
Berry & Co. Inc.,

Petitioner,

v.

County of Hennepin,

Respondent.

**ORDER DENYING HENNEPIN
COUNTY AND THE CITY OF
WAYZATA'S MOTION FOR A
PROTECTIVE ORDER**

File No: 27-CV-13-07304

Filed: January 20, 2016

This matter came before the Honorable Thomas G. Haluska, Judge of the Minnesota Tax Court, on Respondent Hennepin County and interested party City of Wayzata's joint motion to quash and for a protective order.

William R. Skolnick, Esq., appeared for and on behalf of Petitioner, Berry & Co.

Edward P. Sheu, Esq., appeared for and on behalf of Interested Party, City of Wayzata.

Thomas F. Pursell, Esq., appeared for and on behalf of Respondent, County of Hennepin.

Based on the files, records and proceedings herein, together with the arguments of counsel, the Court makes the following:

ORDER

1. The motion of the City of Wayzata to intervene is granted for the limited purpose of making and arguing this motion.
2. The motion of the City and County to quash any subpoenas served on Heidi Nelson, Brian Gadow and Dan Distel is denied.
3. The motion of the City and County for a protective order to limit the scope of any depositions of Heidi Nelson, Brian Gadow and Dan Distel is denied.

IT IS SO ORDERED.

BY THE COURT:



Thomas G. Haluska, Judge

MINNESOTA TAX COURT

DATED: January 20, 2016

MEMORANDUM

The City moved to appear to intervene in this matter for the limited purpose of:

1. Quashing any subpoenas served on Heidi Nelson (city manager for the City of Wayzata), Brian Gadow (former city planner for the City of Wayzata) and Dan Distel (former commercial assessor and current residential assessor of the city of Wayzata);
2. For a protective order preventing any further discovery from the City and any of its current or former employees.¹

During the hearing in this matter, the County joined the City's motion.² For the reasons stated below, we grant the City of Wayzata's motion to intervene and we deny the remainder of the joint motions of the County and City.

Berry & Co., Inc., challenges the 2012 real estate assessment on property it owns in the City of Wayzata Minnesota. Berry contests, among other things, the value of the property and its

¹ City of Wayzata's Am. Not. of Mot. Mot. Quash Prot. Order 1.

² Tr. 23.

highest and best use. Specifically, Berry alleges the property's current and intended zoning affects its highest and best use.³ During a deposition, Christopher Bennett, senior assessor with the Hennepin County Assessor's Office, acknowledged that limitations on the current and potential alternate uses of the property would affect its use and value.⁴ Further, in response to discovery requests, the County identified Heidi Nelson (city manager for the City of Wayzata) and Dan Distel (former commercial assessor and current residential assessor of the City of Wayzata), as people having "knowledge or information relating to the subject matter of this lawsuit or the allegations, claims or defenses asserted" ⁵

Petitioner subsequently noticed the depositions of Heidi Nelson and Dan Distel, along with Brian Gadow, the former Wayzata city planner. The City and County move to quash all three depositions⁶ arguing that they cannot produce relevant information and that their purpose is to harass the City and its current and former employees.⁷

³ See *Appraisal Institute, The Appraisal of Real Estate* 338-339 (14th ed. 2013); Minn. Stat. § 273.13, subd. 33(b) (2014); *Duke Realty Corp. v. Cty. of Hennepin*, No. 27-CV-09-12170, 2013 WL 5629584, at *3-4 (Minn. Tax Oct. 1, 2013); *Hedberg & Sons Co. v. Cnty. of Hennepin*, 305 Minn. 80, 92, 232 N.W.2d 743, 751 (1975). In addition, an appraisal prepared by the Hennepin County Assessor's Office for the 2007 assessment asserted that it was likely that the City of Wayzata would allow a modification of the zoning limitations on the property for redevelopment. Shue Aff., Ex. A., Bennett Dep. at 100-102; Shue Aff., Ex. A., Appraisal, at 34.

⁴ Shue Aff., Ex. A., Bennett Dep., pp. 74-82, at 120-123.

⁵ Shue Aff., Ex. A., Bennett Dep.; Resp't's Answers to Pet'r's First Set of Interrog., at 6.

⁶ The City and County subsequently withdrew their objection to Mr. Distel's deposition. Tr. 19.

⁷ City of Wayzata's Mem. Supp. Mot. Quash. 14.

Parties may obtain discovery by various methods, including depositions.⁸ Although the scope of discovery is broad, it

must be limited to matters that would enable a party to prove or disprove a claim or defense or to impeach a witness and must comport with the factors of proportionality, including without limitation, the burden or expense of the proposed discovery weighed against its likely benefit, considering the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the action, and the importance of the discovery in resolving the issues. . . .⁹

Courts have broad discretion to regulate discovery and to issue suitable protective orders.¹⁰ As relevant here, Minnesota law provides:

Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending . . . may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense¹¹

“Generally, the burden of demonstrating good cause rests with the party seeking a protective order.”¹²

Here, the County and Berry agree that the highest and best use of the property is at issue. Further, the Hennepin County Assessor's Office believes that the property's zoning as of the assessment date and limitations the City might place on redevelopment would affect highest and best use.

⁸ Minn. R. Civ. P. 26.02(a).

⁹ Minn. R. Civ. P. 26.02(b).

¹⁰ *In re Paul W. Abbott Co., Inc.*, 767 N.W.2d 14, 17-18 (Minn. 2009) (citation omitted).

¹¹ Minn. R. Civ. P. 26.03.

¹² *Star Tribune v. Minnesota Twins P'ship*, 659 N.W.2d 287, 293 (Minn. App. 2003) (citations omitted).

A city planning department has considerable input in the design, implementation and enforcement of zoning regulations and variances and other potential developments in a city.¹³ Thus, contrary to the County and City's assertions, the deposition of the individual who was city planner at the time of the assessment falls within the scope and limits of discovery.¹⁴ Additionally, the fact that the County has identified the city manager and the former city commercial assessor as individuals having "knowledge or information relating to the subject matter of this lawsuit or the allegations, claims or defenses asserted . . ." makes them subject to discovery.¹⁵ The City and County offer no persuasive reason to suggest otherwise. We therefore deny the motion to quash the subpoenas issued to Nelson, Distel and Gadow.

Finally, the City and County request a protective order that prospectively imposes discovery limitations on Berry. The City and County assert that, in the absence of a protective order, Berry will abuse the discovery process. We deny the request. Neither the City nor the County has provided any factual basis for this assertion. Further, the City and County may object to questions or requests that they consider outside the scope of discovery. Here, the City and County have failed to show why they need protection beyond the limitations on the scope of discovery already provided by the Minnesota Rules of Civil Procedure. We therefore deny the requests of the City and the County, except for the City's request to intervene for the limited purpose of making and arguing this motion.

T. G. H.

¹³ See Minn. Stat. 462.353 (2014).

¹⁴ Minn. R. Civ. P. 26.02(b).

¹⁵ Shue Aff., Ex. A., Bennett Dep., Resp't's Answers to Pet'r's First Set of Interrog., at 6.