**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A08-1388**

Clear Channel Outdoor, Inc.,
a Delaware corporation,
f/k/a Eller Media Company,
Appellant,

vs.

City of Arden Hills,
Respondent.

**Filed April 28, 2009**
**Affirmed**
**Klaphake, Judge**

Ramsey County District Court
File No. 62-CV-07-3231

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Considered and decided by Peterson, Presiding Judge; Klaphake, Judge; and Harten, Judge.*

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

**KLAPHAKE**, Judge

Appellant Clear Channel Outdoor, Inc. (Clear Channel) challenges the district court's grant of summary judgment to respondent City of Arden Hills (city), arguing that the court erred by affirming the city's denial of Clear Channel's permit application to add light emitting diode (LED) lights to a billboard sign that was already granted a nonconforming use permit. Because the city planning commission's decision that the city's sign code prohibits the proposed use is not arbitrary and capricious, we affirm.

## D E C I S I O N

Summary judgment is appropriate when no genuine issue of material fact exists and one party is entitled to judgment as a matter of law. Minn. R. Civ. P. 56.03. This court construes the language of ordinances according to their plain and ordinary meaning. *Clear Channel Outdoor Adver., Inc. v. City of St. Paul*, 675 N.W.2d 343, 346 (Minn. App. 2004), *review denied* (Minn. May 18, 2004).

"In reviewing actions by a governmental body, the appellate court focuses on the proceedings before the decision-making body, not the findings of the trial court." *Trisko v. City of Waite Park*, 566 N.W.2d 349, 352 (Minn. App. 1997), *review denied* (Minn.

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

Sept. 25, 1997).[1] We independently review the record to examine whether the city planning commission's decision was "unreasonable, arbitrary, or capricious." *Id.* at 353 (reversing denial of conditional use permit as unreasonable, arbitrary, and capricious); *see R.A. Putnam & Assocs., Inc. v. City of Mendota Heights*, 510 N.W.2d 264, 268 (Minn. App. 1994), *review denied* (Minn. Mar. 15, 1994) (stating that reviewing court "should not interfere with a municipal zoning decision that has a rational basis or is reasonably debatable"). A municipal body's action is not arbitrary "when it bears a reasonable relationship to the purpose of the ordinances." *Clear Channel*, 675 N.W.2d at 346.

The City of Arden Hills Sign Code, Chapter 12, Section 1210.01, subd. 6 (2006) (sign code), defines external sign lighting as "illuminat[ion] by means of external light fixtures directed at the sign." Clear Channel's nonconforming use permit allowed it to display a sign only with an external lighting source. Although clear Channel's use of LED lights on the sign violates the city's sign code, Clear Channel argues that the city's sign code illumination standards should not apply to it. Clear Channel does not attack this code provision directly but claims that (a) the city's failure to acquire "statutorily-mandated" certification from the state prohibited it from enforcing the lighting restriction against Clear Channel; (b) the lighting restriction does not apply to Clear Channel

[1] The parties raise as a separate argument whether the changes Clear Channel made to its sign constitute an impermissible "expansion" under the nonconforming use statute, Minn. Stat. § 462.357 (2008). Although the district court reached this issue in its decision, the city planning commission did not. Because we are constrained on review to address only the issues addressed by the planning commission, we decline to reach the issue of applicability of the nonconforming use statute.

because it does not apply to billboards; and (c) the lighting restriction is arbitrary and unenforceable.

*1. Provisions of Minn. Stat. §§ 173.01-.27 (2008)*

Clear Channel argues that chapter 173 of the Minnesota Statutes requires municipalities to seek state certification from the commissioner of transportation before imposing any local lighting restrictions on signs. Clear Channel cites Minn. Stat. § 173.13, subd. 1, for the proposition that the city was required to seek a permit before imposing a sign restriction on any sign adjacent to a state highway. Another provision, Minn. Stat. § 173.16, subd. 5, requires the commissioner to approve local zoning determinations pertaining to lighting of advertising devices where the zoning determinations deviate from chapter 173. *See* Minn. R. 8810.1400 (2007) (requiring commissioner of transportation to certify local zoning authorization that deviates from state zoning requirements). Notably, the rule does not include any consequence for failure to obtain certification.

