

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Philip L. Godino and Lori M. Godino :
 :
 v. :
 :
 Zoning Hearing Board of :
 the City of Scranton and : No. 1312 C.D. 2011
 Charles Santarsiero : Submitted: November 4, 2011

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
 HONORABLE MARY HANNAH LEAVITT, Judge
 HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
 BY JUDGE McGINLEY

FILED: December 30, 2011

Charles Santarsiero (Santarsiero) appeals the order of the Court of Common Pleas of Lackawanna County (common pleas court) that reversed the decision of the Zoning Hearing Board of the City of Scranton (Board) which concluded that a building permit (permit) to construct a pole barn should not have been issued, that the pole barn should not have been built before the issuance of the permit, and that the permit should be revoked because the use of the pole barn appeared to be commercial.

Philip L. Godino (Godino) and Lori M. Godino (Mrs. Godino), (collectively, the Godinos) own real property (Property) located at 707 Newtown Road in the City of Scranton (City). For tax purposes the property is considered as one parcel though it is described in the deed as two parcels. On July 28, 2009, the Godinos through their contractor applied for a building permit to erect a pole barn on the Property. Michael J. Wallace (Wallace), the zoning officer of the City, reviewed the application and found it to be in compliance with the City of Scranton

Zoning Ordinance (Ordinance) and orally approved the permit. The permit was not actually issued until September 21, 2009, because the City lost the check for the permit fee and arrangements needed to be made for the issuance of a new check. The Godinos did not wait for the issuance of the permit to build the pole barn.

On or about September 24, 2009, Santarsiero, a neighboring landowner of the Godinos, appealed the issuance of the permit to the Godinos.

On November 4, 2009, the Board heard the appeal. Santarsiero's attorney, Thomas Ratchford, outlined the basis for the appeal: 1) the irregularities of the permit process in that the Godinos applied for a permit on July 28, 2009, but the permit was not issued until September 21, 2009, after Santarsiero inquired as to whether a permit had been issued; 2) the pole barn was erected before the permit was issued; 3) the Property was located in an area zoned residential but the pole barn was used for commercial purposes; and 4) another garage owned by the Godinos appeared to be on a separate tract of land but did not have a principal structure on it. Notes of Testimony, November 4, 2009, (N.T.) at 4-7; Reproduced Record (R.R.) at RR4-RR7.

Santarsiero testified that a truck in front of one structure on the Property was "parked there all the time" and the truck brought cars to the Property that looked like they had to be repaired. N.T. at 9; R.R. at RR9. Santarsiero further testified that he had a collection of automobiles himself but could not get

permission to build a storage facility on his property because it was in an R-1 zone. As a result, he built a facility three miles from his house. N.T. at 37; R.R. at RR37.

Wallace testified that the Property was almost 1.4 acres in size and the pole barn was a permitted accessory use. Wallace approved the permit application. After Santarsiero complained about the construction of the barn, Wallace went to the Property and observed the barn and “didn’t see a problem.” N.T. at 9-11; R.R. at RR9-RR11. Wallace explained that he did not have anything to do with the check for the permit application. N.T. at 10-11; R.R. at RR10-RR11. Wallace explained that sometimes applicants began construction before they received the building permit. N.T. at 12; R.R. at RR12.

Godino testified that he has old cars and wanted to keep the cars out of the weather in the barn. He had four classic or collector cars stored there. N.T. at 14-15; R.R. at RR14-RR15. Godino testified that the Property was “Almost 1.5 acres, 1.4 acres.” N.T. at 17; R.R. at RR17. Godino testified that his property was on one parcel and not two. N.T. at 25; R.R. at RR25.

Mrs. Godino testified that they would never work on cars there because she owned a body shop. Mrs. Godino explained that the truck was not a commercial vehicle but a “daily driver.” N.T. at 15-16; R.R. at RR15-RR16.

