

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

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|---------------------------------|---|----------------------|
| CITYLINK CENTER, | : | APPEAL NOS. C-061037 |
| | | C-061054 |
| Plaintiff-Appellee, | : | C-061064 |
| vs. | : | TRIAL NOS. A-0603197 |
| | | A-0603918 |
| | | A-0603228 |
| CITY OF CINCINNATI, | : | |
| | | <i>DECISION.</i> |
| WEST END COMMUNITY COUNCIL, | : | |
| KIMBERLY A. HALE, TR., NICHOLAS | : | |
| HOLDINGS, LLC, ROBERT K. RUNTZ, | : | |
| MICHAEL R. KILEY, JANALYN | : | |
| KILEY, RONAN KIRWAN, SEAN M. | : | |
| CALDWELL, DAVID C. PETERSEN, | : | |
| SHARON R. COOK, GERALD J. | : | |
| BATES, and LINDA BATES, | : | |
| | : | |
| and | : | |
| | : | |
| OMAR CHILDRESS, | : | |
| | : | |
| Defendants-Appellants. | : | |

Civil Appeal From: Hamilton County Court of Common Pleas

Judgment Appealed From Is: Affirmed

Date of Judgment Entry on Appeal: November 2, 2007

Manley Burke, Timothy M. Burke, and Gary E. Powell, and Frost Brown Todd, LLC, and Scott D. Phillips, for Plaintiff-Appellee,

Julia L. McNeil, City Solicitor, and Richard Ganulin, Assistant City Solicitor, for Defendant-Appellant City of Cincinnati,

Timothy G. Mara, for Defendants-Appellants West End Community Council and Allied Individuals,

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Cohen, Todd, Kite & Stanford, LLC, and Heidi A. Selden, for Defendant-Appellant Omar Childress.

Please note: This case has been removed from the accelerated calendar.

HILDEBRANDT, Presiding Judge.

{¶1} Defendants-appellants the city of Cincinnati (“the city”), the West End Community Council and various allied individuals (“WECC”), and Omar Childress appeal the trial court’s judgment reversing the decision of the city’s Zoning Board of Appeals (“the ZBA”) that plaintiff-appellee CityLink Center was a “community service facility” and thus not a permitted use in the applicable zoning district. The ZBA had determined that CityLink was not entitled to a Zoning Certificate of Compliance that had been issued to it for its proposed use of its property located in the West End neighborhood of Cincinnati. Because the ZBA’s decision was unreasonable and not supported by a preponderance of substantial evidence, we affirm the judgment of the trial court.

I. What is CityLink?

{¶2} The following undisputed facts are taken from the administrative record. CityLink is a not-for-profit corporation organized by a combination of Cincinnati churches and ministries. Its intended purpose is to create a “centralized hub of services” to assist the low-income population in Cincinnati in becoming more fully contributing members of society. After conducting a search from the Norwood Lateral to the Ohio River, CityLink selected the property at 810 (a.k.a. 800) Bank Street in the West End neighborhood of Cincinnati. The property is a five-acre parcel with two vacant buildings, and it is zoned Manufacturing General (“MG”).¹ The size of the property will allow it to be developed according to “Crime Prevention Through

¹ See, generally, Cincinnati Municipal Code §1400-15.

Environmental Design,” which includes secure entrances, improved lighting, fencing, and good visibility for law enforcement.

{¶3} CityLink intends to lease space in a renovated building to four main tenants: (1) Jobs Plus, which provides job placement, training and other employment services; (2) Crossroads Health Center, which provides health screenings, dental care, pregnancy tests and wellness services; (3) The Lord’s Gym, which provides weightlifting, exercise and wellness programs; and (4) City Gospel Mission, which provides long-term transitional housing for people involved in CityLink’s programs. Further, other entities, such as a café, a day-care center, and a barber and beauty salon will be located within CityLink. All of these entities have separate legal identities, separate governing boards, and independent control over the services they will provide to their clients.

{¶4} CityLink will not be open to the general public. Its services will be provided to those who stay in the transitional housing and to any other client that has completed the intake process to determine eligibility for and commitment to the services to be provided. There will be some charge for clients utilizing the café, which will serve breakfast and dinner, but there will be no charge for the day-care facility that will be used by clients living in the transitional housing and by CityLink’s staff and volunteers.

