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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1446**

Stephen Linn, et al.,
Relators,

vs.

City of Newport, et al.,
Respondents.

**Filed April 22, 2013
Affirmed
Cleary, Judge**

City of Newport

David B. Gates, Kenneth J. Rohlf, Levander, Gillen & Miller, P.A., South St. Paul, Minnesota (for relators)

James J. Thomson, Mary D. Tietjen, Kennedy & Graven, Chartered, Minneapolis, Minnesota (for respondents)

Considered and decided by Smith, Presiding Judge; Cleary, Judge; and Huspeni, Judge.*

UNPUBLISHED OPINION

CLEARY, Judge

Relators challenge the Newport City Council's denial of an application for an off-sale intoxicating liquor license. They argue that the city council abused its discretion,

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

violated their right to equal protection, and failed to issue written findings contemporaneous to and consistent with the denial of the application. We affirm.

FACTS

In June 2012, relator Stephen Linn applied for an off-sale intoxicating liquor license from the City of Newport. He wished to open and operate a liquor store in a vacant commercial space within the city. The city's code allows for the issuance of up to five off-sale intoxicating liquor licenses, and only two had been issued at the time of the application.

The application was discussed during a city council meeting held on July 19, 2012. During the meeting, the city council took comments from members of the community, including the two owners of Newport Liquor Store, the city's existing liquor store located approximately 400 feet from the intended location of Linn's store. Following the discussion, the city council voted to deny the application. During a city council meeting held on September 6, 2012, the city council issued Resolution No. 2012-24, which set forth reasons for the denial of the application and formally adopted the denial. This appeal followed.

D E C I S I O N

I. The city council did not abuse its discretion by denying the application.

A city council has the power to refuse to issue a liquor license "when, in the judgment of the council, the welfare of the city suggests such action." *Polman v. City of Royalton*, 311 Minn. 555, 556, 249 N.W.2d 466, 467 (1977). A city council has "broad discretion" to determine whether to issue a liquor license, and a court's scope of review

of such a determination is “narrow” and “should be exercised most cautiously.” *Wajda v. City of Minneapolis*, 310 Minn. 339, 343, 246 N.W.2d 455, 457 (1976). A court will, however, interfere to prevent an abuse of discretion and will grant relief from unreasonable, arbitrary, capricious, or fraudulent acts. *Id.* A decision is arbitrary and capricious if it is an exercise of will rather than judgment, is based on whim, or is devoid of articulated reasons. *CUP Foods, Inc. v. City of Minneapolis*, 633 N.W.2d 557, 565 (Minn. App. 2001), *review denied* (Minn. Nov. 13, 2001). The applicant for a liquor license has the burden of proving that the city council acted in an arbitrary manner. *Country Liquors, Inc. v. City Council of City of Minneapolis*, 264 N.W.2d 821, 824 (Minn. 1978).

The city council’s reasons for denying the application are evident from the discussion during the July 19 meeting and from the resolution, and these reasons demonstrate that the city council made its decision out of concern for the welfare of the city. During the meeting, council members were troubled by the fact that Linn wished to open his liquor store next to an existing liquor store. The two stores would be located along a highway leading into the city, and council members were concerned about the image that adjacent liquor stores might create. Council and community members noted that their attitude toward the application might be different if Linn wished to open his liquor store in a different location, such as across the highway or in another vacant space in the city.

Council members also questioned whether the city, with a population of approximately 3,400 people, requires another liquor store to serve its population. One

council member stated that, along the highways leading into the city, there are “a lot of different . . . liquor stores,” and questioned whether “the market is saturated at all for liquor stores.” That council member noted that the city council has “a compelling interest” in “attract[ing] and having a diverse ecosystem of businesses that can contribute to our economic development” and “drive a diverse customer base,” and stated that he was “not sure” that another liquor store went along with the city’s long-term development plan. Another council member stated that his decision on the matter would “hinge[] on the [c]ity’s long-term strategic development.” Some council and community members stated outright that they did not think that the city needed another liquor store and did not believe that another liquor store was in the city’s best interests. The resolution states that “there is an adequate number of off-sale liquor stores in the vicinity of the proposed liquor store to serve the needs of Newport residents,” and that Linn had “failed to persuade the [c]ity [c]ouncil that another liquor store within the [c]ity, particularly at that location, is needed or is in the interest of Newport residents.” The resolution explains that the city council “prefers that a variety of retail uses be located in the vicinity of the proposed liquor store and [believes] that concentrating two liquor stores in the area is not in the best interests of the [c]ity or its residents.”

Members of the community, including the owners of Newport Liquor Store, expressed concern during the July 19 meeting that the opening of Linn’s liquor store right next to Newport Liquor Store would put the existing, smaller store out of business. Council members stated that, while they support competition and free enterprise, having two liquor stores located next to one another in their small city seemed inappropriate.

