IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
April 16, 2009 Session

ROB ROTEN AND JERROLD SWAFFORD v. THE CITY OF SPRING HILL, TENNESSEE, ACTING BY AND THROUGH ITS PLANNING COMMISSION, AND IS INVESTMENT, INC.

Appeal from the Chancery Court for Maury County
No. 08-092 Robert L. Jones, Chancellor

No. M2008-02087-COA-R3-CV - Filed August 26, 2009

Residents of the City of Spring Hill brought common law writ of certiorari challenging the City Planning Commission's authority to approve site development plans for proposed construction within the City. The Chancery Court upheld the action of the Planning Commission. Finding no error, we affirm the judgment.

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 ANDY D. BENNETT, J. joined.

George A. Dean, Nashville, Tennessee, for the appellants, Rob Roten and Jerrold Swafford.

Heather C. Stewart and Douglas Berry, Nashville, Tennessee, for the appellees, City of Spring Hill and IS Investment, Inc.

OPINION

I. Background

This action stems from the City of Spring Hill Planning Commission's approval of a site development plan for the proposed construction of several apartment buildings ("the project") as part of a greater mixed-use development. The property on which the project is planned is zoned B-4 (Central Business District). The development of apartment buildings is permitted as of right within a B-4 district, but a site development plan must be submitted to and approved by the Planning Commission in accordance with the procedures and standards set forth in Article VI, § 5.8 of Spring Hill's Zoning Ordinance ("SHZO") before the building inspector will issue a permit allowing construction to begin.

Between December 2007 and March 2008, the Planning Commission held three public hearings to review the project's site plans and hear public comments. Petitioners, residents of Spring Hill who reside in the "immediate vicinity" of the project, participated in the public hearings and spoke against approval of the project's site development plan. Following the Planning Commission's approval of the project's "sketch plan" in December 2007, Petitioners filed a Writ of Certiorari on February 8, 2008, in the Chancery Court for Maury County asking the court to invalidate the action of the Planning Commission because, according to Petitioners, the Planning Commission lacks the authority to approve site development plans. Petitioners amended their petition on March 3, following the Planning Commission's approval of the "preliminary site development plan" on February 11. The Planning Commission approved the project's final site plan on March 10, and Petitioners subsequently filed a second amended petition on May 9.

The trial court upheld the action of the Planning Commission finding "the City has the authority under the Municipal Zoning Enabling Statutes to delegate to the Planning Commission the power to ensure compliance with its zoning ordinance through a site plan approval process" and, further, "the Planning Commission has the authority, express and implied, to approve site plans for projects such as the one at issue, and the Planning Commission is the appropriate panel to decide such issues." Petitioners appeal.

II. Standard of Review

Judicial review of an action by an administrative body, such as the Spring Hill Planning Commission, is by way of the common law writ of certiorari. Tenn. Code Ann. § 27-8-101; *see also Demonbreun v. Metropolitan Bd. of Zoning Appeals*, 206 S.W.3d 42, 46 (Tenn. Ct. App. 2005); *McCallen v. City of Memphis*, 786 S.W.2d 633, 639 (Tenn.1990). Under the common law writ of certiorari, review is limited to whether the administrative body exceeded its jurisdiction or acted illegally. Tenn. Code Ann. § 27-8-101; *Demonbreun*, 206 S.W.3d at 46; *Massey v. Shelby County Retirement Bd.*, 813 S.W.2d 462, 464 (Tenn. Ct. App. 1991). Action that can be characterized as arbitrary or capricious or that is unsupported by material evidence also warrants reversal or modification. *Demonbreun*, 206 S.W.3d at 46; *Massey v. Shelby County Retirement Bd.*, 813 S.W.2d at 464; *McCallen*, 786 S.W.2d at 642. Our scope of review is no broader than that of the trial court. *Demonbreun*, 206 S.W.3d at 46.

III. Discussion

Standing

The Respondents,[1] the City and project developer, ask this Court to dismiss the Petitioners' writ of certiorari for lack standing to bring this action. The Petitioners assert that the issue of standing was waived "because it was not raised at any point below," but that, in any event, they have standing to challenge the Planning Commission's authority to approve site development plans

[1] Parties will be referred to according to their designation in the trial court.

because they live in the immediate vicinity of the planned construction. While the trial court did not address the issue of standing in its judgment, the developer's counsel indicated during oral argument before this Court that they had raised the issue during the trial court's hearing. In the trial court, there were no pleadings submitted by the City or the developer and there is no transcript of the trial court's hearing. Since both parties briefed the issue on appeal, we will review the issue of whether Petitioners have standing to pursue the present action.

The doctrine of standing is employed by courts to determine whether a particular litigant has a personal stake in the outcome of the controversy to warrant the exercise of the court's power on its behalf. *See American Civil Liberties Union of Tenn. v. Darnell*, 195 S.W.3d 612, 620 (Tenn. 2006) (citing *Warth v. Seldin*, 422 U.S. 490, 498, 95 S.Ct. 2197, 45 L.Ed.2d 343 (1975)); *Metro. Air Research Testing Auth., Inc. v. The Metro. Gov't of Nashville and Davidson Cty*, 842 S.W.2d 611, 615 (Tenn. Ct. App. 1992). The doctrine, "grounded upon 'concern about the proper-and properly limited-role of the courts in a democratic society,'" precludes courts from adjudicating an action when a party's rights have not been invaded or infringed. *See Id.* (citing *Warth*, 422 U.S. at 498). In order to establish standing a plaintiff must show: (1) a distinct and palpable injury that is more than conjectural or hypothetical; (2) a causal connection between the claimed injury and the challenged conduct; and (3) that the alleged injury is capable of redress by a favorable decision of a court. *American Civil Liberties Union of Tenn. v. Darnell*, 195 S.W.3d at 620.

The primary focus of a standing inquiry is on the party, not on the merits of the claim; however, whether a party has standing "often turns on the nature and source of the claim asserted." *Metro. Air Research Testing Auth., Inc.*, 842 S.W.2d at 615. Thus, a "careful judicial examination of the complaint's allegations to ascertain whether the particular plaintiff is entitled to an adjudication of the particular claims asserted," is required. *Id.* When the claimed injury involves the violation of a statute, as here, the court must determine "whether the . . . statutory provision on which the claim rests properly can be understood as granting persons in the plaintiff's position a right to judicial relief." *Id.* (citing *Warth*, 422 U.S. at 500). The inquiry, then, is whether the plaintiff's complaint falls within "the zone of interests to be protected or regulated by the statute or constitutional guarantee in question." *Assoc. of Data Processing Serv. Orgs. v. Camp*, 397 U.S. 150, 153, 90 S.Ct. 827, 830, 25 L.Ed.2d 184 (1970).

In land use cases, the concept of "aggrievement" supplies the "distinct and palpable injury" required to have standing to maintain an action challenging a land use decision. *City of Brentwood v. Metro. Bd. of Zoning Appeals*, 149 S.W.3d 49, 58 (Tenn. Ct. App. 2004) perm. appeal den. (Sept. 13, 2004). Tenn. Code Ann. § 27-9-101 authorizes persons who are "aggrieved" to appeal "any final order or judgment of any board or commission functioning under the laws of this state" to the courts. Tenn. Code Ann. § 27-9-101; *see also Roberts v. State Bd. of Equalization*, 557 S.W.2d 502 (Tenn. 1977). This court has held that the extension of the authority to appeal and to seek judicial review to all persons who are 'aggrieved' reflects a legislative intention to ease the strict application of the customary standing principles." *City of Brentwood v. Metro. Bd. of Zoning Appeals*, 149 S.W.3d at 57 (citing *Federal Election Comm'n v. Akins*, 524 U.S. 11, 19, 118 S.Ct. 1777, 1783, 141 L.Ed.2d 10 (1998). Consequently, Tenn. Code Ann. § 27-9-101 should be interpreted broadly rather than

narrowly. While Tenn. Code Ann. § 27-9-101 does not expressly limit standing to residents or property owners of the area over which the local zoning board or planning commission has jurisdiction, to be "aggrieved" a party must at least be able to show "a special interest in the agency's final decision or that it is subject to a special injury not common to the public generally." *Wood v. Metro. Nashville & Davidson Cty Gov't*, 196 S.W.3d 152 (Tenn. Ct. App. 2005).

Respondents contend that because Petitioners were not adversely affected by the procedural requirements of the Planning Commission they have failed to prove that they were "aggrieved" or suffered a distinct and palpable injury not common to the public generally. The Appellees contend that under the facts here only the developer, who was subject to the Planning Commission's review and approval of its site development plan, was in a position to be adversely affected by the Planning Commission's site plan review and approval process. We do not agree. Petitioners reside in the "immediate vicinity" of the project and participated in the Planning Commission's public hearings regarding the project's site development plan approval. Given their proximity to the project as well as the scale of the project and its economic and environmental impact on the neighboring area, Petitioners have a special interest in the project's development that is not common to the public generally. Since we are instructed by the legislature to interpret standing in land use cases broadly and because "[i]t is desirable that land use matters be resolved on their merits rather than on preclusive, restrictive standing rules," *City of Brentwood v. Metropolitan Bd. of Zoning Appeals*, 149 S.W.3d at 57, we find that Petitioners have standing to challenge the action of the Planning Commission.

Writ of Certiorari

On the merits of the writ, Petitioners contend that neither the zoning nor planning enabling statutes specifically grant a local planning commission authority to approve site development plans and since local governments possess only the authority granted or delegated to them by the state, the action of the Spring Hill Planning Commission here approving the site development plan for the project was illegal. Respondents contend that the trial court was correct in finding that the Planning Commission has both express and implied authority under Tenn. Code Ann. § 13-4-103 and Tenn. Code Ann. § 13-7-208, respectively, to review and approve site development plans for proposed construction projects within the City.

Local governments lack inherent power to control the use of land within their boundaries as this power rests with the State; the General Assembly, however, may delegate it to local governments. *Family Golf of Nashville, Inc. v. Metro. Gov't of Nashville and Davidson Cty*, 964 S.W.2d 254, 257 (Tenn. Ct. App. 1998). In Tennessee, the General Assembly delegated its powers of land use control to local governments through zoning and planning enabling legislation that permits local governments to decide for themselves how best to exercise such power as long as their decisions do not conflict with state law. *Id.* at 258; *see* Tenn. Code Ann. §§ 13-3-101 to 13-4-309 and §§ 13-7-101 to 13-7-210.

Land use control involves both planning and zoning. They are complementary pursuits, but are not identical fields and have separate and distinct goals. *Id.* (citing 1 E.C. Yokley, *Zoning Law and Practice* §§ 1-2, at 2 (4th ed. 1978). Land use planning is the broader of the two terms and involves "coordinating the orderly development of all interrelated aspects of a community's physical environment as well as all the community's closely associated social and economic activities." *Family Golf of Nashville*, 964 S.W.2d at 257; *see also* 8 *McQuillin Mun. Corp.* § 25.08 (3rd ed. 2008); Williams, Jr., Norman & John M. Taylor, 1 *American Land Planning Law* § 1.05, at 13 (rev. ed. 1988); *see also Kaufman v. Planning and Zoning Comm'n of City of Fairmont*, 171 W.Va. 174, 298 S.E.2d 148, 180 (W.Va. 1982) (explaining "zoning is concerned with whether a certain area of a community may be used for a particular purpose, while planning involves how that use is undertaken").

Recognizing this distinction, the General Assembly empowered municipal legislative bodies to zone property and create a local board of zoning appeals through municipal zoning enabling legislation, *see* Tenn. Code Ann. §§ 13-7-101 to 13-7-210, while delegating the land use planning function to municipal planning commissions through municipal planning enabling legislation. *See* Tenn. Code Ann. §§ 13-3-101 to 13-4-309. Planning commissions are, thus, coequal and independent agencies from zoning appeal boards. *Whittemore v. Brentwood Planning Comm'n*, 835 S.W.2d 11, 14 (Tenn. Ct. App. 1992).

Local land use planning decisions, including how best to exercise land use control powers, are "basically legislative in character and are best left to local legislative bodies." *Whittemore v. Brentwood Planning Comm'n*, 835 S.W.2d at 15; *see also Fallin v. Knox Cty Bd. of Comm'rs*, 656 S.W.2d 338, 342-43 (Tenn. 1983); *Robertson Cty v. Browning-Ferris Indus. of Tenn., Inc.*, 799 S.W.2d 662, 667 (Tenn. Ct. App. 1990); *Family Golf of Nashville*, 964 S.W.2d at 258. Thus, "courts reviewing either zoning ordinances or the administrative decisions implementing zoning ordinances are inclined to give wide latitude to the responsible local officials" and will not substitute their judgment for that of the local officials or invalidate an ordinance or administrative decision unless it is illegal, arbitrary or capricious. *Whittemore*, 835 S.W.2d at 15; *McCallen*, 786 S.W.2d at 641-42.

Petitioners contend that the SHZO, which requires private developers to seek site plan approval from the Planning Commission prior to applying for a building permit from the building inspector, gives the Planning Commission powers that exceed the authority delegated to local planning commissions by the planning enabling statutes. The planning enabling statutes, Petitioners contend, neither expressly nor impliedly grant municipal planning commissions the authority to approve site development plans for private commercial construction authorized by a local zoning ordinance as a matter of right. Petitioners contend that the planning enabling statutes only give municipal planning commissions the power to make reports and recommendations regarding the municipal plan and to approve the development of public streets and buildings, but not the power to review and approve the development of private property (other than residential subdivision development). Accordingly, Petitioners contend, requiring a private developer to seek site plan approval from the Planning Commission for proposed private construction authorized as a matter of right by the local zoning ordinance gives the Planning Commission powers beyond those

permitted in the planning enabling statutes; consequently, the Planning Commission's action approving the project's site plan here was illegal. Petitioners also assert that nothing in the municipal zoning enabling statutes permit a local legislative body to give site plan approving authority to a local planning commission; rather, if site plan approval is to be required, the board of zoning appeals is the more appropriate administrative body to undertake the task because, Petitioners contend, site plan approval is the equivalent of special exception approval pursuant to Tenn. Code Ann. § 13-7-207(b).

Tenn. Code Ann. § 13-4-103 sets forth the purpose and powers of a municipal planning commission. It provides in pertinent part:

> The commission may make reports and recommendations relating to the plan and development of the municipality to public officials and agencies, public utility companies, to civic, educational, professional and other organizations and to citizens. ... In general, the commission shall have powers as may be necessary to enable it to perform its purposes and promote municipal planning.

Id. Tenn. Code Ann. § 13-4-104 further explains that

> [w]henever the commission shall have adopted the plan of the municipality or any part thereof, then and thence-forth no street, park or other public way, ground, place or space, . . . shall be constructed or authorized in the municipality until and unless the location and extent thereof shall have been submitted to and approved by the planning commission.... The widening, narrowing, relocation, vacation, change in the use, acceptance, acquisition, sale or lease of any street or public way, ground, place, property or structure shall be subject to similar submission and approval....

Id.

The SHZO, enacted by the City, requires the issuance of a building permit by the building inspector before the commencement of any excavation for or the construction of any building. SHZO Art. XII § 2.1. The building inspector is charged, *inter alia*, with enforcing the ordinances and ensuring that any proposed construction conforms with the relevant zoning ordinances. *Id.* at § 2.2. Under the SHZO, when a proposed multi-family construction is permissible as a matter of right within a particular zone, as was the case with the proposed construction here, the developer must submit a site development plan to the Planning Commission for review and approval prior to submitting its application for a building permit. SHZO Art. V § 5.8. The ordinance requires the site plan to detail sixteen items including the location of buildings, driveways and entrances, open space, building height, buffer yards, fences and walls, screen planting, surface drainage, easements and rights-of-way, areas subject to flooding and utilities. *Id.* at § 5.8(3).

Whether a municipal planning commission has the authority, express or implied, to review and approve a site plan for proposed construction has not been directly decided by Tennessee courts,

although our courts have decided a number of cases evaluating whether a local planning commission's approval or denial of a site development plan was arbitrary, capricious or unsupported by material facts. *See, e.g., Metro. Gov't of Nashville and Davidson Cty v. Barry Const. Co., Inc.*, 240 S.W.3d 840 (Tenn. Ct. App. 2007); *Custom Land Dev. v. Town of Coopertown*, 168 S.W.3d 764 (Tenn. Ct. App. 2004); *Hutcherson v. Criner*, 11 S.W.3d 126 (Tenn. Ct. App. 1999); *Mullins v. City of Knoxville*, 665 S.W.2d 393 (Tenn. Ct. App 1983); *Merritt v. Wilson Cty Bd. of Zoning Appeals*, 656 S.W.2d 846 (Tenn. Ct. App. 1983); *Harrell v. Hamblen County Quarterly Court*, 526 S.W.2d 505 (Tenn. Ct. App. 1975); *State ex rel. Poteat v. Bowman*, 491 S.W.2d 77 (Tenn. 1973). As these cases make apparent, many communities in Tennessee have adopted site plan approval by the local planning commission prior to issuance of a building permit as the preferred method for determining whether proposed construction meets the standards set forth in the ordinance for permissive use. It also appears from these cases that local planning commissions have been presumed to have such authority for many decades.

Despite not having considered this precise question, this Court has considered the relationship between zoning appeal boards and planning commissions and held that planning commissions have been granted powers that are both separate and distinct from those of zoning appeal boards. *See, e.g.*, *Family Golf of Nashville*, 964 S.W.2d at 257; *Whittemore*, 835 S.W.2d at 14. In fact, the *Whittemore* court considered the issue of whether a city board of zoning appeals had authority to review, on appeal, a city planning commission's approval of a site development plan for a regional shopping mall. 835 S.W.2d at 15. The *Whittemore* court found that the board lacked such jurisdiction because the local ordinance only authorized the board to hear and decide appeals from zoning ordinance decisions. *Id.* In so determining, the court held that a local planning commission's decision to approve a site plan "was not made as part of carrying out or enforcing the zoning ordinance but, instead, was based upon an independent grant of authority in Tenn. Code Ann. § 13-4-104." *Id.* While the *Whittemore* court was not asked to decide whether the planning commission had exceeded its jurisdiction in approving the site development plan, we believe the court was correct in concluding that a planning commission has independent authority under the planning enabling statutes to review and approve site development plans.

Other jurisdictions have come to similar conclusions. There are very few states whose planning enabling legislation expressly provides authority for review or approval of site plans by the local planning commission, yet site plan approval is frequently part of zoning ordinances and courts have routinely found planning commissions have implied authority to approve site development plans. *See, e.g., Y.D. Dugout, Inc. v. Bd. of Appeals of Canton*, 357 Mass. 25, 255 N.E.2d 732 (Mass. 1970); *Charter Township of Harrison v. Calisi*, 121 Mich.App. 777, 329 N.W.2d 488 (Mich. Ct. App. 1982); *DePetro v. Township of Wayne Planning Bd.*, 367 N.J. Super. 161, 842 A.2d 266 (App. Div. 2004); *Cathedral Park Condominium Comm. v. District of Columbia Zoning Comm'n*, 743 A.2d 1231 (D.C. 2000); *but cf. Thurman v. Snowden*, 28 A.D.2d 705, 280 N.Y.S.2d 945 (2d Dep't 1967) (holding that where site plan approval was not expressly provided for in the enabling statutes, site plan approval processes were merely advisory, not mandatory); *see also* Williams and Taylor, 7 *American Land Planning Law* § 161:1 (rev. ed.).

In finding that a local planning commission had implied authority to approve site development plans as a precondition to the issuance of a building permit, the Supreme Court of New Jersey explained the purpose of the requirement was namely "to insure that the details of the site plan for the authorized use will be such that the operation will not offend the public interest." *Kozesnick v. Montgomery Tp.*, 24 N.J. 154, 186, 131 A.2d 1, 18 (N.J. 1957). Among the criteria courts have held constitute public interest are traffic access, circulation and parking, the disposition of usable open space, and the arrangement of buildings. *Id.*; *see also Wesley Investment Co., v. Cty of Alameda*, 151 Cal. App. 3d 672, 198 Cal.Rptr. 872 (1st Dist. 1984).

In Tennessee, the planning enabling statutes give municipal planning commissions both broad power to "perform its purposes and promote municipal planning," Tenn. Code Ann. § 13-4-103, and specific power to review and approve proposed construction affecting public streets and spaces, among other public interests. *See* Tenn. Code Ann. § 13-4-104. Spring Hill has charged its planning commission with the responsibility of reviewing site plans for proposed construction to ensure that the legislated standards related to public interest elements such as vehicular and pedestrian access, parking, use of open space, among others, *see* SHZO Art. V. § 5.8(3), are satisfied. This is within the scope of powers granted to the planning commission by statute.

Petitioners assert that the power to review a site plan is akin to the power to grant a special exception and that, since Tenn. Code Ann. § 13-7-207(2) authorizes boards of zoning appeals to grant special exceptions to the terms of the zoning regulations, we should hold that approval of site plans in Spring Hill should be by the board of zoning appeals. We do not agree.

Site plan review and approval for a permissive use has long been distinguished from special exceptions processes. *See, e.g., PRB Enterprises, Inc. v. South Brunswick Planning Bd.*, 105 N.J. 1, 7, 518 A.2d 1099 (N.J. 1987) *(*explaining that while site plan review affords a planning board wide discretion to insure compliance with the objectives and requirements of the site plan ordinance it was never intended to include the legislative or quasi-judicial power to prohibit a permitted use); *Howard Research and Development Corp. v. Howard County*, 46 Md. App. 498, 418 A.2d 1253 (1980); *Levine v. Zoning Bd. of Appeals*, 124 Conn. 53, 198 A. 173 (Conn.1938); *Green Point Sav. Bank v. Board of Zoning Appeals,* 281 NY 534, 24 NE2d 319 (N.Y. 1939) (appeal dismissed, 309 US 633, 84 L ed 990, 60 S Ct 719 (1940)); 168 A.L.R. 13 (1947). Ziegler, Jr., Edward H., Arden H. Rathkopf, and Daren A. Rathkopf, 3 *Rathkopf's The Law of Zoning and Planning* § 61:14 (4th ed.); Williams and Taylor, 5 *American Land Planning Law* § 152.01, at 222 (rev. ed.). Certification of a permissive use through site plan review and approval is an administrative function designed to ensure that a site is developed in a manner consistent with the standards imposed by the SHZO. In contrast, granting a special exception involves the exercise of legislative or quasi-judicial power.

Here, the City did not give the Planning Commission authority to approve zoning changes or exceptions; depending on the particular circumstance, that authority is vested in either the city council or board of zoning appeals. *See, e.g.,* SHZO Art. V §§ 5.8(1)(b) and 5.8(2); Tenn. Code Ann. § 13-7-207. Neither did it give the Planning Commission authority to approve or deny a building permit; such authority is vested in the building inspector who is charged with evaluating

a building permit application based on its compliance with all of the zoning ordinance's requirements, including the requirement that proposed construction for a permissive use obtain site plan approval from the Planning Commission. As aforestated, Spring Hill has granted the specific administrative power of approving site plans the planning commission. Having developed the municipal plan pursuant to the authority granted in Tenn. Code Ann. § 13-4-201, the Planning Commission has both expertise and authority to approve site plans.

Because we have found that the Planning Commission has express authority to approve a site development plan for proposed construction permitted as a matter of right by the SHZO under the Planning Enabling Statutes, it is unnecessary for us to decide whether the Planning Commission also had implied authority under the Zoning Enabling Statutes.[2]

IV. Conclusion

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

Costs of appeal are taxed to Petitioners, Rob Roten and Jerry Swafford, for which execution may issue if necessary.

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RICHARD H. DINKINS, JUDGE

[2] We note that there is some Tennessee case law indicating that there can be no implied authority of land use control powers since local governments lack inherent land use control power. *See Whittemore*, 835 S.W.2d at 14 ("The board of zoning appeals' authority extends only so far as state law permits. *Father Ryan High School v. City of Oak Hill*, 774 S.W.2d 184, 190 (Tenn. Ct. App. 1988). It cannot be extended by the city commission or by implication.")