2024 MACPZA CASE LAW UPDATE

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

DOES THE COUNTY HAVE A FORM?

- Statute indicates "[a] request must be submitted in writing to the agency on an application form provided by the agency, if one exists."
- *Stroetz v. Farmington Township*, 2010 WL 2035909 (Minn. App., May 25, 2010) (finding no violation where applicant submitted a letter requesting a zoning permit instead of using township form).
- *Knife River Corporation – North Central v. Whited Township*, 2020 WL 7688625 (Minn. App., Dec. 28, 2020) (Township waived argument regarding form when it did not notify applicant letter was deficient)

IS THE APPLICATION COMPLETE

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

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

AMENDMENTS TO AN APPLICATION

- Only material or significant amendments to a zoning request will restart the 60-day period. *See Tollefson Dev., Inc. v. City of Elk River*, 665 N.W.2d 554 (Minn. App. 2003) (finding amendment from PUD to R3 designation reset the 60-day period).
- Minor amendments will not restart the 60-day period. *See Matter of USS Water Town Solar LLC*, A19-1148, 2020 WL 4280034 (Minn. App., July 27, 2020) (finding updated site plans did not constitute a substantive amendment).

EXTENSIONS

- Subd. 3
- (f) An agency may extend the time limit in subdivision 2 before the end of the initial 60-day period by providing written notice of the extension to the applicant. The notification must state the reasons for the extension and its anticipated length, which may not exceed 60 days unless approved by the applicant.
- (g) An applicant may by written notice to the agency request an extension of the time limit under this section.
- Be careful of self-imposed deadlines less than the additional 60 days. *See Matter of USS Water Town Solar LLC*, A19-1148, 2020 WL 4280034 (Minn. App., July 27, 2020)

CONDITIONAL USES

- "Conditional use" means a land use or development as defined by ordinance that would not be appropriate generally but may be allowed with appropriate restrictions as provided by official controls upon a finding that (1) certain conditions as detailed in the zoning ordinance exist, and (2) the use or development conforms to the comprehensive land use plan of the county and (3) is compatible with the existing neighborhood.

- **Minn. Stat. § 394.22, Subd. 7.**

CONDITIONAL USES

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

Minn. Stat. § 394.301, subd. 1.

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

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

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

Minn. Stat. § 394.301, subd. 2.

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

CUP - CONDITIONS

- There must be a nexus between the condition imposed and the land use desired. *See Middlemist v. City of Plymouth*, 387 N.W.2d 190 (Minn. App. 1986) (finding there was not a sufficient nexus between the city's requirement for a donation of land for a collector street and the proposed land use).

CONDITIONS

- **Sheetz v. County of El Dorado, 22-1074 (April 12, 2024, Sup. Ct.)**
- As a condition of receiving a residential building permit, petitioner George Sheetz was required by the County of El Dorado to pay a $23,420 traffic impact fee. The fee was part of a "General Plan" enacted by the County's Board of Supervisors to address increasing demand for public services spurred by new development. The fee amount was not based on the costs of traffic impacts specifically attributable to Sheetz's particular project, but rather was assessed according to a rate schedule that took into account the type of development and its location within the County. Sheetz paid the fee under protest and obtained the permit.
- He later sought relief in state court, claiming conditioning the building permit on the payment of a traffic impact fee constituted an unlawful "exaction" of money in violation of the Takings Clause. In Sheetz's view, the Court's decisions in *Nollan v. California Coastal Comm'n*, 483 U. S. 825, and *Dolan v. City of Tigard*, 512 U. S. 374, required the County to make an individualized determination the fee imposed on him was necessary to offset traffic congestion attributable to his project.

