

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

Main Line Gardens, Inc. and	:	
Coffman Associates, LLC,	:	
Appellants	:	
	:	
v.	:	No. 413 C.D. 2013
	:	Argued: October 8, 2013
Zoning Hearing Board of Willistown	:	
Township, and J. Dean Reichelle Jr.	:	
and Elizabeth Ann Reichelle, h/w,	:	
and James J. Donnelly and Gladys E.	:	
Donnelly, h/w, J. Stephen Blackburn	:	
and Deirdre Blackburn, h/w and	:	
Willistown Township	:	

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, Judge  
HONORABLE ROBERT SIMPSON, Judge  
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION  
BY JUDGE SIMPSON<sup>1</sup>**

**FILED: February 20, 2014**

In this appeal arising from a zoning enforcement action, Main Line Gardens, Inc. and Coffman Associates, LLC (Coffman) (collectively, Main Line) challenge the orders of the Zoning Hearing Board of Willistown Township (ZHB) and the Court of Common Pleas of Chester County (trial court) that determined Main Line’s garden center use did not comply with the terms of a prior conditional use decision as well as the Willistown Township Zoning Ordinance of 1981 (zoning ordinance). Essentially, Main Line challenges the determinations that, although it may sell mulch from its property, at retail or wholesale, it may not have

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<sup>1</sup> This opinion was reassigned to the author on November 26, 2013.

dumped upon its property, or store, sell or transfer raw wood chip material to be processed into mulch. After review, we affirm.

### **I. Factual and Procedural Background**

Main Line operates a garden center business on an 8.29-acre property located at 376 Paoli Pike, Malvern, Pennsylvania (the property). Coffman is the record owner of the property. The property lies in the RA Residence District, and a portion of the property lies in the Paoli Pike Corridor District (an overlay district). The Paoli Pike Corridor District regulations permit a “Garden Center” by conditional use. See Section 139-146(B) of the zoning ordinance.

In February 2008, Main Line Gardens and Fence Center, Inc., which previously operated a garden center on the property,<sup>2</sup> obtained conditional use approval for expansion of the garden center from the Willistown Township Board of Supervisors (Supervisors). The conditional use decision described the expansion of the garden center as entailing construction of a pole barn, two new six-foot high concrete storage bins, and an additional parking area. Supervisors’ Op., 2/11/08, Finding of Fact No. 7; Reproduced Record (R.R.) at 861a. The Supervisors imposed 20 conditions on the grant of the conditional use approval. Most pertinent to our review, the conditional use decision stated that in granting the application the Supervisors relied on the testimony, plans and exhibits presented by Main Line Gardens and Fence Center, Inc., and the Supervisors incorporated the testimony, plans, exhibits and documentary evidence as additional conditions of the approval.

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<sup>2</sup> The prior record owner of the property was Paoli Pike Realty, Inc.

Approximately three years after the conditional use decision, the Township's zoning officer issued a zoning ordinance enforcement notice to Main Line, which succeeded Main Line Gardens and Fence Center, Inc. in operating a garden center on the property. The enforcement notice ordered Main Line to cease and desist from 16 alleged violations of the zoning ordinance or the conditional use decision. Relevant here, the first violation in the enforcement notice relates to:

[t]he dumping, storage, transfer and/or processing of tree waste in the form of wood chips on the [p]roperty. Tree waste in the form of wood chips is dumped on the ground and stored in large piles, transferred to tractor trailers and transported off of the [p]roperty. This activity does not conform to use permitted as a 'Garden Center' under [zoning ordinance] §139-146.B. This activity is not included within the definition of Garden Center under [zoning ordinance] §139-6. This activity is not permitted within the Paoli Pike Corridor District under the [zoning ordinance]. No approval for this activity has been granted either by the ... Supervisors by conditional use as an accessory use, or by the [ZHB] by variance. This activity is also contrary to the requirements of [c]ondition no. 15 of [the] [conditional use decision and order], which prohibits the dumping, placement or discarding of waste materials on the [p]roperty. The [o]rder provides in paragraph 2 on page 7 that '[a]ny violation of the conditions during or following construction will be treated as a violation of the ... [z]oning [o]rdrinance ..., subject to the enforcement mechanisms specified in MPC §§511 and 616-617, 53 P.S. §§10511 and 10616-10617.'<sup>3</sup> The activity therefore violates the [z]oning [o]rdrinance.

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<sup>3</sup> Pennsylvania Municipalities Planning Code (MPC), Act of July 31, 1968, P.L. 805, as amended, 53 P.S. §§10101-11202. Section 511 of the MPC was reenacted by the Act of December 21, 1988, P.L. 1329, 53 P.S. §10511. Section 616 of the MPC was repealed by the Act of December 21, 1988, P.L. 1329, formerly 53 P.S. §10616. Section 616.1 of the MPC, relating to enforcement notices, was added by the Act of December 21, 1988, P.L. 1329, as amended, 53 P.S. §10616.1. Section 617 of the MPC was reenacted and amended by the Act of December 21, 1988, P.L. 1329, 53 P.S. §10617.

