

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Orange Stones Co., :
Appellant :
v. : No. 287 C.D. 2011
City of Reading Building/Fire : SUBMITTED: August 12, 2011
Board of Appeals :

**BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE JAMES R. KELLEY, Senior Judge**

OPINION NOT REPORTED

**MEMORANDUM OPINION BY
PRESIDENT JUDGE LEADBETTER**

FILED: September 27, 2011

The Orange Stones Company appeals from the order of the Court of Common Pleas of Berks County, which affirmed the decision of the City of Reading Building/Fire Board of Appeals (Board). The Board concluded that Reading’s Chief Building Official properly issued an “Enforcement Notice/Cease of Operations Order” to Orange Stones because its building lacked the required occupancy permit. We reverse.

Orange Stones owns property at 1711 Hampden Boulevard in the City of Reading (City). The property is approximately three acres and includes a large building that was formerly operated as a nursing home. Orange Stones purchased the property in August, 2008, and soon afterward began moving office equipment

and furniture into the facility. Responding to complaints, a Building Code Official visited the property and saw people moving furniture into the building, and, apparently through a window, people sitting at desks. Based on this observation, the official returned to the property several days later and posted a notice banning any business activity until the City gave its approval. The notice identified the problem as a failure to obtain a Certificate of Occupancy pursuant to Section 110.1 of the 2006 International Building Code (IBC). The City subsequently sent a letter to Orange Stones to the same effect. Orange Stones filed a timely appeal with the Board, arguing that it, in fact, had a valid Certificate of Occupancy.¹ After a hearing, the Board concluded that the City had properly issued the enforcement notice. Without taking additional evidence, common pleas affirmed. An appeal to this court followed.

On appeal, Orange Stones argues that common pleas erred in affirming because the Board's decision was not supported by substantial evidence, was legally incorrect, did not contain sufficient findings and reasoning as required by the local agency law, and affected an unconstitutional taking of its property. Because we reverse for the lack of substantial evidence, we need not address the remaining arguments.

With certain amendments not relevant here, the City has adopted the 2006 IBC as its building code. City Code § 5-111, Reproduced Record (R.R.) at 12a. The parties agree that, prior to the City's adoption of the IBC, the previous owners of the property had acquired a certificate of occupancy with the

¹ Before the Board heard the case, the City went to common pleas seeking a preliminary injunction. While it has no bearing on the case currently before us, we note that we decided an appeal in that case in *City of Reading v. Firetree, Ltd.*, 984 A.2d 16 (Pa. Cmwlth. 2009).

classification “C2 Group Habitation.” R.R. at 47a. Under the IBC, structures lawfully in use before the IBC’s adoption can continue to be put to the same use without acquiring additional certifications. IBC § 102.6. However, when a building undergoes a “change in the existing occupancy classification,” a new occupancy permit is required. IBC § 110.1. Chapter 3 of the IBC lists use and occupancy classifications. The group habitation or nursing home use the property was put to by the previous owner is classified by the IBC as Group I-2. IBC § 308.3. The City alleged that Orange Stones was using the property for a business purpose, which falls under the IBC’s Group B classification. IBC § 304.1. Thus, if Orange Stones was changing the use of the property from I-2 to B, it would need to seek a new certificate of occupancy.

However, the City failed to present substantial evidence of such a change in use. The entirety of the City’s evidence for this proposition was that the Building Code Official observed workers unloading furniture at the property, as well as several people sitting at desks inside. The President of Orange Stones testified that the company had not settled on a use for the property, and was not conducting business there. The Board, in a strikingly brief opinion, stated that it “weighed all input and unanimously agreed that inspectors acted responsibly and within their jurisdiction in placarding the building.” Brief of Appellant, Appendix A. This was error. The evidence presented was fragmentary at best, and, as nursing homes presumably require some offices and administration, the relied-upon testimony did not establish that the property was being put to a new use. In addition, because the Board made no explicit findings of fact or credibility determinations, it offered no explanation for its apparent disregard of the testimony of the President of Orange Stones. Therefore, we conclude that the Board’s

decision was not supported by substantial evidence, and it was, therefore, error for common pleas to affirm.²

For all the forgoing reasons, we reverse.

BONNIE BRIGANCE LEADBETTER,
President Judge

² We note that while this decision reverses the order of the Board, Orange Stones is still bound by the provisions of the IBC. When and if Orange Stones decides to put the property to a use outside that covered by their current occupancy permit, it will have to seek a new permit.

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ORDER

AND NOW, this 27th day of September, 2011, the order of the Court of Common Pleas of Berks County is hereby REVERSED.

BONNIE BRIGANCE LEADBETTER,
President Judge