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W. J. Lund, Willard E. Knibbee et al v. Cottonwood Meadows Company et al : Brief of Appellant

Utah Supreme Court

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Mulliner, Prince & Mangum; Attorneys for Respondent;

Ollie McCulloch; Attorney for Respondents;

Harold N. Wilkinson; Homer F. Wilkinson; George H. Searle; Attorneys for Appellant;

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IN THE SUPREME COURT
OF THE
STATE OF UTAH

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V. J. LUND, et al.,
Plaintiffs and Appellants

— vs. —

COTTONWOOD MEADOWS
COMPANY, et al.,
Defendants and Respondents

Utah Supreme Court, Utah
Case No. 10015

BRIEF OF APPELLANT

Appeal from a Summary Judgment Rendered Against
the Appellants by the Honorable Stewart M. Hanson,
Judge of the Third District Court in and for
Salt Lake County, State of Utah

HAROLD N. WILKINSON

HOMER F. WILKINSON

10 Executive Building
Salt Lake City, Utah

GEORGE H. SEARLE

2805 South State Street
Salt Lake City, Utah

Attorneys for Appellant

MULLINER, PRINCE AND MANGUM

315 East Second South
Salt Lake City, Utah

Attorneys for the Respondent

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IN THE SUPREME COURT OF THE STATE OF UTAH

V. J. LUND, et al.,
Plaintiffs and Appellants

— vs. —

COTTONWOOD MEADOWS
COMPANY, et al.,
Defendants and Respondents

Case No. 10015

BRIEF OF APPELLANT

STATEMENT OF NATURE OF CASE

This is an action to permanently enjoin and restrain the respondents from building a Mobile Trailer Park in the area known as Cottonwood Heights, which is within the jurisdiction and under the authority of the “Uniform Zoning Ordinance of Salt Lake County, Utah,” also known as Title 8, Revised Ordinances of Salt Lake County, Utah, 1953, and as amended effective June 15, 1957 (Defendant, Exhibit ~~2~~3), and further amended on or about April 25, 1962 (R. 37 last sentence of paragraph 7) ; to order the recall and voiding of building permit heretofore issued to the respondents allowing them to build and establish a Mobile Trailer Park in said area; in the alternative that in the event respondents are entitled to receive a building permit as applied for, that the same be restricted to and provide that the minimum lot area for each and every dwelling structure shall be one (1) acre.

DISPOSITION IN LOWER COURT

Summary Judgment was granted in favor of respondents allowing respondents to establish 205 trailer dwelling structures on a less than 26-acre plot of land (R. 48, R. 49, R. 57, and R. 58).

The court's ruling was primarily based upon the finding that the decision of the County Planning Board permitting and allowing the respondents to proceed was not appealed within 90 days to the Salt Lake County Board of Adjustment and the appellants slept on their rights and are not in a position to resort to the courts for the purpose of prohibiting respondents' building program.

RELIEF SOUGHT ON APPEAL

Reversal of Summary Judgment granted to respondents and an order directing the Third District Court in and for Salt Lake County, Utah, to permanently enjoin and restrain the respondents from building a Mobile Trailer Park, or to order the recall and voiding of the building permit heretofore issued to the respondents allowing them to build and establish 205 trailer dwelling structures on a less than 26-acre plot of land, or in the event it is found that respondents are entitled to receive a building permit, that the same be restricted to and provide that the minimum lot area for each and every dwelling structure shall be one (1) acre.

STATEMENT OF MATERIAL FACTS

The "Uniform Zoning Ordinances of Salt Lake County, Utah" a/k/a Title 8, Revised Ordinances of Salt Lake County, Utah 1953 as amended, effective June 15, 1957 (Respondents' Exhibit #3) provides:

8-1-3 at page 2

“In interpreting and applying the provisions of this ordinance, the requirements contained herein are declared to be the minimum requirements for the purposes set forth.”

8-1-6 (28) at page 5

“Dwelling, Any building, or portion thereof, which is designed for use for residential purposes, except * * *.”

