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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1395**

In the Matter of the Application of
Chase and Chelsey Meadows
for a Conditional Use Permit.

**Filed June 3, 2019
Reversed
Kirk, Judge***

St. Louis County Planning Commission

Shawn B. Reed, Dryer & Overom, Duluth, Minnesota (for relators Scott Antcliff and Heidi Antcliff)

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Duluth, Minnesota (for respondent St. Louis County Planning Commission)

Chase Meadows, Chelsey Meadows, Saginaw, Minnesota (pro se respondents)

Considered and decided by Hooten, Presiding Judge; Reyes, Judge; and Kirk, Judge.

UNPUBLISHED OPINION

KIRK, Judge

Relators Scott Antcliff and Heidi Antcliff challenge the decision of the St. Louis
County Planning Commission to allow Chase Meadows and Chelsey Meadows to use an

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

easement adjacent to relators' property as a haul road for a borrow pit. Because the record is insufficient to support the planning commission's decision, we reverse.

FACTS

On May 3, 2018, Chase and Chelsey Meadows applied for a conditional-use permit (CUP) to expand the use of an existing borrow pit that they had recently purchased. An easement, granted in 1990, runs north from the pit area along the eastern property line of the parcel. The Meadowses' CUP application requested that they be allowed to use the easement for a haul road (the proposed haul road) to enter and exit the pit area. Relators own a parcel north of the pit. Their property line is adjacent to the easement, and their house is 89 feet from the easement.

On June 14, 2018, the St. Louis County Planning Commission (the commission) met for a hearing on the Meadowses' CUP application. During the hearing, Mr. Meadows testified that he did not have commercial access to his pit and wished to construct the proposed haul road on the easement. He also testified that a potential alternative haul road through his property would go through a swamp and should be avoided to protect wetlands.

The St. Louis County Planner indicated that, because the proposed haul road would violate setback requirements in the county's zoning ordinance, the commission could only approve the proposed haul road for safety reasons as deemed necessary by the appropriate road authority, for avoidance of wetlands, or with the agreement of the neighbor. Because there were insufficient board members for a quorum, the commission did not take a vote on the CUP application but, the commission agreed to table the matter for a later hearing.

Following the initial hearing, the commission received more information from both Mr. Meadows and other members of the community. Mr. Meadows indicated that the previous owner of the borrow pit accessed the pit via a haul road going through a neighboring property owned by a member of the previous owner's family. That neighboring property owner would allow Mr. Meadows to use the haul road running through his property for a fee of \$10,000 a year. Mr. Meadows reiterated that a potential alternate haul road through his own property would go through an area of wetlands "with large amounts of black spruce and standing water year round."

The commission held a second hearing on June 26, 2018. During that hearing, the commission asked Mr. Meadows whether he had considered paying for access to the neighboring property owner's haul road and whether he had talked with any of the owners of nearby borrow pits about using their haul roads instead. Mr. Meadows replied that he had not put any consideration into paying \$10,000 a year to use the neighboring property owner's haul road and that he had not talked to any of the owners of nearby borrow pits about using their haul roads.

Following the hearing, the commission approved the CUP application, allowing the Meadowses to build the proposed haul road within the easement. The commission's findings of fact and decision did not state the basis for allowing the proposed haul road to violate the county's zoning ordinance setback requirements. Relators appeal the commission's decision to allow the proposed haul road to violate the setback requirements.

DECISION

Counties are authorized to carry out planning and zoning activities for “the purpose of promoting the health, safety, morals, and general welfare of the community.” Minn. Stat. § 394.21, subd. 1 (2018). As a zoning tool, a conditional use permit may be approved “upon a showing by an applicant that standards and criteria stated in the ordinance will be satisfied.” Minn. Stat. § 394.301, subd. 1 (2018).

A county’s decision to grant 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). The standard of review is deferential, “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). This court reviews “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.” *Id.* In determining whether the county acted arbitrarily, capriciously, or unreasonably, we follow a two-step process. *RDNT, LLC v. City of Bloomington*, 861 N.W.2d 71, 75 (Minn. 2015). We first determine whether the reasons given by the county are legally sufficient. *Id.* at 75-76. Second, if the reasons are legally sufficient, we must determine whether “the reasons had a factual basis in the record.” *Id.* at 76.

A. Legal sufficiency

The county’s zoning ordinance requires haul roads to meet certain no-disturbance setback requirements. St. Louis County, Minn., Ordinance No. 62 (zoning ordinance), art. VI, § 6.22(G)(9) (2018). It is undisputed that the proposed haul road does not meet the

setback requirements. But the zoning ordinance allows haul roads to be built within the setback area for “safety reasons, as deemed necessary by the appropriate road authority,” “wetland avoidance,” or if there “is a written agreement filed with the Department between the adjoining property owner and pit owner/operator.” Zoning ordinance, art. VI, § 6.22(G)(10) (2018).

The setback requirements, as well as the enumerated exceptions, are all relevant to the “health, safety, morals, and general welfare of the community,” and are proper legal bases to grant or deny a CUP. *See* Minn. Stat. § 394.21, subd. 1 (listing the bases that authorize county zoning activities). The basis for granting the CUP is legally sufficient.

B. Factual basis

The county argues that there is a factual basis in the record to support that the proposed haul road satisfies the first and second exceptions to the setback requirement for haul roads; namely that the proposed haul road would be constructed for “safety reasons, as deemed necessary by the appropriate road authority” and “wetland avoidance.” Zoning ordinance, art. VI, § 6.22(G)(10). The commission’s decision did not state which of the exceptions the proposed haul road satisfies, but we will address each exception in turn.

1. For safety reasons, as deemed necessary by the appropriate road authority

The county argues that the record supports that the proposed haul road meets this exception because its public works department granted a commercial entrance permit for the proposed haul road and the commission heard testimony about sightlines for the proposed haul road. Neither the granting of a commercial entrance permit nor the

discussion of sightlines constitutes evidence that the proposed haul road was deemed “necessary by the appropriate road authority” for safety reasons. Zoning ordinance, art. VI, § 6.22(G)(10)(a). There is no evidence in the record that the appropriate road authority deemed the proposed haul road necessary for safety reasons. There is no factual basis in the record to support that the proposed haul road meets this exception.

2. For wetland avoidance

The county also argues that the potential alternative route for a haul road would have to go through wetlands, and therefore the proposed haul road meets the exception for avoiding wetlands. The county’s argument ignores the other haul road possibilities discussed during the second hearing on the Meadowses’ CUP application. During that hearing, the commission inquired about the possibility of using the neighboring property owner’s haul road or the haul roads used by other nearby borrow-pit owners. Mr. Meadows put no consideration or effort into either alternative.

In its decision granting the CUP, the commission does not address the viability of either of these alternatives. The commission’s decision granting the CUP does not state that the proposed haul road is necessary to avoid wetlands or explain why the other options are not viable alternatives. There is insufficient evidence in the record to support that these alternatives are not viable. Mr. Meadows’s personal preference not to consider these alternatives is not evidence that the proposed haul road is necessary to avoid wetlands. There is no factual basis in the record to support that the proposed haul road is necessary to avoid wetlands.

It is undisputed that the proposed haul road violates the county’s zoning ordinance

setback requirements. There is no factual basis in the record to support that the proposed haul road meets one of the enumerated exceptions to the setback requirements. Accordingly, the commission's decision to grant the CUP application was unreasonable.

Reversed.