whether the juvenile court erred in terminating Travis' parental rights or in finding that such termination was in Da Shawn's best interests.

CONCLUSION

Our de novo review of the record demonstrates that during these proceedings, Travis was denied due process. We therefore vacate the juvenile court's adjudication and termination orders and remand the matter to the juvenile court with directions to conduct a new adjudication hearing and to provide Travis due process in the proceedings consistent with this opinion.

JUDGMENT VACATED, AND CAUSE REMANDED WITH DIRECTIONS.

DOWD GRAIN CO., INC., ET AL., APPELLANTS, V. COUNTY OF SARPY, A CORPORATE BODY POLITIC, ET AL., APPELLEES.

___ N.W.2d ___

Filed February 28, 2012. No. A-10-1238.

1. **Appeal and Error.** In order to be considered by an appellate court, alleged errors must be both specifically assigned and specifically argued in the brief of the party asserting the error.
2. **Trial: Evidence: Appeal and Error.** A trial court has the discretion to determine the relevancy and admissibility of evidence, and such determinations will not be disturbed on appeal unless they constitute an abuse of that discretion.
3. **Judgments: Collateral Estoppel: Res Judicata.** The applicability of the doctrines of res judicata and collateral estoppel is a question of law.
4. **Moot Question: Jurisdiction: Appeal and Error.** Because mootness is a justiciability doctrine that operates to prevent courts from exercising jurisdiction, an appellate court reviews mootness determinations under the same standard of review as other jurisdictional questions.
5. **Judgments: Jurisdiction: Appeal and Error.** When a jurisdictional question does not involve a factual dispute, its determination is a matter of law, which requires an appellate court to reach a conclusion independent of the decisions made by the lower courts.
6. **Summary Judgment: Appeal and Error.** An appellate court will affirm a lower court's granting of summary judgment if the pleadings and admissible evidence offered at the hearing show that there is no genuine issue as to any material facts or as to the ultimate inferences that may be drawn from those facts and that the moving party is entitled to judgment as a matter of law.

7. **Summary Judgment: Affidavits.** Affidavits received on a motion for summary judgment shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein.
8. **Trial: Evidence: Appeal and Error.** To constitute reversible error in a civil case, the admission or exclusion of evidence must unfairly prejudice a substantial right of the litigant complaining about evidence admitted or excluded.
9. **Trial: Presumptions: Evidence.** In a bench trial, there is a presumption that the finder of fact disregards inadmissible evidence.
10. **Actions: Judicial Notice.** A court may judicially notice adjudicative facts, which are not subject to reasonable dispute, at any stage of the proceeding.
11. **Actions: Judicial Notice: Appeal and Error.** In interwoven and interdependent cases, an appellate court may examine its own records and take judicial notice of the proceedings and judgment in a former action involving one of the parties.
12. **Zoning: Ordinances: Time.** The time of decision rule generally requires that the zoning ordinance and regulations in effect at the time of a court's decision control its outcome.
13. **Statutes: Legislature: Intent: Time.** Generally, an appellate court will apply the statute in effect at the time of its decision, at least when the legislature intended that its modification be retroactive to pending cases.
14. ____: ____: ____: ____. The purpose of the principle of an appellate court's applying the statute in effect at the time of its decision is to effectuate the current policy declared by the legislative body.
15. **Zoning: Licenses and Permits.** Under Neb. Rev. Stat. § 23-114.04(1) (Reissue 2007), a county board enforces the zoning regulations within its county by requiring the issuance of permits prior to the construction of any nonfarm building or structure within a zoned area.
16. ____: ____. Under Neb. Rev. Stat. § 23-114.04(1) (Reissue 2007), a county board may provide for the withholding of any permit if the purpose for which it is sought would conflict with zoning regulations.
17. **Evidence: Appeal and Error.** An appellate court cannot consider as evidence statements made by the parties at oral argument or in briefs, as these are matters outside the record.
18. **Appeal and Error.** The law-of-the-case doctrine operates to preclude a reconsideration of substantially similar, if not identical, issues at successive stages of the same suit.
19. ____. An exception to the law-of-the-case doctrine applies if a party shows a material and substantial difference in the facts on a matter previously addressed by an appellate court.
20. **Collateral Estoppel: Res Judicata: Proof.** For application of the doctrines of collateral estoppel or res judicata, the party relying on either of those principles in a present proceeding has the burden to show that a particular issue was involved and necessarily determined in a prior proceeding.
21. **Res Judicata.** Res judicata does not apply when there has been an intervening change in facts or circumstances.
22. **Moot Question: Words and Phrases.** A case becomes moot when the issues initially presented in the litigation cease to exist, when the litigants lack a legally

