

Cite as 2011 Ark. 123

SUPREME COURT OF ARKANSAS

No. 09-1311

KING'S RANCH OF JONESBORO, INC.
APPELLANT

VS.

CITY OF JONESBORO,
METROPOLITAN AREA PLANNING
COMMISSION, KEN BEADLES,
MARVIN DAY, BRIAN DOVER,
LONNIE ROBERTS, JR., JERRY
HALSEY, JR., MARGARET NORRIS,
KEN COLLINS, JOE TOMLINSON AND
PAUL HOELSCHER, IN THEIR
OFFICIAL CAPACITIES AS
COMMISSION MEMBERS
APPELLEES

STEVE AND SUSAN BAKER, MARK
AND D.J. DUCKWORTH, HARRY
AND BRENDA HERGET, DR. REVEL
AND JANICE PORTER, JASON AND
MELANIE RUNSICK, WAYNE AND
MARTA RUSLEY-PARKER, MIKE AND
TERRI HOOVER, MARK AND JULIA
LAMAR, AND DR. JAMES AND SUZIE
SCHRANTZ
INTERVENORS

Opinion Delivered March 31, 2011

APPEAL FROM THE CRAIGHEAD
COUNTY CIRCUIT COURT,
WESTERN DISTRICT, NO. CV08-336,
HON. JOHNNY R. LINEBERGER,
JUDGE,

REVERSED AND REMANDED.

JIM HANNAH, Chief Justice

King's Ranch of Jonesboro, Inc., appeals a decision of the Craighead County Circuit Court finding that there was a rational basis for the decision of the Jonesboro City Council

Cite as 2011 Ark. 123

to deny a conditional-use permit sought by King's Ranch. On appeal, King's Ranch asserts that the circuit court erred in (1) finding there was a rational basis for the City Council to deny the conditional-use permit, (2) applying the rational basis standard of review when the review required was de novo, and (3) striking the amended complaint and motion to continue the trial. This case presents an issue of first impression regarding whether a municipality's decision granting or denying an application for conditional use under a zoning ordinance is a legislative or quasi-judicial act requiring a de novo review by the circuit court under Arkansas Code Annotated section 14-25-425 (Repl. 1998). We hold that a decision granting or denying an application for a conditional use is a quasi-judicial act. We reverse and remand this case for further proceedings consistent with this opinion. Our jurisdiction is pursuant to Arkansas Supreme Court Rule 1-2(b)(1).

King's Ranch wished to establish and operate a group home for abused and neglected children in a 4900-square-foot home located on a ten and one-half acre tract of property within the City of Jonesboro. The proposed home would house up to eight children at a time. The tract is in a district zoned "R-1," a residential zone.

On January 16, 2008, King's Ranch submitted an application for a conditional-use permit to allow operation of the proposed home. The City of Jonesboro Metropolitan Area Planning Commission staff found that the proposed use was within the "conditional uses" as set out in the City of Jonesboro Zoning Ordinance ("Ordinance"). A hearing on the application was held before the City of Jonesboro Planning Commission on March 11, 2008.

Cite as 2011 Ark. 123

The Commission denied the application, and King's Ranch appealed that decision to the Jonesboro City Council. A hearing was held before the Jonesboro City Council on May 20, 2008, and the application was again denied.

King's Ranch appealed the decision of the City Council to the circuit court. On November 5, 2008, the circuit court set a trial date of March 25, 2009. On March 3, 2009, King's Ranch filed an amended complaint. Citing Arkansas Rule of Civil Procedure 15(a), the circuit court granted a motion to strike the amended complaint based on likely prejudice and undue delay in stating the new causes of action.

This case was tried before the circuit court on March 25, 2009. King's Ranch alleged that the City Council's decision to grant or deny an application for a conditional-use permit was a quasi-judicial act entitled to a de novo review in the circuit court under Arkansas Code Annotated section 14-25-425. However, the circuit court found that the City Council's determination to deny the application for conditional-use permit was a legislative act rather than a quasi-judicial act. Therefore, in deciding whether the City Council had erred in denying the application, the circuit court applied the rational-basis standard of review. *See PH, LLC v. City of Conway*, 2009 Ark. 504, ___ S.W.3d ___ (party alleging a legislative act is arbitrary bears the burden of proving there is no rational basis for the legislative act). The circuit court found as follows:

The process available to, and exercised by the City of Jonesboro in its deciding the propriety and effect of the granting or denial of a conditional use permit is substantially similar to that of re-zoning because allowed changes permanently alter the nature and available use of the property.

Cite as 2011 Ark. 123

We disagree. Under the provisions of the Ordinance, granting or denying a conditional-use permit is a decision reached by applying the facts to the provisions of the existing Ordinance. No new law was created, and it was not rezoning; it was execution of a law already in existence.

