STATE OF MINNESOTA
IN COURT OF APPEALS
A23-0159

In the Matter of Stevens County for a Conditional Use Permit.

Filed September 5, 2023
Affirmed in part, reversed in part, and remanded
Gaïtas, Judge

Grant County Board of Commissioners

Hannah J. Schacherl, John C. Kolb, Adam A. Ripple, Rinke Noonan, Ltd., St. Cloud, Minnesota (for relator Stevens County)

Justin Anderson, Grant County Attorney, Elbow Lake, Minnesota; and

Matthew P. Franzese, Special Assistant County Attorney, Wheaton, Minnesota (for respondent Grant County Board of Commissioners)

Considered and decided by Slieter, Presiding Judge; Frisch, Judge; and Gaïtas, Judge.

NONPRECEDENTIAL OPINION

GAÏTAS, Judge

Relator Stevens County applied to respondent Grant County Board of Commissioners (the board) for a conditional use permit (CUP) to install a subsurface tile outlet that would draw water downstream from Silver Lake to stabilize high water levels and prevent roadway flooding. The board granted Stevens County's application, and Stevens County now appeals by writ of certiorari. Stevens County contends that the board lacked authority to issue the CUP because (1) the proposed use is permitted, not conditional, and (2) the CUP application was not reviewed by the board's Planning

Advisory Commission (the commission) before approval. Alternatively, Stevens County argues that the conditions of the CUP are unreasonable, arbitrary and capricious, and unsupported by the record. The board responds that Stevens County's appeal is not properly before this court because Stevens County failed to exhaust the remedies provided under the applicable Grant County ordinance.

We reject the board's exhaustion argument but determine that the board had authority to issue the CUP. However, because the second condition of the CUP is unreasonable, arbitrary and capricious, and unsupported by the record, we reverse and remand for the board to issue the CUP without the second condition.

FACTS

Silver Lake sits in both Stevens and Grant Counties. County State Aid Highway 5 (CSAH 5) runs along Silver Lake in Stevens County. The road continues at the Grant County line, but it is called CSAH 17 in Grant County.

In 2021, the Stevens County Highway Department became concerned "about highwater conditions occurring on Silver Lake," which caused service interruptions and potential safety problems along CSAH 5. Stevens County officials feared that high-water conditions could also damage the road's embankment and surrounding farmland.

To address these concerns, Stevens County proposed constructing a subsurface tile outlet starting on "the east edge of Silver Lake" and daylighting "within an existing ditch connection to Patchen Lake." The subsurface tile would increase the flow of water out of Silver Lake, moving it downstream to Patchen Lake, which is located entirely within Grant County. Stevens County hoped the project would "lower and stabilize high water levels

on Silver Lake" and decrease the frequency of high-water conditions impacting CSAH 5. Because the proposed route of the subsurface tile intersected private property located between Silver Lake and Patchen Lake, Stevens County entered into an easement agreement with the affected property owner.

A Grant County employee, whose identity is not revealed by the record, advised Stevens County that, under the Grant County Shoreland Management Ordinance, the project would require a CUP.[1] Stevens County and the private property owner who had entered into the easement agreement applied for a CUP on September 16, 2022.

The CUP application stated the purpose of the proposed project:

> To maintain the seasonal water level of Silver and Shauer Lakes[2] slightly above the OHWL [ordinary high water level] for safety of the traveling public as well as preservation of the roadbeds on CSAH 5 and CSAH 17. The tile will also protect downstream properties from peak runoff caused by overland flooding by allowing a healthy bounce in Silver Lake and limiting the amount of water that runs overland out of the adjacent natural runout. The natural overland runout will remain intact for times of extreme high water.

In support of the CUP application, Stevens County submitted a map of the Stevens/Grant County line in relation to Silver Lake, a mockup of the proposed project structure, an engineer's feasibility report, and a copy of the easement agreement between Stevens County and the private property owner.

[1] Relator claims it "informally" protested the requirement to apply for a CUP, but no such evidence exists in the record.

[2] Shauer Lake was not included or mentioned in the final CUP approved by the board.

