

SUPREME COURT OF GEORGIA

Jervey v. City of Marietta

274 Ga. 754 (Ga. 2002) · Decided February 4, 2002

SUMMARY

The Georgia Supreme Court reviewed a challenge to the City of Marietta’s denial of rezoning for property proposed for development as a Walgreens store. Applying the balancing test for unconstitutional takings in zoning cases, the court held that the existing office and institutional classification served the substantial public interest of buffering an adjoining residential area and affirmed the trial court’s judgment for the City.

CASE DETAILS

|                       |                                                                                                                                                                                    |
|-----------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Georgia                                                                                                                                                           |
| WRITING FOR THE COURT | Carley, Justice                                                                                                                                                                    |
| JURISDICTION          | Georgia                                                                                                                                                                            |
| DECIDED               | February 4, 2002                                                                                                                                                                   |
| DISPOSITION           | affirmed                                                                                                                                                                           |
| PROCEDURAL POSTURE    | Jervey appealed by discretionary appeal from a trial-court judgment for the City in his action alleging that the City's denial of rezoning constituted an unconstitutional taking. |
| STANDARD OF REVIEW    | The appellate court does not weigh the evidence; it reviews the trial record and will not disturb the trial court's findings unless they are clearly erroneous.                    |
| PRECEDENTIAL VALUE    | Published opinion of the Supreme Court of Georgia; precedential.                                                                                                                   |
| PARTIES               | Richard Jervey v. City of Marietta                                                                                                                                                 |

TOPICS

- zoning
- takings clause
- municipal law
- constitutional law
- real estate

PRACTICE AREAS

- zoning and land-use regulation
- constitutional takings
- municipal law
- real estate

QUESTIONS PRESENTED

1. Whether the trial court applied the correct legal standard in determining whether the City's denial of rezoning and existing OI classification constituted an unconstitutional taking.
2. Whether the evidence required a finding that the City's zoning classification caused a significant detriment to Jervey without a substantial relation to the public health, safety, morality, and welfare.

## HOLDINGS

1. The relevant inquiry is whether the current zoning classification causes the property owner a significant detriment having no substantial relation to the public health, safety, morality, and welfare, rather than simply whether the denial of the requested rezoning was an unconstitutional taking.
2. The OI classification did not constitute an unconstitutional taking because the City demonstrated a substantial public benefit in protecting surrounding residential neighborhoods and Jervey did not present clear and convincing evidence requiring a contrary result.

## KEY QUOTATIONS

*“The actual standard for determining the existence of an unconstitutional taking is whether the current OI zoning classification causes the property owner a significant detriment having no substantial relation to the public health, safety, morality, and welfare.” (274 Ga. 754)*

*“This state uses a balancing test to determine whether the police power has been properly exercised. The test weighs the benefit to the public against the detriment to the individual.” (274 Ga. 755)*

*“On appeal, it is not the function of the appellate court to weigh the evidence, but to look instead to the trial record. Unless the findings are clearly erroneous, they should not be disturbed on appeal.” (274 Ga. 755)*

## FACTUAL BACKGROUND

Richard Jervey owned 2.278 acres in Marietta at a major intersection and sought rezoning from office and institutional use to neighborhood retail commercial use for a Walgreens store. The City denied the application and retained the OI classification, in part to provide a buffer for an adjoining residential area. The trial court concluded that the zoning classification did not constitute an unconstitutional taking.

## PROCEDURAL HISTORY

Jervey applied to rezone property from office and institutional (OI) to neighborhood retail commercial (NRC) to permit development of a Walgreens store. The City denied the application, and Jervey filed an unconstitutional-takings action. The trial court found no unconstitutional taking, and the Supreme Court of Georgia granted discretionary review and affirmed.

## DISPOSITION

affirmed

## CASES CITED

- *Guhl v. Holcomb Bridge Road Corp.*, 238 Ga. 322, 323 (232 S.E.2d 830) (1977)

- *Maree v. Phillips*, 272 Ga. 52, 55 (5) (525 S.E.2d 94) (2000)
- *Holy Cross Lutheran Church v. Clayton County*, 257 Ga. 21, 23 (2) (354 S.E.2d 151) (1987)
- *City of Roswell v. Heavy Machines Co.*, 256 Ga. 472, 474 (349 S.E.2d 743) (1986)
- *Jehco Ventures v. City of Smyrna*, 259 Ga. 599, 602 (2) (385 S.E.2d 397) (1989)
- *Flournoy v. City of Brunswick*, 248 Ga. 573, 574 (285 S.E.2d 16) (1981)
- *Jones v. City of Atlanta*, 257 Ga. 727, 729 (363 S.E.2d 254) (1988)

## OPINION

CARLEY, J.

Carley, Justice. Richard Jervey filed an application to rezone 2.278 acres in Marietta, at the major intersection of the 120 Loop/South Marietta parkway, Powder Springs Road, and Reynolds Street. The property is currently classified as office and institutional (OI), and Jervey sought rezoning to the neighborhood retail commercial (NRC) classification, so as to permit the development of a Walgreen's store.

The City denied the rezoning application, and Jervey brought this action, alleging an unconstitutional taking. The trial court entered judgment in favor of the City, and we granted this discretionary appeal to consider whether the trial court applied an erroneous legal standard and whether the evidence demanded a finding that there was an unconstitutional taking of the subject property.

1. In its order, the trial court twice characterized the relevant determination as being whether the City's denial of NRC rezoning was an unconstitutional taking. The actual standard for determining the existence of an unconstitutional taking is whether the current 01 zoning classification causes the property owner a significant detriment having no substantial relation to the public health, safety, morality, and welfare.

*Guhl v. Holcomb Bridge Road Corp.*, 238 Ga. 322 (232 SE2d 830) (1977). In applying that standard, "[t]he validity of each zoning ordinance must be determined on the facts applicable to the particular case, but certain general lines of inquiry [into six enumerated factors] have been regarded as relevant...." *Guhl*, *supra* at 323.

The trial court cited *Guhl*, referred to the relevant factors listed therein, and found that the denial of NRC rezoning did not constitute an unconstitutional taking of the property. Reviewing the entirety of the order, the trial court based its ruling on the applicable legal principles. See *Maree v. Phillips*, 272 Ga. 52, 55 (5) (525 SE2d 94) (2000). 2.

To prevail, Jervey must show that the 01 classification results in a significant detriment to him and that it has no substantial relation to public welfare. *Holy Cross Lutheran Church v. Clayton*

County, 257 Ga. 21 (2) (a) (354 SE2d 151) (1987). “This state uses a balancing test to determine whether the police power has been properly exercised.

The test weighs the benefit to the public against the detriment to the individual. The factors to be considered are set forth in *Guhl v. Holcomb Bridge Rd. Corp.*, (cit.). A zoning ordinance is presumptively valid, and this presumption can be rebutted only by clear and convincing evidence. [Cit.]...” [Cit.] \*755Decided February 4, 2002. Moore, Ingram, Johnson & Steele, John H. Moore, John K. Moore, for appellant.

Haynie, Litchfield & Crane, Douglas R. Haynie, H. Scott Gregory, Jr., for appellees. *City of Roswell v. Heavy Machines Co.*, 256 Ga. 472, 474 (349 SE2d 743) (1986). The City classifies the subject property as 01 in order to provide a buffer for an adjoining residential area. Maintaining the integrity of existing residential neighborhoods is a valid public interest.

*Holy Cross Lutheran Church v. Clayton County*, supra at 23 (2) (b). In resolving zoning controversies that involve fringe areas, " ‘the local governing body is the more appropriate one to shape and control the local environment according to the best interests of the locality and its citizens.’ [Cit.]” *Holy Cross Lutheran Church v. Clayton County*, supra at 23 (2) (d).

See also *Jehco Ventures v. City of Smyrna*, 259 Ga. 599, 602 (2) (385 SE2d 397) (1989). The trial court was authorized to find that the current designation of the property is fully justified by the public’s interest in protecting surrounding residential neighborhoods. See *Holy Cross Lutheran Church v. Clayton County*, supra at 23 (2) (c); *Flournoy v. City of Brunswick*, 248 Ga. 573, 574 (285 SE2d 16) (1981).

On appeal, it is not the function of the appellate court to weigh the evidence, but to look instead to the trial record. Unless the findings are clearly erroneous, they should not be disturbed on appeal. [Cit.] The trial court here was presented with conflicting evidence and balanced the evidence in favor of the City.... *Jones v. City of Atlanta*, 257 Ga. 727, 729 (363 SE2d 254) (1988).

Since the City showed that the public derives a substantial benefit from the present 01 zoning of the fringe property and Jervey produced no clear and convincing evidence demanding a contrary finding, the trial court’s order finding no unconstitutional taking must be affirmed. *Flournoy v. City of Brunswick*, supra at 574. Judgment affirmed. All the Justices concur.