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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0694**

In re: Appeal from an Order Establishing
Town Road dated April 5, 2004,
and Award of Damages made July 19, 2004,
by Goodland Township
Catherine Carr,
Appellant.

**Filed January 29, 2008
Affirmed
Klaphake, Judge**

Itasca County District Court
File No. 31-C8-04-001364

Tim A. Strom, Hanft, Fride, O'Brien, et al., 1000 U.S. Bank Place, 130 West Superior
Street, Duluth, MN 55802 (for respondent Goodland Township)

Timothy L. Aldrich, 233 Mississippi Avenue Southwest, Bemidji, MN 56601 (for
appellant Catherine Carr)

Considered and decided by Toussaint, Chief Judge; Klaphake, Judge; and
Shumaker, Judge.

UNPUBLISHED OPINION

KLAPHAKE, Judge

Appellant Catherine Carr challenges the district court's summary judgment in
favor of respondent Goodland Township, arguing that the court erred by concluding that
there was a sufficient public purpose for the town road and that the town board of
supervisors did not act in an arbitrary and capricious manner.

Because we are constrained by the deferential standard for review of a municipal body's legislative actions and because we conclude that respondent posited at least a minimal public purpose that was not clearly contrary to the public's best interests, we affirm.

D E C I S I O N

Summary Judgment Standard

The district court shall grant summary judgment if the pleadings, discovery, and affidavits show that there are no genuine issues of material fact and either party is entitled to judgment as a matter of law. Minn. R. Civ. P. 56.03. This court reviews a summary judgment to determine if the district court erred in applying the law and if there are any genuine issues of material fact that would preclude summary judgment. *Watson by Hanson v. Metro. Transit Comm'n*, 553 N.W.2d 406, 411 (Minn. 1996). In so doing, we consider the evidence in the light most favorable to the party against whom summary judgment was granted. *Gradjelick v. Hance*, 646 N.W.2d 225, 231 (Minn. 2002).

Appellant asserts that there are outstanding issues of material fact, but she fails to identify which material facts are in issue. We observe that although there may be factual issues here, the district court adopted the facts as presented by appellant for purposes of determining whether respondent was entitled to summary judgment. If material facts are not disputed and compel one conclusion as a matter of law, summary judgment is appropriately granted. *Illinois Farmers Ins. Co. v. Tapemark Co.*, 273 N.W.2d 630, 634 (Minn. 1978).

Public Purpose

A town board may establish a new town road “upon a petition of not less than eight voters of the town, who own real estate . . . within three miles of the road proposed.” Minn. Stat. § 164.07, subd. 1 (Minn. 2002). When establishing a road, the town board acts in a legislative capacity. *Lieser v. Town of St. Martin*, 255 Minn. 153, 158, 96 N.W.2d 1, 5 (1959). On appeal, the decision of the local board will be set aside only if the board “proceeded on an erroneous theory of law, or . . . acted arbitrarily and capriciously against the best interests of the public.” *Id.* at 158-59, 96 N.W.2d at 5-6.

This court’s review of the legislative decisions of municipal bodies is limited and deferential. *White Bear Docking and Storage, Inc. v. City of White Bear Lake*, 324 N.W.2d 174, 175 (Minn. 1982); *see also Hous. & Redev. Auth. v. Walser Auto Sales, Inc.*, 630 N.W.2d 662, 666 (Minn. App. 2001) (discussing standard of review for condemnation actions), *aff’d*, 641 N.W.2d 885 (Minn. 2002). “The mere fact that the trial court might have reached a different conclusion, had it been a member of the council does not invalidate the judgment of the City officials if they acted in good faith and within the broad discretion accorded them by the ordinance itself.” *White Bear Docking*, 324 N.W.2d at 176.

The decision of the board may be challenged if there is no public purpose or necessity for establishing a town road. Minn. Stat. § 164.07, subd. 10 (2006). “Public purpose,” a phrase used interchangeably with “public use,” is construed broadly by the courts. *City of Duluth v. State*, 390 N.W.2d 757, 763 (Minn. 1986).

What is a “public purpose” that will justify the expenditure of public money is not capable of a precise definition, but the courts generally construe it to mean such an activity as will serve as a benefit to the community as a body and which, at the same time, is directly related to the functions of government.

