IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY OHIO

GLOBAL COUNTRY OF WORLD PEACE Plaintiff, Vs. CITY OF MAYFIELD HEIGHTS, et al., Defendants.	)	Case No. 655897 JUDGMENT AND OPINION

Shirley Strickland Saffold, J.:

JUDGMENT

Appellant is the owner of U-7 zoned property located in Mayfield Heights. before the Mayfield Heights Planning Commission on numerous occasions. The proposal substantially changed at nearly every meeting. Ultimately the Planning Commission determined that Appellant's proposal did not meet the requirements outlined in Mayfield Heights City Ordinance 1177.03.

Appellant then brought the matter before the Mayfield Heights City Council. In a meeting held on March 24, 2008, the Council denied Appellant's proposal. Appellant appealed to this Court on April 4, 2008 pursuant to Ohio Revised Code Section 2506.01. Appellant advanced six assignments of error, each of which will be addressed by this Court.

ASSIGNMENT OF ERROR NO. 1: THE CITY OF MAYFIELD HEIGHTS COUNCIL'S AND PLANNING COMMISSION'S DECISIONS TO DENY APPELLANT'S CONFERENCE CENTER PLAN SHOULD BE REVERSED

BY THE PREPONDERANCE OF SUBSTANTIAL, CREDIBLE, RELIABLE, AND PROBATIVE EVIDENCE IN THE RECORD; IN FACT NO EVIDENCE IN THE RECORD SUPPORTS THOSE ADMINISTRATIVE DENIALS.

When reviewing this appeal, the Court must determine whether there exists a preponderance of reliable, probative and substantial evidence to support the judgment rendered by the Mayfield Heights City Council. *Dudukovich v. Lorain Metropolitan Housing Authority*, 58 Ohio St. 2d 202, 207 (1979). The Ohio Supreme Court provided lower courts with guidance for reviewing administrative decisions when it stated,

> "we caution, however, to add that this does not mean that the court may blatantly substitute its judgment for that of the agency, especially in areas of administrative expertise. The key term is "preponderance." If a preponderance of reliable, probative and substantial evidence exists, the Court of Common Pleas must affirm the agency decision; if it does not exist, the court may reverse, vacate, modify or remand." *Id.*

Appellant's initial proposal in April of 2006 consisted of a restaurant and day spa. Appellant also stated that there would be a store in the building that would sell nutritional supplements. The proposed uses submitted by Appellant clearly failed to comply with Ordinance 1177.01. The permitted uses in a U-7 zoned district are as follows:

(1) "Headquarters or executive offices for businesses or administrative entities, as described in Section 1177.01 and complying with the criteria set forth in this chapter.
(2) Medical offices. A medical office is a facility (building or portion thereof) 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 or the structure; and shall not include any activities, facilities or equipment that are not typically in an office building or that are incompatible

(4) Any other main use not listed in Section 1177.01 and determined to be similar by the Planning Commission may be permitted, in which event it shall comply with all other applicable sections."

In June of 2006, Appellant significantly altered the proposal to include a conference center and a school for children grades nine through twelve. The previously mentioned spa and store were not included in the proposal. The City felt children attending school where adults would come in to receive spa services jeopardized the safety of the children. Further, the City questioned Appellant as to what money the school would take from Mayfield Heights Schools. Appellant had not sufficiently researched the issue and could not provide a definitive answer.

In December of 2007, Appellant once again returned to the Planning Commission. This time Appellant proposed two corporate wellness centers, one for men and one for women. In addition, the high school had been eliminated from the project and was replaced with an adult architecture program. The City remained concerned that the majority of the project appeared to be the spa, which did not conform to the zoning requirements.

Appellant stated holistic medicine would be practiced at the spa; however, holistic

testify which procedures would be practiced in the spa rooms. One of the buildings would also house the corporate headquarters. Appellant's corporate headquarters would also be housed on this site. This conflicted with previous testimony that the plan would contain very few administrative offices, mostly classrooms and the spa. The City argued

within the code, Appellant had minimized that component and attempted to categorize it differently.

Appellant's brief regarding the first assignment of error focuses solely on the lack of evidence provided by the City of Mayfield Heights. Appellant is attempting to have its plan approved; therefore, the burden falls on it to produce evidence demonstrating the proposed use conforms to the zoning requirements. Appellant had ample opportunity to bring in experts to support the proposal and failed to do so.

