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William E. Naylor et al v. Salt Lake City Corp : Brief of Respondents

Utah Supreme Court

Van Cott, Bagley, Cornwall & McCarthy; Attorneys for Appellants;
Oscar W. McConkie, Jr.; Jack L. Crellin; Attorneys for Respondents;

IN THE SUPREME COURT OF THE STATE OF UTAH

WILLIAM E. NAYLOR, WILLIAM COSSEY, JAMES L. NEVILLE, and BLAE E. HANSEN,
Plaintiffs and Appellants,

vs.

SALT LAKE CITY CORPORATION, a municipal corporation, J. BRACKEN LEE, HERBERT F. SMART, GEORGE B. CATMULL, CONRAD HARRISON, JOE L. CHRISTENSEN, RAY ROLFSON, and ALDER-WALLACE, INC., a Utah corporation,
Defendants and Respondents.

Case No. 10114

RESPONDENTS' BRIEF

Appeal From the Judgment of the Third District Court for Salt Lake County
Honorable A. H. Ellett, Judge

HOMER HOLMGREN
CITY ATTORNEY
JACK L. CRELLIN
ASSISTANT CITY ATTORNEY
414 City and County Building
Salt Lake City, Utah
OSCAR W. McCONKIE, JR.
1010 Deseret Building
Salt Lake City, Utah
ATTORNEYS FOR RESPONDENTS

VAN COTT, BAGLEY, CORNWALL & McCARTHY
Suite 300, 65 South Main Street
Salt Lake City, Utah
GRANT MACFARLANE, JR.
ATTORNEYS FOR APPELLANTS

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PREFACE

This Honorable Court is an accepted and much cited authority in the subject matter of this appeal—zoning. There has been no question since the landmark case of *Euclid, Ohio v. Amber Realty*, 272 U.S. 365,

47 S. Ct. 114, that such zoning statutes as we have in Utah are "valid exercises of authority." This Court has refined and expounded and made a part of our lives this important area of law in our complex society. It would be redundant to recite all of the well reasoned and comprehensive cases contributed by this Court. You have said that the exercise of zoning power "is definitely a legislative function and activity" and that the Board of City Commissioners "is given the power in a broad general grant, and without any right of review, of zoning the city as to uses to which land within the city can be put." *Walton v. The Tracy Loan and Trust Company et al.*, 97 U. 249, 92 P.2d 724, 727. As a legislative function is limited to the scope of review of any legislative action. The decision of the legislative body will not be disturbed unless such decision is an abuse of the legislative discretion.

Again in *Marshall v. Salt Lake City,* 105 U. 111, 141 P.2d 704, this Court leads the way: "It must be considered as a whole to see if it is designed to accomplish such (police power and general welfare power) purpose; if it could promote the general welfare; or even it is reasonably debatable that it is in the interest of the general welfare, that act should be upheld. The wisdom of the plan, the necessity for zoning, the number and nature of the districts to be created, the boundaries thereof and the uses therein permitted, are matters which lie in the discretion of the governing body of the city. *Unless the action of such body 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 the municipality.

"*It is primarily the duty of the city to make the classifications. If a classification is reasonably doubtful, the judgment of the court will not be substituted for the judgment of the city.*" (Emphasis added).

And finally, in *Gayland v. Salt Lake County*, 11 U.2d 307, 358 P.2d 633, this court reasonably, and we think in the instant case, with finality, answers appellants' protests. Your words in this case are quoted at length in the following argument.

Assuming the general law of zoning as above said is not seriously contested in this state, we contain ourselves herein to the relatively narrow points raised by appellants' brief on appeal.

STATEMENT OF NATURE OF CASE

This is an action challenging the validity of a zoning amendment ordinance enacted by the Salt Lake City Board of Commissioners and attempting to enjoin the issuance of building permits in accordance therewith.

DISPOSITION IN LOWER COURT

The Third Judicial District Court granted defendant's motion for dismissal upon stipulations of counsel and the pleadings at the pretrial conference.

RELIEF SOUGHT ON APPEAL

Two of the plaintiffs seek a reversal of the judgment of dismissal granted to defendants by the District Court.

