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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Kristi F. Curtis, Circuit Court Judge

Appellate Case No. 2022-001107
Case No. 2021-CP-26-07973

Vishu Bhambhani,

Appellant,

v.

Chris Thompson, CBO of the City of Myrtle Beach,

Respondent.

RESPONDENT'S INITIAL BRIEF

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STATEMENT OF ISSUES ON APPEAL

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STATEMENT OF APPEAL

The appeal arises from an order of the City Council of the City of Myrtle Beach directing Appellant Vishu Bhambhani, owner of Coral Sands Motel (“Bhambhani”), to demolish unsafe dwellings located on his land in the City of Myrtle Beach (“COMB”). City Council’s order was authorized by S.C. Code Ann. § 31-15-20 (Repairing, closing, or demolishing unfit dwellings) and by Chapter 10, Article II, Division 3 (Unfit Dwellings) of the Code of Ordinances of the City of Myrtle Beach, South Carolina¹ (“Myrtle Beach City Code”) (§10-41 *et seq.*).

Bhambhani appeals on the following grounds: 1) COMB did not provide sufficient notice of the violations to comply with due process; 2) the circuit court unconstitutionally shifted the burden of proof to Bhambhani in violation of due process; and 3) there was insufficient evidence before city council to order demolition of the building. COMB disputes all of Bhambhani’s grounds of appeal.

STATEMENT OF THE CASE/ FACTS

Coral Sands Motel is located at 302 North Ocean Boulevard, Myrtle Beach, South Carolina. On July 16, 2021, COMB building officials conducted a formal inspection of the motel structures. The building officials found the structures were unsafe; the structures were unfit for human habitation; and the conditions of the structures violated both the Myrtle Beach Code and the International Property Maintenance Code (IPMC). Respondent Chris Thompson (“Thompson”), the City Building Official, issued a complaint to Bhambhani as owner of the Coral Sands Motel, which was served on July 30, 2021. On August 18, 2021, Thompson ordered Bhambhani to come into compliance with the Myrtle Beach City Code and the IPMC. The order

¹ Available at www.municode.com.

was served on Bhambhani on August 20, 2021. Bhambhani refused to come to the motel site to meet with COMB's building officials to review the violations. [Tr. p. 24] The building officials instead met with Bhambhani's representative, Luke Towry, to review the substantial list of violations. [Tr. p. 24]

Neither Bhambhani nor his representatives took action to respond to or remediate the violations, or to obey the order. [COMB Orders p.1] Accordingly, on October 16, 2021, COMB served Bhambhani with a Notice of Failure to Comply with The Order of The City Building Official, together with a Rule To Show Cause to City Council for a hearing scheduled for November 9, 2021. The Rule to Show Cause hearing before City Council was conducted as scheduled on November 9, 2021. Bhambhani and his attorney, Tucker Player, were present and participated in the proceedings. Thompson, in his capacity as City Building Official, presented evidence in the form of testimony and a power point presentation including photographs and documents demonstrating a myriad of safety problems and code violations found in the structures. [Deposition of Record on Appeal & Exhibits] For instance, Thompson showed photographs evidencing failing balconies and broken guardrails; multiple electrical issues that presented fire hazards; absence of fire-rated doors; structural issues involving spalling concrete; unsanitary problems with sewer and plumbing; dilapidated interiors; issues with exterior weather-proofing leading to moisture intrusion, mold, leaking, and rot; the presence of trash, roaches, rodents, and general uncleanliness; improper, unpermitted repairs; and even a partial collapse of one of the structures. [Deposition of Record on Appeal, pp. 3-105 & Exhibits] Bhambhani's attorney was allowed to cross-examine the COMB's witnesses and Bhambhani was allowed to present witnesses and evidence. However, only Bhambhani testified in support of his case, contending the majority of the numerous hazards were merely cosmetic and he intended to

repair the property if given more time. [Deposition of Record on Appeal p. 33, line 23-p. 24, line 8]

At the conclusion of the evidentiary part of the hearing, City Council deliberated extensively in open session and decided to issue an order requiring Bhambhani to obtain the necessary permits to begin demolishing his structures within twenty (20) days of the receipt of City Council's written orders. City Council's written orders² were issued November 19, 2021. Demolition of the structures was to be completed within thirty (30) days of the issuance of the necessary permits. If Bhambhani did not comply with City Council's order, the City Building Official was instructed to obtain contracts through the bid process from independent contractors to demolish the structures. [COMB Orders] Bhambhani appealed City Council's order to the Circuit Court. Bhambhani's appeal was heard before the Honorable Kristi F. Curtis. After hearing arguments from counsel, Judge Curtis issued an order on July 8, 2022 affirming City Council's order. [Circuit Court Order] Thereafter, Bhambhani appealed to this court.

