STATE OF MICHIGAN
COUNTY OF WASHTENAW
22nd JUDICIAL CIRCUIT COURT

MICHIGAN MATERIALS AND AGGREGATES COMPANY d/b/a STONECO OF MICHIGAN, A domestic corporation,
Appellant,
v

SHARON TOWNSHIP,
Appellee.

Case No. 23-1102 AV

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OPINION AND ORDER FOLLOWING APPEAL

CASE HISTORY

This case presents on appeal from a Sharon Township's denial of an application for a special land use permit for a proposed sand and gravel extraction operation.

Appellant argues that Sharon Township's requirement of a showing of "need" by Appellant in the preliminary review process is contrary to Michigan statute. Appellant further argues that Sharon Township went outside its legal authority when the Township evaluated "need" on a sliding scale. Additionally, Appellant argues that Sharon Township's determinations of need and consequences were not supported by competent, material and substantial evidence on the whole record.

Appellee argues that the decision to deny Appellant's special use permit was proper and in compliance with state law, local ordinances, and case law. Specifically, Appellee argues that the evaluation of need and consequences made by Sharon Township was proper and in compliance with state law, local ordinance and case law. Finally, Appellee argues that determinations made by Sharon Township were supported by competent, material, and substantial evidence on the whole record.

This Court reviewed the approximately 2,000 pages of documents transmitted on appeal and the pleadings filed by both parties in addition to the hearing on the appeal.

FINDINGS

NEED

The Michigan Court of Appeals addressed the need factor as recently as 2023 in *Northstar Aggregates, LLC v. Watson Twp.,* No. 363567, 2023 WL 4830432 (Mich. Ct. App. July 27, 2023). The facts in *Northstar* closely mirror the issue of need in the present case.

We initially note that for purposes of MCL 125.3205(4), there is no dispute that valuable natural resources are located on Northstar's property. MCL 125.3205(4) placed the initial burden on Northstar to demonstrate to the WTPC that there was a "need for the natural resources by" Northstar "*or* in the market served by" Northstar. (Emphasis added.) Northstar's "need" analysis focused on Northstar's need, not the market served by Northstar. The primary evidence that Northstar relied on to establish "need" was the affidavit of its co-owner Matt Double. Northstar also produced an aggregate price list covering several area sand and gravel companies, which reflected significant increases in the price of aggregate from 2017 to 2021. Because we find it persuasive, we adopt the dictionary definition of "need" employed by the panel in *Metamora Twp.* Accordingly, in order for the sand and gravel or aggregate to be needed by Northstar, it had to be requisite, desirable, or useful, and there had to be a lack of aggregate such that a supply was required. See *Metamora Twp*, unpub. op. at 10.

Northstar Aggregates, LLC v. Watson Twp., No. 363567, 2023 WL 4830432, at *20 (Mich. Ct. App. July 27, 2023)

Defendant addressed the issue of need on numerous occasions and made very specific findings as to need. Defendant determined that:

> Stoneco has the initial burden to show that there is a need for the natural resources on the property <u>by the person</u> or <u>in the market served by the person</u>. Considering need by the "person" for the sand and gravel, Stoneco says in its application that from its current Washtenaw County operations

> approximately 25% of the material is used to supply Stoneco's affiliated operation, Cadillac Asphalt's ten (10) asphalt plants throughout south eastern Michigan. But no data is provided on what quantity is supplied to each plant and importantly whether each of these asphalt plants is within a radius of the proposed mine that would permit an economically feasible delivery. Cadillac Asphalt's website confirms that only three (3) of its facilities are within the 40-mile radius that Stoneco claims is a reasonable delivery radius, three (3) of its facilities are within a 60-mile radius; four (4) other facilities are between 65-85 miles from the proposed mine and therefore outside a feasible delivery radius.
>
> Further, Stoneco has no presented evidence that other existing mines, operated by Stoneco or other owners, would not be able to provide any needed material. In addition to Stoneco's Zeeb and Burmeister Washtenaw County operations, Stoneco's website indicates the existence of four (4) additional Stoneco mines within a 50-mile radius of the proposed mine, yet Stoneco has not provided evidence that these mines cannot provide material to fulfill the need created by the Zeeb and Burmeister mine closures. It is also relevant that Stoneco's Burmeister facility will remain open through 2026, several more years than originally predicted by Stoneco.
>
> . . .
>
> For purposes of the need for sand and gravel "by the market served by the person," while Stoneco's FMI report and other evidence have cited an expected demand in the market by industry in general, applicant agreed at the meetings that the only customers that count for purposes of establishing a "need" are those within a radius to permit economic delivery, ideally no more than 40 miles. Unfortunately, applicant has not detailed customers that are wither known or reliably expected which will create the need, or their locations. Need cannot be shown by speculation. Applicant's claim is that there is a lot of work that will be done somewhere in Michigan, and this property will provide the sand and gravel. We know, however, that Stoneco owns other properties, as do other owners, available to provide sand and gravel to satisfy need within the market area. So, without details, Stoneco's position only speculates on the extent of need for its sand and gravel within the feasible travel distance. This does not meet the applicant's initial burden to show need by the market served by the person.