The CUP application was forwarded directly to the board for consideration. In anticipation of the board's review of the application, the Grant County engineer submitted a memorandum to provide the engineer's "overall recommendation." The memorandum stated that Grant County "ha[d] spent considerable effort over the past year to understand the overall situation related to high water in this basin [and] its impact on . . . CSAH 17." The engineer's initial recommendation had been to widen and raise CSAH 5/17 to "meet state aid standards," which would prevent flooding. According to the memorandum, this could be accomplished by either lowering the water level in Silver Lake as proposed by Stevens County or by widening and raising the road itself. The engineer determined that Stevens County's proposal to install subsurface tile would be less costly, but the engineer ultimately recommended that Grant County "raise and widen CSAH 17."

Weeks after Stevens County submitted the CUP application, the board considered it during a public board meeting. According to the meeting minutes, several individuals spoke about the CUP application, including the Stevens County engineer and the Grant County engineer, and officials from the Grant County Office of Land Management, and the Grant County Soil and Water Conservation District. There was also an opportunity for public comment, although the record is unclear as to the extent that members of the public participated. The board decided that additional information was necessary before it could vote on the CUP application. It scheduled a special session in December to reconsider the application.[3]

[3] On October 19, the Office of Land Management notified Stevens County that it had extended the "time for taking action on [the] [CUP] application," as allowed by statute, to further "evaluate" the application.

Following the board meeting, the Grant County highway committee prepared a report for the special session. The report recommended that the board approve the CUP application and suggested specific conditions.

The special session convened on December 2. According to the meeting minutes, the highway committee report was presented, individuals "from Stevens County and the public were given time for comments, questions, and concerns," and the "Commissioners discussed conditions to the permit." Then, the board voted to approve the CUP application with the specific conditions recommended by the highway committee's report.

The conditions on the CUP are as follows:

> 1. Both Silver and Patchen Lakes shall be included in a comprehensive plan to address high water levels impacting road safety.
>
> 2. Both Stevens and Grant County will coordinate and commit to a road project to be constructed within the 5 year road program (2023-2027) on CSAH 5/CSAH 17 from approximately 800' south of the Grant/Stevens County line to CR 35, 1 mile north of the county line.
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> 3. Stevens and Grant County will enter into an agreement identifying the distribution of cost, both initial and ongoing maintenance. Stevens and Grant County will share evenly (50% each) of all costs associated with the construction of the Silver Lake Outlet and at a prorated cost of the difference between a 15" pipe and the proposed 24" pipe at the Patchen Lake Outlet.
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> 4. Both Grant and Stevens County will be responsible for development and approval of the project. This includes design and construction engineering, obtaining all permanent easements, permits, and an Operations and Maintenance Plan for the controlled outlet of Patchen Lake.

5. The project will not be advertised for construction until all of the necessary permits, easements, water management plans, etc. are obtained and/or approved.

6. The proposal will be conducted in phases starting with Patchen Lake.

7. The following design elements will be incorporated into each lake outlet:

SILVER LAKE

a. The proposed tile shall be installed the entire length from Silver Lake to Patchen Lake, approximately 5,300 feet to reduce potential impacts to the existing north south channel and to alleviate future maintenance concerns.

b. The proposed tile shall be designed to be self-cleaning to reduce long term maintenance costs. Per FHWA HEC No. 22, a 15" smooth interior pipe with minimum slope would be 0.28%. Flowing full Q = 3.7 cfs

c. Cleanouts will be installed as recommended by final engineering design.

d. The intake at Silver Lake will provide adequate capacity with assumed 50% plugging.

PATCHEN LAKE

a. The proposed tile shall be installed the entire length from Patchen Lake, approximately 3825 feet to the existing centerline culvert at CR 37.

b. The proposed tile shall be designed to be self-cleaning to reduce long term maintenance costs. Per FHWA HEC No. 22, a 24" smooth interior pipe with minimum slope would be 0.20%. Flowing full Q = 9.4 cfs

c. Cleanouts will be installed as recommended by final engineering design.

d. The intake at Patchen Lake will be designed as a gated control structure to facilitate downstream flood damage

> reduction and will provide adequate capacity with assumed 50% plugging.

Following the grant of its CUP application, Stevens County appealed to this court by petitioning for a writ of certiorari.

