

Commonwealth Docket Sheet

Commonwealth Court of Pennsylvania

Docket Number: 497 CD 2020

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February 5, 2026



CAPTION

Kay Lehigh, LLC,
Appellant

v.

Upper Saucon Township and
Upper Saucon Township Board
of Supervisors

CASE INFORMATION

Initiating Document:	Notice of Appeal		
Case Status:	Closed		
Case Processing Status:	December 20, 2022	Completed	
Journal Number:	36-05-2021		
Case Category:	Civil	Case Type(s):	Zoning

CONSOLIDATED CASES

RELATED CASES

Docket No / Reason	Type
1083 CD 2024 Same Party	Related

COUNSEL INFORMATION

Appellant Kay Lehigh, LLC

Pro Se: No

IFP Status:

Attorney: Preston, James F.
Law Firm: Broughal & DeVito L.L.P.
Address: Broughal & Devito Llp
38 W Market St
Bethlehem, PA 18018
Phone No: (610) 865-3664

Fax No:

Appellee Upper Saucon Township Board of Supervisors

Pro Se: No

IFP Status:

Attorney: Dinkelacker, Thomas H.
Law Firm: Dimmich & Dinkelacker, P.C.
Address: Dimmich & Dinkelacker P.c.
2987 Corporate Ct Ste 210
Orefield, PA 18069-3163
Phone No: (610) 398-1800

Fax No:

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COUNSEL INFORMATION

Appellee Upper Saucon Township

Pro Se: No

IFP Status:

Attorney: Gundlach, Robert W.
 Law Firm: Fox Rothschild, LLP
 Address: Fox Rothschild Llp
 2700 Kelly Rd Ste 300
 Warrington, PA 18976
 Phone No: (215) 918-3636

Fax No:

Attorney: Stoll, Andrew Richard
 Law Firm: Fox Rothschild, LLP
 Address: Fox Rothschild Llp
 2700 Kelly Rd Ste 300
 Warrington, PA 18976
 Phone No: (215) 345-7500

Fax No:

FEE INFORMATION

Fee Dt	Fee Name	Fee Amt	Receipt Dt	Receipt No	Receipt Amt
05/15/2020	Notice of Appeal	90.25	06/03/2020	2020-CMW-H-001154	90.25

AGENCY/TRIAL COURT INFORMATION

Order Appealed From: May 4, 2020 Notice of Appeal Filed: May 15, 2020
 Order Type: Order Dated
 Documents Received: May 26, 2020

Court Below: Lehigh County Court of Common Pleas
 County: Lehigh Division: Lehigh County Civil Division
 Judge: Johnson, J. Brian OTN:
 Docket Number: 2020-C-0036 Judicial District: 31

ORIGINAL RECORD CONTENT

Original Record Item	Filed Date	Content Description
Trial Court Record	September 16, 2020	

