

*This opinion is nonprecedential except as provided by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
A25-0814**

In the Matter of the Application of Jason Kitzman and Rani Kitzman
for a Conditional Use Permit.

**Filed April 20, 2026
Affirmed
Larson, Judge**

Crow Wing County Planning Commission/
Board of Adjustment

Mark A. Severson, Kurt W. Porter, Severson Porter Law, Brainerd, Minnesota (for relators Karen Snedeker, Donna Sutton, Anna Gjerset, Ted Brausen, and Bob Hamilton)

Jason J. Kuboushek, Michael Conlin-Brandenburg, Iverson Reuvers, Bloomington, Minnesota (for respondent Crow Wing County Planning Commission/Board of Adjustment)

Jason Kitzman and Rani Kitzman (self-represented respondents)

Considered and decided by Larson, Presiding Judge; Schmidt, Judge; and Florey, Judge.*

NONPRECEDENTIAL OPINION

LARSON, Judge

Relators Karen Snedeker, Donna Sutton, Anna Gjerset, Ted Brausen, and Bob Hamilton challenge respondent Crow Wing County Planning Commission/Board of Adjustment's (the board) decision to grant a conditional use permit (CUP) to respondents

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

Jason and Rani Kitman (the Kitmans). Because we conclude there is a reasonable basis for the board’s decision, and the decision was not unreasonable, arbitrary, or capricious, we affirm.

FACTS

The Kitmans applied for a CUP to operate a home-based dock and boat-lift business on their four-acre property located in Crow Wing County, Minnesota (the property). The Kitmans have a residence on the property and a shed,¹ which was built with a permit in 2022. The Kitmans utilize the shed for business activity and keep docks and boat lifts on the property.

The property is zoned for single-family residential use, but compatible commercial uses may be allowed as conditional uses under the Crow Wing County Land Ordinance (the ordinance).² The Kitmans applied for a CUP in January 2025 (the CUP application). The CUP application described the Kitmans’ proposed business as a seasonal dock and boat-lift servicing business. The business has approximately four to six employees. The Kitmans submitted a Certificate of Survey to support the CUP application.

¹ Throughout the record, this structure is referred to as a “shed,” “shop,” “pole building,” and “garage.” For consistency, we use the term “shed.”

² The property is zoned rural residential 2.5 and is in the shoreland district. The ordinance provides that for properties zoned rural residential 2.5, “[t]he primary use . . . is single family residential. Compatible commercial uses may be allowed as permitted, conditional or interim uses.” Crow Wing Cnty. Land Use Ord. (CWCO) § 10.2(E) (2025). The ordinance further provides that for land within the shoreland district, “[t]he primary use . . . is seasonal and year-round single family residential. Compatible commercial or water-oriented commercial uses may be allowed as permitted, conditional, or interim uses.” CWCO § 10.2(A) (2025).

While reviewing the CUP application, the board conducted an on-site visit to evaluate the proposed business's compatibility with the surrounding area. The board observed, in a written report, that the property was "well screened from the neighbors," and the shed met "all setback requirements" and was "not visible from" the lake. In its initial findings, the board confirmed that the CUP application met the ordinance's standards.

The board then held a public hearing regarding the CUP application. Jason Kitzman and other attendees gave public comments, including some relators, who are the Kitzmans' neighbors. Relators who made public comments raised concerns about the business's operation in a residential area. These concerns included: parking and increased traffic, noise, aesthetic nuisance, decreased property values for surrounding landowners, and stormwater management.

After the public comments, the board voted to approve the CUP application, subject to the following nine conditions:

- (1) This permit is for the sole use of dock and boat lift installation, storage, repair and maintenance;
- (2) No retail services available on the parcel;
- (3) No dock or boat lift manufacturing allowed on the parcel;
- (4) Dock and boat lift maintenance and repair is allowed on the parcel;
- (5) No docks or boat lifts are allowed to be visible from County Road 11;

- (6) Any permanent light fixtures shall be directed downward, so the source of illumination is not visible to neighboring properties meeting the requirements of Article 16.6 of the Land Use Ordinance;
- (7) There may only be one sign, with a permit, on the parcel advertising the business which shall not be illuminated and shall not measure greater than 70 square feet;
- (8) Maintain existing screening between shed and adjacent property; and
- (9) All vehicles must be parked on said property.

In doing so, the board adopted the earlier findings and determined that the CUP application satisfied the standards set forth in the ordinance, subject to the above conditions.

Relators appeal, challenging the board's decision to approve the CUP application.

DECISION

A county board's decision to approve a CUP application is a quasi-judicial decision subject to certiorari review. *Interstate Power Co. v. Nobles Cnty. Bd. of Comm'rs*, 617 N.W.2d 566, 574 (Minn. 2000). Particularly when a county board approves a CUP, we apply a deferential standard of review. *Big Lake Ass'n v. Saint Louis Cnty. Plan. Comm'n*, 761 N.W.2d 487, 491 (Minn. 2009). "We review a county's decision to approve a CUP independently 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). We conduct a two-part analysis to determine whether a county board's decision was unreasonable, arbitrary, or capricious. *See RDNT, LLC v.*

City of Bloomington, 861 N.W.2d 71, 75 (Minn. 2015).³ We first consider whether the reasons given for the decision were “legally sufficient.” *Id.* at 75-76. If so, we then determine whether the reasons had a factual basis in the record. *Id.* at 76. Relators, the individuals challenging the board’s decision, bear the burden to prove the decision was legally insufficient or not supported by the record. *See Sagstetter v. City of St. Paul*, 529 N.W.2d 488, 492 (Minn. App. 1995).

Here, relators contend that the board’s decision was both legally insufficient and lacked an adequate factual basis. We address relators’ arguments in turn.

A.

Relators broadly argue that the board made a legally insufficient decision when it approved the CUP application. As relevant here, to make a legally sufficient decision, the board needed to apply the relevant provisions in the ordinance. *See In re Stadsvold*, 754 N.W.2d 323, 332 (Minn. 2008). The relevant ordinance provides that, when considering a CUP application, the board must “determine and make findings” on seven criteria before making its decision. *See CWCO* § 7.4 (2025). And the board’s written findings demonstrate that it evaluated each criterion when it granted the CUP application.

³ In *RDNT*, the supreme court reviewed a county board’s decision to *deny* a CUP. 861 N.W.2d at 75. We apply a more deferential standard when reviewing a county board’s decision to *approve* a CUP. *See Big Lake Ass’n*, 761 N.W.2d at 491. While neither this court nor the supreme court has expressly concluded that *RDNT*’s two-part analysis applies in this context, we have applied this two-part analysis in nonprecedential decisions reviewing a county board’s decision to approve a CUP, and the parties do not dispute that this is the appropriate standard. *See, e.g., Miller v. Baytown Township*, No. A22-0672, 2023 WL 1770141, at *3 (Minn. App. Feb. 6, 2023); *In re Meadows*, No. A18-1395, 2019 WL 2332362, at *2 (Minn. App. June 3, 2019). Therefore, we assume without deciding that *RDNT*’s two-part analysis applies to a county board’s decision to *approve* a CUP.

Despite the board's explicit findings on the required criteria, relators first argue that the board's decision failed to comply with the ordinance because it did not account for the Kitzmans' prior operation of the proposed business without a CUP.⁴ But the ordinance expressly allows the board to approve a CUP in a manner that will resolve an "unresolved violation[]." CWCO § 3.2(B). Because approving the CUP application resolved the violation that the Kitzmans were operating their business without a CUP, we conclude the board's decision was not legally insufficient on this basis.

Relators argue second that the board issued a legally insufficient decision because the ordinance *requires* the board to impose conditions that address all concerns raised during the public hearing. We are not persuaded. The ordinance provides that the board, "in approving any [CUP] application, *may* impose additional conditions." CWCO § 7.5 (emphasis added). The word "may" is permissive, not mandatory. *See* Minn. Stat. § 645.44, subd. 15 (2024) (stating that when construing statutes "[m]ay" is permissive"); *see also Eagan Econ. Dev. Auth. v. U-Haul Co. of Minn.*, 787 N.W.2d 523, 535 (Minn. 2010) (noting that rules of statutory construction apply to ordinances). Thus, the ordinance's plain language does not require the board to impose conditions to address all concerns raised at a public hearing.