- When the government wants to take private property for a public purpose, the Fifth Amendment's Takings Clause requires the government to provide the owner "just compensation." The Takings Clause saves individual property owners from bearing "public burdens which, in all fairness and justice, should be borne by the public as a whole." *Armstrong v. United States*, 364 U. S. 40, 49. Even so, the States have substantial authority to regulate land use, *see Village of Euclid v. Ambler Realty Co.*, 272 U. S. 365, and a State law which merely restricts land use in a way "reasonably necessary to the effectuation of a substantial government purpose" is not a taking unless it saps too much of the property's value or frustrates the owner's investmen tbacked expectations. *Penn Central Transp. Co. v. New York City*, 438 U. S. 104, 123, 127. Similarly, when the government can deny a building permit to further a "legitimate police-power purpose," it can also place conditions on the permit that serve the same end. *Nollan*, 483 U. S., at 836.
- For example, if a proposed development will "substantially increase traffic congestion," the government may condition the building permit on the owner's willingness "to deed over the land needed to widen a public road." *Koontz v. St. Johns River Water Management Dist.*, 570 U. S. 595, 605. But when the government withholds or conditions a building permit for reasons unrelated to its legitimate land-use interests, those actions amount to extortion. *See Nollan*, 483 U. S., at 837.

- The Court's decisions in *Nollan* and *Dolan* address the potential abuse of the permitting process by setting out a two-part test modeled on the unconstitutional conditions doctrine. *See Perry v. Sindermann*, 408 U. S. 593, 597.
- First, permit conditions must have an "essential nexus" to the government's land-use interest, ensuring the government is acting to further its stated purpose, not leveraging its permitting monopoly to exact private property without paying for it. *See Nollan*, 483 U. S., at 837, 841.
- Second, permit conditions must have "rough proportionality" to the development's impact on the land-use interest and may not require a landowner to give up (or pay) more than is necessary to mitigate harms resulting from new development. *See Dolan*, 512 U. S., at 391, 393; *Koontz*, 570 U. S., at 612–615. Pp. 4–6.

- **Thomas Coleman v. City of Stillwater**, No. A23-0393, 2023 WL 8013133 (Nov. 20, 2023)(Unpublished)

- Stillwater Towing had been operating an automobile impound lot in the City of Stillwater for 40 years. In January 2020, Stillwater Towing bought a 5.3-acre parcel approximately one-tenth of a mile down from its primary location. The new lot was to be used to store automobiles outside. The area is zoned for BP-I – business park industrial which allows for "light industrial and offices uses," as well as "auto repair and related services." Outdoor storage is permitted with an approved conditional-use permit (CUP).

- Stillwater Towing applied for a CUP in order to conduct its towing and impound business on their new property. It also applied for a variance to the City's trees and forest protection ordinance, anticipating the need to remove trees from the site. Stillwater Planning Commission (Commission) accepted written comments, held a public hearing, and reviewed a report prepared by City staff. Commission voted to approve the CUP with conditions and denied the tree-variance request. Appellant Coleman, and others appealed the decision to the Stillwater City Council (City Council). Stillwater Towing appealed the variance but subsequently withdrew its application. City council accepted written comments, held a public hearing, and review updated staff report. City council adopted resolution approving the CUP with 21 conditions attached.

- SCO § 31-207(d) states before approving a conditional use permit, the governing body must determine that: "(1) The proposed structure or use conforms to the requirements and intent of this chapter, and of the comprehensive plan, relevant area plans and other lawful regulations; (2) Any additional conditions necessary for the public interest have been imposed; and (3) The use or structure will not constitute a nuisance or be detrimental to the public welfare of the community."
- City council received public comments, held multiple hearings, and had multiple staff reports prepared as part of its decision-making process. City council debated in a public session, discussed the rationale, and adopted written findings in its approval resolution. During the hearings, the mayor provided responses to concerns raised by Appellant Coleman and reasoned approving a CUP will move the current Stillwater Towing business to a location 450 feet from residence, whereas its current location is only 10 feet from residence. The conditions set forth in CUP will enable Stillwater Towing to move further away from residential, from homes, than its current location. The city council imposed 21 conditions to limit environmental concerns, and the CUP is subject to review if there are neighborhood complaints. Because city council has broad discretion to approve or deny a CUP in zoning decisions and in weighing the evidence before them, the court held that the reasons given by city council have a factual basis in the record. The court reasoned the City need not make an explicit findings of support for its decision so long as the reviewing court can determine the order granting a CUP demonstrates the board's conclusion the proposal satisfied each zoning ordinance conditions approval.
- Appellant argues the findings made in support of granting CUP were "decisively vacated" by city staff's findings prepared for city council. However, the court has previously held local decision-makers have discretion in weighing conflicting evidence, they are not required to be bound to staff reports.