R.R. at 875a (emphasis added). Main Line appealed the enforcement notice to the ZHB. Hearings ensued.

Based on the evidence presented, the ZHB made the following relevant findings. Main Line stores wood chips in piles in and around outdoor storage bins on the property. Main Line permits local landscape contractors, individual property owners, and the East Goshen Township public works department to dump wood chips on the property. Main Line does not pay for the wood chips delivered to the property, but receives “credits” for the wood chips that are picked up by others and taken off-site. ZHB Op., 5/23/12, Finding of Fact (F.F.) No. 25. Main Line sells the wood chips stored on the property to “mulch supply” companies that use the wood chips to make commercial grade mulch. F.F. No. 26. From March through September 2011, at least 60, 18-wheel tractor trailers were loaded with wood chips on the property, which then transported the wood chips to mulch supply companies. F.F. Nos. 27, 28. Wood chips were stored on the property from at least early-March 2011 through June 2011. Main Line’s owner testified that, in his opinion, wood chips are not “waste” because they are used in day-to-day business and, just like mulch, they are sold in the ordinary course of business. F.F. No. 30.

The ZHB found that a “Garden Center,” as defined in Section 139-6 of the zoning ordinance, includes the “wholesale or retail sale of nursery stock and garden supplies.” F.F. No. 31. The ZHB looked to the dictionary definitions of the terms “wholesale,” the sale of goods in quantity, as to retailers or jobbers, for

resale, and “retail,” the sale of goods to ultimate consumers, usually in small quantities. F.F. Nos. 32, 33.

Significantly, based on a review of the transcript of the conditional use hearing, the ZHB determined there was no testimony or evidence presented “regarding the dumping, storage, transfer and/or processing of wood chips on the [p]roperty or the sale of the wood chips to be used as raw material for the production of commercial grade mulch.” F.F. No. 34. Further, the ZHB found, “[w]hile the sale of wood chips to a property owner or landscaper, retail or wholesale, to use as mulch would be permitted under the Garden Center Use as defined, the sale or transfer of wood chips to be used as raw material to be processed into mulch is not.” F.F. No. 35.

The ZHB found that, “[w]ood chips for sale or barter to mulch manufacturers in bulk are not considered ‘mulch,’ as approved by the [Supervisors] in the [c]onditional [u]se [d]ecision nor as permitted under the definition of ‘Garden Center Use’ set forth in § 139-6 of the [z]oning [o]rdinance.” F.F. No. 36. Additionally, “[t]he [c]onditional [u]se [d]ecision did not authorize the collection or distribution of wood chips as the raw material for the production of mulch as part of the Garden Center use nor did it authorize any accessory use to the permitted Garden Center use.” F.F. No. 37. The ZHB determined there was sufficient evidence that Main Line violated the zoning ordinance and the provisions of the conditional use decision by collecting and distributing wood chips at high volume as the raw material for the production of mulch by an outside manufacturer. F.F. No. 38.

In light of these findings, the ZHB explained:

The first alleged violation[,] that [Main Line] was dumping, storing, transfer[ring] and/or processing tree waste in the form of wood chips on the [p]roperty and that such acts were in violation of the [c]onditional [u]se [a]pproval and were beyond the scope of the permitted Garden Center Use was the most difficult alleged violation for the [ZHB] to rule upon. All parties admit that [Main Line] receives wood chips from local contractors, property owners, and public works departments on the [p]roperty and that the wood chips are removed from the property in high-volume bulk by tractor trailers several times a day during the course of the year. While the [ZHB] acknowledges that processed wood chips are sometimes used by landscapers and property owners as ‘mulch,’ in this case [Main Line] is selling or bartering the wood chips to mulch manufacturers or mulch supply companies who make mulch. In addition, there was no evidence presented in the [c]onditional [u]se hearing that [Main Line] intended to conduct the collection or distribution of the wood chips on the [p]roperty nor was it approved by the ... Supervisors as part of the Garden Center Use. While [Main Line] could have requested approval for such a use as accessory to the Garden Center Use, it did not do so. As such, [the ZHB] is constrained by the record created in the [c]onditional [u]se [h]earing and the [z]oning [o]rdinance definition of a Garden Center Use in §139-6 and it concludes that wood chips for sale or barter to mulch manufacturers are not considered ‘mulch’ within the parameters set forth by the ... Supervisors. The [ZHB] must, therefore, deny the appeal of the alleged violation and affirm the Zoning Enforcement Notice as to Alleged Violation No. 1.

