STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF GRAND TRAVERSE

CLOVELLY CORPORATION,

Appellant,

v

File No. 02-22537-AA
HON. PHILIP E. RODGERS, JR.

CITY OF TRAVERSE CITY,

Appellee.

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DECISION AND ORDER ON APPEAL

On June 21, 2000, Comstock Construction ("Comstock"), on behalf of Appellant Clovelly Corporation's predecessor, applied to the Appellee City of Traverse City ("City") Planning Department for a Special Land Use Permit ("SLUP") for 101 North Park Street. This property is subject to the City Zoning Ordinance and is in the C-4b zoning district. Comstock subsequently submitted a site plan and building plans for a 60-foot, 5-story building. On October 4, 2000, the City Planning Commission recommended that the SLUP be granted. On November 6, 2000, the City Commission adopted the order granting 00-SLUP-02 which authorized a "[t]aller building in the C-4b District (5-story mixed use building)." The Appellant Clovelly Construction ("Clovelly") purchased the property in 2001.

The receipt of a SLUP is the first step in a multi-step process to build a building within the City. After receiving a SLUP, it is still necessary to obtain site plan approval, a land use permit and a building permit. On May 8, 2001, Comstock, on behalf of Clovelly, applied for and received a land use permit for a "5-Story Mixed Use - Foundation Only."

Between May and August of 2001, Clovelly spent more than $1.5 million to remediate the site, complete the excavation for the underground parking structure, and install the necessary foundation, footings and structural elements to support a 5-story building. During that time, Clovelly was involved in a dispute with the City's Historical Districts Commission regarding the height of the building and other architectural details. On April 11, 2002, the City amended the special land use regulations to permit a 68-foot building by SLUP, clearing the way for Clovelly to obtain approval for a 68-foot building and complete construction. In addition, Clovelly's disputes with the City's Historical Districts Commission had been resolved and the City extended Comstock's permit to occupy the public right-of-way to build Clovelly's building until March 31, 2003. Since August of 2001, however, no construction activities have taken place.

After April 11, 2002, Clovelly did not apply for a new SLUP or seek an amendment to its 00-SLUP-02 or its site plan, all of which were for a 60-foot building. Clovelly listed the property for sale in September of 2002. In October of 2002, after 14 months of inactivity on the construction site and at the insistence of the City, Clovelly performed certain streetscape improvements to restore the right-of-way. This work, together with the erection of a fence, effectively "mothballed" the site.

On or about November 6, 2002, Clovelly was notified that its SLUP was about to expire, pursuant to §1364.07 of the City's Codified Ordinances. Clovelly was also notified that it could seek a one-year extension of the permit from the City Commission. Section 1364.07 provides, in relevant part, as follows:

> A special land use order shall expire two years from the date of final approval if the applicant has not commenced substantial construction and is not diligently proceeding to completion. . .
>
> * * *
>
> Upon written request stating the reasons therefor, the granting authority may extend the order for one additional year.

By letters dated November 5 and 6, 2002, Clovelly formally requested an extension but did not provide any reasons for the request. By letter dated November 14, 2002, Clovelly provided the following reasons for the requested extension:

1. Economic conditions generally, and in Traverse City in particular, are presently uncertain.
2. We are investigating alternative sources of financing.
3. We are considering potential purchasers for the development.
4. Retaining the existing permits will make it possible for us to move the project forward rather than backward.

The request for an extension was placed on the agenda for the City Commission's December 2, 2002 meeting. At that meeting, the City Commission voted to deny the request for an extension. Clovelly filed this appeal.

On April 21, 2003, the Court heard the oral arguments of counsel and took the matter under advisement. The Court now issues this written opinion and, for the reasons stated herein, affirms the decision of the City Commission.

STANDARD OF REVIEW

This Court must follow the review methods prescribed in Const Art 6, § 28 which provides in pertinent 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.

All final decisions of administrative officers shall be subject to direct review by courts and this review shall include, at a minimum, the determination of whether such final decisions are authorized by law and, in cases in which hearing is required, whether the same are supported by competent and substantial evidence on the whole record. *Carleton Sportsman's Club v Exeter Twp*, 217 Mich App 195, 199; 550 NW2d 867 (1996).

