IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Stephanie Smith-Dowridge, Appellant	:	
v.	:	No. 1541 C.D. 2007
	:	Argued: March 10, 2008
Zoning Hearing Board of the City of Coatesville and Kenneth W. Fowler and Roseanne M. Fowler	:	

BEFORE: **HONORABLE BONNIE BRIGANCE LEADBETTER,** President Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE JIM FLAHERTY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
PRESIDENT JUDGE LEADBETTER **FILED:** May 14, 2008

Appellant, Stephanie Smith-Dowridge, appeals from the Order of the Court of Common Pleas of Chester County (common pleas). Common pleas affirmed the Decision and Order of the Coatesville Zoning Hearing Board (ZHB), dated November 15, 2006, granting a special exception to Appellee, Kenneth E. Fowler (Fowler), for a change of nonconforming use at 20 North Sixth Avenue, City of Coatesville, Chester County, Pennsylvania (premises) and denied the appeal of Smith–Dowridge from the ZHB's Order. We affirm.

Fowler owns the business known as East Coast Asphalt Maintenance Inc. Fowler applied for a special exception to change a nonconforming use of property to another nonconforming use in accordance with Section 224-94.B of the

Coatesville Municipal Ordinances. The premises are zoned RN-4 (residential) and the immediate prior nonconforming use was a commercial pressure washing business. For the fifteen years prior to August 2006, Fowler's business was located across the street from the premises in an area zoned I-1 Industrial District. Section 224-94.B permits a nonconforming use to be changed to another nonconforming use by grant of a special exception only upon determination by the ZHB, after public hearing, that the proposed new use will be similar to or less detrimental to its neighborhood and abutting properties than is the use it is to replace. *See* Coatesville Zoning Ordinance § 224-94.B. Prior nonconforming uses of the premises included a power washing business and an auto supply store.

The ZHB conducted a hearing on this matter on October 11, 2006. Fowler was present and represented by counsel at the hearing. Fowler testified that he intended to use the premises as a headquarters for his asphalt sealing company. Fowler testified that he intended to use the premises for indoor storage of asphalt sealing equipment, the maintenance of such equipment indoors, and as a distribution point for employees to arrive, park their vehicles, and take Fowler's vehicles and equipment to jobs off the site. No asphalt sealing is conducted on site. Fowler testified that he intended to mix the asphalt sealing compound on site once or twice weekly with the use of a gas-powered motor, which he intended to replace with an electric powered motor to reduce noise. At the hearing, Fowler testified that the asphalt sealing compound was latex based and not hazardous. Fowler's business is seasonal and operational only from May 1 through November 1.

Appellant, who owns property adjacent to the premises at issue, was present at the hearing, but not represented by counsel. The ZHB did not inform

Appellant that she could obtain party status. In addition, the ZHB did not provide Appellant with instructions as to the procedures under the Municipalities Planning Code[1] (MPC) that govern proceedings, including her right to present evidence, and be afforded the opportunity to present argument and cross examine adverse witnesses. *See* Section 908 of MPC, 53 P.S. § 10908. However, the ZHB permitted Appellant to make unsworn statements, question Fowler, and submit photographs of the premises and its surroundings and the police reports of nuisance calls regarding the pressure washing business into evidence. Eight to ten other neighbors attended and participated in the hearing. Appellant expressed concerns regarding the safety of the materials used by Fowler, the noise generated by the business, and additional traffic.

The ZHB determined that Fowler's intended use of the premises was no more detrimental to the neighborhood than the prior commercial power washing business and granted a special exception. The ZHB ordered that Fowler: (1) conduct his business no earlier than 6:00 a.m. and no later than 8:00 p.m.; (2) receive no more than six tractor trailer deliveries *per annum* and only between the hours of 9:00 a.m. and 5:00 p.m.; and (3) operate his business only between May 1 and November 1.

