

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

THE FARM ON BEEBER DRIVE, LLC,	: NO. 16 - 1179
Appellant	:
	: CIVIL ACTION - LAW
vs.	:
	: LAND USE APPEAL
WOLF TOWNSHIP BOARD OF SUPERVISORS,	:
Appellee	: Motion to Strike

OPINION AND ORDER

Before the court is Appellee’s Motion to Strike Notice of Land Use Appeal, filed October 17, 2016. Argument was heard October 18, 2016, at the time of the previously scheduled conference set up for the purpose of establishing a briefing and argument schedule for the appeal.

Appellant filed a Notice of Appeal on August 8, 2016, in which it asserts as grounds for the appeal that the Wolf Township Board of Supervisors (“the Board”) placed an unreasonable restriction on the use of their property by imposing a certain condition (one of a list of such) in granting them a conditional use permit. Appellant then filed an Amended Notice of Appeal on September 16, 2016, in which it asserts various other grounds in addition to the ground asserted in the original appeal. In its Motion to Strike, the Board contends that both appeals must be stricken as untimely.

Pursuant to 53 P.S. Section 11002-A, all appeals from land use decisions must be filed within thirty days after entry of the decision. Here, the Board’s decision was entered July 7, 2016. Appellant’s Notice of Appeal, filed August 8, 2016 was thus timely.¹

The Amended Notice of Appeal, filed about nine weeks after the Board’s decision, is untimely, however. Section 11003-A(a) requires a Notice of Appeal to “concisely set[] forth the grounds on which the appellant relies.” 53 P.S. Section 11003-A(a). The additional issues raised in the amended notice of appeal were not raised in the original notice, and may not be added after the deadline for filing the appeal. See Perin v. Board of Supervisors of Washington Township, 563 A.2d 576 (Pa. Commw. 1989)(attempted supplementation filed well after thirty

days was actually an untimely raising of new allegations and properly disregarded). Indeed, the statute itself indicates that “[i]t is the express intent of the General Assembly that, except in cases in which an unconstitutional deprivation of due process would result from its application, the 30-day limitation in this section should be applied in all appeals from decisions.” 53 P.S. Section 11002-A(a). The courts of this Commonwealth have held that failure to “strictly comply” with the procedural and time requirements of the statute will result in the quashing of the appeal. *See Ottaviano v. Society Hill Civic Association*, 457 A.2d 1041 (Pa. Commw. 1983). Therefore, because Appellant did not set forth the additional grounds in his *timely* Notice of Appeal, those grounds will be disregarded by the court.

ORDER

AND NOW, this 20th day of October 2016, for the foregoing reasons, the Motion to Strike the Notice of Appeal is DENIED. The motion to strike the Amended Notice of Appeal is GRANTED.

BY THE COURT,

Dudley N. Anderson, Judge

cc: W. Jeffrey Yates, Esq.
J. Michael Wiley, Esq.
Gary Weber, Esq.
Hon. Dudley Anderson

¹ Although the notice was filed on the thirty-second day, the thirtieth day was a Saturday and thus the time was extended through Monday. See Pa.R.C.P. 106(b).