

STATE OF NORTH DAKOTA  
COUNTY OF CASS

IN DISTRICT COURT  
EAST CENTRAL JUDICIAL DISTRICT

North Dakota Farm Bureau,

Plaintiff,

vs.

Howes Township, a political subdivision of  
the State of North Dakota, and Board of  
Township Commissioners of Howes  
Township, North Dakota,

Defendants.

Civ. No.: 09-2020-CV-03482

**FINDINGS OF FACT, CONCLUSIONS OF  
LAW, AND ORDER FOR JUDGMENT**

¶1 The above-captioned case is a declaratory judgment action filed pursuant to North Dakota Century Code Section 32-23-02 by Plaintiff, North Dakota Farm Bureau, Inc. (“ND Farm Bureau”) against Howes Township and the Board of Township Commissioners of Howes Township (Defendants are collectively referred to herein as the “Township”). On Wednesday, May 18, 2022, and Tuesday, July 19, 2022, the Court heard oral arguments on a motion for summary judgment brought by ND Farm Bureau as well as a cross-motion for summary judgment brought by the Township. For the reasons stated below, the Township’s motion is DENIED and ND Farm Bureau’s motion is GRANTED.

After issuing oral findings, conclusions and order at the end of both hearings (adopted herein), now being fully advised:

¶2 Having heard the arguments of counsel and considered all the records, pleadings, proceedings, documents of record, and the Briefs of the parties filed herein, the Court makes the following Findings of Fact, Conclusions of Law, and Order for Judgment:

**I. FINDINGS OF FACT**

¶3 ND Farm Bureau is a non-profit corporation organized under the laws of the State of North Dakota, whose stated purpose includes breaking down barriers to entry, promoting, and supporting agriculture, including animal agriculture, in the State of North Dakota.

¶4 ND Farm Bureau members live and own land in Howes Township (“ND Farm Bureau Members”). More specifically, Gerald Melvin, by and through the Melvin Family Real Estate, LLLP owns 460.37 acres of land in Howes Township; Randal Melvin owns record title to 330.66 acres of land in Howes Township (collectively, the “Melvin Land”). The challenged ordinances apply to the Melvin Land and impact where on the Melvin Land Randal and Gerald Melvin can legally locate an animal feeding operation.

¶5 The Howes Township Ordinances affect the right and ability of ND Farm Bureau Members, including Gerald and Randal Melvin, to utilize the land they own as well as their ability to diversify farming operations and support themselves through animal agriculture.

## II. CONCLUSIONS OF LAW

### A. **Associational Standing**

¶6 ND Farm Bureau has associational standing to bring this action on behalf of the ND Farm Bureau Members.

¶7 North Dakota law empowers organizations to bring legal actions on behalf of their members even where the organization itself has not suffered an injury. First Int’l Bank & Tr. v. Peterson, 2011 ND 87, ¶ 11, 797 N.W.2d 316, 321; see Nodak Mut. Ins. Co. v. Ward Cty. Farm Bureau, 676 N.W.2d 752, 758 (N.D. 2004) (quoting 9 V. Braucher, B. Jacobsthal & G. O’Gradney, Fletcher Cyclopedia of the Law of Private Corporations, § 4227, at pp. 47-49 (1999 Rev. ed.) “A nonprofit membership corporation has standing to seek judicial review on behalf of its members, of governmental or municipal regulations directly affecting its members.”). To bring an action on behalf of its members, organizations must satisfy a three-pronged test. Id. at ¶ 12, 797 N.W.2d at 321. First, the organization’s members must have standing to sue in their own right. Id. Second, the interests the organization seeks to protect must be germane to the organization. Id. Third, neither the claim asserted nor the relief requested must require the participation of the individual

members in the lawsuit. Id. This test applies whether the lawsuit seeks declarative, injunctive, or other prospective relief. Id. at ¶ 11, 797 N.W.2d at 321 (citing Hunt v. Wash. State Apple Advert. Comm'n, 432 U.S. 333, 343, 97 S. Ct. 2434, 2441 (1997)).

¶8 ND Farm Bureau Members have standing to sue in their own right. North Dakota's Declaratory Judgment Act is intended to relieve litigants of the rule that no rights may be judicially adjudged until a right has been violated and is to be construed liberally. Langer v. State, 69 N.D. 129, 141, 284 N.W. 238, 244 (1939); see also Ramsey Cty. Farm Bureau v. Ramsey Cty., 755 N.W.2d 920, 926 (N.D. 2008). In relevant part, Section 32-23-02 of the North Dakota Century Code provides that: "Any person ... whose rights, status, or other legal relations are affected by a ... municipal ordinance ... may have determined any question of construction or validity ... arising under the ... ordinance."

¶9 Absent any government regulation, landowners, including members of ND Farm Bureau, are free to develop animal feeding operations on their property. Furthermore, Article XI § 29 of the Constitution of North Dakota enshrines the right of North Dakotans to "engage in modern farming and ranching practices" and prohibits laws that abridge "the right of farmers and ranchers to employ agricultural technology, modern livestock production, and ranching practices."

