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ZONING - NORTH CAROLINA

Blair Investments, LLC v. Roanoke Rapids City Council

Court of Appeals of North Carolina - December 17, 2013 - S.E.2d - 2013 WL 6623348

Blair Investors, LLC, (petitioner), a North Carolina limited liability corporation, leased a 100 square foot site in Roanoke Rapids to U.S. Cellular, which planned to install a cell phone tower. The property is zoned I-1 Industrial by the City of Roanoke Rapids, a zoning category that allows placement of a cellular phone tower upon granting of a special use permit.

The City Council denied the special use permit on the grounds that “more probably than not” the proposed tower would “endanger the public health or safety” and would “not be in harmony with the surrounding area.” The trial court affirmed.

Petitioner appealed, contending that the trial court erred in affirming the decision of the council, on the grounds that the council’s ruling was “not supported by any relevant evidence” and the Court of Appeals agreed.

“We hold that the information in the planning department’s report in conjunction with the director’s testimony, constituted ‘competent, material, and substantial evidence tending to establish the existence of the facts and conditions which the ordinance requires for the issuance of a special use permit.’ Mann Media, 356 N.C. at 12, 565 S.E.2d at 16. We agree with petitioner that it made a prima facie showing that it was entitled to a special use permit.”

“Once an applicant makes a prima facie showing of entitlement to a special use permit, ‘the burden of establishing that the approval of a conditional use permit would endanger the public health, safety, and welfare falls upon those who oppose the issuance of the permit. Denial of a conditional use permit must be based upon findings which are supported by competent, material, and substantial evidence appearing in the record.’”

“Moreover, a city council’s denial of a conditional use permit based solely upon the generalized objections and concerns of neighboring community members is impermissible. Speculative assertions, mere expression of opinion, and generalized fears “about the possible effects of granting a permit are insufficient to support the findings of a quasi-judicial body.” In other words, the denial of a conditional use permit may not be based on conclusions which are speculative, sentimental, personal, vague, or merely an excuse to prohibit the requested use.”