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DISTRICT II

January 29, 2025

To:

Hon. Sandra J. Giernoth
Circuit Court Judge
Electronic Notice

Jack Wallace Rettler
Electronic Notice

Sarah Adjemian
Clerk of Circuit Court
Washington County Courthouse
Electronic Notice

Christine M. Doubleday
3324 Lake Drive
Hartford, WI 53027

James J. Doubleday
Electronic Notice

You are hereby notified that the Court has entered the following opinion and order:

2023AP1317

James J. Doubleday v. Town of Hartford (L.C. #2021CV545)

Before Gundrum, P.J., Grogan and Lazar, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

James J. Doubleday and Christine M. Doubleday, pro se, appeal from an order denying their certiorari challenge to a conditional use permit (CUP) issued by the Town of Hartford. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2021-22).¹ We affirm.

In 2021, the Doubledays sought certiorari review of a CUP the Town of Hartford had granted to C. Goeman Properties IV, LLC, for the operation of a bar and restaurant. The circuit

¹ All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

court denied the petition, a determination we reversed in Appeal No. 2022AP457, unpublished slip op. and order (Feb. 1, 2023). We concluded the record the Town had supplied was too barebones to allow for meaningful certiorari review, and we therefore remanded for further proceedings so that the Town could supplement the certiorari record with either transcripts or recordings of the relevant municipal meetings.

On remand, the Town supplemented the certiorari record with transcripts of the relevant plan commission and town board meetings. The circuit court reconsidered the petition in light of the supplemented record. The outcome did not change. The court concluded that the Doubledays had failed to establish a violation under any of the relevant certiorari criteria. It therefore upheld the Town’s decision to issue the CUP.

The Doubledays raise a multitude of issues, which we will address as best we can perceive them.² Certiorari review permits individuals aggrieved by a municipal zoning decision to raise only certain issues: “(1) whether the [town board] kept within its jurisdiction; (2) whether it proceeded on a correct theory of law; (3) whether its action was arbitrary, oppressive, or unreasonable and represented its will and not its judgment; and (4) whether the evidence was such that it might reasonably make the order or determination in question.” *Oneida Seven Generations Corp. v. City of Green Bay*, 2015 WI 50, ¶41, 362 Wis. 2d 290, 865 N.W.2d 162 (citation omitted). We review the record and decision of the town board, not that of the circuit court, *see id.*, ¶42, and we presume that the municipality’s decision was correct and valid, *see Lamar Central Outdoor, Inc. v. Board of Zoning Appeals of Milwaukee*, 2005 WI 117, ¶16, 284 Wis. 2d 1, 700 N.W.2d 87.

² To the extent we do not address an issue the Doubledays attempted to raise, we deem those matters insufficiently briefed and decline to consider them. *See State v. Pettit*, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992).

First, the Doubledays argue the record is still insufficient to conduct a meaningful review of the record under the certiorari criteria. The Doubledays interpret the relevant case law as requiring the Town to set forth a comprehensive rationale for adopting the CUP. But such an interpretation vastly exceeds the dictates of *AllEnergy Corp. v. Trempealeau County Environmental & Land Use Committee*, 2017 WI 52, ¶23 n.14, 375 Wis. 2d 329, 895 N.W.2d 368, which merely requires that a court be able to “discern” from the record or transcript why the municipality took the challenged action. Here, the supplemented transcripts make clear that the members of the town board generally agreed the use was acceptable, it was supported by many nearby property owners, and the owner had worked with the Town to address many of the objections the Doubledays had raised. The record is sufficient for review.

Turning to the certiorari criteria, the Doubledays argue the Town’s action was arbitrary because the town planning commission failed to comply with town ordinances in its consideration and recommendation on the CUP matter. Primarily, the Doubledays appear to argue the planning commission failed to identify and consider each of sixteen highly specific criteria identified by town ordinance for approving zoning matters, and failed to explicitly find that the proposed use would not be detrimental or injurious to the public health, public safety, or character of the surrounding area.

We are unpersuaded these matters defeat the presumption of correctness to which the Town’s decision is entitled. The sixteen zoning considerations are preceded by the verb phrase “may consider,” establishing that consideration of any individual enumerated factor is a discretionary call. As for the necessity of a specific finding that the use would not injure the public good, the ordinance does not require a written statement from the planning commission,

the planning commission inferentially made such a finding when it recommended approval of the CUP, and the CUP approved by the town board included an explicit statement to that effect.

The Doubledays also take issue with the short time period allocated for public speakers during the relevant hearings, the adequacy of the site plan, the historic nonconforming use of the property, the limited amount of time the planning commission and town board devoted to discussing the CUP proposal, and the CUP being granted to an individual and not the entity. They do not adequately explain why or how these matters are cognizable under the limited scope of certiorari review.

Next, the Doubledays challenge the ability of one town supervisor to vote on the board matter given his involvement at the plan commission level. They contend that under *Marris v. City of Cedarburg*, 176 Wis. 2d 14, 498 N.W.2d 842 (1993), their due process rights were violated by his participation. But *Marris* involved a situation where the board chairperson made comments indicating that he had prejudged the plaintiff's zoning application. *Id.* at 20. Here, the Doubledays point to no comments indicating the supervisor was subjectively or objectively biased. Instead, the Doubledays focus on the supervisor's participation in the planning commission proceedings, without citing any legal authority describing why this was impermissible.³ Nor do the Doubledays grapple with the fact that the approval was unanimous and would have been granted even without the supervisor's participation.

³ The citation to a handbook apparently issued by the League of Wisconsin Municipalities is insufficient to establish a constitutional due process violation.

The Doubledays also argue there was not substantial evidence supporting the approval of the CUP. Their argument on this point generally consists of expressions of consternation that the town board did not accept the Doubledays' position or do more to ameliorate the perceived negative impacts of the CUP. But our task on certiorari review is not to weigh the evidence, nor may we substitute our view of the evidence for that of the Town. *See Eco-Site, LLC v. Town of Cedarburg*, 2019 WI App 42, ¶25, 388 Wis. 2d 375, 933 N.W.2d 179. Rather, we merely assess whether “reasonable persons could decide as the Town did.” *Id.* (citation omitted). The Doubledays have failed to demonstrate that the Town’s action in granting the CUP lacked a sufficient evidentiary foundation.

Based on the foregoing,

IT IS ORDERED that the order of the circuit court is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals