STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0925

In the Matter of the Application of Impact Power Solutions, LLC and MN CSG 2019-29 LLC for a Conditional Use Permit.

Filed May 9, 2022
Affirmed
Reilly, Judge

Stearns County Board of Commissioners

Patrick B. Steinhoff, Thomas F. DeVincke, Malkerson Gunn Martin LLP, Minneapolis, Minnesota (for relators Impact Power Solutions, LLC and MN CSG 2019-29 LLC)

Jay T. Squires, Michael J. Ervin, Rupp, Anderson, Squires & Waldspurger, PA, Minneapolis, Minnesota (for respondent Stearns County Board of Commissioners)

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

NONPRECEDENTIAL OPINION

REILLY, Judge

Relators challenge the decision of respondent county board of commissioners to deny an application for a conditional use permit for a solar farm. Because the reasons cited for denial are supported by evidence in the record and are not arbitrary, capricious, or unreasonable, we affirm.

FACTS

In December 2020, relators Impact Power Solutions LLC and MN CSG 2019-29 LLC (relators), applied for a conditional use permit (CUP) for a one-megawatt community

solar farm. The proposed site is about 7.5 acres in size and is on a larger, 113.36-acre parcel of property in Paynesville Township, Stearns County (the county). The site is in the "Agricultural 40" zoning district (the A-40 district). The purpose of this district "is to preserve the agricultural and rural character of land." Community solar farms are a conditional use within the A-40 district.

In April 2021, the county's planning commission (the planning commission) held a public hearing on relators' application. The planning commission reviewed staff reports and maps of the site and heard public comments. At the end of the hearing, the planning commission recommended denying relators' application and made factual findings supporting its recommendation. The matter then went to respondent Stearns County Board of Commissioners (the board of commissioners). The board of commissioners held public meetings to consider the proposed solar farm. In June 2021, the board of commissioners adopted the planning commission's findings of fact and denied the CUP application.

Relators seek review of the board of commissioners' decision by writ of certiorari.

DECISION

Counties may carry out planning and zoning activities to promote the health, safety, morals and general welfare of the community. Minn. Stat. § 394.21, subd. 1 (2020). Planning and zoning decisions will be reversed only if the governing body "acted unreasonably, arbitrarily, or capriciously." *RDNT, LLC v. City of Bloomington*, 861 N.W.2d 71, 75 (Minn. 2015). A decision is arbitrary and capricious if it is an exercise of will, rather than judgment. *CUP Foods, Inc. v. City of Minneapolis*, 633 N.W.2d 557, 565 (Minn. App. 2001), *rev. denied* (Minn. Nov. 13, 2001). A "[r]uling on a conditional use

permit application is a quasi-judicial act" that "is reviewable by writ of certiorari." *Interstate Power Co. v. Nobles Cnty. Bd. of Comm'rs*, 617 N.W.2d 566, 574 (Minn. 2000). Our standard of review is deferential because a county has "wide latitude" in deciding on permits. *Schwardt v. County of Watonwan*, 656 N.W.2d 383, 386 (Minn. 2003). Nor will we substitute our judgment for that of a county, even if we may have reached a different conclusion. *St. Croix Dev., Inc. v. City of Apple Valley*, 446 N.W.2d 392, 398 (Minn. App. 1989), *rev. denied* (Minn. Dec. 1, 1989).

Relators claim they are entitled to a CUP because they satisfied the standards in the county's zoning ordinance and the county's decision to deny the application lacks factual support in the record. If a municipality explicitly states its reasons for denying a CUP application, as the county did here, this court examines (1) whether "the reasons given by [the county] were legally sufficient," and (2) whether "the reasons had a factual basis in the record." *RDNT*, 861 N.W.2d at 75-76. "The permit applicant has the burden of persuading this court that the reasons for the denial either are legally insufficient or had no factual basis in the record." *Yang v. County of Carver*, 660 N.W.2d 828, 832 (Minn. App. 2003). We therefore consider whether the county properly articulated a legal basis for its decision, and whether there is factual support in the record supporting this legal basis.

