

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1309**

Steven W. Hill, et al.,
Respondents,

vs.

Bemidji Township,
Appellant.

**Filed June 7, 2021
Affirmed
Gaïtas, Judge**

Beltrami County District Court
File No. 04-CV-19-117

Ryan K. Kieson, Drahos Kieson & Christopher, P.A., Bemidji, Minnesota (for respondents)

Jason J. Kuboushek, Julia C. Kelly, Iverson Reuvers, Bloomington, Minnesota (for appellant)

Considered and decided by Gaïtas, Presiding Judge; Larkin, Judge; and Cochran, Judge.

NONPRECEDENTIAL OPINION

GAÏTAS, Judge

Appellant Bemidji Township appeals from the district court's grant of declaratory judgment in favor of respondents Steven Hill and Jill Hill in their challenge of a zoning decision. The township contends that the district court erred in concluding that the township unreasonably denied the Hills' application for a building permit. Because we

determine that the township’s denial of the requested building permit was unreasonable, arbitrary, and capricious, we affirm.

FACTS

Steven Hill and Jill Hill are contractors and real estate developers who often conduct business as “S & J Enterprises.” In 1998, the Hills created a development called Tyler Estates, which is located within Bemidji city limits and abutting Bemidji Township.

Bemidji and surrounding areas experienced flooding in the spring of 2005. One of the most impacted areas was Tyler Estates, where many homes incurred substantial water damage.

Motivated, in part, to resolve the flooding in Tyler Estates, the Hills considered developing an adjacent 60-acre farmstead in Bemidji Township into a 66-unit development with green space and drainage that would “tie into Tyler Estates drainage.” This planned development, which the Hills intended to call Tyler Hills, would be a common interest community (CIC)—a type of development where there are units instead of lots and each unit owner shares ownership of the land with other owners as tenants in common. *See generally* Minnesota Common Interest Ownership Act (MCIOA), Minn. Stat. §§ 515B.1-101 to .4-118 (2020).

In 2005, however, CICs were not a permitted use under the Bemidji Township land use ordinance. S & J Enterprises therefore applied for a conditional use permit (CUP) from Bemidji Township to construct Tyler Hills.

The CUP Application Process

The Bemidji Township Planning and Zoning Commission (the commission) heard the Hills' CUP application in July 2005 at a public hearing. According to the meeting minutes, commission members noted concerns about the proposed number of units in the CIC, the size of a proposed retention pond and its impact on other developments, and how green space was defined, among other issues. Steven Hill assured the commission that once the proposal was approved, "the engineers will design a final plat with the approved number of lots and the water paths and drainage easements necessary," as well as performing grading plans and surveys. The township's zoning administrator recommended that the commission provide preliminary approval for the CUP, noting that final approval "would not be made until a final drawing of the plat with trails, roads, buffers, etc. was presented to the Town Board."

During the meeting, the commission gave preliminary approval for a CUP, which would allow "S & J Enterprises to develop 60 acres . . . into a Common Interest Community with no more than 62 dwelling units." The commission also recommended that the Bemidji Township Board (the board) place 10 conditions on the CUP.

In August 2005, the township granted S & J Enterprises a preliminary CUP, subject to 10 conditions. Condition 8 stated that "[f]inal approval shall not be granted until the final plat drawing, the results of the engineering modeling study, and the final grading plan are published and approved by the Bemidji Township Town Board."

Steven Hill purchased the farmstead. Then, in September 2005, he appeared before the board for a review of the "Steven Hill Development and CUP." According to the

meeting minutes, Hill “provided copies of ‘Common Interest Community Number 38, Tyler Hills, A Planned Neighborhood,’ plat so that Board members could compare the plat to [the] conditions [listed] on the preliminary Conditional Use Permit.” The meeting minutes also reflect that modeling and engineering plans were completed and a copy was provided to the township. During the meeting, the board voted unanimously to approve the CUP with 10 conditions, including condition 8, and the board chair and the township clerk signed the CUP. Additionally, the township and S & J Enterprises entered into an agreement “for the construction of all streets and roads located within Tyler Hills.”

