

*This opinion is nonprecedential except as provided by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
A22-0982**

In the Matter of the Application of
Jim Goodpaster and Sherry Timmermann Goodpaster
for a Conditional Use Permit.

**Filed April 10, 2023
Reversed and remanded
Slieter, Judge**

Chisago County Board of Commissioners
File No. PID 03.01189.00

Peter J. Frank, Christopher L. Olson, GDO Law, White Bear Lake, Minnesota (for relators
Jim and Sherry Goodpaster)

Jason J. Kuboushek, Iverson Reuvers, Bloomington, Minnesota (for respondent Chisago
County Board of Commissioners)

Considered and decided by Connolly, Presiding Judge; Jesson, Judge; and Slieter,
Judge.

NONPRECEDENTIAL OPINION

SLIETER, Judge

Relators challenge the denial of a conditional use permit (CUP) to operate a winery on their agriculturally zoned property. Because respondent failed to provide legally sufficient reasons with a factual basis in the record for its stated reasons to deny the CUP, denial of the CUP was not reasonable. Therefore, we reverse with instructions to issue the CUP with the recommended conditions.

FACTS

Relators Jim Goodpaster and Sherry Timmermann Goodpaster (the Goodpasters) own, through a limited liability company, real property in Shafer Township, located within Chisago County. The property consists of 5.66 acres zoned for agricultural use and is currently planted with 400 grape vines and 25 apple and cherry trees. The northern property line is planted with evergreen saplings, and there are established trees along the eastern and southern property lines. The western edge of the property abuts Upland Road.

In April 2022, the Goodpasters applied for a CUP from Chisago County, which they must obtain to operate the proposed winery as a “Rural Retail Tourism Business” in an agriculturally zoned district. *See* Chisago County Zoning Ordinance (CCZO) § 4.15(B) (2020). The township board considered the application and recommended approval.

The Chisago County Planning Commission held a public hearing on the CUP application. County staff provided proposed findings of fact and recommended granting a CUP with 14 conditions. At the hearing, the Goodpasters presented their application and answered the planning commission’s questions about the potential volume of music at the winery, the layout of the buildings, and whether the lot was large enough to accommodate their planned use. The planning commission then accepted public comments.

Four members of the public offered oral comments, all of whom opposed the CUP application. Three neighbors also submitted written comments opposing the CUP application.

After hearing the comments from the public, the planning commission added three conditions and modified several of the proposed conditions. The planning commission adopted the recommended findings and recommended that respondent Chisago County Board of Commissioners grant the CUP with the 17 conditions. The recommended conditions included limiting the hours of operation to Wednesday through Sunday, 12:00 p.m. to 8:00 p.m.; requiring all music to be indoors and all noise to comply with local noise ordinances; requiring all parking to be on the property; limiting the number of guests on the property at any one time; requiring the winery to comply with all local building and zoning ordinances; and requiring a double row of screening pine trees on the three sides of the property not facing the road.

The county board considered the CUP application with no additional public comment or information.¹ Before any discussion, a commissioner moved to deny the application because “[i]t’s too small of a lot,” they “were having problems with” another winery on a 20-acre lot, there were “too many neighbors in close proximity,” and because of “concern[s] about blocking vegetation.” The board unanimously denied the CUP application.

After the meeting, the county sent the Goodpasters an “official notification” that the county board had denied their application for a CUP. The letter identified three “findings” as a basis for the denial: (1) the lot was “too small” to accommodate the winery without causing “impactful disruption,” (2) the winery was “not sufficiently compatible with” the

¹ The zoning code requires a public hearing only at the planning-commission stage. *See* CCZO § 8.04(B), (F) (2020).

residential nature of the area and “not sufficiently separated by distance from those residentially developed properties,” and (3) the “appearance and intensity of the site development and site development activities” would adversely impact the neighborhood “and screening is unlikely to mitigate such adverse impacts.” The Goodpasters appeal by writ of certiorari.

