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County of Twin Falls v. Hettinga Appellant's Brief Dckt. 37047

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IN THE SUPREME COURT OF THE STATE OF IDAHO

THE COUNTY OF TWIN FALLS,)
STATE OF IDAHO,)
A Political Subdivision of the)
State of Idaho)
)
Plaintiff/Respondent,)
)
v.)
)
ERIC HETTINGA,)
)
Defendant/Appellant,)
_____)

SUPREME COURT NO. 37047-2009

District Court Case No. CV-08-79

BRIEF OF APPELLANT

**APPEAL FROM THE DISTRICT COURT OF THE FIFTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO IN AND FOR
THE COUNTY OF TWIN FALLS**

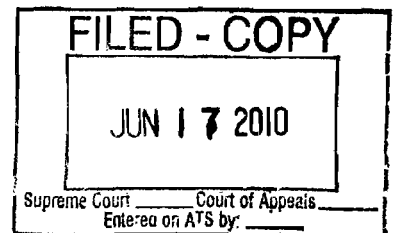
**HONORABLE DISTRICT COURT JUDGE G. RICHARD BEVAN
PRESIDING**

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IN THE SUPREME COURT OF THE STATE OF IDAHO

* * * * *

THE COUNTY OF TWIN FALLS,)	
STATE OF IDAHO,)	
A political subdivision of Idaho)	Docket No. 37047-2009
)	
Plaintiff/Respondent,)	Twin Falls County District
)	Court Case No. CV-08-79
)	
v.)	APPELLANT'S BRIEF
)	ON APPEAL
ERIC HETTINGA,)	
)	
Defendant/Appellant,)	
_____)	

Comes Now, Appellant, Eric Hettinga, and hereby submits his appellate brief for consideration as follows.

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I. STATEMENT OF THE CASE

A. NATURE OF THE CASE

This is an appeal from the Fifth Judicial District, In And For The County of Twin Falls, State of Idaho, Hon. G. Richard Bevan presiding. This appeal is from the Findings of Fact and Conclusions of Law in Case No. CV-08-79, which were filed on August 21, 2009.

This appeal concerns the interpretation and application of zoning ordinances. Appellant, Eric Hettinga, (hereinafter referred to as “Hettinga”), is requesting that this Court hold that his use of the property in question is in compliance with the applicable zoning ordinance, reverse the District Court’s decision, vacate the injunction against his use of the property, or otherwise modify the injunction to further specify what part, if any, of his activities are not prohibited.

B. COURSE OF PROCEEDINGS

A Complaint was filed on January 8, 2008 on the behalf of Respondent, The County of Twin Falls and The City of Filer, (Filer). Amended Complaints were filed on October 16, 2008 and November 24, 2008. These effectively removed Filer as a party to the action.

In summary, the Complaint alleged that Hettinga was operating a trucking and hay hauling operation in violation of the planning and zoning ordinances of Twin Falls County and Filer.

An Answer was filed by Hettinga on January 30, 2008. An Amended Answer was filed on December 2, 2008. In summary, this Answer alleged that Hettinga was not operating a trucking business, that Hettinga is in compliance with the zoning ordinance, and in any case that Filer was not properly authorized by Twin Falls County to enforce such a zoning regulation.

A court trial was held on May 21, 2009 (although the Court previously conducted a view of the premises on September 17, 2008). Thereafter the Court issued its Findings of Fact and Conclusions of Law on August 21, 2009, finding in favor of Twin Falls County and issuing an injunction against Hettinga enjoining him from parking his trucks on the property in question.

The only issue on appeal is whether Hettinga's use of the property is in violation of the zoning ordinance.

C. STATEMENT OF FACTS

Hettinga resides on property which is owned by his mother. This property is located just outside the Filer city limits but it is in the Filer area of impact for planning and zoning. It is also located in Twin Falls County.

Hettinga does have his home on this property but also parks trucks on the property. He uses these trucks for hauling agricultural products. He does not store the products on the property, nor does he do business from the property. His business involves the purchase and sale of agricultural products, and then hauling the products from a farmer's place of business to the location of the business to which the product has been sold.

