

STATE OF MINNESOTA
COUNTY OF DAKOTA

DISTRICT COURT
FIRST JUDICIAL DISTRICT

Al Maghfirah Cemetery Association,
Plaintiff,

Court File No. 19HA-CV-15-1839

v.

Castle Rock Township and Castle Rock
Board of Supervisors,

**ORDER FOR JUDGMENT,
JUDGMENT AND MEMORANDUM**

Defendants.

AND PARTIAL JUDGMENT

The above matter came on before the Honorable David L. Knutson, Judge of District Court, on November 3, 2015 at the Dakota County Judicial Center, in Hastings, Minnesota on the parties' cross motions for summary judgment.

Brandt F. Erwin, Esq., and Thomas P. Harlan, Esq., appeared on behalf of Plaintiff.

Jessica E. Schwie, Esq., appeared on behalf of Defendants.

NOW, THEREFORE, the Court having considered the matter, being fully advised in the premises, and based upon all the files, records, and proceedings herein, the Court makes the following:

ORDER

1. Plaintiff Al Maghfirah Cemetery Association's motion for summary judgment on Count I of the Complaint seeking a Declaratory Judgment is granted.
2. Defendant Castle Rock Township Board of Supervisors shall issue the Conditional Use Permit with the eight conditions as recommended by the Castle Rock Township Planning Commission on June 24, 2014 for the property located at 1120-220th Street West,

**FILED FIRST JUDICIAL DISTRICT
DAKOTA COUNTY, Court Administrator**

JAN 29 2016

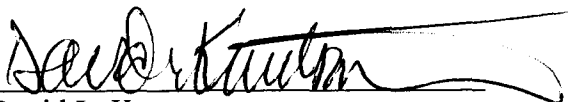
Farmington, Minnesota and legally described as: 3 113 19 E ½ of NW ¼ Ex E 417.43 FT OF N 834.96 FT THEREOF as governed.

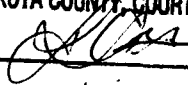
3. Defendants' motion for summary judgment on Counts II – Writ of Mandamus; Count III – Violation of Uniformity Clause and Equal Protection Clause; Count IV – Violation of Open Meeting Law; Count V – Declaratory Judgment; and Count VI – Writ of Mandamus, is granted. Therefore, Counts II, III, IV, V, and VI of the Complaint are all dismissed with prejudice.
4. The attached memorandum is incorporated herein by reference.

LET JUDGMENT BE ENTERED ACCORDINGLY

BY THE COURT:

Dated: January 28, 2016


David L. Knutson
Judge of District Court

PARTIAL JUDGMENT
I HEREBY CERTIFY THAT THE ABOVE ORDER
CONSTITUTES THE PARTIAL JUDGMENT OF
THE COURT.
DAKOTA COUNTY COURT ADMINISTRATOR
BY: 
DATED: 1-29-16 DEPUTY
(SEAL)

MEMORANDUM

I. Factual Background

This case arises out of the denial of a Conditional Use Permit (CUP) application by Defendant, Castle Rock Township Board of Supervisors, with regards to the approximately seventy-three-acre property located at 1120-220th Street West, Farmington, Minnesota and legally described as: 3 113 19 E ½ of NW ¼ Ex E 417.43 FT OF N 834.96 FT THEREOF as governed. The property sits within Castle Rock Township; a political subdivision of the State of Minnesota located within Dakota County, and has been zoned by Castle Rock Township as part of its “AG Agricultural District.” Castle Rock Township Ordinance 6.04(A) states that the primary use for property located in the AG Agricultural District is agricultural due to the “high quality of the soils, availability of water, and/or highly productive agricultural capability” of the land. R.¹ at 100. While agriculture is the primary purpose for land in the AG Agricultural District, at the time of the CUP application, Ordinance 6.04(C) (2) explicitly stated that land included in the district could be conditionally used as a cemetery. *Id.* at 102. Castle Rock Township Ordinances defines conditional use as:

“[a] use of or activity on a parcel of land that because of its unique characteristics is not a permitted use, but may be allowed if it meets the standards and criteria for the use or activity as set forth herein and may be subject to certain additional conditions to protect the public health safety and welfare.”

Id. at 91. Ordinance 6.04(C) requires that all conditional uses must meet the criteria included in ordinances 6.04(D) and 8.05. *Id.* at 102.

