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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-93**

Eagle Nests Townhome Association,
Relator,

vs.

Aitkin County Planning Commission,
Respondent.

**Filed December 21, 2010
Affirmed
Minge, Judge**

Aitkin County Planning Commission
Permit No. 36668C

Jeffrey J. Haberkorn, Aitkin, Minnesota (for relator)

Paul D. Reuvers, Stephanie A. Angolkar, Iverson Reuvers, Bloomington, Minnesota (for respondent)

Considered and decided by Johnson, Presiding Judge; Toussaint, Chief Judge; and Minge, Judge.

UNPUBLISHED OPINION

MINGE, Judge

Relator, Eagle Nests Townhome Association (Townhome), brings this certiorari appeal challenging the decision of respondent, Aitkin County Planning Commission, to deny its request to amend its conditional use permit (CUP). Because we conclude that

the planning commission's decision was not arbitrary and capricious and because it is supported by substantial evidence in the record, we affirm.

FACTS

In 1998, Aitkin County granted Townhome a CUP for a 16-unit planned unit development (PUD) on Big Sandy Lake. The CUP allowed Townhome to build nine permanent mooring sites for boats. This was the maximum number of permanent mooring sites allowed under the Aitkin County Shoreland Ordinance (shoreland ordinance) in effect at the time the PUD was approved.¹

In 2001, Townhome applied to the Aitkin County Board of Adjustment (BOA) for a variance to increase the number of mooring sites to 16. At that time, the request was denied on a vote of 3-2. The BOA determined that Townhome already had reasonable use with nine mooring sites. Sometime after 2003, Townhome went ahead and illegally built seven more permanent mooring sites without the variance.

In December 2008, Townhome returned to the BOA and applied for an after-the-fact variance for the seven mooring sites. It was granted by a vote of 3-1 with the conditions that a shoreline restoration plan be implemented and Townhome give up the right to build a boat-launch ramp. The Department of Natural Resources of the State of Minnesota (DNR) appealed the decision to the district court. The appeal was dismissed

¹ The number of dwelling units allowed in a given area is based on residential density and could be increased by up to 50% under the 1992 ordinance. *See* Aitkin County, Minn., Shoreland Management Ordinance § 8.53(B) (1992); *see also* Minn. R. 6120.3800, subp. 5A (2009) (setting for the residential PUD density evaluation steps and design criteria). With the multiplier, Townhome was allowed to build nine permanent mooring sites. It assigned them on a first-come, first-served basis and the seven units without mooring sites had garage space for boats and lake access through public-ramp facilities.

due to improper service on the county. *In re Appeal of Variance by the Aitkin Cnty. Bd. of Adjustment to Eagle Nests Townhome Ass'n*, No. 01-CV-09-205 (Minn. Dist. Ct. Sept. 8, 2009).

After obtaining the seven-mooring-site variance from the shoreland ordinance, Townhome applied to the planning commission for an amendment to its CUP to increase the number of mooring sites from 9 to 16. The planning commission held a public hearing on the application in December 2009. After reviewing evidence, listening to testimony, and discussing the issue, the planning commission denied the amendment because Townhome did not meet three of the seven relevant criteria. The panel found that (1) the proposed conditional use would be injurious to the use and enjoyment of the environment or of other property in the immediate vicinity; (2) the location and character of the proposed conditional use was inconsistent with a desirable pattern of development for the locality in general; and (3) other applicable requirements of the ordinance were not met. This certiorari appeal followed.

D E C I S I O N

The issue on appeal is whether respondent planning commission improperly denied Townhome's application for a CUP for seven additional mooring sites. The decision of a county zoning authority to approve or deny a CUP is a quasi-judicial decision reviewable by writ of certiorari to the court of appeals. *Big Lake Ass'n v. St. Louis Cnty. Planning Comm'n*, 761 N.W.2d 487, 490 (Minn. 2009); *see also Interstate Power Co. v. Nobles Cnty. Bd. of Comm'rs*, 617 N.W.2d 566, 574 n.5 (Minn. 2000) (noting that unlike zoning decisions of cities, towns, and county boards of adjustment,

quasi-judicial decisions of a county zoning authority is reviewable by writ of certiorari to the appellate court “because the legislature has not provided for judicial review of zoning decisions of county boards in the district court”). Our review is deferential and generally limited to the record made by the local zoning authority. *Big Lake Ass’n*, 761 N.W.2d at 490-91. We consider “whether there was a reasonable basis for the decision, or whether the county acted unreasonably, arbitrarily, or capriciously.” *Id.* at 491 (quotation omitted). Denial of a CUP is not arbitrary when at least one of the reasons provided satisfies the rational-basis test. *Trisko v. City of Waite Park*, 566 N.W.2d 349, 352 (Minn. App. 1997), *review denied* (Minn. Sept. 25, 1997).

