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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A24-1917**

In the Matter of the Application of
Arbor Creek Holdings, LLC, for a Conditional Use Permit.

**Filed September 2, 2025
Affirmed
Ross, Judge**

Wright County Planning Commission
File No. PR20240002335

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Considered and decided by Ross, Presiding Judge; Connolly, Judge; and Schmidt,
Judge.

NONPRECEDENTIAL OPINION

ROSS, Judge

A county planning commission granted a property owner a conditional use permit to build a house on East Lake Sylvia below a natural bluff in an area governed by a comprehensive land-use plan that requires steep slopes to “be protected, as far as practical, in their natural, stable state.” A lake association appeals by certiorari, arguing that the

county's decision to grant the permit was unreasonable, arbitrary, and capricious because it failed to follow the comprehensive plan and applicable ordinance and because it lacks factual findings supported by adequate evidence. Because we hold that the county's permit decision adequately addresses and complies with the ordinance and comprehensive plan and because the finding challenged by the lake association has record support, we affirm.

FACTS

This case concerns a dispute over a proposal to build a house in an environmentally sensitive area on the shore of East Lake Sylvia. East Lake Sylvia rests in Wright County and is overlooked on its north side by a steeply sloped natural bluff. The county's applicable comprehensive land-use plan is its 2009 Northwest Quadrant Land Use Plan, which governs the area around the lake. Among other environmental and developmental concerns, the comprehensive plan declares that “[s]teep slopes in shoreland areas are especially important to recognize, where intense development not only compromises the integrity of these slopes, but once compromised, leads to decreased lake water quality through erosion and siltation.” The comprehensive plan also recognizes that “shoreland areas are very desirable for residential development due to the scenic vistas and recreational opportunities” and provides that, during development, “[s]teep slopes . . . and other sensitive environmental features will be protected, as far as practical, in their natural, stable state.”

Part of the bluff area of East Lake Sylvia was rezoned to residential use in 2021, and respondent Arbor Creek Holdings LLC owns at least one of the parcels in a platted, six-lot subdivision in that area. Seeking to construct a house on that lot, Arbor Creek

applied in June 2023 to amend an existing conditional use permit (CUP) and to build the house below the bluff to alter 16,798 cubic yards of the soil by cutting 12,809 cubic yards and filling 3,989 cubic yards. Arbor Creek’s proposal included a driveway down the bluff to the lakeside house. Staff of respondent Wright County Planning Commission questioned whether Arbor Creek’s proposal comported with the comprehensive plan given its land-alteration component. Arbor Creek withdrew its application.

Arbor Creek reapplied in March 2024. This time it reduced its proposed land alteration to a total of 7,731 cubic yards, based on 1,101 yards of cut and 6,630 yards of fill. The change “significantly reduced” the previously proposed tree and land removal and included other technical alterations advised by various experts. The new proposal included a “ramp” over the bluff to access the lakeshore rather than cutting through the bluff. County staff acknowledged the reduced, proposed land alteration but again believed that the “proposal appears to conflict with the [comprehensive plan].” The planning commission, despite signaling earlier it would grant the application, denied it, reasoning that the proposal “still create[d] a significant disturbance to a natural and stable bluff,” raising concerns about the quantity of fill.

Arbor Creek retained a new engineer to make changes from the previous plan and in September 2024 reapplied to the county. Its modified proposal reduced the land alteration to 3,493 cubic yards, including 1,608 yards of cut and 1,885 yards of fill, and it relocated the proposed driveway. Of the “in bluff” cut and fill, 57 cubic yards were to be cut and 991 cubic yards were to be filled; the “below bluff” (or lakeside) fill was reduced

from 5,242 to 894 cubic yards. The proposal included detailed plans for drainage, erosion control, and stormwater management.

The planning commission received mostly favorable prehearing public comments, but Southside Township and relator Greater Lake Sylvia Association Inc. (GLSA) advocated denying the permit. Neither the Minnesota Department of Natural Resources, the Wright County Soil and Water District, nor the Minnesota Indian Affairs Council expressed opposition, all of whom had expressed concerns about earlier versions of Arbor Creek's proposal. Planning-commission staff opined that, although the proposal had significantly reduced the alteration necessary for the build, the proposal still "appear[ed] to conflict" with the comprehensive plan.

The planning commission held a public hearing on Arbor Creek's third request, where one of Arbor Creek's project planners testified about the new proposal. He explained that the proposal had improved by no longer relying on a "land bridge" over the bluff but would instead use an existing, previously overlooked road that was already clear of trees. The new proposal increased the home's shoreline setback from the previously planned 80 feet to 102 feet. He opined that a silt fence and the existence of an expansive flat area between the bluff and the lakeshore would assist in preventing erosion into the lake.