According to the Land Use Record, Castle Rock Township currently has three cemeteries, but only information on two was provided to the Court. One is owned and operated

¹ “R.” refers to the Land Use Record submitted to the court file by Defendants, which comprises the record at the time of Defendants denial of Plaintiff’s conditional use permit.

by the Emmanuel German Evangelical Cemetery and one is a public cemetery in the township. All of the cemeteries located in Castle Rock Township were founded before 1867.

On February 13, 2014, the owner of the subject property at the time, Agstar Financial Services, and an agent hired by Al Maghfirah to purchase the property on its behalf executed a purchase agreement for the property. On March 11, 2014, Agstar submitted to Defendants a CUP application for a cemetery as part of a purchase agreement Agstar had with the now current owner of the property, Al Maghfirah Cemetery Association, the Plaintiff in this case. R. at 200. The application included a narrative detailing Plaintiff's plans to build a Muslim cemetery and funeral home on the property along with an artistic rendering of Plaintiff's plans for the property. The CUP application was submitted to Defendants and heard by the Castle Rock Township Planning Commission at a public hearing held on May 27, 2014. *Id.* at 210-13. The Commission's hearing on the CUP application was continued to June 24, 2014 where the Commission unanimously recommended the approval of the application without the plan to build a funeral home on the property to Defendant Board of Supervisors with eight conditions on the use of the property. *Id.* at 225-29.

On July 8, 2014, Defendant received the recommendations by the Planning Commission for the approval of the CUP application and tabled discussion of the application until Defendants received the soil boring reports for the property. R. at 230-31. On August 11, 2014, Defendants considered the merits of the CUP application, which is memorialized in the meeting minutes of the hearing. At the meeting, several Board members commented on why they believed the CUP should not be granted. The reasons stated by Board members included, a loss of tax base, fears that the property might not be maintained, discrimination based on the improper exclusion of non-Muslims from burial at the cemetery, and the lack of a need for another cemetery in

Minnesota and, specifically, in Castle Rock Township. *Id.* at 265. After discussing the application, the Board voted 4-0 to deny the CUP application without making any written findings. *Id.* at 265. No discussion of the soil boring reports was held, nor was any evidence of the impact on the tax base presented to the Board at the hearing. On August 15, 2014, Agstar sent a letter to the Board notifying the Board of an appeal of the denial of the CUP application. *Id.* at 362-63. Agstar's request for an appeal was denied on August 25, 2014 as Castle Rock Township ordinance does not provide for an appeal of decisions made by the Board of Supervisors. *Id.* at 364-65

Plaintiff was then assigned all rights and interest in the subject property from their agent, closed on the sale of the property with Agstar, and resubmitted the CUP application without plans to build a funeral home on the property to Castle Rock Township on November 17, 2014. *R.* at 379, 366-76. The resubmitted application was returned to Plaintiff on November 20, 2014 pursuant to Castle Rock Township Ordinance 8.05(B) (5), which prohibits the submission of another CUP application until twelve months after the denial of a prior application. *Id.* at 378. On December 19, 2015, Plaintiff appealed the summary denial of the second CUP application on the basis that Plaintiff was the new owner of the property and should be given the opportunity to present its application to Defendants. *Id.* at 385-88. On January 12, 2015, Defendant Board approved several amendments to the Township ordinances, including removing cemeteries as a conditional use in the AG Agricultural District. The appeal was heard on February 9, 2015 by Defendants sitting as the Board of Adjustment and Appeals. *Id.* at 442-42. After the presentation of Plaintiff's case, a member of the Board produced a resolution denying Plaintiff's appeal. *Id.* at 437-40. Defendants voted to uphold the decision to summarily return the second CUP application without a hearing on its merits and the chair of the Board signed the resolution.

Plaintiff filed a civil Complaint in this case on May 8, 2015 requesting a declaratory judgment by the Court finding that Defendant's decision to deny the CUP application was arbitrary and capricious and further requesting a writ of mandamus requiring that Defendants issue the requested CUP for the subject property. Defendants filed a Joint Answer on May 11, 2015 and a Notice of Motion and Motion for Summary Judgment on July 16, 2015. Plaintiff filed a Notice of Motion and Motion for Summary Judgment on September 21, 2015 and briefing on both motions was completed on October 30, 2015. The hearing on the parties' respective motions was held on November 3, 2015.