cognizable interest in the outcome of litigation, or when the litigants seek to determine a question which does not rest upon existing facts or rights, in which the issues presented are no longer alive.

23. **Moot Question.** Unless an exception applies, a court or tribunal must dismiss a moot case when changed circumstances have precluded it from providing any meaningful relief because the litigants no longer have a legally cognizable interest in the dispute's resolution.
24. **Moot Question: Appeal and Error.** Under the public interest exception, an appellate court may review an otherwise moot case if it involves a matter affecting the public interest or when other rights or liabilities may be affected by its determination.
25. ____: ____. When determining whether a case involves a matter of public interest, an appellate court considers (1) the public or private nature of the question presented, (2) the desirability of an authoritative adjudication for future guidance of public officials, and (3) the likelihood of future recurrence of the same or a similar problem.

Appeal from the District Court for Sarpy County: DAVID K. ARTERBURN, Judge. Affirmed.

Terry J. Grennan, of Cassem, Tierney, Adams, Gotch & Douglas, and Duane J. Dowd for appellants.

Kim K. Sturzenegger and Richard L. Boucher, of Boucher Law Firm, for appellees County of Sarpy, Richard Houck, and Sarpy County Department of Planning and Building.

Joseph E. Jones and Timothy J. Thalken, of Fraser Stryker, P.C., L.L.O., for appellee OSI Properties Limited Partnership.

INBODY, Chief Judge, and CASSEL and PIRTLE, Judges.

CASSEL, Judge.

INTRODUCTION

In a prior appeal, we reversed the district court's judgment of dismissal on the pleadings, where the complaint alleged noncompliance with design aspects of a 2004 zoning ordinance. In 2007, the County of Sarpy enacted a revised zoning regulation which, appellees argue, had the effect of excepting the property at issue from the design requirements. Upon remand, the district court entered summary judgments, determining that the 2007 revised regulation rendered the complaint moot. We conclude that the time of decision rule requires us to

apply the regulations now in effect, that the revised regulation excepts the property at issue, and that the issues raised by the complaint are moot. Accordingly, we affirm the summary judgments entered in favor of appellees.

BACKGROUND

This litigation is before us for a second time. We begin by summarizing the proceedings leading to the first appeal.

Dowd Grain Co., Inc.; Duane J. Dowd, trustee; Grand Prix, Inc.; Duane J. Dowd; and Lawrence Dowd (collectively Dowd) filed an action in December 2005 in the Sarpy County District Court against appellees—the County of Sarpy, Richard Houck, and the Sarpy County Department of Planning and Building (collectively the Sarpy County defendants) and OSI Properties Limited Partnership (OSI). The complaint sought relief such as declaratory judgment, temporary and permanent injunctions, the abatement of a nuisance, and damages based on an alleged improper issuance of building permits and zoning violations. The complaint alleged that the building OSI intended to construct, if completed as designed, would violate certain provisions of an overlay district zoning ordinance which was adopted on March 9, 2004. In particular, OSI's building would use metal panels on areas visible to the public, would have flat facades which were not articulated every 50 feet, and would have loading docks facing public streets, all of which would violate the ordinance.

OSI filed a motion for judgment on the pleadings, and the Sarpy County defendants joined in the motion. The district court sustained the motions and dismissed Dowd's complaint.

