IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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| Thomas M. Sickle and Sara J. Sickle, his wife, | : | |
| Appellants | : | |
| v. | : | |
| | : | No. 749 C.D. 2009 |
| Fayette County Zoning Hearing Board | : | Submitted: March 5, 2010 |

BEFORE: HONORABLE DAN PELLEGRINI, Judge
HONORABLE JOHNNY J. BUTLER, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
JUDGE BUTLER FILED: April 13, 2010

Thomas and Sara Sickle (the Sickles) appeal the March 27, 2009 order of the Court of Common Pleas of Fayette County (trial court) denying the Sickles' appeal, and finding the Sickles in violation of the Fayette County Zoning Ordinance (Ordinance). Essentially, there are four issues before the Court: (1) whether the trial court erred in finding the Sickles in violation of Article III § 1000-305(B)(5) of the Ordinance; (2) whether the trial court erred in finding the Sickles in violation of Article II § 1000-210(H)(1); (3) whether the Ordinance is valid under the United States and Pennsylvania Constitutions; and (4) whether the Ordinance is valid under the Pennsylvania Municipalities Planning Code (MPC).[1] For reasons that follow, we affirm the order of the trial court.

The Sickles own a property located at 163 Greenfield Road, Perryopolis, Fayette County, Pennsylvania. On or about March 26, 2008, the Office of Planning,

[1] Act of July 31, 1968, P.L. 805, *as amended*, 53 P.S. §§ 10101-11202.

Zoning, and Community Development of Fayette County (Office) issued an Enforcement Notice to the Sickles advising that they were using truck trailers for storage in an A-1 zone, which is not a permitted use, and thus a violation of the Ordinance. On April 10, 2008, the Office issued a separate Enforcement Notice to the Sickles advising that they had three dwellings on their property without an approved and recorded subdivision which was an additional violation of the Ordinance.

On May 2, 2008, the Sickles appealed both Enforcement Notices. A hearing was held on June 18, 2008, and on July 30, 2008, the Fayette County Zoning Hearing Board (Board) issued Resolution No. 08-32 which denied the Sickles' appeal and upheld the Enforcement Notices. The Sickles appealed to the trial court. A hearing was held; and on March 27, 2009, the trial court denied the Sickles' appeal and upheld the decision of the Board. The Sickles appealed to this Court.[2]

The Sickles argue that the trial court erred in finding the Sickles in violation of Article III § 1000-305(B)(5) of the Ordinance. We disagree.

Article III § 1000-305(B)(5) of the Ordinance specifically states: "Vehicles and *trailers* are not used primarily as static displays, advertising a product or service, *nor utilized as storage*, shelter or distribution points for commercial products or services for the general public." Reproduced Record (R.R.) at 125a (emphasis added). It is undisputed that the Sickles have several trailers on their property that they use for the storage of farm related goods. Thus, the Sickles are in violation of the Ordinance.

[2] Where the trial court has taken additional evidence, this Court must review whether the trial court has committed an error of law or an abuse of discretion. *Coal Gas Recovery, L.P. v. Franklin Twp. Zoning Hearing Bd.*, 944 A.2d 832 (Pa. Cmwlth. 2008).

The Sickles specifically argue that the Ordinance is ambiguous, and therefore should be interpreted in their favor. However, there is nothing ambiguous about the phrase "*nor utilized as storage*." Further, Article II § 1000-203 Table 1 (permitted uses and uses by special exception, non-residential) does not provide for use of a truck trailer as a storage unit in an A-1 zone. R.R. at 116a-118a. The Sickles further argue that if Article III § 1000-305(B) of the Ordinance does apply, then the truck trailers would fall under the exception listed in § 1000-305(B)(4)(c).

Article III § 1000-305(B)(4) of the Ordinance specifically states:

> *Any sign attached to, or placed on, a vehicle or trailer* parked on public or private property, *except* for signs meeting the following conditions:
>
> . . . .
>
> c. The vehicle or trailer is in operating condition, currently registered and licensed to operate on public streets when applicable, and actively used or available for use in the daily function of the business to which such signs relate.

R.R. at 125a (emphasis added). As this section specifically refers to trailers with attached or placed signs, not trailers used for storage, it clearly does not apply. Accordingly, the trial court did not err in finding the Sickles in violation of Article III § 1000-305(B)(5) of the Ordinance.

