

SUPREME COURT OF SOUTH DAKOTA

Boxdorfer v. Sully County Board of Adjustment

2004 SD 117 (S.D. 2004) (S.D. 2004) · No. 23057 · Decided October 20, 2004

SUMMARY

The South Dakota Supreme Court reviewed a circuit court judgment upholding a special use permit for a drag strip on agricultural land in Sully County. The court held that the county zoning ordinance did not preclude the Board of Adjustment from granting a special use permit for a use specifically excluded from the list of permitted uses, provided the requirements for special use permits were satisfied. The court also concluded that sufficient evidence supported the Board's findings concerning the temporary nature of the improvements, neighboring-property impacts, noise, and traffic.

CASE DETAILS

COURT	Supreme Court of South Dakota
WRITING FOR THE COURT	Johnson, Circuit Judge; Gilbertson, Chief Justice; Sabers, Justice; Konenkamp, Justice; Meierhenry, Justice; Zinter, Justice
JURISDICTION	South Dakota
DECIDED	October 20, 2004
DOCKET	23057
DISPOSITION	affirmed
PROCEDURAL POSTURE	Area residents appealed from a circuit court judgment and order upholding the Sully County Board of Adjustment's issuance of a special use permit for a drag strip on agricultural land.
STANDARD OF REVIEW	Findings of fact are reviewed for clear error. The Court does not defer to the circuit court's legal conclusions when reviewing a county board's decision.
PRECEDENTIAL VALUE	Published South Dakota Supreme Court opinion; precedential.
PARTIES	Terry L. Boxdorfer, John Brakss and Marlene Brakss, Jerry Brown, Dave T. Davidson and Alice H. Davidson, Ed A. Fahlsing and Betty Fahlsing, Michael A. Gorman, A. Dean Gretschmann and Judith L. Gretschmann, Robert Hartford and Sara K. Hartford, Joanne Knight, Leonard P. Kuck and Billie J. Kuck, Lyle E. Lutzka and Ruby C. Lutzka, Henry E. Maddocks and Jodi H. Maddocks, Randy Morris, Bruce Peterson, Walt Reinert and Colleen Reinert, Edward E. Spies,

James C. Spies, Ernest Steffen, David Steffen and Larry Steffen, d/b/a Steffen Brothers, Inc., Darold Swank and Florence Swank, Steve Wegener v. Sully County Board of Adjustment, Sully County, South Dakota, Milt Morris, Jim Blair, Ray Beck, John Nystrom, Norm Nystrom, Kevin Randall, Jim Schumacher, Harvey Sheehan, Brian Tracy, Ron Young, Gene Weinreis, Don Ramler, Les Wulf

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QUESTIONS PRESENTED

1. Whether a special use permit may be issued for a use specifically excluded from the list of permitted principal uses in an agricultural zoning district.
2. Whether sufficient evidence supported the Board of Adjustment's issuance of the special use permit.

HOLDINGS

1. A county board of adjustment may grant a special use permit for a use that is not allowed as a matter of right, including a use specifically identified as excluded from the list of permitted uses, so long as the applicant satisfies the conditions governing special use permits.
2. The evidence was sufficient to support the Board of Adjustment's decision to issue the special use permit.

KEY QUOTATIONS

“The special use permit is designed to allow uses not allowed as a matter of right.” (¶ 12)

“We find the evidence sufficient to support the Board's decision.” (¶ 23)

FACTUAL BACKGROUND

Milt Morris and Jim Blair sought permission to construct and operate a drag strip on undeveloped farmland in southwestern Sully County. The proposed facility included a 3,500-foot asphalt strip, temporary guardrails, concession facilities, restrooms, and a grandstand, all of which the Board found could be removed or restored if the permit ended. The Board considered evidence concerning the facility's temporary nature, its effect on neighboring properties, noise, traffic, and proposed mitigation conditions, and adjoining landowners within one-half mile supported the project.

PROCEDURAL HISTORY

Milt Morris and Jim Blair applied for a special use permit to construct and operate a drag strip. After an evidentiary hearing, the Board voted 4-1 to grant the permit. Opposing residents brought an action in circuit court under SDCL 11-2-61, and the permit applicants and adjoining landowners intervened. The circuit court reviewed the record and testimony from Board members and upheld the Board's decision. The Supreme Court of South Dakota affirmed.

DISPOSITION

affirmed

CASES CITED

- Tisdell v. Beadle County Board of Commissioners, 2001 SD 149, 638 N.W.2d 250
- Coyote Flats, L.L.C. v. Sanborn County Commission, 1999 SD 87, 596 N.W.2d 347
- Estate of Roehr, 2001 SD 85, 631 N.W.2d 600

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