2000

Crestview-Holladay Home Owners Association, Inc. v. Engh Floral Co., Salt Lake County : Petition for Rehearing

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

CRESTVIEW-HOLLADAY HOME OWNERS ASSOCIATION, INC., et al.,

Plaintiffs-Respondents,

vs.

ENGH FLORAL CO., a Utah corporation, dba Engh Floral and Garden Center, SALT LAKE COUNTY, a Political Subdivision, et al.,

Defendants-Appellants.

CASE NO. 14090

RESPONDENT'S PETITION FOR REHEARING AND SUPPORTING BRIEF

Appeal from a Judgment of the Third Judicial District Court of Salt Lake County
Honorable Gordon R. Hall, Judge

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IN THE SUPREME COURT OF THE STATE OF UTAH

CRESTVIEW-HOLLADAY HOME OWNERS ASSOCIATION, INC., et al., Plaintiffs-Respondents, vs. ENGH FLORAL CO., a Utah corporation, dba Engh Floral and Garden Center, SALT LAKE COUNTY, a Political Subdivision, et al., Defendants-Appellants.	CASE NO. 14090

RESPONDENT'S PETITION FOR REHEARING AND SUPPORTING BRIEF

PETITION FOR REHEARING

Plaintiffs and Respondents herein respectfully petition the court for a rehearing on the following grounds:

1. The court failed to give proper approbation to the advantageous position of the trial court in weighing the evidence and improperly overturned the trial court's findings when they were supported by substantial evidence.

2. The court's misconstruction of the terms "arbitrary" and "capricious" seriously undermines the power and responsibility of courts to review challenged actions of county zoning officials.

BRIEF IN SUPPORT OF PETITION

Nature of Case

This was an appeal from a judgment of the District Court setting aside as spot zoning an amendment to the Salt Lake County Zoning Ordinances reclassifying thirteen acres of Engh Floral Company's property from Agricultural A-1 to Residential R-M and Commercial C-2.

Disposition on Appeal

This court held the Board of Commissioners of Salt Lake County acted within the scope of its legislative powers, the reclassification ordinance was adopted pursuant to a planning scheme developed for that portion of the county in question, and the Homeowners Association had failed to sustain their burden that the action of the county was arbitrary, unreasonable or capricious.

Statement of Facts

On August 16, 1973, the Salt Lake County Commission by a 2-1 vote approved Engh Floral Company's application for rezoning and reclassified a thirteen acre parcel of property in the heart of a single and two-family residential district from an A-1 to a C-2 and R-M zone. The three acre parcel zoned C-2 could potentially be used for such

activities as a service station, restaurant, and a Class B beer outlet. On the ten acres zoned R-M there could be constructed 200 new residential units, and if conditional uses are granted, business offices, hotels, nursing homes and mobile home parks could be located on the R-M property.

Fearing the potential effect of this zoning change on the character of the neighborhood, the surrounding property owners challenged the validity of the reclassification ordinance. The trial court held the sole motive for enacting the reclassification ordinance was to amend the zoning pattern to comply with the Engh Floral Company non-conforming use, such action being arbitrary, unreasonable and capricious; the sole and exclusive benefit of the zoning change would be to Engh Floral Company as it would enhance materially the value of its property; the rezoning would not add to the enjoyment of the adjacent property, but would alter irrevocably the character of the general area and so burden the neighboring residential area as to cause substantial and material damage to the adjacent property owners and impair the use and enjoyment of their property; there is no need to rezone the area to permit uses other than those embraced within permissible non-conforming uses; and the zoning ordinance reclassifying the Engh Floral Company property constitutes spot zoning and is invalid.

This court reversed the trial court's finding and upheld the reclassification ordinance basing its decision on its so-called "policy" to avoid substituting its judgment for that of the legislative body of the municipality.

ARGUMENT

I

THE COURT FAILED TO GIVE PROPER APPROBATION TO THE ADVANTAGEOUS POSITION OF THE TRIAL COURT IN WEIGHING THE EVIDENCE AND IMPROPERLY OVERTURNED THE TRIAL COURT'S FINDINGS WHEN THEY WERE SUPPORTED BY SUBSTANTIAL EVIDENCE.

The basis for this court's determination to overrule the judgment of the trial court is expressed in the following excerpt from the decision:

> The prior decisions of this court without exception have laid down the rule that the exercise of the zoning power is a legislative function to be exercised by the legislative bodies of the municipalities. The wisdom of the zoning plan, its necessity, the nature and boundaries of the district to be zoned are matters which lie solely within that discretion. It is the policy of this court as enunciated in its prior decisions that it will avoid substituting its judgment for that of the legislative body of the municipality.

Despite this court's manifest dissatisfaction to substitute its judgment for that of the Board of Commissioners of Salt Lake County, it has a duty to accept the trial court's findings that the reclassification ordinance constitutes spot zoning and that the action of the Board of

County Commissioners was arbitrary, unreasonable and capricious if there is any substantial evidence to support its findings.

