IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Georgette Moyer and Ryan Moyer	:	
	:	
v.	:	No. 259 C.D. 2009
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Zoning Hearing Board of West Pottsgrove Township, West Pottsgrove Township and Blaine Moyer	:	Submitted: March 12, 2010
	:	
Appeal of: Georgette Moyer, Ryan Moyer and Blaine Moyer	:	

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE COHN JUBELIRER **FILED: July 8, 2010**

Georgette Moyer, Ryan Moyer (together, Landowners), and Blaine Moyer[1] (Intervenor) appeal from the November 24, 2008 and January 14, 2009 orders of the Court of Common Pleas of Montgomery County (trial court). The trial court's November 24, 2008 order (November order) denied Landowners' Motion to Present Additional Evidence (Motion) in their land use appeal from the

[1] Intervenor, who is married to and resides with Georgette Moyer, intervened in this matter, pro se, before the Board, the trial court, and now this Court. West Pottsgrove Township also intervened before the trial court and now this Court.

determination of the Zoning Hearing Board of West Pottsgrove Township (Board). The Board held that Landowners were conducting a recycling, salvage, scrap, and/or junkyard business in violation of the West Pottsgrove Township Zoning Ordinance (Ordinance). The trial court's January 14, 2009 order affirmed the Board's determination and dismissed Landowners' appeal. Landowners assert that the Board erred in holding that their operation of a recycling, salvage, scrap, and/or junkyard business violated Sections 701 and 701.1 of the Ordinance because: (1) the Notice of Violation and Cease and Desist Order (Notice) issued was invalid and unenforceable; (2) the Board violated Landowners' and Intervenor's due process rights; and (3) the salvage yard use was the continuation of a lawful non-conforming use, and the Board erred in concluding otherwise; and (4) the Board's findings of fact and conclusions of law are not supported by substantial evidence. Landowners also assert that the trial court erred in denying their Motion. Intervenor also joins in Landowners' arguments (1), (2), and (3),[2] and also argues that the Board lacks jurisdiction over this matter and that West Pottsgrove Township (Township) and the Board violated Landowners' and Intervenor's constitutional rights.

Landowners purchased two parcels of land located within the Township, which are zoned R-2 Residential (Property),[3] on or about July 31, 2007. (Board Decision, Findings of Fact (FOF) ¶¶ 1, 8-9.) Pursuant to the Ordinance, only one

[2] Intervenor sets forth substantially similar arguments as Landowners in his challenges; however, because Landowners' arguments are more developed than the arguments of Intervenor, we will refer to Landowners' arguments in addressing these issues.

[3] The Property has been zoned R-2 Residential since 1966, the year the Township adopted its first zoning ordinance. (Board Decision, Findings of Fact (FOF) ¶ 35.)

use per lot is permitted in the R-2 District, and only "single-family detached dwellings" are permitted uses, although other uses are allowed by special exception. (FOF ¶ 10.) Commercial and business uses are not permitted in the R-2 District. (FOF ¶ 10.) On August 8, 2007, Edward Whetstone, the Township Manager and Zoning Officer, inspected the Property and observed the following on the Property: the trailer/mobile home in which Landowners were residing; gas tanks; propane tanks; tire piles; recreational vehicles with a camper; a truck with gas pumps on it; a front-end loader; a stake-body truck with junk on it; a gas powered generator; several red trucks; a tow truck; and a pick-up truck with a case body on the back. (FOF ¶ 12.) Based on his observations, Mr. Whetstone issued the Notice on August 10, 2007. (FOF ¶ 14.) The Notice informed Landowners that they were violating, *inter alia*, Sections 700, 701, and 701.1 of the Ordinance by: establishing a junkyard in a residential district; operating an unlawful business on the Property; and maintaining an unlawful structure, the mobile home/trailer, on the Property.[4] (FOF ¶ 14.) The Notice advised Landowners that they had ten days to appeal to the Board.

Landowners filed an appeal from the Notice (Appeal), as well as an application (Application) requesting, in relevant part, an interpretation and/or a variance from Sections 700, 701, and 701.1 of Article VII (setting forth the regulations for the R-2 District) of the Ordinance so that they could operate a

[4] The Notice also alleged that Landowners violated Section 405 (requiring access to a public street in order for a lot to be used) and Section 421 (regulating nuisances, health hazards, and noxious or offensive uses in a residential district). (FOF ¶¶ 13-14.) However, the Board ultimately concluded that the Township failed to prove these violations. (Board Decision, Conclusions of Law ¶ 9; Board Order, February 13, 2008.)

recycling and salvage business on the Property. (FOF ¶ 1.) The Board held hearings on the Appeal and Application on October 10, 2007, November 8, 2007, and December 6, 2007. (FOF ¶ 3.)

At the October 10th hearing, Landowners amended the Application, withdrawing the request for a variance and changing the proposed use from the operation of a commercial recycling and salvage business to the operation of a private recycling and salvage yard business. (FOF ¶ 3; Board Hr'g Tr. at 18, October 10, 2007, R.R. at 24A.) Landowners also requested a continuance based on the fact that the Notice gave them only ten days to appeal, not the thirty days required by Section 914.1(b) of the Pennsylvania Municipalities Planning Code (MPC)[5] and Section 1806 of the Ordinance. Landowners contended that they needed the additional time to conduct further legal research on the issues involved. Counsel for Landowners acknowledged that he had conversed with Township officials, who agreed to give Landowners "a few days" to file their Appeal, and Landowners filed the Appeal on August 24, 2007. (Board Hr'g Tr. at 12-13, R.R. at 18A-19A.) The Board denied the request for a continuance and proceeded with the hearing.

In addition, at the October 10th hearing, Landowners requested permission to amend their Application to include a validity challenge to the Ordinance. The

[5] Act of July 31, 1968, P.L. 805, added by Section 95 of the Act of December 21, 1988, 53 P.S. § 10914.1(b). This section provides that "[a]ll appeals from determinations adverse to the landowners shall be filed by the landowner within 30 days after notice of the determination is issued." Id. Section 1806 of the Ordinance also provides 30 days to appeal an adverse determination.

Board advised Landowners that they would have to file another application setting forth their reasons for a validity challenge and that the Board could not proceed with the validity challenge at the October 10th hearing because of the need to advertise that issue. At the end of the hearing, Landowners renewed their request to amend the Application to include the validity challenge; however, the Board's solicitor again denied the request to amend because he had to advertise any validity challenge made. The Board's solicitor indicated that, if Landowners filed a validity challenge application, he would add the validity issue to the agenda for the next hearing, and the Board would consider the two applications together. Landowners' counsel, at one point, stated "Fair enough" in response to the solicitor's explanation. (Board Hr'g Tr. at 128, R.R. at 135A.) There is no indication in the record that Landowners ever filed an application challenging the validity of the Ordinance.

In support of the Notice, Mr. Whetstone testified that Landowners were operating and maintaining a residence, salvage and recycling business, and junkyard on the Property. (FOF ¶ 16.) He stated that Landowners were maintaining two uses, a business use and a residential use, on the Property. (FOF ¶ 16.) Mr. Whetstone indicated that his testimony of the operation of the salvage yard and the use of the trailer/mobile home as a residence on the Property was corroborated by various photographs taken of the Property, which the Township introduced into evidence. (FOF ¶ 16; Board Hr'g Tr. Exs. T-2 – T-6, December 6, 2007, R.R. at 415A-37A.) The Board credited Mr. Whetstone's testimony. (FOF ¶ 16.)

To support its contention that any pre-existing salvage/junkyard use had been abandoned, the Township relied on the testimony of: John Wardzinski, Site Manager of Waste Management, which owns the adjacent property; and Andrew Bealer, Operations Manager for Waste Management. Mr. Wardzinski described annual aerial maps taken of the Property and the surrounding areas beginning in November of 1994 through December of 2006. (FOF ¶ 33(A).) Mr. Wardzinski explained that the 1994 aerial map showed three or four items on the Property and that, by the time the 1997 map was created, those items had been removed. (FOF ¶ 33A.) Mr. Wardzinski indicated that, in the ten or fifteen years he worked for Waste Management, there was never any operation of a recycling/salvage/junkyard business on the Property. (FOF ¶ 33A.) Mr. Wardzinski expressed concern that the operation of a salvage/junkyard business on the Property would possibly pollute the monitoring wells in the western part of the Waste Management property. (FOF ¶ 33A.)

Mr. Bealer offered similar testimony to Mr. Wardzinski, stating that in the time he has worked for Waste Management, approximately thirty-four years, he never observed any salvage operations on the Property. (FOF ¶ 33B.) Mr. Bealer indicated that, beginning in 1996, his landfill work brought him within two-hundred feet of the Property and that he did not see any salvage or recycling operations or the storage of vehicles on the Property. (FOF ¶ 33B.) Mr. Bealer reiterated Mr. Wardzinski's environmental concerns regarding Landowners' use of the Property. (FOF ¶ 33B.)

Landowners testified, describing their use of the Property. Landowners indicated that they: bring in approximately six to eighteen vehicles per week; remove the vehicles' radiators, batteries, gas tanks, and tires; and drain the oil, antifreeze, and transmission fluid from the vehicles. (FOF ¶¶ 17, 22.) Landowners store the oil and antifreeze in 55-gallon plastic drums before disposing of it with another entity, store batteries in plastic tubs, and store radiators in a tractor trailer on the Property. (FOF ¶¶ 18, 20-21.) Ryan Moyer admitted that Landowners both live and conduct a "business"[6] on the Property. (FOF ¶ 19.) The Board found, based on this testimony, that: (1) the Property was being used as a recycling and salvage yard; and (2) the Property is being used for both business and residential uses. (FOF ¶¶ 24-25.)

