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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-161**

Donald J. DeLanghe,
Relator,

vs.

Lyon County Board of Commissioners, et al.,
Respondents.

**Filed August 29, 2011
Affirmed
Larkin, Judge**

Lyon County Board of Commissioners

James P. Peters, Law Offices of James P. Peters, PLLC, Glenwood, Minnesota (for relator)

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Considered and decided by Larkin, Presiding Judge; Shumaker, Judge; and Wright, Judge.

UNPUBLISHED OPINION

LARKIN, Judge

Relator challenges respondent county board of commissioners' amendment of his conditional-use permit. Because the board's decision to impose new conditions on relator's permit was not arbitrary or capricious, we affirm.

FACTS

Relator Donald J. DeLanghe operates an animal feedlot in Lyon County. He received a conditional-use permit in August 2007 that allowed him to maintain up to 4,000 “animal units” of beef cattle. The permit lists a number of conditions regarding manure maintenance and storage, disposal of deceased animals, feedlot size, minimum setbacks of the feedlot from roads and rights-of-way, and mandatory licenses and other permits. The permit states that violations of these conditions or Lyon County zoning regulations “are grounds for enforcement proceedings.”

On September 8, 2010, Lyon County was notified that manure had spilled from DeLanghe’s feedlot into public waters. The Lyon County feedlot officer, John Biren, learned that approximately 800,000 gallons of manure had been applied to 26 acres of DeLanghe’s land and that heavy rainfall had caused a large amount of the manure to run off into public waters. Biren visited DeLanghe’s farm on September 8 to stop the manure application and assess the spill. He reported the incident to respondent Lyon County Board of Commissioners at a public meeting on September 21. The board asked its legal counsel to work with the Minnesota Pollution Control Agency (MPCA) to determine whether DeLanghe had violated his conditional-use permit or any zoning regulations.

Biren gave a detailed report of the incident at another public board meeting on October 5. The board voted to revoke DeLanghe’s permit but also agreed to consider amendments as an alternative to revocation. The board voted to stay revocation of the permit until October 20, to give county staff and DeLanghe time to present “acceptable amendments” to the board. On October 19, the board held another public meeting and

extended the stay until November 2, on which date the board would conduct a hearing to amend DeLanghe's permit. The minutes from these meetings indicate that DeLanghe was present at the first two meetings and answered questions from the board. Lyon County alleges in its respondent's brief that DeLanghe was present at the third meeting, but the minutes do not indicate whether or not he was present.

On November 2, the board met again and voted to acknowledge that DeLanghe violated his conditional-use permit by over-applying manure to his fields and causing manure to enter public waters. The board reviewed a list of proposed amendments that Biren had drafted with DeLanghe's input. The amendments provided detailed rules about the application and storage of manure on DeLanghe's feedlot and required DeLanghe to conduct an analysis of the manure and soil. The amendments also prohibited the runoff of manure from DeLanghe's feedlot into public waters and required DeLanghe to reimburse Lyon County for expenses related to future manure spills.

At the November 2 meeting, DeLanghe's neighbor informed the board that he had hired an environmental consulting firm to assess the contamination to his own property. DeLanghe also spoke to the board, explaining that in applying the manure to the fields, he "thought we had things lined up as perfectly as we could . . . to prevent any type of runoff" and that the spill was unfortunate but unavoidable in light of the heavy rainfall. The board voted to extend the public hearing until December 9.

Biren presented additional proposed amendments at the December 9 hearing, which had been proposed by the environmental consulting firm hired by DeLanghe's neighbor. The proposed amendments included provisions about manure storage and

application; development of a manure and nutrient management plan; record-keeping and reporting on the amount of manure stored on the property; maintenance of spill-control materials and equipment on the feedlot; financial assurance provided by DeLanghe to Lyon County in the amount of \$15,000; and a requirement that DeLanghe report immediately to Lyon County any spills or releases of manure from his property into public waters. Biren explained each of the proposed amendments in detail and responded to questions from the board. DeLanghe informed the board that he agreed to a majority of the provisions but disagreed with others, and he explained his reasons for supporting or opposing each amendment. The board voted to extend the public hearing until December 21, so DeLanghe, Biren, and other county officials could review and further develop the amendments in light of the board's discussion.

At the December 21 hearing, the board reviewed all of the proposed amendments to DeLanghe's conditional-use permit and made minor revisions. DeLanghe informed the board that he and the county "arm wrestled on a number of these [proposed amendments]. I'm not real fond of them, but I guess we got through it." DeLanghe stated that he only opposed five of the proposed amendments. The board voted unanimously to amend DeLanghe's conditional-use permit to include all of the proposed amendments. DeLanghe appeals to this court by writ of certiorari.

