

themorningcall.com

Zoners delay ruling on subpoenas

Developer wants documents from Forks it says will bolster argument in fight against ordinances. Hearing board will meet March 24.

By Madeleine Mathias Of The Morning Call
February 26, 2008

Developers of a proposed 3,000-unit housing project in Forks Township must wait until next month to see whether the township will be compelled to produce documents in a long-standing challenge to the township's zoning ordinances.

KMRD, the developer of Kings Mill, wants the township Zoning Hearing Board to subpoena the administration to release the papers in a battle to prove that zoning ordinances adopted before 2006 are invalid. KMRD said the township failed to properly follow the Municipal Planning Code statutes when advertising its ordinances. At a meeting last week, zoners delayed deciding on the request until March 24.

KMRD attorney John VanLuvanee has argued those records in the township files will show the only valid ordinance is the one approved in 1983. That ordinance allowed for higher-density development in what is now farmland preservation district than the 2006 one that replaced it.

Tim Weis, township zoning officer, said township officials renamed districts in 2000, with the northeast section of the township becoming farmland preservation, restricting development to 2-acre lots.

It is that requirement KMRD has been challenging since 2005 when the Board of Supervisors rejected plans for 3,000 houses, apartments, condominiums and mobile homes on 535 acres in the farmland preservation district.

With 19 hearings held in the past couple of years on the KMRD substantive challenges -- that Forks isn't allowing multiple units and affordable housing -- the developers recently threw in another request: a procedural challenge to the way the township adopted the 2006 zoning ordinance.

Township solicitor Karl Kline said KMRD is trying to prove that the township failed to properly advertise the 2006 ordinance. VanLuvanee argued last week that he believes he can prove the township did not include the full ordinance or a summary of that ordinance in the advertisements required to be published in the newspaper.

VanLuvanee said his clients have challenged not only the 2006 ordinance, but the amendments made to the 1983, 1986, 1988 and 2001 ordinances. In each, he said Friday, the township's procedures failed to meet the Municipal Planning Code statutes and therefore the ordinances weren't valid.

If that's the case, he said, KMRD would be governed by the 1983 ordinance, which included zoning to permit the development of multi-family housing.

At a Feb. 11 zoners meeting, VanLuvanee alleged there were 18 things the township had done wrong in its adoption of the 2006 ordinance. Among them were failure to hold public hearings or to post proper notices of hearings.

But at the end of the Feb. 18 meeting, those 18 challenges had dropped to one, surprising not only the zoners but the township's attorneys, Steven Goudsouzian and Kline.

VanLuvanee said he could end the challenge in five minutes by pointing out that the township did not include the entire 2006 ordinance in its advertisements.

Kline said publishing the entire 200-page ordinance could cost six figures because the Municipal Planning Code requires advertising four times before the vote.

Kline said he will testify at the March 24 meeting that the township complied with the code's requirements..

When the ordinance was passed, Kline said, people had 30 days to review and issue any comments. According to the Municipal Planning Code, no objections could be made after that time.

But VanLuvanee has cited a state Supreme Court opinion to bolster his challenge.

Kline said the court's 2006 decision in Glen-Gery Co. vs. Dover Township Zoning Hearing Board in York County said if defects in the ordinance passage were so serious, then the ordinance was invalid from the beginning.

The court, in essence, Kline said, said there should be no time limit in appealing the ordinance.

At the Feb. 18 meeting, Goudsouzian said he was not prepared to offer a defense to VanLuvanee's argument because it was the first time he was hearing it.

Michael Shay, the zoners' solicitor, despite pressure from VanLuvanee for immediate action, said Goudsouzian had had no opportunity to review the charge.

Because of that unexpected action, the zoners decided no subpoenas would be issued until the township had a chance to respond.

Goudsouzian said at the meeting, the township had already provided KMRD with 300 pages of documents on all actions on the 2006 ordinance.

Attorney Kellie McGowan, VanLuvanee's assistant, said she had filed many right-to-know requests with the township for documents. She agreed she received and reviewed those documents but she said she did not receive everything she was entitled to. She did not specifically list them.

madeleine.mathias@mcall.com

610-559-2144

Copyright © 2008, [The Morning Call](#)