

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

TRANSITIONAL LIVING CENTERS,	:	
INC.,	:	
Plaintiff	:	
	:	
v.	:	NO. 99-01,810
	:	
CITY OF WILLIAMSPORT,	:	
Defendant	:	

OPINION and ORDER

Transitional Living Centers, Inc. (TLC), has appealed the Williamsport City Council’s denial of a conditional use permit to operate a community pre-release corrections treatment center for state prison inmates at 659 East Third Street, Williamsport. Such facilities are highly controversial, especially in a city like Williamsport, where local residents have been appalled by a dramatic increase in violent crime within the last decade. Therefore, it is not surprising that this proposal met with a great deal of public opposition. However, conditional use permits are not to be granted or denied on the basis of the popularity of the applicant.

It is not up to this court or City Council to decide whether pre-release centers are a good idea. The people of Williamsport, through their Zoning Ordinance, have already decided to permit treatment centers in this area of the city,¹ so long as certain requirements are met. Therefore, if TLC satisfactorily demonstrated compliance with those requirements, Council was obligated to approve its application unless the protestors

¹ The property is in an area zoned “CS,” the only type of zoning in which treatment centers are permitted as a conditional use.

demonstrated that *this particular facility* should not be permitted because it endangers public health, welfare, or safety.

From a review of the minutes of the City Council meetings at which the proposal was discussed, it is obvious that the treatment center's opponents were motivated by a fear and loathing of *all* such facilities, and not just this particular one. It also appears that some City Council members voted against the proposal because they did not want to see *any* treatment centers established. To do this, however, is to ignore the zoning ordinance they were obligated to enforce. Such conduct by elected officials is an affront to democracy because it overrides the judgment of the people of Williamsport, who have the right to zone their city and who have already decided to permit treatment centers in this area. City Council may not effectively re-zone the city based on the personal preferences of some individuals, while ignoring the collective resolution of the majority.

Despite this regrettable disrespect of the democratic process by some Council members, however, the court must uphold Council's decision because although Council erred in its conclusion regarding parking, there was sufficient evidence to support its finding that TLC failed to show it will provide adequate supervision and security measures to protect the public.

DISCUSSION

A conditional use is one which the zoning ordinance permits so long as the standards set forth in the ordinance are met. Bureau of Corr. v. Pittsburgh City Council, 532 A.2d 12 (Pa. 1987). The main question in this case is what standards TLC had the

burden of proving, and whether it met its burden. This court's task is to review the decision of the City Council, and we may not disturb that decision unless we find that Council committed an error of law or that its factual findings are not supported by substantial evidence. Bureau of Corr. v. Pittsburgh City Coun., 532 A.2d 12, 13 (Pa. 1987).

A. Technicalities

TLC has attempted to prevent this case from being heard on the merits by claiming it is entitled to an automatic victory because of two technicalities. First, TLC argues its application must be deemed approved because City Council did not render its written decision within forty-five days after the hearing, as it is required to do. 53 P.S. § 10913.2(b)(1) and (2). The hearing was held on 30 September 1999. On 14 October 1999 City Council issued a written denial of the permit, signed by City Council President Michael Rafferty and City Clerk Diane Ellis. The written Findings of Fact and Conclusions of Law, however, were not submitted until 9 December 1999, seventy days after the hearing.

Council's written denial, although not supported until later by Findings of Fact and Conclusions of Law, is still valid. See Romesburg v. Fayette County Zoning Hearing Board, 727 A.2d 150, 152 (Pa. Commw. 1999) (construing the similar language of 53 P.S. § 10908(9)); Mullen v. Zoning hearing Bd., Collingdale, 691 A.2d 998, 1001 (Pa. Commw. 1997). The fact that City Council was late in issuing its Findings of Fact and Conclusions of Law will therefore not get TLC off the hook.

