

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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| St. Germaine Parish, | : | |
| Appellant | : | |
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| v. | : | |
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| Zoning Hearing Board for | : | |
| The Municipality of Bethel Park | : | |
| | : | |
| v. | : | |
| | : | No. 1442 C.D. 2010 |
| Municipality of Bethel Park | : | Argued: April 5, 2011 |

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE JOHNNY J. BUTLER, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
JUDGE BUTLER

FILED: May 4, 2011

St. Germaine Parish (Parish) filed an appeal in this Court seeking reversal of the June 30, 2010 order of the Court of Common Pleas of Allegheny County (trial court) which affirmed a decision of the Bethel Park (Municipality) Zoning Hearing Board (Board) denying a Parish request for interpretation of a zoning ordinance which would allow the erection of an illuminated permanent sign on the Parish's property. The Board ruled, and the trial court agreed, that the ordinance is unambiguous in its prohibition of the Parish's proposed illuminated sign. This Court is now called upon to determine whether the trial court erred in affirming the Board's

decision.¹ For the reasons that follow, we hold that the trial court did not err. We, therefore, affirm the trial court's order.

The Parish owns property located at 7003 Baptist Road, in Bethel Park, Pennsylvania, an address which places the property in an R-3 zoning district. In August of 2009, the Parish applied to the Board for a variance from the Municipality's zoning ordinance (zoning ordinance) to erect an illuminated sign to replace the Parish's existing non-illuminated sign. The Board granted permission to erect the proposed sign, but denied the request pursuant to the zoning ordinance with respect to the sign being illuminated. The Parish then appealed to the Board, arguing that the zoning ordinance provision which prohibited the erection of an illuminated sign was ambiguous, and that it, therefore, should be interpreted in favor of the Parish as property owner. The Board denied the Parish's request for a favorable interpretation of the zoning ordinance, ruling that no ambiguity existed in the signage portion of the zoning ordinance. According to the Board, the provision at issue, Section 69.50.1 of the zoning ordinance (Section 69.50.1), "prohibits lighted signs in all residential districts, including R-3, except for two very narrow and specific exceptions" Parish Br. App. 1, Memorandum Findings, Discussion and Decision of the Board at 5 (referencing non-applicable exceptions allowing residential subdivision identification signs (Section 69.50.1.5 of the zoning ordinance) and temporary promotional signs for places of worship (Section 69.50.1.11 of the zoning ordinance)). The Parish appealed the Board's decision to

¹ In matters such as this, where the trial court took no additional evidence in reviewing the decision of a zoning hearing board, this Court reviews the zoning hearing board's decision for errors of law or an abuse of discretion. *Hamilton Hills Grp., LLC v. Hamilton Twp. Zoning Hearing Bd.*, 4 A.3d 788 (Pa. Cmwlth. 2010). More specifically, "[o]n issues of statutory interpretation this Court's scope of review is plenary, and our standard of review is *de novo*." *Doherty v. Dep't of Transp., Bureau of Driver Licensing*, 921 A.2d 532, 535 n.3 (Pa. Cmwlth. 2006).

the trial court. The trial court agreed with the Board that the zoning ordinance is unambiguous in its prohibition of the Parish's proposed illuminated sign.

In addressing the instant dispute, we find the history of the ordinance provisions at issue to be significant. Prior to November 9, 1998, the zoning ordinance included a section designating the type of signage permitted in zoning districts designated "R" and "CD," and regulating the same. Initially listed as Section 61.1 of the zoning ordinance (pertaining to "Signs" in "R and CD Districts"), the listing was ultimately changed to Section 69.50.1 by subsequent amendment.² As it stood prior to November 9, 1998, this section permitted: one thirty-square-foot bulletin board per street adjacent to a place of worship (Section 69.50.1.2 ("subsection 2")), one twelve-square-foot temporary unlighted real estate sign during the time of sale (Section 69.50.1.3 ("subsection 3")), and one forty-square-foot identification sign per entrance for residential subdivision plans (Section 69.50.1.5 ("subsection 5")). The zoning ordinance also provided that all signs shall be non-flashing and non-animated (Section 69.50.1.7 ("subsection 7")).

