

STATE OF MINNESOTA

IN DISTRICT COURT

COUNTY OF WINONA

THIRD JUDICIAL DISTRICT

Case Type: Civil Other/Miscellaneous

Court File No. 85-CV-19-546

Honorable Kevin F. Mark

Daley Farm of Lewiston, L.L.P., Ben Daley,
Michael Daley, and Stephen Daley,

Plaintiffs/Appellants,

vs.

The County of Winona,

Defendant/Respondent.

SECOND NOTICE OF APPEAL

PLEASE TAKE NOTICE that pursuant to Minnesota Statutes § 394.37, subdivision 9, Plaintiffs/Appellants Daley Farm of Lewiston, L.L.P., Ben Daley, Michael Daley, and Stephen Daley (collectively “**Daley**”) hereby appeal to the District Court from the Winona County Board of Adjustment’s decision, on remand in the above-captioned proceeding, to deny Daley’s variance application. The Winona County Board of Adjustment considered Daley’s variance application, on remand, at a public meeting on December 2, 2021. Daley received written notice of the second denial of its variance application in a letter from Kay Qualley, Winona County Planning & Environmental Services Director, dated December 16, 2021, and received by Daley after that date.

This second appeal is made on the following bases (in addition to the issues previously raised in this proceeding):

1. The Winona County Board of Adjustment’s decision to deny Daley’s variance application was the product of bias and prejudgment by members of the board of adjustment, the county commissioners who appointed those members of the board of adjustment, and county staff and violated Daley’s rights under the due process clauses in the Fourteenth Amendment to the United States Constitution and Article I, Section 7, of the Minnesota Constitution, as well as principles of fundamental fairness.

2. The Winona County Board of Adjustment's decision to deny Daley's variance application was arbitrary and capricious because, *inter alia*, the denial (i) is inconsistent with the evidence in the record, (ii) is based on reports and evidence not included in the record, (iii) was influenced by the biased staff report that was improperly before the board of adjustment, (iv) relied on factors that the board of adjustment was not permitted or intended to consider, (v) was based on misinterpretation, misapplication, or incomplete understanding of and/or confusion regarding the applicable law, and (vi) reflects the will, bias, and prejudice of three board members rather than reasoned decision making.

The issues raised in this second appeal are in addition to the issues originally raised in the Complaint and Notice of Appeal that was previously filed and served and the arguments previously raised in the above-captioned proceeding, including without limitation Daley's assertion that the District Court erred in remanding this proceeding to the Winona County Board of Adjustment.

Dated this 3rd day of January, 2022.

/s/ Matthew C. Berger

Matthew C. Berger #0387666

mberger@gislason.com

Mark S. Ullery #170434

mullery@gislason.com

GISLASON & HUNTER LLP

2700 South Broadway

P. O. Box 458

New Ulm, MN 56073-0458

Phone: (507) 354-3111

Fax: (507) 354-8447

*Attorneys for Plaintiffs/Appellants Daley
Farm of Lewiston, L.L.P., Ben Daley, Michael
Daley, and Stephen Daley*