Appellant appealed the ZHB's order to common pleas. Appellant asserted that the ZHB erred as a matter law and abused it discretion because, *inter alia*, (1) Fowler never established that the prior use was a lawfully existing non-conforming use; (2) Fowler failed to establish that the proposed use was less detrimental than a prior existing and lawful nonconforming use and that evidence presented at the hearing demonstrated that the proposed use was a "much more

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

industrial type use" than a power washing business; (3) the ZHB failed to identify that the asphalt sealing business met the criteria for a special exception under Section 224-87.C (1)-(4) of the Coatesville Zoning Ordinances; (4) the ZHB failed to impose proper restrictions on the hours of operation; (5) the ZHB failed to recognize that the zoning ordinance prohibited engaging in noisy activity (55 decibels) in residential districts prior to 7:00 a.m.; and (6) the ZHB failed to recognized that Fowler acted in bad faith by operating his business and making alterations to the property before obtaining a special exception.

Following briefing by both parties,[2] common pleas affirmed the grant of a special exception. Common pleas did not take any additional evidence and accordingly, its review was limited to whether the ZHB committed an error of law or abused its discretion. Common pleas determined that the ZHB's ten findings of fact were fully supported by the record. This appeal followed.[3]

Waiver and Due Process

Appellant first asserts the ZHB erred in granting Fowler a special exception when Fowler's business is industrial in nature and the prior nonconforming uses were commercial in nature. Common pleas held that

[2] The City of Coatesville attempted to intervene in this matter approximately six months after the Board granted the special exception. Common pleas denied Coatesville's petition to intervene as untimely.

[3] In reviewing a zoning hearing board decision, where the trial court has not taken additional evidence beyond that presented to the zoning hearing board, our review is confined to a determination of whether the zoning hearing board committed a manifest abuse of discretion or an error of law. We may conclude that the zoning hearing board abused its discretion only if its findings are not supported by substantial evidence. *In re: Appeal of Brickstone Realty Corp. and Residence Inn by Marriot*, 789 A.2d 333, 338 (Pa. Cmwlth. 2001); *Mack v. Zoning Hearing Bd. of Plainfield Twp.*, 558 A.2d 616, 619 (Pa. Cmwlth. 1989).

Appellant waived review of this issue by raising it for the first time in her Pa. R.A.P. 1925(b) statement. After a review of the complete record, we conclude that common pleas erred in finding that Appellant waived review of the industrial/commercial issue because Appellant raised this issue very briefly in paragraph 5(b)[4] of her Notice of Land Use Appeal (Notice) and brief in support thereof. Thus, Appellant preserved this issue for review.

In her brief to common pleas, Appellant first asserts that the prior nonconforming uses were commercial in nature. *See* Common Pleas Brief at 3. Appellant later asserts that "[a]lthough it is admitted that there were substantial industrial uses for the property as referenced in the [Board's] Decision and Order, the testimony of record established that the prior use as a pressure washing facility, was a clear nuisance use, at [sic] the operator was frequently operating outside the scope of the restriction imposed upon it." *See Id*. at 3-4. Appellant's own assertions demonstrate that prior nonconforming uses have been both commercial and industrial in nature. In addition, there is no testimony that Fowler's intended use of the premises was indeed industrial rather than commercial.[5] Fowler testified that he intended to mix the asphalt sealant at the premises, but that the sealant was not dangerous or hazardous as it was readily available for purchase at places such as Lowes. None of the evidence presented by Appellant supports the assertion that

[4] Appellant asserts "[m]ore specifically, the proposed asphalt sealing business results in the presence of asphalt on the property with necessary smells and hazards associated therewith – *a much more industrial type use* than a power washing business…." *See* Notice at 3 (emphasis added).

[5] Fowler's business was previously located in an area zoned for industrial use, however, this is not conclusive evidence that Fowler intended to conduct a business that was industrial in nature at the new premises.

Fowler's intended use is more detrimental to the neighborhood than prior mixed commercial/industrial uses. Therefore, Appellant's argument lacks merit.

Appellant next asserts that the ZHB deprived her of basic due process because it did not inform her of her right to obtain party status. Common pleas determined that Appellant had waived the argument regarding basic due process by failing to raise this issue prior to submitting her Pa. R.A.P. 1925(b) statement. Matters not raised in, or considered by, the zoning hearing board or common pleas cannot be considered on appeal. *See Sojtori v. Zoning Hearing Bd.*, 296 A.2d 532 (Pa. Cmwlth. 1972). The reason for such a rule is especially obvious in appeals to this court in zoning cases where common pleas took no additional evidence. *Bamash v. Zoning Bd. of Adjustment*, 313 A.2d 370, 372 (Pa. Cmwlth. 1974). Since our review in these cases is limited to a determination as to whether the ZHB abused its discretion or committed an error of law, it is impossible to perform this review with regard to an issue which was never presented to the ZHB or considered by common pleas. This rule applies even though the matters not raised or considered involve constitutional questions. *Id.* (citing *Altman v. Ryan*, 435 Pa. 401, 257 A.2d 583 (1969); *Wynnewood Civic Association v. Lower Merion Twp. Bd. of Adjustment*, 406 Pa. 413, 179 A.2d 649 [1962]).

