



A Financial Interest in a Development Does Not Necessarily Give Standing in a Land Use Appeal

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Having a financial stake in the outcome of a development does not necessarily grant a party standing to intervene in a land use appeal according to a recent Commonwealth Court Opinion. The court ruled that where a party no longer maintains a legal or equitable interest in the property to be developed, its standing to intervene in a land use appeal is lost.

The January 8, 2008, decision in *Realen Valley Forge Greenes Associates v. Upper Merion Twp. Zoning Hearing Bd.*, is the latest in the ongoing saga of the former Valley Forge Golf Course property, located off North Gulph Road in King of Prussia, which began in 1996. In 2003, the Pennsylvania Supreme Court ruled that the property had been illegally spot-zoned, and remanded the matter to the trial court for “definitive relief.” The intervenor, the Hankin Family Partnership, had transferred its interest in the property to Realen in 2004. Pursuant to the agreement of sale, Hankin was entitled to additional compensation depending on the density of the ultimate development of the property. In 2005, the Township and Realen reached an agreement as to the permissible development and sought trial court approval of the settlement. Hankin sought to intervene on the basis that it had a legally protectable interest in the additional compensation dependent on the density of development permitted. The trial court denied the petition to intervene because Hankin no longer maintained a legal or equitable interest in the property or the development thereof, and because the delay in seeking intervention caused unnecessary prejudice on the parties to the proposed settlement.

The Commonwealth Court affirmed the trial court’s decision. The court ruled that, although Hankin would have had standing to intervene at the outset of the case, it lost that right when it transferred title to the property. The court based its finding on the principle that standing must exist throughout the case, not just at the beginning of the case. The court further found that Hankin had no legally protectable interest because, although it could receive more money depending on the development, the agreement gave Hankin no say in the development whatsoever. Regardless of the additional compensation, Hankin had no right or ability to influence the ultimate development. Finally, the court found that Hankin had sat on its rights, finding, “Hankin did ‘idly wait’ not seeking to intervene until 2006, nine years after the appeal was filed in 1997 and five years after it sought to ‘encourage’ the Township to settle by filing the Additional Actions in 2001.”

The lesson to be learned from Realen is that, if the amount of compensation for a parcel of property is contingent upon the ultimate development of that property, a seller must maintain some right either in the property itself or in the development process. Otherwise, the developer/purchaser may be able to foreclose the seller from using the legal process to maximize the value of the sale.

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