DECISION

Our certiorari review of a county board's decision is limited. *BECA of Alexandria, L.L.P. v. Cnty. of Douglas ex rel. Bd. of Comm'rs*, 607 N.W.2d 459, 462 (Minn. App. 2000). On review, we can only consider "whether the board had jurisdiction, whether the proceedings were fair and regular, and whether the board's decision was unreasonable, oppressive, arbitrary, fraudulent, without evidentiary support, or based on an incorrect theory of law." *Id.* (quotation omitted). Our "authority to interfere in the management of municipal affairs is, and should be, limited and sparingly invoked." *Eagle Lake of Becker Cnty. Lake Ass'n v. Becker Cnty. Bd. of Comm'rs*, 738 N.W.2d 788, 792 (Minn. App. 2007) (quotation omitted).

I. The project proposed by Stevens County requires a CUP because it is a conditional use under the Grant County Shoreland Management Ordinance.

Under Minnesota law, a county "may by ordinance designate certain types of developments . . . as conditional uses under zoning regulations." Minn. Stat. § 394.301, subd. 1 (2022). Before approving a conditional use, a county may require an applicant to show that the standards and criteria in the ordinance will be satisfied. Minn. Stat. § 394.301, subd. 1; *see also Schwardt v. County of Watonwan*, 656 N.W.2d 383, 387 (Minn. 2003) ("[C]ounties may approve conditional uses if the applicant satisfies the standards set out in the county ordinance.").

Notwithstanding the fact that Stevens County *applied* for a CUP, it argues on appeal that its proposal to install subsurface tile is not a conditional use under the Grant County Shoreland Management Ordinance (the ordinance), and therefore, the Grant County board had no authority to issue a CUP in the first place. According to Stevens County, because its proposed project is a permitted use and "approval of a permitted use follows as a matter of right," *Chanhassen Ests. Residents Ass'n v. City of Chanhassen*, 342 N.W.2d 335, 340 (Minn. 1984), the CUP should be reversed.

As a threshold matter, the board urges us not to consider Stevens County's argument because Stevens County failed to challenge the directive it received to apply for a CUP under the procedures mandated by the ordinance. The board contends that, under the ordinance, Stevens County first was required to appeal the directive to apply for a CUP to the Board of Adjustment. *See* Grant County, Minn., Shoreland Management Ordinance (GCSMO) § VI.D.1 (2018) ("The Board of Adjustment shall act upon all questions as they may arise in the administration of this ordinance and [the Board of Adjustment] shall hear and decide appeals from and review and order, requirements, decisions, or determinations made by an administrative official charged with enforcing any provision of the ordinance."). Then, according to the board, Stevens County could have sought review of the Board of Adjustment's decision in the district court. *See* GCSMO § VI.D.2 (providing a right of appeal from a decision of the Board of Adjustment to the district court). Because Stevens County did not exhaust the available procedures under the ordinance, the board argues that Stevens County is precluded from making its challenge to the necessity for a CUP for the first time on appeal.

We reject the board's argument for two reasons. First, the record is not sufficiently developed for us to consider it. The ordinance states that decisions of an "administrative official" are to be appealed to the Board of Adjustment, GCSMO § VI.D.1-.2 (2018), but nothing in the record reveals *who* directed Stevens County to file a CUP. Furthermore, although Stevens County has asserted that it informally protested the directive to apply for a CUP, the record does not contain Stevens County's response to the directive. Second, the ordinance does not support the board's argument. The ordinance does not require a party to appeal a decision to the Board of Adjustment to perfect a certiorari appeal. Indeed, although the ordinance confers a right to appeal a Board of Adjustment decision to the district court on "any person having an interest affected by such decision," it does not address certiorari appeals from such decisions. GCSMO § VI.D.2.

Because we are not persuaded by the board's threshold argument, we turn to the merits of Stevens County's contention that the proposed project was a permitted use under the ordinance and therefore did not require a CUP. To address this argument, we must interpret the ordinance.

The interpretation of an ordinance is a question of law reviewed de novo. *RDNT, LLC v. City of Bloomington*, 861 N.W.2d 71, 75 (Minn. 2015). "A zoning ordinance should be construed according to its plain and ordinary meaning and in favor of the property owner." *Yang v. County of Carver*, 660 N.W.2d 828, 832 (Minn. App. 2003) (citing *Frank's Nursery Sales, Inc. v. City of Roseville*, 295 N.W.2d 604, 608-09 (Minn. 1980)).

