

IN THE UTAH COURT OF APPEALS

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| Brent Poll,               | ) | MEMORANDUM DECISION   |
|                           | ) | (Not For Official Publication)  |
| Petitioner and Appellant, | ) |   |
|                           | ) | Case No. 20061012-CA  |
| v.                        | ) |   |
|                           | ) | F I L E D   |
| Board of Adjustment,      | ) | (October 30, 2008)  |
|                           | ) |   |
| Respondent and Appellee.  | ) | <span style="border: 1px solid black; padding: 2px;">2008 UT App 396</span> |

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Second District, Farmington Department, 050700250  
The Honorable Jon M. Memmott

Attorneys: Brent Poll, South Weber, Appellant Pro Se  
            Christopher F. Allred, Ogden, for Appellee

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Before Judges Greenwood, Thorne, and Billings.

THORNE, Associate Presiding Judge:

Petitioner Brent Poll appeals from the district court's order granting Respondent South Weber City Board of Adjustment's (the Board) motion to dismiss. We affirm.

In 2005, Poll submitted several letters to the Board that enumerated various allegations that South Weber City (the City) failed to apply or enforce certain of its own ordinances. The Board held several public meetings during which it heard Poll's arguments, addressed the allegations, and ultimately concluded that the City had not wrongfully failed to enforce or apply its ordinances. Thereafter, Poll filed a Petition for Review of the Board's Decisions (Petition) in the district court, alleging that the Board's decisions were arbitrary, capricious, and illegal. The Board filed a motion to dismiss Poll's Petition, arguing that the Board had limited authority to decide only those decisions in which a land use authority has applied a land use ordinance to a particular person. As such, the Board argued, it did not have the authority to address the issues Poll raised regarding the City's failure to enforce or apply its own ordinances. The district court considered Utah Code sections 10-9-703, 10-9-704, and 10-9a-701, as well as South Weber City Ordinance section 10-

4-4(A) (the City Ordinance),<sup>1</sup> and concluded that neither the pertinent statute sections nor the City Ordinance granted the Board authority to compel the City to enforce its ordinances. As a result, the court concluded that the Board did not have the authority to decide the issues Poll had submitted and therefore dismissed Poll's Petition for lack of jurisdiction.

We review the district court's order granting the Board's motion to dismiss and its interpretation of the applicable statutes and ordinances for correctness. See Ellis v. Estate of Ellis, 2007 UT 77, ¶ 6, 169 P.3d 441 ("[A] motion to dismiss, . . . presents a question of law that we review for correctness."); Biddle v. Washington Terrace City, 1999 UT 110, ¶ 8, 993 P.2d 875 (reviewing the trial court's interpretation of an ordinance for correctness).

On appeal, Poll argues that the City Ordinance gave the Board broad authority and, in fact, mandates the Board to hear and decide appeals from any planning or zoning decisions related to the City's ordinances, including enforcement issues. The Board argues that the City Ordinance does not give the Board the power to compel the City to comply with or enforce city ordinances. The Board argues that the City Ordinance and various sections in Part 7, Appeal Authority and Variances, of the Utah Municipal Code, see Utah Code Ann. §§ 10-9a-701 to -707 (2007), provides the Board with only the limited appeal authority granted by those sections to hear and decide appeals where an error is alleged to have been made in the enforcement of planning or zoning provisions of the city ordinances, rather than the authority to actually order enforcement of a city ordinance.

The City Ordinance at issue in this case, section 10-4-4(A) provides that the Board shall have the power "[t]o hear and decide appeals where it is alleged that there is error in any order, requirement, decision or determination made by the

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<sup>1</sup>The district court applied former Utah Code sections 10-9-703 and 10-9-704 to Poll's first set of issues--regarding the subdivision plat, vinyl fence, construction of the road, and easements on 1375 East--submitted to the Board for decision prior to May 2, 2005, the date on which that section was repealed. With respect to the second set of issues submitted after May 2, 2005--sewer placement trespass, fire hydrant, interpretation and application of the city's sensitive land ordinance--the court applied Utah Code section 10-9a-701.

We note that Poll does not assert any error in the district court's application of those sections and utilizes them in his own analysis. We therefore include them in our determination of the scope of the Board's authority in this case.

administrative official and the enforcement of any of the planning or zoning provisions of the ordinances of the City." Assuming, without deciding, that the ordinance can be interpreted, as Poll suggests, to provide the Board with the authority to hear and decide appeals pertaining to enforcement issues, the outside limits of that authority are set by state statute. We must therefore interpret the ordinance within the context of the applicable state statutes pertaining to land use ordinance appeals. See id. § 10-9a-701; id. § 10-9-703 to -704 (2003) (repealed 2005).

