[Cite as *Rice v. Johnstown*, 2019-Ohio-4037.]

COURT OF APPEALS
LICKING COUNTY, OHIO
FIFTH APPELLATE DISTRICT

ANDREW L. RICE, et al.,	:	JUDGES:
	:	Hon. Patricia A. Delaney, P.J.
Plaintiffs - Appellees	:	Hon. Craig R. Baldwin, J.
	:	Hon. Earle E. Wise, J.
-vs-	:	
	:	
VILLAGE OF JOHNSTOWN PLANNING AND ZONING COMMISSION,	:	Case No. 19-CA-18
	:	
	:	
Defendant - Appellant	:	O P I N I O N

CHARACTER OF PROCEEDING:	Appeal from the Licking County Court of Common Pleas, Case No. 2018 CV 01131
JUDGMENT:	Affirmed, Modified And Remanded
DATE OF JUDGMENT:	September 27, 2019

APPEARANCES:

For Plaintiff-Appellees

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Baldwin, J.

{¶1} Defendant-appellant Village of Johnstown Planning and Zoning Commission ("the Commission") appeals from the March 6, 2019 Judgment Entry of the Licking County Court of Common Pleas.

STATEMENT OF THE FACTS AND CASE

{¶2} Appellees are Andrew Lee Rice, Mary Neda Ann Shaub, Charles L. Parker and Marilyn J. Parker, as Co-Trustees of the Parker Family Trust, and Wilcox Communities, LLC (collectively, "appellees"). Appellees identified a vacant property in Monroe Township that was outside the Village of Johnstown which appellees wanted for a mixed residential development. Because appellees wanted their development to be located within the Village of Johnstown, they sought annexation of the subject property into Johnstown. The proposed development was to include over 200 units of housing.

{¶3} On July 31, 2018, appellees submitted an Application for a Preliminary Planned Unit Development ("PUD Application") to the Village of Johnstown pursuant to Chapter 1179 of the Village's Codified Ordinances. The Application indicated that the proposed subdivision was to be called Concord Trail's (sic) and would include 165 single family lots and 92 multifamily lots on 84.1 acres. At a July 31, 2018 meeting, the Planning and Zoning Commission members voiced concerns over several issues including the proposed plan's lack of adequate buffering, lack of functional open spaces like recreational areas or playgrounds, adequate storm water management and traffic concerns.

{¶4} In response to the feedback, appellees, on August 28, 2018, submitted an Amended Preliminary PUD Application. A special meeting was called for September 19,

2018 before the Commission to consider the same. Pursuant to Section 1179.02 of the Johnstown Codified Ordinances, the Commission was to consider the following:

{¶5} 1. If it is consistent with the intent and purpose of this Zoning Ordinance.

{¶6} 2. Whether the proposed development advances the general welfare of the community and neighborhood.

{¶7} 3. Whether the benefits, combination of various land uses and the surrounding area justify the deviation from standard district.

{¶8} The Commission was provided with a Staff Report outlining the modifications to the original plan as well as a Village Impact Analysis prepared by the Village Manager/Planner. At the hearing, appellees' representative presented the Amended PUD Application to the Commission members and responded to any comments or questions. Prior to voting on the Amended PUD Application, the Commission members stated that they had concerns over the amount of students and traffic that the proposed development would bring to the community, storm water management, among other matters. The Commission, at the conclusion of the September 19, 2018 meeting, voted 4 to 1 to reject the Amended Preliminary PUD Application.

{¶9} Thereafter, on October 19, 2019, appellees filed an administrative appeal with the Licking County Court of Common Pleas pursuant to R.C. Section 2506.01, et seq, appealing from the September 19, 2018 Decision of the Village of Johnstown Planning and Zoning Commission denying and/or rejecting appellees' application for preliminary approval of a PUD. Appellees, on December 18, 2018, filed a motion pursuant to R.C. 2506.03 for a hearing, to present additional evidence and to set a case schedule. Appellees, in their motion, moved the court to hear appellant's appeal upon additional

evidence, arguing that nearly all of the circumstances set forth in R.C. 2506.03(A)(1) to (5) were present. Appellant filed a memorandum in opposition to the motion on December 28, 2018, arguing that the record was complete and contained all of the information necessary for the trial court to make a determination on the merits. Appellants asked that the matter be briefed. Appellees filed a reply on January 3, 2019.

