

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

CHOICE FUELCORP, INC.,	:	
Appellant	:	DOCKET NO. 11-02,238
	:	CIVIL ACTION – LAW
vs.	:	
	:	LAND USE APPEAL
ZONING HEARING BOARD OF	:	
ARMSTRONG TOWNSHIP,	:	1408 MDA 2012
Appellee	:	
	:	
vs.	:	
	:	
ARMSTRONG TOWNSHIP,	:	
Intervenor	:	
	:	
and	:	
	:	
CAROL and JOSEPH LIVORNO,	:	
Intervenors	:	

OPINION

AND NOW, this 11th day of September, 2012, following receipt of Appellant’s Amended Statement of Matters Complained of on Appeal, the Court enters this Opinion and Order to supplement its initial Opinion and Order entered on July 12, 2012. The Court believes that its prior Opinion and Order is instructive on this matter’s procedural history. Therefore, in this Opinion, the Court will address the issues that Appellant raised in its appeal. Appellant raises four main issues in its appeal; the Court will address each of these issues in turn.

I. Zoning Hearing Board’s Interpretation of its Ordinance¹

Appellant argues that the Court abused its discretion when it upheld the findings of the Armstrong Township Zoning Hearing Board (ZHB) that Appellant’s water-extraction and rail spur applications are not special exceptions under the Armstrong Township Ordinance (Ordinance). Appellant argues that the ZHB essentially “amended” the terms of the Ordinance

¹ The Court believes that this heading includes the first, second, third, fourth, fifth, eighth, and ninth issues raised by Appellant in its Amended Statement of Matters Complained of on Appeal.

when it found the facility and the spur were not special exceptions because the clear language of the Ordinance provides that such uses are special exceptions. In making this assertion, Appellant argues that, in cases of doubt, the Ordinance must be interpreted in favor of land owners. As held previously, the Court found that substantial evidence existed of record that supports the ZHB's findings.

As provided for in the Court's July 12, 2012 Opinion and Order, when the trial court receives no additional evidence in an appeal from a zoning hearing board, its scope of review is limited to determining whether the zoning hearing board manifestly abused its discretion or committed an error of law. *In Re: Appeal of Jones*, 29 A.3d 60, 63 n.4 (Pa. Cmwlth. Ct. 2011); *Northeast Pennsylvania SMSA Ltd. P'ship v. Scott Twp. Zoning Hearing Bd.*, 18 A.3d 1272, 1275 n.5 (Pa. Cmwlth. Ct. 2011); *Borough of Moosic v. Zoning Hearing Bd. of Moosic*, 11 A.3d 564, 564 n.4 (Pa. Cmwlth. Ct. 2010); *Greth Dev. Group, Inc. v. Zoning Hearing Bd. of Lower Heidelberg Twp.*, 918 A.2d 181, 186 n.4 (Pa. Cmwlth. Ct. 2007), *appeal denied*, 929 A.2d 1163 (Pa. 2007). A zoning hearing board abuses its discretion when the board's findings are not supported by substantial evidence; substantial evidence means evidence that a reasonable mind could conclude as supporting the ultimate finding. *Jones*, 29 A.3d at 63 n.4; *Greth*, 918 A.2d at 186 n.4.

In accordance with 53 P.S. § 10603.1, zoning ordinances should be construed liberally and interpreted broadly so as to afford land owners broad use of their land. *Albert v. Zoning Hearing Board of North Abington Township*, 854 A.2d 401, 405 (Pa. 2004); *Southco, Inc. v. Concord Township*, 713 A.2d 607, 609 (Pa. 1998). When words are not defined within a zoning ordinance, the words should be given their ordinary meaning. *Id.* However, a zoning hearing board's interpretation of its own ordinance is given great deference and weight. *Hafner v.*

Zoning Hearing Bd. of Allen Twp., 974 A.2d 1204, 1210 (Pa. Cmwlth. Ct. 2009); *Arter v. Philadelphia Zoning Bd. of Adjustment*, 916 A.2d 1222, 1229 (Pa. Cmwlth. Ct. 2007), *appeal denied*, 934 A.2d 75 (Pa. 2007).

In this instance, the ZHB interpreted its Ordinance as it pertained to Appellant's water extraction and rail spur applications. The ZHB found that Appellant's applications did not comply with the Ordinance's defined special exceptions. This Court upheld the ZHB's findings because the ZHB's interpretation of the Ordinance should be given deference, and, after a thorough reading of the transcripts of the board hearings, the Court found that substantial evidence existed to support the ZHB's findings. Therefore, the Court believes that Appellant's argument lacks merit.

