



PA Case of the Month:

Union Township, et al. v. Ethan Michael, Inc., et al
2009 Pa. Commw. LEXIS 758 July 23, 2009

By Lauren W. Taylor

The Pennsylvania Commonwealth Court recently interpreted a township's zoning ordinance requirement that an applicant's proposal for a special exception be in compliance with the township's comprehensive plan and not be adverse to the character or general nature of the subject property's surrounding neighborhood.

In *Union Township, et al. v. Ethan Michael, Inc., et al.*, the property owners filed an application for special exception seeking to develop a recreational motor sports park/racetrack in an area zoned as an Agricultural Preservation Zoning District. The township's zoning ordinance allowed such use by special exception; however, the zoning ordinance included a provision that special exception uses had to comply with the provisions of the zoning ordinance regarding adversity with the character of the general neighborhood and consistency with the township's comprehensive plan.

After more than 62 hearings over a five-year period, the township's zoning hearing officer issued a report recommending approval of the property owners' special exception application and the Zoning Hearing Board adopted the hearing officer's report as its final decision. The township, however, appealed the Zoning Hearing Board's decision to the trial court, which reversed the Board's order and denied the property owners' special exception application for the motor sports park.

The trial court concluded that although the motor sports park was included within the definition of "recreation area" pursuant to the zoning ordinance, the hearing officer and the Board had not considered the "contextual circumstances, including the size and intensity of the use, and the impact on the surrounding neighborhood" in granting the special exception. The trial court noted that special exception uses had to comply with the provisions of the zoning ordinance regarding adversity with the character of the general neighborhood and consistency with the township's comprehensive plan. The trial court concluded that the proposed uses would adversely affect the general character of the rural and quiet neighborhood, increase traffic in the area, substantially increase the noise and forever transform the nature of the community.

The property owners appealed the trial court's decision, asserting that they had met the requirements for approval of the special exception use and that the trial court had improperly raised its own concerns about the size and intensity of the proposed motor sports park within an agricultural district. The Commonwealth Court agreed, noting that once an applicant shows compliance with the specific requirements of the ordinance, the burden shifts to the protestors to prove that the proposed use will have an adverse effect on the general public.

The Commonwealth Court held that the record supported a finding that the applicant had complied with the specific requirements of the township's zoning ordinance, including the requirements regarding adversity with the character of the general neighborhood and consistency with

the township's comprehensive plan. Specifically, the Commonwealth Court cited to the hearing officer's decision, which provided as follows:

The [recreation] use comes with all its beauty and all of its warts. The application can only be defeated when it presents an impact substantially different and quantitatively more intense than would be anticipated for the generic use. No testimony has been presented to demonstrate that this [motor sports park] would be substantially different from any other [motor sports park]. Most of the nearby land is farmland...But the nature of the surrounding neighborhood must be judged not only by what is now extant but also what is permitted...The ordinance requires that the proposed use will not adversely affect the character of the general neighborhood. There are two things that this sentence does not mean. It is not directed to any individual property, but rather to the neighborhood as a whole. Secondly, this does not mean that there will be no impact from the presence of the use, but rather the overall character of the neighborhood will not be adversely affected.

Accordingly, the Commonwealth Court held that the granting of the special exception application was supported by substantial evidence and met the necessary requirements.

In addition, Judge Robert Simpson wrote a concurring opinion to clarify a point regarding the requirement that the granting of the special exception shall be consistent with the township's comprehensive plan. Judge Simpson stated that this language should be interpreted to mean that a governing body analyze the discrete and objective criteria relating to the current and future zoning for the property rather than the goals of the comprehensive plan. Based on this interpretation, the Commonwealth Court looked at a map of future uses for the subject property and found that the proposed motor sports park was currently in an Agricultural Preservation Zoning District, which permits recreation uses by special exception, and that the future use for the land in the area of the motor sports park was also mapped as Agricultural Preservation. Therefore, the Commonwealth Court determined that the recreation use was consistent with the comprehensive plan as there was nothing in the comprehensive plan indicating a possible future change of zoning that would affect the area of the proposed motor sports park.

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