In support of its position that the salvage/junkyard use existed prior to the passage of the Ordinance and had not been abandoned at the time Landowners purchased the Property, Landowners submitted the testimony of Rick Patten and Goldia Patten (the Pattens), Kevin McBride, Paul Nimmerichter, and Mrs. Moyer. Mr. Patten testified that his grandfather and father, now both deceased, had owned the Property and had used the Property as a scrap yard at one time. (FOF ¶ 26.) He stated that he took over the business from his father and grandfather between

[6] Landowners repeatedly rejected any attempts to classify their non-residential activity on the Property as "business" or "commercial" activity. (Board Hr'g Tr. at 23, 34, 87, November 8, 2007, R.R. at 162A, 173A, 228A; Board Hr'g Tr. at 67-68, 73, December 6, 2007, R.R. at 365A-66A, 371A.) Instead, Ryan Moyer described himself as a "merchant at law." (Board Hr'g Tr. at 23, 88, November 8, 2007, R.R. at 162A, 229A.) However, Ryan Moyer admitted that he sold whatever he salvaged from the vehicles and that, other than his father's Social Security Disability, whatever he made from selling parts supported him and his parents. (Board Hr'g Tr. at 34-35, 41, 74, 76, 82-83, R.R. at 173A-74A, 180A, 215A, 217A, 223A-24A.)

1970 and 1975, but hadn't used the Property for scrap or salvage for a couple of years and, instead, was removing one load of scrap from the Property approximately every six months. (FOF ¶¶ 27-29.) Mr. Patten testified that: no one was actively working the scrap yard on a daily basis since approximately 1975; no one had been bringing new scrap in; any activity on the Property had been limited to removing scrap twice a year; and he had not used the Property for salvaging for six years. (FOF ¶ 29.) Mrs. Patten testified that her husband left the scrap business in 1980 and that her son did not add any vehicles to the Property after 1980. (FOF ¶ 30.) Mrs. Patten indicated that, after her husband died in 1990, the only activity on the Property involved the dismantling and removal of parts left from her husband's and son's salvage operations. (FOF ¶ 30.) Mr. McBride and Mr. Nimmerichter testified that they had made isolated purchases from Mr. Patten sometime in 1996 or 1997. (FOF ¶ 31.) Mr. Nimmerichter stated that he had not brought a vehicle to the Property since at least 1995 or 1996. (FOF ¶ 31.)

Based on the evidence presented and its findings of fact, the Board concluded that the Township satisfied its burden of proving that Landowners used the Property for both residential use and for the operation of a commercial salvage, recycling, and scrap yard in violation of Sections 700, 701, and 701.1 of the Ordinance. (Board Decision, Conclusions of Law (COL) ¶¶ 2, 5, 8.) The Board held that Landowners "failed to establish that at the time of their purchase of the premises on July 31, 2007, any salvage/junkyard/recycling business was being conducted on the [P]roperty" and, therefore, did not have the right to use the Property as a salvage yard because it was not a lawful non-conforming use. (FOF ¶ 32; COL ¶ 4.) Citing the abandonment of non-conforming uses provision of the

Ordinance, Section 1700.6, and Latrobe Speedway, Inc. v. Zoning Hearing Board, 553 Pa. 583, 592, 720 A.2d 127, 132 (1998), the Board concluded that, based on the testimony of both the Township's witnesses and Landowners' witnesses, the Township established that any non-conforming use that had been present on the Property had been abandoned by 1997, approximately ten years before Landowners purchased the Property. (FOF ¶¶ 33-34, 36; COL ¶ 4.) The Board further held that the Township had established that Landowners also violated the Ordinance by residing in a mobile home, which is not a single-family detached dwelling, the only permitted use allowed as of right in the R-2 District. (COL ¶¶ 6-7.) With regard to any allegations raised by Intervenor, the Board concluded that those issues were not raised in the Appeal and, thus, were waived.[7] (COL ¶ 10.) Accordingly, the Board upheld the Notice with regard to Landowners' violations of Sections 700, 701 and 701.1 of the Ordinance.

Landowners appealed to the trial court, which held a hearing on November 20, 2008. On the morning of the hearing, Landowners filed the Motion seeking to present additional evidence pursuant to Section 1005-A of the MPC.[8] Landowners intended to introduce photographs, taken in January 2008, of junk and scrap being

[7] Throughout the hearings, Intervenor questioned and cross-examined witnesses, introduced evidence into the record, and presented argument to the Board. Intervenor's general position was that the Board lacked jurisdiction over this matter and that the conduct of Mr. Whetstone, the Township, and the Board violated Landowners' constitutional right to the Property. (Board Hr'g Tr. at 76-78, December 6, 2007, R.R. at 374a-76a.) Intervenor indicated that Landowners were filing a "counter-claim" against the Township challenging, *inter alia*, the constitutionality of Mr. Whetstone entering the Property without permission or a search warrant. (Board Hr'g Tr. at 66-70, October 10, 2007, R.R. at 206A-11A.)

[8] Added by Section 101 of the Act of December 21, 1988, 53 P.S. § 11005-A.

removed from land that Waste Management had purchased from the Pattens. Landowners contended that the photographs supported their theory that all of the Patten property, at one time, was used as a non-conforming junkyard/scrap yard and that the pictures also impeached the credibility of Mr. Wardzinski. The Township and the Board objected to the Motion on the grounds that it was untimely, the photographs had no relevance to what occurred on the Property because they were taken of a different property, and Landowners could have taken the photographs of the conditions of Waste Management's property before the close of the hearings before the Board. Agreeing with the Township and the Board, the trial court denied the Motion as untimely, pointing out that Landowners had filed the Motion the morning of the argument without providing either the Township or the Board an opportunity to submit a formal response. The trial court further stated that the photographs were not of any particular importance to the substantive issue of whether a non-conforming use existed on the Property and were introduced primarily to impeach the credibility of Mr. Wardzinski. (Trial Ct. Hr'g Tr. at 27-28, R.R. at 671A-72A; Trial Ct. Order, November 24, 2008, R.R. at 589A.)

The trial court, without taking any additional evidence, then considered Landowners' appeal from the Board's determination. The trial court denied Landowners' appeal by order dated January 14, 2009, concluding, *inter alia,* that substantial evidence supported the Board's findings and conclusions that Landowners were operating a salvage, scrap and/or junkyard business on the Property in violation of the Ordinance and that any non-conforming use had been abandoned long before Landowners purchased the Property. The trial court also

rejected Landowners' assertion that the Notice was defective. Landowners filed a Notice of Appeal to this Court, and, after ordering Landowners and Intervenor to submit Statements of Matters Complained of on Appeal, the trial court issued an opinion in support of its January 14, 2009 order.

I. Validity and Enforceability of Notice

On appeal, Landowners and Intervenor first argue that the Notice issued by Mr. Whetstone was invalid and unenforceable because Mr. Whetstone is the Township Manager, not the Zoning Officer.[9] Relying on Section 1800 of the Ordinance, which prohibits zoning officers from holding any other municipal office, Landowners contend that Mr. Whetstone violated the Ordinance by acting as both the Township Manager and Zoning Officer and, therefore, that he lacked the authority to issue the Notice. According to Landowners, the Notice was ineffective and unenforceable based on Mr. Whetstone's lack of authority, and, therefore, the Board's determination must be reversed.

However, as the Board and the Township point out, any challenge to the validity of the Notice based on Mr. Whetstone's status was waived by the failure of Landowners and Intervenor to raise that issue or argument before the Board. In re Kreider, 808 A.2d 340, 342 n.4 (Pa. Cmwlth. 2002) (stating that where the court of common pleas does not hear additional evidence, "any issues or arguments not

[9] In zoning appeals "where the trial court takes no additional evidence, our standard of review is limited to determining whether the Board's findings are supported by substantial evidence and whether the Board has abused its discretion or committed an error of law." Morris v. South Coventry Township Board of Supervisors, 898 A.2d 1213, 1217 n.3 (Pa. Cmwlth. 2006).

raised before the [zoning hearing board] cannot be raised for the first time to common pleas and are waived"). During the October 10th hearing, Mr. Whetstone described his position with the Township as being the Township Manager, Zoning Officer, building code official, and a code enforcement officer.[10] (Board Hr'g Tr. at 20, October 10, 2007, R.R. at 26A.) Landowners and Intervenor had two more hearings after learning the extent of Mr. Whetstone's job duties to raise an objection on that basis.[11] Our review of the record, however, reveals that neither Landowners nor Intervenor ever challenged the validity of the Notice on this basis. In fact, the only challenges to the validity of the Notice raised before the Board were based on: (1) the shortened appeal period contained within the Notice; and (2) the lack of a search warrant when Mr. Whetstone entered the Property rendering the visit an illegal search, and this issue was raised in the context of Landowners and Intervenor filing a "counter-claim" or lawsuit against the Township. (Board Hr'g Tr. at 9, R.R. at 15A; Board Hr'g Tr. at 67-68, November 8, 2007, R.R. at 207A-08A.) Accordingly, we must conclude that Landowners' and Intervenor's argument that the Notice was invalid because of Mr. Whetstone's lack of authority is waived.

[10] In fact, Landowners' Notice of Appeal filed with the Board indicated that, when they filed the appeal, they were aware that Mr. Whetstone was acting as both "Zoning Officer/M[anager]." (Landowners' Notice of Appeal, August 24, 2007, at 1, R.R. at 3A.)

