

A06-1069

NO. A06-0378

State of Minnesota
 In Court of Appeals

Watab Township Citizens Alliance,
 Chuck B. Wocken, Clare M. Wocken, Barbara Wocken,
 Ernie Kruger, Duane Popp, Laura Brand, Janice Buermann,
 Gary Buermann, Douglas J. Boser, Jason A. Zwilling,
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 Estelle Johnson, Roger Carstensen, Christine Carstensen,
 Shawn Corrigan, LouAnn Corrigan, Marilyn C. Popp,
 Katharine Allie, Penny Kassier, Dale Behrend, John Waseka,
 Marla Waseka, Bryan Carstensen,

Relators,

vs.

Benton County Board of Commissioners, et al.,

Respondents.

RESPONDENTS' BRIEF AND APPENDIX

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STATEMENT OF THE CASE

Scott Jarnot (“Jarnot” or “the developer”) is developing agricultural land in Benton County that is within a designated Urban Transition Area. In November and December 2004, he applied for a preliminary plat and a zoning change from agricultural to residential. His preliminary plat was approved, with conditions, in January 2005 by the County Board. Jarnot applied for final plat approval in August 2005.

In November 2005, Jarnot withdrew his plat and submitted a new one to take into account changes that had to be made because of a new waste water treatment design. The Planning Commission recommended denial of the platting and rezoning on December 6, 2005, noting a desire for additional information. The County Board held a public hearing on December 8, 2005, and decided to continue it until January 17, 2006, in order to have time to receive additional information. At the January 17th meeting, the County Board approved the preliminary plat, the rezoning and the final plat.

Relators petitioned for a writ of certiorari on or about February 22, 2006. Relators moved to stay the appeal while the related declaratory judgment action proceeded. On April 18, 2006, the Court of Appeals dismissed the appeal without prejudice and allowed a future reinstatement of the appeal. On or about June 9, 2006, Relators moved to reinstate the appeal. By Order dated June 22, 2006, the Court of Appeals reinstated the appeal and consolidated this and the declaratory judgment action for purposes of oral argument but not for briefing purposes.

STATEMENT OF THE ISSUES

1. Whether the County Board properly approved the preliminary and final plat for Scott Jarnot's Lake Andrew project.

The County Board approved the plats on January 17, 2006. This decision was appealed directly to the Court of Appeals.

2. Whether the Court of Appeals has jurisdiction via a writ of certiorari to consider the County Board's rezoning of the land for the Lake Andrew project.

The County's position is that a zoning appeal must be brought to district court because of the quasi-legislative nature of the decision to rezone.

3. Whether the County Board erred in approving the rezoning of the Lake Andrew land from A-2 to R-3.

The County Board approved the rezoning on January 17, 2006. This decision has not been reviewed by the district court.

STATEMENT OF FACTS

Developer Scott Jarnot owns rural land in Benton County on which he wants to build 61 homes (“the project”). The project requires that the property be rezoned from A-2 (agricultural) to R-3 (residential). Under the County’s zoning ordinance, A-2 is defined as follows:

This District is intended for areas of Benton County that, due to marginal soils, may not be conducive to long-term agricultural production. Some of the areas are currently under agricultural production and can remain as such in this District. Other uses such as hobby farms, ranches and stables, parks and open space, and large lot residential development are also encouraged in the District at an overall density not to exceed 4 per 40 acres.

Benton County Dev. Code § 7.2. Residential district R-3 is for single family detached dwellings on lots of at least 17,000 square feet. *Id.*, § 7.5.

The property at issue is within Watab Township, which “is located on the County’s west central border, and is one of the County’s most urbanized Townships.” *Record, Item 1: Benton County 1999 Comp. Plan p. 55.*¹ “Although there are no cities or rural centers located in the Township, due to its proximity to Sartell, Sauk Rapids, and St. Cloud, as well as such residential amenities as the Mississippi River and Little Rock Lake, Watab is experiencing increased pressure for further residential development.” *Id.* The 1999 Comprehensive Plan further states that “Watab is also the least agricultural Township in the County” and “[r]esidential development is the second largest land use category in Watab.” *Id. at 55-57.* More recent data indicates that residential is in fact

