

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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WOODCLIFF ON THE LAKE CONDOMINIUM  
ASSOCIATION,

UNPUBLISHED  
December 1, 2005

Plaintiff-Appellant,

v

CHARTER TOWNSHIP OF WEST  
BLOOMFIELD,

No. 263693  
Oakland Circuit Court  
LC No. 2003-051858-AW

Defendant-Appellee.

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Before: Whitbeck, C.J., and Saad and O'Connell, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting defendant summary disposition. We affirm.

This case arose when defendant's township board denied plaintiff's request to amend its condominium's site plan. The existent plan required the condominium to maintain a blockade on its primary street to prevent it from connecting two major roads and becoming a thoroughfare. The street is the only true north-south avenue serving the condominium, but it branches at several places, providing more housing frontage and access to nearby subdivisions. The record clearly reflects that the condominium's developer and defendant's board, who approved the developer's plans, always intended the street to serve as two separate dead-end streets. Practical considerations prevailed, however, and the use of a single street aided the condominium's construction and generally saved time. In the end, the blockade once envisioned as an impassable, unpaved berm or swath of turf, ultimately became a locked gate in the middle of an otherwise continuous street separating the northern portion of the condominium from the southern portion. The street has two different names, one for the northern section and one for the southern section.

Plaintiff represents individuals who live on the north side of the gate. Plaintiff moved defendant's board to amend the site plan so that it could remove the gate. Plaintiff complained that the gate inhibited emergency vehicles and encumbered north-side owners' access to a nearby lake. The locked gate required north-side owners to drive an additional four miles around the lake and its surrounding areas to gain access, when their condominium's point of access lay only a few hundred yards on the south side of the gate. Plaintiff's suggested alternative to the gate was an electronic dual-gate system that only allowed condominium owners and their guests to

access the street at its major northerly and southerly intersections. South-side owners contested the plan, arguing that their traffic would increase as north-side owners used the southern portion of the street. They argued that they or their predecessors were promised in earlier township proceedings that the barrier would remain in place, and some of them claimed that they bought their homes in reliance on the gate's permanency. Others raised questions regarding access from the neighboring subdivisions and the workability of a two-gate system. In the end, defendant's planning commission and the township board both rejected plaintiff's suggested amendment to the site plan.

Plaintiff sued in circuit court raising due process and equal rights claims, seeking declaratory relief, and requesting mandamus. In response to defendant's motion for summary disposition, however, plaintiff conceded that the proper remedy was superintending control. The trial court granted defendant summary disposition.

On appeal, plaintiff argues that the trial court erred when it gave deference to the board's final denial. We disagree. We review *de novo* the legal validity of the standard of review employed by the trial court. *Arthur Land Co, LLC v Otsego Co*, 249 Mich App 650, 661-662; 645 NW2d 50 (2002). In this case, plaintiff put a series of confused questions to the trial court, and the trial court did its best to sort through them carefully. For example, plaintiff originally requested mandamus and declaratory relief, but neither of these actions was appropriate. Plaintiff was not seeking a declaration of the law for future guidance, but rather it wanted the trial court to direct defendant's board to adopt the requested amendment and allow the gate's removal. See *Ferency v Secretary of State*, 139 Mich App 677, 683; 362 NW2d 743 (1984). Also, plaintiff conceded that the township acted in a quasi-judicial rather than an executive capacity, so it changed its request from one for mandamus to one for superintending control. But superintending control was not an appropriate remedy until plaintiff demonstrated that it did not have recourse to a direct appeal. MCR 3.302(B). Under Const 1963, art 6, § 28, the township's decision, if quasi-judicial, should have been subject to direct review in court, but plaintiff failed to plead or demonstrate compliance with any procedural requirements for pursuing this remedy. These issues are complicated by the fact that an order for superintending control supersedes writs of both mandamus and certiorari. MCR 3.302(C); *In re Payne*, 444 Mich 679, 687; 514 NW2d 121 (1994) (Boyle, J.). Traditionally, writs of certiorari effectively challenge the evidentiary support for an agency's decision, like a challenge under Const 1963, art 6, § 28. *In re Payne*, *supra* at 688, 691. Plaintiff's complaint also briefly raised constitutional claims.

Faced with these pleadings, the trial court first addressed whether a writ of mandamus was an appropriate remedy. The trial court correctly found that MCL 125.286e(3) granted the board discretion to refuse to agree to an alteration of the original site plan. The relevant portion of MCL 125.286e(3) states, "[S]ubsequent actions . . . shall be consistent with the approved site plan, unless a change conforming to the zoning ordinance receives the mutual agreement of the landowner and the individual or body which initially approved the site plan." In this case, the subsequent action of removing the gate would not be consistent with the original site plan approved by defendant's board, because the site plan, including its maps, clearly reflect the existence of a barrier between the sections of roadway. In fact, the developer emphasized in its 1990 address to the board that the sections would stay separate as the board required for the site plan's original approval. Because the removal of the gate ran contrary to the site plan, it required township approval, which necessarily endowed defendant's board with a measure of discretion.

Nevertheless, plaintiff argues that MCL 125.286e(5) divested the township of discretion to deny its proposed amendment to the site plan. This subsection states:

A site plan shall be approved if it contains the information required by the zoning ordinance and is in compliance with the zoning ordinance and the conditions imposed pursuant to the ordinance, other township planning documents, other applicable ordinances, and state and federal statutes. [MCL 125.286e(5).]

Plaintiff argues that its proposed amendment satisfied these general statutory requirements, so defendant's board had no choice but to adopt it. We disagree. The mandate in MCL 125.286e(5) clearly relates to the approval of new site plans, not the amendment of approved site plans after the developer has finished construction. For post-construction changes, MCL 125.286e(3) more specifically applies, so it is the correct statement of the law. *Gebhardt v O'Rourke*, 444 Mich 535, 542-543; 510 NW2d 900 (1994). Moreover, plaintiff's amendment was not "in compliance with . . . the conditions imposed" by the board in its original approval, so we reject plaintiff's argument that the statute required the board to approve its site plan amendment. MCL 125.286e(5). Without a clear legal duty to approve the amendment, mandamus does not lie. *In re MCI Telecom Complaint*, 460 Mich 396, 442-443; 596 NW2d 164 (1999).

The remainder of plaintiff's appeal and the trial court's decision relates to the evidentiary support for the board's denial. The record is replete with the hearings of defendant's planning commission and board. Several individuals, including the developer, addressed the commission about the fact that an uninterrupted avenue connecting the two major roads would increase traffic in the condominium development. The potential problem is evident from a cursory review of the site map. Other owners expressed valid, practical reservations about the proposed dual-gate system. The maps demonstrate that the southern gate would obstruct flow into a neighboring subdivision and could be totally obviated by cutting through that subdivision's side streets. Defendant's planning commission repeatedly collected all the relevant traffic information and presented it to the board. Therefore, the trial court did not err when it found that the board's decision was supported by "competent, material and substantial evidence . . . ." Const 1963, art 6, § 28. Plaintiff fails to raise any other constitutional challenge to the board's action in this appeal.

Affirmed.

/s/ William C. Whitbeck  
/s/ Henry William Saad  
/s/ Peter D. O'Connell