

WEDNESDAY, MAY 27, 2009
11:30 A.M.

NO. 3

#25008

ROSEMARY ARMSTRONG and
ALPHIE PETERSEN,
Plaintiffs and Appellants,

vs.

TURNER COUNTY BOARD OF
ADJUSTMENT,
Defendant and Appellee,

VIBORG COOPERATIVE ELEVATOR
ASSOCIATION,
Intervenor.

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(FOR APPELLANT)

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(FOR APPELLEE)

The Honorable Timothy Bjorkman
First Judicial Circuit
Turner County

(CIV 07-25)

STATEMENT OF LEGAL ISSUES

1. **Whether the trial court erred in concluding that Board Member Lyle Van Hove's participation in the Board's decisionmaking process did not constitute a conflict of interest requiring reversal of Board's decision.**

The trial court concluded that Mr. Van Hove did not have a conflict of interest and that his participation did not require reversal of the Board's decision.

Hanig v. City of Winner, 2005 SD 10, 692 N.W.2d 202.

Voeltz v. John Morrell & Co., 1997 SD 69, 564 N.W.2d 315.

Winslow v. Town of Holderness Planning Bd., 480 A.2d 114 (N.H. 1984).

Aldom v. Borough of Roseland, 42 N.J. Super. 495, 127 A.2d 190 (1956).

2. **Whether the trial court erred in concluding that the Board had not exceeded its authority when the Board neglected to follow the County's Ordinance in granting a conditional use permit.**

The trial court concluded the Board had entered a finding regarding compatibility and then denied further consideration of this issue under certiorari review.

Save Centennial Valley Assn. v. Schultz, 284 N.W.2d 452 (S.D. 1979)

STATEMENT OF THE CASE

Petitioners own real property and a residence located in the City of Viborg that is adjacent to property owned by the Elevator. R. 8. The Elevator's property was undeveloped agricultural property located outside the Viborg city limits, but within Turner County, South Dakota. (Ex. 1 at p. 7) On October 2, 2006, Elevator applied for a building permit with the County Planning and Zoning Administrator. R. 7. The Elevator's proposed structure would be a 100' by 250' commercial grain storage facility located on property outside the City of Viborg, but directly east and adjacent to Petitioners' property and other family homes in Viborg. R. 7.