MACPZA CASE LAW UPDATE

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LAND USE – ISSUE OVERVIEW

Trends – lake shore issues, utilities, perceived bias, non-conformities

CROIX HOLDINGS, LLC V. CITY OF NEWPORT, NO. A21-0630, 2021 WL 5999561 (MINN. APP. DEC. 20, 2021), *REVIEW DENIED* (MAR. 15, 2022).

- Croix Holding, LLC, challenged the City of Newport's revocation of a conditional use permit. The dispute between Croix Holdings, LLC and the City arose over the use of properties owned by Croix Holdings. In 2015, Croix Holdings purchased the original property and the CUP (Conditional Use Permit) lot. It then leased these properties to tenants, including Imperial Camper who, in 1986 had obtained a CUP which allowed Imperial Camper to sell camper trailers.
- In 2018, Croix Holdings began converting two existing buildings on lots not subject to the CUP into car dealerships.

CROIX HOLDINGS, LLC V. CITY OF NEWPORT, NO. A21-0630, 2021 WL 5999561 (MINN. APP. DEC. 20, 2021), *REVIEW DENIED* (MAR. 15, 2022).

- The Court noted that while the 1986 CUP could have been more explicit about the nature of the original permitted use, the CUP was expressly conditioned on the use remaining the same.
- Because the City had a legally sufficient basis to determine Croix Holdings substantially changed the use of the original property in both nature and scope, and the record supported the basis, the Court held the City's decision to revoke the CUP was not unreasonable.

BLUE EARTH COUNTY IUP CASE V. LYON COUNTY CUP CASE

- Blue Earth County IUP case – IUP for a kennel. Owners had previously run illegal commercial kennel. County denied after-the-fact variance for original kennel. Owners then applied for an IUP for a new kennel on a different area of property. They also provided detailed mitigation measures to address the past concerns. Staff recommended approval with 23 conditions, but Planning Commission and County Board denied.

BLUE EARTH COUNTY IUP CASE V. LYON COUNTY CUP CASE

- The Court of Appeals first noted "the record of the county board's decision-making process is limited. There is no transcript of the proceedings before the county board. There are no meeting minutes. And the letter to the DeMartinis informing them of the denial does not detail why their IUP application was denied."
- The Court then found the County improperly based its determination on neighbors' complaints about historical events and the Planning Commission address the numerous measures the DeMartinis proposed for the new facility. Overall, the Court found the denial was based upon speculation and reversed and remanded back to the County Board to approve with reasonable conditions.

BLUE EARTH COUNTY IUP CASE V. LYON COUNTY CUP CASE

- Lyon County CUP case - Property owner challenged the County's grant of a CUP to electrical cooperative to relocate a 69-kilovolt transmission line along the right-of-way of a county road. Specifically, property owner claimed the County failed to adequate state the reasons for its decision, either orally or in writing, and multiple commissioners failed to abstain from voting based upon potential conflicts.
- In reviewing the approval, the Court of Appeals noted the record contained transcripts of the Planning Commission and County Board meetings. Within those transcripts was evidence the Planning Commission and County Board discussed the criteria for granting a CUP. Additionally, the transcripts and minutes showed the County Board made a motion to approve the CUP based upon the recommendation of the Planning Commission.

BLUE EARTH COUNTY IUP CASE V. LYON COUNTY CUP CASE

- Finally, the Court found the there was no evidence in the record showing the County Board commissioners had a conflict based upon a familial relationship or out of fear of retaliation. Rather, the record showed the proceedings were fair and impartial.

- Why am I comparing these two cases – they show the importance of the record and transcripts in defending the decisions. As defense attorneys, we have more to work with.

STALLAND V. CITY OF SCANDIA, NO. A20-1557, 2021 WL 3611371 (MINN. APP. AUG. 16, 2021)

- Tii Gavo is a planned unit development (PUD) which was approved in 2007 via a CUP. The PUD is on Big Marine Lake and is allowed to have 19 boat slips.
- In April 2019, several homeowners in the development sought to amend the CUP to allow 10 more boat slips. After the DNR, watershed district, and the city planner recommended denying the request, the City Council unanimously voted to deny it.
- Appellants alleged the denial was arbitrary and capricious. Additionally, they asserted their due process rights were violated because earlier staff mis-interpreted the City's ordinance, current staff allegedly tried to sway the DNR and watershed district, city councilmembers mobilized opposition and councilmembers had conflict of interests based upon lake ownership.

STALLAND V. CITY OF SCANDIA, NO. A20-1557, 2021 WL 3611371 (MINN. APP. AUG. 16, 2021)

- The Court found "the city's reasons for its decision were legally sufficient and supported by the record, and the decision was accordingly reasonable."
- The Court also rejected four different claims of procedural unfairness.
- First, Plaintiffs claimed former City workers gave them the wrong boat-slip formula to use on their application. The Court rejected this argument because Minn. Stat. § 462.3595 specifically places the burden of proof on CUP applicants. It was Plaintiffs' responsibility to use and find the correct formula for their application.
- Second, Plaintiffs claimed communications between the city planner and the DNR were improper ex parte communications. However, no ordinance or statute prohibits this, and the Court found nothing "untoward or irregular" about these communications.

STALLAND V. CITY OF SCANDIA, NO. A20-1557, 2021 WL 3611371 (MINN. APP. AUG. 16, 2021)

- Third, Plaintiffs claimed a City Council member wrongfully requested former watershed managers to attend the public hearing. The Court rejected this argument because asking former managers to give input at the hearing was "entirely appropriate."
- Fourth, Plaintiffs claim two councilmembers who own shoreline on the lake had a conflict. Citing *Lenz v. Cook Creek Watershed Dist.*, 153 N.W.2d 209, 219-20 (Minn. 1967), where several watershed district members who made a decision that benefitted their lake property were not automatically disqualified, the Court rejected Plaintiffs' claims as speculative.

MOORE V. MORRISON COUNTY, 969 N.W.2D 86 (2021)

- The Moores requested an after-the fact variance.
- Moores had removed an illegal deck surrounding their cabin on Fish Trap Lake and replaced it with a new deck, which extended closer to the protected shoreline than any structure in the property's history. They claimed they first learned the shore impact zone existed two years after completing several projects within it. While the Moores corrected some of these violations, they applied for an after-the-fact variance to keep the deck as is.
- The Board concluded the Moores failed to establish the required variance criteria under both Minn. Stat. § 394.27, subd. 7, and Morrison County Land Use Control Ordinance § 506.2. The Board found the Moores' proposal unreasonable and inconsistent with both the Morrison County Land Use Control Ordinance and Comprehensive Land Use Plan's purpose and intent to protect surface water quality for the safety and enjoyment of current and future residents.

MOORE V. MORRISON COUNTY, 969 N.W.2D 86 (2021)

- A variance "**shall only be permitted** when" it is "in harmony with the general purposes and intent of the official control" and "consistent with the comprehensive plan." Minn. Stat. § 394.27, subd. 7 (emphasis added). Similarly, the Board of Adjustment "**shall not** grant an application for a variance unless it determines that . . . the granting of such variance(s) will be in keeping with the spirit and intent of this ordinance." *L.U.C. Ord.* § 506.2 (emphasis added). Additionally, the Board specifically, "**must** find" the request is "in harmony with the general purpose of the Morrison County Land Use Ordinance and Comprehensive Plan…" *L.U.C. Ord.* § 506.2.

MOORE V. MORRISON COUNTY, 969 N.W.2D 86 (2021)

- A variance "**may** be granted when ***the applicant for the variance establishes*** that there are practical difficulties in complying with the official control." Minn. Stat. § 394.27, subd. 7. Practical difficulties means the property owner's proposed use—though not permitted by local controls—is a reasonable use, which "will not alter the essential character of the locality." *Id.* Additionally, to show a practical difficulty, the property owner must prove their *plight*, or their inability to use their property as proposed, "is due to circumstances unique to the property not created by the landowner…" *Id.* The statutory authority to grant a variance is permissive not mandatory. *Id.*

MOORE V. MORRISON COUNTY, 969 N.W.2D 86 (2021)

- The Zoning Ordinance is clear the Board "**shall not** grant an application for a variance unless it determines that the strict enforcement of this ordinance would cause a practical difficulty . . . because of circumstances unique to the individual property under consideration…" *L.U.C. Ord.* § 506.2 (emphasis added). Likewise, the Board "**must find** that" an applicant meets "**each** of the [practical difficulty] conditions…" *L.U.C. Ord.* § 506.2.

