STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0294

Jordan Real Estate Services, Inc.,
Respondent,

vs.

City of Gaylord,
Appellant.

Filed April 14, 2009
Reversed
Bjorkman, Judge

Sibley County District Court
File No. 72-CV-07-174

Phillip R. Krass, C. John Jossart, Krass Monroe, P.A., 8000 Norman Center Drive, Suite 1000, Minneapolis, MN 55437 (for respondent)

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

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

BJORKMAN, Judge

In this challenge to the district court's grant of a writ of mandamus to compel appellant-city to approve a plat, the city argues that it cannot be compelled to do so

because the proposed plat does not comply with the city's zoning and subdivision ordinances. The city also contends the district court erroneously granted the writ based on the doctrine of equitable estoppel. We reverse.

FACTS

In 2003, appellant City of Gaylord (the city) entered into a purchase and development agreement with respondent Jordan Real Estate Services, Inc., to build single-family homes in the Meadow Wood Estates subdivision (the subdivision). The subdivision plat had previously been approved by the city council and met all subdivision and zoning ordinance requirements. As part of the development agreement, Jordan was required to construct two homes per year.

Jordan had a difficult time selling the first four homes it built in the subdivision, and it approached the city planning and zoning commission in February 2006 with a proposal to re-plat the subdivision with smaller streets and more affordable housing. The planning and zoning commission recommended that Jordan move forward with its proposal and present the plan to the full city council.

In July 2006, Jordan presented three potential re-plat options for the subdivision to the full city council. The council requested additional information and asked Jordan to get further input from the planning and zoning commission prior to the next full council meeting.

Later that month, with input from the planning and zoning commission, the council agreed that the second plat-design option—43 single-family lots ranging from 50 to 120 feet wide—was the best plan. The council asked Jordan to create a more detailed

plan and confer again with the planning and zoning commission regarding "some variances and rezoning issues." Jordan's principal, Jeff Hennen, asked the city council if it had an ordinance for a planned unit development (PUD), which would allow for such zoning- and subdivision-ordinance variances. The city administrator responded, "We have one for subdivisions but not for this. Everything has to go through planning and zoning for a recommendation and then come back here. That is how it has always been done." This statement was not correct. In fact, the city has zoning and subdivision ordinances that require PUDs to apply for a conditional use permit (CUP).

In January 2007, Jordan presented the preliminary plat for the subdivision to the planning and zoning commission. The commission unanimously approved the plat design with minor modifications. The next month, Jordan presented the preliminary plat to the full city council.

In March 2007, the city council again took up the subdivision-plat issue. At that meeting, the council expressed particular concern "that there are several items on the Hennen Subdivision plan that are not in compliance with City ordinances." The council was concerned that the lots were too small and the houses would be located too close together. One council member suggested that someone from the planning and zoning commission, as well as one or two council members, "sit down with Hennen and work with him prior to the next Council meeting in April."

At the April city council meeting, Jordan presented the plat to the city council for preliminary approval. One council member inquired whether "this subdivision would be [okay] with the Planning and Zoning Commission," and the city administrator stated "this

subdivision would have to be a Planned Unit Development (PUD) because of zoning." The council unanimously approved the preliminary plat proposal for the subdivision,[1] but advised Jordan "that the final plat will need to be approved by Planning and Zoning before the Council sees it again." Although it appears that the parties understood the subdivision would be a PUD, Jordan never took any formal steps to obtain PUD status as outlined in section 17, subdivision 11, of the city's zoning ordinance. This ordinance requires that the proponent of a PUD go through the conditional use application process. Gaylord, Minn., Zoning Ordinance § 17, subd. 11(2), (3) (1995).

Later in April, Jordan presented a revised plat for final approval to the planning and zoning commission. The commission unanimously passed a motion to "meet with the [city council] within the next two weeks . . . to discuss a Planned Unit Development and Meadow Wood Estates."

