

Pa. Supreme Court sides with developer in Chester County case

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A state law designed to shield people from lawsuits when they try to protect the environment suffered a blow Wednesday when the state Supreme Court ruled in a long-running case involving a Chester County development.

The court ruled, in part, that the Environmental Immunity Act does not shield parties who may have already reached a court-approved agreement on an issue.

"It looks like, environmentally, we took one on the chin," said State Rep. Camille "Bud" George (D., Clearfield), who led the effort to pass the Environmental Immunity Act in 2001.

Larry Silver, an environmental attorney who represented the group of Pennsbury Township residents sued by Pennsbury Village Associates, agreed Thursday, suggesting "the Supreme Court just threw a wet blanket" on citizens' rights.

Fronefield Crawford, who represented the Pennsbury Village developer, was out of town and could not be reached for comment.

The case involves a decades-long battle by Pennsbury Village Associates to build a high-density, mixed-use development on two parcels along Route 1 that are bisected by Pennsbury Township land.

In 2005, a judge ended a controversial bid by the township to lease land it owned to the developer so the tracts could be connected. The land had deed restrictions that limited it to public use, the judge ruled.

After more legal wrangling, the developer, township, and residents, including Aaron McIntyre, the lead appellee in the Supreme Court case, entered into an agreement in which the township supervisors got the right to determine configuration of the access roads, the high court opinion said.

When the township subsequently decided that the south border road would be situated on the restricted land, McIntyre and others asked the county to uphold the deed restrictions and oppose the road. The county did so.

The developer sued McIntyre and others for breach of contract. McIntyre, now a township supervisor, countered that he should be protected by the Environmental Immunity Act.

A Chester County court judge disagreed, and McIntyre appealed to Commonwealth Court, which sided with him. That set up the developer's appeal to the state Supreme Court, which heard arguments in December 2009.

Silver said it was unclear what the next step would be.

He said it was up to the developer to decide whether to pursue the litigation against McIntyre, which included a request for damages caused by the delays.

"It's his move," Silver said.

According to township records, final approval of the development, which calls for 97 condominiums and more than 11,000 square feet of commercial space on about 20 acres, is scheduled for Feb. 28.

George said he understood that the high court found that the agreement to which McIntyre was a party trumped his immunity claims. However, the veteran lawmaker said he would review the case and the statute.

"We'll be a poorer nation if we allow the fear of lawsuits to squelch debate on public issues," he said.

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