No. A23-1953

State of Minnesota
In Court of Appeals

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

Appellants,

vs.

The County of Winona, Land Stewardship Project, and Defenders of Drinking Water,

Respondents.

BRIEF OF RESPONDENT-INTERVENORS LAND STEWARDSHIP PROJECT AND DEFENDERS OF DRINKING WATER

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LEGAL ISSUES

I. Did the district court correctly remand Daley Farm's variance application for reconsideration by the newly comprised Winona County Board of Adjustment after the court found prior Board members were biased but did not decide on the merits of the application?

Status of the Issue Below: Daley Farm raised this issue in its first motion for summary judgment. (Index #59 at 52–54.) The district court held that remand was the proper remedy for its finding of bias and prejudice. (Add.14, Add.18–20.)[1] Daley Farm raised the issue in a petition for discretionary review that was previously denied by this Court. (Index #99.) The issue is now before the Court on Daley Farm's appeal from the final judgment entered by the district court. (Index #204.)

Most Apposite Authorities: *Continental Property Group, Inc. v. City of Minneapolis*, No. A10-1072, 2011 WL 1642510 (Minn. App. May 3, 2011); *Krummenacher v. City of Minnetonka*, 783 N.W.2d 721 (Minn. 2010); *In re Stadsvold*, 754 N.W.2d 323 (Minn. 2008).

II. Did the district court correctly hold that the 60-day deadline in Minn. Stat. § 15.99 did not apply on remand?

Status of the Issue Below: Daley Farm raised this issue in its second motion for summary judgment. (Index #162 at 45–49.) The district court held that the deadline in Minn. Stat. § 15.99, subd. 2(a), did not apply on remand and, in the alternative, Daley Farm was equitably estopped from arguing for its application. (Add.38–41.) The issue is now before the Court on Daley Farm's appeal from the final judgment entered by the district court. (Index #204.)

Most Apposite Authorities: Minn. Stat. § 15.99; *Ridge Creek I, Inc. v. City of Shakopee*, No. A09-178, 2010 WL 154632 (Minn. App. Jan. 19, 2010).

III. Did the district court correctly conclude that the Board of Adjustment's denial of the variance application was reasonable?

Status of the Issue Below: Daley Farm raised this issue in its second motion for summary judgment. (Index #162 at 58–62.) The district court held that the denial of the variance application on remand was reasonable. (Add.47–55.) The issue is now before the Court

[1] Appellants' Addendum is cited herein as "Add." Respondent-Intervenors' Addendum is cited as "R.I.Add."

on Daley Farm's appeal from the final judgment entered by the district court. (Index #204.)

Most Apposite Authorities: Winona County Zoning Ordinance § 5.6.2; *RDNT, LLC v. City of Bloomington*, 861 N.W.2d 71 (Minn. 2015).

IV. Did the district court correctly find that the Board of Adjustment's denial of the variance application on remand was not arbitrary and capricious due to bias or prejudice?

Status of the Issue Below: Daley Farm raised this issue in its second motion for summary judgment. (Index #162 at 49–57.) The district court held that the evidence did not support Daley Farm's claim that there was improper bias by Board members on remand. (Add.55–56.) The issue is now before the Court on Daley Farm's appeal from the final judgment entered by the district court. (Index #204.)

Most Apposite Authorities: *Stalland v. City of Scandia*, No. A20-1557, 2021 WL 3611371 (Minn. App. Aug. 16, 2021); *In re Rollingstone Community School*, No. A18-0799, 2019 WL 1591772 (Minn. App. Apr. 15, 2019).

STATEMENT OF THE CASE

This case is about Winona County's ability to enforce its Zoning Ordinance that limits feedlots to 1,500 animal units to protect vulnerable drinking water supplies from manure and fertilizer contamination. *See* Winona County, Minn., Zoning Ordinance ("WCZO") § 8.4.2 (Dec. 14, 2010).[2] Appellants Daley Farm of Lewiston, L.L.P., Ben Daley, Michael Daley, and Stephen Daley (together, "Daley Farm") operate the largest feedlot in Winona County, which is allowed to have 2,160.2 animal units because the operation was grandfathered-in at that size when the animal unit Ordinance went into

[2] Available at https://www.co.winona.mn.us/DocumentCenter/View/2017/Ordinance-41-County-Zoning-Ordinance.

effect. (R. 2815, 2819.)[3] Yet, in 2018, Daley Farm sought a variance from the animal unit ordinance to expand its feedlot to 5,968 animal units—quadruple the maximum number of animals units permitted by local law. (Add.58–63; R. 2814.)

Daley Farm's proposed expansion would greatly increase the amount of manure generated on its feedlot. The expanded feedlot would produce 46.2 million gallons of liquid manure each year. (R.I.Add.2.) This manure would be applied to local agricultural fields. (*Id.*) This is a serious concern to the community because manure contains nitrate, a mobile pollutant that can migrate to the groundwater underlying agricultural fields. Nitrate pollution is already gravely impacting drinking water supplies in the region and poses a severe health risk to humans, especially infants and the elderly. (R.I.Add.3; R. 156.)

On February 21, 2019, the Winona County Board of Adjustment (the "Board") denied Daley Farm's variance application. (R. 2772–83.) Daley Farm appealed the denial to district court. (Index #3.) On December 21, 2020, the Honorable Kevin F. Mark granted Daley Farm's motion for summary judgment, reversed the denial, and remanded to the Board for reconsideration. (Add.13–14.) The court found that three Board members who voted against the variance application had exhibited bias or prejudice. (Add.16–17.) The court determined remand was the appropriate remedy because those three Board members were no longer on the Board and the newly comprised Board would provide

[3] The Administrative Record is cited herein as "R." It appears on the trial court docket at Index #148–156.

Daley Farm a fair hearing. (Add.18–20.) The court emphasized that remand "would ensure 'the judiciary does not encroach upon the constitutional power spheres of the other two branches of government,' or exceed 'the limited role of the judiciary in reviewing zoning decisions.'" (Add.18 (quoting *Big Lake Ass'n v. Saint Louis Cty. Planning Comm'n*, 761 N.W.2d 487, 491 (Minn. 2009)).)

At a hearing on December 2, 2021, the newly comprised Board reconsidered the remanded variance application. (R.I.Add.16–24.) The four voting Board members split two-to-two on competing motions to approve and deny the variance request. (*Id.*) Specifically, the Board split on whether the variance was requested for reasons other than "economic considerations," one of the eight requirements for a variance. (*Id.*) The deadlock rendered the variance denied. (*Id.*)

Daley Farm again appealed to district court. (Index #108.) Land Stewardship Project, a Minnesota non-profit aimed at promoting sustainable agriculture and developing healthy communities, and Defenders of Drinking Water, a local community group concerned about water quality, intervened.[4] (Index #112, #117.) On November 21, 2023, the Honorable Douglas C. Bayley granted summary judgment in favor of Winona County and Intervenors Land Stewardship Project and Defenders of Drinking Water. (Add.57.) The court held: (1) Minn. Stat. § 15.99's 60-day deadline did not apply on remand because its application is inconsistent with the unambiguous, plain language of

[4] Respondent-Intervenors have jointly filed this brief to avoid voluminous and duplicative filings.

the statute, and in the alternative, Daley Farm was equitably estopped from arguing for its application; (2) Daley Farm's due process claim failed because it had no protected interest and received all the process that it was due; (3) the Board's denial was legally supported because the Ordinance requires an affirmative finding on each of the eight criteria for a variance, and it did not make an affirmative finding on all eight criteria; (4) the Board's denial was factually supported because the Administrative Record included evidence that Daley Farm's expansion was solely motivated by economic considerations; and (5) Daley Farm demonstrated no bias or prejudice on behalf of the newly comprised Board. (Add.38–56.)

Daley Farm now appeals the district court's decision to remand after the first Board vote and all but its due process claims on the second vote. Daley Farm devotes considerable portions of its brief to rehashing events that lead to the district court's decision on the first variance denial. But those events are irrelevant now because they were remedied by the district court's first order, which remanded the matter back to the Board for a new vote. The case law and evidence make plain that the district court's decision to remand was correct, as was the district court's rejection of Daley Farm's claims challenging the second vote.

This case is emblematic of agribusiness industry attempts to override the will of the people and local control over the land, thereby putting communities and precious natural resources like drinking water at risk of irreparable injury. As courts have long recognized, it's the right of Minnesotans to avail themselves of democratic processes to chart the course for the health and safety of their communities; private interests cannot be

permitted to use the judicial system to suppress this fundamental principle. Respondent-Intervenors Land Stewardship Project and Defenders of Drinking Water respectfully request the Court affirm the district court and the Board's denial of Daley Farm's variance application.

STATEMENT OF FACTS

I. Daley Farm's Plan to Expand its Feedlot to Four Times the Maximum Size Allowed by Local Law Requires a Variance

Winona County's guiding community values have long been to support local agriculture while protecting the community's sensitive natural resources. *See Winona County Comprehensive Plan Update*, Winona Cty. Bd. of Comm'rs, 4, 14, 31 (2014).[5] This is because the region has both an abundant agricultural economy and a unique vulnerability to pollution. *See id.* at 61, 64. The County is in an area of the state with karst geology, comprised of porous and fractured limestone bedrock, meaning anything applied to the topsoil—like fertilizer or manure used by farms—moves easily into groundwater. *Id.* at 49, 53, 61. In the County, the community's drinking water supply is sourced from groundwater. *Id.* at 34, 61–62. Thus, community leaders made it a priority to balance support for the local agricultural economy with protection of the community's drinking water from agricultural pollution. *See id.* at 30–33.

Chapter 8 of the Winona County Zoning Ordinance covers feedlots and states that its purpose is to "maintain a healthy agricultural community within the County while

[5] Available at https://www.co.winona.mn.us/DocumentCenter/View/1958/2014-Comprehensive-Plan-for-Winona-County.

