

IN THE COURT OF COMMON PLEAS OF LANCASTER COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

IN RE: AGRICULTURAL SECURITY AREA :
IN EAST LAMPETER TOWNSHIP :

APPEAL OF JOE ESH, DANIEL STOLTZFUS, :
ABNER BEILER, ELMER PETERSHEIM, :
AARON FISHER, DAVID SMUCKER, :
KEN DENLINGER, JIM DENLINGER, :
DAVID BEILER, ISSAC STOLTZFUS, and :
JOHN STOLTZFUS, :

APPELLANTS :

VS. :

THE BOARD OF SUPERVISORS OF EAST :
LAMPETER TOWNSHIP, :
APPELLEE :

NO. CI-07-12367

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LANCASTER, PA.

OPINION

BEFORE: FARINA, P.J., MILLER, J.

BY: MILLER, J.

Before the court is Appellants' Appeal of Decision Denying Agricultural Security Area, arising from Appellants' request to the East Lampeter Township Board of Supervisors (Appellee) to establish an Agricultural Security Area (ASA) pursuant to the Agricultural Area Security Law (AASL).¹ For the reasons that follow, we will grant the appeal and reverse Appellee's decision.

Briefly stated, the relevant facts and procedural history are as follows: On June 25, 2007, Appellants filed a petition to establish an ASA pursuant to the AASL. Following the procedures prescribed by the AASL, Appellee created an Agricultural Security Area Advisory Committee (SAA Committee).² The Petition was referred to both the SAA Committee and the East Lampeter

¹ Act of June 30, 1981, P.L. 128, No. 43, as amended, 3 P.S. § 901 *et seq.*

² 3 P.S. § 904.

Township Planning Commission (Planning Commission) for their review and recommendations.³ The Planning Commission recommended that all but one of the properties identified in the petition be included in the ASA; the SAA Committee recommended inclusion of all the properties.

Public hearings, as required under Section 6 of the AASL,⁴ were held on October 30, 2007 and November 14, 2007. At the first hearing, Appellants' counsel entered his appearance and offered to present evidence addressing the factors required to be considered under Section 7(a) of the AASL.⁵ For all intents and purposes, Appellee stipulated to factors (a)(1), (a)(2), (a)(3) and (a)(4). With respect to the final factor (3 P.S. § 907(a)(5)), Appellee stipulated that there were no factors which would show that agricultural economic and technological conditions in the community were unstable and that farming in East Lampeter Township continues to be productive and viable.

Following the November 14, 2007 hearing, Appellee denied the ASA request and issued a written decision. This appeal followed. Briefs were timely filed and oral argument was heard by the above-named sitting *en banc*. The matter is now ripe for decision.

The court's scope of review is limited to determining whether Appellee committed an error of law or whether the material findings of fact upon which Appellee's decision are based are supported by substantial evidence. *Piatek v. Pulaski Township*, 828 A.2d 1164 (Pa. Cmwlth. 2003). If Appellee did commit an error of law by rejecting the ASA, or if the findings upon which

³ 3 P.S. § 905.

⁴ 3 P.S. § 906.

⁵ "The following factors shall be considered: . . . (1) Land proposed for inclusion . . . shall have soils which are conducive to agriculture. . . . (2) Use of land proposed for inclusion . . . shall be compatible with local government unit comprehensive plans. . . . (3) The landowner may propose to include all of his land. . . . (4) The land proposed for inclusion . . . shall be viable agricultural land. (5) Additional factors to be considered are the extent and nature of farm improvements, anticipated trends in agricultural economic and technological conditions and any other matter which may be relevant." 3 P.S. § 907(a).

Appellee's decision is based are not supported by substantial evidence, the court may enter an order reversing Appellee's decision. 42 Pa. C.S. § 706.

