

Denial of a Land Development Plan and Zoning Permit

The appellants in the next case are Mr. and Mrs. Beiler, and the appellees are the Buffalo Township Planning Commission and Buffalo Township. This is also a zoning question, but it is on a much different scale than the earlier case was in that the Beilers own a farm, but it is located in what is called an agricultural preservation district, and within that district there are limits as to what uses the property can be put to.

The Beilers own or have a license to produce agricultural lime, which is a process whereby they will combine municipal bio-solids with lime in order to produce an agricultural fertilizer-type of product.

The question here is whether or not that type of production, this use of bio-solids as combined with lime, constitutes an agriculture business which is a proper use within the agricultural preservation district, or whether it is a commercial use and therefore properly excluded from an agricultural preservation district.

The Beilers allege that they had a permit to operate this production, that they had gone to the Department of Environmental Protection in order to get a permit from them with regard to the land use as controlled by the State as distinguished from the local zoning ordinance, but before they were able to get the DEP permit, their township permit expired. Therefore, they had to submit a new permit request. It is this second permit request that was denied. The township argued that in part, it got new or had a better understanding of the implications of the grant of a permit, and declined to issue the permit the second time around because it concluded that the production of this agricultural lime was not an agriculture business. In reaching that conclusion, it relied upon a local ordinance that provided that an agricultural business is a business which affords at least 25 percent of its services to the agricultural sector including the processing and sale of agricultural products/supplies, or the sale or repair of agricultural equipment.

The issue here is whether or not this agricultural lime production offers at least 25 percent of its services to the agricultural sector, and there is no question that this is a product to be used on farms. It is in the nature of a fertilizer, a soil amendment, something that is intended to improve the quality of the soil. But at least part of the record indicates that at least initially, the Beilers are not sure that they will be able to market this profitably and in fact will initially be paid by local municipalities which are very happy to have a place that they can ship their bio-solids to and effectively get rid of them. So what the township is looking at is that this is really not production for agricultural purposes, but rather, in the nature of a waste processing facility, and it is taking these bio-solids from sewage, from leftovers, from municipal water treatment plants, and sewage plants and using them, converting them into an agricultural product.

Since at least initially the Beilers anticipate getting a substantial amount of their income from the municipalities who are paying them to take these bio-solids, that they are not truly producing an agricultural product as that is defined under the local ordinance.

The trial judge agreed with the zoning board and the township and concluded that in fact, what the Beilers proposed to do on their property is not in fact the production of agricultural products but is rather a commercial operation that is more intended to serve as a waste processing center. Accordingly, the request for a permit, the denial of the request for a permit, was upheld by the trial court, and the Commonwealth Court is being asked today whether or not that trial court order should be affirmed or whether it should be reversed and perhaps remanded for further testimony, what other types of relief the courts could offer the Beilers as they pursue their interest in using their farm and their property as a production site for agricultural lime.

With that, let's go listen to the arguments.