STATE OF MINNESOTA
IN COURT OF APPEALS
A09-381

In re Koochiching County
and City of International Falls
CSAH 155 Project Dispute.

Filed January 26, 2010
Affirmed
Crippen, Judge[*]

Minnesota Department of Transportation

Joseph M. Boyle, Jr., Office of the City Attorney, International Falls, Minnesota (for relator City of International Falls)

Jay T. Squires, Ratwik, Roszak, and Maloney, P.A., Minneapolis, Minnesota (for respondent Koochiching County)

Lori Swanson, Attorney General, Donald J. Mueting, Assistant Attorney General, St. Paul, Minnesota (for respondent Commissioner of Transportation)

Susan L. Naughton, St. Paul, Minnesota (for amici curiae League of Minnesota Cities/Coalition of Greater Minnesota Cities)

Scott R. Simmons, Association of Minnesota Counties, St. Paul, Minnesota; and

Kenneth H. Bayliss, Quinlivan & Hughes, P.A., St. Cloud, Minnesota (for amicus curiae Association of Minnesota Counties)

Considered and decided by Stauber, Presiding Judge; Toussaint, Chief Judge; and Crippen, Judge.

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[*] Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

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

CRIPPEN, Judge

Relator City of International Falls contends that respondent commissioner of transportation exceeded his statutory authority by convening a dispute resolution board without first giving the city ample time to review respondent Koochiching County's proposal for the establishment of a state-aid road. Relator also asserts that it should have been furnished road design plans before the dispute resolution board was convened and that the commissioner's order approving the road was otherwise defective because of procedural irregularities and arbitrary and capricious decisionmaking. Because the order establishing the road and approving the design plans complies with the governing statute and is supported by substantial evidence, we affirm.

FACTS

This dispute involves the establishment of a county state-aid highway (CSAH) in the City of International Falls (city), located in Koochiching County (county). Various CSAHs and state trunk highways (TH) are located in the city, including TH 332, a north-south route, part of which is known as Burner Road. Burner Road passes through the middle of Boise Cascade's (Boise) wood-processing, milling, and chipping operation, and it links TH 332 to the north with TH 11, running east from the city. The roadway at issue is proposed CSAH 155, which is approximately 0.6 miles long and directly connects TH 332 and TH 11, as an alternative route to Burner Road.

There also is a commercial tract known as the "Foreign Trade Zone" (FTZ), which is heavily used by the Canadian Northern Railroad, in this area. The city prefers an

alternative 2.2 mile connecting road from TH 332 that first turns east to abut the FTZ site and then proceeds northerly to TH 11.

1. History of Proposed CSAH 155

It is undisputed that construction of a CSAH route in the general location of proposed CSAH 155 has been discussed since 1966; an earlier proposal for the direct link was approved in 1976, opposed by the city and Boise, and never constructed.

The county submits that it passed a motion to pursue federal funding for CSAH 155 in 2002, which it received. Throughout 2005 and 2006, a series of meetings took place between the city, county, and Boise, and public comment was sought discussing the county's proposal; a number of Boise employees supported the route, but other citizens opposed the plan, stating concern for the effect on local businesses that operate on TH 53, a north-south state highway that parallels TH 332 but runs through the center of the city.

In March 2007, Boise asked the city to vacate Burner Road, citing traffic safety concerns, and the city named a task force to study the issue. The task force, including representatives of the city, the county, and Boise, met throughout 2007 and studied numerous aspects of options for a link to TH 11; the task force report favored vacating Burner Road, but noted concerns of TH 53 merchants that the rerouting avoid any decrease in tourism traffic that uses TH 53 when heading to Canada.

On January 7, 2008, the city council approved vacating Burner Road contingent upon construction of a truck bypass from TH 332 to TH 11 that abutted the FTZ. On February 19, the county board resolved to establish, locate, and designate proposed CSAH 155 pursuant to the county's route. The county engineer presented the resolution

to the city at a council meeting on March 3, 2008. Council members generally expressed a preference for the FTZ route, but decided to ask the city engineer to report on cost comparisons for the rerouting possibilities.

