In the Zone

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New Case Law from the Pennsylvania Commonwealth Court

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***Hellam Twp. v. Hellam Twp. Zoning Hrg. Bd.*, --- A.2d ---, 2007 WL 4707547 (Pa. Commw. 2008).**

In *Hellam Twp. v. Hellam Twp. Zoning Hrg. Bd.*, the Pennsylvania Commonwealth Court determined whether a development plan was substantially similar to a previously submitted development plan such that ordinances that were in effect under the original submission governed the review of the new submission. In this case, Valley Acres Inc. (Valley Acres) submitted a development plan in 1996. The township rejected the plan because it had imposed a moratorium on new zoning residential subdivision and land development for a period of one year. Valley Acres challenged the moratorium and after subsequent appeals, the Pennsylvania Supreme Court invalidated the moratorium and issued an order for the township to review the development plan according to the ordinances in effect at the time the plan was filed in 1996.

In 2001 Valley Acres submitted a plan to the township that was accompanied by a letter stating it was identical to the original plan submitted in 1996. Two revisions were thereafter made to the 2001 plan. Prior to the last revision in 2003, Valley Acres sold the property to Patton Homes, Inc. (Patton). In response to an inquiry from Patton's counsel, the Township zoning officer issued a letter stating that the 1996 ordinances were not applicable and that the plan would be reviewed pursuant to the 2001 ordinances. Patton appealed to the Zoning Hearing Board (the Board) challenging the zoning officer's determination.

The Board conducted a hearing in which both sides presented evidence but neither produced the original 1996 plan. The township submitted evidence of a 1995 plan that depicted a smaller subdivision than the 2001 plan. Patton produced evidence that since submission of the plan in 2001, it was reviewed by the township in accordance with ordinances in effect in 1996. The Board found Patton's evidence credible that all officials involved, including the zoning officer and the Board of Supervisors, authorized Patton and its predecessor in title to proceed with the 2001 plan in accordance with the 1996 ordinances and that the plan was allowed to proceed under the dictates of the 1996 ordinances for four years. The township appealed, contending that the Board capriciously disregarded evidence that the 2001 plan was not the same as the 1996 plan. The Court affirmed the decision of the zoning hearing board finding that the Board had not dismissed the township's evidence capriciously because capricious disregard is deliberate and baseless disregard whereas in this instance, the Board had identified, summarized, and considered the testimony.

***Walck v. Lower Towamensing Twp. Zoning Hrg. Bd.*, --- A.2d ---, 2008 WL 161011 (Pa. Commw. 2008).**

In *Walck v. Lower Towamensing Twp. Zoning Hrg. Bd.*, the Pennsylvania Commonwealth Court determined whether the Nutrient Management Act (NMA) and its attendant regulations preempt

enforcement of a local zoning ordinance regarding the long-term stockpiling of a large quantity of sewage sludge on a farming operation. Under the township's ordinance, agriculture was a permitted use in the R-1 district but intensive agricultural activities, including the storage and processing of liquid and solid waste, was prohibited.

In response to complaints about a landowner (the Landowner) who had stockpiled more than 100 tons of sewage sludge on its property, the township zoning officer issued an enforcement notice. The Landowner appealed the enforcement notice to the zoning hearing board (the Board) contending that the local zoning ordinance was preempted because the application of nutrients to soil is regulated by the NMA. The Board and the trial court rejected the challenge and the Landowner appealed to the Commonwealth Court. The court specifically rejected that the NMA exempts large quantities of sludge and waste from all other regulation. The court found that under the NMA, the State Conservation Commission (the SCC) is vested with the authority to review and approve nutrient management plans and that any local regulation must be consistent with the NMA. However, the court found that there was no evidence that the Landowner had an approved nutrient management plan. The court recommended that the Landowner either get an SCC approved nutrient management plan or, preferably, only receive shipments of sludge in amounts that can be readily applied.

For more information about these cases, contact Robert Gundlach at rgundlach@foxrothschild.com or 215.918.3636.

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