

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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| Peter L. Mansmann and Sarah Mansmann, | : | |
| Appellants | : | |
| | : | |
| v. | : | No. 545 C.D. 2009 |
| | : | Argued: October 13, 2009 |
| Nottingham Township and Nottingham Township Board of Supervisors | : | |

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE KEITH B. QUIGLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE QUIGLEY

FILED: December 21, 2009

Peter L. Mansmann and Sarah Mansmann (Owners) appeal from the March 24, 2009 order of the Court of Common Pleas of Washington County (trial court) denying their complaint in mandamus to compel the Nottingham Township Board of Supervisors (Board) and Nottingham Township (jointly, the Township) to treat their subdivision application and plan (Application) as approved. The questions raised are whether Owners' Application must be deemed approved because: (1) the Board's written decision denying the Application did not specify the defects in the Application and did not cite authority supporting the denial; and (2) the Board failed to act on the Application within ninety days of Nottingham

Township's Planning Commission's first regular meeting after its filing.¹ We reverse.

On April 23, 2007, Owners filed the Application with the Planning Commission. At its first regular meeting after the Application was filed, May 8, 2007, and in a confirmatory letter of May 9, the Planning Commission advised that additional information was needed in order for the application to be accepted for review,² including a field survey in order to accurately determine the boundary lines of the subject property. On May 21, Owners submitted a revised Application correcting all of the listed deficiencies except for providing the field survey, which they contended was not required by the Township's subdivision and land development ordinance (SALDO).

By letter of June 5, the Planning Commission again refused to accept the application due to lack of the field survey. By letter of June 14, Owners again contended the survey was not required and requested guidance both as to the meaning of the SALDO section purportedly requiring the survey and what alternatives were available to Owners. By letter of June 19, the Township's Solicitor advised that Owners could request action on the Application as submitted, could provide the survey, or could request an interpretation of the field survey requirement by the Zoning Hearing Board (ZHB). On June 27, Owners filed a

¹ Section 508(3) of the Pennsylvania Municipalities Planning Code (MPC), Act of July 31, 1968, P.L. 805, *as amended*, 53 P.S. §10508(3), states that, unless an applicant agrees otherwise in writing, an application shall be deemed approved if the local agency fails to render a decision and communicate it to the applicant within the time and in the manner required.

² Under Sections 242.1 and 749 of the Township's subdivision and land development ordinance, the official date of the filing of an application is the date of the regular business meeting of the Planning Commission at which the application is accepted as complete in content and properly filed in accordance with the requirements of the ordinance.

request with the ZHB for an interpretation of the field survey requirement. At the conclusion of a hearing on August 7, the ZHB orally ruled in favor of Owners.³ On September 5, the Planning Commission requested a copy of the deed in lieu of the survey. Owners submitted the deed on September 7.

At its September 10 meeting, the Planning Commission requested information as to ambiguities and omissions in the deed's metes and bounds description of the property. The request also was set forth in a letter dated September 17, which indicated that the Application had been accepted as officially filed. By letter dated October 4, Owners requested that the Planning Commission approve or deny their Application, as they believed they were in compliance with all requirements and they would not submit any further information.

On October 8, the Planning Commission voted to recommend that the Board deny the Application as submitted. By letter dated October 11, it communicated its decision to Owners, specifying the deficiencies in the Application and the SALDO provisions it relied upon. On October 15, the Board denied the Application based on the Planning Commission's recommendation. The Board so advised Owners in a one-sentence letter dated October 16, explaining only that the denial was "based on tract boundary and tract area issues not properly resolved." The letter did not cite any authority supporting the decision.

Owners then filed a complaint in mandamus in the trial court to have the Application declared approved in accordance with Section 508(3) of the MPC because the Board failed to specify the defects in the Application, to describe the requirements which had not been met and to cite to the provisions of whatever statute or ordinance it relied upon and because the Board failed to render a decision

³ On September 11, the ZHB issued findings of fact and conclusions of law.

within ninety days of the Planning Commission's May 8 meeting.⁴ Owners followed with a motion for peremptory judgment.

