MACPZA CASE LAW UPDATE

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LAND USE – ISSUE OVERVIEW

Trends – Minnesota Statutes Sec. 15.99, findings

perceived bias

60 DAY REVIEW

- First step in the process.
- The 60-Day Rule – Minn. Stat. § 15.99
  - Minn. Stat. § 15.99 specifies written requests relating to zoning, septic systems, SWCD review, watershed district review, and/or expansion of the Metropolitan Urban Service Area, for a permit, license, or other governmental approval, must be approved or denied within 60 days from the date of application.
  - Failure to comply with the requirement the application be approved or denied within 60 days results in a penalty of automatic approval.

WHAT APPLICATIONS ARE WITHIN THE STATUTE?

- Application for a certificate of appropriateness under a City's historic preservation ordinance. *See 500, LLC v. City of Minneapolis*, 837 N.W.2d 287 (Minn. 2013).
- Subdivision request. *See Calm Waters v. Kanabec County*, 756 N.W.2d 716 (Minn. 2008).
- Planned Unit Development. *See Mesenbrink Construction & Engineering, Inv. V. Rice County*, 2008 WL 5334251 (Minn. App. Dec. 23, 2008).

APPLICATIONS OUTSIDE OF THE STATUTE

- Building Permits. *See Advantage Capital Management v. City of Northfield*, 604 N.W.2d 421 (Minn. App. 2003).
- Appeal of an appeal of a zoning administrator's cease and desist order to the Board of Adjustment. *See Tompkins v. Lake County*, 2009 WL 66350 (Minn. App. Jan. 13, 2009)
- Request to Amend a Zoning Ordinance. *See Motokazie! v. Rice County*, 824 N.W.2d 341 (Minn. App. 2012).

IS THE APPLICATION COMPLETE

- The 60-day time period begins to run on the municipality's receipt of an application containing all information required by law or a previously adopted rule, ordinance, or policy.
- The municipality must send notice within 15 business days of receipt of the request telling the applicant exactly what is missing in order for an incomplete application to stop the running of the 60-day period.

- Completeness under 60-day rule can only be determined by reference to a pre-existing rule, ordinance, or policy. *See Calm Waters v. Kanabec County*, 756 N.W.2d 716 (Minn. 2008) (rejecting incomplete argument based upon request for information not in ordinance).
- Application form requirements proper. *See Stokke v. Marshan Township*, 2010 WL 3545944 (Minn. App. Sept. 14, 2010)

MATTER OF USS GREAT RIVER SOLAR LLC, NO. A21-1504, 2022 WL 4295368 (MINN. APP., SEPT. 19, 2022)

- In July 2021, relator USS Great River Solar LLC applied for an interim-use permit (IUP) for a one-megawatt solar farm from respondent Stearns County. The proposed project site was on farmland next to an existing solar farm on the same property. The project site is zoned in a district with the purpose "to preserve the agricultural and rural character of land". Great River Solar's application detailed why the site was optimal for the project, described measures to minimize the visual impact of the project and plans to vegetate the site with pollinator-friendly native plantings, and requested that the permit last for 41 years.

- The planning commission recommended that the Stearns County Board of Commissioners deny the application. The board held a public hearing on Great River Solar's application. The board discussed the relevance of LESA scores to solar-project IUPs, the decommissioning fee, and the requested length of the IUP. Specifically, the board considered that the 41-year duration of the proposed project was far longer than that of other solar projects that the board had approved in the past. County staff explained that while CUPs do not have timeframe requirements, solar developers applying for CUPs typically present a projected duration of 25 to 30 years based on the duration of the lease for the underlying property. **The IUP request failed by a 2-2 vote. Great River Solar appealed, arguing that according to Minn. Stat. § 15.99, subd. 2(b), those who vote against the motion must state on the record why they oppose the request and of the two members who voted against the motion,** only one stated their reasons for opposition, being that the IUP did not comply with the city's comprehensive plan.

- On appeal, the court determined the second commissioner's reasons for denial were stated on the record before the board's vote on the motion to approve the IUP request. The court states § 15.99, subd. 2(b) does not require "magic language" to justify a vote for denial and the statute does not specify that in order to satisfy its requirements, a statement of reasons for opposing a permit must have a particular level of detail. Nor does the statute specify the statement of reasons must occur immediately before the vote against the motion. The statute merely requires "those voting against the motion state on the record the reasons why they deny the request.

CUP REVIEW

- The board may by ordinance designate certain types of developments, including planned unit developments and certain land development activities as conditional uses under zoning regulations. Conditional uses may be approved upon a showing by an applicant that standards and criteria stated in the ordinance will be satisfied. Such standards and criteria shall include both general requirements for all conditional uses and, insofar as practicable, requirements specific to each designated conditional use.

Minn. Stat. § 394.301, subd. 1.

- Minnesota Statutes § 394.301 places burden on applicant to "show" that its proposed use meets the standards and criteria for granting a CUP.