Date of Remand of Record: November 9, 2022

BRIEFING SCHEDULE

Appellant

Kay Lehigh, LLC

Brief

Due: December 2, 2020 Filed: December 2, 2020

Reproduced Record

Due: December 2, 2020 Filed: December 2, 2020

Appellee

Upper Saucon Township

Brief

Due: January 6, 2021 Filed: January 4, 2021

Supplemental Reproduced Record

Due: Filed: January 4, 2021

Upper Saucon Township Board of Supervisors

Brief

Due: January 6, 2021 Filed: December 31, 2020

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Filed Date	Docket Entry / Filer	Representing	Participant Type	Exit Date
May 15, 2020	Notice of Appeal Filed Kay Lehigh, LLC		Appellant	
September 9, 2020	Notice of Docketing Appeal Exited Commonwealth Court Filing Office			09/09/2020
September 16, 2020	Trial Court Record Received Lehigh County Court of Common Pleas			
September 18, 2020	Docketing Statement Filed Preston, James F.	Kay Lehigh, LLC	Appellant	
September 22, 2020	Briefing Schedule Issued Commonwealth Court Filing Office			
October 26, 2020	Application for Extension of Time to File Brief - First Request Preston, James F. Kay Lehigh, LLC	Kay Lehigh, LLC	Appellant Appellant	
October 29, 2020	Order Granting Application for Extension of Time to File Brief and Reproduced Record Per Curiam Document Name: upon consideration of Kay Lehigh, LLC's (Appellant) First Application for a 30-Day Extension Comment: of Time to File Brief and Reproduced Record (Application), to which Upper Saucon Township and Upper Saucon Township Board of Supervisors (collectively, Appellees) consent, the Application is GRANTED. It appears that Appellant's brief is currently due on November 2, 2020. Accordingly, Appellant shall file and serve its appellate brief (4 copies) and reproduced record (4 copies) on or before December 2, 2020.			10/30/2020
December 2, 2020	Appellant's Reproduced Record Filed Preston, James F.	Kay Lehigh, LLC	Appellant	
December 2, 2020	Appellant's Brief Filed Preston, James F. Kay Lehigh, LLC	Kay Lehigh, LLC	Appellant Appellant	
December 31, 2020	Appellee's Brief Filed Dinkelacker, Thomas H. Document Name: PACFiled	Upper Saucon Township Board of St	Appellee	
January 4, 2021	Appellee's Brief Filed Upper Saucon Township		Appellee	
January 4, 2021	Supplemental Reproduced Record Filed Upper Saucon Township		Appellee	
March 3, 2021	Tentative Session Date Krimmel, Michael Document Name: May 2021			

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Filed Date	Docket Entry / Filer	Representing	Participant Type	Exit Date
April 8, 2021	Argument Scheduled Krimmel, Michael			
	Document Name: THURSDAY, May 13, 2021 (Panel 1) @9:30 a.m. via WebEx Video Conference (No. 36 on the list)			
April 21, 2021	Application for Continuance Preston, James F.	Kay Lehigh, LLC	Appellant	
	Document Name: Unopposed App. for Continuance of Argument			
April 22, 2021	Order Granting Application for Continuance Per Curiam			04/22/2021
	Document Name: Continuance Granted			
	Comment: AND NOW, this 22nd day of April, 2021, upon consideration of Appellant's unopposed Application to Continue Argument (Application), the Application is hereby granted. Argument previously scheduled for May 13, 2021, at 9:30 a.m. on the May 2021 Argument List in Harrisburg is continued. Appellant is directed to file a status report with this Court within sixty (60) days of the date this Order unless an Application for Leave to Discontinue is filed in the interim.			
June 24, 2021	Status Report Filed Preston, James F.	Kay Lehigh, LLC	Appellant	
June 28, 2021	Order Directing Further Status Report Per Curiam			06/28/2021
	Document Name: Granting Continuance and Directing Status Report			
	Comment: AND NOW, this 28th day of June, 2021, upon consideration of the Parties' request for an additional 60-day extension of their continuance for the Parties to be certain as to the viability of settlement (Request), the Request is hereby GRANTED. The Parties are directed to file a status report with this Court within 60 days of the date of this Order unless an Application for Leave to Discontinue is filed before that date.			
September 2, 2021	Status Report Filed Preston, James F.	Kay Lehigh, LLC	Appellant	
	Document Name: Appellant's Status Report			
September 7, 2021	Order Directing Further Status Report Per Curiam			09/08/2021
	Document Name: Order granting extension.			
	Comment: AND NOW, this 7th day of September, 2021, upon consideration of the Parties' request for an additional 60-day extension of their continuance for the Parties to be certain as to the viability of settlement (Request), the Request is hereby GRANTED. The Parties are directed to file a status report with this Court within 60 days of the date of this Order unless an Application for Leave to Discontinue is filed before that date.			
September 23, 2021	Status Report Filed Stoll, Andrew Richard	Upper Saucon Township	Appellee	
November 16, 2021	Status Report Filed Preston, James F.	Kay Lehigh, LLC	Appellant	
	Document Name: of Appellant			