Based on the Court's review, the material facts as presented by the parties in their pleadings, memorandums and the submitted Land Use Record are not in dispute. The questions presented to the Court are entirely questions of law and, therefore, summary judgment is appropriate on each count of the Complaint. Minn. R. Civ. P. 56.03.

II. Timeliness of Defendants' Reply Memorandum in Support of its Motion for Summary Judgment.

Plaintiff argues that Defendants' Reply Memorandum of Law in Support of its Motion for Summary Judgment filed October 30, 2015 is untimely as it was served on Plaintiff less than three days prior to the hearing on November 3, 2015 as required by General Rule of Practice for the District Courts 115.03(c) and Minn. R. Civ. P. 6.01 (a) and (b). A failure to comply with the timelines on a dispositive motion, like a motion for summary judgment, allows the Court to preclude the offending party from making oral arguments, award attorney's fees, or take any other appropriate action in its discretion. Minn. Gen. R. Prac. Dist. Ct. 115.06; *Pfeiffer ex rel. Pfeiffer v. Allina Health Sys.*, 851 N.W.2d 626, 636, n.7 (Minn. Ct. App. 2014). However, the Court may also waive or modify the time limits of Rule 115.03(c) to prevent irreparable harm or to further the interests of justice. Minn. Gen. R. Prac. Dist. Ct. 115.07.

Under the computation of time prescribed by Minn. R. Civ. P. 6.01 (a) and (b), Defendant's reply brief was required to be served on Plaintiff and filed with the Court by October 29, 2015. However, Defendants served and filed its reply brief on October 30, 2015. While Defendants' brief was filed late under the rules, no prejudice was caused to Plaintiff by the late filing, both parties were prepared to proceed at the hearing and make oral arguments to support their client's case. The only harm caused to either party by Defendants' late filing would be to the Defendants if the timelines were strictly adhered to. Therefore, in the interests of justice, the Court accepts the filing of Defendants' reply brief and shall consider it along with all other briefs filed by the parties with regards to the parties' motions for summary judgment.

III. Summary Judgment Standard

A party is entitled to summary judgment if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is not genuine issue as to any material fact and that either party is entitled to a judgment as a matter of law." Minn. R. Civ. P. 56.03. A material fact is one that would affect the outcome of the case depending on how the fact is resolved at trial. *Sayer v. Minn. Dept. of Transp.*, 790 N.W.2d 151, 162 (Minn. 2010) (citing *Zappa v. Fahey*, 245 N.W.2d 258, 259-60 (Minn. 1976)). While the moving party has the burden to show that no genuine issue of material fact exists, the nonmoving party must rebut a properly supported motion for summary judgment by providing sufficient evidence that would "permit reasonable persons to draw different conclusions" on all issues where the nonmoving party carries the burden at trial. *W.J.L. v. Bugge*, 573 N.W.2d 677, 680 (Minn. 1998); *Schroeder v. St. Louis County*, 708 N.W.2d 497, 507 (Minn. 2006).

IV. Plaintiff is entitled to Summary Judgment of Count I of the Complaint

In reviewing decisions made by a local zoning authority, the court's power is "limited and sparingly invoked." *White Bear Docking and Storage, Inc. v. City of White Bear Lake*, 324 N.W.2d 174, 175 (Minn. 1982). Because the denial of a special use, conditional use, or variance permit is a quasi-judicial function of the local zoning authority, the reviewing court must determine whether there was a reasonable basis for the decision made by the local zoning authority or was the decision "unreasonable, arbitrary, or capricious [.]" *Honn v. City of Coon Rapids*, 313 N.W.2d 409, 416-17 (Minn. 1981). When reviewing a conditional use permit, the standard for reasonableness is determined by the local ordinance, not by state statute. *Id.* at 417. The denial of a special use permit application is arbitrary where it is "established that all of the standards specified by the ordinance as a condition to granting the permit have been met." *Zylka v. City of Crystal*, 167 N.W.2d 45, 49 (Minn. 1969). A denial may also be arbitrary if "the evidence presented at the hearing before the municipal governing body and the reviewing court establishes that the requested use is compatible with the basic use authorized within the particular zone and [the requested use] does not endanger the public health or safety or the general welfare of the area affected or the community as a whole." *Id.* at 49. A decision to deny an application is supported by a rational basis if the decision is legally sufficient and supported by facts in the record. *C. R. Inv., Inc. v. Vill. of Shoreview*, 304 N.W.2d 320, 325 (Minn. 1981). The factual basis for a denial must consist of more than "concerns", "doubts", or "vague reservations". *Id.* at 325. The denial of an application without the contemporaneous issuance of written findings of fact by the local zoning authority creates a prima facie case that the denial of the application was arbitrary. *Zylka*, 167 N.W.2d at 50.

