[Cite as *Global Country of World Peace v. Mayfield Hts. Planning Comm.*, 2010-Ohio-2213.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 92848

GLOBAL COUNTRY OF WORLD PEACE

PLAINTIFF-APPELLANT

vs.

CITY OF MAYFIELD HTS. PLANNING COMM., ET AL.

DEFENDANTS-APPELLEES

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-655897

BEFORE: Cooney, J., Boyle, P.J., and Celebrezze, J.

RELEASED: May 20, 2010

JOURNALIZED:

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N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief per App.R. 26(A), or a motion for consideration en banc with supporting brief per Loc.App.R. 25.1(B)(2), is filed within ten days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. 2.2(A)(1).

COLLEEN CONWAY COONEY, J.:

{¶ 1} Plaintiff-appellant, Global Country of World Peace ("Global"), appeals the trial court's judgment affirming the decision of defendants-appellees, Mayfield Heights Planning Commission, Mayfield Heights City Council, and the city of Mayfield Heights (collectively referred to as "City"), to deny Global's proposal to develop land. Finding no merit to the appeal, we affirm.

{¶ 2} In 2007, Global applied to the City for approval of its site plan for a conference and wellness center on property it owns in Mayfield Heights.[1] The property is zoned as U-7, which is defined in Mayfield Heights Codified Ordinance Section 1177.03 ("M.H.C.O. 1177.03") as headquarters or executive offices for businesses or administrative entities, medical offices, or offices, classrooms, libraries and laboratories for a college, university, or other accredited educational facility.

{¶ 3} At the December 2007 planning commission meeting, Tom Murdach ("Murdach"), Global's director, stated that PC-07-18 included two corporate conference wellness centers — one for women and one for men. The use of the conference centers would be mainly offices and educational

[1] Global's proposal was designated as PC-07-18 by the Mayfield Heights Planning Commission.

classrooms on the first floor, with wellness spas on the second floor. Then at the February 2008 meeting, Global's attorney stated that a licensed doctor would be on staff and therapies would be provided by licensed massotherapists. The program used on site is referred to as holistic health.

{¶ 4} Global met with the planning commission again on March 3, 2008. At this meeting, Global further clarified the use of the conference centers, stating that the building would be an Ayurvedic medicine wellness center. Global stated that there would be a licensed doctor on staff overseeing the licensed massotherapists, who would provide the treatments. The planning commission was concerned that PC-07-18 did not fit within the zoning requirements and denied the proposal.

{¶ 5} Global then presented its proposal to city council on March 10, 2008. At that meeting, Global changed the terminology used in its site plans. Global advised city council that the "spa rooms" on the second floor should be referred to as "treatment rooms." Global also stated that a licensed medical doctor would be involved with the medical part, which would not include any emergency centers, clinics, or urgent care centers in the buildings. The educational component would be taught by qualified teachers through the Maharishi University of Management. The matter was tabled at that time for further review.

{¶ 6} On March 24, 2008, the matter was again presented to city council. Murdach stated that the concept at that point was: (1) a wellness center that would include Ayurvedic treatments under a licensed physician, who would be part-time until the need arose for a full-time position; (2) a corporate development program offered by the Maharishi University of Management; and (3) regional corporate offices. Murdach also stated that the spa rooms are really treatment rooms, where the individual is treated with therapies involving different types of oils and massages. The members of city council voted on the motion, affirming the planning commission's denial of Global's PC-07-18 proposal.

{¶ 7} In April 2008, Global filed an administrative appeal pursuant to R.C. 2506, challenging the City's denial of its proposal. The common pleas court affirmed, finding that the City's decision was supported by the preponderance of substantial, reliable, and probative evidence.

{¶ 8} Global now appeals to this court, raising seven assignments of error, which shall be discussed together where appropriate.

{¶ 9} In the first assignment of error, Global argues that the trial court abused its discretion by failing to require that a preponderance of substantial, reliable, and probative evidence support the City's denial of Global's proposal. In the second assignment of error, Global argues that the trial court abused

its discretion when it affirmed the City's decision because the denial was not supported by the preponderance of substantial, reliable, and probative evidence. In the third assignment of error, Global argues that the City's denial should have been reversed because Global's plan is supported by "the unrebutted preponderance of substantial, reliable[,] and probative evidence." In the fourth assignment of error, Global argues that the trial court abused its discretion when it affirmed the City's decision because the City preferred that Global's land not be used as zoned. In the seventh assignment of error, Global argues that the trial court abused its discretion when it issued an opinion that is "replete with factually incorrect statements and patently erroneous legal conclusions."

Standard of Review

{¶ 10} In *Henley v. Youngstown Bd. of Zoning Appeals*, 90 Ohio St.3d 142, 2000-Ohio-493, 735 N.E.2d 433, the Ohio Supreme Court distinguished the standard of review to be applied by common pleas courts and appellate courts in R.C. Chapter 2506 administrative appeals. The *Henley* court stated:

> "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.
>
> "The standard of review to be applied by the court of appeals in an R.C. 2506.04 appeal is '*more limited* in scope.' (Emphasis added.) 'This

> statute grants a more limited power to the court of appeals to review the judgment of the common pleas court only on "questions of law," which does not include the same extensive power to weigh "the preponderance of substantial, reliable and probative evidence," as is granted to the common pleas court.' 'It is incumbent on the trial court to examine the evidence. Such is not the charge of the appellate court. * * * The fact that the court of appeals, or this court, might have arrived at a different conclusion than the administrative agency is immaterial. Appellate courts must not substitute their judgment for those of an administrative agency or a trial court absent the approved criteria for doing so.'" (Citations omitted.) Id. at 147.

{¶ 11} Thus, this court will review the judgment of the trial court only to determine if the lower court abused its discretion in finding that the administrative order was supported by reliable, probative, and substantial evidence. See *Wolstein v. Pepper Pike City Council*, 156 Ohio App.3d 20, 2004-Ohio-361, 804 N.E.2d 75, ¶21-22. An abuse of discretion "implies that the court's attitude is unreasonable, arbitrary or unconscionable." *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219, 450 N.E.2d 1140, quoting *State v. Adams* (1980), 62 Ohio St.2d 151, 157, 404 N.E.2d 144.

{¶ 12} In the instant case, Global argues that the City's denial was not supported by a preponderance of substantial, reliable, and probative evidence because its proposal is consistent with M.H.C.O 1177.03, which provides in pertinent part:

> "(a) Permitted Main Uses and Buildings. The following uses are permitted in a U-7 District:
> "(1) Headquarters or executive offices for businesses or administrative entities * * *;

> "(2) Medical offices. A medical office is a facility * * * used by physicians, dentists, optometrists, and similar licensed medical personnel for the examination and treatment of patients, solely on an outpatient basis and primarily by appointment. For the purpose of this zoning regulation, drop-in clinics, urgent care and emergency centers/clinics are not considered medical offices; and
>
> "(3) Offices, classrooms, libraries and laboratories for a college, university, or other accredited educational facility. These uses are restricted, entirely, to the interior of the structure; and shall not include any activities, facilities or equipment that are not typically in an office building or that are incompatible with the U-7 Office environment."

{¶ 13} Global claims that the record is void of any evidence that supports the City's arbitrary denial of its proposal. Global's proposal consisted of a wellness center that included Ayurvedic medicine, which is considered alternative medicine by the State Medical Board of Ohio. The medical facility is not an emergency or drop-in clinic. Patients would be required to obtain prescriptions for appointments. Global further claims that the licensed massotherapists satisfied the "similar licensed medical personnel" provision in M.H.C.O. 1177.03(a)(2). The proposal also included education classes taught by qualified teachers through the Maharishi University of Management, which is accredited by the North Central Association of Colleges and Schools. In addition, Global had George Smerigan, a professional planner, testify before city council that Global's plan fit within M.H.C.O. 1177.03.

{¶ 14} As a result, Global maintains that the trial court abused its discretion by shifting the evidentiary burden to Global because it presented ample unrebutted evidence that PC-07-18 met all of the permitted use requirements of M.H.C.O. 1177.03. It contends that the City offered no evidence or testimony in opposition to its proposal. However, as the trial court correctly stated, Global is attempting to have its proposal approved, and "the burden falls on [Global] to produce evidence demonstrating the proposed use conforms to the zoning requirements." See *Consol. Mgt., Inc. v. Cleveland* (1996), 6 Ohio St.3d 238, 240, 452 N.E.2d 1287, citing *C. Miller Chevrolet v. Willoughby Hills* (1974), 38 Ohio St.2d 298, 313 N.E.2d 400 (in which the Ohio Supreme Court found that, in a R.C. Chapter 2506 appeal, the board's denial is presumed to be valid and the burden of showing the claimed invalidity rests upon the party contesting the determination).

