

2000

Woods Cross City v. Douglas R. Smith dba Ralph Smith Trucking Company : Brief of Appellee

Utah Court of Appeals

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FILED
Utah Court of Appeals

AUG 3

Paulette Stagg
Clerk of the Court

IN THE COURT OF APPEALS OF THE STATE OF UTAH

WOODS CROSS CITY, a Utah municipal
corporation,

Plaintiff/Appellee,

vs.

DOUGLAS R. SMITH, dba RALPH
SMITH TRUCKING COMPANY,

Defendant/Appellant.

Case No. 20001024-CA

Civil No. 990700470
Second District Court, Davis County

Priority No. 15

BRIEF OF APPELLEE

Appeal from a Final Order Granting Summary Judgment to Woods Cross City of the
Second Judicial District Court in and for Davis County, Utah

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TABLE OF CONTENTS

TABLE OF AUTHORITIES	iv
STATEMENT OF JURISDICTION	1
STATEMENT OF ISSUES PRESENTED	1
DETERMINATIVE STATUTES AND RULES	2
STATEMENT OF THE CASE	2
Nature of the Case	2
Statement of Facts	2
SUMMARY OF ARGUMENT	4
ARGUMENT	6
POINT I	
THE TRIAL COURT’S REFUSAL TO CONSIDER SMITH’S	
ARGUMENTS RELATING TO SPOT ZONING, DISCRIMINATION,	
UNLAWFUL TAKING OF PROPERTY WITHOUT JUST	
COMPENSATION AND ACCESSORY USES WAS CORRECT	6
POINT II	
SMITH’S AFFIRMATIVE DEFENSES FAIL ON THE MERITS	10
A. Woods Cross City’s Zoning of Smith’s Property Does Not Create an	
Illegal Spot Zone	10
B. Smith’s Claim of Discriminatory Zoning Fails as a Matter of Law	
.....	12
C. Defendant’s Claim of an Unlawful Taking Without Just	
Compensation Fails as a Matter of Law	12
1. The Takings Claim Is Procedurally Defective	12
2. The Takings Claim Fails as a Matter of Law	13
D. Smith’s Use of the Newport Subdivision Property Cannot be	
Justified as an Accessory Use	14
POINT III	
THE TRIAL COURT’S CONCLUSIONS REGARDING LOT 14 WERE	
CORRECT	16

CONCLUSION	17
ADDENDUM	19
<i>Utah Code Ann. § 10-9-1001</i>	19
<i>Woods Cross City Municipal Code § 12-14-104</i>	19
<i>Woods Cross City Municipal Code § 12-22-104</i>	20

TABLE OF AUTHORITIES

Cases

<i>Badger v. Brooklyn Canal Co.</i> , 996 P.2d 884 (Utah 1998)	8, 9
<i>Buehner Block Co. v. UWC Associates</i> , 752 P.2d 892 (Utah 1988)	10
<i>Cornish Town v. Koller</i> , 817 P.2d 305 (Utah 1991)	14
<i>Crestview-Holladay Homeowners Assoc. v. Engh Floral Co.</i> , 545 P.2d 1150 (Utah 1976)	10, 11
<i>Keystone Bituminous Coal Ass’n. v. DeBenedictis</i> , 480 U.S. 470, 107 S.Ct. 1232 (1987)	13
<i>Nelson v. Salt Lake City</i> , 919 P.2d 568 (Utah 1996)	1
<i>Smith Inv. Co. v. Sandy City</i> , 958 P.2d 245 (Utah App. 1998)	13
<i>Treloggan v. Treloggan</i> , 699 P.2d 747 (Utah 1985)	13
<i>Valley Bank & Trust Co. v. Wilken</i> , 668 P.2d 493 (Utah 1983)	6-9
<i>Walker v. Rocky Mt. Recreation Corp.</i> , 508 P.2d 538 (Utah 1973)	13

Statutes and Ordinances

<i>Utah Code Ann.</i> Title 10, Chapter 9	11
<i>Utah Code Ann.</i> § 10-9-1001	2, 11, 12
<i>Utah Code Ann.</i> § 78-2-2(4)	1
<i>Utah Code Ann.</i> § 78-2-2(j)	1
<i>Woods Cross City Municipal Code</i> § 12-14-104	2, 14
<i>Woods Cross City Municipal Code</i> § 12-22-104	2, 15

STATEMENT OF JURISDICTION

Pursuant to *Utah Code Ann.* § 78-2-2(j), this case was originally filed in the Supreme Court of the State of Utah. On April 16, 2001, this case was assigned by the Supreme Court of the State of Utah to the Utah Court of Appeals pursuant to *Utah Code Ann.* § 78-2-2(4).

