

**State Of Minnesota
In Court of Appeals
NO. A09-295**

Fischer Sand & Aggregate, Inc.,

Appellant,

vs.

County of Dakota,

Respondent.

APPELLANT'S REPLY BRIEF

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INTRODUCTION

Appellant does not contend, as Respondent Dakota County (the "County") suggests in its brief, that a landowner need only fill out the proper form to remove a property from agricultural preserve. However, because all required parties have been notified and because the County is not the statutory authority, notification is not the issue in this appeal. Rather, the sole question is whether the date of expiration is the date set by the landowner on the Notice Initiating Expiration of a Metropolitan Agricultural Preserve ("Notice") or eight years from the date the Notice was filed in Dakota County.

The arguments in Respondent's brief do not support its conclusion that the agricultural preserve should not expire until eight years after the Notice was filed with the County. The County focuses primarily on the irrelevant issue of whether the authority and other public agencies were notified of the agricultural preserve's expiration. Further, the County's interpretation of § 473H.08 improperly ignores the clear purpose of the Metropolitan Agricultural Preserve Act (the "Act") and misconstrues its plain language. As demonstrated in Appellant's opening brief, the plain language and purpose of the Act requires a finding that the date of expiration is the date set by the landowner in the Notice. This Court should reverse the district court's decision and permit the agricultural preserve on Appellant's property to expire as of August 11, 2008.

ARGUMENT

I. **RESPONDENT MISCHARACTERIZES OR FAILS TO RESPOND TO THE MAJORITY OF APPELLANT'S ARGUMENTS**

a. **The County is Not the Statutory Authority and Cannot Place Notification At Issue**

The County overstates Appellant's position by claiming that, under Appellant's interpretation, a landowner meets the requirements of § 473H.08 merely by signing the "correct piece of paper."¹ But Appellant does not contend that the landowner does not have to notify the authority. Instead, Appellant asserts that notification is not an issue in this case because (1) all required parties have been on notice for at least six years and (2) Empire Township, the authority under the Act, has already issued its decision on the agricultural preserve expiration by conditionally granting Appellant's mineral extraction permit.

Tellingly, the County's brief is nonresponsive to Appellant's argument that it is Empire Township, and not the County, who has the right to raise any issues with respect to lack of proper notification. The County is not the statutory authority, nor has it presented any evidence that the proper authority has not been notified; therefore, its arguments with respect to lack of notification should be dismissed as nothing more than a distraction.

¹ Resp't Br. at 7.

b. The County's Position Renders Meaningless the Ability of the Landowner to Set the "Date of Expiration"

The County fails to address Appellant's argument that, if the agricultural preserve does not expire until eight years after the date of filing, the language permitting the landowner to set the date of expiration and the phrase "date of expiration" are rendered meaningless. § 473H.08, subd. 2, requires the landowner to "state the date of expiration" on the Notice. § 473H.08, subd. 4, provides that "designation as an agricultural preserve...shall cease on the date of expiration." If the agricultural preserve does not expire until eight years after the date of filing, the ability of the landowner to set a definite expiration date and all references to a "date of expiration" are superfluous. The County has failed to provide a compelling reason for this Court to ignore the language in § 473H.08 permitting the landowner to set the date of expiration and requiring the agricultural preserve to expire on that exact date.

c. The Trial Court Imposed Duties on the Landowner Which are not Contained in the Act

The County mischaracterizes Appellant's argument that the trial court's order improperly imposed a filing requirement that is not contained within the plain language of § 473H.08.² The County argues that, because § 473H.08, subd. 4, requires the authority to forward the Notice to the county recorder for recording, a filing requirement already exists. What the County fails to recognize is that while subdivision 4 does not impose a filing requirement *on the landowner*, the trial court's order does. If the agricultural preserve does not expire until eight years after the date of filing, the

² Id.

landowner is required to file the Notice with the county recorder in order to ensure proper timing.

The County also states, without further support, that Appellant's position renders meaningless the directive in subdivision 4 that notice be given to a number of public agencies. Again, subdivision 4 relates to the *authority's* duty to forward the Notice, not the landowner's. Clearly the legislature did not intend for the landowner to supervise the authority's actions in order to be sure that the acts in subdivision 4 are carried out. The landowner's duties with respect to terminating an agricultural preserve are fully contained in § 473H.08, subd. 2. As asserted in its opening brief, Appellant has met those requirements and should be granted an order releasing the property from agricultural preserve.

II. RESPONDENT'S INTERPRETATION OF MINN. STAT. § 473H.08 IS CONTRARY TO THE PURPOSE AND THE PLAIN LANGUAGE OF THE ACT

Relying heavily on the district court's application of the law, which is not binding on appeal, the County argues that Minn. Stat. § 473H.08 requires "eight years' notice of intent to remove land from an agricultural preserve...."³ The County's argument entirely ignores the overall purpose of the Act and misstates the language of § 473H.08.

The County argues that § 473H.08 is meant to provide the statutory authority and others with ample notice of an agricultural preserve's expiration.⁴ This interpretation is contrary to the Act's stated purpose in § 473H.01. The County's argument places §

³ Id. at 6.

⁴ Id. at 7.

