Circuit Court for Cecil County
Case No. C-07-CV-19-000048

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1216

September Term, 2019

GABRIELLE BUCK

v.

CECIL COUNTY
BOARD OF ZONING APPEALS,
et al.

Fader, C.J.,
Graeff,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Harrell, J.

Filed: November 2, 2020

This appeal arises from a petition filed in the Circuit Court for Cecil County by Gabrielle Buck, appellant, requesting judicial review of a decision of the Cecil County Board of Appeals (the "Board").

In 2017, the Cecil County Division of Planning and Zoning (the "County") issued three notices of violation, advising that a dirt bike course constructed on property known as Mount Ararat Farm ("subject property") violated provisions of the Cecil County Zoning Ordinance.[1] Ms. Buck is a partner in the Mount Ararat Farm General Partnership, which owns the subject property.

After attempts to formalize an agreement to resolve the alleged violations failed, Ms. Buck filed an administrative appeal with the Board. Following a hearing, the Board affirmed the County's decision to issue the notices of violation.

Ms. Buck then filed a petition for judicial review in the Circuit Court for Cecil County. The circuit court issued an order affirming the Board's decision.

Ms. Buck appeals now from the order of the circuit court and raises three issues for our review, which we restate and summarize for clarity as follows:

1. Was there substantial evidence to support the Board's finding that the dirt bike course was a "racetrack," as that term is defined in the Cecil County zoning ordinance?

2. Was there substantial evidence to support the Board's finding that the construction of the dirt bike course on the subject property created an unauthorized disturbance in the critical area buffer?

[1] The development project that is the subject of this appeal is referred to in the record and by the parties interchangeably as a dirt bike trail, motocross track, motocross trail, motocross course and motocross facility. For purposes of this opinion, we shall refer to the project as a dirt bike course.

3. Was the Board's finding that the dirt bike course was constructed in the Resource Conservation Area supported by substantial evidence?[2]

For the following reasons, we shall affirm the circuit court's order in part, reverse in part, and vacate in part. The case shall be remanded to the circuit court with instructions to remand to the Board for further proceedings.

FACTS

As we shall explain, our review is limited to determining whether there was substantial evidence before the Board to support its findings. Accordingly, we present only those facts that appear in the record before the Board.

The subject property, abutting Mount Ararat Farm Road and Frank Brown Road, in Port Deposit, consists of 631 acres abutting also the Susquehanna River. The subject

[2] Ms. Buck presented the following questions:

1. Whether the Circuit [Court] erred in finding that substantial evidence was presented to the Board of Appeals demonstrating that the Motocross Trail was a "racetrack" as defined under ZO § II(12)?

2. Whether the definition of "racetrack" under ZO § II(12) and the requirements for approval of special exceptions for automobile and motorcycle racetracks under ZO § V(103) were meant to apply to non-commercial dirt bike trails constructed on privately owned land used strictly for private recreational, non-racing purposes?

3. Whether the Boards of Appeals' finding that the Motocross Trail was constructed by Appellant in the Resource Conservation Area was supported by substantial evidence?

property is in the "Suburban Transition Residential" zoning district.[3] Approximately 43 acres of the subject property is within the Resource Conservation Area (sometimes referred to as "RCA") of the Chesapeake Bay Critical Area.[4] The subject property is partially encumbered by a conservation easement granted to the Maryland Environmental Trust and Cecil Land Trust, Inc.

In June 2017, the County was notified that land disturbance activities were occurring on the subject property that appeared to be designed for "motorcycle and other types of racing." An aerial photograph of the subject property, taken the same month, depicts a continuous, asymmetrical dirt course with several hairpin turns and changes in elevation.

Following an inspection of the property, the County sent a letter, addressed to Mount Ararat Farm, advising that automobile and motorcycle "racing tracks" were a prohibited use of land in the zoning district where the subject property is located. A "racetrack" is

[3] The Cecil County Zoning Ordinance ("Z.O.") defines Suburban Transition Residential zone as "a transitional zone between higher density zones and lower density zones." Z.O. § 26.1.

