

ARTICLE IV

District Regulations

§ 265-401 AUTHORIZATION OF DISTRICTS

The following Base Zoning Districts are authorized by this Chapter and shall be depicted on the Zoning Map.

- 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.
- F. Roadway Commercial District, RC.

The following Overlay Zoning Districts are authorized in this Chapter and shall be depicted on the Zoning Map.

- A. RFO Riverfront Overlay.
- B. Floodplain District as depicted on the most current Flood Insurance Rate Maps as defined herein.

§ 265-402 COMMERCIAL CENTER, CC

- A. Purpose. The purpose of the CC District is to promote the character and vitality of Tarentum's traditional downtown through preservation of existing structures and development and redevelopment of commercial and residential structures and uses.
- B. Traditional Neighborhood Development. Where any construction or improvement of structures in the CC Commercial Center District constitutes a Traditional Neighborhood Development (TND) as defined in Article II of this Chapter, the construction or improvement shall meet the standards and require approval in accordance with the Article VI of this Chapter. In addition, to the extent possible, construction or improvement should meet the guidelines prepared by the Pittsburgh History and Landmarks Foundation, attached as an appendix to this Ordinance.
- C. Permitted Uses. The following uses shall be authorized within the CC District subject to the performance standards of this Article.
 - (1) Administrative And Professional Offices
 - (2) Adult Day Services Center
 - (3) Animal Hospital/Clinic

- C. Basic Dimensional Standards: Dimensional standards shall be determined based on the characteristics of the use proposed and the physical attributes of the land being developed.

§265-409 RC, ROADWAY COMMERCIAL DISTRICT

- A. Purpose. The RC District is designed to encourage innovative commercial development along the Borough's Route 28 corridor while retaining the essential characteristics of the region and protecting the Borough's natural features.

- B. Permitted Uses. The following uses shall be authorized as permitted uses within the RC District:

- (1) All permitted and conditional uses in the R-1 Single Family District
- (2) Administrative and Professional Offices
- (3) Banquet Hall
- (4) Entertainment Recreation Facilities, Indoor
- (5) Personal Care Home
- (6) School, Private
- (7) Group Residential Facility
- (8) Hospital or Clinic
- (9) Transitional Residential Facility
- (10) Animal Hospital/Clinic
- (11) Warehouse
- (12) Billboards

- C. Basic Dimensional Standards. The following shall apply to all uses authorized:

- (1) Minimum Front Yard: 75 Feet
- (2) Minimum Side Yard: 60 Feet
- (3) Minimum Rear Yard: 75 Feet
- (4) Maximum Lot Coverage: 40 Percent
- (5) Maximum Impervious Surface Coverage: 60 Percent
- (6) Minimum Lot Area: 40,000 square feet
- (7) Minimum Lot Width: 150 feet

- D. Dimensional Standards for authorized conditional uses.

- (1) Minimum Front Yard: 75 Feet



- (2) Minimum Side Yard: 75 Feet
 - (3) Minimum Rear Yard: 75 Feet
 - (4) All yards shall increase by five feet for every thousand square feet of gross floor area beyond five thousand square feet of total gross floor area of buildings on the lot.
 - (5) Maximum Lot Coverage: 35 Percent
 - (6) Maximum Impervious Surface Coverage: 50 Percent
 - (7) Minimum Lot Area: 80,000 square feet
 - (8) Minimum Lot Width: 50 feet
 - (9) Maximum Building Height: 45 feet or three stories, whichever is less.
- E. Billboards are authorized permitted uses in the RC District, either as a principle or accessory use, subject to Pennsylvania Department of Transportation (PennDOT) regulations where such billboard is proposed on land abutting a Commonwealth owned and maintained right-of-way and the following standards:
- (1) Billboards may not exceed forty-two feet (42') in width and fourteen feet (14') in height.
 - (2) Billboards may not be illuminated after 1 a.m. and before 6 a.m.
 - (3) Billboards may not be placed closer than five hundred feet (500') from any point on another billboard.
 - (4) An annual billboard permit fee shall be paid to the Borough, upon inspection, at a rate set by Council by resolution, as may be amended from time to time.

- (2) Where new structures are proposed, building elevations showing building façade treatments.
- (3) The following shall be submitted as an impact study.
 - (a) Information concerning the average number of daily vehicle trips estimated to be generated by such use, with peak-hour vehicle trip ends identified.
 - (b) Information concerning the estimated amount of tax revenue to be generated by such a use, broken down by revenue to paid to the Borough, Allegheny County, and the Highlands School District.
 - (c) Information concerning the estimated cost of public services to be provided to such use, broken down by cost to be borne Borough, Allegheny County, and the Highlands School District, including police, transportation, and other public services.
 - (d) Applicants shall submit a narrative detailing the proposed use including gross floor area, number of employees, operating hours, and a general synopsis of business or use activities and operating polices, including information sufficient to demonstrate compliance with State licenses as may be required.
- (4) Required fee per the Borough's adopted fee schedule.
- (5) The applicant shall indicate in writing whether or not the applicant is willing to accept the decision of a hearing officer if the Borough Council, by majority vote, accepts the decision and findings of a hearing officer in lieu of its own decision and findings, as authorized in Section 913.2 of the Pennsylvania Municipalities Planning Code, as amended.

§ 265-502 SPECIFIC CONDITIONAL USE STANDARDS

A. Automotive Sales And Leasing

- (1) The impervious area utilized for the retail display of vehicles shall not exceed twice that of the gross floor area of the principal structure.
- (2) A full parking plan shall be submitted delineating areas reserved for employee and customer parking versus those to be utilized for retail display of vehicles.
- (3) Display of vehicles shall be within parking spaces that are striped and landscaped in accordance with those standards otherwise applied to parking lots throughout this Chapter.
- (4) In lieu of screening requirements, the applicant may install one additional ornamental tree for every thirty feet of screening omitted in order to permit visibility of the retail display of vehicles on the lot. Said trees shall be

installed within the landscaping area from which the required screening was omitted.

B. Billboards. Billboards are authorized as a conditional use as follows in the C-3 Heavy commercial district on otherwise vacant parcels of land.

- (1) The billboard shall be limited to 200 square feet.
- (2) The billboard shall be set back a minimum of 500 feet from the property line of any lot bearing an existing single family dwelling.
- (3) The billboard shall be setback at least 100 feet from any side or rear property line notwithstanding stricter provisions regarding residentially zoned properties.
- (4) The billboard shall be set back at least 20 feet from any street and shall be located within 125 feet of the right of way of Route 28 and oriented to Route 28.
- (5) Manual changeable copy signs and electronic message centers as defined in Article VIII are not permitted in association with a billboard.
- (6) No flashing or colored lighting are permitted in association with any billboard.

C. Drive Through Facilities and Car Washes

- (1) A minimum of 100 feet as a stacking lane shall be provided with an additional twenty feet of stacking required for each bay or station beyond one. The lane(s) shall be at least ten feet in width.
- (2) Drive through facilities shall be situated on parcels bearing a lot size of 20,000 square feet or greater.
- (3) All drive through lanes shall abide by the same setbacks imposed on principal building structures as applied to the lot on which the facility is constructed.

D. Animal Hospital or Clinic, Commercial Kennel

- (1) Exterior runs shall be enclosed by a secured opaque fence of six feet in height which shall be setback the same distance as required for principal building, as applied to the lot on which the establishment operates. Use of the runs shall not occur before 8 am and after 9 pm.

E. Hospitals and Transitional Residential Facilities

- (1) Notwithstanding stricter standards otherwise applied by this Chapter, the principal building housing the establishment or facility shall be set back 300 feet from a preexisting dwelling unit, day care or adult day care center, nursery school, or local public use, church, or other hospital. The same requirement shall apply to heliports accessory to the facility. The establishment shall be situated on a lot with a lot area of one acre or greater.

ARTICLE VII

SIGNS

The construction, operation, improvement, and maintenance of all signs in the Borough of Tarentum shall be subject to the standards outlined in this Article.

