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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-858**

In re: A Resolution Denying the Citizen Petition
Requesting an Environmental Assessment Worksheet (EAW) for Rejoice!
Church Lots 8, 9 and 10; Block 5; Original Plat of Dundas

**Filed May 7, 2012
Affirmed
Peterson, Judge**

City of Dundas
Resolution 2011-19

Paul A. Merwin, League of Minnesota Cities, St. Paul, Minnesota (for respondent City of Dundas)

Howard A. Roston, Rachel R. Myers, Malkerson Gunn Martin, LLP, Minneapolis, Minnesota (for respondent Rejoice! Lutheran Church)

James P. Peters, Law Offices of James P. Peters, PLLC, Glenwood, Minnesota (for relators)

Considered and decided by Peterson, Presiding Judge; Worke, Judge; and Larkin, Judge.

UNPUBLISHED OPINION

PETERSON, Judge

Relators challenge a municipal decision not to require an environmental assessment worksheet (EAW) for the construction of an addition to a church, arguing that an EAW is required under Minn. R. 4410.4300, subp. 31 (2011), which mandates EAWs

for projects that will result in the destruction, in whole or in part, of a property listed on the National Register of Historic Places. We affirm.

FACTS

This litigation arises out of the plans of respondent Rejoice! Lutheran Church (Rejoice!) to build an addition to the Church of the Holy Cross, which is located in respondent City of Dundas and listed on the National Register of Historic Places (Register). Relators Julie Schrader Bickert, Stephanie Henriksen, and M. Jane Moline are Dundas residents who oppose the project.

The Church of the Holy Cross is described by the Minnesota Historical Society as a “[g]othic church of locally quarried stone built in 1868 under Bishop Henry Whipple, with land and funds donated by mill owner J. S. Archibald.” A parish hall was added onto the church in 1964. And in 1998, a concrete-block and wood-truss handicapped entry was added to the parish hall.

In 1981, an application was submitted to have the church listed on the Register. The application lists the historic name, “Church of the Holy Cross”; a legal description, “Lots 8, 9, 10; Block 5, Original Plat of City of Dundas”; and an address, “Second Street.” Although the description section of the application primarily is devoted to the church itself, it also refers to the parish hall: “The parish hall attached to the south side of the vestry was added in 1964; the similarity in materials and scale make it a sympathetic addition to the building.” The handicapped entrance did not exist when the application was submitted. The church was listed on the Register in April 1982; the listing is titled: “Church of the Holy Cross (Episcopal).”

Rejoice! purchased the church and surrounding property in early 2010, with plans to build “a worship and office facility while preserving the historic stone sanctuary and adjacent cemetery.” The church planned two phases of construction, together adding just under 12,000 square feet of space to be used for worship, office, and classroom space. The first phase of construction, which is currently underway, is for an approximately 6,300-square-foot addition abutting the parish hall.

In August 2010, the church applied for a conditional use permit (CUP) to allow construction of an addition on the property, which is zoned for single-family residential use. Sometime after the city issued the CUP, the question arose whether the city was required to complete an EAW; city zoning administrator John McCarthy reviewed the issue and advised the city council that an EAW was not required.

In early 2011, relators submitted to the Environment Quality Board (EQB) a petition with approximately 32 signatures requesting that an EAW be completed with respect to the planned addition to the church. The EQB determined that the city was the appropriate governmental unit to decide the need for an EAW and forwarded the request to McCarthy. McCarthy responded in a letter to the EQB that no action could yet be taken on the request for an EAW because Rejoice! had not sought a building permit for the addition.

In April 2011, Rejoice! applied for a building permit, which triggered the need for the city to determine whether an EAW was required. City staff prepared a report to the city council advising it of the facts and law relevant to the EAW issue. The staff report concluded that an EAW was not required. City council members also received

correspondence from Jonathan Reppe, an attorney for interested Dundas residents, and John Klockeman, a member of the Rejoice! building-team committee and a licensed architect. Reppe asserted that the property listed on the Register included the parish hall and referenced communication with Linda Pate, a preservation specialist from the Minnesota State Historic Preservation Office, purportedly supporting that view. Klockeman argued that the project would not result in destruction, in whole or in part, of property listed in the Register, explaining that the only modifications to existing buildings would be the removal of the 1998 handicapped entrance and the removal from the south wall of the parish hall of some limestone, to be reused elsewhere in the construction.

