

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

RB MONTOURSVILLE, LLC,	:	NO. 09 – 01,560
Plaintiff	:	
	:	LOCAL AGENCY APPEAL
vs.	:	
	:	
TOWNSHIP OF FAIRFIELD,	:	
Defendant	:	

OPINION AND ORDER

Before the Court is an appeal filed by RB Montoursville, LLC (hereinafter “RB”) from a decision of the Board of Supervisors of Fairfield Township (hereinafter “the Township”). Argument on the appeal was heard February 16, 2010.

A subdivision and land development plan filed by RB in connection with its intention to develop certain property along Route 87 in Fairfield Township¹ was approved by the Township on April 18, 2007, subject to numerous conditions.² RB accepted those conditions by affidavit dated May 21, 2007. On February 4, 2008, the Township granted RB’s request for a one-year extension, until May 22, 2009. RB’s second request for a one-year extension, to May 22, 2010, was denied by the Township on June 1, 2009, however, and it is from that decision, which also rescinded the prior approval of the land development plans, that RB now appeals.

This Court may not reverse the Township’s decision unless it determines that the Township abused its discretion or committed an error of law, Appeal of Rizzone, 490 A.2d 26 (Pa. Commw. 1985). An abuse of discretion occurs when a board’s findings are not supported by substantial evidence. Nascone v. Ross Twp. Zoning Hearing Board, 473 A.2d 1141 (Pa. Comw. 1984). RB contends the Township abused its discretion because its decision “does not

¹ The development plans were referred to by all parties as the “Montour Crossing project”.

² Although at argument both counsel referred to “14 conditions”, and while the conditional approval letter specifies conditions in 14 numbered paragraphs, paragraphs 11 through 14 do not appear to specify conditions for approval of the plan. Rather, they (11) set forth the time period for meeting conditions, (12) specify that the land development plans are part of the agreement to abide by the conditions, (13) direct that the land development plans will not be recorded until all conditions are met, and (14) provide for completion of the improvements within two years from the date all conditions are met.

comport with law and justice”.³ After a thorough review of the matter, the Court does not agree.

In the decision dated June 1, 2009, the Township first noted that nothing in the agreement required it to grant an additional extension beyond the original one-year extension. It also pointed out language in the agreement indicating that “[t]ime is of the essence regarding satisfaction of these conditions.” The Township noted that only one of the conditions had been satisfied,⁴ that some of the conditions could have been accomplished by RB without need for approval from any other agency, and that the conditions which did require agency approval would take substantial time to complete.⁵ The Township opined that it had “no reasonable basis to conclude that a grant of a second one (1) year extension will result in the satisfaction of all conditions ...”, and based on the Township having “expended a significant amount of resources associated with the Montour Crossing project”, it concluded that the grant of a second extension would “result in the expenditure of even more time and resources reviewing a project which now on its face appears to be far from completion.” For those reasons, the Township denied the request for a second extension.

A review of the conditional approval letter and attachment indicates that RB was to comply with the following:

- 1) Obtain a PennDOT highway occupancy permit.
- 2) Obtain all necessary permits from the DEP for erosion and sediment control, dam safety and water management, and any other necessary permits; obtain easements for any retention ponds, flood storage areas, or the like; provide certain drainage easements.
- 3) Comply with all requirements of the Fairfield Township Floodplain Management Ordinance; obtain approval from FEMA/obtain a conditional letter

³ RB also contends the Township committed an error of law “because it ignored the substantial evidence before it”, but as this is simply another way of arguing that the Township’s decision was not based on substantial evidence, i.e., that the Township abused its discretion, this separate argument will not be addressed.

⁴ RB did submit a Conditional Letter of Map Revision to FEMA, as required by paragraph 3, in May 2009.

⁵ The Township relied on its engineer’s opinion that RB’s projections with respect to each item were incomplete and unrealistic in many areas. That assessment appears to be a thorough and well-reasoned analysis of the situation and the Township was justified in relying on such in making its decision.

- of map revision; enter into a maintenance agreement with the current property owner and the Township for the flood excavation area.
- 4) Obtain DEP module approvals for a sewage system; obtain permits and enter into any maintenance agreement/bonding as required by LCSWA.
 - 5) Obtain adequate water sources/bonding with WMWA.
 - 6) Provide the Township with letters from servicing utilities indicating their intent to provide utility services to the project.

It is undisputed that the only condition satisfied thus far is that of submitting an application for a conditional letter of map revision from FEMA. RB argues that it focused on that requirement since without FEMA approval “the project could not go forward”, but such does not excuse the lack of completion of the other requirements; RB offers no reason, for example, why it could not have obtained the PennDOT highway occupancy permit or made the appropriate arrangements with LCSWA or WMWA. These are major steps to be taken and the Township had every right to expect them to be completed in a timely fashion, even if it did, as RB posits, “recognize[] RB Montoursville’s need for a CLOMR as a precondition to the project”, and “acknowledge[] the complexity of the project”. RB could have sought to designate in the conditional approval agreement that FEMA approval was to be accomplished first, followed by the other requirements, with separate time tables for each, but it did not do so. Instead, it agreed to the completion of all requirements within the same time frame, and therefore it was incumbent upon RB to abide by that agreement.

Moreover, the Court does not find that the Township led RB to believe that time was not of the essence, or that completion of only FEMA approval in the two year period would be sufficient. The minutes of the township supervisor’s meetings reflect numerous discussions regarding other conditions, and at no time did the Township indicate that the other conditions were secondary to the FEMA requirement. Further, contrary to RB’s contention that some of

the delays were unreasonably caused by the Township itself, the Court finds the Township's actions were reasonable under the circumstances.⁶

Therefore, having found no abuse of discretion, the Court enters the following:

ORDER

AND NOW, this 22nd day of February 2010, for the foregoing reasons, the appeal filed by RB Montoursville, LLC, is hereby DENIED. The decision of the Fairfield Township Board of Supervisors is hereby AFFIRMED.

BY THE COURT,

Dudley N. Anderson, Judge

cc: Benjamin Landon, Esq.
J. Michael Wiley, Esq.
Gary Weber, Esq.
Hon. Dudley Anderson

⁶ For example, at the meeting on July 7, 2008, it was decided to "stop all reviews of the Montour Crossing submittals until the Township has a viable sales/purchase agreement in hand". The Court sees nothing unreasonable about such a request and, in fact, PennDOT also required a copy of such. At the meeting on September 2, 2008, it was noted that reviews remained suspended for lack of an affidavit of sales agreement, lack of a signed agreement to cover construction and maintenance of traffic lights, no resolution of LOMR/CLOMR flood issues and an uncertain water source. Inasmuch as all of these items had been previously requested, some more than once, the Court does not find the Township's actions unreasonable.