

January 25, 2005
Montgomery wins state Supreme Court ruling in Stucco Case
By: Kara Fitzpatrick , Staff Writer

Reprinted with permission of The Princeton Packet

Determination that a construction code official can issue a notice of violation to a builder after a certificate of occupancy has been issued has statewide impact.

MONTGOMERY — A three-year legal battle ended yesterday when the township resoundingly won a state Supreme Court case that Mayor Louise Wilson said was taken on "to uphold the responsibilities of local government."

The 5-0 decision, written by Justice Jaynee LaVecchia, concerned the authority of a construction code official to issue a notice of violation to the builder of a home once a certificate of occupancy has been issued. Chief Justice Deborah Poritz and Justice Barry Albin did not participate.

The ruling, said Justice LaVecchia, "promotes the salutary public policy goal of compliance with the Code." Township Attorney Kristina Hadinger said she was "delighted" with the ruling. "We couldn't have asked for a better outcome. It is not only a win for Montgomery and a win for municipalities statewide but, more importantly, for residential homebuyers in the state of New Jersey," said Ms. Hadinger. Christine Petruzzell, an attorney from Wilentz, Goldman and Spitzer, who represented the New Jersey Builders Association, which appeared as a friend of the court on behalf of the developer, said she was disappointed with the ruling.

"We think (the ruling) unfortunately ... shifts a much greater burden to code enforcement officials," said Ms. Petruzzell. "We think it ignores the fact that the homeowner does have a remedy under the homeowner's warranty plan." The case began in May 2000 when Montgomery Township learned that many residents of Cherry Valley Country Club development were experiencing decay, rotting wood and mold within their homes. The problem, according to the township, was found to be the result of the builder's failure to correctly install a synthetic stucco product called Exterior Insulating Finishing System according to the manufacturer's specifications. The township's construction official determined that the failure of the builder, DKM Residential Properties, was a violation of the Uniform Construction Code. The construction official issued several notices of violation to the builder, but DKM challenged the township's authority to issue the violations once the certificates of occupancy had been issued.

The company filed a lawsuit against the township in the law division of the state Superior Court. In July 2001, the court issued a ruling siding with the township. DKM appealed the decision to the Appellate Division, which overturned the law division's decision and ruled that the township can only issue a notice of violation to a

homeowner, not the developer, once a certificate of occupancy has been issued. Believing that the legal issues presented were of statewide significance and even though the builder had rectified violations in the Cherry Valley subdivision, the township appealed the case to the state Supreme Court. Testimony began in October. Bill Dressel, executive director of the New Jersey State League of Municipalities, which appeared as a friend of the court on behalf of the township, said, "We are delighted with today's ruling and are pleased that we were able to participate in arguing this important case on behalf of our members."

Mayor Wilson said if the ruling in favor of DKM had stood, "It would have effectively stripped local code officials of their ability to hold developers responsible and protect the public interest.

"This decision doesn't change what happens in Montgomery," said Mayor Wilson, recognizing that DKM has remedied the damage. "This is really a victory that has a statewide significance and importance."