

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Carlos Becerra, *et al.*,
Appellants-Plaintiffs,

v.

Town of Brownsburg and BLC
Investments,
Appellees-Defendants,

And

September 30, 2022

Court of Appeals Case No.
22A-PL-461

Appeal from the Hendricks Circuit
Court

The Honorable Dan Zielinski,
Judge

Trial Court Cause No.
32C01-2111-PL-148

Andre Lacy Family, LLC, *et al.*,
Appellees-Intervenors.

Riley, Judge

STATEMENT OF THE CASE

[1] Appellants-Plaintiffs, Carlos Becerra, individually and on behalf of others similarly situated (collectively, Remonstrators), appeal the trial court's summary judgment, determining that there were no genuine issues of material fact precluding judgment for the Appellees-Defendants, BLC Development LLC (BLC) and Town of Brownsburg (Brownsburg) (collectively, Appellees), and Appellees-Intervenors, Andre Lacy Family, LLC, *et al.* (collectively, Intervenors).

[2] We affirm.

ISSUE

[3] Remonstrators present this court with two issues on appeal, which we restate as the following single issue: Whether the trial court erred by granting summary judgment in favor of the Appellees and Intervenors.

FACTS AND PROCEDURAL HISTORY

- [4] In July 2021, BLC filed a rezoning petition with Brownsburg, seeking to rezone two parcels, Parcel F and Parcel G (collectively, Property), located along County Road 400N (CR 400 N) on the northeast and northwest corners of Ronald Reagan Parkway in Brownsburg, Indiana. BLC intended to construct distribution centers. Parcel F, in the northwest, was zoned as M3 (high-density multi-family unit), and Parcel G, in the northeast, was zoned as C2 (high-intensity general commercial). The concept plan showed that the building on Parcel F would be 500,000 square feet and that the building on Parcel G would be 200,000 square feet. Therefore, although I1 (low-intensity industrial) uses were permitted for the Property, the entire Property had to be rezoned as I2 (high-intensity industrial) due to the size of buildings.
- [5] BLC's rezoning application was first reviewed by the Brownsburg Technical Review Committee (TRC) on July 15, 2021. The TRC then prepared a Project Synopsis for the Brownsburg Advisory Plan Commission (Commission). According to the Project Synopsis, BLC's rezoning request met the five factors outlined in Indiana Code section 36-7-4-603. TRC explained that:

Criterion 1: The Comprehensive Plan

The Future Land Use Map identifies this site as appropriate for flex/light industrial. The Comprehensive Plan defines that section as "intended to accommodate a variety of uses ranging from light assembly, distribution facilities, low-intensity fabrication operations . . ." and others within the description. The proposed distribution center use meets this description. Distribution uses are allowed in both the I1 and I2 Districts, so

the I2 zoning designation for this proposal is compatible with the Comprehensive Plan.

Staff believes this criterion has been met.

* * * *

Criterion 2: Current conditions and the character of the current structures and uses in each district:

The sites are on the Ronald Reagan Parkway and consistent with the expected development patterns. The proposed development will have to meet larger buffer yards and requirements in the [Unified Development Ordinance (UDO)]. It is consistent with the uses in similar districts and will have to meet the UDO requirements for landscaping and architecture. Currently there are a variety of development patterns around both of the sites, with vacant, agricultural, fleet storage, commercial uses, residential, and approved industrial uses nearby.

Staff believes this criterion has been met.

Criterion 3: The most desirable use for which the land in each district is adapted:

Staff has no land use concerns and believes this use is desirable and appropriate, given the desire to attract and construct projects that will diversify the town’s tax base, including commercial and industrial development. This site has excellent access and is a logical fit for industrial uses, especially distribution. Two different building sizes will be constructed, which provides additional options in tenants and employment opportunities. The Town Council, as with all re-zonings, may make the determination of “desirable and appropriate” uses in the best interests of the community.

Staff believes this criterion has been met.

