STATE OF MINNESOTA
IN COURT OF APPEALS
NO. A09-295

Fischer Sand & Aggregate, Inc.,

Appellant,

vs.

County of Dakota,

Respondent.

RESPONDENT'S BRIEF AND APPENDIX

Gerald S. Duffy (#24703)
Steven J. Weintraut (#251975)
Melanie J. Triplett (#0389038)
SIEGEL, BRILL, GREUPNER,
DUFFY & FOSTER, P.A.
1300 Washington Square
100 Washington Avenue South
Minneapolis, MN 55401
Telephone: (612) 337-6100

Attorneys for Appellant

JAMES C. BACKSTROM
DAKOTA COUNTY ATTORNEY
Michael R. Ring (#91820)
Dakota County Judicial Center
1560 Highway 55
Hastings, MN 55033
Telephone: (651) 438-4438

Attorneys for Respondent

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 ii

STATEMENT OF LEGAL ISSUES 1

STATEMENT OF PROCEDURAL HISTORY 1

STATEMENT OF THE FACTS 2

STANDARD OF REVIEW 5

ARGUMENT 6

THERE IS NO AMBIGUITY IN THE STATUTORY REQUIREMENTS 6

CONCLUSION 10

CERTIFICATION 10

APPENDIX 1 ..... A-1

TABLE OF AUTHORITIES

Cases

David Coalwell, et al v. John H. Murray, et al, 1996 Minn. App. LEXIS 905 (unpublished opinion, attached as Appendix 1) 8

Fingerhut Corp. v. Suburban Nat'l Bank, 460 N.W. 2d 63, 65 (Minn. App. 1990) 5

Frost-Benco Elec. Ass'n v. Minnesota Public Utility Commission, 358 N.W. 2d 639, 642 (Minn. 1984) 5

Gleason v. Geary, 214 Minn. 499, 8 N.W. 2d 808, 811-12 (Minn. 1943) 6

Hibbing Educ. Ass'n v. Public Employment Relations Bd., 369 N.W. 2d 527, 529 (Minn. 1985) 6

Hickok v. Margolis, 221 Minn. 480, 22 N.W. 2d 850, 852 (Minn. 1946) 6

Statutes

Minn. Stat.§471.705 8

Minn. Stat. §473H.02, subd. 2 8

Minn. Stat. §473H.08 ..... 1, 9

Minn. Stat. §473H.08, subd. 2 ..... 1, 7, 10

Minn. Stat. §473H.08, subd. 4 7

Minn. Stat. §645.16 ..... 6, 8, 9, 10

STATEMENT OF LEGAL ISSUES

1. Whether the language in Minn. Stat. §473H.08 requiring notice of intention to remove property from an agricultural preserve is ambiguous?

The Trial Court held in the negative.

2. Whether the undisputed facts establish that Appellant provided proper notice of intention to remove property from an agricultural preserve?

The Trial Court held in the negative.

STATEMENT OF PROCEDURAL HISTORY

Plaintiff commenced a declaratory judgment action against Dakota County seeking a declaration of the court regarding the proper interpretation of the requirement that a landowner provide notice of intention to remove land from agricultural preserve as set out in Minn. Stat. §473H.08, subd. 2. The matter was scheduled for court trial on November 6, 2008.

On October 3, 2008, a Stipulation of Facts signed by the attorneys for both parties was filed with the Clerk of District Court.

On November 6, 2008, the parties appeared together in the courtroom of the Honorable Richard G. Spicer and placed on the record the fact that the matter was to be decided by the court on the basis of the Stipulation of Facts submitted by the parties. In addition, each party was provided an opportunity to submit a written memorandum of law in support of their respective positions. Plaintiff's submission was filed with the court on

December 8, 2008. Dakota County's submission was filed with the court on December 12, 2008.

On December 18, 2008, the District Court entered judgment based on Findings of Fact, Conclusions of Law, Order and Judgment signed by Judge Spicer on December 17, 2008.

Plaintiff's Notice of Appeal to the Court of Appeals was served and filed on February 13, 2009.