MOORE V. MORRISON COUNTY, 969 N.W.2D 86 (2021)

- Moores argued the County failed to address the *Kenny/Stadsvold* factors.
- The Zoning Ordinance requires the Board to ***first*** find the statutory minimum is met ***before then*** considering the after-the-fact criteria established through court precedent. *See L.U.C. Ord.* § 506.3 (stating: "***If*** the Board of Adjustment finds that all of the criteria set forth in section 506.2 a through f, are met, ***then*** the following additional criteria ***may*** be considered and weighed by the Board of Adjustment in determining whether to grant or deny the request…" *L.U.C. Ord.* § 506.3 (emphasis added)).

MATTER OF UNITED STATES SOLAR CORP., NO. A20-1043, 2021 WL 2909044 (MINN. APP. JULY 12, 2021)

MATTER OF UNITED STATES SOLAR CORP., NO. A20-1043, 2021 WL 2909044 (MINN. APP. JULY 12, 2021)

- US Solar Corp. wanted to build a 10 acre solar farm and applied for a CUP.
- Planning commission recommended approval.
- County Board denied on 3-2 vote
  - Despite three members commenting that the application met the requirements.
- 2 were given for denial
  1. Concern for the preservation and protection of land values.
  2. The property is considered prime agricultural soil.

MATTER OF UNITED STATES SOLAR CORP., NO. A20-1043, 2021 WL 2909044 (MINN. APP. JULY 12, 2021)

- Court of Appeals reversed, holding both proffered reasons to be arbitrary and capricious.

1. Property Value
   - Board was presented with direct evidence that property value would not be impacted.
   - Evidence included private and public studies, and a statement from the County's director of environmental services.
   - The only evidence of decreased property value was an unsubstantiated public comment.
2. Prime Agricultural Soil
   - Prime agricultural soil is not a condition listed in the ordinance for the board's consideration.
   - Therefore, it was an improper reason to deny the CUP.

STATE V. SANSCHAGRIN, 952 N.W.2D 620, 621 (MINN. 2020) AND *CITY OF SHOREWOOD V. SANSCHAGRIN*, CT. NO. A21-0992, 2022 WL 764223, (MINN. APP., MAR. 14, 2022)

STATE V. SANSCHAGRIN, 952 N.W.2D 620 (MINN. 2020)

- Defendants own undeveloped property in Shorewood on Lake Minnetonka.
- April 2017, Owners install a seasonal dock
- May 11, 2017, City issued notice of zoning violation because property lacked "principal dwelling." Letter directed them to remove the dock or appeal the order.
- May 13, 2017, Owners responded with a letter asserting their position:
  - Code only prohibits permanent or floating docks on unoccupied property – not seasonal.
  - The seasonal dock did not violate the City's zoning code.

STATE V. SANSCHAGRIN, 952 N.W.2D 620 (MINN. 2020)

- June 12, 2017, the City heard Owners' appeal and granted Owners additional time to review City's position.
- July 12, 2017, the City withdrew its notice of violation and told Owners that if the decides to pursue code violations in the future it would give notice.
- July 2017, City Council amended City Code prohibiting the use of any dock, on any property without a principal dwelling.

STATE V. SANSCHAGRIN, 952 N.W.2D 620 (MINN. 2020)

- Spring 2018, City sent letter reminding Owners of City Code.
- Owners responded asserting that "storage of the dock sections was a permitted non-conforming use and that the 2017 amended ordinance did not apply to their property." The City did not respond.
- June 2018, Owners re-installed the dock on their property. The City issued notice, stating the dock violated the amended ordinance.
- Owners submitted a written response to the City, and requested the notice be withdrawn.
- The Owners' attorney also wrote a letter to the City, arguing the dock was a legal non-conforming use.

STATE V. SANSCHAGRIN, 952 N.W.2D 620 (MINN. 2020)

- The City did not respond to the letters and declined to hear the appeal, deeming it untimely.
- In September 2018, Owners were criminally charged for violating the ordinance.
- Owners moved to dismiss charges.
  - City's first notice on May 11, 2017 was a zoning decision and that their appeal letter of May 13, 2017 was a "written application relating to zoning" under Minn. Stat. § 15.99, subd. 1(c).
  - Therefore, under § 15.99, subd. 2(a) the City's failure to approve or deny their request to withdraw the violation notice within 60 days resulted in automatic approval of their use of a dock on the property.

STATE V. SANSCHAGRIN, 952 N.W.2D 620 (MINN. 2020)

- District court granted Owners' pretrial motion to dismiss, because:
  - The Owners' May 17 appeal letter was a sufficient response, and
  - Because City's withdrawal of the first notice was not an approval or denial of the dock, the Owners request for zoning action was automatically approved.
- Court of Appeals Affirmed.
- On appeal, the Supreme Court had to decide whether Owners' May 2017 letter in response to the City's first violation notice was a request as defined by Minn. Stat. § 15.99, subd. 1(c).

STATE V. SANSCHAGRIN, 952 N.W.2D 620 (MINN. 2020)

- "Request" is defined by statute, as a "written application related to zoning... For a permit, license, or other governmental approval of an action." Minn. Stat. § 15.99, subd. 1(c),
- A request can be made:
  1. On an application form provided by the agency, or
  2. If not an a form, it must clearly identify on the first page the specific permit, license or approval sought.
- Here, Owners' May 2017 letter was not made on an application form provided by the City—it was merely a letter in response to a notice of zoning violation.
- And the letter failed to clearly identify the permit, license, or approval being sought.

STATE V. SANSCHAGRIN, 952 N.W.2D 620 (MINN. 2020)

- Therefore, the Owners' letter was not a request for other governmental approval.
- The Supreme Court reversed—much to the chagrin of the Sanschagrins.

CITY OF SHOREWOOD V. SANSCHAGRIN, CT. NO. A21-0992, 2022 WL 764223, (MINN. APP., MAR. 14, 2022)

- In July 2019, while the criminal case was proceeding through the court system, the City sued the Sanschagrins seeking to enjoin them from installing and maintaining their dock.
- The District Court determined the 2006 Code prohibited the installation of the dock on the property.
- Sanschagrins appealed and argued their dock was a legal dock under the 2006 Code and would be a legal non-conforming use under the 2017 Code Amendment.

CITY OF SHOREWOOD V. SANSCHAGRIN, CT. NO. A21-0992, 2022 WL 764223, (MINN. APP., MAR. 14, 2022)

- 2006 Code stated "[d]ocks and wharves, permanent or floating, shall not be built, used or occupied on land located within the R Districts until a principal dwelling has been constructed on the lot or parcel."
- 2017 Code Amendment stated "Docks shall not be built, used or occupied on land within the R District without a principal dwelling on the lot or parcel to which it is accessory."
- No dispute property is without a principal dwelling and is too small for a dwelling.
- Question for the court – was the seasonal dock a legal non-conforming use.

CITY OF SHOREWOOD V. SANSCHAGRIN, CT. NO. A21-0992, 2022 WL 764223, (MINN. APP., MAR. 14, 2022)

- 2006 Code stated "[d]ocks and wharves, permanent or floating, shall not be built, used or occupied on land located within the R Districts until a principal dwelling has been constructed on the lot or parcel."
- Court looked at whether "permanent or floating" only applied to "wharves" or "docks and wharves". Placement of comma was key.
- Court then looked at whether seasonal dock was "permanent".
- Finally, Court determined the removal and reinstallation of the dock each year did not invalidate non-conforming use status.

