Minnesota Association of County Planning & Zoning Administrators

Land Use Case Law Update

(Decisions from April 2020 through June 1, 2021)

Jason Kuboushek, Iverson Reuvers

Materials prepared by Iverson Reuvers
9321 Ensign Avenue South
Bloomington, MN 55438
(952) 548-7200
jasonk@iversonlaw.com

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Land use: subdivisions

Calm Waters, LLC v. Town of Kroschel, No. 33-CV-18-160, 2019 WL 6837002 (Minn. App. Dec. 16, 2019).

The town's zoning ordinance dictates no parcel of land can be smaller than 20 acres and all parcels of land must abut a public road for at least 300 feet. Calm Waters sought a variance from the minimum lot size requirement to create two parcels which were under the 20-acre minimum lot size and a variance from the public road abutment requirement to create two stacked parcels which would require traversing an existing easement. The town denied the requests. At District Court, Calm Waters argued the town's regulation of shoreland was preempted by Minn. Stat. §§ 103F.201–.227 and the variance denial was arbitrary and capricious. But the District Court granted the town's motion for summary judgment. The Court of Appeals affirmed, holding the statute for shoreland regulation allows municipalities to adopt and enforce more restrictive shoreline standards than the DNR's. Because approving the variance would create four parcels, which the town could reasonably find inconsistent with its comprehensive plan and zoning ordinance, the denial was not arbitrary and capricious.

In re Ali, 938 N.W.2d 835 (Minn. 2020).

Ali participated in the Section 8 housing program until Scott County—the local housing administrator—determined the CDCS money Ali had allocated to herself as wages to care for her child was not excluded from the annual income calculation for the purpose of Section 8 eligibility. As a result, Ali lost her Section 8 eligibility. The Court of Appeals affirmed the decision and this appeal followed. The Supreme Court affirmed, determining amounts allocated to a parent to care for her disabled child are excluded as income under section 5.609(c)(16). Using the plain language of the relevant provisions of the federal regulation, cost means an actual monetary expense which has been, or will be, incurred by the family to keep the disabled family member living at home. Here, the amounts Ali received as compensation for her services in caring for her child were not amounts paid to offset the cost of services and equipment because Ali incurred no actual monetary expense.

Land use: annexation

In re Annexation of Real Prop. to Bemidji, 945 N.W.2d 68 (Minn. App. 2020).

In May 2018, the City of Bemidji accepted a petition for annexation by ordinance of a 14-acre parcel of property in Bemidji Township from the property's owner. The public hearing mandated by Minn. Stat. § 414.033, subd. 2b, was held, and the township's objection to annexation was noted. In June 2018, the city adopted an ordinance annexing the property under Minn. Stat. § 414.033, subd. 2(3). The township filed an objection and requested an evidentiary hearing with respondent OAH, which approved the annexation. The township appealed the OAH's decision to the District Court under Minn. Stat. § 414.07 (2018), asking that the order be vacated and the District Court rule on the legal issues raised in its objection to the annexation. The District Court affirmed the OAH's order and dismissed the appeal with prejudice. The township appealed. Because the annexation took place under Minn. Stat. § 414.033, subd. 2, which allows for annexation by ordinance, there was no need for anyone to consider the separate statutory criteria in Minn. Stat. § 414.031 or the policy considerations in Minn. Stat. § 414.01. Thus, the annexation was proper.

Land use: conditional use permits

In re Bolton, A19-1208, 2020 WL 2110735 (Minn. App. May 4, 2020).

A landowner applied for a CUP to build an RV park, which the county board voted to deny, even though the planning commission recommended approval subject to conditions. The board found the proposal was not compatible with adjacent land uses because it was a proposed commercial use in a residential area and because the affected public waters would not be able to safely accommodate the types, uses, and numbers of watercrafts the RV park would generate. The landowner challenged this decision, arguing the findings were erroneous and the decision violated his riparian rights and contradicted the DNR's report. The Court concluded the record reflected a sufficient factual basis for the board's determination to deny the CUP. Further, any asserted impact on his riparian rights did not render the decision arbitrary and capricious.

In re USS Water Town Solar LLC, Nos. A19-1148 & A19-1149, 2020 WL 4280034 (Minn. App. July 27, 2020).

