STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0614

Calm Waters, LLC, a Limited Liability Company under the laws of Minnesota,
Appellant,

vs.

Town of Kroschel, a political subdivision under the laws of the State of Minnesota,
Respondent.

Filed December 16, 2019
Affirmed
Hooten, Judge

Kanabec County District Court
File No. 33-CV-18-160

Grant W. Lindberg, Lindberg Law Office, P.A., Cambridge, Minnesota; and

Charles C. Kallemeyn, Kallemeyn & Kallemeyn, Coon Rapids, Minnesota (for appellant)

Jessica E. Schwie, Joshua P. Devaney, Kennedy & Graven, Chartered, Minneapolis, Minnesota (for respondent)

Considered and decided by Hooten, Presiding Judge; Reilly, Judge; and Smith, Tracy M., Judge.

U N P U B L I S H E D O P I N I O N

HOOTEN, Judge

Appellant Calm Waters, LLC (Calm Waters) challenges the district court's summary judgment in favor of respondent Kroschel Township (Kroschel) affirming Kroschel's denial of Calm Waters' variance application. Calm Waters argues that: (1)

Kroschel lacks jurisdiction over zoning matters in shoreland because it has not adopted shoreland management controls under Minn. Stat. §§ 103F.201–.227 (2018); (2) Kroschel's denial of Calm Waters' variance requests was arbitrary and capricious; (3) the district court erred in determining that Calm Waters must present affirmative evidence to rebut the presumptive validity of Kroschel's comprehensive plan; and (4) the district court abused its discretion in denying Calm Waters' motion to compel discovery as moot. We affirm.

FACTS

Kroschel Township, a political subdivision located in Kanabec County, has a population of 216. Calm Waters owns a parcel of land located inside the limits of the township that includes portions of two lakes. Calm Waters wishes to subdivide its plot into four quadrilateral parcels of four different sizes: parcel A (19.3 acres); parcel B (19 acres); parcel C (26.8 acres); and parcel D (25.8 acres). Although proposed parcels A and B abut a public road, proposed parcels C and D would only be accessible via a utility easement that travels from the public road, bisecting parcels B and C, and ending in parcel D.

Kroschel has maintained a comprehensive land use plan since the early 1980s and a zoning ordinance since 1984. Kroschel's current zoning ordinance dictates that no parcel of land can be smaller than 20 acres and all parcels of land must abut a public road for at least 300 feet.

On September 1, 2015, Calm Waters submitted a variance application to Kroschel's town board seeking approval to subdivide its parcel into four smaller parcels. Calm Waters sought a variance from the minimum lot size requirement for parcels A and B and a

variance from the public road abutment requirement for parcels C and D. Kroschel's planning commission, consisting of the same three members of the town board, sent a letter to members of the community announcing that there would be a special meeting of the planning commission to discuss the variance requests.

The special meeting was held on November 10, 2015. At this meeting, several members of the community expressed their concerns with the proposed subdivision. Immediately following the adjournment of the special meeting, the town board called a meeting and voted to deny the variance requests on the basis of, among other reasons, parcels C and D not abutting a public road for at least 300 feet and parcels A and B being smaller than 20 acres as required in Kroschel's zoning ordinance.

On June 11, 2018, Calm Waters filed suit against Kroschel in district court alleging that: (1) Kroschel did not have the authority to zone the land in Calm Waters' parcel because it contains shoreland, defined as land within 1,000 feet of a natural body of water, and the regulation of shoreland is preempted by Minn. Stat. §§ 103F.201–.227 (2018); and (2) Kroschel's denial of the variance requests was arbitrary and capricious. The district court granted Kroschel's summary judgment motion. This appeal follows.

D E C I S I O N

Calm Waters appeals from the district court's grant of summary judgment to Kroschel. When reviewing the grant or denial of summary judgment, we must determine whether any genuine issues of material fact exist and whether the district court erred in applying the law. *Montemayor v. Sebright Prods., Inc.*, 898 N.W.2d 623, 628 (Minn. 2017). We must view the evidence in the light most favorable to the party against whom

judgment was granted. *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76–77 (Minn. 2002). We address each of Calm Waters' arguments in turn.

I. Kroschel has the authority to zone shoreland that is also subject to the regulatory overlay of Kanabec County's shoreland management controls.

Calm Waters argues that Kroschel does not have the authority to zone its plot of land because the land is shoreland and the regulation of shoreland is field preempted by Minn. Stat. §§ 103F.201–.227. Kroschel responds that shoreland regulations do not prevent the township from zoning the land and instead act merely as a regulatory overlay onto existing zoning ordinances. "We review a district court's application of the law de novo." *Harlow v. State, Dep't of Human Servs.*, 883 N.W.2d 561, 568 (Minn. 2016).

A. Kroschel has the authority to adopt a zoning ordinance under Minnesota law.

A zoning ordinance divides geographic areas into districts and assigns permitted and conditional uses to each district. *In re Denial of Ellers Media Co.'s Applications for Outdoor Adver. Device Permits*, 664 N.W.2d 1, 8 (Minn. 2003). "Zoning ordinances were established to control land use, and development in order to promote public health, safety, welfare, morals, and aesthetics." *In re Stadsvold*, 754 N.W.2d 323, 329 (Minn. 2008) (quotation omitted).

Under Minnesota law, counties and townships have the authority to zone. *See* Minn. Stat. § 394.24, subd. 1 (2018) (counties may enact "official controls"); Minn. Stat. § 462.357, subd. 1 (2018) (municipalities may enact "official controls"); *see also* Minn. Stat. § 462.352, subd. 15 (2018) ("official controls" include zoning ordinances); Minn. Stat. § 462.352, subd. 2 (2018) (defining a municipality as any city or town, including those

operating under a home rule charter). This authority to control land use is derived from the power granted to counties and townships by the state to write their own comprehensive plans. *See* Minn. Stat. § 394.23 (2018) (authorizing county comprehensive plans); Minn. Stat. § 462.355, subd. 1 (2018) (authorizing municipal comprehensive plans). Each entity also has the authority to establish a planning commission to approve variances that deviate from zoning restrictions listed in comprehensive plans. *See* Minn. Stat. § 394.30, subd. 1 (2018) (authorizing county planning commissions); Minn. Stat. § 462.354, subd. 1 (2018) (authorizing municipal planning commissions).

As the authority to zone is derived from the state, the state is free to place additional restrictions on a township's ability to control the land within its borders. However, restrictions that supersede the ability of a local government to make land use decisions must be unambiguously delegated by the legislature. *See In re Hubbard*, 778 N.W.2d 313, 321–22 (Minn. 2010) (stating legislative delegation must be expressly or impliedly authorized and the supreme court is reluctant to find implied authority).

One area where the legislature has established special regulatory conditions is for shoreland. Shoreland is defined as any land within 1,000 feet of the normal high watermark of a lake, pond, or flowage. Minn. Stat. § 103F.205, subd. 4(1). The state has crafted an extensive scheme to regulate the development of shorelands in order to preserve shorelands' economic and environmental value and to preserve and enhance the quality of surface water. *See* Minn. Stat. §§ 103F.201(1), (2); Minn. R. 6120.2500–.3900 (2017). Although this scheme provides that a township may regulate shorelands, the regulations must be as strict as, or stricter than, the regulations adopted by the county, which in turn

must be as strict as, or stricter than, the model scheme established by the Minnesota Department of Natural Resources (DNR). *See* Minn. Stat. § 103F.221, subd. 5; Minn. R. 6120.3900, subp. 4a; Minn. R. 6120.2600.

The authorizing statute for shoreland regulation explicitly provides that a municipality may adopt and enforce an ordinance or rule affecting the use and development of shoreland that is more restrictive than the standards and criteria adopted by the DNR. Minn. Stat. § 103F.221, subd. 5. The promulgated rules for township shoreland management allow for a township to specifically regulate shorelands in a manner inconsistent with the county's plan if the management controls are approved by the county. Minn. R. 6120.3900, subp. 4a(B). Kanabec County requires that any township shoreland management control also be approved by the DNR. Even in light of a broad regulatory scheme detailed in the rules, the DNR only has the authority to ignore, impede, or circumvent a township's zoning ordinance when that authority has been unambiguously granted by the legislature in the authorizing statute. *See Hubbard*, 778 N.W.2d at 321.