In plain English, "authorized by law" means allowed, permitted, or empowered by law. Black's Law Dictionary (5th ed). A decision that "is in violation of statute [or constitution], in excess of the statutory authority or jurisdiction of the agency, made upon unlawful procedures resulting in material prejudice, or is arbitrary and capricious," is a decision that is not authorized by law. *Brandon School Dist v Michigan Ed Special Services Ass'n*, 191 Mich App 257, 263; 477 NW2d 138 (1991).

Generally, administrative decisions are to be affirmed if supported by material, competent, and substantial evidence on the record as a whole. *Nationwide Mut Ins Co v Comm'r of Ins* 129 Mich App 610; 341 NW2d 841, (1983); *Ron's Last Chance, Inc v Liquor Control Comm* 124 Mich App 179; 333 NW2d 502 (1983); *Sponick v City of Detroit Police Dep't*, 49 Mich App 162; 211 NW2d 674 (1973); *Application of First Michigan Bank & Trust Co, Zeeland*, 44 Mich App 83; 205 NW2d 54 (1972); *King v Calumet & Hecla Corp*, 204 Mich App 319; 43 NW2d 286 (1972); *Fisher-New Center Co v Michigan State Tax Comm*, 381 Mich 713; 167 NW2d 263 (1969). "Substantial evidence" has been defined as that evidence which reasonable minds would accept as adequate to support a decision. It is "more than a mere scintilla but less than a preponderance of the evidence." *In re Payne*, 444 Mich 679, 692; 514 NW2d 121 (1994); *In re Kurzyniec Estate*, 207 Mich App 531, 537; 526 NW2d 191 (1994). The Supreme Court set forth the accepted definitions of "arbitrary" and "capricious" in *Goolsby v Detroit*, 419 Mich 651, 678; 358 NW2d 856 (1984):

> Arbitrary is: '[Without] adequate determining principle * * * Fixed or arrived at through an exercise of will or by caprice, without consideration or adjustment with reference to principles, circumstances, or significance, * * * decisive but unreasoned.'
>
> Capricious is: '[Apt] to change suddenly; freakish; [or] whimsical.' [*Id*, quoting *United States v Carmack*, 329 US 230, 243; 67 S Ct 252; 91 L Ed 209 (1946) and *Bundo v City of Walled Lake*, 395 Mich 679, 703 n 17; 238 NW2d 154 (1976).]

Finally, an abuse of discretion occurs only when the result is "so palpably and grossly violative of fact and logic that it evidences not the exercise of will but perversity of will, not the exercise of judgment but defiance thereof, not the exercise of reason but rather of passion or bias." *Alken-Ziegler, Inc v Waterbury Headers Corp*, 461 Mich 219, 227-228; 600 NW2d 638

(1999), quoting *Marrs v Bd of Medicine*, 422 Mich 688, 694; 375 NW2d 321 (1985), and *Spalding v Spalding*, 355 Mich 382, 384-385; 94 NW2d 810 (1959).

ISSUES

Clovelly contends that the City Commission improperly determined that the SLUP expired on November 6, 2002 and that the City Commission's decision not to grant an extension is not supported by competent, material and substantial evidence on the whole record.

Clovelly also contends that the City Commission violated Clovelly's due process rights by failing to provide any standards or criteria in the Zoning Ordinance for deciding whether to extend an SLUP and by denying Clovelly a fair hearing.

Finally, Clovelly contends that the City Commission failed to support its decision with logical and sufficient findings and violated MCL 125.584a.

SPECIAL LAND USE PERMIT

Expiration

The City Commission adopted the order granting Clovelly's SLUP (00-SLUP-02) on November 6, 2000. Pursuant to §1364.07, a SLUP expires "two years from the date of *final approval* if the applicant has not commenced substantial construction and is not diligently proceeding to completion. . ." [Emphasis added.]

Clovelly argues that it did not receive "final approval" for the construction of a 68-foot, 5-story building until the Zoning Ordinance was amended on April 11, 2002 to allow for a 68-foot, 5-story building. Up until then, the Ordinance only allowed for a 60-foot building. Therefore, Clovelly takes the position that its SLUP will not expire until two years from April 1l, 2002 or April 11, 2004.

Clovelly's argument ignores the fact that the subject SLUP was approved based on a site plan for the 60-foot, 5-story building. Without further action on Clovelly's part, Clovelly could not have built a 68-foot building, even after the April 11, 2002 amendment to the Zoning Ordinance. After the April 11, 2002 amendment, Clovelly still had until November 6, 2002 to apply for an amended SLUP or submit an amended site plan. Clovelly never applied for an amended SLUP, nor submitted

a site plan, for a 68-foot building. In fact, Clovelly did nothing until it was notified that its SLUP would expire on November 6, 2002. Clovelly then requested an extension.