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, the Ordinance includes an "animal unit cap" that limits the size of feedlots, stating: "No permit shall be issued for a feedlot having in excess of 1,500 animal units per feedlot site." *Id.* § 8.4.2.[6] Any feedlot with 1,500 or more animal units at the time the Ordinance was adopted was deemed "non-conforming," and while those feedlots were allowed to continue to operate, they are prohibited from adding more animals. *Id.* §§ 3.2.3, 8.2.1.[7]

Daley Farm operates the largest feedlot in Winona County. (R. 1452.) The feedlot is currently allowed to have 2,160.2 animal units. (R. 2815.) This is above the 1,500-animal-unit limit because Daley Farm was "grandfathered-in" at the time the Ordinance passed. (R. 2819.) For context, Daley Farm is located at the edge of two sub-watersheds that have 44 total feedlots with a combined total of 6,053 animal units. (R. 1452.) Thus, Daley Farm's operation contains over one-third of the total animals in the area. Yet Daley Farm seeks to expand its operation further to 5,968 animal units—more than double its current size. (R. 2814.)

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[6] Animal units (or "AUs") is a unit of measurement used to standardize different livestock species by the amount of manure produced. *See* WCZO § 4.2. For example, one mature dairy cow that weighs over 1,000 pounds is 1.4 animal units. *Id.*

[7] The County has cross-appealed the district court's decision that a variance from the non-conforming use provision, WCZO § 3.2.3, is not required for the proposed expansion. (*See* Add.21–25.) Respondent-Intervenors agree with the County that a variance from § 3.2.3 is required and that the question of which variances were required was not properly before the district court.

Daley Farm has repeatedly made clear that the motivations for its expansion are economic. For instance, in its Environmental Assessment Worksheet ("EAW") for the project, Daley Farm stated its purpose is to "enable successive generations of the family to come into the family dairy business without having to establish separate dairy enterprises." (R. 40.) Daley Farm's preference is to operate one massive feedlot rather than smaller separate operations that comply with the Ordinance because "[b]y working together under one corporate ownership and one facility, the family can take advantage of economy of scale" which "will enable the pooling of financial, labor, and management resources to keep the dairy business profitable in the current competitive dairy market." (*Id.*)

Because Daley Farm's expansion plans conflict with the Ordinance, Daley Farm requires a variance to further exceed the animal unit cap. *See* WCZO §§ 8.2.1, 8.4.2. Under the Ordinance, variances are only to be granted in exceptional circumstances. *Id.* § 4.2. Variance applications are considered by the Board of Adjustment. *Id.* § 5.3. The Board of Adjustment is separate from the Board of County Commissioners (the "Commissioners"), which determines who is appointed to the Board of Adjustment. *Id.* To become a member of the Board of Adjustment, an individual must apply and be selected by a majority vote of the Commissioners. *Id.*

Variances are governed by Ordinance § 5.6.2, which prohibits variances unless the Board makes affirmative findings that the applicant satisfies eight 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 this 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.

6. Economic considerations alone do not constitute practical difficulties.

7. The variance cannot 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 shall not have the effect of allowing any use that is not allowed in the zoning district, . . . or permit standards lower than those required by State Law.

To proceed with its expansion, Daley Farm must substantiate each of these eight criteria to the Board. Failure to do so results in denial.

II. Daley Farm's Expansion Plan is Deeply Controversial Among Winona County Residents Due to Risks to Drinking Water

Daley Farm's expansion plan is highly contentious in the County, with many residents for and against the proposal. (*See* R.I.Add.1–15; R. 2212–15 (169 written comments received on variance application), 2447–49 (approximately 60 members of the public signed up to speak at first variance hearing).) Both Respondent-Intervenors Defenders of Drinking Water and Land Stewardship Project oppose the expansion.

Throughout this process, Daley Farm's focus—including much of its brief in this appeal—has been on maligning Land Stewardship Project and its members for their constitutionally protected speech and advocacy. Daley Farm has gone so far as to separately sue Land Stewardship Project and its members in apparent retaliation for the original variance denial. *See Daley Farm of Lewiston, L.L.P. v. Kovecsi*, No. 22-cv-2957 (D. Minn. Feb. 7, 2023).[8] Daley Farm's attacks are squarely directed at Land Stewardship Project's and its members' bedrock First Amendment rights to petition the government. *See E. R. R. Presidents Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127, 145 (1961). Daley Farm repeatedly insinuates that Land Stewardship Project did something wrong by petitioning the Commissioners to appoint those favorable to its political positions on the Board of Adjustment. (*E.g.*, Appellants' Br. at 18–29, 32–33.) But advocating for associates to be appointed to governmental positions is a "paradigmatic First Amendment right" and a "traditional form of political activity." *Tarpley v. Keistler*, 188 F.3d 788, 796 (7th Cir. 1999). As the Seventh Circuit has explained, "[p]olitical advocacy is, after all, the reason for political association"—groups like Land Stewardship Project exist so that its members can "seek governmental action consistent with their ideology." *Id.* at 796.

At the heart of Respondent-Intervenors' and community members' concerns about the proposed expansion are the impacts to drinking water. (*See* R. 2063–2330 (public

[8] Daley Farm voluntarily dismissed its suit without prejudice after the defendants moved to dismiss.

comments on variance application), 192–1307 (public comments on EAW).) The expansion would greatly increase the amount of manure generated at Daley Farm's feedlot: the expanded feedlot would produce 46.2 million gallons of liquid manure each year. (R.I.Add.2.) That is roughly twice that generated by the entire City of Rochester, Minnesota or four times that produced by the entire human population of Winona County. (*Id.*)

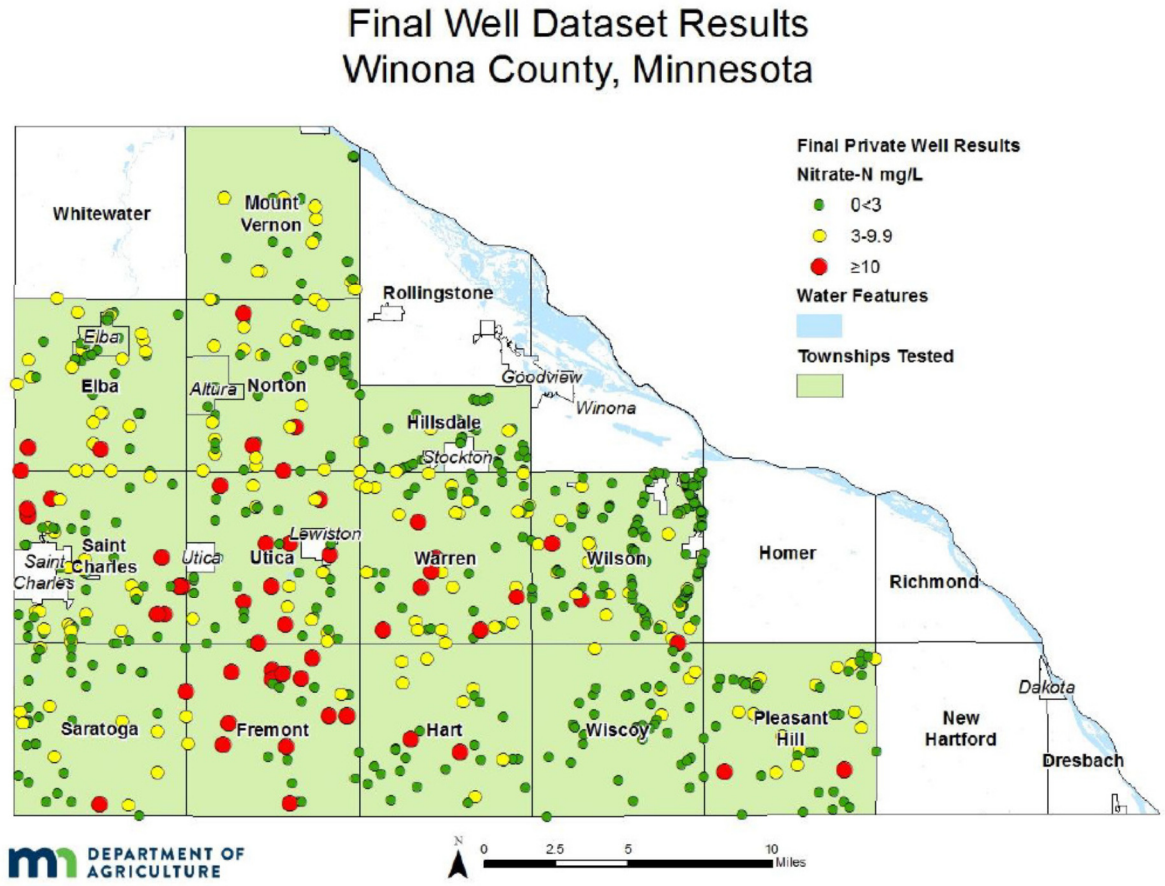
Manure contains nitrate, a dangerous water pollutant. (R.I.Add.3.) When manure is applied to farm fields in the karst area, the karst geology allows for easy infiltration of the nitrate into groundwater aquifers. (R. 169.) Many of the fields Daley Farm intends to spread liquid manure on also have, or are near, sinkholes, which can provide direct access for nitrate to enter groundwater. (*Id.*) Consuming nitrate-contaminated drinking water removes oxygen from the blood and can lead to serious illness or death in infants and other vulnerable populations. (R.I.Add.3; R. 156, 1036, 1737.) Long-term exposure to elevated levels of nitrate in drinking water has also been linked to certain cancers, thyroid disease, and birth defects. (Index #119 at 6.) It is for these reasons that the U.S. Environmental Protection Agency ("EPA") established a maximum contaminant level of 10 milligrams/liter for nitrate in drinking water. (R. 1736.)

