

No. A04-2286

STATE OF MINNESOTA
IN COURT OF APPEALS

RICHARD J. BREZA,

Respondent,

vs.

CITY OF MINNETRISTA,

Appellant.

BRIEF OF *AMICUS CURIAE*
LEAGUE OF MINNESOTA CITIES

HOFF, BARRY & KUDERER, P.A.
George C. Hoff, Esq., (#45846)
Justin L. Templin, Esq., (#0305807)
160 Flagship Corporate Center
775 Prairie Center Drive
Eden Prairie, Minnesota 55344-7319
(952) 941-9220

Attorneys for Appellant

LARKIN, HOFFMAN, DALY
& LINDGREN, LTD
Gary A. Van Cleve, Esq., (#156310)
Jessica B. Rivas, Esq., (#312897)
1500 Wells Fargo Plaza
7900 Xerxes Avenue South
Minneapolis, Minnesota 55431-1194
(952) 835-3800

Attorneys for Respondents

Susan L. Naughton (#259743)
LEAGUE OF MINNESOTA CITIES
145 University Avenue West
St. Paul, Minnesota 55103-2044
(651) 281-1232

Attorney for Amicus Curiae

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LEGAL ISSUE

Minnesota law provides that a city's failure to deny a zoning application within the deadline established by Minn. Stat. § 15.99 results in "approval of the request." Can a landowner use Minn. Stat. § 15.99 to compel a city to issue a zoning permit that violates state law?

INTRODUCTION

The League of Minnesota Cities has a voluntary membership of 825 out of 853 cities in Minnesota. The League represents the common interests of these cities before judicial courts and other governmental bodies and provides a variety of services to its members including information, education, training, advocacy, and insurance services. The League has a public interest in this case as a representative of cities.¹ The League has a particular interest in clarifying that a landowner cannot use Minn. Stat. § 15.99 to compel a city to issue a zoning permit that violates state law.

In this case, the district court held that the automatic-approval provision of Minn. Stat. § 15.99 required the city to issue an exemption allowing a landowner to fill 5,737 square feet of wetland in violation of the state Wetland Conservation Act because the city failed to act on the landowner's exemption application within the statute's 60-day deadline. Under the Wetland Conservation Act, the maximum exemption the city was authorized to issue was for 400 square feet of fill. Minn. R. 8420.0122, subp. 9(A)5.

Appellant's Brief demonstrates why the district court's decision was erroneous. The League concurs with Appellant's legal arguments, which will not be repeated here. Instead, this brief will focus on why it would be bad public policy to allow landowners to use Minn. Stat. § 15.99 to compel cities to issue zoning permits that violate state law.

STATEMENT OF THE CASE AND FACTS

The League concurs with Appellant's statement of the case and facts.

¹ Pursuant to Minn. R. Civ. App. P. 129.03, the League certifies that this brief was not authored in whole or in part by counsel for either party to this appeal, and that no other person or entity made a monetary contribution to its preparation or submission.

ARGUMENT

I. It would be bad public policy to allow landowners to use Minn. Stat. § 15.99 to compel cities to issue zoning permits that violate state law. If landowners can use Minn. Stat. § 15.99 to evade state law, it would usurp the state's power, frustrate the statute's purpose, and deprive Minnesota citizens of the protection of state law.

A. The state's power would be usurped.

Cities are political subdivisions of the state and have only those powers the state has delegated to them. *See, e.g.,* Minn. Const. art XII, § 3; *Welsh v. City of Orono*, 355 N.W.2d 117, 120 (Minn. 1984); *State v. Minneapolis-St. Paul Metro. Airports Comm'n*, 248 Minn. 134, 143, 78 N.W.2d 722, 728 (Minn. 1956). The state certainly has not *expressly* delegated to its political subdivisions the power to authorize violations of state law. And the claim that such a delegation of power can be *implied* by Minn. Stat. § 15.99 is unpersuasive.

There simply is no logical reason why the state would choose to give its political subdivisions the power to authorize violations of state law. The Minnesota Legislature has adopted state laws — like the Wetland Conservation Act — to protect the health, safety, and welfare of its citizens. Why then, would the state choose to allow the actions of its political subdivisions to determine whether these important state laws will be enforced uniformly throughout the state? Why would the state allow the health, safety, and welfare of its citizens to turn on actions that are beyond the state's control? Indeed, the irrationality of the claim that Minn. Stat. § 15.99 contains such an implied delegation of the state's power is further highlighted when the statute's purpose is considered.

B. The purpose of Minn. Stat. § 15.99 would be frustrated.

The purpose of Minn. Stat. § 15.99 is to keep governmental agencies from taking too long to make certain land-use decisions. *Manco of Fairmont, Inc. v. Town Bd. of Rock Dell Township*, 583 N.W.2d 293, 296 (Minn. Ct. App. 1998). As a result, it makes sense that the legislature chose to impose the penalty of automatic-permit approval on any governmental agency that takes too long to make such a decision. If, for example, a city fails to deny a zoning permit within the deadline of Minn. Stat. § 15.99, it must approve the permit regardless of whether it complies with the city's zoning ordinances. Because the city failed to act on the application on a timely basis, it is punished by losing the authority to enforce its ordinances.

