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ZONING & PLANNING - VIRGINIA

Morgan v. Board of Supervisors of Hanover County

Supreme Court of Virginia - February 2, 2023 - S.E.2d - 2023 WL 1456752

Neighbors brought an action seeking declaratory judgment and injunctive relief and claiming that the county board of supervisors violated Virginia law when it approved rezoning and special-exception requests that authorized the construction of a large distribution and warehousing facility nearby.

The Hanover Circuit Court sustained board's demurrer, and dismissed the complaint. Neighbors appealed.

The Supreme Court held that:

- Neighbors sufficiently alleged a likelihood of harm to have standing;
- Action was not an untimely effort to challenge county's original decision to rezone the property;
- Neighbors alleged a non-speculative, direct cause-and-effect relationship between the county's decision and specific, detailed harm; and
- Neighbors asserted a sufficiently "ripe" controversy.

Neighbors' complaint sufficiently alleged a likelihood of harm as required for standing to challenge rezoning and approval of warehouse expansion project; neighbors did not generalize about industrial sites in the abstract or speculate about potential harms, but rather alleged specific harms, including tractor-trailer traffic on specific feeder roads surrounding the facility, the increased level of noise caused by back-up alarms from these trucks, anticipated flooding caused by the topography of the project, and the night-sky light pollution from taller lighting poles in the parking area.

Neighbors' challenge to county's approval of warehouse expansion project was not an untimely effort to challenge county's original decision to rezone the property, but rather their injury was fairly traceable to county's approval of the specific development plan such that neighbors had standing to assert the challenge; original rezoning authorized over 100 specific uses, and while property owner argued it could have developed the property pursuant to that original rezoning ordinance without ever asking the county to supersede its prior zoning ordinance with a revised set of proffers and a special exception, property owner did in fact ask for and receive a favorable decision from the county.

Neighbors alleged a non-speculative, direct cause-and-effect relationship between the county's decision to approve rezoning and special-exception requests for distribution and warehousing facility and specific, detailed harm, as required to maintain declaratory judgment action to challenge the decision; neighbors alleged that property owner's conceptual development plan, as approved, would encroach into resource protection areas, that the facility would violate the county's noise ordinance during construction and operation based upon a county sound study, and that the project would constitute an unlawful nuisance because of the deleterious effects of the site development, including the tractor-trailer traffic, the night-sky light pollution, the unlawful levels of noise, the impact on wetlands and wildlife, and the reduction of property values.

Neighbors asserted a sufficiently “ripe” controversy arising from county’s decision to approve rezoning and special-exception requests for distribution and warehousing facility as required to maintain claim for declaratory judgment; neighbors alleged that conceptual development plan, as approved, would encroach into resource protection areas, that the facility would violate the county’s noise ordinance during construction and operation based upon a county sound study, and that the project would constitute an unlawful nuisance because of the deleterious effects of the site development, including the tractor-trailer traffic, the night-sky light pollution, the unlawful levels of noise, the impact on wetlands and wildlife, and the reduction of property values.

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