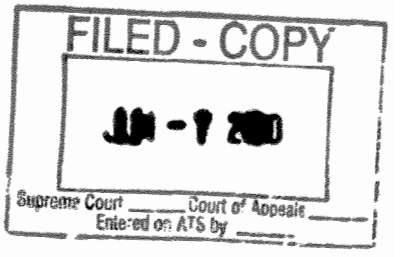
6-7-2010

Eddins v. City of Lewiston Respondent's Brief Dckt. 37209

IN THE SUPREME COURT OF THE STATE OF IDAHO

STEVEN LEE EDDINS, a single man,	)	
	)	**Supreme Court No. 37209**
Appellant,	)	
	)	
v.	)	
	)	
CITY OF LEWISTON, IDAHO, an Idaho Municipal Corporation,	)	
	)	
Respondent.	)	
	)	



RESPONDENT'S BRIEF

Appeal from the District Court of the Second Judicial District in the State of Idaho

In and For the County of Nez Perce

The Honorable Jeff M. Brudie, District Judge, Presiding

Counsel for Appellant

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TABLE OF CONTENTS

TABLE OF CASES AND AUTHORITIES

CASES

STATUTES AND ORDINANCES

STATEMENT OF CASE

On January 9, 2006, the Respondent, City of Lewiston passed Ordinance 4398. The ordinance provided for new regulations for manufactured home parks within the City of Lewiston. A copy of Ordinance 4398 is set forth in full at R, p. 105 - 124 for the Court's review. Section 32-14 of that ordinance provides for standards for manufactured home parks. Recreational vehicles are no longer allowed in manufactured home parks within the city. Recreational vehicles placed in manufactured home parks as of January 9, 2006, are allowed to continue. No recreational vehicles are allowed to be placed in manufactured home parks after the effective date of the ordinance. Also, when a pre-existing recreational vehicle is removed from a manufactured home park it must be replaced with a unit conforming to the standards of Ordinance 4398.

The Appellant, Steven Lee Eddins, owns a manufactured home park at 727 28th Street, Lewiston, Idaho. As of January 9, 2006, the park had a mix of manufactured homes and recreational vehicles. Sometime prior to January 22, 2008, the Appellant applied for a City of Lewiston permit to place a recreational vehicle in the park located at 727 8th Street, Lewiston, Idaho. The city issues permits for placement of manufactured homes to insure utility hookups are done properly and to insure compliance with zoning ordinances.

On January 23, 2008, John Murray of the Lewiston Community Development Department, wrote a letter (R, p. 9-10) to the Appellant, informing him of the city's decision to deny the permit stating:

> "New regulations no longer allow the placement of recreational vehicles in manufactured home parks. All new units or any unit change-outs placed within your park(s) must meet the manufactured home construction and safety standards of the Department of Housing and Urban Development . . ." (R, p. 9).

The Appellant appealed the decision of the Community Development Department to the Lewiston Planning and Zoning Commission. The Planning and Zoning Commission heard the appeal on March 12, 2008, and issued Findings of Fact, Conclusions of Law and Decision dated March 31, 2008 (R, p. 32-34). The Appellant then appealed to the Lewiston City Council. On April 28, 2008, the Lewiston City Council upheld the decision of the Lewiston Planning and Zoning Commission (R, p. 78). The Appellant then filed with District Court below his Petition for Judicial Review of the city's decision denying a permit for the re-placement of the recreational vehicle in his manufactured home park. The District Judge below, Jeff M. Brudie, ruled the city, "after considerable discussion," that removal of recreational vehicles from manufactured home parks was done "for a number of safety reasons" (R, p. 129). Further, he ruled that the Appellant failed to demonstrate how the Respondent's decision exceeded its authority, was based on unlawful procedure, was arbitrary, capricious, or an abuse of discretion (R, p. 120-130).

ADDITIONAL ISSUES ON APPEAL

1. DID APPELLANT'S ELIMINATION OF NON-CONFORMING, PRE-EXISTING USE TERMINATE HIS RIGHT TO CONTINUE THE NON-CONFORMING, PRE-EXISTING USE?