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Filed Date	Docket Entry / Filer	Representing	Participant Type	Exit Date
November 19, 2021	Order Filed Per Curiam			11/22/2021
Document Name: The continuance in this matter is extended for an additional 60 days.				
Comment: AND NOW, November 19, 2021, upon consideration of the Status Report filed by Kay Lehigh, LLC (Appellant), this Court issues the following Order: In the Status Report, Appellant represents that the parties have negotiated a Zoning Amendment that obviates the need for continued litigation and that the Upper Saucon Township Board of Supervisors approved the Zoning Amendment at their meeting on November 16, 2021.				
Further, the parties report that the Zoning Amendment is now within the statutory appeal period after which Appellant may file a conditional use permit, the approval of which would allow for the termination of this litigation.				
Accordingly, the continuance in this matter is extended for an additional 60 days.				
The parties are directed to file a status report with this Court within 60 days of the date of this Order unless an Application for Leave to Discontinue is filed before that date.				
January 18, 2022	Status Report Filed Stoll, Andrew Richard Gundlach, Robert W.	Upper Saucon Township Upper Saucon Township	Appellee Appellee	
Document Name: Appellee, Upper Saucon Township's Status Report				
January 20, 2022	Hearing Scheduled Per Curiam			01/20/2022
Document Name: Feb. 22, 2022 on Conditional Use Application / Stay Continued/ Status Report Due Within 60 Days				
Comment: AND NOW, this 20th day of January, 2022, upon consideration of the Status Report filed by Upper Saucon Township (Township/Appellee), this Court issues the following Order: In the Status Report, Appellee represents that Kay Lehigh, LLC (Appellant) recently submitted a Conditional Use Application (Application) to the Township. A hearing on the Application is scheduled for February 22, 2022. Should the Application be granted, the parties have agreed that, after the decision on the Application becomes final and unappealable, the above-captioned appeal will be discontinued. Accordingly, the continuance in this matter is extended for an additional sixty (60) days. The parties are directed to file a status report with this Court within sixty (60) days of the date of this Order unless an Application for Leave to Discontinue is filed before that date.				
January 24, 2022	Status Report Filed Stoll, Andrew Richard Gundlach, Robert W.	Upper Saucon Township Upper Saucon Township	Appellee Appellee	
Document Name: Appellee Upper Saucon Twp.'s Amended Status Report				
March 21, 2022	Status Report Filed Gundlach, Robert W. Stoll, Andrew Richard	Upper Saucon Township Upper Saucon Township	Appellee Appellee	

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Filed Date	Docket Entry / Filer	Representing	Participant Type	Exit Date
March 28, 2022	Order Filed Per Curiam			03/28/2022
	<p>Document Name: Continuance Extended for another 60 Days/Status Report Due in 60 Days</p> <p>Comment: AND NOW, this 28th day of March, 2022, upon consideration of the Status Report filed by Upper Saucon Township (Township/Appellee), this Court issues the following Order: In the Status Report, Appellee represents that Kay Lehigh, LLC (Appellant) submitted a Conditional Use Application (Application) to the Township. A hearing on the Application was held on February 22, 2022, but was not completed. A second and presumably final hearing is scheduled for March 28, 2022. Should the Application be granted, the parties have agreed that after the decision on the Application becomes final and unappealable, the above-captioned appeal will be discontinued. Accordingly, the continuance in this matter is extended for an additional sixty (60) days. The parties are directed to file a status report with this Court within sixty (60) days of the date of this Order, unless an Application for Leave to Discontinue is filed before that date .</p>			
May 27, 2022	Status Report Filed Stoll, Andrew Richard Gundlach, Robert W.	Upper Saucon Township Upper Saucon Township	Appellee Appellee	
June 3, 2022	Order Filed Per Curiam			06/03/2022
	<p>Document Name: The continuance in this order is stayed for 60 days</p> <p>Comment: upon consideration of the Status Report filed by Upper Saucon Township (Township/Appellee), this Court issues the following Order: In the Status Report, Appellee represents that the parties have reached a settlement agreement (Settlement Agreement) with respect to this case. The Settlement Agreement is based in part on an agreed-upon plan for development of the subject property. However, PennDOT may require additional revisions to the development plan which may, in turn, require revisions to the Settlement Agreement. The parties are awaiting feedback from PennDOT. As such, the parties request that the case continue to be stayed so that final issues can be resolved with respect to the parties' Settlement Agreement. Accordingly, the continuance in this matter is extended for an additional sixty (60) days. The parties are directed to file a status report with this Court within sixty (60) days of the date of this Order, unless an Application for Leave to Discontinue is filed before that date.</p>			
August 2, 2022	Status Report Filed Stoll, Andrew Richard Gundlach, Robert W.	Upper Saucon Township Upper Saucon Township	Appellee Appellee	
	Document Name: Appellee Upper Saucon Township's Status Report.			

