

1981

Sweetwater Properties et al v. Town of Alta, Utah : Supplemental Brief of Appellant Town of Alta

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

SWEETWATER PROPERTIES, SBC :
INVESTMENT COMPANY and :
BLACKJACK TRUST, :
 :
Plaintiffs and :
Respondents, : Case No. 17064
 :
vs. :
 :
TOWN OF ALTA, UTAH, a municipi- :
pal corporation, :
 :
Defendant and :
Appellant. :

SUPPLEMENTAL BRIEF OF APPELLANT
TOWN OF ALTA

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Clark, Supreme C

September 22, 1980

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SUPPLEMENTAL BRIEF OF APPELLANT
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This Supplemental Brief is submitted by the Town of Alta (hereafter "Alta" or "Appellant") subsequent to oral argument of this Case on September 12, 1980 and pursuant to the request of the Court under even date that the parties simultaneously submit Memoranda regarding the applicability to the Case of an Opinion issued by this Court on September 5, 1980 in Western Land Equities, Inc., et al. v. City of Logan, et al., Appeal No. 16321.^{1/}

^{1/} It is noted that the Western Land Equities, Inc. case is still before this Court, the time for petitions for rehearing under Rule 76, Utah Rules of Civil Procedure having not been tolled. Notwithstanding that fact, Alta submits this Supplemental Brief within the purview of the 13 page Slip Opinion in Western Land Equities presently on file with the Office of the Clerk.

QUESTION PRESENTED.

The question to be treated in this Supplemental Brief is:

Whether the rationale and holding of the recent Opinion of the Supreme Court of Utah in Western Land Equities, Inc., et al. v. City of Logan, et al., is controlling or persuasive in the disposition of the instant Appeal?

Alta respectfully submits that the Opinion of this Court in Western Land Equities is not determinative of the Case at Bar or authoritative herein. The facts of this matter are substantially distinguished from those in Western Land Equities. The judicial policy governing this Appeal, as well, is predicated upon a markedly different basis than that of Western Land Equities. There is, however, an aspect of the September 5, 1980 Opinion that may prove to be of some guidance in this Case.

1. The Holding in Western Land Equities.

In the September 5 Opinion in Western Land Equities, this Court affirmed the Order of the District Court, and in so doing, held that under the doctrine of zoning estoppel, a municipality could not amend or change a zoning or land development ordinance affecting a pending land development application before that municipality's Planning Commission, so as to defeat or deny the proposed development of the landowner. Therein, Western Land Equities had sought approval from the City of Logan to develop a residential subdivision in an industrial zone of the municipality. At the time the subdivision application was filed, the city zoning ordinance permitted residential

development in a manufacturing zone. While the matter was pending before the Logan Planning Commission, the City amended the Zoning Ordinance to preclude residential development in the M-1 zone.

In an Opinion authored by Justice Stewart and in reaffirmance of an earlier 1974 Decision,^{2/} the Court declared that the municipality, Logan City, was unentitled to change the rules precluding residential development in an industrial zone when the City ordinances permitted such development at the time the application was filed. Wrote the Court at p. 12 of the Slip Opinion:

"The above competing interests are best accommodated in our view by adopting the rule that an applicant is entitled to a building permit or subdivision approval if his proposed development meets the zoning requirements in existence at the time of his application and if he proceeds with reasonable diligence, absent a compelling, countervailing public interest. * * *

"* * * A property owner should be able to plan for developing his property in a manner permitted by existing zoning regulations with some degree of assurance that the basic ground rules will not be changed in midstream. * * *"

Thus, Western Land Equities involved an internal modification of a municipal land development ordinance during a time when a proposed owner application was pending. It was strictly an intra-city affair with a substantive amendment to the City zoning ordinance relative to the use to which property might be placed within an industrial zone. The Court spelled out under a balancing of interest test that absent a "compelling public

interest * * * grounded in recognized legislative police powers", ^{3/} the landowner was entitled to rely upon the land use ordinance in effect at the time the development application was filed with the City. From the factual recitation in the Opinion, it is apparent that the proposed residential development of Western Land Equities, in its entirety, was before the Logan City Council and Planning Commission for approval.

