Missouri Court of Appeals
Southern District

In Division

CARDS RE HOLDCO, INC.,

Petitioner-Appellant,

v.

MISSOURI DEPARTMENT OF NATURAL RESOURCES, MISSOURI ADMINISTRATIVE HEARING COMMISSION,

Respondents-Respondents.

Case Number SD39190

Filed: July 21, 2026

APPEAL FROM THE MISSOURI ADMINISTRATIVE HEARING COMMISSION

AFFIRMED

This is an appeal by Cards Re Holdco, Inc. ("Cards") from a judgment of the Administrative Hearing Commission ("AHC" or "the Commission") dismissing its claims against the Department of Natural Resources ("DNR" or "the Department"). The Commission determined that the Department had properly denied Cards's request for approval of a solid waste facility (the "Site") in Newton County, Missouri, after a Preliminary Site Investigation ("PSI") revealed that the Site in question had a significant potential for catastrophic collapse. Cards brings 10 points on appeal, all of which claim

that this decision was incorrect. For the reasons stated herein, we deny Cards's appeal and affirm the decision of the AHC.

Factual Background and Procedural History

The state of Missouri requires that, to be eligible to receive a permit for a solid waste facility, an applicant must first request and obtain preliminary site approval from the DNR. The purpose of a PSI is to conduct an investigation of a proposed site to analyze and characterize the geological suitability of the site and to make sure there are no fatal flaws that stand out as reasons why the site would not be developable for the solid waste facility. If a site receives preliminary approval, next follows the detailed site investigation ("DSI"), which is more "invasive and intrusive" than the PSI. Without preliminary approval, the applicant is ineligible for a permit. Section 260.205.2.[1] Thus, when an applicant is denied preliminary approval, the applicant is ineligible for, and effectively denied, a permit.

On September 16, 2024, Cards submitted a request for preliminary site approval in Newton County, Missouri, to the Department. The Site is located on a "320-acre parcel in the East ½ of Section 4, Township 25 North, Range 30 West, Newton County, Missouri. It is approximately two miles east of Granby, immediately south of U.S. Highway 60. It is bounded to the west by Skylark Road and to the East by Shetland Road." Cards's request for approval was supported by geologist Mikel Carlson of Gredell Engineering Resources ("GER"). GER, through Mikel Carlson, stated in its request for the PSI that

[1] All references to statutes are to RSMo Cum. Supp. 2024, unless otherwise specified. All rule references are to Missouri Court Rules (2026).

GER had completed a geologic field investigation to obtain site-specific subsurface information, and GER summarized those findings in the PSI request. GER stated that it understood the DNR would be making a site visit, and GER requested notification of the visit so that Cards's representatives could ensure access and be present.

On October 1, 2024, employees from DNR, GER, and the Waste Management Program conducted a site visit to the proposed Site. In addition to visiting the Site, when reviewing the PSI request, Department staff also relied on a Department document titled "Landfill Collapse Potential Evaluation[,] Standard Procedure for Performing" ("Standard Procedure"), which had been revised in May of 2016. The Standard Procedure contains criteria with associated numerical risk factors at a site. For example, one category is titled, Stream Classification. If there is a stream on the site classified as a gaining stream, it is assigned zero points. If the stream is a losing stream, it is assigned two points. Other criteria include: Depth to Water Table, with zero points assigned if the depth to the water table is less than 50 feet, and four points assigned if the depth to the water table is more than 50 feet; Residuum Thickness; Proximity of Sinkholes to the Site; Proximity of Caves to the Site; and Predominant Characteristics of the Upper 20 feet of Bedrock and/or Surficial Materials. After evaluating all the criteria, the user assigns the site a Collapse Potential Evaluation Score and Rating, which is then used to evaluate a site's collapse potential in connection with a geologist's professional judgment. A geologist's best professional judgment always supersedes the Standard Procedure criteria tool with associated numerical risk factors.

