FILED
02/03/2023
Clerk of the
Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
October 4, 2022 Session

CITY OF ORLINDA, TENNESSEE v. ROBERTSON COUNTY, TENNESSEE ET AL.

Appeal from the Chancery Court for Robertson County
No. CH20-CV-512 Laurence M. McMillan, Jr., Chancellor

No. M2021-01505-COA-R3-CV

The City of Orlinda filed a declaratory judgment action seeking to invalidate the Robertson County Planning Commission's rezoning of property from "Agricultural Residential" to "Neighborhood Commercial," alleging the rezoning was "illegal spot zoning" and was also procedurally deficient. The trial court affirmed the rezoning. Finding no error, we affirm the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed

ANDY D. BENNETT, J., delivered the opinion of the Court, in which FRANK G. CLEMENT, JR., P.J., M.S., and JOHN W. MCCLARTY, J., joined.

Douglas Berry, Nashville, Tennessee, for the appellant, City of Orlinda, Tennessee.

C. Bennett Harrison, Jr., Nashville, Tennessee, for the appellee, Robertson County, Tennessee.

Wesley Hunter Southerland, Brentwood, Tennessee, for the appellees, Julie Bernard and Steven Leslie Bernard.

OPINION

FACTUAL AND PROCEDURAL BACKGROUND

In September 2020, Julie and Steven Bernard ("the Bernards") filed an "Application for Zoning Map Amendment" with the Robertson County Regional Planning Commission ("the County Planning Commission") seeking to build and operate a market and deli on their property in Robertson County. The property at issue was a 6.982-acre parcel just outside the City of Orlinda's city limits on Clay Gregory Road, near Tennessee Highway

49. The Bernards sought to rezone the property from "Agricultural Residential (AG-2)"[1] to "Neighborhood Commercial (C-2)"[2] in order to build a retail space to sell agricultural items from their own farm as well as items from other local farmers.

On October 1, 2020, the County Planning Commission recommended approval of the proposed rezoning of the Bernards' property by a vote of 5 to 4. The County Planning Director placed the Bernards' rezoning request on the Robertson County Commission's Agenda and provided the commission members with additional information relating to the Bernards' request, including a proposed "Resolution to Rezone", a copy of a current survey, the relevant tax map, and a letter from Ms. Bernard, which stated, in relevant part:

> Farming is our family legacy. For four generations, we have proudly farmed in Robertson County. Our most recent expansion in our farming heritage has come in the form of Yorkshire crossed hogs. . . . . As we look toward the future and the farming legacy we want to leave our family, we have conceived a vision for ***Bernard Farm's Custom Cuts and Market***.
> . . . .
> We believe that our proposed business has the opportunity to provide our community with employment opportunities and increased revenue. . . . Additionally, our market would have a deli with kitchen, serving, and custodial needs. These positions would work together with our current staff to make ***Bernard Farm's Custom Cuts and Market*** a destination for farm fresh meats and produce for the people of northern middle Tennessee and southern Kentucky. . . .

[1] The AG-2 Agricultural/Residential "District Description" from the Robertson County Zoning Resolutions is as follows:

> This district is designed to provide suitable open space for agricultural uses and very low density residential development. It shall consist primarily of single family detached dwellings, agricultural uses and their accessory uses. This district shall be located in those areas of the county that shall retain an optimum of open spaces to maintain a rural setting yet affords limited residential development that is conducive to maintaining an agricultural setting. This district shall remain agricultural in nature with limited community facilities, commercial and residential development. The application of this district is appropriate in rural areas of the adopted 2040 comprehensive Growth and Development Plan.

[2] The C-2 "District Description" from the Robertson County Zoning Resolutions is as follows:

> The C-2, Neighborhood Commercial District is primarily intended to accommodate very low intensity office, convenience retail, and personal service uses within residential areas. The district is established to provide convenient locations for businesses that serve the needs of surrounding residents without disrupting the character of the neighborhood. This district is not intended to accommodate retail uses that primarily attract passing motorists. Compatibility with nearby residences is reflected in design standards for both site layout and buildings.

> Pending community approval, ***Bernard Farm's Custom Cuts and Market*** would sit on part of our farm on Clay Gregory Road. The 30 foot by 60 foot market will be fully landscaped with an ample parking lot. The Market will have a wrap around porch and be meticulously designed to blend with the agricultural aesthetic of the surrounding community. We are proud to call Robertson County our home, and we feel humbled by the opportunity to bring jobs, education, revenue, and a gather space for friends and neighbors. . . .

