UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2088

September Term, 2007

NORBECK GROVE COMMUNITY ASSOCIATION, INC.

v.

ROBERT M. MASTERS, ET AL.

Hollander,
Zarnoch,
Wright,

JJ.

Opinion by Wright, J.

Filed: October 17, 2008

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On April 12, 2006, Robert M. Masters and Carolyn Masters ("appellees") filed a complaint with the Montgomery County Commission on Common Ownership Communities ("CCOC"), alleging that the Board of Directors for the Norbeck Grove Community Association ("appellant") erred when it concluded that the exterior stone fireplace in appellees' backyard was constructed without appellant's approval. After a hearing on the merits on January 11, 2007, the CCOC issued a decision on March 8, 2007, stating that "no reasonable person could conclude that the [appellant] approved what the [appellees] built based upon the knowledge and information that the [appellant] had before it."

On April 3, 2007, the appellees filed a petition for judicial review of the CCOC decision with the Circuit Court for Montgomery County. A hearing was held on September 13, 2007 and on October 3, 2007, the circuit court reversed the CCOC's decision. Appellant noted this timely appeal.

We are asked to determine whether there is substantial evidence in the record to support the CCOC's determination that appellees' reliance on appellant's November 11, 2005 approval letter was unreasonable. We answer "no" and hold that appellees' reliance on the letter was, in fact, reasonable. Thus, we affirm the decision of the circuit court.

FACTUAL HISTORY

Appellees own a residence located at 18266 Wickham Road, Olney, Maryland and are within the purview of the appellant. As such, appellees are subject to appellant's Declaration of Covenants, Conditions and Restrictions ("Declaration") and to the terms of

its Design Guidelines and Standards ("Guidelines"). Article 8.1 of the Declaration is titled "Architectural Change Approval" and states, in pertinent part:

> No building, fence, wall, mailbox, ... or other structure or improvement of any kind shall be commenced, erected or maintained upon the Property, nor shall any exterior addition to or change or alteration therein be made (including, but not limited to, changes in color, changes or additions to driveways, or walkway surfaces and landscaping modifications) until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by a covenant committee...

According to the Guidelines, the "guiding principles which direct the Covenant Committee in making its decisions" are as follows:

- protecting owners against improper use of surrounding lots;
- guarding against the erection of poorly designed or proportioned structures or the use of unsuitable materials;
- obtaining harmonious color schemes;
- preventing haphazard and inharmonious improvement of lots; and
- to preserve the open characteristics of the community, all free standing items, e.g. sheds, spas, play equipment, etc. should be placed behind the homes and not visible from the street.

Prior to April 2005, appellees sought to redesign the landscaping of their property and retained MEB Design Studio ("MEB"), a professional landscape architect company, to draft a "Landscape Plan." The Landscape Plan was submitted to appellant's

Architectural Control Committee ("Committee") on September 26, 2005, along with an Application for Architectural Change. The Landscape Plan included a detailed blueprint with a legend, itemizing appellees' proposed changes.[1] It also included the handwritten notation, "stone fireplace," with an arrow pointing to the fireplace's proposed location, at the corner of appellees' existing rear patio.[2]

Shortly after submitting the application, appellees received a letter from Melissa Carroll ("Ms. Carroll"), on behalf of the Committee. The letter, dated September 27, 2005, requested further information regarding appellees' "patio, flagstone walkway, and drystack stone retainer wall." It also requested additional information "showing additional plant material to be used" and indicated that appellees may need to obtain their neighbors' signatures.

After receipt of the letter, appellees contacted Kenneth Windmaier ("Mr.

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[1] At oral argument, it was adduced that the Landscape Plan was printed on a large roll of drafting paper.

[2] There is some dispute with regard to the handwritten notation. Appellant contends that "none of the [Committee] members... saw the handwritten notation on the plans that they reviewed," that in appellees' original submission, the handwritten notation was made with a lighter ink, and that Mr. Masters, not MEB, hand-wrote the reference "stone fireplace."

In their brief, appellees explain that, at the time of its original drafting, the Landscape Plan did not include a stone fireplace due to the high construction cost quoted by MEB. Appellees admit that they added the handwritten notation themselves in "the summer"of 2005, when they met with Salt Creek Garden, the company hired to perform the landscaping, and at which time appellees learned that the fireplace could be constructed at a lower price. Appellees, however, contend that the handwritten notation was present in the original submission made on September 26, 2005.