8-1-6 (64) at page 9

“Structure, Anything constructed or erected, which requires location on the ground or attached to something having a location on the ground.”

8-1-6 (68) at page 9

“Trailer Camp, Any area or tract of land used or designated to accommodate two (2) or more automobile trailers or camping parties.”

8-1-7 at page 10

“Building Permit Required. The use of land or the construction, alteration, repair, or removal of any building or structure or any part thereof, as provided or as restricted in this Ordinance shall not be commenced, or proceeded with, except after the issuance of a written permit for the same by the County Building Inspector.”

AGRICULTURAL ZONE A-2

8-26-1 at page 48

“Use Regulations. In Agricultural Zone A-2, no building, structure or land shall be erected which is arranged, intended or designed to be used for other than one or more of the following uses:

(7) Trailer Camps.”

8-26-2 at page 48

“Area Regulations. None, except that the minimum lot area for any dwelling structure shall be one (1) acre.”

Trailer camps are authorized in the following zoned areas; A-2, A-3, C-3, M-1 and M-2 (Respondents' Exhibit #3 at Page 12). In areas A-2 and A-3 trailer camps are restricted to a minimum lot area for any dwelling to one (1) acre. In areas C-3, M-1 and M-2 no such restriction is imposed.

Salt Lake County on or about April 25, 1962 amended its zoning ordinances changing the classification of the area here involved from Agricultural Zone A-2 to Residential Zone S-1A, which amendment became effective on May 10, 1962 (R. 37).

RESIDENTIAL ZONE S-1A

8-12-1 at page 31

“In Residential Zone S-1A, no building, structure or land shall be erected which is arranged, intended, or designated to be used for other than one or more of the following uses:”

(MOBILE TRAILER PARKS NOT INCLUDED OR LISTED)

8-12-2 at page 31

“Area Regulations. The minimum lot area shall not be less than (1) Acre.”

The following appears to be the chronological order of happening of events in this matter: T. 100-106

- | | |
|---------------------|---|
| January 30,
1962 | Application was made by some of the appellants to amend the Zoning from Agricultural A-2 to Residential S-1A which would in effect outlaw Mobile Trailer Camps. |
| February 8,
1962 | The contract for the purchase of the property was executed by the respondent. |
| March 28,
1962 | Plans for a Mobile Trailer Park were submitted to the Planning Commission by the respondents. |
| April 10,
1962 | Altered plans for a Mobile Trailer Park were submitted to the Planning Commission by the respondents. |
| April 18,
1962 | Subdivision Committee of the Planning Commission approved respondents' plans on the conditions that certain alterations be made. |
| April 25,
1962 | A public hearing was held on appellants' application to amend the Zoning Ordinance from Agricultural A-2 to Residential S-1A. |
| April 25,
1962 | The Salt Lake County Commission approved the appellants' application to rezone the area to S-1A. |

- May 10, 1962 The zoning amendment rezoning the area from Agricultural A-2 to Residential S-1A became effective.
- June 8, 1962 Salt Lake County Attorney's Office directed that the planning commission should sign and approve the respondents' applications and the building and zoning inspection department should issue a building permit to the respondents. (Respondents' Exhibit #4)
- June 12, 1962 Respondents' plans were signed by the Planning Commission and the same were back dated to April 10, 1962 as being the approval date thereof.
- July 19 1962 Respondents' plans were approved by the Board of Health.
- August 21, 1962 Respondents' plans were approved by the County Surveyor.
- September 10, 1962 Building permit was issued to Respondents.

ARGUMENT

POINT I

THE TRIAL COURT ERRED IN FINDING THAT THE APPELLANTS FAILED TO EXHAUST THEIR ADMINISTRATIVE REMEDY.