Nor will this court declare City Council's decision void because a few people spoke on the TLC issue at a second City Council meeting, held on 13 October 1999, and because Council accepted petitions and a letter in opposition to the permit application at that time. First, it appears that the additional information was not determinative of Council's decision. The vast majority of relevant evidence was presented at the first meeting, of which TLC had adequate notice. Second, this court previously offered TLC an opportunity to supplement the record by having the case remanded to City Council for further evidentiary submissions before this court decided the issue. Having rejected this opportunity, TLC will not now be heard to complain. Third, as counsel for the City points out, the Open Meeting Sunshine Law, 65 Pa. C.S.A. § 701, requires public bodies to permit public input prior to voting on an issue. And finally, even if Council had relied on the additional anti-TLC evidence presented at the second hearing, that would have no impact on this court's primary holding: TLC did not meet its initial burden as to showing adequate security and supervision. In fact, this court finds that had TLC met its burden, the protestors would have failed to meet their burden as to general safety concerns—no matter *what* evidence Council relied on. Therefore, any error Council might have made in admitting further evidence is clearly harmless, and has no impact on our decision.

B. Parking

The Williamsport Zoning Ordinance specifies that a treatment center must provide, "One space per employee, plus one per two adult residents of a type reasonably expected

to be capable of operating a vehicle.” § 1345.01.² City Council interpreted this part of the ordinance to mean that a person is “reasonably expected to be capable of operating a vehicle” unless he or she is physically or otherwise incapable of driving. Therefore, Council found that sixteen parking spaces were necessary, based on the potential resident population.

Zoning ordinances are to be liberally construed to allow the broadest possible use of land,” Upper Salford Township v. Collins, 669 A.2d 335 (Pa. 1995), and the court finds City Council’s interpretation to be unreasonable. The residents of the proposed treatment center are still technically incarcerated or are on parole. TLC has complete authority to set the rules, and there is no reason to believe it cannot limit driving privileges to three residents and enforce that restriction. Therefore, inmates without parking privileges cannot reasonably be expected to be capable of driving, and only two parking spaces are necessary based on the proposed resident population.³

² TLC’s argument that it does not have the burden of proving it met parking requirements is soundly rejected. TLC, like all such applicants, must prove compliance with the specific requirements of the ordinance. Bray v. Zoning Board of Adjustment, 48 Pa. Commw. 523, 526-527, 410 A.2d 909 (1980).

³ The court realizes that the evidence presented by TLC on this point was somewhat confusing. TLC’s proposal stated there would be a maximum of sixteen residents, but that no more than three would be given parking privileges. However, the hearing minutes state, “Only three occupants will be capable of driving but others may earn driving privileges after six months residency.” 30 September 1999 Minutes, p. 1. (At oral argument, counsel for TLC explained that this statement was made by the Zoning Officer, and not TLC representatives.) And finally, the attorney for TLC clarified that “there will be no more than three residents permitted to drive.” 30 September 1999 Minutes, p. 2.

Nonetheless, City Council appeared to understand that only three residents would be permitted to drive. Finding of Fact #11. Therefore, the court finds that TLC adequately met its burden on this issue.

Regarding employee parking, TLC's proposal stated there would be three employment shifts, with no more than three employees per shift. City Council interpreted the ordinance to mean there must be one space for each person employed by the facility, regardless of how many employees are working at one time.

We believe Council applied a tortured interpretation of the ordinance to reach this conclusion. However, we do not agree with TLC's interpretation, either. TLC argues the parking requirement should be based on the number of employees working during any one shift. That does not take into account the reality of the situation. The very nature of the proposed facility suggests that employees will not be permitted to leave until their replacement arrives, which would require two parking spaces for each employee working during a shift. But even if employees were permitted to leave before a replacement arrived—which in itself would create a serious public safety threat—one can certainly anticipate that there will be times when one employee arrives early or leaves late, which necessitates two parking spaces instead of one.

Therefore, the court concludes that the ordinance requires enough spaces for employees working in two consecutive shifts, or six spaces. Added to the two spaces required for resident parking, TLC needs eight parking spaces, which is the number the proposal calls for.⁴ Therefore, TLC has met the parking requirement and Council erred in denying the application on that basis.

⁴ Although evidence on this issue was also somewhat confusing, it appears that TLC has eight parking spaces available, and Council accepted that number in making its determination.