Because the site plan that was submitted in support of the application for the SLUP was for a 60-foot, 5-story building and, because Clovelly never sought to amend the SLUP or site plan after the April 11, 2002 amendment, this Court finds that Clovelly had a valid SLUP for a 60-foot, 5-story building that, pursuant §1364.07, expired on November 6, 2002.

Extension

Clovelly contends that the City Commission's decision not to extend its SLUP was not supported by competent, material and substantial evidence on the whole record. The Court disagrees.

Pursuant to the City's Codified Ordinances §1364.07, a SLUP expires two years from the date of final approval if the applicant (1) has not "commenced substantial construction" and (2) is not "diligently proceeding to completion." The rules governing the construction of statutes apply with equal force to the interpretation of municipal ordinances. *Gora v City of Ferndale*, 456 Mich 704, 711; 576 NW2d 141 (1998). The primary goal of statutory interpretation is to ascertain and give effect to the intent of the Legislature. *Draprop Corp v Ann Arbor*, 247 Mich App 410, 415; 636 NW2d 787 (2001). Statutory language should be construed reasonably, keeping in mind the purpose of the act. *Id*. The first consideration in determining legislative intent is the specific language of the statute. *Id.* If the statutory language is clear and unambiguous, judicial construction is neither required nor permitted and courts must apply the statute as written. *Id.*

Clovelly argues that since it has spent more than $1.8 million on this project, it has "commenced substantial construction." Clovelly also argues that it is "diligently proceeding to completion" because it resolved interference by the City's Historical Districts Commission, requested and obtained the adoption of an amendment to the height requirements for the building, made over $1.8 million in physical improvements to the property, completed the streetscape improvements as late as October of 2002 and is attempting to sell the project.

The City takes the position that Clovelly has not proceeded diligently toward completion of the project. The City points out and the record supports that any delays occasioned by the City's Historical Districts Commission and the necessity for an amendment to the height

restrictions for the project were resolved on April 11, 2002 and Clovelly made no effort to recommence construction. Clovelly did not seek to amend its SLUP to take advantage of the height restriction amendment. Clovelly did not apply for any building or land use permits. The only thing that Clovelly did was list the property for sale. The City's conclusion that Clovelly did not do any work on the site (other than repair and replace the required streetscape improvements) for more than a year and a half and that Clovelly's inactivity does not constitute "diligently proceeding to completion" is supported by competent, material and substantial evidence on the whole record.

DUE PROCESS

"Vested Rights"

Clovelly contends that the City violated its due process rights by failing to provide any standards or criteria in the Zoning Ordinance for deciding whether to extend a SLUP and by denying Clovelly a fair hearing. Clovelly's argument is based on the premise that it has constitutionally protected vested rights because its SLUP was approved and it took action in reliance upon it. Clovelly relies upon *City of Lansing v Dawley*, 247 Mich 394; 225 NW 500 (1929) and its progeny, including *Dingeman Advertising, Inc v Algoma Twp*, 393 Mich 89; 223 NW2d 689 (1974).

The City responds that the City has complete discretion to grant or deny an extension and Clovelly cannot, therefore, establish a constitutionally protected property interest in having its SLUP extended. The City relies upon *Bosscher v Twp of Algoma*, 1:00-CV-806 (January 3, 2003).

To establish a due process violation, Clovelly must demonstrate the existence of a constitutionally-protected property or liberty interest. Clovelly claims that "[t]here is no question that Clovelly's SLUP constitutes a 'vested property right' protected by due process." The Court disagrees. The question presented is whether Clovelly has so much invested that it would be inequitable to preclude it from proceeding with construction.

