

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Susan Shaner, Terry Shaner, Sr.,	:
Stephanie Shaner and Terry Shaner, Jr.,	:
Appellants	:
	:
	:
v.	:
	:
	:
West Brunswick Township	:
Zoning Hearing Board and	:
West Brunswick Township	: No. 2062 C.D. 2012
	: Submitted: June 17, 2013

BEFORE: HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE ANNE E. COVEY, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
JUDGE COVEY

FILED: July 3, 2013

Susan Shaner, Terry Shaner, Sr., Stephanie Shaner and Terry Shaner, Jr., (the Shaners) appeal from the Schuylkill County Common Pleas Court's (trial court) October 3, 2012 order granting intervenor West Brunswick Township's (Township) motion to quash and dismiss (Motion) the Shaners' appeal from the West Brunswick Township Zoning Hearing Board's (ZHB) decision. The sole issue before this Court is whether the Shaners' land use appeal notice (Notice) was insufficient and thereby warranted dismissal. We affirm.

On June 4, 2012, the ZHB held a hearing on an appeal from the zoning officer's revocation of the Shaners' zoning permit. On June 18, 2012, the ZHB issued its decision dismissing the appeal because the Shaners did not appear at the hearing, despite having been given proper notice. On July 3, 2012, the Shaners filed a Notice that stated, "[k]indly take notice that the Plaintiffs, [the Shaners], hereby Appeal the Decision of the West Brunswick Township Zoning Hearing Board dated

June 18, 2012 (A copy attached hereto).” Reproduced Record (R.R.) at 2. Although the Shaners attached a copy of the ZHB’s decision to the Notice, the Notice did not provide any grounds for the appeal. On August 10, 2012, the Township filed the Motion asserting that the Notice did not comply with Section 1003-A of the Pennsylvania Municipalities Planning Code (MPC)¹ and Schuylkill County Rule of Civil Procedure 14.² The Shaners filed their answer, and the parties submitted legal briefs on the Motion. By Order dated October 3, 2012, the trial court granted the Motion. The trial court found that the Notice was “clearly deficient under both 53 P.S. § 11003-A and [Schuylkill County Rule of Civil Procedure 14]” and concluded it was “bound by a long line of Commonwealth Court cases that provide where a notice of appeal fails to specify any grounds for the appeal, a dismissal of the appeal is warranted.” Trial Ct. Order, Oct. 3, 2012, at n.1 (citation and quotation marks omitted). The Shaners appealed to this Court.³

¹ Section 1003-A(a) of the MPC, Act of July 31, 1968, P.L. 805, *as amended*, added by Section 101 of the Act of December 21, 1988, P.L. 1329, 53 P.S. § 11003-A(a), provides:

Land use appeals shall be entered as of course by the prothonotary or clerk upon the filing of a land use appeal notice **which concisely sets forth the grounds on which the appellant relies.** The appeal notice need not be verified. The land use appeal notice shall be accompanied by a true copy thereof.

(Emphasis added).

² Schuylkill County Rule of Civil Procedure 14 provides that in appeals from the zoning board and governmental agencies, a notice of appeal shall include, among other things, the name and address of parties, the legal and factual grounds for the appeal and the relief requested.

³ Where the trial court takes no additional evidence following a decision by the [zoning] board, our review is limited to a determination of whether the [b]oard committed an abuse of discretion or an error of law. Moreover, a decision to grant or deny a motion to quash an appeal is a question of law and, therefore, within this Court’s scope of review.

Cossell v. Connellsville Twp. Bd. of Supervisors, 747 A.2d 977, 978 n.1 (Pa. Cmwlth. 2000) (citation omitted). Where a case “was resolved on a procedural issue presented for the first time in

The Shaners contend that the trial court abused its discretion when it granted the Motion and dismissed their appeal. Relying on *Summit Township Board of Supervisors v. Summit Township Zoning Hearing Board*, 571 A.2d 560 (Pa. Cmwlth. 1990), they argue that the Notice was sufficient because the ZHB's opinion was attached to the Notice and should be incorporated by reference. Further, they claim that since there was no hearing, there is no record upon which the appeal was based and therefore, no grounds could be included in the Notice. Finally, the Shaners assert that the parties would not be prejudiced if this Court finds the Notice to be valid. In response, the Township argues that the Notice was clearly deficient and that the trial court properly dismissed the action in accordance with *Therres v. Zoning Hearing Board of the Borough of Rose Valley*, 947 A.2d 226 (Pa. Cmwlth. 2008).

This Court has repeatedly held that “where a notice of [a land use] appeal fails to specify any ground for the appeal, a dismissal of the appeal is warranted.” *Hill v. Lower Saucon Twp. Zoning Hearing Bd.*, 456 A.2d 667, 668 (Pa. Cmwlth. 1983); *see also Therres; Gall v. Zoning Hearing Bd. of Upper Milford Twp.*, 723 A.2d 758 (Pa. Cmwlth. 1999); *Summit Twp.; Lyons v. Zoning Bd. of Adjustment of the City of Erie*, 340 A.2d 585 (Pa. Cmwlth. 1975); *Kreitz v. Zoning Bd. of Adjustment of the City of Easton*, 287 A.2d 884 (Pa. Cmwlth. 1972).

The Shaners’ reliance on *Summit Township* is misplaced. In *Summit Township*, the land use appeal notice expressly incorporated by reference the zoning hearing board’s findings of fact and conclusions of law, **and alleged that the factual findings and conclusions of law were not supported by record evidence and were legally erroneous.** In contrast, the Shaners’ Notice only noted that the Shaners were

the common pleas court, this Court must determine whether that court committed an abuse of discretion or error of law in reaching its legal conclusions on the issue.” *Gall v. Zoning Hearing Bd. of Upper Milford Twp.*, 723 A.2d 758, 759 n.1 (Pa. Cmwlth. 1999).

appealing the ZHB's decision, and included a copy of that decision. The Notice did not specify **any** basis for the appeal.⁴

As suggested by the Township, the *Therres* case is controlling. In *Therres*, this Court affirmed a trial court's decision to quash a land use appeal where the appeal notice only identified and described the decision being appealed from, and noted that a copy of the decision was attached. The appellants in *Therres* similarly relied on the *Summit Township* case to argue that their notice was sufficient. The *Therres* Court considered the argument:

Appellants interpret *Summit Township* as holding that the failure of an appellant to concisely state the grounds on which they rely can be overcome by incorporating by reference the findings and conclusions of the Zoning Hearing Board, which Appellants in this case did. Appellants take the position that it is 'illogical to suggest' that they would need to state that they believed the Zoning Hearing Board committed an error of law or that their findings were unsupported by sufficient evidence, because the filing of an appeal implies exactly that. Appellants maintain that the Commonwealth Court has consistently held that the factual bases of the appeal must be identified in the notice, and that their incorporation of the Zoning Hearing Board's findings of fact into the notice of appeal is sufficient to meet this standard.

....

In *Summit Township*, the notice of appeal incorporated by reference the zoning hearing board's findings and conclusions and asserted that they were not supported by record evidence and were erroneous as a matter of law. The appeal filed in this case does not even make the broad assertion that the decision was not supported by record evidence or was erroneous as a matter of law. Also, this Court in *Summit Township* cited [*Hill*, 456 A.2d at 668] for the proposition that 'where a notice of appeal fails to

⁴ The Shaners' contention that because there was no hearing, they were not required to state the grounds for their appeal is without merit. Essentially, there was a hearing. The Shaners simply failed to appear, and as a result, the matter was dismissed.

specify any grounds for the appeal, a dismissal of the appeal is warranted.'

We must conclude that the trial court properly quashed Appellants' appeal. Some minimal identification of issues on appeal is required. Here, there was no attempt to identify any issues on appeal. To hold otherwise would result in this Court failing to give *any* effect to the statutory language of Section 1003-A(a) of the MPC, requiring [the entry of] a 'land use appeal notice which concisely sets forth the grounds on which the appellant relies.'

Id. at 232-33.

The Shaners' Notice similarly failed to identify **any** issues on appeal. Thus, the trial court properly granted the Township's Motion and dismissed the appeal.

For all of the above reasons, the trial court's October 3, 2012 order is affirmed.

ANNE E. COVEY, Judge

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Stephanie Shaner and Terry Shaner, Jr.,	:	
		Appellants
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v.	:	
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West Brunswick Township	:	
Zoning Hearing Board and	:	No. 2062 C.D. 2012
West Brunswick Township	:	
	:	

ORDER

AND NOW, this 3rd day of July, 2013, the Schuylkill County Common Pleas Court's October 3, 2012 order is affirmed.

ANNE E. COVEY, Judge