

[Cite as *Global Country of World Peace v. Parma*, 2010-Ohio-6023.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 94535

GLOBAL COUNTRY OF WORLD PEACE

PLAINTIFF-APPELLANT

VS.

**CITY OF PARMA
PLANNING COMMISSION, ET AL.**

DEFENDANTS-APPELLEES

**JUDGMENT:
AFFIRMED**

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-654739

BEFORE: Kilbane, P.J., Celebrezze, J., and Jones, J.

RELEASED AND JOURNALIZED: December 9, 2010

ATTORNEY FOR APPELLANT

Timothy J. Grendell
Grendell & Simon Co.
6640 Harris Road
Broadview Heights, OH 44147

ATTORNEYS FOR APPELLEES

Timothy G. Dobeck
Law Director/Chief Prosecutor
City of Parma
Bruce M. Courey
Assistant Law Director
6611 Ridge Road
Parma, OH 44129

MARY EILEEN KILBANE, P.J.:

{¶ 1} Plaintiff-appellant, Global Country of World Peace (“Global”), appeals from the judgment of the common pleas court vacating the decision of the city of Parma Planning Commission that denied Global’s final site plan for a conference center and remanding the matter to the planning commission for further proceedings. We affirm.

I. Background

{¶ 2} Global owns real property at the northwest corner of Huffman and Stumph Roads in the city of Parma. In 2006, it applied to the Parma Planning Commission for a similar use permit to build and operate a conference center for multiple mixed uses, including a teaching facility, staff residence, seminar building, retail store, and a peace palace for transcendental meditation and wellness programs. The similar use application was subsequently put on hold and Global pursued approval of a site plan.

{¶ 3} At a planning commission meeting on July 27, 2007, Global received preliminary approval of its revised site plan. Subsequent proposals on the final site plan were heard at commission meetings on October 24 and November 28, 2007, and again on February 27, 2008. At the February meeting, the planning commission denied approval of Global's final site plan.

{¶ 4} Global appealed the decision of the planning commission to the Cuyahoga County Common Pleas Court pursuant to Chapter 2506 of the Revised Code. It argued that the planning commission had erred in denying approval of its final site plan and asked the court to approve the plan. The common pleas court subsequently vacated the planning commission's decision and remanded the matter to the planning commission for further proceedings not inconsistent with its opinion.

{¶ 5} In its journal entry and opinion, the common pleas court noted that its review of the briefs and transcript of the planning commission proceedings indicated that some portions of the underlying proceedings were missing, some of the testimony had not been given under oath, and the planning commission had failed to file findings of fact supporting its decision under R.C. 2506.03(A)(5). Accordingly, pursuant to R.C. 2506.03(B), the trial court scheduled an evidentiary hearing to give the parties an opportunity to present additional evidence and complete the record.

{¶ 6} The parties appeared for the evidentiary hearing but, in lieu of presenting testimony, they voluntarily entered into three stipulations.¹ Because the parties did not wish to present any additional evidence, the court's review of the planning commission's decision was confined to the record as submitted by the parties.

{¶ 7} Upon review of that record, the common pleas court found that the record was incomplete and ambiguous as to the reasons for the planning commission's decision. The court noted that several issues about the site plan had been raised and discussed at planning commission meetings but were never resolved. For example, the court found that although commission

¹The parties agreed to admit into evidence a letter dated January 7, 2008 from Paul Powers to Mary Galinas. The parties also stipulated that Global's application complied with the city of Parma's zoning requirements and that the testimony of Paul Powers on October 24, 2007 should be considered by the court as if it were sworn testimony.

members had discussed the appearance of the building, it was unclear whether Global was required to use brick and, therefore, not clear if Global's failure to propose a brick building was a basis for the planning commission's denial of Global's request. Likewise, issues regarding what taxes Global would pay, the required number of parking spaces, and whether Global's building would negatively impact Parma's sewer system were raised and discussed, but not resolved. The court found that because the record was incomplete, it could not "determine which, if any, of the [planning commission's] concerns constituted a basis for denying appellant's request" and "to the extent that some of [the commission's] concerns may have been a basis for denying [Global's] request, the record does not support [the planning commission's] decision by a preponderance of substantial, reliable, and probative evidence."

{¶ 8} But the court also found that Global had not "pointed to a preponderance of substantial, reliable, and probative evidence in the record to show that its request must be approved." The court found that although the parties had stipulated that Global's application satisfied the City's zoning requirements, the record was clear that there were still unresolved issues relating to the application. Those issues included, in addition to the previously mentioned issues, building, utility, grading, and drainage plans; an interior floor plan; and driveway accessibility for emergency vehicles. The

court found that “[w]ithout any substantial, reliable, and probative evidence in the record that shows that [Global] has complied with [the planning commission’s] requirements for these aspects of the final site plan, the court cannot require [the commission] to approve the plan.”

