

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

WEIS MARKETS, INC.,	:	
Appellant	:	
	:	
v.	:	No. 06-00,195
	:	CIVIL ACTION
MONTOURSVILLE BOROUGH and	:	
MONTOURSVILLE BOROUGH	:	
COUNCIL,	:	
Appellees	:	
	:	
and	:	
	:	
WAL-MART STORES, INC.,	:	
Intervenor	:	
	:	LAND USE APPEAL

OPINION AND ORDER

Before this Honorable Court, is Appellant Weis Markets Inc.’s January 30, 2006 Land Use Appeal filed to the December 29, 2005 decision of the Borough Council of the Borough of Montoursville, Lycoming County, Pennsylvania. After consideration of oral arguments, briefs, and the certified record, the Court hereby DENIES the Appeal of Weis Market, Inc.

Background

In January 2005, the Intervenor, Wal-Stores, Inc., applied with the Montoursville Borough Planning Commission (hereinafter “Commission”) to expand the existing Wal-Mart into a Wal-Mart Supercenter (hereinafter “Proposal”). In May 2005, the Commission offered a favorable review of the Intervener’s Proposal, and in response, the Intervenor submitted its Preliminary Land Development Plans for Proposed Expansion (hereinafter “Preliminary Plans”) to the Commission, the Lycoming County Planning Commission (hereinafter “LCPC”), and the Borough Council (hereinafter “Council”). Pursuant to comments from the Commission, the

LCPC, and the Council, the Intervenor, on July 20, 2005, submitted its Final Land Development Plans for Proposed Expansion (hereinafter “Final Plans”). On September 9, 2005, the Council approved the Intervener’s Final Plans subject to several conditions. Sometime after this, the Appellant objected to the adequacy of parking for Intervener’s proposed expansion and questioned the affect the expansion may have on the parties’ 2001 Easement with Covenants and Restrictions Affecting Land (“hereinafter ECR”). In response to the Appellant’s objections, the Intervener submitted its Revised Final Development Plans for Proposed Expansion (hereinafter “Revised Final Proposal”) which, on December 19, 2005, the Council orally approved subject to the same conditions placed on the Council’s September 9, 2005 approval with the additional condition that the LCPC issue favorable comments on the Revised Final Proposal. On December 29, 2005, the Council, pursuant to section 10508(1) of the Pennsylvania Municipalities Planning Code (hereinafter “MPC”), notified the Intervenor, in writing, of its December 19, 2005 approval of their Revised Final Plans (hereinafter “Decision”).

The Appellant now appeals the Council’s December 29, 2006 Decision on four grounds: first, the Appellant contends that the Council’s Decision was premature in that it conditioned its approval on comments from the LCPC that had not yet been submitted at the time of the December 29, 2005 approval, and that the Decision contemplated future revisions to the expansion plan; second, the Appellant contends that the Council’s Decision failed to consider the affect their Decision would have on its own parking lot in light of past problems with the Intervener’s customers utilizing the Appellant’s parking lot; third, the Appellant contends that the Council’s Decision failed to adequately address its rights under the parties’ ECR regarding the parties’ shared and interconnected sewer system facilities; and lastly, the Appellant contends

that the Council's Decision failed to adequately address the implications of the Appellant's expansion on its own stormwater management system.

Discussion

"This Court's scope of review in a land use appeal, where, as here, the trial court did not take additional evidence, is limited to determining whether the governing body committed an error of law or abused its discretion." *Ruf v. Buckingham Twp.*, 765 A.2d 1166, 1168 (Pa. Commw. Ct. 2001) citing *Herr v. Lancaster County Planning Commission*, 155 Pa. Commw. 379, 625 A.2d 164 (Pa. Cmwlth. Ct. 1993), *appeal denied*, 538 Pa. 677, 649 A.2d 677 (1994). An abuse of discretion occurs when the governing bodies' findings are not supported by substantial evidence. *Id.*; *Valley View Civic Ass'n v. Zoning Board of Adjustment*, 501 Pa. 550, 462 A.2d 637 (Pa. 1983). In this context, substantial evidence is defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Valley View Civic Ass'n*, 501 Pa. 550, 555, 462 A.2d 637, 640 (Pa. 1983). Instantly, the Court finds that the Council's Decision was supported by substantial evidence, comported with all applicable laws, and therefore, was not an abuse of discretion.

