

STATE OF MICHIGAN
COURT OF APPEALS

ROY SMITH CO. and ROY SMITH
INVESTMENT CO.

UNPUBLISHED
October 11, 1996

Plaintiffs-Appellants,

v

No. 176318
LC No. 92-229133 CE

CITY OF DETROIT and AARO WASTE PAPER
COMPANY,

Defendant-Appellees.

Before: Reilly, P.J., and Michael J. Kelly, and C.L. Bosman,* JJ.

MICHAEL J. KELLY, J (dissenting)

This courts' review of the findings of the Circuit Court and BZA is de novo. Great weight is given to the findings of the lower court and the BZA. Appellate relief is available only when our review of the record convinces this court that it would have reached a different result. *Rogers v City of Allen Park* 186 Mich App 33, 36-37; 463 NW2d 431 (1990); *Cryderman v City of Birmingham* 171 Mich App 15, 20, 429 NW2d 625; 1988. Appellants do not argue that the BZA decision was contrary to law or based upon improper procedures.

The BZA required the facility to meet all health, safety, air pollution and traffic flow regulations. It conditioned it's grant with the imposition of 22 specific compliance requirements which must be met and maintained at all times. Participating agencies overwhelmingly supported the grant of the Use Permit.

The BZA decision was supported by competent, material and substantial evidence on the record, and represented a reasonable exercise of discretion granted to it by law. Where there is sufficient evidence, a reviewing court must not substitute its discretion for that of the administrative tribunal even if the court might have reached a different result. *Black v DSS* 195 Mich App 27, 30; 489 NW2d 493 (1992). A reviewing court must give due deference to the agency's regulatory expertise and may not invade the province of exclusive administrative fact finding by displacing an

* Circuit judge, sitting on the Court of Appeals by assignment.

agency's' choice between two reasonable differing views. *Gordon v Bloomfield Hills* 207 Mich App 231, 232 523 NW2d 806, (1994); *Davenport v Grosse Pointe Farms Zoning Bd.* 210 Mich App 400, 405-406, 534 NW2d 143 (1995)

I would affirm the Circuit Courts findings of 3/18/94 affirming the BZA decision granting appellee Aaro Waste Paper Co.'s special use permit to construct and operate the waste facility in question.

Dissenting

/s/ Michael J. Kelly