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MICHAEL A. SERLUCO d/b/a CONSOLIDATED PROPERTIES v. BOROUGH OF CAMP HILL, CUMBERLAND CO., COMMON PLEAS, No. 2020-00747 CIVIL. Municipal Law—Land Use Appeal—Municipality Planning Code (MPC)—Split-Zoned Tract of Land—Timeliness—Definition of “Plat”—53 P.S. §10508(3)—Good Faith—**Raum v. Board of Supervisors of Tredyffrin Township**, 29 Pa. Commonwealth Ct. 9, 370 A.2d 777 (1976)—No Additional Evidence Presented—Standard of Review—Legal Rationale for Denial of Plan—Burden to Show Entitled to Approval—**Ball v. Montgomery Township Board of Supervisors**, 143 Pa. Commonwealth Ct. 142, 598 A.2d 633 (1991)—Deference to Governing Body’s Interpretation of Ordinances—**In re Provo Pinegood Sumneytown, LLC**, 216 A.3d 512 (Pa. Commw. 2019)—Waiver of Preliminary Submission Requirements—Appeal Denied.

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Continued From Previous Issue

On July 30, 2019, Appellant submitted to the borough an updated traffic impact study, as well as crash analyses.⁹¹ On the same date, Appellant submitted a revised plan for the project by way of

Thirteen (13) sets of the Preliminary/Final Subdivision & Land Development drawings (sheets 1 through 16 of 16), containing a latest revision date of July 26, 2019.

Three (3) copies of the Stormwater Management Narrative and Calculations, containing a latest revision date of July 26, 2019.⁹²

The letter of transmittal enclosing the revised plan included responses to the comments of the engineering company engaged by the borough dated March 15, 2019, as well as certain zoning and pedestrian information. **Inter alia**, the responses on behalf of Appellant indicated that a lot merger agreement would be “consider[ed],” that a construction detail had been revised to clearly depict a 12” minimum milled notch into the existing pavement section, and that proof of owner’s consent for the drainage and fence easement onto the adjacent property ... would be provided to the Borough “once finalized.”⁹³

On the subject of emergency access to the site, the response advised that

[t]his constitutes our third land development submission to the Borough for this project, and we’ve not received any formal comments from emergency service responders. Based on discussions with the Borough Fire Marshal, we’re unaware of any concerns regarding site accessibility for emergency equipment.⁹⁴

The transmittal letter also indicated the following:

The site layout has been adjusted to provide front yard setbacks for both 32nd Street and Chestnut Street Setback distances (0.5’ along 32nd Street and 16.5’ along Chestnut Street) are based on existing building setbacks provided on adjacent properties to the south and east (**see** ‘Basis for Front Yard Building Setbacks’ detail provided on Sheet 13).

In order to accommodate the adjusted setbacks, site improvements have been shifted to the south, and building canopy configurations have been modified in order to allow proposed improvements to comply with front yard requirements.⁹⁵

⁹¹Certified Record, at CP0720.

⁹²Certified Record, at CP00722 et seq.

⁹³Certified Record, at CP0724-CP0725.

⁹⁴Certified Record, at CP0724.

⁹⁵Certified Record, at CP0726-CP0727.

A second point of pedestrian access has been added. A sidewalk providing direct connectivity to the 32nd Street/Chestnut Street intersection is now shown at the northwest corner of the site.^[96]

Thus, as indicated, the revised plan's postulated front yard setback requirement for the restaurant building on 32nd Street was one-half foot, and the postulated front yard setback requirement on Chestnut Street was sixteen and a half feet.

By a memorandum addressed to Appellee's counsel dated July 31, 2019, Appellant's counsel set forth the developer's position on various legal issues that had arisen concerning the project. On the subject of front yard setbacks, the memorandum stated in part:

The Plan, as revised, depicts two front yards along Chestnut Street and 32nd Street. These front yards are measured from the street right-of-way lines of Chestnut Street and 32nd Street. Pursuant to the Zoning Ordinance, the eastern yard is identified as a rear yard and the southern yard is identified as a side yard.^[97]

The built-to front yards shown on the plan are 16.5 feet along Chestnut Street and about three feet along 32nd Street.^[98]

A 16.5-foot front yard setback along Chestnut Street is permitted under the Zoning Ordinance. Although § 503 of the Zoning Ordinance generally requires a 35-foot front yard setback, § 732.B (Yard and Setback Alterations) permits front yard setbacks to be reduced. Section 732.B.1 states in part:

[O]n a lot proposed for development, where the required front setback regulations for the applicable zoning district are greater than the actual distances that the existing buildings on abutting lots are setback from the street right-of-way, the required **front yard and setback may be altered to be similar to those distances between existing principal buildings and the street right-of-way on the abutting lots**, in accordance with the following standards

Zoning Ordinance, § 732.B.1 (emphasis added). The abutting lot immediately to the east of the subject development property

⁹⁶Certified Record, at CP0727.

⁹⁷Certified Record, at CP0778.

⁹⁸Certified Record, at CP0780.

has a front yard setback of 16.5 feet from the street right-of-way line of Chestnut Street. The abutting lot immediately to the south of the development property has a setback of one-half a foot from the street right-of-way line of 32nd Street.^[99]

[T]he front yard setbacks shown on the Plan, as revised, match the setbacks of principal buildings on the abutting lot of each respective street frontage (*i.e.*, the front yard setback along Chestnut Street is 16.5 feet and the front yard setback along 32nd Street is about one-half foot).^[100]

With respect to the split-zoning issue, the memorandum of Appellant's counsel defended the revised plan as follows:

The north-south alley is split-zoned along its centerline. The western portion is located in the Commercial General District (the 'CG District'). The eastern portion is located in the Low Density Residential District (the 'LDR District'). As the alley extends to the south beyond the subject property and to Bramar Road, the alley is split-zoned in the LDR District and HDRO District. The question raised is whether the split-zoned north-south alley may be used to access the proposed restaurant. ... [Z]oning regulations do not apply to the north-south alley [because it is a street] and, if they did apply, such regulations do not prohibit use of the north-south alley to access the proposed restaurant. Indeed, if the Borough were to conclude otherwise, then the numerous existing businesses throughout the Borough that are served by split-zoned alleys would be, and must be, prohibited from using such alleys.^[101]

If the Borough were to conclude that zoning regulated the use of streets, then there would be various land use-street conflicts throughout the Borough (as the Borough's Zoning Map imposes zoning classifications on streets).^[102]

The revised traffic impact study submitted on behalf of Appellant to the borough on July 30, 2019 was the subject of a letter from the company that conducted it to the borough's zoning officer on August 5, 2019.¹⁰³ This letter described the updated study by way of responses to

⁹⁹Certified Record, at CP0779-CP0780.

¹⁰⁰Certified Record at CP0780.

¹⁰¹Certified Record, at CP0786.

¹⁰²Certified Record, at CP0788-CP0789.

¹⁰³Certified Record, at CP0801-CP0805.

the comments of the engineering company engaged by the borough to the initial study; and a letter of the same date from Appellant's counsel noted that the study had been performed pursuant to the borough's subdivision and land development ordinance as opposed to its zoning ordinance.¹⁰⁴

On August 19, 2019, in response to Appellant's revised plan, which had reconfigured the project's layout to conform to the proposition that the site was a corner lot, the borough's zoning officer identified the following issues in a report to the planning commission:¹⁰⁵

1. Designation of front, rear and side yards

a. Front yards are identified along Chestnut St and 32nd St with the rear yard to the east and the side yard to the south. The rear and side yards are based on 32nd St being the street of address. A request was made and I am waiting for the County GIS [Geographic Information Systems] to make a final determination. If the request for a 32nd St address is approved by county GIS then the Plan will meet the Zoning Ordinance [regarding the designation of yards].

2. Setbacks for front, side and rear yards

a. If the north/south alley or eastern alley is considered a 'street,' the southern right-of-way would also be considered an alley, and therefore a 'street,' under this definition.

b. Based on the definition of 'lot line', the lot lines of the ultimate lot should coincide with the right-of-way lines for both the eastern alley (and southern alley, if that right-of-way is to remain).

c. If the north/south or eastern alley is considered a street or a new right-of-way, then a rear yard setback must be measured from the western edge of the new right-of-way in the CG District. The rear setback would be 30 ft.

d. If the east/west or southern alley is considered a street then a side yard setback must be measured from the northern edge of the boundaries of the alley. The side yard setback would be 12 ft.

3. Front Yard Setback on Chestnut St and 32nd St

a. The Developer uses the abutting properties to the east on Chestnut St and to the south on 32nd St to determine the setbacks on Chestnut St and 32nd St. However, in both cases the abutting properties are in different zoning districts (LDR and HDRO) from the CG district for the development of the property.

b. The SALDO defines 'Alley' as a 'minor way, which may or not be legally dedicated, and is used primarily for vehicular **service**

¹⁰⁴Certified Record, at CP0798-CP0799.

¹⁰⁵Certified Record, at CP0865.

access to the rear or side of properties abutting the street. (ZO § 202 contains the same definition). Here the alley will provide the **only** access from the property to the abutting street, not simply service access. Accordingly, the proposed R/W is either a street or a driveway.

4. Commercial Use of Alley

a. If the expansion to the north/south alley contains a new right-of-way for an alley or street, then the zoning of the LDR doesn't apply to the lot area but the lot lines are measured from the street line. If the expanded area of the north/south alley is not part of an alley or street, then the zoning of the LDR district applies to the driveways within the LDR district.

b. A use with the traffic anticipated from the proposed use in the TIS is far greater in the number of trips for the proposed fast food restaurant during the peak hours than the uses in the LDR district.

5. Building Façade

a. No information has been provided indicating compliance with the provisions on Building Façade in Section 604.J.

6. Building Footprint

a. No information has been provided indicating compliance with the provisions on Building Footprint in Section 604.M.^[106]

Also on August 19, 2019, two reports were provided to the borough by the engineering company which it had engaged to review the project—one commenting upon the updated transportation impact study¹⁰⁷ and the other upon the revised site plan.¹⁰⁸ The former commentary concluded that the updated traffic study adequately addressed many of the previously expressed concerns, but that some remained inadequately addressed.

In terms of the study's analysis of traffic at the intersection of Chestnut Street and 32nd Street, the engineering company concluded that "[t]he left-turn phase for the intersection ... was modeled correctly in the resubmission," but that "there are still critical movements that show significant delay increases and one with a LOS [Level of Service] drop between the base and projected year"¹⁰⁹ In addition, according to the commentary, the updated study

indicates that just prior to each peak 1-hour analysis period the highest number of queued vehicles observed was one vehicle for the

¹⁰⁶Certified Record, at CP0837-CP0838.

