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FILED
Court Administrator

SEP 04 2008

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

By JJA Deputy

SECOND JUDICIAL DISTRICT

True Blue Minnesota, a nonprofit corporation,
Martha A. Ballou, President, and Andrew M.
Hine, Vice President,

Plaintiffs,

Chief Judge Kathleen Gearin

vs.

File No. 62-CV-08-8748

ORDER

The Capitol Area Architectural and Planning
Board, and Carol Molnau, Lieutenant Governor
Of the State of Minnesota, in her official capacity
as Chair of the Capital Area Architectural and
Planning Board,

Defendant

The above-entitled matter came on for hearing before the undersigned on August 29, 2008, pursuant to a motion for the temporary injunction filed by the Plaintiffs.

Jay Y. Benanav and Jane L. Prince appeared on behalf of the Plaintiffs. Assistant Attorney General Nathan J. Hartshorn and Deputy Attorney General Christie B. Eller represented the Defendants.

Based upon the files, records, and proceedings herein, the Court makes the following Order:

- 1) The Motion for Temporary injunction is DENIED for jurisdictional reasons only, not on the merits
- 2) The Courts September 2, 2008 order staying the defendants from enforcing their decision is vacated, and the file is dismissed from district court.

3) The attached Memorandum is incorporated into and made a part of this Order.

Date: 9-4-08

BY THE COURT:


Kathleen Gearin
Chief Judge of District Court

MEMORANDUM

The Capitol Area Architectural and Planning Board is given general rule making authority under Minn. Stat. § 15B.03 (2007); which directs decisions to be governed by Minnesota's Administrative Procedures Act ("MN APA"). Statutory law also gives the Court of Appeals jurisdiction to issue writs of certiorari to all agencies except the Tax Court and the Workers Compensation Court of Appeals. Minn. Stat. § 480A.06 (2004). This is further supported by the provisions of the MN APA describing the process for appealing an agency decision. See Minn. Stat. § 14.63 to § 14.69. More specifically, the MN APA directs the Court of Appeals to "declare the rule invalid if it finds that it violates constitutional provisions or exceeds statutory authority of the agency." Minn. Stat. § 14.45 (1984). Furthermore, the Court of Appeals is to hear petitions for declaratory judgment when a rule will impair or threaten to interfere with legal rights or privileges of the petitioner. Minn. Stat. § 14.44 (1984). The applicable case law further supports this rule, "absent express statutory language vesting judicial review of an agency action in the district court, the court of appeals has exclusive jurisdiction over writs of

certiorari.” *Heideman v. Metropolitan Airports Com'n*, 555 N.W.2d 322, at 323.
(Minn.App.,1996). Citing *Township of Honner v. Redwood County*, 518 N.W.2d 639, 641
(Minn. App. 1994).

In the present case petitioners appeal a decision by the Capital Area Architectural and Planning Board denying them a zoning variance for their large billboard in an area governed by the board. Per statutory law that boards decisions is the equivalent to an administrative agency’s decision or rule. Minn. Stat. § 15B.03 (2007). The decision promulgated by the board to deny petitioners the variance therefore can be appealed; however, under Minnesota statutory and case law it is clear that the appeal must be to the Court of Appeals, not to district court. Due to the courts serious concerns about the constitutionality of the Board’s decision, the court has cautiously made this decision after a thorough review of the applicable statutory and case law. The petitioners have gone to the wrong forum to appeal. They should have appealed the Board’s decision to the Minnesota Court of Appeals. Therefore, the case must be dismissed for lack of subject matter jurisdiction.

A handwritten signature in black ink, consisting of a stylized, cursive script that appears to be the initials 'JG' or similar, followed by a large, sweeping flourish.