

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In Re: Appeal of Heritage Building :  
Group, Inc. and Heritage Meadow, L.P. :  
Decision of the Doylestown Township :  
Board of Supervisors Denying Final :  
Plan Approval :  
:  
:  
Appeal of: Heritage Building Group, : No. 1251 C.D. 2010  
Inc. and Heritage Meadow, L.P. : Argued: February 7, 2010

BEFORE: HONORABLE DAN PELLEGRINI, Judge  
HONORABLE JOHNNY J. BUTLER, Judge  
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION  
BY JUDGE PELLEGRINI

FILED: March 3, 2011

Heritage Building Group, Inc. and Heritage Meadow, L.P. (collectively, Developer) appeal from the order of the Court of Common Pleas of Bucks County (trial court) affirming the Doylestown Board of Supervisors' (Board) decision denying Developer's final plan for a residential subdivision. For the reasons that follow, we vacate and remand.

Developer submitted a plan to the Board for development of the property in question (Property) into a residential subdivision. The Property, which is approximately rectangular in shape, borders Old Dublin Pike along the short side of the rectangle. It had been a farm and was undeveloped except for the extreme

front corner of the Property, where a farmhouse was located. In the farmhouse lived Webster Gross, related to the previous owner, who occupied the house and the area immediately around it under a life estate. Once he died, the farmhouse lot would revert to Developer who owned the remainder estate.

The plan, as submitted by Developer on April 5, 2004, included subdividing the Property into 25 lots. A cul-de-sac acted as the access road for the subdivision. It would begin on Old Dublin Pike and cut the Property almost in two along the long side of the rectangle with 12 lots on each side of it. The final lot, Mr. Gross' farmhouse, did not abut the access road. Instead, it accessed Old Dublin Pike with a driveway. Two of the lots fronting the access road bordered the farmhouse lot on its side so that these three lots together would form a square at the front corner of the Property. Directly across Old Dublin Pike from the farmhouse and near the edge of the Property is Sandy Ridge Road, which forms a t-shaped intersection with Old Dublin Pike. This intersection, which is fairly busy, does not have a traffic light and has been the scene of several accidents in the past few years. This intersection is approximately 75 yards on the opposite side of Old Dublin Pike from the proposed access road. The result would be two t-shaped intersections on opposite sides of Old Dublin Pike 75 yards apart from each other.

After Developer submitted its plan, Pennoni Associates, the township engineer for Doylestown Township (Township), wrote a June 24, 2004 letter to the Township manager stating, among other things, "We recommend that the new roadway should be located directly across from Sandy Ridge Road [creating a four-way intersection]. Proper alignment reduces conflicts and enhances safety."

(Reproduced Record at 16a). An examination of the preliminary plan and the shape of the Property shows that if Developer were to adopt this recommendation, its development plan would have to be considerably altered. It appears that the least disruption would be caused by having the cul-de-sac make a sharp turn so that it briefly runs nearly parallel to Old Dublin Pike, cutting through the square consisting of the three proposed lots on the corner of the Property. This would eliminate three lots and necessitate the removal of Mr. Gross' farmhouse. At the time the subdivision plan was submitted, Mr. Gross continued to live in the farmhouse pursuant to his life estate, and any realignment would be impossible because the farmhouse was located directly across the street from the intersection with Sandy Ridge Road.<sup>1</sup>

On July 20, 2004, the Board granted preliminary approval to Developer's plan subject to 15 conditions, only the eleventh of which, dealing with the location of the access road, is at issue here. That condition reads, "Applicant *to discuss*, between now and final plan consideration, the Pennoni letter dated June [2]4, 2004, with respect to the alignment of the access to this project with the intersection of Old Dublin Pike and Sandy Ridge Road." (R.R. at 18a, emphasis added). Developer did not appeal any of the conditions of the preliminary approval. In 2005, about a year after the grant of preliminary approval, Mr. Gross died, removing the impediment from aligning the access road with Sandy Ridge

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<sup>1</sup> Additionally, Developer contends that aligning the access road with the existing intersection would violate the Township's zoning ordinance. The Board states that it would support Developer in getting any zoning relief it needed, but the Board has no power to compel the zoning board to grant such relief.

