IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
August 19, 2014 Session

A-1 WASTE, LLC v. MADISON COUNTY MUNICIPAL SOLID WASTE PLANNING REGION BOARD, ET AL.

Appeal from the Chancery Court for Davidson County
No. 11-409-III Ellen Hobbs Lyle, Chancellor

No. M2013-02265-COA-R3-CV – Filed July 30, 2015

The Madison County solid waste planning region board rejected an application, submitted on behalf of A-1 Waste, LLC, to construct a solid waste landfill. In light of the rejection, the Commissioner of the Tennessee Department of Environment and Conservation declined to issue the landfill permit. A-1 Waste appealed the region board's rejection to the Chancery Court for Davidson County. A-1 Waste also requested review of the Commissioner's action by the Tennessee Solid Waste Disposal Control Board. The chancery court stayed A-1 Waste's appeal pending the outcome of the control board's review. The control board reversed the region board and ordered that the permit be granted. The region board subsequently petitioned the chancery court for review of the control board's decision. The chancery court consolidated A-1 Waste's appeal with the appeal filed by the region board and a third action filed by a group of concerned citizens. Following a hearing, the chancery court reversed the control board's decision and the issuance of the permit. On appeal, A-1 Waste claims the trial court applied an incorrect standard of review to the region board's decision and that the decision was properly reversed by the control board. A-1 Waste also claims that the group of concerned citizens lacked standing to seek judicial review of the control board's decision. We conclude that the control board lacked authority to review the region board's decision and that the region board properly rejected the permit application. We also conclude the concerned citizens had standing to appeal the control board's decision. Therefore, we affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed

W. NEAL MCBRAYER, J., delivered the opinion of the Court, in which FRANK G. CLEMENT, JR., P.J., M.S., and RICHARD H. DINKINS, J., joined.

William L. Penny, Jerry W. Taylor, and Kevin P. Hartley, Nashville, Tennessee, for the appellant, A-1 Waste, LLC.

John S. Hicks and Elizabeth B. McCostlin, Nashville, Tennessee, for the appellee, Madison County Municipal Solid Waste Planning Region Board.

Lyndsay Smith Hyde and Andrea T. McKellar, Nashville, Tennessee, for the appellee, Concerned Citizens of Madison County.

OPINION

I. FACTUAL BACKGROUND

On July 18, 2008, Mr. Bill McMillen of A-1 Waste, LLC submitted an application for a permit to construct a solid waste landfill in the city of Jackson in Madison County, Tennessee. He submitted the application to the Division of Solid Waste Management (the "Division") of the Tennessee Department of Environment and Conservation ("TDEC"). However, he did not submit a copy of the application to the Madison County Municipal Solid Waste Planning Region Board (the "Region Board") either before or at the same time as required by statute. *See* Tenn. Code Ann. § 68-211-814(b)(2)(A) (2013).

Over two years later, on November 23, 2010, the Division sent a letter to the chairman of the Region Board enclosing a copy of the application. This was when the application was first sent to the Region Board.[1] In a separate letter, the Division sent the Region Board a copy of Tennessee Code Annotated § 68-211-814(b)(2), which outlined the Region Board's role in reviewing the application.

The Region Board held three meetings on Mr. McMillen's application. At the final meeting, on February 23, 2011, the Region Board passed a resolution rejecting the application. The resolution included the following four reasons for rejection:

> 1) The Board's current plan for waste [disposal] projects capacity for Municipal Solid Waste be [sic] approximately thirty (30) years. Schedule 3, yard waste, and Schedule 4, construction demolition waste, capacity at eighteen (18) years. Therefore there is no need for additional capacity at this time.

[1] The Region Board could have learned of the application indirectly before November 2010. The Division sent the application to the mayors of Jackson and Madison County on August 14, 2008, and a Public Notice of Receipt of a Department Permit Application for a Solid Waste Disposal Facility appeared in *The Jackson Sun* on August 20, 2008. A consultant for A-1 Waste also sent a letter to the chairman of the Region Board requesting a review of the proposed landfill in December 2009.

2) With no immediate need for capacity and with technology and recycling methods changing continually, it appears prudent to not add a landfill until there is a detailed review of our current plan. After review, we will amend the plan, if needed, to address further requirements.

3) The current contract between City of Jackson/Madison County and Waste Management requires the City of Jackson and Madison County to insure that all of certain types of waste go to the current landfill. Adding a new landfill could require policing by the City and County to guarantee the contract is being upheld on the City/County's part. This requirement could be a tremendous burden on the City/County with possible large negative financial consequences.

4) As the area in question was spot zoned, questions concerning the effect on the community and other questions were not addressed as we feel reason number 1 clearly justifies refusing this request.

In light of the Region Board's rejection of the application, the Commissioner of TDEC (the "Commissioner") declined to issue the permit, concluding that the Region Board's decision was not arbitrary and capricious and unsupported in the record.