[4] The Chesapeake Bay Critical Area consists of "(1) All waters of and lands under the Chesapeake Bay and its tributaries to the head of tide ; (2) All State and private wetlands designated under Title 16 of the Environment Article; and (3) All land and water areas within 1,000 feet beyond the landward boundaries of the resources identified under paragraphs (1) and (2)[.]" Md. Code (1984, 2018 Repl. Vol.), Natural Resources Article ("NR"), § 8-1807(a).

A Resource Conservation Area is one of three land classifications in the critical area. NR §8-1802(a)(14). Land that is designated as a Resource Conservation Area is characterized by "(1) Nature dominated environments, such as wetlands, surface water, forests, and open space; and (2) Resource-based activities, such as agriculture, forestry, fisheries, or aquaculture." NR § 8-1802(a)(22)(i).

defined in the Cecil County Zoning Ordinance ("Z.O.") as "[a] measured course where animals or machines are entered into competition against one another or against time, not including tracks that are used in the training of animals." Z.O. § 12. Counsel for Ms. Buck responded to the County by letter to explain that the dirt bike course would not be used for competitions, stating that:

> The [dirt bike] course was built for personal use by Ms. Buck's son, James, who also resides on Mt. Ararat Farm. The course will also be used by one of James' roommates and Ms. Buck's other son, Frank, who also resides on Mt. Ararat Farm. The course will never be open to the public nor will it ever be utilized for any form of competition. James is an avid dirt biker and wanted a professionally built course to use for his personal enjoyment and practice.

On 19 June 2017, the County sent the first of three notices of violation, informing Ms. Buck that the land disturbance activities on the subject property violated Z.O. § 196, which restricts disturbance of land in the critical area buffer,[5] and Z.O. § 201, which governs how land in the Resource Conservation Area may be used. The record before the Board includes a letter from the State Critical Area Commission explaining these violations as follows:

> The State Critical Area Regulations prohibit disturbance to the Buffer except under very specific circumstances . . . . The County's Critical Area Ordinance, as approved by the Critical Area Commission, details those circumstances . . . Section 196.3 of the County Code specifies that Buffer disturbance may only be authorized for the following activities: 1) related to water-dependent facilities; 2) within an approved Modified Buffer Area

[5] The critical area buffer is an area "immediately landward from mean high water of tidal waters, the edge of bank of a tributary stream, or the edge of a tidal wetland; and exists or may be established in natural vegetation to protect a stream, tidal wetland, tidal waters, or terrestrial environment from human disturbance." Z.O. § 196.1. The subject property is located in the Resource Conservation Area, where the minimum buffer is 200 feet in depth. *Id.*

> (MBA); 3) within a Buffer that encompasses 75% or more of a lot or parcel; or 4) for shore erosion control purposes. The development of a racetrack in the Buffer at this location does not qualify as a permitted disturbance to the Buffer. Therefore, the land disturbance activities associated with the construction of the motocross racetrack is a violation of the County's Critical Area Program.
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> * * *
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> The State Critical Area Regulations also specify allowed uses within the RCA . . . . These include residential uses at a density of one dwelling unit per 20 acres and existing industrial and commercial facilities. New industrial, commercial, or institutional uses are prohibited within the RCA unless the use is authorized by a local program approved by the Critical Area Commission. . . . Section 201 of the Cecil County Critical Area Ordinance describes land uses permitted in the RCA within Cecil County. While this section specifies uses such as golf courses, bed and breakfasts, and daycare facilities with specific limitations, motocross tracks are not included. As such, use of the RCA for a racetrack is a violation of the County's Critical Area Program.

After receiving the notices of violation, Ms. Buck retained an engineering and surveying firm to prepare a survey plat showing the area of disturbance created by the construction of the dirt bike course in relation to the critical area buffer and the conservation easement. The exact location of the dirt bike course within the area of disturbance is not shown on the plat.

