IN THE CIRCUIT COURT FOR FREDERICK COUNTY, MARYLAND

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Petition of:	*	
Social Betterment Properties International.	*	
For Judicial Review of the Decision of the Frederick County Council	*	
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In the Case of	*	Case No. 10-C-15-001859
The Application for Designation of "Trout Run/Richey Lodge," Located at 12929 Catoctin Hollow Road, Near Thurmont, as a Listed Site on the Frederick County Register of Historic Places, Application No. CR-14-03	*	
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OPINION

FACTUAL AND PROCEDURAL BACKGROUND

Petitioner purchased the Trout Run/Richey Lodge property in September 2013 with the intention of using the property to operate a group home for a drug and alcohol abuse rehabilitation facility. The property is zoned for resource conservation which prohibits the use to which Petitioner plans for the property. Thus, Petitioner embarked on the process of obtaining a special exception under Frederick County Code § 1-19-8.600 to allow Petitioner's proposed use of the property. Frederick County Code § 1-19-8.600 provides that the Frederick County Board

of Appeals may grant a special exception in any zoning district for conversion of an existing historic structure or site; defining historic structure or site as only an historic structure or site listed on or eligible for the National Register of Historic Places, the Maryland Register of Historic Places, or the Frederick County Register of Historic Places (hereinafter "FCRHP"). Under § 1-19-8.600, applicants are referred to the Frederick County Historic Preservation Commission (hereinafter "HPC") for a determination of the property's eligibility for placement on the FCRHP. The historic structure or site must be placed on the FCRHP before the special exception can take effect. *Id.*

Petitioner began this process on July 8, 2013, by submitting an application to the Frederick County Board of Appeals for a special exception for conversion of an existing historic site, the Trout Run/Richey Lodge property, into a group home for an alcohol and drug abuse treatment facility. On August 5, 2013, Petitioner submitted a request to the Historic Preservation Committee HPC for a determination of the property's eligibility for placement on the FCRHP in connection with Petitioner's special exception application. The HPC held a public hearing on August 14, 2013. Thereafter, the HPC voted unanimously that the Trout Run/Richey Lodge Property is eligible for placement on the FCRHP, and subsequently issued a written letter noting the property's eligibility on August 19, 2013.

On October 1, 2013, following a full evidentiary hearing, the Frederick County Board of Appeals granted Petitioner's request for the special exception, noting the HPC's determination of the property's eligibility for placement on the FCRHP. During a public meeting of the HPC on December 3, 2014, the HPC unanimously voted to recommend the Trout Run/Richey Lodge property to the Frederick County Council (hereinafter "County") for listing on the FCRHP. The process requires two separate decision from the HPC, one determining eligibility and one for a

final recommendation to the County, to ensure that applicants have some certainty from the Board of Appeals that their intended use for the property will be approved before they have the property placed on the FCRHP. Tr. 126: 2-11.

In February 2015, the Division of Community Development for the County's Department of Planning and Development Review requested a public hearing on Petitioner's request for designation of the "Trout Run/Richey Lodge" property on the FCRHP. The County held public hearings on April 7 and April 21, 2015. At the April 7 hearing the County received oral testimony including Mr. Superczynski's presentation of the proposal and description of the history of the HPC to the County, Petitioner's presentation of its application, public comments, and testimony from Petitioner's experts. At the end of the hearing the County voted to table the matter until the April 21 hearing.

At the April 21 hearing, the County again received oral testimony including additional public comments and rebuttal from Petitioner. The County also received written testimony between the April 7 and April 21 hearings. The County was advised at this hearing by Mr. Chomel, an Assistant County Attorney, that their role in the process "is to decide whether the Historic Preservation Commission was correct in determining that the property was eligible for listing on the Frederick County Register of Historic Places, and if so, to designate the site on the County Register of Historic Places." Tr. 90:7-12. Mr. Chomel further described the County's role as "a very limited role;" "a small role." Tr. 90:13, 15. At the end of the hearing, the County unanimously voted to close the administrative record and to table the matter again, so that Council members had time to process all of the information they were provided.

On June 2, 2015, the County reconvened to conduct a vote on Petitioner's application. At the beginning of this meeting the County was instructed by Mr. Chomel that the decision to

designate Trout Run/Richey Lodge on the FCRHP is discretionary, and that Petitioner had the burden of production and persuasion. Mr. Chomel went on to instruct that Council members could merely say "We are not persuaded that this property is deserving of being placed on the County's Historic Register" in voting to deny Petitioner's application. Tr. 5: 3-5. The County denied Petitioner's application by a 6-1 vote.

Petitioner filed a Petition for Judicial Review of the decision of the County on July 1, 2015, requesting that this court reverse the County's June 2 decision, and direct the County to grant the Petitioner's request for designation of the Trout Run/Richey Lodge property on the FCRHP.

STANDARD OF REVIEW

Judicial review of the final decision of an administrative agency is narrow and deferential. *Dep't of Labor, Licensing & Regulation v. Woodie*, 128 Md. App. 398, 406 (1999). See also: *Trinity Assembly of God of Baltimore City, Inc. v. People's Counsel for Baltimore County*, 407 Md. 53, 78 (2008) (Applying this deferential standard to judicial review of local zoning body decisions). When reviewing an agency's findings of fact, or mixed findings of fact and conclusions of law, the highly deferential substantial evidence test[1] is applied.[2] *E. Outdoor Advertising, Co. v. Mayor & City Council of Baltimore*, 128 Md. App. 494, 514 (1999).

The substantial evidence test provides that administrative agency decisions are *prima facie* correct and the court must view the decisions in the light most favorable to the agency. *Woodie*, 128 Md. App. at 406. The decision is presumed valid if supported by substantial

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[1] The substantial evidence test is interchangeably referred to as the "fairly debatable test" by Maryland courts. *E. Outdoor Advertising, Inc.*, 128 Md. App. at 515 (Quoting *Friends of the Ridge v. Baltimore Gas & Elec. Co.*, 120 Md. App. 444 (1998) *vacated by* 352 Md. 645 (1999)).

[2] When reviewing an agency's conclusions of law, the court must determine whether the agency interpreted and applied the correct principles of law governing the case. *E. Outdoor Advertising, Inc.*, 128 Md. App. at 514. No deference is given to decisions based solely on errors of law. *Id.*

evidence, and absent fraud. *Id.* Thus, the role of the reviewing court is simply to determine whether there exists substantial evidence in the record as a whole to support the agency's final decision. *Id.* The record shall be found supportive of the agency's decision if the court can determine that the record before the agency contained at least "a little more than a scintilla of evidence to support the Board's scrutinized action." *E. Outdoor Advertising, Co.,* 128 Md. App. at 515.

As such, the court must exercise a restrained and disciplined judicial judgment so as not to interfere with the agency's factual conclusions. *Capital Commercial Prop., Inc. v. Montgomery County Planning Bd.*, 158 Md. App. 88, 95 (2004). The reviewing court may not substitute its judgment for the expertise of those persons who constitute the administrative agency from which the appeal is taken. *Woodie*, 128 Md. App. at 406. Simply put, if reasoning minds could reach the same conclusions from the facts relied upon by the agency, the substantial evidence test is satisfied. *Id.* See also: *Trinity Assembly of God*, 407 Md. at 78. Even if the reviewing court would not have reached the same conclusions based upon all the evidence, the court must affirm the decision where substantial evidence exists. *E. Outdoor Advertising, Co.,* 128 Md. App. at 515. The agency's decisions will only be reversed by the court where there is no substantial or sufficient evidence to support the factual findings, thereby making those findings arbitrary and illegal. *Id.*

DISCUSSION

Petitioner sets forth two main arguments attacking the decision of the County:

1. The County's decision is not supported by any substantial, probative evidence; i.e., unrebutted expert testimony was contrary to the County's action.
2. The County improperly considered evidence that was not made part of the administrative

record, which constitutes a denial of due process.

Petitioner contends that the decision of the County was akin to a rezoning or special exception decision, and that this Court should review it as such. In its responding memorandum, the County addresses this issue, but argues that the standard of review for rezoning and special exception decisions does not apply to the County's decision. However, the County did agree that the applicable standard of review is the substantial evidence or "fairly debatable" test. The County argued that the decision to designate the Trout Run/Richey Lodge property was purely discretionary under § 1-23-6 of the HPC ordinance; thus, Petitioner had the burdens of both production and persuasion, and the County acted properly when it denied Petitioner's application.

At the January 4 hearing before this Court, the County argued for the first time that the decision of the County to deny Petitioner's application was a legislative one, thus, not only was the decision within the sole discretion of the County, but also the County was not obligated to issue findings of fact or conclusions of law. Petitioner again countered that the standard of review for the County's decision should be that of a rezoning or special exception decision, but noted that remand of this matter to the County would be inappropriate because the County's decision was clearly based on religious discrimination. The County's decision to designate a property on the FCRHP is based on Frederick County Code Chapter 1-23-6. The authority for Chapter 1-23 is found in § 1-23-1, which provides that "The county derives authority for this chapter by virtue of its conformance with provisions of the State of Maryland Enabling Act for Historic Area Zoning (Md. Code Ann., Land Use Article, Title 8, as amended)."