Criterion 4: The conservation of property values throughout the jurisdiction:

Construction in this area is generally expected to have a positive

impact on area property values and property values throughout Brownsburg. The western property will have to meet the enhanced buffering features required by the UDO, which provides some physical and visual separation between the site and homes to the south. In an informal review of residential properties in Hendricks and other counties around Indianapolis, it appears that the vast majority are increasing in value regardless of proximity to an industrial site and through a varying degree of buffering. Staff does not believe that the result would be different for development within close proximity to this site. In addition, the Town has seen other developments, such as Greystone, proposed directly adjacent to industrial areas without concern from the developers on the marketability and desirability of their proposed neighborhoods.

Staff believes this criterion has been met.

Criterion 5: Responsible development and growth:

The subject property is located within the town's existing boundary. It is in close proximity to existing infrastructure and thoroughfares. Industrial land uses meet development goals of diversifying land uses and providing employment areas.

Staff considers this criterion to be met.

(Appellants' Supp. App. Vol. III, pp. 33-34).

[6] On August 30, 2021, the Commission held a public hearing. At the beginning of the hearing, the rezoning petition was read out loud by Brownsburg's staff. The staff reported that BLC had agreed to increase landscaping buffers to mitigate and conserve residential property values close to the distribution center. In addition, BLC was amenable to making significant revisions to its initial concept plan to accommodate substantial setbacks. The staff also cited that the Property's location along a central transportation corridor was

appropriate for industrial development. Finally, Brownsburg staff reported that Brownsburg would see a 3% increase in tax revenue following the establishment of the distribution centers and that an increase in property values in the surrounding area would be seen. Based on its presentation, Brownsburg's staff supported the rezoning.

[7] BLC made several points, including that Brownsburg's Comprehensive Plan called for the Property to be zoned for I1 uses (light industrial/flex zoning) at some point in the future and that the conversion to I2 would not be a big jump. In addition, BLC stated that its project was in line with Brownsburg's Comprehensive and Strategic Plans but that it required I2 rezoning because of the enormous size of the distribution centers. BLC also addressed the conservation of property values by stating that Brownsburg would see developmental growth and that the presence of a distribution facility would not affect the marketability and desirability of the residential properties. In addition to creating jobs and collecting industrial property taxes, BLC argued, that the distribution centers would generate significant business revenue for Brownsburg.

[8] Twenty-two Remonstrators commented on the rezoning. Residents along CR 400 N remonstrated that semi-trailer trucks would increase traffic and noise on a congested two-lane country road. Another argument was that the bridge that connects CR 400 N to Ronald Reagan Highway needs to be repaired. In addition to complaints about increased traffic on CR 400 N, there were also traffic concerns over semi-trailers trucks joining the Ronald Reagan Highway

from CR 400 N. Additionally, homeowners were concerned that semi-trailer trucks would make it harder for them to safely enter and exit their driveways. Also, due to the narrow nature of CR 400 N, one remonstrator claimed that there was a possibility that the county road might have to be widened to accommodate BLC's distribution centers, resulting in shallower driveways for homeowners whose homes flanked the distribution facilities. Additionally, there were safety concerns for children waiting for the school bus as semi-trucks drove down CR 400 N. Remonstrators also claimed their properties would lose value due to their proximity to the distribution centers. Among other arguments offered was that it was not appropriate to rezone the Property adjacent to a residential area for industrial use. At the end of the hearing, the Commission was required to vote and make either a favorable or an unfavorable recommendation. Three commissioners voted for and two against the rezoning proposal. Because Indiana law requires a majority of four votes, BLC's rezoning petition was sent to the Council without a favorable recommendation from the Commission.

[9] On September 9, 2021, BLC's application for rezoning of the Property was given its first reading before the Council. BLC's counsel discussed that it would offer Commitments limiting its use of the Property. The public was allowed to comment on the rezoning and the major concerns related to traffic congestion on CR 400 N, the use of the Property for industrial purposes, and the possible decline of property values following rezoning. Also, a Council member

expressed concerns about traffic caused by the proposed development. At the close of the meeting, the Council voted 4-0 to approve the rezoning.