II. The Zoning and Appeal

{¶5} In December 2005, the city’s Director of the Department of Buildings and Inspections issued a Zoning Certificate of Compliance for the property located at 800 Bank Street, certifying that CityLink’s intended use of the property to house “professional offices, transitional housing, recreational facility, accessory day care,

barber and beauty salons, and a café” properly conformed to the city’s zoning code.² The director met with representatives of CityLink and consulted with the city’s law department prior to issuing the zoning certificate. After receiving zoning approval, CityLink purchased the property for \$1.4 million.

{¶6} WECC and Childress, an individual who owns property abutting the property purchased by CityLink, filed appeals with the city’s ZBA, requesting that it reverse the director’s decision. The ZBA held a hearing in February 2006. As a result of significant public opposition to CityLink, a few days prior to the hearing Cincinnati’s city council passed a resolution “expressing City Council’s opposition to the placement of the CityLink Center at 800 Bank Street in the West End.” Although WECC attempted to have this resolution admitted into evidence at the ZBA hearing, the ZBA excluded the resolution, noting that the duty before it was to determine if the intended uses of CityLink’s property were permitted in the MG district. But the ZBA had allowed into evidence 14 letters to the ZBA from nearby community groups, churches, and business groups opposing CityLink, despite the fact that none of the letters addressed the zoning issue.

{¶7} Immediately after the hearing, the ZBA announced its decision reversing the director’s issuance of the zoning certificate. In its written decision, the ZBA determined that CityLink was a “community service facility” (“CSF”), which was not a permitted use in the MG zoning district. The ZBA concluded that the director’s decision was “not consistent with the intent and purpose of the Zoning Code.”

{¶8} CityLink appealed to the Hamilton County Court of Common Pleas under R.C. 2506.04. WECC also filed an appeal to preserve the issue that the ZBA had erred in excluding relevant evidence. These appeals were combined and referred

² See Cincinnati Municipal Code §1441-07.

to a magistrate. The magistrate determined that the ZBA's conclusion that CityLink was a CSF that was not permitted in the MG district was supported by the preponderance of substantial, reliable, and probative evidence. Further, the magistrate rejected CityLink's argument that its proposed uses were permitted in the MG district, stating that "[e]ach individual entity would contribute to CityLink's obvious philanthropic purpose. The purpose of the facility, and not its individual functional uses, is what makes CityLink a 'community service facility.'"

{¶9} CityLink filed objections. The trial court sustained those objections and reversed the ZBA's decision, concluding that (1) the proposed uses of CityLink were permitted in the MG district; (2) CityLink was not a CSF because its services were not limited to the community or neighborhood where it was to be located, and because it had many commercial aspects; and (3) the ZBA had not made the required findings and thus could not have overturned the director's decision.

{¶10} Accordingly, the trial court ordered that a zoning certificate of compliance be reissued to CityLink. The city, WECC, and Childress have timely appealed.

III. The Instant Appeal

{¶11} In its single assignment of error, the city contends that the trial court abused its discretion in reversing the decision of the ZBA. Under this assignment of error, the city's arguments are substantially similar to the first, second, third, fourth, fifth, and sixth assignments of error set forth in WECC's appellate brief and the assignment of error set forth in Childress's brief. Accordingly, we address these assignments of error together. Our reference to the term "the city" includes WECC and Childress unless we indicate otherwise.

{¶12} This court’s review of an administrative appeal is extremely deferential. We cannot independently weigh the evidence and are limited to reviewing questions of law and determining whether the trial court abused its discretion when weighing the evidence.³ An abuse of discretion “connotes more than an error of law or of judgment; it implies an unreasonable, arbitrary or unconscionable attitude on the part of the court.”⁴

{¶13} Because this case is about zoning, we acknowledge that as a general rule zoning laws may only regulate uses of land and not the identity of users of the land.⁵ Further, it is well established that zoning resolutions are to be strictly construed in favor of the property owner because “zoning resolutions are in derogation of the common law and deprive a property owner of certain uses of his land to which he would otherwise be lawfully entitled.”⁶

{¶14} The city argues that the trial court abused its discretion in reversing the ZBA’s determinations that CityLink was a CSF and that CityLink’s proposed uses were not permitted in the MG zoning district. We are unpersuaded.