Windmaier"), a Committee member, and arranged a meeting at appellees' home. Within a week, Mr. Windmaier came to the appellees' residence to discuss the Landscape Plan. Appellees recall Mr. Windmaier saying that, if appellant were to take issue with the proposed changes, it would likely be with the proposed walkway in appellees' side yard. Appellees further recall Mr. Windmaier pausing by the side yard as he was leaving and trying to visualize the proposed landscaping in the yard, including the stone fireplace. Because the patio and stone fireplace would be in the backyard and because the trees would soften the view from the street, Mr. Windmaier did not foresee any problems with the Landscape Plan.

Appellees also met with Alan Halper ("Mr. Halper"), who, at that time, was chair of the Committee. According to appellees, Mr. Halper also paid particular attention to the proposed walkway in the side yard. Given its proximity to the neighbors' yard, Mr. Halper suggested that appellees discuss the Landscape Plan with the neighbors and obtain their signatures for approval.

On November 10, 2005, appellees sent the Committee a supplement to their original application. The supplement included a detailed description of the walkway, a signed acknowledgment from Fred Altimont, the appellees' neighbor, a color-coded Landscape Plan, two photos of the area, and a response letter to Ms. Carroll dated October 8, 2005.

On November 11, 2005, appellees received a letter, which provided, in pertinent

part:

> Dear Mr. Masters:
>
> I am writing on behalf of the [Committee] for the Norbeck Grove Community regarding your request to extend walkway on right-hand side of home to extend two feet from property line as well as your landscaping plans. The [Committee] has reviewed your application, and I am pleased to inform you that your request has been **APPROVED**.

Within one week of receiving the approval letter, appellees authorized their landscaper to begin the work, starting with construction of the ten-foot high, four-foot wide, exterior stone fireplace.

On December 11, 2005, when the stone fireplace was fifty percent complete, appellees were contacted and visited by Dave Crowley ("Mr. Crowley"), a member of the Committee. Mr. Crowley advised them that the Committee did not receive or review a request for a fireplace. In response, appellees referenced the "stone fireplace" notation on the original application. The Committee, however, did not retain a copy of the original application for their records. In addition, the committee members testified that they "don't remember" and "don't recall" seeing the handwritten notation on the original application.

On December 13, 2005, the appellant sent appellees a letter, which stated, in relevant part:

> [I]t appears that you have included an outdoor stone fire place [sic] along with the patio which was not a part of the original request.

> You are subject to a $250.00 violation fee for making changes that are substantially different then [sic] what was approved, per the Norbeck Grove Architectural Guidelines.
>
> First, exterior fire places [sic] are not allowed in the community and have been disapproved in the past. Second, you will need to resubmit an architectural change request with these changes along with signatures of your neighbors... or change your modifications back to the original plans. Third, you have the right to appeal the $250.00 violation fee to the Board of Directors in writing within 14 days of the date of this letter.

On December 23, 2005, appellees notified appellant of their decision to appeal the violation fee and asked that the matter be scheduled for a hearing. Meanwhile, appellees continued work on the stone fireplace, which was completed in January 2006.

Appellees' appeal was heard on March 9, 2006. On March 14, 2006, appellant's Board of Directors sent appellees a letter stating, in part:

> The Board has denied your appeal and the stone fireplace structure must be removed within thirty (30) days since it was not requested or approved with your original request and the Board upheld the $250.00 fine...
>
> ...If you do not agree with the Board's decision, you have the right to file a complaint with the [CCOC].

Appellees' filed an appeal with the CCOC on April 12, 2006. On March 8, 2007, after a hearing on the merits, the CCOC issued a Memorandum Decision and Order, which concluded, in part:

> 1. The Panel assumes... that the language "stone fireplace" was handwritten on the plans... at the time that [appellees] first submitted those plans to the

[Committee]... The Panel also assumes... that the five members of the [Committee] simply overlooked this language.

2. ...[T]he Panel concludes that the [appellant] approved some type of structure that could be characterized as a "stone fireplace"...

3. However, the [appellees] did not submit plans and specifications showing the nature, kind, shape, height, materials and location of a proposed stone fireplace as required by Article 8... However, no reasonable person could conclude that the [appellant] association approved what the [appellees] built based upon the knowledge and information that the association had before it...

Thus, the CCOC ordered appellees to remove the stone fireplace within sixty days of its decision.

On April 3, 2007, the appellees filed a petition for judicial review with the Circuit Court for Montgomery County. On October 3, 2007, the circuit court reversed the CCOC's decision. Appellant filed this timely appeal.