Commencing with the landmark case *City of Lansing v Dawley*, 247 Mich 394; 225 NW 500 (1929) a definitive line of authority has emerged regarding when "vested rights" accrue. In *Dawley*, the defendant had obtained a building permit for the erection of a building. Before the defendant could start construction, the city passed a new ordinance precluding construction and

notified the defendant that his permit to build had been revoked. The defendant filed suit claiming that, although he had not started construction, he had made substantial expenditures in time and money, and had thus acquired vested property rights which could not be taken away by the subsequently enacted ordinance. Specifically, the defendant explained that he had ordered plans, paid for a survey, torn down an old barn and moved an old house to another part of the property. The Supreme Court held that such activity was not enough:

> It thus appears that the first work done upon the new building was three months after the ordinance went into effect and after the defendant had been notified that his permit had been revoked. If he had constructed the building or partially constructed it, if the work he did after the enactment of the ordinance had been done before, there would be no question as to his vested property rights. But he did nothing of a substantial character. He went no farther than to order the plans and cause a survey to be made of the lot. This preliminary work was not sufficient to create a vested right to erect the building. 247 Mich 396-397; 225 NW 500.

In *Sandenburgh v Michigamme Oil Co*, 249 Mich 372; 228 NW 707 (1930), the defendant was granted a building permit to construct a filling station on land then zoned for business. Construction started immediately. The city subsequently revoked the building permit and rezoned the property to residential. The Supreme Court held in favor of the landowner because the work commenced on construction of the building, the materials purchased and the sums expended on labor brought the case within the exception noted in *Dawley*.

The importance of obtaining a building permit or its counterpart, a permit to operate, is illustrated in *DeMull v City of Lowell*, 368 Mich 242; 118 NW2d 232 (1962) and *Franchise Realty Interstate Corp v Detroit*, 368 Mich 276; 118 NW2d 258 (1962). In *DeMull*, such a permit was issued and substantial work called for in the permit was commenced, so "vested rights" were acquired. In *Franchise Realty*, the application for the permit was pending and rezoning took place before the permit was issued. Therefore, no vested rights accrued.

In *Detroit Edison Co v City of Wixom*, 382 Mich 673; 172 NW2d 382 (1969), Edison, pursuant to permit secured from the Michigan Public Service Commission, made plans to run a high voltage line through the City of Wixom. Under the permit to construct, the towers supporting the lines had to be at least 130 feet high. Edison had acquired the right of way, some 4 miles long and 200 feet wide, at a cost of $273,000, but had not commenced construction within the city. Before construction could commence, the Wixom city council amended the

city's zoning ordinance to prohibit towers more than 100 feet high. The Supreme Court found that Edison had acquired vested rights prior to the enactment of the ordinance based on the fact that the Wixom portion of the line was only a small part of the entire transmission line. A substantial portion of the line had already been completed at a cost of $2.4 million when Edison started buying property for the Wixom portion. Thus, although construction had not started on the Wixom section, it had started and was well underway on a major portion of the project.

Dingeman, supra, upon which Clovelly relies, adheres to the rules laid down in *Dawley* and its progeny. There, the landowner purchased the land, executed a land contract, obtained a building permit, negotiated and completed an advertising contract, staked the location where a sign would be placed, caused a pole and transformer to be placed on the land, began construction of the sign, but had not commenced erecting the billboard on the property until 22 days after the township adopted the new ordinance. The landowner expended $2,645 performing these tasks. The Court held that these factors made the case analogous to *DeMull*, *supra*. The landowner acquired vested rights in the property.

In the instant case, Clovelly received a SLUP that expired after two years. The approved site plan alone did not give rise to vested rights. *Schubiner v West Bloomfield Twp*, 133 Mich App 490; 351 NW2d 214 (1984). During the two years before the SLUP expired, Clovelly spent in excess of $1.5 million on the foundation to a 5-story building. Clovelly never sought to amend its site plan or sought the requisite approval to build a 68-foot building. Clovelly never applied for a land use or building permit, except "for foundation only." Clovelly never constructed anything but a foundation and no construction has taken place since August of 2001.

There is a major distinction between the *Dawley* line of cases and the instant case. The *Dawley* cases are non-conforming use cases. They involve a change in the applicable rules or zoning ordinance that make the proposed use of the property no longer an approved use. The outcome of each case was decided by looking at where the landowner was in the process of obtaining permission to build and whether the landowner had so much invested in the project that it would be inequitable to preclude him from completing the project. In other words, when the city or other authority

changes the rules after the landowner begins construction, it may be inequitable to stop the construction.

By contrast, in the instant case, the City did not change the rules or modify the zoning ordinance in a way that would interfere with Clovelly's construction. Clovelly received a SLUP which it knew or should have known at the time would expire in two years if the construction had not substantially commenced and was not diligently proceeding to completion. The City's decision not to extend Clovelly's SLUP does not divest Clovelly of the value of the property as the site of a 5-story office building.