Was the Council's Decision procedurally flawed?

The Appellant first contends that, under the MPC, the Council was not authorized to condition its approval on the LCPC's favorable comments. Moreover, the Appellant contends that, because the LCPC's written favorable comments regarding Intervener's Revised Final Proposal contained two dates, one of which fell after the Council issued its December 29, 2005 Decision, the Council's Decision was improper in that it was issued prematurely without the requisite input from the LCPC. Lastly, the Appellant contends that the Council's Decision is flawed in that it contemplates future substantive changes to the Intervener's Revised Final Plan.

First, the Appellant correctly states that land development applicants are required, under the MPC, to submit their plans to the county planning agency for review, and that such applications may not be approved until the county planning agency reviews and/or reports on the application. 53 P.S. § 10502(b); however, the Court disagrees with the Appellant's contention that section 10520(b) of the MPC does not authorize the Council to conditionally approval a land development application pending the outcome of the county planning agency's review. The essence of section 10502(b) is that the Council's approval is conditioned on the county planning agency's review and/or report:

. . . [A]pplications for subdivision and land development . . . shall be forwarded upon receipt by the municipality to the county planning agency for review and report . . .
Provided, That such municipalities **shall not approve such applications until the county report is received** or until the expiration of 30 days from the date the application was forwarded to the county.

53 P.S. § 10502(b) (emphasis added).

As emphasized above, the MPC explicitly requires the Council to withhold its decision on a land development application until the Council receives the county planning agency's (here, LCPC) review/report; therefore, the Court finds that the Appellant's contention that the MPC actually prohibits conditional approval is contrary to the Court's reading of the law.

Second, assuming that it is permissible for the Council to condition its approval on the LCPC's favorable comments, the Appellant contends that the Council issued its approval one day prior to receiving the LCPC's favorable comments and therefore contrary to the MPC. Although the Appellant correctly highlights the requirement that the Council consider the LCPC's comments prior to issuing a final decision on the Intervener's Revised Final Plan, the Appellant, based on conflicting dates on the LCPC's written comments, accuses the Council of shirking this obligation and prematurely approving the Intervener's Revised Final Plan. Unlike

the Appellant and absent evidence to the contrary, the Court will presume that, because the Council conditioned approval on the LCPC's approval, it issued its December 29, 2006 written approval after receipt of the LCPC's favorable comments (i.e. the Court will presume that the LCPC's comments were received and considered on December 29, 2005 and not December 30, 2005).

Lastly, the Appellant's contention that the Council's Decision is flawed because it states the obvious fact that future events could result in changes to Intervener's expansion plans, is not evidence of a procedural defect but is instead evidence that both the Council and the LCPC recognize that an expansion as significant as this will likely lead to future issues for the Council to address, and that, at the time of the Decision, said issues were too remote and/or speculative for the Council to address at that time. Foresight of the obvious (i.e. possible future issues regarding the Intervener's expansion plans) is not a procedural defect but instead, as stated above, a statement regarding the obvious and likely course of future events.

Is a land use appeal the proper forum for the Appellant's to raise issues regarding the affect of the Intervener's expansion on its property?

The Appellant contends that the Council's Decision failed to adequately consider the affect of Intervener's expansion on the existing and anticipated future parking issues between the parties; the parties' shared and interconnected sewer system facilities; and the parties' individual stormwater management systems. The Appellant does not however contend that the Intervener's Revised Final Plan violates any local ordinances and because the province of the Court charged with deciding a land use appeal, regarding a land development application, is to review the deciding body's decision for abuse of discretion and/or error of law, the Appellant's

aforementioned concerns are not proper issues for this Court to address but instead are more appropriate grounds for an action to enforce private rights.

Conclusion

The Court finds that the Council did not abuse its discretion when, on December 29, 2006, it approved Wal-Mart's Revised Final Plan.

ORDER

AND NOW, this _____ day of June 2006, the Court hereby DENIES the appeal of Weis Markets, Inc. and the Decision of the Council is hereby AFFIRMED.

By the Court,

Nancy L. Butts, Judge

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