

NO. A08-233

---

State of Minnesota  
*In Court of Appeals*

---

Halla Nursery, Inc., Donald E. Halla,  
and Sandra Cwayna Halla,

*Respondents,*

vs.

City of Chanhassen, a municipal corporation,

*Appellant.*

---

RESPONDENTS' BRIEF AND APPENDIX

---

Thomas M. Scott (#98498)  
CAMPBELL KNUTSON  
Professional Association  
1380 Corporate Center Curve  
Suite 317  
Eagan, Minnesota 55121  
(651) 452-5000

*Attorneys for Appellant*

Phillip R. Krass (#58051)  
Benjamin J. Court (#319016)  
KRASS MONROE, P.A.  
8000 Norman Center Drive  
Suite 1000  
Minneapolis, Minnesota 55437  
(952) 885-5999

*Attorneys for Respondents*

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).

**TABLE OF CONTENTS**

TABLE OF AUTHORITIES ..... iii

ISSUES PRESENTED.....1

STATEMENT OF THE CASE.....2

STATEMENT OF FACTS .....4

ARGUMENT .....10

    I.    STANDARD OF REVIEW .....10

    II.   THE COURT OF APPEALS SHOULD REVERSE BECAUSE THE DISTRICT COURT ERRED IN CONCLUDING THAT RESPONDENTS' NEW SIGN DOES NOT COMPLY WITH THE 1997 STIPULATION AND JUDGMENT.....11

    III.  ALTERNATIVELY, THE COURT OF APPEALS SHOULD AFFIRM THE DISTRICT COURT'S FINDINGS AND CONCLUSIONS CONCERNING THE NEW SIGN FACES AND ILLUMINATION OF THE NEW SIGN BECAUSE THEY ARE NOT CLEARLY ERRONEOUS.....18

        A.   The District Court's Finding that the New Sign Faces Substantially Comply with the 1997 Stipulation and Judgment is Not Clearly Erroneous .....18

        B.   The District Court's Conclusion that Respondents Could Illuminate the New Sign is Not Contrary to Law .....19

    IV.  THE COURT OF APPEALS SHOULD REVERSE BECAUSE THE DISTRICT COURT ERRED IN ENJOINING RESPONDENTS FROM USING THE SIGN CONSISTENT WITH ITS INTENDED USE AND AS AUTHORIZED BY THE PERMIT DESPITE DETERMINING THAT RESPONDENTS OBTAINED VESTED RIGHTS AND DESPITE THE NEW SIGN NOT VIOLATING CITY CODE.....20

        A.   The New Sign Does Not Violate City Code Sec. 20-1301.....23

B. City Code Sec. 20-1255 Does Not Apply Because Respondents  
Obtained a Permit .....24

C. The New Sign Does Not Violate City Code Sec. 20-1259 in Effect in  
2005 .....26

D. In the Alternative, Because the New Sign Does Not Violate Either  
the 1997 Stipulation and Judgment or City Code in any Respect, the  
Court of Appeals Should Reverse Without Resort to the Vested  
Rights Doctrine .....28

CONCLUSION .....29

CERTIFICATION OF BRIEF LENGTH .....31

## TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page</u>
<u>American Warehousing &amp; Distrib., Inc. v. Michael Ede Management, Inc.</u> , 414 N.W.2d 554 .....	13
<u>Anderson v. City of Minneapolis</u> , 178 N.W.2d 215 (Minn. 1970).....	22
<u>Art Goebel, Inc. v. N. Suburban Agencies, Inc.</u> , 567 N.W.2d 511 (Minn. 1997) .....	12
<u>Boldt v. Roth</u> , 618 N.W.2d 393 (Minn. 2000).....	11
<u>Brookfield Trade Ctr, Inc. v. County of Ramsey</u> , 584 N.W.2d 390 (Minn. 1998).....	1, 12
<u>Chergosky v. Crosstown Bell, Inc.</u> , 463 N.W.2d 522 (Minn. 1990) .....	1, 12, 13
<u>Concept Properties, LLP v. City of Minnetrista</u> , 694 N.W.2d 804 (Minn. Ct. App. 2005).....	21
<u>Current Tech. Concepts, Inc. v. Irie Enters., Inc.</u> , 530 N.W.2d 539 (Minn. 1995) .....	1, 13
<u>Employers Mut. Liab. Ins. Co. v. Eagles Lodge</u> , 282 Minn. 477, 479, 165 N.W.2d 554 (1969) .....	13, 14
<u>Fletcher v. St. Paul Pioneer Press</u> , 589 N.W.2d 96 (Minn. 1999). .....	1, 11, 19
<u>Frank’s Nursery Sales, Inc. v. City of Roseville</u> , 295 N.W.2d 604 (Minn. 1980). .	1, 25, 27
<u>Hawkinson v. County of Itasca</u> , 304 Minn. 367, 231 N.W.2d 279 (1975).....	21
<u>ICC Leasing Corp. v. Midwestern Machinery Co.</u> , 257 N.W.2d 551 (1977).....	1, 18
<u>Independent Sch. Dist. No. 877 v. Loberg Plumbing &amp; Heating Co.</u> , 266 Minn. 426, 436, 123 N.W.2d 793, (1963) .....	13
<u>Jasaka Co., v. City of St. Paul</u> , 309 N.W.2d 40 (Minn. 1981).....	1, 21, 22
<u>Kornberg v. Kornberg</u> , 542 N.W.2d 379 (Minn. 1996).....	11
<u>Metro Office Parks Co. v. Control Data Corp.</u> , 295 Minn. 348, 352, 205 N.W.2d 121 (1973) .....	13

Republic Nat. Life Ins. v. Lorraine Realty Corp., 279 N.W.2d 349 (Minn. 1979) ..... 13

Ridgewood Dev. Co. v. State, 294, N.W.2d 288 (Minn. 1980) ..... 1, 21

Rogers v. Moore, 603 N.W.3d 650 ..... 10, 11

Vangsness v. Vangsness, 607 N.W. 2d 468 (Minn. Ct. App. 2000)..... 11

Yeh v. County of Cass, 696 N.W.2d 115 (Minn. Ct. App. 2005)..... 20, 21

**Statutes**

Minn.R.Civ.P. 52.01 ..... 1, 10, 18

Minn. Stat. § 645.08 ..... 1, 12

## ISSUES PRESENTED

1. Whether the district court erred in concluding that Respondents' sign does not comply with the 1997 Stipulation and Judgment.

