STATE OF MINNESOTA
IN COURT OF APPEALS
A23-1953

Daley Farm of Lewiston, L.L.P., et al.,
Appellants,

vs.

County of Winona,
Respondent,

Land Stewardship Project,
Respondent,

Defenders of Drinking Water,
Respondent.

Filed December 9, 2024
Affirmed
Slieter, Judge

Winona County District Court
File No. 85-CV-19-546

Matthew C. Berger, Jacob J. Brekke, Gislason & Hunter LLP, New Ulm, Minnesota (for appellants)

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Considered and decided by Wheelock, Presiding Judge; Reyes, Judge; and Slieter, Judge.

SYLLABUS

I. A district court's decision to remand a variance application to the county board of adjustment is reviewed *de novo*.

II. When a variance application denial is arbitrary and capricious based solely on bias, remanding for reconsideration by an unbiased decision-maker may be appropriate if the record before a county board of adjustment could support the decision absent the bias.

III. A district court order remanding a variance application to a county board of adjustment is not a "request" as defined in Minnesota Statutes section 15.99, subdivision 1(c) (2022), so the 60-day deadline for an agency response in section 15.99, subdivision 2(a) (2022), is inapplicable to such an order.

OPINION

SLIETER, Judge

This matter involves appellants' twice-denied variance application with respondent-county's board of adjustment. On appellants' appeal from the first denial, the district court found bias in the board of adjustment's decision-making and remanded for reconsideration by an unbiased board. On appellants' second appeal, after the variance was again denied, the district court granted summary judgment for respondents. Appellants argue that the district court erred by (1) remanding the variance application to the board of adjustment after the first denial; (2) holding that the 60-day rule in Minnesota Statutes

section 15.99 (2022) does not apply to remand orders from the district court; and (3) determining that the board's second variance denial was reasonable and not arbitrary or capricious. Because the district court properly remanded the variance application after the first denial, the 60-day rule did not apply to the district court's remand order, and because the board's second denial was reasonable and not arbitrary or capricious, we affirm.

FACTS

In 2018, appellants Daley Farm of Lewiston L.L.P., et al., applied for a variance from respondent Winona County. On February 21, 2019, County of Winona's Board of Adjustment (the board) denied the request. Daley Farm appealed the board's decision to the district court and moved for summary judgment, claiming that the board's denial was arbitrary and capricious as three of the five board members' bias demonstrated that the denial reflected the members' will rather than judgment. The district court determined that the board's decision was so tainted by bias that its denial was arbitrary and capricious. The district court granted Daley Farm's motion for summary judgment and voided the board's decision. The district court remanded the variance application for reconsideration by a newly constituted and unbiased board.[1]

On December 21, 2019, the reconstituted board met to consider the variance application. The three biased members who served when the application was first denied

[1] Daley Farm petitioned this court for discretionary review of the district court's remand order. We denied the request. *Daley Farm of Lewiston, LLP v. County of Winona*, No. A21-0951 (Minn. App. Aug. 24, 2021) (order).

were replaced. Because one of the members of the five-member board was not present, the remaining four members considered the variance application. An Assistant Winona County Attorney reviewed the procedural history and questioned members about their affiliations to ascertain whether the board, as now configured, was able to consider the application solely on the merits. Each member asserted that their vote on the variance request would be based solely on the record. The board unanimously agreed on seven of the eight requirements necessary for variance approval as set forth in the county's zoning ordinance, and as required by statute, but they were evenly split on whether the variance was requested for economic reasons alone. Pursuant to the zoning ordinance, which describes the requirements for variance approval, the split decision on whether the request was based solely on economic reasons resulted in denial of the variance.

Daley Farm appealed the variance denial to the district court, and respondents Land Stewardship Project and Defenders of Drinking Water intervened in the action. Daley Farm moved for summary judgment, arguing that the variance should be considered granted as a matter of law because the board failed to make a decision within 60 days of the district court's remand order as set forth in Minnesota Statutes section 15.99 and that the board's second denial was not reasonable and was arbitrary or capricious. Winona County, Land Stewardship Project, and Defenders of Drinking Water moved for summary judgment, arguing that the board reasonably denied the variance and asked the district court to affirm the board's decision. The district court granted summary judgment in favor of Winona County, Land Stewardship Project, and Defenders of Drinking Water, affirming the variance denial. In denying Daley Farm's summary-judgment motion, the district court

concluded that the 60-day rule did not apply to the board's post-remand decision. The district court also determined that, because the board was split on the requirement that the variance application not be based solely on economic reasons, the variance was properly denied.

