

Bond Case Briefs

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ZONING & PLANNING - SOUTH DAKOTA

Abata v. Pennington County Board of Commissioners

Supreme Court of South Dakota - July 10, 2019 - N.W.2d - 2019 WL 3022361 - 2019 S.D. 39

Citizens brought declaratory judgment action challenging validity of zoning ordinance.

The Circuit Court granted citizens' summary judgment motion, and county board of commissioners appealed.

The Supreme Court held that:

- Citizens had standing to challenge amendment to zoning ordinance;
- Citizens did not waive their objections to alleged violations of due process by attending public hearings and being heard with regard to proposed amendment to zoning ordinance;
- County's notice for county board of commissioner's meeting to consider proposed zoning ordinance amendment was sufficient to satisfy due process; but
- County's notice for county board of commissioner's hearing on proposed zoning ordinance amendment was inadequate to satisfy due process, and amendment to ordinance was therefore void.

Citizens had standing to challenge amendment to zoning ordinance that regulated mining permits on due process grounds; in another action, the Supreme Court had determined that the same citizens, as landowners, could be adversely affected by a neighboring mining operation, and a favorable holding for the citizens in the current action would render the amended ordinance void for violation of the statutory notice provisions.

Citizens did not waive their objections to alleged violations of due process by attending public hearings and being heard with regard to proposed amendment to zoning ordinance; it was the county board of commissioner's burden to comply with statutory notice requirements, any violation of which would render a zoning ordinance amendment void.

County's notice for county board of commissioner's meeting to consider proposed ordinance amendment was sufficient to satisfy due process, as it was given at least ten days in advance by publication in a legal newspaper of the county; the statute governing notice with regard to any proposed change or modification to an ordinance only required one hearing.

County's notice for county board of commissioner's hearing on proposed zoning amendment was inadequate to satisfy due process, and amendment to ordinance was therefore void, where the board did not consider the amendment until more than a month after the published time and place of the hearing.