

SUPREME COURT OF OHIO

Apple Group, Ltd. v. Granger Township Board of Zoning Appeals, 144 Ohio St. 3d 188, 2015-Ohio-1612

41 N.E.3d 118 (Ohio 2015) · Decided June 17, 2015

SUMMARY

The Supreme Court of Ohio held that R.C. 519.02 does not require a township to adopt a comprehensive plan as a separate document from its zoning resolution. A zoning resolution may satisfy the statute if it reflects current land uses, allows for change, promotes public health and safety, uniformly classifies similar areas, clearly defines district locations and boundaries, and identifies permissible uses for each property. The court affirmed the judgment upholding Granger Township's zoning resolution.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	Lanzinger, J.; O'Connor, C.J.; Pfeifer, J.; O'Donnell, J.; French, J.; O'Neill, J.; Kennedy, J.
JURISDICTION	Ohio
DECIDED	June 17, 2015
DISPOSITION	affirmed
PROCEDURAL POSTURE	Apple appealed the denial of zoning variances and separately sought declaratory relief challenging the validity and statutory authorization of Granger Township's zoning resolution. After the common pleas court adopted a magistrate's decision rejecting Apple's claims, the Ninth District Court of Appeals affirmed. The Supreme Court of Ohio accepted two propositions of law concerning whether R.C. 519.02 requires a separately enacted comprehensive plan.
STANDARD OF REVIEW	The court of appeals reviewed the common pleas court's determination that the zoning resolution complied with R.C. 519.02 under the manifest-weight-of-the-evidence standard. The Supreme Court resolved the statutory-interpretation issue de novo.
PRECEDENTIAL VALUE	Published, precedential opinion of the Supreme Court of Ohio
PARTIES	Apple Group, Ltd. v. Granger Township Board of Zoning Appeals

TOPICS

zoning statutory interpretation municipal law ordinances judicial review of agency action

PRACTICE AREAS

zoning and land use municipal law statutory interpretation administrative appeals

QUESTIONS PRESENTED

1. Whether R.C. 519.02 requires a township to enact a comprehensive plan as a separate and distinct document from its zoning resolution.
2. Whether a township zoning resolution may itself constitute or incorporate a comprehensive plan for purposes of the requirement that zoning regulations be adopted in accordance with a comprehensive plan.
3. Whether Granger Township's zoning resolution satisfied the statutory requirement of being enacted in accordance with a comprehensive plan.

HOLDINGS

1. R.C. 519.02 does not require a township to enact a comprehensive plan as a separate and distinct document from its zoning resolution.
2. A zoning resolution is enacted in accordance with a comprehensive plan if it reflects current land uses, allows for change, promotes public health and safety, uniformly classifies similar areas, clearly defines district locations and boundaries, and identifies the uses to which each property may be put.

KEY QUOTATIONS

“We hold that a comprehensive plan pursuant to R.C. 519.02 may be included within a township’s zoning resolution and need not be a separate and distinct document.” (¶ 1)

“A comprehensive plan is defined as one that reflects current land uses within the township, allows for change, promotes public health and safety, uniformly classifies similar areas, clearly defines district locations and boundaries, and identifies the use or uses to which each property may be put.” (¶ 28)

FACTUAL BACKGROUND

Apple Group purchased 88 acres of undeveloped land in Granger Township zoned R-1 residential, which required two-acre minimum lots. Apple sought to develop 44 single-family homes on approximately one-acre lots and requested four variances for each lot. The township's zoning resolution included multiple residential and other zoning districts, an incorporated zoning map, and regulations governing permitted uses, boundaries, changes, and public-health and safety concerns.

PROCEDURAL HISTORY

The Granger Township Board of Zoning Appeals denied Apple's requested variances for a proposed 44-lot subdivision. The Medina County Court of Common Pleas affirmed the BZA decision and rejected Apple's

declaratory-judgment claims, including its argument that the township lacked authority because it had not enacted a separate comprehensive plan. The Ninth District affirmed, and the Supreme Court of Ohio affirmed the court of appeals.

