IN THE COURT OF APPEALS 10/01/96

OF THE

STATE OF MISSISSIPPI

NO. 95-CA-00711 COA

CLARENCE ADAMS AND REGINA ADAMS

APPELLANTS

v.

JACKSON COUNTY, MISSISSIPPI

APPELLEE

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND

MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. BILL JONES

COURT FROM WHICH APPEALED: JACKSON COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANTS:

WILLIAM T. REED

ATTORNEY FOR APPELLEE:

PEGGY G. MULLINS

NATURE OF THE CASE: CIVIL: PERMIT ZONING

TRIAL COURT DISPOSITION: SUMMARY JUDGMENT FOR THE DEFENDANT

BEFORE BRIDGES, P.J., COLEMAN, AND PAYNE, JJ.

BRIDGES, P.J., FOR THE COURT:

Clarence and Regina Adams were denied a special use permit to operate an automobile repair shop

on their residential property by the Jackson County Planning Commission. This property is zoned for agricultural and residential use only. After several unsuccessful appeals to the planning commission, the Jackson County Board of Supervisors, and to the Jackson County Circuit Court, the Adamses appeal to this Court maintaining that the denial was arbitrary and capricious. They also argue that the board's failure to make specific findings on the record requires this Court to reverse the denial. Finding that the denial was in harmony with applicable case law and the rules of zoning for Jackson County, we affirm the decisions of the lower court, the board of supervisors, and the planning commission.

STATEMENT OF THE FACTS

Clarence and Regina Adams own approximately twelve (12) acres on the east side of Highway 613, North of Escatawpa, in Jackson County. The Adamses were granted a building permit to construct an automobile garage so that Mr. Adams could work on his race cars. After the building was built, the Adamses' son decided to seek an application for a use permit from the county zoning board so that he could operate an automobile repair shop in the building. The property is zoned for agricultural use only. The permit was unanimously denied, and Adams appealed to the board of supervisors. The board of supervisors remanded the matter to the planning commission and allowed Adams an opportunity to amend his application. The amended permit application limited the request to:

(1) Hours of operation: 7:30 a.m. to 6:00 p.m., Monday through Saturday;

(2) with the addition of a six-foot privacy fence on the south side;

(3) a 100-foot setback from the south line;

(4) a 100-foot setback from Highway 613;

(5) limited to fenced area 200 North and South by 345 feet East and West;

(6) subject to review by planning commission in one year;

(7) driveway to be in accordance with State permit, two (2) 24 feet culverts and U-shaped driveway.

A second hearing was held on November 16, 1994, and the amended application was again unanimously denied by the planning commission. On appeal, the board of supervisors unanimously upheld the decision of the planning commission. A bill of exceptions was filed and an appeal was perfected to the Circuit Court of Jackson County. The lower court also upheld the planning commission's decision. Finding that the Adamses' complaints are without merit, we affirm the decisions of the lower court, the board of supervisors, and the planning commission.

ARGUMENT AND DISCUSSION OF THE LAW

The criteria for judicial review of a zoning decision is well established. Courts may not interfere with the lawful prerogatives of zoning authorities unless the decision to grant a special use permit may only be characterized as arbitrary and capricious. *Noble v. Scheffler,* 529 So. 2d 902, 905 (Miss 1988). This Court will not substitute its judgment for the judgment of the zoning authorities.

Ridgewood Land Co. v. Simmons, 137 So. 2d 532, 537 (Miss. 1962). We will, however, review acts of governing authorities to determine whether such acts are "reasonable, arbitrary, discriminatory, confiscatory or an abuse of discretion." *Id.* at 536. In this determination, we will look to the record for sufficient evidence to support the findings of the determining board. *Board of Aldermen, v. Conerly*, 509 So. 2d 877, 884 (Miss. 1987). "Absent a record showing sufficient evidence to support the findings, it is inevitable that reversal will follow." *Faircloth v. Lyles*, 592 So. 2d 941, 945 (Miss. 1991). "On the other hand, while recognizing the desirability of specific findings by the zoning authority on each considered issue, we will not reverse for a lack of such specificity where a *factual basis for the action is disclosed*." *Id.* (emphasis added). Moreover, where the evidence, information, and other relevant factors before the zoning authorities render the question, whether the property should be used as the authorities have permitted, one upon which reasonable minds might disagree, the administrative judgment of the zoning authorities is insulated from judicial interference. *Id.* Accordingly, our review is limited to whether or not the determination to deny the special use permit was arbitrary or capricious.

The Adamses' property is located in an A-1 General Agricultural zoning district. The general description of the district in the Jackson County Zoning Ordinance is "an area primarily for agricultural purposes and low density residential development." Because of the rural nature of this particular type of zone, the ordinance states that the purpose of the zone is to "encourage and protect such uses from urbanization until such is warranted and the appropriate change in district classification is made." The criteria for granting a use permit, as stated in Article II, Section 11 of the Jackson County Zoning Ordinance is that: (1) all procedures with regard to the public hearing must have been met, (2) and the planning commission makes a determination that the said use is in harmony with the principal permitted uses of the zone. Jackson County, Miss. Ordinances art II, § 1. Here, the planning commission made a specific finding in its order to deny the use permit that the application be denied because it was not in harmony with that particular neighborhood. Under the ordinance, that particular finding is all that is required. Additionally, use permits, as stated by the Jackson County Zoning Ordinance, are not granted as a matter of right, but are instead granted only if the use is in harmony with the principal permitted uses of the zone.

The determination of the planning commission is supported by the record. There were numerous objections by neighbors to the special use permit. One of the objections was based on the fact that an auto shop would necessarily cause much disturbing noise. Another objection was based on the fact that the requested use would have a detrimental effect on the property values to the surrounding residences. Further, there are thirty (30) pages of testimony from the planning commission's hearings, and twenty-eight (28) pages of testimony from the board of supervisors' hearings. Tax maps indicating the existing uses for the surrounding area were introduced into the record. Several letters protesting the special use permit were introduced into the record. The record also showed that a video tape of the surrounding neighborhood was shown to both the planning commission and the board of supervisors before it denied the special use request. In addition, the record also indicates that board members were personally familiar with the area and the surrounding special use permits that had previously been granted. As such, we find that there was ample evidence in the record to support the finding that an automobile repair shop was not in harmony with the neighborhood and that the decision of the planning board was not arbitrary or capricious.

THE JUDGMENT OF THE JACKSON COUNTY CIRCUIT COURT IS AFFIRMED. ALL

COSTS OF THIS APPEAL ARE TAXED TO THE APPELLANTS.

FRAISER, C.J., THOMAS, P.J., BARBER, KING, McMILLIN, AND SOUTHWICK, JJ., CONCUR. DIAZ, J., DISSENTS WITH SEPARATE WRITTEN OPINION, JOINED BY COLEMAN AND PAYNE, JJ.

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DIAZ, J., DISSENTING:

It is my opinion that in order for an appellate tribunal to determine the propriety of an administrative agency's decision, the agency must be required to include the requisite findings of fact of each case, and the omission thereof may be reversible error.

The Adamses applied for a use permit from the Jackson County Planning Commission. The permit was denied without any specific findings of fact, and the decision was upheld by the board of supervisors and the circuit court. The Adamses contend that the failure of the commission, board of supervisors and circuit court to provide specific reasons for their denial of the permit is arbitrary and capricious in itself, and requires reversal.

Article II, section 11 of the Jackson County Zoning Ordinance provides the following:

a. On application made therefor, the Planning Commission shall have the authority to hear and determine whether a Use Permit should be granted to the applicant. Recommendations for a Use Permit shall not be made to the Board of Supervisors by the Planning Commission unless and until:

1) All procedures and provisions of Section 2 of this article for public hearing procedures have been met and;

2) The Planning Commission determines that the said use is in harmony with the Principal Permitted Uses of the Zone.

Following a hearing, the commission made a finding that the use permit was not in harmony with the particular neighborhood and, thus, denied the application. According to the ordinance, this is all that was necessary. This type of determination is sometimes referred to as "ultimate fact-finding." *See Mississippi State Bd. of Nursing v. Wilson*, 624 So. 2d 485, 495 (Miss. 1993). Mississippi courts have long held that this type of fact finding is sufficient. *Illinois C. R.R. v. Jackson Ready-Mix Concrete*, 137 So. 2d 542, 546 (Miss. 1962). However, the discretion of the agency to limit itself to this type of fact finding has perpetually handicapped the reviewing court in its effort to determine an understanding of the agency's decisions. *See Mississippi Real Estate Comm'n v. White*, 586 So. 2d 805 (Miss. 1991); *Fortune Furniture Mfg. Co. v. Sullivan*, 279 So. 2d 644 (Miss. 1973); *Rivers Constr. Co. v. Dubose*, 130 So. 2d 865, (Miss. 1961).

While recognizing that the decision of the agency must be afforded great deference, it is impossible to determine the validity of the agency's decision without specific findings of fact. Because this Court may reverse if the decision is found to be arbitrary and capricious, it necessarily follows that we must be able to identify the facts which the agency relied upon in refusing the use permit to the Adamses. Even though the commission complied with the requirements as stated in its ordinance, for appellate purposes, the agency should be required to detail its findings and explain the reasons for the denial. For this reason, I respectfully dissent.

COLEMAN AND PAYNE, JJ., JOIN THIS SEPARATE OPINION.