The groundwater in the area around Daley Farm is already contaminated by nitrates. Daley Farm's facility is located between the cities of Lewiston and Utica, both of which struggle with high concentrations of nitrate in their water. (R. 1439.) The primary source of contamination is the application of commercial fertilizers and manure to croplands. (R. 1035.) Due to nitrate contamination in its water, Lewiston was forced to

dig additional wells at a cost of approximately one million dollars per well. (R.I.Add.3.) The public water supply for Utica is similarly contaminated with nitrate, and like Lewiston, Utica has also had to drill another municipal well. (*Id.*) However, even Utica's new well has reached nitrate levels of 8.5 mg/L, which is dangerously close to maximum contaminant level of 10 mg/L. (*Id.*)

Despite this serious existing drinking water contamination, under its expansion, Daley Farm intends to apply liquid manure to cropland within the water supply area for Utica's drinking water well. (R. 1736.) The County's water analysis unsurprisingly found that applying additional manure in this area has the strong potential to contribute additional nitrate to Utica's water source and speed up the need for a replacement water supply. (*Id.*)

Private wells used for drinking water in the area fare no better. In Utica Township, where Daley Farm is located, 20% of the private wells tested had nitrate rates above the 10mg/L maximum contaminant level. (R. 1131.) Just south of Daley Farm's feedlot in Fremont Township, 42.9% of private wells have nitrates above the maximum contaminant level. (*Id.*) The map on the following page shows the private well testing results for Winona County; wells with nitrate levels above the human health limit are represented by red dots.



(R.I.Add.4.)

Given the current state of Winona County's drinking water supply, residents' concerns about Daley Farm spreading an additional 46 million gallons of nitrate-laden manure on karst land are understandable.

Daley Farm argues that the environmental review for the project proves it will not harm Winona County's natural resources. (Appellants' Br. at 7–8; *see* Br. of *Amici Curiae* Minn. Milk Producers Assoc., *et al.*, at 16–19.) But that is not the correct takeaway from the environmental review performed for the project. The Minnesota Pollution Control Agency's ("MPCA") decision that the proposed expansion does not have the potential for

significant environmental effects does not mean the feedlot will be environmentally benign. Instead, this conclusion merely means that MPCA does not believe there is a basis for further environmental study of the proposal through an Environmental Impact Statement ("EIS"), a detailed study that is rarely required by Minnesota agencies. In 2020, for example, Minnesota agencies evaluated 63 projects and found *zero* had the potential for significant environmental effects such that further environmental study was required. Kevin Swanberg, *No Alternative: The Failure of the Minnesota Environmental Policy Act to Consider Project Alternatives and Proposed Remedies*, 49 Mitchell Hamline L. Rev. 126, 135 (Feb. 2023) (only two EISs completed in 2020 were in mandatory categories that do not require a finding of potential for significant impact). In addition, there are other components of Minnesota's environmental review process that undermine Daley Farm and its *amici*'s assertions that the expansion will not be environmentally harmful. For example, although the agency prepares the EAW for a proposed project, the underlying data is generated and submitted by the project proponent. *See id.* at 133 (citing Minn. R. 4410.1400). Thus, MPCA's environmental review process does not, and cannot, guarantee that a project will be without risk.

To put the scope of this problem in perspective, EPA recently acknowledged that "there is an evident need for further actions" by Minnesota agencies "to safeguard public health" from nitrate contamination of drinking water. Letter from EPA Regional Admin. Debra Shore to Dr. Brooke Cunninham, Minn. Dept. of Health Comm'r, *et al.* (Nov. 3,

2023).[9] In November 2023, in response to a petition filed by various groups under the Safe Drinking Water Act, EPA issued a letter to MPCA, the Minnesota Department of Health, and the Minnesota Department of Agriculture requesting that the agencies take immediate action to address nitrate pollution in the region in which Winona County is located. Based on "current available drinking water data" and "the urgency inherent in any situation involving drinking water contamination with known potential health risks," EPA asked the State to "develop a coordinated and comprehensive work plan to identify, contact, conduct drinking water testing and offer alternate water to all impacted persons in the Karst Region, as soon as possible[.]" *Id.* The letter acknowledges that "land application of manure" is a key contributor to nitrate pollution that the State must scrutinize more closely. *Id.* In January 2024, the State issued its workplan in response to EPA's letter, which includes an ongoing review of feedlot rules and permits.[10]

[9] Available at https://www.epa.gov/system/files/documents/2023-11/ao-rmod-reponse-letter_20230510-508.pdf. The letter is the proper subject of judicial notice, and Respondent-Intervenors request the Court do so. *See Bierbach v. Digger's Polaris*, 965 N.W.2d 281, 293 n.9 (Minn. 2021) (Courts "may take judicial notice of government websites and commissioned studies even though not part of the record below.").

[10] Minn. Dept. of Ag., *et al.*, Work Plan: Addressing Nitrate in Southeast Minnesota (Jan. 12, 2024), https://www.health.state.mn.us/communities/environment/water/docs/wells/waterquality/epaworkplan.pdf. Respondent-Intervenors request the Court take judicial notice of this document. *See Bierbach*, 965 N.W.2d at 293 n.9.

III. The Board Denies Daley Farm's Variance Application, But the District Court Remands for a New Decision

In 2018, Daley Farm filed with Winona County an application for a variance from the animal unit cap. (Add.58–63.) The Winona County Board of Adjustment considered the application during a public hearing on February 21, 2019. (R. 2772–83.) The Board has five members. At the time of the first vote, the members were Cherie Hales, Wendy Larson, Rachel Stoll, Larry Greden, and Phillip Schwantz. (R. 2772.) At that hearing, the Board voted to deny the variance application by a vote of three to two. (R. 2782.)

Daley Farm appealed the denial to district court. (Index #3.) At a hearing on December 21, 2020, the district court granted summary judgment in favor of Daley Farm. (Add.13–14.) The court reasoned that three Board members—Hales, Larson, and Stoll—took a position in opposition to the application and exhibited a closed mind prior to the hearing. (Add.15–17.) The court also found members Stoll and Hales had adopted an advocacy role by going beyond mere passive membership in Land Stewardship Project to actively participating in advocacy to oppose Daley Farm's expansion. (*Id.*) The court concluded this prejudgment rendered the decision arbitrary and capricious. (*Id.*)

The court determined that the appropriate remedy was to remand to the Board for a new vote. (Add.18–20.) The district court did not decide whether the record supported the application, explaining that the Board members "might have good reasons aside from the bias" to deny the application, but the decision could not "be allowed to stand because it was tainted." (Add.14.) Remand would remedy the bias because the, the district court reasoned, three Board members at issue were no longer on the Board. (Add.19.) The

court was "satisfied that the [new] composition of the Board" would provide Daley Farm "the fair hearing they are entitled." (*Id.*) The court also reasoned that the Board "has the exclusive power to order the issuance of variances from the requirements of any official control" and "when a decision is made by a biased decisionmaker . . . the party challenging the decision is not automatically entitled to their desired result." (Add.20.) Daley Farm moved for reconsideration and then petitioned this Court for discretionary review, but its petition was denied. (Index #99.)

IV. The New Board on Remand Again Denies Daley Farm's Request to Violate the Prohibition on Large Feedlots, and the District Court Affirms

Daley Farm's original variance application went back before the newly comprised Board for reconsideration on remand. Only Schwantz, who voted in favor of Daley Farm the first time around, remained on the Board. (R.I.Add.16.) The other four Board members were new: Jordan Potter, Elizabeth Heublein, Kelsey Fitzgerald, and Robert Redig. (*Id.*) The decision on remand was to be made on the original record. (R. 2876–77.) Nonetheless, Daley Farm alone was allowed to supplement the record with a memorandum from its counsel and an updated presentation for the Board at the remand hearing. (R. 2879–2901, 2934–54.) Members of the public were not permitted to provide additional written comments, nor were they allowed to speak at the remand hearing. (R. 2876.)

The remand hearing took place on December 2, 2021. (R.I.Add.16.) Board member Redig was absent; therefore, only Schwantz, Potter, Heublein, and Fitzgerald participated in the decision. (*Id.*) Each of these members stated that they could put aside

any personal opinions and make their decision based solely on the record before them. (*Id.*; R. 2980–83.)

At the hearing, the Board systematically walked through the eight criteria that must be met to grant a variance. (R.I.Add.18–22.) Schwantz and Potter both showed a clear intent to grant the variance, and they ultimately voted in favor of the application. (*Id.*; *e.g.*, R. 3041:9–21, 3046:11–47:1, 3048:9–49:3.) Heublein and Fitzgerald took a more thoughtful approach. Both asked questions during the hearing, and both voted in favor of the variance on some criteria and against it on others. (*E.g.*, R.I.Add.27–28; R. 3025–31, 3045:19–46:9.) Heublein found Daley Farm had not met its burden on criterion 1, 3, 4, 6, and 7. (R.I.Add.18–21.) Fitzgerald voted in favor of Daley Farm on all criteria except criterion 6. (*Id.*)

The Board was split as to criterion 6 with two votes finding the criterion was met, and two votes finding it was not. (R.I.Add.21.) The Board's split on criterion 6 caused the variance application to fail. (R.I.Add.22.) Criterion 6 turns on whether the applicant has shown their difficulty in complying with the Ordinance is more than merely economic. Heublein moved to adopt the staff's finding that Daley Farm had not satisfied criterion 6. (R.I.Add.20.) Heublein and Fitzgerald voted in favor of the motion, and Schwantz and Potter voted against the motion. (*Id.*) Schwantz then made a motion to find Daley Farm had satisfied criterion 6, which again was a tie vote with Schwantz and Potter in favor, and Heublein and Fitzgerald opposed. (R.I.Add.20–21.) There were then competing motions to deny or grant the variance, which again resulted in the same deadlock tie. (R.I.Add.21–22.) Because the vote to approve the variance failed, the Board's attorney

noted that Minn. Stat. § 15.99, subd. 2(b), applied, and the Board's failure to approve the variance constituted a denial of the request. (R.I.Add.22.)

