a reasonable mind might accept it as adequate to support a conclusion." *Id.*

An order under section 414.06 enjoys a presumption of correctness. *See McNamara v. Office of Strategic and Long Range Planning*, 628 N.W.2d 620, 625 (Minn. App. 2001) ("Once the order for annexation or incorporation has been made, the decision enjoys a presumption of correctness."), *review denied* (Minn. Aug. 22, 2001). This court "will not interfere with the decision unless the decision is either based on an erroneous theory of law or is not supported by substantial evidence in the record." *Id.* If the "decision is supported by substantial evidence and reflects a reasoned decision-making process, it will be affirmed." *City of Lake Elmo*, 468 N.W.2d at 576.

Lake Elmo raises several arguments in support of reversal. We address each in turn.

I.

Lake Elmo first argues that the ALJ's findings are not supported by substantial evidence. The ALJ found that the subject property is not served by municipal water, and that Lake Elmo has "no specific development plans" for the subject property because it is "not included in areas staged for growth in [the city's] comprehensive plan." Lake Elmo contends that the "ALJ's finding regarding water service and development are arbitrary and capricious and not supported by substantial evidence in the record."

As to the ALJ's finding regarding municipal water service to the subject property, Lake Elmo observes that its "engineer plainly testified that water service had been extended to these parcels for the very purpose of serving them and that they only needed to hook into the stub provided." But an exhibit submitted by Lake Elmo entitled "Factual Information" unambiguously states that Lake Elmo does not provide water service to the subject property. Moreover, at oral argument before this court, Lake Elmo conceded that "the [city water] main ends outside of the subject property. . . . There is not a water main on the detachment lands."

As to the ALJ's finding that the city has no specific plans to develop the subject property, Lake Elmo asserts that the finding is in error because it "reflects the ALJ's errant belief that the City must show that it intends to develop the property, rather than . . . a private developer" and that "[t]here was no reference to 'staged growth' in any of the testimony." We are not persuaded. Although development may be possible in theory, the current and planned future zoning designations for the subject property and

the existing and future land-use designations for the subject property under Lake Elmo's comprehensive plan support the finding.

Lake Elmo next challenges the ALJ's findings regarding the effect of detachment on its access to Manning Avenue. Manning Avenue provides the only existing road access to the Sanctuary housing development in Lake Elmo and Lake Elmo's well house #2. As a result of detachment, a portion of Manning Avenue will be under the authority of Stillwater Township. Another portion of Manning Avenue, which crosses property protruding into the subject property that was not included in the detachment request, would remain in Lake Elmo. The ALJ thoroughly considered Lake Elmo's loss of regulatory authority over Manning Avenue and ultimately concluded that "[t]here is no credible evidence that the sharing of road authority with Stillwater Township over this five-block segment of mostly unpaved roadway will result in more limited access to Highway 36 for Lake Elmo residents."

The ALJ stated that "[r]egardless of whether Manning Avenue south of Highway 36 is located in Stillwater Township or Lake Elmo, it would continue as a public road with existing prescriptive easements" and noted that "[p]eople who live in the Sanctuary area or in the Subject Property would be able to use Manning Avenue to enter and exit Highway 36." Lake Elmo describes the ALJ's statements as a "misapprehension of the status of the road and the devastating affect of detachment"[4] and contends that the ALJ's

[4] We observe that although Lake Elmo describes the effect of detachment on the status of Manning Avenue as "devastating," it did not propose or argue that the ALJ should exclude the Manning Avenue area from the property to be detached in an effort to preserve its control over Manning Avenue. *See* Minn. Stat. § 414.06, subd. 3 ("The chief

findings that Manning Avenue will continue to be available for public use after detachment are based on "errant theories of law." For the reasons that follow, we are not persuaded.

