

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Petition for
Detachment of Property from the
Tofte-Schroeder Sanitary Sewer District

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER
APPROVING DETACHMENT
FROM THE TOFTE-SCHROEDER
SANITARY SEWER DISTRICT**

On March 18, 2019, the Tofte-Schroeder Sanitary Sewer District Board and the Schroeder Township Board (Petitioners) jointly petitioned the Chief Administrative Law Judge of the Office of Administrative Hearings to approve the detachment of certain real property from the Tofte-Schroeder Sanitary Sewer District pursuant to Minn. Stat. § 442A.06 (2018).¹ The Petitioners appeared by and through Mia Thibodeau, Fryberger, Buchanan, Smith & Frederick, P.A.

Upon review of all the files and proceedings herein, the Chief Administrative Law Judge makes the following:

FINDINGS OF FACT

Background

1. The Tofte-Schroeder Sanitary Sewer District (District) was created by Order of the Minnesota Pollution Control Agency dated May 31, 2000.²

Detachment from a Sanitary District

2. On August 15, 2018, the Schroeder Town Board (Schroeder) adopted Resolution 2018-05 authorizing the Chair to execute a petition for detachment from the District. The Resolution was published in the Cook County News Herald on September 15, 2018.³

¹ Joint Petition for Detachment from a Sanitary District (Petition) (Nov. 12, 2018).

² Resolution 2018-05 adopted by the Board of Supervisors of the Town of Schroeder (Aug. 15, 2018), attached as Attachment (Att.) C to Petition; Resolution Authorizing Detachment of Town of Schroeder from Tofte-Schroeder Sanitary Sewer District and Execution of Petition for Detachment, adopted by the District (Sept. 5, 2018), Petition at Att. D.

³ Petition at Att. C.

3. On September 5, 2018, the District adopted the Resolution Authorizing Detachment of Town of Schroeder authorizing the Chair to execute a petition for detachment from the District. The Resolution was published in the Cook County News Herald on December 15, 2018.⁴

4. On September 13, 2018, the Tofte Town Board (Board) adopted Resolution 10-2018 supporting a petition for detachment from the District.⁵

5. On November 12, 2018, Bruce Martinson, the Chair of the District and Chair of the Board, signed the Joint Petition for Detachment from a Sanitary District.⁶

6. A Notice of Public Meeting was published in the Cook County News Herald on July 14 and 21, 2018.⁷

7. The Notice of Public Meeting was posted for at least two weeks prior to the July 31, 2018 public meeting at Tofte Town Hall, the standard meeting location for the District, the Schroeder Town Hall, the Tofte Post Office and the Schroeder Post Office. As there is no functioning website for the District, the Notice of Public Meeting was not posted online.⁸

8. The Public Meeting Notice dated July 6, 2018 was mailed to each property owner named in the list provided by Cook County.⁹ The public was invited to submit written and verbal comments at the public meeting.

9. A public meeting was convened on July 31, 2018 to discuss the proposed detachment from the District. Members of the public were in attendance, allowed to ask questions, and received responses from representatives of the District and the Board.¹⁰

Office of Administrative Hearings

10. On March 18, 2019, the Petitioners filed the Petition with the Chief Administrative Law Judge of the Office of Administrative Hearings, requesting detachment of certain real property from the District.

11. The proposed detachment area is located in Cook County and legally described as follows:

Section 31, Township 59 North, Range 4 West; and

⁴ Petition at Att. D.

⁵ Tofte Township Resolution 10-2018 (Sept. 13, 2018).

⁶ Petition at 3, 4.

⁷ Proof of Publication (Nov. 15, 2018).

