

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
CIVIL DIVISION

KIRK B. BURKLEY, TODD L. KILGORE,
and JEFFREY DIURBA,

Appellants,

vs.

COUNCIL OF THE CITY OF
PITTSBURGH,

Appellee.

CIVIL DIVISION

No. SA 13-000763

MEMORANDUM AND ORDER OF
COURT

ROBERT J. COLVILLE, JUDGE

December 12, 2018

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MEMORANDUM AND ORDER OF COURT

COLVILLE, J.

Before the Court is the Statutory Appeal filed by Appellants Kirk B. Burkley, Todd L. Kilgore, and Jeffrey Diurba (“Appellants”). Appellants appeal from a June 25, 2013 decision of the Council of the City of Pittsburgh (“City Council”) denying a Resolution to Expand the Mexican War Streets Historic District (the “Resolution”). Appellants assert that City Council committed errors of law and abused its discretion in reaching its decision by: 1) denying the Resolution despite City Council’s failure to hold a hearing or take a vote on the Resolution within 120 days; and 2) denying the Resolution despite the Resolution being in compliance with the criteria for designation set forth by the City Code.

Pursuant to 2 Pa.C.S.A. § 752, “[a]ny person aggrieved by an adjudication of a local agency who has a direct interest in such adjudication shall have the right to appeal therefrom to the court vested with jurisdiction of such appeals by or pursuant to Title 42 (relating to judiciary and judicial procedure).” Where there is a complete record of the proceedings before the local agency, as is the case in the present appeal, the court’s standard of review is set forth as follows:

[T]he court shall hear the appeal without a jury on the record certified by the agency. After hearing the court shall affirm the adjudication unless it shall find that the adjudication is in violation of the constitutional rights of the appellant, or is not in accordance with law, or that the provisions of Subchapter B of Chapter 5 (relating to practice and procedure of local agencies) have been violated in the proceedings before the agency, or that any finding of fact made by the agency and necessary to support its adjudication is not supported by substantial evidence.

2 Pa.C.S.A. § 754(b). Accordingly, this Court’s review in the present case is limited to determining whether City Council “abused its discretion, committed an error of law, or made findings unsupported by substantial evidence in the record.” *Civil Serv. Comm’n of City of Pittsburgh v. Parks*, 471 A.2d 154, 156 (Pa. Commw. Ct. 1984) (quoting *City of Meadville*,

correspondence dated February 7, 2013 was sent to Appellants by the Director of City Planning stating that the Planning Commission had decided to recommend the Nomination. This correspondence also stated:

Since the HRC and the Planning Commission have made their recommendations, the matter will now be taken to City Council, who will vote on the expansion within one hundred twenty (120) days. Before any vote is taken, Council is required to hold public hearings and take public comments as well. Please expect to receive further communications on the timing of these hearings directly from City Council.

Return, Ex. 10. The correspondence indicates that copies of this correspondence were also sent to the same City Councilperson, the City Solicitor, and the Assistant City Solicitor referenced in the letter respecting the HRC recommendation. On March 5, 2013, City Council held a meeting and introduced Resolution No. 2013-1251 (i.e. the Resolution), and referred it to the Council's Land Use and Economic Development Committee, who approved the Resolution be scheduled for public hearing. This hearing was held on June 17, 2013. City Council preliminarily voted to not approve the Resolution on June 19, 2013. On June 25, 2013, a unanimous City Council voted to not approve the Resolution.

With respect to the time frame in which City Council must act on a historic designation, Section 1101.03(i)(4) of the City Code provides:

City Council shall vote on the designation of a nominated district, structure, site or object within one hundred twenty (120) days of Council's receipt of the recommendations of the Historic Review Commission and the City Planning Commission.

City of Pittsburgh, Pennsylvania Code of City Ordinances Title Eleven § 1101.03(i)(4).

Further, Section 1101.03(j)(3) of the Code provides:

Where Council fails to render its decision within the period required by this subsection, or fails to hold the required public hearing within one hundred twenty (120) days from the date of the Historic Review Commission and the Planning Commission's recommendations, the failure of Council to act shall be deemed

approval if both the Historic Review Commission and the Planning Commission gave affirmative recommendations for the historic designation.

