

NO. A07-0112

State of Minnesota
In Court of Appeals

Eagle Lake of Becker County Lake Association,
Relator,

vs.

Becker County Board of Commissioners, the County of
Becker, Minnesota, Bruce Jacobs and Barbara Jacobs,
Respondents.

**RESPONDENT BECKER COUNTY BOARD OF
COMMISSIONERS AND THE COUNTY OF BECKER'S BRIEF**

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STATEMENT OF ISSUES

- I. WAS IT A REASONABLE AND PROPER EXERCISE OF DISCRETION FOR THE COUNTY TO APPLY THE ZONING ORDINANCE IN EFFECT AT THE TIME THE JACOBS FILED THEIR APPLICATION FOR A REZONING AND FOR A CONDITIONAL USE PERMIT?

STATEMENT OF THE CASE

On May 13, 2004, Bruce and Barbara Jacobs filed an application with the Becker County Environmental Services Office for a Planned Unit Development Conditional Use Permit for a seasonal recreational vehicle campground consisting of 46 sites. They also sought an amendment to the Zoning Ordinance to change the zoning of the parcel for which they sought the Conditional Use Permit from agricultural zoning to water oriented commercial zoning. Record, No. 4. After a long process involving numerous hearings and environmental review, 2½ years later, on November 28, 2006, the Becker County Board of Commissioners approved the zoning change and a Conditional Use Permit for 46 recreational vehicle sites, 18 boat slips, and a conservation buffer around the wetland and bay area on the north end of the property. Record, Nos. 55, 57. On January 17, 2007, Eagle Lake of Becker County Lake Association filed a petition for writ of certiorari with this Court claiming the County arbitrarily and capriciously approved the Conditional Use Permit application.

STATEMENT OF FACTS

On May 13, 2004, Bruce and Barbara Jacobs applied for a Planned Unit Development/Conditional Use Permit for a seasonal recreational vehicle campground consisting of 46 sites. Record, No. 4. The Jacobs also sought a change in zoning for the parcel from its then classification of agricultural, to water oriented commercial. Id. A water-oriented commercial district is defined in the Becker County Zoning Ordinance as a district intended to be used for commercial uses adjacent to water resources that are functionally dependent on such close proximity to said water resources. Record, No. 1, Becker County Zoning Ordinance, § 5, p. 2.

Up to the time of the application, the land in question, consisting of approximately 31 acres and located in Burlington Township, had been used as pasture land for beef cattle. Record, No. 14, p. 1. As proposed, the Conditional Use Permit ("CUP") sought 46 recreational vehicle campsites, 24 boat slips, a storage building, a bathhouse, a fish cleaning shed, a 10,800-sq. ft. park (with picnicking and playground equipment), and a 70-ft. swimming beach area. Id. The project, entitled Blue's Valley Campground, was intended to provide recreational opportunities on Minnesota lakes for families and retired persons unable to afford lakefront property. Id. In terms of cover types for the area, when the permit was applied for, the area consisted of approximately 23.7 acres of pasture land, 3.4 acres of wetland, and one acre of wooded or forest land. After project completion, the cover type was estimated to be 3.39 acres of wetland, two acres of wooded or forest land, 20.94 acres of grassland or open area, two acres of structures, 2.19 acres of road, and ¼ acre of beach area.

The project was scheduled for a public hearing before the Becker County Planning Commission on June 15, 2004. Public Notices were sent out. Record, Nos. 5, 6. Prior to the hearing, numerous comments were received from the public. Record, No. 7. Many noted that the Lake was mainly made up of private owners and objected to further non-owner usage of the Lake. For instance, there were complaints that there would be noise and increase in population which would infringe upon homeowners' quality of life and privacy, that it would be an eyesore, and devalue property. Id., Moore comment. Others noted that the campground would lead to "confrontations and accidents." Id. Fett comment. However, it was also noted that the cattle currently pasturing on the land "drink and wade in the lake in that area." Id., Donna Fett comment. Other homeowners sought to stop the hearing from going forward by alleging that even though the permit sought only 46 recreational vehicle sites, and the permit would limit it to 46 recreational vehicle sites, since the site could potentially hold more, an EAW on the project was mandatory. Record, No. 9.

