STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1990

Mark Zweber,
Relator,

vs.

Scott County Board of Commissioners,
Respondent.

Filed July 13, 2010
Reversed and remanded
Stoneburner, Judge

Scott County Board of Commissioners
File No. 2009-419

Christopher R. Grote, John C. Ekman, Lindquist & Vennum, P.L.L.P., Minneapolis, Minnesota (for relator)

Jason J. Kuboushek, Iverson Reuvers, Bloomington, Minnesota (for respondent)

Considered and decided by Stoneburner, Presiding Judge; Hudson, Judge; and Collins, Judge.*

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

STONEBURNER, Judge

Appellant challenges respondent's denial of approval of his proposed subdivision plat. Because the proposal meets all the applicable enforceable standards in the county's

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

ordinance, the respondent lacked discretion to deny approval of the proposal. Therefore, we reverse and remand for approval of the proposal.

FACTS

Appellant Mark Zweber, a real-estate developer, owns a 100-acre parcel of land in Credit River Township, Scott County. The property is zoned as Rural Residential Single Family. Zweber's parcel is bordered on all sides by other privately owned property. The parcel is separated from County Highway 27 (a north-south road) by the Skluzacek property on the west and is separated from County Highway 8 (an east-west road) by the Mares property in the south. The property to the east of Zweber's parcel has been developed as "the Territory Development" (Territory). Several residential properties border Zweber's parcel on the north.

In 2008, Zweber applied for approval of a proposed subdivision, the Estates of Liberty Creek (proposal).[1] The proposal is for three outlots in the northern portion of the parcel and nine buildable lots along a road (Mares Court) and cul-de-sac (Aurora Point) in the southern portion of the parcel. Mares Court runs east-west along the southern border of Zweber's parcel and connects on its east end to Bitterbush Pass, a dedicated street in Territory. Mares Court is designed for future connection to the Mares property in the south. Mares Court connects on its west end to Aurora Point, which runs north off of Mares Court. The proposal does not contain any north-south roads connecting the building lots to the outlots. To get from Estates of Liberty Creek to County Highway 8,

[1] In 2006, the county approved a plat to develop the same property but, for financial reasons, Zweber did not pursue that development.

traffic would travel east on Mares Court to Territory then south through Territory to Dakota Avenue, which intersects with County Highway 8. To reach County Highway 27, traffic would take the same route and then continue west on County Highway 8 to County Highway 27.

During the public hearings on the proposal, respondent Scott County Board of Commissioners (the board) questioned whether the proposal meets "interconnectivity" requirements. Zweber countered that the proposal meets all requirements in the county ordinance which, he argued, does not contain enforceable interconnectivity standards. The board wanted Zweber to provide for a north-south road connecting the buildable lots with the outlots. Zweber stated that such a requirement would make the project economically unfeasible. The board ultimately denied approval, concluding that the proposal does not meet the standards set forth in the following five sections of the county ordinance:

> 2-2-2(2) The layout of future streets. Local streets shall be planned to provide street connections to adjoining parcels, neighborhoods, or future development [of] open spaces as a means of discouraging the reliance on County and State roads for local trips.
>
> 7-4-13(b) Cul-de-Sacs/Dead-End Streets. Permanent cul-de-sacs shall only be allowed in cases where proper interconnectivity of local streets will be provided . . . .
>
> 7-4(1) Streets, Continuous. Except for cul-de-sacs, streets shall connect with streets already dedicated in adjoining or adjacent subdivisions, or provide for future connections to adjoining unsubdivided tracts, or shall be a reasonable projection of streets in the nearest subdivided tracts.

> 7-4(5) Provisions for Resubdivision of Large Lots and Parcels. When a tract is subdivided into larger than normal building lots or parcels, such lots or parcels shall be so arranged as to permit the logical location and openings of future streets and appropriate resubdivision . . . .
>
> 7-1 Conformity with the Comprehensive Plan and Zoning Ordinance. A proposed subdivision shall conform to the Comprehensive Plan . . . .

The board also referenced the Credit River Growth Area Alternative Urban Areawide Review (the Credit River AUAR) interconnectivity standards to explain its decision.

In this certiorari appeal, Zweber challenges the board's decision, arguing that the board had no discretion to deny Zweber's application because: (1) the "interconnectivity" requirements contained in the ordinance are unreasonably vague and, therefore, unenforceable; (2) sections 7-4(1) and 7-4(5) of the ordinance do not apply to his proposal; and (3) section 7-1, requiring conformance with the county's comprehensive plan, and the Credit River AUAR cannot be used to justify the board's decision.