After review of the ZHB transcript, Appellant's Notice and brief in support thereof, we would conclude that Appellant did not raise the issue of due process either before the ZHB or common pleas. Thus, Appellant waived this issue.

Even if Appellant had properly preserved the due process issue, her assertions are without merit. Notice and an opportunity to be heard are the fundamental components of procedural due process. *Pessolano v. Zoning Hearing*

Bd. of Adjustment of the City of Pittsburgh, 632 A.2d 1090, 1092 (Pa. Cmwlth. 1993). Section 908(3) of the MPC, 55 P.S. § 10908(3), governs the determination of who is a party before the ZHB.[6] *Grant v. Zoning Hearing Bd. of the Twp. of Penn*, 776 A.2d 356, 358 (Pa. Cmwlth. 1998). In *Grant*, the appellant, West Penn Power, asserted that the trial court erred in determining that the neighbors were parties, and thus, had standing to appeal the grant of a special exception. This court held that although the neighbors did not enter an appearance, but testified at a board hearing, voiced their objections to the proposed electric generating facility and asked questions, the neighbors were a party to the board proceedings, and thus, had standing to appeal the board's decision.

Appellant received notice of the hearing, attended the hearing, and participated. Although Appellant did not formally enter an appearance and was not represented by counsel at the hearing, her participation in the hearing was substantial and substantive. The ZHB permitted Appellant to make unsworn statements, question Fowler, submit photographs of the premises and its surroundings into evidence and submit police reports of prior disturbances at the pressure washing business into evidence. In addition, Appellant clearly was able to gain knowledge of her rights under the MPC as she obtained counsel and filed an appeal to common pleas within 30 days of the ZHB's order. Although not formally declared a party at the hearing, Appellant participated as fully in the hearing as if she were a named party. Based on a review of the record, Appellant

[6] Section 908(3) of the MPC provides that "the parties to the hearing shall be the municipality, any person affected by the application who has made timely appearance of record before the board, and any other person including civic or community organizations permitted to appear by the board. The board shall have the power to require all persons who wish to be considered parties enter appearances in writing on forms provided by the board for that purpose."

seems to have suffered no harm by the ZHB's failure to advise her of the right to obtain party status. Appellant's claim that the ZHB deprived her of basic due process is without merit.[7]

Special Exception

Appellant next asserts that the ZHB did not properly consider the specific standards enumerated in the Coatesville Zoning Ordinance when it granted the special exception. Zoning Ordinance Section 224-94.B sets forth the factors that the ZHB must consider in determining whether to grant a special exception to change one nonconforming use to another nonconforming use. This section permits a change of nonconforming use taking into consideration the issues of (1) potential traffic generation; (2) nuisance characteristics, such as emission of noise, dust, odor, glare and smoke; (3) fire hazards; and (4) hours and manner of operation. *See* Coatesville Zoning Ordinance § 224-94.B A special exception[8] is

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[7] As noted in *Grant*, the average person would be unfamiliar with the rule requiring a written appearance, and thus, it would be a better practice for the ZHB to explain on the record any steps a citizen must take to preserve his or her appeal rights. *Grant*, 776 A.2d at 360.

[8] Special exceptions. Where special exceptions are provided for in this chapter, the Board shall hear and decide requests for such special exceptions in accordance with stated standards and criteria. In granting a special exception, the Board may attach such reasonable conditions and safeguards, in addition to those expressed in this chapter, as it may deem necessary to implement the purpose of this chapter…In rendering its decision, the Board shall determine that the applicant has demonstrated the following:

(1) The property is suitable for the use desired; and the proposed request is consistent with the spirit, intent and purpose of this chapter.

