IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT JULY TERM 2008

HAROLD D. KEENE,

Appellant,

v. Case No. 5D07-3058

ZONING BOARD OF ADJUSTMENT, ETC., ET AL.,

Appellees.

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Opinion filed December 19, 2008

Appeal from the Circuit Court for Putnam County, Terry LaRue, Judge.

Michael W. Woodward, of Keyser & Woodward, Interlachen, for Appellant.

No Appearance for Appellee, Zoning Board of Adjustment, etc.

Ronald D. Wilson, Florahome, pro se.

GRIFFIN, J.

Harold Keene ["Keene"] appeals the final judgment entered in favor of the Board of Adjustment of Putnam County ["Board"] and his neighbors, Ronald and Ossie Wilson ["Wilsons"], in his declaratory judgment action challenging a decision of the Board to grant the Wilsons a Special Use Permit to give riding lessons and to stage, twice annually, a competitive horseback endurance trail ride into the Estoniah Creek State Forest that begins and ends on their 11.25 acre parcel.

The Board granted the permit with the limitations recommended by staff. Keene's contention is that the allowed special use is not within the uses permitted under the County's Land Development Code ["Code"].

The case proceeded to trial in circuit court and, after hearing evidence, the trial court ruled that the permitted uses were within the "Activity-based Recreation" and "Resource Based Recreation" uses identified and described in the Code. The court also concluded that the location, scale and intensity of the activities were compatible with the character and development of the area and the surrounding properties. Given the evidence presented and the categories described in the Code, we find no error and affirm.[1]

AFFIRMED.

PLEUS, J., concurs.
SAWAYA, J., dissents, with opinion.

[1] The fact that the proposed special uses might arguably also fit a use category not allowed for this property is not fatal so long as it fits one or more categories that will allow the use.

SAWAYA, J., dissenting.

The Putnam County Comprehensive Plan designates Ronald and Ossie Wilson's property as Rural Residential. The activities the Wilsons conduct on their property fall squarely within a category of uses prohibited on Rural Residential property. Although those activities could also conceivably fit into other categories of uses that are permitted on Rural Residential property, the use categories set out by the Comprehensive Plan would have to be given a strained interpretation to achieve that result. The majority holds that activities permitted by certain use categories of the Comprehensive Plan are allowed despite a prohibition on those same activities in another provision of the Plan. I believe this holding is legally incorrect because it creates an irreconcilable conflict with the Comprehensive Plan. Moreover, it does not make sense to interpret certain provisions to allow activities that are clearly prohibited by other provisions of the same Plan. I believe that the Comprehensive Plan should be interpreted in a manner that avoids such internal conflicts.

Obviously lacking from the majority opinion is a discussion of the procedural background and the facts of this case, which reveal that the activities conducted on the Wilsons' property clearly fall within a use category of the Comprehensive Plan that is prohibited on the Wilsons' Rural Residential property. Therefore, I will discuss the procedural background and facts in detail, and then analyze the use categories of the Comprehensive Plan applicable to the activities at issue.

We review a final judgment in favor of the Zoning Board of Adjustment of Putnam County and Ronald and Ossie Wilson rendered in the declaratory judgment suit filed by

Harold Keene challenging the decision of the Zoning Board to grant the Wilsons a special use permit (SUP). The SUP allowed the Wilsons to conduct a horseback riding school on their land and to stage, twice yearly, a competitive horseback endurance trail ride that begins and ends on their land. The issue we must resolve is whether the trial court erred in determining that the uses were consistent with the Comprehensive Plan and in upholding the issuance of the SUP.

Keene owns property adjoining the Wilsons' 11.25-acre tract of land. He is, to put it mildly, a disgruntled and annoyed neighbor of the Wilsons. The facts of the case will explain his state of agitation. Of the activities conducted on the Wilsons' property, it is the endurance trail runs that appear to have been the proverbial straw that broke the camel's back for Keene and other neighbors. Although the endurance runs occur only twice a year, they involve as many as 45 riders and at least that many horses (at times in the past, as many as 60 riders participated), up to 30 additional staff workers, and the arrival and parking of large motor homes pulling horse trailers. There is a mobile home on the property that is used for the judges to sleep in, and each participant is permitted to erect a temporary 12 x 12 foot enclosure to stable and board each horse for the weekend. Bullhorn announcements, loud music, and the need for temporary port-o-lets to accommodate the weekend visitors, who sleep in whatever accommodation they have brought, further aggravated Keene and increased his annoyance at the activities.

