

FILED **FIRST JUDICIAL DISTRICT**
DAKOTA COUNTY, Court Administrator

Court File No. 19HA-CV-19-2143

STATE OF MINNESOTA

JAN 10 2020

DISTRICT COURT

COUNTY OF DAKOTA

FIRST JUDICIAL DISTRICT

Court File No. 19HA-CV-19-2143

TK Properties of Northfield, LLC,

Plaintiff,

vs.

Greenvale Township,

Defendant.

**ORDER DENYING PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT**

The above-entitled matter came before the Honorable Danna L. Edwards, Judge of the District Court, for a motion for summary judgment on November 7, 2019, at the Dakota County Judicial Center, Hastings, Minnesota.

TK Properties of Northfield, LLC, hereinafter "Plaintiff", was represented by Attorney Nicholas Delaney.

Greenvale Township, hereinafter "Defendant", was represented by Attorney Paul Reuvers.

Plaintiff moves the Court for summary judgement on the following grounds:(1) the ordinance at the time of filing creates a building entitlement for the Property; (2) the Property is a lot of record and is eligible for a building entitlement; (3) Defendant violated the 60-day rule under Minn. Stat §15.99 and (4) the Defendant withheld Plaintiff's building entitlement out of retaliation. The Plaintiff request that the determination of summary judgment results in the form of Declaratory Relief.

The Defendant moves the Court for the denial of summary judgement and a modification of the scheduling order to extend the deadline for dispositive motions.

The attorneys provided the Court with persuasive oral arguments. The Court took this matter under advisement at the conclusion of the hearing.

Based upon the files, records, and proceedings herein, the Court makes the following:

FINDINGS OF FACT

1. The subject real estate is located within Dakota County, State of Minnesota. Plaintiff owns real property located in the SE ¼ SE ¼ of Section 5 in Greenvale Township, with tax PID 16-00500-80-010. (the “Property”) .The Property is approximately 8.11 acres in size and is located within an area zoned agricultural preservation district.
2. No residential structures or buildings of any kind are located within the SE ¼ SE ¼ of Section 5.
3. In October 2017, Defendant enacted a set of polices to determine building entitlements. These polices were based off of a survey, public meetings, and the advice of a planning consultant.
4. On September 26, 2018, Plaintiff purchased the entire 40 acres, including a farm home. Plaintiff, upon the belief that he was eligible for a building entitlement on the property, began to subdivide and sell parcels of the 40 acres, which included a portion of land that had a structure on it.
5. On January 15, 2019, Plaintiff verbally requested a building entitlement for the Property from the Defendant at a Town Board meeting.
6. On March 19, 2019, Defendant determined that the Property was not buildable at a regularly scheduled meeting. Thus, a building entitlement was not issued to Plaintiff.
7. Defendant provided written notice of the decision in a letter dated April 17, 2019.
8. The complaint in this case was filed May 6, 2019.

9. On August 28, 2019, the Defendant adopted a new ordinance, Ordinance No. 2019-2, which codified the polices from the October 2017 ordinance.
10. Section 5.04B5 of the Ordinance sets the requirements of the building entitlement if the parcel of record exist after July 1, 1980. Namely:

5(a)(4)“If title of the entire quarter –quarter section is not held by the same person or entity seeking the right to construct a single family dwelling unit then all other property owners within the quarter –quarter section must have signed a written agreement allowing one parcel to have the building right to that entire quarter-quarter section.”

The section also set forth requirements for parcels of record existing prior to July 1, 1980.

5(b) “...it is presumed that all parcels of record existing prior to July 1, 1980, that are locate within the Agricultural Preservation District shall be eligible to have one-single family dwelling unit constructed on that parcel, subject to compliance with all the following requirements:

...

5(b)(5) The lot upon which the single-family dwelling unit is proposed to be constructed was under separate ownership from abutting lands on or before July 1, 1980.”

CONCLUSIONS OF LAW

1. Summary judgment is appropriate when the evidence, viewed in light most favorable to the nonmoving party, shows that there is no genuine issues of material fact and the moving party is entitled to judgment of law. MINN. R. CIV. P. 56.03; *Funchess v. Cecil Newman Corp.*, 632 N.W.2d 666, 672 (Minn, 2001).
2. The moving party bears the burden of proving that there are no issues of material fact and that it is entitled to judgement as a matter of law. MINN. R. CIV. P. 56.03.
3. In this case, Plaintiff purchased the Property with the understanding that the Property would have a building entitlement. Plaintiff subdivided, and sold the land, including a portion of land that had a structure upon it.

4. There are several material questions of fact that are at issue, they included whether: (1) development has progressed sufficiently to acquire a vested right; (2) the Property has some relevant grandfathered nonconformities in the zoning code; (3) there is an absolute right, under a Minnesota Statute, that requires the request for a building entitlement be in writing; (4) the Plaintiff's request regarding the building entitlement issue was addressed at a Township Planning Commission meeting, as well as, during a regularly scheduled Township meeting, implicitly convey the waiver of the requirement of Defendant to file its request in writing; (5) Defendant by and through its agents, act unreasonably, arbitrarily, or capriciously towards Plaintiff when addressing, engaging, and/or ruling on Plaintiffs' building entitlement request; and (6) Defendant by and through its agents, treated Plaintiff differentially than similarly situated individuals.
5. Summary judgment is therefore not appropriate at this time. There are numerous material facts in dispute which are suitable for the trier of fact. The Plaintiff is not entitled to judgment as a matter of law. As a result, the Court is compelled to deny Plaintiff's motion for summary judgment.

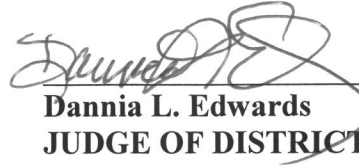
Based on the forgoing Findings of Fact and Conclusions of Law, the Court makes the following:

ORDER

1. Plaintiff's motion for summary judgment is respectfully **DENIED**.
2. Defendant's motion to modify the scheduling order is **GRANTED**.
3. Dakota County Court Administration shall mail a copy of this order via U.S. Mail to the parties and attorneys of record and upon delivery service shall be deemed proper.

BY THE COURT:

Dated: January 10, 2020



Danna L. Edwards
JUDGE OF DISTRICT COURT