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Dead Lake Ass'n, Inc. v. Otter Tail County, No. A04-717, 2005 Minn. App. LEXIS 123 (Minn. Ct. App. Feb. 1, 2005)

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these methods could be used, authorities divided the lake bed in proportion to the shoreline owned. The shoreline described the point where the property met the original lakeshore prior to any filling in or rescission of the water.

Thus, the court upheld the ruling that Meshkin and Kominsky were riparian owners, but reversed and remanded the method that the trial court used in deciphering the riparian boundary lines.

Michael O'Loughlin

MINNESOTA

Dead Lake Ass'n, Inc. v. Otter Tail County, No. A04-717, 2005 Minn. App. LEXIS 123 (Minn. Ct. App. Feb. 1, 2005) (holding a county's inquiry into the potential adverse environmental impacts of a conditional use permit was insufficient, thus requiring preparation of an environmental impact statement to address the potential effects of increased recreation and groundwater nitrate levels).

Dead Lake Association ("Association") brought a claim under the Minnesota Environmental Policy Act against Otter Tail County ("County") for failure to prepare an environmental impact statement ("EIS") prior to approving a housing development proposal and conditional use permit on Dead Lake. Dead Lake, classified by the Minnesota Department of Natural Resources ("DNR") as a natural-environmental lake ("NEL"), had limited assimilation capabilities for development and recreational impacts. Therefore, the County completed an environmental assessment worksheet ("EAW") that considered whether the potential impacts of development warranted further inquiry in the form of an EIS. Due to the increased sensitivity of shallow NELs, both the DNR and the United States Fish and Wildlife Service ("USFWS") recommended EIS preparation. However, the County Planning Commission ("Commission") determined, after consideration of public input, an EIS was not necessary because reasonable mitigation techniques included in the proposal eliminated any potentially adverse environmental impacts. After the County reviewed the Commission's decision, it ultimately declared an EIS was unnecessary and approved the development proposal, granting the requested conditional use permit. The Association subsequently sought judicial review in the Otter Tail County District Court.

The district court granted the County's motion for summary judgment, finding substantial evidence in the record supported the negative EIS declaration. Specifically, the district court held the County's decision not to prepare an EIS was not arbitrary and capricious because the County considered all inherent and potential problems associated with the proposed development. The Association appealed to the Minnesota Court of Appeals.

While not determinative of the need for EIS preparation, the court considered recommendations by the USFWS regarding the detrimental effects of increased boating traffic on NELs. The court determined the County's EAW did not contain an adequate evaluation or description of these potential impacts and, furthermore, the proposed boating restriction mitigation techniques would not alleviate the proven negative impacts. The court noted, while the County did not entirely fail to consider the impacts of boat traffic, the County could not appropriately tailor the proposed restrictions to mitigate impacts when the potential impacts remained unknown without an EIS. Therefore, the court ruled the County's decision not to prepare an EIS was improper. The court reversed the grant of summary judgment and remanded the case to the County for a more complete study of the environmental consequences of the proposed development on Dead Lake.

Amy Mockenhaupt

MISSISSIPPI

Titan Tire of Natchez, Inc. v. Miss. Comm'n on Env'tl. Quality, 891 So. 2d 195 (Miss. 2004) (affirming the fine the Mississippi Commission on Environmental Quality imposed on a company for violating the company's National Pollutant Discharge Elimination System Permit).

In September 1998 Titan Tire of Natchez ("Titan") purchased a tire facility from Fidelity Tire Manufacturing Company ("Fidelity"). Fidelity had a National Pollutant Discharge Elimination System ("NPDES") permit to discharge storm water runoff and treated process water into state waters. In 1996 Fidelity requested a modification of the permit to install additional groundwater monitoring wells. The Mississippi Department of Environmental Quality ("MDEQ") granted the requested modification, but Fidelity did not install the groundwater wells before Titan purchased the plant in 1998. Titan began operating under the existing NPDES permit. In June 2000 Titan renewed the NPDES permit. In December 2001 MDEQ issued a written complaint to Titan asserting that in 1999 and 2000 Titan violated its NPDES permit sixteen times. MDEQ granted Titan a two-day hearing before the Mississippi Commission on Environmental Quality ("Commission"). The Commission found that Titan violated its permit and fined Titan \$5000. Titan appealed to the Hinds County Chancery Court, which affirmed the Commission's order. Titan subsequently appealed to the Mississippi Supreme Court.

MDEQ maintained that when Titan purchased the facility from Fidelity, Titan became responsible for all of the environmental conditions associated with the facility, including the conditions specified in the 1996 NPDES permit. Additionally, when Titan renewed the NPDES permit in 2000, Titan did not request a modification of the 1996 permit. Thus, the permit condition established in 1996 remained