*This opinion will be unpublished and may not be cited except as provided by Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A16-0862**

Sno-Barons Snowmobile Club, Inc.,
Relator,

vs.

Chisago County Board of Commissioners,
Respondent.

**Filed March 27, 2017**
**Affirmed**
**Smith, Tracy M., Judge**

Chisago County Board of Commissioners

Paula A. Callies, Callies Law, PLLC, Minneapolis, Minnesota (for relator)

Paul D. Reuvers, Nathan C. Midolo, Iverson Reuvers Condon, Bloomington, Minnesota (for respondent)

Considered and decided by Hooten, Presiding Judge; Reilly, Judge; and Smith, Tracy M., Judge.

**U N P U B L I S H E D   O P I N I O N**

**SMITH, TRACY M.**, Judge

Relator Sno-Barons Snowmobile Club (Sno-Barons) appeals by writ of certiorari the Chisago County Board of Commissioners' denial of its request for an amended conditional-use permit (CUP), arguing that the board's decision was arbitrary and

capricious. Because the denial of the CUP was supported by legally sufficient reasons having a factual basis in the record, we affirm.

## FACTS

Sno-Barons owns approximately 140 acres of land in Chisago County that is zoned agricultural. In 2009, Sno-Barons was granted a CUP to hold an annual two-day festival called "Hay Days" involving grass snowmobile races and other motorsport-related events. In 2015, Sno-Barons began the process of applying for an amended CUP that would add a third day to Hay Days, remove some conditions from the current Hay Days CUP, and permit Sno-Barons to hold additional "commercial recreation" and "rural retail tourism business" events for 20 days each year. Both commercial recreation and rural retail tourism business are conditional uses that may be permitted in agricultural zones under the Chisago County Zoning Ordinance. Sno-Barons did not specifically define the proposed additional events in its application, but it suggested they might include horse shows, car shows, fitness competitions, holiday festivals, Boy Scout meetings, tractor pulls, drone exhibitions and competitions, paintball events, snow cross, and BMX racing, among others. After twice asking Sno-Barons for additional information, the county received a complete application on January 25, 2016.

On February 4, the Chisago County Planning Commission held a public hearing to consider Sno-Barons' request. The county received written and oral comments from members of the public opposing and supporting the request. Public comments opposing the request highlighted concerns that additional noise, light, and traffic from the proposed activities would disrupt the rural character of the community. The planning commission

voted to revisit the matter at its next meeting. On March 3, the planning commission voted to recommend approval of the CUP request with revised conditions.

The Chisago County Board of Commissioners met on March 16. There is no recording or transcript of that meeting. The agenda and minutes from that meeting state that there was an update on zoning activities, including the Sno-Barons application, but that "[n]o action was taken" on that matter. However, according to the statements of several board members during the board's next meeting, the board voted at the March 16 meeting to deny Sno-Barons' request and directed staff to draft findings supporting denial.

On March 17, the county notified Sno-Barons that it was extending the statutory deadline to consider the request by 60 days pursuant to Minn. Stat. § 15.99, subd. 3 (2016), to allow time to prepare "findings consistent with denial of the permit request."

At its next meeting, on April 6, the board discussed reasons for denial, voted to deny Sno-Barons' request, and adopted written findings supporting denial.

Sno-Barons appeals.

## D E C I S I O N

A county board's decision regarding a CUP is quasi-judicial and reviewable by writ of certiorari. *Interstate Power Co. v. Nobles Cty. Bd. of Comm'rs*, 617 N.W.2d 566, 574 (Minn. 2000). "An appellate court will reverse a governing body's decision regarding a conditional use permit application if the governing body acted unreasonably, arbitrarily, or capriciously." *Perschbacher v. Freeborn Cty. Bd. of Comm'rs*, 883 N.W.2d 637, 643 (Minn. App. 2016) (quotation omitted). A decision is arbitrary or capricious if it represents

the decision-maker's will rather than its judgment, or if it is "based on whim or is devoid of articulated reasons." *Id.* at 643 (quotation omitted).

Sno-Barons alleges that both procedural and substantive issues demonstrate that the board's denial of its CUP request was arbitrary and capricious.