[11] Indeed, had Landowners or Intervenor done so, the Township would have had the opportunity to submit evidence in support of Mr. Whetstone's authority to serve as both Township Manager and Zoning Officer.

II. Due Process

Next, Landowners and Intervenor assert that the Board's order should be reversed because the Township violated Landowners' due process rights, as well as the Ordinance's requirements, when it gave Landowners only ten days to appeal the Notice. Landowners argue that there is no authority in the MPC or in the Ordinance permitting the Township to shorten the appeal period from thirty days to ten days. According to Landowners, they "repeatedly and strenuously objected to this shortened appeal deadline, [but the Board] refused [Landowners'] continuance request at the first hearing to allow time to amend their Zoning Application/Appeal and have more time to prepare." (Landowners' Br. at 11.) Specifically, Landowners contend that such a denial, in addition to the Board's refusal to allow them to amend their Application to include a validity challenge, violated their due process rights and breached the Township's own procedures.

Landowners are correct that both Section 914.1(b) of the MPC and Section 1806 of the Ordinance provide that appeals from determinations adverse to the landowner shall be filed within thirty days after notice of the determination is issued. 53 P.S. § 10914.1(b); (Ordinance § 1806.) Thus, the Notice did not comply with the MPC's and the Ordinance's requirements. However, we disagree that Landowners' due process rights were violated where, as the Township points out, Landowners were given the opportunity to present their appeal during three hearings before the Board (Township Br. at 11), had sixty days before the first hearing to research any relevant legal issues, and could have presented additional issues by raising them during the proceedings before the Board thereby precluding the waiver of those issues. See Seneca Mineral Co., Inc. v. McKean Township Zoning Hearing Board, 556 A.2d 496, 499-500 (Pa. Cmwlth. 1989) (stating that

issues *not* raised during a zoning hearing board's appeal proceedings are waived and that, *after reviewing the record of the hearings before the board*, this Court could not find any instance where the landowner's counsel attempted to advance the position it now asserted on appeal).

"The fundamental components of procedural due process are notice and the opportunity to be heard." In re McGlynn, 974 A.2d 525, 531 (Pa. Cmwlth. 2009). "The concept of due process, however, is a flexible one and imposes only such procedural safeguards as the situation warrants." Id. at 532. A key factor in determining whether procedural due process was denied is whether the party asserting the denial of due process suffered demonstrable prejudice. Id.

Landowners do not assert that they were denied notice or an opportunity to be heard because of the shortened appeal period. Indeed, such an assertion would not be supported by the record where Landowners received the Notice, which outlined the alleged violations of the Ordinance, and participated in three hearings before the Board. During those hearings, Landowners presented documentary evidence, the testimony of six witnesses, and challenged the Township's witnesses and evidence. Landowners argue, instead, that the shortened appeal period precluded them from having sufficient time to prepare their defenses to the alleged violations, specifically a challenge to the validity of the Ordinance.[12]

[12] Other than their validity challenge, discussed in more detail below, Landowners cite no other legal theory or relief they wished to raise, but could not based on the brevity of the appeal period. Indeed, their legal theory throughout the entire course of these proceedings has been, and remains, that their activity on the Property is the continuation of a legal non-conforming use.

(Landowners' Br. at 11.) However, Landowners had two months from August 10, 2007, the date the Notice was issued, to October 10, 2007, the date of the first hearing, to research the legal issues involved, prepare their defenses, and make amendments to their Appeal and Application. Moreover, after the first hearing, Landowners had an additional two hearings to further develop the legal issues involved and their defenses. Accordingly, we conclude that Landowners failed to establish the type of demonstrable prejudice required to prove that their due process rights were violated by the Township or the Board under these circumstances.

Further, with regard to the Board's refusal to allow Landowners to amend their Application to include the validity challenge, the Board did so because it had an obligation, pursuant to Section 916.1 of the MPC,[13] to provide public notice of

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[13] Added by Section 99 of the Act of December 21, 1988, P.L. 1329, as amended, 53 P.S. § 10916.1. Section 916.1 provides, in pertinent part:

> (a) A landowner who, on substantive grounds, desires to challenge the validity of an ordinance . . . or any provision thereof which prohibits or restricts the use or development of land in which he has an interest shall submit the challenge either:
>
> (1) to the zoning hearing board under section 909.1(a) [(describing the jurisdiction of the zoning hearing board)];
>
> . . . .
>
> (c) The submission referred to in subsection[] (a) . . . shall be governed by the following:
>
> (1) In challenges before the zoning hearing board, the challenging party *shall make a written request to the board* that it hold a hearing on its challenge. The request shall contain the reasons for the challenge.
>
> . . . .
>
> (e) *Public notice of the hearing [on the validity challenge to the ordinance] shall include notice that the validity of the ordinance . . . is in question and shall give the place where and the times when a copy of the request, including*

(Continued…)

any hearing in which the validity of an ordinance is questioned. In addition, Section 916.1(e) requires the Board to give the place where and the times when a copy of the validity challenge, including any plans, explanatory materials or proposed amendments to the ordinance, may be examined by the public. 53 P.S. § 10916.1(e). In Crown Communications v. Zoning Hearing Board of the Borough of Glenfield, 679 A.2d 271, 275 (Pa. Cmwlth. 1996), this Court stated, "if an applicant wishes to raise a validity challenge at any time during a [zoning hearing board] proceeding, even if only as an alternative theory, it must make this intent known prior to the meeting in accordance with the requirements of [S]ection 916.1 of the MPC." Thus, even if the Board had allowed Landowners to amend their Application, the validity challenge could not have been considered during the October 10, 2007 hearing without violating Section 916.1 of the MPC. Moreover, the Board advised Landowners that if they filed their validity challenge in time to satisfy the notice requirements, the Board would hold a combined hearing at the next scheduled hearing on November 8, 2007. Counsel for Landowners responded "Fair enough." (Board Hr'g Tr. at 128, October 10, 2007, R.R. at 135A.)

We agree with the Township and the Board that Landowners had the opportunity to challenge the validity of the Ordinance and that the Board would have scheduled combined hearings on the Appeal and the validity challenge if Landowners had submitted a written application giving the reasons for the validity challenge. However, the record reveals that no validity challenge application was

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> *any plans, explanatory material or proposed amendments may be examined by the public*.

53 P.S. § 10916.1 (emphasis added).

ever filed with the Board. The record further reveals that, at the November 8, 2007 hearing, Landowners' counsel referred to his October 10, 2007 letter withdrawing the variance request and amending the proposed use of the Property from a commercial salvage yard to a private yard, but made no reference to the validity challenge request. (Board Hr'g Tr. at 78-79, November 8, 2007, R.R. at 219A-20A.) For these reasons, we conclude that Landowners failed to show the type of demonstrable prejudice required to establish that their due process rights were violated by the Township or the Board under these circumstances.

Landowners and Intervenor next argue that the Board's decision should be reversed because the Board violated Intervenor's due process rights by refusing to allow him to raise certain legal issues during the hearings before the Board. Landowners contend that the Board's Conclusion of Law No. 10, concluding that because Intervenor's issues were not raised on appeal, those issues were waived, must be reversed because such reasoning is illogical. Landowners point out that, because Intervenor intervened in the appeal, he could raise any issue relevant to the case.

Initially, we note that Intervenor, after being allowed to intervene, actively participated in the three hearings before the Board. Intervenor questioned and cross-examined the Township's and Landowners' witnesses, raised objections to the Township's evidence, made argument to the Board, and filed a motion to dismiss. With regard to the allegations that the Board did not allow Intervenor to raise certain legal issues during the hearings, the record reveals that, while

questioning Ryan Moyer about whether Mr. Whetstone was told to leave the Property, the following conversation occurred.

> [Township Solicitor]: I'm going to object. What's the difference?
> [Intervenor]: The difference is down the road maybe.
> [Board Solicitor]: Unfortunately, Mr. Moyer, there has to be some semblance of relevance. That's enough for that line of questioning.
> [Intervenor]: We're going at this constitutionally. We're counterclaiming that.
> [Township Solicitor]: I understand.
> [Intervenor]: We're starting our suit today.
> [Board Solicitor]: Well, take your discovery in that case, though, not tonight.
> [Intervenor]: It's relevant that they came on the property and didn't have - - they weren't allowed on the property. They didn't have no [sic] search warrant. This wasn't criminal.
> [Board Member]: What does this have anything to do with?
> [Board Solicitor]: That's why I'm telling him we're not allowing any more questions along that line.

(Board Hr'g Tr. at 66-67, November 8, 2007, R.R. at 206A-07A.) Thereafter, Intervenor questioned Ryan Moyer on a Pennsylvania Department of Environmental Protection (DEP) inspection of the Property, prompting the following exchange.

> [Intervenor]: When DEP came on the property, did you have a problem with them coming on the property?
> [Ryan Moyer]: No.
> [Intervenor]: Why?
> [Ryan Moyer]: There was no reason to have a problem with them coming on the property. Everything was fine.
> [Intervenor]: Did you ever deal with DEP before?
> [Ryan Moyer]: Yes.
> [Township Solicitor]: I'm going to object. What's the relevance?
> [Board Solicitor]: Mr. Moyer, he's already shown us that DEP didn't have a problem, so I don't know what the issue is?
> [Intervenor]: Well, what I want to establish here is that when the township came on, they came on very hostile.