The property in question falls within the Filer Residential Agricultural District zoning ordinance, Title 9 Chapter 5.

The governing agencies have determined, and the District Court held, that Hettinga's use of the property as described above is not within the permitted uses. The Court found that Hettinga was impermissibly parking trucks on the property in question. R. pp. 89-103.

II. ISSUES ON APPEAL

A. WHETHER THE DISTRICT COURT ERRED IN FINDING THAT HETTINGA'S USE OF THE PROPERTY WAS IN VIOLATION OF THE RESIDENTIAL AGRICULTURAL ORDINANCE.

III. ARGUMENT

A. The District Court Erred In Ruling That Hettinga Violated The City Of Filer's Zoning Ordinance By Parking Trucks On The Property At Which He Resides.

1. Facts Supported By the Record.

Shari Hart is employed by the City of Filer as the city/clerk treasurer and had been for sixteen years prior to the trial in this matter. Her general duties are to handle building permits, answer zoning question and keep track of city council meetings, among other things. Tr.p. 11, L. 7-22.

Ms. Hart is familiar with the property at issue and it is located in the residential/agricultural area of impact which is designated in yellow on the map adopted by the City of Filer. Tr. p. 13, L. 17-25, p. 14, L. 1-9, see also Plaintiff's Exhibit 1. Plaintiff's Exhibits 2 and 3 are the Twin Falls and Filer area of impact zoning ordinances respectively and Exhibit 4 is Chapter 5 Title 9 of the Filer City Code, Residential Agricultural District Regulations. Tr.pp. 14, L. 10-25.

Hettinga resides (and did at the time of trial) at 2319 East, 4000 North in the city of Filer. (Although this is his address, the property is physically outside the city, in the city area of impact in the County of Twin Falls). Hettinga does not own this property. Tr. pp. 110, L. 8-12. Attie Schaap, Hettinga's mother, owns the property. Tr. p. 111, L. 1-7. Defendant's exhibit A.

This parcel is 1.1 acres. Hettinga resides on the north side of the property. He moved there in 1998. This home is 2000 square feet with three bedrooms and two baths. There is a yard, a fence and on the southern end of the property Hettinga parks trucks. Tr. p. 111, L. 5-18.

Hettinga conducts a small independent trucking operation consisting of hauling alfalfa, hay and straw to dairies from farms. His job includes contacting the farmers and getting hay tested. He then evaluates the current market and sells it to dairies and feed lots. Only after that does he haul it.

The contact with farmers and buyers is not made from the residence. Hettinga meets the farmers at their own property. Hettinga does not advertise from his property or send bills from his property. He does not receive any payments for those bills at his residence. Even though Hettinga has a landline telephone at his residence he only uses a cell phone for his business. Additionally, Hettinga only does business with agricultural products. Tr.p. 115, L. 22-25. Tr.pp.116-117.

Hettinga does not stockpile hay on the property and he does not bring loads of hay to the property (with the exception of one time a couple of years after he moved in). Tr.p. 118. L. 12-25. He also does not keep business records at the property. Tr.p.121, L. 16-19. Hettinga has no employees.

Hettinga operates four trucks, (author's note; this is Hettinga's statement but it appears from the record that in fact there are only three trucks). Tr.p. 117, L. 10. These are a 1970

Kenworth, a 1980 Freightliner, and a 1985 Peterbuilt. These are all owned by Attie Schaapp. Tr. pp. 112-114. Defendant's exhibits B, C, and D.

At the time of the trial there were only two trucks being parked on the property and only one that was licensed. Hettinga only used this one to haul hay. The other trucks are older. They are in the shop part of the time and Hettinga cannot afford to license them all at once. He somewhat uses them as spares and trades the trucks around to use. Tr.pp.117-118. Repairs on the trucks are not done on the property. Tr.p. 119. L. 3-9.

Hettinga does not conduct business on the property at all. He simply parks his truck and equipment there. Tr.p. 129, L. 18-25. pp. 130, L 22-25. p. 131, L 1-3.

The neighborhood around the property in question includes about twenty different lots, averaging between an acre to two and one-half acres. It is zoned for residential/agriculture. Tr.p. 121. L. 20-24.

