

STATE OF MICHIGAN
COURT OF APPEALS

COMMON GROUND,

Plaintiff-Appellee,

v

CITY OF PONTIAC, PONTIAC PLANNING
COMMISSION, and PONTIAC CITY COUNCIL,

Defendant-Appellant.

UNPUBLISHED

May 3, 2012

No. 302536

Oakland Circuit Court

LC No. 08-096323-CZ

Before: M. J. KELLY, P.J., and FITZGERALD and DONOFRIO, JJ.

PER CURIAM.

Defendants City of Pontiac, its Planning Commission, and its City Council [hereinafter referred to in the singular as defendant], appeal as of right from the circuit court’s January 31, 2011, final order that was entered after the court granted summary disposition in favor of plaintiff and remanded to the planning commission for further proceedings. We affirm.

I. FACTS AND PROCEDURAL HISTORY

Plaintiff sought to develop a parcel of land on South Saginaw Street in Pontiac for use as administrative offices and to provide mental health services “for children, youth, and families in crisis.” The proposed 48,000 square foot building would consist of administrative and counseling offices. The original plan provided for a short-term residential care component. That plan was subsequently modified to eliminate any provision for residential or overnight care of patients. The mental health services provided would consist of psychiatric screening, referrals, and outpatient counseling.

Plaintiff’s land is zoned C-2, Central Business District. Section 7.47 of defendant’s zoning ordinance lists the following relevant permitted principal uses under C-2 zoning:

1. Any principal use permitted in the C-1 local business district

* * *

6. Physical culture and health services.

* * *

12. Churches, charitable institutions, hospitals.

* * *

15. Other uses similar to the above uses, provided they are conducted within completely enclosed buildings.

Section 7.41 of the ordinance lists the permitted principal uses in the C-1 local business district. Those permitted principal uses include “[a]ny principal use permitted in the C-O office business district.” Section 7.35 lists the following relevant uses as permitted principal uses under C-O zoning:

4. Offices for ... other commercial and civic organizations
5. Medical clinics (outpatient only) and offices of doctors ... and similar or allied professionals

* * *

9. Convalescent and nursing home[s] ...
10. Hospitals

Plaintiff submitted its application for site plan approval to the planning commission on January 2, 2008. The planning commission considered the site plan at meetings held February 6, 2008, March 5, 2008, June 3, 2008 and June 11, 2008. At the end of each of those meetings the commission tabled the matter for later consideration. Staff reports or memorandum by defendant’s planning administrator, Madhu Oberoi, and city planner, David Breneau, were prepared in advance of each of those meetings addressing the concerns raised by the commission and other entities. The staff reports prepared before August of 2008 conclude that plaintiff’s proposed uses -- administrative offices and outpatient counseling center -- were principal permitted uses in the C-2 zoning district. Defendant’s planners concluded that the ordinance made no distinction between medical clinics and clinics that provided mental health services. However, other entities and individuals objected to plaintiff’s site plan on the grounds that it was not consistent with their plans to redevelop downtown Pontiac as a commercial district. Pontiac’s Downtown Development Authority (DDA) objected to plaintiff’s proposal on the basis that it believed that downtown Pontiac was “oversaturated ... with mental health care facilities.” Pontiac’s mayor-elect Leon Jutkowski owned property near plaintiff’s site and objected that plaintiff’s proposed use was incompatible with his proposed developments and would prevent him from obtaining financing for his projects.

In August of 2008 the planning commission met with an outside attorney at a closed meeting and received a legal opinion concluding that plaintiff’s proposed use was a “crisis center” that was not specifically defined under the zoning ordinance and did not appear to be a permitted use under C-2 zoning. A subsequent staff memorandum dated August 29, 2008, reached the same conclusion. Following a meeting held September 3, 2008, the planning commission voted 8-1 to deny approval of plaintiff’s site plan. No explanation for the vote or findings of the commission appears in the minutes of that meeting. In a letter dated September 9,

2008, Oberoi explained that the planning commission denied approval based on the following findings:

- a. Services for children, youth, and families in crisis as requested in your application is not a stated use within the C-1 or C-2 District.
- b. The proposed development will not be compatible with the surrounding neighborhood¹ to the extent that it will adversely affect the value of adjacent or abutting properties and have an adverse impact on economic activity within the downtown area.
- c. Services for children, youth, and families in crisis is a single destination 24 hour, seven days a week use which is incompatible with the stated purpose of the C-2, Central Business District . . .
- d. Common Ground failed to provide compelling evidence that their proposed use meets the criteria for uses permitted within the C-2 District.
- e. The site plan does not comply with the design standards recommended by the 2001 downtown plan adopted by the Downtown Development Authority [DDA].