{¶ 15} In further support of its position, Global cites *Hydraulic Press Brick Co. v. Council of Independence* (1984), 16 Ohio App.3d 204, 475 N.E.2d 144, arguing that the City must authorize uses permitted by or consistent with its zoning code. Because PC-07-18 involves authorized uses of its property, Global claims that the City's denial constituted unlawful rezoning without legislative action.

{¶ 16} In *Hydraulic Press*, the landowner sought to construct a gas well on property zoned for commercial or industrial use. The landowner presented evidence that it would conform with all state requirements and local gas utility specifications. The planning commission approved the request to drill a gas well on the 75-acre property, zoned for industrial use. City council denied the landowner's proposal, not because the project did not comply with zoning requirements, but because the proposal conflicted with the city's master plan. The landowner appealed to common pleas court, which dismissed the appeal, finding that council's decision was reasonable and based on substantial evidence. Id. at 208.

{¶ 17} On appeal, this court reversed the trial court's decision, finding that "city council did not purport to amend or revise existing zoning provisions. As a matter of law, its refusal to approve the requested special permit was 'unsupported by the preponderance of substantial, reliable and probative evidence.' R.C. 2506.04. Its action was 'illegal, arbitrary, capricious, [and] unreasonable,' in light of its authorized role in this controversy." Id. at 208-209.

{¶ 18} However, *Hydraulic Press* is distinguishable from the instant case. The planning commission denied Global's proposal, and the City

council denied the proposal based on Global's failure to meet the City's zoning requirements. Thus, Global's reliance on *Hydraulic Press* is misplaced.

{¶ 19} Furthermore, in the trial court's opinion, the court noted that Global's initial proposal in April 2006 consisted of a restaurant, conference center, and day spa. In June 2006, Global altered the proposal to include two high schools and referred to the spa as a "health clinic." Global referred to this proposal as a "Peace Palace Campus." Then in December 2007, Global presented its current proposal, indicating that the property would have two corporate wellness centers, one for women and one for men, with wellness spas on the second floor. Global eliminated the high schools from its proposal. The City's concern was that the majority of the project appeared to be a spa, which did not conform to the zoning requirements.

{¶ 20} In March 2008, Global's attorney stated that a licensed doctor would be on staff and therapies would be provided by licensed massotherapists. Global further clarified the use of the conference centers in March 2008, stating that the building would be an Ayurvedic medicine wellness center. It would include education classrooms and regional offices. The trial court stated that the corporate headquarter testimony conflicted with previous testimony that PC-07-18 would contain very few administrative offices, but mostly classrooms and spas.

{¶ 21} At its presentation to city council, Global changed the terminology used in its site plans. It changed the term "spa rooms" on the second floor to "treatment rooms." Global also stated that there would not be any emergency or urgent care centers or clinics in the buildings. The educational component would be taught by qualified teachers through the Maharishi University of Management.

{¶ 22} At the March 24, 2008 meeting with city council, Murdach stated that the concept at that point was: (1) a wellness center that would include Ayurvedic treatments under a licensed physician, who would be part-time until the need arose for a full-time position; (2) a corporate development program offered by the Maharishi University of Management; and (3) regional corporate offices. Murdach also stated that the spa rooms are really treatment rooms, where the individual would be treated with therapies involving different types of oils and massages.

{¶ 23} The City was concerned that the spa was the main component of the project, and since it did not fit within M.H.C.O. 1177.03, Global had attempted to minimize that component and categorize it differently. The trial court further noted that initially, Global stated that there would be a physician on staff, but at the last meeting, stated that the physician would be part-time until the need arose for a full-time position. Murdach represented

that a retired doctor may be hired to oversee treatment and that the massotherapists would be the individuals performing the treatment.

{¶ 24} The City was also concerned that there would not be consistent medical supervision at the wellness center. Under M.H.C.O. 1177.03, a facility does not qualify under the medical exception if it is one that regularly accepts walk-in clients. Here, Global stated that it was not opposed to accepting walk-ins if the the schedule allowed. When asked by the City what procedures would be used in the treatment rooms, Global could not completely answer regarding what occurs in the treatment rooms. Because Global presented multiple proposals with varying concepts, the City ultimately determined that Global had crafted its proposal to fit M.H.C.O. 1177.03. In affirming the City's denial, the trial court concluded that Global's proposal was inconsistent and "morphed" to conform to the language of the ordinance.

