Case type: Forfeiture

STATE OF MINNESOTA | DISTRICT COURT

COUNTY OF ST. LOUIS | SIXTH JUDICIAL DISTRICT

Paul King, Copasetic, Inc., Dr. Eric Ringsred, and Temple Corp Inc.,

Plaintiffs,

v.

County of St. Louis, Duluth Economic Development Authority, and State of Minnesota Commissioner of Management and Budget Myron Frans,

Defendants.

Judge: Honorable Jill Eichenwald

Court File No.: 69DU-CV-17-529

PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT

INTRODUCTION

This is an action by Plaintiffs Paul King ("King"), Copasetic, Inc. ("Copasetic"), Dr. Eric Ringsred ("Dr. Ringsred"), and Temple Corp Inc. ("Temple Corp") who are the former owners or parties at interest of a tax-forfeited property known herein as the Pastoret Terrace and Paul Robeson Ballroom (the "Property"), challenging the acquisition and ownership of said Property by Defendants St. Louis County ("County") and the Duluth Economic Development Authority ("DEDA").

Plaintiffs assert their challenge on several grounds, one of which is the subject of this Motion for Partial Summary Judgement – namely that the Property was sold by Defendant County to Defendant DEDA at "less than market value" contrary to the provisions of Minn. Stat. § 282.01 Subd. 1a(d).

STATEMENT OF THE ISSUES

1. Did the Sale of the Pastoret Terrace Property by Defendant St. Louis County to Defendant DEDA at a price below market value fail to comply with Minn. Stat. § 282.01 Subd. 1a(d) because there was no "specific plan" for the Property?

2. Did the Sale of the Pastoret Terrace Property fail to comply with Minn. Stat. 282.01 Subd. 1a(d) because the St. Louis County Board approved sale of the Property without factual support that "a reduced price is in the public interest because a reduced price is necessary to provide an incentive to correct the blighted conditions that make the lands undesirable in the open market, or the reduced price will lead to the development of affordable housing" as required to comply with Minn. Stat. § 282.01 Subd. 1a(d) ?

RECORD UPON WHICH THIS MOTION IS MADE

This Motion for Partial Summary Judgment rests on all the previous pleadings and submissions of the parties, and the following affidavits and exhibits submitted in support of Plaintiffs' Memorandum of Law in Support of its Motion for Partial Summary Judgment:

- Exhibit A- St. Louis County Board Resolution No. 16-168 (March 8, 2016) authorizing the Board to place the Pastoret Terrace Property on List (of properties withheld from repurchase by taxpayer).

- Exhibit B- St. Louis County Board Resolution No. 16-478 (July 26, 2016) approving sale of the Pastoret Terrace Property to DEDA for $75,000.

- Exhibit C- DEDA Resolution No.16D-25 (June 22, 2016) authorizing DEDA to purchase the Pastoret Terrace Property at a price of $75,000.

- Exhibit D- St. Louis County Board Resolution No. 17-243 Correction.

- Exhibit E- Letter from DEDA Director Heather Rand to St. Louis County Administrator Kevin Gray dated September 9th, 2016 ("Letter") explaining DEDA's plans for the Property ("DEDA's Plans").

- Exhibit F- Transcript of testimony of DEDA Director Keith Hamre taken in the 6th Judicial District Case # 69DU-CV-18-953 (April 24, 2019).

- Exhibit G- Real Estate listing of the Property by DEDA at a price of $238,100.

- Exhibit H- Copy of Unpublished Opinion for Court of Appeals in *King v. Cty. of St. Louis*, No. A18-0041, 2018 WL 4397587.

BACKGROUND FACTS

This case involves the disposition of the Property after its tax-forfeiture in 2015. Subsequent to the tax forfeiture Defendant County Board of Commissioners held a meeting on March 8, 2016 in which it resolved to place the Property on the forfeited lands list (Exhibit A) and a meeting on July 26, 2016 in which it resolved to sell the Property to Defendant DEDA at less than market value ("Sale") (Exhibit B). The Sale is the subject of Plaintiffs' instant Motion for Partial Summary Judgment.

