

STATE OF MINNESOTA
COUNTY OF DODGE

IN THE DISTRICT COURT
CIVIL DIVISION
THIRD JUDICIAL DISTRICT

State of Minnesota, by Lowell Trom and
Evelyn Trom, Lowell Trom and Evelyn Trom,

Plaintiffs,

**ORDER GRANTING PLAINTIFFS'
MOTION FOR SUMMARY JUDGMENT**

v.

County of Dodge, Dodge County
Board of Commissioners, Nick Masching,
and Roger Toquam,

Court File No. 20-CV-14-293

Defendants.

The above matter came on before the undersigned Judge of District Court on the 16th day of September 2014, at the Dodge County District Court, City of Mantorville, County of Dodge, State of Minnesota.

APPEARANCES: Plaintiffs were represented by James P. Peters, Esq. Defendants Dodge County ("Dodge County") and Dodge County Board of Commissioners ("Board") were represented by Paul D. Reuvers, Esq. Defendants Nick Masching ("Masching") and Roger Toquam ("Toquam") were represented by Paul V. Sween, Esq.

The matter was before the Court on cross motions for summary judgment. Counsel agreed that the cause of action for the appeal of the conditional use permit ("CUP") was ripe for determination and no contested material facts precluded summary judgment.

FILED

NOV 18 2014

Dodge County District Court, Mantorville MN

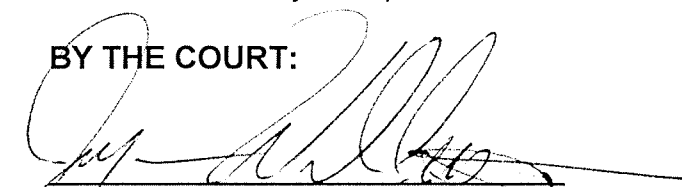
Based upon the file, record, and proceedings herein, the Court finds that Dodge County acted arbitrarily and unreasonably when it granted the Masching CUP because it was granted based upon an incomplete application in violation of Dodge County Ordinance §16.24.3.

IT IS HEREBY ORDERED:

1. That Plaintiffs' Motion for Summary Judgment is hereby **GRANTED.**
2. That the CUP granted by Dodge County to Masching and Toquam is hereby vacated.
3. That Plaintiffs' claims for anticipatory or threatened nuisance and for a violation of the Minnesota Environmental Rights Act are moot and are hereby dismissed without prejudice.
4. That Defendants' Motion for Summary Judgment is denied.
5. That the attached memorandum is hereby incorporated.

Dated: November 18, 2014.

BY THE COURT:


Jodi L. Williamson
Judge of District Court

JUDGMENT

I hereby certify that the foregoing constitutes a judgment of the court herein.

Dated: November 18, 2014.

Patty Ball
Court Administrator

By 
Deputy Clerk

MEMORANDUM

FACTS

On February 10, 2014 Nick Masching filed an application for a Conditional Use Permit (CUP) to establish a hog feedlot in Dodge County. The application consisted of a three page form provided by Dodge County Environmental Services and an attached aerial photo. The application indicated a plan to build a new feedlot to hold 2,400 hogs, equating 720 Animal Units (AU). The barn would be a tunnel type barn, 102 feet by 193 feet, and it would be located in Westfield Township. The land on which the barn was to be built was owned by Roger Toquam. Mr. Masching intended to buy six acres from Mr. Toquam to build his new feedlot. The second page of the application form asked for "[a]dditional information requirements for a feedlot Conditional Use Permit." The majority of these requirements were not included in the application.

