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Segal v. Zoning Hearing Bd., 771 A.2d 90 (Pa. Commw. Ct. 2001)

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the public good, Hudson Township and the Village of Hudson merged creating the City of Hudson ("Hudson"). Hudson, five years later, sought declaratory relief seeking control over the water system. A few months later, the County inquired about possible buyers of the water system. The City of Akron ("Akron") responded, but Hudson did not. Soon after, Hudson moved for an emergency restraining order and a preliminary injunction preventing the sale of the water system they believed passed by the operation of law to them at the creation of Hudson. The trial court, the Summit County Common Pleas Court, determined the water system did not pass to Hudson by the operation of law, and the County was free to sell the water system.

This court addressed whether a water system held in public trust in a township is incorporated into a city at its creation, and whether a county may sell a water system in one municipality to another municipality. The Ohio Constitution art. XVIII, § 4 provides that any municipality may acquire, construct, own, lease and operate within or without its corporate limits, any public utility. Further, the Ohio Revised Code § 6103.22 provides that a water works system may be acquired by mutual agreement or conveyance. Hudson allowed the County to operate the water system for five years without objection. Moreover, the language of the Ohio Constitution suggests the water system may be acquired only by an affirmative act. Hudson could have obtained control over the water system by eminent domain. The Revised Code suggests Hudson also could have gained control through an agreement with the County or through a conveyance. No language suggested the water system passed by the operation of law. Thus, the court held the water system remained in the County's control.

Regarding the second issue, the court again looked to the Ohio Revised Code. Sections 6103.21 and 6103.22 are interrelated. The former addresses the contractual and payment responsibilities, as well as the party's rights. The latter relates to the transfer of a completed water system. The court found a county may only transfer ownership to the municipality the water facility serves. Therefore, the County could only transfer the water system to Hudson, but remained in control of the water system because no agreement or affirmative act transferred the water system from the County to Hudson.

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PENNSYLVANIA

Segal v. Zoning Hearing Bd., 771 A.2d 90 (Pa. Commw. Ct. 2001)
(holding the filling of wetlands and waters of the United States did not constitute a dimensional variance, and the filling of wetlands based on a self-imposed hardship was not authorized).

Allen and Gary Segal ("Segals") appealed the denial by the Zoning Hearing Board of Buckingham Township ("Board") of two of their variance requests for their property. The Court of Common Pleas of Bucks County ("Common Pleas Court") affirmed the Board's decision, as did this court. The Segals owned property in an AG-1 Agricultural District, where they operated a life care facility. The property contained 15.5 acres of wetlands. The Segals wished to expand their life care facility, and build two roads, one that connected the existing building to the expansion and another that provided access to the expansion without crossing the existing parking lots. Both proposed roads crossed the wetlands. A Buckingham Township Zoning Ordinance prohibits the filling of wetlands and the waters of Pennsylvania.

The Board heard the Segals' requests on March 15, 1995. An engineer with project design experience testified on behalf of the Segals. He stressed the importance of the road for safety reasons, but admitted the expansion would occur even without the new road. The Board granted the request for the road connecting the expansion to the existing building thus allowing the Segals to fill 0.02 acres of wetlands, but denied the request for the other road that would cross the wetlands because the construction of the second road did not affect the project.

On appeal, the Segals contended that the fact that the construction of the new buildings would occur without the new road was irrelevant. They asserted a dimensional variance is different from a use variance, and the physical condition of their land was unique and resulted in difficulties that could not be remedied without expending substantial money to construct a bridge to span the wetlands. Since the court determined the variance was not dimensional, the Segals needed to meet the five criteria laid out in 53 P.A. § 910.2 in order to obtain a variance. The third criterion required that the applicant not create unnecessary hardship. Unnecessary hardship is established if the applicant proves either the physical characteristics of the property are such that the property cannot be used for any permitted purpose or only for a permitted purpose at prohibitive expense; or the characteristics of the property are such that it would have no value or only distress value for any use approved by the zoning ordinance.

Here, the Segals would continue to use the property in the same permitted manner. Therefore, the Board determined the Segals failed to prove unnecessary hardship and further, the hardship was self-imposed. The court found substantial evidence supported the decision of the Board, and therefore the Board had not abused its discretion or commited an error of law.

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