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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1321**

Target Corporation,
Relator,

vs.

City of Minnetonka,
Respondent.

**Filed May 18, 2020
Affirmed
Worke, Judge**

Brandt F. Erwin, Megan J. Kunze, Christopher W. Bowman, Madigan, Dahl & Harlan, P.A., Minneapolis, Minnesota (for relator)

James J. Thomson, Mary D. Tietjen, Kennedy & Graven, Chartered, Minneapolis, Minnesota; and

Corrine A. Heine, City of Minnetonka, Minnetonka, Minnesota (for respondent)

Considered and decided by Florey, Presiding Judge; Worke, Judge; and Larkin, Judge.

UNPUBLISHED OPINION

WORKE, Judge

Relator challenges respondent's denial of relator's application for an off-sale intoxicating liquor license, arguing that the decision was arbitrary and capricious because respondent misapplied its policy and violated relator's right to equal protection. We affirm.

FACTS

In March 2019, relator Target Corporation (Target) applied for an off-sale intoxicating liquor license (application) from respondent City of Minnetonka (city) for its store located on County Road 101. Target included a letter outlining its intent to purchase a liquor store in the city which already held a liquor license.

In May 2019, the city council opened a public hearing on the application and continued it to a later hearing. Prior to the public hearing, the city manager submitted a report that included comments from residents. Some residents expressed concerns due to the proposed location's proximity to schools, the proposed store's potential to hurt smaller liquor stores, and the "village center" already having a sufficient number of liquor stores. Other residents expressed support, highlighting convenience, the potential to attract residents to the city, and Target's commitment to the community. City staff recommended granting the application.

In July 2019, the city council continued the public hearing on the application. City staff gave a presentation, which informed the city council about the ten existing off-sale liquor stores in the city and the locations of those stores in relation to the city's schools. City staff also outlined the city council's policy when considering liquor-license applications, noting that they could consider, among other things, land use and zoning, traffic, parking, and proximity to youth-oriented facilities. City staff recommended approval.

Two representatives from Target spoke at the hearing. The first representative emphasized Target's commitment to the city, the convenience that the proposed liquor

store would bring to citizens, plans for ensuring that no alcohol would be sold to minors, that neither the city's superintendent of schools nor the principal of the high school were opposed to the application, and that the proposed purchase of another liquor store would ensure that there was not an increase in the city's total number of liquor stores. The second representative highlighted Target's customers' desire for convenience, that Target had been successful in selling 3.2 alcohol without any violations, and its plan to prevent sales to minors.

After closing the public hearing, the city council members discussed their positions on the application. Concerns included the existence of other liquor stores, approval setting a precedent and saturation of liquor stores, and how another liquor store would affect the city's image. City council members also discussed the schools and how Target had indicated that the schools did not oppose the application, but in reality the schools did not support granting the application either.

The city council, in a 5-1 vote, denied the application. The city formally notified Target of the decision, listing the following reasons: (1) the liquor store would not offer a distinctive specialty service; (2) while a liquor store would complement Target's business, the addition of the store would not add positively to living and working in the city; (3) the location was adequately served by an existing liquor store; (4) there was concern about establishing an undesirable precedent that would allow Cub Foods, located across the street, to request a liquor license and saturate the area with liquor stores; and (5) Target's proposed purchase of an existing liquor store would remove the only liquor store from that "village center." This certiorari appeal followed.

DECISION

A city council is vested with broad discretion in determining whether to issue a liquor license. *Wajda v. City of Minneapolis*, 246 N.W.2d 455, 457 (Minn. 1976). This court’s review of a municipality’s decision regarding a liquor-license application is narrow and “should be exercised most cautiously,” granting relief only from “unreasonable, arbitrary, capricious, or fraudulent action.” *Id.* A decision is arbitrary and capricious when it represents the city council’s will rather than its judgment. *In re Hutchinson*, 440 N.W.2d 171, 177 (Minn. App. 1989), *review denied* (Minn. Aug. 9, 1989). Our review is confined “to the record before the city council at the time it made its decision.” *Hard Times Cafe, Inc. v. City of Minneapolis*, 625 N.W.2d 165, 173 (Minn. App. 2001) (quotation omitted). An applicant bears the burden of proving that the city council acted in an arbitrary manner. *Country Liquors, Inc. v. City Council*, 264 N.W.2d 821, 824 (Minn. 1978).

A city council has the ability to deny a liquor license for reasons relating to the welfare of its city. *Polman v. City of Royalton*, 249 N.W.2d 466, 467 (Minn. 1977). In addition, the city ordinance applicable to this case provides that a liquor license is a privilege, not a right, and the city council has broad discretion to limit the number of licenses when “the welfare of the city suggests such action.” Minnetonka, Minn., Code of Ordinances (MCO) § 600.060(6) (2015). The ordinance also states that the city council may develop criteria for evaluating liquor-license applications. *Id.* The city council did so through its adoption of Policy 6.1, which outlines the standards and criteria the city council will apply when considering the issuance of liquor licenses. Relevant to this appeal, the policy states,

Standards

It is expected that all establishments holding liquor licenses will be operated in accordance with the following standards:

- Type of Establishment
The proposed liquor license should be considered in terms of the type of establishment being proposed and the propriety of having the establishment at the proposed location.

....

Criteria

The city council will consider the following criteria prior to issuing liquor licenses:

- Off-Sale Licenses
Off-sale establishments provide intoxicating liquor that will be consumed in environments that are not monitored. An increase in the number of those outlets increases the access to liquor, contributes to public safety concerns, and detracts from the desired image of the city. Accordingly, the city council determines that the 12 off-sale intoxicating liquor licenses existing as of March 22, 2010 are generally adequate to serve the city. However, the council reserves the right not to issue any license even if the number falls below 12. Despite this maximum number, the council will consider, but not necessarily approve, additional off sale intoxicating liquor licenses only if the council finds in its sole discretion that the business:
 - a. offers a distinctive specialty service, or
 - b. is a complementary part of a business that would add positively to the experience of living and working in the city; or
 - c. is part of a village center that is not currently served.

....

- Proximity to Schools, Churches, Youth Oriented Facilities, etc.
The proposed liquor license should be considered in terms of proximity of the establishment to schools, churches, and youth related and other public facilities. It is expected that

liquor establishments will be located in areas that minimize the impact on such facilities.

Target argues that the city council acted arbitrarily and capriciously by denying its application because it disregarded the considerations required in Policy 6.1. Specifically, Target contends that the city council improperly relied on the subfactors under the criteria for off-sale licenses, which it claims “are only to be analyzed in the event a proposed liquor license application would result in the total number of stores exceeding the [c]ity’s self-imposed quota.”

Our review of the record indicates that the city’s denial of the application was not arbitrary and capricious because the city based its decision on factors relating to the city’s welfare. Further, nothing in the policy’s language precluded the city council from considering the subfactors that Target claims could not be applied when the number of liquor stores is less than twelve.¹ Here, the record reflects that the city council considered the proposed liquor store’s location, future ramifications of granting the application, and the image the city wished to portray. These concerns, which relate directly to the city’s welfare, were also listed in the denial letter as support for the city council’s decision.

Target also argues that the city’s denial on the hypothetical future conduct of Cub Foods renders the city’s decision arbitrary and capricious and that “substantial evidence in the record demonstrates that Target satisfied the city’s required factors.” Both of these

¹ We note that the policy in this case is poorly drafted, particularly with respect to the consideration of the subfactors. Regardless of whether the city violated Policy 6.1, its decision was not arbitrary and capricious given that its denial was made in consideration of the city’s welfare. Further, Policy 6.1 expressly reserves the city’s discretion to deny a liquor license even if the number of liquor stores is less than 12.

arguments are without merit. A city council is able to consider the future adverse effects of granting a liquor license. *See Country Liquors*, 264 N.W.2d at 823 n.1 (considering potential adverse effects proposed liquor store would have on community programs and institutions). And while Target may have satisfied the city’s requirements, a city council has broad discretion to deny a liquor-license application even when an applicant meets the minimum requirements. *Id.* at 824 (noting that city council is not required to grant liquor license despite applicant meeting minimum standards); *see also* MCO § 600.060(6) (“Even if [an applicant] meets the minimum requirements for a license, the city council is not obligated to grant the license.”).

Equal protection

Target also appears to argue that the denial of their application violated its right to equal protection because the city previously issued a liquor license to Total Wine in 2017. Both the United States Constitution and Minnesota Constitution guarantee the right to equal protection of the law. U.S. Const. amend. XIV, § 1; Minn. Const. art. I, § 2.

The initial inquiry in an equal-protection analysis focuses on whether the challenger has been treated differently by the government from others who are similarly situated. *Odunlade v. City of Minneapolis*, 823 N.W.2d 638, 647 (Minn. 2012). In determining whether groups are similarly situated, the focus is on whether “they are alike in all relevant respects.” *State v. Cox*, 798 N.W.2d 517, 522 (Minn. 2011). If this threshold requirement is satisfied, the next issue is whether there is a rational basis for the different treatment. *See Kayo Oil Co. v. City of Hopkins*, 397 N.W.2d 612, 614 (Minn. App. 1986) (applying rational-basis scrutiny to equal-protection claim arising from denial of liquor-license

application). Under rational-basis scrutiny, a classification is upheld when it is “rationally related to the achievement of a legitimate governmental purpose.” *Id.* The denial of a liquor license falls within a city’s police power, which “will be upheld [under rational-basis scrutiny] where it has for its object the public health, safety, morality or welfare and where it is reasonably related to the attainment of those objectives.” *Id.* at 615.

After considering Target’s equal-protection argument, we determine that it has failed to establish that it is similarly situated to Total Wine. However, even if we were to assume that Target and Total Wine are similarly-situated applicants, Target would not prevail because the city’s denial was rationally related to the city’s welfare. *See id.* (holding denial of liquor-license application did not violate equal protection when related to city’s welfare).

Affirmed.