Two energy companies applied for conditional use permits to construct solar gardens within the county, and, according to the companies, the county denied the applications only after a period of indecision so lengthy the applications were approved automatically based on Minn. Stat. § 15.99. The county responded with a letter asserting the county denied the applications within the allowable period because the initial statutory 60-day

period restarted when the companies submitted modified site plans. The Court recognized the 60-day deadline to render a decision and to avoid automatic approval begins when the application is materially complete. Minor changes to the site plan did not trigger a restart. Whether an application is complete can rest on an agency's internal designation of the application and its representations to the applicant. If the agency notifies the applicant of an extension, it must state the anticipated length, which cannot exceed 60 days unless the applicant agrees to it. Minn. Stat. § 15.99, subd. 3(f). Here, the county missed the statutory deadline because it made its decision more than 120 days after the companies submitted their materially completed applications. Once the county's declared extended deadline expired, the applications were approved as a matter of law.

In re Tillman Infrastructure LLC, No. A19-1824, 2020 WL 4432034 (Minn. App. Aug. 3, 2020).

Tillman Infrastructure, LLC filed a CUP to construct a 260-foot telecommunications tower on a landowner's property zoned for farm-residential use. The planning commission approved the CUP but required it to comply with all local, state, and federal regulations and be painted red and white with a slow pulsing red light at night. In this certiorari appeal, relator challenged the decision, arguing the county failed to consider provisions of the tower ordinance as it was required to do. Because the planning commission never found the CUP satisfied the tower ordinance, the Court of Appeals reversed the county's CUP approval.

Kirkpatrick v. Meeker Cty. Bd. of Comm'rs, No. A19-0607, 2020 WL 132536 (Minn. App. Jan. 13, 2020).

A sportsman's club applied for a CUP in Meeker County to build a shooting range on property owned by a third party. Nearby landowners were concerned about the range's impact on their ability to enjoy their property and objected to it at the hearing in front of the planning commission. After the hearing, the commission recommended granting approval, which the board did. After receiving written notice of the decision, the landowners' counsel emailed the board chair a notice of appeal, and two days later, filed the notice of appeal in district court. The board moved for insufficient service of process, as the landowners did not serve the board chair with the notice of appeal. As a result, the District Court dismissed the suit for lack of jurisdiction. The Court observed that existing Minnesota precedent establishes mail and email do not constitute personal service of process and are insufficient unless a party waives service or consents to these alternatives. Further, Minnesota case law requires strict compliance with Rule 4.03. Because the landowners did not personally serve the board chair, the District Court lacked jurisdiction.

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 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.

Land use: eminent domain

Cty. of Hennepin v. Laechelt, 949 N.W.2d 288 (Minn. 2020).

In 2015, Hennepin County filed a condemnation petition to facilitate construction work on a highway. One of the properties belonged to respondent. The petition sought a permanent easement on respondent's property for trail and utility purposes and a temporary easement for construction. The District Court granted the petition. After commissioners appointed by the District Court awarded respondent just compensation for the taking, the county and respondent appealed the award. The Court denied the county's motion in limine to exclude evidence of construction-related interference which occurred after the date of taking. Particularly, the jury heard respondent's property was not like the other properties because the road project removed respondent's extensive landscaping, including a pond, a waterfall, a fire pit, and mature trees. While respondent received severance damages, the award did not indicate how much, if any, was for

construction-related interferences. The county argued the Court could not consider evidence of post-taking construction-related interferences and moved for a new trial, which the Court denied. The Court of Appeals affirmed because the county failed to show the admitted evidence was prejudicial. After granting certiorari, the Supreme Court determined the trier of fact can consider all elements that result from the taking which could legitimately affect the price or reduce the land's value, including the impact on the remainder of the property during the course of construction, even if only temporary in nature. These factors include remediated contamination stigma, construction noise, vibration, dust, and loss of visibility. After-acquired knowledge of the degree of construction-related interference is relevant to the factfinder because it may shed light on what a willing buyer and seller might reasonably expect as of the valuation date. Thus, evidence of actual construction-related interferences that occurs after the date of taking is admissible as a factor in establishing the market value of the remainder property. *Affirmed*.

Marianist Province v. City of Kirkwood, 944 F.3d 996 (8th Cir. 2019).

The city adopted lighting regulations limiting the light cast on nearby residential properties to .1-foot candles. Around the same time, a Marianist school began to install lights around its baseball field. The contractors told the school it would be impossible to comply with the ordinance if the lights were to provide enough light to play ball safely at night. The school then applied for a variance. After the lights were tested, neighbors complained and the school submitted another site plan, which the city approved subject to several conditions. The school claimed the conditions deprived it of all meaningful use of its baseball field at night and filed a petition, alleging claims under RLUIPA. At the time, the city's public school's ball fields had no light restrictions. After removal, the Federal District Court granted summary judgment to the city, and the school appealed. The Eighth Circuit determined the school did not demonstrate the city substantially burdened its religious exercise. Further, the public school's fields were treated differently based not on religious affiliation but on the fact no lighting regulations existed when its lights were installed. *Affirmed and remanded* on state claims.