Based on the record before the Court, it would appear that Clovelly is no longer interested in completing the construction because it has listed the property for sale. The value of the work Clovelly has done is there and, when the property is sold, Clovelly should reap the financial benefit of that work. This distinction between the *Dawley* cases and this case makes the facts at hand more analogous to *Schubiner, supra*. In that case, the plaintiff property owners brought suit against the township alleging that they had a "vested right" in their approved site plan for construction of an office building. Pursuant to the applicable zoning ordinance, the plaintiffs had one year within which to ready their property for the three-story office building and obtain a building permit. Plaintiffs did not do so because they could not obtain the financing needed to start construction. The Court said:

> Inability to secure requisite financing is not the fault of the municipal authority involved. Instead, it is a normal risk of doing business which falls on the developer, who has no right to expect that a site plan will be extended or that existing zoning will be preserved until economic conditions improve.

Even more importantly, the Court said:

> Under all of the cases cited herein a building permit, or its counterpart, a permit to commence operations, is the sine qua non for obtaining 'vested rights'. An approved site plan is not a permit to build. The features of reliance and estoppel which may give rise to a vested right under a building permit do not necessarily arise under an approved site plan which, by statute, merely signifies that the proposed use complies with local ordinances and federal statutes. MCL § 125.286e; MSA § 5.2963(16e). Furthermore, the grant of a permit to build does not in itself confer on the grantee 'vested rights'. Actual construction must commence (*Dawley, supra, DeMull, supra*). The making of preparatory plans, landscaping and the removal of an existing structure is not sufficient. (*Sandenburgh, supra*). Where the building permit has been applied for but has

> not been issued, 'vested rights' are not acquired even though substantial sums have been expended by the applicant. (*Franchise Realty, supra*).

In conclusion, it is impossible for this Court to conclude that Clovelly has vested property rights. While no factor is in itself decisive of the case, the entire circumstances, viewed together, present compelling reasons why equity should refuse Clovelly's request for an extension of its SLUP by application of the doctrine of vested rights.

Guidance or Standards

Clovelly argues that the City violated its due process rights when it refused to extend its SLUP because the Zoning Ordinance does not provide any guidance or standards, criteria or factors that must be considered when making a decision to extend a SLUP. Clovelly relies upon *Roseland Inn, Inc v McClain*, 118 Mich App 724, 728-729; 325 NW2d 551 (1982). Again, this argument is based on the erroneous assumption that Clovelly has constitutionally protected vested rights.

The Michigan Supreme Court stated in *Osius v City of St Clair Shores*, 344 Mich 693, 700; 75 NW2d 25 (1956), when striking down a zoning ordinance for lack of standards: "[w]ithout definite standards an ordinance becomes an open door to favoritism and discrimination." "Absence of standards promotes arbitrary and capricious actions on the part of local legislative bodies, and the lack of fair notice of such standards violates a licensee's right to due process."

As was discussed above, §1364.07 of the City's Zoning Ordinance provides that "a special land use order expires two years from the date of final approval if the applicant has not commenced substantial construction and is not diligently proceeding to completion." In addition, §1364.07 provides that, "[u]pon *written request stating the reasons* therefor, the granting authority may extend the order for one additional year." Again, the rules governing the construction of statutes apply with equal force to the interpretation of municipal ordinances. *Gora v City of Ferndale*, 456 Mich 704, 711; 576 NW2d 141 (1998). The first consideration in determining legislative intent is the specific language of the statute. *Draprop Corp v Ann Arbor*, 247 Mich App 410, 415; 636 NW2d 787 (2001).

It is evident from the clear, unambiguous language of §1364.07 that the City of Traverse City wants those who are going to build buildings in the City to do so quickly, efficiently and with as little interruption of the City's normal appearance and activity as possible. Thus, special land use permits expire after two years if construction has not substantially commenced and is not being diligently pursued. These are the standards or factors the City considers when it has to decide whether to grant an extension.

As the City points out, Clovelly did not indicate that it was going to proceed diligently to completion. Instead, it spoke of uncertain "economic conditions" and "potential purchasers." The City's decision not to extend Clovelly's SLUP was authorized by §1364.07 of the City's Codified Ordinances and supported by competent, material and substantial evidence on the whole record. Clovelly was not denied due process of law because of a lack of guidance or standards for making that decision.