{¶10} Pursuant to an Order filed on January 10, 2019, the trial court scheduled a non-oral hearing on appellees' motion for January 23, 2019.

{¶11} As memorialized in a Judgment Entry filed on March 6, 2019, the trial court found that R.C. 2506.03(A)(1), (3), and (5) applied and that a "proper record was not made for this Court to review." The trial court found that the Commission had not made any findings or conclusions of fact to support its decision as required by R.C. 2506.03(A)(5) and "merely voted to reject the application and did not vote on any findings, nor has any written decision that included findings or support for the rejection been presented to the Court." The trial court further stated, in relevant part, as follows:

{¶12} "While there appear to be grounds to grant appellees' motion, the Court finds any further hearing or admission of evidence would be unnecessary. The Commission made no findings concerning which provisions of the Zoning Ordinances the application violated. Further, it is not clear to the Court what formal procedures the Commission follows in hearing the applications or what the procedures are for formal notice of decision and appeal".

{¶13} The trial court reversed the decision of the Commission and remanded the matter to the Commission for proceedings and findings consistent with its Order.

{¶14} Appellant now appeals from the trial court's March 6, 2019 Judgment Entry, raising the following assignments of error:

{¶15} "I. THE COURT OF COMMON PLEAS ERRED AS MATTER OF LAW BY FINDING THE TRANSCRIPT FILED BY THE JOHNSTON PLANNING & ZONING COMMISSION DID NOT SATISFY R.C. [SECTION] 2506.03(A)(5) AS CONCLUSIONS OF FACT SUPPORTING THE DENIAL OF THE PRELIMINARY APPLICATION."

{¶16} "II. THE COURT OF COMMON PLEAS ERRED AS A MATTER OF LAW BY NOT DENYING APPELLEE'S MOTION FOR HEARING AND TO PRESENT ADDITIONAL EVIDENCE AND BY NOT PROCEEDING DIRECTLY TO BRIEFING ON THE MERITS AFTER DETERMINING THAT FURTHER HEARING OR ADMISSION OF EVIDENCE UNNECESSARY."

I

{¶17} Appellant, in its first assignment of error, argues that the trial court erred by finding that the transcript filed by the Commission did not satisfy R.C. 2506.03(A)(5).

{¶18} R.C. 2506.03(A) states in relevant part, as follows:

{¶19} (A) The hearing of an appeal taken in relation to a final order, adjudication, or decision covered by division (A) of section 2506.01 of the Revised Code shall proceed as in the trial of a civil action, but the court shall be confined to the transcript filed under section 2506.02 of the Revised Code unless it appears, on the face of that transcript or by affidavit filed by the appellant, that one of the following applies:….

{¶20} (5) The officer or body failed to file with the transcript conclusions of fact supporting the final order, adjudication, or decision.

{¶21} As is stated above, the trial court found that the Commission had not made findings or conclusions of fact to support its decision was required by R.C. 2506.03(A)(5) and merely voted to reject the application "and did not vote on any findings, nor has any written decision that included findings or support for the rejection been presented to the Court."

{¶22} As noted by the Court in *Brookside Auto Parts, Inc. v. Cleveland*, 8th Dist. Cuyahoga No. 91721, 2009-Ohio-967 ¶ 27-28:

> R.C. 2506.03(A)(5) requires that conclusions of fact be filed "with" the transcript. Words in a statute must be given their common, plain, and ordinary meaning unless a contrary intention clearly appears or is otherwise indicated. *Cahill v. Bd. of Zoning Appeals* (1986), 30 Ohio App.3d 236, 237, 507 N.E.2d 411, citing 50 Ohio Jurisprudence 2d (1961), 156–157, Statutes, Section 181. Considering the ordinary meaning of the words in R.C. 2506.03(A)(5), we cannot conclude that conclusions of fact are appropriately contained "in" the transcript. The statute explicitly requires separate conclusions of fact, apart from the transcript of the hearing.
>
> Further, the musings of a Board member during the hearing are not "conclusions of fact."

