

COMMONWEALTH V. RUNYON, C.P. Franklin County Branch,
Misc. No. 11 of 1983

Criminal Law - Violation of Building Code - Exercise of Police Power - Validity of Fee

1. A township ordinance is valid as long as it is applied evenly throughout the township and bears a relationship to the public health, safety, morals or general welfare.
2. A building permit fee cannot be used for the purpose of raising revenue.
3. A permit fee based on the actual costs of construction is not unreasonable.

John McD. Sharpe, Jr., Esquire, Attorney for Metal Township
Donald L. Kornfield, Esquire, Attorney for Clement Runyon
District Attorney

OPINION AND ORDER

Eppinger, P.J., May 10, 1984:

Defendant was convicted and fined \$50.00 by a District Justice of the Peace for failing to procure a building permit before he built a shed and animal pen as required by Metal Township Building Code. Ordinance No. 75-2¹. Defendant appeals from the conviction and fine. We feel that the defendant is guilty of the offense.

¹ No. 75-2 is an ordinance requiring all persons, partnerships, businesses and corporations to obtain a building permit for the construction, reconstruction, enlargement, alteration, or relocation of any building or structure. Section 1.01 specifically deals with applicability:

A. It shall be unlawful for any person, partnership, business or corporation to undertake or cause to be undertaken, the construction, reconstruction, enlargement, alteration, or relocation of any building or structure unless an approved building permit has been obtained from the Municipal Building Permit Officer.



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LEGAL NOTICES, cont.

IN THE COURT OF COMMON PLEAS OF
THE 39TH JUDICIAL DISTRICT OF PENN-
OF PENNSYLVANIA —
FRANKLIN COUNTY BRANCH

JOHN S. WETZEL, : CIVIL ACTION —
RODNEY D. : LAW
WETZEL and LISA J.:
WETZEL, his wife, :
Plaintiffs :
vs. : No. A.D. 1983-79

JOHN RUSSELL, :
THE HEIRS OF :
JOHN RUSSELL, De- :
ceased, and any and all :
grantees and assigns of :

JOHN RUSSELL or his :
heirs, and any and all :
unknown parties in :
interest, :
Defendants : ACTION TO QUIET
TITLE

TO: John Russell, The Heirs of John Russell,
Deceased, and any and all grantees and assigns
of John Russell or his heirs, and any and all
unknown parties in interest.

You are notified that an order has been
entered on August 27, 1984, directing that
within thirty (30) days after this publication
you shall commence an action of ejectment
against the plaintiffs or be forever barred
from asserting any right, lien, title or interest
inconsistent with the interest or claim set
forth in the plaintiffs' complaint to the land
here described:

ALL the following described real estate
lying the being situated in Montgomery Town-
ship, Franklin County, Pennsylvania, more
fully limited and bounded as follows:

BEGINNING at a point near the Gearhart
Road, being Township Route 317 Ext.; thence
in and by the latter North 88° West 310.0' to
a point at lands of Marshall Gearhart; thence
by the latter South 14° 36' West, 162.6' to
lands of John S. Wetzel and Louise A. Wetzel,
his wife; thence by the latter South 72° 16'
East, 313.6' to a point in a private road;
thence in and by the center of said private
road North 12° 16' East, 140' to the place of
Beginning; AND CONTAINING 1.09 acres
as per survey of Richard K. Fisher, P.E.,
dated July 24, 1977, and approved by the
supervisors of Montgomery Township, on
August 24, 1977.

LEGAL NOTICES, cont.

If you wish to defend, you must enter a
written appearance personally or by attorney
and file your defenses or objections in writing
with the court. You are warned that if you fail
to do so the case may proceed without you
and a judgment may be entered against you
without further notice for the relief requested
by the plaintiffs. You may lose money or
property or other rights important to you.

YOU SHOULD TAKE THIS NOTICE
TO YOUR LAWYER AT ONCE. IF YOU
DO NOT HAVE A LAWYER OR CANNOT
AFFORD ONE, GO TO OR TELEPHONE
THE OFFICE SET FORTH BELOW TO
FIND OUT WHERE YOU CAN GET LEGAL
HELP.

Legal Reference Service of
Franklin-Fulton Counties
Court House
Chambersburg, PA 17201
Telephone No.: Chambersburg
264-4125, Ext. 213

Dennis A. Zeger
Attorney for Plaintiffs
32 East Seminary Street
Mercersburg, PA 17236

9-7-84

LETTERS OF TESTAMENTARY in the
Estate of Anna M. Henson (who died July 27,
1984), late of Franklin County, Pennsylvania,
having been granted to the undersigned, all
persons indebted to said Estate are requested
to make immediate payment, and those hav-
ing claims will present them for settlement
to:

Frank A. Cressler and
William Howlan Cressler,
Co-Executors
P.O. Box 323
Shippensburg, PA 17257

OR TO:

Handler and Weiner
Attorneys-at-Law
P.O. Box 11866
401 North Second Street
Harrisburg, PA 17108-1866
8/24, 8/31, 9/7/84

In this appeal, defendant asserts that the ordinance is an invalid
and unconstitutional exercise of the township's police power,
that the fee set for the permit is unrelated to the costs of
administering the licensing arrangement and therefore invalid,
and that the ordinance was applied arbitrarily to defendant.

The defendant states he knows of two cases where permits were
not required. The township responds that it is not township policy
to unequally apply the ordinance. As applied to defendant we find
the ordinance was not arbitrary.

Where one challenges the constitutionality of an ordinance, as
here, on the ground that it is an invalid exercise of police power,
there is a strong presumption as to its validity. *Exton Quarries, Inc.
v. Zoning Board of Adjustment*, 425 Pa. 43, 58, 228 A. 2d 169, 178
(1967); *Bilbar Construction Co. v. Easttown Township Board of Adjustment*,
393 Pa. 62, 70, 141 A. 2d 851, 855 (1958). The restriction is valid
as long as it is applied evenly throughout the township. *Exton
Quarries*, supra, at 53, 175-6, and bears a relationship to the public
health, safety, morals or general welfare. *Id.*, at 58, 178; 53 P.S.
§§10603, 10604. We have found the ordinance was not enforced
unequally within the township. Further, it cannot be said that this
ordinance does not bear a relationship to the general welfare. It is
up to the defendant to show that no such relationship existed,
which was not done. And in making this determination we can look
no further than the record before us. *Anstine v. Zoning Board of
Adjustment*, 411 Pa. 33, 42, 190 A. 2d 712, 717 (1963).

Defendant also argues that the permit fee is unrelated to the
costs of administration and is therefore invalid. Neither can we
agree with this contention.

The permit fee is based upon the costs of construction.² This

² Section 2.06 "Fees" provides:
Applications for a building permit shall be accompanied by a fee, payable
to the municipality, based upon the estimated cost of the proposed
construction as determined by the Building Permit Officer at the
following rates:

Estimated Cost	Fee
\$0.00	\$0.00
201.00 to \$1,000.00	\$5.00
Each additional \$1,000.00 or part thereof beyond the first \$1,000.00	\$1.00

is reasonable. Included within the authority to enact building codes and regulations is the power to require a permit fee. *Berwick Lumber and Supply Co. v. City of Harrisburg*, 52 Dauphin 275, 284-286 (1942). While it is true the township cannot use a permit fee for the purpose of raising revenue, *Raum v. Board of Supervisors of Tredyffrin Twp.*, 29 Pa. Cmwlth, 9, 49, 370 A.2d 777, 797 (1977), sometimes revenue will incidently result from the arrangement. But this does not divest the regulation of its police character. *Berwick Lumber*, at 284. Therefore, a permit fee based on the actual costs of construction is not unreasonable and will be enforced. *Id.*, at 289. Moreover, a permit fee may include not only actual costs but any probable future expenses such as supervision, examination, or regulation. *Berwick Lumber*, at 287. Whatever that may be, a \$5 fee is not unreasonable.

It was not permissable for defendant to proceed with construction of the pen and shed without the permit, even if challenging the validity of the ordinance. *Middle Paxton Twp. v. Sweitzer*, 23 Pa. Cmwlth. 59, 60-61, 350 A. 2d 184, 185 (1976).

ORDER OF COURT

May 10, 1984, the defendant shall appear in Court on Wednesday, May 30, 1984, at 9:30 a.m. to be sentenced.



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