

IN THE COURT OF COMMON PLEAS OF
LYCOMING COUNTY, PA

MICHAEL A. WELCH and TAMMY :
WELCH, :
Petitioners : NO: 09-00765
vs. :
BOROUGH OF SOUTH WILLIAMSPORT :
Respondent :

OPINION AND ORDER

On January 12, 2009, the Borough of South Williamsport directed the Petitioners to remove the house located on their real property at 395 Second Avenue, South Williamsport, within thirty (30) days. The Petitioners filed an appeal, and on March 4, 2009 the South Williamsport Board of Appeals conducted a hearing. On April 3, 2009, the Board issued an order denying the Petitioners' request for relief and affirming the Borough's order of demolition.

On April 3, 2009, the Petitioners filed a Petition for Review requesting that this Court vacate the Board's ruling and direct that they be granted a one-year construction permit so as to make repairs necessary to bring the property in compliance with the Borough's Construction and Property Maintenance Codes.

The standard of review of an adjudication of a municipal commission is limited to determining "whether constitutional rights have been violated, an error of law has been committed[,] or findings of fact necessary to support the adjudication

are not supported by substantial evidence.” Day v. Civil Service Commission, 931 A.2d 646, 650 (Pa. 2007)(citations omitted).

The Petitioners argue that the Board erred by ordering demolition because their findings of fact and conclusions of law do not support such an order, and assert that the evidence presented to the Board was inadequate to support an order of demolition.

Following a review of the record in this case, this Court finds that substantial evidence exists for the findings of the Board of Appeals.

The procedural history of this case is lengthy and dates back to August of 2002 when the subject home was damaged by fire. In November of 2002, the Borough of South Williamsport provided notice to the owners that the property was unsafe and needed to be repaired and/or reconstructed or demolished. There was an issue with respect to ownership of the property and entitlement to insurance proceeds, and following court resolution of these issues, Mr. Welch took title to the property in May of 2004. On June 22, 2004, Mr. Welch received a one year building permit to renovate the fire damaged home. In August of 2005 a stop work order was issued by the Borough of South Williamsport because the permit had expired. Following inspection of the property by Eric Laudenslager, P.E., a determination was made by the Borough of South Williamsport that the structure should be demolished. In September of 2005, Mr. Welch appealed the notice to the Board of Appeals and on October 18, 2005 the Board of Appeals upheld the Borough of South Williamsport’s decision. An appeal to the Lycoming County Court of Common Pleas was filed by

Mr. Welch and the matter was ultimately returned to the Borough of South Williamsport for new proceedings.

On November 16, 2006 a certified letter was sent to Mr. Welch advising him that he must apply for a building permit by November 30, 2006, and he would be granted a period of six months to complete work to the structure. No permit application was filed at that time. On March 26, 2007 another letter was sent to Mr. Welch advising him that the Borough Council had agreed to give him a year to complete the repairs to the structure, and advising Mr. Welch that he must apply for the permit by April 10, 2007. On October 10, 2007 Mr. Welch applied for a building permit. On October 10, 2008 the permit expired. This reveals that Mr. Welch has been lackadaisical at best in pursuing timely repairs.

At the hearing held on March 4, 2009, the testimony of Rexford Lowmiller, Ronald Decker, Eric Loudenslager and Michael Welch Sr. was received by the Board. Rexford Lowmiller, the South Williamsport Police Chief, testified extensively regarding the numerous health and safety issues presented by the structure at issue. Mr. Lowmiller testified regarding large holes in the property where the interior of the dwelling is open and exposed to the exterior. N.T. 3/4/09 p. 15, 18. Mr. Lowmiller testified that wires are hanging from the building. Id. at 20. Mr. Lowmiller further testified that although Mr. Welch was notified that repairs needed to be made, those repairs had not been performed. Id. at 21.

Ronald Decker, from Code Inspections, testified that he documented the condition of the building in February of 2009. Photographic evidence revealed exposed wires, debris and fire damaged portions of the interior of the building. Id. at

33-35. Mr. Decker testified that charred wood was visible on the ceiling joists in the structure, and that although dry wall had been placed in portions of the structure, an electrical inspection was never performed prior to its installation. Id. at 35-36. In February of 2009 Mr. Decker observed burned studs positioned sideways next to burned studs. Mr. Decker testified that this would provide “no support at all” and constituted an improper construction technique. Id. at 37. Mr. Decker testified that the wrong insulation was used in the structure and charred wood was used to prop up roof rafters. Id. at 38. Mr. Decker testified to numerous code violations exhibited within the structure, and ultimately concluded that the structure currently exhibits so many code violations that they are “innumerable.” Id. at 38-43.

Eric Loudenslager, a structural engineer, also provided testimony at the March 4, 2009 hearing. Mr. Loudenslager testified that he inspected the property in the fall of 2005 and then reviewed recent photos taken of the property. Mr. Loudenslager concluded that the structure as it currently exists is “unsafe for human habitation, unstable and in danger of collapse.” Id. at 61.

This Court believes this is a public safety concern providing strong support for the Board’s decision in which this Court concurs.

ORDER

AND NOW, this 10th day of December, 2009, following argument and a review of the record in this matter, this Court finds that substantial evidence exists for the findings of the Board of Appeals. Accordingly, the Petitioners request that this

Court vacate the Board's ruling is DENIED and the Board's Order to demolish the subject structure is SUSTAINED.

BY THE COURT,

Richard A. Gray, J.

cc: Mark Szybist, Esquire
Joseph F. Orso, III, Esquire
Gary Weber, Esquire