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Filed Date	Docket Entry / Filer	Representing	Participant Type	Exit Date
August 9, 2022	Order Filed Per Curiam			08/09/2022
<p>Document Name: Request for 30 Day Extension of Time to File Status Report Granted</p> <p>Comment: AND NOW, this 9th day of August, 2022, this Court considers Upper Saucon Township's (Township/Appellee) Status Report and time extension request, wherein Township/Appellee represents the following: This is an appeal from Appellant Kay Lehigh, LLC's ("Kay") substantive validity challenge of the Upper Saucon Township Zoning Ordinance. Since the filing of Kay's appeal to this Court, the Township has conditionally approved a settlement agreement between Kay and the Township (Settlement Agreement). The Settlement Agreement is based in part on an agreed-upon plan for development of the subject property and required certain intersection modifications for Kay's underlying project (Intersection Modifications). The Intersection Modifications are to take place on land owned by a third-party, Pitt Ohio, not Kay; therefore, the parties and Pitt Ohio must agree to a design for the Intersection Modifications. Counsel for the Township is attempting to schedule a meeting with Pitt Ohio and Kay to finalize issues with the design for the Intersection Modifications. There is a condition in the Settlement Agreement which gives the Township Manager authority to ultimately execute the Settlement Agreement upon advice of the Township Solicitor that there exists or will exist a satisfactory agreement between Kay and Pitt Ohio. Due to summer vacations of the parties and their consultants, such meeting has not yet occurred, but is expected to take place in the coming weeks. The Township/Appellee requests the Court to provide an additional thirty (30) days to provide a more substantive update to the Court.</p> <p>Based on the foregoing representations, the Court GRANTS Township/Appellee's request for an additional thirty (30) days to provide the Court a more substantive status report. The parties are directed to file a status report with this Court within thirty (30) days of the date of this Order, unless an Application for Leave to Discontinue is filed before that date.</p>				
September 8, 2022	Status Report Filed			
	Stoll, Andrew Richard	Upper Saucon Township	Appellee	
	Gundlach, Robert W.	Upper Saucon Township	Appellee	
Document Name: Appellee Upper Saucon Township's Status Report.				

