

Court upholds ruling on park development

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WEST CHESTER — The Chester County Court of Common Pleas has upheld a decision by the East Caln Board of Supervisors to allow 70 homes to be built on a seven-acre parcel in the area of Kardon Park.

The board ruled that 70 homes could be built as the first phase of development for the entire Kardon Park project. The other development, in the Borough of Downingtown, was disallowed

through a decision by the Chester County Orphan's Court. That decision is currently being appealed at the Commonwealth Court level.

The East Caln decision was appealed by Ann Feldman, president of the Friends of Kardon Park and a borough council member.

Judge Ronald C. Nagle, who is now retired, wrote that there was "no error of law or abuse of discretion by the board." He said that his role in the appeal was to determine if any law was broken or abuse committed by the board. He did not hear evidence, but instead read the record of the conditional-use hearing.

Developer Sarah Peck said she felt "elation" after reading the decision.

"I was pleased with how strong the decision was in our favor," Peck said in a recent interview. "I am excited to move forward with the project."

Feldman said she was "disappointed" by the outcome. She said her and her attorney, Sam Stretton, are still deciding whether they want to appeal Nagle's decision.

Peck said she hopes there is no appeal and that based on the decision she feels that an appeal has "a very unlikely chance of success."

Feldman raised numerous issues in her appeal. Nagle rejected the appeal issues for different legal reasons.

Feldman said the board improperly allowed Peck to use park land included in the other parcels of Kardon Park and the fourth lake included in that parkland to fulfill open space and storm-water requirements.

Nagle wrote that the general township ordinance states that 40 percent of the land proposed for development needs to be dedicated for

"Specific provisions of an ordinance control over general ones," Nagle said.

Nagle said use of the fourth lake for storm-water management would improve the quality of the lake and not "adversely affect" the use of the park for recreation.

"The park will remain as it has been in the past, a bucolic place within which the general public may recreate itself," Nagle wrote.

Feldman also argued that easements provided on the park land for storm-water runoff would constitute the sale of public park land. Nagle said the easements to not deter the public from using the park and are not a sale of land.

The supervisors approved the zoning change that allowed the proposed development just before it approved the conditional-use application. Stretton argued that it could not do so, because of a law that states that any zoning changes cannot adversely impact any development projects currently proposed in a municipality. Stretton argued, according to the decision, that even though this zoning change allowed the use and had no adverse impact, the law should still apply to this case.

"In short, it doesn't," Nagle wrote.

Feldman also appealed on the basis that the borough officially voted to become party to the hearings long after the hearings began. Nagle wrote that since the borough owned the land, it was automatically a party to the proceeding.

The appeal also argued that the developers did not have enough specifics in their proposal to warrant approval. Nagle wrote the developer needed only to show that it met the general zoning ordinance requirements, such as off-street parking or storm-water management techniques.

Nagle said the developers did that and the board was correct in concluding that the development met the burden of proof to comply with the ordinances.

Because he did not find any legal backing to any of the issues advanced by Feldman, Nagle upheld the board's decision.

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