First, assuming, without determining, that the precise legal analysis supporting the ALJ's finding that Manning Avenue will continue to be available for public use after detachment is flawed, it does not follow that the finding is erroneous. Minnesota statutes provide several avenues of relief when a boundary modification under chapter 414 affects an easement held for the benefit of the public or when road access to real property is otherwise restricted. *See* Minn. Stat. §§ 414.039 (2010) ("If a municipality annexes property in which the affected township holds any easement for the benefit of the public, the township's easement interest continues unless otherwise agreed to by the township."), 160.09, subd. 3 ("When a county highway or town road is the only means of access to any property or properties containing an area or combined area of five acres or more, the highway or road shall not be vacated without the consent of the property owner unless other means of access are provided."), 164.08, subd. 2(a) ("Upon petition presented to the town board by the owner of a tract of land containing at least five acres, who has no access thereto except over a navigable waterway or over the lands of others, or whose access thereto is less than two rods in width, the town board by resolution shall establish a cartway at least two rods wide connecting the petitioner's land with a public road. A town board shall establish a cartway upon a petition of an owner of a tract of land that, as

---

administrative law judge may decrease the area of property to be detached and may include only a part of the proposed area to be detached.").

of January 1, 1998, was on record as a separate parcel, contained at least two but less than five acres, and has no access thereto except over a navigable waterway or over the lands of others.") (2012).

Moreover, nothing in the record suggests that Manning Avenue will not continue to be available for public use after detachment. To the contrary, record evidence shows that Manning Avenue is likely to remain in use. For instance, there is evidence that the Minnesota Department of Transportation and Washington County are planning a number of long-term changes to control access to Highway 36, including the possibility of using "a portion of the Nass and Bidon parcels, and part of Stillwater Township, to create [an] interchange and supporting roadways and ramps at Manning Avenue." The fact that the department of transportation has "plans for an interchange at Manning [Avenue]" demonstrates that it is unlikely that Manning Avenue will not be available for public use.

In sum, we discern no reversible error in the ALJ's findings regarding Manning Avenue or in her findings regarding water service and development plans. Although Lake Elmo understandably would prefer to maintain road authority over Manning Avenue, its loss of that authority does not provide grounds for reversal under our deferential standard of review.

II.

Lake Elmo next argues that the ALJ's detachment order is affected by errors of law. Specifically, Lake Elmo contends that the ALJ erroneously relied on *Village of Goodview v. Winona Area Indus. Dev. Ass'n*, 289 Minn. 378, 184 N.W.2d 662 (1971), and that the ALJ failed to apply the detachment statute "in a manner consistent with its

long-expressed purpose and language" and "to take into account the relevant circumstances surrounding the petition for detachment."

As to the ALJ's reliance on *Village of Goodview*, the ALJ stated that "if the statutory requirements for detachment are met, the intent of the parties is not relevant." The ALJ cited *Goodview* as support, noting that the Minnesota Supreme Court has "held that the specific statutory criteria for detachment were the only pre-requisites to detachment and that it would not read other requirements into the statute." *See Goodview*, 289 Minn. at 380, 184 N.W.2d at 664 ("The obvious answer to this argument is that the statute does not provide for the additional requirement claimed by appellant.").

Lake Elmo asserts that *Goodview* is no longer controlling because Minn. Stat. § 414.06 previously provided that if the statutory factors for detachment were met, the ALJ "shall" order detachment, whereas the applicable version of the statute states that if the statutory factors are met, the ALJ "may" order detachment. *Compare* Minn. Stat. § 414.06, subd. 4 (1967), *with* Minn. Stat. § 414.06, subd. 3 (2010). Lake Elmo therefore contends that in addition to the specific factors listed in section 414.06, the ALJ must consider respondents' intent in seeking detachment and whether that intent is consistent with the underlying purpose of the detachment statute.

Even though the statutory change from mandatory to permissive language expands the ALJ's discretion, the statute did not require the ALJ to consider respondents' intent. And although Section 414.06 was recently amended to require that a detachment petition include "a statement of the reasons the petitioners or the municipality is seeking the detachment," that amendment was not effective at the time of the ALJ's decision in this

case. Minn. Stat. § 414.06, subd. 1 (2012); *see also* Minn. Stat. § 645.02 ("Each act, except one making appropriations, enacted finally at any session of the legislature takes effect on August 1 next following its final enactment, unless a different date is specified in the act."). As succinctly stated by the district court, "[t]he detachment statute neither explicitly requires nor prohibits the intent of the parties from being considered." Therefore, regardless of the decreased precedential value of *Goodview*, the ALJ was not required to base her decision on respondents' intent.