STATEMENT OF ISSUES PRESENTED

1. Whether the trial court's award of summary judgment to the City was correct.

Standard of Review: This case was decided in the District Court on the City's Motion for Summary Judgment and involves the application of undisputed facts to applicable state and local law. Therefore, the standard of review is correctness. *Nelson v. Salt Lake City*, 919 P.2d 568, 571 (Utah 1996).

2. Whether the trial court's award of summary judgment to the City can be justified on other proper grounds.

Standard of Review: This case was decided in the District Court on the City's Motion for Summary Judgment and involves the application of undisputed facts to applicable state and local law. Therefore, the standard of review is correctness. *Nelson v. Salt Lake City*, 919 P.2d 568, 571 (Utah 1996).

DETERMINATIVE STATUTES AND RULES

This case is governed, in part, by *Utah Code Ann.* § 10-9-1001 and *Woods Cross City Municipal Code* §§ 12-14-104 and 12-22-104. These provisions are set forth in full in the Addendum.

STATEMENT OF THE CASE

Nature of the Case

This case was instituted by Woods Cross City as a complaint for injunctive relief against Douglas R. Smith dba Ralph Smith Trucking Company (“Smith”). Smith is the owner of property located within Woods Cross City and an adjoining parcel in West Bountiful City. Smith owns and operates a trucking company on the property. Woods Cross City instituted an action in the Second Judicial District Court in and for Davis County, State of Utah, the Honorable Darwin C. Hansen presiding, alleging that Smith’s use of a portion of his property in Woods Cross City was in violation of the City’s Zoning Ordinance. The City brought a Motion for Summary Judgment which was granted by the District Court. This appeal followed.

Statement of Facts

1. Smith is the owner of property located within Woods Cross City, which property is commonly known as Lot 5 and Lots 7 through 14 of the Newport Subdivision (the “Property”). R. at 139.

2. Smith is also the owner of property within West Bountiful City and an adjacent parcel in Woods Cross City, which properties lie outside the Newport Subdivision (the “West Bountiful Property”). Smith operates Ralph Smith Trucking on the West Bountiful Property and has valid nonconforming use rights for the business on the West Bountiful Property. The West Bountiful Property is not at issue in this matter. R. at 151 (Transcript) pp. 2-3.

3. The Property is zoned I-1, Light Industrial. R. at 139.

4. At times relevant to this matter, Smith was using Lot 5 and Lots 7 through 13 of the Property to park large trucks and other equipment used in his trucking business. R. at 139.

5. At times relevant to this matter, Lot 14 of the Property was being used for the parking of personal vehicles and other recreational vehicles such as jet skis, trailers and campers. R. at 139.

6. Smith’s use of Lot 5 and Lots 7 through 14 of the Property is neither a permitted use nor a conditional use within the I-1 Zone. R. at 139.

7. Smith has never applied for nor received conditional use approval or site plan approval for the operation of a trucking company on the Property. R. at 139.

8. Woods Cross City has requested that Smith cease his unauthorized use of the Property. R. at 139.

9. Smith has failed to comply with the request of the City. R. at 139.

10. In August of 1999, the City brought an action in the Second Judicial District Court in and for Davis County, State of Utah, before the Honorable Darwin C. Hansen, requesting an injunction, enjoining Smith from his use of the Property in violation of Woods Cross City's Zoning Ordinance. R. at 1-5.

11. On September 21, 2000, on Woods Cross City's Motion for Summary Judgment, the District Court ruled in favor of the City. An Order granting the City's Motion for Summary Judgment was signed on October 16, 2000, by the District Court, and entered on October 19, 2000. This appeal followed. R. at 138.

SUMMARY OF ARGUMENT

The trial court's award of summary judgment in this case was correct. Smith's arguments relating to spot zoning, discriminatory effect of City zoning regulations, unlawful taking without just compensation and accessory uses were not properly pleaded and were never properly raised for consideration before the District Court. Smith failed to plead those claims as part of any answer or counterclaim. Therefore, the District Court was correct in awarding summary judgment to Woods Cross City.

Even if this Court were to consider Smith's claims relating to spot zoning, discriminatory effect of the City's zoning regulations, unlawful taking without just compensation and accessory uses, Smith's arguments fail on the merits.

Smith has argued that the City's zoning creates a spot zone. However, zoning on other properties around Smith's Property is consistent. Additionally, on those parcels where

uses are not consistent with the zoning on Smith's parcel, those uses are legally nonconforming or validly approved. Therefore, they cannot form the basis for a claim of spot zoning.

Smith also argues that the City's zoning has created a discriminatory effect on his Property. However, as noted above, all other uses of property in the area of Smith's Property are either valid nonconforming uses or have received proper zoning approvals through the City. Additionally, Smith cannot now challenge the legality or wisdom of the City's zoning classification of the Property.

Smith argues that the City's zoning constitutes an unlawful taking of his Property without just compensation. However, Smith has completely failed to present any evidence justifying this claim. Additionally, Smith's legal arguments fall short of the standard required to demonstrate the taking of property without just compensation.

Finally, Smith argues that his use should be approved as an accessory use. However, Smith has failed to obtain any land-use approvals from the City to validate the primary use of his Property. Therefore, approval as an accessory use is not possible. To the extent Smith argues his use should be approved as an accessory use to the nonconforming use on the West Bountiful Property, his argument also fails. Such a determination would constitute an unlawful expansion of Smith's nonconforming use in violation of City ordinances.

For the foregoing reasons, the decision of the District Court was correct and should be affirmed.

ARGUMENT

POINT I

THE TRIAL COURT’S REFUSAL TO CONSIDER SMITH’S ARGUMENTS RELATING TO SPOT ZONING, DISCRIMINATION, UNLAWFUL TAKING OF PROPERTY WITHOUT JUST COMPENSATION AND ACCESSORY USES WAS CORRECT.

In the Order granting Woods Cross City’s Motion for Summary Judgment in this matter, the Court specifically determined that “Defendant’s claims of spot zoning, discrimination and an unlawful taking of property without just compensation have not been properly raised through pleadings or affidavits and therefore may not be considered by the court.” R. at 140. Additionally, Smith’s argument that his use should be approved as an accessory use was raised for the first time at oral argument on the summary judgment Motion. Therefore, the District Court’s decision was correct and is well supported by law.

Defenses not raised by the answer or by proper motion may not be raised in an affidavit or pleading in opposition to a motion for summary judgment. *Valley Bank & Trust Co. v. Wilken*, 668 P.2d 493 (Utah 1983).

In *Valley Bank & Trust*, the plaintiff brought an action to recover on promissory notes signed by the defendant. The plaintiff filed a motion for summary judgment. In opposition to that motion, the defendant raised the issue of failure of consideration, which did not appear by way of affirmative defense in the answer. Additionally, defendant failed to make any motion to amend her answer to include that defense. In reviewing the issues, the court stated:

The appellant's sole contention is that the trial court erred in granting summary judgment because her husband's affidavit had raised the defense of failure of consideration. The difficulty with her argument is that she was obligated to raise that defense in her answer to the complaint. She made only a general denial in her answer and did not raise any affirmative defenses. Failure of consideration is an affirmative defense and must be pleaded as such. Rule 8(c), U.R.C.P. She made no effort to move to amend her answer under Rule 15 to raise that defense. She could not raise it by means of an affidavit in opposition to summary judgment. It is not the office of an affidavit in opposition to a motion for summary judgment to provide a means of introducing defenses which have not been raised by the answer or by proper motion.

Valley Bank & Trust, 668 P.2d 493 at 493, 494.

In this case, the defenses of spot zoning, discrimination, unlawful taking of property without just compensation and accessory uses were not raised by Smith's Answer. Additionally, Smith failed to take any proper action to have a motion to amend his Answer considered by the District Court.

In his Brief, Smith argues that his right to present the defenses at issue was somehow preserved through his Rule 56(f) Motion. In that Motion, Smith sought a continuance "to conduct discovery and obtain affidavit and/or deposition testimony to oppose these Defendant's [sic] Motion." R. at 52. Neither Smith's Motion nor initial Memorandum in support of the Rule 56(f) Motion sought leave of court to amend his Answer. It was only in Smith's Reply Memorandum that it states:

Should this Court conclude that Defendant may not seek discovery on or present the affirmative defenses indicated in Defendant's 56(f) Motion and discovery requests, Defendant hereby moves this Court for an order allowing

them to amend their Answer pursuant to Rule 15 of the Utah Rules of Civil Procedure.

R. at 65.

Woods Cross City submits that a motion to amend an answer cannot be properly raised through a reply memorandum. However, even if this Court were to determine that the motion to amend the Answer were properly raised, that motion is stated in the alternative, relief only being requested if the court were to deny Smith's Rule 56(f) Motion. In fact, the court granted that Motion. *See* R. at 80. Additionally, Smith was permitted to conduct all the discovery he wished prior to his response to Woods Cross City's summary judgment Motion. If an amendment to the Answer was required by facts determined through that discovery, it was incumbent upon Smith to make a proper motion for leave of court to amend his Answer. Absent a proper motion, the law as set forth by this Court in *Valley Bank & Trust* is applicable and Smith is foreclosed from presenting the defenses at issue by his failure to properly raise those defenses.

Smith also argues that this Court should apply a different standard to determine whether or not the affirmative defenses at issue were properly raised. Smith argues that this Court should apply the rationale of *Badger v. Brooklyn Canal Co.*, 996 P.2d 884 (Utah 1998). However, that case is distinguishable.

In *Badger*, two parties appealed from a district court's grant of summary judgment in favor of a private canal company and the state engineer. The issue arose through the

application of a private canal company, Brooklyn, to change a point of diversion for its water rights. The district court determined that the plaintiffs did not make known the nature of their competing private well rights in a protest hearing before the state engineer and therefore waived the right to claim any impairment to private well rights. The issue in *Badger* had nothing to do with whether or not the plaintiff's claims were properly pleaded, but, rather, dealt with whether or not the plaintiff's claims were preserved in the trial setting for appellate review. The standard to be applied to that question is obviously completely different than the standard to be applied in the question set forth in *Valley Bank & Trust Co.*, and in this case.

If this Court were to apply the analysis of *Badger* to the fact situation in this case, it would completely undo the rationale of the court in *Valley Bank & Trust Co.*, wherein the court stated:

Had appellant made a motion for leave to amend her answer, plaintiff would have been entitled to at least five days' advance notice of the hearing on that motion. Rule 6(b), U.R.C.P. If we were to uphold this manner of injecting new issues into a case, summary judgment could always be thwarted by the procedure attempted here by the appellant. While we have held that the rules must be liberally interpreted to accomplish justice, they should be sufficiently adhered to so there is an orderly procedure followed in the resolution of a case.

Valley Bank & Trust Co., 668 P.2d 493, 494.

The very argument presented by Smith in this case was presented by the defendant in *Valley Bank & Trust Co.* The argument failed there and the Court should uphold the District Court's determination in this matter.

POINT II

SMITH'S AFFIRMATIVE DEFENSES FAIL ON THE MERITS.

Even if this Court were to find that Smith's defenses were properly pleaded and presented, those defenses fail on the merits, as a matter of law, and summary judgment was appropriate.

It is well settled law that an appellate court may affirm a trial court decision on any proper ground, despite the trial court's having assigned another reason for its ruling. *Buehner Block Co. v. UWC Associates*, 752 P.2d 892 (Utah 1988). In this case, an examination of the affirmative defenses at issue clearly demonstrates that Smith cannot succeed on the merits of those defenses. Therefore, the District Court's award of summary judgment was appropriate.

A. Woods Cross City's Zoning of Smith's Property Does Not Create an Illegal Spot Zone.

In his Brief, Smith cites language from *Crestview-Holladay Homeowners Assoc. v. Engh Floral Co.*, 545 P.2d 1150 (Utah 1976) in support of his argument relating to spot zoning. However, Smith fails to cite the full language explaining the reasoning of the court.

In addition to the language cited by Smith, the court went on to state:

It is doubtful that the term "spot zoning" applies to this case in view of the size of the tract. In the area surrounding the subject property there are a number of commercial enterprises most of which began prior to the adoption of a zoning ordinance by the county.

Crestview-Holladay Homeowners, 545 P.2d 1150 at 1152 (emphasis added). The same rationale would apply in this case. Each of the neighboring properties listed in Smith's Brief is zoned I-1, the same classification as Smith's Property. At least nine of the eleven businesses adjacent to Smith's Property are either validly approved or legal nonconforming uses. (See Second Affidavit of Tim Stephens, R. at 130.) As noted by the court in *Crestview-Holladay Homeowners*, an allegation of "spot zoning" cannot rest upon a disparity in use created by neighboring nonconforming uses.

Finally, it should be noted that if Smith has concerns with the zone classifications enacted by the City, those concerns cannot be raised now, more than nine years after adoption of the City's Zoning Ordinance. The City's authority to zone Smith's Property derives from the Utah State Municipal Land Use Development and Management Act, *Utah Code Ann.* Title 10, Chapter 9. Part 10 of the Land Use Development and Management Act sets forth procedures relating to appeals and enforcement actions brought under said Act. Section 10-9-1001 provides, in part:

(1) No person may challenge in district court a municipality's land use decisions made under this chapter or under the regulation made under authority of this chapter until that person has exhausted his administrative remedies.

(2) (a) Any person adversely affected by any decision made in the exercise of the provisions of this chapter may file a petition for review of the decision with the district court within 30 days after the local decision is rendered.

(Emphasis added). Smith's time to challenge the zoning classifications enacted by the City has long passed.

B. Smith's Claim of Discriminatory Zoning Fails as a Matter of Law.

Smith's claim of discriminatory zoning also fails as a matter of law. Smith's claim is based on the uses of other lots within the Newport Subdivision. As noted in the attached Second Affidavit of Tim Stephens, at least nine of the eleven uses set forth in paragraph 13 of Defendant's Brief are either legally nonconforming uses, or properly approved uses under the City's current Zoning Ordinance. R. at 130. Therefore, Smith has failed to state a claim that the City has enforced its Zoning Ordinance in a discriminatory manner or that the regulations are discriminatory in nature and effect.

C. Defendant's Claim of an Unlawful Taking Without Just Compensation Fails as a Matter of Law.

In his Brief, Smith argues that the City's zoning effects a taking without just compensation. However, Smith's arguments on this point are not ripe for consideration and, further, they fail as a matter of law, on the merits.

1. The Takings Claim Is Procedurally Defective.

Smith's takings claim is not ripe for consideration. As noted above, *Utah Code Ann.*

§ 10-9-1001, *infra*, provides, in part:

No person may challenge in district court a municipality's land use decisions made under this chapter or under the regulation made under authority of this chapter until that person has exhausted his administrative remedies.

Therefore, as noted in the District Court's Order, Smith has made no application for any land use approvals from the City. R. at 139. Smith has failed to exhaust his administrative remedies and cannot claim to this Court that his Property has been taken.

2. The Takings Claim Fails as a Matter of Law.

Even if the Court were to consider this allegation, Smith, as a matter of law, cannot prove that the City's zoning regulation effects a taking. A statute regulating the uses that can be made of property effects a taking if it denies an owner economically viable use of his land. *Keystone Bituminous Coal Ass'n. v. DeBenedictis*, 480 U.S. 470, 494, 107 S.Ct. 1232, 1246 (1987); *Smith Inv. Co. v. Sandy City*, 958 P.2d 245, 257, 258 (Utah App. 1998).

Smith has set forth the ridiculous argument that all economically viable use of his Property has been denied. In support of this allegation, Smith has averred: "Affiant sees no economical viable uses of said property considering the surrounding uses and the permitted uses under the I-1 zoning classification." R. at 112. This statement is completely unsupported by any foundation. Additionally, Smith fails to demonstrate why the potential uses listed as conditional uses in the I-1 Zone are not economically viable.

In *Walker v. Rocky Mt. Recreation Corp.*, 508 P.2d 538 (Utah 1973), the Utah Supreme Court held that an affidavit that merely reflects the affiant's unsubstantiated conclusions and that fails to state evidentiary facts is insufficient to create an issue of fact. Additionally, an affidavit based merely on unsubstantiated opinions and belief is insufficient to create an issue of fact. *Treloggan v. Treloggan*, 699 P.2d 747 (Utah 1985).

Simple common sense dictates that, with a long list of conditional uses within the I-1 Zone and the numerous businesses legally operating in the I-1 Zone, Smith's Property is not denied of all economically viable use. Utah law also clearly holds that a mere diminution in value is insufficient to meet the burden of demonstrating a taking by regulation. *Cornish Town v. Koller*, 817 P.2d 305, 312 (Utah 1991). Smith has made no attempt to determine what uses may be allowed and he failed to offer any credible, admissible evidence demonstrating that economically viable use of his Property has been destroyed. Therefore, his takings claim fails on the merits, as a matter of law.

D. Smith's Use of the Newport Subdivision Property Cannot be Justified as an Accessory Use.

As noted above, Smith's Property is zoned I-1, Light Industrial. Chapter 12-14 of the City's Zoning Ordinance sets forth regulations relating to the Light Industrial Zone. Section 12-14-104 of that chapter reads:

Accessory uses in buildings customarily incidental to the permitted uses and conditional uses provided herein may be approved by the City in accordance with the provisions of this title.

As noted in this section, an accessory use must be approved as part of the permitted or conditional use on the Property. The trial court in this matter found, as undisputed fact, that Smith had never received site plan or conditional use approval for his operation of a trucking company on the Newport Subdivision Property. Accordingly, Smith's use of that Property

cannot be approved as an accessory use. Therefore, his arguments on this point fail as a matter of law.

To the extent Smith's argument can be read to assert that his operations should be allowed to expand to the Newport Subdivision Property as part of the valid nonconforming use in West Bountiful, it is also incorrect. Section 12-22-104 of the *Woods Cross City Municipal Code* states:

A nonconforming use shall not be enlarged, extended, or changed unless the use is changed to a use permitted in the district in which it is located, and a nonconforming building shall not be reconstructed or structurally altered unless such alteration results in removing those conditions of the building which render it nonconforming, except as follows:

- (a) More Desirable. When authorized by the City Council in consideration of the prior recommendation of the Planning Commission, and in accordance with this Title, a nonconforming use which is determined to be of a more desirable nature may be substituted for another nonconforming use.
- (b) Repairs. Repairs and structural alterations necessary for building safety may be made to a nonconforming building provided that the floor area of such building is not increased.
- (c) Within Building. A nonconforming use may be extended to include the entire floor area of the existing building in which it is conducted at the time the use became nonconforming.
- (d) Force Majeure. A nonconforming building or structure which is damaged or partially destroyed by fire, flood, wind, earthquake, or other calamity or act of nature or the public enemy, may be restored. The occupancy or use of such building structure or part thereof which existed at the time of such partial destruction may be continued or resumed provided that such restoration is started within a period of 1 year and is diligently prosecuted to completion within a

period of 2 years. In the event such damage or destruction exceeds 3 times the assessed value of such nonconforming building or structure, no repairs or reconstruction shall be made, except in the case of residences or accessory farm buildings, unless every portion of such building or structure is made to conform to all regulations for new buildings in the zone in which it is located, as determined by the Planning Director.

Any extension of Smith's use onto the Newport Subdivision Property would constitute an enlargement or extension of the nonconforming use in violation of the City's nonconforming use regulations. Accordingly, this argument must be rejected.

POINT III

THE TRIAL COURT'S CONCLUSIONS REGARDING LOT 14 WERE CORRECT.

The trial court in this matter determined, as a matter of undisputed fact, that "Lot 14 of the Property is being used for the parking of personal vehicles and other recreational vehicles such as jet skis, trailers and campers." R. at 139. Smith seems to argue that he should be allowed to use Lot 14 in his trucking business because:

[T]he trial court did not seem to consider whether the "personal vehicles" stored were being stored on a private basis separate from the trucking company or whether they were being stored as part of the trucking business as an employee benefit or other trucking business related use.

