

**IN THE COURT OF APPEALS 10/15/96**

**OF THE**

**STATE OF MISSISSIPPI**

**NO. 94-CA-00822 COA**

**JOHN HUDSON, D/B/A/ GULF COAST GATOR RANCH**

**APPELLANT**

**v.**

**JACKSON COUNTY, MISSISSIPPI**

**APPELLEE**

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND  
MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. BILL JONES

COURT FROM WHICH APPEALED: JACKSON COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

WILLIAM T. REED

ATTORNEY FOR APPELLEE:

PEGGY G. MULLINS

NATURE OF THE CASE: CIVIL: LAND USE

TRIAL COURT DISPOSITION: AFFIRMED BOARD OF SUPERVISORS' DENIAL OF THE  
REQUESTED SPECIAL EXCEPTION AND USE PERMIT

BEFORE BRIDGES, P.J., DIAZ, AND SOUTHWICK, JJ.

## SOUTHWICK, J., FOR THE COURT:

John Hudson appeals the denial of his application for a special exception and use permit. He raises issues regarding the sufficiency of the evidence and the absence of specific findings of fact by the Jackson County Board of Supervisors and the circuit court regarding the denial of his use permit. We affirm.

## FACTS

John Hudson, doing business as Gulf Coast Gator Ranch, owns and operates an alligator farm located in an A-1 general agricultural zone. Hudson's property is bordered to the south and to the west by low wetlands. The nearest occupied property to the east is an auto salvage yard, and Highway 90 runs near the north border. At the time Hudson made his application, the Fish and Wildlife Service was in the process of acquiring a wildlife refuge in the neighboring area. Hudson applied to the Jackson County planning commission for a special exception to permit retail sales of aquatic products and novelties on his property and to allow him to operate a tourist attraction including walking, air boat, and canoe tours of the farm. At the planning commission hearing, members of the community expressed their concerns about Hudson's request. Cited as potential adverse impacts of Hudson's proposal were possible drainage problems, noise from air boats and tourists, traffic and parking problems, and harm to the environment. The Commission denied Hudson's application. After conducting a de novo hearing, the Jackson County Board of Supervisors affirmed the commission. Hudson appealed the board's decision to the Jackson County Circuit Court. Two months after his application for a special exception, Hudson applied to the planning commission for a use permit to allow "retail sales of gator products and novelties" on his property. The commission held another hearing and recommended that the board grant the permit. The commission's decision was appealed to the board of supervisors. After a hearing on the matter, the board voted not to accept the commission's recommendation and denied the use permit. Hudson appealed to the circuit court. The court consolidated Hudson's appeal on the special exception with his appeal on the use permit and affirmed both board decisions.

## DISCUSSION

Under the Jackson County zoning ordinance, alligator farming is a form of aquaculture, which is a permitted use in an A-1 zoning district. Thus, the use of Hudson's property as an alligator farm is not at issue. Although much of the testimony at the hearings involved the public's concern about the presence of Hudson's alligators in the community, such considerations were irrelevant then, and remain irrelevant now. At issue in this appeal is whether the circuit court had legally cognizable grounds to interfere with the board of supervisors' decision to deny Hudson's requests for a special exception and a use permit. To decide this issue, we examine the zone's purpose, the criteria to obtain a variance, and the evidence presented regarding the legitimate zoning concerns. As stated in the zoning ordinance, the A-1 district is "an area primarily for agricultural purposes and low density residential development." According to the ordinance, the district's purpose is "to encourage and protect such uses from urbanization until such is warranted and the appropriate change in district classification is made." Our task is to consider the evidence to determine whether Hudson's application met the criteria for either a special exception or a use permit in light of this stated purpose.

Under the county's zoning ordinance, the planning commission may not recommend a special exception to the board of supervisors unless the following criteria have been met:

- 1) All procedures and provisions . . . for public hearing procedures have been met, and:
  
- 2) The planning commission determines: (1) that a literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other residents of the district in which the property is located, and that literal interpretation of this ordinance would work an unnecessary hardship upon the applicant; (2) that the requested exception will be in harmony with the purpose and intent of this ordinance and will not be injurious to the neighborhood or the general welfare; and
  
- 3) That the special circumstances are not the result of actions of the applicant; and
  
- 4) That the existence of a nonconforming use of the neighboring land, buildings, or structures in the same district or of permitted or nonconforming uses in other districts shall not constitute a reason for the required exception.

Likewise, the county's zoning ordinance provides:

Recommendations for a Use Permit shall not be made to the Board of Supervisors by the Planning Commission unless and until:

- 1) All procedures and provisions . . . for public hearing procedures have been met, and;
  
- 2) The Planning Commission determines that said use is in harmony with the Principal Permitted Uses of the Zone.

Jackson County, Miss., Ordinances Art. 7, § 11.

We will apply these factors to the evidence presented. First, Hudson argues that the board's denial of his requests constitutes an unnecessary hardship upon him because he is deprived of a market for his finished alligator products. To sell his product, Hudson must transport it to some other location. This militates in favor of Hudson's position.