Because the case was decided on stipulated facts and there is no transcript, Dakota County respectfully suggests that oral argument is not necessary to assist the Court in rendering a decision on this appeal.

STATEMENT OF THE FACTS

This case was decided on a set of facts agreed to by the parties and submitted to the court in an executed Stipulation of Facts. The trial court incorporated the Stipulation of Facts as its Findings of Fact, with the addition of one clause in one paragraph. In Finding of Fact No. 8, the trial court added the following clause, "In recognition of the business and operational reasons for Fischer's acquisition of the subject property,". The balance of Finding of Fact No. 8 is an exact duplicate of Stipulation No. 8 as agreed to by the parties. The additional clause does not change the substance or significance of this finding of fact. It is likely the result of transmitting an earlier draft of the stipulation to the trial court.

The Findings of Fact are recited here for the convenience of the Court:

FINDINGS OF FACT

1. Plaintiff, Fischer Sand & Aggregate, Inc., (hereinafter "Fischer" or "Plaintiff"), headquartered at 14698 Galaxie Avenue, Apple Valley, County of Dakota, State of Minnesota, is a Minnesota corporation in the business of producing, selling and distributing aggregate products, including gravel and sand.

2. Defendant, County of Dakota (hereinafter "County" or "Defendant") is a political subdivision of the State of Minnesota with its principal office at the Dakota County Administration Center, 1590 Highway 55, Hastings, Minnesota.

3. Venue for this declaratory judgment proceeding is proper in Dakota County District Court as the property that is the subject matter of this proceeding is located in Dakota County.

4. This action involves real property owned by Plaintiff, located in Empire Township, Dakota County, and legally described on Exhibit A, attached hereto and incorporated herein by reference.

5. On or about April 14, 2003, Fischer, through the execution of three purchase agreements, acquired 3 parcels of real property, and in particular the 320-acre property (the "Property") which is the subject of this proceeding.

6. At the time of acquisition, the Property was owned in various portions and interest by the Doyle Farm Family Limited Partnership, the D&R Doyle Family Limited Partnership and the D&K Doyle Family Limited Partnership (collectively the "Sellers").

7. At the time of acquisition, the Property was within the Agricultural Preserve Program, as governed by Minn. Stat. Chapt. 473H, et seq., otherwise known as the Metropolitan Agricultural Preserves Act ("MAPA").

8. In recognition of the business and operational reasons for Fischer's acquisition of the subject property, the purchase agreement contained language acknowledging that at the time of sale the property was designated Agricultural Preserve, and that, at the time of the sale, Sellers had not made the requisite application for removal of the property from the Agricultural Preserve Program, and that the terms and condition of the purchase agreement were contingent upon removal of the property from Agricultural Preservation to permit aggregate mining and processing operations on the subject property.

9. MAPA sets out the steps necessary to initiate expiration of an agricultural preserve by a landowner. The statute reads in part:

> "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 a 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."
>
> Subd. 4. Notice to others. Upon receipt of the notice provided in subdivision 2...the authority shall forward the original notice 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 to 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."

10. "The authority" mentioned in MAPA is defined in Minn. Stat. §473H.02, subd. 4. As "...the unit of government exercising planning and zoning authority for the land specified in an application as provided under section 473H.05 ..." the "authority" for the purposes of this proceeding is Empire Township.

11. The County's website at http://www.co.dakota.mn.us/HomeProperty/AssessingProperty/Programs/AgriculturalPreserves.htm states:

> "How do I get out of Agricultural Preserve? The owner(s) may file an 'Expiration Notice' at any time and file the Expiration with the County Recorder and Assessor. The local city/township may file an 'Expiration Notice' with the County Recorder and Assessor. Eight years after the Expiration Notice is filed, the property is out of Agricultural Preserve. A waiver of the eight-year requirement may be granted only by action of the Governor due to some emergency."

12. On April 18, 2003, a Notice Initiating Expiration of a Metropolitan Agricultural Preserve, on a proper form, was recorded in Dakota County Property Records as Document No. 2032471 attached hereto and incorporated herein as Exhibit B (the "Notice"). The Notice was executed on August 11, 2000, by G. George Doyle, general partner of Doyle Farm Family Limited Partnership, and contains a proper notarization of the signature. Paragraph 9 of the Notice states that the date of expiration of the agricultural preserve status on the Property is to be "8/11/08".

