

IN THE COURT OF COMMON PLEAS
MEDINA COUNTY, OHIO

COMMON PLEAS COURT
2012 JAN 11 PM 3:02

MEDINA OHIO INVESTORS, LTD.,)

Appellant,)

vs.)

PROGRESSIVE MEDINA REAL)
ESTATE, LLC, et al.,)

Appellees.)

CASE NO.: 11CIV0772

JUDGE COLLIER

**JUDGMENT ENTRY WITH
INSTRUCTIONS FOR SERVICE**

DAVID S. WADSWORTH
MEDINA COUNTY
CLERK OF COURTS

This matter is before the Court on the Appellant Medina Ohio Investors, Ltd.'s (hereinafter, the "Appellant") appeal of the Resolution of the City of Medina Planning Commission (hereinafter, the "Commission") dated April 19, 2011, wherein the Commission granted a conditional use certificate to Appellee Progressive Medina Real Estate, LLC (hereinafter, "Appellee"). The Appellant argues the decision of the Commission was arbitrary, capricious, unreasonable and unsupported by a preponderance of substantial, reliable and probative evidence.

The matter before the Court is an administrative appeal pursuant to R.C. 2506.01, et seq. The Court established a briefing schedule for this administrative appeal and parties subsequently submitted timely briefs in support of their respective arguments. In conducting a review of this matter, the Court "considers the whole record ... and determines whether the administrative order is unconstitutional, illegal, arbitrary, capricious, unreasonable, or unsupported by the preponderance of substantial, reliable, and probative evidence." *Henley v. City of Youngstown Bd. of Zoning Appeals*, 90 Ohio St. 3d 142, 147, 735 N.E.2d 433 (2000). Upon consideration of the pleadings, briefs, and upon careful independent review of the complete record of proceedings below provided to the Court in this matter, the Court finds as follows:

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The Court previously set forth the operate facts of this matter in its Journal Entry dated September 13, 2011. This appeal follows a Resolution dated April 19, 2011 whereby the Commission in Case No. 9 11-08 approved the Appellee's application for conditional use and site plan for the property located at 699 E. Smith Road, Medina, Ohio 44256. The application stated that the property would be used as a nursing home. The Appellant is an adjacent landowner who operates a nursing home on the property located at 806 E. Washington St., Medina, Ohio 44256. Prior to the issuance of the Resolution, the Commission conducted public hearings on March 10, 2011 and April 14, 2011. The Appellant did not appear at either hearing. This Court previously denied the Appellant's motion for leave to introduce additional evidence pursuant to R.C. 2506.03 for the reasons outlined in the September 13, 2011 Journal Entry.

The Appellant argues that "the Commission failed to consider all of the general standards pertinent to the conditional use requested by Appellee, despite its obligation to do so under [Section 1153.03] the Medina City Code." Section 1153.03(a), of the Medina City Zoning Code (hereinafter, the "Zoning Code"), titled "Planning Commission's Duties," states that:

The Planning Commission shall establish beyond reasonable doubt that the general standards and the specific standards pertinent to each use indicated herein are satisfied by the completion and operation of the proposed development. The Planning Commission may also impose such additional conditions and safeguards deemed necessary for the general welfare, for the protection of individual property rights and for the insuring that the intent and objectives of this Zoning Ordinance will be observed.

The type of evidence the Appellant desires to introduce should not be considered when deciding zoning matters. The Appellant specifically seeks to introduce evidence regarding the "economic viability of the proposed nursing home, or the over-concentration of nursing home rooms in the vicinity." Section 1153.03(b) of the Zoning Code states that, when deciding zoning matters, the Commission shall consider, in pertinent part, whether the proposed use will be

“hazardous or disturbing to existing or future neighborhood uses” or “detrimental to property in the immediate vicinity or to the community as a whole.”