2. HAS THE APPELLANT DEMONSTRATED PREJUDICE OF A SUBSTANTIAL RIGHT?

ARGUMENT

A. STANDARD OF REVIEW

Pursuant to a long line of Idaho Supreme Court cases articulated in ***Evans v. Teton County,*** 139 Idaho 71, 73 P.3d 84 (2003) and ***Urrutia, et al v. Blaine County***, 134 Idaho 353, 2 P.3d 738, (2000) dealing with the review of local agency decisions in local land use planning issues, the reviewing court is limited to the authority granted in the Idaho

Administrative Procedures Act, Chapter 52, Title 67, ***Idaho Code.*** See also ***Comer v. County of Twin Falls***, 130 Idaho 433, 437, 942 P.2d 557, 561 (1997). The reviewing court does not substitute its judgment for that of the agency as to the weight of the evidence presented. ***Idaho Code* 67-5279(1).** The reviewing court defers to the local agency's findings of fact unless they are clearly erroneous. See also ***South Fork Coalition v. Board of Commissioner of Bonneville County***, 117 Idaho 857, 860, 792 P.2d 882, 885 (1990). The City of Lewiston's decision is binding on the reviewing court, even where there is conflicting evidence, as long as the decision is supported by competent evidence in the record. This Court may overturn the decision of the city only if it (a) violates statutory or constitutional provisions; (b) exceeds the city's statutory authority; (c) is made upon an unlawful procedure; (d) is not supported by substantial evidence in the record; or (e) is arbitrary, capricious, or an abuse of discretion. ***Idaho Code* 67-5279(3).** Cities are authorized by Idaho Code to make all such ordinances, bylaws, rules, regulations and resolutions not inconsistent with the laws of the state of Idaho as may be expedient, in addition to the special powers in this act granted, to maintain the peace, good government and welfare of the corporation, ***Idaho Code 50-302.*** The Local Land Use Planning Act also authorizes cities in Idaho to adopt ordinances and regulations that promote the health, safety, and general welfare of its citizens, ***Idaho Code 67-6502.*** Further, there is a strong presumption of the validity of city ordinances and city actions interpreting its ordinances. ***Lamar Corp v. City of Twin Falls***, 133 Idaho 36, 981 P.2d 1146 (1999), ***Young Electric Sign Co. v. State***, 135 Idaho 804, 25 P.3d 117 (2001), ***CNC v. City of Boise***, 137 Idaho 377, 48 P.3d 1266 (2002). The burden of proof is on the party attacking the city's decision. The Appellant in this case must show the city erred in one of the enumerated areas listed in ***Idaho Code* 67-5279(3)** and that a

substantial right of the Appellant has been prejudiced. See also ***Price v. Payette County***, 131 Idaho 426, 429, 958 P.2d 583, 587 (1998).

B. DID APPELLANT'S ELIMINATION OF NON-CONFORMING, PRE-EXISTING USE TERMINATE HIS RIGHT TO CONTINUE THE NON-CONFORMING, PRE-EXISTING USE?

In 2006 the city adopted Ordinance 4398. This ordinance does not allow the placement of recreational vehicles in manufactured home parks. Prior to the ordinance's passage, the Appellant has a number of recreational vehicles in his manufactured home park. The Appellant asserts he has a "grandfathered" right to continue to have those recreational vehicles in his manufactured home park even though a 2006 city ordinance prohibits the placement of recreational vehicles in a manufactured home park. The Respondent does not deny this "grandfathered' right. All recreational vehicles actually in the manufactured home park on the effective date of the ordinance may continue to remain in the park. The Appellant further asserts his "grandfathered" right includes the right to replace old, abandoned, or moved recreational vehicles with other recreational vehicles. It is the Respondent's position that the Appellant's "grandfathered" right does not give him that right. All placements or re-placements of units in the park after the effective date of the 2006 ordinance must comply with the standards of the 2006 ordinance.

The Appellant has cited a number of Idaho appellate cases that protect a non-conforming, pre-existing use. One of these cases is ***O'Connor v. City of Moscow,*** 69 Idaho 37, 202 P.2d 401 (1949). It is the first case in Idaho to recognize the protected right to continue a non-conforming, pre-existing use. It is clear from this language the right is not absolute, but a limited one.

