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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1221**

Crossroads Center Rochester,
Appellant,

vs.

City of Rochester,
Respondent,

GRAF Enterprises
of Rochester, LLC, et al.,
Respondents.

**Filed April 15, 2013
Reversed
Stauber, Judge**

Olmsted County District Court
File No. 55CV121781

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Considered and decided by Connolly, Presiding Judge; Stauber, Judge; and
Bjorkman, Judge.

UNPUBLISHED OPINION

STAUBER, Judge

Appellant challenges the district court's award of summary judgment in favor of respondents in its action seeking a declaration that the city unlawfully approved a site-development plan. Because the district court erred by concluding that appellant lacks standing, and the city's action in approving the site-development plan was unreasonable, we reverse.

FACTS

Appellant Crossroads Center Rochester (Crossroads) owns and operates Crossroads Center, a shopping center in respondent City of Rochester. Respondents GRAF Enterprises of Rochester, LLC, and Graf Family Investments (collectively Graf) own property adjacent to Crossroads Center (the Graf property). The Graf property was originally part of Crossroads Center, but was sold to C.N.N. Corporation, Graf's predecessor in interest, in 1984. At the time of the sale, the property was the site of a Pannekoken Restaurant.

The record reflects that the Graf property does not have direct access to any public roadway. As part of the 1984 sale, therefore, Crossroads and C.N.N. Corp. agreed to a perpetual, transferable "cross-parking easement," giving both parties rights to park on "that portion of [the properties] which is from time to time devoted to parking" and use "that portion of [the properties] which is from time to time devoted to roadway area" for ingress and egress.

Graf bought the property in 2011 and demolished the Pannekoken Restaurant with the intention of constructing a Buffalo Wild Wings restaurant (BWW) on the site. The planning department for respondent City calculated that the proposed BWW would require 55 parking spaces to comply with the local ordinance. Due to the size of the proposed BWW, there are only 35 parking spaces on the Graf property. Graf submitted a site-development plan, seeking to use the 1984 easement to satisfy the parking ordinance. The city found that Crossroads Center had a surplus of parking spaces to allow for the overflow of twenty parking spaces that Graf required, and it approved Graf's site-development plan on December 7, 2011.

Crossroads appealed the plan's approval to the city's Zoning Board of Appeals, arguing that the city had misinterpreted and misapplied the city code by calculating that the Graf property required 55 parking spaces and that the 1984 parking easement allowed Graf to use twenty parking spaces owned by Crossroads to satisfy its parking requirements. The zoning board unanimously voted to deny the appeal. Crossroads then appealed to the city's Common Council, which also denied the appeal unanimously.

Crossroads then initiated the current action, seeking a declaratory judgment that the city erroneously calculated the number of parking spaces available on Crossroads Center, erroneously calculated the spaces required by Graf's site-development plan, and misapplied the ordinances by allowing Graf to use parking spaces owned by Crossroads to satisfy its parking requirements.

Graf and the city moved for summary judgment. The district court granted the motions, concluding that Crossroads lacks standing to challenge the approval of the site-

development plan because “the harm that Crossroads[] claims it may suffer is contingent on future events.” The district court went on to find that even if Crossroads did have standing to pursue the declaratory-judgment action, the city’s decision was reasonable. This appeal follows.

D E C I S I O N

A motion for summary judgment shall be granted when the “pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that either party is entitled to a judgment as a matter of law.” Minn. R. Civ. P. 56.03. “On appeal, the reviewing court must view the evidence in the light most favorable to the party against whom judgment was granted.” *Fabio v. Bellomo*, 504 N.W.2d 758 761 (Minn. 1993). An appellate court therefore reviews a district court’s summary-judgment decision de novo, determining whether the district court properly applied the law and whether there are genuine issues of material fact that preclude summary judgment. *Riverview Muir Doran, LLC, v. JADT Dev. Grp.*, 790 N.W.2d 167, 170 (Minn. 2010).

I.

“[A] declaratory judgment action must present an actual, justiciable controversy.” *McCaughtry v. City of Red Wing*, 808 N.W.2d 331, 337 (Minn. 2011). The broad concept of justiciability incorporates various overlapping doctrines, including standing, mootness, and ripeness. *State ex rel. Sviggum v. Hanson*, 732 N.W.2d 312, 321 (Minn. App. 2007); see also Erwin Chemerinsky, *A Unified Approach to Justiciability*, 22 Conn.

