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2015 YEAR IN REVIEW

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2015 MACPZA CONFERENCE
BIWABIK, MN

SEPTEMBER 24, 2015

I. CONDITIONAL USE PERMITS

A. August v. Chisago County, ___ N.W.2d ___, 2015 WL 4877658 (Minn. App. 2015)

In this case, a landowner sought a conditional use permit to hold horse-mounted shooting events with an adjacent camping area where competitors and spectators could stay on the property. The county board denied the CUP application on the ground of negative impact on the neighborhood due to noise. The landowner challenged the denial, arguing that the county board could not consider the effects of noise unless the noise meets or exceeds noise standards set by the MPCA. The Court of Appeals upheld the county's decision. The opinion also contains a good discussion on neighborhood observations.

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 While current as of the date of presentation, the information that is provided may be superseded by court decisions, legislative amendments, rule changes, and opinions issued by bodies interpreting the area of law.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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B. RDNT, LLC v. City of Bloomington, 861 N.W.2d 71 (Minn. 2015)

This case involves a CUP application to expand an assisted-living complex. Neighbors testified that the project would cause a significant increase in traffic and that the size of the project would negatively impact the neighborhood's character. The city denied the application on four grounds articulated in its ordinance, including that the proposed CUP would cause injury to the neighborhood and "otherwise harm the public health, safety, and welfare." This was only ground considered by the Supreme Court. The Supreme Court held that the City's ordinance allowing as a standard a general consideration of the public health, safety, and welfare was legally sufficient.

C. Klockmann v. Le Sueur County, 2015 WL 3879640 (Minn. App. 2015)

This case involves the granting of a CUP. The County Board first denied the CUP, then rescinded the denial and granted it. The case involved the question of whether the silage storage facility was an allowed use in an Agricultural District. The neighbors challenging the action also alleged that the County lacked the power and authority to modify its earlier denial of the CUP.

D. Axelson v. Goodhue County, 2015 WL 1514160 (Minn. App. 2015)

This case is an old friend, reviewed in 2012 when the revocation of the CUP was reversed and sent back due to an inadequacy of evidence. Once again the County revoked the CUP, and its back again.

II. PROCEDURE AND FINDINGS

A. Loncorich v. Buss, 2015 WL 4877708 (Minn. App. 2015)

This case involves a citizen challenge to the grant of a conditional use permit for a feedlot. Neighbors challenged the decision, claiming it was arbitrary and capricious because the permit application was incomplete and because the Planning Board had refused to consider written materials submitted by opponents just minutes prior to the deadline. The Court of Appeals rejected these arguments and upheld the permit decision.

B. Bio Wood Processing, LLC v. Rice County, 2015 WL 1608793 (Minn. App. 2015)

The County Board followed the recommendation of its Planning Commission in denying Bio Wood's application to amend an existing CUP. The Board Chair signed a written resolution of denial adopting the Planning Commission's seven written findings of fact as the reasons for denial. Bio Woods appealed attacking the procedure followed,

arguing it did not comply with the County's Ordinance requiring the Planning Commission to make "formal findings on the record." The Court of Appeals agreed. The matter was remanded back to the County to proceed in a manner compliant with its own ordinances.

C. Vigstol v. Isanti County, 2014 WL 6862933 (Minn. App. 2014)

The Vigstols applied for a CUP for a rural retail tourism business on land they owned in an AR District. The project was a venue to host weddings, family reunions, and civic group gatherings of up to 250 people, with the primary season from mid-May to mid-October. After certain revisions to the plan and strong neighborhood opposition, the planning commission voted to approve the request with 20 conditions. The County Board denied the application, making five findings. None of which was found to have evidentiary support on appeal. This case is an excellent example of findings based on neighborhood opposition rather than concrete factual matters. The Court's review and analysis of each finding makes for educational reading.

III. CONSTITUTIONAL ISSUES

A. Reed v. Town of Gilbert, 135 S.Ct. 2218 (2015)

This is the recent United States Supreme Court case affecting sign ordinances. The factual background involved a community church in Gilbert, Arizona. The church was small, cash strapped, and without a permanent location. So it held services at various locations, changing from week to week. The church wanted to post temporary signs as to the time and location of their Sunday services each week. The church was cited for violating the Town's sign code, on aspects of the regulations regarding temporary directional signs. The church sued, raising, among other issues, violation of its First Amendment right to free speech.

First Amendment litigation turns on whether the government regulation is content neutral or content specific. The case contains an extensive discussion of content-based versus content neutral regulation and a concurring opinion sets out numerous examples of sign regulations that would not be considered content based.

IV. ONE OTHER CASE OF INTEREST

A. Erickson v. Minnesota Department of Natural Resources, 2015 WL 4393405 (Minn. App. 2015)

This case reads like a made for TV movie for zoning wonks. This is a silica sand-mining case. It involved a mining operation permitted by a 1992 Houston County CUP;

an agreement by the mine owner Erickson with Minnesota Sands, LLC., for the extraction and processing of 2 million cubic yards of sand; a County moratorium; an order to cease operations due to the moratorium; an EAW ordered due to the new operations; a terminated agreement; a terminated EAW; and an expired and later reissued CUP to Erickson. And litigation involving the County, Erickson and Minnesota Sands. In the end this case involved the DNR taking the position that because the CUP had lapsed, this was a new project subject to setback permit requirements that were not in place when the original CUP was granted.

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