DECISION

“A county board’s decision regarding a CUP is quasi-judicial and reviewable by writ of certiorari.” *August v. Chisago County Bd. of Comm’rs*, 868 N.W.2d 741, 744 (Minn. App. 2015), *rev. denied* (Minn. Dec. 15, 2015); *see also Big Lake Ass’n v. Saint Louis County Plan. Comm’n*, 761 N.W.2d 487, 490 (Minn. 2009). Out of respect for the separation of powers, our review is limited and deferential, *see Big Lake*, 761 N.W.2d at 491, and a relator bears the burden of persuading a reviewing court that the reasons for denial of a CUP were “legally insufficient or had no factual basis in the record.” *Yang v. County of Carver*, 660 N.W.2d 828, 832 (Minn. App. 2003) (citing *Hubbard Broad., Inc. v. City of Afton*, 323 N.W.2d 757, 763 (Minn. 1982)). But, “[s]ince zoning laws are a restriction on the use of private property, a landowner whose application for a conditional use permit has been denied has a lighter burden than one who challenges approval of a permit.” *RDNT, LLC v. City of Bloomington*, 861 N.W.2d 71, 75 n.4 (Minn. 2015) (citing *Bd. of Supervisors of Benton Twp. v. Carver County Bd. of Comm’rs*, 225 N.W.2d 815, 819 (Minn. 1975)).

The basic standard of review for all zoning matters is the same: “whether the zoning authority’s action was reasonable.” *Honn v. City of Coon Rapids*, 313 N.W.2d 409, 417

(Minn. 1981). Caselaw has expressed the standard in various ways, including whether the decision is “unreasonable, arbitrary or capricious.” *Id.*; *see also RDNT*, 861 N.W.2d at 75-76 (applying the unreasonable, arbitrary or capricious standard to a CUP appeal). We independently review the county board’s decision “to see whether there was a reasonable basis for the decision, or whether the county acted unreasonably, arbitrarily, or capriciously.” *Schwardt v. County of Watonwan*, 656 N.W.2d 383, 386 (Minn. 2003).

To determine if a county board’s decision was contrary to reason, we consider whether it articulated legally sufficient reasons with a factual basis in the record. *See RDNT*, 861 N.W.2d at 75-76. In determining what constitutes a legally sufficient reason for denying a CUP, we look to the applicable zoning ordinance as an expression of the county board’s policy determinations regarding what uses will promote the public health, safety, morals, or general welfare. *See Honn*, 313 N.W.2d at 417; *see also* Minn. Stat. § 394.301, subd. 1 (2022) (“Conditional uses may be approved upon a showing by an applicant that standards and criteria stated in the ordinance will be satisfied.”). The county board’s decision must be supported by substantial evidence, *Graham v. Itasca County Plan. Comm’n*, 601 N.W.2d 461, 467 (Minn. App. 1999), and we will not overturn a county board’s decision simply because we may have come to a different conclusion. *See VanLandschoot v. City of Mendota Heights*, 336 N.W.2d 503, 509 (Minn. 1983).

Denial of a CUP is not reasonable if the evidence establishes “that all of the standards specified by the ordinance as a condition to granting the permit have been met.” *See Zylka v. City of Crystal*, 167 N.W.2d 45, 49 (Minn. 1969) (stating that denial of a special-use permit which meets the requirements set by ordinance would be arbitrary); *see*

also In re Livingood, 594 N.W.2d 889, 895 (Minn. 1999) (reaffirming that denying a permit with insufficient evidence is arbitrary or capricious). Although a county board is not required to prepare formal findings of fact, it must, at a minimum, “have the reasons for its decision recorded or reduced to writing and in more than just a conclusory fashion.” *Earthburners, Inc. v. County of Carlton*, 513 N.W.2d 460, 462 (Minn. 1994) (quotation omitted).

The county board articulated three reasons for denying the Goodpasters a CUP: (1) the lot was “too small to accommodate the intensive development proposal,” (2) the proposed use would be incompatible with the neighborhood and was insufficiently separated from it by distance, and (3) the incompatible “appearance and intensity” of the proposed use was “unlikely” to be effectively screened from the neighborhood. The Goodpasters argue that these reasons are legally insufficient and lack support in the record and, thus, denial of the CUP was not reasonable.

The Chisago County Zoning Ordinance allows “Rural Retail Tourism Businesses” on lots zoned agricultural if the business has a demonstrable relationship to the region, is “small-scale” and “low-impact,” and obtains a CUP.² CCZO § 4.15(B), (C) (2020). The sole issue before us is denial of the CUP. The zoning ordinance provides eight nonexclusive factors to consider before granting or denying a CUP:

1. The Comprehensive Plan and development policies of the County;

² We note that the definition of “small-scale” and “low-impact” mirrors the factors to consider when granting or denying a CUP. *Compare* CCZO § 4.15(D) (2020), *with* CCZO § 8.04(C) (2020).