On March 11, 2008, eight days after the council meeting, the county board passed a resolution requesting that the commissioner convene a dispute resolution board (DRB) to resolve the CSAH 155 route issue. Minnesota law provides that a county may request that the commissioner appoint a DRB "[i]f a city has failed to approve establishment, construction, reconstruction, or improvement of a [CSAH] within its corporate limits." Minn. Stat. § 162.02, subd. 8a (2008). The county resolution observed the need for city approval, the city's preference for the alternative route past the FTZ, and the need for the county to act to secure available federal funding.

The record shows frequent contacts between the county engineer and state-aid staff of the Minnesota Department of Transportation (Mn/DOT), both before and after dispute resolution was requested. City officials also established contact with Mn/DOT staff. The state-aid director advised the city attorney to anticipate a dispute resolution proceeding, but the city attorney twice responded by questioning the legality of dispute resolution, stating that the city had not "failed to approve" the road establishment. The state-aid director reported on past events and noted the view that there had been ample time for city approval, but agreed to delay setting the DRB hearing until the city council met on April 7; the director stated that if she set the hearing on April 8, the DRB would convene on April 11.

2. State Process

The parties failed to reach an agreement as of the April 7 council meeting. The meeting minutes indicate that the city received a report from its engineer and noted general discussion concerning the proposed roadway. On April 8, 2008, the state-aid director issued a notice for the April 11 DRB hearing on establishment of CSAH 155.

Both city and county representatives, including both engineers, appeared before the DRB. The city stated its opposition to establishing the county route. The DRB concluded that a dispute existed between the county and the city, and then recommended that CSAH 155 be established without city approval. Among other things, the DRB cited the city's lengthy consideration of the county's proposed route; increased expense with the city's proposed route; the more natural flow of tourist traffic along TH 53, eliminating the city's concern for local businesses; and that further design approval from the city faced a real possibility of delay, putting federal funds in jeopardy.

On April 28, 2008, the commissioner of transportation approved the recommendations of the DRB. Upon request for review by this court, the case was dismissed and remanded because the commissioner had indicated his intent to reconsider the April decision. *City of International Falls v. Sorel*, No. A08-804 (Minn. App. Aug. 19, 2008) (order).

On remand, the commissioner allowed the parties to supplement the record and submit written briefs. The commissioner issued a new order on February 12, 2009. Citing Minn. Stat. § 162.02, subd. 7 (2008), the commissioner noted that a county board may establish and locate a CSAH within its limits, but that approval of the city's

governing body is required when the CSAH is located within the city's corporate limits. Further, citing Minn. Stat. §162.02, subd. 8 (2008), the commissioner observed that no CSAH could be constructed without prior approval of the plans by the governing body of the city. The commissioner also noted that Minn. Stat. § 162.02 was silent on the minimum amount of time required for a city's approval. Without statutory guidance, the commissioner determined that the timing question was to be resolved according to the facts and circumstances of each case. The commissioner also referenced his authority over the CSAH system under Minn. Stat. § 162.02, subd. 4 (2008), and ability to adopt recommendations of the DRB under Minn. Stat. § 162.02, subd. 8a.

The commissioner concluded that the county's proposed route falls within the city's limits. The commissioner found that "[b]y its failure to make a formal response approving or rejecting the [c]ounty's proposed route and by its January 8, 2008 request to the [c]ounty to instead consider a revised route proposal, the [c]ity has failed to approve the proposed [c]ounty route," and thus the DRB was properly convened. Concluding that the city had been aware of the county's proposed route from as far back as May 2007 and had looked into the merits of the route, and that the county's proposal was the superior route, the commissioner ordered the establishment and location of CSAH 155 along the county's route. Like the DRB, the commissioner recognized but found unpersuasive the longstanding contention that the new route would invite diversion of traffic from TH 53.

Finding that the county did not seek prior approval of its design plans and that plans were not included in the record, the commissioner rejected the DRB's recommendation that the city not be allowed to approve the county's final design.

Instead, the commissioner established a schedule of approval that permitted collaboration and review by the parties but left resolution of any disagreement to the commissioner. The commissioner also concluded that there was no bias exercised by Mn/DOT staff in favor of the county, although communications between Mn/DOT and the county "reveal[ed] an occasional, unfortunate casualness but [did] not support the [c]ity's arguments of unfairness." This certiorari appeal follows.

