04/16/96 RALPH AND PEGGY BURNET v. CITY WAYZATA

1996 | Cited 0 times | Court of Appeals of Minnesota | April 16, 1996

HARTEN, Judge

Neighboring landowners argue that the City of Wayzata failed to enforce its zoning ordinances in connection with the contemplated construction of a home on adjacent land. They challenge district court denial of a writ of mandamus and denial of a temporary restraining order or temporary injunction prohibiting the issuance of a building permit. We affirm in part, and dismiss the appeal in part.

FACTS

Respondent Gary Holmes owns a 3.5 acre parcel of real property on the shore of Lake Minnetonka, in Wayzata (the Property), where he intends to build a house. In the spring of 1995, respondent City of Wayzata (the City) granted a setback variance and issued a grading permit to Holmes. In preparation for construction, Holmes brought in 1,150 truckloads of fill (approximately 10,681 cubic yards) and removed topsoil, scrub trees, and bushes.

Appellants Ralph and Peggy Burnet, Kenneth and Judy Dayton, G.A.S. One, Inc., Helen Johnson, and Gerald and Sue Schwalbach (collectively the Neighbors) brought suit, claiming that the City failed to enforce its zoning ordinances against Holmes. The district court denied the Neighbors' petition for writ of mandamus to direct the City to enforce selected provisions of its zoning ordinance. It also denied their request for a temporary restraining order or temporary injunction to prevent the City from issuing Holmes a building permit. The Neighbors appeal.

We note that no building permit had been applied for when this action was commenced. At oral argument, counsel advised that Holmes did apply for a building permit, which the City denied shortly before hearing in this court. [1]

DECISION

1. Mootness

One of appellant Neighbors' claims is that the district court improperly denied their demand for injunctive relief. They had urged that the district court restrain or enjoin the City from issuing Holmes a building permit. At oral argument in this court, counsel revealed a significant development that had occurred since the parties submitted their briefs--Holmes had applied for a building permit,

and the City had denied Holmes' application. No further details were provided. This development gives us cause to believe that the part of this appeal concerning injunctive relief has become moot; the City itself has voluntarily refused to issue Holmes a building permit without the necessity of court intervention.

Surprisingly, none of the parties advanced claims or authorities on mootness given the City's refusal to issue a building permit. Nevertheless, caselaw is clear that we have a duty to consider mootness regardless of whether that issue has been raised by a party:

Well established in this state's jurisprudence is the precept that the court will decide only actual controversies. If the court is unable to grant effectual relief, the issue raised is deemed to be moot resulting in dismissal of the appeal. State ex rel. Lezer v. Tahash, 268 Minn. 571, 128 N.W.2d 708 (1964). Moreover, the court does not issue advisory opinions, nor decide cases merely to establish precedent. Sinn v. City of St. Cloud, 295 Minn. 532, 203 N.W.2d 365 (1972). Although neither party in this case raised the question of mootness, that failure, of itself, does not eliminate the issue. As a constitutional prerequisite to the exercise of jurisdiction, we must consider the mootness question even if ignored by the parties. St. Paul Fire & Marine Ins. Co. v. Barry, 438 U.S. 531, 537, 98 S. Ct. 2923, 2927, 57 L. Ed. 2d 932 (1978).

In re Schmidt, 443 N.W.2d 824, 826 (Minn. 1989).

In the circumstances presented, we believe that our considering the injunctive relief issue now would result in an advisory opinion; the City cannot be restrained from doing something that it already has refused to do. Accordingly, we dismiss that part of the appeal asserting that the district court erroneously refused to award the Neighbors a temporary restraining order or temporary injunction.

2. Writ of Mandamus

The Neighbors argue that their petition for writ of mandamus was improperly denied.

Mandamus is an extraordinary legal remedy awarded, not as a matter of right, but in the exercise of sound judicial discretion and upon equitable principles. A trial court's order on an application for mandamus relief will be reversed on appeal only when there is no evidence reasonably tending to sustain the trial court's findings.

Coyle v. City of Delano, 526 N.W.2d 205, 207 (Minn. App. 1995) (citation omitted). To obtain mandamus, a petitioner must show "(1) the failure of an official duty clearly imposed by law; (2) a public wrong specifically injurious to petitioner; and (3) no other adequate specific legal remedy." Id.

The Neighbors claim that the City violated its duty to enforce its zoning ordinance. In denying the writ, the district court determined that the City had properly enforced its ordinance. [2] This issue thus

turns on interpretation of the City's zoning ordinance, a question of law that we review de novo. See County of Lake v. Courtney, 451 N.W.2d 338, 340 (Minn. App. 1990), review denied (Minn. Apr. 13, 1990). Zoning ordinances are construed according to their plain meaning and in favor of the property owner. Id. The interpretation a city gives its ordinances, while not determinative, is entitled to "some weight." Chanhassen Estates Residents Ass'n v. City of Chanhassen, 342 N.W.2d 335, 340 (Minn. 1984); Rowell v. Board of Adjustment, 446 N.W.2d 917, 920 (Minn. App. 1989), review denied (Minn. Dec. 15, 1989). [3]

The Neighbors contend that Holmes violated the City zoning ordinance by (1) bringing in too much fill; (2) not submitting a Shoreland Impact Plan and not applying for a Conditional Use Permit or variances; (3) using grading potentially to increase building height; and (4) denuding the property.

(1) Amount of Fill

The Neighbors claim that Holmes was required to obtain the City's approval before bringing in approximately 10,681 cubic yards of fill. According to the ordinance,

modifications which serve to alter the average and typical natural grade of an individual lot more than two (2) feet shall require the approval of the City Council.