Kroschel has maintained a comprehensive land use plan since the early 1980s and zoning ordinance since 1984. The township has two zoning regions: agricultural/open (A/O) districts and shoreland districts. Kroschel's zoning ordinance dictates that parcels of land zoned as A/O must: (1) be larger than 20 acres and (2) abut a public road for at least 300 feet. The zoning ordinance also states, though rather opaquely, that Kanabec County's shoreland management controls apply to shoreland as an overlay to existing A/O zoning requirements. Kroschel's zoning ordinance does not list any specific requirements for shoreland districts and instead defers to the county's controls. However, Kroschel's zoning

ordinance does provide that when the county's shoreland management controls are less restrictive than an ordinance specified in the A/O zoning requirements, the more restrictive rules apply. Kroschel's A/O zoning requires more acres per parcel than are required by the county's shoreland management controls.

B. Minn. Stat. § 103F does not preempt Kroschel from zoning shoreland under field preemption.

Calm Waters argues that Kanabec County's shoreland management controls preempt the township from making *any* land use decisions, including zoning, on land that is shoreland. Calm Waters states that because the DNR's shoreland regulations provide that a township must adopt township-specific shoreland management controls to specifically regulate shoreland, Kroschel's failure to adopt controls independent of those of the county prohibits the township from any form of land-use management within 1,000 feet of a body of water. "Preemption of municipal ordinances by state law is a legal question subject to de novo review." *Bicking v. City of Minneapolis*, 891 N.W.2d 304, 312 (Minn. 2017).

The Minnesota Supreme Court recognizes three types of state preemption of municipal authority: (1) express preemption; (2) conflict preemption; and (3) field preemption. *Jennissen v. City of Bloomington*, 913 N.W.2d 456, 459 (Minn. 2018). Calm Waters only argued for the existence of field preemption so we restrain our analysis to that form.

Field preemption exists when a state law so fully occupies a particular field of legislation that there is no room for local regulation. *Mangold Midwest Co. v. Village of*

Richfield, 143 N.W.2d 813, 819 (Minn. 1966). Under this doctrine, it does not matter whether the local legislation complements or contradicts the state law—it is preempted by the very nature of the subject matter. *Id*.

We ask four questions when determining if the actions of a municipality are field preempted by state law: (1) what is the subject matter to be regulated; (2) whether the subject matter has been so fully covered by state law as to have become solely a matter of state concern; (3) whether the legislature, in partially regulating the subject matter, clearly indicated that it is a matter solely of state concern; and (4) whether the subject matter itself is of such a nature that local regulation would have unreasonably adverse effects upon the general populace of the state. *Id.* at 820. In light of these questions, we turn to the caselaw.

In *City of Birchwood Village v. Simes*, we held that a city ordinance limiting the size of a boat moored to a private dock on a lake was field preempted by Minn. Stat. § 103B.661, subd. 2 (1996). 576 N.W.2d 458, 461 (Minn. App. 1998). The statute at issue created a general conservation district and granted that district broad authority to regulate conduct and activities on bodies of water within the district. *Id*. We held that the municipal regulation was preempted because: (1) the powers granted by the statute were broad and intended to preempt all local authority and control; (2) the enabling legislation still provided a voice for the communities through a governing board; and (3) allowing each municipality to enact different boat length requirements would have an adverse impact on the public. *Id.* at 462.

Unlike the statute at issue in *Birchwood Village*, we do not read Minn. Stat. §§ 103F.201–.221 as intending to strip local authorities of all control in managing the land

within 1,000 feet of a natural body of water. Indeed, townships and municipalities are explicitly authorized by the statute to adopt more restrictive controls than those modeled by the DNR. *See* Minn. Stat. § 103F.221, subd. 5. The existence of a regulatory pathway that enables townships to adopt more restrictive shoreland-specific controls than those adopted by the county leaves room for local control and authority. This suggests that the legislature did not intend to so totally occupy the field of shoreland regulation so as to strip any local authority by nature of the subject matter.

As a legislature must explicitly delegate, or unambiguously implicitly delegate, the authority to overcome local government zoning decisions, *Hubbard*, 778 N.W.2d at 321–22, the authority reserved to a township to adopt more restrictive shoreland regulations suggests that the legislature did not intend to fully occupy the field of shoreland regulation so as to implicate field preemption. Therefore, Kroschel's act of deferring to Kanabec County's shoreland management controls does not preempt the township from also regulating land around bodies of water.