> We are not unmindful that zoning ordinances contemplate the gradual elimination of non-conforming uses within the zoned area and such elimination may be accomplished as speedily as possible with due regard to the special interests of those concerned; . . . the accepted method of accomplishing the result has been said to be that the non-conformity, in no case, will be allowed to increase *but will be permitted to continue until some change in the premises* or in the use thereof is contemplated by the owner. . . (emphasis added) ***O'Connor,*** page 42.

Other cases, cited by the Appellant, contain the following language that further clarify the limited nature of "grandfather" protection.

> This "grandfather right" simply protects the owner from the *abrupt termination* of what had been a lawful condition or activity on the property. The protection does not extend beyond this purpose. (emphasis added) ***Baxter v. City of Preston,*** 115 Idaho 607 at 609, 768 P.2d 1340 (1989); ***Glengary-Gamlin Protective Ass'n v. Bird,*** 106 Idaho 84 at 90, 675 P.2d 344 (App. 1983); ***Bastion v. City of Twin Falls,*** 104 Idaho 307 at 309, 658 P.2d 978 (App. 1983)

The ***Bastian*** court further held:

> Thus, nonconforming status is not a talisman from which all zoning controls must retreat. Rather, public policy embodied in zoning laws dictates the firm regulation of nonconforming uses with a view to their eventual elimination. ***Bastian,*** supra, at 309

All these cases anticipate the elimination of non-conforming, pre-existing uses if the local zoning ordinance provides for such elimination. The City of Lewiston considers permanent living in a recreational vehicle a matter of safety; see R, p. 45, for discussion by Planning and Zoning Commissioner Sue Brown on safety. The Findings of Fact, Conclusions of Law and Decision of the Planning and Zoning Commission also specifically cite safety as the reason for the gradual elimination of recreation vehicles from manufactured home parks; see R, p. 33, Finding number 9 and Conclusion number 4. Chapter 3 of Title 50 and Chapter 65 of Title 67 of the ***Idaho Code*** expressly authorize cities to adopt ordinances for public safety and welfare. In reviewing this case the Court does not substitute its

judgment for that of the agency as to the weight of the evidence presented. The reviewing court defers to the local agency's findings of fact unless they are clearly erroneous. The Respondent City has determined long term living in a recreational vehicle is something to be discouraged and eventually eliminated. Nothing in the record suggests that this decision is not a reasonable conclusion or a valid exercise of the city's police power.

Consistent with ***O'Connor*** the Respondent's Ordinance 4398 recognizes the Appellant's non-conforming, pre-existing use. Following the standard of ***Baxter, Glengary-Gamlin*** and ***Bastian*** Ordinance 4398 does not require the "abrupt termination" of a non-conforming, pre-existing use. Also consistent with ***O'Connor*** and ***Bastian***, Ordinance 4398 allows the owner, not the city, to trigger the elimination of the owner's non-conforming, pre-existing use. When the owner or the owner's tenant initiates a change in the premises and chooses to remove a recreational vehicle for reasons of age, non-use, tenant preference, or relocation of a tenant, the "grandfathered" right is terminated and any placement of a new unit must conform with the standards of the 2006 ordinance.

C. HAS THE APPELLANT DEMONSTRATED PREJUDICE OF A "SUBSTANTIAL RIGHT"?

To prevail in this appeal, the Appellant needs to demonstrate prejudice of a substantial right by the Respondent's decision.

> Finally, even if the Board's decision had not been based on substantial evidence or was otherwise invalid under I.C. § 67-5279(3), I.C. § 67-5279(4) states that "notwithstanding the provisions of subsection (2) and (3) of this section, agency action shall be affirmed unless substantial right of the appellant have been prejudiced." ***Wohrle v. Kootenai County,*** 147 Idaho 267, at 276, 207 P.3d 998 (2009).