DECISION

DeLanghe argues that the county board acted arbitrarily and capriciously in amending his conditional-use permit. A county zoning authority's approval or denial of a conditional-use permit is a quasi-judicial decision reviewable by writ of certiorari to the

court of appeals. *Big Lake Ass'n v. St. Louis Cnty. Planning Comm'n*, 761 N.W.2d 487, 490 (Minn. 2009); *In re Block*, 727 N.W.2d 166, 177 (Minn. App. 2007). When reviewing a county's decision regarding a conditional-use permit, we must determine whether there was a reasonable basis for the decision, or whether the county acted unreasonably, arbitrarily, or capriciously. *Schwardt v. Cnty. of Watonwan*, 656 N.W.2d 383, 386 (Minn. 2003).

An agency's decision is arbitrary or capricious if the agency relied on factors the legislature never intended it to consider, if it entirely failed to consider an important aspect of the problem, if it offered an explanation for the decision that runs counter to the evidence, or if the decision is so implausible that it could not be ascribed to a difference in view or the result of agency expertise.

Block, 727 N.W.2d at 178 (quoting *Pope Cnty. Mothers v. Minn. Pollution Control Agency*, 594 N.W.2d 233, 236 (Minn. App. 1999)). A county has broad discretion to approve, deny, or amend a conditional-use permit. See *BECA of Alexandria, L.L.P. v. Cnty. of Douglas ex rel. Bd. of Comm'rs*, 607 N.W.2d 459, 463 (Minn. App. 2000). The appellate "standard of review is a deferential one, as counties have wide latitude in making decisions about special use permits." *Schwardt*, 656 N.W.2d at 386.

At oral argument, DeLanghe's counsel clarified that DeLanghe is only appealing the five amendments that he objected to at the December 21 hearing. He presents three principal arguments in support of his contention that the county board acted arbitrarily and capriciously in adopting these five amendments. We consider each in turn.

First, DeLanghe argues that the board "rushed" or "bulled ahead" in amending his permit before receiving recommendations and guidance from the state pollution control

agency. But the record does not support DeLanghe's characterization of the board's process. After reviewing the report regarding the manure spill from DeLanghe's feedlot into public waters, the board discussed the incident at six separate meetings, at which county feedlot officer Biren, DeLanghe, and members of the public offered commentary. The board concluded that the incident constituted a violation of DeLanghe's conditional-use permit. But rather than revoke DeLanghe's permit, the board considered a number of proposed amendments. These amendments were crafted by Biren with DeLanghe's input and the assistance of an environmental consulting group. The board considered the amendments at three separate hearings. The board directed numerous questions about each amendment to DeLanghe, Biren, and an assistant county attorney, and the board revised the proposed amendments after the hearings. This process speaks for itself. The board addressed the manure-spill incident and the amendments proposed in response to the incident in a measured and deliberative process involving multiple public meetings and input from various stakeholders. The board did not rush to judgment.

Second, DeLanghe argues that the county board lacked the technical competence and skills necessary to amend the conditional-use permit for his feedlot and ought to have included the MPCA in its decision-making process. But statutory and administrative law allows a Minnesota county to assume the responsibility for processing applications for permits required by the MPCA for animal feedlots. Minn. Stat. § 116.07, subd. 7 (2010); Minn. R. 7020.1500 (2009) (same); *see also Berne Area Alliance for Quality Living v. Dodge Cnty. Bd. of Comm'rs*, 694 N.W.2d 577, 579 (Minn. App. 2005) (discussing these rules). DeLanghe concedes that Lyon County has assumed this responsibility. A

county's authority to process feedlot permit applications includes the right to revoke a permit and to impose conditions on a permit. Minn. Stat. § 116.07, subd. 7(b). Further, the county may impose more restrictive conditions on a permit than those required by the MPCA "as [the county] deems necessary to protect the public interest." Minn. Stat. § 394.301, subd. 2 (2010). Although the county may seek "technical assistance" from the MPCA when processing a permit application, it is not required to do so. Minn. R. 7020.1600, subp. 4a(C) (2009). As indicated by these statutes and rules, the Minnesota legislature and the MPCA entrust counties to make decisions regarding conditional-use permits. The Lyon County board was not obligated to wait for guidance from the MPCA before amending DeLanghe's conditional-use permit. Such input might be desirable in certain circumstances, but it is not required.