On February 26, 2014, Dodge County sent notice of Mr. Masching's plan to the Westfield Township, the Soil and Water Conservation District, the County Highway Department, the Minnesota Department of Natural Resources (DNR), the Minnesota Department of Transportation (MnDOT), and the Cedar River Watershed District. The notice stated that a public hearing was scheduled for April 2, 2014 and requested written comments to be submitted by March 17, 2014. This notice also included information on the existing conditions at the proposed feedlot site, based on a staff review of in-office data. The County provided data indicated that neighboring land use was largely cultivated row crops, soil conditions were considered "prime farmland," limestone bedrock existed approximately 100-150 feet below the surface, the area was

not highly sensitive to groundwater contamination, and the site had low value for natural resource use and protection. The notice explained:

Feedlots inherently pose a risk to groundwater and surface water because of manure storage, handling, and land spreading requirements. These risks will be considered when reviewing the application for feedlot construction permit in accordance to MN Rule 7020. Feedlots of this size also present a risk for nuisance related to noise, odor, and traffic. The County is currently requesting additional information from the applicant regarding these potential impacts and information required in the County Zoning Ordinance and MN Rule 7020.

Administrative Record (AR), 5-6. In response to the County's notice, MnDOT and the County Highway Department replied that they had no objections to Mr. Masching's proposed feedlot. AR, 11-12. No other responses were received by the County from the other agencies.

Dodge County's Feedlot Advisory Committee inspected the proposed site on March 4, 2014. The Advisory Committee's report made a number of findings: the University of Minnesota Offset calculation (determining the likelihood that odor would be a nuisance) was 98% odor-free, the distance to the nearest neighbor was 3,845 feet, bedrock in the area was 160-210 feet deep, and Mr. Masching planned to use composting for dead animal disposal. The Committee recommended approval of the CUP, with ten conditions, including that Mr. Masching establish a manure application plan and designate an area for dead animal storage and disposal. AR, 14-15.

On March 19, 2014 notice of the April 2, 2014 public hearing was published in the Dodge Center Star Herald. This notice alerted the community to the April 2, 2014 hearing date and listed several CUP applications, including Mr. Maschings. It did not contain any information about the proposed feedlot, other than the number of hogs, the

location, and the name of the applicant. AR, 20. The notice also indicated that written comments would be accepted up to one day prior to the public hearing.

On April 2, 2014 the Dodge County Planning Commission held the public hearing. Connie Trom, a neighbor to the site of the proposed feedlot and family member of the Plaintiffs, was present but did not speak. A transcript from the hearing was provided.

CHAIRMAN WOLF: *Okay. Do we have a – Westfield Township? I can't – nobody? Oh, okay. Do you want to come up?*

COMMISSION MEMBER: *She's not with the township.*

COMMISSION MEMBER: *She's a neighbor.*

CHAIRMAN WOLF: *Oh, you are not – you are not a township representative?*

CONNIE TROM: *No.*

CHAIRMAN WOLF: *Okay. If anybody wants to speak, we'll run these out and we'll get to you. Who is going to speak? Did you want to speak or – ok. All right. I guess nobody wants to speak.*

COMMISSIONER BUCK: *I'll move we close the public hearing since nobody wants to speak.*

CHAIRMAN WOLF: *Second?*

COMMISSIONER DURST: *Second.*

CHAIRMAN WOLF: *Okay. I've got a motion and a second. All in favor?*

COMMISSION MEMBERS: *Aye.*

CHAIRMAN WOLF: *Opposed? Motion carries.*

AR, Exhibit 13.

Plaintiff Lowell Trom and his son Bradley Trom were also present, but had arrived late after the record had been closed. Harlan Buck, a member of the Dodge County Planning Commission, did speak briefly, stating that "...the Maschings, they know their hogs. And they know how to handle hogs. And they have been very – very patriotic to the community that way with their hog setups and stuff." AR, Exhibit 13. Mark Moenning of the Feedlot Advisory Board explained "...we [the Feedlot Advisory Board] viewed it as a good site in all its regards." *Id.* at 6.

The Planning Committee voted to recommend approval of the CUP, with the following conditions: (1) a Dodge County Zoning Permit shall be obtained before constructing a building; (2) the Dodge County animal feedlot registration shall be updated prior to occupation of the barn; (3) all (ten) recommendations of the Feedlot Advisory Report must be completed; and (4) a copy of the appropriation permit from the DNR shall be submitted. Mr. Masching was notified that any violation of these conditions could result in the termination of the permit. The Planning Commission submitted a ten-page finding of fact and recommendations, Mr. Masching's application, the 'no-objection' notices from MnDOT and the County Highway Department, and the Feedlot Advisory Committee Report to the Dodge County Board of Commissioners.

