

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

FRANK M. and JUDI PICCOLELLA,	:	
Plaintiff	:	
	:	No. 05-01,768
v.	:	CIVIL ACTION
	:	
LYCOMING COUNTY ZONING	:	
BOARD,	:	
Defendant	:	LAND USE APPEAL

OPINION AND ORDER

Before this Honorable Court, is Appellant Frank and Judi Piccolella's¹ September 26, 2005 Land Use Appeal filed to the September 1, 2005 decision of the Piatt Township Zoning Hearing Board. After consideration of the brief² filed in this matter and the certified record, the Court hereby DENIES the Appeal of Appellants Piccolellas.

On May 11, 2005, a private, for-profit corporation applied to the Lycoming County Zoning Administrator for a zoning permit for a "temporary lattice steel tower" to be erected on land adjacent to the Appellants' property. The corporation sought to erect the tower to monitor the meteorological conditions at the site for a finite period of time. The Administrator issued the temporary permit. The Appellants' appealed the Administrator's decision and, after the July 27, 2005 hearing before the Lycoming County Zoning Hearing Board (hereinafter "Board) on said appeal, the Board, on September 2, 2005, affirmed the Administrator's decision. On September 30, 2005, the Appellants' filed the instant appeal alleging that the Board's decision was "contrary to the law, based on an arbitrary and capricious disregard of the evidence and record and was therefore an abuse of discretion".

"This Court's scope of review in a land use appeal, where, as here, the trial court did not take additional evidence, is limited to determining whether the governing body committed an

¹ Initially, the Piccolellas were joined in the instant appeal by Grays Run Club; however, the Court, on May 31, 2006, granted Grays Run Club's Petition to Withdraw from the instant appeal.

² The Court, by Order dated March 27, 2006, ordered that briefs were to be filed, by the Appellant on or before June 1, 2006 and by the Appellee on or before July 1, 2006. Then, after the Court granted the Piccolellas' counsel's Motion to Withdraw as counsel from the instant action on June 26, 2006, the Court extended the briefing schedule to allow both parties an additional month in which to file their respective briefs. The Appellee filed its brief on September 25, 2006; the Appellant's, to date, have not filed the Court ordered brief.

error of law or abused its discretion.” *Ruf v. Buckingham Twp.*, 765 A.2d 1166, 1168 (Pa. Commw. Ct. 2001) citing *Herr v. Lancaster County Planning Commission*, 155 Pa. Commw. 379, 625 A.2d 164 (Pa. Cmwlth. Ct. 1993), *appeal denied*, 538 Pa. 677, 649 A.2d 677 (1994). An abuse of discretion occurs when the governing bodies’ findings are not supported by substantial evidence. *Id.*; *Valley View Civic Ass’n v. Zoning Board of Adjustment*, 501 Pa. 550, 462 A.2d 637 (Pa. 1983). In this context, substantial evidence is defined as “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Valley View Civic Ass’n*, 501 Pa. 550, 555, 462 A.2d 637, 640 (Pa. 1983).

Instantly, the Court finds that the Appellants’ have failed to convince the Court or even cite any support for the contentions in their Appeal that the Board committed an error of law or abused its discretion. For this reason, and those cited in the Appellee’s September 25, 2006 brief, the Court affirms the Board’s affirmation of the Administrator.

ORDER

AND NOW, this _____ day of October 2006, the Court hereby DENIES the appeal of Piccolellas and the Decision of the Board is hereby AFFIRMED.

By the Court,

Nancy L. Butts, Judge

xc: Frank M. and Judi Piccolella, 573 Roaring Branch Road, Liberty, PA 16930
Karl K. Baldys, Esq
Hon. Nancy L. Butts
Judges
Laura R. Burd, Esq. (Law Clerk)
Gary L. Weber, Esq. (Lycoming Reporter)