

IN THE CIRCUIT COURT OF DESOTO COUNTY, MISSISSIPPI

STANDARD CONSTRUCTION COMPANY, INC.

APPELLANT

VS.

CAUSE NO. CI2016186GCD

DESOTO COUNTY, MISSISSIPPI

APPELLEE

OPINION AND ORDER

This cause is before the Court on appeal from the September 19, 2016 decision of the Desoto County Board of Supervisors ("DCBOS" or "the Board") to deny Standard Construction Company, Inc.'s request for a conditional use permit. The Court, having reviewed and considered the Bill of Exceptions, the record on appeal, and the briefs and responses thereto, and also having heard argument of counsel regarding the same, finds the following:

A. Facts

1. On February 11, 2016, Standard Construction Company, Inc. ("Standard Construction") applied for a conditional use permit for a gravel mining operation on property zoned A-R (Agricultural - Residential). A public hearing before the Board of Adjustment was conducted on June 13, 2016. Standard's application was denied at that time and Standard appealed the decision to the Board of Supervisors. On September 19, 2016, the DeSoto County Board of Supervisors conducted a public hearing and affirmed denial of the application.

B. Issue

2. The Appellants contend that according to the applicable regulations, a gravel mining operation was a permissible use of the subject property and that all requisite conditions to extract gravel from the proposed site were met. The Appellants argue that the Board's denial of their conditional use application was arbitrary and capricious and not supported by substantial evidence.

C. Law/Analysis

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DALE K. THOMPSON, CIRCUIT CLERK

3. When applying for a conditional use permit, the burden of proof is on the applicant to show by preponderance of the evidence that they have met the requirements to obtain such a permit, as set forth in the county's ordinances. *Barnes v. DeSoto County Bd. of Supervisors*, 553 So.2d 508, 510-511 (Miss. 1989). With regard to an appeal of the grant or denial of a conditional use permit:

If the Board's decision is founded upon substantial evidence, then it is binding upon an appellate court, i.e., the Circuit Court and [the Supreme Court or Court of Appeals].

Id. Substantial evidence, according to the Mississippi Supreme Court, is defined as relevant evidence that reasonable minds might accept as satisfactory to support a conclusion or, stated otherwise, that which constitutes "more than a 'mere scintilla' of evidence." *Hooks v. George County*, 748 So.2d 678, 680(¶ 10) (Miss.1999) (quoting *Johnson v. Ferguson*, 435 So.2d 1191, 1195 (Miss.1983)).

4. According to the DeSoto County, Mississippi Zoning Regulations:

The following uses may be permitted if approved by the Board of Adjustment, in accordance with the procedures and under the conditions set forth [hereinafter], provided such conditional uses shall comply with [certain regulations not relevant to the issue at hand]:

- (10) Extraction of minerals, including sand and gravel, provided that:
- (a) A designated route for all hauling and trucking activity is approved by the DeSoto County Road Manager
 - (b) A bond is posted by the party obtaining the conditional use permit and/or the party mining such minerals, naming DeSoto County as the insured, beneficiary or Obligee, in an amount to be determined by the DeSoto County Road Manager or his designee to guarantee the following:
 - The pit shall be reclaimed within six (6) months after excavation is completed, which reclamation shall included[sic], but not be limited to, satisfying all MDEQ requirements and all banks having not more than a 3 to 1 slope

- All county roads, which are a part of the designated haul route, or are otherwise traveled by those parties while hauling the excavated materials, shall be properly cared for to deter dust and damage and, within six (6) months after excavation is completed, will be returned to county specifications and/or original road condition prior to project and subject to DeSoto County Road Manager's evaluation and determination
- (c) No material shall be extracted within 100 feet of the centerline of any county road or within 50 feet of any property line
- (d) No washing of gravel shall be permitted unless a filtration system, approved by the county engineer, is provided to prevent pollution of nearby streams
- (e) All gravel mining permits mandated by the Mississippi Department of Environmental Quality (MDEQ) shall be obtained prior to issuance of Use and Occupancy Permit (UNO) by the Planning Commission
- (f) Adequate measures are in place on the site of operation that assure that dust and other airborne products of the operation shall be controlled in such a way that neighboring parcels shall not be disturbed or otherwise bothered by said operations.

See Article V, § 1 (p. 23-24; 29-30). With regard to conditional uses:

The Board of Adjustment will investigate all aspects of the application giving particular regard to whether such building use *will: Substantially* increase traffic hazards or congestion. *Substantially* increase fire hazards. Adversely affect the character of the neighborhood. Adversely affect the general welfare of the county. Overtax public utilities or community facilities. Be in conflict with the Comprehensive Plan. If the findings by the Board of Adjustment relative to the above subjects are that the county would benefit from the proposed use and the surrounding area would not be adversely affected, then such permits *shall* be granted.

See Article XIV (p. 130) (emphasis added). Further,

Any party aggrieved by any decision of the Board of Adjustment may appeal within 10 days to the governing authority and the governing authority may affirm, reverse, remand or modify the decision as may be proper. Parties aggrieved by decisions of the governing authority may seek review by a Court of Record as provided by law.

See Article XVI, § 3(E) (p. 142).

5. There seems to be no dispute among the parties that the applicants met the requirements of Article V, § 1(C)(10)(a-f). Instead, the Board has cited Article XIV in support of their denial of the application. At the September 19, 2016 hearing, the Board conclusively stated:

That the use is not in character with the neighborhood; it will create excessive noise, increase traffic congestion and adversely affect the general welfare of the county, overtax the county's facilities; and the county will not benefit from the proposed use as presented.

See Board Meeting Minutes, Sept. 19, 2016 (p. 36).

6. In reaching the above conclusions, the Board considered "the recommendations of the planning department, the comments received from the applicant and the public, the documents presented, [the board members' own] knowledge of the neighborhood, the location of the property and the impact to the neighborhood." *Id.* The evidence actually presented in opposition to the application, however, can be generally summarized as follows:

- That the gravel mining operation would produce only a *minimal* amount of additional dust, noise and traffic in the area, but any and all regulations imposed by the County to eliminate and/or minimize the impact have been met and/or exceeded.
- That only the *potential* for air and water contamination is increased with the operation of a gravel mine in the area but that any and all regulations intended to eliminate and/or minimize the potential impact have been and will continue to be met and/or exceeded.
- That the current make-up of the neighborhood is residential, but that the proposed operation would not even be visible from outside of the operation boundary lines in light of a wooded buffer and earthen berm.
- That property values could only *potentially* decrease with the introduction of a nearby industrial operation such as a gravel mine.
- That the County will benefit from additional jobs provided by the proposed operation and from the local sale of the extracted materials.

Id. at 27-36.

7. This Court's review of the actual transcript of the hearing and exhibits thereto, the Board Meeting Minutes, and the record reveals that the Board's decision in this case was based on

nothing more than public dissent. Without reweighing the evidence, it appears plainly to this Court the Board's conclusions (cited above) were just that – unsupported conclusions. Because the Board's decision was not based on *substantial* evidence, this Court finds that the Board's decision to deny the application for a conditional use permit was in error.

For the foregoing reasons,

IT IS ORDERED that the decision of the DeSoto County Board of Supervisors be and is, hereby, **REVERSED**.

IT IS FURTHER ORDERED that the DeSoto County Board of Supervisors grant the Appellant's Application for a Conditional Use Permit, with any and all conditions previously advanced by the Appellant.

IT IS FURTHER ORDERED that all parties are responsible for their own costs associated herewith.

SO ORDERED this the 29th day of September, 2017.


HONORABLE GERALD W. CHATHAM, SR.
CIRCUIT COURT JUDGE