

failure to respond to the interrogatories pertaining to expert witnesses by reason of counsel's statement that no expert witnesses will be called, in the defendant-Doctor's defense in chief.

6. The defendant-Doctor shall deliver to the plaintiffs the documents requested by their motion; and

(a) Upon failure to deliver the same within ten (10) days of the date of this order the defendant-Doctor's new matter shall be deemed stricken and the defense therein pleaded will not be available to the defendant-Doctor; and

(b) If sufficient responses are not filed and served upon the plaintiffs within twenty (20) days of the date of this Order the Court will entertain a motion for the entry of a default judgment against the said Doctor.

Costs of this proceeding to be paid by the defendants.

Exceptions are granted the plaintiffs and the defendants.

IN RE: BOROUGH OF GREENCASTLE ZONING ORDINANCE C.P. Franklin County Branch, Volume X, Page 355

Zoning - Enactment of Ordinance - Municipalities Planning Code - Borough Code - Standing

1. The enactment of a zoning ordinance requires not only compliance with the requirements of the Municipalities Planning Code but also with the publications requirements of the Borough Code.

2. A landowner in a municipality has standing to appeal the municipality's enactment of a zoning ordinance.

J. Dennis Guyer, Esq., Attorney for Borough of Greencastle

Stephen E. Patterson, Esq., Attorney for Appellants

OPINION AND ORDER.

EPPINGER, P.J., May 28, 1980:

The Borough of Greencastle found it necessary to "re-enact" its zoning ordinance of February 6, 1973 because of technical defects occurring during the enactment of the original ordinance. Appellants in this case want us to strike off the

present Greencastle ordinance for defects in the re-enactment process.

Appellants contend that the enactment of a zoning ordinance requires not only compliance with the requirements of the Municipalities Planning Code, Act of 1968, July 31, P.L. 805, Sec.101 et seq, 53 P.S. Sec.10101 et seq., but also with the publication requirements of the Borough Code, the Act of 1966, Feb. 1, P. L. (1965) , No. 581, Sec.1006(4), as amended 1976, Apr. 12, P. L. 93, No. 39, Sec.1, 53 P.S. Sec.46006(4). Subsection (4) lists as a duty of council the publication of every proposed ordinance or resolution of a legislative character once in one newspaper of general circulation in the borough not more than sixty days nor less than seven days prior to passage. The Municipalities Planning Code, Sec.103, 53 P.S. Sec.10103, makes other acts relating to municipalities and townships a part of that code and is to be construed to give effect to all provisions of other acts not specifically repealed.

Late in 1979, the Borough prosecuted a landowner for a violation of its zoning ordinance enacted in 1973 and amended in 1978. The ordinance had not been recorded in the Borough's official ordinance book within thirty days of its enactment as required in the Borough Code, Sec.1008, 53 P.S. Sec.1008, so the Borough embarked on a course of reenacting the zoning ordinance.

On October 29, 1979, the Borough Planning Commission held a hearing pursuant to notices published on October 15th and 22nd. This was followed by a duly advertised meeting of the Planning Commission held to consider recommendations to Borough Council concerning reenactment of the ordinance. Borough Council, in newspapers appearing December 13 and 20, 1979, advertised a public hearing to be held December 27, 1979. Appellant appeared at that hearing and by his attorney asked for rezoning of certain property. Action was said to be inappropriate since the request had not been advertised.

After the public hearing, notice of a special meeting of council was given that action would be taken on the "Proposed Zoning Ordinance" on December 31, 1979. During this meeting the ordinance and zoning map were adopted. Later, notice of the enactment of the ordinance was published.

On the surface it would appear that Sec.103 of the Municipalities Planning Code, incorporating the Borough Code, supports appellants' contention that zoning ordinances must be published in accordance with the requirement of the Borough

LEGAL NOTICES, cont.

proposed distribution and notice to the creditors of Millard A. Ullman, executor of the estate of Evelyn K. Ott, late of the Borough of Waynesboro, Franklin County, Pennsylvania, deceased.

GLENN E. SHADLE
Clerk of Orphans' Court of
Franklin County, Pennsylvania

(12-5, 12-12, 12-17, 12-19, 12-26)

NOTICE IS HEREBY GIVEN pursuant to the provisions of the Act of Assembly of May 24, 1945, P.L. 967 and its amendments and supplements of intention to file with the Secretary of the Commonwealth of Pennsylvania at Harrisburg and with the Prothonotary of the Court of Common Pleas of Franklin County, Pennsylvania, on January 9, 1981, an application for a certificate for the conducting of a business under the assumed or fictitious name of RAY'S ELECTRICAL with its principal place of business at 7722 Fern Grotto Circle, Fayetteville, Pennsylvania 17222. The name and address of the person owning or interested in said business is Raymond L. Burnheimer, 7722 Fern Grotto Circle, Fayetteville, Pennsylvania 17222.

Jay H. Gingrich
of Wertime and Guyer, Attorneys
173 Lincoln Way East
Chambersburg, PA 17201

(12-26-80)

NOTICE IS HEREBY GIVEN pursuant to the provisions of the Act of Assembly of May 24, 1945, P.L. 967 and its amendments and supplements of intention to file with the Secretary of the Commonwealth of Pennsylvania at Harrisburg and with the Prothonotary of the Court of Common Pleas of Franklin County, Pennsylvania, on January 15, 1981, an application for a certificate for the conducting of a business under the assumed or fictitious name of BARTON'S COOKIE JAR with its principal place of business at Lincoln Way Shopping Center, Chambersburg, Pennsylvania 17201. The names and addresses of all persons owning or interested in said business are Gerald W. Kipe, Route 3, Box 143, Fayetteville, Pennsylvania; Lloyd Shoemaker, Jr., Route 3, Fayetteville, Pennsylvania; Leroy K. Kipe and Connie M. Kipe, his wife, 4799 Sunset Pike, Chambersburg, Pennsylvania.

David C. Cleaver, Attorney
257 Lincoln Way East
Chambersburg, PA 17201

(12-26-80)

NOTICE IS HEREBY GIVEN pursuant to the provisions of the Act of Assembly of May 24, 1945, P.L. 967 and its amendments and supplements of intention to file with the Secretary of the Commonwealth of Pennsylvania at Harrisburg and with the Prothonotary of the Court of Common Pleas of Franklin County, Pennsylvania, on January 15, 1981, an application for a certificate for the conducting of a business under the assumed or fictitious name of THE LIGHTHOUSE RESTAURANT with its principal place of business at 4301 Philadelphia Avenue, Chambersburg, Pennsylvania 17201. The names and addresses of all persons owning or interested in said business are Leroy

LEGAL NOTICES, cont.

K. Kipe and Connie H. Kipe, his wife, of 4799 Sunset Pike, Chambersburg, Pennsylvania 17201.

David C. Cleaver, Attorney
257 Lincoln Way East
Chambersburg, PA 17201

(12-26-80)

Code. The Chester County Common Pleas Court in *Raum et al. v. Board of Supervisors of Tredyffrin Township*, 22 Ches. Co. Rep. 291 (1974), held that it was not necessary to publish a zoning ordinance in accordance with the provisions of the Second Class Township Code, Act of 1933, May 1, P. L. 103, Sec.702 as amended, 53 P.S. Sec.65741. The court held that the procedures to be followed by a municipality when enacting zoning legislation are found exclusively within the Municipalities Planning Code.

But the Chester County court makes special note, as we do, that the Second Class Township Code calls for publication of proposed ordinances not more than sixty nor less than seven days prior to enactment "unless otherwise provided by law." There is no similar phrase in the Borough Code. And in our reading of *Raum*, we do not find that the Chester County Court referred at all to Sec.103 of the Municipalities Planning Code, 53 P.S. 10103, which makes the provisions of other acts relating to municipalities a part of that code.

The *Raum* lower court, while finding the zoning ordinance properly enacted in this respect, nevertheless declared the act void and invalid on other grounds. The case was appealed to the Commonwealth court, which reversed. However, this particular issue was not discussed, not having been presented to the appellate court. *Raum et al. v. Tredyffrin Township Board of Supervisors*, 20 Pa. Cmwlth. 426, 433, n.4, 342 A.2d 450, 453, n.4 (1975).

We conclude, therefore, that Borough Zoning Ordinances must be published in accordance with the Borough Code and that because this one was not, it must be stricken.

The only remaining problem is whether the appellants in this case have standing. The petition alleges that the appellants Raymond L. Eberly, Sr. and Larry Eberly are owner and lessee, respectively, of property at 146 Antrim Way in Greencastle. Under Sec.1003 of the Municipalities Planning Code, as amended, 53 P.S. Sec.11003, questions of defect in the process of enactment of a zoning ordinance are taken directly from the action of the governing body to the court. A landowner has standing to take such an appeal. See *Petrone v. Hampton Township Council*, 33 Pa. Cmwlth. 515, 382 A.2d 1236 (1978) (appellant was a landowner).

ORDER OF COURT

May 28, 1980, the appeal of Raymond L. Eberly, Sr. and

Larry Eberly, challenging the procedural regularity of the reenactment of the Greencastle Borough Zoning Ordinance apparently adopted December 31, 1979 is sustained and the ordinance is stricken. The parties shall each pay their own costs. Exceptions granted to the Borough of Greencastle appellee.

NEEDHAM v. MYERS, C.P. Franklin County Branch, Misc., Vol. W, Page 193

Custody - Child's Best Interest - Factors to be Considered - Preference of Mature Eleven Year Old Child.

1. Where the physical and financial arrangements of each party do not persuade the Court that they in themselves constitute "convincing reasons" affecting the child's best interest, the Court must focus upon the child's intellectual, moral and spiritual well-being.

2. The expressed preference of a mature eleven year old child will be given weight by the Court in determining the child's best interest.

Thomas M. Painter, Esq., Counsel for Petitioner

David S. Dickey, Esq., Counsel for Respondents

Edward I. Steckel, Esq., Counsel for Respondents

OPINION AND ORDER

KELLER, J., November 18, 1980:

Counsel for Mary C. Needham presented her petition for modification of existing court order to the Court on July 30, 1979. An order was signed on the same date directing a rule to issue upon Charles S. Myers and Mr. and Mrs. Frederick L. Brenner to show cause why the order dated March 30, 1978 should not be modified by placing primary custody of Tammy Joanne Myers in her natural mother. The rule was made returnable twenty days from service and hearing was scheduled for October 1, 1979 at 9:30 A.M. The hearing was subsequently scheduled for December 4, 1979 at 10:00 A.M. On November 28, 1979 counsel for Mrs. Needham moved for a reissuance of the rule because no return of service had been made on the rule issued pursuant to the order of July 30, 1979. The reissued rule, together with a copy of the petition and order, was served upon the respondents on December 3, 1979. An answer was filed by the respondent-father and

respondent's paternal grandparents on January 8, 1980. Hearings were held on January 10, 1980, March 3, 1980, and April 28, 1980. By agreement of counsel the brief of petitioner was filed with the Court on July 18, 1980, and the brief of counsel for the respondents was filed with the Court on July 25, 1980. The matter is now ripe for disposition.

FINDINGS OF FACT

1. The petitioner is Mary Catherine Needham the mother of Tammy JoAnne Myers. Mrs. Needham resided at R.D. 2, Box 162, Newville, Penna. at the time of the filing of the petition, at 69 E. Main Street, Apt. 2, Newville, Penna. on January 10, 1980, and testified at the March 3, 1980 hearing that she and her husband were moving to a new residence approximately one and one-half blocks away from the Main Street home on March 15, 1980.

2. Charles Steven Myers resided at Route No. 11, Box 436, Chambersburg, Penna. at the time of the filing of the petition, and on January 10, 1980 resided in an apartment at 31 Lincoln Way West, Chambersburg, Pennsylvania.

3. Frederick L. Brenner and Phyllis A. Brenner, paternal grandparents of Tammy JoAnne Myers, reside at 4377 Marsh Road, Waynesboro, Pennsylvania. Mrs. Brenner is the paternal grandmother of the child and Mr. Brenner is the paternal step-grandfather of the child.

4. Tammy JoAnne Myers, hereinafter called (child) was born on September 21, 1969 in Germany.

5. Mary Catherine Needham, hereafter (mother), and Charles Steven Myers, hereafter (father), were married in 1968. Father was on active duty in the United States Army and mother was residing with him at the time of the birth of the child in Germany. Father then was assigned to Viet Nam and upon his return from Viet Nam in March of 1972 the parties did not resume living together, and child continued to reside with mother.

6. Mother gave birth to her daughter, Crystal, in December of 1972. Crystal's father was Gary McClure.

7. In August 1974 the child was placed with the paternal grandparents by mother.

8. On January 17, 1975 the paternal grandparents and father petitioned for custody of the child. On February 4,