

BEFORE THE ZONING HEARING BOARD

TOWNSHIP OF EAST LAMPETER

IN RE: :
: No. 2019-19
APPEAL OF JEANNE BOTTA :

DECISION

I. FINDINGS OF FACT

1. Appellant is Jeanne Botta, 817 Waterfront Drive, Lancaster, Pennsylvania 17602.

2. The property which is the subject of the instant appeal is 205 Greenfield Road, East Lampeter Township, Lancaster County, Pennsylvania (the "Property").

3. The Property is located in the BP - Business Park District as shown on the Official Zoning Map of East Lampeter Township.

4. Notice of the hearing on the within appeal was duly advertised and posted in accordance with the provisions of the Pennsylvania Municipalities Planning Code ("MPC") and the East Lampeter Zoning Ordinance of 2016 (the "Zoning Ordinance").

5. A public hearing was held before the Zoning Hearing Board of East Lampeter Township ("Board") on this appeal on October 24, 2019.

6. Testimony at the hearing was stenographically recorded.

7. Appellant was represented at the hearing by Eric Rothermel, Esquire.

8. East Lampeter Township (the "Township") participated as a party in this proceeding.

9. The Township was represented at the hearing by Matthew J. Creme, Jr., Esquire, Township special counsel.

10. David Sinopoli, Assistant Zoning Officer, and Alecia Hair, Zoning, Planning and Building Administrative Assistant, testified at the hearing on behalf of the Township.

11. Tim Gilbert, Appellant's contractor, testified at the hearing on behalf of Appellant.

12. At the hearing, both Appellant and the Township agreed to waive provisions of the MPC which require that the Board render a decision within forty-five (45) days after the last hearing before the Board. Both parties agreed that the Board would render its decision at its meeting to be held on December 12, 2019.

13. The Township issued an Enforcement Notice to Appellant, dated August 14, 2019, alleging as follows:

It has come to the attention of the Township that two possible non-conforming billboard signs have been removed from the property and two new billboard signs have been installed at 205 Greenfield Road in a BP zoning district without zoning and UCC State Building Code approval. These billboard signs have been installed without the required Sign Permit from the Township. These billboard signs must come into compliance with the Township Zoning Ordinance and the UCC State Building Code. The Township Sign Permit Application and the Sign Permit Submittal Guide can be found at eastlampetertownship.org. Please follow the Sign Permit Submittal Guide for billboard signs, all required information must be submitted for review by the Township.

The sign is in violation of ARTICLE 22, TABLE 22230.1, of the East Lampeter Township Zoning Ordinance of 2016 (as Amended).

14. Appellant filed a timely appeal of the Enforcement Notice. More specifically, on or about September 11, 2019, Appellant filed a zoning application with the Board, which application appealed the Enforcement Notice issued by East Lampeter Township for the Property. Appellant stated in her application as follows:

The Zoning Officer erred in determining that repair of these non-conforming structures required compliance with the Zoning Ordinance. As non-conforming structures, applicant is exempt from such requirements. Additionally, the township should be equitably estopped from enforcement because an agent of the township told applicant that it need not comply with the ordinance because it was a non-conforming structure, applicant relied on that and has incurred thousands of dollars to her detriment in reliance on the assertion.

15. In order to meet its burden of proving Appellant violated the Zoning Ordinance provisions set forth in the Enforcement

Notice, the Township presented the testimony of its Assistant Zoning Officer, David Sinopoli.

16. Mr. Sinopoli testified that, when driving and performing inspections, he observed that two billboards had been removed from the Property and new telephone-type poles were erected. New billboard signage was being installed.

17. Article 22, Table 22230.1, of the Zoning Ordinance sets forth a table of regulations and additional provisions and notes regarding permanent signs. With regard to billboards, such Table indicates that billboards require a permit.

