

nor does the lack of a specific statement that the parties intend to be legally bound render the agreement void. While a seal or a statement of intention to be legally bound may substitute for consideration, their absence does not automatically void the agreement. 33 P.S. Sec. 6 *Brereton Estate*, 388 Pa. 206, 130 A. 2d 453 (1957).

Consideration for the agreement need not appear solely on the face of the agreement, but rather it may be inferred from the terms of the agreement. *Holmes' Appeal*, 79 Pa. 279 (1875). The "silent Partnership Agreement" entered into by plaintiff and defendant provides that plaintiff, who was formerly the sole owner of the business, agrees to one-half of the business being "legally owned" by the defendant. Provision is made in the document for the separation of the parties whereby the agreement is to serve as "legal notice" and the net worth and profits of the business are to be evenly divided. All of these terms indicate that promises were exchanged between the parties concerning division of profits, division of ownership, and distribution of proceeds in the event the business was sold or the parties separated. These bargained-for, mutual promises do indeed supply adequate consideration necessary to form a valid and enforceable agreement. *Thomas v. R. J. Reynolds Tobacco Company*, 350 Pa. 262, 38 A. 2d 61 (1944); Restatement of Contracts Sec. 75.

The language of the agreement clearly discloses the parties' mutual intention to be bound by its terms and that promises were exchanged as consideration. For these reasons, defendant's motion for a demurrer is denied.

ORDER OF COURT

NOW, this 27th day of May, 1982, the preliminary objections in the nature of a motion for a more specific pleading is granted. The preliminary objection in the nature of a demurrer is denied.

Plaintiff is granted leave to file an amended complaint within twenty (20) days of this date.

STAKE V. GREENE TOWNSHIP ZONING HEARING BOARD, C.P., Franklin County Branch, Misc. Docket Vol. Y, Page 30.

Zoning Appeal - Effective Date of Ordinance - Filing in Ordinance Book

1. The Second Class Township Code, 53 P.S. Sec. 65741 provides "ordinances shall be recorded in the ordinance book of the township. . . ."
2. The Municipalities Planning Code provides that "Zoning Ordinances and amendments may be incorporated into official ordinance books by reference with the same force and effect as if duly recorded therein."
3. A zoning ordinance properly adopted by a township is in effect even though it was not recorded in the ordinance book, but was entered in the ordinance book and the book contained a notation concerning the adoption of the ordinance.
4. The notation in the Greene Township Ordinance Book was sufficient to incorporate the ordinance by reference.
5. The legislative intent in passing the Municipalities Planning Code was to make the procedure for recordation of a zoning ordinance less formal than the requirements of the Second Class Township Code.

Thomas J. Finucane, Esq., Counsel for Appellants

Welton J. Fischer, Esq., Solicitor for Appellee

Paul F. Mower, Esq., Counsel for Intervener

OPINION AND ORDER

KELLER, J., June 4, 1982:

Appellants, Kenneth E. and Bonny D. Stake, purchased a parcel of ground in Greene Township in 1979. That same year, they applied to the township for a building permit to construct a pole barn for an animal shelter, and it was granted. Appellants then began to use the building for the storage and sale of vehicles in August, 1980.

On February 23, 1981, appellants requested the Zoning Enforcement Officer to register their land as a legal nonconforming use. The request was denied on March 9, 1981, and an appeal was filed with the Greene Township Zoning Hearing Board on March 27, 1981. Hearings were held on May 4 and June 1, 1981, and the Board's decision to deny the appeal was announced on June 11, 1981, following arguments. A written

opinion supporting the decision of the Board was issued on June 15, 1981.

Appellants filed a Zoning Appeal Notice on July 13, 1981, and a Notice of Intervention was filed by the Greene Township Supervisors on July 30, 1981. Argument was heard by this Court on May 6, 1982, and the matter is now ripe for disposition.

The record discloses that on July 3, 1973, the Greene Township Board of Supervisors adopted a zoning ordinance which imposed a residential classification upon appellants' land. The Green Township Zoning Ordinance was not recorded in the Township Ordinance Book but the Ordinance Book Index under "Zoning Ordinance" refers to page 59, and attached to a blank page 59 is a stapled and scotch-taped notation which states: "Subdivision and Zoning Ordinances Adopted July 3, 1973, (In Bound Books)." A copy of the zoning ordinance was kept with the official Ordinance Book, and other copies of this zoning ordinance were made available to the public for their use and inspection upon request.

The zoning ordinance was revised in 1975 and again in 1979. Appellants' land remained classified as "R-1" (residential), which classification prohibited both the storage and sale of motor vehicles. No additional reference was made in the Ordinance Book to the subsequent revisions of the zoning ordinance.

Appellants contend that the zoning ordinances were not properly recorded in the Township Ordinance Book and were thus not in effect when they began to use their land for the storage and sale of vehicles. Therefore, appellants submit that they are entitled to have their use of the land registered as a legal non-conforming use in existence prior to the date when the Township Supervisors properly recorded the ordinances and thus made them legally effective.

The central issue to be decided in this case is whether the ordinance was legally effective prior to 1980 when appellants began using their land for the storage and sale of vehicles. If the ordinance became effective in 1973, then appellants are clearly not entitled to have their use registered as a non-conforming one because such a use, which does not conform to the zoning classification of the district in which it is located, must be in existence on the effective date of the zoning ordinance.

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Appellants rely on the Second Class Township Code, 53 P.S. Sec. 65741 which provides that "ordinances shall be recorded in the ordinance book of the township and shall become effective five days after such adoption." Since the zoning ordinance enacted in 1973 by Greene Township was not physically recorded in the official ordinance book, appellants submit that it was not legally effective.

This Court cannot accept such a contention in light of the Pennsylvania Municipalities Planning Code, 53 P.S. Sec. 10101 et. seq. The purpose of its provisions are to provide for the orderly planning and development of municipalities throughout the Commonwealth, including second class townships such as Greene Township. In accordance with this Code, Greene Township properly enacted their zoning ordinances after holding the required public hearings.

Section 611 of this Planning Code provides: "Zoning ordinances and amendments may be incorporated into official ordinance books by reference with the same force and effect as if duly recorded therein." 53 P.S. Sec. 10611. While appellants contend that the notation placed in the Ordinance Book was not sufficient since it did not specifically state that the zoning ordinance was incorporated by reference, no definitive language is contained in the statute for an incorporation by reference.

In this case, the notation was found in the Ordinance Book itself, the bound copy of the zoning ordinance was in the same drawer as the Ordinance Book and the zoning ordinance was referenced in the index as being in the ordinance book. All of these factors establish that anyone examining the Ordinance Book could not fail to be aware of the existence of the zoning ordinance and its availability for inspection.

As pointed out by counsel for the Greene Township Zoning Hearing Board, if the formalities of ordinance recordation found in the Second Class Township Code had been meant to apply to ordinances adopted under the Planning Code, the drafters of the Planning Code could have so provided by remaining silent on the subject. Instead, they inserted a specific provision in the Planning Code for incorporating zoning ordinances into official ordinance books by reference. It is evident from this action that the intent was to make the procedure for recordation under the Planning Code less formal than its counterpart in the Second Class Township Code.

We conclude that the Greene Township Zoning Ordinance was indeed effective prior to 1980 when appellants commenced

the non-conforming activities upon their land. The decision of the Greene Township Zoning Hearing Board is accordingly affirmed. The collateral issues discussed in the Board's decision need not be addressed since they are rendered moot by this opinion.

ORDER OF COURT

NOW, this 4th day of June, 1982, the appeal of Kenneth E. Stake and Bonny D. Stake, is dismissed. Costs to be paid by appellants.

Exceptions are granted appellants.

COUNTY OF FRANKLIN V. L.B.T. CORPORATION, C.P.,
Franklin County Branch, A.D. 1980-219

FARMERS AND MERCHANTS TRUST COMPANY, V. L.B.T.
CORPORATION, C.P., Franklin County Branch, A.D.
1979-226

Trespass - Joinder of Additional Defendant - Pa. R.C.P. 32253

1. The principal purpose of Pa. R.C.P. 32253 is to protect the Plaintiff from delay.
2. In considering whether or not to grant a late joinder the court may consider such factors as the prejudice a late joinder may work upon the parties, whether the defendant has acted in a reasonable manner and whether the interests of justice will be served by joinder.
3. Where no prejudice other than an increased risk of liability results from a late joinder, the court will permit the joinder.
4. In an effort to avoid a multiplicity of suits, the court may permit the late joinder of a party.

William A. Addams, Esq., Attorney for Proposed Additional Defendants

Robert P. Reed, Esq., Attorney for Farmers & Merchants Trust Company

Jeffrey B. Rettig, Esq., Attorney for Chambersburg Area Jaycees