STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1824
A07-2130

Friends of the Riverfront,
Relator,

vs.

Metropolitan Council,
Respondent,

Minneapolis Park & Recreation Board,
Respondent.

Filed November 25, 2008
Writ of certiorari discharged; motion denied
Larkin, Judge

Metropolitan Council

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Considered and decided by Larkin, Presiding Judge; Peterson, Judge; and Klaphake, Judge.

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

LARKIN, Judge

Respondent Metropolitan Council (Met Council) delegated to its chairperson authority to approve a park land exchange proposed by Respondent Minneapolis Parks & Recreation Board (Park Board). Met Council later ratified its chairperson's approval of the exchange at a meeting. Relator Friends of the Riverfront challenges Met Council's decisions by writ of certiorari. Because Met Council's proceedings were quasi-legislative and therefore not reviewable by this court on a writ of certiorari, we discharge the writ of certiorari and deny relator's pending motion to amend the record.

FACTS

This appeal arises from two related decisions by the Metropolitan Council (Met Council) in response to the Minneapolis Park and Recreation Board's (Park Board) application for conversion of a 1.48-acre parcel of land on Nicollet Island from open park land to nonregional park land. The conversion would accommodate DeLaSalle High School's proposed on-campus football stadium. A conversion of park land must comply with Met Council's *2030 Regional Parks Policy Plan*, Strategy 5(b). Strategy 5(b) requires any park land exchange to involve "equally valuable land."

The Park Board submitted a formal request to Met Council for the conversion of the 1.48-acre Nicollet Island property in exchange for a 2.89-acre parcel along the west bank of the Mississippi River. This 2.89-acre parcel was part of a 9.2-acre tract of land that had already been transferred from the City of Minneapolis to the Park Board as park land. Relator Friends of the Riverfront intervened in Met Council's ensuing

administrative proceeding to consider and evaluate the Park Board's application. Relator intervened pursuant to the Minnesota Environmental Rights Act (MERA), Minn. Stat. § 116B.09 (2006). Met Council held a hearing regarding the proposed land exchange. At the hearing, Met Council received public comments as well as written submissions from both supporters and opponents of the proposed exchange. Relator's representatives attended the hearing and voiced opposition to the application, identifying numerous deficiencies in the proposed exchange.

Met Council denied the Park Board's initial application, explaining that the proposed exchange did not satisfy the requirements of Strategy 5(b). In addition, Met Council delegated authority to its chairperson to negotiate and execute the final terms of an exchange that would satisfy the requirements of Strategy 5(b). At the hearing, the chairperson made a comment that the matter would not come back to Met Council for review. Relator appealed the delegation decision to this court by writ of certiorari. (File No. A07-1824). Shortly thereafter, Met Council's chairperson negotiated a new park land exchange with the Park Board that included the previously proposed 2.89-acre parcel and four additional parcels. Met Council held a meeting regarding the new proposal. Met Council posted notice of the meeting and an agenda on its website. At the meeting, Met Council reviewed the park land exchange negotiated by its chairperson and ratified his approval of the exchange. Relator then appealed Met Council's ratification decision to this court by writ of certiorari. (File No. A07-2130). We consolidated the two appeals.

D E C I S I O N

Relator argues that Met Council's decision delegating authority to its chairperson to give final approval for a park land exchange without further review, and its decision ratifying the chairperson's approval of the park land exchange were both arbitrary, capricious, unsupported by substantial evidence, and contrary to law. Specifically, relator argues that the exchange does not satisfy the requirements of Strategy 5(b). The Park Board argues that this court is barred from considering relator's certiorari appeal because Met Council's proceedings were quasi-legislative rather than quasi-judicial in nature. *See AAA Striping Services Co. v. Minn. Dep't of Transp.*, 681 N.W.2d 706, 715 (Minn. App. 2004) (stating that "[c]ertiorari is not available to review *quasi-legislative* administrative actions"); *see also Honn v. City of Coon Rapids*, 313 N.W.2d 409, 414 (Minn. 1981) (stating that certiorari is inappropriate to review legislative acts). Because this court lacks jurisdiction if Met Council's proceedings were quasi-legislative, we must first decide this threshold issue. "Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action." Minn. R. Civ. P. 12.08(c).

