2021 WL 6010077
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Court of Appeals of Minnesota.

In the Matter of the Application of Nokomis Energy LLC and South Garden LLC for a Conditional Use Permit (A21-0062),
and
In the Matter of the Application of Nokomis Energy LLC and Crane Garden LLC for a Conditional Use Permit (A21-0106).

A21-0062, A21-0106
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Filed December 20, 2021

McLeod County Board of Commissioners CUP Application 20-20

Attorneys and Law Firms

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Considered and decided by Gaïtas, Presiding Judge; Ross, Judge; and Reilly, Judge.

NONPRECEDENTIAL OPINION

ROSS, Judge

***1 Reversed and remanded**

Two subsidiary companies of Nokomis Energy LLC unsuccessfully applied for conditional-use permits to build solar gardens in McLeod County. Answering Nokomis Energy's argument on appeal that the county's denials were arbitrary and capricious, we hold that the county's previous adverse judgment based on this court's rejecting its farmland-preservation rationale for denying a different CUP collaterally estops the county from denying the applications here on that same premise. We also hold that the county improperly ignored Nokomis Energy's proposed conditions aimed at allaying any concerns about stray voltage. We therefore reverse and remand.

FACTS

South Garden LLC and Crane Garden LLC, subsidiaries of Nokomis Energy LLC, each applied for a conditional-use permit (CUP) to build a separate, one-megawatt solar-energy production facility in McLeod County. The McLeod County Planning Advisory Commission and the McLeod County Board of Commissioners considered the applications at public hearings.

Two neighboring landowners expressed fears about stray voltage. They claimed that the number of fetal deaths among their livestock increased after other solar gardens had been constructed nearby. Nokomis Energy did not deny that solar gardens can generate stray voltage, but it proposed conditions that would alleviate the concern that their operation would do so. Nokomis Energy promised to hire only licensed professionals and agreed to allow third-party oversight during construction. It suggested conducting stray-voltage testing before and after construction. And it indicated that it would accept conditions discussed by county officials during the hearings, stating that "the stray voltage considerations noted here would be absolutely something we'd be willing to accept as a condition of the permit." The planning commission and the board of commissioners did not adopt the proposed conditions.

The county denied both applications. It denied the South Garden application on the sole ground that the proposed site is prime farmland. It denied the Crane Garden application because the proposed site is prime farmland and because of the concerns that stray voltage from the operation would negatively affect livestock. Nokomis Energy appeals by certiorari from the county's decisions. We resolve the consolidated appeals.

DECISION

Nokomis Energy asks us to reverse the county's decision denying the South Garden and Crane Garden CUP applications. We review a county's CUP-application decision to determine whether it was arbitrary and capricious. *Schwardt v. County of Watonwan*, 656 N.W.2d 383, 386 (Minn. 2003). Counties have considerable discretion when deciding CUP applications, calling for a deferential standard of review. *Id.* at 386. If a decision rests sufficiently on the law and has a factual basis in the record, it is not arbitrary or capricious. *RDNT, LLC v. City of Bloomington*, 861 N.W.2d 71, 75–76 (Minn. 2015). For the following reasons, we conclude that the county's application denials were arbitrary and capricious.

***2** Nokomis Energy argues that the county should have been collaterally estopped from denying the CUP applications to preserve prime farmland because we recently held that the county could not rely on that legally infirm basis to deny a CUP application for a different solar garden. *See In re Application of U.S. Solar Corp.*, No. A20-1043, 2021 WL 2909044, at *3 (Minn. App. July 12, 2021); Minn. R. Civ. App. P. 136.01, subd. 1(c) (establishing that nonprecedential opinions are binding authority for collateral estoppel). Collateral estoppel prevents a party from relitigating an issue when four elements are met: (1) the issue was identical to one in a prior adjudication; (2) there was a final judgment on the merits in the prior adjudication; (3) the estopped party was a party or in privity with a party to the prior adjudication; and (4) the estopped party was given a full and fair opportunity to be heard on the adjudicated issue. *Ellis v. Minneapolis Comm'n on Civ. Rts.*, 319 N.W.2d 702, 704 (Minn. 1982). All four elements of collateral estoppel are present here. The issue was identical in the prior adjudication. *See U.S. Solar*, 2021 WL 2909044, at *2–3. The decision in that case is a final judgment, McLeod County was a party, and the county had a full and fair opportunity to be heard on the same legal issue. *Id.* The county on appeal has offered no reason why its farmland-preservation rationale escapes collateral estoppel. We hold that the county is estopped from asserting the prime-farmland-preservation rationale as a basis for denying the CUP applications.

Nokomis Energy also contends the county's concerns about stray voltage are not supported by the testimony of the neighboring landowners. Neighborhood opposition can justify denying a CUP application when the opposition rests on "concrete information" rather than generalized concerns. *Yang v. County of Carver*, 660 N.W.2d 828, 833–34 (Minn. App. 2003). The parties argue over whether the testimony was adequately supported, but we need not resolve that dispute. Even when circumstances would otherwise support denying a CUP application, denying the application is arbitrary if the applicant established that a reasonable condition is available to eliminate the basis for denial. *RDNT*, 861 N.W.2d at 78. And a governing body acts arbitrarily if it simply ignores the applicant's proposed conditions. *C.R. Invs., Inc. v. Village of Shoreview*, 304 N.W.2d 320, 325 (Minn. 1981). The record reveals that the county ignored Nokomis Energy's proposed conditions. In deciding to recommend denial, the planning commission did not consider whether the proposed conditions would eliminate the stated concerns. The board of commissioners also failed to address the proposed conditions when it denied the application. The letter outlining the county's decision on the CUP applications did not attempt to explain why the proposed conditions were insufficient. On appeal, the county offers no rationale for ignoring the proposals. We hold that, even assuming the concerns about stray voltage have a factual basis in the record, the county's decision to deny the application without regard to the prophylactic conditions offered to allay them was arbitrary.

We reverse and remand for the county to approve both CUP applications subject to reasonable conditions.

Reversed and remanded.

All Citations

Not Reported in N.W. Rptr., 2021 WL 6010077

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