This opinion is nonprecedential except as provided by Minn. R. Civ. App. P. 136.01, subd. 1(c).

STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1674

Ali Alfureedy, et al.,
Appellants,

vs.

City of Saint Paul,
Respondent.

Filed August 28, 2023
Affirmed
Smith, John, Judge*

Ramsey County District Court
File No. 62-CV-21-4932

Ferdinand F. Peters, Benjamin Loetscher, Ferdinand F. Peters, Esq. Law Firm, St. Paul, Minnesota (for appellants)

Lyndsey M. Olson, St. Paul City Attorney, Kyle Citta, Assistant City Attorney, St. Paul, Minnesota (for respondent)

Considered and decided by Reyes, Presiding Judge; Ross, Judge; and Smith, John, Judge.

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

NONPRECEDENTIAL OPINION

SMITH, JOHN, Judge

We affirm the district court's grant of summary judgment, dismissal of appellants' nonconforming use and estoppel claims, and protective order limiting discovery because (1) respondent had a rational basis for denying appellants' rezoning application; (2) the district court did not have jurisdiction over appellants' nonconforming use and estoppel claims; and (3) the district court did not abuse its discretion because the city council hearing was fair, and the record was clear and complete.

FACTS

This case involves respondent City of Saint Paul's decision to deny appellant Ali Alfureedy's application to rezone 444 Maryland Avenue West (the Property) from B1 to T2.[1] Appellants Alfureedy, Maryland Supermarket Inc. (MSI), and Maryland Tobacco, Inc. (MTI) currently operate a supermarket, a tobacco products shop, and a restaurant on the Property.

In 2011, Alfureedy bought the supermarket business and leased the Property. At that time, the supermarket included a tobacco shop business pursuant to a license from the city. Alfureedy later purchased the Property and formed MSI to operate the supermarket. MSI has held a tobacco license since then.

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[1] T2 is defined as a traditional neighborhood district that is "designed for use in existing or potential pedestrian and transit nodes." St. Paul, Minn., City Code § 66.313 (2011). And B1 is defined as a local business district that "is intend to permit those uses as are necessary to satisfy the basic convenience shopping or service needs of persons residing in nearby residential areas." St. Paul, Minn., City Code § 66.412 (1987).

The city amended the zoning code to replace "tobacco shop" use with "tobacco products shop" use. *See* St. Paul, Minn., Ordinance § 11-26 (Mar. 23, 2011) (now codified at St. Paul, Minn., City Code § 65.535 (2018)). A "tobacco products shop" must, among other things, "derive[] more than ninety . . . percent of its gross revenue from the sale of loose tobacco, plants, or herbs and cigars, cigarettes, electronic cigarettes, pipes, and other smoking devices for burning tobacco and related smoking accessories and in which the sale of other products is merely incidental." *Id.* A "tobacco products shop" cannot be located in a B1 district or within a half mile of another tobacco products shop, and in T2 districts, a conditional use permit is required for a shop larger than 2,500 square feet. St. Paul, Minn., City Code §§ 66.421 (2021), 65.535. The supermarket was less than 2,500 square feet and not located within a half mile of any other tobacco products shop.

The city then amended the code to limit the sale of various tobacco products to a "tobacco products shop." *See* St. Paul, Minn., City Code §§ 324.01, .07 (2021). Businesses responded by physically separating their tobacco products shop storefront from the rest of the business. Even though the Property was in a B1 zone that did not permit tobacco products shops, in 2018, the city granted appellants a license to operate a tobacco products shop, and required appellants to spend over $10,000 to build a wall to establish a separate exit for the tobacco products shop. Two years later, the city realized that the tobacco-products-shop license was erroneously issued and threatened action. In response, Alfureedy applied to rezone the Property from B1 to T2.

In April 2021, the zoning committee issued a staff report about Alfureedy's request. The report found that "the proposed zoning is consistent with the way this area has

developed" and "is consistent with the Comprehensive Plan." Based on the findings, the report recommended approving the rezoning from B1 to T2. The city planning commission voted to approve the rezoning and found that the proposed zoning is "consistent with the way this area has developed," "compatible with surrounding residential uses," and "consistent with the Comprehensive Plan."