After conducting the Site visit and collecting and analyzing the relevant data, the Department ultimately denied Cards's preliminary site approval, stating in part:

> The potential to contaminate the groundwater aquifer in this geologic setting is high.
>
> ….
>
> Due to the residuum thickness, losing stream classification of the nearby unnamed tributary to Shoal Creek, depth to the water table, and identification of an onsite underground opening in the northern portion of the [S]ite, the [S]ite receives a severe collapse potential rating. For a proposed solid waste disposal facility, ratings of severe are classified as having a significant potential for catastrophic collapse.

On December 5, 2024, Cards filed a complaint to appeal the decision of the Department denying Cards's application for PSI of a proposed solid-waste disposal facility. On February 5, 2025, Cards amended that complaint, and the amended complaint contained nine counts with different allegations of error.

On July 10, 2025, the AHC granted the Department's motion for partial summary decision as to Counts I, II, III, and VIII.[2] The AHC held a hearing on the remaining

[2] Counts I, II, III, and VIII alleged as follows: The disapproval was based on the Standard Procedure, which cannot serve as the basis for disapproval because it was not promulgated as a rule; use of the Standard Procedure is not authorized because the Standard Procedure exceeds the scope of the rule; the Department used best professional judgment or experience to draw conclusions about geologic conditions on the Site in the absence of site-specific empirical data or in spite of such data, which is not authorized by the rule; and the Department's reasons for disapproval conflict with 10 CSR 80-3.010.

issues – Counts IV, VI, VII, and IX.[3] On September 8, 2025, the AHC issued its decision denying Cards's PSI approval for the Site, finding that "[b]ased on the preponderance of the evidence, … there is a significant potential for a catastrophic collapse that precludes the development of [a solid-waste disposal facility] on the Site pursuant to 10 CSR 80-2.015(1)(A)1.A(VI)."

Cards appeals.

Standard of Review

We have jurisdiction over this appeal pursuant to section 260.235, RSMo 2016, which grants original jurisdiction to the court of appeals with territorial jurisdiction coextensive with the county – here, Newton County – where the solid waste processing facility or disposal area is to be located.

MO CANN Do, Inc. v. Mo. Dep't of Health & Senior Servs., 686 S.W.3d 642 (Mo. banc 2024), summarizes our applicable standard of review:

> "Article V, section 18 of the Missouri Constitution articulates the standard of judicial review of administrative actions." *Albanna v. State Bd. of Registration for Healing Arts*, 293 S.W.3d 423, 428 (Mo. banc 2009). "On appeal, this Court is charged with determining whether the agency actions 'are authorized by law, and in cases in which a hearing is required

[3] Cards voluntarily dismissed Count V prior to trial. Cards's counts IV, VI, VII, and IX claimed, respectively, that: there is no reasonable scientific basis for the standards, criteria, and numeric ranking system in the Standard Procedure; the Department's conclusion that the Site has a "severe collapse potential" lacks any reasonable scientific basis and is based on assumptions and inferences that are not supported by the facts; the Department's conclusion that the Site has a "severe collapse potential" based on residuum thickness lacks any reasonable scientific basis and is based on assumptions and conclusions not supported by the facts; and information in Cards's geologist's report and from the October 1, 2024 Site visit does not conclusively establish significant collapse potential pursuant to 10 CSR 80-2.015(1)(A)1.A(VI).

by law, whether the same are supported by competent and substantial evidence upon the whole record.'" *Id.* (quoting Mo. Const. art. V, sec. 18).

Moreover, "all final decisions of the administrative hearing commission shall be subject to judicial review as provided in and subject to the provisions of sections 536.100 to 536.140[.]" Section 621.145.[] "Section 536.140.2 lists several criteria for judicial review of an agency decision." *Stone v. Mo. Dep't of Health & Senior Servs.*, 350 S.W.3d 14, 19 (Mo. banc 2011). This Court reviews whether the agency action:

> (1) Is in violation of constitutional provisions;
>
> (2) Is in excess of the statutory authority or jurisdiction of the agency;
>
> (3) Is unsupported by competent and substantial evidence upon the whole record;
>
> (4) Is, for any other reason, unauthorized by law;
>
> (5) Is made upon unlawful procedure or without a fair trial;
>
> (6) Is arbitrary, capricious or unreasonable;
>
> (7) Involves an abuse of discretion.