While workers and perhaps some judges arrive during the week, the event participants generally arrive on Friday to prepare for the Saturday departure from the Wilsons' land. They are released at 30-second intervals to ride from the Wilsons' land to nearby Estoniah Creek State Forest. Entertainment, including hayrides and karaoke,

is provided during the evenings. While Mrs. Wilson pleads ignorance to alcohol use, other than beer, by the participants, there was testimony of drunken hayrides. On Sunday, the event concludes and participants pack up and leave. The Wilsons and Keene live on a narrow paved road with no shoulder; a curve, referred to by one witness as "Dead Man's Curve," is located between the Wilsons' driveway and Keene's driveway and has a 15-mile-per-hour speed limit. Off-duty deputies were hired to handle the traffic issues at the most recent endurance event.

The Putnam County Comprehensive Plan designates the Wilsons' land as Rural Residential Future Land Use. After it was brought to the attention of zoning enforcement authorities that the Wilsons were conducting a riding school and staging competitive endurance trail rides on their property, the Wilsons applied for a SUP. The staff report prepared for the Zoning Board classified the riding school and endurance event as both "commercial agriculture-related uses" and "rural recreational uses" and recommended approval of the SUP. Specifically, the report recommended that the SUP be issued with a cap of 45 riders in the endurance events, with a two-day, twice per year, limit on those events. Approval of the horseback riding day camp was recommended with a cap of six children at any time. The Zoning Board issued the SUP as recommended.

Keene filed suit for declaratory relief against the Zoning Board requesting a judgment declaring that the SUP was erroneously granted.[1] The Wilsons subsequently

[1]Section 163.3215, Florida Statutes (2007), allows aggrieved or adversely affected parties to maintain a de novo declaratory judgment action. Certainly, Keene is an aggrieved or adversely affected party. See also Hodges v. Marion County, 730 So. 2d 786 (Fla. 5th DCA 1999); Alachua County v. Eagle's Nest Farms, Inc., 473 So. 2d 257, 259 (Fla. 1st DCA 1985), review denied, 486 So. 2d 595 (Fla. 1986).

intervened in the action. As the litigation progressed, the Zoning Board and the Wilsons came to realize that the staff report contained errors. Accordingly, the Zoning Board admitted in its answer that the Comprehensive Plan did not allow "rural recreational" or "agriculture-related commercial use" in an area designated as "Rural Residential." It denied, however, that the uses allowed by the SUP fell into either of those two categories and, instead, asserted that the Wilsons' proposed uses were "limited agricultural uses," which are permitted in the Rural Residential Future Land Use category. Alternatively, the Zoning Board contended that the uses were "resource-based recreational uses" that are permitted by the Comprehensive Plan on land designated as Rural Residential on the Future Land Use map. The Wilsons, agreeing that the staff report had mistakenly referred to the uses as "rural recreational," also contended that the uses were actually either limited agricultural, activity-based recreational, or resource-based recreational uses that may be permitted in the Rural Residential Future Land Use category. Because the trial court did not find that the uses fell within the category of limited agricultural uses, that category will not be discussed any further.

Keene contended that even if the uses were labeled as "activity-based recreational" or "resource-based recreational" uses (even though those categories were not identified in the staff report as the basis for its recommendation that the SUP be approved by the Zoning Board), the uses were still wrongly allowed by the Zoning Board. Keene further argued that the uses fell within the category "commercial: agriculture-related," which are not allowed on land designated as Rural Residential on the Future Land Use map of the Comprehensive Plan, even by issuance of a SUP.

The case eventually made its way to trial. Concluding that the Wilsons' uses were "resource-based or activity-based recreational uses" and thus could properly be allowed on the Wilsons' "Rural Residential" land by issuance of a SUP, the court entered Final Judgment in favor of the Zoning Board and the Wilsons. The final judgment neither reveals the basis for the conclusion that the uses fit within the activity-based and resource-based categories nor does it even mention the "Commercial: Agriculture-Related" use category, which is the appropriate category for the Wilsons' activity.

Obviously displeased with the ruling and apparently feeling no less disgruntled and annoyed, Keene appeals to this court to reverse the trial court's decision. Although a declaratory judgment is generally accorded a presumption of correctness by appellate courts, it "may be overturned on appeal if it is based on a misapplication of law or shown by the record to be clearly wrong." Yorty v. Realty Inv. & Mortgage Corp., Inc., 938 So. 2d 1, 4 (Fla. 3d DCA 2006) (citations omitted), review denied, 952 So. 2d 1192 (Fla. 2007); see also Collier v. Parker, 794 So. 2d 616, 618 (Fla. 1st DCA 2001); Williams v. Gen. Ins. Co., 468 So. 2d 1033, 1034 (Fla. 3d DCA), pet. for review denied, 476 So. 2d 673 (Fla. 1985); Gen. Ins. Co. v. Ramanovski, 443 So. 2d 302 (Fla. 3d DCA 1983); Groover v. Adiv Holding Co., 202 So. 2d 103 (Fla. 3d DCA 1967). Because our review centers on the appropriate interpretation of various provisions of the Comprehensive Plan, we will apply the de novo standard. Dixon v. City of Jacksonville, 774 So. 2d 763, 765 (Fla. 1st DCA 2000); see also Fla. Power Corp. v. City of Casselberry, 793 So. 2d 1174 (Fla. 5th DCA 2001).