Clearly, a property owner's right to develop real property in some manner is a substantial right, ***Noble v. Kootenai*** County, Docket No. 35201 (Idaho 4-1-2010). However,

in the ***Wohrle*** case cited above, a property owner had applied for a variance to build within the setback area. The court held "even with the denial of the variance requests, Respondents are still able to use their property as permitted under state law and regulations and county ordinances." ***Worhle,*** supra, at 276. In ***Angstman v. City of Boise,*** 128 Idaho 575, 917 P.2d 409 (App. 1996) the Court ruled the appellant's substantial rights were not violated when a Boise City Council interpretation of a city ordinance resulted in the appellant's project being reduced from 40 units to 33 units. This Court opined in ***Johnson v. Blaine County***, 146 Idaho 916 at 929, 204 P.2d 1127 (2009) "it is questionable whether petitioner's substantial rights are affected by the county's approval of unit pricing policies, or waiving setback requirements in this instance.

In the case before the Court, the Respondent has not denied the Appellant the use or development rights to his real property. The Appellant is free to operate his manufactured home park in much the same manner as the park has been operated in the past, with a mixture of manufactured homes and recreational vehicles.

Lastly, the Appellant asserts if the Appellant is not allow to continue his non-conforming, pre-existing use it would be a violation of due process protections afforded by the Idaho Constitution. The Respondent recognizes a inverse condemnation claim has not been made nor is it appropriate in this proceeding, however, ***Covington v. Jefferson County,*** 137 Idaho 777, 53 P.3d 828 (2002) is instructive on how the Idaho Supreme Court views zoning regulations, property values and due process. In ***Covington***, the owners of real property near a landfill, operating pursuant to a conditional use permit granted by Jefferson County, claimed the landfill diminished the value of their property. The owners estimated a 25% diminishment in value. The Idaho Supreme Court said:

> The Covingtons also claim a taking has occurred due to the diminution in value of approximately one-fourth the appraised value of their property, as a result of the zoning ordinance authorizing the operation of the landfill. This does not constitute a taking where residual value remains. "A zoning ordinance that downgrades the economic value of private property does not necessarily constitute a taking by the government, especially if some residual value remains after the enactment of the ordinance." *(Quoting* ***McCuskey v. Canyon County Comm'rs,*** 128 Idaho 213, at 216, 912 P.2d 100 (1996)). ***Covington***, supra, at 781.
>
> . . . .
>
> The circumstances in this case indicate the property retained residual value despite any reduction in value that may have been cause by Jefferson County's action and, therefore, no compensable taking has occurred. ***Covington,*** supra, at 781.

In the matter before the Court, the Appellant is asking that he be allowed to continue to rent recreational vehicle spaces after a "grandfathered" recreational vehicle is moved out because the space will not accommodate a Class A or Class B manufacture home. This argument fails to consider a future reconfiguration of the manufactured home park, but, nevertheless, any diminution in value is not a violation of due process since the other manufactured home sites remain available, the property retains income producing potential and the Appellant continues ownership and development rights in the property.

CONCLUSION

This Court may overturn the decision of the city only if it (a) violates statutory or constitutional provisions; (b) exceeds the city's statutory authority; (c) is made upon an unlawful procedure; (d) is not supported by substantial evidence in the record; or (e) is arbitrary, capricious, or an abuse of discretion. ***Idaho Code* 67-5279(3).** There is no evidence in the record that would show the Appellant has met his burden in this case. City of Lewiston Ordinance 4398 is a valid exercise of police power and zoning authority. The ordinance follows all the guidelines pronounced by the Idaho Appellate Courts. It recognizes

a legitimate non-conforming, pre-existing use. Pursuant to case law, the ordinance provides for the eventual elimination of the non-conforming, pre-existing use by the action of the property owner, not the local government. The Respondent's decision to deny a permit for placement of the recreational vehicle in a manufactured home park and the decision of the District Court below, should be affirmed.

DATED this 2 day of June, 2010.

Don L. Roberts
Attorney for Respondent

CERTIFCATE OF SERVICE

I hereby certify that on June 3, 2010, a true and correct copy (two copies) of the foregoing **Respondent's Brief** was hand delivered to the Attorney for the Petitioner at his office at Clark and Feeney, 13th and Main Street, Suite 201, Lewiston, Idaho.

DATED this 3 day of June, 2010.

Don L. Roberts
Attorney for the Respondent