Dowd appealed to this court, which appeal was docketed as case No. A-06-682. On appeal, we reversed the judgment and remanded the cause for further proceedings in a memorandum opinion. See *Dowd Grain Co. v. County of Sarpy*, No. A-06-682, 2008 WL 2511147 (Neb. App. June 24, 2008) (selected for posting to court Web site). We determined that some of the issues raised by the complaint were properly before the district court under Neb. Rev. Stat. § 23-114.05 (Reissue 2007), even though Dowd was also pursuing an appeal of the issuance of the building permits to the county board of adjustment.

On that same day, we released a memorandum opinion in a related case, *Dowd Grain Co. v. County of Sarpy Bd. of Adj.*, No. A-06-681, 2008 WL 2511150 (Neb. App. June 24, 2008) (selected for posting to court Web site), but we expressed no opinion on whether our resolution in that case would affect the proceedings in case No. A-06-682 on remand. The Nebraska Supreme Court subsequently denied appellees' respective petitions for further review.

After briefing on the appeal in case No. A-06-682 had been completed, the Sarpy County Board of Commissioners enacted a revised zoning regulation governing the highway corridor overlay district. As amended and adopted in 2010, section 32.3, "Project Application and Exceptions," states that the zoning regulations apply, in part, to the following:

> Any new development requiring a building permit built on land within the boundaries of the HC Highway Corridor Overlay District after the effective date of this Regulation, except any land that was platted prior to March 9, 2004; provided however, that land within the boundaries of the HC Highway Corridor Overlay District that was zoned other than agricultural prior to March 9, 2004, that was part of a Phased Development shall also be excepted.
>
> Replats, lot line adjustments, and lot consolidations of such platted properties shall remain excepted.
>
> Phased Developments shall mean property that was, at a minimum, preliminary platted and at least a part of the property within the preliminary plat was final platted.

Our opinion in case No. A-06-682 did not address or consider any changes made in the zoning regulation after the docketing of that appeal. With the issuance of our mandate in that case, the matter returned to the district court.

Upon receipt of our mandate, the district court entered an order setting the case for a docket call and later addressed Dowd's application for an order to show cause and other motions filed by the parties after our remand on the first appeal.

First, Dowd filed two motions, including a motion for summary judgment. Dowd's motion for summary judgment against the Sarpy County defendants asserted that Dowd was entitled

to relief under § 23-114.05 because OSI had no valid building permits. The other motion was styled as a "motion and application for order requiring [the Sarpy County defendants] to perform their required duties and comply with court orders." In this motion, Dowd alleged that OSI did not have valid building permits for the property and building at issue, that § 23-114.05 required the Sarpy County defendants to perform their duties regarding building permits, and that appellees had no valid reason to negate the requirement of performance of such duties.

Appellees then filed motions for summary judgment. The Sarpy County defendants' motion asserted that Dowd's complaint was based upon the 2004 ordinance, the ordinance at issue was revised in 2007, and Dowd's lawsuit was moot. On the same date, OSI filed a motion for summary judgment. It alleged that the court lacked subject matter jurisdiction due to mootness because Sarpy County amended its zoning regulations after Dowd filed their lawsuit, that OSI's building complied with the current zoning regulations, that OSI's actions and omissions were not a public or private nuisance, and that abatement was not an available remedy. In a "response," Dowd asserted that appellees' motions for summary judgment were barred by the law-of-the-case, res judicata, and collateral estoppel doctrines.

The district court held a hearing on the motions. The court received two affidavits of Rebecca Horner, the planning director of Sarpy County, over Dowd's objections that Horner did not qualify as an expert, that she could not give opinions with regard to the law, and that her affidavits were not relevant or material. Horner stated in an affidavit that under the revised regulation, property platted before March 9, 2004, was excepted from the design requirements applicable to buildings built within the overlay district. Horner further stated that OSI's building would be excepted from the building design requirements if a building permit were submitted because the property on which OSI's building is situated was platted before March 9. According to Horner, "the property described as Lot 1 Commerce Business Centre Replat 5 was originally part of the Commerce Business Centre subdivision. The Commerce

Business Centre Plat was filed on October 24, 2001. Part of that subdivision was replatted as Commerce Business Centre Replat 5 on September 28, 2005."

