

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

ARTHUR and ELKE PLAXTON,	:	NO. 08 - 02,240
Appellants	:	
vs.	:	SUBSTANTIVE VALIDITY CHALLENGE
	:	
ZONING HEARING BOARD OF	:	
LYCOMING COUNTY,	:	
Appellee	:	

OPINION IN SUPPORT OF ORDER OF DECEMBER 24, 2008,
IN COMPLIANCE WITH RULE 1925(A) OF
THE RULES OF APPELLATE PROCEDURE

Appellants have appealed this Court’s Order of December 24, 2008, which denied their appeal from the decision of the Lycoming County Zoning Hearing Board which had denied their substantive validity challenge to an amendment of the Lycoming County Zoning Ordinance. That amendment provided for wind energy facilities as a permitted use in resource protection zones, whereas such use had previously been permitted in a resource protection zone only by special exception.¹ In their Statement of Errors Complained of on Appeal, Appellants raise the same issues as had been raised before this Court and also allege error in this Court’s having proceeded on the record below. With respect to having proceeded on the record below, it is noted that such procedure is provided for by Section 1005-A of the Pennsylvania Municipalities Planning Code.² Although Appellants contend they did not agree with proceeding on the record below, that disagreement was not voiced at the conference before this Court on October 31, 2008, and the Court was not presented with a motion, either written or oral, for the presentation of additional evidence.³ With respect to the remaining issues, as such were raised and addressed by this Court in its opinion in support of the Order of December 24, 2008, the Court will simply rely on that opinion for purposes of the instant appeal.

¹ It should be noted that such use was not specifically provided for in the pre-amendment ordinance but, rather, that such had been determined to be a “public service use”, and was allowed by special exception in a resource protection zone based on that designation.

² 53 P.S. Section 11005-A.

Dated: April 10, 2009

By The Court,

Dudley N. Anderson, Judge

cc: Arthur and Elke Plaxton, 411 Laurel Hill Road, Liberty, PA 16930
Thomas Marshall, Esq.
Karl Baldys, Esq.
Gary Weber, Esq.
Hon. Dudley Anderson

3 *See Id.* (If, upon motion, it is shown that proper consideration of the land use appeal requires the presentation of additional evidence, a judge of the court may hold a hearing to receive additional evidence,)