



Case of the Month - Pennsylvania: *Tennyson v. Zoning Hearing Board of West Bradford Township* ___ A.2d ___, 2008 WL 2415271 (Pa.CmwltH.) June 17, 2008

By *Lauren W. Taylor*

The Pennsylvania Commonwealth Court recently confirmed that restrictive covenants contained in contracts between property owners, or between a municipality and a property owner, have no bearing on zoning applications.

In this case, a landowner filed a zoning application with the Zoning Hearing Board (ZHB) seeking a special exception to develop a stable on her property, which was a permitted use by special exception under the Township's Zoning Ordinance. The neighboring property owners challenged the application based, in part, on the fact that the landowner's property was subject to certain restrictions set forth in a Declaration of Easements and Covenants and the Township's Open Space Management Plan.

The ZHB considered and addressed the neighbors' argument that the special exception application should be denied because it violated the Declaration of Easements and Covenants and Open Space Management Plan. The Board concluded that the Declaration and Open Space Management Plan "speaks for itself" and that the proposed development of the subject property was in conformity with the requirements of such documents.

On appeal, the lower court concluded that the ZHB did not have the authority to interpret or enforce the Declaration of Easements and Covenants and Open Space Management Plan because disputes involving such documents were outside the purview of the ZHB and, consequently, outside the lower court's scope of review.

The Commonwealth Court agreed with the lower court that use restrictions contained in contracts between property owners or between a municipality and a property owner should not enter into the enforcement of zoning regulations or have any bearing on zoning applications. Citing the Pennsylvania Supreme Court's decision in *Appeal of Michener*, 115 A.2d 367 (1955), the Commonwealth Court noted, "[z]oning laws are enacted under the police power in the interest of public health, safety and welfare; they have no concern whatever with building or use restrictions contained in instruments of title and which are created merely by private contracts. If these applicants were to succeed in obtaining a variance relieving them from the restrictions of the zoning ordinance they would still be subject to the restrictions contained in their deeds, but the enforcement of those restrictions could be sought only in proceedings in equity in which the grantors, their representatives, heirs and assigns, would be the moving parties ... Courts in trying a zoning case will ordinarily exclude evidence of private restrictions, and in trying a private restriction case will exclude evidence of the zoning. This is done on the grounds of immateriality."

The ZHB should have excluded the neighboring property owners' evidence and testimony regarding the restrictions in the Declaration of Easements and Covenants and the Open

Space Management Plan. If the neighboring property owners wanted to seek enforcement of such restrictions, then they would have to do so by bringing a separate action in equity for an injunction or damages – not as part of their opposition against an application before the ZHB. The fact that there were restrictions in the Declaration of Easements and Covenants and the Open Space Management Plan was irrelevant in the appeal before the Court on the question of whether a special exception should have been granted by the ZHB under the Zoning Ordinance.

For more information about this issue, please contact Lauren Taylor at 215.918.3625 or lwaylor@foxrothschild.com.



Fox Rothschild LLP
ATTORNEYS AT LAW

© 2008 Fox Rothschild LLP. All rights reserved. This publication is intended for general information purposes only. It does not constitute legal advice. The reader should consult with knowledgeable legal counsel to determine how applicable laws apply to specific facts and situations. This publication is based on the most current information at the time it was written. Since it is possible that the laws or other circumstances may have changed since publication, please call us to discuss any action you may be considering as a result of reading this publication.

California Delaware Florida Nevada New Jersey New York Pennsylvania

www.foxrothschild.com