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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1705**

500, LLC,
Appellant,

vs.

City of Minneapolis,
Respondent.

**Filed June 25, 2012
Affirmed
Peterson, Judge**

Hennepin County District Court
File No. 27-CV-10-25397

Karl Edward Robinson, Hellmuth & Johnson, Edina, Minnesota (for appellant)

Susan L. Segal, Minneapolis City Attorney, Erik Elof Nilsson, Assistant City Attorney,
Minneapolis, Minnesota (for respondent)

Considered and decided by Larkin, Presiding Judge; Peterson, Judge; and Crippen,
Judge.*

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

UNPUBLISHED OPINION

PETERSON, Judge

In this appeal from summary judgment, appellant argues that (a) because the decisions of respondent-city's Heritage Preservation Commission are essentially zoning decisions, a declaratory-judgment action in district court was the appropriate method for challenging the decisions and, therefore, the district court erred in ruling that it lacked subject-matter jurisdiction over the decisions; and (b) the district court erred in ruling that Minn. Stat. § 15.99 does not apply to appellant's application to the Heritage Preservation Commission. We affirm.

FACTS

Appellant 500, LLC, owns a vacant, four-story building constructed in 1908 that is located in respondent City of Minneapolis. In September 2008, appellant submitted applications for zoning approvals to develop the property into a seven-story office building with parking in the basement and on the first floor. The applications included a floor-area-ratio (FAR) variance application and a site-plan-review application.

The Minneapolis Department of Community Planning and Economic Development Planning Division prepared a report analyzing appellant's applications. The report recommended denying the FAR variance application but approving the site-plan-review application subject to six conditions. In November 2008, appellant submitted a revised application, eliminating the proposed seventh floor, which eliminated the need for a FAR variance, and withdrew its FAR variance application. The revised application included retail display windows on the first floor, which was consistent with

one of the conditions in the planning-division report. The planning division determined that the revised application complied with the report's conditions.

At a planning-commission meeting on November 17, 2008, a planning-commission member asked whether the commission had authority to mandate retail or active uses on the first floor. A staff person responded that "our reading of this provision of the ordinance essentially gives the applicant the choice of whether to install active uses at ground level or to include display windows or other types of windows" and opined that the commission "would be stretching the bounds of [its] authority" if it imposed such a requirement.

The planning commission passed a motion "to offer a staff directive . . . that we encourage HPC [Heritage Preservation Commission] staff to look at this as either an interim hold on this to explore its possibilities of designation which has been outlined quite well in the staff report or encourage our colleagues at the HPC to take a look at this property." The staff reports states:

The subject building is currently not a locally designated structure. It is located within the National Register of Historic Places Warehouse District, but outside of the local Warehouse Historic District. The City of Minneapolis Code provides the city clear oversight over proposed exterior alterations to buildings within the *local* Warehouse Historic District, but because the property is only within the National Register boundaries heritage preservation review authority is limited and Heritage Preservation Commission review is not required for the building addition. However, National Register designation still encourages the preservation of historic properties by lending support to local preservation activities.

The *Minneapolis Warehouse Preservation action Plan* was adopted by the Minneapolis City Council in 2000, and one of the goals is to seek an expanded local historic district in line with the national historic district. In addition, this structure is a contributing structure to the National Register Warehouse District, eligible to be designated as a local individual landmark, national landmark, and or nomination to the National Register of Historic Places.

The report listed the following reasons in support of landmark or historic designation: the building has ties to architect C.A.P. Turner, a master engineer/architect, who “was a forerunner in the development of reinforced concrete”; the building was “one of the earliest extant examples in Minneapolis of a flat slab reinforced concrete design by C.A.P. Turner”; the building’s large, closely-spaced columns indicated an experimental design; and the building is the only known business building still existing that could be directly attributed to the DeLaittres family, a prominent Minneapolis family from the 19th and 20th centuries.

The planning commission denied appellant’s proposed site plan for the following reasons:

1. The absence of ground floor active uses in the project is not consistent with the comprehensive plan and the applicable adopted small area plans.
2. The Downtown East/North Loop Master Plan encourages street level retail along 5th Ave N and designates the street as a primary pedestrian corridor.
3. Crime Prevention Through Environmental Design standards discourage facades without windows that allow views into the building and out onto the public sidewalks.
4. The absence of ground floor active uses does not comply with Policy 9.6 of the comprehensive plan that new development should add value to the surrounding environment.

5. The absence of ground floor active uses does not support Policy 9.11 of the comprehensive plan that requires storefront transparency to assure both natural surveillance and an inviting pedestrian experience.