The resolution states that the comments of community members were “persuasive that the proposed location for the license holder would potentially damage the business of the current license holder and could quite possibly put it out of business,” and that “a decision by the [c]ity [c]ouncil that could damage the business of the current license holder, who has operated a satisfactory liquor store within the [c]ity for many years, is not in the best interest of the citizens of the [c]ity.”

Relators contend that the denial of the application was based solely on protection of a private business from competition and not on any reasons related to public welfare. This contention is not supported by the discussion during the July 19 meeting or by the resolution. During the meeting, council members expressed concern about the impression of the city that would be created by adjacent liquor stores along a highway leading into the city. They discussed whether an additional liquor store was necessary to serve the needs of the city’s small population. They considered the city’s long-term plan to attract and develop a diversity of businesses and discussed whether having an additional liquor store corresponded with that plan. The resolution does indicate that the city council’s decision to deny the application was based, in part, on the belief that the opening of Linn’s liquor store would be damaging to Newport Liquor Store, which would not be “in the best interest of the citizens of the [c]ity.” However, the resolution reveals that the city council’s decision was also based on the adequacy of liquor stores in the city, the desire not to have two liquor stores in the same location, and the preference toward developing a variety of businesses.

Relators maintain that these reasons for denying the application are insufficient when the city has not adopted specific regulations or standards regarding its preferred mix of businesses or how far apart liquor stores should be. Relators argue that specific regulations or standards on the placement of liquor stores within the city are required and cite caselaw on land use and zoning to support their argument. But a city council has broad discretion to deny a liquor license “when, in the judgment of the council, the welfare of the city suggests such action.” *Polman*, 311 Minn. at 556, 249 N.W.2d at 466–67 (affirming the denial of a liquor-license application because the city’s existing liquor establishments “fulfilled the need of the community”); *see also Country Liquors*, 264 N.W.2d at 824–25 (affirming the denial of a liquor-license application based on complaints by community members regarding “projected ill effects on their neighborhood”); *Bergmann v. City of Melrose*, 420 N.W.2d 663, 666 (Minn. App. 1988) (affirming the denial of a liquor-license renewal based on the adequacy of liquor establishments in the city and the desire for a diversity of businesses). The city council’s broad discretion makes the issuance of liquor licenses distinguishable from the areas of land use and zoning, where “clearly expressed” restrictions are required. *See Chanhassen Estates Residents Ass’n v. City of Chanhassen*, 342 N.W.2d 335, 340 (Minn. 1984). The city council’s reasons for denying the application are not unreasonable, arbitrary, or capricious.

Relators compare this case to *Wajda v. City of Minneapolis*, in which the supreme court held that a city council had acted unreasonably, arbitrarily, and capriciously by denying an application for a liquor license. 310 Minn. at 343–46, 246 N.W.2d at 457–59.

In *Wajda*, the appellant had operated a tavern for 11 years, with no significant violations of law or complaints from neighbors, before leasing the premises to others. *Id.* at 340–44, 246 N.W.2d at 456–58. Thereafter, numerous violations of law were charged and numerous nuisance complaints were made regarding the tavern, resulting in its liquor license being surrendered. *Id.* at 341, 246 N.W.2d at 456. The appellant then decided to begin operating the tavern again herself and applied for a new liquor license, but the city council denied her application based on the unfitness of the former lessees and a finding that the premises were an unsuitable location for a liquor establishment. *Id.* at 342–43, 246 N.W.2d at 457. The court rejected the city council’s first reason for denial because the appellant had previously operated the tavern competently herself and there was no evidence that she had been aware of the lessees’ misconduct. *Id.* at 343–45, 246 N.W.2d at 458. The court rejected the excuse that the premises were an unsuitable location for a liquor establishment because a tavern had existed in that location for more than 20 years. *Id.* at 345–46, 246 N.W.2d at 459.

The facts of *Wajda* are distinguishable from the present case. First, there is no allegation that Linn is unsuitable to operate a liquor store. In fact, the resolution states that Linn “has been a good businessman in the [c]ity and the [c]ity finds no fault whatever with his personal character or his financial background.” Second, the city council did not determine that the desired location for Linn’s liquor store is unsuitable for the sale of liquor. Rather, the city council was concerned about the potential saturation of liquor establishments in that particular location and in the city in general.

