

**IN THE COURT OF COMMON PLEAS FOR PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION – CIVIL**

**JOHN J. TURCHI, JR. and
MARY E. TURCHI**

OCTOBER TERM, 2008

v.

NO. 00890 & 00899

**PHILADELPHIA BOARD OF
LICENSE AND INSPECTION REVIEW,
ET AL**

OPINION

DOCKETED

MAY 20 2010

T. DUGAN

FACTS AND PROCEDURAL HISTORY

John and Mary Turchi appeal a September 9, 2008 decision of the Philadelphia Board of Licenses and Inspection Review, ("Board"). The Board's decision reversed a decision of the Philadelphia Historical Commission, ("Commission"). The Turchis own property located on 223-225 South 6th Street, Philadelphia ("Property"). The Property is bordered by the three story Athenaeum Library to the North, the five story Lippincott Publishing Building to the South, and historical Washington Square to the West. The building on the Property is the Dilworth House, constructed by Edwin Brumbaugh in a Colonial Revival style. It has significance to the City, having been the home of a former Mayor, Richardson Dilworth, and its construction is considered the start of the Society Hill revitalization. The Property is located within the Society Hill Historic District. The Commission classifies the Dilworth House as "significant," which means it is affording a higher level of importance than a building classified as "contributing."

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On May 16, 2006, the Turchis applied for a building permit to develop the Property in accordance with a plan submitted with the application. Due to its designation the plan must be reviewed by the Commission. On November 9, 2007, the Commission unanimously approved the Application. Thereafter, the Concerned Citizens Opposing Dilworth Development Project filed an appeal with the Board. The Society Hill Civil Association, Mathew DeJulio and Benita Fair Langsdorf also filed appeals with the Board. After a full record hearing the Board reversed the decision of the Commission. The Turchis appealed the Board's decision to this Court. After reviewing briefs, and taking oral argument, this Court affirms the Board's November 9, 2008 decision.

DISCUSSION

In reviewing an appeal from an agency decision Court is required to affirm that decision unless it determines there were violations of Constitutional rights, an error of law, that the procedure before the agency was contrary to the statute, or that necessary findings were not supported by substantial evidence. 2 Pa.C.S. § 754(b); Powell v. Housing Auth. of City of Pittsburgh, 571 Pa. 552, 812 A.2d 1201, 1208 n.9 (Pa. 2002). Here, there is no dispute that a full and complete record was made before the Board. Therefore, this Court limits its review to whether the Board's finding of fact are not supported by substantial evidence, an error of law was committed, Constitutional rights were violated, or the procedure before the agency was contrary to the statute. Valley View Civic Association v. Zoning Board of Adjustment, 501 Pa. 550, 462 A.2d 637 (1983).

The Turchi's main contention is that the Board applied the wrong standard of review in that it was required to give deference to the findings and decision of the Commission. The Turchis argue that

this is an error of law and warrants reversal. This Court disagrees. The Zoning Board's interpretation of the Philadelphia Code is entitled to deference as long as the interpretation is not clearly erroneous. Colville v. Allegheny, 926 A.2d 424, 429 (Pa. 2006).

Section 14-2007, et seq. of the Code creates the Commission. According to the Code an application for a permit to alter or demolish a structure within an historic district must be initially reviewed by the Historical Commission prior to the issuance of a permit by the Department of Licenses and Inspection. §14-2007(7)(c). The duties of the Historical Commission include reviewing and acting upon "applications for permits to alter or demolish historic buildings, structures, sites or objects." §14-2007(4)(d). The Commission is to determine whether the proposed plan for alteration, demolition or construction is appropriate and it considers factors such as: 1) the purposes of this Ordinance, 2) the historical, architectural or aesthetic significance of the building, 3) the effect of the development on the building and its appurtenances, 4) the compatibility of the proposed work with the character of the historic district or with the character of its site, including the effect of the proposed work in the neighboring structures, 5) the design of the proposed work, and 6) the guidance of the Secretary of the Interior's Standards for the Rehabilitation and Guidelines of Rehabilitating Historic Buildings' or similar criteria. §14-2007(7)(k).

Section 14-2007(2)(a) of the Philadelphia Code defines alteration as a "change in the appearance of a building, structure, site or object which is not otherwise covered by the definition of demolition." This includes "reroofing, cleaning or pointing of a building." Id. Demolition is defined as the "razing or destruction, whether entirely or in significant part, of a building, structure, site or object." Demolition includes the removal of a building, structure or object for its site or the removal or destruction of the façade or surface." The Commission can allow the demolition of an historic building

only if it is necessary for the public interest or it can be shown that the building "...cannot be used for any purpose for which it is or may be reasonably adapted." §14-2007(7)(j).