The trial court erred in ruling against the appellants and granting summary judgment for the respondents (Memorandum Decision R. 48) and again on appellants' motion to set aside the summary judgment (Memorandum Decision R. 57) upon the grounds that the appellants failed to exhaust their administrative remedies by not appealing the decision of the County Planning Commission to the County Board of Adjustment within 90 days. This is based on Sec. 17-27-16 UCA 1953 which provides in part:

"Appeals to the board of adjustment *may be taken* by any person *aggrieved* by his inability to obtain a building permit, or by the decision of any administrative officer or agency based upon or made in the course of the administration or enforcement of the provisions of the zoning resolution. Appeals to the board of

adjustment *may be taken* by any officer, department, board or bureau of the county affected by the grant or refusal of a building permit or by other decision of an administrative officer or agency based on or made in the course of the administration or enforcement of the provisions of the zoning resolution. The time within which such appeal must be made, and the form or other procedure relating thereto, shall be as specified in the general rules provided in writing by the board of county commissioners to govern the procedure of such board of adjustment or in the supplemental rules of procedure adopted by such board provided further, that said rules and regulations shall be available to the public at the office of the county commissioners at all time. . . .” (Emphasis added)

The County Commissioners in response to this section, have adopted the following rule of procedure:

“An appeal to the Board of Adjustment must be taken within ninety (90) days after the cause arises or the appeal will not be considered by the Board of Adjustment.”

The appellants have no argument with the general rule of exhaustion of administrative remedies, but assert that it is a rule with many limitations and exceptions and is not applicable in this case for many reasons. First, the cases indicate that when it would appear that the administrative remedy would be fruitless because the administrative body would be powerless to afford relief, then the appeal would be unnecessary. 42 Am. Jur. Public Administrative Law, Sec. 200, Pg. 585. The Board of Adjustment can grant adjustments or variances under the ordinance, but appellants assert that under the law, the Board does not have the power to say that an ordinance is arbitrary or unreasonable or that an ordinance is invalid or that a building permit granted under an ordinance that has been amended would be invalid for, in effect, the Board would be ruling on the validity of the new ordinance. This is what the Board of Adjustment would have to do in this case for the building permit was issued in violation of the new ordinance. This

raises the legal question as to whether the old ordinance or the amended ordinance is applicable and this can only be decided by a judicial tribunal. *Provo City vs. Claudin*, 63 P.2d 570, *Conlan v. Board of Public Works*, 94 A. 20, 660.

The doctrine applies where the express terms of the statute makes the exhaustion of the administrative remedy a condition precedent to the right to bring a court action. However, the doctrine does not apply where the terms of the statute either expressly or by implication makes the bringing of the administrative remedy permissible only, which would indicate that the legislature intended to allow a judicial remedy even though the administrative remedy had not been exhausted. This would mean that the parties would be given an election of remedies either administrative or judicial. 42 Am. Jur. Public Administrative Law, Sec. 199, Pg. 583. *Security First National Bank v. Los Angeles County*, 217 P.2d 946, *Coyle v. Erie R. Co.*, 59 A.2d 817, *McMasters v. Owen*, 81 N.Y.S.2d 564.

I refer the court to Sec. 17-27-16 which is quoted on page 5 of this brief, especially to the italicized portions which provide "appeals to the board of adjustments may be taken" and again further down "appeals to the board of adjustments may be taken." This does not say "shall" or "must" be taken, but "may" which is permissive and not mandatory language in statutory construction.

The legislature realized and intended this for they provided another remedy under Sec. 17-27-28 which states:

"It shall be unlawful to erect, construct, reconstruct, alter, maintain or use any building or structure or to use any land in violation of any regulation in, or any provision of, any zoning resolution, or any amendment thereof, enacted or adopted by any board of county commissioners under the authority of the act. Any person, firm or corporation violating any regulation in, or of

any provision of, any zoning resolution, or any amendment of this act, shall be guilty of a misdemeanor. In case any building or structure is or is proposed to be erected, constructed, reconstructed, altered, maintained or used, or any land is or is proposed to be used, in violation of this act or of any regulation or provision of any resolution, or amendment thereof, enacted or adopted by any board of county commissioners under the authority granted by this act, such board, the district attorney of the county or any owner of real estate within the district in which such building, structure or land is situated, may, in addition to other remedies provided by law, institute injunction, mandamus, abatement or any other appropriate action or actions, proceeding or proceedings to prevent, enjoin, abate or remove such unlawful erection, construction, reconstruction, alteration, maintenance or use.” (Emphasis added)

