MACPZA SPRING CONFERENCE
2022-2023 Case Law Update

Jason Kuboushek
Iverson Reuvers
9321 Ensign Avenue South
Bloomington, MN 55438
(952) 548-7206
jasonk@iversonlaw.com

Conditional Use Permit

***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 recommended conditions included limiting the hours of operation to Wednesday through Sunday, 12:00 p.m. to 8:00 p.m.; requiring all music to be indoors and all noise to comply with local noise ordinances; requiring all parking to be on the property; limiting the number of guests on the property at any one time; requiring the winery to comply with all local building and zoning ordinances; and requiring a double row of screening pine trees on the three sides of the property not facing the road. 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 Goodpasters appeal, arguing the three reasons given are legally insufficient and denial was unreasonable as the reasons provided lack support from the record.

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 township's planning commission conducted a public hearing in January of 2021 and recommended the town board approve the CUP subject to conditions Derrick provide (1) "estimates of average daily traffic generated by the proposed development" and (2) "design options to address concerns of traffic on the west side of the proposed development traveling onto 47th Street". Derrick provided a traffic study which estimated traffic would increase to a total of 380-619 trips per day, depending on which traffic design was implemented. These numbers were below the Minnesota Department of Transportation's estimate a typical volume on a similar road would be about 700 trips per day. Appellant residents who opposed the development responded with their own study showing the development would add 1,049 trips per day and argued that even 619 is a significant increase as the road is currently a cul-de-sac that receives very little traffic. The town planner and engineer also evaluated the traffic issue and estimated the daily trips to be around 615. While recognizing this would be an increase, they noted the intersections were built to handle this level of traffic and this number of daily trips is still lower than if the parcel of land was developed according to the current single-family zoning. 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 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.

The Minnesota Court of Appeals determined the township's reasonings for approving the CUP complied with the zoning ordinance. After first holding a public hearing, the planning commission may recommend granting a CUP if three conditions are met: "[1] the proposed use is listed as a conditional use for the district and [2] upon a showing that the standards and criteria stated in this Zoning Ordinance will be satisfied and [3] that the use is in harmony with the general purposes and intent of this Zoning Ordinance and the Comprehensive Plan." BTZO ch. 1, § 7.3(1); *see* BTZO ch. 2, pt. 3, § 4.4(3). The third condition has nine subfactors to consider, including traffic conditions.

Appellants argued the township erred in applying the zoning ordinance because the township's findings regarding traffic did not include findings on traffic conditions on adjacent streets and land. The Court found this argument to be ineffective as the ordinance does not require the township to make findings of fact about each of the nine subfactors. The Court also found appellants to be overstating what the ordinance required of the township and 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". Appellants challenged three of the township's factual findings and upon addressing each in turn, the Court found appellants failed to show a lack of evidentiary support on any of the three findings and affirmed the District Court's decision to uphold the issuance of the CUP as appellants failed to show the grant of the CUP was arbitrary, capricious, or unreasonable.

***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 application specified that the Land Evaluation Site Assessment (LESA) score for the project site was 72.8 but noted the site is not designated "prime farmland." A property's LESA score represents how valuable the land is for farming. The comprehensive plan advises that land with a LESA score exceeding 65 "is considered to be a site that is better suited for agricultural use". Historically, the LESA score highly influenced land use decisions and projects have been denied if the score was 65 or higher. 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.

Great River Solar also argued the board's decision to deny the IUP was unreasonable, arbitrary, and capricious. The court also rejected this argument, finding the board's decision to deny the IUP was based on legally sufficient reasons. The IUP conflicted with several zoning ordinances and did not conform with the overall goals and policies of the comprehensive plan.

***In the Matter of the Application of Impact Power Solutions, LLC and MN CSG 2019-29, LLC for a Conditional Use Permit,* A21-0925 (Minn. App. May 9, 2022)**