In July 2017, a meeting was held at the subject property between the owners of the property and representatives from the County, the Maryland Department of the Environment, the Critical Area Commission, and the Maryland Environmental Trust. Following the meeting, Ms. Buck had erosion and sediment control measures installed on the subject property, apparently in consultation with the Maryland Department of the Environment and the Critical Area Commission. According to counsel for Ms. Buck, these

efforts were designed to remedy the critical area violations without having to remove the dirt bike course.

On 18 September 2017, the County issued two more notices of violation. One notice advised that the County had determined that the dirt bike course was a "racetrack," which is not a permitted use of land in the zoning district in which the subject property was located, and was therefore a violation of § 103 of the zoning ordinance.[6] The other notice was a follow up to the June 19 notice of violation that advised that the land disturbance activities associated with the construction of the dirt bike course violated §§ 196 and 201 of the zoning ordinance. The County requested that Ms. Buck meet with County staff to formulate a plan of action to resolve the violation and restore the property to its original condition.

A meeting was held at the subject property on 27 October 2017. The parties came to a tentative agreement to resolve the violations, and a proposed consent order was drafted by the attorney for the County. The proposed order provided that the subject property would not be used for a "racetrack," as that term is defined in the zoning ordinance. Ms. Buck would not be required to replant vegetation in the disturbed area if she obtained and implemented an approved stormwater management plan within six months. The County would not require that the property be returned to pre-disturbed grade, but the disturbed area would be left "as is" and would be allowed to regenerate naturally. Upon Ms. Buck's

[6] Section 103 of the County zoning ordinance provides that automobile and racing tracks may be permitted as a special exception in only three zoning districts: Business-Intensive, Mineral Extraction, and Heavy-Industrial. As noted, the subject property is located in the Suburban Transition Residential district.

completion of and continued compliance with the terms of the order, the County would waive further enforcement. The Cecil County Executive declined, however, to execute the proposed consent order. Ms. Buck appealed the notices of violation to the Board.

Ms. Buck's son, James Buck, testified before the Board. Mr. Buck explained that the course was built, for his personal use, by a company named MX Track Builders. He stated that he had never used the dirt bike course to race, either against someone else or against the clock. In response to questions from a member of the Board, Mr. Buck reiterated that he did not engage in racing, and explained that he used the course only to "get better at dirt biking":

> Q. Mr. Buck, you've never used this course?
>
> A. It's kind of hard now because I do a lot of stuff on the farm so I barely get to use it like a lot. It is simply for me to try to get better.
>
> Q. My question was have you used it? Have you ever used it?
>
> A. Uh-huh. Yeah.
>
> Q. Have you ever used it with someone else?
>
> A. In the beginning that one roommate a couple times, then he moved out; so and then it's just me.
>
> Q. So - - so there has been more than one person on the course at one time?
>
> A. Yes, briefly.
>
> Q. And you didn't race him?
>
> A. Nope, because I don't do racing. I just try to get better at dirt biking.

Counsel for Ms. Buck asked the Board to find that there was no violation, arguing that there was no evidence that there was a "racetrack" on the property, as that term is

defined in the County zoning ordinance. As to the critical area violations, counsel for Ms. Buck asserted that any violations had been "remedied to the extent recommended by the County."

The Board issued a written opinion which affirmed the County's decision to issue the notices of violation. The Board found that the dirt bike course was a "racetrack" within the meaning of the zoning ordinance, stating:

> [Ms. Buck's] son testified that he rode his dirt bike along the [dirt bike course]. He testified that on at least one other occasion he rode on the [dirt bike course] with [a] friend. He testified that he did not race, but that he just sought to improve as a dirt bike rider. The Board finds this testimony unpersuasive. A racetrack need not be used to race others in order to be defined as a racetrack; rather, it may also be used to[] race "against time." Mr. Buck's testimony was that he sought to improve as a dirt bike rider. An endeavor, which, would logically be accomplished by seeking to improve his performance in completing the course efficiently and without error. In other words, by seeking to complete the [dirt bike] course at a progressively faster pace, or racing "against time." Accordingly, the Board finds evidence to support the Zoning Administrator's determination that the [dirt bike course] is a racetrack as defined in the Ordinance[.]

