

TOLL PA XVIII, L.P.,
Appellant,

v.

WESTTOWN TOWNSHIP BOARD OF
SUPERVISORS,
Appellee,

and

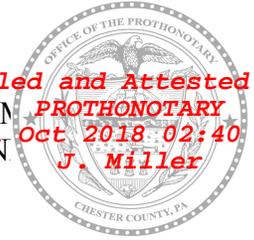
NEIGHBORS FOR CREBILLY, LLC., et
al.,
Intervenors.

IN THE COURT OF COMMON PLEAS
CHESTER COUNTY, PENNSYLVANIA

NO. 2018-02620-ZB

CIVIL ACTION

Filed and Attested by
PROTHONOTARY
31 Oct 2018 02:40 PM
J. Miller



ORDER

Appellant, Toll PA XVIII, L.P (“Appellant”) appeals from this court’s October 1, 2018 Order dismissing its appeal from the denial by the Board of Supervisors of Westtown Township, Chester County of a conditional use application. On October 3, 2018, the court ordered Appellant to file a concise statement of matters complained of within twenty-one (21) days. Appellant did so and therein raised seven (7) alleged errors by the court. The court believes its Decision and Order of October 1, 2018 adequately addresses the issues raised in the Concise Statement at Paragraphs (a)-(f). The court however will address briefly the issue raised in Paragraph (g).

At Paragraph (g) of its Concise Statement, Appellant contends that the court erred in “determining that Toll failed to address or depict ‘all lands visible from adjacent public view.’” The court finds no error in its conclusion.

The Zoning Ordinance at §170-905 - Design Standards - requires applicants, such as Appellant, to provide a site analysis that identified “(m) All lands visible from any adjacent

public road.” Appellant does not suggest that such a depiction was included in its site analysis as required.

Rather, it argues that because the court found the term “scenic view” as used in the subparagraph immediately preceding, §170-905(l), to be a subjective rather than objective standard, the use of the term “scenic views” in a different section of the Zoning Ordinance but nonetheless referenced in §170-905 “Design Standards” renders all portions of that section unenforceable. The court disagrees.

Section 170-905(1) identifies the requirements for a “site analysis.” The Zoning Ordinance states “the applicant shall prepare . . . a site analysis which identifies the items listed below **and** which complies with applicable requirements of §170-1617, Conservation Design.” One such item is a the specific criterion -- all lands visible from any adjacent public road. §170-905(1)(m). This subparagraph does not require as suggested by Appellant the depiction of “scenic views.” Although the “Conservation Design” provisions found in §170-1615 are referenced herein the language of the Zoning Ordinance is clear that the two requirements for a site analysis remain are separate and distinct. Furthermore, the use of a term deemed subjective by the court (in this case “scenic views”) in a related but separate provision within the Zoning Ordinance does not invalidate all of the otherwise objective standards of the Zoning Ordinance.

Appellant also mistakenly suggests that the two provisions discussed above are identical as used in the Zoning Ordinance. The plain language indicates otherwise. Section 170-905(1)(m) discusses an applicant’s need to depict “all lands visible *from any adjacent public road.*” In contrast, the references to scenic views in §170-1615, upon which Appellant relies, refers to “scenic views from existing streets and trails.”

Finally, it is well recognized that the language of a zoning ordinance must be given effect. If the court were to accept Appellant's argument that the above quoted language is identical and interchangeable, the court would be rendering the specific directive of §170-905(1)(m) to be meaningless, a result that should be avoided.

BY THE COURT:

Mark L. Tunnell, J.



Type: ORDER
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So Ordered

/s/ Mark Tunnell

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