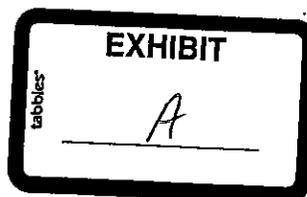


ZONING HEARING BOARD
BOROUGH OF TARENTUM, PENNSYLVANIA

IN RE: Application of American First Enterprises, LLP d/b/a Oliver Outdoor

CONCLUSIONS OF ZONING HEARING BOARD

1. A Zoning Hearing Board hearing was held on May 29, 2019 at 6:30 P.M. in Council Chambers of Tarentum Borough.
2. Notice of the hearing was duly advertised and property involved was duly posted.
3. All witnesses were sworn in.
4. The applicant appealed the decision of the Code Enforcement Officer denying approval of a two-side digital billboard located in the Commercial Center (CC) Zone.
5. The application states the site is located within an easement granted by the property owner.
6. The owner of the property did not sign the application and did not participate in the hearing.
7. The Applicant did not present any proof that it does in fact have an easement.
8. When questioned by the Solicitor for the Zoning Hearing Board as to Applicant's authority to proceed, Applicant responded by stating it would email the easement to the Board's Solicitor.
9. The record was kept open solely for the purpose of the Applicant establishing the existence of the easement, which the Applicant did in fact establish.
10. The proposed 2-sided digital billboard is to be approximately 5 feet adjacent to the Tarentum Bridge roadway, be placed about 10 feet above the road and be 14 feet high and 48 feet wide, a total of 672 square feet on each side.



11. Illuminated billboards are not permitted in the CC Zone and are permitted only in certain overlay districts.

12. After a hearing on November 29, 2016 the Zoning Hearing Board denied an appeal of two other applications for illuminated double sided billboards at the same location. In one case the faces were to be 400 square feet, and in the other case the faces were to be 338 square feet.

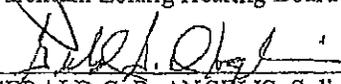
13. The Zoning Hearing Board can grant a variance only when and if the Findings of Fact are supported by 5 circumstances as outlined in Section 265-1404 of the Zoning Ordinance. None of those conditions are supported by the findings.

14. The Zoning Hearing Board may consider a special exception to the Ordinance if supported by 5 criteria as outlined in Section 265-1405 of the Ordinance. None of the criteria was established at the hearing.

15. The Zoning Hearing Board by roll call vote unanimously denied the application since it had no authority to grant same.



JOHN CIESLINSKI, Chairman
Tarentum Zoning Hearing Board



GERALD G. DeANGELIS, Solicitor
Tarentum Zoning Hearing Board

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

AMERICA FIRST ENTERPRISES LLP d/b/a OLIVER OUTDOOR, CIVIL DIVISION

Appellant,

No: SA-19-438

v.

ZONING HEARING BOARD OF THE BOROUGH OF TARENTUM, PENNSYLVANIA,

NOTICE OF APPEAL OF LAND USE DECISION

Appellee.

Filed on behalf of Appellant, America First Enterprises, LLP d/b/a Oliver Outdoor

Counsel of Record for this Party:

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APPELLEE:

Solicitor: Gerald G. DeAngelis, Esq. Borough of Tarentum Zoning Hearing Board 512 Market St Freeport, PA 16229-1245

FILED 2019 JUN 27 PM 3:28 DEPT OF COURT RECORDS CIVIL/FAMILY DIVISION ALLEGHENY COUNTY PA

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IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
CIVIL DIVISION

AMERICA FIRST ENTERPRISES LLP d/b/a)
OLIVER OUTDOOR,)
)
Appellant,) No:
)
v.)
)
ZONING HEARING BOARD OF)
BOROUGH OF TARENTUM,)
PENNSYLVANIA,)
)
Appellee.)