Plaintiff appealed the planning commission's denial of site plan approval to the city council, which considered it at a meeting held November 13, 2008. The council meeting's minutes recite the reasons stated in Oberoi's September 9, 2008, letter. The city council affirmed the planning commission's denial by a majority vote denying a resolution to accept plaintiff's appeal and overturn the commission's decision.

Plaintiff appealed to the circuit court. The parties presented the matter to the circuit court on cross-motions for summary disposition pursuant to MCR 2.116(C)(10), which the circuit court decided in its November 30, 2009, opinion and order.² The court found that there was no genuine issue of material fact that the planning commission's decision was procedurally defective and so must be vacated. The court also found that there was no genuine issue of material fact that plaintiff's proposed uses of the property "clearly and unambiguously fall within 'permitted principal uses' under the City's Ordinance," so denial on that basis was improper. Based on those findings the court remanded the matter back to the planning commission to address whether plaintiff's site met the remaining requirements for approval.

The circuit court noted that under MCL 125.3501(4), a decision rejecting a site plan must be based upon the requirements and standards contained in the zoning ordinance. Under MCL

¹ The city's downtown development authority originally complained that downtown Pontiac was "oversaturated ... with mental health care facilities."

² The circuit court found MCR 2.116(C)(8) inapplicable since the parties relied on evidence beyond the scope of the pleadings.

125.3606, the circuit court reviewed the denial of site plan review to ensure that the decision was based upon proper procedure and supported under the substantial evidence standard. The circuit court pointed out that §5.11 of Pontiac's zoning ordinance required the planning commission to make findings of fact and articulate the reasons for its decision. The court found no issue of material fact that the commission made no findings and stated no reasons when it voted to deny approval of plaintiff's site plan on September 3, 2008. Instead, the purported reasons were provided 6 days later in the letter from Ms. Oberoi, who was not a member of the planning commission. The planning commission did not make any of the determinations made in Oberoi's letter by vote, nor did Oberoi even show the letter to the commission before mailing it to plaintiff. The court found that the planning commission's denial was ineffective because it never articulated its reasons or determinations for denying the application as required by §5.11 of its zoning ordinance. For the same reason, the city council's review affirming the denial was procedurally defective.

With regard to whether plaintiff's proposed use was permitted under the ordinance, the parties had stipulated that the C-2 district allowed for all the principal uses listed under §7.47 of the zoning ordinance. The principle permitted uses in C-2 zoning included any principal permitted use allowed in the C-1 zoning district, which included all principal uses permitted in the C-O office business district, which included outpatient medical clinics and offices for commercial and civic organizations. Under §7.47, principal permitted uses included health services, charitable institutions, hospitals, and "other uses similar to [those] uses." The circuit court noted that, regardless of the label applied, the nature of plaintiff's proposed use had not changed: plaintiff's proposed building included administrative offices, a medical director's office, a doctor's office, a nurse's station, and rooms for psychiatric or psychological screening. The court reviewed the planning commission record and staff memorandum and pointed out that before August of 2008 defendant's planners had characterized plaintiff's uses as office and medical clinic, both of which were permitted uses under the C-2 zoning classification. However, after August 2008 the city planners started referring to plaintiff's use as a "crisis center" and claimed that it was not a permitted use under the ordinance.