The Board further concluded that "the constructed [dirt bike course] consisted of significant land disturbance within the critical area buffer yard" that had not been authorized by variance or other approval, in violation of § 196.3 of the zoning ordinance, and that the dirt bike course was created without a buffer management plan, in violation of § 196.6 of the zoning ordinance.[7]

[7] Pursuant to Z.O. § 196.6, an approved buffer management plan is required before a permit for development activity in the buffer may be issued. A buffer management plan is "[a] plan designed and intended to describe methods and means used to protect, manipulate and utilize the buffer[.]" Z.O § 12.

Finally, the Board found that "the property is within a Resource Conservation Area," and that "a motocross track is not one of the enumerated approved land uses within the Resource Conservation Area as set forth in Section 201.5."

STANDARD OF REVIEW

"In reviewing a circuit court decision on appeal from an administrative agency decision, our role is precisely the same as that of the circuit court." *Assateague Coastkeeper v. Maryland Dep't of the Env't,* 200 Md. App. 665, 691 (2011) (citations and internal quotation marks omitted). "We review[ ] the agency's decision, and not that of the circuit court." *Id.* (citations and internal quotation marks omitted). Our role is narrow and 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." *Richardson v. Maryland Department of Health,* ___ Md. App. ___ , No. 998, Sept. Term 2018 (filed 29 September 2020), sl. op. at 4. We may not uphold the agency's decision "unless it is sustainable on the agency's findings and for the reasons stated by the agency." *McDonell v. Harford County Housing Agency*, 462 Md. 586, 620 (2019) (quoting *United Parcel Serv. Inc. v. People's Counsel for Balt. Cnty*., 336 Md. 569, 577 (1994)).

In reviewing the agency's conclusions of law, "we give appropriate deference to the agency's expertise in its own field." *Richardson, supra*, sl. op. at 4 (citation omitted)). "With regard to the agency's factual findings, we do not disturb the agency's decision if

those findings are supported by substantial evidence." *McClure v. Montgomery County Planning Bd.*, 220 Md. App. 369, 380 (2014) (citation omitted).

For evidence to be considered "substantial," it must be "more than a scintilla of evidence." *B.H. v. Anne Arundel Cnty. Dep't. of Soc. Svcs.*, 209 Md. App. 206, 227 (2012) (quoting *Turner v. Hammond*, 270 Md. 41, 60 (1973)). "If the facts in the record allow reasoning minds to reach the same determination as the agency, then the determination is based on substantial evidence, and the [reviewing] court has no power to reject that conclusion." *Maryland Real Estate Comm. v. Garceau*, 234 Md. App. 324, 349 (2017) (citations and internal quotation marks omitted).

In applying the substantial evidence test, "[w]e defer to the agency's (i) assessment of witness credibility, (ii) resolution of conflicting evidence, and (iii) inferences drawn from the evidence." *Richardson, supra,* sl. op. at 4 (citing *Schwartz v. Md. Dep't of Nat. Res.*, 385 Md. 534, 554 (2005)). Where an administrative agency, however, "draws impermissible inferences or unreasonable inferences and conclusions . . . we owe the agency's decision no deference." *Garceau*, 234 Md. App. at 349-50 (quoting *Bereano v. State Ethics Comm.*, 403 Md. 716, 756 (2008)).

DISCUSSION

I. Violation for unpermitted use of land in the Suburban Transition Residential zoning district – Z.O. § 103

Pursuant to Z.O. § 103, racetracks may be permitted by special exception in only three zoning districts, not including the Suburban Transition Residential zoning district.[8] As noted, "racetrack" is defined as "[a] measured course where animals or machines are entered into competition against one another or against time, not including tracks that are used in the training of animals." Z.O § 12.

Ms. Buck contends that the Board's finding that the dirt bike course fell within the zoning ordinance's definition of "racetrack" was not supported by substantial evidence. She asserts that there was no direct evidence that the dirt bike course was ever used for racing, nor was there evidence from which the Board could infer reasonably that Mr. Buck used the dirt bike course as a racetrack. We agree with Ms. Buck.

