

EXECUTIVE SUMMARY OF ATTACHED LETTER

- 1. According to Pennsylvania law the Municipal Planning Code severely limits the powers of the Board of Supervisors in reviewing a land development plan.**
- 2. The township must act on a plan within a set time period or else it is automatically approved¹.**
- 3. A township cannot deny a plan because residents don't like it².**
- 4. A plan cannot be denied based on non-specific standards such as "potential danger to health, safety and welfare"³.**
- 5. If a plan meets all requirements of the land development ordinance it must be approved⁴.**
- 6. Pennsylvania does not allow a municipality to deny a land use plan because of concerns about traffic, safety or tax status⁵.**
- 7. The township cannot tell you, or any other landowner, who you can or cannot sell your property to.**

¹ Municipalities Planning Code Section 508(3).

² *Goodman v. Board of Commissioners of South Whitehall Township*, 411 A.2d 836 (Pa. Cmwlth. 1980).
Stoner v. Township of Lower Merion, 587 A.2d 879 (Pa. Cmwlth. 1991)

³ *CACO Three, Inc. v. Board of Supervisors of Huntington Township*, 845 A.2d 991, 993-994 (Pa. Cmwlth. 2004)

⁴ *Raum v. Board of Supervisors of Tredyffrin Township*, 370 A.2d 777, 798 (Pa. Cmwlth. 1977)

Honey Brook Estates, LLC v. Board of Supervisors of Honey Brook Township, 132 A.3d 611 (Pa. Cmwlth. 2016)

⁵ *Brentwood Borough v. Cooper*, 431 A.2d 1177, 1179 (Pa. Cmwlth. 1981)

Appeal of Redeemed Christian Church of God, 2016 WL 7449224 (Pa. Cmwlth. 2016)

Borough of Franklin Park v. Atlas Development Company, 497 A.2d 675 (Pa. Cmwlth. 1985)

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VIA E-MAIL

Board of Supervisors
Bern Township
1069 Old Bernville Road
Reading, PA 19605

Re: New Behavioral Health Campus Acadia Healthcare Land Development Plan
Our File No. 38402

Dear Supervisors:

We understand that there have been questions concerning the powers of the Board of Supervisors in acting upon applications for subdivision or land development approval. Certain Township residents are apparently urging the Board to deny the New Behavioral Health Campus Acadia Healthcare Land Development Plan (the "Plan") which proposes the development of a 144-bed behavioral hospital and other medical buildings together with associated parking, circulation, and storm water management facilities on a tract of land identified as 2400 Bernville Road. The Township Engineer issued a review letter for the Plan dated May 4, 2018. The Township Engineer listed few items required for compliance, and most of those items relate to issues that are addressed after a subdivision or land development plan has conditional final approval such as completion of certificates, submission of permits or approvals of other entities such as the highway occupancy permit issued by the Pennsylvania Department of Transportation ("PennDOT"), NPDES permit and approval of an erosion and sedimentation control plan by the Berks County Conservation District, and sewage approvals. The Township Engineer's letter also states that the transportation impact fee must be paid and standard agreements relating to completion of improvements and financial security are required.

The Pennsylvania Municipalities Planning Code ("MPC") authorizes the Township to enact the Subdivision and Land Development Ordinance ("SALDO") and sets forth the limits of the Township's powers governing subdivision and land development. Section 508 of the MPC establishes time periods within which municipalities must act on plans and provides that if the municipality does not act within the required time period or any extension granted by the applicant the plan is deemed unconditionally approved. See MPC §508(3). The decision on a subdivision or land development plan must be in writing, and that written 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.” MPC §508(1). If the written decision does not meet those requirements, the plan is deemed approved.

There are many court decisions dealing with attempts by municipalities to deny subdivision or land development plans. Several of the earlier cases held that certain types of ordinance provisions were not legally sufficient to support the denial of a subdivision or land development plan. For example, in *Goodman v. Board of Commissioners of South Whitehall Township*, 411 A.2d 836, (Pa. Cmwlth. 1980), Commonwealth Court held that citing to provisions of an ordinance that required coordination so that an area may be “developed harmoniously” and that a development not create “detrimental effects” was not legally sufficient to support a denial. The opinion noted that a provision which is “essentially a very general statement of purpose” cannot support a denial because “although it points to an admirable and legitimate goal, it provides no requirement or criterion by which the courts could review a finding of noncompliance with it.” *Id.* at 841. A decade later Commonwealth Court granted a landowner’s request for a deemed approval when a plan was denied because it was inharmonious with the surrounding neighborhood. *Stoner v. Township of Lower Merion*, 587 A.2d 879 (Pa. Cmwlth. 1991).

More recently Commonwealth Court considered a denial of a preliminary plan and summarized the rules that municipalities must follow:

A preliminary plan must be approved if it meets all specific, objective requirements under a subdivision and land development ordinance....

Further, the preliminary plan containing minor defects correctible by amendment must be approved subject to a condition that necessary corrections be made. When the preliminary plan is disapproved, the governing body must “specify the defects found in the plan and describe the requirements which have not been met and ... cite to the provisions of the statute or ordinance relied upon.” Section 508(2) of the MPC.