**The district court made conclusions of law that Respondents' sign did not comply with Section 6 of the 1997 Stipulation and Judgment.**

- Brookfield Trade Ctr, Inc. v. County of Ramsey, 584 N.W.2d 390 (Minn. 1998).
- Chergosky v. Crosstown Bell, Inc., 463 N.W.2d 522 (Minn. 1990).
- Current Tech. Concepts, Inc. v. Irie Enters., Inc., 530 N.W.2d 539, 543 (Minn. 1995).
- Minn. Stat. § 645.08.

2. Alternatively, whether the district court's findings and conclusions regarding compliance of the size of Respondents' sign faces and illumination of the sign are supported by the evidence.

**The district court made findings and conclusions that Respondents' sign faces substantially complied with the 1997 Stipulation and Judgment and that Respondents were entitled to illuminate the sign.**

- Minn.R.Civ.P. 52.01
- ICC Leasing Corp. v. Midwestern Machinery Co., 257 N.W.2d 551 (1977).
- Fletcher v. St. Paul Pioneer Press, 589 N.W.2d 96 (Minn. 1999).

3. Whether the district court erred by enjoining Respondents from using the sign consistent with its intended use and as authorized by the building permit despite determining that Respondents obtained vested rights and despite the sign not violating City Code.

**The district court concluded that Respondents obtained vested rights but denied Respondents a permanent injunction precluding Appellant from interfering with Respondents' rights to use and illuminate the sign and awarded judgment on Appellant's counterclaim for injunctive relief.**

- Frank's Nursery Sales, Inc. v. City of Roseville, 295 N.W.2d 604 (Minn. 1980).
- Ridgewood Dev. Co. v. State, 294, N.W.2d 288 (Minn. 1980).
- Jasaka Co., v. City of St. Paul, 309 N.W.2d 40 (Minn. 1981).

## STATEMENT OF THE CASE

On or about April 8, 2005, Appellant City of Chanhasen (“Appellant”) issued Permit No. 2005-00573 to Respondents Halla Nursery, Inc., Donald E. Halla, and Sandra Cwayna Halla’s (collectively “Respondent” or “Halla”) agent Attracta Sign, Inc.<sup>1</sup> to construct an illuminated monument sign (the “New Sign”) near the intersection of Pioneer Trail and Highway 101. Halla intended the New Sign to replace an existing sign at the same intersection that was demolished several months prior in eminent domain proceedings for the expansion of Highway 101.

In reasonable reliance on the permit, Halla commenced construction of the New Sign in March 2006 after Attracta Sign received confirmation from Appellant that the permit remained valid. On or about March 16, 2006, Appellant approved the footings. On March 17, 2006, however, Halla was notified that Appellant had red tagged the New Sign, temporarily prohibiting Halla from completing construction. Halla eventually received an explanation that Appellant red tagged the New Sign because it did not comply with a 25-foot set back requirement.<sup>2</sup>

Appellant had consistently represented prior to March 17, 2006, that Halla was required to comply only with a 10-foot set back requirement. Nevertheless, in compliance with Appellant’s demand, Halla demolished the existing footings at his cost and expense, and constructed new footings an additional 15 feet from the property line.

---

<sup>1</sup> The City of Chanhasen requires that the sign company apply for the permit. (R.App. at 142).

<sup>2</sup> Appellant has failed to ever provide evidence establishing the alleged 25-foot setback.

In addition, Appellant's city attorney reaffirmed at this time to Halla's counsel that if the New Sign was moved back 15 feet, it was approved for installation.

On April 17, 2006, Appellant inspected and approved the new footings. Between April 18 and April 30, 2006, Halla fully completed construction on the New Sign in its entirety at a total cost of approximately \$124,000, plus an additional \$6,000 in electrical costs.

However, on April 30, 2006, as Halla's electrician was about to connect the New Sign to an electrical source, Appellant once again red tagged it. Halla was informed that the New Sign was red tagged this time because, contrary to the construction permit it issued, Appellant alleged the New Sign was too large and could not be illuminated.

On June 23, 2006, Halla filed a Summons and Complaint against Appellant for injunctive relief, declaratory judgment, and writ of mandamus to prohibit the City from interfering with the use and illumination of the New Sign. (App. 1). Appellant counterclaimed, alleging that the New Sign violated a 1997 stipulation between Respondents and Appellant that was reduced to a judgment (the "1997 Stipulation and Judgment"). (App. 8).

The district court entered an Order granting Halla temporary injunctive relief on August 16, 2006, pending a trial on the merits. (App. 13). The matter was tried to the district court without a jury on April 16, 2007. (R.App. 121-198). The parties stipulated the entire record and all evidence introduced in the August 16, 2006 hearing would constitute evidence for the April 16, 2007 hearing. (Id. at p. 122, 4-16-2007 T., p. 2). On

August 8, 2007, the district court issued its Findings of Fact, Conclusions of Law, Order for Judgment and Judgment. (App. 26). This order dismissed the Respondents' Complaint, awarded judgment to Appellant on its counterclaim, and ordered that Respondents remove the electronic message center component of the New Sign. (Id.).

Respondents brought a motion for amended findings. (App. 38). On December 10, 2007, the district court issued its Amending Findings of Fact, Conclusions of Law, Order for Judgment and Judgment. (R.App. 001-019). This order amended some findings and modified the conclusions and order such that the New Sign could remain intact but could only be operated consistent with the 1997 Stipulation and Judgment, the City Code in effect in 2005, and the pattern of prior use. (Id.). On February 7, 2008, Appellant served and filed a Notice of Appeal. (App. 57). Respondents filed a Notice of Review on February 11, 2008. (App. 58).

### **STATEMENT OF THE FACTS**

Respondents Donald E. Halla and Sandra Cwayna Halla are the fee owners of real estate located in Carver County which they lease to Respondent Halla Nursery, Inc. (the "Nursery"). The Nursery has been operating out of that property for about four decades.