¹ The Record refers to those documents submitted by the County as the record on appeal.

the largest land use category today. *RA 51 (testimony of County Assessor in January 2006).*²

In terms of future planning, the 1999 Plan provides that, “[d]ue to the amount of growth in the area, virtually the entire Township is classified as Urban Transition.” *Id. at 57.* An Urban Transition Area is an area that, due to its location, is under increasing pressure to develop and must be protected to facilitate its ultimate transition to urban use. *Id. at 42.*

As part of his project, Jarnot will provide a community water supply for the development and a community waste water treatment facility. He applied for a zoning change and filed his original preliminary plat in November and December 2004. *See Record, Item 2.* On January 18, 2005, the County Board approved the preliminary plat with the condition that a well draw-down test be conducted to determine if pumping water for the development will adversely affect neighboring wells. *Record, Items 9, 10.* The draw down tests were completed in early March 2005 and the data compiled for the Department of Natural Resources (“DNR”). Jarnot applied for final plat approval in August 2005. *Record, Item 25.*

By letter dated November 30, 2005, Jarnot withdrew his preliminary and final plats and submitted a revised plat that took into account changes he had to make to his proposed waste water treatment system and the land he needed for that new system. *Record, Item 27.* The Planning Commission met on December 6, 2005, and recommended a denial of the platting and zoning, with members stating that they wanted

² “RA” refers to Relators’ appendix.

more information on spot zoning and the road issue, and they wanted an escrow account for the well and septic systems and an agreement on the water supply. *Record, Item 35.*

The Count Board took up the matter two days later on December 8, 2005. After considerable discussion by a number of people on a number of subjects, the Board decided to table the issue until January 17th in order “to digest all the information” and to receive additional information. *Record, Item 50.*

In a lengthy meeting on January 17, 2006, the Board heard testimony from over a dozen witnesses, many of whom discussed the water and sewer issues. Also discussed was “spot zoning,” the township road, an EAW and related issues. After the testimony and deliberation, the Board voted to approve the preliminary plat with the following findings and conditions:

1. adequate water supply (based upon expert testimony as in the record) and potential for lowering pump settings with concurrence of the land owners;
2. adequate fire protection with requirement for a dry hydrant system (based upon expert testimony as in the record);
3. adequate sewage treatment at 61 lots (based upon expert testimony as in the record) – will be addressed in both a developer’s agreement and in a separate agreement;
4. park dedication at \$600/lot; and
5. all residential lots have access to trails without going onto the streets within the development.

RA 54. The Board then voted to approve the rezoning from A-2 to R-3, based upon the following findings:

1. the request comports with the Comprehensive Plan in effect at the time that this request was brought forward, showing the area as *Urban Transition*;

2. the current land use represented through the tax assessment records shows the area as 63% residential; and
3. the County Attorney's opinion that this would not be "spot zoning."

RA 54. The final plat was then approved based upon the following findings:

1. the same findings as noted in the acceptance of the amended preliminary plat;
2. that a Development Agreement be entered that any well interference of adjacent property be handled by the Developer;
3. that any required park dedication is paid prior to recording of the final plat;
4. that the improvements agreement with financial guarantee be completed prior to recording of the final plat; and
5. that an updated title opinion and abstract be reviewed by the County Attorney prior to final plat being recorded.

RA 54. Relators thereafter commenced the present appeal. No attempt was made to appeal the rezoning to district court.

ARGUMENT

I. STANDARD OF REVIEW.

“[T]he standard of review is the same for all zoning matters, namely, whether the zoning authority’s action was reasonable.” Honn v. City of Coon Rapids, 313 N.W.2d 409, 416-17 (Minn. 1981). This standard has been expressed in various ways: “Is there a ‘reasonable basis’ for the decision? Or is the decision ‘unreasonable, arbitrary or capricious’? or is the decision ‘reasonably debatable’?” Id.; see also Hoskin v. City of Eagan, 632 N.W.2d 256, 258-9 (Minn. App. 2001) (same), St. Croix Development, Inc. v. City of Apple Valley, 446 N.W.2d 392, 397 (Minn. App. 1989), review denied (Minn. Dec. 1, 1989) (same). “Nevertheless, while the reasonableness standard is the same for all zoning matters, the nature of the matter under review has a bearing on what is reasonable.” Honn, 313 N.W.2d at 417.