The circuit court found that under the substantial evidence test "reasonable minds could not differ in concluding that the facts in this case, taken together, describe a situation in which the proposed functions and services offered by CGS fall within and otherwise constitute 'permitted principal uses' under the ordinance." The court found this to be so regardless of the label attributed to the proposed uses, whether it was called administrative functions, mental health care facility, administrative office and outpatient psychiatric clinic, or "crisis center." The court noted "[a]fter all, it is the substance, not the label, that controls and must be analyzed." The court continued:

[T]he competent, material, and substantial evidence on the record establishes that, regardless of the label attributed to the proposed use[s], its substance clearly and unambiguously falls within "permitted principal uses" of the ordinance – not even a scintilla of evidence on the record substantiates the City's bald claim in its briefing that the proposes use[s] "actually encompassed a multitude of services" that do not fit within any principal use. Nor does a scintilla of evidence support the City's claim that it was unaware that the CGS application included a psychiatric facility. Rather, the competent, material and substantial evidence,

taken in context, describe a situation where reasonable minds could not differ in concluding that, from the outset, the “administrative functions” component of the proposed use plainly fall within Section 7.47(1) (offices “for commercial and civic organizations”) and that, at a minimum, the “services for children, youth and families in crisis” component clearly falls within the catchall of Section 7.47(15), namely “other uses similar to the above uses”

Even if not squarely within the “permitted principal use” of “medical clinics (outpatient only)” because CGS does not provide “treatment” (part of the definition of “clinic in a planner’s dictionary ...) the substance of the services proposed (e.g. counseling, emergency psychiatric services, and assessments by medical personnel), together with the process explained (e.g., evaluation/assessment/screening upon physical presentation by a RN or Master’s Level Clinician and a doctor) and the drawings submitted with the application showing multiple screening assessment rooms, a doctor’s office, a medical director’s office, and a nurse’s station, all confirm beyond dispute that the substance of the proposed “services for children, youth and families in crisis” is sufficiently similar to an outpatient medical clinic to plainly so as to plainly fall within the catchall “uses similar to the above uses” of Section 7.47(15).

The circuit court further found that plaintiff’s services could fall under the principal use of “physical culture and health services” in §7.47(6), or at least was substantially similar to “health services” to fall within the catchall provision of §7.47(15). The circuit court rejected defendant’s claim that plaintiff’s use was a crisis center, and crisis centers were not listed in the ordinance or permitted, stating “[s]uch a conclusion impermissibly rests on form rather than analysis of the substance.” The court also rejected defendant’s argument that there was an “oversaturation of mental health care facilities” in defendant’s downtown, finding that “such claims are irrelevant to the analysis of whether the uses are permitted principal uses under Section 7.46.” The circuit court remanded the matter as follows:

REMANDS the matter to the Planning Commission and the City Council so that proper analysis, evaluation and development of facts can be conducted consistent with the findings in this Court’s Opinion to determine whether the Application must be approved as is, or whether to approve the Application with conditions in order to bring it into compliance with conditions imposed by the Ordinance beyond permitted principal uses – namely Section 5.11(c), and possible [sic] Section 7.47 – as opposed to outright denial.”

Footnote 38 in the court’s opinion states: “Because the proposed uses clearly and unambiguously fall within the principal permitted uses of Section 7.47, this issue is not to be revisited on remand.

Defendant filed an application for leave to appeal the trial court’s November 30, 2009, opinion and order. On April 30, 2010, this Court denied defendant’s application for leave to appeal “for lack of merit in the grounds presented.”

The planning commission reviewed the remand issues at its July 7, 2010, meeting, at which time it “conditionally approved” the site plan by entering “Findings of Fact” and establishing “Conditions of Site Plan Approval” as follows:

Findings of Fact

1. Pursuant to Pontiac’s Zoning Ordinance, Section 7.47 clinics are a Principal Permitted Use.
2. Common Grounds’ Principal Permitted Use is a Clinic.
3. The Planning Commission finds that clinics are found to provide the following services under the common usage of the term and within the City of Pontiac:
 - a. A building other than a hospital used for the purpose of treating patients;
 - b. A facility providing medical, psychiatric or surgical services for the sick or injured on an exclusively outpatient basis;
 - c. A facility providing emergency treatment, diagnosis, training and administration services to outpatients, employees or visitors;
 - d. A facility where patients are not admitted for any extended stay to exceed eighteen (18) hours;
 - e. A facility where patients are not admitted against their will, and freely and voluntarily seek services;
 - f. A clinic does not include a detention area, lockdown area or any involuntary restraint of an individual
4. Pursuant to Pontiac’s Zoning Ordinance Section 7.48 the permitted accessory uses are warehousing, packaging and trucking connected with retail sales uses; signs in accordance with the city sign ordinance; off street parking and loading as required by Article X; Any use customarily incidental to the permitted principals uses.