Relators brought a writ of certiorari seeking review of the Stearns County Board of Commissioners' decision to deny Relators' conditional use permit for a solar farm. Relators alleged they were entitled to the CUP because they satisfied the county's zoning ordinance CUP standards and that the County Board did not have factual support in the record to deny the application. The Court first determined the County's decision was legally sufficient. It determined the proposed use was incompatible with the comprehensive plan because the proposed site was for a solar farm in an A-40 zoning district which purpose was to "preserve the agricultural and rural character of land" and that zoning in this area should be "agriculturally oriented." Further, the Comprehensive plan specifically stated only limited space in this district should be devoted to solar uses. The Court determined these facts demonstrated concerns relevant to public health, safety or the general welfare of the affected area or the community as a whole. Next, the Court determined the County did have a factual record to support its' decision. The Court found the County based its decision on the comprehensive plan which specifically stated "agricultural heritage is the root of tis prosperity and identity" and the policies are designed to "enhanced and promote the advancement of the county's agricultural economy." The Court accounted for the comprehensive plan's statement that energy resources have an "increasingly prominent role" in the area but focused on the plan's statement about limiting space devoted to solar uses. The Court further looked to the public hearing testimony and evidence related to how the solar farm would affect the area. While the Board was presented with conflicting information about the character of

the land (specifically what the soil is used for), the Court deferred to the Board's decision to credit testimony that the land is suitable for farming. Therefore, the Court upheld the Board's decision to deny Relator's CUP application.

Variances

***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. In July of 2021 the Jackson County Board of Adjustment met to consider the variance requests. Behrends was present at the meeting and spoke against the variance requests. He argued the variance requests were motivated by economic concerns and granting the variances would increase existing issues such as noise pollution, shadow flicker, and decrease property values. 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. Behrends sued in District Court against EW Wind Holdings, the Jackson County Board of Adjustment, and the four landowners whose property the windmills sit on. The District Court granted respondents' summary judgment motions and found Behrend's arguments about the board's failure to consider the ordinance requirement lacked merit because the board's analysis complied with what is required of the ordinance. Behrends appeals the District Court's decision to grant summary judgment.

The Minnesota 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 includes the entire text of the relevant Jackson County Zoning Ordinance. The ordinance was not ignored, the board received balanced evidence from both sides, and recorded the reasons for their decision in a detailed and more than conclusory manner.

The Court also found Behrends' statutory argument to be unpersuasive. Behrends argued the requirements that the variance be for a reasonable use, the variance is necessary due to unique circumstances, and the variance be granted due to non-economic considerations were not met. Behrends failed here as he did not cite legal authority which

states that expanding an existing use is not a reasonable use, the board could have rationally determined there to be unique circumstances as the variance was due to circumstances unique to the property and not created by the property owner, and economic considerations are allowed as long as they are not the only considerations. The Court found the board's findings to be supported by substantial evidence in the record and affirmed the decision of the District Court.

Land Use

***Windcliff Ass'n, Inc. v. Breyfogle*, 988 N.W.2d 911 (Minn. 2023)**

The Breyfogles are homeowners in a residential subdivision where lots are subject to restrictive land use covenants. In April 2019, the Breyfolges submitted to the Association plans to build a 1,656-square-foot unattached garage on their lot. The Association rejected their plans, citing a covenant restricting outbuildings to a maximum size of 1,200 square feet. The Breyfolges responded to the Association by asserting the covenant was no longer in force because the Wabasha County zoning regulation had been repealed in 2015 and proceeded with building the garage. They received a permit in July 2019 and completed the construction. In October 2019, the Association filed suit against the Breyfogles seeking to enforce the size restriction in the covenant.

Respondent argued the Breyfolges newly constructed 1,656-square-feet garage violated the restrictive covenant. The Breyfolges argued the Wabasha County zoning regulations control the interpretation of the covenant and any ambiguity in the restrictive covenant must be strictly construed against the land use restriction as a matter of law. The district court agreed with the Breyfogle's position and granted summary judgment. The court of appeals disagreed, concluding the restrictive covenant was ambiguous and interpretation of the covenant was a question of fact for the jury. The Court of Appeals also disagreed with the District Court's finding an ambiguous restrictive covenant must be automatically construed against the land use restriction as a matter of law. The Breyfolges appealed to the Supreme Court of Minnesota.

The Breyfolges argued strict construction should apply to restrictive covenants, meaning if a court finds a restrictive covenant ambiguous, the court should automatically construe the covenant against the land use restriction as a matter of law, without looking to extrinsic evidence to determine the intent of the parties. The Association's position is the general rules of contract interpretation should apply to interpretation of ambiguous restrictive covenants and strict construction should have no role in interpreting these covenants.

