

NOTICE

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2016 IL App (4th) 150712-U
NOS. 4-15-0712, 4-15-0715 cons.
IN THE APPELLATE COURT

FILED
August 9, 2016
Carla Bender
4th District Appellate
Court, IL

OF ILLINOIS

FOURTH DISTRICT

GEORGE SINCLAIR,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Sangamon County
CALVIN B. JONES and THE CITY OF)	No. 14MR1140
SPRINGFIELD, ILLINOIS, an)	
Illinois Municipal Corporation,)	Honorable
Defendants-Appellants.)	Leslie J. Graves,
)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Presiding Justice Knecht and Justice Turner concurred in the judgment.

ORDER

- ¶ 1 *Held:* The appellate court reversed the trial court's grant of summary judgment for the plaintiff, finding no procedural due process violation.
- ¶ 2 Defendant, Calvin B. Jones, is the owner of property located on 11th Street in Springfield, Illinois. In April 2014, Jones petitioned defendant, the city of Springfield (City), to rezone his property from S-3 (central shopping district) to R-3 (residential) with a conditional permitted use as a rehabilitation house. Plaintiff, George Sinclair, who owns four properties adjacent to Jones's property, opposed the zoning reclassification because he believed transitional housing would stigmatize the surrounding area and adversely affect his businesses. Ultimately, the City approved Jones's petition as submitted, reclassified the subject property as residential, granted a conditional use permit for a rehabilitation house, and granted a variance decreasing the minimum required lot size necessary for the residential classification.

¶ 3 In September 2014, Sinclair filed a complaint for declaratory judgment and injunctive relief against defendants, asserting substantive (count I) and procedural due process (count II) violations. With respect to count II, which is at issue here, Sinclair asserted he was deprived of his right to notice and of an opportunity to be heard regarding the city council's grant of a variance that decreased the minimum required lot area per dwelling unit of the subject property from 2,500 square feet to 1,048 square feet when Jones had not included such a request in his petition. In March 2015, Sinclair filed a motion for summary judgment with respect to count II of his complaint, which was later granted by the circuit court.

¶ 4 Jones and the City appealed and we consolidated their appeals for review. On appeal, Jones asserts the trial court erred in granting summary judgment in favor of Sinclair because the procedures used by defendants in passing the zoning ordinance did not violate Sinclair's procedural due process rights. The City contends the trial court erred in granting summary judgment in favor of Sinclair because he failed to prove that he was deprived of life, liberty, or property. We reverse the circuit court's grant of summary judgment and remand for further proceedings.

¶ 5 I. BACKGROUND

¶ 6 On April 10, 2014, Jones petitioned the City, a home rule municipality, requesting that it change the zoning classification of his property located on 11th Street from central shopping district to residential with a conditional permitted use as a rehabilitation house. The change in the zoning classification would allow Jones to use the subject property as a rehabilitation home, providing temporary housing to two or three adult males impacted by drug or alcohol dependencies, homelessness, disabilities, incarceration, economic disadvantages and family dysfunction. On April 28, 2014, the Springfield-Sangamon County Regional Planning

Commission inspected the subject property and recommended denying the petition because (1) it appeared the property did not meet the requirements necessary for residential zoning, including lot size, parking requirements, and setbacks (bulk requirements); and (2) rezoning the property as residential would be inconsistent with the city plan. On May 2, 2014, the City published public notices regarding Jones's petition. The notices reflected that the Springfield Planning and Zoning Commission (Commission) would meet on May 21, 2014, to hear Jones's petition, and the Springfield city council would meet on June 17, 2014, to consider the Commission's recommendation.

¶ 7 At the public hearing before the Commission on May 21, 2014, Jones stated his plan was to use the subject property as transitional housing for Illinois Department of Corrections parolees. Jones admitted the property did not have sufficient square footage to be zoned residential and that he did not have on-site parking. Sinclair, who was present at the meeting, objected to the petition, arguing that transitional housing would stigmatize the surrounding area and adversely affect his businesses, which catered to teenagers and young adults. The Commission recommended denying the petition because "the evidence adduced at the hearing did not support the proposition that the adoption of the proposed request is in the public interest." In part, the Commission concluded that rezoning the subject property to residential was inconsistent with the area and it did not appear bulk requirements would be met if the property was rezoned.

