

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA

HUTCHINSON REALTY DEVELOPMENT,	:	
L.L.C. and OLD LYCOMING TOWNSHIP	:	NO. 08-00292
Appellants	:	09-00664
	:	
v.	:	
	:	CIVIL ACTION - LAW
OLD LYCOMING TOWNSHIP ZONING	:	
HEARING BOARD and OLD LYCOMING	:	ZONING HEARING BOARD APPEAL
TOWNSHIP	:	
Appellees	:	

**ORDER**

AND NOW, this \_\_\_ of April, 2009, it is hereby ordered and directed that Appellant/Plaintiff Hutchinson Realty Development's request for the hearing of additional evidence is DENIED. The question of whether the presentation of additional evidence is to be permitted under this provision is a matter within the discretion of the trial court. Kossman v. Zoning Hearing Board of the Borough of Green Tree, 143 Pa. Commw. 107, 597 A.2d 1274 (Pa. Cmwlth. 1991). A trial court must hear additional evidence only "where the party seeking the hearing demonstrates that the record is incomplete because the party was denied an opportunity to be heard fully, or because relevant testimony was offered and excluded." In re Appeal of Little Britain Township, 651 A.2d 606, 613 (Pa. Cmwlth. 1994). In addition, a trial court may properly refuse to consider additional evidence where that evidence was available at the time of hearing. Hogentogler v. Windsor Township Zoning Hearing Board, 65 Pa. Commw. 451, 442 A.2d 834 (Pa. Cmwlth. 1982). In the case before the Court, Appellant, Hutchinson Realty Development was given a full opportunity to be heard, no relevant testimony was offered and excluded at the hearing and the information which they now seek to introduce was available at the time of their hearing.

A hearing on the merits shall be scheduled for July 8<sup>th</sup>, 2009 at 9:00a.m in Courtroom #3. Both Appellant's briefs are due 15 days before argument. Responding briefs are due 5 days before argument.

It is further ORDERED and DIRECTED that the above listed docket numbers shall be consolidated into one case. From this day forward, documents shall be filed under the docket number 08-00292.

BY THE COURT,

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Judge Richard A. Gray

cc: Denise Dieter, Esquire  
Gregory Stapp, Esquire  
Christopher Williams, Esquire  
Bill Burd, Prothonotary  
Deb Smith  
Gary Weber, Esquire