

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

H.A. Steen Industries, Inc.,  
d/b/a Steen Outdoor Advertising,  
Appellant

v.

Zoning Hearing Board of Upper Providence

No. 1224 C.D. 2008  
Argued: November 10, 2009

BEFORE: HONORABLE ROBERT SIMPSON, Judge  
HONORABLE JOHNNY J. BUTLER, Judge  
HONORABLE KEITH B. QUIGLEY, Senior Judge

*OPINION NOT REPORTED*

MEMORANDUM OPINION  
BY SENIOR JUDGE QUIGLEY

FILED: December 24, 2009

H.A. Steen, Inc., d/b/a Steen Outdoor Advertising (Steen) appeals from the June 19, 2008 Order of the Court of Common Pleas of Delaware County (Trial Court), upholding the decision of the Zoning Hearing Board (Board) of Upper Providence (Township) to deny Steen's challenge to the validity of Chapter 1276 of the Zoning Code of Upper Providence Township (Code), relating to off-premises advertising signs. We affirm.

Steen has entered into land rental contract agreements to erect double-faced monopole off-premises advertising signs on two properties. The first property is located at 700 West Baltimore Pike (Baltimore Pike Property), and the second is located at 721 Painter Street (Painter Street Property). The Baltimore Pike Property's principal use is a retail store, and the Painter Street Property's

principal use is an equipment yard. A cell tower is also located on the Painter Street Property as an approved conditional use.

Section 1276.04(b) of the Code defines "off-premises signs" as "signs which direct attention to an activity not conducted on the same lot." Section 1276.04(c) of the Code defines "advertising signs" as "off-premises signs which advertise or otherwise direct attention to a commodity, business, industry, home occupation or other similar activity which is sold, offered or conducted elsewhere than on the lot upon which such sign is located." Section 1276.07 of the Code provides:

No off-premises signs shall be permitted except non-illuminated signs used for directing patrons, members or audiences to service clubs, churches or other non-profit organizations, provided that such signs shall indicate only the name of the facility and the direction to the facility and shall not exceed 200 square inches in area.

(Board's op. at 35-36.)

Pursuant to his rental agreements, Steen planned to erect illuminated signs measuring fourteen feet by forty-eight feet that would contain commercial, non-commercial and political advertising. Because of the restrictions set forth in Chapter 1276, Steen filed two applications with the Board challenging Chapter 1276 as excluding off-premises advertising signs.

After conducting hearings and considering the matter, the Board concluded that Chapter 1276 totally excludes off-premises advertising signs in the Township. Nevertheless, the Board denied Steen's applications because the Township presented evidence at the hearings to establish that the erection of the proposed off-premises advertising signs on the Baltimore Pike Property and the Painter Street Property would be injurious to the health, safety and welfare of the

traveling public.<sup>1</sup> Steen appealed to the Trial Court, which denied the appeal. Steen now appeals to this Court.<sup>2</sup>

### I. Remedy for Successful Challenge

Steen first argues that, once the Board concluded that Chapter 1276 totally excludes off-premises advertising signs in the Township, the Board was required to allow Steen to erect his proposed signs. We disagree.

Our Supreme Court has stated that, when it is determined that an ordinance is defective because it totally prohibits a proposed use of property, the approval of the proposed use is not automatic but, instead, must be predicated on the suitability of the proposed site and various health and safety considerations. *Fernley v. Board of Supervisors*, 509 Pa. 413, 502 A.2d 585 (1985). Thus, here, before approving the proposed off-premises advertising signs, the Board was permitted to consider the suitability and safety of the proposed sites.

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<sup>1</sup> The Board also denied Steen's applications because, under the Code, off-premises advertising signs are a principal use of property, and lots in the Township may have only one principal use.

<sup>2</sup> When the Trial Court takes no additional evidence in zoning appeals, this court's scope of review is limited to determining whether the Board committed an error of law or manifestly abused its discretion. *Greth Development Group, Inc. v. Zoning Hearing Board*, 918 A.2d 181 (Pa.Cmwlth.), *appeal denied*, 593 Pa. 742, 929 A.2d 1163 (2007). An abuse of discretion occurs when the Board's findings are not supported by substantial evidence in the record. *Id.* Substantial evidence is that relevant evidence which a reasonable mind would accept as adequate to support the conclusion reached. *Id.*

## II. Substantial Evidence

### A. Accident Reports

Steen next argues that the record does not contain substantial evidence to support the Board's finding that erection of the proposed off-premises advertising signs on the Baltimore Pike Property and the Painter Street Property would be injurious to the health, safety and welfare of the traveling public.

In particular, Steen contends that although the Township presented accident reports pertaining to the two sites, they are irrelevant because the Township presented no evidence that any of the accidents were caused by the presence of signs along the roadway and because the accidents occurred over a period of five years, with none in the prior year. We cannot agree. The accident reports established that a traffic safety problem already existed, and expert witness Michael Angelastro (Angelastro) testified that the proposed signs would add a further distraction to motorists and increase the likelihood of accidents.

### B. Expert Testimony

Steen next argues that the Board improperly qualified Angelastro as an expert in Pennsylvania traffic safety engineering. Steen asserts that, although Angelastro appeared to have the requisite educational background, he previously performed only one traffic safety study in Pennsylvania and was unfamiliar with Pennsylvania's highway regulations. Thus, according to Steen, the Board should not have considered Angelastro's testimony. We disagree.

In Pennsylvania, the standard for qualification of an expert is a liberal one. *Miller v. Brass Rail Tavern, Inc.*, 541 Pa. 474, 664 A.2d 525 (1995). The test is whether the witness has any reasonable pretension to specialized knowledge on the subject under investigation. *Id.* It is not necessary that the expert possess all

knowledge in a given field, only that he possesses more than is otherwise within the ordinary range of training, knowledge, intelligence or experience. *Id.*

The Board found that Angelastro has a Master of Science Degree in Transportation Engineering from Villanova University and that he is currently enrolled in a Ph.D. program at Rutgers University in Civil Engineering with a specialty in traffic and transportation engineering. In addition, Angelastro is a registered professional engineer in both New Jersey and Pennsylvania. He has been employed since October 2002 as a traffic and transportation engineer, and he has done, *inter alia*, roadway design and traffic impact studies, including a traffic impact study in Pennsylvania. The Board found that, although Angelastro's work experience is primarily in New Jersey, engineering standards in Pennsylvania and New Jersey are the same, and highway regulations are based on the same national standards. Considering the Board's findings, Angelastro certainly possesses more knowledge about Pennsylvania traffic safety engineering than is otherwise within the ordinary range of training, knowledge, intelligence or experience. Thus, the Board did not improperly qualify Angelastro as an expert in that field.


Steen asserts that, even if the Board properly qualified Angelastro as an expert, his testimony was not sufficient as a matter of law to establish a traffic safety problem because he did not present evidence of "a full traffic count." In making this argument, Steen cites *Bailey v. Upper Southampton Township*, 690 A.2d 1324 (Pa. Cmwlth. 1997). However, in *Bailey*, this Court simply stated that proof of adverse traffic effects **usually** requires a mixture of proof in the form of traffic counts, accident reports and expert evidence. *Id.* Certainly, where a township is trying to show that a proposal would adversely affect traffic safety by increasing traffic, the township would need to present "traffic count" evidence.

Here, however, there is no suggestion that erecting the proposed signs would increase traffic. Thus, "traffic count" evidence was not required.

### C. Credibility Determination

Steen further argues that the Board should have found Angelastro's credibility completely lacking based on the contrary testimony of Steen's expert, Kevin Johnson. However, the Board is the sole judge of the credibility of witnesses and the weight afforded their testimony. *Pietropaolo v. Zoning Hearing Board*, 979 A.2d 969 (Pa. Cmwlth. 2009). Thus, we reject this argument.

Accordingly, we affirm.<sup>3</sup>

  
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KEITH B. QUIGLEY, Senior Judge

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<sup>3</sup> Steen also argues that the Board erred in concluding that off-premises advertising signs constitute a principal use of property under the Code; Steen contends that such signs should be considered an accessory use. However, having concluded that the Board properly denied Steen's applications based the proposed signs' adverse impact on traffic safety, we need not address whether the Board properly denied Steen's applications on this alternative basis.

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Zoning Hearing Board of Upper Providence

**ORDER**

AND NOW, this 24th day of December, 2009, the order of the Court of Common Pleas of Delaware County dated June 19, 2008, hereby is affirmed.



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KEITH B. QUIGLEY, Senior Judge

Certified from the Record

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and Order Exit