

NO. A11-2030

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State of Minnesota  
**In Court of Appeals**

In Re Application of  
Skyline Materials, Ltd. for Zoning Variance

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**APPELLANT HOUSTON COUNTY'S BRIEF AND APPENDIX/ADDENDUM**

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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).

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## STATEMENT OF LEGAL ISSUES

1. Whether the Minnesota Rules of Civil Procedure apply to district court appeals of decisions of a county board of adjustment.
2. Whether the district court erred in concluding it had subject-matter jurisdiction over this action, despite Respondents' failure to properly serve the County within the 30 day jurisdictional appeal period in Minn. Stat. § 394.27, subd. 9.

## STATEMENT OF THE CASE

Skyline Materials, Ltd. applied for a variance to certain Houston County land use regulations, which variance was granted. Respondent Fields owns land adjacent to Skyline's property. Fields purported to challenge the grant of the variance by initiating a district court action within 30 days per Minn. Stat. § 394.27, subd. 9, which indicates challenges to variance decisions are to be brought in district court. It is undisputed that Fields, in initiating the action, served the Houston County Attorney and the Houston County Zoning Office, not either the County Board Chair or County Auditor as required by Rule 4.03(e)(1) of the Minnesota Rules of Civil Procedure. Despite improper service, the district court denied the County's motion to dismiss, concluding that Minnesota law favors resolution of cases on their merits. This appeal followed.

## STANDARD OF REVIEW

The existence (or not) of subject-matter jurisdiction and the interpretation of statutes addressing subject-matter jurisdiction present legal questions that the Court of Appeals reviews *de novo*. See, e.g., *Kasdan v. Berney*, 587 N.W.2d 319, 321-22 (Minn. App. 1999).

## FACTS

1. Respondents Michael and Diane Fields own certain real property located within the County.
2. Respondents' property is adjacent to property owned by Skyline Materials, Ltd. A rock quarry is operated on Skyline's property.
3. Skyline applied for and was granted, on March 11, 2011, a variance to the setback requirements of the County Zoning Ordinance.
4. Respondents, through their attorney, received a written copy of the Board of Adjustment's decision on April 4, 2011. See Affidavit of Bob Scanlan, App. p. A-3.
5. Respondents purportedly appealed the Houston County Board of Adjustment's grant of the variance, initiating a district court action, by serving the County Environmental Services Office and the County Attorney.
6. Jack Miller, chair of the County Board for Houston County, was not served with the appeal papers. App. p. A-1.
7. Char Meiners, Houston County Auditor, was not served with the appeal papers. App. p. A-3.

8. Based on the deficiencies in service of process, Houston County brought a motion to dismiss the appeal on subject-matter jurisdiction grounds. The motion was argued before the Honorable Robert Benson on July 12, 2011.
9. By Order dated September 14, 2011, Judge Benson denied the County's motion to dismiss. Judge Benson determined that, though the Minnesota Rules of Civil Procedure apply to appeals of decisions of a county board of adjustment, it was permissible for Respondents to initiate the district court action by serving the County Attorney and Environmental Services Office notwithstanding the requirements of Rule 4.03(c) of the Minnesota Rules of Civil Procedure which requires service of process on either the County Auditor or County Board Chair when initiating a civil legal action in district court. Add. p. A-1.
10. This appeal by the County followed.

### DISCUSSION

#### **I. THE MINNESOTA RULES OF CIVIL PROCEDURE APPLY TO APPEALS OF DECISIONS OF A COUNTY BOARD OF ADJUSTMENT.**

Despite Respondents' arguments to the contrary, the district court in its September 14 Order and memorandum concluded, correctly, that district court appeals of decisions of a county board of adjustment are governed by the Minnesota Rules of Civil Procedure. This conclusion was proper and consistent with Minnesota law.<sup>1</sup>

Rule 81.01 of the Rules of Civil Procedure contains a specific list of statutory actions in district courts called "special proceedings," that are not wholly governed by the

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<sup>1</sup> Defendants did not file a Notice of Review challenging this determination.

