

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

HARRY M. CUMMINGS, JR.	:
and LINDA CUMMINGS,	:
Appellants	:
	: No. 04-02098
vs.	:
	: CIVIL ACTION - LAW
ZONING HEARING BOARD OF	:
CUMMINGS TOWNSHIP,	:
Appellee	:
	:
DIANE PRINCE,	:
Intervener	: Land Use Appeal

ORDER

AND NOW, this ____ day of April 2006, after oral argument, review of all parties' briefs, review of the Appellee's certified record and review of the written decision of the Cummings Township Zoning Hearing Board (hereinafter "Board"), the Appeal of Harry M. Cummings Jr. and Linda Cummings is hereby **DENIED**.

The court may not substitute its judgment for that of a local agency unless the board manifestly abused its discretion. See Ramando v. Zoning Board of Haverford Township, 61 Pa. Cmwlth.Ct. 242, 245, 434 A.2d 204, 260 (1981). The court finds that the Board's findings are supported by substantial evidence. Remando, supra.

The Zoning Hearing Board, after taking testimony and hearing all the witnesses on October 26, 2004 and June 29, 2005¹ found that the campground use of Intervenor Diane Prince predated the adoption of the Cummings Township Zoning ordinance in 1980 and that the campground use had not been abandoned. There is substantial evidence to support these

¹ The Honorable Judge William Kieser remanded this matter back to the Zoning Hearing Board to specifically take testimony and evidence on the issue of whether the campground use had been abandoned. This testimony was taken

findings. See N.T., October 26, 2004, pp. 14-15, 24, 27 and 54; Township Exhibit No 1. Further, Mary Prince, who the Board found to be a credible witness, testified the use of the property as a campsite was never abandoned. N.T., October 26, 2004, p. 66. After Mary Prince transferred the property to her daughter Diana Prince, her daughter continued to operate the campsite. N.T., October 26, 2004, pp. 67-71. Mary Prince testified to the installation of water, electric and sewer for the campsite. N.T., June 29, 2005, p. 35; N.T., October 26, 2004, p. 60. Further, her testimony indicated that these services were never removed and there was never a year between 1975 and the present when sites at the campground had not been rented. N.T., June 29, 2005 p. 35; N.T., October 26, 2004, p 66. See Decision of Cummings Township Zoning Hearing Board dated August 9, 2005 at pp. 3-4. The court concludes that this is substantial evidence to support the findings of the Zoning Hearing Board. Credibility of the witnesses was clearly for the Board to decide since the Board saw and heard all the witnesses called in this matter.

Accordingly, the appeal of Appellants Harry and Linda Cummings is **DENIED**.

By The Court,

Kenneth D. Brown, P.J.

cc: Scott T. Williams, Esquire
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Work File

on June 29, 2005.

Gary Weber, Esquire (Lycoming Reporter)