

**SUPREME COURT OF LOUISIANA**

**No. 97-C-1873**

**CARL J. KING, ET UX**

**Versus**

**CADDO PARISH COMMISSION**

**Knoll, Justice, concurring**

In my view the Commission is not bound to adopt a non-arbitrary ZBA decision to grant a zoning variance and thereby allow plaintiff to operate a gaming establishment at his truck stop.

The planning commission recommends, *inter alia*, ordinances to the city council and police jury. La.R.S. 33:140.37. The city council and police jury enact ordinances, including zoning ordinances. La.R.S. 33:140.29. Zoning ordinances “shall provide for a Board of Appeals” (La.R.S. 33:140.32(A)) and “*may* provide for and specify general rules to govern the organization and procedure of such board of appeals.” La.R.S. 33:140.32(B). The board of appeals (designated in the opinion as ZBA) “shall” have enumerated powers including the power

[t]o hear and decide, *in accordance with the provisions of any such ordinance*, request for special exceptions or for interpretations of the map or for decisions upon other special questions upon which such board is authorized by any such ordinance to pass.

La.R.S. 33:140.32(E)(2). (Emphasis added.) Reading the statutory provisions in conjunction with each other, it appears that the ZBA would have the power to decide exceptions, or variances when the ordinances permit.

Local Ord. No. 798, § II, A, 5,2-13-58, or Sec. 51-130, provides:

Except as hereinafter provided:

(1) No land shall be used or occupied, no structure shall be erected, altered, used or occupied, and no use shall be operated unless in conformity with the regulations herein prescribed for the district in which such structure or land is located.

The only ordinance exception relating to gaming provided for continuing non-abandoned lawful gaming operations pursuant to Caddo Parish Ordinance No. 309, Section 2. ZBA's decision to grant a variance not in conformity with local ordinances is not entitled to deference by the Commission, when the Commission is charged with

guiding and *accomplishing* a coordinated, adjusted, and harmonious development of the metropolitan planning area which will, in accordance with existing and future needs, best promote public health, safety, morals, order, convenience, prosperity, or the general welfare, as well as efficiency and economy in the process of development.

La.R.S. 33:140.11. (Emphasis added.) If the Commission's hands are tied with respect to decisions made by the ZBA, then its statutory mission to *accomplish* coordinated development could not be achieved.

The Commission made its decision to reverse the ZBA based on accomplishing a harmonious development of the area pursuant to La.R.S. 33:140.1 et seq.<sup>1</sup> Commissioner Gillen, speaking on behalf of the Commission as a whole, specified that the decision to overturn the ZBA's decision was based on land use. He noted that the establishment's presence would not be compatible with the surrounding area, noting the proximity to four churches and two schools. Therefore, the Commission is not bound to affirm the ZBA decision; its review may be independent, based on its statutory authority.

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<sup>1</sup>The statutory scheme of La.R.S. 33:140.1 et seq. (Shreveport Metropolitan Planning) was to plan and effectuate a master design that would lead to a unified development and provide standards. La.R.S. 33:140.1.