UNDISPUTED MATERIAL FACTS

The following are undisputed facts which support Plaintiffs' Motion for Partial Summary Judgment :

1. On July 26, 2016 Defendant County Board adopted Resolution Resolution No. 16-478 pursuant to Minn. Stat. § 282.01, Subd. 1a(d) which approved the sale of the Pastoret Terrace Property to Defendant DEDA for $75,000. (Exhibit B).

   Minn. Stat. 282.01 Subd. 1a(d) as cited in Exhibit B states in pertinent part:

   Nonconservation tax-forfeited lands may be sold by the county board to an organized or incorporated governmental subdivision of the state or state agency for less than their market value if:

   > (1) the county board determines that a sale at a reduced price is in the public interest because a reduced price is necessary to provide an incentive to correct the blighted conditions that make the lands undesirable in the open market, or the reduced price will lead to the development of affordable housing; and
   >
   > (2) the governmental subdivision or state agency has documented its specific plans for correcting the blighted conditions or developing affordable housing, and the specific law or laws that empower it to acquire real property in furtherance of the plans.

2. In Resolution No. 16-478 (Exhibit B) and the concurrent deliberations of the County Board there are no facts on record to establish that DEDA had "specific plans" for the Property as required by the statute.

3. In Resolution No. 16-478 (Exhibit B) and the concurrent deliberations of the County Board there are no facts on record to establish that "the county board determines that a sale at a reduced price is in the public interest because a reduced price is necessary to

provide an incentive to correct the blighted conditions that make the lands undesirable in the open market, or the reduced price will lead to the development of affordable housing" as required by the statute.

4. A Letter from DEDA Director Heather Rand was submitted to St. Louis County Administrator Kevin Gray on September 9th, 2016 explaining DEDA's non-specific plans for the Property. (Exhibit E).

5. The Letter from DEDA occurred six weeks after St. Louis County approved the sale of the Property. The Letter contains no "specific plans", and no reasons why a reduced price was necessary to correct the "blighted conditions".

6. There is nothing on the record to suggest that the Letter was seen or evaluated by the County Board.

7. DEDA Director Keith Hamre explicitly stated that DEDA's Plans provided to Defendant County on September 9, 2016 were "not specific plans". (Exhibit F p. 164, 6-8; 169, 19-21).

8. DEDA subsequently made no use of the reduced price to "correct blighted conditions" or "develop affordable housing". After purchasing the Property at the reduced price of $75,000 (Exhibit C), DEDA turned around and marketed the Property at a price of $238,100 (Exhibit G).

STANDARD OF REVIEW

The standard of review for a motion for summary judgment is well established. Minn. R. Civ. P., Rule 56.03 is designed to "implement the stated purpose of the rules -securing a just, speedy, and inexpensive determination of an action- by allowing a court to dispose of an action on the merits if there is no genuine dispute regarding the material facts, and a party is entitled to judgment under the law applicable to such facts." *DLH, Inc. v. Russ*, 566 N.W.2d 60, 69 (Minn. 1997), Minn. R. Civ. P. 56.03. A "genuine issue" of "material fact" for trial "must be established by substantial evidence," which "refers to legal sufficiency and not quantum of evidence." *DLH, Inc. v. Russ*, 566 N.W.2d at 69, citing *Murphy v. Country House, Inc.,* 240 N.W.2d 507, 512 (1976). "A fact is material if its resolution will affect the outcome of the case." *O'Malley v. Ulland Bros.*, 549 N.W.2d 889, 892 (Minn.1996). There is no genuine issue of material fact unless the

nonmoving party presents evidence which is sufficiently probative with respect to an essential element of the nonmoving party's case to permit reasonable persons to draw different conclusions. *DLH, Inc. v. Russ*, 566 N.W.2d at 70.

While the court must view the facts in a light most favorable to the nonmoving party, the nonmoving party may not simply rely upon his general statements of fact or averments in his pleadings to defeat the summary judgment. *Thiele v. Stich*, 425 N.W.2d 580, 583 (Minn. 1980) citing *Celotex Corp. v. Catrett*, 477 U.S.317 (1986). The court must grant the motion when:

> the nonmoving party presents evidence which merely creates a metaphysical doubt as to a factual issue and which is not sufficiently probative with respect to an essential element of the nonmoving party's case to permit reasonable persons to draw different conclusions.
>
> DLH, 566 N.W.2nd at 71.

