

RENDERED: SEPTEMBER 29, 2006; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court Of Appeals

NO. 2005-CA-002339-MR

WARREN COUNTY CITIZENS FOR MANAGED
GROWTH, INC.; JIM DUFFER, AS
CHAIRMAN AND INDIVIDUALLY;
AND GAYLA CISSELL,
AS SECRETARY AND INDIVIDUALLY

APPELLANTS

v. APPEAL FROM WARREN CIRCUIT COURT
HONORABLE JOHN R. GRISE, JUDGE
ACTION NO. 05-CI-00350

BOARD OF COMMISSIONERS OF
CITY OF BOWLING GREEN, KENTUCKY;
CITY-COUNTY PLANNING COMMISSION OF
WARREN COUNTY, KENTUCKY;
INTER-MODAL TRANSPORTATION AUTHORITY, INC. ;
AND SOUTH-CENTRAL KENTUCKY REGIONAL
DEVELOPMENT AUTHORITY

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: DIXON AND TAYLOR, JUDGES; KNOPF,¹ SENIOR JUDGE.

KNOPF, SENIOR JUDGE: Warren County Citizens for Managed Growth,
Inc. (WCCMG) appeals from a summary judgment of the Warren

¹ Senior Judge William L. Knopf sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

Circuit Court affirming a Bowling Green city ordinance re-zoning a tract of property from agricultural to light industrial. WCCMG also appeals from the circuit court's dismissal of its declaratory judgment action relating to that re-zoning. We agree with the circuit court that the ordinance granting the map amendment was not arbitrary. Furthermore, the trial court properly dismissed the declaratory judgment action because it presented issues which were subsumed in the statutory appeal. Hence, we affirm.

The subject property in this case is comprised of three adjoining tracts of real property consisting of a total of 28.31 acres. These tracts are owned by the Intermodal Transportation Authority, Inc. and the South-Central Kentucky Regional Development Authority (collectively, the landowners). The subject property is located within the city limits of Bowling Green. The tracts are located at 458 and 500 Glasgow Road, on the north side of U.S. Highway 68/Kentucky Highway 80 near the intersection of U.S. 68/Ky. 80 and U.S. Highway 31-W. At the time of the application, the subject property was zoned agricultural and was used for that purpose. The adjoining properties to the north, east and south were also zoned and used for agriculture. The adjoining property to the west is zoned industrial, a use that pre-dated Warren County's adoption of zoning.

On November 5, 2004, the landowners filed an application for a zoning map amendment seeking to re-zone the subject property to Light Industrial (LI). The landowners sought the re-zoning of the subject property as part of a larger development of the Kentucky Intermodal Transpark - a proposed regional industrial park development with air, rail and highway links. The City-County Planning Commission of Warren County, Kentucky (the Planning Commission) referred the matter to its staff for initial review. After reviewing the application and supporting studies, the Planning Commission staff issued a report recommending that the map amendment be granted, subject to certain binding elements concerning matters which concerned the staff.

After the staff issued its report, the Planning Commission held a public hearing on December 2, 2004. The landowners and the opponents of the re-zoning were each represented by counsel and were afforded the opportunity to call and cross-examine witnesses. In addition, the staff report was read into the record, and the Planning Commission Executive Director testified concerning the studies which went into the report and the binding elements which came out of the report. Other witnesses also testified for both sides. And at the conclusion of proof, individuals were allowed to make statements to the Planning Commission concerning their views on the

proposed re-zoning. After hearing the evidence, the Planning Commission voted 11-1 to recommend approval of the proposed map amendment.

The matter then proceeded to the Board of Commissioners of the City of Bowling Green (the City Commission) for consideration on January 18, 2005. The City Commission received the Planning Commission's report and recommendation, and heard arguments from proponents and opponents of the re-zoning. The City Commission then conducted the first reading of the ordinance granting the map amendment,² which was approved by unanimous vote. On February 1, 2005, the City Commission conducted its second reading of the ordinance, where it was enacted by unanimous vote.

On March 3, within thirty days from the City Commission's final action, WCCMG filed an appeal pursuant to KRS 100.347 seeking judicial review of the ordinance. WCCMG filed a separate count alleging that members of the Planning Commission and the City Commission were predisposed in favor of the map amendment application. The matter was submitted to the court on WCCMG's motion for summary judgment. In an opinion and order rendered on October 11, 2005, the circuit court found that WCCMG had standing to pursue an appeal from the re-zoning.

² Ordinance No BG2005-3, "ORDINANCE REZONING REAL ESTATE".

Nevertheless, the court affirmed the ordinance granting the map amendment. The circuit court also dismissed WCCMG's separate count seeking declaratory relief. This appeal and cross-appeal followed.

The subject property is the fourth of four related tracts which are also part of the proposed Transpark. The Planning Commission and the City have approved the re-zoning of at least three other tracts, and these actions have been the subject of separate appeals. A previous appeal from a map amendment involving the first tract was affirmed by the Warren Circuit Court and by this Court.³ Recently, this Court affirmed an appeal from re-zonings of the second and third tracts.⁴ WCCMG has filed a motion for discretionary review of this opinion with the Kentucky Supreme Court.

Unlike in the previous appeals, the landowners, the Planning Commission and the City Commission have not filed a cross-appeal from the circuit court's finding that WCCMG and its named members have standing to appeal from the enactment of the map amendment. On the other hand, the issues raised by WCCMG are, for the most part, identical to the issues which it raised

³ City of Oakland, et al. v. Board of Commissioners of the City of Bowling Green, et al., Nos. 2003-CA-001153-MR & 2003-CA-001229-MR (Not-to-be Published Opinion rendered September 24, 2004) (*D.R. den.* September 14, 2005).

⁴ Warren County Citizens for Managed Growth, et al. v. Board of Commissioners of the City of Bowling Green, et al., Nos. 2004-CA-002251-MR, 2004-CA-002320-MR, 2005-CA-000287-MR & 2005-CA-000345-MR (To-Be-Published Opinion rendered May 26, 2006).

in the previous appeals. In the interest of brevity, we shall adopt the legal analysis set forth at pages 12 through 23 of this Court's May 26, 2006 opinion. To the extent that this appeal raises unique factual matters, we note that the circuit court engaged in a thorough analysis of the specific Comprehensive Plan policies which are at issue in this rezoning. We find the circuit court's reasoning to be sound, and we adopt the analysis beginning at the second paragraph of page 11 through the end of the first full paragraph on page 14 of the circuit court's October 11, 2005 opinion.

Accordingly, the judgment and order of the Warren Circuit Court is affirmed.

ALL CONCUR.

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