I. The Board's Authority as to Issues  
Submitted Prior to May 2, 2005

The district court considered former Utah Code sections 10-9-703 and 10-9-704 to be in effect during the time Poll submitted his first set of issues to the Board, and concluded that neither section granted the Board authority to require the City to enforce its own ordinances. Former Utah Code section 10-9-703(1)(a) provided that "[t]he board of adjustment shall hear and decide: (a) appeals from zoning decisions applying the zoning ordinance." Id. § 10-9-703(1)(a) (2003) (repealed 2005) (emphasis added). Former Utah Code section 10-9-704(1)(a)(i) provided:

The applicant or any other person or entity adversely affected by a decision administering or interpreting a zoning ordinance may appeal that decision applying the zoning ordinance by alleging that there is error in any order, requirement, decision, or determination made by an official in the administration or interpretation of the zoning ordinance.

Id. § 10-9-704(1)(a)(i) (2003) (repealed 2005) (emphasis added).

Both sections grant authority only to appeal decisions-- decisions applying the zoning ordinance, see id. § 10-9-703(1)(a), or decisions administering or interpreting a zoning ordinance, see id. § 10-9-704(1)(a)(i). Because neither section extends the Board's appeal authority to claims alleging a failure to otherwise enforce a city ordinance, we conclude that the district court correctly determined that the Board did not have authority to require the City to enforce its ordinances in effect prior to May 2, 2005, and pertaining to Poll's first set of issues.

II. The Board's Authority as to Issues  
Submitted After May 2, 2005

Regarding Poll's second set of issues submitted to the Board after May 2, 2005, the district court analyzed section 10-9a-701 and concluded that it did not grant the Board authority to require the City to enforce its ordinances. Utah Code section 10-9a-701, like the former code sections previously discussed, provides entities such as the Board with the authority to hear and decide appeals from decisions applying a land use ordinance. See id. § 10-9a-701(1)(b) (2007) ("(1) Each municipality adopting a land use ordinance shall, by ordinance, establish one or more appeal authorities to hear and decide: . . . (b) appeals from decisions applying the land use ordinances." (emphasis added)). The statutory language of section 10-9a-701 clearly states that the Board's appeal authority extends only to appeals from decisions that apply a land use ordinance.

Poll argues that section 10-9a-701(3) provides the Board with broad authority, which includes the authority to require the City to enforce its own ordinances. We do not agree. Subsection (3) does not grant the Board broad authority to address enforcement issues; rather, it merely defines the Board's duties regarding appeals when reviewing decisions applying land use ordinances. See id. § 10-9a-701(3) (providing that an appeal authority reviewing decisions applying the land use ordinances "(a) shall: (i) act in a quasi-judicial manner; and (ii) serve as the final arbiter of issues involving the interpretation or application of land use ordinances; and (b) may not entertain an appeal of a matter in which the appeal authority, or any participating member, had first acted as the land use authority"). Based on our review of section 10-9a-701, we agree with the district court that section 10-9a-701 does not extend the Board's appeal authority to Poll's second set of issues alleging a failure to apply or enforce city ordinances.<sup>2</sup>

We conclude that the pertinent state statutes discussed above grant the Board limited authority to decide appeals from decisions applying a land use ordinance. We also decline to interpret the City Ordinance as Poll requests--so as to grant authority over enforcement issues--because such an interpretation would be incompatible with the statutory grant of authority to

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<sup>2</sup>Poll's remedies, if any, do not include petitioning the Board. We note that a writ of mandamus may be the proper remedy for enforcement issues.

the land use board.<sup>3</sup> Accordingly, we affirm the district court's order granting the Board's motion to dismiss.

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William A. Thorne Jr.,  
Associate Presiding Judge

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WE CONCUR:

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Pamela T. Greenwood,  
Presiding Judge

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Judith M. Billings, Judge

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<sup>3</sup>Based on this conclusion, we need not consider Poll's other arguments that the City Council for South Weber City intentionally legislated a liberal role for the Board; that the City Council was not precluded by law from mandating a procedure for providing advisory or final opinions to parties regarding the full range of its land use ordinances; and that the Board did not have the power to challenge the propriety of legislative decisions.