## I. Procedural issues

Sno-Barons asserts that the board voted to deny the request on March 16 without stating reasons for denial, making the denial "per se arbitrary and capricious." Minn. Stat. § 15.99, subd. 2(c) (2016), governs the procedures for denying a CUP. That statute states:

> If a multimember governing body denies a request, it must state the reasons for denial on the record and provide the applicant in writing a statement of the reasons for the denial. If the written statement is not adopted at the same time as the denial, it must be adopted at the next meeting following the denial of the request but before the expiration of the time allowed for making a decision under this section. The written statement must be consistent with the reasons stated in the record at the time of the denial.

Minn. Stat. § 15.99, subd. 2(c).

Sno-Barons rightly does not argue that, because the board did not state reasons for denial on the record on March 16, the CUP must be automatically approved as a penalty. As Sno-Barons recognizes, in a case addressing what is now subdivision 2(a) of section 15.99, the supreme court held that a statutory requirement that a state agency provide a written statement of reasons for denying a request is directory rather than mandatory and that the automatic-approval penalty from subdivision 2(a)—which applies when a decision is not made within 60 days—does not attach to the written-statement requirement. *Johnson v. Cook County*, 786 N.W.2d 291, 296 (Minn. 2010); *see also* Minn.

Stat. § 15.99, subd. 2(a) (2016).[1] Sno-Barons does not argue that the stating-reasons-on-the-record requirement of subdivision 2(c) should be treated differently from the written-statement requirement in subdivision 2(a). Thus, even if the board voted to deny the CUP application at the March 16 meeting without stating its reasons on the record, the CUP would not automatically be approved.

Rather, Sno-Barons argues that even if no penalty attaches to the failure to comply with subdivision 2(c), the fact that the board voted to deny the request without articulating reasons at the time demonstrates that the decision was arbitrary. But we have previously upheld denials for which reasons were adopted only after the vote. *See Perschbacher*, 883 N.W.2d at 642-43 (holding that Minn. Stat. § 15.99, subd. 2(b) (2016), which contains language similar to that in subdivision 2(c), permits the board to state reasons after the vote but before the statutory deadline); *see also Concept Props., LLP v. City of Minnetrista*, 694 N.W.2d 804, 812 (Minn. App. 2005) (affirming denial of zoning request where the city voted a second time after it failed to adopt written findings supporting previous vote to deny same request), *review denied* (Minn. July 19, 2005). Thus, even if the board did vote to deny the CUP on March 16, the failure to state its reasons at that time does not in itself render the decision arbitrary and capricious.

[1] "[A] statute may contain a requirement but provide no consequence for noncompliance, in which case we regard the statute as directory, not mandatory." *Hans Hagen Homes, Inc. v. City of Minnetrista*, 728 N.W.2d 536, 541 (Minn. 2007). If a directory statute "requires a governmental body to perform some act, it is reasonable to assume the governmental body will do so or it could be compelled to do so by mandamus." *Id.*

Sno-Barons argues that the board's action in extending the deadline for decision-making was a subterfuge to gain time in order to fabricate reasons for denial. On March 17, the board notified Sno-Barons that it was extending the statutory deadline for deciding the request to allow time to prepare findings consistent with denial. At the board's next meeting on April 6, it was acknowledged that the staff had prepared findings for denial pursuant to the board's direction and had also prepared findings for partial approval and partial denial should the board wish to consider them. These communications openly acknowledged that, at the board's direction, staff prepared reasons for denial; the communications suggest transparency, not subterfuge. The record demonstrates that the board lawfully extended the deadline and, within the extended deadline, stated reasons for denial on the record and adopted a written statement of reasons for denial. We conclude that the alleged procedural errors do not warrant reversal.

## II. Substantive issues

Sno-Barons asserts that the reasons adopted by the board at the April 6 meeting are not legally sufficient to deny the CUP and are not factually supported in the record.

In determining whether a county acted unreasonably, arbitrarily, or capriciously in denying a CUP, an appellate court must examine whether the reasons given by the county were "legally sufficient" and determine whether the legally sufficient reasons "had a factual basis in the record." *RDNT, LLC v. City of Bloomington*, 861 N.W.2d 71, 75-76 (Minn. 2015). "A legally sufficient reason is one reasonably related to the promotion of the public health, safety, morals and general welfare of the community." *BECA of Alexandria, LLP v. Cty. of Douglas ex rel. Bd. of Comm'rs*, 607 N.W.2d 459, 463 (Minn.