IV. CityLink’s Proposed Uses

{¶15} The MG district, out of the over 20 different zoning districts in the city, is ranked as the city’s “least restrictive.” Cincinnati Municipal Code 1413-05 lists the following as permitted uses in the MG district: (1) “transitional housing,” defined in part as “housing designed to assist persons in obtaining skills necessary for

³ *Kohrman v. Cincinnati Zoning Bd. of Appeals*, 165 Ohio App.3d 401, 2005-Ohio-5965, 846 N.E.2d 890, at ¶7.

⁴ *Pembaur v. Leis* (1982), 1 Ohio St.3d 89, 91, 437 N.E.2d 1199

⁵ *Ohio Valley Orthopaedics & Sports Medicine, Inc. v. Bd. of Trustees of Sycamore Twp.*, 158 Ohio App.3d 460, 2004-Ohio-4662, 816 N.E.2d 1088 (“zoning laws regulated the ‘types of uses to which structures and property may be put,’ not the identity of the users”); see, also, *State ex rel. Parker v. Konopka* (1963), 119 Ohio App. 513, 515, 200 N.E.2d 695 (“Zoning ordinances or regulations refer to land use rather than to persons owning the land”).

⁶ *Saunders v. Clark County Zoning Dept.* (1981), 66 Ohio St.2d 259, 261, 421 N.E.2d 152.

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independent living in permanent housing”;⁷ (2) “personal instructional services,” defined in part as “the provision of instructional services,” which includes, among other things, tutoring;⁸ (3) “offices,” defined in part as “a facility for a firm or organization that primarily provides professional, executive, management or administrative services”;⁹ (4) “indoor or small-scale recreation and entertainment,” defined in part as “small, generally indoor facilities, * * * including fitness centers”;¹⁰ and (5) “medical services and clinics,” defined in part as “offices organized as a unified facility for more than two (2) licensed physicians, dentists, chiropractors, or other health care professionals.”¹¹

{¶16} The Gospel City Mission, one of CityLink’s tenants, will provide transitional housing for its clients. Jobs Plus will house its administrative office at CityLink and will provide its clients with job-placement services, including interview training and resume writing, which qualify as “personal instructional services” or an “office” as defined in the zoning code. And depending on the number of health-care professionals, Crossroads Health Center constitutes a “medical service or clinic” or an “office” as defined by the zoning code. Finally, the Lord’s Gym, which will offer a fitness center and wellness programs to its clients, qualifies as “indoor or small-scale recreation and entertainment” as defined by the code. Accordingly, all of CityLink’s uses are permitted in the MG district, which implies that each use supports the purpose of the MG district and does not inhibit industrial development as the dissent asserts.

⁷ Cincinnati Municipal Code § 1401-01-T.

⁸ See Cincinnati Municipal Code §§1401-01-P10.

⁹ See Cincinnati Municipal Code §§1401-01-O.

¹⁰ See Cincinnati Municipal Code §§1401-01-T.

¹¹ See Cincinnati Municipal Code §§1401-01-M3.

{¶17} The city, however, contends that for these uses to be permitted in the MG district they must be “commercial” in nature, which, according to the city, means that the recipients of the services must pay for the services and the services must be provided by a “for-profit” entity. But the term “commercial” does not appear in the definitions for “personal instructional services,” “medical offices or clinics,” “offices,” “transitional housing,” and “recreation and entertainment.” Further, those definitions do not distinguish between uses by a nonprofit entity and uses by a profit-seeking entity. And that is most likely because the fact that CityLink’s tenants may provide services at a reduced rate, as opposed to other entities who may charge the “market” rate for the same services to people with a higher income, does not change the way that the land will be used or the impact of such use on the zoning district.

{¶18} For example, the MG district permits retail stores of less than 10,000 square feet. Under the city’s theory, a clothing store operated by a nonprofit entity such as Goodwill would not be permitted in the MG district, but another retail store, such as a Payless Shoes, that charges market rates would be permitted. This cannot be what the zoning code intends or desires, since zoning laws are meant to group similar uses of land together.

