

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

THE FARM ON BEEBER DRIVE, LLC,	:	NO. 16 - 1179
Appellant	:	
	:	CIVIL ACTION - LAW
vs.	:	
	:	LAND USE APPEAL
WOLF TOWNSHIP BOARD OF SUPERVISORS,	:	
Appellee	:	Land Use Appeal

OPINION AND ORDER

Before the court is Appellant’s appeal of the decision of the Wolf Township Board of Supervisors which approved his application for conditional use of his property for “farm activities” in an agricultural district, but imposed certain conditions on that use. Appellant objects to the condition that he meet certain noise level limitations. A certified record was filed October 17, 2016 (and supplemented (with a transcript of the hearing before the Board) on October 26, 2016), briefs were filed November 9, 2016 and November 30, 2016, and argument was heard December 5, 2016.

To put Appellant’s objection in context, a recitation of the background is necessary. Appellant’s property, which contains about 17 acres, was the residual tract from a single-family residential subdivision developed by the original owner. Deed restrictions on those single-family lots prevent business or commercial use of the lots. That same restriction does not apply to Appellant’s property, and his proposed use, as a wedding venue which can accommodate up to 200 guests, will include “amplified music”¹ and, occasionally, “fireworks”.²

¹ Board’s Opinion and Order dated July 7, 2016, at page 11, finding no. 29.

² Id. at page 11, finding no. 30.

Appellant has already been operating the business³ and, based on testimony from neighbors, the Board made the following findings:

1. [T]here had been an event or events at the property where there were issues with noise and fireworks.⁴
2. Those opposed to Applicant's proposed use raised concerns about the noise[.]⁵
3. Mr. Michael [the original owner] expressed concerns about the music and noise from the facility[.]⁶
4. Steve McDonald questioned the noise generated by the facility and the decibel levels which would be generated by the use... [and] ... also testified that there is often noise after 10 pm and that there have been times at which over thirty minutes of fireworks have been part of events which, in addition to disturbing his enjoyment of the property, also negatively impact his dog.⁷
5. Michelle McGee testified regarding the noise and that she still hears the noise even after she closes her windows over the volume of her television set.⁸

Based on these findings, the Board required that "Applicant must meet or exceed the noise level limitations that had been required by the PLCB for the Township's entertainment district".⁹ That limitation precludes the use of a

³ Id. at page 12, finding no. 35.

⁴ Id. at page 11, finding no. 26.

⁵ Id. at page 12, finding no. 35.

⁶ Id. at page 12, finding no. 38.

⁷ Id. at page 13, findings no. 41 and 42.

⁸ Id. at page 13, finding no. 43.

⁹ Id. at page 14, finding no. 47(A).

loudspeaker or similar device whereby the sound of music or other entertainment can be heard beyond the property line. *See* 47 P.S. Section 4-493(34)). Appellant asserts that such limitation is “an unreasonable restriction on the use of [his] property”.¹⁰

As this court is hearing the matter based on the record below, this court must determine only whether the Board committed a manifest abuse of discretion or an error of law. *See* South Whitford Associates, Inc. v. Zoning Hearing Board of West Whiteland Township, 630 A.2d 903 (Pa. Commw. 1993). In arguing that the Board did make such errors, Appellant contends (1) the use is permitted by right and therefore subject to only applicable district regulations which do not contain any restriction on noise levels, (2) there was not substantial evidence upon which to base findings supporting the conclusion that a noise restriction is necessary, and (3) imposition of the condition is rendered improper by difficulties in enforcement. Each of these contentions will be addressed in order.

The court rejects outright Appellant’s contention that the use is permitted by right. The Board found that the proposed use was *not* allowed as a permitted use, and appellant did not challenge that finding in his Notice of Appeal.¹¹ Based on that finding, the Board analyzed the application pursuant to the terms of Section 27-402 of the Ordinance as a conditional use application. As part of the conditional use approval process, the Board was required to consider

¹⁰ Notice of Land Use Appeal, filed August 8, 2016, at paragraph 8

¹¹ The Board found that “Applicant’s proposed use is not allowed as a permitted use, a conditional use, a special exception use or otherwise in any zoning district under the terms of the [Township’s] zoning ordinance”. *Id.* at page 19, conclusion no. 19(A).

“the economic, noise, glare or odor effects of the conditional use on adjoining properties generally in the district.” Zoning Ordinance of Wolf Township, Section 27-1402(C)(6). Further, the Municipalities Planning Code provides that “[i]n granting a conditional use, the governing body may attach such reasonable conditions and safeguards, in addition to those expressed in the ordinance, as it may deem necessary to implement the purposes of this act in the zoning ordinance.” 53 P.S. Section 10913.2(a). The court believes the imposition of a noise restriction was appropriate under the law and the circumstances, and finds no abuse of discretion or error of law in this regard.

With respect to the contention that the Board’s findings were not supported by substantial evidence, after a review of the testimony and evidence presented to the Board, the court disagrees. Substantial evidence is defined as “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *See Bailey v. Upper Southampton Township*, 690 A.2d 1324, 1325 (Pa. Commw. 1997). The testimony received by the Board regarding the noise issue was relevant to that issue and in the court’s view, adequate to support the Board’s conclusion that a noise restriction would be appropriate to address the effect of such on adjoining property owners.

Finally, the court sees no difficulties with enforcement; one has only to stand at the property line and listen.

Accordingly, the court will enter the following:

ORDER

AND NOW, this 9th day of December 2016, for the foregoing reasons, the decision of the Wolf Township Board of Supervisors is hereby AFFIRMED.

BY THE COURT,

Dudley N. Anderson, Judge

cc: W. Jeffrey Yates, Esq.
J. Michael Wiley, Esq.
Gary Weber, Esq.
Hon. Dudley Anderson