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IN THIS ISSUE

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SHIRLEY A. WILLIAMS AND AMY J. WILLIAMS
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FICTITIOUS NAME REGISTRATION

An application for registration of the fictitious name G & M ELECTRIC, 18 Boyds Hollow Road, Biglerville PA 17307 has been filed in the Department of State at Harrisburg, PA, File Date 5/19/2020 pursuant to the Fictitious Names Act, Act 1982-295. The name and address of the person who is a party to the registration is Bryan M. Boyd, 18 Boyds Hollow Road, Biglerville PA 17307.

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BRIAN J. REDDING, CHARLES E. WILLIAMS,
SHIRLEY A. WILLIAMS AND AMY J. WILLIAMS
VS. LUCAS W. PARR AND JAMIE L. PARR

1. On March 2, 2016, Parr and his father submitted an application for zoning/land use permit to the Franklin Township Zoning Officer. The application sought permission to install a 30-foot by 32-foot horse barn on the property.

2. On March 4, 2016, the Zoning Officer concluded that the proposal complied with the building/use requirements of the residential zoning district. Consequently, on that same date, the Zoning Officer issued Parr a zoning land use permit. Thereafter, Parr posted the property with the permit as required by law. Additionally, Parr informed the Adams County Conservation District of the proposed project on a form provided by the Conservation District and witnessed by the Zoning Officer. Over the course of the next several months, Parr completed construction of the barn in compliance with the representations made on the zoning application and moved three horses onto the property.

3. Unquestionably, the raising or housing of livestock is not a permitted use nor a use permitted by special exception in a residential zone with the Township.

4. Accordingly, had the current litigation presented before the Court as an appeal from the decision of the Zoning Officer and/or the Zoning Hearing Board pursuant to 53 P.S. Section 11001-A (land use appeals), this Court would have little hesitancy in reversing the issuance of a zoning permit; but that is not the path by which this litigation presents. Rather, Plaintiffs seek removal of the horse barn through a private cause of action pursuant to 53 P.S. Section 10617 asking the Court to invoke its equitable authority.

5. Critical to relief under a cause of action brought pursuant to this section is that the structure be “erected, constructed, ... maintained or used in violation of ‘the ordinance’.”

6. The fact that this Court interpreted the Ordinance contrary to the interpretation of the Zoning Officer does not negate the fact that Parr complied fully with the Ordinance. When Plaintiffs failed to appeal to the Zoning Hearing Board of the Zoning Officer’s decision to issue the permit within 30 days of issuance, the decision became final. Under these circumstances, and despite the Zoning Officer’s discretionary error in issuing the permit, Parr is not in violation of the Ordinance and, consequently, escapes equitable enforcement under Section 10617.

IN THE COURT OF COMMON PLEAS OF ADAMS COUNTY,
PENNSYLVANIA, 2018-SU-581, BRIAN J. REDDING, CHARLES
E. WILLIAMS, SHIRLEY A. WILLIAMS AND AMY J. WILLIAMS
VS. LUCAS W. PARR AND JAMIE L. PARR

Hubert X. Gilroy, Esq., Attorney for Plaintiffs
Joseph E. Erb, Jr., Esq. Attorney for Defendants.
George, P. J., July 24, 2020

OPINION

Plaintiffs bring this action under Section 917 of the Municipalities Planning Code, 53 P.S. Section 10617, which permits a private cause of action to enforce a municipality's zoning ordinance.¹ For the reasons set forth below, Plaintiffs' Complaint is dismissed and judgment will be entered in favor of the Defendants.

Defendants, Lucas Parr and Jamie Parr (collectively "Parr"), own a parcel of land located off Mountain Top Drive in Franklin Township, Adams County.² The property was part of a larger parcel of land owned by Parr's father since 1985. The property was part of a subdivision plan approved by the Township Board of Supervisors on March 2, 2017. The property is located in the R-Residential Zone as provided by the Franklin Township Zoning Ordinance adopted by the Township on February 5, 2015 ("Ordinance").