§ 265-701 CALCULATION METHODS

- A. For purposes of this Article, sign area shall be calculated as follows:
- (1) In the case of panel or cabinet type signs, the sign area shall include the entire area of the sign panel, cabinet or face substrate upon which the sign copy is displayed or illustrated.
 - (2) Signs consisting of individual letters and/or elements or logos installed directly on a building surface will be measured as one sign when the distance between the letters and/or elements is less than the largest dimension of the largest sign letter.
 - (3) When the sign faces of a multi-sided sign are parallel or within 30 degrees of parallel, only one side is counted. If the sign faces are not parallel or within 30 degrees of parallel, all sign faces are counted.
- B. Where sign area allotment is calculated based on building frontage, the linear feet used shall be the length of the building façade at ground level.

§ 265-702 GENERAL STANDARDS

- A. Obscene material, illustrations, or language shall not be depicted or displayed on any sign.
- B. To the extent possible, signs should meet the design guidelines prepared by the Pittsburgh History and Landmarks Foundation, attached as an appendix to this Ordinance.
- C. Notwithstanding that any signs not expressly authorized within this Article are prohibited, the following are expressly prohibited:
- (1) Flashing Signs.
 - (2) Banners, series of balloons, and pennants.
 - (3) Balloons and other inflatable objects with a diameter of 2 feet or greater.
 - (4) Signs larger than 2 square feet that are suspended by chains, ropes, or other means designed to allow the sign to swing or move freely.
 - (5) Roof Signs.
 - (6) Signs affixed directly to a tree, utility pole, light pole, traffic control device, barn, shed, or roof of a building or structure.



- (7) Back-lit, translucent awnings or canopies.
 - (8) Permanent signs made of plywood, pressed board, MDO or non-exterior grade wood products.
 - (9) Signs attached to or painted on a licensed vehicle within a residential zoning district if such sign is visible from a public street where such is displayed with the intent of advertising.
- D. Signs shall not block required sight distance at intersections of streets and access roads and driveways to streets.
 - E. No sign or structure shall be erected at any location where, by reason of the position, shape or color of the sign or structure, it may interfere with, obstruct the view of or be confused with any authorized traffic sign, signal or device or public directional, emergency, or street signage.
 - F. The display of signage within public rights of way, including sidewalks within public rights of way shall be governed by Article VII of this Ordinance.
 - G. Window signs displayed on a permanent basis shall be considered as walls signs for purposes of this Article.
 - H. All external lighting associated with signs shall be provided as indirect lighting.
 - I. Billboards, as defined, shall be permitted in the RRO Rural Resource Overlay District. (See Section 265-406, Subsection F)

§ 265-703 EXEMPTIONS

The following signs shall not require a permit. The sign area of the following shall not count toward maximum sign area requirements imposed by this Article.

- A. Public, Semi-Public, and Commemorative Signs and Monuments including signs established by, or by order of, any governmental agency; and religious symbols, commemorative plaques of recognized historic agencies, or identification emblems of religious orders or historic agencies.
- B. Signs indicating the address or name of a building up to two square feet for single family dwellings and six square feet for all other uses.
- C. One "For Sale" or "For Rent" sign is allowed per street frontage. Such signs must be removed within 7 days after the sale, rental, or lease has been accomplished.
- D. "For Sale" or "For Rent" signs on lots containing a single-family dwelling unit or zoned for single-family residential development may not exceed 9 square feet in area.
- E. "For Sale" or "For Rent" signs on lots containing principal uses other than single family dwellings may not exceed the greater of 32 square feet or 0.25 square feet of sign area per each linear foot of street frontage for the first 150 feet of street frontage and 0.10 square feet of sign area for each linear foot of street

- (4) Maximum Lot Coverage: 60 Percent
- (5) Maximum Impervious Surface Coverage: 75 Percent
- (6) Minimum Lot Area: 7,500 square feet
- (7) Minimum Lot Width: 50 feet
- (8) Maximum Building Height: 40 feet or two and one half stories, whichever is less.

§ 265-406 RFO RIVERFRONT OVERLAY

- A. Purpose. The RFO District is designed to encourage innovative development in conjunction with complementary protection of the Borough's natural features and assets, including its riverfront and wooded hillsides.
- B. Applicability of the Districts. The RFO District shall be designated as an overlay district. Therefore, the district standards, whether greater or lesser than those of the underlying base zoning district, shall prevail when uses expressly authorized within the overlay are constructed, operated, and maintained.
- C. The following uses shall be authorized as permitted uses within the RFO District:
 - (1) All permitted and conditional uses in the R-1 Single Family District.
 - (2) Administrative and Professional Offices
 - (3) Banquet Hall
 - (4) Entertainment Recreation Facilities, Indoor
 - (5) Personal Care Home
 - (6) School, Private
 - (7) Group Residential Facility
 - (8) Planned Commerce Park Model
 - (9) Hospital or Clinic
 - (10) Transitional Residential Facility
 - (11) Animal Hospital/Clinic
- D. Basic Dimensional Standards. The following shall apply to all uses authorized
 - (1) Minimum Front Yard: 75 Feet
 - (2) Minimum Side Yard: 60 Feet
 - (3) Minimum Rear Yard: 75 Feet
 - (4) Maximum Lot Coverage: 40 Percent
 - (5) Maximum Impervious Surface Coverage: 60 Percent



- (6) Minimum Lot Area: 40,000 square feet
 - (7) Minimum Lot Width: 150 feet
- E. Dimensional Standards for authorized conditional uses. The Planned Commercial Park Model shall be subject to the standards enumerated in Section 265-504.
- (1) Minimum Front Yard: 75 Feet
 - (2) Minimum Side Yard: 75 Feet
 - (3) Minimum Rear Yard: 75 Feet
 - (4) All yards shall increase by five feet for every thousand square feet of gross floor area beyond five thousand square feet of total gross floor area of buildings on the lot.
 - (5) Maximum Lot Coverage: 35 Percent
 - (6) Maximum Impervious Surface Coverage: 50 Percent
 - (7) Minimum Lot Area: 80,000 square feet
 - (8) Minimum Lot Width: 50 feet
 - (9) Maximum Building Height: 45 feet or three stories, whichever is less.

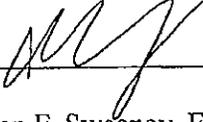
§ 265-407 FLOODPLAIN DISTRICTS

- A. Purposes. The purpose of these provisions is to prevent the loss of property and life, the creation of health and safety hazards, the disruption of commerce and governmental services, the extraordinary and unnecessary expenditure of public funds for flood protection and relief and the impairment of the tax base by:
- (1) Regulating uses, activities and development which, acting alone or in combination with other existing or future uses, activities and development, will cause unacceptable increases in flood heights, velocities and frequencies.
 - (2) Restricting or prohibiting certain uses, activities and development from locating within areas subject to flooding.
 - (3) Requiring all those uses, activities and developments that do occur in flood-prone areas to be protected and/or floodproofed against flooding and flood damage.
 - (4) Protecting individuals from buying lands and structures which are unsuited for intended purposes because of flood hazards.
- B. Applicability.
- (1) These provisions shall apply to all lands within the jurisdiction of the Borough of Tarentum and shown as being located within the boundaries of the

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by: Appellant, America First Enterprises,
LLP d/b/a Oliver Outdoor

Signature: 

Name: Maureen E. Sweeney, Esquire

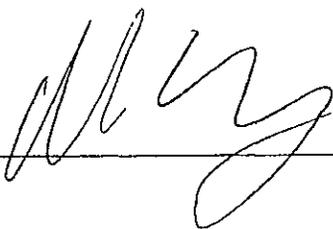
Attorney No. (if applicable): 70497

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **NOTICE OF APPEAL** was served this 27th day of June, 2019, upon the following, by depositing the same in the United States Mail, First Class, Postage Pre-Paid:

Borough of Tarentum
Zoning Hearing Board
318 E. Second Ave
Tarentum, PA 15084

Gerald G. DeAngelis, Esq.
512 Market St
Freeport, PA 16229-1245
(Solicitor for Tarentum Zoning Hearing Board)



IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

America First Enterprises LLP/
d/b/a Oliver Outdoor

Appellant,

vs.