² City Council issued two (2) orders—one addressing the structure located at 302 North Ocean Boulevard and one addressing the structures located at 301 and 303 North Ocean Boulevard. [COMB Orders]

DISCUSSION

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). An appellate court must 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).

ISSUES

I. COMB provided sufficient notice to comply with due process.

a. Procedural Due Process.

The circuit court found Bhambhani’s procedural due process rights were not violated because he was given notice and a meaningful opportunity to be heard before City Council issued its order. Bhambhani claims that COMB’s notice of violations was not sufficient to give him a meaningful opportunity to be heard. Notwithstanding notice of thirty (30) IPMC violations and thirty-seven (37) photos of serious hazards at his property, Bhambhani claims he did not know why his motel was unsafe and not fit for human habitation. He claims COMB’s notice should have provided information on (1) the exact location of each non-compliant fixture/item; (2) the manner in which each specific item actually violates the code; and (3) precisely what Bhambhani was required to do to come into compliance. [Appellant’s Initial Brief p. 9]

“Due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses.” *Clear*

Channel Outdoor, 372 S.C. 230, 235, 642, S.E.2d 565, 567 (2007). Notably, Bhambhani does not argue the violations did not exist or were incorrect. Bhambhani's main objection to the notice is that it provided him only with an unspecified list of thirty (30) code violations.

Bhambhani's argument that the notice was not sufficiently detailed to comply with due process is without merit. Section 10-46 of the Myrtle Beach City Code authorizes the City Building Official to issue a "complaint stating the charges . . . and containing a notice that a public hearing will be held before the public officer or his designated agent at a time and place therein fixed." The required form of notice is further outlined in IPMC §111.4.1, which was adopted by COMB in §6-300 of the Myrtle Beach Code as authorized by S.C. Code Ann. § 6-9-60. The IPMC requires the notice to be in writing; include a description of the real estate sufficient for identification; include a statement of the violations and why the notice is being issued; and include a correction order allowing a reasonable time to make repairs and improvements required to bring the structure into compliance with the provisions of the IPMC. *§111.4.1 IPMC*. The City Building Official's notices met those requirements. [See Deposition of Transcript Exhibits]

Furthermore, the notice together with the IPMC gives an adequate description of problems in the structures and the standards a structure must meet to comply with the IPMC. For example, the building official cited a violation of IMPC § 304.6 - Exterior Walls. This section contains the following description of the code requirement:

Exterior walls shall be free from holes, breaks, and loose or rotting materials; and maintained weatherproof and properly surface coated where required to prevent deterioration.

§ 304.6 Exterior Walls, IPMC. Moreover, Bhambhani was given the opportunity for an in-person meeting, on-site to review the violations, but did not attend and instead sent a representative.

Bhambhani further claims COMB was obligated to tell him how to do the construction

work to remedy these violations and make his motel safe and fit for human habitation. To the contrary, COMB is not authorized to design engineering fixes or suggest construction fixes for private property owners. In fact, dictating the manner or method of fixing defects on private property would constitute an unlawful intrusion into the property rights of a property owner. See *Abbeville Cnty. Sch. Dist. v. State*, 410 S.C. 619, 653, 767 S.E.2d 157, 175 (2014), *amended*, 414 S.C. 166, 777 S.E.2d 547 (2015), *order superseded*, 415 S.C. 19, 780 S.E.2d 609 (2015), and *amended*, 415 S.C. 19, 780 S.E.2d 609 (2015) (court cannot suggest methods of fixing the problem). COMB is only authorized to require a property owner to comply with the minimum safety standards contained in the building codes adopted pursuant to S.C. Code Ann. § 6-9-60.

