

**COURT OF APPEALS
THIRD APPELLATE DISTRICT
LOGAN COUNTY**

HOWARD L. JACKSON

APPELLANT

CASE NUMBER 8-2000-18

v.

**PLEASANT TOWNSHIP BOARD OF
ZONING APPEALS**

OPINION

APPELLEE

**CHARACTER OF PROCEEDINGS: Board of Zoning Appeal from
Common Pleas Court.**

JUDGMENT: Judgment affirmed.

DATE OF JUDGMENT ENTRY: November 15, 2000

ATTORNEYS:

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BRYANT, J. This appeal is taken by Plaintiff-Appellant Howard Jackson from the judgment entered by the Logan County Court of Common Pleas affirming the decision of the Pleasant Township Board of Zoning Appeals granting two conditional use permits.

On June 23, 1997, Appellee, the Pleasant Township Board of Zoning Appeals (“BZA”) granted Johnathan R. Ross (“Ross”) a conditional use permit for his property located on State Road 47 West in DeGraff, Ohio. The conditional use permit allowed Ross to operate a sawmill on his property.

On August 11, 1997, the BZA granted Andrew Hershberger (“Hershberger”) a conditional use permit for his property located at 142 County Road 21 also in DeGraff, Ohio. The conditional use permit allowed Hershberger to operate a sawmill on his property. Appellant, Howard L. Jackson, also a resident of DeGraff, Ohio, subsequently appealed both grants to the Common Pleas Court of Logan County.

On November 21, 1997, the trial court consolidated the actions and ordered the BZA produce the transcripts of the two separate hearings wherein these conditional use permits were discussed and subsequently granted. In May of 1998, the trial court discovered that the tapes of the hearings were of very poor quality and thus, were virtually impossible to transcribe. As a result, Jackson made a motion requesting that the trial court conduct a trial *de novo*, wherein the

trial court would conduct a hearing and consider the appeal based on the evidence introduced by either party. On June 30, 1998, the trial court overruled Jackson's motion for a trial *de novo* and ordered that the matters be remanded to the BZA for new hearings. The trial court required that the hearings be held within sixty days and further ordered that the hearing transcripts be filed with the court thereafter.

On August 31, 1998, the BZA pursuant to remand from the court conducted two separate hearings concerning Ross and Hershberger's application for conditional use permits. On September 10, 1998, both permits were subsequently approved and amended to include certain conditions. The BZA included the conditions pursuant to the requirements of the Pleasant Township Zoning laws. Shortly thereafter the BZA proceeded to file its findings of fact and transcripts of the proceedings with the Court.

On May 19, 2000, the trial court entered judgment in favor of the BZA finding that their decision was supported by "substantial, reliable and probative evidence".

On appeal from that judgment entry Jackson presents the following sole assignment of error:

The Court erred in its interpretation and application of the law regarding the issuance of conditional use permits.

In his sole assignment of error Jackson argues that the trial court erred because it incorrectly interpreted and applied the law regarding the issuance of

conditional use permits. In support of his claim that the trial court erred when applying and interpreting the law Jackson makes four separate arguments.

1. **The Board of Zoning Appeals exceeded its authority when it failed to require the filing of a properly completed application for conditional use permits.**
2. **The Board of Zoning Appeals exceeded its grant of statutory authority when it failed to require all off-street parking and off-street loading requirements be met.**
3. **The Board of Zoning Appeals exceeded its authority mandated by the Pleasant Township Zoning Resolution when it misinterpreted the definitions of Heavy Manufacturing and Light Manufacturing.**
4. **The Board of Zoning Appeals failed to make a finding of facts in the first hearing and the finding of facts made when the Common Pleas Court remanded the matter is a nullity and void.**

R.C. 2506.04 governs the decision-making process of the reviewing court in an R.C. Chapter 2506 administrative appeal. It reads in part:

"The court may find that the order, adjudication, or decision is unconstitutional, illegal, arbitrary, capricious, unreasonable, or unsupported by the preponderance of substantial, reliable, and probative evidence on the whole record. Consistent with its findings, the court may affirm, reverse, vacate, or modify the order, adjudication, or decision * * *."

The standard of review applied by the common pleas court is, therefore, whether there is a preponderance of substantial, reliable, and probative evidence in the record to support the decision of the administrative entity. *Community Concerned Citizens, Inc. v. Union Twp. Bd. of Zoning Appeals* (1993), 66 Ohio

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St.3d 452, 456, 613 N.E.2d 580; *Kisil v. Sandusky* (1984), 12 Ohio St.3d 30, 34, 465 N.E.2d 848; *Dudukovich v. Housing Authority* (1979), 58 Ohio St.2d 202, 207, 389 N.E.2d 1113; *Meadow Creek Co., Inc. v. Brimfield Twp.* (June 30, 1994), Portage App. No. 93-P-0070, unreported, at *1.

