

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,  
PENNSYLVANIA

ROSE VALLEY/MILL CREEK	:	
WATERSHED ASSOCIATION,	:	
Appellant	:	NO. 11-00589
	:	
vs.	:	
	:	
LYCOMING COUNTY PLANNING	:	SUBDIVISION AND LAND
COMMISSION,	:	DEVELOPMENT APPEAL
Appellee	:	
	:	
vs.	:	
	:	
ROBERT A. MAGUIRE,	:	
Applicant/Intervenor	:	
	:	
and	:	
	:	
GAMBLE TOWNSHIP,	:	
Intervenor	:	

**OPINION AND ORDER**

This case arises out of a decision rendered by the Lycoming County Planning Commission (LCPC) at its public meeting on March 17<sup>th</sup>, 2011 that granted preliminary approval of the “Toad Hall” subdivision, including two specific waivers from the Lycoming County Subdivision and Land Development Ordinance (SALDO). The LCPC is responsible for subdivision and land development review and administration in Gamble Township, Lycoming County, Pennsylvania. The LCPC performs subdivision and land development services in Gamble Township pursuant to the Lycoming County SALDO because the Township does not have its own subdivision and land development ordinance. *See* 53 P.S. §10502; SALDO § 1.032. The full-time staff of the LCPC conducts the day-to-day administrative and

application requirements under the SALDO. The LCPC staff provides completed applications to the planning commission members at the LCPC monthly meetings; the commission members act upon the applications at these meetings.<sup>1</sup>

Since 2009, Robert A. Maguire (Mr. Maguire) has submitted applications to the LCPC for approval of the “Toad Hall” subdivision. Mr. Maguire purchased a 13.1 acre parcel in Gamble Township in 2005 that he designated as the Toad Hall subdivision. By letter dated October 27<sup>th</sup>, 2009, Mr. Maguire initially requested that the LCPC grant him SALDO waivers and preliminary approval of the Toad Hall subdivision. In 2009, the LCPC reviewed and considered this application and waiver request. Before a decision could be made on the matter, Mr. Maguire removed this application and request from the LCPC’s consideration. In December 2010, Mr. Maguire submitted a second application with the LCPC for the Toad Hall subdivision with waivers. This 2010 application is the subject of this appeal.

Mr. Maguire’s preliminary application and waiver request sought approval of a five (5) lot subdivision with access by way of a private road across land owned by the Pennsylvania Fish and Boat Commission (PFBC). The Toad Hall subdivision borders public land owned by the PFBC. In addition to preliminary approval, Mr. Maguire requested, in writing, that he be granted two (2) SALDO waivers. These waivers included: 1) a right-of-way that was 17 feet less wide than required 50 foot minimum width over the PFBC land (for a distance of 668 feet), and 2) a cul-de-sac that was 60 feet over the limit of 1000 feet.<sup>2</sup> *See* SALDO § 4.033. In his 2010

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<sup>1</sup> The nine (9) LCPC Commission members are appointed by the Lycoming County Commission, and they serve four (4) year terms.

<sup>2</sup> At the time of the March 17<sup>th</sup> meeting, Mr. Maguire had submitted a proposed right-of-way agreement to the PFBC; to the best of this Court’s knowledge, to date, no agreement has been signed.

application, Mr. Maguire requested the same waivers from the SALDO, but he reduced the size of his proposed subdivision to four (4) lots.

Seven days before the March 17<sup>th</sup> LCPC public meeting, the LCPC staff sent a memorandum that outlined Mr. Maguire's application and waiver requests to its commission members.<sup>3</sup> In addition to citing the SALDO waiver provision (SALDO § 7.01A – C), this memorandum outlined the LCPC staff comments in regard to Mr. Maguire's application. These comments provided:

1. In review of the plan, the waiver request letters and emails by the PA Fish & Boat Commission *the two requested waivers are reasonable where there requested 33 ft. wide private right-of-way is equal width to the existing township right-of-way width for Trimble Rd. and the cul-de-sac street is only 60ft. longer than the SLDO maximum requirement of 1000ft.*
2. The two waivers are recommended to be applied to this subdivision proposal only. Any change in the number of lots to be served by the private right-of-way should be reevaluated by the LCPC.
3. Similar waivers were requested with the prior subdivision layout submission. The current subdivision layout suggested by the PA Fish & Boat Commission *contains one less house lot allowing a lesser road width standard and less environmental impact with the lot addition to the PA Commonwealth property to be an additional buffer between the house lots and wetland/natural area.*

Joshua A. Billings Mem., pg. 3 (emphasis added).<sup>4</sup> The LCPC staff also included four stipulations in its memorandum. These stipulations included:

1. The applicant shall conduct no earth disturbance on the property to begin any road modifications or construction of the required cul-de-sac turn abounds or to build additional dwellings that would be served by the proposed 33 ft. and 50 ft. wide private right-of-ways until a right-of-way agreement has been signed by the PA Fish & Boat Commission and Robert Maguire as pertaining to this preliminary subdivision plan....
2. The applicant shall submit a copy of the signed DEP Sewage Facilities Planning Module for our files and obtain DEP approval for the soils testing on Lot #'s 1-2 prior to Final Plan submission.