A-1 Waste, LLC[2] pursued two avenues of review of the denial of the application. On March 25, 2011, A-1 Waste filed a petition for review in the Chancery Court for Davidson County, appealing the decision of the Region Board. On July 1, 2011, A-1 Waste also filed a Notice of Appeal and Petition for Hearing (the "Notice of Appeal") with the Tennessee Solid Waste Disposal Control Board (the "Control Board"), challenging the Commissioner's "apparent denial" of the permit. In the Notice of Appeal, A-1 Waste alleged that "the Commissioner has reviewed, obtained public comments, and, but for the notice of the rejection of the application by the Region [Board], would have issued the Permit." The claims for relief in the Notice of Appeal all related to the alleged deficiencies in the Region Board's decision.[3]

A-1 Waste initially did not prosecute its appeal to the chancery court, and upon agreement of the parties, the chancery court entered an order holding the matter in

[2] Although "Bill McMillen" was identified as the name of the facility and the owner of the land upon which the proposed landfill would be constructed in Part I of the application, A-1 Waste, LLC, and not Mr. McMillen in his individual capacity, sought review of the denial of the permit.

[3] A-1 Waste filed an Amended Notice of Appeal and Petition for Hearing on November 14, 2011. The amendments to the original Notice of Appeal are not relevant to the issues on appeal.

abeyance.[4] Meanwhile, the Region Board received permission to intervene in A-1 Waste's appeal to the Control Board.

On February 7, 2012, the Control Board held a meeting and reviewed the information submitted by both A-1 Waste and the Region Board. On April 27, 2012, the Control Board reversed the Region Board's decision and ordered the Commissioner to issue the permit. In its written Final Decision and Order, the Control Board found that it had jurisdiction to decide the matter and that A-1 Waste was an aggrieved party. The Control Board also set forth the following pertinent facts and conclusions of law:

> [ ] Mr. McMillen did not submit the application to the Madison County Regional Solid Waste Planning Board at or before the filing of the application with the Division; however, the County was duly notified on a number of occasions since 2008 . . . .
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> . . . .
>
> [ ] Because the Region [Board] did not find that A-1 Waste's application for a new landfill was inconsistent with the Region [Board]'s solid waste plan the Commissioner should have issued the Permit because the Resolution did not comply with Tenn. Code Ann. § 68-211-814(b)(2)(B).
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> [ ] For failing to render a decision within ninety (90) days of receipt of A-1 Waste's complete application, the Region [Board]'s acts were in violation of Tenn. Code Ann. § 68-211-814(b)(2)(A).

The Control Board concluded that TDEC was "not precluded from issuing the Permit" and directed the Commissioner to do so.

On April 9, 2012, the Commissioner issued the permit. The Region Board requested a stay, which was denied. On April 27, 2012, the Region Board filed its petition for judicial review with the Chancery Court for Davidson County. The same day, a group of individuals living near the site of the proposed landfill, known as the Concerned Citizens of Madison County ("Concerned Citizens"), filed their own petition with the chancery court appealing the issuance of the permit. Despite the favorable ruling from the Control Board and receipt of the permit, A-1 Waste did not voluntarily dismiss its petition for judicial review.[5] The chancery court issued an order consolidating all three cases on November 21, 2012.

[4] The order holding in abeyance A-1 Waste's appeal to chancery court does not appear in the record.

[5] In the chancery court, A-1 Waste argued that its petition for judicial review "would be moot" in the event the Control Board ruled in its favor.

On June 19, 2013, the chancery court entered an order reversing the decision to issue the permit. The chancery court determined that the Region Board's resolution rejecting the permit was not "arbitrary, capricious and unsupported by the record." As a result, the court concluded that the Control Board was not authorized to direct the Commissioner to issue the permit. The court reversed the Control Board's Final Decision and Order and dismissed A-1 Waste's petition for judicial review with prejudice.

II. ANALYSIS

In order to address the issues raised by A-1 Waste on appeal, it is necessary to understand the statutory framework governing the issuance of permits for the construction of new landfills. Solid waste disposal is addressed by chapter 211 of title 68 of the Tennessee Code. Chapter 211 contemplates review of applications for landfill permits by both the State, acting through TDEC, and local solid waste planning districts. Although generally approval must be obtained from both, the statutory roles of TDEC and the local solid waste planning districts in the review process are different. The statutes also provide for different avenues of appeal from decisions of TDEC and the local solid waste planning districts.

A. REVIEW OF PERMIT APPLICATIONS BY TDEC AND REGIONAL BOARDS

1. TDEC Review of Proposed Solid Waste Facilities

The Tennessee Solid Waste Disposal Act, which is codified at Tennessee Code Annotated §§ 68-211-101 through -124, grants TDEC "general supervision over the construction of solid waste processing facilities and disposal facilities or sites throughout the state." Tenn. Code Ann. § 68-211-105(a) (2013). Plans for new solid waste facilities or sites must be approved by TDEC. *Id.* § 68-211-105(b). Plans must be submitted with both a "comprehensive environmental site assessment" and proof that "the proposed site and the design of the proposed facility are capable of containing the disposed wastes" and protecting the groundwater. *Id.* § 68-211-105(g)(1), (2).