The Planning Commission finds that an ambulance bay does not fall within any permitted accessory uses to a clinic.

5. The Planning Commission finds that having a lockdown facility is contrary to the goal of the C-2 Central Business District as it does not attract “intense pedestrian activity” or enhance the “economic welfare” of merchandising activities in the downtown district. Releasing individuals who may or may not be a danger to themselves or others confined against their will, does not foster a feeling of safety amongst individuals.

6. The Planning Commission finds that having individuals brought to Common Ground in restraints either by ambulance or police car, is contrary to the goal of the C-2, Central Business District as it does not encourage “intense pedestrian activity” or enhance the “economic welfare” or merchandising activities in the downtown district, and does not foster a feeling of safety amongst individuals.

7. The Planning Commission finds that allowing an involuntary lockdown area or permitting individuals to be brought against their will would be contrary to the Zoning Ordinance Section 5.11 by having an adverse affect on the value of adjacent or abutting properties.

Conditions of Site Plan Approval

a. No residential quarters, sleeping rooms, ‘lock down’ facility, detention areas or any other locked area where patients are held against their will shall be permitted within the facility.

* * *

f. The building’s exterior shall be modified to comply with the design guidelines established by the 2001 downtown plan to the satisfaction of the Planning staff and the DDA Design Committee.

g. Patients to the subject facility shall not be transported by ambulances or police vehicles against an individual’s will.

On August 10, 2010, plaintiff filed a claim of appeal from certain of the planning commission’s findings and conditions with the Pontiac City Council. Specifically, plaintiff appealed as follows:

1. Common Ground appeals all of the Findings of Fact because they relate to whether Common Ground’s use is a permitted use and purport to put restrictions on its use. This portion of the Planning Commission action is beyond the scope of the remand because the court unequivocally declared the proposed use a permitted use. The proposed use has not changed.

2. Common Ground appeals parts (a) and (g) of the conditions because they similarly restrict the proposed use which the court has unequivocally approved.

3. Alternatively to parts of paragraph 1 above, Common Ground appeals all Findings of Fact and conditions that relate to the existence of an ambulance bay, or that relate to who may be transported to or from the property by ambulance or police vehicle, or that purport in any way to regulate such vehicles or the ambulance bay, because –

a. such issues were in the record before the lawsuit and are merged into the court's order. See eg Planning Dept. report 1/31/08 ¶ 6.3; *Id.* 2/20/08 ¶ 6.h; *Id.* 8/29/08 ¶ 6.k; Planning Committee minutes 6/11/08 p 5-6.

b. ambulance (and police) transport is ancillary to the principal use, and is also a permitted use in a C-2 District.

c. the record made at the July 7, 2010 meeting does not comply with MCL 125.3606(1)(c) and (d).

d. such conditions to approval are not within the scope of Zoning Ordinance ¶ 5.11(c).

4. Alternatively to parts of paragraphs 1 and 2 above, Common Ground appeals all findings of fact and conditions that relate to whether parties are on the property against their will, are brought in restraints, or are detained in a lockdown area or by any involuntary restraint because –

a. such issues were in the record before the lawsuit and are merged into the court's order. * * *

b. the rare instances where such conditions occur is ancillary to the principal use, and is also a permitted use in a C-2 District.

c. the record made at the July 7, 2010 meeting does not comply with MCL 125.3401(4)(c) and (d).

d. such conditions to approval restrictions are not within the scope of Zoning Ordinance ¶ 5.11(c).

5. Common Ground appeals part (f) of the conditions because –

a. the remand directed the Planning Commission to establish the conditions under Section 5.11(c) and not to defer such conditions to a later time.

b. the reference to modifying the building's exterior to the design guidelines is vague and the Planning staff had drawings of the exterior since early 2008.

c. the Planning Commission may not delegate modifying the building's exterior to the satisfaction of the "DDA Design Committee."