Courts have the power to enter declaratory judgments with respect to “rights, status, and other legal relations whether or not further relief is or could be claimed.” Minn. Stat. § 555.01 (2014). That power granted to the court by statute includes the power to review zoning decisions made by zoning authorities. *Honn*, 313 N.W.2d at 416. In making its decision, the reviewing court may rely solely on the record made before the local zoning authority if the court finds the hearing before the local zoning authority was fair and the record is clear and complete. *Swanson v. City of Bloomington*, 421 N.W.2d 307, 313 (Minn. 1988).

While this issue is not raised either of the parties, the Court finds that the Plaintiff in this case, while not the original CUP applicant, may pursue the claims in Counts I-IV. On February 13, 2014, the purchase agreement for the property between Agstar and an agent for Al Maghfirah was executed. R. at 392 – 405. Agstar then applied for the CUP as a condition of the sale of the property to Al Maghfirah. After the denial of Agstar’s application, Agstar, the agent and Al Maghfirah signed a one-page Amendment to Commercial Purchase Agreement. R. at 406. That amendment to the purchase agreement specifically states that Agstar “hereby conveys the current conditional use permit ... as well as assigns all rights to the application to obtain conditional use permit for property to be used as a cemetery ... [the agent] hereby assigns all rights, powers, and responsibilities under the terms set forth of [sic] this contract to Al Maghfirah Cemetery Association.” *Id.* at 406. Al Maghfirah then closed on the property with Agstar and submitted a separate application substantially the same as the Agstar application on November 17, 2014. That second application was prohibited by Ordinance 8.05(B) (5) and sent back to Al Maghfirah without a hearing. The Court finds that Agstar and its assignee properly transferred their rights and interests in the subject property to Al Maghfirah and; therefore, Al Maghfirah is a real party

in interest as required by Minnesota Rule of Civil Procedure 17.01 and may pursue Counts I-IV of the Complaint.

Defendants' decision to deny the CUP was arbitrary and capricious and therefore, Plaintiff is entitled to a declaratory judgment. First, Defendants did not supply Plaintiff with any written findings or factual basis regarding the decision on August 11, 2014 denying the CUP application for the subject property, which creates a prima facie case of arbitrariness. Although comments of several members of the Board regarding why they personally voted against the CUP application were recorded in the meeting minutes, even Defendant does not argue that those comments satisfy the requirement that a quasi-judicial body issue written contemporaneous findings to substantiate their decision. Indeed the Defendants action in issuing a written decision following the hearing of the appeal of the denial of the second CUP application on February 9, 2015 demonstrates that they were aware of that requirement under Minnesota law. R. at 445-48. Therefore, the Defendants have the burden to prove that the decision to deny the CUP application was not arbitrary and capricious.

In order to show a rational and reasonable reason for the denial, Defendants must show that the proposed use has an adverse effect on the considerations included in Ordinances 6.04 (D) and 8.05(A), which include "the health, safety, and general welfare of occupants of surrounding lands, the effect and anticipated traffic conditions, including parking facilities, on adjacent streets and land, the effect on values of property and scenic views in the surrounding area, and the consistency of the proposed use on the Comprehensive Plan." R. at 192. Defendants argued in their briefs that the denial of the CUP application was based on their consideration of the loss of taxable land in the Township if the CUP was granted and discrimination due to the planned limitation of burials to Muslims only. At the hearing, Defendants conceded the religious

discrimination argument since private religious cemeteries may restrict burials on the basis of religion in Minnesota. *Erickson v. Sunset Memorial Park Ass'n*, 108 N.W.2d 434, 441 (Minn. 1961). The Court therefore only considered the tax base argument advanced by the Defendants.

However, the only information presented at the hearing regarding a loss of tax base to the Township were the statements of one Board member expressing a concern about the loss of tax base to the Township. Defendant argues that protecting the tax base within the township is a use of the Township's police powers aimed at protecting the health, safety and general welfare of its residents. Without reaching the question of whether the power to collect taxes falls within a government's police powers, the Township has limited itself in considering CUP applications to ensuring the health, safety and general welfare of occupants of *surrounding lands* remains unaffected by a proposed use. The use of the phrase "surrounding lands" by the Township was an intentional limit placed on the Township's ability to use its police powers to prevent a conditional use. *See Employers Liability Assur. Corp. v. Morse*, 111 N.W.2d 620, 624-25 (Minn. 1961) (stating all words in a writing should be given effect, if possible). Rather than considering the effect of the approval of the CUP application on the township as a whole, as Defendants argue, the Board may only consider the effect on the surrounding occupants and landowners when it comes to a use of the Township's police powers.

Second, no evidence of prior tax assessments on the property were presented at the meeting and no discussions were held regarding what the effects on the health, safety and general welfare of the Township would be with the loss of taxes resulting from the approval of a cemetery. While a copy of the 2014 tax assessment on the property was included in the Land Use Record in this case, there is no evidence it was made available to or considered by the Board in making their decision. The 2014 Property Tax Statement for the subject property lists 2014

payable taxes as \$17,776.74. R. at 208. However, only \$1,284.76 of the total taxes are payable to Castle Rock Township with the rest going to Dakota County, the State of Minnesota, the local school district and other taxing entities. *Id.* It is therefore dubious that a decision to deny the CUP application in this case would be rational and reasonable with regard to a loss of tax base. Because the Board failed to make contemporaneous written findings to support the denial of the CUP application and because the record contains no rational and reasonable basis for a denial of the CUP application, Plaintiff is entitled to a declaratory judgment granting the CUP application along with the rational limits placed on the application by the Planning Commission. Any other decision by the Court would result in an unreasonable restriction in the rights of a property owner to use its property as they see fit having complied with the rational zoning regulations of the local zoning authority.

Defendants ask the Court to remand the application back to the Board for consideration of appropriate conditions to be placed on the use of the property as is allowed by ordinance. However, when reviewing a CUP application, Ordinance 8.05(A) requires the Board to “consider the advice and recommendations of the Planning Commission [.]” R. at 192. In its recommendation to the Board, the Planning Commission placed eight conditions on the use of the property, which were required to be considered by the Board when they denied the CUP application. *Id.* at 227. Those conditions included the requirement that the cemetery be open only from 7:00 a.m. until 6:00 p.m., provide adequate parking, use sealed vaults and vault liners in all graves, define the number of potential burials on the property, provide the water table information to the Township, identify landscape perimeter requirements and use only flat stone markers for graves. The Planning Commission also recommended that the Board and the Minnesota Department of Transportation should review installing a turn lane on Highway 50. All

of those conditions proposed by the Planning Commission were supported with rational in the minutes from the June 24, 2014 Planning Commission meeting and all are a rational and reasonable use of the Township's police powers. Remanding to the Board for consideration of appropriate conditions on the property, when the Board was previously required to consider appropriate conditions, would only serve to extend the litigation on this issue and allow the Board a second chance to rationalize the improper denial. *See City of Barnum v. Carlton County*, 386 N.W.2d 770, 776 (Minn. Ct. App. 1986) (holding that a remand for findings from a local zoning authority would be unfair due to the risk the authority could rationalize the prior improper denial).

Therefore, declaratory judgment is entered in favor of the Plaintiff and, in accordance with the holding in *Barnum*, the case is remanded to the Board with an order to issue the CUP with the same conditions placed on the CUP application by the Planning Commission. *See In re Livingood*, 594 N.W.2d 889, 895 (Minn. 1999). Those conditions are as follows:

1. The cemetery shall be open only from 7:00 a.m. until 6:00 p.m.
2. Plaintiff shall provide adequate parking on the property.
3. Plaintiff shall use sealed vaults and vault liners in all graves.
4. Plaintiff shall define the number of potential burials on the property.
5. Plaintiff shall provide the water table information to the Township.
6. Plaintiff shall identify landscape perimeter requirements.
7. Plaintiff shall use only flat stone markers for graves.
8. The Board of Supervisors and shall review the installation of a turn lane on Highway 50 and shall contact the Minnesota Department of Transportation, if necessary.