> Ms. Salzer [(Board Member)]: Mr. Moyer, this is a zoning hearing. I don't want to hear about that. I want to hear about the zoning itself, nothing else.
> [Board Solicitor]: You can do your discovery on those issues as part of the civil rights case - -
> [Intervenor]: We're challenging the ordinance to be constitutional [sic].
> Ms. Salzer [(Board Member)]: Not in here you're not. That is a constitutional matter. You take it up with the right authorities. Take it up with the Superior Court.
> [Intervenor]: We'll go to the Supreme Court of the United States.
> [Board Solicitor]: I understand. Next question.

(Board Hr'g Tr. at 69-70, R.R. at 210A-11A.) These passages reveal that Intervenor's line of questioning was not directly related to the zoning issue before the Board, but was done in anticipation of filing a constitutional counterclaim against the Township. Indeed, this fact was brought out by Intervenor's subsequent introduction of a document titled "Status of Person and Property with Notice of Counterclaim and Affidavit to West Pottsgrove Complaint" (Complaint) at the December 6, 2007 hearing, which advised the Township and the Board that Landowners and Intervenor were, in fact, going to file a counterclaim and suit in court based on numerous allegations of the violation of Landowners' and Intervenor's constitutional rights. (Board Hr'g Tr. at 76-77, December 6, 2007, R.R. at 374A-75A; Complaint, R.R. at 472A-78A.) As such, we conclude that the Board did not err or violate Intervenor's due process rights when it limited Intervenor's questioning on that matter. Moreover, even if the Board's Conclusion of Law No. 10 was erroneous, we conclude that such error was harmless because the issues being raised were related to a potential counterclaim/civil action against the Township, not to the zoning matter before the Board.

III. Abandonment of a Lawful Non-conforming Use

Landowners and Intervenor next argue that, contrary to the Board's findings and conclusions, they established that their use of the Property as a private salvage yard, junkyard and recycling business is the continuation of a lawful non-conforming use. Relying on Latrobe Speedway, Simonitis v. Zoning Hearing Board of Swoyersville Borough, 865 A.2d 284 (Pa. Cmwlth. 2005), and Heichel v. Springfield Township Zoning Hearing Board, 830 A.2d 1081 (Pa. Cmwlth. 2003), Landowners maintain that the Township failed to meet their burden of proving both that: "(1) Landowner intended to abandon the nonconforming use[;] and (2) Landowner actually abandoned the use." (Landowners' Br. at 12.) According to Landowners, the Board erred in finding that any non-conforming use that had been on the Property had been abandoned before Landowners purchased the Property because abandonment cannot be shown by mere proof of failure to use the Property for a certain period of time, and the Pattens testified that the Property had been used as a private salvage or junkyard as far back as the 1950's and continued to be used to store junk up until the time Landowners purchased the Property. Landowners contend that the facts here are similar to those in Simonitis and Heichel and that, as in those cases, the mere fact that the Pattens reduced their use of the Property as a salvage yard did not render that non-conforming salvage yard use abandoned.

We note that the Ordinance does not define "junkyard," "salvage," or "salvage yard" business. The dictionary[14] defines "junk," in relevant part, as "old

[14] "When a term in a zoning code is not defined, Pennsylvania courts use dictionaries as source material to determine the common and approved usage of a term." SPC Co., Inc. v. Zoning Board of Adjustment of the City of Philadelphia, 773 A.2d 209, 213 (Pa. Cmwlth. 2001).

(Continued…)

iron . . . or other waste that may be treated so as to be used again in some form," and a "junkyard" is "a yard used to keep usu. resalable junk." Webster's Third New International Dictionary 1227 (2002). "Salvage" is defined, in pertinent part, as "something extracted (as from . . . rubbish) as valuable or having further usefulness." Id. at 2006. Accordingly, we conclude that the use at issue here involves a yard on which Landowners extract from rubbish something that is valuable and store the salvaged items for resale.

In Latrobe Speedway, our Supreme Court adopted the following analysis for determining whether a non-conforming use has been abandoned,[15] which Justice

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[15] In Latrobe Speedway, our Supreme Court affirmed the determination of this Court that an owner and a lessee of a property were entitled to an occupancy permit to operate an automobile racetrack as a prior non-conforming use and that the zoning hearing board erred in finding that the non-conforming use had been abandoned. The owner operated a stock-car speedway from 1977 through 1982, but there was no racing on the property between 1982 and 1994. Latrobe Speedway, 553 Pa. at 585, 720 A.2d at 128-29. During that time period, the township enacted a zoning ordinance designating the property part of an agricultural use zone and indicated that, if a non-conforming use of a property ceases for one year or is abandoned for any period, the non-conforming use could not be resumed. Id. at 585, 720 A.2d at 129. Despite the fact that no racing occurred on the property, the physical components of the racetrack, i.e., the track, grandstands, light stands, and out-buildings, remained on the property, although they had deteriorated over time and were no longer usable. Id. at 585, 720 A.2d at 128-29. In 1994, the property owner leased the property, and the lessee sought permission to use the property for stock car racing by applying for a development occupancy permit for a non-conforming use. Id. The zoning officer denied the permit on the grounds that the racetrack use had been abandoned and that the proposed use violated the zoning ordinance. Id. at 585, 720 A.2d at 129. On appeal, the property owner's sole stockholder testified that he never intended to abandon the property as a racetrack, that he paid property taxes based on the property's assessment as a racetrack, and that he had attempted to lease or sell the property as a racetrack more than 23 times. Id. at 586, 720 A.2d at 129. The zoning hearing board affirmed the zoning officer's determination, concluding that the previously permitted use as a racetrack had been abandoned because no racing activity had been conducted there for almost 14 years. Id. The trial court affirmed, but this Court reversed and remanded the matter to the trial court to order the grant of the permit.

Zappala had set forth in his concurring opinion in Pappas v. Zoning Board of Adjustment of the City of Philadelphia, 527 Pa. 149, 589 A.2d 675 (1991) (Zappala, J., concurring):

> Failure to use the property for a designated time provided under a discontinuance provision [in a zoning ordinance] is evidence of the intention to abandon. The burden of persuasion then rests with the party challenging the claim of abandonment. If evidence of a contrary intention is introduced, the presumption is rebutted and the burden of persuasion shifts back to the party claiming abandonment.
>
> What is critical is that the intention to abandon is only one element of the burden of proof on the party asserting abandonment. The second element of the burden of proof is actual abandonment of the use for the prescribed period. This is separate from the element of intent.

Latrobe Speedway, 553 Pa. at 592, 720 A.2d at 132 (quoting Pappas, 527 Pa. at 156, 589 A.2d at 678)). Noting that the property owner had not used his property as a speedway for a period in excess of one year, an undisputed fact, the Supreme Court held that "a presumption of an intent to abandon the use of the property as a racetrack arose." Latrobe Speedway, 553 Pa. at 592, 720 A.2d at 132. However, the property owner, who had "the burden of persuasion, presented evidence to rebut this presumption," namely that: the property was assessed as a racetrack; the property owner continued to pay property taxes based on that assessment; there were no attempts to dismantle or remove the structures or otherwise convert the use of the property; and the property owner attempted on numerous occasions to sell or lease the property as a racetrack over the years when racing had ceased. Id. at 592-93, 720 A.2d at 132. Thus, the burden of persuasion shifted back to the township to demonstrate actual abandonment. Id. at 593, 720 A.2d at 132. Because the township failed to present further evidence, "it clearly failed to sustain

its burden of demonstrating that the use of the property for racing activity was actually abandoned for the prescribed period." Id. Accordingly, the Supreme Court affirmed this Court's order remanding the matter for the grant of an occupancy permit. Id.

The Township asserts that any non-conforming use of the Property as a private salvage yard or recycling business had been abandoned by the Pattens long before they sold the Property to Landowners. Like the ordinance in Latrobe Speedway, the Ordinance here contains a discontinuance provision, Section 1700.6, which provides:

> Abandonment. If a lawful non[-]conforming use of a building or other structure is abandoned or discontinued for a continuous period of one year or more, or if a lawful non[-]conforming use of land is abandoned or discontinued for a continuous period of six months or more, subsequent use of such building or structure or land shall be in conformity with the provisions of this Ordinance.

(Ordinance § 1700.6.) As the party asserting abandonment, the Township bears the burden of proving that the Pattens: (1) intended to abandon the non-conforming private salvage yard use; and (2) actually abandoned the private salvage yard use. Latrobe Speedway, 553 Pa. at 592, 720 A.2d at 132. Because the Ordinance contains a discontinuance provision, the Township could prove that the Pattens, the prior owners of the Property, intended to abandon the non-conforming salvage yard use by establishing that such use had been discontinued for a continuous period of more than six months. Id.; (Ordinance § 1700.6.)

Here, the Township presented the testimony of Mr. Wardzinski and Mr. Bealer, both employees of the Waste Management landfill adjacent to the Property.