{¶19} Additionally, we note that even if “commercial” means that recipients of services must pay for them, there is no evidence in the record that CityLink’s tenants will be providing their services at no charge. But there is testimony that CityLink will charge for services if required by the zoning code. For example, a fee must be charged to operate a café in the MG District, and CityLink’s director testified that there would be a fee charged.

{¶20} Because there is substantial evidence in the record supporting the determination that CityLink’s uses are permitted in the MG district, we conclude that the trial court’s reversal of the ZBA’s determination that CityLink’s proposed uses were not permitted was reasonable and thus not an abuse of discretion.

V. Community Service Facility?

{¶21} A CSF is not a permitted use in the MG district. Cincinnati Municipal Code 1401-01-C14 defines a CSF as “a noncommercial facility established primarily for the benefit and service of the populations of the communities in which they are located, such as YMCA or YWCA facilities, boys and girls clubs, and offices of community councils, non-profit civic, religious, welfare, or philanthropic organizations.”

{¶22} In this case, we hold that the trial court’s determination that CityLink was not a CSF because it was not established primarily for the benefit and service of the residents of the West End neighborhood of Cincinnati was reasonable and supported by substantial evidence in the record.

{¶23} CityLink was created to be a “centralized hub of services” catering to the low-income population of Cincinnati and Hamilton County. The sponsors of CityLink come from many different neighborhoods in Cincinnati. CityLink anticipates taking referrals from Hamilton County courts—this will clearly benefit individuals throughout the county and not just the residents of the West End.

{¶24} Further, at the ZBA hearing, Neal Sundermann, CityLink’s commercial realtor, testified that he had conducted a search of properties from the Norwood Lateral to the Ohio River for buildings over 40,000 square feet that were near or accessible to bus lines. He said that his search revealed 15 buildings, but many of them did not have adequate parking or were in out-of-the-way locations that did not

have access to the bus lines. He testified that CityLink finally settled on the Bank Street property because (1) one of the buildings on the property could be renovated; (2) the property consisted of five acres and had adequate parking; and (3) it was within “nine-tenths of a mile” of the current location of each organization that was planning to relocate to CityLink; and (4) it was on major thoroughfares, with access to bus lines.

{¶25} It is clear from this undisputed testimony that CityLink was not targeting West End residents as the primary recipients of CityLink’s services. The property in that neighborhood just happened to satisfy CityLink’s needs because it was large enough to accommodate parking and it was near bus lines that will enable individuals from throughout Hamilton County to use CityLink’s services.

{¶26} WECC argues that CityLink’s promotional literature indicates that West End residents will benefit greatly from CityLink, and that this proves that CityLink was established primarily to serve the West End. But the record demonstrates that most of the literature distributed to West End residents was in response to their opposition to CityLink’s purchase of the property—the letters from residents and business groups in the West End indicate that they were fearful that CityLink would attract dangerous, “undesirable” people and sexual predators to the neighborhood. CityLink has indicated that it will not be providing services to sexual predators, and in its literature it simply attempted to outline some benefits to CityLink’s location in the West End neighborhood. And while some residents of the West End may benefit from CityLink’s services, the record clearly shows that CityLink was not created primarily to serve the West End.

{¶27} We also reject WECC’s argument that the term “communit[y]” in the definition of a CSF refers to a larger area than just a “neighborhood,” because a

review of the zoning code demonstrates that “community,” when associated with the phrase “community council,” refers to a specific neighborhood.¹² And we also reject the assertion that CityLink is similar to a YMCA or a boys and girls club, which are prohibited in the MG district. Those types of organizations are single-user facilities that are scattered throughout many different neighborhoods, and that are meant to primarily serve the residents in the area where each is located. In contrast, CityLink is a multi-purpose center established to serve the whole county, and thus there is only a single location.

{¶28} The trial court also determined that CityLink has many commercial aspects, although it is a nonprofit organization. But the city argues that CityLink is not a “commercial” entity. We are unpersuaded. The United States Supreme Court, noting that “a nonprofit entity is ordinarily understood to differ from a for-profit corporation principally because it is ‘barred from distributing its net earnings, if any, to individuals exercising control over it,’ ” has held that nonprofit entities do engage in commerce.¹³ They can do so by purchasing goods and services in competitive markets, by offering their facilities to a variety of people, and by deriving revenue from a variety of sources. Although CityLink will do all of those things that indicate that it will be engaged in commerce, even if we were to hold that CityLink is a “noncommercial facility,” CityLink would not constitute a CSF because it was not established primarily to serve the community in which it will be located.