MRCP. *See* Minn. R. Civ. P. 81.01(a) and Appendix A. Minn. Stat. § 394.27, subd. 9, which governs appeals from county board of adjustment actions, and is the basis for this action, is not listed in Rule 81 and Appendix A as one of the actions that is exempted from the coverage of the MRCP. The expression of one thing is the exclusion of another. *Brandt v. Hallwood Management Co.*, 560 N.W.2d 396, 400 (Minn. App. 1997); *Underwood Grain Company v. Farmer's State Bank of Dent*, 563 N.W.2d 278 (Minn. App. 1997); *Maytag Co. v. Commissioner of Taxation*, 218 Minn. 460, 463, 17 N.W.2d 37, 40 (1944); Only those proceedings specifically listed in Minn. R. Civ. P. 81.01 and Appendix A are intended to be excluded in any way from coverage of the MRCP. Because Minn. Stat. §394.27 is not listed, proceedings initiated pursuant to this statute are governed, as Judge Benson correctly concluded, by the MRCP.

This conclusion is consistent with decisions of Minnesota courts. For instance, in *Leek, supra*, the court determined that an appeal to a district court from a no-fault arbitration award must follow the MRCP even though additionally governed by the Minnesota No-Fault Act and the Minnesota Arbitration Act. *Leek*, 591 N.W.2d at 509 – 510. The *Leek* court dismissed the action due to a lack of jurisdiction because the action was not properly commenced pursuant to Minn. R. Civ. P. 4. *Id.* Likewise, actions involving the enforcement of mechanic's liens are considered ordinary civil actions, and governed by the MRCP. *Zetah v. Isaacs*, 428 N.W.2d 96, 99 (Minn. App. 1988).

Furthermore, even if this action was deemed to be a “special proceeding” under Minn. R. Civ. P. 81.01 and Appendix A, the MRCP would still apply. Rule 81.01 specifically states that the MRCP apply to such special proceedings to the extent they are

not inconsistent with or in conflict with the procedures set forth in the statute. Minn. R. Civ. P. 81.01(a); *Leek*, 591 N.W.2d at 510; *Stransky v. Independent School Dist. 761*, 439 N.W.2d 408, 410 (Minn. App. 1989); *State by Humphrey v. Baillon Co.*, 503 N.W.2d 799, 803-804 (Minn. App. 1993); and *Petition of Brainerd Nat. Bank*, 383 N.W.2d 284 (Minn. 1986). No service of process requirements of the MRCP are in conflict with Minn. Stat. § 394.27; The statute does not exclude the MRCP, and it contains no independent procedural rules.

**II. THE DISTRICT COURT ERRED IN CONCLUDING IT HAD SUBJECT-MATTER JURISDICTION OVER RESPONDENT FIELDS' APPEAL OF THE HOUSTON COUNTY BOARD OF ADJUSTMENT'S GRANT OF A VARIANCE TO SKYLINE MATERIALS.**

**A. Defective Service.**

Respondents, through their attorney, received written notice of the March 11, 2011 decision of the Board of Adjustment on April 4, 2011. Affidavit of Bob Scanlan, App. p. 3. Therefore, the 30-day time limit to appeal under Minn. Stat. § 394.27 began when notice was received on this date.

In the instant case, Respondents purported to initiate the district court action by serving their appeal papers on the County Attorney and Environmental Services Department.

Rule 4.03(e) of the MRCP, however, provides that in order to initiate a district court action and perfect service on a Minnesota county, a plaintiff must serve either the County Auditor or the chair of the County Board with the original pleadings. Neither

were served in this case. *See* Affidavits of Jack Miller and Char Meiners, App. pp. A-1 and A-2. Service was therefore ineffectual.

The district court concluded that Rule 4.03(e) did not apply, and, instead, Rule 5.01 governed service, concluding that the “action” appealing the variance decision had already been commenced at the County Board of Adjustment. Such a conclusion was in error.

Rule 5.01 of the MRCP, by its terms, only applies to pleadings that are served “subsequent to the original complaint.” Rule 5.02 provides further support that Rule 5 service provisions do not apply to the original pleading which initiates the district court action. The Rule indicates electronic service on a party’s attorney is allowed for pleadings “after the original complaint.”

