STATE OF MINNESOTA
IN COURT OF APPEALS
A06-2128

Helgeson Brothers Partnership,
Relator,

vs.

Douglas County Board of Commissioners,
Respondent.

Filed January 8, 2008
Affirmed
Muehlberg, Judge[*]

Douglas County Board of Commissioners
File No. 57

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Considered and decided by Willis, Presiding Judge; Wright, Judge; and Muehlberg, Judge.

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

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

MUEHLBERG, Judge

Relator appeals respondent's denial of its applications for conditional use permits and plat applications. Because respondent did not err in interpreting the zoning ordinance and its decision is supported by substantial evidence, we affirm.

FACTS

Relator Helgeson Brothers Partnership (Helgeson) is the owner and developer of two properties located near the Alexandria Airport. The two properties are called Prairie Wood and Prairie Wood First Addition (First Addition). The properties are subject to the provisions of the Alexandria Airport Zoning Ordinance. The parties agree that, under the ordinance, First Addition is located primarily in Safety Zone A and Prairie Wood is located primarily in Safety Zone B.

Since 2002, Helgeson has applied for variance, plat, and conditional-use permits that would allow it to develop the properties. In March 2004, Helgeson applied to Douglas County (the county) for a variance from the Safety Zone B housing density requirements. The county referred Helgeson to the Joint Airport Board of Adjustment (joint board), and Helgeson submitted a variance application to the joint board. In May 2005, the joint board denied Helgeson's variance application.

In August 2006, Helgeson submitted two applications to the county for conditional-use permits (CUP) for a residential planned unit development. County staff subsequently issued four reports regarding Helgeson's applications. The four reports include background information, staff findings, staff comments, and a recommendation.

In all four reports, the staff commented that although the county's zoning ordinances allowed Helgeson's proposed developments, the airport zoning ordinance prohibited the proposed developments. The staff recommended that respondent Douglas County Board of Commissioners (the county board) deny Helgeson's applications.

On September 5, 2006, the Douglas County Planning Advisory Commission (planning commission) held a meeting regarding Helgeson's applications. The planning commission recommended that the county board deny Helgeson's applications.

On September 12, 2006, the county board denied Helgeson's applications because (1) the housing density exceeded safety-zone limitations under the airport zoning ordinance; (2) the airport could lose state and federal funding; and (3) the proposed development was in conflict with the county's comprehensive plan. This certiorari appeal followed.

D E C I S I O N

I. Airport zoning ordinance

Helgeson argues that the county board's denial of its CUP and plat applications is an error of law because the county board misinterpreted the housing-density limitations in the airport zoning ordinance. The interpretation of a zoning ordinance is a question of law, which we review de novo. *Eagle Lake of Becker County Lake Ass'n v. Becker County Bd. of Comm'rs*, 738 N.W.2d 788, 792 (Minn. App. 2007).

Under the airport zoning ordinance, "Zone A shall contain no buildings, temporary structures, exposed transmission lines, or other similar above-ground land use structural hazards and shall be restricted to those uses which will not create, attract, or bring

together an assembly of persons thereon." Alexandria, Minn., Airport Zoning Ordinance § 5(B)(2) (1977); *see also* Minn. R. 8800.2400, subp. 6(B) (2005) (prohibiting "buildings, temporary structures, exposed transmission lines, or other similar land use structural hazards" in Zone A). The ordinance restricts land use in Zone B as follows:

> (a) Each use shall be on a site whose area shall not be less than three acres.
>
> (b) Each use shall not create, attract, or bring together a site population that would exceed 15 times that of the site acreage.
>
> (c) Each site shall have no more than one building plot upon which any number of structures may be erected.
>
> . . . .
>
> (e) The following uses are specifically prohibited in Zone B: churches, hospitals, schools, theaters, stadiums, hotels and motels, trailer courts, camp grounds, and other places of public or semi-public assembly.

Alexandria, Minn., Airport Zoning Ordinance § 5(B)(3)(a)-(c), (e) (1977); *see also* Minn. R. 8800.2400, subp. 6(C) (2005) (1977). The ordinance requires that "[a] building plot shall be a single, uniform and noncontrived area, whose shape is uncomplicated and whose area shall not exceed . . . minimum ratios with respect to the total site area." Alexandria, Minn., Airport Zoning Ordinance § 5(B)(3)(d); *see also* Minn. R. 8800.2400, subp. 6(C).

First Addition clearly violates airport-zoning restrictions because most of the development would be in Zone A, which prohibits "buildings, temporary structures, exposed transmission lines, or other similar above-ground land use structural hazards."

Helgeson does not contest the fact that First Addition would violate Zone A restrictions. Helgeson does point out that the county board's findings incorrectly indicate that First Addition is in Zone B instead of Zone A. But the county board's denial of Helgeson's First Addition application did not erroneously interpret the airport-zoning ordinance.

Helgeson asserts that the county board misinterpreted the airport-zoning ordinance when it found that Prairie Wood violated Zone B zoning restrictions. The parties agree that the Prairie Wood development would involve 43 homes on a 50 acre plot of land. Helgeson contends that the entire proposed development consists of a single "use" under the ordinance. Helgeson argues that the "site" must be more than three acres and each site must have one building plot "upon which any number of structures may be erected." Alexandria, Minn., Airport Zoning Ordinance § 5(B)(3)(a), (c).

