1980

John Call and Clark Jenkins v. City of West Jordan, Utah : Brief In Answer To Substitute Petition For Rehearing

Utah Supreme Court

IN THE SUPREME COURT OF THE STATE OF UTAH

JOHN CALL and CLARK JENKINS, Plaintiffs - Appellants, vs. CITY OF WEST JORDAN, UTAH, Defendant - Respondent.	)	Case No. 15908

BRIEF IN ANSWER TO SUBSTITUTE PETITION FOR REHEARING

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STATEMENT OF THE NATURE OF THE CASE

The appeal made from the dismissal of appellants' complaint in trial court was resolved in favor of the City of West Jordan. Appellants' petition for rehearing on the constitutionality of the ordinance in question was granted.

DISPOSITION IN LOWER COURT

The trial court granted respondent's Motion to Dismiss and therefore appellants' Complaint was dismissed, no cause of action.

RELIEF SOUGHT ON APPEAL

Appellants seek to have the court declare the West Jordan ordinance unconstitutional.

STATEMENT OF FACTS

Named plaintiffs - appellants are subdividers, who on July 19, 1977, presented to the City of West Jordan, defendant-respondent, two (2) subdivision plats entitled "Westcall Subdivision Plat 'A'" and "Wescall Subdivision Plat 'B'" containing ninety two (92) lots, for approval.

The City of West Jordan approved the two subdivision plats and required appellants to pay all fees necessary pursuant to the ordinances of the city, including the fee required for flood control purposes, subject matter of this action.

POINT I

THE CONSTITUTIONALITY OF ORDINANCE NO. 33 IS PRESUMED.

It is a well settled rule that where an ordinance is passed relating to a matter which is within the legistlative power of a municipality, all presumptions are in favor of its constitutionality. Village of Euclid v. Ambler Realty Co., 272 U.S. 365, 71 L.Ed 303, 47, S.Ct. 114 54 A.L.R. 1016 (1926); Home Builders Association of Greater Kansas City v. City of Kansas City, 555 S.W.2d 832 (MO. 1977). The effect of this presumption is to require the party challenging the ordinance to bear the burden of proving its unreasonableness. Village of Belle Terre v. Boraas, 416 U.S. 1, 94 S.Ct. 1536, 39 L.Ed 2d 797 (1974). The Utah Supreme Court has stated that unless the action of the governing body of the city is arbitrary, discriminatory, or unreasonable, or clearly offends some provision of the constitution or statute, the court must uphold it; if within the grant of power to municipality. Marshall v. Salt Lake City, 105 U. 111, 141 P.2d 704 (1943); Dowse v. Salt Lake City, 123 U. 107, 255 P.2d 723 (1953).

POINT II

THE PROVISIONS OF ORDINANCE NO. 33 ARE CONSTITUTIONALLY VALID AS REASONABLE

REQUIREMENTS IMPOSED FOR THE PUBLIC WELFARE OF THE CITIZENS OF THE CITY OF WEST JORDAN.

In 1926, the United States Supreme Court decided the landmark case of Village of Euclid v. Ambler Realty Co., supra. The Court in upholding the constitutionality of a zoning ordinance said:

> Building zone laws are of modern origin. They began in this country about twenty-five years ago. Until recent years, urban life was comparatively simple; but with the great increase and concentration of population problems have developed, and constantly are developing, which require, and will continue to require, additional restrictions in respect to the use and occupation of private lands in urban communities. Regulations, the wisdom, necessity, and validity of which, as applied to existing conditions, are so apparent that they are now uniformly sustained, a century ago, or even half a century ago, probably would have been rejected as arbitrary and oppressive. Such regulations are sustained, under the complex conditions of our day, for reasons analagous to those which justify traffic regulations, which, before the advent of automobiles and rapid transit street railways, would have been condemned as fatally arbitrary and unreasonable, and in this there is no inconsistency, for while the meaning of constitutional guarantees never varies, the scope of their application must expand or contract to meet the new and different conditions which are constantly coming within the field of their operation. In a changing world, it is impossible that it should be otherwise. (emphasis added).

The test adopted by the Supreme Court in Euclid to determine the constitutional validity of an ordinance was whether "its provisions are clearly arbitrary and unreasonab

having no substantial relation to the public health, safety, morals or general welfare." Euclid at 395.

Municipal ordinances requiring dedication of a percentage of subdivision property or a cash contribution in lieu thereof for parks and recreational facilities as a condition to subdivision approval are prevalent in this country. These ordinances, like zoning ordinances, have been adopted in response to burdens placed upon cities by rapid urban growth. In Associated Home Builders of the Greater East Bay, Inc. v. City of Walnut Creek, 94 Cal. Rptr. 638, 484 P.2d 606 (1971), the California Supreme Court upheld a city ordinance which required a reasonable nexus between dedicated property or fees in lieu thereof and the use of park and recreational facilities by future inhabitants of the affected subdivision. Because the ordinance required this nexus, the California Court did not resolve the issue of whether constitutional considerations required such a direct connection between the dedication and future use of the facilities. Nevertheless, the court recognized merit in the argument that even if the recreational facilities provided by the subdivider's contribution were not used for the specific benefit of the future residents of the subdivision, but were employed for facilities to be used by the general public, the dedication or fee in lieu thereof would be justified.

This view recognizes a substantial relation between the dedication ordinance and the public health, safety, morals or general welfare of the inhabitants of a city.

More recently, the Supreme Court of Missouri addressed the constitutionality of a dedication ordinance in Home Builders Association of Greater Kansas City v. City of Kansas City, supra, (1977). The Court did not require the use of the money collected to be specifically limited to the direct benefit of the subdivision to satisfy its needs. The Court stated:

> Insofar as the establishment of a subdivision within a city increases the recreational needs of the city, then to that extent the cost of meeting that increase in needs may reasonably be required of the subdivider. (emphasis in original).

Thus, in response to Euclid the Court looked at the substan relation between the ordinance and the public health, safet morals or general welfare of the city in determining the constitutional validity of the ordinance in question.

§9-C-8(a) of Ordinance No. 33 requires a subdivider to dedicate seven percent (7%) of the land area of the propose subdivision or, at the option of the City's governing body, the City may accept the equivalent value of the land in cas for public use for the benefit and use of the citizens of

the City of West Jordan. The ordinance requires the money received by the city to be used for flood control and/or parks and recreational facilities. Both of which have substantial relation to the public health, safety, morals or general welfare of the citizens of the City of West Jordan.

POINT III

THE CONSTITUTIONALITY OF AN ORDINANCE IS UPHELD IF THERE IS A REASONABLE RELATION BETWEEN THE NEEDS CREATED BY THE SUBDIVISION AND THE BURDEN PLACED UPON THE SUBDIVIDER.

Two separate tests have been used to determine the constitutional validity of ordinances which require a subdivider to dedicate land or cash in lieu thereof prior to final approval of the subdivision by a city. First, whether the need for dedication results from specific and unique activity attributable to the developer (hereinafter specific relation test). see Pioneer Trust & Savings Bank v. Village of Mount Prospect, Ill.2d 375, 176 N.E.2d 799 (1961); Ansuini, Inc. v. City of Cranston, 107 R.I. 63, 264 A.2d 910 (1970); Aunt Hack Ridge Estates, Inc. v. Planning Commission, 27 Conn. Sup. 74, 230 A.2d 45 (1967). And second, whether

the need for dedication is reasonably related to activity attributable to the developer (hereinafter rational nexus test). see Land/Vest Properties, Inc. v. Town of Plainfield 379 A.2d 200 (N.H. 1977); Brazer v. Borough of Mountainside, 153 N.J. Super. 343, 262 A.2d 887 (1970); Home Builders Association of Greater Kansas City v. City of Kansas City, supra, 832 (1977); Jordan v. Village of Menomonee Falls, 28 Wis.2d 608, 137 N.W.2d 442 (1965), appeal dismissed, 385 U.S.4, 87 S.Ct. 36, 17 L.Ed.2d 3 (1966); Collis v. City of Bloomington, 318 Minn. 5, 246 N.W.2d 19 (1976); Associated Home Builders of Greater East Bay, Inc. v. Walnut Creek, 94 Cal. Rptr. 638, 484 P.2d 606 (1971); Jenad, Inc. v. Village of Scarsdale, 18 N.Y.2d 78, 218 N.E.2d 673 (1966).

We agree with the great weight of authority and the inferrence created in the heading of Point III of Appellants Substitute Petition for Rehearing and Memorandum in Support of Rehearing that Utah should adopt the rational nexus test.

POINT IV

THE SEVEN PERCENT FEE IS REASONABLY RELATED TO ACTIVITY ATTRIBUTABLE TO A DEVELOPER IN LIGHT OF THE DEDICATION REQUIREMENTS WHICH HAVE BEEN RECOGNIZED AS REASONABLE IN OTHER JURISDICTIONS.

The City ordinance requires a subdivider to dedicate

seven percent (7%) of the land area of the proposed subdivision to the public. Or, at the option of the City's governing body, the City may accept the equivalent value of the land in cash. Dedication requirements based on portions of the plat, ratios of the plat to acres, and percentage value of the plat have been upheld. Billings Properties, Inc. v. Yellowstone County, 144 Mont. 25, 394 P.2d 182 (1964) (1/9 to 1/12 of the plat); Associated Home Builders of the Greater East Bay, Inc. v. City of Walnut Creek, supra, (2 1/2 acres for each 1,000 new residents or the fair market value of the land); Jenad, Inc. v. Village of Scarsdale, supra, ($250.00 per lot); Jordan v. Village of Menomonee Falls, supra, ($200.00 per lot); Home Builders Association of Greater Kansas City v. City of Kansas City, supra, (9% of the plat or $60.00 per living unit); Collis v. City of Bloomington, supra, (10% of the plat); Hirsch v. City of Mountain View, 134 Cal. Rptr. 519 (1976) (approx. $200.00 per apartment unit); Coding Enterprises v. City of Merced, 116 Cal. Rptr. 730 (1974) ($150.00 per apartment unit); O.L. Krughoff v. City of Naperville, 68 Ill. 2d 352, 369 N.E.2d 892 (1977) (5 1/2 acres for each 1,000 new residents or the fair market value of the land with a presumed value of $15,000.00 per acre). The West Jordan ordinance did not require dedication just for parks and recreational facilities,

as was the situation in many of the cases mentioned above, but included flood control needs as specified in the flood control plan adopted by the City. The seven percent (7%) dedication requirement or cash in lieu thereof (which in this instance amounts to less than $200.00 per lot) is within the range of requirements recognized by jurisdictions throughout the county as reasonable.

CONCLUSION

Ordinance No. 33 relating to dedication of land or payment of fees in lieu thereof for flood control and/or park and recreational facilities as a condition to the approval of a final subdivision map is constitutional.

RESPECTFULLY SUBMITTED this 7th day of April, 1980.

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CERTIFICATE OF MAILING

This is to certify that two true and correct copies of the foregoing Brief In Answer to Substitute Petition For Rehearing were mailed to Robert J. DeBry, Attorney for

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