[10] On September 23, 2021, BLC's rezoning request was given a second reading. There was a limited window for oral public comments regarding the rezoning. Written comments were also presented. On October 14, 2021, BLC's rezoning request went through a third reading. Again, Remonstrators commented on the rezoning application, mainly claiming that there would be heavy traffic, noise pollution, and safety concerns due to the increase of semi-trailer trucks entering and exiting the distribution centers. As a result of negotiations with Remonstrators, BLC offered revised Commitments stating as follows:

1. The Subject Property shall be limited to I1 uses, except that the following I2 uses, all as described/defined in the [UDO], shall be permitted:

- a) Processing/storage of agricultural products

- b) Light manufacturing

- c) Food processing

2. The developer of the Subject Property shall design the driveways for Parcel F to discourage right (west bound) turns by exiting semi-trailer trucks on to CR 400 N by use of raised curb or similar means, as well as posting directional signage directing semi-trailer trucks to turn left (eastbound) on CR 400 N.

3. As part of the development plan review process, the developer of Parcel F shall provide a landscaped berm meeting or exceeding

Town of Brownsburg (“Town”) requirements (with 3:1 slope) along/near the entire length of the south property line excepting tree preservation areas and driveway cuts, including any acceleration/deceleration lanes and clear site triangle requirements.

4. The developer of the Subject Property shall cooperate with the Town in order coordinate the proper amount of right of way to be dedicated along the CR 400 N frontage of the Subject Property, balancing the plans for development of the Subject Property (including consideration of compliance with development standards set forth in the [UDO], the Town transportation plan, and existing conditions of other properties fronting on the south side of CR 400 N across from the Subject Property. Such dedication shall be at no cost to the Town.

5. The developer of the Subject Property shall preserve, to the extent that is reasonably practical, existing healthy, non-invasive trees located on the perimeter of the Subject Property; provided, however, the developer shall be permitted to remove such trees in order to meet utility or drainage requirements, or to complete grading for development.

These COMMITMENTS shall be binding on the owner, subsequent owners of the real estate and other persons acquiring an interest therein. These COMMITMENTS may be modified or terminated by a decision of the Town Council of the Town of Brownsburg made at a public hearing after proper notice has been given.

(Appellants’ App. Sup. Vol. III, pp. 38-39). At the close of the hearing, the Council voted 4-1 to approve BLC’s rezoning request. BLC’s rezoning petition became an Ordinance, which reads as follows:

WHEREAS, the Property is zoned M3 (high density multiple family) and C2 (high intensity general commercial); and,

WHEREAS, the Applicant's Proposal is to rezone the property to I2 (high intensity industrial) for the purposes of constructing an industrial business park; and,

WHEREAS, the Applicant's Proposal is consistent with the goals, objectives and policies of the Comprehensive Plan, and the Owner's desired use of the Property; and,

WHEREAS, the Applicant's Proposal is compatible with the current conditions and overall character of the existing development in the immediate vicinity of the Property; and,

WHEREAS, the Applicant's Proposal is the most desirable use for which the land in each district is adapted; and,

WHEREAS, the Applicant's Proposal is expected to conserve property values throughout the jurisdiction; and

WHEREAS, the Applicant Proposal is deemed responsible development and growth . . .

(Appellants' Supp. App. Vol. III, p. 54) (emphasis in original).

[11] On November 15, 2021, following the enactment of the Ordinance, Remonstrators filed their Complaint seeking declaratory relief against Brownsburg. Remonstrators alleged that the adoption of the Ordinance was arbitrary and capricious because the Council did not pay reasonable regard to the five statutory factors prescribed by Indiana Code section 36-7-4-603 when it

approved the Ordinance. On December 2, 2021, the trial court permitted Andre Lacy Family, LLC, *et al.* to intervene. The same day, BLC filed its Answer and moved for summary judgment. BLC argued that the evidence established that the Council followed statutory procedures when passing the Ordinance and that the Council's decision to approve the Ordinance was not arbitrary and capricious. In a footnote, BLC noted that

For the purposes of this motion, BLC has accepted all relevant facts in [Appellants'] complaint as true. There are, therefore, no genuine issues of fact, further discovery is unnecessary, and this matter may be heard immediately as a matter of law on summary judgment.

