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2021 YEAR IN REVIEW

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2021 MACPZA CONFERENCE
Austin, MN

October 14, 2021

I. JURISDICTIONAL ISSUES

A. Stinski v. Carlton County, 2019 WL 5543938 (Minn. App. 2019)

Minn. Stat. §394.27, subd.9, specifies that the time to appeal a variance decision is 30 days after receipt of notice of the decision. The 30 day deadline is jurisdictional. Failure to appeal within that time deprives the court of jurisdiction. This case addressed what constitutes notice of the decision. The County mailed Stinski a letter on May 23, 2018, entitled Notice of Decision, which stated that the neighbors request was granted to construct a 24' by 24' attached garage to a nonconforming dwelling, and that the request was denied to construct a deck onto a nonconforming dwelling.

NOTE: These materials and the corresponding presentation are meant to inform you of interesting and important legal developments. While current as of the date of presentation, the information that is provided may be superseded by court decisions, legislative amendments, rule changes, and opinions issued by bodies interpreting the area of law. We cannot render legal advice without an awareness and analysis of the facts of a particular situation. If you have questions about the application of concepts addressed in this outline or discussed in the presentation, you should consult with your legal counsel.
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The Court decided that the notice was sufficient. The case was dismissed as the appeal was served on the County more than 30 days after the receipt of notice of the decision.

B. Hecker v. Crow Wing County, 959 N.W. 2d 215 (Minn. App. 2021)

This case also dealt with what constitutes notice of the decision on a variance case from a county. Once again, we had a neighbor seeking to appeal a variance decision that partially granted the variance request, denying the majority of what was requested. In response to a request for the status or the requested variances, the County sent the attorney for Hecker an e-mail that said "attached is the draft findings". The attached document included draft minutes that were set to be reviewed by the County about a week later. The draft findings included a summary of the record, findings of fact, a summary of the decision, and a signature line for the board chair. The document was marked DRAFT.

The issue was whether the draft document constituted notice of the decision. Here the Court of Appeals held the draft document did not provide sufficient written notice to constitute notice of the decision under the statute. Additionally, the court definitively answered the question of whether an appeal of a variance requires, in addition to a notice of the appeal, a summons.

C. Kirkpatrick v. Meeker County, 2020 WL 132536 (Minn. App. 2020)

This case addressed the issue of how you properly serve a county to initiate a challenge to a land use decision. The County approved a CUP for a gun range. A neighbor sought to appeal the decision. The board chair of the County was sent a copy of the appeal documents by mail and by e-mail. He received them and the County was definitely aware of the lawsuit. The question was whether that method was adequate personal service by "delivering" a copy to the board chair. The Court held it was not. The case was therefore dismissed for being started more than 30 days after the decision was made.

D. Schultz v. Town of Duluth, 936 N.W. 2d 334 (Minn. 2019)

This case answered the jurisdictional question of who has to be named as parties, and served in the initial 30 day period in a lawsuit when someone is challenging

the decision on a variance. A neighbor appealed the decision. The applicants were not properly served within the 30 day period to seek review of the Township decision. The County was properly served within the 30 day period. The question was when someone other than the applicant for the variance sued to challenge the decision, must the landowner be made a party to the litigation. The question had percolated through the court system for some time. And the argument was that if the landowner wasn't joined initially, if he was sought to be added after the initial 30 day period, that was too late and destroyed jurisdiction.

The Supreme Court held that if the municipality was properly served in the 30 day period, it didn't matter if the landowner was made a party and/or served in that period. Under the statute and ordinance, only the municipality had to be served for the court to acquire jurisdiction, and the landowner could be added later without destroying jurisdiction.

II. SOLAR CASES

In the last several years there have been six appellate cases reviewing challenges to decisions involving conditional use permits. The decisions are as follows:

A. In Re Order Approving the Application of DG Minnesota, CSG2, LLC, 2017 WL 6567653

Carver County approved a CUP for a solar garden in the Agricultural/Shoreland Overlay zoning district. Unhappy landowners challenged the decision. They argued that a CUP could not have been granted because a solar garden is an "industrial use", which was specifically prohibited in the shoreland overlay district. They also argued that the solar garden would have adverse environmental effects, would adversely effect surrounding properties, would negatively impact property values, and was inconsistent with the comprehensive plan's goal of preservation of prime agriculture lands. The court of appeals rejected the arguments.

B. Minnesota Solar, LLC v. Carver County, 2017 WL _____

Carver County denied a CUP for a solar garden. Two local farmers expressed concern that, among other things, stray voltage from the project would negatively effect their dairy operations. A member of the Planning Commission expressed the same concern and shared his experience with stray voltage and its effects on his family dairy operation. The County Board denied the CUP, relying

principally on the stray voltage concerns. The Court of Appeals upheld the denial, concluding the record contained adequate facts supporting the concerns. The Court of Appeals also rejected the applicants' equal protection arguments.