18. Some of the notes to the aforesaid Table are as follows:

Note (7) . No more than 1 billboard structure shall be permitted at any permitted location, which may include 2 surfaces or sign messages that are either attached back to back or shall not exceed an interior angle of 45 degrees.

Note (8). Billboards shall be located at least 1,200 [feet] from another billboard and at least 300 feet from AG, R-1, R-2, R-3 and VR Zoning Districts.

19. Mr. Sinopoli testified that no such sign permit application was made (or permit obtained) for replacement of the billboards on the Property.

20. Because no sign permit application was made, Mr. Sinopoli has no details with respect to the billboards and is unable at this time to determine whether replacement is allowed (he is unable to

determine whether replacement is in violation of other provisions of the Zoning Ordinance).

21. The Board finds that the Township, through its Assistant Zoning Officer, David Sinopoli, presented credible evidence that Appellant violated Article 22, Table 22230.1, of the Zoning Ordinance through her removal and replacement of two billboards without first making application and obtaining a permit from the Township.

22. Although Appellant admits that both billboards, supporting structures and electric service were replaced without a permit, Appellant nevertheless asserts that the Township should be estopped from issuing the Enforcement Notice and requiring a permit based upon alleged statements made by a Township employee.

23. Mr. Gilbert testified that:

(i) Appellant is the owner of the two billboards located upon the Property.

(ii) One of the billboards blew over during a storm in mid July of 2019.

(iii) Appellant hired him to clean up the billboard debris and determine what was necessary to put a billboard back up.

(iv) The owner of the Property (referred to at the hearing as Garden Spot Trucking) advised him that the second billboard sign needed to come down because it was unsafe.

24. Mr. Gilbert further testified that:

(i) He spoke by telephone with someone at the Township (later identified as Alecia Hair, Township Zoning, Planning and Building Administrative Assistant).

(ii) In his telephone conversation, he advised that the property was 203-205 Greenfield Drive, that one of the billboards on the Property blew over and that he would replace it (including replacement of the whole structure) and may replace the other billboard. He did not discuss detail regarding replacement of the electric service.

(iii) The Township representative told him she was familiar with the Property and the signs.

(iv) He was put on hold while the Township representative checked to determine whether a permit was needed to replace the billboards.

(v) The Township representative ultimately advised him that as long as he was replacing the billboards, and not changing the size, no permit was needed.

(vi) He was surprised that no permit was necessary to remove and replace the billboards.

(vii) He replaced the supporting poles, billboards and electric service.

(viii) The new poles were not inspected for applicable code compliance and no plans were reviewed.

(ix) The electric service was inspected but he is uncertain whether the inspector is registered to perform inspections in East Lampeter Township.

(x) The cost of labor and materials to replace the billboards, supporting structures and electric service was approximately \$16,000.00.

25. In rebuttal, Alecia Hair testified as follows:

(i) She received a telephone call in mid-July, 2019, regarding the replacement of signs.

(ii) The caller did not identify himself.

(iii) The caller did not specify the property location.

(iv) The caller did not specify the type of sign.

(v) The caller asked her if a permit was needed to replace a sign.

(vi) The caller did not indicate that the entire support structure and electric service were being replaced.

(vii) She thought that the caller was asking whether the graphics of a sign could be replaced without a permit and advised that no permit was needed.

(viii) She did not put the caller on hold to research the issue.

(ix) The telephone call was less than 5 minutes in duration.

(x) She did not receive any follow up phone calls regarding the issue.

(xi) After August 14, 2019 (the date of the Enforcement Notice, Mr. Gilbert came to the Township office and spoke with her regarding the Enforcement Notice.

(xii) She advised Mr. Gilbert that he would need to discuss the Enforcement Notice with David Sinopoli. She did not provide Mr. Gilbert with any opinion regarding the appropriateness of the Enforcement Notice.

II. CONCLUSIONS OF LAW

1. Appellant's application was timely filed, advertised and the Property posted as required by law.

2. Because this hearing is on an appeal from an Enforcement Notice issued by the Township, the Township has the burden of proof in establishing the violation identified in the Enforcement Notice.