Shortly thereafter, a petition for an EAW was sent to the Environmental Quality Board ("EQB"). That petition was forwarded to Becker County. Record, Nos. 10, 11. As a result thereof, the hearing scheduled for June 15 was canceled. The EAW was submitted to the Becker County EAW Review Committee. Record, No. 12. That Committee consists of representatives from the Minnesota Department of Natural Resources, the local Soil and Water Conservation District, Planning Commission of Becker County, Becker County Board of Adjustment, the Zoning Administrator, Ms. Patty Johnson, for Becker County, and others. Record, No. 15.

An EAW was prepared by an engineering firm on behalf of the Jacobs for Blue's Valley Campground. Record, No. 17. That was reviewed by the Becker County EAW Review Committee on August 23, when the Committee spent over 2½ hours going through the worksheet. Record, No. 15. The Committee found the EAW to be incomplete and vague in content. The minutes of that meeting reflect the scrutiny applied by the Review Committee, and indicate that the document was to be returned as incomplete. Record, No. 15.

Ultimately, a revised EAW was received by the County in January, 2007. Record, No. 17. The EAW was distributed and reviewed by the EAW Review Committee. Record, Nos. 19, 20. The comment period was published in the EQB Monitor, and comments were received. Record, Nos. 21, 22. The Department of Natural Resources comment indicated that retiring lakeshore from intensive pasture would remove a major current source of sediment and nutrient flow entering the lake. While this was a significant problem for the lake, the DNR also noted that as proposed, the location of the campsites and other facilities on steep slopes right next to the lake and associated wetlands might substantially reduce the environmental advantages gained by removing the cattle. They therefore recommended modifying the project to move the campsites back from these areas. Record, No. 22, MDNR letter of April 12, 2005.

After the comment period closed, the EAW Review Committee met and reviewed the EAW, and recommended that an EIS be conducted. The major points noted by the EAW Review Committee were those noted by the MDNR comment. Record, No. 23. The Becker County Board of Commissioners reviewed the matter on two occasions, first

on April 26, 2005 (Record, No. 24) and then again on May 10, 2005. The Board made a positive declaration on the need for an EIS, ordering that an EIS be conducted. Record, No. 26. Notice of the Positive Declaration on the Need for an EIS was published in the EQB Monitor on May 23, 2005. Record, No. 27.

One of the significant notations of the Minnesota Department of Natural Resources in its comment on the EAW (Record, No. 22) was that Eagle Lake did not have an established Ordinary High Water Level (“OHWL”). Until that was established, the DNR opined that no EAW would adequately determine environmental impacts. *Id.*, April 12, 2005 letter from MDNR. Ultimately, a field survey was done by MDNR. That was sent to Becker County on January 17, 2006. Record, No. 29, attachment to Beeson letter of January 17. In addition, the Minnesota Pollution Control Agency approved the Storm Water Pollution Prevention Plan, indicating that it addressed all of the State requirements for post-construction storm water treatment and erosion and sediment control during construction. *Id.* As a result thereof, Becker County submitted information to the Department of Natural Resources, and requested they comment on the same. Those comments were received. Record, No. 29, MDNR Letter of April 17, 2006.

Thereafter, taking into account comments of the MDNR, the Jacobs modified the site design of the project. Responding to the comments of the MDNR, the amount of land alteration was reduced, and all campsites were moved back further than 100 feet from the shoreline to the second tier of development, 267 feet back, and more green open space was set aside. Record, No. 30. As a result of these changes, Becker County once again reviewed the modified EAW, and considered whether the EIS should be

terminated. Notice of this intent was published in the EQB Monitor, comments were received. The EAW Committee reviewed the matter, and the Becker County Board of Commissioners considered the matter. This process occurred from June, 2006 through September, 2006. Record, Nos. 30-36. Comments were received. The Minnesota DNR comment noted that the new configuration resulted in substantially more assurance that in the long-term, construction of the project would be an improvement over existing conditions with respect to lake water quality and protection of shoreline wetlands and habitats. The additional buffer and construction of the storm water ponds further away from the Lake provided for more inherent treatment potential. As a result of all this, the Becker County Board of Commissioners passed a resolution on September 26, 2006, making detailed findings of fact that there was no longer a necessity for an EIS. Record, No. 37.

A public hearing on the proposed Conditional Use Permit for a planned unit development was scheduled before the Becker County Planning Commission for October 17, 2006. Record, No. 39. A petition against the proposal was submitted by a number of people, and comments were received. Record, No. 40. The Planning Commission heard the matter on October 17, 2006. After much debate, the matter was tabled until the November 21, 2006 Planning Commission meeting. Record, No. 41.