The Minnesota Supreme Court determined the rule of strict construction will continue to apply to the interpretation of ambiguous restrictive covenants, but not in the automatic way the Breyfogles' petitioned for. The Court determined strict construction against land

use restrictions should apply to ambiguous restrictive covenants only after attempting to discern the parties' intent, using extrinsic evidence if available. Upon a finding of an ambiguous covenant and upon examining extrinsic evidence, a court may not grant summary judgment unless the extrinsic evidence is conclusive as to the parties' intent. Only if a jury is unable to resolve the ambiguity by a preponderance of the evidence after using any available extrinsic evidence may the rule of strict construction be applied and construe the ambiguity in the covenant against the land use restriction.

After applying this process to the Breyfogles' case, the Court determined the covenant was ambiguous, the extrinsic evidence did not conclusively establish the intent when drafting the covenant, and the matter was remanded for the jury to decide the meaning of the ambiguous restrictive covenant.

***Resol. Ordering Abatement on Prop. Located at 10100 Lake Drive, Circle Pines*, No. A22-1230, 2023 WL 2358669 (Minn. App. Mar. 6, 2023)**

The Pawliks own property at 10100 Lake Drive in Circle Pines. The property is the site of a former bar, and the Pawliks sought to redevelop the property with a new bar. They approached respondent City of Circle Pines regarding redevelopment in 2011. After demolishing the existing building in 2018, they covered the remaining basement with plywood and erected snow fencing around the property. On June 15, 2022, the city sent a letter to Thomas Pawlik regarding "Nuisance Abatement" on the property directing him to obtain a demolition permit and clear the property of all remnants of the structure. The letter also stated the site "must be fully restored with vegetation" and kept clean from debris and weeds. The city gave the Pawliks until July 16 to comply. If they did not do so, the city would "consider abatement of the nuisance" at its July 26 public meeting. The city sent the letter by U.S. Mail, posted a copy on the property, and a week later sent a copy to the Pawliks' attorney. On July 22, the city sent a second letter stating they had not complied with the June 15th letter or made any communication with the city. The second letter warned the Pawliks the city would hold a hearing on August 10 to determine whether to order abatement of the nuisance unless the Pawliks made a good faith effort to begin compliance. This letter was again sent by U.S Mail and posted on the property. During the July 26 meeting, the city council considered whether to declare the property a public nuisance. The Pawliks did not attend. After discussing the property's history, the two letters sent to the Pawliks, and the Pawliks' lack of response, the city council passed a resolution declaring the property a public nuisance. On August 10, the city council conducted a public hearing at which it addressed whether to order abatement of the nuisance at the property. Timothy Pawlik attended the hearing with counsel. The Pawliks asserted they received insufficient notice of the nuisance and abatement proceedings because the first letter was not sent by certified mail as required by city ordinance, but admitted they received the letters by July 25. The Pawliks presented testimony and photographs to show they had responded to the abatement request with concrete barriers around the basement. The city council

received input from the city building inspector and the public who expressed concerns that the property was unsafe. The city council had an unanimous view a nuisance existed at the property and directed for a draft resolution to authorize abatement be brought to the next meeting on August 23. The day of the meeting, the Pawliks submitted a letter to the city stating they had undertaken further corrective action at the property to address the safety concerns. They also submitted photographs depicting these changes. The city council acknowledged receipt but determined the information was not "materially different" from what was presented on August 10. The city council voted to order abatement, directing its staff to "take all actions necessary to enter onto the Property for purposes of abating the public nuisance" and "assess all costs for abatement against the Property."

The Pawliks appeal, arguing the record lacks evidence to support the city's findings they took "no action" in response to the city's letters and the conditions on the property did not constitute a public nuisance after their corrections. The Minnesota Court of Appeals agreed, finding the Pawliks did take action on two separate occasions upon receiving the city's letters. The sufficiency of their actions was recognized and discussed at the August 10 hearing. The Court also noted the City based their nuisance findings on the property being unsafe as it had uncovered holes and "other conditions or things, which are likely to cause injury to the person or property". The Pawliks' took action to correct the safety concerns and the property was now just "unsightly". Since the city grounded the nuisance finding on safety concerns which no longer existed, there was a lack of substantial evidence to support the finding of a continued nuisance and the decision was reversed.

