

LEGAL NOTICES

As soon as the property is knocked down to purchaser, 10% of the purchase price or 10% of all costs, whichever may be the higher, shall be delivered to the Sheriff. If the 10% payment is not made as requested, the Sheriff will direct the auctioneer to resell the property. The balance due shall be paid to the Sheriff by NOT LATER THAN June 19, 2000 at 4:00 PM, prevailing time. Otherwise all money previously paid will be forfeited and the property will be resold on June 23, 2000 1:00 PM, prevailing time, in the Franklin County Court House, Jury Assembly Room, Chambersburg, Franklin County, Pennsylvania, at which time the full purchase price or all costs, whichever may be the higher, shall be paid in full.

Robert B. Wollyung
Sheriff
Franklin County
Chambersburg, Pa

5/19,5/26,6/2/2000

INTEREST OF ROBERT W. FORRESTER, C.P. Franklin County Branch, Civil Action-Law, No. A.D. 1997-390

IN RE: INTEREST OF ROBERT W. FORRESTER

Private Roads - Agricultural Area Security Law

1. The Court of Common Pleas has appellate jurisdiction regarding the actions of the Board of View. This jurisdiction is limited to ascertaining the validity of the Board of View's jurisdiction, the regularity of the proceedings, questions of law, and whether the Board of View abused its discretion
2. The Agricultural Area Security Law does not apply to a private landowner who seeks access to his property.
3. The Agricultural Area Security Law's purpose to protect certain lands from subdivision and private, economically viable ventures is not compromised by a private landowner's desire to simply gain access to his landlocked property.
4. The Board of View must consider four factors when determining the site for a private road: (1) the shortest distance, (2) best ground, (3) least injury to the private parties, and (4) desire of the parties.
5. As long as the Board of View considered the four enumerated factors, it is irrelevant that the Board of View considered other factors, including the landowner's past use of the road.

Joseph A. Macaluso, Esquire, Counsel for Petitioner
Thomas J. Finucane, Esquire, Counsel for Respondents

OPINION AND ORDER

WALKER, P.J., May 4, 2000:

Factual and Procedural History

Petitioner, Robert W. Forrester, had previously used a gravel road over the property of respondents, Harold and Helen Forrester and Rodney and Bonnie McKerrick, to gain access to his landlocked property. After a dispute, petitioner was informed that he would no longer be able to freely use respondents' property. Subsequently, petitioner asked the court to appoint a Board of View (Board) to determine the necessity

of opening a private road which would allow him access to his property.

Following a view of the property and hearings on this matter, the Board concluded that petitioner's property was landlocked and that a private road was necessary. The Board determined that the private road should be located over an existing road on property owned by the respondents rather than over an "alternate route" which would have affected 17 individuals. In making its determination, the Board considered the shortest distance, best ground, least injury to the private parties, and desire of the petitioner as well as petitioner's past use of the road. The Board awarded Harold and Helen Forrester \$2,500 in damages. Rodney and Bonnie McKenrick were awarded \$8,825 in damages.

The property in question is in an agricultural security district. In its report, the Board determined that the petitioner did not need to seek approval from the Agricultural Security Area Advisory Committee (ASAAC) and the local governing body pursuant to the Agricultural Area Security Law (Agricultural Law) in order to proceed.

The respondents filed exceptions to the Board's report. An argument on those exceptions was held on April 18, 2000. Respondents argue that petitioner was required to obtain approval pursuant to the Agricultural Law before a private road could be located upon respondents' property. Furthermore, respondents argue that the Board incorrectly considered petitioner's past use of the road and that the Board abused its discretion by locating the private road on their property rather than selecting the "alternate route."

Discussion

In reviewing the actions of the Board, the

"Common Pleas has appellate review which is limited to ascertaining the validity of the Board's jurisdiction, the regularity

of the proceedings, questions of law and whether the Board abused its discretion."

