IN THE COURT OF APPEALS OF IOWA

No. 9-817 / 09-0561
Filed December 30, 2009

MICHAEL DAHLEN, JANET DAHLEN, and MICHAEL A. McNIEL,
Plaintiffs-Appellants,

vs.

IOWA CITY PLANNING AND ZONING COMMISSION and SHELTER HOUSE,
Defendants-Appellees.

Appeal from the Iowa District Court for Johnson County, Mitchell E. Turner, Judge.

Plaintiffs appeal from the district court's ruling granting defendants' motion to dismiss. **AFFIRMED.**

Gregg Geerdes, Iowa City, for appellants.

Sara E. Holecek of the Iowa City Attorney's Office, Iowa City, and Timothy J. Krumm and Anne E. Daniels of Meardon, Sueppel, & Downer, P.L.C., Iowa City, for appellees.

Heard by Vogel, P.J., and Doyle and Mansfield, JJ.

DOYLE, J.

Plaintiffs Michael Dahlen, Janet Dahlen, and Michael A. McNiel appeal from the district court's ruling granting defendants Iowa City Planning and Zoning Commission and Shelter House's motion to dismiss. Plaintiffs contend the district court erred in finding they failed to exhaust their administrative remedies because the Iowa City Code does not require they first appeal the Iowa City Planning and Zoning Commission's decision to the Board of Adjustment before seeking certiorari review in district court. We affirm the judgment of the district court.

***I. Background Facts and Proceedings*.**

The following facts are essentially undisputed: On August 27, 2008, defendant Shelter House submitted an application to the City of Iowa City's Housing and Inspection Services Department for a major site plan review, as a step toward getting a building permit to build a homeless shelter. On October 16, 2008, plaintiffs Michael Dahlen, Janet Dahlen, and Michael A. McNiel (plaintiffs), along with other neighboring property owners, submitted a request pursuant to the Iowa City Code that the defendant Iowa City Planning and Zoning Commission (Commission) review the major site plan. A public hearing concerning the site plan was held, and evidence was taken. The Commission then approved Shelter House's site plan for the construction of a homeless shelter.

On December 2, 2008, the plaintiffs filed their petition for certiorari and declaratory relief in district court, asserting among other things that the actions of the Commission were illegal and should be invalidated. Thereafter, the

Commission filed a pre-answer motion to dismiss, arguing that because the plaintiffs did not appeal the decision to the Iowa City Board of Adjustment (Board), the plaintiffs failed to exhaust their administrative remedies as required by Iowa Code section 410.10 (2007). Shelter House joined in the Commission's motion. Plaintiffs resisted the defendants' motion, arguing that the Commission is not an administrative official and therefore a challenge of the Commission's decision by a certiorari action was proper.

On March 17, 2009, the district court entered its ruling granting the defendants' motion to dismiss. The court agreed that the plaintiffs were required to first appeal the Commission's decision to the Board. Because the plaintiffs did not so appeal and thus failed to exhaust their administrative remedies, the court determined it did not have jurisdiction[1] to consider the merits of the plaintiffs' claims and dismissed the plaintiffs' petition.

Plaintiffs now appeal.

II. Scope and Standards of Review.

We review the district court's ruling on a motion to dismiss for correction of errors of law. Iowa R. App. P. 6.907; *Crall v. Davis*, 714 N.W.2d 616, 619 (Iowa 2006).

[1] Although the court concluded it lacked jurisdiction, that is a misstatement. *See Holding v. Franklin County Zoning Bd. of Adjustment*, 565 N.W.2d 318, 319 (Iowa 1997). The district court always has subject matter jurisdiction over a case such as this, only certain things may prevent the court having authority at a particular time to hear a case. *Id*.; *see also State v. Mandicino*, 509 N.W.2d 481, 482 (Iowa 1993) (noting that subject matter jurisdiction should not be confused with authority, as "[a] court may have subject matter jurisdiction but for one reason or another may not be able to entertain a particular case . . . . In such a situation we say the court lacks authority to hear that particular case."). We therefore review to determine whether the court lacked authority to hear plaintiffs' claims. *See Holding*, 565 N.W.2d at 319 ("At issue is only whether authority to act in this controversy should be withheld because of the claimed premature filing of the court challenge.").

***III. Discussion*.**

It was uncontested at hearing that the plaintiffs had not sought recourse through the Board before filing their certiorari action in district court. It is well established that a party must exhaust any available administrative remedy before seeking relief in the courts. *Shors v. Johnson*, 581 N.W.2d 648, 650 (Iowa 1998). On appeal, the plaintiffs argue that the Iowa City Code does not require they first appeal the Commission's decision to the Board of Adjustment. Thus, the sole issue on appeal is whether the district court erred in determining the plaintiffs were required to appeal the Commission's decision to the Board.

The plaintiffs argue that there is no authority for the Board to review the Commission's decision, the Commission was acting in a quasi-judicial capacity when it approved the major site plan and thus a certiorari action was proper, and the Board and the Commission are separate entities with separate roles and duties that do not permit one to review the decisions of the other. We will address each argument in turn.

***A. Authority*.**

Plaintiffs argue that because the approval of the major site plan was obtained from the Commission and not from a city staff member or other employee, the Board had no authority to review the Commission's decision. We disagree.