D E C I S I O N

1. Convening of DRB

The Minnesota Constitution mandates construction and maintenance of a CSAH system. Minn. Const. art. XIV, § 3. Under Minnesota law, county boards shall locate and establish CSAHs, subject to the concurrence of the commissioner of transportation. Minn. Stat. § 162.02, subd. 4. The commissioner retains authority over the final selection of routes to be included in the CSAH system. Minn. R. 8820.0600, subp. 1 (2007).

No CSAH "shall be established or located within the corporate limits of any city without the approval of the governing body of the city." Minn. Stat. § 162.02, subd. 7. "If a city has failed to approve establishment, construction, reconstruction, or improvement of a [CSAH] within its corporate limits . . . , the county board may, by resolution, request the commissioner to appoint a [DRB] . . . ." *Id.*, subd. 8a. "The [DRB] shall review the proposed change and make a recommendation to the commissioner," and, "[n]otwithstanding any other law, the commissioner may approve the establishment, construction, reconstruction, or improvement of a [CSAH] recommended by the [DRB]." *Id.*

The parties dispute whether the DRB was convened in excess of the statutory authority set forth in subdivision 8a. "Whether an agency acts within its statutory authority is a question of law to be reviewed de novo." *In re Qwest's Wholesale Serv. Quality Standards*, 702 N.W.2d 246, 259 (Minn. 2005). Interpretations of a statute are also subject to de novo review. *ILHC of Eagan, LLC v. County of Dakota*, 693 N.W.2d 412, 419 (Minn. 2005). "The touchstone for statutory interpretation is the plain meaning of a statute's language." *Id.* "When the words in a statute are clear and unambiguous, a court must give effect to the plain meaning of the language." *Ullom v. Indep. Sch. Dist. No. 112, Chaska*, 515 N.W.2d 615, 617 (Minn. App. 1994).

The city argues that "failure to approve" did not occur in the council meeting on March 3, when the county's establishment resolution was presented, or in the subsequent passing of eight days before the county requested state involvement on March 11. The city contends that the process demonstrates "unfairness" if the city is not given "a reasonable time" to act. As a result, the city concludes that the DRB hearing was "contrary to law" and that subsequent state proceedings were tainted with a "jurisdictional defect." The city asserts that, although the "jurisdictional" defect was in the county's premature action, it nevertheless destroyed state agency jurisdiction. In addition, the city states that its further "study" of proposed CSAH 155 was "reasonable" and that it acted on March 6 to commence that study by contacting the city engineer.

To support these various assertions, the city cites only to authority that limits state agency jurisdiction to the governing statute. *See, e.g., Qwest's Wholesale Serv. Quality Standards*, 702 N.W.2d at 259; *Rowe v. Dep't of Employment & Econ. Dev.*, 704 N.W.2d

191, 194 (Minn. App. 2005). Because the city does not cite to precedent to justify the conclusion that Mn/DOT acted outside the scope of Minn. Stat. § 162.02, subd. 8a, when convening the DRB, it is evident that the city rests its argument on the language of the statute.

Under Minn. Stat. § 162.02, subd. 8a, the city can either approve or fail to approve a county establishment resolution. Because the statute does not distinguish between outright denial or simple inaction, the county correctly observed that "taking no action" results in failure to approve. When the city took no action on establishment at the March 3 council meeting, the county did not violate the statute by reciting that the city had failed to act. And as the commissioner observed, this conclusion was uniquely evident when the city declared in January, after prolonged study, that it opposed the direct route later designated by the county board.

When the city failed to approve establishment of CSAH 155, the county had the discretion to choose its course of response. The county "may" request that the commissioner appoint a DRB. *Id.* "May" is permissive language. Minn. Stat. § 645.44, subd. 15 (2008). The discretion lies with the county to determine whether it will wait on the city's approval—for whatever reason, continuing the dialogue with the city—or pass a resolution requesting that the commissioner appoint a DRB to examine the issue. The city contends that the county took a sudden turn in direction, and the record indicates that the county board, evidently for many years, had shown a willingness to wait for a day when city and county officials could agree on a re-routing proposal. The statute did not compel the county to delay further, and it is evident that it chose to proceed to avoid

expiration of potential federal funding. Moreover, the board had previously acted to obtain public comment on the two route proposals and in its favor of the direct route chosen in establishing CSAH 155.