6. Chapter 8 of the draft Minneapolis Plan for Sustainable Growth has policies that promote ground floor uses in buildings.

The next day, November 18, 2008, at a regularly scheduled HPC meeting, the HPC passed a motion to nominate the property for study and consideration as a potential local historical landmark and directed staff to provide notice and formally present the nomination at the HPC's next meeting on December 2, 2008. An application for nomination that was not signed or dated referred to HPC Chairperson Chad Larson as the nomination applicant. The application also referred to an HPC staff report prepared in connection with a question about whether the property meets any of the criteria for historic designation. At the December 2 meeting, the HPC adopted HPC staff findings regarding the building's historic significance, approved the nomination, established interim protection, nominated the building as a local historic landmark, and directed the planning director to begin a designation study.

While the HPC proceeding was pending, appellant appealed to the city council from the planning-commission's denial of appellant's site-plan application. On January 9, 2009, the city council granted appellant's appeal and approved the site plan. Except for modifying the completion date, the approval included the same conditions that were stated in the planning commission's report. The city council also adopted the findings in the planning commission's report.

On May 6, 2009, appellant applied to the HPC for a certificate of appropriateness, which was necessary for appellant to proceed with its development proposal. At a public hearing on the application, the planning-commission president urged denial of the application based on the absence of active uses on the building's first floor. An HPC staff report was presented at the hearing, which recommended denial of appellant's application for lack of compliance with Secretary of the Interior Standards and Guidelines for historic properties. Also presented at the hearing was a city planner's memorandum stating that the planner had made an error during the earlier site-plan-approval proceeding. The memorandum explained that a codifier's error caused the planner to overlook an ordinance that prohibited first-floor parking without "commercial, residential, office, or hotel uses located between the parking and the public sidewalk." The HPC adopted the staff findings and denied appellant's application. Appellant appealed to the city council, which denied the appeal.

After the historic-designation study was completed, the HPC voted to adopt a resolution recommending that the city council designate the building as a local historic landmark. Following approval of the recommendation by the zoning and planning committee, the city council approved a resolution designating the building as a local historic landmark.

Appellant brought this lawsuit seeking declaratory and injunctive relief and damages as a result of respondent's decisions to refer the property for historic designation and to deny appellant's application for a certificate of appropriateness. Appellant asserted that respondent acted arbitrarily and capriciously and that the decisions were not

supported by substantial evidence. Appellant also asserted claims for violation of Minn. Stat. § 15.99 (2010), violation of due-process and equal-protection rights, and a taking of property without just compensation. Respondent moved for summary judgment, arguing that the district court lacked subject-matter jurisdiction over appellant's claims. The district court granted respondent's motion. This appeal followed.

DECISION

On appeal from a summary judgment, appellate courts review de novo whether a genuine issue of material fact exists and whether the district court erred in applying the law; in doing so, appellate courts view the evidence in the light most favorable to the party against whom summary judgment was granted. *Peterka v. Dennis*, 764 N.W.2d 829, 832 (Minn. 2009). Whether subject-matter jurisdiction exists is reviewed de novo. *Johnson v. Murray*, 648 N.W.2d 664, 670 (Minn. 2002).

I.

Unless otherwise provided by statute or appellate rule, to obtain judicial review of an administrative agency's quasi-judicial decision, a party must petition the court of appeals for a writ of certiorari. If no statute or rule expressly vests judicial review in the district court, this court has exclusive certiorari jurisdiction.

Micius v. St. Paul City Council, 524 N.W.2d 521, 522-23 (Minn. App. 1994) (citation omitted). “[T]he three indicia of quasi-judicial actions can be summarized as follows: (1) investigation into a disputed claim and weighing of evidentiary facts; (2) application of those facts to a prescribed standard; and (3) a binding decision regarding the disputed

claim.” *Minnesota Ctr. for Env’tl. Advocacy v. Metro. Council*, 587 N.W.2d 838, 842 (Minn. 1999) (*MCEA*).

As the district court explained,

[appellant’s] lawsuit challenges two historic preservation decisions of [respondent]: 1) the July 31, 2009 decision to deny [appellant’s] certificate of appropriateness and 2) the May 28, 2010 decision to locally designate the property, which commenced with the November 18, 2008 nomination by the HPC of the Building for historic study. [Appellant] does not challenge [respondent’s] approval of its site plan on January 9, 2009, but believes the facts warrant consideration of the site plan approval in tandem with the historical preservation determination given their effect of serving as a bar to [appellant’s] proposed construction project.

