

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**August 14, 2008**

David R. Schanker  
Clerk of Court of Appeals

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2007AP1643**

**Cir. Ct. No. 2006CV675**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

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**ARTHUR DONALDSON,**

**PLAINTIFF-APPELLANT,**

**V.**

**VILLAGE OF JOHNSON CREEK, PLAN COMMISSION OF THE VILLAGE  
OF JOHNSON CREEK, VILLAGE BOARD OF TRUSTEES OF THE VILLAGE  
OF JOHNSON CREEK AND JOAN DYKSTRA, VILLAGE CLERK OF THE  
VILLAGE OF JOHNSON CREEK,**

**DEFENDANTS-RESPONDENTS.**

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APPEAL from an order of the circuit court for Jefferson County:  
JOHN ULLSVIK, Judge. *Affirmed.*

Before Vergeront, Lundsten and Bridge, JJ.

¶1 BRIDGE, J. Arthur Donaldson appeals a circuit court order affirming the Johnson Creek Village Board's denial of his preliminary plat for a

residential development. He argues that Johnson Creek's action in denying his preliminary plat was arbitrary and unreasonable. We disagree and therefore affirm.

## BACKGROUND

¶2 Donaldson owns a 26.4 acre parcel of land zoned to permit residential development, which is situated immediately south of Interstate Highway 90/94 in Johnson Creek. On September 15, 2006, Donaldson filed with the Village of Johnson Creek a preliminary plat<sup>1</sup> called "Centennial Heights" that would divide the parcel into 48 lots. Johnson Creek Ordinance § 245-24<sup>2</sup> requires that preliminary plats be filed with the Plan Commission at least 45 days prior to the meeting of the Plan Commission at which action is desired.

¶3 On September 20, the Village engineer sent the Village administrator a letter identifying a number of deficiencies with the preliminary plat that would need to be addressed before the preliminary plat could be approved. The deficiencies relevant to our analysis included: (1) the failure to

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<sup>1</sup> A "preliminary plat" is "a map showing the salient features of a proposed subdivision submitted to an approving authority for purposes of preliminary consideration." WIS. STAT. § 236.02(9) (2005-06). All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

<sup>2</sup> Section 245-24 provides in pertinent part:

Before submitting a final plat for approval, the subdivider shall prepare a preliminary plat which shall be clearly marked "preliminary plat" and a letter of application. The preliminary plat shall be prepared in accordance with this chapter, and the subdivider shall file ... with the Village of Johnson Creek Clerk-Treasurer or designee at least 45 days prior to the meeting of the Village of Johnson Creek Plan Commission at which action is desired.

provide the type, width and elevation of existing street pavements within the exterior boundaries of the preliminary plat or immediately adjacent as required by ordinance § 245-33E; (2) the failure to provide the location, width and names of all proposed streets and public rights-of-way, such as alleys and easements as required by ordinance § 245-33O; (3) the failure to provide a storm water management plan for an outlot designated as being reserved for storm water management purposes, which prevented the Village engineer from evaluating the appropriate size and location of a detention pond; (4) the fact that a utility schematic submitted with the preliminary plan indicated the proposal of sewer extension to serve eleven lots even though there was no sanitary sewer extending to the plat from the sanitary station; and (5) omissions from the utility and street construction plans relating to storm sewer, paving details, curb and gutter grades, utility grades for sanitary sewer and watermain, lot grades, location of building envelopes, and foundation/first floor grades. This letter was forwarded to Donaldson's representative.

¶4 On September 21, 2006, the Johnson Creek Plan Commission reviewed Donaldson's preliminary plat. Donaldson's representative requested that the plan before the commissioners be considered a preliminary plat rather than a concept plan. However, because Donaldson's preliminary plat was submitted less than 45 days before the September 21 meeting, the Plan Commission considered its review of the plat to be "conceptual" rather than official. At the meeting, Donaldson's representative gave a presentation about the proposed development. Members of the Plan Commission expressed a number of concerns regarding the plat, some of which, Donaldson's representative indicated, would be addressed by modifying the preliminary plat. These concerns included: Donaldson's failure to send copies of the preliminary plat to those state agencies having the right to

object; the flow of the sewage system; the existence of a billboard on the property; lot configurations; and whether storm water calculations, soil borings, and revised sewer drawings would be submitted to the village engineer. At the close of the Plan Commission's discussion, a member of the Plan Commission advised Donaldson's representative to take the comments by the village staff into consideration before bringing the plan back as a preliminary plat.

