IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

LAMAR ADVERTISING OF PENN, INC.,	:	
Appellant	:	Administrative Appeal
v.	:	
OLD LYCOMING TOWNSHIP ZONING HEARING BOARD,	:	No. 99-00,151
Appellee	:	

O P I N I O N

Lamar Advertising of Penn, Inc. (Lamar) has appealed the decision of the Old Lycoming Township Zoning Hearing Board (Zoning Board), which found that a Lamar billboard exceeds the height specified in its permit. After argument held on 4 March 1999 the court finds that the Zoning Board did not abuse its discretion or commit an error of law.

Facts

The facts underlying this case are not in dispute. In 1990 Lamar obtained a permit to erect a billboard over an Eastern Wood Products building at 2020 Mill Lane in Old Lycoming Township. The billboard was built and has remained unchanged for the last eight years. On 24 November 1998 Lamar received an enforcement notice from Zoning Officer William Wilkinson, notifying the company that the sign is in violation of the zoning ordinance and the permit issued in 1990. The billboard height is almost 36 feet from the level of Route 15 and 44 feet above the grade level, which is the level at the base of the sign.

Lamar's permit for conditional use specifies that the sign height could be up to 36

feet high, but it does not state from what point the height should be measured. However, the permit was granted based upon an application submitted by Lamar (formerly known as Penn Advertising, Inc.), which contained a sketch depicting a side view and a top view of the billboard. (Exhibit A.) The sketch included an arrow extending from a point labeled "grade level" to the top of the sign, with the notation "HAGL = Approximately 36'." Lamar also included with its application a blueprint prepared and certified by Gerald R. Carstens, a registered professional engineer, which refers to the term "HAGL" several times and in a chart indicates that the term denotes "height above grade." (Exhibit B.)[1]

The zoning ordinance in effect at that time, Old Lycoming Township Ordinance No. 84, stated in Section 5: "Advertising signs or billboards may be permitted as a conditional use . . . up to 30 feet in height." The preamble to the ordinance contains a lengthy list of purposes for the ordinance, including: " . . . establishing a 30 foot maximum height from the road level . . . ."

After a hearing, the Zoning Board concluded that the method for measuring the height of the sign was "HAGL," which meant "height above grade level." Therefore, the Zoning Board found that Lamar was not in compliance with its permit.

Discussion

The court took no additional testimony on the issues presented in this appeal.

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[1] Lamar contends that these documents were improperly introduced into evidence. A complete review of the transcript reveals these documents were part of the public record, and Lamar's attorney agreed they could be introduced as such. Transcript, p. 81. Moreover, there is sufficient evidence upon which the Zoning Board could conclude that the documents were prepared by Lamar. Both documents were attached to the permit in the file and the sketch is even stamped with Penn Advertising's name and address.

Therefore, our scope of review is limited to determining whether the Zoning Board abused it discretion or committed an error of law and whether its necessary findings are supported by substantial evidence. Rushford v. Zoning Bd. Of Adjustment of Pittsburgh, 81 Pa. Cmwlth. 274, 473 A.2d 719 (1984). After reviewing the transcript of the hearing, the court finds that the Zoning Board's findings were supported by substantial evidence and we can find no error of law.

A. Taking Refuge Behind the Ordinance

Lamar admits the billboard is 44 feet above grade level. It merely argues that despite what its own submitted documents say, the height of the sign should be measured from road level because the preamble to the zoning ordinance in existence at the time referred to road level. Lamar's argument must fail for two reasons.

First, there is no contradiction between the ordinance in existence at the time and Lamar's permit. The preamble to the ordinance did not say that all signs would be measured from the road level. It merely said that the ordinance was "establishing a 30 foot maximum height from the road level." There are many ways to measure the height of billboards, and the ordinance does not preclude any one of them.

Second, it is blatantly obvious that when the permit was granted all parties–including Lamar–understood that the permit gave Lamar permission to erect a billboard 36 feet from grade level. This is apparent from the application and supporting materials which Lamar submitted to the Zoning Board when it applied for the permit. The sketch and the blueprint prepared by Lamar unequivocally indicate the sign would be erected to a height of

approximately 36 feet above grade level. Clearly, Lamar represented to the Zoning Board that the sign would stand no more than 36 feet above grade level and the permit was granted based upon that representation.

It is highly unlikely that any of the parties believed the permit granted a height of 36 feet from the road level, for if that were the case the permit itself would have violated the zoning ordinance in effect at that time. After all, the ordinance stated that a conditional use may be granted for billboards up to 30 feet from road level, and this billboard is almost 36 feet from road level. Conversely, however, a permit granting permission to erect a billboard 36 feet from grade level does not violate the ordinance, for the ordinance allows as much as 38 feet from grade level.[2]

In short, the facts indicate that Lamar asked for and was granted permission to erect a billboard 36 feet from grade level. Therefore, the court will hold the company to its word and require it to comply with the permit. We will not allow Lamar to build a billboard in violation of its permit and then to escape the consequences of that action by manufacturing a technical argument based on a preamble in the zoning ordinance that does not even conflict with its permit.[3]

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[2] The court arrived at this conclusion based on the parties' statement that the billboard is 36 feet from grade level and 44 feet from road level, which means that the road must be 8 feet higher than the grade.