Section 536.140.2.

"Consistent with the constitutional standard, section 536.140.2 provides for appellate review of the administrative ruling, not that of the circuit court[.]" *Lagud v. Kan. City Bd. of Police Comm'rs*, 136 S.W.3d 786, 791 (Mo. banc 2004); *see also Stone*, 350 S.W.3d at 19 (citing section 536.140.2) ("An appellate court reviews the decision of the agency rather than the decision of the circuit court."). "For purposes of review, the action of the commission and the order, if any, of the agency shall be treated as one decision." Section 621.145. "Under article V, section 18 and section 536.140.2, the standard of review for administrative decisions is 'whether, considering the whole record, there is sufficient competent and substantial evidence to support the agency's decision.'" *Stone*, 350 S.W.3d at 20 (alteration omitted) (quoting *Albanna*, 293 S.W.3d at 428).

Id. at 645-46 (footnote omitted). We apply this standard of review here.

Analysis

For ease of analysis, we address Cards's points out of order.

Administrative Hearing Points

Because Cards's seventh through tenth points all concern alleged errors at the administrative hearing, all contain common claims, and all fail for the same reason, we address them together.

Points Seven, Eight, Nine, and Ten

Cards's points seven, eight, nine, and ten claim, respectively, as follows:

> The AHC erred and abused its discretion in its Decision that the CARDS'[s] [S]ite has a significant potential for catastrophic collapse because the Decision is not supported by competent and substantial evidence and is invalid in violation of § 536.140.2 in that there is no site-specific empirical or geophysical data and evidence within the project's boundaries, as required by 10 CSR 80-2.015(1)(A)1.A, showing residuum thickness at the entire Site, and thus such decision is arbitrary, capricious, unreasonable, and unlawful.
>
> The AHC erred and abused its discretion in its Decision that the CARDS'[s] [S]ite has a significant potential for catastrophic collapse because the Decision is not supported by competent and substantial evidence and is invalid in violation of § 536.140.2 in that there is no site-specific empirical or geophysical data and evidence within the project's boundaries, as required by 10 CSR 80-2.015(1)(A)1.A, showing that a losing stream is present within the boundaries of the Site, and thus such decision is arbitrary, capricious, unreasonable, and unlawful.
>
> The AHC erred and abused its discretion in its Decision that the CARDS'[s] [S]ite has a significant potential for catastrophic collapse because the Decision is not supported by competent and substantial evidence in violation of § 536.140.2 in that there is no site-specific empirical or geophysical data and evidence within the project's boundaries, as required by 10 CSR 80-2.015(1)(A)1.A, showing that the static water level is between 80-105 feet below ground surface at the entire 320-acre [S]ite, and thus such decision is arbitrary, capricious, unreasonable, and unlawful.

> The AHC erred and abused its discretion in its Decision that the CARDS'[s] [S]ite has a significant potential for catastrophic collapse because the Decision is not supported by competent and substantial evidence and is invalid in violation of § 536.140.2 in that there is no site-specific empirical or geophysical data and evidence within the project's boundaries, as required by 10 CSR 80-2.015(1)(A)1.A, showing that a disqualifying underground opening is present within the boundaries of the Site, and thus such decision is arbitrary, capricious, unreasonable, and unlawful.

We first note that points seven through ten are multifarious in that they combine more than one claim of error into a single point relied on.[4] ***Matter of Est. of A.R.B.***, 705 S.W.3d 694, 705-06 (Mo. App. S.D. 2024) ("A multifarious point groups multiple, independent claims, rather than making a single claim of error."). However, we review Cards's points for whether the decision is supported by competent and substantial evidence on the whole record.

