

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Commonwealth of Pennsylvania	:	
	:	
v.	:	No. 707 C.D. 2010
	:	
David Lease,	:	
	:	
Appellant	:	
	:	
Commonwealth of Pennsylvania	:	
	:	
v.	:	No. 708 C.D. 2010
	:	
David Lease,	:	Submitted: November 5, 2010
	:	
Appellant	:	

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge  
HONORABLE PATRICIA A. McCULLOUGH, Judge  
HONORABLE JAMES R. KELLEY, Senior Judge

**OPINION NOT REPORTED**

MEMORANDUM OPINION  
BY JUDGE McCULLOUGH

FILED: April 13, 2011

David Lease (Lease) appeals from the March 25, 2010, orders of the Court of Common Pleas of Adams County (trial court), finding Lease guilty of violating two provisions of the Hamilton Township Zoning Ordinance (Ordinance) and directing him to pay a fine of \$5,000.00 plus costs for each violation.

This is not the first matter Lease has brought before this Court involving the same underlying facts. Recently, we upheld a decision of the trial court, within its civil jurisdiction, sustaining two zoning violations against Lease, David R. Lease v. Hamilton Township Zoning Hearing Board and Board of Supervisors of Hamilton

Township (No. 1613 C.D. 2009, filed March 2, 2010), and we summarize the following relevant facts and testimony from that decision. (R.R. at 22-28.)<sup>1</sup>

Lease is the owner of two parcels of land located at 150 and 160 Gun Club Road in Hamilton Township, Adams County, Pennsylvania. By letter dated July 16, 2008, Ronald Balutis (Balutis), zoning and building code enforcement officer for Hamilton Township (Township), issued Lease notice of two zoning violations with respect to his property. The first violation related to the construction of a garage without a zoning permit at 160 Gun Club Road, and the second violation related to the installation of a new heating system, consisting of an outdoor wood burner and piping, without a zoning permit at 150 and 160 Gun Club Road. Lease appealed to the Hamilton Township Zoning Hearing Board (Board), which conducted a hearing on September 25, 2008.

At this hearing, Balutis testified that he personally observed the property on July 14, 2008, following complaints by Keith Traini, who resides at 140 Gun Club Road. Balutis said he noted the significant expansion of a garage housing an outside wood burner and an open trench with new, insulated piping running from this burner to a house on the property. Balutis identified the piping as flexible pex piping, commonly used for exterior wood-burning heating. Balutis noted that the piping was red and blue, which presumably would indicate a hot feed and a cold return. Balutis approximated the length of the trench at eighty to one hundred feet, running from the burner to the buildings on the property. Balutis then identified two aerial photographs of the property, one from December of 2003 and another from January of 2007, which showed an addition to the garage that housed the burner.

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<sup>1</sup> We note that Lease's reproduced record fails to include the lower case "a" following the page number as required by Pa. R.A.P. 2173.

During his testimony, Lease denied that he expanded the garage that houses the burner or installed a new heating system on his property. As to the garage, Lease stated that he merely repaired the roof, added siding and replaced one or two windows. With respect to the trench and piping, Lease indicated that he dug the trench by hand in order to repair a water line to a well pump, and he specifically denied the presence of any new piping in the trench. Lease noted that the wood burner supplies heat for the building at 160 Gun Club Road, but not the building at 150 Gun Club Road, which utilizes electric baseboard heat. Lease also presented the testimony of Barbara Zamboni (Zamboni), who resides at 170 Gun Club Road, and Jeffrey McClintock, a state-certified residential code inspector, to corroborate his testimony.

At the conclusion of the hearing, the Board voted unanimously to deny Lease's appeal and sustain the zoning violations. Lease appealed to the trial court, which affirmed the Board's order based upon the credible testimony of Balutis and the aerial photographs. Lease subsequently appealed to this Court, and we affirmed by the decision cited above.

While Lease's appeal in the civil action was pending before this Court, the Township filed four separate, criminal complaints against Lease based upon his expansion of the garage and installation of a new heating system without the required zoning or building permits. (R.R. at 30-45.) A summary hearing was held before a district justice on August 19, 2009, and Lease was found guilty in each case. *Id.* The district justice imposed a fine of \$1,920.00, costs of \$59.50, and directed restitution for attorney fees in the amount of \$1,457.62, for a total of \$3,437.12 in each case.<sup>2</sup>

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<sup>2</sup> The district justice's dispositions are not included in the reproduced record but are included in the original record filed by the trial court.

Lease appealed to the trial court, which consolidated the appeals into two separate docket numbers.<sup>3</sup> The trial court conducted *de novo* hearings with respect to both appeals on December 21, 2009, and March 25, 2010. (R.R. at 46.)