R.E. Short Co. v. City of Minneapolis, 269 N.W.2d 331, 337 (Minn. 1978); *see also In re Condemnation by Minneapolis Cmty. Dev. Agency*, 582 N.W.2d 596, 598 (Minn. App. 1998) (“If it appears that the record contains some evidence, however informal, that the taking serves a public purpose, there is nothing left for the courts to pass upon.”).

“Necessity” is also broadly construed. A taking is necessary if it is “*reasonably necessary or convenient* for the furtherance of a proper purpose.” *Id.* at 600 (quoting *City of Duluth v. State*, 390 N.W.2d 757, 764-65 (Minn. 1986)). A challenge to necessity must be based on more than the existence of alternatives to the government’s plan. *Id.*

Although the board of supervisors suggested five public purposes for establishing this road, a close examination reveals that they are largely without basis in fact. The petition for establishment of the road stated, and the board of supervisors adopted, the following statement of purpose:

1. The road already exists.
2. Plum Road has been a Goodland Township Road for years. Although only a part of it was maintained by the Township. At this point in time a gate has been put up by a landowner and has closed the road to the public, which road accesses public lands to the West.
3. The road was used for the extraction of gravel from the Township pit, located on what is now the gated part of the Plum Road to use on Town projects. The residents knew it was a Township Road.
4. A snowmobile trail has accessed public lands to the west for a period in excess of twenty-five (25) years, but

cannot now, because a gate has been placed upon the road recently.

5. Opening the road will give access to property owners along the road. A numbered existing road is also the road by which area residents have access [sic] to hunting and camping areas for many years. There exists thousands of acres of public lands to the West of said road.

According to the record before us, these statements are not accurate and have no factual basis, except for the last part of the fifth purpose: area residents have used this private road to access thousands of acres of public lands beyond the road. The record also suggests that the route proposed by the board of supervisors is the most accessible and the closest to the township, and thus arguably the most reasonably necessary or convenient for furtherance of the public purpose. Bearing in mind the deferential standard of review, we conclude that this provides a minimal statement of public purpose and necessity sufficient to avoid reversal.

Arbitrary and Capricious Actions

A town board's establishment of a town road will be put aside if the board proceeded on an erroneous theory of law or if it acted arbitrarily and capriciously against the best interests of the public. *Lieser*, 255 Minn. at 159, 96 N.W.2d at 5-6. A decision will not be set aside as arbitrary and capricious solely because the board had "preconceived views" about the issue or because a member of the board showed actual or sympathetic interest. *Id.* at 160, 96 N.W.2d at 6-7.

Appellant raises five issues in support of her argument that the board acted arbitrarily and capriciously: (1) board members had conflicts of interest; (2) board members proceeded in bad faith; (3) board members established the town road despite an

inconsistent use; (4) the board failed to adequately consider the costs and consult with experts; and (5) board members violated open meeting laws.

Certainly the individual members of the board of supervisors behaved throughout in a manner that raises doubts as to their maturity or fitness to act on behalf of the public. Public statements by the board members include (1) “I believe that every trail, road, path and even deer path that has ever been used by members of the community belongs to the community and not the property owners”; (2) “I have the right to piss on any property in Goodland Township and no one has any right to tell me otherwise”; (3) “Take down your gate or we’ll take your property”; (4) “If you want to maintain a good relationship between the Town Board and the Fire Department, you had better shut your mouth and quit making waves”; and (5) “You can’t stop us. It’s a done deal. It’ll happen.” Further, board members suggested that the town board would fight opponents until they went broke and shouted and pounded their fists on the table during public meetings in an intimidating manner. This behavior borders on an exercise of will rather than judgment.

The record also suggests that the board members were encouraged by family members to grant the petition, ignored an existing snowmobile trail that crossed the proposed road, made misleading statements about “illegal” gating of the road, and failed to seriously consider or consult with experts about the cost of establishing and maintaining the road.

