

Condemnation of Agricultural Security Area Farmland

White v. Pennsylvania Department of Transportation (PennDOT):

Commonwealth Court of Pennsylvania Commonwealth Court of Pennsylvania
Date of Decision: August 30, 1999
738 A.2d 27 (Pa. Cmwlth.), 1999 WL 668795, 1999 Pa. Cmwlth. Lexis 696

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Interstate Route 81 is a major trucking thoroughfare running through Pennsylvania's prime farmland. With the exception of Thanksgiving and Christmas, eighteen wheelers constantly roll across the area carrying tons of freight in every direction. In late 1988, PennDOT proposed constructing a new Exit 7 interchange along Interstate 81 in the Chambersburg area of Franklin County. This \$5.8 million improvement would provide additional access to Chambersburg and relieve traffic congestion on the nearby I-81 interchange and Route 30, which sits about a mile south of the intended location.¹

Lamar and Lois White own a 26-acre farm contiguous to Interstate 81 in Greene and Guilford townships. The farm is in an Agricultural Security Area (ASA)². The Agricultural Security Area Act sets up a statewide program designed to conserve, protect, and encourage the development and improvement of Pennsylvania's agricultural lands for the production of food and other agricultural products. To encourage participation in this program, numerous incentives are offered. Landowners receive incentives in exchange for relinquishment of the right to develop the farmland. Compensation is provided by the taxpayers.³

In June 1994, the Whites received a notice from PennDOT informing them that PennDOT might need to enter their property to conduct surveys and tests for the construction of a new Exit 7 interchange. PennDOT would need to condemn all or a large portion of the White farm to build the proposed exit.⁴ Sometime after receiving the notification of possible entry, the Whites refused entry to PennDOT employees. PennDOT made no further attempt to access the Whites' property.

In March 1999, PennDOT received approval from the Federal Highway Administration (FHA) to move forward with plans to construct a new Exit 7 interchange. The FHA approval meant that designers could draft final plans, acquire the right-of-way property

* *The Center does not provide legal advice, nor is its work intended to be a substitute for such advice and counsel.*

and construct the interchange as early as Spring 2000.⁵ In response to the FHA announcement, the Whites filed a lawsuit against PennDOT in the Commonwealth Court, alleging that PennDOT violated the Agricultural Security Area Law by illegally conducting tests on their land prior to obtaining Agricultural Lands Condemnation Approval Board (ALCAB) permission. PennDOT responded by claiming that they did not need the approval of the ALCAB because they were simply widening an existing road and the ALCAB statute exempted the approval.

The lawsuit presented two issues for the Court:

I. Must the Pennsylvania Department of Transportation have Agricultural Lands Condemnation Approval Board approval before it files a declaration of taking and condemns Agricultural Security Area farmland?

The court began its decision by stating that Pennsylvania Statutes clearly empower PennDOT to condemn land for all transportation purposes.⁶ But before condemning agricultural lands that are being used for productive agricultural purposes, PennDOT must request the ALCAB to determine if there is a reasonable and prudent alternative to building the highway on productive farmland.⁷

The Agricultural Lands Condemnation Approval Board was created to protect productive agricultural land from condemnation. The board is comprised of six members consisting of the Director of the Office of Policy and Planning, the Secretaries of Agriculture, Environmental Protection, Transportation and two active farmers appointed by the Governor with the advice and consent of a majority of the Senate. The Secretary of Agriculture is the chairman. The board has jurisdiction over land condemned for highway and waste disposal purposes. Once faced with a dispute, the board has sixty days in which to determine whether there is a feasible and prudent alternative to the proposed condemnation.⁸

Pennsylvania Department of Transportation argued to the court that the ALCAB has no jurisdiction over PennDOT's power to condemn farmland because the Exit 7 project was simply a widening of an existing road. In section 106(d)(1) of the ALCAB, the statute provides that board jurisdiction does not apply to widening roadways of existing highways, and the elimination of curves or reconstruction on existing highways.⁹ According to PennDOT, the Exit 7 project was a simple widening of an existing highway. The court disagreed. It found that the work proposed on Exit 7 was clearly outside the scope of the exception because it involved the addition of an interchange with new ramps and connector roads. The court held that PennDOT must seek ALCAB approval before it can file a declaration of taking.

II. Can the Pennsylvania Department of Transportation conduct tests on Agricultural Security Area farmland proposed for condemnation before getting approval from the Agricultural Lands Condemnation Approval Board (ALCAB)?¹⁰

The court in deciding this issue looked to section 1-409 of the Eminent Domain Code (EDC).¹¹ Section 1-409 provides that prior to the filing of the declaration of taking, a condemnor is authorized to enter onto property for the purposes of conducting public planning studies.¹² However, one restriction provided in the EDC is a ten-day notification period. Therefore, PennDOT must wait ten days after notifying the Whites before entering the land and conducting the tests.

Entry onto land to conduct a survey may cause damage to the land. The Eminent Domain Code acknowledges this and provides a landowner compensation for any damages incurred from the land study. The court found that PennDOT was entitled to enter the Whites' property without ALCAB approval for testing and planning purposes pursuant to the Eminent Domain Code but PennDOT must pay the Whites for any damage caused by the testing. The Eminent Domain Code is clear and ALCAB approval is not a prerequisite to PennDOT's right to enter the farmland for the purposes of public planning studies.

Conclusion

Pennsylvania recognizes that once farmland is lost, it is gone forever. To slow the conversion of farmland into housing or industrial developments, Pennsylvania enacted the ALCAB. The court held that the ALCAB must be provided the opportunity to look for a way to save productive ASA farmland proposed for condemnation. Pennsylvania also recognizes that changes not contemplated twenty years ago can and do become a reality. These changes require looking at all possible options, including the condemnation of ASA farmland. Each survey conducted protects taxpayers from wasting the limited resources available to state and local government. The court's ruling provides PennDOT the ability to conduct tests allowing for change in the future, but PennDOT's authority is not unfettered and is tempered by ALCAB approval before condemnation.

¹ *Plans Approved for New I-81 Exit 7 Interchange*, Carlisle Pa. Sentinel, Mar. 27, 1999, at B-1.

² 3 PA. CONS. STAT. ANN. §§ 901 et. seq. (West 1988)

³ 3 PA. CONS. STAT. ANN. § 902 (West 1988)

⁴ *Farm Bureau Files Amicus Curiae In Exit 7 Lawsuit*, Pennsylvania Farm Bureau Country Focus, Sep. 1999, at 16.

⁵ *Plans Approved for New I-81 Exit 7 Interchange*, Carlisle Pa. Sentinel, Mar. 27, 1999, at B-1.

⁶ 71 PA. CONS. STAT. ANN. §§ 513(e)(1) (West 1990)

⁷ 71 PA. CONS. STAT. ANN. §§ 106(b) (West 1990)

⁸ 71 PA. CONS. STAT. ANN. §§ 106 (a), 106 (b) (West 1990)

⁹ 71 PA. CONS. STAT. ANN. §§ 106(d)(1) (West 1990)

¹⁰ 71 PA. CONS. STAT. ANN. § 106 (West 1995)

¹¹ 26 PA. CONS. STAT. ANN. § 1-409 (West 1997)

¹² 26 PA. CONS. STAT. ANN. § 1-409 (West 1997)