¹⁰⁷Certified Record, at CP0831-CP0835.

¹⁰⁸Certified Record, at CP0825-CP0827.

¹⁰⁹Certified Record, at CP0831.

eastbound left movement during the Weekday AM, Weekday PM, and Saturday Midday periods and none for all other movements. This does not seem realistic as vehicles on several approaches to the intersection must typically wait through more than one signal cycle to clear the intersection during peak periods. ...^[110]

Also not adequately addressed, in the engineering company's view, was the issue of perpendicular parking along the site's access way:

Perpendicular parking spaces are still proposed along the site access driveway. Although 6 of the 11 spaces will likely be used by employees with a lower turnover rate, they should all be removed because of the conflicts that will result between parking maneuvers and traffic flow on the site access road.^[111]

Similarly inadequately addressed, from the engineering company's perspective, were its concerns about the effect of unaligned business accesses on opposite sides of Chestnut Street,¹¹² the miscalculation as to the number of vehicles which a 110-foot lane would accommodate,¹¹³ and a failure to properly anticipate worst case scenario vehicle queues.¹¹⁴ The commentary of the engineering company on the revised plan in terms of traffic also included the following:

1. In Table 13, the Chestnut/Trindle & 32nd Street SB left-turn queue for 2020 Base Conditions is minimal at 1-2 vehicles for all peak hours. During the weekday midday, weekday PM and Saturday midday peak hours for the 2020 Projected With Improvements scenario the queues are between 167 and 255 feet, significantly above the available storage length of 110 feet. After the table it is stated, '2020 Projected Condition queues will largely be accommodated within the projected storage length or are comparable to the base (no-build) conditions. This is not the case.

2. Concern over drive-thru queueing remains. It is noted that the access road is available for queueing. If this is the case the applicant is essentially saying that it is acceptable for queued vehicles to block access to the parking area, which would result in additional queueing.^[115]

¹¹⁰Certified Record, at CP0832.

¹¹¹Certified Record, at CP0832.

¹¹²Certified Record, at CP0833.

¹¹³Certified Record, at CP0833.

¹¹⁴Certified Record, at CP0833-CP0834.

¹¹⁵Certified Record, at CP0834.

5. With the left-turn restriction at the site access driveway during peak hours, how will drivers know to not use the left-turn lane? Congestion/confusion may result when a driver approaches Chestnut Street only to find that he cannot turn left and is then trapped in the left-turn lane. An approach should be offered to prevent this situation.

6. According to the Camp Hill Borough Subdivision and Land Development Ordinance Section 502.1.B, ‘Streets shall be laid out to preserve the integrity of their design. Local access streets shall be laid out to discourage their use by through traffic’. With the turn restrictions at the site access driveway, drivers leaving the site are forced to use 31st Street and other residential streets that are not designed to accommodate through traffic.^[116]

In its more general commentary on the revised site plan, the engineering company again interposed no objection to Appellant’s requested waiver of preliminary submission requirements.¹¹⁷ Other comments included the following:

3. Given that the proposed limits of disturbance exceed 1.0 acre, approval of an NPDES Permit (for ‘Discharge of Stormwater From Construction Activities’) will be required (by PADEP & Cumberland County Conservation District). In this regard, a separate technical review and approval of the Erosion and Sediment Control Plan will be required from the Cumberland County Conservation District (407.1.A(17)) (Dec 2018 Review Comment No. 3, Mar 2019 Review Comment No. 2).^[118]

12. The construction detail provided for the proposed connection to Chestnut Street should be revised to depict a 12” minimum milled notch (1 1/2” deep) across the existing pavement section in order to create a ‘ship lap’ and stagger the vertical joint (Dec 2018 Review Comment No. 17, Mar 2019 Review Comment No. 12).

13. A proposed easement/option area for a driveway and fence onto the adjacent property (133 South 32nd St LLC) is shown on Sheet 5. Identification by a metes and bounds description is required. Proof of right of the applicant to construct the facilities and

¹¹⁶Certified Record, at CP0835.

¹¹⁷Certified Record, at CP0825.

¹¹⁸Certified Record, at CP0825.

occupy the area from property owner be provided, and approved by the Borough Solicitor, prior to final plan approval (407.1.A (2&5)) (Dec 2018 Review Comment No. 21, Mar 2019 Review Comment No. 14).

14. A proposed easement for the drainage facilities onto the adjacent property (133 South 32nd Street LLC) is shown on Sheet 6. Identification by a metes and bounds description is required. Proof of right of the applicant to construct the facilities and occupy the area from property owner be provided, and approved by the Borough Solicitor, prior to final plan approval (407.1.A (2&5)) (Dec 2018 Review Comment No. 21, Mar 2019 Review Comment No. 14).

15. We would encourage the Borough to require a Developer's Agreement for this project. The Developer's Agreement should include the Owner's responsibility to address sidewalk maintenance and repairs; General Note No. 17 should be updated to read 'The developer will enter into a Development Agreement, approved by the Borough Solicitor, agreeing to maintenance and repair of the sidewalks, approved by the Public Works Director and Borough Engineer, within the R/W of Chestnut St. and 32nd St.' (Dec 2018 Review Comment Nos. 19 & 22, Mar 2019 Review Comment Nos. 13 & 15).^[119]

17. The Parking Data Table on Sheet 5 should be updated to read 'Fast Food Restaurant' instead of 'Restaurant'.

18. The East/West Alley is identified on the plan as a 'proposed 15' access easement', while the North/South Alley is identified as a 'proposed 37.67' alley R.O.W.'" We request clarification on the distinction between these two labels.^[120]

21. The Designer should review/consider adjusting the location of the proposed southeast alley curb return to reside within the property.

22. The direction of all proposed stop and no traffic thru signs should be indicated on the plan clarifying to which direction of travel they apply.

23. Turning templates for cars and trucks should be provided to show how traffic will negotiate the offset intersection between the proposed access from Chestnut St., the existing alley from Bramar,

¹¹⁹Certified Record, at CP0826-CP0827.

¹²⁰Certified Record, at CP0827.

and the East/West Alley, in all directions. It should be further clarified if traffic will be restricted from traveling any direction, noting the existing businesses and homes to the south of the site.

24. A proposed traffic sign is shown on the adjacent property (133 South 32nd Street LLC) on Sheet 5. Proof of right of the applicant to construct the facilities and occupy the area from property owner be provided, and approved by the Borough Solicitor, prior to final plan approval (407.1.A(2&5)).¹²¹

On August 20, 2019, Appellant's counsel advised the borough of the applicant's agreement to extend the deadline for action by the borough to November 19, 2019, to facilitate "review [of] the comments, discuss comments with Borough consultants, and revise the plan accordingly."¹²² A resubmission of the plan was anticipated for the planning commission's September 2019 meeting.¹²³ Approval of the extension offered was recommended by the planning commission at its meeting on August 20, 2019¹²⁴ during which more negative comments concerning the plan were made by members of the public.¹²⁵

As of August 24, 2019, the borough regarded itself as on notice that its review of the project was a subject of potential litigation by plan opponents.¹²⁶

On August 29, 2019, the borough's zoning officer amended his report¹²⁷ dated August 19, 2019, to the planning commission with respect to issues which he perceived to be associated with Appellant's project as revised. In its entirety, the zoning officer's amended report read as follows:

Issues identified on the Consolidated Properties Preliminary/
Final Land Development Plan for Chick-fil-A dated December 4,
2018, last revised July 26, 2019 ('Plan')

1. Designation of front, rear and side yards

a. Front yards are identified along Chestnut St and 32nd St with the rear yard to the east and the side yard to the south. The rear and side yards are based on 32nd St being the street of address. ZO § 202, Definitions, 'Rear Lot Line'; 'Lot, Corner.' ('... rear lot line shall be the lot line opposite the lot line along the street of address'). A

¹²¹Certified Record, at CP0827-CP0828.

¹²²Certified Record, at CP0860.

¹²³Certified Record, at CP0860.

¹²⁴Certified Record, at CP0895.

¹²⁵Certified Record, at CP0867-CP0901.

¹²⁶Certified Record, at CP0923.

¹²⁷Certified Record, at CP1001, CP1020.

request was made and I am waiting for the County GIS to make a final determination. If the request for a 32nd St address is approved by county GIS [Geographic Information Systems] then the Plan will meet the Zoning Ordinance [regarding the designation of yards].

2. Setbacks for side and rear yards

a. Developer is claiming that the eastern alley is a right-of-way that will not be part of the ultimate lot and, thus, not subject to zoning. Accordingly, based on the definition of 'lot line' (ZO §202), the lot lines of the ultimate lot should coincide with the right-of-way lines for both the eastern alley (and southern alley, if that right-of-way is to remain).

b. If the north/south or eastern alley is considered a street or a new right-of-way, then a rear yard setback must be measured from the western edge of the new right-of-way in the CG District. The rear yard setback would be 30 ft. ZO Table 5-3.

c. If the east/west or southern alley is considered a street then a side yard setback must be measured from the northern edge of the boundaries of the street. The side yard setback would be 12 ft. ZO Table 5-3.

d. Per the Zoning Ordinance, setbacks are measured from right-of-way lines. The Plan currently does not show any setbacks from the right-of-way line for the eastern alley (or southern alley if that is to remain a formal right of way).

3. Conformity of Streets

a. SALDO § 301 defines 'Alley' as a 'minor way, which may or may not be legally dedicated, and is used primarily for vehicular **service access** to the rear or side of properties abutting the street.' (emphasis supplied) (ZO § 202 contains the same definition). Here the proposed 'alley R.O.W.' (**i.e.** The expanded north/south or eastern alley) will provide the **only** access from the property to the abutting street, not simply service access. Accordingly, the proposed 'alley R.O.W.' does not qualify as an 'alley' and should be considered either a street (if it is not part of the lot) or a driveway (if it is to be part of the lot).

b. If the north/south alley or eastern alley is a 'street,' the east/west or southern alley (referred to in the Plan as an 'access easement') would also be considered a 'street,' under this definition. ZO §202, Definitions, 'Street.'

c. If the proposed ‘alley R.O.W.’ and ‘access easement’ are streets, they must conform to SALDO § 502 including but not limited to Table I requirements for minor streets for industrial/commercial uses.

d. the proposed ‘alley R.O.W.’ and ‘access easement’ provide unrestricted access to the lot along their entire lengths in violation of ZO § 902.D.

e. The developer must enter an agreement with the Borough to maintain the private street to Borough standards in perpetuity. **See** SALDO § 501.1.H.

f. The Plan depicts a mountable curb near the western edge of the ‘access easement’ that provides access to S.R. 15. An HOP from PennDOT is required if the mountable curb remains or if access to S.R. 15 is otherwise not restricted. SALDO § 501.11B.

