

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Board of Supervisors of :  
Bedminster Township :  
 :  
v. : No. 1076 C.D. 2010  
 :  
Zoning Hearing Board of : Argued: February 7, 2011  
Bedminster Township :  
and Heritage Nurseries, Inc. :  
 :  
Appeal of: Heritage Nurseries, Inc. :

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge  
HONORABLE BERNARD L. MCGINLEY, Judge  
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION  
BY SENIOR JUDGE KELLEY

FILED: March 15, 2011

Heritage Nurseries, Inc. (Heritage) appeals from a final order of the Court of Common Pleas of Bucks County (trial court), which denied its challenge to the validity of land use ordinances of Bedminster Township. Also before the Court is Heritage’s application for relief to allocate the cost of the reproduced record. We affirm the order of the trial court and deny Heritage’s application for relief.

The Board of Supervisors of Bedminster Township, Bucks County, Pennsylvania, (Township) had adopted numerous subdivision and land development ordinances and amendments thereto, the last of which was a comprehensive reenactment of its Subdivision and Land Development Ordinance

No. 181 adopted on March 14, 2007 (“New SALDO”). The Township also adopted numerous zoning ordinances and amendments thereto, including a comprehensive reenactment of its Zoning Ordinance Text and Map No. 183 adopted on June 13, 2007 (“New Zoning Ordinance”). The new ordinances were introduced, advertised, considered, heard and enacted to avoid the impact of the decision in Glen-Gery v. Dover Township, 589 Pa. 135, 907 A.2d 1033 (2006) (the Supreme Court held that a municipal ordinance pertaining to zoning and/or land development is *void ab initio* if the statutorily required procedures were not followed during its enactment and that the procedural failure resulted in a violation of public due process).

On April 25, 2007, Heritage filed a procedural challenge to all of the land use ordinances in Bedminster Township with the Zoning Hearing Board (Board). The Township filed a motion to dismiss the challenge based upon the “pending ordinance doctrine.”

By order dated November 25, 2008, the Board granted in part and denied in part the Township’s motion to dismiss - the Board dismissed the challenge to the procedural validity of all versions of the ordinances preceding the New SALDO and New Zoning Ordinance, but denied the motion as to New SALDO and New Zoning Ordinance and ruled that the hearings on procedural challenges limited to those new ordinances shall resume. The Board found that the Township complied with the notice requirements pursuant to the Pennsylvania Municipalities Planning Code (MPC)<sup>1</sup> for reenacting the New SALDO and the New Zoning Ordinance.

From this decision, the Township and Heritage filed cross appeals with the trial court, which were consolidated. By order dated May 14, 2010, the trial court

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<sup>1</sup> Act of July 31, 1968, P.L. 805, as amended, 53 P.S. §§10101 - 11202.

granted the Township's appeal and denied Heritage's appeal, so that all procedural challenges put forth by Heritage to the subject zoning and land use ordinances were overruled, denied and dismissed.

Heritage filed the instant appeal. Heritage raises the following issues on appeal:

1. Whether the Board erred in granting a motion to dismiss instead of hearing evidence in this procedural challenge and deciding the matter on its merits.
2. Whether the Board erred in holding that the pending ordinance doctrine applies to these procedural challenges, and that two new ordinances were pending when the challenges were filed on April 25, 2007.
3. Whether the Board erred in failing to find that the two new ordinances were defectively adopted and thus were *void ab initio*.
4. Whether the Board erred in finding that procedural defects in prior ordinances which were adopted before the two new ordinances would be irrelevant and immaterial; such defects would not apply to prior ordinances; and that challenges can be raised only to ordinances in effect at the time of the challenge.<sup>2</sup>

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<sup>2</sup> Rather than setting forth the argument for issues number 1-4 in its brief, Heritage incorporated its trial court brief by reference and directed the Court to locate its argument in the reproduced record. Pursuant to the Pennsylvania Rules of Appellate Procedure, the brief of the appellant "shall consist of ... Argument for appellant." Pa. R.A.P. 2111(a)(8). The rules further provide that "argument ... shall have ... discussion and citation of authorities..." Pa. R.A.P. 2119. Heritage's reference to its trial court brief for its argument scarcely conforms to the Pennsylvania Rules of Appellate Procedure. Moreover, as a result of Heritage's handling of the argument, Heritage's Table of Citations is woefully deficient as it does not include any cases contained in its trial court brief. See Pa. R.A.P. 2174(b). Additionally, this portion of Heritage's argument does not contain references to the reproduced record. See Pa. R.A.P. 2119(c); Pa. R.A.P. 2132(a). The Court cautions counsel to refrain from such practice in the future.

5. Whether the trial court erred in holding that Heritage's procedural challenge must be in response to a specific pending application for relief.
6. Whether the trial court erred in holding that Heritage's procedural challenge did not cite a single specific defect in the procedure by which ordinances were adopted.
7. Whether the trial court erred in holding that Heritage's procedural challenge was academic and not related to Heritage's land, and that Heritage was required to show that it suffered some personal harm (i.e., be aggrieved) by the defective ordinances instead of merely being affected.

We conclude that the trial court thoroughly and correctly analyzed these issues and that this matter was ably disposed of in the comprehensive and well-reasoned opinion of the Honorable Gary B. Gilman. Accordingly, we affirm on the basis of Judge Gilman's opinion in Board of Supervisors of Bedminster Township v. Zoning Hearing Board of Bedminster Township (Nos. 2008-13176-18-5 and 2008-13202-19-5, filed May 14, 2010).

Additionally, Heritage has filed an Application for Relief seeking \$1,268.80 from the Township for the cost of the three-volume reproduced record on the basis that the items set forth in the Township's supplemental designation of contents of reproduced record were unnecessary to the disposition of Heritage's appeal pursuant to Pa. R.A.P. 2155(b).<sup>3</sup> Our review reveals that the Township did

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<sup>3</sup> Rule 2155(b) provides:

Allocation by court. The cost of reproducing the record shall be taxed as costs in the case pursuant to Chapter 27 (fees and costs in appellate courts and on appeal), but if either party shall cause material to be included in the reproduced record unnecessarily, the appellate court may on application filed within ten days after the

*(Continued....)*

not cause materials to be reproduced unnecessarily. Accordingly, Heritage's Application for Relief is denied.

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JAMES R. KELLEY, Senior Judge

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last brief is filed, in its order disposing of the appeal impose the cost of reproducing such parts on the designating party.

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**ORDER**

AND NOW, this 15th day of March, 2011, the order of the Court of Common Pleas of Bucks County, dated May 14, 2010, at Nos. 2008-13176-18-5 and 2008-13202-19-5, is AFFIRMED, and Heritage Nurseries, Inc.'s Application for Relief is DENIED.

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JAMES R. KELLEY, Senior Judge