

FRANKLIN COUNTY BOARD OF APPEALS
FRANKLIN COUNTY, GEORGIA

In re: TROY CONSTRUCTION, LLC
FRANKLIN COUNTY TAX PARCEL IDENTIFICATION NUMBER 006 018
633 NEAL ROAD; 15.44 ACRES
REZONED FROM AGRICULTURE INTENSIVE (AI) TO LIGHT INDUSTRIAL (LI)

Written Findings of the Board of Appeals

I. Introduction

This matter came before the Franklin County Board of Appeals (the “Board of Appeals”) for a Public Hearing on January 25, 2022. The Public Hearing was duly authorized and called by the Board of Appeals, in accord with O.C.G.A. § 36-66-1 *et seq.* (the “Zoning Procedures Law” or “ZPL”) and Section 1800 *et seq.* of the Zoning Regulations of Franklin County, Georgia (the “Zoning Ordinance”). The purpose of the Public Hearing was to address allegations raised by Attorney John C. Doss (“Appellant”) concerning the Zoning Map Amendment adopted by the Franklin County Board of Commissioners on November 1, 2021 pursuant to the application of Troy Construction, LLC (“Troy Construction,” or “Property Owner”) on property then belonging to Dexter J. Ledford, in Franklin County, Georgia.¹ The property at issue is located at 633 Neal Road, and bears Franklin County Tax Parcel Identification Number 006 018 (the “Subject Property”). All interested parties were afforded the right to appear, present testimony to the Board of Appeals, and tender evidence.

The Public Hearing was the subject of a notice that was prepared in accord with O.C.G.A. § 36-66-4 and provided to Appellant, Property Owner, as well as to all interested

¹ The Board of Appeals received evidence indicating that on November 2, 2021, Troy Construction LLC completed the purchase of the Subject Property from Mr. Ledford. *See* Limited Warranty Deed from Dexter J. Ledford to Troy Construction, LLC dated November 2, 2021, recorded in Deed Book 01485, Page 0216, Franklin County, Georgia Records, attached hereto as Exhibit A.

parties by legal notice published in the legal organ of Franklin County. In addition to the published notice, public notice of the meeting of the Board of Appeals was also posted at the regular meeting room where the Board of Appeals assembles, and other conspicuous, public places.

At the hearing, Appellant Doss appeared on his own behalf.² Attorney Ed Ridgway appeared on behalf of Property Owner, Troy Construction. Members of the Board of Appeals in attendance were: Chairman Jason K. Macomson, Robert Franklin, Kyle Foster, Ryan Swails, and Eddie Wester. Franklin County Planning Director Scott DeLozier appeared as well.

Mr. Doss indicated in his November 24, 2021 notice of appeal that he sought to appeal the decision of the Board of Commissioners to rezone the Subject Property from Agriculture Intensive (AI) to Light Industrial (LI) districts, basing his appeal on “two primary factors” as follows:

- (1) “because a vast majority of the property lies in Banks County, Franklin County does not have authority to rezone the property;” and
- (2) “the Subject Property does not have adequate access to arterial streets to support LI zoning.”³

At the outset of the January 25, 2022 hearing, however, Appellant clarified that the sole issue before the Board of Appeals was whether Franklin County has legal authority to zone the Subject Property, because he contends the majority of the Subject Property lies in Banks County rather than Franklin County.

² In his notice of appeal, Mr. Doss did not identify the client(s) or interest(s) he represents, stating only that “[his] firm has been retained to assist in a matter regarding the recent rezoning of property.” While other citizens appeared at the Public Hearing to present testimony, it is unclear whether any of them were represented by Mr. Doss as interested parties.

³ See Doss notice of appeal letter dated November 24, 2021, attached hereto as Exhibit B.

II. Evidentiary Standard

Section 1804 of the Zoning Ordinance provides that “[t]he Board of Appeals is a body of limited powers, and its actions are taken in quasi-judicial capacity rather than a legislative capacity.” Pursuant to Section 1805 of the Zoning Ordinance, the Board of Appeals “is empowered to hear and decide appeals where it is alleged there is an error in any order, requirement, decision, or determination made by the Planning Director or Building Official, in the interpretation or enforcement of these land use protection regulations.” Although the notice of appeal did not indicate Appellant’s intention to seek review of an administrative decision of the Planning Director as relates to the district boundaries of the Subject Property, this Board recognizes that its scope of review is limited to that issue.⁴

Thus, the only issue properly before this Board of Appeals is whether the Planning Director erred in determining the Subject Property is located in Franklin County. Accordingly, based upon the above authority, these Findings are be based upon what was, in the determination of this Board, the probative and substantial evidence presented at the January 25, 2022 hearing.

III. Findings

Franklin County Planning Director, Scott DeLozier, presented the pertinent procedural history regarding the application of Troy Construction and the instant appeal. On August 4, 2021, in accordance with Section 1604 of the Zoning Ordinance, Troy Construction applied to rezone the Subject Property to Light Industrial (LI) district, which would allow Applicant, as a

⁴ This Board notes additionally that Section 1806 of the Zoning Ordinance provides that “[t]he Board of Appeals shall have original jurisdiction to, upon application, determine the location of a particular district boundary in question as specified in Section 302 of this Ordinance.” Appellant’s notice of appeal did not purport to seek a determination by the Board of Appeals in its original jurisdiction of the “location of a particular district boundary.” Rather, in both the notice of appeal, and subsequently in his presentation to the Board on January 25, 2022, Appellant argued that the action to rezone the Subject Property by the Franklin County Board of Commissioners was invalid because the County lacks the legal authority to zone the Subject property based upon his contention that the property lies in Banks County rather than Franklin County. That issue, while perhaps a proper subject for an action seeking review of a legislative zoning decision of the Franklin County Board of Commissioners to adopt an amendment to its zoning map, is not properly before the Board of Appeals.

permitted use, to store materials and equipment on the property for use in its utility contracting business. Mr. DeLozier recommended approval of the rezoning application pursuant to Section 1609 of the Zoning Ordinance, and after a Public Hearing was conducted on September 16, 2021 in accordance with Sections 1608 and 1611 of the Zoning Ordinance, the Franklin County Planning Commission recommended approval with conditions pursuant to Section 1610 and 1613. Mr. DeLozier submitted as evidence in this matter the Meeting Minutes from the September 16, 2021 Public Hearing and Meeting of the Franklin County Planning Commission, the Meeting Minutes from the October 4, 2021 Public Hearing and Regular Board Meeting of the Franklin County Board of Commissioners, and the Meeting Minutes from the November 1, 2021 Regular Board Meeting of the Franklin County Board of Commissioners. The Meeting Minutes submitted are attached hereto collectively as Exhibit C. Mr. DeLozier also tendered Troy Construction's Request for an Amendment to the Official Zoning Map (the "Application"), attached hereto as Exhibit D.

Appellant Doss then presented arguments in favor of his appeal. Appellant testified initially that he does not wish to question the process involved in the rezoning action, and noted that, in his legal opinion, the notices involved were "spot on." With respect to the only issue properly before this Board, Appellant indicated his belief that Franklin County lacks the authority to zone the Subject Property. In support of that contention, Appellant cited Article I, Section 1, Paragraph 11 of the Georgia Constitution indicating that the metes and bounds description of the several counties in Georgia shall remain as prescribed by law on June 30, 1983, unless changed under the operation of general law. Appellant also cited O.C.G.A. § 36-66-2 which recognizes and confirms the authority of local governments to exercise zoning power within their respective territorial boundaries. Appellant alleged the territorial boundary between

Franklin County and Banks County “tracks incredibly close” to a 2006 Franklin County Tax Map, which shows roughly 10% of the Subject Property located in Franklin County. Appellant argued that Franklin County can easily agree with Banks County to tax the portion of property located in Banks County; however, he argued that zoning the property is treated differently. Appellant submitted certain plats that he stated support his conclusion that the Subject Property is mostly located in Banks County rather than Franklin County. The plats submitted by Appellant are attached hereto as Exhibit E.

Mr. DeLozier responded, indicating that the documentation contained in Exhibit E was never presented to Franklin County. The only recorded plat that was presented to Franklin County for the Subject Property, and which is referenced in the recorded deeds to the Subject Property, is that plat of survey for Debra Bravo, dated July 7, 2014, prepared by DuSouth Surveying & Engineering, Inc., Registered Land Surveyor, recorded in Plat Book 29, Page 843, Franklin County Public Records (the “Bravo Survey”). The Bravo Survey and the recorded deeds referencing the Bravo Survey are attached hereto as Exhibit F. Mr. DeLozier pointed out that the Bravo Survey clearly depicts the Southwest property line of the Subject Property is the same as the county boundary, such that the entirety of the Subject Property is located in Franklin County. Mr. DeLozier also noted that Franklin County tax records indicate the Subject Property has been taxed in Franklin County for at least the last twenty (20) years.

