

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1311**

Paul L. Jackels, et al.,
Appellants,

vs.

Warren Township Board of Supervisors/
Warren Township Planning Commission,
Respondents,

Christopher Kopperud,
Respondent.

**Filed April 6, 2010
Affirmed
Johnson, Judge**

Winona County District Court
File No. CV-08-2386

William J. Ryan, Hilary R. Stonelake, Dunlap and Seeger, P.A., Rochester, Minnesota
(for appellants)

Einar E. Hanson, Patrick J. Hynes, Strobel & Hanson, P.A., Red Wing, Minnesota (for
respondents Warren Township Board of Supervisors/Warren Township Planning
Commission)

Jed J. Hammell, Rippe, Hammell & Murphy, P.L.L.P., Caledonia, Minnesota (for
respondent Kopperud)

Considered and decided by Connolly, Presiding Judge; Hudson, Judge; and
Johnson, Judge.

UNPUBLISHED OPINION

JOHNSON, Judge

Paul and Laurie Jackels challenge two decisions of the board of Warren Township concerning a neighbor's expansion of a small feedlot. The township board determined that, with respect to the Jackels property, the neighbor's expansion of the feedlot is exempt from an ordinance prohibiting the operation of a feedlot within 1,000 feet of a neighboring residence. The township board also determined that, with respect to a different neighbor's property, the expansion of the feedlot is restricted by the ordinance but deserving of a variance to allow the feedlot to operate within 750 feet of that neighbor's residence. We conclude that the first decision of the township board is not unreasonable, arbitrary, or capricious. We also conclude that the Jackelses do not have standing to challenge the second decision of the township board. Therefore, we affirm.

FACTS

The feedlot at issue in this case is owned and operated by Christopher Kopperud. In November 1996, Kopperud purchased a five-acre parcel of land in rural Winona County from his aunt. For zoning purposes, the Kopperud property is designated "Agricultural--Natural Resource District." At oral argument in this court, the township's counsel informed the court that this is the designation generally applicable to farming operations in Warren Township. Prior to Kopperud's purchase of the property, his aunt operated a small poultry feedlot on the property and also raised a small number of calves.

The Jackelses own and reside on property located directly to the south of the Kopperud property, across a road. Sam and Debra Kemp own and reside on property

located to the southwest of the Kopperud property, to the west of the Jackels property. Both the Jackelses and the Kemps operate active feedlots on their respective properties.

In December 1996, Warren Township adopted a new zoning ordinance, which was modeled after the zoning ordinance of Winona County. The zoning ordinance provides, in part: “Feedlots shall not be located within one thousand (1,000) feet of any residential dwelling, except for the dwelling of the feedlot owner or feedlot operator.” Winona County, Minn., Zoning Ordinance § 719.3(1) (2006). When the zoning ordinance was adopted, the southern edge of the Kopperud feedlot was approximately 350 feet from the Jackels home, and the western edge was approximately 835 feet from the Kemp home.

Between 1996 and 2004, Kopperud expanded the western portion of the feedlot on several occasions by adding some structures, such as a chicken house, several portable sheds, and twenty porta-huts for calves. As a result of Kopperud’s expansion of the feedlot, the feedlot grew closer to the Kemp residence by approximately 85 feet such that the nearest part of the feedlot now is approximately 750 feet from the Kemp residence. But because the expansion occurred on the western edge of the feedlot, the expanded feedlot is no closer to the Jackels property than it was before the expansion.

In the spring of 2008, Kopperud applied to the Warren Township board for an after-the-fact variance from the 1,000-foot restriction in the zoning ordinance. The township board considered Kopperud’s variance application at its July 2008 meeting. The discussion at that meeting focused on whether the expansion of the Kopperud feedlot is a “substandard use” or a “nonconforming use” with respect to the Jackels property. Those terms are defined by the township’s zoning ordinance as follows:

USE, NONCONFORMING: Any legal use of lands, structures or buildings already in existence, before the adoption of this Ordinance or amendments thereto that would not have been allowed to become established under the terms of this Ordinance as now written, if this Ordinance had been in effect prior to the date the use was established.

USE, SUBSTANDARD: Any use existing prior to the adoption of this Ordinance or amendments thereto which is allowed either as a permitted or conditional use but does not meet the minimum lot area, height, yard, width or depth standards.

Winona County, Minn., Zoning Ordinance § 402 (2006). The distinction between the two classifications is meaningful because a nonconforming use cannot be extended or enlarged unless a variance is granted, Winona County, Minn., Zoning Ordinance § 306.2(1) (2006), but a substandard use “may be improved, extended, altered, or expanded without a variance if the work to be done does not decrease the existing substandard dimension,” Winona County, Minn., Zoning Ordinance § 307 (2006).

