

Bond Case Briefs

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ZONING & PLANNING - NEBRASKA

Landrum v. City of Omaha Planning Board

Supreme Court of Nebraska - July 14, 2017 - N.W.2d - 297 Neb. 165 - 2017 WL 2990029

Neighboring residents sought review of city planning board's approval of a conditional use permit and the city council's approval of a special use permit and zoning overlay for a proposed storage facility.

The District Court ruled that neighboring residents had standing, that they timely filed their petition in error regarding the conditional use permit, and that neighboring residents could use a petition in error to challenge the special use permit and zoning overlay, but dismissed their challenge with prejudice. All parties appealed.

The Supreme Court of Nebraska held that:

- Date of city council's approval of the zoning overlay was the date on which the planning board's approval of a conditional use permit became a "final order";
- Neighboring residents had standing to seek review of city's approval of the zoning overlay;
- As matter of apparent first impression, city council acted as a legislative body when it granted the zoning overlay and special use permit;
- Planning board had sufficient evidence to approve the conditional use permit; and
- The planning board provided neighboring residents with due process.

Date on which the city council approved a zoning overlay for a proposed storage facility was the date on which the city planning board's previous approval of a conditional use permit for the proposed facility became a "final order," and thus neighboring residents had 30 days from the city council's action to file their petition in error challenging the proposed facility in order to give the trial court subject-matter jurisdiction, as required by statutes governing proceedings in error. Under the city's code, the official effective date of a conditional use permit was the date on which the city council approved rezoning of the site in question.

Neighboring residents had standing to seek review of city's approval of zoning overlay for a proposed storage facility. Statute required notice in metropolitan-class cities to owners of property within 300 feet of a proposed project, and evidence existed that the proposed facility would have adversely affected neighboring residents' property values.

City council acted as a legislative body when it granted a zoning overlay and a special use permit for a proposed storage facility, and thus the trial court and the Supreme Court lacked jurisdiction to adjudicate neighboring residents' petition in error regarding the rezoning and special use permit, where the special use permit and rezoning applications proceeded at the same hearing pursuant to separate agenda items, and although several residents presented argument to the council and residents submitted an opposition document to the city clerk, no evidence or testimony was offered.

City planning board had sufficient evidence to approve a conditional use permit for a proposed storage facility, where the board gave due consideration to the criteria listed in the municipal code

that were relevant to the matter, which was what the code required, a report by the planning department noted that developer's permit request was in substantial conformance with the zoning ordinance and city's master plan, and the planning department opined that developer had essentially complied with all the requested changes to the proposal.

City planning board provided neighboring residents with due process as part of board's approval over residents' objections a conditional use permit for a proposed storage facility, despite argument that a board member cautioned one resident who suggested that the proposed facility would be frequented by owners of lower-end homes rather than owners of higher-end homes such as his and that a second board member expressed his concerns about residents' arguments against the project from a socioeconomic standpoint; board members' concerns did not reflect that the members were not impartial or had become witnesses, and residents were allowed to offer evidence and their opinions.