

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MUNICIPAL BOUNDARY ADJUSTMENT UNIT

In the Matter of D-496 Gilbert/Fayal
Township

ORDER ON MOTION TO DISMISS

This matter came before Administrative Law Judge Amy J. Chantry on the Motion to Dismiss filed by the City of Gilbert on May 2, 2013. The Petitioners filed their response on May 8, 2013. The City of Gilbert filed its response on May 17, 2013. The hearing record closed that day.

Mitchell J. Brunfelt, Colosimo, Patchin, Kearney & Brunfelt, appeared on behalf of the City of Gilbert (City).

Kelly Klun, Klun Law Firm, appeared on behalf of Petitioners Roy and Jodi Pontinen, James and Julie Jarvi, Tom and Jennifer Nemanich, and Robert and Mary Nanti (Petitioners).

Based upon all of the files, records, and proceedings herein, and for the reasons set forth in the accompanying Memorandum, the Administrative Law Judge makes the following:

ORDER

IT IS HEREBY ORDERED that:

- (1) The City of Gilbert's Motion to Dismiss is **DENIED**;
- (2) The Petitioner's Motion for Costs and Attorney's Fees is **DENIED**;
- (3) The matter shall be set for a hearing;
- (4) The City of Gilbert shall bear the cost of publication for the hearing.

Dated: July 1, 2013

s/Amy J. Chantry

AMY J. CHANTRY
Administrative Law Judge

MEMORANDUM

Facts

On July 3, 2012, the Petitioners in this matter filed a Petition for Detachment of 104.22 acres of land from the City.¹ The Petition identifies as to the area subject to proposed detachment, four parcels with eight property owners. Six individuals identifying themselves as property owners signed the Petition. The subject properties are legally described as follows:

Property 1: 060-0055-00200 (Robert and Mary Nanti)

Section 35 Township 58 Range 17

SW1/4 OF SE1/4 EX COMM AT NE COR OF FORTY THENCE S02DEG54'39"E ALONG E LINE 41.99 FT TO SWLY R.O.W. LINE OF CO HWY 97 AND PT OF BEG THENCE CONT S02DEG54'39"E ALONG E LINE 614.67 FT THENCE S87DEG05'21"W 250 FT THENCE N02DEG 54'39"W 669 FT TO N LINE OF FORTY THENCE N89DEG54'34"E ALONG N LINE 218.63 FT TO SW R.O.W. LINE THENCE S38DEG54'46"E ALONG R.O.W. 53.83 FT TO PT OF BEG & EX COMM AT NE COR OF FORTY THENCE S02DEG54'39"E ALONG E LINE 656.66 FT TO PT OF BEG THENCE CONT S02DEG54'39"E ALONG E LINE 118.38 FT THENCE S87DEG00'27"W 250 FT THENCE N02DEG54'39"W 118.74 FT THENCE N87DEG05'21"E 250 FT TO PT OF BEG **38.70 acres**

Property 2: 060-0055-00193 (Roy and Jodi Pontinen)

Section 35 Township 58 Range 17

PART OF NW1/4 OF SE1/4 LYING ELY OF WLY 370 FT & SWLY OF SWLY R/W LINE OF CTY RD 97 INC PART OF VAC OLD CTY RD 97 ADJ **11.71 acres**

Property 3: 060-0055-00190 (James and Julie Jarvi)

Section 35 Township 58 Range 17

NW1/4 OF SE1/4 LYING NELY OF HWY R.O.W. **13.81 acres**

Property 4: 060-0055-00180 (Tom and Jennifer Nemanich)

Section 35 Township 58 Range 17

NE1/4 OF SE1/4 **40.00 acres**²

It was discovered at the May 2, 2013, hearing that Jodi Pontinen was not a fee owner of one of the subject properties. Jodi Pontinen, however, was one of the six

¹ PROPERTY OWNER PETITION FOR DEATCHMENT OF PROPERTY FROM A CITY, filed July 3, 2012.

² *Id.*

individuals who executed the Petition. There is no dispute that the other five are fee owners. The five fee owners are: Roy Pontinen, James and Julie Jarvi, and Tom and Jennifer Nemanich. As a result, the City brought a Motion to Dismiss the Petition for Detachment, arguing that the Petitioners failed to have 75 percent of the property owners sign the Petition as required by Minn. Stat. § 414.06.

Analysis

Under Minn. Stat. § 414.06, when the detachment area is over 40 acres, property owners may initiate a proceeding for detachment of property from a municipality if 75 percent of the property owners submit a Petition seeking detachment. With only five out of the seven property owners signing the Petition for Detachment, only 71.4 percent of the property owners in the area being proposed for detachment would have signed the Petition. Therefore, the City asserts the Petitioners are unable to meet the threshold requirement of 75 percent of landowners.

