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## 2023 YEAR IN REVIEW

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## 2023 MACPZA CONFERENCE

**Grandview Lodge**  
**October 13, 2023**

### I. Conditional Use Permits

#### A. *In re Application of Goodpaster*, 2023 WL 2847347 (Minn. App. Apr. 10, 2023).

This case involves the Goodpasters' application for a CUP to operate a winery in Chisago County. A CUP is required for "rural retail tourism business" in an Ag district. County staff recommended approval of the CUP application with 14 conditions. The Planning Commission held a public hearing and heard from staff, the applicants, and four members of the public who opposed the winery. The PC also received three written comments opposing the application. The PC recommended approval with 17 conditions, which included modifications to the original conditions proposed by staff.

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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 While current as of the date of presentation, the information that is provided may be superseded by court decisions, legislative amendments, rule changes, and opinions issued by bodies interpreting the area of law.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 Board did not receive any new information other than the record from the PC. A commissioner immediately moved to deny the application and the Board unanimously denied the application. The County sent notice of the denial and identified the following reasons as the basis: 1) the lot was too small to operate the winery without impactful destruction; 2) the winery was not sufficiently compatible with the residential nature of the area and too close to residences; and 3) the appearance and intensity of operations would adversely affect the neighborhood and screening was unlikely to remedy it. The Court noted that the first reason (lot size) was not a justifiable reason to reject the application. The Board did not connect lot size to an ordinance requirement and the lot size exceeded the minimum lot size for the Ag district. With respect to the second, the Court noted that distance and screening were required by the ordinance. However, the Board simply issued the conclusory statement that it was too close to residences. The Court explained that there was only one concern from a neighbor that was not addressed by the PC's 17 proposed conditions. That concern related to increased traffic on the adjacent road. However, the County Board did not discuss traffic as a reason for denying the application. Therefore, the Court concluded there was not sufficient factual basis in the record to support this finding. On the third reason, the Court noted that the only concern about the appearance of the proposed project related to use of portable toilets. However, the only indication that the winery would have portable toilets was based on the applicants' statement that they would comply with the requirements of the County Sanitarian. The Court explained that there was no reason to assume such toilets would be necessary and, even if they were, that screening would be inadequate.

**B. *USS Great River Solar v. Stearns County*, 2022 WL 4295368.**

Stearns County denied a request for an interim use permit for a one-megawatt solar farm. Denial was largely based on the County Board's conclusion that the property was good agricultural property, and conversion of the land to non-agricultural uses was not consistent with the County's Comprehensive Plan. The case is notable because it contains a good discussion of inconsistency with a comprehensive plan as a legally-sufficient reason to deny an IUP or a CUP. Second, the case also contains an interesting 60 day rule issue centered on when a failed motion to approve constitutes a denial. Minn. Stat. § 15.99 states that a failed motion to approve constitutes a denial when those voting against the motion state their

reasons for opposition. This case has a good discussion surrounding what needs to be stated, and when opponents need to state reasons for opposition.

**C. *Miller v. Baytown Township*, 2023 WL 1770141 (Minn. App. Feb. 6, 2023).**

Baytown Township granted a CUP for an “open space development” that included 101 homes on a 195-acre parcel designed to essentially cluster residences while leaving over 50% of the parcel as open space. Neighbors challenged the CUP largely based on concerns about traffic. The township, however, had considered extensive evidence regarding traffic, holding a total of five public hearings primarily on this issue. The court rejected the notion that the mere fact of traffic increase necessarily means health, safety, and welfare will suffer. It similarly refused to reverse the CUP on the basis that the township misstated that there was “no evidence” that traffic changes would damage property values, opting instead to review the record itself to determine whether there was a rational basis for the decision. Finally, the court refused to overturn the CUP on the basis that the township’s comprehensive plan only estimated the addition of 90 households by 2040.

**D. *In re Stevens County Application for a Conditional Use Permit*, 2023 WL 5696623 (Minn. App. Sept. 5, 2023).**

Stevens County proposed construction of a subsurface tile outlet from Silver Lake to decrease flooding of a road. Plan went into Grant County, which told Stevens County to get a CUP for the project. Stevens County applied for CUP. Grant County Engineer noted flooding could be addressed by either the subsurface tile proposed by Stevens County or widening and raising the road.

Application went directly to Board. Board held a hearing and approved CUP subject to seven conditions, including that the Counties would commit to a road project to be completed within 5 years. Stevens County appealed, asserting 1) no CUP was required for the project and 2) the CUP was void because the hearing was held before the Board instead of the PC; and 3) the CUP conditions were not supported by the record.

On the first issue, the Court noted that it was odd for Stevens County to claim no CUP was required when Stevens County had *applied* for the CUP in the first place. The Court reviewed the applicable ordinance provisions and agreed with Grant County that a CUP was required under at least two separate provisions. The Court

acknowledged that Grant County’s decision could have more clearly identified which ordinance provisions required a CUP, but applied the deferential standard of review and determined this did not form a basis to overturn Grant County’s decision.

