STATE OF MINNESOTA **DISTRICT COURT**

COUNTY OF WINONA **THIRD JUDICIAL DISTRICT**

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

Plaintiffs,

vs.

The County of Winona,

Defendant,

and

Land Stewardship Project and Defenders of Drinking Water,

Intervenors.

Court File No.: 85-CV-19-546

ORDER AND MEMORANDUM ON MOTIONS FOR SUMMARY JUDGMENT

On August 3, 2023, the above-entitled matter came on for a remote hearing before the undersigned Judge of District Court on the parties' Cross-Motions for Summary Judgment.

Matthew Berger appeared on behalf of Plaintiffs. Paul Reuvers appeared on behalf of Defendant. Justin Cummins appeared on behalf of Intervenor Land Stewardship Project. Amelia Vohs appeared on behalf of Intervenor Defenders of Drinking Water.

The parties had previously submitted motions and memoranda, and at the hearing, made arguments. The parties then submitted draft Orders. The matter was taken under advisement on August 25, 2023.

Based on the submissions and arguments of counsel, and a review of the pleadings, motions, memoranda, and affidavits in the file, the Court makes the following:

FINDINGS OF FACT AND CHRONOLOGICAL PROCEDURAL BACKGROUND

1. Plaintiff Daley Farm of Lewiston, L.L.P. ("Daley Farm"), is a limited liability partnership that is comprised of five members of the Daley family. Plaintiff Ben Daley is one of the partners of Daley Farm. Plaintiffs Michael Daley and Stephen Daley were previously partners of Daley Farm but retired from the partnership during the pendency of this proceeding. The Daley family has farmed in and have been active members of the Lewiston community for more than 160 years.

2. Daley Farm is located at 18774 Highway 14, Lewiston, Utica Township, Winona County, Minnesota 55952 ("Daley Farm Site"). Daley Farm currently owns and operates dairy facilities on the Daley Farm Site. The Daley Farm Site is in Winona County's Agricultural/Resource Conservation District. The existing facilities have a total capacity of 1,608 cows and 120 calves, or 2,275.2 animal units.

3. Daley Farm's existing facilities are regulated under State of Minnesota Individual Animal Feedlot National Pollution Discharge Elimination System (NPDES) Permit MN0067652 issued by the Minnesota Pollution Control Agency (MPCA).

4. With regard to feedlots, Winona County's Zoning Ordinance (WCZO) states its purpose is to "maintain a healthy agricultural community within the County while ensuring that farmers properly manage animal feedlots and animal waste to protect the health of the public and the natural resources of Winona County." *WCZO* § 8.1.1. To achieve this purpose, the WCZO limits the size of feedlots, mandating that, "[n]o permit shall be issued for a feedlot having in excess of 1,500 animal units per feedlot site." *Id.* at § 8.4.2. Section 5.6 of the WCZO authorizes the Winona County Board of Adjustment to grant a variance that allows "deviations from the literal

provisions of this Ordinance in instances where their strict enforcement would cause practical difficulties because of physical circumstances unique to the individual property under consideration" and "when it is demonstrated that such actions will be in keeping with the spirit and intent of this Ordinance." *See also* Minn. Stat. § 394.27, subd. 7 (2022).

5. Although Daley Farm's existing facilities exceed the 1,500-animal-unit cap under the WCZO, the facilities are allowed to continue as a nonconforming use under Sections 3.2.2 and 3.2.3 of the Ordinance and Minn. Stat. § 394.36 (2022) because the facilities existed before the animal unit cap was enacted.

6. Daley Farm proposes to modernize its existing facilities and expand its dairy farm. These plans include constructing a new barn, milking parlor, sand processing and storage building, animal mortality building, feed storage pad, manure storage basin, runoff controls, and eliminating some existing facilities that are outdated (the "Modernization Project"). If the Modernization Project is completed, the facilities would have a total maximum capacity of 3,983 cows, 525 heifers, and 120 calves, or 5,967.7 animal units.

7. Daley Farm looked to expand after a new generation of the Daley family desired "to return to Winona County and work on the family farm" and to "provide economic support for the additional family members to return to the agricultural communities in Winona County." From Daley Farm's viewpoint, "[a]n expansion of the farm is necessary in order to support the additional people who will be making their living by farming in Winona County." This would generate the income necessary to support the desired quality of life for the Daley family "into the future, into the next generation[,]" and "for future generations." The Daleys stated: "for us to bring in the next generation and yet retire at some point, we need to do an expansion so we can

leave our children with something and still have a thriving business."

8. Daley Farm declined to "expand its operation by constructing multiple smaller facilities on different sites in the area." It had "made significant investments to construct its existing facilities … these existing facilities cannot be moved" and "such expansions would cause significant duplication of equipment, dramatically increase the cost of the project, [and] decrease the efficiency of the operation."

9. Defendant Winona County claims that Daley Farm's proposed expansion was also an effort to remedy its violations of the NPDES permit and federal zero discharge requirements. Winona County claims that Daley Farm drew attention to these violations in its correspondence to Winona County where counsel for Daley Farm claimed: "In addition to economic considerations, Daley Farms' variance request is also motivated by non-economic motivations to reduce the environmental impact of the farm." Winona County states that Section 1 of the letter made clear these non-economic motivations to reduce the environmental impact of the farm were merely actions Daley Farm needed to take to meet the ongoing requirements of Daley Farm's current NPDES permit and remedy its ongoing violations of federal law. Daley Farm's expansion plans included the construction and installation of runoff control measures for an existing non-compliant feed pad, and the closure of a separate non-compliant feedlot site, both of which Daley Farm would be required to complete if Daley Farm was to "continue to operate" its current dairy farm site if, for instance, it was "unable to receive all needed permits and approvals."

10. Many Winona County community members are concerned about an expansion they see as a threat to the community's vulnerable natural resources. Two groups—Land Stewardship

Project and Defenders of Drinking Water—intervened in this matter to provide the perspective of local citizens who are concerned about the impact the proposed expansion would have on Winona County. Intervenor/Defendant Defenders of Drinking Water describes itself as an unincorporated association whose members are residents of Winona County and "act under a common name with a common purpose to protect water quality in Winona County." The members of this association are members of the Minnesota Center for Environmental Advocacy.

11. On July 31, 2017, Daley Farm submitted to the MPCA the initial data for the preparation of an environmental assessment worksheet for the Modernization Project and an application for modification of Daley Farm's individual NPDES permit to authorize the Modernization Project.

