NO. COA02-1619

NORTH CAROLINA COURT OF APPEALS

Filed: 7 September 2004

VISUAL OUTDOOR ADVERTISING, INC.,
Petitioner,

v. Lee County
No. 02 CVS 228

CITY OF SANFORD
BOARD OF ADJUSTMENT,
Respondent.

Appeal by petitioner from judgment entered 30 August 2002 by Judge Wiley Bowen in Lee County Superior Court. Heard in the Court of Appeals 14 October 2003.

WALLER, STROUD, STEWART, & ARANEDA, LLP, by Betty Strother Waller, for petitioner.

City of Sanford, by Susan C. Patterson, for respondent.

TIMMONS-GOODSON, Judge.

Visual Outdoor Advertising, Inc. ("petitioner") appeals an order by the trial court affirming a decision of the City of Sanford Board of Adjustment ("Board") denying petitioner billboard construction permits. For the reasons stated herein, we affirm the trial court's decision.

In 2001, petitioner applied to the City of Sanford Zoning Enforcement Officer ("zoning officer") for permission to construct six billboards along Highway 421, also known as Horner Boulevard, in Sanford. The zoning officer denied petitioner's application

pursuant to City of Sanford zoning code § 42-317 ("the Code"), which prohibits advertising signs in all zoning districts, except those which "are located along federal aid primary highways or interstate highways for which sign compensation is regulated by state and federal law." Sanford Code of Ordinances ("S.C.O.") § 42-317(8) (adopted and effective 4 January 2000). The record reflects that federal regulations apply to Highway 421 because it is a federal-aid highway. The Federal-Aid Highways statute restricts billboards to the following uses:

> (1) directional and official signs and notices, which signs and notices shall include, but not be limited to, signs and notices pertaining to natural wonders, scenic and historical attractions, which are required or authorized by law, which shall conform to national standards hereby authorized to be promulgated by the Secretary hereunder, which standards shall contain provisions concerning lighting, size, number, and spacing of signs, and such other requirements as may be appropriate to implement this section,
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> (2) signs, displays, and devices advertising the sale or lease of property upon which they are located,
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> (3) signs, displays, and devices including those which may be changed at reasonable intervals by electronic process or by remote control, advertising activities conducted on the property on which they are located,
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> (4) signs lawfully in existence on October 22, 1965, determined by the State, subject to the approval of the Secretary, to be landmark signs, including signs on farm structures or natural surfaces, of historic or artistic significance the preservation of which would be consistent with the purposes of this section, and

> (5) signs, displays, and devices advertising the distribution by nonprofit organizations of free coffee to individuals traveling on the Interstate System or the primary system.

23 U.S.C. § 131(c) (2000).

Petitioner appealed the zoning officer's permit denial to the Board, which conducted a hearing on the matter. The Board voted to affirm the zoning officer's decision. Petitioner then appealed to the trial court, which affirmed the Board's decision. It is from this decision that petitioner now appeals.

The issues presented on appeal are whether the trial court erred by concluding (I) the Board committed no errors of law; (II) the Board relied on competent material and substantial evidence in support of its decision; and (III) the Board's decision was not arbitrary or capricious. We affirm the order of the trial court.

Petitioner first argues that the trial court erred by concluding that the Board's decision was not affected by errors of law. Specifically, petitioner asserts that the Board incorrectly interpreted the local zoning ordinance to prohibit advertising signs. We disagree.

"The proper appellate standard for reviewing a superior court order examining a final agency decision is to examine the order for errors of law." *Shackleford-Moten v. Lenoir Cty. DSS*, 155 N.C. App. 568, 572, 573 S.E.2d 767, 770 (2002), *disc. review denied*, 357 N.C. 252, 582 S.E.2d. 609 (2003). Where a petitioner alleges that

a board of adjustment decision involves an error of law, this Court is required to conduct a *de novo* review. *Whiteco Outdoor Adver. v. Johnston County Bd. of Adjust.*, 132 N.C. App. 465, 470, 513 S.E.2d 70, 74 (1999). *De novo* review requires the trial court to consider a question anew, as if not considered or decided by the local zoning board. *Shackleford-Moten*, 155 N.C. App. at 571, 573 S.E.2d at 770.

However, one function of a board of adjustment is to interpret local zoning ordinances, and those interpretations should be given deference. *Whiteco*, 132 N.C. App. at 470, 513 S.E.2d at 74 (1999). "'[This Court's] task on appeal is not to decide whether another interpretation of the ordinance might reasonably have been reached by the board,' but to decide if the board 'acted arbitrarily, oppressively, manifestly abused its authority, or committed an error of law' in interpreting the ordinance." *Id.* (quoting *Taylor Home v. City of Charlotte*, 116 N.C. App. 188, 193, 447 S.E.2d 438, 442, *disc. review denied*, 338 N.C. 524, 453 S.E.2d 170 (1994)). Thus, we review the trial court's decision with deference to the Board's interpretation of the Sanford zoning ordinance.

Upon *de novo* review of the record, we do not believe the Board's interpretation of S.C.O. § 42-317(8), which prohibits advertising signs, "except where permitted by federal regulations," to be an error of law, nor was it an arbitrary or oppressive act or a manifest abuse of authority. The Board interpreted the exception as referring to "signs advertising the next turnoff, advertising the next town, [and] directional signs." Defendant argues that the

language of the exception is clear and unambiguous and should be construed to mean that billboards are permitted in Sanford everywhere federal regulations allow. However, the rules of statutory interpretation require statutes "to be construed as a whole, and not by the wording of any particular section or part." *McLeod v. Commissioners*, 148 N.C. 77, 85, 61 S.E. 605, 607 (1908). Article III, Section 42-174 lists permissible business uses of signs in Sanford, but does not list advertising signs as permissible in *any* zone, including "Light Industrial," or "General Business." The Board's interpretation construes the Code as a whole by aligning the meaning of the exception in Section 42-317(8) with the clear prohibition of billboards in Section 42-174. We conclude that there was no error of law in the Board's interpretation of the Code.

Petitioner next argues that the trial court erred in finding that the Board relied on competent, material, and substantial evidence to support its decision. Petitioner further argues that the trial court erred by failing to find the Board's decision arbitrary or capricious. We disagree on both counts.

When a petitioner alleges that the decision of a board of adjustment is based on incompetent, immaterial or insubstantial evidence or that the decision is arbitrary or capricious, the superior court must use the "whole record test" as its standard of review. *Whiteco*, 132 N.C. App. at 468, 513 S.E.2d at 73. "Substantial evidence is 'evidence a reasonable mind might accept as adequate to support a conclusion.'" *Id.* (quoting *Hayes v.*

Fowler, 123 N.C. App. 400, 405, 473 S.E.2d 442, 445 (1996)). A decision may only be reversed as arbitrary or capricious where "petitioner establishes that the decision was whimsical, made patently in bad faith, indicates a lack of fair and careful consideration, or 'fail[s] to indicate any course of reasoning and the exercise of judgment.'" *Id.* at 468-69, 513 S.E.2d at 73 (quoting *Adams v. N.C. State Bd. of Reg. for Prof. Eng. and Land Surveyors*, 129 N.C. App. 292, 297, 501 S.E.2d 660, 663 (1998)).

We hold that the trial court was correct in using the whole record standard of review. We further hold that the trial court correctly determined that the Board relied on competent, material, and substantial evidence to support its decision, and that the decision was not arbitrary nor capricious. The Board made the following findings of fact: (1) Section 42-174 prohibits billboards and advertising signs in all zoning categories; (2) Section 42-317(8) prohibits advertising signs "except where permitted by federal regulations."

At the Board hearing, the former Community Development Director testified that he wrote the current version of Sanford's sign ordinance. He further testified that the exceptions listed in Section 42-317(8) only allow for directional signs. The vice-chair of the Sanford Planning Board also testified at the Board hearing. She testified that the planning board intended to limit or eliminate the use of billboards to enhance and beautify Sanford's thoroughfares. The assistant Community Development Director

testified that billboards have not been allowed in Sanford since 1975.

The foregoing evidence is adequate to support the Board's conclusion that the exception listed in Section 42-317(8) refers to signs advertising the next turnoff, signs advertising the next town, and directional signs. Petitioner offers evidence that supports a contrary conclusion, but we defer to the Board's interpretation of the zoning ordinance. Further, because the Board's decision was supported by substantial evidence in the record, the decision cannot be considered arbitrary or capricious.

Affirmed.

Judges WYNN and ELMORE concur.

Report per Rule 30(e).