

# Land use and permit analysis

By Reed Hardesty

The City received a claim from a Developer alleging the City improperly stopped its Contractor's work. The claim gives a nice look and explanation for a low damages issue on a fairly typical day for city inspectors and planning department staff.

The Developer claimed the City stopped work on the repaving being performed by its Contractor and improperly required a permit before the easement could be paved. Contrary to the assertions in the claim, the City did not stop work on the paving project. The contractor was asked in the field by the City inspector the amount of surface that was being paved and the contractor responded he did not know. The City inspector properly informed the Contractor that depending on the amount of surface being paved, a drainage study may be required, permits might be required and if he proceeded with the paving, it would be at his peril if these items were required. The Contractor did not feel comfortable proceeding and chose to halt paving. This was the Contractor's choice, not a requirement of the City.

The Contractor responded to the City shortly after the discussion, providing the amount of paving contemplated and based on the amount of impervious surface being created, stormwater review was required. While the review was being done it was also determined that the easement is in a mine hazard area, which is a critical area per the City's Municipal Code. While it was ultimately determined that the paving project did not require a stormwater permit, a grading permit was required under Municipal Code since the easement is in a critical area. The City letter noted the activity was not exempt from a Grading Permit under Municipal Code. The Developer applied for the permit and it was issued. There was no undue delay in issuance of the permit once the Developer applied for it. The Developer did not dispute the need for a permit after the City's letter, nor did it appeal the issuance or requirement for a permit.

WCIA successfully denied the claim to the Developer and its attorney citing that the City properly required a grading permit for paving of the easement, which was located in a critical area. Furthermore, if the Developer had wanted to appeal any of the City's requirements with regard to this permit, the proper action it should have taken would have been the filing of a Land Use Petition Act (LUPA) appeal in superior court within 21 days of the date the City issued a final administrative decision. Land use decisions must first be judicially challenged via the LUPA, within the LUPA's 21 day deadline before a damage claim is legally ready for Court's review. If the Developer does not exhaust all City administrative remedies prior to the City's final decision on the issues, the Court should not accept the Developers land use petition. Since the deadline had passed, the Developer's claims were time barred and properly denied.