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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0279**

Kristi Rosenquist, et al.,
Relators,

vs.

Circle K. Family Farms,
Respondent,
Goodhue County Board of Commissioners, et al.,
Respondents.

**Filed December 18, 2017
Affirmed
Reyes, Judge**

Goodhue County Board of Commissioners

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Considered and decided by Jesson, Presiding Judge; Reilly, Judge; and Reyes,
Judge.

UNPUBLISHED OPINION

REYES, Judge

Relators appeal respondent Goodhue County Board of Commissioners' decision to grant a conditional-use permit to respondent Circle K Family Farms for construction of a hog-confinement facility. We affirm.

FACTS

Relators appeal the Goodhue County Board of Commissioners' (the county board) decision to grant a conditional-use permit (CUP) to Circle K Family Farms (Circle K) as an unreasonable, arbitrary, and capricious exercise of its power based on the administrative record. All pertinent facts are undisputed.

In November 2015, Circle K submitted a CUP application to respondent Goodhue County (the county). Circle K seeks to construct a hog-confinement facility on a parcel of land in Zumbrota Township, Goodhue County (the project). The facility will house up to 4,700 finishing hogs, or 1,410 animal units.

Minn. R. 4410.4300, subp. 29(A), requires farms in possession of various animals constituting more than 1,000 animal units to prepare an Environmental Assessment Worksheet for review by the Minnesota Pollution Control Agency (MPCA) to determine whether the animal-farming operation must conduct an Environmental Impact Study. The county informed Circle K that it must first submit an Environmental Assessment Worksheet to the MPCA prior to CUP review.

On January 20, 2017, following a lengthy inquiry, the MPCA concluded that the project did not pose a risk of potential significant environmental effects. As a result, Circle

K was not required to conduct an Environmental Impact Study. Relators did not challenge the MPCA's findings of fact and conclusions of law as provided in Minn. Stat. § 116D.04, subd. 10 (2017 Supp.).

On February 13, 2017, the Goodhue County Planning and Advisory Commission (the planning commission) held a public hearing to review Circle K's CUP application. The planning commission heard testimony from relators, Circle K ownership, and other citizens both in favor and against Circle K's proposed CUP. It then passed a motion to adopt into the record the planning commission staff report, findings of fact, application, testimony, exhibits, and other evidence presented. It recommended that the county board approve Circle K's CUP application. On February 21, 2017, the county board approved Circle K's CUP.

Relators sought certiorari review.

D E C I S I O N

I. The county board's grant of a CUP to Circle K was not unreasonable, arbitrary, and capricious, or contrary to law based on the administrative record.

Relators argue that the county board's grant of a CUP to Circle K was unreasonable, arbitrary and capricious, or contrary to law because the administrative record contained substantial evidence that the project violated the minimum mandatory requirements set forth in the county zoning ordinance. We disagree.

A county board may approve a CUP if the applicant shows that all the standards and criteria in the county ordinance will be satisfied. Minn. Stat. § 394.301, subd. 1 (2016). A county board's decision regarding a CUP is a quasi-judicial decision we review by writ of

certiorari. *Interstate Power Co. v. Nobles Cty. Bd. of Comm'rs*, 617 N.W.2d 566, 574 n.5 (Minn. 2000); *Picha v. Cty. of McLeod*, 634 N.W.2d 739, 741 (Minn. App. 2001). To show that the county board acted unreasonably, relators have the burden of establishing that the proposal did not meet one of the standards set forth in the county zoning ordinance and that the grant of the CUP was an abuse of discretion. *See Schwardt v. Cty. of Watonwan*, 656 N.W.2d 383, 387 (Minn. 2003).

We independently review the county board's grant of Circle K's CUP to determine if it is unreasonable, arbitrary and capricious, or contrary to law. *Id.* at 386. A decision is arbitrary and capricious if it represents the decisionmaker's will and not its judgment. *Perschbacher v. Freeborn Cty. Bd. of Comm'rs*, 883 N.W.2d 637, 643 (Minn. App. 2016) (internal quotation omitted). "The standard of review is a deferential one, as counties have wide latitude in making decisions about special use permits." *In re Block*, 727 N.W.2d 166, 177 (Minn. App. 2007). We give more deference to a county's approval of a CUP than a county's denial of a CUP. *Watonwan*, 656 N.W.2d 383, 389 n.4 (Minn. 2003).

First, we address whether the reasons given by the governmental body in granting the CUP were legally sufficient (legal-sufficiency prong). *RDNT, LLC v. City of Bloomington*, 861 N.W.2d 71, 75 (Minn. 2015) (internal citation omitted). Second, if the reasons given are legally sufficient, we determine whether the reasons had a factual basis in the record (factual-basis prong). We review the county's interpretation of the zoning ordinance de novo, and we apply the same rules that govern statutory interpretation. *Eagle Lake of Becker Cty. Lake Ass'n v. Becker Cty. Bd. of Comm'rs*, 738 N.W.2d 788, 792 (Minn. App. 2007).