City of Pittsburgh, Pennsylvania Code of City Ordinances Title Eleven § 1101.03(j)(3).

City Council argues that a decision must be rendered on a historic designation within 120 days of City Council's *receipt* of the affirmative recommendations of the HRC and the Planning Commission, and that the date of receipt is the date that a quorum of City Council receives both recommendations. City Council asserts that this date is March 5, 2013, i.e. the date on which a quorum of City Council held a meeting and publically acknowledged, for the first time, its receipt of the recommendations made by the HRC and the Planning Commission with respect to the Nomination/Resolution. City Council asserts that 113 calendar days elapsed between the March 5, 2013 meeting and the June 25, 2013 decision of City Council, and that City Council thus did not violate § 1101.03(i)(4) or § 1101.03(j)(3) when it voted to not approve the Resolution on June 25, 2013.

The Court interprets § 1101.03(i)(4) to provide that the 120-day time limit begins when City Council receives actual notice that both the Planning Commission and the HRC have recommended a historic designation, not when a quorum of City Council acknowledges such notice. With respect to what constitutes effective notice, the City Code does not explicitly require that receipt be by a quorum of City Council, nor does it state that receipt by one Councilperson is sufficient. In the present case, it is clear that a Councilperson, as well as the City Solicitor and an Assistant City Solicitor,⁴ received a copy of a February 7, 2013 correspondence indicating that the Planning Commission had recommended the Nomination. This correspondence also advised that City Council would vote on the proposed expansion within 120 days. The Court finds that a reasonable definition of "receipt" includes the present circumstances, where a Councilperson, as

⁴ Attorneys who represent the City of Pittsburgh's and City Council's interests.

well as two attorneys who represent the City, were served with notice via a correspondence that both the HRC and the Planning Commission had rendered affirmative recommendations, and further where the correspondence expressly states that a decision would be rendered within 120 days. To accept City Council's definition of "receipt" would open the door to absurd results, where City Council could let months pass without publically acknowledging recommendations made by the HRC and the Planning Commission, thus tolling, potentially indefinitely, the clear 120-day requirement imposed by § 1101.03(j)(3) and § 1101.03(i)(4). Accordingly, for the reasons discussed above, the Court holds that the date that City Council received affirmative recommendations from the HRC and the Planning Commission was February 7, 2013, the date that a copy of the correspondence regarding the Planning Commission's recommendation was sent to a City Councilperson, the City Solicitor, and an Assistant City Solicitor.

City Council was in receipt of the affirmative recommendations of the HRC and the Planning Commission on February 7, 2013. Accordingly, the June 17, 2013 public hearing occurred 130 days after City Council's receipt of the recommendations, City Council's June 19, 2013 initial vote occurred 132 days after receipt, and City's Council's June 25, 2013 decision was rendered 138 days after receipt. In any case, City Council failed to act within 120 days of receipt of the affirmative recommendations of the HRC and the Planning Commission. Therefore, City Council's failure to act within the requisite 120 days resulted in the deemed approval of the Resolution, and City Council's decision to not approve the Resolution was in error. This Court will remand this matter to City Council for approval of the Resolution for Expansion of the Mexican War Streets Historic District.

For these reasons, I enter the following Order of Court:

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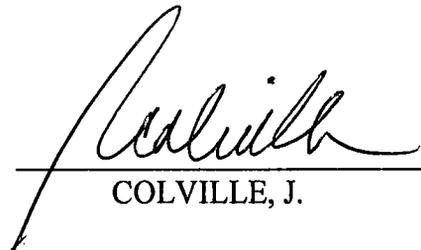
DEPT. OF COURT RECORDS
CIVIL FAMILY DIVISION
ALLEGHENY COUNTY PA
2018 DEC 12 PM 12:32

FILED

ORDER OF COURT

AND NOW, this 12th day of December, 2018, upon consideration of Appellants' Statutory Appeal, it is hereby ORDERED that the decision of Appellee the Council of the City of Pittsburgh to deny the Resolution to Expand the Mexican War Streets Historic District is overturned. This matter is remanded to City Council for approval of the Resolution.

BY THE COURT:


COLVILLE, J.