At the November 21, 2006 meeting, the Planning Commission approved a motion to recommend a change of zone from agricultural to water oriented commercial, and approve a Conditional Use Permit for 46 RV sites, 18 boat slips, a conservation easement buffer around the wetland and bay area on the north end of the property, with a

stipulation that a proposed boat ramp be eliminated and implementing the remaining EAW statements and the storm water pollution prevention plan. Record, No. 52. One week later, the Becker County Board of Commissioners passed a motion concurring with the Planning Commission's findings and recommendations, and approved the Zoning Amendment and Conditional Use Permit for the 46 recreational vehicle sites, and all other conditions placed by the Planning Commission. Record, No. 55. The permits and zoning changes were then prepared and filed with the County Recorder. Record, No. 57.

The main issue faced by the decision makers in Becker County related to which ordinance provisions should be applicable to the project in question. As indicated in the letter of January 31, 2005 to the applicant, Becker County's policy was that because the application was submitted for review and accepted by Becker County in May, 2004, the application would be reviewed in accordance with the Zoning Ordinance in effect as of that date. Record, No. 18. This letter was written by the Zoning Administrator. That letter also indicated that due to the project application date, a moratorium in place in Becker County did not apply to the proposed project. On September 28, 2004, a moratorium resolution was passed by Becker County, imposing a six-month moratorium on any planned unit developments within County shoreland districts, which would have affected this application. That moratorium was six months in length, and was extended once for another six months in March, 2005. That moratorium expired on September 28, 2005, and ultimately thus has little impact on this case, irrespective of assertions by the Relators to the contrary.

Relators cite a portion of the Record, item No. 8 (located in Relator's Appendix at p. 41) and indicate that handwritten note states that if the Jacobs changed their application they would be required to submit a new application and they would be required to have the Ordinance in effect on the date their application is heard applied to their proposal, versus the Ordinance in effect on the date the application was submitted. However, that piece of Record evidence does not make those statements. The note is obviously a note of a telephone conversation wherein Mr. Jacobs contacted the Zoning Office, as his telephone number is noted thereon. Compare Record No. 8 and Record No. 4. The only thing referenced in the note is whether or not the moratorium applies to his application. There is a large question mark on the note, and it reads "# of sites original 46 room for 60 Deb told him if change of # of sites no need for new application now wants 50 sites told needs new app and falls under moratorium needs-answers." Record, No. 8. Nowhere in the note is there an indication that any new Ordinance would apply.

When the Blue's Valley Campground application was submitted in May, 2004, the applicable section of the Becker County Zoning Ordinance was Section 7, relating to planned unit developments. Record, No. 3, Section 7 of the Becker County Zoning Ordinance in effect in May, 2004. That Ordinance would allow up to 74 units. Record, Nos. 3, 41, 52. However, the Ordinance was amended in July, 2005. Section 7C was added, entitled "Shoreland Commercial/Transient Multi-Unit Developments." Record No. 1, Zoning Ordinance Section 7C. Although the Relators cite to Section 7A of the current Zoning Ordinance, that Section does not apply. That Section deals with multi-unit residential developments. A recreational vehicle campground is not a residential

development. Campgrounds, recreation vehicles, recreational vehicle parks, dwellings, etc. are all defined terms under the Zoning Ordinance and do not equate to a residential use. Record, No. 1, Zoning Ordinance, Section 4, Subd. 2, Definitions. Furthermore, Section 5 of the Becker County Zoning Ordinance defines residential districts and water oriented commercial districts. Id. at Section 5. The two are distinct. This project was a water oriented commercial district.

Thus, from the outset, the Jacobs were told that their application would be processed under Section 7 of the Becker County Zoning Ordinance. In September, 2006, when it was apparent through comments of the DNR, and all the plans submitted, that the potential for significant environmental effect had been eliminated by the applicants' response to the DNR's concerns, Relators began to assert that the County could not process the application under the Ordinance in effect in May, 2004. In the finding of the Becker County Board of Commissioners, terminating the EIS, it is noted that there is a comment letter from Peters & Peters asserting that the amended Zoning Ordinance must apply. Record, No. 37, Board Resolution, Finding 9A5; Record No. 34, Peters & Peters letter of August 14, 2006. In their Resolution, the Board found that the original Conditional Use Permit Application was submitted on May 13, 2004, at which time commercial planned unit development shoreland standards were in effect.