On November 16, 2020, the County Commission voted to approve the rezoning request with 21 commissioners voting for rezoning, 1 voting against rezoning, and 2 absent. That same day, the Robertson County Mayor and Robertson County Clerk signed Resolution No. 111620120 "A Resolution to Rezone a Tract of Land from AG-2 to C-2" approving the Bernards' request.

On December 18, 2020, the City of Orlinda ("the City") filed a Complaint for Declaratory Judgment in the Chancery Court for Robertson County against Robertson County ("the County") and the Bernards (collectively, "Defendants"), urging the court to declare that the County Commission's rezoning of the Bernards' property constituted illegal "spot zoning" and was "otherwise invalid and not a rational exercise of the zoning power." The City also sought a ruling that the Planning Commission and County Commission "failed to follow the procedural rules for enacting a map amendment" and that their amendment was "void *ab initio*." Specifically, the City argued that the notice of the zone change given to the public was deficient and that the County Planning Commission failed to give a detailed report to the County Commissioners prior to the commissioner's vote to approve the zone change. The City asserted the rezoning of the Bernards' property "interferes with the City's land use plan and the goals and purposes of its zoning ordinance . . . and generally will impair the health, safety, and welfare of the residents of the City." In February 2021, the County and the Bernards answered the City's complaint. On March 18, 2021, Robertson County issued a commercial building permit to the Bernards for the construction of the market.

On July 26, 2021, the City filed a Motion for Temporary Injunction, moving the court to enjoin the Bernards from operating the retail market pending the trial on the merits. The case proceeded to trial on September 23, 2021, at which Kevin Breeding, City Manager of the City of Orlinda;[3] Lawrence Hoge, Robertson County Planner; Terry Douglas Vann, Robertson County Planning Director; Jerry Hoover, Robertson County Commissioner; Bart Glover, Robertson County Commissioner; and the Bernards testified. The court entered its Memorandum Opinion and Order on November 18, 2021, dismissing the City's complaint, ultimately holding that "the rezoning at issue was not arbitrary and capricious, and that there were no procedural defects prior to the county's action."

[3] Mr. Breeding lives across the street from the Bernards' property.

The City of Orlinda appeals, raising several issues, which we restate below:

1. Whether the City has standing to bring the suit?
2. Whether the County's rezoning of the Bernards' property was illegal spot zoning?
3. Whether the rezoning was invalid because it was in conflict with the zoning resolutions?
4. Whether the County Planning Commission failed to submit a recommendation as required by the zoning resolutions?

STANDARD OF REVIEW

Tennessee Code Annotated section 13-7-201(a)(1) authorizes local governments to enact zoning ordinances "for the purpose of promoting the public health, safety, morals, convenience, order, prosperity and general welfare." When a party seeks to challenge the "validity, including the constitutionality, of an ordinance, or to determine whether an ordinance applies[,]" an "action for declaratory judgment is available and appropriate." *State ex rel. Moore & Assocs., Inc. v. West*, 246 S.W.3d 569, 581 (Tenn. Ct. App. 2005). When reviewing a municipality's zoning decisions, our Supreme Court has explained the limited nature of our review as follows:

> Inasmuch as zoning laws are in derogation of the common law and operate to deprive a property owner of a use of land that would otherwise be lawful, such laws are to be strictly construed in favor of the property owner. *State ex rel. Wright v. City of Oak Hill*, 321 S.W.2d 557, 559 ([Tenn.] 1959). "Legislative classification in a zoning law, ordinance or resolution is valid if any possible reason can be conceived to justify it." *State ex rel. SCA Chem. Waste Servs., Inc. v. Konigsberg*, 636 S.W.2d 430, 437 (Tenn. 1982). As we found in *McCallen v. City of Memphis*, "the court's primary resolve is to refrain from substituting its judgment for that of the local governmental body. An action will be invalidated only if it constitutes an abuse of discretion. If 'any possible reason' exists justifying the action, it will be upheld." 786 S.W.2d 633, 641 (Tenn. 1990).