The neighborhood includes agricultural areas and many residences that use the property for purposes other than strictly residential. Mr. Robinson is a neighbor at 3998 North 2300 East in Filer. This is in the area of impact and just west of Hettinga's property. Mr. Robinson has a three bay shop with a backhoe also parked there. Tr.p. 122, L.14-24, p. 123, L.2-14. Defendant's exhibit J.

Alan Justesen, another neighbor parks his dump truck on his property. Tr.pp. 123, L. 21-25. Defendant's exhibit J. Another neighbor parks a large semi truck hauling a rock crusher or portable paver on his property. Tr.p. 124, L. 12-25. Another neighbor, Jerry Smith, also has a shop on his property. Tr.p. 125, L. 7-15. Defendant's exhibit J. These

properties are in the area of impact. Other neighbors park dump trucks and business pressure washers on their property. Tr.pp. 126-127.

2. Legal Authorities Applied to the Facts.

Article XII, Section 2 of the Idaho Constitution provides that: “[a]ny county or incorporated city or town may make and enforce, within its limits, all such local police, sanitary and other regulations as are not in conflict with its charter or with the general laws.”

The Twin Falls County Ordinance Section 8-9-19 governs city of impact areas. Subsection C governs the area of impact for the City of Filer. This authorizes enactment, adoption and enforcement of zoning ordinances by the City of Filer.

Twin Falls County Ordinance §8-9-19 (c) (1) adopts the Filer area of impact map within the unincorporated area of Twin Falls County. Section (c) (4) of the same ordinance states:

The area of city impact shall be administered by the city’s governing board. Two (2) of the commission members shall serve as representatives of the area of impact. The area of impact members shall serve as representatives of the area of impact. The area of impact members shall be appointed by the county commissioners with concurrence of the city council. The area of impact members so appointed shall serve terms of three (3) years. The member appointed by the county commissioners shall be a resident within the area of impact, residing outside the city limits and shall vote on all are of impact issues coming before the governing board.

Filer City Code Section 9-5-1 provides in part:

Purpose: The R-A residential agricultural zone is intended to provide areas for low density residential development and continuation of farm uses where compatible with each other.

Filer's zoning ordinance section 9-5-2 provides the use regulations for R-A or Residential Agricultural Districts within Filer's area of impact. Section 9-5-2 governs permitted uses. Subsection A Permitted Uses:

Cemeteries.

Churches and religious facilities.

Home occupations, suburban, rural or external.

Noncommercial public parks and recreation grounds and buildings.

One- and two-family dwellings.

The growing of soil crops, including all farming, livestock and poultry raising activities.

In Potts v. City of Hugo, 416 N.W. 2d 465, 467 (Minn. App. 1987) the court addressed the standard of review for zoning ordinances and stated:

Thus, where the question is whether an ordinance is applicable to certain facts is for the governmental authority, but the manner of applying the ordinance to the facts is for the court.

In Hettinga's case there is little disagreement as to the facts. He does no business from the residence, not even telephone calls. He keeps no office, no records, no employees,

does not stock product. He only parks vehicles used to transport agricultural products. This Court has free review of the application of the ordinance to the facts of this case.

In St. Louis County v. Taggart, 866 S.W. 2d 181 (Mo. App. 1993), the appellate court set forth the principles of construction used in interpreting a zoning regulation as follows:

1. The determination of what uses are permitted under a zoning ordinance must be made on the basis of the wording of a particular ordinance and the context in which it occurs;
2. The basic rule of statutory construction is to seek the intention of the legislators and, if possible, to effectuate that intention;
3. Legislative intent must be ascertained by giving the word an ordinary, plain and natural meaning, by considering the entire act and its purposes and by seeking to avoid an unjust, absurd, unreasonable or oppressive result;
4. Zoning ordinances, being in derogation of common law property rights, are to be strictly construed in favor of the property owner against the zoning authority;
5. Where a term in a zoning ordinance is susceptible of more than one interpretation, the courts are to give weight to the interpretation that, while still within the confines of the term, is least restrictive upon the rights of the property owner to use his land as he wishes;
6. The interpretation placed upon a zoning ordinance by the body in charge of its enactment and application is entitled to great weight.