You will note that this gives a judicial action in addition to “other remedy provided by law” or the permissive appeal to the Board of Adjustment. The case at hand is clearly a case where the appellants had an election of remedies, and they chose to resort to the courts. Even if the court finds that the appellants should have appealed to the Board of Adjustment, the appellants are now barred by the 90-day limitation laid down by the Board of County Commissioners so the appellants’ administrative remedy has now been exhausted, and they would have the right to bring an original action as provided for in Sec. 17–27–23.

Appellants also contend that they have a right to bring an appeal for the Board would not have jurisdiction to hear the matter since the appellants are not “persons aggrieved” as required in Sec. 17–27–16.

The Supreme Court of Oklahoma in the case of *Clark v. Warner*, 204 P. 929, had the question come before them as to what “person aggrieved” meant. The court held:

“Webster’s International Dictionary defined ‘aggrieved’ as follows:

‘Adversely affected in respect of legal rights; suffering from an infringement or denial of legal rights.’

Bouvier's Law Dictionary defined "aggrieved" as follows:

'Having a grievance, or suffered loss or injury. The parties aggrieved are those against whom an appealable order or judgment has been entered. One cannot be said to be aggrieved unless error has been committed against him.'

A person cannot be said to be aggrieved when they are only remotely or indirectly affected by the decision or action of the board of county commissioners. In a civil action the persons who may be aggrieved by the decision of the court are the parties to the action, the real parties in interest. The one aggrieved is the one against whom a judgment or decision is rendered or order made . . ."

See also, 20 C.J.S., County, Sec. 95.

In this case the appellants are not aggrieved by any action of the Board, for action was not taken directly against them. They are not appealing from any decision for they have not been parties to any action, but are instituting an action in the first instance as owners of real estate under Sec. 17-27-23.

POINT II

THE BUILDING PERMIT ISSUED TO THE RESPONDENTS IN VIOLATION OF THE EXISTING ZONING ORDINANCE IS NULL AND VOID AND THE RESPONDENTS DID NOT ACQUIRE ANY VESTED RIGHTS EVEN THOUGH THEY MAY HAVE ACTED IN RELIANCE ON SAID PERMIT.

Appellants call the Court's attention to the fact that the plans were actually signed by the Planning Commission, approved by the Board of Health, approved by the County Surveyor, and the Building Permit was issued after the ordinance was amended, all this being done in violation of the then existing zoning ordinance. The Utah Code Annotated 1963, Sec. 17-27-12 provides in part:

" . . . such building inspector shall not issue any permit unless the plans of and for the proposed erection, construction, reconstruction, alteration, or use fully conform to all zoning regulations then in effect."

This section specifically provides that a building permit shall not be issued unless the plans conform to the ordinance then in effect, and in this case the new ordinance had gone into effect so the plans did not conform and the permit should not have been issued. A permit issued in violation of law is null and void and confers no vested rights on the holder even though the holder acts in reliance on the permit. 101 C.J.S. Zoning, Sec. 238 Pg. 1001 provides:

“Generally, an unauthorized permit or certificate, or one which violates, or does not comply with, the zoning laws or ordinances is void, or a nullity, and confers no rights on the permittee . . . and does not bind the municipality in any respect, even though the permittee may have commenced building operation, or otherwise incurred expenses or obligation thereunder. . . . An unauthorized permit does not constitute a basis for estoppel, or prejudice or destroy the rights of the public to require the enforcement of zoning laws valid on their face.”

See also 58 Am. Jur. Zoning, Sec. 184.