During the next two months, there are a number of letters from various interested persons regarding the issue of Ordinance application. For the most part, they set forth legal argument pertaining to vested rights doctrines, estoppel, etc. Record, Nos. 34, 40 (Peters & Peters correspondence of October 9, 2006), 45-51, 53. The Record does reflect

much discussion at the Board levels on this matter, and evidence of the practice of the County. There were several projects that were in front of the Planning Commission and the County Board during the transition period from the old to the new Ordinances. In each case in which the application was filed under the old Ordinance, the Planning Commission and the County Board considered the application under the Ordinances in effect at the time the application was submitted. Record, No. 46 at p. 2. This is consistent with what the Jacobs had always been told. Record, No. 47. This was also consistent with the opinion given by the Assistant County Attorney, Gretchen Thilmony, in that the County could approve the project based on the Ordinance in effect on the date of the application or could choose to apply the new Ordinance. The discussion at the Planning Commission meeting of November 21, 2006 indicates the Planning Commission chose to apply the Ordinance in effect on the date of the application. Record, No. 52. The Board of Commissioners, by its approval, concurred in this decision. Record, No. 55.

ARGUMENT

I. THE COUNTY MADE A RATIONAL AND REASONABLE DECISION TO APPLY THE ZONING ORDINANCE IN EFFECT AT THE TIME THE JACOBS' APPLICATION WAS FILED.

A. The Issue in This Case.

In reality, and irrespective of the argument that is set forth in Relator's Brief, there is only one issue before this Court. There were two approvals granted by the Becker County Board of Commissioners on November 28, 2006. One was for a CUP for a recreational vehicle campground encompassing 46 recreational vehicle sites. The other was a change in zoning from agricultural, which would preclude the continued pasturing of beef cattle on the lakeshore, to water oriented commercial within the meaning of the Becker County Zoning Ordinance.

Nowhere in the writ or the Brief of the Relators is there any claim that the Zoning Amendment was improper. That is appropriate, as this Court recently reaffirmed that a writ of certiorari to the Court of Appeals is not the means by which individuals can challenge a rezoning under a zoning ordinance. That can be done only by initiating the declaratory judgment action in the district court. See Watab Township Citizen Alliance v. Benton County, _____ N.W.2d ____, 2007 WL 582989 (Minn. App.); Honn v. City of Coon Rapids, 313 N.W.2d 409 (Minn. 1981); In Re Merritt, 537 N.W.2d 289 (Minn. App. 1995).

Nor are we dealing with an analysis under Section 7A of the Becker County Zoning Ordinance. Relators spend much time in their factual section and in their argument in chief detailing provisions of Section 7A. See Record, No. 1, Becker County

Zoning Ordinance. That provision deals with multi-unit residential developments.

Simply stated, the plain language of the Becker County Zoning Ordinance indicates that this Section does not apply to the analysis. For instance, in Section 7A, it is indicated that multi-unit residential developments may be allowed on previous sites which would involve conversions of “campsites.” When one looks at the land use classifications of districts within Becker County, under Section 5 of the Becker County Zoning Ordinance (Record, No. 1), it defines residential districts and water oriented commercial districts. A water oriented commercial district is at issue in this case, not a residential district. Furthermore, there is a difference in definitions in the Becker County Zoning Ordinance between commercial planned unit developments and residential planned unit developments. Residential planned unit developments fall under Section 7A. However, a commercial planned unit development is defined as one that provides “transient short-term lodging spaces, rooms or parcels. For example, hotels, motels, resorts, recreational vehicle and camping parks.” Becker County Zoning Ordinance, Section 4, Subd. 2(21), at Record No. 1. Thus all of the Relator’s references to Section 7A of the Ordinance are irrelevant and superfluous.