The only evidence before the Board as to how the dirt bike course was used was the testimony of Mr. Buck. The Board was free, of course, to disbelieve his assertion that he did not race his dirt bike on the course, either against another person or against the clock. Without "substantial evidence" to the contrary, however, the Board's finding that the dirt bike course was a "racetrack" cannot be sustained on this record.

[8] A use that is permitted by special exception is "deemed *prima facie* compatible in a given zone[,]" but "requires a case-by-case evaluation by an administrative zoning body or officer according to legislatively-defined standards." *People's Counsel for Baltimore Cnty. v. Loyola Coll. in Maryland*, 406 Md. 54, 71 (2008).

As the Court of Appeals has explained, although "[t]he finder of fact properly may assign no weight and no credibility to a particular witness's testimony[,]" the fact finder "may not assign [ ] negative weight to the testimony, inferring that the opposite of that witness's statements is true, without the consideration of any other evidence." *Bereano*, 403 Md. at 747. *See also Grimm v. State*, 447 Md. 482, 506 (2016) (although a fact-finder may disbelieve all or part of a witness's testimony, that disbelief "does not constitute affirmative evidence of the contrary." (quoting *VF Corp. v. Wrexham Aviation Corp.*, 350 Md. 693, 711 (1998)). Here, there was no other evidence before the Board to support a finding that the opposite of what Mr. Buck said was true, that is, that Mr. Buck was "seeking to complete the course at a progressively faster pace, or racing 'against time.'"

The County contends that the Board's conclusion was a reasonable inference drawn from the evidence. The County suggests that the "common sense meaning" of "motocross," is restricted to "a timed motorcycle race," and that the Board could have relied on common sense to infer that the dirt bike course was used for racing. We are not persuaded that was possible from this record.

As this Court has stated, "[i]nferences must be based on reasonable probability, rather than speculation, surmise, or conjecture." *Ward v. Hartley*, 168 Md. App. 203, 218 (2006) (citing *Chesapeake and Potomac Tel. Co. of Md. v. Hicks*, 25 Md. App. 503, 524 (1975)). The test for distinguishing between legitimate inference and speculation has been articulated as follows: "where from the facts most favorable to the [party with the burden of proof] the nonexistence of the fact to be inferred is just as probable as its existence (or more probable than its existence), the conclusion that it exists is a matter of speculation,

surmise, and conjecture, and a [factfinder] will not be permitted to draw it." *Dukes v. State*, 178 Md. App. 38, 47-48 (2008) (quoting *Bell v. Heitkamp*, 126 Md. App. 211, 224 (1999)) (in turn quoting *Hicks*, 25 Md. App. at 524)).

There was nothing in the record before the Board describing the activity of "dirt biking" or "motocross," or explaining the method(s) by which a person engaged in such an activity might improve their skills. Contrary to the County's assertion that "motocross" is nothing but a speed competition, there is a basis to conclude that the sport may include events in which competitors are judged on the level of difficulty and skill involved in the execution of jumps and other stunts.[9]

Viewing the evidence in the light most favorable to the County, as the party with the burden of proof, it appears just as probable that Mr. Buck used the dirt bike course to practice skills associated with landing jumps and/or executing stunts as it was that he was attempting to "complete the course at a progressively faster pace." Consequently, we conclude that the Board's finding that the dirt bike course was a "racetrack" was based on an impermissible inference and not substantial evidence.[10] Accordingly, we shall vacate

[9] For example, "freestyle motocross" is described elsewhere as an event "in which riders perform two routines, each lasting between 90 seconds and 14 minutes, on a course consisting of multiple jumps of varying lengths and angles that generally occupy one to two acres . . . . [A] panel of judges assigns each contestant a score based on a 100-point scale, looking for difficult tricks and variations over jumps." Wikipedia, Freestyle Motocross, http://en.wikipedia.org/wiki/Freestyle_motocross (last visited 15 October 2020).

