



## Pennsylvania Case of the Month: *Luke v. Cataldi*

By Michael Kornacki

In *Luke v. Cataldi* ( --- A.2d ---) (2007 WL 2790385 (Pa.) (decided September 26, 2007), the Supreme Court held that where there were procedural defects in the approval of a conditional use permit, such defects would be sufficient to render the approval void *ab initio* and, accordingly, the dismissal of neighboring landowners' appeal of that approval as untimely was improper.

In 2000, the Buffalo Valley, Ltd. and McVille Mining Company filed applications for conditional use permits to conduct mining operations on certain property in South Buffalo Township. At a regularly scheduled meeting, the Board of Supervisors of South Buffalo Township granted the conditional use permits. Mining operations commenced in December 2000.

In June 2001, neighboring landowners filed a petition for review with the Commonwealth Court, which was dismissed for lack of jurisdiction, and then filed a complaint in mandamus with the Court of Common Pleas. The neighbors complained that the approval process for the conditional use permit violated the Municipalities Planning Code, because the Supervisors did not give public notice of the intent to act on the application and did not hold a public hearing in connection with the approval. The Supervisors filed preliminary objections on the basis that the neighbors' action was essentially a land use appeal that, under the MPC, had to be filed within 30 days of the issuance of the approval. The court agreed that the neighbors' proper remedy was to appeal the decision to issue the permit within 30 days after issuance, and that the appeal was not timely.

The Commonwealth Court affirmed the decision of the Court of Common Pleas, relying on its decision in *Schadler v. Zoning Hearing Board of Weisenberg Township*, 814 A.2d 1265 (Pa. Cmwlth. 2003) (*Schadler I*). In *Schadler I*, the Commonwealth Court held that a procedural challenge to a zoning ordinance must be brought within the time period specified in the MPC or be dismissed. Because the interests of the neighbors were protected by the proscribed land use appeal process, the mandamus complaint was properly dismissed as untimely. The neighbors then appealed to the Supreme Court. In the interim, the *Supreme Court* decided *Schadler v. Zoning Hearing Board of Weisenberg Township*, 578 Pa. 177, 850 A.2d 619 (2004) (*Schadler II*), holding that a procedural challenge to a zoning ordinance filed after the 30-day appeal period is not barred because the zoning ordinance was void *ab initio*. The Supreme Court remanded *Luke* to the Commonwealth Court to reconsider it in light of the *Schadler II* ruling.

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The Commonwealth Court then reaffirmed its earlier decision, distinguishing the case from *Schadler II*. Assuming (as it was required to do) that the neighbors' allegations were true and the Supervisors failed to provide public notice of its intention to consider the conditional use application and then failed to conduct public hearings, the Commonwealth Court still held that the neighbors were required to appeal within 30 days after the approval was granted. The Commonwealth Court said *Schadler II* was inapplicable because *Schadler II* involved a zoning ordinance, a legislative act, as opposed to the granting of a conditional use permit, which was an administrative act. In the view of the Commonwealth Court, legislative acts and administrative acts were fundamentally different, and the MPC dictated that the sole method for reviewing a land use decision was to file an appeal within 30 days of entry of the decision. The Court also determined that the procedurally defective grant of a permit did not render the permit void *ab initio* under the MPC, since the conditional use would have been deemed approved had the Supervisors failed to take any action on the application. The case was then appealed to the Supreme Court.

The Supreme Court overruled the Commonwealth Court on the basis of its holding in *Schadler II*. The Supreme Court acknowledged that there are fundamental differences between the legislative act of adopting a zoning ordinance and the quasi-judicial act of issuing a conditional use permit. The Court also agreed with the Commonwealth Court that the MPC expressly provides that the sole method for challenging a land use decision is to appeal within thirty days of entry of the decision. However, the Court found that the notice and hearing process mandated for the adoption of ordinances is very similar to the notice and hearing process for the issuance of conditional use permits, and the purposes served by those processes are the same. The Court found that the public and neighboring landowners have interests that are protected by the procedural safeguards; giving the public and neighbors notice of the proposed zoning ordinance or conditional use permit provide them the opportunity to "participate in the consideration of such changes," which is important since the property rights of the public or neighboring landowners may be affected by the proposed action. The alleged circumvention of the procedural safeguards in the present case "may have left Appellants without any practical opportunity to contest the effects of the Supervisors' action on their property rights, thereby implicating the harm from which the void *ab initio* doctrine was intended to protect citizens." Accordingly, the Supreme Court found that the decision to grant the conditional use permit was void *ab initio* and, since no valid decision was made, "there is not date of entry from which the appeal period can commence." Therefore, the dismissal of the neighboring landowners' complaint as untimely was overruled.

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