



## Pennsylvania Supreme Court Rules that Municipalities Must Act on Inconsistent Land Use Applications or Risk Deemed Approval

By Andrew W. Bonekemper

The Pennsylvania Supreme Court recently ruled that a municipality must act on all land use applications – even those superseded by a new, inconsistent application – or risk a deemed approval in favor of the developer.

In *Philomeno & Salamone v. Bd. of Supervisors of Upper Merion Twp.*, the developer had submitted a subdivision plan seeking to subdivide an 18-acre parcel for the construction of 17 single-family detached residential units. At the suggestion of the Township's planning commission, the developer then submitted a conditional use application for 28 townhouses, open space and an a recreational area. The developer did not withdraw the prior subdivision application, but granted an extension of the 90-day review period under Section 508 of the Municipalities Planning Code. The conditional use for the cluster development was denied, and the Township never ruled on the original subdivision application.

The developer sought and received a deemed approval for the original plan based on the Township's failure to act on the application before the expiration of the voluntary extension. On appeal, the Commonwealth Court reversed, finding that the conditional use application for the cluster development effectively abandoned the application for the single family detached development.

On appeal, the Supreme Court reversed the Commonwealth Court and ruled that a municipality has an obligation to rule on all applications within 90 days per Section 508, even if there are inconsistent or contradictory applications pending. The Court noted that Pennsylvania law has long permitted the submission of inconsistent and/or alternate applications. The Court noted that revisions to existing applications re-start the 90-day clock, but alternative or inconsistent applications do not suffer the same fate. The Court concluded that because the Township failed to act on the original application for the 17 single-family detached units, it was deemed approved.

Significantly, Justice Saylor filed a concurring opinion pointing out the potential pitfalls of the Court's decision. Without definitions of "inconsistent," "alternative" and "revised," Saylor wrote, there is bound to be confusion because the terms are not mutually exclusive. Indeed, the principle adopted by the Court could be manipulated to reach either conclusion depending on one's view of the facts. However, it appears, at least for now, that a developer will be entitled to a timely ruling on *all* applications submitted to a municipality, regardless of whether it later submits an inconsistent application that might otherwise render the original a nullity.

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