

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2006 CA 0793

TIGERLAND TRUCK STOP & CASINO, L.L.C.

VERSUS

TOWN OF ST. GABRIEL, LOUISIANA

Judgment Rendered: December 28, 2006

On Appeal from the Eighteenth Judicial District Court
In and For the Parish of Iberville
State of Louisiana
Docket No. 60,845

Honorable J. Robin Free, Judge Presiding

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Counsel for Intervenor/Appellee
Highway 30 Enterprises, Inc.

BEFORE: PARRO, GUIDRY, AND McCLENDON, JJ.

Parro, J., concurs.

Guidry, J., concurs in the result.

McCLENDON, J.

On April 27, 2004, Tigerland Truck Stop & Casino, L.L.C. (Tigerland) filed a suit for declaratory judgment and injunctive relief against defendant, Town of St. Gabriel. Tigerland prayed that a St. Gabriel ordinance be declared null, and an injunction issue against enforcement of the ordinance. Alternatively, Tigerland asked the court to declare that the ordinance forbids gaming in the truck stop operated by Highway 30 Enterprises, Inc. (Highway 30).¹ Highway 30 intervened and essentially asserted that the Highway 30 building permit was issued before adoption of the ordinance in question and could not be abrogated. After a hearing on cross motions for summary judgment, the trial court granted judgment in favor of St. Gabriel and Highway 30, and dismissed Tigerland's suit, with prejudice. Tigerland appealed. We affirm.

PROCEDURAL AND FACTUAL BACKGROUND

Based on a set of plans showing the proposed construction of a truck stop and video poker facility, St. Gabriel granted a building permit to Highway 30 on October 28, 1997. The building was substantially complete by November of 1998.

Before the building permit for the Highway 30 truck stop and video poker facility was issued, St. Gabriel had no zoning ordinances in effect that would restrict the building of truck stops offering video poker devices. The Mayor of St. Gabriel, at the time in question, testified by deposition that after Highway 30's permit was issued, the community wished to limit the number of such facilities. On December 10, 1998, after issuance of the permit and completion of the Highway 30 building, St. Gabriel passed an ordinance pursuant to LSA-R.S. 27:324. Said state statute allowed local

¹ Highway 30 Enterprises, Inc. was formerly known as Fred's Lounge, Inc. d/b/a Highway 30 Truck Plaza.

governing authorities to “enact zoning ordinances and building codes to regulate and restrict the placement or use of video draw poker devices, or the location, design, and construction of buildings . . . for licensed video draw poker device operation at qualified truck stop facilities” LSA-R.S. 27:324.

The relevant paragraphs of St. Gabriel ordinance 1999-01, Section 14(a) and (e), became effective on January 9, 1999, and provided that:

(a) Except to the extent otherwise permitted in this Ordinance or elsewhere, no building, structure or premises containing a nonconforming use shall hereafter be extended, altered, enlarged or changed, unless such extension, alteration, enlargement, or change shall conform to the provisions of the district in which it is located.

* * *

(e) Gambling or gaming establishment when operated as part of a truck stop is a nonconforming use in any district. The operation of any gambling or gaming establishment when operated as part of a truck stop, exactly as such use existed on the effective date of this Zoning Ordinance, may be continued as a nonconforming use. If this nonconforming use is abandoned, discontinued or ceases to operate it shall not thereafter be reestablished.

However, Section 13 governed structures or uses with existing permits, and provided that: “Any building, structure or use lawfully existing at the time of enactment of this ordinance may be continued as a nonconforming use even though [it] does not conform with the provisions of this ordinance” (Emphasis added.)

When asked in his deposition about Section 14(a) specifically, the mayor testified, as follows:

And that was done at the advice of our legal counsel because he didn’t want us to get into a position where we were doing something that would not hold up, because we had issued that [Highway 30] permit, so therefore when we finalized the ordinance he said: Well, you know, you’ve already done this [issuance].

By Mr. Marionneaux:

Q. Can't go back and undo what you've already done?

A. Correct. Yes.

The record also contains the deposition testimony of Mr. David Roshto, a representative of Highway 30. He testified that Highway 30 received a permit to build a truck stop video poker facility in St. Gabriel. When asked why there were no other video poker truck stops, he replied, "They weren't permitted," that is, no one else had been issued a valid permit.

After opening as a truck stop, Highway 30 had to sell a certain amount of fuel per month as one of the requirements for a state gaming license for the video poker machines. After reaching the rate that allowed Highway 30 to operate 50 video poker machines, Highway 30 applied for, and subsequently received from the state, a gaming license for the Highway 30 facility in St. Gabriel in May of 1999. The machines were enabled on May 19, 1999.

Tigerland primarily relied on the wording of Section 14(e), and argued that only establishments with gaming in progress at the time of the ordinance's enactment were allowed to continue. Highway 30 did not have active gaming devices until after the passage of the ordinance. Thus, Tigerland argued, the Highway 30 video poker operation should be shut down as not in compliance with the ordinance.²

APPLICATION OF LEGAL PRECEPTS

On motions for summary judgments, the appellate courts conduct a *de novo* review. **Costello v. Hardy**, 2003-1146, p. 8 (La. 1/21/04), 864 So.2d 129, 137. If there is no genuine issue of material fact, and the movant is

² Finding that Highway 30's permit to build a truck stop video poker facility in St. Gabriel was validly issued, we pretermitted discussion of Tigerland's assignment based on the claim that the ordinance impermissively outlawed all video poker facilities in the town.

entitled to judgment as a matter of law, the motion for summary judgment must be granted in the movant's favor. LSA-C.C.P. art. 966B.

After a thorough *de novo* review of this particular record, we find no error by the trial court. This case involves the issuance of a building permit by the town. The building permit in question was issued before the ordinance adopted by St. Gabriel restricted the building or location of subsequent truck stop gaming facilities. In other words, prior to the ordinance, Highway 30 was validly permitted to build a structure for use as a gaming facility. After passage of the ordinance, the language of Sections 13 and 14(a) recognized pre-existing "permitted" buildings and uses. Town of St. Gabriel Ordinance 1999-01, Section 14(a). Although the use as a video poker facility could not be implemented until a gaming license was approved by the state, the intended use as a video poker truck stop was known to the town and approved before the enactment of the ordinance. Video poker play could not begin until after the building was completed and a gaming license obtained. There is no showing of an undue or unnecessary delay between completion of construction and application for the requisite state gaming license. Nor was there a showing of a public safety or welfare concern. **Four States Realty Co., Inc. v. City of Baton Rouge**, 309 So.2d 659, 672 (La.1975) (on rehearing) (Generally, owners may rely on previous zoning, "expecting that changes in zoning will only be made so as to affect vested property interests when the change is required to assure the public welfare."). Thus, we find no support in this record for revocation of a pre-existing, validly issued building and use permit for a now completed building via retroactive application of the ordinance at issue. See **Four States Realty Co., Inc.**, 309 So.2d at 672-74; **A to Z Paper Co., Inc. v. Carlo Ditta, Inc.**, 99-1189, p. 8 (La.App. 4 Cir. 10/4/00), 775 So.2d 42, 47,

writ denied, 2000-3431 (La. 2/9/01), 785 So.2d 824 (issuance of a permit determined by existing zoning, not future zoning plans); **Deshotel v. Calcasieu Parish Police Jury**, 323 So.2d 155, 157 (La.App. 3 Cir. 1975), writ denied, 326 So.2d 371 (La.1976) (construction cannot be made retroactively illegal by an ordinance); for background information, see generally **Davis v. Town of St. Gabriel**, 2001-0031, p. 12 (La.App. 1 Cir. 2/15/02), 809 So.2d 537, 545, writs denied, 2002-0771 & 2002-0803 (La. 10/14/02), 827 So.2d 420 (Although validity of compromise was at issue, not a permit per se, this court noted that St. Gabriel “grandfathered” in the Highway 30 project and barred further such facilities.).

For these reasons, we affirm the judgment of the trial court. The costs of the appeal are assessed to plaintiff-appellant, Tigerland Truck Stop & Casino, L.L.C.

AFFIRMED.