The project's newly retained engineer also testified, describing the modified driveway design and explaining that it follows the existing grade and "hug[s] the bluff" so as to reduce the need for fill and eliminated or greatly reduced the need for retaining walls. He described the plan's curb-and-gutter system, which would direct drainage to a catch-basin to dissipate water-flow energy before stormwater could reach the lake, as well as the

plan's leaving intact an ice ridge, which would direct runoff into swales. The new design also needed less fill to elevate the house. The engineer additionally discussed how the new plan's cut and fill amounts balanced, allowing most of the fill material to be moved from elsewhere on the site, eliminating the need for large amounts of material to be trucked in. And he added that areas on the slope would be graded and seeded, minimizing runoff.

A consultant specializing in wetlands and landfills testified, saying that the design will "cause a lot less erosion to occur." He said that vegetation in the swales would capture silt, reducing erosion that was "likely presently occurring in there." Arbor Creek's general construction contractor testified that he had constructed "nearly 40 new houses on Sylvia" and that his process protects the lake by including silt fencing and mats and by monitoring runoff. Other members of the public also testified favoring the project.

GLSA's counsel testified against the proposal, arguing that it contravenes the comprehensive plan. He conceded that it was not as "adverse and impactful as the original" proposal but asserted that "large truckloads of trees [had been] removed." Arbor Creek confirmed it had removed some trees but countered by insisting that it had done so consistent with the existing directives on the land. GLSA presented no expert testimony.

The planning commissioners conferred. The chairperson observed that Arbor Creek had "dotted a lot of the I's and crossed a lot of the T's," but he referenced "that elephant in the room, the bluff," and wondered, "[H]ow are we going to work through that[?]" The commissioners debated the proposal's merit, ultimately voting to approve Arbor Creek's permit request. The planning commission issued an order discussing the succession of proposals, observing the improvements regarding land alteration, road alignment,

stormwater protection, and erosion control. It found that the proposal comported with the comprehensive plan and would not injure the lake or other parcels. And it wrote that it could not find that the proposal's land alteration and end use "conflict[ed] with the land use plan." It issued a CUP with stated conditions, including those required to control erosion and water runoff.

GLSA appeals by writ of certiorari.

DECISION

GLSA contests the CUP. GLSA faces an uphill battle to convince us to overturn the planning commission's decision to grant the CUP, given that counties are entitled to "wide latitude" in making the quasi-judicial decision. *See Schwardt v. County of Watonwan*, 656 N.W.2d 383, 386, 388 (Minn. 2003). To prevail, GLSA must establish that the decision is unreasonable, arbitrary, or capricious because it was based on legally insufficient reasoning or because its reasoning was not record-supported. *RDNT, LLC v. City of Bloomington*, 861 N.W.2d 71, 75–76 (Minn. 2015); *see also White Bear Docking & Storage, Inc. v. City of White Bear Lake*, 324 N.W.2d 174, 176 (Minn. 1982) (cautioning judicial restraint in zoning appeals). GLSA argues that the planning commission's reasons for granting the CUP do not meet the legal or factual thresholds. The arguments fail. GLSA argues that the planning commission's reasons for granting the CUP were both legally insufficient and lacked a factual basis. The arguments fail under the standard of review.

I

GLSA first contends that the planning commission's decision was unreasonable, arbitrary, and capricious because it failed to apply its own ordinances when it granted the

CUP, pointing to the county’s CUP ordinance and comprehensive plan. A planning commission must apply the relevant provisions of a county ordinance. *See In re Stadsvold*, 754 N.W.2d 323, 332 (Minn. 2008). One criterion for granting a CUP under a Wright County ordinance is that “[t]he use is not in conflict with the Policies Plan of the county.” Wright County, Minn., Code of Ordinances (WCO) § 155.029(A)(5) (2022); *see* Minn. Stat. § 394.22, subd. 9 (2024) (defining “comprehensive plan”). The county’s relevant comprehensive plan again is the Wright County Northwest Quadrant Land Use Plan, which dictates, “Proposals that conflict with the adopted Plan will only be approved in extraordinary circumstances, when unique reasons justify the departure, and the basic policies and intent of the Land Use Plan are not compromised.” The plan outlines major goals that “serve as the framework within which [the] Plan must be reviewed and used as a decision making tool.” Its fourth major goal regards environmental protection, and its relevant provisions mentioned above are more fully presented here:

Steep slopes, wetlands, unstable soils and other sensitive environmental features will be protected, as far as practical, in their natural, stable state. Development on or near such areas may be required to provide larger lot sizes, enhanced setbacks or other conditions to protect the sensitive features.