2. The use shall not create an excessive demand on existing parks, schools, streets and other public facilities and utilities which serve or are proposed to serve the area;
3. The use shall be sufficiently compatible or separated by distance or screening from adjacent development or land so that existing development does not suffer undue negative impact and there will be no significant deterrence to future development;
4. The structure and site shall have an appearance that will not have an adverse effect upon adjacent properties;
5. The use in the opinion of the County is reasonably related to the overall land use goals of the County and to the existing land use;
6. The use is consistent with the purposes of the Zoning Ordinance and the purposes of the zoning district in which the applicant intends to locate the proposed use;
7. The use shall not cause traffic hazard or congestion; and
8. Existing nearby properties shall not be adversely affected by intrusion of noise, glare or general unsightliness.

CCZO § 8.04(C).

Although the county board did not reference the zoning ordinance during its meeting or cite it in the reasons it gave for denying the CUP, the planning commission's recommended findings referenced the zoning ordinance and addressed the eight listed factors.

The county board's first finding is that the lot is "too small to accommodate the intensive development proposal." The minimum lot size in an agricultural district is five acres, which the Goodpasters' 5.66-acre lot exceeds. *See* CCZO § 5.15 (2020). The county board did not indicate how this finding connected to the zoning ordinance, and we see no connection between the size of the lot and the factors for the county board to consider. This finding therefore lacks a legal basis.

The county board's second finding is that the proposed use is incompatible with the existing residential neighborhood and is "not sufficiently separated by distance from those residential properties." This finding has a legal basis in the zoning-ordinance requirement that a proposed conditional use be sufficiently compatible with existing uses or separated from them by distance or screening to prevent "undue negative impact." CCZO § 8.04(C)(3). But this finding must also have a factual basis and, if the zoning authority does not give its reasons for denying a CUP in "more than just a conclusory fashion," it "runs the risk of not having its decision sustained." *Honn*, 313 N.W.2d at 416.

During oral argument to this court, the county board's attorney identified one neighbor's concern that remained unaddressed by the recommended 17 conditions. The neighbor was concerned about increased traffic because "neighbors walk or ride [Upland R]oad for exercise, [and] use it to visit neighbors on foot." However, there is no indication from the oral comments of commissioners during the county board meeting or in the notice-of-denial sent to the Goodpasters that traffic was a basis for the county board's denial of the CUP. And, based on our independent review of the record, we can see no factual basis for the county board's conclusion which was not addressed by the recommended 17 conditions.

The county board's third finding is that the neighboring residential properties "will be adversely impacted by the appearance and intensity of the site development and site development activities and screening is unlikely to mitigate such adverse impacts." This finding has a legal basis in the zoning-ordinance requirements that incompatible uses be adequately screened, and that the "appearance" of the proposed project "will not have an

adverse effect upon adjacent properties.” CCZO § 8.04(C)(3), (4). But again, there must be a factual basis for the county board’s finding, and the board did not point to any factual basis to support its determination. *See Honn*, 313 N.W.2d at 416.

The one objection related to appearance expressed to the planning commission was the possible use of portable toilets. The only indication that the proposed project may include portable toilets is the statement in the Goodpasters’ proposal that they “will comply [with] all requirements of the County Sanitarian,” including “satellite toilets as stipulated by the County Sanitarian.” There is no indication that “satellite toilets” will be required and, if they are, that they will not be adequately screened. In addition to established trees on two sides of the property, the recommended conditions require that “Landscape screening shall be included consisting of staggered rows of 4ft. to 6ft. tall pine trees” on the three sides of the property not abutting Upland Road. The planning commission added this requirement to address concerns expressed about screening. Therefore, this finding lacks factual support.

In sum, though we give great deference to the county board’s zoning decisions, this appeal represents the unique circumstance where the county board failed to articulate any facts to explain why the CUP, with its 17 conditions which appear to address the public concerns, was denied. Therefore, the denial of the CUP lacks a reasonable basis. *See RDNT*, 861 N.W.2d at 75-76; *see also Zylka*, 167 N.W.2d at 50.

The usual remedy for wrongful denial of a CUP is remand to the zoning authority with instructions to issue the requested permit. *Livingood*, 594 N.W.2d at 895; *In re Stadsvold*, 754 N.W.2d 323, 332-33 (Minn. 2008). Because the only CUP considered by

the county board included the 17 recommended conditions, which address neighborhood concerns, we reverse and remand with instructions to grant the CUP with the recommended conditions.

Reversed and remanded.