

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

CORE5 at VALLEY COMMERCE	:	
CENTER, LLC	:	
Appellant	:	
	:	
v.	:	No. 2023-C-2100
	:	
LOWHILL TOWNSHIP	:	
Appellee	:	
	:	

**MOTION TO VACATE AUTOMATIC SUPERSEDEAS
PURSUANT TO PA.R.A.P 1732**

AND NOW comes, Movant, Core5 at Valley Commerce Center, LLC, by and through its counsel, Fitzpatrick Lentz & Bubba, P.C., and it hereby files Movant, Core5 at Valley Commerce Center, LLC’s, Motion to Vacate Automatic Supersedeas Pursuant to Pa.R.A.P 1732.

PROCEDURAL HISTORY

1. This matter is a statutory appeal of the decision of the Lowhill Township Board of Supervisors (the “**Supervisors**” or the “**Township**”) to deny an application for Final Land Development approval (the “**Application**” or “**Final Plan**”).
2. On July 25, 2023, the Supervisors issued a decision denying the Application (the “**Decision**”).
3. Appellant, Core5 at Valley Commerce Center, LLC (“**Core5**”) filed a timely appeal of the Decision with this Honorable Court on July 28, 2023. Core5 and the Township filed briefs pursuant to the August 25, 2023, Order of the Honorable Zachary J. Cohen, and Oral argument was held on January 9, 2024.
4. An Order sustaining Core5’s appeal, overturning the decision of the Township, and

determining that the Final Plan was approved as a matter of law was entered on April 8, 2024 (the “**Order**”).

5. The Township filed an appeal of the Order on May 7, 2024, and the matter is currently before the Commonwealth Court.

OPERATIVE FACTS

6. Core5 is the equitable owner of property situate at 2766 Pa Route 100, Orefield, PA 18069, consisting of +/- 43.351 acres in the Township’s RV – “Rural Village” district, further identified as Lehigh County Parcel No. 545702330003-1 (the “**Property**”).

7. On May 8, 2023, Core5 filed the Final Plan and proposed the construction and operation of +/- 312,120 sq. ft. warehousing facility with public water service provided (the “**Project**”). The Project was a permitted by-right use in the RV – “Rural Village” district when the Final Plan was filed. Access to the Property is only from S.R. 100, a PennDOT road.

8. The Project proposed by the Application is identical to the project which received Preliminary Land Development Approval by the Township on June 16, 2022 (the “**Preliminary Plan or Preliminary Approval**”).

9. The Preliminary Approval was not conditioned on compliance with the comments of any Township consultants or the recommendation of the Lowhill Township Planning Commission.

10. The Township did not provide a written decision for the approval of the Preliminary Plan within fifteen (15) days of the Preliminary Approval.

11. The Decision acknowledges that the Township did not provide a written decision after the Preliminary Approval. The only record of the Preliminary Approval is the meeting minutes of June 16, 2022.

12. Upon filing of the Final Plan, the Township engineer, Keystone Consulting Engineers

("KCE"), issued various review letters raising purported deficiencies in the Project notwithstanding the unconditional Preliminary Approval and the failure of the Township to issue a letter in conformity with the law. Most of these purported deficiencies were identified for the first time after the Preliminary Approval.

13. Despite Core5's position that the Final Plan is entitled to approval as a matter of law, Core5 addressed each and every of the comments of KCE and attended the July 13, 2023, meeting of the Board of Supervisors with its Traffic Engineer and Civil Engineer and offered to work with the Township to cure perceived errors. Nevertheless, the Final Plan was denied.

14. After thorough and extensive review of the record by this Honorable Court, the Order was entered.

15. The reasoning in support of Order was premised upon, *inter alia*, the failure of the Township to issue written correspondence in accordance with the law and the necessary result that the Preliminary Plan must be approved as a Final Plan.

16. After the entry of the Order, Core5 again attempted to work with the Township to reach an amicable resolution to any outstanding land development concerns.

17. The Township filed a Notice of Appeal on May 7, 2024.

18. The Notice of Appeal operates as an automatic supersedeas pursuant to Pa.R.A.P 1736(b), renders the Order nugatory, and allows the Township to obfuscate and delay for an indeterminate amount of time with no incentive to work with Core5 amicably.

19. Core5 filed a motion substantially similar to the instant motion and subsequently withdrew the same based on the representation that the Township would forward third-party approval documents to the appropriate agencies.

20. Unless vacated, the supersedeas will remain in effect until final disposition of the

Township's appeal by, hypothetically, the United States Supreme Court.

MOTION TO VACATE THE AUTOMATIC SUPERSEDEAS OF PA.R.A.P 1736(B)

21. Each and every preceding averment is incorporated herein by reference as if the same was set forth herein at length.

22. Pa.R.A.P 1736(b) grants the Township an automatic supersedeas on appeal, stating:

(b) *Supersedeas automatic.* — Unless otherwise ordered pursuant to this chapter the taking of an appeal by any party specified in Subdivision (a) of this rule shall operate as a *supersedeas* in favor of such party, which *supersedeas* shall continue through any proceedings in the United States Supreme Court.¹

23. This Court is vested with jurisdiction to vacate the supersedeas pursuant to Pa.R.A.P 1732(a), which states in relevant part:

(a) *Application to trial court.* -- Application...for approval of or modification of the terms of any supersedeas...during the pendency of an appeal...must ordinarily be made in the first instance to the trial court....

24. A supersedeas in place pursuant to 1736(b) may be vacated when (1) the moving party demonstrates that it is likely to prevail on the merits of the underlying appeal; (2) irreparable injury will result if the supersedeas remains; and (3) vacation of the supersedeas will not substantially harm interested parties or the public interest. Rickert v. Latimore Twp. 960 A.2d 912, 923 (Pa. Cmwlth. 2008).

25. “Essentially, to set aside the automatic supersedeas, the litigant must make a showing that is the obverse of what is required under Pennsylvania Public Utility Commission v. Process Gas Consumers Group, 467 A.2d 805, 808 (1983)” to obtain a stay as appellant. Id.

26. Core5 will prevail on the merits.

27. Core5 will suffer irreparable harm if the supersedeas is not vacated.

¹ Those parties subject to subdivision (a) includes a political subdivision, which includes the Township.


28. Neither the Township nor the public will be harmed by vacating the supersedeas.

WHEREFORE, Core5 requests this Honorable Court enter an **ORDER** finding that the instant motion is **GRANTED** and that the automatic supersedeas of Pa.R.A.P 1736(b) is **VACATED**.

Respectfully submitted,

FITZPATRICK LENTZ & BUBBA, P.C.

Date: July 10, 2024

By: 

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