¶10 The Township ordinances legally restrict how landowners in Howes Township may utilize their land. More specifically, the Township ordinances legally restrict Gerald and Randal Melvin's ability to utilize the Melvin Land to engage in modern farming and ranching practices including modern livestock production. The Melvins have a legally protectable interest that is affected by the Township ordinances.

[¶11] Because the rights of ND Farm Bureau members, including Randal and Gerald Melvin, to use their land are affected by the Township ordinances, individual members of ND Farm Bureau would have standing to seek judicial review of the Township ordinances.

[¶12] The interests ND Farm Bureau seeks to protect are germane to ND Farm Bureau's purpose. ND Farm Bureau is an association created to break down barriers to entry, promote, and support agriculture, including animal agriculture, in the State of North Dakota. The Township's Ordinances affect the ability to engage in animal agriculture in Howes Township. The claims raised by ND Farm Bureau in this action are germane to ND Farm Bureau's stated purpose.

[¶13] Neither the claims asserted nor the relief requested by ND Farm Bureau requires the participation of any specific or individual ND Farm Bureau Member. ND Farm Bureau argues the Township's ordinances are inconsistent with and therefore invalid under state law. Therefore, the participation of a specific ND Farm Bureau Member is not required.

[¶14] Because ND Farm Bureau Members have standing to sue in their own right, the interests ND Farm Bureau seeks to protect are germane to ND Farm Bureau's purpose, and neither the claims asserted nor the relief requested requires the participation of any individual ND Farm Bureau Member, the Court finds that ND Farm Bureau has standing to challenge the validity of the Township ordinances on behalf of ND Farm Bureau Member's affected by the ordinances. Therefore, the Township's motion to dismiss for lack of standing is DENIED.

#### **B. Subject Matter Jurisdiction.**

[¶15] This Court has subject matter jurisdiction to determine the validity of the Township's ordinances in light of state laws restricting township authority to regulate animal feeding operations. "A Court has subject matter jurisdiction if it has the authority, under the constitution and the laws, to hear and determine cases of the general class to which the particular

action belongs.” Reliable, Inc. v. Stutsman County Comm’n, 409 N.W.2d 632, 634 (N.D. 1987). Section 32-23-02 of the North Dakota Century Code provides, in part, that “Any person . . . whose rights, status or other legal relations are affected by a . . . municipal ordinance . . . may have determined any question of construction or validity.”

[¶16] North Dakota courts consider the nature of a plaintiff’s grievance in determining whether the grievance is appropriately brought as an action for declaratory judgment under N.D.C.C. § 32-23-02 or as an appeal of a township decision under N.D.C.C. § 28-34-01. North Dakota Courts consistently hold that the statutory appeal process, a limited scope of review, is not the appropriate mechanism for determining whether municipal actions or ordinances comply with state law. See, Pulkrabek v. Morton County, 389 N.W.2d 609, 611 (N.D. 1986). Rather, a declaratory judgment action is the appropriate procedure for challenging the validity of a municipal ordinance. See, Braunagel v. City of Devils Lake, 2001 ND 118, 629 N.W.2d 567.

[¶17] Here, Plaintiff’s Complaint for Declaratory Judgment identifies the limits state law places on township authority, repeatedly alleges the township lacked jurisdiction to regulate certain matters, and explicitly requests a declaration of the validity of township ordinances in light of alleged non-compliance with state law. Plaintiff is not challenging the wisdom or correctness of the decision to adopt the ordinances. Rather, Plaintiff is challenging the legal validity of the ordinances adopted—a challenge appropriately brought as a declaratory judgment action.

[¶18] Therefore, because N.D.C.C § 32-23-02 confers subject matter jurisdiction to determine the validity of municipal ordinances and Plaintiff’s claims challenge the legal validity of the Township’s ordinances, this Court has subject matter jurisdiction over ND Farm Bureau’s claims and the Township’s motion to dismiss for lack of subject matter jurisdiction is DENIED.

### **C. Unauthorized Setbacks.**

[¶19] The Township ordinances impose setbacks which are beyond the scope of Township authority to enforce. Section 58-03-11.1 of the North Dakota Century Code limits township authority to impose setbacks on animal feeding operations. North Dakotas Townships may not impose setbacks other than those measured from: (1) the nearest occupied residence; (2) the nearest buildings used for nonfarm purposes; and (3) the nearest land zoned as a residential, recreational, or commercial zoning district. See, 58-03-11.1(1)(d).

[¶20] The Township’s ordinances establish a number of setbacks, including setbacks measured from existing residences (regardless of whether occupied), businesses, churches, schools, public parks, federal highway rights-of-way, state highway rights-of-way, township road rights-of-way, adjacent property lines, and areas of residential use (the “Inappropriate Setbacks”).

[¶21] Because the Township lacks authority to adopt, impose, or enforce the Inappropriate Setbacks, ND Farm Bureau’s motion for summary judgment asking this Court to set aside the Inappropriate Setbacks as invalid and unenforceable is GRANTED.

