

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1152**

In re: Appeal Rescinding the Resolution Approved on November 15, 2005,
Which Conditionally Vacated Todd County Road No. 55

**Filed June 8, 2010
Affirmed
Larkin, Judge**

Todd County District Court
File No. 77-CV-08-48

Scott T. Johnston, Kelly L. Jenzen, Johnston Law Office, P.A., Alexandria, Minnesota
(for appellant)

Paul D. Reuvers, Stephanie A. Angolkar, Iverson Reuvers, Bloomington, Minnesota (for
respondent)

Considered and decided by Halbrooks, Presiding Judge; Johnson, Judge; and
Larkin, Judge.

UNPUBLISHED OPINION

LARKIN, Judge

This appeal arises from respondent-county's denial of appellant-developer's petition to vacate a county road. Appellant challenged the respondent's decision in district court, and the district court granted summary judgment in respondent's favor. Because the district court correctly determined that respondent's decision was not arbitrary or capricious, we affirm.

FACTS

The facts in this case are undisputed. On September 15, 2005, appellant Area Lakes Properties, LLC (ALP) submitted a County Highway Vacation Petition requesting that respondent Todd County, through its Board of Commissioners, vacate a portion of County Road 55. The requested action was part of ALP's proposed residential lakefront development on Lake Osakis.

The county board held a public hearing on ALP's petition in November 2005, and adopted a resolution to vacate County Road 55. The resolution was subject to three express conditions: (1) ALP would construct a new public road running approximately parallel to Lake Osakis and located between 200 and 350 feet of the ordinary high water mark of the lake; (2) ALP would provide access to a public road for affected properties; and (3) ALP would remove the bituminous surface of the vacated county road. Satisfaction of the first condition required the relocation and realignment of a portion of State Highway 27.

In July 2007, the Minnesota Department of Transportation (MN DOT) notified Todd County that it would not allow the proposed relocation of State Highway 27 unless Todd County agreed to reimburse MN DOT for the cost of any resulting litigation and judgments incurred by MN DOT. Todd County would not agree to indemnify MN DOT. Thus, State Highway 27 could not be realigned and a new road could not be built between 200 and 350 feet of the ordinary high water mark of Lake Osakis.

Because construction of a new public road was an express requirement of the resolution vacating County Road 55, the county board considered whether to modify or

rescind the resolution at its regular meeting on December 6, 2007. The board received and considered evidence for and against the proposed vacation and was informed that over 1,000 residents had signed a petition opposing the vacation. The board determined that vacation of County Road 55 was not in Todd County's best interests and rescinded its earlier resolution. The board made the following findings in support of its decision: (1) the proposed lakefront development had changed because of the inability to realign State Highway 27; (2) there was a public benefit to preserving a long-standing public road; and (3) the rescission resolution would resolve pending litigation with a property owner concerning the proposed development, which had resulted in costs to the county exceeding \$10,000.

ALP exercised its statutory right to appeal the board's decision to the district court. *See* Minn. Stat. § 163.13, subd. 3 (2008) (providing any person aggrieved by a county board's denial of a petition to vacate a county highway may appeal the denial to the district court). The parties brought cross motions for summary judgment, and the district court granted summary judgment in Todd County's favor. This appeal follows.

D E C I S I O N

“On an appeal from summary judgment, we ask two questions: (1) whether there are any genuine issues of material fact and (2) whether the [district] court[] erred in [its] application of the law.” *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). “When the district court grants summary judgment based on the application of a statute to undisputed facts, the result is a legal conclusion that we review *de novo*.” *Weston v.*

McWilliams & Assocs, 716 N.W.2d 634, 638 (Minn. 2006) (citing *Lefto v. Hoggsbreath Enters., Inc.*, 581 N.W.2d 855, 856 (Minn. 1998)).