(2) The proposed special exception will not substantially injure or detract from the use of neighboring property or from the character of the neighborhood and that the use of property adjacent to the area included in the proposed change or plan is adequately safeguarded.

(3) The proposed special exception will serve the best interests of the City, convenience of the community and the public welfare.

(Footnote continued on next page…)

properly denied if the applicant fails to carry his burden of establishing that the proposed use satisfies the requirements of the ordinance or where, even if such requirements are met, protestants can show that the proposed use would be adverse to the public health, safety and welfare. *Hannon v Zoning Hearing Bd. of Wilkes-Barre*, 379 A.2d 641, 642 (Pa. Cmwlth. 1997).

In general, protesters must provide evidence that there is more than a "*mere speculation* of harm." *Szewzcyk v. Zoning Bd. of Adjustment of the City of Pittsburgh*, 654 A.2d 218, 224 (Pa. Cmwlth. 1995) (quoting *Abbey v. Zoning Hearing Bd. of the Borough of East Stroudsburg*, 559 A.2d 107, 110 (Pa. Cmwlth. 1989) [emphasis in original]). For example, speculative testimony from concerned neighbors regarding increased traffic is insufficient to justify refusal of a special exception. *Bailey v. Upper Southampton Twp.*, 690 A.2d 1324, 1327 (Pa. Cmwlth. 1997); *Archbishop O'Hara's Appeal*, 389 Pa. 35, 54, 131 A.2d 587, 596 (1957) (the anticipated increase in traffic must be of such character that it bears a substantial relation to the health and safety of the community); *In re: Appeal of Brickstone Realty Corp. and Residence Inn by Marriot*, 789 A.2d 333, 340-41 (Pa. Cmwlth. 2001) (to defeat a request for special exception, protestors must show a "high degree of probability" that the anticipated traffic increase would pose a "substantial threat" to the community) (quoting *Bray v. Zoning Bd. of Adjustment*, 410 A.2d 909, 910 [Pa. Cmwlth. 1980]).

(continued…)

(4) There will be no adverse effect of the proposed special exception upon the logical efficient and economical extension of public services and facilities, such as public water, sewers, police and fire protection and public schools.

Coatesville Zoning Ordinance § 224-87.C.

In the present case, the ZHB stated that it "believe[d] that the applicant's use would be no more detrimental to the neighborhood, particularly in light of the fact of applicant's proposed limited operations" and the conditions the ZHB imposed. *See* Order and Decision dated November 15, 2006 at 4. The ZHB found that the traffic to and from the premises would be less than the pressure washing business, which employed more persons, and the retail auto supply store. Appellant did not submit any evidence other than unsubstantiated speculation that the operation of Fowler's business would generate any more traffic than the prior nonconforming businesses. Accordingly, the ZHB's findings regarding the absence of increased detrimental traffic impact are supported by substantial evidence.

The ZHB determined that the materials used by Fowler to mix the asphalt sealant were latex based and that exposure to these materials was not hazardous.[9] Appellant did not provide any evidence that contradicted Fowler's testimony that the materials he used were neither hazardous nor highly flammable. Fowler testified that he intended to mix the asphalt sealant once or twice weekly inside the premises and that he intended to utilize an electric powered mixer, which was quieter than a gas-powered mixer. Appellant testified that the premises were extremely close to her home and that during operation of the power washing business she often heard noises and felt vibrations. Appellant did not provide any evidence that the operation of Fowler's business would cause the same noise or

[9] Appellant asserts that the Board erred in relying on the Material Safety Data Sheet (MSDS) submitted to the Board, but not made part of the record, in determining that the materials used by Fowler are not hazardous. Even if erroneous, the error was harmless. At the hearing, Fowler presented uncontradicted testimony that the products he used were latex based, commonly found at such stores as Lowes and not hazardous. Accordingly, the Board's finding that Fowler utilized non-hazardous, latex based materials is still supported by substantial evidence.

vibrations as the power washing business. Fowler's testimony constitutes substantial evidence to support the finding that the operation of his asphalt sealing business would be no more detrimental to the neighborhood than the prior nonconforming use. In addition, Appellant provided only speculative concerns, which are insufficient to meet her burden regarding noise and other nuisance characteristics.