STATEMENT OF FACTS

The facts as set forth in the appellants' brief are essentially correct. The Board of Commissioners of Salt Lake City passed an ordinance changing the zoning classification of a major portion of a city block located between 2nd and 3rd South Streets and 6th and 7th East Streets of said city. The zoning was changed from a Residential R-6 classification to a Business B-3 classification. (R. 8). The action was taken after due and regular notice. (R. 21-22) and after advertised and proper public hearings. (R. 17-18, 21). A copy of the amended ordinance is a part of this record (R. 8) together with the Use District Map which was altered thereby. (Attached to affidavit R. 21-22). It was agreed at pre-trial that the said map was a photostatic copy of the use map of Salt Lake City. Counsel for appellant further agreed that the map now in the record was "some evidence" of the general and comprehensive plan of zoning in the city. (R. 33).

The ordinance change was sought by petition of Alder-Wallace, Inc., owners and optionees of the instant property. (R. 34-35). The change was in accordance with the orderly development of Salt Lake City.

A perusal of the Use District Map indicates the classifications of property in the vicinity and the tendency of business use extending eastward and southward as the city expands and the population grows.

Plaintiffs and appellant brought this action to declare the action of the legislative body of Salt Lake City void as an action in excess of the city's power and authority and to estop them from issuing building permits. (R. 7).

At the pre-trial conference defendants moved that the complaint be dismissed with prejudice upon the stipulations at pre-trial and upon the pleadings. The complaint was dismissed with prejudice. Plaintiffs-appellants have brought this appeal from this order of dismissal.

ARGUMENT

POINT I

THE LOWER COURT DID NOT ERR IN HOLDING AS A MATTER OF LAW FROM THE PLEADINGS AND PRE-TRIAL PROCEEDINGS THAT THE CITY HAD ACTED WITHIN ITS AUTHORITY IN ADOPTING THE QUESTIONED AMENDMENT TO THE ZONING ORDINANCE.

Sections 10-9-1 and 10-9-2, U.C.A. 1953, grant to Salt Lake City the power "to regulate and restrict . . .

the location and use of buildings, structures and land for trade, industry, residence or other purposes" and to "divide the municipality into districts" of such number, scope and area as may be deemed best suited to carry out the purposes of [the statute]." Section 10-9-3, U.C.A. 1953, provides as follows:

> "Such regulations shall be made in accordance with a comprehensive plan designed to lessen congestion in the streets, to secure safety from fire, panic and other dangers, to promote health and the general welfare, to provide adequate light and air, to prevent the overcrowding of land, to avoid undue concentration of population, to facilitate adequate provision for transportation, water, sewage, schools, parks and other public requirements. Such regulations shall be made with reasonable consideration, among other things, to the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout th city."

The main contention of the appellants is that the lower court was in error in considering the Zoning Ordinnace of Salt Lake City, Utah, together with the Use District Map of Salt Lake City (Pre-Trial Exhibit 1, following R-22), as evidence from which the "comprehensive plan" required under Section 10-9-3, U.C.A. 1953, could be ascertained.

The term "comprehensive plan" as used in our statute, which term is similarly used in like legislation in over 40 other states, has been generally defined as "a

general plan to control and direct the use and development of property in a municipality or a large part thereof by dividing it into districts according to the present and potential uses of the property." See *Words and Phrases, Permanent Edition, Volume* 8, as supplemented, and *Clark v. Town Council of Town of West Hartford*, 135 Conn. 476, 144 A.2d 327, cited in Appellants' brief.

In the leading case on zoning in this state, *Marshall v. Salt Lake City*, 105 U. 111, 141 P.2d 704, 149 A.L.R. 282, this court recognized that the zoning ordinance of Salt Lake City, as enacted in August, 1927, was the embodiment of a "comprehensive zoning plan" which had its historic origin prior to 1920. In answering its own question (141 P.2d 707) of whether the zoning provisions for small business districts within residential districts was "a violation of the statute requiring a comprehensive plan" this court, in upholding the city's zoning ordinance and amendments thereto in question, quoted the following from page 129 of *Metzenbaum's Law of Zoning* (141 P.2d 709-710):

> " 'In a comprehensive plan, the whole territory of the municipality is divided into districts some of which may be large, some small * * * each with its own standards of use, height and occupancy; each selected by the consideration of the community health and general welfare as applied to that particular district; *the whole constituting a comprehensive plan* for the best manner of conserving and assuring th greatest safety and welfare of the entire community.' " (Emphasis added.)

