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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1348**

Simanski Metals, LLC,
Relator,

vs.

Goodhue County Board of Commissioners,
Respondent.

**Filed May 20, 2019
Affirmed
Halbrooks, Judge**

Goodhue County Board of Commissioners

Martin H.R. Norder, Patrick J. Kelly, Kelly & Lemmons, P.A., St. Paul, Minnesota (for relator)

Jason J. Kuboushek, Francine M. Kuplic, Iverson Reuvers Condon, Bloomington, Minnesota (for respondent)

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

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

HALBROOKS, Judge

Relator challenges respondent's denial of its application for a conditional-use permit (CUP), arguing that the decision was arbitrary, capricious, and unreasonable. Because the decision is supported by facts in the record, we affirm.

FACTS

Relator Simanski Metals, LLC owns a 4.06-acre parcel of land in Hay Creek Township.¹ The parcel is located at the intersection of Hay Creek Hills Drive and Highway 58. The land is located partially in the A-2 (Agriculture) Zone District and partially in the B-2 (Highway Business) Zone District. On March 21, 2018, Simanski Metals filed an application for a CUP to operate a junk/salvage yard on the land. Both the Hay Creek Planning Commission and Goodhue County Planning Advisory Commission (county planning commission) held public hearings on the application. Thirty-five area residents expressed concern over the proposal. Both commissions recommended that the application be denied. On April 17, Simanski Metals withdrew the request for rezoning and application for a CUP for a junk/salvage yard.

On May 25, 2018, Simanski Metals filed a second application for a CUP. Simanski Metals proposed to build and operate a contractors yard on the land. The Goodhue County Zoning Ordinance defines a “contractors yard” as “[a] site used for storage, maintenance, and staging of vehicles, equipment, and materials related to contracting work in any of the building trades, landscaping, road building, sewer installation, transport and hauling, or similar professions in which work is principally conducted off-site.” Goodhue County, Minn., Zoning Ordinance (GCZO) art. 10, § 2 (2018). A contractors yard may be operated with a CUP in both the A-2 and B-2 zoning districts. GCZO art. 11, § 33 (2018).

¹ The land was initially two separate parcels, but was joined during the CUP application process.

The CUP application provided a detailed description of the proposed project. The proposal indicated that Simanski Metals operates a trucking business consisting of six commercial trucks. The trucks leave by 6:30 a.m. and return in the late afternoon. Simanski Metals proposed constructing a 100' by 120' heated and insulated building to house the trucks and related equipment. The site would also contain a gravel lot where empty roll-off containers could be stored, as well as "an occasional full container on a short term basis." Simanski Metals planned to create a visual screen by planting trees along the border with Hay Creek Hills Drive and to construct a screen fence along the border with Highway 58. The gravel driveway would exit onto Hay Creek Hills Drive approximately 80 feet west of Highway 58. Simanski Metals also submitted an Industrial Stormwater Permit issued by the Minnesota Pollution Control Agency and a letter from the Minnesota Department of Transportation (MnDOT) stating that the application met the requirements for an access driveway permit and therefore MnDOT was obligated to issue a permit.

On June 18, 2018, the county planning commission held a public hearing on the application. The county zoning administrator addressed the commission and summarized the Goodhue County Land Use Management (land-use management) staff's view of the proposal. He stated that a specific concern was that Simanski Metals indicated that if it were unable to haul a full container of recyclable materials or demolition landfill, then it would store the container on the property overnight and haul it the next day or at the earliest available opportunity. He stated that "there isn't really any provisions in our contractor yard language that addressed this. Frankly, it's—it's not spoken to. And generally with

zoning, if a use isn't expressly permitted or it's not very close to something that is allowed, we would consider it not allowed."

The zoning administrator also stated that there were concerns over whether a contractors yard was compatible with the surrounding area and fit with the County's Comprehensive Plan for ensuring that business development was consistent and compatible "with the county's natural environment, quality of rural living, and the needs of county residences." He submitted a staff report from land-use management that identified factors that weighed both in favor of and against granting the application. Members of the public spoke and expressed concerns over how the contractors yard would affect their use and enjoyment of their properties, noise and traffic, and possible groundwater contamination.

After hearing from representatives of Simanski Metals and members of the public, the county planning commission voted to recommend granting the CUP with eleven additional conditions. One of the conditions was that "[s]olid waste, demolition debris or recyclable materials may be stored on or transported to the property on a temporary basis, as long as the containers are within a building or properly covered. Loaded containers must be removed from the site the next business day." Respondent Goodhue County Board of Commissioners (board of commissioners) received the request and recommendations and tabled the issue until Simanski Metals provided an updated site plan and communication from MnDOT and remediated any erosion damage. Simanski Metal subsequently provided the requested information.

On June 24, 2018, the board of commissioners held a public hearing on the permit application. The county's director of land-use management spoke and indicated that the department "still feels in order for it to really meet the contractor's yard definition, which it does . . . no solid waste, demolition debris, or recyclable materials that are not generated on-site should be stored on the property." She noted that the staff had "worked on that contractor's yard language for a number of years" and felt the project fell more properly under the definition of a junk/salvage yard. While discussing factors that weighed in favor of denying the application, she stated, "The request to bringing in and temporarily store waste and recycled material appears to be more in line with the junk/salvage operation and not compatible with surrounding residential uses." The director expressed that, aside from the temporary storage of waste and demolition debris, the proposal generally met the definition of a contractors yard. The land-use management report included a proposed condition that "No municipal solid waste, demolition debris or recyclable materials may be stored on or transported to the property either on a temporary or permanent basis. Only waste or recyclable material generated on-site may be temporarily stored on site between scheduled trash/recycling pickup."

