

IN THE COURT OF COMMON PLEAS OF LANCASTER COUNTY, PENNSYLVANIA  
CIVIL ACTION – LAW

KEGERREIS OUTDOOR  
ADVERTISING, LLC,

v.

ZONING HEARING BOARD OF  
EAST LAMPETER TOWNSHIP

and

EAST LAMPETER TOWNSHIP

No. CI-13-11618

LAND USE APPEAL

OPINION

BY: ASHWORTH, J., JANUARY 30, 2015

This land use appeal challenges the Zoning Hearing Board of East Lampeter Township's decision interpreting the Zoning Ordinance to completely prohibit electronic billboards in the Township. For the reasons set forth below, I find that the Zoning Hearing Board committed an error of law, and its ruling shall be reversed.

**I. Background**

Kegerreis Outdoor Advertising, LLC, initiated this matter by submitting a Sign Permit Application to East Lampeter Township for issuance of permit to erect an electronic billboard on commercial property at 2343 Lincoln Highway East in the Township. Record Exhibit 5 (Applicant's Exhibit 1). The Sign Permit Application described the billboard as follows:

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The billboard will be of uni-pole construction, and will have two (2) off-premise outdoor advertising (billboard) panels. Each advertising face will NOT exceed 300 square feet of active advertising. The off-premise advertising panel that will be facing WEST will be a traditional (static) panel. The off-premise advertising panel that will be facing EAST will be an L.E.D. (light emitting diode) panel with static advertisements being displayed. The static advertisement displayed on the L.E.D. panel will[] change[,] at regular intervals of not less than eight (8) seconds, to an entirely different and random advertisement. The change from one static advertisement to the next will be instantaneous and there will be no fading, dissolving, etc. between the advertisements.

Id. An electronic billboard with these described characteristics is known as a "changeable message sign." Record Exhibit 15 (Notes of Testimony (N.T.), October 10, 2013 Hearing) at 21. The advertisement copy can be electronically changed by a programmed internet connection to show another advertisement. Id. at 43; *see also* Record Exhibit 13, Finding of Fact No. 19. The image changes instantly to another image, at intervals no more frequently than every 8 seconds, without fading, dissolving or any other noticeable effect other than that a new image is displayed. Id. at 13-14, 32; *see also* Record Exhibit 13, Finding of Fact No. 18 & No. 20. The image is changed by changing the color of individual light emitting diodes in the sign. Id. at 13, 32, 33-34; *see also* Record Exhibit 13, Finding of Fact No. 23. The change in color does not change the intensity of the light. Id. at 33-34.

The assistant zoning officer for the Township denied the Sign Permit Application by letter dated July 12, 2013. Record Exhibit 12. In the denial letter, the assistant zoning officer determined that the electronic billboard with a changeable message did



not comply with § 1604.24 of the East Lampeter Township Zoning Ordinance, which generally prohibits sequential, intermittent, or flashing signs.<sup>1</sup> Id.

On August 10, 2013, Kegerreis filed a Zoning Hearing Board Application (the ZHB Application) with the Zoning Hearing Board of East Lampeter Township. The ZHB Application challenged the determination by the assistant zoning officer that § 1604.24 of the East Lampeter Township Zoning Ordinance prohibited the proposed electronic billboard. Alternatively, the ZHB Application challenged on substantive grounds the validity of § 1604.24, and requested site specific relief permitting the construction and operation of the proposed electronic billboard.<sup>2</sup>

The Board held a hearing on the ZHB Application on October 10, 2013. Record Exhibit 15. On November 14, 2013, the Board held its decisional meeting. Record Exhibit 16 (N.T., November 14, 2013 Hearing). At that meeting, the Board denied the ZHB Application and issued a written decision dated November 14, 2013, denying the ZHB Application on the grounds that the proposed electronic billboard did not comply with § 1604.24 of the Zoning Ordinance. Id. at 59-60; *see also* Record Exhibit 13.