Zoning Hearing Board of The Borough of
Tarentum, PA

Appellee

CIVIL DIVISION

SA 19-000438

2019 DEC -3 PM 3:31
COURT REPORTER
CIVIL FAMILY DIVISION
ALLEGHENY COUNTY

ORDER OF COURT

AND NOW, this 3rd day of December, 2019, it is ORDERED and DECREED, that this matter is remanded to the Zoning Hearing Board for an Evidentiary Hearing to determine whether the zoning order is *de facto* exclusionary

BY THE COURT:



IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

America First Enterprises LLP/
d/b/a Oliver Outdoor

Appellant,

vs.

Zoning Hearing Board of The Borough of
Tarentum, PA

Appellee

CIVIL DIVISION

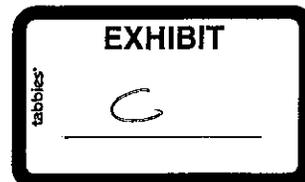
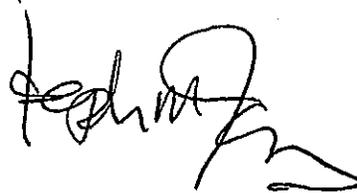
SA 19-000438

2019 DEC - 3 PM 3: 31
CIVIL FAMILY DIVISION
ALLEGHENY COUNTY

ORDER OF COURT

AND NOW, this 3rd day of December, 2019, it is ORDERED and DECREED, that this matter is remanded to the Zoning Hearing Board for an Evidentiary Hearing to determine whether the zoning order is *de facto* exclusionary

BY THE COURT:



Maureen Sweeney

From: Larry Loperfito <ldl@gllawyers.com>
Sent: Thursday, August 13, 2020 1:59 PM
To: Maureen Sweeney; A. Colleen Schantz (regoli@regolilaw.com)
Cc: Sandra Kephart; Michael Nestico
Subject: Oliver Outdoor/Tarentum Borough
Attachments: Certified Zoning Ordinance.pdf; Praecepte to File Opinion.pdf; Praecepte to File Transcript & Exhibits.pdf; Consent Order of Court.pdf; Executed Opinion.pdf

Dear Maureen and David:

Attached please find a copy of the Opinion of the Tarentum Borough Zoning Hearing Board. The original in the official Borough files. If there is no objection, I will file as attached. Additionally, attached please find a Consent Order permitting us to close the record and filing, of record, the opinion, the zoning ordinance and the exhibits. A copy of the Zoning Ordinance to be filed is attached hereto as well to allow you to verify the same against the copies in your possession. Also attached are copies of the Praeceptes to file the opinion, transcript and exhibits.

My paralegal has reached out to Madonna Melle at Judge James' chambers who has proposed the Consent Order of Court to allow the Judge to move forward. Please contact me with any questions or concerns, with a "reply all" to this email. Thank you for your attention to this matter.

c: Mike Nestico

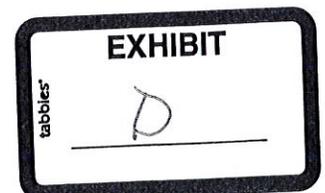


Larry D. Loperfito, Esq.
Geary, Loperfito & Generelli, LLC
159 Lincoln Avenue
Vandergrift, PA 15690
(724) 568-3694
(724) 568-2500 (Fax)
ldl@gllawyers.com

NOTE: OUR OFFICE IS FOLLOWING ALL RESTRICTIONS OF THE GOVERNOR OF PENNSYLVANIA AS WELL AS THE GUIDANCE AND RECOMMENDATIONS OF THE CDC FOR THE OPERATION OF OUR OFFICE. MASKS MUST BE WORN AT ALL TIMES WHEN ENTERING OUR OFFICE. SOCIAL DISTANCING IS IN PLACE AND WILL APPLY TO ALL CLIENTS AS WELL. THANK YOU FOR YOUR CAUTION DURING THIS TIME.

The information contained in this e-mail message may be attorney work product, privileged, confidential and protected from disclosure. If you are not the intended recipient, any dissemination, distribution or copying is strictly prohibited. If you think that you have received this e-mail message in error, please e-mail the sender at the above e-mail address.

Circular 230 Notice: To comply with IRS regulations, please note that any discussion of Federal tax issues in this email (and in any attachments) is not intended or written



to be used, and cannot be used, by any taxpayer for the purpose of (a) avoiding any penalties imposed under the Internal Revenue Code or (b) promoting, marketing or recommending to another party any transaction or matter addressed herein.

TARENTUM BOROUGH ZONING HEARING BOARD

APPEAL BY: AMERICA FIRST ENTERPRISES, LLP
d/b/a OLIVER OUTDOOR

DATE OF DECISION: JUNE 29, 2020

The Zoning Hearing Board of the Borough of Tarentum held a public hearing on June 29, 2020 at the Tarentum Borough Council Chambers, 318 East Second Avenue, Tarentum, Allegheny County, Pennsylvania 15084 to hear a remand from the Court of Common Pleas of Allegheny County by Order of Court issued by the Honorable Joseph James to the limited issue of whether the Tarentum Borough Zoning Ordinance is *de facto* exclusionary.

SUMMARY

The Zoning Hearing Board of the Borough of Tarentum, after COVID-19 related delays, held a public meeting on June 29, 2020 on the limited specific issue of whether the Tarentum Borough Zoning Ordinance is *de facto* exclusionary. As part of the official record, the Board accepted the following exhibits:

1. Board Exhibit R-1 – Order of Court of the Honorable Joseph James dated December 3, 2019;
2. Board Exhibit R-2 – Proof of legal advertising for the proposed March 26, 2020 Zoning Hearing;
3. Board Exhibit R-3 – Proof of legal advertising for the cancelled March 26, 2020 hearing;

4. Board Exhibit R-4 – Proof of legal advertising for the June 29, 2020 Zoning Hearing;
5. Borough of Tarentum Exhibit R-1 -- Transcribed minutes of the regular Council meeting of the Borough of Tarentum dated February 18, 2013;
6. Borough of Tarentum Exhibit R-2 – Draft zoning map of Borough of Tarentum;
7. Appellant Exhibit R-A – Containing proposed sign site plan, photos of site and surrounds, Tarentum Zoning Ordinance, Tarentum zoning map, Section 265-401, Section 265-409, Section 265-502, Section 265-702, Section 265-406 and Wooster CV and photos with proposed sign illustration;
8. Appellant Exhibit R-B – Chapter 265-406 RFO – Riverfront Overlay and RRO – Rural Resource Overlay District;
9. Appellant Exhibit R-C – Chapter 265-406 RFO – Riverfront Overlay and RRO – Rural Recourse Overlay District.
10. Appellant Exhibit R-D – Section 265-401 – Authorization of Districts.

Following a hearing on the merits of the matter, with all parties being heard and having the opportunity to present and cross examine witnesses, the Zoning Hearing Board of the Borough of Tarentum, Allegheny County, Pennsylvania found, factually, and concluded as a matter of law, that the Zoning Ordinance of the Borough of Tarentum was not *de facto* exclusionary and sets forth their opinion as follows:

FINDINGS OF FACT

The Board finds as follows:

1. That the remanded hearing is from an Order of Court in the matter of America First Enterprises, LLP d/b/a Oliver Outdoor, Appellant, versus the Zoning Hearing Board of the

Borough of Tarentum, Appellee, at Allegheny County Civil Division Case SA 19-000483. Order issued on December 3, 2019 by the Honorable Joseph James. (The Order of Court was entered into the record as Exhibit Board R-1.)

2. The subject hearing was advertised in the Trib Total Media, Valley News Dispatch edition originally, on March 11 and March 18, 2020 (Notice of Hearing entered into the record as Exhibit Board R-2).

3. Due to the impact of COVID-19, the hearing originally scheduled for March 26, 2020 was cancelled. Notice of said cancellation having been published in the Trib Total Media, Valley News Dispatch edition on March 20, 2020 (Notice of advertising entered into the record as Exhibit Board R-3).