At a meeting of the Pontiac City Council on November 8, 2010, the council noted that it had considered plaintiff's appeal and "agrees with the Planning Commission's Findings of Fact and other conditions of Site Plan Approval" and,

NOW, THEREFORE, BE IT RESOLVED, that the City Council hereby denies the appeal of Common Ground Sanctuary, 147 South Saginaw Street, and

approves its Site Plan consistent with the Findings of Fact and certain conditions of Site Plan approval adopted by the Planning Commission on July 7, 2010, for a medical office and clinic . . .

On December 22, 2010, plaintiff filed a “Motion to Compel Defendants to Issue Site Plan Approval and Declaration” in the trial court. In the motion, plaintiff noted that it “accepts all of the conditions of the site plan approval on remand as set forth by the Planning Commission in the July 12, 2010, document, except subsections (a) and (g), discussed below, and part of subsection (f).” Specifically, plaintiffs alleged as follows in pertinent part:

13. Subsection (f) states:

The building’s exterior shall be modified to comply with the design guidelines established by the downtown plan to the satisfaction of the Planning staff and the DDA committee.

14. Subsection (f) does not comply with the remand because the conditions do not identify the modifications required to comply. The court remanded for a determination of proper conditions, not to postpone the subject to an indefinite later time, possibly requiring a second court review. Moreover, this Court held that the master plan is only a “guide.”

15. Subsection (f) also does not comply because the Ordinance does not provide for any delegation of authority to impose conditions to another entity such as the DDA Design Committee. The Ordinance states that the planning commission shall prescribe the conditions. Moreover, this Court held that “DDA recommendations are not binding on the Planning Commission.

The Planning Commission Findings and Conditions are Beyond the Scope of the Remand

16. This Court directed defendants not to revisit the proposed use on remand. See ¶ 4 above. Conditions of approval (a) and (g) and Findings 1 – 7 (ex 1) violate that direction. They are also improper for the additional reasons set forth below.

17. Conditions of approval (a) and (g) state:

(a) No residential quarters, sleeping rooms, lockdown facility, detention areas or any other locked area where patients are held against their will shall be permitted within the facility.

(g) Patients to the subject facility shall not be transported by ambulance or police vehicles against their will.

18. These conditions are not within the scope of § 5.11(c) because conditions (a) and (g) relate to activities and the use of the site. Section 5.11(c) is limited to physical characteristics of the building exterior and the site.

19. Conditions (a) and (g) are also improper because:

(a) The rare instances where detention or lock down occurs is ancillary to the principal use, and is also a permitted use in a C-2 District.

(b) Ambulance (and police) transport is ancillary to the principal use, and is also a permitted use in the C-2 District.

20. Conditions (a) and (g) are also beyond the scope of the remand because these issues were in the record and are merged in the Court's Opinion and Order. The ambulance bay is listed in the Planning Department written reports, verbal reports at meetings, and proposed resolutions. . . . The proposed resolutions addressed sirens. . . . At the September 3, 2008 meeting of the Planning Commission, the chair reported on his visit to a facility the new building would replace. The minutes state he "indicated there was a portion that was a locked facility, which concerned him . . ." . . . The transcripts of the Planning Commission meetings of March 5 and September 3, 2008 confirm the issues in the new Findings had been discussed at the meetings before this lawsuit was filed. . . .

21. The Planning Commission Findings 1 – 7 are also contrary to this Court's Opinion and Order and this Court should set them aside. . . . These include findings that define the permitted use to be a "clinic." From that findings, the Planning Commission found that a "clinic" does not include patients admitted against their will, a detention area, an ambulance bay, individuals brought in restraints, or an involuntary lock down area. . . .

In sum, plaintiffs requested that the court "compel defendants to issue a site plan approval, subject to the conditions of the July 12, 2010, letter to Common Ground, excluding Sections (a), (f), and (g).