On the morning of April 8, 2014 the same day the Board of Commissioners met to decide on Mr. Masching's CUP, counsel for the Plaintiffs sent a letter to the Board. This letter stated the objection of the Troms to the proposed feedlot, primarily because the feedlot would "alter the essential character of the locality, would cause an adverse

effect on property values, and would cause injury to health and environment of residents.” AR, 63. Plaintiffs asked the Board to either deny the CUP, to grant the CUP with certain conditions, or to postpone the Board’s decision until the April 22, 2014 Board meeting to give Plaintiff’s time to present their objection in full. The Board did not grant Plaintiff’s request, instead voting that same day to grant Mr. Masching’s CUP with only the four conditions recommended by the Planning Commission.

On May 5, 2014 Plaintiffs filed their complaint against Dodge County, the County Board of Commissioners, Mr. Masching, and Roger Toquam. Plaintiffs’ primary claim is that Mr. Masching’s application was incomplete as it failed to include information required pursuant to Dodge County ordinances. Plaintiff cites specifically to the failure to include a description of the geological conditions, soil types, or seasonal high water table, a map or aerial photo showing all dimensions and all features within ½ mile of the proposed feedlot, manure management plan information, including USDA aerial photos of all manure application sites and acreage reports, written land spreading agreements, plans and soils analysis when required, and a detailed map of the site to include the proposed total confinement barn and the proposed composting building. Plaintiffs assert claims based on the Minnesota Environmental Rights Act (MERA), anticipatory nuisance, and requested an injunction preventing Mr. Masching from building the proposed feedlot.

On June 25, 2014 Plaintiffs filed a motion for summary judgment. Defendant Dodge County responded by filing a motion for summary judgment on June 27, 2014. On July 9, 2014 Defendant Masching and Toquam filed a motion for summary judgment.

Plaintiffs maintain that the CUP application was incomplete and the County therefore acted arbitrarily and unreasonably in granting the CUP. As a result, they ask the Court to vacate the CUP. Defendants respond that the County followed proper procedure consistent with Dodge County ordinances, and that all required information was either submitted or provided for in the CUP permit and conditions. Defendants further argue that the site of the proposed feedlot is appropriate in all respects.

ISSUE

- I. Whether Dodge County acted arbitrarily and unreasonably when it granted the Masching conditional use permit (CUP).

ANALYSIS

Decisions by a county to grant or deny a CUP are quasi-judicial in nature. *Interstate Power Co. v. Nobles County Bd. of Comm'rs*, 617 N.W.2d 566, 574 (Minn. 2000). As a result, the district court acts as an appellate court when reviewing a county decision. "Generally [the court's] review of a quasi-judicial decision is limited to an examination of the record made by the local zoning authority."¹ *Big Lake Assn v. Saint Louis County Planning Comm'n*, 761 N.W.2d 487, 490 (Minn. 2009). The standard of review is a "deferential one, as counties have wide latitude in making decisions about special use permits." *Schwardt v. County of Watonwan*, 656 N.W.2d 383, 386 (Minn. 2003). See also *Barton Contracting Co., Inc. v. City of Afton*, 268 N.W.2d 712, 717 (Minn. 1978). "When an application for a special use permit is approved, the decision-making body has implicitly determined that all requirements for the issuance of the

¹ The Court has conducted its review on the basis of the Administrative Record only. Affidavits submitted by Plaintiffs as to the beauty and historic nature of the Trom family farm, although eloquent, played no role in the Court's decision.

permit have been met.” *Barton Contracting*, 495 N.W.2d at 471. The court reviews the county’s decision only to see “whether there was a reasonable basis for the decision, or whether the county acted unreasonably, arbitrarily, or capriciously.” *Id.* See also *Sunrise Lake Ass’n, Inc. v. Chisago County Bd. of Com’rs*, 633 N.W.2d 59, 62 (Minn. App. 2001). A county may approve conditional uses if the applicant satisfies the standards established by county ordinances. Minn. Stat. § 394.301, subd. 1. To show that the county board did not act reasonably, the plaintiffs must show that application did not meet the standards set out in the county ordinances and that the grant of the CUP was an abuse of discretion. *Schwardt*, 656 N.W.2d at 387.

