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**STATE OF MINNESOTA
IN COURT OF APPEALS
A14-0531**

Helga Township,
Respondent,

vs.

Douglas Crosby,
Appellant,

Reierson Construction, Inc.,
Defendant.

**Filed December 15, 2014
Affirmed
Klaphake, Judge ***

Hubbard County District Court
File No. 29-CV-12-814

Robert A. Alsop, Kennedy & Graven, Chartered, Minneapolis, Minnesota; and

Kenneth H. Bayliss, Quinlivan & Hughes, P.A., St. Cloud, Minnesota (for respondent
Helga Township)

Zenas Bauer, Zenas Bauer Law Office, Hawley, Minnesota (for appellant)

Considered and decided by Hooten, Presiding Judge; Smith, Judge; and Klaphake,
Judge.

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

UNPUBLISHED OPINION

KLAPHAKE, Judge

Appellant Douglas Crosby contracted with Reiersen Construction to excavate and haul more than 1,000 cubic yards of rock and top soil from his property in order to prepare his land for livestock grazing. Respondent Helga Township (the township) informed Crosby that the township land-use ordinance required him to obtain an interim-use permit (IUP) for these activities. When Crosby refused to comply, the township brought this enforcement action against him in Hubbard County District Court. The township sought a declaratory judgment that excavation and removal of mineral materials without an IUP violates the township's land-use ordinance, and also sought to permanently enjoin Crosby and Reiersen from excavating and removing mineral materials and top soil without an IUP. The district court granted the township's motion for summary judgment. Crosby argues that the district court erred by granting summary judgment to the township, on the grounds that the district court misinterpreted the ordinance to require Crosby to obtain an IUP for hauling earthen materials from his land. Crosby also argues that the district court erred by dismissing his counterclaims against the township as moot. Because we conclude that the district court correctly interpreted the ordinance, we affirm.

DECISION

On appeal from summary judgment, this court reviews the record to “determine whether there are any genuine issues of material fact and whether a party is entitled to judgment as a matter of law.” *In re Collier*, 726 N.W.2d 799, 803 (Minn. 2007); Minn.

R. Civ. P. 56.03. This court views the record evidence “in the light most favorable to the party against whom summary judgment was granted.” *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993). The interpretation of an existing ordinance presents a question of law for the court. *Frank’s Nursery Sales, Inc. v. City of Roseville*, 295 N.W.2d 604, 608 (Minn. 1980). Therefore, we review de novo the issue of whether the ordinance required Crosby to obtain an IUP in order to conduct his activities.

Under Minnesota law, three rules of construction govern the interpretation of a zoning regulation: (1) terms should be construed according to their plain and ordinary meaning; (2) any ambiguity should be resolved against the governing body; and (3) the regulation should be considered in light of underlying policy goals. *Id.* at 608-09. “Only if the court determines that an ordinance is ambiguous, should the court ascertain the legislative intent behind the ordinance and construe it so as to effectuate that intent.” *Mohler v. City of St. Louis Park*, 643 N.W.2d 623, 635 (Minn. App. 2002).

The township’s land-use ordinance contains “General Performance Standards” that apply to all districts in the township. Helga Township, Minn., Land Use Ordinance art. VII, § 5 (2011). The “Excavation of Mineral Materials” performance standard states, “[t]he use of land for the excavation and removal of mineral materials, top soil or gravel is not permitted within the Town unless done pursuant to an interim use permit.” Helga Township, Minn., Land Use Ordinance art. VII, § 5(D). Farms and agricultural uses, as well as uses accessory to those activities, are permitted uses within the agricultural zoning district where Crosby’s land is located. Helga Township, Minn., Land Use Ordinance art. VI, § 1(C). The ordinance defines a permitted use as “[a] use identified in

this Ordinance that may be lawfully established as a matter of right in a particular zoning district or districts, provided it conforms with all requirements, regulations, and performance standards (if any) of such district.” Helga Township, Minn., Land Use Ordinance art. IV, § 1.35.

Crosby argues that his activities are properly characterized as an accessory use to his agricultural pursuits, and should therefore be considered a permitted use under the ordinance. He further argues that the district court’s interpretation would allow for the excavation and removal of mineral materials, which is not listed as a permitted use in an agricultural district, to occur within an agricultural district. He argues that this interpretation is unreasonable because it converts a prohibited use into a permitted use. However, Crosby’s argument misunderstands the way that the performance standards in article VII relate to the uses enumerated in article VI. A landowner must still comply with any applicable performance standards even when the landowner’s activities fall under a permitted use of the ordinance. Helga Township, Minn., Land Use Ordinance art. IV, § 1.35. In other words, the performance standards are read into the permitted uses when the landowner’s activity is covered by a performance standard, regardless of the landowner’s purpose for engaging in the activity. The plain meaning of the ordinance is unambiguous, and thus we will not look to the legislative history of the ordinance in interpreting it. *Mohler*, 643 N.W.2d at 635.

Even when viewing the evidence in the light most favorable to Crosby, he engaged in “excavation and removal of mineral materials [and] top soil” under any reasonable definition of the phrase. At Crosby’s behest, Reiersen used an “excavator” to dig up the

earth at an average depth of three feet in order to extract thousands of cubic yards of rock and top soil. Reiersen then removed the material from the property by hauling it away. These activities were not de minimis—they enabled Crosby to develop a for-profit side business. Crosby engaged in excavation and removal of mineral material and top soil from his land, and regardless of his ultimate purpose for doing so, the ordinance required that he obtain an IUP.

Contrary to Crosby’s assertion, this interpretation does not lead to an absurd result—it is consistent with the policy goals evident in the excavation and removal provision. The permitting process gives the township the opportunity to “impose appropriate standards for reclamation of the land subject to the excavation so as to ensure its restoration to its original condition insofar as possible after removal of the minerals.” Helga Township, Minn., Land Use Ordinance art. VII, § 5(D). Anytime a landowner excavates his or her land and removes that material from the land, the township has an interest in ensuring that the landowner undertake proper reclamation and restoration in order to “protect[] and preserv[e] the attractive, stable, and wholesome environment of Helga Township.” Helga Township, Minn., Land Use Ordinance art. II.

Crosby makes several arguments about improper and discriminatory enforcement by the township. He claims that he was singled out for enforcement of this provision and cites examples of other residents who engaged in similar activity without facing enforcement actions. However, those examples predate the ordinance and are distinguishable based on the scope of Crosby’s operations as well as his blatant refusal to comply with the ordinance even after being served with a cease-and-desist order. He also

claims that the enforcement action was initiated by a single town board member acting outside of his authority, but the evidence shows that this action was initiated after a consistent, concerted effort by the land-use administrator, town attorney, and town board to induce Crosby to comply.

Lastly, we conclude that Crosby has failed to meet the burden of proving his counterclaims. For his *Monell* claim, he has not demonstrated how any township official deprived him of a right secured by the U.S. Constitution. *See Parratt v. Taylor*, 451 U.S. 527, 535, 101 S. Ct. 1908, 1913 (1981), *overruled on other grounds by Daniels v. Williams*, 474 U.S. 327, 106 S. Ct. 662 (1986). For his abuse-of-process claim, he has not demonstrated any ulterior purpose on the part of the township in bringing this action. *See Bigelow v. Galway*, 281 N.W.2d 835, 837 (Minn. 1978). Therefore, we affirm the district court's dismissal of Crosby's counterclaims.

Affirmed.