> In determining whether a decision is supported by competent and substantial evidence, we review the record as a whole and determine whether the AHC's decision is against the overwhelming weight of the evidence. Though we do not view the AHC's factual findings in the light most favorable to the decision, we still must defer to its credibility findings, as the AHC is the sole judge of the credibility of witnesses and the weight and value to give to the evidence. We review the AHC's conclusions on the interpretation and application of the law, however, *de novo*.

Cash v. Mo. Dep't of Revenue, 461 S.W.3d 57, 60 (Mo. App. W.D. 2015) (quoting ***Faenger v. Bach***, 442 S.W.3d 180, 185-86 (Mo. App. W.D. 2014)).

[4] As stated in section 536.140.2, unsupported by competent and substantial evidence on the whole record, arbitrary and capricious, and an abuse of discretion are all separate criteria for judicial review of an agency action.

Each of these four points claims that the AHC's decision was not supported by competent and substantial evidence in finding that the Site has a significant potential for catastrophic collapse because certain findings it used to support that decision came from areas outside of the Site itself and thus were not "site-specific." We disagree.

The regulation at issue states as follows:

> A. Sites proposed for sanitary or demolition waste landfills known to have one (1) or more of the following geologic or hydrologic conditions within its boundaries are considered unsuitable for the development of a solid waste disposal area:
>
> (I) Groundwater that must be pumped in order to keep the wastes within the proposed solid waste disposal area isolated above the water table;
>
> (II) Permeable geologic media, including soil or bedrock with karst[5] terrane features, faults, joints, fractures, or voids, that provide a pathway for the rapid migration of fluids from the site into the uppermost regional aquifer or the rapid migration of groundwater from the site to a surface water body outside of the site;
>
> (III) Permeable geologic media, including soil or bedrock with karst terrane features, faults, joints, fractures, or voids, that provide a pathway for the migration of landfill-derived gases outside of the site;
>
> (IV) A fault that has experienced movement during the Holocene epoch that is located within the boundaries of the proposed solid waste disposal area;
>
> (V) Groundwater that cannot effectively be monitored on-site due to karst terrane conditions; or
>
> (VI)The presence of subsurface voids or conditions that present a significant potential for catastrophic collapse.

[5] Karst is characterized as soluble bedrock which dissolves over time, oftentimes into sinkholes, which are "depressions in the ground that transmit water in significant velocity and volume into an underground conduit that was formed from the dissolution of this rock."

10 CSR 80-2.015(1)(A)1.A.

The regulation identifies which geologic or hydrologic conditions within a site's boundaries make a certain area unsuitable for development of a solid waste disposal area. Cards's argument that the Site at issue was lacking these characteristics and therefore *not* unsuitable for a solid waste facility ignores the extensive expert testimony in this case. As the DNR aptly states in its brief, the Department's investigation utilized "a comprehensive, data-driven evaluation grounded in established geologic and hydrologic science."

Specifically, Molly Starkey, a registered geologist with 14 years' experience evaluating solid waste disposal area sites and responding to karst-related hazards, including sinkholes, testified on the DNR's behalf. Starkey testified that the Department's PSI used a geohydrologic evaluation to characterize site conditions such as bedrock composition groundwater, and the consequences to the surrounding areas in the event of a failure. Most importantly, Starkey stated that the impacts of a solid waste facility extend beyond the Site itself, and thus the PSI examines both on-site and surrounding geologic conditions. Surrounding geologic conditions typically share the same structural features, rock formation, and weathering history. The DNR experts stressed that the geology outside the boundaries of the Site is relevant and significant because the characteristics on a site are the same as those in the surrounding area. Thus, in assessing the potential for collapse, the Department looked at a range of site-specific conditions, such as sinkholes, losing streams, water tables, and local geology, as well as conditions near and around the Site.

While Starkey took the six risk factors in the Standard Procedure into account during her analysis, she testified that the Department did not rely on the numeric scoring system in the Standard Procedure when making a professional evaluation of the Site's potential for collapse.