¶5 Thereafter, the matter of the preliminary plat was placed on the Plan Commission's agenda for its October 19, 2006 meeting. In the interim between the September 21 meeting and the October 19 meeting, no modifications were made to the preliminary plat. The Plan Commission voted to recommend that the plat be denied.

¶6 Johnson Creek Ordinance § 245-25(B) provides that the Village Board shall, within 90 days of the date of filing a preliminary plat, act on the plat.<sup>3</sup> The ordinance reflects a similar requirement in WIS. STAT. § 236.11(1)(a). On October 23, the Village Board adopted a resolution denying the preliminary plat. The Village Board cited the following five reasons for denying the plat:

1. The plat application was deficient, as noted by the Village Engineer in correspondence provided to the applicant prior to the Plan Commission meeting of September 21, 2006. Despite requests made during the meeting of September 21, 2006 by the Plan Commission for the additional information, and the

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<sup>3</sup> Section 245-25B provides in pertinent part:

The Village Board shall, within 90 days of the date of filing a preliminary plat with the Village of Johnson Creek Clerk-Treasurer or designee, approve, approve conditionally, or reject such plat. If the preliminary plat is approved conditionally or rejected, the Village of Johnson Creek shall state, in writing, any conditions of approval or the reasons for rejection.

acknowledgement by the applicant's representatives that such information would be provided, the information has not been submitted to the Village.

2. The applicant has failed to submit information evidencing the filing of the plat with other approving or objecting authorities.
3. The applicant has acknowledged the existences of a 40 foot wide vision easement which extends a distance of 400 feet along the common property line to the property immediately adjacent, and south of, the proposed plat.... The preliminary plat, if finally approved, would result in the dedication of a public roadway which crosses a portion of the easement area. Unless and until the easement is removed, a plat with the road configuration depicted on the preliminary plat could not be approved because the proposed road could not be dedicated to the Village free and clear of this encumbrance. The applicant has provided no information indicating that the easement can be removed as a part of the platting process.
4. The designation of Outlot 2 as an outlot is inconsistent with the provisions of the Village Code relating to subdivision of land.
5. The proposed retention of a nonconforming billboard structure on Outlot 4 is inconsistent with sound planning and land division practices. The area surrounding the proposed outlot is entirely developed for residential purposes. The continued maintenance of the billboard would be inconsistent with reasonable development of the property for residential purposes.

¶7 Donaldson petitioned the circuit court for Jefferson County for certiorari review of the Village Board's decision pursuant to WIS. STAT. §§ 236.13(5) and 62.23(7)(e)<sup>4</sup>. The Village moved the court for summary judgment. In its memorandum decision on the Village's motion, the court ruled

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<sup>4</sup> Donaldson also filed suit against the Village in another action, 04-CV-493. That action arose out of a special assessment proceeding undertaken by the Village pursuant to WIS. STAT. § 66.0703. On Donaldson's motion, the action giving rise to the present appeal and 04-CV-493 were consolidated for trial purposes.

that the Village Board's second and fourth reasons for denying the plat were invalid. However, the court upheld the remaining reasons and affirmed the Village Board's rejection of Donaldson's preliminary plat. The court therefore entered an order dismissing the action. Donaldson appeals.

### STANDARD OF REVIEW

¶8 On appeal to the circuit court under WIS. STAT. § 236.13(5), “[t]he court shall direct that the plat be approved if it finds that the action of the approving authority or objecting agency is arbitrary, unreasonable or discriminatory.” In this court, we review the decision of the Village Board, not that of the circuit court, and we apply the same standard to the Board's decision as did the circuit court. *Manthe v. Town Bd. of Windsor*, 204 Wis. 2d 546, 551, 555 N.W.2d 167 (Ct. App. 1996). Our review is limited to: (1) whether the Village Board kept within its jurisdiction; (2) whether it acted according to law; (3) whether its action was arbitrary, oppressive or unreasonable and represented its will and not its judgment; and (4) whether the evidence was such that it might reasonably make the decision in question. *Id.* Whether the Village Board has exceeded its statutory authority is a question of law which we review de novo. *Id.* However, in reviewing the reasons for the rejection, we affirm if there is adequate support in the record. *Busse v. City of Madison*, 177 Wis. 2d 808, 812, 503 N.W.2d 340 (Ct. App. 1993). If a municipality rejects a plat for several reasons, it is sufficient if the record supports one of the reasons, and we need not address the others. *Id.* at 813.