We next address Lake Elmo's assertion that the ALJ "applied an erroneous theory of law by failing to consider the expressly stated purposes of the municipal boundary statute and other relevant factors and circumstances." Lake Elmo contends that the ALJ erred by limiting her analysis to the factors set forth in section 414.06 and by failing to consider the principles set forth under section 414.01. *See* Minn. Stat. § 414.01, subd. 1a(2), (3) (stating that "municipal government most efficiently provides governmental services in areas intensively developed for residential, commercial, industrial, and governmental purposes; and township government most efficiently provides governmental services in areas used or developed for agricultural, open space, and rural residential purposes" and "the public interest requires that municipalities be formed when there exists or will likely exist the necessary resources to provide for their economical and efficient operation"), subd. 1b(1)-(3) (stating that "[t]he chief administrative law judge may promote and regulate development of municipalities: (1) to provide for the extension of municipal government to areas which are developed or are in the process of being developed for intensive use for residential, commercial, industrial, institutional, and

governmental purposes or are needed for such purposes; and (2) to protect the stability of unincorporated areas which are used or developed for agricultural, open space, and rural residential purposes and are not presently needed for more intensive uses; and (3) 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").

Lake Elmo contends that the intent of the detachment statute is to allow rural or agricultural lands, which are not needed for municipal purposes and which do not benefit from services provided by the municipality, to separate from a municipality to preserve their rural character and agricultural use. Lake Elmo claims that respondents are "dissatisf[ied] that they cannot build more densely" on their property and improperly sought detachment in order "to bolster the land's attractiveness for sale to a commercial developer." Lake Elmo asserts that respondents' use of the detachment statute "to bolster the land's attractiveness for sale to a commercial developer" is "squarely inconsistent with the long-stated purposes of the detachment statute and well-settled caselaw." *See Vaubel v. Village of Mapleton*, 194 Minn. 621, 621, 261 N.W. 869, 869 (1935) (addressing the detachment of a farm from the Village of Mapleton); *In re Detachment of Unplatted Lands from Owatonna*, 183 Minn. 164, 165, 236 N.W. 195, 195 (1931) (addressing the detachment of land owned by the Clinton Falls Nursery Company from Owatonna); *In re Petition of Norrish*, 155 Minn. 415, 416, 193 N.W. 947, 948 (1923) (addressing the detachment of agricultural lands from a city); *Cavert v. Bd. of Cnty.*

Comm'rs of Renville Cnty., 153 Minn. 360, 361, 190 N.W. 545, 545 (1922) (addressing the detachment of a farm from the Village of Bird Island).

Lake Elmo complains that respondents did not show "that they were disproportionately burdened by urban taxation or regulation, or that they were engaged in or wished to advance or continue agricultural uses [that] could not occur in Lake Elmo." Lake Elmo further complains that respondents' detachment request does not comply with the historical purpose of the detachment statute and instead merely serves their personal preferences, i.e., to make the subject property more marketable for future sale. The ALJ rejected those complaints, reasoning that Lake Elmo's "concerns about [respondents'] motivations and the possibility that the Subject Property may in the future be annexed to another municipality and developed in a manner not to its liking are not a proper basis for denying detachment."

Even though respondents' request for detachment is not based on a desire to continue existing agricultural uses—unlike the circumstances in the detachment cases Lake Elmo cites from the 1920s and 1930s—the subject property is zoned for agricultural uses. Moreover, respondents' request complies with the express requirements of section 414.06. Although Minn. Stat. § 414.06, subd. 3, historically only allowed detachment for property that was "unplatted, and used and occupied primarily for agricultural purposes," this language was removed in 1978. 1978 Minn. Laws. ch. 705, § 24, at 639. Currently, the property need only be "rural in character and not developed for urban residential, commercial or industrial purposes." Minn. Stat. § 414.06, subd. 3. As explained in the next section, the ALJ correctly found that the subject property is rural in character.