The indicators in this case that signaled elevated collapse risk at the Site are as follows:

- The Site is situated in karst terrane, where losing streams commonly signal development of subsurface voids; a DNR geohydrologist had previously classified a tributary running through the Site as a losing stream on adjacent property;[6]
- Well records and boring data show that even up to 200 feet below the ground's surface, groundwater was still not encountered. Starkey stated that deep water tables in this area of the country are associated with a high likelihood of catastrophic collapse due to large water fluctuations that are likely to result in sudden failure;
- Borings revealed residuum thickness between 24 and 70 feet, with similar data in the adjacent site. DNR studies identify residuum thickness between 40 and 100 feet as particularly prone to collapse; and
- Two internally drained surface depressions were identified as being consistent with sinkholes; while the potential exists that the two depressions could be abandoned mine openings, either condition represents surface instability and increases the risk of catastrophic collapse.

[6] Given what the DNR characterizes as "the continuity of geologic units," Starkey concluded that the on-site portion of the same tributary remains a losing stream.

Thus, a review of the record reveals that the Department used a multitude of factors to reach its decision, including site-specific geological conditions, as well as conditions near and around the Site. The Department's geologists, including Starkey, gave persuasive testimony that conditions outside the Site's boundaries are relevant to conditions inside the Site, as they are often the same. A review of the record reveals that the AHC's decision is supported by competent and substantial evidence on the whole record, and points seven through ten claiming otherwise are denied.

Summary Decision Points

As discussed, the AHC ruled in the Department's favor and granted summary decision on Counts I, II, III, and VIII. The remaining counts – IV, VI, VII, and IX – were decided in the Department's favor after hearing. All points, whether decided by summary decision or after hearing, sought the same outcome – a declaration by the AHC that the Department erred in its denial of preliminary site approval based on its determination that the Site presented a risk for catastrophic collapse. This Court, having already upheld the AHC's decision – after a hearing – that the Department correctly determined that the Site presented the risk for catastrophic collapse, fails to see how our review of the summary decision on the same affords any relief to Cards. Nonetheless, we will proceed to review Cards's points on appeal as they relate to the AHC's summary decision, grouping the points accordingly.

Cards challenges the AHC's grant of summary decision on these counts in points one through six, and we address them out of order for ease of analysis.

Point Two

Cards's point two claims as follows:

> The AHC erred and abused its discretion in entering summary decision for DNR on Count I because such Decision is not supported by competent and substantial evidence in violation of § 536.140.2 in that the Decision is based on the "Landfill Collapse Potential Evaluation, Standard Procedure for Performing," which is a statement of general applicability that implements and prescribes DNR's policy and procedure for the review of all PSI requests and which has not been promulgated as a rule, and thus is an unpromulgated rule that is void and unenforceable.[sic] by operation of § 536.021.7, RSMo.

In short, Cards contends the Standard Procedure is an un-promulgated rule and is therefore unenforceable. We disagree.

A rule is defined as "each agency statement of general applicability that implements, interprets, or prescribes law or policy, or that describes the organization, procedure, or practice requirements of any agency." Section 536.010(6). It does not include "[a] statement concerning only the internal management of an agency and which does not substantially affect the legal rights of, or procedures available to, the public or any segment thereof[.]" Section 536.010(6)(a).

The Standard Procedure is a document created by the DNR as part of the Geological Survey Program to create guidelines for the completion of an assessment of a site's landfill collapse potential, and to assess whether a site is suitable for development of a solid waste disposal facility. By considering site-specific geologic factors, the guidelines in the Standard Procedure aim to assess whether a site is suitable for a solid waste facility. An assessment of the landfill collapse potential is required for all proposed

solid waste disposal facilities, and provides the following guidelines for areas of assessment:

- Stream Classification (gaining versus losing);
- Depth to Water Table (less than 50 feet or greater than 50 feet);
- Residuum Thickness (less than 20 feet, between 20 and 40 feet, greater than 100 feet, between 40 and 100 feet);
- Predominant Characteristics of the Upper 20 feet of Bedrock or Surficial Materials (solution free bedrock, glacial drift, or alluvium with gaining conditions; bedrock with permeable weathered zone less than 10 feet thick or minor solution features; bedrock with permeable weathered zone greater than 10 feet thick, alluvium if losing conditions);
- Proximity of Sinkholes to the Site (categories from no sinkholes within one mile to sinkholes on the site); and
- Proximity of Caves to the Site (categories from no evidence of caves that are lower than the site within ½ mile of the site boundary to caves beneath the site).