Counties have the authority to establish ordinances governing the issuance of conditional use permits. Minn. Stat. § 394.301. Under state law, CUPs “may be approved upon a showing by an applicant that standards and criteria stated in the ordinance will be satisfied.” Minn. Stat. § 394.301, subd. 1. In Dodge County, Zoning Ordinance § 16.24 addresses feedlots and pastures, including the requirements for granting a CUP for a feedlot. These performance standards “are the minimum requirements” for the use of the land as a feedlot. Dodge County Ordinance § 16.1.

Dodge County Ordinance § 16.24.3 is titled “Information Requirements for a Feedlot Conditional Use Permit.” As a prerequisite for issuing a CUP, the ordinance requires the County to have a completed permit application. The ordinance further requires that the applicant submit a variety of information before the County issues a feedlot CUP, including a description of the geological conditions, a map of the proposed site showing the location and dimensions of any manure storage facilities, wells, and animal confinement buildings, the drainage patterns on the site, and information on the

applicant's manure management planning.² As part of the applicant's manure management planning, the applicant must provide written land spreading agreements if the applicant does not have the minimum acreage to apply animal waste, plans for proposed manure storage, and USDA aerial photos of the location of all manure application sites and acreage reports.

The information required by Dodge County Ordinance § 16.24.3 is mirrored in the permit application form provided by the county. A CUP application must be submitted on forms provided by the Dodge County Environmental Services Department. Dodge County Ordinance § 18.13.5(A). Page one of the provided application form requested basic identifying and descriptive information on the proposed project. AR, 1. Page two addressed "additional information requirements for a feedlot Conditional Use Permit." AR, 2. The first five questions on page two requested the exact information required by Ordinance § 16.24.3, including a manure management plan and an aerial photo. AR, 2. The last three questions went beyond the information required by Dodge County

² The ordinance reads in full as follows: 16.24.3 INFORMATION REQUIREMENTS FOR A FEEDLOT CONDITIONAL USE PERMIT:

- (A) A completed permit application listing all owners and signed by at least one of the owners;
- (B) The maximum number of animals of each type that will be confined at the feedlot at one time;
- (C) A description of the geological condition, soil types, and the seasonal high water table;
- (E) A map or aerial photo indicating dimensions of the feedlot, showing all existing homes, buildings, lakes, ponds, watercourses, wetlands, dry runs, rock out-croppings, roads, ells, land contours, and surface water drainage within one half (1/2) mile of the feedlot;
- (F) Manure management planning shall include the following information:
 - (I) USDA aerial photos of the location of all manure application sites and acreage reports
 - (II) Written land spreading agreements shall be provided if the applicant does not have the minimum acreage to apply animal waste
 - (III) Manure handling and application techniques
 - (IV) Plans for proposed manure storage and/or pollution abatement structure
 - (V) An analysis of the soils and manure when required by the enforcement officer;
- (G) A map of the site showing the following information:
 - (I) The locations and dimensions of all animal confinement buildings including outside lots
 - (II) The locations and dimensions of any manure storage facilities, including those not located in a building
 - (III) The location of any well, active or abandoned, and its distance to the nearest confinement building or outside lot
 - (IV) The drainage patterns on the site.