On December 13, 2013, Kegerreis timely filed this land use appeal, challenging the denial of the appeal of the assistant zoning officer's determination, the denial of the substantive challenge to the validity of § 1604.24 of the Zoning Ordinance, and the

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<sup>1</sup>Section 1604.24 provides: "No animated, sequential, intermittent, flashing, rotating, or oscillating signs shall be permitted except for time and temperature signs." Record Exhibit 14 (Zoning Ordinance) at § 1604. The Township conceded that the electronic billboard would not be an animated, rotating or oscillating sign. Record Exhibit 13, Conclusion of Law No. 2.

<sup>2</sup>The ZHB Application also alternatively sought a variance from the provisions of § 1604.24. Record Exhibit 1. Kegerreis is not challenging the Board's denial of the variance.



denial of site specific relief. On January 6, 2014, the Township intervened pursuant to § 1004-A of the Municipalities Planning Code, 53 P.S. § 11004-A, and Local Rule 27 of the Court of Common Pleas of Lancaster County, L.C.R.C.P. No. 27. On January 13, 2014, the Board returned the record to the Court. On January 22, 2014, the Prothonotary issued a Notice of Making Return. Briefs having been filed by the parties, this matter is now ripe for disposition.

## II. **Standard of Review**

Where the court takes no additional evidence in a land use appeal, its review is limited to a determination of whether the board committed an error of law or abused its discretion by making findings of fact not supported by substantial evidence of record. **Smailey v. Zoning Hearing Bd. of Middletown Township**, 575 Pa. 85, 89, 834 A.2d 535, 538 (2003); **Cottone v. Zoning Hearing Board of Polk Township**, 954 A.2d 1271, 1275 n.2 (Pa.Cmwlth. 2008). An abuse of discretion will be found only where the zoning board's findings are not supported by substantial evidence. "Substantial evidence" is defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Id.* (*quoting Hertzberg v. Zoning Board of Adjustment*, 554 Pa. 249, 255, 721 A.2d 43, 46 (1998) (additional citation omitted)).

"It is well settled that a zoning hearing board's interpretation of its own zoning ordinance is entitled to great weight and deference from a reviewing court." **Lancaster Township v. Zoning Hearing Board of Lancaster Township**, 6 A.3d 1032, 1034 (citation omitted). This judicial deference results from the knowledge and expertise a zoning board has in interpreting the ordinance it administers. *Id.*



### III. Discussion

#### A. An Electronic Billboard is Not Prohibited Pursuant to § 1604.24 of the Zoning Ordinance

As a matter of law, the proposed electronic billboard does not violate § 1604.24 of the Zoning Ordinance because it is not a sequential, intermittent and/or flashing sign. The terms "sequential," "intermittent," and "flashing" are not defined in the Zoning Ordinance. Record Exhibit 14 (Zoning Ordinance, Article IV-Definitions). "[U]ndefined terms are given their plain meaning and *any doubt is resolved in favor of the landowner and the least restrictive use of the land.*" **H.E. Roher, Inc. v. Zoning Hearing Board of Jackson Township**, 808 A.2d 1014, 1016-17 (Pa. Cmwlth. 2002) (emphasis in original). Our Commonwealth Court has expressly stated that "[t]o define an undefined term, [courts] may consult definitions found in statutes, regulations or dictionaries for assistance." *Id.* at 1017. Thus, this Court may rely upon the interpretations of the Federal Highway Administration and the Commonwealth of Pennsylvania that electronic billboards are not "flashing" or "intermittent" as those terms are used in federal and state sign agreements, sign statutes and sign regulations.

Kegerreis introduced testimony at the hearing before the Board of an agreement dated January 6, 1972 (the "FSA Agreement") between the United States and the Commonwealth of Pennsylvania regarding outdoor advertising along certain highways. Record Exhibit 7 (Applicant's Exhibit 3). The FSA Agreement contains the following sign prohibition language, which is strikingly similar to the language used in § 1604.24 of the Zoning Ordinance:



Signs which contain, include or are illuminated by any flashing, intermittent or moving light or lights are prohibited, except those giving public service information such as time, date, temperature, weather or similar information.

Id. at ¶4.d.

