

Petition for Curative Amendment for Zoning Ordinance

The next case that the court will be hearing is the Rice Family Trust v. the City of St. Marys. At issue is the denial by a local zoning board of a curative amendment to the zoning that would permit this residence, and from the description in the briefs it appears it is an older house in St. Marys, and the current owner bought the property at a sheriffs sale, and is attempting to get the zoning for the property changed, and in part what's involved is a change in the organization, the zoning districts of the city, or the town, and the uses, the goals, the ways things have been evolving over the years.

As originally built, the house was a single family residence with a detached garage and an apartment over the garage. In the 60s that was a perfectly appropriate use of the property and all was right with the world. The predecessor in title to the Rice Family Trust was an individual who maintained a chiropractic practice in the building for a while, and lived in the remainder of the building, that then passed to the immediate prior owner of the property who alleged, although there were questions of proof when it came to the hearing before the trial court, that he had used the facility as part of his CPA business. Currently, as I said, the property was bought at a sheriffs sale in order to protect the third mortgage held by the Rice Family Trust. The Rice Family Trust sought this curative amendment because as zoned now, while it was perfectly legal when the property was being used as the chiropractic facility and the residence, and then later as then arguably as the CPA practice and residence, it had inconsistently with the zoning been turned into four apartments, so that the building as currently constructed, currently divided, is four apartments, but the zoning prohibits more than two apartments in a single building. It permits duplexes.

The current owner wants to be able to use the facility as a three or four apartment building and his difficulty is that across the street from his property are a number of commercial buildings including an apartment building that has more than simply two apartments. On another side of the property is an area that is zoned commercial, so you have commercial on one side, commercial/residential on the other, and then the district in which this property now exists which is zoned as limited residential. His argument in part is a complaint about where the zoning lines are. He submitted a curative amendment, and the curative amendment was denied. As a procedural matter, he would have taken that denial on appeal to the Common Pleas Court. The Common Pleas Court eventually entered an order determining that the zoning was correct for this property, that there was no basis for changing the zoning, and therefore the request would be denied, it was denied, the order has been appealed to Commonwealth Court by filing a notice of appeal.

The difficulty here is that under a zoning ordinance, the property must be used as zoned. It is a residential area, but it prohibits more than two apartments in a single

building. His complaint is really one of when the house was built, single apartments were appropriate, single family homes in this area were appropriate. Now they've limited it, I can't even put an office in there because it is purely residential, it is inappropriate to not permit me to use my property in the most economically feasible manner. Well, he initially encountered at the trial court a problem of proof because the trial judge concluded that in fact he had not proven that the property was economically, completely non-feasible using it to rent only two apartments. Part of his argument goes to the judge's interpretation of the evidence that was presented. Beyond that, his argument is that his property should be rezoned and part of what goes into a plan that is developed under the municipality's planning code is that there has to be a line somewhere. In this case, it runs down through the middle of the street, he's on one side of the street and that side is residential. It sounds on the one hand unfair in the sense that the building hasn't changed, it is simply the uses around it have, but on the other hand, as the trial judge points out repeatedly, you have to draw a line somewhere and in this case, this property is in a zone that is properly zoned residential and the request for the curative amendment was properly denied.

You'll be hearing both from the family trust attorney and then from a representative from the City of St. Marys defending its zoning plan, and in fact exactly what the Appellate Court could do because the Appellate Court's scope of review on appeal is very limited, because here it can look at what the trial court did but it is bound by the findings of fact as made by the trial court unless there is a lack of substantial evidence to support those facts.

So with that as background, we listen to the arguments in court.