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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1635**

Martin Huss, et al.,
Respondents,

vs.

Scott County,
Appellant.

**Filed October 7, 2008
Reversed
Muehlberg, Judge***

Scott County District Court
File No. 70-CV-07-7663

Phillip R. Krass, C. John Jossart, Krass & Monroe, P.A., 8000 Norman Center Drive,
Suite 1000, Minneapolis, MN 55437-1178 (for respondents)

Jason J. Kuboushek, Iverson Reuvers, 9321 Ensign Avenue South, Bloomington, MN
55438 (for appellant)

Considered and decided by Lansing, Presiding Judge; Minge, Judge; and
Muehlberg, Judge.

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

UNPUBLISHED OPINION

MUEHLBERG, Judge

Scott County appeals from a final order and judgment in a mandamus proceeding, which requires appellant to approve respondents' preliminary plat. Because the writ of mandamus was improperly issued, we reverse.

FACTS

At issue is the propriety of appellant Scott County requiring respondents to include future drainage and utility easements over an existing drainage ditch as a condition of granting respondents' application for rezoning and approval of a preliminary plat. The district court found that respondents' refusal to grant the requested easements was "the only impediment to the approval of the preliminary plat," a prerequisite to respondents' development of their property.

Four families entered into an agreement in 1963 for construction of a private ditch to benefit four farms, including the one that respondents now seek to develop. In April 2006, respondents submitted a preliminary plat and rezoning application to divide 349.01 acres into 16 lots and five outlots. In several memoranda issued during review of the preliminary plat, the county's natural resources department informed respondents that they must include drainage and utility easements to serve both the developed areas and "preserved areas" that are not currently being developed, that easements must be included on "grading plans," and that easements "over the existing ditches" must be included. In June 2006, the Scott County Planning Commission recommended approval of respondents' application, contingent on respondents obtaining approval of the plat from

the natural resources department before the application would be considered by the county board.

In October 2006, the county board approved respondents' request for rezoning and for approval of the preliminary plat, subject to certain conditions. Shortly thereafter, the county received drawings of the property from respondents that included drainage and utility easements. In November 2006, the natural resources department confirmed that the plans conformed to applicable requirements.

After the preliminary plat was approved, respondents again objected to the drainage and utility easements and proposed that "stormwater detention ponds" shown on the plat be redesigned, so they would not drain into the existing ditch. The county maintained its position that because the existing ditch conveyed water across the platted area and accepted runoff from adjacent properties, it constituted a "stormwater management facility" and easements are required. In March 2007, respondents initiated a mandamus action in the district court, seeking to compel appellant to approve the plat without the contested easements. The district court concluded that because the area could be developed in a manner that would not direct surface water from the new development into the ditch, the contested easements were not required by the applicable ordinances, and it issued a writ of mandamus. This appeal was taken from the final order and judgment of the district court.

DECISION

Ordinary remedy for review of plat approval decisions

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 (2006). 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 v. City of Delano*, 526 N.W.2d 205, 207 (Minn. App. 1995). When reviewing findings of a district court ruling on an application for mandamus relief, we will reverse only if “there is no evidence reasonably tending to sustain” those findings. *Id.* 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).

That someone challenging “the validity of the ultimate action taken by [a governmental subdivision] with respect to [a] proposed plat” may do so by taking a certiorari appeal “is well established.” *Binder v. Village of Golden Valley*, 260 Minn. 418, 423, 110 N.W.2d 306, 309 (1961). Most such cases come before this court by way of a certiorari appeal from the denial of a plat application. *See, e.g., Hurrle v. County of Sherburne*, 594 N.W.2d 246, 249 (Minn. App. 1999). We note that in this case, the appellant actually approved the plat application, although respondents are objecting to the easements required as a result of appellant’s interpretation of the applicable ordinances. A certiorari appeal is the proper route to challenge a decision regarding a plat, when the

challenger alleges that the county's decision is based on an incorrect theory of the applicable law. *PTL, LLC v. Chisago County Bd. of Comm'rs*, 656 N.W.2d 567, 571 (Minn. App. 2003); *see also W. Circle Props. LLC v. Hall*, 634 N.W.2d 238, 241-44 (Minn. App. 2001) (reviewing township's refusal to record a plat, based on interpretation of statutory provision requiring prior county approval), *review denied* (Minn. Dec. 19, 2001). Even if there are related proceedings in the district court, any legal issue involving interpretation of the applicable statutes or ordinances can be addressed by this court in the context of a certiorari appeal from the governmental decision. *W. Circle Props.*, 634 N.W.2d at 244. But respondents failed to bring a certiorari appeal from the county's decision or to establish that a certiorari appeal would be an inadequate remedy.

Certiorari is not the appropriate remedy to review most zoning decisions, and district court actions for declaratory judgment, injunctive relief, or mandamus may be appropriate to challenge such decisions. *Honn v. City of Coon Rapids*, 313 N.W.2d 409, 416 (Minn. 1981). Even when a zoning decision is involved, mandamus has only limited application and a declaratory judgment action is more often the appropriate remedy to obtain review of a decision by a governmental subdivision. *Mendota Golf, LLP v. City of Mendota Heights*, 708 N.W.2d 162, 178 (Minn. 2006). In this case, respondents' application for rezoning was approved, they did not challenge that decision in the district court, and their challenge is limited to appellant's decision regarding the need to include drainage and utility easements over the ditch that falls within the platted area. Accordingly, their ordinary remedy was a certiorari appeal to this court, and not a petition for mandamus in the district court.

Respondents' reliance on *Kramer v. Otter Tail County Bd. of Comm'rs*, 647 N.W.2d 23 (Minn. App. 2002) is misplaced. That case recognized that a mandamus action in the district court may be an appropriate remedy for a county's refusal to act on an application for a conditional use permit within the period prescribed by statute for ruling on "a request relating to zoning." *Kramer*, 647 N.W.2d at 25-26. But respondents are not challenging any refusal to act on their application, their challenge to the county's decision does not turn on the calculation of a specified statutory deadline, and the specific decision challenged does not involve a request related to zoning of the property. Certiorari would have provided an adequate remedy to respondents and the district court erred in granting mandamus.

Failure to perform an official duty

Generally, when certiorari is available, it is the exclusive remedy for review of a quasi-judicial decision by an agency or governmental body. *Willis v. County of Sherburne*, 555 N.W.2d 277, 282 (Minn. 1996); *Heideman v. Metro. Airports Comm'n*, 555 N.W.2d 322, 323 (Minn. App. 1996). And when a litigant aggrieved by a decision fails to obtain a timely writ of certiorari, that litigant is not entitled to a review on the merits of the challenge by way of some other remedy. *See In re Occupational License of Haymes*, 444 N.W.2d 257, 259 (Minn. 1989) (reversing review on the merits of quasi-judicial decision, because of litigant's failure to timely petition this court for writ of certiorari).

Respondents argued in the district court that the county had a clear duty to approve the plat application without requiring easements over the existing ditch and that its

interpretation of the county ordinance requiring easements “over any stormwater management facilities, natural drainageways, and wetlands,” was erroneous. *See* Scott County, Minn., Land Subdivision Ordinance No. 7 ch.7, § 7-5(1) (2001). The district court determined that the ordinance should be construed to limit its application to facilities that are constructed to “address the impact” of the development being proposed and concluded that because the ditch was created years before, for purposes unrelated to the proposed development, the county had a clear duty to interpret the ordinance in respondents’ favor.

The interpretation of a zoning ordinance is a question of law, and is therefore reviewed de novo by this court. *Frank’s Nursery Sales, Inc. v. City of Roseville*, 295 N.W.2d 604, 608 (Minn. 1980). When the governmental body charged with interpreting an ordinance is acting in a fact-finding or policy-making capacity, courts review a decision to determine whether it was arbitrary and capricious. *Id.* “Thus, where the question is whether an ordinance is applicable to certain facts, the determination of those facts is for the governmental authority, but the manner of applying the ordinance to the facts is for the court.” *Id.*

When interpreting terms of ordinances that are not defined therein, reviewing courts are guided by several principles: (1) terms should be construed according to their plain and ordinary meanings; (2) zoning ordinances should be strictly construed in favor of property owners; and (3) the underlying policy goals of the ordinance must be considered when construing the ordinance. *Id.* at 608-09.

It is undisputed that the ditch located within the platted area was intentionally constructed to drain water that would otherwise accumulate on or flow across the four farms it served. Presumably, the property owners served by the ditch expected that it would provide “an outlet for water that would otherwise accumulate on the land.” *See In re Redetermination of Benefits of Nicollet County Ditch 86A*, 488 N.W.2d 483 (Minn. 1992). By providing an outlet in the location chosen by the property owners, the ditch assisted with the management of stormwater, directing it in a manner or to a degree that would not have occurred naturally. Thus, construing the ditch to be a stormwater management facility is consistent with the plain and ordinary meaning of the term.

Chapter 6 of the county’s zoning ordinance is devoted to stormwater management, erosion control, and wetlands. Scott County, Minn., Zoning Ordinance ch. 6 (2001). One of the stated purposes of that chapter is “[t]he protection, preservation, maintenance, and use of the water and soil resources of the unincorporated area of the County through management of stormwater drainage, minimization of land disturbance, and prevention of damage from erosion and sedimentation.” *Id.* Construing the ditch to be a stormwater management facility is consistent with the policy underlying the county ordinances.

We do not endorse appellant’s argument that “anything which manages stormwater” could be characterized as a stormwater management facility. That argument is inconsistent with the requirement that we construe zoning ordinances in favor of the property owner, in a manner least restrictive of a property owner’s right “to use his land as he wishes.” *Frank’s Nursery Sales*, 295 N.W.2d at 609. Appellant’s broad definition could arguably result in mandatory easements over any low area that tends to collect

rainwater. But that is not the situation presented here; this ditch was intentionally constructed to manage stormwater and to benefit the property on which respondents are proposing a new development. Construing the ordinance so that the existing ditch is subject to regulations on stormwater management facilities, while permitting the proposed development of the property, does not impose significant additional restrictions on the respondents' right to use the land as they wish.

Because respondents had an adequate legal remedy and could have filed a certiorari appeal from the county's decision on the preliminary plat, and because the county did not have a clear duty to interpret the applicable ordinances in the manner proposed by respondents, the district court erred in granting a writ of mandamus.

Reversed.