

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

HERBERT A. ECKER and LUCILLE	:	
ECKER, Husband and Wife,	:	
Appellants	:	
	:	
v.	:	No. 05-02,237; 05-02,244; and
	:	06-00,949
CITY OF WILLIAMSPORT,	:	
Appellees	:	LOCAL AGENCY APPEAL

OPINION AND ORDER

Before this Honorable Court is Appellants Herbert A. and Lucille Ecker’s May 4, 2006 Local Agency Appeal filed to the April 6, 2006 decision of the Williamsport City Council (hereinafter “Council”). After consideration of oral arguments, briefs, and the certified record, the Court hereby AFFIRMS the Council’s decision.

Background

The building at issue in this case is located at 414-416 West Fourth Street, just inside the gateway to Williamsport’s Historic District. Prior to February 2005, the building, located adjacent to Appellant Dr. Ecker’s medical practice, served as an apartment building. Unfortunately, in February 2005, a fire severely damaged the structure and, because the fire resulted in fatalities, law enforcement officials designated the property a crime scene and restricted the Appellants access to the building.

In September 2005, after law enforcement officials had concluded their investigation of the fire and resulting deaths, the Appellants applied for a permit to demolish the fire-damaged building and a construction permit to expand the contiguous building (i.e. Appellant Dr. Ecker’s medical practice). Contemporaneous with said applications, Dr. Ecker also, as required by local ordinance, submitted an application for a Certificate of Appropriateness which, as also required

by local ordinance, the Council referred to the City's Historic Architectural Review Board (hereinafter "HARB"). In October 2005, HARB recommended that Council deny the Appellants' application to demolish and, at a November 2005 public hearing, Council voted to deny the Appellants' demolition application (said decision was committed to writing in December 2005); the Appellants filed appeals to both the November 2005 denial at the hearing and the December 2005 written memorialization of said denial at dockets number 05-02,237 and 05-02,244 respectively.

All parties involved agreed to hold the aforementioned appeals in abeyance pending further review of the Appellants' demolition permit. HARB conducted another review of the matter and, after a tie decision, Council referred the matter to the City's Historic Preservation Committee (hereinafter "Committee") for further review. After conducting two hearings on the matter, the Committee submitted findings of fact, but no ultimate vote, to the Council. On April 6, 2006, Council again voted to deny the Appellants' demolition permit; the instant consolidated appeal ensued.

Standard of Review

2 Pa.C.S. § 754 directs that, in an appeal from a decision of a local agency, the reviewing Court "shall affirm the adjudication unless it finds that the adjudication is in violation of the constitutional rights of the appellant, or is not in accordance with law, or that local agency practice and procedure has been violated in the proceedings before the agency, or that any finding of fact made by the agency and necessary to support its adjudication are not supported by substantial evidence." In this context, "substantial evidence has been defined as, such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Society Hill Civic Ass'n and Richard Lush v. Philadelphia Bd. of License & Inspection Review, Philadelphia*

Historical Comm'n, and P&A Associates, 905 A.2d 579, 587 (Pa. Commw. Ct. 2006) (citations omitted).

Discussion

Lining West Fourth Street, in the City proper, are the remnants of an era when Williamsport boasted more millionaires per capita than any other city in the country¹. In an effort to protect this historical area (commonly known as “Millionaire’s Row”), recognizing that “the distinctive character and rich architectural history it enshrines will awaken interests in our historic past and promote the general welfare, education, and culture of the communities in which this district exist,” the city, in December 1975 (*see*, WILLIAMSPORT, PA., ZONING ORDINANCE § 1729.01, *et seq.* (2005), created, pursuant to 53 P.S. § 8001, *et seq.*, the Williamsport Historic District.

The structure at issue is located just inside the gateway to Millionaire’s Row. It was constructed prior to 1901 and is in the Colonial Revival Style; because of its location, style, and age of construction the building falls under the protections, requirements, and restrictions of WILLIAMSPORT, PA., ZONING ORDINANCE § 1729.01, *et seq.* (2005); most applicably, the provisions related to demolition.

Collateral and, in the case *sub judice*, contrariant are the city’s interest and goals regarding preservations of structures within the Historic District and the historic structure owner’s desire to do with his/her property as he/she sees fit; unfortunately, as is in the instant matter, these conflicting desires cannot always be harmonized.

Instantly, the Appellants fundamental argument on appeal is that the Council’s denial of their demolition application amounts to an unconstitutional taking. In 1976, the Commonwealth

¹ www.williamsport.org.

Court of Pennsylvania set forth the following test to be applied to determine whether a denial of a demolition application amounts to an unconstitutional taking: “such an [application to demolish] must be granted if the property in question cannot be used or sold for any purpose permitted by the applicable zoning regulations but that it should be denied if the showing is merely that the property could be more gainfully used or sold for a purpose not allowed by such regulations.” *First Presbyterian Church of York v. City Council of the City of York*, 25 Commw. 154, 162, 360 A.2d 257, 261 (Pa. Commw. Ct. 1976) (citations omitted). More recently, the Pennsylvania Supreme Court has cited, with approval, the test articulated in *First Presbyterian*: “in order to show a deprivation of property rights without due process, the property owner must show “that the sale of the property was impracticable, that commercial rental could not provide a reasonable rate of return, or that other potential use of the property was foreclosed”, *City of Pittsburgh, Historic Review Commission v. Weinberg*, 544 Pa. 286, 294, 676 A.2d 207, 211 (Pa. 1996) (*see also*, *United Artist’s Theatre Circuit, Inc. v. City of Philadelphia, Philadelphia Historical Review Commission*, 535 Pa. 370, 635 A.2d 612 (Pa. 1993) and *The Park Home v. City of Williamsport*, 545 Pa. 94, 680 A.2d 835 (Pa. 1996)).

Here, the Appellants contend that, the Council’s denial of their demolition application amounted to an unconstitutional taking because (1) it is impractical or impossible to sell the structure at issue and (2) the Council’s decision has denied them any profitable use of the structure. The Court will address the Appellants’ contentions *seriatim*.

Similar to the Appellants in *Park Home*, the Ecker's failed to present Council with any evidence that they have made any efforts to sell the structure at issue. Prior to the Council hearings, Local Intervenor, Preservation of Williamsport Foundation (hereinafter “Foundation”), offered to purchase the structure at issue for fair market value; the Appellants rejected the offer

stating that sale of the structure would interfere with their use of the adjoining property that houses Appellant Dr. Ecker's medical office. After the Council hearings, but before Council issued its decision, local attorney Allen Ertel offered to purchase the structure at issue and the adjoining property for fair market value; the Ecker's rejected this offer in lieu of an offer for a fixed purchase price. Since this time, the Appellants have not listed the property for sale, but claim to be willing to entertain definite purchase price offers for both pieces of property (i.e. the structure at issue and the adjoining property housing Dr. Ecker's medical office). Unfortunately, *Weinberg* and its progeny place the burden on the owner to demonstrate that sale of the historical structure at issue is impracticable or impossible and, this Court agrees with Council's determination that, the Appellants obstinate refusal to entertain anything but a definitive offer to purchase while simultaneously failing themselves to offer the property for a definitive price, falls obviously short of meeting their burden. Therefore, analogous to the situation in *Weinberg*, this Court need not address the issue of rehabilitation of the structure because the Court agrees with Council that the Appellants failed to "meet their burden of proving that it was impracticable or impossible to sell their property." *Weinberg*, 544 Pa. at 297, 676 A.2d at 212 (Pa. 1996).

ORDER

AND NOW, this _____ day of December, 2006, the Court hereby DENIES the appeal of Herbert A. and Lucille Ecker; accordingly, the April 6, 2006 Decision of the Council is hereby AFFIRMED.

By the Court,

Nancy L. Butts, Judge

xc: Benjamin E. Landon, Esq.
Norman M. Lubin, Esq.
Robert B. Elion, Esq.
Hon. Nancy L. Butts
Judges
Laura R. Burd, Esq. (Law Clerk)
Gary L. Weber, Esq. (Lycoming Reporter)