STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1198

Mann Brothers Real Estate, LLC, et al.,
Appellants,

vs.

City of Minneapolis,
Respondent.

Filed June 10, 2008
Affirmed
Peterson, Judge

Hennepin County District Court
File No. CV-06-21454

Thomas F. Pursell, Forrest D. Nowlin, Lindquist & Vennum, P.L.L.P., 4200 IDS Center, 80 South Eighth Street, Minneapolis, MN 55402 (for appellants)

Jay M. Heffern, City Attorney, Erik E. Nilsson, Assistant City Attorney, 333 South Seventh Street, Suite 300, Minneapolis, MN 55402 (for respondent)

Considered and decided by Wright, Presiding Judge; Peterson, Judge; and Collins, 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

PETERSON, Judge

In this appeal from a city zoning decision to return a conditional-use-permit application and approve a preliminary plat and site plan, appellant neighboring landowners argue that the city's decision reflected its will rather than its judgment and that the city (1) erred in failing to consider the proposed project a railroad right-of-way, (2) erred in determining that the project is substantially similar to uses permitted in the zoning district, and (3) ignored adverse impacts that the project will cause. We affirm.

FACTS

John Robinson sought approval from respondent City of Minneapolis to use property located at 2400 Traffic Street Northeast to build a train shed for storing a historic railroad car that he owns and uses for travel. The site is located in an I2 (medium industrial) zoning district, near a railway line. The site is bordered by 2905 East Hennepin Avenue, which is owned by appellant Mann Brothers Real Estate, LLC, and by 2801 and 2821 East Hennepin, which are owned by appellant Second Restated George W. Fulford, Jr. Trust.

After consulting with city-planning-department staff, Robinson submitted applications for a conditional-use permit (CUP), a site-plan review, and a plat approval. The project was initially classified as a railroad right-of-way, but at the public hearing before the planning commission, questions were raised about the propriety of this classification, and the hearing was continued. The zoning administrator issued a memorandum that concluded that the proposed train shed is a permitted use in the I2

district because it is substantially similar to other uses permitted in the district. As a result, a revised staff report was issued, which recommended that the CUP application and fee be returned to Robinson, that the site plan be approved with conditions, and that the preliminary plat be approved. The planning commission approved these recommended actions. Appellants appealed to the city council.

After public notice and a hearing, the zoning-and-planning committee voted to approve Robinson's applications. But the committee added an express condition to the site-plan approval, which required that "the amount of stormwater draining to neighboring properties from the property in question shall not be increased." The city council voted to adopt the committee recommendations. Appellants sought declaratory and injunctive relief in the district court. The district court denied appellants' motion for summary judgment and dismissed their complaint. This appeal followed.

D E C I S I O N

For zoning matters, the standard of review is whether the action of the zoning authority was reasonable, "[r]egardless of whether the zoning matter is legislative (rezoning) or quasi-judicial (variances and special-use permits)." *VanLandschoot v. City of Mendota Heights*, 336 N.W.2d 503, 508 (Minn. 1983). The courts have limited authority to interfere in the management of municipal affairs, and that authority should be sparingly invoked. *St. Croix Dev., Inc. v. City of Apple Valley*, 446 N.W.2d 392, 397-98 (Minn. App. 1989), *review denied* (Minn. Dec. 1, 1989). "The mere fact that a court might have reached a different conclusion, had it been a member of the council, does not invalidate the judgment of the city officials if they acted in good faith and within the

broad discretion accorded them by statute and ordinance." *Id.* at 398. "[A]ppellate courts must conduct an independent examination of the local authority's decision without according any special deference to the same review conducted by the [district] court." *City of Barnum v. County of Carlton*, 394 N.W.2d 246, 248 (Minn. App. 1986) (quotation omitted), *review denied* (Minn. Dec. 17, 1986).

But "the interpretation of an existing ordinance is a question of law for the court." *Frank's Nursery Sales Inc. v. City of Roseville*, 295 N.W.2d 604, 608 (Minn. 1980).

> The opinions of the governmental authority, while entitled to consideration, are not as persuasive as they would be on questions of fact within its purview. Thus, where the question is whether an ordinance is applicable to certain facts, the determination of those facts is for the governmental authority, but the manner of applying the ordinance to the facts is for the court.

Id.

I.

Upon initial review, the project was described by the zoning administrator as a railroad right-of-way. However, the zoning administrator later categorized the use as a "train shed for storage of a historic rail car." According to the revised report, "Staff erred in classifying this use as railroad right-of-way as the definition excludes train sheds."

Appellants argue that because the property is now and will continue to be a railroad right-of-way, the city may not issue a CUP to build a train shed on the property. But this argument rests on the incorrect premise that when the proposed project is completed, the property will continue to be a railroad right-of-way. A Minneapolis ordinance defines a railroad right-of-way as "[a] strip of land with tracks and auxiliary

facilities for track operation such as signals or crossing arms, but not including freight depots or stations, loading platforms, train sheds, warehouses, car or locomotive shops or car yards." Minneapolis, Minn., Code of Ordinances § 520.160 (2008). Citing this definition, appellants argue that the proposed project is literally a strip of land with tracks that lies adjacent to an existing rail line and that under the terms of the ordinance, a train shed is not permitted on a railroad right of way. But the presence of tracks on the property does not mean that the property will be used as a railroad right-of-way.