Dissatisfied with the Board's second denial of its variance application, Daley Farm again appealed to district court. (Index #108.) Daley Farm essentially revived its claims about the first denial, this time shifting its bias allegations to the new Board members Heublein and Fitzgerald. (*Id.*) On November 21, 2023, the district court granted summary judgment in favor of the County and Intervenors on all claims. (Add.26–57.) Daley Farm has appealed that decision as to all but the due process claims and has also appealed the district court's decision to remand the matter back to the Board after the first appeal.

ARGUMENT

I. The District Court Correctly Remanded Daley Farm's Variance Application for Reconsideration After it Found Bias but did not Decide on the Merits of the Application

Daley Farm challenges the district court's decision to remand for a new hearing after it found bias by Board members who voted on the variance application in 2019. Remand was the correct remedy because the membership of the Board had changed, ensuring a new vote would be made by new decisionmakers. As the district court noted, remand is the appropriate remedy because it "would ensure 'the judiciary does not encroach upon the constitutional power spheres of the other two branches of government,' or exceed 'the limited role of the judiciary in reviewing zoning decisions.'" (Add.18 (quoting *Big Lake Ass'n*, 761 N.W.2d at 491).) This Court should affirm the district court's decision to remand because it is consistent with case law imposing remand

when a court finds a municipality failed to apply the correct standard but does not opine on the merits of a zoning application.

This Court reviews de novo whether a particular remedy is available. *Pirino v. City of St. Anthony*, No. C2-93-534, 1993 WL 491250, at *1 (Minn. App. Nov. 30, 1993). In general, "when a governmental body denies a permit *with such insufficient evidence* that the decision is arbitrary and capricious, the court should order issuance of the permit." *In re Livingood*, 594 N.W.2d 889, 895 (Minn. 1999) (emphasis added). By its own terms, this general principle encompasses only circumstances in which the reviewing court found the record did not support the denial, which is not the case here.[11] For instance, in *Livingood*, the Minnesota Supreme Court upheld a decision reversing a county denial of a conditional use permit application and ordered that the permit be issued. *Id.* at 895. The county in that case "admitted . . . that it gave an inadequate explanation for its decision and that the record does not support its decision." *Id.* at 893. The county sought remand to "develop a record and articulate its findings and conclusion." *Id.* at 894. But the county had previously represented that the record was complete. *Id.* at 895. The Minnesota Supreme Court determined the county must be "held to its representations . . . that the record was complete" and could not be given "another chance to build a record to support

[11] Daley Farm quotes a more generous wording of this general principle that appears in *In re Stadsvold*, 754 N.W.2d 323, 332 (Minn. 2008): "If the zoning authority's decision is arbitrary and capricious, the standard remedy is that the court orders the permit to be issued." (Appellants' Br. at 37.) But for that premise, *Stadsvold* actually cites the language above from *Livingood*, which limits the general principle's application to circumstances where the permit was denied due to "insufficient evidence." *Stadsvold*, 754 N.W.2d at 332–33 (quoting *Livingood*, 594 N.W.2d at 895).

its denial of the permit." *Id.* at 895. Because the county admitted the record was complete, and the record did not support its denial, issuance of the permit was the proper remedy. *Id.*

The cases cited by Daley Farm follow this same pattern: the denial of the permit was arbitrary and capricious because applicant had met the requirements for the permit, making the denial unsupported by the record. (Appellants' Br. at 37–39.) *See Interstate Power Co. v. Nobles Cty. Bd. of Comm'rs*, 617 N.W.2d 566, 580 (Minn. 2000) (permit issuance where there was "no permissible basis in the record on which to deny the permit"); *C.R. Investments, Inc. v. Village of Shoreview*, 304 N.W.2d 320, 328 (Minn. 1981) (permit issuance where denial "either had no factual bases or were not legally sufficient"); *Frank's Nursery Sales, Inc. v. City of Roseville*, 295 N.W.2d 604, 609 (Minn. 1980) (permit issuance when city's interpretation of ordinance was not legally supported); *Metro 500, Inc. v. City of Brooklyn Park*, 211 N.W.2d 358, 364 (Minn. 1973) (permit issuance where reason for denial was not supported by record); *Arcadia Dev. Corp. v. City of Bloomington*, 125 N.W.2d 846, 851 (Minn. 1964) (permit issuance where there was "no valid reason to restrict this use of the land"); *Zylka v. City of Crystal*, 167 N.W.2d 45, 51 (Minn. 1969) (permit issuance where decision unsupported by record). Thus, the cases relied on by Daley Farm do not stand for the proposition that issuance of the permit is the appropriate remedy when a court does not decide on whether the record supports the municipality's decision.

Instead, and consistent with this general principle, the Minnesota Supreme Court has held remand is the appropriate remedy when the permitting decision was "not

necessarily arbitrary" but was not "heard under the correct legal standard[.]" *Krummenacher v. City of Minnetonka*, 783 N.W.2d 721, 733 (Minn. 2010).[12] This exception originates from *Stadsvold*, where the Minnesota Supreme Court concluded remand was appropriate where a board of adjustment erred by denying a variance request under an "adequate hardship" standard rather than the "practical difficulties" standard. 754 N.W.2d at 332–33. The *Stadsvold* Court reasoned that where a decision was not based on the right standard, "it is difficult if not impossible for a reviewing court to determine whether the zoning authority's decision was proper, was predicated on insufficient evidence, or was the result of the zoning authority's failure to apply the relevant provisions of the zoning ordinance." *Id.* at 333. This exception to the general principle was carried forward in *Krummenacher*, in which the Minnesota Supreme Court held that remand was proper where the city granted a variance request under a "reasonable manner" standard rather than the proper "undue hardship" standard. 783 N.W.2d at 732–33.

The Court of Appeals has since used this exception to hold that remand is the proper remedy for a finding of bias. In *Continental Property Group, Inc. v. City of*

[12] The origins of this exception can be traced further back to two other exceptions to the general principle. In *White Bear Rod & Gun Club v. City of Hugo*, 388 N.W.2d 739, 742 (Minn. 1986), the Court held that remand is proper in instances where the decision "lack[ed] any findings of fact or other explanation of its decision adequate for any judicial review." Then in *Earthburners, Inc. v. County of Carlton*, 513 N.W.2d 460, 463 (Minn. 1994), the Court ordered remand where the proceeding below was entirely inadequate and therefore "the decision was premature[.]" The reasoning underlying these exceptions supports remand here: both are premised on the fact that the reviewing court could not determine whether the record supported the decision at hand.

Minneapolis, No. A10-1072, 2011 WL 1642510 (Minn. App. May 3, 2011), this Court determined remand for a new hearing was the proper remedy for its finding of bias by a councilmember who actively advocated against a development project. The Court found the councilmember showed bias by "exhibit[ing] a closed mind" to the project, adopting an "advocacy role" in opposition to the project, and "mobiliz[ing] neighborhood opposition . . . to sway the opinions of her fellow council members." *Id.* at *6. Neither the district court nor this Court decided on the merits of the zoning application. Instead, the Court concluded the exception requiring remand applied, explaining: "Here, like in *Krummenacher*, the city council's decision would not necessarily have been arbitrary and capricious had the council followed the correct standards and procedures in considering [Continental Property's] applications—namely, had it not allowed a biased councilmember to participate in the decision." *Id.* at *7.

Likewise, this Court remanded when a county commissioner was biased in deciding that an EIS was required for a project. *Living Word Bible Camp v. Cty. of Itasca*, No. A12-0281, 2012 WL 4052868, at *8–9 (Minn. App. Sept. 17, 2012). In *Living Word Bible Camp*, the commissioner expressed doubt about the EAW produced by a consultant, and presented recommendations for amendments and the addition of materials received from individuals in opposition to the project. *Id*. at *2. The board voted three-to-one to require an EIS. *Id.* The Court concluded remand was required, explaining that the record "could support either a positive or a negative declaration" on the EIS and "it is impossible to speculate as to what the result would have been absent [the commissioner's] partiality and improper conduct." *Id.* at *4, 8.

Daley Farm asks the Court to deviate from these prior decisions simply because it is unhappy that an unbiased Board on remand likewise rejected its application. But there is no reason to do so. Daley Farm does not address *Living Word Bible Camp*, despite the district court explicitly relying on that case in its decision. (Add.18–19.) Daley Farm instead asserts that this Court wrongly decided *Continental Property*, reasoning the Court's reliance on *Krummenacher* was misplaced because that case involved the grant, rather than denial, of a variance. (Appellants' Br. at 43.)[13] But Daley Farm does not elucidate why this distinction matters. In *Krummenacher* and *Continental Property*—and the district court's order remanding in this case—the reviewing court did not address whether there was support in the record for the decision at hand. In all three instances, it would overstep the judiciary's bounds to order issuance of the permit when it had not reviewed the evidentiary merits of the application. And Daley Farm ignores that *Krummenacher* is based on *Stadsvold*, where a permit denial was at issue.

Daley Farm also argues that *Continental Property* is factually distinct from the present case, but it vastly minimizes the extent of the bias found in *Continental Property*. (Appellants' Br. at 43–44.) Daley Farm says that only one city councilmember in that

[13] Ironically, Daley Farm itself cites a case that involves a community challenge to the grant of a building permit, rather than a denial. (*See* Appellants' Br. at 37 (citing *Chanhassen Estates Residents Ass'n v. City of Chanhassen*, 342 N.W.2d 335, 340–41 (Minn. 1984)).) In that case, the Court rejected residents' challenge to the issuance of a building permit because it deferred to the city's interpretation of its zoning ordinance, and the Court ordered issuance of the permit. *Chanhassen Estates*, 342 N.W.2d at 340. Regardless of the procedural differences, that case too supports a conclusion that the general principle only applies where the court determines the record supports issuance of the permit.

case was found to be biased, and the other twelve had unanimously voted to deny the requested permits—thus, even without the biased decisionmaker the requests would have been denied. (*Id.*) But Daley Farm misstates the facts from the case. In *Continental Property*, the Court found the biased decisionmaker proactively sought to influence her fellow decisionmakers, both directly and by mobilizing community opposition to the project. 2011 WL 1642510, at *6. She sought to spread her bias to the whole council. *Id.* And her opinion was given substantial weight by the other members as the councilmember in whose ward the project was proposed. *Id.* Daley Farm seems to suggest that remand in that case was pointless because the council would just deny the applications anyway. But that strengthens the case for remand here because the outcome was not predetermined: each member who voted against the application the first time around was no longer on the Board, the only remaining Board member who voted previously was in favor of the application, and the new Board members gave a fresh look at the application. (*See*, *e.g.*, R.I.Add.16; R. 2980–83.)