4. The hearing was rescheduled for June 29, 2020 and notice of said hearing was published in the Trib Total Media, Valley News Dispatch edition, on June 12 and June 19, 2020. (Proof of advertising entered into the record as Exhibit Board R-4.)

5. The Order of Judge Joseph James, dated December 3, 2019 states as follows: “And now, this 3rd day of December, 2019, it is ORDERED AND DECREED that this matter is remanded to the Zoning Hearing Board for an evidentiary hearing to determine whether the zoning *order* is *de facto* exclusionary. (Emphasis added.)

6. By agreement between the Borough of Tarentum, Intervenor, and Appellant, First American Enterprises, LLP d/b/a Oliver Outdoor, it was determined that the Zoning Hearing Board should interpret the order *to determine whether the zoning ordinance is de facto exclusionary.* (T-12 L-10-24.)

7. Jerome Oliver testified for the Appellant, American First Enterprises, LLP d/b/a Oliver Outdoor and stated that he filed the application because he “believed that the Zoning

Ordinance would permit it because it doesn't permit them anywhere, so I believed." (T-24 L-17-19.) Mr. Oliver testified under questioning from his legal counsel that he believes that he was entitled to seek a billboard permit even though they were not expressly permitted in the CC District. (T-24 L-21-25.)

8. Charles Wooster was called as a witness in his capacity as a Professional Engineer registered in the Commonwealth of Pennsylvania as well as Ohio and West Virginia specifically, as a Professional Traffic Operations Engineer, working with the firm David E. Wooster & Associates.

9. Upon Tarentum Borough's request for an offer of proof, it was determined that the testimony was being presented to seek site-specific relief testifying from a traffic perspective regarding why the location should be deemed reasonable and not injurious to the public health, safety and welfare in terms of traffic, said testimony was not accepted by the Zoning Hearing Board.

10. The Zoning Hearing Board determined that his testimony was not relevant for the remand hearing as all parties agreed that the sole purpose of the hearing was to determine whether the ordinance was in fact *de facto* exclusionary.

11. That America First Enterprises, LLP d/b/a Oliver Outdoor called no additional witnesses on direct examination in the case in chief portion of the remand hearing.

12. In support of their position on remand, America First Enterprises, LLP d/b/a Oliver Outdoor submitted the following exhibits:

- a. Appellant R-A (a notebook evidencing proposed sign site plan, photos of site and surrounds, the Tarentum Zoning Ordinance, the Tarentum Zoning Map, Section 265-401 Authorized Zoning Districts, Section 265-409 RC District, Section 265-502 Specific Conditional Use Standards, Section 265-702 Signs, Section 265-406 and Wooster CV and photos with proposed sign illustration.)

- b. Appellant R-B – Section 265-406 RFO Riverfront Overlay and RRO – Rural Resource Overlay District provisions from the Borough of Tarentum Zoning Ordinance Ecode360.com.
- c. Appellant R-C – Section 265-406 RFO Riverfront Overlay and RRO – Rural Resource Overlay Districts.
- d. Appellant R-D – Tarentum Borough Ordinance Section 265-401 – Authorization of Districts.

13. Michael Nestico testified on behalf of the Borough of Tarentum in his capacity as Borough Manager.

14. Mr. Nestico testified that he has been Borough Manager since January of 2018 and is the keeper of the official records of the Borough of Tarentum.

15. Mr. Nestico testified that he had the opportunity to look at the records and review the prior minutes and documents of the municipality relative to the Zoning Ordinance of the Borough of Tarentum.

16. Mr. Nestico testified that there are two different versions of the Borough Zoning Ordinance, one identified through an independent company, Ecode360, and one, located on the Borough website which was provided to the Board as Section 3 of the Exhibit Appellant R-A and was the Zoning Ordinance originally provided to Appellants at the time of application.

17. Mr. Nestico testified that Tarentum Borough held a public hearing on January 12, 2012 and ultimately adopted Zoning Ordinance 12-02 which contained language concerning a Riverfront Overlay District and a Rural Resource Overlay District where billboards were permitted; however, Mr. Nestico further indicated that the language was only in effect for about one year at which point the Borough amended 12-02 to remove said language from that Section and to place it into a new Section that was called Roadway Commercial District, RC District. (T-38 L-5-14.) Mr. Nestico testified that a public hearing was held in 2013 to adopt Zoning Ordinance 13-03;

referencing Exhibit Borough R-1, minutes of the regular Council meeting of February 18, 2013, Mr. Nestico indicated that said ordinance was adopted on February 18, 2013.

18. Mr. Nestico testified that the amendments identified three primary changes and, reading from the regular Council minutes stated “the first change is per the citizens who live northwest of new Route 28 in West Tarentum. They wanted the Rural Resource Overlay removed and the new Ordinance so removes it. It will not longer be in existence. That per the Planning Commission’s recommendation. The second is to add a district called the Roadway Commercial District. That district, and I don’t know if you can see it well in here and that district goes from Bakerstown Road out towards Cedar Street. It doesn’t go very deep, 750 feet deep, and it encompasses a couple vacant lots along Cedar and goes to Bakerstown Road and it goes further from there and explains a third change which is not relevant related to adult videos.” (T-40 L-22-25; T-41 L-1-13.) Mr. Nestico further testified from the minutes of February 18, 2013 “the language where we can regulate billboards which was removed from the RRO was in fact added the Roadway Commercial District where we can add – let’s see, we can add a permit fee on resolution of Council, height and width regulations that we had in the prior Ordinance. So, they are in this just in another place.” (T-42 L-2-9.)

19. Mr. Nestico testified further that the prior Borough Solicitor, in addressing the Tarentum Borough Council responded to a question of Council, “how far from Bakerstown Road are we talking?” to which he replied “to Bakerstown Road, this Roadway Commercial District starts at Bakerstown Road and goes East toward Bullcreek Road to Cedar Street, and its 750 feet deep and just that wide.” (T-43 L-11-17.)

20. Mr. Nestico further testified that during the same Council meeting “the Councilman asks “Why are we changing that? What’s the reason for that?” The Solicitor responds “to put billboards in.” (T-43 L-21-24.)

21. Mr. Nestico testified, further, from the Council meeting transcripts, which he identified were of actual transcripts of the Council meetings, wherein it is stated “Mr. Grimm had three proposals and this is actually the 4th and was a compromise on his part to put that there.” (T-44 L-6-8.)

22. Mr. Nestico further testified that in 2014, the Zoning Ordinance was again revisited at which time the Council amended 409-E in which they expanded the size of billboards from 42 feet to 48 feet. (T-46 L-12-18.)

23. Mr. Nestico acknowledged inconsistencies or mistakes in the Tarentum Zoning Ordinance but indicated that “you can put a billboard in the Roadway Commercial District along the Route 28 corridor. You know, that has been done since this Ordinance was fully adopted and amended.” (T-49 L-22-25.) Mr. Nestico testified that there has been one billboard placed in the Roadway Commercial District since the enactment of the Ordinance amendments in 2014 which said application was approved by the Council of the Borough of Tarentum. (T-50 L-23-25; T-51 L-1.)

24. The Borough admitted Exhibit Borough R-2 a draft zoning map of Tarentum Borough, Allegheny County.

25. Mr. Nestico testified that discrepancies existed between the official Zoning Ordinance of the Borough of Tarentum and the version identified on the website owned by Ecode360.

26. Mr. Nestico further testified that references to Section 265-406 in the RRO – Rural Resource Overlay District on Ecode360 were inaccurate.

27. Mr. Nestico indicated that during his tenure as Manager changes were not provided to Ecode360 to amend the documents because the Borough is in the process of preparing a new Zoning Ordinance.

28. Mr. Nestico testified that Ecode360 remains on the Borough website because they cannot simply remove the one Ordinance or one document and stated “we have Ordinances – the entire Borough Code is listed on there, so 265 Chapters, obviously not all-inclusive, but there are a number of documents on there.” (T-64 L-1-5.)

29. Anthony Bruni testified for the Borough of Tarentum as the Code Enforcement and Zoning Officer.

30. Mr. Bruni testified that he is aware of multiple billboard applications for property near the Tarentum bridge, including an application filed regarding property identified as the Weleski property.