There are also a number of arguments set forth by the Relator’s as to the unsuitability of this site. They point to one e-mail sent by an individual claiming the soils were unsuitable for a septic system, and standards of the Minnesota Department of Health that are claimed not to have been met. However, the Relators have the burden of establishing that the proposal does not meet standards of the ordinance and that the grant of the CUP was an abuse of the discretion granted to the County Board. See, e.g.,

Schwardt v. County of Watonwan, 656 N.W.2d 383 (Minn. 2003). Indeed CUP approvals are held to a more deferential standard of review than CUP denials. Id. The Record materials show that the analysis conducted by every other individual was that this site could support a septic system. Beyond that, all of the EAW and SWPP plan and condition placed on the termination of the EIS are part of this permit. It is required that a sewage treatment system permit be issued by Becker County before any project go forward. See Record, Nos. 37, 57. The EAWs and all of the materials submitted by the applicants indicate that they will apply with all applicable state and federal standards.

There are a number of claimed Minnesota Department of Health rules relating to recreational vehicle parks that the Relators claim are violated. Even a cursory examination of those shows that is not the case. The space size for each recreational vehicle is 2000 square feet (See Record, No. 17), which complies with Minn. R. 4630.0400. Relators argue that the rules require an onsite caretaker, citing Minn. R. 4630.0300. Yet, that Rule only requires a caretaker and does not say the caretaker has to be onsite at all times. Each of the provisions cited by Relators could be dealt with and seem to be without basis.

Beyond that however, this Court has already made clear that specific state licensing standards are not established by a county board of commissioners or the county's ordinance and it is not the county board's responsibility, under the ordinance, to enforce compliance with these standards. The issue of regulatory compliance with standards set by the state is reserved for relevant state agencies, not a county board of commissioners. Indeed, it would be arbitrary and capricious to deny a permit on the basis

that it did not appear to a county board that the regulatory standards of a state entity were met. Yang v. County of Carver, 660 N.W.2d 828 (Minn. App. 2003).

In reality, none of these alleged infirmities or failures to meet state regulatory scheme are at issue in this case. It is evident from the Record that Becker County chose to apply the Ordinance in effect at the time the Zoning Application was received by the County, rather than the Ordinance in effect that the Application was heard for approval or denial by the County Board. The Board's approval of the application under the Zoning Ordinance in effect in May, 2004 constitutes proof of its conclusion that it met all of the requirements of that Ordinance. See Schwardt, supra; Corwine v. Crow Wing County, 309 Minn. 345, 244 N.W.2d 482 (1976). In reality, there is not evidence being proposed by the Relators, nor was there any evidence proposed by anyone during the hearing process on this permit application, that the project did not meet the standards of the May, 2004 Ordinance. Instead, all of the evidence proffered relates to whether the Board had the ability to grant the permit under the Ordinance in effect in May, 2004. That is the sole issue before the Court.

B. Standard of Review.

The Minnesota Legislature had delegated to counties the power to determine and plan the use of land within their boundaries. Under Minn. Stat. Ch. 394, for the purpose of promoting the health, safety, and general welfare of the community, the county is authorized to carry on planning and zoning activities. See Minn. Stat. 394.21.

Municipal zoning ordinances are authorized by virtue of the police power. See, e.g., Pierce v. Village of Edina, 118 N.W.2d 659 (Minn. 1962). In passing upon the Jacobs'

request for an extension of its CUP, Becker County was managing County affairs. Upon review of such management activity by a court, the role of the judiciary is “limited and sparingly invoked.” White Bear Docking v. City of White Bear Lake, 324 N.W.2d 174 (Minn. 1982). See also, Kehr v. City of Roseville, 426 N.W.2d 233 (Minn. App. 1988).

As has long been established by the courts of this State, the standard of review in all zoning matters is whether the zoning authority’s action was reasonable. Honn. v. City of Coon Rapids, 313 N.W.2d 408 (Minn. 1981); White Bear Docking, supra; In re Appeal of Brine, 457 N.W.2d 268 (Minn. App.) aff’d in part, rev’d in part, 460 N.W.2d 53 (Minn. 1990). The Minnesota Supreme Court repeatedly has stated:

With respect to the decisions of municipal and other governmental bodies having the duty of making decisions involving judgment and discretion that it is not the province of the court to substitute its judgment for that of the body making such a decision, 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.

In re the Appeal of Brine, supra, at 269-270, (citing Village of Edina v. Joseph, 119 N.W.2d 809 (Minn. 1962) at 815).