Daley Farm appeals.

ISSUES

I. Did the district court err by remanding to the board of adjustment the variance request after determining the board's first variance denial was tainted by bias?

II. Was the variance application granted as a matter of law pursuant to Minnesota Statutes section 15.99 because the board of adjustment failed to respond to the district court's remand order within 60 days?

III. Was the variance denial unreasonable, and arbitrary or capricious?

ANALYSIS

"On an appeal from summary judgment, we ask two questions: (1) whether there are any genuine issues of material fact and (2) whether the [district court] erred in [its] application of the law." *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). "When the district court grants summary judgment based on the application of a statute to undisputed facts, the result is a legal conclusion that we review de novo." *Weston v. McWilliams & Assocs., Inc.*, 716 N.W.2d 634, 638 (Minn. 2006).

I. The district court did not err by remanding the variance application to the board of adjustment for reconsideration following the first board's denial.

Daley Farm claims that the district court erred by remanding the variance application to the board of adjustment for reconsideration following its first denial that the district court determined was so tainted by bias that it rendered its denial arbitrary and

capricious. As a threshold matter, the parties dispute whether we review the district court's decision to remand *de novo* or for an abuse of discretion.

Appellate courts routinely review remanded cases to local governments with no deference to the district court, which demonstrates that appellate courts consider the proper remedy in these cases *de novo*. *See Krummenacher v. City of Minnetonka*, 783 N.W.2d 721, 732-33 (Minn. 2010) (remanding a variance application to the decision-maker for application of the proper legal standard). Appellate review of local-government decisions, which were considered by the district court, is also consistent with our *de novo* standard of review. *VanLandschoot v. City of Mendota Heights*, 336 N.W.2d 503, 508 (Minn. 1983) (noting that appellate courts review "the decision of the city council independent of the findings and conclusions of the district court"); *see also Toby's of Alexandria, Inc. v. County of Douglas*, 545 N.W.2d 54, 56 (Minn. App. 1996) (reversing the district court's dismissal for lack of subject-matter jurisdiction and remanding to the district court for review of the board's denial of a conditional-use permit), *rev. denied* (Minn. May 21, 1996); *In re Kenney*, 358 N.W.2d 120, 123 (Minn. App. 1984) (reversing the district court's determination that a local government lacks authority to grant a variance and remanding the variance to the local government for consideration), *aff'd*, 374 N.W.2d 271 (Minn. 1985). Consistent with this precedent, we review a district court's decision to remand a variance request for reconsideration *de novo*.

"Municipalities have 'broad discretionary power' in considering whether to grant or deny a variance." *Krummenacher*, 783 N.W.2d at 727 (quoting *VanLandschoot*, 336 N.W.2d at 508). When reviewing a local government's land-use decision, the reviewing

court must determine whether the action was reasonable. *VanLandschoot*, 336 N.W.2d at 508. An action is unreasonable if it was arbitrary and capricious. *Id.* A quasi-judicial administrative decision—such as a denial of a variance application—is arbitrary and capricious if it represents the decision-maker's will and not its judgment, and if the decision-maker considered facts not intended by the legislature. *In re Valley Branch Watershed Dist.*, 781 N.W.2d 471, 428 (Minn. App. 2010). A decision by an unbiased and impartial decision-maker is fundamental in the quasi-judicial proceeding. *Chanhassen Chiropractic Ctr., P.A. v. City of Chanhassen*, 663 N.W.2d 559, 562 (Minn. App. 2003), *rev. denied* (Minn. Aug. 5, 2003).

There is no dispute that the first board's denial was unreasonable because it was arbitrary and capricious due to bias. Following the first board's denial, the district court did not consider whether the record, absent the taint of bias, supported the board's denial. We know that the record before the reconstituted board, which denied the variance request the second time, was a nearly identical record to that which was before the first board. Moreover, as we explain below, that record reasonably supports the board's variance denial following remand such that its decision is neither arbitrary nor capricious.