12. On October 1, 2018, the MPCA published public notices of the availability of an environmental assessment worksheet for Daley Farm's proposed Modernization Project and of the agency's intent to issue a modified individual NPDES permit to authorize such project.

13. As required under Minn. Stat. § 116D.04, subd. 2a(d) (2018), and Minnesota Rules 4410.1600, the MPCA originally established a 30-day public comment period that began with the publication of the public notices on October 1, 2018, and would have continued through October 31, 2018. At Land Stewardship Project's request, the MPCA subsequently extended the public comment period through November 15, 2018.

14. Ben Daley, on behalf of Daley Farm, filed a variance application on November 16, 2018, requesting "a variance from the requirement in Section 8.4.2 of the Winona County Zoning Ordinance." However, Winona County could not consider this variance request until the MPCA had completed its environmental review process. *See* Minn. Stat. § 15.99, subd. 3I.

15. On January 4, 2019, the MPCA issued an Order for a Negative Declaration on the need

for an Environmental Impact Statement (EIS) regarding the proposed expansion.

16. Also on January 4, 2019, the MPCA issued written Findings of Fact, Conclusions of Law, and an Order approving the modification of Daley Farm's individual NPDES permit and authorizing the proposed Modernization Project.

17. Intervenor/Defendant Land Stewardship Project and the Minnesota Center for Environmental Advocacy commenced a certiorari proceeding in the Minnesota Court of Appeals to challenge the MPCA's decisions that an environmental impact statement was not required for Daley Farm's proposed Modernization Project and to issue the modified NPDES permit authorizing the project.

18. On October 14, 2019, the Minnesota Court of Appeals reversed and remanded the MPCA's decision for further proceedings after it determined "the MPCA failed to consider the effects of the proposed expansion's greenhouse-gas emissions" and "MPCA's determination that an EIS was not needed was arbitrary and capricious." *See In re Denial of a Contested Case Hearing Request & Modification of a Notice of Coverage Under Individual Nat'l Pollution Discharge Elimination Sys. Feedlot Permit No. MN0067652*, No. A19-0207, 2019 WL 5106666, at *1-5 (Minn. App. Oct. 14, 2019).

19. On remand, the MPCA issued a supplemental environmental assessment worksheet and, after an additional public comment period, issued Supplemental Findings of Fact, Conclusions of Law, and Order[s] on April 24, 2020. The agency again determined that an environmental impact statement was not required for Daley Farm's proposed Modernization Project and again issued the modified NPDES permit authorizing the project.

20. Land Stewardship Project and the Minnesota Center for Environmental Advocacy did not

seek judicial review of the April 24, 2020, MPCA Order.

21. The Winona County Board of Adjustment held a public hearing on Daley Farm's variance application on February 21, 2019. At the conclusion of the hearing, the Board considered each of the eight variance criteria set forth in WCZO § 5.6.2 and adopted written Findings of Fact to memorialize its findings and decision.

22. Based on its findings that three of the eight criteria were not satisfied, the Board of Adjustment—by a three-to-two vote, with Cherie Hales, Wendy Larson, and Rachel Stoll voting in favor of the motion—denied the variance application.

23. Daley Farm appealed the denial of the variance application pursuant to Minn. Stat. § 394.27, subd. 9, and asserted additional claims for deprivation of their constitutional right to due process of law.

24. This Court (the Honorable Kevin F. Mark) held a hearing on December 21, 2020, on the parties' cross motions for summary judgment. At the conclusion of that hearing, the Court ruled from the bench that "[t]his decision made by the Board of Adjustment is so severely tainted by members of the Board of Adjustment that it can't stand." The Court determined the Winona County Board of Adjustment's decision was arbitrary, capricious, and unreasonable. After further briefing on the appropriate remedy, the Court issued a written decision on January 25, 2021, ordering "[t]hat the Winona County Board of Adjustment's denial of Daley Farm's Variance Application is declared void and Daley Farm's Variance Application is remanded for reconsideration by the current 2021 Winona County Board of Adjustment." The Court determined remand was appropriate because the "Court is satisfied that the current composition of the Board will grant Plaintiffs the fair hearing they are entitled."

25. On February 16, 2021, this Court granted Plaintiffs' motion for reconsideration in order to clarify the scope of the variance that Daley Farm requires for its proposed Modernization Project.

26. Meanwhile, Winona County reached out to Daley Farm to discuss a new hearing on the variance request, tentatively scheduled for March 18, 2021. Daley Farm requested multiple extensions, which the County granted. None of these requests were in writing and none specifically referenced the 60-day deadline imposed by Minn. Stat. § 15.99. In granting the first of the requested extensions, however, counsel for Winona County wrote to counsel for Daley Farm and stated:

> I do not believe the 60-day Rule is in play for the remand, and I assume that is your view too. If I am mistaken, please let me know. We want to move this forward as soon as practical, and we don't want to get tripped up on a timing argument down the line, particularly with approaching the Court for further direction.

In the end, Daley Farm's requested extensions delayed the remand hearing by more than seven months. During that time, the County did not receive any new written application form requesting a variance.

27. On June 29, 2021, this Court issued an Order determining that "Daley Farm may proceed with its proposed Modernization Project without the requirement of a variance from Section 3.2.3.2, the Continued Use provision of the Winona County Zoning Ordinance."

28. Daley Farm subsequently petitioned the Minnesota Court of Appeals requesting discretionary review of the remand remedy ordered by this Court. The court of appeals denied this request in a written order issued on August 24, 2021.

29. Daley Farm requested the County reprocess the previous variance application, and the

Board held another meeting to vote on the variance request on December 2, 2021.

30. In the lead up to the December 2, 2021, meeting, County staff prepared a new staff report, and though the Zoning Administrator had a difference of opinion with one of her subordinates regarding the extent to which the Board should be presented with new information. They both agreed Daley Farm failed to prove its variance request was supported by any practical difficulties beyond economic considerations. The County allowed Daley Farm—and no one else—to submit additional information into the record, but otherwise confined the Board's inquiry to those issues raised in earlier proceedings. The record was nearly identical to the one created in the earlier proceedings, but only one Board member who voted on February 21, 2019, remained.

31. One new Board member acknowledged conducting independent research to become informed regarding the topics referenced in the record, although none of the sources referenced related to the question of whether Daley Farm's variance relied solely on economic considerations. That member—Phillip Schwantz—twice voted in favor of granting Daley Farms a variance.

