

IN THE UTAH COURT OF APPEALS

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Adiyan Haran,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellant,)	
)	Case No. 20090988-CA
v.)	
)	F I L E D
Escalante City,)	(December 23, 2010)
)	
Defendant and Appellee.)	2010 UT App 372

Sixth District, Panguitch Department, 080600055
The Honorable Wallace A. Lee

Attorneys: Michael A. Zody, Salt Lake City, for Appellant
Barton H. Kunz II, Salt Lake City, for Appellee

Before Judges Davis, Orme, and Voros.

ORME, Judge:

We have determined that "[t]he facts and legal arguments are adequately presented in the briefs and record and the decisional process would not be significantly aided by oral argument." Utah R. App. P. 29(a)(3). Moreover, the issues presented are readily resolved under applicable law.

Despite the obvious inefficiency in the use of judicial resources, we consider a district court's review of a local land use authority's decision "as if we were reviewing the land use authority's decision directly," affording no deference to the district court's decision.¹ See Fox v. Park City, 2008 UT 85, ¶ 11, 200 P.3d 182. When reviewing a local land use decision, "courts shall . . . presume that a decision . . . made under the authority of [the Municipal Land Use, Development, and Management Act] is valid . . . and . . . determine only whether or not the decision . . . is arbitrary, capricious, or illegal." Utah Code

¹Notwithstanding this legal standard, our review of this matter was, as a practical matter, greatly simplified by the district court's thorough consideration and incisive and detailed explanation in upholding the determination made by Escalante City's Board of Adjustment.

Ann. § 10-9a-801(3)(a)(i)-(ii) (2007). Such decisions are not seen as arbitrary and capricious so long as they are supported by substantial evidence. See Bradley v. Payson City Corp., 2003 UT 16, ¶ 10, 70 P.3d 47. Substantial evidence is defined as "that quantum and quality of relevant evidence that is adequate to convince a reasonable mind to support a conclusion." Id. ¶ 15 (citation and internal quotation marks omitted).

Haran's argument is that the "nonconforming use of the land" was expanded between the time he purchased his adjacent property and the present time. The applicable ordinance provides that a nonconforming use can continue only in the manner it existed prior to the ordinance's enactment. Additionally, the provision states that if the nonconforming use is abandoned for a period of three years, it is no longer permitted.

The evidence regarding the historical presence of animals on the lot was in dispute. Nonetheless, after reviewing all of the testimony and evidence, the members of Escalante City's Board of Adjustment concluded that the lot had historically been used for purposes of animal husbandry. Additionally, the Board found that such use had not been abandoned for a period of three years.²

Alvey and Lyman³ both offered testimony indicating that the historic use of the lot included the keeping of cows, horses, and chickens in varying numbers over the years. Alvey testified that pigs had been raised commercially on the property, that at one time he had up to fifty head of black-and-white calves on the property, and that there had "always" been livestock on the property. Lyman testified that he had been keeping up to a dozen animals on the lot since the late 1980s and that he brings his cows there for about a month in the spring for purposes of branding and vaccinating. During the winter, Lyman also has kept cows on the lot that are calving, that are suffering from health problems, or for various other reasons. We conclude that this testimony and other evidence before the Board was sufficient to "convince a reasonable mind" that the property had been historically used to hold at least eighteen animals prior to the

²Consensus among the Board members was that, at most, any abandonment in the use of the land for animals was only for one-and-a-half years. The Board members were also in agreement that general use of the land for animal husbandry went back to the 1970s--well before enactment of the ordinance in question.

³While additional witnesses testified at the hearing, the testimony of Alvey and Lyman appeared to entail the most discrepancy vis-a-vis the testimony of Haran. Accordingly, we highlight the testimony of Alvey and Lyman.

enactment of Escalante City's zoning ordinance. Likewise, it was reasonable to conclude from the evidence that there was not a period of three years during which the use of the land for animal husbandry purposes had been abandoned. Accordingly, the Board's decision was supported by substantial evidence and was not arbitrary, capricious, or illegal.

Affirmed.

Gregory K. Orme, Judge

WE CONCUR:

James Z. Davis,
Presiding Judge

J. Frederic Voros Jr., Judge