

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

VANDERLIN, et. al	:	No. 01-01232
Plaintiffs	:	
	:	
vs.	:	CIVIL ACTION - LAW
	:	
	:	
CITY COUNCIL OF THE CITY OF	:	
WILLIAMSPORT; and CITY OF	:	
WILLIAMSPORT,	:	
Defendants	:	
	:	Motion for Determination of
ECK REALTY COMPANY,	:	Composition of Record on
	:	Appeal Pursuant to Rule 1926
	:	of the Pennsylvania Rules
Intervenor	:	of Appellate Procedure

O R D E R

AND NOW, this 23<sup>rd</sup> day of July 2002, after conference and argument on Plaintiffs' Motion for Determination of Composition of Record on Appeal pursuant to Pennsylvania Rule of Appellate Procedure 1926, the Court determines the record to be as follows:

1. The certified record submitted by J. David Smith, attorney for City Council of the City of Williamsport and City of Williamsport filed on January 3, 2002. This certified record contains seven (7) marked and delineated tabs.

2. Tabs 8 and 9 which by agreement of all parties have been added to the certified record and are attached to

this order. Also, attached to this order is a transcript of an in-chambers discussion with counsel of February 22, 2002. At this in-chambers discussion, counsel agreed the information contained in tabs 8 and 9 would be part of the certified record. See also the Opinion and Order of March 20, 2002 at 6-7, which summarizes and delineates the record.

3. The Court DENIES the request of Intervenor to include the letter from David C. Babbitt and Associates to Keith Eck, dated November 9, 2000 as part of the record in this matter.

On October 2, 2001, counsel for City of Williamsport, J. David Smith, filed a certified record which only contained the minutes of the June 21, 2001 and July 5, 2001 City Council meetings. Thereafter, Attorney Smith submitted an additional proposed record of proceedings which included as tab 1, the David C. Babbitt report to Keith Eck, principal for the Intervenor.<sup>1</sup>

On November 20, 2001 Michael Wiley, Esquire, counsel for appellants James and Pennie Vanderlin, filed a Motion to Establish the Contents of the Reproduced Record. In this motion Attorney Wiley asked that the David C. Babbitt report of November 9, 2000 not be considered part of the record to be submitted to the lower Court for consideration of its decision in this case, because the Babbitt report was not introduced

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<sup>1</sup> Although the Proposed Record of Proceedings was submitted to the Court and all counsel, it does not appear that counsel ever filed this document

into evidence during the public hearing held before Williamsport City Council on June 21, 2001 or July 5, 2001.

The Court held an argument on this motion. All the parties were represented by counsel, who capably argued their positions. In an Order dated December 14, 2001, the Court sustained the objection to inclusion of the Babbit report. In this order of December 14, 2001, the Court also allowed all parties to review whether they desired to present testimony to the lower Court as opposed to the lower Court deciding the matter on the record before City Council.

On or about December 26, 2001, in response to the Order of December 19, 2001, the Intervenor filed a Motion to Present Additional Evidence in accordance with 53 P.S. Section 11005-A. Specifically, the Intervenor requested the Court to allow presentation of additional testimony by its expert, David C. Babbitt. Argument on this motion was scheduled on January 3, 2002 before this Court.

On January 3, 2002, counsel for the Intervenor, John Zurich, Esquire, did not pursue his motion to present testimony from Mr. Babbitt.

4. In addition to tabs 1-9, all counsel agreed on January 3, 2002 that the certified record would also include videotapes of the public hearings held before City Council on June 21, 2001 and July 5, 2001 since these were the public hearings held in conjunction with the decision made by

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in the Prothonotary's office.

Williamsport City Council.

Also, all counsel agreed to provide the videotape of a public hearing held before Williamsport City Council on November 9, 2000 to the Court. On November 9, 2000, City Council held a public hearing on the same ordinance as was later submitted in year 2001. In 2000, City Council refused to pass the ordinance proposed by the Intervenor. However, in 2001, the Intervenor refiled the same proposed ordinance, and City Council passed the ordinance on July 5, 2001. All parties felt that the Court would benefit from viewing the videotape of the November 9, 2000 hearing in order to give the Court a better understanding of the history and progression of this case. See the Opinion and Order of the lower Court of March 20, 2002, at 6 n.7 ("The November 9, 2000 decision of council is not at issue in this appeal. However, the parties agreed to include the tape of this public hearing as part of the record to aid the Court in its understanding of this case.")

5. All counsel agreed when they appeared before this Court on July 17, 2002 to discuss the Motion for Determination of Composition of Record on Appeal that the City of Williamsport could prepare typed transcripts of the videotaped public hearings held before City Council on November 9, 2000, June 21, 2001 and July 5,, 2001, to facilitate appellate review of these hearings.

In summary, this Court finds that the Composition of Record on Appeal pursuant to Rule of Appellate Procedure 1926 shall contain:

?? Tabs 1-9 of the certified record of proceedings.

?? Videotapes of the public hearing held before Williamsport City Council on November 9, 2000, June 21, 2001 and July 5, 2001.

?? Transcripts of the aforementioned hearings, which are being transcribed by the City of Williamsport.

The Court DENIES the request of the Intervenor to include in the record the written report of November 9, 2000 from David D. Babbitt to Keith Eck.

The Lycoming Count Prothonotary shall submit this record to the Pennsylvania Commonwealth Court upon receipt of the transcripts of the November 9, 2000, June 21, 2001, and July 5, 2001 hearings before Williamsport City Council. Counsel for the City of Williamsport shall ensure that these transcripts are completed forthwith in order for the record to be transmitted to the Pennsylvania Commonwealth Court.

By The Court,

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Kenneth D. Brown, J.

cc: Douglas Engelman, Esquire  
Leo Klementovich, Esquire  
John Zurich, Esquire