31. Mr. Bruni testified that the application was denied by the Zoning Hearing Board.

32. Mr. Bruni testified that there was a second request for a variance filed by Brian Marra who owns a business adjacent to the Weleski property.

33. Mr. Bruni indicated that the Zoning Hearing Board denied the Marra application for variance.

34. Mr. Bruni testified that Ross Grimm filed an application with the Borough of Tarentum for a billboard on the Route 28 corridor within the Borough of Tarentum.

35. Mr. Bruni did not believe that the Grimm matter was heard before the Zoning Hearing Board.

36. Mr. Bruni indicated that a permit was issued for the Grimm billboard on the Route 28 corridor.

37. Mr. Bruni testified that if an application was presented in the Roadway Commercial District for a billboard and as long as the plan specifications met all other terms of the Ordinance it would go through without the need for a Zoning Hearing. (T-74 L-14-19.)

38. Ross Alan Grimm testified. Mr. Grimm testified that he applied for a sign permit for a property that he owns along the Route 28 corridor in 2014.

39. Mr. Grimm testified that he met with the "Zoning Officer, Council. The property was zoned Highway Commercial, which permitted the LED billboard." (T-78 L-12-16.)

40. Mr. Grimm testified that he did receive the billboard permit without proceeding before the Zoning Hearing Board. (T-78 L-17-25.)

41. On cross-examination, Mr. Grimm testified that his application was presented in the RC Highway Commercial District and that the billboard is on property that he owns in said district.

42. Michael Nestico was recalled testifying and testified that the application of Ross Grimm was presented in the form of zoning application or billboard application on July 24, 2015.

43. Mr. Nestico testified that he doesn't have the exact date that the billboard was granted.

CONCLUSIONS OF LAW

The Board concludes, as matter of law, as follows:

1. That Tarentum Borough possesses one official Zoning Ordinance, said Zoning Ordinance having been provided to the applicants at the time of application and said Ordinance having been made part of Appellant's Exhibit R-A (tab 3).

2. That the Borough of Tarentum engaged the services of Ecode360 for the production of an online code of all Ordinances of the Borough of Tarentum and has not updated Ecode360 for a number of years.

3. That the Borough is unable to remove the Zoning Ordinance from Ecode360, as the Borough does not own the website and cannot control partial content to remove the Zoning Ordinance without removing the entirety of the Code of the Borough of Tarentum.

4. That the Council of the Borough of Tarentum, in 2013, enacted Ordinance 13-03 to permit billboards in the Highway Commercial District (RC District) along the Route 28 corridor.

5. That the Borough of Tarentum Zoning Ordinance was further amended in 2014 by action of the Council of the Borough of Tarentum to expand the size of permitted billboard in the RC District from 42 feet in width to 48 feet in width.

6. That the Tarentum Borough Zoning Ordinance in Section 265-401(F) recognizes Roadway Commercial Districts.

7. That the lot, piece or parcel of land in the appeal of Oliver Outdoor is situate in the CC Commercial District.

8. That the Commercial Center, CC District, identified in Section 265-402 of the Zoning Code of the Borough of Tarentum, does not identify billboards as a permitted use.

9. That Tarentum Borough Code Section 265-502(B) provides for billboards as a conditional use in the C-3 Heavy Commercial District and sets forth design and location criteria.

10. That Section 265-409(B)(12) of the Tarentum Borough Code identifies billboards as a permitted use in the RC, Roadway Commercial District.

11. That Section 265-409(E) provides that billboards are authorized permitted uses in the RC District, either as a principal or accessory use, subject to Pennsylvania Department of

Transportation (PennDOT) regulations where such billboard is proposed on the land abutting a Commonwealth owned and maintained right-of-way and the following standards:

- (a) Billboard may not exceed forty-two feet (42') in width and 14 feet (14') in height. (Error noted.)
- (b) Billboards may not be illuminated after 1:00 A.M. or before 6:00 A.M.
- (c) Billboards may not be placed closer than 500 feet (500') from any point on another billboard.
- (d) An annual billboard permit fee shall be paid to the Borough, upon inspection, at a rate set by Council for resolution, as may be amended from time to time.

12. That Section 265-409(E)(1) identifies in writing billboard size of "forty-two" however, in numerical form identifies 48 feet (48') within the same provision.

13. That, in accordance with the testimony of Mike Nestico, the correct and approved size for billboards in the RC District would be 48 feet.

14. The Board concludes that no Zoning Hearing for the application of Ross Grimm for the placement of a billboard in the RC, Route 28 Corridor District was ever held by the Zoning Hearing Board of the Borough of Tarentum.

15. The Board concludes, pursuant to the testimony of Ross Grimm that no hearing was held on the application for billboard presented by Ross Grimm and that the same was granted either by action of the Code Officer or by action of the Borough Council without a hearing or legal proceeding.

16. That the Borough of Tarentum does not *de facto* prohibit billboards within the Borough of Tarentum as evidenced by the placement and location of the Grimm billboard in the RC District.

17. That the applicant, America First Enterprises, LLP d/b/a Oliver Outdoor filed their application in the CC District which has never been a permitted location for the placement of billboards in the Borough of Tarentum, nor was said area ever contemplated as part of an Overlay District for the placement of the billboards.

18. The Borough concludes as a matter of law that the unintentional omission of the RC District on the official map is ministerial in nature and does not affect the validity of 265-409(e).

DISCUSSION AND DECISION

Pennsylvania law presumes that zoning ordinances are “valid and constitutional, [and] thus places a heavy burden on anyone challenging the ordinance to prove contrary.” *Benham v. Board of Supervisors of Middletown Twp.*, 22 Pa.Cmwlth. 245, 349 A.2d 484, 487 (Pa.Cmmw.Ct.1975); *Ficco v. Board of Supervisors of Hempfield Twp.*, 677 A.2d 897, 899 (Pa.Cmmw.Ct.1996). “This presumption can be overcome by proof that the ordinance totally excludes an otherwise legitimate use.” *Farrell v. Worcester Twp. Bd. of Supervisors*, 85 Pa.Cmwlth. 163, 481 A.2d 986, 989 (Pa.Cmmw.Ct.1984). Exclusionary ordinances take two forms: *de jure* and *de facto*. *De jure* exclusion exists where “the ordinance, on its face, totally bans a legitimate use.” *Farrell*, 481 A.2d at 989. *De facto* exclusion exists “where an ordinance permits a use on its face, but when applied acts to prohibit the use throughout the municipality.” *Id.*; see *Borough of Edgewood v. Lamanti's Pizzeria*, 124 Pa.Cmwlth. 325, 556 A.2d 22, 24 (Pa.Cmmw.Ct.1989).

It must first be considered whether the challenging party has overcome the presumed constitutionality of an ordinance by showing it excludes billboards as a use. *Id.* If it is determined that the challenger has done so, then the Court considers whether the municipality has salvaged the ordinance by presenting evidence to show that the exclusionary regulation bears a substantial

relationship to the public health, safety, morality or welfare. *Id.* Furthermore, in *Reatly Enterprises, LLC v. Marple Township*, 213 A. 3d 333 (Pa. Cmwlth. 2019), the Commonwealth provided that the change to a zoning map was merely a ministerial task that had no effect on the validity of the Ordinance, which was properly enacted and recorded. Therefore, the failure of a township to revise its zoning map did not render zoning ordinance ineffective. *Id.*

This hearing was the result of a remand from the Court of Common Pleas of Allegheny County on the limited issue of whether the Zoning Ordinance of the Borough of Tarentum is *de facto* exclusionary. During the hearing, the Borough of Tarentum presented testimony from the Borough Manager, Mike Nestico, regarding official Borough records identifying actions of Borough Council through transcripts of actual Borough meeting wherein, the Council of the Borough of Tarentum amended the Zoning Ordinance of the Borough of Tarentum to identify billboards as a permitted use in the RC District along the Route 28 corridor. The Borough Manager further identified expansions of the billboard Ordinance in subsequent 2014 Ordinances to expand the size from 42 feet in width to 48 feet in width. The Borough of Tarentum also presented the compelling testimony of Ross Grimm who testified that he was granted a permit for the placement of a billboard without the necessity to appear before a Zoning Hearing Board or any other governing body and that the approval was granted either directly by a Code Officer or by the Council of the Borough of Tarentum without any quasi-judicial proceeding.