Appellee's denial of the ASA petition was based on its findings and conclusions with respect to the fifth of the five factors enumerated in Section 7(a) of the AASL.⁶ Specifically, Appellee concluded that existing land planning, farmland protection and preservation mechanisms in place were sufficient to protect Appellants' interests and that the requested ASA was unnecessary.⁷ Appellee contends that its determination of the necessity of the requested ASA was an appropriate consideration within the purview of the fifth factor. Appellants disagree. Based on the court's research and the research provided by the parties, this appeal presents an issue of first impression.

Section 7(a)(5) (the fifth factor) states: "[a]dditional factors to be considered are the extent and nature of farm improvements, anticipated trends in agricultural economic and technological conditions and any other matter which may be relevant." 3 P.S. § 907(a)(5) (emphasis added). Because the term "relevant" is not defined in the Act, Appellee argues that it should be broadly interpreted. Whether ultimately interpreted broadly or not, what is relevant under Section 7(a)(5) must first be determined with reference to the Act's legislative purpose and in a manner consistent with the Act as a whole. Because we find it to be inconsistent with the Act and its purposes, this court rejects Appellee's contention that a municipality's determination of the need for a requested ASA is an appropriate consideration under the Act as an "other matter which may be relevant" under Section 7(a)(5).

⁶ 3 P.S. § 907(a)(5). As indicated above, the first four factors (3 P.S. § 907(a)(1)-(4)) were stipulated to and are not at issue.

⁷ See Background, Evaluation, Findings of Fact, Discussion, Conclusion and Decision.

41 Valley Assoc. v. Bd. of Supervisors of London Grove Township, 882 A.2d 5 (Pa. Cmwlth. 2005), cited and discussed by both parties, provides a comprehensive review of AASL procedures. There, the issue was whether London Grove Township could deny an ASA request based on the particular agricultural use (mushroom composting) to which the property would be put. Discussing the governing body's evaluation of the criteria enumerated in Section 705(a), the court observed that each of the factors "relate in one way or another to whether the land in question can be used for agriculture in the present and in the future." *41 Valley Assoc.*, 882 A.2d at 14. While factually distinguishable, *41 Valley Assoc.* provides guidance on what facts may be properly considered when a governing body evaluates the factors enumerated in Section 705(a) and on the scope of permissible inquiry under Section 705(a)(5).

In considering the additional factors of Section 7(a)(5), London Grove Township found that:

- a. Based upon the extent and nature of the proposed improvements to the [Subject Property] as set forth in the [c]onditional [u]se [p]lan, the [Board] believe[s] that the [Subject Property] will not be used primarily for agricultural purposes but rather for the industrial purpose of manufacturing mushroom substrate. 3 P.S. § 907[(a)](5).
- b. The [Board] believe[s] that the inclusion of the [Subject Property] into the ASA could adversely affect the health and welfare of the community and threaten important regional water resources. . . . 3 P.S. § 907[(a)](5).
- c. The Application is inconsistent and contrary to the policy and purpose of the [AASL]. The proposed inclusion of the [Subject Property] into the ASA will not conserve and protect agricultural lands as valued natural and ecological resources.

41 Valley Assoc., 882 A.2d at 15-16 (citation omitted). In holding that the Township erred as a matter of law in its consideration of such factors under Section 7(a)(5), the court stated:

First and foremost, the Board erred when it denied inclusion of the proposed land based on concerns for a specific use. As is readily apparent from the preceding discussion of the [AASL], its purpose is not to enable a specific use; rather, its purpose is to preserve land for a broad class of uses which are agricultural in nature.

The [AASL]'s evaluation criteria address whether the land proposed for inclusion is appropriate for agricultural uses now and in the future.

The “additional factors” cited by the Board do not relate to whether the proposed land is appropriate for agricultural uses now and in the future. Indeed, the Board did not conclude that the land was inappropriate for all agricultural uses, or even some agricultural uses. Instead, the Board determined the specific proposed use should not be located on the land. This is not an “additional factor” contemplated by the Law.

A governing body may consider past, present and pending uses of a property to the extent such evidence tends to shed light on the ultimate inquiry of whether the land is appropriate for agricultural uses now and in the future. However, a hearing on inclusion of land in an ASA should remain focused on the land as conducive for the broad class of agricultural uses and not on any specific use. Moreover, a hearing on inclusion of land in an ASA should not devolve into a debate on zoning and land development approval for a specific use, as happened here. Those issues will be addressed in separate proceedings.