Metro. Council v. Ziegler Inc., 937 N.W.2d 481 (Minn. App. 2020).

The Metropolitan Council filed a petition to acquire temporary construction and access easements over real property owned by a church. The council sought the easements to perform maintenance on the underground sewer. The District Court granted the council's petition, and the council began working on the church property. The commissioners awarded the church $106,000.00 plus pre-judgment interest and a $5,000 reimbursement for appraisal fees. The church appealed, arguing that, since the award was over 40 percent greater than respondent's final written offer, it should receive an award of fees and costs pursuant to the mandatory fee provision of Minn. Stat. § 117.031(a). The council countered, and the District Court agreed, that the council is a public-service corporation

under Minn. Stat. §§ 117.189(a) and 117.025, subd. 10, and is therefore exempted from the mandatory fee provision. The Court of Appeals recognized Section 117.025, subd. 10 sets forth the definition of "public service corporation," which explains that a municipal utility is an entity that provides an essential public service in relation to a political subunit of the state. Because the council was acting exclusively pursuant to its wastewater-management function, it was exempt from the mandatory fee provision. *Affirmed*.

Minn. Sands, LLC v. Cty. of Winona, 940 N.W.2d 183 (Minn. 2020).

The county board revised its zoning ordinance to prohibit industrial mineral operations within the county. The ordinance continued to allow extraction of construction minerals, provided the landowner secured a CUP. A mining company seeking to mine and process silica sand in the county, claimed the county's prohibition on its proposed land use violated the Commerce Clause. U.S. Const. art. I, § 8. It also contended the ordinance was an unconstitutional taking of its property interests in five mineral leases it held within the county. The District Court granted summary judgment to the county, which the Court of Appeals affirmed. The Supreme Court granted certiorari. To make a valid dormant Commerce Clause claim, one must demonstrate the ordinance favors in-state economic interests over out-of-state interests. Because the county's ordinance did not benefit in-state interests at the expense of out-of-state interests, the Court concluded the ordinance did not discriminate against interstate commerce. *Affirmed*.

State v. Elbert, 942 N.W.2d 182 (Minn. 2020).

The landowners owned valuable property along Highway 61 on the north shore of Lake Superior. The State, acting through the Minnesota Department of Transportation (the Department), condemned a small portion of the landowners' property for a construction project intended to improve the highway's safety and quality. After a hearing, court-appointed commissioners awarded the landowners $390,904.29 in damages, $305,000 of which were severance damages attributable to the presumed loss of access to the property during construction. But the landowners never lost access during the project. Each party appealed the damages award to the District Court. The District Court granted partial summary judgment to the Department, which the Court of Appeals affirmed. In a partial taking, just compensation includes (1) damages for the value of land actually taken, and (2) the severance damages to the remaining property resulting from the land actually taken. Severance damages measure the diminution in market value to the remaining property. Considered in determining these severance damages are construction-related interferences. The Supreme Court determined the Department did not take a right of access and the landowners retained suitable access to their property at all times. Accordingly, the landowners failed to establish a genuine issue of material fact on compensable damages. *Affirmed*.

White Bear Lake Restoration Ass'n v. Minn. Dep't of Nat. Res., 946 N.W.2d 373 (Minn. 2020); *White Bear Lake Restoration Ass'n ex rel. State v. Minnesota Dep't of Nat. Res.*, No. A18-0750, 2020 WL 7690268 (Minn. App. Dec. 28, 2020).

A nonprofit corporation dedicated to preserving White Bear Lake brought an action against the DNR for declaratory and injunctive relief, alleging groundwater-appropriation permits issued by the DNR had caused the lake's water levels to drop in violation of the Minnesota Environmental Rights Act (MERA). An association of lakeside homeowners intervened as a plaintiff and claimed the DNR violated the common-law public-trust doctrine. After municipalities with permits to draw groundwater from the vicinity of the lake intervened as defendants, the Court entered judgment in favor of the nonprofit and homeowners' association (respondents) that, among other things, required the DNR to review all groundwater-appropriation permits near the lake and enjoined the DNR from granting new permits until it complied with statutory requirements. The DNR and municipalities appealed, and the Court of Appeals reversed and remanded. The Supreme Court granted review. First, the Supreme Court held the DNR's alleged conduct was actionable under Minn. Stat. § 116B.03, subd. 1. Nothing would suggest excluding an agency's conduct in issuing, reviewing, or amending permits—to the extent the conduct violates standards or materially adversely affects the environment—from liability under section 116B.03. Second, the public trust doctrine did not apply because the Legislature has established structures within which public water use priorities are to be balanced, and no private encroachment or diversion to another state has been alleged. On remand, the Court of Appeals held the District Court did not err in denying summary judgment on the ground respondents failed to exhaust administrative remedies. MERA expressly provides its remedies are in addition to other remedies. Next, the Court of Appeals held the District Court did not exceed its authority under MERA or violate the separation of powers by requiring the DNR to reopen and amend existing permits. Finally, the Court of Appeals held the District Court's findings of fact were not clearly erroneous, as they were supported by evidence in the record.

