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IN THE
COURT OF APPEALS OF INDIANA

JOHN and DOROTHY ARNDT, ARNDT, LLC,	)	
Appellants-Plaintiffs,	)	
vs.	)	No. 64A03-0608-CV-374
PORTER COUNTY PLAN COMMISSION,	)	
Appellee-Defendant.	)	

APPEAL FROM THE PORTER SUPERIOR COURT
The Honorable William E. Alexa, Judge
Cause No. 64D02-0510-PL-8836

August 31, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

John and Dorothy Arndt, and John Arndt LLC (collectively, "Arndt") appeal the denial of their application for a primary plat by the Porter County Plan Commission ("Commission"). Arndt asserts the Commission had no discretion to deny his application because he submitted all documentation required by the Porter County Subdivision Control Ordinance. The Commission did not abuse its discretion in finding Arndt failed to provide sufficient information to demonstrate compliance with Porter County's Open Space Ordinance, and we accordingly cannot find the Commission erred when it denied his application. Therefore, we affirm.

FACTS AND PROCEDURAL HISTORY

Arndt decided to build a twelve-house subdivision to be known as Rilan Acres on a twenty-acre parcel in Porter County. In July 2005, Arndt filed an application for a primary plat with the technical advisory committee ("TAC")[1] of the Commission. After reviewing the application, the TAC sent the application to the Commission with a favorable recommendation. In September 2005, the Commission held a public hearing and then denied Arndt's application. Arndt petitioned for a writ of certiorari with the Porter Superior Court, which upheld the Commission's decision. Arndt now appeals.

DISCUSSION AND DECISION

A court reviewing the decision of an administrative agency may provide relief only if the agency action is: (1) arbitrary, capricious, an abuse of discretion, or otherwise

[1] The TAC is "a committee established by the commission which has the authority to review site reviews, primary and secondary plats, approve minor subdivisions, as well as any other duties assigned by the Porter County plan commission and the members thereof shall be appointed annually by the Porter County plan commission." Porter County Subdivision Control Ordinance 16.008.010.

not in accordance with law; (2) contrary to constitutional right, power, privilege, or immunity; (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; (4) without observance of procedure required by law; or (5) unsupported by substantial evidence. *Van Vactor Farms, Inc. v. Marshall County Plan Comm'n*, 793 N.E.2d 1136, 1142 (Ind. Ct. App. 2003), *trans. denied* 812 N.E.2d 790 (Ind. 2004).

As a reviewing court, we neither try the facts *de novo* nor substitute our own judgment for that of the agency. *Id.* We will not reverse an agency's decision unless the evidence as a whole demonstrates the agency's conclusions are clearly erroneous. *Id.* We give the agency's decision great deference concerning findings of fact or the application of the law to the facts. *Id.* Errors of law are not afforded such deference. *Id.* We presume the agency decision was correct. *Id.* We will sustain the agency decision if it was correct on any ground stated for disapproval of the petition. *Id.*

Arndt argues his application complied with the requirements of the Porter County Subdivision Control Ordinance ("Subdivision Ordinance" or "PCSCO"), and the Commission therefore had no discretion to deny it. "A plan commission's only task when reviewing an application for preliminary plat approval is to determine whether the proposed plat complies with the concrete standards set forth in the subdivision control ordinance, and the commission cannot deny an application on the basis of factors outside the ordinance." *Van Vactor*, 793 N.E.2d at 1144. If a proposal meets the concrete standards of the ordinance, then the approval of the plat on the basis of those standards is a "ministerial act." *Id.* at 1148. Thus, if the Commission had found his application

complied with all the requirements, Arndt would be correct in saying the Commission had no discretion to deny his application. However, the Commission did not so find.