NOTICE OF APPEAL OF LAND USE DECISION

Appellant, America First Enterprises LLP, d/b/a Oliver Outdoor, and incorrectly designated below as American First Enterprises (hereinafter referred to as “Oliver Outdoor” or “Appellant”), by and through its undersigned counsel, hereby files the within Appeal pursuant to 53 P.S. § 11001-A, et seq., from the June 10, 2019 written decision of the Tarentum Borough Zoning Hearing Board, denying its appeal from the determination of the Borough Zoning Officer, as follows:

1. Appellant is an equitable owner of an easement in a certain parcel of property located at 107 E. Fourth Street in the Borough of Tarentum, Allegheny County, Pennsylvania (hereinafter referred to as the “Property”).

2. Appellee is the Zoning Hearing Board for the Borough of Tarentum, Allegheny County, Pennsylvania, with a business office located at 318 E. Second Ave, Tarentum, Pennsylvania 15084 (hereinafter referred to as “Appellee”, “Board” or the “ZHB”).

3. As indicated on the Borough’s official Zoning Map (“Zoning Map”), attached in the Borough’s official Zoning Ordinance (“Zoning Ordinance”), the Property is in the

Commercial Center or CC zoning district for the Borough of Tarentum. A copy of the Zoning Map is attached as **Exhibit 1**.

4. On May 29, 2019, the ZHB voted to deny Appellant Oliver Outdoor's appeal of a determination of the Zoning Officer to deny its Application for a Permit for an illuminated pole sign with two faces. A copy of a June 10, 2019 letter from the ZHB (the "ZHB Decision"), transmitting to Appellant Oliver Outdoor the so-called "Conclusions of Zoning Hearing Board" following the May 29, 2019 vote, is attached as **Exhibit 2**; a copy of the underlying Denial by the Zoning Officer is attached as **Exhibit 3**.

5. To date, the ZHB has not issued or served upon Appellant any Findings of Fact or Conclusions of Law in accordance with Section 908 of the Pennsylvania Municipalities Planning Code ("MPC"), but in light of the written document as the ZHB Decision served upon Appellant on June 10, 2019, Appellant has no choice but to file this Appeal in order to preserve its rights under the MPC.¹

6. The Denial had asserted that billboards are not a permitted use or conditional use in the CC zoning district.

7. Appellant then filed an appeal to the ZHB with regards to Denial, asserting that the permit should have been granted, given the numerous errors and contradictions within the Zoning Ordinance, which effectively prohibit billboards under the current ordinance's form. See **Exhibit 4**, Application/Appeal to ZHB.

8. At the hearing before the ZHB on May 29, 2019, Oliver Outdoor duly provided evidence about the inherent conflicts and contradictions throughout the Zoning Ordinance regarding billboards.

¹ Appellant further reserves its right to appeal/object to any subsequently issued Findings of Fact and Conclusions of law which may be subsequently issued by the ZHB in this matter.

9. Appellant submitted evidence to the ZHB establishing that, the Zoning Ordinance authorizes the following base zoning districts:

- (a) Commercial Center, CC;
- (b) Highway Commercial and Manufacturing District, HC-M;
- (c) Mixed Density Residential District, R-2;
- (d) Single Family Residential District R-1;
- (e) Public District, P-1; and
- (f) Roadway Commercial District, RC.

See, Section 265-401, "Authorization of Districts," attached hereto as **Exhibit 5**.

10. Section 265-401 also enumerates certain overlay districts which are authorized, namely: a) RFO Riverfront Overlay, and b) Floodplain District; but **no other zoning districts or overlay districts are authorized under Section 265-401.**

11. "Billboard" is defined by the Zoning Ordinance as "A sign, upon which advertising matter of any character is printed, posted or lettered, which is erected upon a property bearing no establishment or principal building." Section 265-202, Definitions.

12. Appellant further submitted evidence and testimony that, of the zoning districts expressly authorized by Section 265-401 of the Zoning Ordinance, only the RC Roadway Commercial District permits the use of a billboard as a permitted use; this would be a permitted use, not a conditional use, in that district. Section 265-409, attached hereto as **Exhibit 6**.