Nevertheless, the record demonstrates that the board imposed conditions to respond to the concerns relators articulated at the public hearing. For example, the condition

⁴ Relators also argue the board's decision was legally insufficient because it did not account for prior land-use violations, including shoreline alterations without permits and septic-compliance issues. But the record lacks evidence to support relators' contention that these prior violations occurred.

prohibiting the Kitzmans from manufacturing docks or boat lifts on the property addresses noise concerns. And the condition prohibiting the Kitzmans from providing retail services on the property addresses traffic and parking concerns. Other conditions, such as limiting the visibility of the docks and lifts from the county road, maintaining existing screening, and requiring all vehicles to be parked on the property, also address the noise, parking, and aesthetic-nuisance concerns relators raised.

Because the record demonstrates that the board evaluated the required criteria in its written findings when it approved the CUP application, we conclude relators did not meet their burden to demonstrate that the board made a legally insufficient decision.

B.

Relators also argue the board's decision did not have a sufficient factual basis such that it was unreasonable, arbitrary, and capricious. Legally sufficient reasons for approving a CUP application must have a factual basis in the record. *See RDNT*, 861 N.W.2d at 76. When determining whether the decision has a sufficient factual basis, we do not reweigh the evidence. *See id.* Instead, we review the record to determine whether it supports the board's decision. *See id.*

Relators raise three primary challenges to the board's factual determinations. First, they argue the board made an arbitrary decision because they relied on a prewritten staff report. Second, they contend the board made an unreasonable decision because it dismissed public concerns over the CUP. Last, they assert that, to the extent the board intended the conditions to address the public's concerns, the board made an arbitrary decision because the conditions are inadequate. We address these arguments in turn.

1. Adequate Factual Findings

Relators argue the board acted arbitrarily because it relied on the prewritten staff report that used “single word[]” findings and ignored “substantial testimony, evidence, and comments presented from aggrieved neighbors.” We are not persuaded.

In *Schwardt*, a county board approved a CUP application using a checklist as its written findings to indicate that the CUP met the ordinance standards. 656 N.W.2d at 386. The supreme court held that the county board’s decision was not arbitrary, reasoning that “the board . . . indicate[d] on a checklist that the . . . CUP, with conditions, met the standards in the [o]rdinance. The board’s use of a checklist [was] a *sufficient expression* of the board’s conclusion that the conditions for approval have been met.” *Id.* at 389 (emphasis added).

The board’s decision here is analogous to *Schwardt*. Using a prewritten checklist that outlined the requirements in the ordinance, the board demonstrated that it considered the applicable standards and determined the CUP application satisfied the ordinance’s requirements. Moreover, the board’s findings contained in the checklist are *not* mere one-word answers. Instead, the findings articulate specific observations as to each criterion under the ordinance. *See Picha v. County of McLeod*, 634 N.W.2d 739, 742 (Minn. App. 2001) (stating the board’s findings must be recorded or put in writing in more than a conclusory fashion). Accordingly, we conclude relators did not meet their burden to demonstrate that the board acted arbitrarily in the manner that it made its findings.

2. Public Concern

Relators next argue the board made an unreasonable decision because it dismissed the public's concerns. Again, we are not persuaded.

While the board “may consider neighborhood opposition” that is “based on concrete information,” *see Yang v. County of Carver*, 660 N.W.2d 828, 833 (Minn. App. 2003), the “simple fact that community members oppose a landowner using [their] land for a particular purpose is not a legally sufficient reason for denying a special use permit,” *see Amoco Oil Co. v. City of Minneapolis*, 395 N.W.2d 115, 118 (Minn. App. 1986). Here, relators raised specific concerns during the public comments. And the record demonstrates that the board considered those comments when it approved the CUP application because it imposed conditions seeking to ameliorate those concerns. Accordingly, we conclude relators did not meet their burden to show the board's decision was unreasonable.

3. Conditions

Finally, relators contend the board acted arbitrarily because the conditions the board imposed did not adequately address the public's concerns regarding traffic, noise, aesthetic nuisance, decreased property values for surrounding landowners, and stormwater management. We first observe that many of relators' arguments regarding the conditions effectively ask us to reweigh conflicting evidence, giving more weight to their public comments. But we do not reweigh conflicting evidence on appeal; instead, we “defer to [the board's] judgment.” *See RDNT*, 861 N.W.2d at 76. Thus, with respect to relators' arguments to this effect, they have not met their burden to show the board's decision was arbitrary. We address relators remaining arguments below.

