IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA
CIVIL DIVISION - LAW

KARA SCOTT,	:	
	:	
Plaintiff/Appellee	:	
	:	
v.	:	No. 22-0131
	:	
BOWMANSTOWN BOROUGH AUTHORITY,	:	
	:	
Defendant/Appellant	:	

MEMORANDUM OPINION

Serfass, J. - March 10, 2025

Here before the Court is the Appeal of the Bowmanstown Borough Authority (hereinafter "Appellant") from our Order of December 13, 2024, which denied its "Motion for Post-Trial Relief". We file the instant Memorandum Opinion pursuant to Pa.R.A.P. 1925(a), respectfully recommending that the aforesaid Order and underlying Decision and Verdict in favor of Kara Scott (hereinafter "Appellee") be affirmed for the reasons set forth hereinafter.

FACTUAL AND PROCEDURAL BACKGROUND

Since 2004, Appellee has owned and resided in a structure situated at 422 Ore Street, Bowmanstown, Carbon County, Pennsylvania. Prior to Appellee's ownership, the subject structure had rooms on the first floor which could serve as a separate apartment unit. The first-floor apartment had its own bathroom and kitchen. The previous owners and the Borough of Bowmanstown

entered into a written agreement (hereinafter "the Agreement") dated January 2, 1999, pursuant to which the subject structure was converted from a building with two (2) equivalent dwelling units for sanitary sewage purposes to a building with one equivalent dwelling unit. This conversion was accomplished by removing all cooking facilities from the structure other than those in the surviving kitchen. Since that time, the subject structure has had only one kitchen.

In June 2021, Appellee submitted a home occupation application/permit to utilize the first floor of the subject structure as a bed and breakfast. That application was denied by the Bowmanstown Borough Zoning Officer and Appellee then filed an appeal application seeking a variance for off-street parking purposes and a special exception to operate a bed and breakfast. A public zoning hearing was held on August 23, 2021. Via Decision dated September 15, 2021, the Bowmanstown Borough Zoning Hearing Board granted an off-street parking variance and a special exception to operate a bed and breakfast upon the condition that the number of occupants in the bed and breakfast not exceed two individuals at any given time. The Zoning Hearing Board also concluded that the appliances listed in Appellee's application for the proposed bed and breakfast (dorm refrigerator, coffee pot,

toaster and small microwave) did not constitute a "cooking facility" as referenced in the zoning ordinance.

By letter dated October 20, 2021, Appellant's solicitor informed Appellee that Appellant had determined that the subject structure was to be treated as two equivalent dwelling units based on its interpretation of Resolution No. 2005-02, section 1.9(c)1.(F). As a result, Appellee was billed for a second tapping fee of three thousand dollars ($3,000.00). When Appellant refused to place the additional tapping fee into an escrow account pending resolution of the assessment/payment dispute, Appellee paid the fee in protest and has also been required to pay additional monthly fees related to the second equivalent dwelling unit.

On January 20, 2022, Appellee filed a Complaint for Declaratory Judgment challenging the decision of Appellant in assessing her residential property an additional equivalent dwelling unit for sanitary sewage purposes and seeking the return of the three thousand dollar ($3,000.00) tapping fee assessed by Appellant as well as additional charges which she paid in connection with the additional equivalent dwelling unit.

A non-jury trial was held on May 12, 2023. Thereafter, counsel submitted proposed findings of fact, conclusions of law and post-trial briefs. This Court filed a Decision and Verdict on January 19, 2024, finding in favor of Appellee and against

Appellant. We directed Appellant to reimburse Appellee the three thousand dollar ($3,000.00) tapping fee together with all charges and fees which were paid in connection with the additional equivalent dwelling unit assessed by Appellant. On January 26, 2024, Appellant filed a "Post-Trial Motion" seeking modification of our Decision and Verdict as well as the entry of judgment for Appellant. Following the oral argument of counsel and the submission of Appellee's post-argument brief, we denied Appellant's "Post-Trial Motion" via Order dated December 13, 2024.

Appellant filed a Notice of Appeal to the Commonwealth Court of Pennsylvania on January 10, 2025. On that same date, we entered an Order directing Appellant to file a concise statement of matters complained of on appeal pursuant to Pa.R.A.P. 1925(b). In compliance with our Order, Appellant filed its concise statement on January 30, 2025.

ISSUES

In "Appellant's Concise Statement of Appellate Issues Pursuant to Pa.R.A.P. Rule 1925(B)", the following nine issues are raised for appellate review:

1. The Court of Common Pleas erred by abusing its discretion and committing a substantial error of law, pursuant to the Court's Findings of Fact paragraph 11, the prior agreement setting up the

single EDU was conditioned upon any change in circumstance or modification, change in use requiring an additional EDU surcharge. (The Court's Finding omits the actual condition(s) for any future change in use for the property);

2. The Court of Common Pleas committed a manifest abuse of discretion and an error of law, pursuant to the Court's Conclusion of Law paragraph 1, the Court erroneously interpreted the Bowmanstown Authority Resolution 2005-02 which permits the Authority to determine that the Plaintiff's change of use required an additional EDU or two EDU's as outlined by the Authority's October 2022 Decision;

3. The Court of Common Pleas committed a manifest abuse of discretion and an error of law pursuant to the Court's Conclusion of Law paragraph 3, the Court erroneously finds that Resolution 2005-02 is clear and free from ambiguity such that the Resolution does not authorize an additional EDU for the additional commercial use by Plaintiff, Kara Scott;

4. The Court of Common Pleas committed a manifest abuse of discretion and an error of law pursuant to the Court's Conclusion of Law paragraph 6, the Court errored by not granting the required judicial deference to the Bowmanstown Authority, the underlying municipal decision for interpretation of its own ordinance, rather the Court decided to be the administrator or ultimate decision

maker or interpreter of the Authority's own Resolution and interpreting that said Resolution does not in fact provide authority for the additional EDU charged to Plaintiff, rather than administratively deferring and refusing to oversee or become the fact finder and providing judicial deference to the Authority based on its own ordinance and interpretation administratively of said ordinance;

5. The Court of Common Pleas committed a manifest abuse of discretion and an error of law pursuant to the Court's Conclusion of Law paragraph 7, the Court committed an error of law and an abuse of discretion in failing to find that Resolution 2005-02 was consistent with the assessment of an additional EDU to Plaintiff additional commercial use, the establishment of the "bed and breakfast variance; the Court incorrectly errored in finding that Resolution 2005-02 is inconsistent with the EDU assessment and tapping fee and therefore erroneous as applied to Plaintiff's EDU assessment and tap in fee;

6. The Court of Common Pleas committed a manifest abuse of discretion and an error of law pursuant to the Court's Conclusion of Law paragraph 8, the Court made an error of law in concluding that the Authority's Resolution 2005-02 does not provide a provision for adding an additional EDU when Plaintiff or homeowner makes a change in use by adding a commercial "bed and breakfast"

use thus requiring an additional EDU pursuant to Resolution 2005-02;

7. The Court of Common pleas committed a manifest abuse of discretion and an error of law pursuant to the Court's Conclusion of Law paragraph 9, the Court incorrectly and erroneously interpreted Resolution 2005-02 and Section 1.9(c)1.(F) inapplicable to the additional assessment as applied to Plaintiff;

8. The Court of Common Pleas committed a manifest abuse of discretion and an error of law pursuant to the Court's outline of the verdict committed an error of law in finding that Resolution 2005-02 does not permit the Authority to charge Plaintiff with the additional one EDU and tap in fee for Plaintiff's acknowledged additional commercial use for Bed & Breakfast in the residential home; and

9. The Court of Common Pleas committed a manifest abuse of discretion and an error of law pursuant to the Court committed an error of law in the verdict in finding that the property situated at 422 Ore Street shall be assessed at one (1) Equivalent Dwelling Unit (EDU) and the requisite refund of the tapping fee of three thousand dollars ($3,000.00) as required by Resolution 2005-02.

DISCUSSION

At the outset, we note that each of the nine issues articulated in Appellant's concise statement were previously

raised, verbatim, in its post-trial motion. Therefore, we will discuss those issues as addressed in our Order denying post-trial relief.

Throughout its concise statement, Appellant claims that this Court committed errors of law and/or abuses of discretion in rendering a verdict in favor of Appellee finding that Appellant is not authorized to charge her an additional tapping fee and that the subject property shall be assessed as one equivalent dwelling unit (hereinafter "EDU").