4. Front Yard Setbacks on Chestnut St and 32nd St

a. The Developer uses the abutting properties to the east on Chestnut St and to the south on 32nd St to determine the setbacks on Chestnut St and 32nd St. The provision for yard and setback alterations under ZO §732.B.1 applies ‘where the required front setback regulations for **the applicable zoning district** are greater than the actual distances that the existing buildings on abutting lots are setback from the street right-of-way.’ (emphasis supplied). Said provision does not apply to the Plan because in both cases the abutting properties are in different zoning districts (LDR and HDRO) from the CG district for the development of the property.

b. The front yard setbacks on Chestnut St and 32nd St must be 35 ft. ZO Table 5-3.

5. Commercial Use of Driveways

a. If the expanded area of the north/south alley or the area of the east/west alley (the proposed ‘access easement’) are not part of an alley or street, then the zoning of the LDR/HDRO districts apply to the driveways within the LDR/HDRO districts.

b. The proposed commercial use of driveways is prohibited because the traffic anticipated from the proposed use in the TIS is far greater in the number of trips for the proposed fast food restaurant during the peak hours than the uses in the LDR/HDRO districts.

6. Traffic Study

a. The provisions of ZO § 731 related to required traffic study are applicable to the Plan.

b. SALDO § 405.2.1, nor any other section of the SALDO, does not relieve the developer from complying with ZO § 731.

c. SALDO § 405.21 is not objective, but a subjective, discretionary standard, that a TIS is not provided, and ZO § 731 applies.

d. Where the provisions of the Zoning Ordinance impose greater restrictions than the SALDO, the provisions of the Zoning Ordinance shall be controlling. SALDO § 205.^[128]

On or about September 5, 2019, the Pennsylvania Department of Transportation issued a commentary on the updated traffic impact study submitted on July 30, 2019.¹²⁹ This commentary reiterated the department's concern with unaligned accesses on opposite sides of Chestnut Street:

As currently shown on the site plan, the offset alignment with the commercial access may lead to conflicting left turn movements attempting to access the two sites simultaneously, which may lead to queuing towards the signalized intersection.^[130]

In addition, the department recommended crash analyses for the intersection “of ... Chestnut Street/Trindle Road (S.R. 0641) and S 32nd Street (S.R. 0015) through the proposed site frontage along both roadways for the most recent five years ...”¹³¹ Another comment stated that “the queue tables should note the existing nearest signalized or major unsignalized intersection spacing for the through lane storage available to document potential impacts on adjacent intersections,” and provide mitigating measures “where with[-]development queues are greater than without [-]development queues and exceed exiting/proposed storage lengths.”¹³²

The commentary of the department also noted that the study optimized the traffic signal timings for the aforesaid intersection, “adding delay to already at-capacity/over-capacity (failing) movements,” and advised identification of “improvements/mitigation such that no queuing/delay is added to these critical movements/approaches beyond without[-] development conditions.”¹³³ Finally, the department recommended the provision of “right-turn lane warrant and length analyses on S.R. 0015 at Chestnut Street in accordance with Chapter 11 of PennDOT Publication 46 due to the potential impacts to the adjacent signalized intersection.”¹³⁴

¹²⁸Certified Record, at CP1001-CP1003.

¹²⁹Certified Record, at CP1027-CP1028.

¹³⁰Certified Record, at CP1027.

¹³¹Certified Record, at CP1027.

¹³²Certified Record, at CP1027.

¹³³Certified Record, at CP1027-CP1028.

¹³⁴Certified Record, at CP1028.

On September 11, 2019, Appellant’s counsel offered to extend the deadline for action by the borough “on the plan” until December 11, 2019, to facilitate Appellant’s submission of a revised plan to the borough by October 22, 2019.¹³⁵ In proffering this extension, Appellant’s counsel noted that

Consolidated Properties is not particularly happy with having to extend deadlines as each delay has financial implications, but the fact is that we received new zoning comments in the August 19/August 30 memo (nine months after the plan submission). The August 19 memo was received in the late afternoon of the day before the PC meeting. The following week, we promptly arranged a meeting with Borough staff and discussed those comments and other comments. Following that meeting, [the borough’s zoning officer] issued a revised memorandum and provided that memo to us on August 30. The fact is Consolidated Properties is being diligent in its pursuit of the plan ...^[136]

In response, Appellee’s solicitor stated that Appellant’s most recent submission

was a revised or new plan from what had previously been submitted, which resulted in new zoning issues and comments, including replacing the access easement to Chestnut Street with a new street, significantly changing the front yard setbacks on both Chestnut Street and 32nd Street based on a new interpretation by the developer, a mountable curb providing access to 32nd St, unrestricted access with parking spaces to the new street, utilizing the entire east/west alley abutting the property into an access drive, after initially telling the Borough the developer would follow the zoning ordinance for a traffic impact study but now only following the SALDO, submitting an entirely new TIS [traffic impact study] with this submission, among the many changes. ...^[137]

At its meeting on September 11, 2019, Appellee’s borough council approved the proffered extension of the deadline for action by the borough on Appellant’s project to December 11, 2019 to facilitate a revised submission by October 22, 2019.¹³⁸

¹³⁵Certified Record, at CP1047-CP1048.

¹³⁶Certified Record, at CP1048.

¹³⁷Certified Record, at CP1047.

¹³⁸Certified Record, at CP1053.

However, on October 22, 2019, Appellee’s solicitor received this e-mail from Appellant’s counsel:

A revised plan will not be submitted. A revised traffic impact study will not be resubmitted. The plan and related documentation, as previously submitted, will remain pending.^[139]

No action was taken on the project at the borough’s planning commission meeting on October 22, 2019, notwithstanding a resident’s request that the plan be denied.¹⁴⁰

On November 15, 2019, a “litigation hold letter” was issued to the borough on behalf of Appellant, demanding that it preserve all documents, tangible things and electronically stored information potentially relevant to the issues in a potential lawsuit against the Borough of Camp Hill, its officers and employees, and other individuals relating to the development of a Chick-fil-A at the corner of South 32nd Street (SR 11) and Chestnut Street ...^[141]

By way of explanation, Appellant’s counsel advised that “[t]he Preliminary/Final Subdivision and Land Development Plan for Chick-fil-A was not revised and resubmitted in October to address zoning comments because the Borough’s zoning reviews of this plan have not been objective or in good faith.”¹⁴²

The timing of the comments, the nature of comments, and Council members discussions about the plan even before such plan has been finalized and/or left the Planning Commission has made it clear to us that the Borough and its officials have engaged in a pattern of conduct that is calculated to contrive an ultimate denial of the plan and/or delay in the ultimate construction of the project, in violation of the rights of Consolidated Properties to develop this site.^[143]

At the borough’s planning commission meeting on November 19, 2019, no representative of Appellant appeared,¹⁴⁴ and the borough’s solicitor noted that Appellant had decided not to submit a revised plan and was alleging that the borough’s zoning review of the plan had not been objective or in good faith.¹⁴⁵ Issues regarding the project before

¹³⁹Certified Record, at CP1061.

¹⁴⁰Certified Record, at CP1062.

¹⁴¹Certified Record, at CP1074-CP1078.

¹⁴²Certified Record, at CP1070.

¹⁴³Certified Record, at CP1070.

¹⁴⁴Certified Record, at CP1089.

¹⁴⁵Certified Record, at CP1089.

the commission in its advisory capacity included Appellant's request for a waiver of preliminary submission requirements and approval **vel non** of the plan.¹⁴⁶

On the former issue, the borough's solicitor made the following observation:

[T]here's a requirement under the SALDO to submit a preliminary plan and a final plan. There is a request that they can submit a preliminary and a final plan at the same time. That is a very routine waiver request and is usually granted in every single land development plan that comes before the Commission.¹⁴⁷

On the latter issue, the borough's solicitor advised the commission as follows:

Even though the developer is not present tonight their plan remains pending. The Municipalities Planning Code and Borough ordinances require the Planning Commission to act tonight. The Planning Commission needs to made [sic] recommendations to Borough Council first on the developer's waiver request and second to approve, conditionally approve, or deny the plan.

If the plan complies with all objective provisions of the Borough's Subdivision and Land Development Ordinance, the SALDO, as well as other applicable regulations, the plan must be approved; however, if the plan does not comply, Council has discretion to deny the plan.

Council m[a]y also approve the plan with conditions. For example, if permits are required from other government agencies, council should not deny the plan, but should require the developer to obtain the appropriate permits as a condition of approval.

The Borough's professionals have reviewed and offered comments on the plan. The comment letters were provided to the developer and posted on the Borough's website. The Borough professionals are present to answer the Planning Commission's questions.

The Planning Commission will also hear public comment before it acts. Public comment is not a question and answer session, but rather an opportunity for the Planning Commission to hear the public concerns. It is—it's important to note that the Borough does not comment on threatened litigation.

¹⁴⁶Certified Record, at CP1089.

¹⁴⁷Certified Record, at CP1089.

The Planning Commission's recommendations tonight are non-binding. Council will vote to approve, conditionally approve or deny the plan at it[]s regular meeting on December 11, 2019.^[148]

Following the receipt of a number of negative comments from the public concerning the project,¹⁴⁹ the planning commission voted, **inter alia**, to recommend denial of the waiver request¹⁵⁰ and disapproval of the plan.¹⁵¹ On the waiver issue, the planning commission member who made the motion stated that, "It's an unusual circumstance, but I'm not comfortable fast forwarding anything, even if in a procedural sense given the developer's stated position on how the process has been going,"¹⁵² and another member stated that

they've not engaged us on a regular basis like every other Applicant comes before us and makes their case and listens to our comments and makes changes and comes back and follows the process expeditiously.^[153]

On the issue of plan approval, the planning commission member who made the motion premised the recommendation of disapproval upon the following:

[T]his process has always been bound by the ordinances on our books. We are stuck with them and so is the developer. So that's what's been guiding me through this process and that's what the law requires.

That being said, I think the developer has removed itself from the process and really in my mind we don't have a choice but to deny the plan and for that reason I'm going to move that the Planning Commission recommend the Borough Council deny the preliminary plan for the proposed Chick-fil-A at 3115 and 3133 Chestnut Street and the reasons that we are setting forth for Borough Council to consider that I'm moving for have been reviewed at length in previous meetings and for the record I will list them here.

They are contained in the review letter of the Borough engineer dated August 19, 2019, the review letter of the transportation impact study dated August 19, 2019; the zoning officer memoran-

¹⁴⁸Certified Record, at CP1089.

