



Old 76 Group loses appeal regarding West Blue permit

YORK -- The Old 76 Group had hoped the courts would rule in their favor, saying the York County Board of Adjustment erred in their decision to uphold a previously-granted zoning/building permit to the West Blue Pork operation. But they didn't get what they were after.

District Judge Alan Gless has ruled that the board of adjustment was justified in their decision.

The permit was granted to West Blue, for the construction and operation of a hog confinement operation south of the Waco interchange. The Old 76 Group, which is made up of residents in that area, immediately argued against it -- stating that the livestock units exceed the county's zoning regulations, there were no clear plans regarding waste disposal, and that York County Zoning Administrator Orval Stahr erred in the permit's issuance.

Two hearings were held before the board of adjustment (who was charged with determining if Stahr had erred). Both times, the board upheld his decision and said the permit complied with all zoning regulations.

But the Old 76 Group argued that their evidence was not properly considered by the board of adjustment, that a decision was made before the hearing even took place and that the board was biased and pre-judgmental. So, they filed an appeal in District Court.

Meanwhile, the West Blue LLC moved ahead with construction of the hog confinement facility. They were legally able to do so, because their building/zoning permit was legal and active.

And it will remain so, according to Judge Gless.

Judge Gless' formal judgment addresses three main issues brought before the court by the Old 76 Group:

- Issue of animal numbers

"I do not agree that the computations for animal units are grossly in error . . . The board's conclusion relating to the animal units issue, on this record, was

neither illegal, unsupported by the evidence, arbitrary, unreasonable, nor clearly wrong."

- Waste and disposal issue

"The group contends WBP's (West Blue Pork's) zoning permit should have been denied for the alleged further reason that there is no indication on the application as to the existence and location of any sewage disposal facility . . . The adequacy of WBP's animal waste storage facility and disposal plan presents questions not appropriately within the zoning administrator's and board's primary expertise and jurisdiction. The issues raised by this particular objection properly fall within NDEQ's primary expertise and jurisdiction. The group also points to written comments of Kathy Martin, PC, describing the Martin document as a five-page scientific critique in which the author analyzed in detail numerous allegedly critical problems with WBP's plan. When considered by a non-engineer and non-scientist possessing some environmental science education, it seems a bit of a stretch to describe the Martin report as a detailed scientific analysis. The board's conclusion relating to the waste disposal issue was neither illegal, unsupported by the evidence, unreasonable nor clearly wrong."

- Board's alleged prejudgment/violation of due process

"The board members had more than adequate time between the filing of the appeal from the zoning administrator and the board hearing in which the members could examine the WBP zoning permit application and supporting documentation. Although the record contains no evidence that the board members did that, the record likewise contains no evidence of improper biases nor prejudices nor impermissible contacts or improper relations nor impermissible interests. The board's action in this instance may not have comported with concepts of good public relations, but that does not render the board's action a violation of due process."

In other words -- Judge Gless says he felt the animal unit computation was an issue of interpretation based on the county's current zoning regulations; the "Martin report" submitted by the Old 76ers was without scientific or professional merit, regarding the waste issue, and the WBP plan fell within DEQ standards; and while the board members may have not exercised good public relations in their decision-making process during the public hearing, it doesn't indicate they violated due process.

"Finding no infirmity in the board's decision to issue the WBP zoning permit, I affirm the board's decision and all costs on appeal are taxed to the petitioners." □

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