- Quasi-judicial decision, which is afforded deference – grants of CUPs are held to a lower standard than denials.

- In connection with ordering the issuance of a conditional use permit the designated approval authority may impose such additional restrictions or conditions as it deems necessary to protect the public interest, including but not limited to matters relating to appearance, lighting, hours of operation and performance characteristics.

Minn. Stat. § 394.301, subd. 2.

- If a municipality can impose additional conditions on a CUP which will satisfy any issue raised during the application process, denying the application rather than issuing the CUP subject to the additional conditions may indicate arbitrary action. *See Trisko v. City of Waite Park*, 566 N.W.2d 349 (Minn. App. 1997) ("Evidence that a municipality denied a conditional use permit without suggesting or imposing conditions that would bring the proposed use into compliance may support a conclusion that the denial was arbitrary"); *In re Lawrence*, 2009 WL 438058 (Minn. App. 2009); *Buberl Recycling & Compost, Inc. v. Chisago County*, 2009 WL 274623 (Minn. App. 2009).

- The Vigstols sought a CUP to use their property as a wedding venue, which the planning commission recommended with 20 conditions. The county board denied the permit after substantial public opposition. The court of appeals reversed, finding the reasons cited by the board for denial were too speculative and not supported by the record.

Vigstol v. Isanti Board of Commissioners, 2014 WL 6862933 (Minn. App., Dec. 8, 2014).

MATTER OF GOODPASTER, NO. A22-0982, 2023 WL 2847347 (MINN. APP. , APR. 10, 2023)

- The Goodpasters own 5.66 acres zoned for agricultural use in Chisago County. In April 2022, the Goodpasters applied for a CUP from Chisago County, which they must obtain to operate the proposed winery as a "Rural Retail Tourism Business" in an agriculturally zoned district. The township board considered the application and recommended approval. After hearing comments from the public, the planning commission adopted the recommended findings and recommended that respondent Chisago County Board of Commissioners grant the CUP with 17 conditions.
- The county board considered the CUP application with no additional public comment or information. Before any discussion, a commissioner moved to deny the application because the lot was too small, and they were having problems with another winery on a 20-acre lot. The board unanimously denied the CUP application.

- After the meeting, the county sent the Goodpasters an "official notification" that the county board had denied their application for a CUP. The letter identified three "findings" as a basis for the denial: (1) the lot was "too small" to accommodate the winery without causing "impactful disruption," (2) the winery was "not sufficiently compatible with" the residential nature of the area and "not sufficiently separated by distance from those residentially developed properties," and (3) the "appearance and intensity of the site development and site development activities" would adversely impact the neighborhood "and screening is unlikely to mitigate such adverse impacts."
- The Court of Appeals agreed with the Goodpasters, finding the three reasons provided by the board to not be supported. The lot size does not appear to be connected to the factors the board was to consider and the finding lacks a legal basis. The second finding was conclusory and lacked factual support, same as the third finding. The Court determined the denial of the CUP lacked a reasonable basis and reversed and remanded the case with instructions to grant the CUP with the 17 recommended conditions.

MILLER V. BAYTOWN TWP., NO. A22-0672, 2023 WL 1770141 (MINN. APP., FEB. 6, 2023)

- Derrick Custom Homes LLC applied for a conditional use permit (CUP) from Baytown Township to build 101 homes on a 195-acre parcel. A CUP was required because the parcel was zoned for single family estates with a minimum lot size of 2.5 acres and the proposed development was for lots of only 0.5-1.0 acres as over half of the 195 acres was to remain as open space.
- The board approved the CUP. The residents initiated action in District Court where upon cross-motions for summary judgment the District Court granted summary judgment in favor of the township. The residents then appealed, arguing the grant of the CUP was unreasonable, arbitrary, and capricious because the town misapplied the zoning ordinance and the township's findings in the resolution approve the CUP lacked substantial evidentiary support.

- Evaluation of Traffic. The Court found the township adequately considered traffic of the proposed development and nearby areas. The township held a total of five public hearings, which is more than what is required under the ordinance, extended the timelines for reviewing the CUP, and weighed input on traffic analyses from both parties and the township's staff.
- Appellants also argued the township's findings lacked substantial evidentiary support. The Court evaluated this argument under the standard of "whether the evidence could reasonably support or justify the determination" and found standard was met.

THE IMPORTANCE OF THE RECORD

- The general standard of judicial review in zoning matters is whether the zoning authority's action was reasonable. Substantial deference is given to the decisions of municipalities in zoning matters.

- It is not the province of the court to substitute its judgment for that of the municipality, but merely to determine whether the body was within its jurisdiction, was not mistaken as to the applicable law, and did not act arbitrarily, oppressively or unreasonably, and to determine whether the evidence could reasonably support or justify the determination.

