

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MUNICIPAL BOUNDARY ADJUSTMENT UNIT

In the Matter of the Petition for the
Detachment of Certain Land from the City
of Babbitt, Minnesota, Pursuant to Minn.
Stat. § 414.06 D-492

**ORDER ON MOTION
FOR SUMMARY DISPOSITION**

This proceeding was initiated on May 2, 2012, when 150 property owners (Petitioners) in the City of Babbitt (City), Minnesota, filed a Petition, pursuant to Minn. Stat. § 414.06, for detachment of 5,675 acres of property from the City. On February 15, 2013, the City filed a Motion for Dismissal/Summary Disposition, together with a supporting affidavit and exhibits. The City alleged that the Petition had not been signed by 75 percent of the property owners of the land to be detached, as required by Minn. Stat. § 414.06, subd. 1, and that the Administrative Law Judge (ALJ) therefore lacked jurisdiction over the subject matter of this proceeding. On February 28, 2013, the Petitioners filed Petitioners' Response to the City of Babbitt's Motion for Dismissal/Summary Disposition, together with a supporting affidavit and exhibit.

Angela Sipila, Attorney at Law, appeared on behalf of the Petitioners. Mitchell Brunfeldt, Colosimo, Patchin, Kearney & Brunfeldt, Ltd., appeared on behalf of City of Babbitt.

Based upon all of the records, files, and proceedings herein, and for the reasons set forth in the Memorandum that follows:

IT IS HEREBY ORDERED, that the City of Babbitt's Motion for Dismissal/Summary Disposition is DENIED.

Dated: March 13, 2013

s/Bruce H. Johnson
BRUCE H. JOHNSON
Administrative Law Judge

MEMORANDUM

I. Uncontested Facts

The property that the Petitioners propose to be detached consists of a tract of approximately 5,675-acres located in the northwest corner of the City.¹ Some years ago, the City established a cemetery, commonly known as the Argo Cemetery, on land that it owned within the property that the Petitioners propose to detach.

City Ordinance No. 161, dated June 8, 2001, established regulations on the use and maintenance of the Argo Cemetery. On June 3, 2002, that ordinance was amended by City Ordinance No. 165. On December 4, 2006, City Ordinance No. 161, as amended, was repealed and replaced by City Ordinance No. 188, which remains in effect.²

City Ordinance No. 188 generally provides for the administration and maintenance of the Argo Cemetery. Among other things, it contains the following specific provision regarding the sale and conveyance by the City of cemetery lots to individuals:

The Prices of Cemetery Lots shall be subject to change from time to time and set by Resolution by the City Council. Any person paying the price thus fixed for any lot shall be entitled to a deed conveying the same, which deed shall be executed by the Mayor and the City Clerk. *Such deed shall give the purchaser only the right of burial therein and shall be considered an easement privilege or license that restricts the use of the lot so conveyed to burial purposes.*³ [Emphasis supplied.]

Attachment B hereto accurately represents the form and content of Cemetery Deeds that the City has issued to purchasers of cemetery lots.⁴ The Cemetery Deeds issued by the City contain the following provisions:

Know all by These Presents: that the Argo Cemetery of the City of Babbitt in the County of St. Louis and State of Minnesota, in consideration of the sum of Five Hundred (\$500.00) dollars, to them in hand paid by [name of purchaser(s)] hereby grant, bargain, sell and convey (sic) until said party (sic) their heir and assigns forever the following described piece of land *as a place for the burial of the dead*, to wit: [Emphasis Supplied.]

* * *

¹ Property Owner Petition for Detachment of Property from a City ("Petition") at 2; Affidavit of Cathy Klegstad (Klegstad Affidavit) at ¶ 2.

² Babbitt City Ordinance No. 188, attached as Exhibit 1 to the Affidavit of Pamela Berens (Berens Affidavit) and also hereto as Attachment A.

³ *Id.*

⁴ Berens Affidavit at ¶ 4.

To have and to hold the same, subject to the laws of this State, now or hereafter enacted for the management and regulation of Cemeteries, and *also subject to all rules and by-laws of the Cemetery now or hereafter made, for the regulation of the affairs of the same or any part thereof.* [Emphasis supplied.]

It is hereby covenanted, that said hereby granted premises are free from all encumbrances, and that the title now conveyed is perfect, and that said City of Babbitt, Argo Cemetery will warrant and defend the same to said grantee, their heirs and assigns.⁵

Four hundred twelve persons own burial plots in the Argo Cemetery.⁶ If one includes those owners of burial plots, the total number of property owners in the property that the Petitioners propose to detach from the city would be 607, and 75 percent of that number would be 456, or more than the 150 property owners who have signed the Petition.