ARGUMENT

I. THE DECISION OF THE ST. LOUIS COUNTY BOARD TO SELL THE PROPERTY TO DEDA WAS "IN EXCESS OF STATUTORY AUTHORITY"; "WITHOUT A FACTUAL BASIS"; AND AN "ABUSE OF DISCRETION".

A. "In Excess Of Statutory Authority" because there was no "specific plan" for the Property

The decision of the St. Louis County board to sell the Pastoret to DEDA at a price below market value has been determined in this case by the Court of Appeals to be legislative in nature. *See* Exhibit H, *King v. Cty. of St. Louis*, No. A18-0041, 2018 WL 4397587, at *5 (Minn. Ct. App. Sept. 17, 2018), *review denied* (Nov. 27, 2018) (concluding "that the decision to sell the property to DEDA was not a quasi-judicial decision.").

The Standard of review by this Court therefore, is whether the Board's decision "exceeds statutory authority" or was "an abuse of discretion". *St. Paul Area Chamber of Commerce v. Minnesota Pub. Serv. Comm'n*, 312 Minn. 250, N.W.2d 350, 354 (1977).

In the present case, the "statutory authority" which Defendants exceeded is Minn. Stat. §

282.01, Subd. 1a(d) which requires "specific plans" when tax forfeit property is purchased below market value, as occurred when DEDA purchased the Pastoret Property from St. Louis County:

> Nonconservation tax-forfeited lands may be sold by the county board to an organized or incorporated governmental subdivision of the state or state agency for less than their market value if:
>
> > (1) the county board determines that a sale at a reduced price is in the public interest because a reduced price is necessary to provide an incentive to correct the blighted conditions that make the lands undesirable in the open market, or the reduced price will lead to the development of affordable housing; and
> >
> > (2) the governmental subdivision or state agency has documented its specific plans for correcting the blighted conditions or developing affordable housing, and the specific law or laws that empower it to acquire real property in furtherance of the plans.
>
> Minn. Stat. § 282.01, Subd. 1a(d)

This Court is obligated to review the County's decision to sell the Property at below market value in light of the facts before the County at the time of the decision, on July 26, 2016.

> "The second statement in Zylka has been reaffirmed and expanded in subsequent cases. In Inland Construction Co. v. City of Bloomington, 292 Minn. 374, 195 N.W.2d 558 (1972), this court held that a trial court erred in sustaining the city council's denial of a conditional-use permit for a shopping center where the court had based its findings on reasons not articulated by the city council. In Metro 500, Inc. v. City of Brooklyn Park, 297 Minn. 294, 211 N.W.2d 358 (1973), this court refused to rely on reasons for denial which apparently had some basis in the record, but were not formally articulated by the city council as reasons for denial. We stated:
>
> > 'We cannot find any evidence that would support a finding by the trial court that the council, contemporaneously with the denial of the special permit, found or gave as reasons for that denial that the proposed filling station would seriously depreciate surrounding property values or would cause serious traffic congestion. It follows that any finding by the trial court to the contrary would be clearly erroneous.' 297 Minn. 303, 211 N.W.2d 364.'
>
> *Corwine v. Crow Wing Cty.*, 309 Minn. 345, 350–51, 244 N.W.2d 482, 485 (1976), *overruled* (on other grounds) *by Nw. Coll. v. City of Arden Hills, 281 N.W.2d 865 (Minn. 1979).*

The Court has further emphasized in other cases, its requirement that findings must be

"contemporaneous" to justify municipal decision making, and explained its reasoning for such a requirement:

> "In a most recent case, Main Realty, Inc. v. Pagel, Minn., 208 N.W.2d 758, 760 (1973), we stated:
>
> > 'In recent years a number of cases have articulated the perimeters of municipal authority in granting or denying permits of this kind. In Zylka v. City of Crystal, 283 Minn. 192, 199, 167 N.W.2d 45, 51 (1969), we alluded to 'the danger of permitting the council to deny a special-use permit without contemporaneous findings or reasons and then permit its members after several months of thought to present reasons perhaps totally unrelated to the actual reasons for denying the permit.' Where the requested use is consistent with those authorized by zoning ordinance, the permit may not be denied unless there is a showing that the public health, safety, or welfare is in danger. Twin City Red Barn, Inc. v. City of St. Paul, 291 Minn. 548, 192 N.W.2d 189 (1971). We have held that the failure of the council to record contemporaneously a legally sufficient basis for its determination constitutes a prima facie showing of arbitrariness. Inland Const. Co. v. City of Bloomington, 292 Minn. 374, 392, 195 N.W.2d 558, 569 (1972). *(emphasis added).*
> >
> > 'We are not impressed by the vague references in the council minutes to the 'health, welfare, and safety for the people of Woodbury' as justification for denying the permit without an articulation by the council of the factual basis and reasons for that determination. Enright v. City of Bloomington, 295 Minn. 186, 190, 203 N.W.2d 396, 399 (1973); Hay v. Township of Grow, Minn., 206 N.W.2d 19 (1973).'
>
> *Metro 500, Inc. v. City of Brooklyn Park*, 297 Minn. 294, 299–300, 211 N.W.2d 358, 362 (1973).

At the time of the decision by the County Board on July 26, 2016 there were literally no facts presented or considered by the County Board in making its decision as to whether a "specific plan" existed as required by Statute.

However, in September 2016, after the decision to sell had already been made by the County, DEDA got around to sending the County a post hoc justification for the sale and purchase below market value. This occurred in the form of a Letter (Exhibit E) which purported to outline DEDA's "specific plans" for the Property. There are three problems with this Letter:

1) It came after the County Board had already made its decision; in fact six weeks after the decision. It cannot serve as a basis for that decision.

2) There is no evidence on the record that the Letter was ever seen or considered by the County Board.

3) The Letter does not provide a "specific plan" as required by statute.

It is undisputed that in the Letter, Defendant DEDA has stated that the development of the property will include, "either the redevelopment of or the demolition of the existing structure", and that "the exact nature of the final redevelopment of the Property is not known at this time.". (*Exhibit E*).

Moreover, it is undisputed that Defendant DEDA by its director Keith Hamre, when questioned under oath as to whether the Letter submitted to Defendant County consisted of "specific plans or general plans", answered that they were "general plans to first try to provide ideas and options that a developer or development team would be looking at to consider…." (*Exhibit F, p. 164, 6-8*). Further, when asked "[w]as there any specific plan in place when you were going to purchase this property to develop it" Mr. Hamre replied under oath "[n]o, there was not." (*Exhibit F, p. 169, 19-21*).

B. **The decision of the County Board was made "without factual basis" to establish that a sale at below market value was "necessary to provide an incentive to correct blighted conditions"**

"Despite a municipality's broad discretionary power, however, the reviewing court may reverse the municipality's decision if its reasons are 'legally insufficient or if the decision is without factual basis.' *Amoco Oil Co. v. City of Minneapolis,* 395 N.W.2d 115, 117 (Minn.App.1986). *Clear Channel Outdoor Advert., Inc. v. City of St. Paul*, 675 N.W.2d 343, 346 (Minn. Ct. App. 2004).

Not only was the County's decision to sell the Property below market value "legally

insufficient" without "specific plans" as established above, but also it was not supported by any facts to justify the other requirements of Minn. Stat. § 282.01, Subd. 1a(d) that:

> (1) the county board determines that a sale at a reduced price is in the public interest because a reduced price is necessary to provide an incentive to correct the blighted conditions that make the lands undesirable in the open market, or the reduced price will lead to the development of affordable housing;

Defendant County's Resolution makes no mention of the conditions of the property nor any plan to correct a blighted condition or develop affordable housing. Defendant County's Resolution and deliberations provide no factual basis, nor any discussion at all, for their determination that "a reduced price is necessary to provide an incentive to correct the blighted conditions".

To make matters worse, it is undisputed that Defendant DEDA after purchasing the Property for $75,000 subsequently failed to utilize the reduced price to correct blighted conditions, but rather turned around and placed the property on the real estate market for a price of $238,100. (Exhibit G).