Ordinance § 16.24.3, and asked for a tree planting plan (if applicable) and the location and dimensions of road access, parking, and loading facilities, all to be shown on the site plan provided. The application form itself, to be complete, thus required all of the information mandated by Ordinance § 16.24.3 to be submitted with the application.³

The application submitted by Defendant Masching was clearly incomplete. The application form asks for a description of the geological condition, soil type, and seasonal high water table for the proposed site. This was not provided. The application form asks for an aerial photo showing the area within a half mile of the proposed feedlot. This was not provided. The application form asks for manure management planning information. This was not provided. The application form asks for a map of the proposed site showing the location and dimension of any manure storage facilities, the location of any well, and drainage patterns on the site. This was not provided. The application form asks for a site plan showing the location and dimensions of road access, parking, and loading facilities. This was not provided. The only information provided, apart from the identifying material on the first page of the application, was an aerial photograph showing the proposed barn and a small section of the outlying area.⁴ The application contained only a fraction of the information required by both Dodge County ordinance and asked for on the application form itself. Because § 16.24.3 requires a complete application before a feedlot CUP may be approved, the County's decision to deem an obviously incomplete application complete was unreasonable and

³ Because the application form provided by the County asks for the same information as the County Ordinance, the Court is not required in this case to decide if, as a matter of statutory interpretation, Dodge County Ordinance § 16.24.3 mandates all the "information requirements" to be submitted at the time of the application or simply at some point before the CUP is issued.

⁴ It is unclear what the scale is on this map; it is, however, clearly less than the required half mile.

arbitrary.⁵ The CUP was therefore issued in violation of the requirements of Dodge County Ordinance § 16.24.3, and is hereby vacated.

Defendants put forward several arguments for why the CUP was properly granted. First, Dodge County argues that, under Minn. Stat. § 15.99, the application should be deemed complete by law. Minn. Stat. § 15.99 states that an agency must approve or deny a zoning request within 60 days and, if the agency receives a request that does not contain all required information, the 60 day time limit will start over only if the agency sends written notice to the applicant within 15 days of receipt of the request. The statute defines an “agency” as a “statutory or home rule ... county.” Minn. Stat. § 15.99, subd. 1(b). Minn. Stat. § 15.99 therefore applies to Dodge County.

In Dodge County, all feedlot CUP applications are first reviewed by the Zoning Administrator, who makes the initial determination whether the application is complete. Ordinance § 18.13.5(C). If the “request does not contain all required information or sufficient information for the permit to be issued, it shall be returned within fifteen (15) days,” language that specifically tracks Minn. Stat. §15.99. *Id.* Dodge County argues that because the application was never returned to Mr. Masching, it is now deemed complete as a matter of law.

Statutory interpretation is a question of law. *Calm Waters, LLC v. Kanabec County Bd. of Com’rs*, 756 N.W.2d 716, 719 (Minn. 2008). County ordinances are construed under the same principles as statutes. *Id.* at 721. Minn. Stat. § 15.99, subd. 3(a) states in relevant part if “an agency receives a written request that does not contain all required information, the 60-day limit starts over *only* if the agency sends written

⁵ Dodge County’s contention, through the affidavit of Melissa DeVetter, that applications with a similar lack of information were regularly deemed complete by the County is irrelevant.

notice within 15 business days of receipt of the request telling the requester what information is missing” (emphasis added). As a matter of plain language, the 15 day deadline imposed by both Dodge County ordinance and Minnesota state law is merely a timing deadline: the County has 15 days to determine if it will reject the zoning request as incomplete, thus avoiding triggering the 60 day deadline to take action on the request. Once the 15 days pass, the agency then has 60 days to take action on the zoning request, regardless of whether the application is in fact complete or not. The County’s argument that the 15 day deadline has legal significance to the question of whether the application is complete is without merit.

Defendant Dodge County next argues that because Plaintiffs did not raise the issue of an incomplete application during the CUP process, they cannot now raise the issue for the first time on appeal. It is true that a “reviewing court must generally consider only those issues that the record shows were presented and considered by the trial court in deciding the matter before it.” *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (citation omitted). Here, the District Court is acting as a reviewing court. *Interstate Power Co. v. Nobles County Bd. of Comm’rs*, 617 N.W.2d 566, 574 (Minn. 2000). “But the question of whether a zoning or land use planning issue was properly raised is not always easily determined.” *Big Lake Ass’n v. Saint Louis County Planning Com’n*, 761 N.W.2d 487, 491 (Minn. 2009). In *Big Lake*, the Minnesota Supreme Court held that an appellant, who had notice that a resort project was classified as a “commercial planned unit” and did not contest that classification until appeal, had waived that issue because the appellant had not raised the issue before the planning commission. *Id.* at 491.