In *Handicraft Block Ltd. P’ship v. City of Minneapolis*, the supreme court applied the three indicia of quasi-judicial actions identified in *MCEA* and held that a city’s proceedings designating a building for historic preservation were quasi-judicial and subject to certiorari review. 611 N.W.2d 16, 20-24 (Minn. 2000). There is no authority that addresses whether a decision on an application for a certificate of appropriateness is a quasi-judicial decision. But appellant does not dispute that the determination whether to grant a certificate of appropriateness is a quasi-judicial decision.

Instead, relying on *Honn v. City of Coon Rapids*, appellant argues that an exception for zoning-related decisions should be applied to this case. 313 N.W.2d 409, 413-17 (Minn. 1981). *Honn* involved a statute that vested judicial review of zoning decisions in the district court, which stated:

Any person aggrieved by an ordinance, rule, regulation, decision or order of a governing body or board of adjustments and appeals acting pursuant to sections 462.351

to 462.364 may have such ordinance, rule, regulation, decision or order, reviewed by an appropriate remedy in the district court, subject to the provisions of this section.

Minn. Stat. § 462.361, subd. 1 (2010). Minn. Stat. §§ 462.351-.364 (2010) authorize municipalities to provide for “future development of land so as to insure a safer, more pleasant and more economical environment for residential, commercial, industrial and public activities, to preserve agricultural and other open lands, and to promote the public health, safety, and general welfare.” Minn. Stat. § 462.351.

Appellant correctly argues that a city council is a governing body within the meaning of Minn. Stat. § 462.361, subd. 1. *See* Minn. Stat. § 462.352, subd. 11 (2010) (defining governing body to include city council). But Minn. Stat. ch. 462 does not contain the enabling authority for municipalities to make historic-preservation decisions. The enabling authority for historic-preservation decisions is set forth in Minn. Stat. § 471.193, subd. 1 (2010), which states:

The legislature finds that the historical, architectural, archaeological, engineering, and cultural heritage of this state is among its most important assets. Therefore, the purpose of this section is to authorize local governing bodies to engage in a comprehensive program of historic preservation, and to promote the use and conservation of historic properties for the education, inspiration, pleasure, and enrichment of the citizens of this state.

See also Minn. Stat. §§ 138.71-.75 (2010) (Minnesota Historic District Act).

Appellant also argues that a municipality must exercise its “historical designation powers in accordance with its own municipal zoning regulations” and that the historic-landmark designation of its building was made in direct response to its site-plan

application. But appellant is not challenging the decision on the site-plan application, and the fact that the site-plan-review application led to the HPC's decisions does not alter the character of the decisions. We conclude that the decisions to locally designate appellant's property for historic preservation and to deny appellant's application for a certificate of appropriateness are quasi-judicial decisions subject to certiorari review by this court. Therefore, the district court did not err in determining that it did not have subject-matter jurisdiction to review the decisions.

II.

Minn. Stat. § 15.99, subd. 2(a) (2010), requires that an agency “approve or deny within 60 days a written request relating to zoning . . . for a permit, license or other governmental approval of an action. Failure of an agency to deny a request within 60 days is approval of the request.” *Id.*

This court has construed the phrase “relating to zoning” as follows:

The underlying purpose of the statute is to establish time deadlines for local governments to take action on zoning applications. The legislative history of section 15.99 provides specific information on the use of the term “zoning.” During senate floor debate, the senate version of the bill was amended to delete a reference to the generic term, “land use,” and replace it with the more precise term, “zoning.”

Interpreting “written request relating to zoning” to apply to zoning-application actions rather than all land-use decisions that might be tangentially connected to zoning, would permit agencies to reasonably apply the provision and reasonably respond within the permitted time limit. To force agencies to consider building-permit applications and other land-use permits and approvals as triggering section 15.99 would frustrate the legislative intent of ensuring timely

compliance by the city in notifying the landowner whether a particular zoning action is allowable.

In light of the legislative history, purpose, and effect of the competing interpretations, we conclude that “a written request relating to zoning” is a request to conduct a specific use of land within the framework of the regulatory structure relating to zoning or, in other words, a zoning application.

Advantage Capital Mgmt. v. City of Northfield, 664 N.W.2d 421, 427 (Minn. App. 2003)
(citation omitted).

The city’s approval of appellant’s site-plan-review application permitted appellant to conduct a specific use of its property. Appellant’s application for a certificate of appropriateness was not a second request to conduct a specific use of the property. Instead, it was a request to make alterations to the property that are needed so that appellant can conduct the permitted use of the property. Consequently, under *Advantage Capital Management*, the application for a certificate of appropriateness is not a request relating to zoning, and the district court did not err in determining that Minn. Stat. § 15.99 does not apply to the application.

Affirmed.