Edwards v. Allen, 216 S.W.3d 278, 284-85 (Tenn. 2007). Stated another way, "'in cases where the validity of a zoning ordinance is fairly debatable, the court cannot substitute its judgment for that of the legislative authority.'" *Fallin v. Knox Cty. Bd. of Comm'rs*, 656 S.W.2d 338, 342 (Tenn. 1983) (quoting 82 AM. JUR. 2d *Zoning and Planning* § 338 (1976) at 913-14); *see also Keeton v. City of Gatlinburg*, 684 S.W.2d 97, 98 (Tenn. Ct. App. 1984) (holding that where a municipal body acts in zoning matters, the "court's inquiry is limited as to whether any rational basis exists for the legislative action and, if the issue is fairly debatable, it must be permitted to stand as valid . . ."). We must favor "permitting the community decision-makers closest to the events to make the decision." *Lafferty v. City*

of Winchester, 46 S.W.3d 752, 758 (Tenn. Ct. App. 2000). Therefore, "the exercise of zoning power should not be subjected to judicial interference unless clearly necessary." *Fallin*, 656 S.W.2d at 342 (quoting 82 AM. JUR. 2d *Zoning and Planning* § 338 (1976) at 913-14).[4]

---

[4] There are two alternative procedures for judicial review of actions taken by county or municipal authorities:

> § 4. Actions.—Generally—An action for declaratory judgement, rather than a petition for certiorari, is the proper remedy to be employed by one who seeks to invalidate an ordinance, resolution or other legislative action of a county, city or other municipal legislative authority enacting or amending zoning legislation . . . .
>
> The remedy of certiorari will continue to be the proper remedy for one who seeks to overturn a determination of a board of zoning appeals. This distinction in remedies is made because the determinations made by a board of zoning appeals are administrative determinations, judicial or quasi-judicial in nature, and are accompanied by a record of the evidence produced and the proceedings had in a particular case, whereas the enactment of ordinances or resolutions, creating or amending zoning regulations, is a legislative, rather than an administrative action and is not ordinarily accompanied by a record of evidence, as in the case of an administrative hearing.

Thompson v. Dep't of Codes Admin., Metro. Gov't of Nashville & Davidson Cty., 20 S.W.3d 654, 658-59 (Tenn. Ct. App. 1999) (quoting 26 *Tennessee Jurisprudence* Zoning § 4, p. 232 (1993)). "Thus, where the action being challenged is administrative or quasi-judicial in nature, rather than legislative in nature, the appropriate method for obtaining judicial review of that action is by common law writ of certiorari." *State ex rel. Moore & Assocs., Inc.*, 246 S.W.3d at 575. When reviewing the common law writ of certiorari, courts are limited to determining "whether the board or agency exceeded its jurisdiction or acted illegally, capriciously, or arbitrarily." *421 Corp. v. Metro. Gov't of Nashville & Davidson Cty.*, 36 S.W.3d 469, 474 (Tenn. Ct. App. 2000). In contrast, the "'fairly debatable, rational basis'" standard of review is applied to legislative acts which are brought through an action for declaratory judgment. *MC Props., Inc. v. City of Chattanooga*, 994 S.W.2d 132, 134-35 (Tenn. Ct. App. 1999). Here, when reviewing the rezoning decision, the trial court stated the rezoning decision was "not arbitrary and capricious." Thus, the trial court essentially reviewed the decision under the standard reserved for the writ of certiorari. We view this as harmless error, however, because our Supreme Court has stated that:

> The "fairly debatable, rational basis," as applied to legislative acts, and the "illegal, arbitrary and capricious" standard relative to administrative acts are essentially the same. In either instance, the court's primary resolve is to refrain from substituting its judgment for that of the local governmental body. An action will be invalidated only if it constitutes an abuse of discretion. If "any possible reason" exists justifying the action, it will be upheld. Both legislative and administrative decisions are presumed to be valid and a heavy burden of proof rests upon the shoulders of the party who challenges the action.
>
> If there was ever any basis for the distinction in the application of the substantive law to legislative and administrative actions, it has dissipated with the passage of time.

McCallen v. City of Memphis, 786 S.W.2d 633, 641 (Tenn. 1990).