....
Lakeshore and shoreland areas are very desirable for residential development due to the scenic vistas and recreational opportunities. . . .

Development of lakeshore property shall abide by State Shoreland Management Rules to maintain, as far as practical, a natural shoreline and natural views of shoreland areas from the lake’s surface.

....

In general, development activity should take place in harmony with the existing, stable, natural environment. Development proposals should be adapted to suit the natural landscape, rather than altering the land to suit the development.

It is impossible for any development to occur without some alteration of the land. However, it is often possible, through innovative or alternative design considerations, to suit the development to the existing natural conditions. Unnecessary alteration is expensive, and can lead to a variety of unforeseen problems through the disturbance of natural soil, drainage or other systems.

(Emphasis in original.) GLSA’s argument requires us to consider whether the planning commission’s decision granting the CUP satisfies these provisions.

GLSA couches its argument in terms of alleged deficiencies in the planning commission’s specific findings regarding elements in the plan’s provisions: “the [commission] did not *find* that . . .”; “[n]or did the [commission] *articulate* whether . . .”; “[t]he [commission] did not *conclude* whether . . .”; “the [commission] failed to *articulate* any finding as to . . .”; “[n]or did it *state* . . .” (Emphasis added.) The argument is not convincing.

The first flaw in GLSA’s insufficient-findings argument is that, although the county’s CUP ordinance identifies specifically required findings “where applicable” for CUP approval, the commission made the findings that the ordinance requires:

Among other things, the County Planning Commission shall make the following findings where applicable.

(1) The conditional use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially diminish and impair property values within the immediate vicinity.

(2) The establishment of the conditional use will not impede the normal and orderly development and improvement of surrounding vacant property for uses predominant in the area.

(3) Adequate utilities, access roads, drainage and other necessary facilities have been or are being provided.

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

(5) The use is not in conflict with the Policies Plan of the county.

(6) Adequate measures have been taken 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.

WCO § 155.029(A) (2022). While we reject Arbor Creek’s argument that the planning commission did not need to make *any* express findings, and the commission’s suggestion that it did not have to expressly address the comprehensive plan, none of the allegedly missing findings are expressly required by the county’s ordinance. More importantly, the commission’s CUP-approval decision in fact expressly listed the six ordinance factors and immediately included detailed, non-conclusory findings explaining why the approved CUP met each of them. GLSA cites no authority that requires the county to make the additional findings that GLSA says are missing.

We are not persuaded otherwise by GLSA’s contention that the commission failed to adequately consider and explain whether Arbor Creek’s final CUP proposal comported with the comprehensive plan. A county’s CUP decision must adequately explain its

reasoning to allow for judicial review. *See White Bear Rod & Gun Club v. City of Hugo*, 388 N.W.2d 739, 742 (Minn. 1986). Our review of the record and findings informs us that, while reviewing the series of successively improved applications, the commission grappled with and explained its reasoning, addressing the same competing policy concerns that are outlined in the challenged portions of the comprehensive plan—the right of property owners to develop property and the objective to maintain preferred types of land in their natural state. The comprehensive plan provides for steep-slope protection “*as far as practical*, in [a] natural, stable state” while also contemplating “[d]evelopment on or near such areas” with “conditions to protect sensitive features.” (Emphasis added.) The commissioners clearly considered these concerns and explained their reasoning for finding no conflict with the plan.

For example, one commissioner reflected, “I don’t think our [comprehensive] Plan says, ‘thou shall not touch a bluff.’ When they wrote it, if they wanted to do that, they could have said that. They didn’t.” He added, “I just think we’re here with a better more adapted plan that does more to protect the natural environment than it did even at that second stage.” And he observed, “It seems like they’re trying to adapt their plan to be consistent with the natural environment. And we can have a reading of that major policy goal and the points . . . about trying to adapt development to what’s there and not vice versa. It seems like they’re doing that.” Commissioners frequently discussed or engaged with the abundant testimony about protecting the bluff and controlling runoff and erosion. They praised Arbor Creek’s “pretty heroic efforts” in improving the plan.

