

A05-0912

OFFICE OF  
APPELLATE COURTSSTATE OF MINNESOTA  
IN SUPREME COURT

JUN - 4 2007

FILED

All Parks Alliance for Change,

Petitioner,

v.

Unipro Manufacturing Housing Communities  
Income Fund, d/b/a Ardmor Village,

Respondent.

## PETITION FOR REHEARING

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TO: THE SUPREME COURT OF THE STATE OF MINNESOTA:

Petitioner All Parks Alliance for Change (APAC) requests rehearing upon the following grounds:

**A. Rehearing Is Requested on the Fifth Element of the Reasonable Limits Test – Limits Placed “Cannot Significantly Diminish or Eliminate any Material Right, Privilege, or Freedom of Action of a Resident.”**

By decision issued May 24, 2007, this Court enunciated a new five-prong test for determining whether limitations placed by a manufactured home park on non-commercial speech within a park meet the statutory requirement of “reasonable limits as to time, place and manner.” (A. 1.) This Petition for Rehearing is directed only at prong five of this five-part test – the limits placed “cannot significantly diminish or eliminate any material right, privilege, or freedom of action of a resident.” (A. 6.)

While this Court’s decision discusses the first four elements of its newly enunciated test and how the Court reviewed the “district court’s application of those limits to the undisputed facts, as the district court found them,” there is no discussion or application by this Court of the fifth prong of its enunciated reasonable limits test. (Id.) Since this prong has been overlooked in the Court’s analysis, the trial court’s findings do not support that this factor was analyzed by the trial court or that this factor can otherwise be met as a matter of law on this record, Petitioner respectfully requests rehearing. Minn. R. Civ. App. Proc. 140(c) (rehearing permitted where there is a material question in the case which, in the opinion of the petitioner, the Supreme Court has overlooked, failed to consider, misapplied or misconceived).

Rather than the Court's ordered affirmance on this record, the trial court's decision should be ordered reversed. Either on this record the fifth factor is not met as a matter of law or the case must be sent back for further proceedings consistent with this Court's Opinion, including a possible reopening of the record on remand to address prong five.

**B. Trial Court's Findings of Fact and Conclusions of Law Do Not Support Fifth Element Met as a Matter of Law.**

At no time does the trial court state it either considered or analyzed whether limits placed by Uniprop on unsolicited and noncommercial speech within the park "significantly diminish[ed] . . . any material right, privilege, or freedom of action of a resident." (A. 11, 28.) Also noticeably absent from the trial court's findings or conclusions of law is an acknowledgment that Uniprop's rule limits not only an organization like APAC's ability to engage in noncommercial speech with park residents but the fact that the rule prohibits such speech activities between the residents of the park. (A. 31.)

As a review of the trial court's findings of fact and conclusions of law reveals, the trial court's focus was on the effect that Uniprop's rule would have on APAC's activities. The trial court's conclusions of law include: "APAC has a right of free expression within Ardmor Village for noncommercial purposes pursuant to Minn. Stat. § 327C.13" and that "Ardmor violated Minn. Stat. § 327C.13 by prohibiting and adopted a rule prohibiting APAC's employees from peacefully leafleting and canvassing at Ardmor Village . . . ." (A. 16-17.) The trial court also concluded: "The Court finds that the new rule is not reasonable, in that it would restrict APAC from being able to directly contact residents

during the times in which residents are most likely to be home . . .” and “APAC has been injured by Ardmor’s violation of Minn. Stat. § 327C.13.” (A. 17.)

The trial court’s findings of fact likewise focus on APAC’s outreach efforts, the time it would take for APAC to canvas all of the home sites, the time that APAC would normally engage in outreach activities and the unreasonable impediment of the new rule to APAC’s activities. (See Findings of Fact 17, 20, 21, 22, 23 and 24; A. 15-16.) The trial court also looks at Uniprop’s rule from the point of view of Uniprop. (Finding of Fact 14; A. 15.) Little mention is made of the park residents. Findings of Fact 18 and 19 simply state that at least two residents on the no contact list “have a desire to be left alone, and do not want uninvited guests, including APAC, to come to their home sites” and that there was “no evidence” that a resident was coerced into signing onto the no contact list. (A. 16.)

**C. Rule Impacts Resident to Resident Speech as Well as Nonresident to Resident Speech.**

It is difficult to conceive how a rule that limits the ability of residents to share information with each other except during hours when most people who work outside the home are not at home does not “significantly diminish a material right, privilege or freedom of action of a resident.” One resident cannot canvas another resident except during the limited “blue penciled” hours set out by the trial court. (A. 11, 28, 31.) A resident who works 8:00 to 5:00 and has a reasonable commute would have less than one hour during the work week from September 1 to April 30 of each year to leaflet or canvass their fellow residents.

Since leafleting is also prohibited between residents except during these limited hours, a resident could not leave a flyer announcing a neighborhood potluck dinner, for example, except during designated hours. Moreover because the no contact list must be viewed “by all individuals prior to any leafleting, canvassing or, door to door solicitation” and the fact such list is maintained in park office which is open during limited hours, further restrictions are placed on resident’s free speech with each other.

(A. 31.)

Moreover, under the “no contact list,” before one resident can “canvas” another resident on issues of public concern, that resident is required to check the no contact list. The list is contained in the park office which office is open Tuesday through Friday from 9:00 a.m. to 5:00 p.m.; Monday from 9:00 a.m. to 7:00 p.m. and Saturday from 9:00 a.m. to 12:00 noon. Such limitations on a resident’s ability to receive speech and to speak to other residents does significantly eliminate a material right, privilege or freedom of action of a resident.

On this record, the fifth factor is not met as a matter of law. Reversal, not affirmance, is warranted. At minimum, given this Court’s newly enunciated test which the lower court did not apply, Petitioner respectfully asserts the appropriate remedy is to reverse and remand to the trial court for further proceedings consistent with this Court’s opinion, including the possibility of reopening the record to address prong five.

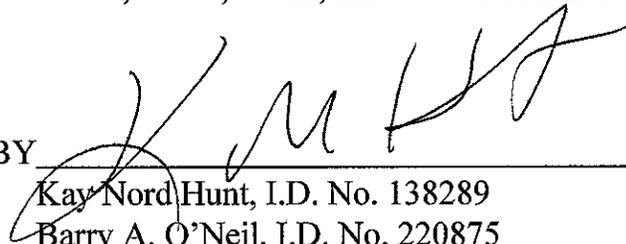
**CONCLUSION**

For the above-stated reasons, Petitioner respectfully requests its Petition for Rehearing be granted.

Dated: June 4, 2007

**LOMMEN, ABDO, COLE, KING & STAGEBERG, P.A.**

BY



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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2) (with amendments effective July 1, 2007).