

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

DANIEL J. WINNER and BARBARA D. SCHRAMM,	: NO. 17 - 0788
Plaintiffs	:
	: CIVIL ACTION - LAW
vs.	:
	:
ARMSTRONG TOWNSHIP,	:
Defendant	: Preliminary Objections

OPINION AND ORDER

Before the court are Defendant’s preliminary objections, filed August 21, 2017. Argument thereon was heard November 17, 2017.

In 1997, Plaintiffs subdivided their property into three tracts, one of which is at issue here. The subdivision approval imposed a condition which allowed no use on that tract “other than agricultural or forestry uses”. Plaintiffs now wish to build a house on the property but, according to their Amended Complaint, were told by the Board of Supervisors that the subdivision approval condition prohibits them from doing so.

In their Amended Complaint, Plaintiffs seek a declaratory judgment that their plan to construct a residence on their property “does not contradict any binding directive of the 1997 subdivision approval process”, or in the alternative, an injunction prohibiting the Township “from directing its zoning officer to refuse to allow a single family home on the tract”, based on a declaration that even if construction would contradict the condition of subdivision approval, that condition is unenforceable. In their preliminary objections, the Township asserts that the Declaratory Judgments Act does not afford relief in this instance, Plaintiffs have failed to exhaust their statutory remedies, and Plaintiffs have failed to join an indispensable party, namely, the Lycoming County Planning

Commission. The court finds the first two objections to be related, and to require dismissal, and therefore will not address the third.

Although the Declaratory Judgments Act was enacted to “settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations, and is to be liberally construed and administered”, 42 Pa. C.S. § 7541(a), relief is not available under the Act for any "proceeding within the exclusive jurisdiction of a tribunal other than a court" or any "proceeding involving an appeal from an order of a tribunal." 42 Pa. C.S. § 7541(c). Further, there must be a real and present controversy; advisory opinions are not permitted. Board of Supervisors v. Diehl, 694 A.2d 11 (Pa. Commw. Ct. 1997).

The court finds the instant situation quite similar to that presented in Board of Supervisors v. Diehl, *supra*. There, a subdivision approval granted in 1988 was rendered non-conforming by 1989 and 1990 amendments to the township’s zoning and subdivision regulations. In 1995, the property owner made an informal request for sewage permits but the township informed the property owner that the Board considered the subdivision plan void by operation of law, because the five-year protection period afforded by Section 508(4)(ii) of the MPC had expired,¹ and that no permits would be issued unless new plans were submitted to ensure compliance with existing ordinances. Thereafter, the property owner transferred legal title to the property to Raymond and Donald Diehl, who,

¹ The Pennsylvania Municipalities Planning Code provides for a five-year protection period for subdivision approvals, as follows:

When an application for approval of a plat, whether preliminary or final, has been approved without conditions or approved by the applicant's acceptance of conditions, no subsequent change or amendment in the zoning, subdivision or other governing ordinance or plan shall be applied to affect adversely the right of the applicant to commence and to complete any aspect of the approved development in accordance with the terms of such approval within five years from such approval.

53 P.S. § 10508(4)(ii).

in turn, conveyed the lots to their respective wives, Genevieve and Suzanne Diehl. The Board filed a complaint for declaratory judgment seeking to void the conveyances, enjoin further conveyance until a conforming plan was submitted, and to declare that the property was subject to existing township zoning, subdivision and other ordinances. After noting the requirement that there be “antagonistic claims indicating imminent and inevitable litigation coupled with a clear manifestation that the declaration will be of practical help in ending the controversy”, and that “relief cannot be used in anticipation of events that may never occur or for rendering an advisory opinion that may prove to be purely academic”, Id. at 13, the Commonwealth Court stated:

As [the common pleas] court noted, all that occurred was a transfer of lots among Appellees; no attempt has been made to develop the lots. Therefore, no actual controversy is identified. When and if Appellees choose to develop the lots, Appellees must, of course, approach the Board or the local zoning hearing board for the necessary approvals. Therefore, any issue regarding the future status of the lots must necessarily be determined at the local administrative level. Further, although the Board argues that declaratory judgment is proper because it contends that the transfer of the lots violates the Township's subdivision and zoning ordinances as well as the MPC, the Board fails to state any particular provision that renders the transfers violative of local law and, more significantly, *fails to state why any violation cannot be addressed first by local administrative action*. Accordingly, declaratory judgment relief is unavailable to the Board where the Board fails to identify an imminent controversy, where any issue regarding the matters complained of would undoubtedly be addressed first at the local administrative level, and where declaratory judgment relief would merely serve as an advisory opinion for the local administrative bodies.

Id. (Emphasis added.)

In the instant case, Plaintiffs have not applied for any permits but have merely made an oral inquiry to the Board of Supervisors. By filing a complaint for declaratory judgment, Plaintiffs by their own admission seek to “remove the ‘condition’ ... without the necessity of applying for a single family home and zoning permit and having it denied by the zoning officer subject to appeal to the zoning hearing board.” Amended Complaint, Paragraph 15. To provide such relief would, in the words of the Commonwealth Court, “merely serve as an advisory opinion for the local administrative bodies.” This the court will not do.

ORDER

AND NOW, this day of November 2017, for the foregoing reasons, Defendant’s preliminary objections are SUSTAINED and Plaintiffs’ Amended Complaint is hereby DISMISSED.

BY THE COURT,

Dudley N. Anderson, Judge

cc: Marc S. Drier, Esq.
N. Randall Sees, Esq.
Gary Weber, Esq. (Lycoming Reporter)
Hon. Dudley Anderson