

02-1842-CD
RICHARD L. KOVALICK, et al. vs. BRADFORD TWP. BOARD of
SUPERVISORS

TIMOTHY E. DURANT
ATTORNEY AT LAW
201 NORTH SECOND STREET
CLEARFIELD, PENNSYLVANIA 16830
(814) 765-1711

[REDACTED]

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

RICHARD L. KOVALICK and LINDA L.	*	
KOVALICK, BRIAN G. AVENI and	*	
MARCELLA J. AVENI, NORMAN McDOWELL	*	
and KIMBERLY McDOWELL, and	*	
DONNA J. LIPPERT	*	
	*	
Appellants,	*	
vs.	*	No. 2002- 1842 -CD
	*	
THE BOARD OF SUPERVISORS OF	*	NOTICE OF APPEAL
THE TOWNSHIP OF BRADFORD,	*	
Appellee.	*	
		Appeal from grant of permit under the Subdivision and Land Development Ordinance

Filed on behalf of:

RICHARD L. KOVALICK and LINDA
L. KOVALICK, BRYAN G. AVENI
and MARCELLA J. AVENI,
NORMAN McDOWELL and
KIMBERLY McDOWELL, DONNA
J. LIPPERT, Appellants

Counsel of Record for this
party:

TIMOTHY E. DURANT, ESQUIRE
Pa. I. D. No. 21352
201 North Second Street
Clearfield, PA 16830
(814) 765-1711

FILED
NOV 22 2002
William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

RICHARD L. KOVALICK and LINDA L.	*
KOVALICK, BRIAN G. AVENI and	*
MARCELLA J. AVENI, NORMAN McDOWELL	*
and KIMBERLY McDOWELL, and	*
DONNA J. LIPPERT	*
	*
Appellants,	*
vs.	*
	No. 2002-
	-CD
THE BOARD OF SUPERVISORS OF	*
THE TOWNSHIP OF BRADFORD,	*
Appellee.	*

SUBDIVISION AND LAND DEVELOPMENT ORDINANCE APPEAL NOTICE

Appellants all of whom are adult individuals jointly appeal from the decision of the Subdivision and Land Development Board of the Township of Bradford, Pennsylvania, (hereinafter the "Board"), and in support thereof state the following:

1. Appellants, RICHARDL. KOVALICK and LINDAL. KOVALICK, his wife, are the owners of premises at 1545 Pine Top Road, Woodland, PA 16881 and are aggrieved by the decision of the Board.
2. BRYANG. AVENI and MARCELLAJ. AVENI, his wife, are the owners of premises located along Pine Top Road, Woodland, PA 16881 and are aggrieved by the decision of the Board.
3. NORMAN McDOWELL and KIMBERLY McDOWELL, his wife, are the owners of premises located along Pine Top Road, Woodland 16881 and are aggrieved by the decision of the Board.
4. DONNA J. LIPPERT is the owner of premises located along Pine Top Road,

Woodland 16881 and is aggrieved by the decision of the Board..

5. Appellee is the Board.

6. RONALD L. KRISE (hereinafter "Applicant") who resides at RR #1, Box 287, Woodland, PA 16858, is the owner of a .828 acre parcel of land (County Tax Map Parcel No. 106-N8-108) located along PA State Route 970 in Bradford Township, Clearfield County, Pennsylvania known as the "Ron Krise Land Development", (hereinafter "Property").

7. The Property is a parcel of land with a mobile home thereon situated in a residential area along Pine Top Road which the developer seeks to convert into a Mobile Home Park under the provisions of the "*Township of Bradford Subdivision and Land Development Ordinance*" (hereinafter the "Bradford Ordinance").

8. On or about February 25, 2002 Applicant filed an application for a Mobile Home Park Development (hereinafter MHP) with the Township of Bradford.

9. Prior to his application for approval of a MHP Applicant was in violation of the Bradford Ordinance because he had constructed a mobile home lot and placed a mobile home on the subject property which is contiguous to his other parcel on which his 1st Mobile Home was situated. See definition of Mobile Home Park in "Section 202 Meaning of Words" of the Bradford Ordinance.