A. Review of Platting Decisions.

The denial or approval of a plat application is a quasi-judicial administrative decision that the Court of Appeals reviews to determine whether the decision is unreasonable, arbitrary or capricious. Hurrle v. County of Sherburne, 594 N.W.2d 246, 249 (Minn. App. 1999). “Because local officials have broad discretion in deciding whether to grant or deny a proposed land use, we give great deference to their land-use decisions and will reverse only in rare instances where the decision lacks a rational basis.” PTL, LLC v. Chisago County Bd. of Comm’rs, 656 N.W.2d 567, 571 (Minn. App. 2003). “A decision lacks a rational basis if it is unsupported by substantial evidence

in the record, premised on a legally insufficient reason, or based on subjective or unreasonably vague standards.” Id.

B. Review of Zoning Decisions.

“[T]he standard of review for legislative zoning decisions is narrow.” Honn, 313 N.W.2d at 414. “[I]n legislative zoning, the municipal body is formulating public policy, so the inquiry focuses on whether the proposed use promotes the public welfare.” Id. at 417. “[A] zoning or rezoning classification must be upheld unless opponents prove that the classification is unsupported by any rational basis related to promoting the public health, safety, morals, or general welfare.” Id. at 414-15 (quoting State, by Rochester Ass’n of Neighborhoods v. City of Rochester, 268 N.W.2d 885, 888 (Minn. 1978); see also Mendota Golf, LLP v. City of Mendota Heights, 708 N.W.2d 162, 180 (Minn. 2006) (same).

It is a rational basis test. A zoning authority has broad discretion in legislative matters, and even if the authority’s decision is debatable, so long as there is a rational basis for what it does, the courts do not interfere. Honn, 313 N.W.2d at 415; Rochester Ass’n of Neighborhoods, 268 N.W.2d at 888.

II. THE COUNTY BOARD PROPERLY APPROVED THE PRELIMINARY AND FINAL PLATS.

Jarnot’s original preliminary plat was approved in January 2005. He later filed for a final plat, but then withdrew those plats and submitted a new one in November 2005 because of changes necessitated by a new sewage treatment design. Relators claim that the plat violates County ordinances and therefore should not have been approved. That

claim is without any factual or legal basis, as the plat is entirely consistent with the provisions of the Development Code.

If a plat satisfies the standards contained within a county's ordinance, the plat must be approved. PTL, LLC, 656 N.W.2d at 571. Relators' primary argument against the plat approvals concerns the Watab Township road that serves the new development. Relators argue that the County's Development Code requires that the road's purported inadequacies be taken into consideration when reviewing the plat application. Relators have misconstrued the Development Code, which does not pertain to roads over which the County has no control.

Relators cite section 10.11.1 of the Code for the proposition that it sets forth the requirements "for the review and approval of roads and streets within a plat *and in the vicinity of the development.*" Relators' Brief at 18 (emphasis added). Section 10.11.1, however, only deals with the streets within the plat; it has no bearing on roads external to the platted area, much less those roads owned and maintained by another zoning authority like Watab Township. There is no statutory authority that would allow Benton County to dictate to the Township how it should maintain its road, and there is certainly no authority allowing the County to force a developer to pay for township road improvements.

Relators are trying to create an issue where one does not exist. A plat cannot be in violation of the zoning ordinance because of a road issue when the zoning ordinance does not, and cannot, govern the road. This situation is no different than if the road at issue was owned by the State or the Federal government; the County simply does not have the

authority to order changes to such roads by developers. Relators may not like the road, and there may be a general belief that the road should be improved to handle this development, but that alone does not make the plat approvals improper. The County is limited by its own jurisdiction. As stated above, if a plat satisfies those standards within the County's control, as expressed in its ordinance, then the plat must be approved. PTL, LLC, 656 N.W.2d at 571. The streets within the plat meet the ordinance requirements, so there are no "road" issues.