- **In the Matter of Stevens County for a Conditional Use Permit**, Ct. No. A23-0159, 2023 WL 5696623 (Minn. App. Sept. 5, 2023)
- Stevens County applied to respondent Grant County Board of Commissioners (the board) for a conditional use permit (CUP) to install a subsurface tile outlet which would draw water downstream from Silver Lake to stabilize high water levels and prevent roadway flooding. The board granted Stevens County's application, and Stevens County appealed the decision by writ of certiorari. Stevens County contended the board lacked authority to issue the CUP because (1) the proposed use is permitted, not conditional, and (2) the CUP application was not reviewed by the board's Planning Advisory Commission (the commission) before approval. Alternatively, Stevens County argued the conditions of the CUP are unreasonable, arbitrary and capricious, and unsupported by the record.

- The Court of Appeals found: 1) the project proposed by Stevens County requires a CUP because it is a conditional use under the Grant County Shoreland Management Ordinance; 2) the board's approval of the CUP application without review by the Grant County Planning Advisory Commission does not render the CUP "void."; and 3) the CUP conditions were reasonable and supported by the record except for condition two, which required Stevens County to commit to a road construction project.
- The Court determined the board unilaterally decided to impose a road infrastructure project on Stevens County which was not related to the proposed use, not a part of Stevens County's original CUP application, and not discussed at any of the board's meetings.

REZONING

- **EP Land LLC v. City of Eden Prairie,** No. A23-0561, 2024 WL 1153940 (Minn. App. Mar. 18, 2024) (Nonprecedential)
- In 2021, appellants EP Land LLC and Auto Care World sought to develop a 3.96 acre lot into a commercial lot with a gas station, convenience store, and auto-repair shop. The north side of the lot abuts a residential roadway, and residential buildings sit to the west of the property. The city denied appellants application.

- In 1999, the city rezoned the property from "rural" to "neighborhood commercial" (N-COM) and approved a development plan that allowed for commercial development on the property. That plan included a gas station and convenience store. In 2007, the city council approved a planned unit development (PUD) ordinance and development agreement for a property that allowed a coffee shop and other unspecified "commercial development." The Eden Prairie City Code states that a PUD "is supplementary to a zoning district within or encompassing all or a portion or portions of one (1) or more original districts in accordance with the provisions of this chapter." The 2007 PUD was recorded with the county and is a public record.

- The city's zoning code establishes four findings the city must make before it can approve an application: (1) the project must not conflict with the city's comprehensive plan; (2) the project must form a desirable and unified environment within its boundaries; (3) any exceptions to the requirements of the code must be justified by the project's design; and (4) the PUD must be a complete unit itself, without dependence on any other property. A city may consider inconsistency with surrounding uses and failure to comply with a comprehensive plan, so long as the city provides a factual basis to support its decision, because the legislature delegated to municipalities the power to determine and plan the use of land within the municipality's boundaries.
- The city found none of the requisite four findings could be satisfied. First, the city found the application conflicted with its comprehensive plan because the application provided for a project design "increases potential negative impacts to the surrounding residential uses, including increased traffic, noise, and safety concerns," and thus it conflicted with the comprehensive plan's objective "to promote balanced growth and retain an appropriate mix of land uses while enhancing housing opportunities and preserving natural areas." Second, the city found the application did not form a desirable and unified environment because it would generate additional commercial traffic on neighboring residential streets that would negatively impact surrounding properties. Third, city found the application did not justify its requested waivers of city standards set forth in the Zoning Code because the purpose of the Zoning Code requirements in the N-COM district was to minimize the impact of convenience stores and gas stations adjacent to residential areas and granting the waivers here would be the opposite of that stated purpose. Fourth, the city found the application did not support a finding the property could be independent from any other property because the application would depend on adjacent residential streets which were not designed to accommodate the commercial traffic the project would generate. The City's findings pursuant to the City's zoning code provide a rational basis for the city's denial of the application.