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<sup>3</sup> All of the Commission members at the March 17<sup>th</sup> meeting were Commission members when Mr. Maguire's application was initially considered by the LCPC in 2009.

<sup>4</sup> Mr. Billings is the LCPC's Subdivision and Land Development Administrator.

3. The applicant shall obtain stormwater management plan approval from our LCPC consulting engineer prior to Final Plan submission.
4. The applicant shall provide a copy of the signed Maguire/PA Fish & Boat Commission private right-of-way use and maintenance agreement prior to Final Plan Submission.

*Id.*, pg. 4.<sup>5</sup>

Also, as required under the SALDO, the LCPC sent notification to Gamble Township and the Gamble Township Planning Commission concerning the pendency of Mr. Maguire's application at the LCPC. Gamble Township considered Mr. Maguire's application at its March 7<sup>th</sup>, 2011 meeting. On March 9<sup>th</sup>, 2011, the Township Supervisors composed a letter to the LCPC stating that "[The Township Supervisors'] approval is contingent on the approval of the Pennsylvania Fish and Boat Commission." Gamble Township Letter, Mar. 9, 2011. The LCPC staff informed its commission members of this input from Gamble Township.<sup>6</sup>

On March 17<sup>th</sup>, 2011, the LPCP held its regularly-scheduled, public meeting.<sup>7</sup> The recommendation by the LCPC staff, stated in the March 10<sup>th</sup> memorandum, included approving Mr. Maguire's two waiver requests and granting preliminary plan approval, with the four above-stated stipulations. The commission members unanimously approved this staff recommendation.

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<sup>5</sup> The LCPC may attach reasonable conditions to a preliminary land development plan if the plan does not comply with the SALDO because a planning commission has "significant discretionary authority." See *Morris v. S. Coventry Twp. Bd. of Supervisors*, 836 A.2d 1015, 1020 (Pa. Commw. Ct. 2003).

<sup>6</sup> The March 10<sup>th</sup> memorandum provides:

MUNICIPAL COMMENTS: Gamble Township Planning Commission and Supervisors have no issue with the requested waivers and continue to comment that rights of access through the PA Fish & Boat Commission must be concluded prior to Final Subdivision Approval.

Joshua A. Billings Mem., pg. 4.

<sup>7</sup> The public meeting was held at the Executive Plaza Conference Room, 330 Pine Street, Williamsport, Pennsylvania, at 6:00 p.m. Eight (8) Commission members and the LCPC full-time staff representatives attended the meeting. At the time of the meeting, there was one vacancy on the Commission, due to the expiration of one of the Commissioner's terms and the fact that no Commissioner appointment had been made by the time of the meeting.

On April 11<sup>th</sup>, 2011, the Rose Valley/Mill Creek Watershed Association (RVMCWA) filed with this Court a Notice of Appeal of the LCPC's March 17<sup>th</sup> decision. The RVMCWA is a not-for-profit entity that was formed with the specific mission to protect and perpetuate the Rose Valley Mill Creek Watershed. The Toad Hall subdivision is in close proximity to Rose Valley Lake.

In response to RVMCWA's Motion to Appeal, Mr. Maguire and Gamble Township filed timely and appropriate Intervention Petitions with this Court. This Court held conferences and arguments relating to the preliminary issues in this matter, and, by Order dated July 6<sup>th</sup>, 2011, this Court addressed those preliminary issues. This Court then held oral arguments on September 6<sup>th</sup>, 2011 on the merits of the subdivision and land development appeal.

Appellant RVMCWA argues that the LCPC abused its discretion by failing to follow and meet the standard of review required for SALDO waivers because the LCPC's decision was not supported by substantial evidence. For the following reasons, this Court finds that the LCPC did not abuse its discretion when it made its March 17<sup>th</sup> decision, pertaining to Toad Hall, because the decision is supported by substantial evidence in the certified record.

