

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
April 5, 2001 Session

**NATIONAL AUTO/TRUCK STOPS, INC. v. WILLIAMSON COUNTY,
TENNESSEE**

**Appeal from the Chancery Court for Williamson County
No. II-23788 Russ Heldman, Chancellor**

No. M2000-02456-COA-R3-CV - Filed April 30, 2001

The intent of an auto/truck stop to revamp business signs located on its property was thwarted by the county's interpretation of its zoning requirements. The plaintiff claimed the benefit and protection of the Grandfather Statute, Tenn. Code Ann. § 13-7-208; the defendant county prevailed in its argument that the Grandfather Statute afforded no protection to signs, but only to business. We reverse.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Reversed

WILLIAM H. INMAN, SR. J., delivered the opinion of the court, in which WILLIAM C. KOCH, JR. and D. MICHAEL SWINEY, JJ., joined.

George A. Dean, Nashville, Tennessee, for the appellant, National Auto/Truck Stops, Inc., d/b/a TravelCenters of America.

Kristi D. Earwood, Franklin, Tennessee, for the appellee, Williamson County, Tennessee.

OPINION

Pleadings and Judgment

The complaint alleged that the plaintiff operates an auto/truck stop on property it owns in Williamson County. The county enacted a zoning change which (1) rendered the signs on the plaintiff's property legally nonconforming, and (2) required that the signs be removed or replaced in their entirety by January 31, 2002. The complaint further alleged that the zoning change contravenes the Tennessee Public Zoning Enabling Statutes, Tenn. Code Ann. § 13-7-201, *et seq.*

The county responded that it had amended its zoning regulations which required the plaintiff to replace all legally nonconforming signs on or before January 31, 2002. It specifically denied that

the amended zoning regulations violated any provisions of the Tennessee Public Zoning Enabling Statutes, although it did admit that Tenn. Code Ann. § 13-7-208 is applicable to the county.

Each party filed a motion for summary judgment. The motion of the plaintiff was denied. The motion of the defendant was granted. The plaintiff appeals and presents for review the issue of whether the Tennessee Non-Conforming Property Act, Tenn. Code Ann. § 13-7-208, protects an onsite accessory business sign from a zoning change making its continued use illegal.

The issue is one of law and our review *de novo* involves no presumption of correctness. *Basily v. Rain, Inc. et al*, 29 S.W.3d 879 (Tenn. Ct. App. 2000).

Facts

The plaintiff owns and operates an auto/truck stop and travel center with a maintenance facility, restaurant and store on Peytonsville Road in Williamson County. At that location is an 85 foot sign together with several ground signs advertising the business.

The use of this property as an auto/truck stop and travel center with the maintenance facility, restaurant and store, is classified according to the Williamson County Zoning Ordinance as heavy retail, which under the terms of the Williamson County Zoning Ordinance is considered a commercial use as that term is used in the zoning ordinance.

The use of the property as an auto/truck stop began in 1969. County wide zoning was adopted in Williamson County in 1970. The adoption of the county zoning ordinance rendered the signs on the subject property legally non-conforming.

In 1991, certain amortization provisions, which seek to compel owners of legally non-conforming properties to remove the non-conformities, were adopted. The plaintiff contends that these amortization provisions contravene the state enabling legislation.

The Williamson County Zoning Ordinance¹ provides that

[n]on-conforming signs shall not be changed, expanded, or altered in any manner which would increase the degree of non-conformity, prolong the useful life, or be moved in whole or in part to any other location where it would remain non-conforming.

It further provides that any “non-conforming sign not terminated pursuant to any other provision of this ordinance shall be terminated” no later than, in the case of a sign valued at more than \$5001, ten years after adoption of the amortization provisions.

¹Section 9902.

In February 7, 1996, the plaintiff's predecessor in title, National Auto Truckstops, Inc., was informed by the Williamson County Codes Compliance Office that no later than January 31, 2002 all non-conforming signs on the property must be removed. The plaintiff does not want to remove the signs from its property, but if they are removed for structural reasons, it intends to replace the signs with new ones of equal size and height, which the Williamson County Zoning Ordinance does not permit. The plaintiff insists that it is entitled to not only continue the use of the signs, but to replace them if necessary or commercially expedient in accord with Tenn. Code Ann. § 13-7-208. Its application to replace the signs was denied, thereby triggering this litigation.

It is not controverted that the replacement of the signs on the property is necessary to the continued conduct of the business at that location, because the signs have deteriorated and replacement is required to attract business to the location of the business establishment.

Analysis

It is clear that legally non-conforming signs are presently in place, and that Williamson County changed the Zoning rules after the placement of the signs. If the provisions of Tennessee Non-Conforming Property Act, Tenn. Code Ann. § 13-7-208(b), (c) and (d), apply and therefore protect the property from the more restrictive provisions of the zoning change, the plaintiff is entitled to the relief it seeks.