Land Use: Nonconforming Use

AIM Dev., LLC v. City of Sartell, 946 N.W.2d 330 (Minn. 2020).

For years, a paper mill operated in the city. In 1984, its owner sought permission to open and operate a landfill nearby. The MPCA subsequently approved a permit, which provided the landfill could accept any nonhazardous industrial waste from sources listed in the application (from the paper mill). Over 20 years later, a new entity purchased the property, which had operated as a nonconforming use since 1989. This case concerns the scope of the entity's nonconforming-use rights and, specifically, whether the waste facility could accept waste from places other than the destroyed paper mill. The Court of Appeals determined the MCPA permit controlled the entity's rights and determined it could only accept waste from the destroyed paper mill. The Supreme Court then

considered whether the entity continued the original nonconforming use and did not expand the use. See Minn. Stat. § 462.357, subds. 1, 1e(a). The plain language of the statute reveals the Legislature defined the term "continued" to include activities, such as "repair, replacement, restoration, maintenance, or improvement," so long as those activities were non-expansionary. Landowners are not confined to exercising their nonconforming use rights with outdated or inefficient equipment if it is possible to make improvements consistent with the original use of their land. Here, the entity had to expand the area of its operation or be deprived of all value. Thus, the Supreme Court held the Court of Appeals erred by focusing on the original permit because the scope of a nonconforming use is measured at the time the use became nonconforming due to an adverse zoning change. Because the entity planned on putting nonindustrial, non-toxic waste in the landfill, its purpose fits within the existing operation of the nonconforming waste facility. *Reversed and remanded.*

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 that 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.

Land use: appellate fees

State v. Schneider, 934 N.W.2d 140 (Minn. App. 2019).

In this condemnation action, the State took the landowner's property to make highway improvements, and landowners received compensation in an amount close to $25,000. Later, the landowners challenged the District Court's denial of their motion for attorney fees, which was based on the Court's determination the appellants' final judgment or award of damages did not exceed the $25,000 threshold for reimbursement of attorney fees under Minn. Stat. § 117.031(a). Appellants argue the District Court should have

included the interest accrued on the damage award under Minn. Stat. § 117.195, subd. 1, which would have increased the award to an amount greater than $25,000. However, neither Section 117.031(a) nor 117.195, subdivision 1 states interest shall be included in the final judgment or award. Because the plain language does not authorize adding interest to the final judgment or award of damages to determine eligibility for reimbursement of attorney fees, the Court of Appeals affirmed the District Court's decision.

Land use: variances

Ex rel. Tower Hill Park v. Foxfire Props., LLC, No. A19-1111, 2020 WL 994767 (Minn. App. Mar. 2, 2020).

Vermilion planned to construct a 14-story mixed-use building in Minneapolis, approximately one-half block away from the Prospect Park Water Tower. Appellant Friends of Tower Hill Park opposed the project, claiming it would impair views of and from the tower. Vermilion submitted a land-use application to the city, requesting rezoning, a CUP, variances, and approval of the project's site plan and plat. The planning commission adopted the recommendations of the city's planning and economic development department and approved the project. Appellant appealed the decision, petitioned the city to prepare an environmental assessment worksheet (EAW), and initiated a MERA action, seeking a declaration that the water tower and its viewshed were natural resources and an injunction preventing Vermilion from proceeding with its project. The city denied the appeal and EAW petition, and the District Court dismissed the MERA action, applying collateral estoppel based on the city's prior proceedings. Because the city's proceedings addressed the same issue appellant presented in its MERA action—whether the project would affect the views from and of the tower—which was properly before the city, and the city rendered a final decision on the merits, collateral estoppel applied. The fact that the city attached conditions to the project's approval did not undo its finality. *Affirmed.*

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.

Schulz v. Town of Duluth, 936 N.W.2d 334 (Minn. 2019).