In response to plaintiff's motion, defendants asserted that the trial court had determined that plaintiff's proposed use was sufficiently similar to an outpatient clinic and, on remand, the planning commission placed conditions on the facility accordingly. Specifically, defendants noted that:

Clinics are a principal permitted use in the C2 zoning district, which is where Common Ground seeks to establish their facility, however these clinics differ from Common Ground's proposed usage in several ways. The first, and most important distinction is that these existing clinics do not have a lock-down or holding facility where individuals are held against their will. Secondly, they do not have an ambulance bay where ambulances and police staff can bring in restrained individuals. This has been the City of Pontiac's primary concern from the beginning . . .

Defendants also noted that the City of Pontiac's Zoning Ordinance provides that "any use that is not expressly permitted is prohibited" and that "Just because a clinic and anything substantially similar is a principal permitted use, does not mean that they can operate in any way they see fit,

nor can they use their facility in ways not contemplated under the ordinance.” After noting that the dictionary definition of “clinic” defines a clinic as a “facility for diagnosis and treatment of outpatients, and ‘outpatient’ as a patient who is not hospitalized overnight but who visits a hospital, clinic, or associated facility for diagnosis and treatment,” defendants asserted that:

These terms all define a voluntary activity where a patient seeks treatment, are free to come and go as they please, and under no circumstances be kept overnight. What these definitions clearly lack is any indication that a clinic would be any sort of holding facility for the mentally ill where they would be kept against their will. Therefore, a holding facility is not expressly permitted, and is therefore expressly prohibited under the City of Pontiac’s Zoning Ordinances when looking to the ordinary meaning assigned to words.

The Planning Commission made a finding of fact that they do not believe that a clinic is a facility where patients are admitted against their will, and is a place where they freely and voluntarily seek services.

Plaintiff further argues that an ambulance bay and lock-down facility are permitted accessory uses. The City of Pontiac’s Zoning Ordinance defines “accessory use” as a “subordinate use that is customarily incidental to the principal use on the same lot.” The Planning Commission made a finding of fact that they do not believe that an ambulance bay is a permitted accessory use to a clinic. Other clinics within the City of Pontiac, and primarily within the C2 district, do not have ambulance bays or lock-down facilities.

Defendants further asserted that the intent section of the zoning ordinance which describes the types of businesses sought in the C-2 district clearly establishes restrictions for the zoning district. They further asserted that the 2001 downtown plan was on file and available to plaintiff when it applied to have its project approved and that the plan should be adhered to.

A hearing was held on plaintiff’s motion on January 19, 2011. Following a discussion during which the parties agreed not to object to any procedural irregularities in the manner in which plaintiff was raising the issues presented in its motion, the trial court ruled in pertinent part as follows:

With regard to the ambulance, I find that it is – or, ambulance bay, I find that that condition is not appropriate, it was clearly within the application, it was on the drawings. The various transcripts reveal – or transcripts of planning commission meetings, etcetera, reveals that this was always part and parcel of the application process and that it, therefore, falls within the permitted use that the court has previously ruled on in connection with application.

And, therefore, I grant the relief requested by the Common Ground in connection with the condition of trying to bar the ambulance bay, which – and the use of ambulances thereto, which would be condition – sub-paragraph G, which “Patients of the subject facility shall not be transported by ambulance or police vehicles against an individual’s will.” I find that is not appropriate.

With regard to – and I’ve already ruled that condition F, I believe, is appropriate, which leaves condition A. Condition A, much of it has been conceded by the moving party, they agree there will be no residential quarters or sleeping rooms. It comes down to a lock down facility, detention areas or other locked areas where patients are held against their will and shall e permitted within the facility. This is the hardest issue before the court, I find that for the reasons articulated by Common Ground, that if it falls within the definition of permitted use and that it is contemplated and it’s been contemplated from the beginning that there would be detention and lock down areas and that the decision of the defendant to try to exclude that would be inappropriate in light of the court’s prior rulings and, therefore, I will in part, affirm condition A which is, no residential quarters or sleeping rooms but strike down the lock down facility and detention areas or other locked area where patients are held against their will shall be permitted within the facility.