In undertaking this review, the common pleas court must give due deference to the administrative agency's resolution of evidentiary conflicts. *Lawson v. Foster* (1992), 76 Ohio App.3d 784, 788, 603 N.E.2d 370; see, also, *Univ. of Cincinnati v. Conrad* (1980), 63 Ohio St.2d 108, 111, 407 N.E.2d 1265. The common pleas court may not substitute its judgment for that of the agency, especially in areas of administrative expertise. *Community Concerned Citizens* at 456, 613 N.E.2d 580; *Dudukovich* at 207, 389 N.E.2d 1113; *Lawson* at 788, 603 N.E.2d 370. Furthermore, the common pleas court "is bound by the nature of administrative proceedings to presume that the decision of the administrative agency is reasonable and valid." *Community Concerned Citizens* at 456, 613 N.E.2d 580; see, also, *C. Miller Chevrolet v. Willoughby Hills* (1974), 38 Ohio St.2d 298, 313 N.E.2d 400, paragraph two of the syllabus.

The role of an appellate court is more limited in scope. A court of appeals must affirm the decision of the common pleas court unless it finds, as a matter of law, that the decision of the common pleas court is not supported by a preponderance of substantial, reliable, and probative evidence. *Kisil* at 34, 465

N.E.2d 848. R.C. 2506.04 gives the common pleas court the authority to weigh the evidence, but the statute grants a more limited power to an appellate court to review the judgment of the common pleas court only on "questions of law." This does not accord an appellate court the same power to weigh "the preponderance of substantial, reliable and probative evidence" as is granted to the common pleas court. *Id.* at fn. 4.

Employing the standard of review outlined above, we will now separately address each of Jackson's arguments.

Jackson initially argues that the trial court erred in applying and interpreting the law regarding conditional use permits because it did not find that the Board of Zoning Appeals had exceeded its authority when it failed to require the filing of a properly completed application for conditional use permits.

R.C. 519.14 grants township boards of zoning appeals certain powers including the power to grant "conditional use permits" for the use of land if that specific use is allowed by the zoning regulations of that particular township. It reads in pertinent part:

519.14 Powers of township board of zoning appeals

(C) Grant conditional zoning certificates for the use of land, buildings, or other structures if such certificates for specific uses are provided for in the zoning resolution.

The official schedule of regulations provides for the grant of a conditional use permit in an area zoned U-1 Rural for the purpose of light manufacturing. The Pleasant Township Zoning resolution further specifies that conditional use permits shall be granted in accordance with certain procedures. The resolution is in part:

Section 560 Procedure and Requirements For Approval of Conditional Use Permits. Conditional uses shall conform to the procedures and requirements of Section 561-568, inclusive of this Resolution.

One of the requirements for grant of a conditional use permit is that the individual requesting the permit fill out an application in accordance with the guidelines of the resolution. The resolution requires:

Section 562 Contents of Application for Conditional Use Permit. An application for a conditional use permit shall be filed with the Chairman of the Board of Zoning Appeals by at least one owner or lessee of property for which such conditional use is proposed. At a minimum the application shall contain the following information:

- 1. Name, address and telephone number of the applicant;**
- 2. Legal description of property;**
- 3. Description of existing use;**
- 4. Zoning District;**
- 5. Description of proposed conditional use;**
- 6. A plan of the proposed site for the conditional use showing the location of all buildings, parking and loading areas, traffic access and traffic circulation, open spaces, landscaping, refuse and service areas, utilities, signs, yards, and such other information as the Board may require to determine if the proposed conditional use meets the intent and requirements of this Resolution.**
- 7. A narrative statement evaluating the effects on adjoining property; the effect of such elements as noise, odor and fumes on adjoining**

property; a discussion of the general compatibility with adjacent and other properties in the district.

The record reveals that the trial court and the BZA both found the applications sufficient to make a “determination of whether or not the proposed conditional use meets the intent and requirements of the zoning resolution”. However, Jackson argues that they were insufficient to give notice and further that many of the specific requirements outlined above were not complied with. Specifically Jackson claims that the applications are not clear and the drawings attached to the applications are “crude”. Therefore, he argues that the applications are insufficient. However, we do not agree.

The Common Pleas Court correctly noted in its judgment entry that Jackson fails to cite any authority for such a strict interpretation of the application requirements. The applications on their face appear to satisfy every requirement outlined above. Furthermore, the resolution does not require the perfection and sophistication that Jackson argues is necessary. The resolution does not require the application including its drawings and narrative be sophisticated or complex in nature. Therefore, we cannot say that the decision of the common pleas court, as a matter of law, was not supported by a preponderance of substantial, reliable and probative evidence. Jackson’s first argument is therefore, without merit.

Next Jackson claims that the trial court erred in its application and interpretation of the applicable zoning laws because it did not find that the BZA

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exceeded its grant of statutory authority when it failed to require off-street parking and off-street loading requirements be met.