One of the "concrete standards" of the Subdivision Ordinance is "[p]roof of compliance with any and all other ordinances of political subdivisions with jurisdiction over the area proposed for development." PCSCO 16.04.040(E). One such "other ordinance," *id.*, is the Open Space Ordinance, which requires certain environmental features—such as wetlands, dunes, natural lakes, forests, and prairies—be set aside and preserved as open space. Porter County Mun. Code 17.108.060. It also prohibits the development of unsuitable land:

> Land Unsuitable for Development. Lands or portions of lands that *the plan commission finds to be unsuitable for development due to* flooding, improper drainage, steep slopes, adverse earth formations or topography, utility easements, or *other reason or feature that may be harmful to the health, safety and general welfare of the present or future inhabitants of the development* shall not be subdivided or developed unless adequate and environmentally appropriate provisions are made by the developer and approved by the plan commission to remedy and/or control the problems created by the unsuitable conditions. If the conditions cannot be remedied, those lands, or portions of lands, shall be set aside and allowed to remain open space.

Porter County Mun. Code § 17.108.060(C) (emphases supplied).

In denying Arndt's petition, the Commission specifically found:

> With regard to Storm Water issues:
> Evidence was presented that the water table in this area is very high, and becomes a swamp in years of increased rainfall. There was also testimony that there is an active spring there. All the existing houses in this area are built on hills or rise [sic]. Petitioners presented testimony that the water within the subdivision would remain within the subdivision; however, this does not answer the concerns about the existing swampy conditions there.
> The water table presents significant problems with regards to the use of septic fields.

* * * * *

> Wetlands and Environmental Concerns:
> Testimony established that this area drains into Sand Creek which is an undisturbed natural feature. The Wetlands are shown on the National Wetlands Inventory Map. Standard management practices may not be sufficient to protect this fragile environment. Insufficient evidence was presented to show that [sic] proper compliance with the Open Space Ordinance. It was discussed that there are special Natural features on this property that may require a greater set aside under the open space requirements, and that this should be revisited.
>
> Another area of difficulty with this proposal has to do with soil problems. The report from Soil Solutions[2] indicates that there are a number of soils on this property of types unsuitable for both septic fields and for building stability. Some if [sic] the soils are listed as having "moderate" and others as having "severe" limitations as to suitability for septic fields. The report from the Board [of] Health indicates that many of the lots would require mound or flood type septic systems[.] The Commission finds that there are insufficient calculations and a lack of other soil boring evidence to support the placement of sufficient septic fields, based on the proposed number and size of the lots. The Plan Commission further finds that it is against the interests of public health, safety and welfare to allow septic fields in soils of this quality unless the petitioner can provide specific evidence that each proposed lot can support same, and the calculations exclude unsuitable soils.

(Appellants' App. at 24-25) (footnote supplied).

Arndt argues the suitability of septic systems "is an issue reserved for review by the County Health Department." (Br. of Appellants at 39.) He asserts the Commission could properly deny the application on this ground only if the "proposed septic fields were not approved by the county health officer." (*Id.* at 23.) However, while health department approval is *necessary* before the Commission may approve a primary plat, that approval is not *sufficient* to guarantee Commission approval of a primary plat.

[2] Soil Solutions is "a soil and environmental consulting company." (Appellants' App. at 50.)

Rather, the Commission had to review all the evidence presented to determine whether Arndt complied with all relevant ordinances – including the Open Space Ordinance.

In reviewing the Commission's decision to deny Arndt's plan, we must give great deference to the Commission's findings of fact. *See Van Vactor*, 793 N.E.2d at 1142. "In an administrative proceeding that involves technical or scientific evidence, we will not determine the credibility or weight to be given to technical evidence." *Id.* at 1147.

The Commission had before it both lay testimony and scientific evidence regarding the soil, water table, "swampy conditions," "undisturbed natural features," and "fragile environment" at Rilan Acres. (Appellant's App. at 24-25.) We must defer to the Commission's expertise in finding "[s]tandard management practices may not be sufficient to protect this fragile environment" and "[n]atural features on this property . . . may require a greater set aside under the open space requirements." (*Id*.) Those findings support the Commission's conclusion Arndt did not provide sufficient evidence to demonstrate the land was suitable for development under the Open Space Ordinance. Therefore, we affirm the denial of his application for primary plat approval.

Affirmed.

NAJAM, J., and MATHIAS, J., concur.