



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

Fischer Sand & Aggregate, Inc.,

Appellant,

vs.

County of Dakota,

Respondent.

APPELLANT'S BRIEF, ADDENDUM AND APPENDIX

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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).

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STATEMENT OF LEGAL ISSUE

The previous owner of Appellant's property properly executed a notice initiating the expiration of an agricultural preserve on August 11, 2000 and stating the date of expiration, as required by the Metropolitan Agricultural Preserves Act, to be eight years later on August 11, 2008. The District Court held that the date of expiration is not the date stated in the notice, but is eight years from the date the notice was recorded in Dakota County, or April 18, 2011.

Did the District Court err when it denied Appellant's claims for declaratory relief and ordered that the agricultural preserve status on Appellant's property will terminate eight years after the date the notice was recorded in Dakota County as opposed to the date stated in the notice?

Most apposite authority:

Minn. Stat. § 473H.08, subd. 2.

Minn. Stat. § 473H.08, subd. 4.

STATEMENT OF THE CASE

This is an appeal from a judgment entered on December 18, 2008 by the Dakota County District Court, the Honorable Richard G. Spicer, denying Appellant Fischer Sand & Aggregate, Inc.'s ("Fischer") claims for declaratory relief. Fischer commenced this action seeking declarations, pursuant to Minn. Stat. § 473H.08, that the expiration date of the agricultural preserve status on its property in Dakota County is the date set by the landowner on the notice, not eight years from the date of recordation, and Dakota County's policies with respect to the termination of agricultural preserves are in conflict with the statute. Fischer alternatively requested a writ of mandamus compelling Dakota County to release the property from agricultural preserve.

The parties submitted the case to the Dakota County District Court on stipulated facts and memoranda of law. The court entered judgment for Respondent, holding that the date of expiration of an agricultural preserve is eight years from the date the County was notified and not the date stated in the notice.

STATEMENT OF THE FACTS¹

Appellant Fischer is a Minnesota corporation engaged in the business of producing, selling and distributing aggregate products, including gravel and sand.² On or about April 14, 2003, Fischer acquired a 320-acre parcel of property (the "Property") located in Dakota County and owned in various portions and interests by the Doyle

¹ The parties stipulated to all material facts in this case. *See* Stipulation of Facts (hereinafter "Stip. ¶ __") at p. 14 to 21 of the Appendix to Appellant's Brief (hereinafter "A-__").

² A-14 (Stip. ¶ 1).

Family Farm Limited Partnership, the D&R Doyle Family Limited Partnership and the D&K Doyle Family Limited Partnership.³ When Fischer acquired the Property, the Property was enrolled in the Agricultural Preserve Program governed by Minn. Stat. § 473H et seq., otherwise known as the Metropolitan Agricultural Preserves Act (the “Act”).⁴

The Act sets forth the steps necessary to initiate the expiration of an agricultural preserve.⁵ Minn Stat. 473H.08, subd. 2 permits a landowner to initiate the expiration of an agricultural preserve by notifying the authority on a form provided by the commissioner of agriculture.⁶ Referring to the definition set forth in the Act, the parties have agreed that, for purposes of this case, the “authority” is Empire Township.⁷ But according to Dakota County’s website, in order to remove a property from agricultural preserve, the landowner must file a notice with the County Recorder and Assessor.⁸

On August 11, 2000, G. George Doyle, general partner of the Doyle Farm Family Limited Partnership (“Doyle”) executed a properly notarized Notice Initiating Expiration of a Metropolitan Agricultural Preserve (the “Notice”).⁹ In item number 9 of the Notice, Doyle entered August 11, 2008 as the date of expiration of the agricultural preserve on

³ A-14 (Stip. ¶¶ 5,6).

⁴ A-14 (Stip. ¶ 7).

⁵ A-15 (Stip. ¶ 9).

⁶ See p. 12 of the Addendum to Appellant’s Brief (hereinafter “Add-___”).

⁷ A-15 (Stip. ¶ 10).

⁸ A-15 (Stip ¶ 11).