D E C I S I O N

Standard of Review

"On a writ of certiorari, our review is limited to determining whether a county board of commissions had jurisdiction; whether its proceedings were fair and regular; and whether its decision was unreasonable, without evidentiary support, or based on an incorrect theory of law." *PTL, LLC v. Chisago County Bd. of Comm'rs*, 656 N.W.2d 567, 571 (Minn. App. 2003). Because local officials enjoy broad discretion in deciding whether to grant or deny proposed land uses, we give great deference to their land-use decisions, and we only reverse on rare occasions where the decision lacks a rational basis.

SuperAmerica Group, Inc. v. City of Little Canada, 539 N.W.2d 264, 266 (Minn. App. 1995), *review denied* (Minn. Jan. 5, 1996). "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*, 656 N.W.2d at 571. Denial of a land-use request is not arbitrary where *at least one* of the stated reasons satisfies the rational-basis test. *Trisko v. City of Waite Park*, 566 N.W.2d 349, 352 (Minn. App. 1997), *review denied* (Minn. Sept. 25, 1997).

This court interprets an ordinance as it would a statute, *see Chanhassen Estates Residents Ass'n v. City of Chanhassen*, 342 N.W.2d 335, 339 n.3 (Minn. 1984), under a de novo standard of review, *Gadey v. City of Minneapolis*, 517 N.W.2d 344, 347 (Minn. App. 1994), *review denied* (Minn. Aug. 24, 1994). When an ordinance's words are clear and free from ambiguity, we do not disregard the letter of the ordinance to pursue its spirit. *See* Minn. Stat. § 645.16 (2008). We interpret an ordinance's words according to their common and approved usage. *See* Minn. Stat. § 645.08 (2008).

I. The county's ordinance does not contain enforceable standards for interconnectivity.

"Under Minnesota law, when an ordinance specifies minimum standards to which subdivisions must conform, local officials lack discretionary authority to deny approval of a preliminary plat that meets those standards." *PTL*, 656 N.W.2d at 571. The "standards must be sufficiently precise to ensure the application of objective standards to all similarly situated property, to adequately inform landowners of the requirements they must satisfy to gain subdivision approval, and to allow a reviewing court to evaluate

noncompliance." *Id*. at 572. Standards are vague and, therefore, unenforceable if they are merely "general statements of purpose" or do not "set forth clear and objective standards a developer must meet to obtain subdivision approval." *Id*.

The parties agree that, aside from provisions cited by the board as governing "interconnectivity," Zweber's proposal meets all other applicable requirements contained in the ordinance, including prerequisites for density, lot size and width, and setbacks. Zweber argues that the provisions referencing connections or "interconnectivity" in the county's ordinance—particularly in sections 2-2-2(2) and 7-4-13(b)—are unreasonably vague and, therefore, are not enforceable provisions. We agree.

Section 2-2-2(2) of the county's ordinance states that "[l]ocal streets shall be planned to provide street *connections* to adjoining parcels, neighborhoods, *or* future development [of] open spaces as a means of discouraging the reliance on County and State roads for local trips." (Emphasis added.) Section 7-4-13(b) provides, in relevant part, that "[p]ermanent cul-de-sacs shall only be allowed in cases where proper *interconnectivity* of local streets will be provided." (Emphasis added.)

Term "interconnectivity" is not defined in the county ordinance. "Interconnect" means "[t]o be connected with each other." *American Heritage Dictionary of the English Language* 940 (3d ed. 1992). And "connect" means "[t]o join or fasten together." *Id*. at 399. If two things connect—or are joined or fastened together—they are interconnected. Section 2-2-2(2) of the ordinance explains the purpose of the interconnectivity requirement, stating that street connections are to be provided "as a means of discouraging the reliance on County and State roads for local trips."

As Zweber argues, the plain language of section 2-2-2(2), requires only that: (1) a subdivision plat must provide streets that join with the streets existing in, and providing access to, adjoining parcels or neighborhoods and (2) in the case of a subdivision adjoining an undeveloped open space, the streets provided must be planned such that future streets in the adjoining undeveloped open space could eventually connect with the subdivision's streets. And, the plain language of section 7-4-13(b) provides that permanent cul-de-sacs, such as the one in Zweber's proposal, are only allowed where the planned subdivision will otherwise provide the proper joining of local streets. But the ordinance does not specify how many local streets in a proposal must connect to streets in adjoining parcels to satisfy section 2-2-2(2), or the number of connections that constitute "proper interconnectivity of local streets" to satisfy 7-4-13(b). And the statement of purpose does not provide an enforceable standard of interconnectivity. *See PTL*, 656 N.W.2d at 572 (stating that standards are vague and, therefore, unenforceable if they are merely "general statements of purpose").

