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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1922**

Pierre duCharme, et al.,
Relators,

vs.

Otter Tail County Board of Commissioners,
Respondent.

**Filed August 3, 2010
Affirmed
Halbrooks, Judge**

Otter Tail County Board of Commissioners

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Considered and decided by Worke, Presiding Judge; Halbrooks, Judge; and
Johnson, Judge.

UNPUBLISHED OPINION

HALBROOKS, Judge

Relators Pierre and Mary duCharme bring this certiorari appeal challenging the decision of respondent Otter Tail County Board of Commissioners (the board) to deny their request for a conditional use permit (CUP). Because we conclude that the board's decision is not arbitrary and capricious and because it is supported by substantial evidence in the record, we affirm.

FACTS

Relators own a parcel of lakefront property on the west arm of Star Lake. In October 2007, relators applied for a CUP, requesting approval to construct and operate a 45-unit recreational vehicle (RV) park on their property that included lake access and 19 boat slips. *duCharme v. Otter Tail County Bd. of Comm'rs*, No. A08-0529, 2009 WL 1851445, at *1 (Minn. App. June 30, 2009). Relators' application was considered by the Otter Tail County Planning Commission (planning commission) at a public hearing in November 2007. *Id.* Residents expressed concerns with the proposal, and the planning commission tabled the application and directed relators to address those concerns and to reduce the number of proposed RV units from 45 to 30. *Id.* At a second hearing on January 9, 2008, the planning commission considered relators' amended application, which reduced the number of RV units from 45 to 30 and the number of boat slips from 19 to 8. *Id.* Residents continued to raise objections, and the planning commission voted to recommend a denial of relators' application. *Id.* at *2.

By the time of a subsequent board meeting at which relators' CUP application was considered, relators had further modified their proposal to eliminate all boat slips. *Id.* Given this modification, the board referred the matter back to the planning commission to reconsider the application. *Id.* The planning commission met but was unable to reach a decision whether to approve or deny the application, so it was sent back to the board without a recommendation. *Id.* The board met on February 26, 2008, and voted to deny relators' application based on the reasons articulated by the planning commission at its January 9 meeting. *Id.*

Relators appealed the denial, arguing that the decision of the board was arbitrary and capricious. *Id.* We agreed, reasoning that the board acted arbitrarily by not considering relators' amended proposal. *Id.* at *4. Therefore, we reversed and remanded the matter for the board to address the amended proposal. *Id.* at *5.

On September 15, 2009, the board reconsidered relators' application in light of the remand. Bill Kalar, the county's land and resource director, presented the board with density comparisons of the west arm of Star Lake, and the entire lake, with and without relators' proposed RV park. Board chairman Everett Erickson read letters from citizens who opposed the proposed CUP because of potential increased boat traffic, density in the west arm, and possible environmental impact.

Commissioner Lee Rogness stated that the density in the west arm is "astronomical" and Commissioner John Lindquist agreed. Commissioner Lindquist also cited the shallow waters and possible adverse environmental effects as reasons for

denying the CUP. After some discussion, the board voted to deny relators' application on four grounds:

1. The density on this part of Star Lake is too great/astronomical.
2. The shallow nature of the west arm of Star Lake, with only 39% of this area being 10 feet or more in depth.
3. Adverse effects of the proposed Conditional Use Application in terms of significant impact on emergent vegetation and additional pressure on the lake and this fragile area as these campers use the public access.
4. The lack of adequate water frontage for the proposed use due to aquatic vegetation.

This certiorari appeal follows.

DECISION

Our review of county board decisions regarding a CUP is limited to determining whether the board's decision was arbitrary and capricious and whether there is any evidence to support its decision. *Molnar v. County of Carver Bd. of Comm'rs*, 568 N.W.2d 177, 181 (Minn. App. 1997). Relators advance two arguments: (1) that the board's decision is arbitrary because it failed to follow this court's instructions on remand and (2) that the board's decision cannot be upheld because it failed to detail a factual basis for its decision.

Remand Instructions

On remand, the decisionmaker must strictly execute the remanding court's instructions without altering, amending, or modifying the mandate. *Halverson v. Vill. of Deerwood*, 322 N.W.2d 761, 766 (Minn. 1982). But without any "specific directions as to how it should proceed" on remand, the decisionmaker has discretion to "proceed in

any manner not inconsistent with the remand order.” *Duffey v. Duffey*, 432 N.W.2d 473, 476 (Minn. App. 1988). We review compliance with remand instructions for abuse of discretion. *Janssen v. Best & Flanagan, LLP*, 704 N.W.2d 759, 763 (Minn. 2005).