13. On July 24, 2007, Fischer made application with Empire Township for a Mineral Extraction Interim Use Permit for the Property and made accompanying application for a comprehensive Plan Amendment and for Rezoning of portions of the subject property to Mineral Extraction Overlay. On November 13, 2007, Fischer's Mineral Extraction Permit application was approved by Empire Township, conditioned upon Termination of the Agriculture Preserve on the subject property on or before August 11, 2008. Fischer's Comprehensive Plan amendment and Rezoning applications were also approved based on the same condition.

14. If the county refuses to authorize expiration of the agricultural preserve status on the Property on August 11, 2008, Fischer's Mineral Extraction Permit from Empire Township becomes null and void and, under the terms of the Township resolution adopted on November 13, 2007, Fischer will be prohibited from making a new application for mineral extraction until April, 2010.

15. Eight years after April 18, 2003, is April 18, 2011.

(See ADD-1, ADD-2 and ADD-3)

STANDARD OF REVIEW

When a case is decided on stipulated facts, the only issue on appeal is whether the district court erred in applying the law. Fingerhut Corp. v. Suburban Nat'l Bank, 460 N.W. 2d 63, 65 (Minn. App. 1990). Because this case involves a question of law, the appellate court need not defer to the decision of the district court. Frost-Benco Elec. Ass'n v. Minnesota Public Utility Commission, 358 N.W. 2d 639, 642 (Minn. 1984).

Statutory construction is a question of law and thus fully reviewable by this court. Hibbing Educ. Ass'n v. Public Employment Relations Bd., 369 N.W. 2d 527, 529 (Minn. 1985). The general rule is that where the language is unambiguous, the clearly expressed intent must be given effect, and there is no room for construction. Hickok v. Margolis, 221 Minn. 480, 22 N.W. 2d 850, 852 (Minn. 1946). Where the language is ambiguous, the statute must be construed in light of the general legislative purpose and the policy and object of the enactment should be considered on the subject viewed as a whole. Gleason v. Geary, 214 Minn. 499, 8 N.W. 2d 808, 811-12 (Minn. 1943).

ARGUMENT

THERE IS NO AMBIGUITY IN THE STATUTORY REQUIREMENTS

According to Minn. Stat. §645.16:

> The object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature. Every law shall be construed, if possible, to give effect to all its provisions. When the words of a law in their application to an existing situation are clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit.

As determined by the trial court, there is no ambiguity in the statute as it concerns this case. Notwithstanding the statutory requirement for eight years' notice of intent to remove land from an agricultural preserve, the trial court noted that accepting the Plaintiff/Appellant's position, "...if taken to its logical conclusion, would mean that the landowner could complete the form but not deliver it to the authority until all the way up

to one day before the expiration was to occur. But the clear intent of the statute is that the authority and other agencies receive ample notice of expiration, namely eight years." (ADD 3). Appellant's interpretation of the statute makes a mockery of the law. In essence, Appellant claims that if the correct piece of paper is signed by a landowner the requirements of the statute are met. (App. Brief, pg. 6).

The relevant portions of the Agricultural Preserve Act are noted in Finding of Fact No. 9. Minn. Stat. §473H.08, subd. 2, requires a landowner to "notify" the relevant land use Authority of its intention to remove land from an agricultural preserve and to indicate the date of expiration which shall be at least eight years from the date of notice. The "notice" may be rescinded by the landowner at any time during the first two years after notice.

Minnesota Statutes §473H.08, subd. 4, requires the land use Authority to forward that "notice" to the county recorder for recording, to the county auditor, the county assessor, the Metropolitan Council and the local soil and water conservation district. Appellant argues that the trial court improperly added a filing requirement to the law. (App. Brief pg. 8). Clearly, that is not accurate. As just cited, the law already contains a filing requirement. Until the land use Authority has been advised by a landowner of intent to terminate an agricultural preserve, there is no way for the Authority to become aware of the landowner's desire.

