



Pennsylvania Sprinkler Ordinance Case

Schuylkill Twp. v. Pa. Builders Assoc., --- A.2d ---, 2007 WL 2492356

by Robert W. Gundlach, Jr.

In *Schuylkill Twp. v. Pa. Builders Assoc.*, Schuylkill Township (the Township) appealed a trial court order affirming an adjudication of the Secretary of Labor and Industry (the Secretary) that invalidated a Township Ordinance because it conflicted with the Uniform Construction Code. In this case of first impression, the court considered what constitutes “local” circumstances or conditions that permit municipalities to enact construction ordinances that exceed the minimum requirements of the Uniform Construction Code.

The Pennsylvania Construction Code Act (the Act), 35 P.S. 7210-101-7210.1103 was enacted in 1999 to insure uniform and modern construction regulations throughout the Commonwealth. The Act directed the Secretary of the Department of Labor and Industry (the Department) to adopt the 1999 BOCA National Building Code, as a Uniform Construction Code that preempts construction standards established by any other Pennsylvania statute, local ordinance or regulation. Municipalities are permitted to enact ordinances that equal or exceed the requirements of the Uniform Construction Code but the ordinances are subject to review by the Department. Upon review of such an ordinance, the Department must determine whether “certain clear and convincing local climatic, geologic, topographic or public health and safety circumstances or conditions justify the exception.” 35 P.S. § 7210.503(j)(2).¹

In the case, the Township passed an ordinance (the Ordinance) that required the installation of automatic sprinkler systems in a variety of new construction projects. The state builders association and others (the “Objectors”) filed a challenge with the Department that the Ordinance did not satisfy the legal standard required under the Act for exceeding the minimum requirements of the Uniform Construction Code.

The Township defended the Ordinance as a response to certain local circumstances and conditions that it believed hampered fire-fighting in the Township. The Township cited census statistics regarding the high Township growth rate and offered evidence that: 1) very few of the volunteer fire-fighters actually live and work within the Township; 2) the traffic congestion and steep topography of the Township inhibit rapid response time to fires scenes; and 3) most new homes are built using lightweight wood trusses, which have a higher surface to mass ratio allowing them to burn more rapidly than traditional sawn wood joists and beams. The Township also provided extensive evidence regarding the efficacy of sprinkler systems on fire suppression.

¹ Section 503(j)(2) states in full:

The Department shall review any ordinance which would equal or exceed the minimum requirements of the Uniform Construction Code based on the following standards:

(i) that certain clear and convincing local climatic, geologic, topographic or public health and safety circumstances or conditions justify the exception;

-
- (ii) the exception shall be adequate for the purpose intended and shall meet a standard of performance equal to or greater than the prescribed by the Uniform Construction Code;
 - (iii) the exception would not diminish or threaten the health, safety and welfare of the public; and
 - (iv) the exception would not be inconsistent with the legislative findings and purpose described in section 102.

The Secretary considered the evidence regarding the circumstances and conditions within the Township but determined that “these conditions are not atypical.” The Secretary concluded that the Township had “failed to establish clear and convincing local climatic, geologic, topographic or public health and safety circumstances and conditions in the Township to justify the enactment of the Ordinance.”

The Township appealed the invalidation of its Ordinance to the trial court, and the trial court affirmed. In the appeal to the Commonwealth Court, the Township argued that the Secretary erred by considering whether the Township’s proffered local circumstances and conditions were “atypical.” The Township contended the Secretary erred by engrafting an additional requirement onto Section 503(j)(2) of the Act. The Township also argued that the Secretary’s decision was not supported by substantial evidence because it failed to consider the cumulative effect of the conditions cited by the Township.

The Court found the Secretary’s observation that conditions within the Township were not atypical was merely a reason to explain his conclusion that the exception to the Uniform Construction Code was not justified. The Court also found that even if the Secretary did equate “local” with “atypical,” this was not error but instead consistent with the basic tenet of statutory construction that “[w]ords and phrases shall be construed according to rules of grammar and according to their common and approved usage.” Pa.C.S. § 1903(a). The Court found that the dictionary defined “local” to include the definition “not general or widespread,” and that therefore the Secretary’s reasoning was valid.

The Commonwealth Court went on to provide examples of municipalities that had successfully enacted sprinkler ordinances. The Court provided that in both of those municipalities, Marcus Hook and Carroll Valley Borough, the “local” circumstances and conditions justified an exception to the standard in the Uniform Construction Code. The Court explained that Marcus Hook warranted the exception because the municipality is situated in between two major oil refineries and the world’s largest propane storage tank lies underneath the municipal town hall. The Court explained that Carroll Valley Borough also has local circumstances and condition that justify the exception because the municipality is basically carved into the side of a mountain with over half of the topography on a 12 percent slope as well as having no public water supply, fire hydrants, or fire company. The Court explained that it found the examples of these municipalities instructive because they exemplified the types of clear and convincing local circumstances that will justify a sprinkler ordinance, and they also illustrate how “local” can also mean “atypical.”

The Commonwealth Court held that the Secretary did not misinterpret the Act by requiring the Township to show conditions that were so different from the statewide norm as to justify a deviation from the Uniform Construction Code. The Court found this to be a proper inquiry in determining whether local circumstances and conditions justify an exception. The Court also rejected the Township’s contention that the Secretary’s decision was not supported by substantial evidence finding that the Objectors had effectively exposed weaknesses in the Township’s case. Thus, the Court affirmed the trial court decision upholding the Secretary’s invalidation of the Ordinance because the Township failed to provide clear and convincing local circumstances or conditions that justify a departure from the Uniform Construction Code.

For more information about this case, please contact Robert W. Gundlach at 215.918.3636 or rgundlach@foxrothschild.com.