

STATE OF SOUTH CAROLINA
HORRY COUNTY

IN THE COURT OF COMMON PLEAS
THE FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2021-CP-26-07973

Vishu Bhambhani,
Appellant,
vs.
Christopher Thompson, CBO of the City of
Myrtle Beach,
Respondent,

ORDER

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Aug 08 2022
SC Court of Appeals

STATEMENT OF APPEAL

The appeal arises from an order of the Myrtle Beach City Council directing Appellant Vishu Bhambaini, owner of Coral Sands Motel, to demolish unsafe dwellings located on his land in the City of Myrtle Beach. City Council’s order was authorized by S.C. Code Ann. § 31-15-20. (Repairing, closing, or demolishing unfit dwellings) and by Article II Division 3. - Unfit Dwellings of the Code of Ordinance of the City of Myrtle Beach South Carolina. (§10-41 et seq.). Appellant appeals on the grounds: 1) City Council’s Order violates the due process clause of the United States Constitution; 2) it does not comply with the rules and regulations of the City of Myrtle Beach; and 3) it is not supported by any credible evidence and must be reversed. Respondent City filed a Memorandum of Law opposing Respondent’s appeal.

STATEMENT OF FACTS

Appellant’s motel is located at 302 North Ocean Boulevard, Myrtle Beach, South Carolina. On July 16, 2021, City building officials conducted a formal inspection of Appellant’s structures at that location. The City building officials found the structures were unsafe; the

structures were unfit for human habitation; and the conditions of the structures violated City Ordinances and the International Property Maintenance Code (IMPC). The City Building Official issued a complaint to Appellant and the complaint was served on Appellant on July 30, 2021. On August 18, 2021, the City Building Official ordered Appellant to come into compliance with the City's ordinances and the IMPC. The order was served on Appellant on August 20, 2021. On October 16, 2021, the City Building Official served a Notice of Failure to Comply With The Order Of The City Building Official, together with a Rule To Show Cause to City Council at a hearing scheduled for November 9, 2021.

The Rule to Show Cause hearing was conducted as scheduled on November 9, 2021. Appellant and his attorney, Tucker Player, were present and participated in the proceedings. Evidence was presented by the City Building Official in the form of testimony and in the form of a power point presentation including photographs and documents documenting safety problems and code violations found in the structures. [See Record on Appeal] Appellant's attorney was allowed to cross examine the City's witnesses and Appellant was allowed to be heard and present his case on the nature of the problems in his structures.

At the conclusion of the evidentiary part of the hearing, City Council deliberated in open session and decided to issue an order requiring Appellant to obtain the necessary permits to begin demolishing his structures within twenty days of the receipt of City Council's written order. City Council's order was issued November 19, 2021. Demolition of the structures was to be completed within thirty days of the issuance of the necessary permits. If Appellant did not comply with City Council's order, the City Building Official was instructed to obtain contracts from independent contractors to demolish the structures. On December 10, 2021, Appellant appealed City Council's order to this Court.

DISCUSSION

1. *Standard of Review*

“When the city council of a municipality has acted after considering all of the facts, this court should not disturb the finding unless such action is arbitrary, unreasonable, or an obvious abuse of its discretion.” *Gay v. City of Beaufort*, 364 S.C. 252, 254, 612 S.E.2d 467, 468 (Ct.App.2005). *Amrik Singh & SBPS, Inc. v. City of Greenville*, 384 S.C. 365, 370, 681 S.E.2d 921, 924 (Ct. App. 2009). The Appellate Court does not substitute its judgment for that of the reviewing body, even if it disagrees with the decision. *Talbot v. Myrtle Beach Bd. of Adjustment*, 222 S.C. 165, 173, 72 S.E.2d 66, 70 (1952).

2. *City Council’s Order complies with the due process clause of the United States Constitution.*

a. *Procedural Due Process.*

The Court finds that Appellant was given notice and a meaningful opportunity to be heard before City Council issued its order. The Court finds that Appellant’s due process rights were not violated. See *Clear Channel Outdoor v. City of Myrtle Beach*, 372 S.C. 230, 642 S.E.2d 565 (2007) (finding no procedural due process violation where the zoning board provided an applicant a meaningful opportunity to be heard regarding whether the applicant was entitled to a permit to replace a billboard).

Appellant’s appeal on the grounds of a denial of procedural due process rights is denied.

b. *Substantive Due Process*

Substantive due process requires that no person shall be deprived of property without due process of law. U.S. Const. amend XIV, § 1; S.C. Const. art. I, § 3. In order to prove a denial of substantive due process, a party must show that he was arbitrarily and capriciously deprived of a

cognizable property interest rooted in state law. *Sunset Cay, LLC v. City of Folly Beach*, 357 S.C. 414, 430, 593 S.E.2d 462, 470 (2004). The standard for reviewing all substantive due process challenges is whether the government act bears a reasonable relationship to any legitimate interest of government. The “common touchstone” of each regulatory taking theory is “to identify regulatory actions that are functionally equivalent to the classic taking in which government directly appropriates private property or ousts the owner from his domain.” *Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 125 S. Ct. 2074, 161 L. Ed. 2d 876 (2005).

The United States Supreme Court repeatedly has declined to identify a specific threshold of interference with property rights below which no taking occurs and above which there is a taking. See, e.g., *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Plan. Agency*, 535 U.S. 302, 122 S. Ct. 1465, 152 L. Ed. 2d 517 (2002) (holding that determining whether a regulatory taking has occurred is not best served by categorical rules but rather “requires careful examination and weighing of all the relevant circumstances”).