¹⁴⁹Certified Record, at CP1089-CP1095.

¹⁵⁰Certified Record, at CP1095-CP1096.

¹⁵¹Certified Record, at CP1098.

¹⁵²Certified Record, at CP1095.

¹⁵³Certified Record, at CP1095.

dum amended August 29th, 2019; the review letter of post construction storm water management plan dated August 28th, 2019. The Cumberland County subdivision and land development review report dated December 20th, 2018.^[154]

Other members' comments on the motion included the following:

I would just like to add that in good faith we granted the extension and we were sent a letter that described the developer's intent to remediate or made [sic] adjustments based on what was recommended and I don't know what changed in between then, but it appears that good faith is no longer honored. ...^[155]

I'd also like to add that there were still many conditions that need to be met, we were diligent and our engineer and our engineering people were diligent. Everyone was diligent in putting forward comments for this developer to make adjustments for—in order to make this project viable and at the eleventh hour they decided to walk away.^[156]

I have a series of comments that I think should be emphasized to Borough Council that I would like to enter into the record. The first one is the importance of the NPDES storm water permit that we just talked about. I think in this situation where you have run-off coming directly from a commercial facility, you know, into the tributary of Cedar Run, that you need the extra review provided by the Conservation District and the DEP.

The second thing is the—a PennDOT highway occupancy permit. There are changes to alley that affect the entrance to PennDOT's road and that's a—it's part of the requirements that they get the permit, but I think it needs to be emphasized.

The next one involves the R1—or the project being in an R1 zoning district. When you look at the frontage across 32nd Street, approximately 15 to 20 percent of the project lies within an R1 district. This is not allowed. A commercial property is just not allowed in an R1 district.

The next item is commercial deliveries. As I went through the plans it wasn't clear to me how they are going to access the site and depart the site with commercial deliveries. Chestnut Street

¹⁵⁴Certified Record, at CP1097.

¹⁵⁵Certified Record, at CP1097.

¹⁵⁶Certified Record, at CP1097.

according to the ordinance is—you can make a local delivery using Chestnut Street, but it's not open to commercial traffic; so the only choice is to make a swing and try to get back on 32nd Street.

Again, you cannot use Chestnut Street. If you try to cut through an adjoining property, that's not a commercial zone either and this wouldn't be allowed for that zoning district also.

The next item is property rights. To me it wasn't clear that they have full property rights for—for the all[ey]s and the easements and, you know, this is something that must be addressed.

And lastly, it's the whole traffic issue. According to the plans, three times a day five days a week and once on weekends the only way this facility can operate is if the traffic is forced into the R1 district using the R1 district streets, residential streets as cut-throughs to get to either Market Street or wherever else you're trying to go. You know, again this is not allowed under the R1 district. In fact, R1 districts say that you should, you know, avoid cut-throughs.¹⁵⁷

At a meeting of Appellee's borough council on December 11, 2019, Appellant's counsel appeared.¹⁵⁸ The minutes of the meeting reflect the following:

Counsel for Consolidated Properties ... discussed the entire timeline of this development plan, from December 2018 to the present. [He] addressed some of the comments made by the Camp Hill zoning officer in August 2019 regarding revisions to the development plan. [He] explained why the developer chose not to submit a revised development plan. [He] explained that Chick-fil-A will not agree to submit a plan that is compliant with Borough ordinances and that the Borough needs to work with the developer.

[The borough's zoning officer] asked [Appellant's counsel] why these comments were not made sooner at the Planning Commission meeting on November 19, 2019 and asked why [Appellant's counsel] nor anyone from the developer's agency attended that meeting. [The zoning officer] stressed that council was legally obligated to vote at this December meeting on this plan, regardless of the reasons the developer decided not to submit a revised development plan. [The zoning officer] asked [Appellant's counsel] what he hoped as an outcome for the vote. [Appellant's counsel]

¹⁵⁷Certified Record, at CP1097-CP1098.

¹⁵⁸Certified Record, at CP1137-CP1143.

replied that the developer would be open to an extension if council members agreed to not be biased against the plan.¹⁵⁹

Following the receipt of numerous negative comments from the public with regard to the project, the borough council voted, **inter alia**, on Appellant's requested waiver of preliminary submission requirements¹⁶⁰ and on the latest version of the plan.¹⁶¹ With respect to the first issue, the borough's solicitor, according to the minutes,

stated that the Planning Commission recommended denying the request. [The solicitor] explained that Section 901 of the SALDO allows for modifications of the standards of the SALDO where literal enforcement will exact undue hardship due to peculiar conditions on the land in question. The developer's written request for waiver asserted that this waiver was appropriate because 'existing supporting infrastructure (is) already in place. No new streets or significant utility improvements are needed.' This statement is not consistent with the proposed plan. [A] report submitted with the original plan included a recommendation to 'widen and improve the alley to a three-lane road which will operate as the site driveway.' Therefore, [the solicitor] recommended that Council deny the waiver of requirements of Camp Hill SALDO Section 403 regarding preliminary plan.¹⁶²

This recommendation was followed and Appellee's borough council denied the requested waiver.¹⁶³

With respect to action on the plan itself, the borough's solicitor, according to the minutes,

explained that Borough Council must decide to approve, conditionally approve, or deny the plan. If the plan complies with all objective provisions of the Borough's Subdivision and Land Development Ordinance (SALDO), as well as all other applicable regulations, the plan must be approved. However, if the plan does not comply, Council has discretion to deny the plan. Council may also approve the plan with conditions. For example, if permits are required from other government agencies, Council should not deny the plan but should require the developer to obtain the appropriate permits as a condition of approval.

¹⁵⁹Certified Record, at CP1137-CP1138.

¹⁶⁰Certified Record, at CP1139.

¹⁶¹Certified Record, at CP1140.

¹⁶²Certified Record, at CP1139.

¹⁶³Certified Record, at CP1139.

The Borough's professionals have reviewed and offered comments on the plan. The comment letters were provided to the developer and posted on the Borough's website.

The Planning Commission reviewed the Plan in August. At that meeting, the developer offered to extend Council's deadline to act on the plan, to give the developer time to meet with Borough representatives, respond to professional review comments, and submit a revised plan. Borough representatives met with the developer the following week. Legal counsel for the Borough and the developer negotiated a new schedule for submission and review of a revised plan, which was approved by Borough Council in September. However, on October 22, the developer's attorney notified the Solicitor that a revised plan will not be submitted.

The Planning Commission met on November 19. The floor was opened, but no one from the developer appeared or made a presentation to the Planning Commission. The Planning Commission recommended that Council deny the Plan. The Planning Commission cited the outstanding comments in: (i) the review letter of the Borough engineer dated August 19, 2019, (ii) the review letter of the transportation impact study dated August 19, 2019, (iii) the zoning officer memorandum, amended August 29, 2019, (iv) the review letter of the Post Construction Stormwater Management Plan, dated August 28, 2019, and (v) the Cumberland County Subdivision and Land Development Review Report dated December 20, 2018.

The Planning Commission's recommendations are advisory and non-binding on Council.¹⁶⁴

On this issue, as further indicated by the minutes of the borough council meeting,

[Councilman] Guerin made a motion [to] deny the Preliminary/Final Subdivision & Land Development Plan for the proposed Chick-fil-A at 3115-3133 Chestnut Street, for the reasons set forth in: (i) the review letter of the Borough engineer dated August 19, 2019, (ii) the review letter of the transportation impact study dated August 19, 2019, (iii) the zoning officer memorandum, amended August 29, 2019, (iv) the review letter of the Post Construction Stormwater Management Plan, dated August 28, 2019, and (v) the Cumberland County Subdivision and Land Development Review Report dated December 20, 2018. [Councilwoman] Twiford sec-

¹⁶⁴Certified Record, at CP1139.

onded. [Councilman] Schultz requested clarification that the motion reflected that council denied the waiver for preliminary plan and [the borough's solicitor] confirmed that it did. The motion passed with all in favor [with one abstention].^[165]

In a written decision dated December 19, 2019, supporting the plan's denial, Appellee's borough council enumerated 33 reasons for its action.¹⁶⁶ A number of the reasons are technical in nature and would not normally rise to the level of irremediable, fatal defects in the plan. For instance,

3. ZO § 903.A, Table 9-3, distinguishes between parking for fast food restaurants and sit down restaurants. The Parking Data Table on Sheet 5 was not updated to read 'Restaurant, Fast Food Restaurant' instead of 'Restaurant.' (Aug 2019 Review Comment No. 17).^[167]

4. SALDO § 502.1.B requires that 'streets shall be laid out to preserve the integrity of their design' and that 'local access streets shall be laid out to discourage their use by through traffic.' The plan fails to meet this requirement because it does not clarify the direction of traffic flow of the east/west alley and the north/south alley. (SALDO 502.1B) (Aug 2019 Review Comment 18).^[168]

7. ZO 731.C requires the plan to incorporate 'the transportation related improvements required to provide safe and convenient ingress and egress to the development site.' SALDO § 502.1B provides that 'local access streets shall be laid out to discourage their use by through traffic.' The plan does not meet these requirements because it fails to incorporate into the plan the direction of all proposed stop and no thru traffic signs on the plan to clarify the recommended direction of travel (as utilized and confirmed in the traffic impact study). (Aug 2019 Review Comment No. 22).^[169]

17. The plan does not comply with SALDO § 405.2.I ... because it fails to remove STOP sign at the internal intersection. (Aug 2019 TIS Revised Plans Comment No. 3).

¹⁶⁵Certified Record, at CP1140.

¹⁶⁶Certified Record, at CP1144-CP1148.

¹⁶⁷Certified Record, at CP1144.

¹⁶⁸Certified Record, at CP1145.

¹⁶⁹Certified Record, at CP1145.

18. The plan does not comply with SALDO § 405.2.I because it fails to remove or properly sign crosswalk at menu boards in order to address pedestrian safety concerns. (Aug 2019 TIS Revised Plans Comment No. 4).^[170]

30. SALDO § 502.11.B requires a valid highway occupancy permit where applicable. The plan does not meet this requirement because the developer failed to apply for an HOP from PennDOT for a proposed mountable curb providing direct access to an old unpermitted driveway onto S.R. 15 at the location of the East-West Alley (Aug. 29, 2019 Comment 3f).^[171]

While these purported deficiencies may be technical and remediable in nature, it must also be noted that Appellant has declined to submit a remediated plan addressing them.