The district court later entered its order granting appellees' motions for summary judgment. It observed that the narrow issue previously before us was whether Dowd could pursue an action under § 23-114.05 while also appealing the issuance of building permits to the county board of adjustment and that we merely concluded Dowd could proceed under that statute. The district court phrased the primary issue then before it as whether it was proper to consider the revised version of the highway corridor overlay district. The district court reasoned that the 2007 revised regulation was not before the appellate courts in the prior appeal, that the revised regulation effectively repealed the 2004 ordinance, and that Dowd's 2005 complaint was moot because it did not address the legislation currently in existence. The court found that there was no genuine issue as to any material fact regarding whether OSI's building must comply with the overlay district zoning ordinance in light of the 2007 amendment, that the evidence established OSI's property was not subject to the 2004 ordinance because of the exception passed in 2007, and that there was no evidence to support Dowd's claim that OSI's property was a nuisance. The court also denied both of Dowd's motions.

Dowd then filed a motion to alter or amend the judgment, which the district court overruled. This timely appeal followed.

ASSIGNMENTS OF ERROR

[1] Dowd assigns 10 errors. In order to be considered by an appellate court, alleged errors must be both specifically assigned and specifically argued in the brief of the party asserting the error. See *Bedore v. Ranch Oil Co.*, 282 Neb. 553, 805 N.W.2d 68 (2011). Dowd argues, consolidated, restated, and reordered, that the district court erred in (1) admitting Horner's affidavits into evidence; (2) failing to apply the law-of-the-case, res judicata, or collateral estoppel doctrines; and (3) granting appellees' motions for summary judgment rather than the motions of Dowd for summary judgment and for

an order requiring the Sarpy County defendants to perform their duties.

STANDARD OF REVIEW

[2] A trial court has the discretion to determine the relevancy and admissibility of evidence, and such determinations will not be disturbed on appeal unless they constitute an abuse of that discretion. *Conley v. Brazer*, 278 Neb. 508, 772 N.W.2d 545 (2009).

[3] The applicability of the doctrines of res judicata and collateral estoppel is a question of law. *Eicher v. Mid America Fin. Invest. Corp.*, 270 Neb. 370, 702 N.W.2d 792 (2005).

[4,5] Because mootness is a justiciability doctrine that operates to prevent courts from exercising jurisdiction, an appellate court reviews mootness determinations under the same standard of review as other jurisdictional questions. *Kuhn v. Wells Fargo Bank of Neb.*, 278 Neb. 428, 771 N.W.2d 103 (2009). When a jurisdictional question does not involve a factual dispute, its determination is a matter of law, which requires an appellate court to reach a conclusion independent of the decisions made by the lower courts. *Id.*

[6] An appellate court will affirm a lower court's granting of summary judgment if the pleadings and admissible evidence offered at the hearing show that there is no genuine issue as to any material facts or as to the ultimate inferences that may be drawn from those facts and that the moving party is entitled to judgment as a matter of law. *Howsden v. Roper's Real Estate Co.*, 282 Neb. 666, 805 N.W.2d 640 (2011).

ANALYSIS

Admission of Horner's Affidavits.

Dowd argues that the district court committed reversible error by admitting Horner's affidavits. The district court's order quoted a portion of the revised regulation, which was attached to Horner's affidavits, and noted that Horner stated OSI's building would be excepted from the building design requirements under the revised regulation and that OSI's building was compliant with the current zoning regulations. We conclude that any error in admission of the exhibits was harmless.

[7] Horner's affidavits were relevant and material. Affidavits received on a motion for summary judgment "shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein." Neb. Rev. Stat. § 25-1334 (Reissue 2008). Horner is the planning director of Sarpy County. As such, she is required to be familiar with the Sarpy County zoning regulations and to prepare any amendments to the zoning regulations. See, also, Neb. Rev. Stat. §§ 23-174.06 and 23-174.08 (Reissue 2007) (planning director is responsible for preparation of comprehensive plan of county and amendments and extensions thereto, for zoning resolution, and for submitting such items to county planning commission). Appellees' motions for summary judgment relied upon the 2007 revised regulation, and Horner attached the pertinent portion of the regulation to her affidavits.

