

SUPREME COURT OF NORTH DAKOTA

Dockter v. Burleigh County Board of County Commissioners

2015 ND 183 (2015) · No. 20140379 · Decided July 2, 2015

SUMMARY

The North Dakota Supreme Court affirmed a district court judgment upholding the Burleigh County Board of County Commissioners’ rezoning of a 311-acre tract from agricultural to industrial use. The Court held that the rezoning was not impermissible spot zoning and was neither arbitrary, capricious, nor unreasonable because it was supported by substantial evidence and furthered the county’s economic-development objectives. The Court also denied the appellants’ request for attorney fees and costs.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Gerald W. VandeWalle, Chief Justice; Dale V. Sandstrom; Daniel J. Crothers; Lisa Fair McEvers; William A. Neumann, Special Judge
JURISDICTION	North Dakota
DECIDED	July 2, 2015
DOCKET	20140379
DISPOSITION	affirmed
PROCEDURAL POSTURE	The Dockters appealed the Burleigh County Board of County Commissioners' rezoning decision to the district court, which affirmed the decision and denied attorney fees and costs. They then appealed to the North Dakota Supreme Court.
STANDARD OF REVIEW	A county zoning decision is reviewed deferentially. The Supreme Court independently determines the propriety of the decision without special deference to the district court, but must affirm unless the local governing body acted arbitrarily, capriciously, or unreasonably, or the decision is unsupported by substantial evidence. The reviewing court may not substitute its judgment for that of the local governing body or act as a super board.
PRECEDENTIAL VALUE	Published precedential opinion
PARTIES	Thane Dockter, Nicole Dockter v. Burleigh County Board of County Commissioners

TOPICS

zoning municipal law standard of review appellate procedure administrative law

PRACTICE AREAS

Land use and zoning Municipal law Administrative law Appellate procedure

QUESTIONS PRESENTED

1. Whether the County Commissioners' rezoning of the 311-acre tract constituted impermissible spot zoning.
2. Whether the County Commissioners' rezoning decision was arbitrary, capricious, or unreasonable or unsupported by substantial evidence.
3. Whether the Dockters were entitled to attorney fees and costs under N.D.C.C. § 11-11-39.

HOLDINGS

1. The rezoning did not constitute impermissible spot zoning because the record showed a reasonable basis for the different treatment, including community-wide economic-development benefits and the tract's substantial size and proximity to Interstate 94.
2. The County Commissioners' decision was not arbitrary, capricious, or unreasonable and was supported by substantial evidence.
3. The Dockters were not entitled to attorney fees and costs under N.D.C.C. § 11-11-39 because the courts did not rule in their favor.

KEY QUOTATIONS

“The [Commission’s] decision must be affirmed unless the local body acted arbitrarily, capriciously, or unreasonably, or there is not substantial evidence supporting the decision.” (¶ 8)

“This Court’s function is to independently determine the propriety of the [Commission’s] decision without giving special deference to the district court decision.” (¶ 8)

FACTUAL BACKGROUND

Dale Pahlke sought to rezone 311 acres in Menoken Township from agricultural to light industrial use and proposed subdividing the property into five- to ten-acre lots. The tract was adjacent to Interstate 94 and within approximately one mile of the Menoken interchange, but was surrounded primarily by agricultural land. The Dockters, who operated a certified organic farm immediately north of the tract, opposed the rezoning because of concerns about contamination, traffic, noise, and loss of organic certification. After hearings and reconsideration, the County Commissioners approved the rezoning subject to conditions addressing cultural resources, platting, stormwater, screening, roadway access, emergency access, and related development controls.

PROCEDURAL HISTORY

The County Commissioners approved rezoning a 311-acre tract in Menoken Township from agricultural to industrial use, subject to conditions. The Burleigh County District Court affirmed, concluding the decision was not impermissible spot zoning and was not arbitrary, capricious, or unreasonable and was supported by substantial evidence. The Supreme Court affirmed the judgment and the denial of attorney fees and costs.

DISPOSITION

affirmed

CASES CITED

- Pulkrabek v. Morton County, 389 N.W.2d 609, 612-14 (N.D. 1986)
- Shaw v. Burleigh County, 286 N.W.2d 792, 796-97 (N.D. 1979)
- Hagerott v. Morton County Board of Commissioners, 2010 ND 32, ¶ 7, 778 N.W.2d 813
- Dahm v. Stark County Board of County Commissioners, 2013 ND 241, ¶ 10, 841 N.W.2d 416
- Hanson v. Industrial Commission, 466 N.W.2d 587, 590 (N.D. 1991)
- Hector v. City of Fargo, 2009 ND 14, ¶ 9, 760 N.W.2d 108
- Gullickson v. Stark County Board of County Commissioners, 474 N.W.2d 890, 894-95 (N.D. 1991)
- Bigwood v. City of Wahpeton, 1997 ND 124, ¶ 22, 565 N.W.2d 498
- City of Fargo v. Harwood Township, 256 N.W.2d 694, 697 (N.D. 1977)