In Chevron Oil Co. v. Beaver County, 22 Utah 2d 143, 449 P.2d 989 (1969) the plaintiffs purchased property near on and off ramps for the I-15 Freeway with the hopes of converting grazing land worth twenty or thirty dollars per acre into highway service land worth $10,000 per acre. The Beaver County Commissioners refused to rezone the subject property to permit highway services on the basis that the property would cause a loss of tourist business to existing cities in the county, the county would be required to furnish police protection to the proposed new area and transporation would need to be provided for school children who might live there to established schools in the county. This court implied dissatisfaction with the action of the Board of Commissioners of Beaver County but apparently felt constrained to uphold their decision rather than overrule the trial court. The court stated:

> Whether we agree with the wisdom of the county commissioners or do not agree with it is of no importance. The matter is to be decided by a legislative body (the county commission), and the courts do not ordinarily interfere in such matters. However, should a board enact an ordinance which deprives a person of his property, and where it is clear that the board has acted arbitrarily, capriciously,

> or in a discriminating manner, the courts will grant redress.
>
> * * *
>
> This being an equitable proceeding, we may review the findings but should not disturb them unless they are clearly against the weight of the evidence. (Emphasis added.)

In the case at bar the trial court determined that the county officials had acted in an arbitrary, capricious and unreasonable manner and these findings should stand unless clearly against the weight of evidence. The fact that this court on appeal might have viewed the matter differently does not justify a reversal of the trial court's findings and judgment. In Del Porto v. Nicolo, 27 Utah 2d 286, 495 P.2d 811 (1972), a suit in equity to set aside deeds, the court stated:

> It is true, as plaintiff asserts, that this action to avoid deeds is one in equity upon which this court has both the prerogative and the duty to review and weigh the evidence, and to determine the facts. However, in the practical application of that rule it is well established in our decisional law that due to the advantaged position of the trial court, in close proximity to the parties and the witnesses, there is indulged a presumption of correctness of his findings and judgment, with the burden upon the appellant to show they were in error; and where the evidence is in conflict, we do not upset his findings merely because we may have reviewed the matter differently, but do so only if evidence clearly preponderates against them. (Emphasis added.)

See also Corbet v. Corbet, 24 Utah 2d 378, 472 P.2d 430 (1970); Nelson v. Nelson, 30 Utah 2d 80, 513 P.2d 1011 (1973); and Jensen v. Eddy, 30 Utah 2d 154, 514 P.2d 1142 (1973).

In the case at bar there was substantial evidence to support the trial court's findings and judgment that the Salt Lake County zoning officials acted in an arbitrary, capricious or discriminatory manner and that the ordinance in question amounts to spot zoning. The Engh Floral Company is the only commercial enterprise in the area bounded by 3300 South and 4500 South on the north and south and 2300 East and Highland Drive on the east and west (R.56,45). The thirteen acres involved represents approximately one percent of the approximately 1,240 acres lying in this core area. The property situated directly south of the Engh Floral Company is zoned R-1-10 (generally authorizing agriculture and single family homes); property to the east and northwest is zoned R-2-104 (generally authorizing agriculture and one and two family dwellings); and property to the west is zoned R-2-8 (generally authorizing agriculture and one and two family dwellings) (Ex. 16-P; R.144,145). In one of Mr. Engh's previous applications to change the zoning on his property the Staff Report for the District Plan-

ning Commission had recommended the application be denied as spot zoning and stated it would be "very poor planning to allow any commercial zoning at this location" (R.146). Clayne Ricks, Planning Director for the Salt Lake Planning Commission, testified that the rezoning would enhance the value of the Engh property and that he could not recall a similar zoning change in Salt Lake County in the last five years (R.148,65).

This court's decision makes no reference to the above-stated facts. They are unrebutted, relevant and material. This court, in derogation of its own stated principals of the scope of appellate review, simply disregarded the lower court's findings and based its decision on its "policy" to avoid substituting its judgment for that of the Board of County Commissioners. Does it matter that this court substituted its judgment or opinion for that of the trier of the facts? The only facts cited in this court's opinion that support its conclusion are either in conflict with other evidence or else are insubstantial in light of other facts.

In its opinion this court states that "it is doubtful that the term 'spot zoning' applies to this case in view of

the size of the tract". The trial court, which heard the evidence, found the facts to be "spot zoning." The evidence in that regard was substantial and convincing, and nowhere does this court hold that such a determination was a question of law. Clayne Ricks, who is the recognized expert in zoning matters in Salt Lake County, testified that the size of the parcel rezoned is immaterial as a parcel of one hundred acres could constitute spot zoning if completely detrimental or for the benefit of one person (R.56). This court also relies on the Big Cottonwood Master Plan to support the action of the County Commissioners. In so doing the court either overlooked or disregarded the testimony of Clayne Ricks that Williams and Mocine, the consulting firm which drew up the Master Plan, worked extensively with the Planning Commission (R.55). In essence, the consulting firm was simply back stopping the decision which the Planning Commission had already taken to approve the Engh rezoning application.

