

**APPEAL OF CHARLESTOWN OUTDOOR, LLC  
BEFORE THE ZONING HEARING BOARD  
CHARLESTOWN TOWNSHIP, CHESTER COUNTY,  
PENNSYLVANIA  
NO. 01-17**

Pursuant to 53 P.S. §916 (c)(6), the Zoning Hearing Board of Charlestown Township, sets forth hereafter Findings of Fact and Conclusions of Law in support of its Order denying Charlestown Outdoors, LLC's Zoning Challenge, made the 24<sup>th</sup> day of April, 2018.

**FINDINGS OF FACT**

1. Circlewood, LP, is the legal owner of realty and improvements located at 3317 Phoenixville Pike, Charlestown Township, Chester County, Pennsylvania, which property is designated tax map parcel 35-4-32. (11/29/17, n.t 9, Exhibit B).
2. Circlewood, LP, granted Charlestown Outdoor, LLC, hereinafter, "Outdoor," a leasehold in a portion of 3317 Phoenixville Pike, depicted on Exhibit "B," attached to a Display Lease Agreement, dated April 20, 2017, as amended by an Addendum, dated November 27, 2017, to construct, maintain and lease for advertising purposes an off-premises display, including the rights of possession and use of ingress and egress, to the display area depicted on Exhibit "B," attached to Outdoor's Exhibit "A". (11/29/17, n.t. 9)
3. 3317 Phoenixville Pike is situated in a B-1 (TND overlay) zoning district. (Outdoor's Zoning Challenge, filed May 1, 2017).
4. Outdoor alleged in its Zoning Challenge that Charlestown Township's zoning ordinance does not permit outdoor advertising billboards, a legitimate business use, as a matter of law (*de jure*) and/or fact (*de facto*) and therefore said ordinance is invalid and unconstitutional. (Outdoor's Zoning Challenge, filed May 1, 2017).

5. A landowner who, on substantive grounds, desires to challenge the validity of an ordinance or map or any provision thereof which prohibits or restricts the use or development of land in which he has an interest may submit the challenge to the zoning hearing board or to the governing body under §916.1(a). 53 P.S. §10916.1(a).

6. A challenger who alleges that a zoning ordinance is unconstitutional and invalid must overcome the presumption that the ordinance is constitutional and valid. Township of Exeter v Zoning Bd. of Adjustment of West Whiteland Tp. 599 Pa. 568, 579, 962 A.2d 653, 659 (2009); Exton Quarries, Inc. Zoning Hearing Board of West Whiteland Tp. 228 A.2d 169, 179 (Pa, 1967)

7. Charlestown Ordinance No. 125-04, enacted by Charlestown Township's Board of Supervisors on December 20, 2004, amended the Ordinance by adding definitions, by repealing the LI-Limited Industrial Districts and the regulations applicable thereto, amending the regulations applicable in the NC-1 zoning district, establishing four new zoning districts known as the Industrial/Office, Business-1, Limited Industrial/Business, and Residential Cluster Districts; and amending the zoning map to delineate the boundaries of the new zoning districts. (11/29/17, n.t. 19-20); Township Exhibits T-3 and T-10)

8. When Charlestown Township changed codifiers, the amendments set forth in Ordinance No. 125-04, which were correctly set forth in Keystate's codification of the Ordinance, were not entirely included in the codification, prepared by General Code, Charlestown's current codification company. (11/29/17, n.t.21-22; n.t.19, line 8)

9. At a public meeting of Charlestown's Planning Commission held April 11, 2017, Thomas Comitta, Charlestown's land planner, informed the commission that the zoning ordinance (sic) refers to "LI" in regard to billboards; there is no longer an LI zone in the Township, therefore the ordinance (sic) needs to be updated to refer to the proper district, it should say "IO". (the context of Mr. Comitta's statement supports a finding that he meant the printed ordinance for purchase by the

public and not the enacted Charlestown Township Zoning Ordinance of June 20, 1979, as amended.) (Judicial Notice: Charlestown Twp. Planning Commission Minutes, April 11, 2017).

10. Outdoor filed its Zoning Challenge on May 1, 2017, and alleged that §27-1405.13B of the zoning ordinance permits outdoor advertising billboards in the Limited Industrial Two (LI-2) district (Zoning Challenge, paragraph 11) and because the ordinance no longer has an LI-2 district (Zoning Challenge, paragraph 12), there is no district that permits outdoor advertising billboards, allegations based on General Code's inaccurate codification which omitted certain changes enacted by Ordinance No. 125-04 (11/29/17, n.t.20, line-24 through n.t.21, line-25)

11. Charlestown Township's Business-1(B-1) district permits outdoor advertising billboards as a use (11/29/17, n.t.21-22; Exhibit T-3, pages 14-3, 14-5)

12. The B-1 district is depicted on Exhibit T-2 as a pink shaded area and the limits of its area are marked in red on Exhibit T-7.

13. The B-1 district is bounded on its southern side by the Pennsylvania Turnpike. (11/29/17, n.t. 24; Exhibit T-2).

14. At paragraphs 15 and 16 of its Zoning Challenge, Outdoor averred that based on the Route 29 slip ramp improvements, the billboard district provided under §27-1405.13B. (sic, §27-1002.1.A (1)(b) and (2)(c)) does not comply with PennDot's interchange ramp spacing requirements under the Pennsylvania Outdoor Advertising Control Act and therefore the Ordinance is either or both de jure and de facto exclusionary with respect to outdoor advertising billboards.

15. In support of Outdoor's allegations 15 and 16, Outdoor submitted Exhibit CO-G to show the extent of PennDot's regulation 445.4 prohibiting billboards within 500 feet of an Interchange. (11/29/17, n.t.11, Exhibit CO-G, pages 1 and 2.

