

IN THE COURT OF COMMON PLEAS OF  
LYCOMING COUNTY, PA

MONTY K. HORNBERGER and :  
SANDRA K. HORNBERGER :  
Appellants : NO: 09-01469  
vs. :  
: :  
: :  
ZONING HEARING BOARD OF WOLF :  
TOWNSHIP :  
Appellee :

**OPINION**

Monty Hornberger and Sandra K. Hornberger are the owners of property in Wolf Township. The property is in the Residential-Urban (R-U) Zoning District. Mr. and Mrs. Hornberger kept and maintained an RV or bus on their property. Monty Hornberger is in a Christian group composed of three (3) men that sing at churches. The RV/bus was used to transport the group to its singing engagements. The RV/bus was also used to store their equipment and supplies which included sheet music, tapes and compact discs (CD's).

On February 10, 2009, the Zoning Officer of Wolf Township sent an Enforcement Notice to Monty Hornberger and Sandra K. Hornberger informing them that they were in violation of Section 27-305 of the Wolf Township Zoning Ordinance because they were operating a commercial business and were storing business assets in a residential district. Mr. and Mrs. Hornberger appealed the enforcement notice to the Wolf Township Zoning Hearing Board (hereinafter "Board"). A public hearing was held on April 29, 2009. On May 29, 2009, the Board entered a written decision. In its decision, the Board found that Mr. and Mrs.

Hornberger did not operate a business within their home and that no customers or prospective customers visited the subject property. The Board further found that the RV/bus did not exhibit any commercial signs and concluded that because the bus had been removed from the property within the 30 day period as requested in the enforcement notice, the Appellants were not in violation of the Township Zoning Ordinance. The Board's Order, however, did not end with this determination. The Board went on to state that a return of the bus would constitute a violation, specifically stating:

“As long as the bus is not returned to the subject property Appellants’ are not in violation of the enforcement notice....The return of the bus as it was used to the subject property would be a violation of the Wolf Township Zoning Ordinance.”

53 P.S. § 10616.1 of the General Municipal Law sets forth the procedure which a municipality must follow relative to enforcement of the municipality's zoning laws. If there appears to be a violation, the municipality is required to send an enforcement notice to the owner of the property where the alleged violation has occurred. 53 P.S. § 10616.1(a). The enforcement notice must identify the specific violation and provide the property owner with a date by which steps for compliance must be completed. 53 P.S. § 10616.1(c) and (d). Section 10616.1(5) provides that the recipient of the notice has the right to appeal to the Zoning Hearing Board within a prescribed period of time in accordance with procedures set forth in the ordinance. Section 10617.2 provides the enforcement remedy available to the township upon determination of a violation.

Section 10617.2(a) provides:

Any person...**who or which has violated** or permitted the violation of the provisions of any zoning ordinance enacted under this act...shall, upon being found liable therefor in a civil enforcement proceeding commenced by a municipality, pay a judgment of not more than \$500 plus all court costs, including reasonable attorney fees incurred by the municipality as a result thereof. No judgment shall commence or be imposed, levied or payable until the date of the determination of a violation by the district justice. (Emphasis added).

Since the bus was removed, the Board found that Mr. and Mrs. Hornberger were in compliance with the zoning enforcement notice, and that they were not in violation of the Township Zoning Ordinance. In these respects, the Board fully completed its function pursuant to provisions of General Municipal Law. By holding that the return of the bus at any time in the future would constitute a violation, the Board exceeded its authority, and abused its discretion. Essentially, what the Board has attempted to do is obtain an injunction prohibiting the return of the RV/bus to the Hornbergers' property. It is undisputed, however, that there is no Township Ordinance prohibiting landowners from parking RVs or buses on their property. The ordinance at issue involves the use of the RV/bus. By prohibiting its return to the property, the Township has made a predetermination of the RV's use, and has essentially enjoined any and all future uses of the RV/bus, for camping, leisure and vacationing activities.

The Board only has jurisdiction to act on appeals from a determination of a Zoning Officer, not to preemptively declare certain conduct as a zoning violation.<sup>1</sup> Moreover, the Board's holding regarding the return of the bus permits the municipality to circumvent the procedures set forth in 53 P.S. § 10616.1 and allows the municipality to assess costs and fines just for the return of the RV to the

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<sup>1</sup> Actions to prevent, restrain, correct or abate a use of property are instituted before the Court of Common Pleas. See 53 P.S. § 10617.

Hornbergers' property, despite the fact that there is no ordinance which prohibits landowners from parking RVs on their property, and regardless of the fact that no violation was found to have existed. In this respect, the Board has exceeded its authority and abused its discretion and the language in the Board's written decision relative to the return of the bus to the subject property shall be STRICKEN.<sup>2</sup>

**ORDER**

AND NOW, this 22<sup>nd</sup> day of February, 2010, it is hereby ORDERED that the language in the Zoning Hearing Board's written decision relative to the return of the bus, specifically, "As long as the bus is not returned to the subject property Appellants' are not in violation of the enforcement notice," and "[t]he return of the bus as it was used to the subject property would be a violation of the Wolf Township Zoning Ordinance" shall be STRICKEN. In all other respects, the Zoning Hearing Board's decision is AFFIRMED.

BY THE COURT,

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Richard A. Gray, J.

cc: Scott A. Williams, Esquire

J. Howard Landgon, Esquire  
3 South Main Street  
Muncy, PA 17756

<sup>2</sup> As the Board found that the Hornbergers were not in violation of the Zoning Ordinance, this Court will not reverse the Board's ruling. Moreover, this holding is procedural only, and does not reflect a determination by this Court that the Zoning Hearing Board's findings, in any other respects, constituted an abuse of discretion.