Mr. Wardzinski testified that at no time in the ten or fifteen years he had worked at the landfill had he observed a salvage or junkyard on the Property. (Board Hr'g Tr. at 104-08, November 8, 2007, R.R. at 245A-49A.) Mr. Wardzinski further testified about various aerial maps, created between 1994 and 2006, which he indicated revealed no salvage activity occurring on the Property beyond three or four items being left on the Property. (Board Hr'g Tr. at 96-103, R.R. at 237A-44A.) Those aerial maps were introduced and received as evidence for the Board to consider. (Board Hr'g Tr. at 4, 106, December 6, 2007, R.R. at 301A, 404A; Board Hr'g Tr., Exs. T-12 – T-16, R.R. at 461A-66A.) Mr. Bealer similarly testified that there was no salvage operation going on in 1994 and 1995 and that, beginning in 1996, his work at the landfill extended within two hundred feet of the Property and that he did not observe any salvage or recycling operations or any cars being stored on the Property. (Board Hr'g Tr. at 139-41, November 8, 2007, R.R. at 280A-82A.) This testimony, as well as the aerial photographs presented by the Township, supports the Board's finding that the salvage yard use had been discontinued for a continuous period of six months or more *before* Landowners' purchase of the Property on July 31, 2007. Thus, the Township satisfied its initial burden of proving the intent to abandon pursuant to Section 1700.6 of the Ordinance and Latrobe Speedway. Moreover, the credited testimony of Mr. Wardzinski and Mr. Bealer, that they observed no salvage yard activity on the Property by the Pattens from 1996 until Landowners purchased the Property in 2007, further satisfies the Township's burden of establishing that the salvage yard use had been *actually* abandoned for a period of more than six months. The burden of persuasion then shifted to Landowners to submit evidence of a contrary intention. Latrobe Speedway, 553 Pa. at 592, 720 A.2d at 132.

To satisfy their burden of proving a contrary intention by the Pattens, Landowners relied on the testimony of the Pattens about the history of the use of the Property and the Pattens more recent use of the Property. Mr. Patten testified, *inter alia*, that he removed the last load of scrap material from the Property in the beginning of 2007 in preparation for the sale of the Property. (Board Hr'g Tr. at 78, October 10, 2007, R.R. at 84A.) Mrs. Patten stated that the last time she sold parts from the Property was sometime in 2006 and that a relative dropped off one vehicle on the Property some months before the sale, which was fine because her son was just hauling the vehicles out anyway. (Board Hr'g Tr. at 109, R.R. at 115A.) However, Mr. Patten acknowledged in his testimony that: he had not used the Property to strip or salvage vehicles since approximately 1997; beginning in 1997, he began hauling scrap off the Property for his mother every six months or so; and in recent years, no scrap was added, and they were strictly removing scrap. (Board Hr'g Tr. at 69-72, 76-78, R.R. at 75A-78A, 81A-84A.) Additionally, Mrs. Patten acknowledged that: there was no active junkyard on the Property; she and her son were in the process of clearing the Property out to sell; and when she sold the Property, she did not warrant that it could be used as a junkyard or that there was a preexisting use on the Property. (Board Hr'g Tr. at 98, 100-01, R.R. at 104A, 106A-07A.) To the extent the Pattens' testimony indicates that some activity may have occurred on the Property after the mid-1990s, that activity still occurred more than six months before Landowners purchased the Property. Mrs. Patten's sale of parts in 2006 does not negate the fact that she testified that there was no active junkyard on the Property, that she and her son were in the process of clearing out the Property to sell it and that Mr. Patten testified that he hauled out the last load of scrap in the beginning of 2007. Moreover, this Court has held that

"[a]fter a cessation of activity by an owner . . . a mere casual, occasional and infrequent return to the original activity is not sufficient to continue or renew a prior nonconforming use, nor can a new, separate and distinct enterprise gain the protection of the prior nonconforming use." DiNardo v. City of Pittsburgh, 325 A.2d 654, 658 (Pa. Cmwlth. 1974).

Landowners also presented the testimony of Mr. McBride, Mr. Nimmerichter, and Mrs. Moyer to establish that the Pattens did not intend to abandon the non-conforming use of the Property. Mr. McBride testified that he purchased items from Rick Patten between 1984 and 1997 and that his last purchase of goods from the Property occurred in 1997. (Board Hr'g Tr. at 9-13, December 6, 2007, R.R. at 306A-10A.) Mr. McBride indicated that when he was at a property located across the street from the Property in approximately 2004, he saw remnants of cars "three-quarters of the way rusted away. . . [s]ome were half rusted away," and those remnants were "not something that you could pick up or carry around." (Board Hr'g Tr. at 15, 28, R.R. at 312A, 325A.) Mr. Nimmerichter testified that, between the 1970s and 1996, he went to the Property approximately three to five times a year, but had not taken any cars to the Property since approximately 1995 or 1996. (Board Hr'g Tr. at 44-45, 51, R.R. at 341A-42A, 349A.) Mr. Nimmerichter stated that he went to the Property once or twice in the past five years, i.e., since 2002, but that he left when he saw no one on the Property. (Board Hr'g Tr. at 46-47, R.R. at 343A, 345A.) Finally, Mrs. Moyer testified about certain scrap items that were left on the Property by the Pattens and that she was aware of the historic use of the Property as a salvage yard, as she had visited the Property in the mid-to-late 1980s. (Board Hr'g Tr. at 57-58, R.R. at

355A-56A.) Mrs. Moyer agreed that, although the topic had been discussed with the Pattens, Landowners' ability to continue to use the Property as a non-conforming salvage yard was not a condition of the sale.[16] (Board Hr'g Tr. at 60, R.R. at 358A.) However, this testimony does not rebut the presumption, pursuant to Section 1700.6 of the Ordinance, that the Pattens intended to abandon the non-conforming use of the Property because the testimony involved activity or observations that occurred years, and in some instances, a decade, before Landowners purchased the Property. This testimony supports the Board's contrary conclusions that Landowners did not establish that a non-conforming use existed on the Property at the time they purchased the Property and that any non-conforming use had not been continued at least six months before Landowners purchased the Property, thus raising the presumption of intent to abandon set forth in Section 1700.6 of the Ordinance. Moreover, this testimony does not contradict the Township's credited evidence that the Property had not been used as a salvage yard since the mid-1990s.

Landowners are correct that "[a]bandonment of a non-conforming use cannot be 'inferred from or established by a period of nonuse alone. It must be shown by the owner['s] . . . overt acts or failure to act.'" Zitelli v. Zoning Hearing Board of the Borough of Munhall, 850 A.2d 769, 772 (Pa. Cmwlth. 2004) (quoting Estate of Barbagallo v. Zoning Hearing Board of Ingram Borough, 574 A.2d 1171,

[16] The Township presented the testimony of Earl Swavely, Jr., the Township's Chief of Police (Chief Swavely) in rebuttal. Chief Swavely testified, in relevant part, that, after 1997, he did not see anyone working the Property as a recycling or scrap business. (Board Hr'g Tr. at 86, 92, December 6, 2007, R.R. at 384A, 390A.)

1173 (Pa. Cmwlth. 1990)). However, to the extent that Landowners rely on Simonitis[17] and Heichel[18] for their contention that the mere reduction in activity

[17] In Simonitis, the appellant, who was in the process of purchasing the property at issue, appealed from the denial of his request to expand an auto repair business, which was a non-conforming use of the property, on the grounds that the use had been abandoned. Simonitis, 865 A.2d at 285. The trial court affirmed the denial, and the appellant appealed to this Court. Id. On appeal, the appellant argued that the property owners neither intended to abandon, nor did they ever actually abandon, the use of the property as an auto repair garage. Id. at 286. This Court reversed, agreeing with the appellant's arguments. Id. at 288-90. In doing so, our Court pointed to the fact that the property owner testified that: "he intended to keep the garage functioning as a business, at least part-time"; all the property owner's "tools, painting system, and 'office stuff' (desks, chairs) remained in the building"; "he continued to work on his own car as well as on other people's cars on a case-by-case basis at the [p]roperty"; he continued to advertise in the telephone directory; the property owner intended to "sell the [p]roperty as an auto body garage"; and the agreement of sale was contingent on the appellant's ability to obtain approval to enlarge the building for continuing the non-conforming use as a garage. Id. at 286, 288.

[18] In Heichel, the estate of the property owner, which operated a non-conforming salvage yard, appealed from the zoning hearing board's denial of a salvage yard permit application based on the board's determination that the non-conforming use had been abandoned. Heichel, 830 A.2d at 1082. The board held that there was abandonment because: when the salvage yard had been in operation, there were hundreds of vehicles, and, by 2001, there were no more than ten vehicles on the property; the estate was willing to sell the property to the municipality or the association for a use other than a salvage yard, and the other offeror was not a serious and bona fide purchaser. Id. at 1085. The trial court affirmed the board's determination. This Court reversed on appeal, agreeing with the estate that the Township failed to meet its burden of proving abandonment because the municipality failed to prove either that the estate intended to abandon the non-conforming use or actually abandoned the use. Id. at 1086-87. In so holding, our Court noted that the evidence showed that: the executrix of the estate specifically denied the intent to abandon the non-conforming use; family members continued to operate a salvage yard on the property full-time until June 2000; a subcontractor continued to use the property for a salvage yard business until March 2001; the property remained operational as a salvage yard at all relevant times up until the application for a salvage yard permit in December 2001; there was no attempt to convert the property to some other use; no structures were demolished; no equipment was sold; the estate was actively marketing the property for sale as a salvage yard; the sale of the property was conditioned on the use of the property as a salvage yard; and the offers were based on the value of the property as a salvage yard. Id. at 1086-88.