- The city's zoning code provides a Planning Unit Development District ("PUD") is supplementary to a zoning district. The term "supplementary" as used in the definition of a PUD in the city's Zoning code is unambiguous and means a PUD can amend the underlying zoning district by limiting the uses allowed within the relevant district. Therefore, the 2007 PUD is applicable to the property until the 2007 PUD is rescinded or amended. The Court of Appeals held because the 2007 PUD rezoned the property and did not allow gas stations or convenience stores as uses within the area to which it applies, the 2007 PUD was a rational basis on which the city could rely to deny the application.

- **Regulatory taking claim:** The Penn Central framework identifies three factors that courts must consider and balance to determine "the severity of the burden that government imposes upon private property rights." The three factors are (1) the economic impact of the regulation, (2) the interference of the regulation with distinct investment-backed expectations, and (3) the character of the government's action.

- The Court of Appeals held a taking did not occur when the city denied appellant's application to develop the property. The first Penn Central factor favors the City because the City denied the application for the specific businesses and aspects of the businesses proposed to be developed, it did not deny all development of the property. Other economically viable uses under the 2007 PUD include a coffee shop and other retail stores. The second factor favors the City because at the time appellants purchased the property, the 2007 PUD did not allow gas stations or convenience stores to be built on the property. The 2007 PUD was recorded in Hennepin County and was a public document, so appellants were on notice that the property was subject to a PUD. Therefore, appellants' argument that they had an investment-backed expectation fails. The third factor is neutral because the decision to deny the application impacted appellants more than the public. In addition, the application included a request to rezone the property by issuing a new PUD that would permit the application's proposed uses on the property, and a request to rezone a property is regulatory in nature and impacts the public generally.

- The Court of Appeals held a taking did not occur when the City amended its zoning code to exclude gas stations and convenience stores from the list of permitted uses in N-COM districts. The first factor favors the city because the impact of the Zoning Code amendment is to remove only two specific uses, gas stations and convenience stores, from the list of permitted uses of N-COM properties, there are other reasonable and economically viable uses for the property. The second factor favors the city because the property was already subject to the 2007 PUD, which excluded gas stations and convenience stores from the permitted uses of the property, the Zoning Code amendment did not impact the permitted uses of the property. The third factor favors the city because an amendment to the Zoning Code is a legislative function and applies to all properties zoned N-COM, not only appellants' property, the character of the city's action here is general.

- **Alfureedy v. City of St. Paul**, Ct. No. A22-1674, 2023 WL 5526397 (Minn. App., Aug. 28, 2023)
- In 2011, Alfureedy bought the supermarket business and leased the Property. At that time, the supermarket included a tobacco shop business pursuant to a license from the city. Alfureedy later purchased the Property and formed MSI to operate the supermarket. MSI has held a tobacco license since then.
- The city its code to limit the sale of various tobacco products to a "tobacco products shop." Businesses responded by physically separating their tobacco products shop storefront from the rest of the business. Even though the Property was in a B1 zone which did not permit tobacco products shops, in 2018, the city granted Alfureedy a license to operate a tobacco products shop, and required him to spend over $10,000 to build a wall to establish a separate exit for the tobacco products shop. Two years later, the city realized the tobacco-products-shop license was erroneously issued and threatened action. In response, Alfureedy applied to rezone the Property from B1 to T2.

- At the June 9, 2021 meeting the City Council voted to deny the application. On July 14, 2021, the city council voted to adopt a resolution outlining its reasons for denying the rezoning application.
- The Court of Appeals found the resolution stated the city's reason for denial. Moreover, the city council videotaped and took minutes of the hearing. Thus, even though it took a little over a month for the formal resolution to be adopted, this was a reasonable amount of time given the extensive documentation in this case. The record in front of the city council included committee reports, community letters, the city's 2040 plan, and the neighborhood plan. Finally, the reasons given in the July 14 resolution reflected the reasons stated at the June 9 hearing.

- The Court also determined the city had a rational basis for denying the rezoning application. Moreover, the record showed denial was proper where the Property did not meet the legal definition of a T2 zone and because the City's comprehensive plan did not contemplate changes to the Property's zoning.

