

STATE OF MINNESOTA
COUNTY OF RICE

COPY

IN DISTRICT COURT
CIVIL DIVISION
THIRD JUDICIAL DISTRICT

State of Minnesota, by Rice County
Land Use Accountability, Inc.,
Plaintiff,

File No.: C7-05-2141

vs.

ORDER DISMISSING CLAIM

Rice County, a political subdivision
of the State of Minnesota, and the
Rice County Board of Commissioners,
Defendants.

The above-entitled matter came for hearing before the undersigned Judge of District Court on January 20, 2006, upon Defendants' Amended Notice of Motion and Motion to Dismiss Plaintiff's complaint and Defendants' Motion for Sanctions, dated December 21, 2005.

Plaintiff was represented by Attorney Carol A. Overland, Northfield, Minnesota.

Defendants were represented by Attorney Paul D. Reuvers, Bloomington, Minnesota.

The Court, having heard the arguments of counsel, being fully advised on the premises, and upon the pleadings, motions, memoranda and affidavits filed herein, makes the following:

IT IS HEREBY ORDERED THAT:

1. Defendants' Motion to Dismiss is **GRANTED**.
2. The Defendants' Motion for Sanctions pursuant to Rule 11 of the Minnesota Rules of Civil Procedure and Minnesota Statute § 549.211 is **DENIED**.
3. The following **MEMORADUM** is incorporated herein.

COURT ADMINISTRATOR

MWR
APR 05 2006
RICE COUNTY, MINN.
FILED

IT IS SO ORDERED AND LET JUDGMENT BE ENTERED ACCORDINGLY.

BY THE COURT:

Dated this 4th day of April, 2006.

A handwritten signature in cursive script, reading "Gerald J. Wolf", written over a horizontal line.

Gerald J. Wolf
Judge of District Court
Third Judicial District

MEMORANDUM

The Plaintiff has filed a complaint against Rice County and its Board of Commissioners in an almost identical form to one filed on June 10, 2005. The June 10, 2005, claim was dismissed by the Court for lack of jurisdiction, but Plaintiff's were informed that the court "can only decide 'actual cases and controversies.'" Rice County Land Use Accountability, Inc. v. Rice County, et al., Court File No. C8-05-1032, Order of Dismissal (October 24, 2005).

Plaintiff's complaint requests declaratory judgment relief wherein they assert that Rice County has violated Minnesota Rule 4410.1100, 4410.3100, and 4410.4300, by failing to complete **Environmental Assessment Worksheets** (EAW) on specific land permit decisions. Plaintiff's further request that the Court "Order that Rice County shall review its environmental review practices to assure it is fully in compliance with all environmental rules and regulations." Complaint Relief ¶ 11. And, that the Court "Order that Rice County shall comply with all environmental rules and regulations." Complaint Relief ¶ 12. Plaintiff assert their claims against the County come under MERA ("Minnesota Environmental Rights Act") Minn. Stat. §116B.02.

Defendant's move to dismiss Plaintiff's claim under Minn. R. Civ. P. 12 for failure to state a claim upon which relief can be granted and for sanctions in bring this action.

Initially, the court must inquire whether the Complaint sets forth a **legally** sufficient claim for relief. Bodah v. Lakeville Motor Express Inc., 663 N.W.2d 550, 553

(Minn. 2002). The County is already required to follow the law. There is neither a showing by the Plaintiff's that the County has violated the law beyond Plaintiff's broad and general allegations to the contrary, nor has Plaintiff made a showing that there is a **specific case or controversy** at issue. Plaintiff's new action against Rice County fails to state a claim upon which relief can be granted. Plaintiff's Complaint is dismissed pursuant to Minn. R. Civ. P. 12.02(e).

Even if Plaintiff's Complaint did set forth an appropriate prayer for relief, Plaintiff has failed to show they are entitled to relief under MERA. MERA provides a private cause of action for the "protection of the air, water, land, or other natural resources located within the state, whether publicly or privately owned, from pollution, impairment or destruction." Minn. Stat. §116B.03, subd. 1. To make a prima facie case under MERA, Plaintiff must show, 1, "a protectable natural resource" and 2, conduct by the County must cause or be likely to cause "pollution, impairment or destruction" of the environment. White v. Minnesota Dep't. of Natural Resources, 567 N.W.2d 724, 737 (Minn. App. 1997).

Plaintiff has failed to show a prima facie case under MERA because environmental review does not constitute a protectable natural resource and environmental review does not constitute conduct which causes pollution, impairment or destruction of the environment. National Audubon Soc'y v. Minnesota Pollution Control Agency, 569 N.W.2d 211, 219 (Minn. App. 1997).

Plaintiff's ten count complaint alleges violations of Minnesota Rules Chapter 4410 regarding environmental review and environmental assessment worksheets. These alleged violations do not constitute "conduct" under MERA upon which relief can be

granted. Again, Plaintiff's Complaint fails to state a claim upon which relief can be granted, and, therefore the Complaint is dismissed.

Defendants request sanctions and costs associated with this case arguing that Plaintiff's failed to heed the warnings of the District Court in a prior order where they were reminded that there must be an actual case or controversy at issue to survive a dismissal on the merits. Plaintiff responded by stating that the prior case was dismissed for lack of jurisdiction and not ruled upon on the merits.

The undersigned is mindful that citizens have the right to contest the actions of elected officials and that a lawsuit, now and then, unfortunately is part of being an elected official. The Defendants have failed to show that Plaintiffs actions have been such that sanctions should be applied. The granting of sanctions is a harsh remedy and should be applied sparingly so as not to stymie citizen input. This case is not one where sanctions should be applied.