KENDALL COUNTY PLANNING, BUILDING & ZONING COMMITTEE
Kendall County Office Building
Rooms 209 and 210
111 W. Fox Street, Yorkville, Illinois
5:30 p.m.
Meeting Minutes of June 29, 2022

CALL TO ORDER
The meeting was called to order by Chairman Gengler at 5:30 p.m.

ROLL CALL
Committee Members Present: Elizabeth Flowers (left at 7:13 p.m.), Judy Gilmour (Vice-Chairwoman), Scott Gengler (Chairman), Dan Koukol (arrived at 5:44 p.m.), and Robyn Vickers (arrived at 5:38 p.m.)
Committee Members Absent: None
Also Present: Matt Asselmeier (Senior Planner), Pat Frescura, Sharleen Smith, Anne Vickery, Jackie Kowalski, Seth Wormley, and Frank Badus

APPROVAL OF AGENDA
Member Flowers made a motion, seconded Member Gilmour, to approve the agenda as presented.

With a voice vote of three (3) ayes, the motion carried.

APPROVAL OF MINUTES
Member Flowers made a motion, seconded by Member Gilmour, to approve the minutes of the June 13, 2022, meeting.

With a voice vote of three (3) ayes, the motion carried.

PUBLIC COMMENT
Anne Vickery suggested that when an issue arises in Seward Township, the resident of Seward Township could video record the issue and use that information in court. The resident could email the evidence to the PBZ Department. She also noted a potential stormwater issue at County Line Road and Route 52 with the "forestry" business.

Pat Frescura said her confidence in the Board was renewed because the Committee was examining the forestry issue. She thanked the Committee for examining the issue.

Sharleen Smith thanked the Committee for listening to the residents of Seward Township and revisiting the definitions of landscaping and excavating businesses.

PETITION
Petition 22-06 Kendall County Planning, Building and Zoning Committee
Mr. Asselmeier summarized the request.

At the December 14, 2021, Planning, Building and Zoning Committee meeting, the Planning, Building and Zoning Committee requested Staff to prepare definitions for landscaping businesses and excavating businesses.

For preparing the proposed definition of landscaping business, Staff used the definition found in the North American Industrial Classification System as published by the United States Census Bureau. The proposed definition of landscaping business is as follows:

Member Vickers arrived at this time (5:38 p.m.).

"LANDSCAPING BUSINESS. A business engaged in providing landscape care and maintenance services and/or installing trees, shrubs, plants, lawns, or gardens and businesses primarily engaged in providing these services along with the design of landscape plans and/or the construction and installation of walkways, retaining walls, decks, fences, ponds, and similar structures."

Landscaping businesses are special uses in the A-1, B-3, M-1 and M-2 Districts.

When considering a definition of excavating businesses, the North American Industrial Classification System grouped excavating businesses with other site preparing contractors including dirt movers, trenching, and foundation drilling. Also, the terms "excavating business" and "excavator" do not appear in the Zoning Ordinance. Accordingly, Staff proposes the following definition of excavating business:

"EXCAVATING BUSINESS. A business engaged in site preparation activities including grading, earthmoving, and land clearing and businesses that rent equipment for such purposes. For the purposes of this Ordinance, an excavating business shall be considered a contractors' office or shop."

Contractor and Contractor Offices and Shops are conditional uses in the B-2 and B-3 Districts and permitted uses in the M-1 and M-2 Districts. In the B-2 and B-3 Districts, all work and storage must be inside buildings.

On January 25, 2022, the Kendall County Planning, Building and Zoning Committee unanimously voted to initiate a text amendment to the Kendall County Zoning Ordinances adding the above definitions as proposed by Staff.

This proposal was sent to the Townships on February 15, 2022. To date, no comments have been received.

ZPAC reviewed this proposal at their meeting on March 1, 2022. ZPAC recommended approval of the request by a vote of six (6) in favor and zero (0) in opposition with four (4) members absent. The minutes of the meeting were provided.

The Kendall County Regional Planning Commission reviewed this proposal at their meeting on March 23, 2022. Discussion occurred about requiring businesses that engage in designs of landscapes only to obtain a special use permit. These types of office businesses would be allowed in the B-3 without a special use permit and could be allowed as a home occupation if the other home occupation rules were met. The Kendall County Regional Planning Commission, by vote of seven (7) in favor and zero (0) in opposition with two (2) members absent voted to recommend approval of the text amendments with a change to the proposed definition of excavating business as shown below in red:

"EXCAVATING BUSINESS. A business engaged in site preparation activities including grading, earthmoving, and land clearing and businesses that rent equipment weighing over thirty thousand pounds (30,000 lbs.) for such purposes. For the purposes of this Ordinance, an excavating business shall be considered a contractors' office or shop."

