

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF WARD

NORTH CENTRAL JUDICIAL DISTRICT

RMM Properties, L.L.L.P., )  
Appellant, ) Case No. 51-2023-CV-02081  
vs. )  
City of Minot, )  
Appellee. ) **ORDER AFFIRMING THE CITY  
OF MINOT'S RULING**

[¶1] This matter comes before the Court on an appeal under N.D.C.C. § 28-34-01. The Appellant, RMM Properties, L.L.L.P. (“RMM”) is appealing the Appellee’s (“City”) decision in approving Aksal Group, LLC’s (“Aksal”) application for vacation of Kyle’s Addition under N.D.C.C. § 40-50.1-16, and approval of a preliminary plat of Citizens Alley Addition.

[¶2] RMM filed its Notice of Appeal on October 17, 2023. (R1). A certificate of record was filed by the City on November 13, 2023 (R9-25). RMM filed its brief on December 6, 2023. (R30). The City filed its brief on December 18, 2023. (R34). RMM filed its reply brief on December 26, 2023. (R36).

[¶3] RMM asserts that the City’s decision to approve vacation of the plat of Kyle’s Addition and the approval of the preliminary plat of Citizen’s Alley Addition was done so by interpreting and applying incorrect controlling law, leading to a decision that is arbitrary, capricious, and unreasonable. Based on the following, the City of Minot decision is hereby AFFIRMED.

## DISCUSSION

[¶4] On July 24, 2023, Aksal filed an application with the City Planning Department requesting vacation of a plat of Kyle's Addition and approval of a preliminary plat of a new 3-lot subdivision called "Citizens Alley Addition." (R10). As platted, Kyle's Addition contained no number lots. Block 1 encompassed the entire platted subdivision of Kyle's Addition. (R34:1:3). The plat of Kyle's Addition contained a 24-foot "public access easement" located along the westerly edge of Block 1, which was donated and dedicated to the public for public use. (R16). At all times during the City proceedings Aksal Group owned all of Block 1, Kyle's Addition. RMM is the owner of the East half of Lots 4, 5, & 6 of Block 23 in the First Addition to the City of Minot, which adjoins Kyle's Addition.

[¶5] The City Planning Commission Staff reviewed the Aksal Group Application and distributed it to City departments and other public agencies within the City of Minot for comment. The City Planning Commission then prepared a staff report dated August 6, 2023, which recommended approval of vacation of Kyle's Addition and approval of the preliminary plat of Citizen's Alley. (R19).

[¶6] On August 29, 2023, RMM submitted an objection to Aksal's application on the basis that Aksal Group failed to obtain RMM's consent as required under N.D.C.C. § 40-39-05 when vacating a public alley dedicated to the public. (R16). RMM further contends that the city applied the wrong law in making its decision, arguing that because the application calls for vacation of the public access easement they refer to as an alley, then N.D.C.C. § 40-39-05 should apply.

[¶7] The City Planning Commission conducted a public hearing on the Aksal Group application on September 6, 2023. (R22). The City Council reviewed the City Planning

Commissions recommendation at its September 18, 2023, meeting and concurred with the recommendations of the Planning Commission. (R24 & 25). The City passed a resolution that vacated Kyle's Addition and the corresponding public access easement, and did so pursuant to N.D.C.C. §40-50.1-16. (R25).

[¶8] North Dakota Century Code § 28-34-01 governs appeals from local governing bodies. Under N.D.C.C. § 28-34-01, the district court's scope of review is limited. *Hagerott v. Morton Cnty. Bd. of Comm'r's*, 2010 ND 32, ¶ 7, 778 N.W.2d 813 (citing *Gowan v. Ward Cnty. Comm'n*, 2009 ND 72, ¶ 5, 764 N.W.2d 425; *Tibert v. City of Minto*, 2006 ND 189, ¶ 8, 720 N.W.2d 921); The local governing body's decision must be affirmed unless it acted arbitrarily, capriciously, or unreasonably, or if there is not substantial evidence supporting the decision. *Id.* (citing *Gowan*, at ¶ 5; *Tibert*, at ¶ 8). “A decision is not arbitrary, capricious, or unreasonable if the exercise of discretion is the product of a rational mental process by which the facts and the law relied upon are considered together for the purpose of achieving a reasoned and reasonable interpretation.” *Id.* (quoting *Gowan*, at ¶ 5; *Tibert*, at ¶ 8). A governing body's failure to correctly interpret and apply controlling law constitutes arbitrary, capricious, and unreasonable conduct.” *Hagerott*, 2010 ND 32, ¶ 7, 778 N.W.2d 813 (quoting *Gowan*, 2009 ND 72, ¶ 5, 764 N.W.2d 425; *City of Fargo v. Ness*, 551 N.W.2d 790, 792 (N.D.1996)). “Such a standard of review ensures that the court does not substitute its judgment for that of the local governing body which initially made the decision.” *Hector v. City of Fargo*, 2009 ND 14, ¶ 9, 760 N.W.2d 108.

[¶9] RMM's contention is that the City should have considered Aksal's application to vacate under N.D.C.C. § 40-39-05. The City applied N.D.C.C. § 40-50.1-16. North Dakota Century Code § 40-39-05 governs the opening and vacating of streets, alleys, and public places. It

requires that a petition be signed by all owners of adjoining property prior to a street, alley, or public ground be vacated. North Dakota Century Code § 40-50.1-16 governs the platting of town sites and subdivisions. If lots contained in the plat have already been sold, then all owners of the lots in the plat must join in the signing of an instrument declaring vacation of the plat. Vacation of streets and public rights is not effective without endorsement by the governing body that has the power to approve the plat, and the endorsement must indicate the rights to be vacated.

