

RENDERED: MARCH 19, 2010; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2008-CA-000213-MR

VALLEY VIEW FARM I, LIMITED PARTNERSHIP;
HERITAGE HILL PROPERTIES, LLC; AND
HERITAGE HILL COMMUNITY ASSOCIATION, INC. APPELLANTS

v. APPEAL FROM BULLITT CIRCUIT COURT
HONORABLE STEPHEN P. RYAN, SPECIAL JUDGE
ACTION NO. 06-CI-00376

THE CITY OF SHEPHERDSVILLE, KENTUCKY;
THE CITY COUNCIL OF THE CITY OF
SHEPHERDSVILLE; JOE SOHM, MAYOR, OR HIS
SUCCESSOR; MARY T. HAMILTON, LIVING TRUST;
MARY ANN MILLER, REVOCABLE TRUST;
SARA NELL MCDADE, REVOCABLE TRUST;
JAMES C. HAMILTON, LIVING TRUST;
CHARLES L. HAMILTON, LIVING TRUST;
JAMES C. HAMILTON; LORA L. HAMILTON; AND
BULLITT COUNTY JOINT PLANNING COMMISSION APPELLEES

AND

NO. 2008-CA-000381-MR

MARY T. HAMILTON, LIVING TRUST;
MARY ANN MILLER, REVOCABLE TRUST;
SARAH NELL MCDADE, REVOCABLE TRUST;

The appellants, Valley View Farm I, Limited Partnership, and Heritage Hill Properties, LLC, developed an 840-acre farm known as Heritage Hill into a residential community located in Bullitt County. The Heritage Hill Community Association, Inc. represents the current and future homeowners in the community who are referred to collectively as Heritage Hill. The appellees, referred to as the Hamiltons, include adjoining landowners who, in 2005, applied to the Bullitt County Planning Commission for a zoning map amendment to have a portion of their property rezoned from agricultural to light industrial. Although Heritage Hill did not completely oppose the amendment, it sought restrictions concerning building heights, the location of HVAC units, and truck loading docks.

The planning commission held a public hearing following which it recommended that the property be rezoned with restrictions. However, contrary to Heritage Hill's request, there were no restrictions regarding the location of loading docks on the Hamiltons' property in the planning commission's recommendation before the Shepherdsville City Council.

On February 13, 2006, Heritage Hill and the Hamiltons appeared at the second reading of an ordinance to approve the commission's recommendation and grant the request for a zoning map amendment. The parties differ regarding the content of the discussion at the hearing before the council. However, both were given the opportunity to present their case. Heritage Hill requested restrictions to preserve the character of the adjoining property. Although the council agreed to approve the zoning map amendment, it was subject to restrictions

to be subsequently submitted in writing. The minutes from the February 13th hearing became the subject of debate when offered for approval at the city council's next scheduled meeting held on February 27, 2006.

Heritage Hill contended that at the February 13th hearing, the Hamiltons agreed to place the loading docks only on the west side of the buildings adjacent to Heritage Hill and that the approval of the zoning amendment was based upon the Hamilton's agreement. Ultimately, the minutes were approved and included the following restriction: "loading docks, parking lots, and dumpsters must be located on the opposite side of the building from residential areas."

Subsequently, Heritage Hill requested and obtained a copy of the zoning restrictions dated March 23, 2006, that stated "loading docks or parking lots will not be located on the East side of any buildings erected adjacent to the East property line of the Property and the West property line of Heritage Hill."

Heritage Hill alleged the restriction that permitted loading docks on the north, south and west sides of the Hamiltons' property was inconsistent with the council's prior decision on February 13th to permit loading docks only on the west side of the property. Unable to rectify its dispute with the City of Shepherdsville, Heritage Hill filed an action in the Bullitt Circuit Court alleging that the zoning restrictions did not conform to the actions taken at the February 13th council meeting as reflected in the council's minutes. Heritage Hill later amended its complaint to allege claims pursuant to Kentucky Revised Statutes (KRS) 100.347.

Upon the Hamiltons' motion, the circuit court remanded the case to the city council to decide whether the minutes and the zoning restrictions correctly expressed the council's intentions and, if not, to adopt minutes and restrictions consistent with its intent. On remand, the council voted that the February 13th minutes and the written zoning restrictions were consistent with its intentions.

Subsequently, Heritage Hill filed a motion to amend its first amended complaint to include the additional allegation that the minutes again approved by the city council were inconsistent with the restrictions and that the decision of the city council on remand was arbitrary, capricious, and unsupported by the record.

The circuit court denied the motion to amend the first amended complaint to assert additional claims that the city council's February minutes were inconsistent with the restrictions. It emphasized that the first amended complaint alleged only that the minutes and the signed restrictions were not consistent with the council's actions and made no alternative allegation that if the minutes were accurate, the minutes were not consistent with the signed restrictions. The court held that the allegations made in the second amended complaint were known to Heritage Hill at the time the first amended complaint was filed and, therefore, were required to be included in that complaint. Because on remand the city council decided that the minutes of the February 13th meeting and the restrictions dated March 23, 2006, accurately reflected its intentions, the circuit court dismissed Heritage Hill's claims that the minutes and restrictions did not accurately reflect the action of the city council on February 13, 2006. Finality of its order was

reserved pending resolution of Heritage Hill's remaining claims arising under KRS 100.347, alleging that the city's actions were arbitrary, capricious, and unsupported by the record.

After the submission of briefs and review of the administrative record, the circuit court rejected Heritage Hill's statutory appeal. In doing so, it reaffirmed its prior ruling that the city council decided on remand that the restrictions reflected its intent. It further found that the allegations made by Heritage Hill were insufficient to sustain an appeal of the city council's action pursuant to KRS 100.347.

Although Heritage Hill now contends that the minutes and the restrictions are inconsistent, this is the same allegation sought to be presented in the second amended complaint that was denied by the circuit court. "Though CR 15.01 provides that leave to amend shall be freely given when justice so requires, it is still discretionary with the trial court, whose ruling will not be disturbed unless it is clearly an abuse." *Graves v. Winer*, 351 S.W.2d 193, 197 (Ky. 1961)(internal quotations omitted). Because the allegations presented in Heritage Hill's second amended complaint could have been presented in its first amended complaint, we conclude there was not abuse of discretion by the circuit court when it denied its motion to file a second amended complaint. We now address Heritage Hill's allegations in its complaint and first amended complaint.

Typically, the issues in a zoning case are whether the action of the body was arbitrary on the basis of what evidence was heard and what proceedings

took place before the body. A trial *de novo* cannot be held in the court and the action will be considered arbitrary only if “(1) the proceedings before the body did not afford procedural due process, or (2) the action of the body was not supported by substantial evidence heard by it.” *Morris v. City of Catlettsburg*, 437 S.W.2d 753, 755 (Ky. 1969). However, Heritage Hill does not challenge the amendment of the zoning map based on substantial evidence grounds. Rather, throughout the litigation, Heritage Hill has maintained only that the City Council’s actions were not accurately reflected in the restrictions imposed on the property. Presented with Heritage Hill’s request that the court determine the City Council’s intent when voting on the zoning map amendment, the Court properly remanded the matter to the city council which again voted that the minutes from the February 13th meeting and the restrictions dated March 23, 2006, accurately reflected the intentions of the city council. Thus, all issues regarding the accuracy of the February 13th minutes and the zoning restrictions were resolved and Heritage Hill’s claims were properly dismissed.

Because we affirm the Bullitt Circuit Court, we do not address the issue raised in the Hamiltons’ cross-appeal.

The judgment of the Bullitt Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT/CROSS-
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I, LIMITED:

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