When determining whether a person aggrieved by a land use decision has administrative remedies that he is required to execute before commencing legal action, this court looks to the language of the local ordinance. *Riley v. Boxa*, 542

N.W.2d 519, 522 (Iowa 1996). Iowa City Code section 18-2-3, which sets forth the approval and denial process for site plans, provides:

> A. *The city* shall review and approve, review and approve with conditions, or review and deny all site plans submitted under this title . . . without requiring submission of the plan to the planning and zoning commission.
>
> B. Upon submission of a major site plan, *the building official* shall promptly convey a copy of the major site plan to the department of public works and the department of planning and community development for their review and comments. The departments of planning and community development, public works, and housing and inspection services shall review the site plan to determine if the design conforms to the standards set forth in this title. The departments of planning and community development and public works shall forward their recommendations to the department of housing and inspection services within ten (10) working days after date of submission of a major site plan to the city.
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> C. For major site plans, the department of housing and inspection services or those owners of twenty percent (20%) or more of the property located within two hundred feet (200') of the exterior boundaries of the proposed development site may request a review by the planning and zoning commission. . . . When such a request is received, the planning and zoning commission may review and approve, review and approve with conditions, or review and deny said plan . . . . *The commission's scope of review shall be the same as that of the building official and the department of housing and inspection services.*
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> D. Upon site plan approval by *the building official or the planning and zoning commission*, a building permit may be issued. . . .

(Emphasis added.)

Title 14 of the Iowa City Code, known as the Iowa City Zoning Code, establishes both the Commission and the Board. *See* Iowa City Code §§ 14-7A-1(A), 14-17A-2(A). Under the city code, the Board has the power

> [t]o hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by *the city manager or designee* in the enforcement of [the Iowa City Zoning Code] or of any ordinance adopted pursuant thereto.

Id. § 14-7A-2(C)(1) (emphasis added).

Here, Iowa City Code section 18-2-3(C) expressly provides that the Commission's scope of review in approving or denying site plans "shall be the same as that of the building official and the department of housing and inspection services." At hearing, plaintiffs conceded that the "building official" was a designee of the city manager. Because the Commission, in reviewing major site plans, stands in the same shoes as a building official, it logically follows that the Commission when acting in such capacity is also a designee of the city manager. Thus we conclude that as a designee of the city manager, the Iowa City Zoning Code provides the Board the authority to decide appeals concerning the Commission's site plan decisions. *See* Iowa City Code § 14-7A-2(C)(1).

Additionally, Iowa Code section 414.10 grants the Board the authority to decide appeals concerning the Commission's site plan decisions. Section 414.10 provides:

> Appeals to the board of adjustment may be taken by any person aggrieved . . . by any decision of the *administrative officer*. Such appeal shall be taken within a reasonable time as provided by the rules of the board by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal specifying the grounds thereof.

(Emphasis added.) Plaintiffs argue that the Commission cannot be considered an "administrative officer." However, we agree with the defendants that section 414.10 is permissive rather than restrictive. It is not intended to limit the type of entities from which a city, by local ordinance, may authorize an appeal to its board of adjustment. Accordingly, section 414.10 does not deny the Board

authority to hear appeals concerning the Commission's site plan approval or denial decisions.

***B. Quasi-Judicial Capacity*.**

Plaintiffs next argue that the Commission's decision approving the site plan constituted quasi-judicial action since it involved notice, an opportunity to be heard at a public hearing, the taking of input and evidence at the hearing, and a determination of rights that involved the exercise of discretion. The plaintiffs argue their certiorari action was proper because a quasi-judicial decision may be challenged through a certiorari action.

While it is true a quasi-judicial decision may be challenged through a certiorari action, *see Sutton v. Dubuque City Council*, 729 N.W.2d 796, 797-98 (Iowa 2006), plaintiffs are still required to exhaust their administrative remedies before seeking review through a certiorari action, if such remedies are available. *See Jim O, Inc. v. City Council of City of Cedar Rapids*, 574 N.W.2d 301, 302-03 (Iowa 1998). Thus, even assuming without deciding that the Commission's decision was a quasi-judicial decision, the plaintiffs would be required to first exhaust their administrative remedies before seeking review through a certiorari action.

***C. Separation of Powers*.**

Finally, the plaintiffs argue that the Board was not permitted to review the Commission's decision due to Board and the Commission's separation of powers, citing *Cowan v. Stroup*, 284 N.W.2d 447 (N.D. 1979). We find that case to be distinguishable and inapplicable. In *Cowan*, the North Dakota Supreme Court held that a city ordinance delegating the city's legislative authority to zone

property or to change the zoning pattern in its basic particulars to its board of adjustment was invalid. *Cowan*, 284 N.W.2d at 450-51. In the present case, the Commission did not exercise any legislative powers when it approved Shelter House's major site plan. We therefore find the plaintiff's argument to be without merit.

***IV. Conclusion*.**

We conclude the Board had the authority to hear plaintiffs' appeal of the Commission's decision. Plaintiffs were required to exhaust their administrative remedies before seeking relief from the court. We further conclude the plaintiffs were required to exhaust their administrative remedies even if the Commission's decision could be considered a quasi-judicial decision. Additionally, there is no separation of powers issue to prevent the Board from reviewing the Commission's site plan decision. We therefore conclude the district court did not err in determining the plaintiffs were required to appeal the Commission's decision to the Board and accordingly affirm the district court's grant of the defendants' motion to dismiss.

AFFIRMED.