The board concedes that the proposal provides two connections to adjoining parcels: a street connecting to Territory to the east and a future street connection to any future development to the south. But the board argues that a connection to the northern part of Zweber's property is necessary for his proposed plat to meet the ordinance's interconnectivity requirement so that any future development in the northern portion of the parcel will be connected to the buildable lots in the proposal. The board argues that connection between the building lots and outlots is crucial because without it, Zweber's parcel will be separated into two unconnected neighborhoods. The board argues that

"[a]ny connectivity between the neighborhoods on Zweber's property would be lost," but the ordinance does not contain a requirement for the connection between building lots and outlots demanded by the board. Significantly, the ordinance states that "[l]ocal streets shall be planned to provide street connections to adjoining parcels, neighborhoods, *or* future development." The disjunctive word "or" indicates that some level of connectivity to adjoining parcels, *or* neighborhoods, *or* future development is sufficient to satisfy the ordinance's requirement of interconnectivity. And, because there is no current proposed development for the northern portion of the parcel, the board's concern about lack of neighborhood connections is currently mere speculation.

The ordinance, read as a whole, does not require that streets in a subdivision need to be connected to *all* adjoining parcels or that *all* streets in a proposal must be connected to: (1) existing local streets; (2) streets in adjoining parcels or neighborhoods; or (3) projected future streets in adjoining open spaces, in order to meet the interconnectivity requirement.

Because sections 2-2-2(2) and 7-4-13(b) do not specify the number of connections needed, we conclude that the "connections" requirement in section 2-2-2(2) and "proper interconnectivity" requirement in section 7-4-13(b), are, without more, too vague to be enforceable against Zweber, and the ordinance cannot be read as requiring a connection

to the north.[2] The board abused its discretion by denying Zweber's application under sections 2-2-2(2) and 7-4-13(b).

II. Sections 7-4(1) and 7-4(5) of the county's ordinance do not apply to Zweber's proposed resubdivision.

Zweber also argues that sections 7-4(1) and 7-4(5) of the ordinance do not apply to his proposal and, therefore, the board erred by citing these sections as supporting its decision to deny Zweber's application to subdivide his parcel. We agree.

Section 7-4(1) states that "*[e]xcept for cul-de sacs*, streets shall connect with streets already dedicated in adjoining or adjacent subdivisions, or provide for future connections to adjoining unsubdivided tracts, or shall be a reasonable projection of streets in the nearest subdivided tracts." (Emphasis added.) The board used this section to justify its decision to deny Zweber's application for lack of interconnectivity. The board found that "[a]s a cul-de-sac Aurora Point does not provide a northerly connection to the nearest subdivided tract (Territory). Territory provides a platted right-of-way connection that will become Sundance Trail, which Aurora Point should tie into to provide a continuous local street system."

But section 7-4(1) contains a clear exception for cul-de-sacs. The board asserts that it is plain from reading the ordinance as a whole that the cul-de-sac exception of section 7-4(1) only exempts cul-de-sacs meeting the conditions of section 7-4-13(b), which states that permanent cul-de-sacs are only allowed by the ordinance where the

[2] At oral argument on appeal, the board asserted that the ordinance language allows for "flexibility," but "flexibility" apparently means that the standard for meeting interconnectivity requirements rests in the discretion of the board.

planned subdivision will otherwise provide the "proper interconnectivity of local streets." But, as discussed above, the ordinance cannot be read to require more connections than are contained in the proposal. Because Aurora Point is a cul-de-sac, and Aurora Point and Mares Court provide for connections or future connections to adjoining property on the east and south of Zweber's parcel, the proposed cul-de-sac meets the requirements of the ordinance and is exempt from the provisions of 7-4(1). The board's decision to deny approval based on 7-4(1) is legally insufficient because that section does not apply to the proposal.

Section 7-4(5) of the county's ordinance states that "[w]hen a tract is subdivided into larger than normal building lots or parcels, such lots or parcels shall be so arranged as to permit the logical location and openings of future streets and appropriate resubdivision." The board cited section 7-4(5) to justify, in part, its decision to deny the proposal for lack of interconnectivity, stating that all lots and outlots associated with the proposal "should be arranged to permit future street connections" to a proposed east-west road on the north side of the parcel to "promote[] neighborhood interconnectivity and distribute[] local traffic to nearby principal and minor arterials."