In a subdivision and land development appeal, this Court's standard of review is limited to deciding whether the LCPC committed "an abuse of discretion or error of law." *Morris v. S. Coventry Twp. Bd. of Supervisors*, 836 A.2d 1015, 1018, n.3 (Pa. Commw. Ct. 2003). An abuse of discretion by a planning commission may be found "only if its findings are not supported by substantial evidence. Substantial evidence is

such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Id.* (citations omitted).

Even though subdivision and land development in Gamble Township is controlled by the SALDO, appeals from LCPC decisions are governed by the Municipalities Planning Code (MPC), 53 P.S. §§ 10101 *et seq.* 53 P.S. § 10502; SALDO § 1.032. Section 503(8) of the MPC authorizes the LCPC to grant waivers through land development ordinances, such as the SALDO. 53 P.S. § 10503(8)<sup>8</sup>; *see Morris*, 836 A.2d at 1022. Section 7.01 of the SALDO provides:

[i]f any mandatory provision of this Ordinance is shown by the applicant, to the satisfaction of a majority or the Commission present at a scheduled public meeting, to be unreasonable and to cause unique and undue hardship as it applies to his proposed subdivision or land development, the Commission may grant a waiver in writing to such applicant from such mandatory provision, so that substantial justice may be done and the public interest secured; provided that such waiver will not have the effect of nullifying the intent and purposes of this Ordinance.

SALDO § 7.01B (emphasis in original).<sup>9</sup> Beyond SALDO, Section 512.1 of the MPC allows a planning commission, itself, to grant modifications of SALDO requirements “if the literal enforcement will exact undue hardship because of the peculiar conditions pertaining to the land in question, provided that such modification will not

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<sup>8</sup> Section 503 of the MPC states “[t]he subdivision and land development ordinance may include... (8) Provisions for administering waivers or modifications to the minimum standards of the ordinance in accordance with section 512.1, when the literal compliance with mandatory provisions is shown to the satisfaction of the governing body or planning agency, where applicable, to be unreasonable, to cause undue hardship, or when an alternative standard can be demonstrated to provide equal or better results.” 53 P.S. § 10503 (footnote omitted).

<sup>9</sup> SALDO’s purpose includes providing the harmonious development of Lycoming County by: A. Assisting in the orderly and efficient integration of subdivisions within the county; B. Ensuring the conformance of subdivision and land development plans with public improvement plans; ...D. Securing the protection of soil and water resources and drainage ways; E. Facilitating the safe and efficient movement of traffic; F. Securing equitable handling of all subdivision and land development plans by providing uniform standards and procedures; G. In general, promoting the greater health, safety, and welfare, of citizens of the county; and H. Securing adequate sites for recreation, conservation, scenic, and other open space purposes.

SALDO § 1.02.

be contrary to the public interest and that the purpose and the intent of the ordinance is observed.” 53 P.S. § 10512.1(a).

Here, Mr. Maguire’s waivers do not nullify the intent and purpose the Lycoming County SALDO, and this Court concludes that a 50 foot road width would offer no additional benefit. Waivers by a planning commission are properly granted “where an additional requirement would offer little or no additional benefit and where literal enforcement would frustrate the effect of the improvements.” *Tioga Preservation Group v. Tioga County Planning Commission*, 970 A.2d 1200, 1205 (Pa. Commw. Ct. 2009).<sup>10</sup> In *Tioga*, the Tioga County Planning Commission approved a waiver/modification request of the county screening requirements, permitting the construction of a wind farm. *Id.* at 1202. Affirming the commission’s waiver, the Commonwealth Court determined that requiring the wind turbines to have screens, as required under the ordinance, would “unquestionably frustrate the effect of the wind turbines, and the Project as a whole.” *Id.* at 1205. The Court held that it would be unreasonable to require the screens to be constructed because the fencing would “provide little or no additional benefit to the community.” *Id.*

Similarly, in this case, substantial evidence exists in the certified record to support the LCPC’s waiver of SALDO. The main waiver issue in this case appears to be the width of the right-of-way for Toad Hall. However, the Gamble Township public road that will be used by the proposed Toad Hall subdivision is itself only 17 feet in width. *See* Letter from Marc Drier to the LCPC, Oct. 27, 2009, pg. 2. This width is significantly less than the proposed 33 foot wide right-of-way proposed by

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<sup>10</sup> *See also Appeal of Main Street at Exton, L.P.*, No. 1507 C.D. 2009, 2010 Pa. Commw. Unpub. LEXIS 614 (Pa. Commw. Ct. Sept. 9, 2010); *Desind v. Hamilton Twp. Bd. of Supervisors*, No. 513 C.D. 2009, 2009 Pa. Commw. Unpub. LEXIS 501 (Pa. Commw. Ct. Sept. 1, 2009).