As a preliminary matter, this Court questions how Plaintiffs could have objected to the completeness of the application before they were afforded an opportunity to see the application. The notice given by Dodge County to Plaintiffs in the published notice on March 19, 2014 contained only the name of the CUP applicant and the location of the proposed feedlot. The facts before this court are clearly distinguishable from *Big Lake*, where the notice of public hearing “clearly stated that the Planning Commission was considering a proposal for ‘a commercial planned unit development,’” thus alerting the appellant of the classification issue before the public hearing was held. *Id.* The April 2, 2014 hearing before the Planning Commission did not discuss the feedlot proposal in any detail and of more concern to this reviewing court, no one commented on the clearly incomplete application before the Planning Commission. In the absence of any evidence that Plaintiffs were able to view the Masching application before April 8, 2014, this Court finds that Plaintiffs have not waived the issue of the completeness of the Masching CUP application.

Defendant Dodge County cites to an unpublished case, *Steiger v. Douglas County Bd. of Com'rs*, 2005 WL 1869471 (Minn. App. 2005), as authority that Plaintiff must have raised the sufficiency of the application to the County before raising this issue on appeal. In *Steiger* the Court of Appeals ruled against an appellant who had failed to object to the applicant's failure to provide a map with his CUP application, as was required by Douglas County ordinance. The court reasoned that “if this issue had been presented to the [Planning Advisory Commission], it could have been easily addressed and probably resolved. Raising the issue for the first time on appeal blindsides the respondents.” *Id.* at *3. The court explained that the applicant's failure to

include the map was “a significant omission.” *Id.* Yet the court concluded in a narrowly drawn decision that because “the sources of information that could support [information that would have been provided in the map] are easily available, the defect in the application could have been cured and waived, the record contains a statement addressing the fact in question, and the objection is first raised on appeal” the omission of the map was not fatal to the CUP. *Id.*

The Court finds Defendant's use of *Steiger* unpersuasive. The *Steiger* court found that a trial court may vacate a CUP if an incomplete application omits material information that is not addressed by other information available to the County:

No Minnesota caselaw has been brought to our attention regarding the significance of an incomplete application for a conditional-use permit. Courts in other jurisdictions have determined that immaterial omissions in land-use permit applications do not affect the validity of a county board's approval of the application when no prejudice is demonstrated. ... In this case, we cannot conclude that the lack of a map is immaterial. ... However, failure to include a map with the application could be corrected during the proceeding and is a failure that the county could waive if the relevant information is otherwise provided.

Steiger at *3 (citations omitted).

In this case, the Court determines that the missing information in the application is substantial and material, and was not addressed by information otherwise available to the County. Such information could only be supplied by the applicant. The importance of good manure management planning, for a feedlot that proposes to have 2,400 head of hog, is reflected in the numerous Dodge County ordinances regulating manure management. See Dodge County Ordinance § 16.24.2(B); Dodge County Ordinance § 16.24.3(F); Dodge County Ordinance § 16.24.5. Dodge County Ordinance § 16.24.6. Defendant Dodge County could not waive the provision of this information, and Plaintiffs

claims on this issue are not barred because they did not raise them during the CUP application process.

Dodge County further argues that all the information required by § 16.23.4 will eventually be submitted to the County as Mr. Masching continues the process of approval for his feedlot. For instance, geological conditions and a site map must be submitted as part of a Feedlot Permit application, and whatever manure management plan Mr. Masching designs, it must comply with Minnesota Pollution Control Agency Rule 7020. Dodge County argues that, by conditioning Mr. Masching's CUP on complying with state and local law, it has sufficiently addressed the feedlot CUP requirements of § 16.24.3.

