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## Lake Mary Villas, L.L.C. v. County of Douglas, No. A05-717, 2006 Minn. App. unpub. LEXIS 96 (Minn. Ct. App. Jan. 24, 2006)

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including 2, 4-Dichlorophenoxyacetic acid ("2, 4-D") and Aqua Kleen, were hazardous to human health and the environment. The Society also contended that the Department of Environmental Quality of the State of Louisiana ("DEQ") required the DWF to obtain a permit before carrying out its spraying activities. Since the DWF did not obtain such a permit, the Society asked for a preliminary injunction to prevent DWF's second scheduled drawdown on July 15, 2005.

In a hearing on the preliminary injunction, a DWF expert testified that 2, 4-D does not negatively impact water quality. Moreover, a representative from the DEQ testified that the application of herbicides to aquatic vegetation did not require a permit. The DEQ adopted this view in February 2005 from an Environmental Protection Agency interpretive statement.

On July 12, 2005, the 26th Judicial District Court, Parish of Bossier, held that the DEQ did not need a spraying permit and denied the preliminary injunction request. The Society immediately appealed but failed to request expedited review of the matter. While the ordinary delays of the appeal process occurred, the DWF completed the second drawdown and spraying. The DWF then indicated that it completed the Plan for Lake Bistineau and canceled the final spraying scheduled for 2006.

The court upheld the decision of the trial court denying the preliminary injunction; however, the court did not rule on the merits of the Society's argument. The court stressed that its holding did not preclude the Society from prosecuting their pending claim for declaratory judgment regarding the application of the LWCL and the LEQA and permanent injunctive relief preventing the application of herbicides into state waters. The court noted that based on evidence presented, the Society failed to prove the presence of a damaging toxins. The court also advised the Society to include the DEQ as a party if seeking to prove a violation of permit compliance, and directed the trial court to note with disfavor a nonjoinder of DEQ.

The court dismissed the Society's preliminary injunction seeking to prevent the herbicide spraying as moot because the DEQ already completed it.

*Roman Ginzburg*

## MINNESOTA

**Lake Mary Villas, L.L.C. v. County of Douglas, No. A05-717, 2006 Minn. App. Unpub. LEXIS 96 (Minn. Ct. App. Jan. 24, 2006)** (holding that the Board of Commissioners had the proper authority and appropriately imposed a condition prohibiting a dock at a proposed lake-shore development).

Relator Lake Mary Villas, L.L.C. ("Relator") sought review of the Douglas County Board of Commissioners' ("Board") decision conditionally approving an application for a conditional use permit and a preliminary plat approval. Relator originally proposed a residential planned unit development at Lake Mary, which included fifty units and a centralized dock. The Board approved the application but prohibited the centralized dock. On appeal, Relator argued that the Board's no-dockage condition (1) was arbitrary and capricious; (2) exceeded the scope of the county's authority to regulate land use; and (3) violated Relator's constitutional rights.

First, Relator contended that the no-dockage condition was arbitrary and capricious because the Board failed to explain its decision and lacked sufficient scientific evidence to support the condition. However, the Court of Appeals of Minnesota determined that the Board explicitly relied on two letters on the record from the Department of Natural Resources and the Douglas County Soil and Water Conservation District. The court decided that these letters were sufficiently scientific and authored by experts representing agencies responsible for water and fisheries. Furthermore, the letters specifically addressed the impact of a centralized dock on the flora and fauna of the area.

Secondly, Relator argued that the Board did not have the authority to prohibit docks or to discriminate against one riparian user by treating them in a manner significantly different from neighboring riparian users. The court found, however, that the Douglas County Zoning Ordinance did create a standard of "suitability" for the development of docks, which allowed the Board to evaluate docks and, when necessary, prohibit certain proposed docks upon the consideration of relevant factors. Furthermore, the court dismissed Relator's discrimination claim for failure to provide sufficient evidence.

Lastly, Relator claimed that the prohibition of the centralized dock violates both the United States Constitution and the Minnesota Constitution. Rejecting this argument, the court found that while riparian rights include the right to build and maintain such a dock, such riparian rights remain subordinate to reasonable control by the state and the rights of the public. Therefore, for a land use regulation to be a constitutional violation of a riparian right, the regulation must deprive the property of all reasonable uses. The court determined that since Relator had alternatives in the development project, the regulation did not violate constitutional rights. Thus, the court affirmed the Board's conditional approval of Relator's applications.

*Maria E. Hohn*