Clear Channel misconstrues the entire statutory scheme of chapter 173. Instead of limiting the authority of local controls, the statute gives deference to municipalities. First, Minn. Stat. § 173.13, subd. 1, places no responsibility on the city to seek permits before imposing sign restrictions and provides in part that "permit systems of legitimate local zoning authorities shall take precedence inside a business area." Minn. Stat. § 173.02, subd. 17, defines "business area" as "zoned for business, industrial, or commercial activities[.]" It appears from the record that the area in which the sign is located is zoned as a "business area." Second, Minn. Stat. § 173.16, subd. 5, instead of

limiting the city's local control of advertising devices as Clear Channel contends, actually provides for local, not state, control unless local control would result in the loss of federal highway funds. The record is devoid of any claim that federal highway funds are in jeopardy. Third, Minn. Stat. § 173.20 states that "[n]othing in [the statute] shall be construed to abrogate or affect the provisions of any other law, municipal ordinance, regulation, or resolution which is more restrictive concerning advertising than the provisions of [this statute] or of the regulations adopted thereunder." As the city's sign code is more restrictive than the restrictions on highway signs contained in the statute, the city's sign code is not preempted. *See In re Appeal of Rocheleau*, 686 N.W.2d 882, 890 (Minn. App. 2004), *review denied* (Minn. App. 2004) (ruling that when statute provided for regulation of sewage treatment system unless similar local government ordinances were more restrictive than the statute, statute did not preempt local ordinances).

*2. City Code Regulation of "Billboard" vs. "Sign"*

Clear Channel next contends that even if the city had authority to impose external lighting restrictions on signs, those restrictions do not apply to this sign, because it is a billboard. More specifically, Clear Channel argues that because the word "billboard" does not appear in a table summarizing the city's lighting standards, billboards should be excluded from lighting regulation.

We reject this argument because the fact that the type of nonconforming sign at issue here is not mentioned specifically in the table does not mandate that nonconforming signs--or billboards--are exempt from regulation. The city's sign code states that its regulations apply to "all structures and all land uses." Sign Code, Section 1200.03. The

sign code defines "[b]illboard" as "a sign that is used for the primary purpose of selling space advertising a product . . . ." Sign Code, Section 1210.01, subd. 1. The sign code defines "sign" to include "any written message, pictorial presentation, number, illustration, decoration, banner or other device that is used to announce, direct attention to, identify, advertise or otherwise make anything known." Sign Code, Section 1210.01, subd. 11. Thus, under the pertinent provisions of the sign code, Clear Channel's sign, or billboard, is subject to regulation, including lighting restrictions.

*3. Enforceability of Lighting Restrictions*

Clear Channel's sign is located at the northeast corner of the intersection of I-35W and I-694 in Arden Hills. The sign code defines this area as "District 7," one of nine districts that are subject to different restrictions. Sign Code, Section 1240.01. District 7 is one of the last development areas within the city and includes the area surrounding the I-694/I-35W corridor. Clear Channel complains that this district has lighting restrictions that are as restrictive as those in residential districts, and that the lighting restrictions of this district were motivated entirely by aesthetics, an improper consideration in establishing local regulations.

The sign code's stated purpose is not only "to promote the public health, safety, and welfare," but also to "[p]romote an attractive environment while providing for effective means of communication consistent with constitutional guarantees and the City's goals of public safety and aesthetics." Sign Code, Section 1200.02, subds. 1, 3. Clear Channel has not demonstrated that the lighting restrictions of district 7 do not further these objectives. Further, aesthetics are a valid purpose for enacting a zoning

ordinance zoning ordinance. *See Naegele Outdoor Advert. Co. v. Minnetonka*, 281 Minn. 492, 499, 162 N.W.2d 206, 212 (1968) ("[t]he mere fact that the adoption of a zoning ordinance reflects a desire to achieve aesthetic ends should not invalidate an otherwise valid ordinance"). And, given a standard of review that merits court involvement only if the zoning decision is "unreasonable, arbitrary, or capricious," *Trisko*, 566 N.W.2d at 352, we find no legal basis to question the zoning authority's decision on this issue.

Clear Channel further argues that its permit was approved by operation of law under a specific provision of the sign code, because the city failed to respond to its sign permit application within 30 days. While both legal and equitable reasons exist for refusing to apply this automatic permit approval provision, we decline to reach this issue because it was not raised to or addressed by the planning commission or the city council. This court does not consider matters not raised and decided in prior proceedings. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988); *see WH Link, LLC v. City of Otsego*, 664 N.W.2d 390, 393 n.1 (Minn. App. 2003) (noting application of *Thiele* to "proceedings before the city council"), *review denied* (Minn. Sept. 13, 2000). Thus, we decline to consider this issue for the first time on appeal.

**Affirmed.**