

# Adams County Legal Journal


Vol. 59

June 2, 2017

No. 4, pp. 1 - 8

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ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

Designated for the Publication of Court and other Legal Notices. Published weekly by Adams County Bar Association, John W. Phillips, Esq., Editor and Business Manager.

Business Office – 117 BALTIMORE STREET, ROOM 305, GETTYSBURG, PA 17325-2313. Telephone: (717) 334-1553

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INCORPORATION NOTICE

NOTICE IS HEREBY given that articles of incorporation were filed with the Pennsylvania Department of State, Harrisburg, Pennsylvania on May 10, 2017 incorporating and organizing a proposed nonprofit corporation to be known as UPPER CONEWAGO CONGREGATION, INC. formed pursuant to provisions of the Pennsylvania Nonprofit Corporation Law of 1988, 15 Pa. C.S. Section 5306, et seq. as amended and supplemented.

John D. Miller, Jr., Esq.  
MPL Law Firm, LLP  
137 East Philadelphia Street  
York, PA 17401-2424

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DISSOLUTION NOTICE

NOTICE IS HEREBY GIVEN by TB LIQUIDATING COMPANY (f/k/a TimBar Packaging & Display, a/k/a Tim-Bar Corporation), a Pennsylvania business corporation, that said corporation is winding up its affairs in the manner prescribed by the Pennsylvania Business Corporation Law, as amended, so that its corporate existence shall cease upon the filing of Articles of Dissolution with the Department of State of Pennsylvania.

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HERRICK SEPTIC & EXCAVATING, SEAN HERRICK AND  
LAUREL A. HERRICK, A/K/A LAUREL A. CATCHINGS V.  
MOUNT JOY TOWNSHIP ZONING HEARING BOARD V.  
MOUNT JOY TOWNSHIP

1. A conclusion that the governing body abused its discretion may be reached only if its findings of fact are not supported by substantial evidence.

2. Moreover, the Board's interpretation of the zoning ordinance it is charged with enforcing is generally entitled to a great degree of deference.

3. The Commonwealth Court has explained when an "ordinance provision . . . is unambiguous, we must apply it directly as written. However, if we deem the language of the ordinance ambiguous, we must then ascertain the legislative body's intent by statutory analysis.

4. An ambiguity exists when language is subject to two or more reasonable interpretations and not merely because two conflicting interpretations may be suggested.

5. More specifically, the Commonwealth Court explained under these definitions as well as the common usage of the term equipment, a septic truck, generator and construction and landscaping trailers are clearly articles or implements used in the operation of a septic and excavating business, and the Board erred in determining that the language of the conditions was ambiguous.

6. Evidence is substantial when a reasonable mind could accept it as adequate to support a conclusion.

7. The Board, as fact finder, is the ultimate judge of credibility and resolves all conflicts of evidence. A zoning board is free to reject even uncontradicted testimony it finds lacking in credibility.

IN THE COURT OF COMMON PLEAS OF ADAMS COUNTY,  
PENNSYLVANIA, CIVIL 2016-S-1099, HERRICK SEPTIC &  
EXCAVATING, SEAN HERRICK AND LAUREL A. HERRICK,  
a/k/a LAUREL A. CATCHINGS V. MOUNT JOY TOWNSHIP  
ZONING HEARING BOARD V. MOUNT JOY TOWNSHIP

Chris Naylor, Esq., Attorney for Appellants

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Board

Susan J. Smith, Esq., Attorney for Intervenor

Wagner, J., May 5, 2017

## MEMORANDUM OPINION

Before this Court is a Land Use Appeal filed by Appellants, Herrick Septic & Excavating, Sean Herrick and Laurel A. Herrick, a/k/a Laurel A. Catchings (hereinafter referred to as Appellants) on October 27, 2016. Appellants' Appeal is from the Mount Joy Township Zoning Hearing Board's (hereinafter referred to as ZHB) decision to affirm the Zoning Officer's June 20, 2016 Enforcement Notice. For the reasons set forth herein, Appellants' Land Use Appeal is Denied.

### BACKGROUND

The property at issue in the current appeal is 3772 Baltimore Pike, Littlestown, Adams County, Pennsylvania, which is zoned as Village District. On August 22, 2012, the ZHB granted Appellants a dimensional variance with eleven conditions attached. It is important to note Appellants accepted the eleven conditions imposed by the ZHB. Only three of those conditions are at issue in the current appeal.

On June 20, 2016, the Zoning Code and Enforcement Officer Shannon Hare (hereinafter referred to as ZO), issued an Enforcement Notice detailing the violations found on the property. The ZO cited Appellants for unlawful principal storage use and unpermitted parking use, as well as a violation of conditions of approval attached to grant of conditional use. See Enforcement Notice, Exhibit A attached to Appellants' Notice of Land Use Appeal<sup>1</sup>. Appellants appealed that decision on June 27, 2016. Condition 5 requires "[t]hat all equipment to the business be stored inside the building on the property." See ZHB Written Decision dated August 22, 2012, Township Exhibit 7 attached to Return of Writ of Certiorari. Condition 9 states "[c]onstruction materials and construction equipment must be stored in the warehouse building." **Id.** Condition 10 states "[s]eptic materials must be stored in the warehouse building." **Id.** On August 17, 2016

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<sup>1</sup> The three conditions Appellants were cited as violating were condition 5, 9, and 10. The ZO stated "From June 17, 2014 through June 7, 2016 the Township observed that additional equipment and materials have been brought to the Property and stored outside the office/storage structure. For example, on November 20, 2015, the Township observed equipment such as a skid loader, a mini excavator, a roller air compressor, generator, or pump, a tank on a trailer, chemical or water tanks, and equipment accessories such as buckets. On June 7, 2016, the Township observed the back doors of the building open, which we could conclude use of the building." **Id.**

and August 31, 2016, the ZHB held a hearing on Appellants' appeal. On September 30, 2016, the ZHB, by written decision<sup>2</sup>, confirmed the ZO's Enforcement Notice and denied Appellants' appeal. This appeal follows.

### LEGAL STANDARD

In zoning cases such as the instant matter where the trial court does not receive any additional evidence, the scope of review is limited to determining whether the Board committed an error of law or a manifest abuse of discretion. *In re Petition of Dolington Land Group*, 839 A.2d 1021, 1026 (Pa. 2003). The Court does not substitute its own interpretation of the evidence for that of the Board. *Pietropaolo v. Zoning Hearing Bd. of Lower Merion Twp.*, 979 A.2d 969, 976 (Pa. Commw. Ct. 2009). "A conclusion that the governing body abused its discretion may be reached only if its findings of fact are not supported by substantial evidence." *Sutliff Enterprises, Inc. v. Silver Spring Twp. Zoning Hearing Bd.*, 933 A.2d 1079, 1081 n.1 (Pa. Commw. Ct. 2007). Evidence is substantial when a reasonable mind could accept it as adequate to support a conclusion. *Cardamone v. Whitpain Twp. Zoning Hearing Bd.*, 771 A.2d 103, 104 (Pa. Commw. Ct. 2001).

Moreover, the Board's interpretation of the zoning ordinance it is charged with enforcing is generally entitled to a great degree of deference. *Ruley v. W. Nantemean Twp. Zoning Hearing Bd.*, 948 A.2d 265, 268 (Pa. Commw. Ct. 2008). The basis for this deference is the specific knowledge and expertise the Board possesses to interpret said zoning ordinances. *Willits Woods Assoc. v. Zoning Bd. of Adjustment City of Philadelphia*, 587 A.2d 827, 829 (Pa. Commw. Ct. 1991).

### DISCUSSION

Appellants allege the ZHB erred by affirming the ZO's Enforcement Notice. Appellants argue the term "equipment" is ambiguous and therefore must be construed in their favor. Furthermore, Appellants argue "many of the items set forth in the Enforcement notice are not being 'stored' on the Property, but rather are actively being used as

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<sup>2</sup> See Decision Denying Appeal From Determinations of Zoning Officer, Exhibit B attached to Appellants' Notice of Land Use Appeal.

necessary relative to the construction of the building.”<sup>3</sup> Thus, the ZHB abused its discretion by finding Appellants violated the conditions attached to the variance.

Conversely, Intervenor, Mount Joy Township, argues the term “construction equipment” is unambiguous and cite to the plain meaning of the word.<sup>4</sup> Mount Joy Township also alleges “the use presently conducted on the Property is a principal storage use that is not permitted by the Zoning Ordinance in the zoning district in which the Property is located.”<sup>5</sup> Additionally, they claim the other use of the property is that of a parking lot, which Appellants do not have a zoning permit for.<sup>6</sup> Similarly, the ZHB argues the term equipment is not ambiguous and also cite the plain meaning of equipment.<sup>7</sup>

The Commonwealth Court has explained when an “ordinance provision . . . is unambiguous, we must apply it directly as written. However, if we deem the language of the ordinance ambiguous, we must then ascertain the legislative body’s intent by statutory analysis.” **Tri-County Landfill Inc. v. Pine Twp. Zoning Hearing Bd.**, 83 A.3d 488, 510 (Pa. Commw. Ct. 2014) (internal citations omitted). “Where the words in an ordinance are free from all ambiguity, the letter of the ordinance may not be disregarded under the pretext of pursuing its spirit.” **Id.** at 509 (citing 1 Pa.C.S. § 1921). “An ambiguity exists when language is subject to two or more reasonable interpretations and not merely because two conflicting interpretations may be suggested.” **Id.** at 510 (citing **Adams Outdoor Adver., L.P. v. Zoning Hearing Bd. of Smithfield Twp.**, 909 A.2d 469 (Pa. Commw. Ct. 2006)).

Because the instant case involves the exact same parties and the issue of whether the term equipment is ambiguous, the Commonwealth Court’s holding in **Mount Joy Twp. v. Mount Joy Twp. Zoning**

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<sup>3</sup> Appellants’ Notice of Land Use Appeal at 5, para. 26.

<sup>4</sup> Intervenor Mount Joy Township’s Brief in Opposition to Land Use Appeal at 12. “The meaning of the term ‘equipment’ as stated in the Conditions also can be understood from the extensive discussion before the Zoning Hearing Board made of record during the hearing on the Application. And in this case, the meaning of the term equipment cannot ignore the additional defining term found in the Variances Decision and in the record- construction equipment.” **Id.**

<sup>5</sup> **Id.** at 10-11.

<sup>6</sup> **Id.** at 11.

<sup>7</sup> Appellee’s Brief in Opposition to the Land Use Appeal of Herrick Septic & Excavating, et. al. at 9.

**Hearing Bd., Herrick Bldg. and Excavating, Inc.**, No. 2429 C.D. 2015, 2016 WL 4898552 (Pa. Super. Sept. 15, 2016) is directly relevant to the case at bar.<sup>8</sup> In 2014 Herrick was cited by Mount Joy Township’s Zoning Officer for violating conditions 5, 9, and 10 attached to the variance. **Id.** at \*3.<sup>9</sup> Herrick appealed that decision, and the ZHB held a hearing on the matter in August of 2014. **Id.** at \*3. The ZHB determined “condition numbers 5, 9, and 10 of its previous decision were ambiguous. . .”, and therefore, under the law, Herrick did not violate those variance conditions. **Id.** at \*4. The Township appealed the ZHB’s decision, which the trial court affirmed. **Id.** at \*4. On appeal, the Commonwealth Court reversed the trial court holding “the language of the conditions imposed upon Applicant’s variance that all equipment had to be stored inside the building is unambiguous.” **Id.** at \*1.<sup>10</sup> The Commonwealth Court’s holding in **Mount Joy** is controlling in this case. Therefore, this Court finds the term equipment is not ambiguous.

As this Court has found the term “equipment” is not ambiguous, the next issue is whether there was substantial evidence in the record to support the ZHB’s findings of fact. The ZO, in her Enforcement Notice, determined Appellants were conducting an unlawful principal

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<sup>8</sup> It is important to note that the specific items deemed to be equipment in the 2014 case are different from the items alleged to be equipment in the instant case. The Enforcement Notice in the 2014 case dealt with items such as “two septic trucks, a construction trailer, a pickup truck with a landscaping trailer, a generator, and a pile of dirt on the Property ....” **Id.** at \* 3. The items deemed equipment in the instant case were “a skid loader, a mini excavator, a roller, air compressor, generator, or pump, a tank or a trailer, chemical or water tanks, and equipment accessories such as buckets.” See Enforcement Notice, Exhibit A attached to Appellants’ Notice of Land Use Appeal.

<sup>9</sup> Condition 5 requires “that all equipment to the business be stored inside the building on the property.” See ZHB Written Decision dated August 22, 2012, Township Exhibit 7 attached to Return of Writ of Certiorari. Condition 9 states “[c]onstruction materials and construction equipment must be stored in the warehouse building.” **Id.** Condition 10 states “[s]eptic materials must be stored in the warehouse building.” **Id.**

<sup>10</sup> More specifically, the Commonwealth Court explained “[u]nder these definitions as well as the common usage of the term ‘equipment,’ a septic truck, generator and construction and landscaping trailers are clearly articles or implements used in the operation of a septic and excavating business, and the Board erred in determining that the language of the conditions was ambiguous.” **Mount Joy**, 2016 WL 4898552, at \*5.

storage use and unpermitted parking use.<sup>11</sup> Mount Joy Township alleges “the use presently conducted on the Property is a *principal* storage use that is not permitted by the Zoning Ordinance in the zoning district in which the Property is located.”<sup>12</sup> Appellants contend the items on the property are not being stored but actively being used in construction of the building. Appellants argue the ZHB abused its discretion by finding Appellants violated three of the variance conditions.