II. Owners of Burial Plots in the Argo Cemetery Are Not “Fee Owners” Within the Meaning of Minn. Stat. § 414.011, subd. 5.

A. Minn. Stat. § 414.06, subd. 1, requires that a petition for detachment be signed by 75% of the

Minn. Stat. § 414.06, subd. 1, provides:

Property which is situated within a municipality and abutting the municipal boundary, rural in character and not developed for urban residential, commercial, or industrial purposes may be detached from the municipality according to the following procedure. The proceeding may be initiated by submitting to the chief administrative law judge a resolution of the municipality to which the land is attached or by submitting to the chief administrative law judge a petition of all of the property owners of the land to be detached if the area is less than 40 acres or of 75 percent of the *property owners* if over 40 acres. [Emphasis supplied.]

The term “property owner” is further defined in Minn. Stat. § 414.011, subd. 5:

"Property owner" means the fee owner of land, or the beneficial owner of land whose interest is primarily one of possession and enjoyment. The term includes, but is not limited to, vendees under a contract for deed, and mortgagors. Any reference to a percentage of property owners shall mean in number.

Because the Cemetery Deeds expressly limit use of the property interest being conveyed to “burial of the dead,” the grantees do not obtain an interest that “is

⁵ Attachment B.

⁶ Klegstad Affidavit at ¶ 5.

primarily one of possession and enjoyment.” Minnesota Statutes does not further define the term “fee,” as it used with reference to real property. In fact, however, “fee” has a technical meaning in real property law, and Minn. Stat. § 645.08(1) provides that:

words and phrases are construed according to rules of grammar and according to their common and approved usage; *but technical words and phrases and such others as have acquired a special meaning, or are defined in this chapter, are construed according to such special meaning or their definition.* [Emphasis supplied.]

Black’s Law Dictionary defines “fee,” as that term is used in real property law, as

[a]n inheritable interest in land, constituting maximum legal ownership; esp. a fee simple absolute.⁷

“Fee simple” is further defined as:

[a]n interest in land that, being the broadest property interest allowed by law, endures until the current holder dies without heirs.⁸

Rather than conveying “maximum legal ownership” or “the broadest property interest allowed by law,” the deeds conveying interests in the Argo Cemetery expressly limit the holders from using the lots for any purpose other than burial of the dead.

Deeds to lots in the Argo Cemetery also do not convey more limited fee interests known as “fee simples conditional” or a “fee simples determinable.” The limitations in those forms of fees pertain to inheritance and not land use:

fee simple conditional. An estate restricted to some specified heirs, exclusive of others.⁹

fee simple determinable. An estate that will automatically end and revert to the grantor if some specified event occurs.¹⁰

In summary, the limited property interests that holders of Cemetery Deeds to lots in the Argo Cemetery do not meet the special technical meaning of “fees,” as that term is commonly understood in real property law.

⁷ *Black’s Law Dictionary* 629 (7th ed. 1999)

⁸ *Id.* at 630.

⁹ *Id.* at 631.

¹⁰ *Id.*

B. Deeds to cemetery lots in the Argo Cemetery incorporate the provisions of City Ordinance No. 188 and its predecessors.

Additionally, the Cemetery Deeds that the City has issued to purchasers of cemetery lots in the Argo Cemetery expressly provide that the property interests acquired by the grantees are “subject to all rules and by-laws of the Cemetery now or hereafter made, for the regulation of the affairs of the same or any part thereof.” Those rules include the provisions of City Ordinance No. 188 and its predecessors. Thus, purchasers of those cemetery lots were placed on notice of Section 3 of Ordinance No. 188, which reaffirms that they were obtaining something less than a fee interest in the property and which indicates that what they were obtaining was an interest that was more in the nature of an easement or license:

Such deed shall give the purchaser only the right of burial therein and shall be considered an easement privilege or license that restricts the use of the lot so conveyed to burial purposes.¹¹

III. Conclusion

For the reasons set forth above, the ALJ concludes that owners of cemetery lots in the Argo Cemetery are not “fee owners” within the meaning of Minn. Stat. § 414.011, subd. 5. They are therefore not “property owners” within the meaning of Minn. Stat. § 414.06, subd. 1, and they need not be counted in determining whether 75 percent of the owners of property to be detached have signed the Petition, as required by that subdivision. The City’s Motion for Dismissal/Summary Disposition must therefore be denied.

B. H. J.

¹¹ *Id.*