32. With respect to seven of the eight variance criteria set forth in section 5.6.2 of the WCZO, the Winona County Board of Adjustment found that Daley Farm's Variance Application satisfied the criteria. Specifically, the Board found as follows with respect to these criteria:

1. The variance request is in harmony with the intent and purpose of the ordinance. . . .
2. The variance request is consistent with the comprehensive plan. . . .
3. The applicant has established that there are practical difficulties in complying with the official control and proposes to use the property in a reasonable manner. . . .
4. The variance request is due to special conditions or circumstances unique to the property not created by owners of the property since enactment of

> the Ordinance. . . .
> 5. The variance will not alter the essential character of the locality nor substantially impair property values, or the public health, safety, or welfare in the vicinity. . . .
> * * * *
> 7. The variance can[not] be alleviated by a reasonable method other than a variance and is the minimum variance which would alleviate the practical difficulty. . . .
> 8. The request is not a use variance and does not have the effect of allowing any use that is not allowed in the zoning district, permit a lower degree of flood protection than the regulatory flood protection elevation or permit standards lower than those required by State Law. . . .

33. With respect to Criterion No. 6 in section 5.6.2 of the WCZO—"[e]conomic considerations alone do not constitute practical difficulties"—the Winona County Board of Adjustment evenly split (two-to-two) on competing motions and did not adopt any finding with respect to this criterion.

34. At the close of the Board's December 2, 2021, meeting, two votes were taken on two motions. The first motion, to approve the variance, failed because it was subject to a split vote. The second motion, to deny the variance, also failed because it was subject to a split vote. The split votes resulted in the Board's denial of the variance request. Board member Robert Redig did not participate in the proceedings because, while a member of the public, he submitted public comments during the first public hearing in 2019.

35. The two of the four voting Board members who voted to deny the variance did not find Daley Farm supported its variance request with any practical difficulties beyond its economic motivation. They specifically found that Daley Farm needed the "variance to make sure that they have the capacity to support the[ir] family" and Daley Farm's other justifications were things Daley Farm must or should be doing even in the absence of a variance. The economic considerations criterion, criterion six, is the only variance requirement that the Board did not

affirmatively find was satisfied by Daley Farm's variance application.

36. Because a majority of the Board did not believe the administrative record contained evidence Daley Farm needed a variance for non-economic reasons, or in other words, that economic considerations were the only claimed practical difficulties, the Board did not approve the variance request and therefore denied the variance application.

37. Daley Farm alleges that Intervenor/Defendant Land Stewardship Project conspired with Winona County officials to deprive Daley Farm of a fair hearing and to defeat Daley Farm's variance application. Daley Farm's allegations in this regard both predate and postdate this Court's 2021 Orders.

38. Before this Court's 2021 Orders, Daley Farm claims, among other items, that Land Stewardship Project engaged in significant advocacy efforts to oppose Daley Farm's proposed Modernization Project, and Cherie Hales, a member of LSP's organizing committee since February 2015 and a member of the Winona County Board of Adjustment, was intimately involved in organizing and implementing these advocacy efforts. Daley Farm states that Rachel Stoll also actively participated in Land Stewardship Project's advocacy efforts. Daley Farm claims that before it even filed its variance application, Cherie Hales and Land Stewardship Project focused on the composition of the Winona County Board of Adjustment as part of LSP's efforts to oppose Daley Farm's proposed Modernization Project. Daley Farm states that on October 29, 2018, Doug Nopar sent an e-mail message to Cherie Hales (with copies to others) that described a detailed plan for Land Stewardship Project to manipulate the composition of the Winona County Board of Adjustment and Planning Commission for the specific purpose of defeating Daley Farm's anticipated variance application for its proposed Modernization Project.

39. After this Court's 2021 Orders, Daley Farm alleges that the Winona County Board of Commissioners appointed Kelsey Fitzgerald to the Board of Adjustment. Daley Farm states that the county commissioners who appointed Ms. Fitzgerald to the Board of Adjustment were the same as in January 2019 when Cherie Hales, Wendy Larson, and Rachel Stoll were appointed to the Board of Adjustment for the specific purpose of defeating Daley Farm's variance application. Further, Daley Farm claims that Doug Nopar recruited Ms. Fitzgerald to apply for the Board of Adjustment based on her views about agriculture, and Ms. Fitzgerald had been a member of Land Stewardship Project for ten years, that she agreed with the positions that LSP had advocated in opposition to Daley Farm's proposed Modernization Project, and she may have signed petitions circulated by LSP in opposition to Daley Farm's proposed Modernization Project.

40. Daley Farm alleges that Marie Kovecsi actively participated in Land Stewardship Project's advocacy efforts to oppose Daley Farm's proposed Modernization Project and variance application. Daley Farm claims that in addition to participating in LSP's efforts to use the state environmental review process to delay the project and to manipulate the composition of the Winona County Board of Adjustment for the specific purpose of defeating Daley Farm's variance application, Commissioner Kovecsi participated in LSP's "narrative development" process to shape the organization's public perception and lobbied a state legislator on behalf of LSP. Daley Farm claims that after attending a Township Officers Association meeting at which Daley Farm's proposed Modernization Project was discussed, Commissioner Kovecsi affirmatively contacted LSP to make sure it was aware of the discussion as part of its advocacy efforts. Finally, Daley Farm states that in internal e-mail communications sent between February 2021 and April

2021—mere months after Commissioner Kovecsi and other county commissioners appointed Kelsey Fitzgerald to the Board of Adjustment—LSP identifies Commissioner Kovecsi as a "member" of and "key organizer" for LSP who was "involved in the fight against the Daley factory dairy farm and felt abandoned or confused by the law of communication and action from LSP on the issue" and a "community leader who took key steps around the Daly operation and felt unsupported by LSP in recent months as that issue has been a central news story."

41. This appeal followed the Board of Adjustment's December 2, 2021, decision.

ANALYSIS AND CONCLUSIONS OF LAW

THE 60-DAY RULE UNDER MINN. STAT. § 15.99.

1. Minn. Stat. § 15.99, subd. 2(a), states that an agency must approve or deny a written request—for a permit, license, or other governmental approval of an action—relating to zoning within 60 days. This time limit, however, is extended if an application submitted to a county "requires prior approval of a state or federal agency." Minn. Stat. § 15.99, subd. 3(e).

2. Here, the County had until March 5, 2019, to act on Daley Farm's application, and it acted within the time limit by denying the variance request on February 21, 2019. The Winona County Board of Adjustment's February 21, 2019, decision satisfied the statutory deadline.