The Hallas individually also own property across Highway 101 to the east which has been recently developed as a golf course. The golf course property extends all the way to Pioneer Trail on the north, which is a quarter mile north the Nursery. Because the Nursery cannot be seen from the busy intersection of Highway 101 and Pioneer Trail, the Nursery wished to have a directional sign located at the northwest corner of the golf

course property, which is the southeast corner of the intersection of Highway 101 and Pioneer Trail. (R.App. 002, Findings of Fact 1-3.)<sup>3</sup>

In 1994, the Nursery constructed a new retail sales building of approximately 5,000 square feet on the nursery property. Mr. Halla had received a fax from Appellant, after he had contacted the City about the new garden center building, telling him that since the property was zoned agricultural, and the use of the building was agricultural, no building permit was needed. (Id. at 020-0120, 8-2-06 Transcript.)<sup>4</sup>

The Nursery proceeded to construct the new nursery building and upon its completion was informed by Appellant that a building permit was in fact required. In June of 1994, the City initiated a lawsuit against Halla Nursery, Inc. seeking to permanently enjoin use of the new building without a building permit and satisfying certain building code requirements. The Nursery counterclaimed, and after an extended period of litigation, the parties entered into a Stipulation for Entry of Judgment (previously identified at the “1997 Stipulation and Judgment”) settling all of their issues regarding the Nursery property. The 1997 Stipulation and Judgment was drafted by the attorneys for the City of Chanhassen. (Id. at 199-215)

---

<sup>3</sup> All references to “Findings of Fact” refer to the Amended Findings of Fact, Conclusions of Law, Order for Judgment and Judgment dated November 26, 2007 by the Honorable Kevin W. Eide and filed in the office of the Carver County Court Administrator on December 10, 2007. (R.App. 001-018).

<sup>4</sup> The Transcripts for the two hearings each begin with page 1 and are not numbered consecutively and consequently will be referred to as the “8-2-06 Transcript” or “4-17-07 Transcript.”)

In addition to resolving the issues of the Nursery building on the Nursery property, the 1997 Stipulation and Judgment also dealt with the Nursery's desire to place a directional sign on the northwest corner of the golf course property in the southeast quadrant of the intersection of Highway 101 and Pioneer Trail. (Id.).

The 1997 Stipulation and Judgment was nine pages long and dealt primarily with the Nursery property. Paragraph 6 deals with signage and reads as follows:

**6. SIGNAGE.**

**A. Permitted Signage.** The following signs are allowed:

1. Existing sign on the roof of the Garden Center.
2. Existing sign at the entrance to the Subject Property from Highway 101, or an updated pylon sign of the same height and square footage.
3. One off premises directional sign may be placed in the southeast quadrant of the intersection of Highway 101 and Pioneer on Lot 2, Block 1, Halla Great Plains Addition. The sign content shall be as approved by City Staff in the sign permit. The sign may not exceed eight (8) feet in height and seventy-two (72) square feet in size per sign face. The sign may have two sides back-to-back or "V" shaped. The sign shall not be lit. Before erecting the sign, a sign permit must be obtained from the City. The sign must be removed when the lot on which it is located is sold.
4. Plant identification signs not to exceed two (2) square feet each.

**B. Directional/Safety Signage.** On-site directional and safety signage as shown on the Site Plan. Additional on-site directional and safety signage may be allowed provided that it is approved by the City Staff.

- C. **Prohibited Signage.** All signs are strictly prohibited, except as expressly allowed pursuant to paragraphs 6A and 6B of this Stipulation, or pursuant to a sign permit issued by the City.

(Id. at 204-05).

Donald Halla signed the 1997 Stipulation and Judgment as president of Halla Nursery, Inc., and both he and his wife signed a consent to it. Appellant issued a sign, (“Old Sign”) permit for the southeast quadrant of Highway 101 and Pioneer Trail. The Old Sign was authorized pursuant to a sign permit application as required by paragraph 6A(3) of the 1997 Stipulation and Judgment. The approved Old Sign had two faces each 8 feet in height and 72 feet in total area. The overall structure of the approved Old Sign was listed as 9 feet high by 16 feet wide, and the approved message on both sign faces included the name of the Nursery, a directional arrow with the words “one-quarter mile ahead” and the telephone number. The approved Old Sign plan did not show or describe an illumination. (Id. at 004, Findings of Fact 13.)

Shortly after the sign was erected, Chanhassen Community Development Director Kate Aanenson (hereafter “Aanenson”) observed the sign faces were illuminated and contacted Mark Halla, Vice President of Halla Nursery and the signor of the Old Sign permit application, about the fact that the sign was not supposed to be illuminated. That discussion became somewhat confrontational because there were a number of issues still to be resolved by the 1997 Stipulation and Judgment. Halla Nursery did not remove the illumination nor did Appellant take any action to have the illumination removed. The Old Sign as constructed and illuminated remained until it was torn down in 2005 during a

MnDOT improvement of the intersection of Highway 101 and Pioneer Trail which necessitated the condemnation of the property upon which the Old Sign was located. (Id. at 005, Findings of Fact 16 and 17.) After the condemnation commenced, Donald Halla, on behalf of Halla Nursery, Inc., consulted with Paul Punt (“Punt”) of Attracta Sign about the design for the New Sign and authorized Attracta Sign to apply to Appellant for a sign permit. Appellant required a licensed sign company to make such applications. Halla did not actually see the application before it was submitted by Attracta Sign; he only saw the final drawing of the sign itself. (Id. at 142-43, 4/16/07 Transcript, p. 22-23.)

On March 28, 2005, the Appellant received Attracta Sign’s application and accompanying drawing of the proposed New Sign. (Id. at 216, Tr. Exhibit 5, Affidavit of Josh Metzger) The permit was approved and was enclosed with an April 11, 2005 letter from Josh Metzger, Planner I for Appellant (“Metzger”). (Id. at 225, Ex. C to the Metzger Aff.)

The highway construction was not completed until the end of 2005, and in February of 2006, Punt confirmed with Metzger that the permit issued on April 8, 2005 for the New Sign was still valid. (Id. at 144-45, 4/16/07 Transcript, p. 24-25.) After confirming with Metzger the validity of the sign permit, Attracta Sign entered into a contract with Halla accepting Attracta Sign’s New Sign proposal for construction of the sign approved by Appellant at a cost of \$124,000.