Owners of real property applied to Duluth for a variance to build a retirement home, which Duluth granted. The neighbors opposed the variance because the proposed home would block their view of Lake Superior. The neighbors sought judicial review and personally served the summons and complaint upon Duluth but failed to serve the owners within the same 30-day period. The District Court dismissed the owners from the case because they had not been timely served, and then dismissed the entire action, determining they were a necessary and indispensable party under Minnesota Rules of Civil Procedure 19.01 and 19.02. The Court of Appeals affirmed. The Supreme Court reversed, determining that serving Duluth—the decision-maker and party that retained an affirmative defense –was enough to perfect an appeal under section 462.361 and the Duluth ordinance. Further, precedent demonstrates that failure to join a necessary party is not a jurisdictional defect. *Reversed and remanded* so the owners could be added as a party and the matter litigated.

Stinski v. Ruedebusch, No. A19-0525, 2019 WL 5543938 (Minn. App. Oct. 28, 2019).

Landowners requested variances from the county to add a garage and deck, and their neighbor opposed them. After holding a hearing and reaching a decision, the county mailed notice of the decision to the neighbor, detailing which request was denied and which request was granted. The neighbor appealed the decision, but the District Court dismissed the appeal as untimely. On appeal, the neighbor argued the county's notice of the decision was insufficient to trigger the 30-day appeal deadline under Minn. Stat. § 394.27, subd. 9. Previously the Minnesota Supreme Court held, it is implicit in the requirement of service that the notice be written. While it does not appear that any particular form of notice must be given, plainly the writing must call to the attention of the recipient what it is that has been filed and when. The Court of Appeals determined the county's notice met the required standard. *Affirmed*.

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 the 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.

Other land use related cases

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 that the township had standing to enforce it. On appeal, the Court 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 that 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 that 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, No. A19-1099, 2020 WL 1909700 (Minn. App. Apr. 20, 2020), *review granted* (June 30, 2020).

Appellants 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. *Affirmed.*

Cty. of Wright v. Schiel, No. A20-0226, 2020 WL 4280663 (Minn. App. July 27, 2020).

The Schiels lived in a motor home located on their real property. The county sent a letter to the Schiels, advising its ordinance prevented them from using a motor home as a dwelling and that the motor home violated its setback requirements. When the Schiels did not comply, the county sought a permanent injunction. The District Court granted the injunction on summary judgment, allowing the county to remove the motor home from the property after 30 days. On appeal, the Schiels argued the permanent injunction was illegal because they had abated a separate nuisance on the property. This was irrelevant, and the Court affirmed the grant of the injunction because the Schiels did not present any evidence to show an issue of material fact as to whether they lived in the motor home or whether its placement violated the setback requirements. *Affirmed.*

Hayden v. City of Minneapolis, 937 N.W.2d 790 (Minn. App. 2020).

This appeal involves a two-block area immediately west of U.S. Bank Stadium, known as the Commons. In 2015, the city council and the park board entered into an MOU under which the Commons would be conveyed to the city, the city would convey it to the park board, and the park board would lease it back to the city. In January 2017, the park board leased the Commons to the city to operate and manage the Commons. However, residents of the city sued the city, park board, and others, declaring the city council had no authority to operate and fund the Commons. They also sought a permanent injunction barring the use of city funds for the Commons. The District Court ruled for the city on the request for declarative relief and for the residents on the injunction. Both parties appealed. The Court of Appeals held the city council lacked the authority to operate and manage the park because the city charter reserved those activities for the city's park board. Further, the Court of Appeals determined the residents lacked standing to challenge the use agreement and MOU as taxpayers because they could not demonstrate a unique injury not sustained by the general public. *Affirmed*.

In re Individual Nat'l Pollution Discharge Elimination Sys. Feedlot Permit No. MN0067652, Nos. A19-0207 & A19-0209, 2019 WL 5106666 (Minn. App. Oct. 14, 2019).

A dairy farm sought to expand its operation and applied to the Minnesota Pollution Control Agency (MPCA) for "major modification" to its NPDES feedlot permit. An NPDES permit limits the type and quantity of pollution which can be released into waters of the United States and includes conditions to ensure compliance with state water-quality standards. Because of the size of the proposed project, the MPCA was required to conduct an environmental review and complete an environmental assessment worksheet (EAW). After the comment period ended, the MPCA determined an EIS was not required and issued a modified NPDES permit. The Minnesota Center for Environmental Advocacy (MCEA) appealed and argued, that, given the potential for significant environmental effects, an EIS should occur before the MCPA approves the expansion. The Court acknowledged the MPCA must evaluate whether the project has the "potential for significant environmental effects," Minn. Stat. § 116D.04, subd. 2a(a), and an EIS "shall be ordered for projects that have the potential for significant environmental effects." The Court concluded the MCPA's determination that an EIS was not needed was arbitrary and capricious. Because an EIS must precede a decision to approve a permit modification, the Court also reversed the permit modification approval.

