

McClellan v. Granville Township Board of Supervisors

Bradford County Court of Common Pleas
No. 99EQ000016 (April 2000)

On April 6, 2000, the Court of Common Pleas of Bradford County handed down its decision in the case of McClellan v. Granville Township Board of Supervisors. The case is significant in that it is the first time, to our knowledge, that a court has considered the interplay between the Pennsylvania Nutrient Management Act, 3 P.S. § 1701 *et seq.* (1993) and a local ordinance.

The controversy began in 1998 when the Granville Township Board of Supervisors adopted an ordinance captioned, "An ordinance for the purpose of imposing certain restrictions upon site selection for concentrated animal feeding operations [CAFO] and their manure storage facilities; providing for certain definitions, a procedure for a permit to carry on such operations, providing for review by the Township Planning Commission and imposing certain penalties for violation thereof." The six plaintiffs, who were owners and operators of a hog finishing operation located in the Township, filed suit asking the Court to declare that the ordinance was void because it was pre-empted by the Nutrient Management Act. The Township replied by asserting that the Ordinance was passed under the authority of the Pennsylvania Municipalities Code, 53 P.S. § 10101 *et seq.* (1968), and hence, was valid.

The Court decided in favor of the plaintiffs and in its opinion made several major points. First, in response to the Township's argument that the Nutrient Management Act "deals solely with the application of manure to the land," the Court explained that the Act's legislative intent makes clear "that hog finishing operations which generate and store animal manure are subject to the provisions of the Act." Consequently, as the regulations promulgated under the authority of the Act make clear (in 25 Pa. Code § 83.201 *et seq.*), the design, construction, location, operation, maintenance, and removal from service of manure storage facilities must be conducted in accordance with the statewide regulations. Next, the Court pointed to the Act's pre-emption clause. The clause states, in part, "no ordinance or regulation of any political subdivision or home rule municipality" may prohibit or regulate practices "related to the storage, handling or land application" of manure or the "construction, location, or operation of facilities used for the storage of manure" if that ordinance **is in conflict with or more stringent than** the Act or the regulations promulgated under the Act (emphasis ours). The Court then noted that the Township had admitted that "the Nutrient Management Act would pre-empt the provisions of the Ordinance in question, when the Nutrient Management Act is applicable." Finally, the Court decided that the Ordinance was in conflict with and more stringent than the regulations, pointing out, for example, that the setback requirements and the penalties in the ordinance were more stringent than those provided for in the

regulations. Consequently, the Court held that the ordinance was pre-empted by the Nutrient Management Act.

Judge John C. Mott went on to say that the Township's argument that the Township had the authority to pass this ordinance under the Municipalities Planning Code was simply a "bold and naked assertion" since the Township had not taken the necessary steps in the zoning process, specifically, the adoption of a comprehensive plan and a land development ordinance. He concluded his opinion by stating that this decision did not mean that the Township could not enact a comprehensive plan and include rules for land development that "properly and legitimately regulate land use in the Township, including CAFO's that might wish to locate in the Township in the future," so long as those "plans, rules, and zoning have not been legitimately pre-empted by laws of higher authority than the Township."

The Township is not appealing this decision.

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