Each category provides a risk factor score of zero to eight. Based on the overall numeric risk factor score, the Department assigns a collapse potential evaluation rating. Ratings of zero through nine are rated as having an insignificant collapse potential, and ratings of 10 or more are rated as having a significant collapse potential.[7]

The Standard Procedure is solely an administrative tool to guide the Department staff and does not impose binding legal obligations or consequences on the site applicant

[7] We also note that Cards does not argue that these are incorrect risk factors for analyzing collapse potential; as noted by the AHC in its decision, Cards's geologists used these factors in their own analysis.

or the public. The Department staff testified that the Standard Procedure is used only as internal technical guidance for Department staff and does not command anyone to act or to refrain from acting. The testimony was clear that the Standard Procedure is merely one tool of many that the Department uses to evaluate collapse potential, along with personal observations, materials that Cards submitted, and the Department's own independent investigation of geologic and hydrologic formation information on both the Site and areas nearby. Furthermore, the AHC explicitly stated in its decision that "[g]iven these uncertainties" over the Standard Procedure and its numeric ranking system, it was "declin[ing] to rely on the numerical ranking system of the [Standard Procedure] in rendering our decision." As such, the Standard Procedure is not a rule and was not required to be promulgated as such.

Point two is denied.

Point Four

Point four claims as follows:

> The AHC erred and abused its discretion in entering summary decision for DNR on Count II because the Decision is not supported by competent and substantial evidence in violation of §536.140.2 in that the Decision is based on the "Landfill Collapse Potential Evaluation, Standard Procedure for Performing," 10 CSR 80-2.015 does not include any of the criteria, standards, risk factors, and numeric scoring system used by DNR in [sic] to disapprove CARDS'[s] PSI request.

While this point is based on the AHC's grant of summary decision, our analysis of points seven through ten, *infra*, explains why the AHC decision is supported by competent and substantial evidence based upon the whole record. The Department used expert analysis, data from both the Site and adjacent sites, and other technical data and

analysis to carry out its regulatory duties to identify sites with significant collapse potential. As explained above, it is not this Court's job to second-guess or rewrite those policies. For the reasons already explained herein, Cards's point four is denied.

Points One, Three, Five, and Six

Cards's first, third, and fifth points claim, similarly, that:

> The AHC erred and abused its discretion in entering summary decision for DNR on Count[s I, II, and III] because the Decision is based on an unlawful procedure in violation of § 536.140.2 in that the Decision on Count[s I, II, and III] does not conform to the numbered-paragraphs-and-responses framework, as required by 1 CSR 15-3.446(6)(A) and Rule 74.04(c).

Cards's sixth point claims:

> The AHC erred and abused its discretion in entering summary decision for DNR on Count III because the Decision is not supported by competent and substantial evidence and is invalid in violation of § 536.140.2 in that DNR's use of "best professional judgment" and "experience" as a substitute for the lack of site-specific empirical and geophysical data and evidence exceeds the scope of its authority under 10 CSR 80-2.015(1)(A)1.A and is arbitrary, capricious, and unreasonable.

We disagree.

We first note that Cards's points one, three, and five all violate Rule 84.04(e) in that the argument portions of these points do not follow the points relied on. The points relied on claim error in the AHC's decision failing to conform to the numbered-paragraphs-and-responses framework. The arguments that follow, however, claim that the facts contained in the DNR's motion for summary decision were not material facts for purposes of summary decision, and that the AHC improperly considered evidence outside of the summary decision pleadings in reaching its decision. Changing the point relied on in the argument section of a brief violates Rule 84.04(e) and preserves nothing for our

review. ***Hale v. Burlington N. and Santa Fe Ry. Co.***, 638 S.W.3d 49, 61 (Mo. App. S.D. 2021). Furthermore, the argument sections of points one, three, and five present two separate arguments, making the point multifarious.[8] ***A.R.B.***, 705 S.W.3d at 705.