L. Rev. 677, 677-78 (1990) (listing five justiciability doctrines that must be met in order for a federal court to hear a case).

“Any person aggrieved by an ordinance, rule, regulation, decision or order of a governing body or board of adjustments and appeals acting pursuant to sections 462.351 to 462.364 may have such ordinance, rule, regulation, decision or order, reviewed by an appropriate remedy in the district court,” subject to certain restrictions not applicable here. Minn. Stat. § 462.361, subd. 1 (2012). While the statute does not define the term “person aggrieved,” we have concluded that the term “grant[s] standing to a person when an action by the municipality adversely operates on his rights of property or bears directly upon his personal interest.” *Stansell v. City of Northfield*, 618 N.W.2d 814, 819 (Minn. App. 2000) (quotation omitted), *review denied* (Minn. Jan. 26, 2001).

Here, Crossroads has alleged that if the city’s action were allowed to stand, Crossroads would be denied the ability to count twenty parking spaces on its property for its own purposes if it were to expand Crossroads Center or convert space to a more parking-intensive use. The city’s action of denying Crossroads future ability to count the twenty spaces for its own purposes is a particularized injury to Crossroads’s right of property and personal interest. Crossroads is therefore an aggrieved person under the statute and thus has standing to challenge the city’s approval of Graf’s site-development plan. *See Citizens for a Balanced City v. Plymouth Congregational Church*, 672 N.W.2d 13, 18-19 (Minn. App. 2003) (conducting similar analysis).

However, the primary justiciability issue in this case focuses on *when* Crossroads may challenge the city’s approval of the site-development plan, as opposed to *whether*

Crossroads may challenge the plan's approval. Therefore, the relevant issue is not one of standing, but rather of ripeness. See *McCaughtry*, 808 N.W.2d at 338 (conducting similar analysis); *McKee v. Likins*, 261 N.W.2d 566, 569-70 n.1 (Minn. 1977) (explaining that standing "is concerned with 'who' may bring a suit," whereas the Declaratory Judgments Act "is directed towards the 'ripeness' of a dispute, i.e., 'when' it may be brought").

"An injury that is merely possible or hypothetical is not enough to establish justiciability." *McCaughtry*, 808 N.W.2d at 338 (quotation omitted). And an issue is not fit for review "when 'further factual development would significantly advance [the court's] ability to deal with the legal issues presented.'" *Id.* (quoting *Nat'l Park Hospitality Ass'n v. Dep't of the Interior*, 538 U.S. 803, 812, 123 S. Ct. 2026, 2032 (2003)) (other quotation omitted). Put another way, "[i]ssues which have no existence other than in the realm of future possibility are purely hypothetical and are not justiciable." *Lee v. Delmont*, 228 Minn. 101, 110, 36 N.W.2d 530, 537 (1949).

But in declaratory-judgment actions, "the present controversy requirement of justiciability is viewed leniently and is satisfied if there is a controversy of sufficient immediacy and reality to warrant issuance of a judgment." *Rice Lake Contracting Corp. v. Rust Env't & Infrastructure, Inc.*, 549 N.W.2d 96, 99 (Minn. App. 1996) (quotations omitted), *review denied* (Minn. Aug. 20, 1996). The Declaratory Judgments Act "is designed to resolve the uncertainty over a party's legal rights pertaining to an actual controversy *before* those rights have been violated," and a disruption of the status quo "is not a prerequisite to the establishment of a justiciable controversy." *McCaughtry*, 808 N.W.2d at 340 (quotation omitted). In declaratory-judgment actions, therefore:

Jurisdiction exists to declare the rights, status, and other legal relations of the parties if the complainant is possessed of a judicially protectible [sic] right or status which is placed in jeopardy by the ripe or ripening seeds of an actual controversy with an adversary party, and such jurisdiction exists although the status quo between the parties has not yet been destroyed or impaired and even though no relief is or can be claimed or afforded beyond that of merely declaring the complainant's rights so as to relieve him from a present uncertainty and insecurity.

Minneapolis Fed'n of Men Teachers, Local 238, A.F.L. v. Bd. of Educ. of Minneapolis, 238 Minn. 154, 157, 56 N.W.2d 203, 205-06 (1952).