(Appellants' App. Vol. II, p. 27). On January 11, 2022, Remonstrators filed their response, arguing that Appellees' recitation of the above footnote certainly meant that Appellees agreed with their legal conclusion that the Council acted arbitrarily and capriciously by failing to pay reasonable regard to the five factors outlined in Indiana Code section 36-7-4-603 and that summary judgment was not appropriate. Brownsburg and Intervenors then joined in BLC's motion for summary judgment. BLC subsequently filed its reply in support of its motion for summary judgment and argued that Remonstrators "make way too much out of BLC's" footnote because it "*never* accepted" Remonstrators' characterization of the legal conclusions as stated in the complaint because to do so, "would negate the very motion at issue." (Appellants' App. Vol. II, pp. 78, 79). BLC also noted in a footnote that Remonstrators' Complaint was not verified and therefore could not "serve as designated evidence precluding

summary judgment.” (Appellants’ App. Vol. II, p. 79). On January 18, 2022, the trial court held a hearing on the summary judgment motion. On February 2, 2022, the trial court granted summary judgment in favor of Appellees and Intervenors, finding that the Ordinance was valid.

[12] Remonstrators now appeal. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

I. *Standard of Review*

[13] Remonstrators contend that the trial court erred by granting summary judgment in favor of Appellees and Intervenors. The purpose of summary judgment is to terminate litigation about which there can be no factual dispute, and which can be determined as a matter of law. *Sheehan Constr. Co., Inc. v. Cont’l Cas. Co.*, 938 N.E.2d 685, 689 (Ind. 2010). Our standard of review for summary judgment is that used in the trial court: summary judgment is appropriate only where the evidence shows there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. Ind. Trial Rule 56(C); *Warner Trucking, Inc. v. Carolina Cas. Ins. Co.*, 686 N.E.2d 102, 104 (Ind. 1997). We construe all factual inferences in the non-moving party’s favor and resolve all doubts as to the existence of a material issue against the moving party. *Reed v. Reid*, 980 N.E.2d 277, 285 (Ind. 2012). The party moving for summary judgment bears the initial burden to establish its entitlement to summary judgment. *Pfenning v. Lineman*, 947 N.E.2d 392, 397 (Ind. 2011). Only then

does the burden fall upon the non-moving party to set forth specific facts demonstrating a genuine issue for trial. *Id.* at 397.

[14] Remonstrators argue that summary judgment was inappropriate because BLC conceded that the facts asserted in their Complaint were true, the Complaint was properly designated as evidence, and that the Council failed to take reasonable regard to the statutory factors when it approved the Ordinance. We will address each issue in turn.

II. *Footnote*

[15] Remonstrators argue that on the morning of the summary judgment hearing, BLC backtracked on the statements it had made in their footnote, which conceded that BLC had

accepted all relevant facts in [Appellants'] complaint as true. There are, therefore, no genuine issues of fact, further discovery is unnecessary, and this matter may be heard immediately as a matter of law on summary judgment.

(Appellants' App. Vol. II, p. 27). Citing to *Whitaker v. Becker*, 960 N.E.2d 111 (Ind. 2012), Remonstrators argue that

[BLC] never objected to any particular assertions in the complaint, nor identified which factual statements or other assertions it now deemed unworthy. However, the idea that [BLC] can claim it is accepting the asserted facts for purposes of summary judgment, use that claim to preclude discovery, then turn around and claim the asserted facts are not admissible because the complaint is not verified, is the type of gamesmanship our [s]upreme [c]ourt has frowned upon.