The city evidently concludes that the statute suggests a requirement that "failure" occurs only through "action," and not as a result of inaction, but this construction is not supported by the statute itself. The city neither disputes that it had not approved the establishment on March 11 nor that it had previously opposed this route, and the city does not dispute that it opposed the project at all times through February 2009, when the commissioner issued his order.

Similarly, the city concludes that, although it had not approved establishing CSAH 155 by March 11, its inaction was not a "failure" under the statute because it intended to study the county's proposal and needed a reasonable time to do so. Again, the city's argument is without reasoning or authority on point, and the statute is silent on requirements respecting deliberations or delays. We are not at liberty to supply language that the legislature purposely omits or inadvertently overlooks. *Ullom*, 515 N.W.2d at 617. Moreover, despite the city's claim of a need to study the proposal, it is significant that its longstanding disapproval of the road proposal persisted for nearly a year after March 21, 2008, when the city's engineer reported his analysis. Although the city has called this report "preliminary," it has failed to identify any study or topic of study that it wished to pursue or the time needed for any inquiry.

Once the DRB was convened, it was required by statute to issue a recommendation to the commissioner. The DRB "shall" conduct a review and make a

recommendation. Minn. Stat. § 162.02, subd. 8a. "Shall" is mandatory language, Minn. Stat. § 645.44, subd. 16 (2008), and thus not within the discretion of the DRB. It is not disputed that the DRB conducted proceedings as required by the statute. And it is not disputed that the city appeared before the DRB, voiced its objections, and made no request when asked whether it wished to have the DRB hearing reconvened at a subsequent date.

Similarly, the city does not dispute that the commissioner acted after the DRB proceedings were requested and the DRB recommended approval of the county's establishment. The statute's jurisdictional requirements were fulfilled. *See* Minn. Stat. § 162.02, subd. 8a. In addition, the city does not dispute the commissioner's finding that it withheld approval of the road proposal at all times through February 2009.

In sum, there is no significant "eight day" factor in this case. On March 11, 2008, as well as before and after that date, the city failed to approve establishment of CSAH 155.

In oral argument, the city asserted that it was entitled to "due diligence" deliberation on whether to approve the county's request for establishment. Although the city does not suggest authority for its position outside the plain meaning of the statute, we appreciate the significance of the city's concerns regarding reasonableness, fairness, and due diligence. Certainly, these terms imply thoughts of fundamental fairness or due process. But there are no legal principles to explore beyond the language of the statute.

The city does not have constitutional due process rights. *See City of Marshall v. Pub. Employees Ret. Ass'n*, 246 N.W.2d 572, 575 (Minn. 1976) ("As a governmental

subdivision of the state, the city is not a 'person' within the meaning of the due process clause."). And insofar as added process might be considered, the city was given the opportunity to make presentations to both the DRB (where it appeared) and the commissioner; moreover, when asked by the commissioner if it wanted the DRB reconvened, the city made no such request.

In addition, even when an individual states a due process demand, we have held that an individual's claim for more time, despite the fact that the time allowed appeared to be insufficient, must be supported by a showing of prejudice. *Staeheli v. City of St. Paul*, 732 N.W.2d 298, 305 (Minn. App. 2007). Even if the city were considered a "person" for the purposes of due process, the city has failed to identify what additional information it needed, what was left to study, what questions it needed to resolve, or make any demonstrable showing of prejudice. We also note that the city's position was plainly apparent at the DRB hearing when the city stated it "oppose[d]" designation pursuant to the county's route.

We do not find authority to confine our consideration to a count of days, such as the city proposes. As the commissioner concluded, assessment of the failure to act depends on the facts and circumstances of the case. The commissioner did not exceed his statutory authority in convening a DRB to resolve the dispute in this matter.

2. Alleged Unfairness

"An appellate court may reverse or modify an administrative decision if substantial rights of the petitioners have been prejudiced by administrative findings, inferences, conclusions or decisions that are unsupported by substantial evidence in view

of the entire record, or [are] arbitrary and capricious . . . ." *In re Excess Surplus Status of Blue Cross & Blue Shield of Minn.*, 624 N.W.2d 264, 277 (Minn. 2001). Decisions of an administrative agency enjoy a presumption of correctness, and this court defers to the agency's expertise and special knowledge of its particular field. *Id.* at 278. "The agency decision-maker is presumed to have the expertise necessary to decide technical matters within the scope of the agency's authority . . . ." *Id.*

As the county asserts, the city does not argue that the commissioner's decision was unsupported by substantial evidence. "[I]f the ruling by the agency decision-maker is supported by substantial evidence, it must be affirmed." *Id.* at 279; *see also In re Grand Rapids Pub. Utils. Comm'n*, 731 N.W.2d 866, 871 (Minn. App. 2007). But because the city's claims of arbitrariness and capriciousness may contradict a conclusion that substantial evidence supports the commissioner's decision, we consider these claims.