STANDARD OF REVIEW

"When this Court reviews a decision of an administrative agency, we... limit our review to the agency's decision." *Anderson v. Gen. Cas. Ins. Co.*, 402 Md. 236, 244 (2007) (citing *Watkins v. Sec'y, Dep't of Pub. Safety & Corr. Servs.*, 377 Md. 34, 45-46 (2003)). We do not reevaluate the decision of the lower court. *Gigeous v. E. Corr. Inst.*, 363 Md. 481, 495-96 (2001). "Our primary goal is to determine whether the agency's decision is in accordance with the law or whether it is arbitrary, illegal, and capricious."

Md. Dep't of Env't v. Ives, 136 Md. App. 581, 585 (2001) (citations omitted). "Thus, our role is 'limited to determining if there is substantial evidence in the record as a whole to support the agency's findings and conclusions, and to determine if the administrative decision is premised upon an erroneous conclusion of law.'" *Pickert v. Md. Bd. of Physicians*, 180 Md. App. 490, 500 (2008) (quoting *United Parcel Serv., Inc. v. People's Counsel*, 336 Md. 569, 577 (1994)).

"In applying the substantial evidence test, we must decide whether a reasoning mind reasonably could have reached the factual conclusion the agency reached." *Rideout v. Dep't of Pub. Safety & Corr. Servs.*, 149 Md. App. 649, 656 (2003) (citations omitted). "When deciding issues of law, however, our review is expansive, and we may substitute our judgment for that of the agency if there are erroneous conclusions of law." *Ives*, 136 Md. App. at 585 (citing *Curry v. Dep't of Pub. Safety and Corr. Servs.*, 102 Md. App. 620, 627 (1994), *cert. granted*, 338 Md. 252 (1995), *cert. dismissed*, 340 Md. 175 (1995)).

DISCUSSION

At the outset, we emphasize that the CCOC "assume[d] for the purposes of [its] decision that the language 'stone fireplace' was handwritten on the plans... at the time that [appellees] first submitted those plans" to the Committee and that "the five members of the Covenants Committee simply overlooked this language." Thus, for the purpose of reviewing the CCOC's decision, we will make those same two assumptions.

On appeal, appellant argues that the CCOC acted properly in rejecting appellees' argument of estoppel because appellees unreasonably believed that the Committee approved their application to build their exterior stone fireplace. Specifically, appellant asserts that appellees' application was "devoid of any dimension or location details" and "there were no specifications in the [a]pplication detailing its 'nature, kind, shape, height, materials, and location' as required by the Declaration." Appellant also notes that the stone fireplace is "extremely large" and "is clearly visible from the street." We disagree with the CCOC and hold that there was not substantial evidence in the record that appellees unreasonably relied on appellant's November 11, 2005 letter. As such, appellant is estopped from denying appellees the right to keep and use their fireplace.

In this case, appellees submitted their Application for Architectural Change along with a detailed Landscape Plan. Although the landscape architect did not include the words "stone fireplace" in the Landscape Plan, there was testimony that Mr. Masters made the handwritten notation himself and that the words were hand-printed on the Landscape Plan at the time it was first submitted to appellant.

In response to the submitted Landscape Plan, appellant sent appellees a letter on September 27, 2005, requesting more information about the proposed "patio, flagstone walkway, and drystack stone retainer wall." Appellant's letter did not mention the stone fireplace. Therefore, we believe it was reasonable for appellees to believe that additional information regarding the fireplace was not required. Appellees' attempt to comply with

appellant's Declaration and Guidelines was demonstrated by appellees' prompt response to appellant's September 27, 2005 request and their attempt to seek the advice of two Committee members to ensure that the proposed landscape changes would pose no problem to the appellant. It was reasonable for appellees to believe that the supplement sent on November 10, 2005, coupled with the original Landscape Plan, provided the information necessary to show "the nature, kind, shape, height, materials, and location" of all the proposed modifications.

On November 11, 2005, appellees received a letter of approval from appellant, stating that their "request to extend walkway on right-hand side of home to extend two feet from property line as well as [appellees'] landscaping plans" were "approved." This Court holds that appellees were reasonable in believing that the stone fireplace was approved as part of the "landscaping plans" for several reasons.

First, we, as did the CCOC, assume that the notation "stone fireplace" was, in fact, written on the original Landscape Plan. Appellant contends that it was not. Appellant, however, did not retain a copy of the original application and is, therefore, unable to support its contention. The most that appellant can provide is testimony from members of its Board of Directors, stating that they "don't remember" or "don't recall" seeing the handwritten notation. Considering this testimony, the CCOC assumed, for the purpose of its decision, that the handwritten notation "stone fireplace" was present in appellees' original application.