does not constitute abandonment of the non-conforming use, we conclude that those cases are distinguishable. In both Simonitis and Heichel, the former property owners testified that they had no intent of abandoning the non-conforming uses on their properties. Simonitis, 865 A.2d at 288; Heichel, 830 A.2d at 1086. There is no such testimony here. Further, in Simonitis and Heichel, the sales of the properties at issue were conditioned on the continuation of the non-conforming use. Simonitis, 865 A.2d at 285; Heichel, 830 A.2d at 1088. In Simonitis, the property owner was selling the property as a non-conforming auto repair business, Simonitis, 865 A.2d at 288, and in Heichel, the former property owner actively marketed the property as a non-conforming salvage yard use, Heichel, 830 A.2d at 1087-88. Here, Mrs. Patten testified that, although she described how the Property had been used in the past to Landowners, she did not care how Landowners were going to use the Property and that she did not warrant the Property as a salvage yard. (Board Hr'g Tr. at 101, 105, November 10, 2007, R.R. at 107A, 111A.) In fact, Mrs. Moyer acknowledged that the sale was not conditioned on Landowners' ability to continue the non-conforming use on the Property. (Board Hr'g Tr. at 60, December 6, 2007, R.R. at 358A.) Finally, unlike the property owners in Simonitis and Heichel, who continued to actively engage in the non-conforming use alleged to be abandoned and stored tools and equipment necessary for the continuation of the non-conforming use on their properties, Simonitis, 865 A.2d at 288, Heichel, 830 A.2d at 1087, the Pattens were not actively operating a junkyard and were actively removing the items associated with their operation of a salvage yard in anticipation of selling the Property. (Board Hr'g Tr. at 96, 98, R.R. at 102A, 104A.) Thus, Simonitis and Heichel do not support Landowners' contention that there was no actual abandonment here because the Pattens were merely reducing

the extent of their non-conforming use on the Property. Accordingly, we conclude that the Board did not commit an error of law or abuse its discretion in holding that the Township established, through substantial evidence, that any non-conforming use of the Property as a salvage yard had been abandoned.

IV. Substantial Evidence

Next, Landowners contend that certain of the Board's findings of fact and conclusions of law are not supported by substantial evidence in the record. Landowners first argue that the Board committed an abuse of discretion in its Finding of Fact No. 34, asserting that the "Board found that there has been 'no activity at the subject premises which would constitute a non-conforming [] use'" and that such finding is "an abuse of discretion as it clearly contradicts the testimony of Rick Patten and Goldia Patten who testified that the [P]roperty was used as a salvage yard up to and including 2007." (Landowners' Br. at 17.)

A zoning hearing board abuses its discretion only where its findings of fact are not supported by substantial evidence. Heichel, 830 A.2d at 1085 n.11. "Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Id. Where, as here, "both parties present evidence, it does not matter that there is evidence in the record which supports a factual finding contrary to that made by the factfinder, rather, the pertinent inquiry is whether there is any evidence which supports the factfinder's factual finding." Mulberry Market, Inc. v. City of Philadelphia, Board of License & Inspection Review, 735 A.2d 761, 767 (Pa. Cmwlth. 1999). "When performing a substantial evidence analysis, this Court must review the evidence in the light most favorable

to the party who prevailed before the fact finder." Adams Outdoor Advertising, Ltd. v. Department of Transportation, 860 A.2d 600, 605 n.8 (Pa. Cmwlth. 2004). The zoning hearing board is the fact finder, and a "reviewing court may not substitute its judgment for that of the zoning hearing board . . . [but] is bound by the zoning hearing board's determinations of witness credibility and evidentiary weight." In re Rural Route Neighbors, 960 A.2d 856, 860 (Pa. Cmwlth. 2008), appeal denied, ___ Pa. ___, 989 A.2d 10 (2010).

We first note that Landowners misquote the Board's finding of fact at issue here. That factual finding actually states that "[b]oth [Landowners] and Township have established for at least ten years, there has been no activity at the subject premises which would constitute a non-conforming use of the property as a recycling, salvage or other type of scrap or junk yard." (FOF ¶ 34.) After reviewing the record in the light most favorable to the Township, the prevailing party, we conclude that this finding of fact is supported by Mr. Wardzinski's credited testimony that he did not observe any salvage activity occurring on the Property in the ten or so years he had managed the adjacent landfill, as well as Mr. Bealer's credited testimony that he observed no salvage activity occurring on the Property starting in 1994. The aerial photographs taken from 1994 through 2006, accepted as evidence by the Board, provide additional support for this finding of fact.[19] This finding is also supported by Mr. Nimmerichter's testimony that the last

[19] To the extent that Landowners assert that these photographs do not reveal items visible only at ground level because those items were covered by the underbrush, we conclude that such assertions go to the weight of the evidence, a determination that falls within the sole province of the Board as fact finder and which this Court cannot review on appeal. In re Rural Route Neighbors, 960 A.2d at 860.

time he took a car to the Property was in 1995 or 1996, and by Mr. McBride's testimony that the last time he purchased anything from the Property was in 1997. Finally, this finding is supported by Mr. Patten's testimony that, starting in approximately 1996, the activity on the Property consisted of removing scrap from the Property in anticipation of the sale of the Property. Because the Board's challenged finding of fact is supported by substantial evidence in the record, the fact that the Pattens' testimony could support a finding contrary to one made by the Board is of no moment. Mulberry Market, 735 A.2d at 767.

Landowners and Intervenor next assert that the Board's Conclusion of Law No. 4 is erroneous as a matter of law.[20] Landowners claim that, pursuant to Heichel, the Township had to prove both the intent to abandon and *actual* abandonment and that the record does not support the conclusion that the non-

[20] The Board's Conclusion of Law No. 4 states:

> 4. [Landowners] have maintained that [Mr. Whetstone] erred in that they had a right to use the property as a salvage/recycling/junkyard operation because there was a lawful non-conforming use of the property which existed and which continued to exist at the time of their purchase of the properties. However, a zoning ordinance may establish a presumption of intent to abandon a use by incorporating a discontinuance provision that provides that the lapse of a designated time is sufficient to establish the intent to abandon a non-conforming use. Once the intent to abandon is established pursuant to a discontinuance provision in a zoning ordinance, the burden of persuasion shifts to the party challenging the claim of abandonment. [Landowners] have failed to rebut this presumption and have failed to demonstrate that any lawful, non-conforming use existed at the time they purchased the properties and, in fact, their testimony only establishes that the use, if any existed at all, had long since been abandoned.

(COL ¶ 4 (citations omitted).)

conforming salvage yard use was ever completely abandoned. According to Landowners, the Board "misconstrued the facts against the law in believing that a substantial reduction in activity equals abandonment" and that this "is clearly not the law in Pennsylvania." (Landowners' Br. at 19.) Rather, Landowners argue that this matter is similar to the facts in Simonitis and Heichel, in which, according to Landowners, this Court held that the municipalities failed to prove abandonment where the evidence of abandonment, like here, was that the intensity of the use had been significantly decreased.

However, as indicated above, we conclude that Simonitis and Heichel are distinguishable from the present matter. In addition to the reasons already stated, we note that the reduction in the non-conforming activities involved in Simonitis and Heichel were accompanied by additional overt conduct by the property owners that led this Court to conclude, in both those cases, that there was no actual abandonment of the non-conforming uses. That overt conduct included: express statements that there was no intent to abandon the use; the storage of tools and equipment necessary to continue engaging in the non-conforming use; the express marketing or sale of the properties as being available for the non-conforming uses; and making the agreements of sale in those cases contingent or conditional on the ability to continue, or expand, the existing non-conforming use. Here, the evidence presented to establish that the salvage yard use continued was the fact that, for a period of approximately ten years, the Pattens *removed* items from the Property in order to prepare the Property for sale. We conclude that this type of conduct, when compared to the conduct that established the continuation of a non-conforming use in Simonitis and Heichel, does not preclude the Board from

finding, based on the credited testimony of Mr. Wardzinski and Mr. Bealer, as well as the testimony of Mr. McBride and Mr. Nimmerichter, that the non-conforming use on the Property was actually abandoned before Landowners purchased the Property in July 2007.

Landowners further assert that the Board's Finding of Fact Nos. 30 and 36 conflict and that, pursuant to Simonitis and Heichel, the testimony of the Pattens establish that there was not an abandonment of the non-conforming scrap yard use.[21] Thus, Landowners contend that the Board committed an error of law and abused its discretion in finding that the non-conforming use had been actually abandoned ten years prior to Landowners' purchase of the Property. In Finding of Fact No. 30, the Board summarized Mrs. Patten's testimony and, in relevant part, stated "[f]rom 1990 through 2007, the only activity on the [P]roperty was dismantling and removal of things on the [P]roperty." (FOF ¶ 30.) In Finding of Fact No. 36, the Board found that Landowners "failed to establish a lawful prior non-conforming use in existence at the time of their purchase of the properties or within the period of six months prior to their purchase. Evidence established [that any] non-conforming uses were abandoned 10 years prior to [Landowners'] purchase of the [P]roperty." (FOF ¶ 36.)

We discern no conflict in these Findings of Fact. The Board acknowledged in Finding of Fact No. 30 that limited activity continued on the Property between

[21] Intervenor asserts that Finding of Fact No. 30 "confirms that the non-conforming use of the [P]roperty was still in place when [Landowners] purchased the [P]roperty." (Intervenor's Br. at 7.)