This argument is unconvincing. Indeed, the fact that the County found it necessary to condition the CUP on Mr. Masching's later completion of certain requirements shows clearly that the County did not have any facts regarding these requirements. The conditions imposed contained few specifics, but merely warned Mr. Masching to follow the law. AR, 14-15 ("Accurate Manure Application Plans be established and maintained that meet the MPCA 7020.2225 requirements. ... MPCA 7020.2225 will be followed for land application of manure. If weather or soil conditions do not allow for injection, then the Dodge County feedlot officer shall be notified and MPCA 7020.2225 followed for surface application setbacks and rates. ... A designated area shall be provided for dead animal storage and disposal that meets Minnesota Board of Animal Health. ... All MPCA permits in place and MPCA 7020.2100 followed for concrete construction.").

As specifically regards manure management planning, the County's solution of conditioning the CUP on Mr. Masching later designing a plan in compliance with Minnesota Pollution Control Agency (MPCA) Rule 7020 is completely inadequate. Mr. Masching is already required by the MPCA Rules to have a plan in compliance with MPCA Rule 7020, regardless of the conditions on his CUP. MPCA 7020.2000, subd. 1 ("An owner of an animal feedlot or manure storage area ... shall comply with parts 7020.2000 to 7020.2225."). See also Dodge County Ordinance § 16.2.1 ("All uses and any structures serving those uses, whether Permitted, Interim, or Conditional shall comply with all applicable Federal, State and County laws, rules and regulations..."); Dodge County Ordinance § 16.24.2(B) ("all manure storage lagoons and earthen storage basins shall conform with MPCA design standards."); Dodge County Ordinance § 16.24.5 ("Manure application will comply with MPCA Rule 7020.2225 or successor rules."). Further, a feedlot CUP is revoked by Dodge County law if there is no longer "sufficient land specified for spreading manure." Dodge County Ordinance § 16.24.2(A). When the County had no information on *how* Mr. Masching would comply with state and local rules, and that information is required by ordinance before issuing a CUP, merely conditioning the CUP on Mr. Masching's legal compliance is an unreasonable and arbitrary procedural choice.

There is no allegation that Mr. Masching or Dodge County would have been prejudiced by a delay in issuing the CUP until Mr. Masching had all the required planning necessary to submit a completed application. Indeed, the fact that some of this information is required for other necessary permits and approvals argues strongly against the idea that any such prejudice would occur.

Finally, the circumstances of this case support vacating Mr. Masching's CUP, rather than remanding to the County for further proceedings. The problem here differs from cases where a remand is the usual remedy because the wrong in this case is not a county's failure to follow substantive standards when denying a CUP, but a county's failure to follow procedure in approving a permit. See *Interstate Power Co., Inc. v. Nobles County Bd. of Com'rs*, 617 N.W.2d 566 (Minn. 2000) (denial of a conditional use permit was initially remanded so that county could make findings sufficient to explain its decision); *Earthburners v. County of Carleton*, 513 N.W.2d 460 (Minn. 1994) (Supreme Court remanded back to county board because the board had not articulated its basis for denial of a conditional use permit); *Scott County Lumber Co., Inc. v. City of Shakopee*, 417 N.W.2d 721 (county's denial of a conditional use permit was reversed because it was based solely on neighborhood opposition and there was expert opinion in favor of granting the permit). In the present case, the application process was faulty from the very beginning, preventing the opportunity for a full public hearing.

Following the Court taking this case under advisement on September 16, 2104, there have been numerous submissions on the MERA and nuisance claims. This court does not need to address Plaintiffs' claims on MERA and nuisance.

CONCLUSION

Plaintiffs' motion for summary judgment is granted and Defendant Masching's CUP permit is vacated. The Court takes no position on the merits of the Masching feedlot proposal; Mr. Masching may have proposed a perfectly appropriate location for a feedlot that complies with the Dodge County ordinances. The County must, however,

abide by its own rules as set forth in the Dodge County ordinances, when granting a CUP permit. Mr. Masching is at liberty to re-apply for a CUP, with all the required information provided. At that point a full hearing on the merits of the CUP can be addressed. Plaintiffs' other claims regarding MERA and anticipatory nuisance are hereby dismissed as moot.

JLW

Assistance with research and writing provided by Kirsten Selvig, Esq. Judicial Clerk