Appellant first argues that its decision concerning the assessment of an additional EDU is not subject to judicial review because that decision constitutes a discretionary act. While we acknowledge the line of cases relied upon by Appellant which stand for the proposition that courts will generally not review the actions of governmental bodies involving acts of discretion in the absence of bad faith, fraud, capricious action or abuse of power (See Hyam v. Upper Montgomery Joint Authority, 160 A.2d 539, [Pa.1960]; Eways v. Reading Parking Authority, 124 A.2d 92, [Pa. 1956]; and Blumenschein v. Pittsburgh Housing Authority, 109 A.2d 331, [Pa. 1954]), we find these cases to be inapposite to the matter *sub judice* in that this case does not involve an act of discretion by Appellant. Rather, Appellant is simply tasked with following its own unambiguous Resolution. "When the words of a

statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit", 1 Pa.C.S. §1921(b). At oral argument on its post-trial motion, Appellant's counsel also cited Del Buono v. Pennsylvania Labor Relations Board, 89 A.2d 323 (Pa. 1952) to bolster the position that this Court does not have the authority to review Appellant's decision. In Del Buono, our Supreme Court explained that the findings of the Pennsylvania Labor Relations Board, which were supported by substantial and legally credible evidence presented during multiple hearings, were conclusive and provided competent evidence to support the Board's order. However, Del Buono provides Appellant with no support in the instant matter as there were no such findings made by Appellant prior to the assessment of an additional EDU. Moreover, the argument that this Court must defer to Appellant's interpretation of Resolution No. 2005-02 (hereinafter "the Resolution") is misplaced and unpersuasive. Where an administrative interpretation is inconsistent with the resolution itself, or where the resolution's meaning is unambiguous, such an interpretation carries little or no weight. Terminato v. Pa. Nat'l Ins. Co., 645 A.2d 1287, 1293 (Pa. 1994); Velocity Express v. Pa. Human Relations Comm'n, 853 A.2d 1182, 1185 (Pa.Cmwlth. 2004). Although courts often defer to an agency's interpretation of the statutes it administers, when convinced that

the agency's interpretation is unwise or erroneous, that deference is unwarranted. Rosen v. Bureau of Professional and Occupational Affairs, 763 A.2d 962, 968 (Pa.Cmwlth. 2000).

Appellant next argues that because the January 2, 1999 Agreement between the former owner of the subject property and Appellant provides that a change of use or additional sewage discharge **may** require the owner to pay Appellant a fee based upon additional EDUs, the assessment of an additional EDU is authorized and warranted in this case. Notwithstanding the Agreement, Appellant must comply with the terms of its Resolution in the assessment of EDUs and the clear, unambiguous terms of that Resolution do not permit such an assessment.

Finally, Appellant claims that section 9(c)2(B) of the Resolution authorizes it to assess Appellee an additional EDU because she was connected to the municipal system prior to obtaining a bed and breakfast permit. According to Appellant, such improper connection provides direct authority for the assessment of an additional EDU based upon the change of use to a bed and breakfast. Again, we note that the clear and unambiguous language of the Resolution does not provide for the assessment of an additional EDU under the facts of this case. Relying upon our Decision and Verdict of January 19, 2023, a copy of which is

attached hereto for the convenience of the Honorable Commonwealth Court, we find the issues raised by Appellant to be without merit.

CONCLUSION

Based upon the foregoing, we respectfully recommend that our Order of December 13, 2024, denying Appellant's "Post-Trial Motion", be affirmed together with our underlying Decision and Verdict dated January 19, 2023.

BY THE COURT:

Steven R. Serfass, J.

