

IN THE DISTRICT COURT OF MCCLAIN COUNTY  
STATE OF OKLAHOMA

THERESA MONNARD )  
)  
Plaintiff, )  
)  
v. )  
)  
CITY OF NEWCASTLE, OKLAHOMA, *ex rel.*, )  
NEWCASTLE PLANNING AND ZONING )  
COMMISSION, GORDON HARNESS, )  
Individually, MICHEAL LITTLEJOHN, )  
Individually, NATHAN RYKER, )  
TONY SPECK, Individually, and DENNIS )  
SANDERS, Individually, )  
)  
Defendants. )

Case No. CJ-09-374

FILED IN DISTRICT COURT  
McClain County, Oklahoma  
JUN 08 2009  
by Lynda Baker, Court Clerk  
Deputy

**PETITION**

COME NOW Plaintiff, Theresa Monnard, and for her action against Defendants, the City of Newcastle, Oklahoma, *ex rel.*, Newcastle Planning and Zoning Commission (collectively the "City"), Gordon Harness, an individual ("Harness"), Michael Littlejohn, an individual ("Littlejohn"), Nathan Ryker, an individual ("Ryker"), Tony Speck, an individual ("Speck"), and Dennis Sanders, an in individual ("Sanders"), and Harness, Littlejohn, Ryker, Speck, and Sanders collectively referred to herein as the "Planning Commission" hereby alleges and states as follows:

**PARTIES**

1. Theresa Monnard is an individual residing in Newcastle, McClain County, Oklahoma.
2. Upon information and belief, the City of Newcastle, *ex rel.*, Planning Commission is an incorporated municipality in the State of Oklahoma with its principal place of business in McClain County, Oklahoma.

3. Upon information and belief, Harness is an individual residing in Newcastle, McClain, County, Oklahoma, and is a board member on the Planning Commission.
4. Upon information and belief, Littlejohn is an individual residing in Newcastle, McClain County, Oklahoma, and is a board member on the Planning Commission.
5. Upon information and belief, Ryker is an individual residing in Newcastle, McClain, County, Oklahoma, and is a board member on the Planning Commission.
6. Upon information and belief, Speck is an individual residing in Newcastle, McClain County, Oklahoma, and is a board member on the Planning Commission.
7. Upon information and belief, Sanders is an individual residing in Newcastle, McClain County, Oklahoma, and is a board member on the Planning Commission.

#### **GENERAL STATEMENT OF FACTS**

8. In or about August 1999, at significant expense, Theresa Monnard purchased one acre of real property located at 1838 SE 32<sup>nd</sup> Street, Newcastle, Oklahoma (the "First Parcel"). At the time the First Parcel was purchased, it was zoned by the City of Newcastle R-2.
9. Ms. Monnard specifically purchased the First Parcel on the City's representation and in accordance with the requisite 1986 Code of Ordinances and Zoning Regulations for the City of Newcastle that she would be able to reside on the Property and operate a not-for-profit animal rescue on the First Parcel (reference to the Code of Ordinances shall be hereinafter referred to as the "Code" and reference to the Zoning Regulations shall be hereinafter referred to as the "Regulations").
10. Commensurate with the purchase of the First Parcel and in compliance with the 1986 Code and 1986 Regulations, Ms. Monnard applied for a kennel license with the City of Newcastle, which was granted without any requirements or mention of a special permit, use on review, or any restrictions or requirements.

11. Accordingly, in or about 2001, Ms. Monnard purchased an additional half-acre, zoned A-1, contiguous with the First Parcel, and at considerable expense, constructed a state of the art indoor/outdoor animal shelter (the "Second Parcel"). Ms. Monnard applied for the necessary permits for the construction of the kennel with the City of Newcastle, which were freely given without any requirement for a special permit, use on review, or any restrictions or limitations. Reference to the First Parcel and Second Parcel hereinafter are referred to collectively as the "Property."

12. At all relevant times, Ms. Monnard utilized the Property as her personal residence and a not-for-profit animal rescue specializing in rescue, rehabilitation and hospice for dogs otherwise known as Rocky Spot Rescue (the "Rescue").

13. At all relevant times, and in accordance with the 1986 Code and 1986 Regulations, the City issued Ms. Monnard a kennel license to operate the Rescue and reside on the Property from 1999 forward.

14. The Rescue operated and Ms. Monnard resided on the Property peacefully for more than seven (7) years and with the full consent of the City, and within the purview of the 1986 Code and 1986 Regulations and all other applicable ordinances, until one resident began to lodge private complaints regarding the "noise" resulting from the Rescue.

15. As a direct result of the complaints from one resident, on March 2, 2007, counsel for the City demanded Ms. Monnard submit an application for "Use on Review" for the continued operation of the Rescue on the Property. However, at no time prior to this correspondence, did the City ever request, aver or reference that the Property or the continued operation of the Rescue was subject to a "Use on Review" nor was a "Use on Review" in effect, utilized or common practice prior to 2003, when the City of Newcastle amended the Code and Regulations, four years after Ms. Monnard purchased the Property.