The Petitioners argue that their Petition for Detachment meets the 75 percent requirement because even though Jodi Pontinen was not a fee owner at the time she signed the Petition, she constitutes a “beneficial owner” under Minn. Stat. § 414.011, subd. 5. Minn. Stat. § 414.011, subd 5, defines the term “property owner” as:

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.³

When interpreting a statute, a court must first determine whether a statute’s language, on its face, is ambiguous.⁴ A statute is only ambiguous when the language therein is subject to more than one reasonable interpretation.⁵ Words and phrases are to be construed according to their plain and ordinary meaning.⁶ Plain meaning presupposes the ordinary usage of words that are not technically used or statutorily defined, relies on accepted punctuation and syntax, and draws from the full-act context of the statutory provision.⁷

Although plain meaning is the governing principle in applying all statutory language, Minnesota courts will not give effect to the plain meaning if it produces an absurd result or an unreasonable result that is plainly at variance with the policy of the legislation as a whole.⁸ If the meaning of the statutory language is not plain, courts resolve ambiguity by looking to legislative intent, agency interpretation, and principles of continuity which include consistency with laws on the same or similar subjects.⁹ The

³ Minn. Stat. § 414.011, subd. 5.

⁴ See *Amaral v. St. Cloud Hosp.*, 598 N.W.2d 379, 384 (Minn. 1999).

⁵ *Id.*

⁶ *Frank’s Nursery Sales, Inc. v. City of Roseville*, 295 N.W. 2d 604, 608 (Minn. 1980).

⁷ *Am. Tower, L.P.v. City of Grant*, 636 N.W.2d 309, 312 (Minn. 2001).

⁸ *Olson v. Ford Motor Co.*, 558 N.W.2d 491, 494 (Minn. 1997).

⁹ Minn. Stat. § 645.16 (2012).

test for ambiguity is whether the statutory language has more than one reasonable interpretation.¹⁰

In 1978, the Minnesota Legislature altered Minn. Stat. § 414.011, subd. 5, by deleting “in contemplation of ultimate ownership” from the beneficial owner portion of the definition of property owner. In doing so, the Minnesota Legislature reinforced the idea that possession and use were to be the touchstones of the statutory requirement of Minn. Stat. § 414.011, subd. 5. Contractual relationship arrangements can afford possession and use of property over and above that of a fee owner and result in recognition of beneficial ownership without fee ownership.¹¹

Jodi Pontinen and Roy Pontinen are husband and wife. Jodi Pontinen was afforded possession and enjoyment of the property because of her marriage relationship with Roy Pontinen. In *Blee v. City of Rochester*, the Minnesota Supreme Court noted:

The word ‘owner’ has no technical meaning, but its definition will contract or expand according to the subject matter to which it is applied. As used in statutes it is given the widest variety of construction, usually guided in some measure by the object sought to be accomplished in the particular instance.¹²

While Ms. Pontinen was not a fee owner of the property, she was in possession of the property at the time she signed the Petition for Detachment. Since she was in possession, she had the right to exercise dominion and control over the property. She could also use the property for her own enjoyment. Thus, she constitutes a beneficial owner under Minn. Stat. § 414.011, subd 5.

Since Ms. Pontinen is a beneficial owner, the Petitioners have the required 75 percent of property owners joining in the Petition as required by Minn. Stat. § 414.06. The matter, therefore, may proceed to a hearing. In addition, since the May 2, 2013, hearing, Jodi Pontinen is now a fee owner. Roy Pontinen conveyed and recorded a quitclaim deed to himself and Jodi Pontinen.¹³

Attorney’s Fees and Costs

As part of Petitioners’ Memorandum of Law, they requested that the Administrative Law Judge award them costs associated with the May 2, 2013, hearing, attorney’s fees, and future administrative costs. Petitioners assert that Minn. R. 1400.8401 allows for such an award. However, the Petitioners reliance on Minn.

¹⁰ *Tuma v. Comm’r of Econ. Sec.*, 386 N.W.2d 702, 706 (Minn. 1986).

¹¹ See *Federated Retail Holdings, Inc. v. County of Ramsey*, A11-2013 (Minn. September 19, 2012) (holding that a leasehold interest can run with the land where there is: (1) privity of estate; (2) a covenant that touches the land; and (3) the ability and fact of assignment.).

¹² *Blee v. City of Rochester*, 109 N.W. 2d 44 (Minn. 1961).

¹³ Ex. E.

R. 1400.8401 is misplaced. Minn. R. 1400.8401 implements petitions under the Minnesota Equal Access to Justice Act, Minn. Stat. §§ 15.471 to 15.474 (MEAJA).

MEAJA only allows an Administrative Law Judge to award attorney's fees and costs where a state agency has taken a position in a contested case proceeding brought by that agency where: (1) the nonstate party has prevailed, and (2) the state agency's position in that contested case is "not substantially justified."¹⁴ MEAJA does not apply to detachment proceedings brought by private parties before the MBAU. Since this case involves Petitioners who are private citizens and the City of Gilbert, which is a municipality, the Petitioners' requests for reimbursement for their attorney's fees and costs is denied.

A. J. C.

¹⁴ Minn. Stat. § 15.472(a).