Once the township granted the CUP, the Hills prepared a platting permit application for Beltrami County, the county where the township is located. The Beltrami County Surveyor issued a letter in September 2005, which stated, “[t]he plat of ‘Tyler Hills Common Interest Community Number 38’ has been checked and has been found to conform to the requirements of Minnesota State Statute number 515B.2-110, subdivision ‘C.’” In early 2006, the Beltrami County Board of Commissioners “approved the Final Plat of Common Interest Community #38, Tyler Hills, as submitted,” and included “Bemidji Township’s approval” because the CUP had been granted. The Office of the Beltrami County Recorder recorded the plat for Tyler Hills in December 2006.

S & J Enterprises then performed significant work on Tyler Hills. The Hills spent over \$600,000 on grading work for the roads, a water retention basin, fencing, and trees. They also supplied all 62 lots in Tyler Hills with connections for natural gas and electricity. In January 2007, the Hills used a quit claim deed to convey to the Tyler Hills Homeowner’s

Association “all common elements of the Common Interest Community No. 38, Tyler Hills, also known as Outlot A.”

The Hills’ 2018 Building-Permit Application

In early 2018, Steven Hill contacted the township’s current zoning administrator—who was not involved in the 2005 CUP application process—to discuss the development of the residential lots in Tyler Hills. The zoning administrator reviewed the plat and noted that the lot sizes were not “the appropriate size.” He advised that the Hills “would need to start the process because we didn’t, we weren’t going to say yes or no to any of this stuff until, at that time.”

Several months later, S & J Enterprises applied to the township for a permit to build a house on a lot that the Hills owned in Tyler Hills. The commission met in November 2018 and recommended that the board deny the permit because the lot size did not meet the lot-size regulations in the township’s land use ordinance.

Although the Hills asserted that the 2005 CUP gave them the right to develop the property, the board unanimously denied the Hills’ building-permit application in December 2018. The board supplied two reasons for the denial:

1. The lot size for [the property] is .33 [acres] and in the Land Use Ordinance, the minimum lot size needs to be 2.4 [acres]; and
2. The Conditional Use Permit is invalid as #8 in the CUP was not met, as the Township did not sign off on the plat. The plat in question as according to Minnesota State Statute 505.09, subd. 1a, was not complied with.

The Hills then brought a declaratory-judgment action against the township, challenging the denial of their building-permit application. They asserted that the township's denial of the requested building permit was arbitrary and capricious.

The Trial and the District Court's Decision

In January 2020, the district court held a court trial on the Hills' claim. The parties agreed to a joint exhibit list and submitted 108 exhibits, including township meeting minutes from 2005 and the signed 2005 CUP. Additionally, the district court heard testimony from multiple witnesses, including Steven Hill, land surveyors, the former township zoning administrator, the former township board chair, the current township zoning administrator, the current township board chair, and Beltrami County officials.

The former township zoning administrator, who worked closely with the Hills during the application process for the 2005 CUP, testified that the City of Bemidji, the township, and Beltrami County were very motivated to correct their flooding problem and believed the Tyler Hills development would be a part of the solution. Because CICs were not a permitted use under the township's land use ordinance in 2005, a CUP was the only available legal avenue for creating the proposed Tyler Hills CIC.

Both the former zoning administrator and the former board chair testified that the Hills had satisfied all conditions in the CUP and that the CUP had been approved. According to the former board chair, the township only granted CUPs after all conditions were met.

The current zoning administrator, who also functioned as the township supervisor, agreed that if the Hills had complied with all of the conditions in the 2005 CUP, they would

be entitled to their requested building permit. But he disagreed that the Hills had satisfied the CUP conditions. Based on his review of documents from 2005, he did not believe that the CUP had been issued because the plat had not been signed by the township, as required by law. Moreover, he saw no evidence that the township board had given final approval to the plat.

The district court granted declaratory judgment in favor of the Hills. Because the township approved the 2005 CUP, the Hills had satisfied all of the CUP conditions, and the CUP remained in effect at the time of the building-permit application, the district court determined that the township's decision to deny the building-permit application was arbitrary and capricious. The district ordered the township to issue the building permit. Following the decision, the township moved the district court for a new trial and for amended findings. The district court denied the motions.

The township appeals.