The Court also rejected the procedural challenge asserting the CUP was void because it was not considered by the PC before the Board. The Court acknowledged that the Grant County Ordinance required CUPs to be heard by the PC, but noted that there was no penalty in the ordinance for non-compliance. Without a stated penalty, the action would only be overturned if Stevens County could show it was harmed by the failure to be considered by the PC. The Court noted that the Board was presented with all the information the PC would typically consider, accepted public comments, and even delayed the issuance to seek additional information about safety and environmental concerns. The Court also explained that the PC’s role is merely advisory, which made it less critical to the decision.

Finally, the Court considered Stevens County’s argument that the conditions in the CUP were not supported by the evidence in the record. The Court found that the second condition, which required both counties to cooperate and fund a road project within five years, was not sufficiently related to the CUP. Although the purpose of the project for which the CUP was granted was subsurface tile to prevent road flooding, the road project was not required as a result of the tile. This condition was also not discussed by the Board. The Court ordered the Board to approve the CUP without the second condition.

## **II. Variances**

### **A. *Behrends v. Jackson County*, 2022 WL 179556776.**

Jackson County approved four variances for wind generators. The neighboring property owner sued, alleging that the County Board of Adjustment failed to consider the specific standards for a variance in the County’s Zoning Ordinance. Of note in this case is the fact the Ordinance contained verbiage related to “hardship” (the language had not been revised since adoption of the “practical difficulty” standard into Minn. Stat. § 394.27). The BOA did adopt findings that more closely paralleled the practical difficulty standard. The court upheld the

variance grant, finding the decision to have been made in accordance with the statute, regardless of Ordinance language.

### **III. Environmental Law**

**A. *In re City of Cohasset's Decision on Need for an EIS for Proposed Frontier Project*, 985 N.W.2d 370 (Minn. App. 2023).**

After completing a required EAW, Cohasset determined that an EIS was not necessary for a proposed oriented-strand-board manufacturing facility. The Leech Lake Band of Ojibwe appealed the city's decision, contending that an EIS was mandatory because the proposed project would eliminate public waters wetland and that an EIS was required because of the potential for significant environmental effects through wetlands removal, air emissions, and/or timber harvesting. The court agreed that an EIS was mandatory due to elimination of public waters wetlands, reasoning that entire disappearance is not required to constitute elimination if the impacts would remove the area from meeting the characteristics of public waters wetland. The court also agreed with the Tribe that a plan to purchase wetland credits did not establish that the potential wetland impacts had been fully considered, while concluding that the robust air emissions regulatory scheme was sufficient to address that issue outside of the EAW/EIS process. This case also includes a brief, but interesting, discussion of the weight assigned to the Tribe's input on EAW/EIS issues.

**B. *East Phillips Neighborhood Institute, Inc. ("EPNI") v. City of Minneapolis*, 2023 WL 177092 (Minn. App. Feb. 6, 2023).**

This case was brought by a neighborhood organization asserting that the EAW prepared by the City of Minneapolis for a City project was inaccurate and biased. The project was the expansion of a maintenance facility that would allow the City to consolidate services in one location. It involved environmental abatement and demolition of a former warehouse, which would be replaced by 328,000 square feet of new construction and parking for the associated employees. The East Phillips Neighborhood is comprised primarily of people of color and has historically been disproportionately affected by pollution, leading to its classification by the MPCA as an area of environmental justice concern. When the project was initially proposed, residents petitioned the City to conduct an EAW.

Although the City concluded no EAW was required, it opted to complete a discretionary EAW. The Council ultimately adopted the findings of fact, approved the adequacy of the EAW, and approved the determination that an EIS was not required.

EPNI appealed claiming bias and that the City failed to address certain concerns. EPNI argued the City was biased because it was a City project and the City had already invested millions of dollars in the project. The Court explained that EPNI had the burden to show bias based on specific evidence rather than broad assertions. It observed that the project was proposed by the Public Works department and the EAW was completed by the Department of Community Planning and Economic Development, which undermines the assertion of bias. It also noted that the Minnesota Rules governing discretionary EAWs state that the governmental unit that orders the EAW is the RGU for the EAW.

EPNI also argued that the City failed to consider eight different concerns it raised in response to the EAW. The Court reviewed those issues and concluded that the City had addressed each of the areas. The Court applied its ordinary deferential standard of review, in which it does not overturn a Board's decision if there is any evidence in the record supporting that decision. Essentially, EPNI was asking the Court to consider the evidence differently and conclude that evidence submitted by EPNI should be considered over evidence the City relied on.