¶ 8 At the city council meeting on June 17, 2014, an oral motion was made by an alderman for a variance reducing the lot size requirement as it pertained to Jones's property. After hearing arguments, the city council approved the petition and rezoned the subject property from central shopping district to residential, granted a variance reducing the minimum required

lot area needed for each dwelling unit from 2,500 to 1,048 square feet, and granted Jones a conditional use permit to use the subject property as a rehabilitation house.

¶ 9 On July 1, 2014, the mayor of Springfield issued a letter to city council members vetoing the grant of Jones's petition. The mayor opined that the "[z]oning change [was] not in the best interest of the neighborhood and it [did] not fit into the commercial nature of the adjoining properties." Further, the mayor "believe[d] that allowing the zoning change [would] have a negative economic impact on the adjoining commercial properties as well as the real estate values of all properties in the area."

¶ 10 On July 15, 2014, the city council considered the mayor's veto of Jones's petition. Sinclair was present at the meeting and spoke in opposition of the zoning change. Ultimately, the city council voted to override the mayor's veto and granted Jones's petition, conditional use permit, and lot size variance.

¶ 11 On September 15, 2014, Sinclair filed a complaint for declaratory judgment and injunctive relief, asserting substantive (count I) and procedural due process (count II) violations. With respect to count II, which is at issue here, Sinclair asserted he was deprived of his right to notice and of an opportunity to be heard regarding the city council's grant of a variance that decreased the minimum required lot area per dwelling unit of the subject property from 2,500 square feet to 1,048 square feet when Jones had not included such a request in his petition.

¶ 12 On October 21, 2014, the City filed a motion to dismiss Sinclair's petition, asserting that Sinclair lacked standing and his claims were insufficient at law. Following a December 8, 2014, hearing, the circuit court denied the City's motion.

¶ 13 On March 17, 2015, Sinclair filed a motion for summary judgment with respect to count II of his complaint. He alleged the city council's decision to *sua sponte* grant the

unrequested variance, decreasing the required lot size for the subject property, violated (1) its own city ordinances and (2) his procedural due process rights since he was never given notice of the City's intent to grant the variance and, therefore, he was deprived of an opportunity to be heard on that issue.

¶ 14 On August 10, 2015, the circuit court granted Sinclair's motion for summary judgment, finding the procedures followed by defendants violated Sinclair's procedural due process rights and failed to comport with the City's applicable ordinances and that Sinclair was entitled to a judgment as a matter of law on count II of his complaint. In addition, the court dismissed as moot count I of Sinclair's complaint.

¶ 15 Jones and the City appealed, and we consolidated their appeals for review.

¶ 16 II. ANALYSIS

¶ 17 On appeal, Jones asserts the trial court erred in granting summary judgment in favor of Sinclair because the procedures used by defendants in passing the zoning ordinance did not violate Sinclair's due process rights. The City contends the trial court erred in granting summary judgment in favor of Sinclair because he failed to prove that he was deprived of life, liberty, or property.

¶ 18 A. Summary Judgment and Standard of Review

¶ 19 Summary judgment is appropriate when "the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." 735 ILCS 5/2-1005(c) (West 2014). "Summary judgment is a drastic measure and should only be granted if the movant's right to judgment is clear and free from doubt." *Outboard Marine Corp. v. Liberty Mutual Insurance Co.*, 154 Ill. 2d 90, 102, 607 N.E.2d 1204, 1209 (1992). The party

moving for summary judgment bears the initial burden of proof. *Hall v. Flowers*, 343 Ill. App. 3d 462, 469, 798 N.E.2d 757, 762 (2003). "When reviewing a grant of summary judgment, this court must determine whether, when viewed in the light most favorable to the nonmoving party, the pleadings, depositions, admissions, and affidavits on file reveal any genuine issues of material fact and, if not, whether the moving party is entitled to judgment as a matter of law." *Brugger v. Joseph Academy, Inc.*, 202 Ill. 2d 435, 446, 781 N.E.2d 269, 275 (2002). We review a trial court's entry of summary judgment *de novo*. *Illinois State Bar Ass'n Mutual Insurance Co. v. Law Office of Tuzzolino & Terpinas*, 2015 IL 117096, ¶ 14, 27 N.E.3d 67.