This court remanded the board’s earlier decision because we concluded that it failed to consider relators’ modified CUP application. Therefore, we specifically directed the board to do so. The record of the post-remand board meeting indicates that the board did address the amended application, including the fact that the proposal included 30 units and no boat slips. Relators argue that because the board cited new reasons for denying their CUP application, the board failed to implement our remand instructions. We disagree. We did not remand, as relators argue, for factual findings related to the board’s original reasons for denial. Instead, we remanded for the board to consider the amended application. Nothing in our opinion prevented the board from citing new reasons for denial upon considering the amended application. Indeed, it would be contrary to our remand instructions for the board to simply attach findings to a determination that we found to be arbitrary and capricious. Because the board specifically considered relators’ amended application, we conclude that it abided by our remand instructions.

Factual Basis

Relators also argue that the board’s decision must be reversed for its failure to provide detailed factual findings in support of its determination. While it is not necessary to prepare formal findings of fact, 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.” *Honn v. City of Coon Rapids*, 313 N.W.2d 409, 416 (Minn. 1981). And the absence of detailed findings of fact is not fatal if the record contains substantial evidence to support the board’s decision. *Graham v. Itasca County Planning Comm’n*, 601 N.W.2d 461, 467 (Minn. App. 1999).

The board advanced four reasons to deny relators’ application: density, the shallow nature of the west arm of Star Lake, adverse effects on the surrounding environment, and a lack of adequate water frontage. Although the board’s determination does not include detailed findings of fact to support its decision, the record contains substantial evidence to support the board’s denial of relators’ CUP.

The director of the county’s land and resource department provided information regarding the density of the west arm of Star Lake and Star Lake as a whole. The density comparisons indicate that the west arm has 310 acres of water and that Star Lake as a whole has 4,606 acres of water. The current number of dwelling units on the west arm is 99, which translates to 3.1 acres of water per unit and 16 dwellings per mile of shoreline. For comparison, Star Lake as a whole has 7.3 acres of water per dwelling unit and 18.6 dwellings per mile of shoreline. With relators’ proposed 30 units, the number of units on the west arm would increase to 129, meaning 2.4 acres of water per unit and 21.1 units per mile of shoreline. On Star Lake, relators’ proposal would result in 7 acres of water per dwelling unit and 19.5 dwellings per mile of shoreline. It is clear that adding 30 units to the west arm of Star Lake would significantly increase the density of units in the small area, particularly when compared to Star Lake as a whole. It was not arbitrary and

capricious for the board to rely on these calculations and determine that the density of the west arm was too great to add an additional 30 units.

The board also received letters from area residents who objected to relators' proposal. Of note, Glen and Jody Shaw, residents of the west arm, referenced the density calculations in their letter. The Shaws noted that with relators' 30-unit proposal, the ratio of homes/cabin units to cluster-development¹ units would increase from 1 to 1 to almost 1 to 2.

Relators argue that it was inappropriate for the board to consider neighborhood comments. But we have held that a county board may consider neighborhood opposition when making a determination, although it may not rely solely on unsubstantiated concerns. *SuperAmerica Group, Inc. v. City of Little Canada*, 539 N.W.2d 264, 267-68 (Minn. App. 1995), *review denied* (Minn. Jan. 5, 1996). Here, the residents of the west arm were discussing matters that they were able to observe—the density of the area of the lake where they lived. *See Yang v. County of Carver*, 660 N.W.2d 828, 833 (Minn. App. 2003) (noting that a municipality may consider neighborhood opposition if based on concrete information). Therefore, we conclude that it was not improper for the board to consider neighborhood comments when making its determination.

Because the calculations of the density on the west arm offer concrete support for the board's determination on the issue of density and because the board did not err by considering neighborhood comments, we conclude that there is substantial evidence to

¹ An RV park is characterized as a cluster development in the county ordinances. Otter Tail County, Minn., Shoreland Management Ordinance § II(13) (2004).

support the board's determination on the issue of density. Because one basis to affirm the board's denial of relators' CUP is sufficient, we decline to address the board's other reasons for denial. *See Trisko v. City of Waite Park*, 566 N.W.2d 349, 352 (Minn. App. 1997) (explaining that the denial of a land-use request is not arbitrary when at least one of the stated reasons may be upheld), *review denied* (Minn. Sept. 25, 1997).

Affirmed.