FINDINGS OF FACT

- Findings of fact are necessary to support decision.
- Findings of fact apply the facts in the record to the standards set forth in the ordinance.
- Findings are your reasons why a permit should be granted or denied.
- Must follow ordinance requirements for findings. *Bio Wood Processing, LLC v. Rice Cty. Bd. of Comm'rs* (remanding denial of an application for an amended conditional-use permit to correct a procedural defect).

VARIANCES - REVIEW

- Minnesota Statutes § 394.27, Subd. 7 (2022)
- Variances shall only be permitted when they are in harmony with the general purposes and intent of the official control and when the variances are consistent with the comprehensive plan.
- Variances may be granted when the applicant for the variance establishes that there are practical difficulties in complying with the zoning ordinance. "Practical difficulties," as used in connection with the granting of a variance, **means that the property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance; the plight of the landowner is due to circumstances unique to the property not created by the landowner; and the variance, if granted, will not alter the essential character of the locality.** Economic considerations alone do not constitute practical difficulties. Practical difficulties include, but are not limited to, inadequate access to direct sunlight for solar energy systems.
- The board of appeals and adjustments or the governing body as the case may be, may not permit as a variance any use that is not allowed under the zoning ordinance for property in the zone where the affected person's land is located.
- The board of adjustment may impose conditions in the granting of variances. A condition must be directly related to and must bear a rough proportionality to the impact created by the variance.

BEHRENDS V. JACKSON CNTY., NO. A22-0797, 2022 WL 17956776, (MINN. APP. DEC. 27, 2022), REVIEW DENIED (MAR. 28, 2023)

- EW Wind owned a wind farm that had been in operation since 2008. EW Wind applied for new variances and a conditional use permit to add longer blades which required a component to sit on top of the existing towers. This modification would increase the tower height.
- The board of adjustment granted EW Wind's variance requests and made five findings of fact: (1) the property owners were proposing to use the property in a reasonable manner, (2) the need for variances was due to circumstances unique to the properties and not created by the property owners, (3) the variances would maintain the essential character of the locality, (4) the need for the variances involved more than economic considerations, and (5) the variances were requesting the minimum variance necessary.

- The Court of Appeals first addressed Behrends' argument the board's decision was not legally valid because the board failed to incorporate the local zoning ordinance in its analysis and the board incorrectly analyzed the statutory factors. The Court found this argument unpersuasive as the board used a form which outlines the criteria for granting variance and included the entire text of the relevant Jackson County Zoning Ordinance.
- Strong Dissent on this issue

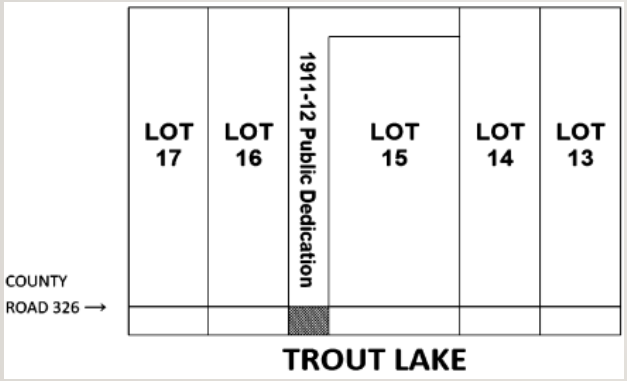
FINDINGS, FINDINGS, FINDINGS

- BOA must find ALL statutory (and ordinance)criteria are met to justify the grant of a variance.
- Avoid voting to simply grant or deny variance, before discussing all the criteria.
- Deferential standard of review.

MATTER OF MORATZKA, TRUSTEE OF NANCY L. MAYEN RESIDUAL TRUST, 988 N.W.2D42 (MINN. 2023).

- 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, 988 N.W.2D 42 (MINN. 2023).



MATTER OF MORATZKA, TRUSTEE OF NANCY L. MAYEN RESIDUAL TRUST, 988 N.W.2D42 (MINN. 2023).

- 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.
- The Supreme Court disagreed and held the MTA does not operate to extinguish public interests properly dedicated by plat.

DATA PRACTICES

- Trend – substantial Data Practices requests pre-suit.
- Not only County documents, but e-mails. This includes e-mails of Commission and Board members.

PREJUDGMENT

- This includes a decision maker who has not prejudged the matter before it is presented to him. *Continental Property Group v. Minneapolis*, 2011 WL 1642510 (Minn. App. 2011).

- Prejudgment/bias shown before hearing can invalidate a decision. *Living Word Bible Camp v. County of Itasca*, 2012 WL 4052868 (Minn. App. 2012).

- Constituent contacts.

BIAS

- The test for determining whether a decision maker is unbiased is whether the decision maker's situation could tempt "the average man" as a judge to forget the burden of proof required to rule against an alleged violator.
- *In re Khan*, 804 N.W.2d 132 (Minn. App. 2011) (Kahn failed to show a three year contract with the city to provide hearing officer services would tempt an average judge to forget burden of proof and rule in favor of city.)

QUESTIONS?