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ZONING & PLANNING - NORTH CAROLINA

Schooldev East, LLC v. Town of Wake Forest

Court of Appeals of North Carolina - July 19, 2022 - S.E.2d - 2022-NCCOA-494 - 2022 WL 2812335

After town planning board denied applicant's applications for major site plan and major subdivision approval to build a charter school, applicant filed a petition for writ of certiorari.

The Superior Court granted writ and affirmed the board's decision, and applicant appealed.

The Court of Appeals held that:

- Applicant's appeal from superior court's decision was not moot;
- Superior court erroneously exercised the whole record test in determining the preliminary legal question concerning the sufficiency of applicant's evidence;
- Term "street improvements" did not include sidewalk improvements, as that term was used in statute providing that city could only require "street improvements" related to schools that were required for safe ingress and egress to municipal street system;
- Statute providing that city could only require street improvements related to schools that were required for safe ingress and egress to the municipal street system did not prohibit towns from regulating pedestrian and bicycle connectivity; and
- Applicant failed to meet its burden of production to show that it satisfied town ordinance so as to establish prima facie case for entitlement to permits.

Court of Appeals had jurisdiction to address applicant's appeal from superior court's order entered upon review of a quasi-judicial decision by a municipality; town planning board denied applicant's applications for major site plan and major subdivision approval to build a charter school, and after certiorari was granted, superior court affirmed board's decision.

Applicant's appeal from trial court's decision affirming town planning board's denial of applications for major site plan and major subdivision approval to build charter school was not moot, even though applicant had allegedly renounced its legal right to "operate" charter school after filing its notice of appeal; applicant applied only for development permits under town's unified development ordinance (UDO), and it was a separate entity, namely charter school, that sought charter applications which would allow it to "operate" school, the questions originally in controversy between applicant and town were not moot, and decision on the existing controversy would have practical effect on applicant's ability to obtain the required development permits.

Superior court properly applied de novo standard of review in interpreting statute governing limitation on city requirements for street improvements related to schools and in reaching its decision that statute did not prohibit municipalities from regulating pedestrian and bicycle connectivity in relation to proposed new schools.

When reviewing town planning board's denial of applications for major site plan and major subdivision approval to build a charter school, superior court erroneously exercised the whole

record test in determining the preliminary legal question concerning the sufficiency of applicant's evidence; instead, superior court should have applied de novo review to determine the initial legal issue of whether applicant had presented competent, material, and substantial evidence in support of its applications.

On review of town zoning board's decision, it was not prejudicial error when superior court erroneously exercised the whole record test, as opposed to de novo review, in determining the preliminary legal question concerning the sufficiency of applicant's evidence in support of its applications for major site plan and major subdivision approval to build a charter school, given that applicant failed to meet its burden of production to show it was entitled to the requested permits.

The Court of Appeals would review de novo whether statute governing limitation on city requirements for street improvements related to schools was properly interpreted in context of applicant's zoning applications for major site plan and major subdivision approval to build a charter school.

Term "street improvements" did not include sidewalk improvements, as that term was used in statute providing that city could only require "street improvements" related to schools that were required for safe ingress and egress to the municipal street system and that were physically connected to a driveway on the school site.

Statute providing that city could only require "street improvements" related to schools that were required for safe ingress and egress to the municipal street system and that were physically connected to a driveway on the school site did not prohibit towns from regulating pedestrian and bicycle connectivity in relation to proposed new schools; statutory term "street improvements" did not include sidewalk improvements.

Statute providing that charter school's specific location would not be prescribed or limited by a local board or other authority except a zoning authority did not prevent town from considering community plan policies with respect to schools and corresponding regulations, as town zoning board was acting as a zoning authority when denying applications for major site plan and major subdivision approval to build a charter school.

Town's community plan policy stating that public school locations should serve to reinforce desirable growth patterns rather than promoting sprawl was solely advisory, and thus, it was irrelevant to applications for major site plan and major subdivision approval to build a charter school and was not a proper basis for town zoning board to deny applicant's site plan application; community plan policy was a policy statement applicable to the planning of a new school location, and policy was not implemented by a zoning regulation.

Town's community plan policy providing that school campuses should be designed to allow safe pedestrian access from adjacent neighborhoods was a policy of the town's comprehensive plan to be implemented by a zoning regulation and could be changed at any time, and standing by itself, community plan policy was only advisory and did not have the force of law; however, the policy was implemented by town's unified development ordinance (UDO) requiring applicant for school to demonstrate how its plan would achieve walking and bicycle accessibility by schoolchildren to schools.

Applicant's failure to satisfy town's unified development ordinance (UDO), requiring applicant for school to demonstrate how its plan would achieve walking and bicycle accessibility by schoolchildren to schools, was a proper basis on which town denied applications for major site plan and major subdivision approval to build charter school.

Town’s unified development ordinance (UDO) that was intended to regulate the development of land to be used for educational uses and required the provision of off-premise sidewalks and multi-use trails or paths to allow for accessibility by students to schools was a subdivision ordinance because it concerned a component of essential infrastructure for an elementary and secondary school within town’s planning jurisdiction, and thus, superior court properly considered the ordinance in denying applicant’s subdivision plan application in connection with charter school.

Applicant failed to show that it was not required to comply with town’s unified development ordinance (UDO) that was intended to regulate the development of land to be used for educational uses in order to satisfy conditions for approval of its applications for major site plan and major subdivision approval to build a charter school.

Town zoning board made ultimate decision as to whether applicant presented competent, material, and substantial evidence in support of its applications for major site plan and major subdivision approval to build a charter school and whether applicant met requirements of town unified ordinance that was intended to regulate the development of land to be used for educational uses.

Applicant failed to meet its burden of production to show that it met town unified development ordinance (UDO) requiring the provision of off-premise sidewalks and multi-use trails or paths to allow for accessibility by students to schools in order to establish a prima facie case for entitlement to permits for major site plan and major subdivision approval to build a charter school; applicant demonstrated that it would provide pedestrian connectivity to only one residential neighborhood through park located to the south of the proposed school.

Town’s local zoning ordinances requiring pedestrian connectivity and accessibility for schoolchildren to school were not preempted by statute providing that city could only require street improvements related to schools that were required for safe ingress and egress to the municipal street system and that were physically connected to a driveway on the school site.

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