A. Legal-sufficiency prong

The county zoning ordinance states in relevant part: “These feedlot controls will regulate the uses and development of land in Goodhue County which may adversely affect the health, safety, and general welfare of the public.” Goodhue County, Minn., Zoning Ordinance, art. 13, § 1 (2007). In *RDNT*, the applicable CUP zoning ordinance similarly protected the health, safety, and welfare of residents and was adequate to satisfy the legal-sufficiency prong of the test. 861 N.W.2d at 76. Thus, the county zoning ordinance here, like the ordinance in *RDNT*, is legally sufficient because its purpose is to protect the health, safety, and welfare of the public.

B. Factual-basis prong

Relators argue that the county acted unreasonably when it granted Circle K’s CUP because the feedlot will: (1) violate the county odor-offset ordinance; (2) pose environmental concerns; and (3) substantially diminish property values and create a nuisance. We analyze each argument in turn.

1. County odor-offset ordinance

Relators argue that the county acted unreasonably in its approval of Circle K’s CUP because it violates the county odor-offset ordinance. We are not persuaded.

The county zoning ordinance sets forth various restrictions on feedlot locations and includes provisions for setbacks from land uses, including dwellings:

New feedlots shall not be located within 1,000 feet or 94% odor annoyance free rating [distance], as determined by the OFFSET odor evaluation model, from any existing dwelling (other than those designated as an accessory to a feedlot or a feedlot operator’s dwelling), churches, public parks, schools

(as defined in Minnesota Statutes 120A.05), or private schools excluding home school sites, whichever is greater.

Goodhue County, Minn., Zoning Ordinance, art. 13, § 7, subd. 6 (2007).

Pursuant to the county zoning ordinance, odor-offset calculations are made using an odor-offset worksheet developed by the University of Minnesota. Goodhue County, Minn., Zoning Ordinance, art. 13, § 1 (2007). The odor-offset worksheet contains the heading “optional inputs – additional building or area[,]” but the drop-down under this heading does not contain an input for an unenclosed rendering pit. Its instructions state:

There may be some types of facilities that are not listed in the drop down menus. Typically, these types of sources are not listed because there has been no emission data collected at these types of sources. For these cases, a best professional judgment can be used to estimate the flux rates. These can be based on similar facilities or current literature.

The crux of the issue is the interpretation of the word “feedlot” in the county zoning ordinance, which requires that Circle K’s feedlot to adhere to the 94% odor annoyance-free rating. Relators argue that the rendering pit must be included in the calculation because it is part of the “feedlot.”

The county zoning ordinance defines the word “feedlot” as:

Lot or building or combination of lots and buildings intended for the confined feeding, breeding, raising or holding of animals and specifically designed as a *confinement* area in which manure may accumulate, or where the concentration of animals is such that a vegetative cover cannot be maintained within the enclosure.

Goodhue County, Minn., Zoning Ordinance, art. 10, § 2, subd. 44 (2007) (emphasis added).

“Confine” is defined as “to shut or keep in, especially to imprison.” *American Heritage*

Dictionary of the English Language 382 (4th ed. 2000). The rendering pit is a concrete structure with no roof, and accordingly, it cannot be a “feedlot” because it is unenclosed.

The county did not act unreasonably in making its odor-offset calculations. Its county feedlot officer conducted an independent odor-offset review using the University of Minnesota’s odor-offset worksheet and found that the proposed project—the hog-confinement facility itself—will have a 94% odor annoyance-free rating at 1,655 feet. During the planning-commission hearing, the county feedlot officer testified that the county does not speculate as to the odor emissions from the rendering pit because the odor-offset worksheet does not contain an input for it, and the director of land-use management confirmed that the county has never included a rendering pit in its calculations in the past. Therefore, the feedlot officer acted in compliance with the odor-offset worksheet instructions by using her best professional judgment in calculating odor emissions for the feedlot based on similar facilities.

At the public hearing, relator Kristi Rosenquist presented evidence of her independent odor-offset calculations, which calculated a 93% odor offset using the same odor-offset worksheet that the county used.¹ After hearing these concerns, the planning

¹ It appears that Rosenquist’s calculations factored in the hog-confinement facility, the rendering pit, and 12 additional hog-confinement facilities measuring 5’ x 8” each. There is nothing in the record indicating that Respondent Circle K proposed to construct an additional 12 hog confinement facilities. In addition, relators do not argue that the odor-offset calculations should take these additional hog-confinement facilities into account; rather, relators argue that the odor-offset calculations should be based on the location of the rendering pit in relation to the nearest dwelling. Thus, relators have not met their burden to establish that the proposal did not meet one of the standards set out in the county zoning ordinance. *See Watonwan*, 656 N.W.2d at 387.

commission determined that the project met the 94% odor-annoyance-free rating based on the hog-confinement facility's distance to the nearest residence, which was 1,708 feet away. The county board subsequently received the planning commission's recommendations, considered them, and approved Circle K's CUP.