The Appellant claims this includes evidence regarding competition and economic viability of the surrounding businesses based on that competition. This Court does not agree. The Commission properly considered a multitude zoning issues, which included those issues relating to grading, landscaping, material use, signage, setbacks, utility connections, traffic concerns and lighting. The Commission is not permitted under Section 1153.03(b) of the Zoning Code to consider the effect of reduced competition when deciding zoning matters. The increased economic competition as a consequence of another adjacent nursing home establishing itself at this location will not be hazardous or disturbing to existing or future neighborhood uses.

Further, an additional nursing home in the area will not be detrimental to property in the immediate vicinity or the community as a whole. If the Appellant operating a nursing home at 806 E. Washington St., Medina, Ohio 44256 is not detrimental to property in the immediate vicinity or the community as a whole, there is no reason to suspect that the Appellee’s operation of an adjacent nursing home would be detrimental to surrounding properties or the community. The Appellant’s arguments regarding competition and economic viability concerns are misplaced. The issue is simply not a zoning issue. The issue is one of supply and demand economics that business owners must consider when deciding whether or not to locate their business at a certain location. The Appellee clearly believes that the operation of a nursing home at 699 E. Smith Road, Medina, Ohio 44256, would be profitable, despite the fact that the Appellant operates an adjacent facility that will be in direct competition. The Commission would be permitted, if the Court were to accept the Appellant’s argument, to prevent one fast food restaurant from opening up next to another fast food restaurant simply because one

restaurant might take business away from the other or the increased competition may cause both restaurants to close down.

Additionally, the Commission heard evidence that the Director of the Ohio Department of Health issued a Certificate of Need (hereinafter, "CON"), which found that there was a need in the community for the Appellee's nursing home. The Appellant's argument that this is about more than simply increased competition is not compelling. The Appellant is concerned there will be a detrimental impact to the community as a whole "if one or both facilities were forced to close business," thereby "leaving two large buildings sitting vacant and susceptible to vandalism and crime" and cause the "displacement of elderly community members living at the facilities." Again, as unfortunate as the scenario the Appellant paints to the Court would be, this is simply not a zoning issue for the Commission to consider. Competition inherently creates the risk that one, both or all of the surrounding business in competition with one another will fail due to oversaturation. Even if the Appellant had been present at the public hearings to present evidence on this issue, the Commission was neither required or permitted to consider it when deciding this zoning issue.

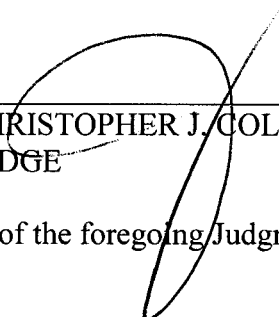
Upon consideration of the pleadings, briefs, and upon careful independent review of the complete record of proceedings provided to the Court in this matter, the Court finds no error of law or fact. The administrative decision, when considered as a whole, is properly based upon consideration of all the evidence and law presented. Furthermore, the Court cannot substitute its judgment for that of the Commission. The Commission was not required under the law to reach a particular decision with regard to this particular conditional use permit. The Commission was only required to support its decision with substantial, reliable and probative evidence.

The record and content of the public hearing establishes that the Commission's Resolution was not arbitrary, capricious or unreasonable. There is nothing before the Court to suggest that the Commission did not consider proper evidence or all the evidence presented as required by the Zoning Code when it issued the Resolution. The Commission was not required to issue written findings relating to each general standard found in Zoning Code 1153.03(b). The record below establishes that the Commission considered the criteria and general standards set forth in the Zoning Code. Under the facts of this case, the Court finds the Resolution was supported with substantial, reliable and probative evidence.

Accordingly, the Resolution of the City of Medina Planning Commission dated April 19, 2011, wherein the Commission granted a conditional use certificate to the Appellee is affirmed in full.

Costs are assessed to the Appellant.

IT IS SO ORDERED.



 CHRISTOPHER J. COLLIER
 JUDGE

The Clerk of Courts is instructed to send notice of the foregoing Judgment Entry to the following parties or their counsel of record.

- Atty. Genshaft
- Atty. Markowitz
- Atty. Huber

Notice of this Entry was mailed by the Clerk of Courts on Jan. 13, 2012.



 DEPUTY CLERK OF COURT

"FINAL APPEALABLE ORDER"