STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1043

In the Matter of the Application of United States Solar Corporation and USS Water Fowl Solar LLC for a Conditional Use Permit.

Filed July 12, 2021
Reversed and remanded
Slieter, Judge

McLeod County Board of Commissioners
CUP No. 19-23

Timothy M. Kelley, James A. Schoeberl, Stinson LLP, Minneapolis, Minnesota (for relators United States Solar Corporation and USS Water Fowl Solar LLC)

Michael K. Junge, McLeod County Attorney, Glencoe, Minnesota (for respondent County of McLeod)

Considered and decided by Reilly, Presiding Judge; Slieter, Judge; and Bryan, Judge.

NONPRECEDENTIAL OPINION

SLIETER, Judge

In this certiorari appeal from respondent-county's denial of relators' application for a conditional use permit (CUP), relators argue that the decision must be reversed because it was arbitrary or capricious. The county board identified two reasons for denial of relators' application to build solar panels on property leased within the county. The first reason, "concern for the preservation and protection of land values" is not supported by the record and does not address whether "the conditional use will . . . substantially diminish

and impair property values within the immediate vicinity" and is, therefore, both factually and legally insufficient. The second reason, that the "property is considered prime agricultural soil," is not a condition listed in the county zoning ordinance that must be satisfied to approve a CUP, and is, therefore, legally insufficient. Because both reasons are insufficient to deny the permit, the decision to deny the application was arbitrary or capricious and we reverse and remand for approval of the application.

FACTS

In December 2019, relators United States Solar Corporation and USS Water Fowl Solar LLC (relators) applied to respondent McLeod County (McLeod County, or the county) to build a ".5-MW photovoltaic solar energy system," also referred to in the CUP application as a "solar garden," on ten acres of leased farmland in the county.

The application twice came before the county planning commission, which both times recommended to the county board its approval of the application. The planning commission recommended approval subject to conditions summarized as follows: providing a bond, insurance, landscaping, fencing, and other repairs; obtaining necessary permits; testing stray voltage; and restoring the site to its original and natural state after the solar panels are no longer in use.

Pursuant to a 3-2 vote, the county board denied the application though three of the five county board members commented that the application met the requirements of the city's zoning ordinance for granting a CUP:

- "I'm kind of torn on this issue. You know, my township and my constituents are asking me to vote against it. I don't see that this project violates any of the restrictions/conditions that

we've placed on any of the other projects . . . I think it's a worthy project";

- "[Relators have] been willing to do everything we've asked of them. My problem is I'm not sure that we can regulate how someone should use their property as long as they're within the guidelines provided . . . [The CUP is] within the guidelines"; and

- "[The CUP] met all the criteria of the way our—our regulations or policies are written today."

The county board mailed relators a one-page letter stating, with no additional explanation, its two reasons for denial as: (1) "Concern for the preservation and protection of land values," and (2) "The property is considered prime agricultural soil."

This certiorari appeal follows.

DECISION

Relators argue the decision was arbitrary or capricious because the two reasons the county provided for denial were legally insufficient and factually unsupported by the record. "[Appellate courts] will reverse a governing body's decision regarding a conditional use permit application if the governing body acted unreasonably, arbitrarily, or capriciously." *RDNT, LLC v. City of Bloomington*, 861 N.W.2d 71, 75 (Minn. 2015). "An agency decision is arbitrary and capricious if it is an exercise of the agency's will, rather than its judgment . . . ." *CUP Foods v. Cty. of Minneapolis*, 633 N.W.2d 557, 565 (Minn. App. 2001), *review denied* (Minn. Nov. 13, 2001). On appeal from denial of a CUP, the applicant bears the burden of showing "that the reasons for the denial either are legally insufficient or had no factual basis in the record." *Yang v. Cty. of Carver*, 660 N.W.2d 828, 832 (Minn. App. 2003). A board's denial of a CUP is subject to a less deferential

standard of review than CUP approvals. *Schwardt v. Cty. of Watonwan*, 656 N.W.2d 383, 389 n.4 (Minn. 2003). Our review of this record indicates that the county board's denial of relator's CUP application was arbitrary or capricious.

First, the record does not support the county board's finding of "[c]oncern for the preservation and protection of land values." The zoning ordinance which controls the "Approval, Disapproval or Modification" of conditional uses states that "[n]o conditional use shall be recommended by the County Planning Commission unless said Commission shall find," among other conditions that the parties agree were satisfied, that "the conditional use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor *substantially diminish and impair property values* within the immediate vicinity." McLeod County, Minn., Zoning Ordinance § 17, subd. 6 (2020) (emphasis added).