{¶29} Finally, we note that the magistrate, in agreeing with the ZBA that CityLink was a CSF, based that conclusion on the fact that CityLink’s purpose in using the land was philanthropic. But the magistrate never addressed one of the

¹² See Cincinnati Municipal Code Chapter 207 et seq. (explicitly linking “community councils” to “neighborhood leadership”).

¹³ *Camps Newfound/Owatonna v. Town of Harrison* (1988), 520 U.S. 564, 585, 117 S.Ct. 1590.

essential requirements of a CSF—whether it was established to primarily serve the community in which it will be located. By looking only at CityLink’s purpose, which is similar to considering its not-for-profit status, the magistrate elevated purpose over use of the land. That was improper. Zoning laws regulate use of the land, not the motivation behind the use.

{¶30} Finally, we find it relevant that each use that CityLink will engage in on the property is specifically permitted in the MG district. Simply because these uses will be housed under one roof does not transform the use of the land into a CSF. The evidence demonstrates that each of CityLink’s tenants has a separate legal identity and a separate governing board.

{¶31} Accordingly, because the ZBA’s decision was unsupported by substantial evidence in the record, we hold that the trial court did not err in sustaining CityLink’s objections to the magistrate’s decision and reversing the ZBA’s decision.

VI. The ZBA’s Findings, Bias, and Constructive Taking

{¶32} The city next argues that the trial court erred in reversing the ZBA’s decision (1) because it found that the ZBA did not make any of the required findings prior to reversing the director’s decision; (2) because it concluded that the ZBA was biased and under extreme political pressure; and (3) because it concluded that the ZBA’s decision constituted a “constructive taking” of CityLink’s property. Regardless of whether these conclusions are supported in the record, they are not pertinent to the trial court’s ultimate decision that CityLink’s uses are permitted in the MG district and that it is not a CSF. Because those two determinations are supported by the preponderance of the evidence in the record and are reasonable, the trial court

did not abuse its discretion in reversing the ZBA. Accordingly, the city's assignment and those that are substantially similar to it are overruled.

VII. WECC's Remaining Assignments of Error

{¶33} In its sixth, seventh, and eighth assignments of error, WECC asserts that the trial court erred in sustaining CityLink's objections to the magistrate's decision because it concluded (1) that CityLink's proposed uses were reasonable or fair; (2) that CityLink was entitled to use its property as proposed because it had relied upon approvals given by city employees; and (3) that CityLink had been discriminated against because it was funded by Christian organizations, had religious backing and was a nonprofit organization. Again, regardless of whether the trial court made these conclusions and regardless of whether they are supported in the record and in the law, they were not crucial to the trial court's decision in overruling the magistrate and reversing the ZBA. The trial court properly concluded, based on the zoning code and the evidence in the record, that CityLink is not a CSF and that its proposed uses are permitted in the MG district.

{¶34} Accordingly, the three remaining assignments of error are overruled, and we enter final judgment in favor of CityLink and order the Director of the Department of Buildings and Inspections to reissue the Zoning Certificate of

Compliance.

Judgment accordingly.

GORMAN, J., concurs.

DINKELACKER, J., dissenting.

ROBERT H. GORMAN, retired, from the First Appellate District, sitting by assignment.

DINKELACKER, Judge, dissenting.

{¶35} I disagree with the majority’s holding because the proposed uses of the property by CityLink establish that it is a community service facility, which is not a permitted use in an MG district. CityLink spends a substantial amount of time arguing around this unequivocal fact by citing parts of the zoning code out of context. I believe that, in concluding that CityLink was not a community service facility, the trial court substituted its judgment for that of the ZBA, and I would, therefore, reverse the trial court’s judgment.