C. Kanabec County's shoreland management controls overlay Kroschel's zoning requirements.

An overlay district provides a supplemental unit of regulation superimposed on an existing zoning scheme. Minn. R. 6106.0050, subp. 46 (2017). This form of layered land use regulation allows a state to address common issues that may extend across multiple zones. *See, e.g.*, *Amcon Corp. v. City of Eagan*, 348 N.W.2d 66, 69 (Minn. 1984) (noting that many land use classifications may apply to a single plot of land). Although caselaw is sparse on a specific test to determine whether a land use restriction is intended to be an

overlay, the regulations note that overlay districts are often used to protect historic features and natural resources *such as a shoreland*. Minn. R. 6106.0050, subp. 46. Additionally, the DNR notes that overlay districts are "often a practical approach for administering shoreland regulations." Minn. Dep't of Nat. Res., *Shoreland Management Model Ordinance*, https://www.dnr.state.mn.us/waters/watermgmt_section/shoreland/mod-ord.html (last visited Nov. 12, 2019).

Calm Waters argues that concurrent jurisdiction between different layers of government (the county and the township), a jurisdictional arrangement necessary for a county-based regulatory overlay to exist, cannot exist. In the alternative, if concurrent jurisdiction can exist, it was ceded when Kroschel opted not to establish independent shoreland management controls. Kroschel contends that: (1) it has concurrent jurisdiction with the county over the shoreland and the county's shoreland management controls are simply an overlay to the township's existing zoning scheme; and (2) the general A/O zoning requirements also apply to areas classified as shoreland.

In *In re Administrative Order Issued to Wright County*, a persuasive authority, we held that a township may issue building permits on shoreland even as the county continues to administer shoreland management controls. 784 N.W.2d 398, 404 (Minn. App. 2010). Although we found that concurrent jurisdiction exists between the county and the city within the shoreland, we did note that building permits are distinct from other forms of land use regulations, such as zoning, as building permits do not address the placement and density of development. *Id.* Although this speaks to the ability of a county and township

to have concurrent jurisdiction over shoreland, it does leave open the question of whether this authority extends to zoning.

The shoreland regulatory scheme provides that an individual seeking to build on shoreland need only apply for approval from one governmental body under Minn. R. 6120.3900, subp. 4a(B). Calm Waters asks us to infer from this single application, defined in a regulation, that the legislature intended not only for all zoning authority to be stripped from a township for failure to seek independent shoreland management controls, but also to prohibit concurrent jurisdiction between a township and a county. We decline to do so. A single regulatory pathway is simply insufficient in light of the supreme court's direction that in order for the DNR to circumvent a township's zoning ordinance, the authority must be unambiguously granted by the legislature. *See Hubbard*, 778 N.W.2d at 321.

Additionally, the regulatory definition of an overlay district explicitly contemplates that overlays are a tool that may be used to add additional layers of regulatory protection on top of existing zoning at shorelands. Minn. R. 6106.0050, subp. 46; *see also County of Pine v. State, Dept. of Nat. Res.*, 280 N.W.2d 625, 626 (Minn. 1979) (stating that shoreland regulations do not prohibit the DNR from imposing more restrictive zoning regulations); *Wright County*, 784 N.W.2d at 404 (holding that a county and a township may have concurrent jurisdiction over shoreland where the township seeks to issue building permits).

Kanabec County's comprehensive plan explicitly states that the county will continue to implement shoreland management regulations "as an overlay district to provisions found in existing township ordinances which manage development in rural portions of the County." The shoreland in Kroschel is subject to the county's shoreland

management controls and Kroschel's more restrictive zoning ordinance. Although the county's shoreland controls are less strict than the township's underlying zoning ordinance, the county is free to adopt stricter controls and the township would be required to abide by those additional restrictions.

As the inability for a township to zone land within 1,000 feet of a body of water—in a state filled with 11,842 lakes[1]—would be a significant departure from current zoning practices, a single approval pathway is not sufficient for us to find that no concurrent jurisdiction, and therefore no regulatory overlay, exists. Instead, we hold that absent unambiguous legislative intent to strip a township of all independent zoning authority within 1,000 feet of water, Kroschel has the authority to zone shoreland that also remains subject to the regulatory overlay of Kanabec County's shoreland management controls.

