Albert J. SCHWAB
v.
ZONING BOARD OF APPEALS OF the TOWN OF DARIEN.

Supreme Court of Connecticut.

Jan. 25, 1967.

Proceeding to review decision of zoning board of appeals which had sustained zoning and building inspector in notifying property owner that he was violating zoning regulations. The Court of Common Pleas, Fairfield County at Stamford, trial to the court, Tierney, J., entered judgment dismissing the appeal and property owner appealed. The Supreme Court, Alcorn, J., held that under zoning regulations providing that any use of residential property not specifically permitted by regulations is prohibited and which did not in express terms permit maintenance of dog kennel and which permitted farming but after defining farming specifically stated that dog kennels shall not be included, maintenance of kennel on property owner's property was prohibited.

No error.

1. Zoning ⇐231

In interpreting language of zoning regulations, reviewing court's function is to determine expressed legislative intent of town planning and zoning commission.

2. Statutes ⇐181(1)

Intent of legislating body is to be found not in what it meant to say but in meaning of what it did say.

3. Zoning ⇐279

Under zoning regulations providing that any use of residential property not specifically permitted by regulations is prohibited and which did not in express terms permit maintenance of dog kennel and which permitted farming but after defining farming specifically stated that dog kennels shall not be included, maintenance of kennel on property owner's property was prohibited.

George B. Smith III, with whom was Sidney Vogel, Norwalk, for appellant (plaintiff).

Warren W. Eginton, Stamford, with whom, on the brief, was Edward R. McPherson, Jr., Stamford, for appellee (defendant).

Before KING, C. J., and ALCORN, HOUSE, THIM and RYAN, JJ.

ALCORN, Associate Justice.

The plaintiff has appealed from a judgment of the Court of Common Pleas sustaining a decision of the Darien zoning board of appeals, which in turn had sustained the Darien zoning and building inspector in notifying the plaintiff that he was violating § 220.18 of the zoning regulations by maintaining a dog kennel on his property.

The plaintiff leases property located in what is designated as an R–⅓ residence zone. At the time the notice was served on him by the building and zoning inspector, he owned and kept six dogs within the confines of this property. He had owned some of these dogs for about three years and, during the last year, had sold five puppies from a single litter of eight. The plaintiff claims that he keeps the dogs as a hobby to exhibit at dog shows and that the five puppies were sold, not as a commercial transaction, but because he did not wish to retain all of the litter. No evidence to the contrary is before us.

The R–⅓ zone permits a one-family residence on one-third of an acre of land. Darien Zoning Regs. § 300 (1957, as amended). It is next to the least restricted of five residential zones. The zoning regulations provide that no building shall be erected and no land shall be used for any purpose except in conformity with the regulations for the zone in which it is located.

§ 403. Section 424 provides that any use not specifically permitted by the regulations is prohibited. Under these regulations no use is permissible within a given zone unless it is expressly authorized. Park Regional Corporation v. Town Plan & Zoning Commission, 144 Conn. 677, 682, 136 A.2d 785.

The uses which are permitted in an R-⅓ zone include all those allowed in the three more restricted residential zones, including enumerated principal uses requiring special permits and enumerated accessory uses. Without listing these, it is sufficient to note that none of them, in express terms, permit the maintenance of a dog kennel either under a special permit or as an accessory use. Farming, as defined in the regulations, is however, permitted in an R-⅓ zone, either as a principal or an accessory use. The plaintiff does not claim to be engaged in farming, but he does rely on that permitted accessory use to justify his maintenance of a kennel on his property. Likewise, it is that accessory use which the zoning and building inspector claimed had been violated. That section of the ordinance reads as follows: "Section 220.18 *Farming:* Farming shall include the use of a lot, either as a principal use or an accessory use, for the purpose of producing agricultural, horticultural, floricultural, vegetable, and fruit products of the soil, and shall include the raising of horses and other domestic farm animals. Riding academies, livery stables, dog kennels, the breeding, raising or habitation of furbearing animals, commercial poultry farms, stands for the sale of produce or the commercial processing of the products of the farm, shall not be included."

[1, 2] The question to be decided is whether that language permits the plaintiff to continue the use which he is making of his property. The adoption of the zoning regulations by the town planning and zoning commission, although local in scope, was basically a legislative process, and in interpreting the language of the regulations, our function is to determine the expressed legislative intent. Park Regional Corporation v. Town Plan & Zoning Commission, supra. The intent of the legislative body is to be found, not in what it meant to say, but in the meaning of what it did say. Connecticut Light & Power Co. v. Sullivan, 150 Conn. 578, 581, 192 A.2d 545; Toll Gate Farms, Inc. v. Milk Regulation Board, 148 Conn. 341, 344, 170 A.2d 883; Mad River Co. v. Town of Wolcott, 137 Conn. 680, 688, 81 A.2d 119; Lee Bros. Furniture Co. v. Cram, 63 Conn. 433, 438, 28 A. 540.