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

KARA SCOTT,	:	
Plaintiff	:	
	:	
vs.	:	**No. 22-0131**
	:	
BOWMANSTOWN BOROUGH AUTHORITY,	:	
Defendant	:	

Armin Feldman, Esquire — **Counsel for Plaintiff**
Neil D. Ettinger, Esquire — **Counsel for Defendant**

DECISION AND VERDICT

Serfass, J. – January 19, 2023

On March 3, 2022, Kara Scott filed an Amended Complaint for Declaratory Judgment challenging the decision of the Bowmanstown Borough Authority in assessing her residential property an additional equivalent dwelling unit for sanitary sewage purposes and seeking the return of the three thousand dollar ($3,000.00) tapping fee assessed by the Authority as well as all additional charges which she paid in connection with the additional equivalent dwelling unit. Following a non-jury trial held before this Court and upon review of the record and the post-trial submissions of counsel, and after careful consideration of evidence presented at trial, we make the following:

FINDINGS OF FACT

1. Kara Scott (hereinafter "Plaintiff") owns and resides in a structure situated at 422 Ore Street, Bowmanstown, Pennsylvania (hereinafter "the Structure").

2. The Structure is a single-family dwelling.

3. Defendant, Bowmanstown Borough Authority (hereinafter "the Authority"), is a municipal water authority organized under and governed by the Municipality Authorities Act[1] which serves Bowmanstown Borough and the surrounding area.

4. In or around the year 1999, the Authority had begun to operate a sanitary sewage collection and treatment system and was levying and assessing connection fees and tapping fees on owners of improved properties and occupied buildings within Bowmanstown Borough.

5. During this time, the Structure had multiple rooms on the first floor which could serve as a separate apartment ("the Apartment").

6. The Apartment had its own bathroom and kitchen.

7. The Authority had initially charged the former owners of the Structure with two equivalent dwelling units (hereinafter "EDUs") because of the Apartment on the first floor.

8. The number of EDUs affects the number of tapping fees and the amount of monthly charges.

9. Tapping fees in the amount of three thousand dollars ($3,000.00) per EDU are assessed by the Authority.

[1] 53 Pa.C.S.A. § 5601, et seq.

10. On January 2, 1999, the former owners of the Structure and the Borough of Bowmanstown entered into a written agreement pursuant to which the owners were required to convert the Structure into a single-family dwelling by removing therefrom all kitchen cooking facilities other than those in the surviving kitchen.

11. Pursuant to the aforesaid agreement, the Borough of Bowmanstown agreed that the owners of the Struture would be charged with one EDU with the understanding that a change in use or additional sewage discharge may require the owner(s) of the Structure to pay additional fees to the Authority based upon additional EDUs.

12. In 2021, Plaintiff began operating a bed and breakfast on the first floor of the Structure.

13. The bed and breakfast on the first floor of the Structure has a separate entrance and consists of a bedroom, bathroom and sitting room.

14. On June 3, 2021, Plaintiff submitted to the Borough of Bowmanstown a zoning/building permit application to create a bed and breakfast as a home occupation within the Structure.

15. Plaintiff's zoning/home occupation application was denied by the Bowmanstown Zoning Officer via letter dated July 9, 2021.

16. The denial letter issued by the Bowmanstown Zoning Officer noted that the creation/operation of a bed and breakfast home occupation at the Structure would require a special exception, an

off-street parking variance and a determination by the zoning hearing board as to whether a proposed kitchenette qualifies as a "cooking facility" which would require an additional variance.

17. On or about July 9, 2021, Plaintiff appealed the Zoning Officer's denial of her zoning/building permit application to the Bowmanstown Zoning Hearing Board.

18. Following a public hearing on August 23, 2021, the Zoning Hearing Board granted Plaintiff's application for a special exception to operate a bed and breakfast out of the Structure with the condition that the number of bed and breakfast occupants not exceed two (2) individuals at any given time, and also granted Plaintiff's request for a parking variance.

19. In its written decision of September 15, 2021, the Zoning Hearing Board determined that the appliances for the proposed bed and breakfast did not constitute a seperate "cooking facility."

20. By letter dated October 20, 2021 (hereinafter "the Letter"), the Authority's solicitor informed Plaintiff that because of the commercial use of the Structure as a bed and breakfast, an additional EDU would be assessed, which required Plaintiff to pay an additional tapping fee.

21. According to the Letter, the Authority had determined that having the bed and breakfast in the Structure "creates a new and separate business use/non-residential use, which ultimately

under 2005-02 resolution results in a tap-in fee and an additional EDU."

22. The Authority based its decision that the Structure would be assessed an additional EDU on Section 1.9(c)1.(F)of Resolution No. 2005-02 which provides: Computing a Non-Residential Multi-Unit EDU. When more than one commercial establishment is contained in a building, each business establishment will be considered one dwelling unit if the commercial establishment contains a separate toilet facility.