II

Defendants first argue that the trial court erred in determining that the proposed use of the property clearly and unambiguously falls within the permitted uses of property in the C-2 district and that the trial court erred in its “form over substance” analysis when considering the proposed facility. Following the circuit court’s grant of summary disposition in favor of plaintiff with a remand to the circuit court, defendant filed an interlocutory appeal in this Court. The present issues were raised in that application for leave to appeal. This Court’s previous order denying defendant’s application for leave to appeal the trial court’s order granting plaintiff’s motion for summary disposition is the law of the case because this Court denied the application “for lack of merit in the grounds presented.” *Common Ground v City of Pontiac*, unpublished order of the Court of Appeals, Docket No. 295626 (entered April 30, 2010). Cf. *Grievance Administrator v Lopatin*, 462 Mich 235, 260; 612 NW2d 120 (2000).

Even if this Court were to exercise its discretion and revisit the merits of the issue, see *Freeman v DEC Int’l, Inc*, 21 Mich App 34, 37-38; 536 NW2d 815 (1995), relief would not be warranted because the circuit court did not misinterpret defendant’s zoning ordinance or misapply the substantial evidence standard of review when it determined that plaintiff’s proposed use of the property was a permitted principal use of the land and that the planning commission erred by concluding otherwise.

The rules of statutory construction apply to the interpretation of municipal ordinances. *Gora v City of Ferndale*, 456 Mich 704, 711; 576 NW2d 141 (1998); *Great Lakes Society*, 281 Mich App 407; *Kalinoff v Columbus Township*, 214 Mich App 7, 10; 542 NW2d 276 (1995). As a general rule courts should defer to the interpretation of the statute by the administrative agency which is legislatively charged with enforcing it. *Ford Motor Co v Bruce Township*, 264 Mich App 1, 7; 689 NW2d 764 (2004). However, where the language used in the zoning ordinance is clear, the ordinance must be enforced as written. *Kalinoff*, 214 Mich App at 10-11. Where specific definitions are not provided, “terms used in an ordinance must be given their plain and ordinary meanings.” *Great Lakes Society*, 281 Mich App at 408.

It is undisputed that plaintiff's land is zoned C-2, and that §§7.47(1) and 7.41 of defendant's zoning ordinance allow the principal permitted uses allowed in C-1 and C-O districts as permitted principal uses in the C-2 district. Section 7.35 of the ordinance lists the principal permitted uses for the C-O zoning district as including "offices for ... commercial and civic organizations," "medical clinics (outpatient only) and offices of doctors ... and similar or allied professionals" ... and "hospitals." Since these uses are permitted on properties zoned C-O, they are also allowed on land zoned C-2. In addition to the principal permitted uses allowed in C-1 and C-O zones, §7.47(6) and (12) of the ordinance allows "health services," "charitable institutions [and] hospitals" as permitted principal uses in a C-2 zone. Furthermore, the "catchall" provision of §7.47(15) expressly allows "[o]ther uses similar to the above uses, provided they are conducted within completely enclosed buildings."

While defendant characterizes plaintiff's proposed facility as a "crisis center," it does not cite any portion of the ordinance referring to a "crisis center," nor has this writer found any reference to crisis centers in the ordinance. Nor does defendant provide any authority for its argument that a "crisis center" is anything other than a form of outpatient mental health clinic. Review of plaintiff's plans shows that it proposes a 48,000 square foot facility consisting of both offices for administrative purposes and a place where physicians, nurses, and psychologists can conduct assessments, counseling, and other psychiatric-related services on an outpatient basis. Offices, outpatient medical clinics, hospitals, and "health services" are all permitted uses under the C-2 zoning classification, as are other uses similar to those uses. Defendant's assertions to the contrary were not supported by the plain language of the ordinance, nor were they supported by competent, material, and substantial evidence.

Additionally, the circuit court did not err by finding that the planning commission's decision was not based on proper procedure since it did not state its reasons or findings on the record when it rejected plaintiff's site plan application.

Section 5.11 of defendant's zoning ordinance states in relevant part:

In granting approval of, or rejecting a site plan, ***the record shall be expressed in writing and/or drawings as to the findings of fact and the reason for the decision***, with a statement of any conditions or limitations to which an approval is subject. [Emphasis added.]