Road. Developer did not inform the Board of Mr. Gross' death, which it only learned of years later from another source.

Some time later, Developer submitted final plans for the Property, and on December 4, 2007, the Board denied the final plans via letter. The sole reason given was that Developer had not aligned the access road with Sandy Ridge Road in violation of the Doylestown Township Subdivision and Land Development Ordinance (SALDO) §153-24A(2)(a), which provides:

Streets shall be arranged in a manner to meet with the approval of the Board of Supervisors, considered in relation to both existing and planned streets and located so as to allow proper development of surrounding properties...

Developer appealed to the trial court. It argued that it did comply with the condition regarding street alignment, which required nothing more than it hold a discussion with the Township about aligning the roads, which it did. The condition, according to Developer, did not require that it actually align the roads. The trial court, *sua sponte*, remanded the matter to the Board for a further development of the record with regard to whether the offset intersections would be a safety hazard compared to one four-way intersection. On remand, testimony was taken regarding the alleged dangerousness of the intersections, and the Board, for the first time, made findings of facts and conclusions of law, stating that the intersection as proposed by Developer was indeed dangerous and that Developer had failed to comply with the condition of its preliminary approval.

Developer again appealed to the trial court. It argued that it did comply with the condition, which required only that it discuss moving the access road. Additionally, it argued that SALDO §153-24A(2)(a) was too general to be the basis for a denial, and the Board was required to approve its final plan because it complied with all the specific requirements in the SALDO regarding roads. It further argued that the trial court abused its discretion by remanding because the parties already had the opportunity to present their evidence and because neither party asked for a remand. It also argued that the remand order only authorized the Board to further develop the record, not to make findings of facts and conclusions of law.

The trial court affirmed the Board's decision. It held that it properly remanded the case, that the Board properly issued its ruling, and that Section 153-24A(2)(a), regarding the layout of streets, could be a basis for denying a final plan. With regard to the meaning of "to discuss", the trial court held that regardless of how it was interpreted, Developer did not comply with the condition, writing that letters from the township engineer stating "all other traffic engineering comments have been addressed" and "the plans have been revised to address all of PC&S's concerns," showed that alignment had not been discussed. The trial court further held:

Although the wording of the disputed condition may be open to different interpretations, it is clear that by accepting the condition, [Developer] accepted the Township's authority to condition approval of the final plans based upon its determination as to the appropriate location of the access road based upon safety considerations.

(Trial court opinion at 8). In other words, the trial court determined that the phrase “Developer to discuss moving the road” really meant “Developer is required to move the road if the Board decides that safety considerations require it.” Developer appealed to this Court.<sup>2</sup>

A preliminary subdivision plan may be approved with conditions by a Board of Supervisors. *See Rickert v. Latimore Township*, 960 A.2d 912, 919 (Pa. Cmwlth. 2008). “[Once] a preliminary application has been duly approved, the applicant shall be entitled to final approval in accordance with the terms of the approved preliminary application.” Section 508(4)(i) of the Pennsylvania Municipalities Planning Code;<sup>3</sup> *Rickert; Annand v. Board of Supervisors of Franklin Township, Chester County*, 634 A.2d 1159 (Pa. Cmwlth. 1994). Thus, once a Board of Supervisors has granted approval to a preliminary plan, it is required to grant final approval to the plan without adding any further conditions or altering any of the original conditions if the original conditions have been met. The only condition the Board claims Developer has not complied with is the eleventh, which states, “Applicant to discuss, between now and final plan consideration, the Pennoni letter dated June [2]4, 2004, [recommending] alignment of the access to this project with the intersection of Old Dublin Pike and Sandy Ridge Road.”

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<sup>2</sup> Our standard of review when the trial court takes no additional evidence is whether the Board manifestly abused its discretion or committed an error of law. *McMahon v. Kingston Township Board of Supervisors*, 771 A.2d 96 (Pa. Cmwlth. 2001).

<sup>3</sup> Act of July 31, 1968, P.L. 805, *as amended*; 53 P.S. §10508(4)(i).

Developer contends the phrase “to discuss” the road alignment with the Township meant literally that, and nothing in the preliminary approval required actually moving the road, and that the Board could not later impose this requirement. Because it complied with that requirement by discussing the issue with Township officials as well as with all the other conditions imposed by the Board’s preliminary approval, it is entitled to final approval. The Township contends, however, the phrase “to discuss aligning the roads” really meant “once Mr. Gross died, Developer was required to align the roads” and that the only reason the word “discuss” was chosen was because the Board could not require aligning the roads as long as Mr. Gross was alive. Even if “discuss” literally only meant “discuss”, an overly literal and unreasonable interpretation of the condition, Developer did not do so and acted in bad faith by not informing the Board that Mr. Gross had died so discussions could begin.<sup>4</sup>

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<sup>4</sup> Much has been made of two other issues by both parties and the trial court, but neither has any bearing on the result of the appeal. First, Developer contends that the Board had no discretion to deny its application for final approval because SALDO Section 153-24A(2)(a) is too general to be the basis for a denial when Developer complied with all the specific SALDO provisions concerning roads. However, acceptance of conditions imposed on a subdivision as part of a preliminary plan approval constitutes a waiver of future challenges to those conditions. *In re Busik*, 759 A.2d 417, 421 (Pa. Cmwlth. 2000). Developer did not appeal the preliminary plan conditions, and it claims it complied with all of them, showing that it accepted them. Therefore, this issue is waived.

Second, Developer argues that the trial court improperly remanded the matter to the Board to develop a record on the issue of whether the intersection was dangerous when the Board already had the opportunity to present evidence on this matter, and that the Board was not empowered on remand to issue findings of fact and conclusions of law. However, whether the intersections are dangerous or not is irrelevant if Developer complied with the conditions of preliminary approval. The alleged dangerousness of the intersections goes to the justification for conditioning preliminary approval to the alignment of the roads. The rationale for the conditions in the preliminary plan has no bearing on whether Developer complied with those conditions before a determination of final approval was made. Therefore, we need not decide whether the **(Footnote continued on next page...)**

Language in statutes, zoning ordinances or, in this case, conditions imposed by a Board of Supervisors, is construed against its drafters. Undefined terms are given their plain, ordinary meaning, and any doubt is resolved in favor of the landowner and the least restrictive use of the land. *See Trojnacki v. Board of Supervisors of Solebury Township*, 842 A.2d 503, 509 (Pa. Cmwlth. 2004); *Caln Nether Co., L.P. v. Board of Supervisors of Thornbury Township*, 840 A.2d 484, 491 (Pa. Cmwlth. 2004). “Discuss” is defined as “to investigate by reasoning or argument; to present in detail for examination or consideration.” Webster’s Ninth New Collegiate Dictionary (1989), p. 362. In other words, “to discuss” means “to have a substantive conversation.” Contrary to the Township’s insistence, “discuss” does not mean “require”, but neither does it mean a casual mention followed by immediate dismissal. Moreover, nothing in the language of the condition required Developer to inform the Township or Board if Mr. Gross passed away. Simply, if the Board wanted Developer to align the roads once the life estate extinguished, it could have used language such as, “If the final plan has not been approved as of the time the life estate ends, Developer is required to align the access road with the existing intersection.” Alternatively, it could have required Developer to submit two plans, one if Mr. Gross was still living at the time of final approval and one if he had passed away. However, the Board did no such thing – only requiring a discussion.

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**(continued...)**

trial court was correct in remanding the matter or whether the Board acted properly upon remand.



While there are hints in the record that discussions had taken place, whether they involved a substantive conversation, a detailed presentation or a reasoned argument with the Township regarding the location of the access road, was not addressed below. Because no findings were made, we remand to the Board to hold a hearing and take evidence regarding this issue. If such a discussion occurred, the Board must grant final approval to Developer's application.

For the foregoing reasons, the order of the trial court is vacated and remanded to the trial court to remand to the Board for further action in accordance with this opinion.

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DAN PELLEGRINI, JUDGE

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**ORDER**

AND NOW, this 3<sup>rd</sup> day of March, 2011, the order of the Court of Common Pleas of Bucks County, dated May 24, 2010, is vacated and remanded to the Court of Common Pleas of Bucks County with instructions to remand to the Doylestown Township Board of Supervisors for further proceedings in accordance with this opinion.

Jurisdiction relinquished.

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DAN PELLEGRINI, JUDGE