DISPOSITION

affirmed

CASES CITED

- *Developers Diversified Ltd. v. Cuyahoga Cty. Bd. of Revision*, 84 Ohio St. 3d 32, 701 N.E.2d 975 (1998)
- *Torok v. Jones*, 5 Ohio St. 3d 31, 448 N.E.2d 819 (1983)
- *Yorkavitz v. Columbia Twp. Bd. of Trustees*, 166 Ohio St. 349, 142 N.E.2d 655 (1957)
- *Cassell v. Lexington Twp. Bd. of Zoning Appeals*, 163 Ohio St. 340, 127 N.E.2d 11 (1955)
- *B.J. Alan Co. v. Congress Twp. Bd. of Zoning Appeals*, 124 Ohio St. 3d 1, 2009-Ohio-5863, 918 N.E.2d 501
- *State ex rel. Plain Dealer Publishing Co. v. Cleveland*, 106 Ohio St. 3d 70, 2005-Ohio-3807, 831 N.E.2d 987
- *Lamie v. United States Trustee*, 540 U.S. 526, 124 S. Ct. 1023, 157 L. Ed. 2d 1024 (2004)
- *Columbus City School Dist. Bd. of Edn. v. Wilkins*, 101 Ohio St. 3d 112, 2004-Ohio-296, 802 N.E.2d 637
- *White Oak Property Dev., L.L.C. v. Washington Twp.*, 12th Dist. Brown No. CA2011-05-011, 2012-Ohio-425, 2012 WL 368254
- *Rumpke Waste, Inc. v. Henderson*, 591 F. Supp. 521 (S.D. Ohio 1984)
- *Westlake v. Elrick*, 52 Ohio Law Abs. 538, 83 N.E.2d 646 (8th Dist. 1948)
- *BGC Properties v. Bath Twp.*, 9th Dist. Summit No. 14252, 1990 WL 31789
- *Cent. Motors Corp. v. Pepper Pike*, 63 Ohio App. 2d 34, 409 N.E.2d 258 (8th Dist. 1979)

OPINION

LANZINGER, J.

Lanzinger, J. {¶ 1} This zoning case involves the interpretation of a single statutory phrase. We are asked to determine whether R.C. 519.02 requires a township to adopt a “comprehensive plan” separately from its zoning resolution.

We hold that a comprehensive plan pursuant to R.C. 519.02 may be included within a township’s zoning resolution and need not be a separate and distinct document. Furthermore, a zoning resolution is enacted in accordance with a comprehensive plan, as required by R.C. 519.02, if it (1) reflects current land uses, (2) allows for change, (3) promotes public health and safety, (4) uniformly classifies similar areas, (5) clearly defines district locations and boundaries, and (6) identifies the use or uses to which each property may be put.

I. Case Background {¶ 2} Appellant, Apple Group, Ltd. (“Apple”), purchased 88 acres of undeveloped land in Granger Township (“Granger”) in May 2006. The property was zoned R-1

residential, which permits the construction of single-family and two-family homes on a minimum lot size of two acres. Granger's zoning resolution also provides for an R-2 residential district that allows two to three dwelling units per acre if they can be serviced by central water and sanitary sewers at the time of development.

Because Apple sought to develop a subdivision consisting of 44 single-family homes situated on approximately one-acre lots on its property, it applied to appellee Granger Township Board of Zoning Appeals ("BZA") for 190176 variances, four variances for each of the 44 proposed lots.¹ The BZA denied the variance application. {¶ 3} Apple filed an administrative appeal, and the BZA's decision was affirmed by the Medina County Court of Common Pleas.

The court found that the BZA's decision was supported by a preponderance of the evidence and that the request for variances was in reality an attempt to rezone the land to a new district unlike the R-1 or R-2 residential districts, a request that the BZA was not authorized to grant. Apple also filed a complaint for declaratory judgment, seeking a declaration that Granger's zoning resolution establishing the R-1 zoning classification is unconstitutional and beyond the authority delegated to Granger in R.C.