As for the trial court's findings of fact, our review is de novo, and we presume that the findings are correct unless the evidence preponderates otherwise. TENN. R. APP. P. 13(d). For the evidence to preponderate against a trial court's finding of fact, it must support another finding of fact with greater convincing effect. *Id.*

ANALYSIS

I. The City's Standing

The City notes in its brief that neither the Bernards nor the County briefed or argued the issue of standing at trial or in their post-trial submission; however, the City raised the issue on appeal because "both appellees contested the City's standing in their answers." The City asserts it has standing because the rezoning of the Bernards' property "interferes with the City's land use plan" and "conflicts with the land uses in the area" among other reasons. In response, the Defendants agree that they "did not brief or argue the issue at trial" but assert the issue is still relevant on appeal and that the City lacks standing to attack the County's zoning decision.

As a general matter, this Court does not entertain issues that were not raised in the court below. *Consol. Waste Sys., LLC v. Metro. Gov't of Nashville & Davidson Cty.*, No. M2002-02582-COA-R3-CV, 2005 WL 1541860, at *31 (Tenn. Ct. App. June 30, 2005) (citing *Simpson v. Frontier Cmty. Credit Union*, 810 S.W.2d 147, 153 (Tenn. 1991)). However, "[t]he issue of subject matter jurisdiction 'is non-waivable and must be considered by an appellate court.'" *150 4th Ave N., LLC v. Metro. Nashville Bd. of Zoning Appeals*, No. M2019-00732-COA-R3-CV, 2020 WL 1278226, at *6 (Tenn. Ct. App. Mar. 17, 2020) (quoting *In re Estate of Smallman*, 398 S.W.3d 134, 148 (Tenn. 2013)). "'[T]he issue of standing is interwoven with that of subject matter jurisdiction and becomes a jurisdictional prerequisite" only when "a statute creates a cause of action and designates who may bring an action.'" *Bowers v. Estate of Mounger*, 542 S.W.3d 470, 480 (Tenn. Ct. App. 2017) (quoting *In re Estate of Smallman*, 398 S.W.3d 134, 149 (Tenn. 2013)). Here, the Declaratory Judgments Act is the statute creating the cause of action and provides:

> Any person[5] interested under a deed, will, written contract, or other writings constituting a contract, or whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract, or franchise, may have determined any question of construction or validity arising under the

[5] For the purposes of the Declaratory Judgments Act, "[p]erson" is defined as "any person, partnership, joint stock company, trust, unincorporated association, or society, or municipal or other corporation of any character whatsoever." The City qualifies as a person under this definition.

> instrument, statute, ordinance, contract, or franchise and obtain a declaration of rights, status or other legal relations thereunder.

Tenn. Code Ann. § 29-14-103. This Court has observed that, "[s]tanding is a threshold requirement for actions seeking declaratory relief[.]" *Reguli v. Guffee*, No. M2015-00188-COA-R3-CV, 2016 WL 6427860, at *2 (Tenn. Ct. App. Oct. 28, 2016). Therefore, we will address the issue of standing despite the fact that the trial court did not rule upon the issue in the case below.

The Tennessee Supreme Court has explained the doctrine of standing as follows:

> The doctrine of standing is used to determine whether a particular plaintiff is entitled to judicial relief. *Knierim*, 542 S.W.2d at 808. It is the principle that courts use to determine whether a party has a sufficiently personal stake in a matter at issue to warrant a judicial resolution of the dispute. *SunTrust Bank, Nashville v. Johnson*, 46 S.W.3d 216, 222 (Tenn. Ct. App. 2000). Persons whose rights or interests have not been affected have no standing and are, therefore, not entitled to judicial relief. *Lynch v. City of Jellico*, 205 S.W.3d 384, 395 (Tenn. 2006).
>
> "The sort of distinct and palpable injury that will create standing must be an injury to a recognized legal right or interest." *Wood v. Metro. Gov't of Nashville & Davidson Cnty.*, 196 S.W.3d 152, 158 (Tenn. Ct. App. 2005). Such a legal right or interest may, but not must, be created or defined by statute. "[I]n cases where a party is seeking to vindicate a statutory right of interest, the doctrine of standing requires the party to demonstrate that its claim falls within the zone of interests protected or regulated by the statute in question." *Id.* (citing *Fed. Election Comm'n v. Akins*, 524 U.S. 11, 20 (1998)).