Administrative agencies perform both legislative and judicial functions. *City of Moorhead v. Minn. Pub. Utils. Comm'n*, 343 N.W.2d 843, 846 (Minn. 1984). "Legislative acts affect the rights of the public generally, unlike quasi-judicial acts which affect the rights of a few individuals analogous to the way they are affected by court proceedings." *Interstate Power Co., Inc. v. Nobles County Bd. of Comm'rs*, 617 N.W.2d 566, 574 (Minn. 2000). Certiorari is an "extraordinary remedy" only available for review

of judicial or quasi-judicial proceedings; certiorari is not available for review of legislative actions. *AAA Striping Services*, 681 N.W.2d at 715; *see Honn*, 313 N.W.2d at 414; *see also W. Area Bus. & Civic Club v. Duluth Sch. Bd. Indep. Distr. No. 709*, 324 N.W.2d 361, 364 (Minn. 1982). Parties wishing to challenge legislative decisions by local governmental bodies "must first litigate the question of their validity in district court." *Watab Twp. Citizen Alliance v. Benton County Bd. of Comm'rs*, 728 N.W.2d 82, 93 (Minn. App. 2007), *review denied* (Minn. May 15, 2007) (quoting *Dead Lake Ass'n, Inc. v. Otter Tail County*, 695 N.W.2d 129, 134 (Minn. 2005)). If Met Council's approval of the park land exchange is indeed quasi-legislative in nature, this court does not have jurisdiction to hear relator's appeal, and the appeal must be dismissed. *See id.*

The Minnesota Supreme Court has articulated the factors to be used in distinguishing between quasi-judicial and quasi-legislative proceedings. *See Meath v. Harmful Substance Comp. Bd.*, 550 N.W.2d 275, 279 (Minn. 1996); *Minn. Ctr. for Envtl. Advocacy v. Metro. Council*, 587 N.W.2d 838, 842 (Minn. 1999) (*MCEA*). In *Meath*, the supreme court explained, "it seems to us that we would be well-advised today to apply the term [quasi-judicial act] only to those administrative decisions which are based on evidentiary facts and which resolve disputed claims of rights." 550 N.W.2d at 279. The court held that "quasi-judicial conduct is marked by an investigation into a disputed claim and a decision binding on the parties." *Id.* In *MCEA*, the supreme court added a third factor to the framework, which was originally proposed by the concurrence in *Meath*. *See MCEA*, 587 N.W.2d at 842. "[T]he three indicia of quasi-judicial actions can be summarized as follows: (1) investigation into a disputed claim and weighing of

evidentiary facts; (2) application of those facts to a prescribed standard; and (3) a binding decision regarding the disputed claim." *Id.*

While most administrative decisions are to some extent based on evidentiary facts established through investigation, "few such decisions adjudicate any right or obligation of contending parties." *Meath*, 550 N.W.2d at 277. What separates an agency's quasi-judicial functions from its other functions is resolution of a person's legal interests through application of a standard. *Id.* at 280 (Anderson, J., concurring) (explaining that an agency acts in a quasi-judicial capacity when it "applies a prescribed standard to reach a conclusion that affects the legal interests of the persons before it").

Investigation into a disputed claim

Turning to the first of the three factors, we must determine whether Met Council's decision involved investigation into a disputed claim and weighing of evidentiary facts. Functionally, this first factor has two parts; the first part focuses on the nature of the claim, the second part focuses on the nature of the agency's evidence-gathering process. *MCEA*, 587 N.W.2d at 842-43. Relator contends that "there can be no question that [the Park Board's] claim was disputed, as Met Council heard testimony from parties opposed to and in favor of the claim." Relator's argument is based upon a broad reading of the term "disputed claim." Under relator's theory, a disputed claim would exist any time there is opposition to a proposed agency action. We believe the proper focus is on the nature of the interest at stake, rather than on the existence of opposition to the proposed action.

For example, in *MCEA*, the challenged agency decision involved planning for the "Stillwater Bridge Project," a proposed four-lane bridge across the St. Croix River. 587 N.W.2d at 841. Coincidently, Met Council was also the governing agency in *MCEA*. To comply with federal requirements, Met Council developed a Transportation Improvement Program (TIP) that identified specific, proposed construction projects in the metropolitan area using federal transportation funds. *Id.* at 840; 23 U.S.C. §§ 134(h)(1), (2) (1994). Met Council's TIP included the Stillwater Bridge Project. *MCEA*, 587 N.W.2d at 841. After Met Council approved the TIP, appellant, a nonprofit environmental organization, filed a writ of certiorari in the court of appeals for review of Met Council's decision. *Id.*

