

IN THE CHANCERY COURT FOR LOUDON COUNTY, TENNESSEE

IN RE: PETITION FOR WRIT OF)
CERTIORARI)
)
MITCHELL HYDE,)
)
)
Plaintiff,)
)
v.)
)
LOUDON COUNTY BOARD OF)
ZONING APPEALS,)
)
)
Defendant.)

Civil Action No. 13079

FILED 7 DAY OF June 2023
AT 11:50 AM
LISA SCOTT VAS
LOUDON CO. CLERK & MASTER

ANSWER TO PETITION FOR A WRIT OF CERTIORARI

Comes now Defendant Loudon County Board of Zoning Appeals (“Defendant”), by and through counsel, for answer and in defense of the Petition for a Writ of Certiorari filed against it by Mitchell Hyde (“Plaintiff”), state as follows:

DEFENSES

A. Plaintiff’s Petition should be dismissed as it fails to state a claim upon which relief may be granted.

B. Defendant’s action in denying Plaintiff’s request for a special exception was not clearly illegal, arbitrary, or capricious, but was instead based on sufficient evidence, namely, Plaintiff’s admission that he was pumping material out of holding tanks and “spreading it out on the farm.”

In response to the enumerated paragraphs in the Petition, Defendant states as follows:

PARTIES AND JURISDICTION

1. The Petitioner, Mitchell Hyde, is a citizen of the State of Tennessee and the owner of real property located in Loudon County, Tennessee, shown as Parcel 044.00 on Map 084 in the records of the Property Assessor's Office for Loudon County, Tennessee. The real property is more specifically described in Deed Book 426, page 881, in the Loudon County Register of Deed's Office.

RESPONSE: For answer to Paragraph 1, Defendant admits Plaintiff has represented that he is the owner of the subject property and admits Plaintiff is identified in public land records as the owner of the subject property.

2. The Loudon County Board of Zoning Appeals is a Board authorized by TCA Section 13-7-106 and established by Loudon County in Section 7.070 of the Zoning Resolution of Loudon County, Tennessee.

RESPONSE: Admitted.

3. The Petitioner brings this Petition for a Writ of Certiorari pursuant to TCA Section 27-9-101, *et seq.* as he is a person aggrieved by a Final Order of the Loudon County Board of Zoning Appeals on March 14, 2023.

RESPONSE: For answer to Paragraph 3, Defendant admits the nature of the action is as stated; but, it denies that it is well-founded.

4. Parcel 044.00 on Map 084 as shown in the records of the Property Assessor's Office for Loudon County, Tennessee has an address of 7431 Highway 411, Loudon, TN. The Petitioner purchased Parcel 044.00 on Map 084 in October 2020. Parcel 044.00 on Map 084 was zoned A-2 Rural Residential District. Within this A-2 Zone, the Petitioner was permitted to operate and did

construct and open a butcher shop for the Petitioner's own agricultural use and purposes. An A-2 Zone does not permit operating a butcher shop open to the general public.

RESPONSE: Defendant is without information sufficient to admit or deny the allegations of Paragraph 4 regarding the Plaintiff's intent regarding his use of the subject property. The remaining allegations are admitted. Further answering, Defendant states the Loudon County Zoning Resolution, A-2 Rural Residential District, speaks for itself.

5. Pursuant to TCA Section 13-7-105, a county legislative body may amend its zoning ordinance, but any such amendment shall not be made or become effective unless the same be first submitted for approval, disapproval, or suggestions to the Regional Planning Commission.

RESPONSE: Admitted.

6. After the Petitioner constructed and opened a butcher shop permitted under A-2 zoning for his use, the Petitioner determined there was a market and need to be able to operate a butcher shop open to the public. The Petitioner contacted the Loudon County Planning Department and was advised in order to operate a butcher shop open to the public his property had to be re-zoned to a M-1 Zone – General Industrial District.

RESPONSE: Defendant is without information sufficient to admit or deny the allegations regarding “market” conditions for a “butcher shop open to the public.” Further answering, Defendant admits Plaintiff was informed that “in order to operate a butcher shop to the public his property had to be re-zoned to a M-1 Zone – General Industrial District.”

7. The Petitioner appeared before the Loudon County Regional Planning Commission on April 20, 2021. Minutes from the meeting of April 20, 2021 state that the Petitioner appeared to begin the process for re-zoning. The Petitioner had in place a septic system approved by the

State of Tennessee. The Petitioner did not have a completed survey or other necessary information, and any request to re-zone a part of Parcel 044.00 on Map 084 was denied.