Because the parties offered conflicting evidence and testimony, "our function is 'not to weigh the evidence but to review the record'" to determine whether there was evidence to support the zoning authority's decision. *RDNT*, 861 N.W.2d at 76 (internal quotation omitted).

2. Environmental concerns

Relators argue that the county board acted unreasonably because the project will pose environmental concerns relating to hydrogen-sulfide air pollution and groundwater pollution. The MPCA conducted an extensive analysis of these issues when relators voiced their concerns during its public-comment period. In its findings of fact and conclusions of law, the MPCA found that these concerns would not pose an environmental risk. The MPCA's findings of fact and conclusions of law, which relators did not challenge pursuant to Minn. Stat. § 116D.04, subd. 10, were adopted by the county board when it made its decision to grant Circle K's CUP.

3. Substantial diminishment in property values and creation of a nuisance

Relators argue that the project will substantially decrease property values. Relators' argument lacks merit.

During the county board meeting, relators quoted the Goodhue County, Minn., Zoning Ordinance, art. 13, § 5, subd. 4(E), which prohibits approval of a CUP when the use would substantially diminish nearby property values. Relators alleged that property values will decrease, and introduced studies that show property values generally decrease when hog facilities are constructed nearby. These are mere assertions of vague concern lacking substantiated, concrete evidence. We have held that “A city may consider neighborhood opposition only if based on concrete information.” *Yang v. County of Carver*, 660 N.W.2d 828, 832 (Minn. App. 2003). Relators present no additional evidence to this court and have not met their burden. *See Watonwan*, 656 N.W.2d at 387.

Thereafter, the county board adopted the planning commission’s finding that the project conforms to the county zoning ordinance. We review the county board’s decision approving Circle K’s CUP with particularly great deference and will affirm the decision so long as its basis has even the slightest validity. *See Roselawn Cemetery v. City of Roseville*, 689 N.W.2d. 254, 259 (Minn. 2004); *Watonwan*, 656 N.W.2d at 387.

The county board’s approval of Circle K’s CUP was neither unreasonable nor an abuse of discretion. The county board permissibly relied on the MPCA’s findings of fact and conclusions of law, which relators failed to challenge under to Minn. Stat. § 116D.04, subd. 10. Additionally, the county board relied on respondents’ evidence and testimony regarding odor-offset calculations, diminishment in property values, and creation of a nuisance. *See RDNT*, 861 N.W.2d at 76 (“courts should ordinarily defer to a [county’s] judgment on conflicting evidence”). The county board satisfies prong two.

II. The county did not abuse its discretion when it granted Circle K's CUP based on its allegedly incomplete application.

Relators argue that the county's grant of a CUP to Circle K was an abuse of discretion because Circle K submitted an incomplete application. We disagree.

"For the permit to be struck down, the county board's grant of the permit with the incomplete application must also have been an abuse of discretion." *Loncorich v. Buss*, 868 N.W.2d 755, 760 (Minn. App. 2015). Goodhue County, Minn., Zoning Ordinance, art. 13, § 6, subd. 6 requires:

Land spreading agreements shall be provided if the applicant does not own the minimum acreage as required in the nutrient management plan and that minimum must be under agreement throughout the lifetime of the permitted feedlot. Any shortage of minimum required acreage is cause for revocation of the permit and constitutes a violation of this Ordinance.

Circle K does not own the 577 acres of real property required to annually spread manure produced by the hog-confinement facility.

Relators argue Circle K's application was incomplete because it did not submit land spreading agreements for "the lifetime of the feedlot." Nothing in the ordinance requires lifetime land-spreading agreements be submitted prior to CUP approval, and Circle K's land-spreading agreements state "[t]his Agreement is Good Until further notice." Circle K's application does not violate Goodhue County, Minn., Zoning Ordinance, art. 13, § 6, subd. 6.

The county board did not abuse its discretion in granting Circle K's CUP. "[W]here a conditional use applicant informs the board of commissioners of his intention to comply with all applicable standards, the board need not resolve specific compliance issues prior

to granting a conditional use permit.” *Yang*, 660 N.W.2d at 835. In *Loncorich v. Buss*, this court held that an altogether-absent manure-management plan was sufficient to permit the county board to grant a CUP. 868 N.W.2d at 761. Therefore, Circle K did not submit an incomplete application, and the county did not abuse its discretion in approving its CUP.

Affirmed.