This standard has been expressed in various ways: “Is there a ‘reasonable basis’ for the decision? Or is the decision ‘unreasonable, arbitrary or capricious’? Or is the decision ‘reasonably debatable’?” Honn, supra; See also Hoskin v. City of Eagan, 632 N.W.2d 256, 258-9 (Minn. App. 2001); St. Croix Development, Inc. v. City of Apple Valley, 446 N.W.2d 392, 397 (Minn. App. 1989). “Nevertheless, while the

reasonableness standard is the same for all zoning matters, the nature of the matter under review has a bearing on what is reasonable.” Honn, 313 N.W.2d at 417.

The decision of whether to pass a zoning ordinance, amend a zoning ordinance, or which zoning ordinance applies to an application, is in reality a legislative decision. The standard of review for the legislative zoning decisions is narrow. In that type of decision, a municipal body is formulating policy, so the inquiry focuses on whether the policy decision is unsupported by any rational basis related to promoting the public health, safety or general welfare. Honn, 313 N.W.2d at 414-415 (quoting State by Rochester Ass’n of Neighborhoods v. City of Rochester, 268 N.W.2d 885, 888 (Minn. 1978)). See also Mendota Golf, LLP v. City of Mendota Heights, 708 N.W.2d 162, 180 (Minn. 2006).

A policy decision is exactly what we have in this case. The policy being whether an ordinance in effect at the time the application is made will be applied to determining whether the application should be granted, or whether intervening zoning ordinance amendments will be applied to that application. Thus the test that we hold this decision against is the rational basis test. And, as this Court has said, even if the authority’s decision is debatable, as long as there is a rational basis for what it does, courts do not interfere. Honn, *supra*; Rochester Assn’n of Neighborhoods, *supra*.

C. The County Made a Rational and Reasonable Decision to Apply the Zoning Ordinance in Effect at the Time the Jacobs’ Application was Filed.

The County, consistent with its policy and past practices, chose to assess the Jacobs’ application under the terms of the Zoning Ordinance in effect in May of 2004. This decision had a rational basis and was within the broad discretion given to

municipalities on land use matters. See, e.g., PTL, LLC v. Chisago County Board of Commissioners, 665 N.W.2d 567 (Minn. App. 2003); Honn, supra. Chapter 394 of Minnesota Statutes delegates expansive powers over land use to counties. Even a cursory examination of Minn. Stat. § 394.25 indicates that this is an exceedingly broad grant of authority, which allows for ordinances that regulate virtually any and all uses of land within a county border. Minnesota has long recognized the legitimate general powers of municipalities to exercise their police powers by regulating land use and development. See, e.g., Wedemeyer v. City of Minneapolis, 540 N.W.2d 539 (Minn. App. 1995). Thus, municipalities are given broad discretion in making determinations relating to the use of land, permit applications, zoning schemes, ordinances, the establishment of districts within the county, and all other decisions in the area of zoning. See, e.g., Hubbard Broadcasting, Inc. v. City of Afton, 323 N.W.2d 757 (Minn. 1982); Maine Realty, Inc. v. Pagel, 208 N.W.2d 758 (Minn. 1973). As noted herein, this general discretionary power is even broader when dealing with legislative acts. See Odell v. City of Eagan, 348 N.W.2d 792 (Minn. App. 1984).

The broad grant of discretion given to municipalities extends to whether land use applications are processed under the ordinance in effect at the time of the application, or the ordinance in effect at the time of the approval. It would have to be shown by the person challenging this decision that this decision is unsupported by any rational basis. Relators have not attempted to do that. Instead, they argue that there are no vested rights and they argue that equitable estoppel cannot apply. These arguments are really off the mark. Nor do those theories apply under the facts of this case, for a variety of reasons.

First, and without belaboring the point, this is a discretionary legislative decision made by the County. Relators have identified no precedent for stripping the County of its authority and requiring it to apply a later enacted Ordinance to an application that had been pending for more than ten months when the amended Ordinance came into being. Nor is there any. No Minnesota case is directly on point. In an unpublished decision of this Court in June of this last year, this Court found a set of factual circumstances that justified a county in allowing a rezoning under an ordinance in effect at the time of the original application, versus a changed ordinance that came into effect later and would have precluded the zoning application in question. See Newton v. County of Itasca, 2006 WL 771719 (Minn. App.). The Newton Court noted that in determining whether the county board's application of its 1998 zoning ordinance was reasonable, that the standard was whether application of that ordinance was "so inequitable that it is arbitrary and capricious." While the case may not be 100% applicable because there was a remand order from a court that took place at a point in time, it does serve several illustrative principals.