⁹ A-15 (Stip. ¶ 12).

the Property.¹⁰ The Notice was recorded in Dakota County Property Records on April 18, 2003.¹¹

On July 24, 2007, Fischer applied to Empire Township for a Mineral Extraction Interim Use Permit for the Property.¹² Fischer's application was approved on November 13, 2007, conditioned upon the termination of the agricultural preserve on the Property.¹³ Respondent County of Dakota (the "County") has taken the position that the termination will not occur until April 18, 2011, rather than August 11, 2008, eight years after Doyle executed the Notice on August 11, 2000.¹⁴ The County's refusal to authorize or acknowledge expiration of the agricultural preserve status on the Property on August 11, 2008 voids Fischer's conditional approval for a Mineral Extraction Permit from Empire Township and prevents Fischer from applying for a new permit until April 2010.¹⁵ Fischer loses its permit, must apply for a new one, and will lose nearly three years of ability to mine on its property.

ARGUMENT

I. STANDARD OF REVIEW

On appeal from the district court's denial of Fischer's claims for declaratory judgment, the Court of Appeals must apply a clearly erroneous standard to the factual findings, but review the district court's determination of questions of law de novo. *Rice*

¹⁰ A-15 (Stip. ¶ 12).

¹¹ A-15 (Stip. ¶ 12).

¹² A-16 (Stip. ¶ 13).

¹³ A-16 (Stip. ¶ 13).

¹⁴ A-12, ¶ 5.

¹⁵ A-16 (Stip. ¶ 14).

Lake Contracting Corp. v. Rust Env't & Infrastructure, Inc., 549 N.W.2d 96, 98-99 (Minn. App. 1996). The application of a statute to a set of undisputed facts is a question of law, and this Court is not bound to accept the district court's decision. *Davies v. W. Publ'g Co.*, 622 N.W.2d 836, 841 (Minn. Ct App. 2001). Where the material facts are undisputed, as here, the Court of Appeals does not need to defer to the district court's application of the law. *Hubred v. Control Data Corp.*, 442 N.W.2d 308, 310 (Minn. 1989).

II. WHEN THE LANGUAGE OF MINN. STAT. § 473H.08 IS GIVEN PROPER EFFECT, AN AGRICULTURAL PRESERVE EXPIRES ON THE DATE SET BY THE LANDOWNER ON THE NOTICE PRESCRIBED BY THE COMMISSIONER OF AGRICULTURE

The object of statutory interpretation is to ascertain and give effect to the legislature's intent. Minn. Stat. § 645.16 (2008). When determining the meaning of a statute, a court must look first to the plain language of the statute itself. *Am. Tower, L.P. v. City of Grant*, 636 N.W.2d 309, 312 (Minn. 2001). The pertinent text of § 473H.08 reads as follows:

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. Minn. Stat. § 473H.08, subd. 2.¹⁶

...

Notice to others. Upon receipt of the notice provided in subdivision 2...the authority shall forward the original notice

¹⁶ Add-12.

to the county recorder for recording, or to the registrar of titles if the land is registered, and shall notify the county auditor, county assessor, the Metropolitan Council, and the county soil and water conservation district of the date of expiration. Designation as an agricultural preserve and all benefits and limitations accruing through sections 473H.02 through 473H.17 for the preserve shall cease on the date of expiration. The restrictive covenant contained in the application shall terminate on the date of expiration. Minn. Stat. § 473H.08, subd. 4.¹⁷

The parties differ in their interpretations of § 473H.08 with respect to the actual date on which the agricultural preserve on Fischer's property expires. Because the agricultural preserve "terminate[s] on the date of expiration," which must be "at least eight years from the date of notice," the present controversy puts two of the provision's terms – "notice" and "date of expiration" – at issue.