C. Adequate Supervision and Security

1. *Who has the Burden?*

The initial question regarding Council's finding of fact on safety and security is which side has the burden on this issue: the applicant or the objectors? The Williamsport Zoning ordinance states:

The applicant shall prove to the satisfaction of City Council, with the burden of proof being upon the applicant, that the use will involve adequate supervision and security measures to protect public safety.

§ 133.05(a)(6)(e). TLC argues that the ordinance is an ineffective attempt to shift the burden to the applicant.

To analyze the burdens in the Williamsport Zoning Ordinance, it is necessary to understand the distinction between the burden of persuasion and the burden of production. The burden of persuasion is the responsibility of establishing a fact by a preponderance of the evidence, once the entire case has been tried. The burden of production is the responsibility of a party to present evidence regarding a particular fact.

In conditional use cases, the burden of persuasion is always on the applicant.

Bray v. Zoning Board of Adjustment, 48 Pa. Commw. 523, 525, 410 A.2d 909 (1980).⁵

The applicant also has the burden of production on any specific criteria stated in the ordinance. Id. at 526-30. An ordinance may not, however, impose upon an applicant the burden of production as to general matters of health, safety, and general welfare. Id. The reason for this rule is twofold. First, the mere fact that a use is permitted as a conditional

⁵ Bray involved the standard for a special exception, which is the same as the standard for a conditional use. Bailey v. Upper Southampton Tp., 690 A.2d 1324, 1326 (Pa. Commw. 1997).

use evidences a decision by the legislative body that the particular type of use is not in itself adverse to the public interest. Secondly, it is unfair to require the applicant to prove what is essentially compliance with a policy statement. Only reasonably specific requirements may be imposed. Id. at 527-28. If the opponents introduce substantial evidence on specific concerns in the area of safety or welfare, however, the applicant has the responsibility of introducing evidence to alleviate those particular concerns in order to meet its general burden of persuasion.

Thus in Bray, the ordinance stated that an applicant for establishing a conditionally permitted roller-rink has the burden of production regarding a number of issues, including traffic congestion, fire danger, overcrowding, impairment of light and air to adjacent property, and adverse impact on transportation or other community facilities. The Commonwealth Court held that while the City could place all these burdens upon the applicant, it could not impose upon the applicant the burden of production as to public health, safety and general welfare, or harmony with the spirit and purpose of the zoning code. The objectors had the burden of production as to those requirements, with the responsibility of presenting specific evidence on how the proposed use would be detrimental to health, safety, and welfare, and conflict with the spirit and purpose of the zoning law. Subsequent appellate cases have followed the Bray rule. Westinghouse Elec. Corp. v. Council, 686 A.2d 906 (Pa. Commw. 1996); Manor Health Care v. Zoning Hearing Bd., 590 A.2d 65 (Pa. Commw. 1991); Kern v. Zoning Hearing Board of Township of Tredyffrin, 449 A.2d 781 (1982).

Therefore, the question in this case is whether the requirements of the Williamsport

Zoning Ordinance are specific and objective or whether they are non-specific and general.⁶ The ordinance states the applicant must prove “that the use will involve adequate supervision and security measures to protect the public.” § 133.05(a)(6)(e). This statement is unlike the one in the Bray ordinance, which required the applicant to show the use would not be detrimental to public health, safety, or general welfare. It is also unlike the one in Manor Health Care, supra, which stated the applicant must prove that granting the application “will not adversely affect the health, safety, or welfare of the community of the Township.” It is further unlike the one in Westinghouse, supra, 686 A.2d 906 (Pa. Commw. 1996), which stated the applicant must demonstrate that the use “will not endanger the public health, safety and welfare.”