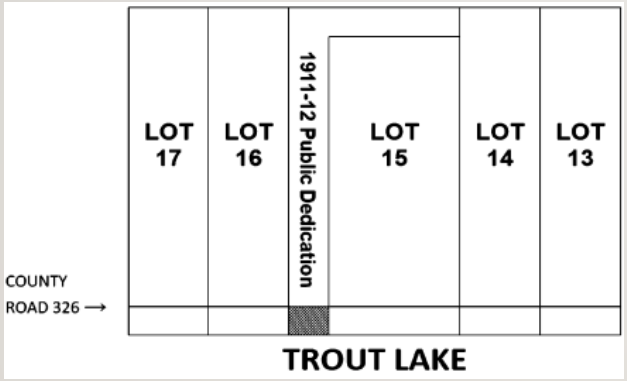
CITY OF SHOREWOOD V. SANSCHAGRIN, CT. NO. A21-0992, 2022 WL 764223, (MINN. APP., MAR. 14, 2022)

- Issue on remand – whether the Sanschagrins' legal on-conforming use had been discontinued, expanded or materially changed since the initial lawful installation in 2017 (the date of the Code Amendment).

MATTER OF MORATZKA, TRUSTEE OF NANCY L. MAYEN RESIDUAL TRUST, -- N.W.2D – (MINN. APP. 2022).

- This case involved consolidated appeals involving a parcel of land created via dedication "to the public forever" in 1911.
- Appellants Itasca County and the Minnesota Department of Natural Resources (DNR) challenged the district court's grant of summary judgment in favor of respondent trustee Timothy Moratzka.
- District Court erred in concluded as a matter of law the public's interest in the land was abandoned under the Minnesota Marketable Title Act (MTA) because the interest was not recorded within 40 years of the dedication.

MATTER OF MORATZKA, TRUSTEE OF NANCY L. MAYEN RESIDUAL TRUST, -- N.W.2D – (MINN. APP. 2022).



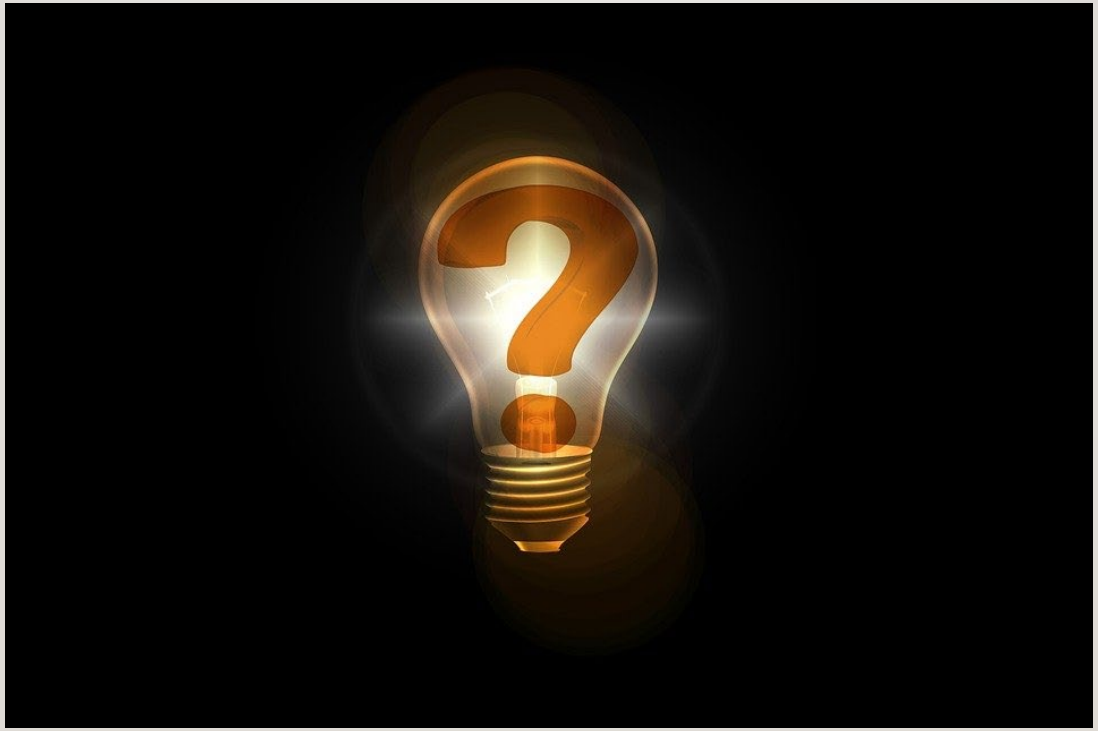
MATTER OF MORATZKA, TRUSTEE OF NANCY L. MAYEN RESIDUAL TRUST, -- N.W.2D – (MINN. APP. 2022).

- The Court of Appeals concluded the MTA creates a conclusive presumption of abandonment where the public's interest in a parcel of land created by plat was not validly recorded by the relevant public authority within 40 years of the dedication of any such interest. Thus, the easement to use a lakefront strip of land was abandoned and extinguished.
- Key point in Court's mind - While it is true that Akeley *created* the interest by recording the 1911-12 dedication with Itasca County, there was no act of *acceptance* by the claimant. The MTA requires the claimant to accept the interest by recording in the office of the county recorder "a notice *sworn to by the claimant or the claimant's agent or attorney*" identifying the interest, the transaction upon which the interest is founded, and a description of the property. But what was on the Plat????????

CITY OF AUSTIN, TEXAS V. REAGAN NATIONAL ADVERTISING OF AUSTIN, LLC, --S. CT. – (2022).

- Supreme Court case from Texas involving a sign ordinance and the First Amendment.
- On-premise v. off-premise signs – is this distinction content neutral?

QUESTIONS?



MACPZA SPRING CONFERENCE
2021-2022 Case Law Update

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1. **CUPs and IUPs.**

***AIM Dev. (USA), LLC v. City of Sartell*, No. A18-0443, 2020 WL 7134863 (Minn. App. Dec. 7, 2020), *review denied* (Feb. 16, 2021).**

Following the Supreme Court's determination the entity's proposal to accept waste from other generators of nonhazardous, nontoxic industrial waste was "a non-expansionary continuation of its nonconforming use," the Court of Appeals considered whether the legal nonconforming use had been discontinued. Under Minn. Stat. § 462.357, subd. 1e(a)(1), an existing nonconformity may continue unless "the nonconformity or occupancy is discontinued for a period of more than one year." After that time, any subsequent use of the property "shall be a conforming use or occupancy." *Id.*, subd. 1e(b) (2018). The city's ordinance read similarly. According to the plain language of the statute and ordinance, discontinuing a nonconforming use did not require abandonment. Having determined the correct standard, the Court of Appeals considered whether the entity's maintenance-related activities avoided discontinuation, even though it had not deposited waste in the landfill since it purchased the property. While the Court recognized "continued" includes certain activities, such as repair, replacement, restoration, maintenance, or improvement, (see Minn. Stat. § 462.357, subd. 1e(a)), it affirmed the district court's determination of a fact issue.

***Croix Holdings, LLC v. City of Newport*, No. A21-0630, 2021 WL 5999561 (Minn. Ct. App. Dec. 20, 2021), *review denied* (Mar. 15, 2022).**

Croix Holding, LLC, challenged the City of Newport's revocation of a conditional use permit. The dispute between Appellant, Croix Holdings, LLC, and Respondent, City of Newport (City), arose over the use of properties owned by Croix Holdings. In 2015, Croix Holdings purchased the original property and the CUP (Conditional Use Permit) lot. It then leased these properties to tenants, including Imperial Camper who, in 1986 obtained a CUP that allowed Imperial Camper to sell camper trailer where sales of this nature were not allowed under the City's zoning ordinance. After the City revoked the CUP for one property and ordered Croix Holdings to cease its non-conforming use of its other property, Croix Holdings filed a declaratory judgment action in District Court. The City moved for summary judgment, and the District Court granted the City's motion. On appeal, Croix Holdings argued the District Court erred in granting the City's summary judgment motion. The Court noted that while the 1986 CUP could have been more explicit about the nature of the original permitted use, the CUP was expressly conditioned on the use remaining the same. Croix Holdings stipulated there were no genuine issues of material fact and therefore, there was no factual dispute Imperial Camper applied for the CUP so it could sell non-motorized campers on the lot.

The Court therefore rejected Croix Holdings' argument the City unreasonably went beyond the plain language of the CUP in determining the multi-dealer auto sales was a

"change of use" from camper sales. Croix Holdings failed to show the City's decision to revoke the 1986 CUP was arbitrary and capricious. Because the City had a legally sufficient basis to determine Croix Holdings substantially changed the use of the original property in both nature and scope, and the record supported the basis, the Court held the City's decision to revoke the CUP was not unreasonable. Thus, the District Court did not err in granting summary judgment in favor of the City because it is a reasonable action to revoke a CUP after a company impermissibly expands the use of the original property by changing the nature and scope of its use. Croix Holdings petitioned the Minnesota Supreme Court for review, and the Court denied.

***Hill v. Bemidji Twp.*, No. A20-1309, 2021 WL 2309891 (Minn. App. June 7, 2021), *review denied* (Aug. 24, 2021).**

The Hills are contractors and real estate developers. In 1998, the Hills created a development called Tyler Estates within Bemidji city limits and abutting Bemidji Township. In 2005 the Bemidji area experienced severe flooding and the area surrounding Tyler Estates was hit particularly hard. Many homes suffered substantial water damage. As a potential solution to the Tyler Estates flooding problem, the Hills considered developing an adjacent 60 acres in Bemidji Township. The drainage of the new development would tie into that of Tyler Estates. The planned development would require a CUP because Bemidji Township does not allow Common Interest Communities (CICs). In August 2005, the Township granted a preliminary approval for a CUP subject to ten conditions. Condition 8 explained "final approval shall not be granted until the final plat drawing, the results of the engineering modeling study, and the final grading plan are published and approved by the Bemidji Township Town Board." In response, the Hills purchased the 60 acres, and obtained engineering plans, studies, and plats. These documents were reviewed by the Township and a CUP was granted to the Hills in September 2005. The CUP contained the same ten conditions as the preliminary CUP, including Condition 8. Construction began on the development. In 2008, after the new lots had been established and supplied with utilities, the Hills applied for a building permit to build on a lot. The board unanimously denied the application in December 2018. There were two reasons for the denial. First, "the lot size for the property is .33 acres and in the Land Use Ordinance, the minimum lot size needs to be 2.4 acres," and second, "the Conditional Use Permit is invalid as #8 in the CUP was not met, as the Township did not sign off on the plat. The plat in question as according to Minnesota State Statute 505.09, subd. 1a, was not complied with." In response, the Hills brought a declaratory judgment action. At trial, the district court held the Township approved the CUP in 2005, the conditions had been met, and the CUP was still in effect. The court held for the Hills because the denial was arbitrary or capricious. The Township appealed. The Court rejected the Township's first reason for denial based on lot size. The 2005 CUP did not require specific lot size and did not reference the Township's lot size ordinances. "Because the 2005 CUP did not limit or even reference lot sizes, and instead, expressly permitted 62 buildings on 60 acres of land, denying the Hills' permit on the basis of the

township's lot-size ordinance was arbitrary and capricious." The Court also rejected the Township's second reason for denial. The Court held the Township did not need specific authority to grant CUPs for Common Interest Communities. The purpose of CUPs is to allow certain land uses notwithstanding legal limitations. Additionally, the record showed the Township did approve the Hills' plat application when granting the 2005 CUP—so Condition 8 was met. Accordingly, the Court held the second stated reasons for denial were arbitrary or capricious too. The Court of Appeals affirmed the district court's decision.

***In re: County Board action notice on interim use permit request to operate a kennel on parcel number R35.14.20.300.020*, A21-0498, 2022 WL 664175 (Minn. App. Mar. 7, 2022).**

The DeMartinis own property in an area of rural Blue Earth County which is zoned for agricultural use. They operated a commercial dog kennel on their property, which was not a permitted use under the county's zoning laws. In October 2020, the DeMartinis applied to the county for an after-the-fact variance so they could continue to operate and expand the business. After a public hearing, where neighbors complained of excessive barking and trespassing dogs, the Blue Earth County Board of Adjustment denied the variance request.

In December 2020, the DeMartinis applied to the county for an IUP. County staff recommended approval of the DeMartinis' application and proposed 23 conditions. After considering Blue Earth County ordinances and staff's proposed findings, the planning commission voted four to one to recommend denial of the IUP to the county board because the application failed to satisfy three factors under the county ordinance. The planning commission members who voted to recommend denial concluded that (1) the interim use would be injurious to neighbors' use and enjoyment of their property, (2) there were insufficient measures to prevent or control offensive noise and dust from vehicles accessing the property, and (3) "[t]he protection of the public's health, safety, morals and general welfare have NOT been addressed through the required performance standards for this type of interim use and in the [proposed] conditions." At a public meeting on February 18, 2021, the county board voted three to two to deny the IUP. On March 1, 2021, county staff prepared a letter notifying the DeMartinis of the decision. The letter stated:

> The Blue Earth County Board of Commissioners held a public hearing on the request on February 16th. Following a public comment period and discussion by the Board, a motion was made to deny the request. By roll call vote, the Board voted three in favor to two opposed to pass the motion thereby denying the request.

The letter ordered the DeMartinis to discontinue operating a kennel on their property.

On appeal, the Court of Appeals first noted "the record of the county board's decision-making process is limited. There is no transcript of the proceedings before the county board. There are no meeting minutes. And the letter to the DeMartinis informing them of the denial does not detail why their IUP application was denied."

The Court then found the County improperly based its determination on neighbors' complaints about historical events and the Planning Commission address the numerous measures the DeMartinis proposed for the new facility. Overall, the Court found the denial was based upon speculation and reversed and remanded back to the County Board to approve with reasonable conditions.

***Knife River Corp.-N. Cent. v. Whited Twp.*, No. A20-0449, 2020 WL 7688625 (Minn. App. Dec. 28, 2020).**

Knife River Corp. applied for a CUP to mine in Whited Township, which mistakenly identified the application as one for an IUP. The township held a hearing on the application, at which residents expressed several concerns, which Knife River did not satisfactorily address. The board denied the permit for failing to meet the ordinance requirements. Knife River demanded the board grant the permit, arguing the township never voted on the CUP within 60 days, as required, because it voted on an IUP. Alternatively, Knife River argued the denial was improper because the board did not provide a written explanation of its denial and did not first submit it to the planning commission. In response, the township adopted a resolution, detailing the board's conclusions of law, stating the project was "not in harmony with the purposes and intent" of the zoning ordinance. Knife River appealed the decision to the district court, which granted summary judgment in favor of the township. Knife River appealed. The Minnesota Court of Appeals held the board denied the CUP application within the required 60 days. While the board mislabeled the application, the minutes and ordinance demonstrated the board had substantively considered a CUP. Further, Knife River waived the argument by failing to correct the board's mistake. Next, the Court distinguished between failing to issue written reasons for a decision and failing to decide at all within 60 days. Unlike the latter, the former does not result in automatic approval. Without written findings, a decision is only justified by the evidence in the record available to the board at the meeting. These materials included the valid and unanswered concerns of residents. Because the record reasonably showed the CUP could negatively impact the township and its residents, the decision was not arbitrary or capricious. Finally, the Court rejected Knife River's due process claim, as the board provided it with notice and a hearing, and because misidentifying the CUP as an IUP did not prevent it from defending its position.

***Matter of Application Number 2020-006782*, A21-0383, 2022 WL 274252 (Minn. App. Jan. 31, 2022).**

Applicants sought a CUP for an "outdoor and off-highway recreation area" to allow for single-track riding of motorcycles during daylight hours in the spring, summer and fall. Neighbors, who had challenged the activities prior to the CUP and environmental review, argued the use was not allowed by the zoning ordinance and the approval was arbitrary and capricious. The Court of Appeals found the neighbors forfeited their challenge to whether or not the use was allowed because it was not raised during the county proceeding. The Court then found the decision was not arbitrary and capricious because the record showed the applicants could comply with the zoning requirements, the noise studies from the environmental review were proper and had been relied upon by the MPCA and the neighbors' comments were not based upon concrete factual basis.

