MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

P&G Associates LLC,
Appellant-Plaintiff,

v.

Monroe County Board of Zoning Appeals and Monroe County Plan Commission,
Appellees-Defendants

July 31, 2023

Court of Appeals Case No. 23A-PL-40

Appeal from the Monroe Circuit Court

The Honorable Erik C. Allen, Special Judge

Trial Court Cause No. 53C06-2201-PL-16

Memorandum Decision by Judge Mathias
Judges Crone and Kenworthy concur.

Mathias, Judge.

[1] P&G Associates LLC ("P&G") appeals the trial court's entry of summary judgment for the Monroe County Board of Zoning Appeals ("BZA") and the Monroe County Plan Commission. P&G raises four issues for our review, which we consolidate and restate as whether the designated evidence established that the BZA and Plan Commission were entitled to judgment as a matter of law. We affirm.

Facts and Procedural History

[2] In 1991, Alan Terry owned certain real property on South Victor Pike in Monroe County. The property is the site of a gasoline station and convenience mart with corresponding temporary public parking. But Terry permitted drivers of semi tractor-trailers (the parties refer to these vehicles as "trucks," and, for ease of reading, we do too after this use) to use the property for overnight parking. At the time, the County had zoned the property within a "limited business" district. According to the ordinances then in effect, limited business districts were "to provide areas for business uses that are compatible with nearby residential areas." Appellant's App. Vol. 2, p. 92.

[3] In 1991, numerous disputes arose between the County and Terry's use of the property, which resulted in the County and Plan Commission filing a complaint against Terry. However, the parties settled their dispute by way of a Settlement Agreement and dismissed the lawsuit. Pursuant to the terms of the Settlement Agreement, Terry would apply "penetrating oil . . . to all crushed stone surface area[s]" at the property and perform additional "dress up" to those surfaces; he would continue to apply "penetrating oil to such areas as often as reasonably

necessary to prevent migrating dust from becoming a nuisance to residences contiguous" to the property; he would pave various areas at the property according to stated specifications and phases; he would improve the trash containment at the property; and he would install a visual screen around the property. *Id.* at 229-33. Once Terry completed those improvements to the County's and Plan Commission's satisfaction, they agreed they would dismiss their complaint against him. The Settlement Agreement also contained an integration clause that made clear that the Agreement represented the parties' complete agreement and understanding. *Id.* at 234.

[4] In 1996, the County adopted new zoning designations. In relevant part, the property was reassigned from a limited business district to a pre-existing business district, which designation was created "to accommodate commercial and business service uses that were in operation prior" to 1996. *Id.* at 217.

[5] In 2005, P&G purchased the property. There is no dispute that, when P&G purchased the property, it continued all prior uses of the property, including use of the property for "overnight truck parking." Appellant's App. Vol. 3, p. 28.

[6] In July 2020, the Plan Commission issued a notice of violation to P&G for the "[u]npermitted use" of the property as a "trucking terminal." *Id.* at 112. In response, P&G submitted a Use Determination Form in which P&G requested a determination of whether "overnight truck driver parking" was a permitted use of the property. Appellant's App. Vol. 2, p. 60. After reviewing submitted materials, including the Settlement Agreement, historical zoning ordinances

relevant to the property, and the current zoning ordinance, the Plan Commission concluded that the "[u]se of [the] site for overnight truck parking was not a permitted use at the time the prior owners began to allow overnight parking of trucks," and that any such use was and is "in non-compliance with the zoning ordinance[s]" both during Terry's ownership and during P&G's ownership. *Id.* at 26.

[7] P&G appealed the Plan Commission's determination to the BZA. After a hearing, the BZA agreed with the Plan Commission's determination and affirmed its decision. P&G then filed its petition for judicial review and complaint for declaratory judgment in the trial court, in which P&G sought a judicial determination on the question of its use of the property for overnight truck parking.

[8] The BZA and Plan Commission moved for summary judgment across two different motions, and P&G filed corresponding cross-motions for summary judgment. After a hearing on all motions, the trial court entered summary judgment for the BZA and the Plan Commission on P&G's request for judicial review as well as its complaint for declaratory judgment and denied P&G's motions. This appeal ensued.

Standard of Review

[9] P&G appeals the trial court's entry of summary judgment for the BZA and Plan Commission. Our standard of review is well settled:

> We review summary judgment de novo, applying the same standard as the trial court: "Drawing all reasonable inferences in favor of . . . the non-moving parties, summary judgment is appropriate 'if the designated evidentiary matter shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.'" *Williams v. Tharp*, 914 N.E.2d 756, 761 (Ind. 2009) (quoting T.R. 56(C)). "A fact is 'material' if its resolution would affect the outcome of the case, and an issue is 'genuine' if a trier of fact is required to resolve the parties' differing accounts of the truth, or if the undisputed material facts support conflicting reasonable inferences." *Id.* (internal citations omitted).
>
> The initial burden is on the summary-judgment movant to "demonstrate [ ] the absence of any genuine issue of fact as to a determinative issue," at which point the burden shifts to the non-movant to "come forward with contrary evidence" showing an issue for the trier of fact. *Id.* at 761-62 (internal quotation marks and substitution omitted).

Hughley v. State, 15 N.E.3d 1000, 1003 (Ind. 2014) (alterations original to *Hughley*).

Discussion and Decision

[10] Although P&G frames its arguments on appeal in various ways, the central issue underlying P&G's appeal is straightforward: whether the 1991 Settlement Agreement was equivalent to the County authorizing or acquiescing in Terry's use of the property for overnight truck parking, and whether that apparent authorization then became an explicit authorization by way of the 1996 re-designation of the property within a pre-existing business district. P&G does not dispute the fact that at no time did the language of any local zoning ordinance

permit it or Terry to use the property for overnight truck parking, save for P&G's attempts to apply the 1996 pre-existing business district ordinance.

[11] We thus consider whether the 1991 Settlement Agreement authorized Terry—and, thus, P&G as his successor—to use the property for overnight truck parking despite the language of the relevant zoning ordinances. And P&G's assertions aside, no reasonable reading of the Settlement Agreement would lead anyone to that conclusion. The Settlement Agreement speaks to mitigating dust from gravel surfaces, paving certain surfaces, properly collecting trash, and mitigating the visual appearance of the property. Nowhere does the Settlement Agreement speak to using the property for overnight truck parking.

[12] P&G unconvincingly asserts that, because Terry's unauthorized use of the property for overnight truck parking was open and obvious[1] at the time of the Settlement Agreement, his use was somehow incorporated into or otherwise authorized by the Agreement. The Settlement Agreement contains an integration clause, and that clause made clear that the four corners of the Settlement Agreement represented the parties' complete understanding and agreement of the issues between them. Thus, P&G may not expand on the

[1] In its brief on appeal, P&G repeatedly asserts that Terry's use of the property for overnight truck parking was "known and allowed" by the Plan Commission at the time of the Settlement Agreement. *See, e.g.*, Appellant's Br. at 15-16. P&G cites no evidence in the record to show any such knowledge by the Plan Commission or the BZA. *See* Ind. Appellate Rule 46(A)(8)(a). We therefore interpret P&G's assertions to be that the Plan Commission *should have known* based on Terry's open use of the property for overnight truck parking.

parties' purported understanding behind the Agreement beyond those four corners.

[13] P&G also suggests that, any alleged prior authorizations notwithstanding, the 1996 re-designation of the property within a pre-existing business district operated as authority to use of the property for overnight truck parking going forward. But the 1996 re-designation spoke only to lawful uses of the property. No reasonable reading of the 1996 re-designation would suddenly authorize a prior unlawful use.

[14] Finally, P&G asserts that it is patently unfair to enforce the zoning ordinances against it when the property has been used for overnight truck parking for more than three decades. We understand P&G's position, but our case law is clear that property owners may not argue that local government is estopped from or has acquiesced in unauthorized uses based only on the passage of time. *See, e.g.*, *City of Hammond v. Rostankovski*, 148 N.E.3d 1165, 1169-70 (Ind. Ct. App. 2020) ("it is well established that laches is not a defense to a municipality's action to enforce its zoning ordinances"); *Metro. Dev. Comm'n of Marion Cnty. v. Schroeder*, 727 N.E.2d 742, 749 (Ind. Ct. App 2000) (stating that the same "public policy interests [that] prohibit a private party from asserting laches as a defense against a municipality in the enforcement of its zoning ordinances . . . also would preclude a private party from asserting acquiescence . . . ."), *trans. denied*.

[15] Accordingly, the 1991 Settlement Agreement did not authorize, explicitly or implicitly, the use of the property for overnight truck parking, and neither did

the 1996 re-designation of the property within a pre-existing business district make lawful the prior unlawful use. Further, P&G's apparent arguments under theories of estoppel or acquiescence are contrary to law.

[16] Thus, for all of these reasons, we affirm the trial court's entry of summary judgment for the BZA and the Plan Commission as well as its denial of P&G's cross-motions for summary judgment.

[17] Affirmed.

Crone, J., and Kenworthy, J., concur.