Overall, Section 265-409(E) of the Borough code, which appears in the official Borough Code supplied to and relied upon by the Appellant, provides that billboards are an authorized permitted use in the RC District. Pursuant to the testimony of Mr. Nestico and Ross Grimm, it was accepted that Mr. Grimm erected a billboard in the RC District. Mr. Grimm's billboard application was granted either by action of the Code Officer or by action of the Borough Council, i.e. without a

hearing or legal proceeding. Accordingly, the Zoning Hearing Board concludes that there is a valid ordinance which permits billboards in the RC District of the Borough of Tarentum, a place where there is in fact a permitted billboard erected. Therefore, the Zoning Ordinance of the Borough of Tarentum in regard to billboards is not *de facto* exclusionary.

The Board acknowledges that the RC District does not appear on Borough's official zoning map. However, as Mr. Nestico testified, the regular Council minutes from February 18, 2013 (the minutes pursuant to the adoption of the RC District) outlined "the first change is per the citizens who live northwest of new Route 28 in West Tarentum. They wanted the Rural Resource Overlay removed and the new Ordinance so removes it. It will no longer be in existence." A map titled "Draft Zoning Map" was admitted into the record by the Borough, which the Board determines accurately reflects the RC District as described in the February 13, 2018 minutes.

Based upon the ordinance and testimony, it becomes apparent that RC District falls along the Borough's Corridor of Route 28, where there is a billboard already in place. There is case law to support that an error in a map is a ministerial error which should not alter the validity of an ordinance. *Realty Enterprises, LLC v. Marple Township*, 213 A. 3d 333 (Pa. Cmwlth. 2019). Thus, the Board has determined that the unintentional omission of the RC District on the official map is ministerial, and it does not affect the validity of 265-409(E).

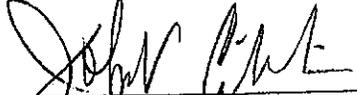
In summation, the Tarentum Zoning Hearing Board finds that the Zoning Ordinance of the Borough of Tarentum in regard to billboards is not *de facto* exclusionary.

CONCLUSION AND ORDER

And now this 29th day of June, 2020, the Zoning Hearing Board of the Borough of Tarentum, following an evidentiary proceeding, determines that the Zoning Ordinance of the

Borough of Tarentum is not *de facto* exclusionary as to the issue of the placement of billboards within the Borough of Tarentum.

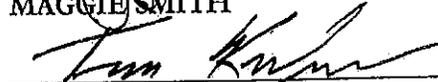
BY THE BOARD:



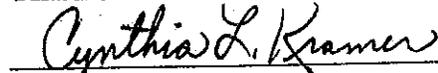
JOHN CIESLINSKI, Chairman



MAGGIE SMITH



TIM KUHNS



CYNTHIA KRAMER



ROLAND FIGORE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BOROUGH OF TARENTUM
ALLEGHENY COUNTY, PENNSYLVANIA

- - -

ZONING HEARING BOARD

Original

- - -

REORGANIZATION MEETING

-and-

EVIDENTIARY HEARING
re: America First Enterprises, LLP d/b/a
Oliver Outdoor versus Zoning Hearing Board of
The Borough of Tarentum, PA

- - -

DATE: June 29, 2020
TIME: 7:00 p.m. - 8:45 p.m.
PLACE: Tarentum Borough Council Chambers
318 E. Second Avenue
Tarentum, Pennsylvania 15084
REPORTER: Shannon Russo

- - -

ASAP-BUCKLER & ASSOCIATES COURT REPORTING
Registered Professional Reporters
167 South McKean Street
Kittanning, Pennsylvania 16201
(724) 543-4996 - (412) 471-3117 - (866) 382-6878
FAX: (724) 543-5054
e-mail: asap10@windstream.net
www.asap-buckler.com



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

- - -

JEROME OLIVER,

the witness, having been previously duly sworn,
was examined and testified on behalf of the
Appellant as follows:

- - -

DIRECT EXAMINATION

BY MS. SWEENEY:

Q. Can you state your name for the
record.

A. Jerome Oliver.

Q. Mr. Oliver, are you affiliated with
America First?

A. Yes. I'm the general partner.

Q. And how long have you been
affiliated with the sign industry?

A. Since 2004.

Q. Are you generally familiar with
efforts to exclude or zone out billboards in
communities?

MR. REGOLI: Objection. Relevancy.

MS. SWEENEY: I'll get there.

MR. LOPERFITO: I'm sorry, did you
want to respond to his objection as to the
relevance of that?

1 it was exclusionary or not. I don't think that
2 matters.

3 MR. LOPERFITO: I would tend to
4 agree with that. I believe that he can testify
5 as to why he filed the application, but to state
6 that there is some legal principle for whatever
7 reason is a decision of the Board.

8 MS. SWEENEY: I think -- I
9 disagree, but I will move on and ask another
10 question.

11 BY MS. SWEENEY:

12 Q. Mr. Oliver, why did you decide to
13 seek a permit for this particular property?

14 A. Couple reasons. It's a good
15 location. Most importantly, because of my review
16 and my experience in the outdoor advertising
17 industry, I believed the zoning ordinance would
18 permit it because it doesn't permit them
19 anywhere, so I believed, too, that it would
20 permit them anywhere because of that.

21 Q. So you believed you were entitled
22 to seek a billboard permit even though they were
23 not expressly permitted in the CC District?

24 MR. REGOLI: Objection. Leading.

25 THE WITNESS: Yes.

1 MS. SWEENEY: There are no Rules of
2 Evidence against leading.

3 MR. LOPERFITO: I'll caution
4 against leading, but I will overrule that.

5 MS. SWEENEY: Okay.

6 BY MS. SWEENEY:

7 Q. And have you been involved in other
8 matters involving exclusionary zoning?

9 A. Yes.

10 Q. Have you had cases involving
11 attempts to exclude billboards in other
12 municipalities?

13 MR. REGOLI: Objection. Relevancy.
14 What does that have to do with what we're doing
15 here in Tarentum?

16 MS. SWEENEY: It goes to his
17 knowledge and why he's moving forward with this
18 particular application.

19 MR. REGOLI: But that doesn't have
20 anything to do with what's going on in Tarentum.

21 MR. CEISLINSKI: I sustain the
22 objection.

23 MS. SWEENEY: Okay.

24 That's all I have for you. Thank
25 you.

1 can do is if you want to move forward with
2 testimony, we can hear arguments on the admission
3 of documents later.

4 MR. REGOLI: Okay.

5 MR. LOPERFITO: We'll do it before
6 closing the hearing.

7 MR. REGOLI: Okay.

8 Well, the borough would call the
9 borough manager, Michael Nestico.

10

- - -

11

MICHAEL NESTICO

12

the witness, having been previously duly sworn,

13

was examined and testified on behalf of the

14

borough as follows:

15

- - -

16

DIRECT EXAMINATION

17

BY MR. REGOLI:

18

Q. Would you state your name and title

19

for the record, please.

20

A. Michael Nestico; N, as in Nancy,

21

E-S-T-I-C-O. I'm the borough manager.

22

Q. Okay. Mr. Nestico, how long have

23

you been the borough manager?

24

A. Since January of 2018.

25

Q. Okay. And in your role as a

1 Borough Manager, are you the keeper of the
2 official records of the borough of Tarentum?

3 A. Yes, I am.

4 Q. And in your official capacity as
5 the borough manager and the keeper of the
6 records, have you had an opportunity to go back
7 and review prior year minutes and documents
8 belonging to the municipality relative to the
9 zoning ordinance in the Borough of Tarentum?

10 A. Yes, I have. I looked back all the
11 way to -- around 2011 is where I kind of was able
12 to track things back to.

