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

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A18-1403**

In Regards to the Conditional Use Permit Application of Mark H. Bauman.

**Filed June 10, 2019  
Affirmed  
Smith, John, Judge\***

Wright County Planning Commission  
File No. PR2018-0000258

Mark Thieroff, Siegel Brill, P.A., Minneapolis, Minnesota (for relators Aaron and Jean Milton)

Scott T. Anderson, Kristin C. Nierengarten, Rupp, Anderson, Squires & Waldspurger, P.A., Minneapolis, Minnesota (for respondent Wright County)

Mark H. Bauman, Delano, Minnesota (pro se respondent)

Delano Sportsmen's Club, Delano, Minnesota (respondent)

Considered and decided by Connolly, Presiding Judge; Slieter, Judge; and Smith, John, Judge.

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

## **UNPUBLISHED OPINION**

**SMITH, JOHN**, Judge

We affirm the grant of a conditional use permit (CUP) to respondents to construct and operate a shooting range, because we conclude that the use is authorized and the conditions are not inconsistent with the Wright County zoning ordinance.

### **FACTS**

On March 8, 2018, respondent Mark H. Bauman filed an application for a CUP to operate a shooting range on property located in Wright County. The property is owned by respondent Delano Sportsmen's Club (the club) and located along the border of Wright County and Hennepin County. At the time the application was filed, the club had been operating a shooting range directly on the other side of the county line in Hennepin County for over 50 years. The club sought to expand the shooting range onto the property in Wright County, and applied for a CUP to construct and operate three trap ranges, a parking lot, and a building.

The Wright County Planning Commission (the planning commission) held four public hearings on the CUP application. The planning commission received submissions and heard testimony both in support of and against the proposed shooting range. Several neighboring landowners, including relators Aaron and Jean Milton, submitted letters opposing the application. The members of the public opposed to the project submitted a petition signed by 98 residents summarizing their concerns, including increased noise, safety problems, and that the property was not suitable to be used as a shooting range. The Milton's counsel also submitted a letter that argued that the use as a shooting range and

proposed gravel parking lot were not permitted under the zoning ordinance. Members of the club, representatives of the school district, and other members of the public supported the proposal, arguing it would benefit the high school trap shooting teams and that the shooting would not substantially increase from the current level at the existing range in Hennepin County.

On July 19, 2018, the planning commission held the final public hearing on the CUP application. After closing the hearing to further comments from the public, a motion was made and seconded to direct the county attorney and staff to draft proposed findings and conditions for approving the CUP application. The planning commission voted 5-2 to adopt the motion. On April 9, the planning commission adopted the findings and conditions for approval and granted the CUP. This certiorari appeal follows.

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

We review the grant of a CUP under a deferential standard because counties have “wide latitude in making decisions about special use permits.” *Schwardt v. County of Watonwan*, 656 N.W.2d 383, 386 (Minn. 2003). We independently review a county’s grant of a CUP “to determine if it is unreasonable, arbitrary, or capricious.” *Loncorich v. Buss*, 868 N.W.2d 755, 759 (Minn. App. 2015). A county acts unreasonably if the reasons for its decision are legally insufficient or lack a factual basis in the record. *RDNT, LLC v. City of Bloomington*, 861 N.W.2d 71, 75-76 (Minn. 2015).

**I. The use is authorized under the zoning ordinance.**

The Miltons argue that the use approved in the CUP is not permitted under the zoning ordinance. The property is zoned General Agriculture (AG)/Residential-Recreational Shoreland (S-2). Under the zoning ordinance, one of the uses that is conditionally permitted in this zone is commercial outdoor recreation. Wright County, Minn., Zoning Ordinance § 155.048(D)(13) (2018) (WCZO). The Miltons argue that the shooting range does not fall under the definition of “commercial outdoor recreation.”