The ZHB also determined that the hours of operation were suitable. The ZHB restricted operation of the asphalt sealing business to between May 1 and November 1 and between the hours of 6:00 a.m. and 8:00 p.m.[10] In addition, the ZHB restricted tractor trailer deliveries to six *per annum* and only between the hours of 9:00 a.m. and 5:00 p.m. The ZHB considered the proposed hours of operation as required by Zoning Ordinance § 224-94.B and as directed by Zoning Ordinance § 224-87.C and attached conditions and safeguards as it deemed necessary. We find these conditions reasonable and will not disturb them on appeal.

As directed by Zoning Ordinance § 224-87.C the ZHB also considered whether the operation of the asphalt sealing business would detract from the character of the neighborhood. The ZHB acknowledged the concerns of the neighbors regarding such use in the immediate locale of their homes. However, the ZHB recognized that the premises at issue and other properties on Fowler's side of the roadway had long been used for industrial purposes. The ZHB

[10] Appellant asserts that the Board erred in permitting operation of the business prior to 7:00 a.m. because Article XI of the Coatesville Zoning Ordinance precludes noisy activity greater than 55 decibels in residential areas prior to 7:00 a.m. Appellant merely asserted that operation of the asphalt sealing business would exceed the 55 decibel limit. Appellant did not submit any evidence demonstrating that operation of Fowler's business would exceed 55 decibels. Accordingly, Appellant's argument is without merit.

thus determined that Fowler's potential use was no more detrimental to the neighborhood than the prior nonconforming use. Appellant's assertion that the ZHB erred by disregarding the standards set forth in Section 224-87.C is without merit.

Appellant next asserts that the ZHB erred in granting a special exception because Fowler operated his business prior to obtaining the special exception. Fowler purchased the premises on August 17, 2006 and on August 31, 2006 submitted a use and occupancy commercial permit application to relocate his asphalt sealing business to the premises. Fowler believed that the existing nonconforming use permitted him to conduct a different nonconforming use without obtaining a special exception. On September 12, 2006, a Coatesville zoning officer issued a cease and desist order directing that the premises not be used or occupied for Fowler's intended commercial purpose until the ZHB authorized the use. On that same day, Fowler filed an application with the ZHB seeking to establish his business on the property as a lawful nonconforming use.

Appellant asserts that Fowler's use of the property during August and September of 2006 prohibits him from obtaining a special exception. Appellant relies on *Hannon v. Zoning Hearing Bd. of Wilkes-Barre*, 379 A.2d 641 (Pa. Cmwlth. 1977), for the proposition that prior illegal nonconforming use of a property prevents an owner from later obtaining a special exception. In *Hannon*, the property owner operated an unpermitted rooming house for several months prior to submitting an application for a special exception. At a hearing, Hannon presented testimony that the building and its facilities conformed in all respects with the conditions for the grant of a special exception. However, neighbors testified that during the months of illegal operation there had been a shooting at the

rooming house and that loud, obscene and very disturbing shouting matches among residents of the boarding house occurred at all hours of the day and night. The ZHB denied a special exception, finding that the disorderly conditions that prevailed at the rooming house were not in harmony with the residential character of the neighborhood.

Appellant's reliance on *Hannon* is misplaced. The application in *Hannon* for a special exception was denied not because the applicant operated his business illegally, but rather because the disorderly conditions present at the rooming house did not conform to the conditions for a special exception as specified by ordinance. The ZHB in this case found that Fowler carried his burden of proof and that his business as conducted per the ZHB's conditions satisfied the requirements of Coatesville's ordinance. By granting a special exception the ZHB determined that Appellant and the other objectors, unlike the objectors in *Hannon*, had not carried their burden of proof by demonstrating that Fowler's proposed use was more detrimental to the neighborhood than the prior nonconforming use. *See Shamah v. Hellam Twp. Zoning Hearing Bd.*, 648 A.2d 1299, 1304-05 (Pa. Cmwlth. 1994).

In the present case, Fowler operated his business without ZHB approval for approximately one month. Fowler was under the impression that he was operating legally, and when notified of his ordinance violation he acted promptly to remedy the situation. At the ZHB hearing, Fowler presented testimony that his business conformed to the conditions of the Coatesville ordinance regarding special exceptions. Appellant and other neighbors presented testimony regarding infractions committed by the prior power washing business. In addition, Appellant and other neighbors also testified regarding the state of

disrepair present at Fowler's prior location across the street. The infractions of a prior business operator are not relevant to Fowler's application for a special exception. The testimony regarding Fowler's business operation at his prior location was equivocal and disputed. In addition, the infractions complained of did not rise to the level which would disqualify Fowler from obtaining a special exception.

After a review of the record, we would conclude that the ZHB determination that Fowler's proposed use satisfied the requirements of Coatesville's special exception ordinance was supported by substantial evidence and that Appellant did not demonstrate that Fowler's proposed use was more detrimental to the neighborhood than prior nonconforming uses.

Petition to Intervene

Finally, Appellant asserts that common pleas erred by finding that Coatesville's petition to intervene was not timely. Questions of intervention are within the discretionary domain of the trial court. *Atticks v. Lancaster Twp. Zoning Hearing Bd.*, 915 A.2d 713 (Pa. Cmwlth. 2007); *Mack v. Zoning Hearing Bd. of Plainfield Twp.*, 558 A.2d 616, 618 (Pa. Cmwlth. 1989). This Court's limited role on review is to determine whether common pleas committed a manifest abuse of discretion or an error of law. *Mack*, 558 A.2d at 618.

A municipality is not automatically a party in an appeal from a zoning hearing board decision. *Gilbert v. Montgomery Twp. Zoning Hearing Bd.*, 427 A.2d 776, 779 (Pa. Cmwlth. 1981). However, pursuant to Section 11009 of the MPC, 53 P.S. § 11009, a municipality may intervene as of course within thirty days following the filing of a zoning appeal. *Mack*, 558 A.2d at 618. A request to

intervene filed beyond the thirty day period is governed by Pa.R.C.P. No. 2329. Pursuant to Pa. R.C.P. No. 2329(2), an application for intervention may be denied if "the interest of the petitioner is already adequately represented." In addition, an application for intervention may be denied if "the petitioner has unduly delayed in making application for intervention or the intervention will unduly delay, embarrass or prejudice the trial or the adjudication of the rights of the parties." *See* Pa. R.C.P. No. 2329(3).

In the present case, Coatesville waited nearly six months after the ZHB granted the special exception to file its petition for intervention with common pleas. Since Coatesville did not petition to intervene within 30 days of the ZHB's order as required by the MPC, the petition to intervene is governed by Pa. R.C.P. No. 2329. Common pleas noted that Coatesville did not request a hearing on its petition and failed to observe the local rules requiring it to file a praecipe for determination. Coatesville did not offer any excuse to explain its delay in seeking intervention. Based on Coatesville's six-month delay in filing a petition to intervene and its failure to follow the local rules, common pleas determined that Coatesville was unduly delayed in intervening in this matter. In addition, we find that Coatesville's interests were already adequately represented by Appellant and her counsel. We conclude that common pleas did not abuse its discretion in denying Coatesville's petition to intervene.[11] *See, Mack*, 558 A.2d at 618 (affirming denial of petition to intervene where township waited six months to file

[11] It should be noted that Coatesville did not appeal common pleas' denial of its petition to intervene; rather Appellant has raised this issue. Whether Appellant has standing to raise this issue is doubtful. *Seibel v. Allstate Ins. Co.*, 499 A.2d 666, 668 fn. 2 (Pa. Super. 1985) (citing *John G. Bryant Co. v. Sling Testing & Repair, Inc.*, 471 Pa. 1, 16, 369 A.2d 1164, 1171 (1977) [party may not appeal an order not adverse to itself]).

petition, it offered no excuse for the delay, and its interests were adequately represented by another party).

Accordingly, we affirm.

BONNIE BRIGANCE LEADBETTER,
President Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Stephanie Smith-Dowridge, Appellant	:	
v.	:	No. 1541 C.D. 2007
Zoning Hearing Board of the City of Coatesville and Kenneth W. Fowler and Roseanne M. Fowler	:	

O R D E R

AND NOW, this 14th day of May, 2008, the order of Chester County Court of Common Pleas in the above captioned matter is hereby AFFIRMED.

BONNIE BRIGANCE LEADBETTER,
President Judge