

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1466**

Bernard Friel, James Losleben, Jill Smith, Robert Bonine,
Marina McManus, Robert Diedrich, Stephen Treichel,
Appellants,

vs.

City of Mendota Heights,
Respondent.

**Filed March 18, 2019
Affirmed
Reyes, Judge**

Dakota County District Court
File No. 19HA-CV-17-4442

Bernard P. Friel, Mendota Heights, Minnesota; and

James Losleben, Mendota Heights, Minnesota; and

Jill Smith, Mendota Heights, Minnesota; and

Robert Bonine, Mendota Heights, Minnesota; and

Marina McManus, Mendota Heights, Minnesota; and

Robert Diedrich, Mendota Heights, Minnesota; and

Stephen Treichel, Mendota Heights, Minnesota (pro se appellants)

James J. Thomson, Elizabeth C. Brodeen-Kuo, Kennedy & Graven, Chtd., Minneapolis,
Minnesota (for respondent)

Considered and decided by Hooten, Presiding Judge; Reyes, Judge; and Cochran, Judge.

UNPUBLISHED OPINION

REYES, Judge

On appeal from the district court’s grant of summary judgment to appellant citizens and subsequent dismissal of their claims on the merits, citizens challenge several land-use and zoning actions by respondent City of Mendota Heights (the city), arguing that they were arbitrary and capricious, violated city ordinances, lacked factual support in the record, and denied citizens due process of law. We affirm.

FACTS

This case involves a developer’s plan to construct two apartment buildings on 5.45 acres of land located in Mendota Heights. In late May 2017, the developer submitted to the city an application to amend the city’s comprehensive plan by redesignating the property’s future land use from a general business development designation (“B-3 General Business District”) to one that allows for residential development (“High Density Residential - Planned Unit Development” (HR-PUD)). The city’s planning commission held a public hearing on the application and recommended approval to the city council. The city council adopted Resolution 2017-43, approving the developer’s application based on four findings of fact.

The developer submitted a second application to the city relating to the construction project. The application included a request to rezone the property from B-3 General Business to HR-PUD, a request for a conditional use permit (CUP) and a wetlands permit,

and a preliminary plat approval. The city's planning commission held a public hearing on the application and unanimously recommended to the city council that it approve all parts of the application. The city council adopted Resolution 2017-69, approving the application in its entirety. The city council based its approval of Resolution 2017-69 on eleven findings of fact.

On November 2, 2017, citizens filed suit against the city, alleging that it adopted Resolutions 2017-43 and 2017-69 without legal authority and in direct violation of its own ordinances. Both parties filed cross-motions for summary judgment. At or about the same time, the city council adopted Resolution 2017-95, approving a final plat for the property and authorizing the developer to proceed with construction of the project.

In January 2018, the city council considered and adopted Resolution 2018-01, which reaffirmed Resolutions 2017-43 and 2017-69. A large part of Resolution 2018-01 focused on addressing whether the proposed HR-PUD complied with the city's ordinances, specifically Mendota Heights, Minn., City Code § 12-1K-2(B) (2003), which governs grants of PUDs for plots of less than ten acres, and it adopted additional findings related to this issue.

In February 2018, the parties appeared in district court on their cross-motions for summary judgment. While the district court took the matter under advisement, the city council conducted a public hearing on March 27, 2018, to address some of its actions that citizens alleged were unlawful. The public hearing discussed reaffirming the rezoning of the property, as previously considered by the city council in January 2018, and addressed proposed amendments to the project by the developer to bring the project into compliance

with section 12-1K-2(B). Based on the information and the comments at the public hearing, the planning commission submitted to the city council a planning staff report, recommending that it adopt a resolution approving the issues discussed at the hearing. On April 3, 2018, the city council adopted Resolution 2018-29, accepting the additional findings and recommendations for the project. Resolution 2018-29 also reaffirmed the city's adoption of Resolutions 2017-43, 2017-69, 2017-95, and 2018-01.

The parties appeared before the district court in June 2018, to address the city's various postmotion hearings and their effect on the cross-motions for summary judgment. Both parties declined to submit additional briefing.

In July 2018, the district court issued an order granting citizens' motion for summary judgment, holding that the city's land-use actions violated the city ordinance regarding grants of PUD permits and were arbitrary and capricious. In the same order, the district court then dismissed the case on the merits, holding that the city's actions in March and April of 2018 resolved the city's complained-of ordinance violations. This appeal follows.