V. Defendants are entitled to Summary Judgment on Counts II, III, IV, V, and VI of the Complaint

a. Plaintiff is not entitled to a Writ of Mandamus under Minnesota Statutes § 586.01 as a matter of law

A writ of mandamus may only be issued in limited circumstances where an inferior tribunal has failed to perform an act “which the law specifically enjoins as a duty resulting from an office, trust, or station.” Minn. Stat. § 586.01 (2014). While cases involving a denial of a conditional use or variance permit mostly pursue a declaratory judgment, there are some circumstances where a denial of a conditional use or variance permit may result in the issuance of a writ of mandamus. *Mendota Golf, LLP v. City of Mendota Heights*, 708 N.W.2d 162, 178-79 (Minn. 2006). Mandamus is appropriate in cases where the inferior tribunal has no discretionary authority and must grant relief as a matter of right if certain conditions are met. *Chanhassen Estates Residents Ass’n v. City of Chanhassen*, 342 N.W.2d 335, 340 (Minn. 1984).

Here, the Township defines a conditional use as “[a] use of or activity on a parcel of land that because of its unique characteristics is not a permitted use, but may be allowed if it meets the standards and criteria for the use or activity as set forth herein and may be subject to certain additional conditions to protect the public health [sic] safety and welfare.” R. at 91. Defendant Township defines its authority to grant conditional uses as a permissive power, subject to its discretion, rather than a requirement to use its power if all conditions are met. *Cf. Chanhassen Estates Residents Ass’n*, 342 N.W.2d at 340. Because the Township retains some level of discretion over the grant of CUP applications, there is no right that can be vindicated through a grant of mandamus by the Court and; therefore, Defendant is entitled to judgment as a matter of law on Count II of the Complaint.

b. Plaintiff is not entitled to relief under the Uniformity Clause of the Minnesota Constitution or the Equal Protection Clause of the United States Constitution as a matter of law

Article I, Section 2 of the Minnesota Constitution states “[n]o member of this state shall be disenfranchised or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land or the judgment of his peers.” Section 1 of the Fourteenth Amendment to the United States Constitution states “[n]o state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law [.]” Both provisions require that government actors treat zoning applications similarly situated in time and nature similarly unless there is a rational relationship to a legitimate government objective that justifies disparate treatment. *Kottschade v. City of Rochester*, 537 N.W.2d 301, 306-07 (Minn. Ct. App. 1995).

While a CUP for a cell phone tower was approved four months after the denial of the CUP in this case are similarly situated in time, they are not similarly situated in nature. While not binding, the court’s opinion in *USCOC of Greater Iowa, Inc. v. Zoning Board of Adjustment of the City of Des Moines*, 465 F.3d 817 (8th Cir. 2006) is instructive on how CUP applications involving cell phone towers are reviewed by the Federal courts. While the review of local zoning authority decisions is normally considered under the arbitrary and capricious standard, decisions involving applications for cell towers are reviewed by the Federal courts applying Federal law. *Id.* at 820. Under the Telecommunications Act of 1996, the court must determine whether the local zoning authority’s decision to deny a CUP application discriminates against a wireless provider, whether it effectively prohibits “the provision of personal wireless service” and

whether the decision of the local zoning authority is in writing and supported by substantial evidence. Id. at 822 (quoting 47 U.S.C. § 332(c) (7) (B)).

Based on the evidence provided by the parties, Plaintiff has failed to prove that the CUP applications are similar in nature and that the special provisions of the Telecommunications Act of 1996, requiring disparate treatment for cell towers in certain situations, did not apply in the case before the Defendants. Because Plaintiff has failed to substantiate its claim for relief under the Uniformity Clause and the Equal Protection Clause, Defendant is entitled to judgment as a matter of law.

c. Plaintiff is not entitled to relief under Minnesota’s Open Meeting Laws as a matter of law

Minnesota Statutes § 13D.01, subdivision 1 (2014) requires that all gatherings of a quorum or more of a town’s governing body where “members discuss, decide, or receive information as a group on issues relating to the official business of that governing body” must be open to the public. *Moberg v. Independent School Dist. No. 281*, 336 N.W.2d 510, 518 (Minn. 1983). Any violation of this statute must be proven to be an intentional violation and shall create personal liability for the individual rather than the governing body on which the individual holds a position. Minn. Stat. § 13D.06, subd. 1 (2014). Plaintiff alleges two instances where the Open Meeting Law was violated. First, that the denial of the second CUP application by the Town Clerk without a public hearing and second, that the pre-prepared Resolution Regarding the Appeal Brought by the Al Maghfirah Cemetery Association dated February 9, 2015 was a result of a closed meeting between members of the Board prior to the meeting held on February 9, 2015.

