

Commonwealth Of Kentucky
Court of Appeals

NO. 2005-CA-001511-MR

KENNETH W. CLAWSON AND BOBBIE CLAWSON;
ROBERT ADAMS AND CONNIE ADAMS; MARTY BAKER
AND PATTI BAKER; LEE HESTER AND ALISON
HESTER; RON ISAACS AND JUDY ISAACS;
VERN MCGLONE AND TERESA MCGLONE; CHUCK
STRUNK AND MARY ANN STRUNK; KENNETH
NELSON AND LUCIE NELSON; AND DON HALEY

APPELLANTS

v. APPEAL FROM MADISON CIRCUIT COURT
HONORABLE JULIA HYLTON ADAMS, JUDGE
ACTION NO. 03-CI-01257

CONGLETON LANE, LLC AND THE
RICHMOND CITY COMMISSION

APPELLEES

OPINION
AFFIRMING

** ** * * *

BEFORE: COMBS, CHIEF JUDGE; GUIDUGLI AND JOHNSON, JUDGES.

COMBS, CHIEF JUDGE: Kenneth Clawson and his wife, Bobbie, along with several of their neighbors (all collectively referred to as "Clawson" for ready reference), appeal from a decision of the Madison Circuit Court affirming a zoning change as approved by the Richmond City Commission. Clawson claims that the findings of the circuit court were inadequate and thus arbitrary under

Kentucky Revised Statutes (KRS) 100.211 and 100.213 as to whether there was substantial evidence in the record and whether due process was afforded to the parties. After our review of the record and pertinent authorities, we affirm the trial court.

The property at issue is located on the west side of Interstate 75 approximately 100 feet northwest of the intersection of Old Town Branch Road and Pioneer Drive in Madison County. It consists of 207 acres. In May 2003, owners of the tract of land requested a zoning change from agricultural to single-family residential. In June 2004, the land was sold to Congleton Lane, LLC (Congleton), who was substituted as Defendant/Appellee. Congleton intends to develop the farmland into a subdivision with 464 lots (minimum 9500 square feet) for affordable housing. The Clawson appellants own the surrounding properties, which are zoned agricultural. Located on those portions of land that are already developed are residences valued at from \$200,000 to more than \$500,000.

The proposed zoning change was first discussed on May 13, 2003, at a Planning Commission public work session. The next discussion occurred at a Planning Commission public hearing that was advertised pursuant to statutory requirements by posting signs and sending notice by certified mail to the surrounding landowners. This session was a trial-type hearing

attended by counsel for both supporters and opponents of the zoning change.

On June 10, 2003, the proposed change went before the Richmond City Commission. The Planning Commission considered the matter again at two public work sessions on July 8, 2003, and on August 12, 2003. On August 27, 2003, the Planning Commission discussed the change at yet another public hearing. All of those meetings concluded with approval of the change. On October 28, 2003, the matter was discussed by the Richmond City Commission, and the Ordinance was read for the first time. The Ordinance was read for the second time and received final approval unanimously from the Richmond City Commission on November 11, 2003.

Clawson then appealed to the Madison Circuit Court, charging that the Commission's actions were arbitrary. After examining the evidence presented and its relationship to Richmond's comprehensive plan, the circuit court issued an order providing as follows: "The zone change agrees with parts of the Comprehensive Plan but may disagree with others." (Order Affirming Change of Zone at 2.) The court then carefully examined the evidence to determine whether the area had undergone changes that would justify deviating from the comprehensive plan. After reviewing testimony concerning growth and development in the county and a moratorium on multi-family

homes, the court concluded: "Therefore, it is clear that the City based the zone change on the evidence presented to them. No part of their decision was arbitrary in nature." Id. at 3.

On appeal, the parties raise the following issues: 1) whether all of the findings required by KRS 100.213(1)(b) were made; 2) if all the required findings were made, whether there were basic evidentiary findings of fact to support the conclusions required by the statutes; 3) whether the findings of fact were supported by substantial evidence in the record; and 4) whether the basic elements of due process were afforded to the parties.

These issues were addressed by the Supreme Court of Kentucky in the classic zoning case of American Beauty Homes Corp. v. Louisville and Jefferson County Planning and Zoning Comm'n., 379 S.W.2d 450 (Ky. 1964). Explaining that zoning decisions are administrative in nature, the Supreme Court emphasized that:

[t]here is an inherent right of appeal from orders of administrative agencies where constitutional rights are involved, and section (2) of the Constitution prohibits the exercise of arbitrary power.

The Court set forth three criteria for ferreting out arbitrariness: "(1) action in excess of granted powers, (2) lack of procedural due process, and (3) lack of substantial

evidentiary support...." Id. at 456. The Court summarized its reasoning as follows:

In the final analysis all of these issues may be reduced to the ultimate question of **whether the action** taken by the administrative agency **was arbitrary**. As a general rule the **yardstick of fairness** is sufficiently broad to measure the validity of administrative action.

Id. at 457. (Emphasis added.)

Utilizing that yardstick, we shall examine the statutes underlying the administrative process. The pertinent excerpt of KRS 100.211 sets forth the requirement that:

The planning commission shall then hold at least one (1) public hearing after notice. . . and make findings of fact and a recommendation of approval or disapproval of the proposed map amendment to the various legislative bodies or fiscal courts involved. The findings of fact and recommendation shall include a summary of the evidence.

KRS 100.213 sets requirements concerning zoning changes as they relate to the comprehensive plan. It provides:

Before any map amendment is granted, the planning commission or the legislative body or fiscal court must find that the map amendment is in agreement with the adopted comprehensive plan, or, in the absence of such a finding that . . . there have been major changes of an economic, physical, or social nature within the area involved which were not anticipated in the adopted comprehensive plan and which have substantially altered the basic character of such an area.

The primary concern of KRS 100.211 is due process. In Hilltop Basic Res. v. County of Boone, 180 S.W.3d 464, 469 (Ky. 2005), a recent zoning decision, the Supreme Court of Kentucky once again defined due process in the administrative context:

The fundamental requirement of procedural due process is simply that all affected parties be given "the opportunity to be heard at a meaningful time and in a meaningful manner." Mathews v. Eldridge, 424 U.S. 319, 333 (1976)...Procedural due process in the administrative or legislative setting has been widely understood to encompass "a hearing, the taking and weighing of evidence if such is offered, a finding of fact based upon a consideration of the evidence, the making of an order supported by substantial evidence, and, where the party's constitutional rights are involved, a judicial review of the administrative action."

Id., quoting Morris v. City of Catlettsburg, 437 S.W.2d 753, 755 (Ky. 1969). The eight public meetings held prior to the approval of the ordinance were properly noticed, considerably more hearings than were required to satisfy the statutory mandate of "at least one" public meeting.

Clawson next attacks the evidence as lacking the necessary specificity to satisfy procedural due process. He relies on Caller v. Ison, 508 S.W.2d 776, 777 (Ky. 1974), which held that:

...the requirements of the proceeding conducted, in order to meet constitutional due process must include a hearing, the

taking and weighing of offered evidence, a finding of fact based upon a consideration of the evidence, and conclusions supported by substantial evidence.

As the findings were nothing more than a restatement of the legal requirements, they were not specific enough to permit a meaningful review by the court.

(Citations omitted.) Caller, however, is highly distinguishable since it did not address **any evidence at all**. The circuit court in Caller found there were not even enough facts presented for an initial "meaningful review." Id.

At the oral argument of this case, counsel for Clawson vehemently argued that the Commission's findings were wholly inadequate. He was correct only in part. While the findings were certainly neither abundant nor numerous, they were not so sparse or "bare bones" in nature to compel us to set them aside as insufficient.

The disputed property had been recently annexed by Richmond and zoned "agricultural" as a transitional classification pending development. The evidence clearly established that the proposed map amendment conformed to Richmond's comprehensive plan.

In addition, the commissioners specifically found that the disputed area was no longer suitable for strictly agricultural use and that it was suitable for relatively dense single-family housing. The commissioners also noted that the

area had undergone economic, physical, or social changes that had altered the farmland. No specific finding was recited that the economic, physical, or social changes had **not** been anticipated in the adopted comprehensive plan. However, the omission of such a finding assumes less significance since the property had only recently been annexed. As we review the findings of the Commission, we conclude that the proposed zone classification was appropriate, that the findings were adequate, that the evidence supported the findings, and that the decision was not arbitrary.

In its review of the Commission's action, the trial court recited in its order that it reviewed transcripts from the public hearings and considered the evidence presented concerning new road construction and utilities -- as well as a moratorium on multi-family housing.

KRS 100.213 directs that evidence be examined by the planning commission, legislative body, or fiscal court. After considering the evidence, findings must be made:

that the map amendment is in agreement with the adopted comprehensive plan, or in the absence of such a finding that . . .there have been major changes of an economic, physical, or social nature within the area involved.

Evidence was presented showing that a new road was constructed giving access to the property in question. Ample evidence

indicated an increasing need for single-family housing in the rapidly growing areas of Madison County.

In 1997, Richmond instituted a moratorium on multi-family homes in order to encourage growth of single-family residences. The record shows extensive discussion of Madison County's need for sufficient housing. Testimony indicated that the property at issue is one of the few -- if not the only -- appropriate areas for construction of medium-income homes in the county. Madison County is experiencing extraordinary growth, adding approximately 100 people per month to its population base. An additional 800 to 1200 families are anticipated in the community in the wake of the federal order to destroy the nerve gas that is stored at the county's Bluegrass Army Depot.

The record also shows the Commission considered evidence offered by opponents of the change concerning traffic, water flow, and deed restrictions. Although the proposed zoning change generally complies with Richmond's comprehensive plan, the Madison Circuit Court found that it deviated in part because the surrounding developed properties consist of much larger lots than those involved in the plan for new housing construction. However, based on the totality of the evidence examined by the Commission, the court found that the area had experienced changes sufficiently consistent with the guidelines of KRS 100.213 to justify the zoning change.

Both the Commission and the Madison Circuit Court were presented with sufficient evidence to show the zoning change is in agreement in major part with the comprehensive plan in providing affordable housing for a growing community. Based on adequate but not ample evidence, findings recited that the growth has been more than sufficient to justify the proposed zoning change insofar as it deviates from the comprehensive plan. Thus, the change complies with KRS 100.211 and 100.213. Although more detailed and more specific findings might have avoided recourse by the appellants to this appeal, we cannot agree that they have succeeded in demonstrating a violation of due process.

We affirm the judgment of the Madison Circuit Court.

ALL CONCUR.

BRIEF AND ORAL ARGUMENT FOR
APPELLANTS:

David L. Bohannon
Richmond, Kentucky

BRIEF AND ORAL ARGUMENT FOR
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Roger M. Oliver
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