**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A07-1019**

Eagle Ridge Homeowners' Association, Inc.,
Relator,

vs.

Lac qui Parle Board of Commissioners,
Respondent,

Karian Peterson Power Line Contracting, L.L.C.,
Respondent.

**Filed July 15, 2008**
**Affirmed**
**Johnson, Judge**

Lac qui Parle County Board of Commissioners

John E. Mack, Mack & Daby, P.A., 26 Main Street, P.O. Box 302, New London, MN 56273 (for relator)

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Considered and decided by Toussaint, Chief Judge; Halbrooks, Judge; and Johnson, Judge.

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

**JOHNSON,** Judge

The board of commissioners of Lac qui Parle County granted a conditional use permit (CUP) to Karian Peterson Power Line Contracting, L.L.C., permitting Karian to build and use two commercial buildings on land that is zoned for agricultural use. On appeal by writ of certiorari, a group of nearby residents, the Eagle Ridge Homeowners' Association, argues that the county improperly granted the CUP because Karian's proposed use does not satisfy the applicable criteria in the county's land-use ordinance. We conclude that the county did not act unreasonably, arbitrarily, or capriciously and did not abuse its discretion in granting the CUP and, therefore, affirm.

## FACTS

Karian is engaged in the business of constructing and maintaining power lines and equipment used by electrical utilities. It is owned collectively by seven rural electrical cooperatives, including one that serves Lac qui Parle County and customers in other counties in the state.

Karian owns a ten-acre parcel of land within Lac qui Parle County, in Camp Release Township, on which it wishes to build two buildings—an office and shop building and a storage building. The property is zoned for agricultural use and is immediately adjacent to Camp Release Park, which was the first state park in Minnesota and now is owned by the City of Montevideo. Karian has plans for an office building that would be 80 feet by 80 feet and would be occupied by three or four employees. The office building would be attached to a shop that would be 80 feet by 150 feet. Karian also has plans for a

storage building that would be 60 feet by 100 feet and would be used to store equipment. Vehicles used by Karian employees four days per week would be parked in the back of the office building when not in use.

In March 2007, Karian applied to the county board for a CUP that would allow the construction and use of the two proposed buildings. At an April 2007 public hearing of the county's planning and zoning commission, nearby homeowners and a representative of the City of Montevideo expressed opposition to the proposed project. The opponents objected that, among other things, the project would be noisy, would be ugly, would be a safety hazard because of increased traffic, and would lower the values of neighboring properties. The opponents also stated that the county's land-use ordinance did not provide for this type of project. After listening to community members and representatives of Karian, the planning and zoning commission unanimously recommended granting the CUP, subject to the planting of two rows of trees along the Camp Release side of the property. On April 17, 2007, the county board adopted the commission's recommendation and approved the CUP with no additional conditions.

In May 2007, Eagle Ridge, which consists of homeowners in the vicinity of the proposed project, commenced a civil action in district court to challenge the county's issuance of the CUP and to seek a temporary injunction. Meanwhile, on May 22, 2007, Eagle Ridge also filed a petition for writ of certiorari with this court. The petition was timely filed within the required 60-day period. *See* Minn. Stat. §§ 606.01, .02 (2006). In June 2007, the district court denied the motion for a temporary injunction and dismissed

the civil action for lack of jurisdiction. Eagle Ridge now argues that the county's issuance of the CUP was not authorized by the county's land-use ordinance.

**D E C I S I O N**

A county may approve a CUP if the proposed use satisfies the criteria of the county's zoning ordinance. Minn. Stat. § 394.301, subd. 1 (2006). A county board's decision to grant a CUP is a quasi-judicial decision that may be reviewed by this court pursuant to a writ of certiorari. *Interstate Power Co. v. Nobles County Bd. of Comm'rs*, 617 N.W.2d 566, 574 & n.5 (Minn. 2000); *Picha v. County of McLeod*, 634 N.W.2d 739, 741 (Minn. App. 2001). We "review a county's decision to approve a CUP independently to see whether there was a reasonable basis for the decision, or whether the county acted unreasonably, arbitrarily, or capriciously." *Schwardt v. County of Watonwan*, 656 N.W.2d 383, 386 (Minn. 2003). The standard of review is deferential because counties have wide latitude in making decisions about special-use permits. *Id.* Furthermore, we typically afford more deference to a decision granting a CUP than to a decision denying one. *Id.* at 389 n.4 (citing *Interstate Power*, 617 N.W.2d at 579). "For a challenge to a CUP to succeed, there must be a showing that the proposal did not meet one of the standards set out in the [o]rdinance and that the grant of the CUP was an abuse of discretion." *In re Block*, 727 N.W.2d 166, 177-78 (Minn. App. 2007) (quotation omitted).