Chapter 519. A magistrate issued a decision denying Apple's claims. With respect to the constitutional claim, the magistrate concluded, "Granger Township's desire to maintain the rural character of its land is a legitimate governmental goal, which may be regulated by its zoning resolution." In denying Apple's claim that Granger exceeded its authority in enacting the zoning resolution without enacting a separate comprehensive plan, the magistrate concluded, "The zoning resolution itself meets the statutory requirement of a comprehensive plan, because it has the essential characteristics of a comprehensive plan; it encompasses all geographic parts of the community and integrates all functional elements." The common pleas court adopted the magistrate's findings, and Apple appealed to the Ninth District Court of Appeals. {¶ 4} At the court of appeals, Apple argued that the trial court's declaration that Granger had complied with R.C.

519.02's requirement that a zoning resolution be adopted in accordance with a comprehensive plan was in error and was against the manifest weight of the evidence. The court of appeals concluded that the township's failure to enact a separate comprehensive plan did not mean it lacks authority to adopt a zoning resolution.

The court reasoned that the purpose of the requirement in R.C. 519.02 for a comprehensive plan is to prevent piecemeal zoning and ensure that someone purchasing property will be able to determine in advance how the property may be used.

The appellate court rejected Apple's argument that a zoning ordinance cannot constitute a comprehensive plan and concluded that the trial court's decision that Granger's zoning resolution

constitutes a comprehensive plan pursuant to R.C. 519.02 was not against the manifest weight of the evidence. {¶ 5} An appeal was taken to this court, and we accepted Apple's two propositions of law: *191For purposes of a township's exercise of its statutory zoning power, the "zoning plan" that R.C.

Chapter 519 empowers townships to adopt by resolution, which includes the zoning regulations and a zoning map, is not identical to or a substitute for the "comprehensive plan" identified in R.C. 519.02, with which R.C. 519.02 requires the "zoning plan" to be "in accordance." A township's zoning regulations, adopted by resolution under R.C. Chapter 519, are, standing alone, insufficient as a matter of law to establish that such regulations are "in accordance with a comprehensive plan," as R.C.

519.02 requires. See 139 Ohio St.3d 1404, 2014-Ohio-2245, 9 N.E.3d 1062. In short, Apple argues that a comprehensive plan must be enacted separately and apart from zoning regulations. II. Legal Analysis {¶ 6} "Zoning" is "the government's 'regulation of the character and intensity of real estate uses through police power.' [American Institute of Real Estate Appraisers, *The Dictionary of Real Estate Appraisal* 332 (1984)]." *Developers Diversified Ltd. v. Cuyahoga Cty.*

Bd. of Revision, 84 Ohio St.3d 32, 36, 701 N.E.2d 975 (1998). In Ohio, the authority of a township to enact zoning ordinances derives not from the township's inherent authority or the Ohio Constitution, but from the General Assembly. *Torok v. Jones*, 5 Ohio St.3d 31, 32, 448 N.E.2d 819 (1983), citing *Yorkavitz v. Columbia Twp. Bd. of Trustees*, 166 Ohio St. 349, 142 N.E.2d 655 (1957). {¶ 7} R.C.

Chapter 519 sets forth the method by which townships may regulate land use. R.C. 519.02(A) grants authority to a township's board of trustees to regulate the size and location of buildings and other structures and the use of land for residences or other purposes: Except as otherwise provided in this section, in the interest of the public convenience, comfort, prosperity, or general welfare, the board by resolution, in accordance with a comprehensive plan, may regulate the location of, set back lines for, and the uses of buildings and other structures * * * and the uses of land * * * in the unincorporated territory of the township, and may establish reasonable landscaping standards and architectural standards excluding exterior building materials in the unincorporated territory of the township. *192(Emphasis added.) {¶ 8} Apple's appeal does not challenge the reasonableness of Granger's zoning resolution but only whether the township's resolution may also function as its comprehensive plan.

According to Apple, a comprehensive plan must be created first to assure the public that the township's zoning has been properly considered. Apple argues that a zoning resolution must implement the comprehensive plan. Granger argues that its Revised Zoning Resolution is the comprehensive plan identified in R.C. 519.02.