Fair Hearing

Clovelly argues that it was denied due process because the City did not provide it with a fair hearing. This argument also presumes that Clovelly has constitutionally protected vested property rights in its SLUP. As discussed above, this Court does not agree.

However, even if Clovelly has vested property rights in its SLUP, according to the record in this matter, it received a fair hearing. Section 1364.07 requires that one who seeks a SLUP extension give the reasons therefor. Clovelly eventually gave four reasons for requesting the extension. The members of the City Commission advised Clovelly that they were not in favor of extending its SLUP. None of their reasons were beyond the obvious - construction had stopped in August of 2001 and Clovelly had no immediate plans to get the construction back on track. Clovelly's attorney and real estate agent addressed the Commission. Clovelly's president declined to make any remarks. No one was able to assure the City Commission that Clovelly would or even wanted to complete the project. Extending the SLUP would have been futile.

LOGIC AND SUFFICIENT FINDINGS

Clovelly contends that the City Commission was required to provide a statement of the specific basis for its decision, "a full explanation of the facts and reasoning" by which it concluded that the SLUP should not be extended. Clovelly relies upon *Reenders v Parker*, 217 Mich App 373; 551 NW2d 474 (1996) and *Tireman-Joy-Chicago Improvement Ass'n v Chernick*, 361 Mich 211, 219; 105 NW2d 57 (1960).

Meaningful judicial review of whether there was competent, material, and substantial evidence on the record to support a zoning board decision requires "a knowledge of the facts justifying the board's ... conclusion." *Tireman-Joy-Chicago Improvement Ass'n v Chernick*, 361 Mich 211, 219; 105 NW2d 57 (1960). Accordingly, "the board of zoning appeals must state the grounds upon which it justifies the granting of a variance." *Id.* It is insufficient for the zoning board to merely repeat the conclusionary language of the zoning ordinance without specifying the factual findings underlying the determination that the requirements of the ordinance were satisfied in the case at hand. *Badanek v Schroskey*, 21 Mich App 582, 584-585; 175 NW2d 784 (1970). See also, *Reenders v Parker*, 217 Mich App 373; 551 NW2d 474 (1996).

Clovelly contends that the transcript of the meeting in the instant case demonstrates that the City Commission's denial of the requested extension was unsupported by any logical reasons. According to the transcript of that meeting, the Commissioners expressed the following reasons for denying the request: (1) the original intent was to encourage residential use downtown, but that intent was not being fulfilled; (2) opposition to the increase in the allowed height of the building; (3) construction stoppage; and (4) Clovelly not diligently proceeding to completion.

Because the record allows the reasons for the Commission's decision to be discerned, the record contains sufficient facts for this Court to affirm. *Viculin v Dep't of Civil Service*, 386 Mich 375, 404-406; 192 NW2d 449 (1971).

VIOLATION OF MCL 125.584a

Clovelly complains that the record is devoid of any evidence that proper notice was given it and that the Commission's decision does not specify the basis for the decision contrary to MCL 125.584a.

MCL 125.584a provides, in pertinent part, as follows:

> (2) Upon receipt of an application for a special land use which requires a decision on discretionary grounds, 1 notice that a request for special land use approval has been received shall be published in a newspaper of general circulation in the city or village and shall be sent by mail or personal delivery to the owners of property for which approval is being considered, to all persons to whom real property is assessed within 300 feet of the boundary of the property in question, and to the occupants of all structures within 300 feet, except that the notice shall be given not less than 5 and not more than 15 days before the application will be considered. . .
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> * * *
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> (4) The body or official designated in the zoning ordinance to review and approve special land uses may deny, approve, or approve with conditions, requests for special land use approval. The decision on a special land use shall be incorporated in a statement of conclusions relative to the special land use under consideration. The decision shall specify the basis for the decision, and any conditions imposed.

The City correctly points out that MCL 125.584a does not apply to the present case. MCL 125.584a prescribes the requirements for issuing a special land use permit. It has nothing to do with requesting an extension of an existing permit which is governed by §1364.07.

CONCLUSION

The decision of the City Commission not to extend Clovelly's SLUP was authorized by law and supported by material, competent and substantial evidence on the whole record. That decision is affirmed.

IT IS SO ORDERED.

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HONORABLE PHILIP E. RODGERS, JR.
Circuit Court Judge

Dated: S/ 5/7/03