II. Expansions and Natural Expansions of a Non-Conforming Use in Floodway²

Appellant argues that the Court erred when it found that the water extraction facility is not a natural expansion of the existing non-conforming bio-diesel fuel facility use. The Court reached the natural expansion of a non-conforming use analysis because the Ordinance prohibits expansion of a non-conforming use in a floodway and "[a] municipality cannot, *per se*, prohibit the natural expansion of a non-conforming use." *Arter*, 916 A.2d at 1229. However, the Court may affirm a zoning hearing board decision, even if the hearing board analysis is partially faulty, as long as the Court bases its decision on the board's record. *Gateside-Queensgate Co. v. Delaware Petroleum Co.*, 580 A.2d 443, 447 (Pa. Cmwlth. Ct. 1990). Therefore, the Court applied the natural expansion doctrine when it considered if the proposed water extraction facility is a natural expansion of the bio-diesel facility; it found the proposed water extraction facility is not a natural expansion of the current non-conforming use.

² The Court believes that this heading includes the sixth, seventh, and twelfth issues raised by Appellant in its Amended Statement of Matters Complained of on Appeal.

In order to be considered an expansion of a non-conforming use, the expanded use need not be identical to the current non-conforming use. *Arter*, 916 A.2d at 1230. Yet, the expanded use “must be sufficiently similar to the non-conforming use as to not constitute a new or different use.” *Id.* An over-technical analysis should not be used when determining if a proposed use is a natural expansion of a non-conforming use so that modernization of businesses and technology is precluded. *Id.* However, the burden of proving a natural expansion of a non-conforming use rests with the land owner. *Id.*

In this instance, Appellant provided no evidence that a water extraction facility is a natural expansion of a bio-diesel fuel facility within the Commonwealth. *See Arter*, 916 A.2d at 1231 (holding that Appellant provided no evidence that the addition of a funeral home and crematory constitutes the natural expansion of a cemetery). The Court believes that the use of the facility for water extraction is a new use and not an expansion of an existing non-conforming use. Therefore, the Court found that the water extraction application does not comport with the natural expansion doctrine and that the ZHB properly denied Appellant’s water-extraction application.

III. Substantial Adverse Impact Testimony³

Appellant argues that the Court erred when it found that the evidence showed that the water-extraction facility and the rail spur would result in substantial adverse impacts within the community. In supporting its argument, Appellant argues that of the eight references to the testimony cited by the Court, only one reference was to an objector.

Initially, the Court notes that it found that Appellant did not establish that the water-extraction facility and the rail spur were special exceptions under the Ordinance; therefore, the

³ The Court believes that this heading includes the tenth and eleventh issues raised by Appellant in its Amended Statement of Matters Complained of on Appeal.

Court did not need to address the potential detrimental impact on the health, safety, and general welfare of the community. The ZHB found that Appellant did not fulfill the initial burden that the use satisfies the criteria for a special exception use under the Ordinance. *See Greth*, 918 A.2d at 186. Therefore, the burden never shifted to the objectors to prove that the proposed use would have a detrimental impact on the community. *See id.* However, the Court cited witness testimony to illustrate that even if the use was deemed to fulfill the special exception requirements, substantial evidence was presented that the use would have a detrimental impact on the community. This evidence was provided not only by objectors, but by witnesses who testified in support of the applications. Therefore, the Court held that substantial evidence existed of record to support the ZHB's finding that the applications would have a potentially detrimental impact on the health, safety, and general welfare of the community.⁴

Based upon the foregoing reasons, the Court respectfully requests the Commonwealth Court's affirmation of the Court's July 12, 2012 Opinion and Order, affirming the Armstrong Township Zoning Hearing Board's decision to deny Appellant's requests for special exceptions and an expansion of a non-conforming use.

BY THE COURT,

Date

Richard A. Gray, J.

cc: Scott T. Williams, Esquire
Karl Baldys, Esquire
J. Michael Wiley, Esquire

John Bonner, Esquire
Gary L. Weber, Esquire

⁴ Additionally, the Court notes that the three applications were being considered for one overall project, and the ZHB found that the witnesses' testimony regarding the detrimental effect on the community could be adequately apportioned to apply to each application.