[10] It appears that the Board did not make a finding that Mr. Buck used the course to race against others, but rather based its decision solely on a finding that he raced against time (in other words, competed against himself). At oral argument, the County's attorney

that part of the circuit court's order affirming the Board's finding that the dirt bike course is a racetrack and remand to the circuit court with instructions to reverse the Board's finding.[11]

II. Violations for disturbance in the buffer – Z.O. §§ 196.3 and 196.6

Pursuant to Z.O. § 196.3, disturbances in the buffer may be authorized for (1) shore erosion control measures, or (2) development activities that are (a) associated with a water-dependent facility, (b) located in an approved buffer exemption area, or (c) within a buffer that occupies 75% or more of a lot or parcel. "Disturbance" is defined as "any alteration or change to the land," including "any amount of clearing, grading or construction

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stated that "the Board found, at a minimum, that Mr. Buck was competing against time, against his own personal best, because he was trying to improve his performance."

Nonetheless, even if there had been evidence in the record to support the Board's finding that Mr. Buck operated his dirt bike on the course in an effort to "complete the course at a progressively faster pace" and improve his personal best time, it would not alter our conclusion that there was a lack of substantial evidence to support the finding that the dirt bike course was a "racetrack" because there was no evidence that animals or machines were "entered into competition." We are not convinced by the County's contention that, in this context, entering a competition encompasses the idea of one person trying to improve their personal best time. A competition, as that word is commonly understood, suggests a contest between two or more participants. *See e.g.* Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/competition (defining "competition" as "a contest between rivals"); Oxford English Dictionary, https://www.oed.com/view/Entry/37578?rskey=3w48q7&result=1&isAdvanced=false#eid (defining "competition" as "the striving of two or more for the same object; rivalry.") (last visited 15 October 2020).

[11] Having concluded that there was a lack of substantial evidence to support a finding that the dirt bike course was a racetrack, we need not address the second issue raised in Ms. Buck's brief, which is whether the zoning provisions applicable to racetracks apply exclusively to commercial venues seeking to host competitive racing events.

activity." Z.O. § 12. Ms. Buck asserts that, because there was no evidence showing the location of the dirt bike course, the Board's finding that construction of the dirt bike course resulted in disturbance to the buffer, in violation of Z.O. §§ 196.3 and 196.6, cannot be sustained.

As an initial matter, however, it appears that Ms. Buck is precluded from raising that issue on appeal, as this was not the theory she presented to the Board. At the Board hearing, Ms. Buck's counsel stated that Ms. Buck was "not disputing the disturbance[,]" but was appealing the critical area violations because "the critical area damage . . . even though it may have been a violation at that time, has been remedied to the extent recommended by the county." Similarly, in the hearing before the circuit court, Ms. Buck's attorney conceded that there was "no dispute that at the time of the construction of the [dirt bike course] that there was some interference" that "went into and dealt with" the critical area. Counsel specifically admitted "that there were issues in regards to the Critical Area when . . the [dirt bike course] was built[,]" but argued that "significant remediation" had resolved the issues.[12]

As this Court has stated "[a] party is bound by the theory he or she elects to pursue before the administrative agency and may not change theories on appeal." *Prince George's County Health Dep't. v. Briscoe*, 79 Md. App. 325, 341 (1989) (*aff'd in part and vacated*

[12] We note that the issue before the Board was whether the County's decision to issue the notices of violation was correct, that is, whether there were violations in existence at the time the notice was issued. The issue of whether the violation was subsequently abated was not decided by the Board.

and remanded in part on other grounds) (citing *Chertkof v. Dept. of Natural Resources*, 43 Md. App. 10, 16 (1979)). We have explained that, in an administrative proceeding, "a party must avail [them]self of the opportunity to present [their] position before the proper administrative body as failure to do so would preclude [them] being heard by a reviewing court." *Chertkof*, 43 Md. App. at 16. To allow a party "to raise an entirely new theory which was never espoused at any point in the . . . administrative process would make a mockery of the appellate process." *Id.*