In contrast to these three ordinances, the Williamsport ordinance is specific, stating the applicant must show “adequate supervision and security measures.” Although these criteria obviously relate to public safety, they raise particular and specific concerns: the manner and extent to which the residents will be supervised and the precise security measures that will be implemented within the facility. These are perfectly valid criteria to

⁶ See, Blancett-Maddock v. City of Pittsburgh, 640 A.2d 498, 501 (Pa. Commw. 1994) (Once an applicant has established compliance with the *specific objective requirements* of the exception as set forth in the ordinance, the objectors have the burden of production that the general, non-specific requirements have not been fulfilled.); Shamah v. Hellam Tp. Zoning Hearing Board, 648 A.2d 1299, 1303-04 (Pa. Commw. 1994) (Applicant has the burden of proving it meets the criteria contained in the ordinance; protestors have the burden of production to show the use will have an adverse effect on the general public and to present evidence of non-compliance with *general* conditions.) See Appeal of Neill, 634 A.2d 749, 751 (Pa. Commw. 1993) (Applicant has the burden of proving the request complies with all of the *objective requirements* of the zoning ordinance); Manor Health Care, supra at 70 (objectors have presentation burden with respect to *general matter* of detriment to health, safety, and general welfare).

impose upon an applicant because they give fair notice of exactly what information City Council desires and expects. The applicant is on notice to present specific information on exactly how the residents will be supervised and what security measures will be in effect. Such a task is hardly difficult or onerous, for it merely requires a detailing of the specific measures the facility already plans to implement. Therefore, we find that the Williamsport Zoning Ordinance effectively shifts the burden of production to TLC to show that adequate supervision and security measures are in place.

The burden of proving detriment to general public health, safety, and welfare, however, fell on the protestors. Therefore, if TLC had shown it met the standards set forth in the Ordinance, the protestors would have had the burden of producing evidence to show the proposed use would pose a substantial threat to the community. Bureau of Corr. v. Pittsburgh City Coun., 532 A.2d 12, 14 (Pa. 1987).

2. Did TLC Meet its Burden?

City Council found that TLC did not meet its burden, and we agree. The facility presented little evidence on supervision or security, as the Ordinance directed it to do. There will be as many as sixteen adult males in the facility, some of whom may have been convicted of violent crimes, which certainly presents cause for concern.

Regarding supervision, TLC stated there would be a maximum of three staff members working per shift and there may be as few as one per shift. There was no testimony on the qualifications of the staff, nor the method and extent of supervision. In fact, TLC gave no indication what type of supervision, if any, will be supplied either inside

or outside the facility. Will the residents be subject to regular roll call to ensure all are present, or will they be on their own once they have entered the building? Will their activities inside the facility be monitored? If so, how often and by what means? Will the residents be subject to random drug and weapon searches?

Regarding security, the only evidence TLC presented was that there would be an alarmed outside door to advise the staff when someone enters or exits the building, a sign-in/sign-out log, and random verification by staff of resident destinations and employment.⁷ There was no testimony as to how often the activities of the residents would be monitored when they exit the building, or how that would be accomplished. Will the staff members call the proposed destinations, and if so, how often? Furthermore, there was no testimony regarding whether the staff would be armed or otherwise trained to prevent residents from escaping, or whether there would be locks on all the windows. Nor was there any evidence the staff will regularly and routinely check to ensure no drugs or weapons are brought inside the facility or taken outside the building. No evidence was presented as to how often the residents would be tested for drugs, other than the Executive Director's statement that the facility would be "monitored as required every six to eight weeks for compliance regarding health issues, program structure and random urinalysis checks." 30 September 1999 Minutes, p. 1. The Executive Director also stated,:

Two manuals govern their operations, Title 8 of the Pennsylvania Department of Corrections and a Contract Facility Manual drafted by the Bureau of Community Corrections. The mission listed by both manuals include public safety and the safety of the areas surrounding the facility.

⁷ The court notes that this information was not even provided at the City Council meeting, but was found in TLC's proposal letter to the Williamsport Zoning Officer.

20 September 1999 Minutes, p. 1. Unfortunately, there was no evidence as to what these manuals contained. Therefore, City Council members had no idea if there were any specific procedures regarding supervision or security imposed by these manuals.