The sole issue for us to decide regarding the first variance denial, is whether remand by the district court was the appropriate remedy. Daley Farm claims that, because the first board's denial was arbitrary and capricious, the variance should have been judicially granted. Winona County, Land Stewardship Project, and Defenders of Drinking Water argue that remanding for reconsideration allowed Daley Farm to have the request considered under a fair and unbiased process.

Following the second board's denial of the variance request, as part of its grant of summary judgment, the district court observed that "[t]he 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." Thus, as the district court found, "[t]he record was nearly identical to the one created in the earlier proceedings."

It is generally true, as Daley Farm argues, that "[i]f the zoning authority's decision is arbitrary and capricious, the standard remedy is that the court orders the permit to be issued." But there are exceptions. *In re Stadsvold*, 754 N.W.2d 323, 332 (Minn. 2008). And we are persuaded that the facts here, and the relevant caselaw, fit within an exception to the rule and support the district court's decision to remand the variance request for consideration by the reconstituted board.

In *Krummenacher*, a landowner sought a variance under a city ordinance to expand an existing nonconformity. 783 N.W.2d at 723. The ordinance could be granted only if the landowner demonstrated an undue hardship. *Id.* at 727-32. The board applied the wrong undue-hardship standard, and the supreme court remanded the variance request to the board for reconsideration applying the correct standard. *Id.* at 733. The supreme court explained that an exception to the general rule, that when a zoning authority's decision is arbitrary and capricious the standard remedy is to grant the variance, applied. And it determined that remand was appropriate because the board's decision would not necessarily have been arbitrary had it been considered under the proper standard. *Id.* at 732-33.

Like in *Krummenacher*, the first variance denial would not necessarily have been arbitrary and capricious had a proper and unbiased process been followed and given the record that was before it. Considering "the limited role of the judiciary in reviewing zoning decisions," we conclude that the district court's decision to remand the variance application for review by an unbiased decision-maker ensured that Daley Farm received a fair process while also respecting the other branches of government. *Big Lake Ass'n v. St. Louis Cnty Planning Comm'n*, 761 N.W.2d 487, 491 (Minn. 2009).

II. The 60-day rule set forth in Minnesota Statutes section 15.99 does not apply to a remand order from the district court.

Daley Farm claims that its variance application should be deemed approved because the board did not make a decision within 60 days of the remand order, pursuant to Minnesota Statutes section 15.99, subdivision 2. The county maintains that the 60-day rule does not apply to remand orders because a remand from the district court is not a "request" as defined by the statute. Separately, the county argues that Daley Farm is equitably estopped from reliance on the 60-day rule. We agree with the county's first argument and, therefore, do not reach its equitable-estoppel argument.

"The interpretation of a statute is a question of law reviewed de novo." *Cocchiarella v. Driggs*, 884 N.W.2d 621, 624 (Minn. 2016). "When interpreting statutes, our function is to ascertain and effectuate the intention of the legislature." *Anker v. Little*, 541 N.W.2d 333, 336 (Minn. App. 1995), *rev. denied* (Minn. Feb. 9, 1996). "[W]e first look to see whether the statute's language, on its face, is clear or ambiguous." *Am. Fam. Ins. Grp. v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000). "[W]ords and phrases are construed

according to rules of grammar and according to their common and approved usage." Minn. Stat. § 645.08(1) (2022). "A statute is only ambiguous when the language therein is subject to more than one reasonable interpretation." *Schroedl*, 616 N.W.2d at 277 (quotation omitted). "If the statute is free from ambiguity, we look only at its plain language." *Anker*, 541 N.W.2d at 336.

Appellate courts "cannot add to a statute what the legislature has either purposely omitted or inadvertently overlooked." *Christiansen v. Univ. of Minn. Bd. of Regents*, 733 N.W.2d 156, 159 (Minn. App. 2007), *rev. denied* (Minn. Aug. 21, 2007). The court's duty is to "interpret the policy that the Legislature has already determined in the statutory language at issue." *In re Guardianship of Tschumy*, 853 N.W.2d 728, 741 n.10 (Minn. 2014). Any change to a statute's language "must come from the legislature." *Martinco v. Hastings*, 122 N.W.2d 631, 638 (Minn. 1963).

Minnesota Statutes section 15.99, subdivision 2, provides that "an agency must approve or deny within 60 days a written request relating to zoning." This time limitation "begins upon the agency's receipt of a written request." *Id.*, subd. 3(a).