App. 2000) (quotation omitted). The applicant bears the burden of persuading the court that the reasons for denial are legally insufficient or have no factual basis in the record. *Hubbard Broad., Inc. v. City of Afton*, 323 N.W.2d 757, 763 (Minn. 1982).

A conditional use is one

> that would not be appropriate generally but may be allowed with appropriate restrictions as provided by official controls upon a finding that (1) certain conditions as detailed in the zoning ordinance exist, and (2) the use or development conforms to the comprehensive land use plan of the county and (3) is compatible with the existing neighborhood.

Minn. Stat. § 394.22, subd. 7 (2016). The reasonableness of a decision on a CUP application "is measured by the standards set out in the local ordinance." *White Bear Docking & Storage, Inc. v. City of White Bear Lake*, 324 N.W.2d 174, 176 (Minn. 1982). Not all of the reasons given must be legally sufficient and supported in the record in order to affirm the decision. *See Barton Contracting Co. v. City of Afton*, 268 N.W.2d 712, 719 (Minn. 1978) (upholding city's denial of a CUP even though one of five given reasons was not legally sufficient to support denial). A denial is not arbitrary when at least one reason given has a rational basis. *Trisko v. City of Waite Park*, 566 N.W.2d 349, 352 (Minn. App. 1997), *review denied* (Minn. Sept. 25, 1997). The applicant has the burden of showing that the county's denial was without any legally sufficient reasons with factual support in the record. *Hubbard*, 323 N.W.2d at 765.

### A. Legally sufficient reasons

Sno-Barons argues that the county's decision lacks a legally sufficient basis because the county ordinances do not provide express standards or criteria that must be satisfied to obtain a CUP. We disagree.

The county's ordinances lay out specific standards for evaluation of proposed conditional uses. The general CUP provision of the Chisago County Zoning Ordinance directs the planning commission to consider eight general factors before providing the board with a recommendation on a CUP request. Chisago County, Minn, Zoning Ordinance § 8.04(C) (Dec. 30, 2008). In this case, the board's written findings cite seven of the eight factors that were not satisfied and were the bases for denial:

> 1. [Possible effect of the CUP on] [t]he Comprehensive Plan and development policies of the County;
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> . . .
>
> 3. The use shall be sufficiently compatible or separated by distance or screening from adjacent development or land so that existing development does not suffer undue negative impact and there will be no significant deterrence to future development;
> 4. The structure and site shall have an appearance that will not have an adverse effect upon adjacent properties;
> 5. The use in the opinion of the County is reasonably related to the overall land use goals of the County and to the existing land use;
> 6. The use is consistent with the purposes of the Zoning Ordinance and the purposes of the zoning district in which the applicant intends to locate the proposed use;
> 7. The use shall not cause traffic hazard or congestion; and
> 8. Existing nearby properties shall not be adversely affected by intrusion of noise, glare or general unsightliness.

*See id.*

These factors apply to "commercial recreation areas" and "rural retail tourism businesses," both of which are recognized and defined by county ordinances as conditional uses that may be permitted in the agricultural zone. Commercial recreation areas are

> similar to public recreation areas including private campgrounds, golf courses, swimming pools, resorts, and crafting uses such as quilting and scrapbooking [and] [r]estaurants and/or liquor establishments when clearly incidental and associated with the primary commercial recreation use.

*Id.*, § 5.06(C)(5). Rural retail tourism businesses must have "a unique and demonstrable relationship with Chisago County or its region, and its history, culture, traditions, arts, crafts, lore, natural resources, or other features and amenities," and should be "small-scale" and "low impact." *Id.*, § 4.15(B)-(C) (Nov. 16, 2011). The county's findings address both of these conditional-use ordinances and find that Sno-Barons' proposed use exceeds the scale of commercial recreation areas and rural retail tourism businesses.