Findings and Motion on Part 1 of Consideration of Stoneco's Application, page 1-2 of 3, ROA 0084.

NO VERY SERIOUS CONSEQUENCES

The Court of Appeals also addressed the factor of the permit having no very serious consequences in the *Northstar Aggregates, LLC v Watson Twp.* case. The Court of Appeals ruled:

> MCL 125.3205(4) placed the initial burden on Northstar to show "that no very serious consequences would result from" the planned mining operation. And under MCL 125.3205(5), the Legislature dictated that the *Silva* standards must be applied when determining whether very serious consequences would result from extracting natural resources. A court may also consider, if applicable, the relationship between mining and existing land uses and the impact of extracting minerals on property values, on pedestrian and traffic safety, on the health, safety, and welfare interests held by the local governmental unit, and on the overall public interest in extracting natural resources. MCL 125.3205(5)(a)-(f).

Northstar Aggregates, LLC v. Watson Twp., No. 363567, 2023 WL 4830432, at *24 (Mich. Ct. App. July 27, 2023)

Defendant addressed the potential of very serious circumstances and made the following determinations:

Impact #1: Agriculture: high consequence:

- The proposed intensity of truck traffic would make movement of farm equipment difficult and affect safety
- The site is approximately 400 acres and over half of the site is prime farmland, from information presented at the first public hearing (part of an application for a conservation easement). Those prime soils would be removed.
- The use and reclamation would not match with the Future Land Use Plan, which would need to be changed.
- The removal of the agricultural soils and the change of use would necessitate changes to the Agricultural Preservation Overlay in the Master Plan
- Agriculture is a use with special treatment in the Michigan Constitution and the Michigan Zoning Enabling Act.

Impact #2: Moderate to High (Cooper – high)
Home-based businesses

- Two businesses exist near the subject site that depend on an atmosphere that extraction operation could have serious consequences on due to noise as testified at public hearings. One business owner testified at the first public hearing but has since moved. People testified to concerns about fumes and dust

and silica but no studies have been provided that are definitive.

Adjacent property owner

- A disabled child and his mother testified that the extraction operation would have health impacts as shared in public comment. The family has invested money to improvements to accommodate the child's needs.

Pedestrian Safety

- Bus stops are along the haul route and peak hours are at the same time as bus pick up and drop offs.
- No sidewalks or safety paths exist or are proposed.
- Mail boxes are on one side of the road on the Pleasant Road haul route and for at least part of M-52 haul route.

Manchester to the south

- 25% of trucks will proceed south through the Village of Manchester
- The Manchester Schools campus is along the haul route and children walk to school in the Village.
- The Manchester Village President and Manager stated that the proposed level of truck traffic would have a negative impact on the Downtown and geometry of the main intersection in the Downtown is unequipped to handle the types of trucks proposed.

Property Values: low to medium (Kelly, Hobbs), medium to high (Bradshaw, Cooper), Medium (Smith)

- Based upon the competing evidence presented, the Planning Commission finds that the applicant has not proven that property values will not be impacted and the burden of proof has not been met.

Sharon Township Planning Commission Deliberation Notes dated May 23, 2023 (ROA 0258)

THIS COURT'S REVIEW OF THE PLANNING COMMISION'S DENIAL OF SPECIAL USE APPLICATION

When a township's zoning ordinance does not provide for review of a decision of a township board by the township's zoning board of appeals, the decision of the township board is instead subject to appellate review by the circuit court pursuant to Const. 1963, art. 6, § 28. *Ansell v Delta Planning Commission*, 332 Mich App 451, 458 (2020).