3. "The 60-day timetable begins when the agency receives a written request containing all the necessary information and any applicable fee." *State v. Sanschagrin,* 952 N.W.2d 620, 625 (Minn. 2020). Unlike the terms *relating to* and *zoning*, "the Legislature provided a specific definition for the term 'request' in Minn. Stat. § 15.99, subd. 1(c)." *Id*. Specifically, a "request" means "a written application related to zoning … for a permit, license, or other governmental approval of an action[,]" which "must be submitted in writing to the agency on an application

form provided by the agency[.]" Minn. Stat. § 15.99, subd. 1(c).

4. When a word is defined in a statute, Minnesota courts "are guided by the definition[,]" which is applied in its entirety without "opportunity to ignore part of the legislature's definition." *Sanschagrin*, 952 N.W.2d at 625. Additionally, the law "forbid[s] adding words or meaning to a statute that were intentionally or inadvertently left out." *Genin v. 1996 Mercury Marquis, VIN No. 2MEBP95F9CX644211, License No. MN 225 NSG*, 622 N.W.2d 114, 117 (Minn. 2001). Courts are "prohibited from adding words to a statute and cannot supply what the legislature either purposely omitted or inadvertently overlooked." *Underwood Grain Co. v. Harthun*, 563 N.W.2d 278, 281 (Minn. App. 1997). Courts are duty-bound to "interpret the policy that the Legislature has already determined in the statutory language at issue[,]" because courts "are limited to 'correcting errors' and … [a]ny change to a statute's language 'must come from the legislature.'" *Hayden v. City of Minneapolis*, 937 N.W.2d 790, 796 (Minn. App. 2020).

5. The only request the County received was the November 16, 2018, request for "a variance from the requirement in Section 8.4.2 of the Winona County Zoning Ordinance." The deadline for the County to respond to the request under Minn. Stat. § 15.99 was extended due to a decision from the MPCA. The County made its decision within 60 days of the Court's remand order.

6. Daley Farm, however, argues that Minn. Stat. § 15.99's 60-day deadline is triggered by this Court's remand order. According to Daley Farms, this event restarts the 60-day deadline and the County therefore had to make another decision on the variance within 60 days of this Court's remand order.

7. Daley Farm's argument is at odds with the plain language of the statute. Nothing in

Minn. Stat. § 15.99's plain language suggests the statute applies following a remand, much less spells out the proposed procedure for "restarting the clock." Moreover, expanding the scope of Minn. Stat. § 15.99 under the guise of judicial construction is inconsistent with the public policy goal the statute was designed to address. Because the 60-day clock in Minn. Stat. § 15.99 does not apply on remand, the County complied with Minn. Stat. § 15.99 when it denied the variance request on February 21, 2019.

8. This result is further supported because "[c]ourts must narrowly construe" the statute against application because it results in a "harsh, extraordinary remedy." *Harstad v. City of Woodbury*, 902 N.W.2d 64, 77 (Minn. App. 2017) (quoting *Moreno v. City of Minneapolis*, 676 N.W.2d 1, 6 (Minn. App. 2004)); *see also Motokazie! Inc. V. Rice Cnty.*, 824 N.W.2d 341, 359 (Minn. App. 2012) (finding that Minn. Stat. § 15.99 should be construed narrowly because "the legislature intends to favor the public interest as against any private interest"). Daley Farm's interest in the variance application is private, and the County's interest in having the variance application evaluated and considered upon the merits is public. Thus, the Court declines to find that the 60-day deadline in Minn. Stat. § 15.99 restarted upon remand.

9. Alternatively, even if Minn. Stat. § 15.99 applied following a remand, it still does not apply under the specific facts of this case because Daley Farm is equitably estopped from arguing for its application. A party seeking to invoke the doctrine of equitable estoppel has the burden of proving three elements: (1) that promises or inducements were made; (2) that it reasonably relied upon the promises; and (3) that it will be harmed if estoppel is not applied. *Ridge Creek I, Inc. v. City of Shakopee*, No. A09-178, 2010 WL 154632, at *5 (Minn. App. Jan. 19, 2010) (citing *Hydra-Mac, Inc. v. Onan Corp.*, 450 N.W.2d 913, 919 (Minn. 1990)).

10. The record shows that Daley Farm got everything it asked for. The Court issued its remand order on January 25, 2021, and counsel for the County reached out to Daley Farm within the week to plan a remand hearing on March 18, 2021. In other words, the County was prepared to pursue the remand hearing within 60 days of the remand. Daley Farm, however, asked for multiple extensions, which lasted more than seven months. Even if this were all that the record showed this would be enough to apply equitable estoppel. It is accepted as a matter of law in Minnesota "[o]ne who speaks must say enough to prevent his words from misleading the other party." *Klein v. First Edina Nat. Bank*, 293 Minn. 418, 421, 196 N.W.2d 619, 622 (1972). Daley Farm's more than seven-month delay was not preceded by "written notice" requesting "an extension of the time limit under" Minn. Stat. 15.99, which would have been required if Daley Farm claimed the 60-day rule applied. Minn. Stat. § 15.99, subd. 3(g).

11. But the record also reveals that counsel for Winona County wrote to counsel for Daley Farm after Daley Farm made its first request for an extension and stated:

> I do not believe the 60-day Rule is in play for the remand, and I assume that is your view too. If I am mistaken, please let me know. We want to move this forward as soon as practical, and we don't want to get tripped up on a timing argument down the line, particularly with approaching the Court for further direction.

Counsel for Daley Farm did not suggest he believed Minn. Stat. § 15.99 applied, but instead represented it did not apply by making various other requests for extensions, none of which complied with Minn. Stat. § 15.99, subd. 3(g). The County relied on Daley Farm's representations that Minn. Stat. § 15.99 did not apply to the remand and the County would clearly suffer if equitable estoppel is not applied. *Ridge Creek*, 2010 WL 154632, at *5.

12. Therefore, the Court concludes that Winona County did not violate the 60-day rule.

DALEY FARM'S CONSTITUTIONAL CLAIMS.

13. A court *shall* grant a motion for summary judgment when there is no genuine issue of material fact, and a party is entitled to judgment as a matter of law. *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993); *see* Minn. R. Civ. P. 56.03. A fact is only "material for purposes of summary judgment if its resolution will affect the outcome of the case." *Sayer v. Minn. Dep't of Transp.*, 790 N.W.2d 151, 162 (Minn. 2010). "When a motion for summary judgment is made and supported, the nonmoving party must present specific facts showing that there is a genuine issue for trial." *DLH, Inc. v. Russ*, 566 N.W.2d 60, 69 (Minn. 1997); *see* Minn. R. Civ. P. 56.05.