Finally, in an attempt to show spot zoning is not involved this court observes there are a number of commercial enterprises surrounding the Engh property. While other "enterprises" may exist they are few in number, extremely small and limited in nature, exist as non-conforming uses

and do not have an impact on the character of the neighborhood. Engh Floral is the only real business in the immediate area. Furthermore, as argued in Respondent's Appeal Brief, the theory of zoning is that non-conforming uses being detrimental to the public are not to be perpetuated, but should be gradually eliminated to comport the area to the comprehensive zoning plan.

The case at bar involves a factual determination of whether the action of the Salt Lake County zoning officials in adopting the ordinance reclassifying the Engh property constitutes spot zoning. After having thoroughly considered the testimony and exhibits presented at trial the lower court concluded the ordinance in question constituted "spot zoning". Such a finding is supported by substantial evidence and should have been sustained on appeal if this court is to adhere to its own stated principals relating to the trial court's findings.

II

THE COURT'S MISCONSTRUCTION OF THE TERMS "ARBITRARY" AND "CAPRICIOUS" SERIOUSLY UNDERMINES THE POWER AND RESPONSIBILITY OF COURTS TO REVIEW CHALLENGED ACTIONS OF ZONING OFFICIALS.

Courts ordinarily should not interfere in zoning mat-

ters. However, it is the court's inherent responsibility to see that the zoning officials do not abuse the liberal discretion they are given and to take action when the zoning officials act in an arbitrary, capricious or discriminatory manner. The duty of this court not to substitute its judgment for that of the county zoning officials is no more imperative than the power and duty of this court to set aside any purported exercise of the zoning officials' discretion which is in fact arbitrary, capricious or discriminatory. Zoning in this respect can no more escape judicial review than any other purported exercise of the police power.

The only other possible rational explanation for this court's decision is that it misconstrued the terms "arbitrary" and "capricious". These words when used in a legal sense are to be distinguished from the same words used in a popular sense, where they have an opprobious connotation. In Ostler v. Industrial Commission, 84 Utah 437, 36 P.2d 95, 98 (1934) this court had occasion to define the terms "arbitrary" and "capricious". The court stated:

> It would seem the words "arbitrarily" and "capriciously" are used merely to characterize a conclusion, when the conclusion is announced with no substantial evidence to support it or a conclusion contrary to substantial competent evidence.

While the above definition was used in the context of a review of a decision of the Industrial Commission of Utah, this definition applies to a review of all decisions of administrative bodies, including zoning officials, which are challenged as arbitrary and capricious. For cases in which courts have defined the terms "arbitrary" and "capricious" in their legal sense see the following cases: City of North Little Rock v. Habrle, 239 Ark. 1007, 395 S.W.2d 751, 753 (arbitrary and capricious action of zoning officials defined to mean not guided by steady judgment or purpose); Tri-County Electric Co-op, Inc. v. Elkin, ___ N.D. ___, 224 N.W.2d 785, 794 (arbitrary and capricious used to indicate the findings are without rational basis or that the evidence to support the findings is nonexistent or without probative value); Toole v. Toole, 260 S.C. 235, 195 S.E.2d 389, 391 (arbitrary and capricious used to mean the verdict is against the overwhelming weight of the evidence); Canty v. Board of Education, City of New York, D.C.N.Y., 312 F.Supp. 254, 256 (an administrative decision is arbitrary and capricious when it is not supported by evidence or where there is no reasonable justification for the decision); Montgomery County v. Merlands Club, Inc., 202 Md. 279, 76 A.2d 261,

267 (county zoning board's denial of application for exception based on incorrect legal premise and unsupported by substantial evidence was arbitrary and capricious in a legal sense and could be set aside by the court).

It would be hard to conceive of a more classic example of spot zoning than that present in the case at bar. The trial court's findings are explicit in showing the one-sided benefit of the reclassification ordinance and the potential deteriorative effect of the ordinance on the character of the neighborhood in question. The findings of the trial court further indicate the zoning officials' action was based on an incorrect legal premise, i.e., amending the zoning pattern to comply with Engh Floral Company's non-conforming use (See Point III of Respondent's Brief). To reverse these findings and the judgment entered below because of this court's "policy" to avoid substituting "its" judgment for the legislative body of the municipality is tantamount to giving the zoning officials a carte blanche in all zoning decisions.

The precedent established by this court's decision seriously undermines the power and responsibility of our courts to set aside arbitrary, capricious and discriminatory actions of zoning officials.

CONCLUSION

It is submitted that this court was duty bound to give approbation to the findings of the trial court and uphold its judgment as they were supported by substantial evidence.

Not only did the court not follow the lower court decision, it failed to mention and distinguish the facts relied on by the trial court in reaching its decision.

For these reasons, a rehearing should be granted.

Respectfully submitted,

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