13. However, a review of the official zoning map attached to the Zoning Ordinance shows that **there is no property in fact zoned in the RC or Roadway Commercial District;** indeed, the RC district cannot be found anywhere on the official Zoning Map. See, Exhibit 1.

14. Later in the Zoning Ordinance, under the provisions dealing with Specific Conditional Use Standards, Section 265-402(B) states that "billboards are authorized as a

conditional use as follows in the C-3 heavy commercial district on otherwise vacant parcels of land.....” A copy of Section 265-402(B) is attached as **Exhibit 7** (Emphasis added).

15. **The Zoning Ordinance, however, does not have an authorized zoning district of C-3, nor does the Zoning Map show that district, or any property being zoning C-3.** See Exhibit 1.

16. Later in the Zoning Ordinance, under Article VII for Signs, General Standards, Section 265-702(I) states “Billboards, as defined, shall be permitted in the RRO Rural Resource Overlay District. (See Section 265-406, Subsection F.)” A copy of Section 265-702(I) is attached as **Exhibit 8**.

17. **But there is no Section 265-406, Subsection F, nor are there any regulations in the Zoning Ordinance for the so-called” RRO Rural Resource District.**” A copy of Section 265-406 is attached as **Exhibit 9**.

18. While the Zoning Map attached to the official Zoning Ordinance does appear to indicate an additional overlay district called the “RRO Rural Resource (sic) Overlay” within the R-1 Single Family Residential District, **this alleged RRO Rural Resource Overlay District is not authorized by Section 265-401, and the Zoning Ordinance does not contain any regulations regarding this District,** other than the sole stray reference to it in the Sign Regulations in Section 265-702(I) (which in turn refers to a regulation Section 265-406(F), which does not exist). See Exhibit 1, 5, 8 and 9.

19. Thus, under the current Zoning Ordinance, there is, in fact, no property in the Borough which is authorized for the use of billboards (illuminated or otherwise).

20. A de facto exclusion exists where an ordinance permits a use on its face, but when applied, acts to prohibit the use throughout the municipality. See., e.g., Macioce v. Zoning Hearing Board of Borough of Baldwin, 850 A.2d 882, 887 (Pa.Comm. 2004).

21. The current zoning Ordinance is de facto exclusionary regarding the use of billboards.

22. Since “billboards are not objectionable per se, a blanket prohibition on billboards without justification cannot pass constitutional muster.” Township of Exeter v. Zoning Hearing Board, 599 Pa. 568, 962 A.2d 653 (2009).

23. Here, there is no property in any authorized district which is permitted the use of a billboard: the sole authorized district is the RC District, but there is no property actually zoned in the RC District, as per the official Zoning Map.

24. There is absolutely no evidence in the record from the Borough or other objector, showing that such an exclusion bears a substantial relationship to the public health, safety, morality or welfare.

25. The Zoning Ordinance, with its de facto exclusion of the use of billboards, is invalid and unconstitutional.

26. It was an error of law for the Board not to find a de facto exclusion of billboards under the Zoning Ordinance, which was indeed well within its “authority.”

27. Given this improper exclusion of a legitimate use, the “sole remedy is to allow the use somewhere in the municipality and equity dictates that this opportunity fall to the successful litigant.” Lamar Advertising of Penn, LLC v. Zoning Hearing Board of the Borough of Deer Lake, 915 A.2d 705, 710 (Pa. Commw. 2007).

28. The conclusions in the Zoning Officer’s Denial are erroneous, inaccurate, and should be overruled.

29. Likewise, the conclusions in the ZHB Decision are erroneous, inaccurate, and should be overruled.

30. Notwithstanding the evidence showing the de facto exclusion of the billboard use under the current Zoning Ordinance, the ZHB erroneously held that use was not permitted, and improperly denied Appellant's appeal and request for relief.

31. The ZHB Decision with respect to the Appeal of the underlying Denial by the Zoning Officer, is not supported by substantial evidence, was erroneous, constitutes an abuse of discretion and is contrary to law.

