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**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0310**

RDNT, LLC,
Respondent,

vs.

City of Bloomington,
Appellant.

**Filed January 6, 2014
Reversed
Johnson, Judge**

Hennepin County District Court
File No. 27-CV-12-791

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Considered and decided by Johnson, Presiding Judge; Smith, Judge; and Minge,
Judge.*

*Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

JOHNSON, Judge

RDNT, LLC owns and operates a senior-living facility in the city of Bloomington. RDNT wishes to expand the facility by constructing a building that would contain, among other things, 67 assisted-living apartments. The city council, however, denied RDNT's application for a conditional-use permit. RDNT sought relief from the district court, which ordered the city council to issue the permit. On appeal, the city argues that the city council appropriately exercised its discretion by denying the conditional use permit. We agree with the city and, therefore, reverse.

FACTS

RDNT owns and operates the Martin Luther Care Campus, which presently consists of two buildings, Martin Luther Manor and Meadow Woods Assisted Living. RDNT seeks to expand its campus by building a new "catered living facility." The proposed new facility would be a 123,055-square-foot building comprised of 67 apartments and various on-site amenities.

The campus is surrounded on its east, south, and west sides by dense woodlands. To the north, the campus is bordered by East 100th Street, beyond which is a residential neighborhood. The sole public entrance to the campus is on its north side, at the L-shaped intersection of East 100th Street and 13th Avenue South. From that intersection, 13th Avenue South runs north, with the residential neighborhood on its east side and an elementary school on its west side. Approximately 80 percent of the traffic to and from the campus is carried by 13th Avenue South. The remainder of the traffic to and from the

campus is carried by East 100th Street, to the east of its intersection with 13th Avenue South.

In September 2011, RDNT applied to the city for a conditional-use permit (CUP) that would allow the construction and use of the proposed expansion. RDNT presented its application to the city's planning commission at a public hearing in November 2011. Several nearby homeowners expressed opposition to the project on the ground that, among other things, the project would aggravate existing traffic issues in the surrounding neighborhood. City staff recommended that the application be denied because the project would conflict with provisions of the city's comprehensive plan. Both the city and RDNT presented traffic studies indicating that the proposed expansion would increase the number of daily trips to and from the campus, although they disagreed about the precise amount of the increase. The planning commission unanimously recommended denial of the expansion. The city council met to consider the application in a public hearing later in November 2011. Homeowners again expressed opposition to the project, and city staff again recommended denial. In December 2011, the city council passed a resolution denying RDNT's application by a vote of four to three.

In January 2012, RDNT petitioned the district court for a writ of mandamus to compel the city to issue the CUP. In August 2012, both RDNT and the city moved for summary judgment. In December 2012, the district court granted RDNT's motion and entered judgment in favor of RDNT, thereby reversing the city's denial of the CUP application. The city appeals.

DECISION

The city argues that the district court erred by reversing its denial of RDNT's CUP application. Specifically, the city argues that its reasons for denying the application are legally sufficient and supported by a factual basis.

A city council has broad discretion to grant or deny a CUP application. *Zylka v. City of Crystal*, 283 Minn. 192, 196, 167 N.W.2d 45, 49 (1969). Nonetheless, a city's land-use decision cannot be unreasonable, arbitrary, or capricious. *Swanson v. City of Bloomington*, 421 N.W.2d 307, 313 (Minn. 1988). If a city council explicitly states its reasons for denying a CUP application, this court asks whether those reasons are legally sufficient and, if so, whether the reasons have a factual basis. *Trisko v. City of Waite Park*, 566 N.W.2d 349, 352 (Minn. App. 1997), *review denied* (Minn. Sept. 25, 1997). A city 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). A city council's denial of a CUP is not legally sufficient if the city bases its denial on land-use standards that are "unreasonably vague" or "unreasonably subjective." *Trisko*, 566 N.W.2d at 353 (quoting *C.R. Invs., Inc. v. Village of Shoreview*, 304 N.W.2d 320, 327-28 (Minn. 1981)). Not all of a city's reasons for the denial of a CUP need be legally sufficient and supported by facts in the record. *Id.* at 352. Rather, a city's denial of a CUP is proper if at least one of the reasons given for the denial is both legally sufficient and has a factual

basis. *Id.* A party appealing a city council’s decision bears the burden of persuasion on appeal. *Hubbard Broad., Inc.*, 323 N.W.2d at 763.

On an appeal from a district court’s review of a city council’s decision to deny a CUP application, this court independently considers the record before the district court together with the city’s decision, without affording any special deference to the district court’s review. *Northwestern Coll. v. City of Arden Hills*, 281 N.W.2d 865, 868 (Minn. 1979). Thus, this court essentially conducts a deferential review of the city’s decision and a *de novo* review of the district court’s decision. *See id.*

In this case, the city’s resolution stated four reasons for denying RDNT’s CUP application. Three reasons relate to conflicts with the city’s comprehensive plan, and one reason relates to concerns about public health and welfare. We will address the city’s reasons in turn.

A. Conflicts with Comprehensive Plan

The city argues that the district court erred because RDNT’s proposed use is incompatible with various parts of the city’s comprehensive plan. The city specifically cites three conflicts, each of which is included in the city council’s resolution denying the application: (1) the proposed expansion would make the campus a “larger traffic generator” that is not “adjacent to a collector or arterial street”; (2) the proposed expansion “would negatively impact the character of the surrounding low density neighborhood”; and (3) the proposed expansion consists of high-density housing that is not located near transit, amenities, services, and employment.

In response, RDNT argues that the city cannot base its denial of the CUP application on conflicts with the city's comprehensive plan because the plan has not been enacted as an "official land use control." RDNT contends that the city's comprehensive plan is simply a guide and that, to make it an official control, the city must take further steps to enact it through "ordinances establishing zoning, subdivision controls, site plan regulations, sanitary codes, building codes and official maps," as required by statute. *See* Minn. Stat. § 473.852, subd. 9 (2012). RDNT attempts to show that the plan is not yet an official control because the "Implementation Element" section of the plan states that the next step is "actually implementing the plan" through a variety of means. RDNT contends that the true official controls in this case are the zoned setback limitations, not the city's comprehensive plan.

Conflict with a comprehensive plan typically is a legally sufficient ground for denying a CUP application. *See Hubbard Broad. Inc.*, 323 N.W.2d at 763. In this case, the Bloomington City Code specifically requires the city to find that a proposed conditional use will not conflict with the comprehensive plan before granting a CUP application. Bloomington, Minn., City Code (BCC) § 21.501.04(e)(1) (2013). The city code also requires RDNT to obtain a CUP before proceeding with its proposed expansion. *See* BCC § 19.27(d)(4) (2013). Thus, as a condition of granting RDNT's CUP application, the city code required the city council to ensure that RDNT's expansion would not conflict with the comprehensive plan. Because compliance with the city's comprehensive plan is required by the relevant ordinance, the comprehensive plan is an "official control" that is a legally sufficient basis on which to deny RDNT's CUP

application. Thus, we will proceed to address the city's arguments concerning whether the proposed expansion would conflict with the comprehensive plan.

1. Larger Traffic Generator

The city argues that it properly denied the CUP application because the proposed expansion, coupled with the existing campus, constitutes a "larger traffic generator" that is not located adjacent to an arterial or collector street. The city's comprehensive plan states: "Access requirements of quasi-public uses vary widely and must be evaluated according to the nature of the particular use. Larger traffic generators should be located adjacent to arterial or collector streets." The city contends that the proposed expansion would conflict with the comprehensive plan because the campus is designated quasi-public and because the nearest arterial or collector street, Old Shakopee Road, is six blocks from the campus.

In response, RDNT argues that this provision of the comprehensive plan does not provide a legally sufficient ground for denial of its CUP application because the provision applies only to a *new* land use, not to RDNT's proposed expansion of a *current* use. RDNT notes that this provision of the comprehensive plan is in a section entitled "Future Land Use." Our resolution of this argument requires us to interpret the city's comprehensive plan. We must construe the language of a comprehensive plan according to its plain and ordinary meaning. *Frank's Nursery Sales, Inc. v. City of Roseville*, 295 N.W.2d 604, 608 (Minn. 1980). But if the words used are subject to various interpretations that are more or less restrictive in scope, we should "give weight to the interpretation that, while still within the confines of the term[inology], is least restrictive

upon the rights of the property owner.” *Id.* at 608-09. We also must consider the language in light of its underlying policy. *Id.* at 609.

The comprehensive plan indicates that the larger-traffic-generator provision is a prerequisite for approval of a CUP application. The plan states that the city may approve a “development proposal” only if it complies with both “applicable zoning” and “future land use designation[s].” Thus, the plan required the city council to determine, before approving RDNT’s CUP application, whether the proposed expansion would comply with its quasi-public designation. Accordingly, the phrase “future land use” encompasses a future expansion of current land use. Therefore, this provision of the plan is a legally sufficient basis for denying the CUP application.

The city contends that the record provides a factual basis to show that the campus is a “larger traffic generator” compared to the residential neighborhood to its north. The comprehensive plan does not define the term “larger traffic generator.” The plain meaning of the word “larger” connotes a comparison in terms of size or quantity. Thus, the city is justified in comparing the traffic produced by the campus with the traffic produced by the residential neighborhood directly north of the campus.

Both RDNT’s traffic consultant, URS, and the city’s traffic consultant, SRF, agreed that, without the expansion, the campus currently produces an average of 1,145 vehicle trips per day. RDNT also agreed that the campus generates daily commercial traffic in the form of semi-trucks and delivery trucks. The city council heard testimony from the city’s traffic engineer that the average traffic counts for residential streets typically are between 300 to 500 trips per day but that 13th Avenue South, the residential

street most often used to access the facility, already has an average of 1,080 trips per day, of which approximately 916 are attributable to the campus. Other residential streets in the immediate vicinity of 13th Avenue South have significantly lower traffic counts. The two traffic consultants disagreed on the amount of traffic the expansion would generate, but they agreed that the increase would be, on average, at least 184 trips per day. Thus, we conclude that the record provided the city with an adequate factual basis to conclude that the campus is a “larger traffic generator” and that it would remain so if the CUP application were granted.

RDNT contends that, regardless whether the campus is a “larger traffic generator,” its expansion would comply with the comprehensive plan because the campus is located adjacent to an arterial or collector street. It is undisputed that the closest arterial or collector street, Old Shakopee Road, is six blocks (or approximately half a mile) from the campus. The city contends that this distance means that Old Shakopee Road is not “adjacent” to the campus.

The city’s comprehensive plan does not define the term “adjacent.” Caselaw provides that the word “adjacent” is “relative in meaning and its construction should be determined by the context in which it is used.” *Grudnosky v. Bislow*, 251 Minn. 496, 500, 88 N.W.2d 847, 851 (1958). The definition of the word suggests close physical proximity but does not necessarily require contiguity. *See American Heritage Dictionary* 21 (5th ed. 2011) (defining “adjacent” as both “[c]lose to; lying near” and “[n]ext to; adjoining”); *Black’s Law Dictionary* 46 (9th ed. 2009) (defining “adjacent” as “[l]ying

near or close to, but not necessarily touching”). Thus, RDNT is correct that the campus need not abut Old Shakopee Road to be “adjacent” to it.

Nonetheless, the meaning of the word “adjacent” requires that the campus be “near” or “close to” Old Shakopee Road. One of the historic guiding principles of the comprehensive plan is the desire to locate “housing farther away from the freeway[] . . . to reduce both land use conflicts and commercial traffic through residential areas.” One goal of the plan is the preservation of “low density neighborhoods.” Considering these factors in conjunction with the requirement that larger traffic generators be adjacent to arterial or collector streets, it appears that the plan is designed to avoid non-residential traffic in residential neighborhoods as much as possible. We conclude that a distance of six blocks is too distant in this context. *See Frank’s Nursery Sales, Inc.*, 295 N.W.2d at 609 (requiring that ordinances be interpreted in light of underlying policy). Thus, the city had a factual basis to conclude that the campus is not “adjacent” to an arterial or collector street.

We conclude that the city had a legally and factually sufficient reason to determine that RDNT’s proposed expansion would conflict with provisions of the city’s comprehensive plan concerning larger traffic generators. Accordingly, the district court erred by granting summary judgment to RDNT. This conclusion is sufficient to reverse the district court and to uphold the city’s denial of RDNT’s CUP application. *See Trisko*, 566 N.W.2d at 352.

2. Preserving the Character of Low-Density Neighborhoods

The city also argues that it properly denied the CUP application because RDNT's proposed use would have a negative impact on the character of the surrounding low-density neighborhood. The comprehensive plan seeks to preserve the character of low-density neighborhoods in three different provisions of the plan; first, as a "Strategic Direction[]"; second, under the heading of "Sustainable Development and Community Enhancement Strategy"; and third, under the "Goals, Strategies, Actions" heading.

RDNT attacks the legal sufficiency of this reason, arguing that the plan's directive to preserve the character of low-density neighborhoods is "merely a blurb from a figure in the Comprehensive Plan" and, thus, not a valid ground for denying a CUP application. The provisions concerning low-density neighborhoods, however, appear in at least three places in the comprehensive plan. Those provisions are not merely "blurbs"; they represent a focus of the plan and a valid consideration for rejection of a CUP application.

The city contends that it had a factual basis to conclude that the nature of RDNT's expansion would degrade the character of the surrounding residential neighborhood for essentially three reasons. First, the size of the expansion would result in a level of development inconsistent with the scale and character of the surrounding neighborhood. Second, the expansion would increase the amount of traffic in the neighborhood, which already is atypical and disruptive. Third, the expansion likely would increase emergency and commercial vehicle trips, which are especially likely to disturb the peaceful and quiet enjoyment of residents in the surrounding neighborhood, which consists principally of single-family homes.

a. Character of Neighborhood

With respect to the first of the city's three reasons, the city considered evidence that the expansion would consist of the construction of a 123,055-square-foot building, which would represent a 62-percent increase in the square footage of the campus's buildings. City staff calculated the ratio of total floor area to land area, which they deemed important in determining neighborhood character. The floor-area ratio of the expanded campus would be 0.56, which is approximately five times greater than that of the block immediately to the north of the campus, where the floor-area ratio is only 0.11.

b. Quantity of Traffic

With respect to the city's second reason, the city relied on the testimony of neighborhood residents about existing traffic issues. One resident testified that the campus's parking lots overflow into nearby residential streets, that she has observed commercial traffic such as shuttles, semi-trucks, and delivery trucks driving into the campus, and that she has observed several near-accidents with vehicles leaving the campus that failed to yield to oncoming traffic. She stated that some people park on East 100th Street and then enter the campus by walking over a berm. Several other residents spoke about specific instances of semi-trucks idling on the streets while waiting to enter the campus and the difficulty that large commercial vehicles have in entering the campus. Another neighbor testified that she had heard delivery trucks make a "beep" noise at 8:30 in the evening. Yet another resident spoke about the volume of emergency vehicles entering the campus.

RDNT contends that this testimony is not specific enough to form part of the factual basis for the city's denial. Neighborhood opposition alone is not a legally sufficient reason for denying a CUP application. *C.R. Invs., Inc.*, 304 N.W.2d at 325. But a city may consider neighborhood opposition if it is based on concrete information. *Yang v. County of Carver*, 660 N.W.2d 828, 833 (Minn. App. 2003). Testimony about traffic concerns is concrete if it addresses "existing, daily traffic problems," *SuperAmerica Grp., Inc. v. City of Little Canada*, 539 N.W.2d 264, 268 (Minn. App. 1995), *review denied* (Minn. Jan. 5, 1996), or is based on "actual observations of traffic congestion or potential traffic impact," *Bartheld v. County of Koochiching*, 716 N.W.2d 406, 413 (Minn. App. 2006). But vague general statements about congestion, or remote "anecdotal comments," are not concrete. *Id.*; *Yang*, 660 N.W.2d at 834.

In this case, the testimony provided by neighbors was concrete. Neighborhood residents based their comments on personal observations of existing traffic issues, and they identified specific incidents that illustrated the issues already caused by traffic in the area. These were not vague statements alleging general "congestion." Rather, the public comments were sufficiently concrete and specific to provide the city with a factual basis for its determination that the aggravation of existing traffic issues would cause the campus to be incompatible with the residential neighborhood.

The city also was aware of more-scientific evidence that traffic to and from the campus already was atypical. The city's traffic engineer testified that the average daily traffic counts for residential streets are typically between 300 to 500 trips and that once trips "get above or around a thousand," city officials "start to hear from the residents."

Both the city's and RDNT's traffic consultants agreed that the proposed expansion would increase the average number of trips per day by at least 184 for a total of approximately 1,300 trips per day. The two streets providing access to the campus are lined by single-family homes on one side. This evidence provided the city with a factual basis from which it could conclude that the proposed expansion would increase traffic to levels above those associated with typical residential streets. Coupled with the citizen testimony, the city also could conclude that this increase in traffic would aggravate existing traffic issues.

c. Commercial and Emergency Vehicles

With respect to the city's third reason, the city council received evidence of concerns about an increase in commercial- and emergency-vehicle traffic. Many of the complaints of nearby residents concerned commercial vehicles, and some comments referred to emergency vehicles. In addition, RDNT's proposed expansion would include the addition of a gift shop, private and catered dining facilities, and additional amenities, all of which would generate additional traffic from commercial vendors. Furthermore, the expansion would add 67 apartment units for elderly individuals, who naturally require emergency medical care from time to time. These features of the proposed expansion provided the city with a factual basis to conclude that the expansion would increase both commercial- and emergency-vehicle trips.

RDNT contends that, despite the above-described concerns, the city arbitrarily disregarded RDNT's proposed expansion of its Transportation Demand Management Program (TDMP), which it claimed would alleviate traffic concerns by reducing

commercial, employee, resident, and visitor trips to the campus. The TDMP already includes a shuttle service to and from a nearby church parking lot for employees who drive, discounted fares for employees who take public transit, and on-site showering and storage facilities for employees who commute by bicycle. RDNT proposed to expand the TDMP by incentivizing carpooling, providing visitors with pre-paid coupons for public transit, consolidating employee lunch deliveries and commercial deliveries, providing a transit map, working with on-line direction providers, and initiating a “Good Neighbor Policy” to ensure that employees comply with traffic laws and campus policies. However, RDNT already was required by a pre-existing CUP to accommodate all vehicles at its facility “without on-street parking,” and the record indicates that the campus was unable to comply with this condition. Additionally, several portions of the TDMP already were in place when traffic numbers were calculated. RDNT’s traffic expert agreed that the overall traffic counts would increase even with the expanded TDMP. Thus, the city acted within its discretion by discounting RDNT’s TDMP.

RDNT also contends that the surrounding neighborhood is not a low-density neighborhood and that, as a result, this portion of the comprehensive plan is inapplicable. The campus itself is not designated low-density residential; it is designated quasi-public. But the campus lies next to an area that is designated low-density residential housing. Thirteenth Avenue South, the main access point for the campus, is lined on its east side by single-family homes. The street along the north boundary of the campus, East 100th Street, is also lined by low-density residential housing on its north side. All traffic must travel past this low-density housing on its way to and from the campus. The record

contains an adequate factual basis from which the city could conclude that the surrounding neighborhood qualifies as low-density.

RDNT further argues that the city's denial of its CUP application is arbitrary because the city approved another senior housing project, Applewood Pointe. According to RDNT, traffic counts on streets near Applewood Pointe are, on average, between 1,395 and 1,842 trips per day. But the city council also heard testimony that the nature of the Applewood Pointe project is different from RDNT's proposed expansion. City staff stated that Applewood Pointe built an additional street, provided two access points to its facility, and was rezoned prior to approval. The city also heard testimony that, before its approval, the Applewood Pointe project was expected to produce only 400 trips per day, which is much less than RDNT's campus would produce after the proposed expansion. In addition, the neighborhood surrounding Applewood Pointe is different; Applewood Pointe is two blocks from a high-use street, Penn Avenue, and is surrounded by an office building and a church. RDNT also points to two other residential streets in the city that have a traffic volume similar to what 13th Avenue South would be expected to have after the proposed expansion. But city staff did not state that the other streets reflect normal traffic on residential streets. Rather, staff commented that they had been "managing [one of the streets] for some time." RDNT's evidence concerning Applewood Pointe does not indicate that the city abused its discretion when it discounted RDNT's suggested comparisons.

We conclude that the city had legally and factually sufficient reasons to determine that RDNT's proposed expansion would conflict with provisions of the city's

comprehensive plan concerning the preservation of the character of low-density neighborhoods. Accordingly, the district court erred by granting summary judgment to RDNT on this basis as well. This conclusion also is sufficient to uphold the city's denial of RDNT's CUP application and to reverse the district court. *See Trisko*, 566 N.W.2d at 352.

3. *High-Density Housing*

The city also argues that it properly denied the CUP application because RDNT's proposed expansion would constitute high-density housing and, thus, should be located near transit, amenities, services, and employment. In response, RDNT argues that these provisions of the comprehensive plan concerning high-density housing are inapplicable because the campus is designated quasi-public and, thus, is not subject to density requirements. If we were to consider and resolve this issue, we would conclude that RDNT is correct. But it is unnecessary to reach this issue because we have concluded that the city's first two arguments are meritorious and are sufficient to support reversal of the district court's decision.

B. *Injurious to Health and Welfare*

The city next argues that the district court erred because RDNT's proposed expansion would be injurious to the surrounding neighborhood.

Generally, it is within a city's power to deny a CUP application if it will result in a conditional use that is injurious to public safety and welfare. *See Hubbard Broad. Inc.*, 323 N.W.2d at 763. Furthermore, the Bloomington City Code required the city to find that RDNT's proposed use is "not[] injurious to the surrounding neighborhood or

otherwise harm[ful] [to] . . . public health, safety and welfare” before issuing a CUP to RDNT. BCC § 21.501.04(e)(5). In its resolution denying RDNT’s CUP application, the city stated that RDNT’s proposed expansion would be “injurious to the surrounding neighborhood or otherwise harm the public health, safety and welfare.” The city’s basis for this statement plainly is legally sufficient. We must next evaluate whether it has a factual basis in the record.

The city cited three specific aspects of RDNT’s expansion that would cause injury to the surrounding neighborhood. These three grounds are the same as those cited by the city with respect to the character of the surrounding low-density neighborhood. *See supra* part A.2. For the same reasons as are stated above, we conclude that the city had both a legally and factually sufficient basis for denying RDNT’s CUP application based on concerns for the health and welfare of the surrounding neighborhood. Thus, the district court erred by granting summary judgment to RDNT because the city was within its discretion in denying RDNT’s CUP application on this basis. This conclusion also is sufficient to uphold the city’s denial of RDNT’s CUP application and to reverse the district court. *See Trisko*, 566 N.W.2d at 352.

C. General Hostility

As its last responsive argument, RDNT contends that the city’s denial of its CUP application is improper because city council members exhibited “general hostility” toward the proposed expansion. In support of this argument, RDNT relies on a federal district court decision. *See APT Minneapolis, Inc. v. City of Maplewood*, No. Civ. 97-2082, 1998 WL 634224 (D. Minn. Aug. 12 1998).

The *APT* decision is inapplicable to this case. First, the relevant part of *APT* is not based on state law but, rather, involves the application of a “substantial evidence” standard of a federal statute. *Id.* at *5. Second, *APT* does not provide any description of the legal standard used to identify an unacceptable degree of general hostility. *Id.* Third, the statements made by city officials in *APT* are very different from the statements made in this case. The mayor in *APT* expressed a complete unwillingness to allow the construction of a cell-phone tower based on his personal distaste for cell phones. *Id.* In this case, council members’ statements do not reveal a closed-minded approach or any personal vendetta against the campus in particular or nursing homes in general. In short, RDNT’s argument is not a reason to uphold the district court’s summary judgment despite our conclusion that the city complied with the applicable state-law standards when denying RDNT’s CUP application.

Reversed.