14. "A genuine issue of material fact arises when there is sufficient evidence regarding an essential element to permit reasonable persons to draw different conclusions." *Kelly for Washburn v. Kraemer Constr., Inc.*, 896 N.W.2d 504, 508 (Minn. 2017). "A party cannot rely upon speculation to demonstrate the existence of a genuine fact issue." *Johnson v. Van Blaricom*, 480 N.W.2d 138, 140 (Minn. App. 1992). Evidence merely creating a metaphysical doubt is not sufficiently probative with respect to an essential element to create a genuine issue for trial. *DLH*, 566 N.W.2d at 71. Resisting summary judgment requires more than mere averments, unverified conclusory allegations, and claims about evidence a party might produce at trial. *Id.*; *Cargill Inc. v. Jorgenson Farms*, 719 N.W.2d 226, 234 (Minn. App. 2006) (quoting *Lubbers v. Anderson*, 539 N.W.2d 398, 401 (Minn. 1995)). A complete lack of proof on an essential element of the plaintiff's claim mandates judgment as a matter of law. *Lubbers*, 539 N.W.2d at 401. "[T]his failure renders all other facts immaterial." *Jane Doe 43C v. Diocese of New Ulm*, 787 N.W.2d 680, 686 (Minn. App. 2010) (quotation omitted).

15. The principal issue in this case is whether the Board reasonably denied Daley Farm's variance request. Daley Farm also claims it suffered a constitutional injury in Counts Eight and

Nine of the operative complaint. Daley Farm claims the County, "with respect to the consideration and denial of Daley Farm's Variance Application[,] violated" its "fundamental right to due process of law."

16. Eighth Circuit and Minnesota courts treat the due process protections in the United States Constitution and the Minnesota Constitution identically. *Schatz v. Interfaith Care Ctr.*, 811 N.W.2d 643, 657 (Minn. 2012); *McDonald v. City of Saint Paul*, 679 F.3d 698, 704 n.3 (8th Cir. 2012); *Yanke v. City of Delano*, 393 F. Supp. 2d 874, 879 (D. Minn. 2005), *aff'd sub nom. Yanke v. City of Delano, Minn.*, 171 F. App'x 532 (8th Cir. 2006). To establish a due process violation, "a plaintiff, first, must establish that his protected liberty or property interest is at stake. Second, the plaintiff must prove that the defendant deprived him of such an interest without due process of law." *Elder v. Gillespie*, 54 F.4th 1055, 1064 (8th Cir. 2022).

Daley Farm cannot show a protected interest.

17. Analyzing a "due process claim must begin with an examination of the interest allegedly violated[,]" because "[t]he possession of a protected life, liberty or property interest is a condition precedent to the government's obligation to provide due process of law, and where no such interest exists, there can be no due process violation." *McDonald*, 679 F.3d at 704. This condition precedent is satisfied by reference to "an independent source, such as state law, rules or understanding that support" a "legitimate claim to entitlement as opposed to a mere subjective expectancy." *Carolan v. City of Kansas City, Mo.*, 813 F.2d 178, 181 (8th Cir. 1987); *Snaza v. City of Saint Paul, Minn.*, 548 F.3d 1178, 1182-1183 (8th Cir. 2008).

18. State law creates a legitimate claim to entitlement in a land use approval when two elements are satisfied. A property interest exists "if the municipality, under state law or

ordinance, lacks discretion" to deny the application because the applicant "complies with" and "fulfill[s] the requirements." *Carolan*, 813 F.2d at 181. Both conditions—i.e. the applicant complied "with all the applicable laws and codes required for permit issuance[,]" *Ellis v. City of Yankton, S.D.*, 69 F.3d 915, 917 (8th Cir. 1995), and the municipality lacks discretion to deny the application—"must be met before a constitutionally protected property interest . . . arises." *Carolan*, 813 F.2d at 181.

19. A variance application is not a property interest entitled to constitutional protection. *See Solum v. Bd. of Cnty. Comm'rs for Cnty. of Houston*, 880 F. Supp. 2d 1008, 1012–13 (D. Minn. 2012) (finding "the [plaintiffs] have not established a protected property interest, and summary judgement as to their procedural due process claim is warranted[,]" where plaintiffs based their claim on a "variance application to the board of adjustment"); *Cont'l Prop. Grp., Inc. v. City of Minneapolis*, No. A10-1072, 2011 WL 1642510, at *4 (Minn. App. May 3, 2011) (holding plaintiff "did not have a protected property interest in its variance application because an applicant has no claim of entitlement to a variance") (citing *Krummenacher v. City of Minnetonka*, 783 N.W.2d 721, 727 (Minn. 2010)). Accordingly, Daley Farm's variance application cannot provide the basis for its due process claim.

20. Alternatively, Daley Farm attempts to couch its supposed right in some other interest. First, Daley Farm alleges it has a right to operate a dairy farm, but this does not provide a basis for Daley Farm's constitutional claim. Because Daley Farm admitted from the outset it owns and operates a dairy farm in Winona County, Winona County never deprived it of this supposed right.

21. Second, Daley Farm suggests it has the right to use and enjoy its property for any purpose. Here again, the Court finds that this argument is not borne out. It is a fundamental

principle of law "that the right to use property as one wishes is subject to and limited by the proper exercise of the police power in the regulation of land use." *McShane v. City of Faribault*, 292 N.W.2d 253, 257 (Minn. 1980) (citing *Vill. of Euclid, Ohio v. Ambler Realty Co.,* 272 U.S. 365, 388–90 (1926)). For nearly 100 years, *Euclid* has served as the basis for municipal land use planning and zoning nationwide. 272 U.S. at 379–397. The Supreme Court has never entertained a challenge to overturn *Euclid*, and "the constitutionality of zoning ordinances is no longer seriously debated." *RDNT, LLC v. City of Bloomington*, 861 N.W.2d 71, 80 n.1 (Minn. 2015). Daley Farm's right to use their property is lawfully restrained by the WCZO.

22. Finally, Daley Farm contends its protected property right is the "right of property generally." However, the U.S. Supreme Court recognizes that the rules of law include those contained in a local zoning ordinance. *See State of Wash. ex rel. Seattle Title Tr. Co. v. Roberge*, 278 U.S. 116, 120 (1928) (recognizing the right to use property as one wishes is subject to zoning ordinances and of land use regulations adopted by the proper exercise of the police power). In short, it is well-settled that a property owner may not violate the law, but is entitled to use their property consistent with—not in contravention of—the law.

23. Daley Farm has failed to identify a protected property interest. As such, its constitutional claims must be dismissed, and the collective Defendants are entitled to judgment as a matter of law on all of the constitutional claims.