The statute seems to use the words "notify" and "notice" interchangeably. Dakota County argues that the words "notify" and "notice" are obviously meant to include

something more than just the paper form on which the information is printed. The trial court referred to Black's Law Dictionary to find that the word "notify" means to inform, communicate knowledge, or to make one aware of something. (ADD 4). That certainly seems to be a plain meaning of the action that would effectuate the intention of the legislature. The law allows a landowner to rescind the action to remove land from agricultural preserve status "...at any time during the first two years following notice." Minn. Stat. §473H.02, subd. 2. If a person does not communicate to another an intent to do something, such person cannot rescind that stated action within two years. There must be a date established from which to start the running of the two year period. Further, Appellant's position renders meaningless the legislative directive that notice be given to the public agencies specifically listed in the statute. As stated in Minn. Stat. §654.16, the object of statutory construction is to give effect to all provisions in a law.

In its decision in the case David Coalwell, et al v. John H. Murray, et al, 1996 Minn. App. LEXIS 905 (unpublished opinion, a copy of which is attached as Appendix 1) the Court of Appeals added the word "proper" to the notice requirement for meetings of public bodies. With regard to the notice of meetings required by Minn. Stat.§471.705, the court stated the following:

> The language "then no further notice is necessary" of subdivision 1c(d), when read in context with the provision requiring notice of special meetings can only mean that proper notice has already been given for the initial meeting. See Minn. Stat. §645.16 (1994) (every law shall be construed, if possible, to give effect to all its provisions). To qualify as a continued meeting, the statute requires that proper notice be given for the initial meeting, and then the time

> and place of the continued meeting should be established during the previous (duly noticed) meeting. Otherwise, as appellants accurately point out, a government body could hold one meeting in violation of the Open Meeting Law notice requirement, "continue" the meeting on multiple occasions, and forever have only one violation. The better reasoning and the spirit of the law leads us to conclude that if the initial meeting is improper, a continuation of that meeting carries the same problems.

In the context of the case currently before the Court, "proper" notice means not only that the correct paper form has been used, but also that the parties required by law to be given notice have actually received a copy of the paper form. There is no other way to give full effect to all of the provisions of Minn. Stat. §473H.08.

Appellant offers the Court no legally compelling reason to read out of the law the requirement that the notice to remove land from an agricultural preserve must be given to the local land use Authority and to the other public agencies listed in the statute. Further, Appellant ignores that portion of the trial court order that permits expiration of agricultural preserve status on the subject property as of April 18, 2011. (ADD-5) Appellant asserts hardship and injury caused by the County's interpretation of the statute. They claim that the Mineral Extraction Permit issued by Empire Township will become void or that a new permit must be obtained from Empire Township. (Appellant Brief, pg. 4) To the contrary, Finding of Fact No. 13 states that the Township only requires that the agricultural preserve status on the subject property be terminated on or before August 11, 2008. (A-16) That is five months after the date of expiration established by the court order. Finally, there is no mention in Minn. Stat. §645.16 and Appellant cites

no cases to support a claim that financial advantage or disadvantage is a factor to be considered in interpreting the meaning of a statute or legislative intent.

CONCLUSION

The facts of this case are undisputed. Based on the requirements set forth in Minn. Stat. §645.16 for judicial interpretation of legislative actions, this court should sustain the interpretation given to Minn. Stat. §473H.08, subd. 2 by the trial court as expressed in its Order of December 17, 2008.

Respectfully submitted,

Dated: April 30, 2009.

JAMES C. BACKSTROM
DAKOTA COUNTY ATTORNEY

By Michael R. Ring

Michael R. Ring
Assistant County Attorney
Attorney Registration No. 91820
Dakota County Judicial Center
1560 Highway 55
Hastings, MN 55033
Telephone: (651) 438-4438
Attorneys for Respondent County of Dakota

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 2,695 words. This brief was prepared using Microsoft Office Word 2007.

Michael R. Ring

O:\CIVIL\LIT\Appeals\A09-3 Respondent'sBrief doc