Even ignoring Cards's briefing deficiencies and addressing its points on appeal, it still fails on the merits. As mentioned, Cards argues that the facts contained in the DNR's motion for summary decision were not material facts, and that the AHC considered facts outside of the summary decision record. Point six argues that the summary decision is not supported by competent and substantial evidence and is therefore arbitrary and capricious.

Our courts have set out specific requirements that an appellant must follow when challenging a trial court's grant of summary judgment.[9] Because our review is *de novo*, an "argument on appeal that a genuine issue exists as to a particular material fact must necessarily track the Rule 74.04 requirements" that are enumerated for the trial court. ***Great S. Bank v. Blue Chalk Constr., LLC***, 497 S.W.3d 825, 834 (Mo. App. S.D. 2016). ***Blue Chalk*** went on to elucidate the steps an appellant must take to mount a successful

[8] As stated in section 536.140.2, unsupported by competent and substantial evidence on the whole record, arbitrary and capricious, and an abuse of discretion are all separate criteria for judicial review of an agency action.

[9] Our courts have stated that the summary decision procedures set out in administrative cases is "modeled on the summary judgment procedure at the circuit court level," and we review those administrative summary judgment procedures using the same standards that our circuit courts use for summary judgment proceedings. *See* ***Krispy Kreme Doughnut Corp. v. Dir. of Revenue***, 358 S.W.3d 48, 51 (Mo. banc 2011) (employing the summary judgment framework set out in Rule 74.04 to analyze a summary decision issued by the AHC).

challenge to a trial court's grant of summary judgment, and we recite them herein verbatim:

> For each material fact the non-movant claims is genuinely disputed and therefore defeats the movant's prima facie showing of a right to judgment, the non-movant must direct the trial court to a particular numbered paragraph in movant's statement of uncontroverted material facts that is denied in the non-movant's response. The trial court then considers the movant's specific references in that numbered paragraph to the pleadings, discovery, exhibits, or affidavits attached to the movant's statement supporting the existence of that material fact, *see* Rule 74.04(c)(1); considers the non-movant's specific references to the discovery, exhibits, or affidavits attached to the response supporting the non-movant's denial of that material fact, *see* Rule 74.04(c)(2); and then compares the two sets of specifically referenced evidence to ascertain the existence of a genuine issue as to that particular numbered paragraph material fact. Rule 74.04 does not authorize the trial court to consider any other evidence as to whether a genuine issue exists as to that particular numbered paragraph material fact.
>
> ….
>
> Appellants make no such argument in their brief for any of their points. Our review of their points and the argument sections of their brief for those points reveals that they are totally devoid of any reference to or mention of any particular numbered paragraph material fact in the summary judgment record that they denied in their response and that they now claim is genuinely at issue.

Id. at 834.

Similar to the failings of the appellants in ***Blue Chalk***, Cards makes no reference to any particular numbered paragraph material fact in the summary decision record which they denied and that they now claim is genuinely at issue. To examine Cards's argument would require this Court to become its advocate by sifting through the record and determining what is fact versus conclusion, an admission from a dispute, and material versus immaterial. ***Id.*** at 835. That, this Court cannot do.

For the reasons stated herein, Cards's points one, three, five, and six are denied.[10]

JENNIFER R. GROWCOCK, C.J. – OPINION AUTHOR

JEFFREY W. BATES, J. – CONCURS

BRYAN E. NICKELL, J. – CONCURS

[10] We also note that Cards's motion for attorney fees on appeal that was taken with the case is hereby denied. For one, the section Cards relies on in requesting the award specifies that "[a] party who prevails in an agency proceeding or civil action arising therefrom, brought by or against the state, shall be awarded" reasonable fees and expenses. Section 536.087.1. Cards is not a prevailing party and is therefore disqualified from receiving fees and expenses under this section.