Accordingly, the notice from the City Building Official delineating thirty (30) IMPC violations provided Bhambhani with adequate notice of the problems with his motel and complied with procedural due process safeguards. 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).

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.*

In the present case, COMB’s government act was to enforce a public safety statute which has been in effect since 1972. *See* S.C. Code Ann. § 31-15-320 (1972). Bhambhani is being required to remove structures found to be unsafe to the public because COMB determined the repairs to the motel structures could not be made at a reasonable cost in relation to the motel

structure's assessed value. 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 adoption of building codes and enforcement of compliance with those codes complies with both the S.C. Constitution and the U.S. Constitution. As stated in *Richards*, “[s]tatutes and municipal ordinances calculated to better the health, safety and welfare of the people have long and universally been recognized to be within the police power.” 227 S.C. at 547, 88 S.E.2d at 687. The building codes bear a reasonable relationship to the legitimate interest of government in public safety. *See Sunset Cay*, 357 S.C. at 430, 593 S.E.2d at 470. The City Building Official presented evidence to City Council demonstrating the motel structures were unsafe and unfit for human habitation and therefore violated the Myrtle Beach City Code and the IPMC. [Tr. pp. 4-30] The circuit court properly found that City Council's actions were reasonable and rationally related to the legitimate government interest of public safety. [Circuit Court Order]

II. COMB's burden of proof was not shifted to Bhambhani in violation of due process.

Bhambhani argues City Council unconstitutionally shifted the burden of proof to him by requiring him to hire an engineer to determine what is wrong with the structure so he could make repairs.³ As an initial matter, this argument is not preserved for appeal because it was not raised to and ruled upon by the lower court. *See, e.g., Bakula v. Bakula*, 352 S.C. 612, 576 S.E.2d 156 (2003) (even constitutional arguments must be raised to and ruled upon by the trial court to be preserved for appeal); *Wilder Corp. v. Wilke*, 330 S.C. 71, 497 S.E.2d 731 (1998) (lower court

³ Bhambhani had in fact hired an engineer, who did not testify at the Rule to Show Cause hearing or provide an affidavit or written report for City Council's consideration.

must rule on issue for it to be preserved).

Regardless, City Council did not shift the burden of proof to Bhambhani by mandating he hire an engineer. No such mandate was imposed. A review of the exchange on which Bhambhani bases this contention demonstrates Thompson explained on cross-examination that, as City Building Official, he is required to tell individuals whether their structure meets code or does not meet code. Building officials do not advise how to fix issues or make repairs. That is done by a licensed contractor or engineer. (Tr. p. 25, line 16-p. 26, line 22; p. 54, line 3-p. 55, line 12). Bhambhani has mischaracterized the comments of City Council.

Furthermore, the circuit court found that COMB met its burden of proof. COMB's building official introduced photographs and evidence reflecting thirty (30) different code violations in Bhambhani's structures. Thompson testified that while he was not an engineer, as the Building Code Official, he could testify that the motel structures were unsafe and unfit for human habitation. [Tr. p. 29]. City Council and the circuit court agreed that COMB had met its burden of proof showing that Bhambhani's motel was unsafe and not fit for human habitation.

Bhambhani claims the present case is a condemnation action. COMB contends that in condemnation actions landowners bear the burden of establishing the fair market value of their property. See *United States ex rel. Tenn. Valley Auth. v. Powelson*, 319 U.S. 266, 273, 63 S.Ct. 1047, 87 L.Ed. 1390 (1943); *United States v. 269 Acres, More or Less, Located in Beaufort Cnty.* S.C., 995 F.3d 152, 164 (4th Cir. 2021). The building official in the present case used the fair market value of the structures in question as reported by the Horry County Tax Assessor. [Tr.15-16] Bhambhani does not appear to contest the fact that the assessed value of his structures is inaccurate. The building official testified he believed the necessary repairs to the motel structures could not be made at a reasonable cost in relationship to the structures' assessed value. [Tr. p 16].

Judge Curtis agreed in her order. State statute and COMB's ordinances provide that if the necessary repairs cannot be made at a reasonable cost in relationship to the structure's value a city can order that the structure be demolished. See *S.C. Code Ann. §30-15-30* and *§ 10-48 Code of Ordinances of the City of Myrtle Beach*.