RESPONSE: Defendant admits the Loudon County Regional Planning Commission denied Plaintiff's rezoning request on April 20, 2021. The remaining allegations of Paragraph 7 are denied, and Defendant says the minutes of the April 20, 2021 meeting speaks for themselves.

8. The Petitioner submitted a formal re-zoning Application to the Loudon County Planning Department September 23, 2022. The Application presented by the Petitioner reflects the request is to re-zone 5 acres to M-1 for the purpose of doing custom butchering for public. A copy of this Application is attached as Exhibit "1."

RESPONSE: Admitted.

9. The Loudon County Regional Planning Commission approved the zoning change from A-2 to M-1 October 11, 2022. The Minutes of the October 11, 2022 meeting reflect that the Planning and Codes' Officer informed the Planning Commission that the Petitioner had met all requirements for his re-zoning request. The Planning Commission was well aware that the Petitioner intended to operate a butcher shop open to the public, when the Planning Commission approved the zone change to M-1.

RESPONSE: Defendant is without sufficient information to admit or deny the allegations of Paragraph 9 regarding Plaintiff's intent. Further answering, Defendant states the Loudon County Regional Planning Commission recommended "the Zone change to M-1"; and, states the minutes of the October 11, 2022 meeting speak for themselves.

10. At a February 6, 2023 meeting, the Loudon County Commission unanimously approved the re-zoning request of the Petitioner to re-zone approximately 2.18 acres of Parcel 044.00 on Map 084 from A-2 to M-1. The Loudon County Commission was well aware of the

purpose of the re-zoning request to allow the Petitioner to operate a butcher shop open to the public. A copy of the Minutes of the February 6, 2023 Loudon County Commission meeting is attached as Exhibit “2.”

RESPONSE: Defendant is without sufficient information to admit or deny the allegations of Paragraph 10 regarding Plaintiff’s intent or purpose. Further answering, Defendant admits the Loudon County Commission approved the “rezoning request . . . from A-2 to M-1”; and, states the minutes of the February 6, 2023 meeting speak for themselves.

11. As a part of converting his butcher shop from a butcher shop for his own use to a butcher shop open to the public, the Petitioner was required to submit a site plan to the Loudon County Regional Planning Commission. The Petitioner appeared before the Loudon County Regional Planning Commission on January 10, 2023 to continue with his site planning process to operate a butcher shop open to the public. Even though the Petitioner had an approved septic/sewer system, it appeared to the Petitioner the Planning Commission desired that he connect to the Tellico Area Services System (TASS) which provides and operates a water and waste-water treatment system. The Petitioner advised the Planning Commission that the fees had been paid, but his place of business had not yet been connected to TASS. The Planning Commission denied the Petitioner’s site plan approval. Leon Shields and Jim Brooks are members of the Loudon County Regional Planning Commission.

RESPONSE: For answer to Paragraph 11, Defendant admits the Planning Commission denied the “site plan approval” and that “Leon Shields and Jim Brooks are members of the Loudon County Regional Planning Commission.” Defendant further admits Plaintiff was “required to submit a site plan to the Loudon County Regional Planning Commission . . . to continue with his

site planning process to operate a butcher shop open to the public.” Defendant further states the minutes of the January 10, 2023 meeting speak for themselves.

12. At a February 14, 2023 Loudon County Regional Planning Commission meeting, the Petitioner advised the Planning Commission that his butcher shop had been connected to the water and waste-water treatment system operated by TASS as requested. The Loudon County Regional Planning Commission approved the site plan presented by the Petitioner to operate a butcher shop open to the public. The Motion to approve the site plan was made by Jim Brooks, seconded by Leon Shields, and unanimously approved. A copy of the Minutes of the February 14, 2023 Loudon County Regional Planning Commission meeting is attached as Exhibit “3.”

RESPONSE: Admitted. Further answering, Defendant states that the minutes of the February 14, 2023 meeting speak for themselves.

13. Under the Loudon County Zoning Resolution, uses permitted in the M-1 zone include food manufacturing, except meat products. In the M-1 zone, meat product manufacturing is permitted as a special exception after review and approval by the Loudon County Board of Zoning Appeals pursuant to Section 7.060 of the Zoning Resolution. The Loudon County Board of Zoning Appeals is composed of certain members from the Loudon County Planning Commission.

RESPONSE: Admitted.