{¶23} In *Ziss Bros. Constr. Co., Inc. v. Independence Planning Comm.,* Cuyahoga App. No. 90993, 2008–Ohio–6850, ¶ 27, the court held that statements made by planning commission members explaining their reasons for denying a zoning application, which were included in the transcript, constituted conclusions of fact. The *Ziss* court found that "the Planning Commission presented detailed findings of fact at the June 6, 2006 hearing

as evidenced by the minutes which it provided Ziss and the public. Each of the Planning Commission members expressed their reasoning for denying Ziss's application, unlike [*Felder v. City Planning Comm. of Pepper Pike* (Apr. 26, 1979), Cuyahoga App. No. 38663, 1979 WL 210091]. Thus, it cannot be said that the Planning Commission failed to file findings of fact with the transcript."

{¶24} The key concern is that parties should be informed of the reasons for the decision, and courts should have something to review. *Shelly Materials v. Daniels*, 2nd Dist. Clark No. 2002-CA-13, 2003-Ohio-51, ¶ 23.

{¶25} In the case sub judice, the Johnstown Commission's record does not contain detailed findings of fact explaining the reasons why each Commission member who voted to deny appellee's Preliminary PUD Application did so. While the transcript of the September 19, 2018 hearing contains the musings of the Board members, the musings of a Board member during the hearing are not "conclusions of fact." Id. *Brookside*, supra at paragraph 28. Moreover, "there is nothing in the record to indicate that the Board adopted this member's statement of the facts as true or that it based its final decision upon this member's perception of the facts." *Brookside, supra* at paragraph 28. Each of the Planning Commission members did not express his or her reasoning for denying appellee's Application. According to the record, after a motion to reject the Application was made, all of the Commission members, except one, voted to reject the Application. No reasons were given at such time for their rejection.

{¶26} Based on the forgoing, appellant's first assignment of error is overruled.

II

{¶27} Appellant contends in its second Assignment of Error that the trial court erred by not denying appellee's motion for hearing and to present additional evidence. This assignment also claims the trial court erred by not proceeding directly to briefing on the merits after determining that further hearing or admission of evidence was unnecessary. The Appellant argues that the trial court should have directed the filing of briefs, considered argument and then rendered a decision.

{¶28} "[A] common pleas court should, when faced with a transcript of proceedings lacking appropriate conclusions of fact, hold an evidentiary hearing to establish the factual basis for the decision being appealed." *Aria's Way, LLC v. Bd. of Zoning Appeals,* 173 Ohio App.3d 73, 2007–Ohio–4776, 877 N.E.2d 398, ¶ 29 (11th Dist.). In such a situation, R.C. 2506.03 provides for the trial court to conduct an evidentiary hearing to 'fill in the gaps." ' *Stein v. Geauga Cnty. Bd.,* 11th Dist. No.2002-G-2439, 2003-Ohio-2104, at ¶ 14.

{¶29} In *Route 20 Bowling Alley, Inc. v. City of Mentor* , 11th Dist. No. 94–L–141, 1995 Ohio App. LEXIS 5721, 1995 WL 869959 (Dec. 22, 1995) , the court determined that "[w]here the transcript of proceedings filed by the administrative agency does not include conclusions of fact, the common pleas court is 'without authority to remand the matter or permit supplementation of the transcript to avoid the requirement of hearing additional evidence submitted by any party.' " *Aria's Way, LLC v. Bd. of Zoning Appeals,* supra at ¶ 14, quoting *Route 20* at 11.

{¶30} We find the trial court committed no error by failing to deny appellee's motion for hearing and to present additional evidence and likewise, the trial court did not

err by failing to consider the matter presented on briefs and oral argument. Appellant's second assignment of error is overruled; however, we modify the order of the trial court regarding remand of the matter to the Commission to complete findings of fact. Based upon the foregoing, the trial court is obligated to conduct a hearing to allow presentation of evidence pursuant to R.C. 2506.03(A)(5) and, for that reason, we direct the trial court to conduct a hearing pursuant to that section and permit the presentation of evidence.

{¶31} Accordingly, the judgment of the Licking County Court of Common Pleas is affirmed and modified. We modify the order of the trial court and require that they conduct a hearing in accordance with the requirements of R.C. 2503.03(A)(5).

By: Baldwin, J.

Delaney, P.J. and

Wise, Earle, J. concur.