The record shows that at the end of its September 3, 2008, meeting, the planning commission voted 8-1 in support of its resolution to deny approval of plaintiff's site plan. The commission did not state its reasons in writing or on the record at the time it voted to reject the plan, nor do its reasons appear in the minutes of the meeting. Instead, defendant's planning administrator drafted some reasons in a letter dated September 9, 2008, and sent it on to plaintiff, apparently without even consulting the planning commission. The procedure followed was contrary to the plain language of §5.11, which requires some sort of findings made by the actual decision-makers, rather than an after-the-fact explanation made by the planning official. Whether this procedural error required vacating the planning commission's decision is irrelevant, since the circuit court also concluded that the planning commission's ultimate determination [as presented in the September 9, 2008, letter] was not supported by the language of the zoning ordinance or by competent, material, and substantial evidence on the record presented.

III

Defendant asserts that the trial court erred in denying the city's conditions for site plan approval. This issue concerns events that occurred after the court granted summary disposition in favor of plaintiff and remanded "to determine whether the Application must be approved as is, or whether to approve the Application with conditions in order to bring it into compliance with conditions imposed by the Ordinance beyond permitted principal uses – namely Section 5.11(c),³ and possible [sic] Section 7.46 – as opposed to outright denial."

On remand, plaintiff accepted all of the planning commission's conditions of site plan approval in the July 12, 2010, document that had been included in prior planning commission reports, but did not accept new conditions (a) – which precluded a "lock down facility, detention areas or any other locked area where patients are held against their will," and (g) – which precluded transportation of patients against their will by ambulance or police vehicle.⁴ Plaintiff asserted that defendant was simply attempting to relitigate the issue of permissible uses, and that the trial court had specifically ordered that the issue of permissible use was not to be addressed on remand.

Citing Const 1963, art 7, § 29, defendant now argues that it was within the city's police power to place conditions upon site approval pursuant to city ordinance Section 7.46, labeled "Intent." Section 7.46 provides:

This district is designed to serve a complex of urban functions that are enhanced both by the centrality of the location and the ease of access of being at the hub of a system of radial thoroughfares and also being types of activities that gain economic advantage from a close proximity organized relationship to each other. It is desired to have this district be more than a regional shopping center and to find here the main offices of banks, headquarters and main offices of public utility companies and other office center activities, the main library, theaters, hotels, and restaurants and other activities that attract the congregation of people. Activities such as warehousing, for example should be discouraged since they take up space without adding to pedestrian activity.

A prime characteristic of this district is a core of intense pedestrian activity. Most persons entering the district will come by automobile and typically will park once to carry out several errands.

³ The scope of § 5.11(c), as explained by Oberi at the June 11, 2007, planning commission meeting, "relates to the physical characteristics of the building and site. The goals and objectives in the Master Plan specify architectural design standards that should be followed." Neither of the conditions at issue in this appeal involve the physical characteristics of plaintiff's building.

⁴ Plaintiff also did not accept condition (f), but the court upheld this condition; this condition is not involved in this appeal.

Defendant argues that conditions (a) and (g) reflect the planning commission's findings that these activities are contrary to the zoning goal of the C-2 district because they do not attract "intense pedestrian activity," enhance the "economic welfare" of merchandising activities, and do not foster a feeling of safety among individuals. However, no citation to legal authority, other than as noted above, nor any citation to the record on remand, is offered. Rather, defendant merely asserts that the use of an ambulance bay and a lock down/detention area is inconsistent with the intent of the C-2 district as described in § 7.46 of the city ordinance.

Section 7.47 then addresses the permitted principal uses and/or exceptions in the C-2 district. However, the trial court had previously concluded that plaintiff's facility is a permitted principal use and that the issue of use could not be revisited on remand. Given the limited scope of remand, we find that the trial court properly concluded that condition (g) was not appropriate because the ambulance bay was clearly included within the application for site plan approval, was on the drawings, and was always part of the application process. Similarly, the court properly concluded that the detention area was contemplated from the beginning and that a new condition "would be inappropriate in light of the court's prior rulings." In other words, the trial court properly concluded that conditions (a) and (g) amounted to restrictions on a permitted principal use, not conditions imposed by ordinance, and, therefore, were improper.

Affirmed.

/s/ Michael J. Kelly
/s/ E. Thomas Fitzgerald
/s/ Pat M. Donofrio