***Matter of Application of Impact Power Solutions, LLC*, A21-0925, 2022 WL 1448223 (Minn. App. May 9, 2022).**

Applicant applied for a CUP for a one-megawatt community solar farm. The proposed use was in the "Agricultural 40" zoning district. The purpose of the district "is to preserve the agricultural and rural character of land." Community solar farms, however, are a conditional use in this district. Following public hearings before the Planning Commission and County Board, the County Board recommended denial of the CUP application.

The Court of Appeals found the County properly denied the CUP because the CUP did not comply with the Comprehensive Plan and the district's purpose of preserving agricultural and rural character of land. The Court also found the evidence showed there were a large concentration of solar farms in the area and the farm land in question was suitable for farming.

***Matter of East River Electric Cooperative*, No. A21-0885, 2022 WL 1073736 (Minn. App. April 11, 2022).**

Property owner challenged the County's grant of a CUP to electrical cooperative to relocate a 69-kilovolt transmission line along the right-of-way of a county road. Specifically, property owner claimed the County failed to adequate state the reasons for its decision, either orally or in writing, and multiple commissioners failed to abstain from voting based upon potential conflicts.

During the Planning Commission meeting the cooperative presented the reasons for the needed upgrade and relocation. By moving to the right-of-way of a county road, the cooperative would have better access to the electrical line if a crew had to go out in bad weather or in the winter. The property owner then argued for an alternative route along

a township road. This route, as noted by the cooperative, had issues due to terrain, trees and accessibility. After hearing the testimony, the Planning Commission then recommended approval and prepared findings. At the County Board meeting, a cooperative representative described how the proposed route was chosen and why the alternative route was rejected. Ultimately, the Board approved the CUP.

In reviewing the approval, the Court of Appeals noted the record contained transcripts of the Planning Commission and County Board meetings. Within those transcripts was evidence the Planning Commission and County Board discussed the criteria for granting a CUP. Additionally, the transcripts and minutes showed the County Board made a motion to approve the CUP based upon the recommendation of the Planning Commission.

Finally, the Court found the there was no evidence in the record showing the County Board commissioners had a conflict based upon a familial relationship or out of fear of retaliation. Rather, the record showed the proceedings were fair and impartial.

***Matter of Nokomis Energy LLC*, Nos. A21-0062, A21-0106, 2021 WL 6010077 (Minn. App. Dec. 20, 2021).**

Two subsidiary companies of Nokomis Energy LLC unsuccessfully applied for conditional-use permits to build solar gardens in McLeod County. In answering Nokomis Energy's argument on appeal the county's denials were arbitrary and capricious, the Court of Appeals held the county's previous adverse judgment based on the Court of Appeal's rejecting its farmland-preservation rationale for denying a different CUP collaterally estops the county from denying the applications here on the same premise. The Court also held the county improperly ignored Nokomis Energy's proposed conditions aimed at allaying any concerns about stray voltage. Therefore, the Court of Appeals reversed and remanded.

***Matter of United States Solar Corp.*, No. A20-1043, 2021 WL 2909044 (Minn. App. July 12, 2021).**

Relators wanted to build a solar energy plant on ten acres of leased farmland and applied for a CUP from the County. The planning commission recommended approving the application. Despite three of the five County Board members commenting the application met the requirements of the zoning ordinance for granting a CUP—the application was denied on a 3-2 vote. The County had two justifications. First, "Concern for the preservation and protection of land values," and second, "The property is considered prime agricultural soil." Relators appealed this denial, arguing it was arbitrary or capricious. The Court held the first reason to be arbitrary or capricious because the Board was presented with direct evidence the land value would not be impacted by the solar energy plant. This evidence included a study from Chisago County, a study from a

private consulting company, and a statement from the County's director of environmental services finding no negative impacts to property value. There was one public comment concerned with impacts to property value. But because it was not backed by expert evidence or concrete information, the Court discredited it. *See SuperAmerica Group, Inc., v. Cty. of Little Canada*, 539 N.W.2d 264, 267-68 (Minn. App. 1995), *review denied* (Minn. Jan. 5, 1996). The Court held the second reason to be arbitrary and capricious because "'property is considered prime agricultural soil' is not a condition listed in the ordinance for the board's consideration related to the CUP application." Therefore, this is a legally insufficient reason to deny Relator's application. *See Zylka v. Cty. of Crystal*, 167 N.W.2d 45, 49 (Minn. 1969). Because both reasons were deemed arbitrary or capricious, the Court reversed the denial.

***Stalland v. City of Scandia*, No. A20-1557, 2021 WL 3611371 (Minn. App. Aug. 16, 2021).**

Tii Gavo is a planned unit development (PUD). The City of Scandia authorizes PUDs by issuing conditional use permits. Tii Gavo received a CUP from the City and executed a development agreement. Tii Gavo is on Big Marine Lake. The CUP allows Tii Gavo to have 19 boat slips. In April 2019, several homeowners in the development sought to amend the CUP to allow 10 more boat slips. After the DNR, watershed district, and the city planner recommended denying the request, the City Council unanimously voted to deny it. Residents of the development filed suit. The district court granted the City's motion for summary judgment, and the Court of Appeals affirmed. The Court found "the city's reasons for its decision were legally sufficient and supported by the record, and the decision was accordingly reasonable." The Court also rejected four different claims of procedural unfairness. First, Plaintiffs claimed former City workers gave them the wrong boat-slip formula to use on their application. The Court rejected this argument because Minn. Stat. § 462.3595 specifically places the burden of proof on CUP applicants. It was Plaintiffs' responsibility to use and find the correct formula for their application. Second, Plaintiffs claimed communications between the city planner and the DNR were improper ex parte communications. However, no ordinance or statute prohibits this, and the Court found nothing "untoward or irregular" about these communications. Third, Plaintiffs claimed a City Council member wrongfully requested former watershed managers to attend the public hearing. The Court rejected this argument because asking former managers to give input at the hearing was "entirely appropriate." Fourth, Plaintiffs claim two councilmembers who own shoreline on the lake had a conflict. Citing *Lenz v. Cook Creek Watershed Dist.*, 153 N.W.2d 209, 219-20 (Minn. 1967), where several watershed district members who made a decision that benefitted their lake property were not automatically disqualified, the Court rejected Plaintiffs' claims as speculative. Thus, the Court affirmed the district court's grant of summary judgment for the City.

2. Environment

***State by Smart Growth Minneapolis v. City of Minneapolis*, 954 N.W.2d 584 (Minn. 2021).**

Appellants alleged the city's 2040 comprehensive plan violated the Minnesota Environmental Rights Act (MERA). The District Court granted the city's motion to dismiss, and the Court of Appeals affirmed. Granting certiorari, the Supreme Court determined the Minnesota Environmental Policy Act's (MEPA) rule of excepting comprehensive plans from environmental review did not mean comprehensive plans were automatically excluded under MEPA. Because MERA's purpose is broad and applies to any conduct of any person, it serves other purposes beyond enforcing MEPA. Consequently, the Supreme Court determined the District Court erred in concluding appellants' claims were barred. Next, the Supreme Court considered whether appellants' complaint sufficiently alleged a causal link between the adoption of the comprehensive plan and the type of environmental damage MERA aims to prevent. The complaint alleged that if the city adhered to its plan, it would likely adversely affect stormwater runoff, threatening sanitary sewer systems and water supply, reducing wildlife habitat, and diminishing air quality. Accepting the allegations as true, the Supreme Court concluded the allegations sufficed and remanded the case to District Court, where the complaint would be reinstated.