On review, this court concluded that Met Council's decision to approve the TIP was quasi-legislative and therefore not reviewable by certiorari. *Id.* at 844. When addressing the first of the three factors, the court focused its analysis on the process that Met Council used without discussion of whether the decision involved disputed claims of rights. *See id.* at 842-43 (examining Met Council's deliberative process to determine whether the proceedings' purpose was to resolve adversarial claims under the first indicium). Nonetheless, the facts indicate that appellant's challenge to Met Council's decision to approve the TIP was made on behalf of the public's interest in proper transportation planning. *See id.* at 841. Appellant's claim did not involve the legal rights of a specific individual. *See id.*

In contrast, in *Handicraft Block Ltd. P'ship v. City of Minneapolis*, relator owned the Handicraft Guild Building and an adjacent building in downtown Minneapolis. 611 N.W.2d 16, 18 (Minn. 2000). The City of Minneapolis designated the exteriors of both

buildings for heritage preservation. *Id.* Relator filed a writ of certiorari, arguing that the designation was arbitrary. *Id.* In its analysis of the first factor, the court highlighted the fact that the historic designation determination involved a specific property and specific property rights. *Id.* at 21. "The city was not making a decision bearing on an open class of persons and properties." *Id.* The city had directed its efforts to a specific property and property owner, and collected facts about that property from its owner and other interested members of the public. *Id.* Relator's legal rights in his specific property would be impacted by the historic designation. *Id.* at 19. The court stated:

> [t]here is a significant difference between the opportunity given to the public at large in *MCEA* to comment on possible future highway development and the opportunity given to a *specific property owner*, targeted by the City, to be heard and present evidence regarding the immediate heritage preservation designation of a single property.

Id. at 21 (emphasis added).

The instant case is distinguishable from *Handicraft* and more analogous to *MCEA* because there is not a specific property owner with specific property rights at stake. Unlike the city's historic preservation designation in *Handicraft*, which affected a specific property owner, Met Council's decision here affects the park system as a whole and the public at large, much like the Met Council's decision in *MCEA* affected the transportation system as a whole and the public at large.

The party status relator claims under MERA exists to represent the public interest in air, water, land and other natural resources, not a specific property or property owner. Minn. Stat. § 116B.01 (2006) (stating MERA's purpose is to protect and preserve air,

water, land, and other natural resources for the present and future generations and explaining that "it is in the public interest to provide an adequate civil remedy to protect air, water, land and other natural resources"). MERA provided relator an ability to intervene on behalf of the public—an open class of persons; relator does not claim private property rights in the regional park lands. Any party status that relator may enjoy under MERA does not equate to the interests of a specific property owner. *See* Minn. Stat. §§ 116B.09, subd. 1 (explaining that MERA allows intervention "upon the filing of a verified pleading asserting that the proceeding or action for judicial review involves conduct that has caused or is likely to cause pollution, impairment, or destruction of the air, water, land or other natural resources located within the state"), 116B.01 (explaining that it is in the public's interest to provide an adequate civil remedy for protection and preservation of land and natural resources located within the state).

With regard to the evidence-gathering process, Met Council's decision to approve the park land exchange likewise is policy driven when considered in the context of its investigative and deliberative process. Met Council's staff reviewed the parcels proposed for the exchange, applied the Strategy 5(b) criteria to determine whether the exchange should be approved, issued a report to Met Council, and then allowed the public to speak for and against the proposed park land exchange at a public hearing. Met Council did not take evidence in accordance with formal or informal evidentiary rules, nor was testimony given under oath. The Park Board argues that because the process was guided by objective information and public input, it is more typical of a legislative proceeding than

"a determination of facts for the purpose of reaching a legal conclusion in resolution of adversarial claims." We agree.

Our supreme court in *MCEA* concluded that the first factor was not satisfied because the proceedings did not determine facts "for the purpose of reaching a legal conclusion in resolution of adversarial claims." 587 N.W.2d at 843. Because the relevant action did not require Met Council to provide a public hearing, no particular persons or parties were given notice or a right to participate in the public hearing regarding the proposed bridge. *Id.* at 839 nn.2-3. Members of the public were allowed to offer comments about the long-range plans. *Id.* at 839-41 nn.3-4. The court in *MCEA* held that the information-gathering purpose of Met Council's proceeding distinguished it from a judicial proceeding and rendered it more akin to a legislative process. *Id.* at 842.