In the case of *Underhill v. Board of Appeals*, 72 N.Y.S.2d 588, action was brought by a group of property owners against the Board of Appeals for granting a building permit for the building of an airport, one of the bases of the action being that the permit was issued in violation of the zoning ordinance. The permittee went to a great deal of expense in constructing an aviation field, hangars, office building, gasoline pumps, etc. The court in ruling for the petitioners quoted from Judge Cardoza to the effect that when the permit was revoked by the court, it returned the parties to the position they were before the issuance of the permit, that the establishment of the airport and structure were illegal and the permittees did not acquire any vested rights to maintain their structures or continue operation even though they acted under the permit. In effect, it was as if a permit had never been granted. The Supreme Court of

Alabama in the case of *Board of Zoning Adjustments v. Boykin*, 92 So.2d 906 held:

“When a building permit is issued in violation of the zoning ordinance it is invalid, and the permittee acquires no vested rights thereunder and this although the permittee has incurred expense in connection therewith and in reliance thereon. (citation omitted) And one to whom a building permit has been illegally issued cannot successfully invoke the doctrine of estoppel so as to preclude the municipality from revoking the permit, notwithstanding the fact that the permittee may have acted in good faith and may have expended money or incurred obligation in reliance upon the permit. (citations omitted)”

I refer the court to the case of *McCarty v. Schuette*, 24 N.W.2d 244 where the plaintiff who was an adjoining property owner to the defendant brought action against him for building a garage in violation of the zoning ordinance even though the defendant was acting under a building permit. The court held that the permit offered no protection because the garage was in violation of the ordinance and it was proper for plaintiff to maintain this action. The Florida court in the case of *Miami Shore Village v. Wm. N. Brockway, Post.*, 24 So.2d 33 held that a permit issued in violation of law confers no right because every person is presumed to know the nature and extent of the powers of the municipal office. This was after the permittee had gone to a great deal of expense of obtaining plans, excavating, purchasing material and pouring a foundation. A permit issued in violation of an existing zoning ordinance was held to be null and void and the governmental powers may not be forfeited by the action of the local office in disregard of the ordinance in the case of *V. F. Yahodiakin Engineering Corporation v. Zoning Board of Adjustments*, 86 A.2d 127.

The Uniform Zoning Ordinance of Salt Lake County, Sec. 8-1-10 provides:

“Licensing. All departments, officials and public employees of Salt Lake County which are vested with the duty of authority to issue permits or licenses shall conform to the provisions of this Title and shall issue no permit or license for use, building or purpose where the same would be in conflict with the provisions of this Title, and any such permit or license, if issued in conflict with the provisions of this Title shall be null and void.”

The Court should find that the respondents’ permit issued after the ordinance was amended is null and void and was never a valid permit.

POINT III

THE RESPONDENTS DID NOT OBTAIN ANY VESTED RIGHTS UPON THE FILING OF AN APPLICATION FOR A BUILDING PERMIT FOR WHEN THE ORDINANCE WAS AMENDED THE AMENDMENT BECAME CONTROLLING AND RIGHTS COULD NOT VEST.

The cases hold that zoning regulations are not regarded as contracts made by the municipality with the land owner and may be modified at any time. Also, that property owners do not obtain a vested right as a result of a zoning ordinance which would preclude a future amendment to the ordinance and that the governmental body is not estopped from enforcing any change in the ordinance. *Case v. City of Los Angeles*, 298 P.2d 50, *Taylor v. City of Hackinsack*, 5 A.2d 788.

The great majority of the cases hold that if an ordinance is amended while an application for a permit is pending that the application will be controlling. 169 A.L.R. 584, 75 A.L.R.2d 236, 101 C.J.S. Zoning, Secs. 90 and 221, 58 Am. Jur. Zoning, Sec. 182. In the Maryland case of the *Board of County Commissioners v. Snyder*, 46 A.2d 689, the Defendant on September 7th purchased property, had plans prepared by an architect, and spent several thousands of dollars in grading and preparing the land to build a busi-

ness building which was in compliance with the then existing ordinance. On October 7th and again on November 17th, Defendant made application for a building permit. Certain residents became aware of the situation and protested the issuance of the permit. The permit was denied on December 5th pursuant to an amendment of the zoning ordinance on November 28th. The court in holding that the city had the right to amend the zoning ordinance even after the application had been filed stated:

"But it does not follow that the proposed business in the case at bar was established or existing. No permit was issued, and if it had been, it would have conferred no vested rights, nor would it have created any estoppel. (citations omitted) A mere intention to use of the business in the particular zone. . . ."