A public official may be disqualified from municipal decision making if there is an impermissible conflict of interest between the official’s own selfish interests and the broader public interest. *Township Bd. of Lake Valley Tp. v. Lewis*, 305 Minn. 488, 493,

234 N.W.2d 815, 818 (1975). Some of the factors to consider are the nature of the official's pecuniary interest, the number of officials making the decision, the need to have interested parties make the decision, and the opportunity for review. *Id.*

Here, the board members had a recreational interest in establishment of the road, but no pecuniary interest per se; three board members were involved in making the decision; in a township of 200 people, it would be almost impossible to find a totally disinterested party to make the decision; and the board's decision has been subject to district court and appellate review. As the supreme court noted, "By its very nature, the decision to establish a town road will be of interest to all local citizens including members of the town board of supervisors." *Id.* at 494, 234 N.W.2d at 819. In light of this deferential standard, we cannot conclude that the board of supervisors had an impermissible conflict of interest that voids the establishment of this road.

The burden of proving bad faith is on the party asserting it. *Hous. & Redev. Auth. of City of St. Paul v. Schapiro*, 297 Minn. 103, 108, 210 N.W.2d 211, 214 (1973). Although some of the board's statements are inaccurate, at the very least, the hearing on the petition exposed these inaccuracies. In the final analysis, the board declared a minimally acceptable public purpose, negating a clear finding of bad faith.

A municipal body may not condemn land if the planned use for the property is inconsistent with a current public use. *City of Shakopee v. Minnesota Valley Elec. Co-op.*, 303 N.W.2d 58, 60 (Minn. 1981). But if the proposed use is not substantially inconsistent with the current use, there is an implied right of condemnation. *In re Condemnation by Suburban Hennepin Reg'l Park Dist.*, 561 N.W.2d 195, 196-97 (Minn.

App. 1997). Here, a snowmobile trail crosses the road at some point, but the snowmobile club charged with upkeep of the trail did not oppose establishment of the road and merely stated that it would not be financially responsible for changes to the trail; there is no evidence that establishment of the road and dedication of part of the road for a snowmobile trail crossing are mutually incompatible uses.

The board of supervisors opined that the cost of establishing the road would be between \$5,000 and \$20,000, based on their experience in road matters. The board did not spend a great deal of effort in making this estimate, but courts will not generally examine cost or funding decisions made by legislative bodies. *See Lifteau v. Metro. Sports Facilities Comm'n*, 270 N.W.2d 749, 755 (Minn. 1978).

Appellant asserts, and the district court found, that the board of supervisors violated the Open Meeting Law, Minn. Stat. § 13D.01, subd. 1(b)(5), (c)(3) (2006), which states that all meetings of a town board must be open to the public. The purpose of the law is to prohibit actions being taken in secret, where it is impossible for the public to become fully informed; to secure the public's right to be informed; and to afford the public an opportunity to present its views. *Prior Lake Am. v. Mader*, 642 N.W.2d 729, 735 (Minn. 2002). The remedies for violation of the law are set forth in Minn. Stat. § 13D.06 (2006), and include civil penalties of up to \$300 for each intentional violation of the act and forfeiture of office after three violations while a violator is a member of the same governing body. *Id.* at subd. 1, 3.

This court has stated that remedies for violation of the Open Meeting Law are limited by this statute; a violation of the law, even if proved, does not invalidate action

taken at the closed meeting. *Rupp v. Mayasich*, 561 N.W.2d 555, 557 (Minn. App. 1997); *In re Petition of D & A Truck Line, Inc.*, 524 N.W.2d 1, 6 (Minn. App. 1994). A violation of the Open Meeting Law can suggest that a municipal body is acting in an arbitrary and capricious manner if the municipal body fails to explain its reasoning for undertaking an action made in secret. *See, e.g., Motor Vehicle Mfrs. Ass'n v. State Farm Mutual Ins. Co.*, 463 U.S. 29, 42-43, 103 S. Ct. 2856, 2866-67 (1983) (to avoid arbitrary and capricious action, the agency must examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made). But the alleged violations here preceded the open public discussion and the board provided its reasoning for its decision; in *Motor Vehicle Mfrs. Ass'n*, the Supreme Court stated that an agency decision may be upheld if the reasoned basis for the agency's action could be discerned from the record. *Id.* at 43, 103 S. Ct. 2867.

Although the conduct of the board of supervisors calls their judgment into question, we are constrained by the deferential standard by which we review legislative actions by municipal bodies. Because the board was able to articulate at least a minimal justification that its decision had a public purpose and was in the public's interest, we are obliged to affirm the district court's decision.

Affirmed.