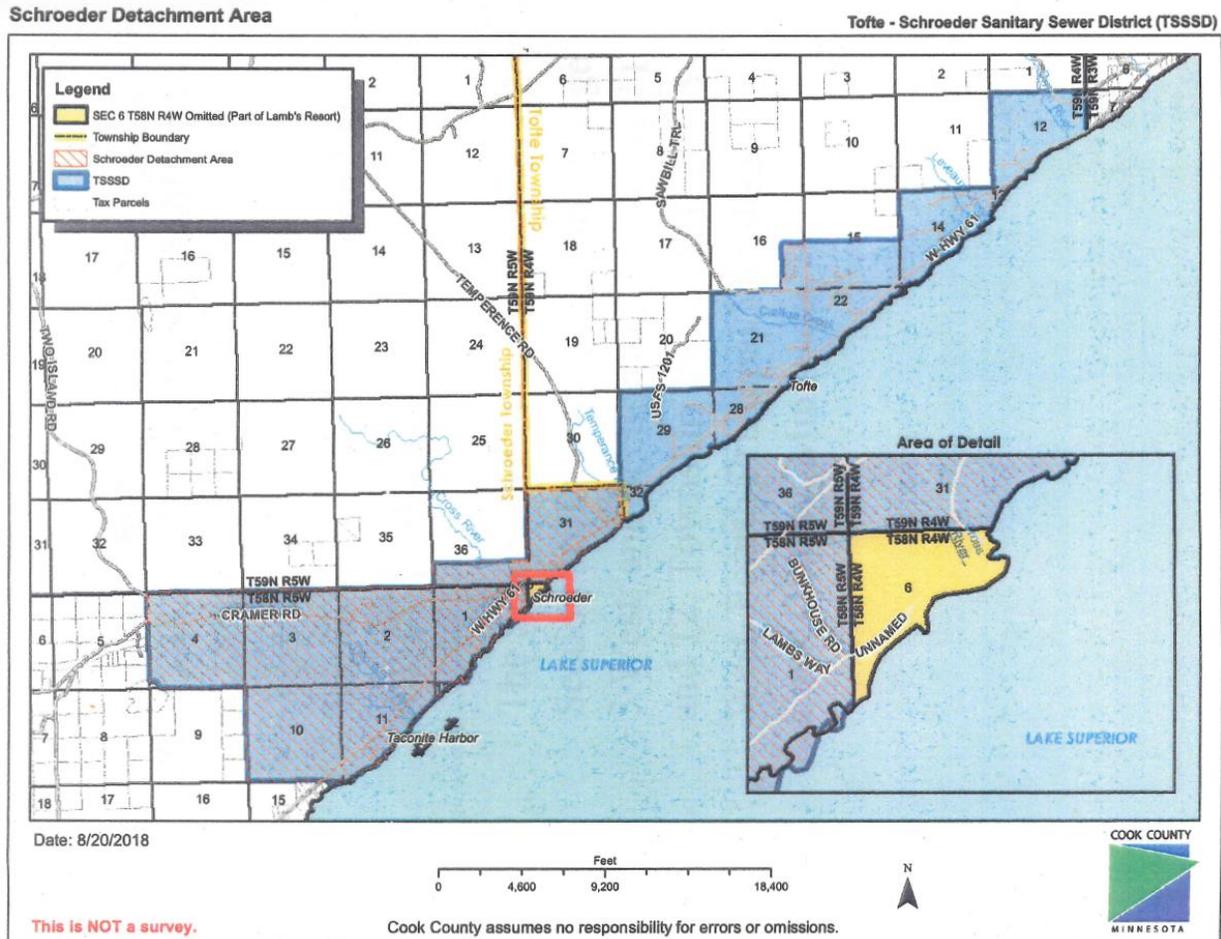
⁸ Affidavit of Posting and Website (Nov. 11, 2018).

⁹ Affidavit of Mailing (Nov. 16, 2019).

¹⁰ Minutes of Joint Meeting (July 31, 2018), Petition at Att. A.

The South Half of the South Half of Section 36, Township 59 North, Range 5 West; and Sections 1, 2, 3, 4, 10, 11, and 12, Township 58 North, Range 5 West, Fourth Principal Meridian, Cook County, Minnesota.¹¹

12. A map indicating the proposed detachment area is available at the Office of Administrative Hearings,¹² and illustrated below.



13. At the direction of the Chief Administrative Law Judge, the Cook County News Herald published the Notice of Intent for Detachment of Property from a Sanitary District (Notice of Intent) on April 20, 2019.¹³ Also at the direction of the Chief Administrative Law Judge, the Office of Administrative Hearings mailed the Notice of Intent to the Petitioners and counsel¹⁴ and mailed to the affected property owners, using the addresses certified and provided by the Cook County Auditor, a memorandum containing notice of intent to order the proposed detachment.¹⁵

¹¹ Petition at 1.

¹² Petition at Att. A.

¹³ Affidavit of Publication (Apr. 20, 2019).

¹⁴ Certificate of Service attached to Notice of Intent (Apr. 11, 2019); Proof of Publication (Apr. 30, 2019).

¹⁵ Memorandum and Certificate of Service (Apr. 11, 2019).

14. The public notice period lasted for 30 days and ended on May 20, 2019.

15. By May 20, 2019, the Chief Administrative Law Judge had received no requests for hearing but had received seven comments regarding the proposed detachment from the District,¹⁶ all of which are summarized below.

