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Land Use

Commonwealth Court Reiterates Standards When Interpreting Zoning Ordinances

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In Pennsylvania, municipal governing bodies and zoning hearing boards are entitled to considerable deference when interpreting and applying their own zoning ordinances. This deference is based largely on the premise that municipal bodies and boards charged with drafting and administering zoning ordinances possess an unparalleled knowledge of and expertise in their own ordinances, as in [In re Thompson](#), 896 A.2d 659, 669 (Pa. Commw. Ct. 2006). However, this deference is not without limit. The General Assembly and Pennsylvania courts have established the following statutory construction standards to guide municipal bodies and boards in their interpretations:

- Governing bodies and boards must construe the words and phrases of a local zoning ordinance according to rules of grammar and according to their common and approved usage, Section 1903(a) of the Statutory Construction Act, 1 Pa.C.S. Section 1903(a).
- Governing bodies and boards have an obligation to construe the words of an ordinance as broadly as possible to give the landowner the benefit of the least restrictive use, as in [Albert v. Zoning Hearing Board of North Abington Township](#), 854 A.2d 401, 405 (Pa. 2004).
- Any doubt as to undefined words or terms in a local zoning ordinance must be resolved in favor of the landowner and the least restrictive use of the land, as in [Kissell v. Ferguson Township Zoning Hearing Board](#), 729 A.2d 194, 197 (Pa. Commw. Ct. 1999).
- When attempting to define an undefined ordinance term, governing bodies and boards may look to statutes, regulation or dictionaries for assistance, as in [Hartman v. Zoning Hearing Board of Cumru Township](#), 133 A.3d 806, 810 (Pa. Commw. Ct. 2016).
- A ordinance's plain language generally provides the best indication of legislative intent and thus statutory construction begins with an examination of the text itself, as in [Malt Beverages Distribution v. Liquor Control Board](#), 918 A.2d 171, 176 (Pa. Commw. Ct. 2007).
- Although the legislative intent of the governing body that enacted the ordinance is of primary concern, the letter of the ordinance is not to be disregarded under the pretext of pursuing its spirit, as in [Borough of Fleetwood v. Zoning Hearing Board of Borough of Fleetwood](#), 649 A.2d 651, 656 (Pa. 1994).

As evidenced by the Commonwealth Court's recent decisions in [Marchenko v. Zoning Hearing Board of Pocono Township](#), 2016 Pa. Commw. LEXIS 401 (Pa. Commw. Ct. 2016), and [Balady Farms v. Paradise Township Zoning Hearing Board](#), 2016 Pa. Commw. LEXIS 416 (Pa. Commw. Ct. 2016), if a local governing body or zoning hearing board fails to observe the above standards, Pennsylvania courts will find the body or board abused its discretion and/or committed an error of law and will not hesitate to substitute its judgment for that of the body's or board's.

The threshold issue in both Marchenko and Balady Farms was whether the respective zoning hearing boards erred in interpreting their zoning ordinances. In both cases, the Commonwealth Court concluded that the boards had.

In Marchenko, on an appeal of a notice of violation, the Pocono Township Zoning Hearing Board had to determine whether the definition of "single-family dwelling" in its zoning ordinance included or was intended to include short-term rentals. The property subject to the notice of violation was located in the township's R-1 low density residential zoning district and contained a single-family dwelling, which the property owner used as her primary residence 62 percent of the time. The remaining 38 percent of the time the property owner, in an attempt to help defray her housing costs, rented the dwelling to families visiting the area. Due to the use of the property for commercial purposes (i.e., short-term rentals), a use not expressly permitted in the R-1 zoning district, the township's zoning officer issued the property owner a notice of violation.

The property owner appealed the notice to the zoning hearing board. On appeal, the zoning hearing board acknowledged that although the zoning ordinance defines "single-family dwellings", neither that definition nor any other defined term in the ordinance specifically addressed short-term rentals. The zoning hearing board turned to the text of the zoning ordinance and the dictionary for guidance in interpreting the ordinance. After doing so, the zoning hearing board concluded that: (1) the property owner's rental activity constituted a transient "lodge" use, an undefined use that is not permitted in the R-1 zoning district; (2) the definition of "single family dwelling" did not include rental activity; and (3) the property owner's periodic use of her single-family dwelling for short-term rentals was prohibited.

The property owner appealed the zoning hearing board's determination to the trial court, which affirmed. The property owner next appeal to the Commonwealth Court, arguing that the zoning hearing board erred in concluding that her rental activity was prohibited in the R-1 district and not consistent with the single-family dwelling use. Finding the zoning hearing board failed to observe the second standard above—that zoning hearing boards have an obligation to construe the words of an ordinance as broadly as possible to give the landowner the benefit of the least restrictive use—the Commonwealth Court reversed. In doing so, it explained that the zoning ordinance's definition of "single-family dwelling" does not prohibit short-term rental activity and such rental activity is not encompassed by any other use defined by the ordinance. Moreover, the court explained that the zoning hearing board should have taken into account the fact that the property owner resides at the dwelling 62 percent of the time and thus broadly interpreted the term "single-family dwelling" to allow the property owner to continue her rental activity.

Less than one month later in the Balady Farms case, the Commonwealth Court again concluded that a zoning hearing board abused its discretion and committed an error of law while interpreting its zoning ordinance for failure to adhere to the above-referenced standards. In Balady Farms, the owner of a farm located on a 23-acre lot in Abbottstown Township's RC Rural Conservation District asked the township's zoning hearing board whether the zoning ordinance's definition of "agriculture," a use permitted by right in the township's RC zoning district, encompassed or was intended to encompass the processing (i.e., slaughtering, cutting and cleaning) of chickens in preparation for market.

In an effort to interpret its zoning ordinance, the zoning hearing board examined: the zoning ordinance's definition of agriculture, which includes "an enterprise that is actively engaged in the commercial production and preparation for market ... livestock, including poultry"; the purpose of the RC zoning district in general, which is to preserve the quality of agricultural lands; and whether the processing of chickens is consistent with the procedures that are normally engaged in by farmers in the township. As a result of its examination, the zoning hearing board concluded that the definition of "agriculture" did not encompass the commercial processing of chickens on the basis that: there is no mention of a slaughter house in the zoning ordinance; the zoning ordinance does not specifically permit, nor deny, the processing operation in the RC zoning district; the commercial processing of chickens is not consistent with the township's definition of agriculture because it does not constitute the production and preparation for market of livestock; the processing of chickens is a commercial endeavor that is not normally engaged in by farmers in the township.

On appeal, the trial court affirmed. Disagreeing with the zoning hearing board's and trial court's conclusions, however, the Commonwealth Court reversed. In doing so, the court explained that the key to interpreting the ordinance's definition of "agriculture" is determining what the township intended by the terms "commercial," "production" or "preparation" in the definition. The court further stated that in accordance with the fourth standard above, the zoning hearing board should have looked to statutes, such as the Pennsylvania Right-to-Farm Act, and dictionaries for assistance with its interpretation. Moreover, the court concluded that the zoning hearing board also failed to observe standards 5 and 6 above—related to the use of an ordinance's plain language to determine legislative intent—because the plain language of the ordinance illustrates that the governing body did not intend to require that proposed uses to be consistent with the procedures and activities normally engaged in by other farms in the township. The Commonwealth Court noted that had the governing body intended such a restriction, it could have expressly imposed it. Finally, the Commonwealth Court found nothing in the record to support the zoning hearing board's conclusion that the inclusion of chicken processing within the definition of "agriculture" offends the RC zoning district's purpose.

The Commonwealth Court's decisions in Marchenko and Balady Farms are excellent reminders for local governing bodies, zoning hearing boards and landowners that when local governing bodies and zoning hearing boards are called upon to interpret and apply their zoning ordinances, governing bodies and zoning hearing boards may not take it upon themselves to deviate from the zoning ordinance's express terms and impose their own unexpressed policies on landowners. •

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