Iteration of the admission by the Zoning Board is helpful here because the Board candidly conceded in its pleadings filed in the trial court that uses categorized as "commercial: agricultural-related" are not permitted on lands designated Rural Residential. I also note that the Board's trial counsel repeated that concession at trial. My review of the Comprehensive Plan confirms the correctness of that concession, and so the issue, as crystallized for review, is whether the horseback riding day camp and the endurance trail rides fall within the definition of activity-based or resource-based recreational uses, which are permissible, or whether they are commercial agriculture-related uses, which are impermissible.

The Comprehensive Plan defines "Activity-Based Recreational Uses" as "recreational activities providing the participant user with a built court, field or structure for a specific activity or activities. Examples of activity-based uses include, but are not limited to, playgrounds, softball and baseball fields, basketball courts and recreation centers." The Land Development Code similarly defines "Recreation: Activity-Based" uses in section 2.02.22:

> a. This category includes public recreational uses that primarily rely on facilities sports and other active recreational activities as the attraction.
>
> b. Examples:
> Ballparks and fields
> Playgrounds
> Boat Ramps
> Public Docks/Boat Moorings

Although the Comprehensive Plan does not define resource-based recreational activities, the Land Development Code's category of "Recreation: Resource-Based" in section 2.02.21, defines this use:

a. This category includes public recreational uses that primarily rely on natural resources as the attraction.

b. Examples:
Public and Private Parks
Public and Semi-Private Beaches

If the horseback riding day camp and the endurance trails may possibly be squeezed, if at all, into the above categories, they may only be so categorized in a very general manner. On the other hand, the category labeled "Commercial: Agriculture-Related" in the Land Development Code specifically and explicitly includes the stabling and boarding of horses and riding academies as examples of uses coming within that category:

a. This category includes commercial uses directly related to agricultural production.

b. Examples:
Stabling or Boarding of Farm Animals
Roadside stand
Livestock Auction
Feed Store
Saw Mill (where wood is from trees grown on the site of the saw mill)
Slaughterhouse (where animals to be slaughtered are pastured on the site of the slaughterhouse)
Veterinary Facilities: Large Animal
Riding Academy
Airstrip for Crop Dusting

(Emphasis added). The record reveals that the Wilsons' land provides only the start and end points for the endurance trail rides through the nearby Estoniah Creek State Forest. Other than coming and going on the trail rides, the horses are being stabled on the Wilsons' land the majority of the time they are on the Wilsons' property. As for the horseback riding day camp, I fail to see how it does not fall under the label of "Riding Academy." I conclude that the staging of the trail ride, which itself occurs in a state

forest, clearly fits within the category of "Commercial: Agriculture-Related" uses, for which a SUP may not properly issue where the property is on the Rural Residential Future Land Use map. The same is true of the horseback riding day camp.

Even if the activities conducted on the Wilsons' property could possibly fall within the permissible use categories in a very general way, and I do not think they do, the activities clearly fall within the specific category of commercial agricultural uses, which are prohibited by the Comprehensive Plan. In this instance, the general rule that applies provides that when a use or activity falls into a category of permissive uses in a general way, but clearly falls into a specific category prohibited by the Comprehensive Plan, the specific category trumps the general category and the activity should be prohibited. See Stroemel v. Columbia County, 930 So. 2d 742 (Fla. 1st DCA 2006); Saadeh v. Stanton Rowing Found., Inc., 912 So. 2d 28 (Fla. 1st DCA 2005); see also Volusia County v. Aberdeen at Ormond Beach, L.P., 760 So. 2d 126 (Fla. 2000); Barry v. Garcia, 573 So. 2d 932 (Fla. 3d DCA), review denied, 583 So. 2d 1034 (Fla. 1991). This rule ensures consistency in application of the Comprehensive Plan and avoids internal conflicts of the kind the majority apparently believes to be acceptable.

Summarizing what happened here, the Zoning Board initially issued the SUP based on the recommendation made in an erroneous staff report. When the errors were discovered, the Board adopted an alternative basis upon which to uphold issuance of the SUP, which was also erroneous. While I do not question the Board's motives in doing so, the alternative basis it embraced was error nonetheless. The errors continued when the trial court misapplied the law and incorrectly interpreted the pertinent portions of the Comprehensive Plan by mistakenly placing the uses of the Wilsons' property into

the wrong category. I believe it is time to correct all of these errors by holding that issuance of the SUP ran afoul of the Comprehensive Plan and the trial court erred as a matter of law in upholding it. Accordingly, the final judgment should be reversed and the cause remanded with instructions to enter a declaratory judgment finding the SUP was improperly issued.