In reality, neither the vested rights doctrine nor estoppel are determinative factors in this case. The vested rights doctrine is a rule of law that says that in general there are no vested rights acquired in an existing zoning ordinance that cannot be cut off by a subsequent zoning amendment. See, e.g., State v. Iten, 106 N.W.2d 366 (Minn. 1960); Kiges v. City of Saint Paul, 62 N.W.2d 363 (Minn. 1953). The question that the vested rights doctrine addresses is whether a landowner can complete his construction, and/or undertake the use for which an application was made or a permit was granted, even

though there is now a zoning ordinance in effect that would preclude that particular use or development. While somewhat nebulous and at times difficult to get one's hands around, the basic question in a vested rights analysis that the court asks is whether a developer has progressed sufficiently with his construction to acquire vested rights to complete it. We can compare Sullivan v. Credit River Township, 217 N.W.2d 502 (Minn. 1974) with Hawkinson v. County of Itasca, 231 N.W.2d 279 (Minn. 1975). Thus, the Relators can cite cases under the vested rights doctrine, as they have done so at pages 26 and 27 of their Brief, but these cases do not apply.

That is because there is a significant difference in a vested rights doctrine case than what occurred in this case. The vested rights doctrine exists as a means of allowing individual property owners to force an unwilling municipality to apply a zoning ordinance that is no longer in effect to a particular application or permit. Those are not the facts in this case. Here we have a county that is determined that in terms of dealing with members of the public in that county, and in order to ensure certainty and avoid unnecessary expenditure of economic resources, that it will allow an individual to have its application for a land use heard under the ordinance in effect at the time the application was made. Thus it is not a situation where a municipality is unwilling to apply an earlier version of the ordinance. Vested rights analysis does not help.

The same is true of estoppel arguments. This Court can see when reviewing the record, Record Nos. 45-53, that the attorneys for the Relators and the attorney for the applicants spent much time battling back and forth on the general applicability of estoppel and vested rights. In the end, the principles in an estoppel argument and the

facts in an estoppel argument are very similar to that existing when an applicant for a permit might raise a vested rights doctrine argument. See, e.g., Interstate Power Company v. Nobles County Board of Commissioners, 617 N.W.2d 566 (Minn. 2000), is a case where estoppel is talked about. Some of the other vested rights cases cited herein talk about estoppel, because the requirements for it are very similar. There must be some substantial change in position or the incurring of such extensive obligations and expenses that it would be highly unequitable and unjust to destroy the rights which a person says they have acquired such that estoppel will apply. But just like looking at the vested rights doctrine, the doctrine of estoppel is not relevant to the issue because, once again, it is a doctrine used to force a municipality to act in a certain way.

If anything, what these doctrines show is that a county or a city or a township could make a representation to an applicant for a permit that the zoning ordinance in effect at the time they submit their application will be applied when the application is decided, and could then change their minds. The only thing that would keep them from doing so is an application of the vested rights doctrine or the doctrine of estoppel. But what about when the municipality does not change its mind? Those are the facts we have in front of the Court in this case. Can a municipality make a legislation decision as to which ordinance will apply under facts where there has been a change in the ordinance during the pendency of the application?

There is not one portion of the Relator's brief which deals with that issue. Instead, as pointed out in the Statement of Facts, Relator attempts to misquote a piece of Record evidence (Record, No. 8) and state that the promise made by the Zoning Administrator in

writing on January 31, 2005, that the Ordinance in effect in May of 2004, would apply, was revoked. However, as noted herein, a plain reading of that document does not support that claim. Neither do the later proceedings that took place in front of the County Board support that interpretation.

In reality, there are good and legitimate reasons that are based upon public welfare that support a county choosing to apply ordinances in effect at the time of an application when processing a zoning ordinance. First, there is the general notion of fairness and faith in government. When the government promises to an individual that a certain action will take place, general notions of fairness and fostering public belief in responsible government actions are advanced when the government follows through on that action. One branch of government should not rule that another branch of government cannot act in accordance with its representations to an individual. That is what the Relators are asking the Court to do in this case.

A county can also rationally decide that reasoned and rational development of lands within the county is advanced when members of the public know the standards to which their application for certain land development will be applied will remain the same throughout the pendency of the permitting process. The fact of the matter is that economic resources are spent by individuals in processing applications through municipal zoning bodies. That can clearly be seen in this case with the costs that were incurred in the environmental review process. It is not illogical for a county board of commissioners to determine that it does not want its citizens to waste those resources by changing the

standards midway through the process, which can result in an applicant for a particular use having to start all over again with new plans, new proposals, etc.