In re Minn. Power's Energyforward Res. Package, 938 N.W.2d 843 (Minn. App. 2019), *rev granted* (Mar. 17, 2020).

A Minnesota public utility company petitioned the Public Utilities Commission for approval of affiliated-interest agreements with its Wisconsin affiliate for construction and operation of a power plant. Clean energy organizations filed a petition with the Environmental Quality Board requesting an environmental assessment worksheet (EAW) be prepared with respect to the proposed project, which the Commission denied. The commission approved the affiliated-interest agreements with conditions. Clean energy organizations appealed by writ of certiorari. The Court held the commission must prepare an EAW before approving an affiliated-interest agreement if a petition under Minn. Stat. § 116D.04, subd. 2a(e) (2018), demonstrates there may be potential for significant environmental effects. Further, MEPA applies to the affiliated-interest agreements, and the commission can order an EAW for a project outside of Minnesota. Accordingly, the commission erred by denying the EAW petition and approving the affiliated-interest agreements without substantively addressing the criteria which govern whether an EAW is necessary. *Reversed and remanded*.

Matter of Issuance of Air Emissions Permit No. 13700345-101 for PolyMet Mining, Inc., City of Hoyt Lakes, St. Louis Cty., Minnesota, 955 N.W.2d 258 (Minn. 2021).

Environmental advocacy groups and Fond du Lac Band of Lake Superior Chippewa brought certiorari appeals to challenge the decision of the Minnesota Pollution Control

Agency (MPCA) granting air-emissions permit to a mining company (PolyMet) for proposed copper-nickel-platinum group elements (PGE) mine operation, which was the first of its kind in Minnesota. The Court of Appeals determined the MPCA's findings were insufficient to facilitate judicial review because the agency's short responses to the written concerns of environmental groups were not the "hard look" required by the MPCA. First, the Supreme Court determined the MPCA did not have to prospectively investigate whether the synthetic minor source air-emissions permit was a sham because federal regulations and EPA guidance contemplate retrospective enforcement for sham permitting. Thus, the MPCA was not required by the federal Clean Air Act to determine whether PolyMet intended to expand its mining operations in the near future, making it subject to the more stringent emissions limitations that apply to a "major source" instead of those that apply to a "synthetic minor source." *Reversed and remanded*.

Matter of Freeborn Wind Energy LLC's Application for Large Wind Energy Conversion Sys. Site Permit for 84 MW Freeborn Wind Farm in Freeborn Cty., No. A19-1195, 2021 WL 1529113 (Minn. App. Apr. 19, 2021).

Following a contested hearing, the Minnesota Public Utilities Commission (MPUC) granted Freeborn Wind Energy LLC (Freeborn Wind) a site application permit to construct a large wind energy conversion system (LWECS). An association of landowners petitioned MPUC for reconsideration, which it denied. After MPUC amended the site permit, the association petitioned for reconsideration again, which MPUC also denied. The association timely appealed the decision. Excel Energy then acquired Freeborn Wind and petitioned to amend the site permit. Although the association petitioned for an EAW, MPUC denied the petition and granted the proposed permit amendment. The association appealed a second time. The Court of Appeals consolidated the appeals. Environmental review for LWECS is governed by Minnesota Rule 7854, which does not require an EAW when the applicant includes an analysis of the potential environmental impact of the project. The Court of Appeals found no EAW was necessary because both Freeborn Wind and Excel Energy included analysis of environmental concerns in their applications. Further, MEPA does not require an EAW here either. The Court found the second initial permit grant was supported by the record and that MPUC complied with the public-participation requirements of Minn. R. 7854.0900. Finally, the Court determined MPUC did not act arbitrarily or capriciously in approving the amended permit. While MPUC did not independently verify information submitted by Excel Energy in the petition, it reasonably relied on the expertise of the Minnesota Department of Commerce's Energy Environmental Review and Analysis unit, which it was entitled to do in a LWECS proceeding.

Matter of NorthMet Project Permit to Mine Application Dated Dec. 2017, No. A18-1952, 2021 WL 1652768 (Minn. Apr. 28, 2021).

