

IN THE COURT OF COMMON PLEAS OF WESTMORELAND COUNTY,
PENNSYLVANIA
CIVIL ACTION – LAW

KIM E. MILLER and)
DIANNE E. MILLER, husband and wife,)
Appellants,)

v.)

AGRICULTURAL LAND)
PRESERVATION BOARD OF)
WESTMORELAND COUNTY,)
Appellee.)

No. 2275 of 2020

OPINION AND ORDER OF COURT

By Harry F. Smail, Jr., Judge:

This matter is before the Court on an appeal from a decision of the Agricultural Land Preservation Board of Westmoreland County (the “Board”) in regards to real property owned by Kim and Dianne Miller (the “Millers”) which is subject to an agricultural easement. The Millers applied to the Board for approval to subdivide their property located at 213 Peoples Road, Ligonier, Pennsylvania 15658 at Tax Map Number 51-16-00-0-079 (the “Property”). By letter dated June 1, 2020, the Board denied the Millers’ application. This appeal timely followed, and a hearing *de novo* was held before this Court on October 5, 2020.

As a preliminary matter, the Court notes the standard of review in the instant case. Pennsylvania law provides that when considering a local agency appeal, “[i]n the event a full and complete record of the proceedings before the local agency was not made, the court may hear the appeal *de novo*, or may remand the proceedings to the agency for the purpose of making a full and complete record or for further disposition in accordance with the order of the court.” 2 Pa.

C.S. § 754. In this case, a record was not made before the Board, and so the Court held a hearing with both parties producing evidence for the Court's consideration.

FACTUAL FINDINGS

The Property consists of 256.7 acres of farm land in Ligonier Township, Westmoreland County, Pennsylvania, conveyed to the Millers on July 11, 2011. (Petitioners' Exhibit "1"). Title to the Property is subject to an agricultural conservation easement made by previous property owners Harry and Elizabeth Marker on June 12, 2007. (Petitioners' Exhibit "2"). On February 18, 2020, the Millers filed an application to subdivide the Property into two separate parcels of 150.53 ("Lot 1") and 106.25 acres ("Lot 2") respectively, with the future option for an additional residential structure to be built on the Property. (Petitioners' Exhibit "4"). The proposal was denied by the Board by letter dated June 1, 2020. (Petitioners' Exhibit "5").

The rejection letter states the basis for the denial of the subdivision as the presence of the main residential building and an apartment on the Property on proposed Lot 1, leaving no ability for the Millers to construct an additional residential structure on either lot due to the limitations created by Pennsylvania's Agricultural Area Security Law. (Petitioners' Exhibit "5"). The Millers argue that the alleged apartment located in the barn in proposed lot one is not an "additional residential structure" as defined under the Agricultural Area Security Law, and so another residential structure may be built on the Property as of right.

At the hearing, testimony was first provided by Petitioner Kim E. Miller. (Transcript of Proceedings 10/05/2020 (hereinafter "Tr."), p. 24). He testified that he presently lives in a house on the property and primarily uses the property to raise grass-fed beef cattle. (Tr. p. 25-26). The property mostly consists of grazing fields, along with other barns, hay sheds and a maintenance shop. *Id.* One of the barns on proposed Lot 1 has a partially finished basement, which presently

has constructed within it offices and a commercial kitchen. (Tr. p. 27). The barn is one hundred to one hundred fifty years old; it is two stories with the upper level being used to store farm machinery and the lower level being the office rooms, two bathrooms, commercial kitchen, woodworking equipment, freezers for beef storage and parking for one truck. (Tr. p. 27-28). Photographs of the barn were presented to the Court, and photographs show the outside of the barn, the machinery storage, the beef freezers and commercial kitchen, used and vacant office space and a bathroom. (Petitioners' Exhibit "10"). The photographs were taken within a week prior to the hearing on October 5, 2020. (Tr. p. 29).

Mr. Miller does not deny that the portion of the barn referred to as the apartment was once lived in by himself and his family after they first purchased the farm, while the former occupants still had an additional two years in which they were permitted to live in the main residence. (Tr. p. 36). Mr. Miller constructed four rooms within the large open space of the lower level of barn. (Tr. p. 49). The apartment occupies approximately fifteen percent (15%) of the barn building space. (Tr. p. 36). Subsequent to Mr. and Mrs. Miller living in the apartment for one to two years, their daughter, her husband and their children also resided in the apartment for approximately four years, moving out in approximately October 2019. (Tr. p. 58-59). No other persons have ever lived in the apartment. (Tr. p. 67-68).

The space is presently not occupied as a residence, and he does not contemplate using it as such in the future. (Tr. p. 36-37, 67). Mr. Miller intends to use the space as it was originally intended: as an office, training facility and commercial kitchen. (Tr. p. 61). Although at one point the farm was listed for sale through the Petitioners' son and included a description of the apartment on the listing, this description only persisted for a few days before information about

the apartment was removed from the listing. (Tr. p. 73). The original description was picked up by and used by the real estate listing aggregator Zillow. (Respondent's Exhibit "B").