The parties thus disagree over the meaning of the phrase “in accordance with a comprehensive plan.” A “Comprehensive Plan” {¶ 9} There is no standard definition for “comprehensive plan” in the context of zoning law.

The original Standard Zoning Enabling Act (“SZEa”), which the United States Department of Commerce issued in 1922 as a model for state legislation enabling and limiting local zoning power, included a requirement that zoning decisions be made “in accordance with a comprehensive plan.” Hirokawa, Making Sense of a “Misunderstanding of the Planning Process”: Examining the Relationship Between Zoning and Rezoning Under the Change-or-Mistake Rule, 44 Urb.Law.

295, 299 (2012). However, “[t]he term ‘comprehensive plan’ was not defined in the SZEa, and so both its purpose and confines of legal sufficiency have not been well understood or enforced.” Id. at 300. The view of the majority of states adopting the SZEa language is that “comprehensive planning requires some form of forethought and reasoned consideration, as opposed to a separate plan document that becomes an overarching constitution guiding development.” Sullivan & Richter, Out of the Chaos: Towards a National System of Land-Use Procedures, 34 Urb.Law.

449, 454 (2002). A minority of states view the comprehensive plan as “an independent document separate from the comprehensive zoning ordinance.” Benintendi, Comment, The Role of the Comprehensive Plan in Ohio: Moving Away from the Traditional View, 17 U.Dayton L.Rev. 207, 217 (1991). {¶ 10} While R.C. Chapter 519 offers detailed instructions on how townships are to adopt or amend zoning plans or resolutions, it does not define the term “comprehensive plan” or offer any specific guidance on the standard to be used to establish one.

But we have considered the phrase “in accordance with a comprehensive plan,” as used in R.C. 519.02, and stated indirectly what it was not in *Cassell v. Lexington Twp. Bd. of Zoning Appeals*, 163 Ohio St. 340, 127 N.E.2d 11 (1955). There, we held: A township zoning regulation, which provides merely that a section of a township, one square mile in area, shall be zoned for farming, residential, *193commercial and recreational uses, and which does not specify therein which portions of said section may be used for any or all of such purposes or is not accompanied by a map designating such use areas, is not adopted in accordance with a comprehensive plan.

Id., paragraph two of the syllabus. Thus, by implication, a comprehensive plan consists of something more than zoning a section of a township to allow farming, residential, commercial, and recreational uses without specifying which portions of the section can be used for any of those purposes.

In *Cassell*, we expressed concern over leaving the administration of zoning to the “unwarranted whim or caprice” of enforcement officials. Id. at 345-346. “The absence of any comprehensive plan in the regulation involved * * * open[ed] the door to an arbitrary and unreasonable

administration of the regulation.” Id. at 346. {¶ 11} We considered the phrase “in accordance with a comprehensive plan” more recently in B.J.

Alan Co. v. Congress Twp. Bd. of Zoning Appeals, 124 Ohio St.3d 1, 2009-Ohio-5863, 918 N.E.2d 501. That case addressed whether a township could rely on a comprehensive plan created at the county level. In answering yes, we explained: R.C. 519.02 does not require that a township create its own comprehensive plan — it requires only that a zoning resolution be “in accordance with a comprehensive plan.” (Emphasis added.)

To require each township to create its own comprehensive plan is to read additional language into R.C. 519.02. Id. at ¶ 13. We emphasized that our holding in the case was limited and noted that among the issues not determined in the case was whether the township zoning ordinance was indeed “in accordance” with the county’s comprehensive plan. Id. at ¶ 43. {¶ 12} Neither Cassell nor B.J.

Alan provides the answer to the issue before us today, but each case sets forth principles that aid us in our decision. Cassell stands for the proposition that a comprehensive plan serves to protect against the arbitrary and unreasonable administration of a zoning regulation. B.J. Alan explains that a township is not required to create its own comprehensive plan, but that its zoning resolution must be enacted in accordance with a comprehensive plan. {¶ 13} Apple argues that the term “comprehensive plan” is a term of art among zoning professionals and that the statutory language must be interpreted according to the meaning prevalent in that profession.

This court, however, has never ¹⁹⁴treated the term “comprehensive plan” as a term of art, and no court has found that the phrase “comprehensive plan” has acquired a technical or particular meaning pursuant to R.C. 1.42.

We have emphasized that “the plain meaning of a statute is always preferred.” State ex rel. Plain Dealer Publishing Co. v. Cleveland, 106 Ohio St.3d 70, 2005-Ohio-3807, 831 N.E.2d 987, ¶ 40, citing Lamie v. United States Trustee, 540 U.S. 526, 536, 124 S.Ct. 1023, 157 L.Ed.2d 1024 (2004). Furthermore, “ ‘[i]f a review of the statute conveys a meaning that is clear, unequivocal, and definite, the court need look no further.’ Columbus City School Dist.

Bd. of Edn. v. Wilkins, 101 Ohio St.3d 112, 2004-Ohio-296, 802 N.E.2d 637, ¶ 26.” Id. at ¶ 38. Our consideration of the statutory language leads us to conclude that no formally enacted comprehensive plan is required by R.C. 519.02. {¶ 14} We agree with Granger that the plain meaning of the phrase “in accordance with a comprehensive plan” is that zoning regulations should be adopted pursuant to a plan that is comprehensive, or all-encompassing, in the sense that the plan addresses the specific goals and objectives for the entire township.

This definition is implied in, and in keeping with, Cassell, which emphasizes that comprehensive plans are essential to protecting against arbitrary enforcement of zoning regulations. A court of

appeals decision, however, is even more helpful in establishing a meaning of the contested phrase. White Oak {¶ 15} The Twelfth District Court of Appeals also concluded that a comprehensive plan need not be an independent document.

White Oak Property Dev., L.L.C. v. Washington Twp., 12th Dist. Brown No. CA2011-05-011, 2012-Ohio-425, 2012 WL 368254. In White Oak, the property owner sought declaratory relief on the basis of its claim that Washington Township's zoning resolution was unenforceable because it was not in accordance with a comprehensive plan. Id. at ¶ 4.

The zoning resolution divided the territory of the township into four districts (agricultural, residential, commercial, and industrial) and reflected the primarily agricultural nature of the township's land. Id. at ¶ 17, 24.

The zoning resolution covered many topics, including land use, housing, and environmental precautions, and it incorporated a zoning map that marked the location and boundaries of each district, which the court noted allowed potential purchasers to identify the permissible uses of any particular piece of property. Id. at ¶ 25. While the zoning resolution covered the entire township, the court of appeals emphasized that it also allowed for changes in zoning as the township's needs developed.

Id. at ¶ 24. {¶ 16} The Twelfth District agreed that the township's zoning resolution and accompanying zoning map constituted a comprehensive plan and that it therefore complied with R.C. 519.02. Id. at ¶ 23. The court considered the term "comprehensive plan" to be a "flexible term" that " 'must be sufficiently detailed that a potential purchaser might ascertain in advance to what use property might be put.' " Id. at ¶ 16, quoting Rumpke Waste, Inc. v. Henderson, 591 F.Supp. 521, 534 (S.D.Ohio 1984).

And furthermore, "[w]ith respect to sufficient detail, the plan must 'define with certainty the location, boundaries and areas of the * * * districts,' and a failure to do so renders the plan invalid." White Oak at ¶ 16, quoting Westlake v. Elrick, 52 Ohio Law Abs. 538, 541, 83 N.E.2d 646 (8th Dist.1948).

We adopt the factors that the White Oak court considered to be indicative of a comprehensive plan, i.e., that it "(1) reflect current land uses; (2) allow for change; (3) promote public health and safety; (4) uniformly classify similar areas; (5) clearly define district locations and boundaries; and (6) identify the use(s) to which each property may be put." Id. at ¶ 46, citing Rumpke Waste and Elrick.

These factors are present within Granger's zoning resolution. Granger's Zoning Resolution {¶ 17} Granger's Zoning Resolution is an exhaustive document, which consists of more than 100 pages and incorporates an attached zoning districts map. {¶ 18} The resolution's stated purpose is to promote and protect the health, safety, morals, and welfare of the residents of the unincorporated

area of Granger Township, Medina County, Ohio, and to conserve and protect property and property values, and to provide for the maintenance of the rural character of Granger Township, and to manage orderly growth and development in said Township. {¶ 19} Thus, the zoning resolution is intended to be a comprehensive plan for the entire township.

And all six White Oak points are met. 1. Reflects current land uses {¶ 20} The resolution contains general regulations that apply to all districts or zones within the township and sets forth specific uniform regulations for each individual district.

The resolution also clearly sets forth the zoning districts and their boundary line on the attached map, which allows any potential purchaser to determine the uses to which a piece of property may be put. {¶ 21} It reflects current land uses in its intention to “provide for the maintenance of’ the already-existing “rural character of Granger Township” and its establishment of zoning districts reflecting the established rural character of the township. *196 2.

Allows for change {¶ 22} The resolution allows for change: it establishes a process for property owners to obtain conditional zoning permits, which “provide controllable and reasonable flexibility in requirements for certain kinds of uses that will allow profitable latitude for the investor.” 3. Promotes health and safety {¶ 23} The resolution promotes public health and safety: a number of provisions, such as those regulating the placement of signs that are in part “intended to reduce sign or advertising distractions and obstructions that may contribute to traffic accidents,” regulate potential hazards. k- Uniformly classifies similar areas {¶ 24} The resolution uniformly classifies similar areas: it creates seven distinct district types (R-1 Residential, R-2 Residential, C-1 Local Commercial, C-2 General Commercial, C-3 Highway Interchange Commercial, 1-1 Industrial Commercial, and PDD Planned Development) and adopts clear regulations for each type of district.

5. Clearly defines district locations and boundaries {¶ 25} The resolution contains clearly defined district locations and boundaries that are set forth on a zoning-districts map incorporated into the resolution. It presents rules for interpretation in the event that “uncertainty exists with respect to the boundaries of any of the aforesaid districts as shown on the zoning map.” 6.

Identifies the use or uses to which each property may be put {¶ 26} Finally, the resolution identifies the use or uses to which each property may be put within each zoning type. For example, it allows for single-family dwellings, two-family dwellings, certain manufactured homes, and certain roadside stands among the permitted uses within an R-1 Residential District. {¶ 27} We accordingly conclude that the resolution satisfies the requirement of R.C.

519.02 that it be enacted “in accordance with a comprehensive plan.” III. Conclusion {¶ 28} We agree with those appellate courts that have considered the issue and have held² that a comprehensive plan need not be set forth in a separate *197document and may be included in the

township's zoning plan. A comprehensive plan is defined as one that reflects current land uses within the township, allows for change, promotes public health and safety, uniformly classifies similar areas, clearly defines district locations and boundaries, and identifies the use or uses to which each property may be put.

Granger's zoning resolution was enacted in accordance with such a comprehensive plan pursuant to R.C. 519.02. {¶ 29} We accordingly affirm the judgment of the court of appeals. Judgment affirmed. O'Connor, C.J., and Pfeifer, O'Donnell, French, and O'Neill, JJ., concur. Kennedy, J., dissents.. Specifically, it asked for a variance from the R-1 district's two-acre lot minimum, the 175-foot minimum street-side lot frontage, the 175-foot minimum continuous front-yard width, and the 15-foot side-yard setback requirement..

BGC Properties v. Bath Twp., 9th Dist. Summit No. 14252, 1990 WL 31789, *4 (Mar. 21, 1990); Cent. Motors Corp. v. Pepper Pike, 63 Ohio App.2d 34, 65, 409 N.E.2d 258 (8th Dist.1979); White Oak, 12th Dist. Brown No. CA2011-05-011, 2012-Ohio-425, 2012 WL 368254, ¶ 46.