In March of 2006, Attracta Sign dug and poured footings for the New Sign in accordance with the approved permit. After the footings were approved by Metzger,

Metzer came back to the job and posted a stop work order contending that Appellant determined a 25-foot setback was required for the New Sign.<sup>5</sup> Respondent's attorney contacted the Appellant's attorney Roger Knutson of the Campbell Knutson law firm, which had also represented Appellant in the 1994 litigation as well as this litigation. It was that firm which drafted the Stipulation for Entry of Judgment in February of 1997. After looking into the matter, Mr. Knutson responded by insisting that the 25-foot setback be adhered to. Mr. Knutson indicated that once the setback of 25 feet was met, construction of the New Sign could proceed. (Id. at 257, Affidavit of Phillip R. Krass in support of Temporary Injunction Motion)

Rather than go to the mat on this issue, Respondents ripped out the correctly placed footings and re-dug and poured them at the 25-foot setback line. Appellant's building inspector approved the new footings on April 17, 2006, and construction of the remainder of the New Sign continued. The New Sign was completely constructed and final electrical connections were being made to put the New Sign in operation when Metzer posted a second stop work order. Metzer claimed to have somehow overlooked the obvious reference to the electronic message board in the sign permit application that he approved. (Id. at 007, Findings of Fact 27-28.) Metzer subsequently measured the new sign and found the electronic reader boards measured 73.75 square feet. The sign is

---

<sup>5</sup> Appellant has never provided any support for its position that a 25-foot setback was required. The New Sign already had to be moved to 140 feet east of Highway 101 because of the road project. (See R.App. p. 269, Engineer Report). That new distance is the reason Attracta Sign recommended the New Sign design so it would have the same impact as the Old Sign which was right at the intersection, 10 feet from both Pioneer Trail and Highway 101. (Id. at. 128, 4-16-2007 T., p. 8).

located on property zoned Agricultural Estate and guided for eventual residential use. (Id., Findings of Fact 29-30.) At the time of the issuance of the sign permit, the Appellant had adopted an ordinance relating to signs which included a blanket prohibition against any “motion signs and flashing signs, except time and temperature signs and barber poles which may be permitted by conditional use permits....” (Id., Findings of Fact 33.) However, the district court was provided with a videotape showing signs authorized under the same ordinance similar to the one in question which were clearly determined not to be “motion signs and flashing signs” since such signs are prohibited. Rather, those signs, like the New Sign, were message board signs which were approved and were in use prior to construction of the New Sign. Appellant provided a report from its consulting engineer indicating that the New Sign changed approximately every 12 seconds. (Id. at 267-69, Report of City Engineer) The videotape of other message board signs in Chanhassen showed changes to a new message much more often than the New Sign.

## **ARGUMENT**

### **I. STANDARD OF REVIEW.**

The district court’s findings of fact, whether based upon oral or documentary evidence, should not be set aside unless clearly erroneous, and due regard is given to the opportunity of the trial court to judge the credibility of the witnesses. Minn.R.Civ.P 52.01. In applying Minn.R.Civ.P. 52.01, the record is reviewing in the light most favorable to the judgment of the district court. Rogers v. Moore, 603 N.W.2d 650, 656

(Minn. 1999). The Court of Appeals should not reverse the district court's judgment on factual findings merely because it views the evidence differently. Id.; see also Vangsness v. Vangsness, 607 N.W.2d 468, 474 (Minn. Ct. App. 2000) (“[t]hat the record might support findings other than those made by the [district] court does not show that the ... findings are defective.”). Rather the court's factual findings must be clearly erroneous or “manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole.” Id. Findings of fact are clearly erroneous only if the reviewing court is left with the definite and firm conviction that a mistake has been made. Fletcher v. St. Paul Pioneer Press, 589 N.W.2d 96, 101 (Minn. 1999). If there is reasonable evidence to support the district court's findings, they will not be disturbed. Rogers, 603 N.W.2d at 656.

In contrast to matters arising during the course of trial, the Court of Appeals gives no deference to the district court's conclusions of law and, accordingly, such questions are reviewed de novo. Kornberg v. Kornberg, 542 N.W.2d 379, 384 (Minn. 1996); Boldt v. Roth, 618 N.W.2d 393, 396 (Minn. 2000). On an appeal challenging the district court's conclusions of law, the question is whether the conclusions of law are supported by the findings of fact and whether the district court erred in its conclusions of law. Id.

**II. THE COURT OF APPEALS SHOULD REVERSE BECAUSE THE DISTRICT COURT ERRED IN CONCLUDING THAT RESPONDENTS' NEW SIGN DOES NOT COMPLY WITH THE 1997 STIPULATION AND JUDGMENT.**

In Conclusion of Law No. 2 of the Amended Findings of Fact, Conclusions of Law, Order for Judgment and Judgment, The district court held that the New Sign does

not comply with the 1997 Stipulation and Judgment. This conclusion of law forms the basis of much of the district court's Order for Judgment, including the denial of a permanent injunction precluding Appellant from interfering with Respondents' rights to use the New Sign as intended and as authorized by the permit. It also forms the legal basis of the district court's award of judgment to Appellant on its counterclaim for injunctive relief.

The reasoning underlying the district court's decision in this regard was its interpretation of Section 6 of the 1997 Stipulation and Judgment. The district court found that the permit exception language in Section 6C did not apply to Section 6A.3 of the 1997 Stipulation and Judgment. The district court's interpretation, however, is contrary to the plain language of the document and would violate the canons of construction established under Minnesota law. Accordingly, the district court's conclusion of law should be reversed.

In interpreting contracts in Minnesota, the language is to be given its plain and ordinary meaning. Brookfield Trade Ctr, Inc. v. County of Ramsey, 584 N.W.2d 390, 394 (Minn. 1998); Minn. Stat. § 645.08 (words and phrases are construed according to rules of grammar and according to their common and approved usage). "The cardinal purpose of construing a contract is to give effect to the intention of the parties as expressed in the language they used in drafting the whole contract." Art Goebel, Inc. v. N. Suburban Agencies, Inc., 567 N.W.2d 511, 515 (Minn. 1997). Courts should construe a contract as

a whole and attempt to harmonize all clauses of the contract. Chergosky v. Crosstown Bell, Inc., 463 N.W.2d 522, 525 (Minn. 1990).

The method by which courts will ascertain the intent of the parties is not “a dissection in which words or phrases are isolated from their context, but rather from a process of synthesis in which the words or phrases are given a meaning in accordance with the obvious purpose of the ... contract as a whole.” Republic Nat. Life Ins. v. Lorraine Realty Corp., 279 N.W.2d 349, 354 (Minn. 1979). Phrases and sentences cannot be dissected and read separately and “out of context with the entire agreement.” Metro Office Parks Co. v. Control Data Corp., 295 Minn. 348, 352, 205 N.W.2d 121, 124 (1973).

“Because of the presumption that the parties intended the language used to have effect, we will attempt to avoid an interpretation of the contract that would render a provision meaningless.” Chergosky, 463 N.W.2d at 526; see also Current Tech. Concepts, Inc. v. Irie Enters., Inc., 530 N.W.2d 539, 543 (Minn. 1995) (“[a] contract must be interpreted in a way that gives all of its provisions meaning.”); Independent Sch. Dist. No. 877 v. Loberg Plumbing & Heating Co., 266 Minn. 426, 436, 123 N.W.2d 793, 799-800 (1963) (every provision in a should be given meaning); American Warehousing & Distrib., Inc. v. Michael Ede Management, Inc., 414 N.W.2d 554, 557 (Minn. Ct. App. 1987) (contracts should not be absurdly construed); Employers Mut. Liab. Ins. Co. v. Eagles Lodge, 282 Minn. 477, 479, 165 N.W.2d 554, 556 (1969) (contract terms are read

in the context of the entire contract and should not be construed so as to lead to a harsh and absurd result).

