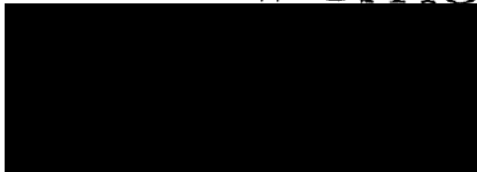


THOMPSON LAW OFFICES



January 21, 2010

James J. Holzinger, Esquire



RE: MATTER: Appeal of Kevin Horvath
ADDRESS: 1801 Elliot Avenue
FILE: 2009-44

Dear Attorney Holzinger:

Enclosed please find the original Findings of Fact, Conclusions of Law, and Formal Written Decision of the City of Bethlehem.

Additionally, this letter constitutes written notification to those individuals who entered their appearance at the Hearing of the above decision of the Zoning Hearing Board under Section 908(10) of the Pennsylvania Municipalities Code. The Zoning Hearing Board granted a favorable interpretation regarding time-limitations in relation to the specific application.

A copy of this decision will be on file and may be examined for inspection at the Planning and Zoning Office of the City of Bethlehem located at 10 East Church Street, Bethlehem, Pennsylvania. The appeal period expires thirty (30) days from the date of the decision, which is January 21, 2010.

Very truly yours,

Mickey K. Thompson
Solicitor

MKT/owk
c: John Lezoche, Zoning Officer
Michael Shay, Esquire
Kathy Detzi Light
William Schreier
Jerry Green
Patrick McGinty
Mary Lou Hatcher
Martha Christine

A. Parties

1. APPELLANT/APPLICANT(S)¹: Kevin Horvath appeared at the hearing and was represented by James J. Holzinger, Esq. of Boyer, Holzinger, Harak and Scamilio of Bethlehem, Pennsylvania. The Applicant had standing to appear before the Board as the fee simple owner of the premises.

2. ZONING HEARING BOARD: The Board, consisting of Chairman Gus Loupos and Members William Fitzpatrick and Kenneth Kraft, was represented by its Solicitor, Mickey K. Thompson, Esq. of Thompson Law Offices in Bethlehem, Pennsylvania.

3. PROTESTANT(S)/INTERESTED PARTIES: Jerry Green, Kathy Detzi Light, William Schreier, Patrick McGinty, Mary Lou Hatcher, Martha Christine, Kevin Brezack, and Keith Gurman appeared at the Hearing as objectors to the proposed plan.

B. Notice

Notice of the hearing was given by newspaper advertisement, by physical posting of the property, and by regular mail to neighboring property owners pursuant to the applicable provisions of the Pennsylvania Municipalities Planning Code,² the Zoning Ordinance of the City of Bethlehem³, citations *infra*, and the Rules of the Board.⁴

¹ Those persons or entities who have sought a permit from the Zoning Officer and were denied a permit have appealed from his denial and are thus "appellants" in a certain sense; they also are applying for relief from the Zoning Hearing Board and are thus "applicants."

² MPC § 10908(1) provides that "[p]ublic notice shall be given and written notice shall be given to the applicant, the zoning officer, such other persons as the governing body shall designate by ordinance and to any person who has made timely request for same. Written notices shall be given at such time and in such manner as shall be prescribed by ordinance or, in the absence or ordinance provisions, by rules of the board. In addition to the written notice provided herein, written notice of said hearing shall be conspicuously posted on the affected tract of land at least one week prior to the hearing."

³ Article 1325.04(a) provides for notice to be given as follows: "(1) At least seven (7) days prior to the date fixed for public hearing, publish a public notice describing the location of the building or lot and the general nature of the question involved in a newspaper of general circulation in the City. (2) Give written notice to parties in interest at least seven (7) days in advance of such hearing."

VI. Findings of Fact

1. The subject premises are located at 1801 Elliot Avenue in the Northampton County portion of the City of Bethlehem.
2. The Applicant, Kevin Horvath, applied for an Interpretation in 2008 regarding the whether the steep slope of the subject premises was impacted by man-made slopes and what the average degree of slope would be but for the intervention by man.
3. The Board determined in 2008 that the relative slope of the property was 15%.
4. The Applicant went to the City of Bethlehem to begin the development of the property and was rejected by the City of Bethlehem planning staff because of the one-year limitation provisions under Section 1325.09.
5. The Applicant filed an Appeal for an Interpretation as to whether the one-year time limitation applies to Interpretation applications in the City of Bethlehem.

VII. Conclusions of Law

The Applicant, Kevin Horvath, is the fee simple owner of the subject premises located at 1801 Elliot Avenue within the City of Bethlehem. The Applicant purchased the property in 2008 and sought an Interpretation at that time to determine what the relative slope of the property was. After an exhaustive Hearing, the Board determined that the relative slope affecting the property was 15% and that the slope was man-made. Even though the matter was contested, there was no appeal by the several objectors in attendance at the 2008 Hearing.

relative slope of the land was 15% was not "permitting the use of a building or land" necessarily. In fact, no plan accompanied the Interpretation request in 2008. The Applicant merely was looking for guidance as to what could be constructed on the property because the Steep Slope Ordinance dictates the density or intensity of the use of the property depending on the slope of the parcel. Because the Board granted the requested Interpretation in 2008, the Applicant knew what was permissible for the development of the parcel at a future date. But no such use was proposed at that time for the Board to find that the one-year limitation applied to the respective Interpretation request.

Upon looking at the powers granted to the Board under Section 1325.05, the Board has the power to review and determine the exact locations of district boundary lines if an applicant disagrees with the stated location. In analyzing this power, it seems obvious that once a determination is made by the Board as to the exact location of a district boundary without higher court review, there would be no need to re-litigate that matter in the future. As such, would the one-year time limitation be in effect for the determination of a district boundary line if no use was proposed to coincide with that specific request for Interpretation relief? The obvious answer is that implementing a time-limitation requirement on the establishment of a district boundary line would be wasteful to the quasi-judicial economy of the Board as well as fly in the face of the Doctrine of Res Judicata which serves to prevent the endless and needless re-litigation of matters already determined by a court.

In this instance, the Board made the determination in 2008 that the slope affecting the property was man-made and that the relative or average slope of the property was 15%. There

VIII. Decision of the Board

Based upon the foregoing, the Zoning Hearing Board granted the Interpretation request in favor of the Applicant.

THE BOARD:


MICKEY K. THOMPSON
Solicitor

/s/ Gus Loupos*
GUS LOUPOS
Chairman

/s/ John R. Lezoche*
JOHN R. LEZOCHÉ
Zoning Officer

/s/ William Fitzpatrick*
WILLIAM FITZPATRICK
Member

/s/ Kenneth Kraft*
KENNETH KRAFT
Member

DATE OF HEARING: November 18, 2009 and December 16, 2009

DATE OF ORAL DECISION: December 16, 2009

DATE OF FORMAL WRITTEN DECISION: January 21, 2010

*The above individuals were unavailable at the date of mailing.

Mary Lou Hatcher



Martha Christine



Kevin Brezack



Keith Gurman



DATE: January 21, 2010


Mickey K. Thompson