During a public meeting on April 25, 2011, members of the city council heard public comments and discussed the need for an EAW. McCarthy explained city staff's understanding that the parish hall was not part of the property listed on the Register and that, even if it were, the removal of the limestone from the south wall would not result in the destruction, in whole or part, of that property. The council heard comments from relators Bicket, Moline, and Henriksen and from two other residents who supported requiring an EAW. The council also heard from Klockeman and Reppe, who reiterated the points made in their earlier communications to the council. The council sought advice from its legal counsel, who advised that it was up to the council to interpret and apply the requirements of the relevant rules and that the staff's analysis made sense. After discussing the matter on the record, the council passed a resolution denying the EAW request, expressly determining that the project would not result in any "destruction,

in whole or in part, of a property that is listed on the National Register of Historic Places.”

This appeal follows.

DECISION

This is the first appeal from a municipal decision under the Minnesota Environment Policy Act (MEPA), Minn. Stat. § 116D.01-.11 (2010), since the act was amended to allow direct appeal to this court by writ of certiorari. *See* 2011 Minn. Laws. ch. 4 § 8, at 60 (amending Minn. Stat. § 116D.04, subd. 10, to allow for direct appeal to this court); Minn. Stat. § 116D.04, subd. 10 (Supp. 2011). This court has historically reviewed challenges to MEPA decisions “without according deference to the district court’s review.” *Watab Twp. Citizen Alliance v. Benton Cnty. Bd. of Comm’rs*, 728 N.W.2d 82, 89 (Minn. App. 2007), *review denied* (Minn. May 15, 2007). Accordingly, the legislative amendment allowing for direct appeal does not affect this court’s standard of review, which is to determine whether an EAW determination was unreasonable, arbitrary or capricious, made under an erroneous theory of law, or unsupported by substantial evidence. *Id.*; *Moreno v. City of Mpls.*, 676 N.W.2d 1, 7 (Minn. App. 2004). This court’s review should “probe whether the [city] has taken a ‘hard look’ at the salient problems and has genuinely engaged in reasoned decision-making.” *Watab Twp.*, 728 N.W.2d at 89 (quoting *Citizens Advocating Responsible Dev. v. Kandiyohi Cnty.*, 713 N.W.2d 817, 832 (Minn. 2006)).

Relators assert that the city erred by determining that it was not required to complete an EAW before issuing a building permit to Rejoice! The necessity for an

EAW is governed by rules adopted by the EQB pursuant to MEPA. *See* Minn. Stat. § 116D.04, subd. 2a(a) (Supp. 2011) (directing board to establish categories for which EAW's are and are not required); Minn. R. 4410.1000 (listing projects requiring an EAW), .4600 (2011) (listing projects exempt from EAW requirements). Under rule 4410.1000, subp. 2, completion of an EAW is mandatory for "any project that meets or exceeds the thresholds of any of the EAW categories listed in part 4410.4300 ." Minn. R. 4410.4300, subp. 31, in turn, designates as an EAW category projects that result in the "destruction, in whole or in part, or the moving of a property that is listed on the National Register of Historic Places."

Based on our review of the record, we are persuaded that the city took the required "hard look" at the relevant issues and engaged in reasoned decision making to determine that the project would not destroy in whole or in part property that is listed on the Register. Before making its determination, the city accepted written submissions from opponents and proponents of the project, sought advice from city staff and legal counsel, and heard comments on the record at a public hearing. And, the discussion among city council members reflects their reasoned consideration of whether to require an EAW for the project.

Relators assert that the city's decision was made under an erroneous theory of law and is arbitrary and contrary to the substantial evidence, arguing that the parish hall added in 1964 is part of the property listed on the Register as a matter of law and that the project will result in partial destruction of the parish hall. But relators point to no authority suggesting that the determination of the scope of the property listed on the

Register is a legal determination, much less that the city erred in making that determination. Relators similarly fail to identify any basis for this court to conclude that the city erred in determining that the project will not result in the destruction, in whole or part, of the property. *See Midway Ctr. Assocs. v. Midway Ctr., Inc.*, 306 Minn. 352, 356, 237 N.W.2d 76, 78 (1975) (explaining that “on appeal error is never presumed” and that “the burden of showing error rests upon the one who relies upon it”) (quotation omitted).

Because we are “obligated to affirm” a municipal decision “if the record shows the city engaged in reasoned decision making,” *Moreno*, 676 N.W.2d at 7, we affirm the city’s decision not to require an EAW.

Affirmed.