Even if the argument was not waived, there was substantial evidence before the Board that the construction of the motocross track created an unauthorized disturbance in the buffer. The record before the Board includes the survey plat, dated 21 July 2017, approximately a month after the first notice of violation was issued. The plat, which was prepared by a surveyor hired by Ms. Buck, delineates the boundary of the expanded buffer on the property, as well as the location of 4.27 acres of "existing disturbed area," part of which clearly extends into the buffer.[13] The exact location of the dirt bike course, which is not shown on the plat, was not critical to the Board's determination that the subject property was in violation of provisions of the zoning ordinance restricting disturbances in the critical area buffer.

[13] In arguing that the Board's findings regarding violations of §§ 196.3 and 196.6 were not supported by substantial evidence, Ms. Buck appears to suggest that the Board's finding of a disturbance in the buffer was limited to the parameters of the completed dirt bike course. We do not agree with such a narrow reading of the Board's finding. As we interpret the Board's decision, it found that the total area of disturbance resulting from the construction of the dirt bike course extended into the buffer.

III. Land use in the Resource Conservation Area – Z.O. § 201.5

Section 201.5 of the zoning ordinance provides that land in a Resource Conservation Area may be used for specific non-residential uses, such as a home occupation, golf course, cemetery and skeet shooting range, among others. At the Board hearing, Stephen O'Connor, the Cecil County Zoning Administrator, explained that a "racing or motorcycle track" is not one of the permitted non-residential uses enumerated in Z.O. § 201.5. In affirming the County's decision to issue the notice of violation, the Board expressed its finding as follows: "[a] motocross track is not one of the enumerated approved land uses within the Resource Conservation Area as set forth in Section 201.5."

Ms. Buck contends that, because there is no evidence in the record demonstrating the actual location of the dirt bike course (as opposed to merely the entire "existing disturbed area"), the case should be remanded to the Board to conduct further proceedings to determine whether and to what extent the dirt bike course falls within the Resource Conservation Area. For the following reasons, we shall vacate the circuit court's order affirming the Board's finding of a violation of Z.O. § 201.5, with instructions to remand to the Board so that the Board may clarify its finding and, if necessary, conduct further proceedings.

As an initial matter, remand is necessary to clarify what we perceive to be an ambiguity in the stated finding. We note that, with respect to the violation of Z.O. § 103, the Board found that the "motocross track is a racetrack as defined in the Ordinance." In finding a violation of Z.O. § 201.5, however, the Board described the unauthorized use as a "motocross track." Upon remand, the Board shall clarify whether it found a violation of

Z.O. § 201.5 based on its finding that the subject property was being used as a "racetrack" or whether (and on what grounds) it distinguished a "motocross track" from a "racetrack" in making its finding.

To the extent that the Board's finding of a violation of Z.O. § 201.5 was premised on its determination that the dirt bike course was a "racetrack," the Board's decision that there was a violation of § 201.5 cannot stand, in accordance with our holding that the Board's finding that the dirt bike course was a racetrack was not supported by substantial evidence.

Alternatively, if the Board did not equate a "motocross track" with a "racetrack" in finding a violation of Z.O. § 201.5, the Board shall, as Ms. Buck has requested, conduct further proceedings to determine whether and to what extent the dirt bike course is located in the Resource Conservation Area. Although the Board did not need evidence of the exact location of the dirt bike course to find that land disturbance associated with its construction extended into the buffer, such evidence was necessary to support a finding that the dirt bike course is a nonresidential use of land in the Resource Conservation Area that is incompatible with Z.O. § 201.5.

JUDGMENT OF THE CIRCUIT COURT FOR CECIL COUNTY AFFIRMED IN PART, REVERSED IN PART AND VACATED IN PART. CASE REMANDED TO THE CIRCUIT COURT FOR FURTHER PROCEEDINGS NOT INCONSISTENT WITH THIS OPINION. COSTS TO BE SPLIT EVENLY BETWEEN THE PARTIES.