Second, for the reasons previously stated, the Board erred when it determined the proposed land fails to satisfy the “additional factors” criterion because its future use conflicts with the Law’s “policy and purpose” rather than any specific standard of the statute.

41 Valley Assoc., 882 A.2d at 16 (citations omitted) (footnotes omitted).

Not only do we find that Appellee’s determination of need does not “relate in one way or another to whether the land in question can be used for agriculture in the present and in the future,” *41 Valley Assoc.*, 882 A.2d at 14; we also find it to be inconsistent with the purposes and procedures of the AASL. Among the legislative findings and stated purposes articulated in Section 2 of the AASL are “to provide means by which agricultural land may be protected and enhanced as a viable segment of the Commonwealth’s economy and as an economic and environmental resource of major importance.” 3 P.S. § 902. The ASA is the tool provided by the AASL to achieve these stated purposes, the “means by which agricultural land may be protected and enhanced. . . .” *Id.* By creating this tool, the Legislature made a determination that there was a need for it in a general sense.

When the purposes enunciated in Section 2 of the AASL are read in conjunction with Section 5, 3 P.S. § 905, it seems clear that the determination of whether an ASA is needed in a given instance lies with the land owner, not with the municipality, because that section authorizes the land owner, not the municipality, to submit the proposal to create an ASA.⁸ This limits the inquiry of what is relevant under Section 7(a)(5) with respect to the need for an ASA. We hold that the need for an ASA, whether evaluated in the context of the municipality's comprehensive plans, ordinances, or zoning or other enactments, or the availability of other preservation tools or techniques, is not within the permissible scope of "other matters which may be relevant" under Section 7(a)(5).

To hold otherwise and broadly construe "other matters which may be relevant" to encompass analysis of the need for an ASA would elevate that factor to a discretionary standard able to trump all the specific standards of the AASL. It would effectively enable a municipal governing body to approve or deny an otherwise qualifying ASA petition at its discretion and to exercise that discretion merely on the basis of the governing body's judgment of how much protection farmers needed and were already afforded by other programs or regulations available to them, as was done here. The Municipalities Planning Code, 53 P.S. §10101 *et seq.*, grants a municipal governing body complete legislative discretion to enact or not enact land use zoning and planning regulations as they deem necessary.⁹ The AASL neither expressly nor impliedly confers such discretion. Under the AASL, need is determined by the petitioning farmers, not the municipal governing body.

Now, therefore, we enter the following:

⁸ Section 5(a) states in pertinent part, "Any owner or owners of land used for agricultural production . . . may submit a proposal to the governing body for the creation of an agricultural security area within such local government unit. . . ." 3 P.S. § 905(a) (emphasis added).

⁹ See 53 P.S. §10401 (official map), §10601 (zoning), and §10701 (planned residential development).

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ORDER

AND NOW, this 11th day of July, 2008, upon consideration of Appellants' Appeal of Decision Denying Agricultural Security Area, and the parties' briefs and oral arguments, the Appeal is GRANTED, Appellee's decision denying Appellants' petition to create an Agricultural Security Area is REVERSED and the matter is remanded to the East Lampeter Township Board of Supervisors for the purpose of approving the petition and establishing the Agricultural Security Area requested by Appellants.

NOTICE OF ENTRY OF ORDER OR DECREE
PURSUANT TO PA. R.C.P. NO: 236
NOTIFICATION - THE ATTACHED DOCUMENT
HAS BEEN FILED IN THIS CASE
PROTHONOTARY OF LANCASTER CO., PA
DATE: 7/15/08

BY THE COURT:


MARGARET C. MILLER
JUDGE

LOUIS J. FARINA, PRESIDENT JUDGE, joins in the foregoing Opinion and Order

ATTEST: S.S. Schlinkmae

COPIES TO: James S. Tupitza, Esquire
Randall M. Justice, Esquire