

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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HALDON MAUCHMAR, ESTHER MAUCHMAR,  
LEE GORTON, LINDA GORTON, DAVID WEAL,  
FREDERICK BOGDON, CATHY BOGDON,  
OWEN D. RAMEY, RANDY HUNT, KAREN  
HUNT, and PAUL BOGDON,

UNPUBLISHED  
January 17, 2003

Appellees,

v

No. 232741  
Allegan Circuit Court  
LC No. 00-027277-AZ

WATSON TOWNSHIP PLANNING  
COMMISSION and WATSON TOWNSHIP,

Nonparties,

and

WYOMING ASPHALT, INC.,

Intervenor-Appellant.

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Before: Meter, P.J., and Neff and Donofrio, JJ.

PER CURIAM.

Intervening appellant Wyoming Asphalt, Inc. appeals by leave granted the November 27, 2000, decision by Allegan Circuit Court reversing the Watson Township Planning Commission's grant of a special use permit.<sup>1</sup> We reverse and remand.

I

Wyoming applied for a special land use permit to operate a gravel mine on land it owned in the township. After a series of meetings over the course of several months, on June 28, 2000, the planning commission voted in a 4-2 decision to approve Wyoming's special use permit

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<sup>1</sup> To avoid any confusion relating to the parties by their lower court designation, we will refer to appellees as the "landowners," Watson Township Planning Commission as the "planning commission," Watson Township as the "township," and Wyoming Asphalt as "Wyoming."

subject to various conditions. Wyoming also entered into an agreement with the township to improve both 13th Street and 117th Avenue, which served as the primary access to the mine site.

On July 19, 2000, the landowners appealed the planning commission's approval of the special use permit to the circuit court. The landowners generally argued that the findings of fact adopted by the planning commission were not supported by competent, material and substantial evidence. The trial court essentially agreed and reversed the planning commission's approval of the special use permit on the basis that certain findings of the commission were conclusory and unsupported by the record and that the standards and requirements for approval of a special use permit were not met.

## II

The planning commission's decision is a final administrative decision subject to review by the circuit court pursuant to Const 1963, art 6, § 28. *Silver Creek Twp, v Corso*, 246 Mich App 94, 98; 631 NW2d 346 (2001); *Carleton Sportsman's Club v Exeter Twp*, 217 Mich App 195, 200; 550 NW2d 867 (1996).<sup>2</sup> “[W]hen reviewing a lower court's review of agency action this Court must determine whether the lower court applied correct legal principles and whether it misapprehended or grossly misapplied the substantial evidence test to the agency's factual findings.” *Boyd v Civil Service Comm*, 220 Mich App 226, 234; 559 NW2d 342 (1996). The latter standard is indistinguishable from the clearly erroneous standard. *Id.*

## III

On appeal, Wyoming asserts that the trial court applied the wrong standard of review and incorrectly determined that the planning commission's grant of a special use permit was not supported by competent, material and substantial evidence. Although we agree that in rendering its decision, the circuit court articulated an incorrect statement of the scope of review of a final administrative decision, we are not convinced that the error was dispositive in the court's ultimate review of the planning commission's decision. Nonetheless, because we are unable to determine whether the court's decision was based in any way on the erroneous standard, we reverse and remand for reconsideration under *Boyd, supra*, to ensure that the circuit court applied correct legal principles and did not misapprehend or grossly misapply the substantial evidence test.

## A

As the circuit court observed at the outset of its opinion, the township's zoning ordinance lacks a provision for appeal of the planning commission's decision to the township zoning board of appeals (ZBA). Consequently, the statutorily prescribed provisions for judicial appeal, MCL

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<sup>2</sup> We do not address the correctness of the holding in *Carleton, supra*, which is not at issue in this appeal. See LeDuc, Michigan Administrative Law, § 807, ch 8, pp 561-562. (Calling into question the legal basis for judicial review of a planning commission decision absent a statutory grant of subject matter jurisdiction.)

125.293a,<sup>3</sup> do not apply, and the planning commission's decision is subject to appellate review under Const 1963, art 6, § 28. *Silver Creek Twp, supra; Carleton, supra*. Const 1963, art 6, § 28 provides in relevant part:

All final decisions, findings, rulings and orders of any administrative officer or agency existing under the constitution or by law, which are judicial or quasi-judicial and affect private rights or licenses, shall be subject to direct review by the courts as provided by law. This review shall include, as a minimum, the determination whether such final decisions, findings, rulings and orders are authorized by law; and, in cases in which a hearing is required, whether the same are supported by competent, material and substantial evidence on the whole record.

