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Nos. A06-2019 and A06-2361

State of Minnesota

In Supreme Court

Kanabec County Board of Commissioners,
Kanabec County Planning Commission, and
Kanabec County Environmental Services,

Appellants,

vs.

Calm Waters, LLC, a Minnesota limited liability corporation,

Respondent.

APPELLANTS' ANSWER TO RESPONDENT'S PETITION FOR REHEARING

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ARGUMENT

I. THE RESPONDENT HAS NOT SHOWN THAT THIS COURT FAILED TO CONSIDER ANY MATERIAL FACT OR ISSUE OR MADE A DECISION THAT IS IN CONFLICT WITH CONTROLLING LAW.

It is apparent from the Petition for Rehearing that Respondent merely wishes to reargue the points already ruled on by the Court in the Opinion issued on September 25. It is not the function of a petition for rehearing to afford a party an opportunity to reargue matters fully considered by the Court in the opinion filed. Standard Clothing Co. v. Wolf, 219 Minn. 128, 17 N.W.2d 329 (Minn. 1944). The Plaintiffs have not shown that a question decisive of the case and duly submitted has been overlooked by the Court, or that the decision reached is in conflict with controlling law. This Court has stated that a party will be entitled to a rehearing "only because of some manifest error or omission which is so material that, if it is corrected, it will result in a substantial alteration or change of the original opinion." Wurdemann v. Hjelm, 260 Minn. 455, 110 N.W.2d 150, 151 (Minn. 1961). While the Respondent raises numerous issues and attempts to manufacture conflicts where none exist, it is apparent, even from looking at the layout of the Petition, that the Respondent merely wants to reargue every point already argued and covered in the briefs to this Court.

The Respondent alleges that this Court is confused, and that it is making a substantive regulation out of what information may be required to process a zoning application. The Respondent argues its interpretation of the ordinances, and then claims that the Court cited provisions in the local ordinances in support of its opinion that are simply unenforceable. There is no merit to this argument.

Respondent cites cases from other jurisdictions for its points, not cases from Minnesota that are controlling on this question. Indeed, the completed application section of Minn. Stat. § 15.99, subd. 3(a), had never been interpreted by this Court before. It is the role of this Court to make controlling authority. That is in fact what it did in this case. The fact Respondent does not like the result does not justify a Petition for Rehearing.

The Respondent also ignores provision of the Subdivision Ordinance in making its argument. The Subdivision Ordinance sets forth minimum design standards, requiring the proposed subdivisions be coordinated with existing nearby municipalities or neighborhoods. It also mandates that no proposed lot in any subdivision can have less area or width than is required by zoning regulations applying to the area in which it is located. See Appendix at pp. A102, 105.

All the County is doing is implementing a policy to enable it to properly administer and enforce its land use controls. How they do so is within their discretion. In reality, Respondent argues that there should be no discretion, and that only its viewpoint is correct. This argument ignores controlling authority. Minn. Stat. § 15.99 does not indicate what information can be required by a municipality for purposes of determining what is a "complete application." Therefore, it is left to the discretion of the County. See American Tower LP v. City of Grant, 636 N.W.2d 309 (Minn. 2001).

The Respondent also misconstrues the Supreme Court Opinion in arguing that the Court failed to consider controlling principles of law regarding published notice and public hearing under Minnesota Statutes Chapter 394. The Record reflected that the

October 18, 2006 public hearing notice was published in the official newspaper of the County at least ten days before the hearing. There is actually no dispute about that. The Record reflects that the County sent a notice to the Kanabec Times with a copy to Calm Waters. In reality, Respondent is not arguing about the published notice. They want to reargue facts that this Court already fully analyzed, considered, and ruled upon. That is not the purpose of a petition for rehearing. Standard Clothing Co., supra.

Respondent again misconstrues this Court's decision in attempting to argue that the Court held that the Kanabec County Environmental Services Director is a "agency" under Minn. Stat. § 15.99. The Court made no such holding. What this Court did and said was that the extension letter from the Environmental Services Director was the action of an agency as that term is used in Minn. Stat. § 15.99, subd. 3(f). The fact of the matter is that a governmental entity, of course, only acts through its agents. This Court held that a County employee, the Environment Services Director, performed an act within work related limits of time and place related to that person's employment. That has, traditionally under the law, been an action which the courts of this state and most others have said is within the scope of that employee's authority. No new principle was set forth by this Court. That is simply basic agency law. No rehearing is warranted.

Finally, the Respondent assumes that this Court did not consider the cases before it. The Respondent argues that because there is nothing in writing addressing a denial of the application for preliminary plat approval, that the Court did not consider it. That is quite an assumption. Simply stated, that argument flies in the face of accepted legal principles. There is no law, principle, or requirement that this Court, or any other court,

address in writing every single contention made by a party. Generally, when examining a judgment, for instance for purposes of collateral estoppel, the law considers that the issues decided were those that were necessary or essential to the judgment, and necessarily implied in the judgment. Here, the Court ruled in favor of Kanabec County. Arguments were put before the Court that if it ruled in the manner in which it did, that it should be remanded for further proceedings. The Court specifically rejected those contentions. The opinion clearly indicates within it all rationale and conclusions supporting the conclusion that all actions of the County, including denial of the application, were appropriately taken.

CONCLUSION

It is apparent that the Respondent merely wishes to reargue those points already argued to and considered by this Court. The Petition for Rehearing should be denied.

Respectfully submitted,

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Dated: October 10, 2008

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