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STATE OF MINNESOTA
COUNTY OF RAMSEY

DISTRICT COURT
SECOND JUDICIAL DISTRICT

Friends of Twin Lakes,

File No. C3-05-44

Plaintiff,

vs.

City of Roseville, Minnesota; Rottlund Homes;
and The Rottlund Company, Inc.,

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER FOR JUDGMENT

Defendants.

The above-entitled matter came on for trial before the undersigned Judge of District Court on December 19- 20, 2005. Upon conclusion of trial, counsel were granted the opportunity to submit proposed findings of fact, conclusions of law and order and/or memoranda. By agreement of counsel, their post-trial submissions were to be filed by January 24, 2006. The matter was submitted as of that date.

Thaddeus R. Lightfoot, Esq., appeared for and on behalf of Plaintiff.

Robert R. Weinstine, Esq., and Matthew D. Spohn, Esq., appeared for and on behalf of Defendants.

Based upon the entire file, records and proceedings herein, the testimony and exhibits received at trial, the parties' post-trial submissions and argument of counsel, the Court makes the following:

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Robert W. Weinstine

FINDINGS OF FACT

1. This action concerns a dispute over whether the proposed development of the Twin Lakes Redevelopment Area (hereinafter “the Area”) violates the Minnesota Environmental Rights Act (“MERA”), Minn. Stat. § 116B.01, *et seq.*

2. At issue in this case is Phase I of the proposed redevelopment. The Area is comprised of approximately 80 acres of land abutting the south and southwest end of Langton Lake Park in Roseville, Ramsey County, Minnesota. The site is bordered by Cleveland Avenue on the west, Fairview Avenue on the east, County Road C to the south, and County Road C2 to the north. Interstate 35W is approximately 200 yards from the Area and approximately 800 to 1,000 feet from Langton Lake. Arthur Street runs approximately 100 to 150 feet from the edge of Langton Lake.

3. Plaintiff consists of a group of Roseville citizens, some of whom reside near the Area.

4. Defendant City of Roseville (hereinafter “the City”) is the governmental unit that has coordinated the Area and approved the redevelopment plans that are at issue in this case. The City has stipulated to adopt the evidence, testimony and argument of Defendant Rottlund and to be bound by the result of the trial. Defendant Rottlund Homes and The Rottlund Company, Inc. (hereinafter “Rottlund”) is the master developer for the project.

5. By order dated August 12, 2005, the Honorable M. Michael Monahan granted the City’s motion for summary judgment on Counts I and II of Plaintiff’s amended complaint. Counts III and IV of the amended complaint were those at issue at

trial. Both counts allege that the City's approval and Rottlund's implementation of the Twin Lakes Phase I Project violates MERA.

6. Prior to trial, the parties stipulated to the specific issues to be tried, as follows:

1. Whether the project is likely to materially adversely affect the wildlife, wildlife habitat, botanical resources, and recreational resources in Langton Lake and Langton Lake Park that Plaintiff alleges are unique;
2. whether the project is likely to materially adversely affect the quietude allegedly currently enjoyed by Plaintiff and others who visit Langton Lake and Langton Lake Park;
3. whether the project is likely to exacerbate existing soil, surface water, and ground water contamination by the substances benzene, trichloroethene (TCE), phosphorous, diesel-range organics, and gasoline-range organics in the Twin Lakes redevelopment area;
4. whether the project will materially adversely affect the water quality of Langton Lake; and
5. whether the project is likely to create storm water runoff that is likely to violate state water quality rules protecting Langton Lake.

7. At the conclusion of Plaintiff's case, Rottlund moved for judgment pursuant to Rule 41.02(b), Minn. R. Civ. P. The motion was granted on issues 3, 4 and 5 and denied on issues 1 and 2 above. As to stipulated issues 3, 4 and 5, Plaintiff failed to provide any credible or competent evidence that the project would exacerbate existing soil, surface water or ground water contamination, would adversely affect the water quality of Langton Lake and/or would likely create storm water runoff that would likely violate state water quality rules.

8. Langton Lake Park (hereinafter “the Park”) is owned by the City. The Park substantially surrounds Langton Lake (hereinafter “the Lake”) and is comprised of several acres of woodland and trees. There is a walking trail through the western, southern and southeast portions of the park and a children’s fishing dock on or near the lake. The lake is stocked with fish by the Department of Natural Resources, but it is shallow and freezes during cold winter months, killing the fish and requiring new supplies to be stocked most, if not every, year.

9. The Area encompasses a number of industrial parcels that are near the Park. Truck terminals abut the southern and southwestern edge of the Park. Most of the terminals are now dormant or abandoned, but some trucking activity continues. Terminal buildings are located approximately 100 feet from the edge of the Park. The terminals serve as storage areas for hundreds of truck and trailer bodies. During winter months, these truck and/or trailer bodies are visible from some areas within the Park.