Plaintiff alleges that because the second application was denied by the town clerk working with the attorney for Defendants and the Chair of the Board, that group constituted a

group authorized to conduct business on behalf of the town governing authority. However, the denial of the second application was purely an administrative decision by the Town Clerk, who was complying with Ordinance 8.05(B) (5). Only one member of the Board was involved in the discussion and her involvement in the conversation regarding the summary denial of the second application did not constitute a quorum of the five-member Board. The denial of the second application was not a use of the Township’s discretionary authority to consider CUP applications, but was an administrative action in compliance with the ordinance forbidding the consideration of a resubmitted application within twelve months of a denial of the same application.

Second, there is no evidence provided to the Court that there was a meeting that occurred out of the view of the public that resulted in the drafting of the proposed resolution. Indeed, the resolution could be a form that is easily filled in and printed off before meetings by any member of the Board. Even if a violation of the Open Meeting Law occurred, Plaintiff has failed to produce any evidence to implicate any member of the Board or prove that the violation was intentional, both of which are required by the statute.

d. Plaintiff is not entitled to a declaratory judgment in Count V or a writ of mandamus in Count VI as a matter of law.

Again, Courts have the power to enter declaratory judgments with respect to “rights, status, and other legal relations whether or not further relief is or could be claimed” and may issue a writ of mandamus only when an inferior tribunal has failed to perform an act “which the law specifically enjoins as a duty resulting from an office, trust, or station.” Minn. Stat. § 555.01 (2014); Minn. Stat. § 586.01 (2014). Because no right was infringed by the decision to deny Plaintiff’s second CUP application, Defendant is entitled to judgment as a matter of law.

Ordinance 8.05(B)(5) states “[n]o application for a conditional use permit that has been denied shall be resubmitted for a period of twelve (12) months from the date of said order of denial.” R. at 193. In the Resolution Regarding the Appeal Brought by the Al Maghfirah Cemetery Association dated February 9, 2015, the Board states that the policy reason for limiting CUP applications is to preserve town resources, which are heavily used when considering CUP applications. In considering the first application in this case, two public Planning Commission hearings were held, two Board meetings were held, a 400 page Land Use Record was compiled, and several public comment sessions were held where members of the public questioned applicants as well as members of the Planning Commission and the Board. It is rational and reasonable for the Township to limit the resubmission of CUP applications after a denial has been entered in order to preserve the resources for other worthy applicants. Second, as stated above, an appeal of a denial to an independent magistrate is available through an action for declaratory judgment or a writ of mandamus in order to enforce the party’s rights. *Honn*, 313 N.W.2d at 416. Allowing a party to resubmit a CUP application over, and over, and over to the same governing authority would not increase the ability of a party seeking a CUP to vindicate its rights but would only further tax local zoning authority’s limited resources.

For the above reasons it is rational to limit the ability of a property owner to resubmit substantially similar CUP applications within twelve months of the denial of the previous application. Defendant is therefore entitled to judgment as a matter of law on Counts V and VI of the Complaint as no right of the Plaintiff’s would be vindicated through a declaratory judgment or a writ of mandamus.

VI. Conclusion

Defendants' decision to deny the CUP application in this case after meeting all zoning requirements, several public meetings, a lengthy public comment period, unanimous approval from the Planning Commission, a general lack of any justification based on the health, safety and general welfare of the local residents and the failure to substantiate its denial with written findings was arbitrary and capricious. Plaintiff's use was allowed under the township's zoning ordinances and further, Plaintiff complied with all of the conditions imposed by the local zoning authority. Plaintiff, as the owner of real property, is entitled to free use of its property, subject to reasonable zoning restrictions. That right was denied to them by the arbitrary decision of the Castle Rock Township Board of Supervisors, which was later framed as a concern over the loss of tax base. The Court therefore orders the Board to issue to Plaintiff a CUP with the conditions recommended by the Planning Commission as soon as practicable. Judgment is granted as a matter of law for Plaintiff on Count I of the Complaint. Judgment is granted as a matter of law for Defendants on Counts II-VI and they are dismissed with prejudice.



D.L.K.