13 Q. Okay. And are you able to go back
14 and sort of give us a timeline of what you did.
15 And then when you have a document that
16 supports -- or meeting minutes that would concur
17 or that would support the basis of your
18 testimony, would you hand them to me so I can
19 give them to Council and the Board.

20 A. Sure.

21 Q. And we'll mark them one as a time
22 as we're going through.

23 A. Sure, I can do that.

24 Q. Okay.

25 A. I have in front of me a timeline I

1 wrote up that I can refer to the specific dates,
2 if that's okay.

3 Q. Sure.

4 MS. SWEENEY: Can I have a copy?

5 MR. REGOLI: That's not an exhibit.

6 MS. SWEENEY: Oh, okay.

7 MR. REGOLI: That's just a timeline
8 so you have an idea of where he's going.

9 THE WITNESS: Simply because there
10 are quite a few dates and a lot of confusion, as
11 well.

12 I looked back in the borough
13 meeting minutes for council meeting minutes
14 dating back to 2011 to try to trace some of the
15 origins of some of the zoning ordinances that
16 currently exists in Tarentum.

17 MS. SWEENEY: I would just like to
18 interject with an objection as to this. I don't
19 think what the minutes are are relevant to what
20 the actual ordinance states. What the ordinance
21 states is what governs here, not what minutes
22 might have happened previous to here.

23 So I believe this entire line of
24 questioning is irrelevant.

25 MR. LOPERFITO: Judge?

1 MR. REGOLI: Well, we're here for
2 the limited purpose of whether or not our
3 ordinance is exclusionary, and I think to
4 understand our ordinance and maybe some of the
5 mistakes or typos that are in it, I think it's
6 important for him to give some background, and I
7 will try to streamline this as much as possible.

8 MR. CIESLINSKI: I'll overrule the
9 objection.

10 THE WITNESS: Okay. The meeting
11 minutes that I'll be referring to specifically
12 indicate which -- you know, what parameters of
13 the ordinance are operable today and I think that
14 that will become pretty clear as I step through
15 this. I'll try to be succinct.

16 On the borough's website there are
17 two different versions of the zoning ordinance
18 that you'll hear reference to. One version is
19 through eCode360. That's a service that the
20 borough will send their ordinances to in order
21 for them to be published in a consolidated
22 database.

23 Also on our website are our own PDF
24 and Word document versions of the existing
25 documents. So there will probably be reference

1 of the borough manager. Offer for cross.

2

- - -

3

CROSS EXAMINATION

4

- - -

5 BY MS. SWEENEY:

6

7

8

9

Q. If I could, Mr. Nestico, with regards to the meeting minutes that you have offered, there's a series of numbers in the right-hand corner.

10

A. Correct.

11

Q. What does that represent?

12

13

14

15

16

A. I believe that the -- whoever kept the minutes at that time would number each of the pages of all the subsequent minutes over the years -- you know, over the various meeting periods.

17

18

19

Q. But the Draft Zoning Map that you say was referenced by these minutes doesn't have those numbers?

20

21

A. No. The Draft Zoning Map is not included as part of the minutes.

22

23

Q. So these were not kept with the minutes?

24

A. Correct.

25

Q. Where did you find this?

1 A. Within the borough files.

2 Q. Where in the borough files?

3 A. I don't know specifically. We came
4 upon it after kind of digging and researching and
5 trying to gather -- put the pieces of the puzzle
6 together, as you referenced earlier.

7 Q. So this document is actually not
8 kept with the minutes and was not memorialized as
9 part of the official minutes for February 18,
10 2013?

11 A. No, none of the ordinances -- none
12 of the ordinances, or I guess any of the attached
13 materials, are kept with the minutes. The only
14 thing that is kept with the minutes -- well, the
15 minutes themselves are simply kept in a log, so
16 no documents are attached to any of the minutes.

17 Q. Okay. So.

18 How do you -- which -- how do
19 you --

20 You made some testimony that this
21 is the zoning map that was referenced by those
22 minutes. How do you know that? You weren't
23 there at that meeting.

24 A. That's correct, I wasn't there.

25 Q. So how do you know this was the map

1 referenced by these zoning maps?

2 A. I suppose just through, you know,
3 looking through borough records and examining
4 everything, reading the testimony of the
5 solicitor; obviously matching it up. The
6 description that he provides matches up precisely
7 with the map itself. It does eliminate the
8 district that he referenced and it does add in
9 the district with kind of the specific
10 coordinates or location, so ...

11 I did reach out to Olson and
12 Associates that is listed there to ask them, you
13 know, did they do this, you know, if they have
14 any other further information for us. They
15 indicated that the individual that did that map
16 passed away, that they would try to answer my
17 questions, and ultimately they weren't able to
18 provide really anything to me about what map is
19 in effect, what they did for the borough, what
20 they didn't do.

21 I guess the individual that was
22 there at the time -- I think the firm has even
23 changed, but I think the individual there at that
24 time has since passed the away.

25 Q. So you can't state for a fact that

1 A. That's correct.

2 Q. Okay. So if I am a citizen and I
3 am acquiring a copy of the zoning ordinance,
4 there is nothing in the zoning ordinance that
5 specifically dictates or describes the property
6 that comprises the RC District, is there?

7 A. It explains that it's the
8 28 corridor.

9 Q. But nothing more specific than
10 that?

11 A. Not that I can see, no, not that I
12 can see right offhand.

13 Q. And it's your testimony that in
14 fact as you understand the RC District, it does
15 not include the entire 28 corridor?

16 A. No. According to the solicitor at
17 that time when they did the amendment, it
18 includes the area between Bakerstown Road and
19 Cedar Street.

20 Q. And you're referring to the meeting
21 minutes; you didn't have any other subsequent
22 discussion with the solicitor at that time?

23 A. No.

24 Q. Did you talk to anyone who was at
25 that meeting?

1 A. No.

2 The meeting minutes are a
3 transcript of what occurred unlike, I guess,
4 maybe current minutes are a reflection of a
5 general business conducted at the meeting. They
6 actually had a court reporter and would do a
7 transcript of the full text, so that's what you
8 see in the meeting minutes.

9 Q. So the RC District does not replace
10 the RRO Wholesale, there is a difference in the
11 properties at issue?

12 A. There is. The RRO is kind of
13 that -- the whole -- would it be the northern
14 part, west -- northwestern part of the borough.

15 Everything on the opposite side of
16 Route 28 is what appears to be the RRO or the
17 former RRO, whereas the RC is only one area of
18 that.

19 Q. So that's a big change?

20 A. Sure.

21 Q. Now, you testified that there were
22 also some references on the borough's website to
23 an eCode ordinance; is that correct?

24 A. Yes.

25 Q. Okay. And I am going to give you a

1 document --

2 MR. LOPERFITO: Want me to mark

3 this as Appellant -- that would be R-B?

4 MS. SWEENEY: Sure.

5 (Appellant Exhibit R-B was marked
6 for identification.)

7 BY MS. SWEENEY:

8 Q. Mr. Nestico, I will represent to
9 you that this is a document that Mr. Loperfито
10 actually referred to during oral argument to
11 Judge James. It's dated Wednesday, July 31st,
12 2019 for Section 265-406, and it says "RFO
13 Riverfront Overlay and RRO Rural Resource Overlay
14 Districts."

15 Do you see that?

16 A. I do.

17 Q. Okay. And I'll also represent to
18 you that Mr. Loperfито advised the Court this was
19 something that he went on the website and
20 downloaded himself.

21 Do you see that?

22 A. Yes.

23 Q. Okay. But it's your testimony that
24 since 2013 that the RRO District had been
25 removed, correct, from the zoning ordinance?

1 A. Since 2013? Yes.

2 Q. 2013?

3 A. Yes.

4 Q. Okay. So this posted on the
5 borough's website in fact is an inaccurate
6 representation --

7 MR. REGOLI: I'm going to object.
8 I don't think there's any testimony it was on the
9 borough's website. This is on a commercial
10 website, eCode360. That's not the borough's
11 website.