In re Brinker, 683 A.2d 966, 969 (1996). The property in question is in an agricultural security district. Therefore, respondents argue that approval from the ASAAC and the local governing body was required pursuant to the Agricultural Law before the Board could locate a private road upon respondents' property.

The Commonwealth Court has held that the Agricultural Law does not apply to a private landowner who seeks access to his property. *In re: Laying Out and Opening a Private Road in Charleston Township, Tioga County*, 683 A.2d 947, 948 (1996). In *Tioga County*, appellee sought access to his landlocked property. *Id.* at 947. The Board concluded that the private road should be located upon appellants' land for a distance of 600 feet. *Id.* at 947 - 48.

"The trial court held that since the Agricultural Law is primarily concerned with encouraging a long term commitment to agriculture, protecting farming and conservation and to prevent wholesale subdivision and the conversion of farm lands into non-agricultural 'urban purposes,' it did not apply to a private landowner who merely seeks to achieve access to his land locked property. We agree."

Id. at 948.

The court reasoned that the intent of the Agricultural Law was to protect "certain lands from subdivision and private, economically viable ventures." *Id.* The court found that the intent of the law was not compromised by appellee's desire to simply gain access to his landlocked property. *Id.*

In the present case, the parties agree that the Board considered *Tioga County* and ultimately concluded that the Agricultural Law did not apply to this case. This court agrees with the Board's decision. Petitioner sought access to his landlocked property, and the Board located a private road

upon respondents' property which is in an agricultural security district. As in *Tioga County*, the intent of the Agricultural Law is not compromised by petitioner gaining access to his landlocked property because a gravel road already existed. Therefore, there is no conversion of farmland to a road because the road already existed. Respondents argue that because this road is four times longer than the road in *Tioga County* that the holding in *Tioga County* does not apply to this case. This is irrelevant because the intent of the Agricultural Law is still not compromised. Because the Agricultural Law does not apply to this case, the Board did not need to consider it before making its decision to locate the private road upon respondents' property.

Next, respondents argue that the Board incorrectly considered petitioner's past use of the road in determining that the private road should be located upon respondents' property. The Board must consider four factors when determining the site for a private road: (1) the shortest distance, (2) best ground, (3) least injury to the private parties, and (4) desire of the parties. 36 P.S. §1785. In its report, the Board stated it considered

"the shortest distance, best ground, least injury to private parties, and the desire of the petitioner, Robert W. Forrester, and in addition, considered the past usage of the road by the petitioner in common with the Forresters and McKenricks."

Because the Board considered the four necessary factors, it is irrelevant that the Board also considered petitioner's prior use of the road. Respondents argue that considering past use will discourage people from entering voluntary agreements with respect to the use of their property. By considering petitioner's past use of the road, the Board is not discouraging people from entering voluntary agreements because ultimately the Board must make its decision based on the four factors in the statute.

Lastly, respondents argue that the Board abused its discretion in locating the private road upon their property. The Board considered the four necessary factors in making its determination. The "alternate route" is shorter than the road chosen by the Board. Because that is only one of the four factors to be considered, the Board did not abuse its discretion by choosing a longer road. In looking at the best ground, the Board noted that there was an existing gravel road on respondents' property. With regard to the least injury of the private parties, the "alternate route" would have affected 17 individuals whereas the road selected by the Board affects only 4 individuals, the respondents. It was petitioner's desire to continue using the road over respondents' property which he had used in the past. After considering all the evidence with regard to the four factors, there is a basis for locating the private road upon respondents' property. As a result, the Board did not abuse its discretion.

Furthermore, respondents argue that this private road could result in later subdivision of petitioner's property. The court is unwilling to speculate. In order to subdivide, petitioner would have to comply with water and sewer regulations. If the property is later subdivided, the matter will come before the court again.

ORDER OF COURT

May 4, 2000, after consideration of the Board of View's report, respondents' exceptions, the briefs submitted to the court, and the arguments made by counsel, the Board of View's report is affirmed, and respondents' exceptions are dismissed.