

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Stone Hill Station Route 100, LP,	:	
As successor-in-interest to	:	
Ashley Development Corporation,	:	
Appellant	:	
	:	
v.	:	
	:	
Borough of Macungie and	:	No. 2130 C.D. 2009
The Macungie Borough Council	:	Argued: May 17, 2010

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
JUDGE BUTLER

FILED: June 24, 2010

Stone Hill Station Route 100, LP (Stone Hill) appeals from the October 1, 2009 order of the Court of Common Pleas of Lehigh County (trial court) denying Stone Hill’s appeal from the Macungie Borough Council’s (Borough) denial of its land development plan (the Plan). The issues raised are: 1) whether the Borough made a good faith effort to review and process the Plan; 2) whether the Borough should be estopped from changing its interpretation of the Ordinance because it misrepresented material facts related to the standards for public streets required by the Ordinance, knowing that Stone Hill would rely on the facts; and 3) whether the Borough erred in denying the Plan based on allegedly vague or general zoning standards. For the reasons that follow, we affirm the trial court’s order.

Stone Hill submitted the Plan to the Borough for a residential subdivision in October of 2006. The parties participated in a series of discussions concerning the Plan, and Stone Hill made changes suggested by the Borough engineer. At a meeting on May 8, 2007, the Borough Planning Commission discussed whether the internal roads of the subdivision would be required to conform to public street standards; ultimately concluding that they would not. On May 25, 2007, however, in a letter from the Borough Solicitor, the Borough reversed its position, stating that the subdivision roads must meet public road standards. On September 15, 2008, the Borough denied the Plan at a Borough meeting, and informed Stone Hill of its decision on September 26, 2008.

Stone Hill timely appealed the Borough's decision citing three errors of law: 1) the Borough should be estopped because it made a negligent or intentional misrepresentation, that Stone Hill relied on, concerning the required standards for constructing the subdivision roads; 2) the Borough acted illegally in denying a request for extension for the Borough to make a final decision, and in acting on the approval request of the Plan without notice to Stone Hill; and 3) two of the reasons provided by the Borough for its denial were vague. Argument was held before the trial court on May 1, 2009, and an order was issued on October 1, 2009 denying Stone Hill's appeal. Stone Hill appealed to this Court.¹

Stone Hill argues that the Borough led it to believe that the subdivision roads were not required to be designed to public road standards, and that only after the Plan was fully engineered did the Borough change its position. It further argued

¹ "Our scope of review in a land use appeal, where the trial court has not taken additional evidence, is limited to determining whether the local governing body committed an error of law or whether the necessary findings of fact were supported by substantial evidence." *Union Twp. v. Ethan Michael, Inc.*, 979 A.2d 431, 435 n.5 (Pa. Cmwlth. 2009).

that the timing of the Borough's actions, coming after the design of the Plan over a period of more than eight months, constitutes a breach of the duty of good faith. We disagree.

A municipality has a legal obligation to proceed in good faith when reviewing and processing land development plans; however, where a developer is afforded a reasonable period of time by the municipality to correct any defects with its plan, and does not correct the defects, the municipality cannot be found to have acted in bad faith if it denies the plan. *Kassouf v. Twp. of Scott*, 584 Pa. 219, 883 A.2d 463 (2005).

Stone Hill's argument centers around comments the Borough engineer, Thomas Deily, and Borough solicitor, Peter Lehr, made at a Planning Commission meeting² allegedly stating that the internal subdivision roads were not required to meet the public street standards, versus the May 25, 2007 letter from the Borough solicitor, Timothy Siegfried, providing a legal opinion to the zoning officer, Chris Boehm, that the internal subdivision roads were required to meet public street standards. Reproduced Record (R.R.) at 9a-11a, 35a, 37a-38a, 40a. There is nothing in the May 8, 2007 Planning Commission meeting minutes indicating that either Deily or Lehr specifically stated that the subdivision roads were not required to meet public road standards. R.R. at 35a. In fact, there is no documentation provided by Stone Hill, other than a sworn affidavit from Andrew Donchez, Stone Hill's Project Manager, which indicates that either Deily or Lehr made such comments. R.R. at 37a-38a. However, the Borough admitted in its brief in opposition to Stone Hill's appeal that there was confusion with respect to whether the subdivision roads had to

² Stone Hill does not specifically state the date of the Planning Commission meeting it is referring to, but it is assumed that it is referencing the May 8, 2007 meeting. Reproduced Record at 35a, 37a-38a, 40a.

meet public road standards, and that the Borough engineer and solicitor mistakenly commented that they did not need to meet standards. Appellees' Brief in Opposition to Appellants' Land Use Appeal at 3.

While the Borough admits its mistake, the amount of time that lapsed between the May 8, 2007 Planning Commission meeting and the May 25, 2007 letter requiring that the subdivision roads meet public road standards, was only 17 days. In addition, the correspondence provided in the record indicates that the width and accessibility of the subdivision roads had been an item of concern for the Borough. R.R. at 7a-8a, 12a, 13a-25a, 29a-36a. Finally, the Borough did not reject the Plan until September 15, 2008, more than a year after the May 25, 2007 letter. Clearly, Stone Hill had ample time to revise the Plan to meet the required standards or address the inconsistencies and allegedly detrimental impact of the Borough's interpretation before the Borough denied the Plan. Therefore, the Borough did not breach its duty of good faith in reviewing and/or subsequently denying the Plan.

Next, Stone Hill argues that the Borough made an intentional or negligent misrepresentation of material facts related to the standards required for the subdivision roads it should have known Stone Hill would rely on, that Stone Hill did in fact rely on the misrepresentation, and as a result, the Borough's change in interpretation of its Ordinance should be estopped. We disagree.

In order to apply equitable estoppel to a governmental agency, the party sought to be estopped (1) must have intentionally or negligently misrepresented some material fact, (2) knowing or having reason to know that the other party would justifiably rely on the misrepresentation and (3) inducing the other party to act to his detriment because of his justifiable reliance on the misrepresentation.

Cicchiello v. Bloomsburg Zoning Hearing Bd., 617 A.2d 835, 837 (Pa. Cmwlth. 1992). In addition, the party asserting estoppel must establish these three elements by clear, precise and unequivocal evidence. *Borkey v. Township of Centre*, 847 A.2d 807 (Pa. Cmwlth. 2004).

In this case, in order for the Borough's interpretation to be estopped, it must have intentionally or negligently misrepresented the applicable design standard for roads located in a subdivision. Even assuming that the Borough did state at the May 8, 2007 Planning Commission meeting that the subdivision roads did not have to meet public road standards, it thereafter sent out an official interpretation of the requirement on May 25, 2007, 17 days later. There is no evidence, let alone clear, precise and unequivocal evidence, that Stone Hill made any attempt to dispute this new interpretation prior to the Borough's denial of the Plan on September 15, 2008. The Borough's statements were not an intentional or negligent misinterpretation of a material fact.

Next, the Borough must know or have reason to know that Stone Hill would rely on the misinterpretation. While the Borough may have had reason to know that Stone Hill would rely on its interpretation of the Ordinance after the May 8, 2007 Planning Commission meeting, it was not reasonable for Stone Hill to continue to rely on the misinterpretation after the Borough issued the May 25, 2007 letter outlining its position on the standards required for the subdivision roads. Only 17 days passed between the time the Borough told Stone Hill it did not need to comply with the public road standards and when it corrected its interpretation. There is no evidence in the record that there was sufficient time in which Stone Hill would have detrimentally relied on the mistaken interpretation the Borough made at the Planning Commission meeting. Moreover, Stone Hill does not present clear, precise

and unequivocal evidence that the Borough knew that it would detrimentally rely on the May 8, 2007 interpretation of the standards, particularly after the May 25, 2007 correction.

As to the remaining factor, in order for estoppel to lie, the Borough had to induce or influence Stone Hill to act to its detriment because of its reliance on the misinterpretation of the standards. Again, it is reasonable to assume that the Borough influenced Stone Hill's decision after the May 8, 2007 Planning Commission meeting, but it is not reasonable to conclude that there was any influence on the part of the Borough after the May 25, 2007 letter was issued. And, once again, Stone Hill did not provide clear, precise and unequivocal evidence of detriment. Therefore, equitable estoppel is not appropriate in the present case.

Stone Hill finally argues on appeal that the Borough cannot deny a land development plan because it is allegedly not in "harmony" with adjacent developments, or because the Borough does not believe that the proposed development follows the "intent" of the residential district in which it is planned. Specifically, Stone Hill cites two grounds for denial that it believes are too vague or general:

4. Failure to comply with Section 424 of the SALDO, which requires the development of a proposed subdivision to be coordinated with adjacent existing development so that the area, as a whole, may develop harmoniously. The Plan is a coordinated development with land situated in Lower Macungie Township and the approval of Lower Macungie Township needs to be and has not yet been secured.

.....

10. Failure to comply with the stated intention of Section 16 of Chapter 345 of the Borough Code of the Borough of Macungie which provides that the R-7.8 District is

characterized in part by relative high densities of older sections of the Borough and to help create continuity between old areas and new areas of the Borough. The extremely high density of the Subdivision and its gated nature do not follow the defined intent of the R-7.8 District to create continuity between old and new areas of the Borough.

R.R. at 5a-6a. We disagree.

“[A] decision disapproving the application must include (1) a specification of any defect in the application; (2) a description of the requirements in the applicable statute or ordinance which have not been met; and (3) a citation to the statutes or ordinances relied upon.” *Kassouf*, 584 Pa. at 229, 883 A.2d at 469-70; Section 508(2) of the Pennsylvania Municipalities Planning Code (MPC).³ The purpose behind the requirements of Section 508 of the MPC is to allow a party to effectively appeal the denial to the trial court. *Advantage Dev., Inc. v. Bd. of Supervisors of Jackson Twp.*, 743 A.2d 1008 (Pa. Cmwlth. 2000).

Assuming that the two subject statements were too vague or general to allow Stone Hill to effectively appeal the denial, and these were the only reasons the Borough provided for its denial, Stone Hill may have prevailed on this issue. However, the Borough provided 12 reasons for its denial of the Plan in its September 26, 2008 letter. R.R. at 4a-6a. Each of the reasons, including the two allegedly vague and general statements, provided a citation to the section of the Ordinance relied upon, a description of the Ordinance requirement that was not met, and the specific reason why the Plan did not meet the Ordinance requirement. Even assuming that the fourth and tenth grounds for the Borough’s denial were too vague or general, Stone Hill still had ten other reasons for the Plan’s denial on which it could effectively

³ Act of July 31, 1968, P.L. 805, *as amended*, 53 P.S. § 10508(2).

appeal to the trial court. Therefore, the Borough did not err in denying the Plan based on allegedly vague or general zoning standards.

For the reasons stated above, we affirm the order of the trial court.

JOHNNY J. BUTLER, Judge

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v.	:	
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Borough of Macungie and	:	No. 2130 C.D. 2009
The Macungie Borough Council	:	

ORDER

AND NOW, this 24th day of June, 2010, the October 1, 2009 order of the Court of Common Pleas of Lehigh County is affirmed.

JOHNNY J. BUTLER, Judge