

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Joseph L. Tweedle, :
Appellant :
v. : No. 877 C.D. 2010
Zoning Hearing Board of Rice : Argued: December 7, 2010
Township and Board of :
Supervisors of Rice Township :
and Stanley J. Zuczek :

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE JOHNNY J. BUTLER, Judge
HONORABLE KEITH B. QUIGLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE QUIGLEY

FILED: January 6, 2011

Joseph Tweedle appeals from an order of the Court of Common Pleas of Luzerne County (Trial Court) upholding an order of the Rice Township (Township) Zoning Hearing Board (ZHB) that upheld the Township's issuance of a zoning permit. The Trial Court found Tweedle's appeal to the ZHB to be untimely. We affirm.

Tweedle owns real property near the real property of Intervenor Stanley J. Zuczek. On August 12, 2008, Zuczek applied for and received a zoning permit for construction of a 40' x 60' pole building on his property, and thereafter began construction. During the initial phases of construction, in October, 2008, Tweedle raised issues about the permit's validity directly with Zuczek, and also

with the Township's Zoning Officer and Solicitor. Zuczek's construction was finalized by the end of November, 2008.

On December 5, 2008, Tweedle filed an appeal from the permit's issuance with the ZHB, and hearings ensued. Zuczek raised the issue of the appeal's timeliness¹ before the ZHB, which overruled the objection. By Decision and Order dated April 9, 2009, the ZHB made Findings, drew Conclusions therefrom, and denied Tweedle's appeal, concluding that the construction met the requirements of Sections 304.2 and 503.5 of the Township Zoning Ordinance,² and that the permit was thusly properly issued.

Tweedle thereafter appealed to the Trial Court on May 8, 2009. By Opinion and Order dated April 14, 2010, the Trial Court concluded that Tweedle's appeal of the permit's issuance was untimely under the 30-day appeal period

¹ Section 914.1(a) of the Pennsylvania Municipal Planning Code (MPC), Act of July 31, 1968, P.L. 805, added by the Act of Dec. 21, 1988, P.L. 1329, 53 P.S. §10914.1, reads, in relevant part:

Time limitations

(a) No person shall be allowed to file any proceeding with the board later than 30 days after an application for development, preliminary or final, has been approved by an appropriate municipal officer, agency or body if such proceeding is designed to secure reversal or to limit the approval in any manner unless such person alleges and proves that he had no notice, knowledge, or reason to believe that such approval had been given.

² The Township Zoning Ordinance may be found in the Reproduced Record (R.R.) at 243-445.

pursuant to Section 914.1(a) of the MPC,³ after concluding that the issue had been properly preserved before the ZHB. As the permit was issued on August 12, 2008, and the appeal filed December 5, 2008, the Trial Court found the appeal untimely. Addressing the timeliness exception contained within Section 914.1(a), the Trial Court concluded that Tweedle had not met his burden of proving that he had no timely notice, knowledge, or reason to believe that the permit had been issued, based upon Tweedle's own testimony within the record that he had known of and raised the permit's potential invalidity in early October, 2008, and at the latest on October 31, 2008. The Trial Court dismissed Tweedle's appeal as untimely, and upheld the permit's issuance. Tweedle now appeals to this Court.⁴

Tweedle presents multiple issues to this Court in his appeal. However, our disposition only requires us to address Tweedle's first issue – whether the Trial Court erred in reversing the ZHB's timeliness ruling.

We have carefully considered the positions set forth by each party on every issue, including Tweedle's arguments regarding the timeliness of his appeal to the ZHB. Finding no error in the Trial Court's analysis of the timeliness issue and arguments, we now affirm the Trial Court's order in its entirety based on the

³ The Trial Court incorrectly cited to the MPC regarding the Section controlling timeliness in this matter, in several instances, in addition to otherwise correctly citing to the applicable Section. As noted, the 30-day appeal period is set forth in Section 914.1 of the MPC, and the harmless error of the Trial Court is of no moment to the instant disposition.

⁴ Where the trial court received no additional evidence on appeal of a zoning board's decision, this Court's standard of review is to determine whether the board committed an abuse of discretion or an error of law. Moy v. Zoning Hearing Board of Municipality of Monroeville, 912 A.2d 373 (Pa. Cmwlth. 2006).

well-reasoned opinion of Judge William H. Amesbury in Joseph L. Tweedle v. Zoning Hearing Board of Rice Township, (No. 7255 of 2009, filed April 14, 2010).

KEITH B. QUIGLEY, Senior Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Joseph L. Tweedle, :
Appellant :
v. : No. 877 C.D. 2010
Zoning Hearing Board of Rice :
Township and Board of :
Supervisors of Rice Township :
and Stanley J. Zuczek :

ORDER

AND NOW, this 6th day of January, 2011, the order of the Court of Common Pleas of Luzerne County in the above-captioned matter is hereby affirmed on the basis of the opinion issued by the Court in Joseph L. Tweedle v. Zoning Hearing Board of Rice Township, (No. 7255 of 2009, filed April 14, 2010).

KEITH B. QUIGLEY, Senior Judge