Any owner of property in a county may petition the county board to vacate a county highway. Minn. Stat. § 163.13, subd. 1 (2008). Denial of the petition may be appealed to the district court. *Id.*, subd. 3. On appeal to the district court, a “trial” is to be held. *Id.*, subd. 4 (2008). However, “the appeal in such cases does not bring up such matters for determination by the court de novo and . . . it would be error for the [district] court to submit to the jury the matters involved in the cause as an original question.” *Lieser v. Town of St. Martin*, 255 Minn. 153, 159, 96 N.W.2d 1, 6 (1959) (reversing the jury’s determination that the town board acted “arbitrarily, oppressively or fraudulently and against the best interests of the public” by denying a petition for development of a road).

On appeal to the district court, “[t]he determination of the board shall not be reversed except upon a showing of arbitrary, capricious or fraudulent action.” Minn. Stat. § 163.13, subd. 4. An agency ruling is arbitrary and capricious if the agency:

- (a) relied on factors not intended by the legislature;
- (b) entirely failed to consider an important aspect of the problem;
- (c) offered an explanation that runs counter to the evidence; or
- (d) the decision is so implausible that it could not be explained as a difference in view or the result of the agency’s expertise.

White v. Minn. Dep’t of Nat. Resources, 567 N.W.2d 724, 730 (Minn. App. 1997) (quotation omitted), *review denied* (Minn. Oct. 31, 1997).

A county board's decision to deny a petition to vacate a county road is legislative in nature. *See Brazil v. Sibley County*, 148 Minn. 164, 164, 181 N.W. 329, 329 (1921) (“A county board, in altering or changing or refusing to alter or change a highway, exercises legislative discretion with which the courts do not interfere, except when its action is fraudulent or manifestly arbitrary and unreasonable or is based upon an erroneous theory of the law.”). A county board has broad discretion in legislative matters, and even if the board's decision is debatable, so long as there is a rational basis for what it does, the courts do not interfere. *Beck v. City of St. Paul*, 304 Minn. 438, 448, 231 N.W.2d 919, 925 (1975).

“The general rule is that a decision by the members of town boards acting in a legislative capacity shall be the outcome of examination and consideration; in other words, that it shall constitute a discharge of the official duty and not a mere expression of personal will.” *Lieser*, 255 Minn. at 158, 96 N.W.2d at 5.

[A] town board acting on a petition for the establishment of a town road acts in a legislative capacity; all questions in respect to the propriety and necessity of the particular improvement are legislative in character and the determination thereof by the local tribunal is final and will be set aside by the court on statutory appeal only when it appears that the evidence is practically conclusive against it, or that the local board proceeded on an erroneous theory of law, or that it acted arbitrarily and capriciously against the best interests of the public.

Id. at 158-59, 96 N.W.2d at 5-6. “If all the factors which the record indicates exist were taken into account by the members of the . . . town board[] in reaching [its] conclusions,

then a determination honestly made is not arbitrary. Neither would it be fraudulent, oppressive, or manifestly against the public interest.” *Id.* at 162, 96 N.W.2d at 7.

In this case, the county board made a legislative determination that it was in the county’s best interests to rescind its resolution authorizing the conditional vacation of County Road 55. The board’s primary reason for rescinding the resolution was that ALP could not satisfy the condition that a new road would be built between 200 and 350 feet of the lake’s high water mark. The board also recognized strong public opposition to the plan to vacate the road and the litigation costs that the county had incurred as a result of that opposition. Contrary to ALP’s assertions, the board’s consideration of the ancillary costs to the taxpayers was not improper. Lastly, the board acknowledged the public benefit of retaining a long-standing scenic road.

The board’s decision was not the result of its will, but rather its deliberate consideration of relevant factors and current circumstances. And because there was a rational basis for the board’s decision, the district court properly declined to interfere. The district court correctly determined that the county board’s decision to maintain County Road 55 was not arbitrary and capricious. We therefore affirm the award of summary judgment in the county’s favor.

Affirmed.

Dated:

Judge Michelle A. Larkin