The permitting decisions challenged in these appeals were made in relation to the NorthMet project, which, if built by PolyMet, would be the first copper-nickel-PGE mine in Minnesota. As such, the NorthMet project generated significant public interest. Of particular concern is the potential for acid mine drainage, which may occur if ore and waste rock containing sulfide minerals are exposed to oxygen and water, causing the release of soluble metals and sulfate in area surface waters and groundwaters. Based on feedback from the DNR, PolyMet submitted revised applications followed by an active public comment period, during which relators Minnesota Center for Environmental Advocacy (MCEA) et al., WaterLegacy (WL), and the Fond du Lac Band of Lake Superior Chippewa (the band) opposed the project. The DNR issued three decisions: the first denied relators' petitions for a contested-case hearing and granted the permit to mine; the second granted dam-safety permits; and the third transferred the existing permit for a tailings basin to PolyMet. Relators appealed. The Court of Appeals affirmed the DNR's decision to transfer the existing permit for the tailings basin but reversed the DNR's decisions to deny a contested hearing and grant the mine and dam permits. The Supreme Court affirmed the DNR's decision to transfer the tailings basin permit. It also held that a factual dispute does not require a contested hearing, and the DNR had sufficient evidence to deny one. Finally, the Supreme Court held the permit grants were improper for a lack of sufficient evidence to show the proposed reclamation techniques were practical and workable, and because the permit lacked a fixed term. *Affirmed, in part, reversed in part, and remanded*.

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.

Mast v. Cty. of Fillmore, No. A19-1375, 2020 WL 3042114 (Minn. App. June 8, 2020).

Members of an Amish community (appellants) submitted a letter to the Minnesota Pollution Control Agency (MPCA) stating their opposition, on religious grounds, to the requirement they use gray-water-treatment systems to dispose of their household wastewater. Instead, appellants implemented their own experimental gray-water-treatment systems on their properties. The MPCA filed administrative enforcement actions against them. Appellants sought a judgment declaring the state and county rules mandating the installation of septic systems to treat gray water violated their freedom of conscience under the Minnesota Constitution and RLUIPA. The Court denied relief and appellants appealed. The Court of Appeals affirmed, concluding appellants' alternative water-treatment systems did not accomplish the government's compelling public health and environmental safety interests, and thereby, could not constitute a less restrictive means. *Affirmed.*

Perham Hosp. Dist. v. Cty. of Otter Tail, No. 56-CV-18-1196, 2021 WL 1099500 (Minn. Tax Mar. 18, 2021).

The Perham Hospital District owned several parcels of real property on which it operated three medical clinics. The district petitioned the Tax Court, arguing its real property was exempt from taxation as a public nonprofit healthcare organization. The Court determined the auxiliary property doctrine used to determine whether non-hospital property is exempt from property taxes did not apply here because it is distinct from the statutory Hospital District Exemption under Minn. Stat. § 447.31, subd. 6. For purposes of the Hospital District Exemption, which turns on whether a district "acquired, owned, leased, controlled, used, or occupied" property, Minn. Stat. § 447.31, subd. 6, to "improve[ ] and run [a] hospital," Minn. Stat. § 447.33, subd. 1, it is necessary to inquire what hospitals actually did—and were required to do—given the economic and regulatory structure of the healthcare industry during the tax periods in issue. Here, the Court determined the District's sole purpose was to care for people and to provide health and wellness. Because the three clinics were a fully integrated hospital, the District operated the clinics as hospital facilities and used or occupied the real property to improve and run the hospital. Thus, the clinic properties were exempt from taxation under the Hospital District Exemption.

Ringsred v. Duluth Econ. Dev. Auth., No. A19-2031, 2020 WL 5104885 (Minn. App. Aug. 31, 2020).

Certain buildings on a property in Duluth were listed in the National Register of Historic Places as contributing structures to the Duluth Commercial Historic District. Later, a fire damaged the property, resulting in its condemnation. Eventually, the State of Minnesota acquired the property in trust for St. Louis County. The Duluth Economic Development Association (DEDA) marketed the property but passed a resolution to demolish the buildings because none of the redevelopment proposals would benefit Duluth. Appellants sued DEDA and Duluth, alleging their actions allowed the property to deteriorate, and that the plan to demolish the property constituted a material impairment of the Historic District, which is a protected resource under MERA. The District Court noted that while the property may be a protected resource under MERA, DEDA had properly determined there were no feasible and prudent alternatives to demolition. The Court of Appeals determined the District Court had wrongly concluded that DEDA had raised a valid affirmative defense. Under MERA, economic considerations alone do not constitute a defense. Yet, this is all DEDA provided. Because the District Court applied the wrong standard, the Court of Appeals reversed and remanded.

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.

Save Lake Calhoun v. Strommen, 943 N.W.2d 171 (Minn. 2020).

