IN THE COMMONWEALTH COURT OF PENNSYLVANIA

John J. Rosebosky and Rebecca L. Rosebosky, husband and wife,	:	
Appellants	:	
v.	:	No. 827 C.D. 2010
	:	Argued: November 8, 2010
The Unity Township Zoning Hearing Board and Unity Township	:	

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE JIM FLAHERTY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE FLAHERTY FILED: December 10, 2010

John J. Rosebosky and Rebecca L. Rosebosky, husband and wife (Appellants) appeal from an order of the Court of Common Pleas of Westmoreland County (trial court) which affirmed the decision of the Unity Township Zoning Hearing Board (Board) denying Appellants' appeal of a violation notice with respect to a dirt bike track on their property. We affirm.

Appellants are the owners of over 80 acres of land in the R-1 district. In 2003, Appellants developed a track for dirt bikes on their property for use by their children and a few of their friends. Harry Hiasck, the zoning officer (zoning officer) for Unity Township (Township), visited

the property in 2005, due to a complaint that the Appellants were running a business on the property, that is, operating a track for profit. Appellants indicated that the track was not used for profit and no violation was noted by the zoning officer.

In June of 2009, the zoning officer issued a violation notice to Appellants, alleging that use of their land for a track for off-road vehicles was not permitted under the Ordinance. Appellants appealed to the Board, which conducted a hearing.

At the hearing, Appellants argued that the track is permitted in the R-1 district, because such use constitutes "parks and recreation" and such use is permitted in the R-1 district.[1] Although "parks and recreation" is not defined in the Ordinance, Appellants argued that the common word usage and general definition would include a track for off-road vehicles and dirt bikes. Moreover, Appellants argued that any doubt in the meaning of a term should be resolved in favor of the landowner and the least restrictive use. In addition, Appellants also noted that the zoning officer did not find that the track was in violation of the Ordinance when he had visited the property some four years earlier in 2005.

The zoning officer testified that since he first observed the track in 2005, many changes had occurred over the course of time. The track had been lengthened, jumps had been installed, and the property had been graded. Additionally, there was increased usage of the track by numerous

[1] The R-1 district also permits the following uses: single family dwelling, farm, cemetery, school, church, accessory uses, communication antennas, drilling and timber harvesting.

people at all times of the day. Neighbors would shut their windows to avoid the dust and would not schedule events in their own yards due to the noise.

Neighbors testified that the track operated approximately five days a week and that there were as many as eleven bikes on the track at one time creating unbearable noise. Richard Loughner (Loughner), who lives across the street from the property, testified that the track is now approximately three times the size that it was when it was first developed. He also testified that the dust and dirt from the track is substantial, in that it coats neighboring homes and properties.

Michael Olechock (Olechock), who also lives across the street from the property, testified that the track has greatly expanded over the years from simple dirt bike riding by Appellants' children, to numerous vehicles being at the site at any one time. He also testified to the noise pollution and dirt.

Appellants acknowledged that the track is used by their children and other children whose parents they have met through competitive dirt bike riding. They testified that at most, the track was utilized by three or four bike riders at a time, not ten or eleven, as testified to by the neighbors. Appellants also testified that they water down the track and are in the process of installing sprinklers.

Based on the above testimony, and its own viewing of the property, the Board determined that the dirt bike track, being of this size, scope and magnitude, does not fall within the category of "parks and recreation." The intensity of the usage, the size, scope and magnitude of the track remove this activity from any reasonable definition of recreational

activity within a residential zone. "The dirt bike track operation is a private use being made by the Appellants and their friends, neighbors, guests and invitees to the site, and is not of a public nature as one would also readily conclude the term "parks and recreation" was designed to encompass." (Board's decision at 8.) Accordingly, the Board denied Appellants' appeal from the violation notice.

Appellants appealed to the trial court which denied Appellants appeal. This appeal followed.[2]

On appeal, Appellants claim that the Board erred in interpreting the term "parks and recreation." Initially, Appellants point out that the zoning officer first visited the property containing the track in 2005 and, at that time, expressed no opposition to the existence of the track for off-road vehicles. His reason for investigating was to determine whether the track was being run as a business. No citation or notice of violation was issued to Appellants following the initial visit.

Appellants also argue that because the term "parks and recreation" is undefined in the Ordinance, the Board and the trial court were bound to consider common word usage and general definitions in their interpretation. In Tapco, Inc. v. Township of Neville, 695 A.2d 460, 463, n.3 (Pa. Cmwlth. 1997), this court stated:

> Pennsylvania's rules of statutory construction provide for undefined words to be given their common and ordinary usage as 1 Pa. C.S. §

[2] Where, as here, the trial court does not take additional evidence, this court's review is limited to determining whether the board abused its discretion or committed an error of law. Limley v. Zoning Hearing Board of Port Vue Borough, 533 Pa. 340, 625 A.2d 54 (1993).

> 1903(a) provides in relevant part that "words and phrases shall be construed according to rules of grammar and according to their common and approved usage."

Here, Appellants argue that the zoning officer acknowledged that the operation of off-road vehicles, such as dirt bikes or quads, could be considered a recreational use. Any doubt concerning the meaning of an undefined term should be resolved in favor of the landowner and the least restrictive use. In re Arnold, 984 A.2d 1 (Pa. Cmwlth. 2009). Further, although the Board determined that considering the size and scope of the track, it could not be classified as an appropriate recreational activity in the R-1 district, the Board was only required to determine whether the activity fit within the undefined term of "parks and recreation," it was not proper to impose a "reasonableness" standard.

Appellants note that the trial court, in affirming the decision of the Board, determined that the phrase "parks and recreation" must be read as a single use, not as separate uses for "parks" and "recreation." Specifically, the trial court stated that "parks and recreation" are "customarily associated with a public agency, department or program of a government and encompasses activities that are conducted on areas of land that are set aside for public recreation and are maintained for the benefits of the public." (Trial court opinion at p. 6.) Here, Appellants argue that this is one possible interpretation of the phrase "parks and recreation," but that the least restrictive use should be employed and that a track used for off-road vehicles is a type of recreation which is permissible. Moreover, although the trial

court suggests that "parks and recreation" must somehow be open to the public, the term public is not actually used.

The Township responds that ordinances should receive a reasonable and fair construction in light of the subject matter dealt with and the manifest intention of the local legislative body. Broussard v. Zoning Board of Adjustment of the City of Pittsburgh, 589 Pa. 71, 907 A.2d 494 (2006). Additionally, courts often grant deference to the zoning boards understanding of its own ordinance, as governmental agencies are entitled to great weight in the interpretation of legislation they are charged to enforce. Willits Woods Association v. Zoning Board of Adjustment of the City of Philadelphia, 587 A.2d 827 (Pa. Cmwlth. 1991).

We agree that the Board and trial court properly concluded that the intensive use of the property does not fall within the term "parks and recreation." The private use of the dirt bike track by the Appellants, their friends, neighbors and other invitees is not of a public nature which is the common meaning of the term "parks and recreation." Merely because riding a dirt bike is a form of recreation, it does not follow that having a track for such use constitutes "parks and recreation." The terms should be considered together, not separately as argued by the Appellants. As stated by the trial court:

> The focus of the legal analysis is on the phrase "Parks and recreation." In the list of permitted uses, the Ordinance does not state "parks and then state "recreation," it states "Parks **and** recreation". The common meaning of each of these words standing alone differs from the meaning of "Parks and recreation" when appearing

> in common parlance. This phrase is customarily associated with a public agency, department or program of a government and encompasses activities that are conducted on areas of land that are set aside for public recreation and are maintained for the benefit of the public.

(Trial court opinion at p.6.) (Emphasis in original.)

"[Z]oning ordinances should be construed in a sensible manner …." Steeley v. Richland Township, 875 A.2d 409, 414 (Pa. Cmwlth. 2005). The Board recognized that the property in question is zoned R-1, one of the most regulated and restrictive zones in the Township. Here, we agree with the Board that the Appellants' use of their land, which included the grading of their property, the installation of jumps and a sprinkler system for a track which is open for use by 50 to 60 families who signed releases, absolving the Appellants of any liability, does not constitute parks and recreation.

In accordance with the above, the decision of the trial court is affirmed.

JIM FLAHERTY, Senior Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

John J. Rosebosky and Rebecca L. Rosebosky, husband and wife,	:	
Appellants	:	
v.	:	No. 827 C.D. 2010
The Unity Township Zoning Hearing Board and Unity Township	:	

O R D E R

Now, December 10, 2010, the order of the Court of Common Pleas of Westmoreland County, in the above-captioned matter, is affirmed.

JIM FLAHERTY, Senior Judge