The decision granting the CUP implicitly addresses the comprehensive plan's challenged objectives, which are themselves tempered by practical considerations. A challenged provision in the plan states, "Development proposals should be adapted to suit the natural landscape, rather than altering the land to suit the development." This language is followed by the recognition that "[i]t is impossible for any development to occur without some alteration of the land" and that "it is often possible, through innovative or alternative design considerations, to suit the development to the existing natural conditions." And the challenged provision that development of lakeshore property "maintain, *as far as practical*, a natural shoreline and natural views of shoreland areas from the lake's surface" similarly follows language that "[l]akeshore and shoreland areas are very desirable for residential development." (Emphasis added.) The granted CUP order considers these balanced goals. It recognizes that Arbor Creek's "consultants have stated the cut and fill along [the] bluff will not degrade the bluff and make it unstable." It recognizes the significant reduction of cut and fill from the previously denied applications, incorporation of a new road alignment down the bluff, and provisions for stormwater protection and pollution and erosion controls. It emphasizes that the land-alteration plans were created by a licensed professional engineer and reviewed by an environmental consultant. And it states the proposal will not injure the lake or adjacent land. It found that "increase in drainage from the land alteration has been engineered to either be contained or controlled on the property." Its conditions likewise reflect adherence to the comprehensive plan, including requiring that construction be consistent with engineered plans and that Arbor Creek comply with its state and federal water-quality permits, maintain stormwater basins, and

institute best practices for runoff control. And it obligates Arbor Creek to accept future directives for controlling erosion. GLSA does not convince us that the commission failed to make the required findings or to adequately consider the comprehensive plan.

We are also not persuaded by GLSA's reference to the commission's decision to reject Arbor Creek's earlier applications. Findings on one application do not necessarily bind the commission's decision on a different application. *See Sunrise Lake Ass'n, Inc. v. Chisago Cnty. Bd. of Comm'rs*, 633 N.W.2d 59, 64 (Minn. App. 2001); *cf. In re Rev. of 2005 Ann. Automatic Adjustment of Charges for All Elec. & Gas Utils.*, 768 N.W.2d 112, 120 (Minn. 2009) ("[A]n agency must generally conform to its prior norms and decisions or, to the extent that it departs from its prior norms and decisions, the agency must set forth a reasoned analysis for the departure that is not arbitrary and capricious."). The planning commission's CUP decision recognized that it was working with a substantively different application here by detailing the impactful changes to the proposal. And although Southside Township opposed the proposal, and some planning-commission staff observed that the proposal appeared to conflict with the comprehensive plan, it is the commission itself, not the staff or the township, who ultimately controls the decision whether to grant the proposal. WCO § 155.027(A) (2023); *see Bd. of Supervisors v. Carver Cnty. Bd. of Comm'rs*, 225 N.W.2d 815, 819–20 (Minn. 1975). GLSA's reliance on the prior application rejections and staff disagreement about the approval provide no basis for reversal.

In sum, the planning commission articulated legally sufficient reasons why Arbor Creek's proposed project met the objectives of the comprehensive plan and why the

commission changed course. GLSA's contention that the findings and consideration by the commission fail to comport with the comprehensive plan does not lead us to conclude that granting the CUP was unreasonable, arbitrary, or capricious.

II

GLSA argues also that the planning commission's findings lack record support. A county's decision to approve a CUP is unreasonable, arbitrary, or capricious if it is justified by reasons that have no factual basis in the record. *See RDNT*, 861 N.W.2d at 75–76. We consider the argument without reweighing evidence, reviewing the record only to determine whether the evidence supports the decision. *Id.* at 76. GLSA specifically challenges as unsupported the commission's finding that “the cut and fill along [the] bluff will not degrade the bluff and make it unstable” and implies that the commission errantly relied on the testimony of Arbor Creek's consultant to make this finding. GLSA maintains that Arbor Creek had cleared “truckloads of trees” below the bluff for a build site, even though clear cutting was prohibited under a pre-existing CUP to prevent erosion, and that Arbor Creek's final application was therefore simply proposing a solution to a problem Arbor Creek had created. But the consultant did not connect the trees cut below the bluff to the “siltation that's likely presently occurring in there.” And we see nothing in the record describing how clear-cutting trees below the bluff would impact the stability of the bluff itself. GLSA also tries to undercut the finding by pointing to the consultant's testimony that “[t]hey did what they could with the existing conditions there. There's still sedimentation that can go wash into the lake.” But the same consultant testified that “this engineered design will make a lot less erosion or cause a lot less erosion to occur.” We are

in no position to weigh the evidence. And the challenged finding has further support in the record. Another consultant testified that the plan follows an existing bluff roadway that had already mostly been cleared of trees and that planned fill on the bluff wouldn't "degrade the slope." He stated that he could not see how "anything" could "get into the lake." It is clear from the record that the commission might have interpreted the evidence differently and reached a different conclusion. But our deferential review standard prevents us from reversing.

Affirmed.