On June 9, 2021, the city council held a virtual public hearing on the application.[2] Councilmember Brendmoen moved to deny the rezoning application. She stated that "this is a residential neighborhood" and the street is transforming to a residential feel. She cited the B1 zoning definition and stated that she thought that was an appropriate zone for that area and that "the current B1 zoning works fine." Councilmember Brendmoen then expressed her concerns about police calls, shootings, fights, and loitering that had been going on near the Property. She also stated that the 2040 Comprehensive Plan "does not contemplate any changes to zoning in this area" and the North End District Plan keeps the Property B1. Councilmember Yang spoke next in support of the motion to deny the application. She said that she found the community member's experiences with crime at this location "really moving and really conveyed to us their lived experiences and how important it is for us to support [the] motion."

The record in front of the city council included letters from community members and the North End Neighborhood Organization (NENO). NENO and community members

[2] The June 9, 2021, city council meeting can be found at the following link**:** https://perma.cc/Y84K-RNYM at 24:50-32:09 (referred to hereinafter as "June 9 Hearing").

expressed concerns about public safety issues at the Property. NENO also noted that B1 zoning "is a compatible and appropriate use by the city['s] . . . general intent regarding zoning, . . . and B1 zoning fits the intent of the code by offering services to those *local* to the business." The city council voted to deny the application.[3]

On July 14, 2021, the city council voted to adopt a resolution outlining its reasons for denying the rezoning application. The resolution stated that the Property is zoned B1, which is intended for business uses necessary to satisfy the needs of local residents and that "B1 zoning is appropriate for [the Property]." It then described that "T2 zoning is intended for pedestrian and transit nodes for the purpose of fostering and supporting compact pedestrian oriented, commercial and residential development." It also noted that neither the 2040 Comprehensive Plan nor the North End District Plan contemplates changing the Property and that "B1 zoning is consistent with the way this area is developing." The resolution also expressed concern about public safety at the Property.

Appellants initiated this action seeking declaratory judgment (1) "[t]o determine that the denial of the [a]pplication was an error," (2) "[t]o determine that even if the [c]ity [c]ouncil had power to deny the [a]pplication, a tobacco products shop may nevertheless be maintained as a continuing use at the Property," and (3) "that if the [c]ity wrongfully granted the tobacco products license, it should be estopped from revoking it."

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[3] On June 16, 2021, the city gave notice of its intent to revoke appellants' tobacco products shop license. The city asserts that it started an administrative proceeding to revoke the license and that the proceeding is ongoing.

The city moved to dismiss appellants' nonconforming use and estoppel claims and for a protective order limiting discovery. The district court granted the city's motions. Appellants appealed, and this court dismissed the appeal as from a partial judgment. On August 1, 2022, the city moved for summary judgment on count one, arguing that it had a rational basis to deny the application. The district court granted the motion.

Appellants appeal the district court's summary judgment and its orders dismissing counts two and three and granting the city's motion for a protective order.

DECISION

I. The district court did not err by granting the city's summary judgment motion.

Summary judgment is appropriate when the moving party shows that "there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law." Minn. R. Civ. P. 56.01. "We view the evidence in the light most favorable to the party against whom summary judgment was granted." *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76-77 (Minn. 2002). We review the district court's grant of summary judgment de novo. *Montemayor v. Sebright Prods., Inc.*, 898 N.W.2d 623, 628 (Minn. 2017).

A. The July 14, 2021, resolution states the city's reasons for denying appellants' rezoning application.

Appellants contend that "there is a dispute of fact that the July 14, 2021, resolution by the [c]ity council is in fact the reasons given for its decision." This argument is unpersuasive.

First, appellants contend that there was no written list of reasons for the denial at the time of the hearing, arguing that this contradicts *R.A. Putnam & Assocs., Inc. v. City of Mendota Heights*, 510 N.W.2d 264, 267 (Minn. App. 1994), *rev. denied* (Mar. 15. 1994). "If a city council fails to record the basis for a zoning determination at the time it acts, the zoning action is presumed to be arbitrary." *R.A. Putnam & Assocs., Inc.*, 510 N.W.2d at 267. In *R.A. Putnam & Associates, Inc.*, the council videotaped, took minutes of, and transcribed its hearings at which its reasons for the denial of a zoning request were discussed. *Id.* We concluded that this was enough to overcome a presumption of arbitrariness. *Id.* The court then determined that a resolution adopted two weeks after the denial of the zoning request was prepared and adopted within a reasonable amount of time because the zoning request was complex and involved extensive documentation. *Id.*

Here, the resolution states the city's reason for denial. Like *R.A. Putnam & Assocs.*, the city council videotaped and took minutes of the hearing, which is enough to overcome any presumption of arbitrariness. This case is similarly analogous to *R.A. Putnam and Assocs.* because, even though it took a little over a month for the formal resolution to be adopted, this was a reasonable amount of time given the extensive documentation in this case. The record in front of the city council included committee reports, community letters, the city's 2040 plan, and the neighborhood plan. And the reasons given in the July 14 resolution reflect the reasons stated at the June 9 hearing. Thus, the city council's action is not presumed arbitrary because the July 14 resolution is the city's written decision.