Testimony was also provided by Betty Joann Reefer, Executive Director of the Westmoreland County Agricultural Land Preservation Board since 1993. (Tr. p. 76). Her position entails ensuring that farms operating under the program remain in compliance with applicable law. (Tr. p. 77). Ms. Reefer attends regular trainings in the law relative to her position, generally two trainings per year. (Tr. p. 84). She is familiar with the Miller farm, and conducts now-biannual inspections as part of her employment. (Tr. p. 78). Ms. Reefer is also charged with reviewing subdivision proposals, such as that submitted by the Petitioners in February of 2020. (Tr. p. 84).

A meeting of the Board was held on June 1, 2020 at which time the subdivision request was considered. (Tr. p. 93). In reviewing the Millers' subdivision proposal, Ms. Reefer noted in the minutes that the Ligonier Township Planning Commission had concerns with regard to the apartment's compliance with zoning and DEP regulations. (Respondent's Exhibit "E"). Counsel for the Board noted his opinion that the apartment was considered an additional residential structure under the relevant law, and he recommended denial of the Miller's subdivision request. *Id.* The subdivision request was unanimously denied by the Board. *Id.*

In discussing how she became aware of the apartment on the farm property, she states that she received an anonymous call in 2017 directing her to the aforementioned Zillow listing. (Tr. p. 102-103). Her 2018 farm Easement Inspection report, sent to the Millers, notes the inclusion of the apartment and states: "No additional residential permitted." (Respondent's Exhibit "F"). She noted that the Petitioners never objected directly to this classification of the apartment as it appears in the report. (Tr. p. 115). She also noted that from the time of the

Millers' purchase of the farm, the relationship between herself and Mr. Miller was relatively strained. (Tr. p. 105).

DISCUSSION AND ANALYSIS

AGRICULTURAL EASEMENT LAW

In reviewing an agency appeal in which the Court has taken evidence, the standard of review is *de novo*, and the Court stands as the finder of fact. 2 Pa. C.S. § 754. "Under *de novo* review, the reviewing tribunal conducts an independent fact-finding proceeding in which new evidence is taken and all issues are determined anew." *Med. Shoppe, Ltd. v. Wayne Mem'l Hosp.*, 866 A.2d 455, 464 (Pa. Cmwlth. 2005). The question before the Court hinges on whether the apartment space at issue is considered an "additional residential structure" under the guidelines of Pennsylvania's Agricultural Area Security Law and regulations promulgated thereunder. } I

3 P.S. § 901 through § 915 comprise Pennsylvania's Agricultural Area Security Law (the "Law"), which was established to protect and promote the development of Pennsylvania's agricultural lands. 3 P.S. § 902. The Law allows for designation of "agricultural security areas" and allows county boards and programs to be established for the purpose purchasing of agricultural conservation easements from landowners located in the agricultural security areas. 3 P.S. § 914.1. The Law additionally provides that the Secretary of the Pennsylvania Department of Agriculture shall promulgate rules and regulations concerning the administration of the county programs. 3 P.S. § 915. These rules and regulations are codified at 7 Pa. Code § 138e.1 *et seq.* Specifically relevant to the present case, 7 Pa. Code § 138e.223(a) reads:

- (a) New buildings or structures. The construction or use of a building or other structure on the restricted land other than a building or structure existing on the date of the granting of the easement is prohibited, except that:

(2) The construction of one additional residential structure is permitted...

7 Pa. Code § 138e.224(a) governs the regulations regarding construction of the additional residential structure, and it provides:

- (a) General. In addition to the structures existing on the restricted land on the date of the granting of the easement, one additional residential structure may be constructed on the restricted land if the following apply:
 - (1) The residential structure is constructed and used as the landowner's principal residence or for the purpose of providing necessary housing for seasonal or full-time farm employees.
 - (2) No other residential structure has been constructed on the restricted land, under authority of section 14.1(c)(6)(iv) of the act (3 P. S. § 914.1(c)(6)(iv)) and this section, after the date of the granting of the easement.
 - (3) The residential structure and its curtilage occupy no more than 2 acres of the restricted land.

The subdivision of land subject to an agricultural conservation easement where an additional residential structure is desired is governed by 7 Pa. Code § 138e.224(c) which reads:

If the restricted land is subdivided prior to the construction of a residential structure under authority of section 14.1(c)(6)(iv) of the act and this section, the landowner shall do the following:

- (1) Inform the county board of the specific subdivided tract with respect to which the right to construct and use such a residential structure is reserved.
- (2) Ensure that the deed to the subdivided tract with respect to which the right to construct and use the residential structure is reserved clearly sets forth the reservation of this right.
- (3) Ensure that the deeds to the remaining subdivided tracts recite that no residential structure may be constructed on the remaining subdivided tracts.