If plans are disapproved, the Commissioner is required to notify the applicant in writing, stating "the grounds for the commissioner's disapproval." *Id.* § 68-211-105(e). In the event of either disapproval or the Commissioner's failure to act on a plan within forty-five days, the permit applicant must first seek Control Board review of the Commissioner's disproval or inaction. *Id.* § 68-211-113(b) & (c) (2011).[6] The Control Board then conducts a hearing at which it makes findings and renders a decision. *Id.*

[6] Tennessee Code Annotated § 68-211-113 was amended in 2013 to rewrite subsections (a), (b), and (h). 2013 Tenn. Pub. Acts 437(ch. 181 §§ 4-6). A disapproval or inaction by the Commissioner remains subject to review by the Control Board under Tennessee Code Annotated § 68-211-113(a)(1) & (c) (Supp. 2014).

§ 68-211-113(f).[7] The final decision of the Control Board is appealable to the "chancery court for Davidson County." *Id*. § 68-211-113(g) (Supp. 2014).

2. Local Review of Proposed Solid Waste Facilities

The Solid Waste Management Act of 1991, which is codified at Tennessee Code Annotated §§ 68-211-801 through -874 (ch. 451 §§ 1-52), provides for local input in solid waste management. 1991 Tenn. Pub. Acts 731-68. In summary,

> [t]he Act divides the state into municipal solid waste planning districts, and the solid waste disposal activities in each district are managed by a board. These boards are empowered to create and maintain a plan for managing the disposal of solid waste within the district. Any entity desiring to operate a solid waste disposal facility must first obtain . . . [approval] from the board overseeing the disposal of solid waste in the district in which the facility will be located.

Waste Mgmt., Inc. v. Solid Waste Region Bd., No. M2005-01197-COA-R3-CV, 2007 WL 1094131, at *1 (Tenn. Ct. App. Apr. 11, 2007) (footnotes omitted). These districts, which the statute refers to as regions, may consist of a single county, as in the case before us, or two or more contiguous counties. Tenn. Code Ann. § 68-211-813(a)(1).

Permit application and region review procedures are set forth in Tennessee Code Annotated § 68-211-814(b)(2)(A):

> An applicant for a permit for construction or expansion of a solid waste disposal facility or incinerator shall submit a copy of the application to the region at or before the time the application is submitted to the commissioner. The region shall review the application for compliance with this section, and shall conduct a public hearing after public notice has been given in accordance with title 8, chapter 44, prior to making the determination provided for in this subdivision (b)(2). The hearing shall afford all interested persons an opportunity to submit written and oral comments, and the proceeding shall be recorded and transcribed. The region shall render a decision on the application within ninety (90) days after receipt of a complete application. The region shall immediately notify the commissioner of its acceptance or rejection of an application.

Id. § 68-211-814(b)(2)(A). A region determines only whether "the application is inconsistent with the solid waste management plan adopted by the county or region . . . ."

[7] Subsection (f) of Tennessee Code Annotated § 68-211-113 was deleted effective July 1, 2013. 2013 Tenn. Pub. Acts 437 (ch.181 §§ 4-6).

Id. § 68-211-814(b)(2)(B). If the region rejects an application as inconsistent with its solid waste management plan, the Commissioner "shall not issue the permit unless the commissioner finds that the decision of the region is arbitrary and capricious and unsupported in the record developed before the region." *Id*. § 68-211-814(b)(2)(C).

"[A]n aggrieved person" must appeal "*final actions of the region*," including the region's rejection of an application, to the chancery court of Davidson County within thirty days. *Id.* § 68-211-814(b)(2)(D) (emphasis added). In reviewing a region's decision, the chancery court conducts "the same review as it would in a case arising under the Uniform Administrative Procedures Act." *Id*.

B. THE THREE APPEALS ARISING FROM THE SAME PERMIT APPLICATION

On appeal, A-1 Waste argues that the chancery court erred in the following three respects: (1) "by failing to reverse the Region's decision denying A-1 [Waste]'s landfill permit application," (2) "by reversing the [Control] Board's ruling," and (3) "by allowing the 'Concerned Citizens' to proceed with their purported case." However, in the summary of its argument, A-1 Waste recasts the three issues as a single issue: whether the chancery court erred in "attempt[ing] to rule on all three cases at once." Although conceding that each case involves the same landfill permit application, A-1 Waste notes that the cases were "based on different records" and, therefore, "deserved independent consideration."

By not giving the cases "independent consideration," A-1 Waste claims it was effectively denied a forum for review of the Region Board's denial of the landfill permit application. Additionally, by deciding "all three cases at once," A-1 Waste claims the chancery court failed to apply the appropriate standard of review to the decisions of the Region Board and the Control Board.