> "Request" means a *written application* related to zoning . . . for a permit, license, or other governmental approval of an action. A request must be submitted in writing to the agency on an application form provided by the agency, if one exists. . . . A request not on a form of the agency must clearly identify on the first page the specific permit, license, or other governmental approval being sought. No request shall be deemed made if not in compliance with this paragraph.

Id., subd. 1(c) (emphasis added).

The district court issued the remand order in January 2021. The parties then asked the district court to reconsider issues that are not relevant to this appeal, and the district court issued an order clarifying those issues in June. And, in December—well beyond the 60-day deadline—the board reconsidered and denied the variance request.[2]

Automatic-approval provisions "establish deadlines for local governments to take action on zoning applications." *Perschbacher v. Freeborn County Bd. of Comm'rs*, 883 N.W.2d 637, 642 (Minn. App. 2016) (quoting *Am. Tower, L.P. v. City of Grant*, 636 N.W.2d 309, 312 (Minn. 2001)). Such provisions offer a "harsh, extraordinary remedy." *Moreno v. City of Minneapolis*, 676 N.W.2d 1, 6 (Minn. App. 2004). And, therefore, "[c]ourts must narrowly construe the automatic-approval provisions against the penalty." *Harstad v. City of Woodbury*, 902 N.W.2d 64, 77 (Minn. App. 2017).

The issue presented by Daley Farm's appeal is whether the district court's remand order is a "request" pursuant to Minnesota Statutes section 15.99 that makes it subject to the 60-day response requirement. "When a word is defined in a statute, we are guided by the definition provided by the Legislature." *Wayzata Nissan, LLC v. Nissan N. Am., Inc.*, 875 N.W.2d 279, 286 (Minn. 2016). A variance application is a "request" pursuant to Minnesota Statutes section 15.99, which can be made "on an application form provided by the agency" or "not on a form of the agency."

Critically, Minnesota Statutes section 15.99 does not identify remand orders from a district court as a "request," but it does provide that the time limit "is extended if a . . . court

[2] This court denied Daley Farm's request for discretionary review in August, which is when, Daley Farm maintains, the timeline for response started.

order requires a process to occur before the agency acts on the request, . . . or [a] court order make[s] it impossible to act on the request within 60 days." This language demonstrates that the legislature contemplated judicial involvement in requests made pursuant to section 15.99, but it still omitted a district court's remand order from the definition of "request." *See Christiansen*, 733 N.W.2d at 159 ("this court cannot add to a statute what the legislature has either purposely omitted or inadvertently overlooked"). A district court's remand order, therefore, is not a "request" as defined by statute.

Moreover, the statute defines "applicant" as "a person submitting a request under this section. An applicant may designate a person to act on the applicant's behalf . . . and any action taken by or notice given to the applicant's designee related to the request shall be deemed taken by or given to the applicant." Minn. Stat. § 15.99, subd. 1(d). Therefore, Minnesota Statutes section 15.99 does not include a district court in its definition of applicant. This similarly supports our interpretation that a district court's remand order is not a "request" as defined by the statute.

We, therefore, conclude that the 60-day deadline for an agency response in section 15.99, subdivision 2(a), does not apply to a district court's remand order because it is not a "request" by an applicant as defined in Minnesota Statutes section 15.99, subdivision 1(c)-(d).

III. The second variance denial was reasonable and was neither arbitrary nor capricious.

Daley Farm challenges the second variance denial, claiming that the denial was not reasonable and was arbitrary and capricious.

"Municipalities have broad discretionary power in considering whether to grant or deny a variance." *Krummenacher*, 783 N.W.2d at 727 (quotation omitted). An appellate court reviews a municipal variance decision "to determine whether the municipality was [] within its jurisdiction, was not mistaken as to the applicable law, and did not act arbitrarily, oppressively, or unreasonably, and to determine whether the evidence could reasonably support or justify the determination." *Id.* (quoting *Stadsvold*, 754 N.W.2d at 332 (internal quotation omitted)). We "defer to a municipality's decision when the factual basis for the denial has even the 'slightest validity.'" *Roselawn Cemetery v. City of Roseville*, 689 N.W.2d 254, 259 (Minn. App. 2004) (quoting *White Bear Docking & Storage, Inc. v. City of White Bear Lake*, 324 N.W.2d 174, 176 (Minn. 1982)).