On November 9, 1998, the Municipality amended the zoning ordinance by enacting Ordinance 11-9-98E.³ This 1998 enactment amended subsection 5 (referring to identification signs for residential subdivision plans) by stating, "[t]he sign may be flood lighted from below[,]" and setting average maximum illumination levels and other precautions for such illumination. In addition, however, and as a separate paragraph, the amendment added this prohibition: "*No other illuminated signs are allowed in R1, R2, R3, R4, R5, R, OS and CD districts.*"⁴

² Reproduced Record (R.R.) at 43a.

³ R.R. at 22a.

⁴ *Id.* (emphasis added).

Thereafter, on September 13, 1999, the Municipality again amended the zoning ordinance, this time enacting Ordinance 9-13-99B.⁵ This amendment added Sections 69.50.1.9 through 69.50.1.11 of the zoning ordinance (“subsections 9 – 11”). Pursuant to subsection 11, as of September 13, 1999, churches and similar places of worship are permitted: “One (1) temporary promotional sign per lot . . . for a period not exceeding seven (7) days in any one calendar month.” Subsection 11 continues: “Any lighting of said sign must be done so in accordance with the provisions of lighting of signs as addressed in the Zoning Ordinance.”

With the foregoing provisions in place, the Board determined that the prohibition of subsection 5, that “[n]o other illuminated signs are allowed in . . . R3 . . . districts[,]” clearly and unambiguously prohibited the illuminated permanent sign proposed by the Parish. The Parish argues that subsection 5’s prohibition should only be applied to the subject matter of subsection 5, namely identification signs for residential subdivision plans, because a contrary reading creates ambiguity in light of the remaining provisions of Section 69.50.1. Thus, the issue before this Court is whether the Board erred in its determination that the zoning ordinance was unambiguous in its prohibition of the Parish’s desired illuminated sign. We agree with the Board, and discern no error.

We acknowledge that Section 603.1 of the Pennsylvania Municipalities Planning Code⁶ provides the following guideline:

In interpreting the language of zoning ordinances to determine the extent of the restriction upon the use of the property, the language shall be interpreted, *where doubt exists as to the intended meaning of the language written*

⁵ R.R. at 36a.

⁶ Act of July 31, 1968, P.L. 805, *as amended*, added by Section 48 of the Act of December 21, 1988, P.L. 1329, 53 P.S. § 10603.1.

and enacted by the governing body, in favor of the property owner and against any implied extension of the restriction.

(Emphasis added). However, in *City of Hope v. Sadsbury Township Zoning Hearing Board*, this Court aptly stated the following:

As a preliminary matter, we reiterate the now well-settled principle that a zoning hearing board's interpretation of its own zoning ordinance is entitled to great weight and deference. Such deference is appropriate because a zoning hearing board, as the entity charged with administering a zoning ordinance, possesses knowledge and expertise in interpreting that ordinance. *While it is undeniable that we are to interpret ambiguous language in an ordinance in favor of the property owner and against any implied extension of the restriction, such a restrictive reading of an ordinance is unwarranted where 'the words of the zoning ordinance are clear and free from any ambiguity.'*

890 A.2d 1137, 1143 (Pa. Cmwlth. 2006) (quoting *Isaacs v. Wilkes-Barre City Zoning Hearing Bd.*, 612 A.2d 559, 561 (Pa. Cmwlth. 1992)) (other citations omitted; emphasis added).