Remand is the only appropriate remedy considering the burden an applicant must carry when seeking a variance. In Winona County, a variance may only be granted in "exceptional circumstances[.]" WCZO § 4.2 (definition of "variance"). The applicant has a "heavy burden" to demonstrate to the local decisionmaker why a variance allowing it to violate local law is appropriate. *VanLandschoot v. City of Mendota Heights*, 336 N.W.2d 503, 509 (Minn. 1983). The Ordinance requires the applicant to substantiate each of the eight criteria. WCZO § 5.6.2. Bias of the Board members on the first vote did not somehow mean Daley Farm met this burden. As the district court explained, the Board

"might have good reasons aside from the bias" for denying the application. (Add.14.) The remedy in bias situations cannot be automatic issuance because such a rule would violate separation of powers principles by subverting local zoning control without any affirmative showing that the applicant has met the requirements for a variance. This impact would reach beyond this case, giving developers a channel for automatic approval solely due to deficiencies in procedure or the applicable standard without ever having substantiated their requests.

In short, although Daley Farm is entitled to unbiased decisionmakers, it is not entitled to automatic approval of its application when the district court did not determine whether the record supported denial of the application. This Court should affirm the district court's 2020 decision to remand the variance for a new vote by a new Board.

II. The District Court Correctly Concluded Minn. Stat. § 15.99's Deadline did not Apply on Remand and Daley Farm was Equitably Estopped from Arguing the Deadline Applied

Daley Farm next argues that the district court erred by concluding remand of the variance application was not subject to Minn. Stat. § 15.99's 60-day deadline. The statute provides that "an agency must approve or deny within 60 days a written request relating to zoning"—failure to do so renders the application approved. Minn. Stat. § 15.99, subd. 2(a). Daley Farm claims the 60-day clock restarted once the district court's remand decision was rendered final when this Court denied discretionary review on August 24, 2021; therefore, Daley Farm argues, the application was granted by operation of law when the County did not decide on the variance until December 2, 2021. (Appellants' Br. at 47–48.) The district court properly rejected this argument because remand is not a

"request" within the plain meaning of the statute and, in the alternative, Daley Farm was equitably estopped from bringing this argument based on its own delay and admission that the deadline did not apply.

A. The deadline in Minn. Stat. § 15.99 does not apply on remand per the statute's unambiguous, plain language

Daley Farm's position that the 60-day deadline applies on remand is inconsistent with the unambiguous, plain language of the statute, which controls and cannot be judicially circumvented. The standard of review is de novo. *Cocchiarella v. Driggs*, 884 N.W.2d 621, 624 (Minn. 2016). If a statute is unambiguous, the court must apply its plain meaning. *State v. Sanschagrin*, 952 N.W.2d 620, 624 (Minn. 2020). Only if a statute is ambiguous will the court resort to canons of statutory construction to determine its meaning. *Id.* "[F]ailure of expression does not give rise to ambiguity." *Phelps v. Commonwealth Land Title Ins. Co.*, 537 N.W.2d 271, 274 (Minn. 1995).

"When a word is defined in a statute," the court must be "guided by the definition provided by the Legislature." *Sanschagrin*, 952 N.W.2d at 625 (quoting *Wayzata Nissan, LLC v. Nissan N. Am., Inc.*, 875 N.W.2d 279, 286 (Minn. 2016)). A statutory definition must be applied in its entirety, and the court may not "ignore part of the legislature's definition." *Id.* (quoting *State v. Peck*, 773 N.W.2d 768, 773 (Minn. 2009)). Courts "cannot add to a statute what the legislature has either purposely omitted or inadvertently overlooked." *Hayden v. City of Minneapolis*, 937 N.W.2d 790, 796 (Minn. App. 2020) (quoting *Christiansen v. Univ. of Minn. Bd. Of Regents*, 733 N.W.2d 156, 159 (Minn.

App. 2007)). "Any change to a statute's language 'must come from the legislature.'" *Id.* (quoting *Martinco v. Hastings*, 122 N.W.2d 631, 638 (Minn. 1963)).

The 60-day deadline applies only to "written request[s] relating to zoning[.]" Minn. Stat. § 15.99, subd. 2(a). The statute defines a "request" as "a written application related to zoning . . . for a permit, license, or other governmental approval of an action" that "must be submitted in writing to the agency on an application form provided by the agency, if one exists." *Id.* § 15.99, subd. 1(c). It expressly provides that "[n]o request shall be deemed made if not in compliance" with this requirement. *Id.*

Remand does not fall within the unambiguous statutory definition of a "request." The only "request" the County received was the initial application on November 16, 2018, which the County undisputedly denied within the statutory time limit. (*See* Appellants' Br. at 45.) When the case was remanded, the County did not receive a "request" because there was no "written application" using the "application form provided by" the County. Instead, the remand order sent the original application back to County—it did not order Daley Farm to submit a new or different application, or otherwise suggest that by operation of remand the application would be deemed new. (Add.14, 18–20.) Nowhere in the statute is there a reference to or suggestion that the deadline restarts when an application is remanded back to the decisionmakers for a revised opinion. Accepting Daley Farm's argument would require the Court to add language to the statute, which the Minnesota Supreme Court has repeatedly rebuked. *See*, *e.g.*, *Reetz v. City of St. Paul*, 956 N.W.2d 238, 246 (Minn. 2021) (refusing to supply meaning to statute that the legislature chose not to include); *Walsh v. U.S. Bank, N.A.*, 851

N.W.2d 598, 604 (Minn. 2014) (refusing to add "plausible" to Minnesota pleading standard); *Cty. of Dakota v. Cameron*, 839 N.W.2d 700, 709 (Minn. 2013) (refusing to add "functional equivalence" to the definition of comparable property in eminent domain statute). Whether intentional or an oversight by the legislature, it is not for the Court to supplement the unambiguous statutory language by modifying the term "request" to encompass remand.

Moreover, courts must narrowly construe § 15.99 against the "harsh, extraordinary remedy" of automatic approval. *Harstad v. City of Woodbury*, 902 N.W.2d 64, 77 (Minn. App. 2017), *aff'd*, 916 N.W.2d 540 (Minn. 2018) (quoting *Moreno v. City of Minneapolis*, 676 N.W.2d 1, 6 (Minn. App. 2004)). The Minnesota Supreme Court has explained that this is because "statutes that are penal in nature are construed narrowly against the penalty" and "the legislature intends to favor the public interest as against any private interest." *Hans Hagen Homes, Inc. v. City of Minnetrista*, 728 N.W.2d 536, 543 (Minn. 2007). The public interests in enforcement of the animal unit cap and consideration of variance applications on the merits significantly outweigh Daley Farm's private interest in having its variance application automatically approved. This is especially true given that the proposed expansion poses risks to the community's precious drinking water. *See supra* Statement of Facts § II.

Daley Farm does not explain how remand falls within the definition of "request." Instead, it curtly equates the remand to a brand-new variance application without reconciling that logical jump with the plain language of the statute. Minimizing the focus on this fatal defect, Daley Farm argues remand is the "receipt" required to trigger the 60-

day deadline. (Appellants' Br. at 46.) This novel interpretation fails to confront the district court's reasoned conclusion that there is no "request" to begin with. Instead, Daley Farm abruptly proclaims that "a new 60-day clock begins to run when an order remanding a zoning request becomes final." (*Id.*) But this is inconsistent with the plain language of the statute and only draws attention to the fact that § 15.99 lacks any guidelines for how the deadline would even operate on remand. The Court cannot supplement the language of the statute to fill any perceived gaps.

Daley Farm's position also lacks support in case law. It cites only one unpublished case in support of the premise that § 15.99's deadline applies on remand. (Appellants' Br. at 46–47 (citing *In re McDuffee*, No. A07-1053, 2008 WL 2492323, at *3 (Minn. App. June 24, 2008)).) But the majority opinion in that case does not reference § 15.99. Instead, the decision in dicta cites a separate Morrison County Ordinance that required the Morrison County Board of Commissioners to issue a decision on a conditional use permit within 60 days. *In re McDuffee*, 2008 WL 2492323, at *3. Ironically, the only reference to § 15.99 in the decision is found in the dissent, which explains:

> The county board argues that they were advised that they must move quickly to avoid the effect of the sixty-day rule that would result in automatic issuance of the permit. *See* Minn. Stat. § 15.99 . . . . Complying with statutory time limits is important, but the statute does not indicate that the sixty-day rule applies to a remand from a court decision.

Id. at *10, Lansing, J., dissenting. To the extent *McDuffee* is relevant, it supports the district court's conclusion, not Daley Farm's argument.

B. Alternatively, Daley Farm was equitably estopped from arguing for the deadline's application

Even if the 60-day deadline applied on remand (which it does not), the district court correctly found that Daley Farm was equitably estopped from arguing for its application. The Court determines de novo whether equitable estoppel applies. *Lucio v. Sch. Bd. of Indep. Sch. Dist. No. 625*, 574 N.W.2d 737, 740 (Minn. App. 1998). A party seeking to invoke equitable estoppel must show: "(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." *Hydra-Mac, Inc. v. Onan Corp.*, 450 N.W.2d 913, 919 (Minn. 1990). "Affirmative promises or inducements are not required to establish misrepresentation for purposes of equitable estoppel; silence or omission may be sufficient, and fraud or intent to deceive is not required." *Ridge Creek I, Inc. v. City of Shakopee*, No. A09-178, 2010 WL 154632, at *6 (Minn. App. Jan. 19, 2010) (citing *Pollard v. Southdale Gardens of Edina Condo. Ass'n, Inc.*, 698 N.W.2d 449, 454 (Minn. App. 2005)).