CACO Three, Inc. v. Board of Supervisors of Huntington Township, 845 A.2d 991, 993-994 (Pa. Cmwlth. 2004) (citations omitted). Commonwealth Court specifically stated in that opinion that “any inconsistency with the comprehensive plan, standing alone, cannot justify disapproving the land development plan.” *Id.* at 995. Commonwealth Court reaffirmed that “it is well established that a preliminary plan may not be denied based on general, non-specific standards, such as the potential danger to health, safety and welfare.” *Id.* at 996. The Court also reaffirmed its prior decisions that denial of a plan because the developer did not yet have a highway occupancy permit from PennDOT was improper. *Id.* at 998.

The Board of Supervisors is also subject to a requirement to review plans in good faith. Commonwealth Court established this doctrine in *Raum v. Board of Supervisors of Tredyffrin Township*, 370 A.2d 777, 798 (Pa. Cmwlth. 1977) stating:

A municipality has a legal obligation to proceed in good faith in reviewing and processing development plans. The duty of good faith includes discussing matters involving technical requirements or ordinance interpretation with an applicant, and providing an applicant a reasonable opportunity to respond to objections or to modify plans when there has been a misunderstanding or difference of opinion.

Commonwealth Court reiterated that doctrine, quoting the above language, in *Honey Brook Estates, LLC v. Board of Supervisors of Honey Brook Township*, 132 A.3d 611 (Pa. Cmwlth. 2016). It is my understanding that the Township Engineer and Township representatives provided reviews prior to the Township Engineer's May 4, 2018, letter and allowed revisions to the Plan to fulfill the Township's duty to review a subdivision or land development plan in good faith.

We understand from newspaper coverage that neighbors are concerned that patients may leave the facility and enter the nearby residential neighborhood, potentially harming residents. Persons also raised concerns about traffic and whether the facility would become tax exempt. Pennsylvania law does not allow a municipality to deny a land use approval for general concerns regarding traffic and safety, and a municipality cannot consider tax status. Commonwealth Court has stated, "As to concerns about the effect of a particular development on the tax base, we have held that tax base concerns cannot be decisive in a zoning case." *Brentwood Borough v. Cooper*, 431 A.2d 1177, 1179 (Pa. Cmwlth. 1981). See also *Appeal of Redeemed Christian Church of God*, 2016 WL 7449224 (Pa. Cmwlth. 2016).

Commonwealth Court considered a case where residents opposed a subdivision plan because they expected traffic conditions to worsen due to increased traffic flows from the proposed houses, but Commonwealth Court held that the municipality could not deny the plan or impose conditions not required by its governing ordinances to address the traffic concerns. *Borough of Franklin Park v. Atlas Development Company*, 497 A.2d 675 (Pa. Cmwlth. 1985).

Even if the SALDO had a provision governing safety that would meet the above discussed standards, I have seen nothing that would allow the Board to deny the Plan on such a ground. In an appeal concerning denial of a request to waive a requirement of a subdivision ordinance concerning street design, Commonwealth Court held the municipality could not deny the waiver based on safety concerns stating:

While the Fire Chief testified that there are problems with people parking in the designated fire zones and within 15–20 feet of an intersection, he did not offer any

concrete examples of when emergency vehicles attempting to respond to emergency situations in the Township were hampered or unable to complete a mission because illegally parked cars hindered access to the area in need of emergency services. Instead, the Fire Chief testified that he *thought* that emergency vehicles would not have the ability to safely and efficiently get people out if the horizontal curve was modified from 100 feet to 65 feet and there was no secondary means of egress.

This Court realizes that concern for public safety is of utmost importance to a governing body, such as the Township Council in this matter, and that local public safety officials have the knowledge and first-hand experience necessary to maintain safety in a municipality. However, the foregoing testimony shows that the Fire Chief's safety concerns are based upon speculation and do not constitute competent evidence to support the Township Council's Decision

In re Cornell Homes, 2014 WL 201485, at *5–6 (Pa. Cmwh. 2014). As you can see, the Court did not accept the testimony of a fire department chief because the Court in essence will require specific and expert testimony to support any claim of public safety.

In summary, the MPC severely limits the powers of the Board of Supervisors in reviewing any subdivision or land development plan. Unless the Board can cite to a specific and objective requirements of the SALDO or other governing ordinance or a state statute, the Board must approve the plan. If it denies the plan without citing to such a section of a governing ordinance, the applicant can file an appeal and the courts will reverse the Board's decision. Even where there is a specific and objective requirement in the SALDO, such as the submission of a highway occupancy permit, Commonwealth Court has held that a municipality is required to approve a plan conditioned upon providing the highway occupancy permit before the plan is released for recording. Because the Township Engineer's May 4, 2018, letter lists only minor items which are principally submission of approvals from other entities and/or items such as signing certificates and posting financial security, they do not rise to the level to support denial of the Plan.

If you have any questions concerning these issues, please contact me. I will be on vacation beginning on June 15 and will return to the office on July 2.

Very truly yours,


Josele Cleary