By contrast, the court in *Handicraft* compared the proposed heritage designation to the proposed highway-planning project in *MCEA* and determined that "the designation proceedings are more typical of judicial proceedings than legislative proceedings because they involve investigating and determining facts for the purpose of reaching a legal conclusion regarding the disputed claim of whether this building is to be designated." 611 N.W.2d at 20-21. In determining that the agency proceeding in *Handicraft* constituted a quasi-judicial proceeding, the court focused on the agency's process: (1) Handicraft was formally identified as a party to the proceedings; (2) the city sent notice specifically to Handicraft regarding the possible designation of its property; (3) the city expressly invited Handicraft to present evidence on its behalf at the public hearings (presumably so that Handicraft could prepare arguments in opposition to the

designation); (4) the city held four public hearings that Handicraft attended, and Handicraft was represented by counsel at each; and (5) Handicraft submitted both oral testimony and written evidence in opposition to the designation. *Id.* at 21. "These were adversarial proceedings." *Id.* The supreme court's focus on the process highlights the nature of the interest at stake, a specific owner's interest in specific property that would be negatively impacted as a result of a proposed agency action. In that sense, the supreme court found the historic designation in *Handicraft* analogous to a conditional-use permit, which courts have said is quasi-judicial.[1] *Id.* (explaining that although the city initiated the historic designation proceedings, the conduct of those proceedings "was no different in format from that of typical conditional use permit or variance proceedings which [the supreme court has] acknowledged are quasi-judicial").

Again, the supreme court's focus in *Handicraft* was on relator's legal interests in specific property. "The City was not making a decision bearing on an open class of persons and properties. Rather, it directed its efforts to the particular interests of a *specific property and property owner*." *Id.* (emphasis added). There is no similar interest at stake here. The fact that Met Council gathered information and weighed evidentiary facts during its decision-making process is not determinative because the proceedings' central purpose was to reach an informed decision regarding the park land system as a

[1] Precedent indicates that the decision to lift a restrictive covenant from a parcel of land in order to use it for a different purpose is analogous to a rezoning decision, which courts have consistently held to be quasi-legislative. *See, e.g.*, *Application of Merritt*, 537 N.W.2d 289, 290 (Minn. App. 1995) (determining that an agency's decision not to rezone relator's land was quasi-legislative and therefore, not reviewable by certiorari).

whole, rather than to resolve a particular adversarial claim related to a specific property and specific property rights. We conclude that this case does not involve a "disputed claim" despite public opposition to the proposed exchange and, therefore, Met Council's proceedings cannot be characterized as quasi-judicial under the first factor.

Application of a prescribed standard

Next we consider whether Met Council applied a prescribed standard to the Park Board's request. Relator argues that Strategy 5(b) unequivocally provides a prescribed standard for Met Council's decision-making process with regard to park land exchanges. Strategy 5(b), titled "Conversion of regional parks system lands to other uses," allows removal of a regional park restrictive covenant *only if* the same restrictive covenant is imposed on other "equally valuable land." *See 2030 Regional Parks Policy Plan*, Strategy 5(b). In addition, Strategy 5(b) outlines specific criteria that "*will be used* to determine whether regional parks system land may be exchanged for other parkland." *Id.* (emphasis added). Strategy 5(b) establishes specific criteria that must be used when determining whether to make a park land exchange. *Id.* Strategy 5(b) is a prescribed standard, and Met Council applied that standard to the proposed park land exchange. This factor supports a conclusion that Met Council's proceedings were quasi-judicial.

But we note that Strategy 5(b) does not mandate approval of a proposed park land exchange when its criteria are satisfied. Once Met Council determines that a proposed park land exchange satisfies the mandatory criteria in Strategy 5(b), it is not obliged to automatically approve the exchange; rather, Met Council maintains discretion to nevertheless reject the proposal. The fact that Strategy 5(b) does not require Met Council

to approve a park land exchange, even if the proposed land exchange satisfies Strategy 5(b)'s criteria, reinforces our view that this case does not involve a disputed claim regarding specific property but rather, a policy decision regarding the park system as a whole.

Binding decision regarding the disputed claim

Because we have determined that Met Council's decision did not involve a disputed claim, there can be no binding decision with regard to a disputed claim. Failure to meet any of the three factors is fatal to relator's claim that the proceedings are quasi-judicial. *MCEA*, 587 N.W.2d at 844; *AAA Striping Servs. Co. v. Minn. Dep't of Transp.*, 681 N.W.2d 706, 715 (Minn. App. 2004).

The first and third factors demonstrate that Met Council's proceedings to approve the park land exchange were quasi-legislative, therefore, certiorari review by this court is not authorized. Accordingly, we discharge relator's writ of certiorari for lack of jurisdiction and we do not reach the substantive issues raised on appeal. We likewise do not reach relator's pending motion to amend the record because it is moot.

Writ of certiorari discharged; motion denied.

Dated: _____

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The Honorable Michelle A. Larkin
Minnesota Court of Appeals