Moreover, any argument that a district court appeal of a board of adjustment variance decision is a “continuation” of an existing “action” is untenable. An appeal of a variance is an entirely new action because it alleges new or additional claims: It asserts the Board of Adjustment acted arbitrarily and capriciously (in this case in granting a variance to Skyline). Consequently, the pleading initiating the district court action (in this case, captioned by Respondents as a Notice of Appeal) is an original pleading. Service of process of original pleadings is governed by Rule 4 of the MRCP. Service of process of pleadings subsequent to or after the original pleading are governed by Rule 5.

In an analogous situation, the Minnesota Court of Appeals has ruled that the MRCP apply to suits commenced against a county in an effort to appeal a county board’s budget decision. *Landgren v. Pipestone Cnty. Bd. of Comm’rs*, 633 N.W.2d 875, 879

(Minn. 2001). In *Landgren*, the sheriff personally served the county auditor in order to commence an appeal of the county board's resolution regarding setting the sheriff's budget. *Id.* at 876. The sheriff served the notice of appeal himself, even though he was a party to the action. *Id.* The district court dismissed the appeal for lack of subject-matter jurisdiction, applying the MRCP, because, under the rules, a party to an action may not personally serve the summons. *Id.* at 876-77.

The court of appeals affirmed the district court's dismissal. *Id.* at 879. The court determined that the Minnesota Rules of Civil Procedure applied to this action against the county board so that a failure to effect proper service was a failure to commence the action. "The initiation of an action in a Minnesota court requires a plaintiff to follow the procedures in the Minnesota Rules of Civil Procedure." *Id.* at 877. The court further emphasized that "the rules concerning the commencement of an action should be construed to provide a single, uniform course of procedure applicable to all civil actions," and that its holding "both supports the purpose behind Rule 4.02 and is consistent with the rulings and long-standing policies in other jurisdictions." *Id.* at 878.

The above cases show that it does not matter what you call the original pleading in a district court action. It could be called a notice of appeal or a complaint. The MRCP apply uniformly to original pleadings; Original pleadings must be properly served according to the requirements of Rule 4.03, and not Rule 5.01. Here, because process was not properly effected within the 30 day period in Minn. Stat. § 394.27, the district court erred in concluding it had subject-matter jurisdiction over Respondents' action.

**B. The *Curtis* Decision.**

The district court concluded that the subject-matter jurisdiction issue in this case is controlled by this Court's decision in *Curtis v. Otter Tail County Board of Adjustment*, 455 N.W.2d 86 (Minn. 1990). The narrow question the Court in *Curtis* addressed, however, was whether a summons must accompany the original pleading initiating a district court appeal of a variance decision. The holding in *Curtis* was that a summons was not necessary.

*Curtis* stated that “. . .we find the rules of civil procedure do not apply to the procedures used to appeal a decision from a county board of adjustment to the district court.” This statement was simply dicta. The district court in this case properly rejected such an argument by Respondents that *Curtis* made the MRCP inapplicable in this action.<sup>i</sup>

Further, *Curtis* does not address the issue of whether Rule 4 or Rule 5 governs service of process requirements for the original pleading by which the district court appeal is initiated. In fact, from the case it is impossible to tell whether the original pleading initiating the district court action was served on the County Auditor, County Board Chair, County Attorney, Environmental Services Officer, Board of Adjustment Chair or someone else. In short, *Curtis* is inapposite to the particular issue in this case.

**CONCLUSION**

For the reasons discussed herein, the district court's September 14, 2011 decision should be reversed, and this action should be dismissed with prejudice on subject-matter jurisdiction grounds

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Dated: 12/13/11

  
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<sup>i</sup> Again, this conclusion of the district court was not challenged by Respondents through a notice of review. Thus, the only real issue in this case is whether Rule 4 or, conversely, Rule 5 of the MRCP should apply when serving the original pleading in a district court action challenging a decision of a county board of adjustment.