2. The Facts of Sweetwater Herein are Significantly Distinguished.

There are several major factors which separate the legal and factual issues in this Appeal from those before the Court in Western Land Equities. Perhaps the pivotal distinction is that whereas in Western Land Equities the Court was faced with an internal amendment of substantive zoning ordinances within and by Logan City, the Court is now involved with only a policy declaration by a municipality, Alta, incident to possible annexation of private property having its situs within Salt Lake County. That Declaration was in turn enacted pursuant to a State Annexation Statute, 10-2-414, under which the Utah State Legislature has expressly encouraged annexation. Thus, this matter involves different governmental entities, Salt Lake County and Alta, the latter of which has a fundamental and express, statutory policy of annexation to fulfill. Such element was not before the Court in Western Land Equities.

Secondly, Sweetwater attempts in its Brief to make much of the fact that it had, prior to the issuance of the Alta Policy Declaration on September 13, 1979, secured building

permits for construction and development of the 226 time-sharing condominium project. The facts of the matter are that Sweetwater never secured building permits or permission from Salt Lake County to undertake construction of such a project prior to the issuance of the Alta Policy Declaration. Rather, the Sweetwater developer obtained a "foundation" permit for only 15 condominium units prior to the Alta declaration and that 15-unit permit was obtained in a highly questionable maneuver by Sweetwater in direct anticipation of and only two hours before the Town Council meeting of Alta to consider adopting the proposed Policy Declaration. The consequent factor of good faith reliance (inevitably a part of the zoning estoppel doctrine) by the landowner-developer upon existent land use and density ordinances of Salt Lake County is missing. Sweetwater expressly knew, at the time it attempted to obtain the 15-unit foundation permit, that Alta had been for more than two months considering the statutory policy of this State, as adumbrated in 10-2-414 and 10-2-418 U.C.A. 1979 (Repl. Vol. 2A) relative to favoring annexation of Sweetwater to Alta.

Thirdly, the Alta Policy Declaration adopted by Ordinance on September 13, 1980 did not modify, alter, or otherwise change the zoning ordinances of Salt Lake County wherein Sweetwater property was situated or, for that matter, the zoning or land use ordinances of Alta. Neither did the Policy Declaration subject Sweetwater to new and different land use

restrictions as was the case in Western Land Equities. The Policy Declaration only expressed an interest in the annexation of Sweetwater in specific compliance with State Statute, 10-2-414. It was the companion statutory declaration in 10-2-418 that caused Sweetwater to hold in abeyance its 15-unit "foundation" permit pending negotiations with the municipality, Alta, regarding annexation. The statutory policy of the Utah Legislature declares,

"Urban development shall not be approved or permitted within one-half mile of a municipality in the non-incorporated territory which the municipality has proposed for municipal expansion in its Policy Declaration, if a municipality is willing to annex the territory proposed for such development under the standards and requirements set forth in this chapter * * *."
10-2-418.

The Alta Policy Declaration of September 13, 1979, met the standards and requirements of the annexation Statute for reasons set forth in the main Brief filed herein. There was no statutory Policy Declaration in Western Land Equities that sought to accomplish the same omnibus public policy as does the annexation Statutes in this Appeal. Western Land Equities is inapposite to this Case on the facts.

3. The Legal Policy of Western Land Equities is Not Controlling in This Appeal.

The Opinion of this Court in Western Land Equities does not seek to reach annexation processes under a state statute. Not one of the cases cited in the Slip Opinion of the Court involves an attempted annexation or proceedings under a state-wide statutory policy favoring annexation. That policy invokes

singular principles of law that have no relationship to the interstitial modification or amendment of internal zoning ordinances of a city.

Moreover, the Opinion in Western Land Equities is rooted in the principal of reliance by the landowner and zoning estoppel of Logan City. Can it be said that such principal has any nexus to the independent and good faith act of Alta in issuing a Policy Declaration favoring annexation? We submit not. Alta acted in good faith, independently, and in the public interest as declared by the Legislature. There is no reliance or estoppel to be worked.

4. The Concept of the "Compelling Public Interest".

The Court in adopting a balancing of interest test in Western Land Equities, stated clearly that although the facts in that case favored the position of the land developer, if the case reflected "a compelling countervailing public interest * * * grounded in recognized legislative police powers",^{4/} the municipality would be entitled to modify a zoning ordinance affecting a pending, proposed land development scheme. Accordingly, to the extent that it may be argued by Sweetwater herein that Western Land Equities is persuasive authority in this Appeal because the same general subject, private land development, is in issue, it is plain that the facts of this case satisfy the "compelling, countervailing public interest" qualification in Western Land Equities. The Utah Statute, 10-2-401 et. seq. is a 1979 Act of general State import. It expressly encourages annexation of unincorporated properties

sitting on the rim of a municipality. It mandates a city to issue a policy declaration under 10-2-414 before entering upon the annexation of unincorporated territory. As stated in the main Brief of Alta, the Policy Declaration of Alta contained no property or developmental restrictions. The temporary restriction on development stems from the Statute, itself, 10-2-418. The Annexation Act of 1979 was enacted to expressly deal with issues of the character now before this Court.

The District Court herein, unlike that in Western Land Equities, gave no consideration to the element of zoning estoppel. It rather struck as void and unenforceable the Alta Policy Declaration on the basis that it was substantively inadequate and that it constituted a present and future "taking" of the Sweetwater property. The trial Court ignored the general rule of law that upon annexation of non-incorporated property within a municipality, the annexed land loses its previous restrictive zoning outside the city. Louisville & Jefferson County Planning & Zoning Comm. v. Fortner, 243 S.W. 2d 492 (Ky.); City of South San Francisco v. Berry, 260 P.2d 1045 (C.A. 1953).

The language in Western Land Equities regarding a "compelling, countervailing public interest grounded in recognized legislative police powers", while not directly applicable or controlling, is of some guidance in the determination of the Case at Bar. Such public policy suggests that, under a balancing of interests and the facts of the instant matter, the Alta Policy Declaration was and is valid and enforceable and

that the lower Court determination to the contrary should be overturned.

C O N C L U S I O N

The September 5, 1980 Opinion of this Court in Western Land Equities is not controlling or persuasive on the fundamental questions in this Appeal. The facts are entirely distinguishable and the law is premised upon inapposite policy. The balancing test of Western Land Equities does recognize, however, the importance of implementing state legislative policy and to that end, Western Land Equities does provide some guide to the realization and fulfillment of the 1979 Annexation Act of the Utah Legislature.

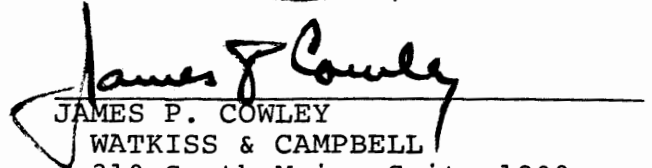
The legislation which delayed the 15-unit "foundation" permit of Sweetwater was not the Alta Policy Declaration, but rather was the implementing Statute, 10-2-418. It is the constitutionality of that Statute which should have been but never was attacked by Sweetwater in this litigation.

The Order of the District Court in this matter striking as void and unenforceable the Policy Declaration of Alta regarding the Sweetwater property and permanently enjoining Alta from entering upon any further Policy Declaration amendment, modification or alteration regarding Sweetwater, is palpably erroneous and should not be permitted to stand. The case should be reversed and remitted to the trial Court with appropriate directions to dismiss the Complaint of Sweetwater so

that negotiations regarding annexation may proceed between
Alta and the Sweetwater owners.

Respectfully submitted,


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September 22, 1980

CERTIFICATE OF SERVICE

It is herewith certified that pursuant to Rule 5 and 75,
U.R.C.P. two copies of the attached Supplemental Brief of
Alta has this day been served upon:

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by depositing the same in the U. S. post, postage prepaid
thereon this 22nd day of September, 1980.