"Notice" is not defined in the Act, but it acquires its meaning from the plain language of § 473H.08. When the same word is used in the same section of an act more than once and the meaning is clear as used in one place, the word must be construed to have the same meaning in the next place. *Twin Ports Oil Co. v. Pure Oil Co.*, 26 F.Supp. 366, 371 (D. Minn. 1939). In subdivision 2, the phrase "on a form provided by the commissioner of agriculture" immediately precedes the first use of the word "notice" and is an adjective phrase modifying and defining the word "notice" to mean the form that is provided by the commissioner of agriculture. Because the term's meaning is clear in the first instance, it must be consistently defined throughout the Act. The notice supplied by the commissioner of agriculture supports this interpretation where it states that the date of

¹⁷ Add-12.

expiration must be at least eight years from the last notarized date (i.e. the date of notice).¹⁸

The term “date of expiration” also acquires its meaning from its placement within and the context of § 473H.08. Subdivision 2 requires that the landowner state the date of expiration in the notice. Subdivision 4 states that the agricultural preserve will terminate on the date of expiration. Reading these statements together, the date of expiration is clearly the actual date of expiration stated on the notice. Any other interpretation makes the date of expiration a moving target and negates the ability of the landowner to set the date, thus not giving effect to all of the statute’s provisions.

Reading the terms “notice” and “date of expiration” in light of their proper meanings compels a finding that the agricultural preserve on Fischer’s property should have expired eight years from the date of the Notice, or August 11, 2008.

III. THE DISTRICT COURT ERRONEOUSLY CONSTRUED § 473H.08 TO FIND THAT THE DATE OF EXPIRATION OF THE AGRICULTURAL PRESERVE IS EIGHT YEARS AFTER THE DATE THE NOTICE WAS FILED IN DAKOTA COUNTY

The district court interpreted the language of § 473H.08 to mean that “an expiration does not occur until at least eight years after the Notice Initiating Expiration of a Metropolitan Agricultural Preserve is delivered to the authority.”¹⁹ The court then held that the agricultural preserve status on the Property will terminate on April 18, 2011, or eight years after the date the Notice was recorded in Dakota County. The district court’s interpretation is erroneous for four reasons. First, by focusing on the phrase “notifying

¹⁸ Add-11.

the authority” in making its determination, the court lost sight of the issue. Second, the court failed to consider the Act’s purpose as a whole in construing the language of § 473H.08. Third, the court improperly added a filing requirement to the Act. Finally, the court interpreted the Act in a manner which fails to give effect to all of its provisions.

A. The District Court’s Focus on the Phrase “Notifying the Authority” is Misplaced.

The present controversy involves the parties’ differing interpretations of the agricultural preserve’s date of expiration. There is no question that both Empire Township and the County have been on notice of the expiration since at least approximately six years ago. Because the issue is not whether the authority has been notified, but when the agricultural preserve expires, the phrase “notifying the authority” is irrelevant.

Even if the phrase “notifying the authority” was at issue, the district court’s holding is not consistent with the statute’s definition of “authority.” Empire Township, not Dakota County, is the authority in this case. The date on which the Notice was provided to or recorded with *the County* has no bearing on the date of expiration as defined in § 473H.08. As the authority, the Township is the proper party to raise any issues regarding lack of notification, but it has not done so. In fact, Empire Township has already issued its decision regarding the agricultural preserve on the Property by conditionally approving Fischer’s interim use permit. Although the Township’s decision

¹⁹ Add-4.

should have been final, the County's policy requiring the landowner to file notice with the County has created this ongoing controversy.

B. § 473H.08 Must be Construed in Light of the Act's Purpose as a Whole.

The district court ascertained that the "clear intent of the statute is that the authority and other agencies receive ample notice of expiration, namely eight years."²⁰

But the application of a statute must be determined in light of the statute's purpose as a whole. *Dahlberg v. Young*, 42 N.W.2d 570, 574 (Minn. 1950).

Under Minn. Stat. § 473H.05, an agricultural preserve can only come into existence upon the application of the property owner.²¹ The Act's purpose is plainly stated in § 473H.01 as follows:

Policy; purpose. It is the policy of the state to encourage the use and improvement of its agricultural lands for the production of food and other agricultural products. It is the purpose of sections 473H.02 to 473H.17 to provide an orderly means by which lands in the metropolitan area designated for long-term agricultural use through the local and regional planning processes will be taxed in an equitable manner reflecting the long-term singular use of the property, protected from unreasonably restrictive local and state regulation of normal farm practices, protected from indiscriminate and disruptive taking of farmlands through eminent domain actions, protected from the imposition of unnecessary special assessments, and given such additional protection and benefits as are needed to maintain viable productive farm operations in the metropolitan area.²²

²⁰ Add-3.

