

# **Bond Case Briefs**

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## **ZONING & PLANNING - PENNSYLVANIA**

### **Altoona First Savings Bank v. Township of Logan**

**Commonwealth Court of Pennsylvania - December 22, 2021 - A.3d - 2021 WL 6057874**

Bank brought declaratory judgment action against township and developer, arising from bank's purchase of foreclosed properties previously owned by developer, and seeking declarations that the bank was not a "developer" or "applicant" under the Municipalities Planning Code, that the bank was neither a party to nor bound by agreement between developer and township, that township's failure to file a claim against the developer's performance bond made township liable for the costs of completing infrastructure in development, and that developers were liable for the infrastructure costs.

The Court of Common Pleas granted partial summary judgment in favor of bank. Township filed interlocutory appeal.

The Commonwealth Court held that:

- Genuine issue of material fact precluded summary judgment on issue of whether bank was the successor to developer;
- Agreement between developer and township was not a covenant that ran with the land in development; and
- Genuine issues of material fact precluded summary judgment on issue of whether agreement was binding on bank.

Genuine issue of material fact existed regarding whether bank assumed the proprietary interest of developer by purchasing foreclosed properties previously owned by developer, precluding summary judgment on issue of whether bank was the successor to the developer who made application for development and, therefore, the successor applicant under the Municipalities Planning Code responsible for all required infrastructure for the completion of the development.

Developers agreement between developer and township was not a covenant that ran with the land in development project, although agreement was recorded; one clear purpose of the agreement was to assure that developers, not the individual lot purchasers, would be primarily responsible to provide the requisite infrastructure for the development, and agreement therefore could not constitute a covenant running with the land, in that it could not and did not impose infrastructure obligations on the individual lot purchasers.

Genuine issues of material fact existed regarding the meaning of "successor" in developers agreement between developer and township and whether the bank that bought foreclosed properties previously owned by developer was a successor under the agreement, precluding summary judgment on issue of whether agreement was binding on bank.