{¶36} It is true that courts must strictly construe zoning regulations in favor of the property owner.¹⁴ But courts do not apply rules of construction when statutes or ordinances, including zoning regulations, are clear and unambiguous. When a statute or ordinance conveys a meaning that is clear and unequivocal, the need for interpretation is at an end, and the court should apply the law as written.¹⁵ Further, when terms are not defined in a zoning regulation, a court should consider the common and ordinary meaning of those terms.¹⁶

{¶37} Cincinnati’s zoning code defines a community service facility as “a noncommercial facility established primarily for the benefit and service of the

¹⁴ *Ware v. Zoning Bd. of Appeals*, 164 Ohio App.3d 772, 2005-Ohio-6516, 844 N.E.2d 357, ¶6.

¹⁵ *Silver Lake v. Metro Reg. Transit Auth.*, 111 Ohio St.3d 324, 2006-Ohio-5790, 856 N.E.2d 236, ¶17; *Taylor v. Circleville*, 4th Dist. No. 03CA8, 2003-Ohio-7166, ¶11.

¹⁶ *In re Appropriation for Hwy. Purposes of Land of Seas* (1969), 18 Ohio St.2d 214, 249 N.E.2d 48, paragraph one of the syllabus; *Ameigh v. Baycliffs Corp.* (1998), 127 Ohio App.3d 254, 262, 712 N.E.2d 7841.

populations of the communities in which they are located, such as YMCA or YWCA facilities, boys and girls clubs and Offices of community councils, non-profit civic, religious, welfare, or philanthropic organizations.”¹⁷ Giving the terms used their common, ordinary meanings, I am convinced that this definition is clear and unambiguous.

{¶38} The trial court found that CityLink’s use of the property was commercial. The term “commercial” as it is commonly understood means “of, in or relating to commerce,” “from the point of view of profit” and “having profit as the primary aim.” “Commerce” means “the exchange or buying and selling of commodities esp[ecially] on a large scale and involving transportation from place to place[.]”¹⁸

{¶39} CityLink’s own articles of incorporation show that it is a nonprofit entity, organized exclusively for charitable purposes. All of the organizations that would provide services at CityLink are philanthropic organizations, and their proposed activities are all philanthropic. Any other uses of the property, such as the café, the day-care center and the barber shop, would be to support CityLink’s philanthropic mission and to serve CityLink’s clients, not customers at large.

{¶40} The trial court found that “CityLink will provide residents of Cincinnati who struggle with substance abuse, cope with physical, mental, or educational deficiencies, and face constant financial difficulties, a chance to re-enter the Cincinnati economy as a productive member of the workforce.” CityLink’s own literature states that “CityLink Center is about care, offering life relief, relationship and real life change to people who struggle.” Further, “CityLink Center will provide

¹⁷ Cincinnati Municipal Code 1401-01-C14.

¹⁸ Webster’s Third New International Dictionary Unabridged (1961) 456.

relief via outstretched hands that will change the trajectory of people's lives by meeting their physical, emotional, mental and spiritual needs through the intervention of, and in the direction of Jesus Christ."

{¶41} Thus, CityLink would not be engaged in exchanging goods or services or in attempting to make a profit. CityLink would provide services as part of its charitable mission. Commercial enterprises, as they are commonly understood, focus on making a profit, not on rescuing those in need. Nothing in the record demonstrates that CityLink will be a commercial enterprise. To the contrary, the record shows that it is a nonprofit, noncommercial venture.

{¶42} The trial court also found that CityLink was not established primarily for the benefit of the community in which it was located. Specifically, the court stated that "CityLink is designed and planned to business for all residents of Cincinnati, not just the residents of the West End."

{¶43} First, this finding ignores the statements in CityLink's own literature, which shows that the facility would primarily benefit the West End neighborhood. In a letter addressed "Dear West End Neighbor," CityLink stated, "CityLink Center is a 5-acre neighborhood campus where you can explore new life skills, get access to important integrated services, and meet other people who are growing. * * * City Link will offer many opportunities for you to make the changes you'd like in your life." It went on to state, "CityLink will enhance the aesthetics of this block and help to build a stronger community and a safer neighborhood." In other literature aimed at the West End Community Council, CityLink stated, "The CityLink Center will bring resources to the West End and breathe new life into Bank Street * * * [m]ulti-million dollar investment into the neighborhood * * * [t]housands of volunteers

contributing to a revitalized community.” It is disingenuous for CityLink to now argue that it did not actually mean what it had said.