“A conclusion that the governing body abused its discretion may be reached only if its findings of fact are not supported by substantial evidence.” **Sutliff Enterprises, Inc. v. Silver Spring Twp. Zoning Hearing Bd.**, 933 A.2d 1079, 1081 n.1 (Pa. Commw. Ct. 2007). Evidence is substantial when a reasonable mind could accept it as adequate to support a conclusion. **Cardamone v. Whitpain Twp. Zoning Hearing Bd.**, 771 A.2d 103, 104 (Pa. Commw. Ct. 2001).

At the August 17, 2016 hearing before the ZHB, the ZO testified as well as Appellant Sean Herrick. The ZO also presented pictures of Appellants’ property which corroborated her testimony that these items were outside the building. The ZO testified the original use of the property, as set forth in Appellants’ application, was “an office with accessory warehouse storage”; specifically, that storage was to occur inside the building. Transcript of Proceedings (Volume I), 8/17/16 at 25. The ZO testified for approximately one year she observed Appellants’ property, driving by “less than 30 times”. **Id.** at 33. During that timeframe she noticed more equipment on the property than when the 2014 enforcement hearing occurred and that they had “pretty much” remained there on a consistent basis. **Id.** at 19-23,

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<sup>11</sup> In her Enforcement Notice, the ZO wrote “[b]ased on information provided by the Department of Labor and Industry, a use and occupancy permit has not been issued for the constructed structure on the Property and occupancy of the structure is not permitted. You applied for and were granted a zoning permit for the use of the structure for an office and accessory storage uses. The Property cannot be used for parking and storage as a principal use. The Zoning Ordinance does not permit the use of property in the Village zoning district for storage as a principal use (110 Attachment 4, Table of Permitted Uses by District). Application for and issuance of a zoning permit is required for use of property and structures (Zoning Ordinance Section 110-6 and 110-7). No zoning permit has been issued for the use of the Property for a principal parking use.” Enforcement Notice, Exhibit A attached to Appellants’ Notice of Land Use Appeal (emphasis in original).

<sup>12</sup> Intervenor Mount Joy Township’s Brief in Opposition to Land Use Appeal at 10-11.



36.<sup>13</sup> The ZO also testified she spoke with the State’s Labor and Industry Department and determined a Use and Occupancy Permit was not issued for the building. **Id.** at 24. Furthermore, Appellants have not applied for a parking permit. **Id.** at 27. The ZO was of the opinion that storage was the principal use of the property. **Id.**

Appellant, Herrick, also testified at the hearing in front of the ZHB on August 17, 2016. He explained the property and building are still under construction. **Id.** at 46-47.<sup>14</sup> While the ZO conceded she does not know if the items she viewed on the property were being used for construction of the building or for business purposes, the ZO testified during the time period she observed the property she did not see any construction activity outside of the building. **Id.** at 42. “The Board, as fact finder, is the ultimate judge of credibility and resolves all conflicts of evidence.” **In re Brickstone Realty Corp.**, 789 A.2d 333, 339 (Pa. Commw. Ct. 2001). “A zoning board is free to reject even uncontradicted testimony it finds lacking in credibility . . . .” **Taliaferro v. Darby Twp. Zoning Hearing Bd.**, 873 A.2d 807, 811 (Pa. Commw. Ct. 2005). The ZHB credited and believed the testimony presented by the ZO. This Court will not disturb those credibility determinations on appeal.

A review of the record establishes the ZHB had substantial evidence to support its findings of fact. Thus, the ZHB did not abuse its discretion in finding Appellants’ violated the conditions of the variance.

Therefore, for the aforementioned reasons, Appellants’ appeal is DENIED.

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<sup>13</sup> The ZO also testified she was able to view pictures of the property taken in 2014 by the prior Zoning Officer which were used at the 2014 enforcement hearing as well as other photographs that the Township had in their records. **Id.** at 18-19.

<sup>14</sup> Specifically, “[t]here’s sidewalks to be completed, concrete in the front of the building the full length, concrete pads at the exterior vaulted doors. Exterior lighting on the building needs to be completed. There’s utility trenching in the front that needs to be completed. There’s parking lot demolition and removal in the front that’s yet to be completed. There’s landscaping areas in the front that need to be completed. Handicap accessibility ramp’s that need to be completed outside. And there’s a substantial amount of parking lot grading that needs to be completed.” **Id.** at 47.

ORDER OF COURT

AND NOW, this 5th day of May, 2017, for the reasons set forth in the attached Opinion, the Appeal taken by Herrick Septic & Excavating, Sean Herrick and Laurel A. Herrick, a/k/a Laurel A. Catchings, Appellants, from the decision of the Mount Joy Township Zoning Hearing Board dated September 30, 2016 is **Denied**.

**ESTATE NOTICES**

**NOTICE IS HEREBY GIVEN that in the estates of the decedents set forth below, the Register of Wills has granted letters, testamentary of or 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 JEANNE MARIE BOLLINGER, DEC'D**

Late of Conewago Township, Adams County, Pennsylvania

Executrices: Jane R. Griffith, 209 Berwick Road, Abbottstown, PA 17301; Tamara J. Wolf, 319 Tallahassee Blvd., Abbottstown, PA 17301

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

**ESTATE OF PHYLLIS KNOX GETTIER, DEC'D**

Late of Oxford Township, Adams County, Pennsylvania

Personal Representative: Kevin Trump, 620 Jasontown Rd., Westminster, Md 21158

**ESTATE OF LEONA MAE SHAFFER, DEC'D**

Late of Oxford Township, Adams County, Pennsylvania

Co-Executors: Dennis R. Shaffer, 4555 Blue Hill Rd., Glenville, PA 17329; Robert P. Shaffer, 1116 Chatelaine Dr., Fallston, MD 21047

Attorney: Keith R. Nonemaker, Esq., Guthrie, Nonemaker, Yingst & Hart, LLP, 40 York Street, Hanover, PA 17331

**ESTATE OF PAMELA H. WEBSTER, DEC'D**

Late of Huntington Township, Adams County, Pennsylvania

Executrix: Tammy Peros, c/o Christopher E. Rice, Esq., Martson Law Offices, 10 East High Street, Carlisle, PA 17013

Attorney: Christopher E. Rice, Esq., Martson Law Offices, 10 East High Street, Carlisle, PA 17013

**SECOND PUBLICATION****ESTATE OF JOSHUA L. DEARDORFF, DEC'D**

Late of the Borough of Biglerville, Adams County, Pennsylvania

Beverly G. Deardorff, 161 South Main Street, Biglerville, PA 17307

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

**ESTATE OF ROBERT L. HINKLE, DEC'D**

Late of Oxford Township, Adams County, Pennsylvania

Executrix: Tami W. Bubbs, c/o Ronald Perry, Esq., Katherman, Heim & Perry, 345 East Market Street, York, PA 17403

Attorney: Ronald Perry, Esq., Katherman, Heim & Perry, 345 East Market Street, York, PA 17403

**THIRD PUBLICATION****ESTATE OF ROXANNE L. BREIVOGEL, DEC'D**

Late of Mount Joy Township, Adams County, Pennsylvania

Samuel F. Breivogel, 430 Old Route 30, Biglerville, PA 17307

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

**ESTATE OF CHESTER E. CHRONISTER, a/k/a CHESTER ELWOOD CHRONISTER, SR, DEC'D**

Late of Latimore Township, Adams County, Pennsylvania

Co-Executors: Jack E. Chronister and Kenneth E. Chroinster, c/o Alex E. Snyder, Esq., Barley Snyder LLP, 100 E. Market Street, York, PA 17401

Attorney: Alex E. Snyder, Esq., Barley Snyder LLP, 100 E. Market Street, York, PA 17401

**ESTATE OF JERRY A. FISHER, DEC'D**

Late of Franklin Township, Adams County, Pennsylvania

Executrix: Jeannine Fisher Wang, 720 Calmar Ave., Oakland, CA 94610

**ESTATE OF B. PATRICIA HARTMAN, DEC'D**

Late of Mount Pleasant Township, Adams County, Pennsylvania

Executrix: Joanne Hartman Cody, c/o Jon M. Gruber, Esq., Russell, Krafft & Gruber, LLP, 930 Red Rose Court, Suite 300, Lancaster, PA 17601

Attorney: Jon M. Gruber, Esq., Russell, Krafft & Gruber, LLP, 930 Red Rose Court, Suite 300, Lancaster, PA 17601

**ESTATE OF WILLIAM F. MARTIN, DEC'D**

Late of the Borough of New Oxford, Adams County, Pennsylvania

Executor: Stephen P. Martin, 316 Lincoln Way West, New Oxford, PA 17350

**ESTATE OF HARRIET A. WRIGHT, a/k/a HARRIET ANN WRIGHT, DEC'D**

Late of Union Township, Adams County, Pennsylvania

Co-Executors: William F. Wright, Jr., 586 Sells Station Road, Littlestown, PA 17340; Stephen K. Wright, 1820 Earl Drive, Bel Air, MD 21015

Attorney: David C. Smith, Esq., 754 Edgemoor Road, Hanover, PA 17331

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