III. Sufficient evidence existed before City Council to order demolition.

Bhambhani claims that because Thompson would not give an opinion regarding what needed to be done to correct the cited code violations, there was no evidence supporting an order for demolition of the structures. COMB contends the building official's testimony that the necessary repairs to the motel structures could not be made at a reasonable cost in relationship to the structure's assessed value as shown by Horry County public records was sufficient to order demolition of the structures. [Tr. p 16] See *S.C. Code Ann. §30-15-30* and *§ 10-48 Code of Ordinances of the City of Myrtle Beach*. City Council and the circuit court agreed.

City Council's determination that the structures should be demolished was proper under Myrtle Beach City Code §10-48(c) in light of the evidence and testimony presented at the November 9, 2021 hearing. Myrtle Beach City Code §10-48(c) provides City Council may order demolition of a structure if it is found to be "unfit for human habitation, and the cost of potential repairs cannot be made at a reasonable costs in relationship to the structures assessed value as shown Horry County public records." After viewing photographs of the dilapidated and unsafe condition of the structures, hearing testimony regarding Thompson's personal observations of the conditions, hearing testimony from Bhambhani concerning his view of the conditions, and hearing argument from Bhambhani's counsel, City Council found that necessary repairs to the motel structures could not be made at a reasonable cost in relationship to the structures' assessed

values of \$330,600.00⁴ and \$81,200.00.⁵ Their finding was based on the building official's presentation of evidence and the building official's opinions. City Council has the discretion to rely upon the opinion of the city building official. See *Gay v. City of Beaufort*, 364 S.C. at 254, 612 S.E.2d at 468 (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.”).

Furthermore, to the extent Bhambhani takes issue with City Council relying on the assessment of the City Building Official simply because is not an engineer, “[w]hether a witness is properly qualified is a question primarily addressed to the sound discretion of the trial judge and his ruling will not be reversed absent a showing of abuse of discretion.” *City of Spartanburg v. Laprinakos*, 267 S.C. 589, 230 S.E.2d 443 (1976). Opinion testimony of a non-expert who has sufficient knowledge of the value of the property question, or has had ample opportunity for forming a correct opinion of it, is admissible. *Roland v. Palmetto Hills*, 308 S.C. 283, 286, 417 S.E.2d 626, 627–28 (Ct. App. 1992). Both Thompson and Bhambhani testified regarding whether they believed the structures could be repaired at a reasonable cost in relation to their assessed values. In fact, despite his insistence that repairs could be made, Bhambhani testified that the cost of necessary materials and construction costs had risen sharply. [Tr. p. 40, lines 6-20]

Appellate courts will not disturb on appeal such findings of the city council, concurred in by a circuit judge, unless they are without evidentiary support or against the clear preponderance of the evidence. *Gay*, 364 S.C. at 254, 612 S.E.2d at 468. City Council's findings

⁴ The assessed value for the structure located at 302 North Ocean Boulevard. [COMB Order]. The top floor of this structure had collapsed into the floor below. [Tr. p. 66, lines 5-20; p. 97, line 7-p. 102, line 5]

⁵ The assessed value for the structures located at 301 and 303 North Ocean Boulevard. [COMB Order]

should be affirmed because the presentation and testimony of the building official supports those findings. See *Austin v. Bd. of Zoning Appeals*, 362 S.C. 29, 36, 606 S.E.2d 209, 213 (Ct. App. 2004). After considering all of the facts, City Council properly decided that Bhambhani's structures could not be made safe or fit for human habitation for a reasonable cost and the structures should be demolished because of safety issues and in the interest of the public welfare. *Gay*, 364 S.C. at 254, 612 S.E.2d at 468; *Amrik Singh & SBPS, Inc. v. City of Greenville*, 384 S.C. 365, 370, 681 S.E.2d 921, 924 (Ct. App. 2009).

CONCLUSION

For the forgoing reasons, Respondent Chris Thompson, CBO of the City of Myrtle Beach, respectfully requests that the order of the circuit court be affirmed and that the appeal be dismissed.

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