The Sickles next argue that the trial court erred in finding the Sickles in violation of Article II § 1000-210(H)(1). Specifically, the Sickles contend that because they had two homes on a single lot prior to the enactment of the Ordinance, the Ordinance does not apply to them. We disagree.

Article II § 1000-210(H)(1) of the Ordinance specifically states: "Only one (1) single-family detached dwelling unit, one (1) mobile home or one (1) two-family detached dwelling, together with its permitted accessory structures, shall be

located on any single lot. A land development proposing two (2) or more single-family detached dwellings on one (1) lot shall not be permitted." R.R. at 120a. It is undisputed that the Sickles have at least two dwellings on their property. Thus, the Sickles are in violation of the Ordinance.

The Sickles contention that they are entitled to keep their dwellings on their property because the dwellings predate the Ordinance is inaccurate. They are basically arguing the concept of a prior non-conforming use; however, a non-conforming use is defined under Article I §1000-108 of the Ordinance as: "A use, whether of land or of a structure, which does not comply with the applicable use provisions in this Chapter, its predecessor or any amendment thereto, where such use was lawfully in existence prior to enactment of this Chapter, its predecessors or amendments thereto." R.R. at 113a. Here, the "use" is a single-family dwelling. Each dwelling on their property is in fact a single-family dwelling. It is the number of dwellings that violates the Ordinance, not the use of the dwellings. As a single-family dwelling is a permitted use in an A-1 zone under Article II § 1000-203 Table 1 (permitted uses and uses by special exception, residential), the Sickles non-conforming use argument, by definition, does not apply.[3] R.R. at 115a. Accordingly, the trial court did not err in finding the Sickles in violation of Article II § 1000-210(H)(1).

The Sickles next argue that the Ordinance is invalid under the United States and the Pennsylvania Constitutions. Specifically, the Sickles contend that Article III § 1000-305 of the Ordinance is unconstitutional to the extent that it restricts all use of their truck trailers for storage. We disagree.

[3] The Sickles are not, however, without recourse. They can either apply to subdivide their property or seek a use variance.

"Zoning ordinances are presumed constitutional. Anyone challenging the constitutionality of such an ordinance bears a heavy burden of proof." *Caln Nether Co., L.P. v. Bd. of Supervisors*, 840 A.2d 484, 491 (Pa. Cmwlth. 2004) (quoting *Upper Salford Twp. v. Collins*, 542 Pa. 608, 610, 669 A.2d 335, 336 (1995)). The Sickles contend that the prohibited use of trailers for storage threatens their fundamental right to operate their business, i.e., their ability to farm their land. However, the Ordinance does not restrict storage per se. Under Article II § 1000-203 Table 1 (permitted uses and uses by special exception, non-residential) agriculture is a permitted use in an A-1 zone, and as such, barns and storage units are permitted. It is simply not accurate to state that if one cannot use a trailer for storage then one cannot farm his land. Thus, the Sickles have clearly not met their heavy burden of proving the unconstitutionality of the Ordinance.

Lastly, the Sickles argue that the Ordinance is not valid under the MPC. Specifically, the Sickles argue the Ordinance violates Section 603(h) of the MPC, 53 P.S. § 10603(h). We disagree.

Section 603(h) of the MPC states in pertinent part:

> Zoning ordinances shall encourage the continuity, development and viability of agricultural operations. Zoning ordinances may not restrict agricultural operations or changes to or expansions of agricultural operations in geographic areas where agriculture has traditionally been present unless the agricultural operation will have a direct adverse effect on the public health and safety.

The Sickles contend prohibiting the use of their trailers for storage threatens their agricultural business, and therefore, proof that their agricultural business has an adverse effect on the public health and safety was required. The Ordinance does not restrict the storage of hay, feed, equipment and wool. It only restricts the use of *trailers* for storing such items. As such, it does not restrict agricultural operations.

Thus, proof that the agricultural operation has an adverse effect on the public health and safety was not required.

For all of the above reasons, the order of the trial court is affirmed.

JOHNNY J. BUTLER, Judge

Senior Judge Kelley dissents.

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O R D E R

AND NOW, this 13th day of April, 2010, the March 27, 2009 order of the Court of Common Pleas of Fayette County is affirmed.

JOHNNY J. BUTLER, Judge