(Appellants' Br. p. 13). In *Whitaker*, Whitaker's lawyer ignored repeated discovery requests, and the trial court issued an order to compel discovery. *Whitaker*, 960 N.E.2d at 112. Becker filed a motion for sanctions, seeking dismissal of Whitaker's suit. *Id.* The trial court dismissed the claim, finding that Whitaker and his lawyer acted in bad faith, and that dismissal was appropriate. *Id.* Our supreme court affirmed the dismissal by stating

The purpose of the discovery rules is to allow for minimal trial court involvement and to promote liberal discovery. Although concealment and gamesmanship were once accepted as part and parcel of the adversarial process, we have unanimously declared that such tactics no longer have any place in our system of justice. Today, the purpose of pretrial discovery is to make a trial less a game of blindman's bluff and more a fair contest with the basic issues and facts disclosed to the fullest practicable extent.

Id. at 115. BLC argues, and we agree, that Remonstrators' reliance on *Whitaker* is misplaced. To the extent Remonstrators claim that BLC's footnote precluded discovery, Remonstrators served BLC with written discovery requests to which BLC responded "within two business days." (Appellees' Br. p. 16).

[16] BLC also argues that while it accepted the facts contained in the Complaint as true, it only admitted to the relevant facts, and its admission was not an explicit approval of all the allegations contained in the Complaint. *See Cowe v. Forum Grp., Inc.*, 575 N.E.2d 630, 633 (Ind. 1991) (holding that "[i]n ruling upon a motion for summary judgment, facts alleged in a complaint must be taken as true except to the extent that they are negated by depositions, answers to interrogatories, affidavits, and admissions on trial or by testimony presented at

the hearing on a motion for summary judgment.”). The record shows that BLC filed its reply to Remonstrator’s objection to the summary judgment motion and claimed that it “*never* accepted” Remonstrators’ characterization of the legal conclusions as stated in the Complaint because to do so “would negate” its summary judgment motion. (Appellant’s App. Vol. II, pp. 78, 79).

III. *Complaint as Designated Evidence*

[17] Remonstrators allege that their Complaint, although unverified, should have been treated as designated evidence, and they add that their Complaint created an issue of material fact to evade summary judgment. Specifically, Remonstrators contend that

Once [BLC] stated that it was accepting the facts in the [C]omplaint for purposes of summary judgment, [Remonstrators] had a right to rely on that statement when preparing [their] response and did so. It obviated the need for many affidavits containing sworn statements that the Complaint now covered. In this sense the court should treat the [C]omplaint as an affidavit. In this regard there can be no doubt that it, at a minimum, created material issues of fact.

(Appellants’ Br. pp. 13, 14). BLC responds by stating that it

objected to any use of the [C]omplaint as designated evidence in its reply brief in support of its motion for summary judgment. [Remonstrators] had every opportunity to designate evidence in opposition to summary judgment. Indeed, [they] did submit affidavits in response to the motion for summary judgment. The simple fact is that the evidence [they] designated does not create a material issue of fact precluding summary judgment. [Remonstrators] do[] not even mention these affidavits on

appeal. This is because they did not create any issue of material fact precluding summary judgment. [Remonstrators] may not rest on [their] unverified complaint.

(Appellees' Br. p. 17).

- [18] While Indiana Trial Rule 56(C) does not dictate the way a party is to specifically designate material, as long as the trial court is apprised of the specific material upon which the parties rely in opposition to a motion for summary judgment, the material may be considered. *National Bd. of Examiners for Osteopathic Physicians and Surgeons, Inc. v. American Osteopathic Ass'n*, 645 N.E.2d 608, 615 (Ind. Ct. App. 1994). The designation of pleadings, discovery material, and affidavits in their totality fails to meet the specificity requirement of Trial Rule 56. *Plummer v. Bd. of Comm'rs of St. Joseph Cnty.*, 653 N.E.2d 519, 521-22 (Ind. Ct. App. 1995), *trans. denied*. A party can comply with the designation requirement by providing specific page numbers and paragraph citations, or by specifically mentioning the substantive assertions in the affidavit. *See Abbott v. Bates*, 670 N.E.2d 916, 922 (Ind. Ct. App. 1996).
- [19] Even if we were to agree with Remonstrators' claim that their entire Complaint should have been treated as designated evidence, which we are not, Remonstrators' designated affidavits did not specifically cite nor identify the relevant portions of their Complaint which would defeat BLC's claim for summary judgment, and, therefore the Complaint did not qualify as proper summary judgment evidence. *See Kronmiller v. Wangberg*, 665 N.E.2d 624, 627

(Ind. Ct. App. 1996) (holding this court may only consider properly designated evidence when deciding a motion for summary judgment) *trans. denied*.

