[Cite as *Byers DiPaola Castle v. Ravenna City Planning Comm.*, 2011-Ohio-6095.]

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

PORTAGE COUNTY, OHIO

BYERS DIPAOLA CASTLE, LLC,	:	**O P I N I O N**
Appellee,	:	
		CASE NO. 2010-P-0063
- vs -	:	
RAVENNA CITY PLANNING COMMISSION, et al.,	:	
Defendants,	:	
HARVEST ROSE LIMITED PARTNERSHIP,	:	
Appellant.	:	

Civil Appeal from the Court of Common Pleas, Case No. 2008 CV 1902.

Judgment: Affirmed in part, reversed in part, and remanded.

David E. Williams, Williams, Welser, Kratcoski & Can, 11 South River Street, Suite A, Kent, OH 44240 (For Appellee).

Robert J. Paoloni, Paoloni & Lewis, 250 South Water Street, P.O. Box 762, Kent, OH 44240 (For Appellant).

TIMOTHY P. CANNON, P.J.

{¶1} Appellant, Harvest Rose Limited Partnership ("Harvest Rose"), appeals the judgment of the Portage County Court of Common Pleas reversing a decision of the

Ravenna City Planning and Zoning Commission ("Commission")[1] which granted Harvest Rose a conditional zoning certificate. For the following reasons, we affirm in part, reverse in part, and remand this matter for proceedings consistent with this opinion.

{¶2} Harvest Rose is a limited partnership whose general partner is Harvest Rose Corporation, which is 75% owned by Neighborhood Development Services, Inc., and 25% owned by East Akron Neighborhood Development Corporation. Harvest Rose acquired, by a Warranty Deed from Community and Economic Development Corporation, a single undivided parcel of vacant land consisting of 24.574 acres in the city of Ravenna on October 30, 2007.

{¶3} On this land, Harvest Rose proposed to build the Harvest Rose Project ("Project"), which was first presented to the Commission on August 27, 2007. After numerous meetings and objections, the plans were modified. Under the plan ultimately approved by the Commission, the Project consisted of a 40-unit, low income residential rental housing project to be occupied exclusively by persons 62 years of age or older. The Project included 15 single-story units, each containing between two and four apartments. The units were not to contain basements.

{¶4} The Project would also contain a community center, which would be approximately 1,800 square feet, 18 feet high, and able to occupy no more than 30 occupants. The plans designate an area that would accommodate 19 cars adjoining the community center.

{¶5} The land upon which the Project is to be constructed is within an R-4 Residential District. This zoning district permits two-family and multifamily residential

1. Although the Commission participated in the proceedings at the trial court level, the Commission is not a party to this appeal.

dwellings as a conditionally permitted use. The Project would not be divided into lots, but would remain a single parcel under single ownership.

{¶6} The Project abuts property owned by appellee, Byers DiPaola Castle, LLC ("Byers"), a personal residence that is a registered historical site. Throughout the process, Byers objected to various aspects of the plans, contending they do not comply with the mandatory provisions of the Ravenna City Code ("Code"). Byers also objected to the Project tying into the storm water easement that empties onto its property, as it is not permitted by the Code and is not permitted by the express terms of the easement. Byers also requested fencing and landscaping around the Project to minimize the impact on the adjoining property.

{¶7} The Commission approved the site plan at its October 27, 2008 meeting. Prior to this meeting, the terms of the "Covenant and Agreement" between Harvest Rose and the city of Ravenna were drafted. The Commission approved this "Covenant and Agreement" as a conditional use certificate to Harvest Rose to construct the Project on a single lot.

{¶8} Byers appealed the decision of the Commission to the Portage County Common Pleas Court. In its appeal, Byers contended the following:

{¶9} "The Site Plan fails to provide adequate site and sound buffering as required by 1274.04(j) and (m).

{¶10} "The Site Plan does not comply with 1262.05 Exhibit B, subsection D(4)(c)(4) in that it permits discharge onto Appellant's property without Appellant's permission.

{¶11} "The Site Plan does not provide for adequate landscaping around parking areas as required by 1278.05(C).

{¶12} "The Site Plan provides for more than one driveway on the lot in violation of 1278.17.

{¶13} "The Site Plan does not meet all of the requirement(s) of 1268.04(C).

{¶14} "The Site Plan does not provide for the 40 foot front yard as required by 1268.04(d)(6).

{¶15} "The Site Plan provides for front yard parking in violation of 1272.06(A)(1).

{¶16} "The Site Plan permits a parking lot in an R-4 District in violation of 1278.18.

{¶17} "The Site Plan does not comply with the subdivision standards as required by 1274.03(f), particularly 1246.04(b); 1246.05; and 1246.11.

{¶18} "The 'driveways' within the project are actually private streets as defined in 1260.05(a)(91) (102) and therefore the Site Plan fails to meet the setback requirements of the R-4 District and the front yard requirements of R.C. 1260.05(a)(114).

{¶19} "The Site Plan is based upon the project tying into a drainage easement that discharges on Appellant's land in violation of the easement and the law."

{¶20} The trial court concluded that the "decision of the Commission granting Harvest Rose a 'Covenant and Agreement' as a conditional use certificate to proceed with the development is illegal, unreasonable, and not supported by the preponderance of the substantial, reliable, and probative evidence on the whole record. Therefore, [the trial court reversed] the decision of the Commission granting Harvest Rose the authority to build its proposed apartment development."

{¶21} Harvest Rose appealed, assigning the following assignments of error:

{¶22} "[1.] The trial court erred by reversing the decision of the city of Ravenna Planning Commission and the decision of the trial court is not supported by a preponderance of reliable, probative, and substantial evidence.

{¶23} "[2.] The trial court erred in determining that appellee, Byers DiPaola Castle, LLC, has standing to bring an appeal of the commission's decision to the Portage County Court of Common Pleas.

{¶24} "[3.] The trial court erred in determining that the subdivision regulations of the Ravenna City Code apply to the proposed development of Harvest Rose."

{¶25} Before we address Harvest Rose's assignments of error, we must consider our standard of review. First, upon review of an administrative appeal, a court of common pleas considers whether the decision to grant or deny a certificate is supported by "the preponderance of substantial, reliable, and probative evidence on the whole record." R.C. 2506.04. This court's review of the judgment of the trial court is more limited than that of the court of common pleas. *Henley v. City of Youngstown Bd. of Zoning Appeals* (2000), 90 Ohio St.3d 142, 147. This court's review is whether, as a matter of law, the decision of the court of common pleas is supported by a preponderance of reliable, probative, and substantial evidence. *Kisil v. Sandusky* (1984), 12 Ohio St.3d 30, 34. "'While the court of common pleas has the power to weigh the evidence, an appellate court is limited to reviewing the judgment of the common pleas court strictly on questions of law.'" *Carrolls Corp. v. Willoughby Bd. of Zoning Appeals*, 11th Dist. No. 2005-L-110, 2006-Ohio-3411, at ¶10. (Citations omitted.)

{¶26} "'Zoning ordinances typically provide for two types of uses: permitted and conditional. Permitted uses are those allowed as of right, provided the landowner meets all other requirements, e.g., building code requirement. Conditional uses (also known as special exceptions) are also allowed in the zoning code, but they are uses that may have a significant impact and thus require an administrative hearing for approval.'" *Kipp v. Bd. of Zoning Appeals of Stonelick Twp*., 12th Dist. No. CA2003-10-086, 2004-Ohio-5903, at ¶10, quoting Meck and Pearlman, Ohio Planning and Zoning Law (2004 Ed.) 387, Section 9:11.

{¶27} For ease of discussion, we first address Harvest Rose's second assignment of error. Under this assigned error, Harvest Rose contends that Byers does not have standing as it is an entity not located within the city of Ravenna and is not "considered a 'citizen' of the city of Ravenna." Further, Harvest Rose argues that Byers is not an "aggrieved" party, as there is no evidence in the record that it would be harmed by water runoff from the Project.

{¶28} The Supreme Court of Ohio has held:

{¶29} "'Appeal lies only on behalf of a party aggrieved by the final order appealed from.' *** An 'aggrieved' party is one whose interest in the subject matter of the litigation is 'immediate and pecuniary, and not a remote consequence of the judgment.' *** Thus, in order to have standing to appeal, a person must be 'able to demonstrate a present interest in the subject matter of the litigation which has been prejudiced' by the judgment appealed from. *** A future, contingent, or speculative interest is not sufficient to confer standing to appeal. ***." (Internal citations omitted.)

Midwest Fireworks Mfg. Co. v. Deerfield Twp. Bd. of Zoning Appeals (2001), 91 Ohio St.3d 174, 177. (Citation omitted.)

{¶30} Initially, we note that under this assignment of error, Harvest Rose cites to numerous reasons supporting the position that existing water runoff points of discharge would not change. Harvest Rose, however, has failed to cite to the record as required by App.R. 16(A)(7), which states:

{¶31} "The appellant shall include in its brief, under the headings and in the order indicated, *** [a]n argument containing the contentions of the appellant with respect to each assignment of error presented for review and the reasons in support of the contentions, with citations to the authorities, statutes, and parts of the record on which appellant relies."

{¶32} We agree with the trial court's decision that Byers has standing in the instant administrative appeal since Byers is a contiguous property owner, actively participated during the administrative proceedings, and claims to be adversely affected by the Project. Additionally, we note the record establishes that this property is registered as a historical site. Throughout this process, Byers has continually objected to the proposed plans of Harvest Rose claiming that water drains from the Project site onto Byers' property; that the Code provides for adequate buffering in terms of fencing and landscaping to alleviate the impact on the surrounding property; and that the Project would result in increased storm water run-off onto Byers' property.

{¶33} Additionally, upon application for a conditional zoning certificate, the Code requires the Commission to "review the proposed development, as presented on the submitted plans and specifications, in terms of the standards established in [the] Zoning

Code, for the health, safety and welfare of the community." 1274.02(c)(1). Byers was entitled to notice under the Code, as it states that the Commission "shall notify *** all property owners contiguous or across the street from the subject property ***." 1274.02(c)(2).

{¶34} Harvest Rose's second assignment of error is without merit.

{¶35} Under the first assignment of error, Harvest Rose argues that the trial court's judgment is not supported by a preponderance of substantial, reliable, and probative evidence and, thus, must be reversed. Harvest Rose's assigned error contains no argument or analysis; it merely states this court's standard of review for an administrative appeal. We find that Harvest Rose's first assignment of error fails to comply with App.R. 16(A)(7), and, therefore, this court is unable to conduct a review on appeal.

{¶36} Harvest Rose's first assignment of error is without merit.

{¶37} Under the third assignment of error, Harvest Rose maintains that the trial court erred in applying the subdivision regulations of the Code to the Project. Harvest Rose argues that the Project is not a subdivision under the Code, but rather it is to be developed as a single lot and is not to be divided into multiple lots. As expressed by the Covenant and Agreement executed by Harvest Rose, "the real property shall be held as one parcel and no portion of said land and no interest therein shall be transferred separately."

{¶38} At the meeting of the Commission held on September 29, 2008, the issue was discussed whether the subdivision regulations applied to the Project. As reflected in the minutes of that meeting, it was the Commission's interpretation of the zoning code

that the subdivision regulations do not apply to a private, one-parcel development. The following discussion took place:

{¶39} "Mayor Poland: As far as the application, again just for purposes of the record here, I want to make sure that we address these issues. It is my understanding that the subdivision regulations do not apply to a private one parcel development. There has been some discussion as far as curbs, gutters and sidewalks so I want to make sure that we have an understanding of that. ***

{¶40} "Mark Bowen: *** [M]y understanding of the subdivision regulations talks about each individual lot that is created has to meet the requirements of the subdivision regulations. There is only one lot being created and it is the whole parcel and it does have access to the public road and the public road is constructed according to the subdivision regulations. We just recently heard that there will be no further subdivision in the future so I don't see how anyone can claim that this is a public road or that it will be a public road.

{¶41} "Mayor Poland: Or in that case that it must be subdivision regulations. ***

{¶42} "[Attorney] Williams: With those comments [Byers reserves] our objections to that basis of 1274.03 which I have cited in my objections and I would just like to reserve that."

{¶43} In its judgment entry, the trial court reversed the decision of the Commission and the opinion of the mayor, finding that the subdivision regulations are applicable to the Project. The trial court stated:

{¶44} "The Ravenna ordinances clearly require the Commission to determine that all structures and roads be in compliance with the subdivision regulations.

Ravenna Ord. 1274.03(f). Harvest Rose's proposed development does not comply with the subdivision regulations applicable to an R-4 Residential District.

{¶45} "Harvest Rose principally argues that its apartment development is not a subdivision, so the subdivision ordinances and rules do not apply. But what Harvest Rose really contends is that no definite requirements apply to their development."

{¶46} The trial court then found that the Project failed to comply with the following subdivision regulations: 1246.11(c), requiring a street width of 26 feet with curbs; 1246.05, requiring a sidewalk on each side of the street; 1278.18, prohibiting parking lots in residential districts; and 1268.04(d), requiring various minimum distances between dwellings, such as lot frontage, lot width, lot depth, front yard depth, and various other set-offs. The trial court also determined that the proposed community center, allowing only resident use, was not acceptable under the Code.

{¶47} Before we address Harvest Rose's assigned error, we are mindful that "[a] trial court does not sit as a trier of fact in an administrative appeal; rather, when reviewing an administrative appeal, a trial court may not substitute its judgment for that of the agency unless there is a lack of a preponderance of reliable, probative, and substantial evidence to support the agency's decision." *Brunn v. Litchfield Twp. BZA*, 9th Dist. No. 07CA0053-M, 2007-Ohio-7029, at ¶5, citing *Kisil v. Sandusky*, supra, at 35; see, also, R.C. 2506.04.

{¶48} Both Byers and the trial court state that Section 1274.03 of the Code requires Harvest Rose's Project to be in compliance with the subdivision regulations. Section 1274.03, entitled "Standards for Approval of Use," states, in pertinent part:

{¶49} "The Planning Commission shall review the particular facts and circumstances of each proposed use in terms of the following standards and shall find that such proposed use of the proposed location:

{¶50} "***

{¶51} "(f) Will include all structures, roads and utilities which shall be in compliance with the Subdivision Regulations ***."

{¶52} Section 1240.04 of the Code states:

{¶53} "As used in these Subdivision Regulations[,] [s]ubdivision means the division of a lot, tract or parcel of land into two or more lots, plats, sites or other divisions of land for the purpose, whether immediate or future, of transfer of ownership or building development, including all changes in road or lot times. However, divisions of land for agricultural purposes in parcels of more than five acres, not involving any new road or easement of access, shall be exempted."

{¶54} The applicability of subdivision regulations is somewhat self-explanatory. When a developer seeks to divide a parcel or parcels into smaller parcels and create public roads and utility services, public entities seek to strictly regulate the process. This is done primarily because the entity will ultimately accept the roads and utilities and thereafter be responsible for their repair and maintenance. Although Section 1274.03 requires compliance with the subdivision regulations, the Commission determined those regulations are only applicable if the property in question qualifies as a subdivision as defined under the Code. Further, we recognize that the definition of subdivision includes "building development." However, to fall within the classification of subdivision the "lot, tract or parcel of land" must be divided into "two or more lots." Here, the

evidence unequivocally demonstrates that the Project is to be developed on *one single, undivided parcel of land*, as stated in the Covenant and Agreement executed by Harvest Rose and the Commission. That Agreement states, in pertinent part:

{¶55} "We hereby agree and covenant with the City of Ravenna, Ohio, that the above legally described real property shall be held as one parcel and no portion of said land and no interest therein shall be transferred separately.

{¶56} "We hereby agree and covenant with the City of Ravenna, Ohio[,] that the above legally described real property shall not be restructured into a Condominium or any other ownership configuration that would allow any part of it to be transferred separately, and further that there shall be no further subdivision of the property herein, that the property shall only be developed as set forth in the site plan approved by the Planning Commission and the conditions contained therein on the 27th day of October, 2008."

{¶57} In this Project, it is not anticipated that any part of it will be transferred to a public entity, thus requiring the public to provide maintenance and repair. The Commission, after numerous meetings spanning nearly one year, was in the best position to make that judgment. The Commission's judgment, that this Project is not governed by the subdivision regulations of the Code, is supported by reliable, probative, and substantial evidence.

{¶58} The trial court must review the decision of the administrative agency with a presumption that the decision is valid, and it is error to fail to give deference to the Commission. The trial court may not simply substitute its judgment for that of the agency. *Dudukovich v. Lorain Metro. Hous. Auth.* (1979), 58 Ohio St.2d 202, 207. The

trial judge stated that the decision of the Commission is "illegal, unreasonable, and not supported by the preponderance of the substantial, reliable, and probative evidence."

{¶59} In this case, there was evidence supporting the Commission's ruling that the project complied with the Code. Neither the mayor nor the Commission thought the Project needed to comply with the subdivision regulations, because the Project did not meet the definition of a subdivision. Their assessment was reasonable and should have been given deference, absent evidence that their decision was unconstitutional, illegal, arbitrary, capricious, unreasonable, or unsupported by the preponderance of substantial, reliable, and probative evidence.

{¶60} While the trial court found that Ravenna's Code "clearly require[s] the Commission to determine that all structures and roads be in compliance with the subdivision," it is not so clear. The Commission could reasonably have read section 1274.03(f)—requiring a proposed use to be "in compliance with the Subdivision Regulations ***"—to apply only to the extent the proposed use was, in fact, a subdivision.

{¶61} The decision of the trial court is contrary to the spirit of real property law, as stated by the Supreme Court of Ohio:

{¶62} "All zoning decisions, whether on an administrative or judicial level, should be based on the following elementary principles which underlie real property law. Zoning restrictions are in derogation of common law and deprive a property owner of certain uses of his land to which he would otherwise be lawfully entitled. Therefore, such resolutions are ordinarily construed in favor of the property owner. *** *Restrictions on the use of real property by the ordinance, resolution or statute must be*

strictly construed, and the scope of the restrictions cannot be extended to include limitations not clearly prescribed. ***." (Emphasis added and internal citations omitted.) *Saunders v. Zoning Dept*. (1981), 66 Ohio St.2d 259, 261.

{¶63} In its entry, the trial court states that "Harvest Rose *** contends *** that no definite requirements apply to their development." This is incorrect. Harvest Rose applied for a conditional use certificate, which is governed by the Code. Section 1274. grants the Commission latitude and discretion with respect to granting conditional zoning certificates, stating, in part:

{¶64} "Rather than assign all uses to special, individual and limited zoning districts, it is important to provide controllable and reasonable flexibility in requirements for certain kinds of uses that will allow practicable latitude for the investor, but that will, at the same time, maintain adequate provision for the security of the health, safety, convenience, and general welfare of the community's inhabitants." 1274.01(a).

{¶65} In addition to several enumerated "Permitted Uses" within an R-4 Residential District, the Code sets forth a list of "Conditionally Permitted Uses." "The inclusion of conditional use provisions *** in zoning legislation is based upon a legislative recognition that although certain uses are not necessarily inconsistent with the zoning objectives of a district, their nature is such that their compatibility in any particular area depends upon surrounding circumstances. ***." (Internal citations omitted.) *Gerzeny v. Richfield Twp.* (1980), 62 Ohio St.2d 339, 341.

{¶66} Multifamily residential dwelling is a conditionally permitted use in the Code. As stated in Section 1268.04, governing an R-4 Residential District:

{¶67} "(c) Conditionally Permissible Uses. The Planning and Zoning Commission may issue conditional zoning certificates for uses listed herein subject to the general regulations of Chapter 1274 and to the specific requirements of Section 1274.04 as listed below:

{¶68} "***

{¶69} "(2) Multifamily residential dwelling subject to Section 1274.04(a), (b), (c), (d), (h), (i), (j), (m), and (o)."

{¶70} In addition to those restrictions enumerated above, Section 1268.04(d) also requires certain area, density, setback, and height regulations, which would be applicable to the Project. According to the trial court, Harvest Rose was arguing that that no definite requirements apply to their proposed development. The trial court's construction of Harvest Rose's argument was inaccurate.

{¶71} While Byers argues that the administrative agency cannot enlarge its power or ignore the law, it is important to note the broad power and authority given to the Commission by the zoning resolution. This is evidenced by Section 1278.01(b), which states:

{¶72} "(b) The Planning and Zoning Commission shall have the power to permit any use comparable in character to any of the specified uses listed under the sections providing for permitted or conditionally permissible uses in any district. In determining comparability the Commission shall consider:

{¶73} "(1) The nature of the use,

{¶74} "(2) Other land uses in the vicinity,

{¶75} "(3) Bulk and size of structure in comparison to neighborhood structures,

{¶76} "(4) Intensity of use,

{¶77} "(5) Density,

{¶78} "(6) Size and design of parking areas,

{¶79} "(7) Traffic demands and traffic patterns,

{¶80} "(8) Hours of operation and/or use,

{¶81} "(9) And other factors as determined by the Commission."

{¶82} Determining that the subdivision regulations do not apply to the Project, we now address each issue raised by Harvest Rose. First, Harvest Rose contends the trial court erred in determining that the Project did not comply with Section 1246.11(c), which requires new streets in new subdivisions to have "a minimum pavement width of twenty six (26) feet, measured back to back of curbs."

{¶83} Second, Harvest Rose maintains that the sidewalks are not required to meet Section 1246.05, which requires sidewalks to be at least four feet wide and to be located on both sides of the street. Both Section 1246.11(c) and 1246.05 apply to subdivisions, and are therefore not applicable to the Project.

{¶84} Third, Harvest Rose argues the trial court erroneously determined that the Project contains parking lots, which are prohibited in residential areas by Section 1278.18 of the Code. Harvest Rose alleges, and the Commission agreed, that these areas are not parking lots, but private streets which provide for additional parking. We find that the decision of the trial court is not supported by a preponderance of reliable, probative, and substantial evidence. There is no evidence in the record that designates these areas as parking lots. Section 1278.18 of the Code is only applicable to parking lots, not private streets. While parking lots are prohibited in one section of the Code,

Section 1272.02 of the Code requires a *minimum* number of spaces in residential districts, with no reference to a *maximum* number. We find the trial court abused its discretion, as the Code gives latitude and discretion to the Commission in granting conditional use certificates.

{¶85} Fourth, Harvest Rose maintains that the trial court erred in determining that the Project does not meet the minimum 40-foot setback as required by 1268.04(d), entitled "R-4 Residential District." Harvest Rose argues that Section 1274.04, which governs regulations pertaining to conditionally permissible uses, provides the Commission with discretion with respect to setbacks. Section 1274.04(b) states:

{¶86} "Additional Setbacks. All structures and activity areas shall be located at least twenty-five feet from all property lines. The Planning and Zoning Commission may increase the requirements to not exceed 100 feet. The Commission shall base its determination on the degree of danger, noise and inconvenience to the adjacent property owners."

{¶87} Upon first review, it appears there is an apparent contradiction within the Code. While 1268.04(d) requires a setback of 40 feet, it seems 1274.04(b) grants the Commission discretion to modify the setback requirements from 25 feet to 100 feet.

{¶88} Section 1278.02, however, resolves this issue and states that setback requirements are governed by the setback regulations of the district "in which the building is located, unless otherwise specifically provided for in this Zoning Code." The R-4 Residential District generally requires a minimum setback of 40 feet; however, the Code does, in fact, "otherwise specifically" provide. In Section 1268.04(c)(2), for multifamily residential dwellings, the more specific setback provision of Section

1274.04(b) is applicable in this case. Consequently, the trial court erred in determining that the Project does not meet the setback requirement of the Code.

{¶89} Fifth, Harvest Rose states that the trial court erroneously determined that the Project is prohibited by Section 1278.09 of the Code, which states "no residential structure shall be erected upon the rear of a lot or upon a lot with another dwelling." We agree with Harvest Rose. Given the discretion of the Commission, it is a logical interpretation that this restriction applies to a request to build a residential structure on a lot with an existing residential structure, not a multifamily residential dwelling that requires issuance of a conditional use permit, subject to the general regulations of Chapter 1269.04 and to those specific requirements enumerated in Section 1274.04 of the Code. And, as we previously stated, the Code grants the Commission discretion in granting a conditional use certificate.

{¶90} Sixth, Harvest Rose argues that the community center is not prohibited under the Code, as determined by the trial court. We agree. Section 1274.04(c) grants the Commission discretion in determining whether recreational facilities are necessary.

{¶91} For the foregoing reasons, Harvest Rose's third assignment of error has merit to the extent indicated.

{¶92} Based on the opinion of this court, the judgment of the Portage County Court of Common Pleas is hereby affirmed in part, reversed in part, and remanded for proceedings consistent with this opinion.

THOMAS R. WRIGHT, J., concurs,

MARY JANE TRAPP, J., concurs with Concurring Opinion.

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MARY JANE TRAPP, J., concurs with Concurring Opinion.

{¶93} While I concur with the majority opinion, I write separately as I arrive at a decision as to Harvest Rose's third assignment of error from a different perspective.

{¶94} While the commission could "reasonably have read section 1274.03(f) requiring a proposed use to be 'in compliance with the Subdivision Regulations ***'" to apply only where the proposed use is, in fact, a subdivision, it was equally reasonable for the trial court to find the ordinance required all elements of the project to comply with the subdivision regulations.

{¶95} The Ravenna City Code can be read as requiring all conditional uses of land to comply with subdivision rules. Section 1268.04(c) addresses conditionally permissible uses in R-4 residential districts and states: "The Planning and Zoning Commissions may issue conditional zoning certificates for uses listed herein subject to the general regulations of Chapter 1274 ***." The portion of the code pertinent to conditional uses, therefore, refers specifically to a section that calls for compliance with subdivision regulations: Section 1274.03 (clearly contained in Chapter 1274 referred to in the conditional use section) sets forth standards for approval of a conditional use, including "(f) [w]ill include all structures, roads and utilities which shall be in compliance with the Subdivision Regulations, the standards of the Board of Health and the Building Code of the City."

{¶96} Given the language in the conditional use section that points directly to subdivision regulation language, it was not unreasonable for the trial court to conclude

appellant's project in this case would be subject to those regulations. However, when the well-established rule that the trial court is to review the decision of an administrative agency with the presumption that the agency's decision is valid is considered along with the broad power given to the Commission under Section 1278.01(b) to "permit *any use comparable in character* to any of the specific uses listed under the sections providing for permitted or conditionally permitted uses *in any district*" (emphasis added), the decision of the Commission must stand.

{¶97} While the trial court in this case reached a reasonable interpretation of the Ravenna City Code, it erred by substituting its judgment for that of the zoning commission where the commission applied an equally valid interpretation of the code.