In addition, two members of the Committee visited appellees to discuss the Landscape Plan and both made note of the stone fireplace that was to be built. Both members further testified that the only potential problem was the walkway that appellees planned to add to the side yard. In an effort to avoid any problems, appellees consulted with their neighbor, Fred Altimont, and obtained his signature of approval. During the CCOC hearing, Mr. Windmaier, one of the Committee members who visited appellees, testified, "I remember [Mr. Masters] talking to me about the fireplace, because we used the same landscaping guy." In addition, Mr. Crowley, the new chair of the Committee, testified, "[Mr. Windmaier] said that he did know, the conversation over at the house, that [appellees] were going to put a fireplace there."

As the circuit court correctly stated in its opinion and order:

> Ultimately, these meetings make clear that both Windmaier and Halper failed to inquire about the nature, kind, shape, color, or height of the stone fireplace, despite having actual knowledge of its inclusion in the "Landscape Plan." This knowledge is properly imputed to the Association based on the long standing rule that a principal is charged with knowledge of its agent acquired in the course of the principal's business. *Curtis, Collins & Holbrook, Col. v. U.S.*, 262 U.S. 215, 223, 43 S.Ct. 570, 573 (1923). And to the extent the [Committee] needed or wanted that information in the [appellees'] application, it could have inquired either in the September 27, 2005, letter, during either of Mr. Masters' meetings with members of the board, or at any other time prior to November 11, 2005.
>
> In light of these considerations, the court finds that the [appellees] neither knew, nor had reason to know of any concerns with respect to the fireplace aspect of the

submission.

This case is similar to *Baltimore County Licensed Beverage Ass'n, Inc. v. Kwon*, 135 Md. App. 178 (2000), in which this Court affirmed the circuit court's reversal of a board's decision, holding that substantial evidence did not support the board's finding. In *Kwon*, the Board of Liquor License Commissioners for Baltimore County denied the Kwons' application to transfer a Class A off-sale alcoholic beverages license to a new location, stating that "while the Kwons had satisfied the other requirements for the transfer of their license, they had not shown that the transfer was necessary for the accommodation of the public." *Id.* at 185. This Court determined that "necessary" meant "that the transfer of the liquor license to the transfer site will be 'convenient, useful, appropriate, suitable, proper, or conducive' to the public in that area." *Id.* at 193-94 (citing BLACK'S LAW DICTIONARY 714 (abridged 6th ed.1991)). After reviewing the evidence presented before the Board, this Court concluded that it "was not such that the Board reasonably could have concluded that a liquor store at the [new location] was not convenient, useful, appropriate, suitable, proper or conducive to accommodation of the public." *Id.* at 194-95. Thus, the Board's decision was not supported by substantial evidence. *Id.* at 195.

In this case, the CCOC Panel assumed, at the hearing, that the language "stone fireplace" was handwritten on the plans at the time of first submission. The Panel also assumed that the five members of the Committee simply overlooked this language. At the

end of the hearing, the Panel concluded that appellant approved "some type of structure that could be characterized as a 'stone fireplace,'" but added that "no reasonable person could conclude that the [appellant] association approved what the [appellees] built based upon the knowledge and information that the association had before it."

We disagree with the Panel's conclusion. It is reasonable to assume that an outdoor fireplace on a patio would be of significant size to warm the entire patio area on a chilly night. In addition, we agree with appellees that a fireplace is assumed to be "an open structure, usually of masonry, in which a fire is contained and burns." In this case, the fireplace in question, as described and pictured in the record, has those exact characteristics. Thus, we agree with appellees that there was not substantial evidence in the record, as a whole, to support the agency's findings and conclusions. *See Miller v. Abrahams*, 239 Md. 263, 275 (1965) (reversing the circuit court's affirmance of the Board's decision and holding that the Board "rendered its action arbitrary and capricious in a legal sense" because "the evidence before the Board was too thin" to make the contested issue fairly debatable). Instead, the evidence in the record shows that appellees' reliance on appellant's November 11, 2005 approval letter was reasonable in a legal sense. In its memorandum decision and order, the CCOC correctly stated that appellant could be estopped from denying appellees the right to keep their fireplace, if appellees' actions amounted to reasonable reliance. (Citing *Savonis v. Burke*, 241 Md. 316 (1966)). The CCOC erred by stopping short and not finding that appellees' reliance

was reasonable. For this reason, appellant is now estopped from denying appellees the right to keep and use their fireplace. Accordingly, we affirm the circuit court's reversal of the CCOC's decision.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.