***Matter of Determination of Need for Env't Impact Statement for Mankato Motorsports Park*, No. A20-0952, 2021 WL 1604359 (Minn. App. Apr. 26, 2021).**

Bradford Development Group proposed to construct a motorsports park with a seasonal driving track in the City of Eagle Lake. Because the project would convert 230 acres of agricultural land to industrial use, it required an Environmental Assessment Worksheet (EAW). The EAW was published, and the city received public comments from several agencies. The city then consulted with an engineering corporation and determined it had insufficient information to decide whether the project required an Environmental Impact Study (EIS), which is a more exhaustive environmental review. After the city made changes to its proposed findings, the engineering corporation advised no EIS was needed. Nearby residents formed an entity called "CAMP" and petitioned for review. The Court determined substantial evidence supported the city's determination that an EIS was not required on the issues of noise impact on humans, waste storage and disposal, land alterations, and wetlands. However, the substantial evidence did not support the city's findings there would be no significant impact on wildlife. Further, the Court determined it was arbitrary and capricious for the city to determine the project would have no cumulative effects on the environment without addressing the DNR's comments regarding the project's effects on climate change. Finally, CAMP argued the city violated the process by changing the scope of the project after the period for public comments closed. While the Court recognized a supplemental EIS may be required when

substantial changes are made that affect the potential significant adverse environmental effects of the project, there was no legal error here because the proposed changes actually decreased the potential for environmental impact. The Court reversed and remanded for a new EIS determination.

3. Variances

***Tulien v. City of Minneapolis*, No. A20-0542, 2021 WL 79526 (Minn. App. Jan. 11, 2021), *review denied* (Mar. 30, 2021).**

Respondent, an entity, proposed to build a six-story, mix-used office and residential apartment building in Minneapolis, requesting several variances and a CUP in the process. The Minneapolis Department of Community Planning and Economic Development recommended denying the variances and CUP. However, after holding a public hearing, the planning commission approved all the applications, and a neighbor appealed. After respondent modified the project, the city council approved the project, and the neighbor appealed to District Court. The Court determined the variances were improperly granted because the zoning code cannot serve as the unique circumstances of the property required for a variance. Such circumstances must be features or characteristics of the property or its surroundings itself. Other variance requests were improperly granted because the unique circumstances of the property did not create Respondent's practical difficulties in complying with the code. The decision to grant the CUP was also found unreasonable because the city did not determine whether the conditional use would injure the use and enjoyment of other properties nearby as required by ordinance. While such a finding could normally be inferred from the approval, that was not the case here, as the record was replete with evidence of such injuries. Thus, the city needed to consider and reject these possible injuries before reaching its conclusion. Consequently, the Court of Appeals reversed all approvals.

***Woodland Gale Owners' Ass'n, LLC v. City of Woodland*, No. A20-0057, 2020 WL 4743526 (Minn. App. Aug. 17, 2020), *review denied* (Oct. 28, 2020).**

Landowners owned two non-contiguous pieces of property. The upper property held the family residence, while the lower property had a small nonconforming building 14 feet from Lake Minnetonka. The owners already had an easement for water pipes between the residence and the building but sought to add plumbing to the building for a toilet. After being informed they needed to obtain a variance to change a nonconforming use to another nonconforming use, the owners did so. But the city denied it. The owners brought the case to the District Court, which granted the city's motion for summary judgment and affirmed the denial. On appeal, the Court affirmed the denial was procedurally valid. Although the city did not adopt a written resolution in support of the denial until the meeting after the one where it denied the variance, this satisfied Minn. Stat. § 15.99, subd. 2(c). Further, the record reflected the council considered (1) the environmental risks of

having a sewage line close to the lakeshore, (2) the possible requests of other pump house owners to seek similar variances, (3) the difficulty of enforcing a requirement that the pump house not be used as a residence, and (4) the comprehensive plan's mandate of open shoreline. While the owners argued damages caused by a variance must be proved before denial, that is not the standard. Because the city's findings had a rational basis, the Court affirmed the denial of the variance.

***Schulz v. Town of Duluth*, No. A21-0733, 2022 WL 433225 (Minn. App. Feb. 14, 2022)**

The Billes, a married couple nearing retirement, purchased two lots on the North Shore of Lake Superior and submitted an application to the Town of Duluth (Town) Planning Commission for six variances from the town's zoning ordinance in order to build a house of the property. The planning commission approved the application by a four-to-two vote. Four of the Bille's neighbors, hereinafter Plaintiffs, appealed the Planning Commission's decision to the Town Board. The Town Board then denied the Billes' variance application by a three-to-two vote. The Chair of the Town Board told the Billes they could seek judicial review of the denial in District Court or submit another, revised variance application. The Billes submitted a second variance application to the Planning Commission which was modified in response to the concerns raised. The Planning Commission then approved the Billes' second variance application by a four-to-three vote, and the Plaintiffs appealed the Planning Commission's decision on the second application to the Town Board. Three of the Plaintiff-neighbors sought judicial review in the District Court. The District Court dismissed the Billes from the action on the ground that the Plaintiffs did not timely commence the action against them, and further dismissed the action with respect to the Town on the ground that the Billes were necessary and indispensable parties. The Court of Appeals affirmed. The Minnesota Supreme Court reversed and remanded, holding that Billes must be added to the action. The Plaintiffs and the Town, including the Billes, served and filed cross-motions for summary judgment. The District Court ordered entry of judgment in favor of judgment in favor of the Plaintiffs, and reasoned that the doctrine of collateral estoppel precluded the Town Board from considering the Billes' second variance application and, in the alternative, that the Town Board's decision to grant the Billes' variance application was unreasonable, capricious, and arbitrary. The Billes appealed.

On remand, the Court of Appeals found the Town Board had a sufficient factual basis to determine the Billes' variance application was consistent with the town's comprehensive plan. The Court found this on the basis that the Billes proposed to use the property in a reasonable manner, the Billes' plight was due to circumstances unique to the property which were not created by them, and their requested variance would not alter the essential character of the locality. Ultimately the Town Board did not act unreasonably, capriciously, or arbitrarily when it granted the Billes' second variance application finding the District Court did not give sufficient deference to the broad discretion of the Town Board in zoning matters.

***Moore v. Commissioner of Morrison County Board of Adjustment*, 969 N.W.2d 86 (Minn. App. 2021).**

After Morrison County Board of Adjustment denied Moores' after-the-fact variance request, Moores appealed to the district court, which reversed the denial. On appeal to the Court of Appeals, the Moores argued the County acted unreasonably for two reasons. First, Moores contended the denial of their variance request was not based on legally sufficient criteria because the board failed to apply each of the *Kenney/Stadsvold* factors. Contrary to this argument, the Court of Appeals concluded the County relied on legally sufficient criteria when it applied the statutory definition of the practical difficulties standard, and it did not err as a matter of law.

Second, Moores contended the denial of the variance request was not sufficiently supported as a factual matter. The Court of Appeals also disagreed with this argument and concluded the County's decision had an adequate factual basis in the record. Accordingly, the Court of Appeals reversed the district court and reinstated the County's denial of the after-the-fact variance request.

4. Other Land Use

***Carlson v. Twp. of Livonia*, No. A20-0993, 2021 WL 1344043 (Minn. App. Apr. 12, 2021).**

The subject property sat above an unpaved maintenance road running along a lake within the township. A developer created a residential development encompassing the property. The developer dedicated the road to the township, and later conveyed all interest it had in the land between the lake and the road to the township. Subsequently, the Carlsons purchased the property and placed a dock in the lake. After the township placed a gate barring access to the road and ordered the Carlsons to remove their dock, the Carlsons sought declaratory relief. The district court determined the township owned fee title to the street, the Carlsons had no riparian rights, the Carlsons had notice of and were bound by the development's covenant prohibiting docks, and the township had standing to enforce it. On appeal, the Minnesota Court of Appeals determined the plain language of the plat demonstrated fee title to the street was not conveyed to the township by dedication and remained with the developer. Fee title then passed to the subsequent landowners, including the Carlsons, when they purchased the property. This conclusion was supported by the general principle the donee only receives the interest necessary to fulfill the purposes of the dedication. Because the purpose of dedication was "public use," only an easement was given to the township. While evidence of the parties' intent showed otherwise, parole evidence could not be considered because the plat language was unambiguous. Further, the road did not pass to the township when the developer executed the quitclaim deed. This is because the law presumes the platter intends to part with title to the land underlying the road in favor of the landowner whose property abuts

the road when he dedicates a road within a plat. Because the Carlsons owned the property, they also had riparian rights. Finally, the Court rejected the argument the township, by virtue of its ordinance, had the authority to enforce the covenant. True, Section 462.358 and the township's ordinance allowed it to approve subdivisions subject to conditions, which it could enforce. But the developer's agreement with the township did not directly condition approval on prohibiting docks or require creating such a covenant. *Reversed and remanded.*