DECISION

The township contends that it reasonably denied the Hills' building-permit application. Accordingly, the township urges us to reverse the district court's grant of declaratory judgment in favor of the Hills and either uphold its denial of the building permit or remand for a new trial.

In reviewing a zoning decision, a "quasi-judicial" decision, appellate courts consider whether the decision was unreasonable, arbitrary, or capricious. *Honn v. City of Coon Rapids*, 313 N.W.2d 409, 416-17 (Minn. 1981). If the zoning authority's decision was reasonable, it will be upheld. *See id.* at 417.

When a party challenges a zoning authority's decision via a declaratory-judgment action, the district court may allow the parties to supplement the record with additional evidence if it determines "that the additional evidence is material and that there were good reasons for failure to present it at the municipal proceedings." *Swanson v. City of Bloomington*, 421 N.W.2d 307, 313 (Minn. 1988). On review, "this court must then conduct an independent review of the record as augmented." *St. Croix Dev., Inc. v. City of Apple Valley*, 446 N.W.2d 392, 397 (Minn. App. 1989), *review denied* (Minn. Dec. 1, 1989); *see also VanLandschoot v. City of Mendota Heights*, 336 N.W.2d 503, 509 (Minn. 1983) ("Based upon an independent examination of the record, we must determine whether the City's denial of respondent's application for subdivision was reasonable."). Moreover, "[i]n reviewing the denial of a conditional use permit by a local governing authority, this court must conduct an independent examination of the local authority's decision without according any special deference to the same review conducted by the district court, even if the district court hears additional evidence." *City of Barnum v. Carlton County*, 394 N.W.2d 246, 247 (Minn. App. 1986), *review denied* (Minn. Dec. 17, 1986).

It is unreasonable for a zoning authority to base its decision on reasons that have no factual basis or are legally deficient. *C.R. Invs., Inc. v. Village of Shoreview*, 304 N.W.2d 320, 325 (Minn. 1981). A zoning decision is arbitrary and capricious when it "represents the agency's will, rather than its judgment" or if it is "based on whim or is devoid of articulated reasons." *In re Proposal by Lakedale Tel. Co.*, 561 N.W.2d 550, 553 (Minn. App. 1997) (quotation omitted).

Here, the township issued a written explanation of its decision to deny the Hills' building-permit application, providing two bases for the denial. First, the township stated that the lot size was too small because it was smaller than the minimum lot size required by a township ordinance. Second, the township said that the CUP was invalid because condition “#8 in the CUP was not met, as the Township did not sign off on the plat. The plat is in question as according to Minnesota State Statute 505.[0]9, subd. 1a, was not complied with.”

We initially consider the township's second stated reason for denying the building permit, which is that the 2005 CUP is invalid. The township advances two distinct arguments in support of this position.

First, the township contends that the plat did not comply with Minnesota law. According to the township, in 2005, its land use ordinance required that the subdivision of all land conform with the procedures set forth in Minnesota Statutes chapter 505 (2020).¹ The township's ordinance did not authorize the creation of a CIC, which is a process governed by different statutes—the MCIOA, Minnesota Statutes chapter 515B.² The township argues that, because its ordinance explicitly required compliance with chapter

¹ Minnesota Statutes chapter 505 defines terms and provides procedures for subdividing land. *See* Minn. Stat. §§ 505.01-.33. A plat prepared and recorded pursuant to chapter 505 may be used to “(1) indicate the dedication of easements for public ways, utility easements, and drainage easements as necessary for orderly development; (2) depict one or more parcels for the purpose of simplifying legal descriptions; or (3) comply with minor subdivision procedures of a local unit of government.” Minn. Stat. § 505.01, subd. 2.

² Among other things, the MCIOA provides procedures for common interest communities, including their creation, alteration, and termination. *See* Minn. Stat. §§ 515B.2-101 to .2-125.

505 in the platting process, the township did not have authority to permit the creation of a CIC through the CUP process. Moreover, the township points out, the plat for Tyler Hills did not comply with Minnesota Statutes section 505.09, subdivision 1a,³ which requires a plat to bear the signature of the township board chair.

