

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
February 19, 2014 Session

WESTERN FARM PRODUCTS, LLC v. SUMNER COUNTY

**Appeal from the Chancery Court for Sumner County
No. 2011CV420 Tom E. Gray, Chancellor**

No. M2013-01578-COA-R3-CV - Filed May 5, 2014

Land owner applied to the Sumner County Board of Zoning Appeals for a conditional use permit to operate a quarry with accessory asphalt and concrete plants and rock crushing facilities. After a public hearing, the Board denied the application. The land owner filed a petition for a writ of certiorari seeking review of the Board's decision; the trial court affirmed the Board's denial. Finding no error, we affirm the decision of the trial court.

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

RICHARD H. DINKINS, J., delivered the opinion of the court, in which PATRICIA J. COTTRELL, P. J., M. S., and FRANK G. CLEMENT, J., joined.

Thomas V. White and George A. Dean, Nashville, Tennessee, for the appellant, Western Farm Products, LLC, Inc.

Leah May Dennen, Gallatin, Tennessee; A. Scott Derrick and Jack W. Robinson, Jr., Nashville, Tennessee, for the appellee, Sumner County, Tennessee.

David M. Amonette, Gallatin, Tennessee; Louis W. Oliver, Hendersonville, Tennessee, for intervening respondents, Thomas Neal, Jr., Lester Lonzo Luce, Carol Dee Luce, John J. Simons, and Allyson Simons.

Robert E. Cooper, Jr., Attorney General and Reporter; William E. Young, Solicitor General; Elizabeth P. McCarter, Senior Counsel, Nashville, Tennessee, as the Amicus Curiae.

OPINION

I. HISTORY

Western Farm Products Co., LLC (“Western”) is the owner of 350 acres of land in the Castalian Springs area of Sumner County. In the Sumner County Zoning Resolution the property is zoned R1A, which is general residential; in Sumner County’s 2035 Comprehensive Plan¹, a portion of the property is designated as “Rural” and the remainder is designated as “Historical Village Center.” On May 18, 2011 Western applied to the Sumner County Board of Zoning Appeals (“BZA”) for a conditional use permit, seeking to operate a quarry with accessory asphalt and concrete plants and rock crushing facilities. The BZA held a public hearing on July 14, 2011, and at the conclusion voted to deny the application.²

Western filed a petition for writ of certiorari in the Sumner County Chancery Court on September 2, alleging that the decision to deny its application was “illegal, arbitrary, and/or capricious.” On October 13, neighboring property owners, Thomas Neal, Jr., Lester Lonzo Luce, Carol Dee Luce, John J. Simons, and Allyson Simons (the “Intervenors”) filed a Motion to Intervene and an Intervening Petition in support of the denial; the motion was granted. The State of Tennessee’s motion to file an amicus brief in support of the BZA was granted on October 25, 2012. By order entered June 11, 2013, the court held that “the Board did not act illegally, arbitrarily, or fraudulently, and did not exceed its jurisdiction or act without material evidence” in denying Western’s application; the court dismissed the petition. Western appeals, articulating the following issue:

Whether the Sumner County Board of Zoning Appeals acted arbitrarily and capriciously in denying the application for a use permitted on appeal for a quarry.

II. STANDARD OF REVIEW

The vehicle for reviewing decisions of local boards of zoning appeals is through common law writ of certiorari. *Hoover, Inc. v. Metro. Bd. of Zoning Appeals of Davidson*

¹ The Sumner County Zoning Resolution and the 2035 Comprehensive Plan are more fully discussed in our analysis.

² The minutes of the meeting, which included the BZA’s vote, were approved by the BZA on August 11, 2011.

Cnty., 955 S.W.2d 52, 54 (Tenn. Ct. App. 1997). Under the limited standard of review in such proceedings, courts review the lower tribunal’s decision only to determine whether that decision maker exceeded its jurisdiction, followed an unlawful procedure, acted illegally, arbitrarily, or fraudulently, or acted without material evidence to support its decision. *Petition of Gant*, 937 S.W.2d 842, 844–45 (Tenn. 1996) (quoting *McCallen v. City of Memphis*, 786 S.W.2d 633, 638 (Tenn. 1990)); *Hoover, Inc.*, 955 S.W.2d at 54.

Under the certiorari standard, courts may not (1) inquire into the intrinsic correctness of the lower tribunal’s decision, *Arnold v. Tenn. Bd. of Paroles*, 956 S.W.2d 478, 480 (Tenn. 1997); *Powell v. Parole Eligibility Review Bd.*, 879 S.W.2d 871, 873 (Tenn. Ct. App. 1994); (2) re-weigh the evidence, *Watts v. Civil Serv. Bd. for Columbia*, 606 S.W.2d 274, 277 (Tenn. 1980); *Hoover, Inc. v. Metro. Bd. of Zoning Appeals*, 924 S.W.2d 900, 904 (Tenn. Ct. App. 1996); or (3) substitute their judgment for that of the lower tribunal. *421 Corp. v. Metro. Gov’t of Nashville*, 36 S.W.3d 469, 474 (Tenn. Ct. App. 2000). This Court’s review of the evidence on appeal is no broader or more comprehensive than the trial court’s review. *Watts*, 606 S.W.2d at 277; *Jacks v. City of Millington Bd. of Zoning Appeals*, 298 S.W.3d 163, 167 (Tenn. Ct. App. 2009).

III. ANALYSIS

The Zoning Resolution for Sumner County was adopted by the Sumner County Quarterly Court on July 9, 1973 pursuant to the authority granted by Tenn. Code Ann. §§ 13-401–416.³ The Zoning Resolution establishes eighteen districts in the county and includes provisions within each district regarding the uses of land, structure of buildings, the size of open spaces, the density of population, and other matters. Western’s property is in the R1A district; the intent of the district, stated in the Zoning Resolution, is “[t]o provide a low-density residential environment for all types of housing units having good access to public water, schools and other community facilities, but well separated from activities incompatible with residential.” Pertinent to the issues in this appeal, the Zoning Resolution establishes the following regulations with respect to property in the R1A district:

7.1 Uses Permitted

7.1 (1) Single-family and two-family dwellings; mobile homes subject to additional regulations in Section 7.7.

³ Tenn. Code Ann. §§ 13-401–415 is now codified at Tenn. Code Ann. §§ 13-7-101–115; Tenn. Code Ann. § 13-416 is now codified at Tenn. Code Ann. § 13-7-401.

7.1 (2) Other uses permitted in the Residential A District.^[4]

7.2 Uses Permitted on Appeal. Cluster residential developments, churches and other places of worship; schools offering general education courses; railroad and utility rights-of-way; municipal, county, state, or federal uses except storage facilities; cemeteries; privately owned and commercially operated recreation areas and facilities and similar uses subject to the requirements in Article IV, Section 13; philanthropic institutions and clubs, except clubs the chief activities of which are customarily carried on as business; and any other similar uses or structures; subject to such conditions as the Board of Zoning Appeals may require in order to preserve and protect the character of the district in which the proposed use is located.

7.3 Uses Prohibited. Uses not specifically permitted or permitted on appeal.

⁴ The following are uses permitted in a Residential A District:

1.1 Uses Permitted.

1.1(1) Single-family and two-family dwellings, excluding mobile homes and mobile home parks.

1.1(2) The taking of boarders or the renting or leasing of rooms by the family resident on the premise; provided, that not over fifty (50) percent of the total floor area is used for such purpose.

1.1(3) Customary home occupations conducted within the principal structure, but only by a person resident of the premise; provided, that not more than one person, not resident of the premise, is employed.

1.1(4) One un-illuminated temporary on-site sign not exceeding one hundred (100) square feet in area, with no dimension exceeding twelve (12) feet, at each major approach to a subdivision advertising the sale of houses or lots. The display of such sign shall be limited to a period of one year; any remaining nonconforming sign may be removed by the county at the expense of the owner.

1.1(5) One un-illuminated temporary on-site not exceeding sixteen (16) square feet in area, advertising the sale of farm or garden products for the duration of the harvest season.

1.1(6) Farming uses.

1.1(7) Accessory uses or structures customarily incidental to the above permitted uses.

On July 27, 2010, pursuant to authority granted in Tenn. Code Ann. § 13-3-301(a), the Sumner County Regional Planning Commission developed and adopted a plan known as the “2035 Comprehensive Plan” to guide future development in the county; the 2035 Plan was adopted by the Sumner County Commission in September 2010.⁵ In the 2035 Plan, a portion of Western’s property is designated “Rural,” which is defined as “areas having significant value for continued agricultural purposes and a rural way of life in the future.”⁶ The development pattern for property designated rural includes “predominantly rural and agricultural uses” and an “emphasis on maintaining a rural atmosphere and surroundings”; the vision and goals for the designation include “protection of natural resources” and “historic conservation and enhancement.” The remainder of Western’s land is designated “Historical Village Center,” an area “of important historical significance to Sumner County and a legacy as a cultural center.”⁷ The development pattern for property so designated includes an emphasis on the preservation of historical assets and a requirement that new development “fit in with the existing community character.”

⁵ Chapter 3 of Title 13 of the Tennessee Code is entitled “Regional Planning” and is composed of five parts, entitled Regional Planning Commission (Part 1), Community Planning Commission (Part 2), Regional Plan (Part 3), Regional Planning Regulations (Part 4), and Movement of Single Family Residences (Part 5). Tenn. Code Ann. § 13-3-301(a) authorizes the regional planning commission, established at § 13-3-101, to “make and adopt a general regional plan for the physical development of the territory of the region.” The plan is then presented to the chief legislative body of each municipality and upon approval has the “same force and effect as provided by law for municipal planning commissions and municipal plans.” Tenn. Code Ann. § 13-3-301(a). Similarly, the plan is presented to the chief legislative body of each county in the region; once the plan has been approved by all legislative bodies, “any land use decisions thereafter made by the legislative body, planning commission or board of zoning appeals when the board of zoning appeals is exercising its powers on matters other than variances, must be consistent with the general regional plan.” Tenn. Code Ann. § 13-3-304(b).

⁶ The 2035 Plan employs the term “community character areas” for the different land use types and development patterns. The Plan states:

The term “character” represents the look or feel of a place, that which sets it apart from other areas. Character areas have their own unique setting, development pattern and visual qualities. . . .

The character areas presented in the 2035 Comprehensive Plan are not meant to be synonymous with the Sumner County Zoning Resolution, nor should they be thought to replace the rules and requirements set forth in the currently adopted county regulations. The character areas should be a framework for future planning and zoning decisions.

⁷ The Historical Village Center includes the following historical sites: Wynnewood, a national historic landmark; Hawthorne Hill, the birthplace of former Tennessee Governor William B. Bate; Cragfont, the home of Memphis Founder and Revolutionary War veteran James Winchester; and the Cheskiki Native Indian mounds, Mississippian Period archeological site.

Western's application was considered by the BZA on July 14, 2011. At the close of the public hearing the BZA began its deliberations, during which member Bruce Rainey stated:

- - even though there's a lot of issues involved here, I think we have two primary points to deliberate. The first is what Mr. White said. Is this request in keeping with the zoning resolution that we - - that gives us any jurisdiction at all, and is it in keeping with the 2035 plan. . . .

I think our deliberation first needs to be: Is this request in keeping with a use that we can grant on appeal in a R1A zoning district.

In looking at it, Mr. Chairman, if I could. Mr. White stated in the request - - and I don't have the words right in front of me, but they are requesting based on the extraction of rock, using that part of the conditional uses, stretching it to not the R1A zone but the RA district, that a use permitted on appeal is a farming use. Now, whether that stretch - - that's the stretch. There's no other item in the R1A district or the RA district that will permit that stretch.

Now, the argument on the agricultural zone, granted, the land use plan states that it's an agricultural use. The land use plan is subject to change. Anybody can change it. It's not a zoning document, but a wish, if you will. Now, whereas our zoning resolution is the document that we have to look at.

Now - - and I spent yesterday, about eight hours, discovering what both sides have given us tonight on my own, trying to educate myself. I thought I knew the resolution pretty well, but I'd like to reread it and I didn't know it as well as I thought I did. But I did find that while the extraction of rock could be - - go to a farming use, processing of that mineral - - it's in our intermediate manufacturing - - well, actually extensive manufacturing classification, use classification, that says non-metallic mineral processing. That tells me that processing up rock is an extensive use. It says very clearly asphaltic cement plants are an extensive use, cement and/or concrete plants are an extensive use. They're telling me that that is an industrial use.

Our R1A district very clearly says the intent of the district is - - and I'll read it so that everybody knows that I heard it, that - - to provide a low density residential environment for all types of housing units having good access to public water, schools, and other community facilities, but well separated from activities incompatible with residential.

Now, ever since I came on this board, and I can't tell you how long ago that was, we have been trying - - we've tried to be very consistent in our

actions, making sure that we followed the zoning resolution. And in some cases we have determined that based on the request, it was a rezoning issue, not a use permitted on appeal. And I think that's the item we have to think about tonight. And I'm - - I've thought about it, and I'm open for us to - - you know, let's discuss it, but whenever you're ready, I'm ready to make a motion.

Mr. Rainey then moved to deny the request; his motion was seconded and passed unanimously.

As noted above, in reviewing the BZA's decision we do not inquire into the intrinsic correctness of the decision or re-weigh the evidence; rather we determine whether the decision is supported by evidence in the record. The decision to deny Western's application was supported by material evidence, was within the BZA's authority, and is in accord with the Zoning Resolution and 2035 Plan.

With specific reference to the Zoning Resolution, Bill Lockwood, a registered landscape architect, spoke at the hearing; Mr. Lockwood stated that a rock quarry, asphalt plant, cement plant, and rock crushing facility were not uses permitted or uses permitted on appeal in the R1A district and that the proposed uses were not compatible with a residential district. Mr. Lockwood also read a letter from Rachel Ivie, State Planner, and Art Brown, Regional Director of the Tennessee Department of Economic and Community Development.⁸ In the letter the authors discussed the BZA's powers, specifically its power to "approve special exceptions request which are also known as uses permitted on appeal or conditional uses;" they stated that "[a]ctivities permitted as uses permitted on appeal must be explicitly stated in the text of the Zoning Resolution" and that "a rock quarry can only be permitted to locate on the site if the parcel is located in a zoning district that permits rock quarries or similar uses." After discussing the uses permitted by right and permitted on appeal in a R1A district, the letter concludes:

In summary, the Sumner County BZA does not have the authority to approve the location of a rock quarry in a residential R1A zoning district given that it [is] not a use permitted on appeal. Since the property does not have the correct

⁸ The Sumner County Department of Construction and Development requested that the Local Planning Assistance Office of the Tennessee Department of Economic and Community Development provide its opinion on "whether the Sumner County Board of Zoning Appeals (BZA) can make a ruling on a request to locate a rock quarry in the county." The Department responded by sending a letter to the BZA.

zoning to allow a rock quarry, only the county legislative body has the authority to rezone the property or amend the Zoning Resolution to allow development of a rock quarry.

David Amonette, counsel for the Intervenors, echoed Mr. Lockwood's presentation.

Mr. Lockwood also made comments relative to the 2035 Plan; he stated that the quarry would not be consistent with the uses permitted in an area designated as rural. Steve Graves, County Commissioner of the 3rd District, stated that the quarry would negatively affect the environment and property values for those living nearby. Pertinent to the land designated Historical Village Center, numerous people commented regarding the significance of the historical sites located in the Historical Village Center, the importance of protecting the sites, and the irreparable damage that a rock quarry would cause. Specifically, Martha Atkins, Director of the Tennessee Historical Commission, stated that the "historical structures are not designed or built using materials meant to withstand rock quarry blasting" and she noted that the State of Tennessee has invested a substantial amount of money in the Castalian Springs area — the Historic Village Center — for the preservation of the historic sites. Anthony Holt, County Executive, stated that the area is the "crown jewel" of the county and that it would be devastating to the county to permit a rock quarry to be placed there.⁹

The record fully supports the conclusion that a quarry is not a use permitted by right or on appeal in a R1A district under the Zoning Resolution and is not a "predominately rural or agricultural" use as permitted in a Rural area or within the "existing community character" of the Historic Village Center under the 2035 Plan.

Western contends that quarrying is permitted on its property because the land is designated rural, which is defined in the 2035 Plan as "areas having significant value for continued agricultural purposes and a rural way of life in the future", and because "the only indication anywhere in the Sumner County land use documents as to where mining and quarrying activities would be permitted is in the zoning ordinance indicating that they are

⁹ Other persons making presentations regarding the potential effects of operating a quarry in the Historical Village Center: Steve Graves, County Commissioner for the 3rd District; Paul Goode, County Commissioner for the 10th District; Baker Ring, County Commissioner for the 5th District; Mike McDonald, State Representative; Patrick McIntyre, Director of the Tennessee Historic Commission; Bill Puryear, Bledsoe Lick Association representative; Dr. Kevin Smith, Middle Tennessee State University archeological professor; and Rich Hendrix, Site Director of Wynnewood.

agricultural uses.”¹⁰ To hold otherwise, Western argues, would be to totally exclude mining and quarrying from the county. We disagree.

It is not necessary to refer to the Use Classification System in the Zoning Resolution to resolve issues related to Western’s application. Tenn. Code Ann. § 13-3-304(b) requires the BZA’s decision to be consistent with the 2035 Plan. We have earlier held that the evidence supports the BZA’s finding that the proposed use of the property is not a “predominantly rural or agricultural use” and would not fit within “existing community character” of the Historic Village Center as those terms are used in the 2035 Plan. Western’s argument that, unless the classifications in the Zoning Resolution is used in determining the uses permitted in the property designated rural, the effect of the decision will be is to totally exclude mining and quarrying from the county, is not well taken in this certiorari proceeding, where we perform our limited review of the BZA’s action. Whether quarrying per se is a permitted use under the 2035 Plan is not a question we are called to resolve.

CONCLUSION

For the foregoing reasons, the judgment of the trial court is affirmed.

RICHARD H. DINKINS, JUDGE

¹⁰ Western’s reference is to the “Use Classification System” found at Article VII of the Zoning Resolution. In its Brief, the BZA states that, in a related declaratory judgment action, Western has taken the position that the Use Classification System was never adopted by Sumner County and is not a part of either the Zoning Resolution or the 2035 Plan. This issue is not presented in this appeal and in our analysis we presume that the system is an approved part of the Zoning Resolution.