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September 16, 2022	Order Filed Per Curiam			09/16/2022
<p>Document Name: Appllees 30 day extension is granted. Parties directed to file status report w/i 30 days.</p> <p>Comment: AND NOW, September 16, 2022, upon consideration of Upper Saucon Township's (Appellee) Status Report, Appellee represents the following: This is an appeal from Appellant Kay Lehigh, LLC's (Kay) substantive validity challenge to the Upper Saucon Township Zoning Ordinance. Since the filing of Kay's appeal to this Court, Appellee has conditionally approved a settlement agreement between it and Kay (Settlement Agreement). The Settlement Agreement is based in part on an agreed-upon plan for development of the subject property that requires certain intersection modifications for Kay's underlying project (Intersection Modifications).</p> <p>The Intersection Modifications are to take place on land owned by a third-party, Pitt Ohio; therefore, the parties and Pitt Ohio must agree to a design for the Intersection Modifications.</p> <p>At this time, Pitt Ohio and Kay have agreed to general terms for the Intersection Modification and Pitt Ohio is in the process of completing a draft of their agreement, which should be completed in the upcoming weeks. Appellee requests the Court to provide it an additional thirty (30) days to file a further update with the Court.</p> <p>Based on the foregoing representations, the Court GRANTS Appellee's request for an additional thirty (30) days to provide the Court an additional update on the status of the case.</p> <p>The parties are directed to file a status report with this Court within thirty (30) days of the date of this Order, unless an Application for Leave to Discontinue is filed before that date .</p>				
September 20, 2022	Order Directing Status Report Per Curiam			09/20/2022
<p>Document Name: Within 30 days</p> <p>Comment: AND NOW, this 20th day of September, 2022, this Court considers Upper Saucon Township's (Township/Appellee) Status Report and time extension request, wherein Township/Appellee represents the following: This is an appeal from Appellant Kay Lehigh, LLC's (Kay) substantive validity challenge of the Upper Saucon Township Zoning Ordinance. Since the filing of Kay's appeal to this Court, the Township has conditionally approved a settlement agreement between Kay and the Township (Settlement Agreement). The Settlement Agreement required certain intersection modifications for Kay's underlying project (the Intersection Modifications). The Intersection Modifications are to take place on land owned by a third-party, Pitt Ohio, not Kay. Thus, there is a condition in the Settlement Agreement which gives the Township Manager authority to ultimately execute the Settlement Agreement upon advice of the Township Solicitor that there "exists or will exist a satisfactory agreement between Kay and Pitt Ohio." Ultimately, this means that the parties, including Pitt Ohio, must agree to a design for the Intersection Modifications . Pitt Ohio and Kay have agreed to general terms for the Intersection Modifications. As of the filing of this Status Report, Counsel for Pitt Ohio is in the process of completing a draft of the agreement between Kay and Pitt Ohio which will permit the Intersection Modifications. According to counsel for Pitt Ohio, that agreement should be completed in the upcoming weeks. The Township requests that the Court provide an additional thirty (30) days to provide further updates to the Court.</p> <p>Based on the foregoing representations, the Court GRANTS Township/Appellee's request for an additional thirty (30) days to provide the Court with an updated status report. The parties are directed to file a status report with this Court within thirty (30) days of the date of this Order, unless an Application for Leave to Discontinue is filed before that date.</p>				

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Filed Date	Docket Entry / Filer	Representing	Participant Type	Exit Date
October 17, 2022	Status Report Filed Stoll, Andrew Richard Gundlach, Robert W.	Upper Saucon Township Upper Saucon Township	Appellee Appellee	
	Document Name: Appellee Upper Saucon Township's Status Report.			
October 21, 2022	Order Directing Further Status Report Per Curiam			10/21/2022
	Document Name: Request for Status Report in 30 Days Granted/ Status Report Due within 30 Days of Exit of this Order			
	<p>Comment: AND NOW, this 21st day of October, 2022, this Court considers Upper Saucon Township's (Township/Appellee) Status Report and time extension request, wherein Township/Appellee represents the following: This is an appeal from Appellant Kay Lehigh, LLC's (Kay) substantive validity challenge of the Upper Saucon Township Zoning Ordinance. Since the filing of Kay's appeal to this Court, the Township has conditionally approved a settlement agreement between Kay and the Township (Settlement Agreement). The Settlement Agreement required certain intersection modifications for Kay's underlying project (the Intersection Modifications). The Intersection Modifications are to take place on land owned by a third-party, Pitt Ohio, not Kay. Thus, there is a condition in the Settlement Agreement which gives the Township Manager authority to ultimately execute the Settlement Agreement upon advice of the Township Solicitor that there "exists or will exist a satisfactory agreement between Kay and Pitt Ohio." Ultimately, this means that the parties, including Pitt Ohio, must agree to a design for the Intersection Modifications. Pitt Ohio and Kay have agreed to general terms for the Intersection Modifications, and Counsel for Pitt Ohio is in the process of completing a draft of the agreement between Kay and Pitt Ohio which would permit the Intersection Modifications. During that time, Kay has requested the opportunity to continue with hearings on Kay's conditional use application. The next hearing on Kay's conditional use application is scheduled for October 24, 2022. By completion of the October 24, 2022 conditional use hearing, the parties hope to have a decision on Kay's conditional use application, and resolution of issues with respect to an agreement for the Intersection Modifications. Township/Appellee requests that the Court provide an additional thirty (30) days to provide an updated status report to the Court.</p> <p>Based on the foregoing representations, the Court GRANTS Township/Appellee's request for an additional thirty (30) days to provide the Court with an updated status report. The parties are directed to file a status report with this Court within thirty (30) days of the date of this Order, unless an Application for Leave to Discontinue is filed before that date.</p>			
November 2, 2022	Joint Status Report Preston, James F.	Kay Lehigh, LLC	Appellant	
	Document Name: Status Report - Appellant.			
November 9, 2022	Remand Jurisdiction Retained Per Curiam			11/09/2022
	Document Name: The parties May file Motion for Entry of Consent Decree within 30 Days/ Status Report Due Jan. 9, 23			
	<p>Comment: AND NOW, this 9th day of November, 2022, upon review of Appellant, Kay Lehigh, LLC's Status Report, filed on behalf of the parties, this matter is remanded to the Court of Common Pleas of Lehigh County (trial court), where the parties may file a Motion for Entry of Consent Decree (Motion) within 30 days of the date of this Order.</p> <p>No later than January 9, 2023, the parties shall file a joint status report advising the Court of the status of their Motion in the trial court if a praecipe to discontinue the appeal has not been filed by that date.</p> <p>Jurisdiction retained.</p>			