Second, appellants contend that "there is a dispute of fact that the reasons now urged by the [c]ity were the actual reasons in light of the weight of undisputedly impermissible

reasons surrounding them" and that it was impermissible for the city council to consider "that the Property was the cause of violence on the North End." But the city need only prove that one of their bases for denial is rational. *See St. Croix Dev., Inc. v. City of Apple Valley*, 446 N.W.2d 392, 398 (Minn. App. 1989) ("[T]he city's denial of the rezoning request is not arbitrary when at least one of the reasons given for the denial satisfies the rational basis test."), *rev. denied* (Minn. Dec. 1, 1989).

B. The city had a rational basis for denying the rezoning request.

The denial of a rezoning request is a legislative act. *Larson v. County of Washington*, 387 N.W.2d 902, 905 (Minn. App. 1986), *rev. denied* (Minn. Aug. 20, 1986). And "[a]s a legislative act, a . . . rezoning classification must be upheld unless opponents prove that the classification is unsupported by any rational basis related to promoting the public health, safety, morals, or general welfare." *State by Rochester Ass'n of Neighborhoods v. City of Rochester*, 268 N.W.2d 885, 888 (Minn. 1978); *see also* 2023 Minn. Laws ch. 37, art. 6, § 7 (listing these zoning purposes). So long as there is a rational basis for what the city council does, this court will not interfere with the city's decision even if it is debatable because "[a] city council has broad discretion in legislative matters." *Honn v. City of Coon Rapids*, 313 N.W.2d 409, 415 (Minn. 1981). When reviewing the legislative actions of a municipality, "[w]e review the record to determine if the reasons given by the city are legally sufficient and supported by a factual basis." *Wensmann Realty, Inc. v. City of Eagan*, 734 N.W.2d 623, 630 (Minn. 2007).

“This court independently examines a city’s denial of a rezoning request.” *R.A. Putnam & Assocs., Inc*, 510 N.W.2d at 267. We do not accord any deference to the district court’s review. *St. Croix Dev., Inc.*, 446 N.W.2d at 397.

Here, the city council explained that “B1 zoning is consistent with the way this area is developing” and that “[t]here is a small grocery store within [the Property] which fits with the intent of B1 zoning.” The city council concluded that “[t]he current B1 zoning does not need changing to accommodate business changes on this site.”

“The original zoning classification of property is presumed to be well planned, and it is expected to be somewhat permanent.” *Freundshuh v. City of Blaine*, 385 N.W.2d 6, 8 (Minn. App. 1986). When a city’s refusal to rezone is based on a desire to maintain its existing zoning structure, the applicant must prove that the current zoning “was arbitrary, capricious, or otherwise invalid, or that the neighborhood of the subject property had undergone such a substantial change since the enactment of the original . . . zoning classification” as to make the proposed classification the only reasonable classification for the property. *Sun Oil Co. v. Village of New Hope*, 220 N.W.2d 256, 261 (Minn. 1974).

Appellants contend that this presumption applies only when that classification was made as part of a “comprehensive plan.” This argument is unavailing. While *Sun Oil Co.* did emphasize that the village council was acting to support a comprehensive zoning ordinance, *id.*, Minnesota courts have discussed this principle in cases without referencing a “comprehensive plan.” In *Mendota Golf, LLP v. City of Mendota Heights*, our supreme court noted that this presumption is a legal standard that a local government may use when considering an application for a change to a zoning ordinance. 708 N.W.2d 162, 180 n.11

(Minn. 2006). The supreme court noted that "in reviewing a city's zoning decision, a court may have occasion to assess the city's application of the 'change or mistake' standard in determining whether the city had a rational basis for its decision." *Id.*; *see also Honn*, 313 N.W.2d at 419 (citing the standard that "the original classification of this property . . . is presumed to be well planned and intended to be more or less permanent" in a case in which the city did not have a comprehensive plan). Thus, the city's conclusion that the current B1 zone is consistent with the way the area is developing is a legally sufficient basis for denying the rezoning application.

