

STATE OF MICHIGAN
COURT OF APPEALS

KAY AUTOMOTIVE GRAPHICS, INC,
SCHENCK TURNER, INC, and KOPPY
CORPORATION,

UNPUBLISHED
August 20, 1996

Plaintiffs-Appellants,

v

No. 184119
LC No. 94-484164-AA

ORION TOWNSHIP PLANNING COMMISSION,
FAITH EVANGELICAL PRESBYTERIAN
CHURCH, INC, and DANIEL P. FONS,

Defendants-Appellees.

Before: Sawyer, P.J., and Bandstra and M.J. Talbot,* JJ

PER CURIAM.

Plaintiffs appeal as of right from the circuit court order affirming the decision of defendant Township of Orion Planning Commission. The planning commission approved the proposal of defendant, Faith Evangelical Presbyterian Church, to construct a “Family Life Center” in Orion Township. The circuit court, acting as a court of appeals, found that the planning commission’s decision to approve the project was based on competent, material and substantial evidence. We affirm.

Plaintiffs argue that the proposed Family Life Center would in fact be a church, which would be an illegal use under the applicable zoning law. The land on which the proposed Family Life Center was to be built was zoned as OP-2, for research/office development. Orion Township’s zoning did not allow for the establishment of a church in the OP-2 district; however, “meeting halls, clubs and similar uses designed to serve the needs and [sic] members rather than of the general public” were allowed. Thus, in voting to grant the special land use permit, the planning commission implicitly found that the proposed project did not constitute a church, but fell within the guidelines of the zoning ordinance.

Orion Township’s planning commission was acting as the zoning board of appeals pursuant to MCL 125.331; MSA 5.2963(111). See *Krohn v Saginaw*, 175 Mich App 193, 196; 437 NW2d

* Circuit judge, sitting on the Court of Appeals by assignment.

260 (1988). The decision of a zoning board of appeals is final. *Macenas v Michiana*, 433 Mich 380, 393; 446 NW2d 102 (1989). However, the circuit court, when acting as an appellate court from a zoning decision by a zoning board of appeals, can make a determination whether the decision by a zoning board of appeals:

- (a) Complies with the constitution and laws of the state.
- (b) Is based upon proper procedure.
- (c) Is supported by competent, material, and substantial evidence on the record.
- (d) Represents the reasonable exercise of discretion granted by law to the board of appeals. [*Id.*, 393-394; MCL 125.585(11); MSA 5.2935(11).]

Plaintiffs contended that the decision of the planning commission was not based on competent, material and substantial evidence on the record. MCL 125.585(11)(c); MSA 5.2935(11)(c). In this context, the term “substantial” means evidence that a reasoning mind would accept as sufficient to support a conclusion. *Halm v Bd of Ed of the Dansville Agricultural Schools*, 174 Mich App 520, 522; 436 NW2d 680 (1988); *Ron’s Last Chance, Inc v Liquor Control Comm*, 124 Mich App 179, 182; 333 NW2d 502 (1983). While it must consist of more than a scintilla of evidence, it may be substantially less than a preponderance of the evidence. *Halm, supra*, 522; *Ron’s Last Chance, supra*, 182.

The following evidence was available to the planning commission: Membership in the proposed Family Life Center was to be open to everyone, regardless of religion or whether they were affiliated with the Faith Church. The Family Life Center’s facilities were to include athletic programs, a gymnasium, weight rooms, racquetball courts, aerobics, a pool and other family programs. The proposed project would also include day care programs, programs for senior citizens and an event center where concerts and theater will be performed. Both the City Planner and City Engineer approved of the project. Additionally, the planning commission solicited the opinion of attorney J. Timothy Patterson, regarding whether the Faith Church’s application for a special land use permit could be granted for an OP-2 zone. After conducting a study, Patterson opined that “the proposed use does not constitute a church or a school.” Patterson found that “the proposed family life center will be the primary use and any church activities will be secondary to that use.” Additionally, he stated that, because the proposed project, “encompasses much more than a church, it is our opinion that the Special Land Use Application should be granted under the provision relating to meeting halls, clubs, and similar uses designed to serve the needs of the members rather than that of the general public.”

The evidence on the record establishes that the planning commission’s decision to grant the special permit requested by Faith Church was supported by competent, material and substantial evidence on the record, thus complying with the mandates of MCL 125.585(11)(c); MSA 5.2935(11)(c). Accordingly, the circuit court properly refused to reverse the planning commission’s decision.

Plaintiffs also contend that, in a non-jury case, the trial court must make specific findings of fact, which the circuit court allegedly failed to do in this case. However, MCR 2.517(A)(1), upon which plaintiffs rely, applies only to “actions tried on the facts.” As conceded by plaintiffs, the circuit court was not acting as a trial court, but as an appellate court. Thus, MCR 2.517(A)(1) was not applicable and the circuit court was under no duty to “find the facts specially.” Therefore, plaintiffs’ argument that the trial court’s findings of fact were not sufficient is without merit.

Affirmed.

/s/ David H. Sawyer

/s/ Richard A. Bandstra

/s/ Michael J. Talbot