

IN THE CHANCERY COURT FOR WILLIAMSON COUNTY, TENNESSEE

FILED
WILLIAMSON COUNTY
CLERK & MASTER

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ENTERED 3-3-04

THOMAS E. BOLTON)
)
 Plaintiff,)
)
 vs.)
)
 WILLIAMSON COUNTY, acting)
 by and through the WILLIAMSON)
 COUNTY PLANNING COMMISSION)
)
 Defendant)

No. 29567

ORDER

STATEMENT OF CASE

This case is before the Chancery Court upon Mr. Bolton's petition for writ of certiorari to review the actions of the Williamson County Planning Commission in denying his site plan application. Mr. Bolton applied to the Williamson County Planning Commission for site plan approval to permit the development of ninety-four (94) single family homes on 120 acres of land. The project was first considered by the Planning Commission on June 13, 2002. At that meeting the Planning Commission deferred the application.

On August 8, 2002 the Planning Commission again considered the project and disapproved the request. On December 12, 2002 Mr. Bolton returned to the Planning Commission with revisions to his site plan application. A motion for approval of the site plan failed. On February 13, 2003 the Planning Commission met again. It determined that its prior action did not meet the requirements of the Williamson County ordinance. Chairman Lackey correctly directed the Commission to take one of the following actions: (1) approve the request, (2) approve the request with conditions, or (3) deny the request. After discussion, the

Commission voted to deny Mr. Bolton's request for site plan approval. On April 10, 2003 Mr Bolton filed his petition for writ of certiorari with this Court

ANALYSIS

Under a petition for writ of certiorari, a court's review of an administrative agency's decision is limited to a determination of whether the administrative body acted within its jurisdiction or acted illegally, arbitrarily or capriciously. Cooper v. Williamson County Board of Education, 746 S.W. 2d 176, 179 (Tenn. 1987). A court is not to weigh the evidence. Watts v. Civil Service Board for Columbia, 606 S.W. 2d 274, 277 (Tenn. 1980). If the reviewing court finds there was any material evidence to support the Board's decision, then the Court must affirm the administrative body. Hoover, Inc. v. Metro Board of Zoning Appeals, 924 S.W. 2d 900, 905 (Tenn. App., 1996).

Mr. Bolton requested site plan approval for a single family, open space development. The proposed development was adjacent to much older subdivisions with 40,000 square foot lots. The proposed sewage treatment facility and drip fields for this development took up most of the open space. The topography of the open space included slopes over 15% and up to 40%. The Bolton proposal placed 94 lots on 117 acres or approximately 20,000 square foot lots. At the first meeting in June of 2002, the Planning Commission raised significant questions regarding the septic treatment system which the developer's experts were unable to answer satisfactorily. As a result the Commission deferred the application for another time. Mr. Bolton was charged with addressing the concerns of the County's consultant as they related to the difficult topographic nature of the proposed sewage treatment facility. At the time of the August hearing, Mr. Bolton had complied with and addressed the issues raised by the Commission in June. However, the

Commission still expressed great concern over the proposed sewer system and its possible failure, and who would pay for the corrective measures. It is clear from the comments by the various Planning Commission members that they were extremely concerned about the viability of the proposed sewage treatment system and that the City of Franklin had refused to make any commitment in terms of hooking up to the City sewer system in the event of a failure. As a result the Board voted to disapprove the application. Perhaps Chairman Lackey articulated the real problem during this meeting when he stated:

I think that is (the public safety, health and welfare) a very serious consideration that we don't take lightly and I think that's one that enters in this Stand to [be] corrected if I'm not, but I have seen that occasionally where we have that aberration and I consider this an aberration project frankly, a project that takes advantage of the regulations in my judgment. I think if it is approved or if it not approved, then the very next step will be to change the regulations so we don't face this again, . . . and I'm going to see that that happens because I think it is not the kind of thing we intended when we developed the regulations for using step systems
(Tr 70)

On December 12, 2002 Mr Bolton returned to the Planning Commission. The staff articulated four items which concerned the Planning Commission

- (1) The topography of the property identified for the proposed sewage treatment facility and the drip field areas;
- (2) The transition between the proposed development and the existing single family residential subdivision lots,
- (3) Access to the proposed sewage treatment facility through challenging topography and traffic and,
- (4) Access as it related to the construction, inspection and maintenance of the operation of the sewage treatment facility

The staff noted that the property owner had addressed each of these four areas of concern and recommended approval of the revised plan. During this meeting staff member Greg Langeliers, informed the Commission that the applicant had met the specific criteria requirements of the Williamson County regulations. However, the Planning Commission failed to either approve or disapprove the application ¹

As a result of the County's inaction, the Bolton development was placed upon the Planning Commission's agenda one last time on February 13, 2003. Although it appeared the applicant had addressed the concerns articulated by the Planning Commission as to the sewage system, the Commission was clearly troubled by the failure of the proposed development to conform to the existing character of the older traditional subdivisions in that area. As a result, the Commission denied the development "For failure to maintain the character of the surrounding suburban estate zone."

The Legislature did grant regional planning commissions discretion to adopt regulations concerning the subdivision of land within their jurisdiction for the harmonious development of the region T.C.A. § 13-3-403. The zoning on the property involved in this case is Suburban Estates. The existing Williamson County zoning ordinance permits a number of different kinds of uses in this type of zoning district. In this case Mr. Bolton's proposed development was a planned residential conservation development or P.R.C.D. Under the terms of § 4002, a P.R.C.D. is permitted by right in a suburban estate's zoning district in Williamson County. The

¹ At this hearing a motion was made for approval which did not pass, however, the regulations require the Planning Commission to approve, approve with conditions or deny the application.

legislative body, the Williamson County Commission, is the entity which has the authority to require additional conditions or modifications to its regulations. To the extent the Williamson County Commission fails to provide the Planning Commission with such authority through its ordinances, the hands of the Planning Commission are tied.

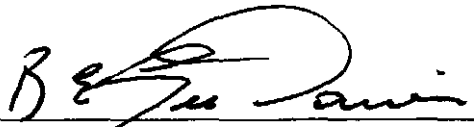
Therefore, this Court finds that the Planning Commission exceeded the authority conferred upon it by the Williamson County Zoning Ordinances and was without jurisdiction to deny the application once all requirements had been met.

The petitioner has requested that attorney's fees be awarded pursuant to 42 U.S.C. § 98 for violation of his constitutional rights and pursuant to the Tennessee Equal Access of Justice Act of 1984. This Court finds that neither statute is applicable to this case. Moreover, even if this Court had discretion to award attorney's fees it declines to do so.

The decision of the Planning Commission is reversed and this matter is remanded to the Planning Commission for any further necessary proceedings. Cost of this cause is taxed to Williamson County which execution may issue if necessary.

It is so **ORDERED**

Entered this 3 day of March, 2004



R. E. LEE DAVIES
CHANCELLOR

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been mailed, postage pre-paid to Mr Thomas White, Attorney at Law, Suite 2100, AmSouth Center, 315 Deaderick Street, Nashville, TN 37238, George Dean, Attorney at Law, 200 4th Avenue, North, Nashville, TN 37219 and to Robert Schloesser, Attorney at Law and William Squires, Attorney at Law, 306 Public Square, Franklin, TN 37064 on this 3rd day of March, 2004

Sharon H. Barton, Dep.
Clerk & Master