1990 and 2007. However, in concluding that the non-conforming use as a salvage yard had been abandoned during that time, the Board essentially concluded that such activity, limited to the removal of already scrapped items from the Property every six months in anticipation of the sale of the Property, was not the continuation of the non-conforming use of the Property as a scrap yard. Mrs. Patten agreed that she was not running an active junkyard on the Property and that her son was hauling everything off the Property in anticipation of the sale. (Board Hr'g Tr. at 98, 100, October 10, 2007, R.R. at 104A, 106A.**)** Moreover, as noted previously, where an owner ceases the non-conforming activity, a mere casual, occasional, and infrequent return to that non-conforming activity is insufficient to continue or renew a prior non-conforming use. DiNardo, 325 A.2d at 658. Finally, to the extent that Landowners argue that the Board's determination is contrary to Simonitis and Heichel, we point to our prior analysis setting forth the reasons we conclude that Simonitis and Heichel are distinguishable and do not support Landowners' allegations of error.[22]

Landowners next argue that the Board erred as a matter of law or abused its discretion in rendering its Conclusions of Law Nos. 2 and 3.[23] Landowners argue

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[22] For these reasons, we also reject Landowners' claim that the Board abused its discretion when it rendered Finding of Fact No. 32, in which the Board found that Landowners "have failed to establish that at the time of their purchase of the [Property] on July 31, 2007, any salvage/junkyard/recycling business was being conducted on the [P]roperty." (FOF ¶ 32.)

[23] Conclusions of Law Nos. 2 and 3 state:

> 2. The Township has established its burden of proof with respect to the Notice of Violation as that notice cites violations of Article VII [(describing the zoning regulations applicable to the R-2 zoning district)] §§700, 701 and 701.1. The first alleged violation addressed is

(Continued…)

that the Township did not prove that Landowners' conduct violated Sections 701 and 701.1 of Article VII of the Ordinance. In doing so, Landowners essentially repeat their arguments that the Township did not prove both intent to abandon and actual abandonment of the non-conforming salvage yard use. We have already rejected those arguments, and we do so again based on our foregoing analysis.

Landowners claim that the Board erred in making Conclusion of Law No. 5, holding that Landowners "are operating a business or other commercial enterprise in the [R-2][24] District which is in violation of Article VII, §701 of the [Ordinance.]" (COL ¶ 5.) According to Landowners, the testimony of Ryan Moyer and Mrs. Patten was clear that the Property was operated as a "private yard and not a commercial business as alleged by the Township." (Landowners' Br. at 20.)

Section 701 of the Ordinance limits the use of a property zoned R-2 to one use. (Ordinance § 701.) Approved uses in the R-2 District are single-family detached dwellings (permitted as of right), other uses that are specifically

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> [Landowners'] conducting of a commercial salvage, recycling and scrap yard use and a residential use in an R-2 Zoning District.
>
> 3. Article VII, §701 of the Township Zoning Ordinance provides in relevant part ". . . a lot may be used or occupied for any <u>one</u> of the following uses and no other: §701.1 Single-family detached dwellings." Other uses require a Special Exception.

(COL ¶¶ 2-3.)

[24] It appears that this Conclusion of Law contains a typographical error in that it states that Landowners were operating a business in the R-1 District; it is undisputed that the Property is zoned R-2, which is governed by Article VII of the Ordinance.

authorized as special exceptions, and accessory uses on the same lot that are customarily incidental to any permitted use. (Ordinance §§ 701.1-701.3.) Commercial or business uses are not permitted unless they are accessory uses with and customarily incidental to any permitted use. The operation of a salvage yard, private or otherwise, does not qualify as an accessory use to a residential use according to Section 201.3 (defining "accessory use") and Section 407.2 (describing uses accessory to dwellings) of the Ordinance because such use is not subordinate or customarily incidental to the main use of the land, here the residential use.

The Ordinance defines "commercial use" as a "[u]se predominately for trade or commercial service purposes." (Ordinance § 201.107(A).) The Ordinance does not define "business," "commercial," or "trade." The dictionary defines "business" as, *inter alia*, "a usu. commercial or mercantile activity customarily engaged in as a means of livelihood . . . ." Webster's Third New International Dictionary 302. "Commercial" is defined as "occupied with or engaged in commerce."[25] Id. at 456. To "trade" is "to engage in the exchange, purchase, or sale of goods or other property." Id. at 2421. Despite Landowners repeated attempts to remove the "commercial" or "business" nature from their activities because they are not incorporated and do not advertise, we conclude that the Pattens' prior abandoned activity and Landowners' current activity on the Property was and is a commercial

[25] "Commerce" is "the exchange or buying and selling of commodities esp. on a large scale and involving transportation from place to place." Webster's Third New International Dictionary 456. A "commodity" is, *inter alia*, "an economic good" or "something used or valued." Id. at 458.

use of the Property. Landowners, through their salvage activities, engage in the exchange, purchase, and sale of goods, and they rely on these activities as a means of livelihood. Thus, we conclude that the Board did not err or abuse its discretion in rendering its Conclusion of Law No. 5.

Landowners next argue that the Boards' Conclusions of Law Nos. 6, 7, and 8 are erroneous.[26] Landowners point out that they own two parcels of land, one which they use for the non-conforming private salvage yard use and one which they use for their residential use. Thus, they do not have two "uses" on *one* parcel in violation of Section 701 of the Ordinance. However, the Township's evidence,

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[26] Conclusions of Law Nos. 6, 7, and 8 state:

> 6. The Township Zoning Ordinance defines a single-family detached dwelling as "a building designed for and occupied exclusively as a residence . . ." (§203.43A.1). A "building" is defined in the Ordinance as "Any structure having roof supported by walls and intended for . . . housing . . ." (§201.14) and "structure" is defined as "Any man-made object having ascertainable stationary location on or in land . . . " (§201.91).
> 7. The [Landowners'] evidence established that they were living in a mobile home (not a building) without a stationary location and sewer or water (NT 11-8-07 p. 46).
> 8. The Board finds that [Landowners] are living on the property and conducting a salvage building or other commercial enterprise on the property (two different uses) in violation of Article VII, §701 of the [Township] Zoning Ordinance.

(COL ¶¶ 6-8 (emphasis in original).) Although Landowners challenge Conclusions of Law Nos. 6 and 7, they offer no argument or reason in their brief as to why these Conclusions of Law are erroneous or constitute an abuse of discretion, and, as such, the challenges have been waived. In re Condemnation of Land for South Central Business District Redevelopment Area # 1 (405 Madison St., City of Chester), 946 A.2d 1154, 1156 (Pa. Cmwlth. 2008) (stating that, pursuant to Pa. R.A.P. 2119(a), "[a]rguments not properly developed in a brief will be deemed waived").

namely the photographs introduced of the Property and Mr. Whetstone's testimony, as well as Ryan Moyer's testimony that he lives and conducts a business on the Property and that there are two uses on the Property, (Board Hr'g Tr. at 23, November 8, 2007, R.R. at 162A), constitutes substantial evidence that supports the Board's conclusion that Landowners are operating the salvage yard on the entire Property, including on the parcel on which Landowners reside, in violation of Section 701 of the Ordinance.

V. Denial of Landowners' Motion to Submit Additional Evidence to the Trial Court

Landowners next argue that the trial court erred in denying Landowners' Motion to present additional evidence as "untimely" and should have addressed the Motion on its merits. According to Landowners, Section 1005-A of the MPC places no restriction upon when a trial court may consider a motion to present additional evidence. Thus, Landowners contend that the trial court erred in denying their Motion to submit evidence that:

> showed strong evidence that the [P]roperty . . . was historically used as a salvage yard which would corroborate [the Pattens'] cited testimony . . . . Said photographs would have also impeached the credibility of [Mr. Wardzinski] who testified that the [P]roperty was not used as a salvage yard. The photographs would also rebut the aerial photographs that allegedly did not show 'salvage' material on the ground.

(Landowners' Br. at 22.)

Section 1005-A of the MPC provides, in relevant part, "[i]f, upon motion, it is shown that proper consideration of the land use appeal requires the presentation of additional evidence, a judge of the court *may* hold a hearing to receive

additional evidence." 53 P.S. § 11005-A (emphasis added). Whether a party may introduce additional evidence before the trial court under Section 1005-A of the MPC is a question within the discretion of the trial court. Morris v. South Coventry Township Board of Supervisors, 898 A.2d 1213, 1217 (Pa. Cmwlth. 2006). "A trial court must hear additional evidence only 'where the party seeking the hearing demonstrates that the record is incomplete because the party was denied an opportunity to be heard fully, or because relevant testimony was offered and excluded.'" Id. (quoting In re Appeal of Little Britain Township, 651 A.2d 606, 613 (Pa. Cmwlth. 1994)). "[A] trial court may properly refuse to consider additional evidence where that evidence was available at the time of hearing." Morris, 898 A.2d at 1217-18.

Landowners are correct that Section 1005-A does not provide a time period in which a party must file a motion seeking to submit additional evidence; however, we disagree that the trial court did not consider the merits of the Motion. The trial court based its denial partially on the fact that Landowners, who had the additional evidence it sought to introduce as early as February 2008, waited until the morning of the hearing some nine months later on November 20, 2008 to request that this evidence be submitted and considered by the trial court. However, the trial court also stated in its November order:

> Furthermore, since the "Additional Evidence" which is the object of [Landowners'] Motion consists of certain photographs taken in January, 2008, of property adjacent to the premises which is the subject of this appeal and intended to be offered primarily for the record purpose of impeaching the credibility of a witness or witnesses who testified on behalf of [the] Township in opposition to [Landowners'] application heard in 2007 by the [Board], it is unlikely

> that [Landowners] would have otherwise prevailed had their Motion been timely.

(Trial Ct. Order, November 24, 2008, R.R. at 589A.) Thus, the trial court gave reasons, other than the timeliness of the Motion, for why the Motion should be denied.