The single appeal, filed by A-1 Waste after the Region Board's rejection of its permit application, became three appeals only as a consequence of A-1 Waste's simultaneous pursuit of two avenues of review of the Region Board's decision, one judicial and one administrative. This created, in the words of A-1 Waste, a "procedurally complicated" case. This also raises a fundamental issue—whether simultaneous administrative and judicial review of a region's decision is authorized. [8]

[8] The same "procedural complication" occurred once before, in *Consol. Waste Sys., LLC v. Solid Waste Region Bd.*, Nos. M2002-00560-COA-R3-CV & M2001-01662-COA-R3-CV, 2003 WL 21957137 (Tenn. Ct. App. July 2, 2003). In that case, the region did not formally reject or accept a permit application within ninety days of receiving the application. *Id.* at *1. The applicant requested both judicial and administrative review. *Id.* at *2. The applicant asked the Control Board for "a ruling vindicating the Commissioner's authority to issue a permit without an affirmative vote granting the application." *Id.* The Control Board concluded that "the Region Board lost its opportunity to decide within the statutory ninety day period and, as a result the Commissioner had the authority to issue the

Although Tennessee Code Annotated § 68-211-814(b)(2)(D) mandates that appeals of final region decisions be made to the chancery court, A-1 Waste also sought Control Board review of the Region Board's decision. Apparently, A-1 Waste takes the position that, when the Commissioner did not issue a permit because of the prohibition found in Tennessee Code Annotated § 68-211-814(b)(2)(C), that action was subject to review by the Control Board under Tennessee Code Annotated § 68-211-113(b)(2011). Based on principles of statutory construction, we conclude such a reading of the statute is untenable.

"Every application of a text to particular circumstances entails interpretation." Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 53 (2012) (citing *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177, 2 L. Ed 60 (1803)). Statutory interpretation is a question of law, which we review de novo. *Wallace v. State*, 121 S.W.3d 652, 656 (Tenn. 2003). When interpreting statutory provisions, our goal is to "ascertain and effectuate the legislature's intent." *Kite v. Kite*, 22 S.W.3d 803, 805 (Tenn. 1997). When a statute's language is unambiguous, we derive legislative intent from the statute's plain language. *Carson Creek Vacation Resorts, Inc. v. Dep't of Rev.*, 865 S.W.2d 1, 2 (Tenn. 1993). However, when a statute's language is subject to several interpretations, we also consider the broader statutory scheme, the statute's general purpose, and other sources to ascertain legislative intent. *Wachovia Bank of N.C., N.A. v. Johnson*, 26 S.W.3d 621, 624 (Tenn. Ct. App. 2000).

"'When the meaning of a statute is in question, we rely upon well-established canons of statutory construction.'" *State v. Marshall*, 319 S.W.3d 558, 561 (Tenn. 2010) (quoting *State v. Sherman*, 266 S.W.3d 395, 401 (Tenn. 2008)). In this case, three canons of statutory construction support the conclusion that the sole avenue for review of a region's decision is to the chancery court.

First, "when the word 'shall' is used in constitutions or statutes it is ordinarily construed as being mandatory and not discretionary." *Stubbs v. State*, 393 S.W.2d 150, 154 (Tenn. 1965).[9] The statute provides that, when a region rejects an application, appeals "*shall* be taken by an aggrieved person within thirty (30) days to the chancery court of Davidson County." Tenn. Code Ann. § 68-211-814(b)(2)(D) (emphasis added). "To determine whether the use of the word 'shall' in a statute is mandatory or merely directory, we look to see 'whether the prescribed mode of action is of the essence of the

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landfill permit." *Id*. After the Control Board's decision, the applicant received approval to dismiss its petition for judicial review. *Id.* However, the local government requested judicial review of the Control Board's decision. *Id.* We upheld the Control Board's decision on appeal, but acknowledged the distinction between the jurisdictions of the Control Board and the region. *Id.* at *5.

[9] "[D]rafters have been notoriously sloppy with their *shalls*, resulting in a morass of confusing decisions on the meaning of this modal verb." Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 112 (2012).

thing to be accomplished.'" *Myers v. AMISUB (SFH), Inc.*, 382 S.W.3d 300, 309 (Tenn. 2012) (quoting Norman J. Singer & J. D., Singer *Statutes & Statutory Construction* § 57:2 (7th ed. 2008)). The essence of section 814(b)(2)(D) is to provide a mechanism for review of a region's decisions, and therefore, the use of "shall" is mandatory.

Second, where a conflict is present, "'a more specific statutory provision takes precedence over a more general provision.'" *Lovlace v. Copley*, 418 S.W.3d 1, 20 (Tenn. 2013) (quoting *Graham v. Caples*, 325 S.W.3d 578, 582 (Tenn. 2010)). A-1 Waste's interpretation relies on both section 814 and section 113. Section 113, entitled "Review of correction order or plan disapproval—Hearing—Appeal," concerns the Commissioner's disapproval of plans for the construction or modification of solid waste processing or disposal facilities and correction orders. Tenn. Code Ann. §§ 68-211-113(a), (b) (2011). Section 113, therefore, provides for review of TDEC's decisions or orders. Section 814, entitled "Municipal solid waste region plans—Authority of region or solid waste authority after approval," addresses a more narrow topic. Section 814 concerns a region board's role in considering a permit application, including the development of regional solid waste management plans.