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

Appellants (ironically named the Docks) began installing a large permanent dock after a city employee and the DNR confirmed they did not need a permit. At that time, no ordinance prohibited permanent docks. A month after installation commenced, the city council held an emergency meeting and passed a temporary moratorium on permanent docks. Appellants continued with installation despite the city's orders to stop, and the city then passed a permanent dock ordinance prohibiting permanent docks. The city commenced this action to enjoin appellants from constructing the dock. Appellants counterclaimed for declaratory and injunctive relief, seeking to invalidate the dock ordinance. The District Court ruled in favor of the city and ordered appellants to remove their dock. The Court of Appeals' analysis hinged on statutory interpretation. First, the Court determined the city council had the right to regulate docking pursuant to its powers as a statutory city under Minn. Stat. § 412.221, subd. 12. While appellants argued Minn. Stat. § 86B.205 required all government bodies with jurisdiction over the lake to jointly pass a docking ordinance, the ordinance did not apply because there was no joint powers agreement. Next, the Court rejected the argument that the dock ordinance was a zoning ordinance requiring notice and a hearing. Minn. Stat. § 462.357, subd. 1 defines zoning ordinances as those dividing any areas of the city into "districts or zones of suitable numbers, shape, and area." Because the docking ordinance applied generally to all riparian lots in public waters within the City, it was not a zoning ordinance. Lastly, the Court determined Appellants' dock was permanent under the ordinance because removing it would be impracticable. Another appeal ensued. The Supreme Court developed a two-step test for determining whether an ordinance is a zoning regulation: 1) whether it governs the subjects identified by section 462.357 (which empowers municipalities to adopt zoning regulations regarding specific things like uses of land, types of foundation, etc.); and 2) whether an ordinance serves a zoning purpose. The Court applied the test to the ordinance prohibiting permanent docks and determined it was a zoning regulation. By its own terms, the ordinance regulated the location of docks because it permitted them on commercially zoned shoreline lots but not on private, noncommercial lots. Additionally, because the ordinance effectively prohibited certain types of foundations—those that rest or are embedded in the lake bottom and are designed to make relocation difficult—the ordinance regulated the 'type of foundation' of a 'structure' as described in Minn. Stat. § 462.357. Lastly, the ordinance regulated the use of structures or lands. Under step 2, the ordinance embodied a clear judgment about

the appropriate use and development of land within the city. It regulated dock usage and where permanent docks could be built. Thus, the Court held the ordinance was a zoning regulation. Consequently, the City was required to adhere to the procedural requirements of Minn. Stat. § 462.357. Because the City passed the ordinance without providing notice or a hearing, the Supreme Court reversed, allowing the dock to remain.

***Docks of White Bear Lake, LLC v. Dockside Waterski Co.*, No. A20-1594, 2021 WL 2909036 (Minn. App. July 12, 2021).**

Tally's Dockside is a full-service marina on White Bear Lake that leases a nearby parcel of land from the City. Since the early 1990's, Tally's has maintained a fuel tank on the parcel where it stores gas it sells to boaters. A nearby property owner filed suit against Tally's and the City alleging that the fuel tank created a nuisance because it did not comply with general Minnesota Fire Code setback regulations. The district court granted defendant's motion for summary judgment and the Court of Appeals affirmed. An "alleged code violation, without more, cannot establish the actual, material, and substantial interference with property interests necessary for a private nuisance claim." Simply put, the existence of a small fire code setback violation does not create a per se nuisance claim.

***Hecker v. Crow Wing Cty. Bd.*, No. A20-0932, 2021 WL 1522247 (Minn. App. Apr. 19, 2021).**

The County board granted one of three variance requests from Sunset Shores, LLC, along with its CUP. An aggrieved neighbor, Hecker, had his attorney contact the county to determine the status of the decision. The county sent its draft findings to Hecker's attorney, who later served a notice of its appeal. The county responded, arguing the appeal was untimely, and improperly made because Hecker did not serve a separate summons. A week later, the county posted notice of its decision on its website. The District Court denied the county's motion to dismiss. The Court of Appeals determined the draft findings did not provide Hecker with "notice of the decision" required to start the appeal period under Minn. Stat. § 394.27, subd. 9. Rather, "notice of the decision" means requiring a final written decision. This interpretation was supported by case law, legislation, and the Black's Law Dictionary. Because the county did not finalize its decision more than 30 days before Hecker served the notice of appeal, the appeal was timely served, irrespective of when Hecker received notice of the decision. Next, while a summons is generally required under the Minnesota Rules of Civil Procedure, the rules do not define "summons". However, the rules and case law suggest a summons is simply any document that commences a civil action. Here, Hecker's notice of appeal satisfied this interpretation, as it gave the county formal notice of his appeal of the variance decision and his intent to commence an action in District Court. Further, the notice properly invoked jurisdiction. While the notice lacked explicit language requiring the county to appear and answer, the county did both, demonstrating it understood the notice to

constitute a summons. Because the notice of appeal fulfilled the requirements of a summons for purposes of commencing the action, the District Court had jurisdiction and did not err by denying the county's motion to dismiss.

***Puce v. City of Burnsville*, No. A21-0895, 2022 WL 351119 (Minn. Ct. App. Feb. 7, 2022)**

Puce sought to redevelop a property zoned for commercial use in three phases. Specifically, he sought to operate an automobile dealership and a bakery in the existing structure, build an automobile repair shop, and improve part of the property to create an open storage lot. Puce applied to the City of Burnsville (City) seeking approval of a preliminary and final plat of the property, a conditional use permit (CUP), and variances related to signage and land grading. The City's planning commission reviewed his application and recommended approval of the plat and CUP, and denial of the variances, subject to 17 conditions, including the payment of a park-dedication fee in the amount of $37,804. Puce objected to the City's imposition of the park-dedication fee as well as the amount of the fee. Puce asked the City to waive the fee on the ground that the automobile shop and bakery would not result in a need for more park land or services. In response, the City Attorney stated there was a need for open space created any time that open land is developed or redeveloped and used at a higher intensity then previously used. The City then reduced the park-dedication fee from $37,804 to $11,700 by recalculating the size of Puce's property and by using the actual fair market value of the property. Puce maintained his objection. The City considered Puce's application for a second time. The City Attorney stated that business developments generally increase the demand for public services, including parks, and that the City uses park-dedication fees to fund new capital improvements that enhance and provide additional capacity to serve developments such as Puce's development. The City Attorney added a park-dedication fee is still appropriate if a development does not directly cause a need for additional park land or services. The City approved the plat, and the requested CUP, approved a sign variance, and denied a land-grading variance. The City voted to deny Puce's request for a waiver of the park-dedication fee.

Puce commenced action in District Court for judicial review of the decision to impose a park-dedication fee. The District Court conducted a court trial based solely on the parties' 17 exhibits and found that imposition of a park-dedication fee in the amount of $11,700 was lawful. Puce appealed and argued the City erred by imposing the park-dedication fee on his development application and the District Court erred by determining that the fee is lawful.

Under Minn. Stat. § 462.358, municipalities may adopt ordinances regulating standards, requirements, and procedures for the review, and approval or denial of subdivisions. The ordinances may also require that a reasonable portion of the buildable land of any proposed subdivision be dedicated to the public, or preserved for public use. As an alternative to taking a reasonable portion of the buildable land of any proposed subdivision, a municipality may choose to accept a cash fee set forth by statute. Under

subd. 2c(a), there must be a nexus between the fees and the municipal purpose sought to be achieved by the fee, and the fee must bear a rough proportionality to the need created by the proposed development. The Court found that there is no precise mathematical calculation to determine rough proportionality, however, case law requires that a municipality must make some sort of individualized determination that the required dedication is related both in nature and extent to the impact of the proposed development, and quantify its findings in support.