10. The appellee Planning Commission approved the MHP on October 28, 2002.

11. Appellants attended the hearing and protested the request of RONALD L. KRISE to obtain approval of the MHP.

12. The Board has refused to provide appellants with a copy of their decision of approval of the MHP or the Plan submitted by Applicant and for that reason a copy cannot be attached to this appeal.

13. It is believed and therefore averred that one of the decision makers or influencers in

the approval of the said MHP is the father of the Applicant.

14. Appellants reserve the right and ask this Court to grant to them the right to raise any claims as to deficiencies or irregularities that become apparent to them within 30 days from the delivery to them or their counsel of the decision and plan approved for the said MHP by the Board.

15. The action of the Board in granting the MHP status was arbitrary, capricious, and an abuse of discretion and contrary to the law in that:

(a) The Bradford Ordinance is invalid and does not apply to a MHP as it is less restrictive than the Clearfield County Subdivision and Land Development Ordinance, effective January 1, 1996 (hereinafter “Clearfield Ordinance”) at Section 1101 **Applicability**, the Clearfield Ordinance states its preemptive quality as regards Mobile Home Parks i.e. “In any municipality which has a locally adopted ordinance which governs Mobile Home Parks with greater restrictions, the ordinance, whose standards are more restrictive shall apply.”

(b) The Bradford Ordinance states at Section 1105A. “**Minimum Area of Tract or Park** - There are no minimum area requirements for the Park; ...”. The Clearfield Ordinance states at Section 1105A. “**Minimum Area of Tract or Park** - The minimum area of the Tract or Park shall be five (5) acres.” The Clearfield Ordinance is obviously more restrictive. The parcel in question is stated in the application to be a mere 0.828 acres in area.

(c) Even if the Court should find that a MHP can exist on the subject premises the Board erred in finding that there is sufficient space to place five mobile homes on the subject premises taking into consideration the required road rights-of-way, the building set back requirements and the side/front/rear yard requirements.

(d) The Bradford Ordinance is invalid and fatally defective because it makes no provision for parties aggrieved by *approval* of a plan to appeal. Section 1505 **Appeals** states in its

entirety as follows, "In any case where the Township Board of Supervisors *disapproves* a plan, any person aggrieved thereby may, within thirty (30) days thereafter, appeal to the Court of Common Pleas of Bradford (sic) Township, Pennsylvania in accordance with Article X-A of the Pennsylvania Municipalities Planing Code." [53 Pa.C.S.A. §10101, et seq.]

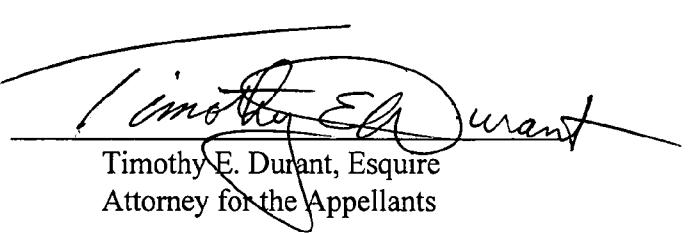
(e) The Board has refused to provide appellants with a copy of their decision of approval of the Mobile Home Park or of the Plan submitted by Applicant.

(f) The Board's grant of this approval was based on Nepotism.

(g) After the approval of the MHP the Township Supervisors were asked to and did provide and post speed limit signs reducing the speed on Pine Top Road to 30 m.p.h. in an effort to assist Applicant in complying with the MHP requirements.

WHEREFORE, the Appellants hereby file this Notice of Appeal so that the Prothonotary of Clearfield County may forthwith and as of course send to the Supervisors of Township of Bradford, County of Clearfield, Pennsylvania, by registered or certified mail, a copy of the "Subdivision and Land Development Ordinance Appeal Notice" together with a Writ of Certiorari commanding said Township Supervisors within twenty (20) days of receipt thereof to certify to the Court its entire record in this matter, including the transcript of testimony.