We first examine the pertinent language of the ordinance. The ordinance generally defines a conditional use as:

> A land use or development as defined by ordinance that would not be appropriate generally, but may be allowed with appropriate restrictions as provided by official controls upon a finding that:
>
> a. Certain conditions as detailed in the zoning ordinance exist.
>
> b. The use or development conforms to the comprehensive land use plan of the county.
>
> c. Is compatible with the existing neighborhood.

GCSMO § II.A.29 (2018). Of relevance here, the ordinance requires a CUP for "the grading/filling of soil within shoreland as set forth in this ordinance or any activity as defined by 'Conditional Use.'" GCSMO § II.A.30 (2018); *see also* GCSMO § V.C.3, .14 (2018) (requiring a CUP for specific activities within shoreland).

Stevens County observes that the board failed to articulate what provision of the ordinance it relied on to determine that a CUP was required. We agree that the board did not identify the applicable provision in any of the materials in the record. However, the record shows that the Grant County highway committee believed that the project would require moving more than 10 cubic yards of material in the "shore impact zone."[4] That committee report, prepared at the board's request, referred to Stevens County's CUP application as one for a "Conditional Use Permit to allow the movement of more than 10 cubic yds of material in the shore impact zone for the purpose of water level manipulation

[4] "Shore impact zone" is defined as "[l]and located between the ordinary high water mark of public water and a line parallel to it at a setback of 50% of the structure setback." GCSMO § II.A.87 (2018).

A "setback" is defined as "[t]he minimum horizontal distance between a structure, sewage treatment system, or other facility and an ordinary high water level, top of a bluff, road, highway, property line or other facility." GCSMO § II.A.85 (2018).

of Silver Lake." The language used—"movement of more than 10 cubic yds of material in the shore impact zone"—directly corresponds to language in the ordinance. Section V.C.14 states that a conditional use permit is required under the ordinance if "more than 10 cubic yards within the Shore Impact Zone is moved."

Stevens County argues that section V.C.14 does not apply because the project would move less than 10 cubic yards of material. The record contains no evidence regarding the amount of material that would be moved during the installation of the subsurface tile. In its principal brief, Stevens County asserts that, because the tile would be buried, "there is no evidence . . . that the use would move more than 10 cubic yards from the Shore Impact Zone." But this assertion does not track the language of the ordinance. The ordinance does not state that it is a conditional use for more than 10 cubic yards to be moved *from* the Shore Impact Zone. It simply states that a CUP is required if "more than 10 cubic yards within the Shore Impact Zone *is moved*." GCSMO § V.C.14 (emphasis added). By its plain language, this provision applies when earth or other material within a shore impact zone is merely moved.

In its reply brief, Stevens County attempts to quantify the amount of material that would be moved in the project. It extrapolates some numbers from the record and then applies a mathematical equation to conclude that its project would move only 4.55 cubic yards of material. But Stevens County did not plug all the information about the project into its equation. In determining that 4.55 cubic yards would be moved, Stevens County only considered the amount of earth that would be displaced by the tile once the tile was placed underground in the shore impact zone. It did not account for material that would be

moved within the shore impact zone as part of the installation process, including the earth that would be dug up in order to place the tile underground. We therefore are not persuaded by Stevens County's calculations that section V.C.14 did not apply to the project.

But even if section V.C.14 does not cover the proposed project, another section of the ordinance does. The board argues that a CUP is also required for the project under section V.C.3 of the ordinance. That section provides:

> No grading, filling, or alteration of existing topography, including retaining walls, shall be performed in the shore or bluff impact zones, on steep slopes, or in a wetland, in excess of one (1) cubic yard of material . . . , unless a Conditional Use Permit . . . has been obtained . . . .

GCSMO § V.C.3.

We agree with the board that the project proposed by Stevens County would alter the "existing topography . . . in excess of one . . . cubic yard of material" in the shore impact zones. GCSMO § V.C.3. The project will involve digging up portions of the shore impact zones to bury the subsurface title, installing vertical access shafts that would reach the surface of the shore impact zone, and creating or installing stabilizers for the pipe. And once installed, the tile will move water from Silver Lake downstream, impacting the shoreline level of the lake. The record supports a determination that the proposed use requires "altering" the existing topography in excess of one cubic yard of material. Accordingly, a conditional use permit is required under section V.C.3. of the ordinance.