We also observe that Lake Elmo's argument that the ALJ failed "to consider and protect developing areas and to protect the integrity of land use planning in municipalities" presumes that the subject property is a developing area and that the city plans for the subject property to be used for nonagricultural purposes. The record refutes those presumptions. The current and planned zoning designation for the subject property is agricultural. In addition, under Lake Elmo's comprehensive plan for 2005-2030, the existing and future land-use designation for the subject property is rural agricultural density. The record simply would not support a conclusion that detachment interferes with planned development of the subject property.

In sum, the ALJ considered all of the factors that are mandatory under the applicable version of section 414.06 and did not err in applying the statute.

III.

Lake Elmo also argues that several of the ALJ's conclusions regarding factors under section 414.06, subdivision 3, are erroneous. Lake Elmo specifically challenges the ALJ's conclusions that the subject property is rural in character, that detachment does not unreasonably affect Lake Elmo's symmetry, and that the subject property is not needed for reasonably anticipated future development. Lake Elmo argues that the factual findings underlying those conclusions are not supported by substantial evidence in the record and that the ALJ's conclusions therefore are arbitrary and capricious. We address each factor in turn.

Rural Character

To order detachment under section 414.06, subdivision 3, an ALJ must determine "that the property is rural in character and not developed for urban residential, commercial or industrial purposes." The term rural is not defined in the statute. But "words and phrases are construed according to rules of grammar and according to their common and approved usage." Minn. Stat. § 645.08 (2012). Rural is commonly defined as "[o]f, relating to, or characteristic of the country." *The American Heritage Dictionary of the English Language* 1580 (3d ed. 1992).

The ALJ found that Lake Elmo "provides no water, sanitary sewer, storm sewer, solid waste collection or disposal, or law enforcement services to the Subject Property." The ALJ also found that there is limited high density residential or commercial development in Lake Elmo; the subject property is currently zoned for agricultural uses; under Lake Elmo's comprehensive plan for the years 2005-2030, the existing and future land-use designation for the property is rural agricultural density; working farms, agricultural uses, and single-family detached residences are permitted under the rural-agricultural-density classification; and only two households exist on the subject property. These findings, which are supported by substantial evidence in the record, support the ALJ's conclusion that the subject property is rural in character. Lake Elmo's arguments to the contrary, which include its unpersuasive assertion that "there are plans to develop the Subject Land currently and in the future," are not persuasive.

Symmetry

Section 414.06, subdivision 3, requires the ALJ to determine "that the detachment would not unreasonably affect the symmetry of the detaching municipality." Symmetry is not defined in the statute, but "words and phrases are construed according to rules of grammar and according to their common and approved usage." Minn. Stat. § 645.08. Symmetry is commonly defined as "[e]xact correspondence of form and constituent configuration on opposite sides of a dividing line or plane or about a center or an axis." *American Heritage, supra,* at 1818. Thus, under the common definition, the ALJ was required to examine the physical boundaries of Lake Elmo following detachment.

Noting that Minnesota caselaw has not defined symmetry in the context of detachment proceedings, Lake Elmo cites an Idaho Supreme Court case for the proposition that

> [s]ymmetry means more than due proportion of the parts of a body, conformance and consistency, and correspondence or similarity of form. . . . Symmetry also involves the ability of the municipality to regulate adjoining lands whose use affects the quality of life in residential and business districts of the community. Symmetry thus requires not only regularity in the shape of the city, but also a measure of consistency, harmony and uniformity of regulation.

In re Williamson, 19 P.3d 766, 770 (Idaho 2001) (quotation omitted). But *Williamson* is not precedential, and we do not apply its definition of symmetry. *See Mahowald v. Minn. Gas Co.*, 344 N.W.2d 856, 861 (Minn. 1984) (noting that decisions from foreign jurisdictions are not binding as authority). We therefore reject Lake Elmo's argument that the ALJ's reliance on the common meaning of symmetry was an error of law, as well

as its argument that "symmetry is harmed by loss of regulatory authority over the [subject property]."