Wayzata, Minn., Zoning Ordinance § 801.16.4.D (1992).

To calculate the "average and typical natural grade," it is the practice of the City to multiply the square footage of the subject parcel by two feet to ascertain how much fill may be added before approval is required. Using this method, the plain language of the ordinance has not been violated. [4] The City apparently accepted Holmes' assertion that he has maintained the natural grade and slope of the Property. We find the ordinance unambiguous as applied and hold that the City's interpretation of the ordinance gives effect to its plain meaning. [5]

(2) Necessity of Shoreland Impact Plan

The next issue is whether Holmes was required to submit a Shoreland Impact Plan (SIP) and apply for a Conditional Use Permit (CUP) before grading the Property. A SIP and application for a CUP must be submitted before beginning construction unless one of the exceptions listed in the ordinance applies. Id. § 801.91.19.A (1993). One such exception provides that:

No conditional use permit or shoreland impact plan shall be required for the development of permitted principal uses contained within the zoning districts, provided that such uses are constructed on standard lots and in compliance with the standards of this Ordinance and that all such uses are serviced with public sanitary sewer.

Id. § 801.91.19.B.2 (emphasis added). "Permitted use" is defined as a "use which may be lawfully established in a particular district or districts, provided it conforms with all requirements, regulations, and performance standards (if any) of such districts." Id. § 801.02.2 (1992). A "principal use" is the "main use of land or buildings as distinguished from subordinate or accessory uses." Id.

The Property is zoned R-1A, single-family residential. The home that Holmes proposes to build is a permitted R-1A use and is being constructed on a standard lot served by a public sanitary sewer. The "permitted principal use" requirement is thus met. We find that the exception applies, and therefore no SIP or CUP was required for grading the Property.

The Neighbors also contend that Holmes was required to submit a SIP when he applied for a setback variance. The ordinance states:

No permit or variance shall be issued unless the applicant has submitted a Shoreland Impact Plan as required and set forth in this Ordinance.

Id. § 801.91.20.F (1993). The Neighbors argue that because Holmes received a setback variance, the plain language of this provision requires such a plan. We disagree. Such a reading makes the last phrase "as required and set forth in this Ordinance" superfluous. Because this exception applies, a SIP is not required for permitted and principal uses.

(3) Building Height

The Neighbors argue that Holmes is impermissibly using grading to increase building height.

Modifications to the site grading of a lot may not be undertaken as a means of achieving increased building height, unless approved by the City Council.

Id. § 801.19.3.C (1992).

The Neighbors claim that Holmes has violated the ordinance because he admitted that he would need to add fill and raise the elevation of his home. The district court concluded that there was no present violation:

[The Neighbors] contend that Holmes has brought in fill for the purpose of raising the height of his home in violation of ordinance section 801.19.3.C. Since there has been no building plan presented for approval, and until the height of the proposed home is determined, there can be no violation.

We agree. Furthermore, before the setback variance was granted, Holmes' attorney told the City Council:

And then the other thing I just need you to realize is that as we move the house back closer to the bottom of the hill as it comes up, in order to keep this grade sustainable, our elevations have increased like 974.5 to 976.5 on the first floor, so up two feet, and then the lower level elevation has again gone up two feet, from 962.5 to 964.5, and so as that's had to come up to keep these from getting out of hand, we're going to have to put some fill in. I just want you to be aware of that. Still there won't be any issue of exceeding the height limit or anything like that, but you need to know that.

By granting the setback variance with this knowledge, the City tacitly approved the use of grading to increase the elevation slightly.

(4) Denuding the Property

Finally, the Neighbors contend that Holmes violated the zoning ordinance by denuding the Property. The ordinance, however, allows the removal of vegetation "necessary for construction." Id. § 801.91.14.A (1993). The Neighbors ask us to hold as a matter of law that the denuding was greater than necessary. We decline to do so. What is "necessary" is a fact question to be determined by the City and reviewed under an abuse of discretion standard. See Coyle 526 N.W.2d at 207. Furthermore, zoning ordinances are to be construed in favor of the property owner. County of Lake, 451 N.W.2d at 340. We thus conclude that denuding the property in violation of the ordinance has not been established.

In summary, we hold that the district court properly denied the Neighbors' petition for a writ of mandamus. The Neighbors have not shown a failure of official duty clearly imposed by law; nor have they shown specific injury from a public wrong.

Affirmed in part, and appeal dismissed in part.

10 April 1996

James C. Harten

1. Based on statements made by appellant's counsel at oral argument, we treat as inoperative appellant's February 28, 1996 motion to supplement the record and expedite the decision.

2. Without articulating a detailed legal analysis of ordinance construction and application, the district court stated its legal conclusions from the bench, leaving the parties understandably uncertain of the specific bases for the district court holding.

3. The district courts likewise interpret a city's ordinances de novo, Frank's Nursery Sales v. City of Roseville, 295 N.W.2d 604, 608 (Minn. 1980), but give the city's interpretation some weight. Chanhassen Estates, 342 N.W.2d at 340.

4. The Property is 3.5 acres. There are 43,560 square feet in an acre (or 4,840 square yards in an acre). American Heritage Dictionary 16 (3d ed. 1992). There are 152,460 square feet in 3.5 acres. Therefore, 304,920 cubic feet of fill would be required to reach the two-foot average. Holmes brought in 10,681 cubic yards of fill, or 288,387 cubic feet (1 cubic yard = 27 cubic feet). That is 16,533 cubic feet less than the amount needed to produce an average grade adjustment of two feet.

5. The Neighbors argue that this method of calculation would permit erection of a towering pyramid. We need not address speculative or absurd applications of the ordinance.