ZONING ENFORCEMENT

- **Stockholm Township v. Schmidt,** Ct. No. A23-1109, 2024 WL 1713930 (Minn. App., April 22, 2024) (Nonprecedential)

- The Schmidts own property located on Collinwood Lake in Stockholm Township. The Schmidts do not reside on the property and rented out the property through a vacation rental listing website. The township sent the Schmidts a letter directing the Schmidts to discontinue renting out their property without obtaining a conditional use perform from the township. The township sent a second letter stating the township's zoning ordinance prohibits short-term rentals within an R-1 district, where the Schmidts property was located, and the Schmidts must cease renting out the property. The township's 1992 zoning ordinance lists permitted, accessory, and conditional uses of property within an R-1 district. In 2022, the township adopted an ordinance amending its zoning ordinance to expressly prohibit short-term and vacation rentals within an R-1 district.

- The township sued the Schmidts, seeking declaratory judgment the Schmidts violated the township's ordinance. The district court granted summary judgment for the township. The Schmidts moved for amended findings and a new trial. The district court denied the motion. The Schmidts appealed.

- The issue before the Court was whether the appellants' rental use of their property a permitted or conditional use under the township's 1992 ordinance. The Court found it was not.

- One of the permitted uses under the township's ordinance is a "single family detached residence." The term, "single family detached residence," is not defined in the ordinance. The court concluded the term unambiguously means single-family detached dwellings in which an individual or related persons live. The court held the Schmidts' use of their property as a short-term rental does not constitute a permitted use of "single family detached residence," because the Schmidts do not live on the property. The Schmidts use of their property also does not fall under the conditional use provision of the ordinance for "all home occupations," because residing on the property is plainly a requirement of a home occupation conditional use.

- **City of Plymouth v. Kristensen**, Ct. No. A23-0743, 2024 WL 2270176 (Minn. App. May 20, 2024)
- Kristensen is the owner of property located in a developed subdivision in Plymouth. Kristensen's property contains a single-family home, in which she resides, and is subject to a city-approved grading and erosion control plan.
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- Kristensen claimed her next-door neighbor to the east engaged in landscaping which caused flooding in her backyard. In August 2020, Kristensen constructed a nine-inch-tall earthen berm spanning most of the eastern edge of her property. The berm prevented water from flowing across Kristensen's property and caused significant flooding on her eastern neighbor's property that was inconsistent with the approved grading and erosion control plan.
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- In June 2021, the city served Kristensen with a summons and complaint alleging (1) a violation of Plymouth, Minnesota, Code of Ordinances (PCO) sections 425.01, subdivision 1, and 21105.04 (2024), by causing flooding inconsistent with the approved grading and erosion control plan; and (2) a violation of PCO section 400.15 (2024), by creating a system or device designed to collect water that failed to discharge the water to the city's storm water drainage system.

- In December 2022, the city moved for summary judgment. In support of its motion, the city submitted briefing, photographs, and an affidavit from the city's public works director.
- In March 2023, the district court issued an order granting summary judgment in favor of the city on both counts and ordering injunctive relief for the city requiring Kristensen to regrade her property in compliance with the city's grading and erosion control plan. The district court based its determinations of code violations on "the affidavits, admissions, and other supporting documentation submitted by [the city]."
- The Court of Appeals affirmed based upon the evidence in the record.

PARK DEDICATION

- **Puce v. City of Burnsville**, 997 N.W.2d 49 (2023)
- Puce sought preliminary and final approval from the Burnsville City Council to develop a parcel of land for various commercial uses. The city council approved Puce's development plans but imposed an $11,700 park dedication fee. Puce appealed the imposition of the fee to the district court, which found the imposition of the fee lawful.

- The Minnesota Supreme Court found:
- 1) an essential nexus existed between park dedication fee and city's purpose for imposing it;
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- 2) imposition of park development fee was done pursuant to an individualized determination based on the actual value of the land and thus complied with rough proportionality requirement; and
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- 3) city reasonably determined that, pursuant to comprehensive plan, it needed five percent of the gross land area of proposed development to be dedicated.