Legal Basis for Decision

Relators claim there was not a legal basis to deny the CUP application. A municipal council's denial of a CUP is legally sufficient if it is based on reasons "relating to public health, safety[,] and general welfare or because of incompatibility between the proposed use and a municipality's comprehensive municipal plan." *Hubbard Broad., Inc. v. City of*

Afton, 323 N.W.2d 757, 763 (Minn. 1982). Denial of a CUP is not legally sufficient if the municipality bases its denial on land-use standards that are "unreasonably vague" or "unreasonably subjective." *Trisko v. City of Waite Park*, 566 N.W.2d 349, 353 (Minn. App. 1997) (quotations omitted), *rev. denied* (Minn. Sept. 25, 1997). Generally, however, a conflict with a comprehensive plan is a legally sufficient ground for denying a CUP. *Hubbard Broad., Inc.*, 323 N.W.2d at 762-63 (affirming denial of permit for satellite station based on incompatibility between proposed use and municipality's comprehensive plan); *see also Barton Contracting Co. v. City of Afton*, 268 N.W.2d 712, 717-18 (Minn. 1978) (determining that municipality had legally sufficient reason to deny permit to mine gravel based on inconsistency with land-use plan).

Here, the zoning ordinance authorizes the board of commissioners to consider whether a proposed use conforms to the comprehensive plan before granting a CUP. The board of commissioners determined that relators' proposed use was incompatible with the comprehensive plan. The proposed site of the solar farm is in the A-40 zoning district. The purpose of this district "is to preserve the agricultural and rural character of land." The comprehensive plan specifically provides that agricultural areas, such as those in the A-40 zoning district, should be "agriculturally oriented." The comprehensive plan also instructs that only "limited" space in agricultural zones should be devoted to solar uses. Moreover, while solar farms are permitted within the A-40 district, the comprehensive plan provides that solar sites are to be situated "in a way that reduces conflict with adjacent land uses."

The board of commissioners denied the application to help preserve the agricultural character of the land. The board of commissioners also focused on the negative effects of

a solar farm on the surrounding areas. The board of commissioners specifically questioned the effects of the solar farm on the general welfare of the property, given the high number of solar projects near the Paynesville area. These concerns are relevant to the "public health or safety or the general welfare of the area affected or the community as a whole." *RDNT*, 861 N.W.2d at 76 (quotation omitted); *see also* Minn. Stat. § 394.21, subd. 1 (listing bases for county zoning activities). Because the county's decision is reasonably related to the health, safety and general welfare of the community, the board of commissioners had a legally sufficient basis for its decision.[1]

Factual Basis for Decision

Having determined that the county's basis for denying the CUP is legally sufficient, we next turn to whether facts in the record support the legal basis for the decision. The board of commissioners determined that the CUP deviated from the agricultural-use section of the county's comprehensive plan. The comprehensive plan states that the county's "agricultural heritage is the root of [its] prosperity and identity." The agricultural-use policies are designed to "enhance and promote the advancement of [the county's] agricultural economy." The following considerations are relevant in determining whether a proposed use violates the county's agricultural-use policies:

[1] Relators argue that upon a showing that a CUP application complies with the county's zoning requirements, the county *must* grant the application. The county asserts that while the application fit with some portions of the zoning ordinance, the proposed use deviated from the agricultural-use provisions of the comprehensive plan. Settled Minnesota law holds that "[a] municipality may weigh whether the proposed use is consistent with its land-use plan" in deciding whether to grant a permit. *Barton Contracting Co.*, 268 N.W.2d at 717.

a. Primary land uses in the "Agricultural" areas should be agriculturally oriented, including animal agriculture, crop production and specialized agricultural enterprise, in combination with limited agricultural related business, solar and wind, recreational, institutional, and open space uses.
b. Emphasize the importance of animal agriculture to the County economy by treating it as a priority land use in this area (compared with residential or other non-agricultural uses).
c. Encourage agricultural practices that allow for co-existence with sensitive natural resources.
d. Encourage sustainable agricultural practices that protect prime farmland and water resources for future generation[s].

The comprehensive plan states that clean energy resources "hav[e] an increasingly prominent role in energy systems." The county's goals in this area include "[e]ncourag[ing] the development and use of renewable energy systems throughout the county, including wind energy and solar energy." Yet the comprehensive plan notes that agricultural areas should remain "agriculturally oriented," with only "limited" space devoted to solar uses.