IV. Rezoning

[20] Lastly, we turn to Remonstrators' main argument which is whether the Council failed to consider appropriate statutory factors and, therefore, issued an arbitrary and capricious decision. Rezoning is a legislative process. *Borsuk v. Town of St. John*, 820 N.E.2d 118, 122 (Ind. 2005). The procedure for review of legislative action is to bring a suit for declaratory judgment. *Bd. of Comm'rs of Cnty. of Vanderburgh v. Three I Prop.*, 787 N.E.2d 967, 976 (Ind. Ct. App. 2003). Because the action is "legislative" as opposed to "judicial" in nature, a reviewing court has much narrower scope of review. *Id.* Accordingly, review of a rezoning decision is limited to constitutionality, procedural soundness, and whether the decision is arbitrary or capricious. *Borsuk*, 820 N.E.2d at 122. An arbitrary and capricious decision on zoning occurs when the legislative body acts without consideration and disregard for the facts or circumstances of the case. *City of Crown Point v. Misty Woods Props., LLC*, 864 N.E.2d 1069, 1075-76 (Ind. Ct. App. 2007). A reviewing court will not interfere in the local legislative process, provided that it is supported by some rational basis. *Id.* at 1076.

[21] When preparing and considering a rezoning proposal

the plan commission and the legislative body shall pay reasonable regard to:

- (1) the comprehensive plan;
- (2) current conditions and the character of current structures and uses in each district;

- (3) the most desirable use for which the land in each district is adapted;
- (4) the conservation of property values throughout the jurisdiction; and
- (5) responsible development and growth.

Ind. Code § 36-7-4-603. Our supreme court in *Borsuk*, explained that Indiana Code section 36-7-4-603 requires local legislative bodies to “consider all factors and make a balanced determination.” *Borsuk*, 820 N.E.2d at 122.

Remonstrators argue the Council ignored all the statutory factors, and the decision approving BLC’s rezoning request was therefore arbitrary and capricious.

[22] Remonstrators maintain that a genuine issue of material fact exists as to whether there was a rational basis for the Council’s rezoning decision in light of the fact that the Council failed to pay reasonable regard to 1) the Comprehensive Plan which indicated that I2 uses were not suitable; 2) that the rezoning runs contrary to the UDO, Economic Development Strategic Plan, and the Ronald Reagan Corridor Master Plan; 3) that I2 uses were not desirable; 4) its “actual analysis that showed neighborhoods that homes backed up to warehouses in Brownsburg experience a 20% slower increase in home values over time compared to a neighborhood that did not have” a warehouse; and 5) the fact that the development will have no direct access to Ronald Reagan and will only have ingress and egress on CR 400 N. (Appellant’s Br. p. 21).

[23] In *Borsuk*, Borsuk sought to rezone half of his land from residential to commercial. *Borsuk*, 820 N.E.2d at 120. The town rejected his rezoning request, and Borsuk filed a petition for *writ of certiorari*, alleging that the town's denial constituted a taking and was arbitrary and capricious. *Id.* Borsuk moved for summary judgment, and the trial court entered judgment in favor of the town. *Id.* On appeal, we reversed the trial court after concluding that the decision rejecting Borsuk's rezoning petition was not in line with the town's comprehensive plan. *Id.* On transfer, our supreme court ruled that our interpretation of the statute, that a town must comply with the comprehensive plan, created a rebuttable presumption that the statute did not create, and that *all* factors enumerated in Indiana Code section 36-7-4-603 should be taken into account by a town. *Id.* at 122. Based on that conclusion, and after reviewing the evidence, our supreme court concluded that the town appraised the evidence offered at public hearings on the rezoning petition and expressed concern regarding traffic congestion and possible harm to neighboring properties as a result of the project. *Id.* Despite apparent contradictions of the rezoning petition with the town's comprehensive plan, our supreme court maintained that *all* the statutory factors had been considered and the town's decision was rational. *Id.*