[8-11] Even if Horner's interpretation of the regulation and its applicability to OSI's building was inadmissible, the admission of that portion of her affidavit does not require reversal. To constitute reversible error in a civil case, the admission or exclusion of evidence must unfairly prejudice a substantial right of the litigant complaining about evidence admitted or excluded. *Nickell v. Russell*, 260 Neb. 1, 614 N.W.2d 349 (2000). Dowd cannot establish prejudice, because similar content was established by other means. Because the pertinent portion of the 2007 revised regulation was attached to Horner's affidavits, the district court did not need to rely on Horner's interpretation of it. And in a bench trial, there is a presumption that the finder of fact disregards inadmissible evidence. *In re Interest of Christopher T.*, 281 Neb. 1008, 801 N.W.2d 243 (2011). Further, the record and our opinion in case No. A-06-681 established the October 2001 platting of the Commerce Business Centre and the September 2005 replatting of some of that same property upon OSI's purchase of it. A court may judicially notice adjudicative facts, which are not subject to reasonable dispute, at any stage of the proceeding. *Pennfield Oil Co. v. Winstrom*, 276 Neb. 123, 752 N.W.2d 588 (2008). In interwoven and interdependent cases, an appellate court may examine its own records and take judicial notice of

the proceedings and judgment in a former action involving one of the parties. *Id.* Dowd has not established that admission of Horner's affidavits constituted reversible error.

Applicability of 2007 Revised Regulation.

Before considering the effect of the 2007 revised regulation, we must first determine whether it is applicable in this appeal. Dowd's position is that we must decide this appeal under the 2004 overlay district ordinance because it was the ordinance in effect when OSI applied for its building permits. OSI, on the other hand, contends that the district court correctly held that the time of decision rule required application of the 2007 regulation. We agree with OSI.

[12] We hold that the time of decision rule generally requires that the zoning ordinance and regulations in effect at the time of a court's decision control its outcome. In reaching this conclusion, we first consider analogous reasoning of the Nebraska Supreme Court in cases not directly focused on the issue. We then examine the decisions of other states that have decided this precise issue. Finally, we observe that recognized exceptions to the doctrine do not apply in the situation before us.

The Nebraska Supreme Court has applied a similar concept to the time of decision rule. Although not as succinctly stated, it appears that similar reasoning was employed in *Whitehead Oil Co. v. City of Lincoln*, 234 Neb. 527, 451 N.W.2d 702 (1990). In that case, Whitehead Oil Company filed its land-use permit application before the city adopted a change of zone; thus, it argued that it acquired a vested right to use the property at issue in a manner consistent with the zoning in effect at the time of filing its permit application. The Supreme Court reasoned that a landowner had no vested right in the continuity of zoning in a particular area so as to preclude subsequent amendment, and a zoning regulation may be retroactively applied to deny an application for a building permit even though the permit could lawfully have issued at the time of application. *Id.*

[13,14] We next observe that in most jurisdictions, the reviewing court will apply the law as it exists at the moment

of decision in the reviewing court. See 4 Kenneth H. Young, Anderson's American Law of Zoning § 27.38 (4th ed. 1997). See, also, *U.S. Cellular v. Board of Ad. of Des Moines*, 589 N.W.2d 712 (Iowa 1999); *MacDonald Advertising Co. v. McIntyre*, 211 Mich. App. 406, 536 N.W.2d 249 (1995); *City and County of Honolulu v. Midkiff*, 616 P.2d 213 (Haw. 1980). Generally, an appellate court will apply the statute in effect at the time of its decision, at least when the legislature intended that its modification be retroactive to pending cases. *CBS Outdoor v. Lebanon Plan. Bd.*, 414 N.J. Super. 563, 999 A.2d 1151 (2010). The purpose of the principle is to effectuate the current policy declared by the legislative body. *Id.*