{¶44} Second, the trial court took a restrictive view of the term “community,” which the zoning code does not define, equating it with the term “neighborhood.” But those terms are not synonymous.

{¶45} “Community” means “a body of individuals organized into a unit,” or “the people living in a particular place or region and usu. linked by common interest[.]”¹⁹ “Neighborhood” means “the quality or state of being immediately adjacent or relatively near to something[.]” It also means “a number of people forming a loosely cohesive community within a larger unit (as a city, town) and living close or fairly close together in more or less familiar association with each other within a relatively small section or district[.]”²⁰

{¶46} The term “community” in the definition of a community service facility does not necessarily refer to the West End neighborhood. YMCAs and offices of nonprofit and religious organizations, which the zoning code specifically designates as community service facilities, may serve the populations of more than one neighborhood, but still primarily benefit the community as a whole. Therefore, CityLink is a community service facility even if it benefits and serves populations beyond that in the West End.

{¶47} CityLink points out that the MG district is the “least restrictive” of all the zoning classifications in the zoning code. But the code still states that the purpose of manufacturing districts in general is to (1) “[p]romote and preserve manufacturing areas as significant employment generators”; (2) “[f]acilitate the

¹⁹ Webster’s, *supra*, at 460.

²⁰ *Id.* at 1514.

necessary infrastructure to accommodate a wide variety of transportation, manufacturing and technology uses”; (3) “[a]ccomodate existing traditional industries, while anticipating new technologies and business service uses”; and (4) “[p]reserve appropriate location of industries that may have the potential to generate off-site impacts, while providing compatability in use and form.”²¹

{¶48} Specifically, the purpose of the MG district is “[t]o create, preserve and enhance areas that are appropriate for a wide variety of supporting and related commercial and manufacturing establishments that may have the potential to generate off-site impacts. Future development will accommodate heavy industrial and manufacturing uses, transportation facilities, warehousing and distribution and similar related supporting uses. These uses typically require sites with good transportation access. Uses that may inhibit industrial development are prohibited.”²²

{¶49} The zoning code excludes community service facilities from the MG district because they do not support manufacturing. The evidence before the ZBA unequivocally showed that CityLink’s uses would not benefit, facilitate, or enhance manufacturing and were generally inconsistent with industrial development. Further, the uses would not directly benefit those working in the surrounding manufacturing or industrial areas. Simply stated, CityLink does not belong in a manufacturing district. To conclude otherwise is to ignore the plain language of the zoning code. Whether another type of retail store is a permitted use is irrelevant and is not at issue in this case.

²¹ Cincinnati Municipal Code 1413.01.

²² Cincinnati Municipal Code 1413.03(b).

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{¶50} In undertaking its review of the decision of an administrative agency, the common pleas court must give due deference to the agency's resolution of evidentiary conflicts and may not, especially in areas of administrative expertise, substitute its judgment for that of the agency.²³ Further, courts should uphold a zoning board's interpretation of the zoning code where the interpretation is reasonable.²⁴ The bottom line is that the ZBA's decision was reasonable, and it was supported by a preponderance of the evidence. Thus, the trial court should have affirmed the ZBA's decision, regardless of whether the court agreed with it.

{¶51} In my view, the trial court abused its discretion in concluding that the ZBA's decision was "arbitrary, unreasonable and unsupported by a preponderance of substantial, reliable and probative evidence[.]" and it improperly substituted its judgment for that of the board. I would reverse the trial court's judgment and reinstate the decision of the ZBA.

Please Note:

The court has recorded its own entry on the date of the release of this decision.

²³ *Cash v. Cincinnati Bd. of Zoning Appeals* (1996), 117 Ohio App.3d 319, 322-323, 690 N.E.2d 593; *Elsaesser v. Hamilton Bd. of Zoning Appeals* (1990), 61 Ohio App.3d 641, 646, 573 N.E.2d 733.

²⁴ *LaMar Outdoor Advertising, Inc. v. Dayton Bd. of Zoning Appeals*, 2nd Dist. No. 20158, 2004-Ohio-4796, ¶6.