The Board’s solicitor, Daniel Penetar, suggested that the Board vote on whether the permit was issued correctly or incorrectly. N.T. at 43; R.R. at

RR43. The Board voted 5-0 that the permit was issued incorrectly. N.T. at 44; R.R. at RR44.

In its written decision the Board made the following pertinent conclusion of law:

16. By a vote of 5-0, the Board found that there was sufficient evidence to conclude the building permit should not have been issued under §403(12)(b); that the pole barn should not have been built before the permit was issued (107.D.4); and that the permit should be revoked under 107.E in that the use of the pole barn appears to be commercial.

Zoning Hearing Board of the City of Scranton, Conclusions of Law No. 16 at 4.

The Godinos appealed to the common pleas court. The common pleas court reversed:

In the present case, the decision of the ZHB was not supported by substantial evidence in the record. The Appellant [Godinos] did not begin construction on the pole barn until he filed an application on July 28, 2009 with the Zoning Officer and received approval. Through no fault of his [Godino] own, the City misplaced his [Godino] check, and the permit was not actually issued until September 21, 2009. Upon receiving a complaint from the Intervenor [Santarsiero], the Zoning Officer inspected the job site, and found no violations. The Appellant [Godinos] took the appropriate steps to comply with the permit process, and the error was committed on the part of the City of Scranton. There was insufficient evidence presented at the hearing to indicate that the use of the structure was commercial in nature, and the Zoning Officer's inspection did not reveal any commercial activity.

Common Pleas Court Opinion, June 15, 2011, at 4-5.

Santarsiero contends¹ that the decision of the Board was supported by substantial evidence in the record and the common pleas court improperly considered factual testimony and exceeded its scope of review.²

Initially, Santarsiero contends that the Board's decision to revoke the permit was supported by substantial evidence in that the Godinos commenced construction of the pole barn without having received a valid permit in violation of Section 107.D of the Ordinance.

Section 107.D.4 of the Ordinance provides: "4. No owner, contractor, worker or other person shall perform building or construction activity of any kind regulated by this Ordinance unless a valid Zoning Permit has been issued for such work, nor shall such persons conduct such work after notice that a Zoning Permit has been revoked."

The Board found that Wallace testified that while the Godinos applied for the zoning permit on July 28, 2009, the permit was not issued until September 21, 2009, because the City lost the check for the permit fee and arrangements had to be made for the issuance of a new check. Wallace also testified that he orally

¹ Santarsiero's brief fails to comply the Pennsylvania Rules of Appellate Procedure, Pa.R.A.P. 2111(6) and (7) because his brief does not contain both a summary of argument and an argument section. The brief has a section entitled "summary of argument," but in reality it is the argument. However, because this Court is able to render meaningful appellate review, this Court will address his arguments.

² In a land use appeal where the trial court took no additional evidence, this Court's review is limited to determining whether the municipal body abused its discretion or committed an error of law. Ethan-Michael, Inc. v. Board of Supervisors of Union Township, 918 A.2d 203 (Pa. Cmwlth. 2007).

approved the permit. It is undisputed that the Godinos commenced construction of the pole barn prior to the issuance of the permit. The question then is whether commencement of construction prior to the actual physical issuance of the permit is ground for revocation of the permit.

Section 107.E of the Ordinance, Revocation of Permits provides:

The Zoning Officer shall revoke a permit or approval issued under the provisions of the Zoning Ordinance in case of:

1. any false statement or misrepresentation of fact in the application or on the plans on which the permit or approval was based . . . or
2. upon violation of any condition lawfully imposed upon a special exception or conditional use; or
3. any work being accomplished or land or structures being used in such a way that does not comply with this Ordinance or an approved site plan or approved permit application or
4. for any other just cause set forth in this Ordinance.