Due process requirement met.

24. Daley Farm's due process claims also fail as a matter of law. *See Sawh v. City of Lino* Lakes, 823 N.W.2d 627, 632 (Minn. 2012) (noting that in addition to a protected property interest, due process requires notice and a meaningful opportunity to be heard). Daley Farm had actual notice about the hearing to decide the variance, and Daley Farm has availed itself of the

opportunity to be heard before the Board twice. Furthermore, this is the second time Daley Farm availed itself of the opportunity for judicial review. Daley Farm has received all the process it is due.

25. To the extent Daley Farm is claiming a procedural due process violation due to bias and prejudgment, the claim still must be dismissed. As a starting point, under due process law, a Board of Adjustment is presumed to be impartial. *See In re Kahn*, 804 N.W.2d 132, 137 (Minn. App. 2011) ("Ultimately, there is a presumption of administrative regularity, and the party claiming otherwise has the burden of proving a decision was reached improperly."). Overcoming this burden requires more than bald allegations that the decisionmaker was biased. The United States Supreme Court has repeatedly recognized that what rises to the level of a due process violation for bias is only a rare and extreme case. *See Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 898-890 (2009). Indeed, the United States Supreme Court has only recognized four ways decisionmaker bias can rise to the level of a violation of the due process clause. The first is when the decisionmaker has a "direct, personal, substantial, pecuniary interest" in the outcome of the case. *Tumey v. Ohio*, 273 U.S. 510, 523 (1927). The second is when the decisionmaker is the victim of the conduct before them. *See Mayberry v. Pennsylvania*, 400 U.S. 455, 465 (1971) (noting the personal nature of the attacks against the judge jeopardized the judge's ability to remain fair when deciding contempt charges). The third is when the adjudicator both makes final decisions and investigates the dispute before him. *See In re Murchison*, 349 U.S. 133, 137 (1955) (holding that due process was violated when judge was permitted to act as grand jury and then try the same person as a result of his investigation). The fourth is when an individual with a personal stake in the case has a significant and

disproportionate influence in placing a particular judge on that case through campaign contributions. *See Caperton*, 556 U.S. 868 at 884.

26. None of these situations are present here. Plaintiffs claim certain members on the Board of Adjustment deprived them of a constitutionally fair hearing on their variance application because of a generalized claim of bias stemming from one member's tangential involvement with LSP. This claim falls well short of what Plaintiffs must demonstrate. Plaintiffs cannot point to any actual evidence of bias. Under the due process clause, mere prior involvement with an advocacy organization that has taken a position on a case is not sufficient "bias" to rise to the level of a procedural due process violation.

27. Therefore, Daley Farm's constitutional claims fail as a matter of law. There is no genuine dispute that Daley Farm received and is receiving all the process it is due. The Court grants the Defendants and Intervenor-Defendants summary judgment as a matter of law on all the constitutional claims.

THE BOARD REASONABLY DENIED THE VARIANCE APPLICATION.

28. In zoning appeals like this one, this Court acts as an appellate court and reviews the variance decision based on the record made before the local zoning body. *Swanson v. City of Bloomington*, 421 N.W.2d 307, 311 (Minn. 1988). A county board of adjustment has "the exclusive power to order the issuance of variances from the requirements of any official control." Minn. Stat. § 394.27, subd. 7. A local government unit's decision to grant or deny a zoning variance is a quasi-judicial decision. *VanLandschoot v. City of Mendota Heights*, 336 N.W.2d 503, 508 (Minn. 1983). "County zoning authorities have 'wide latitude' in making" quasi-judicial decisions. *Big Lake Ass'n v. Saint Louis Cnty. Plan. Comm'n*, 761 N.W.2d 487, 491

(Minn. 2009) (quoting *Schwardt v. Cnty. of Watonwan*, 656 N.W.2d 383, 386 (Minn. 2003)).

29. The Minnesota Supreme Court has repeatedly "stressed the limited role of the judiciary in reviewing zoning decisions." *Id.* "[E]xcept in rare cases where there is no rational basis for the decision, it is the duty of the judiciary to exercise restraint and accord appropriate deference to civil authorities in routine zoning matters." *Id.* Rooted in the balanced separation of powers, this "limited and deferential review . . . ensures that the judiciary does not encroach upon the constitutional power spheres of the other two branches of government." *Id.* "The subjective balancing of factors in granting or denying variances is a classical area where judicial deference is extended" to the zoning authority. *Sagstetter v. City of St. Paul*, 529 N.W.2d 488, 493 (Minn. App. 1995).

30. The Court's task then in reviewing a variance decision is to "determine whether the municipality's action in the particular case was reasonable." *VanLandschoot*, 336 N.W.2d at 508. Reasonableness "is measured by the standards set out in the local" zoning ordinance. *White Bear Docking & Storage, Inc. v. City of White Bear Lake*, 324 N.W.2d 174, 176 (Minn. 1982); *VanLandschoot*, 336 N.W.2d at 508 n.6. The Court assesses whether the decision was reasonable by applying a two-step analysis. *RDNT,* 861 N.W.2d at 75-76. First, the court determines whether the board's stated reasons were legally valid; second, the court determines whether the decision had a factual basis in the record. *Id.* Because the reviewing court must give deference to the zoning board's decision, the court may only set aside a decision in "those rare instances in which the . . . decision has no rational basis." *White Bear Docking & Storage, Inc. v. City of White Bear Lake,* 324 N.W.2d 174, 179 (Minn. 1982). If there is evidence supporting the board's decision, a court must not substitute its judgment for that of the zoning authority, even if it would

have reached a different conclusion had it been a member of the board. *VanLandschoot,* 336 N.W.2d at 509. The reviewing court also does not weigh the evidence, and instead reviews the record to determine whether there was legal evidence to support the zoning authority's decision. *RDNT,* 861 N.W.2d at 76. If there is conflicting evidence, this court defers to the zoning authority's judgment as to the weighing of that evidence. *See White Bear Docking*, 324 N.W.2d 176.

31. In this appeal, Plaintiffs have the burden of proof to demonstrate that the reasons stated by the Board for denying the variance are either without factual support in the record or are legally insufficient. *See Moore v. Comm'r of Morrison Cnty. Bd. of Adjustment*, 969 N.W.2d 86, 91 (Minn. App. 2021).

The Board based its decision on legally sufficient criteria.