In a wide variety of contexts, a government may execute laws or programs that adversely affect recognized economic values. *Dunes W. Golf Club, LLC v. Town of Mount Pleasant*, 401 S.C. 280, 314–15, 737 S.E.2d 601, 619 (2013) Not all damages suffered by a private property owner at the hands of [a] governmental agency are compensable.’ *Carolina Chloride, Inc. v. Richland Cty.*, 394 S.C. 154, 170, 714 S.E.2d 869, 877 (2011). Under our system of government, one of the State's primary ways of preserving the public weal is restricting the uses individuals can make of their property. *Keystone Bituminous Coal Ass'n v. DeBenedictis*, 480 U.S. 470, 107 S. Ct. 1232, 94 L. Ed. 2d 472 (1987). “While each of us is burdened somewhat by such restrictions, we, in turn, benefit greatly from the restrictions that are placed on others.” *Id.*

The City's government act in the present case was to enforce a public safety statute which has been in effect since 1972. See *S.C. Code Ann. § 31-15-320 (1972 (57) 2622)*.

Appellant is being required to remove structures found to be unsafe to the public because the cost of repairing those structures is greater than the value of those structures after they are repaired. A similar statute authorizing the demolition of unfit dwellings was examined and upheld in *Richards v. City of Columbia*, 227 S.C. 538, 88 S.E.2d 683 (1955) (upholding city ordinance requiring the alteration, repair or destruction of houses deemed unfit for human habitation).

The Court finds that the City's acts in question in the present appeal were reasonable. The Court further finds the City's acts are rationally related to the legitimate government interest of public safety. After inspection the City Building official found, and testified, Appellant's structures were unsafe, unfit for human habitation, and the conditions of the structures violated City Ordinances and the International Property Maintenance Code (IMPC). The City Building Official testified Appellant could not fix the structures at a reasonable cost in relation to the value of the structures. His testimony was supported by the photographs of the numerous code violations that existed in the building.

City Council agreed with the Building Official and City Council made factual findings that Appellant's cost of compliance could not be made at a reasonable cost in relation to the value of the building and that demolition was necessary for the public welfare. When the city council of a municipality has acted after considering all of the facts, this Court should not disturb the finding unless such action is arbitrary, unreasonable, or an obvious abuse of its discretion." *Gay v. City of Beaufort*, 364 S.C. 252, 612 S.E.2d 467 (Ct.App.2005). After reviewing evidence in the record on appeal this Court finds the City's actions were not arbitrary, unreasonable, or an obvious abuse of its discretion.

Appellant's appeal on the grounds of a denial of substantive due process rights is denied.

3. *The City complied with the rules and regulations of the City of Myrtle Beach.*

Appellant claims in his Notice of Appeal that the City Council did not comply with the rules and regulations of the City of Myrtle Beach in reaching its decision to order the Appellant to obtain necessary permits and to begin demolishing his structures. In the notice of appeal the Appellant is required to state with his grounds for appeal with particularity. *S.C. Code Ann. § 18-7-30*. Appellant did not submit any memorandum in support of his appeal. During oral argument, Appellant did not articulate any rules or regulations he claims the City violated. Short, conclusory statements made without supporting authority are deemed abandoned on appeal and therefore not presented for review. See *Fields v. Melrose Ltd. Partnership*, 312 S.C. 102, 106, 439 S.E.2d 283, 285 (Ct.App.1993) ("An issue raised on appeal but not argued in the brief is deemed abandoned and will not be considered by the appellate court."). *Glasscock, Inc. v. U.S. Fid. & Guar. Co.*, 348 S.C. 76, 81, 557 S.E.2d 689, 691 (Ct. App. 2001).

Appellant's appeal on the grounds that the City failed to comply with its own rules and regulations is denied.

4. *City Council's Order is supported by the evidence.*

Appellant claims that City Council's decision is not supported by the evidence. The Court disagrees. The City Building Official identified thirty different code violations in Appellant's structures. He introduced photographs of those violations. He further testified according to the City's ordinance, if Appellant's structures cannot be repaired at a reasonable cost, then they should be demolished. He testified the structures could not be repaired for a reasonable cost. Appellant admits his structures have code violations and some structural damages. However, he believes the structures could be repaired for a reasonable cost.

City Council heard all of the evidence presented by the City Building Official and the Appellant. After considering all of the facts, City Council decided that Appellant's structures could not be repaired for a reasonable cost and the structures should be demolished because of safety issues and in the interest of the public welfare. Courts are admonished not to disturb the City Council's findings unless those findings are arbitrary, unreasonable, or an obvious abuse of its discretion." *Gay v. City of Beaufort*, 364 S.C. 252, 254, 612 S.E.2d 467, 468 (Ct.App.2005). *Amrik Singh & SBPS, Inc. v. City of Greenville*, 384 S.C. 365, 370, 681 S.E.2d 921, 924 (Ct. App. 2009). The Court finds that the findings of the Myrtle Beach City Council are not arbitrary, unreasonable, or an obvious abuse of its discretion and those findings are supported by the evidence. Appellant's appeal on the grounds of lack of evidence is denied

CONCLUSION

For the forgoing reasons, denies Appellant's appeal, affirms the Order of City Council the City of Myrtle Beach and the Court dismisses the above captioned appeal.

IT IS SO ORDERED.

July __, 2022

Order Electronically signed on following page

By: The Honorable Kristi F. Curtis
Presiding Judge
Horry County Court of Common Pleas
15th Judicial Circuit



Horry Common Pleas

Case Caption: Vishu Bhambhani VS Christopher Thompson , defendant, et al

Case Number: 2021CP2607973

Type: Order/Other

So Ordered

s/ Kristi F. Curtis, Circuit Court Judge, No. 2762