Finally, we should endeavor to give effect to the whole statute, *Hill v. City of Germantown*, 31 S.W.3d 234, 238 (Tenn. 2000); *State v. Odom*, 928 S.W.2d 18, 29-30 (Tenn. 1996), and "construe [the] statute in a way that avoids conflict and facilitates the harmonious operation of the law." *Lee Med., Inc. v. Beecher*, 312 S.W.3d 515, 527 (Tenn. 2010). Interpreting the statutes to provide both judicial and administrative review of a region's decisions would result in two standards of review, depending on the type of review sought.

The statute is clear that, on appeal to the chancery court, the court is to "exercise the same review as it would in a case arising under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5." Tenn. Code Ann. § 68-211-814(b)(2)(D). If the Control Board has the ability to review the Commissioner's decision not to disregard the Region Board's rejection, presumably, the Control Board must determine whether the Commissioner properly complied with Tennessee Code Annotated § 68-211-814(b)(2)(C). Therefore the Control Board would be determining whether "the decision of the region is arbitrary and capricious and unsupported in the record developed before the region." *Id.* § 68-211-814(b)(2)(C). Although the standard found in section 814(b)(2)(C) shares some commonalities with that found in the Uniform Administrative Procedures Act ("APA"), the standards are not the same.[10] *See id.* § 4-5-322(h) (Supp.

[10] The standard for disregarding a region's rejection of an application is higher and more narrow than that necessary to reverse an administrative decision under the Uniform Administrative Procedures Act. Among other reasons, an administrative decision may be reversed if it is "[a]rbitrary or capricious" *or* "[u]nsupported by evidence that is both substantial and material in light of the entire record." Tenn. Code Ann. § 4-5-322(h)(4), (h)(5)(A) (Supp. 2014). To disregard a rejection by the region, the Commissioner

2014). When we consider chapter 211 as a whole, "in view of its structure and of the physical and logical relation of its many parts," we conclude that the more harmonious reading and the one that avoids conflict requires aggrieved parties to seek review of region decisions exclusively in chancery court. Scalia & Garner, *supra*, at 167.

Therefore, we conclude that A-1 Waste could not simultaneously pursue administrative and judicial review of the Region Board's decision. Under section 814(b)(2)(D), A-1 Waste's exclusive method for review of the Region Board's decision was to the chancery court. In light of this conclusion, we consider the decisions of both the Control Board and the Region Board.

C. REVIEW OF THE DECISIONS

When reviewing administrative decisions, trial courts and appellate courts use the same standard of review. *Martin v. Sizemore*, 78 S.W.3d 249, 275-76 (Tenn. Ct. App. 2001) (citing *Gluck v. Civil Serv. Comm'n*, 15 S.W.3d 486, 490 (Tenn. Ct. App. 1999); *Ware v. Green*, 984 S.W.2d 610, 614 (Tenn. Ct. App. 1998)). "Courts defer to the decisions of administrative agencies when they are acting within their area of specialized knowledge, experience, and expertise." *Wayne Cnty. v. Tenn. Solid Waste Disposal Control Bd.*, 756 S.W.2d 274, 279 (Tenn. Ct. App. 1988). Tennessee Code Annotated § 4-5-322(h) governs the narrow scope of judicial review of an administrative agency's decision:

> The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision of the agency if the rights of the petitioner have been prejudiced because the administrative findings, inferences, conclusions or decisions are:
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> (1) In violation of constitutional or statutory provisions;
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> (2) In excess of the statutory authority of the agency;
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> (3) Made upon unlawful procedure;
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> (4) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or
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> (5)(A) Unsupported by evidence that is both substantial and material in light of the entire record.

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must "find[] that the decision is arbitrary and capricious *and* unsupported in the record developed before the region." *Id.* § 68-211-814(b)(2)(C) (emphasis added).

> (B) In determining the substantiality of the evidence, the court shall take into account whatever in the record fairly detracts from its weight, but the court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact.

Tenn. Code Ann. § 4-5-322(h).

A court's review of the agency's decision is limited to the record. *Id.* § 4-5-322(g). "When we are reviewing the evidentiary foundation of an administrative decision under Tenn. Code Ann. § 4-5-322(h)(5), we are not permitted to weigh factual evidence and substitute our own conclusions and judgment for that of the agency, even if the evidence could support a different determination than the agency reached." *Ware*, 984 S.W.2d at 614. We may overturn an agency's findings of fact "only if a reasonable person would necessarily reach a different conclusion based on the evidence." *Davis v. Shelby Cnty. Sheriff's Dep't*, 278 S.W.3d 256, 265 (Tenn. 2009); *see also Martin*, 78 S.W.3d at 276. An agency's construction of a statute and the application of a statute to the facts of the case are questions of law, which we review de novo. *Jones v. Bureau of TennCare*, 94 S.W.3d 495, 501 (Tenn. Ct. App. 2002).

1. Decision of the Control Board

In reversing the decision of the Control Board, the chancery court focused on each of the two grounds upon which the Control Board reversed the decision of the Region Board. First, the Control Board concluded that the Region Board had failed to comply with Tennessee Code Annotated § 68-211-814(b)(2)(C). By this, the Control Board meant that the Region Board's decision was "arbitrary and capricious and unsupported in the record." *See* Tenn. Code Ann. § 68-211-814(b)(2)(C). The court rejected this basis for reversal.