In its opinion, the trial court stated:

The scope of review by the court is de novo on the record made before the Planning Commission. The Court is not free to receive further evidence, however, it is free to draw its own conclusions from the evidence presented below. *Quigley v Dexter Twp*, 390 Mich 707, 710[; 213 NW2d 166] (1973).

Contrary to the circuit court's pronouncement, the circuit court was obligated to apply the substantial evidence standard, rather than conduct a review de novo of the planning commission's findings. *Boyd, supra* at 234 n 4. The proper review standard to be applied by the circuit court was whether the decision was *authorized by law* and the findings were *supported by competent, material and substantial evidence on the whole record*. Const 1963, art 6, § 28; *Carleton, supra* at 201.

Whether a decision was "authorized by law" under the constitutional standard is subject to various interpretations by the courts, LeDuc, Michigan Administrative Law, § 9:05, ch 9, pp 607-609, but has recently most reasonably been interpreted by this Court to mean "allowed, permitted, or empowered by law." *Northwestern Nat'l Casualty Co v Comm'r of Ins*, 231 Mich App 483, 488; 586 NW2d 563 (1998); see LeDuc, *supra*, § 9:05, pp 608-609. An agency decision that is in violation of a statute or the constitution, is in excess of the statutory authority or jurisdiction of the agency, is made upon unlawful procedures resulting in material prejudice, or is arbitrary and capricious is a decision that is not authorized by law. *Northwestern Nat'l Casualty, supra*.

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<sup>3</sup> With respect to judicial review of ZBA decisions, pursuant to MCL 125.293a, the circuit court must consider whether the decision (1) complies with the constitution and laws of the state, (2) is based on proper procedure, (3) is supported by competent, material, and substantial evidence on the record, and (4) represents a reasonable exercise of discretion. MCL 125.293a(1); *Reenders v Parker*, 217 Mich App 373, 378; 551 NW2d 474 (1996). Further, if the court finds that the record is inadequate for the statutorily-required review or finds that there is additional material evidence, which for good reason was not presented, the court shall order further proceedings before the ZBA. MCL 125.293a(2).

Unlike the “authorized by law” test, the substantial evidence prong of the constitutional standard is properly applied when judicial review involves an evidentiary matter. LeDuc, *supra*, § 9:13-9:15, pp 619-624 and § 9:23, pp 647-649.. Thus, findings of fact are upheld if supported by competent, material and substantial evidence on the whole record. *MERC v Detroit Symphony Orchestra, Inc*, 393 Mich 116, 121; 223 NW2d 283 (1974); *Boyd, supra* at 234 (this Court must determine whether the lower court misapprehended or grossly misapplied the substantial evidence test to the agency’s *factual findings*) (emphasis added).

“‘Substantial evidence’ is evidence which a reasonable person would accept as sufficient to support a conclusion. While this requires more than a scintilla of evidence, it may be substantially less than a preponderance.” *Dowerek v Oxford Charter Twp*, 233 Mich App 62, 72; 592 NW2d 724 (1998).

Under the substantial evidence test, the circuit court’s review is not de novo and the court is not permitted to draw its own conclusions from the evidence presented to the planning commission. Deference must be given to an agency’s findings of fact. *THM, Ltd v Comm’r of Ins*, 176 Mich App 772, 776; 440 NW2d 85 (1989). When there is substantial 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 Dep’t of Social Services*, 195 Mich App 27, 30; 489 NW2d 493 (1992). A court may not set aside findings merely because alternative findings also could have been supported by substantial evidence on the record. *In re Payne*, 444 Mich 679, 692 (Boyle, J.), 698 (Riley, J.); 514 NW2d 121 (1994).

Because the circuit court articulated an incorrect legal principle and misapprehended the scope of review of the planning commission’s factual findings, we remand this case for the court to reconsider its determinations under the review standards outlined above. *Boyd, supra* at 234.<sup>4</sup>

## B

In light of our above disposition, we do not address Wyoming’s argument that the planning commission’s grant of the special use permit was supported by competent, material and substantial evidence. However, as a matter of law, we are not convinced that the circuit court clearly erred in reversing the planning commission’s decision where the court, in essence, concluded that the commission failed to properly consider the required standards and criteria under the zoning ordinance.

