



PA Case of the Month:

Larock v. Bd. of Supervisors of Sugarloaf Twp., 208 Pa. Commw.
LEXIS 596 (December 5, 2008)

By Lauren W. Taylor

The Pennsylvania Commonwealth Court recently examined the issue of whether a township's zoning ordinance, which permitted a quarry only in one zoning district where all the minerals had been mined that could be economically extracted, was consistent with Section 603(i) of the Pennsylvania Municipalities Planning Code (MPC), which mandates that ordinances provide for the "reasonable development of minerals."

In *Larock v. Bd. of Supervisors of Sugarloaf Twp.*, the property owners, the Larocks, filed a petition for a curative amendment in which they alleged that Sugarloaf Township excluded, or alternatively, did not meet its "fair share" obligation to provide for "non-coal surface mining." The curative amendment sought to create a new zoning classification called a "Mineral Recovery District" on the Larocks' three tracts of land, consisting of 235 acres in Sugarloaf Township.

As of the date the Larock's curative amendment was filed, the Ordinance did provide, generally, for mining in the I-1 General Industrial District. At the Board of Supervisors' hearings on the proposed curative amendment, the Larocks' expert witness (who worked for the company that wanted to mine the Larocks' property) testified that 80-85 percent of the land in the I-1 General Industrial District had been mined out and that what remained available for mining was less than .5 percent of the total acreage of the Township. He further stated that due to the existence of various factors, such as aquifers, porous rock formations, mine pits, overhead power lines, old spoils from strip mining, resultant instability from previous deep pit mining and underground gas lines, only three distinct areas of the I-1 District potentially remained available for mineral extraction (a 25-33 acre tract, a 24 acre tract, and a 49 acre tract), and that they were so small that, from an engineering and economic standpoint, they could not feasibly be used for that purpose.

The Board of Supervisors concluded that the Ordinance was valid and found no need to create a Mineral Recovery District and denied the curative amendment.

On appeal, the trial court reversed the decision of the Board, finding that there were no minerals to be recovered in the existing mineral recovery district.

The Board of Supervisors and certain taxpayers appealed the trial court's decision to the Commonwealth Court, contending that the trial court erred in reversing the Board's decision and in granting the curative amendment. The Commonwealth Court explained that there is a presumption that a zoning ordinance is constitutional and valid unless the party challenging the zoning ordinance shows that "it is unreasonable, arbitrary or not substantially related to the police power interest" which it purports to serve. One of the reasons a court will find an ordinance "unreasonable" and not substantially related to the police power is if the ordinance is unduly restrictive or exclusionary. When a validity challenge is brought, the board or trial court is required to examine whether the ordinance,

as a whole, is “reasonable.” In determining what is reasonable, the board and trial court must consider various factors including whether the zoning ordinance provides for the reasonable development of minerals in each municipality.

Here, the Commonwealth Court found that the trial court failed to look specifically at the underlying reason for the fact that there were no minerals to be recovered in the I-1 District in determining that the ordinance was invalid – i.e., that minerals had already been extracted in that district. The Court noted that future extraction was impacted by depletion and not by application of the ordinance. The Court went on to state that a municipality should not necessarily be required to designate a new area for mineral extraction where an established mineral extraction zone within the township has been depleted. Thus, the Court found that the Sugarloaf Ordinance did provide an opportunity for the reasonable development of minerals, and reversed the trial court decision.

For more information about this topic, please contact Lauren Taylor at 215.918.3625 or lwtaylor@foxrothschild.com.



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