Kegerreis introduced further testimony that pursuant to the most recent guidance issued by the Federal Highway Administration (FHA), the federal government has determined that “changeable Electronic Variable Message Signs” do not violate the prohibitions against “intermittent” or “flashing” or “moving” lights as those terms were used in the FSA Agreements between states and the federal government. Record Exhibit 8 (Applicant’s Exhibit 4) at 1. The FHA Guidance specifically provides that signs are acceptable and not considered flashing or intermittent or moving if the “[d]uration of each display is generally between 4 and 10 seconds – 8 seconds is recommended.” Id. at 2.

Pennsylvania statutory and regulatory law regarding signs along public roads also contains language similar to that contained in § 1604.24 of the Zoning Ordinance. The Outdoor Advertising Control Act of 1971, 36 P.S. § 2718.105(c)(3)(iv), provides:

Signs which contain, include, or are illuminated by any flashing, intermittent, or moving light or lights are prohibited, except those giving public service information such as time, date, temperature, weather or similar information.

Record Exhibit 9 (Applicant’s Exhibit 5) at 2. The Pennsylvania Administrative Code section on outdoor advertising devices, 67 Pa. Code § 445.3(b)(3)(i), similarly provides that “[s]igns which contain, include or are illuminated by a flashing, intermittent or moving light are prohibited.” Record Exhibit 10 (Applicant’s Exhibit 6).



As established by Kegerreis at the hearing, the Commonwealth of Pennsylvania through the Department of Transportation (PennDOT) has issued Publication 581, which provides that the language of 36 P.S. § 2718.105 and 67 Pa. Code § 445.3 prohibiting signs with flashing, intermittent or moving lights does not apply to changeable message signs: "This prohibition of flashing, intermittent or moving light or lights (except for public service information) is not interpreted as prohibiting changeable message signs." Record Exhibit 11 (Applicant's Exhibit 7) at 5-3. Publication 581, issued December 15, 2006, goes on to provide the specific Pennsylvania policy applicable to the change of message on any electronic billboard:

The following policy applies to all off-premise outdoor advertising signs located in zoned or unzoned commercial or industrial areas and on-premise signs that conform to the requirements of Act No. 160 and Chapter 445, where the message or any part of the display area of a sign can be changed by electronic process or remote control:

1. All messages/displays shall remain unchanged for a minimum of five (5) seconds.
2. The time interval used to change from one complete message/display to the next complete message/display shall be a maximum of one (1) second.
3. There shall be no appearance of a visual dissolve or fading, in which any part of one electronic message/display appears simultaneously with any part of a second electronic message/display.
4. There shall be no appearance of flashing or sudden bursts of light, and no appearance of animation, movement, or flow of the message/display.
5. Any illumination or contrast of light level shall remain constant.

Id. at 6-2. Accordingly, the Commonwealth of Pennsylvania has interpreted prohibitions on flashing or intermittent lights to be inapplicable to electronic billboards, even where the message changes as frequently as every five seconds.



Kegerreis established that the federal and state interpretations of language virtually identical to the language used in § 1604.24 certainly show common, approved usage and meaning of those words. There is no basis to read the Township Zoning Ordinance, that uses the same words "intermittent" and "flashing," as meaning something more restrictive. Although the Township could have adopted a zoning ordinance that is more restrictive of electronic billboards than the federal and state restrictions, the Township has not done so. Instead, the language used by the Township is virtually identical to the federal and state language that has been interpreted as not barring electronic billboards. The Township cannot say these words mean something different, and something more restrictive, when used by the Township than what the words mean when construed by federal and state authorities. Under the common and approved federal and state governmental interpretation of the words "intermittent" and "flashing," the proposed billboard cannot be construed to violate § 1604.24 of the Zoning Ordinance.

While the federal and state governments have specifically found that electronic billboards that change messages are not "intermittent" or "flashing," they have not specifically addressed whether such billboards are "sequential." Therefore, as an undefined term in the Zoning Ordinance, I must look to the plain, ordinary meaning of the term as found in the dictionary to determine if the billboard at issue fits the definition of "sequential." See **Header v. Schuylkill County Zoning Hearing Board**, 841 A.2d 641, 645 (Pa. Cmwlth. 2004).

