

IN THE COURT OF COMMON PLEAS OF YORK COUNTY, PENNSYLVANIA

KINSLEY EQUITIES II, LLP
on behalf of itself and
WAYNE H. and SUSAN N. BLESSING
And ROBERT N. and AGNES M. BLESSING
Appellants,

No. 2017-SU-002416

v.

HELLAM TOWNSHIP
ZONING HEARING BOARD
Appellee,

LAND USE APPEAL

and

HELLAM TOWNSHIP,
KREUTZ CREEK VALLEY PRESERVATION
SOCIETY and
PRESERVATION PENNSYLVANIA
Intervenors.

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APPEARANCES:

Jeffrey D. Lobach, Esq., for Appellants
Bradley J. Leber, Esq., for Appellee and Intervenor
J. Dwight Yoder, Esq., for Intervenors

ORDER

AND NOW, this 19th day of July, 2018, this Court does hereby AFFIRM the decision of the Hellam Township Zoning Hearing Board.

Copies of this Order shall be served upon counsel by the Prothonotary's Office.

BY THE COURT:

Michael W. Flannelly
MICHAEL W. FLANNELLY, JUDGE

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Memorandum Opinion

Presently before the Court is the Appeal from the decision of the Hellam Township Zoning Hearing Board issued on August 22, 2017, denying Appellants' appeal from the action of the Zoning Officer of Hellam Township, which denied Appellant's application for a Demolition Permit related to Wright's Crossing Business Park. This Appeal was filed Kinsley Equities II, LLP on behalf of itself, Wayne H. and Susan N. Blessing, and Robert N. and Agnes M. Blessing (jointly referred to as Kinsley). Appellee in this matter is the Hellam

Township Zoning Hearing Board (HTZHB), and Intervenors are Hellam Township (Intervenor Township), Kreutz Creek Valley Preservation Society, and Preservation Pennsylvania (Intervenors Kreutz and Preservation).

On or around September 1, 2017, Kinsley filed an appeal from a decision of the Hellam Township Zoning Hearing Board. Kinsley then filed a Brief in support of the appeal on November 6, 2017. On November 9, 2017 Preservation Pennsylvania was granted leave to intervene in this matter, and on November 27, 2017 Kreutz Creek Valley Preservation was also granted leave to intervene in this matter.

On December 11, 2017, Intervenor Township filed Brief in Opposition of Appeal, and Intervenors Kreutz and Preservation filed a Memorandum of Law in Opposition of the Appeal. On December 19, 2017, HTZHB filed a Brief in Opposition of Appeal. On January 9, 2018, Kinsley filed a Reply Brief in support of the Appeal. Kinsley then filed a Praecipe for One-Judge Disposition of the case, and July 6, 2018, this case was assigned to the undersigned Judge, and the matter is now ripe for disposition.

Upon consideration of the Record, the Court does hereby affirm the decision of the Hellam Township Zoning Hearing Board.

Background

At issue is the denial of an Application for Demolition Permit filed by Kinsley, seeking to demolish a farmhouse and surrounding farm buildings on lot 11 of a 13-lot subdivision known as Wright's Crossing Business Park. The undisputed facts are as follows:

Wright's Crossing Business Park was created when Kinsley submitted to Hellam Township a Preliminary Subdivision Plan, as well as a Final Subdivision Plan in 1998 (1998 Plans). Both of these 1998 Plans included a notation on lot 11 which read "Existing Farm Complex to Remain." The 1998 Plans were subsequently approved by the Board of Supervisors. In 2000, another Final Subdivision Plan (2000 Plan) was submitted and approved by the Board of Supervisors. In the 2000 Plan, the words "To Remain" were removed from the lot 11 label; the label now read "Existing Farm Complex." Kinsley submitted multiple plans after the 2000 Plan, and none of those plans included the words "To be Remain" on the label for lot 11.

The parties dispute the effect of removing the label, and the reason for the removal. Kinsley contend that the words "To Remain" were included in the lot 11 label of the 1998 Plans because at that time there were no immediate plans to develop lot 11, the words were an indication that "the improvements would temporarily remain on the property until development." *Appellant Brief in Support* at 8. Kinsleys' position is that the intent was, and has always been, to one day develop the lot. "The words 'To Remain' were inserted to indicate that the improvements would temporarily remain on the property until development." *Id.*

HTZHB contends that the words "To be Remain" were removed from subsequent plans because "none of the plans involved the development of Lot Eleven" and "no further Subdivision plan was submitted for Lot Eleven". *Brief of the Zoning Hearing Board of*

Hellam Township at 7. Intervenors Kreutz and Preservation likewise contend that “none of the subsequent changes involved lot 11”. *Intervenor Brief in Opposition* at 6. Intervenor Township states that the words “To Remain” were removed from subsequent plans because “the stated intention of each [plan] was not to develop or otherwise alter Lot 11...the use of the words ‘Existing Farm Complex’ without the words “To Remain” are merely a note pointing out the existence of the nearby Lot 11 buildings”. *Brief of Hellam Township* at 8-9. Appellee, and all Intervenors, have the position that because the words “To Remain” were recorded in the 1998 Plans, and there were no later changes to lot 11, “this notation on a recorded plan served as public notice in writing to anyone that there were restrictions on the development” of lot 11. *Brief of the Zoning Hearing Board of Hellam Township* at 7.