***Culligan v. City of Mendota Heights,* A21-1708 (Minn. App. July 25, 2022)**

The City asked the Court to reverse the lower court's decision that the City Council's denial of Culligan's development application was arbitrary and capricious. The Court found for the City's decision, therefore upholding the application denial. The City relied on nine findings to support its decision. It found that the proposed development created an unjustifiable risk of erosion and landslides which city ordinance specifically protected against. Further, the Court found the City's decision was supported by facts in the record including unanimous recommendation from the planning commission, reports and testimony by an expert from the University of Minnesota on soil and groundwater flow, testimony about safety from neighbors and a DNR report expressing concerns about the project. The Court compared the City's argument to those in RDNT. It found similar to RDNT, there was conflicting expert testimony presented but credibility of witnesses is not for the court to decide but rather whether there was sufficient factual basis in the record. Because the decision was legally sufficient and there was facts in the record, Culligans did not meet their burden of proof.

***Bexell, et. al. v. Brand, et. al.*, A21-1302 (Minn. App. May 31, 2022)**

The Brands challenged the district court's determination their neighbors, the Bexells, were entitled to use an easement through the Brands' land for drainage, utilities, ingress and egress. The Brands argued the easement was unambiguous and only granted for ingress and egress benefitting the property. However, the Court disagreed. It found that the granted document was ambiguous and reasonable minds could conclude the Bexells have right to use the easement for drainage and utilities as well. The Brands further argued the rule from *Giles,* that a right of way without restrictive terms is available for reasonable uses can only apply to grants that have "express language about use." The Court against disagreed with this argument. Instead, the Court said *Giles's* rule explicitly applies to rights of way "not restricted by the terms of the grant." Because the granting document here was ambiguous (it did not contain language regarding reasonable uses for the benefitted land), the district court was free to consider extrinsic evidence. Finally, the Court found the record contained findings of fact to support the district court's decision. The Court found evidence in the record showing both parties had knowledge of the original owner's intent for the Bexell property, to develop it and this required an easement for access and egress, drainage and utilities.

ENVIRONMENTAL

***In re City of Cohasset's Decision on Need for an Env't Impact Statement for Proposed Frontier Project*, 985 N.W.2d 370 (Minn. App. 2023)**

Huber Engineered Woods LLC wanted to build an oriented-strand-board manufacturing facility that would occupy 159 acres of agricultural and undeveloped lands one mile east of the Leech Lake Indian Reservation. The proposal was met with mixed reactions, with the governor and legislature supporting the project due to the jobs that would be provided. Others were concerned about the potential environmental impacts as the project is so close to reservation lands and would be expected to impact tribal resources. The record shows the facility would have environmental impacts, such as filling wetlands, including two public waters wetlands, and emissions of air pollutants. The facility required permits from various agencies, including the City of Cohasset. The required environmental-assessment worksheet was completed (EAW). After multiple public-comment periods and a revision to the initial EAW, it was concluded that the project did not have the potential for significant environmental effects. An EIS may be required under the Minnesota Environmental Policy Act for one of two reasons. First, an EIS is required if the characteristics of a proposed project exceed one or more of the mandatory EIS thresholds in Minnesota Rule 4410.4400. Minn. Stat. § 116D.04, subd. 2a(b). Second, an EIS is required—even if the proposed project does not exceed any mandatory EIS threshold—if the proposed

project has the potential for significant environmental effects. Minn. Stat. § 116D.04, subd. 2a(a). Due to the determination that the facility did not have the potential for significant environmental effects and it did not exceed any of the mandatory environmental-impact statement (EIS) thresholds, the city decided it was not necessary to prepare the more detailed EIS. The decision not to prepare an EIS was challenged by the Leech Lake Band of Ojibwe, arguing the manufacturing facility is included in the categories for which an EIS is mandatory under administrative rules. The Band also challenged the city's determination that the facility did not trigger the requirement that an EIS be prepared for proposed projects that have the potential for significant environmental effects.

The Court determined the city erred by determining the EIS was not mandatory under the governing administrative rules. An EIS is required under Minnesota Rule 4410.4400, subpart 20 if a project will "eliminate" a public waters wetland. What constitutes as "elimination" is not defined. The Court decided that to "eliminate" a wetland does not mean to make it completely disappear. Rather, a wetland will be "eliminated" if the project will deprive a public waters wetland of either: 1. its particular wetland type (type 3, 4, or 5 determined by the nature of its waters and vegetation), or 2. it will reduce the minimum acreage for the wetland's current classification.