The only other argument Relators make is that the County Board violated the ordinance by approving both the preliminary and final plats at the same meeting. Relators argue that the project is supposed to be built after the preliminary plat but before final plat approval. Once again, Relators' argument lacks any factual or legal basis.

Chapter 394, which governs county zoning, does not require any construction or time delay between preliminary and final plat approval. That is left up to the counties. Unlike some counties, Benton County does not require any delay or pre-final plat construction. All the ordinance requires is that the developer enter into certain agreements with respect to the nature of the proposed improvements and financial guarantees. See Benton County Dev. Code § 10.6 (listing items that must be agreed upon) and § 10.7 (financial guarantees). When the final plat was approved, it was expressly conditioned on those ordinance provisions being satisfied. RA 54.

Relators cite to section 10.8.1³ for support, but that section just refers generally to the platting process; it does not require that a period of time elapse between preliminary and final plat approval, nor does it require that any construction occur. There are no County code provisions that support Relators' argument and they cite none. Relators also cite Save Lantern Bay v. Cass County Planning Comm'n, 683 N.W.2d 862 (Minn. App. 2004) and Semler Const., Inc. v. City of Hanover, 667 N.W.2d 457 (Minn. App. 2003), but neither case holds that a final plat must, as a matter of law without regard to the pertinent ordinance, be delayed in time after approval of the preliminary plat or after some sort of construction is completed. There is simply no legal support for the argument that a County Board cannot approve both a preliminary and final plat at the same meeting, particularly when the vast majority of the details of this plat have been worked on for months by the developer and County.

Relators also insinuate that the Board was under some sort of time pressure because it had been almost a year since the original preliminary plat was approved. That argument is baseless given that the original preliminary plat was withdrawn by Jarnot in November 2005 and replaced with a revised plat application. There was no time pressure as of January 2006 when the plats were approved.

In sum, Relators have no basis for appealing the platting decisions. Jarnot met all of the Development Code requirements and his plats were therefore approved. It would

³ This citation is to the amended Development Code. The Code section, as it existed in January 2006, is actually 10.5.0.

have been arbitrary for the County not to have approved them. Relators are grasping at arguments that have no legal support in the County Development Code.

Finally, Relators argue that, if this Court reverses the District Court on the related EAW petition appeal, then the plats should be vacated. Relators cite no case where an appellate court has vacated approved plats solely because of a reversal of a decision not to require an EAW, nor is there any basis for doing so. If an EAW is ordered, building permits will not be issued and the project will come to a halt. There is no reason to vacate the plats, which may not be altered even if an EAW is completed. The plats, which were properly approved, can and should remain in place.

III. A REZONING DECISION CANNOT BE APPEALED TO THE COURT OF APPEALS.

Relators are attempting to appeal a zoning decision directly to the Court of Appeals via a writ of certiorari. There is no legal basis for a certiorari appeal of a quasi-legislative rezoning decision; such appeals must be taken directly to district court.

When a municipality rezones land, it acts in a legislative capacity under its delegated police powers, just as it did when it passed an ordinance zoning the land in the first instance. Rochester Ass'n of Neighborhoods v. City of Rochester, 268 N.W.2d 885, 888-89 (Minn. 1978); In Re the Application of Merritt, 537 N.W.2d 289, 290 (Minn. App. 1995). The argument that rezoning should be treated as quasi-judicial was made and lost nearly 30 years ago in the *Rochester Ass'n* case. Honn v. City of Coon Rapids, 313 N.W.2d 409, 414 (Minn. 1981). Indeed, "Minnesota courts consistently have held

that a governing board's decision to zone or rezone an area of land is a legislative determination." In Re the Application of Merritt, 537 N.W.2d at 290.

"[C]ertiorari is not appropriate to review legislative acts." Honn, 313 N.W.2d at 414. It is properly used only to review quasi-judicial issues. Id. Instead of certiorari, "a party must obtain review of a rezoning decision by a declaratory judgment action." In Re the Application of Merritt, 537 N.W.2d at 290. The Court of Appeals has no subject matter jurisdiction to hear an appeal of a rezoning issue by certiorari. See id. at 291 (appeal of zoning decision by certiorari dismissed for lack of jurisdiction).