Here, the language at issue, “[n]o other illuminated signs are allowed in R1, R2, R3, R4, R5, R, OS and CD districts[,]” is explicitly clear and free from ambiguity on its face. The Parish poses a question as to whether the language is a prohibition pertaining only to other illuminated identification signs for entrances to residential subdivision plans, or pertaining to all “other illuminated signs” as subsection 5 states. The Parish attempts to paint Section 69.50.1, as a whole, as being ambiguous by pointing to other subsections of Section 69.50.1 which might suggest that subsection 5 means something other than what is stated on its face. Specifically, the Parish argues that subsection 5 should be construed in favor of the Parish because application to all of Section 69.50.1 would create ambiguities with respect to certain prior and subsequently enacted provisions. If Ordinance 11-9-98E is construed as

having application to the entire zoning ordinance, thus prohibiting all illuminated signs, subsection 3's prior designation of "unlighted" for real estate signs becomes superfluous, as does subsection 7's ongoing requirement of "non-flashing and non-animated." Further, such construction conflicts directly with subsection 11, which contemplates a "temporary promotional sign . . . for churches or similar places of worship . . ." where "[a]ny lighting of said [church or place of worship] sign must be done . . . in accordance with . . . the Zoning Ordinance." The Parish makes the point that if the zoning ordinance does not permit "any lighting" of any signs other than compliant residential subdivision signs, subsection 11's "any lighting" language as pertaining to temporary promotional signs for places of worship is rendered unnecessary, as such place of worship signs are not permitted to have "any lighting" in the first place. The Court is not persuaded by this argument.

Aside from subsection 11's creation of a second exception⁷ to the general prohibition against illuminated signs established in subsection 5, the Parish has not demonstrated that any of the language in Section 69.50.1 actually conflicts with the general prohibition. At best, the Parish has demonstrated that certain language in Section 69.50.1 is rendered superfluous by the clear language of subsection 5, but the Parish has cited to no statute or caselaw prohibiting the superfluity which may sometimes be produced by amendments to ordinances. While the various subsections could certainly be rewritten or reorganized to be clearer, that does not, by itself, render Section 69.50.1 ambiguous. To declare it so in this case would certainly run contrary to the well-settled mandate of receiving the Board's interpretation of its own zoning ordinance with great weight and deference.

⁷ As noted above, subsection 11 was enacted as part of the 1999 Amendment, permitting temporary promotional signs at places of worship.

Moreover, as noted by this Court in *Tobin v. Radnor Township Board of Commissioners*: “Of primary concern in interpreting a zoning ordinance is the legislative intent of the governing body which enacted the ordinance.” 597 A.2d 1258, 1264 (Pa. Cmwlth. 1991) (citing 1 Pa.C.S. § 1921(a); and *Baker v. Commonwealth*, 581 A.2d 1019, 1023 n.1 (Pa. Cmwlth. 1990)). Somewhat tellingly, the Parish admits in its brief: “If the Bethel Park governing body intended to totally prohibit all illuminated signs in the R3 zoning district when it enacted ordinance 11-[9]-98E, it certainly would have included such language in a separate paragraph in its Ordinance” Parish Br. at 16. As demonstrated by the Reproduced Record in this matter, the Municipality’s governing body did include the language at issue in a separate paragraph. In fact, the language at issue is set apart within the amendment as a paragraph unto itself.⁸ Thus, the inference to be drawn, that the governing body intended to prohibit *all* illuminated signs in the R3 zoning district (with only certain exceptions), is entirely consistent with the determination made by the Board below.

For these reasons, we hold that the Board did not err in its determination that the zoning ordinance is unambiguous in its prohibition of the Parish’s proposed illuminated and permanent sign. Accordingly, the trial court’s order is affirmed.

JOHNNY J. BUTLER, Judge

⁸ See R.R. at 23a. We note that the full zoning ordinance article pertaining to “Signs”, Article XVI, includes the language in question as part of the only paragraph printed in subsection 5 according to the Reproduced Record at 3a. However, Ordinance 11-9-98E, the 1998 ordinance which amended the original subsection 5, is depicted in the Reproduced Record at 22a, demonstrating that the disputed language was, in fact, set forth as a second distinct paragraph to subsection 5. See R.R. at 23a. Thus, it appears that at some point in time, a typographical error may have been made, whereby the second paragraph of subsection 5 was inadvertently joined to the first. Subsequent typographical error, however, has no bearing upon original legislative intent.

