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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1853**

In the Matter of the Application of Uniti Towers LLC for a Conditional Use Permit.

**Filed July 22, 2019
Affirmed
Ross, Judge**

Freeborn County Board of Commissioners
Resolution 18-18-247

Jonathan D. Wolf, Nicholas R. Delaney, Adam A. Ripple, Rinke Noonan, St. Cloud, Minnesota (for relator American Towers LLC)

David J. Walker, Freeborn County Attorney, Albert Lea, Minnesota (for respondent Freeborn County Board of Commissioners)

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Considered and decided by Connolly, Presiding Judge; Ross, Judge; and Stauber, Judge.*

UNPUBLISHED OPINION

ROSS, Judge

Uniti Towers LLC applied for and received from Freeborn County a conditional use permit to build a cellular telephone tower. American Towers LLC argues on appeal that the county's board of commissioners did not explain its reasons for approving the permit,

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

failed to support its decision with required factual findings, and failed to consider whether the tower will be unnecessary and duplicative. Because the decision was based on a sufficient factual basis and because the planning commission is not required to find whether the tower is duplicative, we affirm.

FACTS

In August 2018 Uniti Towers LLC applied to Freeborn County for a conditional use permit to construct a wireless-communication tower outside of Glenville. Zoning Administrator Trevor Bordelon submitted a report to the Freeborn County Planning Commission assessing the application. His report included five findings of fact regarding the tower's impact on the surrounding area and recommended approving the permit.

The planning commission held a hearing on the application. American Towers LLC, which operates a wireless tower of its own nearby, objected. It argued among other things that an additional tower is unnecessary because American Towers' tower stands close to the proposed tower site and that the tower would harm nearby property and the community. The planning commission voted to recommend approving the conditional use permit and submitted a report to that effect to the Freeborn County Board of Commissioners. The planning commission's report included its recommendation, Bordelon's report, and Uniti Towers' plans for the tower.

The board of commissioners voted to approve the permit. American Towers appeals by writ of certiorari.

DECISION

American Towers argues that the board of commissioners erred in three ways: by not explaining its reasoning sufficiently to allow for judicial review, by failing to make findings required for a conditional use permit, and by failing to consider the impact of an unnecessary and duplicative tower on the surrounding area. The argument fails. We give great deference to a county's decision to approve a conditional use permit. *Schwardt v. County of Watonwan*, 656 N.W.2d 383, 386, 389 n.4 (Minn. 2003). We will reverse a conditional use permit approval "if the governing body acted unreasonably, arbitrarily, or capriciously." *RDNT, LLC v. City of Bloomington*, 861 N.W.2d 71, 75 (Minn. 2015). American Towers fails to justify reversing under this deferential standard.

As a threshold matter, Freeborn County argues unconvincingly that American Towers lacked standing to challenge Uniti Towers' petition. Although it raised the issue for the first time at oral argument on appeal, we will address it; standing is a jurisdictional requirement that may be challenged at any time. *State by McClure v. Sports & Health Club, Inc.*, 370 N.W.2d 844, 850 (Minn. 1985). We evaluate questions of standing de novo. *In re Custody of D.T.R.*, 796 N.W.2d 509, 512 (Minn. 2011).

American Towers has standing. Standing exists when a party has an injury-in-fact that is causally connected to the complained-of conduct and can be redressed by a decision in the party's favor. *Id.* (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61, 112 S. Ct. 2130, 2136 (1992)). American Towers possesses property near the site of the proposed new tower. Although its claim that nearby property will suffer harm because of operation of a new wireless tower seems dubious in light of its own operation of a wireless

tower in the vicinity, if a new tower can result in an injury in fact to nearby property—yes, even to property possessed by American Towers—a decision in favor of American Towers would redress the injury. On the thin record before us concerning any harm to nearby property, we can say for now that American Towers has standing. We turn to the merits.

