

**IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
CIVIL DIVISION**

QUAKER VALLEY SCHOOL DISTRICT,

Appellant,

v.

LEET TOWNSHIP ZONING HEARING BOARD,

Appellee,

LEET TOWNSHIP, WILLIAM JASPER,
MICHELLE ANTONELLI AND LEET
TOWNSHIP MUNICIPAL AUTHORITY

Intervenors.

No: SA 22-000186

OPINION

James, J.

November 28, 2022

This appeal arises from the decision of the Appellee Leet Township Zoning Hearing Board (“Board”) dealing with Appellant Quaker Valley School District’s (“QVSD”) application for a special exception to build a school on 108 acres of land in the AAA Residence Zoning District of Leet Township. Intervenors are Leet Township, Leet Township Municipal Authority and William Jasper and Michelle Antonelli, who own property in close proximity to the proposed site.

Section 27-301 of the Leet Township Zoning Ordinance permits school use as a special exception in the AAA zoning district. The Ordinance does not establish

any specific or general criteria for approval of a school use as a special exception. The Board held eleven hearings from June of 2021 to February of 2022. The record established that the proposed school would be served by Camp Meeting Road and there would be two access driveways off of Camp Meeting Road into the school. At the hearings, concerns were raised that Camp Meeting Road was already congested during times of shift changes at nearby employers. The Board noted that with the addition of student drivers and school buses, first responders would be delayed in reaching the school. However, no first responders or emergency management experts testified. On March 28, 2022, the Board denied QVSD's application but stated in its Decision that had the school district agreed to the emergency-only road provision, then it would have approved the application with conditions. The Board found that based upon the testimony, it was an abnormal risk for a school not to implement an emergency management plan that included an emergency-only road if reasonably recommended by first responders. The Board stated that it relied on the testimony of traffic expert Charles Wooster, school feasibility expert Jon Thomas and the Objectors' testimony on the emergency-only road issue. RR 4740. It is from that decision that QVSD appeals.

When the trial court takes no additional evidence, the scope of its review is limited to determining whether the Board committed an error of law, abused its discretion or made findings not supported by substantial evidence. Mars Area Residents v. Zoning Hearing Board, 529 A.2d 1198, 1199 (Pa. Cmwlth. 1987). Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. Valley View Civic Association v. Zoning

Board of Adjustment, 462 A.2d 637, 640 (1983).

The Board erred in denying QVSD's application. The current Zoning Ordinance expressly permits schools in the AAA Residence District as a special exception. Therefore, the Leet Township Commissioners acknowledged that a school use in the AAA Residence District would not be detrimental to the health, safety and welfare of the community. The current Zoning Ordinance does not set forth specific or general criteria for review of an application for a special exception for school use. It only requires that a written application address 13 different topics. Conversely, the previous Ordinance provision, which was repealed in 2019, expressly required conditions to be met to grant a special exception. Therefore, the Board's requirement of an emergency-only road provision, was improper because the Ordinance does not require any criteria for review of a special exception.

The record lacks evidence to support the Board's finding that the failure to provide an emergency-only road would, to a high degree of probability, pose a substantial threat to the health, safety and welfare of the community beyond what would normally be expected by use of the Property for a school. In making that finding, the Board stated that it relied on the testimony of traffic expert Charles Wooster, school feasibility expert Jon Thomas and the Objectors. RR 4740. However, the Board also found that Mr. Wooster had not consulted with local police in preparing the traffic study and did not evaluate the need for an emergency-only road. See Findings 22-24. The Board found that Mr. Thomas also confirmed that he did not consult with local first responders and also did not provide an opinion

on an emergency plan. See Findings 22-24. Mr. Wooster confirmed that matters related to emergency response would be developed in the future. See Finding 21.

The Board incorrectly applied the burden of proof on complying with general criteria in accordance with Bray v. Zoning Board of Adjustment, 410 A.2d 909 (Pa. Cmwlth. 1980). Bray holds that objectors must first raise an objection showing to a high degree of probability that the use as a school may cause a substantial harm beyond what is normally expected, and that the impact would pose a substantial threat to the community. This burden may not be shifted by the zoning ordinance. QVSD had no opportunity or obligation to refute this burden because no testimony asserted that an emergency-only road was required. The Board's finding regarding emergency access was based on speculation with no foundation in the record. Board Finding No. 15 stated "No first responders or emergency management experts testified." The Board's Solicitor questioned Mr. Wooster.

God forbid, if there were an active shooting incident at that new school, do you have any expert opinion as to how that would be -- how Camp Meeting would accommodate it if it happened at a peak time, when school was letting out or school was starting?

Mr. Wooster answered, "We did not."

RR 1927.

The Board also noted that the testimony referred to as the additional "God forbid" exchange with Mr. Wooster, was important when he was again questioned by the Board Solicitor. RR 4739.

God forbid there would ever be a catastrophe at the school, a shooter, an explosion, something like that, but if that were to happen, what do you foresee happening here in terms of emergency

vehicles? And in connection with that --and I apologize for the two parts of the question-- have you talked with the police in Leetsdale, Sewickley about, gee, guys, does this from a traffic standpoint makes sense if we have that kind of catastrophe?

Mr. Wooster answered:

Not yet. Again, that's part of the I'll call it event contingency plan. So you need to create an event plan to have a plan for all events. I will say that in my history I've not been approached to say, what do we do from a traffic standpoint to handle an active shooter situation? It's normally outside of my issue. So that's emergency management issue. We can certainly assist in it, whatever they are doing, but that's usually unique.

RR 4739-4740.

The Court recognizes that implementing an emergency plan is a legitimate concern to members of the community. However, the emergency-only road is a matter to be addressed as part of the land development process, not zoning use approval. The Board has no jurisdiction regarding road design. In the In Re: Thompson, 896 A.2d 659, 671 (Pa. Cmwlth. 2006) case, the Commonwealth Court stated, “[s]pecial exception or conditional use proceedings involve only the proposed use of the land, and do not involve the particular details of the design of the proposed development. Schatz v. New Britain Township Zoning Hearing Board of Adjustment, 596 A.2d 294 (Pa. Cmwlth. 1991).” QVSD stated in its brief at page 13, “[t]he School District, at all times, considers the safety of its students, teachers and staff. The new high school will be no different: an emergency plan will be in place.”

Based upon the foregoing, the Board's decision is reversed. QVSD's special exception request to permit the use of the Property for school purposes is granted.

By the Court:

Joseph M. James