Relators imply that the application should have been approved because Linn was a fully-qualified applicant, and the city code allows for the issuance of three more off-sale intoxicating liquor licenses. But Minnesota caselaw makes clear that a city council has discretion to deny a liquor-license application even when the minimum requirements for receipt of a liquor license have been satisfied. *See, e.g., Country Liquors*, 264 N.W.2d at 824 (rejecting an argument that a city council was compelled to approve a liquor-license application because the application met the requirements of the applicable ordinance). This discretion makes the issuance of liquor licenses distinguishable from the areas of land use and zoning, where “approval of a permitted use follows as a matter of right” if ordinance requirements and regulations are complied with. *See Chanhassen Estates Residents Ass’n*, 342 N.W.2d at 340. The city council did not abuse its discretion by denying the application.

II. The city council did not violate relators’ right to equal protection by denying the application.

Both the United States Constitution and Minnesota Constitution guarantee the right to equal protection of the law. *See* U.S. Const. amend. XIV, § 1; Minn. Const. art. I, § 2. The guarantee of equal protection requires that similarly situated individuals be treated equally. *Hale v. Viking Trucking Co.*, 654 N.W.2d 119, 125 (Minn. 2002). Relators argue that the denial of the application violated their right to equal protection. They apparently believe that they are entitled to a liquor license because one was previously issued to Newport Liquor Store. They presume that liquor-license holders and liquor-license applicants are similarly situated.

Even if we assume that similarly situated individuals were not treated equally in this case, rational-basis scrutiny would apply to this equal-protection claim because no fundamental right or suspect classification is involved. *See Kayo Oil Co. v. City of Hopkins*, 397 N.W.2d 612, 614–15 (Minn. App. 1986) (applying rational-basis scrutiny to an equal-protection claim arising from the denial of a liquor-license application); *see also Sabes v. City of Minneapolis*, 265 Minn. 166, 171, 120 N.W.2d 871, 875 (1963) (stating that “[n]o citizen has an inherent or vested right to sell intoxicating liquors”). Under rational-basis scrutiny, a classification should be upheld if it is “rationally related to the achievement of a legitimate governmental purpose.” *Kayo Oil*, 397 N.W.2d at 614 (citing *Minnesota v. Clover Leaf Creamery Co.*, 449 U.S. 456, 464, 101 S. Ct. 715, 724 (1981)). Limiting the issuance of liquor licenses falls within a city’s police power, and “an exercise of the police power will be upheld [under rational-basis scrutiny] where it has for its object the public health, safety, morality or welfare and where it is reasonably related to the attainment of those objectives.” *Kayo Oil*, 397 N.W.2d at 615.

As we previously stated, the record reflects that the city council made its decision out of concern for the welfare of the city. Promotion of city welfare is a legitimate governmental objective, and limiting the number of liquor stores in a city or in a particular area of a city is rationally related to the achievement of that objective. *See Bergmann*, 420 N.W.2d at 667 (holding that the denial of a liquor-license renewal based on the adequacy of liquor establishments in the city and the desire for a diversity of businesses was rationally related to the promotion of public welfare and was not a

violation of the right to equal protection). The city council did not violate relators' right to equal protection by denying the application.

III. The resolution was contemporaneous to and consistent with the denial of the application.

A decisionmaking entity must make a record “contemporaneous” with a decision to explain its findings and reasoning; this requirement prevents the entity from making “after-the-fact justifications” that are “unrelated to the actual reasons” for the decision. *R.A. Putnam & Assocs., Inc. v. City of Mendota Heights, Dakota Cnty.*, 510 N.W.2d 264, 267 (Minn. App. 1994) (quotations omitted), *review denied* (Minn. Mar. 15, 1994). To be considered “contemporaneous,” the necessary record need not be completed at the same time that the decision is made, but must be “prepared within a reasonable time.” *Id.*

Relators claim that the findings in the resolution are not consistent with the discussion during the July 19 meeting and that the resolution contains “after-the-fact justifications” for the denial of the application. The resolution lists as reasons for the denial that damaging the business of Newport Liquor Store and concentrating two liquor stores in an area is not in the best interests of the city; that the existing liquor store adequately serves the needs of city residents; and that the city council prefers to develop a variety of retail businesses in the vicinity of the proposed liquor store. As we previously discussed, all of these reasons were brought up during the July 19 meeting.

Relators also take issue with the fact that the resolution was not adopted until September 6, when the vote to deny the application took place on July 19. They argue that the issuance of the resolution was not “contemporaneous” with the city council’s

decision. But the record reveals a reasonable explanation for the delay in the issuance of the resolution. The minutes from the September 6 meeting indicate that the city's practice is to put a written resolution on an issue before the city council during the first monthly meeting held after the city council's vote on the issue. The resolution would have been put before the city council during the August 2012 meeting, but one councilman could not be present for the August meeting and requested that acceptance of the resolution be tabled until the September meeting. The resolution was contemporaneous to and consistent with the denial of the application.

Affirmed.