Daley Farm made inducements by failing to dispute the County's contention that § 15.99 does not apply on remand and repeatedly asking for extensions without complying with the extension request provision of § 15.99. The district court remanded the variance application to the Board on January 25, 2021. (Add.13–14.) Ten days later, County counsel wrote to counsel for Daley Farm, stating: "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." (R.I.Add.47–48.) Daley Farm did not respond to the County's

statement that § 15.99 did not apply and instead requested seven months of extensions. (R.I.Add.42–47.) None of Daley Farm's extension requests complied with § 15.99, subd. 3(g)—which provides, "[a]n applicant may by written notice to the agency request an extension of the time limit under this section"—because Daley Farm did not reference § 15.99. (*See* R.I.Add.42–47.) Daley Farm's silence is an inducement for purposes of equitable estoppel. *See Ridge Creek I*, 2010 WL 154632, at *6 (concluding that emails discussing deadline extension satisfied inducement).

Daley Farm's sole counter is that its inducements ceased to exist on August 24, 2021, when this Court denied discretionary review. (Appellants' Br. at 49.) But this does not negate its failure to dispute the County's email from February 4, 2021. Moreover, Daley Farm's argument relies on inconsistent positions on what the triggering event for § 15.99 is if it applies on remand. Daley Farm first suggests that the district court's remand is the "receipt" triggering the 60-day deadline. (*Id.* at 46 ("by 'remanding' the Variance Application, the court sent it back to the board of adjustment for further action.").) If that were the case, Daley Farm would have been required to request extensions under § 15.99, subd. 3(g), during its discretionary appeal before this Court. It did not do so. Therefore, its actions show it understood § 15.99 did not apply. Daley Farm contemporaneously proffers that the date this Court denied its discretionary appeal triggered the 60-day deadline but provides no explanation for how this can be read from the statute, let alone reconciled with its prior position that the district court's remand is the "receipt." (*Id.*)

The County reasonably relied on Daley Farm's inducements that the 60-day deadline did not apply on remand and will be harmed if Daley Farm's variance is granted automatically regardless of the merits. The County produced evidence showing that it would not have delayed had Daley Farm not made these inducements. (R.I.Add.43.) If estoppel is not applied, the County will lose the opportunity to enforce the animal unit cap and protect the community's drinking water from serious harms. *See Ridge Creek I*, 2010 WL 154632, at *6 (holding developer equitably estopped from raising § 15.99 where "[c]ity lost the opportunity to protect its wetlands areas from degradation.").

Thus, the Court should affirm the district court's rejection of Daley Farm's arguments because remand does not fall within the unambiguous term "request" from § 15.99 and, in the alternative, Daley Farm is equitably estopped from arguing for application of the 60-day deadline.

III. The District Court Correctly Found that the Board's Denial of the Variance Application was Legally and Factually Sound

Daley Farm additionally challenges the district court's conclusion that the Board's denial of the variance application on remand was reasonable. Daley Farm falls far below the high evidentiary threshold required to overturn a local variance decision. The Board's denial of the variance was legally sound because it could not find all criteria were met. Its denial was also factually sound because the record evidence supports a conclusion that Daley Farm had solely economic reasons for seeking the variance. Thus, the Court should affirm.

This Court reviews a district court's decision on a local land use decision de novo. *Stalland v. City of Scandia*, No. A20-1557, 2021 WL 3611371, at *4 (Minn. App. Aug. 16, 2021). County boards are given broad discretionary power to approve or deny variances. *VanLandschoot*, 336 N.W.2d at 508–09. The Minnesota Supreme Court has emphasized that the "scope of review is narrow" when a court reviews a local zoning decision. *Mendota Golf, LLP v. City of Mendota Heights*, 708 N.W.2d 162, 180 (Minn. 2006). This is based on separation of powers principles: local officials are the ones entrusted to make land use choices for their communities. *See Big Lake Ass'n*, 761 N.W.2d at 491. The inquiry for a reviewing court is whether the local authority's action was reasonable. *VanLandschoot*, 336 N.W.2d at 508. A reviewing court asks two questions: (1) whether the board's stated reasons were legally sufficient; and (2) whether the decision "had a factual basis in the record." *RDNT, LLC v. City of Bloomington*, 861 N.W.2d 71, 75–76 (Minn. 2015).

Zoning board decisions may only be set aside in "those rare instances" where the "decision has no rational basis." *White Bear Docking & Storage, Inc. v. City of White Bear Lake*, 324 N.W.2d 174, 176 (Minn. 1982). If there is evidence supporting the board's decision, the 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. All that is required to uphold a decision is a rational basis between the decision and the evidence. *Mendota Golf*, 708 N.W.2d at 180. The reviewing court may not weigh the evidence; instead, it must only examine the record to determine whether there was support for the zoning authority's decision. *RDNT*,

861 N.W.2d at 76. If there is conflicting evidence, the court defers to the zoning authority's judgment. *See White Bear Docking*, 324 N.W.2d at 176.

A. The denial was legally sound because lack of an affirmative finding on criterion 6 rendered the application denied

Daley Farm contends the denial of its application was legally flawed because the Board's failure to issue a finding on criterion 6 should have resulted in approval. (Appellants' Br. at 56–57.) At the remand hearing, the voting members of the Board were split two-to-two on criterion 6. (R.I.Add.21.) Criterion 6 states, "[e]conomic considerations alone do not constitute practical difficulties." WCZO § 5.6.2. Because the members were split on whether this criterion was met, the Board made no affirmative finding on criterion 6, and the variance application was therefore denied. (R.I.Add.22.)

Daley Farm argues no affirmative finding on criterion 6 was required because it defines an exception to criterion 3, which requires the applicant to establish "that there are practical difficulties in complying with the official control" and that the applicant "propose[s] to use the property in a reasonable manner." (Appellants' Br. at 56 (quoting WCZO § 5.6.2).) But, as the district court correctly concluded, Daley Farm's argument is wholly incompatible with the unambiguous, plain language of the Ordinance, which requires an affirmative finding on *each* of the eight criteria for an application to be approved.

The same rules governing statutory interpretation apply to the interpretation of ordinances: courts adhere to the plain language of an ordinance unless it is susceptible to more than one reasonable interpretation. *Cannon v. Minneapolis Police Dep't*, 783

N.W.2d 182, 192–93 (Minn. App. 2010); *see supra* at 27–28 (articulating statutory interpretation standard).

The Ordinance explicitly defines what the Board must affirmatively find to approve a variance application. Section 5.6.2, subd. 1, provides: "The [Board] shall not grant a variance . . . unless it shall make findings of fact based upon the evidence presented and on the following standards[.]" The Ordinance then lists the eight variance criteria as those "standards." *Id.* There is no ambiguity in this language, which uses ordinary, well-understood terms. *See* Minn. Stat. § 645.08 (in plain language analysis, words are construed according to their common usage). The phrases "shall not grant" and "unless it shall make findings . . . on the following standards" are open to only one interpretation: the Board is prohibited from approving a variance application unless it makes affirmative findings on *each* of the eight criteria.[14]

Daley Farm seizes on the grammatical structure of each of the criteria to argue that the differences in criterion 6 are intentional. (Appellants' Br. at 56–57.) This interpretation is irreconcilable with the plain language of the clause that introduces the eight criteria, which requires that the Board "shall make findings of fact . . . on the

[14] Moreover, criterion 6 comes verbatim from the statute codifying what must be established before a city board of adjustment may grant a variance. *See* Minn. Stat. § 394.27, subd. 7. The district court's interpretation of the Winona County Ordinance is consistent with the unpublished decision in *Continental Property Group, LLC v. City of Wayzata*, No. A15-1550, 2016 WL 1551693, at *4–6 (Minn. App. Apr. 18, 2016), in which the court *separately* analyzed the "practical difficulties" criterion and the "economic difficulties" criterion rather than treating the latter merely as an exception to the former.

following standards[.]" WCZO § 5.6.2. In this instance, the Board did not make findings on "the following [eight] standards," because it could not agree to a finding on criterion 6. Therefore, the Ordinance's unambiguous, plain language prohibited the Board from granting the variance. Daley Farm's unreasonable interpretation first requires the Court to find ambiguity where none exists, and then to rewrite the Ordinance under the guise of statutory interpretation—something a court cannot do. *See Laase v. 2007 Chevrolet Tahoe*, 776 N.W.2d 431, 438 (Minn. 2009).[15] The Court should affirm.

B. The denial was factually sound because the Board's conclusion that criterion 6 was not met has factual basis in the record

Next, Daley Farm argues that the Board's decision on criterion 6 did not have *any* factual basis in the record. The Court's deference to the Board on this issue is great, and the Board may only be overturned if there is no rational basis in the record for its decision. *See Mendota Golf*, 708 N.W.2d at 180. As the district court correctly found, Daley Farm failed to meet its heavy burden of showing the Board reached a conclusion "without *any* evidence to support it." *Dietz v. Dodge Cty.*, 487 N.W.2d 237, 239 (Minn. 1992) (emphasis added) (citation omitted).

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[15] Daley Farm also argues that "[w]hen county staff . . . inserted an adverse finding on Criterion No. 6 that was never actually adopted by the board of adjustment, the County tacitly admitted that the findings actually adopted by the board do not support the denial of" its application. (Appellants' Br. at 57.) This is yet another assertion that is irrelevant to the Board's decisionmaking. A zoning body need not "prepare formal findings of fact" for its decision to be valid—all that is required is that "the reasons for its decision recorded or reduced to writing and in more than just a conclusory fashion." *Earthburners*, 513 N.W.2d at 462 (citation omitted). The hearing notes and transcript accomplish this.