The ALJ concluded that detachment of the property would not unreasonably affect symmetry and would, in fact, enhance Lake Elmo's symmetry by establishing Manning Avenue as its eastern border and eliminating an irregular diagonal boundary along its northeastern corner due to the manner in which the Buberl property was divided during its annexation. The ALJ noted that detachment would create a small protrusion around a land parcel not related to these proceedings, but that the protrusion would not unreasonably affect the symmetry of Lake Elmo's boundaries. The ALJ's findings and conclusion regarding symmetry do not constitute reversible error.

Future Development

Section 414.06, subdivision 3, requires the ALJ to determine "that the land is not needed for reasonably anticipated future development." The ALJ found that "[t]he record as a whole does not support a finding that the City needs the Subject Area for reasonably anticipated future development, despite the numerous assertions to the contrary by City witnesses. Instead, the record established that Lake Elmo seeks to retain regulatory control over the Subject Area in order to maintain it as a semi-rural buffer to existing and future commercial development." This finding was based on testimony from Lake Elmo's mayor, who had previously served on Lake Elmo's planning commission. He testified regarding why detachment was not in Lake Elmo's best interest.

> When you're planning a city you are always looking for interactions between, for example, residential neighborhoods and things that surround them. And we already have a

> residential neighborhood there and we would like to make sure that the residents who have made their homes there are able to retain at least a significant part of the character that they experienced when they purchased that. I mean, for example, if that were to be detached and someone were to put in a big box retail store, that would, I think, represent a significant deterioration in the environment that we have planned and the people who bought homes there are expecting.

That testimony supports the ALJ's conclusion that Lake Elmo had no plans for future development of the property and preferred to maintain it as a "rural" buffer for the existing residential development. Moreover, the subject property is zoned agricultural, its future land-use designation is rural agricultural density, and only 18 homes could be constructed on 40 contiguous acres in the subject property under the open-space regulations of Lake Elmo's zoning ordinance.

Lake Elmo counters that it needs the subject property for *existing* development, stating:

> First, the city improved, paved and widened Manning Avenue and required a developer to furnish it with $75,000 to allow it to make further expected and required upgrades. Second, the City constructed a well house to serve the detachment parcels and the Sanctuary development with water service. Third, the City has only one way of reaching its well house—Manning Avenue. Fourth, a major subdivision in the area—the Sanctuary—relies on Manning Avenue and the City's maintenance and repair and ownership of it for its only access.

Once again, Lake Elmo's argument focuses on Manning Avenue. Respondents contend that Lake Elmo, "[r]ecognizing that it cannot demonstrate that the subject land is needed for development . . . exaggerates the importance of Manning Avenue for purposes

of the present litigation." The ALJ agreed, stating that "the City's relatively recent assertion of the importance of Manning [Avenue] south of Highway 36 is inconsistent with its actual analysis of the roadway in its comprehensive plan." The record supports the ALJ's assessment.

Lake Elmo's engineer testified that possible construction of a projected expansion project at the intersection of Manning Avenue and Highway 36 involving the subject property is still five to ten years in the future. There is no indication that Lake Elmo attempted to acquire, or offered to purchase, the subject property for the intersection project. And Manning Avenue only crosses the subject property, mostly as a gravel road, for a distance of .2 miles. Moreover, although the above-quoted portion of Lake Elmo's brief details the importance of Manning Avenue to Lake Elmo, it does not describe any anticipated development of the subject property beyond Manning Avenue itself.

In sum, the ALJ's factual findings and conclusions regarding the detachment factors under section 414.06, subdivision 3, are not in error.

IV.

Lake Elmo next argues that "[t]he conclusion that the Subject Property is currently rural in character and has not been developed for urban residential, commercial or industrial purposes, as required by Minn. Stat. § 414.06, subd. 1, is not supported by substantial evidence in the record." Section 414.06, subdivision 1, like subdivision 3, specifically requires a finding that the subject property is "rural in character and not developed for urban residential, commercial, or industrial purposes." Lake Elmo's arguments regarding the rural-character determination under section 414.06, subdivision

1 are duplicative of its arguments under subdivision 3 of that section, and they are similarly unpersuasive.

V.