7 Pa. Code § 138e.224. The Board has also promulgated its own "Land Subdivision Guidelines for Land Subject to an Agricultural Conservation Easement Under the Westmoreland County Agricultural Land Preservation Program," which largely mirror those set out in the Pennsylvania Code. (Petitioners' Exhibit "3," Respondent's Exhibit "C").

ANALYSIS

Looking to the evidence presented at the hearing, it is apparent that the main brick house in which the Petitioners now live comprises the main residential structure on the Property. The question remains whether the apartment qualifies as the permitted "one additional residential structure" as allowable under 7 Pa. Code § 138e.223(a)(2). Black's Law Dictionary defines a "structure" in relevant part as follows: "Any construction, production, or piece of work artificially built up or composed of parts purposefully joined together <a building is a structure>." Black's Law Dictionary (11th Ed. 2019), *structure*.

I
Definition
of
Structure

It is undisputed that the apartment space is encompassed entirely within the barn structure that pre-dated the agricultural easement and the Millers' purchase. Mr. Miller testified, and Respondent did not dispute, that the apartment comprises approximately one sixth (1/6) of the total space within the barn. Utilizing the Black's Law Dictionary Definition of "structure," it is clear that the barn itself, as a construction comprised of parts purposefully joined together (*i.e.* a building) is the structure in question, and not the small internal division of the structure comprising of the apartment rooms. It is clear that by the plain meaning of the word structure the barn itself, which has a minimum of five sixths (5/6) of its space reserved for undisputed agricultural use, is an agricultural structure.

This conclusion is further bolstered by Mr. Miller's testimony, which indicates that the apartment portion of the barn is not presently being used in any residential manner, and he has no plans to use it in a residential manner in the future. The photographs taken by Mr. Miller prior to the hearing support this conclusion as well, showing the almost entirely commercial and agricultural nature of the barn structure. The apartment rooms appear to be set up to presently support commercial and office activities.

The central purpose behind the Board's Subdivision Guidelines is "to preserve as much farmland as possible in integral tracts and to promote viable agricultural enterprises." (Petitioners' Exhibit "2"). The request being made by the Petitioners is fully in compliance with this general goal, as well as statutory and regulatory authority. 7 Pa. Code § 138e.223(a)(2) expressly permits the reservation for construction of "an additional residential structure" pursuant to a subdivision where only one residential structure exists on the property. Having determined that the apartment does not comprise a "residential structure," Petitioners are permitted to ensure that the subdivision deeds provide for the future construction of one additional residential structure under 7 Pa. Code § 138e.224(c).

Additionally raised at time of hearing was the possible use of the apartment area by Petitioners for future agrotourism accommodations. Pursuant to 7 Pa. Code § 138e.241, agricultural conservation easements must contain provisions which ensure that "customary part-time or off-season minor or rural enterprises and activities which are provided for in the county program are permitted." The Pennsylvania Bureau of Farmland Preservation defines these enterprises and activities to include:

The accommodation of tourists and visitors within principally family residential and/or agricultural structures otherwise permitted under the law so long as the accommodation of tourists and visitors is undertaken as a part-time or off-season minor or rural enterprise and is incidental to the agricultural and open space character of the property.

(Petitioners' Appeal, Exhibit "E"). Thus, because the barn is a principally agricultural structure, the part-time accommodation of tourists within the barn would be permissible under law separate from any proposed additional residential construction.

In sum, it is clear that the barn is an agricultural structure, interior apartment rooms notwithstanding. All evidence taken together and with all other procedural requirements met, the

Court finds that the Petitioners' application for subdivision must be granted as requested, and the decision of the Board reversed.

Accordingly, this Court enters the following Order:

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AGRICULTURAL LAND)
PRESERVATION BOARD OF)
WESTMORELAND COUNTY,)
)
Appellee.)

No. 2275 of 2020

ORDER OF COURT

AND NOW, to wit, this 16th day of February, 2021, consistent with the foregoing analysis, and after careful consideration, it is hereby ORDERED, ADJUDGED and DECREED as follows:

1. The Appeal of Petitioners Kim E. Miller and Dianne E. Miller is hereby GRANTED;
2. The decision of the Respondent Agricultural Land Preservation Board of Westmoreland County is REVERSED, and the Board is DIRECTED to approve the Kananga Farm Subdivision Plan as submitted;
3. In accord with Pa.R.C.P. 236(a)(2)(b), the Prothonotary is DIRECTED to note in the docket that the individuals listed below have been given notice of this Order.

BY THE COURT:


Harry F. Smal, Jr., Judge

ATTEST:

Prothonotary

cc: James S. Lederach, Esq.
Denis P. Zuzik, Esq.