Mr. Maguire. Evidence indicates that vehicles will be able to pass each other while driving in opposite directions on this 33 foot wide right-of-way. *Id.* Also, evidence indicates that the tract of land known as the Toad Hall subdivision has limited use because farming ceased on this tract within the past years due to a regional trend. *Id.* Additionally, Mr. Maguire changed his subdivision plans for his 2010 application, reducing the number of lots from five (5) to four (4). The LCPC staff determined that this change lessened the road width standard and the environmental impact of the development. This Court believes that this evidence is sufficient to support the LCPC's preliminary approval of the Toad Hall subdivision plan. It is clear that the LCPC thoroughly considered input from its professional staff, Gamble Township, and the PFBC.<sup>11</sup> In short, this Court believes that the LCPC lacks the "power to deny subdivision approval based upon generalized concerns over environmental impact." *Morris*, 836 A.2d at 1025; *see* 53 P.S. § 10508(2).<sup>12</sup>

Furthermore, this Court finds that Appellant RVMCWA's argument that the LCPC failed to provide an adequate hearing and keep adequate records on the Toad Hall matter is unsupported. The SALDO provides that "the County Planning Commission shall maintain an accurate public record of all of the plans upon which it takes action and of its findings, decisions, and recommendations in relation thereto." SALDO § 7.02. The MPC also directs that planning commissions may make their own rules consistent with the applicable laws, rules, and regulations and that it must

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<sup>11</sup> It is well-settled that "where an outside agency's approval is required, the municipality should condition final approval upon obtaining a permit, rather than denying preliminary approval of the land development application." *Morris*, 836 A.2d at 1026. In this case, the LCPC stipulated that a PFBC right-of-way must be obtained prior to final plan submission.

<sup>12</sup> Section 508(2) of the MCP states "[w]hen the application is not approved in terms as filed the decision shall specify the defects found in the application and describe the requirements which have not been met and shall, in each case, cite to the provisions of the statute or ordinance relied upon." 53 P.S. § 10508(2) (preliminary and final approval of plats).



keep a full record of its business. 53 P.S. § 10207. The MPC does not define “full record.” *See id.*

The Commonwealth Court has held that the MPC “places virtually no procedural requirements on a Board of Supervisors considering subdivisions and land development proposals.” *Miravich v. Township of Exeter*, 6 A.3d 1076, 1079 (Pa. Commw. Ct. 2010). In *Miravich*, the Court held that the rule requiring appearance before a zoning hearing board before being granted standing in a zoning appeal does not extend to subdivision and land development appeals. 6 A.3d at 1079. Quoting the language of Section 508(5) of the MPC, that Court concluded that a public hearing is not required before acting on a subdivision plat because less stringent procedural protections are afforded in a subdivision proceeding.<sup>13</sup> *See id.*

This Court believes that the certified record contains an accurate public record of the findings, decisions, and recommendations that the LCPC took into consideration when deciding the Toad Hall matter. The March 10<sup>th</sup> memorandum composed by Mr. Billings provides information concerning the background of the Toad Hall subdivision application, as well as staff comments, municipal comments, stipulations, and a recommendation. Additionally, the transcript of the March 17<sup>th</sup> meeting shows Mr. Billing’s discussion with the commission members prior to their unanimous approval of Mr. Maguire’s preliminary subdivision plan and waiver applications. In short, this Court believes the certified record supports the LCPC’s March 17<sup>th</sup> decision.

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<sup>13</sup> Section 508(5) of the MCP provides “[b]efore acting on any subdivision plat, the governing body or planning agency, as the case may be, *may* hold a public hearing thereon after public notice.” 53 P.S. § 10508(5) (emphasis added).

**ORDER**

AND NOW, this 22<sup>nd</sup> day of September 2011, it is hereby ORDERED and DIRECTED that the March 17<sup>th</sup>, 2011 decision of the Lycoming County Planning Commission, regarding Robert A. Maguire's application for preliminary approval of plans for a subdivision known as "Toad Hall" and two waivers from the Lycoming County Subdivision and Land Development Ordinance, is AFFIRMED. Appellant Rose Valley/Mill Creek Watershed Association's Appeal is DISMISSED.

BY THE COURT,

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Richard A. Gray, J.

RAG/abn

cc: J. Michael Wiley, Esquire  
Marc S. Drier, Esquire  
Charles F. Greevy, III, Esquire  
Benjamin E. Landon, Esquire  
Gary Weber, Esquire