{¶ 9} In short, the court found that even though it had provided the parties with an opportunity present evidence at an evidentiary hearing, the parties had failed to produce sufficient evidence for the court to render a decision regarding Global’s application for final approval. Accordingly, the court found that it was constrained to vacate the planning commission’s decision and remand the matter to the administrative agency for further proceedings not inconsistent with its opinion.

{¶ 10} Global appeals from this judgment.

II. Law and Analysis

{¶ 11} The standard of review to be applied by common pleas courts and courts of appeals in R.C. Chapter 2506 administrative appeals is unique. The common pleas court considers the whole record, including any new or additional evidence admitted under R.C. 2506.03, and determines whether the administrative order is unconstitutional, illegal, arbitrary, capricious, unreasonable, or unsupported by the preponderance of substantial, reliable, and probative evidence. R.C. 2506.04. “Consistent with its findings, the court may affirm, reverse, vacate, or modify the order, adjudication, or

decision, or remand the cause to the officer or body appealed from with instructions to enter an order, adjudication, or decision consistent with the findings or opinion of the court.” Id.²

{¶ 12} An appeal to the court of appeals is more limited in scope. We review on questions of law and must affirm the common pleas court unless we find that the decision of the common pleas court is not supported by a preponderance of reliable, probative, and substantial evidence. *Kisil v. Sandusky* (1984), 12 Ohio St.3d 30, 34, 465 N.E.2d 848. Whether the common pleas court abused its discretion is within the ambit of “questions of law” in R.C. 2506.04 administrative appeals. *Henley v. Youngstown Bd. of Zoning Appeals*, 90 Ohio St.3d 142, 148, 2000-Ohio-493, 735 N.E.2d 433.

{¶ 13} In its single assignment of error, Global contends that the trial court erred by not ordering that its final site plan was deemed approved. Global argues that the trial court properly found that the planning commission’s decision denying its application was not supported by the preponderance of the evidence, but contends that because the parties

² Common pleas courts are authorized under R.C. 2506.04 to reverse an administrative decision and remand the cause to the administrative body to conduct further proceedings on the matter. *State ex rel. Village of Chagrin Falls v. Geauga Cty. Bd. of Commrs.*, 96 Ohio St.3d 400, 2002-Ohio-4906, 775 N.E.2d 512, ¶12. “Once a court remands to the administrative agency, the agency’s jurisdiction over the matter is revived. That being so, the agency may conduct further proceedings and render a new decision.” Id., ¶11, quoting *Neary v. Moraine Bd. of Zoning Appeals* (July 30, 1999), 2d Dist. No. 17428.

stipulated that Global's site plan complied with the city of Parma's zoning requirements, the trial court should have ordered its final site plan approved.

{¶ 14} But Global's argument ignores the many other unresolved issues surrounding its proposed site plan, including (1) whether Global must use brick in its structure; (2) whether Global will pay property taxes; (3) whether the final site plan includes the required number of parking spaces; (4) what effect Global's building will have on the City's sewer system; (5) elevations of the building, utility, grading, and drainage plans; (6) an elevation and interior floor plan; (7) a detailed elevation of the fencing; and (8) driveway accessibility for emergency vehicles. Because there was not substantial, reliable, and probative evidence in the record that Global had complied with the City's requirements for these aspects of the site plan, the common pleas court properly held that it could not require the planning commission to approve the plan.

{¶ 15} This case is similar to *In re Rocky Point Plaza Corp.* (1993), 86 Ohio App.3d 486, 621 N.E.2d 566, in which Rocky Point Plaza Corporation appealed from the common pleas court's judgment that affirmed the decision of the board of zoning appeals denying Rocky Point's application for a zoning permit. The Tenth District found that the administrative body had not filed conclusions of fact supporting its decision under R.C. 2506.03 with the common pleas court. It also found, however, that "on the other hand, Rocky

Point made no effort to have appropriate evidence adduced before the common pleas court * * *.” The court stated that “[t]he upshot of the matter is that not only is there no reliable, probative and substantial evidence supporting a denial of the permit, there is no substantial, reliable and probative evidence supporting a granting of the conditional use permit.” Therefore, the court held that the common pleas court should have reversed the decision of the board of zoning appeals and remanded the matter for a new hearing and determination.

{¶ 16} We have the same situation here. The record before the common pleas court was incomplete and ambiguous, but the planning commission did not offer conclusions of fact into evidence and Global did not offer supplemental testimony in support of its case. Thus, the record lacked a preponderance of substantial, reliable, and probative evidence for either party. Because the parties failed to produce sufficient evidence for the common pleas court to render a decision regarding Global’s application for final approval, the court properly vacated the planning commission’s decision and remanded the matter to the administrative agency for further proceedings.

Affirmed.

It is ordered that appellees recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

MARY EILEEN KILBANE, PRESIDING JUDGE

FRANK D. CELEBREZZE, JR., J., and
LARRY A. JONES, J., CONCUR