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November 9, 2022	Remitted Commonwealth Court Filing Office Document Name: Per Order of 11/9/22. Jurisdiction Retained.			
November 21, 2022	Acknowledgement of Record Remittal Lehigh County Court of Common Pleas			
December 16, 2022	Application for Discontinuance Preston, James F. Document Name: Application for Leave to Discontinue Appeal	Kay Lehigh, LLC	Appellant	
December 20, 2022	Discontinued Per Curiam Document Name: App. to Discontinue is granted. Comment: AND NOW, this 20th day of December, 2022, upon consideration of Appellant Kay Lehigh, LLC's Application for Leave to Discontinue Appeal (Application), the Application is GRANTED, and the Prothonotary shall mark the docket in this case as closed.			12/20/2022

SESSION INFORMATION

Journal Number: 36-05-2021
 Consideration Type: Oral Argument - Panel
 Listed/Submitted Date: May 13, 2021

DISPOSITION INFORMATION

Final Disposition: Yes
 Related Journal No:
 Category: Disposed Before Decision
 Disposition: Discontinued
 Disposition Comment: AND NOW, this 20th day of December, 2022, upon consideration of Appellant Kay Lehigh, LLC's Application for Leave to Discontinue Appeal (Application), the Application is GRANTED, and the Prothonotary shall mark the docket in this case as closed.
 Disposition: Discontinued
 Disposition Date: December 20, 2022
 Disposition Comment: AND NOW, this 20th day of December, 2022, upon consideration of Appellant Kay Lehigh, LLC's Application for Leave to Discontinue Appeal (Application), the Application is GRANTED, and the Prothonotary shall mark the docket in this case as closed.
 Disposition: Discontinued
 Disposition Date: December 20, 2022
 Disposition Comment: AND NOW, this 20th day of December, 2022, upon consideration of Appellant Kay Lehigh, LLC's Application for Leave to Discontinue Appeal (Application), the Application is GRANTED, and the Prothonotary shall mark the docket in this case as closed.
 Disposition: Discontinued
 Disposition Date: December 20, 2022
 Disposition Comment: AND NOW, this 20th day of December, 2022, upon consideration of Appellant Kay Lehigh, LLC's Application for Leave to Discontinue Appeal (Application), the Application is GRANTED, and the Prothonotary shall mark the docket in this case as closed.

Dispositional Filing: Filing Author:
 Filed Date: