

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

JOHN R. ASEL and MARJORIE A. ASEL,	:	NO. 03-01,128
Appellants	:	
	:	
vs.	:	
	:	ZONING APPEAL
LIMESTONE TOWNSHIP	:	
ZONING HEARING BOARD,	:	
Appellee	:	

OPINION AND ORDER

Before the Court is an appeal from a decision of the Limestone Township Zoning Hearing Board, brought by John and Marjorie Asel. The Asels had been issued a building permit to construct a wireless transmission tower on their property but were denied an extension of that permit. The Zoning Hearing Board upheld that denial and the Asels now seek review in this Court.

The permit in question was issued April 1, 2002, and indicated on its face that it expired April 1, 2003. In February 2003, the Asels sought an extension of the permit as work on the tower had not yet begun and would not be completed by April 1, 2003. The extension was denied on the grounds the permit had already expired as construction had not begun within six months as required by the zoning ordinance. The Asels argue that they did not have notice of the requirement that construction begin within six months, or, in the alternative, that the survey and FAA approval obtained by them constitutes “construction begun”.

The relevant section of the Limestone Township Zoning ordinance provides as follows:

1202 ZONING PERMITS AND CERTIFICATES OF OCCUPANCY

F. Time Limitations

Work on the proposed construction shall begin within six (6) months after the date of issuance of the zoning permit and shall be completed within twelve (12) months after the initiation of such work or the

permit shall expire unless a time extension is granted in writing by the Zoning Officer. Time extensions shall be granted only if a written request is submitted by the applicant, which sets forth sufficient and reasonable cause for the Zoning Officer to grant such a request.

Clearly, unless the survey and FAA approval is found to be “construction begun”, the permit expired six months after issuance. While Appellants argue they had no knowledge of the six month requirement, the Court simply notes the maxim that mistake of law is no defense. With respect to their argument the expiration date on the permit somehow misled them, to the extent Appellants seek to raise a claim of estoppel by reliance, it appears an affirmative misrepresentation by an official acting in their official capacity is required to support such a claim; a vague or contradictory message is not sufficient. Commonwealth v. Kratsas, 764 A.2d 20 (Pa. 2001).¹ Appellants presented no evidence they were informed by anyone they did not need to begin construction within six months. Thus, unless construction is found to have begun, the permit expired and an extension could not be granted.

With respect to the issue of whether construction began, the ordinance indicates in the same section, as follows:

For the purposes of this Ordinance, construction and/or development shall be considered to have started with the preparation of land, including land clearing, grading, filling, excavation for basement, footings, piers or foundations, erection of temporary forms, the installation of pilings under proposed subsurface footings, or the installation of sewer, gas, and water pipes, or electrical or other service lines from the street.

A plain reading of the ordinance indicates some sort of alteration to the land is required. Surveying and application for other permits which may be required by other agencies, while perhaps necessary first steps in Appellants’ project, are not sufficient to constitute the beginning of construction within the meaning of the Ordinance.

Since the permit expired prior to Appellants’ request for an extension, the Court finds the Zoning Officer correctly denied the request for an extension, and the Zoning Hearing Board did not abuse its discretion in upholding that decision.

¹ While Kratsas addresses the “entrapment by estoppel” doctrine in the context of a criminal charge, the Court believes the same reasoning can be applied to Appellant’s argument herein.

ORDER

AND NOW, this day of February, 2004, for the foregoing reasons, the decision of the Limestone Township Zoning Hearing Board in this matter is hereby AFFIRMED.

BY THE COURT,

Dudley N. Anderson, Judge

cc: Richard Gahr, Esq.
Malcolm Mussina, Esq.
Gary Weber, Esq.
Hon. Dudley Anderson