

RENDERED: FEBRUARY 10, 2006; 2:00 P.M.  
NOT TO BE PUBLISHED

# Commonwealth Of Kentucky

## Court of Appeals

NO. 2004-CA-002535-MR

MARTY MCCLANAHAN  
AND NANCYE MCCLANAHAN

APPELLANTS

v. APPEAL FROM CAMPBELL CIRCUIT COURT  
HONORABLE LEONARD L. KOPOWSKI, JUDGE  
ACTION NO. 03-CI-01237

CAMPBELL COUNTY FISCAL COURT;  
CAMPBELL COUNTY AND MUNICIPAL  
PLANNING AND ZONING COMMISSION;  
AND BRINKMAN FAMILY, LLC

APPELLEES

OPINION  
AFFIRMING

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BEFORE: BUCKINGHAM, JOHNSON, AND TACKETT, JUDGES.

TACKETT, JUDGE: Marty McClanahan, et al., affected landowners in Campbell County, Kentucky, appeal from the decision of the Campbell Circuit Court, which affirmed a zoning change approval by the Campbell Fiscal Court. The appellants argue that the zoning change was contrary to the comprehensive plan for development and that the change constitutes impermissible spot

zoning, and that they were denied adequate notice of the public hearing. The appellees respond that the decision was supported by substantial evidence and thus must not be disturbed on appeal. We agree that the decision was supported by substantial evidence and affirm.

The property in question is in southern, rural Campbell County, on U.S. 27, and is owned by appellee Brinkman Oil Company, Inc., the business of appellee Richard Brinkman. Brinkman operated a convenience store in the area for many years prior to Brinkman requesting a zoning change so that the business could relocate after the Kentucky Department of Transportation began plans to widen the highway in the area, necessitating condemnation of the property on which Brinkman's convenience store was located at the time, in 2002. Brinkman purchased a 5-acre tract and sought a zoning change so that his business could be relocated and expanded.

In opposition to the change, adjoining landowners argued that the expansion of the business was too great and would lead to commercialization of the surrounding area, destroying the character of the neighborhood. The planning commission disagreed and approved the amendment, and the fiscal court adopted the commission's recommendation and issued final approval.

The adjoining landowners appealed to the circuit court, which held that the fiscal court's action was supported by substantial evidence and affirmed its decision. The landowners then appealed to this Court, arguing that the zoning action was inconsistent with the comprehensive plan for the county and thus not supported by substantial evidence.

The standard on appeal is a difficult one for the party challenging the decision below. The courts have traditionally limited the scope of review of zoning decisions, restricting themselves to the question of whether the decision is based on substantial evidence, as zoning is a legislative function, not a judicial one. Landgrave v. Watson, 593 S.W.2d 875 (Ky. App. 1979). Local authorities have broad discretion to determine the merits of each zoning map amendment, and these authorities may consider many factors, of which the effect on neighboring property values is only one. Hougham v. Lexington-Fayette Urban County Gov't, 29 S.W.3d 370, 372 (2000); Pierson Trapp Co v. Peak, 340 S.W.2d 456, 460 (Ky. 1960). A comprehensive plan is a guideline, not a set of rules from which the local authorities may not deviate. Ward v. Knippenberg, 416 S.W.2d 746 (Ky. 1967).

Here, we cannot say that the decision is unsupported by substantial evidence. The business in question was a long-established business that was being displaced by road

construction. The expansion of the business that was proposed was fairly modest, not a doubling in size as the Appellants have said. The underground storage tanks about which the Appellants expressed concerns are not appreciably different in size, number and capacity from the ones that were already in use at the existing location. The zoning authorities seemed to conclude that the impact of losing an existing business due to construction outweighed the concerns of the owners of the largely agricultural properties adjoining the parcel to which Brinkman proposed to relocate. Accordingly, we conclude, as did the circuit court, that the decision was based on substantial evidence and must be upheld.

Turning briefly to the argument that the adjoining landowners were not provided sufficient notice of the public hearing, we hold this argument to be without merit. The record reflects that the commission complied with the requirements of the statute in that they notified all those parties identified as adjoining landowners according to PVA records. Whether the Appellants in particular were notified in this manner or not, the record also reflects that they had actual notice of the hearing, appeared at the hearing, and argued against the change. Accordingly, no prejudice resulted, even if the commission had failed to notify them.

For the foregoing reasons, the judgment of the  
Campbell Circuit Court is affirmed.

BUCKINGHAM, JUDGE, CONCURS.

JOHNSON, JUDGE, CONCURS IN RESULT ONLY.

BRIEFS FOR APPELLANTS:

Mark D. Guilfoyle  
Crestview Hills, Kentucky

BRIEF FOR APPELLEES, CAMPBELL  
COUNTY FISCAL COURT AND  
CAMPBELL COUNTY MUNICIPAL  
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COMMISSION:

Jeffrey C. Mando  
Mary Ann Stewart  
Steven R. Dowell  
Covington, Kentucky

NO BRIEF FOR APPELLEE,  
BRINKMAN FAMILY, LLC