

FILED

IN THE CIRCUIT COURT OF CRAIGHEAD COUNTY, ARKANSAS
WESTERN DISTRICT
CIVIL DIVISION

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CIRCUIT AND CHANCERY
COURT CLERK

ROBERT RYAN

PLAINTIFF

VS.

NO. CV-2001-698 (LF)

CITY OF JONESBORO, ARKANSAS; DAVID YOUNG;
Alderman, et al

DEFENDANTS

DEAN TYRER and ANGELA TYRER, his wife

INTERVENORS

AMENDED ORDER

Now on the 28th day of January, 2003, came on for hearing the Motion for Additional Findings of Fact filed by the intervenors herein, based upon statements of counsel, prior stipulations of fact and the prior Order, and other matters and things in proof before the Court, the Court doth find :

1. That this Court has jurisdiction of this cause of this action.
2. That the plaintiff, Robert Ryan, is a resident citizen and taxpayer of the City of Jonesboro, Craighead County, Arkansas, residing at 609 Paragould Drive, Jonesboro, AR 72401. Mr. Ryan's property is near the subject property of this litigation.
3. The City of Jonesboro is a municipal corporation duly organized and existing under the laws of the State of Arkansas, located in the County of Craighead.
4. Defendants David Young, Garry Tate, Davy Crocket, Fred Rorex, Brian Rega, Paul Copeland, Chris Moore, Tim McCall, Cecil Province, Harold Perrin, Bill Roddy, and Ron Kelton made up and comprised the duly authorized and acting City Council of the City of Jonesboro during the time of the re-zoning in question.

5. Defendant Hubert Brodell was the duly authorized and acting Mayor of the City of Jonesboro during the time of the re-zoning in question.

6. Defendant Donna Jackson was the duly authorized and acting City Clerk of the City of Jonesboro during the time of the re-zoning in question.

7. This litigation involves the following property located in Jonesboro, Arkansas:

A part of the Southeast Quarter of the Northeast Quarter, and a part of the Northeast Quarter of the Southeast Quarter, both in Section 15, Township 14 North, Range 4 East, Craighead County, Arkansas to wit:

From the Northeast Quarter of said Section 15, then run S 00°10'39" E along the East line thereof a distance of 1,325.85 ft. to the Northeast Corner of said Southeast Quarter of the Northeast Quarter, then run S 89°49'32" W along the North line of said Southeast Quarter of the Northeast Quarter a distance of 336.60 ft. to a point; then run S 00°10'39" E, a distance of 495.00 ft. to a point on the Northerly Right-of-way line of the Southern Pacific Railroad, then following said Right-of-way S 62°14'36" W, a distance of 952.38 ft. to a point, said point being the intersection point of said Railroad Right-of-way and the South line of said Northeast Quarter of the Southeast Quarter, thence along said South line of the Northeast Quarter of the Southeast N 89°42'00" W, a distance of 165.42 ft. to the Southwest Corner of said Northeast Quarter of the Southeast Quarter, thence following the West line of said Northeast Quarter of the Southeast Quarter, N 00° 06'35" E, a distance of 1,247.40 ft. to a point; thence N 00° 10'39" E, a distance of 495.00 ft. to a point; thence N 89°49'32" E, a distance of 356.00 ft. to a point, said point being the POINT OF BEGINNING, said tract containing 52.24 acres, LESS AND EXCEPT, the Utility Easements and the Right-of-Way of Aggie Road.

8. That in 1972, C. Ray Sulfridge began operating the existing mobile home park.

9. That the property listed above is adjacent to an existing mobile home park, which Dean Tyrer purchased in 1985 and has been running since that date.

10. That the existing mobile home park owned by Dean Tyrer contains approximately one hundred two (102) spaces.

11. That on or about July 24, 2001, Dean Tyrer executed a Real Estate Contract ("Contract") to purchase the property which is the subject of this litigation.

12. That at the time of the execution of the Contract, the legal title holders to the property being purchased were C. Ray Sulfridge, Mary Ann Sulfridge, Allan Mullis and Mari Mullis, who is the daughter of the Sulfridges.

13. That the Contract was signed by Mari Mullis only. The parties stipulated that if Mari Mullis, C. Ray Sulfridge, Mary Ann Sulfridge and Allan Mullis testified, they would testify that Mari Mullis signed on behalf of all other owners.

