

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF LABOR AND INDUSTRY

In the Matter of the Administrative Order
Issued to Wright County

**ORDER ON PETITION
TO INTERVENE**

This matter is before Administrative Law Judge Kathleen D. Sheehy on the Petition of Corinna Township to Intervene in this Proceeding. The motion was filed February 20, 2009. The motion record closed on March 20, 2009, upon receipt of Wright County's objection to the Township's submission of briefs on the merits of the pending cross motions for summary disposition by Wright County and the Department.

Scott T. Anderson, Esq., Ratwik, Roszak & Maloney, P.A., 730 Second Avenue South, Suite 300, Minneapolis, MN 55402, appeared for Wright County (the County or Respondent). Christopher M. Kaisershot, Assistant Attorney General, Suite 1200, 445 Minnesota Street, St. Paul, MN 55101-2130, appeared for the Department of Labor and Industry (Department). Peter B. Tiede, Esq., and Cally E. Swanson, Esq., Murnane Brandt, 30 East Seventh Street, Suite 3200, St. Paul, MN 55101-4919, appeared for Corinna Township (Petitioner/Intervenor).

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:

1. That the Petition to Intervene of Corinna Township is GRANTED, and Corinna Township shall be considered a party to this matter. Its participation shall be limited, however, to the submission of briefs on the issues identified in the cross motions for summary disposition filed by the County and the Department; and
2. Respondent shall file a written response to the Township's briefs, on the merits of the legal issues addressed in the pending motions for summary disposition, by April 20, 2009.

Dated: April 10, 2009

s/Kathleen D. Sheehy

KATHLEEN D. SHEEHY
Administrative Law Judge

MEMORANDUM

Procedural Background

Wright County has issued building permits for townships within the County for many years. In August 2008, Corinna Township adopted the Minnesota State Building Code and notified the Department and the County that it had appointed a Certified Building Official. Shortly thereafter, the Department accepted the appointment of the Township's certified building official. The County declined to recognize the Township's authority to issue building permits.¹ In September 2008, the Township brought a declaratory judgment action in Wright County district court, seeking a declaratory judgment that it has sole authority to issue building permits. The Department is not a party to that action.

In October 2008, the Department issued a Cease and Desist Order to the County, directing it to cease and desist from administering the State Building Code in Corinna Township. The County requested a hearing on the cease and desist order, in response to which the Commissioner issued a Notice and Order for Hearing in October 2008. In the course of the contested case proceeding, the Department and the County agreed to resolve the legal issues by submission of cross motions for summary disposition. They filed their cross motions for summary disposition on February 20, 2009.

On the same day, Corinna Township filed a Notice of Motion and Motion to Intervene with Petition to Intervene, and a Memorandum opposing the County's earlier motion to dismiss. On February 27, 2009, the County filed its memorandum in opposition to Corinna Township's Petition to Intervene and a Motion to Strike Corinna Township's Memorandum Opposing Respondent's Motion to Dismiss.

On March 11, 2009, Corinna Township filed its Memorandum of Law, and the Department filed a letter brief opposing the County's Motion for Summary Disposition. The Department does not oppose the Township's Petition to Intervene, maintaining that this action directly affects the Township's rights and duty to enforce the Building Code within its jurisdiction without interference from the County. On March 20, 2009, Respondent noted its objection to the Township's submission opposing its Motion for Summary Disposition, because the Township had not been granted permission to intervene.

¹ It is unclear to the Administrative Law Judge whether the County recognizes the Township's authority to administer the building code in areas other than those subject to the County's shoreland management ordinance. In any event, it is clear that the County does not recognize the Township's authority to issue building permits in shoreland areas.

Petition for Intervention

Corinna Township has petitioned to intervene pursuant to Minn. R. 1400.6200, subp. 1.² To justify intervention, a party must demonstrate how its legal rights, duties, or privileges may be affected by the outcome of the contested case. The judge “shall” allow intervention upon a proper showing pursuant to subpart 1 unless the judge finds that the petitioner’s interest is adequately represented by one or more parties participating in the case.³ The Township maintains that its rights and duties to administer building permits within the Township are directly affected by this contested case. The Township seeks the opportunity to present its view of the statutes and rules that govern the exercise of permitting authority.

In opposing the Petition, the County argues that it is not claiming in this proceeding that the Township has no power to issue building permits. Instead, the County argues, it is challenging the Department’s authority to intervene in the dispute by ordering the County not to administer the building code within the Township.⁴ The County also contends that the Department can adequately protect the Township’s interests in this proceeding.

The interests of the Department and the Township may be aligned at present, but they are not identical. And although not directly at issue here, the Township’s authority to issue building permits will certainly be impacted by any decision to either affirm or rescind the Department’s cease and desist order. The Township has adequately demonstrated that its legal rights, duties, and privileges may be affected by the outcome of this case, that the Department cannot adequately protect its interests, and that its Petition to Intervene should be granted. The Township’s participation will be limited, however, to the submission of briefs on the legal issues identified by the County and the Department.

Because the Township’s Petition to Intervene has been granted, its submissions concerning the issues raised in the cross motions for summary disposition will be considered. The County has requested additional time to respond to the Township’s legal arguments, and it may have until April 20, 2009, to do so.

K. D. S.

² Unless otherwise noted, rules are cited to Minnesota Rules, 2007 Edition.

³ Minn. R. 1400.6200, subp. 3.

⁴ Wright County’s Memorandum of Law in Opposition to Corinna Township’s Petition to Intervene, at 3.