STATE OF MICHIGAN

COURT OF APPEALS

JAN BROWN, ROBERTA FRENCH, MELISSA GARY, JANE HEIDEN, RICH SPLAINE, and DALE DEHAAN, Plaintiffs-Appellants,	UNPUBLISHED May 9, 2000
v	No. 216099 Kent Circuit Court
ADA TOWNSHIP and ADA TOWNSHIP BOARD. Defendants-Appellees.	LC No. 97-013469-CZ

Before: Jansen, P.J., and Hoekstra and Collins, JJ.

PER CURIAM.

Plaintiffs appeal as of right from a trial court decision granting summary disposition to defendants. We affirm.

This case arises from defendants' approval of a developer's application to divide certain real property under the Land Division Act, MCL 560.101 *et seq.*; MSA 26.430(101) *et seq.* Plaintiffs argue on appeal that the trial court erred in granting summary disposition in favor of defendants by failing to consider the evidentiary record pertaining to whether the proposed intersection meets the requirements of the Land Division Act. The parties agree that article 6, § 28 of the Michigan Constitution controls review of defendants' approval of the proposed road intersection. That provision provides:

> All final decisions, findings, rulings and orders of any administrative officer or agency existing under the constitution or by law, which are judicial or quasi-judicial and affect private rights or licenses, shall be subject to direct review by the courts as provided by law. This review shall include, as a minimum, the determination whether such final decisions, findings, rulings and orders are authorized by law; and, in cases in which a hearing is required, whether the same are supported by competent, material and substantial evidence on the whole record…. [Const 1963, art 6, § 28.]

Nevertheless, the parties disagree regarding the level of review that should have been undertaken by the trial court and that is to be taken by this Court when reviewing defendants' action. Plaintiffs contend that the level of review is de novo, and that article 6, § 28 sets merely the minimum standard of review. Defendants maintain that the only review of defendants' decision is a determination whether the approval of the application was "authorized by law."

In the instant matter, MCL 560.109(1); MSA 26.430(109)(1), does not require that a municipality hold a hearing as part of its determination whether an application should be approved. This Court has interpreted article 6, § 28 to state that if a hearing is not required, "it is not proper for the circuit court *or this Court* to review the evidentiary support of an administrative agency's determination." *Northwestern Nat'l Casualty Co v Comm'r of Ins*, 231 Mich App 483, 488; 586 NW2d 563 (1998), quoting *Brandon School Dist v Michigan Ed Special Services Ass'n*, 191 Mich App 257, 263; 477 NW2d 138 (1991) (emphasis added in *Northwestern Nat'l*). As such, judicial review is not de novo, but "is limited in scope to a determination whether the action of the agency was authorized by law." *Northwestern Nat'l, supra* at 488, quoting *Brandon, supra* at 263. Thus, this Court concluded that an agency's decision is not "authorized by law" if it "is in violation of statute [or constitution], in excess of the statutory authority or jurisdiction of the agency, made upon unlawful procedures resulting in material prejudice, or is arbitrary and capricious." *Northwestern Nat'l, supra*, quoting *Brandon, supra*.

Here, the trial court was required to review whether the action was "authorized by law," and was not permitted to consider evidentiary support of defendants' action. *Northwestern Nat'l, supra*. Consequently, the trial court did not err by failing to consider the evidentiary record, nor may this Court consider the evidentiary record when addressing plaintiffs' appeal.

Plaintiffs also argue that defendants were required to reject the application because the proposed road intersection at Honey Creek Avenue failed to meet all applicable location standards—in particular, whether the proposed road intersection was "accessible." When the Kent County Road Commission (KCRC) granted a highway permit for the proposed road on April 18, 1997, the relevant statutory provision[1] governing a local governmental unit's consideration of a proposed land division stated that "[a] municipality shall approve a proposed division . . . if . . . all the following requirements are met …" MCL 560.109(1); MSA 26.430(109)(1). Accordingly, defendants were required to approve any application that satisfied all of the statutory prerequisites. See *Port Huron v Amoco Oil Co, Inc*, 229 Mich App 616, 631; 583 NW2d 215 (1998) (Generally, the word "shall" is used to designate a mandatory provision.).

The statutory prerequisite in question, subsection (e), requires that "[e]ach resulting parcel is accessible." MCL 560.109(1)(e); MSA 26.430(109)(1)(e). The Land Division Act defines "accessible" as follows:

> "Accessible", in reference to a parcel, means that the parcel meets 1 or both of the following requirements:
>
> * * *

> (ii) Is served by an existing easement that provides vehicular access to an existing road or street and that meets all applicable location standards of the state transportation department or county road commission under Act No. 200 of the Public Acts of 1969 [MCL 247.321 to 247.329; MSA 9.140(21) to 9.140(29)] and of the city or village, or can be served by a proposed easement that will provide vehicular access to an existing road or street and that will meet all such applicable location standards. [MCL 560.102(j); MSA 26.430(102)(j).]

Plaintiffs argue that defendants improperly concluded that the proposed road intersection satisfied the statutory definition of "accessible" because the intersection fails to satisfy specific KCRC rules. In essence, plaintiffs contend that defendants were required to make an independent inquiry as to whether the KCRC rules were satisfied rather than rely on the permit issued by the KCRC.

Here, the trial court noted that the KCRC approved the plan that the developer submitted and that the approval was issued in accordance with the rules properly adopted by the KCRC and promulgated in accordance with Act No. 200 of the Public Acts of 1969. As the trial court stated, "[t]hat determination by the [KCRC] makes the intersection in question meet the definition of 'accessible' in the statute." As such, defendants were presented with evidence that the property is accessible. Accordingly, the requirements of the Land Division Act having been met, defendants properly approved the application under MCL 560.109(1); MSA 26.430(109)(1).

Plaintiffs cite no authority suggesting that defendants were required to review the KCRC rules or make their own inquiry into whether the proposed road intersection satisfied KCRC standards. Even if the KCRC approval of the proposed road intersection was not in accordance with properly promulgated rules, plaintiffs cite no authority suggesting that defendants could reject a KCRC conclusion that the proposed road intersection satisfied its own rules or standards. Rather, upon receiving approval of the proposed road intersection by the KCRC, we find that defendants were required by statute to conclude that it was "accessible" under the act. To examine the factors to be considered before the KCRC issues a permit, as requested by plaintiffs, would exceed our limited scope of review as provided by the Michigan Constitution. We conclude that defendants' reliance on the KCRC permit was sufficient to satisfy the statutory requirement that the county road commission's standards be met, and thus we cannot say that defendants' decision was not authorized by law.

Based on the above discussion, we need not address plaintiffs' remaining argument on appeal.

Affirmed.

/s/ Kathleen Jansen
/s/ Joel P. Hoekstra
/s/ Jeffrey G. Collins

[1] Prior to its amendment, effective July 28, 1997, MCL 560.109(1); MSA 26.430(109)(1) stated that: "A municipality shall approve a proposed division within 30 days after the filing of the proposed division

with the assessor or other locally designated official if, in addition to the requirements of section 108, all of the following requirements are met . . . ."

Following the 1997 amendment, the statute reads:

> A municipality shall approve or disapprove a proposed division within 45 days after the filing of a complete application for the proposed division with the assessor or other municipally designated official. However, a municipality with a population of 2,500 or less may enter into an agreement with a county to transfer to the county authority to approve or disapprove a division. An application is complete if it contains information necessary to ascertain whether the requirements of section 108 and this section are met. The assessor or other municipally designated official, or the county official, having authority to approve or disapprove a proposed division, shall provide the person who filed the application written notice whether the application is approved or disapproved and, if disapproved, all the reasons for disapproval. A complete application for a proposed division shall be approved if, in addition to the requirements of section 108 [section 560.108], all of the following requirements are met … [MCL 560.109(1); MSA 26.430(109)(1).]