The city council record supports the council's conclusion. In a letter to the zoning committee, NENO wrote, "B1 is a compatible and appropriate use." The record shows that there is still a reasonable use for the Property because appellants also operate a supermarket at the Property. Indeed, appellants cite no evidence in the record that shows the B1 zoning was a mistake or that there is no reasonable use of the property in its B1 zone. *See Honn*, 313 N.W.2d at 419 (stating applicant has the burden of showing a mistake in the original zoning or that neighborhood's character has changed so that there can be no reasonable use of the property in its current zoning classification). Therefore, the city had a rational basis for denying appellants' rezoning application. The city also asserts that it denied the application because the Property does not meet the legal definition of a T2 zone and because its comprehensive plan does not contemplate changes to the Property's zoning. We need not address the city's other reasons for denying the application because a "rezoning [denial] is not arbitrary when at least one of the reasons given for the denial satisfies the rational basis test." *St. Croix Dev., Inc.*, 446 N.W.2d at 398.

II. The district court did not err by dismissing appellants' nonconforming use and equitable estoppel claims.

This court reviews the district court's grant of a motion to dismiss for failure to state a claim de novo. *Sipe v. STS Mfg., Inc.*, 834 N.W.2d 683, 686 (Minn. 2013); *see* Minn. R. Civ. P. 12.02(e). In so doing, we "consider only the facts alleged in the complaint, accepting those facts as true and must construe all reasonable inferences in favor of the nonmoving party." *Bodah v. Lakeville Motor Express, Inc.*, 663 N.W.2d 550, 553 (Minn. 2003).

A. The district court did not err by dismissing appellants' legal nonconforming use claim.[4]

"A nonconforming use is a use of land that is prohibited under a current zoning ordinance but nonetheless is permitted to continue because the use lawfully existed before the ordinance took effect." *White v. City of Elk River*, 840 N.W.2d 43, 49 (Minn. 2013).

Appellants brought this claim under Minn. Stat. § 462.361, subd. 1 (2022), which states that an individual aggrieved by a decision of a governing body may have that decision "reviewed by an appropriate remedy in the district court, subject to the provisions of this section." In actions brought under this statute:

> a municipality may raise as a defense the fact that the complaining party *has not attempted to remedy the grievance* by use of procedures available for that purpose under ordinance or charter, or under sections 462.351 to 462.364. If the court finds that such *remedies have not been exhausted,* it shall *require the complaining party to pursue those remedies* unless

[4] The city contends that appellants' nonconforming-use and estoppel claims are "derivative" of his license revocation case. Because we affirm on other grounds, we need not address whether appellants' claims were derivative.

> it finds that the use of such remedies would serve no useful purpose under the circumstances of the case.

Minn. Stat. § 462.361, subd. 2 (2022) (emphases added). If a party has not exhausted its available remedies, there is no final action for the district court to review. *Stillwater Township v. Rivard*, 547 N.W.2d 906, 912 (Minn. App. 1996).

The district court concluded that the nonconforming use claim was not appropriate for judicial review because appellants did not exhaust their remedies. Appellants contend that the city code does not require them to "apply" to have their use be recognized as a legal nonconforming use because the code provides that a legal nonconforming use will be *presumed*, citing St. Paul, Minn., City Code § 62.102 (2012). This court interprets an ordinance according to its plain and ordinary meaning. *Frank's Nursery Sales, Inc. v. City of Roseville*, 295 N.W.2d 604, 608 (Minn. 1980).

Appellants' argument is not persuasive because the city does have an application process for nonconforming uses. The city code provides that "[a]ny person having an ownership . . . in the subject land . . . is eligible to *file an application* with the planning commission for . . . nonconforming use permit." St. Paul, Minn., City Code § 61.301(a) (1987) (emphasis added). There is an application fee for a nonconforming use permit. St. Paul, Minn., City Code § 61.302(b)(5) (2017). It is the zoning administrator's duty to "determine whether lots, structures, or uses are legally nonconforming." St. Paul, Minn., City Code § 61.201(c) (2010). And while the code does provide that a use may be presumed legally nonconforming, it must first be "demonstrated *by clear and convincing evidence*" that "the use or structure was allowed in its location at the time it was

established." St. Paul, Minn., City Code § 62.102 (2012) (emphasis added). Thus, this provision provides a standard for the zoning administrator to use to determine whether a use is legally nonconforming but does not provide that the use is per se legally nonconforming.

Lastly, appellants contend that, even if they did need to apply to be recognized as a nonconforming use, the application process would have been futile. But appellants do not describe how the process would have been futile. Indeed, the city zoning administrator declared that his "office reviews any request for recognition of a legally nonconforming land-use on a case-by-case basis" and that "[u]ntil [his] office receives a request for recognition of a legally nonconforming land-use in connection with the [P]roperty . . . and until [his] office conducts a thorough review and investigation of that request, [he] cannot say whether or not that request would qualify as a legally nonconforming use under state and local law." Therefore, because appellants did not exhaust their remedies by applying for a nonconforming use permit, the district court did not err by dismissing their nonconforming use claim. *See* Minn. Stat. § 462.361, subd. 2.