Minn. Stat. § 414.06, subd. 3, provides that the ALJ may deny the detachment "on finding that the remainder of the municipality cannot continue to carry on the functions of government without undue hardship." Lake Elmo argues that "[t]he [ALJ's] conclusion that the remainder of the City of Lake Elmo could carry on the functions of the government without undue hardship is not supported by substantial evidence in the record." The ALJ reasoned that "[g]iven the small acreage of land and minimal amount of tax revenue at issue in this detachment proceeding, as well as the lack of any specific future development plans for the Subject Property, Lake Elmo will be able to continue to carry on the functions of government without undue hardship if the Subject Property is detached." The ALJ found, based on witness testimony, that Lake Elmo would lose approximately $3,900 in property tax revenue, compared to its annual budget of $2.4 million. And the ALJ noted that Lake Elmo is approximately 15,523 acres in size, whereas the subject property consists of 57.17 acres.

Lake Elmo contends that "[d]etachment of Manning Avenue and land around it creates undue hardship on the City," that it "will lose its ability to regulate any nuisances if the Subject Land is detached," referring to the "intensive and nuisance-prone activities" at the Buberl composting site, and that it will lose significant water-system income. The ALJ considered and rejected those contentions. The ALJ concluded that Lake Elmo's "concern about potential nuisance activities on the Subject Property is speculative and not

evidence of an undue hardship that would render it unable to carry out government functions." As to the water claim, the ALJ found "the City's claim that detachment of the Subject Property will cause financial damage to its water enterprise . . . unconvincing, particularly because the Subject Property has only two houses on it and because higher-density residential development of the property is unlikely." Finally, the ALJ found that Manning Avenue was of significantly less importance to Lake Elmo than it contended.

Lake Elmo's loss of authority over Manning Avenue is the most persuasive of its contentions. We recognize that Lake Elmo has obligations to its residents in the Sanctuary and a reasonable desire to maintain control over the only road that accesses one of its subdivisions and one of its well houses. We also recognize that Lake Elmo's ability to carry out the functions of government related to the Sanctuary residents and well house #2 will be compromised, to some degree, by its loss of authority over Manning Avenue. But the relevant inquiry is whether Lake Elmo "cannot continue to carry on the functions of government without *undue* hardship." Minn. Stat. § 414.06, subd. 3 (emphasis added). Although the loss of authority over Manning Avenue creates some hardship, because the record evidence provides no reason to believe that Manning Avenue will not be maintained for public use as a result of detachment, we cannot say that the ALJ erred in concluding that detachment does not create an undue hardship for Lake Elmo.

In sum, the ALJ's conclusion that Lake Elmo can continue to carry on the functions of government with undue hardship after detachment is not erroneous.

VI.

Lastly, Lake Elmo argues that "[i]t was error to exclude the statement of the City of Stillwater in opposition to the detachment." At the evidentiary hearing before the ALJ, the City of Stillwater testified that it took no position on respondents' petition for detachment and that it was remaining neutral on the issue of whether property south of Highway 36 should be annexed to the city. Nevertheless, the City of Stillwater submitted a "Closing Argument," stating that "the subject property should remain in the City of Lake Elmo." The ALJ "disregarded" this assertion because it was made "outside the evidentiary record" and "[t]he City of Stillwater did not seek or obtain permission to re-open the record."

Lake Elmo argues: "Given that the City of Stillwater, the City to which the Respondents seek to eventually join, opposes this detachment and states reasons for it, the statement should not have been excluded." But, as the ALJ correctly noted, "[t]he evidentiary record closed at the conclusion of the hearing." And although Stillwater's position may have been relevant, it was inconsistent with its testimony at the evidentiary hearing. The ALJ therefore properly excluded the factual assertions in Stillwater's closing argument. *See Hall v. Stokely-Van Camp, Inc.*, 259 Minn. 101, 104, 106 N.W.2d 8, 10 (1960) (stating that counsel may not introduce into his argument to the jury statements and conclusions unsupported by the evidence).

In conclusion, the ALJ's detachment determination is entitled to deference. *See McNamara*, 628 N.W.2d at 625 ("Once the order for annexation or incorporation has been made, the decision enjoys a presumption of correctness."). And because the

decision is supported by substantial evidence and reflects a reasoned decision-making process, we will not disturb the determination. *See City of Lake Elmo*, 468 N.W.2d at 576.

Affirmed.