STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0129

George Bourcy, petitioner,
Respondent,

vs.

Ravenna Township,
Appellant.

Filed February 26, 2008
Reversed
Kalitowski, Judge

Dakota County District Court
File No. C9-06-8186

David L. Warg, O'Connell, Wermager & Warg, 906 Vermillion Street, P.O. Box 6, Hastings, MN 55033 (for respondent)

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Considered and decided by Hudson, Presiding Judge; Kalitowski, Judge; and Huspeni, Judge.*

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

KALITOWSKI, Judge

On appeal from the district court's grant of respondent George Bourcy's motion for summary judgment and an alternative writ of mandamus, appellant Ravenna

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

Township argues that the district court erred as a matter of law in granting respondent mandamus relief because the Township (1) did not have a clear legal duty to grant respondent's requested zoning variance; (2) was not equitably estopped from denying the variance; and (3) acted reasonably and was not arbitrary or capricious in denying the variance. We reverse.

D E C I S I O N

On August 13, 1992, the Board of Supervisors (Board) of appellant Ravenna Township considered and conditionally approved respondent George Bourcy's application to split a 3.5-acre parcel (lot B) from his 16.8-acre parcel of land (lot A) for the purpose of placing a second residential dwelling on the smaller parcel. Although the survey was signed by the Board's chairman as approved for building, the minutes of the Board's meeting indicate that the Board's approval of respondent's proposed lot split was conditioned on him first establishing that lot B was a suitable site for a second septic system. During the 13 years that followed the Board's conditional approval, respondent failed to provide any evidence of lot B's suitability for a second septic system, failed to record the lot split with the Dakota County Recorder, and failed to obtain a building permit.

In 2005, respondent submitted a building-permit application to the Board for the purpose of relocating a residential dwelling on lot B. But in the interim between the Board's 1992 conditional approval and respondent's submission of a building-permit application, Ravenna adopted a zoning ordinance that altered the density requirements of the township, so as to mandate a maximum of one residential unit per ten acres. The

Board denied respondent's application, informing him that the township's revised zoning ordinance prohibited it from approving the lot split necessary in order to approve his building-permit application. Respondent appealed the Board's denial of his application to the Ravenna Town Board of Adjustment and Appeals (BAA). Following a public hearing, the Ravenna Township Planning Commission recommended that the BAA affirm the Board's denial of respondent's application. On April 13, 2006, the BAA adopted this recommendation.

Having exhausted his administrative remedies, respondent filed suit in district court. After a hearing, the district court issued an order granting respondent's motion for summary judgment and for an alternative writ of mandamus. Appellant challenges this order, arguing that the district court erred in granting respondent an alternative writ of mandamus requiring appellant to issue respondent a building permit and lot split.

This court is not bound by the district court's decision when reviewing an agency's decision. *In re Signal Delivery Serv., Inc.*, 288 N.W.2d 707, 710 (Minn. 1980). Rather, we may "conduct an independent examination of the administrative agency's record and decision and arrive at [our] own conclusions as to the propriety of that determination." *Id*. Accordingly, when reviewing the district court's grant of summary judgment for respondent, this court must focus "on the proceedings before the decision-making body . . . , not the findings of the trial court . . . ." *Iron Rangers for Responsible Ridge Action v. Iron Range Res.*, 531 N.W.2d 874, 879 (Minn. App. 1995) (quotations omitted), *review denied* (Minn. July 28, 1995).

On appeal from summary judgment, we ask two questions: "(1) whether there are any genuine issues of material fact and (2) whether the [district] court[] erred in [its] application of the law." *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). Because both parties in this matter agreed that there was no factual dispute, the district court only addressed the question of whether respondent was entitled to judgment as a matter of law. And since the district court's grant of summary judgment and alternative writ of mandamus for respondent was based solely on its legal determinations, we review the district court's determinations de novo. *See Breza v. City of Minnetrista*, 725 N.W.2d 106, 110 (Minn. 2006).

I.

Appellant argues that respondent was not entitled to mandamus relief because the record failed to establish that the Township had a clear legal duty to grant respondent's requested zoning variance. Because the record demonstrates that respondent failed to acquire a vested right in the Township's prior zoning ordinance, and because respondent had available to him the plain and adequate statutory remedy of a declaratory-judgment action, we agree.

A writ of mandamus "shall not issue in any case where there is a plain, speedy, and adequate remedy in the ordinary course of law." Minn. Stat. § 586.02 (2006). Instead, the "proper procedure for reviewing a city's decision in a zoning matter generally will be a declaratory judgment action, possibly including a request for injunctive relief." *Mendota Golf, LLP v. City of Mendota Heights*, 708 N.W.2d 162, 178 (Minn. 2006).

Because a writ of mandamus is an extraordinary legal remedy, it will be granted only when a petitioner shows "a clear and present official duty to perform a certain act." *McIntosh v. Davis*, 441 N.W.2d 115, 118 (Minn. 1989). In order to establish a right to mandamus relief, a petitioner must show that (1) the defendant failed to perform an official duty clearly imposed by law; (2) as a result, the petitioner suffered a public wrong specifically injurious to the petitioner; and (3) there is no other adequate legal remedy. *Northern States Power Co. v. Minnesota Metro. Council*, 684 N.W.2d 485, 491 (Minn. 2004).