Metro. Gov't of Nashville v. Bd. of Zoning Appeals of Nashville, 477 S.W.3d 750, 755 (Tenn. 2015) (quoting *State v. Harrison*, 270 S.W.3d 21, 27-28 (Tenn. 2008)). When a party challenges the validity and application of an ordinance, standing is determined by "whether the party's rights, status or other legal relations are affected by the ordinance." *Consol. Waste Sys., LLC*, 2005 WL 1541860, at *32. Importantly, "we do not consider the likelihood of the plaintiff's success on the merits of its petition in determining whether the plaintiff has standing." *Metro. Gov't of Nashville*, 477 S.W.3d at 755 (citing *Wood v. Metro. Nashville & Davidson Cty. Gov't*, 196 S.W.3d 152, 158 (Tenn. Ct. App. 2005)). But, we are mindful that "[i]t is desirable that land use matters be resolved on their merits rather than on preclusive, restrictive standing rules." *City of Brentwood v. Metro. Bd. of Zoning Appeals*, 149 S.W.3d 49, 57 (Tenn. Ct. App. 2004).

In paragraph nine of its complaint, the City asserted it had standing:

> The City has standing because the rezoning of a portion of the Bernards' property, part of which [is] within the County and the rest within the City interferes with the City's land use plan and the goals and purposes of its zoning ordinance, conflicts with the land uses in the area, damages property values in the City, and generally will impair the health, safety, and welfare of the residents of the City.

In its appellate brief, the City acknowledges that it "has not adopted a general plan pursuant to Tenn. Code Ann. §§13-4-101 *et seq.*, but in October 2002, the City Commission approved a document entitled 'Development Priority Guidelines.'" This document was accepted by vote of the City Council in October 2002. The document includes the following policy statement:

> A ½ mile radius from Orlinda's downtown serves as a boundary within which to strive to keep new development. This sort of development should be appropriate for the Village Center function and character . . . . The Surrounding Rural area and the corridors into Orlinda, particularly along Highways 52 and 49, should be preserved for their functional and scenic qualities. Concentrated development should not occur in these areas.

To determine whether the City had standing to bring this declaratory judgment action, we turn to this Court's opinion in *City of Brentwood v. Metropolitan Board of Zoning Appeals*, 149 S.W.3d 49 (Tenn. Ct. App. 2004) for guidance. Although that case examined standing through the lens of a common law writ of certiorari, which authorizes persons who are "aggrieved" to appeal the decision of a board of zoning appeals, we find "aggrieved" persons and "affected" persons to be sufficiently similar for the case to be instructive. *Id.* at 57. In *City of Brentwood*, the city sought judicial review of a metropolitan board of zoning appeals decision to approve a building permit for construction of a billboard on property in Davidson County at an intersection located near the City of Brentwood. *Id.* at 53. The billboard was not inside the city limits but was in a location characterized as a "gateway to Brentwood from the north." *Id.* The court noted, "'municipal boundary lines are not Chinese walls separating one municipality from the other.'" *Id.* at 58 (quoting *Borough of Roselle Park v. Twp. of Union*, 272 A.2d 762, 767 (N.J. 1970)). The City of Brentwood asserted that the billboard would "do great damage to the otherwise aesthetically appealing entrance to Brentwood, thereby hurting the image of the City and its attractiveness to future residents, businesses, tourists and other visitors." *Id.* at 59. This Court held that the billboard "could be viewed as inconsistent with the use of property in the surrounding area, an interference with Brentwood's Franklin Road corridor program, and an impairment to the welfare of Brentwood residents." *Id.* Thus, we held the City of Brentwood was "aggrieved" for the purposes of seeking judicial review

of the approval of the billboard. *Id.* Furthermore, we held that the city's interest in the case was within in the zone of interests protected by Nashville's zoning ordinance. *Id.*

As in the *City of Brentwood* case, the property at issue in this case is not within the City of Orlinda's city limits, but it is in the corridor leading to the city's downtown area. In addition, the property was zoned inconsistently with the City's Development Priority Guidelines which sought to preserve the Bernards' property as "agricultural" and "scenic." Keeping in mind the preference that "land use matters be resolved on their merits rather than on preclusive, restrictive standing rules[,]" we find that the City's rights, status, or other legal relations were "affected" by the rezoning at issue, and that the City's interest in the case was within the "zone of interests" to be protected. *Id.* at 57. Thus, the City had standing to pursue the declaratory judgment.

II. Illegal Spot Zoning

The City asserts that judicial relief is justified in this case because the rezoning of the Bernards' property constituted "illegal spot zoning." As will be explained below, we disagree.