In July 2008, the board determined that the expansion of the Kopperud feedlot is, with respect to the Jackels property, not a nonconforming use but, rather, a substandard use. The township board’s decision relieved Kopperud of any obligation to obtain a variance concerning the distance between his feedlot and the Jackels residence. But as a result of the board’s decision, Kopperud sought a variance concerning the distance between his feedlot and the Kemp residence. Specifically, Kopperud sought a variance to permit the operation of his feedlot within 750 feet of the Kemp residence. In August 2008, the board approved Kopperud’s application for a variance with respect to the Kemp property.

The Jackelses sought judicial review of the township board's decisions in the Winona County District Court. *See* Minn. Stat. § 394.27, subd. 9 (2008). On cross-motions for summary judgment, the district court granted Warren Township's motion and denied the Jackelses' motion, concluding that "Warren Township's grant of the variance application of Respondent Kopperud and finding that his feedlot was a substandard use has a rational basis in the facts and law, based upon the applicable zoning ordinance provisions." The Jackelses appeal.

D E C I S I O N

"We review zoning actions to determine whether the zoning authority was within its jurisdiction, was not mistaken as to the applicable law, and did not act arbitrarily, oppressively, or unreasonably, and to determine whether the evidence could reasonably support or justify the determination." *In re Stadsvold*, 754 N.W.2d 323, 332 (Minn. 2008) (quotation omitted). "When proceedings before a board are fair and complete, appellate review is based on the record of the board's proceedings, not the district court's findings or conclusions." *Kismet Investors, Inc. v. County of Benton*, 617 N.W.2d 85, 90 (Minn. App. 2000) (citing *Swanson v. City of Bloomington*, 421 N.W.2d 307, 313 (Minn. 1988)), *review denied* (Minn. Nov. 15, 2000). Although rebuttable, there is a strong presumption favoring the action taken by a municipality. *Arcadia Dev. Corp. v. City of Bloomington*, 267 Minn. 221, 226, 125 N.W.2d 846, 850 (1964). "[E]xcept in those rare cases in which the city's decision has no rational basis, 'it is the duty of the judiciary to exercise restraint and accord appropriate deference to civil authorities in the performance

of their duties.” *Swanson*, 421 N.W.2d at 311 (quoting *White Bear Docking & Storage, Inc. v. City of White Bear Lake*, 324 N.W.2d 174, 176 (Minn. 1982)).

I. Determination Concerning Jackels Residence

The Jackelses argue that the township board acted unreasonably, arbitrarily, and capriciously by determining that the expansion of the Kopperud feedlot constituted a substandard use, as opposed to a nonconforming use, with respect to their residence. The interpretation of a zoning ordinance is a question of law, to which we apply a *de novo* standard of review. *Watab Twp. Citizen Alliance v. Benton County Bd. of Comm’rs*, 728 N.W.2d 82, 94 (Minn. App. 2007), *review denied* (Minn. May 15, 2007).

The Jackelses contend that the Kopperud feedlot is a nonconforming use because it is “a preexisting use of land that would not have been allowed to become established under the terms of the Ordinance (i.e., within 1,000’ of a residential dwelling).” They further contend that the feedlot is not a substandard use “because the reason it is not a permitted use (i.e., setback from residential dwellings) is not one of the reasons specified in the definition (i.e., minimum lot area, height, yard, width or depth standards).” In response, the township argues that the board’s decision that the Kopperud feedlot constitutes a substandard use had a rational basis and therefore should be upheld. The township contends that the board’s decision was proper because a nonconforming use is a use of land that is no longer permitted and because feedlots continue to be a permitted use under the zoning ordinance.

The township is correct that a feedlot is a permitted principal use of property within the Agricultural--Natural Resource District. Winona County, Minn., Zoning

Ordinance § 603.2(5) (2006). That fact alone makes the definition of nonconforming use inapplicable. The inapplicability of the definition of nonconforming use suggests that the definition of substandard use is applicable. The township's interpretation of the definition of substandard use is reasonable even though that definition does not use the term "setback." The substandard-use definition may apply if the use of a particular parcel of property "does not meet the minimum . . . width and depth standards." Winona County, Minn., Zoning Ordinance § 402. The term "depth" may be used to refer to a horizontal measurement as well as a vertical measurement. *The American Heritage College Dictionary* 382 (4th ed. 2007) (defining "depth" to include "[t]he extent, measurement, or dimension downward, backward, or inward"). Under the Warren Township zoning ordinance, the expansion of a substandard use may result in the reduction of a minimum depth standard with respect to one property but not with respect to another property. In this case, the westward expansion of the Kopperud feedlot shortened the distance between the feedlot and the Kemp residence, which lies to the southwest of the Kopperud property. But the westward expansion of the Kopperud feedlot did not affect the distance between the feedlot and the Jackels residence, which lies to the south of the Kopperud property.

Thus, the board did not act unreasonably, arbitrarily, or capriciously when it determined that the expansion of the Kopperud feedlot is a substandard use with respect to the Jackels residence.