12 MS. SWEENEY: There was testimony
13 that the borough's website refers and contains
14 link to the eCode360, so this is accessed via the
15 borough's website.

16 MR. REGOLI: Okay. I just wanted
17 to make sure that you didn't think that the e360
18 is our website.

19 MS. SWEENEY: No, duly noted.

20 MR. REGOLI: Okay, thank you.

21 MS. SWEENEY: Another document I'll
22 show you.

23 (Appellant Exhibit R-C was marked
24 for identification.)

25 ///

1 BY MS. SWEENEY:

2 Q. Mr. Nestico, this is a document
3 that I myself downloaded today, June 29th, 2020,
4 via the borough of Tarentum's website and the
5 link to eCode360, and it also references 265-406
6 and references the "RRO Rural Resource Overlay
7 District."

8 Do you see that here?

9 A. Yes, I do.

10 Q. And that is also inaccurate; would
11 that be correct?

12 A. That would be inaccurate, yes. As
13 I mentioned, eCode360 is a service and they will
14 publish the documents that we send to them.

15 So in order for this to be updated,
16 at any time since it was initially done in 2012,
17 I believe. When you click on the zoning
18 ordinance Chapter 265, front page has a note
19 there that explains that this is a -- and it
20 actually is inaccurate. It references that it
21 was adopted in 2011, but in fact it was 2012.

22 So when this was uploaded or sent
23 to eCode and the borough paid to have that
24 published at that time, they have not changed it
25 since.

1 Now, I haven't changed it as my
2 tenure as the manager because we're doing a
3 Zoning rewrite. I'm not going to pay to have
4 eCode360 change the document only to have it be
5 changed again and I don't want to, you know,
6 consume taxpayer dollars and do something that's
7 futile.

8 So we're in the process of a zoning
9 ordinance rewrite. We recognize that these
10 issues do exist. There's no question. That's
11 part of the problem that we're facing now today.

12 But that's why it's not updated.
13 So even as of today -- and it's not going to be
14 updated tomorrow or anytime until we do our new
15 zoning ordinance rewrite, so ...

16 Q. Okay.

17 A. But when someone does come to us
18 and ask us for an ordinance or a printout or to
19 purchase, we provide the book, and I have
20 multiple copies that are available for public
21 purchase. That's what we send to people.

22 Q. But you haven't removed the link to
23 the 360, the eCode360, on the website, either,
24 have you?

25 A. No, because we can't just remove

1 only one ordinance or one document. I mean, we
2 have ordinance -- the entire Borough Code is
3 listed on there, so 265 chapters, obviously not
4 all-inclusive, but there are a number of
5 documents on there, so ...

6 Q. And I will show you one more
7 document.

8 (Appellant Exhibit R-D was marked
9 for identification.)

10 MS. SWEENEY: Here you go.

11 MR. REGOLI: Thank you.

12 BY MS. SWEENEY:

13 Q. And Mr. Nestico, this is also
14 another document that I downloaded today,
15 June 29, 2020, via the borough of Tarentum's
16 eCode link, and it's for Section 412, 265-401,
17 "Authorization of Districts," and it does not
18 list the RC District but it continues to list the
19 RRO, Rural Resource Overlay, District.

20 And would you agree with me that
21 this is an inaccurate reflection of what the
22 authorized districts are in the borough?

23 A. That it is ...

24 Q. Inaccurate?

25 A. Inaccurate. Yes, I would agree

1 with that.

2 It also references a Public
3 District, P1, which has never existed in the
4 borough. So -- and you -- as you go through the
5 ordinance, you will see that there are some
6 references in there that are simply not found
7 elsewhere.

8 And I think at the time that the
9 borough adopted the main zoning ordinance, you
10 know, I believe that they -- you know, whoever
11 they contracted with or used as a consultant to
12 adopt their ordinance, I think they probably
13 pulled a template from another location, because
14 there are definitely references that don't add
15 up, there's no question.

16 MS. SWEENEY: I have nothing
17 further.

18 MR. LOPERFITO: Redirect?

19 MR. REGOLI: No redirect.

20 MR. LOPERFITO: Okay. Thank you,
21 Mr. Nestico.

22 THE WITNESS: Thank you.

23 MR. REGOLI: I do, just to make
24 sure.

25 MR. LOPERFITO: Sure.

- - -
REDIRECT EXAMINATION

BY MR. REGOLI:

1
2
3
4 Q. Mr. Nestico, are ordinances kept
5 separate from the minutes?

6 A. Yes.

7 Q. Okay. And the minutes -- to your
8 understanding, what are the meeting minutes, or
9 what were they back then? I think you had
10 testified earlier.

11 A. At that time, the meeting minutes
12 were actually a transcript of the meeting itself.
13 They would have a stenographer that would record
14 I believe verbatim what was said at the meeting.

15 Our modern or current minutes are
16 simply a reflection of the business and items
17 conducted in the dialogue of the meeting. It's
18 kind of a, you know, generalization of things
19 that occurred.

20 Q. So if council passes Ordinance 20-1
21 this year, the text of the ordinance is not going
22 to be in the minutes. It's going to be in a
23 separate area where the ordinances are kept; is
24 that correct?

25 A. That's correct. The only thing

1 you'll see in the minutes is a motion and
2 potentially an approval of that document.

3 Q. Okay.

4 MR. REGOLI: Thank you.

5 MS. SWEENEY: I just have one more.

6 MR. LOPERFITO: Certainly.

7 - - -

8 REXCROSS EXAMINATION

9 BY MS. SWEENEY:

10 Q. Just to be clear, the document
11 you've identified as the Draft Zoning Map that
12 you had found, that's not kept with the
13 ordinances in the borough's office, is it?

14 A. No, because as you saw, in the back
15 of the main published book that we have is, you
16 know, an incorrect map.

17 Q. So anyone coming in and asking for
18 a copy of the ordinance will not see this?

19 A. They will now, obviously after
20 going through this process and learning of the
21 existence of this map, but no, you know, when the
22 applicant came in, whenever it was, a year and a
23 half ago, we sat down, we spoke about the
24 different districts and things like that where a
25 billboard could go in, I didn't have that map at

1 that time.

2 So we discussed, again, what the
3 text of the ordinance said, which, you know,
4 doesn't --

5 Q. In fact, you didn't even know about
6 this at this time?

7 A. Oh, that's right.

8 Q. Okay.

9 MS. SWEENEY: I have nothing
10 further.

11 MR. REGOLI: Thank you.

12 MR. LOPERFITO: Okay.

13 Thank you, Mr. Nestico.

14 THE WITNESS: Thank you.

15 MR. REGOLI: Okay. I call

16 Mr. Bruni.

17 - - -

18 ANTHONY BRUNI

19 the witness, having been previously duly sworn,
20 was examined and testified on behalf of the
21 borough as follows:

22 - - -

23 DIRECT EXAMINATION

24 BY MR. REGOLI:

25 Q. Mr. Bruni, would you please give

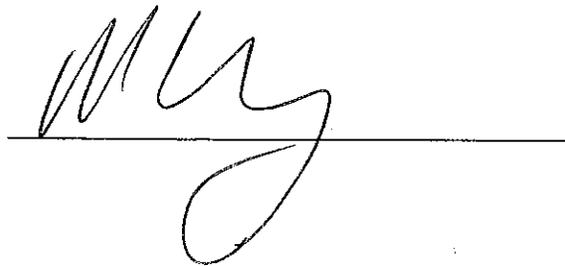
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **NOTICE OF APPEAL** was served this **11th day of September 2020**, upon the following, by depositing the same in the United States Mail, First Class, Postage Pre-Paid:

Borough of Tarentum
Zoning Hearing Board
318 E. Second Ave
Tarentum, PA 15084

Larry D. Loperfito, Esq.
Geary & Loperfito LLC
159 Lincoln Ave
Vandergrift, PA 15690
(Counsel for Tarentum Zoning Hearing Board)

David A. Regoli, Esq.
333 Freeport Street, Suite 201
New Kensington, PA 15068
(Counsel for Borough of Tarentum)

A handwritten signature in black ink, appearing to be 'M. L.', is written over a horizontal line.