²¹ Add-13.

²² Add-15.

The Act's language and structure demonstrates an intent and purpose which is focused entirely on the interests of the landowner, not the state or local government.

One of the Act's purposes is to equitably tax agricultural preserve lands to reflect "the long-term singular use of the property." When construed in light of this purpose, the eight year period in § 473H.08 is meant to ensure long-term singular use of the property rather than to provide eight years of notice to the authority. The intent is for the property to remain in agricultural preserve for at least eight years. Two other provisions provide support for this interpretation. Minn. Stat. § 473H.07 permits the commencement of an agricultural preserve 30 days after the date of the landowner's application, suggesting that a minimal amount of time is necessary to prepare for a change in designation.²³ In addition, the last sentence of subdivision 2 in § 473H.08 allows the landowner to rescind notice and expiration for two years following the date of notice.

Based on the Act's overall purpose to protect and benefit those landowners who voluntarily enroll in the agricultural preserve program, it is clear that the purpose of § 473H.08 is to provide landowners with the opportunity to terminate those benefits and protections on the date stated in the notice, not to strictly require at least eight years notice to the authority.

C. § 473H.08 Does Not Require the Landowner to File Notice with the County.

When construing a statute, a court is forbidden from "adding words or meaning[s] to a statute that were intentionally or inadvertently left out. *Genin v. 1996 Mercury*

²³ Add-16.

Marquis, 622 N.W.2d 114, 117 (Minn. 2001). The County's procedures for terminating an agricultural preserve require the landowner to file notice with the County Recorder and Assessor. The district court approved these procedures by holding that the agricultural preserve on the Property will not terminate until eight years after the date the Notice was filed with the County. But the text of § 473H.08 does not impose any filing requirements on the landowner.

In giving effect to the Act, the court must constrain itself to the words actually contained in the Act itself. If the legislature had intended for a landowner to file notice with the County, it could have expressly included a filing requirement in the Act. Instead, subdivision 4 makes it the express duty of the authority to forward notice to the county recorder and other county officials. The district court erred in its decision to disregard the statutory text in favor of terms that are not actually contained therein.

D. The District Court's Interpretation Fails to Give Effect to All of the Act's Provisions.

A statute should be interpreted to give effect to all of its provisions. Minn. Stat. § 645.16. "Whenever possible, no word, phrase, or sentence should be deemed superfluous, void, or insignificant." *Vlahos v. R&I Constr. of Bloomington, Inc.*, 676 N.W.2d 672, 681 (Minn. 2004). By holding that the agricultural preserve does not expire until eight years after recording, the district court entirely ignored and rendered meaningless the language requiring the landowner to state the date of expiration and the term "date of expiration."

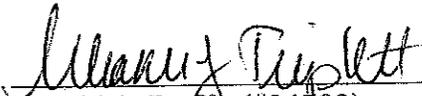
Under the district court's interpretation, the actual "date of expiration" could never be determined because the date stated in the notice is not likely to be exactly eight years from the filing date. In addition, the only requirement for setting the date is that it be *at least* eight years from the date of notice. Even if the notice was filed on the same day, the landowner could set the date further out than eight years. It is clear that the recording date is not meant to be determinative of the expiration date. The district court's decision to disregard the landowner's right to set the date of expiration for the agricultural preserve improperly strips the landowner of the control and protections intended by the legislature.

CONCLUSION

Based on the foregoing, the district court erred in denying Appellant's claims for declaratory relief and ordering that the agricultural preserve on Appellant's property will not expire until April 18, 2011. This Court should reverse the district court's December 18, 2008 Order and Judgment and determine that the agricultural preserve on Appellant's property expired on August 11, 2008.

Dated: March 13, 2009.

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CERTIFICATION

I hereby certify that this brief conforms to the requirements of Minn. R. Civ. App. P. 132.01, subs. 1 and 3, for a brief produced with a proportional font. The length of this brief is 2,939 words. This brief was prepared using Microsoft Word, Version 2003.


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