C. **The Decision of the County Board was "Arbitrary" and "An Abuse Of Discretion"**

"Abuse of Discretion" is defined by Minnesota law as a decision that "misapplies the law" or is "unsupported by the record":

> Among other ways, a district court abuses its discretion if it acts against logic and the facts on record, or if it enters fact findings that are unsupported by the record, or if it misapplies the law.
>
> *In re Adoption of T.A.M.*, 791 N.W.2d 573, 578 (Minn. App. 2010) (internal quotation marks and citations omitted).
>
> A district court abuses its discretion when it makes findings unsupported by the evidence or when it improperly applies the law.
>
> *Hemmingsen v. Hemmingsen*, 767 N.W.2d 711, 716 (Minn. App. 2009), review granted (Minn. Sept. 29, 2009), appeal dismissed (Minn. Feb. 1, 2010); see Dobrin v. Dobrin, 569 N.W.2d 199, 202 & n.3 (Minn. 1997).
>
> "Arbitrary" is defined similar to "abuse of discretion" as a decision without a record of the

factual basis contemporaneous with the decision. Otherwise a decision might be based only on "the mere individual whim" of the board members, as noted in *Corwine*, wherein the Supreme Court has clarified its reasoning:

> "Second, the court held that a prima facie case of arbitrariness was made out when a decision-making body failed to record legally sufficient reasons for its decision:
>
> > 'It is undisputed that in passing upon plaintiff's application neither body preserved any record of the hearing before it, made any findings of fact, or recorded any reason or reasons for its action. When plaintiff established this in his case in chief, the trial court had no choice but to conclude that a prima facie case of arbitrariness had been established. Surely, where nothing more appears than that the council denied the application after a hearing before and upon recommendation of its planning commission, there is no sufficient evidentiary basis for a court to infer that the council's action was reached upon a consideration of the facts and was based upon reason rather than the mere individual whim of the council members. While plaintiff, indeed, has the burden to show arbitrariness, the failure of the council to record any legally sufficient basis for its determination at the time it acted made a prima facie showing of arbitrariness inevitable.' 283 Minn. 198, 167 N.W.2d 50. (Zylka v. City of Crystal, 283 Minn. 192, 167 N.W.2d 45 (1969).
>
> *Corwine v. Crow Wing Cty.*, 309 Minn. 345, 349–50, 244 N.W.2d 482, 484–85 (1976), *overruled by Nw. Coll. v. City of Arden Hills*, 281 N.W.2d 865 (Minn. 1979)

As noted and evidenced above, Defendants "misapplied the law" when the Property was sold contrary to the Statute at below market value, and thus abused their discretion in that manner. And in addition, discretion was also abused by the absence on the record of any facts to serve as a basis for them to decide that "a reduced price is necessary to provide an incentive to correct the blighted conditions that make the lands undesirable in the open market ". The County's decision was "unsupported by the record" and unreviewable by any Court. Without a factual basis, the Board's decision by definition was "an abuse of discretion".

CONCLUSION

For the foregoing reasons, Plaintiffs request this Court grant Plaintiffs' Motion for Partial Summary Judgment pursuant to Minn. R. Civ. P., Rule 56.

Plaintiffs ask this Court to declare that there was "no specific plan" for the Property when Defendant St. Louis County Board made its decision to sell the Pastoret Property to Defendant DEDA at below market value.

Plaintiffs further ask this Court to declare that Defendant St Louis County failed to record any factual basis to "determine that a sale at a reduced price is in the public interest because a reduced price is necessary to provide an incentive to correct the blighted conditions that make the lands undesirable in the open market, or the reduced price will lead to the development of affordable housing".

This Court has ample and multiple reasons to declare that the County's decision to sell the Property to DEDA at a price "below market value" was contrary to law.

The facts are undisputed; the Statute is unambiguous; the standard for this Court's review of the County Board's decision is clear. Plaintiffs are entitled to summary judgment.

Respectfully submitted,

Dated this 10th day of February 2020

/s/Miles Ringsred

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Dated this 10th day of February 2020

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ACKNOWLEDGEMENT

Plaintiffs, by their respective legal counsel, acknowledges the provisions of Minn. Stat. § 549.211 and understands sanctions may be imposed for violation of this statute.

/s/Miles Ringsred
MILES RINGSRED