Next, the proof was disputed on whether Hudson's requested use of his property would be in harmony with the permitted uses and intent of the zone. A tourist attraction and gift shop do not necessarily promote agriculture or protect against urbanization. In fact, the board could determine that such uses promote the opposite. In any case, we find this question to be one of which reasonable minds might disagree. Several interested members of the community testified at the hearings against Hudson's requests to conduct retail sales on his property and to use his property as a tourist attraction. These citizens expressed varying concerns, including a potential adverse environmental impact to the area, disturbance of the marsh, excessive noise, and drainage, parking and traffic problems.

In zoning matters, both this Court and the circuit court sit as appellate courts with a limited scope of judicial review. *McWaters v. City of Biloxi*, 591 So. 2d 824, 827 (Miss. 1991). "The zoning decision of a local governing body which appears to be 'fairly debatable' will not be disturbed on appeal, and will be set aside only if it clearly appears the decision is arbitrary, capricious, discriminatory, illegal, or is not supported by substantial evidence." *City of Biloxi v. Hilbert*, 597 So. 2d 1276, 1280-81 (Miss. 1992) (citations omitted). "'Fairly debatable' is the antithesis of arbitrary and capricious. If a decision is one which could be considered 'fairly debatable,' then it could not be considered arbitrary or capricious." *Id.* (citation omitted). We conclude that the evidence and other pertinent factors before the board render the question of whether Hudson's property should be used as he requested, one upon which reasonable minds might disagree. In other words, we find the board's decision to be "fairly debatable." The administrative judgment of the board in denying Hudson's requests is therefore "insulated from judicial interference." *Noble v. Scheffler*, 529 So. 2d 902, 906 (Miss. 1988).

Hudson next contends that the circuit court erred in upholding the board's denial of his use permit because the record contains no specific findings of fact by either the court or by the board of supervisors. The dissent is based solely on this issue. The good policy argued by both the dissent and Hudson simply is not the law. Once the supreme court has established clear guidelines, we are constrained to follow them. Those guidelines come from *Faircloth v. Lyles*, 592 So. 2d 941, 945 (Miss. 1991). In *Faircloth*, after "recognizing the desirability of specific findings by the zoning authority on each considered issue," the court stated that it would "not reverse for a lack of such specificity where a factual basis for the action is disclosed." *Id.* In this case, the board's denial of the use permit is supported by facts which are sufficiently revealed in the record. As noted above, the factual basis for denial of the permit included possible disturbance of the marsh, excessive noise, and parking and traffic concerns. Because a factual basis is contained in the record, the board was not required to expressly state in its order on which asserted grounds its action rested. *Id.*

This court has previously spoken to the handicap of reviewing administrative agencies whose decisions are supported by nearly nonexistent findings. *See May v. Mississippi Bd. of Nursing*, 667 So. 2d 639 (Miss. Ct. App. 1995) (unpublished opinion). The same problem exists in reviewing this board of supervisors action. However, as long as the supreme court merely encourages and does not mandate detailed fact finding and legal conclusions, this intermediate court of appeals is bound.

In view of our limited scope of review and the evidence presented in the record supporting the Board's decisions, we affirm.

**THE JUDGMENT OF THE JACKSON COUNTY CIRCUIT COURT IS AFFIRMED. ALL**

**COSTS OF THIS APPEAL ARE TAXED TO THE APPELLANT.**

**FRAISER, C.J., BRIDGES AND THOMAS, P.JJ., KING, McMILLIN, AND PAYNE, JJ.,  
CONCUR.**

**DIAZ, J., DISSENTS WITH SEPARATE WRITTEN OPINION, JOINED BY BARBER AND  
COLEMAN, JJ.**

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**DIAZ, J., DISSENTING:**

I respectfully dissent from the majority's conclusion that both the circuit court and the board of supervisors can summarily deny a use permit without any specific findings of fact. In this particular case, two separate permits were sought. The first was an application for a special exception to allow public tours of the area by canoe or air boat. This application was denied first by the planning commission, whose decision was upheld by both the board of supervisors, and the circuit court. A second application was made for a permit to allow retail sales of alligator products and novelties. This application was approved by the planning commission, but subsequently denied by both the

board of supervisors, as well as the circuit court.

The majority opinion states that the board's denial of the permits was supported by facts sufficiently revealed in the record. In reviewing the record, the only decision that was accompanied by any findings of fact whatsoever was that of the planning commission. The subsequent denials by the board of supervisors, as well as the circuit court were merely blanket, conclusory denials without any findings of fact on the record. The facts that the majority refer to are from the testimony of opponents at the hearing before the planning commission. Other than that, there are no specific findings of facts whatsoever to support either the board of supervisors' decision, or the circuit court's decision in denying Mr. Hudson the permits that he sought.

This Court has stated in the past, as well as in the majority opinion, that it is better practice for a fact finding administrative agency to make a finding of fact on which to base its award or failure to award a claim. *Mississippi Pub. Serv. Comm'n v. AAA Anserphone, Inc.*, 372 So. 2d 259, 264-65 (Miss. 1979). In the present case, we are left without any facts upon which the denial is based. Absent a finding of facts specifically made on the record, we are unable to determine the validity of the judgment below. Therefore, I would reverse this case and adopt the recommended action of the planning commission which is the only decision supported by specific findings of facts in the record.

**BARBER AND COLEMAN, JJ., JOIN THIS SEPARATE OPINION.**