

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Lower Paxton Township Authority,	:	
	:	
Appellant	:	
	:	
	:	
v.	:	No. 249 C.D. 2010
	:	Argued: September 14, 2010
South Hanover Township Zoning	:	
Hearing Board and South Hanover	:	
Township	:	
	:	

BEFORE: HONORABLE DAN PELLEGRINI, Judge  
HONORABLE JOHNNY J. BUTLER, Judge  
HONORABLE JIM FLAHERTY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION  
BY SENIOR JUDGE FLAHERTY

FILED: November 23, 2010

The Lower Paxton Township Authority (Authority) appeals from an order of the Court of Common Pleas of Dauphin County (trial court) which affirmed the decision of the South Hanover Township Zoning Hearing Board (Board) denying the application filed by the Authority for a zoning permit to place fill and to perform site grading on property owned by the Authority. The purpose for the fill and grading was to prepare the property for the construction of a wet weather sewage treatment plant. South Hanover Township is the Intervenor (Township). We affirm.

The Authority is a municipality organized and existing under the Municipality Authorities Act, 53 Pa. C.S. §§5601-5623. The property at

issue is an unimproved parcel consisting of approximately 18.59 acres, which was purchased by the Authority in November of 2003 and is located in the Floodplain district. To the west, the property is bounded by Beaver Creek which is the dividing line between South Hanover and Lower Paxton Townships. The property is located near a residential subdivision known as Crestview Manor.

On May 15, 2008, the Authority applied for a zoning permit to place fill and perform site grading for its proposed sewage treatment plant. The application described the work as, “fill and grading in accordance with permits issued by DEP, Army Corp. and Dauphin County Conservation District.” The Authority intended to prepare the property for the construction of a wet weather sewage treatment plant, having a peak flow of 12 million gallons per day during wet weather.

The zoning officer issued a letter denying the application. The Authority appealed and the Board conducted hearings and ultimately issued a decision upholding the denial of the zoning application. The Board determined that a permit is required by Sections 1405 and 2103 of the South Hanover Township Zoning Ordinance (Ordinance) to place fill on land within the Floodplain district, that the application failed to indicate compliance with Section 1502(5) of the Ordinance, that the application failed to include the cost of the work, that the plant is not a permitted use in the Floodplain district and that the Authority failed to establish the elements for relief in a claim for variance by estoppel or equitable estoppel.

The Authority appealed to the trial court, which affirmed the decision of the Board. Although the trial court disagreed with the Board’s

assessment that the plant is not a municipal use under Section 1502(26) of the Ordinance, the trial court, nonetheless, determined that the plant was not permitted in the Floodplain district, following the principles contained in the Statutory Construction Act of 1972, 1 Pa. C.S. §§ 1501-1991.

Specifically, Part 14 of the Ordinance addresses zoning in the Floodplain district and Section 1406 of the Ordinance sets forth a list of specifically permitted uses. The trial court observed that the only permitted uses set forth in Section 1406 of the Ordinance that would potentially apply to this case, are those set forth in subsection (7):

**§1406. Uses Permitted.**

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(7) Electric and telephone utility, transmission and distribution of facilities including substations, water or sewer pumping stations and reservoirs which shall be floodproofed as set forth in the South Hanover Township Building Code.

The trial court observed that the Authority's proposed use is not a water or sewer pumping station. Instead, it is a wet weather sewage treatment plant, which is not listed among the specifically permitted uses in a Floodplain district and, therefore, not permitted in the Floodplain district. Although Section 1502(26) of the Ordinance permits municipal uses in any district, it is controlled by Section 1406 of the Ordinance, because Section 1502(26) is a general regulation and Section 1406 is a specific regulation.<sup>1</sup> This appeal

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<sup>1</sup> In its decision, the trial court also observed that although the Authority argues before the Board that it should have the permit approved based on estoppel, the issue of estoppel was not pursued before the trial court and therefore was not addressed.

followed.<sup>2</sup>

On appeal, the Authority maintains that the plant is a municipal use permitted as of right in any zoning district by virtue of Section 1502(26) of the Ordinance. Section 1502(26) provides:

Municipal Uses. In any district a building may be erected, altered or extended and land may be developed which is arranged, intended or designed for municipal uses including municipal recreation use.