Brief of Appellant at p. 14. This argument does nothing to compromise the District Court's decision on this point. The particular reason the personal vehicles are being stored on the lot (the parking of personal vehicles as opposed to dump trucks or other large industrial-type trucks) is irrelevant to the actual use of the lot. The fact is that Lot 14, as determined by the

District Court, was not being used for the parking of trucks used in Smith's trucking business. That determination of fact was not disputed in any way by Smith and therefore, the decision of the District Court was correct.

CONCLUSION

In response to discovery requests in this matter, Smith has asserted that his use of the Property constitutes no injury to the City because "the image of Woods Cross City is one of oil refineries and freeways." R. at 34. In fact, the Woods Cross City Council, as a legislative determination and in the interest of protecting public health, safety and welfare, has determined those uses which are appropriate in the area where Smith's Property is located. Prior to Smith's use of the Property, it was determined that use of the Property for storage of trucks and equipment is not appropriate and is therefore detrimental to public health, safety and welfare. Smith's blatant disregard of City laws in the face of requests to comply was appropriately enjoined by the District Court. For the foregoing reasons, that decision should be affirmed by this Court.

DATED this 20th day of August, 2001.

MAZURAN & HAYES, P.C.

By: 

Todd J. Godfrey

Attorneys for Plaintiff Woods Cross City

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of August, 2001, I caused to be mailed, first-class United States mail, postage pre-paid, a true and correct copy of the foregoing **BRIEF OF APPELLEE** to the following:

Randy B. Birch
114 South 200 West
Heber City, UT 84032



ADDENDUM

(1) No person may challenge in district court a municipality's land use decisions made under this chapter or under the regulation made under authority of this chapter until that person has exhausted his administrative remedies.

(2) (a) Any person adversely affected by any decision made in the exercise of the provisions of this chapter may file a petition for review of the decision with the district court within 30 days after the local decision is rendered.

(b) (i) The time under Subsection (2)(a) to file a petition is tolled from the date a property owner files a request for arbitration of a constitutional taking issue with the private property ombudsman under Section 63-34-13 until 30 days after:

(A) the arbitrator issues a final award; or

(B) the private property ombudsman issues a written statement under Subsection 63-34-13(4)(b) declining to arbitrate or to appoint an arbitrator.

(ii) A tolling under Subsection (2)(b)(i) operates only as to the specific constitutional taking issues that are the subject of the request for arbitration filed with the private property ombudsman by a property owner.

(iii) A request for arbitration filed with the private property ombudsman after the time under Subsection (2)(a) to file a petition has expired does not affect the time to file a petition.

Utah Code Ann. § 10-9-1001.

Accessory uses in buildings customarily incidental to the permitted uses and conditional uses provided herein may be approved by the City in accordance with the provisions of this title.

Woods Cross City Municipal Code § 12-14-104.

A nonconforming use shall not be enlarged, extended, or changed unless the use is changed to a use permitted in the district in which it is located, and a nonconforming building shall not be reconstructed or structurally altered unless such alteration results in removing those conditions of the building which render it nonconforming, except as follows:

(a) More Desirable. When authorized by the City Council in consideration of the prior recommendation of the Planning Commission, and in accordance with this Title, a nonconforming use which is determined to be of a more desirable nature may be substituted for another nonconforming use.

(b) Repairs. Repairs and structural alterations necessary for building safety may be made to a nonconforming building provided that the floor area of such building is not increased.

(c) Within Building. A nonconforming use may be extended to include the entire floor area of the existing building in which it is conducted at the time the use became nonconforming.

(d) Force Majeure. A nonconforming building or structure which is damaged or partially destroyed by fire, flood, wind, earthquake, or other calamity or act of nature or the public enemy, may be restored. The occupancy or use of such building structure or part thereof which existed at the time of such partial destruction may be continued or resumed provided that such restoration is started within a period of 1 year and is diligently prosecuted to completion within a period of 2 years. In the event such damage or destruction exceeds 3 times the assessed value of such nonconforming building or structure, no repairs or reconstruction shall be made, except in the case of residences or accessory farm buildings, unless every portion of such building or structure is made to conform to all regulations for new buildings in the zone in which it is located, as determined by the Planning Director.

Woods Cross City Municipal Code § 12-22-104.