14. The Petitioner presented his request for a special exception to operate a butcher shop open to the public in a M-1 district to the Loudon County Board of Zoning Appeals on March 14, 2023. The Minutes of this meeting reflect a discussion between the Petitioner and Jim Brooks about treatment of waste. A Motion was made by Ryan Bright to approve the request for a special exception, seconded by John Napier. Jim Brooks, Chairman of the Board of Zoning

Appeals, and Leon Shields opposed the request. There were 5 members present, with the 2 for and 2 against vote resulting in a denial of the request. One member recused himself. Jim Brooks and Leon Shields, members of the Loudon County Planning Commission, had previously approved the Petitioner's site plan to operate a butcher shop open to the public after being advised that the Petitioner had connected to TASS at the February 14, 2023 Loudon County Regional Planning Commission meeting. A copy of the Minutes of the March 14, 2023 Loudon County Board of Zoning Appeals is attached as Exhibit "4."

RESPONSE: For answer to Paragraph 14, Defendant admits Plaintiff's application for a special exception was denied based on a "2 for and 2 against vote" after Plaintiff admitted during the meeting that although his operation is connected to the sewer system, he is pumping material out of holding tanks and "spreading it out on the farm."

15. As afore-mentioned, the Loudon County Regional Planning Commission and the Loudon County Commission knew that the Petitioner lawfully opened and operated a butcher shop on Parcel 044.00 on May 084 in Loudon County for his own use. Both the Loudon County Regional Planning Commission and the Loudon County Commission were presented with the re-zoning request of the Petitioner from A-2 to M-1 for the express purpose of allowing the Petitioner to operate a butcher shop open to the public. Both the Loudon County Planning Commission and the Loudon County Commission approved the re-zoning request to M-1 with knowledge that the Petitioner would have to request a special exception to operate his proposed butcher shop open to the public. Jim Brooks and Leon Shields are members of the Loudon County Regional Planning Commission and the Loudon County Board of Zoning Appeals. Mr. Brooks and Mr. Shields, as members of the Loudon County Regional Planning Commission, approved the site plan for the Petitioner to operate a butcher shop open to the public at a meeting on February 14, 2023.

Mr. Brooks and Mr. Shields, without any stated plausible or reasonable basis, cast the votes at the Board of Zoning Appeals meeting 30 days later that resulted in the denial of the special exception request.

RESPONSE: For answer to Paragraph 15, Defendant states Mr. Brooks and Mr. Shields voted to deny Plaintiff's application for a special exception after Plaintiff admitted during the meeting that although his operation is connected to the sewer system, he is pumping material out of holding tanks and "spreading it out on the farm." Defendant denies Mr. Brooks and Mr. Shields did not have a "plausible or reasonable basis" for voting to deny the special exception based on Plaintiff's admission about "spreading [material from holding tanks] out on the farm."

16. The decision of the Loudon County Board of Zoning Appeals on March 14, 2023 denying the request for a special exception to operate a butcher shop open to the public in a M-1 district prohibits the Petitioner from converting his butcher shop for his own use to a butcher shop open to the public.

RESPONSE: For answer to Paragraph 16, Defendant admits "the decision . . . denying the request for a special exception" prohibits Plaintiff from operating "a butcher shop open to the public." Defendant further states the vote to deny the special exception was lawful based on Defendant's duty to protect the "public health, safety, convenience, and general welfare" of the citizens of Loudon County by requiring property owners to provide proper sanitation.

17. The Petitioner avers that the decision of the Loudon County Board of Zoning Appeals denying his request for a special exception was illegal, arbitrary, and capricious with no material evidence or reasonable basis presented to the Board to support the denial of the request.

RESPONSE: Denied. Further answering, Defendant avers the denial of Plaintiff's application for a special exception was a valid and lawful exercise of its duty to protect the "public

health, safety, convenience, and general welfare” of the citizens of Loudon County by requiring property owners to provide proper sanitation.

18. All allegations not admitted, denied, or explained are hereby denied.

19. Defendant denies Plaintiff is entitled to any relief in this civil action.

WHEREFORE, Defendant respectfully prays for judgment as follows:

1. That the Petition be dismissed with prejudice and that the Plaintiff take nothing;
2. That judgment be entered in favor of Loudon County Board of Zoning Appeals;
3. That all attorney fees and costs expended in defending this action be taxed to

Plaintiff; and

4. That the Court order such other and further relief as it deems just and proper.

Respectfully submitted this 7th day of June 2023.



Robert L. Bowman (BPR No. 017266)

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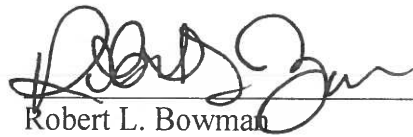
865-525-5134

Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on this the 7th day of June 2023, a true and correct copy of the foregoing **Answer to Petition for a Writ of Certiorari** was served via United States Mail, postage prepaid and addressed to:

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