

IN THE CIRCUIT COURT FOR LOUDON COUNTY, TENNESSEE

TELLICO RESERVOIR DEVELOPMENT AGENCY,
Plaintiff

VERSUS

NO. 2008CV1

LOUDON COUNTY,
Defendant

TELLICO VILLAGE PROPERTY
OWNERS ASSOCIATION, INC.,
Intervening Party,

and
RARITY COMMUNITIES, INC.,
Intervening Party,

FILED & ENTERED
12-4 2008
MINUTE BOOK # 71
PAGE NO. _____
Debbie Hart
CIRCUIT COURT CLK.

MEMORANDUM OPINION

The Plaintiff, Tellico Reservoir Development Agency (TRDA), filed a Complaint for Declaratory Judgment against Defendant, Loudon County (Loudon), asking the Court to declare which party had the right to issue building permits on land owned by TRDA pursuant to a contract with Tennessee Valley Authority, which property will be called "development lands". Tellico Village Property Owners Association, Inc. (TVPOA) and Rarity Communities, Inc. (Rarity) filed Intervening Complaints since their developments had land purchased from TRDA, and this lawsuit affects their developments. An order was entered indicating that the parties had agreed as to their rights concerning TVPOA, and their settlement was entered by Court order which dismissed TVPOA as a party. Rarity remains as an intervening party.

The original parties, TRDA and Loudon, both claim that the State has given them the authority, through the statutes referred to below, to create development standards or building

standards for construction of improvements on “development lands” which authority includes the right to issue building permits.

Both parties agree that the State has the power to control the use of land within its boundaries which power can be delegated through the General Assembly to local governing entities.

TRDA was created to exercise public and governmental functions over “development lands” as set out in T.C.A. 64-1-701. TRDA was delegated the power to control use of “development lands” through T.C.A. 64-1-703(L) by being given the power to “Promulgate and enforce such rules and regulations with respect to use of lands, interests in lands, or facilities the agency may acquire or construct that the agency deems necessary to protect such lands and facilities, to provide for the convenient and safe use thereof, or to provide for the orderly administration and efficient operation thereof;”

Loudon’s delegation of power to control the use of land is set out in T.C.A. 13-7-101 *et seq* in which the county legislative body is granted zoning power by which they can regulate the use of land within their boundaries and outside boundaries of municipal corporations. However, this power of Loudon to adopt any zoning regulation was declared to be of no force or effect as regards any lands (“development lands”) in Loudon County acquired by the agency (TRDA) T. C. A. 64-1-709(b).

Loudon does not deny its zoning power was negated over “development lands” by T.C.A. 64-1-709(b) but claims that T.C.A. 5-20-101 [Adoption of Prepared Building, Plumbing and Gas Codes By Reference] independently grants it the authority “to create building standards or issue building permits”.

TRDA has already been involved with a similar issue which was resolved in *Tellico Reservoir Development Agency v. Town of Vonore*, 2000 Tenn. App. Lexis 428. The Court of Appeals indicated that:

“This Court has long recognized that statutes contained in Title 13 give local governments power to zone and plan, which is precisely the power that the TRDA enabling legislation supersedes, both generally and specifically.....Vonore concedes that TRDA is exempt from Vonore’s planning and zoning, but not from its building code enforcement. This argument fails because the issuance of building

permits cannot be severed from general planning and zoning duties, such that the ability to issue permits is not superseded by the TRDA's powers, when the record shows that the ordinances which control the issuance of building permits in Vonore are the zoning ordinances. Vonore's power to issue building permits derives from the delegation of power to zone by the legislature in Tenn. Code Ann. § 13-7-201, which as related to the issue before us is expressly supplanted by Tenn. Code Ann. § 64-1-709(b)."

Loudon County in its Trial Brief states that "Planning and zoning activities are distinct activities from creating building standards and issuing building permits". This statement is the foundation of Loudon County's position in this lawsuit, but is in direct contradiction to the statement of the Court of Appeals as set out above in the Town of Vonore case when it opines that "Vonore's power to issue building permits derives from the delegation of power to zone".

Under T.C.A. 64-1-705 TRDA authored the required Comprehensive Development Plan which included development standards for the construction of buildings and other residential, commercial and industrial improvements on "development lands" and further provided that TRDA must issue a building permit before excavation or construction could commence.

The Court finds that Loudon County is delegated its right to zone in T.C.A. 13-7-101 *et seq* which delegation of power is of no force or affect as to "development lands" T.C.A. §64-1-709(b). The Court further finds that T.C.A. 5-20-101 *et seq* gives Loudon County only the right to adopt provisions of any code by reference without setting out the code in full. This code section does not delegate to Loudon County any power to plan or to regulate zoning as to "development lands", nor does it give authority "to create building standards or issue building permits" as to "development lands".

After creating TRDA, one purpose in giving TRDA sole and exclusive control over the use of "development lands" was to keep the Development Plan uniform since the "development lands" would be in multiple counties and cities. By negating the power of counties and cities to plan and regulate zoning over "development lands", the General Assembly did give TRDA sole authority over "development lands".

Based on the above the Court finds that TRDA has the sole and exclusive power to create development standards or building standards and the issuance of building permits on

"development lands", and Loudon has no power to create building standards or issue building permits on "development lands" pursuant to T.C.A. §5-20-101 *et seq.*

Attorney for the Plaintiff is to prepare an Order based upon the findings in this Memorandum Opinion which shall be filed with the Clerk within ten (10) days.

Enter this the 3 day of December, 2008.



RUSSELL E. SIMMONS, JR.
Circuit Court Judge

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing was delivered to attorneys, Robert Goddard, A. Wayne Henry and David Buuck, by hand delivering or by placing same in the United States Mail, with sufficient postage, on this the 4th day of December, 2008.

Lisa Niles, Circuit Court Clerk

BY: Debbie Hart, Deputy Clerk