14. That the Contract was contingent upon re-zoning of a portion of the property being purchased from R-1 to R-3.

15. That on or about August 10, 2001, Dean Tyrer submitted an application to the City of Jonesboro requesting the re-zoning of the property in question from R-1 to R-3.

16. That according to Section 14.44.05(b) of the Jonesboro Zoning Ordinance, a re-zoning may be proposed by the city council, the planning commission, or by a property owner or his legal agent.

17. That according to Section 14.08.02 of the Jonesboro Zoning Ordinance, the word "owner" means "[t]he property owner of record, according to the office of the Craighead County Circuit Court Clerk."

18. That the application was submitted by George Hamman, a local engineer and surveyor who prepared the plat, on behalf of Dean Tyrer.

19. That upon processing Dean Tyrer's application, the city planner scheduled a public hearing date before the planning commission to take place on September 11, 2001.

20. That notice of the hearing on the application for re-zoning was published in the Jonesboro Sun, a newspaper of general circulation in the City of Jonesboro, on August 28, 2001,

which was fourteen (14) days prior to the Metropolitan Area Planning Commission (“MAPC”) meeting.

21. That according to the Jonesboro City Ordinance [Section No. 14.44.05(b)(2)], such notice is to be published fifteen (15) days prior to the MAPC meeting.

22. That according to the Jonesboro City Ordinance [Section No. 14.44.05(b)(2)], signs are to be placed as follows:

The applicant shall (1) post notice on weatherproof signs provided by the City; (2) place the signs on the property that is the subject of the application at least ten (10) days before the public hearing; and (3) ensure that the signs remain continuously posted until a final decision is made by the city council. At least one (1) sign shall be posted by the applicant for each one hundred and fifty feet (150) of street frontage, up to a maximum of five (5) signs. Signs shall be placed along each abutting street in a manner that makes them clearly visible to neighboring residents, and passers-by. There shall be a minimum of one (1) sign along each abutting street.

23. That according to Section 14.08.01(f) of the Jonesboro Zoning Ordinance, the word “shall” is always mandatory and not discretionary. Further, it also provides that the word “may” is permissive and not mandatory.

24. That signs were not placed on Aggie Road, but were placed inside the existing trailer park.

25. That on September 4, 2001, the Jonesboro City Planner issued a Re-zoning Report to the Planning Commission setting forth his opinion and the basis for his opinion in favor of the re-zoning.

26. That on September 11, 2001, the MAPC meeting was not held, but was instead held on September 18, 2001, due to the attack on the World Trade Center.

27. That at the September 18, 2001, hearing before the MAPC, several citizens appeared in opposition to the re-zoning. However, at that time, no one challenged or objected to the hearing due to lack of notice; no one objected due to the claim or improper placing of signs; no one objected claiming that Dean Tyrer was not an owner or agent; and no one raised any other claimed procedural defect.

28. That after hearing evidence and testimony from those in favor and those opposed to the re-zoning request as well as a review of items submitted, the MAPC unanimously denied Dean Tyrer's re-zoning application.

29. That on September 26, 2001, Dean Tyrer appealed the denial of his re-zoning request to the Jonesboro City Council.

30. That according to Section 14.44.05(b)(4) of the Jonesboro Zoning Ordinance, the City Council may consider a matter denied by the Planning Commission after an appeal is "filed by the property owner" with the City Clerk.

31. That notice of the appeal hearing scheduled for October 15, 2001, was published in the Jonesboro Sun on October 5, 2001, and October 11, 2001.

32. That a public hearing on the appeal of the MAPC's denial of Dean Tyrer's re-zoning request was held on October 15, 2001.

33. The intervenors have argued that the Jonesboro City Council has substantially complied with its zoning ordinance citing an Arkansas Supreme Court Case, Mings v. City of Fort Smith and St. Edward Mercy Medical Center, 288 Ark. 42, 701 S.W.2d 705 (1986). In the Mings case, the Supreme Court found that the City Board substantially complied with its procedures when it requested the Planning Commission to reconsider denial of the permit for a parking lot.

34. According to the Jonesboro City Ordinance Section 14-44-05(b)(2) [notice was to be published fifteen days prior to the MAPC meeting]. The notice was actually published fourteen days prior to the original public hearing date of September 11, 2001.

35. That same city ordinance section also provided that a notice was to be placed by placing a weather-proof sign along all street frontage up to a maximum of five signs on any street and the signs being at least every 150 feet, and then the zoning ordinance states “signs shall be placed along each abutting street in a manner that makes them clearly visible to neighboring residents, and passers-by. There shall be a minimum one (1) sign along each abutting street.” In this case, the intervenor Mr. Tyrer and/or his agent, placed the signs inside the existing trailer park and not on Aggie Road as required.

36. Because of the events of the World Trade Center, the meeting was not held on September 11, 2001, but instead was held on September 18, 2001; however, no additional notice or change of notice was given in any manner likely to inform the public of the changed meeting date.

37. The Jonesboro Zoning Ordinance further provides in Section 14.44.05(b) that a rezoning may be proposed by the City Council, the planning commission or by a property owner or his legal agent. The zoning ordinance further defines owner in Section 14.08.02 to mean “the property owner of record according to the office of the Craighead County Circuit Court Clerk.” The parties stipulated that the property owners were C. Ray Sulfridge, Mary Ann Sulfridge, Allan Mullis and Mari Mullis, who is the daughter of the Sulfridges. Mr. Tyrer argues that because he signed a contract with Mari Mullis only, the daughter of the Sulfridges, that he was the equitable owner of title. The Court feels that Mr. Tyrer has equitable title only when all of the necessary owners of the

contract have signed the contract with him. Even at that point, he is not the “property owner of record” as required.

38. Mr. Tyrer then argues that he is the agent of the owners and therefore entitled to represent them before the planning commission of the City Council. The application was submitted by George Hamman, a local engineer and surveyor who prepared the plat on behalf of Dean Tyrer. So it appears that we have an agent of an agent making the application.

39. The City Council held a public hearing (an appeal hearing) on October 15, 2001, at which time they passed the re-zoning request. The City Council voted 7-3 with two abstentions in favor of the re-zoning of the subject property from R-1 to R-3. The ordinance in question states that it is an “ordinance to amend Ordinance No. 954, known as the zoning ordinance providing for changes in zoning boundaries and for other purposes.” Ordinance 954 was adopted in 1958 and then repealed and replaced on June 4, 2001. The ordinance that was passed by the City was amending a repealed ordinance.

40. The plaintiff argues that the subject of the ordinance is not clearly expressed in its title and further provides “be it ordained by the City Council of the City of Jonesboro, Arkansas: from R-1 to R-3 the [subject property],” which, though taken alone, may not be insufficient, but with the totality of the errors, certainly is troubling to the Court.

41. The intervenors’ arguments that the City substantially complied with its zoning ordinance pursuant to Mings. supra is not convincing. This intervenor did not comply in so many areas and the City itself did not comply in so many areas that even though it might be argued that any one or two of the errors may have been enough to say that they did substantially comply:

however, the totality of the errors requires the Court to rule in favor of the plaintiff and to reverse the action of the City Council of the City of Jonesboro.

42. The intervenors argue that the plaintiff has waived his right to object to the notice on appeal, because the arguments not raised at either the planning commission or the City Council, and further that he has no right to object because he was a winning party in the planning commission. This case is basically on appeal from the City Council and he is a losing party at the City Council. Additionally, the Court finds that in the traditional sense of being a party to the action, he was not a party. The Court finds those arguments by the intervenors to be without merit.

43. The intervenors' argument that the notice requirements, even though not complied with, were somehow not defective because the public was able to participate in the hearing, does not relieve the City from its requirements to follow its own zoning ordinance.

44. The Court rules that the action of the City Council was arbitrary and capricious in reversing the decision of the MAPC by re-zoning the subject property, because of the many errors in the procedures by both the intervenors and the City Council.

45. The Court rules that the Jonesboro City Council did not substantially comply with its zoning ordinance.

46. The request of the plaintiff for attorneys fees is hereby denied.

It is, therefore, by the Court CONSIDERED, ORDERED, ADJUDGED and DECREED that the action of the City Council for the City of Jonesboro, Arkansas in enacting Ordinance No. 3324 is reversed and Ordinance No. 3324 is set aside and declared void.

IT IS SO ORDERED on this 28th day of January, 2003.



CIRCUIT JUDGE LEE FERGUS