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ZONING & PLANNING - GEORGIA

Carson v. Brown

Court of Appeals of Georgia - February 7, 2023 - S.E.2d - 2023 WL 1792668

Landowner filed petition for a writ of certiorari against the county and its planning director over county zoning board of appeals' decision affirming determination that landowner lacked vested right to develop property at a certain lot size.

Landowner then filed separate action for mandamus relief against planning director and a planner technician for the county, in their individual and official capacities, to have county's moratorium on land-disturbance permits for development at certain densities declared void and to have director and technician ordered to process land-disturbance-permit application under the iteration of the zoning code that allowed for lots of landowner's desired size.

In the mandamus action, the Superior Court partially granted director and technician judgment on the pleadings. Both sides appealed. The Court of Appeals affirmed in part and reversed in part. After the case returned to the trial court, landowner amended his complaint to add claims for declaratory and injunctive relief against director and technician in their individual capacities, and the Superior Court granted in part and denied in part the parties' motions for summary judgment. Landowner appealed, and planner and technician cross-appealed. In the certiorari action, the Superior Court, Forsyth County, David L. Dickinson, J., affirmed decision of the local zoning board of appeals. Landowner applied for discretionary appellate review. Upon consideration of the appeals in both actions, the Court of Appeals reversed the judgment in the certiorari action and dismissed the appeal and cross-appeals in the action for mandamus, injunctive, and declaratory relief. On certiorari review, the Supreme Court reversed and remanded with direction.

On remand, the Court of Appeals vacated its opinion, adopted the Supreme Court's opinion, and held that:

- Landowner's initiation of process to obtain sewer easements under zoning code's provisions allowing lots of desired size did not grant landowner a vested right to a land-disturbance permit to develop lots of that size;
- Alleged lack of ascertainable standards or objective criteria in county ordinance setting out the administrative procedure for determining vested rights was not a basis to find that landowner had vested rights to a land-disturbance permit for lots of desired size;
- The Court's prior ruling that landowner's purported failure to pursue an administrative appeal did not bar the action for mandamus, injunctive, and declaratory relief was the law of the case; and
- Resolution adopted by county's board of commissioners before landowner applied for land-disturbance permit created a valid moratorium on lots of landowner's desired size.

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