The interpretation of an ordinance is a question of law that this court reviews de novo. *Prior Lake Aggregates, Inc. v. City of Savage*, 349 N.W.2d 575, 578 (Minn. App. 1984). The goal of our interpretation is to ascertain the intent of the legislative body. *State v. Vasko*, 889 N.W.2d 551, 556 (Minn. 2017) (interpreting city ordinance). When interpreting an ordinance, “we give words and phrases their plain and ordinary meaning.” *Id.* (quotation omitted). The ordinance should be read and construed as a whole, with each section interpreted in light of the surrounding sections to prevent a conflict. *Am. Family Ins. Grp. v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000). If the ordinance is unambiguous, we apply its plain meaning. *Vasko*, 889 N.W.2d at 556.

The WCZO defines “commercial outdoor recreation” as “[c]ommercial recreation which requires large land areas or location in a rural setting such as golf courses, driving ranges, flea markets, shooting ranges and the like, but not to include campgrounds, nor recreational vehicle camps.” WCZO § 155.003(B)(119) (2018). The ordinance also provides a definition of “commercial recreation,” which is a use that is conditionally permitted in other zones. The ordinance defines commercial recreation as including “all

uses such as bowling alleys, driving ranges and movie theaters that are privately owned and operated with the intention of earning a profit by providing entertainment for the public.” WCZO § 155.003(B)(118) (2018).

The Miltons acknowledge that a shooting range is a conditionally permitted use under the definition of “commercial outdoor recreation.” But they argue that the definition of “commercial outdoor recreation” incorporates the definition of “commercial recreation.” They assert that based on the incorporation of that definition, “commercial outdoor recreation” must also be “operated with the intention of earning a profit by providing entertainment for the public.” They argue that because the club is both a registered nonprofit and membership based, it cannot meet the definition of commercial recreation because it is not intended to earn a profit and provide entertainment to the public.

The county argues that the planning commission appropriately rejected this argument because “commercial recreation” and “commercial outdoor recreation” are distinct uses that are permitted in different zoning districts. We agree with the county. “Commercial recreation” and “commercial outdoor recreation” are separately defined in the zoning ordinance and permitted in different zoning districts. The definitions are in distinct subdivisions and do not reference one another; “commercial outdoor recreation” is not a subsection of “commercial recreation” as the Miltons contend. *See* WCZO § 155.003(B)(118), (119). The property is located in a General Agriculture (AG)/Residential-Recreational Shoreland (S-2) zone, and one of the uses that is conditionally permitted in this zone is commercial outdoor recreation. WCZO § 155.048(D)(13). Because the zoning ordinance authorizes the property for use for

commercial outdoor recreation, and a shooting range falls under the definition of commercial outdoor recreation, we conclude that the planning commission did not act arbitrarily or capriciously in granting the CUP.

## **II. The conditions of the CUP are not inconsistent with the zoning ordinance.**

The Miltons argue that the condition of the CUP that permits the parking lot to be composed of “a hard surface such as gravel or bituminous” is impermissible under the WCZO. The WCZO requires that off-street parking “shall be improved with a durable and dustless surface.” WCZO § 155.081(A) (2018). The ordinance further provides that “[d]urable and dustless surface may include crushed rock and similar treatment for parking accessory to one-, two-, three- and four-unit residential structures; all other uses shall utilize asphalt, concrete or other surface (water-sealed) as approved by the Zoning Administrator.” *Id.* The Miltons argue that the approved gravel parking lot does not constitute a parking lot utilizing “asphalt, concrete or other surface (water-sealed).”

The county argues that the parking-lot condition is not a basis to reverse the grant of the CUP because the parking-lot material still needs to be approved by the zoning administrator. We agree. The WCZO leaves final approval for the materials of a parking lot to the zoning administrator, *see id.*, and the zoning administrator has not issued a permit for construction of the parking lot. The zoning administrator is required by the ordinance to “[e]nforce and administer” the WCZO and therefore there is no reason to suggest that he will issue a permit that is contrary to the zoning ordinance. WCZO § 155.025(B)(1) (2018). And when the zoning administrator issues a permit for the parking lot, relators may appeal the decision to the board of adjustments if they believe the approved material

is unauthorized by the ordinance. WCZO § 155.026(B)(1) (2018). Because a final decision has not been made, we conclude that the condition addressing the parking lot for the shooting range does not warrant reversal of the CUP.

**Affirmed.**