ZHB Op. at 26-27 (emphasis added).<sup>4</sup>

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<sup>4</sup> Of the 16 alleged violations of the zoning ordinance and conditional use decision, the ZHB determined Main Line committed six violations. Specifically, the ZHB upheld the enforcement notice and denied Main Line’s appeal as to Violation Numbers 1, 2, 12, 14, 15 and 16. ZHB Op., 5/23/12, at 32. The ZHB overturned the enforcement notice and granted Main Line’s appeal as to Violation Numbers 3, 4, 5, 6, 7, 8, 9, 10, 11 and 13. *Id.* at 32-33.

Before the trial court, Main Line challenged the ZHB’s decision as to Violation Numbers 1, 2, and 12. Violation Number 1 relates to the dumping, storage, transfer and/or processing of tree waste in the form of wood chips on the property. Violation Number 2 relates to the **(Footnote continued on next page...)**

Main Line appealed to the trial court, which did not receive additional evidence on the merits.<sup>5</sup> In a thoughtful decision, the Honorable David F. Bortner agreed with the ZHB's essential finding that, although the sale of wood chips to a property owner or landscaper, retail or wholesale, to use as mulch was permitted under the defined garden center use, the sale or transfer of wood chips to be used as a raw material to be processed into mulch is not. Based on its agreement with the ZHB's analysis on this point, the trial court determined Main Line would be permitted to sell wood chips to be used, in that chipped but unprocessed form, as mulch or ground covering, but would not be permitted to have dumped on its property, or to store, sell or allow to be transported from its property, wood chips which thereafter will be further processed into a more refined mulch product (or into any other product). The trial court explained this latter category of wood chips did not constitute "garden supplies," and, thus, did not comply with the definition of a "Garden Center" in Section 139-6 of the zoning ordinance.

The trial court also considered and rejected Main Line's argument that, in affirming certain alleged violations in the enforcement notice, the ZHB improperly imposed additional conditions on the previously approved garden

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**(continued...)**

construction of outdoor storage bins on the property that exceed six feet in height. Violation Number 12 relates to the failure to install and maintain a buffer planting strip. Violation Numbers 2 and 12 are not before this Court. Although the Supervisors assert the ZHB properly determined that outdoor storage bins on the property exceed six feet in height in violation of the conditional use decision and the zoning ordinance (Violation Number 2), Main Line does not challenge the determinations of the ZHB and the trial court on this issue.

<sup>5</sup> The trial court did, however, hold a hearing on Main Line's petition for stay of any existing or additional enforcement actions against it pending its appeal to the trial court. Reproduced Record at 922a, 971a; see Tr. Ct., Slip Op., 2/15/13, at 15.

center use. To that end, the trial court acknowledged that neither a zoning officer nor a ZHB could alter or re-open a conditional use decision. However, it determined, that is not what occurred here. Rather, the ZHB here sought to “compel compliance with the February 11, 2008 [c]onditional use [d]ecision and order” by requiring Main Line to conduct its business in conformity with the zoning ordinance’s definition of a “garden center,” selling only “garden supplies.” Tr. Ct., Slip Op., 2/15/13, at 8 (emphasis in original).

Further, the trial court rejected Main Line’s argument that this enforcement action was an effort to retroactively prohibit the sale of mulch through the imposition of conditions on the sale of mulch set forth in the ZHB’s factual findings. The trial court explained that the “inaccurate semantic premise of this argument is that ‘wood chips’ equal ‘mulch’, at all times and for all purposes.” Id. The trial court rejected this argument in light of its analysis that, for wood chips to be properly sold from a garden center, they must constitute a type of garden supply, and not a type of tree waste or raw material. “When being transported away from [Main Line’s] property for some act of further processing, those wood chips are not being sold (or bartered) as garden center ‘mulch.’” Id.

In light of its holding, however, the trial court deemed it necessary to clarify and narrow the scope of the language utilized in Violation Number 1 of the enforcement notice. The trial court explained that Main Line could not properly be prohibited, in a blanket fashion, from the “dumping, storage, transfer and/or processing of tree waste in the form of wood chips on the [p]roperty.” Id. at 9. But, the trial court stated, Main Line must be prohibited from the “dumping,



storage, transfer and/or processing, and sale or barter from the ... property of all wood chips which thereafter will be processed into a more refined mulch product (or into any other product).” Id. As a result, the trial court modified the original language set forth in the enforcement notice to comport with its decision.

More specifically, the trial court’s order regarding this aspect of the enforcement notice states:

The May 23, 2012 Order of the [ZHB], with regard to ‘Violation No. 1’ is AFFIRMED, with the following modification: ‘[Main Line is] prohibited from the dumping, storage, transfer and/ or processing, and the sale or barter from the property ... of all wood chips which thereafter (upon leaving the property) will be processed into a more refined mulch product (or into any other product). This activity does not conform to the use permitted as a ‘Garden Center’ under [Section] 139-146.B [of the zoning ordinance]. This activity is not included within the definition of Garden Center under Code [Section] 139-6 [of the zoning ordinance]. This activity is not permitted within the Paoli Pike Corridor District under the [zoning ordinance]. No approval for this activity has been granted either by the ... Supervisors by conditional use as an accessory use, or by the [ZHB] by variance.