Relying on Webster's New World Dictionary of American Language, the Zoning Hearing Board determined that a sign with a message that changes every eight



seconds would be "sequential" in that the advertisements would come one after another in regular intervals, or in succession.<sup>3</sup> Record Exhibit 13, Conclusion of Law No. 6.

"Succession" is defined in Webster's II New College Dictionary as:

1. The act or process of following in order or sequence.
2. A group arranged or following in order: SEQUENCE.
3. a. The sequence in which one person after another succeeds to a title, office, throne or estate.

Appellant's Reply Brief, Exhibit A. Thus, a "sequence" in the context of this definition is not just that one thing comes after another, but it is one thing that follows another "in order" for purposes of succession.

In the instant case, the advertisements do not come in any kind of "sequence of parts" as each advertisement is completely independent and no message is part of any other message. The advertisements will appear in random order, no image will continue onto the next image, and each advertisement will not be connected in any way to the replaced advertisement. Record Exhibit 15 (N.T., October 10, 2013 Hearing) at 16; *see also* Record Exhibit 5 (Applicant's Exhibit 1 (last page)). A particular advertisement is viewed in its entirety with one image, not in serial images, and each message is completely independent and unconnected from the previous message and the following message. *Id.*

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<sup>3</sup>Webster's New World Dictionary of American Language offers the following definitions:  
Sequential: (1): Sequent, (2) characterized by or forming a regular sequence of parts.

Sequence: The following or coming of one thing after another; succession.  
Record Exhibit 13, Conclusion of Law No. 5.



This is contrary to the plain meaning of the term "sequential" as defined in Webster's Online Dictionary (Merriam-Webster.com) and Merriam-Webster's Collegiate Dictionary (10<sup>th</sup> Ed.):

- 1: of, relating to, or arranged in a sequence: SERIAL
- 2: following in sequence.

Record Exhibit 6 (Applicant's Exhibit 2); Appellant's Reply Brief at Exhibit B.

"Sequence" is defined as "a continuous or connected series." *Id.* The term "sequential" is further defined in Webster's II New College Dictionary as "[f]orming or marked by a sequence, as of notes or units." Appellant's Reply Brief at Exhibit A. These definitions of "sequential" require that the items be continuous, connected and related in some way.

This is contrary to the evidence presented at the hearing by Zegerreis as to the nature of the electronic billboard at issue. Here, there is no succession in the context of the display of sign messages. Nor is there any order whatsoever to what sign comes after the former sign. There is no correlation between any one sign and the sign that comes randomly after it.

Utilizing the common and relevant definitions of the word "sequential" to mean continuous and connected, the proposed electronic billboard is not sequential. The random sign images displayed on the proposed billboard have no connection to the prior or subsequent displayed images. Accordingly, the ban on "sequential" signs in § 1604.24 does not prohibit the proposed electronic billboard.

As a matter of law, the proposed electronic billboard does not violate § 1604.24 of the Zoning Ordinance because it is not a sequential, intermittent and/or flashing sign.



**IV. Conclusion**

For the reasons set forth above, the appeal of Kegerreis will be granted, the decision of the Zoning Hearing Board will be reversed, and a permit will issue to Kegerreis for the proposed electronic billboard.

Accordingly, I enter the following:



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No. CI-13-11618

LAND USE APPEAL

ORDER

AND NOW, this 30<sup>th</sup> day of January, 2015, upon consideration of the land use appeal of Kegerreis Outdoor Advertising, LLC, and the briefs filed by the parties, it is hereby ORDERED that said appeal is GRANTED, and the decision of the Zoning Hearing Board of East Lampeter Township is REVERSED.

It is further ORDERED that a permit shall be issued for Appellant's proposed electronic billboard.

NOTICE OF ENTRY OF ORDER OR DECREE  
PURSUANT TO PA R.C.P. NO. 236  
NOTIFICATION - THE ATTACHED DOCUMENT  
HAS BEEN FILED IN THE  
PROthonotary OF LANCASTER CO., PA  
DATE: 2-3-15 *afg*

BY THE COURT:

*David L. Ashworth*  
DAVID L. ASHWORTH  
JUDGE

ATTEST:

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