II. The district court did not err in finding that Kroschel's denial of Calm Waters' variance requests was not arbitrary and capricious.

Kroschel's zoning ordinance dictates that no parcel of land can be smaller than 20 acres and all parcels of land must abut a public road for at least 300 feet. Calm Waters sought a variance from the minimum lot size requirement to create two parcels that were under the 20-acre minimum lot size and a variance from the public road abutment requirement to create two stacked parcels that would require traversing an existing easement to reach. Kroschel denied the requests.

[1] Minn. Dep't of Nat. Res., *Lakes, rivers, and wetland facts*, https://www.dnr.state.mn.us/faq/mnfacts/water.html (last visited Nov. 12, 2019).

We review a municipal variance decision "to determine whether the municipality was within its jurisdiction, was not mistaken as to the applicable law, and did not act arbitrarily, oppressively, or unreasonably, and to determine whether the evidence could reasonably support or justify the determination." *Krummenacher v. City of Minnetonka*, 783 N.W.2d 721, 727 (Minn. 2010) (quotations omitted). To do so, we must make an independent examination of the record before Kroschel and arrive at our own conclusion as to the propriety of Kroschel's final decision, without according any special deference to the same review conducted by the district court. *Swanson v. City of Bloomington*, 421 N.W.2d 307, 311 (Minn. 1988). When a proceeding is fair and produces a record that is clear and complete, this court's review is limited to the record developed before the town at the time the decision was made. *R.L. Hexum & Assocs., Inc. v. Rochester Twp., Bd. of Supervisors*, 609 N.W.2d 271, 278 (Minn. App. 2000).

The standard of review "remains whether on the evidence before it, the [town board] reached a reasonable decision." *Town of Grant v. Washington Cty.*, 319 N.W.2d 713, 717 (Minn. 1982). "An action is reasonable, or not arbitrary, when it bears a reasonable relationship to the purpose of the ordinances." *Clear Channel Outdoor Advert., Inc. v. City of St. Paul*, 675 N.W.2d 343, 346 (Minn. App. 2004), *review denied* (Minn. May 18, 2004). "The setting aside of routine municipal decisions should be reserved for those rare instances in which the [township]'s decision has no rational basis." *White Bear Docking & Storage, Inc. v. City of White Bear Lake*, 324 N.W.2d 174, 176 (Minn. 1982).

In *VanLandschoot v. City of Mendota Heights*, the supreme court held that a municipal decision-making body has broad discretionary power to deny an application for

variances. 336 N.W.2d 503, 508–09 (Minn. 1983). Although a denial must be made based on a record, the record may include contemporaneous findings, transcripts, and written reports by city directors. *Swanson*, 421 N.W.2d at 313. Indeed, a record is not limited to the actual proceedings. *Mendota Golf, LLP v. City of Mendota Heights*, 708 N.W.2d 162, 181 n.13 (Minn. 2006) (finding the comprehensive plan, subdivision ordinance, and documents reflecting the historical designation, regulation, and character of the property are relevant to a city's land use decision). Accordingly, our review of the reasonableness of Kroschel's denial is not limited to the arguments advanced in the public hearing regarding the variance requests.

Turning to the reasonableness of Kroschel's denial, a township's police powers allow the township to approve variances only "when they are in harmony with the general purposes and intent of the ordinance and when the variances are consistent with the comprehensive plan." Minn. Stat. § 462.357, subd. 6(2). Variances may be approved when an owner establishes practical difficulties in complying with the zoning ordinance. *Id.* Practical difficulties mean the property owner proposes to use the property in a reasonable way but cannot do so under the current zoning scheme due to circumstances unique to the property and not of the owner's making. *Id*. Additionally, this court may uphold the reasonableness of a denial so long as there is at least one rational basis for the decision. *See, e.g.*, *VanLandschoot*, 336 N.W.2d at 510.

The Calm Waters' parcel is subject to Kroschel's A/O zoning restrictions as well as Kanabec County's shoreland management controls through a regulatory overlay. Because Calm Waters wished to subdivide the plot in a manner that violates Kroschel's zoning

ordinance, Calm Waters requested a variance. Calm Waters was provided with notice of the hearing and had an opportunity to be heard regarding its requested variance. And yet, Kroschel denied Calm Waters' variance requests in part because it was not in harmony with the purpose and intent of Kroschel's A/O zoning.