In the present case, Relators are attempting to appeal the rezoning of the Jarnot parcel in the same certiorari appeal as the appeal of the platting decisions, instead of bringing a separate declaratory judgment action in district court. In their appellate brief, Relators provide no argument as to why this appeal of a rezoning decision should be by certiorari appeal, unlike all other rezoning appeals over the last three decades.

In their March 24, 2006, "Statement of Non-Opposition to Motion," Relators seem to argue that if the County's zoning ordinance was not amended, then the situation somehow becomes quasi-judicial and a certiorari appeal is appropriate. All rezoning decisions, however, constitute amendments to the County's zoning ordinance. Section 11.8 of the County Development Code sets forth the process for zoning amendments, and it was that process that Jarnot followed in applying for and receiving the change from R-2 to A-3. When the County Board approved the rezoning, the County's zoning ordinance was amended by operation of the ordinance. This was a legislative process like any other rezoning, and the only way to appeal it was by a declaratory judgment action. Relators

declined to pursue that remedy. The Court of Appeals therefore has no subject matter jurisdiction.

IV. THE REZONING WAS CONSISTENT WITH THE COMP PLAN.

Relators appear to argue in their March 24, 2006, submission and in their appellate brief that the rezoning from R-2 to A-3 constituted “spot zoning” and therefore was inappropriate. Even if this Court had jurisdiction to consider this argument, it is unsupportable.

The Minnesota Supreme Court has explained “spot zoning” as follows:

‘Spot zoning’ is a label applied to certain zoning amendments invalidated as legislative acts unsupported by any rational basis related to promoting public welfare. The term applies to zoning changes, typically limited to small plots of land, which establish a use classification inconsistent with surrounding uses and create an island of nonconforming use within a larger zoned district, and which dramatically reduce the value for uses specified in the zoning ordinance of either the zoned plot or abutting property.... [W]e characterized spot-zoning amendments as those which result in total destruction or substantial diminution of value of property affected thereby.

Rochester Ass’n of Neighborhoods, 268 N.W.2d at 891 (internal quotes and citations omitted). “The burden of demonstrating that a particular zoning amendment is spot zoning rests with the litigant attacking the ordinance, and the usual presumption of validity attaching to zoning amendments as legislative acts applies.” Id.

Relators have offered no evidence whatsoever with respect to the total destruction or substantial diminution of their property value, nor does any such evidence exist. Instead, they complain that this development sits in the middle of a rural, agricultural area without public water or sewer and an inadequate road, and therefore the rezoning was

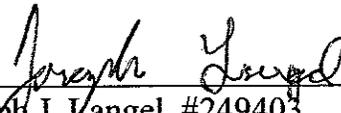
inappropriate. What they do not discuss is the fact that Watab Township is now primarily residential, not agricultural; that it is in an Urban Transition Area because of the long term trend towards urbanization; and that while development adjacent to existing residential areas and public utilities is encouraged under the zoning ordinance, it is not required. Cluster developments with community water and sewer are not uncommon and are part of the urbanization of the Township. Relators cannot ignore the big picture while trying to prevent development in their back yards. This development is entirely consistent with the long term growth of Watab Township. There is no factual or legal basis for arguing that rezoning this acreage constituted improper spot zoning.

CONCLUSION

The approval of Jarnot's preliminary and final plat, as submitted in November 2005, was entirely in accordance with the County's platting requirements and state law. Neither Relators' desire for an EAW or an improved township road change the fact that the plat itself complies with the law. As for the rezoning, this Court has no jurisdiction to consider the appeal, and even if it did, there is no factual or legal basis to argue that the rezoning was in any way improper. Benton County respectfully requests that its platting decisions be affirmed and that the zoning appeal be dismissed.

RATWIK, ROSZAK & MALONEY, P.A.

Dated: August 23, 2006.



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STATE OF MINNESOTA
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I hereby certify that this Brief conforms to the requirements of Minn. R. Civ. App. P. 132.01, subd. 1 and 3, for a brief produced with a monospaced font. The length of this Brief is 421 lines, 4,004 words. This Brief was produced using Microsoft Word 2000.

RATWIK, ROSZAK & MALONEY, P.A.

Dated: August 23, 2006



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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2) (with amendments effective July 1, 2007).