Also citing *Cunningham v. Board of Alderman of Overland*, 691 S.W. 2d 476, 478 (Mo. App. 1991). St. Louis County, Supra, at 182.

By following the above rules of construction for a zoning ordinance we first analyze the wording of a particular ordinance and the context in which it occurs. The context is in an agricultural area and to protect such use of that area. This is not limited to using property

only for actual farming, but for uses within the context of an agricultural area. Certainly the means for transporting agricultural products must be within the context of an agriculturally zoned district. In fact, other neighbors parking backhoes or dump trucks does not seem offensive to the zoning restrictions. The business of agriculture could not even be conducted without using large pieces of equipment and generally keeping that equipment on the property for long periods of time.

Next, the intent of the governmental authority should be ascertained and effectuated. Common sense would dictate that in the face of urban sprawl those agricultural zoning restrictions are meant to protect the rural agriculture way of life and promote economic stability of such endeavors. Operations such as Hettinga's should be promoted.

If a district is zoned agricultural but the means to transport (or other large vehicles used for agricultural purposes) were not allowed to be parked in the district then the result would be absurd and unreasonable. Would this also mean that a farmer whose residence is on one particular acre of property could not park his tractor or truck on that property if the property he actually farms upon is separately described in another deed or even one-half mile down the road? Would he not be allowed to park the means to transport his product, even if it were to only to transport from one field to another? One sees trucks for hauling parked in fields or on farmer's residences all the time. Would a person in this zoning district be required to either join all parcels of property into one deed with his residence on it, with the residence off it? Would he be required to separate his residential

property in another deed? Can he only park large vehicles on the land upon which crops are actually growing? Would that be prohibited also?

It is understandable that a truck hauling scrap metal or such, would be prohibited in an agricultural district, but parking a truck hauling agriculture products? That is not only a reasonable use of the property but a necessary one for the area.

The next two considerations are that zoning restrictions should be strictly construed against the governmental authority and if subject to two different interpretations then the one least restrictive against the property owner should be used.

In Hettinga's case the obviously least restrictive interpretation of the allowable use from the zoning ordinance phrasing "including all farming, livestock and poultry raising activities", includes allowing parking of the means to transport agricultural products.

In City of Boise City V. Gabica, 106 Idaho 94, 675 P.2d 354 (App. 1984), the Court of Appeals addressed a zoning issue in what is probably the closest Idaho case factually to Hettinga's case.

The Fourth Judicial District Court issued an injunction against the Gabicas to cease certain business activities from their residence. The Gabicas conducted a carpet cleaning business from their home. The City sought to enjoin the Gabicas from such business activity. The Gabica's residence was in a neighborhood zoned R-1C which specifies single family dwellings as the principal land use in that neighborhood.

The Gabicas were conducting bookkeeping and telephone communications from inside the house. It appears the house was essentially the office. They also parked one or two

business vans on the property. Employees picked these vans up in the morning and were dispatched to particular jobs. The equipment was also cleaned on the property.

The District Court declined to enjoin the bookkeeping and telephone communication or the parking of the vans. The Court did however, enjoin cleaning business equipment and dispatching employees from the residence. Only the issue of the injunction against dispatching employees was appealed but the Appellate Court did address the issue of what is an “accessory use”.

The City relied upon §11-2-4.2 of the Boise City Code. This allows:

“[a]ccessory uses relating to single-family dwelling[s]” in R-1C districts. Section 11-1-3 defines the “use, accessory” as “[a] use incidental and subordinate to the principal use of the premises which does not alter the essential characteristics of the use considered as a whole and as related to other uses permitted in the same district.” Supra, at 95. (Underline emphasis added by this author).

The Appellate Court did uphold the injunction by saying, “[o]ur characterization of the business is consistent with the general view that a commercial enterprise, conducted to make money, is a principal use, of itself, and is not occasioned by day-to-day living in a residential area. (Citations omitted). Supra, at 96.