During the public hearings, the planning commission and the board of commissioners heard testimony and reviewed evidence related to how a solar farm on the site would affect these agricultural-use policies. The commission members also visited the site before the public hearings. The facts in the record support the county's decision to deny the CUP to preserve farmland in the A-40 agricultural district.

The board of commissioners received conflicting evidence about the character of the land itself. The CUP application stated that the site was "nonprime farmland." One of the members of the planning commission disagreed with this portion of the application and

asserted, "[it] is farmland." Relators' representative described the property as "kind of an old gravel pit" with "very light" soil. The representative stated the soil "doesn't produce very well with conventional crops." But the representative acknowledged that the landowners were "currently farming the entire . . . farmable land. And this is . . . some of the better stuff, but our goal is just to make sure that we maintain enough to raise . . . cattle." The county's environmental services director shared a map of the area and explained that solar projects were clustered in a "pretty limited area" of north Paynesville. The director explained that there were concerns about solar projects "taking too much prime farmland" within this limited area. Faced with conflicting statements about the character of the land, the board of commissioners credited testimony that the land was suitable for farming or raising animals. We defer to the board's resolution of conflicting testimony on this issue. *See Senior v. City of Edina*, 547 N.W.2d 411, 416 (Minn. App. 1996) (noting that on review of a certiorari appeal, we do not retry facts or make credibility determinations).

The record also supports the board of commissioners' exercise of its discretion to limit the space devoted to solar uses. As stated, the comprehensive plan provides that only "limited" space may be devoted to solar energy projects.[2] In considering this issue, the board of commissioners discussed the proliferation of solar farms in the area. One solar project, the MN East Regal LLC (East Regal) solar garden, is located directly next to the

[2] Relators argue that the county should have provided a definitive number of solar projects that could be permitted in the area rather than state that solar uses could be "limited." Relators have identified no authority for this proposition.

site.[3] Four other solar gardens are located within one mile of the site. There were additional proposals for solar farms pending before the county, including another solar project from East Regal on the same property. A neighbor objected to the proposal, asserting that the area was being "choked" with solar projects in recent years and neighboring property owners did not want to be "surrounded" by solar farms. A member of the planning commission stated that the county had "opened the floodgates" for solar farms in the area, and that there were currently 90 applications within Stearns County. The board of commissioners noted that there were "a lot" of solar farms in the Paynesville area. There was testimony in the record that McLeod County was "denying all solar projects," that Wright County had "put a moratorium" on solar farms, and that other counties were also "backing off" of solar farms. Relators' proposed solar farm would be the second solar project on the property and the sixth solar project in the north of Paynesville. The board of commissioners found that a sixth solar farm in this one-mile area would not satisfy the comprehensive plan to limit solar projects in agriculturally oriented areas.

The record supports the board of commissioners' decision to deny the application because it did not fit the county's objectives to preserve the agricultural nature of the land and to limit the space devoted to solar uses. "County zoning authorities have wide latitude

[3] The county approved the East Regal solar farm by administrative permit. Previously, all proposed solar farms were required to go through a CUP process. The ordinance was amended to allow the first one-megawatt solar garden on any parcel of property to be approved administratively. Because East Regal received administrative approval for the first solar garden, any later requests for a solar farm, including relators' request, required a CUP. Relators' CUP application is the second request for a one-megawatt solar farm located on the same parcel of record and therefore required approval from the board of commissioners.

in making decisions on [CUPs]," and "except in rare cases where there is no rational basis for the decision, it is the duty of the judiciary to exercise restraint and accord appropriate deference to civil authorities in routine zoning matters." *Big Lake Ass'n v. St. Louis Cnty. Plan. Comm'n*, 761 N.W.2d 487, 491 (Minn. 2009) (quotations omitted). And this court "may not substitute its judgment, if there is a legally sufficient reason for [a CUP] decision, even if it would have reached a different conclusion." *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). Here, the county had a legally sufficient basis for its decision and the facts support this legal basis. Given the deferential standard of review, we therefore approve the board of commissioners' decision.[4]

Affirmed.

[4] The county asserts it also had a rational basis to deny the CUP because of potential construction disturbances and environmental concerns, among other reasons. At the hearing before this court, the county clarified that their primary arguments related to preserving farmland and limiting the land devoted to solar uses.