Thus, in order for mandamus to apply in this case, the record must establish that appellant had a clear legal duty to grant respondent's lot-split and building-permit application. But no clear legal duty exists here because the minutes of the Board meeting reflect that the Board's approval of respondent's proposed lot split in 1992 was expressly conditioned on lot B being found to be a suitable site for a second septic system. And because this condition was not met prior to the change in the ordinance, respondent did not have a vested right under the prior ordinance.

As a general rule, a landowner's right to his property "becomes vested when it has arisen upon a contract, or transaction in the nature of a contract, authorized by statute and liabilities under that right have been so far determined that nothing remains to be done by the party asserting it." *Ridgewood Dev. Co. v. State*, 294 N.W.2d 288, 294 (Minn. 1980) (quotation omitted). Nevertheless, when applying the vested-right theory to zoning cases, this court has held that "neither a municipality's preliminary approval of a project nor a determination that a development plan would be consistent with applicable land-use

regulations will create a vested right." *Concept Props., LLP v. City of Minnetrista*, 694 N.W.2d 804, 820 (Minn. App. 2005) (citation omitted).

Here, because the Board's grant was conditional, respondent's right to receive the zoning variance did not attach until he put forth evidence of lot B's suitability for a second septic system. The record shows that respondent did not satisfy this condition until December 2005 – 13 years after the Board's conditional approval of respondent's proposal and 6 years after the revised zoning ordinance's adoption. Because the Board's conditional approval in 1992 was insufficient to create a vested legal right for respondent in the Township's prior ordinance, appellant did not have a clear legal duty to grant respondent's requested zoning variance.

A landowner may acquire a vested right in a repealed ordinance "[u]nder certain limited circumstances." *Naegele Outdoor Adver. Co. v. City of Lakeville*, 532 N.W.2d 249, 254 (Minn. App. 1995), *review denied* (Minn. July 20, 1995). In order to acquire a vested right in a prior zoning ordinance, "a developer must have progressed significantly with physical aspects of the project or made a binding commitment to develop the property." *Concept Props.*, 694 N.W.2d at 820. But "the mere possession of a building permit, the incurring of some expense and the assumption of obligations preliminary to construction, such as excavation, create no vested right." *Jasaka Co. v. City of St. Paul*, 309 N.W.2d 40, 44 (Minn. 1981).

Here, respondent did not take any affirmative steps to record a deed for lot B or to place a residence on lot B until he applied for a building permit and obtained a report regarding lot B's septic-system suitability in 2005 – six years after the revised ordinance

was adopted. Because respondent did not incur substantial expense or take significant steps with the physical aspects of the building project in reliance on the preexisting zoning ordinance, respondent's activity did not meet the level required to create a vested right. *Concept Props.*, 694 N.W.2d at 819-20.

In conclusion, because neither respondent's activity nor the Board's 1992 conditional approval of respondent's proposal was sufficient to give respondent a vested legal right in the township's prior ordinance, appellant did not have a clear legal duty to grant respondent's lot-split and building-permit application. Accordingly, the district court erred as a matter of law when it issued a writ of mandamus directing the township to grant respondent's requested zoning variance.

II.

Appellant contends that it cannot be estopped from enforcing its ordinance because, contrary to the finding of the district court, the Township had no duty to inform respondent of the specific manner in which the revised zoning ordinance would impact his development of lot B. Because the record indicates that respondent cannot satisfy the requisite elements of equitable estoppel, we agree.

To estop a local government from exercising its zoning powers, a property owner must demonstrate good-faith reliance on some act or omission of the local government that resulted in the owner substantially changing their position, or incurring detrimental expenses and obligations. *Ridgewood Dev. Co.*, 294 N.W.2d at 292. Moreover, when a private party seeks to apply equitable estoppel against a government agency acting in its sovereign capacity, it has "a heavy burden" and thus must show that the government's

wrongful conduct actually induced the private party's detrimental reliance. *Northwest Airlines, Inc. v. County of Hennepin*, 632 N.W.2d 216, 221 (Minn. 2001).

Here, the district court appears to have implicitly based its ruling in part on the Township's failure to provide respondent with "any notice whatsoever" of how the revised zoning ordinance would impact respondent's legal interests in his property. But "[a] property owner is charged with knowledge of whether a local zoning ordinance permits construction undertaken on the property." *Stotts v. Wright County*, 478 N.W.2d 802, 805 (Minn. App. 1991), *review denied* (Minn. Feb. 11, 1992). Because respondent is charged with knowing about the Township's revised ordinance and how it relates to his property rights, the Township had no affirmative duty to give respondent individualized notice above and beyond the written notice it provided to all Township residents explaining the proposed ordinance change before its adoption. Accordingly, the Township's failure to inform respondent as to how the revised ordinance would specifically impact his development of lot B cannot form the basis for respondent's good-faith reliance.