This Court has previously explained what constitutes illegal spot zoning:

> Spot zoning is the "process of singling out [a] small parcel of land for use classification totally different from that of [the] surrounding area, for [the] benefit of an owner of such property and to [the] detriment of other owners, and, as such, is [the] very antithesis of planned zoning." *Grant v. McCullough*, 270 S.W.2d 317 (Tenn. 1954); *Crockett v. Rutherford Cty.*, 2002 WL 1677725 (Tenn. Ct. App. July 25, 2002); *Crown Colony Homeowners Ass'n v. Ramsey*, 1991 WL 148058, at *6 (Tenn. Ct. App. Aug. 7, 1991); *Fallin v. Knox Cty. Bd. of Comm'rs*, 656 S.W.2d 338, 343 (Tenn. 1983); *Rains v. Knox Cty. Bd. of Comm'rs*, 1987 WL 18065, at *7 (Tenn. Ct. App. Oct. 9, 1987). The Supreme Court of Tennessee explained why the practice of spot zoning is disfavored:
>
>> The law is well settled that 'spot zoning,' as properly known and understood, and 'spot zoning' ordinances, as properly identified, are invalid on the general ground that they do not bear a substantial relationship to the public health, safety, morals and general welfare and are out of harmony and in conflict with the comprehensive zoning ordinance of the particular municipality.
>
> *Fallin v. Knox Cty. Bd. of Comm'rs*, 656 S.W.2d 338, 343 (Tenn. 1983) (quoting 2 Yokley *Zoning Law and Practice* § 13-3 (1978)).

> It is, therefore, universally held that a 'spot zoning' ordinance, which singles out a parcel of land within the limits of a use district and marks it off into a separate district for the benefit of the owner, thereby permitting a use of that parcel inconsistent with the use permitted in the rest of the district, is invalid if it is not in accordance with the comprehensive zoning plan and is merely for private gain.

> *Grant v. McCullough*, 270 S.W.2d 317, 319 (Tenn. 1954) (quoting *Cassel v. Mayor & City Counsel of Baltimore*, 73 A.2d 486, 489 (Md. Ct. App. 1950)).

Phillips v. Tenn. Dep't of Transp., No. M2006-00912-COA-R3-CV, 2007 WL 1237695, at *4-5 (Tenn. Ct. App. Apr. 26, 2007). Not every instance of "spot zoning" is illegal, however. *Fielding v. Metro. Gov't of Lynchburg, Moore Cty.*, No. M2011-00417-COA-R3-CV, 2012 WL 327908, at *3 (Tenn. Ct. App. Jan. 31, 2012). "'In addressing a claim of spot zoning, the most important factor is whether the rezoned land is being treated *unjustifiably different* from the surrounding land, thereby creating an island having no relevant differences from its neighboring property.'" *Id.* (quoting *Quoc Tu Pham v. City of Chattanooga*, No. E2008-02410-COA-R3-CV, 2009 WL 2144127, at *3 (Tenn. Ct. App. July 20, 2009)).

A review of this Court's opinion in *Fielding v. Metropolitan Government of Lynchburg, Moore County*, No. M2011-00417-COA-R3-CV, 2012 WL 327908 (Tenn. Ct. App. Jan. 31, 2012) is helpful in our analysis of the issue. In *Fielding*, a Lynchburg resident, Mr. Ambrose, requested to rezone his property from "Agricultural-Forestry" to "General Commercial" to allow him to operate an automobile towing/roadside assistance business. *Id.* at *1. The Metro Council granted his request to rezone, and he immediately commenced operation of his towing business. *Id.* His closest neighbors were bothered by his towing operation and filed suit against him and Metro seeking a declaratory judgment striking down the rezoning ordinance, among other things. *Id.* at *2. This Court permitted the rezoning to stand, finding a "rational basis" for the ordinance, including "a public safety need for Mr. Ambrose's services—because out-of-county towing businesses often took hours to meet stranded drivers." *Id.* at *7. The court summarized its holding thusly: "We are respectful of Plaintiffs' concerns and frustration arising from the foregoing changes; however, as the Supreme Court stated in *Fallin,* 'local authorities are vested with broad discretion' in zoning matters and 'where the validity of a zoning ordinance is fairly debatable, the court cannot substitute its judgment.'" *Id.* at 342 (quoting *Fallin*, 656 S.W.2d at 342).