> Considering the foregoing application of the terms "inconsistent," "arbitrary," "capricious" and "unsupported" to the text of the Resolution, and then on this same point adopting the arguments of the Region [Board]'s counsel, as well as factoring in that [TDEC's] expertise is that the Region [Board]'s decision was not arbitrary and capricious, and taking into account the absence of proof by A-1 [Waste] and the absence of technical and industry reasoning in the Final Decision and Order, the Court concludes that the record does not support [the Control Board's] Conclusion of Law (4) that the Region [Board] failed to fulfill the statutory "inconsistent" requirement for rejecting the permit. Accordingly, [the Control Board's] Conclusion of Law (4) is reversed by the Court, and, therefore, in that regard, there was no basis for [the Control Board] to direct the Commissioner of [TDEC] to issue the permit.

Second, the Control Board concluded that the Region Board failed to comply with Tennessee Code Annotated § 68-211-814(b)(2)(A)[11] by "failing to render a decision within ninety days of receipt of A-1 Waste's complete application." The court also rejected this basis for reversal. After noting the permit applicant's admission that he did not send the application to the Region Board, the court stated the following:

> Deferring to [the Control Board] as to its interpretation that timing and technical compliance with this statutory scheme is directive not mandatory, the Court must reverse Conclusion of Law (5). The record establish[es] that any deviation from the 90 days referred to in paragraph 5 of the Conclusions of Law was contributed to and perhaps caused by the Permit Application not following the statute. Section 68-211-814(b)(2)(A) sets 90 days for the Region [Board] to act "after receipt of a complete application." In providing leeway to the Permit Applicant, [the Control Board] has watered down compliance with statutory requirements, eschewing a determination of if and when there was "receipt of a complete application" by the Region [Board]. Under these circumstances, both as a matter of fact and law, there is insufficient support in the record to conclude that the [Region Board] violated the 90-day timing requirement. Accordingly on Conclusion of Law (5), that the Region [Board] failed to act timely, the Court reverses the decision of [the Control Board].

Although we agree with the chancery court's reasoning and conclusions on both grounds, we reverse the Control Board's decision on a different basis. *See McEwen v. Tenn. Dep't of Safety*, 173 S.W.3d 815, 818 n.1 (Tenn. Ct. App. 2005) ("The Court of Appeals may affirm a judgment on different grounds than those relied on by the trial court when the trial court reached the correct result."). The chancery court focused almost exclusively on Tennessee Code Annotated § 68-211-814(b)(2)(A) and (C). We conclude reversal is appropriate under Tennessee Code Annotated § 4-5-322(h).

Every agency action "must be grounded in an express statutory grant of authority or must arise by necessary implication from an express statutory grant of authority." *Sanifill of Tenn., Inc. v. Tenn. Solid Waste Disposal Control Bd.*, 907 S.W.2d 807, 810 (Tenn. 1995). "Even though statutes such as the Solid Waste Disposal Act should be construed liberally . . . the authority they vest in an administrative agency must have its source in the language of the statutes themselves." *Id.* As noted above, chapter 211 does not expressly provide the Control Board with authority to review a region board's decision approving or rejecting a permit application. To the contrary, the statute provides for appeal to the chancery court for Davidson County. Tenn. Code Ann. § 68-211-

[11] Tennessee Code Annotated § 68-211-814(b)(2)(A) provides that "[t]he region shall render a decision on the application within ninety (90) days after receipt of a complete application." Tenn. Code Ann. § 68-211-814(b)(2)(A).

814(b)(2)(D). We also find nothing within the statute impliedly granting the Control Board such authority. Therefore, we conclude that the Control Board's decision should be reversed because its review of the Region Board's decision was "in excess of the statutory authority of the agency." *Id.* § 4-5-322(h)(2).

2. Decision of the Region Board

Although the chancery court effectively affirmed the Region Board's decision, it did so as a byproduct of its review of the Control Board's decision to issue a permit. The court distilled the issue before it as whether "the record in the contested case hearing conducted by the [Control Board] show[ed] that the [Region] Board's denial of the permit was arbitrary, capricious and unsupported, thereby authorizing [the Control Board's] instruction to the Commissioner to issue the permit." Stated another way, the court applied the standard found in section 814(b)(2)(C) to the Region Board's decision. However, section 814(b)(2)(D) requires the chancery court to review the Region Board's decision under the APA.

A-1 Waste argues that the Region Board's decision should be reversed under: (1) Tennessee Code Annotated § 4-5-322(h)(1) because it was in violation of statutory provisions; (2) Tennessee Code Annotated § 4-5-322(h)(4) because it was arbitrary or capricious; and (3) Tennessee Code Annotated § 4-5-322(h)(5)(A) because it was unsupported by substantial and material evidence. First, A-1 Waste argues that, because there is no finding that that the proposed landfill was "inconsistent" with the region's solid waste plan, the Region Board acted in violation of section 814(b)(2)(B). Although the Region Board did not use the precise phrase, "inconsistent with the solid waste management plan," its rationale for rejecting the permit application is based on the conclusion that a new landfill would be inconsistent with its plan.