Pursuant to MCL 125.286b(1), the Watson Township Zoning Ordinance, § 9.18, sets forth the requirements for the application, review and approval of special use permits.

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<sup>4</sup> Wyoming also argues that the circuit court erred in relying on case law pertaining to judicial review of variances, the standards for which Wyoming contends differs from judicial review of special use permits. However, we disagree that this distinction is necessarily dispositive. It is the context of the authority providing for judicial review that dictates the standard and scope of judicial review, rather than merely the substantive nature of the matter being reviewed. See LeDuc, *supra*, §§ 9:01, 9:27-9:28, pp 597-598, 652-655.

Specifically, Section 9.18(c)(3) applies to gravel processing, mining and related mineral extraction activities. Section 9.18(c)(3)f)[p 42]<sup>5</sup> provides that after receiving an application for a special exception permit, the planning commission shall hold a public hearing. Section 9.18(c)(3)f3)[p 42] states:

Following such hearing, said Planning Commission shall grant or deny the application and set forth the reasons for its decision. Such recommendation shall be based upon the criteria set forth within the Ordinance and shall be based, in addition, on a consideration of the following:

- a) the most advantageous use of the land, resources, and property
- b) the character of the area in question and its peculiar suitability, if any, for particular uses
- c) conservation of property values, as well as natural resources and the general and appropriate trend and character of development in the subject area
- d) the protection and preservation of the general health, safety and welfare of the township
- e) the scarcity or value of the minerals sought to be mined as compared with the effect upon adjacent community of the proposed operations
- f) whether or not the operations were previously in existence prior to the adoption of the text provision concerning the same and the extent and character of such previous operations[.]

The trial court essentially concluded that the planning commission failed to properly consider subsections d) and e) as required by law. In regard to subsection d), the planning commission's finding was merely that "[r]easonable safeguards have been required that will adequately protect health, safety and welfare." The trial court found that this finding was conclusory and inadequate to allow meaningful judicial review; further, the finding was not supported by competent, material, and substantial evidence on the record.

Similarly, in response to subsection e), the planning commission's finding merely stated that "[p]otential short term negative impacts will be held to a minimum." The trial court ruled that this criterion required a balancing test, weighing the scarcity or value of the gravel to be mined against the effect on the community. The trial court noted that the planning commission concluded that the gravel was valuable; however, there was insufficient evidence in the record to

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<sup>5</sup> We note, as did the trial court, that the Watson Township Ordinance contains non-standard section numbering for its many subsections. For ease of reference, we will also include the page number in citing a particular subsection.

support such a conclusion. The court concluded that the planning commission's finding was not supported by competent, material, and substantial evidence on the record.

The zoning ordinance, § 9.18(c)(3)f3)[p 42], provides that the planning commission "shall grant or deny the application and *set forth the reasons for its decision,*" and further that the decision "*shall be based upon the criteria set forth within the Ordinance and shall be based, in addition, on a consideration of [the criteria in subsection f)3)]*" (emphasis added). The commission's written decision listed its findings with respect to each specific standard or requirement of § 9.18. The circuit court was obligated to determine both whether the planning commission's decision was authorized by law and whether the factual findings and conclusions were supported by competent, material and substantial evidence on the whole record. If the court determines by the planning commission's lack of factual findings and the evidence that the commission failed to properly consider a particular criterion or standard as required by law, then the decision may be viewed as "not authorized by law,"<sup>6</sup> and reversal is proper. *Northwestern Nat'l Casualty Co, supra* at 488-489. In that instance, further factual findings by the planning commission are unnecessary to the court's disposition. Further, the court was not obligated to remand the decision to the planning commission for further findings merely because the court found the planning commission's findings insufficient.

#### IV

We remand this case to the circuit court for a determination under the proper review standard, i.e., whether the planning commission's decision was authorized by law and whether the factual findings were supported by competent, material and substantial evidence on the whole record. The circuit court shall submit its decision, following its reconsideration, to this Court within thirty-five days of the release of this opinion. We retain jurisdiction.

Reversed and remanded for further proceedings consistent with this opinion.

/s/ Patrick M. Meter  
/s/ Janet T. Neff  
/s/ Pat M. Donofrio

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<sup>6</sup> We note that on remand this same analysis applies to the circuit court's consideration of § 9.17 of the zoning ordinance concerning Wyoming's site plan. To the extent that § 9.17 sets forth standards or requirements for the grant of a special use permit, the court may properly review the planning commission's action pertaining to § 9.17.