

the Township, covering approximately 164 acres situated entirely within the Township's AP District.

On November 1, 2002, our supreme court issued its decision in *C & M Developers, Inc. v. Bedminster Township Zoning Hearing Board*, 573 Pa. 2, 820 A.2d 143 (2002), holding that the dimensional requirements set forth in sections 408(2)(b) and 513 of Ordinance 118 were unconstitutional. Five days later, on November 6, 2002, Bedminster filed its Application with the Board pursuant to sections 609.1, 909.1(b)(4) and 916.1(a)(2) of the Pennsylvania Municipalities Planning Code (MPC),¹ and substantively challenged the identical provisions that were challenged and found invalid in *C&M*. Bedminster's Application includes a proposed curative amendment ordinance and development plans. In accordance with Bedminster's proposed ordinance, the development plans permit the construction of 161 single-family dwelling units on a minimal lot area of 6,500 square feet. Bedminster also proposed the construction of a small sewage treatment plant and community water facilities.

On November 12, 2002, in response to the *C&M* decision filed eleven days earlier, the Township entered into a settlement agreement with C&M Developers to resolve the case. In addition, on November 14, 2002, at the first available public meeting, the Township declared that it would undertake a municipal

¹ Act of July 31, 1968, P.L. 805, *as amended*, 53 P.S. §§10609.1, 10909.1(b)(4), 10916.1(a)(2). Section 609.1 of the MPC was added by section 10 of the Act of June 1, 1972, P.L. 333, *as amended*; section 909.1(b)(4) of the MPC was added by section 87 of the Act of December 21, 1988, P.L. 1329, *as amended*; and section 916.1(a)(2) of the MPC was added by section 99 of the Act of December 21, 1988, P.L. 1329, *as amended*.

curative amendment pursuant to section 609.2 of the MPC.² On April 30, 2003, the Township adopted Ordinance 149 to cure the infirmities identified in *C&M*. The Township further amended its Ordinance by adopting Ordinance 162 on July 20, 2005, thereby facilitating more development within the AP District.

Between March 18, 2003, and December 28, 2006, fifty-six hearings were held before the Board on Bedminster's Application. During these proceedings, the Board was represented by the Township Solicitor, who now assumed the role of the Board Solicitor; Special Township Counsel was appointed to represent the Township in opposition to Bedminster's Application. On March 5, 2007, the Board issued a lengthy adjudication denying Bedminster's Application, and Bedminster filed a land use appeal with the trial court, appealing the Board's decision. Following oral argument and the filing of briefs, the trial court, by opinion and order dated August 27, 2009, denied Bedminster's appeal and affirmed the Board. Bedminster now appeals to this court.³

The critical issues raised here are: (1) whether Bedminster is entitled to approval of its November 6, 2002, Application based solely on the Supreme Court's

² Added by section 2 of the Act of October 5, 1978, P.L. 1067, *as amended*, 53 P.S. §10609.2.

³ 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. *Baker v. Chartiers Township Zoning Hearing Board*, 677 A.2d 1274 (Pa. Cmwlth. 1996), *appeal denied*, 547 Pa. 738, 690 A.2d 238 (1997). The Board abuses its discretion when its findings of fact are not supported by substantial evidence. *Valley View Civic Association v. Zoning Board of Adjustment*, 501 Pa. 550, 462 A.2d 637 (1983). Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Id.*

decision in *C&M* and the Board's settlement agreement with C&M Developers; (2) whether a *de novo* standard of review should be applied in this case because the Board, and the Board Solicitor in particular, conducted the hearings in a manner that violated Bedminster's due process rights; (3) whether the trial court erred in holding that Bedminster's requested relief is unreasonable and in failing to discuss whether Bedminster's proposed use and development plans satisfied the criteria set forth in section 609.1(c) of the MPC; and (4) whether the trial court erred in determining that Ordinance 149 cured the defects identified by the Supreme Court in *C&M*.

The trial court ably addressed and correctly decided each of these issues in its thorough and thoughtful opinion. Accordingly, we affirm, adopting the well-reasoned opinion of Judge C. Theodore Fritsch, Jr., entered in *Bedminster Associates, L.P. v. Bedminster Township Board of Supervisors*, (Bucks County, No. 07-02636-29-5, filed August 27, 2009).

ROCHELLE S. FRIEDMAN, Senior Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Bedminster Associates, L.P., :
 Appellant :
 :
 :
 v. :
 :
 :
Bedminster Township Board of :
Supervisors and Bedminster Township :

No. 1823 C.D. 2009

ORDER

AND NOW, this 12th day of March, 2010, the order of the Court of Common Pleas of Bucks County, No. 07-02636-29-5, filed August 27, 2009, is hereby affirmed.

ROCHELLE S. FRIEDMAN, Senior Judge