Balutis testified at these hearings, reiterating much of his testimony from the previous civil matter regarding his personal observations of Lease's property in July of 2008. Balutis indicated that the construction/expansion he observed required building and zoning permits, which Lease never obtained. (R.R. at 56-57.) Balutis indicated that, despite the notices of violations and subsequent stop work orders, Lease has not taken any corrective actions. (R.R. at 58-59.) As in the previous civil matter, Balutis identified aerial photographs of the property, one from 2003 and another from 2007, which showed an addition to the garage that housed the burner. (R.R. at 60-61.) Balutis noted that, when he observed the property on March 24, 2010, the violations still existed, i.e., the garage remained the same size as it was in 2008 and there was no indication that excavation had been done to remove the piping. (R.R. at 91.) On cross-examination, Balutis acknowledged that he did not observe any underground piping during this inspection. (R.R. at 92.)

Lease presented the testimony of John Shambaugh (Shambaugh), an engineer who had done work for Lease in 2007 and had visited the property at least six times from 2007 to 2010. (R.R. at 94.) Shambaugh denied that the garage housing the burner had been expanded over this time period. (R.R. at 95.) Shambaugh indicated that the only excavation he observed at the property was the construction of a septic system. *Id.* On cross-examination, Shambaugh admitted that

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<sup>3</sup> Lease's notices of appeal of his summary criminal convictions are not included in the reproduced record but are included in the original record.

Lease had asked him to visit the property in December of 2009 concerning an issue with the septic system and that he was not paying specific attention to the size of the garage or looking for excavation relating to underground piping at that time. (R.R. at 97.) Lease again presented the testimony of Zamboni, who lives next door to the property at 170 Gun Club Road in another building owned by Lease. (R.R. at 98.) Zamboni lived next door for ten years and testified that she had not observed an expansion of the garage in question or the installation of underground piping during that time period. (R.R. at 99.)

Lease testified on his own behalf that the only changes he made to the garage were the addition of siding and the extension of a chimney. (R.R. at 104.) Lease denied making any changes to the heating system, indicating that the outdoor burner had been in use since 1989 and that repairs were being made to the piping in 2008 at the time Balutis observed his property. (R.R. at 105.) Lease also stated that Balutis informed his counsel that a permit was not necessary for repairs to a heating system. (R.R. at 106.)

By separate orders dated March 25, 2010, the trial court found Lease guilty of violating the Township's Ordinance and directed Lease to pay a fine in the amount of \$5,000.00, plus costs, in each case. (R.R. at 1-2.) Lease filed a motion for reconsideration with the trial court, but the motion was denied. (R.R. at 3.) Lease then filed notices of appeal. (R.R. at 9, 12.) In a subsequent opinion in support of its orders, the trial court credited Balutis' testimony and noted that Lease did not contest the evidence that he failed to take action pursuant to the enforcement notices. (R.R. at 7.) The trial court indicated that Lease instead attempted to re-litigate the facts which formed the basis for the original issuance of the enforcement notices. Id. The trial court described this Court's previous decision as an "affirmation of the propriety

of the enforcement notices” and a “conclusive determination of the violation.” Id. Additionally, the trial court found the aerial photographs to be credible and convincing evidence which “unquestionably refuted” Lease’s “persistence that he is not in violation of the Township’s Ordinance....” Id.

On appeal to this Court,<sup>4</sup> Lease argues that the evidence before the trial court was insufficient to support a finding, beyond a reasonable doubt, that he was guilty of violating the Township’s Ordinance. We disagree.

Balutis testified before the trial court regarding his personal observations of Lease’s property in July of 2008, describing the expanded garage and the excavated ditch with new piping running from the outdoor burner to one of the buildings on the property. Balutis also identified aerial photographs of Lease’s property from 2003 and 2007, which reveal an increase in the size of the garage at issue. Balutis indicated that Lease never obtained the required permits for expanding the garage or outdoor burner. Balutis noted that he personally observed the property on March 24, 2010, the day before his testimony, and that the expanded garage remained intact and no excavation had been done to the area where he had observed the piping.<sup>5</sup> The trial court credited this testimony, which constitutes competent evidence in support of the trial court’s findings.

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<sup>4</sup> An appellate court’s review of a trial court’s decision on appeal from a summary conviction is limited to determining whether there has been an error of law or whether competent evidence supports the trial court’s findings. Commonwealth v. Nicely, 988 A.2d 799 (Pa. Cmwlth. 2010). The Commonwealth has the never-shifting burden of proving all elements of a summary offense beyond a reasonable doubt. Id. In considering whether the evidence is sufficient to convict, the court must view all of the evidence admitted at trial, together with all reasonable inferences therefrom, in the light most favorable to the Commonwealth. Id.

<sup>5</sup> We note that the evidence of record further indicates that Lease has refused to permit Balutis to enter his property for an inspection. (R.R. at 83-89.)

Accordingly, the orders of the trial court are affirmed.

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PATRICIA A. McCULLOUGH, Judge

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**ORDER**

AND NOW, this 13th day of April, 2011, the March 25, 2010, orders of the Court of Common Pleas of Adams County are hereby affirmed.

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PATRICIA A. McCULLOUGH, Judge