We agree with Stevens County that the board could have been clearer in identifying which provision of the ordinance applied. But because the record supports a determination

that the proposed project is a conditional use under two separate provisions of the ordinance, we disagree that the board had no authority to require a CUP for the project.

II. The board's approval of the CUP application without review by the Grant County Planning Advisory Commission does not render the CUP "void."

Stevens County argues that, even if a CUP is required, the board's issuance of the CUP without prior review by the commission violated the ordinance and rendered the CUP void. The parties agree that the commission did not review the CUP application before the board approved it.

In support of its argument, Stevens County relies on section VI.C (2018) of the ordinance, which governs the timeline and administrative process for CUP applications. Section VI.C provides that, after a CUP application is filed with the office of the administrative officer, "[a]ny proposed Conditional Use Permit shall be presented to [the commission] for the determination of its applicability to the shoreland management district where it's proposed." GCSMO § VI.C. The administrative officer must refer the application to the commission for consideration "at its next regular meeting at which time is available." GCSMO § VI.C.5-.6. At that meeting, the commission can question the CUP applicant directly. GCSMO § VI.C.8. It also may "require preliminary architectural drawings or sketches" of all buildings, structures, or other improvements that may be made to the proposed use area to determine whether they will be "of unsightly, undesirable, or obnoxious appearance to the extent that they will hinder the orderly and harmonious development of the county and the zoning district." GCSMO § VI.C. The commission must also consider "possible adverse effects" of the proposed use along with additional requirements or conditions needed to prevent these effects. GCSMO § VI.C.9. Finally,

the commission provides a recommendation to the board about whether the CUP application should be granted or denied. GCSMO § VI.C.10. The board then "take[s] action on the application in accordance with Minnesota Statutes, Chapter 15.99." GCSMO § VI.C.11. If the Board grants the CUP, it "may impose any special conditions it considers necessary to protect the public health, safety and welfare." GCSMO § VI.C.11.

Citing Minnesota Statutes section 645.44 (2022)—which sets forth rules of statutory construction—Stevens County argues that the ordinance's use of the word "shall" means that commission review of a CUP application is mandatory. *See* GCSMO § VI.C. ("Any proposed [CUP] shall be presented to [the commission] . . . "); Minn. Stat. § 645.44, subd. 16 (providing that "shall" is mandatory). Because the board did not follow a mandatory provision of the ordinance, Stevens County contends, the CUP is void.

To address Stevens County's argument, we must again interpret the ordinance. As noted, the interpretation of an ordinance is a question of law that is reviewed de novo. *RDNT*, 861 N.W.2d at 75.

Although section 645.44, subdivision 16, states that "shall" means that something is mandatory, this court previously concluded that the statutory provision is merely a rule of construction and is not binding. *See Szczech v. Comm'r of Pub. Safety*, 343 N.W.2d 305, 307 (Minn. App. 1984). The supreme court has stated that the use of "shall" in a statute may be interpreted as directory—and not mandatory—if the statute "provide[s] no consequence for noncompliance." *Hans Hagen Homes, Inc. v. City of Minnetrista*, 728 N.W.2d 536, 541 (Minn. 2007) (citing *Lord v. Frisby*, 108 N.W.2d 769, 773 (Minn. 1961); *see also Wenger v. Wenger*, 274 N.W. 517, 519 (Minn. 1937) ("[T]he words 'shall' and

'must,' while suggestive of a mandatory meaning, are not always to be construed in a statute as being mandatory. . . . [and may] be construed as directory.").

We note that the ordinance prescribes no penalty or consequence for submission of a CUP application directly to the board. This suggests that the use of the term "shall" in this context is directory rather than mandatory.

