

Commonwealth Of Kentucky

Court Of Appeals

NO. 1999-CA-002063-MR

LEE COCHRAN

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE ERNEST JASMIN, JUDGE
ACTION NO. 99-CI-001824

LOUISVILLE AND JEFFERSON COUNTY
PLANNING COMMISSION;
MAIN STREET REALTY, INC.;
DAVID A. JONES; AND
BETTY A. JONES

APPELLEES

OPINION
AFFIRMING
** **

BEFORE: BARBER, BUCKINGHAM, AND MILLER, JUDGES.

MILLER, JUDGE: Lee Cochran brings this appeal from a July 8, 1999, opinion and order of the Jefferson Circuit Court. We affirm.

In April, 1997, a golf driving range was proposed in the River Road area of Jefferson County. An application for a change of zoning on the subject property from residential district R-4 to residential district R-1 was filed. A conditional use permit application was also filed with the

Louisville and Jefferson County Planning Commission. The Planning Commission voted unanimously to approve the conditional use permit and recommended approval of the zoning application. Subsequently, the Jefferson County Fiscal Court voted to approve the zone change.

On February 4, 1999, over a year and a half later, Cochran submitted a "Plan Review Application", "motion", and "request" asking the Planning Commission to modify the approved conditional use permit and amend the binding elements upon the subject property. Cochran did not own a legal interest in the subject property; rather, her residence was approximately one and a half miles from same. Cochran claimed to be "concerned and aggrieved" because the binding elements did not adequately address the hours of operation and lighting and because the conditional use permit did not contain any limitation on the hours of operation or lighting. On March 18, 1999, the Assistant Jefferson County Attorney, Deborah A. Bilitski, notified Cochran

by letter that her "Plan Review Application", "motion" and "request" would not be docketed. Her reasoning was as follows:

While a property owner has the right to request modification of a conditional use permit and amendments to binding elements on his or her own property, I can find no legal basis upon which to allow parties other than the property owner to reopen a case and disturb a final action of the Planning Commission or Fiscal Court.

On March 30, 1999, Cochran filed a complaint and appeal in the Jefferson Circuit Court under Kentucky Revised Statutes

(KRS) 100.347(2). In an opinion and order, the circuit court concluded that Cochran lacked standing and it (the court) lacked subject matter jurisdiction. The circuit court dismissed the action, thus precipitating this appeal.

Cochran contends the circuit court committed error by dismissing her complaint. We disagree. Section 8.1(A)(4)(b) of the Jefferson County Development Code deals with amendment of the Zoning District Map and states:

All applications for amendment to the Zoning District Map shall be signed by the owner(s) of the affected property. Leaseholders, option-holders, developers, and agents should also be identified.

Section 8.1(B)(1) provides that "the Zoning District Map shall include a general district development plan. . . ." Binding elements are found in the district development plan. We observe there exists no specific provision concerning amendment of the development plan or binding elements. As the Zoning District Map must include a development plan, we view Section 8.1(A)(4)(b), amendment of Zoning District Map, as an appropriate criterion to amend binding elements. Hence, we think that only affected property owners may file an application to amend binding elements. We do not perceive Cochran to be an affected property owner; thus, we do not believe Cochran may file an application to amend the binding elements under the Jefferson County Development Code. Moreover, we do not think Cochran may file an application to modify a conditional use permit. KRS 100.237 deals with the filing and consideration of a conditional use permit. While that statute does not specifically state the applicant must possess a

legal interest in the property, we are inclined to interpret the statute as implicitly requiring same. Indeed, subsection 2 of KRS 100.237 states:

Granting of a conditional use permit does not exempt the applicant from complying with all of the requirements of building, housing and other regulations.

If the applicant need not be a property owner, subsection 2 is rendered meaningless. As Cochran has no legal interest in the subject property, we are of the opinion the circuit court did not commit reversible error by dismissing the instant action.

We perceive Cochran's remaining issues as moot.

For the foregoing reasons, the opinion and order of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Kyle T. Hubbard
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BRIEF FOR APPELLEE, MAIN
STREET REALTY, INC., DAVID A.
JONES, AND BETTY A. JONES:

Margaret E. Keane
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BRIEF FOR APPELLEE, LOUISVILLE
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COMMISSION:

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