C. In Re Order Finding Certain Facts and Ordering Denial of a CUP for United States Solar, 2018 WL 6729753

The Carver County Board denied a condition use permit request for a one-megawatt solar garden. The Board cited a number of reasons, principal of which was the effect of stray voltage on surrounding dairy farms. Analyzing the record, the court of appeals concluded that it did not support the County's concerns. The court of appeals distinguished the Minnesota Solar decision by concluding that the proximity of the solar garden interconnection infrastructure to nearby dairy farms was different in the two cases.

D. In Re Order Denying CUP for United States Solar, 2019 WL 1320571

Carver County denied a CUP request for a Solar garden. The Board relied principally on concerns expressed by members of the public that the project would negatively impact land values, and would cause stray voltage. The Court of Appeals reversed the CUP denial, concluding that concerns about stray voltage were only anecdotal and generalized. The Court of Appeals also concluded the record did not support the fact property values would be impaired, noting that testimony that they may be impaired was not enough.

E. In the Matter of USS Washburn Solar, LLC and In the Matter of USS Water City Solar, LLC, 2020 WL 4280034

This is a consolidated appeal challenging two contemporaneous denials of conditional use permits for solar gardens. While the cases involved substantive challenges to the CUP denials, the Court of Appeals did not get to the substantive challenges. Instead, it concluded that the County had not complied with the 60-Day Rule.

F. In the Matter of US Solar Corporation and USS Water Fowl Solar, LLC, 2021 WL 2909044

The County Board denied a CUP for a solar garden. Denial was based on two reasons: First, a "concern for the preservation and protection of land values", and second, that the subject property "… is considered prime agricultural soil". The court of appeals reversed the denial. Reviewing the record, the court of appeals

noted that neighbor concerns about property value impacts were not based on concrete information. The court of appeals also concluded that whether the project site was "prime agricultural soil" was not a listed standard for CUP decisions.

III. NONCONFORMITIES

A. AIM Development v. City of Sartell, 946 N.W. 2d 330 (Minn. 2020)

This case dealt with the issue of whether and under what circumstances an entity was in fact expanding a nonconforming use. Here, the company, a paper mill, operated a landfill that took in the company's nonhazardous, non-toxic industrial waste for decades. The paper mill was destroyed by fire and was not rebuilt. A successor corporation that purchased the mill site and the landfill site wanted to take in nonhazardous, non-toxic industrial waste from sources other than the paper mill. The Court discusses the scope of nonconforming rights and whether taking industrial waste from new sites, not being taken at the time the use became a nonconforming use, was an expansion.

IV. NUISANCES

Several cases provide guidance and reminders to consider when dealing with nuisance properties and enforcing nuisance provision in state law and county ordinances. They are as follows

A. Arthur Towp. V. Sakuve, 2021 WL 40590

A township ordinance prohibited property owner from maintaining a property's "visual appearance" or "such other objectionable influence" that the township deemed "to have a negative impact upon property values in the area". Relying on these provisions, the township, after attempting to achieve voluntary compliance, initiated a district court action against a property owner that maintained numerous unlicensed vehicles on his property. The district court ordered the property owner to comply with the ordinance. The property owner appealed. The property owner, on appeal, attempted to offer new documents and evidence that supported his position that he was in compliance with the township ordinance. The court of appeals rejected the information, concluding it would not be considered for the first time on appeal.

B. In Re North Mankato, _____ WL _____

The City of North Mankato adopted a Resolution declaring a property to be a public nuisance. The matter centered on a residential property in the City where, the court noted, landowners took an "unconventional approach" to lawn care, allowing all trees, shrubs, and vegetation to grow freely in their yard. The City had addressed the issue over the course of 9 years. The property owner raised several arguments in the certiorari appeal, principal of which was the argument that there was insufficient evidence presented to the City Council to support the Resolution. Considering whether there was a "rank growth of vegetation" (the term used in the City Ordinance), the court of appeals defined the phrase to mean "excessive growth harmful to the public health" or "annoying to members of the public". The court of appeals found the record supported the existence of excessive growth, but not a negative impact on public health. The court of appeals also concluded the record did not support the fact the vegetation sufficiently "annoyed members of the public".

V. 60 DAY RULE CASES

A. Knife River Corporation v. Whited Township, 2020 WL 7688625 (Minn. App. 2020)

Here there was a request for a CUP**.** In the staff report, the request was misidentified as a request for an interim use permit (IUP). The permit request was denied. On appeal, one of the arguments the landowner made was that the request was never acted on because they acted on an IUP, and that therefore the 60 days ran and the permit should be granted as a matter of law. Also involved in the case are issues of whether both the Township and the applicant can raise new arguments on appeal not presented to the Town Board.

B. State v. Sanschagrin, 2020 WL 1673741 (Minn. App. 2020)

This was a misdemeanor zoning violation case. Respondents owned an unimproved lot on lake Minnetonka that they used for access to the lake. They put a seasonal dock in and the City issued them a notice of violation for placing a dock on the property. Respondents sent a timely letter challenging the ordinance interpretation. More happened, and a second notice of violation was sent. Again Respondents sent a letter challenging the City interpretation of the ordinance and appealing the violation determination. The issue in the case was whether the letter challenging the interpretation of the ordinance and the statement they

wanted to appeal was a request relating to zoning within the meaning of the 60 day rule.

