IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
March 26, 2001 Session

CITIZENS FOR A BETTER JOHNSON CITY, ET AL. v. CITY OF JOHNSON CITY, TENNESSEE, ET AL.

Appeal from the Chancery Court for Washington County
No. 33389 Thomas J. Seeley, Jr., Judge

FILED JULY 10, 2001

No. E-2000-02174-COA-R3-CV

The plaintiffs filed a declaratory judgment action seeking to invalidate a zoning ordinance enacted by a 3-2 vote of the Board of Commissioners of Johnson City ("the City"). The trial court concluded that the action taken by the City was "fairly debatable" and dismissed the plaintiffs' complaint. The plaintiffs appeal, arguing that the trial court erred in finding that the City's action was fairly debatable. The plaintiffs contend that the City's action amounts to "spot zoning." They also challenge the trial court's award of discretionary costs to one of the defendants. The defendants seek an award of damages for a frivolous appeal. We affirm the actions of the trial court, but do not find the appeal to be frivolous.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed; Case Remanded

CHARLES D. SUSANO, JR., J., delivered the opinion of the court, in which HOUSTON M. GODDARD, P.J., and D. MICHAEL SWINEY, J., joined.

David H. Hornik, Nashville, Tennessee, for the appellants, Citizens for a Better Johnson City and C. Melissa Love.

James Haws Epps, III, and James D. Culp, Johnson City, Tennessee, for the appellee, City of Johnson City, Tennessee.

Richard W. Pectol, Johnson City, Tennessee, for the appellees, Griff Adams, Gayle Adams Winn, and Dabney Adams Mayfield.

J. Thomas Jones, Knoxville, Tennessee, for the appellee, Laird Development, LLC.

OPINION

I.

On March 7, 2000, the City passed, on third and final reading, Ordinance No. 3730 amending the City's zoning map so as to rezone a 4.5-acre[1] tract of undeveloped land located at the northwest corner of South Roan Street and University Parkway from R-4 (medium density residential) to PB (planned business). C. Melissa Love, who owns property at the northeast comer of the subject intersection, together with a not-for-profit corporation, Citizens for a Better Johnson City, filed a declaratory judgment action against the City, the owners of the subject property, and Laird Development, LLC ("Laird"), who holds an option to purchase the tract in question. The plaintiffs sought a declaration that the zoning "constitutes 'spot zoning' and as such is an illegal, arbitrary and unreasonable exercise of the zoning authority of the City." Following a bench trial, the court below concluded that the challenged action was "fairly debatable" and, consequently, dismissed the plaintiffs' complaint and awarded Laird discretionary costs of $2,309.47. This appeal followed.

II.

The tract of land at issue in this case is located in the northwest quadrant of the intersection of South Roan Street and University Parkway in Johnson City. The subject intersection is approximately two-tenths of a mile west of I-181, a part of the national interstate highway system. I-181 runs generally north and south as does South Roan Street. University Parkway runs east and west, intersecting I-181 and South Roan Street at right angles. University Parkway is a multi-lane road in each direction, divided by a grassy median. South Roan Street at its intersection with University Parkway is also a multi-lane road in each direction. Traffic at the subject intersection is controlled by a traffic light. I-181 to the east of the intersection has a partial cloverleaf entrance and exit ramp onto University Parkway.

The southwest quadrant of the subject intersection, which is directly across University Parkway from the subject property, is a large commercial development consisting of a motel, a fast food restaurant, a convenience store/gas station, a liquor store, a grocery store and other commercial entities. The southeast quadrant of the intersection, which is located diagonally from the subject property, also consists of commercial development, including two fast food restaurants, another liquor store, another grocery store and other commercial entities. The subject property is located approximately eight-tenths of a mile south of downtown Johnson City. Traveling north on South Roan Street away from the subject property toward downtown Johnson City, one encounters, within two-tenths of a mile, commercial development on both sides of South Roan Street.

Laird, the developer who holds the option on the subject property, proposes to build a "neighborhood" Walgreens store together with a separate building for related retail shops.

[1] At some places in the record, the area rezoned is reflected as 4.5 acres and at other places it is stated to be 4.8 acres. This difference is not relevant in our decision.

III.

Each of the five members of the City's Board of Commissioners testified at trial. Mayor Vance Cheek, Jr., testified that he voted to rezone the property because he believed that it was a good development for the south side of Johnson City, that the architectural style of the development would uphold the characteristics of the neighborhood, and that the Walgreens and related development would serve the neighborhood. Commissioner Elizabeth Duffy Jones testified that she voted to rezone the property because she availed herself of all the information that was brought to her and decided that the rezoning would possibly reduce urban sprawl and would fit in well with the neighborhood. Commissioner Dan Mahoney testified that he voted to rezone the property after considering the issue of whether this would be spot zoning. He concluded that it was not, due to the commercial activity on the other two corners. He also believed that the rezoning was in the best interest of the overall community, that it would boost economic development on the south side of Johnson City, and that Laird had taken safeguards regarding the development.

The Commissioners who voted against the proposed rezoning – Ricky Mohon and Vice Mayor Peter Paduch – expressed concerns about increased traffic. They agreed with the Planning Commission's decision, which was adverse to the rezoning. That decision was based upon its staff's finding that the development is inconsistent with the Land Use Plan of the City.

IV.

The modern seminal case in this area of zoning law is ***Fallin v. Knox County Board of Commissioners***, 656 S.W.2d 338 (Tenn. 1983). In ***Fallin***, the trial court had invalidated a zoning action by the legislative body of Knox County. That body had rezoned a 10.6 acre tract of land from Agricultural to Residential B, thereby permitting the landowner to build 275 apartment units. The trial court had relied upon the case of ***Grant v. McCullough***, 196 Tenn. 671, 270 S.W.2d 317 (1954), a case cited by the plaintiffs in the instant action, and held that the "amendatory resolution in question amounted to unconstitutional 'spot zoning' and was, therefore, invalid." ***Fallin***, 656 S.W.2d at 340. On appeal, the Court of Appeals reversed the trial court. The Supreme Court subsequently upheld the judgment of the Court of Appeals.

The Supreme Court in ***Fallin*** opined as follows:

> Our county legislative bodies are vested with broad powers to enact and to amend zoning regulations governing the use of land. When a municipal governing body acts under its delegated police powers either to adopt or amend a zoning ordinance, it acts in a legislative capacity and the scope of judicial review of such action is quite restricted.
>
> Legislative classification in a zoning law, ordinance or resolution is valid if any possible reason can be conceived to justify it.

> The restricted role of the courts in reviewing the validity of a zoning ordinance or regulation has been stated as follows: Zoning is a legislative matter, and as a general proposition, the exercise of the zoning power should not be subjected to judicial interference unless clearly necessary. In enacting or amending zoning legislation, the local authorities are vested with broad discretion and, in cases where the validity of a zoning ordinance is fairly debatable, the court cannot substitute its judgment for that of the legislative authority. If there is a rational or justifiable basis for the enactment and it does not violate any state statute or positive constitutional guaranty, the wisdom of the zoning regulation is a matter exclusively for legislative determination.
>
> > In accordance with these principles, it has been stated that the courts should not interfere with the exercise of the zoning power and hold a zoning enactment invalid, unless the enactment, in whole or in relation to any particular property, is shown to be clearly arbitrary, capricious, or unreasonable, having no substantial relation to the public health, safety, or welfare, or is plainly contrary to the zoning laws.

Id. at 342-43 (citations and internal quotation marks omitted). In reversing the action of the trial court, the Supreme Court stated that it could not conclude that the legislative body's action was "without any rational basis." ***Id***. at 343. It went on to recite that "the issue is fairly debatable and, therefore,...we must permit it to stand as valid legislation." ***Id***. at 343-44.

V.

At the conclusion of the proof in the instant case, the trial court discussed the evidence presented at this two-day trial. After doing so, the court concluded that the plaintiffs had not made out their case:

> By virtue of the fact that this rezoning was certainly hotly controversial, it was apparent to me that the question of the validity of this rezoning and whether or not it would have any benefits was certainly fairly debatable. And if it is fairly debatable, this court is not to step in. There are certainly benefits to which there's been much testimony, and as ***Fallin*** said, if there's any possible reason it can be conceived of to justify an ordinance as being in the public's interest, then this court has to uphold it. There clearly has been no showing on the part of the plaintiffs from which I could find that the Commission's action was clearly arbitrary or capricious. Therefore, the plaintiffs' Complaint is dismissed. The Court declares that the City's action in rezoning this property from R-4 to PB was valid.

Each side in this well-tried, hotly-contested litigation advanced reasons for its respective position. The defendants pointed to the fact that there is extensive commercial development in the southwest quadrant (directly across from the proposed development) and the southeast quadrant (diagonally across from the proposed development) of the intersection of South Roan Street and University Parkway. The aerial photographs in the record bear this out. The plaintiffs acknowledge this, but point out that access to these commercial strip areas is limited to ingress and egress by way of South Roan Street. Again, with reference to the aerial and other photographs, it is clear that there is no access from these commercial areas by way of University Parkway.

Each side presented experts. The experts on the plaintiffs' side opined that the proposed development constitutes spot zoning. The testimony on the defendants' side was just as adamant that it did not.

The legislative body of the City of Johnson City decided, by a 3-2 vote, that the subject property should be zoned PB – a zone that accommodates Laird's proposed development. The question for us is whether the "legislative classification for zoning purposes is fairly debatable or whether it is 'spot zoning.'" *See* ***Fallin***, 656 S.W.2d at 343. In making this determination, we must look to see "if any possible reason can be conceived to justify it." ***State ex rel. SCA Chemical Waste Servs., Inc. v. Konigsberg,*** 636 S.W.2d 430, 437 (Tenn. 1982). If so, then there is a "rational basis" for the legislative action, *see* ***Fallin***, 656 S.W.2d at 343, it is "fairly debatable," ***id.*** at 344, and the plaintiffs' complaint must be dismissed.

We find that a "possible reason can be conceived to justify" the legislative classification of this property as PB (planned business). The massive commercial developments on both sides of the south side of the subject intersection – even though access to those areas is limited to South Roan Street – serve as a legitimate reason for the classification. It is clear from the record that commercial development long ago descended upon this particular intersection. Given the facts of this case, the commercial nature of this intersection could, and apparently did, serve as a rational basis for this legislative enactment. In addition, there were other reasons advanced by the witnesses who testified favorably to the position of the defendants.

Courts are not "super" legislatures. They do not decide whether a challenged legislative action is wise or unwise. It is not the role of judges to set public policy for local governments, nor do we decide if a municipality has adopted the "best," in our judgment, of two possible courses of action. That is not our role. The concept of separation of powers precludes such an activist role on our part. As the ***Fallin*** case points out, ours is a "quite restricted" role. 656 S.W.2d at 342. When we exercise that limited role in this case, we find a fairly debatable issue and, hence, no arbitrary or capricious action. Consequently, we find no error in the trial court's action.

The plaintiffs' reliance on ***Grant v. McCullough***, 196 Tenn. 671, 270 S.W.2d 317 (1954), is misplaced. In that case, a single residential lot surrounded by other residential lots was proposed for commercial development. Hence, ***Grant*** dealt with a clear case of spot zoning. Given the nature

of the pre-existing commercial development at the subject intersection, the instant controversy does not present such a case.

The evidence does not preponderate against the trial court's finding that the legislative enactment before us is fairly debatable and, hence, valid.

VI.

The plaintiffs contend that the trial court abused its discretion in awarding Laird discretionary costs of $2,309.47. Our review of the record persuades us there is no abuse of discretion in the trial court's award.

VII.

While we find no merit in the issues raised by the plaintiffs, we do not consider this appeal to be frivolous. *See* ***Cole v. Dych***, 535 S.W.2d 315, 323 (Tenn. 1976) (Henry, J.) (on petition to rehear). Consequently, we decline to award damages for a frivolous appeal.

VIII.

The judgment of the trial court is affirmed. Costs on appeal are taxed against the appellants. This case is remanded to the trial court for collection of costs assessed below, pursuant to applicable law.

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CHARLES D. SUSANO, JR., JUDGE