This case is helpful because it demonstrates that operating a business from a home in a single dwelling residential district is not, at least in part, inconsistent with the use of the property in the area or district. The District Court did hold that the activities inside the home were allowable and parking the vans was allowable. Whether that decision would

have been upheld were those issues appealed may be debatable, but the point that some activities which do not affect the character of the area are allowable, is certainly one that favors Hettinga in this case.

Hettinga did not conduct any business activities from his home, nor clean or repair equipment (except it appears, once) on the property. He did not have employees on the property (he has no employees). He only parked trucks.

More importantly, Hettinga's property is in a district zoned for residential and agriculture. Hettinga only provides transportation for agricultural products. Hettinga's operation is entirely consistent with the agricultural area and does not alter the essential characteristics of the use considered as a whole and as related to other uses permitted in the same district.

In Taddeo v. Commonwealth of Pennsylvania, 412 A. 2d 212 (1980), Taddeo resided in an area zoned as R-1 which is a Rural-Residential area. Taddeo conducted an asphalt business at a different address but parked various vehicles necessary for the business at his residence. This included trucks, rollers, trailers, back-hoes and other equipment.

Employees showed up at the residence to pick these vehicles up for the workday because it was easier for them. Also, the registered business address was the residence address.

The trial court held the residential address was being used for commercial purposes. This was upheld on appeal.

In the instant case the zoning is residential-agricultural, not just residential. Also, Hettinga's use of the property has far less indicia of running a business than did the facts in Taddeo.

In St. Louis County v. Taggart, 866 S.W. 2d 181 (Mo. App. 1993), the County sought to enjoin Taggart from conducting a commercial business on his residential property in an area zoned residential. Taggart was parking two dump trucks used for hauling gravel on his residence. The trial court held such parking did not violate the zoning ordinance, the appellate court reversed.

The Missouri appellate court said the case was one example of permissive zoning, which is what the District Court in the instant case held. The St. Louis County court said:

A permissive zoning ordinance is drawn to show those uses which are permitted for a particular district and any use which is not expressly permitted in a given zone or district is thereby excluded from it. (Citations omitted). Permitted uses may be explicitly expressed or may belong to a group of uses in generically expressed categories. (Underline added by this author).

Id. at 183.

The court further stated, "In determining whether use is accessory or incidental to a primary use, the decision must be made on the basis of the particular zoning ordinance and the context in which it occurs. Schaefer v. Neuman, 561 S.W. 2d 426, 424 (Mo. App. 1978)" Id. at 183.

Of course in the instant case, the zoning is for residential/agriculture. The agricultural use is expressly allowed and trucking only agricultural products is certainly incidental to

the expressed category of agriculture. Also, since agriculture is generally expressed as the use of the district and the ordinance should be strictly construed against the governing authority, allowing Hettinga to park his trucks in such a zoned area should be allowable.

The District Court in the instant case used the St. Louis County case for the proposition that the parking of a commercial vehicle on residential property is not a permissible accessory use of the property.

However, Hettinga's case differs in that the property at issue is zoned as agricultural. His trucks are for agricultural uses only. Also, he does not run a trucking business from his mother's residence at all.

The District Court in the instant case also cited Galliford v. Commonwealth of Pennsylvania, 430 A. 2d 1222 (1981). In that case the son of a homeowner, whose residence was in a zoned residential district, regularly parked a 14,500 pound truck cab outside. The court held, among other things, that the truck was not an incidental use of, or accessory to the use of the residential property.

However, again, in contrast to Galliford, Hettinga has agricultural trucks parked in an agricultural zoned district.

IV. CONCLUSION

Although Hettinga does park trucks on residential property, such activity is related to and concerns only agricultural activities. In view of the essential characteristics of the use

considered as a whole and as related to other uses permitted in the same district
Hettinga's use of the property is within the context of the zoning ordinance and the
decision of the District Court should be reversed and the injunction vacated.

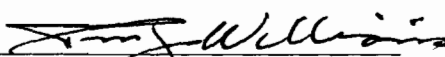
V.

ATTORNEY'S FEES AND COSTS

Appellant hereby requests attorney's fees and costs on appeal.

Respectfully submitted on behalf of Appellant.

Dated this 16 day of June, 2010.



Tim J. Williams

