

Judge rules Jaindl zoning changes invalid

The amendments allow developer to build warehouses, homes on farmland in western Lower Macungie Township.

By Patrick Lester, Of The Morning Call

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A Lehigh County judge has shot down zoning changes in Lower Macungie made as part of a controversial deal that allows David Jaindl to build warehouses and homes on 600-plus acres of farmland.

Judge Michele A. Varricchio, in a decision issued Wednesday, declared the ordinance invalid, saying the township didn't properly notify the public of the proposed changes before ratifying them at a public meeting.

While Varricchio wrote the township made a "good faith effort" to comply with the Pennsylvania Municipalities Planning Code when advertising the ordinance changes, she said the notices were "misleading" because they omitted important details.

"This is a victory for the residents of Lower Macungie Township who deserved a full and open process of revising their zoning ordinance as drastically as was done," said Donald Miles, one of the attorneys representing a group of residents that filed zoning challenges in county court and before the township's Zoning Hearing Board.

Township officials and their attorney had not seen a copy of the decision. Jaindl, an intervenor in the court case, also said he has not seen the ruling.

It's not clear what the township's next move will be. Commissioners could simply redo the zoning change process with more detailed public notices, or they could appeal the judge's decision in Commonwealth Court.

Miles promised close public scrutiny if the commissioners revisit the zoning change process.

"The folks I represent and the rest of the residents of Lower Macungie will make sure they hear the demands of the residents, that this time the law should be followed and real land use planning ... be done," Miles said.

Whatever the township decides, it's likely to draw out an already lengthy legal battle that cost township taxpayers nearly \$50,000 by the end of April.

Commissioners approved the zoning changes in July 2010, establishing four new zoning districts designed to allow Jaindl Realty to build homes, warehouses and shopping centers in an area bounded by Smith Lane and Mertztown, Spring Creek and Ruth roads in the western part of the township. That particular section previously had zoning provisions designed to preserve farmland.

The zoning ordinance changes, subdivision and land development ordinance changes and other perks were part of an April 2010 agreement reached with Jaindl that raised the ire of some township residents.

Commissioners, after months of negotiations, agreed to change the rules of development on Jaindl's land in exchange for assurances from the farmer and developer that he would not move forward with plans for a controversial 700-plus acre quarry.

Jaindl, as a result of the zoning changes, could have developed nearly 700 homes and 4 million square feet of warehouses on the land, in addition to a 443,000-square-foot shopping center, a convenience store with 16 gasoline pumps and a sit-down restaurant. Jaindl has said he has no plans to develop the land to the maximum extent allowed.

Varricchio wrote that the public notice did not identify the 1998 ordinance that was to be amended, nor a section to be repealed. She took issue with the fact the public notice failed to summarize the purpose of the new classes of zoning districts, which included industrial, commercial, agricultural protection and residential.

"Informing the public of the purpose of the new class of zoning district is significant for the public to have a full understanding of the proposal and what will be discussed at the public hearing," she wrote.

While Varricchio upheld the claim that public notice was lacking, she did not decide on two other claims raised in the lawsuit: that the commissioners were guilty of contract zoning and that they abused their power by enacting zoning amendments without amending the township's comprehensive plan.

Miles and two others on his legal team, Thomas Anewalt and Robert Rust III, are fighting a similar legal battle before the township's zoning board, arguing their case on substantive grounds. Rust most recently asked zoning board Chairman William Royer to issue subpoenas to compel commissioners to testify at that proceeding.

Royer has not announced a decision, which could determine whether the residents proceed with their case before the zoning board.