Even with this interpretation, the city argues an EIS is still not required as the wetlands would not change type and would remain above the minimum acreage to be considered public waters wetlands. The Leech Lake Band argues the city's assertions are not supported by substantial evidence and are instead conclusory. The Court agreed with the Band and reversed and remanded the decision with instructions for the city to apply the correct legal standard on a properly developed record to determine whether an EIS is mandatory according to the Court's interpretation of Minnesota Rule 4410.4400, subpart 20.

Regarding the Band's alternative argument that an EIS be prepared for proposed projects that have the potential for significant environmental effects, the Court found there was sufficient evidence by the city to support the determination that there were no significant environmental effects that would have triggered the need for an EIS if the facility does not meet the new standard set out under Minnesota Rule 4410.4400.

***Matter of MCEA for Commencement of an Env't Assessment Worksheet*, 980 N.W.2d 175 (Minn. 2022)**

This case was a dispute as to whether the upper reach of Limbo Creek in Renville county was a "public water" or not. Pursuant to a District Court Order from 1985, the upper reach was not included in the inventory list of public waters. According to the Minnesota Department of Natural Resources (DNR), the upper reach of Limbo Creek meets the statutory definition of a public water and is therefore a public water. During a

hearing regarding a ditch project, the County considered whether an environmental assessment worksheet (EAW) was necessary to complete the project. Respondents, Minnesota Center for Environmental Advocacy and Protecting Public Waters (MCEA) asserted the project required an EAW because it will "change or diminish the course, current, or cross-section" of a public water. The County denied the EAW petition after finding the upper reach of Limbo Creek is not a public water, despite the DNR's repeated assertions that it was. MCEA challenged the decision in the Court of Appeals where the Court reversed and remanded for the county to prepare an EAW. The Court determined the absence of the upper reach of Limbo Creek from the inventory list does not conclusively establish that the watercourse is not a public water under the statute. The county filed a petition for review, asserting the Court of Appeals erred when it failed to hold that the inventory list was a final, binding, and exhaustive list of public waters in the state. The issue before the Minnesota Supreme Court is whether the county must complete a mandatory EAW for the County Ditch 77 project affecting Limbo Creek. The answer to this question turns on whether the upper reach of Limbo Creek is a public water or not. The MCEA argues that the definition of "public waters" in Minnesota statutes does not reference the inventory, the 1979 inventory law, or the current inventory statute so the definition of "public waters" should be independent from the inventory list. The county essentially argues that the statutory definitions are not decisive because they are dependent on the inventory list, which conclusively classified all public waters in Minnesota. Non-inclusion in the list definitively shows a water is not a public water.

Notably, the upper reach of Limbo Creek does not appear on the inventory *list* but it does appear on the inventory *map*. Section 103G.201(a)—the statutory basis for the county's position—directs the DNR to "maintain a public waters inventory *map* of each county that shows the waters of this State that are designated as public waters" under the inventory. Section 103G.201(a) does not explicitly reference the inventory *list*. The inventory map designates the upper reach of Limbo Creek to be a public ditch and a public water. The Court was able to avoid the question of whether the absence of a water conclusively establishes that it is not a public water because Limbo Creek appears on the inventory map. Instead, the Supreme Court concluded the Court of Appeals did not err by relying on the statutory definition of "public water" to determine if the upper branch of Limbo Creek is a public water as opposed to relying on the absence of the branch from the inventory list.

***In re: Determination of Need for Environmental Impact Statement for Pavilion Estates Subdivision,* A21-1276 (Minn. App. June 6, 2022)**