Prior to the subdivision discussed above, on March 2, 2016, Parr and his father submitted an application for zoning/land use permit to the Franklin Township Zoning Officer. The application sought permission to install a 30-foot by 32-foot horse barn on the property. On March 4, 2016, the Zoning Officer concluded that the proposal complied with the building/use requirements of the residential zoning district. Consequently, on that same date, the Zoning Officer issued Parr a zoning-land use permit. Thereafter, Parr posted the property with the permit as required by law. Additionally, Parr informed the Adams County Conservation District of the proposed project on a form provided by the Conservation District and witnessed by the Zoning Officer. Over the course of the next several months, Parr completed construction of the barn in compliance with the representations made on the zoning application and moved three horses onto the property.³

Plaintiffs claim to have become aware of the existence of horses on the Parr property in approximately October 2017. On November 20, 2017, they complained to the Township alleging that the horse

¹ The parties have stipulated that Plaintiffs have given 30 days' prior notice of the commencement of this litigation to Franklin Township as required by Section 10617.

² The factual background recited herein is based upon evidence presented at hearing which the Court deems credible.

³ The zoning application indicated that the estimated cost of the horse barn construction was approximately \$5,500. Trial testimony did not further elaborate on this issue.

barn was in violation of the Ordinance. Although the record does not disclose any formal response to the complaint, the subject was a matter of discussion at a January 7, 2018 Board of Supervisors meeting which was attended by Plaintiff Brian Redding and Parr's father. Discussion was tabled and re-visited at a Township Board of Supervisors special meeting held on January 19, 2018. At the special meeting, the Zoning Officer explained his issuance of the zoning permit was due to the construction being minimal on a ten-acre parcel of land. He opined the horses were companions/pets and the use constituted a lawful accessory structure to the primary residence. Apparently, the Township accepted the Zoning Officer's explanation as the minutes from the meeting reflect that discussion shifted on to other issues without any formal action. Neither Plaintiffs nor Parr were present at the January 19, 2018 special meeting. On May 21, 2018, Plaintiffs commenced the current civil action.

Subsequent to the filing of the current Complaint, Plaintiffs complained to the Township concerning smells of manure and urine emitting from the Parr property. They also complained of excessive flies due to the presence of horses and expressed concern over water run-off from the property. The Complaint prompted six separate site visits to the property extending through early September 2018. On September 8, 2018, the Zoning Officer and Code Enforcement Officer indicated they failed to detect any smells of manure or urine and further could not reach any conclusion as to an increase or decrease in the number of flies in the area. Apparently, a subsequent complaint triggered another inspection to the Parr property by the Code Enforcement Officer on May 1, 2019. Once again, the Code Enforcement Officer could not smell any odors. Finally, in August 2019, a complaint was filed with the Adams County Conservation District alleging a violation of 25 Pa. Code, Section 91.36(b) (related to manure management regulations) at the Parr property. By correspondence dated August 26, 2019, investigators from the Conservation District determined the Parr was in compliance with applicable state regulations.

Unquestionably, the raising or housing of livestock is not a permitted use nor a use permitted by special exception in a residential zone within the Township. Ordinance, § 175-10 (residential zone). The suggestion that the stabling of horses, as pets, is a permitted

accessory use rings hollow in light of unequivocal language in the definition section of the Ordinance which defines “livestock” as:

Any farm animal, such as cattle, poultry, donkeys, **horses**, mules, burrows, sheep, swine or goats, kept for agricultural use, commercial purposes, **or pleasure**. (emphasis added)

Ordinance, § 175-6 (definitions). Incidentally, the Ordinance identifies the raising of livestock as a permitted use in both the agricultural and open space zones. *See* Ordinance, § 175-8 (use regulations).

Generally speaking, Pennsylvania courts afford a zoning officer’s interpretation of the zoning ordinance some degree of deference. *Sabatini v. Zoning Hrg. Bd. of Fayette County*, ___ A.3d ___, 2020 (WL 1969466). However, when the zoning officer’s interpretation is inconsistent with the plain language of the ordinance, the “interpretation carries little or no weight.” *Id.* (citing *Malt Beverages Distributors Assoc. v. Pa. Liquor Control Bd.*, 918 A.2d 171, 176 (Pa. Cmwlth. 2007)). Rather, where the words in a zoning ordinance are free from all ambiguity, the letter of the ordinance may not be disregarded under the pretext of pursuing its spirit. *Tri-County Landfill, Inc. v. Pine Twp. Zoning Hrg. Bd.*, 83 A.3d 488, 509 (Pa. Cmwlth. 2017) (citing 1 Pa. C.S.A. § 1921(b)).

Contrary to the interpretation of the Zoning Officer, the plain language in the Ordinance defining “livestock” unambiguously includes horses kept as pets for pleasure. This language must be applied directly as written. *Id.* A.3d at 510. Accordingly, had the current litigation presented before the Court as an appeal from the decision of the Zoning Officer and/or the Zoning Hearing Board pursuant to 53 P.S. Section 11001-A (land use appeals), this Court would have little hesitancy in reversing the issuance of the zoning permit; but that is not the path by which this litigation presents. Rather, Plaintiffs seek removal of the horse barn through a private cause of action pursuant to 53 P.S. Section 10617 asking the Court to invoke its equitable authority.

Section 10617 permits a person substantially affected by a violation of a zoning ordinance to institute a civil action to prevent, correct, or abate the violation. Pursuant to this section, a court has jurisdiction to restrain violations of municipal zoning ordinances despite the availability of other remedies. *Municipality of Monroeville v. Gateway Motels, Inc.*, 47 Pa. D&C 3d 492 (1986),

affirmed 525 A.2d 478 (Pa. Cmwlth. 1986). Critical to relief under a cause of action brought pursuant to this section is that the structure be “erected, constructed, ... , maintained or used in violation of ‘the ordinance.’ ” 53 P.S. § 10617.

Instantly, Parr acted in compliance with legal requirements in obtaining a zoning permit. Application was filed with the Township Zoning Officer and a permit was issued. The permit was posted on the affected land as required by statute and the Ordinance. Additionally, Parr filed proper documentation with the Adams County Conservation District. Following the issuance of a permit, Parr, in good faith, constructed the barn and brought horses onto the property. The fact that this Court interpreted the Ordinance contrary to the interpretation of the Zoning Officer does not negate the fact that Parr complied fully with the Ordinance. When Plaintiffs failed to appeal to the Zoning Hearing Board of the Zoning Officer’s decision to issue the permit within 30 days of issuance, the decision became final. 53 P.S. § 10909.1(a)(8) (related to jurisdiction of zoning hearing board); 53 P.S. § 10914.1 (establishing 30-day time period for appeals to the zoning hearing board).⁴ Under these circumstances, and despite the Zoning Officer’s discretionary error in issuing the permit, Parr is not in violation of the Ordinance and, consequently, escapes equitable enforcement under Section 10617.

In reaching this decision, I am cognizant of the Plaintiffs’ argument that the issuance of a permit does not establish a right to land development when the permit is issued contrary to the plain language of a zoning ordinance. That argument is rejected as its acceptance would render that statutory scheme concerning zoning disputes, as crafted by the legislature, meaningless. More importantly, accepting Plaintiffs’ argument that the discretionary errors made by a zoning officer in issuing a permit may be attacked years after the decision would cause chaos to land development.

⁴ Parr has not claimed nor proved lack of notice of issuance of the zoning permit. See *Schoepfle v. Lower Saucon Twp. Zoning Hrg. Bd.*, 624 A.2d 699, 704-05 (Pa. Cmwlth. 1993) (objector who does not file appeal within 30 days must prove lack of actual notice). To the contrary, the property was posted and construction completed in 2016. Additionally, Plaintiffs conceded they unquestionably had actual notice of the barn’s construction by October 2017. Nevertheless, an appeal to the Zoning Hearing Board was never made. Additionally, this litigation was not commenced until approximately seven months after Parr clearly had actual notice.

Plaintiffs' inability to provide authority for this argument negates it in light of clear statutory scheme for resolving issues related to a zoning officer's decision. Case law produced by both parties recognizes circumstances where an unappealed permit may not be conclusive, however, these cases appear to be limited to permits issued illegally or in reliance upon a mistake of fact. See *Carman v. Zoning Bd., Adj. City of Phila.*, 638 A.2d 365 (Pa. Cmwlth. 1994); *Bruno v. Zoning Bd., Adj. City of Phila.*, 664 A.2d 1077 (Pa. Cmwlth. 1995); *Nowak v. Zoning Bd. of Bridgeville Borough*, 534 A.2d 165 (Pa. Cmwlth. 1987). Accordingly, they are not controlling as the current matter involves a discretionary decision, made well within a zoning officer's authority, involving an accurate set of facts.

Nevertheless, assuming, in arguendo, that the current zoning permit is invalid, Parr still has a vested right to continue housing and maintaining the horses. The Doctrine of Vested Rights applies when a landowner to whom a permit was issued can demonstrate the following factors:

1. due diligence in attempting to comply with the law;
2. good faith throughout the proceedings;
3. expenditure of substantial unrecoverable funds;
4. expiration of the period during which an appeal could have been taken from the issuance of the permit without an appeal having been filed; and
5. insufficiency of the evidence proving another's individual property rights would be adversely affected by the use of the permit.

Petrosky v. Zoning Hrg. Bd. of Upper Chichester, 402 A.2d 1385, 1388 (Pa. 1979). The doctrine is designed to prevent injustice to a good faith permit holder who acted in reliance upon the permit's issuance. *Lamar Advantage GP Co. v. Zoning Hrg. Bd. of Adj. of City of Pittsburgh*, 997 A.2d 423, 441 (Pa. Cmwlth. 2010).

As mentioned above, Parr exercised complete diligence in obtaining the zoning permit. Their good faith throughout the process is evident by their full transparency and accurate disclosure of their intent. Unquestionably, they have expended thousands of dollars in furtherance of a project they believed they were legally entitled to undertake. Although the sum expended might be considered minimal

when compared to large scale projects, the amount is significant to an average wage earner. As discussed above, the appeal period has clearly expired as Plaintiffs have never filed an appeal challenging the Zoning Officer's issuance of the permit to the Zoning Hearing Board. Finally, despite Plaintiffs' subjective claims, independent observations by Township and Conservation District officials negate any finding that individual property rights or public health, safety, and welfare are being adversely affected by the presence of three horses. The issuance of an injunction requiring removal of the barn and horses is an extraordinary remedy which should only be issued with caution where the rights of the Plaintiffs are clear and free from doubt and where the harm sought to be remedied is great and irreparable. *Woodward Twp. v. Zerbe*, 6 A.3d 651, 658 (Pa. Cmwlth. 2010). Under circumstances as discussed above, this Court is unwilling to invoke such a remedy.⁵

For the foregoing reasons, the attached Order is entered.

ORDER OF COURT

AND NOW, this 24th day of July, 2020, it is hereby Ordered that judgment is entered against the Plaintiffs and in favor of the Defendants. The Complaint in this matter is dismissed with prejudice. The Adams County Prothonotary's Office is directed to enter judgment as set forth hereinabove.

⁵ As Parr's use is not a permitted use under the Ordinance, the right to continue the use as granted by this Court's Order does not equate to a right to expand the use beyond its current use. This Court's Order permits only Parr's maintenance of the barn at its current size limited to no more than three horses.

ESTATE NOTICES

NOTICE IS HEREBY GIVEN that in the estates of the decedents set forth below, the Register of Wills has granted letters, testamentary or of administration to the persons named. All persons having claims or demands against said estates are requested to make known the same, and all persons indebted to said estates are requested to make payment without delay to the executors or administrators or their attorneys named below.

FIRST PUBLICATION

ESTATE OF GREGORY D. BLANK a/k/a GREGORY DONALD BLANK, DEC'D

Late of the Borough of Abbottstown, Adams County, Pennsylvania

Administrator: Scott L. Kelley, Esq., c/o Barley Snyder, LLP, 14 Center Square, Hanover, PA 17331

Attorney: Scott L. Kelley, Esq., Barley Snyder, LLP, 14 Center Square, Hanover, PA 17331

ESTATE OF ROBERT E. CARBAUGH, DEC'D

Late of Hamiltonban Township, Adams County, Pennsylvania

Executrix: Sarah E. Carbaugh, c/o Matthew R. Battersby, Esq., Battersby Law Office, P.O. Box 215, Fairfield, PA 17320

Attorney: Matthew R. Battersby, Esq., Battersby Law Office, P.O. Box 215, Fairfield, PA 17320

ESTATE OF JANET COBBAN DEWAR a/k/a JANET C. DEWAR, DEC'D

Late of Germany Township, Adams County, Pennsylvania

Executrix: Janet L. Dewar, 51 Riverside Drive, Apt. 9A, New York, NY 10024

Attorney: Puhl, Eastman & Thrasher, 220 Baltimore Street, Gettysburg, PA 17325

ESTATE OF BLANCHE THEODOSIA KEILHOLTZ, DEC'D

Late of the Borough of Carroll Valley, Adams County, Pennsylvania

Carolynn R. Maddox, 14 Lure Trail, Fairfield, PA 17320

Attorney: Matthew R. Battersby, Esq., Battersby Law Office, P.O. Box 215, Fairfield, PA 17320

ESTATE OF MARY M. OTT, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Executor: Richard M. Stoops, 646 Hammond Drive, Milford, DE 19963

Attorney: Matthew R. Battersby, Esq., Battersby Law Office, P.O. Box 215, Fairfield, PA 17320

SECOND PUBLICATION

ESTATE OF GEORGE OLIVER LYTER, III, a/k/a GEORGE O. LYTER, III, DEC'D

Late of Mt. Pleasant Township, Adams County, Pennsylvania

Executrix: Jacklyn L. Lyter, 5919 Ambau Road, Spring Grove, PA 17362

Attorney: John A. Wolfe, Esq., Wolfe, Rice & Quinn, LLC, 47 West High Street, Gettysburg, PA 17325

ESTATE OF DANIEL H. MYERS, DEC'D

Late of Mt. Pleasant Township, Adams County, Pennsylvania

Executrix: Deborah L. Myers, 210 Kimberly Lane, East Berlin, PA 17316

Attorney: Elinor Albright Rebert, Esq., 515 Carlisle Street, Hanover, PA 17331

ESTATE OF VANDRINA ROGERS, DEC'D

Late of Hamilton Township, Adams County, Pennsylvania

Administrator: Devante L. Ellis, 46 Stonybrook Lane, New Oxford, PA 17350

Attorney: Amy E.W. Ehrhart, Esq., 118 Carlisle Street, Suite 202, Hanover, PA 17331

ESTATE OF PHYLLIS M. WARNER, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executrix: Carol P. Wilson, 186 Skylite Drive, Hanover, PA 17331

Attorney: Elinor Albright Rebert, Esq., 515 Carlisle Street, Hanover, PA 17331

THIRD PUBLICATION

ESTATE OF LINDA K. CUFFLEY a/k/a LINDA KAYE CUFFLEY, DEC'D

Late of Hamilton Township, Adams County, Pennsylvania

Michael E. Cuffley, 170 Hamilton Drive, Abbottstown, PA, 17301

Attorney: Arthur J. Becker, Jr., Esq., Becker Law Group, P.C., 544 Carlisle Street, Hanover, PA 17331

ESTATE OF MARIO C. GALANTI, DEC'D

Late of Latimore Township, Adams County, Pennsylvania

Joyce Galanti, 30 York Street, Apt. #1, Gettysburg, PA 17325

Attorney: Henry O. Heiser, III, Esq., 104 Baltimore Street, Gettysburg, PA 17325

ESTATE OF THERON EUGENE HANN, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Administrator: Theron Matthew Hann, c/o Jennifer M. Stetter, Esq., Barley Snyder, LLP, 14 Center Square, Hanover, PA 17331

Attorney: Jennifer M. Stetter, Esq., Barley Snyder, LLP, 14 Center Square, Hanover, PA 17331

ESTATE OF TERRY L. HERMAN, DEC'D

Late of Mt. Pleasant Township, Adams County, Pennsylvania

Administratrix: Phyllis Herman, P.O. Box 95, Arendtsville, PA 17303

Attorney: John A. Wolfe, Esq., Wolfe, Rice & Quinn, LLC, 47 West High Street, Gettysburg, PA 17325

ESTATE OF WILMA W. HOFF, a/k/a WILMA HOFF, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Co-Executors: Joseph H. Fischer, 674 Glenbarrett Court, Marietta, GA 30066; William Alexander Joachim
Attorney: Terence J. Barna, Esq., BennLawFirm, 103 East Market Street, P.O. Box 5185, York, PA 17405-5185

ESTATE OF ANDREW CHARLES LANGLEY, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Co-Administrators: Jeff Langley and Nancy Langley, 300 Coleman Road, Gettysburg, PA 17325

Attorney: John A. Wolfe, Esq., Wolfe, Rice & Quinn, LLC, 47 West High Street, Gettysburg, PA 17325

ESTATE OF VERGIE L. NACE, DEC'D

Late of Tyrone Township, Adams County, Pennsylvania

Executors: Cynthia J. Naylor, 860 Company Farm Road, Aspers, PA 17304; Michael Naylor, 860 Company Farm Road, Aspers, PA 17304

Attorney: Elinor Albright Rebert, Esq., 515 Carlisle Street, Hanover, PA 17331

ESTATE OF SYLVIA A. WOLFORD, DEC'D

Late of Berwick Township, Adams County, Pennsylvania

Carla J. Grove, 1662 Hanover Pike, Littlestown, PA 17340

Attorney: David K. James, III, Esq., 234 Baltimore Street, Gettysburg, PA 17325



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