Appellant argued their wellness center met the medical office use allowed by

the fact that the types of therapies to be performed at Appellant's center do constitute the practice of medicine. Initially, Appellant stated there would be a physician on staff. However, it was later revealed the physician would not be a permanent position, but rather a retired physician who would oversee the facility on a part-time basis. The

supervision at the wellness center. Further, under Section 1177.03, a facility does not qualify under the medical exception if it is an urgent care facility or one that regularly accepts walk-in clients. Appellant stated it is not opposed to accepting walk-ins if they fit its schedule. It is unclear what portion of the clientele would simply walk-in and be seen by the doctor.

When looking at all the evidence presented by the Appellant, the City determined the project had simply been worded to fit the applicable ordinances. Specifically, the conference and wellness centers each had a second floor consisting of nine spas. The

the predominant use of the buildings had always been a spa. Commission members expressed the concern that the plan was inconsistent and morphed to conform to the language of the ordinance. This assignment of error is without merit and is hereby overruled.

ASSIGNMENT OF ERROR NO. 2: APPELLEES' FAILURE TO FILE CONCLUSIONS OF FACT AS REQUIRED BY R.C. 2506.03(A)(5) CONSTITUTES REVERSIBLE ERROR, WARRANTING REVERSAL OF APPELLEES DENIAL OF GLOBAL'S CONFERENCE CENTER PLAN APPROVAL REQUEST.

Appellant argues that the Appellee's failure to file Conclusions or Findings of Fact requires an automatic reversal of its decision. There is no merit to this argument. Ohio Revised Code Section 2506.03 does state that the trial court is confined to the transcript when reviewing the decision unless certain conditions apply. One of the listed conditions is when the administrative body fails to file conclusions of fact to support their final order. While it is true the Appellee failed to file conclusions of fact, the statute does not require automatic reversal as the Appellant suggests. Due to Appellee's failure to file conclusions of fact, Appellant's remedy was to file a request for an evidentiary hearing pursuant to Ohio Revised Code Section 2306.03(B). Appellant never made such a request.

As the sole basis for Appellant's argument it cites the 11th District case, *Aria's Way v. Board of Zoning Appeals.* See *Aria's Way, LLC. V. Board of Zoning Appeals* (11th Dist. 2007), Ohio App. 3d 73. In *Aria's Way*, the appellant was denied a zoning variance and appealed to the trial court. At the time the appeal was filed, the Board of Zoning had not yet filed its conclusions of facts, but intended to do so. The Board of

would be delayed, the appellant requested that a hearing be held where they could submit additional evidence in response to the findings filed by the Board. The Court denied the request for hearing. *Id.* at 76.

This case is factually different in two main respects. First, the Appellee did not file findings of fact and has never filed a motion with the court to do so. The Appellant in *Aria's Way* was at a disadvantage by the late findings of fact by the Board because it gave them less time to respond. There was no such disadvantage in this case. Secondly, the appellant in *Aria's Way* requested an evidentiary hearing, which was denied. Appellant in this case has never requested a hearing. Appellant is provided the opportunity to request a hearing under the statute and failed to do so. As such, a reversal on this basis would not be appropriate. This assignment of error is hereby overruled.

APPELLANT'S ASSIGNMENT OF ERROR NO. 3: THE CITY OF MAYFIELD HEIGHTS COUNCIL'S AND PLANNING COMMISSION'S DECISION TO DENY APPELLANT'S CONFERENCE CENTER PLAN APPROVAL APPLICATION SHOULD BE REVERSED BECAUSE APPELLANT'S CONFERENCE CENTER PLAN APPROVAL APPLICATION IS SUPPORTED BY THE PREPONDERANCE OF SUBSTANTIAL, CREDIBLE, RELIABLE, AND PROBATIVE EVIDENCE IN THE RECORD.

The Court specifically addressed why the plan was not supported by a preponderance of substantial, credible, reliable, and probative evidence in Appellant's assignment of error number one. Therefore, this assignment of error is overruled.

