

Bond Case Briefs

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ZONING & LAND USE - PENNSYLVANIA

Lower Mount Bethel Township v. Gacki

Commonwealth Court of Pennsylvania - November 30, 2016 - A.3d - 2016 WL 6993996

Township filed zoning enforcement action against landowners. The magisterial district judge entered judgment against landowners, and landowners appealed.

The Court of Common Pleas entered judgment in favor of township and awarded attorney fees. Landowners appealed.

The Commonwealth Court held that:

- Township had geographic jurisdiction over retaining wall and backfill which landowners alleged were located in the Delaware River;
- Landowners' failure to appeal zoning violation notice to zoning hearing board resulted in a conclusive determination that their retaining wall and backfill violated floodplain ordinance; Award of over \$20,000 in attorney fees to municipality was reasonable;
- Permanent injunction directing landowners to remove the retaining wall and backfill was warranted; and
- Imposition of \$1,200 fine was warranted.

Township had geographic jurisdiction over retaining wall and backfill which landowners alleged were located in the Delaware River, in township's zoning enforcement action. Federal law granted Commonwealth authority over the portion of the river bed that was within the Commonwealth's boundaries, boundary of township and Commonwealth was the middle of the Delaware River, and interstate compact with New Jersey extended boundary line of township to river's New Jersey shore.

If a landowner does not appeal a zoning violation notice to the zoning hearing board, the failure to appeal renders the violation notice unassailable; therefore, in the event a landowner does not appeal to the zoning hearing board and the municipality files an enforcement action with a district justice, neither the district justice nor a common pleas court may conduct a de novo review of the question of whether the landowner violated the zoning ordinance, and the only question before the district justice and the Common Pleas Court is whether the penalty imposed for the violation was proper.

Award of over \$20,000 in attorney fees to municipality was reasonable in zoning enforcement action. Landowners' failure to appeal violation notice resulted in conclusive determination of their violation of ordinance, and landowners' counsel stipulated that amount of attorney fees was reasonable.

Permanent injunction directing landowners to remove the retaining wall and backfill that violated township's zoning ordinance was warranted; landowners constructed the retaining wall and backfilled the property without applying for a permit, and failed to appeal violation notice.

Imposition of \$1,200 fine was warranted for landowners' violation of township zoning ordinances; landowners remained in violation of magisterial district judge's judgment that their retaining wall and backfill violated the ordinance for 687 day