Mr. Ridgway then appeared on behalf of the Property Owner, Troy Construction. Mr. Ridgway informed the Board that since the November 1, 2021 zoning decision, his client completed the purchase, and is now the owner of the Subject Property. (See Exhibit A) His client owns and operates a construction company doing business throughout the State of Georgia. Mr. Ridgway argued that at this point, his client owns property that is properly zoned for the use

his client is making of it, and stated his objection to Appellant bringing the instant appeal for lack of standing. With regard to the determination that the Subject Property is located in Franklin County, Mr. Ridgway stated his client presented the Bravo Survey as a part of its application for the map amendment that was granted by the Board of Commissioners on November 1, 2021. The recorded plat shows the entire 15.44 acres of the Subject Property is located in Franklin County. Mr. Ridgway also provided Franklin County tax records back to 2002 indicating the entirety of the Subject Property is located in Franklin County. The current tax map of Franklin County depicts the Subject Property is located in Franklin County. The tax map of Banks County is consistent with that of Franklin County, showing the Subject Property is not located in Banks County. The deeds in the chain of title to the Subject Property back to 1996 describe the Subject Property as being in Franklin County. The public records supporting his assertions in this regard were tendered by Mr. Ridgway and are attached hereto as Exhibit G. Mr. Ridgway urged the Board of Appeals to dismiss the instant appeal and reaffirm the rezoning of his client's property to Light Industrial zoning district.

After a brief recess, the floor was opened to the public for comment. Five (5) individuals presented testimony, essentially stating that each of them is opposed to the November 1, 2021 zoning decision of the Franklin County Board of Commissioners, referring to safety concerns and a petition indicating 103 people are against it. The testimony was largely consistent with the testimony presented and considered at the Public Hearings held in conjunction with the original rezoning application process. With respect to the issue properly before this Board, one individual, Stanley Beasley, indicated he has a road map on his basement wall that depicts the county line running through the subject property.⁵ Another individual, Katie Braswell, indicated she has communicated with Senator Bo Hatchett to express concern over the rezoning of

⁵ The map Mr. Beasley referred to was not tendered as evidence.

property that is split between two counties. Ms. Braswell also indicated she has spoken to the surveyor responsible for the Bravo Plat, but stated she is still working on getting information regarding the source of the legal description contained therein. Finally, Ms. Braswell tendered a 1996 deed that referenced an unrecorded plat of survey. Ms. Braswell presented a plat that she said she believes was the plat referenced in the 1996 deed. The Braswell deed and plat are attached hereto as Exhibit H.

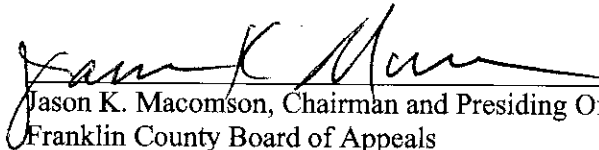
In rebuttal, Appellant contended that after reviewing U.S. Census Bureau information and records in the Office of the Georgia Secretary of State, there are no legal documents that show the location of the county boundary lines have changed. Appellant concluded by stating an opinion that basing a zoning decision off of how taxes are paid, and a single recorded plat is a "risky thing for the County to do," and encouraging the County to reconsider its zoning decision.

IV. Conclusion

The only issue properly before the Board of Appeals is whether the Planning Director erred in determining the Subject Property is located in Franklin County. Based upon the evidence presented and the arguments and testimony received during the hearing on January 25, 2022 as recited herein, the Board of Appeals, by majority vote, hereby affirms the determination by the Planning Director that the Subject Property is located in Franklin County. Based upon these Findings, the instant appeal is hereby DENIED.

So ordered this 7th day of February, 2022; *nunc pro tunc* to January 25, 2022.

For the Franklin County Board of Appeals


Jason K. Macomson, Chairman and Presiding Officer
Franklin County Board of Appeals