DeLanghe also suggests that the county board was preempted from amending his conditional-use permit by state administrative law. *See City of Morris v. Sax Invs., Inc.*, 749 N.W.2d 1, 3 (Minn. 2008) (concluding that the state building code preempted a municipal ordinance). Although DeLanghe concedes that the administrative rules "do not technically preempt local zoning ordinance regulation" of feedlots, he argues that the existence of state regulation suggests that a county board lacks the "capability, expertise, and competence . . . to handle zoning permit conditions." This argument is squarely contradicted by the above-referenced statutes and administrative regulations, which allow Minnesota counties to assume responsibility for processing conditional-use permits and to employ or otherwise acquire the expertise they deem necessary to fulfill the obligations they undertake. *See* Minn. Stat. § 116.07; Minn. R. 7020.1500. The county

board was authorized to amend DeLanghe's permit independent of any action by the MPCA, and no state law preempts the board's decision.

Finally, DeLanghe argues that the county board's decision to amend his conditional-use permit lacks support in the record. A county board's explanation of its reasons for amending a conditional-use permit must be sufficient to allow for judicial review. *See Sunrise Lake Ass'n, Inc. v. Chisago Cnty. Bd. of Comm'rs*, 633 N.W.2d 59, 61 (Minn. App. 2001) (discussing a board's grant of a conditional-use permit). A county is "not required to prepare formal findings of fact" supporting its amendment of a permit, but it must "have the reasons for its decision recorded or reduced to writing and in more than just a conclusory fashion." *White Bear Rod & Gun Club v. City of Hugo*, 388 N.W.2d 739, 742 (Minn. 1986) (quotation omitted) (discussing a board's denial of an amendment to a conditional-use permit). The party seeking review carries the burden of persuading us that the county's reasons "either are legally insufficient or had no factual basis in the record." *Yang v. Cnty. of Carver*, 660 N.W.2d 828, 832 (Minn. App. 2003) (citing *Hubbard Broad., Inc. v. City of Afton*, 323 N.W.2d 757, 763 (Minn. 1982)).

The minutes and transcripts from the hearings on December 2 and December 21, 2010, provide support for the county board's decision to amend DeLanghe's permit. At the December 2 hearing, Biren read each of the then-proposed amendments aloud, provided commentary on some of them, and answered the board's questions regarding the amendments. DeLanghe explained his perspective on each of the proposed amendments. Frequently, board members explained their thoughts on a given proposed amendment and explained why they believed the proposed amendments were appropriate

despite DeLanghe's objections. At the December 21 hearing, the board once again discussed each of the proposed amendments. DeLanghe explained his objection to five of the proposed amendments, and the board responded to his concerns. For example, one proposed amendment would prohibit DeLanghe from applying manure within 24 hours of a prediction by the National Weather Service (NWS) of more than one-half inch of rainfall. DeLanghe argued that he should be able to apply manure so long as the NWS's prediction of rainfall is less than 50%, which he claimed is consistent with a state rule. The board decided not to modify the proposed amendment because it wished to be more restrictive than the state rule. This explanation is sufficient. *Cf. White Bear Lake Rod & Gun Club*, 388 N.W.2d at 742 (rejecting a city council's reasons for denying a special-use permit amendment where the reasons amounted to "nothing more than a list of the council's sources of information and tell a reviewing court nothing about how the council may have evaluated or used this information"); *Sunrise Lake Ass'n, Inc.*, 633 N.W.2d at 61-62 (determining that a county board failed to sufficiently explain its grant of a conditional-use permit where its minutes stated only that it "accept[ed] the report and recommendation of the Planning Commission" and "authoriz[ed] the issuance of the conditional use permit").

Moreover, the minutes reflect the board's desire to prevent another manure spill and to mitigate the costs to the county of any future spill. The five challenged amendments are consistent with these two objectives. The amendments prohibit the application of manure within 100 feet of public waters, under certain weather conditions, and on slopes of a certain degree. They require DeLanghe to notify both the MPCA and

Lyon County prior to applying manure in certain forms. They also require DeLanghe to provide \$15,000 in financial assurances for Lyon County to offset the costs of a future spill. Although the imposition of these conditions might be arbitrary and capricious in the absence of a previous violation, the amendments are reasonable in the context of DeLanghe's conditional-use permit violation, which polluted public waters with manure.

To conclude, on this record, the Lyon County board's decision to amend DeLanghe's conditional-use permit was not arbitrary or capricious.

Affirmed.

Dated:

Judge Michelle A. Larkin