3. The Board must be convinced that the Township has submitted credible evidence to prove its case.

4. Mr. Sinopoli's testimony represents substantial credible evidence to support the Enforcement Notice.

5. The Board concludes that the Township has met its burden of proof. Article 22, Table 22230.1, of the Zoning Ordinance sets forth a table of regulations and additional provisions and notes regarding permanent signs. With regard to billboards, whether nonconforming or otherwise, such Table indicates that billboards require a permit. Appellant did not obtain the required permit.

6. With regard to Appellant's argument that the Township should be equitably estopped, equitable estoppel is one of three labels assigned in Pennsylvania land use/zoning law to the equitable remedy precluding municipal enforcement of a land use regulation. Pennsylvania courts have generally labeled the theory under which a municipality is estopped "equitable estoppel" where the municipality intentionally or negligently misrepresented its position with reason to know that the landowner would rely upon the misrepresentation. Estoppel is an unusual remedy granted only in extraordinary circumstances and the landowner bears the burden of proving his entitlement to relief. The elements are as follows: (i) good faith action on the part of the landowner; (ii) the

landowner relies to his detriment, such as making substantial expenditures; (iii) based upon an innocent belief that the use is permitted; and (iv) that enforcement of the ordinance would result in hardship, ordinarily that the value of the expenditures would be lost. See Lamar Advantage GP Company v. Zoning Hearing Board of Adjustment of the City of Pittsburgh, 997 A.2d 423 (Pa Cmwlth Ct 2010).

7. The Board must initially determine whether Appellant undertook good faith action to determine whether a permit was necessary and that it had an innocent belief that replacement of the billboards, supporting structures and electric service were allowed without a permit. Appellant bears the burden of proving her entitlement to relief.

8. There is conflicting testimony regarding the actions taken on behalf of the Appellant to determine whether a permit was necessary to replace the billboards, supporting structures and electric service.

9. "In zoning cases it is well-settled that the Board is the fact finder, with exclusive province over matters of credibility and weight to be afforded to the evidence." Manayunk Neighborhood Council v. Zoning Board of Adjustment of the City of Philadelphia, 815 A.2d 652, 658 (Pa. Cmwlth. 2003).

10. The Board finds and concludes the rebuttal testimony offered by Alecia Hair is credible and finds and concludes that the testimony of Tim Gilbert is not credible. In fact, Mr. Gilbert testified he was surprised that a permit was not necessary in this instance. There can be no good faith reliance when the Appellant's representative failed to disclose all pertinent information to the Township official.

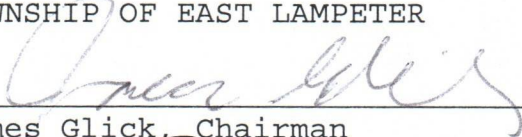
11. Although Appellant spent substantial funds, Appellant has not met her burden of proving entitlement to the extraordinary relief of equitable estoppel.

12. The Enforcement Notice issued to Appellant by the Township is valid, and the appeal of the Enforcement Notice is without merit.

III. DECISION

Based on the testimony presented at the hearing, the Board upholds the validity of the Enforcement Notice dated August 14, 2019, issued to the Appellant by East Lampeter Township for property located at 205 Greenfield Road, Lancaster, Pennsylvania 17601, and denies and dismisses Appellant's appeal of such Enforcement Notice. Moreover, the Board rejects Appellant's argument that the Township is equitably estopped from enforcement.


ZONING HEARING BOARD OF THE
TOWNSHIP OF EAST LAMPETER



James Glick, Chairman



J. Scott Enterline, Vice Chairman



Lester Weaver, Secretary

Dated and filed December 12, 2019, after a hearing held on
October 24, 2019.

The undersigned certifies that a copy of this Decision was
served upon all parties on or prior to December 13, 2019.