B. The district court did not err by dismissing appellants' estoppel claim.

A license revocation or denial is a quasi-judicial decision. *DRJ, Inc. v. City of St. Paul*, 741 N.W.2d 141, 142 (Minn. App. 2007). A municipality's quasi-judicial decision is reviewable by a certiorari appeal to the court of appeals. *County of Washington v. City of Oak Park Heights*, 818 N.W.2d 533, 539 (Minn. 2012). The limited scope of judicial review of municipal decisions is based on the separation of powers clause in the Minnesota Constitution. *Id.*; *see* Minn. Const. art. 3, § 1. This court reviews questions of subject

matter jurisdiction de novo. *Zweber v. Credit River Township*, 882 N.W.2d 605, 608 (Minn. 2016).

The district court concluded that whether a license should be revoked is a quasi-judicial decision that is only reviewable by the court of appeals. Here, the decision to revoke appellants' tobacco products shop license is a quasi-judicial decision. *See DRJ, Inc.*, 741 N.W.2d at 142. As such, appellants' request that the district court estop the city from revoking appellants' tobacco products shop license would be an impermissible review by a district court of a municipality's quasi-judicial decision.

Appellants contend that they are not "seek[ing] to undo any quasi-judicial decision, but just to establish a right to a *use* which is then subject to licensing." But count III of appellants' complaint does not allege a right to a use; the complaint requests "that if the [c]ity wrongfully granted the tobacco products license, it should be estopped from revoking it." Therefore, the district court did not err in dismissing appellants' equitable estoppel claim.

III. The district court did not abuse its discretion by granting the city's motion for a protective order.

Upon a motion by a party from whom discovery is sought that makes a good cause showing that justice requires protection from "annoyance, embarrassment, oppression, or undue burden or expense," the district court may order that discovery not be had. Minn. R. Civ. P. 26.03(a)(1). The district court has wide discretion to issue protective orders, and, absent a clear abuse of that discretion, its discovery orders will not be disturbed. *Erickson v. MacArthur*, 414 N.W.2d 406, 409 (Minn. 1987).

Review of a municipal proceeding should be on the record where the proceeding was fair and the record clear and complete. *Swanson v. City of Bloomington*, 421 N.W.2d 307, 313 (Minn. 1988). But if "the municipal proceeding has not been fair or the record of that proceeding is not clear and complete," the parties may add to the record in district court. *Id.*

Appellants asserts that the "hearing in front of the [c]ity [c]ouncil was not fair."[5] In *R.L. Hexum & Assocs., Inc. v. Rochester Township, Board of Supervisors*, this court considered whether a conditional use permit hearing before a township board was fair. 609 N.W.2d 271, 278 (Minn. App. 2000). We concluded that the proceeding was fair because the property owner had "ample opportunity" to present evidence before the township made its decision, their submissions were in the district court record, all proceedings were recorded and transcribed, and the township made contemporaneous findings. *Id.*

Here, the district court concluded that the June 9 hearing was "fair and the administrative record clear and complete." The district court noted that appellants submitted nothing to the city before the city council hearings. Appellants had a chance to submit evidence to the city council before the hearings but chose not to. Like *R.L. Hexum & Assocs., Inc.*, all of the city council hearings were recorded and transcribed, and the city council made contemporaneous findings. Therefore, the city council hearing was fair.

[5] Appellants first contend that the protective order should be reversed because counts two and three should be reinstated. But, as previously discussed, the district court did not err in dismissing those counts.

Appellants also contend that the "failure of the [c]ity [c]ouncil to record the reasons for its actions, as of June 9, 2021," rendered the record not clear and complete and "establish[ed] a prima facie case of an unfair hearing." "Where the municipal body has proposed formal findings contemporaneously with its decision and there is an accurate verbatim transcript of the proceedings, the record is likely to be clear and complete." *Swanson*, 421 N.W.2d at 313. The district court concluded that the city council "clearly stated on the record why it [moved to deny appellants' application] before holding a vote." As explained above, the city council did record its reasons on June 9 and in a resolution. The reasons stated at the hearing and in the resolution are the same. The municipal proceeding was fair and the record clear and complete. Thus, the district court did not abuse its discretion by issuing a protective order limiting discovery.

Affirmed.