In the case of *Re Town Board v. Huntington*, 214 N.Y.S.2d 164, an application was made to extend the business use of certain property as was then permitted by the zoning ordinance and upon the granting of the application the town appealed and during the time of the appeal amended the ordinance prohibiting the extending business use. The court held:

"The right to an extension did not vest, and this appeal must be decided upon the law as it now exists."

See also *Re Dengles*, 160 N.Y.S.2d 83, *Harrison Ridge Associates Corporation v. Sforza*, 179 N.Y.S.2d 547.

Also, the court, in the case of *Rodu v. Lee*, 81 A.2d 517, held that the law in effect at the time of the decision of the court is controlling for the court stated:

"The first question is whether or not the zoning ordinance, as it existed . . . when the applications for the permits were filed, or whether the zoning ordinance as subsequently amended, is controlling. The law as it exists at the time of the decision in the instant proceeding is controlling. *Concord apartments vs. Board of Adjustments*, 1 N. J. Super. 301, 64 A. 2d 355. (App. Div. 1949)."

I call the Court's attention to the chronology of events which are listed under the facts, particularly to the fact that an application for the change of zoning was filed on January 30, 1962 and the application for a building permit was not filed until March 28, 1962. If the rights vest in either party they would vest first in those who were first to file an application for the zoning amendment. They had the right to have their application acted on and decided before action was taken on respondents' subsequent application.

However, as in most fields of the law, there are limitations to the general rule, those being if before the ordinance is amended a party substantially changes his position in reliance on the ordinance, or if only ministerial acts are left to be performed before a permit is issued. The respondents were negotiating on the property in January but did not execute the contract for the purchase of the property until February 8, 1962 which was during the time the change of zoning application was pending. A public hearing on the zoning application was held on April 25, 1962 and the ordinance was amended on May 10, 1962. Four months after this on September 10, 1962, the building permit was issued. The respondents surely had knowledge of the happenings of these events and cannot now be heard to say that they changed their position in reliance on the former ordinance. Any expenses they incurred was at their own risk.

Respondents in their argument before the court (T. 125) refers to the ministerial limitation and cite the case of *State v. City of Bellvue*, 275 P.2d 899 as authority. In the Bellvue case the City refused to grant a permit for business because the applicant failed to provide off-street parking. The applicant cured this defect and the city still refused on the grounds that the off-street parking did not represent the

highest and best use to which the property could be put. The applicant sought a writ of mandate compelling the issuance of the permit and the city responded by then attempting to rezone the area. On appeal, the court held for the applicant. There may have been only a ministerial act left to be performed in the Bellvue case, but in the case at hand, there was an application to amend the ordinance staring the Board in the face, which they must rule on prior to issuing a building permit, and approval still had to be obtained from the County Surveyor and Board of Health, so you can hardly say that there was only a ministerial act left to be performed. The Bellvue case is certainly distinguishable on its facts and is not in point with the case before this court, which case falls within the rule followed by the overwhelming majority of the cases.

If we look at this in the light most favorable to the respondents and assume that the approval of the plans and the issuance of the building permit were valid, then the question arises as to what effect the zoning amendment has on the permit and what rights, if any, an applicant acquires if he obtains approval and then the ordinance is amended. The general rule is set forth in 58 Am. Jur. Zoning, Sec. 185, which provides:

"A number of cases sustain the express or implied revocation of a building permit where, subsequent to its issuance, the city passes a valid ordinance which has the effect of prohibiting the erection of a building such as the one in question, and, under some decisions, this is true even though the grantee of the permit has entered into contracts, bought material, or incurred other expenses. This rule has been applied in the case of a subsequent zoning ordinance or amendment thereof, and it is held that the grant of a permit or license does not preclude the application thereto of a new zoning regulation prohibiting the erection of the building or the operation of the business in the particular zone. . . ."

