RENDERED: June 9, 2000; 10:00 a.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court Of Appeals

NO. 1998-CA-002149-MR

SHELBY COUNTY FISCAL COURT — APPELLANT

v.

APPEAL FROM SHELBY CIRCUIT COURT
HONORABLE WILLIAM F. STEWART, JUDGE
ACTION NO. 97-CI-00372

ALBERT MOFFETT, INC;
JOHN J. CROSS — APPELLEES

OPINION
REVERSING AND REMANDING
** ** ** ** **

BEFORE: COMBS, DYCHE AND McANULTY, JUDGES.

McANULTY, JUDGE. The Shelby County Fiscal Court (SCFC) appeals from the Shelby Circuit Court judgment entered on May 27, 1998, which ordered the SCFC to grant a zoning change to the appellees, Albert Moffett, Inc. and John J. Cross. The Circuit Court found that the SCFC's decision to deny the appellee's request for a zoning change was arbitrary and that the SCFC had failed to act within the statutorily prescribed time period.

Appellees are owners of approximately six acres of real property located in the Hill-N-Dale subdivision in Shelby County, Kentucky. In 1997, appellees sought to change the zoning of the property from a combination of agriculture, interchange, and

commercial to an R-3 zoning classification, single family residential. A public hearing was held before the Triple S Planning & Zoning Commission on May 20, 1997. After listening to the appellees and several residents of the Hill-N-Dale subdivision, the Commission determined that the zoning change was in conformity with the Shelby County Comprehensive Plan. The Commission then voted to grant the zoning change and subsequently forward its recommendation to the SCFC.

The SCFC attempted to address the zoning change on the 8th and 22nd of July, 1997, however a transcript of the May 20, 1997, hearing was not yet available. Finally, on September 2, 1997, the SCFC proceeded with an argument-type hearing on the zoning change. At the conclusion of the hearing, the SCFC voted to deny the zoning change. The appellees appealed the SCFC's decision to the Shelby Circuit Court. On May 27, 1998, the circuit court reversed the SCFC's decision and ordered it to grant the zoning change. This appeal followed.

On appeal the SCFC argues that the circuit court applied the incorrect standard of review, that it properly denied the zoning change, and that it acted within the time frame and in substantial compliance with Kentucky Revised Statute (KRS) 100.211(7).

The proper standard of review in zoning cases was set forth in Fritz v. Lexington-Fayette Urban County Government, Ky. App., 986 S.W.2d 456, 458 (1999):

> Under City of Louisville v. McDonald, [Ky., 470 S.W.2d 173 (1971)], when the legislative body denies the requested change, the property owner must show the decision was "arbitrary," and whether an action is

> arbitrary depends on whether the proponents of change can show "[n]o rational connection between that action and the purpose for which the body's power to act exists." Id. at 178. The question then becomes "[w]hether or not the evidence shows a compelling need for the rezoning sought or clearly demonstrates that the existing zoning is no longer appropriate." Id. at 179. McDonald, supra, establishes what a property owner needs to show in order to be entitled to a zone change. KRS 100.213 goes further than McDonald, supra, and adds that in order to get the requested zone change, the proponent must also show that the proposed zoning classification is appropriate. Appellants cannot read McDonald in a vacuum.
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> All zoning is mandated to follow the comprehensive plan. KRS 100.201 and KRS 100.213(1)(a) and (b). KRS 100.213 provides that before a zone change request is granted, (map amendment), the planning commission or respective legislative body must find either that the request is in agreement with the comprehensive plan or that the existing zoning classification is inappropriate and that the proposed zoning classification is appropriate; or that there have been major changes of an economic, physical, or social nature in the area which were not anticipated in the current comprehensive plan and which substantially alter the character of the area.
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> . . . In Kaelin v. City of Louisville, Ky., 643 S.W.2d 590 (1982), our Supreme Court labeled zoning change requests as trial-type hearings for the purpose of determining the adjudicative facts necessary to decide whether or not to grant the zone change. As such, the taking and weighing of evidence is necessary with "[a] finding of fact based upon an evaluation of the evidence and conclusions supported by substantial evidence." Id. at 591. The circuit court's review is authorized by KRS 100.347 and American Beauty Homes Corporation v. Louisville and Jefferson County Planning and Zoning Commission, Ky., 379 S.W.2d 450 (1964). The question on review is whether the administrative agency's decision is supported by substantial evidence; otherwise it's classified as arbitrary. Id. at 456. In Danville-Boyle County Planning and Zoning Commission v. Prall, Ky., 840 S.W.2d 205 (1992), our Supreme Court held that in planning and zoning cases, the property owner has the burden of proof, and judicial review is limited to the question of whether the administrative decision was arbitrary. "By arbitrary we mean clearly erroneous and by clearly erroneous we mean unsupported by substantial evidence." Id. at 208.