As stated in Kroschel's zoning ordinance, the purpose of the A/O district is "to provide areas to be utilized and retained in agricultural and/or open space uses, preserve the local agricultural economy, protect private agricultural investments, promote orderly development by limiting scattered non-farm uses, and secure economy in government expenditures for public facilities and services." Kroschel established minimum lot sizes to limit the density of development in this rural township so as to maintain its rural and agricultural character. Kroschel imposed a minimum frontage requirement to ensure every parcel had adequate access to a public road and to avoid the stacking of lots in a manner that would be inconsistent with the rural and agricultural character of the township. The record does not show that the property had unique characteristics that prevent the property from being divided in a manner consistent with the zoning ordinance, even if the division would yield fewer parcels than Calm Waters seeks to create.

In addition to the lot size and frontage requirements, Kroschel cited four additional reasons for denying the variance requests: (1) the proposed property lines do not create an orderly division of the property consistent with the zoning ordinance and comprehensive plan; (2) the variance would not keep with the general purpose and intent of the zoning ordinance as it would land-lock two parcels; (3) the property can be developed and used in a manner consistent with the county ordinance without creating practical difficulties for

Calm Waters; and (4) the request is based primarily on economic concerns. The general sentiment of the community also likely played a role in Kroschel's decision, as well as, perhaps, an almost 15-year history of litigation over this property. *See Calm Waters, LLC v. Kanabec Cty. Bd. of Comm'rs*, 756 N.W.2d 716 (Minn. 2008).

Although Calm Waters requested only a slight deviation below the minimum parcel size for which the region is zoned, approving the variance would slightly increase the lot density of the region in a manner inconsistent with the intent of the zoning ordinance and comprehensive plan to keep the region rural and devoted to agricultural purposes. Additionally, although two portions of the parcel may be accessible using an easement, the stacking of lots also is inconsistent with the intent of the comprehensive plan and zoning ordinance. Finally, although the location of the two lakes does complicate the development of the property, the record does not reflect that the division requested by Calm Waters was necessary due to practical difficulties unique to the parcel. Instead, the practical difficulties Calm Waters claims are difficulties entirely of its own making in an attempt to subdivide the property into four parcels. *See* Minn. Stat. § 462.357, subd. 6(2) (stating practical difficulties are "due to circumstances unique to the property not created by the landowner").

And so, because approving the variance would create four parcels that Kroschel could reasonably find inconsistent with the intent of the comprehensive plan and zoning ordinance, we hold that Kroschel's decision to deny Calm Waters' variance application was not arbitrary and capricious.

III. The district court did not err in finding that Calm Waters must present affirmative evidence of Kroschel's failure to adopt a comprehensive plan.

Calm Waters claims that the only copy of Kroschel's comprehensive plan presented was a "draft" plan from the early 1980s and therefore is invalid. Calm Waters argues that Kroschel has no authority to zone as the comprehensive plan is invalid.

Just as an act of a legislature is presumed constitutional, a comprehensive plan is presumptively valid. *See City of Duluth v. Krupp*, 49 N.W. 235, 236 (Minn. 1891) (holding that a city ordinance is presumptively valid). Absent affirmative evidence to the contrary, we will presume the municipality complied with all necessary formalities. *Id*. Only when the record affirmatively shows that the necessary formalities are omitted will we find the ordinance invalid. *Id*. We will not set aside an ordinance unless its invalidity is clear. *Bolen v. Glass*, 755 N.W.2d 1, 5 (Minn. 2008).

In *Krupp*, the supreme court held that when the record failed to show an ordinance was voted on and adopted as was required under a city's charter, the city was entitled to the presumption that the ordinance was validly adopted absent affirmative evidence that the vote did not take place. *Krupp*, 49 N.W. at 236.

Calm Waters argues that the township's failure to produce a final plan, as well as Calm Waters' inability to find any public notice of the adoption of the final plan in two local newspapers from the time period, is affirmative evidence that the plan was not validly adopted. Kroschel denies that the plan available to Calm Waters was merely a draft plan.