Contrary to Helgeson's assertion that the entire Prairie Wood development would be a single "use" under the ordinance, in this case, the term "use" plainly applies to each house in the proposed development. To interpret the ordinance otherwise would allow developers to ignore any housing-density requirements within the ordinance and would render the limitations ineffective. The county board's interpretation is further supported by both the joint board's denial of Helgeson's variance application as well as letters from the Minnesota Department of Transportation (MNDOT) Airport Zoning Coordinator and MNDOT Airport Zoning Administrator. The county board did not err in interpreting the airport zoning code.

II. Sufficiency of the record

Helgeson argues that the record does not support the county board's denial of its applications. When reviewing a county board's decision on a writ of certiorari, an appellate court's inquiry is limited to questioning whether the board had jurisdiction, whether the proceedings were fair and regular, and whether the board's decision was unreasonable, oppressive, arbitrary, fraudulent, without evidentiary support, or based on an incorrect theory of law. *BECA of Alexandria, L.L.P. v. County of Douglas*, 607 N.W.2d 459, 462 (Minn. App. 2000). "A county has broad discretion in deciding whether to grant or deny a conditional use permit." *Id.* at 463. "A court gives great deference to a county's land use decision and will overturn such decisions only when there is no rational basis for them." *Id.* "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." *PTL, L.L.C. v. Chisago County Bd. of Comm'rs*, 656 N.W.2d 567, 571 (Minn. App. 2003). An appellate court "may not substitute its judgment, if there is a legally sufficient reason for the decision, even if it would have reached a different conclusion." *BECA*, 607 N.W.2d at 463. "A legally sufficient reason is one reasonably related to the promotion of the public health, safety, morals and general welfare of the community." *Id.* (quotation omitted).

Helgeson asserts that the standard of review for a certiorari appeal from a county board's zoning decision is broader than the standard of review for an appeal from a municipality's zoning decision. Helgeson argues that in a "typical" municipal zoning case only "a factual basis" is needed to support a zoning board's decision, but in a

certiorari case "a substantial basis" is required. But Helgeson does not cite any case indicating that this court's review is any broader on certiorari cases than in appeals from municipal zoning decisions. Regardless, a county board's "decision lacks a rational basis if it is unsupported by substantial evidence in the record." *PTL*, 656 N.W.2d at 571.

Helgeson also argues that the county board failed to make an adequate record of the proceedings. "Papers filed, exhibits, and transcripts are part of the record in a certiorari appeal." *In re Block*, 727 N.W.2d 166, 175 (Minn. App. 2007). The record contains Helgeson's applications, staff reports, the minutes and a transcript of the planning commission meeting, and the minutes of the county board meeting that includes the reasons for the denial. The record is sufficient for meaningful review.

The county board made two findings of fact regarding the zoning ordinance's limitations on housing density. As discussed above, the county board did not err in interpreting the housing-density restrictions in the ordinance. The county board also indicated that the proposed developments—if granted—would be contrary to the comprehensive plan because they negatively affect intergovernmental cooperation and result in land-use conflict. This finding is supported by the facts that the joint board denied Helgeson's variance and that MNDOT also was opposed to the development. The county board's finding regarding airport funding is supported by the letter from the MNDOT Airport Zoning Administrator. This letter begins by stating that "[t]he impact of approving the Helgeson variance request . . . is loss of Federal and State funding for the Alexandria Municipal Airport." All of the county board's reasons for denying Helgeson's applications are supported by the record, and its denial was reasonable.

III. Equal protection

Helgeson argues that the county board violated its equal-protection rights when it denied its applications. "A zoning ordinance must operate uniformly on those similarly situated." *Nw. Coll. v. City of Arden Hills*, 281 N.W.2d 865, 869 (Minn. 1979).

> [T]he equal protection clauses of the Minnesota Constitution and of the Fourteenth Amendment of the United States Constitution require that one applicant not be preferred over another for reasons unexpressed or unrelated to the health, welfare, or safety of the community or any other particular and permissible standards or conditions imposed by the relevant zoning ordinances.

Id. (quotation omitted).

Helgeson asserts that the county has granted other similar permits, but has selectively denied its permit. But the record does not contain any relevant information regarding these other applications. Furthermore, Helgeson agrees that the record before this court is inadequate to demonstrate unequal treatment. Helgeson states in its reply brief, "Nonetheless, the record submitted to [the court of appeals] by the County excluded the documentation, relating to those other proceedings and developments, necessary to evaluate the claims presented therein." Helgeson argues that this demonstrates that "the County failed to make and to provide this Court with an adequate record in this case." However, as discussed above, the record is adequate and supports the county board's decision. It appears that Helgeson is arguing that it was the county board's burden to demonstrate that its decision did not violate equal protection rather than Helgeson's burden to demonstrate that it did violate equal protection. But the burden was on Helgeson to submit the necessary evidence to establish its equal-

protection claim. *See Kottschade v. City of Rochester*, 537 N.W.2d 301, 307 (Minn. App. 1995) (determining that a relator's equal-protection claim failed when relator "failed to show any similarly situated property owners whom the city treated differently from [relator]"), *review denied* (Minn. Nov. 15, 1995). The record contains a letter[1] from Helgeson's attorney requesting to view and copy "[a]ll documents relating to any development proposals, developments, or improvements that have been made, in whole or in part, in the [Zone A and B] Property, including but not limited to applications, staff reports, correspondence, studies, memoranda, recommendations, minutes of meetings, resolutions, variances, and approvals or denials." Helgeson does not assert that it was denied access to these documents. It was Helgeson's burden to demonstrate unequal treatment, and it failed to put any information in the record to indicate such treatment.

Affirmed.

[1] The letter, dated April 22, 2005, appears to have been sent in conjunction with Helgeson's variance application to the joint board.