The Region Board found "no need for additional capacity." By statute, solid waste region plans must address "[a]nticipated waste capacity needs." *Id.* § 68-211-815(b)(5). Mandated periodic assessments must also evaluate "existing solid waste capacity" and identify "potential shortfalls in capacity." *Id.* § 68-211-811(c)(6) & (9). At the time of the Region Board's decision, based on the last assessment, the region projected thirty years of capacity for household and commercial waste and eighteen years of capacity for farming, landscaping, and construction/demolition waste. In this instance, sufficient waste capacity for both current and anticipated needs made the proposed new landfill inconsistent with the region's plan.

Second, A-1 Waste argues the Region Board's decision was arbitrary or capricious. The arbitrary or capricious standard requires a court to determine if the agency made a "clear error in judgment." *Jackson Mobilphone Co. v. Tenn. Pub. Serv. Comm'n*, 876 S.W.2d 106, 110-11 (Tenn. Ct. App. 1993). A decision is arbitrary if it is "not based on any course of reasoning or exercise of judgment." *Id.* at 111. The decision

may also be arbitrary if it "disregards the facts or circumstances of the case without some basis that would lead a reasonable person to reach the same conclusion." *Id.* Based on our review of the record, we conclude that the Region Board's decision considered the relevant facts and relied upon the research and goals laid out in its ten-year solid waste management plan and 2008 assessment. We discern no error in judgment on the part of the Region Board.

Finally, A-1 Waste argues that the Region Board's decision was unsupported by substantial and material evidence. Tennessee Code Annotated § 4-5-322(h)(5) does not define "substantial and material" evidence, but cautions courts to "take into account whatever in the record fairly detracts from its weight, but the court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact." Tenn. Code Ann. § 4-5-322(h)(5)(B). In other words, we must determine if the administrative record contains "'such relevant evidence as a reasonable mind might accept to support a rational conclusion.'" *Clay Cnty. Manor, Inc. v. State Dep't of Health & Env't*, 849 S.W.2d 755, 759 (Tenn. 1993) (quoting *S. Ry. Co. v. Bd. of Equalization*, 682 S.W.2d 196, 199 (Tenn. 1984)). The agency's decision need not be supported by a preponderance of the evidence, but it must be supported by more than a "scintilla or glimmer" of evidence. *Wayne Cnty.*, 756 S.W.2d at 280; *see also Humana of Tenn. v. Tenn. Health Facilities Comm'n*, 551 S.W.2d 664, 667 (Tenn. 1977).

In this case, the Region Board's decision was supported by sufficient evidence. In its resolution, the Region Board explained that there was no need for additional landfill space and existing waste management needs were already fulfilled through a partially exclusive contract.[12] The region's 2008 waste management assessment report concluded that it had twenty years of remaining capacity with the region's existing landfill. The solid waste management plan, the 2008 waste management assessment report, and the exclusive contract were all included in the record of the proceeding.

A-1 Waste also claims the Region Board's decision was unsupported by substantial and material evidence because the record of proceedings before the Region Board is incomplete. However, a court's review of the Region Board's decision is limited to the record, which was adequate for judicial review in this case. *See* Tenn. Code Ann. § 4-5-322(g).

Although the chancery court reviewed the Region Board's decision using the standard found in Tennessee Code Annotated § 68-211-814(b)(2)(C), we find no basis under Tennessee Code Annotated § 4-5-322(h) to reverse the Region Board. Therefore, the chancery court properly dismissed A-1 Waste's petition.

[12] The City of Jackson/Madison County and Waste Management entered into a contract requiring "all of certain types of waste go to the current landfill."

D. STANDING OF CONCERNED CITIZENS

Finally, A-1 Waste argues that the chancery court erred by allowing the Concerned Citizens to proceed with their case, which was consolidated with the petitions for judicial review of A-1 Waste and the Region Board. Concerned Citizens is an association that includes individuals living within a three-mile radius of the site proposed for the landfill. A-1 Waste asserts that the Concerned Citizens's petition should have been dismissed because the Concerned Citizens lacked standing to seek review of the Control Board's decision.

Like all other plaintiffs, persons challenging an administrative agency's decision must have standing. *Tenn. Envtl. Council v. Solid Waste Disposal Control Bd.*, 852 S.W.2d 893, 896 (Tenn. Ct. App. 1992). The APA provides that only "aggrieved parties" have standing to seek judicial review of an agency's decision. Tenn. Code Ann. § 4-5-322(a)(1) ("A person who is aggrieved by a final decision in a contested case is entitled to judicial review under this chapter."). The term "aggrieved party" is not defined by the APA, so we turn to precedent for its meaning. *See, e.g.*, *Deselm v. Tenn. Peace Officers Standards & Training Comm'n*, No. M2009-01525-COA-R3-CV, 2010 WL 3959627, at *25 (Tenn. Ct. App. Oct. 8, 2010).