In a case like this, however, where the state was not the permitting agency and could not ensure that the land-use application was processed in compliance with Minn. Stat. § 15.99, it does not make sense to punish the state by allowing a landowner to flagrantly evade the requirements of state conservation laws. To do so would violate the purpose of Minn. Stat. § 15.99 because the statute cannot create an incentive for governmental agencies to act on land-use applications on a timely basis when it is applied in a way that punishes a governmental agency that did not have authority to make a decision about the disputed application.

C. Minnesota citizens would be deprived of the protection of state law.

It would be bad public policy to punish the state in situations where it is not the governmental agency that failed to meet the deadline imposed by Minn. Stat. § 15.99. It would also be bad public policy to punish Minnesota citizens in these situations by

depriving them of the protection of state law. In this case, the district court deprived Minnesota citizens of the protection provided by the state Wetland Conservation Act. And if the district court's decision is not reversed, Minnesota citizens will risk losing the protection of many other state laws.

Consider, for example, the hypothetical situation where a city receives an application for installation or repair of a septic system that doesn't comply with requirements mandated by the Minnesota Pollution Control Agency. *See, e.g.*, Minn. Stat. § 115.55; Minn. Rules Ch. 7080. If the city fails to act on the application within the deadline of Minn. Stat. § 15.99, the application will automatically be approved, and Minnesota citizens will lose the protection of state laws designed to protect them from the public-health hazards associated with the improper treatment and disposal of human sewage.

Or consider the hypothetical situation where a city receives an application for a variance from setback requirements in an area where the requirements are mandated by state shoreland regulations. *See, e.g.*, Minn. Stat. §§ 103F.221; 103F.211; Minn. Rules Ch. 6120. If the city fails to act on the application within the deadline of Minn. Stat. § 15.99, the application will automatically be approved, and Minnesota citizens will lose the protection of state laws designed to protect their water resources.

And finally, consider the hypothetical situation where a landowner submits an application to a city seeking to operate a feedlot in an agricultural zone of the city. The proposed feedlot violates state environmental laws. *See, e.g.*, Minn. Stat. § 116.07; Minn. Rules Ch. 7020. City staff correctly inform the landowner that the city does not have

statutory authority to issue feedlot permits and that the proper permitting agency is either the county or the Minnesota Pollution Control Agency (“MPCA”).² City staff — believing that the landowner’s application has been properly disposed of — do not bring the feedlot application before the city council for a vote. If the district court’s decision is not reversed, it would appear that the landowner could simply wait until the deadline of Minn. Stat. § 15.99³ has passed and then come back to the city and demand that it approve the feedlot application as submitted even though the feedlot will violate state environmental laws designed to protect Minnesota citizens from the negative environmental effects caused by animal manure.

It is possible to attempt to distinguish the last hypothetical by arguing that because the city was not the proper permitting agency in the first place, it would not have authority to issue the permit under Minn. Stat. § 15.99. But closer analysis reveals that there really is no meaningful distinction between the legal issue in this last hypothetical and the legal issue in the case before this Court. The hypothetical city clearly does not have statutory authority to issue a permit for a feedlot. Likewise, the City of Minnetrista clearly does not have statutory authority to issue a permit that authorizes the filling of 5737 square feet of wetland. The legal issue in both situations is whether a landowner (whether it be the hypothetical landowner or Respondent Breza) can use Minn. Stat. §

² Under state law, only the MPCA, and in certain circumstances, counties participating in the MPCA’s delegated county program, have authority to issue feedlot permits. *See* Minn. Stat. § 116.07, subd. 7; Minn. Rules 7020.1500-.1900.

³ Certain feedlot-permitting decisions are expressly subjected to the requirements of Minn. Stat. § 15.99. *See, e.g.,* Minn. Stat. § 116.07, subd. 7(b) (providing that “[f]or permit applications filed after October 1, 2001, section 15.99 applies to feedlot permits issued by the agency or a county pursuant to this subdivision”).

15.99 to compel a city to issue a permit that it is not statutorily authorized to issue and that violates state law.

In short, if the district court's decision is not reversed, there are a variety of situations in which Minnesota citizens may lose the protection of state law. Landowners should not be allowed to deprive Minnesota citizens of the protection of state law in situations where the state did not violate Minn. Stat. § 15.99.

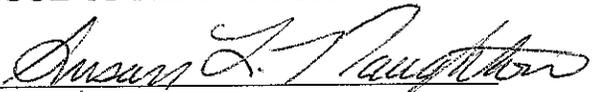
CONCLUSION

It would be bad public policy to allow landowners to use Minn. Stat. § 15.99 to compel cities to issue zoning permits that violate state law. If landowners can use Minn. Stat. § 15.99 to evade state law, it would usurp the state's power, frustrate the statute's purpose, and deprive Minnesota citizens of the protection of state law. For all of these reasons, the League of Minnesota Cities respectfully requests that the district court's decision be reversed.

Dated March 3, 2005

Respectfully submitted,

LEAGUE OF MINNESOTA CITIES

By: 
Susan L. Naughton (#259743)

145 University Avenue West
St. Paul, Minnesota 55103-2044

Attorney for Amicus Curiae