473H.08 in a vacuum and ignores the “cardinal rule of statutory interpretation that [a court must] read each statutory provision in reference to the whole statute.” *In re Appeal of Staley*, 730 N.W.2d 289, 297 (Minn. Ct. App. 2007). As detailed in Appellant’s opening brief, the Act is intended to benefit landowners who enroll their property in the agricultural preserve program for a long-term period of time. Those who enroll receive tax benefits and are protected against several forms of government regulation. The focus is on the rights of and the benefits to the landowners. § 473H.08 is merely an administrative provision which provides landowners with the tools necessary to terminate an agricultural preserve on their property. Rather than rigidly requiring eight years of notice to the authority, it complements other provisions in the Act by ensuring that property in agricultural preserve will remain there for at least eight years.

The County also argues that the statute uses the words “notice” and “notify” interchangeably.⁵ § 473H.08, subd. 2 reads as follows:

Subd. 2. Expiration by landowner. A landowner may initiate expiration by notifying the authority *on a form provided by the commissioner of agriculture*. The notice shall describe the property for which expiration is desired and shall state the date of expiration which shall be at least eight years from the date of notice. The notice and expiration may be rescinded by the owner at any time during the first two years following notice. (emphasis added).

In arguing that the words “notice” and “notify” in § 473H.08 have the same meaning, the County paraphrases the above excerpt and carefully omits the italicized phrase. The italicized phrase is important because it gives context to the first use of the word “notice”

⁵ Id. at 7-8.

in § 473H.08. When the phrase is properly included, it becomes clear that notice can only mean the actual notice form provided by the commissioner of agriculture. Further, while a form of “notify” is used only once in the statute, the word “notice” is used multiple times, demonstrating that the two words are not used interchangeably.

Finally, the County cites to the unpublished opinion, *Coalwell v. Murray*, 1996 WL 438806, to support its argument as to how to properly interpret § 473H.08.⁶ It should be noted that unpublished opinions, because they may be lacking in detail, are of limited value on appeal. *See Chamberlain v. Chamberlain*, 615 N.W.2d 405, 411 n.1 (Minn. Ct. App. 2000). Regardless, the *Coalwell* decision does not aid in an analysis of § 473H.08. In *Coalwell*, the Court of Appeals was concerned with notice given under the open meeting law, which serves to protect interested members of the public. The public’s interests are not at issue here. In addition, although the County uses *Coalwell* to support its argument that “proper notice” requires that all required parties have actually received a copy of the Notice, there is no claim that any party so required has actually *not* received the Notice.

When the language of § 473H.08 is properly construed and read in light of the Act’s purpose as a whole, it is clear that an agricultural preserve expires on the date set by the landowner in the Notice.

⁶ Id. at 8. (Case attached at Resp’t App. 1).

III. RESPONDENT FAILS TO OFFER ANY COMPELLING REASON TO KEEP THE PROPERTY IN AGRICULTURAL PRESERVE UNTIL APRIL 18, 2011

The County's brief is most notable for what it does not say. The County fails to offer any reason for its interference with Empire Township's decision as the statutory authority to allow the agricultural preserve to expire on Appellant's property on August 11, 2008. In addition, the County fails to offer any compelling reason for requiring the property to remain in agricultural preserve until April 18, 2011.

The County argues that Appellant will not suffer any hardship as a result of the district court's order because Empire Township requires that the agricultural preserve status be terminated on or before August 11, 2008 in order for Appellant's permit to remain valid and "that is five months *after* the date of expiration established by the court order."⁷ This argument fails on its face because the date of expiration established by the district court is April 18, 2011. That is more than two years after the date set by Empire Township. Finally, were this Court to determine that the language of § 473H.08 is ambiguous, Minn. Stat. § 645.16 permits the court to consider the consequences of a particular interpretation in ascertaining the legislature's intent. While Appellant has asserted specific hardship if the agricultural preserve is not terminated as of August 11, 2008, the County fails to cite any compelling reason for delaying the inevitable use of the property.

⁷ Id. at 9. (emphasis added).

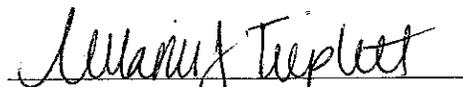
CONCLUSION

As argued herein and in its opening brief, proper interpretation of § 473H 08 compels a finding that the agricultural preserve on a property expires on the date set by the landowner in the notice. Appellant respectfully requests that the decision of the district court be reversed and that this Court enter an order determining that the agricultural preserve on Appellant's property expired on August 11, 2008.

Dated: April 13, 2009

**SIEGEL, BRILL, GREUPNER,
DUFFY & FOSTER, P.A.**

By:

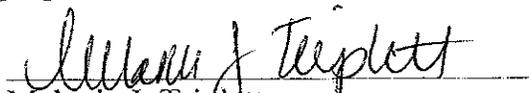

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CERTIFICATION

I hereby certify that this brief conforms to the requirements of Minn. R. Civ. App. P. 132.01, subds. 1 and 3, for a brief produced with a proportional font. The length of this brief is 1,816 words. This brief was prepared using Microsoft Word, Version 2003.


Melanie J. Triplett