It is immaterial, for present purposes, whether the word "kennel" means a collection of dogs or the quarters in which they are housed. State v. Tripp, 84 Conn. 640, 645, 81 A. 247; Webster, Third New International Dictionary, p. 1237. This court has had occasion, many times, to discuss the emergence of the dog, aided by statute, from its lowly common-law status as an animal considered "to be 'base', inferior, and entitled to less regard and protection than property in other domestic animals"; Woolf v. Chalker, 31 Conn. 121, 127; to its current status which accords "the full recognition of property rights in dogs as in other domestic animals." Soucy v. Wysocki, 139 Conn. 622, 627, 96 A.2d 225, 228; see also Griffin v. Fancher, 127 Conn. 686, 20 A.2d 95, 134 A.L.R. 701; Dickerman v. Consolidated Ry. Co., 79 Conn. 427, 65 A. 289; Ford v. Glennon, 74 Conn. 6, 49 A. 189; Town of Wilton v. Town of Weston, 48 Conn. 325, 336.

In a day when countless people regard the dog as a faithful companion, a staunch guardian, and a family pet, we think it unlikely that the Darien zoning authority actually intended to exclude every dog kennel from a residence zone. It may very well be, as the plaintiff claims, that the intent, as a state of mind, was only to exclude a commercially operated kennel. Our function, however, is circumscribed, for, as already stated, where the language is plain, we must give effect to the intention expressed in the regulation.

[3] Section 220.18 of the zoning regulations, after defining "farming", specifically states that "dog kennels * * * shall not be included." The statement is unqualified and all inclusive. Its scope is not affected by the portion of the definition of "farming" which includes "the raising of horses and other domestic farm animals." The dog's lowly state in the early common law is accounted for largely because it was excluded from classification with other domestic animals. Soucy v. Wysocki, supra; Town of Wilton v. Town of Weston, supra; Woolf v. Chalker, supra. While the dog has been domesticated, it does not, in the circumstances of the present case, meet the definition of a "domestic farm animal." If emphasis is needed for the fact that this regulation does not include the dog in the term "domestic farm animals", it is found in the express exclusion of a dog kennel from the activities embraced in the definition of "farming." It follows that nothing in § 220.18 of the Darien zoning regulations permits the maintenance of a kennel in an R-⅓ zone. Hence that use, on the plaintiff's property, is prohibited.

There is no error.

In this opinion the other judges concurred.

The SLOANE-WHEELER CORPORATION et al.
v.
Smaro ODISEOS et al.

Supreme Court of Connecticut.

Jan. 17, 1967.

Action to quiet title to realty, for a declaratory judgment, and for other relief. The Superior Court, Fairfield County, Gaffney, J., upon trial to the court, entered judgment for plaintiff, and defendants appealed. The Supreme Court held that an action for a declaratory judgment relieving owners of lots in a subdivision from certain building and use restrictions could not be maintained where there was no showing that all persons having any interest in the removal of the deed restrictions on the lots in the subdivision either were made parties to the action or had reasonable notice thereof.

Error, judgment set aside and case remanded with directions.

The appellees filed a motion for reargument which was denied.

1. Declaratory Judgment ⇐256, 293

Strict observance of jurisdictional requirement of making all parties having an interest in subject matter of a complaint for a declaratory judgment a party to the action or giving them reasonable notice thereof is necessary to maintain an action for declaratory relief. Practice Book 1963, § 309; C.G.S.A. § 52-29.

2. Declaratory Judgment ⇐256, 296

An action for a declaratory judgment relieving owners of lots in a subdivision from certain building and use restrictions could not be maintained where there was no showing that all persons having any interest in the removal of the deed restrictions on the lots in the subdivision either were made parties to the action or had reasonable notice thereof. C.G.S.A. § 52-29; Practice Book 1963, § 309.

John C. Macrides, Stamford, with whom, on the brief, was Donald F. Zezima, Stamford, for the appellants (defendants).

Emile W. Jacques, Jr., Greenwich, with whom was Everett Fisher, Greenwich, for the appellees (plaintiffs).

Before KING, C. J., and ALCORN, HOUSE, THIM and RYAN, JJ.

PER CURIAM.

In 1906, a tract of land in Greenwich known as The Maples was divided into for-