

BOSTLEY’S PRE-SCHOOL LEARNING	:	IN THE COURT OF COMMON PLEAS OF
CENTER, INC., a/k/a BOSTLEY’S CHILD	:	LYCOMING COUNTY, PENNSYLVANIA
CARE, SUSQUEHANNA HEALTH	:	
SYSTEM and DIVINE PROVIDENCE	:	
HOSPITAL,	:	
Appellants	:	
	:	
vs.	:	NO. 03-00,782
	:	
CITY COUNCIL of the CITY OF	:	CIVIL ACTION - LAW
WILLIAMSPORT and the CITY OF	:	
WILLIAMSPORT and ZONING	:	
HEARING BOARD,	:	
Appellees	:	
	:	
vs.	:	
	:	
MR. & MRS. JAMES DOUGHERTY et al.,	:	
Intervenors	:	LAND USE APPEAL

Date: November 6, 2003

OPINION and ORDER

Facts/Procedural Background

Before the Court for determination is the appeal of Bostley’s Pre-School Learning Center, *et al* (“Bostley’s”) filed May 16, 2003. This appeal is to be decided by the Court “*de novo*” as the parties submitted additional evidence to this Court through a stipulation entered on the record by counsel on September 29, 2003. The facts set forth in this Opinion and Order are based upon the Record and the Stipulation.

Bostley’s desires to construct a childcare center on property located at 1708 Chestnut Street, Williamsport, Lycoming County, Pennsylvania (“The Property”). The Property is owned by Susquehanna Health Systems. On March 4, 2003, Bostley’s filed an Application for Land Development with the City of Williamsport to initiate the project. On March 10, 2003, the Williamsport Planning Commission reviewed the application and

recommended that it be approved subject to the condition that public sidewalks be installed adjacent to the Chestnut Street frontage. On April 17, 2003, the Williamsport City Council (“City Council”) denied the application at a council meeting. City Council’s decision was based upon its determination that the Property is zoned residentially as an R2 district and that a childcare center would not be a permitted use under the City’s zoning ordinance.

Prior to 1992, the Property was located within an Institutional “I” district. On May 21, 1992, the City Council amended the city’s zoning ordinance by enacting Ordinance # 5556, which rezoned the property to Residential R2. Ordinance # 5556 directed the proper city officials to make the necessary changes to the official zoning map in order to reflect the amendment. However, the zoning change was not made on the official zoning map.

On April 16, 1998, by Ordinance # 5745, City Council adopted a new zoning ordinance. Ordinance #5745 repealed the zoning ordinance of 1971, as amended, and all other ordinances or resolutions that preceded the new zoning ordinance. Ordinance #5745 also established the map identified as the Williamsport, PA Zoning Map dated March 31, 1998 as the official zoning map of the city.

Section 1331.02 of the Williamsport zoning ordinance states that the official zoning map is the final authority as to the current status of a zoning district in the city of Williamsport. Section 1321.01 gives City Council the power to amend the zoning ordinance along with the zoning map. If City Council amends the zoning ordinance, then the change shall be promptly reflected on the map. A change to the map can be made without the procedures outlined in §1321 if it is to update or correct base map information.

The March 31, 1998 map did not reflect the change in the zoning of the property made by Ordinance # 5556 in 1992. According to the 1998 map, the property was located in an Institutional district. At the time Bostley's submitted their application, the zoning map still indicated that the property was in an Institutional district. The construction and operation of a childcare center would be a permitted use in an Institutional district, but prohibited in a Residential R2 district.

Discussion

The central issue in the case *sub judice* is in what zoning district is the Property located. Bostley's argues that the Property is zoned as Institutional. Bostley's contends that municipalities have a duty to create accurate zoning maps that landowners can rely on when determining whether they are permitted to build certain structures or use the land in a particular way. In this case, Bostley's argues that the official zoning map of Williamsport speaks for itself. The ordinance that repealed all prior zoning ordinances and their amendments adopted a zoning map that clearly indicated the Property was zoned as Institutional. Bostley's argues that the Interveners and the City Council cannot assert that the City Council intended to zone the property Residential R2 when the map it adopted clearly states that the Property is zoned Institutional. Therefore, Bostley's contends that the Property was zoned Institutional and City Council's denial of their application was arbitrary, capricious, an abuse of discretion, contrary to law, and unsupported by substantial evidence.

In response, Mr. and Mrs. James Dougherty, *et al* ("the Interveners") and City Counsel argue that the Property is zoned Residential R2; therefore, City Council did not err in denying Bostley's application. The Interveners and City Council assert that the failure to

change the zoning map to reflect the change made in 1992 was an administrative error that cannot bind a municipality to a result that was not intended. For this proposition, the Interveners and the City Council cite *Bd. of Supervisors v. Wellington Fed. Dev. Corp.*, 602 A.2d 425 (Pa. Cmwlth. 1992). Both argue that had the change been made to the zoning map in 1992, the 1998 map would have shown the Property to be zoned Residential R2. The Interveners and City Council contend that there was no intent in 1998 to change the area from Residential R2 to Institutional. The use of the 1998 map was merely a continuation of the administrative error that occurred in 1992.

To determine the proper zoning of the property, the Court must look to the 1998 zoning ordinance and the zoning map adopted by City Council. While appearing simple and clear-cut, the waters are muddied by the fact that the zoning map, which was adopted to establish the zoning districts, existed in its pre-1992 amendment form due to an administrative error and was not demonstrative of the intent nor prior actions of City Council. Fortunately, the case of *Bd. of Supervisors v. Wellington Fed. Dev. Corp.*, *supra*, shines some light on the subject.

In *Wellington*, the Superior Court was faced with the issue of determining the effect of an error in the Montgomery Township zoning map. 602 A.2d at 429. On November 4, 1979, the Township enacted an ordinance that rezoned the subject property from R-1 Residential to R-5 Residential. An adjacent property became the subject of litigation, which eventually resulted in a stipulation that imposed various zoning classifications and restrictions on different parts of that property. The stipulation was approved by the court of common pleas on July 10, 1984, and, subsequently, the township engineer changed the zoning map to reflect

the stipulation by having those areas designated “CA or “Court Approved.” *Id.* at 427. When this change was made, the R-5 designation was removed from the subject property, thereby causing the map to show the subject property within the CA designation.

The applicants desired to commercially develop the subject property. The applicants filed a request with the township’s ZHB for a hearing to challenge the validity of the zoning ordinance and the zoning map in addition to a proposed curative amendment to change the zoning of the subject property to S-Shopping Center District. *Wellington*, 602 A.2d at 427. The ZHB denied the proposed curative amendment.

On appeal, the ZHB argued that the error on the map did not change the zoning of the subject property or render it unzoned. The petitioners argued that the subject property was totally unzoned because of this error. *Wellington*, 602 A.2d at 429. The Superior Court held that the ZHB did not err in denying the request for a curative amendment since the basis for it, that the subject property was unzoned, was incorrect. *Id.* at 430. The Superior Court held that “a mere administrative error in mis-designating the zoning of a specific property cannot change the zoning classification of that property so that it is unzoned.” *Ibid.* The Superior Court stated that it would not permit “an innocent administrative mistake ... to bind municipal governments.” *Ibid.* Therefore, the Superior Court concluded that the property was zoned R5 Residential.

While *Wellington* dealt with the issue of whether the mistake on the zoning map rendered the property unzoned, the case dealt with the issue now before this Court in dicta. In further addressing the argument that the mistake rendered the property unzoned, the Superior Court posited that it would be more likely that the zoning classification would be that of the

error then not being zoned at all. *Wellington*, 602 A.2d at 430. Following this, the Superior Court stated that the consequence of such a determination “would be to allow an innocent administrative mistake alone to bind municipal governments, a result [it] refuse[d] to tolerate.” *Ibid*. Taking guidance from the Superior Court, it would seem that the proper zoning of the subject property at issue here is Residential R2 and not Institutional, since to hold otherwise would allow an administrative error to bind City Council.

Support for this conclusion does not rest upon the dicta of *Wellington*, but more importantly upon the reasoning of *Wellington*. *Wellington* stated that pursuant to 53 P.S. §10402(a) the governing body of the municipality has the exclusive authority to amend the zoning map. 602 A.2d at 426. Because said authority resides exclusively with the governing body, municipal employees do not have the authority to amend or change the zoning map. As such, their error in changing the designation on the map could not operate as an amendment or change to the zoning of that property. *Ibid*.

In essence, what the Superior Court is saying is that while the actions of the municipal employee may have a practical effect on how the zoning of a property is publicly presented, the employee’s actions have no legal effect on the zoning of the property. Since the employee’s actions have no legal effect, the Superior Court concluded that an administrative mistake would not bind a municipal government. The bottom line is that municipal employees have no authority to amend or modify the zoning map; therefore, their actions or inactions have no binding effect on the zoning of a property.