It is clear beyond doubt from the above that this court has itself recognized the zoning ordinance of Salt Lake City and its attendant Use District Map as incorporating the "comprehensive plan" contemplated by Section 10-9-3, U.C.A. 1953. The appellants, however, fail to point this out in their brief and cite the case of *Hochberg v. Borough of Freehold,* 40 N.J. Super. 276, 123 A.2d 46, as authority for their contention that the term "comprehensive plan" signifies something other than the pre-existing zoning ordinance itself. This case was decided in 1956 by the Superior Court of New Jersey, Appellate Division, which is an intermediate court of appeal in the New Jersey judiciary. In 1957 the Supreme Court of New Jersey, which is the highest court of appeal in that state, in the case of *Kozesnik v. Township of Montgomery,* 24 N.J. 154, 131 A.2d 1, had occasion to consider the validity of an amendatory zoning ordinance as being "in accordance with a comprehensive plan" under a statute in all respects similar to Section 10-9-3, U.C.A. 1953. The New Jersey court held as follows at 131 A.2d 7-8:

> "The Zoning Act nowhere provides that the comprehensive plan shall exist in some physical form outside the ordinance itself. The question thereof is whether that requirement inheres in the very nature of a 'comprehensive plan.'
>
> "There has been little judicial consideration of the precise attributes of a comprehensive plan. Haar, "In Accordance with a Comprehensive Plan," supra, (68 Harv. L. Rev. 1154). Our own decisions emphasize that its office is to prevent a

capricious exercise of the legislative power resulting in haphazard or piecemeal zoning. (Citing cases). Without venturing an exact definition, it may be said for present purposes that 'plan' connotes an integrated product of a rational process and 'comprehensive' requires something beyond a piecemeal approach, both to be revealed by the ordinance considered in relation to the physical facts and the purposes authorized by R.S. 40:50-32, N.J.S.A. *Such being the requirements of a comprehensive plan, no reason is perceived why we should infer the Legislature intended by necessary implication that the comprehensive plan be portrayed in some physical form outside the ordinance itself. A plan may readily be revealed in an end-product — here the zoning ordinance* — and no more is required by the statute." (Emphasis added).

Obviously referring to the lower appellate court's reasoning in the *Hochberg* case that the embodiment of the comprehensive plan in the zoning ordinance itself would freeze the ordinance beyond amendment, the New Jersey Supreme Court observed as follows at 131 A.2d 8:

> "The comprehensive plan embraced by an original zoning ordinance is of course mutable. If events should prove that the plan did not fully or correctly meet or anticipate the needs of the total community, amendments may be made, * * * and if the ordinance as thus amended reveals a comprehensive plan, it is of no moment that the new plan so revealed differs from the original one."

In 1959, the New Jersey Supreme Court, in the

case of *Ward v. Montgomery Township*, 28 N.J. 529, 147 A.2d 248, reaffirmed its decision in the *Kozesnik* case and stated the rule of that state as follows:

> "A comprehensive plan has been defined generally as an 'integrated product of a rational process' revealing a physical partition of the municipality reasonably designed to produce a homogenous pattern of location and uniform development of variant land uses. *The zoning ordinance itself may bespeak the scheme; there need be no extrinsic guide.*" (Emphasis added).

In light of the foregoing it is clear that the *Hochberg* case does not represent the law of the state of New Jersey as asserted by the appellants. Furthermore, the rule as enunciated by the Supreme Court of New Jersey is supported by other authorities cited by the appellants in their brief. Thus Charles M. Haar, Assistant Professor of Law at Harvard Law School, in an article entitled *"In Accordance With A Comprehensive Plan,"* 68 *Harv. L. Rev.*, 1154, 1167, is quoted by appellants as follows:

> "This general plan, or comprehensive plan, with which the (zoning) amendment must conform, is many things to many courts. *It may be the basic zoning ordinance itself*, or the generalized 'policy' of the local legislative or planning authorities in respect to their city's development —or it may be nothing more than a general feeling of fairness and rationality." (Emphasis added).