Section 14-2007(10) of the Code allows for a direct appeal from the Commission to the Board. Thus the very section of the Code that provides for review by the Commission allows for an appeal to the Board. When the words of a statute are clear, there is no need to look beyond the plain meaning of a statute. Commonwealth v. McClintic, 589 Pa. 465, 909 A.2d 1241, 1245 (Pa. 2006). Here the Code is unambiguous and this Court finds that the Board has the power to review and reverse the conclusions of the Commission.

Further, the Charter describes the broad review powers of the Board to review decisions of administrative agencies such as the Commission. According to §5-1005 of the Charter, in such an appeal "...the Board shall hear any evidence while the aggrieved party or the City may desire to offer, shall make findings and render a decision in writing." Id. Additionally, the Board may affirm, modify, reverse, vacate or revoke the action from which the appeal was taken. Id. The Board is created to affording citizen adversely affected by the exercise of licensing and inspection powers invested in the City agencies, an orderly procedure, in conformity with due process, for the review of action taken against them." Id. The Board's decisions are to be binding on the relevant administrative agency subject to further appeals to the courts. Id. Clearly, the language of the Code and the Charter is free from ambiguity. The touchstone of statutory interpretation is that where a statute is unambiguous, the judiciary may not ignore the plain language "under the pretext of pursuing its spirit," 1 Pa.C.S. § 1921(b), for the language of a statute is the best indication of legislative intent. Pa. Dep't of Transp., Bureau of Driver Licensing v. Weaver, 590 Pa. 188, 912 A.2d 259, 264 (Pa. 2006). Words and phrases should be construed in accordance with their common and approved usage. 1 Pa.C.S. § 1903(a).

When the words of a statute are clear, there is no need to look beyond the plain meaning of a statute. See, e.g., Commonwealth v. McClintic, 589 Pa. 465, 909 A.2d 1241, 1245 (Pa. 2006) (citing Sternlicht v. Sternlicht, 583 Pa. 149, 876 A.2d 904, 909 (Pa. 2005) and Rarnich v. Worker's Comp. Appeal Bd. (Schatz Elec., Inc.), 564 Pa. 656, 770 A.2d 318, 322 (Pa. 2001)). Here, the Board is clearly empowered to take evidence and to overrule and reverse decisions by the Commission. The only logical conclusion from the language of the Code and Charter then is that the Board's standard of review is *de novo*.

Based on this same reasoning, this Court rejects the Turchi's argument that the Commission's decisions are entitled to "strong deference." Neither the Code nor the Charter has any language that the Board is required to give deference to the Commission nor any similar agency. In fact the charter states that a Board's reversal of the Commission is binding. §5-1005. Again, the language of the Code and Charter is free from ambiguity. This Court need not look beyond the words of the Code and Charter to conclude that the Board has authority to conduct a hearing, take its own evidence and reach its own decision. This Court may not speculate as to the intent of the General Assembly where the words and phrases of the statute are clear. Colville, *supra*. The Code and Charter do not make reference to a deferential standard of review here. Therefore, despite the Turchi's contention, this Court cannot incorporate a deferential standard of review.

This Court rejects the Turchi's argument that this Court should follow the Commonwealth Court's reasoning in Scanlon v. DPW, Department of Aging, 739 A.2d 635. Scanlon involved an appeal taken straight from an agency to the Court. Here, both the Board and the Commission are two agencies on separate levels within the Department of Licenses and Inspection. Again, Under §14-2007(4)(d) of the Code, the Commission initially reviews permits involving structures within the

historical district before the Department of Licenses and Inspection may issue a permit. Then, under §14-2007(10) of the Code and §5-1005 of the Charter, the Board has the authority to hear appeals directly from the Commission and render a binding decision that affirms, modifies or reverses the Commission. Clearly, the Board plays a supervising role over the Commission subject to this Court's review.

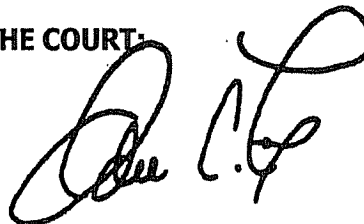
Further, the Board hearings are consistent with due process as a record hearing with a stenographer present and evidence presented with the right of cross examination.

There are no other grounds to reverse the Board in this matter. The Board concluded that substantial evidence and testimony proved that the Commission's decision conflicted with several factors under §14-2007(7)(k), such as §14-2007(7)(k)(3), §14-2007(7)(k)(4), and §14-2007(7)(k)(6) *supra*. Based on the authority provided under the Code and the Charter, the Board utilized relevant sections of the Code and based its decision on substantial evidence and testimony.

ORDER

AND NOW, this 19th day of May 2010, upon consideration of the Appeal from the decision of the Board of Licenses and Inspection Review, the response thereto to, oral argument and a thorough review of the record, it is hereby **ORDERED** and **DECREED** that the appeal is **DENIED** and the decision of the Board is **AFFIRMED**.

BY THE COURT:



IDEE C. FOX, J.