The City argues that "only the Bernards benefitted from the rezoning" and that the Bernards' property "would be a commercial island in the midst of a sea of residential and agricultural use." The trial court considered this argument and held:

> Because the individual Defendants have been selling their meats and produce to the surrounding population of northeast Robertson County for years, and because there are no retail food stores currently in the City of Orlinda or surrounding area, this court is of the opinion that the action of the Robertson County Commission to rezone a small portion of Plaintiffs' property lying outside of the City of Orlinda to C-2 Neighborhood Commercial District to allow a retail food market was not an arbitrary or capricious use of zoning authority.

The evidence does not preponderate against the trial court's finding. Ms. Bernard testified that the City lacked a local food market that allowed local farmers to sell their agricultural products:

> Q. Okay. And are you aware, specifically, of any store in the surrounding Orlinda community or neighborhood, that does anything like you guys are trying to do as far as retail store?
> A. Not in Orlinda, no.
> Q. Why did you feel this was important to the City of Orlinda and the community of Orlinda?
> A. Because Orlinda is a food desert. There's not any grocery stores or any type stores, food stores, where you can purchase local farm raised food.

We find that the Bernards are not the only beneficiaries of the rezoning of their property. The local community will also benefit from the market, as well as local farmers who may sell their own agricultural products to citizens who frequent the store. In light of our quite limited standard of review applicable to these decisions, we find a rational basis for the rezoning resolution. Therefore, we do not find the rezoning of the Bernards' property to be illegal spot zoning.

III. Standards for Neighborhood Commercial Zoning

The City argues that because customers may travel from different areas other than the "neighborhood" to shop at the Bernards' store, the Bernards' rezoning request was improper and should be invalidated by this Court. The Defendants assert that the City's interpretation of the Neighborhood Commercial zoning district is too narrow and does not warrant invalidation of the rezoning resolution. We agree with the Defendants.

The Bernards' property was rezoned to C-2 Neighborhood Commercial, which is defined as:

> The C-2, Neighborhood Commercial District is primarily intended to accommodate very low intensity office, convenience retail, and personal service uses within residential areas. The district is established to provide

convenient locations for businesses that serve the needs of surrounding residents without disrupting the character of the neighborhood. This district is not intended to accommodate retail uses that primarily attract passing motorists. Compatibility with nearby residences is reflected in design standards for both site layout and buildings.

The City focuses on a section of the Bernards' application for rezoning that states the market would be a "destination for farm fresh meats and produce for the people of northern middle Tennessee and southern Kentucky." The City argues that attracting customers from this geographic area would violate the Neighborhood Commercial zoning requisites. However, there was no evidence or testimony that the rezoning would "primarily" attract "passing motorists." Moreover, the record shows that the Bernards' property is approximately three miles from the Kentucky border. There is no testimony or interpretation to suggest that people who live three miles from the store would not be "surrounding residents" for purposes of the Neighborhood Commercial district. Finally, the City does not take issue with the design or site layout of the market and does not argue that it aesthetically disrupts the character of the neighborhood. In our view, the record shows that the Bernards' market will "serve the needs of the surrounding residents without disrupting the character of the neighborhood." Therefore, we do not disturb the decision of the Robertson County Commission to rezone the Bernards' property to Neighborhood Commercial.

IV. Procedural Violations

The City argues that the rezoning process was procedurally flawed because the Planning Commission failed to provide a written report to the County Commission "detailing the recommendations and how they meet the regulations set forth in the Zoning Ordinance." Defendants assert that the appropriate report was submitted and the procedures were followed, but if not, any error or deviation was not "substantial." The procedure for map amendments is outlined in resolution 11-9.2 of the Zoning Resolutions for the Robertson County Regional Planning Commission which states as follows:

> D. Planning Commission Public Hearing and Recommendations.
>
> Before submitting its recommendations on a proposed zoning map amendment to the County Commissioners, the Planning Commission shall consider the request at a public meeting. Notice of the request for a zoning map amendment will be given to all adjacent property owners (taken from the tax rolls) by mail prior to the date of the hearing. The notice shall state the place and time of the meeting. When the Planning Commission has completed its recommendations on a proposed amendment, it shall certify the same to the County Commissioners and submit a report detailing the

> recommendations and how they meet the regulations set forth in the Zoning Ordinance.

In ruling on whether the Planning Commission was in compliance with section 11-9.2(D), the trial court held:

> At trial, the Robertson County Zoning Director testified that he forwarded Exhibit 14 to all County Commissioners before their vote, which he contends was the "report" required under the Zoning Resolution. Exhibit 14 identifies the Bernard property and the request for a zone change from AG-2 to C-2. Exhibit 14 also contained a proposed Resolution To Rezone, a copy of a current survey, the relevant tax map, and a statement from Julie Bernard outlining the reasons behind her rezoning request.
>
> The Zoning Director also testified that he personally presented the rezoning request to the commission, during which he outlined the vote of the Planning Commission and the reasons for its approval. The Zoning Director testified that he had the entire Planning Commission file with him at the county commission meeting, and that he made the file available for inspection to all commissioners prior to the vote being taken. Under these facts, the court is of the opinion that the "report" requirements of Section 11-9.2 D were satisfied.

We recognize that "'[p]rocedural requirements are considered by the courts to be safeguards against arbitrary exercise of power. Failure to comply with such procedural requirements has been regarded not only as an ultra vires act on the part of municipal legislators, but also as a denial of due process of law.'" *Edwards v. Allen*, 216 S.W.3d 278, 285 (Tenn. 2007) (quoting *State ex rel. SCA Chem. Servs., Inc. v. Sanidas*, 681 S.W.2d 557, 564 (Tenn. Ct. App. 1984)). Indeed, this Court has determined that a "'failure substantially to comply'" with the procedural requirements of zoning ordinances renders the ordinance "'invalid.'" *Hutcherson v. Criner*, 11 S.W.3d 126, 134 (Tenn. Ct. App. 1999) (quoting 83 AM. JUR. 2d *Zoning and Planning* § 581 (1992)). We have reviewed the record and testimony[6] forming the basis of the trial court's ruling and agree with the

---

[6] Regarding the materials submitted by the Planning Commission in advance of the County Commission meeting, the County Planning Director, Doug Vann testified as follows:

> Q. Mr. Vann, who makes the presentations to the county commission on proposed rezonings?
> A. I do.
> Q. And when you make that recommendation, do you have with you the file of the planning commission that -- let me rephrase that, Your Honor. When you make your presentation for each rezoning proposal at the county commission level, do you have with you the file from the planning commission that had been made a recommendation?
> A. Yes, I do.

trial court that the documents provided by the Zoning Director, as well as his presentation before the County Commission and the entire file that was available for review by the County Commissioners, constituted substantial compliance with the report requirements of section 11-9.2(D).

Q. And in looking at Exhibit 26, do those documents comprise what would have been in the planning commission file that you had the night the county voted to rezone the Bernard property?
A. It appears so, yes, sir.
Q. Are county commissioners free to come to your office and review that file before they vote at the county commission meeting on any rezoning?
A. Yes, sir.
Q. And do you sometimes get questions answered by county commissioners at the county commission level about certain issues with a certain particular property?
A. Yes, sir. That has happened in the past, yes.
MR. RICHERT: Your Honor, I want to hand that back to the Court, offered as an exhibit for what planning commission file looked like on the November rezoning. And I would like to hand to the witness Exhibit 14. . . .
Q. Mr. Vann, I've handed you Exhibit 14, which by agreement of counsel, I think represents the documents that you submitted as planning director to the county commissioners before their vote in November. Does that appear to be what Exhibit 14 is?
A. Yes, sir. . . .
BY MR. RICHTER: Q. So those documents, Exhibit 14, are sent out in a package ahead of time to the planning commissioners before their vote?
A. Yes.
Q. And, in fact, on November 16th, the county commission did revote -- did vote, by 22 for, 1 against, and two absent to rezone the Bernard property to C-2; is that correct?
A. Yes, sir. That's my recollection.
Q. And these documents for Exhibits 14 are what they would have been furnished by your office prior to that vote?
A. That's correct.
Q. Do those documents contain a drawing of the proposed building?
A. I don't believe they do at that time because that was part of the site land process later. This is just the rezoning of the property.
Q. Do those documents indicate the action of the planning commission in terms of how the planning commission had voted?
A. Yes, sir. And I'll reiterate that at the time, verbally.
Q. Okay. So when you made your presentation that night in November to the county commission as a matter of routine and course, do you advise what the planning commission had done?
A. Yes, sir, I did.

CONCLUSION

The judgment of the trial court is affirmed. Costs of this appeal are assessed against the appellant, the City of Orlinda, for which execution may issue if necessary.

_/s/ Andy D. Bennett_______________
ANDY D. BENNETT, JUDGE