Here, the “ripening seeds” are sufficient to satisfy the present-controversy requirement. If the city’s action is allowed to stand, twenty parking spaces on the Crossroads property will be rendered unavailable for purposes of future expansion of the Center or a shift to more parking-intensive uses of the Center. Indeed, in response to the common council president’s question on whether Crossroads would be entitled to count the disputed parking spaces in the event of a future expansion, an attorney representing the City stated:

If what—if what your decision here tonight is, is that those spaces are to be counted for Buffalo Wild Wings, if there—if there [sic] are in need of them for Crossroads, depending on their separate requirements they have got and how many spaces they need, *you can't double count them*, exactly

(Emphasis added).

The fact that Crossroads did not present a plan for expansion does not render the claim unripe. *See id.* (“[J]urisdiction exists although the status quo between the parties has not yet been destroyed or impaired and even though no relief is or can be claimed or

afforded beyond that of merely declaring the complainant's rights so as to relieve him from a present uncertainty and insecurity.”). Because Crossroads's protectable right to the parking spaces on its property is placed in jeopardy by the city's actions, Crossroads has standing, its claim is ripe, and the district court erred by dismissing the claim on justiciability grounds.

II.

When reviewing a zoning determination, we review the municipality's determination directly, without any regard for the district court's conclusions. *Citizens*, 672 N.W.2d at 19. “The standard of review in all zoning matters is whether the local authority's action was reasonable.” *St. Croix Dev., Inc. v. City of Apple Valley*, 446 N.W.2d 392, 397 (Minn. App. 1989), *review denied* (Minn. Dec. 1, 1989). The reasonableness test is satisfied when the stated reasons for the municipality's determination are legally sufficient and have a factual basis. *Citizens*, 672 N.W.2d at 19. The interpretation and application of a city ordinance, meanwhile, is a question of law that we review de novo. *Cannon v. Minneapolis Police Dep't*, 783 N.W.2d 182, 192 (Minn. App. 2010). Therefore, we review de novo what the city ordinances require, but we review the city's approval of the site-development plan only to determine if it had a legally sufficient and factual basis. *See Citizens*, 672 N.W.2d at 19 (expressing standard of review of municipality decision involving interpretation of federal statute).

A. Classification of the Graf property as part of a business center

Ordinarily, the proposed BWW on the Graf property would require approximately 84 parking spaces under the relevant city ordinance. *See Rochester, Minn.*, Code of

Ordinances § 62.322 (2012) (requiring standard B-4 restaurants to have one off-street parking space per four seats in restaurant, plus one off-street parking space for each employee on the largest shift). The city code provides lower requirements, however, for space designated as part of a “business center.” Rochester, Minn., Code of Ordinances § 62.383(D) (2012).

The city considered the Graf property to be part of a business center, therefore requiring only 55 off-street parking spaces for ordinance compliance, and the district court found that the city had a reasonable and factually sufficient basis to do so. Crossroads challenges that determination on appeal, arguing that the Graf property does not meet the requirements to be considered part of a business center and therefore the city erroneously applied the ordinance in calculating the parking requirements.

Rochester’s city ordinance defines a business center as “[a] building or group of buildings planned, constructed and managed as a total entity, with common on-site parking for a group of commercial, office or service establishments.” Rochester, Minn., Code of Ordinances § 60.200 (2012). Here, the city council considered the proposed BWW on the Graf property to be part of a business center because it would “be developed as one of a group of buildings that are planned and constructed to use common access points along with other adjacent businesses at this same location.” The city based its determination on the fact that the Graf property does not have separate access to any public street and shares a perpetual, non-exclusive easement for purposes of ingress and egress, internal roadways, and parking with Crossroads Center.

The record indicates that the Graf property was originally constructed and managed as part of the Crossroads Shopping Center, but was sold off in 1984 to Graf's predecessor in interest. There is no evidence in the record that the proposed BWW on the Graf property is to be planned or constructed as a total entity along with Crossroads Center, nor is there any evidence that the restaurant and Crossroads Center are managed as a total entity. *See id.* (defining requirements for a business center as including joint planning, construction, and management). Because the Graf property does not meet the ordinance requirements to be considered part of a "business center," the city's classification of it as such lacks a legally sufficient basis.

B. Interpretation of 1984 easement

The city calculated that the proposed BWW on the Graf property would require 55 off-street parking spaces to satisfy the city ordinances. Because there are only 35 parking spaces on the Graf property, the city used the 1984 Easement to allocate 20 parking spaces on Crossroads's property to Graf to satisfy its parking requirement. Appellant argues that the city ordinances prohibit using the easement to satisfy off-street-parking requirements. We agree.

"Where required off-street parking is provided elsewhere than on the same lot as the use which it serves, evidence of ownership or control of the parking facility, either by deed or long term lease, shall be provided with the application for zoning certificate approval." Rochester, Minn., Code of Ordinances § 63.435 (2012). Under the plain language of the ordinance, therefore, Graf must establish ownership or control of a sufficient number of parking spaces on Crossroads's property by deed or long-term lease.

Graf argues that the 1984 easement satisfies this requirement. Assuming without deciding that the easement is a deed or long-term lease, Graf’s argument that the easement grants it ownership or control over parking spaces owned and maintained by Crossroads is without merit. The ordinance does not specifically define “ownership” or “control,” and we therefore use the plain and ordinary meaning of those words. *See Am. Family Ins. Grp. v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000) (“Basic canons of statutory construction instruct that we are to construe words and phrases according to their plain and ordinary meaning.”)

The *American Heritage Dictionary* defines “ownership” as “[l]egal right to the possession of a thing.” *The American Heritage Dictionary of the English Language* 1295 (3rd ed. 1992). “Control” is defined as “[a]uthority or ability to manage or direct.” *Id.* at 410. At most, the 1984 easement allows Graf to use such areas of the Crossroads property “which [are] from time to time devoted to parking” and roadways. To accept Graf’s argument that the 1984 cross-parking easement satisfies the requirements of the city ordinance conflates “ownership” or “control” with “use.” The city ordinance unambiguously requires Graf to show ownership or control over any parking spaces on a different lot being used to satisfy the off-street-parking requirements. The 1984 easement does not meet this requirement, and the city’s action in approving the site-development plan therefore lacked a sufficient legal basis. *See Amoco Oil Co. v. City of Minneapolis*, 395 N.W.2d 115, 117 (Minn. App. 1986) (stating that, notwithstanding the municipality’s broad discretionary power, we may reverse a municipality’s decision if its reasons are “legally insufficient or if the decision is without factual basis”).

Moreover, in addition to showing such ownership or control by deed or long-term lease, “the owner of the development shall [also] file a recordable document with the City requiring the owner and his or her assigns to maintain *the required number* of off-street parking spaces during the existence of said use.” Rochester, Minn., Code of Ordinances § 63.435 (emphasis added). Here, there is no recordable document that sets out a specific number of parking spaces for BWW’s use. The 1984 easement only allows for parking on “that portion of the Crossroads Center Parcel which is from time to time devoted to parking” and ancillary ingress and egress. Nowhere does the easement require any party to allocate or maintain a certain number of parking spaces or any parking spaces at all. Therefore, even if the 1984 easement did give Graf “ownership or control” over parking spaces owned by Crossroads, it is not sufficient to satisfy the requirements of the ordinance.

C. Calculation of gross-leasable area

Crossroads also challenges the city’s calculation of the parking requirements based on a 90% calculation of the gross square footage of what Graf contends is a single business center. Crossroads correctly notes that the city ordinance defines “gross leasable area,” which is the principal metric used in the calculation of parking requirements for a business center, as “[t]he total floor area designed for the occupancy and exclusive use of a tenant.” Rochester, Minn., Code of Ordinances § 60.200. But the ordinance also states that, in determining the number of off-street parking spaces, “floor area” specifically *excludes* “areas used principally for non-public purposes, such as storage, the incidental repair, processing or packaging of merchandise, for show

windows, for restrooms, areas devoted to mechanical equipment, or for dressing rooms.”
Rochester, Minn., Code of Ordinances § 63.422(1) (2012).

Here, the city found that at least 10 percent of any business center’s total floor area is generally used for non-public uses, and therefore calculated the gross leasable area as being 90% of the building’s total square footage. While such practice does not necessarily run afoul of the language of the ordinance, it appears the city may have used different percentages when applying the ordinance in the past. Because we conclude that the city erred by concluding that the proposed BWW on the Graf property is part of a business center, we do not specifically address the city’s calculation of gross leasable area as being 90% of total square footage. We do note, however, that we have previously held that a municipality acts arbitrarily and unreasonably by inconsistently applying its ordinances. *See, e.g., Clear Channel Outdoor Adver., Inc. v. City of St. Paul*, 675 N.W.2d 343, 344-45 (Minn. App. 2004), *review denied* (Minn. May 18, 2004).

Reversed.