It is not clear from the Ordinance that simply beginning construction prior to the formal issuance of a building permit is grounds for revocation of the permit. In fact, in its brief, the Board states, “Regardless, if the Permit was properly issued, even after construction, then there is no penalty for starting construction early.” Board’s Brief at 9. This Court will defer to the Board’s interpretation of its own ordinance. Where an administrative board reasonably interprets the ordinance it is charged with administering, that interpretation is entitled to deference unless clearly erroneous or inconsistent with the ordinance. Turchi v. Philadelphia Board of License and Inspection Review, 20 A.3d 586, 591-

92 (Pa. Cmwlth. 2011). Therefore, the fact that construction commenced prior to the formal issuance of the building permit does not require revocation of the permit unless there is another reason why the permit should not have been issued.

Santarsiero contends that the Board correctly found that the permit should not have been issued under Section 403.C.12.b of the Ordinance.

Section 403.C.12(b) of the Ordinance provides “Accessory buildings on a lot with a lot area of $\frac{2}{3}$ acre or less in a residential district shall meet the following requirements: 1) Maximum total floor area of all accessory buildings-1,200 square feet. 2) Maximum of 2 accessory buildings per lot.”

Santarsiero presented evidence based on the recorded deeds that the Godinos owned two separate parcels and that the parcel where the Property was built was .74 acres. Wallace testified that the parcel was 1.4 acres. Godino testified that the Property was approximately 1.4 acres. As Section 403.C.12.b applies to accessory buildings with a lot area of two-thirds of an acre or less in a residential district, Section 403.C.12.b would not apply because there was no evidence to support a finding or conclusion that the Property had a lot area of two-thirds of an acre or less.

Santarsiero next contends that the Board properly concluded that the pole barn violated the Ordinance because it was used for commercial purposes in a residentially zoned district. When questioned by one of the Board members, David

Carden, concerning the use of the garage and the truck that was parked outside it, Santarsiero responded:

Mr. Carden: The truck that's in front of one structure, how often is that in an out of there?

Mr. Santarserio [sic]: It's always there, parked there all the time.

Mr. Carden: Does it bring cars there?

Mr. Santarserio [sic]: Yes.

Mr. Carden: Cars that look like they have to be fixed?

Mr. Santarserio [sic]: Yes.

N.T. at 9; R.R. at RR9.

Godino explained that he kept his old cars in the pole barn. N.T. at 14; R.R. at RR14. Mrs. Godino testified, "We never would have a need to work on cars there. I actually run a body shop up in Hamlin that is my father's, that we've owned for 30 years. I would never need to work on cars at my home." N.T. at 14; R.R. at RR14.

In proceedings before a zoning board, the zoning board as factfinder is the sole judge of credibility and conflict in the testimony and has the power to reject even uncontradicted testimony that the Board finds to be lacking in credibility. Valley View Civic Association v. Zoning Board of Adjustment, 501 Pa. 550, 462 A.2d 637 (1983). However, the zoning board's findings must be supported by substantial evidence. Hitz v. Zoning Hearing Board of South Annville Township, 734 A.2d 60, 65 n. 9 (Pa. Cmwlth. 1999). The common pleas court in its review of the Board's decision concluded that there was insufficient evidence to establish that the use of the pole barn was commercial. The common pleas court conducted its review under the same standard as this Court. This Court

agrees with the common pleas court that the determination that the structure was used commercially was not supported by substantial evidence as this Court can discern no evidence to support that determination in the record. Santarsiero's testimony, alone, does not support that conclusion.³

Accordingly, this Court affirms.

BERNARD L. McGINLEY, Judge

³ Santarsiero argues that the truck used by the Godinos is a commercial vehicle and a commercial vehicle cannot be stored in the pole barn in a residential area. However, there is no evidence in the record that the truck was parked inside. This argument has no merit. He also argues that the common pleas court exceeded its review and engaged in factfinding. This Court does not agree. The common pleas court executed a proper review.

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 Charles Santarsiero :

ORDER

AND NOW, this 30th day of December, 2011, the order of the Court of Common Pleas of Lackawanna County in the above-captioned matter is affirmed.

BERNARD L. MCGINLEY, Judge