32. The ZHB erroneously applied the standards for a use or dimensional variance to the instant appeal in paragraph 13 of the Decision, such that the ZHB Decision was not supported by substantial evidence, was erroneous, constitutes an abuse of discretion and is contrary to law.

33. The ZHB erroneously applied the standards for a special exception to the instant appeal in paragraph 14 of the Decision, such that the ZHB Decision was not supported by substantial evidence, was erroneous, constitutes an abuse of discretion and is contrary to law.

34. The ZHB Decision's holding in paragraph 15 that "it had no authority to grant" the requested relief on the Application, was erroneous, inaccurate, an abuse of discretion, and should be overruled.

35. Further, to the extent the ZHB Decision relied upon alleged prior decisions in prior hearings in 2016, no evidence of which were before the ZHB and also were entirely irrelevant, the instant ZHB Decision was erroneous, inaccurate, an abuse of discretion, arbitrary and capricious.

36. The ZHB Decision erroneously failed to find the Zoning Ordinance was de facto exclusionary, despite the evidence showing the internal contradictions and holes in the Zoning Ordinance and Zoning Map, such that there is no property in the Borough zoned in an authorized district for such a use.

37. The ZHB's denial of the instant Appeal is arbitrary, capricious and without support in law or fact.

38. The ZHB Decision is not supported by substantial evidence, constitutes an abuse of discretion, and is contrary to law.

39. The ZHB Decision fails to comply with the requirements of Section 908 of the MPC.

40. Appellant appeals the decision of the Tarentum ZHB for each of the following additional reasons.

41. Appellant's protected financial, property and due process rights were substantially and materially affected by the Tarentum ZHB's decision.

42. Statements, actions and decisions by the Tarentum ZHB and the Zoning Officer in connection with Appellant's use of this Property violated Appellant's constitutional and due process rights afforded Appellant by virtue of the United States and Pennsylvania Constitutions.

43. The Tarentum ZHB's May 29, 2019 Decision was arbitrary, capricious, and discriminatory.

44. The Tarentum Borough Zoning Ordinance, in whole or in part, is unconstitutional and invalid.

45. The Tarentum Borough Zoning Ordinance is substantively invalid, in that it does not permit the use of billboards anywhere in the Borough and is therefore de facto exclusionary.

46. The Borough failed to provide any evidence that such an exclusion has a substantial relationship with public health, safety, morality or general welfare.

47. Pursuant to Section 603.1 of the Pennsylvania Municipalities Planning Code, any doubt in the interpretation of any restriction of a zoning ordinance shall be interpreted in favor of the property owner and against any implied extension of the restriction, 53 P.S. §10603.1.

48. Appellant is entitled to site-specific relief from the Court under Section 1006-A of the MPC. Adams Outdoor Advertising v. Hanover Township Zoning Hearing Board, 633 A.2d 240 (Pa.Comm. 1992)(where there was a de facto exclusion of billboards in zoning, and township failed to produce evidence that would show the proposed sign would be injurious to the public health, safety and welfare of its citizens, court should have ordered township to issue sign permit as requested by appellant).

49. The Tarentum Borough Zoning Ordinance is impermissibly ambiguous, vague, contradictory, incapable of objective criteria and violative of the United States and Pennsylvania Constitutions.

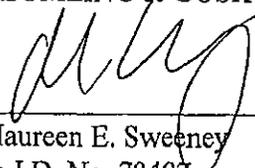
50. Appellant challenges the validity of the Tarentum Borough Zoning Ordinance on the basis that it is exclusionary, impermissibly vague, contradictory, incapable of objective criteria and violative of the United States and Pennsylvania Constitutions and the MPC.

WHEREFORE, Appellant America First Enterprises LLP d/b/a Oliver Outdoor respectfully requests that this Honorable Court sustain their appeal, vacate the decision of the Zoning Hearing Board for the Borough of Tarentum, and further direct the Tarentum officials to issue a permit as outlined on the Application as site specific relief, authorized by Section 1006-A of the MPC.

Respectfully submitted,

BLUMLING & GUSKY LLP

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