With this standard of review in mind, we now address the SCFC's arguments on appeal.

As evidenced by the transcript of the public hearing and its recommendation to the SCFC, the Commission had determined, as part of its findings of fact, that the zoning change was in agreement with the Comprehensive Plan. Despite this finding, the SCFC denied the zoning change. As this Court has previously held, the "planning commission does not have to rezone solely because a request is in accordance with a comprehensive plan or its recommended land use element." 21st Century Development Co. v. Watts, Ky. App., 958 S.W.2d 25, 27 (1997). KRS 100.213 does not mandate a specific result; it only requires that certain findings be made before a zoning change is granted. Therefore, the SCFC may still deny a zoning change even though it appears to be in agreement with the comprehensive plan.

The residents of the Hill-N-Dale subdivision who opposed the zoning change did not contest the change from agricultural, interchange, and commercial to a residential zoning classification, but rather, they argued that the appellees' residential development plan, which provided for the building of 22 homes on the six acres, was inconsistent with the nature of the surrounding subdivision. Specifically, the residents were concerned with the R-3 zoning classification because it allowed a minimum lot size of 7,500 square feet. They believed that the subject property was more suitable for an R-1 zoning change, which requires a minimum of 12,500 square feet per lot. The lots provided for in the R-1 zoning classification more closely resemble the present lots in the Hill-N-Dale subdivision which on average run about 14,000 square feet. The residents also

expressed concern over the increase in traffic caused by the addition of 22 homes in the area and the fact that the cul-de-sac design of the development contained only one entrance and exit. They pointed out that certain transportation improvements provided for in the comprehensive plan to ease traffic congestion, i.e. the widening of Kentucky Highway 55, have not yet taken place. The SCFC agreed with the residents and recommended that the appellees resubmit an application to the Commission for an R-1 zoning change. Clearly, the SCFC concluded that the area should be rezoned residential, but that an R-1 zoning classification was more suitable with the surrounding area. The appellees failed to demonstrate that the evidence showed a compelling need for the R-3 zoning change. City of Louisville v. McDonald, Ky., 470 S.W.2d 173 (1971).

Next we turn to the issue of whether the SCFC acted within the statutorily prescribed time period set forth in KRS 100.211(7). The pertinent portions of KRS 100.211 provide:

> (1) A proposal for a zoning map amendment may originate with the planning commission . . . . Unless a majority of the entire legislative body or fiscal court votes to override the planning commission's recommendation, such recommendation shall become final and effective and if a recommendation of approval was made by the planning commission, the ordinance of the fiscal court or legislative body adopting the zoning map amendment shall be deemed to have passed by operation of law.
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> (7) The fiscal court or legislative body shall take final action upon a proposed zoning map amendment within ninety (90) days of the date upon which the planning commission takes its final action upon such proposal.

In this case, the Commission held a public hearing on May 20, 1997, in which it voted to grant the appellees' zoning

application and forward its recommendation to the SCFC. The SCFC held an argument-type hearing and decided to deny the appellees zoning application on September 2, 1997, clearly more than ninety (90) days after the Commission made its recommendation. Pursuant to KRS 100.211, the circuit court determined that the SCFC's failure to legally override the Commission's May 20, 1997, recommendation within ninety (90) days caused it to become enacted by operation of law. Upon further review, we believe the circuit court erred in its conclusion.

KRS 100.211(7) plainly states that the fiscal court or legislative body must take its final action "within ninety (90) days of the date upon which the planning commission takes its final action upon such proposal." According to the Zoning Regulations for Shelby County, Kentucky, "[t]he deliverance of the recommendation, with the approved Finding of Fact and approved transcript, to the Fiscal Court or City Council/Commission shall constitute the Final Action by the Planning Commission on the map amendment." Article XIV, Section 1450. Bobby Stratton, County Judge Executive for Shelby County and President of the SCFC, stated in an affidavit that the SCFC received the Commission's Findings of Fact in or around June 3, 1997. Minutes from the SCFC's meetings also establish that the SCFC attempted to hold a hearing on the Commission's recommendation on the 8th and 22nd of July, but a transcript of the public hearing was not available. Under the terms of the zoning regulations, the appellees were responsible for providing a transcript of the public hearing to the SCFC. Id. The

transcript was not delivered to the SCFC until August 1997. Therefore, the SCFC's hearing and decision on September 2, 1997, was within the ninety (90) day period set forth in KRS 100.211(7).

For the reasons stated above, we reverse the judgment of the Shelby Circuit Court and remand for entry of an order reinstating the order of the Shelby County Fiscal Court.

ALL CONCUR.

BRIEFS FOR APPELLANTS:

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BRIEF FOR APPELLEE:

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