The board argues that it was correct in applying section 7-4(5) because the area of each of the three large outlots is larger than the area of a normal building lot under the ordinance. But section 7-4(5) applies to larger-than-normal building lots or parcels, and the proposal does not subdivide the northern portion, into "larger than normal building lots." Outlots are not "building lots": an outlot is defined in section 7-1-7 of the ordinance as "land that is part of the subdivision but *is to be subdivided into lots . . . at a*

later date." And the ordinance provides no "normal" size for outlots but rather provides, under section 7-3-12, that "the outl[o]t shall be sized in a manner to accommodate its intended use." Plainly, the outlots are not "larger than normal" building lots or parcels under the ordinance. Therefore, section 7-4(5) does not apply to the proposal and cannot be used to support the board's denial of the proposal.

III. The county's comprehensive plan, incorporated into the ordinance through section 7-1, does not constitute a legal basis to deny approval of the proposal.

In addition to sections 2-2-2(2), 7-4-13(b), 7-4(1), and 7-4(5), the board based denial of the proposal on section 7-1, which requires conformance with the county's comprehensive plan. The board found that the proposal is not in conformance with the county's comprehensive plan which, consistent with the Metropolitan Council's Regional Policy Framework and 2030 Transportation Policy Plan, includes County Highways 27 and 8 as part of a regional transportation system integrated with an interconnected local transportation system.

Specifically, the comprehensive plan classifies County Highways 27 and 8 as minor arterial roadways. Under the plan, the capacity of minor arterial roadways is to be extended by "[a] supportive local road network" that "links access connections" and "allow[s] short local trips to be taken on the local roads." The board found that the proposal results in too much reliance on County Highway 8 for local trips.

Zweber argues that the board exceeded its authority by enforcing provisions of the comprehensive plan through section 7-1 because the comprehensive plan is merely advisory. *See PTL*, 656 N.W.2d at 574 (stating that whether the board exceeded its

authority in denying approval of a preliminary plat under two sections of the county's ordinance requiring implementation of and consistency with the comprehensive plan, "depend[ed] on whether [those two sections] g[a]ve the comprehensive guide plan regulatory effect").

Each Minnesota county "has the power and authority to prepare and adopt by ordinance, a comprehensive plan." Minn. Stat. § 394.23 (2008). But the plan, if it is to be implemented, must be implemented by "official controls," including zoning and subdivision ordinances. *See* Minn. Stat. §§ 394.22, subd. 6, .24, subd. 1 (2008). The comprehensive plan is "the guide for the future development of the county;" it contains "the policies, statements, goals, and interrelated plans for private and public land and water use, transportation, and community facilities" as well as recommendations for its execution. Minn. Stat. § 394.22, subd. 9 (2008). Official controls, on the other hand, "are the means of translating into ordinances all or any part of the general objectives of the comprehensive plan." *Id*., subd. 6.

In keeping with Chapter 394, Scott County's comprehensive plan states that it is a planning guide and that ordinances may be established to actually carry out the plan. It explicitly states that the purposes of the plan, in relevant part, are:

> - *guid[ing]* county residents and decision-makers to plan for future growth and development through 2030 and beyond; [and] . . .
> - provid[ing] the legal basis of the establishment of *ordinances to carry out this 2030 Plan Update*.

(Emphasis added.)

In *PTL*, this court concluded that the Chisago County Board of Commissioners erred by denying PTL's application for approval of a preliminary plat when it gave the county's comprehensive guide plan the force of law (using the plan as a basis to deny the application), "elevat[ing] it to the stature of the zoning and subdivision ordinances," contrary to Chapter 394 and the purpose language of the comprehensive plan itself. 656 N.W.2d at 574. We determined that the comprehensive plan was merely advisory, and therefore not a valid legal basis to deny approval, notwithstanding that one section of the county's ordinance provided that the purpose of the ordinance was to implement the county's comprehensive guide plan and another section required that the subdivision of land "be consistent with" the comprehensive guide plan. *Id.* at 575.