32. WCZO § 5.6.2 states the "Board of Adjustment *shall not* grant a variance . . . unless it *shall* make findings" on eight individual criteria. *WCZO* § 5.6.2 (emphases added). "The word 'shall'" is "mandatory." *WCZO* § 4.1.E; *see also* Minn. Stat. § 645.44, subd. 16. One of the eight individual criteria upon which the Board must make findings is criterion six, which requires that the applicant's need for a variance may not be based upon "[e]conomic considerations alone." *See WCZO* § 5.6.2.6 (criterion six stating "[e]conomic considerations alone do not constitute practical difficulties"); *see also* Minn. Stat. § 394.27, subd. 7 ("Economic considerations alone do not constitute practical difficulties.").

33. At the Winona County Board of Adjustment's December 2, 2021, meeting, two votes were taken on two motions—one to approve and one to deny the variance request. Both motions failed because they were subject to a split vote, two-to-two. The split votes resulted in the

Board's denial of the variance request pursuant to Minn. Stat. § 15.99. *See* Minn. Stat. § 15.99, subd. 2(b) ("When a vote on a resolution or properly made motion to *approve* a request fails for any reason, the failure shall constitute a denial of the request provided that those voting against the motion state on the record the reasons why they oppose the request.") (emphasis added).

34. Two of the four voting Board members explained that they could not vote in favor of granting the variance because they found Daley Farm's practical difficulties in complying with the ordinance were purely economic. In other words, two of the four Board members made clear they could not find that the record showed criterion six of the Ordinance was met. Because two Board members could not find that all the Ordinance criteria were satisfied, they voted against granting the variance to Daley Farm. *See WCZO* § 5.6.2.1.6.

35. Daley Farm, however, argues that the Board's failure to find criterion six satisfied does not matter because criterion six defines an exception to an earlier criterion. Under Daley Farm's theory, because it is an exception to an earlier criterion, the Board does not need to find criterion six satisfied. But Daley Farm's interpretation conflicts with the clear and unambiguous language of the ordinance.

36. "The same rules that apply to the interpretation of a statute apply to the interpretation of an ordinance." *State v. Vasko*, 889 N.W.2d 551, 556 (Minn. 2017). When the words of an "ordinance in their application to an existing situation are clear and free from ambiguity, judicial construction is *inappropriate*." *Chanhassen Ests. Residents Ass'n v. City of Chanhassen*, 342 N.W.2d 335, 339 (Minn. 1984) (emphasis added). Indeed, it is prohibited. *Lenz v. Coon Creek Watershed Dist.*, 153 N.W.2d 209, 216 (Minn. 1967) (stating that judicial construction of an unambiguous ordinance is neither "necessary nor permitted"). The Court's only task is to apply

the plain language of the statute while declining "to explore its spirit or purpose." *Cocchiarella v. Driggs*, 884 N.W.2d 621, 624 (Minn. 2016). *Id*. The clear and unambiguous language of the ordinance requires rejection of Daley Farm's interpretation.

37. WCZO Section 5.6.2.1 contains explicit language limiting the Board's authority to grant a variance. *WCZO* § 5.6.2.1. WCZO Section 5.6.2.1 expressly bars the Board from granting a variance unless it finds all eight criteria are satisfied, including criterion six. *WCZO* §§ 5.6.2.1 (the "Board of Adjustment *shall not* grant a variance . . . unless it *shall* make findings" on eight individual criteria) (emphasis added), 5.6.2.1.6 (criterion six stating, "[e]conomic considerations alone do not constitute practical difficulties."). To read Zoning Ordinance Section 5.6.2.1 in the manner Daley Farm suggests would render the mandatory language limiting the Board's authority to grant a variance superfluous. The plain meaning of Zoning Ordinance Section 5.6.2.1 is that the Board must make findings on all eight mandatory criteria before a variance can issue.

38. In this case, because two of the four Board members did not find criterion six was met, the Board could not adopt any finding with respect to this required criterion. Therefore, under the plain language of the Ordinance, the Board had no authority to grant Daley Farm's variance request as it could not find all eight criteria were met. Because the Board followed the clear and unambiguous requirements of the Zoning Ordinance, it relied on legally sufficient criteria when it denied the variance request.

39. Additionally, the Board's vote on the overall motion to approve the variance shows the Board's decision was legally sufficient. The motion to approve the variance failed due to a tie vote, and Minn. Stat. § 15.99 makes clear that a tie constitutes a denial, provided that board

members state on the record the reasons they oppose the request. Thus, when the Board voted down the motion to approve the variance, and two members stated their reasons for the denial on the record, the vote resulted in a denial by operation of law.

The record evidence supports the Board's decision.

40. The next step of the Court's review is to determine if the Board's reasons for denying the variance "had a factual basis in the record." *RDNT,* 861 N.W.2d at 76. The burden remains with Daley Farm, who must show that the Board reached a conclusion "without *any* evidence to support it." *Dietz v. Dodge Cnty.*, 487 N.W.2d at 239 (Minn. 1992) (emphasis added). Even if there was conflicting evidence, courts "ordinarily defer to [the municipality's] judgment[,]"as the court's function is not to weigh the evidence, but to determine whether there is any evidence that supports the local government's decision. *RDNT*, 861 N.W.2d at 76. Accordingly, courts will "defer to a municipality's decision when the factual basis" relied upon "has even the *slightest* validity." *Roselawn Cemetery v. City of Roseville*, 689 N.W.2d 254, 259 (Minn. App. 2004) (emphasis added). Moreover, a court must not substitute its judgment for that of the local government, even if it would have reached a different conclusion had it been a member of the board. *VanLandschoot*, 336 N.W.2d at 509.

41. Based on the administrative record evidence, the Court concludes that the Board could rationally conclude economic considerations alone prompted Daley Farm's variance request. *See Neighbors for E. Bank Livability v. Minneapolis*, 915 N.W.2d at 517 n.23; *VanLandschoot*, 336 N.W.2d at 509–10 (Minn. 1983).

42. In its variance application, Daley Farm explained it was proposing to triple the size of its current operation "because a new generation of the family desires to return to Winona County

and work on the family farm." This expansion, Daley Farm explained, "is necessary in order to support the additional people who will be making their living by farming in Winona County." *Id*. This was an oft-repeated justification by Daley Farm, which is proposing to triple the size of its current operation "because a new generation of the family . . . desires to return to rural Winona County and work on the family farm. The expansion is necessary to make the farm economically sustainable into the future and provide economic support for the additional family members". Daley Farm did not deny and in fact fully acknowledged its *economic motivation* for proposing this project. For instance, in discussing its economic motivation, Daley Farm explained its goal was to ensure the farm is "sustainable into the future, into the next generation." Stated differently, "*for us to bring in the next generation* and yet retire at some point, *we need to* do an expansion so we can *leave our children with* something and still have *a thriving business*." Given that Daley Farm admitted several times that its desire to expand was motivated by economic considerations, there is no reasonable dispute that the Board could rationally conclude Daley Farm's variance request was motivated by economic considerations alone.

