



## **Recent Minnesota Supreme Court Case Law**

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A recent case decided by the Minnesota Supreme Court informs land use practitioners and their clients to verify that actions taken by Minnesota governmental agencies and/or departments are supported by the relevant statutory law. At issue in the Matter of the Denial of Certification of the Variance Granted to Robert W. Hubbard by the City of Lakeland was a variance granted by the City of Lakeland to a landowner, Robert W. Hubbard. -- N.W.2d --, 2010 WL 455278 (Minn. 2010).

Mr. Hubbard had purchased property in the City of Lakeland in 2006. The property was heavily wooded and was adjacent to the St. Croix River. A river bluff extended the entire length of the property. Mr. Hubbard had purchased the property with the intention of building a new home on the property. Mr. Hubbard wanted the new home built to the edge of the bluff. However, a City ordinance required that new construction be placed at least 40 feet back from the bluffline.

Mr. Hubbard sought a variance from the City of Lakeland to build the home within 40 feet from the bluffline. The City of Lakeland, acting through its city council, granted the variance. After granting the variance, the City of Lakeland notified the Minnesota Department of Natural Resources (hereinafter "DNR") of its variance decision so that the DNR could certify the variance pursuant to a DNR rule. The DNR refused to certify the variance.

The issue addressed by the Minnesota Supreme Court was whether the DNR has the authority to certify local variance decisions. Mr. Hubbard argued that the DNR did not have the authority to certify local variance decisions. The DNR argued that it has the authority to certify local variance decisions. In support of its argument that it has statutory authority to certify local variance decisions, the DNR cited the Minnesota Lower St. Croix Wild and Scenic Rivers Act and the Minnesota Wild and Scenic Rivers Act (hereinafter "Acts"). Those two acts grant the DNR broad rulemaking authority to adopt rules and standards regarding zoning. The DNR argued that because it was granted broad rulemaking authority, its rule regarding the certification of variance decisions is valid and it has the authority to approve or not approve the City of Lakeland's variance decision.

The Minnesota Supreme Court disagreed with the DNR, stating that "simply because an agency has broad authority to promulgate rules does not mean that the rules the agency promulgates can permissibly expand the substantive authority the legislature gave the agency." In sum, the Acts cited by the DNR did not give it the authority to certify local variance decisions. Thus, the City of Lakeland's determination that the variance should be granted is final.

The lessons to be learned by In re Hubbard are two-fold. The first, and most basic, is that broad rulemaking authority does not allow governmental agencies and/or departments to write rules or

take actions that are not supported by substantive law. Second, land use practitioners and their clients must scrutinize the actions taken by governmental agencies and/or departments to ensure that the actions are permitted by, and grounded in, substantive law. If the actions are not, they are void.

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