The relevant section of the Constitution of Michigan of 1963 is located in Article 6, § 28 and provides, in part:

> All final decisions, findings, rulings and orders of any administrative officer or agency existing under the constitution or by law, which are judicial or quasi-

> judicial and affect private rights or licenses, shall be subject to direct review by the courts as provided by law. This review shall include, as a minimum, the determination whether such final decisions, findings, rulings and orders are authorized by law; and, in cases in which a hearing is required, whether the same are supported by competent, material and substantial evidence on the whole record. ...

Thus, under Const. 1963, art. 6, § 28, the circuit court's review of a decision of a township planning commission is required to include, at least, a determination (1) whether the decision, findings, rulings, and orders are authorized by law, and when a hearing is required, (2) whether the decision, findings, rulings, and orders are supported by competent, material, and substantial evidence on the whole record.

Also relevant is MCR 7.122 which "governs appeals to the circuit court from a determination under a zoning ordinance by any officer, agency, board, commission, or zoning board of appeals, and by any legislative body of a city, village, township, or county authorized to enact zoning ordinances." MCR 7.122(A)(1).

Consistent with the standard provided by Const. 1963, art. 6, § 28, MCR 7.122(G)(2) provides that "[i]n an appeal from a final determination under a zoning ordinance where no right of appeal to a zoning board of appeals exists, the court shall determine whether the decision was authorized by law and the findings were supported by competent, material, and substantial evidence on the whole record." *Top Grade Aggregates, LLC v. Twp. of Richland*, No. 361743, 2023 WL 4144564, at *3 (Mich. Ct. App. June 22, 2023)

Under the substantial-evidence test, it is irrelevant that the contrary position is supported by more evidence, that is, which way the evidence preponderates; rather, the circuit court must only be concerned with whether the position adopted by the agency is supported by evidence from which legitimate and supportable inferences were drawn. *McBride v Pontiac Sch Dist*, 218 Mich App 113, 123; 553 NW2d 646 (1996). When there is sufficient evidence, a reviewing court is not permitted to substitute its discretion for that of the administrative tribunal, even when the court might have reached a different result. *Id.* "Great deference must be given to an agency's choice between two reasonable differing views as a reflection of the exercise of administrative expertise." *Id.*

The Court of Appeals also set forth the proper procedure to be followed when a decision of a Planning Commission is to be appealed to a circuit court. Specifically, the Court of Appeals directed:

> Appellants therefore are required to demonstrate to the Planning Commission that (1) there are valuable natural resources on the property, (2) there is a

> need for the natural resources by the person or in the market served by the person, and that (3) no very serious consequences would result from the extraction by mining, of the natural resources. MCL 125.3205(4). The circuit court then was required to determine whether the Planning Commission's decision was authorized by law and whether the findings of the Planning Commission were supported by competent, material, and substantial evidence on the whole record. Const. 1963, art. 6, § 28; MCR 7122(G)(2).

(See – *Top Grade Aggregates, LLC v. Twp. of Richland* at *7.)

In applying the required substantial evidence test, this Court finds that the position adopted by the Planning Commission is supported by evidence from which legitimate and supportable inferences were drawn. This Court further finds that Plaintiffs failed to meet their burden as to the need served by the market or the by the person in the market and that no very serious consequences would result from the proposed extractions.

HOLDING

For the reasons stated above, this Court holds that Sharon Township's denial of denial of Plaintiff's application for a special land use permit for a proposed sand and gravel extraction operation was a decision, finding, ruling, and order that was authorized by law. Additionally, this Court holds that Sharon Township held numerous hearings, conducted investigations, and allowed for continued input from Plaintiff. Finally, this Court holds that the decision, finding, ruling, and order denying the application is supported by competent, material, and substantial evidence on the whole record.

IT IS HEREBY ORDERED:

The appeal is denied.

IT IS SO ORDERED.

Date: 8/9/2024

Timothy P. Connors

HONORABLE TIMOTHY P. CONNORS
Circuit Court Judge

PROOF OF SERVICE

The undersigned certifies that on 8/9/2024, copies of Opinion and Order Following Appeal were served on the parties.

Sherry Fire

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