APPELLANT'S ASSIGNMENT OF ERROR NO. 4: THE CITY OF MAYFIELD HEIGHTS COUNCIL'S AND PLANNING COMMISSION'S DENIAL OF THE AUTHORIZED USES REQUESTED BY APPELLANT SIMPLY BECAUSE THE COUNCIL AND PLANNING COMMISSION PREFERRED THAT APPELLANT'S LAND NOT BE USED AS ZONED SHOULD BE REVERSED BECAUSE THE COUNCIL'S AND PLANNING COMMISSION'S ACTIONS

In support of this argument, Appellant relies on *Hydraulic Press Brick Company v. Council of City of Independence*. See *Hydraulic Press Brick Company v. Council of City of Independence* (8th Dist. 1984) 16 Ohio App. 3d 204. In *Hydraulic*, the appellant sought to construct a gas well on property zoned for industrial and commercial use. The appellant presented a topographical map which clearly illustrated the appellant met all of

that the project did not comply with the zoning requirements, but rather, that the project did not fit with the city's master plan.

In the instant case there is ample evidence to support the denial of the proposal based upon its failure to meet the zoning requirements. The proposal did not clearly meet the statute as it did in *Hydraulic*. The City did not deny the proposal based upon it not fitting into the overall scheme of the area. The assignment of error is without merit and is overruled.

APPELLANT'S ASSIGNMENT OF ERROR NUMBER 5: APPELLEE'S ARBITRARY AND BASELESS DISAPPROVAL OF GLOBAL'S PLAN VIOLATES GLOBAL'S CONSTITUTIONAL RIGHT TO USE ITS PROPERTY AS ZONED AND, THEREFORE, SHOULD BE REVERSED.

Appellant cites, *Shemo v. The City of Mayfield Heights* for the proposition that property rights are fundamental and the government must action with caution when governing these rights. See *Shemo v. The City of Mayfield Heights*, 95 Ohio St. 3d 59 (2002). In *Shemo* the court concluded that in order for a zoning ordinance to be unconstitutional the ordinance must not, "substantially advance legitimate state interests, or denies the landowner of all economically viable use of the land." *Id*

The *Shemo* Court concluded that the property owner in that case was not deprived of all economically viable use. *Id.* at 65. In the instant case, the City may have

however, that does not mean there is no other economically viable use for the property. Permitted uses include medical offices and executive headquarters. There are many possibilities to benefit and profit from this property.

Appellant can still prevail under the *Shemo* test if it can demonstrate that the zoning ordinance does not substantially advance legitimate state interests. The City needs to demonstrate that the ordinance does not advance any health, safety, or welfare concern. *Id.* at 64. The testimony concerning the type of medical professionals and when they would be present changed several times. Further, classes that were to be offered at the location were not accredited by the state. The type of classes to be offered also changed several times. At one point, Appellant even proposed a school for grades 9-12. The City has legitimate interests in the health and education of its citizens. As the testimony consistently changed on these issues, the City's concerns in these areas were justified and this assignment of error is overruled.

APPELLANT'S ASSIGNMENT OF ERROR NUMBER 6: THE CITY OF MAYFIELD HEIGHTS COUNCIL'S AND PLANNING COMMISSION'S DENIAL OF APPELLANT'S PLAN SHOULD BE REVERSED BECAUSE THE CITY'S LAW DIRECTOR, IMPROPERLY CONDUCTED INVESTIGATIONS OUTSIDE OF THE ADMINISTRATIVE RECORD AND THOSE IMPROPER INVESTIGATIONS ADVERSELY AFFECTED THE COUNCIL'S AND PLANNING COMMISSION'S DECISIONS AND DEPRIVED GLOBAL OF ITS BASIC DUE PROCESS RIGHT TO A FAIR HEARING.

At the Council meeting held on March 24, 2008, the law director does make

record. However, the law director specifically stated that he believed the Appellant was an organization that had interesting ideas and was well received throughout the country. The law director stated that the problem was that the plan did not meet the zoning requirements. It was also clear that the law director had thoroughly reviewed the records and the information submitted by Appellant before reaching this conclusion.

The Court notes, after a thorough review of the transcripts provided from the council meetings, that the City did inquire into some irrelevant matters. Appellant's

into the zoning established in Mayfield Heights. However, it is clear after reviewing the record that these questions had no impact on the outcome of the proceedings. It 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.

Therefore, Appellant's assignments of error are overruled and the judgment of the Mayfield Heights City Council is hereby Affirmed.

IT IS SO ORDERED

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Date

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