Cases support the general rule to the effect that municipalities through their police power may impliedly revoke an existing building permit by amending the existing ordinance, for the California Court in the case of *Miller v. Board of Public Works*, 234 P. 381, held:

“No point is made that the Board has not the power to revoke a permit once it has been duly issued, nor that the ordinance, if valid, may not operate retroactively to nullify a permit previously issued.”

See also 40 A.L.R. 732.

In the case of *Geneva Investment Company v. City of St. Louis, Missouri*, 87 F.2d 83, where the applicant, on November 18, obtained a permit to construct a filling station and on December 6th, the ordinance was amended, the court held:

“The building permits created no vested right, but were subject to revocation by the proper exercise of police power. The amending ordinance had the effect of revoking the permits. (citations omitted) . . . The loss sustained by appellant through depreciation of value, if the ordinance is sustained, while proper for consideration by the court, is not controlling, for if the police power is properly exercised, loss to the individual is a misfortune which he must undergo as a member of society.”

POINT IV

THAT IF THE RESPONDENTS ARE ENTITLED TO A BUILDING PERMIT, THE SAME SHOULD BE RESTRICTED TO AND PROVIDE THAT THE MINIMUM LOT AREA FOR EACH AND EVERY DWELLING STRUCTURE SHOULD BE ONE (1) ACRE.

The lower court chose to ignore the fact that on January 30, 1962 application was made by some of the citizens of the area to rezone the area from Agricultural A-2 to Residential S-1A which by deleting “trailer camps” did “outlaw” the same prior to any application made by the respondents.

The lower court chose to ignore the fact that the respondents who had made application for a permit and were parties to the proceedings slept on their rights by not appealing, within ninety (90) days as required by the rule of procedure of the Board of County Commissioners, the rezoning to S-1A which became effective and law on May 10, 1962, prior to the respondents being granted a building permit.

The lower court chose to ignore the fact that the area now supports a \$125,000.00 Country Club, numerous above-average residential homes built in platted subdivisions serviced with sewer, gas and electricity all being installed primarily for residential purposes and hardly for agricultural endeavors.

The lower court chose to ignore that "trailer camps" in an agricultural area such as A-2 and A-3 would contemplate the same being sheepherder camps or cattle camps and not Mobile Trailer Park or tourist camps which would be permissible in areas such as C-3, M-1, and M-2 where they would not be limited to one (1) acre lots.

The lower court chose to ignore the great and important investment that the residential home owners, as represented by the appellants, have invested in their homes and the area; the school and church problems that would arise and the tax impact imposed upon such an agricultural area under Zoning A-2 or the residential area under Zoning S-1A.

Instead the lower court chose to see: That it is just and reasonable to impose upon a property owner who would wish to build a home for his family without wheels attached to it that he be restricted for the good of the public to not less than a one (1) acre plot of ground for each "dwelling structure," while if he attaches wheels to the side of his

“dwelling structure” he could put as many on one (1) acre of ground as he wished.

That the appellants had acquired no vested rights by the fact that some of the residents had applied for rezoning prior to the respondents applying for a building permit and the area was in fact, rezoned prior to the issuance of the building permit.

That it was not necessary for the respondents to administratively appeal the rezoning to S-1A within 90 days even though the same became effective and law before the respondents were granted a building permit, but that the appellants who were not aggrieved party and some of whom were not even on the application for the zoning change slept on their rights by not appealing.

It is submitted that if the area had not been rezoned from Agricultural A-2 to Residential S-1A the respondents would not have been entitled to place more than one (1) dwelling structure on one (1) acre of land and should not be allowed to place 205 trailer dwelling structures on a less than 26-acre plot of land as they now contemplated doing. The only difference is that the trailer dwelling structure would have some wheels attached while a substantial brick home would not, for both would be using the same light, gas, sewer, and school facilities.

CONCLUSION

That this court should reverse the decision of the lower court and find for the appellant and against the respondent.

HAROLD N. WILKINSON
HOMER F. WILKINSON
GEORGE H. SEARLE

Attorneys for Appellant