II. Determination Concerning Kemp Residence

The Jackelses also argue that the township board acted unreasonably, arbitrarily, and capriciously by determining that the expansion of the Kopperud feedlot constituted a nonconforming use with respect to the Kemp residence and by granting Kopperud's application for a variance for that nonconforming use.

We first analyze whether the Jackelses have standing to obtain judicial review of the board's decision to grant Kopperud a variance with respect to the Kemp residence. "Standing is a legal requirement that a party have a sufficient stake in a . . . controversy to seek relief from a court." *Enright v. Lehmann*, 735 N.W.2d 326, 329 (Minn. 2007). "A standing analysis focuses on whether the plaintiff is the proper party to bring a particular lawsuit." *Olson v. State*, 742 N.W.2d 681, 684 (Minn. App. 2007). Standing may be acquired in either of two ways: "either the plaintiff has suffered some 'injury-in-fact' or the plaintiff is the beneficiary of some legislative enactment granting standing." *State by Humphrey v. Philip Morris Inc.*, 551 N.W.2d 490, 493 (Minn. 1996). If the party seeking judicial review of a zoning decision does not have standing, we do not have power to review the township board's decision. *Citizens for a Balanced City v. Plymouth Congregational Church*, 672 N.W.2d 13, 18 (Minn. App. 2003). It is appropriate for a court to raise the issue of standing *sua sponte*. *Enright*, 735 N.W.2d at 329.

In the context of judicial review of zoning decisions, the legislature has conferred standing on persons who are "aggrieved." Minn. Stat. § 394.27, subd. 9 (2008). A person is "aggrieved" only if a decision adversely "operates on his rights of property or bears directly upon his personal interest." *In re Application by City of Rochester for*

Adjustment of Serv. Area Boundaries, 524 N.W.2d 540, 542 n.1 (Minn. App. 1994) (quoting *In re Getsug*, 290 Minn. 110, 114, 186 N.W.2d 686, 689 (1971)); see also *Stansell v. City of Northfield*, 618 N.W.2d 814, 819 (Minn. App. 2000), review denied (Minn. Jan. 26, 2001). The term “aggrieved” applies only if there exists “a substantial grievance, a denial of some personal or property right, or the imposition on a party of a burden or obligation.” *Id.* (quotation omitted).

The Jackelses oppose the township board’s variance decision because “of the substantial detriment it has on their property.” But we have concluded in part I that Kopperud has no obligation to seek a variance with respect to the distance between his feedlot and the Jackels residence. In light of that conclusion, the Jackelses do not have any enforceable rights or interests under the zoning ordinance concerning Kopperud’s expansion of his feedlot on its western edge. In other words, in light of our conclusion in part I, the Jackelses are not “aggrieved” persons, insofar as the Warren Township zoning ordinance is concerned, with respect to the variance that allows Kopperud to operate his feedlot within 750 feet of the Kemp residence. Only the Kemps have rights and interests in that decision, but the Kemps have not sought judicial review, and they did not oppose Kopperud’s application when the matter was considered by the township board.

The Jackelses state in their brief that they “have been confined to their home in air conditioning to escape the odor from Kopperud’s feedlot” and that “the feedlot’s location is likely to decrease the value of [their] property.” These facts, if proved to be true, conceivably could be a basis of relief pursuant to a common-law or statutory cause of action against Kopperud, but no such cause of action was pleaded. The Jackelses’

complaint sought only judicial review of the township board's zoning decisions. It appears that the zoning ordinance does not favor the Jackelses' concerns:

Owners, residents and other users of property in this zone or neighboring properties may be subjected to inconvenience or discomfort arising from normal and accepted agricultural practices and operation, including but not limited to, noise, odors, dust, operation of machinery of any kind including aircraft, the storage and disposal of manure or the application of fertilizers, herbicides and pesticides. Owners, residents and users of this property or neighboring property should be prepared to accept such inconveniences or discomfort from normal operations and are hereby put on official notice that this declaration may prevent them from obtaining a legal judgment against such normal operations.

Winona County, Minn., Zoning Ordinance § 603.1 (2006). Rather, it appears that the 1,000-foot restriction in section 719 is the sole means used by the zoning ordinance to regulate feedlots in that zoning district.

In light of the theories pleaded in their complaint, the Jackelses have not been "aggrieved" by Kopperud's variance with respect to the Kemp residence. *See Stansell*, 618 N.W.2d at 819 (holding that appellants lacked standing to challenge city's adoption of zoning ordinance benefitting third party). The Jackelses have not suffered an "injury-in-fact" and are not the beneficiaries of a legislative enactment granting them standing. *See Philip Morris Inc.*, 551 N.W.2d at 493. Thus, they lack standing to challenge the variance granted to Kopperud with respect to the Kemp residence.

Affirmed.