In short, although TLC had the opportunity of proving it had adequate supervision and security measures, the facility presented little evidence on these issues. The evidence it did present on these matters was rather vague and general, and the members of Council had good reason to be dissatisfied with TLC's presentation. Therefore, we affirm City Council's finding that TLC did not meet its burden of showing adequate supervision and security at the facility.⁸

D. Compliance with the Comprehensive Plan

The Zoning Ordinance specifies that in considering a conditional use application, Council must "[r]eview the intended purpose of the proposed use as it relates to the City's

⁸ If TLC had met its burden, then City Council would have been required to grant the application unless the opponents presented evidence establishing to a high degree of probability that the use would substantially affect the general health and safety of the community. Manor Healthcare v. Zoning Hearing Bd., 590 A.2d 65, 70-71 (Pa. Commw. 1991). The objectors cannot meet this burden by merely speculating as to possible harm, but must raise specific health and safety issues.

A review of the record shows that the evidence presented by the objectors did not rise to this level. The protestors' testimony was highly speculative, expressing concerns that were heartfelt but poorly documented. Although there was a vague allusion to some Internet research on halfway houses, no studies or documents were introduced into the record. Because of the blatant lack of evidence of general harm to the public, we must conclude that City Council erred in finding the objectors had met their burden in this regard. See Bureau of Corr. v. Pittsburgh City Coun., 532 A.2d 12 (Pa. 1987), in which protestors unsuccessfully presented similar arguments in an attempt to prevent a pre-release center from being approved.

development objectives established in the Comprehensive Plan.” § 1320.01(c). City Council found that the protestors had met their burden of proving the proposed use is inconsistent with the objectives of the Comprehensive Plan.⁹ The court finds there was insufficient evidence to support this conclusion. The only reference to the Plan made by the objectors at the 30 September 1999 meeting was in relation to “putting a correctional facility in an area that is viable for residential use,” and counsel for the City has argued that the proposed use violates the Plan because it calls for the conversion of a single family home, which the Plan discourages.

This argument is absurd in light of the fact that the Zoning Ordinance specifically permits this type of facility in “CS” zones, for such facilities rarely exist within single family homes. Therefore, in passing the Zoning Ordinance the people of Williamsport must have realized that some single family homes might be sacrificed for pre-release facilities. In fact, that is probably one of the reasons such facilities are limited to “CS” zones, which are commercial zones established primarily for “wholesale, warehouse and service activities which require a central location.” § 1331.01(e). In such areas, concern for single family residential housing is certainly minimal. Therefore, unless we find that the Zoning Ordinance itself conflicts with the Plan, which we certainly are not prepared to do, we must conclude that the proposed use is not inconsistent with the objectives of the Plan.

Conclusion

⁹ City Council was correct in placing this burden upon the objectors. Because the Comprehensive Plan is a lengthy document containing numerous policy statements, it would be unfair to impose such a burden on the applicant.

In permitting pre-release treatment facilities as a conditional use in this area of the city, the people of Williamsport have decided that these facilities are not inherently adverse to the public welfare. However, the Williamsport Zoning Ordinance demonstrates that while the people have approved these facilities as a general concept, they have limited their approval only to those facilities that can concretely demonstrate the residents will be adequately supervised and the building will be secure.

The Williamsport Zoning Ordinance clearly reflects the people's serious concern about supervision and security at the facilities, and legitimately places the burden on the proposed facility to prove it will implement safeguards to adequately address these specific concerns. The people of Williamsport had every right to impose this burden on proposed treatment centers, to ensure the safety of their community. TLC had fair notice of its responsibility and a fair opportunity to present evidence that it would provide adequate supervision and security. When it failed to do so, City Council was perfectly justified in denying the proposal.

ORDER

AND NOW, this _____ day of March, 2000, for the reasons stated in the above opinion, the Petition for Appeal from the Decision of the City Council of the City of Williamsport filed by Transitional Living Centers, Inc. is dismissed.

BY THE COURT,

Clinton W. Smith, P.J.

cc: Dana Stuchell Jacques, Esq., Law Clerk
Hon. Clinton W. Smith
Norman Lubin, Esq.
Fred Holland, Esq.
Gary Weber, Esq., Lycoming Reporter