

11. TIME PERIOD FOR MEETING CONDITIONS. The Developer anticipates a prompt satisfaction of all of the conditions set forth herein. However, the Township acknowledges that some of the conditions set forth herein require coordination, approval, and/or permitting from other federal, state and local agencies. As such, the conditions set forth herein will be completed within one (1) year from the date of acceptance by Developer. **Time is of the essence regarding satisfaction of these conditions. Should the Developer need additional time to meet the conditions, an additional period of time, not to exceed one (1) year, may be requested by the Developer, subject to the approval of the Township, which said approval shall not unreasonably be withheld.** (Emphasis added).

Conditional Approval Letter, April 27, 2007, at 4-5; Reproduced Record (R.R.) at 14a-15a.

On May 22, 2007, Developer expressly agreed to and accepted the conditions.

On February 4, 2008, the Township granted Developer a one-year extension, until May 22, 2009.

On February 20, 2009, Developer requested a second extension. Developer claimed that it experienced complications beyond its control and that it was working diligently toward the satisfaction of all conditions.

In a Decision dated June 1, 2009, the Township denied the request and rescinded its prior approval of the land development plan. The Township based its decision, in part, on the thorough and well-reasoned comments and observations of

its engineer, who concluded that Developer's status report of the work that was completed was "not comprehensive" and that Developer's estimation of the work that was completed and the work that still needed to be completed was "unrealistic," "uncertain," and "overly optimistic." Letter from Pysher & Associates to Fairfield Township Supervisors, May 20, 2009, at 1-3; R.R. at 51a-53a.

The Township also based its decision on the fact that Developer "had failed to reimburse engineering review fees pertaining to the CLOMR [Conditional Letter of Map Revision] application" which was a condition of approval. Fairfield Township Board of Supervisors Decision, June 1, 2009, at 3; R.R. at 4a. Developer also failed to demonstrate to the Township's satisfaction that "it still had a valid agreement of sale and thus equitable title in the property." Id. The Township further noted that "of particular concern ... was the lack of any progress by RB Montoursville, LLC [Developer] on conditions that did not require any action by either Fairfield Township or any other permitting body." Fairfield Township Board of Supervisors Decision, June 1, 2009, at 4; R.R. at 5a.

Developer appealed the Township's denial to the common pleas court which affirmed. The common pleas court essentially rejected Developer's evidence and accepted the Township's evidence. It concluded that because the Township's decision was supported by substantial evidence there was no abuse of discretion.

On appeal¹, Developer argues that the Township had no legitimate reason to deny its request for a second extension. Developer claims that regardless of any other condition, its focus was on the issuance of a CLOMR by the Federal Emergency Management Agency (FEMA). Absent the issuance of a CLOMR, the project could not be built because a portion of it was located on a floodplain. In order for the application to FEMA to be complete, the Township was required to submit various documents to FEMA which it did not submit until April 30, 2009. Developer argues that it was not its fault that the application was not timely submitted.

Developer also argues that the common pleas court abused its discretion because it arbitrarily and capriciously disregarded the evidence. Developer contends that the Board of Supervisors' meeting minutes revealed that the Township knew the complexity of the project, the various governmental agencies involved and the amount of engineering required. The minutes also contain numerous references to the work by Developer which demonstrated that Developer spent over \$2 million on the project and was working diligently to meet the Township's conditions.

Last, Developer argues that it will suffer significant hardship if the common pleas court's decision is not reversed. Specifically, Developer complains that it will have to file a new application for land development which will demand significant time and expense. Developer argues that it did not cause its hardship.

¹ Where the common pleas court takes no additional evidence, this Court's scope of review in a land use and development appeal is limited to determining whether the local governing body committed an error of law or an abuse of discretion. Zajdel v. Board of Supervisors of Peters Township, 925 A.2d 215 (Pa. Cmwlth. 1997).

Developer contends that the Township hindered its ability to fulfill the conditions required by the Supervisors. It claims that the Township refused to issue a “letter of consistency” to inform FEMA that the Plan was consistent with the Township’s floodplain ordinance. Also, one of the delays resulted from a neighboring township’s objection to FEMA approval, something which was out of Developer’s control.

The Township responds to these issues collectively. The Township’s version of the facts, which the common pleas court found was supported by the record, varies significantly from Developer’s. The Township contends that to date, Developer satisfied only a single condition of approval on the original list which contained 14 paragraphs.

According to the Township, the reason it did not submit the FEMA application was because Developer failed to reimburse it for engineering review fees. Also, the Township asserts it was Developer’s responsibility to demonstrate that the project complied with the floodplain ordinance, which it did not do. Furthermore, an issue also arose as to Developer’s equitable title. The Township requested, and Developer refused to submit, evidence that it still had a valid agreement of sale. This omission also caused PennDOT to halt all further reviews of permits.

The Township also contends that Developer made absolutely no progress on conditions that did not require any action by the Township or PennDOT, or the Department of Environmental Protection. For example, Developer failed to obtain the necessary easements for storm water sewers and drainage. See Letter from Pysher & Associates to Fairfield Township Supervisors,

May 20, 2009, at 1; R.R. at 51a. Condition of Approval No. 5 required Developer to obtain water for the project from other public or private off-site sources. Developer provided no indication that any progress toward meeting that condition was made. According to the Township, most of the conditions of approval remained outstanding.

Having reviewed the record, this Court must agree that the common pleas court's decision was supported by the record and grounded in the complete lack of progress by Developer. The Township's decision to deny the second request for an extension was appropriate and within its discretion and based on its reasonable perception of Developer's lack of effort and ability to satisfy the conditions of approval. Developer specifically agreed that time was of the essence, yet after two years, only one condition was satisfied.

As the Township points out, it should not be required to continue to expend significant financial resources on engineering and legal fees at the expense of its taxpayers. Nor should its employees and Board members be required to expend more time and energy on a project which lacked any meaningful progress. Moreover, as pointed out by the Township and common pleas court, there is nothing that prevents Developer from resubmitting its subdivision and land development plan once it gets its "ducks in a row."

Further, to the extent that Developer believes that the conditions or timetable were unreasonable, the time to appeal from the imposition of such a condition was within 30 days; otherwise those challenges are waived. Bonner v. Upper Mansfield Township, 597 A.2d 196 (Pa. Cmwlth 1991).

The Order of the common pleas court is affirmed.

BERNARD L. McGINLEY, Judge