The Application for Demolition Permit was denied by the Township’s Zoning Hearing Officer on April 6, 2017, and on May 5, 2017 Kinsley filed an appeal to the Zoning Board. On June 27, 2017, the Zoning Hearing Board held a hearing on Kinsley’s application. On August 22, 2017, the Zoning Hearing Board issued its decision, upholding the Zoning Officer’s decision. Kinsley subsequently filed an appeal to this Court.

Discussion

In reviewing an appeal from a zoning hearing board, “where the court of common pleas did not take additional evidence, its scope of review is to determine if the local agency committed an error of law and whether its necessary findings are supported by substantial evidence.” *Nascone v. Ross Twp. Zoning Hearing Bd.*, 473 A.2d 1141, 1142 (Pa. Cmwlth.,

1984) Substantial evidence is defined as “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Valley View Civic Ass'n v. Zoning Bd. of Adjustment*, 462 A.2d 637 (Pa.1983) During a hearing in front of a zoning hearing board, said board “ is free to accept or reject, in whole or part, the testimony of any witness.” *Broussard v. Zoning Bd. of Adjustment of City of Pittsburgh*, 831 A.2d 764, 772 (Pa. Commw. Ct. 2003), *aff'd*, 589 Pa. 71, 907 A.2d 494 (2006). In addition, “the court may not substitute its judgment for that of the local agency unless the board manifestly abused its discretion.” *Nascone* at 1142.

In this matter, Kinsley contends that HTZHB “abused its discretion and committed an error of law and fact by ‘sustaining’ the Zoning Officer’s decision denying a demolition permit solely due to a notation of ‘To Remain’ on a previously submitted plan”, and that the HTZHB also erred by determine that the notation runs with the land. *Notice of Appeal* at 16. This Court must determine whether HTZHB committee an error of law in its decision, and whether its findings are supported by substantial evidence

We first find that HTZHB did not commit an error of law or abuse its discretion in sustaining the Zoning Hearing Officer’s decision to deny the demolition permit. In the findings of fact of the Decision of the Hellam Township Zoning Hearing Board, Kinsley’s exhibit 28, HTZHB made numerous findings upon which they based their decision. Kinsley found, *inter alia*, that the 1998 Plans “specifically included a note on Lot 11 that states ‘existing farm complex to remain’”, that “since the approval of the plans no change to the restrictions enumerated on Lot 11 were ever requested or approved”, that “there is nothing in

the SALDO which would indicate that an identification of buildings on adjoining lots constitute a waiver on restrictions placed on Lot 11” and that “Mr. Kinsley was advised by his own engineer that he might be creating a permanent requirement.” *Decision of the Hellam Township Zoning Hearing Board* at 2-3. Additionally, HTZHB found credible the testimony that Appellant “added a notation on the plan”, and that this “created a right on the part of the municipality to insist that these buildings not be demolished in light of the clear and unambiguous notation on the plan”. *Decision of the Hellam Township Zoning Hearing Board* at 5.

HTZHB properly found that Appellants accepted the condition that the buildings on lot 11 were to remain, and “acceptance of conditions imposed on a subdivision plan constitutes a waiver of future challenges to those conditions.” *Bonner v. Upper Makefield Twp.*, 597 A.2d 196, 201 (Pa. Cmwlth. 1991). Kinsley points to *DeFilippo v. Cranberry Twp. Bd. of Sup'rs*, 49 A.3d 939 (Pa. Commw. Ct. 2012) for the proposition that they are able to operate under later filed plans, because “developers may submit mutually exclusive plans and, after securing approval of those conflicting plans, are free to implement the plan of their preference developers may submit mutually exclusive plans and, after securing approval of those conflicting plans, are free to implement the plan of their preference.” *Id.* at 943.

However, that is not the situation here. Here, subsequent plans do not include changes to lot 11, and outside of the 1998 Plans, there have been no other plans approved which concern lot 11. As HTZHB and Intervenor state, subsequent plans with a notation on lot 11 are simply identifications of the buildings on the lot. The Hearing Officer researched the

plans filed for Wright's Crossing, she found the condition restricting changes to lot 11, and was unable to find (and was not presented with) any subsequent plans that modify the condition. As this Court took no testimony on this matter, and must accept the credibility determinations made by HTZHB, we find that there is sufficient evidence which supports HTZHB sustaining the decision of the Hearing Officer.

Kinsley further allege that the HTZHB 'abused its discretion and committed an error of law and fact by determining that the notation runs with the land in perpetuity and cannot be altered by subsequent plans approved by the Township." *Notice of Appeal* at 16. First, we note that the Decision of HTZHB is that "applicable law makes it clear that the notation on Lot 11 runs with the land in perpetuity", and not that subsequent plans cannot alter the notation. In fact, HTZHB state in their Brief in opposition that "Appellant should have requested a modification... [although] whether the Municipality would have granted that modification is uncertain." "Once the condition is accepted and the plan is recorded the condition runs with the land". *Ice v. Cross Roads Borough*, 694 A.2d 401, 403 (Pa. Commw. Ct. 1997). We find no indication that HTZHB abused its discretion in making that determination.

Conclusion

For the foregoing reasons, the Court **AFFIRMS** the decision of the Hellam Township Zoning Hearing Board. The appropriate Order follows.

BY THE COURT,


MICHAEL W. FLANNELLY, JUDGE

Dated: 7/19/2018