

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

TFP, Ltd.	:	
	:	
v.	:	No. 1484 C.D. 2009
	:	
Dorrance Township Board of	:	
Supervisors, George Rusczyk,	:	
Joseph Potelunas, Robert M. Gaydos,	:	
Beverly Fisher-Cruikshank, David	:	Argued: June 24, 2010
Solomon, Edward Urban and	:	
Jan Urban	:	
	:	
Appeal of: Dorrance Township	:	
Board of Supervisors	:	

BEFORE: HONORABLE DAN PELLEGRINI, Judge
HONORABLE P. KEVIN BROBSON, Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE McCULLOUGH

FILED: September 9, 2010

The Dorrance Township Board of Supervisors (Board) appeals from the June 30, 2009, order of the Court of Common Pleas of Luzerne County (trial court), which reversed the Board’s decision and granted tentative approval to a planned residential development (PRD) by TFP, Ltd. (TFP). We now reverse and remand.

TFP is the owner of 546.56 acres of property surrounding and including the Blue Ridge Trail Golf Club, an eighty-acre, twenty-seven hole commercial golf course in Dorrance Township, Luzerne County, Pennsylvania. The property is located in a C-1 Conservation zoning district, and a PRD is

permitted as a conditional use in the district. On March 6, 2007, TFP submitted an application for tentative approval of a PRD, seeking to construct 133 single-family homes and 202 townhouses on the property in three phases over a period of five years. TFP sought to position the PRD around a nine-hole portion of the golf course and to designate the area occupied by that part of the course as common open space for the PRD. TFP requested waivers with respect to three provisions of the Dorrance Township Zoning Ordinance (Ordinance) governing PRD's, specifically the density requirements in section 1603, the dimension requirements in section 1604, and documentation requirements in section 1609.

On February 14, 2008, following several public hearings,¹ the Board issued a decision denying TFP's application, denying the waiver requests from sections 1603 and 1604 of the Ordinance, but granting the waiver request relating to section 1609.

The Board first concluded that all of the standards and requirements of the Township's Subdivision and Land Development Ordinance (SALDO) are applicable to the PRD application and are specifically incorporated under section 1606(A) of the Ordinance. The Board also concluded that TFP's application failed to meet these standards because the plan proposes roads with a slope of more than twenty-five percent, cul-de-sac streets in excess of 600 feet long and serving more than thirteen dwelling units, and streets and lots encroaching upon wetlands. Additionally, the Board stated that TFP could not include the nine-hole portion of the golf course in its calculation of common open space because the golf course serves the public at large and is a commercial recreation facility as defined by the

¹ Several neighboring landowners appeared at the hearing in opposition to TFP's application, including George Rusczyk, Joseph Potelunas, Robert M. Gaydos, Beverly Fisher-Cruikshank, David Solomon, Edward Urban and Jan Urban.

Ordinance. Further, the Board determined that TFP failed to meet the one-acre density requirement after preclusion of the golf course and inclusion of the wetlands and twenty-five percent slopes in the calculation of common open space.

TFP filed a notice of land use appeal with the trial court alleging that the Board erred in subjecting its application to the standards of the Township's SALDO, in concluding that the nine-hole portion of the golf course could not be included in the calculation of common open space, and in denying two of the requested waivers. TFP also alleged that the Board erred in finding that its application failed to comply with the specific standards of the Ordinance. Finally, TFP asserted that the Board erred in allowing supervisor Benjamin Ostrowski to vote on the application because he evidenced an appearance of bias against the PRD.

The trial court granted neighboring landowners leave to intervene. Following argument, by order dated June 30, 2009, the trial court granted TFP's land use appeal and reversed the Board's decision. The trial court noted that where a PRD ordinance does not incorporate the requirements of a SALDO, a township may not reject a PRD application on the grounds that the plan fails to satisfy the SALDO requirements. The trial court also indicated that the Board, in denying the application, utilized standards and reasons that are more reasonably considered in reviewing applications for final approval. The trial court concluded that, in this case, section 1609 of the Ordinance, which sets forth the standards and procedures for submission of an application for tentative approval of a PRD, does not specifically indicate that a PRD application must comply with the Township's SALDO.

On appeal to this Court,² the Board argues that the trial court erred as a matter of law in concluding that the standards and regulations contained in the Township's SALDO are not applicable to the tentative approval of TFP's PRD application. We agree.

Section 702 of the Pennsylvania Municipalities Planning Code (MPC)³ specifically empowers the governing body of a municipality to enact, amend, and repeal provisions within a zoning ordinance fixing standards and conditions for a PRD. Pursuant to this authority, the Township enacted Article 16 of its Ordinance, which is simply entitled "Planned Residential Developments."

Section 705(h) of the MPC, 53 P.S. §10705(h), states that the standards applicable to a particular PRD may be different than or modifications of, the standards and requirements otherwise required of subdivisions authorized under an ordinance adopted pursuant to Article V of the MPC (relating to subdivision and land development). However, section 705(h) does not automatically incorporate Article V of the MPC into zoning ordinances; it merely grants the governing body the authority to do so. Board of Supervisors of Charlestown Township v. West Chestnut Realty Corp., 532 A.2d 942 (Pa. Cmwlth. 1987), appeal denied, 519 Pa. 657, 546 A.2d 61 (1988). Where the PRD ordinance provisions do not specifically incorporate the provisions of a municipality's SALDO, a township may not reject a PRD application on the ground that the

² Where, as here, the trial court takes no additional evidence, our scope of review is limited to determining whether the Board committed an abuse of discretion or an error of law. Piper Group, Inc. v. Bedminster Township Board of Supervisors, 992 A.2d 224 (Pa. Cmwlth. 2010). The Board abuses its discretion when its findings of fact are not supported by substantial evidence. Id. Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. Id.

³ Act of July 31, 1968, P.L. 805, as amended, 53 P.S. §10702.

application fails to satisfy subdivision requirements. Robert S. Ryan, Pennsylvania Zoning Law and Practice, §12.1.5. Further, section 707 of the MPC, 53 P.S. §10707, envisions a two-step approval process in evaluating an application for a PRD, tentative approval followed by final approval.

In the present case, section 1606(A) of the Ordinance does in fact incorporate the SALDO. Section 1606(A) addresses the requirements for improvements and design within a PRD and provides as follows:

All improvements, including but not limited to, streets, curbing, sidewalks, stormwater detention facilities, drainage facilities, water supply facilities, sewage disposal, street lighting, tree lawns, etc., unless otherwise exempted, shall be designed and constructed in conformance with the standards and requirements of the Dorrance Township [SALDO].

(R.R. at 85a.) Furthermore, section 707(3) of the MPC and section 1609(C) of the Ordinance provide that “all planning, zoning and subdivision matters...and subsequent modifications of the regulations relating thereto...shall be determined and established by the Board” at the tentative approval phase. The Board cited and relied upon section 1606(A) in rendering its decision, yet the trial court makes no mention of this section in its opinion.

Moreover, in Board of Supervisors of Charlestown Township, this Court previously held, albeit in the context of a final plan approval, that the lack of any specific incorporation clause in the township’s PRD ordinance did not preclude application of the township’s SALDO, because a PRD comes within the definitions of a “land development” and “subdivision” as set forth in the

township's SALDO.⁴ In the present case, the Township's SALDO contains definitions of these terms that are substantially similar to the definitions in Charlestown Township's SALDO.⁵ For these reasons, we conclude that the trial court erred in reversing the Board's decision.

⁴ In Board of Supervisors of Charlestown Township, the township's SALDO defined "land development" as:

The improvement of one or more contiguous lots, tracts or parcels of land for any purpose involving a group of two or more buildings, or the division or allocation of land between or among two or more existing or prospective occupants by means of, or for the purpose of streets, common areas, leaseholds, building groups or other features, a subdivision.

532 A.2d at 945. The township's SALDO defined a "subdivision" as:

The division or redivision of a lot, tract or parcel of land, by any means, into two or more lots, tracts, parcels or other divisions of land, including changes in existing lot lines, for the purpose, whether immediate or future, of lease, transfer of ownership or building or lot development; provided, however, that the division of land for agricultural purposes into parcels of more than ten (10) acres not involving any new street or easement of access, shall be exempted; and any development of land for multi-unit use, as a shopping center, industrial park, or multiple dwelling building, shall for the purposes of this Ordinance, be considered a subdivision or a land development.

Id.

⁵ The Township's SALDO in the present case defines "land development" as follows:

The improvement of one lot or two (2) or more contiguous lots, tracts or parcels of land for any purpose involving:

- (A) A group of two or more residential or nonresidential buildings, whether proposed initially or cumulatively, or a single nonresidential building on a lot or lots regardless of the number of occupants or tenure.

(Footnote continued on next page...)

(continued...)

(B) The division or allocation of land or space, whether initially or cumulatively, between or among two or more existing or prospective occupants by means of, or for the purpose of streets, common areas, leaseholds, condominiums, building groups or other features.

(C) A subdivision of land.

(D) The conversion of an existing single-family detached dwelling or single family semidetached dwelling into more than three (3) residential units. Any conversion, described above that is intended to be a condominium, shall be exempt from classification as a land development.

(E) Any nonresidential use of land, with or without structures, which encompasses five (5) or more acres of land, excluding agricultural use of land.

(F) The development of a mobile home park or the expansion of an existing mobile home park within the context of the definition of said term as contained within this Ordinance.

(R.R. at 114a-15a.) The Township's SALDO herein defines the term "subdivision," in part, as follows:

The division or redividing of a lot, tract or parcel of land by any means into two or more lots, tracts, parcels or other divisions of land including changes in existing lot lines for the purpose, whether immediate or future, of lease, partition by the court for distribution to heirs or devisees, transfer of ownership or building or lot development: Provided, however, that the subdivision by lease of land for agricultural purposes into parcels of more than ten acres, not involving any new street or easement of access or any residential dwelling, shall be exempted.

(R.R. at 121a.)

Accordingly, the order of the trial court is reversed. Because the trial court reversed the Board's order solely with respect to application of the Township's SALDO, a remand is necessary for the trial court to address the remaining issues raised by TFP in its land use appeal, including issues relating to specific noncompliance with certain SALDO provisions, denial of waivers, and alleged bias on the part of one of the Board's members.

PATRICIA A. McCULLOUGH, Judge

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ORDER

AND NOW, this 9th day of September, 2010, the June 30, 2009, order of the Court of Common Pleas of Luzerne County (trial court) is hereby REVERSED. The matter is remanded to the trial court for further proceedings consistent with this opinion.

Jurisdiction relinquished.

PATRICIA A. McCULLOUGH, Judge