¶ 20

B. Jones's Appeal

¶ 21 As stated, Jones asserts summary judgment was improper in this case because the procedures used by defendants did not violate Sinclair's procedural due process rights.

Specifically, Jones maintains that "despite the due process veneer [Sinclair] has attempted to place on his claim, the crux of his argument is that the procedures utilized by the [d]efendants were not in compliance with the ordinances of the [C]ity." Alternatively, Jones contends Sinclair "was afforded all of the process he was due in relation to the passing of the zoning ordinance."

¶ 22 "The federal and Illinois Constitutions protect persons from state governmental deprivations of life, liberty, or property without due process of law." *Village of Vernon Hills v. Heelan*, 2015 IL 118170, ¶ 31, 39 N.E.3d 937 (citing U.S. Const., amend. XIV; Ill. Const. 1970, art I, § 2). "Procedural due process is founded upon the notion that prior to a deprivation of life, liberty or property, a party is entitled to ' ' notice and opportunity for [a] hearing appropriate to the nature of the case.' " " *Passalino v. City of Zion*, 237 Ill. 2d 118, 124, 928 N.E.2d 814, 818 (2010) (quoting *Jones v. Flowers*, 547 U.S. 220, 223 (2006), quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950)). "The [fundamental] requirement of

[procedural] due process is met by having an orderly proceeding wherein a person is served with notice, actual or constructive, and has an opportunity to [present his objections] and to enforce and protect his rights." *Tri-G, Inc. v. Burke, Bosselman & Weaver*, 222 Ill. 2d 218, 244, 856 N.E.2d 389, 404-05 (2006).

¶ 23 Jones cites *Landmarks Preservation Council of Illinois v. City of Chicago*, 125 Ill. 2d 164, 531 N.E.2d 9 (1988) and *Condominium Ass'n of Commonwealth Plaza v. City of Chicago*, 399 Ill. App. 3d 32, 924 N.E.2d 596 (2010), for the proposition that the failure of a home rule municipality to follow its own self-imposed regulations in enacting an ordinance is not, in and of itself, a constitutional violation. In *Landmarks*, our supreme court rejected the contention that an ordinance enacted by a home rule unit may be invalidated on judicial review solely because the city failed to comply with its own procedures. Specifically, in that case, the plaintiffs appealed from the circuit court's dismissal of their complaint for failure to state a cause of action, which had sought a declaration declaring an ordinance adopted by the city rescinding a building's designation as a landmark was null and void due to the city's failure to comply with the requirements of its own ordinance. *Landmarks*, 125 Ill. 2d at 167, 182, 531 N.E.2d at 10, 17. The supreme court affirmed the dismissal, noting that home rule units, such as the city of Chicago, have broad authority to govern their own affairs. *Id.* at 178-79, 531 N.E.2d at 15; see also Ill. Const. 1970, art. VII, § 6(a). Bearing that in mind, the court concluded it could not declare an ordinance enacted by a home rule unit invalid unless it was enacted in violation of a constitutional provision or a provision of a state or federal statute—a claim the plaintiffs did not assert on appeal. *Landmarks*, 125 Ill. 2d. at 179, 531 N.E.2d at 15.

¶ 24 In *Condominium*, the plaintiffs challenged the validity of a zoning amendment passed by the city of Chicago that allowed construction on a hospital campus, asserting that the

zoning amendment violated the Chicago zoning ordinance in a number of ways. *Condominium*, 399 Ill. App. 3d at 33-34, 924 N.E.2d at 598-99. The plaintiffs attempted to distinguish their claim from the *Landmarks* plaintiffs' rejected claim by also alleging a denial of their procedural and substantive due process rights in connection to the Plan Commission's hearing regarding the amendment. *Id.* at 41, 924 N.E.2d at 604. Specifically, they alleged that their witnesses and representatives were harassed by Commission members and that they were not reasonably afforded the right of cross-examination. *Id.* at 35, 924 N.E.2d at 600. For support, the plaintiffs cited *Treadway v. City of Rockford*, 24 Ill. 2d 488, 494-95, 182 N.E.2d 219, 223 (1962), a case in which the plaintiffs challenged an ordinance passed by the city of Rockford that reclassified certain property from residential to business because the city failed to follow the publication requirements necessitated by statute. *Condominium*, 399 Ill. App. 3d at 42, 924 N.E.2d at 605. The court rejected the plaintiffs' reliance on *Treadway*, however, noting that the ordinance at issue there was passed in 1960 and did not involve a home rule unit under the Illinois Constitution of 1970. *Id.* The appellate court found that "despite the due process veneer that [the] plaintiffs have attempted to place upon their claim, their underlying complaint [was] still Chicago's failure to comply with its own self-imposed regulations in approving the [zoning amendment] and, as such, [was] insufficient to evade the application of *Landmarks* to the present case." *Id.* at 38, 924 N.E.2d at 602.

¶ 25 Sinclair contends that *Landmarks* and *Condominium* are not applicable here because the crux of his claim revolves around the denial of his procedural due process rights due to the City's failure to provide notice of its intent to *sua sponte* grant a variance of the residential bulk regulations. We agree. Although Sinclair asserted in his summary judgment motion that

the City did not follow its own ordinances, the gist of his claim in count II of his complaint for declaratory judgment was a denial of his procedural due process rights due to a lack of notice.

¶ 26 Although we find *Landmarks* and *Condominium* are not applicable, we agree with Jones's contention that Sinclair had all the notice to which he was entitled. (Here, we assume for the sake of argument that Sinclair was entitled to due process, including the right to notice, a notion which the City disputes.) The record shows that Sinclair had notice of Jones's petition in which he sought (1) a zoning reclassification from central shopping district to residential and (2) a conditional use permit so that he could use the property as a rehabilitation home. Sinclair attended the May 21, 2014, public hearing before the Commission, where he voiced his opposition to the reclassification of Jones's property, which was based on his belief "that transitional housing [would] stigmatize[] the surrounding area and adversely affect[] Sinclair's businesses." Following discussion, the Commission voted to deny Jones's petition, finding "the evidence adduced at the hearing did not support the proposition that the adoption of the proposed request [was] in the public interest." Attached to its written decision were its findings of fact, which included a finding that "it [did] not appear the bulk requirements [would] be met if the rezoning [was] granted."

¶ 27 The issue was then taken up before the city council on June 17, 2014. Although Sinclair had notice of this hearing, he did not attend. As noted, it was during this hearing that an oral motion was made by a City alderman to accept Jones's petition as submitted, to grant a conditional use permit so he could use the property as a rehabilitation home, and to grant a variance decreasing the minimum required lot size per unit from 2,500 square feet to 1,048 square feet. Thereafter, the city council approved the ordinance reclassifying Jones's property as residential with the lot-size variance. According to Sinclair, this was the first instance that he

had notice the City was considering a variance of the bulk regulations. The mayor later vetoed the ordinance because he felt the reclassification was "not in the best interest of the neighborhood" and would "have a negative economic impact on the adjoining commercial properties as well [as] the real estate values of all properties in the area." On July 15, 2014, the city council considered the mayor's veto of Jones's petition at another public hearing at which Sinclair was not only present, but again spoke in opposition to the zoning change. The record on appeal does not include a transcript of this hearing. We note, however, in his brief, Sinclair does not assert his comments at the July 15, 2014, city council meeting related in any way to the City's motion to grant a lot-size variance even though he had notice of the request for a variance prior to this meeting. Thus, it appears that Sinclair has consistently framed his opposition to Jones's rezoning request on the basis that a rehabilitation home would stigmatize the area and adversely affect his business rather than any concern regarding the lot size of the subject property. Since Sinclair had an opportunity to present his objections to the zoning reclassification request and to protect his rights as to his opposition, we find no procedural due process violation. Accordingly, the circuit court's grant of summary judgment on count II in Sinclair's favor was error and must be reversed. Further, since the court's dismissal of count I as moot was based on its erroneous grant of summary judgment on count II, we reverse the court's dismissal of count I.

¶ 28 C. The City's Appeal

¶ 29 Having reversed the circuit court's grant of summary judgment on other grounds, we need not address the City's contention that summary judgment was improper because Sinclair failed to prove he was deprived of life, liberty, or property.

¶ 30 III. CONCLUSION

¶ 31 For the reasons stated, we reverse the trial court's grant of summary judgment on count II and dismissal of count I of Sinclair's complaint and remand for further proceedings.

¶ 32 Reversed and remanded.