[J-47-2006]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

NARBERTH BOROUGH,	:	No. 123 MAP 2005
	:	
Appellant	:	Appeal from the Order of Commonwealth Court entered April 16, 2004, reargument denied June 11, 2004, at No. 1867 CD
v.	:	2003, reversing the Order of the Court of Common Pleas of Montgomery County, Civil Division, entered August 8, 2003 at
LOWER MERION TOWNSHIP, MERLOC PARTNERS, INC., WYNNEWOOD CIVIC ASSOCIATION, ROSALIND NATHANSON AND MAUREEN D. WITTE,	:	No. 02-07918.
	:	
Appellees	:	ARGUED: April 5, 2006
	:	
NARBERTH BOROUGH,	:	No. 124 MAP 2005
	:	
Appellant	:	Appeal from the Order of Commonwealth Court entered April 16, 2004, reargument denied June 11, 2004, at No. 1938 CD
v.	:	2003, affirming the Order of the Court of Common Pleas of Montgomery County, Civil Division, entered August 8, 2003 at
LOWER MERION TOWNSHIP, MERLOC PARTNERS, L.P., WYNNEWOOD CIVIC ASSOCIATION, ROSALIND NATHANSON AND MAUREEN D. WITTE,	:	No. 02-09356.
	:	
Appellees	:	ARGUED: April 5, 2006

CONCURRING OPINION

MR. CHIEF JUSTICE CAPPY **DECIDED: February 20, 2007**

I am obliged to join the majority opinion. Although I am so constrained, I am also compelled to write separately and point out the pitfalls of this decision.

At issue in this case is the identity of the triggering mechanism that starts the time period for filing an appeal in a land-use case under the Pennsylvania Municipalities Planning Code (hereinafter "MPC"). The majority quite correctly reads the MPC as identifying that trigger as the mailing of a written decision, which starts the 30-day appellate clock for all appeals under the MPC. 53 P.S. § 1102-A. With that conclusion, I cannot quibble. What is not revealed in that straightforward legal conclusion is its practical impact.

In this case, as in many land use cases, the interested parties often extend beyond the landowner and the political subdivision. The MPC does not require the delivery of written notice of its decisions to anyone other than the applicant in a land use case. 53 P.S. § 10908. An objector, like the appellant herein, would not have a reliable means to ascertain the triggering date for bringing an appeal.[1] Normally, the objectors receive notice of the Board's decision orally at the public meeting. Recognizing this differing treatment of applicants and objectors, and how this distinction would affect appellate time limitations, the Commonwealth Court attempted to create a two-tiered time system for bringing an appeal. See Peterson v. Amity Twp. Bd. of Supervisors, 804 A.2d 723 (Pa. Cmwlth. 2002). This attempt by the Commonwealth Court was laudatory; it acknowledged the reality of the land use process and attempted to preserve the due process rights of all interested parties to bring a timely appeal. Although well intended, this two-tiered system does not reflect the clear language of the MPC.

[1] I recognize that in this case the objector was given written notice of the decision at the same time as the applicant, this fact is peculiar to this case and is not reflective of the statutory obligations of a zoning hearing board under the MPC. 53 P.S. § 10908.

While I acknowledge the common sense efforts of the Commonwealth Court in attempting to engraft a practical solution in the face of a legislative scheme that is not sensitive to the realities of citizen involvement in the land-use process, in the end I cannot endorse that effort. Ultimately, I must agree with the majority, it is not the function of the judiciary to correct the foibles of inartful legislation or to legislate from the bench.

Accordingly, I join the opinion of the majority.

Messrs. Justice Castille and Eakin join this concurring opinion.