The circumstances here are similar to the circumstances in *PTL*. As in *PTL*, the purpose language in the Scott County Comprehensive Plan indicates, consistent with Chapter 394, that it is only to be used as a *guide* and does not carry the force of law as an ordinance would. And section 7-1 of Scott County's subdivision ordinance, stating that "[a] proposed subdivision shall conform to the Comprehensive Plan," is similar to the language in the Chisago County ordinance addressed in *PTL* that proposed subdivisions "[shall] not be inconsistent with [the comprehensive guide plan]." *See id*. at 574; *see also American Heritage Dictionary of the English Language* 396 (defining "conform," in part, as "[t]o act or be in accord or *agreement*; comply" (emphasis added)), 402 (defining "consistent," in part, as "[i]n *agreement*; compatible"(emphasis added)) (3d ed. 1992).

The board argues that Chapter 473 (Metropolitan Government) of the Minnesota Statutes, which controls land-use planning in the Metropolitan Area including Scott

County, *see* Minn. Stat. § 473.123, subd. 3d(4) (2008), governs this matter and not the more general Chapter 394 (Planning, Development, Zoning) of the Minnesota Statutes considered in *PTL*. The board argues that applying Chapter 473 mandates a different result than the result reached in *PTL*. We disagree, and conclude that the application of Chapter 473 leads to the same result reached in *PTL*.

Like Minn. Stat. § 394.22, subd. 9, Minn. Stat. § 473.859, subd. 1 (2008), states that a comprehensive plan is merely a guide: "[t]he comprehensive plan shall contain objectives, policies, standards and programs *to guide* public and private land use, development, redevelopment." (Emphasis added.) And, like Minn. Stat. §§ 394.22, subd. 6, .24, subd. 1, Minn. Stat. § 473.852, subd. 9 (2008), explains that official controls—including ordinances—are the means of actually implementing the comprehensive plan:

> "Official controls" . . . means ordinances and rules which control the physical development of a city, county or town or any part thereof or any detail thereof and *implement the general objectives of the comprehensive plan*. . . .

(Emphasis added.)

The board also argues that, in contrast to *PTL*, the county's comprehensive plan in this case contains more than broad goal statements or general objectives; it contains policies and strategies intended to provide specific guidance for future development. And the board notes that the comprehensive plan also contains an entire chapter dedicated to implementation. Therefore, the board argues, the comprehensive plan in this case, in contrast to the comprehensive plan considered in *PTL*, has the force of law. But

we conclude that the board's argument mischaracterizes the comprehensive plan: it is advisory in nature, and has no precise standards. *See PTL*, 656 N.W.2d at 572 (stating that "standards must be sufficiently precise to ensure the application of objective standards to all similarly situated property, to adequately inform landowners of the requirements they must satisfy to gain subdivision approval, and to allow a reviewing court to evaluate noncompliance"). The comprehensive plan states that its purpose is only to "*guide*[] county residents and decision-makers to plan for future growth and development."

Notwithstanding the board's attempt to distinguish this case from *PTL*, we conclude that *PTL* is on point and that the board in this case, as in that case, exceeded its authority and thereby abused its discretion by denying approval of the project based on provisions of the county's comprehensive plan.

IV. The Credit River AUAR does not independently justify the board's decision.

In addition to the five sections of the county ordinance that the board concluded were not satisfied, the board extensively referenced the Credit River AUAR, which, the parties agree, is an environmental review document. The board stated that the AUAR "identified an interconnected road system" to be phased in and that it "identified that this specific property is to be connected to both [County Highway] 8 and [County Highway] 27"—in justifying its decision under the ordinance. The board found that the proposed Aurora Point cul-de-sac violates the minimum interconnectivity requirements of the AUAR. Zweber argues that the AUAR cannot be used to justify the board's decision. On appeal, the board denies that it used the AUAR to justify its decision to deny

approval, apparently conceding that the denial cannot be based on the AUAR. *See* Minn. R. 4410.0300, subp. 3 (2007) (stating that "[e]nvironmental documents," which include environmental impact statements as well as other environmental analysis documents, Minn. R. 4410.0200, subp. 25 (2007), "shall not be used to justify a [governmental] decision, nor shall indications of adverse environmental effects necessarily require that a project be disapproved").

"Under Minnesota law, when an ordinance specifies minimum standards to which subdivisions must conform, local officials lack discretionary authority to deny approval of a preliminary plat that meets those standards." *PTL*, 656 N.W.2d at 571 (holding that a municipality lacks legal authority to deny an application for approval of a preliminary plat that proposes a permitted use and complies with the regulatory standards prescribed for that use). Therefore, because the proposal meets all the applicable enforceable standards in the county's ordinance, the board lacked discretion to deny approval of the proposal regardless of the basis for denial. *See id.* We reverse and remand to the board for approval of the proposal.

Reversed and remanded.