In this matter, Section 6 of the 1997 Stipulation and Judgment provides:

**6. SIGNAGE.**

**A. Permitted Signage.** The following signs are allowed:

1. Existing sign on the roof of the Garden Center.
2. Existing sign at the entrance to the Subject Property from Highway 101, or an updated pylon sign of the same height and square footage.
3. One off premises directional sign may be placed in the southeast quadrant of the intersection of Highway 101 and Pioneer on Lot 2, Block 1, Halla Great Plains Addition. The sign content shall be as approved by City Staff in the sign permit. The sign may not exceed eight (8) feet in height and seventy-two (72) square feet in size per sign face. The sign may have two sides back-to-back or "V" shaped. The sign shall not be lit. Before erecting the sign, a sign permit must be obtained from the City. The sign must be removed when the lot on which it is located is sold.
4. Plant identification signs not to exceed two (2) square feet each.

**B. Directional/Safety Signage.** On-site directional and safety signage as shown on the Site Plan. Additional on-site directional and safety signage may be allowed provided that it is approved by the City Staff.

**C. Prohibited Signage.** All signs are strictly prohibited, except as expressly allowed pursuant to paragraphs 6A and 6B of this Stipulation, or pursuant to a sign permit issued by the City.

(R.App. 204-05).

The district court held that Section 6C modifies all of the language in Section 6 except the language of 6A.3. The district court reasoned that because language in Section 6A.3 directed Respondents to obtain a permit before constructing the Old Sign (the one torn down because of the condemnation), the permit exception set forth in Section 6C modifies only the other signage discussed in Section 6. The district court's holding in this regard resulted in Conclusion of Law No. 2 that the New Sign does not comply with Section 6A.3 of the 1997 Stipulation and Judgment.

The district court's interpretation and Conclusion of Law, however, are contrary to the plain language of the 1997 Stipulation and Judgment. Indeed, the plain language of Section 6C provides that "[a]ll signs are strictly prohibited, except as expressly allowed pursuant to paragraphs 6A and 6B of this Stipulation, or pursuant to a sign permit issued by the City." (emphasis added). That the phrase "or pursuant to a sign permit issued by the City" immediately follows a prohibition on all signs except those expressly set forth in Sections 6A and 6B leads to the inescapable conclusion that the exception for signs authorized by sign permit in this section applies to all signs contemplated in the preceding sections. Stated another way, it clearly means that Respondents were prohibited from constructing all signs not expressly allowed in Sections 6A or 6B unless they were issued a sign permit from Appellant. To interpret this language any other way would ignore the document's plain language. It would also render the language "allowed pursuant to paragraphs 6A and 6B" immediately preceding the permit exception meaningless. Such constructions are certainly disfavored under Minnesota law.

Further, had the parties intended the permit exception to apply only to the signs contemplated in Sections 6A.1, 6A.2 and 6B, they could have inserted that exact language into Section 6C of the 1997 Stipulation and Judgment.<sup>6</sup> However, the city chose no such qualifying language and as a result, there can be no question or confusion that the sign permit exception applies to any signs Respondents wished to construct. The district court's interpretation that the parties implied such a qualification is not supported by either the plain language or the canons of construction.

The interpretation offered by Respondents here would harmonize with the language contained in Section 6A.3 concerning permit requirements. The language in Section 6A.3 simply requires Respondents to obtain a sign permit for the specific Old Sign contemplated in that section even though it was expressly allowed pursuant to Sections 6A and 6C. Thus, not only did Section 6 require Respondents to obtain a permit for all signs unless expressly allowed pursuant to Sections 6A and 6B, it expressly also required Respondents to obtain a permit to construct the specific Old Sign (later removed via condemnation) contemplated under Section 6A.3.<sup>7</sup>

Additionally, to accept the district court's interpretation of Section 6C takes the Section 6 provisions of the 1997 Stipulation and Judgment out of context. Indeed, Section 6A discusses "Permitted Signage" and goes on to describe the types of signs that are

---

<sup>6</sup> It should be noted this language was drafted by the same city attorney's office which later opined that the setback to 25 feet was the only impediment to construction of the New Sign as permitted.

<sup>7</sup> That Appellant required Respondents to obtain a permit for the sign contemplated in Section 6A.3 would also harmonize with City Code 20-1255 concerning the authorization and permitting of off-premises signs.

permitted pursuant to the agreement on the Nursery property. Section 6B describes those specific on-premises “Directional/Safety Signage” signs set forth on the site plan Respondents submitted to Appellant to obtain building permits for the structure they were constructing on the Nursery property. Section 6C discusses “Prohibited Signage” and sets forth that all signs, wherever located, are prohibited except pursuant to Section 6A, 6B, or pursuant to a sign permit issued by the City. If the district court’s interpretation were correct, Section C would have to be interpreted to remove the language applying the permit exception to subsections of Sections 6A and 6B. Again, such as construction is disfavored under Minnesota law.

Because it is plain that the district court’s interpretation of Section 6 of the 1997 Stipulation and Judgment is erroneous and contrary to law, and because it is undisputed that Appellant approved Respondents’ permit that clearly identified the New Sign’s size, capabilities and use,<sup>8</sup> Conclusion of Law No. 2 must be reversed as a matter of law. It necessarily follows that Appellant’s allegations, and the district court’s holdings, that the New Sign violates the 1997 Stipulation and Judgment because it is larger than that allowed by the 1997 Stipulation and Judgment, is improperly illuminated, is a general advertising sign, and contains electronic message matrixes necessarily fail as a matter of law. The New Sign as built conforms exactly to Appellant’s permit. Thus, the Court of Appeals should reverse to the extent that the district court denied Respondents permanent

---

<sup>8</sup> Any reliance placed on Metzger’s lack of personal knowledge of the 1997 Stipulation is misplaced. City files contained the Stipulation, other city staff, such as Ms. Aanenson and the city attorneys who drafted the Stipulation, had such knowledge. Metzger’s excuse that he didn’t notice the clear references to the reader board character of the New Sign doesn’t merit a legal response.

injunctive relief on the perceived basis that the Section 6 sign permit exception did not apply to the New Sign, and Respondents are entitled to an Order precluding Appellant from interfering with their use and operation of the New Sign as authorized by the permit Appellant issued.