November 22, 2002


Timothy E. Durant, Esquire
Attorney for the Appellants

FILED

~~cc~~

01/22/02

Atty. Durant

Atty. F. C. 85.00

William A. Shaw
Secretary

1cc mailed by certified mail

11-25-02 : Bradford Twp. Board of
Supervisors

Po Box 79
Woodland, PA 16881

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Bradford Township Board of
Supervisors
PO Box 79
Woodland, PA 16881

COMPLETE THIS SECTION ON DELIVERY

A. Received by <small>(Please Print Clearly)</small>	B. Date of Delivery
<i>AMON</i>	<i>11/20/01</i>
C. Signature	
<i>Matthew J. Monks</i>	
D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
If YES, enter delivery address below:	

1. Article Addressed to:

Bradford Township Board of
Supervisors
PO Box 79
Woodland, PA 16881

3. Service Type
<input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail
<input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise
<input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.
4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes, <input checked="" type="checkbox"/> No

2. Article Number (Copy from service label)	7099	3400	0016	7880	5447
PS Form 3811, July 1999 Domestic Return Receipt					
02595-00-M-0932					

UNITED STATES POSTAL SERVICE



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

- Sender: Please print your name, address, and ZIP+4 in this box •

Clearfield County Courthouse
Office of the Prothonotary
P O Box 549
Clearfield, PA 16830

02-1842-CD, cc Appeal

02-1842-CJ

Certified copy of appeal filed 11/22/02
Complaint

FILED

10:23 AM
NOV 27 2002

WAS

William A. Shaw
Prothonotary

5447
7400
0014
0000
7099

**U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)**

Bradford Township Board of Supervisors

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Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$

Postage
Certified Fee
Return Receipt Fee
(Endorsement Required)
Restricted Delivery Fee
(Endorsement Required)
Total Postage & Fees

Recipient's Name (Please Print Clearly) (to be completed by mailer)
Board of Supervisors
Street, Apt. No. or PO Box No.
PO Box 79
City, State, ZIP+4
Woodland, PA 16881

Postmark
Here
NOV 25 2002
CLEARFIELD PA 16830
USPS

PS Form 3800, February 2000
See Reverse for Instructions

FILED

NOV 27 2002

0111:00 am *Prue*

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

RICHARD L. KOVALICK and LINDA L. : No. 2002-1842-CD
KOVALICK, BRIAN G. AVENI and :
MARCELLA J. AVENI, NORMAN :
MCDOWELL and KIMBERLY :
MCDOWELL and DONNA J. LIPPERT, :
Appellants :
vs. : Type of Pleading: Motion to Quash Appeal
THE BOARD OF SUPERVISORS OF : Filed on Behalf of: Appellee
THE TOWNSHIP OF BRADFORD, : Counsel of Record for this Party:
Appellee : Kim C. Kesner, Esquire
: Supreme Ct. I.D. No. 28307
: 23 North Second Street
: Clearfield, PA 16830
: 814-765-1706

FILED

JAN 03 2003

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

RICHARD L. KOVALICK and LINDA L.	:	No. 2002-1842-CD
KOVALICK, BRIAN G. AVENI and	:	
MARCELLA J. AVENI, NORMAN	:	
MCDOWELL and KIMBERLY	:	
MCDOWELL and DONNA J. LIPPERT,	:	
Appellants	:	
	:	
vs.	:	
	:	
THE BOARD OF SUPERVISORS OF	:	
THE TOWNSHIP OF BRADFORD,	:	
Appellee	:	

MOTION TO QUASH APPEAL

AND NOW, comes Bradford Township by its Solicitor, Kim C. Kesner, Esquire and files this Motion to Quash Appeal and in support thereof avers as follows:

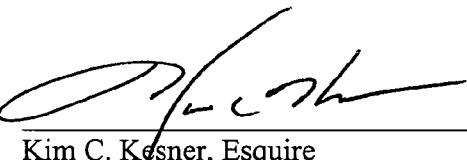
1. On November 22, 2002, this matter was commenced by the filing of a "Subdivision and Land Development Ordinance Appeal Notice".
2. Bradford Township believes and therefore avers that the pleading is intended to be and does constitute a Land Use Appeal under Section 1001 of the Pennsylvania Municipalities Planning Code ("MPC"), 53 P.S. §11001-A.
3. As such, the Appeal to be valid must be from a final land use decision rendered by Bradford Township pursuant to Article IX of the MPC.
4. While the pleading filed refers to an Application for Subdivision and Land Development approval filed by Ronald L. Krise, the pleading does not aver any final land use decision by Bradford Township.
5. In fact, at the time that the pleading was filed on November 22, 2002, an Application for Approval of a Final Subdivision and Land Development Plan by Ronald L. Krise

was pending before the Board of Supervisors of Bradford Township and no final decision on the Plan had been rendered.