To meet criterion 6, the applicant must demonstrate that the variance request is not based on economic considerations alone. WCZO § 5.6.2. At the remand hearing, the Board did not find this requirement was met and denied the variance. (R.I.Add.21.) Daley Farm argues that, although it admitted the variance application was in-part economically motivated, it also set forth "several non-economic considerations" for its request. (Appellants' Br. at 57–58 (quoting R. 1858).) In support, it cites a single page from a memorandum submitted by Daley Farm's attorney, apparently taking the untenable position that simply because its counsel stated Daley Farm had non-economic reasons for seeking the variance, it makes it so. The Board, however, is not obligated to find a fact is true simply because an applicant argued it. Instead, the Board evaluates and weighs all the evidence and makes credibility determinations. And so long as there was some evidence in the record supporting the Board's decision, it must be upheld. *See RDNT*, 861 N.W.2d at 76.

Daley Farm's position must be rejected because there is substantial evidence supporting a conclusion that its reasons for requesting the variance were purely economic. For years, Daley Farm publicly stated its reasons for seeking the variance are to add jobs at the feedlot to employ more family members and to maintain profits using economies of scale. For example, Daley Farm's variance request, which it "submitted to provide [its] written response to the variance criteria," did not include even a single non-economic reason for requesting the variance. (R.I.Add.32–33.) Rather, Daley Farm requested the variance because "[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." (R.I.Add.33.) The request explains how Daley Farm believed it met the other variance criteria, but was notably silent on criterion 6, providing no mention of any non-economic motivations for the variance. (*See* R.I.Add.32–33.) In the same document, Daley Farm explained that its preference for expanding beyond the animal-unit cap was also economic: "Although [Daley Farm] could, in theory, expand its operation by constructing multiple smaller facilities on different sites in the area, such expansions would . . . dramatically increase the cost of the project[.]" (R.I.Add.33.)

Similar admissions of economic motivations are replete throughout the record, for instance:

- "By working together under one corporate ownership and one facility, the family can take advantage of economy of scale. This economy of scale will . . . keep the dairy business profitable in the current competitive dairy market." (R. 40.)

- "And as that margin compresses, dairies need to adapt. They need to change the way they operate if they are going to survive economically . . . . And if we look at Daley Farm here, . . . [t]hey are attempting to adopt a project to meet the economic realities of the time and preserve their operation." (R. 2576:18–2577:7.)

- "The expansion is necessary to make the farm economically sustainable into the future and provide economic support for the additional family members to return[.]" (R. 1849.)

Daley Farm also stated to several media outlets that its motivations were economic. (R. 2834.) Indeed, Daley Farm has never denied its economic motivation for the project. Thus, Daley Farm's admissions that the variance was economically motivated are sufficient to uphold the Board's decision. *See RDNT*, 861 N.W.2d at 76.

Nonetheless, Daley Farm contends that a statement by its attorney listing "several non-economic considerations" motivating its application—submitted in a last-ditch effort

just two days before the Board's vote—somehow renders the Board's decision unsupported. (Appellants' Br. at 57–58 (quoting R. 1858).) At best, Daley Farm cites contradictory evidence. But, as the case law make clear, the Court must defer to the Board's judgment as to the weighing of that evidence. *See White Bear Docking*, 324 N.W.2d at 176. In weighing the evidence, two Board members did not find Daley Farm's proffered non-economic reasons credible, instead finding that Daley Farm was simply seeking to increase profits and employ more family members. (*See* R.I.Add.27–28 (Heublein: "They're needing this variance to make sure that they have the capacity to support the family that wants to come in on the business and require that. These other [non-economic] things would be there anyway."); R.I.Add.30 (Fitzgerald: "I guess I feel kind of how Elizabeth [Heublein] feels with [the non-economic factors] on that would stay the same regardless of whether they expanded or not and stay the same size.").)

The Board's decision is further supported by the fact that none of Daley Farm's purported non-economic motivations were reasons for *needing* the variance. The stated non-economic motivations were to "promote animal welfare and food safety" and "ensure the continued safety and well-being of its employees." (R. 1858.) But Daley Farm provided no explanation or evidence supporting these bare assertions, nor does it explain why it could not accomplish these things at its current size.

Daley Farm also represented that it needs the variance to "reduce the environmental impact" of its operation. (*Id.*) This contention is directly at odds with the known negative environmental effects of large-scale feedlots like Daley Farm, including impacts to the community's drinking water. *See supra* Statement of Facts § II. Daley

Farm says its expanded operations are "designed . . . to satisfy all applicable laws and regulations," including by adding runoff controls, closing a federally noncompliant part of the farm, and complying with a National Pollutant Discharge Elimination System or "NPDES" permit. (R. 1849.) But Daley Farm must take measures to comply with the law regardless of whether it expands its herd; no variance is required to do so. Indeed, the MPCA has already ordered that "[i]f the Winona County variance or exemption is not approved . . . Daley will . . . add open-lot runoff controls, in accordance with [their] Individual NPDES Feedlot Permit Schedule of Compliance." (R. 170.)

Daley Farm further asserts that the expansion would allow it to use manure as fertilizer and convert 800 acres from row crops to alfalfa. (R. 1850–51.) But these are not reasons for the variance—they are actions required to maintain the status quo if the variance is granted. Daley Farm already spreads manure and does not need a variance from the animal unit cap to continue doing so. If the variance is granted, Daley Farm's additional animals would generate significantly more waste that would need to be disposed of through land application. That is a consequence of the variance, not a reason for it. Similarly, Daley Farm already grows alfalfa. (R. 2818.) No variance is required to grow more alfalfa. Thus, consistent with the Board's conclusion, none of Daley Farm's purported non-economic motivations for seeking the variance actually require a variance. Daley Farm's true motivation is purely economic.

To succeed on this claim, Daley Farm must show the Board reached a conclusion "without any evidence to support it." *Dietz*, 487 N.W.2d at 239 (citation omitted). It failed to do so. There was not only some, but abundant evidence in the record showing

Daley Farm had solely economic reasons for seeking the variance. The Court should affirm.

IV. The District Court Correctly Determined the Board's Decision was not Arbitrary or Capricious Due to Bias or Prejudgment

Finally, Daley Farm revives its argument that the Board's decision was arbitrary and capricious because the Board was biased and prejudiced. The district court properly rejected this argument because changes in the Board's composition negated Daley Farm's conspiracy claims and the Board members who voted against the variance the second time around did not actively advocate against the project.

As a preliminary matter, Daley Farm fails to describe the applicable standard of review for this argument. In this case, Daley Farm brought two separate claims related to bias: one alleging due process violations, and the other alleging the Board's denial is arbitrary and capricious under Minn. Stat. § 394.27, subd. 9, due to bias and prejudice. The district court rejected both on separate grounds. (Add.42–47 (denying due process claim where Daley Farm lacked a protected interest and required process was met), Add.55–56 (denying Minn. Stat. § 394.27 claim due to lack of evidence showing bias).) While in its Statement of the Case filed on December 21, 2023 Daley Farm indicated it intended to appeal both types of claims, it has since abandoned its due process claims. Thus, the only question before the court is whether the Board's decision was arbitrary and capricious due to bias. *See Hunter v. Anchor Bank, N.A.*, 842 N.W.2d 10, 17 (Minn. App. 2013) ("[A]n argument for reversal that is not raised in an appellant's principal brief is forfeited.").

Yet most cases cited by Daley Farm are decided under the due process clause's requirement for any unbiased decisionmaker. (Appellants' Br. at 51.)[16] Daley Farm also cites the standard for cases governed by the Minnesota Administrative Procedure Act ("MAPA") for finding an administrative agency's decision arbitrary and capricious. (*Id.* at 51–52.) But appeals of the Board's decisions are not subject to MAPA review. *See* Minn. Stat. § 14.69. Instead, the separate standard of review in zoning appeals under Minn. Stat. § 394.27, subd. 9, asks only whether: (1) the decision was legally sufficient, and (2) the decision had factual support in the record. *RDNT*, 861 N.W.2d at 75–76. And Daley Farm's citations from other jurisdictions are irrelevant to the interpretation and application of a specific Minnesota statute. (*See* Appellants' Br. at 52.)

Case law discussing Minn. Stat. § 394.27 claims that a local government's zoning decision should be overturned due to bias or prejudgment is sparse, but consistent with the district court's decision. Respondent-Intervenors are only aware of one case in which a Minnesota court overturned a zoning board's decision based on a bias claim under state

[16] *Citing Barton Contracting Co. v. City of Afton*, 268 N.W.2d 712 (Minn. 1978) (permit applicant not denied procedural due process); *Juster Bros. Inc. v. Christgau*, 7 N.W.2d 501, 508 (Minn. 1943) (failure to send notice in administrative unemployment action was a due process violation); *Chanhassen Chiropractic Ctr., P.A. v. City of Chanhassen*, 663 N.W.2d 559, 562 (Minn. App. 2003) (petitioner failed to show breach of clear duty in case alleging due process violation based on impartial decisionmaker); *Buchwald v. Univ. of Minn.*, 573 N.W.2d 723, 727 (Minn. App. 1998) (no due process violation where decisionmaker recused himself in separate proceeding against claimant); *Deli v. Univ. of Minn.*, 511 N.W.2d 46, 50 (Minn. App. 1994) (termination of employee did not violate due process).

statute: *Continental Property Group*.[17] There, the Court's decision was based on one council member actively advocating against a project by organizing and mobilizing neighborhood opposition and lobbying her fellow council members to vote against the project. 2011 WL 1642510, at *6.