The appellants also cite the case of *Gayland v. Salt Lake County*, 11 U.2d 307, 358 P.2d 633, as authority

for their position that matters extrinsic to the Use District Map or Zoning Ordinance must be considered in enacting amendments thereto. By skillfully extracting various portions of that opinion, together with their own abridgment thereof, they conclude that this court held in that case that a legislative body must consider many extrinsic matters in adopting zoning regulations such as location of businesses, schools and roads, traffic conditions, growth in population, existing land use classifications and the effect of zoning reclassifications upon the foregoing. But what the appellants have artfully concealed is the fact that the Supreme Court in the *Gayland* case actually assumed wide knowledge of such matters in public officers by virtue of their holding such offices. Thus in discussing the means by which a legislative body may inform itself of pertinent facts in adopting zoning regulations, this court stated as follows at page 636 of 358 P.2d Reporter:

> "For this reason it is entirely appropriate to hold public hearings and to allow any interested parties it desires to give information and to present their ideas on the matter. But this is by no means the only source from which the commissioners may obtain such information. *From the fact that they hold such public offices it is to be assumed that they have wide knowledge of the various conditions and activities in the county bearing on the question of proper zoning, such as the location of businesses, schools, roads and traffic conditions, growth in population and housing, the capacity of utilities, the existing classification of surrounding property, and the effect that the proposed reclassification may have on*

> *these things and upon the general orderly development of the county.* In performing their duty it is both their privilege and obligation to take into consideration their own knowledge of such matters and also to gather available pertinent information from all possible sources and give consideration to it in making their determination." (Emphasis added).

The holding in the *Gayland* case actually attributes to the governing body of a municipality wide knowledge of conditions, activities and pertinent factual matters extrinsic to the zoning ordinance and use district map. The fact that the Board of Commissioners of Salt Lake City conducted two separate public hearings upon the zoning change challenged in this suit is not in dispute. An examination of the Use District Map of Salt Lake City, pretrial Exhibit 1, will readily reveal the existence of property zoned for commercial purposes east along 4th South Street to 9th East Street and extending north and south therefrom. Around the periphery of this commercially zoned area are small Business "B-3" districts located 1 or 2 blocks therefrom. On 2nd South Street the commercially zoned property extends to within one block of the property involved in this action. The same is true on 7th East Street. The location of intermediate business use districts on the periphery of an expanding commercial zone is clearly evident. That the zoning power is definitely a legislative function is beyond dispute. *Walton v. Tracy Loan & Trust Co.*, 97 U, 249, 92 P.2d 724, 726. That the governing body of a city has wide discretion in exercising its zoning

power is likewise firmly established. *Marshall v. Salt Lake City*, supra; *Gayland v. Salt Lake County,* supra. That such discretion is applicable to the wisdom of the plan, the necessity for zoning, the number and nature of the districts to be created, the boundaries thereof and the uses therein permitted is clearly fixed by the decisions of this court. *Marshall v. Salt Lake City,* supra; *Dowse v. Salt Lake City,* 123 U. 107, 255 P.2d 723. That the zoning action of a city is endowed with a presumption of validity is also established law. *Gayland v. Salt Lake County,* supra. That the court may not substitute its judgment for that of the Board of Commissioners of Salt Lake City in zoning matters is not subject to dispute. *Gayland v. Salt Lake County,* supra, and cases therein cited; *Marshall v. Salt Lake City,* supra. And it is the court's duty to resolve all doubts in favor of the commission's action unless such action is clearly beyond its power. *Gayland v. Salt Lake County,* supra. Under the circumstances here presented, viewed together with the law applicable thereto, it is clear that the lower court was correct in granting respondents' motion for judgment of dismissal.

CONCLUSION

The action of the Board of Commissioners of Salt Lake City in rezoning the property which is the subject of this litigation was a presumptively valid legislative act adopted after two public hearings thereon. In view of the assumed knowledge of public officers relating to

conditions and activities bearing on the question of proper zoning, the wide discretion vested in such officers, and the prohibition against courts substituting their judgment for that of the Board of Commissioners of Salt Lake City in adopting zoning regulations and amendments clearly in accordance with a comprehensive plan, it must be concluded that the lower court did not err in granting summary judgment for the respondents.

Respectfully submitted,

HOMER HOLMGREN
SALT LAKE CITY ATTORNEY

JACK L. CRELLIN
ASSISTANT SALT LAKE CITY ATTORNEY
414 City and County Building
Salt Lake City, Utah

ATTORNEYS FOR RESPONDENTS SALT LAKE CITY CORPORATION, J. BRACKEN LEE, HERBERT F. SMART, GEORGE B. CATMULL, CONRAD HARRISON, JOE L. CHRISTENSEN and RAY ROLFSON

OSCAR W. McCONKIE, JR.
1010 Deseret Building
Salt Lake City, Utah

ATTORNEY FOR RESPONDENT ALDER-WALLACE, INC.