16. On November 28, 2008, the City, advised Ms. Monnard she was required to submit an application for "Use on Review" under the 2003 Code and 2003 Regulations even though it was previously represented to her that she was "grandfathered-in".

17. As a direct result of the City's mandate and in fear of losing her kennel license, Ms. Monnard submitted to the City an application for "Use on Review" (the "Application") in accordance with the current Code and Regulations, even though the Property and use and operation of the Rescue was grandfathered-in and not subject to such review under the current Code.

18. On or about May 18, 2009, Ms Monnard appeared before the Planning Commission on her Application. During this meeting, the Planning Commission entertained a proposal submitted on behalf of the Rescue for her continued use of the Property and took notice of the personal complaints of the complaining resident. Thereafter, Harness recognized, acknowledged and stated a Use on Review was disjointed in this instance because the Rescue has been in operation for ten (10) years.

19. Nevertheless Harness, Speck, Ryker, Littlejohn, Sanders and the Planning Commission, continued to render a "ruling" which irreparably harms the Rescue, is contrary to City ordinances and retroactively imposes ordinances and use restrictions in violation of the Oklahoma and United States Constitution. The Planning Commission further "ruled" the Rescue would be subject to unannounced inspections and would be subject six month reviews by the Planning Commission to ensure "the operation of the Rescue was working" and the "noise" levels did not disrupt one citizens summer barbeques, which was the subject of much discussion at the Planning Commission meeting.

20. Further the Planning Commission failed to make an actual recommendation to the City and instead reset the Application for a final review six month out to ensure the complaints of one

citizen had been fully satisfied and directed that the Rescue immediately implement the restrictions adopted by the board.

21. The powers bestowed to the Planning Commission are specifically limited and set forth the code of ordinances. Notably, the Planning Commission's purpose is limited is to conduct research, review and make recommendations to the City Council for a final determination and ruling. Accordingly, the Planning Commission lacks any and all power, authority or right to implement, regulate, rule or enact regulations or restrictions for any "Use on Review" much less enable a "zoning police power" to enforce arbitrary rulings imposed by the Planning Commission.

22. A "Use on Review" did not exist in Newcastle until 2003 and as written only applies in new development and construction under the zoning regulations. In this instance, the Rescue has been in operation and in existence since 1999, thus four years prior to any notion of a Use on Review was ever created or in force or affect by the City's own Code and Regulations.

23. The City has not, and cannot attribute any relationship between its retroactive application of the current Code and/or current Regulations to the public health, safety, morals or general welfare and otherwise constitutes an unreasonable exercise of the City's police power and contrary to Oklahoma Constitution.

24. The City has wholly failed to demonstrate how the Property is now subject to the current Code or how the current Regulations are applicable inasmuch as Ms. Monnard operated the Rescue with the full consent of the City for ten (10) years without any restrictions, requirements, or limitations.

25. The City's retroactive application of the Code as means to enforce an arbitrary "Use on Review" fails to comport with the language set forth in the applicable 1986 Code and

Regulations and is arbitrary, capricious and in violation of Oklahoma law and the United States Constitution.

26. The City's retroactive application of the Code as means to control, regulate, shut-down and police a Rescue that has been operating lawfully and in existence for ten (10) years, is arbitrary, capricious and in violation of Oklahoma law and the United States Constitution.

**FIRST CAUSE OF ACTION**  
(Abuse of Discretion)

Plaintiff re-alleges and adopts those contentions set forth in paragraphs 1 through 26 above, and in support of its First Cause of Action against Defendants does hereby state as follows:

27. The Defendants retroactive application of the Code to require Ms. Monnard to submit the Application for use on review constitutes an abuse of discretion. Specifically, the City's demand that a use on review occur ten (10) years after Ms. Monnard has been owned, lived and operated the Rescue is arbitrary, capricious and an abuse of power.

28. The Defendants retroactive application of the Regulations is also arbitrary, capricious and contrary to Oklahoma law. Specifically, the Defendants abusive scheme to retroactively apply the Regulations, as means to control the use of the Property which has been in use for 10 years, for the sole purpose of satisfying the Defendants self-serving goals and not for the public health, safety, morals or general welfare of Newcastle, and is arbitrary, capricious and contrary to Oklahoma law.

29. In addition, the City's conduct, as referenced above, does not bear a substantial relation to the public health, safety, morals or general welfare, and otherwise constitutes an unreasonable exercise of the City's police power or authority.

30. The conduct of Harness, Littlejohn, Ryker, Speck and Sanders and Planning Commission exceeds the scope of the power given to them under the Code and Regulations and therefore action is arbitrary, capricious and contrary to Oklahoma law.

31. The conduct of Harness, Littlejohn, Ryker, Speck and Sanders and Planning Commission, as set forth herein, were done willfully, wantonly and in bad faith.

WHEREFORE as a result of the Defendants' conduct Ms. Monnard is entitled to judgment enjoining the City from enforcing and/or retroactively applying the Subdivision Regulations in relation to the Property, costs, attorney fees and any all other relief that this Court finds equitable.

**SECOND CAUSE OF ACTION**  
(Violation of Due Process)

Plaintiff re-alleges and adopts those contentions set forth in paragraphs 1 through 31 above, and in support of its Second Cause of Action against Defendant, the City, does hereby state as follows:

30. Harness, Speck, Ryker, Littlejohn, Sanders, The Planning Commission and The City's conduct in retroactively requiring a "Use on Review" was arbitrary, capricious and without a rational basis, and constitutes an arbitrary deprivation of Ms. Monnard's property rights and due process of law. Specifically:

- a. The City retroactively applied the 2003 Code and Regulations to require a "use on review," thereby arbitrarily depriving Ms. Monnard of her property rights;
- b. The City arbitrarily and without basis is subjecting the Property to the to jurisdiction of the 2003 Code and Regulations, despite the fact that the use and characterization of the Property has not changed, thereby arbitrarily depriving Ms. Monnard of her property rights; and
- c. The City arbitrarily and without basis demanded unnecessary restrictions and requirements as a condition predicate to operation of the Rescue, thereby arbitrarily depriving Ms. Monnard of her property rights.

WHEREFORE, the conduct of Harness, Speck, Ryker, Littlejohn, Sanders, The Planning Commission and The City's, as described above, constitutes an arbitrary deprivation of Ms. Monard's property rights and violates the Due Process Clause.

**THIRD CAUSE OF ACTION**  
(Detrimental Reliance, Estoppel, Injunction, Waiver)

Plaintiff re-alleges and adopts those contentions set forth in paragraphs 1 through 30 above, and in support of its Third Cause of Action against Defendants does hereby state as follows:

31. As more fully set forth above, the City continuously and without limitation, restriction or requirement granted and issued a kennel license to Ms. Monnard for the operation of the Rescue for over ten (10) years. At no time, prior to 2007, has the City withheld a kennel license or ever stated the operation of the kennel was subject to a special use permit or that a "Use on Review" was required or necessary.

32. That the City allowed the construction of a state-of-the art shelter on the Property without limitation, restriction or requirement and granted all necessary construction permits. At no time, prior to 2007, has the City withheld a kennel license or ever stated the operation of the kennel was subject to a special use permit or that a "Use on Review" was required or necessary.

33. Ms. Monnard has relied to her detriment on the City's actions and has invested a significant expense in the upkeep and development of the Rescue and Property. Moreover the life and welling being of countless dogs are wholly dependent on the continued operation of the Rescue and Property which serves as a direct benefit to the citizens of McClain County.

34. Ms. Monnard has sustained financial losses and has been damaged in an amount in excess of Ten Thousand Dollars (\$10,000.00), exclusive of attorneys' fees, costs and interest.

WHEREFORE, the City should be enjoined and estopped from enforcing the provisions of the current Code and Regulations as to the subject Property.

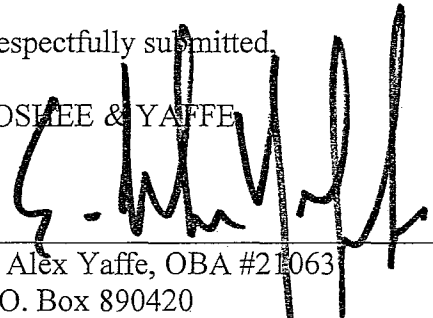
**PRAYER FOR RELIEF**

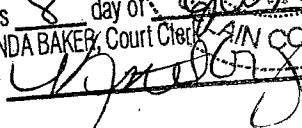
WHEREFORE, premises considered, Plaintiff, Theresa Monnard prays for judgment in his favor as follows:

- a. Judgment finding that the Defendants conduct in retro-actively enforcing the Code and Zoning Regulations was arbitrary, capricious and without a rational basis;
- b. Judgment finding that the conduct of the City was an arbitrary deprivation of Ms. Monnard's property rights in violation of the Due Process Clause;
- c. Judgment enjoining the City from enforcing a "Use on Review;"
- d. Judgment enjoining Defendants from retroactively applying the Code and Regulations;
- e. Actual damages (general and special) to compensate Plaintiff for loss of use of its Property caused by Defendants' wrongful conduct and to compensate Plaintiff for monies expended on the development of the Property in reliance of the consent the Defendants to operate the Rescue;
- f. Recovery of all attorney fees and, if appropriate, costs and such other relief as provided by statute or law; and such other relief as may be just and proper.

Respectfully submitted,

FOSLEE & YAFFE

  
S. Alex Yaffe, OBA #21063  
P.O. Box 890420  
Oklahoma City, OK 73189  
*Attorneys for Plaintiff*

I, LYNDIA BAKER, Court Clerk for McClain County, OK, hereby certify that the foregoing is true, correct, and complete copy of the instrument herewith set out as appearing in the Court Clerk's Office of McClain County, Oklahoma.  
This 8 day of June 2009  
LYNDIA BAKER, Court Clerk  
By  Deputy

