

STATE OF MICHIGAN
COURT OF APPEALS

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UNPUBLISHED
March 20, 2003

Appellees,

v

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

WATSON TOWNSHIP PLANNING
COMMISSION and WATSON TOWNSHIP,

Nonparties,

AFTER REMAND

and

WYOMING ASPHALT, INC.,

Intervenor-Appellant.

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

PER CURIAM.

This case is before us after remand to the circuit court to “determine 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.”¹ We affirm.

The trial court complied with this Court’s order and filed an Opinion and Order After Remand dated February 21, 2003. The trial court reevaluated the evidence pursuant to the proper standard of review and applied the substantial evidence test, concluding that the planning commission failed to support its factual findings and conclusions with substantial evidence and

¹ *Mauchmar v Wyoming Asphalt, Inc.*, unpublished order of the Court of Appeals, entered January 17, 2003 (Docket No. 232741).

failed to properly consider all of the criteria required by the zoning ordinance. The trial court on remand held that these failings of the planning commission resulted in a decision which was not authorized by law and, accordingly, the decision was again reversed.

As noted in our original opinion in this case,

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.²

The trial court's opinion on remand confirms that the original error regarding the standard of review to be applied to the planning commission's decision was not the dispositive factor in the court's conclusion that the decision was not sustainable. Const 1963, art 6, § 28. That is, on review under the proper standard, the court determined that the decision was not authorized by law because the planning commission failed to properly consider all of the criteria required by the zoning ordinance for the issuance of a special use permit, and because it failed to support its factual findings and conclusion with competent, material, and substantial evidence. Specifically, the court held:

The planning commission's failure to support it's [sic] factual findings and conclusion with substantial evidence as to sec 9.17(d)(1)-(7) [p. 32] and 9.18(c) f) 3) subsection d) and e) [p. 42] as stated above, leads this court to conclude the planning commission failed to properly consider all of the required criteria required by the zoning ordinance and therefore made a decision not authorized by law.

In essence, the trial court determined that in failing to consider all of the criteria required by the zoning ordinance (as specifically enumerated in both the trial court's original opinion and its opinion on remand) in granting the special use permit, the planning commission exceeded its authority. As noted in our earlier opinion,

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 Cas Co v Comm'r of Ins*, 231 Mich App 483, 488; 586 NW2d 563 (1998).³

² *Mauchmar v Wyoming Asphalt, Inc.*, unpublished opinion of the Court of Appeals, issued January 17, 2003 (Docket No. 232741)

³ *Mauchmar v Wyoming Asphalt, Inc.*, unpublished opinion of the Court of Appeals, issued January 17, 2003 (Docket No. 232741).

Thus, the trial court applied the proper standard of review to the planning commission's decision and further reiterated its finding that the planning commission failed to support its decision under the substantial evidence test. *Carleton Sportsman's Club v Exeter Twp.*, 217 Mich App 195, 203; 550 NW2d 867 (1996). The court did not misapprehend or misapply the substantial evidence test to the planning commission's factual findings. *Boyd v Civil Service Comm*, 220 Mich App 226, 234; 559 NW2d 342 (1996).

Affirmed.

/s/ Patrick M. Meter

/s/ Janet T. Neff

/s/ Pat M. Donofrio