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COPY

IN THE CIRCUIT COURT OF MORGAN COUNTY, WEST VIRGINIA

DONALD E. LARGENT,  
PLAINTIFF,

2007 JUN -4 PM 2:20

KIMBERLY J. JACKSON, CLERK

V.

CIVIL ACTION NO.: 06-C-26

ZONING BOARD OF APPEALS  
FOR THE TOWN OF PAW PAW and  
THE TOWN OF PAW PAW, a municipal corporation,

SUMMARY JUDGMENT ORDER

This matter came before the Court this 4<sup>th</sup> day of June, 2007, upon the Plaintiff's Motion for Summary Judgment, Defendant's Response thereto, the Court's consideration of the matters set forth therein, and upon the Court setting the matter for a status and scheduling conference on May 10, 2007. Whereupon, the parties appeared by counsel, Michael L. Scales, Esq. for the Plaintiff and Christopher D. Janelle, Esq. For the Defendant, and the Court did hear the arguments of counsel regarding Plaintiff's motion. Upon consideration of all of the above, the Court finds and concludes as follows:

Plaintiff's Complaint alleges that, for various reasons associated with the recently enacted West Virginia Code § 8A-1-1, et seq., and its predecessor statute found at § 8-24-1, et seq., the Town of Paw Paw zoning ordinance is void.

The Town of Paw Paw zoning ordinance has been in effect since

1972. Plaintiff does not argue that the zoning ordinance was improperly enacted in 1972.

The language of West Virginia Code § 8A-7-12, enacted in 2004, as follows, is clear and unambiguous:

All zoning ordinances, all amendments, supplements and changes to the ordinance, legally adopted under prior acts, and all action taken under the authority of the ordinance, are hereby validated and the ordinance shall continue in effect until amended or repealed by action of the governing body taken under authority of this article.

Plaintiff cites West Virginia Code §§ 8-24-16 through 8-24-19 as authority that the Defendant Town was required to enact a comprehensive plan, with specific provisions, prior to enacting its zoning ordinance. These statutes were repealed in 2004, and even if they were active at the time of the enactment of the Paw Paw zoning ordinance, they do not stand for the propositions asserted.

At the time of enactment of the Paw Paw zoning ordinance, West Virginia Code § 8-24-17 contained no mandatory components for a comprehensive plan. Even if it did, § 8-24-19 contained no requirement for the adoption of same prior to the adoption of a zoning ordinance. Accordingly, when the Town of Paw Paw zoning ordinance was adopted, it was legally adopted and it is expressly validated by the clear language of West Virginia Code § 8A-7-12, which in the Court's opinion acts as a saving clause.

Based upon the above ruling, the Defendant moved orally for summary judgment, the parties being in agreement that this matter was ripe for judgment as a matter of law.

Accordingly, it is ADJUDGED and ORDERED that Plaintiff's motion for summary judgment is denied, Defendant's oral motion for summary judgment is GRANTED, and this matter is DISMISSED from the docket of this Court, with prejudice.

The timely objection of the Plaintiff to all adverse rulings is noted.

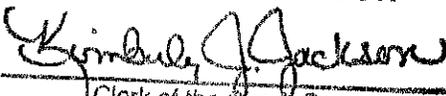
The Clerk shall enter the foregoing as of the date first written above and transmit attested copies thereof to Michael L. Scales, counsel for Plaintiff, and Christopher D. Janelle, counsel for Defendant.

June 4, 2007  
DATE

cc: 6-11-07  
Scales  
Janelle

  
HONORABLE GINA GROH  
JUDGE OF THE CIRCUIT COURT OF  
MORGAN COUNTY, WEST VIRGINIA

GUARDIAN  MAG   
DOM  MH   
CIVIL  JUVENILE   
CRIMINAL  ADM   
ORDER BOOK 33  
PAGE 622 INITIAL  
DATE 6-4-07

A TRUE COPY, ATTEST:  
  
Clerk of the Circuit Court  
of Morgan County, West Virginia  
By 