Tr. Ct. Order, 2/15/13, at 1. Main Line now appeals to this Court.

## **II. Issues**

On appeal,<sup>6</sup> Main Line presents four issues. First, it asserts the ZHB and the trial court erred in adding new conditions to a previously final, unappealed

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<sup>6</sup> Because the parties presented no additional evidence on the merits after the ZHB’s decision, our review is limited to determining whether the ZHB committed an abuse of discretion or an error of law. Taliaferro v. Darby Twp. Zoning Hearing Bd., 873 A.2d 807 (Pa. Cmwlth. 2005). The ZHB is the fact-finder here. Id.

conditional use approval. It also argues the ZHB and the trial court erred in determining a municipality may prohibit the sale of a product, which may otherwise be lawfully sold at wholesale and retail, based on the use to which the customer puts the product once off the premises. Further, Main Line challenges the trial court's alleged imposition of a new condition, requiring Main Line to provide weekly documentation to the Township concerning all tractor-trailer activity, including the intended destination of each truck. Finally, Main Line contends the police power of a township, exercised through its zoning ordinance, does not permit the township to control activities that occur outside the township.

### **III. Discussion**

#### **A. Alleged Imposition of Conditions on Unappealed Conditional Use Decision**

Main Line first contends the ZHB and trial court erred in adding new conditions to the final, unappealed conditional use decision. Main Line argues the trial court erred in determining the enforcement notice does not append new conditions to the prior approval, but rather seeks to “compel compliance with the February 11, 2008 conditional use [d]ecision ....” Tr. Ct., Slip Op., at 8. It asserts the trial court erred in concluding the conditional use decision limited the use of the property to the sale of only “garden supplies.” Id.

Main Line argues it relied on the final, unappealed conditional use decision when it purchased and cleared the property, erected bins to receive mulch, installed landscape buffers, and constructed a new building for the business, as shown on the photos and plans. Main Line also contends it has a vested right in the conditional use approval as it was given. Because the hearing before the ZHB here arose from an appeal of an enforcement notice, Main Line asserts, the

Township bore the burden of proof. Main Line argues the ZHB and the trial court sought to impose new conditions that infringed on Main Line's vested rights. As a result, Main Line asserts the burden was not on it to prove vested rights, but on the Township to prove Main Line's rights were not vested. Main Line contends that, because this case arose out of an enforcement action, it was the responsibility of a party other than Main Line to raise this issue and establish that: (1) Main Line did not exercise due diligence in attempting to comply with the law; (2) Main Line did not exercise good faith; (3) Main Line did not expend substantial unrecoverable funds; (4) there was a filing of an appeal by either the Township or an interested party; and, (5) there was sufficient evidence to prove that property rights, or the public health, safety or welfare would be adversely affected by the use.

Here, Main Line asserts no one met the burden of establishing Main Line's rights were not vested in order to allow a revision of the prior conditional use approval. Main Line argues there was no hearing where the issue of vested rights was discussed. Had the issue been raised, Main Line contends, it would have been clear that 7,200 additional square feet of bins, and a large new building were built. Main Line contends it was certainly foreseeable that many tractor trailers would be needed to stock product, and that some customers would buy in tractor trailer loads. Main Line argues it was also foreseeable that the business might be successful and require more trucks delivering more materials. Main Line asserts all of these additional trucks and products were completely legal, until the ZHB and the trial court imposed their new conditions. Main Line argues this was not an enforcement of existing conditions; rather, it required a major change in Main Line's growing business. Now that the business is successful, Main Line

contends, it is unlawful to add new conditions that will punish Main Line's success and limit the amount of products that can be sold, and the number of trucks that can access the property.

Main Line further asserts there is nothing in the conditional use hearing transcript or decision that limits the business to selling only "garden supplies." Further, there is nothing in the conditional use decision that limits the sale of any product based on what a purchaser plans to do with it after purchase. The Township zoning officer testified mulch can lawfully be sold at retail and at wholesale and that product can be sold at wholesale in trucks. He further testified there were no limits on the number of trucks permitted to make deliveries or the amount of mulch that could be sold.

Main Line argues the trial court found the character of the mulch for sale was modified, not by the conduct of the property owner, but by the intent of the purchaser. Main Line contends a municipality may not prohibit the sale of a product that may otherwise be lawfully sold at both retail and wholesale based on the use to which a purchaser puts the product once off the property.