The writ of certiorari provides a limited review to insure that “the judiciary does not encroach upon the constitutional power spheres of the other two branches of government.” *Big Lake Ass’n*, 761 N.W.2d at 491 (quotation omitted). “A county has broad discretion in deciding whether to grant or deny a conditional use permit.” *BECA of Alexandria, L.L.P. v. Cnty. of Douglas ex rel. Bd. of Comm’rs*, 607 N.W.2d 459, 463 (Minn. App. 2000). The judiciary has a duty to “exercise restraint and accord appropriate deference to civil authorities” and the court should “sparingly invoke[]” the ability to interfere in zoning decisions. *Big Lake Ass’n*, 761 N.W.2d at 491 (quotations omitted).

One of the reasons the planning commission denied the amendment is that it found current violations of the shoreland ordinance in both the number of mooring sites and the amount of vegetation removed. Although Townhome emphasizes that the extra mooring sites are now in compliance with the ordinance because it received a variance from the

BOA, we note that this variance does not adequately address Townhome's violation of the shoreline impact zone requirement.

Townhome concedes that the shoreland ordinance requires that 70% of the shoreline in the impact zone be kept in its natural state. The record indicates that Townhome exceeded its CUP conditions for several years not only with the number of mooring sites but also due to the amount of vegetation that had been removed. Townhome argues that the ordinance was satisfied because as part of the variance granted by the BOA, Townhome had to implement shoreland restoration that would have brought the property into compliance with the ordinance. This argument overlooks the fact that the property had been, and at the time of the hearing was still, in violation of the ordinance. This violation could properly be considered by the commission. *See Aitkin County, Minn., Shoreland Ordinance § 3.43(6) (2009) (providing that a CUP shall be granted only if the commission finds, among other things, "[t]hat other applicable requirements of this ordinance . . . have been met")*. Such a violation of the ordinance at the time of the meeting was a rational reason for denying the amendment.

Respondent planning commission also found that the pattern of development on the lake and in the county has been to not increase the density on the shoreline, that granting the CUP would increase the density on the shoreline, and that this would negatively impact the shoreline. The staff memorandum noted that in 2005, Aitkin County reduced the first tier density multiplier from 50% to 25% on concerns of overcrowding and that under the amended ordinance Townhome would have only been permitted seven mooring sites. *See Aitkin County, Minn., Shoreland Ordinance § 7.53B*

(2009). The fact that the county changed the ordinance to reduce the density allowed on the shoreline since the original CUP was granted is reliable evidence that the pattern of development was towards reduced shoreline density. Granting a CUP for 16 sites would allow a 166% multiplier over the original permitted number of six sites and is directly contradictory to a pattern of development reducing shoreline use. This is a rational, factually supported reason for denying the proposal.

The chair of the planning commission also relied on his knowledge to note that the pattern of development has been to not increase the density on the shoreline. As the chair of the commission and an officer on several other lake-related associations, it was reasonable for the commission to rely on that knowledge. *See Roselawn Cemetery v. City of Roseville*, 689 N.W.2d 254, 260 (Minn. App. 2004) (noting that the city council could consider the opinions of area residents as long as their opinions are “concrete and based on observations, not merely on fear or speculation”). The commission was further concerned about setting a precedent for further PUD applications asking for similar increases in the number of mooring sites. The evidence in the record indicates a pattern of development for reducing shoreline density and was a rational reason for denying the amendment.

Because Townhome was in violation of the shoreline ordinance at the time of the meeting and granting the amendment was contrary to the pattern of development, we conclude that the evidence on the record supported respondent planning commission’s denial of the amendment. As these determinations are an adequate basis for upholding the planning commission’s denial of the amendment to the CUP, we do not reach the

commission's other reasons for denial. *See Trisko*, 566 N.W.2d at 352 (explaining that the denial of a land-use request is not arbitrary when at least one of the stated reasons may be upheld).

Affirmed.

Dated: