



D120129638

IN THE COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

S. C.	7
Line # :	

R.S. PROFESSIONAL SERVICES, LLC, et al., : Consolidated Case
: Nos. A 1504907 and A 1504910

Appellants/Plaintiffs,

vs.

JUDGE PATRICK T. DINKELACKER

ENTERED
NOV 21 2017

THE COUNCIL OF THE VILLAGE OF SILVERTON, OHIO

AGREED JUDGMENT ENTRY

Appellee/Defendant

This Agreed Judgment Entry is entered by the Court upon the agreement of Appellants/Plaintiffs, R.S. Professional Services, LLC, Professional Psychiatric Services, LLC, Mohamed Aziz, and Majed Dabdoub (the "Appellants"), and Appellee/Defendant, the Village of Silverton, Ohio (the "Village") (Appellants and the Village together are the "Parties"):

- A. R.S. Professional Services, LLC is the owner of the real property and the structures thereon located at 6760 Belkenton Avenue in the Village of Silverton, Ohio (Hamilton County, Ohio Auditor parcel number 602-0001-0001-00) (the "Property").
- B. On September 11, 2015, Appellants/Plaintiffs, R.S. Professional Services, LLC, Professional Psychiatric Services, LLC, Mohamed Aziz, and Majed Dabdoub, filed an Administrative Appeal (Case No. A 1504907) and a Complaint for Declaratory Judgment (Case No. A 1504910) against the Village. Both cases involved a zoning dispute. The Court consolidated these actions under Civ. R. 42.
- C. The Administrative Appeal (A 1504907) was briefed and argued to the Court. Magistrate Michael Bachman issued a Decision on May 9, 2016. Magistrate Bachman dismissed the appeal based on a lack of standing and a failure to prosecute the appeal against the proper party. (See Magistrate Bachman's Decision (the "Decision") at 3-4). In addition to the jurisdictional findings, Magistrate Bachman also affirmed the decision of the Silverton Board of Zoning Appeals on the merits. (*Id.* at 4-5). Appellants appealed the Magistrate's Decision.
- D. The Complaint for Declaratory Judgment (A 1504910) is currently pending before the Court. Count One seeks a declaration that "the adoption of Ordinance No. 15-3443 was in violation of the Silverton, Ohio Code of Ordinances and Ohio law." (Complaint ¶ 43). Counts Two and Three allege an

unconstitutional regulatory taking and unspecified violations of Silverton's Municipal Code, respectively. (*See id.* at ¶¶ 44-61). On October 2, 2017, the Village moved for Summary Judgment on all of the claims in the Complaint for Declaratory Judgment.

- E. In order to avoid the ongoing uncertainty, delay, and expense of litigation, the Parties each agree that the disputes between them should be resolved upon the terms and conditions set forth herein.
- F. The Parties to this Agreed Judgment Entry recognize, and the Court by entering this Agreed Judgment Entry finds, that it has been negotiated at arms' length and in good faith, and that it is fair, reasonable, and in the public interest.

NOW THEREFORE, upon the agreement of the Parties, it is **ORDERED, ADJUDGED, and DECREED** as follows:

1. DISMISSAL OF BOTH ACTIONS WITH PREJUDICE.

Appellants/Plaintiffs, R.S. Professional Services, LLC, Professional Psychiatric Services, LLC, Mohamed Aziz, and Majed Dabdoub, hereby dismiss with prejudice all claims brought in both the Administrative Appeal (A 1504907) and the Complaint for Declaratory Judgment (A 1504910) consolidated herein. The costs of both actions shall be paid by the Appellants/Plaintiffs.

2. ZONING FOR THE PROPERTY IS CURRENTLY R-1.

The Parties hereby stipulate and the Court finds that all prior zoning map amendments concerning the Property have lapsed by operation of law under Section 153.129 of the Silverton Zoning Code. The Parties further stipulate that the current zoning for the Property is R-1.

3. NO UNCONSTITUTIONAL TAKING OR VIOLATIONS OF LAW.

The Parties hereby stipulate that no unconstitutional action of any kind, including but not limited to, a taking, or violations of any law or ordinance have occurred concerning the Property, whether based on actions or omissions of the Village.

4. CURRENT RETAINING WALL AND PAVED PARKING.

The Parties hereby stipulate that the retaining wall constructed on the Property by Appellants/Plaintiffs may remain in its current condition, provided that it does not deteriorate, collapse, or otherwise become a nuisance at any time. (*See Decision at 4-5*). This stipulation does not change, limit, or otherwise affect the requirement that all future plans for the development or use of the Property shall comply with all laws, ordinances, and regulations concerning the retaining wall, including its removal if necessary.

The Parties further stipulate that a paved parking area constructed by Appellants/Plaintiffs on the Property may remain in its current condition. (See Decision at 4-5). This stipulation does not change, limit, or otherwise affect the requirement that all future plans for the development or use of the Property shall comply with all laws, ordinances, and regulations concerning the paved parking area, including its removal if necessary.

5. NO PENALTIES FOR ZONING VIOLATIONS.

Based upon the representations of Appellants/Plaintiffs, the Village agrees that all zoning violations have been resolved and not to assess any penalties or fines for the three zoning violations at issue in the Administrative Appeal. (See Decision at 4-5).

6. GENERAL RELEASE OF CLAIMS.

Appellants/Plaintiffs irrevocably and unconditionally release, acquit and forever discharge the Village from any and all charges, claims, liabilities, obligations, promises, agreements, controversies, damages, liquidated damages, actions, causes of action, suits, rights, demands, liens, costs, losses, warranties, and debts related to this litigation or that could have been brought in this litigation.

This Agreed Judgment Entry does not constitute an admission of liability by the Parties but is entered into only to bring an end to the litigation.

7. CONTINUING JURISDICTION.

Each Party is responsible for their own attorney fees associated with this litigation. The Court shall retain jurisdiction over enforcement of this Agreed Judgment Entry. Should any Party violate any provision of this Agreed Judgment Entry, in addition to and without limitation of any remedies otherwise available to the Party, the Party shall be entitled to seek enforcement of the Agreed Judgment Entry by means of a motion seeking to have the violating party held in contempt for violation of the Agreed Judgment Entry. This Agreed Judgment Entry shall be binding on the Parties hereto and their respective successors.

8. FINAL ORDER

Upon approval and entry of this Agreed Judgment Entry by the Court, this Entry shall constitute a final judgment of the Court. The Court finds that there is no just reason for delay and, therefore, enters this judgment as a final order.

SO ORDERED,

COURT OF COMMON PLEAS
ENTERED
[Signature]
HON. PATRICK DINKELACKER
JUDGE PATRICK T. DINKELACKER
TO PARTIES PURSUANT TO CIVIL
RULE 58 WHICH SHALL BE TAXED
AS COSTS HEREIN. 11-21-17

Agreed:

ON BEHALF OF
APPELLANTS/PLAINTIFFS:

/s/ Casey A. Taylor per auth. 11/21/17
Christopher P. Finney (0038998)
Casey A. Taylor (0095966)
Finney Law Firm, LLC
4270 Ivy Pointe Boulevard, Suite 225
Cincinnati, Ohio 45245
Phone: 513-942-6650
Fax: 513-943-6669
chris@finneylawfirm.com
casey@finneylawfirm.com
Attorneys for Appellants/Plaintiffs

ON BEHALF OF
APPELLEE/DEFENDANT:

[Signature]
Lawrence E. Barbieri (0027106)
Kurt M. Irely (0077328)
Jonathan T. Deters (0093976)
Schroeder, Maundrell, Barbieri & Powers
5300 Socialville Foster Road, Suite 200
Mason, Ohio 45040
(513) 583-4200 Telephone
(513) 583-4203 Fax
lbarbieri@smbplaw.com
kirely@smbplaw.com
Attorneys for Appellee/Defendant

/s/ Bryan E. Pacheco per auth. 11/21/17
Bryan E. Pacheco (0068189)
255 E. Fifth Street, Suite 1900
Cincinnati, Ohio 45202
(513) 977-8247 Telephone
(513) 977-8141 Fax
bryan.pacheco@dinsmore.com
**Village Solicitor for Silverton,
Ohio**