The validity of the plan is a question of fact. Yet, relying on *Krupp*, the district court held that the comprehensive plan was presumptively valid and Calm Waters failed to

present affirmative evidence showing that the plan was not validly adopted. Although Calm Waters argues that the district court mischaracterized its evidence as negative, it is not clear that Calm Waters' evidence, even if characterized as affirmative, would overcome a presumption that the plan was validly adopted. The entirety of Calm Waters' evidence appears to be an inability to find a notice in the newspaper, omission of any reference to the plan in a series of hand-written meeting notes from the 1980s, and, as the district court found, general "troublesome" record keeping. Overcoming a presumption of validity requires affirmative evidence that the township decided not to adopt the plan—not merely evidence that a party cannot find the precise moment a plan was adopted. As Carl Sagan popularized, "absence of evidence is not evidence of absence." Carl Sagan, *The Demon-Haunted World: Science as a Candle in the Dark* 223 (1997).

In light of a strong presumption that an ordinance is valid, we hold that the district court did not err when it found Calm Waters failed to present affirmative evidence that the comprehensive plan was not adopted.

IV. The district court did not abuse its discretion when it denied Calm Waters' motion to compel discovery.

The denial of a motion to compel discovery is reviewed for an abuse of discretion. *Gunnufson v. Onan Corp.*, 450 N.W.2d 179, 181 (Minn. App. 1990). A district court abuses its discretion when it makes findings unsupported by the evidence or by improperly applying the law. *Sehlstrom v. Sehlstrom*, 925 N.W.2d 233, 239 (Minn. 2019).

The district court has broad discretion to determine the procedural calendar of a case; nevertheless, there is a presumption in favor of granting discovery orders. *Rice v.*

Perl, 320 N.W.2d 407, 412 (Minn. 1982). Summary judgment is premature when subsequent discovery is likely to discover relevant material facts to the proceeding. *Bixler by Bixler v. J.C. Penney Co.*, 376 N.W.2d 209, 216–17 (Minn. 1985).

In *Rice*, the supreme court established a two-part test to determine whether a discovery request should be granted: first, was the requesting party diligent in obtaining or seeking discovery; and second, did the requesting party make the request in a good-faith belief that material facts will be uncovered. *Rice*, 320 N.W.2d at 412; *see also Hasan v. McDonald's Corp.*, 377 N.W.2d 472, 475 (Minn. App. 1985) (reviewing a decision on a motion to compel discovery under the same test set out in *Rice* for discovery continuances).

When a district court is concurrently faced with a motion for summary judgment and a motion to compel discovery, the better practice is to decide the motion to compel before deciding the motion for summary judgment. *Hasan*, 377 N.W.2d at 475. This posturing is particularly important when a municipal body has failed to make a complete and adequate record of its proceedings in zoning matters, as a court may require the municipality to prove the basis of its decision and expand the record through discovery. *Swanson*, 421 N.W.2d at 311–12; *Honn v. City of Coon Rapids*, 313 N.W.2d 409, 415–16 (Minn. 1981).

In this case, although the district court found that the Kroschel's lack of recordkeeping was troubling, it is not clear that subsequent discovery would provide Calm Waters with the supplemental information it sought.

Applying *Rice*, the record suggests that Calm Waters was not necessarily diligent in its efforts to seek discovery. Although Calm Waters formally objected to the record of the

proceedings created by Kroschel, Calm Waters was unresponsive to requests by the township to supplement the record. Second, it is also not clear that Calm Waters made its motion to compel discovery in a good-faith belief that material facts would be subsequently uncovered. This is a township of 216 people. The only formal archival system appears to be based in someone's home. As Calm Waters was well aware of Kroschel's administrative deficiencies from their extensive experience with Kroschel's municipal procedures, it seems unlikely that material information from 35 years ago would somehow be uncovered.

In one line, the district court dismissed Calm Waters' motion to compel discovery as moot as the district court already granted Kroschel's summary judgment motion. Other than mootness, the district court presented no reason to dismiss the motion. Although the better approach would be for the district court to rule on the motion to compel discovery before ruling on the motion for summary judgement, it is not clear that subsequent discovery would uncover any additional information to supplement the record at issue. Therefore, the district court did not abuse its discretion when it dismissed Calm Waters' motion to compel discovery.

Affirmed.