Moreover, Landowners do not assert that the record was incomplete because they were denied the opportunity to be heard or because this testimony or evidence, claimed to be relevant, was offered but excluded by the Board. Absent these assertions, the trial court was not obligated to accept the evidence Landowners sought to introduce at the hearing on their appeal. Morris, 898 A.2d at 1217. Indeed, we question whether Landowners could make such assertions given that the Board held three hearings during which Landowners offered the testimony of six witnesses and introduced numerous photographs, all describing the history of the Property and the condition of the Property when Landowners purchased it in July 2007. Landowners acknowledged, during the November 20, 2008 argument before the trial court, that they presented evidence before the Board in an effort to rebut the same testimony and evidence it sought to rebut with the "new" evidence before the trial court. (Trial Ct. Hr'g Tr. at 26-28, November 20, 2008, R.R. at 669A-71A.) Accordingly, we conclude that the trial court did not abuse its discretion in denying Landowners' Motion.

VI. Intervenor's Additional Arguments

Intervenor raises claims in addition to the claims of Landowners, in which he joined. Intervenor repeatedly asserts that the Board did not have jurisdiction over this matter, stating that "Once Jurisdiction is challenged, it must be proven."

(Intervenor's Br. at 12.) Intervenor first contends that the Board and the Township did not have jurisdiction because Mr. Whetstone and the Township violated Landowners' and Intervenor's constitutional rights by "unlawfully trespassing [] without a Search Warrant." (Intervenor's Br. at 11.) Intervenor argues that Ryan Moyer's testimony establishes that Intervenor and Mrs. Moyer told Mr. Whetstone to leave the Property and that Mr. Whetstone refused to leave. (Intervenor's Br. at 10.) In response to Intervenor's argument, the Board asserts that Intervenor's constitutional challenges were not set forth in his Statement of Matters Complained of on Appeal with any specificity, were more "vague references to perceived violations of his Constitutional Due Process rights," and that the "vagueness and rambling manner [of the concise statement of matters complained of and Intervenor's brief in support thereof] hinder the identification of the pertinent issues." (Board's Br. in Response to Intervenor's Br. at 3-4.) Thus, the Board argues that Intervenor's appeal should be dismissed. We decline to dismiss Intervenor's appeal.

Initially, we note that, to the extent that Intervenor asserts in his Statement of Matters Complained of on Appeal that the trial court erred by not addressing the issue of Mr. Whetstone's alleged unlawful trespass, (Intervenor's Concise Statement of Errors Complained of on Appeal at 3, ¶ 16, March 12, 2009, R.R. at 641A), the issue was not raised in either Landowners' Notice of Appeal or Intervenor's Petition to Intervene. (Landowners' Notice of Land Use Appeal, March 14, 2008, R.R. at 479A-84A; Intervenor's Petition to Intervene in Opposition of the Decision of the Board (Petition to Intervene), May 14, 2008.) Thus, the trial court could not have had addressed that issue. Moreover, to the

extent Intervenor may have attempted to raise this issue before the Board, it was in the context of his "counterclaim" suit against the Township and Mr. Whetstone for allegedly violating Landowners' and Intervenor's constitutional rights, which the Board's solicitor concluded was not relevant to the zoning matter before the Board. This counterclaim was born out by Intervenor's subsequent introduction of the Complaint, which advised the Board and the Township that Landowners and Intervenor were going to file an action against them based on the alleged constitutional rights violations. We conclude that the Board did not err in refusing to allow Intervenor to proceed with this line of questioning or in not addressing this issue further.[27]

Intervenor next argues that the Board lacked jurisdiction based on Landowners' and Intervenor's "right to be secure in their person and property." (Intervenor's Br. at 14.) This argument appears to arise from the Board's denial of Intervenor's motion to dismiss the matter for lack of jurisdiction. (Board Hr'g Tr. at 104-05, December 6, 2007, R.R. at 402A-03A.) While Mrs. Moyer was testifying, Intervenor asked her about the Complaint, which Intervenor submitted to the Board. (Board Hr'g Tr. at 76-77, R.R. at 374A-75A.) In the Complaint, Intervenor and Mrs. Moyer challenge the Board's "jurisdiction over the person and

[27] We also note that Mr. Whetstone credibly testified that, when he went to the Property on August 8, 2007, he had *discussions* with Intervenor, Mrs. Moyer, and Ryan Moyer. (Board Hr'g Tr. at 23, October 10, 2007, R.R. at 29A.) Mr. Whetstone also testified that, on August 8, 2007, he had a conversation with Intervenor, who explained to Mr. Whetstone about the operation of the salvage yard on the Property. (Board Hr'g Tr. at 23, 28, R.R. at 29A, 34A.) This testimony conflicts with Ryan Moyer's testimony that all he told Mr. Whetstone was to speak with Intervenor and that Intervenor told Mr. Whetstone to leave. (Board Hr'g Tr. at 65-66, November 8, 2007, R.R. at 205A-06A.) In finding Mr. Whetstone's testimony credible, the Board implicitly rejected Ryan Moyer's contrary testimony on this issue.

property of [Landowners and Intervenor]." (Complaint at 1, R.R. at 472A.) The Complaint advised the Board and Township that Landowners and Intervenor would "be filing a complaint in the courts to assist them in protecting their God-given life, liberty, and property." (Complaint at 1, R.R. at 472A.) The Complaint states that Landowners and Intervenor are "Freeman" and "Sovereign Citizen[s] of the United States" subject only to the "Biblically ordained, and constitutionally secured common law" and that they "vehemently repudiate all jurisdiction and claims outside common law." (Complaint at 1, R.R. at 472A.) Pursuant to the Complaint, Landowners and Intervenor indicate that they "repudiate and deny all decisions by any official in any capacity which are repugnant to the above-mentioned laws and constitutions." (Complaint at 1, R.R. at 472A.) Thereafter, the Complaint sets forth 53 acts by the Township or Mr. Whetstone that allegedly violated Landowners' and Intervenor's rights. (Complaint at 3-4, R.R. at 474A-75A.) The Complaint further alleges that: Landowners' own the Property in "Allodial Freehold"; "no agent/agency of government, nor any subdivision thereof, nor any other individual, corporations, or other entities can lay claim to jurisdiction over said real property or these free and natural citizens"; and that Landowners and Intervenor "are free from any intrusion whatsoever from any source." (Complaint at 6-7, R.R. at 477A-78A.) The Board denied Intervenor's motion to dismiss, but accepted the Complaint as evidence. (Board Hr'g Tr. at 104-05, December 6, 2007, R.R. at 402A-03A.)

We disagree that the Board lacked jurisdiction. Section 909.1(a)(3) of the MPC provides that "[t]he zoning hearing board shall have exclusive jurisdiction to hear and render final adjudications in the following matters: . . . Appeals from the

determination of the zoning officer, including, but not limited to, the granting or denial of any permit, or . . . the issuance of any cease and desist order." 53 P.S. § 10909.1(a)(3). This matter clearly falls within the Board's jurisdiction under Section 909.1(a)(3) of the MPC. To the extent that Intervenor's assertions are based on the belief that zoning ordinances are unconstitutional, it is well-settled that "[z]oning laws are founded upon the constitutional principles of police powers of government to promote the public health, morals, safety and general welfare." Forks Township Board of Supervisors v. George Calantoni & Sons, Inc., 297 A.2d 164, 166 (Pa. Cmwlth. 1972). In In re Realen Valley Forge Greenes Associates, 576 Pa. 115, 838 A.2d 718 (2003), our Supreme Court stated the following:

> Property owners have a constitutionally protected right to enjoy their property. . . . That right, however, may be reasonably limited by zoning ordinances that are enacted by municipalities pursuant to their police power, *i.e.*, governmental action taken to protect or preserve the public health, safety, morality, and welfare. Cleaver [v. Board of Adjustment], 414 Pa. 367, [372], 200 A.2d [408] at 411-12 [(1964)] ("it is well settled that [the] constitutionally ordained right of property is and must be subject and subordinated to the Supreme Power of Government – generally known as the Police Power – to regulate or prohibit an owner's use of his property").

Id. at 131, 838 A.2d at 727-28 (quoting C & M Developers, Inc. v. Bedminster Township Zoning Hearing Board, 573 Pa. 2, 14, 820 A.2d 143, 150 (2002)). Moreover, "[a] property owner is obliged to utilize his property in a manner that will not harm others in the use of their property, and zoning ordinances may validly protect the interests of neighboring property owners from harm." Hopewell Township Board of Supervisors v. Golla, 499 Pa. 246, 255, 452 A.2d 1337, 1341-42 (1982). Finally, "[a] municipality has the right to reasonably limit an owner's absolute right to use his or her property with zoning ordinances designed to protect

or preserve public health, safety and welfare." Keinath v. Township of Edgmont, 964 A.2d 458, 462 (Pa. Cmwlth.), appeal denied, ___ Pa. ___, 983 A.2d 730 (2009). Accordingly, we conclude that the Board had jurisdiction over Landowners, Intervenor, and the Property in this matter.

For the foregoing reasons, we affirm the trial court's orders.

RENÉE COHN JUBELIRER, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Georgette Moyer and Ryan Moyer	:	
	:	
v.	:	No. 259 C.D. 2009
	:	
Zoning Hearing Board of West Pottsgrove Township, West Pottsgrove Township and Blaine Moyer	:	
	:	
Appeal of: Georgette Moyer, Ryan Moyer and Blaine Moyer	:	

O R D E R

NOW, July 8, 2010, the orders of the Court of Common Pleas of Montgomery County, dated November 24, 2008 and January 14, 2009, in the above-captioned matter are hereby **AFFIRMED**.

RENÉE COHN JUBELIRER, Judge