The Minneapolis Code of Ordinances includes a list of general use categories for some types of industrial uses. Minneapolis, Minn., Code of Ordinances Table 550-1 (2008). A railroad right-of-way is one of the uses on this list, and if Robinson wanted to use his property for a railroad right-of-way, he would need to obtain approval for this use. But if he obtained city approval to use his property for a railroad right-of-way, the definition of "railroad right-of-way" in the city ordinance would mean that the approved use could not include using the property for freight depots or stations, loading platforms, train sheds, warehouses, car or locomotive shops, or car yards because those uses are explicitly excluded from the use defined as a railroad right-of-way. This is why the city zoning administrator changed the classification of the project from railroad right-of-way to train shed for storage. Robinson does not want to use his property for a railroad right-of-way; he wants to build a train shed on his property. Because train sheds are explicitly excluded from the definition of a railroad right-of-way, the property will not be used as a railroad right-of-way, and the use of the property does not have to be consistent with the definition of a railroad right-of-way.

II.

As we have already explained, the Minneapolis Code of Ordinances includes a list of general use categories that are permitted or conditional uses in industrial districts. Any use not listed is prohibited unless it is "determined by the zoning administrator to be substantially similar to a use listed as permitted or conditional." Minneapolis, Minn., Code of Ordinances § 550.30(d) (2008). A train shed is not listed as a permitted or conditional use in an industrial district. *See* Minneapolis, Minn., Code of Ordinaces Table 550-1. Thus, Robinson's proposed project is prohibited in the I2 district unless it is substantially similar to a permitted or conditional use.

In determining whether a proposed project constitutes a similar use, a municipality is interpreting its zoning ordinance, which presents a question of law. *Prior Lake Aggregates, Inc. v. City of Savage*, 349 N.W.2d 575, 578 (Minn. App. 1984). Proper appellate review is "a de novo determination of whether the district court has correctly interpreted the ordinance, giving only slight consideration to the interpretation by the governmental authority." *R.L. Hexum & Assocs., Inc. v. Rochester Twp.*, 609 N.W.2d 271, 274 (Minn. App. 2000).

In a September 25, 2006 memorandum, the zoning administrator concluded that the proposed train shed "is a permitted use in the I2 district." The zoning administrator found that a shed for storing a rail car is substantially similar to production of transportation equipment, self-service storage, and warehousing, which are all permitted uses in an I2 district. The zoning administrator reasoned:

> Train cars can be manufactured and warehoused in the I2 District and individuals may store personal items in self-storage facilities. The proposed building meets all zoning code district requirements for bulk and area and building code requirements as well. If rail cars can be manufactured and stored in the I2 District and buildings for the storage of personal items (self-storage) are allowed in the I2 District, then it is reasonable to allow the storage of a personal rail car in a building allowed by the zoning and building codes.

Appellants argue that the proposed train shed is not a use similar to a building used for producing transportation equipment, a self-service storage facility, or a warehouse because unlike these other uses, the train shed will not produce income. But we find no authority in the zoning ordinances for the city to base its zoning decision regarding Robinson's proposed property use on whether the purpose of the use is to generate income. Instead, the similar-use ordinance allows the city to approve property uses that have not previously been contemplated, but which fit in the district because the activities involved in the use are substantially similar to permitted uses. The city concluded that the activities involved here are substantially similar to those permitted in an I2 district. Because train cars and other industrial goods can be warehoused in the district, and because personal items can be stored in the district, the city's conclusion that storing a private rail car is substantially similar to several uses permitted in the I2 district is consistent with the plain meaning of the ordinance.[1]

[1] We also note that if Robinson's proposed project was to build a train shed to be used to store a train car for someone else in exchange for a fee, the proposed train shed would produce income, but the actual use of the property would not be at all different from Robinson's actual intended use. Under appellants' argument, the project that includes paying a fee would be a substantially similar use, but the project that does not include a

III.

Appellants argue that the city "wrongly dismissed" concerns about the adverse impacts that they allege the project will have on their properties and erred in approving the site plan and preliminary plat without "meaningful protective conditions." One concern that appellants raised while the city was considering the project is drainage. In response to that concern, the city approved Robinson's applications with the express condition that "the amount of stormwater draining to neighboring properties from the property in question shall not be increased." Appellants do not allege or explain why this condition is inadequate.

Appellants also complain that the proposed train shed will be located too close to the building at 2821 East Hennepin. However, there is no setback requirement in industrial districts in Minneapolis, and appellants do not claim that the proposed shed encroaches on their property or that they have any right to use the Robinson property. Appellants also complain that the project will block railroad access to their properties, but Robinson submitted evidence to the contrary, including a letter from the Minnesota Commercial Railway stating that the project "would not interfere with any possible future rail service to any of the buildings in the area," including 2801, 2821, and 2905 East Hennepin. The fact that the city disagreed with appellants' claims of adverse impacts does not mean that it ignored those claims. Because there is evidence in the record from which the city could reasonably conclude that only appellant's concern regarding

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fee would not. It is not apparent why the payment of a storage fee should lead to a different zoning decision.

drainage was meritorious, the city did not act unreasonably when it adopted only the protective condition regarding drainage.

IV.

"An agency decision is arbitrary and capricious when the decision represents the agency's will rather than its judgment." *In re Max Schwartzman & Sons, Inc.* 670 N.W.2d 746, 753 (Minn. App. 2003). A decision reflects the agency's will rather than its judgment

> if the agency relied on factors which the legislature had not intended it to consider, if it entirely failed to consider an important aspect of the problem, if it offered an explanation for the decision that runs counter to the evidence, or if the decision is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.

Id. (quotation omitted).

Appellants have not shown that the city relied on factors outside the applicable ordinances, failed to consider an important aspect of the project, offered an explanation that runs counter to the evidence, or that the city's decisions were implausible. Thus they have failed to meet their burden of showing that the city's decision was arbitrary and capricious.

Affirmed.