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AUG 17 2010
FILED

State of Minnesota
In Supreme Court

No. A08-0767

Eagan Economic Development Authority,

Petitioner,

v.

Larson Training Services, Inc.
d/b/a Larson's Automotive Repair Services;
Randall J. and Sandra K. Quam, husband and wife,
Competitive Engines, Inc.; U-Haul Co. of Minnesota, et al.;
and AMERCO Real Estate Company,

Respondents.

APPELLANT'S ANSWER TO RESPONDENTS' PETITION FOR REHEARING AND RECONSIDERATION

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The Eagan Economic Development Authority ("EDA") respectfully requests that this Court deny the Petition for Rehearing submitted by Randall J. and Sandra K. Quam, husband and wife; Competition Engines, Inc.; Larson Training Services, Inc. d/b/a Larson's Automotive Repair Services; U-Haul Company of Minnesota; and AMERCO Real Estate Company (the "Petitioners").

First and foremost, the Petitioners have failed to identify, let alone describe in any detail, what this Court overlooked, failed to consider, misapplied, or misconceived. Secondly, the Petition is replete with arguments previously advanced to the Court.

This Court should deny Petitioners' request for their failure to comply with Rule 140.01 of the Minnesota Rules of Civil Procedure. In a recent article in the Minnesota Lawyer[1], it was noted that in talking with bar members, Justice Page urged them to abide by the page limits and other requirements of Rule 117. The article quoted Justice Page as stating "it is always helpful when the requirements are followed." No less important than complying with the requirements of Rule 117, is the need to follow the requirements of Rule 140.01 when petitioning for a rehearing.

> The Petition shall set forth with particularity: (a) any controlling statute, decision or principle of law; or (b) any material fact; or (c) any material question in the case which, in the opinion of the Petitioner, the Supreme Court has overlooked, failed to consider, misapplied or misconceived.

MINN. R. CIV. P. 140.01.

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[1] The Minnesota Lawyer, Volume 14, No. 28, pg. 5 (July 12, 2010).

CONTROLLING DECISION

Within the nine pages submitted, the Petitioners do not cite to any controlling statute, decision or principle of law that was overlooked by the Court. This is not surprising as there is no one legal principle that dictates the outcome of this matter. Though Petitioners refer to cases that have dealt with the construction of statutes, they do not argue that any one construction was not applied or was misapplied; rather, they simply suggest that the Court limit its interpretation of Subsection 1-8 to the language contained in the Subsection. Petitioners' argument is in conflict with *Am. Family Ins. Group v. Schroedl,* 616 N.W.2d 273 (Minn. 2000) cited by this Court in its Opinion of July 29, 2010.

MATERIAL FACT

Nowhere in the Petition do the Petitioners assert that this Court overlooked, failed to consider, misapplied or misconceived any material fact; the term "material fact" is absent from in the Petition. Having failed to identify with particularity the existence of any material fact, likewise Petitioners do not state what relevant evidence, if any, was overlooked, failed to be considered, misapplied or misconceived by this Court.

MATERIAL QUESTION

The final basis to support a rehearing (i.e. this Court having overlooked, failed to consider, misapplied or misconceived any material question) is likewise not addressed in the Petition. The sole questions brought to this Court arose out of the issues sought to be reviewed by the Eagan Economic Development Authority. Those questions were

answered in this Court's Opinion of July 29, 2010. Petitioners make no attempt to seek any additional answer from this Court.

Simply captioning a document as a "petition" does not meet the procedural requirements set forth under the Minnesota Rules. A review of the first full paragraph under the heading "Argument" reveals that the Petitioners do not advance the argument that this Court overlooked, failed to consider, misapplied or misconceived any of the law or evidence, but rather they are unsatisfied with the Court's interpretations and result.

SUBSECTION 1-8 OF THE REDEVELOPMENT PLAN[2]

It is ironic that the majority of the Petition focuses on the Court's interpretation of Subsection 1-8. This Court devoted a considerable amount of analysis of Subsection 1-8 in its Opinion. Such analysis was to be expected as a direct outcome of the issues submitted on appeal. Both parties extensively briefed their interpretation of Subsection 1-8 and were confronted about its impact during oral argument. If the Petitioners are dissatisfied with the outcome of this Court's Opinion, it is certainly not from a lack of opportunity for expression.

Lastly, the Petitioners assert that this Court's Opinion was founded on an assumption not supported by the record. Petitioners aver that the Court's assumption is at odds with the position taken by the EDA and they cite to statements found in the EDA's Brief to the Court of Appeals. However, the Petitioners' assertion lends nothing to nor

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[2] Curiously, though the Petitioners state that this Court erred in its conclusions regarding MINN. STAT. § 469.094, subd. 2 (page 1 of the Petition), there is no further mention in the Petition as to what is the error.

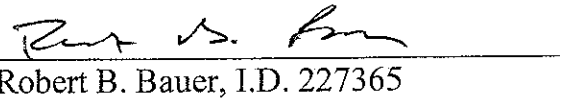
impacts the Court's interpretation of Subsection 1-8. The EDA's Brief properly noted the EDA's arrangement with Doran Pratt for the redevelopment of the Cedar Grove area. Noticeably absent from the language cited is any statement that the Petitioners' properties were sought to be acquired for conveyance to Doran Pratt, let alone any other specific developer. Moreover, there is nothing in the record to support Petitioners' claim that the subject properties were being acquired with the intent to convey the same to a specific developer. If evidence existed that the EDA was acquiring Petitioners' properties at the request of a specific developer, (which there is none), Petitioners had every opportunity to offer such material into the record.

In conclusion, the Petition does not meet the requirement of Rule 140.01. The arguments made by the Petitioners fail to particularly address any issue that this Court had overlooked, failed to consider, misapplied or misconceived in rendering its Opinion. The Eagan Economic Development Authority respectfully requests this Court to deny the Petition.

Respectfully submitted,

Dated: 8/17, 2010

SEVERSON, SHELDON, DOUGHERTY
& MOLENDA, P.A.



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