In addition to technical and normally remediable grounds for disapproval, several of the reasons proffered by Appellee are clearly substantive in nature. For instance, with respect to compliance with the borough's zoning ordinance the decision includes the following reasons for denial of the project as proposed:

12. ZO § 902.D provides 'in no case shall there be unrestricted access from a lot along the length of a street or alley.' The perpendicular parking spaces proposed along the north/south alley violate this requirement because they provide unrestricted access from the lot along the length of the alley. (March 2019 Review Comment No. 7; Aug 2019 TIS Review Comment No. 7).

24. Based on the definition of 'lot line' (ZO § 202), the right-of-way lines of streets constitute lot lines. The plan does not meet this requirement because it does not depict lot lines coinciding with the right-of-way lines for the North-South alley or the East-West alley. (Aug 29, 2019 Comment No. 2a).^[172]

25. ZO Table 5-3 requires 30-foot rear yard setbacks. The plan does not meet this requirement because it fails to measure a 30-foot rear yard setback from the western edge of the new right-of-way in the CG District. (Aug 29, 2019 Comment No. 2b).

26. ZO Table 5-3 requires 12-foot side yard setbacks. The plan does not meet this requirement because it fails to measure a 12-foot side yard setback from the northern edge of the boundary of the East-West alley. (ZO Table 5-3) (Aug 29, 2019 Comment No. 2c).

¹⁷⁰Certified Record, at CP1147.

¹⁷¹Certified Record, at CP1148.

¹⁷²Certified Record, CP1146-CP1147.

27. Based on the definition of ‘lot line’ (ZO § 202), the right-of-way lines of streets constitute lot lines. The plan does not meet this requirement because the plan does not depict any setbacks from the right-of-way lines from the North-South alley or the East-West alley. (Aug 29, 2019 Comment No. 2d).

28. SALDO § 502 requires streets to conform to certain standards including but not limited to Table I requirements for minor streets for industrial/commercial uses. The Proposed ‘alley R.O.W.’ and ‘access easement’ do not conform to SALDO § 502 for minor streets for industrial/commercial uses. (Aug. 29, 2019 Comment No. 3c).

29. ZO § 902.D provides ‘in no case shall there be unrestricted access from a lot along the length of a street or alley.’ The proposed ‘alley R.O.W.’ and ‘access easement’ do not meet this requirement because they provide for unrestricted access to the lot along their entire lengths. (Aug 29, 2019 Comment No. 3d).^[173]

31. ZO Table 5-3 requires 35 foot front yard setbacks. The plan does not meet this requirement because the front yard setbacks on Chestnut St and 32nd St must be 35 feet. (Aug 29, 2019 Comment 4b).

32. If portions of the proposed ‘alley R.O.W.’ and ‘access easement’ are not part of any alley or street, then the proposed use of the portions of those driveways on land located within the Low Density Residential District or High Density Residential Office District for any use not allowed in those districts under the Zoning Ordinance is prohibited because the increase in the volume of traffic is not consistent with the current volume of traffic. (Aug 29, 2019, Comments 5a and 5b).

33. Per above TIS review comments, there is a failure to comply with ZO § 731. (Aug 29, 2019, Comments 6a-6d).^[174]

On other subjects of a substantive nature, the decision includes the following in its rationale for denial of the plan:

1. SALDO § 407.1A(2) requires the plan to show right-of-way lines of streets, easements and other rights of way. SALDO 407.1A(5) requires the plan to show certification of title showing that the applicant is the owner of land or agent of landowner. The plan does not meet these requirements because the plan does not pro-

¹⁷³Certified Record, at CP1148.

¹⁷⁴Certified Record, at CP1148.

vide: (i) a metes and bounds description for the proposed easement/option area for a driveway and fence onto the adjacent property (133 South 32nd Street LLC); (ii) proof of right of the applicant to construct the facilities and occupy the area from property owner. (Dec 2018 Review Comment No 21; Mar 2019 Review Comment 14; Aug 2019 Review Comment No. 13).

2. The plan does not meet the requirements of SALDO § 407.1A(2&5), as described in the previous paragraph, because the plan does not provide: (i) a metes and bounds description of the proposed easement for the drainage facilities onto the adjacent property (133 South 32nd Street LLC); and (ii) proof of the right of the applicant to construct the facilities and occupy the area from property owner. (Dec 2018 Review Comment No. 21; March 2019 Review Comment No. 14; Aug 2019 Review Comment No. 14).^[175]

With this background, Appellant's land use appeal was filed on January 21, 2020.¹⁷⁶ As noted, the grounds for the appeal are that (a) the municipality's lack of timely action on his application has resulted in a deemed approval of the project, (b) the municipality acted in bad faith with respect to the project, and (c) the municipality's denial of his subdivision and land development plan lacked legal justification.¹⁷⁷

DISCUSSION

Deemed Approval

Under Section 508 of the Municipalities Planning Code, it is provided as follows:

All applications for approval of a plat ... , whether preliminary or final, shall be acted upon by the governing body ... within such time limits as may be fixed in the subdivision and land development ordinance but the governing body ... shall render its decision and communicate it to the applicant not later than 90 days following the date of the regular meeting of the governing body ... next following the date the application is filed ... , provided that should the said next regular meeting occur more than 30 days following the filing of the application ... , the said 90-day period shall be measured from the 30th day following the day the application has been filed.

¹⁷⁵Certified Record, at CP1144.

¹⁷⁶Appellant's Notice of Appeal.

¹⁷⁷Appellant's Notice of Appeal.

(1) The decision of the governing body ... shall be in writing and shall be communicated to the applicant personally or mailed to him at his last known address not later than 15 days following the decision.

(2) When 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(1), (2). Appellee’s subdivision and land development ordinance mirrors this provision.¹⁷⁸

The state act further provides that a failure of the governing body to render a decision and communicate it to the applicant

within the time and in the manner required herein shall be deemed an approval of the application in terms as presented unless the applicant has agreed in writing to an extension of time or change in the prescribed manner of presentation of communication of the decision, in which case, failure to meet the extended time or change in the manner of presentation of communication shall have like effect.

53 P.S. §10508(3). Appellee’s subdivision and land development ordinance contains a similar provision.¹⁷⁹

For purposes of these provisions, a “plat” is defined as “the map or plan of a subdivision or land development, whether preliminary or final.”

53 P.S. §10107(a).¹⁸⁰

While conceding that Appellee took action within the extended time period to deny the “plan” in this case, Appellant argues that this was not the equivalent of denying the more inclusive application.¹⁸¹ Appellant also notes that the written decision issued did not reference the denial of Appellant’s request for a waiver of preliminary submission requirements.¹⁸² As a consequence, it is contended, the “application,” including each of its constituents, has been deemed approved.¹⁸³

This argument is not persuasive. First, by the terms of the applicable statute and ordinance, the deadline for action by the governing body re-

¹⁷⁸ Camp Hill Borough Subdivision and Land Development Ordinance, §406.15, Certified Record, at CP1549 (hereinafter Subdivision and Land Development Ordinance, §__, Certified Record, at __).

¹⁷⁹ Subdivision and Land Development Ordinance, §406.16, Certified Record, at CP1549-CP1550.

¹⁸⁰ Subdivision and Land Development Ordinance, §301, Certified Record, at CP1532.

¹⁸¹ Appellant’s Brief, at 18-19.

¹⁸² Appellant’s Brief, at 18-19; Appellant’s Reply Brief, at 14.

¹⁸³ Appellant’s Brief, at 18-19.

lates to a decision on approval of the submitted plat, or “plan.” Second, this understanding of the provisions’ import was common to both parties, as evidenced by Appellant’s reference to the “plan” in proffers of extensions of the deadline for borough action. Third, as a practical matter, the rejection of a development plan is the functional equivalent of a denial of the associated application. Finally, neither the statute nor the ordinance equates a denial of a request for modification of preliminary submission requirements with a formal disapproval of a plan, for purposes of the requirement for a written decision defending the action.

Accordingly, Appellant’s position that his development project has been deemed approved by Appellee on grounds of untimeliness cannot be sustained.

Good Faith

“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 where there has been a misunderstanding or difference of opinion.” **Raum v. Board of Supervisors of Tredyffrin Township**, 29 Pa. Commonwealth Ct. 9, 48, 370 A.2d 777, 798 (1976) (bad faith shown in municipality’s deprivation of developer’s rights under prior adjudication). An example of bad faith can be found in a municipality’s refusal to advise an applicant on how to cure deficiencies in its plans, as well as the municipality’s interpretation of its ordinance. **Highway Materials, Inc. v. Board of Supervisors of Whitemarsh Township**, 974 A.2d 539 (Pa. Commw. 2009).

However, in **Abarbanel v. Solebury Township**, 132 Pa.Cmwlth. 326, 572 A.2d 862 (1990), [the Commonwealth] Court held that where a municipality has reviewed plans for the development of property in good faith, has highlighted the plan’s deficiencies, and has given the developer an opportunity to cure those deficiencies, the municipality will not be found to have abused its discretion in denying an application based on failures of the plan to comply with township ordinances. Further, [the] Court reasoned in **Abarbanel** that ‘similar to a municipality’s duty under **Raum**, a developer has a reciprocal good faith duty to submit revised plans in a reasonable and timely manner, which will enable a municipality to comply with its duties under [Section] 508 [of the MPC] and **Raum**. [**Abarbanel v. Solebury Township**, 132 Pa. Cmwlth. 326, 331, 572 A.2d 862, 864 (1990)]. Finally, in **Herr [v. Lancaster County Planning Commission**, 155 Pa. Cmwlth. 379, 625 A.2d

164 (1993), the Commonwealth] Court concluded that there was no evidence of bad faith where the applicant was given two weeks to address the deficiencies in its plan and distinguished **Raum** as a basis for finding bad faith because the deficiencies in the plan were substantive rather than the frivolous technical details cited as a basis for the rejection in **Raum**.

Delchester Developers, L.P. v. London Grove Township Board of Supervisors, 161 A.3d 1106, 1116 (Pa. Commw. 2017).

In the present case, a number of factors militate against a conclusion that the borough's review of Appellant's land development plan was designed to frustrate or delay his right to approval. First, the borough acted affirmatively to facilitate Appellant's development of the site by transferring a parcel of land at the intersection in question to him. Second, the municipality initially attempted to accommodate Appellant's concept of the site as a non-corner lot, reaching a different conclusion only when it became obvious that the zoning ordinance could not sustain such a construction.

Third, as opposition to the project intensified, the borough issued a public statement advising the community of the developer's right to a fair process of review of the plan, of the right of a property owner to use his or her property in conformity with applicable zoning designations and regulations, and of the adverse consequences to a municipality of a failure to respect those rights. Fourth, the borough's solicitor publicly advised the municipality of its duty to act in good faith with respect to a review of the project, of the legal requirement that the plan be approved if it complied with applicable ordinances and regulations, and of the necessity for conditional approval in appropriate circumstances.

