

SUPREME COURT OF MONTANA

Powell County v. Country Village, LLC

352 Mont. 291 (2009) · No. DA 08-0654 · Decided September 3, 2009

SUMMARY

The Montana Supreme Court affirmed Powell County orders enforcing zoning regulations against Country Village, LLC, d/b/a Happy Endings Casino. The Court held that the Powell County Planning Board had jurisdiction over the unincorporated area containing the casino, that the proposed casino expansion required a conditional use permit, and that the County's enforcement substantially complied with its Growth Policy. The Court also concluded that the County did not abuse its discretion by denying approval for artificial lighted palm trees and an LCD sign.

CASE DETAILS

COURT	Supreme Court of Montana
WRITING FOR THE COURT	Chief Justice Mike McGrath; Mike McGrath; John Warner; W. William Leaphart; Brian Morris; Jim Rice
JURISDICTION	Montana
DECIDED	September 3, 2009
DOCKET	DA 08-0654
DISPOSITION	affirmed
PROCEDURAL POSTURE	Country Village, LLC appealed from orders of the Third Judicial District Court, Powell County, granting Powell County's petition for a restraining order and denying Country Village's motion to alter or amend the judgment or for a new trial.
STANDARD OF REVIEW	Zoning-authority decisions are reviewed for abuse of discretion; a zoning authority abuses its discretion when the information supporting its decision is so lacking in fact and foundation that the decision is clearly unreasonable. Conclusions of law are reviewed for correctness. An agency's interpretation of its own rule is given great weight and is upheld unless plainly inconsistent with the rule's spirit.
PRECEDENTIAL VALUE	Published Montana Supreme Court opinion; precedential.
PARTIES	Country Village, LLC d/b/a Happy Endings Casino v. Powell County

TOPICS

zoning

municipal law

gambling

administrative law

appellate procedure

PRACTICE AREAS

Land use and zoning

Municipal law

Administrative law

Appellate procedure

Gambling regulation

QUESTIONS PRESENTED

1. Whether the Powell County Planning Board had jurisdiction to require Happy Endings to apply for a conditional use permit.
2. Whether the proposed changes to Happy Endings' business constituted a change in use requiring a conditional use permit under the Powell County Zoning and Development Regulations.
3. Whether Powell County's enforcement of its zoning regulations substantially complied with the Powell County Growth Policy.

HOLDINGS

1. The Powell County Planning Board had jurisdiction over Happy Endings' property and could require Happy Endings to apply for a conditional use permit. The reservation of District 5-specific standards did not eliminate the general county-wide zoning standards applicable to unincorporated Powell County.
2. A conditional use permit was required because the proposed elimination of the convenience store and significant expansion of the casino constituted a significant change in use. The permit requirement was not based solely on the erection of the lighted palm trees.
3. Powell County substantially complied with its Growth Policy when it enforced the zoning regulations and denied approval for the artificial palm trees. The denial did not unlawfully infringe Happy Endings' private-property rights.

KEY QUOTATIONS

“Clearly reading the Zoning Regulations as a whole, the provisions in Chapter VI regarding specific standards that were reserved do not abrogate the general standards that provide county planning jurisdiction in this matter.” (¶ 15)

“Happy Endings' private property rights were not infringed when the Planning Board denied portions of the CUP requesting to erect artificial palm trees on the property.” (¶ 25)

FACTUAL BACKGROUND

Happy Endings Casino operated in an unincorporated area of Powell County outside Deer Lodge's city limits, within a planning-area district known as the "donut." After the City and County terminated their interlocal agreement and the County created District 5, Happy Endings applied for a conditional use permit involving casino expansion, signs, and 50 lighted artificial palm trees. The Planning Board denied the palm trees and LCD sign, but Happy Endings did not pursue administrative appeal and later erected 25 palm trees, prompting Powell County to seek a restraining order.

PROCEDURAL HISTORY

Country Village submitted a conditional-use-permit application for logo signs, an LCD display sign, and 50 lighted artificial palm trees. The Powell County Planning Board approved some requested uses but denied the palm trees and LCD sign. Country Village did not appeal the Planning Board decision through the statutory administrative review process and instead erected 25 palm trees. Powell County obtained a restraining order requiring enforcement of the Planning Board's decision, and the District Court denied Country Village's postjudgment motion.

DISPOSITION

affirmed

CASES CITED

- Town & Country Foods, Inc. v. City of Bozeman, 2009 MT 72, ¶¶ 13-14, 349 Mont. 453, 203 P.3d 1283
- Flathead Citizens for Quality Growth, Inc. v. Flathead Co. Bd. of Adjustment, 2008 MT 1, ¶ 32, 341 Mont. 1, 175 P.3d 282
- Clark Fork Coalition v. Mont. Dept. of Env'tl. Quality, 2008 MT 407, ¶¶ 19-20, 347 Mont. 197, 197 P.3d 482
- Shelby Distributors, LLC v. Mont. Dept. of Revenue, 2009 MT 80, ¶ 18, 349 Mont. 489, 206 P.3d 899
- Barnard v. Liberty Northwest Ins. Corp., 2008 MT 254, ¶ 17, 345 Mont. 81, 189 P.3d 1196
- State v. Brendal, 2009 MT 236, ¶ 18, 351 Mont. 395, ____ P.3d ____
- North 93 Neighbors v. Bd. of Co. Commrs. of Flathead Co., 2006 MT 132, ¶¶ 21, 23, 332 Mont. 327, 137 P.3d 557