Since this unpublished decision was issued in 2011, this Court has twice rendered decisions involving allegations of biased decisionmakers. Daley Farm does not even attempt to confront this more-recent case law. In *Stalland*, the plaintiff asserted that a councilmember had previous knowledge of the project, asked community members with knowledge of the project to attend the council's hearing, and had not kept an open mind about the project. 2021 WL 3611371, at *8. Nonetheless, this Court declined to overturn the council's decision, explaining that the councilmember had not actively advocated against the project with the public or other councilmembers. *Id.* Similarly, in *In re Rollingstone Community School*, No. A18-0799, 2019 WL 1591772, at *5 (Minn. App. Apr. 15, 2019), even though school board members had written an opinion piece about a forthcoming decision, this Court again did not find bias or prejudgment on the part of those school board members. Instead, the Court noted that the decision in *Continental Property* was based on a council member's "advocacy activities," and that nothing in the record indicated the opinion piece affected the board's decision. *Id*. at *5, n.5.

[17] While this case was brought under Minn. Stat. § 462.361, which provides for judicial review of city (rather than county) zoning decisions, the standard of review is the same.

These cases dictate that mere advanced knowledge about a project and unsupported allegations that a decisionmaker did not keep an open mind are insufficient to render a local zoning decision arbitrary and capricious due to bias. Rather, as indicated by *Continental Property*, active advocacy relating to a specific project by a board member within the community and among fellow board members is required to overturn a decision for bias. This is consistent with the Court's duty to defer to local zoning board decisions except in the rare instances when it has no rational basis. *See White Bear Docking*, 324 N.W.2d at 176.

Daley Farm's claim falls far below this standard. First, Daley Farm makes broad accusations of conspiracy, spending over twenty pages detailing actions taken before the original denial of the variance application in 2019. (Appellants' Br. at 8–30.) This historical recitation is entirely irrelevant to the Court's examination of the Board's remand vote in 2021. Tellingly, Daley Farm spends almost four times as long reciting events *before* the remand than it does on the facts relevant to the decision before this Court. (*Compare id.*, *with* Appellants' Br. at 30–36.) Lacking evidence for its claim, Daley Farm attempts to draw the Court's attention to irrelevant facts about the reversed decision made by a different Board with different decisionmakers. But the district court correctly found that remand to the to the newly constituted Board was the appropriate remedy to the bias it found in the first denial. (Add.19.) When the case was remanded, the only voting member who was on the Board at the time of the first vote was Schwantz—and he voted in favor of granting the variance. (*See* R.I.Add.16, 21.)

Narrowing the evidence to that which relates to the Board on remand, Daley Farm puts forth only two ways it contends Board members were biased: first, that Land Stewardship Project somehow put Heublein and Fitzgerald on the Board[18]; and second, that Heublein was biased because she conducted background research. (Appellants' Br. at 53–55.) There is, however, no evidence of advocacy against Daley Farm's proposed expansion by Heublein or Fitzgerald, and certainly nothing that comes close to the type of active advocacy required to find bias under *Continental Property*.

First, Daley Farm cobbles together stray facts as proof that Land Stewardship Project placed Heublein and Fitzgerald on the Board to oppose Daley Farm's variance. (Appellants' Br. at 53–54.) The full extent of Daley Farm's evidence related to these Board members is as follows: Commissioner Marie Kovecsi said Heublein was appointed for "very careful reasons"; and Doug Nopar from Land Stewardship Project talked to Fitzgerald about applying for the Board. (*Id.* at 53.) These two facts cannot demonstrate bias, let alone active advocacy against the project. Moreover, Commissioner Kovecsi explained that when she said she was voting to appoint Heublein for "very careful reasons" she was referring to Heublein's background as a researcher, which Kovesci thought would be an asset to the Board. (R.I.Add.39–40 (Kovecsi Tr. at 68:21–69:7).) Daley Farm has offered no evidence to refute this explanation. There is no evidence in

[18] Daley Farm also suggests that Redig's appointment to the Board renders the denial biased. (Appellants' Br. at 53.) This is nonsensical: Redig recused himself from the vote on remand and was not in attendance at the remand hearing. (*Id*. at 32.)

the record to connect this innocuous phrase to actual bias, only Daley Farm's unsupported speculation.

As for Fitzgerald, Daley Farm cannot dispute that although Nopar may have talked to Fitzgerald about applying for the Board, neither Nopar nor anyone else from Land Stewardship Project talked to Fitzgerald about Daley Farm's proposed expansion. (R.I.Add.34–35 (Fitzgerald Tr. at 17:23–18:4, 21:5–23).) Nor can Daley Farm contest Fitzgerald's testimony that she applied for the Board because she thought the experience would be useful for her work as a farmer. (*Id.* at 19:17–20:35.) Daley Farm likewise cannot dispute that no one from Land Stewardship Project contacted Kovecsi or any other Commissioner to lobby for Fitzgerald's appointment. (R.I.Add.37 (Meyer Tr. at 33:20–34:2, 34:11–13); R.I.Add.38 (Kovecsi Tr. at 51:19–23); Berger Aff. (Deps.), Index #167, Ex. M, Olson Tr. at 20:23–21:4.) The weakness of Daley Farm's conspiracy and bias claims are laid bare given that Daley Farm's extensive discovery campaign, which included taking depositions of the County Commissioners, turned up no other evidence, however remote, of skullduggery.

Further, the idea of a conspiracy makes little sense considering the timing of the remand order. Heublein was appointed to the Board and Fitzgerald applied to join the Board before the district court ordered the vote be redone. (Berger Aff. (Public Docs.), Index #163, Ex. AY, Minutes of Jan. 7, 2020, Meeting at 5; Berger Aff. (Deps.), Index #166, Ex. G, Fitzgerald Tr. at 20:23–25.) When Heublein was appointed and Fitzgerald applied, no one knew there would be a second vote on the variance application. Moreover, if Commissioner Kovecsi were conspiring against Daley Farm, she would not

have voted to reappoint Schwantz to the Board knowing that he had already voted in favor of the variance application once. (*See* Berger Aff. (Public Docs.), Index #163, Minutes of Jan. 7, 2020, Ex. AY at 5.) And Daley Farm only asserts that it was entitled to unbiased *decisionmakers*. (Appellants' Br. at 51.) The Board—not the Commissioners—are the decisionmakers on the variance application. With respect to the actual decisionmakers, Heublein and Fitzgerald, Daley Farm cites no actual evidence of bias.[19]

Next, Daley Farm insists the Board's decision must be overturned because Heublein conducted background research. (Appellants' Br. at 54–55.) Here, Daley Farm mischaracterizes the facts. Dr. Heublein testified that if she does not know something, she will "look it up and become informed." (R.I.Add.36 (Heublein Tr. at 21:22–23).) To make sure she is informed, she will consult a variety of sources like books, documentaries, and newspapers, never relying on just one source. (*Id.* at 22:1–5.) Daley Farm fails to cite any legal authority holding such background research is improper. Instead, Daley Farm cites the broad judicial review standard for local zoning decisions: "A decision that is not

[19] Daley Farm also argues that Winona County Planning and Environmental Services Director Kay Qualley disagreed with her subordinate regarding the contents of the staff report on the proposed expansion. (Appellants' Br. at 33–36, 54.) It is unclear how this demonstrates that the decision of the Board was so biased as to be arbitrary and capricious. Qualley is not a decisionmaker, and there is no evidence tying her to Land Stewardship Project or demonstrating any bias against Daley Farm. Daley Farm has not pointed to any ordinance or statute that is violated by county staff disagreeing over the contents of a report. *See Stalland*, 2021 WL 3611371, at *8. Nor has Daley Farm cited any case law indicating that a disagreement among staff makes a board's decision improper. Likewise, Daley Farm finds some bias in County staff listing a negative finding on criterion 6 after the Board's vote. (Appellants' Br. at 54.) It is again unclear how this shows bias by the decisionmakers.

based on the evidence in the record is unreasonable, arbitrary, and capricious." (Appellants' Br. at 55 (emphasis omitted).) As discussed above, there is ample evidence in the record supporting Heublein's determination that Daley Farm's expansion was motivated solely by economic considerations. Daley Farm does not explain what outside research it thinks Heublein relied on, nor does it point to any specific facts Heublein mentions in her decision that it alleges were not in the record. Moreover, the criterion that was not satisfied relies on Daley Farm's specific reasons for needing a variance. Daley Farm does not explain how background research from books or articles would have any bearing on Heublein's decision regarding Daley Farm's motivations for seeking the variance. Most importantly, Heublein stated she had seen no outside materials that affected her vote. (R. 2976:7–77:7.)

A local zoning decision is not arbitrary and capricious simply because decisionmaker has previous, outside knowledge relating to a project. *See Stalland*, 2021 WL 3611371, at *1. Heublein's background research—performed to ensure she was educated enough to understand the information presented to her—is like the prior knowledge of the council member in *Stalland*, and does not disqualify her vote. In *Stalland*, the board member's knowledge was considerably more than general background knowledge: he had specific knowledge of the project, explaining that "he was quite familiar with the original negotiations around the . . . development, as he was a watershed district manager at the time [the original conditional use permit was issued]." *Id.* at *3. He voted against amending the permit, partially based on his knowledge about the negotiations around the original conditional use permit. Part of his rationale was to

honor the original negotiated agreement. *Id.* This board member's involvement in the original conditional use permit decision, and his opinion on the permit amendment based on his prior involvement, would certainly show a greater opportunity for bias or prejudgment than Heublein's general background research. Thus, if the *Stalland* board member's prior involvement with the project was not a problem, Heublein's background research certainly should not be.

This outcome makes sense. Local boards need members with sufficient background knowledge, or willingness to learn, to make sound land use decisions for the community. Board members must be allowed to do the basic research to be able to understand the issues before them. For example, if a jurist were unfamiliar with the acronym "AU," it would not be surprising—nor improper—to conduct an internet search for that acronym to understand arguments in this case. Thus, the district court correctly found no Board member exhibited unlawful bias and prejudice against Daley Farm, and the Court should affirm.

CONCLUSION

For the foregoing reasons, Respondent-Intervenors Land Stewardship Project and Defenders of Drinking Water respectfully request that the Court affirm the decision of the district court and the Board's denial of the variance application.

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Respectfully submitted,

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