The trial court denied the motion on the grounds that: (1) while the Board's October 16 decision letter did not contain the information required by Section 508(2), the Planning Commission's October 11 letter did; and (2) the Board's decision was issued within the ninety-day period specified in Section 508 either because the Application was not officially filed until September 7, when Owners completed the Application by submitting the deed, or because the ninety-day period was extended by virtue of the Planning Commission allowing Owners to file revisions to the Application and by Owners' commencement of the ZHB proceeding.

Owners now appeal to this Court.⁵ They contend the Application must be deemed approved because the Board's written decision did not comply with the requirements of the MPC. We agree.

Section 508(2) of the MPC provides: "When the application is not approved in terms as filed the decision shall specify the defects found in the application and describe the requirements which have not been met and shall, in

⁴ Owners also filed a separate land use appeal in the same court. It has not been acted upon and remains pending.

⁵ Owners' initial appeal from denial of their motion for peremptory judgment was quashed because the denial was a non-appealable order. Owners then moved for entry of a final order on the ground that the denial of the motion for peremptory judgment disposed of all claims. The trial court granted the motion and dismissed the mandamus action, resulting in this appeal. We review a mandamus action to compel a governing body to approve a subdivision application for failure to comply with Section 508 to determine whether the trial court abused its discretion or committed an error of law and whether sufficient evidence exists to support its findings. *Philomeno & Salamone v. Board of Supervisors of Upper Merion Township*, 882 A.2d 1044 (Pa. Cmwlth. 2005), *rev'd on other grounds*, 600 Pa. 407, 966 A.2d 1109 (2009).

each case, cite to the provisions of the statute or ordinance relied upon." These requirements are mandatory. *Coretsky v. Board of Commissioners of Butler Township*, 520 Pa. 513, 555 A.2d 72 (1989). Section 508(3) of the MPC provides: "Failure of the governing body or agency to render a decision and communicate it to the applicant . . . in the manner required herein shall be deemed an approval of the application in terms as presented"

The Board's October 16 letter communicating its written decision does not set forth any of the information required by Section 508(2) of the MPC. Thus, the Township clearly failed to render a decision in the manner specified in the MPC.⁶ Section 508(3) of the MPC mandates that an application be deemed approved in the event of such a failure. *Timothy F. Pasch, Inc. v. Springettsbury Township Board of Supervisors*, 825 A.2d 719 (Pa. Cmwlth. 2003), *appeal denied*, 577 Pa. 730, 847 A.2d 1291 (2004).

⁶ The Township's arguments to the contrary, echoing the trial court's reasoning, are without merit. The Township contends that: (1) Owners knew of the reasons for the denial from their communications with the Planning Commission; and (2) the Planning Commission's October 11 letter is sufficient on its own because Section 209.1(b)(5) of the MPC, added by the Act of June 1, 1972, P.L. 333, *as amended*, 53 P.S. §10209.1(b)(5), authorizes a planning agency to do such acts as may be imposed by the MPC and Section 508(2) allows either a governing body or a planning agency to issue a written decision.

However, it is irrelevant whether Owners knew of the reasons for the denial because the reasons must be specified within the four corners of the governing body's written denial. *Bensalem Township v. Blank*, 539 A.2d 948 (Pa. Cmwlth. 1988). Moreover, Section 209.1(b)(5) only authorizes a planning commission to do such acts as may be authorized by the governing body. *See also* Section 501 of the MPC, 53 P.S. §10501 (stating that planning agencies are authorized to make the written decision of the municipality on a subdivision application only where the governing body has, by ordinance, delegated that authority to the planning agency). Here, the Board only authorized the Planning Commission to make recommendations, not to make decisions. Sections 261.4 and 262.1 of the SALDO.

Accordingly, the order of the trial court is reversed.⁷

KEITH B. QUIGLEY, Senior Judge

⁷ Because our ruling is dispositive of this appeal, we need not address Owner's question as to the timing of the Board's decision.

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O R D E R

AND NOW, this 21st day of December, 2009, the order of the Court of Common Pleas of Washington County, dated March 24, 2009, hereby is reversed.

KEITH B. QUIGLEY, Senior Judge