The county ordinances relied on by the board provide legally sufficient bases for denying a CUP. The ordinances lay out multiple factors relating to "public health, safety, and welfare." *RDNT, LLC*, 861 N.W.2d at 76 (holding that a city ordinance providing that use "not be injurious to the surrounding neighborhood or otherwise harm the public health, safety and welfare" was legally sufficient). For example, preventing traffic hazards and congestion are goals reasonably related to the promotion of public safety. *C.R. Invs., Inc. v. Village of Shoreview*, 304 N.W.2d 320, 325 (Minn. 1981). In addition, incompatibility between a proposed use and a comprehensive plan is a legally sufficient reason for denying a CUP. *Barton Contracting Co.*, 268 N.W.2d at 717-18.

### B. Reasonable factual basis

Having concluded that the county gave legally sufficient reasons, we turn to whether those reasons are supported by a reasonable factual basis. We conclude that they are.

Sno-Barons argues that the county lacked a reasonable factual basis for finding that the proposed CUP is not consistent with the county's comprehensive plan and development policies, that the proposed uses cannot be practically or strategically screened, that the proposed uses would have an adverse effect on adjacent properties, that the proposed uses are inconsistent with the county's land use goals, that the proposed uses would cause traffic hazards or congestion, and that nearby properties would be adversely affected by noise, glare, or general unsightliness. With respect to these factors, Sno-Barons relies primarily on the argument that the proposed CUP would add only 21 additional days a year to the two days of events already permitted for Hay Days, that any concerns are already well managed for Hay Days, and that the proposed uses would not all be of the same large scale as that event.

The county's findings determine that the proposed uses, if extended to the limits of Sno-Barons' requested CUP, would be incompatible with comprehensive-plan goals such as preventing incompatible uses in agricultural areas and encouraging growth in village centers and in areas where urban services and adequate roads are already available. The findings also express a concern that granting the request for 20 days per year of new crowd-drawing events in addition to Hay Days, with no limitations on scale beyond the physical limitations that the event be contained within Sno-Barons' 140 acres and 8,600 parking spots, would draw too much traffic and congestion to a rural area with limited road access.

The findings observe that the traffic, noise, light, and glare already present for Hay Days would be increased, adversely affecting neighboring properties. And the findings express concern that the loosely defined events proposed by Sno-Barons would result in an unknown number of days of pre- and post-event preparations, temporary structures, and site changes that would result in a continual appearance of a commercial district in the rural area.

The county's findings have a factual basis in the record. The county received public comments on Sno-Barons' proposed CUP throughout the application process. A citizens' organization expressed concern about the uncertain nature and size of proposed uses and the impacts on traffic, noise, and lighting. Area businesses expressed concern about the impact of larger scale events like Hay Days on their rural businesses. Residents testified to the noise, light, traffic congestion, and disruption they experienced during Hay Days and expressed concern about increasing those negative effects throughout the year.

A staff report to the planning commission provides additional factual support for the county's findings. The staff report found that the proposed uses would bring traffic congestion and possible traffic hazards to the area, as Hay Days has in the past. It found that neighboring properties would be impacted visually by the requested addition of new permanent lighting, outdoor lighting during night events, and the presence of additional cars and event attendees in the area. The staff report noted that there is insufficient landscaped or natural buffering to insulate some of the nearby residential properties from the visual impacts of Sno-Barons' events. The staff report also found that even the smaller proposed events might impact neighboring properties with noise from "cars arriving and

departing, engines starting, car doors slamming, as well as normal crowd gathering sounds such as conversation and laughter." Further, it found that some events would generate more significant auditory impacts from amplified announcing and racing engines. The staff report cited a 2010 study of Hay Days noise, which is included in the record and which found measurable noise impacts from snowmobile racing, motorcycle and ATV events, a PA system, generators, vehicles, and banner-pulling airplanes. According to the study, Hay Days noise was audible at several nearby locations and exceeded state noise-level standards at one of the neighboring residential locations during the 2010 Hay Days event. The staff report also found that adding more days of events would have cumulative impacts on the closest neighbors who are accustomed to the existing agricultural land uses.

Because the board provided reasons for denying the CUP that are legally sufficient and have a factual basis in the record, we conclude that the denial was not arbitrary, capricious, or unreasonable and reversal is not warranted. *See Barton Contracting Co.*, 268 N.W.2d at 719; *Perschbacher*, 883 N.W.2d at 643.

**Affirmed.**