On May 2, the full city council considered final plat approval for the subdivision. The council voted to deny approval of the final plat, citing concerns that the lots were too

[1] During the April 4, 2007 meeting, the city administrator also stated: "Our attorney isn't here and he would be the authority on [platting issues for a subdivision] but we can establish a PUD for that which would govern—that would basically be an exception to our city ordinances for this development that would be binding." Another council member also stated:

> If we give preliminary approval tonight we will have to go back to planning and zoning and define what is different from our ordinance there or at least know because the next time somebody is going to want a subdivision and we started something here and with a PUD how that all qualifies and we do have a subdivision ordinance that we need to find out with the streets are different, the lots are different and everything we have changed to get here.

small, that changing the tone of the subdivision to build more affordable homes might drive down the prices of homes currently on the market, and that the subdivision was not compatible with the city's future housing needs.

Jordan commenced this mandamus action seeking an order "requiring the City of Gaylord to approve in all respects [Jordan's] Final Plat as submitted," and "[f]or such other and further relief as the Court may deem just and proper." The district court held a mandamus hearing on August 13, 2007. After finding that Jordan did not comply with at least one of the applicable zoning ordinances, the district court applied equitable estoppel principles to reach its conclusion that mandamus should issue. The court focused on the fact that the city provided inaccurate information to Jordan throughout the plat approval process. The district court issued an order compelling the city to approve the final plat for the subdivision. The district court entered judgment on December 17, 2008, and subsequently filed an order staying final plat approval pending resolution of this appeal.

D E C I S I O N

When reviewing a district court's findings on an application for mandamus relief, we will reverse only if "there is no evidence reasonably tending to sustain" those findings. *Coyle v. City of Delano*, 526 N.W.2d 205, 207 (Minn. App. 1995). But when the district court's decision on a petition for mandamus is based on a legal determination, we review that decision de novo. *Demolition Landfill Servs., LLC v. City of Duluth*, 609 N.W.2d 278, 280 (Minn. App. 2000), *review denied* (Minn. July 25, 2000).

A writ of mandamus "shall not issue in any case where there is a plain, speedy, and adequate remedy in the ordinary course of law." Minn. Stat. § 586.02 (2008). To

obtain a writ of mandamus, a petitioner must demonstrate (1) the failure to perform an official duty clearly imposed by law; (2) a public wrong specifically injurious to petitioner; and (3) the absence of any other adequate specific legal remedy. *Coyle*, 526 N.W.2d at 207.

We conclude that the district court erred in granting mandamus relief. Mandamus does not lie here because (1) the final plat does not comply with the city's subdivision and zoning ordinances and therefore the city was not legally obligated to approve it; (2) Jordan has another legal remedy available; and (3) equitable estoppel is not a permissible basis for granting mandamus relief.

I. The final plat does not comply with the city's subdivision and zoning ordinances and the city was not obligated, under Minnesota law, to approve it.

Jordan's mandamus petition asserts that mandamus is warranted because the city had a legal duty to approve its final plat. Minnesota law provides:

> Following preliminary approval the applicant may request final approval by the municipality, and upon such request the municipality shall certify final approval within 60 days if the applicant has complied with all conditions and requirements of applicable regulations and all conditions and requirements upon which the preliminary approval is expressly conditioned either through performance or the execution of appropriate agreements assuring performance.

Minn. Stat. § 462.358, subd. 3b (2008). But the undisputed record evidence demonstrates that Jordan had not "complied with all conditions and requirements of the applicable regulations." Jordan acknowledges that it did not apply for a CUP as required by

Gaylord, Minn., Zoning Ordinance § 17, subd. 11(2), (3). Moreover, the city identifies numerous other subdivision and zoning ordinances that the proposed final plat violates.[2]

Jordan urges this court to find that the city had a duty to approve the final plat based on the city's approval of the preliminary plat. Jordan argues that the city, in effect, exempted it from the ordinance requirements and that the parties "fully vetted the CUP criteria in connection with this PUD prior to preliminary plat approval," citing *Semler Constr., Inc. v. City of Hanover*, 667 N.W.2d 457, 462-63 (Minn. App. 2003) (noting that preliminary plat approval establishes the nature, design, and scope of a development project; that the primary emphasis is placed on preliminary plat approval; and once preliminary plat conditions and requirements are satisfied, the plat mechanically receives final approval), *review denied* (Minn. Oct. 29, 2003).