43. Daley Farm can expand its dairy farming operation absent a variance. Daley Farm admitted that it could expand "its operation by constructing multiple smaller facilities on different sites in the area," but that Daley Farm does not want to do this because "such expansions would cause significant duplication of equipment, dramatically increase the cost of the project, [and] decrease the efficiency of the operation." In short, it would be more expensive. Thus, Daley Farm rejected the option to expand at multiple smaller sites based solely on its *economic motivation*.

44. Moreover, while Daley Farm argued "taking advantage of the existing facilities" was

distinct from its economic motivation, caselaw in Minnesota establishes otherwise. In *Kismet Investors, Inc. v. County of Benton*, the plaintiff argued its variance request should be granted "based on financial investment[,]" specifically "substantial and costly improvements[,]" "combined with practical difficulties of complying with the zoning ordinance." 617 N.W.2d 85, 91-92 (Minn. App. 2000). The court, however, found the plaintiff had other reasonable uses for its property, and the "landowner's significant investment in the property," neither "demonstrate[d] the absence of other reasonable uses[,]" nor permitted plaintiff to claim "a unique plight based on its investment." *Id.*

45. Thus, the record evidence suggests economic considerations alone constituted Daley Farm's claimed practical difficulties. Daley Farm admitted its variance request was driven by its economic motivation, and it rejected reasonable alternatives, which would not require a variance, solely for economic reasons. In quasi-judicial appeals such as this, the Court's "function is not to weigh the evidence, but to review the record" and ordinarily to defer to a local government's judgment on conflicting evidence. *RDNT*, 861 N.W.2d at 76 (emphasis added). "If there is evidence in the record supporting the decision, a court may not substitute its judgment for that of the zoning authority, even if it would have reached a different conclusion." *Moore*, 969 N.W.2d at 91. There is clear evidence in the record supporting Board members' conclusions that the variance was motivated by economic considerations alone, therefore this Court must uphold the Board's decision.

46. The Court finds that the Board's decision to deny Daley Farm's variance request was reasonable, and based on legally sufficient criteria, specifically the mandatory requirements contained in WCZO Section 5.6.2.1, which limit the Board's authority to grant a variance.

Additionally, evidence in the record supports the conclusion Daley Farm's variance request was based on economic considerations alone. Therefore, the Board's decision was reasonable and in light of the broad discretion afforded the quasi-judicial bodies of coordinate government branches, this Court affirms the Board's decision to deny Daley Farm's variance request.

DALEY FARMS BIAS CLAIMS.

47. If a municipality's decision is legally and factually supported, bias allegations do not provide an independent basis to overturn the quasi-judicial decision. *Lenz*, 153 N.W.2d at 219. The few (unpublished) Minnesota cases discussing whether, on appeal under Minn. Stat. § 394.27, a local government's zoning decision may be overturned for bias make clear that a decision will not be overturned unless one of the decisionmakers *actively advocates* against a project. *See Cont'l Prop. Grp., Inc. v. City of Minneapolis*, 2011 WL 1642510, at *6; *Stalland v. City of Scandia*, No. A20-1557, 2021 WL 3611371, at *8 (Minn. App. Aug. 16, 2021). Courts will not overturn a local government's decision for less. Even the fact that a decisionmaker, or majority of individual decisionmakers, may have a personal interest in an outcome does not make their reasonable decision unreasonable unless the officials "acted pursuant to this interest." *Lenz*, 153 N.W.2d at 219. Similarly, mere membership in an organization that would be affected by a decision, "is not a sufficiently direct interest" to justify overturning a local government's decision. *Rowell v. Bd. of Adjustment of the City of Moorhead*, 446 N.W.2d 917, 921 (Minn. App. 1989), *abrogated on other grounds by Krummenacher*, 783 N.W.2d 721.

48. Daley Farm argues that the two Board members who voted to deny the variance were biased against them. Daley Farm, however, has not presented the Court with any evidence—either in or outside the administrative record—to support this allegation. The record contains no

evidence that members of the Board of Adjustment engaged in active advocacy against the Daley Farm expansion or acted pursuant to a pecuniary interest in the outcome of the vote. Accordingly, the Board of Adjustment's decision must stand.

49. Daley Farm's bias argument principally relies on evidence which was before the Court on the first appeal relating to the County Commissioners who appointed the Board members. Because the Court found bias in the first appeal, Daley Farm argues, the Court can rightly conclude County Commissioners engaged in a conspiracy to appoint biased individuals to the Board for the second vote. However, this Court already found remand to a newly constituted board was an appropriate remedy. The mere fact that certain County Commissioners appointed members to both the first and second boards did not make this remedy inappropriate. In any case, despite extensive discovery in this case, Daley Farm has offered no evidence of a plot by the County Commissioners to appoint a Board biased against Daley Farm. Notably, Dr. Heublein was appointed to the Board and Ms. Fitzgerald applied to join the Board before the first decision was remanded—in other words, before anyone knew there would be a second vote on the variance application. The County Commissioners also reappointed Phillip Schwantz to the Board, knowing he had voted in favor of Plaintiffs' variance application previously. This act weighs against a conspiracy to oppose Daley Farm's variance. Nor did Daley Farm cite any evidence that the alleged conspiracy actually influenced any Board member's vote. Daley Farms has not identified any outstanding factual questions which would merit a denial of the summary judgment motion. There simply is no evidence of bias, that would justify overturning the Board's legally and factually supported decision to deny Daley Farm's variance request.

50. For the foregoing reasons the Court grants Defendant's and Defendant-Intervenors'

Motions for Summary Judgment.

The Court, therefore, makes the following Order:

ORDER

1. The Motions for Summary Judgment by Defendant Winona County, Intervenor/Defendant Land Stewardship Project and Intervenor/Defendant Defenders of Drinking Water are granted. All claims by Plaintiffs are dismissed.

2. Plaintiffs' Motion for Summary Judgment is denied.

LET JUDGMENT BE ENTERED ACCORDINGLY.

BY THE COURT

Bayley, Douglas
Nov 21 2023 3:38 PM

The Honorable Douglas C. Bayley
Judge of District Court

I certify the above order constitutes the Judgment of the Court.

Court Administrator

By:  Nov 21 2023 4:10 PM