Although there are exceptions to the time of decision rule, we do not find any applicable exception under the circumstances presented by this appeal. In *Hanchera v. Board of Adjustment*, 269 Neb. 623, 694 N.W.2d 641 (2005), the Nebraska Supreme Court stated that a new zoning ordinance will not have retroactive effect where a landowner, in good faith reliance on existing zoning, has substantially changed position either by causing substantial construction to be made or by incurring substantial expenses related to construction, or both. And in *Whitehead Oil Co. v. City of Lincoln*, 245 Neb. 660, 515 N.W.2d 390 (1994), the Supreme Court stated that a new regulation may not be applied retroactively where a zoning authority is guilty of misconduct or bad faith in its dealings with an applicant for a use permit in accordance with the then-existing zoning regulation, or if it arbitrarily and unreasonably adopts a new regulation in order to frustrate an applicant's plans for development rather than to promote general welfare. We find none of the exceptions to be applicable under the circumstances of this case. Thus, we will follow the general rule and apply the current zoning regulations, which include the substance of the 2007 revised regulation.

We reject Dowd's argument that the 2007 revised regulation, even if applicable, does not except OSI's property. Dowd asserts that we determined in case No. A-06-681 that OSI's property was platted on September 28, 2005, and thus, the language from the new ordinance excepting any land platted prior to March 9, 2004, does not apply. What we actually stated in

case No. A-06-681, however, is that OSI's property was *replatted* on September 28, 2005. We recognized that the property was originally platted in 2001 and then replatted in 2005. And the 2007 regulation specifically states that replats of property platted before March 9, 2004, "shall remain excepted." Therefore, we reject Dowd's argument that the language of the 2007 regulation does not except OSI's property.

[15,16] We also find no merit to Dowd's argument that OSI does not have a valid building permit. Under Neb. Rev. Stat. § 23-114.04(1) (Reissue 2007), a county board enforces the zoning regulations within its county by "requiring the issuance of permits prior to the . . . construction . . . of any nonfarm building or structure within a zoned area" and the board "may provide for the withholding of any permit if the purpose for which it is sought would conflict with zoning regulations." Thus, the purpose of the building permit is to ensure compliance with the zoning regulations and the statute emphasizes the importance of obtaining such compliance *before* the construction of a building or structure. Here, OSI sought building permits prior to the erection of its building and its building has been fully constructed. The Sarpy County defendants have no quarrel with OSI's application, payment of fees, filing of plans, performance of construction, or compliance with all applicable zoning regulations. The revised zoning ordinance adopted after construction of OSI's building excepts the building from the design requirements which previously applied to it. The primary purpose of § 23-114.04(1) is to ensure compliance with the zoning regulations, and that purpose has been accomplished—the building complies with the zoning regulations that now apply to it. Under the circumstances before us, that purpose would not be enhanced or furthered by requiring OSI to obtain a new permit for the building that has already been built and that complies with the applicable zoning regulations.

Law-of-the-Case, Res Judicata, and Collateral Estoppel Doctrines.

Dowd argues that the law-of-the-case, res judicata, and collateral estoppel doctrines render the new overlay district

ordinance immaterial and irrelevant. We reject Dowd's argument for a number of reasons.

[17] First, the revised ordinance was not before the appellate courts in the prior appeal in case No. A-06-682. Dowd contends that appellees "presented the 'change in the ordinance' at oral argument in the Court of Appeals, [and] they also made the change in the [o]rdinance part of their [p]etitions for [f]urther [r]eview." Brief for appellants at 21. Dowd then equates the Supreme Court's denial of the petitions for further review with a rejection of the argument that the change in the ordinance made the case moot. However, an appellate court cannot consider as evidence statements made by the parties at oral argument or in briefs, as these are matters outside the record. *Bedore v. Ranch Oil Co.*, 282 Neb. 553, 805 N.W.2d 68 (2011). The revised regulation—which was enacted after the bill of exceptions was prepared—was not a part of the record in the prior appeal, and we did not consider it.