To qualify as an "aggrieved party," an individual must first satisfy the traditional standing requirements by showing: (1) that he has sustained a distinct and palpable injury to a recognized legal right or interest; (2) that the injury was caused by the challenged conduct; and (3) that the injury is one that can be addressed by a remedy the court is empowered to give. *See Tenn Envtl. Council*, 852 S.W.2d at 896; *Wood*, 196 S.W.3d at 157-58; *see also Metro. Gov't of Nashville & Davidson Cnty. v. Dep't of Safety*, 1986 WL 8973, at *6 (Tenn. Ct. App. Aug. 20, 1986). The party must have "a personal or property right to assert or defend in court in their own name, not a mere general interest in the subject matter of the litigation in common with other citizens." *Metro Gov't of Nashville*, 1986 WL 8973, at *6. In appeals of administrative cases, an aggrieved party must also have "a special interest in the agency's final decision" or claim to have suffered a particular, individualized injury as a result of the agency's decision. *Deselm*, 2010 WL 3959627, at *25.

In its order consolidating the three petitions, the chancery court concluded that the Concerned Citizens did have standing. The court stated the following:

> The complication in this case is that the [Concerned Citizens] did not join A-1 [Waste] in the . . . appeal of the Region's rejection of the permit to this Court because the [Concerned Citizens] agreed with and was not aggrieved by the Region [Board]'s decision. That is the petition for judicial review which by statute would provide the [Concerned Citizens] standing. Nor did the [Concerned Citizens] intervene, like the Region [Board] did, in the

> appeal A-1 [Waste] filed for a contested case hearing before the [the Department] Control Board which resulted in issuance of the permit. Nevertheless, that is the administrative proceeding on which the [Concerned Citizens] has filed its petition for judicial review.
>
> The failure to intervene in the contested case hearing, this Court concludes, ordinarily would preclude the [Concerned Citizens] from appealing issuance of the permit. Since review by this Court is conducted on the record, and the [Concerned Citizens] was not a party to the contested case hearing, their participation on appeal is not a perfect fit. The procedural posture of this case, however, is unusual. Moreover, the Court concludes, as a matter of law, that the [Concerned Citizens] is permitted to be a party in the . . . appeal filed by A-1 [Waste] against the Region [Board] as provided in section 68-211-814(b)(2)(D). Limited to the very unusual facts of this case and since the Court is consolidating the appeal by A-1 [Waste] of the Region [Board]'s denial of the permit with the Region [Board]'s appeal of TDEC's issuance of the permit, the Court shall not dismiss the petition for judicial review filed by the [Concerned Citizens], and the Court shall allow the [Concerned Citizens] to be a party to the consolidated appeals.

The chancery court was clearly troubled by the Concerned Citizens' failure to intervene in the Control Board proceeding, but the court also recognized that the Concerned Citizens had standing to appeal the decision of the Region Board.

Although the term "aggrieved party" is not defined in the APA, the Solid Waste Management Act does define who is aggrieved for purposes of appeals of a final action of the region. Under Tennessee Code Annotated § 68-211-814(b)(2)(D), "an 'aggrieved person' is limited to persons applying for permits, persons who own property or live within a three-mile radius of the facility or site that is proposed for permitting, or cities and counties in which the proposed facility is located." Tenn. Code Ann. § 68-211-814(b)(2)(D).

In these circumstances, we also conclude that the Concerned Citizens had standing to seek review of the Control Board's decision.[13] To establish standing, an association, such as the Concerned Citizens, must demonstrate that: "(1) its members would otherwise have standing to sue in their own right; (2) the interests it seeks to protect are germane to the organization's purpose; and (3) neither the claim asserted, nor the relief requested, requires the participation of individual members in the lawsuit." *ACLU of Tenn. v.*

[13] Even had the chancery court dismissed the Concerned Citizens's petition for judicial review, the Concerned Citizens could have intervened in the case filed by A-1 Waste. *See* Tenn. R. Civ. P. 24.

Darnell, 195 S.W.3d 612, 626 (Tenn. 2006). The Concerned Citizens meet all three prongs of the test.

As for the first prong, "individual members of [the Concerned Citizens] either own property or live within three miles of the proposed landfill" and, therefore, at least some members of the group qualify as "aggrieved persons" eligible to seek judicial review of the Region Board's decision. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 563 (1992) (holding that an association has standing to represent its members' interests so long as one or more members would have standing to bring a claim as an individual); *see also* Tenn. Code Ann. § 68-211-814(b)(2)(D) (2011). Because the Control Board reviewed the action of the Region Board, the Concerned Citizens had a special interest in the determination of the agency. The Solid Waste Management Act recognizes that special interest by including members of the Concerned Citizens within the definition of "aggrieved person" and permitting them to appeal region decisions.

As for the second prong, the Concerned Citizens group was established specifically to challenge the Control Board's permitting decision and, therefore, the interests it seeks to protect are germane to the group's purpose. Finally, as for the third prong, individual participation of the group's members is unnecessary to challenge the permitting decision.

III. CONCLUSION

For the foregoing reasons, we affirm the reversal of the Control Board's decision on the basis that it acted in excess of its statutory authority. We also affirm the decision of the Region Board. Finally, we affirm the denial of the motion to dismiss the Concerned Citizens' petition for judicial review.

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W. NEAL McBRAYER, JUDGE