**III. ALTERNATIVELY, THE COURT OF APPEALS SHOULD AFFIRM THE DISTRICT COURT'S FINDINGS AND CONCLUSIONS CONCERNING THE NEW SIGN FACES AND ILLUMINATION OF THE NEW SIGN BECAUSE THEY ARE NOT CLEARLY ERRONEOUS.**

Appellant alleges the district court's Findings of Fact do not support the conclusion that the sign faces are in substantial compliance with the 1997 Stipulation and Judgment, and that it should not be enjoined from enforcing 1997 Stipulation and Judgment's provision prohibiting the illumination of the New Sign. As stated above, Appellant's arguments must fail as the 1997 Stipulation and Judgment contained an exception for all signs obtained by Respondents pursuant to a permit. Because Respondents obtained a permit for the New Sign and constructed the New Sign consistent with the permit, Appellant's arguments are moot. However, in the alternative, the district court's findings and conclusions concerning the substantial compliance of the sign faces and the illumination of the New Sign should be affirmed.

**A. The District Court's Finding that the New Sign Faces Substantially Comply with the 1997 Stipulation and Judgment is Not Clearly Erroneous.**

Generally, a trial court's findings will be overturned only if the reviewing court is left with the definite and firm conviction that a mistake has been made. Minn.R.Civ.P. 52.01; ICC Leasing Corp. v. Midwestern Machinery Co., 257 N.W.2d 551 (1977). Unless

clearly erroneous and unsupported by reasonable evidence, factual findings should not be disturbed. Fletcher, 589 N.W.2d at 101 (if there is reasonable evidence tending to support the district court's findings of fact, the appeals court should not reverse them).

In this matter, an affidavit from city planner Josh Metzger was introduced as Trial Exhibit 5. (R.App. 216-255). Exhibit A to the Metzger Affidavit is a drawing of the New Sign. (Id. at 220-22). The dimensions of the reader board sign face as indicated in Exhibit A are plainly 60 inches by 14 feet, nine inches. (Id. at 222). The square footage of these dimensions is 73.75 square feet as set forth in the district court's finding. Appellant essentially alleges that the district court erred in failing to consider surface area other than the reader boards in determining the total sign face surface area. In addition to the district court having properly exercised its discretion in weighing the evidence in this regard, the district court's measurements are supported by other evidence contained in the Metzger Affidavit. Attached as Exhibit J to the Metzger Affidavit is a drawing of the Old Sign. (Id. at 233-35). For purposes of determining the 72 square feet of its sign faces, the measurements include only the areas that contain advertising print, which is comparable to the print that would be used on the message reader boards. Accordingly, the district court's finding that the New Sign substantially complies with the 1997 Stipulation and Judgment is not clearly erroneous and is supported by the evidence.

**B. The District Court's Conclusion that Respondents Could Illuminate the New Sign is Not Contrary to Law.**

Appellant also contends that the district court erred in concluding that Respondents are entitled to illuminate the New Sign, alleging that its failure for more than eight years

to stop Respondents from illuminating the Old Sign does not constitute a waiver of its rights to enforce its zoning ordinances and that the 1997 Stipulation and Judgment prohibits the old sign from being illuminated. Although Appellant has correctly stated that the legal authority allows a municipality to enforce its zoning ordinances, Appellant ignores the uncontested fact that granted a permit to Respondents that clearly allowed them to illuminate the New Sign. Because the 1997 Stipulation and Judgment allows Respondent to negotiate for a sign permit that would be illuminated, because the evidence at trial established that illuminated signs in agricultural zones to not violate City Code, and because Appellant in fact approved a sign permit allowing Respondents to illuminate it, the district court's conclusion is not contrary to law. Indeed, Section 6A.3 of the 1997 Stipulation and Judgment clearly references the Old Sign. Section 6C has no such restriction. Accordingly, the Court of Appeals should affirm.

**IV. THE COURT OF APPEALS SHOULD REVERSE BECAUSE THE DISTRICT COURT ERRED IN ENJOINING RESPONDENTS FROM USING THE NEW SIGN CONSISTENT WITH ITS INTENDED USE AND AS AUTHORIZED BY THE PERMIT DESPITE DETERMINING THAT RESPONDENTS OBTAINED VESTED RIGHTS AND DESPITE THE NEW SIGN NOT VIOLATING CITY CODE.**

The district court correctly determined that Respondents obtained vested rights to continue to keep and operate the New Sign.<sup>9</sup> Despite that finding, the district court erred in refusing to grant a permanent injunction enjoining Appellants from interfering with

---

<sup>9</sup> Appellant contends the district court misused the doctrine of vested rights and seeks reversal of its application. Keep in mind, the vested rights doctrine was intended to apply to permits issued in error and later revoked. *Yeh v. County of Cass*, 696 N.W.2d 115, 132 (Minn. Ct. App. 2005). If the permit was correctly issued in the first place, there would be no reason to apply the doctrine.

Respondents rights to use the New Sign consistent with its intended use and as authorized by the permit Appellant issued. As explained below, the district court should have granted Respondents a permanent injunction enjoining Appellants from interfering with the use of the New Sign based either on the application of the vested rights doctrine or because the district court erroneously concluded the New Sign violated City Code. Accordingly, the Court of Appeals should reverse.

The vested rights doctrine in Minnesota was developed to deal with state control over private development through the use of zoning provisions and building permits. Ridgewood Dev. Co. v. State, 294, N.W.2d 288, 294 (Minn. 1980); Hawkinson v. County of Itasca, 304 Minn. 367, 231 N.W.2d 279 (1975). In a vested rights analysis, “the courts asks whether a developer has progressed sufficiently with his construction to acquire a vested right to complete it.” Ridgewood, 294 N.W.2d at 294. A right becomes vested when:

[i]t has arisen upon a contract, or transaction in the nature of a contract, authorized by statute and liabilities under that right have been so far determined that nothing remains to be done by the party asserting it.

Jasaka Co., v. City of St. Paul, 309 N.W.2d 40, 44 (Minn. 1981). Stated another way, a person acquires vested rights when he or she has progressed significantly with the physical aspects of the property. Concept Properties, LLP v. City of Minnetrista, 694 N.W.2d 804, 820 (Minn. Ct. App. 2005). The “contract” in construction cases is the issuance of a permit issued in error or later revoked. Yeh v. County of Cass, 696 N.W.2d 115, 132 (Minn. Ct. App. 2005).