"If a statutory rule is directory, generally prejudice must be shown before the failure to comply with that rule potentially warrants relief." *Riehm v. Comm'r of Pub. Safety*, 745 N.W.2d 869, 876 (Minn. App. 2008), *rev. denied* (Minn. May 20, 2008). Stevens County has not shown that bypassing the commission and submitting the CUP application directly to the board caused any prejudice. Under the ordinance, the commission performs just two functions in relation to a CUP application: the commission may question the CUP applicant about the proposed use and the commission must consider "possible adverse effects" of the proposed use. GCSMO § VI.C.8-.9. And contrary to Stevens County's argument on appeal, nothing in the ordinance suggests that these functions can *only* be performed by the commission. In this case, the board performed both functions. The board held two public hearings regarding the CUP application. It heard testimony from representatives of Grant County and Stevens County, and it accepted public comments. Additionally, the board instructed the Grant County highway committee to prepare a report on the proposed use and to consider "associated safety concerns," impacts to downstream property, whether the proposal was consistent with "existing County ordinances" and the goals of other watershed management plans, and whether there were "environmental

concerns" to be addressed. Given these circumstances, we discern no prejudice from the lack of commission review.

Stevens County cites *Hamline-Midway Neighborhood Stability Coal. v. City of St. Paul*, 547 N.W.2d 396 (Minn. App. 1996), *rev. denied* (Minn. Sept. 20, 1996), to argue that the board's failure to comply with its own ordinance "voids" the CUP. The dispute in *Hamline-Midway* began when the City of St. Paul issued a license to sell firearms to St. Paul Firearms Company. 547 N.W.2d at 397. A neighborhood coalition challenged the licensure, contending that it violated the city's legislative code, which prohibited selling firearms near "protected areas," such as schools and playgrounds. *Id.* The coalition argued that the city violated the licensing process specified in its legislative code. *Id.* at 398-99. We agreed with the coalition and reversed the issuance of the license, concluding that "[t]he city did not merely fail to post proper notice, barely miss a procedural deadline, or skip a minor step. The [city] issued the license without a public hearing, and without consideration or approval by the city council. The [city] entirely bypassed the city council." *Id.* at 399. Stevens County argues that, just as in *Hamline-Midway*, the board entirely bypassed the commission, voiding the CUP.

However, Stevens County's reliance on *Hamline-Midway* is misplaced. In *Hamline-Midway*, we did not conclude that the license at issue was "void;" we declared that it was "voidable." *Id.* ("We therefore conclude the city's failure to follow [the code's requirement to hold a public hearing and get approval by city council resolution] renders its actions voidable, and we reverse . . . ."). This distinction is particularly significant. If something is "void," it is "null" or "of no legal effect," whereas if something is "voidable"

it is "valid until annulled" and "capable of being affirmed or rejected at the option of one of the parties." *Black's Law Dictionary* 1885 (defining "void"), 1886 (defining "voidable") (11th ed. 2019); *see also Graves v. Wayman*, 859 N.W.2d 791, 811 (Minn. 2015) (Dietzen, J., dissenting) (discussing distinction between "void" and "voidable" transactions). More importantly, we reversed because the city council—which the city bypassed in making the licensing decision—was the very entity that was responsible for deciding whether to issue the license. *Hamline-Midway*, 547 N.W.2d at 399. Here, by contrast, the commission serves only an advisory role. It is the board that has the authority to decide whether to issue a CUP. Thus, *Hamline-Midway* does not advance Stevens County's argument.

The board did not follow the process outlined in the ordinance. But the board's failure to follow this process, which did not prejudice Stevens County, did not invalidate the CUP.

III. The CUP conditions are reasonable and supported by the record except for condition two, which requires Stevens County to commit to a road construction project.

Stevens County challenges all of the conditions imposed by the CUP, arguing that they are unreasonable, arbitrary and capricious, and unsupported by the record.

Appellate courts "review a county's decision to approve a CUP independently to see whether there was a reasonable basis for the decision." *Schwardt*, 656 N.W.2d at 386. A reviewing court "will reverse a governing body's decision regarding a conditional use permit application if the governing body acted unreasonably, arbitrarily, or capriciously." *RDNT*, 861 N.W.2d at 75 (citation omitted). A decision is arbitrary and capricious if it "(a) relied on factors not intended by the legislature; (b) entirely failed to consider an

important aspect of the problem; (c) offered an explanation that runs counter to the evidence; or (d) the decision is so implausible that it could not be explained as a difference in view or the result of the agency's expertise." *Citizens Advocating Responsible Dev. v. Kandiyohi Cnty. Bd. of Comm'rs*, 713 N.W.2d 817, 832 (Minn. 2006); *see also CUP Foods, Inc. v. City of Minneapolis*, 633 N.W.2d 557, 565 (Minn. App. 2001), *rev. denied* (Minn. Nov. 13, 2001) ("An agency decision is arbitrary and capricious if it is an exercise of the agency's will, rather than its judgment . . . .").