VARIANCES

- Minnesota Statutes § 394.27, Subd. 7 (2022)
- Variances shall only be permitted when
- they are in harmony with the general purposes and intent of the official control and when the variances are consistent with the comprehensive plan.
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- Variances may be granted when the applicant for the variance establishes that there are practical difficulties in complying with the zoning ordinance. "Practical difficulties," as used in connection with the granting of a variance, **means that the property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance; the plight of the landowner is due to circumstances unique to the property not created by the landowner; and the variance, if granted, will not alter the essential character of the locality.** Economic considerations alone do not constitute practical difficulties. Practical difficulties include, but are not limited to, inadequate access to direct sunlight for solar energy systems.

PRACTICAL DIFFICULTIES

- The property owner proposes to use the property in a reasonable manner not permitted by an official control.
  - In other words, the property owner wants to use the property in a reasonable way but cannot do so under the rules.
  - It does not mean the land cannot be put to any reasonable use without the variance.

- The plight of the landowner is due to circumstances unique to the property not created by the landowner.
  - The uniqueness generally relates to the physical characteristics of the piece of property.

- The variance will not alter the essential character of the locality.
  - Will the proposed use be out of place or inconsistent with the surrounding area.
  - What is the locality? How is it defined or interpreted?

- Economic considerations alone do not constitute practical difficulties.
  - *VanLandschoot v. City of Mendota Heights, 336 N.W.2d 503, 509-10 (Minn. 1983)* (holding variance application motivated "*primarily*" by "the cost of owning and maintaining a large lot" was insufficient to justify granting variances.)
  - *Tuckner v. May Twp.*, 419 N.W.2d 836, 839 (Minn. App. 1988) ("The property may continue to be used as it is presently being used—a residential property with seasonal dwellings which may be rented out. This use is reasonable, even if it may not be as profitable as selling the property as separate parcels.")
  - *Cont'l Prop. Grp., LLC v. City of Wayzata*, No. A15-1550, 2016 WL 1551693, at *5–6 (Minn. App. Apr. 18, 2016) (holding zoning authority did not misapply the law because it considered practical difficulties factors amidst the backdrop of applicant's primary motivation to see acceptable economic return.)
  - *In re Appeal of Decision of Winona City Council on Variance Petition No. 93-01-V.*, No. C7-94-37, 1994 WL 385642, at *3 (Minn. App. July 26, 1994) (rejecting appeal upon finding variance request was based on concerns, which "were predominantly, if not completely, economic.").
  - *Cont'l Prop. Grp., Inc. v. Hassan Twp.*, No. A07-1600, 2008 WL 2651422, at *2 (Minn. App. July 8, 2008) ("Without the desired variance, appellant is still able to build a smaller, allegedly less marketable office/warehouse than the one it has proposed. This is a financial or economic consideration and was duly noted as such by the board and therefore does not constitute a" basis to grant the variance.)

- The board of appeals and adjustments may not permit as a variance any use which is not allowed under the zoning ordinance for property in the zone where the affected person's land is located.
- The board of adjustment may impose conditions in the granting of variances. A condition must be directly related to and must bear a rough proportionality to the impact created by the variance.

THE RECORD

- The record consists of that evidence considered by the municipality when making the permit decision. ***Swanson v. City of Bloomington*, 421 N.W.2d 307 (1988).**
- The record includes all documents that come before the Board or Council as a part of "the file", including minutes, reports, letters, applications, other submittals and findings.
- The record may also include documents not physically submitted at the hearing on an application if the documents were referred to or testified to at the hearing and had been received by the decision-maker previously.
- Documents reflecting the historical designation, regulation and character of the property, including photographs, are part of the record even if they were not presented to the decision-making body.

THE RECORD

- Observations at a site visit are part of the record if they are reduced to some sort of writing. For example, Board or Council members' shared observations of what they saw of a property are often reflected in minutes.

- In almost all cases, an adequate record precludes the applicant from introducing new data during an appeal of the municipality's decision.

- During judicial review, a court will review the "record," and determine whether the decision of the Board or Council was reasonable in light of record evidence.

THE IMPORTANCE OF THE RECORD

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

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

FINDINGS OF FACT

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

QUESTIONS / COMMENTS