We reject American Towers’ argument that the board’s failure to support its decision with reasons and findings in the record renders its decision arbitrary and capricious. In Freeborn County, the task of making factual findings supporting approval or denial of a conditional use permit is delegated to the Freeborn County Planning Commission. Freeborn County, Minn., Ordinances § 42-613 (2017). The planning commission also decides whether to recommend approval of a conditional use permit, and that recommendation, along with the planning commission’s findings, are sent to the board of county commissioners, which then votes to approve or deny the permit. *Id.* It is the planning commission’s job to make the required factual findings, not the board’s.

And the planning commission’s findings are sufficient. Before a conditional use permit may be granted in Freeborn County, the planning commission must make five findings:

- (1) That the conditional or interim use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted and not substantially diminish and impair property values within the immediate vicinity.
- (2) That the establishment of the conditional or interim use will not impede the normal and orderly development and improvement of surrounding vacant property for uses predominant to the area.
- (3) That adequate utilities, access roads, drainage and other necessary facilities have been or are being provided.

(4) That adequate measures have been or will be taken to provide sufficient off-street parking and loading space to serve the proposed use.

(5) That adequate measures have been or will be taken [to] prevent or control offensive odor, fumes, dust, noise and vibration, so that none of these will constitute a nuisance, and to control lighted signs and other lights in such a manner that no disturbance to neighboring properties will result.

Freeborn County, Minn., Ordinances § 42-614 (2017). The Bordelon report included all five required findings. The planning commission received it and made its recommendation based on the report's findings, which were then expressly incorporated into the commission's report to the board. The board received the commission's report before voting whether to approve the permit. The findings satisfy the ordinance.

American Towers asserts that the county board could not delegate its duty to make factual findings, citing our recent decision, *Perschbacher v. Freeborn County Board of Commissioners*, 883 N.W.2d 637, 639–45 (Minn. App. 2016). American Towers reads too much into the *Perschbacher* decision. In that case, the board had decided *against* the recommendation of the planning commission, denying the appellant's permit to build a swine barn. *Id.* at 639–40. We observed that every decision regarding a conditional use permit must be supported by reasons in the record. *Id.* at 643 (citing *Morey v. Sch. Bd. of Indep. Sch. Dist. No. 492, Austin Pub. Sch.*, 136 N.W.2d 105, 108 (Minn. 1965)). Because the board decided against the recommendation and findings of the planning commission, the commission's findings could not support the decision and the board therefore needed to provide its own rationale for denying the permit. *Id.* at 641–46. We concluded that the board had indeed placed its reasoning in the record, and we held that its decision was

therefore not arbitrary and capricious. *Id.* at 643–46. Here the board approved Uniti Towers’ conditional use permit following the recommendation and findings of the planning commission. No additional findings were necessary to justify the approval.

We reject American Towers’ argument that county boards must make independent findings in every conditional use permit decision because the cases it cites for the proposition do not support it. In *Bartheld v. County of Koochiching*, 716 N.W.2d 406, 411–13 (Minn. App. 2006), and in *Picha v. County of McLeod*, 634 N.W.2d 739, 742–43 (Minn. App. 2001), we reversed a board’s decision denying a conditional use permit. In *Bartheld*, the board had not adequately explained its reasons for denying a permit after receiving a recommendation from the zoning commission, and the application met all required conditions. 716 N.W.2d at 411–13. In *Picha*, the planning commission forwarded the permit application without a recommendation or findings and the county’s minutes did not demonstrate that the county had considered the necessary factors. 634 N.W.2d at 742–43. It is true that the supreme court in *Earthburners, Inc. v. County of Carlton* did require a county board to specify reasons for its decision, but there the permit applicant made concessions to accommodate the planning commission’s concerns, the board chairperson stated that proper consideration of the application would be too time consuming, and the board summarily adopted the planning commission’s recommendation to deny the permit. 513 N.W.2d 460, 461–62 (Minn. 1994). The planning commission here recommended approval, Uniti Towers included no additional information in its application after that approval, and the county board approved the permit. The ordinance does not

obligate the board to make its own findings, and this is not a situation where additional findings or rationale were necessary to explain the decision.

American Towers argues that the board's decision was arbitrary and capricious because it did not evaluate the impact of an unnecessary and duplicative tower on the area. American Towers cites no authority that would have required the commission to consider whether a permit approves a duplicative use.

Affirmed.