Not only are there economic resources that come into play, but time resources. It is in the general interest of the public at large that matters pertaining to applications for land uses be processed in a timely and efficient manner. This case could pose as an example of what could happen when ordinances keep changing and government says that an applicant must change their proposals in accordance with all changed ordinances. This particular application took over two years to process due to the environmental review that took place. And, one can only say that environmental review successfully performed its function in this case. As a result of the environmental review procedure, information was gathered that led the applicant to change the proposal to mitigate adverse environmental effects. That is certainly what we want to occur. But it is clear that in the factual circumstances of this case, residents were greatly opposed to having a campground on this lake, for whatever reason, whether that would be a reason that this Court recognizes as legitimate, or one that would not be legitimate upon which a county to base a decision. But how long should the process go on? Had the County, in this case, indicated in November of 2006 that new ordinances must apply, this process that had already taken 2½ years, could have taken another 2½ years. There could have been a new application, a new EAW, a new EIS, etc. There is an interest in finality, and in everyone knowing that in a certain point in time processes relating to land use applications will end. To rule that a county does not have the discretion to determine that the ordinance in effect at the time an application is made will apply throughout the

pendency of that application encourages abuse of other processes and ultimately may lead individuals to view government regulation with a jaded eye.

Additionally, having one ordinance that applies during the pendency of an application encourages the conservation of scarce resources. This Court could look at its decisions in Interstate Powers, supra, and Newton, supra, and say that a rule that applies when a case is under a remand order that the ordinances will not be changed so that the standards do not change is also a means of conserving judicial resources. County resources in the time of county employees, elected officials, and appointed officials are just as important as court resources. The county only has so much money. If staff has to keep going over application after application for the same proposed use, because the standards for that use keep changing through ordinance amendments, that has an adverse impact upon county government and the provision of services to the public. The same is true for those persons who sit on elective and appointed bodies of the county that make these land use decisions. There is only so much time and so much attention to devote to all applications. A county can rationally determine that these interests are advanced by having a policy that it will apply the ordinance in effect at the time of an application throughout the pendency of that application, no matter how long, and no matter how many twists and turns the road may take, as that application travels towards a hearing for approval or denial.

A myriad list of rational reasons for the County to exercise its discretion in this legislative area and determine that it will apply an ordinance in effect at the time of an application throughout the pendency of that application exists. Relators offer no

explanation whatsoever as to why this should not be the case. Moreover, a number of theories and a number of cases support upholding the County's decision in this case. See, e.g., Alexander v. City of Minneapolis, 125 N.W.2d 583 (Minn. 1963); Town of Southhampton v. Todem Homes, Inc., 377 N.Y.S.2d 112 (App. Div. 1975); Osina v. City of Chicago, 329 N.E.2d 498 (Ill. App. 1975); Nyquist v. Board of Appeals of Acton, 269 N.E.2d 654 (Mass. 1971); Cameron v. Board of Adjustment of Greensburg, 281 A.2d 271 (Pa. Commw. Ct. 1971); Barker v. County of Forsyth, 281 S.E.2d 549 (Ga. 1981).

CONCLUSION

Becker County determined that it would apply the Zoning Ordinance in effect at the time the Jacobs' application was made, rather than amendments that had come into play in the 2½ years while this application was pending. Rational reasons support this decision. This Court should affirm the action of the Becker County Board of Commissioners.

Respectfully submitted,

Dated: March 19, 2007

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STATE OF MINNESOTA

IN COURT OF APPEALS

Eagle Lake of Becker County Lake Association,

Relator,

**CERTIFICATE OF
BRIEF LENGTH**

v.

Becker County Board of Commissioners, the
County of Becker, Minnesota, Bruce Jacobs
and Barbara Jacobs,

Respondents.

**COURT OF APPEALS
CASE NO.:A07-112**

I hereby certify that this Brief conforms to the requirements of Minn. R. Civ. App. P. 132.01, subds. 1 and 3, for a brief produced with a proportional font. The length of this Brief is 521 lines, 6,753 words. This Brief was prepared using Microsoft Word 2002.

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2) (with amendments effective July 1, 2007).