COURT OF APPEALS
DECISION
DATED AND FILED

November 15, 2000

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

No. 00-0571

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT II

ALVAR LARSON,

PLAINTIFF-APPELLANT,

V.

CITY OF ELKHORN,

DEFENDANT-RESPONDENT.

APPEAL from a judgment of the circuit court for Walworth County: MICHAEL S. GIBBS, Judge. *Affirmed.*

Before Nettesheim, Anderson and Snyder, JJ.

¶1 PER CURIAM. Alvar Larson appeals from the judgment granting summary judgment to the City of Elkhorn. The issue on appeal is whether the Common Council properly denied Larson's request for a conditional use permit.

Because we conclude that the Council acted properly as a matter of law, we affirm.

¶2 Larson purchased two parcels of land in the City of Elkhorn in 1995. The previous owners of the property had entered into a Pre-Annexation Agreement with the City whereby the City agreed to provide services to the land and grant a conditional use for the development of a mobile home park subject to the owner's compliance with all existing zoning regulations and ordinances. The City annexed the property in 1991. The City granted the previous owners a conditional use permit to develop the mobile home park. This permit was rescinded in 1993 because the construction had not begun as it should have under the Agreement.

¶3 When Larson purchased the property, he intended to develop a mobile home park. He applied for a conditional use permit. The City denied Larson's request for the permit. Larson then brought an action asking the court to declare that the City was obliged to grant Larson's request for the permit and for mandamus to order them to do so. Eventually, both Larson and the City moved for summary judgment. The court granted summary judgment to the City, finding that Larson had no right to the conditional use permit as a matter of law, and that he had not demonstrated that he was entitled to the extraordinary remedy of mandamus. Larson appeals.

¶4 Our review of the circuit court's grant of summary judgment is de novo, and we use the same methodology as the circuit court. *See* ***M&I First Nat'l Bank v. Episcopal Homes Management, Inc.***, 195 Wis. 2d 485, 496, 536 N.W.2d 175 (Ct. App. 1995). That methodology is well known, and we need not repeat it here. Summary judgment is appropriate when there is no genuine issue of

material fact and the moving party is entitled to judgment as a matter of law. *See* ***id.*** at 496-97.

¶5 The first issue raised by the parties is whether the City's reliance on and citation to the general intent and purpose provisions of the zoning ordinance as a basis for denying Larson's conditional use permit was appropriate. The circuit court found that the minutes of the Common Council meeting when the Council denied Larson's request for a permit indicated that the Council denied the request based on the fact that the request did not comply with certain provisions of the general intent section of the zoning ordinance.[1]

¶6 Larson argues that the Council may not rely on the general intent provisions to deny a request because there are specific standards which should have been considered. We disagree. In ***Kraemer & Sons, Inc. v. Sauk County Board of Adjustment***, 183 Wis. 2d 1, 13, 515 N.W.2d 256 (1994), the supreme court specifically rejected the argument that only specific standards may be

[1] Specifically, the Council found that the request did not comply with the following portions of the zoning ordinance:

> 17.1-3 Purpose. The purpose of this chapter is to promote the comfort, health, safety, morals, prosperity, aesthetics and general welfare of the City of Elkhorn, Wisconsin.
> 17.1-4 Intent. It is the general intent of this chapter is [sic] to regulate and restrict the use of all structure, lands and waters, and to:
> ....
> (3) Regulate parking, loading and access so as to lessen congestion in and promote safety and efficiency of streets and highways;
> (4) Secure safety from fire, flooding, pollution, contamination and other dangers;
> (5) Stabilize and protect existing and potential property values;
> (6) Preserve and protect the beauty of the City of Elkhorn;
> ....
> (10) Protect the traffic-carrying capacity of existing and proposed arterial streets and highways; ....

considered. The court further held that the Board in that case would have been acting contrary to law had it failed to consider the general intent provisions. *See* ***id.*** at 14.

¶7 We agree with the circuit court's findings that, although succinct, the findings of the Common Council were clear. They denied Larson's request based upon concerns about traffic congestion, access to the property for emergency vehicles, stabilization of property values, aesthetics, and the fact that it was not in compliance with the present land use plan. These findings were specific enough to inform the parties of the basis of the decision, *see* ***Old Tuckaway Associates v. City of Greenfield***, 180 Wis. 2d 254, 277, 509 N.W.2d 323 (Ct. App. 1993), and proper under ***Kraemer***. Consequently, the Common Council properly denied the request.

¶8 Larson argues, however, that the ***Kraemer*** case is inconsistent with a previous supreme court case, ***State ex rel. Humble Oil & Refining Co. v. Wahner***, 25 Wis. 2d 1, 130 N.W.2d 304 (1964), which, he argues, requires that the Council rely on specific standards. We do not agree that these two holdings are in conflict, but conclude that Larson misconstrues the holding of the court in that case. In ***Humble Oil***, the ordinance was found to be defective for failing to provide any factors to guide the board. *See* ***id***. at 11. In that case, the ordinance under consideration did not contain any standards and the court held that there must be some factors for a board to consider. *See* ***id.*** In ***Kraemer***, the court considered the type of factors that a board must consider. The two are not inconsistent holdings; rather, ***Kraemer*** builds on the holding of ***Humble Oil***.

¶9 Larson next argues that he is entitled to the land use privileges granted by the Pre-Annexation Agreement to the previous owners of the property.

Larson has not established that he had a contractual right to enforce the agreement. Larson was neither a party to the contract nor was he a third-party beneficiary.

¶10 Although a contract may not be enforced by a person not a party to it, there is an exception when the contract is made specifically for the benefit of a third party. *See* ***Estate of Plautz v. Time Ins. Co.***, 189 Wis. 2d 136, 146, 525 N.W.2d 342 (Ct. App. 1994). The third party may recover when the contract indicates "an intention to secure a benefit to that party." ***Id.*** There is no indication whatsoever in the Pre-Annexation Agreement that the agreement was intended to benefit Larson or any future owners of the property. Larson does not have any contractual right to enforce the agreement.

¶11 Moreover, even if the Agreement did create an obligation from the City to the owner of the property, this obligation was not unrestricted. It required the owner to be in compliance with all existing zoning ordinances and regulations. Larson was not.

¶12 Further, the conditional use granted by the Agreement was, in essence, a contingent conditional use. It contained certain conditions with which the prior owner had to comply before the conditional use went into effect. The prior owner never complied with those terms. Consequently, the conditional use never ripened and Larson has no right to enforce it.

¶13 Larson's next argument is that he is entitled to a writ of mandamus directing the City to grant him the permit. Mandamus requires that the duty of the City be positive and plain and that the applicant's asserted legal rights be specific and free from substantial doubt. *See* ***Lake Bluff Housing Partners v. City of South Milwaukee***, 197 Wis. 2d 157, 170, 540 N.W.2d 189 (1995). For the reasons discussed above, Larson has not met that burden.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.