The same is true here. If the Court were to conclude that the zoning of the property was Institutional, then it would be giving binding effect to the actions of the City of

Williamsport's employees. Such a conclusion would be in direct contravention of what the Superior Court stated in *Wellington*. The 1998 map adopted as the official map was based on an administrative error that cannot be given binding effect. Therefore, the proper zoning classification of the property is Residential R2, as was intended by the city council when the map should have been changed in accordance with Ordinance #5556.

This may seem like a harsh result considering that Bostleys and the public rely on the map to determine the zoning of a property. However, "the power to zone is the power to regulate land use." *Hopkins v. Zoning Hearing Bd. of Abington Twp.*, 432 A.2d 1082, 1084 (Pa. Cmwlth. 1980). "Municipalities derive their power to enact zoning ordinances from specific grants by the Legislature." *City of Pittsburgh v. Commonwealth of Pennsylvania*, 360 A.2d 607, 610 (Pa. 1976), *overruled on other grounds, Commonwealth of Pennsylvania, Dep't of General Services v. City of Philadelphia*, 483 A.2d 448, 454 (Pa. 1984). The Municipalities Planning Code specifically grants the power to zone to the governing body of the municipality. 53 P.S. § 10401; 53 P.S. § 10601; *Commonwealth v. Karn*, 650 A.2d 1176, 1178 (Pa. Cmwlth. 1994).

Since the power to zone effects property rights, it is essential to ensure and require that the decision that impacts those property rights is made by those who are authorized to do so. Under the Municipalities Planning Code, the governing body of the municipality has the sole authority to zone or make changes to the zoning map. That is why this Court must conclude that the property at issue is not zoned Institutional. The purported zoning of the property as Institutional on the zoning map was the result of someone's actions or inactions that did not have the authority to change the zoning of the property.

The fact that City Council adopted the 1998 map with the evident Institutional classification does not change the conclusion of the Court. It can be argued that City Council intended to change the zoning of the property by adopting the 1998 map. The map clearly indicates that the area was zoned as Institutional; therefore, it can logically be asserted that City Council knew what it was doing when it adopted the map with the Institutional demarcation. While logical, this argument must fail in light of the fact that there is no evidence that City Council intended to zone the property Institutional.

The City Council enacted Ordinance # 5556 to preserve the residential character of the neighborhood where the Property is located. Minutes of Williamsport City Council Meeting, May 21, 1992. There is no evidence that the City Council retreated from the position it expressed in 1992. In 1998, when the new zoning ordinance and map were adopted, the intent of the City Council was to have the changes on the map reflect the actual uses of the property. Intervener's Exhibit A, Memorandum of Urban Research and Development Corporation.¹ The use of the property at issue here, as well as the surrounding neighborhood, was residential. If one of the purposes behind the adoption of the new zoning map was to reflect the actual uses of property, then it would be illogical to have the Property zoned Institutional when it was used as residential. The same conclusion was echoed by the City Council when it denied Bostley's Land development Plan. The City Council stated that it did not intend to repeal the changes that Ordinance #5556 made in 1992 and that the map needed to be brought in line with the written ordinances. Minutes of Williamsport City Council, April 17,

¹ Bostley's objected to the admission of the Interveners' Exhibits A and B on the basis that the intent of the City Council was irrelevant. The Court overrules the objection and admits Exhibits A and B.

2003. The City Council intended that the Property be zoned Residential R2. The adoption of the zoning map indicating the property as zoned Institutional was not a change of that intent. It was an administrative error.

The Court must note that, as Bostley's argues, the zoning map must clearly indicate zoning district boundaries "with definiteness in order that landowners can rely upon predictable content within the zoning ordinance and map for the purpose of deciding where they can develop structures and where they cannot do so." *Tohickon Valley Transfer, Inc. v. Tinicum Twp. Zoning Hearing Bd.*, 509 A.2d 896, 904 (Pa. Cmwlth. 1986). Therefore, "a municipality has a duty to create zoning maps which clearly delineate zoning district boundaries." *Jacquelin v. Zoning Hearing Bd. of Hatboro*, 558 A.2d 189, 191 (Pa. Cmwlth. 1989).² However, these general principles are not applicable to the issue in this case. These rules are more applicable to the situations such as those that arose in *C & C Marine Maintenance Corp. v. Zoning Hearing Bd. of Georgetown Borough*, 686 A.2d 896 (Pa. Cmwlth 1996), *appeal denied*, 703 A.2d 468 (Pa. 1997) and *Jacquelin, supra*.