The record establishes that the county board was presented with information suggesting the project would not negatively impact property values. This information included two studies submitted by relators describing the impact that solar panels had on neighboring property values: (1) a study from Chisago County concluding there is "no adverse impact" on neighboring property sale price; (2) a study from Kirkland Appraisals, LLC, finding "no indication of any impact on the property values, positive or negative, of [adjacent properties]." The county board was presented with statements from the McLeod County director of environmental services that "[a]ll available data on the public record and, otherwise, finds no negative impacts to property values of residential homes or

agricultural land adjacent [to] or near a solar array" and that "there is no adverse impact between a solar project and a property in regards to resale at this time."

The county board received the following statements from neighboring landowners in opposition to the application, with only one statement referencing the impact the project might have on land values:

- The project should be placed on "grounds of lesser value" than the leased property;
- Concern over a "reduction in the fair market value of the property surrounding the proposed . . . solar panels";
- That "all the neighbors don't want" the solar panels present at the proposed location; and
- That "common sense" dictates that "most people do not want to buy a house that has to look at a field of solar panels day in and day out."

The statements from neighbors were not buttressed by expert opinion or other "concrete information." There was no evidence presented, nor did the county find, that that the project would "substantially diminish and impair property values" as described by the zoning ordinance. While neighborhood opposition may be considered in application decisions, the opinions of neighbors must be "based on concrete information" such as personal observations, or support from experts, neither of which exist here. *SuperAmerica Group, Inc., v. Cty. of Little Canada*, 539 N.W.2d 264, 267-68 (Minn. App. 1995), *review denied* (Minn. Jan. 5, 1996). The board's finding of generalized "[c]oncern for property values" does not rise to the level of "substantially diminish and impair property values in immediate vicinity" and therefore is not a legally sufficient basis for denial. For these

reasons, there is an insufficient basis in the record to deny the CUP out of "[c]oncern for the preservation and protection of land values."

Second, that the "property is considered prime agricultural soil" is not a condition listed in the ordinance for the board's consideration related to the CUP application. This reason is, therefore, legally insufficient and to deny relator's CUP application on this basis is arbitrary or capricious. "A denial would be arbitrary . . . if it was established that all of the standards specified by the ordinance as a condition to granting the permit have been met." *Zylka v. Cty. of Crystal*, 167 N.W.2d 45, 49 (Minn. 1969) (footnote omitted). When reviewing decisions for denying the permit, the reviewing court may reverse the decision if the reasons "are legally insufficient" or if the decision is "without factual basis." *Nw. Coll. v. Cty. of Arden Hills*, 281 N.W.2d 865, 868 (Minn. 1979).

The county argues that preservation of "prime agricultural soil" is a legally sufficient basis for denial, pointing to the general-purpose language of section 7, subdivision 1, of the county zoning ordinance which states that the "purpose of [an] Agricultural District is to preserve for farming those locations that have soils which, when properly managed, are capable of high crop yields . . . ." We are not persuaded.

First, section 7 is not the provision in the county's zoning ordinance which establishes the criteria the county must consider involving a CUP application. Second, this language from section 7 is not referenced in section 17 of the zoning ordinance, which is the section that governs CUP applications. Finally, there is no reference in section 17 to the general-purpose statement of section 7 which might incorporate it as a basis to consider a CUP. This compels our conclusion that preservation of "prime agricultural soil" is not a

legally sufficient basis for denial of a CUP, as "[t]he rules that govern the construction of statutes are applicable to the construction of [county] ordinances." *Smith v. Barry*, 17 N.W.2d 324, 327 (Minn. 1944).

Even if it were proper to consider preservation of "prime agricultural soil" as a basis for denial, this reason is not supported by the record. The landowner who leased the property to relators for the project told the county board that the proposed project site is a "small knob" of land off the main tillable parcel of property and with a "gas regulator" nearby which creates "big problems" when farming and that the leased land is "not exactly prime for farming." Thus, the county board's finding that the application should be denied because the "property is considered prime agricultural soil" is not supported by the record.

We therefore reject the county's argument that the leased property being "prime agricultural soil" is a legally sufficient reason to deny the CUP. Because this reason for denial is also without factual basis, the county's decision must be reversed. *Nw. Coll.*, 281 N.W.2d at 868.

In sum, because each of the two reasons given by the county board are insufficient to support a denial of the application, and because the record shows the application satisfies all the standards of the county zoning ordinance, we reverse and remand with instruction to the county board to approve the CUP application subject to reasonable conditions.

Reversed and remanded.