Fifth, the borough granted every extension proffered by Appellant with respect to a deadline for action to accommodate revised submissions, and it was Appellant who ultimately terminated the review process. Finally, and perhaps most important, the record evidences a conscientious effort by municipal officials and consultants, including the borough's planning commission, to properly resolve complex legal and practical issues presented by a controversial development plan that was significantly reconfigured during the course of review.

Under these circumstances, support cannot be found for Appellant's contention that Appellee acted in bad faith with respect to its review of the project.

Sufficiency of Legal Rationale for Denial of Plan

General principles. A party seeking approval of a land development plan bears the burden of showing its entitlement to approval. **Ball**

v. Montgomery Township Board of Supervisors, 143 Pa. Commonwealth Ct. 142, 598 A.2d 633 (1991).

On a land use appeal from a governing body’s decision on a land development plan, “where the court receives no additional evidence, ... the standard of review is whether the [governing body] committed an abuse of discretion, an error of law, or made findings that are not supported by substantial evidence.” **LTS Development, Inc. v. The Middle Smithfield Township Board of Supervisors**, 2003 WL 23864650, at 2 (Monroe County 2003); see **Wolter v. Board of Supervisors of Tredyffrin Township**, 828 A.2d 1160 (Pa. Commw. 2003).

Where a “plan complies with all objective provisions of the applicable subdivision [and land development] ordinance as well as all other applicable regulations, the plan must be approved.” **Herr v. Lancaster County Planning Commission**, 155 Pa. Commonwealth Ct. 379, 387, 625 A.2d 164, 168 (1993). However, “[w]here significant use or zoning issues are apparent on the face of a site plan application, it does not offend policy to deny approval of the plan and require the developer to resolve the use or zoning issue first” **Bell Atlantic Mobile Systems, Inc. v. Zoning Hearing Board of the Township of O’Hara**, 676 A.2d 1255, 1263 (Pa. Commw. 1996). Importantly, “[a] rejection of the plan may stand ... **if validly supported by even one of several objections.**” **Herr**, supra at 387, 625 A.2d at 168-69 (emphasis added).

In this context, courts are instructed to exercise deference “when reviewing a governing body’s interpretation of the ordinances it enacts and applies.” **In re Provo Pinegood Sumneytown LLC**, 216 A.3d 512, 517-18 (Pa. Commw. 2019).

With respect to split-zoned land, it has been said that, “[w]here two adjacent lots are split-zoned commercial and residential, and the owner proposes a single commercial use, the appropriate procedure is to request a variance to use the residential parcel for commercial purposes.” **Zoning Board of Adjustment of Philadelphia v. Fun Bun, Inc.**, 5 Pa. Commonwealth Ct. 439, 443, 291 A.2d 344, 346 (1972); see **LHT Associates, LLC v. Township of Hampton**, 809 A.2d 1072 (Pa. Commw. 2002).

Rear yard setback. Under the Appellee’s zoning ordinance, a corner lot is “[a] lot at the junction of and abutting on two (2) or more intersecting streets, excluding alleys.”¹⁸⁴ As described by the ordinance, a corner lot has one rear yard.¹⁸⁵

¹⁸⁴Zoning Ordinance, §202.A, Certified Record, at CP1214.

¹⁸⁵Zoning Ordinance, §202.A (“LOT, CORNER”), Certified Record, at CP1214.

The rear yard's "lot line" (the "line that separates the lot from another lot **or from a street** or any other public or private space"¹⁸⁶), from which the setback (the required distance "between a ... setback line and an abutting lot line or street right-of-way line, as applicable"¹⁸⁷) for placement of "a use, structure and/or building" is measured,¹⁸⁸ "shall coincide with the lot line abutting any alley, otherwise it shall be the lot line opposite the lot line along the street of address,"¹⁸⁹ according to the ordinance.

A "street" includes any way "used or intended to be used for vehicular traffic," including an alley.¹⁹⁰ A "right-of-way" includes a strip of land "intended to be occupied by a road, street ... [or] other similar uses, **whether public or private**,"¹⁹¹ and a "street line/right-of-way line" is "[a] line defining the edge of a street right-of-way and separating the street line from an abutting property or lot,"¹⁹² under the ordinance.

The rear yard setback under the ordinance in a General Commercial Zoning District is 30 feet, "except [it is] ... 40 feet for a new or expanded principal nonresidential building from a directly abutting residential lot in a Residential Zoning District."¹⁹³

In the present case, it appears clear that the project site is a corner property for purposes of Appellee's zoning ordinance, and that its rear yard is on the eastern side of the property in which the north/south corridor resides. Appellant's contention that the corridor is a street, and therefore not subject to the use restrictions of the Low Density Residential District in which it is partially situated,¹⁹⁴ has been accepted by the borough for the sake of argument.¹⁹⁵ However, a consequence of this proposition, according to the borough, is that the rear yard setback is to be measured from the street's right-of-way line, as a species of lot line.¹⁹⁶ It is not

¹⁸⁶Zoning Ordinance, §202.A ("LOT LINE"), Certified Record, at CP1215 (emphasis added).

¹⁸⁷Zoning Ordinance, §202.A ("SETBACK"), Certified Record, at CP1227.

¹⁸⁸Zoning Ordinance, §202.A ("SETBACK LINE"; "SETBACK, REAR"), Certified Record, at CP 1227, CP1229.

¹⁸⁹Zoning Ordinance, §202.A ("LOT, CORNER"; "LOT LINE, REAR"), Certified Record, at CP1214, CP1215).

¹⁹⁰Zoning Ordinance, §202.A ("STREET"), Certified Record, at CP1236.

¹⁹¹Zoning Ordinance, §202.A ("RIGHT-OF-WAY"), Certified Record, at CP1224 (emphasis added).

¹⁹²Zoning Ordinance, §202.A ("STREET LINE/RIGHT-OF-WAY LINE"), Certified Record, at CP1236.

¹⁹³Zoning Ordinance, Table 5-3, Certified Record, at CP1283.

¹⁹⁴**See Strasburg Associates I v. West Bradford Township**, 77 Pa. Commonwealth Ct. 166, 465 A.2d 124 (1983).

¹⁹⁵Appellee's Brief, at 9.

¹⁹⁶Appellee's Brief, at 9-11.

disputed that Appellant’s plan does not conform to this interpretation of the ordinance,¹⁹⁷ and Appellant’s contention is that for setback purposes the lot line “can be either the line separating the lot from another lot **or** a line separating a lot from a street **or** a line separating a lot from a public or private space.”¹⁹⁸

In the court’s view, Appellee’s interpretation of its ordinance is the more reasonable one. When all of the provisions of the ordinance quoted above are considered, it does not seem likely that multiple versions of a lot line for purposes of setback were intended where a developer has employed a street in the project.

Unrestricted lot access along street. While permitting driveways and access drives with respect to lots, the borough’s zoning ordinance provides that “[i]n no case shall there be unrestricted access from a lot along the length of a street or alley.”¹⁹⁹ It appears that unrestricted-access parking spaces line the north/south corridor on Appellant’s plan to a substantial degree,²⁰⁰ although not, as Appellant would point out,²⁰¹ along its **entire** length.

The purpose of this proscription in the zoning ordinance is obviously to prevent the chaotic situation that would result from vehicles moving onto and off streets at innumerable points along a site’s frontage. As such, Appellee’s interpretation of the provision to encompass the condition proposed by Appellant seems to be the more practical application of the proscription than the construction that Appellant infers was intended.

Certification of title. Under Section 407.1.A(5) of the borough’s subdivision and land development ordinance, final approval of a plan is dependent upon “[c]ertification of title showing that the applicant is the owner of the land, agent of the landowner or tenant with permission of the landowner.”²⁰² In this case, the development as proposed appears to be projected onto neighboring property for purposes of a driveway, drainage and fencing.

Early in the process, the concern of the aforesaid engineering company with regard to Appellant’s right to extend the project onto adjoining property elicited Appellant’s promise to submit “[a] copy of the drainage

¹⁹⁷ See Appellant’s Brief, at 15-16; Appellant’s Reply Brief, at 9-11; Appellee’s Brief, at 9-11.

¹⁹⁸ Appellant’s Brief, at 16.

¹⁹⁹ Zoning Ordinance, §902.D, Certified Record, at CP1408.

²⁰⁰ Certified Record, at CP0732.

²⁰¹ See Appellant’s Reply Brief, at 7.

²⁰² Subdivision and Land Development Ordinance, §407.1.A(5), Certified Record, at CP1551.

easement prior to approval of the final plan.”²⁰³ Subsequently, Appellant’s representative assured the borough that proof of the owner’s consent for the drainage and fence easement would be provided “once finalized.”²⁰⁴

In his brief, Appellant argues that “any disputes between property owners as to the use of a private easement is a private matter between property owners that cannot justify a land use denial.”²⁰⁵ In this regard, it is true that a municipality’s governing body may not premise the denial of a development plan upon the existence of a dispute as to the scope of an easement possessed by the developer, inasmuch as a court is the proper forum for resolution of such a dispute.²⁰⁶

On the other hand, the assertion of at least a colorable claim to entitlement to a projection of a proposed land development onto adjoining property would appear to be a reasonable concern of the governing body charged with approval of the plan, and authority to act upon this concern is found in the provision of Appellee’s subdivision and land development ordinance quoted above. **Cf. Hummelstown Swim Club v. Borough of Hummelstown**, 2017 WL 2118776, at 11 (Pa. Commw. 2017) (“Council could require that title issues be resolved before approval of the proposed development.”) (cited pursuant to Section 414 of the Commonwealth Court’s Internal Operating Procedures).

Accordingly, Appellant’s argument is not persuasive that Appellee committed an error of law or abuse of discretion in its application of Section 407.1.A(5) of its subdivision and land development ordinance in declining to give final approval to Appellant’s plan.

Waiver of preliminary submission requirements. Under Article IV of Appellee’s Subdivision and Land Development Ordinance, a three-step procedure for review of most subdivision and land development plans within the borough is provided for. The second step²⁰⁷ is governed by Sections 404 (Preliminary Plats: Procedure) and 405 (Preliminary Plat: Specifications)²⁰⁸ of the ordinance. This procedure includes submission of a preliminary plat, including with it the following items, **inter alia**:

A copy of a report, where deemed necessary by the Borough Council or Borough Engineer, indicating an estimated volume of

²⁰³Certified Record, at CP0429.

²⁰⁴Certified Record, at CP0724.

²⁰⁵Appellant’s Reply Brief, at 9.

²⁰⁶**B.R. Associates v. Board of Commissioners of Township of Upper St. Clair**, 136 A.3d 548 (Pa. Commw. 2016).

²⁰⁷Subdivision and Land Development Ordinance, §404, Certified Record, at CP1541-CP1542.

²⁰⁸Subdivision and Land Development Ordinance, §405, Certified Record, at CP1543-CP1545.

vehicular traffic movement and the adequacy of the proposed and existing streets and highways to carry the traffic both within and beyond the proposed development including possible solutions to such problems as may be thereby identified.

Where the proposed subdivision abuts a State Highway (Pennsylvania Route or United States Route), evidence in writing from the Pennsylvania Department of Transportation indicating the Department's concurrence with the proposed design for driveway access and drainage required for issuance of the Department Highway Occupancy permits.^[209]

Review of the project by both the planning commission and the borough council is contemplated under this procedure, and preliminary approval is effective for a period of five years.²¹⁰

A waiver of the requirement for a preliminary plat **may** be granted by the borough council if (a) **inter alia**, the proposed project "is on an existing street and no new streets are involved"²¹¹ or (b) the requirement would impose an undue hardship upon the applicant due to "peculiar conditions pertaining to the land in question, provided that such [a waiver would] not be contrary to the public interest and that the purpose and intent of [the ordinance] would be observed."²¹²

In the present case, where (a) it is more than arguable that the development involves a new street in the form of the expanded north/south corridor for traffic, (b) an undue hardship is not implicated by peculiar conditions pertaining to the land, (c) Appellant elected to make no presentation before the planning commission with respect to the latest, substantially reconfigured version of the development plan, and (d) Appellant chose not to address numerous concerns arising out of the revised plan by way of an amended submission, it cannot be found that the borough council's unwillingness to approve the plan as a final plat is an abuse of discretion.

²⁰⁹Subdivision and Land Development Ordinance, §§405.2.I, 405.2.G, Certified Record, at CP1545.

²¹⁰Subdivision and Land Development Ordinance, §404, Certified Record, at CP1541-CP1542.

²¹¹Subdivision and Land Development Ordinance, §403, Certified Record, at CP1539.

²¹²Subdivision and Land Development Ordinance, §901.1, Certified Record, at CP1597.

CONCLUSION

Appellant's frustration with the result obtained with respect to the land development plan **sub judice** is understandable, given the effort and resources expended upon it and the perceived early prospect of success, much of the delay in the approval process was occasioned by Appellant's initial characterization of the site as a non-corner lot, a legal position that ultimately proved unsustainable. Based upon the foregoing, and without exhausting the analysis of other reasons proffered for disapproval of the plan, including traffic, safety, and front yard setback issues, the record does not support Appellant's contentions that the plan has been deemed approved by operation of law, that Appellee acted in bad faith in its review of the plan, or that a legal justification was lacking for denial of the plan.²¹³

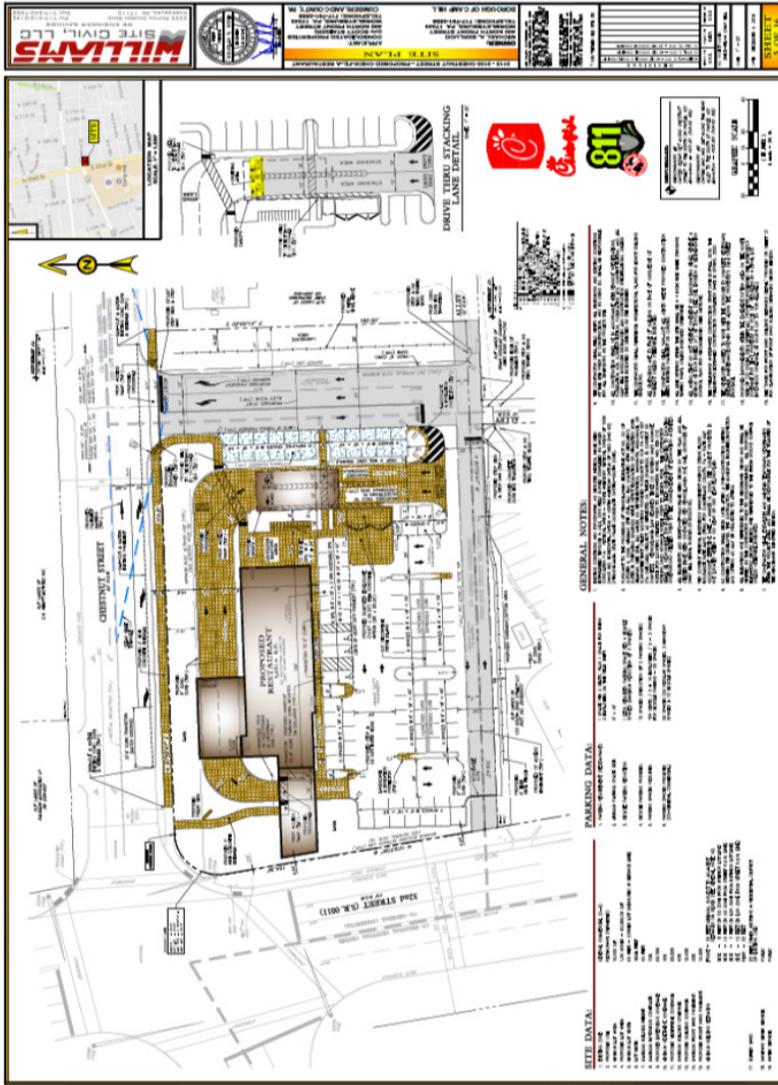
Accordingly, the following order will be entered:

ORDER OF COURT

AND NOW, this 30th day of October, 2020, upon consideration of Appellant's Notice of Appeal in the above-captioned case, filed January 21, 2020, following oral argument held on June 19, 2020, and for the reasons stated in the accompanying opinion, the appeal is denied.

²¹³From an aerial view, not caught up in the unkind and discourteous statements of a minority of the Camp Hill citizenry, there is merit in the development of these lots for the betterment of the borough. The attorneys are commended for keeping above that petulant fray and entreating the citizenry to follow their civil example.

Appendix Certified Record at CP0372
 Image taken from Court Ex. 1
 Petitioner's Plan 7-26-19 sheet 5 of 16



ESTATE AND TRUST NOTICES

Notice is hereby given that, in the estates of the decedents set forth below, the Register of Wills has granted letters testamentary or of administration to the persons named. Notice is also hereby given of the existence of the trusts of the deceased settlors set forth below for whom no personal representatives have been appointed within 90 days of death. All persons having claims or demands against said estates or trusts are requested to make known the same, and all persons indebted to said estates or trusts are requested to make payment, without delay, to the executors or administrators or trustees or to their attorneys named below.

FIRST PUBLICATION

Blazina, Robert J., dec'd.
 Late of Cumberland County.
 Executrix: Sylvia I. Blazina, 60 Avery Way, Mechanicsburg, PA 17050.
 Attorneys: Elyse E. Rogers, Esquire, Sullivan Rogers & Feichtel, 100 Sterling Parkway, Suite 100, Mechanicsburg, PA 17050.

Fischer, Wilma L., dec'd.
 Late of Upper Allen Township.
 Executor: Larry F. Smith.
 Attorneys: Michael L. Bangs, Esquire, Bangs Law Office, LLC, 429 South 18th Street, Camp Hill, PA 17011.

Gutshall, Harold L. a/k/a Harold Leroy Gutshall, dec'd.
 Late of Southampton Township.
 Executors: Cheryl Wenger and Alan D. Gutshall c/o R. Thomas Murphy & Associates, P.C., 237 East Queen Street, Chambersburg, PA 17201.
 Attorneys: Jared S. Childers, Esquire, R. Thomas Murphy & Associates, P.C., 237 East Queen Street, Chambersburg, PA 17201.

Jasinski, Theresa M., dec'd.
 Late of Hampden Township.
 Executrix: Susan M. Lentz.
 Attorneys: John P. Sanderson, III, Esquire, The Sanderson Law Firm, Sanderson Building, 1 Terrace Drive, Olyphant, PA 18447.

Kelly, Rick Eugene, dec'd.
 Late of Dickinson Township.
 Executor: Tracy Starnes c/o Sharon E. Myers, Esquire, CGA Law Firm, PC, P.O. Box 606, East Berlin, PA 17316.
 Attorneys: Sharon E. Myers, Esquire, CGA Law Firm, PC, P.O. Box 606, East Berlin, PA 17316.

Lefever, Linda P. a/k/a Linda Pearson Lefever, dec'd.
 Late of Upper Allen Township.
 Executors: Elizabeth H. Lefever and Richard P. Lefever.
 Attorneys: Elizabeth P. Mullaugh, Esquire, McNeas Wallace & Nurick LLC, 100 Pine Street, P.O. Box 1166, Harrisburg, PA 17108-1166, (717) 232-8000.

Mays, Wanda Lou, dec'd.
 Late of West Pennsboro Township.
 Executrix: Margo Lynn Mays, Boyds, MD.
 Attorneys: Jacqueline A. Kelly, Esquire, JSDC Law Offices, 555 Gettysburg Pike, Suite C400, Mechanicsburg, PA 17055, (717) 533-3280.

Nye, Mary Ruth, dec'd.
 Late of Newburg Borough.
 Executrix: Marsha G. Kuhn c/o R. Thomas Murphy & Associates, P.C., 237 East Queen Street, Chambersburg, PA 17201.
 Attorneys: Jared S. Childers, Esquire, R. Thomas Murphy & Associates, P.C., 237 East Queen Street, Chambersburg, PA 17201.

Pringle, Goldie I., dec'd.
 Late of West Pennsboro Township.

Executor: Gilbert L. Pringle, 309 Byers Ln., Gettysburg, PA 17325.
Attorney: None.

Royer, Loretta E., dec'd.

Late of Lower Allen Township.
Revocable Inter Vivos Trust dated May 31, 2006, as amended.
Settlor: Loretta E. Royer.
Senior Trust Administrator: LeTort Management & Trust Company, Attn.: Charlene L. Feuchtenberger, 3130 Morningside Drive, Camp Hill, PA 17011.

Silbaugh, Bonita S., dec'd.

Late of Lower Allen Township.
Executor: Joshua A. Silbaugh, 524 Lavina Drive, Mechanicsburg, PA 17055.
Attorney: None.

Strauch, Joseph A., dec'd.

Late of Mechanicsburg.
Executrix: Eileen Eckhart-Strauch, 2736 S. Rosegarden Blvd., Mechanicsburg, PA 17055.
Attorney: None.

SECOND PUBLICATION

Bielaszka, Dottie M., dec'd.

Late of Monroe Township.
Executrix: Jennifer A. Vogelsong.
Attorneys: Katherine L. McDonald, Esquire, Dethlefs-Pykosh Law Group, LLC, 2132 Market Street, Camp Hill, PA 17011, (717) 975-9446.

Davis, Emily L., dec'd.

Late of Hampden Township.
Executrix: Paulette Y. Matthews c/o Stock and Leader, 221 West Philadelphia Street, Suite 600, York, PA 17401.
Attorneys: Thomas M. Shorb, Esquire, Stock and Leader.

Glessner, Tracey E., dec'd.

Late of East Pennsboro Township.
Administrator: James A. Glessner.

Attorneys: Jessica Fisher Greene, Esquire, Walters & Galloway, PLLC, 39 West Main Street, Mechanicsburg, PA 17055.

Kleinklaus, James, dec'd.

Late of North Middleton Township, Carlisle.
Executrix: Sharon L. Kleinklaus.
Attorneys: Kristen Snyder, Esquire, Jackson Law Firm, PLLC, 1215 Manor Drive, Suite 202, Mechanicsburg, PA 17055, (717) 620-7119.

Mosser, Ruth E., dec'd.

Late of Camp Hill.
The Ruth E. Mosser Protector Trust, Dated July 30, 2019.
Settlor: Ruth E. Mosser.
Trustee: Jeannie M. Rombach.
Attorneys: Brittany O. L. Smith, Esquire, Steinbacher, Goodall & Yurchak, 413 Washington Boulevard, Williamsport, PA 17701.

Myers, Wayne E., Jr., dec'd.

Late of Hampden Township.
Executrix: Amanda R. Sabers c/o Craig A. Hatch, Esquire, Halbruner, Hatch & Guise, LLP, 2109 Market Street, Camp Hill, PA 17011.
Attorneys: Craig A. Hatch, Esquire, Halbruner, Hatch & Guise, LLP, 2109 Market Street, Camp Hill, PA 17011.

Noss, Howard M., dec'd.

Late of Upper Allen Township.
Executors: Gayle A. George and Deanna J. Boyanowski.
Attorneys: Murrel R. Walters, III, Esquire, Walters & Galloway, PLLC, 54 East Main Street, Mechanicsburg, PA 17055.

Price, Shirley Mae, dec'd.

Late of Silver Spring Township, Mechanicsburg.
Executrix: Wendy L. Campbell.

Attorneys: Kristen Snyder, Esquire, Jackson Law Firm, PLLC, 1215 Manor Drive, Suite 202, Mechanicsburg, PA 17055, (717) 620-7119.

Riggleman, Fern E., dec'd.
 Late of South Middleton Township.
 Executrix: Sharon Vaughn c/o Martson Law Offices, 10 East High Street, Carlisle, PA 17013.
 Attorneys: Colleen A. Baird, Esquire, Martson Law Offices.

Weaver, Barbara Lee, dec'd.
 Late of Upper Allen Township.
 Executor: Randall John Weaver.
 Attorneys: Katherine L. McDonald, Esquire, Dethlefs-Pykosh Law Group, LLC, 2132 Market Street, Camp Hill, PA 17011, (717) 975-9446.

THIRD PUBLICATION

Cho, Jay Jungho, dec'd.
 Late of Hampden Township.
 Executrix: Kay Cho, 1675 Lambs Gap Road, Mechanicsburg, PA 17050.
 Attorney: Joseph J. Dixon, Esquire, 126 State Street, Harrisburg, PA 17101.

Garman, Terry A., dec'd.
 Late of North Middleton Township.
 Co-Administrators: Pamela K. Feuchtenger and Dennis E. Garman c/o Marcus A. McKnight, III, Esquire, Irwin & McKnight, P.C., 60 West Pomfret Street, Carlisle, PA 17013.
 Attorneys: Irwin & McKnight, P.C.

Keane, Michael J., dec'd.
 Late of New Cumberland Borough.
 Co-Executors: Michael Keane, Jr., Patrick C. Keane and Mary Eileen Mueller, 700 Carol Street, New Cumberland, PA 17070.
 Attorney: None.

Ochs, Magdalene A., dec'd.
 Late of Camp Hill Borough.
 Executor: Edwin L. Ochs, III c/o Lauren E. Kays, Esquire, Bogar & Hipp Law Offices, LLC, One West Main Street, Shiremanstown, PA 17011.
 Attorneys: Lauren E. Kays, Esquire, Bogar & Hipp Law Offices, LLC, One West Main Street, Shiremanstown, PA 17011.

Seeley, Joyce A. a/k/a Joyce Ann Seeley, dec'd.
 Late of Hampden Township.
 Executor: Gerald J. Shekletski, Esquire, 414 Bridge Street, New Cumberland, PA 17070.
 Attorney: Gerald J. Shekletski, Esquire, 414 Bridge Street, New Cumberland, PA 17070.

Stefanik, Ruth A., dec'd.
 Late of North Middleton Township.
 Executrix: Juli A. Stefanik c/o James M. Robinson, Esquire, Salzmänn Hughes PC, 354 Alexander Spring Road, Suite 1, Carlisle, PA 17015.
 Attorneys: Salzmänn Hughes, P.C.

Sujeski, Harold Warren, Jr. a/k/a Harold W. Sujeski, Jr., dec'd.
 Late of East Pennsboro Township.
 Executor: Chad Warren Sujeski.
 Attorneys: Gregory L. Hollinger, Esquire, Gates & Gates, P.C., 250 York Street, Hanover, PA 17331.

Travitz, Nancy L., dec'd.
 Late of Lower Allen Township.
 Executrix: Ellen T. Dayhoff, 744 Solomon Road, Gettysburg, PA 17325.
 Attorneys: Todd A. King, Esquire, Salzmänn Hughes PC, 112 Baltimore Street, Gettysburg, PA 17325.

Ward, Richard B., dec'd.
 Late of Hampden Township.

Executors: Laura K. Voigt, 34 Windsor Road, Pittsburgh, PA 15215 and Scott J. Ward, 8202 Talbot Road, Edmonds, WA 98026. Attorneys: Kevin S. Koscil, Esquire, Barley Snyder, 213 Market Street, 12th Floor, Harrisburg, PA 17101.

Improvements thereon: RESIDENTIAL DWELLING. Judgment Amount: \$168,114.20. PROPERTY ADDRESS: 1670 WILLIAMS GROVE ROAD, DILLSBURG, PA 17019. UPI# 20-000-PC-0101.D0-00000.

Notice is further given to all parties in interest and claimants that a Schedule of Proposed Distribution will be filed by the Sheriff of York County not later than thirty (30) days after the sale and Distribution will be made in accordance with the schedule unless exceptions are filed thereto within ten (10) days after posting.

KML LAW GROUP P.C.

Attorneys for Plaintiff

Seized, levied upon and taken into execution as the Real Estate aforesaid by:

RICHARD P. KEUERLEBER,

Sheriff

Sheriff's Office

York County,

Pennsylvania

Dec. 11, 18, 25

Wilt, Irene A., dec'd.

Late of Middlesex Township.

Executors: Marshall G. Wilt and Wanda E. Lee.

Attorneys: Jessica Fisher Greene, Esquire, Walters & Galloway, PLLC, 54 East Main Street, Mechanicsburg, PA 17055.

SHERIFF'S SALE

NOTICE IS HEREBY GIVEN that February 8, 2021 at 2:00 O'Clock, P.M., prevailing time, by virtue of a Writ of Execution issued out of the Court of Common Pleas of York County, Pennsylvania on Judgment of:

Docket Number: 2019-SU-001465

Plaintiff(s) QUICKEN LOANS INC.

vs.

Defendant(s) JODIE R. SHOVER a/k/a JODIE R. YOUCH

And to me directed, I will expose at public sale in the York County Administrative Center, City of York, County of York, Commonwealth of Pennsylvania the following real estate to wit: AS THE REAL ESTATE OF:

JODIE R. SHOVER a/k/a JODIE R. YOUCH

Owner(s) of property situate in CARROLL TOWNSHIP, YORK County, Pennsylvania, being 1670 Williams Grove Road, Dillsburg, PA 17019.

PARCEL #: 20000PC0101D000000.

NOTICE

In the Court of Common Pleas of Perry County, Pennsylvania Civil Division

No. CV-6 of 2020

In the matter of SEAN ANDREW POTTER (Attorney Registration No. 92102)

Pursuant to an order dated November 16, 2020, Hannah Suhr, Esq., was appointed as Conservator for Sean Andrew Potter.

If you believe that Sean Andrew Potter is holding monies that belong to you, please contact the Conservator immediately. Any monies remaining in the accounts of Sean Andrew Potter may be paid over to the Pennsylvania Lawyers Fund for Client Security.

If you are a current or former client, please call the Conservator's Office at (717) 243-7135 to retrieve your files. All unclaimed files will be destroyed within 180 days of the date of this Notice, in accordance with Rule 322 of the Pennsylvania Rules of Disciplinary Enforcement.

If you are in need of substitute counsel, you can contact the Pennsylvania Bar Association Lawyer Referral and Information Service at 1-800-692-7375.

HANNAH R. SUHR, ESQUIRE

Conservator for

Sean Andrew Potter

2011 W. Trindle Road

Carlisle, PA 17013

(717) 243-7135

Dec. 25

**FICTITIOUS NAME
REGISTRATION**

NOTICE IS HEREBY GIVEN that an Application for Registration of Fictitious Name was filed with the Department of State of the Commonwealth of Pennsylvania on November 30, 2020, for:

MXBoot.com

at: 6653 Carlisle Pike, Mechanicsburg, PA 17050. The names and address of the individuals interested in the business are Christopher Louis Cuomo and Sam Louis Cuomo at 6653 Carlisle Pike, Mechanicsburg, PA 17050. This was filed in accordance with 54 Pa. C.S. 311.

Dec. 25

NOTICE

NOTICE IS HEREBY GIVEN that a Certificate of Organization was filed with the Corporation Bureau of the Pennsylvania Department of State, at Harrisburg, Pennsylvania, for the purpose of forming a domestic business corporation under the Pennsylvania Uniform Limited Liability Company Act of 2016 (P.L. 1328, No. 170), 15 Pa. C.S.A. §8811 et seq. as amended. The purpose of the corporation is to provide electrical services and to engage in any other lawful business a corporation may engage in.

The name and address of the corporation is:

JLS ELECTRICAL SERVICE, LLC
15 Ball Park Drive, Gardners, PA 17324.

ERNEST J. WOOLEVER,
ESQUIRE

42 West Main Street
Palmyra, PA 17078

Dec. 25

NOTES



PERIODICAL PUBLICATION

*** Dated Material. Do Not Delay. Please Deliver Before Monday, December 28, 2020**