[18,19] Second, Dowd's argument focuses on the prior appeal in a different case, case No. A-06-681. The law-of-the-case doctrine operates to preclude a reconsideration of substantially similar, if not identical, issues at successive stages of the same suit. *State v. Huff*, 282 Neb. 78, 802 N.W.2d 77 (2011). Thus, if the law-of-the-case doctrine had any applicability, it would be with regard to our holdings in case No. A-06-682, not those in case No. A-06-681. And an exception to the law-of-the-case doctrine applies if a party shows a material and substantial difference in the facts on a matter previously addressed by an appellate court. *County of Sarpy v. City of Gretna*, 276 Neb. 520, 755 N.W.2d 376 (2008). The enactment of the 2007 revised regulation, which excludes OSI's building from certain requirements which precipitated Dowd's complaint, constitutes a material and substantial difference in the facts. Accordingly, the law-of-the-case doctrine does not apply.

[20,21] Third, collateral estoppel and res judicata do not bar our consideration of the new ordinance. For application of the doctrines of collateral estoppel or res judicata, the party relying on either of those principles in a present proceeding has the burden to show that a particular issue was involved and necessarily determined in a prior proceeding. *Stevenson v.*

Wright, 273 Neb. 789, 733 N.W.2d 559 (2007). Res judicata does not apply when there has been an intervening change in facts or circumstances. *Ichtertz v. Orthopaedic Specialists of Neb.*, 273 Neb. 466, 730 N.W.2d 798 (2007). As discussed above, the applicability of the 2007 revised regulation to OSI's property was not considered or at issue in either case No. A-06-681 or case No. A-06-682, and it presents a change in circumstances.

Mootness.

Appellees contend, and the district court found, that the revised regulation makes the issues raised by Dowd's complaint moot. We agree.

[22,23] A case becomes moot when the issues initially presented in the litigation cease to exist, when the litigants lack a legally cognizable interest in the outcome of litigation, or when the litigants seek to determine a question which does not rest upon existing facts or rights, in which the issues presented are no longer alive. *Kuhn v. Wells Fargo Bank of Neb.*, 278 Neb. 428, 771 N.W.2d 103 (2009). Unless an exception applies, a court or tribunal must dismiss a moot case when changed circumstances have precluded it from providing any meaningful relief because the litigants no longer have a legally cognizable interest in the dispute's resolution. *Wetovick v. County of Nance*, 279 Neb. 773, 782 N.W.2d 298 (2010). Because Dowd's complaint is based on OSI's building's noncompliance with design aspects of the 2004 ordinance and the 2007 revised regulation excepts OSI's building from those requirements, the district court correctly determined that the issues raised by Dowd's complaint were moot.

[24,25] We conclude that no exception to the mootness doctrine applies, and Dowd does not assert otherwise. Under the public interest exception, an appellate court may review an otherwise moot case if it involves a matter affecting the public interest or when other rights or liabilities may be affected by its determination. *City of Omaha v. Tract No. 1*, 18 Neb. App. 247, 778 N.W.2d 122 (2010). When determining whether a case involves a matter of public interest, an appellate court considers (1) the public or private nature of the question presented,

(2) the desirability of an authoritative adjudication for future guidance of public officials, and (3) the likelihood of future recurrence of the same or a similar problem. *Id.* While the first factor may weigh in favor of finding the public interest exception applies, we think that a similar problem is not likely to recur and that this court's resolution is not likely to offer much guidance in light of our discussion of the time of decision rule. We conclude that this case does not fall within the public interest exception to the mootness doctrine.

Because the issues raised by Dowd's complaint are moot and an exception to the mootness doctrine is not applicable, the district court properly entered summary judgment in favor of appellees and denied Dowd's motion for summary judgment.

CONCLUSION

We conclude that any error in admitting Horner's affidavits was harmless and not reversible error. Under the time of decision rule, we apply the zoning regulations currently in effect, which include the 2007 revised regulation. Because the revised regulation was not considered or at issue in the prior appeals in cases Nos. A-06-681 and A-06-682 and it constitutes a material change in facts, the law-of-the-case, res judicata, and collateral estoppel doctrines do not apply. Finally, we conclude that the issues raised by Dowd's complaint—premised upon violations of the 2004 ordinance from which OSI's building is excepted under the 2007 revised regulation—are moot and that the public interest exception to the mootness doctrine does not apply. Accordingly, we affirm the district court's entry of summary judgments in favor of appellees.

AFFIRMED.