{¶ 25} Based on the foregoing, we find that the trial court did not abuse its discretion when it affirmed the City's denial of Global's proposal.

{¶ 26} Accordingly, the first, second, third, fourth, and seventh assignments of error are overruled.

{¶ 27} In the fifth assignment of error, Global argues that the trial court abused its discretion when it ignored the fact that the City failed to file

conclusions of fact as required by R.C. 2506.03(A)(5), which provides that "[t]he hearing of an appeal taken in relation to a final * * * decision * * * shall proceed as in the trial of a civil action, but the court shall be confined to the transcript filed under [R.C. 2506.02] unless it appears, on the face of that transcript or by affidavit filed by the appellant, that * * * [t]he officer or body failed to file with the transcript conclusions of fact supporting the final order, adjudication, or decision." The statute further provides that "[i]f any circumstance described in divisions (A)(1) to (5) of this section applies, the court shall hear the appeal upon the transcript and additional evidence as may be introduced by any party." R.C. 2506.03(B).

{¶ 28} Global relies on *Aria's Way, LLC v. Concord Twp. Bd. of Zoning Appeals*, 173 Ohio App.3d 73, 2007-Ohio-4776, 877 N.E.2d 398, claiming that the City's failure to file conclusions of fact with the transcript justifies a reversal. In *Aria's Way,* the landowner was denied a zoning variance and appealed to the trial court. At the time the appeal was filed, the Board of Zoning Appeals ("BZA") had requested an extension of time to file its conclusions of fact, which the trial court granted. In response, the landowner filed a motion for a hearing to submit additional evidence under R.C. 2506.03(A)(5) on the grounds that the BZA had not filed its conclusions of fact with the transcript. The trial

court denied the landowner's request for a hearing and affirmed the BZA decision.

{¶ 29} On appeal, the Eleventh District Court of Appeals held that "'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. Otherwise, a court runs the risk of allowing in evidence that had not been subjected to the adversarial process and is possibly inaccurate.'" *Aria's Way* at ¶29, quoting *Eckmeyer v. Kent City School Dist. Bd. of Edn.* (Nov. 3, 2000), Lake App. No. 99-P-0117.

{¶ 30} However, *Aria's Way* is factually distinguishable from the instant case. Here, the City did not file conclusions of fact, and Global failed to request that any additional evidence be submitted. In *Aria's Way*, the landowner was disadvantaged by the late conclusions of fact filed by the BZA. There was no such disadvantage in this case. Furthermore, the landowner in *Aria's Way* requested an evidentiary hearing, which the trial court denied. Here, Global had the opportunity to request a hearing under R.C. 2506.03, but failed to do so. Thus, we find that a reversal on this basis is not warranted.

{¶ 31} Accordingly, the fifth assignment of error is overruled.

{¶ 32} In the sixth assignment of error, Global argues that the trial court abused its discretion and deprived Global of its right to a fair hearing when the trial court relied on evidence outside of the administrative

proceedings. Global claims that the City law director's investigation and "communications outside of the official proceedings and record" deprived it of a fair adjudication and improperly affected the City's decision. Global further argues that the trial court abused its discretion when it considered the information obtained by the City's law director.

{¶ 33} In the instant case, the law director referred to research he conducted on Global outside of what was presented in the record at the March 24, 2008 city council meeting. However, the law director also stated that he believed that Global was an organization that had interesting ideas and was well received throughout the country. The law director stated that the problem was that Global's plan did not meet the zoning requirements.

{¶ 34} In the trial court's opinion, the court noted that "after a thorough review of the transcripts provided from the council meetings, * * * the City did inquire into some irrelevant matters. [Global's] dealing with other municipalities are not relevant to determine whether [it] fits into the zoning established in Mayfield Heights." The trial court then concluded that these questions had no impact on the outcome of the proceedings because "[i]t was clear from the beginning that there were numerous problems in meeting the zoning criteria. No reliable testimony was presented to explain the exact plan for the property."

{¶ 35} Based on the foregoing, we find that the trial court did not rely on evidence outside the record, and Global's argument lacks merit.

{¶ 36} Thus, the sixth assignment of error is overruled.

Judgment is affirmed.

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

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas 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.

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COLLEEN CONWAY COONEY, JUDGE

MARY J. BOYLE, P.J., and
FRANK D. CELEBREZZE, JR., J., CONCURS IN JUDGMENT ONLY