D E C I S I O N

Citizens argue that the city acted without legal authority and in direct violation of its ordinances. Citizens' arguments fail.

Our scope of review for zoning matters is the same as that used for state administrative-agency decisions; to make an independent examination of the record before the city and arrive at our own conclusion as to the propriety of the city's final decision, without according any special deference to the same review conducted by the district court.

Swanson v. City of Bloomington, 421 N.W.2d 307, 311 (Minn. 1988) (citation omitted). Cities have broad discretion in land-use planning and regulation as these are within a city’s legislative prerogative. *Mendota Golf, LLP v. City of Mendota Heights*, 708 N.W.2d 162, 174 (Minn. 2006). Our review of decisions regarding comprehensive-plan amendments, which are legislative in nature, is limited to determining whether the reasons given by the city are legally sufficient and are factually supported. *Wensmann Realty, Inc. v. City of Eagan*, 734 N.W.2d 623, 630 (Minn. 2007). When the parties agree that there are no material issues of fact, we review a district court’s interpretation of a city ordinance de novo, giving only slight consideration to the city’s interpretation. *R.L. Hexum & Assocs., Inc. v. Rochester Twp., Bd. of Supervisors*, 609 N.W.2d 271, 274 (Minn. App. 2000) (citation omitted).

Here, citizens challenge the city’s adoption of Resolutions 2017-43 and 2017-69. Citizens also challenge the actions taken by the city in January, March, and April of 2018, on the grounds that the city violated its ordinances by attempting to “shore up” the record after it had already made a final zoning decision on the project.

Citizens argue that the four findings of fact that the city relied on in approving Resolution 2017-43 lacked factual bases. However, each of these findings is supported by the additional information the city obtained in its planning staff report of March 27, 2018. Citizens argue that the project failed to comply with several provisions of section 12-1K-2(B), and that this invalidated several of Resolution 2017-69’s findings of fact. The March 27, 2018, report resolved these issues as well, by providing a clarified definition of “infill” sites that applied to the property, an updated grading/utility plan for the project site that

eliminated the need for a wetlands permit, a traffic report confirming that the project complied with city ordinances, proposals by the developer to reduce the impervious-surface ratio and the parking-spaces-per-unit ratio, and a proposal to increase the amount of separation space between the proposed buildings.

This court recognizes a local government's inherent authority to reconsider its own decisions. *In re Block*, 727 N.W.2d 166, 182 (Minn. App. 1979); *see also State ex rel. Turnblad v. District Court*, 107 N.W.2d 307, 308 (Minn. 1960) (holding that an administrative agency has a right to reopen, rehear, and reconsider its own determinations until jurisdiction is lost by appeal or lapse of time); *In re North Metro Harness, Inc.*, 711 N.W.2d 129, 134-136 (Minn. App. 2006), *review denied* (Minn. June 20, 2006) (finding administrative agencies may independently move to reconsider their decisions). Therefore, the city had authority to resolve the deficiencies of its 2017 resolutions, and its actions in March and April of 2018 complied with its ordinances.¹

Section 12-1K-5² outlines the procedures a city council must follow to amend a PUD grant after it has made a final decision. Mendota Heights, Minn., City Code § 12-1K-5 (2003). The city council complied with section 12-1K-5 by amending its PUD approval pursuant to the procedures for the approval of a CUP under section 12-1L-6. *Id.* at § 12-1K-5(G)(2). The city's planning commission considered each set of additional

¹ The January 2, 2018 adoption of Resolution 2018-01 did not amend the defects of Resolution 2017-69 because the city did not follow the procedures under section 12-1L-6 of the city's ordinances.

² The district court referenced the online version of the city code, in which this section is labeled "12-1K-6." When citing city code, we refer to the official print version, which refers to this section as "12-1K-5."

findings and provided recommendations to the city council. The city council held public hearings on April 3 and March 27, 2018, to consider the proposed additional findings. These actions complied with the city ordinance for amending PUD decisions after a final approval and honored citizens' due-process rights.

Because the city's decisions have factual support and the city lawfully supplemented the record to comply with its ordinances, we affirm the district court's holding.

Affirmed.