The board of commissioners had an extensive discussion as to whether the proposal met the definition of a contractors yard. During the discussion, a commissioner asked Kevin Simanski, the owner of Simanski Metals, how his proposal would be affected if the board adopted the condition that prohibited the company from temporarily storing solid waste or debris on the site. Simanski responded, "If we cannot bring in part dumpsters on occasions and take them out, that pretty much eliminates the use of the property for that—

that adventure.” A different commissioner ultimately moved to deny the CUP. He explained that he felt the prohibition on the storage of waste was critical and that, based on “Mr. Simanski’s testimony, it’d make it impossible to function without that allowance.” The county attorney asked if the motion on the table was to deny the CUP on the basis that it “does not meet the definition of a contractor’s yard,” and the moving commissioner agreed. The commissioner also moved to adopt the staff report’s recommendations for denial into the record. The motion passed, and the CUP was denied. This appeal follows.

D E C I S I O N

A county’s decision to grant or deny a CUP is a quasi-judicial act. *Interstate Power Co. v. Nobles Cty. Bd. of Comm’rs*, 617 N.W.2d 566, 574 (Minn. 2000). “We 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). “Our standard of review is a deferential one, as counties have wide latitude in making decisions about special use permits.” *Schwardt v. County of Watonwan*, 656 N.W.2d 383, 386 (Minn. 2003). But the denial of a CUP is unreasonable when the “applicant establishes that all of the standards specified by the zoning ordinance as conditions of granting the permit have been met.” *Yang v. County of Carver*, 660 N.W.2d 828, 832 (Minn. App. 2003). When a CUP is denied, the applicant bears the burden of establishing that the reasons for denial are either legally insufficient or unsupported by the facts in the record. *Id.*

Simanski Metals argues that the board of commissioners’ decision to deny the CUP is legally insufficient and unreasonable because the proposal satisfies the specific

standards for a contractors yard established in the zoning ordinance. The Goodhue County Zoning Ordinance establishes seven standards that a contractors yard must meet:

- A. The minimum parcel size shall be 3 acres and shall meet road access standards.
- B. The site shall not be located within Shoreland, Floodplain, or Blufflands.
- C. Materials, structures, and operations associated with the Contractors Yard shall be located a minimum of 100 feet from adjacent neighboring dwellings existing at the time of permit application.
- D. Non-Resident Employees, except designated office or shop personnel, may occupy the site only for the purpose of gathering equipment and supplies, necessary fabrication, or general maintenance.
- E. There shall be no on-site retail sales. The sale of incidental stock-in-trade shall not be considered retail sales.
- F. Exterior storage of materials, vehicles, and equipment may require screening from public view.
- G. The routes and conditions of local transportation networks will be part of the review process to determine if they are capable of supporting the proposed use without appreciably diminishing traffic safety along primary access routes. When appropriate, the applicant shall bear the costs of required dust mitigation measures.

GCZO art. 11, § 33.

The board of commissioners does not dispute that Simanski Metals' proposal meets these standards. But the board of commissioners contends that the decision to deny is not based on a determination that the proposal fails to satisfy the established standards for a contractors yard, but rather the determination that the proposal does not meet the definition

of a contractors yard. The record confirms that a commissioner moved to deny the CUP on the basis that the proposal does not meet the definition of a contractors yard. The board of commissioners determined that the application is more properly categorized as one to operate a junk/salvage yard. Indeed, the board of commissioners made the following finding to support it:

1. The CUP/IUP will be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, and substantially diminish and impair property values within the immediate vicinity. The conditions imposed are not sufficient to mitigate the concerns the public has in regards to affecting their right to the enjoyment of their property due to factors such as the noise of loading and off-loading dumpsters, and equipment backup alarms. *The request to bring in and temporarily store waste and recycled material appears to be more in line with a junk/salvage operation and not compatible with surrounding residential uses. Such a transfer station for waste is not permitted under the definition of a contractor's yard in the Goodhue County Ordinance.*

(Emphasis added.)

The zoning ordinance defines a “contractors yard” as “[a] site used for storage, maintenance, and staging of vehicles, equipment, and materials related to contracting work in any of the building trades, landscaping, road building, sewer installation, transport and hauling, or similar professions in which work is principally conducted off-site.” GCZO art. 10, § 2. By contrast, a junk/salvage yard is defined as “[a] place maintained for keeping, storing, or piling in commercial quantities, whether temporarily, irregularly, or continually . . . rubbish . . . iron, or other metals, or articles which from its worn condition

render it practically useless for the purpose for which it was made and which is commonly classed as junk.” *Id.*

As noted above, the board of commissioners had an extensive discussion concerning whether the plan to store solid waste and recyclable materials on site took the plan outside the definition of a contractors yard. Both the zoning administrator and the director of land-use management indicated that the staff believed that such an activity is not covered under the definition of a contractors yard. The primary concern was the storage of solid waste and demolition debris on the premises. These fall under the materials listed in the definition of a junk/salvage yard. *See id.* And while Simanski Metals stated that the storage would only occur occasionally, the definition of junk/salvage yard covers temporary and even irregular storage of such materials. *Id.* Accordingly, that aspect of the proposal falls outside the definition of a contractors yard.

After reviewing the record, we conclude that the board of commissioners did not act arbitrarily or capriciously in denying the application for a CUP to operate a contractors yard. Our standard of review is a deferential one, *Schwardt*, 656 N.W.2d at 386, and there is evidence in the record to support the board of commissioner’s decision. Specifically, both the opinion of land-use management and the zoning ordinance’s definition of junk/salvage yard support the determination that the storage of solid waste on the premises falls outside the scope of the definition of a contractors yard.

Affirmed.