The record shows that there is more than substantial evidence to support the commissioner's decision to establish CSAH 155 and provide a timeframe for approval of the county's construction plans. *See Minn. Ctr. for Envtl. Advocacy v. Minn. Pollution Control Agency*, 644 N.W.2d 457, 464 (Minn. 2002) (articulating need for evidence "as a reasonable mind might accept as adequate to support a conclusion"). The commissioner's findings and conclusions reflect that he took into account the following factors: (1) Boise's request that Burner Road be vacated; (2) safety concerns regarding Burner Road; (3) public support and opposition to the different proposals; (4) concerns of local businesses regarding the new route; (5) findings of the Burner Road Task Force; (6) Mn/DOT's interest in reducing mileage on the TH system and the mileage of

alternative proposals; (7) costs associated with the different routes; and (8) the ease of construction.

In the commissioner's accompanying memorandum, he concluded that "the proposed [c]ounty route is both a better transportation alternative and a much safer alternative than the current situation. Based on the reasons advanced by the [c]ounty and Boise with regard to safety, efficiency, and cost, I have decided to approve the [c]ounty's proposal." *See* Minn. Stat. § 162.02, subd, 4 (stating commissioner's duty to review CSAH systems and relevant considerations). According to governing rules, the commissioner has the final authority to designate the routes to be included in the CSAH system. Minn. R. 8820.0600, subp. 1. The commissioner's findings and conclusions for the establishment and construction of CSAH 155 reflect the determinations and considerations within the commissioner's transportation expertise and statutory duties in his ultimate oversight of the CSAH system. Accordingly, because the commissioner's findings are plainly such that a reasonable mind would conclude they support his decision, we conclude that the commissioner's order is supported by substantial evidence.

We also conclude that the commissioner did not err in providing the parties with a process for approval of the final design plans. Mn/DOT "is the principal agency of the state for development, implementation, administration, consolidation, and coordination of state transportation policies, plans, and programs," including highways. Minn. Stat. § 174.01, subd. 1 (2008). As the head of Mn/DOT, the commissioner oversees the CSAH system. Minn. Stat. §§ 162.02, 174.02, subd. 1 (2008). Minn. Stat. § 162.02, subd. 8, provides that "no portion of the [CSAH] system lying within the corporate limits of any

city shall be constructed . . . without the prior approval of the plans by the governing body of such city and the approval shall be in the manner and form required by the commissioner."

It is undisputed that the county did not provide design plans to the city. If the commissioner is statutorily authorized to determine the manner and form of approval required, it follows that the commissioner is able to fashion a process for plan approval in this case. *See In re De Laria Transp., Inc.*, 427 N.W.2d 745, 748 (Minn. App. 1988) (although cautioning that agency power is limited to that conferred by statute, it includes what "is by fair implication and intendment incident to and included") (quotation omitted)). The commissioner's solution permits each party to give input regarding the design plans for CSAH 155, while simultaneously recognizing the very real possibility that the parties will not be able to reach a consensus. *See, e.g., City of Richfield v. Local No. 1215, Int'l Ass'n of Fire Fighters*, 276 N.W.2d 42, 51 (Minn. 1979) (stating futility as a proper consideration in formulating process). Lastly, we note that any design plans must meet certain standards as required by law. *See, e.g.*, Minn. R. 8820.2500 (2007) (setting forth minimum state-aid standards for new construction projects).