Contrary to Main Line's assertions, neither the ZHB nor the trial court imposed additional conditions on the final, unappealed conditional use decision. Rather, both the ZHB and the trial court reviewed the language of the zoning ordinance as it relates to the approved "Garden Center" use, the transcript of the conditional use proceeding, and the conditional use decision, and they determined

Main Line's use of the property violated the terms of the approved use as alleged in the Township's enforcement notice.

More specifically, the ZHB determined that, while the sale of wood chips to a property owner or landscaper, retail or wholesale, to use as mulch was permitted under the defined "Garden Center" use, the sale or transfer of raw material for processing into mulch was not.

In considering this issue, we note, the words of the ordinance control its meaning and application, and effect must be given to all relevant provisions. Lench v. Zoning Bd. of Adjustment of City of Pittsburgh, 13 A.3d 576 (Pa. Cmwlth. 2011). Undefined terms are given their plain meaning. Atiyeh v. Bd. of Comm'rs of Twp. of Bethlehem, 41 A.3d 232 (Pa. Cmwlth. 2012). In construing provisions of a zoning ordinance, a tribunal may use the dictionary to determine the common and approved usage of a term. Pennsy Supply, Inc. v. Zoning Hearing Bd. of Dorrance Twp., 987 A.2d 1243 (Pa. Cmwlth. 2009).

Further,

a zoning hearing board is the entity charged with the interpretation and application of the zoning ordinance. It is well settled that a zoning hearing board's interpretation of its own zoning ordinance is entitled to great weight and deference from a reviewing court. This principle is also codified in Section 1921(c)(8) of the Statutory Construction Act of 1972, 1 Pa. C.S. §1921(c)(8). The basis for the judicial deference is the knowledge and expertise that a zoning hearing board possesses to interpret the ordinance that it is charged with administering.

Smith v. Zoning Hearing Bd. of Huntingdon Borough, 734 A.2d 55, 57-58 (Pa. Cmwlth. 1999) (citations and footnote omitted).

Section 139-146 of the zoning ordinance provides that, “[a]ll uses permitted under [the Paoli Pike Corridor] [D]istrict shall be permitted only after conditional use approval.” Id. A “Garden Center,” the approved use of the property, is permitted by conditional use in the Paoli Pike Corridor District. See Section 139-146(B) of the zoning ordinance. The zoning ordinance defines a “Garden Center” as:

Land and buildings where the wholesale or retail sale of nursery stock and garden supplies takes place. Such nursery stock and supplies may include any of the following: ornamental plants, flowers, shrubs and trees cultivated in a nursery; seed, fertilizer, garden pesticides and herbicides in retail quantities and packaging; garden hand tools; plant containers; garden statuary and furniture; landscape lighting; bird feeders and supplies; and seasonal ornaments and novelties such as Christmas wreaths and decorations. Such use may include the provision of landscape design and/or installation services, provided that such services are ancillary to the principal use and offered to clients whose residence or place of business exists elsewhere. Outdoor storage of lawn and garden supplies such as mulch, fertilizer, topsoil and related landscape or garden supplies, such as ornamental stone or gravel, are permitted only where expressly authorized by the regulations governing the jurisdictional zoning district.

Section 139-6 of the zoning ordinance (emphasis added).

Based on this provision, the ZHB found a “Garden Center” includes the “wholesale or retail sale of nursery stock and garden supplies.” F.F. No. 31. The ZHB consulted dictionary definitions of the terms “wholesale,” the sale of

goods in quantity, as to retailers or jobbers, for resale, and “retail,” the sale of goods to ultimate consumers, usually in small quantities. F.F. Nos. 32, 33. Based on these definitions, the ZHB found that, “[w]hile the sale of wood chips to a property owner or landscaper, retail or wholesale, to use as mulch would be permitted under the Garden Center Use as defined, the sale or transfer of wood chips to be used as raw material to be processed into mulch is not.” F.F. No. 35. Further, “[w]ood chips for sale or barter to mulch manufacturers in bulk are not considered ‘mulch’ ... as permitted under the definition of ‘Garden Center Use’ ....” F.F. No. 36. Thus, the ZHB determined Main Line’s use of the property for this purpose was not consistent with the approved “Garden Center” use defined above. Based on the plain language of the “Garden Center” definition, no error is apparent in this determination.

Indeed, as the trial court explained (with emphasis added):

A reading of [the ‘Garden Center’] definition, giving usual and ordinary meaning to its terms, plainly reveals that a garden center may sell mulch, wholesale or retail, as a garden supply. In analyzing this case, however, the [trial] court finds the zoning officer’s usage of the characterization ‘tree waste in the form of wood chips’ not to be helpful. Rather, we conclude that wood chips may, or may not, be tree waste, depending upon how they are next intended to be used. If next taken to a landfill for disposal, wood chips would be tree waste. If next purchased, retail or wholesale, from a garden center to be used, for example, as an inexpensive ground covering, wood chips would be a garden supply. If next taken to a processing facility to be ground into a refined or finer mulch product, wood chips would be a raw material. The court is satisfied, upon careful review of the voluminous record here, that any wood chips sold, bartered or transported from the ... property, whether in an 18-wheel tractor trailer truck or a single wheelbarrow, for the purpose of being transformed into another mulch product

(or into any other product), are a raw material, because they are not leaving the property as garden supplies. Furthermore, any such wood chips could not be delivered to (or dumped upon) the ... property, nor stored there for any period of time, because they constitute a raw material, not garden supplies. ...