Moreover, the record indicates that respondent did not substantially change his position in reliance on the Board's 1992 conditional approval. As discussed above with respect to the vested-right doctrine, respondent did not incur substantial financial obligations or take any affirmative steps to place a residence on lot B in reliance on the Board's 1992 conditional approval. Rather, respondent did nothing until he applied for a building permit and obtained a report regarding lot B's septic-system suitability 13 years later.

In conclusion, because respondent cannot demonstrate that he substantially changed his position in good-faith reliance on the Township's failure to give him notice of the specific manner in which the revised zoning ordinance would impact his development of lot B, respondent cannot avail himself of equitable estoppel in an effort to demonstrate his entitlement to a zoning variance.

III.

Although mandamus relief was not an appropriate procedural vehicle for respondent's action, we note that the action was in essence a "request for a judicial declaration as to the scope and validity" of the Board's 1992 conditional approval. *See Mendota Golf, LLP*, 708 N.W.2d at 179 (quotation omitted). Thus, rather than require respondent to "correct the procedure" by restating his claim in a declaratory-judgment action, "we will consider the substance of the parties' arguments and determine whether the [Township] abused its discretion by denying" respondent's lot-split and building-permit application. *See id.*

Appellant argues that its denial of respondent's requested zoning variance was not arbitrary and capricious and satisfied the rational-basis test. Because appellant's denial of respondent's request was made in accordance with the zoning ordinance's density requirements and is supported by substantial evidence in the record, we agree.

An appellate court may reverse an administrative decision if it is not supported by substantial evidence or is arbitrary and capricious. *In re Excess Surplus Status of Blue Cross & Blue Shield of Minn.*, 624 N.W.2d 264, 277 (Minn. 2001); *Johnson v. Comm'r of Health*, 671 N.W.2d 921, 923 (Minn. App. 2003). Substantial evidence is "1. [s]uch

relevant evidence as a reasonable mind might accept as adequate to support a conclusion; 2. [m]ore than a scintilla of evidence; 3. [m]ore than some evidence; 4. [m]ore than any evidence; and 5. [e]vidence considered in its entirety." *White v. Minn. Dep't of Natural Res.*, 567 N.W.2d 724, 730 (Minn. App. 1997), *review denied* (Minn. Oct. 31, 1997). A conclusion is arbitrary and capricious if there is no rational connection between the facts and the entity's decision. *Blue Cross & Blue Shield*, 624 N.W.2d at 277.

A local zoning authority has broad discretion to deny requested variances. *Kismet Investors, Inc., v. County of Benton*, 617 N.W.2d 85, 90 (Minn. App. 2000), *review denied* (Minn. Nov. 15, 2000). When reviewing zoning matters, we determine whether the zoning authority's action was "reasonable and not arbitrary or capricious in light of applicable zoning ordinances." *Horbal v. City of Ham Lake*, 393 N.W.2d 5, 7 (Minn. App. 1986). And determining whether denial of a land-use request is "reasonable and not arbitrary and capricious," requires application of the rational-basis test. *Id.*; *Trisko v. City of Waite Park*, 566 N.W.2d 349, 352 (Minn. App. 1997), *review denied* (Minn. Sept. 25, 1997). Under the rational-basis test, this court will not interfere with the denial of respondent's requested variance so long as at least one of the Board's stated reasons for its decision is found to be reasonable. *Trisko*, 566 N.W.2d at 353; *Freundshuh v. City of Blaine*, 385 N.W.2d 6, 8 (Minn. App. 1986). Moreover, respondent bears the burden of demonstrating that the local zoning authority's decision was unreasonable. *Concept Props.*, 694 N.W.2d at 817.

Here, a review of the administrative record shows that the Board's approval of respondent's 1992 proposal was expressly conditioned on respondent proving the septic-

suitability of lot B. Respondent failed to put forth any evidence to fulfill this condition until six years after the revised zoning ordinance was passed. Further, the findings of fact and recommendations issued by the Board when it denied respondent's application in 2006 show that its decision was based on its determination that lot B was (1) incompatible with the density requirements and comprehensive plan of the Township's revised zoning ordinance; (2) not recorded; and (3) not otherwise entitled to grandfather rights under the township's prior ordinance.

The Minnesota Supreme Court has specifically held that when a municipality refuses to rezone because doing so would be inconsistent with its comprehensive land-use plan, its action does not, "without evidence to the contrary, constitute arbitrary or capricious action on the part of the [city] council." *Sun Oil Co. v. Village of New Hope*, 300 Minn. 326, 337, 220 N.W.2d 256, 263 (1974). And this court has recognized that adherence to a comprehensive plan when considering a rezoning request actually "guards against arbitrary and capricious action by serving as a hedge against "special interest, irrational *ad hocery.*" *Concept Props.*, 694 N.W.2d at 818 (citation omitted). Thus, we conclude that it was reasonable and neither arbitrary nor capricious for appellant to deny respondent's requested zoning variance based on its incompatibility with the township's current zoning ordinance and comprehensive plan.

Reversed.