[24] BLC claims that Remonstrators' designated evidence which included two affidavits from the Remonstrators, did not address their main contention, which is whether the Council had a rational basis for enacting the Ordinance. BLC claims that by contrast, it designated many facts showing that the Ordinance is

procedurally sound, and the Council considered the factors outlined in Indiana Code section 36-7-4-603, and therefore, the Council had a rational basis for enacting the Ordinance.

[25] Turning the facts of this case, during the public hearing on August 30, 2021, Brownsburg's staff informed the Commission that BLC's rezoning request aligned with Brownsburg's comprehensive and strategic plans, and that BLC's proposed industrial use was the most desirable use for the Property, Brownsburg would benefit from the collection of tax from BLC, and that property values in the surrounding area would improve. Additionally, BLC's legal counsel reiterated how the rezoning met the criteria outlined in Indiana Code sections 36-7-4-603. Twenty-two Remonstrators then commented on BLC's rezoning request. Those opposed to the rezoning cited several issues, including the project's inconsistency with the Brownsburg Comprehensive Plan, public safety, traffic congestion, and a decline in property values. At the end of the hearing, three commissioners voted in favor and two in opposition. Because four votes are required, the Commission did not offer a favorable recommendation to the Council. The Council subsequently conducted three public meetings to discuss BLC's rezoning request. During the first meeting on September 9, 2021, Brownsburg's attorney discussed the statutory procedure regarding the Council's consideration of a rezoning petition during the first reading of the rezoning application. BLC announced it would offer Commitments to the residents regarding how it would restrict its use of the Property, Remonstrators spoke in favor and against the rezoning, and one

council member stated that the distribution centers would increase traffic. On September 23, 2021, BLC's rezoning request had its second reading, BLC presented formal Commitments, and arguments for and against the rezoning were offered. Finally, on October 14, 2021, as a result of its meeting with residents, BLC presented its revised Commitments addressing the concerns raised by the homeowners. At the close of that public meeting, the Council approved BLC's rezoning application.

[26] Viewing the facts of this case in the light most favorable to the non-movant and following the holding in *Borsuk*, we find no dispute of material fact as to whether the Council paid "reasonable regard" to the factors outlined by the Indiana Code section 36-7-4-603. In this case, the Commission had one public hearing, and the Council held three public hearings. We also have access to videos of those public hearings. It appears that, among other documents which BLC designated, the Council had the Comprehensive Plan, Project Synopsis, Commitments from BLC, minutes from the Commission's public hearing, and minutes from its own prior meeting. There is no doubt from the record that the Council was provided with information regarding the five factors outlined in Indiana Code section 36-7-4-603, heard the Remonstrators' comments, and weighed and deliberated on the evidence as it was being presented. As a result, the Council approved BLC's rezoning application after considering all five factors, and we do not find its decision to be arbitrary or capricious. In reaching our decision today, we express no opinion on the propriety of the project by BLC. We also reiterate that our standard of review does not permit

us to substitute our judgment for that of the Council, and it compels us to affirm the summary judgment because we have determined, based upon the record and the arguments before us, that BLC designated evidence showing that the Council paid reasonable regard to the statutory factors. *See City of Crown Point, LLC*, 864 N.E.2d at 1076 (holding that a reviewing court will not interfere in the local legislative process provided that it is supported by some rational basis). Thus, we must agree with the trial court's conclusion that the Appellees and Intervenors were entitled to summary judgment.

CONCLUSION

[27] For all these reasons, we affirm the trial court's entry of summary judgment in favor of the Appellees and Intervenors.

[28] Affirmed.

[29] Bailey, J. and Vaidik, J. concur