[I]n reviewing certain exhibits contained in this record, it clearly appears that not all of the piles of material depicted in the photographs would be suitable for sale as a garden supply type of 'unscreened woodchips'.... For example, contained within Exhibit T-10 are three color photographs (dated June 6, 2011, June 21, 2011, and October 2, 2011), each of which very obviously depicts large unchipped branches, or pieces of branch, with numerous green leaves still attached and intact. Surely that particular batch of 'wood chips' would never be seriously considered for purchase by either a retail gardener or wholesale contractor looking for 'an inexpensive ground covering'. To the contrary, it seems indisputable that such a batch would only be suitable as a raw material requiring further processing.

Tr. Ct., Slip Op., at 6-7 (footnote omitted). We agree with the trial court's analysis of this issue.

More particularly, the trial court did not prohibit the sale of mulch in general; rather, it prohibited Main Line from having dumped upon its property, storing, selling or allowing the transport from its property of "tree waste" or certain raw materials, including branches and limbs with leaves still attached, which it did not consider "mulch." See Certified Record (C.R.), ZHB Hearing, Ex. T-10. The trial court correctly determined that raw materials, including those consisting of tree branches and limbs with leaves still attached, were not "mulch," but rather raw materials to be sold for processing into "mulch." To that end, "mulch" is defined as "a protective covering (as of sawdust, compost or paper) spread or left on the ground to reduce evaporation, maintain even soil temperature, prevent erosion,



control weeds, enrich the soil, or keep fruit (as strawberries) clean.” MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY 762 (10th ed. 2001). Clearly, the raw materials stored on and transported off the property, including those depicted in the photographs referenced by the trial court, are not “mulch.” See C.R., ZHB Hearing, Ex. T-10.

Of greater significance, the ZHB determined the sale or transfer of wood chips in the form of raw materials for the production of mulch was not permitted under the terms of the conditional use approval obtained by Main Line’s predecessor. To that end, in granting conditional use approval for the expanded garden center use of the property, the Supervisors’ order stated:

[T]he [Supervisors] [have] relied upon the testimony, plans and exhibits presented by [Main Line Gardens and Fence Center, Inc.] in this proceeding and said testimony, plans, exhibits and documentary evidence are hereby incorporated as additional conditions of approval, [Main Line Gardens and Fence Center, Inc.] being strictly bound by all the representations made in the testimony, plans, and exhibits and documentary evidence. The [p]roperty shall be developed and used in compliance with all of the testimony, plans and other exhibits presented by [Main Line Gardens and Fence Center, Inc.] and admitted into the record, unless modified by the enumerated conditions herein below. . . .

Any proposed development or use of the [p]roperty different in any aspect from [Main Line Gardens and Fence Center, Inc.’s] proposal will require conditional use application to and approval from the [Supervisors].

R.R. at 865a-66a (emphasis added). The ZHB found, “[a] review of the transcript shows that there was no testimony or evidence presented at the [c]onditional [u]se [h]earing regarding the dumping, storage, transfer and/or processing of wood chips

on the [p]roperty or the sale of the wood chips to be used as raw material for the production of commercial grade mulch.” F.F. No. 34 (emphasis added). Our review of the transcript of the conditional use hearing confirms the ZHB’s finding. R.R. at 794a-856a.

Further, our review of the conditional use decision, R.R. at 859a-870a, supports the ZHB’s determination that the decision did not authorize the collection or distribution of wood chips as the raw material for the production of mulch as part of the garden center use nor did it authorize any accessory use to the permitted garden center use. F.F. No. 37. Thus, no error is apparent in the ZHB’s conclusion that Main Line’s sale or transfer of wood chips as raw material for the production of mulch was not permitted under the terms of the conditional use approval.

Based on the above analysis, we reject Main Line’s argument that the ZHB or the trial court imposed a new condition on the final, unappealed conditional use decision. Rather, as set forth above, the ZHB and the trial court examined the approved use of the property based on the language of the zoning ordinance and the conditional use decision, and they determined the dumping, storage, sale or transfer of wood chips as raw material for processing into mulch, did not comply with that approved use.

### **B. Alleged Interference with Business Operations**

Main Line next asserts the ZHB and the trial court abused their discretion and committed an error of law by illegally extending the police power of

a township to require a business owner to interrogate a purchaser before making a sale. Main Line contends that if a sale is otherwise legal at the point of sale, a township cannot declare the sale illegal if the purchaser intends to do something not approved by the township, while off the property. It argues that regulation of what the purchaser will do must be based on the township's jurisdiction over the site where the customer will perform that act.

Contrary to Main Line's assertions, nothing in the decisions of the ZHB or the trial court requires Main Line to interrogate customers with regard to their planned use of a product lawfully purchased from Main Line. Rather, the decisions of the ZHB and the trial court distinguish between the items Main Line is permitted to store and sell on its property, mulch (a garden supply), and the items Main Line may neither store nor sell on its property, raw material in the form of wood chips for further processing (not a garden supply). Thus, the decisions below pertain to the activities Main Line may or may not conduct on its property.

### **C. Alleged Imposition of Condition Regarding Tractor-Trailer Activity**

Main Line further contends, even if the trial court may add a new condition to a previously final conditional use approval, a condition requiring a property owner to "provide weekly documentation to the Township concerning all tractor-trailer activity, including the intended destination of each truck[.]" is an excessive and unconstitutional exercise of police power. Tr. Ct., Slip op. at 10. Main Line argues the trial court added a new condition by creating two new concepts in the law: (1) requiring businesses to provide weekly reports on the number of trucks legally accessing their property; and, (2) requiring truck drivers

to be interrogated as to their next point of delivery. Main Line asserts the Supervisors could have regulated truck traffic through the imposition of conditions in their original conditional use decision, but they did not do so. Thus, Main Line argues the trial court erred in imposing a condition requiring the monitoring of truck activity given that the conditional use decision is final. Again, Main Line's argument fails.

Here, in its opinion, the trial court recognized its analysis of the wood chip issue "may present interesting challenges in determining whether a given pile of wood chips is, or is not, a prohibited raw material ...." Id. Thus, it offered the following "comments":

First, and most importantly, there will be no difficulty in enforcement if Main Line ... simply acts in good faith to comply with its legal obligations under this decision. Second, common sense indicates that the vast majority of tractor trailer truck activity is likely to be associated with the removal from the subject property of 'raw material' wood chips. To the extent that tractor trailer traffic to and from the property is not hereafter reduced, it will not require advanced detective work for someone to follow a loaded truck or two to determine its next destination. Finally, it does not seem inappropriate or unreasonable in this rather unique zoning situation to require Main Line ... to provide weekly documentation to the Township concerning all tractor trailer truck activity, including the intended next destination of each truck.

Id. at 9-10. Despite offering these "comments," or suggestions in *dicta* in its opinion, the trial court's order did not impose any condition regarding the monitoring of tractor trailer activity, nor did it modify the ZHB's decision to impose such a condition. Thus, Main Line's argument that the trial court erred in imposing such a condition fails.

#### **D. Alleged Conditions Allowing Township to Control Activities Outside its Borders**

As a final issue, Main Line asserts the trial court abused its discretion and committed an error of law when it imposed new conditions designed to control conduct outside the Township. Main Line argues the condition, banning sales of a product if the purchaser's intent is to further refine the product, controls behavior outside the Township where such refinement occurs. The condition requiring Main Line to report on all tractor trailer traffic, including the frequency of visits and the intended destination of all trucks, is designed to determine where those trucks travel, and if they travel to somewhere other than someone's garden, plants or shrubs, to enable the Township to declare the sale illegal. Main Line contends such a condition is not legal as the conditional use approval was final long ago, and the Township was not delegated power to control activity outside its borders.

We respectfully disagree that the trial court imposed any conditions that attempted to give the Township control over conduct outside its borders. As explained above, the trial court's order did not impose any additional conditions, including any condition on tractor trailer traffic or on sales of a product based on a purchaser's intended use of that product. Rather, in light of the difficulty that could arise in determining whether a pile of wood chips is, or is not, prohibited raw material, the trial court offered some suggestions to assist in resolving any such issue. Further, the trial court did not provide the Township with authority to regulate conduct outside its borders. Instead, the trial court distinguished between the materials Main Line could accept, store, transfer and sell or barter under its permitted "Garden Center" use and those it could not. Thus, the trial court's decision relates to the activities Main Line may lawfully conduct on its *own*

property consistent with its approved use, and it does not seek to extend the Township's authority beyond its borders. As such, Main Line's argument fails.

For all the foregoing reasons, we affirm.

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ROBERT SIMPSON, Judge

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

Main Line Gardens, Inc. and :  
Coffman Associates, LLC, :  
Appellants :  
 :  
v. : No. 413 C.D. 2013  
 :  
Zoning Hearing Board of Willistown :  
Township, and J. Dean Reichelle Jr. :  
and Elizabeth Ann Reichelle, h/w, :  
and James J. Donnelly and Gladys E. :  
Donnelly, h/w, J. Stephen Blackburn :  
and Deirdre Blackburn, h/w and :  
Willistown Township :

**ORDER**

**AND NOW**, this 20<sup>th</sup> day of February, 2014, the order of the Court of  
Common Pleas of Chester County is **AFFIRMED**.

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ROBERT SIMPSON, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Main Line Gardens, Inc. and	:
Coffman Associates, LLC,	: No. 413 C.D. 2013
	: Argued: October 8, 2013
Appellants	:
	:
v.	:
	:
Zoning Hearing Board of Willistown	:
Township, and J. Dean Reichelle Jr. and	:
Elizabeth Ann Reichelle, h/w, and James J.	:
Donnelly and Gladys E. Donnelly, h/w,	:
J. Stephen Blackburn and Deirdre Blackburn,	:
h/w and Willistown Township	:

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, Judge  
HONORABLE ROBERT SIMPSON, Judge  
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

DISSENTING OPINION  
BY SENIOR JUDGE FRIEDMAN

FILED: February 20, 2014

I respectfully dissent. Because the use of Main Line Gardens, Inc. and Coffman Associates, LLC (collectively, Main Line) was not in violation of the Willistown Township Zoning Ordinance of 1981 (ordinance) or the Willistown Township Board of Supervisors’ conditional use decision, I would reverse the decision of the trial court.

As acknowledged by the majority, the ordinance permits the sale of wood-chip mulch at either wholesale or retail as a Garden Center use. (Maj. Op. at 16.) Therefore, the sale of wood-chip mulch to “mulch supply” companies that



further process the mulch does not violate the ordinance or the conditional use decision.

Wood-chip mulch is permitted to be accepted, stored, transferred, and sold on the property.<sup>1</sup> An issue arises, however, when the wood-chip mulch is sold as a raw material to be processed further into a more refined mulch product. The Zoning Hearing Board of Willistown Township (ZHB) determined that “[w]hile the sale of wood chips to a property owner or landscaper, retail or wholesale, to use as mulch would be permitted under the Garden Center [u]se as defined, the sale or transfer of wood chips to be used as raw material to be processed into mulch is not.” (ZHB Decision, 5/23/12, at 14.) The ZHB denied the appeal as to the alleged violation of “dumping, storing, transfer and/or processing tree waste in the form of wood chips on the Property . . . in violation of the Conditional Use [Decision] and . . . beyond the scope of the permitted Garden Center [u]se.” (ZHB Decision, 5/23/12, at 26.)

The trial court modified the ZHB’s decision, prohibiting “the dumping, storage, transfer and/or processing, and the sale or barter from the [P]roperty . . . of all wood chips *which thereafter (upon leaving the property) will be processed into a more refined mulch product (or into any other product).* . . .” (Trial Ct. Order, 2/15/13, at 1 (emphasis added).) The trial court recognized that its analysis of the

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<sup>1</sup> At the enforcement hearing, the township zoning officer testified that wood-chip mulch can lawfully be sold at retail and wholesale and that wood chips could be sold at wholesale in trucks. He further testified that there was no limit on the number of trucks that were permitted to be involved in delivery and no limit on the amount of wood chips that could be sold. (N.T., 9/28/11, at 55-62.)

wood-chip issue may present an interesting challenge in determining whether a given pile of wood chips is or is not a prohibited raw material.

The majority determines that Main Line may not accept, store, transfer, or sell wood-chip mulch as a raw material for further processing. (Maj. Op. at 18.) The prohibition is not based upon the further processing of the mulch, but upon the form of the wood chip itself. Specifically, the majority finds that there is a distinction between wood-chip mulch and raw material wood-chip mulch and that Main Line would know the difference and not accept, store, transfer, or sell the raw-material variety. (Maj. Op. at 16-18.) However, as all parties admit, this raw material wood-chip mulch is identical to the wood-chip mulch that is lawfully sold to homeowners and landscapers at both wholesale and retail. Thus, the only difference is how the customer ultimately uses the wood-chip mulch once it leaves the premises.

Because all parties agree that wood-chip mulch can be lawfully accepted, stored, transferred, and sold as a Garden Center use, and the only difference is the intended use, not the product itself, I would find that the trial court and ZHB erred in prohibiting the sale of wood-chip mulch based upon a purchaser's intended use for the mulch once it leaves the premises.

I agree with Main Line that neither the ordinance nor the conditional use decision limits the sale of wood-chip mulch based upon a purchaser's intended use of the product.<sup>2</sup> Accordingly, I would reverse the trial court's order.

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ROCHELLE S. FRIEDMAN, Senior Judge

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<sup>2</sup> Main Line also argues that the trial court erroneously imposed a requirement that it report tractor-trailer activity to the township. I agree with the majority that this statement was merely dictum in the trial court's opinion and was not part of the trial court's order.