The statute protects existing business establishments from zoning changes which would not only require discontinuation, but also permits the expansion and construction of additional facilities. As relevant here, the statute provides as follows:

(b) In the event that a zoning change occurs in any land area where such land area was not previously covered by any zoning restrictions of any governmental agency of this state, or its political subdivisions, or where such land area is covered by zoning restrictions of a governmental agency of this state or its political subdivisions, and such zoning restrictions differ from zoning restrictions imposed after the zoning change, then any industrial, commercial or business establishment in operation, permitted to operate under zoning regulations or exceptions thereto prior to the zoning change shall be allowed to continue in operation and be permitted; provided, that no change in the use of the land is undertaken by such industry or business.

(c) Industrial, commercial or other business establishments in operation and permitted to operate under zoning regulations or exceptions thereto in effect immediately preceding a change in zoning shall be allowed to expand operations and construct additional facilities which involve an actual continuance and expansion of the activities of the industry or business which were permitted and being conducted prior to the change in zoning . . . No building permit or like permission for construction or landscaping shall be denied to an industry or business seeking to

expand and continue activities conducted by that industry or business which were permitted prior to the change in zoning . . .

(d) Industrial, commercial, or other business establishments in operation and permitted to operate under zoning regulations or exceptions thereto immediately preceding a change in zoning shall be allowed to destroy present facilities and reconstruct new facilities necessary to the conduct of such industry or business subsequent to the zoning change . . . No building permit or like permission for construction or landscaping shall be denied to an industry or business seeking to expand and continue activities conducted by that industry or business which were permitted prior to the change in zoning . . .

It is not disputed that the plaintiff is a business establishment which was in operation and permitted to operate under the zoning regulations in effect immediately before a change in zoning. A part of the actual business operations included the use of signs to advertise the location of the property and the means of ingress and egress. The tallest of the signs, 85 feet, was erected specifically to attract customers from the nearby interstate highway. As heretofore stated, the plaintiff seeks to replace the signs with new ones, and in the case of the tall sign, to replace it with a sign of the same height.

These signs are an integral part of the business establishment, much the same as the building in which the service station is housed, and it is not disputed that their replacement is necessary to the continued conduct of the business at that location. We agree with the appellant that the Tennessee Non-Conforming Property Act protects not only principal uses, but the accessory uses of a business establishment as well. Within the purview of the statute, one cannot be separated from the other.

We have heretofore reviewed sections (c) and (d) of the statute in a similar way:

The General Assembly also envisioned that property owners permitted to continue using their property contrary to the zoning laws might desire to expand their businesses or might, for some reason, desire to construct replacement facilities. Accordingly, Tenn. Code Ann. § 13-7-208(c) authorizes a property owner continuing to operate its business under Tenn. Code Ann. § 13-7-208(b) “to expand operations and construct additional facilities which involve an actual continuation and expansion of the activities of the industry or business which were permitted and being conducted prior to the change in zoning.” Likewise, Tenn. Code Ann. § 13-7-208(d) authorizes businesses “to destroy present facilities and reconstruct new facilities necessary to the conduct of such industry or business.” 421 *Corporation v. Metro* 2000WL 823465.

The Eastern Section of this Court considered a similar issue in *Outdoor West of Tennessee v. City of Johnson City*, 2000 WL 823465, wherein the plaintiff sign company applied for building

permits to enlarge eleven signs which legally pre-existed the effective date of the zoning change prohibiting the signs. Citing *Rives v. City of Clarksville*, 618 S.W.2d 502 (Tenn. Ct. App. 1981), we found that a plaintiff must make two threshold showings before invoking the protection of Tenn. Code Ann. § 13-7-208: (1) that there has been a change in zoning (either adoption of zoning where none existed previously, or an alteration in zoning restrictions), and (2) that the use to which they put their land was permitted prior to the zoning change. In *Outdoor West*, the Court concluded that both elements were met. We ordered the city to issue the permits to expand the size and number of faces on the signs.

In the case at Bar, both of the elements referred to in *Rives* have been met. First, there has been a change in the zoning restrictions (making the signs illegal); second, the use of the signs was permitted before the zoning change.

The county argues that the signs at issue are not principal uses, and not subject to the protection of the statute because they are not in and of themselves “business establishments.” We disagree. It is clearly provided that:

No building permit or like permission for demolition, construction or landscaping shall be denied to an industry or business seeking to destroy and reconstruct facilities necessary to the continued conduct of the activities of that industry or business, where such conduct was permitted prior to a change in zoning . . .

Tenn. Code Ann. § 13-7-208(d). We have previously concluded that the signs are necessary for the continued conduct of the business, and the statute nowhere indicates that accessory uses are not protected.

The judgment is reversed. The motion of the plaintiff for summary judgment is granted. The motion of the defendant is denied. Costs are assessed to the appellee. The case is remanded for entry of a judgment in accordance with this opinion.

WILLIAM H. INMAN, SENIOR JUDGE