Relators sought review of Rochester Township's negative declaration for need of an environmental-impact statement in relation to a residential-development project and requested the court remand for the township to prepare an Environmental Impact Statement. Relators argued the township's negative declaration was affected by various

errors of law, that the township failed to engage in reasoned decision-making, and the declaration was arbitrary, capricious and unsupported by substantial evidence. The Court found the township's declaration was not affected by errors of law because they followed the proper publishing and public comment rules, the issue was not whether the proposed project complied with land-use regulations but rather whether there is a potential for significant environmental effects, and the township provided and reviewed all of the necessary documents to ensure no error of law. Next, the Court determined the township engaged in reasoned decision-making. The Court found the record reflected the township used a staff report and substantial responses to public and agency comments including on issues like greenhouse-gas emissions and water uses. In its declaration, the township repeatedly mentions those comments in the context of land-use regulation, development, regulatory issues, mitigation efforts, potential endangered species, water etc. It further addresses concerns and why the project will not create significant environmental effects. Finally, the Court determined the township's declaration was not arbitrary, capricious or unsupported. It found the township did conduct an analysis of the development's impact on the surrounding area and gathered further information from experts. The Court found the lack of a DNR letter or SHPO archaeological did not make their decision arbitrary or capricious because the report by developers and negative declaration require developing to stop if human remains or any historic items are uncovered onsite.

ROADS AND PLATTING

***Matter of Moratzka, Trustee of Nancy L. Mayen Residual Trust,* 988 N.W.2d 42 (Minn. 2023)**

The parcel of land at issue was part of the Plat of Trout Lake Park, which was created in 1911. The Plat of Trout Lake Park borders Trout Lake, which is a lake fully contained within the Chippewa National Forest and is used for fishing, boating, and camping. The plat, which has been on file since 1912, states the dedicator does "hereby dedicate to the public use forever the public roads [located on the plat]." The 1911–12 dedication included a north-south public road running between lots 15 and 16 of the plat.

Since dedication, some of the lots within the plat have been used as a resort—in particular, Lots 13, 14, 15, 16, and 17 (now known as Parcel 1), all of which abut Trout Lake. In the 1980s, the then-owners of the resort filed a petition to vacate the north-south public road that passes between Lots 15 and 16. As part of a settlement, the County agreed to vacate the road north of County Road 326, and the resort owners agreed to exclude the portion of the road south of County Road 326 from the petition to vacate. That portion of the original dedication south of County Road 326 is what is now known as Parcel 3. Although described in the plat as a "public road," no physical road has been constructed there; it is instead a sandy beach.

In 2019, Moratzka filed an application to register Parcels 1, 2, and 3 as Torrens property. He asserted the trust possessed a fee-simple interest in the land. He acknowledged the platted public way on Parcel 3 but asserted "no public road exists" because neither Balsam Township nor Itasca County had recorded "any interest in the road within 40 years of the road's dedication," which he claimed was required under the Marketable Title Act (MTA), Minn. Stat. § 541.023. The Supreme Court disagreed and held the MTA does not operate to extinguish public interests properly dedicated by plat.

***Zimmer v. Pine Lake Township,* A22-1606, 2023 WL 3574229, (Minn. App., May 22, 2023)**

Plantain Trail is a road located in respondent Pine Lake Township. In 2008, the residents of six properties on Plantain Trail met to discuss the repairs necessary to bring the road up to township standards so the township would accept it for ownership as a public road. The cost of the repairs was determined to be $30,000.

In 2016, the fee owners of Plantain Trail executed a deed dedicating it to the public. In 2017, appellants Leonard and Virginia Zimmer, owners of property on Plantain Trail, formally requested Pine Lake Township to maintain it as a township road. The township denied the request, and the Cass County Board of Commissioners upheld the denial. Appellants did not challenge this decision.

In 2018, appellants filed an action against the township in district court. The township moved to dismiss on the ground that appellants' only remedy after the County Board's denial of the request to maintain the road was to petition for a writ of certiorari in this court. The district court determined that: (1) the public had used the road for decades, creating a public road by dedication; (2) the township did not have to accept that dedication; (3) the district court lacked jurisdiction because appellants' only remedy was to petition for a writ of certiorari in this court; and (4) the township's motion to dismiss would be granted. Appellants did not challenge the dismissal. In 2019, appellants again asked the township to recognize Plantain Trail as a township road and to maintain it. The township again denied the request, and appellants did not challenge that denial.

In 2020, appellants filed another action in district court, alleging that Plantain Trail had been used by the public since 1994 and been "constructively dedicated" as a public road by deed in 2016; the township had repaired and maintained Plantain Trail; and the township denied that Plantain Trail was a township road and refused to repair and maintain it.

The Court found because the dedication of a road does not meet a township's standards, the Court cannot impose on a township the obligation to improve and maintain the dedicated property. Accordingly, the township has no obligation to improve and maintain Plantain Trail.