First, relators argue the board acted arbitrarily because it did not adequately address traffic impact. We disagree. The board must consider “[t]he effect of the proposed use on . . . roads.” CWCO § 7.4(E). Here, the board determined that approving the CUP application would not impact traffic because “[t]he business is seasonal . . . [and] [m]ost of the work occurs off site.” This finding is supported by the record, namely the CUP application and the information submitted with the application. Moreover, the board prohibited on-site retail to address public comments about increased traffic. Relators also raise concerns about the lack of a turn lane on the adjacent county road. But the board received comments from the Crow Wing County Highway Department which opined that the business proposed in the CUP application presented “no adverse impacts” on the county road. As such, the board’s findings regarding traffic impacts were supported by the record.

Second, relators argue the board’s decision was arbitrary because the conditions do not adequately address their noise concerns. The board must consider the “impact of the proposed use on the health, safety, and general welfare of the occupants.” CWCO § 7.4(A). Relators made public comments regarding sanding and grinding sounds that the business has generated. Jason Kitzman responded to these concerns, noting that a storm the previous year caused an atypical increase in the number of repairs on his customers’ docks and lifts. The board then noted that the storm had created a unique circumstance that was unlikely to occur “every year.” Thereafter, the board approved the CUP application, allowing for “repair and maintenance,” but prohibiting manufacturing of docks or boats lifts. Based upon this evidence, we conclude that the board’s findings concerning noise are supported

by the record, and the conditions were not arbitrary because they were tailored to address the public's noise concerns.

Third, relators contend the board's decision was arbitrary because it failed to consider their concerns that the business will be an aesthetic nuisance. But the board's on-site-visit report indicated that the shed was not visible from the lake, and that the property was well-screened from surrounding landowners. The board also noted that the property had "adequate space for employee parking and storage of equipment while still being screened." Moreover, the board imposed the condition that the Kitzmans must store docks and boat lifts such that they are not visible from the county road. Accordingly, the record does not support relators' contention that the board did not consider this concern.

Fourth, relators assert that the board's decision was arbitrary because it did not adequately consider the impact on property values. The board is required to consider "[t]he effect of the proposed use on property values . . . in the surrounding neighborhood." CWCO § 7.4(D). At the public hearing, one relator commented that the business would be an aesthetic nuisance that would decrease property "resale value." For support, the relator indicated that she had spoken with a "licensed broker" who confirmed her concern.⁵ But the commenting relator's concern was tied to the conclusion that the business would be an aesthetic nuisance. And, as stated above, the board specifically considered the adequacy

⁵ Relators state, without citation to the record, that a licensed broker offered public comments that the Kitzman's business would negatively impact property values for surrounding neighbors; however, a review of the record shows that no licensed broker commented at the public hearing. Instead, one relator commented that she had engaged a licensed broker, who "confirmed" that property values would be negatively affected by the business.

of the screening and set conditions to mitigate any aesthetic nuisance from the business. Accordingly, the board did not act arbitrarily when it concluded that approving the CUP application would not impact the surrounding property values.

Last, relators contend that the board made an arbitrary decision when it did not investigate whether other approvals may be required for the business to operate, such as a stormwater-management plan.⁶ However, relators offer *no* evidence or information to substantiate their concerns. *See Yang*, 660 N.W.2d at 833 (stating that “a [board] may consider neighborhood opposition only if based on concrete information”). The board’s decision to dismiss these concerns was not arbitrary because the basis for this opposition lacked support in the record.

For these reasons, we conclude the board supported its decision with a sufficient factual basis, and the board’s decision was not unreasonable, arbitrary, or capricious.

Affirmed.

⁶ Relators also argue that the Kitzmans’ business violates the “home business standards” because they have employees who do not reside on the property. This argument is without merit as the ordinance, in defining home-business standards, provides that “[p]ersons other than those that occupy the primary dwelling may be employed,” and does not otherwise limit the number of employees. *See CWCWCO § 30.2 (2025)*.