In considering whether a CUP and its conditions are reasonable, an appellate court applies a two-step inquiry. *RDNT*, 861 N.W.2d at 75-76. "First, [the court] must determine if the reasons given by [the board] were legally sufficient. Second, if the reasons given are legally sufficient, [the court] must determine if the reasons had a factual basis in the record." *Id.* (citation omitted). The party challenging the decision must prove that the reasons for the decision were legally insufficient or not supported by the record. *Sagstetter v. City of St. Paul*, 529 N.W.2d 488, 492 (Minn. App. 1995). The "standard of review is a deferential one, as counties have wide latitude in making decisions about special use permits." *Schwardt*, 656 N.W.2d at 386.

Stevens County first argues that because the board made no explicit factual findings to support the conditions, we must conclude that *all* the conditions imposed are arbitrary and capricious. Our caselaw holds otherwise, however. Minnesota law does not require a county board to prepare formal factual findings. *Bartheld v. County of Koochiching*, 716 N.W.2d 406, 413 (Minn. App. 2006). A county board "must, at a minimum, have the reasons for its decision recorded or reduced to writing and in more than just a conclusory

fashion." *Id.* (quoting *Picha v. County of McLeod*, 634 N.W.2d 739, 742 (Minn. App. 2001)). And "[w]hen a use permit is approved, the decision-making body is always implicitly giving the same reason—all requirements for the issuance of the permit have been met." *In re Env't Impact Statement*, 849 N.W.2d 71, 84 (Minn. App. 2014) (quotation omitted); *see also Schwardt*, 656 N.W.2d at 389 ("We have specified that an order granting a CUP shall demonstrate the board's conclusion that the proposal has satisfied each of the zoning ordinance's conditions for approval.").

Applying these principles, we determine that all the CUP conditions are reasonable except for condition two. With the exception of condition two, which we address below, all the conditions are directly related to the proposed use. They concern the development, construction, and maintenance of the subsurface tile system, the size of the subsurface tile, the flow rate of the water removed from Silver Lake and Patchen Lake, and cost sharing between the two counties for the project. The condition that both counties evenly share the costs associated with the construction of the Silver Lake Outlet is reasonable because Silver Lake is located in both counties and the proposed use will benefit all parties. And the record, including Stevens County's Energy Feasibility Report, Grant County's Highway Committee Report, and the board's meeting minutes, supports all the other conditions.

Condition two states that "[b]oth Stevens and Grant County will coordinate and commit to a road project to be constructed within the 5 year road program (2023-2027) on CSAH 5/CSAH 17 from approximately 800' south of the Grant/Stevens County line to CR 35, 1 mile north of the county line." Stevens County contends that the record does not support imposing a condition that requires its "participation and monetary contribution

towards improving Grant County infrastructure," specifically CSAH 17. But the board responds that CSAH 17 was referenced in two documents in the record: the CUP application, which identifies the project's purpose as preserving the "roadbeds on CSAH 5 and CSAH 17," and the comments of the Grant County engineer regarding the CUP application, which discuss improvements to CSAH 17 at length.

However, these references to CSAH 17 do not support the imposition of condition two. Although the CUP application does state that its purpose is to preserve the CSAH 5/CSAH17 roadbed, the proposed project is a subsurface tile to drain water from Silver Lake—not a road project. Additionally, the Grant County engineer stated that CSAH 5/17 could be protected from highwater conditions by *either* raising and widening the road *or* by lowering the water in Silver Lake using the proposed subsurface drainage project. The board unilaterally decided to impose a road infrastructure project on Stevens County that is not related to the proposed use, not a part of Stevens County's original CUP application, and not discussed at any of the board's meetings. We therefore agree with Stevens County that the board's imposition of condition two was unreasonable, arbitrary and capricious, and unsupported by the record.

Because we affirm the issuance of the CUP but conclude that condition two is improper, we reverse and remand. On remand, the board shall reissue the CUP without condition two.

Affirmed in part, reversed in part, and remanded.