16. Ordinance #125-04 was enacted on December 20, 2004, and the construction of the slip ramp to the turnpike occurred at least 5 years after the enactment of said ordinance. (Exhibit T-10), Judicial Notice).

17. PennDOT's regulation 445.4 prohibits billboards within 500 feet of a Turnpike Interchange. (11/29/17, n.t. 11)

18. A de facto exclusion occurs when an ordinance appears to permit a use, but *under such conditions* (italics added for emphasis) that the use cannot be in fact accomplished. Township of Exeter v. ZHB of Exeter Township, supra, at 659.

19. There is no de facto exclusion as the 500 feet prohibition was not a condition imposed by Charlestown Township.

20. The interchange was not in existence when the B-1 district was created.

21. Thomas Comitta, a certified planner, whose experience includes, preparing at least 60 zoning ordinances, 30 subdivision and land development ordinances, 50 comprehensive plans, testifying as an expert witness more than 1,200 times during public hearings, and presently is the planning consultant for 22 Pennsylvania municipalities, testified that there is a small part of the B-1 zoning district outside the 500 feet PennDOT prohibition that is available for billboard use. (11/29/17, n.t. 23 through 25 and 35, CO1, sub G and Exhibit T-1).

22. In 2008 Charlestown Township adopted the Phoenixville Regional Comprehensive Plan, a multi-municipal comprehensive plan pursuant to Article XI of the Pa. Municipalities Planning Code. (11/29/17, n.t. 28, Exhibit T-8).

23. §916.1 of the M.P.C., provides at subparagraph (h):

Where municipalities have adopted a multimunicipal comprehensive plan pursuant to Article XI, but have not adopted a joint municipal ordinance pursuant to Article VIII-A, and all municipalities participating therein have adopted and are administering zoning ordinances generally consistent with the provisions of the multimunicipal comprehensive plan and a challenge is brought to the validity of a zoning ordinance of a participating municipality involving a proposed use, then the zoning hearing board or governing body, as the case may be, shall consider the availability of uses under the zoning ordinances within the municipalities participating in the multimunicipal comprehensive plan within a reasonable geographic area and shall not limit its consideration to the application of the zoning ordinance on the municipality whose ordinance is being challenged. (11/29/17, n.t. 25-26, 28,(Exhibit T-4)

24. Schuylkill Twp., Phoenixville Borough, East Pikeland Twp., East Vincent Twp., West Vincent Twp. and Charlestown Twp. are part of the Phoenixville Regional Planning Commission. (11/29/17, n.t. 28, Exhibit T-8, page 1.3)

25. Charlestown Township adopted the Phoenixville Comprehensive Plan in 2008. (11/29/17, n.t 28, Exhibit T-8)

26. The six municipal members of the Phoenixville Regional Planning Commission have zoning ordinances that are generally consistent with the Phoenixville Regional Comprehensive Plan. (11/29/17, n.t 38)

27. Off-premise advertising sign or billboard use is permitted in the zoning ordinances of the member municipalities. (11/29/17, n.t 38)

28. Schuylkill Township permits billboards in its LI district, along route 23, near Phoenixville Borough a distance approximately 4 miles from Charlestown Township's B-1 district. (11/29/17, n.t 28-29 & 38; Exhibits T-5 and T-6)

29. Phoenixville Borough permits billboards in its TC and MG districts, a distance approximately 4.5 miles from Charlestown Township's B-1 district. (11/29/17, n.t 28-29 & 38; Exhibits T-5 and T-6)

30. East Pikeland Township permits billboards in its C district, a distance approximately 5 miles from Charlestown Township's B-1 district. (11/29/17, n.t 38; Exhibits T-5 and T-6; §916.1(h) of the M.P.C.)

31. The testimony of Charlestown Township's land planning consultant, Thomas J. Comitta, is based on specialized knowledge, experience, training and education and assists the Zoning Hearing Board to determine the evidence and facts in issue. (11/29/17, n.t 3)

32. The approximate distances between Charlestown's B-1 zoning district and the billboard districts described in Findings of Fact 28 through 30 are within a reasonable geographical area and the Zoning Hearing Board finds that billboard districts situated in said participating member's ordinances preclude the validity of

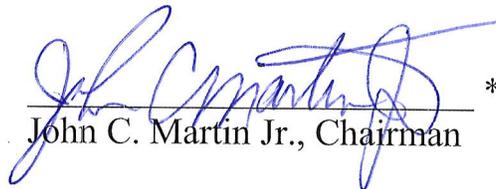
Outdoor's zoning challenge. (11/29/17, n.t. 38, Exhibits T-5 and T-6, §916.1(h) of the M.P.C)

**CONCLUSIONS OF LAW**

1. The Charlestown Township Zoning Ordinance, of 1979, as amended, does not exclude billboards advertising off-premises businesses on its face; there is no de jure exclusion.

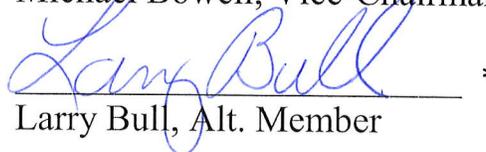
2. The Charlestown Township Zoning Ordinance, of 1979, as amended, does not exclude billboards advertising off-premises businesses as a matter of fact, as the condition which allegedly precludes accomplishment was not applicable to the land designated district B-1 at the time Ordinance #125-04 was enacted; there is no de facto exclusion.

BY THE ZONING HEARING BOARD:

 \*

John C. Martin Jr., Chairman

\_\_\_\_\_\*  
Michael Bowell, Vice-Chairman

 \*

Larry Bull, Alt. Member

\* This document may be signed counterparts, in which case the signed counterparts when joined together and attached to these Findings of Fact and Conclusions of Law shall constitute one original signed document.