At issue is the Ordinance and its provisions regarding conditional use. Therefore, we are faced with an issue of statutory interpretation:

When reviewing issues of statutory interpretation, we are mindful that the first rule in considering the meaning and effect of a statute is to construe it just as it reads, giving the words their ordinary and usually accepted meaning in common language. *Cave City Nursing Home, Inc. v. Ark. Dep't of Human Servs.*, 351 Ark. 13, 89 S.W.3d 884 (2002). When the language of a statute is plain and unambiguous, there is no need to resort to rules of statutory construction. *Id.* A statute is ambiguous only where it is open to two or more constructions, or where it is of such obscure or doubtful meaning that reasonable minds might disagree or be uncertain as to its meaning. *Id.* When a statute is clear, however, it is given its plain meaning, and this court will not search for legislative intent; rather, that intent must be gathered from the plain meaning of the language. *Id.* This court is hesitant to interpret a legislative act in a manner contrary to its express language, unless it is clear that a drafting error or omission has circumvented legislative intent. *Id.*

Ludwig v. Bella Casa, LLC, 2010 Ark. 435, at 5–6, ___ S.W.3d ___, ___.

The City of Jonesboro enacted the Ordinance dividing the City into zoning districts. Jonesboro Code Ordin. (Ark.) § 117-6(a) (2010). Change to the provisions of the Ordinance is made by way of amendment, which may only revise the textual provisions or the boundary of a zoning district. Jonesboro Code Ordin. (Ark.) § 117-34 (2010). Further, where there is a change to the terms of the Ordinance by a permissible amendment, the amendment must be adopted by the City Council. *Id.* Thus, by adoption of an amendment, new law is added to the provisions of the Ordinance.

Cite as 2011 Ark. 123

In *PH*, this court discussed zoning at length and stated that the “crucial test for determining what is legislative and what is administrative [quasi-judicial] is whether the ordinance is making a new law, or one executing a law already in existence.” *PH, LLC. v. City of Conway*, 2009 Ark. 504, at 7, ___ S.W.3d ___, ___ (quoting *Camden Cmty. Dev. Corp. v. Sutton*, 339 Ark. 368, 373, 5 S.W.3d 439, 442 (1999) (overruled in *PH*, 2009 Ark. 504, at 10, ___ S.W.3d ___, ___ to the extent it held that a zoning decision was an administrative rather than a legislative act)). Clearly, adoption of amendments under the Ordinance constitutes the creation of new law and is therefore a legislative act by the City Council.

Conditional uses are different. Under the Ordinance at issue, Article V.—Conditional Uses—sets out the process for obtaining a conditional-use permit. In granting or denying a conditional use permit, the city council is not amending any provisions to the Ordinance. Instead, an analysis is undertaken to determine whether the proposed conditional use complies with the already existing provisions of the Jonesboro Ordinance. When a conditional-use application is filed, eight factors set out in the Ordinance are considered by the Planning Commission, *see* Jonesboro Code Ordin. (Ark.) § 117-198 (a–h) (2010), and a decision must be made that includes findings of whether “the proposed use is within the provision of conditional uses as set out in this Ordinance,” *see* Jonesboro Code Ordin. (Ark.) § 117-198(a) (2010), whether the proposed use conforms to applicable provisions of the Ordinance, *see* Jonesboro Code Ordin. (Ark.) § 117-198(b), whether it is “not inconsistent with requirements of this Ordinance,” *see* Jonesboro Code Ordin. (Ark.) § 117-198(f), and whether it is in “in accordance with provisions of this Ordinance,” *see* Jonesboro Code Ordin. (Ark.) § 117-198

Cite as 2011 Ark. 123

(g) (2010). It is thus clear that a decision on a conditional-use application requires an application of the facts to the existing provisions of the Ordinance, and a judgment on whether the conditional use should be granted under the existing Ordinance provisions.

As this is an issue of first impression, there is no case on point. However, some cases should be noted because they contain references to issues now before this court. In *City of Jonesboro v. Vuncannon*, 310 Ark. 366, 371, 837 S.W.2d 286, 288 (1992), this court noted that Arkansas Code Annotated section 14-56-425 provides for a de novo review in circuit court where the issue is one of an application of zoning ordinances as opposed to enactment of zoning ordinances. At issue in the present case is the application of the Ordinance rather than enactment of new provisions to the Ordinance. In *Mings v. City of Ft. Smith*, 288 Ark. 42, 47, 701 S.W.2d 705, 708 (1986), in the context of a discussion of who has standing to appeal a decision from the board to the planning commission, this court stated that “[t]he majority tradition however, has been to treat the conditional-use request as invoking quasi-judicial powers of the planning commission and of the board.”

In the case before us, both the Planning Commission and the City Council were asked to apply the facts to the existing Ordinance provisions and to decide whether a conditional use should be granted. The provisions of the Ordinance were not amended by the decision on the conditional use; therefore, there was no legislative act. Rather, it was a quasi-judicial act based on an application of the facts to the existing Ordinance provisions. The circuit court erred in finding that the City Council’s action was a legislative act, and, therefore, also erred in applying the rational-basis standard of review.

Cite as 2011 Ark. 123

Because we hold that the circuit court applied the wrong standard of review, the question of whether the City Council acted in an arbitrary or capricious manner is moot. We do not address moot issues. *McDermott v. Sharp*, 371 Ark. 462, 466, 267 S.W.3d 582, 585 (2007). Further, because this case is being reversed and remanded for further proceedings, we need not address whether the circuit court erred in refusing to grant the motion to continue and in granting the motion to strike.

Reversed and remanded.