Finally, we address the city's allegations of bias of Mn/DOT staff and the city's conclusion that these facts establish that the commissioner's decision was arbitrary and capricious. On appeal, our review is guided "by the principle that the agency's conclusions are not arbitrary and capricious so long as a rational connection between the facts found and the choice made has been articulated." *Blue Cross & Blue Shield*, 624 N.W.2d at 277 (quotation omitted). Agency rulings are arbitrary and capricious when the

agency relies on factors not considered by the legislature; fails to consider important aspects of the issue; provides an explanation not supported by the evidence; or renders a decision so implausible that neither differences of opinion nor the agency's particular expertise can explain the result. *White v. Minn. Dep't of Natural Res.*, 567 N.W.2d 724, 730 (Minn. App. 1997). "A decision is not arbitrary and capricious if the agency, presented with opposing points of view, reaches a reasoned decision that rejects one point of view." *Grand Rapids Pub. Utils. Comm'n*, 731 N.W.2d at 871. As discussed, the record contains substantial evidence to support the commissioner's decision and reflects his judgment on issues within Mn/DOT's expertise. This is precisely a case in which the commissioner was presented with the opposing viewpoints of the city and the county and reached a reasoned decision, ultimately rejecting the city's proposed route.

The city details numerous e-mail communications between the county and the Mn/DOT state-aid director, asserting that the actions of this official and others demonstrate procedural irregularities and reflect Mn/DOT's preference for the county's proposed route. "Parties to an administrative proceeding are entitled to a decision by an unbiased decisionmaker." *Buchwald v. Univ. of Minn.*, 573 N.W.2d 723, 727 (Minn. App. 1998), *review denied* (Minn. Apr. 14, 1998). "There is a presumption of administrative regularity, and the party claiming otherwise has the burden of proving a decision was reached improperly." *Id.*

The city analogizes various e-mail communications in this case to the procedural irregularities addressed in *Hard Times Cafe, Inc. v. City of Minneapolis*, 625 N.W.2d 165, 173-74 (Minn. App. 2001), involving e-mails exchanged between city council

members and staffers. As the county argues, *Hard Times Cafe* is distinguishable. The e-mails in *Hard Times Cafe* suggested that council members, in their capacity as decision makers, had made up their minds before the license revocation proceedings were complete and had considered evidence outside the administrative record. *Id.* at 174. These activities were in direct violation of the manual governing license adverse action proceedings, which specifically instructed the council members to "avoid ex parte contacts, base [their] decision[s] solely on the record, and not make [their] final decision until after the hearing." *Id.* at 170. The city has provided no similar rules governing the DRB or the commissioner. Importantly, the city does not appear to allege that members of the DRB or the commissioner were engaged in any sort of biased decisionmaking or improper communications with the county. All of the city's arguments appear to focus primarily on the state-aid director and other employees.

Similarly, the city's argument that the county and Mn/DOT employees were conspiring to disregard Minn. Stat. § 162.02, subd. 8, concerning its approval of the design plans, is misplaced. The city has failed to identify error of the commissioner either in the designation of CSAH 155 or in his plan for determining a final design proposal.

The city also cites this court's decision in *Yellowbird, Inc. v. MSP Express, Inc.* for the proposition that "'[w]here there is a combination of danger signals which suggest the agency has not taken a hard look at the salient problems and has not genuinely engaged in reasoned decisionmaking it is the duty of the court to intervene.'" 377 N.W.2d 490, 493 (Minn. App. 1985) (quoting *Reserve Mining Co. v. Herbst*, 256 N.W.2d

808, 825 (Minn. 1977) (internal quotation marks omitted)). This citation of authority is not persuasive. As the county notes, the agency decision in *Yellowbird* was reversed and remanded because the agency failed to provide any findings to support its decision and failed to follow the statutory hearing procedure. 377 N.W.2d at 493-94. In considering CSAH 155, the commissioner provided extensive findings and detailed the rationale supporting his decision. The thoroughness of the commissioner's order demonstrates that this is not a case in which the agency failed to take a "hard look" at the underlying issues.

The city has not met its burden. Examining the city's bias claim, the commissioner observed an "unfortunate casualness" in the communications of his staff. This finding may be imprecise or dismissive, but the record demonstrates that it is supported by substantial evidence. Moreover, nothing in the record shows or tends to show that the commissioner was affected by actual bias, failed to hear and consider opposing points of view, or failed to reach a reasoned decision. *See Sleepy Eye Care Ctr. v. Comm'r of Human Servs.*, 572 N.W.2d 766, 772 (Minn. App. 1998) (declining to change the review process absent actual bias on the part of the commissioner, and remanding the case to the commissioner).

Affirmed.