VI. CONDITIONAL USE PERMIT CASES

A. Bolton v. Hubbard County, 2020 WL 2110735 (Minn. App. 2020)

Bolton proposed to develop his property into a 14 unit RV park. In what would not be a surprise to anyone, there was vigorous opposition to the proposal. The planning commission in a 3-2 vote recommended approval with 22 conditions. The board denied the application, and Bolton appealed. The case shows the creative use of the record to the advantage of the County.

B. In re Tillman Infrastructure, LLC., 2020 WL 4432034 (Minn. App. 2020)

This was an appeal from Aitkin County's grant of a CUP to construct a telecommunications tower. A good example of the court taking a hard look at the record and from that determining what the County did or did not do.

VII. TAKINGS CASES

A. Minnesota Sands v. Winona County, 940 N.W.2d 183 (2020)

The saga is finally at an end. In 2106, the Winona County Board adopted a comprehensive zoning ordinance amendment prohibiting all "industrial mining operations" within the County. The amendment was supported by detailed findings. The amendment had the effect of prohibiting large scale silica sand mining. Minnesota Sands challenged the ordinance amendment as unconstitutional on a number of grounds, including the fact it was a taking and violated the commerce clause of the U.S. Constitution. The district court and court of appeals upheld the ordinance amendment. In this decision, the State Supreme Court also found the ordinance amendment to be constitutional. With respect to the takings issue in particular, the supreme court concluded that Minnesota Sands did not have a sufficient property right to mine due to language in Minnesota Sands leases, and the fact an EIS had not yet been prepared and CUPs not obtained. Minnesota Sands petitioned for review to the U.S. Supreme Court, but the petition was denied.

B. Bystedt v. City of Duluth, 2021 WL 2067328

This is also an inverse condemnation case. The City constructed a multi-level parking ramp. An adjacent landowner alleged the ramp interfered with its quiet enjoyment of its property, and implied easement rights to light, air, and view. The court rejected the argument. The court concluded that a takings claim requires a property owner to show harm "peculiar to them", rather than harm suffered by the public at large. The court concluded inconveniences and impacts caused by the ramp were inconveniences that would be suffered by all property owners in that area of downtown Duluth. It rejected the takings claim.

VIII. MISCELLANEOUS MATTERS

A. City of Waconia v. Dock, 961 N.W. 2d 220 (Minn. 2021)

This was a case over a dock. The landowner, Dock, was constructing a permanent dock that the City went to court to stop from being constructed and to require its removal. The City had an ordinance prohibiting the placement of permanent docks on riparian lots within the city limits. The ordinance prohibiting the dock was passed pursuant to the powers granted statutory cities in Chapter 412 of Minnesota Statutes, § 412.221. The ordinance was not passed as a zoning ordinance, or under the authority of Chapter 462, the zoning act for cities and Townships. The issue in the case came down to when an ordinance is a zoning ordinance. How is it determined.

IX. RLUIPA

A. Mast v. County of Fillmore, 2020 WL 3042114

The Religious Land Use and Institutionalized Persons Act (RLUIPA) is a federal law that impact counties' ability to make land use decisions that negatively effect sincerely-held religious beliefs. RLUIPA claims are fairly uncommon. This case involves a suit brought by an Amish community against Fillmore County alleging the community should be exempt from rules mandating installation of approved gray water septic systems. Under RLUIPA, state and local government cannot adopt and enforce regulation that adversely effect sincerely held religious beliefs unless government can prove that the regulations serve a compelling governmental interest, and that the regulation are "narrowly tailored" to achieve that interest. In this case, the state district court and court of appeals concluded government has a compelling interest in enforcing sanitary regulations. By order

dated July 2, 2021, however, the United States Supreme Court vacated the state decisions and remanded the case back to the state courts. The U.S. Supreme Court indicated the state courts were not exacting enough in applying the rule of strict scrutiny in the case. The court indicated the question is not whether the County has a compelling interest in enforcing septic rules generally, but whether it has a compelling interest in denying the community the right to install an alternate gray water system that may not meet septic rules. This more exacting standard will be more difficult for the County to meet.

X. VARIANCES

A. Woodland Gale Owner's Assoc. v. City of Woodland, 2020 WL 4743526

This case involves a variance to allow the installation of sanitary facilities in a cabana located at the shoreline of Lake Minnetonka. Specifically, the property owner sought to run water and sewer lines to the cabana, which the record showed was already finished living space. At its April 2018 meeting, the City Council considered and denied the request. The Council member that moved denial in his motion recommended denial because the variance would "materially increase the frequency and duration of occupancy of the structure, resulting in [increases in activities] contrary to the comprehensive plan". At the Council's next meeting a formal resolution was adopted with much more detailed findings. On appeal, the landowner argued that the court could not consider the resolution, but rather could only consider the decision by reference to the reasons in the April 2018 oral motion. The argument was based on a provision in Minn. Stat. § 15.99. The appellate court rejected the argument, concluding the City was within its rights to rely on the Resolution, particularly since Council had not adopted the Council Member's April 2018 statement as its own "written statement of reasons".