Land Use Article § 8-105, which falls under Division 1-Single-Jurisdiction Planning and Zoning, provides that "each local jurisdiction may designate boundaries for sites, structures, and

districts . . . by following the procedures of the local jurisdiction for establishing or changing zoning districts and classifications." Md. Code 8-105.[3] While zoning is primarily a legislative function, the County acts in a quasi-judicial capacity by "holding a hearing, receiving written and oral testimony, and considering evidence to determine the specific amount of special benefit to a particular piece of property." *Mayor and Council of Rockville v. Woodmont Country Club*, 348 Md. 572, 585 (1998). Additionally, when a board or agency makes factual determinations, decides contested issues, or reviews applications, it performs a quasi-judicial function. *1000 Friends of Md. V. Ehrlich*, 170 Md. App. 538, 549-50 (2006). In this case, the County's review of Petitioner's application for designation on the FCRHP included two public hearings at which the County received oral and written testimony, and the County's consideration of evidence in the record to determine whether the Trout Run/Richey Lodge property was of a special benefit to the Frederick community due to its particular historic characteristics. Accordingly, the County was acting in a quasi-judicial capacity when it considered and denied Petitioner's application for designation on the FCRHP.

When an agency such as the County functions in a quasi-judicial capacity, the agency is required to issue a final decision, either in writing or on the record, which contains separate statements of the findings of fact, the conclusions of law, and the order. Md. Code, State Govt. § 10-221. Such findings of fact must be meaningful and cannot simply repeat statutory criteria, broad conclusory statements, or boilerplate resolutions. *Bucktail, LLC. v. County Council of Talbot County*, 352 Md. 530, 553 (1999). Moreover, mere reference to preprinted forms or

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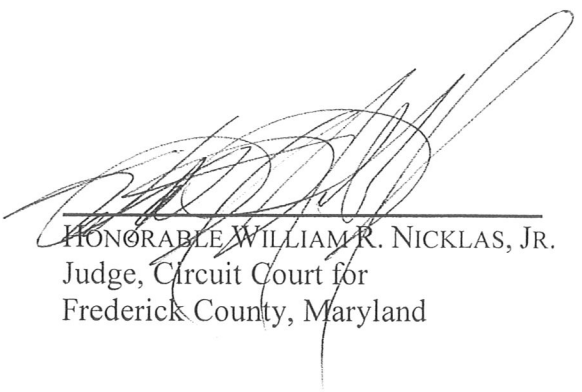
[3] *See also Casey v. Mayor and City Council of Rockville*, 400 Md. 259, 279, 284-5 (2007) (Referring to the historic designation process as "the administration of zoning procedures," and explaining that if the Rockville Historic Designation Committee evaluation favors designation, the process continues with an application to amend the existing zoning map); and *Baltimore Street Parking Co., LLC v. Mayor & City Council of Baltimore*, 194 Md. App. 569, 591 (2010) (Reviewing a decision of the Baltimore City Commission for Historical and Architectural Preservation (CHAP) placing landowner's building on list of buildings having historical or architectural significance as that of a local administrative or legislative body acting in an adjudicative or quasi-judicial capacity).

checklists will not satisfy the need for specific finds of fact and conclusions of law. *Turner v. Hammond*, 270 Md. 41, 55-56 (1973). Without findings of fact on all material issues, and without a clear statement of the rationale behind the final decision maker's action, a reviewing court cannot properly perform its function. *Mehrling v. Nationwide Ins. Co.,* 371 Md. 40, 65 (2002) (quoting Froman, 332 Md. At 220-21). See also *United Steelworkers of Am. AFL-CIO, Local 2610 v. Bethlehem Steel Corp.,* 298 Md. 665, 679 (1984) ("We must know what a decision means before the duty becomes ours to say whether it is right or wrong").

As the County was functioning in a quasi-judicial capacity in considering and ruling upon Petitioner's application, the County was required to issue a final decision including findings of fact and conclusions of law pursuant to Md. Code, State Gov't. § 10-221. As no such final decision was issued, this Court cannot properly perform its function of reviewing the County's denial of Petitioner's application. Nor can this Court evaluate Petitioner's claim of religious discrimination without the specific factual findings required here. Therefore, this matter must be remanded to the Frederick County Council for issuance of a final decision including specific findings of fact and conclusions of law in denying Petitioner's application to place the Trout Run/Richey Lodge property on the Frederick County Register of historic places.



HONORABLE WILLIAM R. NICKLAS, JR.
Judge, Circuit Court for
Frederick County, Maryland

ORDER

This matter having come before the court on January 4, 2016 on Petitioners' petition for judicial review of the administrative decision of the Frederick County Council, on June 2, 2015, and supporting memoranda having been filed by Petitioners and Respondents, and argument having been received and considered, it is this 11th day of January, 2016, by the Circuit Court for Frederick County, Maryland:

ORDERED, that the above captioned be remanded to the Frederick County Council for issuance of a final decision including findings of fact and conclusions of law.

HONORABLE WILLIAM R. NICKLAS, JR.
Judge, Circuit Court for
Frederick County, Maryland

FILED
2016 JAN 13 AM 9:40
ANDREA R. DALTON
CLERK
BY