

Barnes v. Town Council of Perdido Beach: Alabama Municipalities and Governmental vs. Proprietary Functions

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In October, the Alabama Supreme Court ruled on a challenge to the Town Council of Perdido Beach’s plan to construct a public boat launch and pier funded by a grant resulting from the 2010 BP Deepwater Horizon oil spill.² Neighboring residents brought the suit, seeking an injunction to stop the development of the project. The neighbors alleged that the town’s rezoning of the property to allow the development was arbitrary and capricious, in part because it violated the wetland setback requirements in the town’s zoning ordinances. The Alabama Supreme Court ruled in favor of the Town Council, affirming that the project was a governmental function exempt from zoning ordinances.

Governmental and Proprietary Functions

The main issue in this case was whether the Town Council’s Boat-Launch Project was a governmental or proprietary function. In Alabama, a municipality enjoys freedom from constraints created by certain ordinances and regulations when the municipality is performing a governmental function. Governmental functions include actions taken by a municipality that promote the “public peace, health, safety, and morals, as well as the expenditure of money for public improvements. . . .”³ In other words, a governing entity undertakes a governmental function when it exercises its power for the benefit of its citizens. For instance, a municipality’s operation of a landfill for garbage disposal or the construction of a facility where school property can be stored are governmental functions because they are actions that benefit the general public. If a municipality’s actions are deemed a governmental function, any zoning ordinances that would ordinarily regulate the development will not apply.

A municipality does not, however, enjoy this same freedom if it is performing a proprietary function. Proprietary functions are “essentially commercial transactions involving the purchase or sale of goods and

services and other activities for the commercial benefit of a particular government agency.”⁴ Where a municipality is charging its citizens a fee for goods or services, it is engaging in a proprietary function. Proprietary functions include, for example, a municipality receiving compensation for providing water service or charging an entrance fee at a park, because they are actions taken for the commercial benefit of the municipality. If a municipality’s actions are deemed a proprietary function, any zoning ordinances that would ordinarily govern the activity will apply.

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Central to the dispute in *Barnes* was Section 10.1.4 of the Perdido Beach Land Use and Zoning Ordinance and Section 12.3 of Perdido Beach’s Subdivision Regulations—each of which required that the setback line for building developments near wetlands be at least thirty feet away from the wetland. The Town Council intended to construct the boat launch within one foot of the wetlands. While the Town Council did not make any amendments to Section 10.1.4 or Section 12.3, it did make several amendments to other sections of the Perdido Beach Land Use and Zoning Ordinance to ensure the Boat-Launch Project could move forward.

Dennis E. Barnes, Chris Chandler, and Jan B. Chandler (collectively “Barnes”) filed suit against the Town Council, seeking an injunction to prevent construction from taking place. After a bench trial, the trial court decided in favor of the Town Council, allowing construction to move forward. On appeal, Barnes argued that 1) the Boat-Launch Project violated the public dedication of the street at the end of which the boat launch would be constructed, 2) the Boat-Launch Project was a proprietary rather than governmental function, and 3) the Town Council’s amendments to the Perdido Beach Land Use and Zoning Ordinance were arbitrary and capricious.

Barnes argued that the boat launch would “encroach” on the end of the street, thereby violating the public dedication of the street. Barnes asserted that municipalities do not have the power to encroach on public streets by using them for a purpose for which they were not originally dedicated. The Alabama Supreme Court disagreed, stating that, because the boat launch would be placed at the end of the street, it would not interfere with the street’s use as a public road. Further, the court stated that the addition of the boat launch would enhance the street’s “use as an area of public recreation, rendering it easier for citizens to launch boats, to fish at the pier, and to picnic in the adjacent designated public park,” concluding that the Boat-Launch Project would not divert the street from its dedicated purpose.⁵

Next, Barnes argued that the Boat-Launch Project was a proprietary rather than governmental function. Barnes based this argument largely on a Minnesota case in which the court found that a harbor for mooring boats was proprietary because it only benefitted those citizens who owned boats.⁶ Barnes asserted that the same would be true of the boat launch in Perdido Beach. However, the Alabama Supreme Court readily distinguished the facts of that case, noting that the Minnesota municipality was charging fees for mooring boats in the harbor. The court found no evidence that the Town Council would charge a fee to use the boat launch. Additionally, the court noted that the boat launch would also benefit those renting boats and those travelling with boat owners—not to mention that the Boat-Launch Project also provided for a public pier and park that “would benefit the public as a whole.”⁷ Accordingly, the court concluded that the Boat-Launch Project was a governmental rather than proprietary function. As a result, the Town Council was not subject to Section 10.1.4 of the Perdido Beach Land Use and Zoning Ordinance nor Section 12.3 of Perdido Beach’s Subdivision Regulations in pursuing the Boat-Launch Project.

Lastly, Barnes argued that the Town Council’s amendments to the Perdido Beach Land Use and Zoning Ordinance were arbitrary and capricious. The Town Council had 1) rezoned the area designated for the Boat-Launch Project from a residential area to an outdoor recreation area, 2) changed the minimum lot size for outdoor recreation areas, and 3) changed “the designation for using an [outdoor recreation] district for a public park, a public pier, or a public boat launch from ‘conditional uses’ to ‘permitted uses’”.⁸

Barnes asserted that evidence presented at trial indicated that the boat launch would create a public safety hazard and that, because the amendments were only made to help the Boat-Launch Project move forward rather than for the public’s benefit, the Town Council’s zoning amendments were arbitrary and capricious—necessitating judicial intervention. However, the court noted that Barnes and the Town Council presented conflicting evidence as to the boat launch’s possible effects. According to the court, the presence of this conflicting evidence showed that the “wisdom of the ordinance [amendments were] fairly debatable,” so the Town Council’s actions were not arbitrary or capricious.⁹ The court further noted that, even if the court found “the zoning amendments to be arbitrary or capricious, the original zoning provisions would not prevent construction of the boat-launch project because municipal governmental functions are immune from existing zoning ordinances.”¹⁰

Barnes failed to succeed on any arguments presented. First, the public street’s purpose would be enhanced rather than encroached upon by the Boat-Launch Project. Second, the Boat-Launch Project is a governmental rather than proprietary function, thereby exempting it from regulation by zoning ordinances and subdivision regulations. Third, the conflicting evidence presented concerning the effects of the Boat-Launch Project made the wisdom of the Town Council’s zoning amendments fairly debatable rather than arbitrary and capricious. Accordingly, the Alabama Supreme Court affirmed the trial court’s holding. 🐦

Endnotes

1. NSGLC Research Associate; 2024 J.D. Candidate, University of Mississippi School of Law.
2. Barnes v. Town Council of Perdido Beach, No. 1210072, 2022 WL 12240411 (Ala. Oct. 21, 2022).
3. *Id.* at *10.
4. *Id.*
5. *Id.* at *9.
6. *Id.* at *11 (citing Heitman v. Lake City, 30 N.W.2d 18 (Minn. 1947)).
7. *Id.* at *12.
8. *Id.* at *15.
9. *Id.* at *15-17.
10. *Id.* at *15.