The township's second argument in support of its position that the 2005 CUP is invalid is that the record contains no evidence that shows the township actually approved the Tyler Hills plat. Thus, according to the township, the CUP was invalid because the Hills failed to satisfy condition 8.

The record does not support either of the township's arguments. We initially note that the 2005 CUP does not reference chapter 505. Compliance with chapter 505 was not identified as a condition and there is no mention of chapter 505 in the signed CUP document. The 2005 CUP document does state that it was granted "subject to any and all applicable regulations, standards and criteria set forth in said Bemidji Township Land Use Ordinance."⁴ But the former zoning administrator explained that because the township's ordinances did not expressly provide for CICs in 2005, the very purpose of the CUP was to create the Tyler Hills CIC notwithstanding the limitations of the law in existence at the time. Because the 2005 CUP did not require compliance with chapter 505, the procedures

³ "The board shall not approve any plat of land lying in a town which has appointed a planning and zoning commission unless the town board approves the plat and the laying of streets and other public ways shown on it. The approval shall be endorsed on the plat and signed by the chair of the town board." Minn. Stat. § 505.09, subd. 1a.

⁴ The 2005 CUP did not cite any specific ordinance.

outlined in that chapter, including the requirement for the board chair's signature on the plat, did not apply.

Moreover, contrary to the township's claim, the record shows that the township did approve the plat for Tyler Hills. The board meeting minutes from September 12, 2005, state that the CUP was unanimously approved. In addition to noting the approval of the CUP, the minutes also incorporate "findings of fact," which address the conditions of the 2005 CUP. The findings suggest that all of the 2005 CUP conditions were satisfied, including condition 8, and that the project was moving forward. Among other things, the board found: "[t]he modeling and engineering plans have been completed and a copy is on file in the township office"; "[t]he developer has signed a 'Road Agreement for Plats' to verify to the City of Bemidji that he plans to build the road to township specifications"; and "the modeling and engineering plans have been sent out for contract bids and these bids are due Friday, September 16, 2005." A CUP document, signed by the board chair and township clerk, was issued. Individuals who were involved in the 2005 CUP application process—including the township's former zoning administrator and board chair—testified that all of the CUP conditions had been satisfied before the board issued the 2005 CUP. And in January 2006, the Beltrami County Board of Commissioners approved the final plat, noting that the township had approved the plat because the CUP had been granted.

Given this record, it is clear that the 2005 CUP was issued irrespective of chapter 505, that the Hills satisfied all of the identified conditions, and that the CUP was valid upon its issuance. The township's insistence that the 2005 CUP was never valid—13 years after

the township granted it and following the Hills’ investment of substantial resources in Tyler Hills—is contrary to the facts in the record and thus unreasonable. *See C.R. Invs., Inc.*, 304 N.W.2d at 325.

We next address the township’s concern about the size of the lot where the Hills intend to build—the township’s first stated reason for denying the building permit. The township maintains that its land use ordinance, which requires a minimum lot size of 2.4 acres, Bemidji Twp., Land Use Ordinance art. III.3.A (2004), precludes the Hills from building on their proposed lot, which is just 0.33 acres in size. But the 2005 CUP did not specify any required lot size and did not reference the township ordinance now cited. Moreover, the 2005 CUP specifically authorized the division of a 60-acre farm into 62 individual units, none of which could comply with the township ordinance. Because the 2005 CUP did not limit or even reference lot sizes, and instead, expressly permitted 62 buildings on 60 acres of land, denying the Hills’ permit on the basis of the township’s lot-size ordinance was arbitrary and capricious. *Cf. Hay v. Township of Grow*, 206 N.W.2d 19, 22 (Minn. 1973) (stating that, when a zoning ordinance specifies the standards that must be applied in determining whether to grant a conditional use permit, and the applicant fully complies with the specified standards, denial of the permit is arbitrary as a matter of law).

“A conditional use permit shall remain in effect so long as the conditions agreed upon are [followed].” Minn. Stat. § 394.301, subd. 3 (2020). Our independent review of the record convinces us that the 2005 CUP was valid when issued and remains in effect.

We therefore conclude that the township's denial of the building-permit application was unreasonable, arbitrary, and capricious and that the permit must be granted.

Affirmed.