But our decision in *Semler* "did not strip final-plat decisions of all meaning." *Save Lantern Bay v. Cass County Planning Comm'n*, 683 N.W.2d 862, 866 (Minn. App. 2004). And the city's poor advice and lack of guidance does not change the fact that Jordan is "charged with knowledge of whether a local zoning ordinance permits

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[2] The re-plat does not include the name of the original plat; was not reviewed by the city engineer; was not mailed to owners of the land immediately adjoining the subdivision to provide notice prior to the approval hearing; does not comply with the city's comprehensive plan; does not have minimum street widths of 37 feet; does not have alleys with paved widths of 16 feet; and was not part of the subdivision agreement with the city. Gaylord, Minn., Ordinance No. 232 §§ 4, subds. 3(O), 4(C), 4(E), 5, subd. 2(B), 6, subds. 1, 9(A), (B), (C), 15 (2000). The city also argues that the plat fails to comply with several provisions of the city's zoning ordinance: the plat fails to meet front yard setbacks, side yard setbacks, and minimum lot-size requirements and was not designed as a PUD through the CUP process, as was required because the plat does not comply with the subdivision and zoning requirements. Gaylord, Minn., Zoning Ordinance §§ 8, subd. 5, 17, subd. 11 (1995).

construction undertaken on the property." *Yeh v. County of Cass*, 696 N.W.2d 115, 132 (Minn. App. 2005) (quotation omitted), *review denied* (Minn. Aug. 16, 2005).

Regardless of a city's conduct along the way, mandamus does not lie when a petitioner has not complied with applicable ordinances and regulations. Minn. Stat. § 462.358, subd. 3b; *see also Nat'l Capital Corp. v. Vill. of Inver Grove Heights*, 301 Minn. 335, 338, 222 N.W.2d 550, 552 (1974) (reversing district court's grant of writ of mandamus to developer and holding "[w]e do not believe that it is a prudent policy to allow a plat to be recorded which on its face does not conform to the requirements of the subdivision ordinance of a municipality"); *Minneapolis-Honeywell Regulator Co. v. Nadasdy*, 247 Minn. 159, 163, 76 N.W.2d 670, 674 (1956) ("[T]he writ of mandamus will not be granted where it is shown that the petitioner has not complied with the provisions of the statute or ordinance which are conditions precedent to the assertion of the right demanded."). Because Jordan did not comply with the city's subdivision and zoning ordinances, the city was not obligated, under Minn. Stat. § 462.358, subd. 3b, to approve the final plat, and mandamus is not an available remedy.

II. Jordan has another available legal remedy.

The district court concluded that there is no other adequate legal remedy available to Jordan because, "[i]n addition to the costs already incurred, [Jordan] continues to accumulate expenses with each day the City refuses to approve the final plat." Jordan also contends that it "had no other plain, speedy or adequate remedy but to seek a writ of mandamus."

We disagree. Mandamus has only limited application with respect to zoning decisions. *Honn v. City of Coon Rapids*, 313 N.W.2d 409, 416 (Minn. 1981). "[T]he proper procedure for reviewing a city's decision in a zoning matter generally will be a declaratory judgment action, possibly including a request for injunctive relief." *Mendota Golf, LLP v. City of Mendota Heights*, 708 N.W.2d 162, 178 (Minn. 2006). Jordan cannot establish that the city failed to perform a duty required by statute in this case, and "mandamus does not lie for mere error in the exercise of discretion." *Id.* at 179 (quotation omitted).

III. Equitable estoppel is not a basis for granting mandamus relief.

We also agree with the city's argument that a writ of mandamus cannot be granted based upon the doctrine of equitable estoppel. Jordan did not plead equitable estoppel in its mandamus petition, there was no discussion or development of the factual record with regard to the elements of equitable estoppel at the mandamus hearing, and estoppel is not a mandamus element. Although equitable estoppel has been used to resolve developer-government conflicts over land-use decisions in declaratory-judgment actions, *e.g.*, *Ridgewood Dev. Co. v. State*, 294 N.W.2d 288, 292 (Minn. 1980), it is a distinct legal theory from mandamus and requires proof of entirely different elements.

The district court erred in granting mandamus to Jordan based on equitable estoppel principles.

Reversed.