Section 1100 of the Zoning Resolution is in part:

No building or structure shall be erected * unless permanently maintained off-street parking and/or loading spaces have been provided in accordance with the provisions of the Resolution.**

Off-street parking has been defined as “an area adequate for parking an automobile with room for opening doors on both sides, together with properly related access to a public street or alley and maneuvering room.” Further the resolution requires that the all parking, loading spaces, driveways, etc. be paved. Paving is defined as “material to provide a durable and dust-free surface”. Asphalt or concrete is not required by the resolution.

The record reveals that the trial court and the BZA found “vehicular approaches to the property have been designed so that it will not create an interference with traffic on surrounding public thoroughfares.” Further both Hershberger and Ross testified that they had allotted sufficient space and room for the entrance, parking and exit of a semi-tractor trailer as well as any other vehicles that may provide for the transport of finished or raw materials. Finally, the BZA noted that the Zoning Resolution does not require that “paving” be done by asphalt or concrete means. Further it found that the stone driveways provided a “dust-free” surface as required by the resolution and the trial court agreed.

After a thorough review of the record, we must agree with the findings of the trial court as a matter of law. The zoning resolution does not require that the applicant use concrete or asphalt to pave his driveway and therefore, a stone driveway is sufficient. Further, there was no evidence presented that the space that Hershberger and Ross had allotted for their driveways is inadequate. Therefore, we cannot say that the decision of the common pleas court, as a matter of law, was not supported by a preponderance of substantial, reliable and probative evidence. Jackson's second argument is therefore, without merit.

Next Jackson argues that the trial court erred by failing to find that the Board of Zoning Appeals exceeded its authority mandated by the Pleasant Township Zoning Resolution when it misinterpreted the definitions of Heavy Manufacturing and Light Manufacturing.

As stated above the BZA has the authority to grant conditional use permits in an area zoned U-1 Rural for the purpose of light manufacturing. The resolution defines light and heavy manufacturing as follows:

Article II Definitions

Light Manufacturing. Manufacturing or other industrial uses which are usually controlled operations; relatively clean, quiet and free of objectionable or hazardous elements such as smoke, noise, odor or dust; operate and store within enclosed structures; generate little industrial traffic and no major nuisances.

Heavy Manufacturing. Manufacturing, processing, assembling, storing, testing and similar industrial uses which are generally major

operations and extensive (sic) in character; require large sites, open storage and service areas, extensive services and facilities, ready access to regional transportation; and normally generate some nuisances such as smoke, noise, dust, glare, air pollution, odor, but not beyond the district boundary to any large extent.

Furthermore, it should be noted that the BZA may place conditions on the receipt of the conditional use permit to ensure that the applicants are in compliance with the regulations of the Pleasant Township Zoning Resolution. The resolution states in part:

Section 545. Supplementary Conditions and Safeguards. Under no circumstances shall the Board of Zoning Appeals grant an appeal or variance to allow a use not permissible under the terms of this Resolution in the District involved, or any use expressly or by implication prohibited by the terms of this Resolution in said district. In granting any appeal or variance, the Board of Zoning Appeals may prescribe appropriate conditions and safeguards in conformity with this Resolution. * (Emphasis added)**

The record reveals that the trial court and the BZA found the sawmill operations proposed by both Hershberger and Ross qualified as “light manufacturing”. Further the BZA noted that several aspects of the proposed operations were not in accordance with the definition of “light manufacturing”. In order to ensure that the sawmill operations would be in compliance with the zoning regulations the BZA accordingly attached conditions to the permits. Specifically, the BZA designated the hours of operation; the operations were limited to wood products only; the sawdust must be stored to remain dry and

prevent dust; and the slab wood created must be enclosed by either a fence or flora.

Despite this, Jackson maintains that the sawmill operations are “heavy manufacturing” as defined by the zoning regulations. However, there is no evidence in the record to support this contention. The proposed sawmill operations were small in character, specifically, one or two man operations; the situs of the operation was small in nature and enclosed by a pole barn; extensive services and facilities were not required; both individuals would deliver the finished product themselves and the only transportation into the area would be the occasional delivery of raw materials; there was no threat of smoke, noise, glare, air pollution and odor; and finally, the threat of dust was dissipated by the conditions imposed by the committee and the only threat of noise was the occasional and rare use of a chainsaw by Ross.

Therefore, we cannot say that the decision of the common pleas court, as a matter of law, was not supported by a preponderance of substantial, reliable and probative evidence. Jackson’s third argument is therefore, without merit.

In his final argument Jackson claims that the trial court erred by failing to recognize that the BZA failed to make findings of fact in the first hearing and the findings of fact made when the Common Pleas Court remanded the matter is a nullity and void.

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The record reveals that the trial court remanded the matter to the BZA on June 30, 1998, for new hearings. The findings of fact filed concerning those new hearing were filed in accordance with the remand of the trial court. Jackson's final argument is without merit. Therefore, we find as a matter of law that judgment of the trial court was supported by substantial, reliable and probative evidence. No error having been shown the judgment of the Court of Common Pleas of Logan County is affirmed.

Judgment affirmed.

SHAW and WALTERS, JJ., concur.

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