

IN THE COURT OF COMMON PLEAS OF YORK COUNTY, PENNSYLVANIA

DILLSBURG VENTURES, LLC,

2008-SU-1421-Y08

VS

CIVIL ACTION - LAW

CARROLL TOWNSHIP

2008 JUL 23 AM 11:30
GUONING
YORK, PA

OPINION

This matter is before the Court on a land use appeal, Appellant filed a preliminary plan for a traditional neighborhood design (TND) development. Shortly thereafter the Township revised the ordinance in a manner that would no longer permit a TND on appellant's land. Appellants plan was reviewed and revised on multiple occasions. The Township eventually denied the plan citing 27 defects. The matter is before the Court on an appeal from that decision.

The Township listed 27 defects for its denial of the plan. The Township concedes that many of these defects are matters which could be corrected, and are not a proper legal basis to deny the plan. However the Township argues that some of the defects do support denial.

The Court finds that even as to those defects the Township still relies on, the Township is exulting form over substance and there is no valid legal basis for the denial.

The Township's first reason is that an applicants signature is not on the plan. A small portion of the development will be on land owned by the Dillsburg Area Authority. The Authority is aware of the application, has never objected to the application, has participated in the discussions about the application, and has indicated a willingness to sign the application when certain approvals are obtained. Despite the fact that the Township is aware of all this

and never made any objection to the lack of a signature in the two years this matter has been under discussion with appellant, the Township now recites this as a basis for denial. This is mere sophistry. The Township has no basis on which to believe that the authority is not in agreement with the proposal or that it will not sign the application when it is legally permissible for it to do so. Finally the Township is esstopped from raising this objection, because it was not raised any time prior to the Townships denial letter.

The Township next asserts that the appellant has not provided a complete planning module. The Township acknowledges a planning module was submitted, but remains pending due to disputes regarding some of its provisions. Clearly this is a dispute as to contents of the module, not a failure to submit a module. Therefore this is not a valid basis to deny the plan. The only reason that the model is not complete is because the Township has objected to portions of it, and requested changes which are in dispute.

Township next contends that appellant has not submitted a request for highway occupancy permits. Township argues it never received any submission, nor does it have knowledge of any submission. This is simply not supported by the record. Appellant has applied to Penn Dot for a highway occupation permit which is still pending approval. The Township received a copy of the application, and it's own documents show that it reviewed said request.

Township next argues that appellant failed to provide a jurisdictional determination regarding wetlands. Again the record shows that an application was made to the Federal authorities requesting a jurisdictional determination regarding wetlands, but it is still pending.

The fact that the approval has not yet been obtained is not a legitimate basis for denying a preliminary plan.

The remaining four alleged defects are actually acknowledged by appellant, and appellant had previously requested waivers regarding the problems. Appellant contends the waivers were improperly denied. The first waiver is requested because the block lengths exceed 600 feet. Appellant's engineers testified why the proposed roads were laid out in that manner due to the physical conditions of the property. The experts also stated that the proposed design would still meet the purpose and intent of the ordinance. There was no testimony to the contrary. The Township only argues that many other properties in the area have similar typography. While that may be true, it is irrelevant. The question is whether this oddly shaped property could comply with the provisions of the ordinance, and if not, was there an acceptable alternative which maintained the purposes of the ordinance. There is no testimony supporting the Township's conclusion that the proposed alternative did not meet the purpose of the ordinance.

The Township also recites the failure to follow a straight course for 100 feet prior to an intersection. Again the Township merely recites the fact that the plan is in violation of the ordinance. It doesn't address appellant's acknowledgment of said violation, its explanation as to why it was a hardship to comply, and if the alternative proposed by appellant will still meet the purpose of the ordinance.

Township next argues that there are violations regarding the minimum distances between intersections. The Township argues for example that the intersection of Aiden

Avenue and Harrisburg Pike could be shifted further south. The record shows that the intersection cannot be moved "to the south" due to the presence of drainage and wetlands in the area, a fact established by the Township's own engineer who recommended the intersection be moved to its current location to avoid the drainage areas. The Township also discusses the intersection with Route 15, which the Township argues could cause traffic to stack up. Court would note that there is no testimony to support that determination. The appellants traffic study shows the opposite, and the use of a "right in, right out" restriction on the design of the intersection was made specifically to address the stacking concern.

The Townships last alleged defect is that the maximum slope is exceeded. Appellant responds that the Township has never identified the specific locations where the slope is excessive. The court agrees that the Township could not have made a valid determination when the exact location of the alleged violations isn't even indicated.

Appellant argues that the Township did not act in good faith in review of the plan. The Court does not believe that such a determination is necessary. However it appears obvious at the bare minimum the Township would prefer not to have TND's at this location (shown by the revised ordinance), and reviewed the plan with the intent to find any technical violation it could to attempt to justify a denial as opposed to conducting a "judicial" review as required. Therefore the Townships denial should be reversed.

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ORDER

2008 JUL 23 AM 11:50
CLERK OF COURT
YORK, PA

ORDER NOW, TO WIT, this 22 day of July, 2008. The appeal of Dillsburg Ventures, LLC, is granted and the Townships denial is reversed.

BY THE COURT



JOHN H CHRONISTER
JUDGE