The Lac qui Parle County land-use ordinance sets forth a list of 20 conditional uses that may be approved for an agricultural district. Lac qui Parle County, Minn., Land Use Ordinance § 16.03 (2000). The fourth item in the list states as follows: "Essential Services including without limitations dams, power plants, switching yards, transmission

lines of over 35KV, flowage areas, pipelines and *buildings supporting essential services*." *Id.* (emphasis added). In another section of the ordinance, the term "Essential Services" is defined as:

> overhead or underground electric, gas, communication, sewage, steam or water transmission or distribution systems and structures, by public utilities or governmental departments or commissions or as are required for protection of the public health, safety, or general welfare, including towers, poles, wires, mains, drains, sewers, pipes, conduits, cables, fire alarm boxes, police call boxes, and accessories in connection therewith, *but not including buildings*.

Land Use Ordinance § 5.01 (emphasis added). The ordinance also sets forth 11 requirements that must be satisfied before a CUP may be granted. *Id.* § 14.02. The planning and zoning commission found that Karian's proposed use satisfied each of the 11 requirements, and the county board approved that decision.

The general thrust of Eagle Ridge's argument is that Karian's proposed use is not a conditional use that is permitted by the ordinance because the proposed use is not within the ordinance's definition of "Essential Services." It is undisputed that the proposed buildings are not themselves "Essential Services" under section 5.01 of the ordinance, which defines "Essential Services." But section 16.03(4), which sets forth one of the conditional uses that may justify the issuance of a CUP, is not confined to essential services themselves; it also allows for "buildings supporting essential services." Karian is engaged in the business of installing and maintaining electrical distribution lines. The definition of "Essential Services" includes, among other things, "electric . . . transmission or distribution systems and structures." Land Use Ordinance § 5.01. There is no apparent

dispute that the buildings Karian proposes to build would be used in connection with the installation and maintenance of electrical distribution lines. Thus, Karian's proposed use is among those that are expressly permitted by section 16.03(4) of the ordinance.

Eagle Ridge attempts to overcome this straightforward analysis by arguing that the ordinance does not authorize Karian's proposed use because Karian is a construction and maintenance company, not a utility that actually delivers electricity to consumers. But there is nothing in the ordinance that can be interpreted to require that the owner of a building supporting essential services be the same company that provides the essential services. Eagle Ridge essentially asks this court to engraft additional language onto the Lac qui Parle County land-use ordinance, but we must decline the invitation. *See Roer v. Dunham*, 682 N.W.2d 179, 181 (Minn. App. 2004) (noting "the statutory rule of construction that this court cannot add language that is not present in the statute or supply what the legislature purposely omits or inadvertently overlooks"); *Chanhassen Estates Residents Ass'n v. City of Chanhassen*, 342 N.W.2d 335, 339 n.3 (Minn. 1984) ("Ordinances are construed according to the recognized principles of statutory construction.").

Eagle Ridge also argues that the "buildings supporting essential services" that are authorized by section 16.03(4) must be located at or near the location of the essential services that are supported by the buildings. Eagle Ridge reasons that the term "Essential Services" should be read together with the term "Accessory Use or Structure," which the ordinance defines as a "building, structure or use on the same lot with and of a nature customarily incidental and subordinate to the principal building or use." Land Use

Ordinance § 5.01. In support of this argument, Eagle Ridge cites *Lowry v. City of Mankato*, 231 Minn. 108, 42 N.W.2d 553 (1950), in which the supreme court interpreted a different zoning ordinance to require that an accessory building in a residential district be located on the same property as the home to which it is an accessory. *Id.* at 115, 42 N.W.2d at 558-59. Eagle Ridge's argument is creative but is inconsistent with the plain language of the Lac qui Parle County ordinance. Section 16.03(4) does not use the term "Accessory Use or Structure," so there is no reason to invoke the definition of that term or to refer to the *Lowry* case. In addition, the Lac qui Parle County land-use ordinance is not identical to the zoning ordinance of the City of Mankato that was at issue in *Lowry*. Eagle Ridge's argument fails because there is no requirement in the text of section 16.03(4), the provision permitting "buildings supporting essential services," that a building supporting essential services and the essential services themselves be located on the same property. Again, we will not append language to the ordinance that would impose such a requirement. *See Roer*, 682 N.W.2d at 181; *Chanhassen*, 342 N.W.2d at 339 n.3.

In sum, because Karian's proposed use of its property is one of the conditional uses that may be allowed in an agricultural district within Lac qui Parle County, the county did not act unreasonably, arbitrarily, or capriciously, and did not abuse its discretion, when it approved the CUP. *See Schwardt*, 656 N.W.2d at 389 (holding that county did not abuse discretion in granting CUP to hog feedlot).

**Affirmed.**