IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO
GENERAL DIVISION

RICHARD HAIG, et al.,	)	CASE NO. CV 16 863347
	)	
Appellants,	)	JUDGE NANCY R. McDONNELL
	)	
vs.	)	
	)	
THE CITY OF SOLON, OHIO, et al.,	)	**OPINION**
	)	
Appellees.	)	

The instant Administrative Appeal challenges Appellees City of Solon and Solon City Council's denial of Appellants Richard Haig, Ismat Y. Ghanem and Haya I. Ghanem's application for placement of farmland in an Agricultural District for property located at 39335 Bainbridge Road, Solon, Ohio 44139. Pursuant to ORC § 2506.04, the Court of Common Pleas must affirm the decision of the administrative body unless it determines that the decision is "unconstitutional, illegal, arbitrary, capricious, unreasonable or unsupported by the preponderance of substantial, reliable and probative evidence on the whole record." For the reasons that follow, the Appellant's denial of the application is upheld.

Appellant's first assignment of error raises the issue of due process. Appellants contend they were not afforded the opportunity to present evidence at the April 18, 2016 hearing before City Council. The audio/visual recording of the hearing belies this assertion. Additionally, notice of the public hearing was adequately given. It was published in the *Solon Sun* and *Solon Times* (Ex. 4) and the record contained properly returned certified mail addressed to Appellants (Ex. 6).

At the point of the council meeting to address Appellant's Application, Vice Mayor Russo opened the public hearing and asked for comments. He further requested that anyone wishing to make a comment to come forward. At this time, Law Director Lobe indicated to those in attendance that applicant would have a right to appeal and thus requested anyone who would be speaking to come forward and be sworn. Only Mr. Moore, Mr. Rosen and Planning Director Frankland did so. Moore and Rosen own neighboring parcels to the one in question.

At the conclusion of Moore and Rosen's testimony, Law Director Lobe asked if applicants had any questions. None were forthcoming. When Vice Mayor Russo asked if there were any other questions, no one came forward. Next, Lobe asked for the testimony of Planning Director Frankland. Once again, at the conclusion of that testimony, Russo asked for further comments. None were made.

Appellant's due process rights were in no way violated. Proper notice of the Solon City Council hearing was given by publication and certified mail. At the hearing applicants were given a number of opportunities to testify, question and comment. There was no violation of due process.

Appellant's second assignment error contends the decision of City Council was unconstitutional, illegal, arbitrary, capricious or unreasonable. The unrebutted testimony at the public hearing demonstrates it was not.

Both Mr. Moore and Mr. Rosen, owners of neighboring parcels, testified that the granting of the application would prevent the efficient use of land within the municipal corporation, the orderly growth and development of the municipal corporation, and the public health, safety and welfare. The neighbors explained each feared granting the application would affect their property value, that the area was otherwise residential, that the lots were narrow and an increasing number of animals

may pose a danger to residents. The Planning Director testified the area had been designated residential by a vote of the citizens for 30-40 years. These factors which were unrefuted by applicants are those the statute recognizes to disapprove an application pursuant to ORC § 929.02(B). The decision was not unconstitutional, illegal, arbitrary, capricious, unreasonable or unsupported by the preponderance of substantial, reliable and probative evidence.

Appellants complain in the third assignment of error that Appellees ignored the plain language of ORC § 929.02, which establishes an agricultural district when

> "1. The land is composed of tracts, lots or parcels that total not less than ten acres; **or** *(emphasis added).*
>
> 2. The activities conducted on the land produced an average yearly gross income of at least $2,500 during the three-year period or the owner has evidence of an anticipated gross income of that amount from those activities."

The undisputed evidence produced demonstrates that although the tract is only 4.603 acres, the second prong regarding gross income has been met. Solon Planning Director Frankland testified to this based on the submitted tax returns.

Despite the fact that the parcel in question meets the threshold requirement to qualify for an agricultural use, this is not determinative of whether City Council acted appropriately in denying the application. The testimony has shown as discussed in the second assignment error that the city was legally justified in its decision.

The fourth assignment of error claims Appellees' insistence on differentiating between animal husbandry and other agricultural use renders the decision arbitrary. This claim is inconsequential as all the unrefuted testimony indicated many factors contained in ORC § 929.02(B) existed which would properly support denial of the application.

Appellants' fifth assignment of error states Appellees unreasonably misconstrued the benefit that will accrue to Appellants if their land is placed in an agricultural district. This assignment addresses the viability of either the city or neighbors bringing a nuisance action against Appellants. While the exemption for nuisance complaints is not unfettered, the statute certainly does provide that such designation is a defense (See ORC § 929.04). This contention of appellant does not render denial of the application unreasonable.

In the sixth and final assignment of error, Appellant states Appellees unreasonably did not allow a carve-out for Appellant Haig's personal residence in finding that the property was not used exclusively for agricultural use. Appellants cite *Maralgate, L.L.C. v. Greene Ct. Bd. Of Revision*, 130 Ohio St.3d 316, 319, 2011-Ohio-5448 (2011), which is easily distinguishable. *Maralgate* dealt with tax valuation and the instant case deals with land use.

Although it could be found that Appellants' land is not devoted exclusively to agricultural use due to a residence being located on the parcel, such a finding is not essential to the ultimate decision. There is ample uncontroverted evidence as discussed in earlier assignments as to the propriety of Solon's decision to deny the application.

The decision of Appellees to deny the application for agricultural use is not unconstitutional, illegal, arbitrary, capricious, unreasonable or unsupported by the preponderance of substantial, reliable and probative evidence on the whole record. Therefore, the denial is upheld.

NANCY R. McDONNELL, JUDGE

Date: September 22nd, 2016

CERTIFICATE OF SERVICE

A copy of the foregoing Opinion was sent by ordinary U.S. Mail this 22nd day of September, 2016 to:

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NANCY R. MCDONNELL, JUDGE