The DNR commissioner issued an order changing the name of Lake Calhoun to Bde Maka Ska. The commissioner invoked his authority under Minnesota Statutes § 83A.02 (1), (3) (2018) to do so. Another statute within chapter 83A prohibits changing a body of water's name "which has existed for 40 years." Minn. Stat. § 83A.05, subd. 1 (2018). Respondent Save Lake Calhoun contends, based on the 40-year limitation in section 83A.05, the name change was beyond the commissioner's authority under section 83A.02, and the courts should so rule by issuing a writ of quo warranto. After the District Court granted the DNR's motion to dismiss, the Court of Appeals reversed and remanded. The Supreme Court determined petitioning for the writ of quo warranto was proper because respondent challenged whether the commissioner had legal authority, not whether he misused it. However, the 40-year limitation applies only to county boards, and did not prevent the commissioner from changing the lake's name.

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 the 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.

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 Court of Appeals agreed. The 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 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 owner's 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.*

Walmart Inc. v. Winona Cty., Nos. A19-1877 & A19-1878, 2020 WL 3956251 (Minn. App. July 13, 2020).

Walmart sought relief from property-tax assessments for two of its stores in Martin County and Winona County. Both complaints asserted the same two claims: first, a claim for unequal assessments (count one); and, second, a violation of 42 U.S.C. §§ 1983, 1988 (count two). The District Courts dismissed Walmart's complaints for failure to state a claim. On appeal, Walmart argued the District Court decisions must be reversed because they erroneously determined that Minn. Stat. §§ 278.01-.14 (2018) (chapter 278) is the exclusive remedy for property-tax-assessment claims. The Court of Appeals affirmed, observing that section 1983 is unavailable in state taxation cases when an adequate remedy exists under state law, which chapter 278 satisfies. Further, a denial of equal protection for property tax assessments must show the difference in assessments is due to purposeful discrimination, which Walmart failed to plead. Finally, when allegations are insufficient to establish a section 1983 claim, section 1988 attorney fees are also unavailable. *Affirmed.*

Berg v. City of Saint Paul, No. A20-0465, 2020 WL 7332906 (Minn. App. Dec. 14, 2020).

In October 2009, the Pedro family gifted the city a piece of property immediately adjacent to the Public Safety Annex ("PSA") for parkland. The agreement stated the city must use the space for a park, and it gave the city five years to secure funding to expand the park beyond the size of the donated property. But if the city did not obtain the funding for a larger park, it would convert the donated parcel to a parkland consistent with the agreement. The city then passed a resolution to name the park after the Pedros. They also

passed a resolution to demolish the PSA and convert it into office space. Plaintiffs then attempted to prevent the city from using the entire block as anything but parkland. The District Court granted summary judgment and the Court of Appeals affirmed, rejecting the argument that the park resolution incorporated the PSA property into Pedro Park. The resolution stated the park would consist of the "north half block," which was the land donated by the Pedros. The only reasonable interpretation of the resolution as a whole was that the city's original vision was for the park to encompass the entire block and that the dedicated parkland donated by the Pedro family—as well as any the city land later added to it for park purposes—would be named Pedro Park. It was not reasonable to interpret the resolution as causing the PSA to be acquired for park purposes. *Affirmed.*

Jellinger v. City of Anoka, No. A20-0620, 2020 WL 7491265 (Minn. App. Dec. 21, 2020).

This case involved a dispute between neighboring landowners. The Weavers applied for a permit to build a six-foot fence along the dividing property line, which the city granted. Rather than challenge the permit, the Jellingers filed a lawsuit requesting declaratory judgment on three issues. First, they argued the ordinance prohibited the fence because it limited fences along the front line of the residential structure to a height of four feet. Second, they argued the Weavers violated the ordinance by failing to return their recycling bin to its place of storage within 12 hours of collection. Third, the Jellingers maintained the Weavers' "golden retriever crossing" sign violated the ordinance. The District Court granted summary judgment in favor of the Weavers, and the Jellingers appealed. The Court of Appeals determined all three ordinance provisions were unambiguous and applied their plain meaning. It determined the fence height limit did not apply to the Weavers' fence because the "front lot line of a residential structure" meant the side of the lot where the main entrance of the home was located. The Jellingers argued the analysis changed because the Weavers had a riparian lot. While one could argue the lakeside was the front side of the lot, it certainly was not the front lot line of the house. Next, the Court of Appeals noted the plain language of the ordinance requiring people to move their recycling containers with 12 hours of collection only applied to those who place their containers next to the street or curb for collection. Because the Weavers left theirs next to the private drive near their home, the ordinance did not apply. Finally, the Court of Appeals held the ordinance did not require the Weavers to take down their sign. Using the plain meaning of the phrase "in the view of the general public," which was part of the city's definition of sign, the Court determined it was not a sign at all because it was located on a private drive nearly 400 feet from the nearest public street. *Affirmed.*