**C. *Matter of Lorentz & Sons Construction, Inc.*, 2023 WL 1955159 (Minn. App. Feb 13, 2023).**

Lorentz is a mining company with a sand and gravel pit site in Nicollet County that encompasses historic and culturally important sites, including petroglyphs. Lorentz sought to add a quarry site under its existing NPDES/SDS permit by including it on a site inventory report form submitted to MPCA. A citizen group petitioned to require an EAW for the new quarry on the basis that the quarry threatened the loss of significant and irreplaceable historical and archaeological resources. The MPCA determined that an EAW was required on these grounds. Lorentz appealed this determination arguing that this effectively imposed an EAW after a permit was already issued, contending that by failing to deny the site inventory report including the new quarry, MPCA approved it. The court rejected this argument because the MPCA had not issued a written modification of the

permit. The court also rejected Lorentz's argument that MPCA's decision to require an EAW was improper, emphasizing that EAWs are appropriate when there *may* be potential for significant environmental effects, even though there was evidence in the record that Lorentz did an investigation of the site and had a monitoring plan that anticipated and mitigated potential environmental effects.

**D. *In re Petition of MCEA for Commencement of an Environmental Assessment Worksheet*, 980 N.W.2d 175 (Minn. 2022).**

This case relates to identification of "public waters," specifically whether a body of water can be a public water without being identified on DNR's public water inventory. It concerns the upper reach of Limbo Creek in Renville County. The court reviews the lengthy and heavily litigated history of public waters designations in the County, but the core facts are that this particular body of water was not referenced in earlier litigation, it was not on DNR's *list* of public waters in the County, but it was on DNR's *map* of public waters.

MCEA petitioned the County to complete a mandatory EAW. An EAW is mandatory when a project "will change or diminish the course, current, or cross-section of... [a] public water." Minn. R. 44`0.4300, subp. 27(A). The County considered MCEA's petition, but ultimately determined that the upper reach of Limbo Creek was not a public water and no EAW was required.

MCEA appealed to the Court of Appeals, which concluded that the absence of a body of water from the DNR inventory list does not conclusively establish that it is not a public water. The County and property owners appealed to the Minnesota Supreme Court.

The Court found in favor of MCEA on different grounds. The Court reasoned that Minnesota law only requires DNR to complete the public waters *map*, which did include this body of water. Although the written inventory did not include it, the inventory was not required by the more recent statutes. In the future, counties will need to consult the map, in addition to the inventory, to determine whether a body of water is a public water. Additionally, the Court left open the possibility that something could be a public water if it meets the statutory definition, even if it is not on the inventory or the map.

#### IV. Other Cases of Interest

**A. *Sanimax USA, LLC v. City of South St. Paul*, 2023 WL 2189208.**

This is a federal court decision involving equal protection and retaliation allegations. In this case Sanimax had historically operated an animal rendering plant in South St. Paul for over 50 years. While stockyards in the City had ceased operation in 2008, some of the industries related to them, including Sanimax, continued to operate. The City conducted a study of the businesses and ultimately adopted new odor-related ordinances. It also rezoned Sanimax's property to light industrial, which precluded the use (though it then became non-conforming). Sanimax sued. It alleged equal protection and First Amendment retaliation claims. The case contains a good discussion of the "similarly-situated" concept in equal protection. It also contains an interesting discussion of a claim involving alleged use of land use ordinances and decisions to retaliate against a person or business.

**B. *Mast v. Fillmore County*, 993 N.W.2d 895 (Minn. App. 2023).**

This case stems from an Amish community's religious objection to the use of septic systems to dispose of gray water from their homes. Though the county had an "alternative local standard" in place for the Amish community, it still required the use of a septic tank, which the community alleged violated their religious rights. Under RLUIPA, the government may not implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person unless it demonstrates that imposition of the burden (1) furthers a compelling governmental interest and (2) is the least restrictive means of doing so. The court decided this matter on the first prong, explaining that the compelling interest must relate to the application of the challenged regulating to the particular claimant whose sincere religious belief is being substantially burdened (here, the Amish community), not just a broad or general interest in applying the law. The court concluded that the government cannot enforce the SSTS ordinance against this Amish community based on the evidence in this case, which did not include sufficient information about this community's gray water, water usage, or amount of discharge to support a conclusion that the septic tank requirement furthers a compelling state interest specific to these religious objectors.



**C. *Alfureedy v. City of St. Paul*, 2023 WL 5526397.**

The St. Paul Council denied Alfureedy's rezoning request. Two weeks after the denial the Council adopted a resolution setting forth the reasons for denial. The plaintiff sued and alleged the Council's decision was arbitrary because it did not adopt written reasons at the time of denial. The court rejected this claim, noting that the City videotaped, took minutes, and transcribed the meeting. The Court concluded this was an adequate contemporaneous record of the decision. The court went on to substantively revise the rezoning denial. The case contains good discussion of the burden of a challenges in a rezoning context. Finally, there are a few good nuggets in the court's decision relative to what constitutes a "fair hearing."

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