The Court of Appeals concluded the City did not make an individualized determination concerning the nature and extent of the impact of the proposed development, and did not make an effort to quantify that impact. The Court of Appeals held the City's imposition of the park-dedication fee violated Minn. Stat. § 462.358, subd. 2c(a), because the City did not reasonably determine that it would need to acquire and develop, or improve park land as a result of its approval of the development application. The Court held the appropriate remedy was reversal of the District Court's decision and the City's decision, without remand for further proceedings.

***Roach v. Cty. of Becker*, No. A19-2083, 2020 WL 4281003 (Minn. App. July 27, 2020), *review granted in part* (Oct. 20, 2020), *review granted* (Oct. 20, 2020).**

The dispute originated between the owners of adjacent riparian lots. The Alinders built a house and added fill, elevating their property. This change diverted water runoff to the Roach property, and Roach complained to the county zoning office. The county instructed the Alinders to develop a stormwater management plan to retain the runoff and granted them a land-alteration permit based on the plan, even though Roach disputed its effectiveness and eventually appealed the decision. The Court eventually vacated the permit, determining the zoning administrator has a continuing duty to enforce the zoning ordinance. Consequently, the county ordered the Alinders to remove the added fill, but the parties disputed the amount. The Court decided to hold a bench trial on declaratory relief and then a separate jury trial on damages. Eventually, the Court affirmed the restoration plan, which required removal of enough fill to restore the Alinders' property to its prior elevation. Before the Court held a jury trial on damages, however, the county was dismissed due to discretionary-function immunity. At the jury trial, Roach objected to having the county on the special verdict form because Roach could not recover damages from a non-party. The jury apportioned 20 percent of the fault to the county. Roach moved for judgment as a matter of law, arguing the county owed no duty and was not negligent. Because these arguments were contrary to Roach's longstanding prior advocacy and the Court's prior determinations, there was no error in submitting the issue of fault by the county to the jury.

***Smeby v. Hanson*, No. A20-1329, 2021 WL 2201679 (Minn. App. June 1, 2021), *review denied* (Aug. 24, 2021).**

This involved a quiet title action and dispute between two neighbors about who owned undeveloped land previously dedicated by plat as a road. The main issue on appeal concerned the validity of the Township's road vacation in 1967. The district court held the Township lacked authority to vacate the road because only district courts have that authority under Minn. Stat. § 505.14. The Court of Appeals disagreed, holding the district court's authority to vacate is not exclusive. Section 164.07, subd. 1 says that "[a]ny town board may alter or vacate a town road." Accordingly, the Court held, because "the statute authorized a town board to vacate a 'town road' and does not exclude town roads that exist only through platting, the Township had authority to vacate the platted road." Next, the Court determined who owned the dedicated land after the Township vacated it. Parcels on both sides of the road were originally owned by the Ness family. The Smeby's received their deed directly from the Nesses, which included the land under the road. The Nesses conveyed a deed for the other parcel to the Thomases but did not include the land under the road. The Thomases conveyed this land to the Hansons and included land under the road. The Court determined the Hansons had no interest in the road because the Ness-to-Thomas deed specifically excluded any portion of the road.

***State v. Sanschagrin*, 952 N.W.2d 620, 621 (Minn. 2020).**

The owners of an undeveloped lot on Lake Minnetonka installed a dock. The city of Shorewood issued a notice of zoning violation because the owners did not occupy the property, which also lacked a principal dwelling. The notice directed them to remove the dock or appeal the order to the city council in writing by a certain date. Before the deadline, the owners responded by letter, asserting the dock did not violate the city code, and the city withdrew the notice of violation. The city, however, amended its zoning ordinance to prohibit the owners' seasonal dock as well. The owners put out their dock the following year and refused to remove it, despite the city's demands. The city refused to hear the owners' appeal, and instead, charged them with criminal misdemeanors for violating the city code. The owners moved to dismiss the case, arguing their dock constituted a non-conforming use. Specifically, they argued their initial letter appealing the notice of violation constituted a "request" for "other governmental approval of an action" under Minn. Stat. § 15.99, subd. 1(c). Because the city did not act on the letter, the owners argued the 60-day time period expired, and their request to keep their dock was automatically approved. The district court and Minnesota Court of Appeals agreed. The Minnesota Supreme Court reversed, noting the letter did not meet the statutory definition of a "request." The letter was not made on an application form, nor did it identify the specific permit, license, or other governmental approval being sought, as required. Because the phrase "other governmental approval" was ambiguous, the Minnesota Supreme Court applied canons of construction and found construing the letter as a request contradicted *ejusdem generis* because licenses and permits are prospective

requests, unlike the letter. The owners' interpretation also went against legislative intent and public interest. Thus, the letter was not a request. Accordingly, the owners had to challenge the city's charges using arguments other than automatic reversal. *Reversed.*

***City of Shorewood v. Sanschagrin*, No. A21-0992, 2022 WL 764223 (Minn. App. Mar. 14, 2022).**

Guy Gerald Sanschagrin, Kristine Knudson Sanschagrin, Jeffery Lowell Cameron, and Linda Kay Cameron appealed from the district court's order granting partial summary judgment and injunctive relief in favor of City of Shorewood related to their dock. Sancagrins argued the (1) the district court erred in determining as a matter of law their dock violated city ordinances; (2) summary judgment should not have been granted because there exist disputed issues of material fact; and (3) the district court should not have granted injunctive relief. The Court of Appeals found because Shorewood, Minn., Code of Ordinances (SCO) § 1201.03(14)(b) (2006) was in effect before and during April 2017, it is controlling, and because Sanchagrins installed a dock in April 2017 which was lawful under the 2006 code, it was a legal non-conforming use and did not have to be removed. The Court of Appeals, however, remanded for further proceedings the question of whether or not the legal non-conforming use had been discontinued, expanded or materially changed.

***Matter of Moratzka, Trustee of Nancy L. Mayen Residual Trust*, -- N.W.2d – (Minn. App. 2022).**

This case involved consolidated appeals involving a parcel of land created via dedication "to the public forever" in 1911. Appellants Itasca County and the Minnesota Department of Natural Resources (DNR) challenged the district court's grant of summary judgment in favor of respondent trustee Timothy Moratzka. Appellants argued the district court erred in concluding as a matter of law the public's interest in the land was abandoned under the Minnesota Marketable Title Act (MTA) because the interest was not recorded within 40 years of the dedication. The Court of Appeals concluded the MTA creates a conclusive presumption of abandonment where the public's interest in a parcel of land created by plat was not validly recorded by the relevant public authority within 40 years of the dedication of any such interest. Thus, the easement to use a lakefront strip of land was abandoned and extinguished.

***City of Austin, Texas v. Reagan National Advertising of Austin, LLC*, --S. Ct. – (2022).**

The City of Austin, Texas (City), specially regulates signs which advertise things which are not located on the same premises as the sign, as well as signs which direct people to offsite locations (i.e. off-premise signs). The City's sign code at the time of this dispute prohibited construction of new off-premises signs. Grandfathered off-premises signs could remain in their existing locations as "nonconforming signs," but could not be

altered in ways that increased their nonconformity. On-premises signs, however, were not similarly restricted.

Reagan National Advertising of Austin, LLC, and Lamar Advantage Outdoor Company, L. P., own billboards in Austin. When Reagan sought permits to digitize some of its billboards, the City denied its applications. Reagan filed suit in state court, alleging the City's prohibition against digitizing off-premises signs, but not on-premises signs, violated the First Amendment's Free Speech Clause. The City removed the case to federal court, and Lamar intervened. The District Court held the challenged sign code provisions were content neutral under *Reed v. Town of Gilbert*, 576 U.S. 155, reviewed the City's on-/off-premises distinction under intermediate scrutiny, and found that the distinction satisfied the standard. The Court of Appeals reversed. It found the on-/off-premises distinction to be facially content based because a government official had to read a sign's message to determine whether the sign was off-premises. The court then reviewed the City's on-/off-premises distinction under strict scrutiny, and it held the City failed to satisfy the onerous standard. After review, the Supreme Court held the City's on-/off-premises distinction was facially content neutral under the First Amendment.