In Jasaka Co., the Minnesota Supreme Court found that the structure at issue pursuant to the permit was 90 percent complete. But for the applicant's failure to construct the tower in conformity to the permit issued, the Minnesota Supreme Court stated that Jasaka would have acquired a vested right to keep the tower, despite the invalidity of the permit.

In this matter, the New Sign Respondents constructed conforms directly to the permit Appellant issued and construction of the New Sign was actually complete when Appellant red tagged it. As a result, there can be no question that Respondents progressed significantly with the physical aspects of the project as required by Concept Properties, LLP. Moreover, because construction was completed consistent with the permit issued, the rule annunciated in Jasaka Co., establishes the applicability of the vested rights doctrine. In this regard, the district court was correct.

In response to the application of the doctrine, however, Appellant alleged that the New Sign was clearly illegal because it allegedly violated the 1997 Stipulation and Judgment as well as City Code in effect at the time. The district court initially accepted this argument in its entirety in the original Findings of Fact, Conclusions of Law, Order for Judgment and Judgment, a determination it partially rejected in its Amended Findings.

Specifically, Appellant contended, and the district court concluded, that the New Sign was larger than those allowed in agricultural zones pursuant to City Code Sec. 20-1301; was an off-premises sign not fitting into any of the exceptions set forth in City

Code Sec. 20-1255; and that it violated City Code Sec. 20-1259 prohibiting motion and flashing signs. In all three cases, however, both Appellant and the district court were incorrect as the New Sign is not clearly illegal and does not violate City Code or, as described in detail above, the 1997 Stipulation and Judgment. In any event, because the New Sign is not clearly illegal and does not violate any City Code, the district court must be reversed and Respondents are entitled to an order enjoining Appellant from interfering with the use of the New Sign as authorized by the permit.

**A. The New Sign Does Not Violate City Code Sec. 20-1301.**

In its Conclusion of Law No. 3, the district court accepted Appellant's argument that the New Sign is too large for the City's Agricultural Zoning District's sign restrictions. The City Code provides that signs contained on property zoned Agricultural may not exceed 24 square feet. See R.App. 243, Tr. Ex. 5, Metzger Aff. at Ex. K. However, this ignores the 1997 Stipulation and Judgment that allowed Respondents to construct a sign with faces of 72 square feet as well as the permit exception contained in Section 6C. Pursuant to the 1997 Stipulation and Judgment, Respondents obtained the right to construct a sign with faces of 72 square feet even though the City Code doesn't authorize that size. The district court properly made a finding that the New Sign substantially complies with the 1997 Stipulation and Judgment. Moreover, pursuant to the Section 6C exception, Respondents received a permit to construct the New Sign in the size that it was in fact constructed.

Accordingly, Appellant can not on the one hand bargain with Respondent for an exception to the City Code, execute a stipulation to authorize that exception, file the stipulation as a judgment, and then on the other hand seek to enforce the Code contrary to the bargain it struck. Because the size of the New Sign substantially complies with the 1997 Stipulation and Judgment and because it was authorized by permit, the district court's holding and conclusion that the New Sign violates the City Code must be reversed.

**B. City Code Sec. 20-1255 Does Not Apply Because Respondents Obtained a Permit.**

Additionally, the district court's Conclusion of Law No. 3 states that the New Sign violates the City Code in that it is an off-premises sign advertising Respondents' business. Appellant alleged that the New Sign does not fit into any of the categories of off-premises signs allowed by the City Code. The district court's conclusion, as well as Appellant's argument, is incorrect and must be reversed for at least two reasons.

First, the City Code provisions offered by Appellant to the district court provide that certain off-premises signs are allowed without a sign permit: City Code Sections 20-1255(2)(b) (where access is confusing and traffic safety could be jeopardized); 20-1255(10)(b) (temporary real estate signs advertising the sale, rental or lease of businesses or industrial buildings); and 20-1255(10)(c) (showing the direction to new residential developments). See id. at R. App. 236-40. The City Code contains no general prohibition on off-premises signs as Appellant contended to the trial court; rather the City Code merely has carved out exceptions to permit requirements concerning certain off-premises

signs. These exceptions actually authorize instances in which sign construction may occur without a permit.

In this matter, it is undisputed that Respondents' New Sign was authorized by a permit issued by the City. Further, the New Sign as constructed indisputably conformed to the permit Appellant issued. As a result, not only does the City Code fail to prohibit the New Sign, but Section 20-1255 is entirely inapplicable as it is undisputed that Respondents obtained not only a permit to construct the sign but also obtained off-premises sign rights pursuant to the 1997 Stipulation and Judgment. Accordingly, the district court's Conclusion of Law No. 3 should be reversed as the New Sign plainly does not violate City Code as a matter of law.

Second, City Code Sec. 20-1259 contains a list of the types of prohibited signs. See id. at R. App. 241-42. Off-premises signs such as Respondents' New Sign are plainly not on the list. Id. Thus, to the extent that the district court accepted Appellant's argument that the New Sign somehow was not allowed by City Code, that conclusion is contrary to law. Moreover, to the extent that there could be any uncertainty or ambiguity concerning the City Code in this regard, which there is not, Minnesota law requires the courts to construe zoning ordinances strictly against the municipality and in favor of the property owner. See Frank's Nursery Sales, Inc. v. City of Roseville, 295 N.W.2d 604, 608 (Minn. 1980) (zoning ordinances are construed strictly against municipalities and favorably to property owners). Accordingly, the district court erred in concluding that

Respondents' New Sign violated City Code and the Court of Appeals should therefore reverse.

C. **The New Sign Does Not Violate City Code Sec. 20-1259 in Effect in 2005.**

Finally, the district court determined that the New Sign violated City Code Sec. 20-1259 in effect in 2005. The applicable 2005 version of this Code Section provided:

The following signs are prohibited:

\*\*\*\*

- (2) Motion signs and flashing signs, except time and temperature signs and barber poles which may be permitted by conditional use permits ....

See R.App. 241-42, Tr. Ex. 5, Metzger Aff. at Ex. K.

There was no evidence introduced in the proceedings below that Respondents' New Sign constituted a "motion" or "flashing" sign. Instead, the only evidence in this regard came in the form of a written report from Appellant's engineering firm that described the New Sign in great detail. This report makes no mention of a "moving" or "flashing" sign and it is merely described as a message board sign.

Additionally, the district court's Amended Findings of Fact, Conclusions of Law, Order for Judgment and Judgment contains no finding that the New Sign is a "motion" or "flashing" sign. Instead, there is merely a reference in Finding of Fact No. 34 to the capability of the New Sign to periodically change messages. Further, the district court was provided with a DVD containing evidence of other signs within the City of Chanhasen containing matrix message board signs, several of which operated either

similarly or identically to Respondents' New Sign. Appellant, since it gave permits for these signs, did not consider these message board signs to be "motion" or "flashing" signs under the City Code in effect in 2005. If Appellant considered these other signs prohibited as "moving" or "flashing," it could not have authorized them in any zone since that prohibition applies to all zones. In fact there was absolutely no code provision regulating message board signs at the time of Respondents' permit application.

Without evidence or findings that the New Sign is even considered a "moving" or "flashing" sign as described in City Code 20-1259(2), in light of the evidence presented concerning similar and nearly identical signs to Respondents' that Appellant approved and therefore did not consider to be in violation of that code provision, and in the absence of any code provisions regulating message board signs, there is no foundation or basis for the district court's Conclusion of Law No. 3. See also Frank's Nursery Sales, Inc., 295 N.W.2d at 608 (zoning ordinances are construed strictly against the municipality and in favor of the property owner).

Perhaps more significant, however, was evidence introduced concerning subsequent City Code sign amendments in 2006. With the 2006 amendments, Appellant for the first time attempted to regulate message board signs in certain zoning classifications and under certain conditions. Stated another way, prior to these amendments, there is absolutely no reference to message board signs anywhere in the City Code. (R.App. 136, 4-16-2007 T p. 16). As mentioned above, clearly Appellant did

not take the position that prior to the 2006 amendments, message board signs were not authorized since several such signs were authorized and existed within the City.

The district court's conclusion was rendered even more doubtful when the evidence indicated that in addition to amending the City Code to regulate message board signs for the first time in 2006, Section 20-1259(2) ("moving" and "flashing" prohibition) remained entirely intact and unchanged. If "moving" and "flashing" signs already covered message board signs as the Appellant argues and the district court's conclusion implies, the 2006 amendments would not have been necessary. Indeed, it would be impossible to reconcile these two provisions under the present City Code. If message board signs were prohibited in 2005 because they constitute "moving" and "flashing" signs, how could any such signs have ever been approved under the City Code? The only logical answer is they couldn't have, yet we know such signs were approved by the City, and predated Respondents' New Sign. Under these circumstances, the district court's conclusion is simply unsupportable in this regard and it should be reversed as contrary to the evidence and contrary to law.

**D. In the Alternative, Because the New Sign Does Not Violate Either the 1997 Stipulation and Judgment or City Code in any Respect, the Court of Appeals Should Reverse Even Without Resort to the Vested Rights Doctrine.**

Appellant claims that it has never taken the position that Respondents could not replace the Old Sign and that to the extent the New Sign complies with the 1997 Stipulation and Judgment and City Code there is no issue and no vested rights analysis is necessary. As described and explained extensively above, the New Sign does not violate

either the 1997 Stipulation and Judgment or the City Code. In addition, it is undisputed Respondents constructed the New Sign in accordance with the permit they obtained from Appellant. Accordingly, Appellant may be correct that no vested rights analysis is necessary to entitle Respondents to a permanent injunction prohibiting Appellant from interfering with its use of the New Sign as intended and authorized by the permit.

This is a very simple case for the Court of Appeals to reverse. The 1997 Stipulation and Judgment requires Respondents to obtain a permit for any sign they wished to construct that was different from those expressly authorized without a permit pursuant to that stipulation.<sup>10</sup> Respondents did so and in fact obtained such a permit. The City Code also required Respondents to obtain a permit because the New Sign was off premises. Respondents complied. Further, the City Code in effect at the time did not expressly regulate the New Sign's reader board character, a position born out by subsequent amendments. As a result, there is no basis for the district court's erroneous conclusions and refusal to grant Respondents a permanent injunction prohibiting the use of the New Sign as clearly intended in the permit that Appellants authorized.

### CONCLUSION

For all of the foregoing reasons, the Court of Appeals should reverse the district court's conclusion that the New Sign does not comply with the 1997 Stipulation and

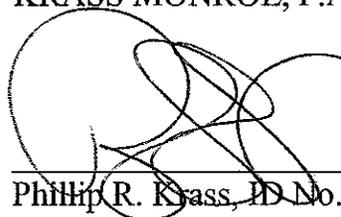
---

<sup>10</sup> To the extent that Appellate or the Trial Court relies on the requirement that all amendments to the 1997 Stipulation and Judgment be in writing and approved by the Chanhassen City Council (R.App. 206, 1997 Stipulation and Judgment, ¶ 12) such reliance is misplaced. The New Sign did not constitute an amendment to the 1997 Stipulation and Judgment, it was issued as provided by Section 6C of the 1997 Stipulation and Judgment.

Judgment, affirm the district court's findings and conclusions that the New Sign's faces substantially complied with the 1997 Stipulation and Judgment and that Respondents were entitled to illuminate the New Sign, and reverse the district court's denial of a permanent injunction precluding Appellant from interfering with Respondents' rights to use the New Sign consistent with its intended use and as authorized by the permit.

Dated: June 30, 2008.

KRASS MONROE, P.A.



---

Phillip R. Krass, ID No. 58051  
Benjamin J. Court, ID No. 319016  
8000 Norman Center Drive, Suite 1000  
Minneapolis, Minnesota 55437  
(952) 885-5999  
Attorneys for Respondents

**APPELLATE COURT CASE NO. A08-233**

---

**STATE OF MINNESOTA  
IN COURT OF APPEALS**

---

Halla Nursery, Inc., Donald E. Halla  
and Sandra Cwayna Halla

Respondents,

vs.

City of Chanhassen, a municipal corporation,

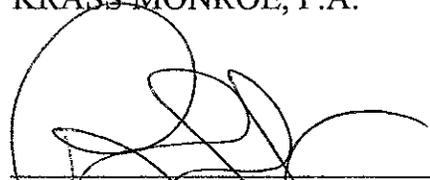
Appellant.

---

I hereby certify that this brief conforms to the requirements of Minn. R. Civ. App. P. 132.01, Subd. 1 and 3, for a brief produced with a proportional font. The length of this brief is 7,810 words, and the font size is 13 point. This brief was prepared using MicrosoftWord 2003 software.

Dated: June 30, 2008.

KRASS MONROE, P.A.



---

Phillip R. Krass, ID No. 58051  
Benjamin J. Court, ID No. 319016  
8000 Norman Center Drive, Suite 1000  
Minneapolis, Minnesota 55437  
(952) 885-5999  
Attorneys for Respondents