6. As such, there was no appealable decision.

WHEREFORE, Bradford Township respectfully requests this Honorable Court to Quash Appellants' "Subdivision and Land Development Ordinance Appeal Notice" as being improvidently filed.

Respectfully submitted:



Kim C. Kesner, Esquire
Supreme Ct. I.D. No. 28307

23 North Second Street
Clearfield, PA 16830

(814) 765-1706
(814) 765-7006 – facsimile

COMMONWEALTH OF PENNSYLVANIA

COUNTY OF CLEARFIELD

: SS.

I, William M. Graham, verify that I am the Chairperson of the Board of Supervisors of Bradford Township, and as such am authorized and empowered to make this Verification and that the statements made in this Motion are true and correct.

William M. Graham

Chairperson
Board of Supervisors, Bradford Township

Sworn and subscribed to before me this 2nd day of January, 2003.

Linda M. Wooster

Notary Public

My Commission Expires: 10-22-2005

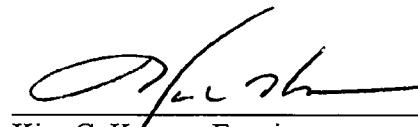
NOTARIAL SEAL
LINDA M. WOOSTER, Notary Public
Bradford Twp., Clearfield County
My Commission Expires Oct. 22, 2005

CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of January, 2003, I caused to be served a true and correct copy of Motion to Quash Appeal on the following and in the manner indicated below:

BY U.S. FIRST CLASS MAIL,
POSTAGE PREPAID

Timothy E. Durant, Esquire
201 North Second Street
Clearfield, PA 16830
(Attorney for Appellants)



Kim C. Kesner, Esquire
Attorney for Appellee

23 North Second Street
Clearfield, PA 16830

(814) 765-1706 – telephone
(814) 765-7006 – facsimile

Date: January 3, 2003

RICHARD L. KOVALICK, et al.,
Appellants

vs.

THE BOARD OF SUPERVISORS OF THE
TOWNSHIP OF BRADFORD,
Appellee

MOTION TO QUASH APPEAL

FILED

012346789
JAN 03 2003

3cc
KESNER
KESNER

William A. Shaw
Prothonotary

KIM C. KESNER
ATTORNEY AT LAW
23 North Second Street
CLEARFIELD, Pa. 16830
(814) 765-1706

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL DIVISION

RICHARD L. KOVALICK, al :
:
vs. : No. 02-1842-CD
:
THE BOARD OF SUPERVISORS OF :
THE TOWNSHIP OF BRADFORD :
:

ORDER

AND NOW, this 27 day of August, 2004, it is the Order of the Court that a status conference in the above-captioned matter has been scheduled for **Wednesday, September 22, 2004 at 9:30 A.M.** in Courtroom No. 1, Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:



FREDRIC J. AMMERMAN
President Judge

FILED

AUG 30 2004

William A. Shaw
Prothonotary/Clerk of Courts

FILED *66K*
1CC
09-3564 Atty's Docket
AUG 30 2004 Kosner
(CIA envelopes)

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

RICHARD L. KOVALICK and
LINDA L. KOVALICK, BRIAN
G. AVENI and MARCELLA J.
AVENI, NORMAN McDOWELL and
KIMBERLY McDOWELL, and
DONNA J. LIPPERT

-VS-

No. 02-1842-CD

THE BOARD OF SUPERVISORS
OF THE TOWNSHIP OF BRADFORD

ORDER

NOW, this 22nd day of September, 2004, following status conference, with the Court noting that counsel for both parties have agreed that the above-described appeal should be quashed and that the parties are proceeding to litigate the matter in a separately-captioned case, it is therefore the ORDER of this Court that the Motion to Quash Appeal filed on January 3, 2003, on behalf of the Appellee be and is hereby granted. The appeal is quashed and the case dismissed.

BY THE COURT.

President Judge

FILED *E6e*
cc
08/08/2004 Atty's: Duran,
SEP 24 2004 *Kesner*

William A. Shaw
Prothonotary, Clerk of Courts