N.D.C.C. § 40-50.1-16.

[¶10] Thus, the threshold question for this Court to consider is whether the City's decision to vacate Kyle's Addition, including the public access easement, is a product of a rational mental process by which the facts and law relied upon are considered together for the purpose of achieving a reasoned and reasonable interpretation.

[¶11] Here, the City relied on a several factors when reaching its decision. First, the City Planning Commission Staff reviewed the Aksal's application and distributed it to City departments and other public agencies within the City for comment. A staff report was provided on August 6, 2023. (R19). In the report was an analysis of vacation of the plat. The City took into consideration the public's interest in the public access easement to be vacated. The public access easement historically connected a remnant segment of 1<sup>st</sup> Avenue SE to East Central Avenue, and the City noted that connectivity between 1<sup>st</sup> Ave SE to East Central Avenue is easily provided by the street network and sidewalk network that surrounds East Central Avenue, 1<sup>st</sup> Street SE, and 1<sup>st</sup> Avenue SE. After taking into consideration the public's interest in the easement, the City determined that the public access easement was no longer necessary. Additionally, the staff report took into consideration adjoining properties, as the public access

easement had provided some functionality for the adjoining landowners. With that in mind, the staff report recommended establishing a maintenance easement so that the adjoining landowners may conduct maintenance as necessary.

[¶12] Next, RMM argues that the public access easement is an alley. At the creation of the Kyle's Addition, the owner, Kyle A. Schmidt, "donated and dedicated the access easement to the public for public use." (R16:9). Although, it is referred to as an alley, and the new proposed addition is titled "Citizens Alley", it is clearly referred to as an access easement at the creation of Kyle's Addition. RMM further argues that City incorrectly found that Aksal was the only owner of the entire plat because the dedication of the easement was to the public, and upon vacation of the plat RMM should have obtained half the interest in the easement. However, the City found that Aksal was the only owner of Kyle' Addition. (R25). An easement for public use does not relinquish the owner's property rights subject to the easement. *State v. Wilkie*, 2017 ND 142, ¶ 12, 895 N.W.2d 742, 745–46, referencing *Riverwood Commercial Park, LLC v. Standard Oil Co., Inc.*, 2011 ND 95, ¶ 8, 797 N.W.2d 770 ("An easement is an interest in land consisting in the right to use or control the land, or an area above or below it, for a specific limited purpose[.]") (internal citation and quotation omitted); *Donovan v. Allert*, 11 N.D. 289, 91 N.W. 441, 442 (1902) (an owner "who dedicates by plat does not convey an absolute fee to the public, but reserves the whole estate and title, except the limited fee conveyed to the public for the designated and intended use."); *Hjelle v. J.C. Snyder and Sons*, 133 N.W.2d 625, 629–30 (N.D. 1965) (holding landowner retains right to use property subject to highway easement). Thus, because the easement contained in Kyle's Addition was listed as a public access easement, there

was sufficient evidence in the record for the City to determine that Aksal is the sole owner of the plat.

[¶13] Next, at the Planning Commission meeting of September 6, 2023, public testimony was heard from Nici Meyer, counsel for RMM who argued that N.D.C.C. § 40-50.1-16 cannot be applied independent from N.D.C.C. § 40-39-05. Jack Dwyer, legal counsel for Aksal, spoke and addressed the comments from Mrs. Meyer. He argued that because Aksal owns the entire of Kyle's Addition then N.D.C.C. § 40-50.1-16 applies. Mr. Dwyer also referenced a 1997 Attorney General Opinion that states that a city may vacate streets and public rights through the required procedures for vacating a plat under N.D.C.C. § 40-50.1-16 without additionally following the procedures for vacating streets, alleys, or public grounds under N.D.C.C. § 40-39-05. *See* 1997 N.D. Op. Atty. Gen. L-132 (1997). Assistant City Attorney Nick Schmitz informed the Planning Commission that it was his belief that proceeding under N.D.C.C. § 40-50.1-16 was appropriate. The City reasoned that the application of N.D.C.C. § 40-50.1-16 is appropriate as a result of Aksal being the only owner of Kyle's Addition, as well as that the location of the public access easement was wholly located within the boundaries of Kyle's Addition.

[¶14] Subsequently, on September 18, 2023, the City adopted a resolution for vacation of Kyle's Addition and the public access easement in concurrence with the Planning Commission's recommendations. When looking at the decision-making process of the City, it becomes clear that based upon the evidence in the record, the City, relying on relevant facts and law reached a reasonable decision. The City applied N.D.C.C. 40-50.1-16 because Aksal owned the entirety of the plat, and was seeking to vacate the entirety of the plat, rather than specifically a street, alley, or public ground, or a portion thereof, as contemplated in N.D.C.C. § 40-39-05. The City also

took into consideration the public's interest in the public access easement. In doing so it decided that the easement was no longer necessary, and endorsed that the public access easement be vacated. There is no evidence contained in the record that indicates that the City's decision was arbitrary, capricious, unreasonable or there was no substantial evidence to support it. Therefore, the City's decision must be upheld.

*27th*  
Dated this 21<sup>st</sup>, day of February, 2024.

BY THE COURT:



Todd L. Cresap  
District Judge

E-Served by M. Knight on

2-28-24:

N. Meyer

B. Quarne

B. Van Grinsven