10. The redevelopment plan is for mixed-use land development. Truck terminals and other parcels on the site would be replaced with a mix of multi-family housing, commercial, small retail and a “big box” retail store. A new road, Twin Lakes Parkway, would be built through the development. The road would primarily run east to west, pass south of Langton Lake and connect Cleveland Avenue with Fairview Avenue.

11. The development will increase traffic in the area. The City estimates that 11,200-17,900 additional car trips per day will occur in the Area.

12. The development itself will not encroach upon or intrude into the Park. The Park will not be physically altered and its boundaries will remain as they currently exist. The truck terminals, together with whatever surrounding paved surfaces exist, will

be destroyed. New buildings will be constructed in and around those areas. New trees will be planted and other landscaping around the Park will be completed. Additional storm water management ponds will be constructed to the south and west of the Lake. New housing units that are planned to be constructed in closest proximity to the Park would not be visually intrusive from within the Park. In an effort to expand the Park, the City is attempting to acquire parcels of land on the east and north sides of the lake as such parcels become available.

13. Parcels of land that surround the Park and substantially comprise the redevelopment area are Brownfield sites. In the past, petroleum leaks have been located in some of the sites and leaking and non-leaking underground storage tanks have been removed. Petroleum and non-petroleum contaminants have in the past been discharged into the soil, groundwater and surface water in the redevelopment and surrounding area. Untreated storm water runs into the Lake, adversely affecting its water quality.

14. Margaret Rattei, one of Plaintiff's experts, established by her testimony that the Lake's water quality failed to meet water quality standards prior to redevelopment. She did testify that the redevelopment plan would adversely affect the Lake by increasing its phosphorus content, but this testimony lacked foundation and was deemed to be unreliable. Plaintiff did not provide credible evidence that the planned redevelopment of the Area would worsen the water quality of the Lake.

15. In the early to mid-1990s, the City implemented plans to redevelop the Area, including the construction of Arthur Street, corporate centers on Cleveland Avenue and Arthur Street and construction of a medical complex on County Road C. In the late 1990s, in an effort to further pursue redevelopment of the Area, the City studied surface

water, groundwater and soil contamination in the Area. The City and Rottlund then entered into the Minnesota Petroleum Control Agency's Voluntary Investigation and Cleanup and Petroleum Brownfields Programs. Investigations of the subject property revealed petroleum contamination on a number of parcels. TCE was discovered in the soil and glacial aquifer on two parcels. Upon completion of these investigations, Rottlund's consultants prepared and provided a Response Action Plan and a Development Response Action Plan for the redevelopment site. The Minnesota Pollution Control Agency approved these plans. The efforts taken by the City and Rottlund in this regard were voluntary and for the purpose of redeveloping the Area.

16. The City has required Rottlund to assess the environmental impact of redevelopment by comparison to the standards of LEED (Leadership in Energy and Environmental Design). These standards exceed those of building codes. Preliminary scoring under LEED standards is positive.

17. Plaintiff claims that wildlife habitat is rare in a first-ring suburb such as the City and that it continues to decline. Dr. Thomas Soulen, an expert in bird identification and a professor emeritus of plant biology, testified that: The Park differs from other recreational parks in the Twin Cities metropolitan area because it contains a wide variety of habitats, including trees and undisturbed underbrush; the Park is unique because, though it is small, it has many tree species, a lake and marshy areas, all of which attract a variety of bird species; he has observed approximately 150 species of birds in the Park over a period of approximately thirty years, some of which showed evidence of nesting; and, in 1980, he observed a yellow-throated warbler in the Park, a bird that is rarely seen in Minnesota and/or the midwestern states. Dr. Soulen did not specifically

identify what birds showed signs of nesting, and he has not observed the rare warbler in the Park since 1980. Dr. Soulen testified that "if he wants to find birds, he does not go to urban areas," and that development of an area "replaces something natural with something that is not." He did not identify any bird species within the Park that are considered to be endangered or rare (other than his observation of the warbler in 1980). He did testify that the number and kinds of birds were reduced when "crucial habitat was reduced" in the redevelopment of an area in and around Gramsie Road, Ramsey County. There is no evidence that the Gramsie Road development was similar in any manner to the planned redevelopment of the Area in this case, or that the Gramsie Road area was in any respect similar to the Lake and Park area. The development in this Area will not physically intrude into the Park and most of what now surrounds the Park is not natural.

18. Carrol Henderson, a nongame wildlife supervisor with the Minnesota Department of Natural Resources, testified that, in his opinion, the development is likely to materially adversely affect the Park by eliminating the "buffer area" around the Park so that it will be "walled off." He opined that development of the Area around the Park will increase human activity and destroy native wildflowers, plants, shrubs and trees surrounding the Park, thereby increasing the likelihood that road salts and other chemicals, dog droppings and lawn clippings may wash into the lake. He testified that he is "concerned" about the possibility that wildlife may be endangered as a result of the planned placement of a storm water pond south of the new parkway, suggesting that wildlife may be encouraged to cross the parkway to reach this new pond and be subject to traffic fatalities or injury. Mr. Henderson's testimony with respect to runoff flowing into the Lake lacked foundation because he did not have information about the City's and

Rottlund's storm water management and landscaping plans. Mr. Henderson admitted that such information may change his opinion. Mr. Henderson's testimony with respect to the possible danger to wildlife crossing the street to a pond lacked quantification and appeared to be based upon speculation.

19. Dr. Soulen and Carrol Henderson testified that diversity of habitat increases the likelihood that a variety of wildlife and plant species will be present in an area. Neither was able, however, to testify with particularity or sufficient foundation that the diversity that now exists within the Park will be adversely affected. This is not a Park that sits in an area of undisturbed quietude. It is surrounded by paved areas upon which truck and trailer bodies sit and sometimes move. The buildings located on the terminal parcels are in close proximity to the Park and, though human activity will increase by the development of the Area, there is no credible proof that such activity will impinge on the habitat in the Park or that the habitat described (including wooded areas with underbrush, cattails and various scrub trees) is unique within a first-ring suburb or the state.

20. In support of Plaintiff's claim that redevelopment of the Area will adversely affect the quietude of the Park because the noise level in and around the Park will increase, one witness, Mr. Moses, testified that he does not hear any noise when he visits the Park. Considering the proximity of 35W to the Park, Mr. Moses' testimony lacked credibility. A second witness, Ms. McGehee, testified that she does hear traffic noise emanating from Interstate 35W when she is in the Park and that she hears traffic noise from the freeway at her home, which is located approximately two miles from the Park. Dennis Welsch, a witness for the City and Rottlund, testified that there is an "overwhelming sound" from 35W, as well as noise emanating from movement of trucks

and trailers and adjoining landowners' parcels that surround the Park. No one offered any quantitative evidence of the elevation of noise as a result of the redevelopment. This court may assume that the expected increase in traffic in the Area will increase the noise surrounding the Park, but it cannot assume the degree to which it may increase or that it will increase to such an extent that the quietude of the Park will be adversely affected.

21. There is no credible evidence that the plants and/or animals within the Park are unique, endangered or threatened in this state or in the United States.

CONCLUSIONS OF LAW

1. Plaintiff has standing to bring this action pursuant to Minn. Stat. § 116B.03, subd. 1.

2. Plaintiff has the burden to prove a prima facie case consisting of two prongs: (1) that there is a "protectable natural resource" under MERA, *State by Archabal v. County of Hennepin*, 495 N.W.2d 416, 421 (Minn. 1993); and (2) that the activity is likely to pollute, impair, or destroy that natural resource. *Id.* (Citing *State by Powderly v. Erickson*, 285 N.W.2d 84, 87-88 (Minn. 1979)). "Natural resources" include all "mineral, animal, botanical, air, water, land, timber, soil, quietude, recreational and historical resources." Minn. Stat. § 116B.02, Subd. 4. "Pollution, impairment or destruction" is (1) "any conduct by any person which violates, or is likely to violate, any environmental quality standard, limitation, rule, order, license, stipulation, agreement, or permit of the state or any instrumentality, agency, or political subdivision thereof which was issued prior to the date the alleged violation occurred or is likely to occur," or (2) "any conduct which materially adversely affects or is likely materially adversely affect the environment." Minn. Stat. § 116B.02, Subd. 5.

3. The Park and Lake are protectable natural resources.
4. The redevelopment plan does not involve a violation of an environmental quality standard, limitation, rule, order, license, stipulation agreement, or permit of the state of any instrumentality, agency, or political subdivision thereof.
5. Plaintiff has failed to meet its burden to prove that the planned redevelopment of the Area will materially adversely affect the Park and/or Lake.
6. Plaintiff has failed to demonstrate a prima facie case that Phase I of the Twin Lakes Redevelopment Plan will cause pollution, impairment, or destruction of a natural resource as defined by MERA.
7. Defendants are entitled to judgment in their favor.

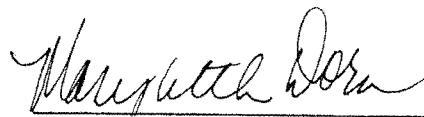
ORDER

Defendants are granted judgment in their favor on counts III and IV of Plaintiff's amended complaint.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: March 27, 2006

BY THE COURT



Marybeth Dorn
Judge of District Court