### **D. Extended Setbacks**

[¶22] The setbacks imposed by the Township are of a greater distance than is allowed by law, without sufficient justification. Section 58-03-11.1 (8)(c) of the North Dakota Century Code allows townships to impose setback requirements up to fifty percent further than the limitations imposed by N.D.C.C. § 23.1-06-15 (7)(a) if “the township can demonstrate compelling, objective evidence specific to the township which requires a greater setback.” The setbacks imposed by the Township ordinances exceed those allowed by state law (the “Extended Setbacks”).

[¶23] In an attempt to justify the Extended Setbacks, the Township produced extensive documentation associated with studies related to the effects of animal agriculture in places such as

Ohio, North Carolina, Missouri, and Iowa. The Township could not, however, produce any studies or evidence about the effects of animal agriculture in Howes Township. Because Section 58-03-11.1 (8)(c) of the North Dakota Century Code allows extended setbacks only where a township can demonstrate evidence that is specific to a township, demonstrating a need for extended setbacks in such township, the Extended Setbacks are invalid and unenforceable. ND Farm Bureau's motion for summary judgment asking this Court to set aside the Extended Setbacks as invalid and unenforceable is GRANTED.

#### **E. Unauthorized Regulations.**

[¶24] Township authority to regulate animal feeding operations is limited to regulations regarding the type, location, and size, of animal feeding operations. Ramsey County, 755 N.W.2d 920 (N.D. 2008). If townships allow animal feeding operations as conditional uses, state law limits the scope of conditional use regulations to the township's authority under North Dakota Century Code Section 58-03-11.1. N.D.C.C. § 58-03-11.1(9). Furthermore, "a local governing body cannot validly enact a zoning ordinance that contravenes federal or state law." Mountrail County v. Hoffman, 2000 ND 49, ¶ 7, 607 N.W.2d 901.

[¶25] Chapter 2, Section 3(4) of the Township ordinances states that animal feeding operations are "only permitted as conditional uses subject to the provisions of this ordinance . . ." Despite the strict limits on township authority to regulate animal feeding operations, the ordinances purport to authorize the Board to "impose such conditions . . . as may be deemed necessary . . . to protect the public health, safety, and welfare." Chapter 1, Article IV, Section I, subsection 2.A – 2.B, Index # 3, p. 11. Subsection 2.C of the Township ordinances lists various criteria for approval of conditional use applications, including: "[t]he use will not create an excessive burden on parks, schools, streets, and other public facilities and utilities which serve or are proposed to service the area."; "[t]he structure and site shall have an appearance that will not have any adverse effect upon

adjacent residential properties”; and “[t]he use in the opinion of the Township Board is reasonably related to the existing and projected land use of the Township”; and “[t]he use is not in conflict with the Comprehensive Plan of the Township.” Id. at 11–12.

¶26] The Township does not have authority to regulate an animal feeding operation’s appearance, burden on streets, nor general compliance with the Township’s Comprehensive Plan. Therefore, ND Farm Bureau’s motion for summary judgment asking this Court to set Chapter 2, Section 3 (4) of the Township ordinances aside as invalid and unenforceable against animal feeding operations is hereby GRANTED.

¶27] Furthermore, the Township ordinances grant the Township the authority to “order cessation of a facility for animal feeding” and revoke permits “[i]n the event of a violation of this ordinance or a judgment on a civil action by the NDDH.” Chapter 2, Section 3(6), Index # 3, p. 52. However, townships do not have authority to interpret or enforce regulations adopted and policed by state agencies. Therefore, ND Farm Bureau’s motion for summary judgment asking this Court to set Chapter 2, Section 3(6) of the Township ordinances aside as invalid and unenforceable is GRANTED.

### **III. ORDER FOR JUDGMENT**

¶28] On the basis of the foregoing, IT IS ORDERED:

¶29] Township ordinances establishing setbacks measured from the following points are hereby set aside, invalid, and unenforceable:



- (a) Federal highway rights-of-way;
- (b) State highway rights-of-way;
- (c) Township road rights-of-way;
- (d) Public parks;
- (e) Areas of residential use;
- (f) Property lines; and
- (g) Existing residences, churches, schools, and businesses without reference to whether such structures are occupied.

¶30] The setbacks imposed in Chapter 2, Section 4 of the Township ordinances are hereby set aside, invalid, and unenforceable.

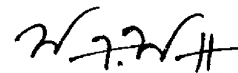
¶31] Conditional use regulations contained in the Township ordinances not expressly authorized N.D.C.C. § 58-03-11.1, including the following portions of the Township ordinances shall not be applied to animal feeding operations and are invalid and unenforceable to the extent they purport to apply to animal feeding operations:

- (a) Chapter 1, Article IV, Section I, subsection 2.A – 2.C;
- (b) Chapter 2, Section 3(4);
- (c) Chapter 2, Section 3(6);

¶32] ND Farm Bureau is awarded costs and disbursements in the amount of \$900.54. The Township shall pay ND Farm Bureau the sum of \$900.54 within thirty days of the date of this Order.

BY THE COURT:

Signed: 7/30/2022 12:15:56 PM



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Wade Webb, District Court Judge  
East Central Judicial District