The Authority maintains that based on the above, a municipal use is permitted in any district including the Floodplain district.

Although the trial court determined that Section 1406 and Section 1502(26) of the Ordinance are in conflict, such that in accordance with 1 Pa. C.S. § 1933, the particular of Section 1406 controls the general of Section 1502(26), the Authority argues that, in fact, the two sections are not in conflict. Section 1933 provides:

Whenever a general provision in a statute shall be in conflict with a special provision in the same or another statute, the two shall be construed, if possible, so that effect may be given to both. If the conflict between the two provisions is irreconcilable, the special provisions shall prevail and shall be construed as an exception to the general provision ....

The Authority maintains that the above is only applicable when two provisions are in conflict. Here, according to the Authority, no conflict

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<sup>2</sup> Where, as here, the trial court does not take additional evidence, this court's review is limited to determining whether the Board committed an error of law or abuse of discretion. Walck v. Lower Towamensing Township Zoning Hearing Board, 942 A.2d 200 (Pa. Cmwlth. 2008).

exists between Section 1502(26) of the Ordinance, which allows municipal uses in any district, and Section 1406 of the Ordinance, which sets forth permitted uses in the Floodplain district.

Even if there is conflict between the provisions, they can be construed to give effect to both and the conflict is not irreconcilable as outlined in Section 1501 of the Ordinance, which provides:

The following general regulations shall supplement the regulations set forth herein for each district and shall apply throughout the Township unless otherwise specified in other Sections of this Chapter.

According to the above, the Authority maintains that the Ordinance intends that the general regulations, such as Section 1501(26), add to the regulations in the individual districts, such as the Floodplain district, and do not conflict with them. Moreover, there is no provision in the Floodplain district which specifies that the general regulations do not apply in the Floodplain district or that municipal uses are prohibited in the Floodplain district.

The Authority also argues that when interpreting a zoning ordinance provision governing permitted uses, the landowner must be given the benefit of the interpretation, the least restrictive of its use and enjoyment of the property. Laird v. City of McKeesport, 489 A.2d 942 (Pa. Cmwlth. 1985). Such an interpretation in favor of the landowner is consistent with Section 603.1 of the Pennsylvania Municipalities Planning Code, 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, which provides:

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

The Township initially responds that a zoning hearing board's interpretation of its own zoning ordinance is entitled to great deference. Walck. Here, the Floodplain district, lists those uses which are permitted. A sewage treatment plant is not included therein. If the governing body intended to include sewage treatment plants within the Floodplain district, it would have included them in its list of authorized uses, as it did for sewer pumping stations.

Contrary to the Authority's argument, we agree with the Township that it is not possible to give effect to both Section 1502(26), which permits municipal uses in any district and Section 1406 of the Ordinance, which prohibits such a use because it is not a use specifically permitted within the Floodplain district.

The more specific provisions of Section 1406 of the Ordinance control Part 15 of the Ordinance, which is entitled "General Regulations". In applying Section 1933 of the Statutory Construction Act to a zoning ordinance, the more specific language in the use description part of the ordinance controls over a more general inconsistent provision. Heck v. Zoning Hearing Board for Harveys Lake Borough, 397 A.2d 15 (Pa. Cmwlth. 1979). Furthermore, the general regulations of Part 15 of the Ordinance, by its terms "supplement the regulations set forth herein for each district and shall apply throughout the Township unless otherwise specified in other Sections of this Chapter." Section 1501 of the Ordinance. Here, it

is otherwise specified in Part 14 of the Ordinance that only those uses which are specifically listed are permitted in the Floodplain district.

In accordance with the above, the decision of the trial court is affirmed.

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JIM FLAHERTY, Senior Judge

Judge Brobson did not participate in the decision in this case.