23.The Structure does not have more than one commercial establishment.

24.The Structure is not: a non-residential improved property, Section 1.9(c)1.(C); a residential multi-unit facility, Section 1.9(c)1.(E); or a non-residential multi-unit facility, Section 1.9(c)1.(F).

25.As a consequence of the Authority's determination that the Structure would be assessed an additional EDU, Plaintiff has paid an additional tapping fee of three thousand dollars ($3,000.00) and additional fees of twenty dollars and seventy-five cents ($20.75) per month.

After careful review and analysis of the above findings, we reach the following:

CONCLUSIONS OF LAW

1. There is no provision within Resolution No. 2005-02 which permits the Authority to determine that the Structure has two (2) EDUs.

2. The rules of statutory construction are applicable to both statutes, ordinances, and resolutions. In re Appeal of Edwin R. Thompson, 896 A.2d 659, 669 (Pa.Cmwlth. 2006).

3. The words of Resolution No. 2005-02 are clear and free of all ambiguity and, as such, the letter of the resolution is not to be disregarded under the pretext of pursuing its spirit. 1 Pa.C.S. § 1921(b).

4. Since the language of Resolution No. 2005-02 is unambiguous, statutory interpretation is not necessary in this instance. Commonwealth v. McClintic, 909 A.2d 1241, 1246 (Pa. 2006).

5. Where an administrative interpretation is inconsistent with the resolution itself, or where the resolution's meaning is unambiguous, such an interpretation carries little or no weight. Terminato v. Pa. Nat'l Ins. Co., 645 A.2d 1287, 1293 (Pa. 1994); Velocity Express v. Pa. Human Relations Comm'n, 853 A.2d 1182, 1185 (Pa.Cmwlth. 2004).

6. Although courts often defer to an agency's interpretation of the statutes it administers, when convinced that the agency's interpretation is unwise or erroneous, that deference is

unwarranted. Rosen v. Bureau of Professional and Occupational Affairs, State Architects Licensure Board, 763 A.2d 962, 968 (Pa.Cmwlth. 2000).

7. The Authority's interpretation of Resolution No. 2005-02 is inconsistent with the Resolution itself and is, therefore, erroneous as applied to Plaintiff.

8. There is no provision within Resolution No. 2005-02 which concerns itself with those situations in which a residential dwelling has a business within the Structure.

9. Section 1.9(c)1.(F) of Resolution No. 2005-02 is inapplicable to the facts in this case in that the plain language of this section does not concern itself with a situation in which a residential dwelling has a business within the Structure.

Based upon the foregoing Findings of Fact and Conclusions of Law, we enter the following:

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Plaintiff	:	
	:	
vs.	:	**No. 22-0131**
	:	
BOWMANSTOWN BOROUGH AUTHORITY,	:	
Defendant	:	

Armin Feldman, Esquire — **Counsel for Plaintiff**
Neil D. Ettinger, Esquire — **Counsel for Defendant**

VERDICT

AND NOW, to wit, this 19th day of January, 2024, following a non-jury trial held before the undersigned in the above-captioned action, and in accordance with our Decision bearing even date herewith, our Verdict is in favor of Plaintiff, Kara Scott, and against Defendant, Bowmanstown Borough Authority, as follows:

1. Resolution 2005-02 does not permit the Authority to charge Plaintiff with an additional tapping fee;
2. The property situated at 422 Ore Street, Bowmanstown, Pennsylvania, shall be assessed as one (1) equivalent dwelling unit; and
3. Within thirty (30) days of the date of this Decision and Verdict, the Authority shall reimburse/return to Plaintiff the tapping fee in the amount of three thousand dollars ($3,000.00) which she paid for the additional E.D.U. together with all additional fees/charges which were paid in

connection with the additional E.D.U. assessed by the Authority.

PURUSUANT to Pa.R.C.P. No. 227.4, the Prothonotary shall, upon praecipe, enter judgment on the Verdict if no motion for post-trial relief has been filed under PA.R.C.P. 227.1 within ten (10) days after the filing of this Decision and Verdict.

BY THE COURT:

Steven R. Serfass, J.