- a. R. Anderson, a Schroeder resident and current Town Board Supervisor, commented that in the first ten years of its existence the District had spent over \$750,000 researching the feasibility of constructing a municipal sewer system and determined such was not geographically possible nor economically feasible. Mr. Anderson opined that detachment should be approved.
- b. Charlie Muggley, a resident of Schroeder and member of the District's board since 2010, expressed his view that the District had been "born of greed and ignorance and continued in controversy" for nearly 20 years, and noted that predicted commercial and residential development had not materialized. Mr. Muggley supports the proposed detachment.
- c. Deidre LaRock-Muggley, a resident of the District, commented that she supports the petition and hopes it will be approved.
- d. Nichole Finley Borson, a resident/owner of property in Schroeder Township, commented that the District was never a feasible project and had wasted taxpayer money such that she supports the proposed detachment.
- e. Peter and Nichole Borson commented they were against the creation of the District, felt that the public had been lied to when the District was formed, view the District as a waste of time, energy, and money, and strongly approve of the proposed detachment.
- f. Mike McCann, a property owner in Schroeder, commented that he is in the process of installing a new septic system and has been informed by the county that 180 properties have non-compliant sewer systems. Mr. McCann welcomes any local assistance in solving this countywide problem, and so would like to remain within the District.
- g. Jerry and Julie Donek commented that they support the proposed detachment.

¹⁶ Comments (on file with the Minn. Office of Admin. Hearings).

Statutory Factors Considered

16. In its 19 years of existence, the District has not constructed any collection and treatment system for the covered area due to unanticipated geological barriers and resulting greater-than-expected construction costs. As such, the proposed detachment will not have any negative environmental impact or otherwise affect the public health, safety, or welfare of the area, same not having been impacted by the District since its creation.

17. Cook County, within which the District is located, has expanded its services related to management of and enforcing compliance for individual septic treatment systems within the District. Ongoing county oversight will provide a sufficient alternative for managing the public health impacts in the detachment area.

18. The Petition does not reveal any competing equities nor contain any reference of fact or law within its contours that raise any dispute of fact or law relevant to this Order except as otherwise addressed herein.

19. The public was sufficiently notified of the terms and legal effect of the proposed detachment, as required by law, as evidenced by the fact of the public's attendance and participation at the public hearing and its submission of public comments.

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

CONCLUSIONS OF LAW

1. The Chief Administrative Law Judge of the Office of Administrative Hearings has jurisdiction over the proposed detachment from the Tofte-Schroeder Sanitary Sewer District pursuant to Minn. Stat. § 442A.01-.29 (2018).

2. The Petitioners have met all the public notification, public interaction and other procedural requirements of Minn. Stat. § 442A.06, as well as other substantive and procedural requirements of law and rule.

3. Minn. Stat. § 442A.06, subd. 4(b), requires the Chief Administrative Law Judge to hold a hearing if fifty (50) or more written requests are received by the end of the public comment period. Because no requests for hearing were received throughout the comment period, no public hearing was required.

4. Following review of the relevant factors as required by Minn. Stat. § 442A.06, subd. 6, and as set forth above, the Chief Administrative Law Judge concludes as follows:

- a. The proposed detachment area has adequate alternatives for managing public health impacts due to the detachment;

- b. The proposed detachment area is not necessary for the District to provide a long-term, equitable solution to pollution problems affecting public health, safety, and welfare;
- c. Property owners within the District and the proposed detachment area were provided notice of the proposed detachment and were given an opportunity to comment on the Petition for detachment;
- d. The Petition complied with the requirements of all applicable statutes and rules pertaining to sanitary district detachment.

Based upon these Conclusions of Law, the Chief Administrative Law Judge issues the following:

ORDER

1. The following described property is hereby detached from the Tofte-Schroeder Sanitary Sewer District:

Section 31, Township 59 North, Range 4 West; and

The South Half of the South Half of Section 36, Township 59 North, Range 5 West; and Sections 1, 2, 3, 4, 10, 11, and 12, Township 58 North, Range 5 West, Fourth Principal Meridian, Cook County, Minnesota.

2. The Office of Administrative Hearings will cause copies of this Order to be mailed to all persons described in Minn. Stat. § 442A.13, subd. 2.

3. Pursuant to Minn. Stat. § 442A.06, subd. 10, the Chief Administrative Law Judge will deliver a certified copy of this Order to the Minnesota Secretary of State for filing.

4. Pursuant to Minn. R. 1408.0030 (2017), the costs of all publications and mailings required to be made in this matter by the Office of Administrative Hearings are to be paid by the Petitioners. An itemized invoice will be sent under separate cover.

Dated: June 18, 2019



TAMMY L. PUST
Chief Administrative Law Judge

NOTICE

This Order is the final administrative order in this case under Minn. Stat. §§ 442A.06, .11, .13 (2018). Pursuant to Minn. Stat. § 414.11, subd. 2, any person aggrieved by this Order may appeal to Cook 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.