In *C & C Marine Maintenance Corp.*, Campbell Barge Line, Inc., a predecessor in interest to C & C Marine Maintenance Corporation, constructed four cells in the Ohio River at distances of thirty to fifty feet from shore. The cells were used to moor barges while repairs were made. The area where the cells were located was a portion of the Ohio River that adjoined land zoned as residential. C & C Marine would often wire groups of barges together at these cells to conduct the repair work. The borough's zoning officer issued a cease and

² If a municipality fails to fulfill this duty, then "the onus of that failure" will not be placed on the applicant. In such a situation, the burden of proving in which zoning district the property falls is placed upon the municipality. *Jacquelin*, 558 A.2d at 191.

desist order stating that C & C Marine was in violation of the borough's zoning ordinance because it was operating a commercial business in a residential district without a permit. *C & C Marine Maintenance Corp.*, 686 A.2d at 897. C & C Marine appealed the zoning officer's cease and desist order to the borough's zoning hearing board (ZHB). The ZHB affirmed the cease and desist order. It concluded that the cells were located in a residential district and operating a barge repair business was not a permitted use in such a district. *Id.* at 689.

The Superior Court held that the ZHB erred in concluding that C & C Marine violated the zoning ordinance by operating a commercial business in a residential district. The Superior Court reached this conclusion because, after reviewing the ordinance and the zoning map, the Court determined that the area of the river where the cells were located was not zoned residential. *C & C Marine Maintenance*, 686 A.2d 899. In fact, the area of the Ohio River was not zoned at all. The Superior Court noted the requirement that municipalities must create a zoning map that clearly delineates zoning district boundaries so that landowners can determine where they can and cannot erect structures. *Id.* at 898. The borough failed in this regard, because the borough's zoning map did not extend any zoning boundary or district into the Ohio River. The Court concluded this was evidence that the borough did not exercise its zoning powers and that there were no restrictions on the use of the Ohio River in that portion of the borough. *Ibid.* As such, the Superior court concluded that the ZHB erred in holding that C & C Marine was in violation of the zoning ordinance since the area was not zoned.

In *Jacquelin*, the applicant wanted to construct a single-family residence on a fifty-foot wide lot. 558 A.2d at 190. The Hatboro Borough zoning officer and council denied the applicant's building permit and informed him that he would need a dimensional variance to

construct the home on the lot. This determination was based on the conclusion that the property was zoned R-1 Residential, which required a seventy foot lot width. *Id.* at 191. The applicant appealed to the borough's ZHB requesting the variance and, alternatively, argued that the property was zoned R-2 Residential, not R-1 Residential. The ZHB determined that the property was zoned R-1 Residential and also denied the variance request.

Ultimately, the Superior Court found that the ZHB did not err in concluding that the property was zoned R-1 Residential. Here too, the Superior Court stated the requirement that a municipality must create a zoning map that clearly delineates zoning district boundaries so that landowners can determine where they can and cannot erect structures. *Jacquelin*, 558 A.2d at 191. The Superior Court concluded that the borough failed in this respect because the property at issue was situated in close proximity to two zoning districts and the zoning map did not have a definite line of demarcation between the two districts. *Ibid.* As such, the Superior Court stated that the burden of proving in which zoning district the property was located fell upon the borough. In the end, the Superior Court held that the borough met its burden in proving that the property was located in the R-1 Residential district. *Ibid.*

As *C & C Marine Maintenance* and *Jacquelin* demonstrate, the requirement that municipalities create zoning maps that clearly delineate zoning district boundaries becomes an issue when the zoning map fails in this regard. That is not the situation here. The 1998 zoning map clearly indicates that the property is located within an Institutional district. The issue in the case *sub judice* is not that the clarity of the map; the issue before the Court is accuracy of the zoning map.

Conclusion

The Court holds that City Council did not err when it denied Bostleys' Application for Land Development. The zoning map contained an administrative error. The municipality will not be bound by said error. The proper zoning of the property is Residential R2. Therefore, the City Council properly denied the Application for Land Development, since the use was not permitted under the zoning ordinance.

ORDER

It is hereby ORDERED that the appeal of Bostley's Pre-School Learning Center, *et al* filed May 16, 2003 is denied and the decision of City Council is affirmed.

BY THE COURT:

William S. Kieser, Judge

cc: Marc F. Lovecchio, Esquire
William L. Knecht, Esquire
Norman M. Lubin, Esquire
Joseph R. Musto, Esquire

Judges
Christian J. Kalas, Esquire
Gary L. Weber, Esquire
(Lycoming Reporter)