### DISCUSSION

¶9 The first reason specified by the Village Board for denying Donaldson's preliminary plat was that the application was deficient due to

Donaldson's failure to provide the Village Board with additional information, which was required by Village ordinance and was needed in order for the Plan Commission and the Village Board to properly evaluate the proposed land division. This information, which was specified in the letter from the Village engineer, is described above.

¶10 The Village points out that both by letter dated September 20 and at the September 21 meeting, Donaldson's representatives were asked to provide information that had been omitted but was required under village ordinance, and to make other modifications to the plat. However, the information requested was not provided, and the plat was not modified. The only communication between Donaldson or his representatives and any Village official occurred when the Village Administrator notified Donaldson's representatives that the preliminary plat had been placed on the October 19 agenda. The Village acknowledges that, when notified of the meeting date, Donaldson's representatives did request an extension of time. However, it notes that his representatives did not explain why the information had not been submitted and did not provide a timeline as to when it would be provided.

¶11 Donaldson does not contend that, as of the October 19 meeting, he had satisfied the requirements for submitting a complete preliminary plat, and does not challenge the Village's actions in requesting additional information. Instead, he challenges the timeframe within which the Village rejected the preliminary plat before receiving the requested information. As we understand Donaldson's argument, he does not argue that the Village Board was foreclosed from acting before the expiration of the 90-day period set out in WIS. STAT. § 236.11(1)(a) and

Johnson Creek Ordinance § 245-25(B). We agree that the Village Board was free to act before the 90 days expired.<sup>5</sup> Further, he does not argue that anything in the statutes or Johnson Creek Ordinances prohibited the Village Board from acting until the 45-day lead time period had expired. We also agree that the Village Board was not legally precluded from doing so. Instead, Donaldson argues that it was premature, and therefore arbitrary and unreasonable, for the Village Board to act 53 days before the expiration of the 90-day time period and before the expiration of the 45-day lead-time requirement for filing a preliminary plat.

¶12 An arbitrary action is “one that is either so unreasonable as to be without a rational basis, or one that is the result of an unconsidered, willful or irrational choice of conduct—a decision that has abandoned the ‘sifting and winnowing’ process so essential to reasoned and reasonable decisionmaking.” *Glacier State Distrib. Servs., Inc. v. DOT*, 221 Wis. 2d 359, 369-70, 585 N.W.2d 652 (Ct. App. 1998) (citing *Nelson Bros. Furniture Corp. v. DOR*, 152 Wis. 2d 746, 757, 449 N.W.2d 328 (Ct. App. 1989)). The term “unreasonable” is generally equated with “irrational or lacking ‘a rational basis.’” *Id.* (citing *School Dist. of Waukesha v. SDBAB*, 201 Wis. 2d 109, 116, 548 N.W.2d 122 (Ct. App. 1996)).

¶13 It is clear from the record that, as of the September 21 meeting of the Plan Commission, Donaldson was well aware that his preliminary plat was deficient under village ordinance. However, he failed to take any steps to remedy those deficiencies, and failed to initiate any communication with Village officials

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<sup>5</sup> We agree that neither section prohibits action before the 90 days expires. Instead, under the plain meaning of the two sections, the Board must act “*within*” 90 days of the filing of a preliminary plat.

between that date and the October 19 meeting of the Village Board. We conclude that the Village Board's decision rejecting Donaldson's preliminary plat due to the absence of necessary information following the expiration of this length of time was a reasoned decision and is supported by adequate evidence in the record.

¶14 Because we have concluded that the Village Board's first reason for denying the plat was valid, we need not address the remaining reasons given by the Village Board for denying Donaldson's preliminary plat.<sup>6</sup> See *Wood v. City of Madison*, 2003 WI 24, ¶14, 260 Wis. 2d 71, 659 N.W.2d 31.

¶15 For the foregoing reasons, we affirm the circuit court's decision affirming the Village Board's denial of Donaldson's preliminary plat.

*By the Court.*—Order affirmed.

Not recommended for publication in the official reports.

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<sup>6</sup> In addition to challenging the reasons given by the Village Board for rejecting his preliminary plat, Donaldson also challenges the ruling by the circuit court. He contends that an affidavit filed by the Village Board in support of its motion for summary judgment contains evidence beyond the certiorari record and argues further that the circuit court should not have employed summary judgment methodology in the context of a statutory certiorari action. Donaldson did not raise these issues before the circuit court, and we therefore do not address them. See *Green v. Hahn*, 2004 WI App 214, ¶21, 277 Wis. 2d 473, 689 N.W.2d 657. In any event, as noted above, our de novo review of this matter is of the actions of the Village Board, not of the circuit court.