[3] The court notes that Lamar has not argued that it actually relied on the language of the zoning ordinance. It merely presents the technical argument that this language should take precedence over the language in its permit.

B. Haggling Over HAGL[4]

Lamar argues that the Zoning Board unjustifiably and improperly defined the term "HAGL." In its outline submitted to the court Lamar argues that the Zoning Board presumed to define HAGL based solely on the sketch and blueprint. Lamar states: "There was no testimony presented by the zoning officer or any witness as to the definition of 'HAGL.'" The court disagrees. Jeffrey Brooks, a civil and structural engineer, testified at the zoning hearing that grade level is the industry standard when measuring billboards, and that road level is never used.

Zoning Officer William Wilkinson testified that during his ten years as Zoning Officer road level was never used to measure billboards. He also stated that whenever height of a billboard or building was at issue, grade level was always the standard of measurement. The reference to road level in the earlier ordinance appears to have been a fluke, and the language was later changed to grade level.[5]

Moreover, as mentioned above, Lamar's own documents essentially define HAGL. Exhibit A shows an arrow extending from grade level to the top of the sign, with the phrase "HAGL = approximately 36'." Exhibit B includes "HAGL" numerous places, and one of the columns in the measurement chart states: Height Above Grade (H.A.G.L.). The court therefore finds that the Zoning Hearing Board had more than sufficient evidence upon which

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[4] German philosopher Hegel would no doubt view this as part of the dialectical.

[5] One of the obvious problems with using road level is how to determine which road to measure from. For instance, underneath the Lamar billboard at issue is a private dirt road which could well be used instead of Route 15. That road is on approximately the same level as the grade, which would make Lamar in violation of its permit even if its permit were interpreted to grant 36 feet from road level.

to conclude that HAGL means height above grade level.

Lamar's outline also states that HAGL is "an industry term, measuring from the ground to the bottom of the structure." The court can find no evidence to support this definition anywhere in the record, and in fact it contradicts Lamar's own sketch, which shows the measurement running from the grade to the top of the sign.

C. Application of Estoppel

Finally, Lamar argues that the Zoning Board should be prohibited from issuing a violation notice based on the equitable doctrine of estoppel. Lamar believes estoppel applies in this case because the sign has stood at its present height for eight years and the zoning officer has only now issued an enforcement notice. Estoppel is not applicable in this case because there is no evidence that any of the elements are met.[6] Nothing indicates that the Zoning Board or the zoning officer even knew the billboard violated the ordinance. On the contrary, the testimony at the hearing reveals that a private citizen suspected a violation, hired an expert to measure the sign, and presented his finding to the Township Supervisors.[7]

If the doctrine of estoppel should apply to any party, it should apply to Lamar, who

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[6] In order to apply the doctrine of equitable estoppel, the party to be estopped must have: (1) intentionally or negligently misrepresented some material fact; (2) known or had reason to know that the other party would justifiably rely on the misrepresentation; and (3) induced the party to act to his or her detriment based on their justifiable reliance upon the misrepresented fact. Foster v. Westmoreland Casualty Company, 145 Pa. Cmwlth. 638, 604 A.2d 1131 (1992).

[7] At the zoning hearing, Lamar appeared to find these actions objectionable. The court disagrees. Unlike totalitarian regimes, our democratic system encourages private citizens to become actively involved in their communities rather than relying on government to take care of everything.

after representing to the Zoning Board that its billboard would be 36 feet above ground level now argues that this very same billboard should be permitted to stand 36 feet above road level, thus gaining another 6 feet.

Conclusion

One of the purposes of zoning ordinances is to preserve the character of a community by restricting and curtailing certain commercial activities that can be aesthetically unappealing, such as billboards. If the people of Old Lycoming Township, through their elected representatives, have determined that they do not wish to bear the sight of billboards towering more than 30 feet from road level, they have a perfect right to legislate that conviction. Lamar represented that its billboard would not be higher than that level, and was granted permission to build based on that representation. It is the duty of this court to hold the company to its word.

O R D E R

AND NOW, this _____ day of March, 1999, the appeal filed by Lamar Advertising of Penn, Inc., to the decision of the Zoning Hearing Board issued 21 January 1999 is dismissed.

BY THE COURT,

Clinton W. Smith, P.J.

cc: Dana Stuchell, Esq., Law Clerk
Hon. Clinton W. Smith
Richard Gahr, Esq.
Denise Dieter, Esq.
Gary Weber, Esq.