Economic Considerations

"A variance may be granted when the applicant for the variance establishes that there are practical difficulties in complying with the local control." Minn. Stat. § 394.27, subd. 7 (2022). However, a variance may not be granted if the practical difficulties associated with compliance are due to economic considerations alone. *Id.*

"The Winona County Board of Adjustment shall not grant a variance" unless it finds that the applicant satisfies the eight criteria outlined in Minnesota Statutes section 394.27, subdivision 7. Winona County, Minn., Zoning Ordinance § 5.6.2 (2011). Among these is a finding that "economic considerations alone do not constitute practical difficulties." *Id.* In other words, prior to granting a variance, the board must affirmatively find that a consideration other than economics is the reason a variance is necessary.

Because two of the four voting members did not agree that the variance application was for noneconomic reasons, there was no finding satisfying this criterion and, thus, the variance application was denied. The record supports the finding that the variance application was made for economic reasons alone.

Daley Farm sought a variance from the ordinance prohibiting feedlots with having more than 1,500 animal units. *See* Winona County, Minn., Zoning Ordinance § 8.4.2 (2011). Daley Farm's variance application requested to expand its operation, exceeding the county's animal-unit cap, to "provide economic support" for the sixth generation of the family to join the business. As the district court observed, Daley Farm stated that the variance was sought "to bring in the next generation and yet retire at some point," claiming that they need to expand operation to "leave [their] children with something and still have a thriving business." Denying Daley Farm's variance request because two of the four board members found that the variance request was made solely for economic reasons is, therefore, supported by the record. *Roselawn Cemetery*, 689 N.W.2d at 259 (noting deference is given to municipal decisions when there is a valid factual basis to support denial).

Bias

Daley Farm argues that board member bias rendered the second denial arbitrary or capricious.

As we have explained, the record supports the decision of two of four board members who concluded that the variance application was for economic reasons alone.

And because we must defer to the board's decision when there exists even the "slightest validity" of support, its decision was neither arbitrary nor capricious. *Id.*

As to its allegation of bias by the board's members, Daley Farm points to Land Stewardship Project's activities related to the establishment of the first board that denied the variance. But as explained above, the district court agreed that bias tainted the first board's decision and, hence, remanded for reconsideration of the variance application by the reconstituted board.

And as to alleged bias by the second board, the district court found, "[p]laintiffs cannot point to any actual evidence of bias." Our review of the record supports this determination.

There is nothing in the record to support Daley Farm's claim that any member of the board of adjustment considered evidence outside of the record. When the assistant county attorney asked if any board members conducted independent research, one board member answered: "No, just the newspaper, and that hasn't affected me in any way because it was information I already knew." And before the board considered the variance application, another board member acknowledged that she "pay[s] a membership fee to post [her] personal farm business's information on [the Land Stewardship Project's] [web]site to encourage participation in [her] own farm, and [she has] taken a couple of their Farm Beginnings classes in the past," but she also indicated that her affiliation with the organization would not impact her decision.

As noted, before the board considered the variance application, an assistant county attorney questioned members about their affiliations, and each member indicated that their

vote on the variance application would be based solely on the record. The record, therefore, does not suggest that the board's decision denying Daley Farm's variance application represented the board's "will and not its judgment." *In re Schmalz*, 945 N.W.2d 46, 54 (Minn. 2020). The second board's variance denial was neither arbitrary nor capricious.[3]

DECISION

Because the first board's variance denial was arbitrary and capricious based solely on bias, and the record could support the decision absent the bias, the district court properly remanded the request for reconsideration. We also conclude that, because a district court order remanding an application to a county board of adjustment is not a "request" as defined in Minnesota Statutes section 15.99, subdivision 1(c), the 60-day deadline for an agency response in section 15.99, subdivision 2(a), is inapplicable. Finally, the second board's denial was reasonable and neither arbitrary nor capricious. Therefore, we affirm.

Affirmed.

[3] Daley Farm also suggests that the lack of a specific finding means that the board did not deny the request. The relevant ordinance and statute make clear that the county "shall not grant a variance" unless it makes affirmative findings. Minn. Stat. § 394.27, subd. 7; Winona County, Minn., Zoning Ordinance § 5.6.2. The lack of a finding for this criterion, therefore, prevents the county from granting the variance request.