The minutes of the Kendall County Regional Planning Commission meeting were provided.

The Kendall County Zoning Board of Appeals held a public hearing on this proposal on March 28, 2022. No members of the public testified at the public hearing. The Kendall County Zoning Board of Appeals recommended approval of the proposal with the amendment proposed by the Kendall County Regional Planning Commission by a vote of five (5) in favor and one (1) in opposition with one (1) member absent. Member Vickery voted no because she felt the proposal would open a can of worms. The minutes of the hearing were provided.

Staff has concerns regarding obtaining the weights of various pieces of equipment.

Mr. Asselmeier read a letter from Dan Kramer requesting that the weight restriction be eliminated and allowing excavating businesses as special uses in the A-1 District.

Member Gilmour requested clarification from Anne Vickery regarding her concerns about opening a can of worms by adopting the proposal. Ms. Vickery said her concerns were in relation to the request by a business on Route 126 that claimed to be a landscaping business even though they had excavating in their name.

Member Koukol arrived at this time (5:44) p.m.

Ms. Vickery said large pieces of equipment were not used by small businesses.

Chairman Gengler said excavating business have to operate in industrial parks. He felt the proposed language addressed the concerns of having landscaping businesses and excavating businesses located in the proper zoning districts. The proposal would clean-up issues.

Member Gilmour asked Member Koukol his opinion regarding the weight limit. Member Koukol expressed concerns about setting a precedent from the business that located at 3485 Route 126. He felt that thirty thousand pounds (30,000 lbs.) was not much weight.

Member Flowers supported the weight restriction.

Members Vickers and Koukol were against the weight restrictions.

Member Koukol said the company at 3485 Route 126 is engaged in other activities not related to landscaping.

Mr. Asselmeier said the Regional Planning Commission added the weight restriction because the Commission did not want businesses that rent small pieces of equipment to be considered excavating businesses.

Member Koukol expressed concerns about the County obtaining the weight of equipment.

Chairman Gengler favored the original proposal without the weight restriction.

Member Koukol said that landscaping businesses usually cannot afford farmettes and just run a

landscaping company without going into other services.

The consensus of the Committee was to not allow excavating businesses on A-1 zoned property.

Member Koukol wanted the text amendment advanced before the business at 3485 Route 126 was approved. He was concerned that other excavating businesses will claim to be landscaping businesses.

Member Gilmour made motion, seconded by Member Vickers, to recommend approval of the text amendment without the weight restriction proposed by the Kendall County Regional Planning Commission.

With a voice vote of five (5) ayes, the motion carried.

The proposal goes to the County Board on July 19, 2022, on the regular agenda.

NEW BUSINESS

Discussion of Adding Definitions of Forestry, Tree Farm, and Related Text Amendments to the Kendall County Zoning Ordinance; Committee Could Initiate Text Amendments Related to These Terms and Uses or Forward the Proposal to the Comprehensive Land Plan and Ordinance Committee

Mr. Asselmeier summarized the issue.

Following the June 21, 2022, County Board meeting, Staff received a request to draft definitions of forestry and tree farming.

The term "forestry" was added as a permitted use in the A-1 District in 2000. The State of Illinois does not have a definition of forestry or forest. Also, professional organizations related to tree care do not have the exact same definitions of these terms. Accordingly, Staff suggests the following definition of forestry:

"Forestry. A business engaged in the growing, managing, and selling of trees not including the processing of trees or tree by-products."

Tree farms are listed in State law as an agricultural purpose. However, no definition of "tree farm" is provided. Tree farms are a permitted use in the A-1 District only. Staff suggests the following definition of tree farm:

"Tree Farm and Tree Farming. A business engaged in the growing, cultivating, and harvesting of trees, including fruits and nuts grown on trees, on the same premises of where the trees are grown and not including the processing of trees or tree by-products."

At the June 16, 2022, Committee of the Whole meeting, it was mentioned that the processing of mulch was not listed as a use within the Kendall County Zoning Ordinance. The closest related use is the production, publishing, processing, cleaning, testing, or repair of lumber mentioned in Section 10:01.B.21.k of the Kendall County Zoning Ordinance. This use is a permitted use in the M-1 and M-2 Districts. While other uses not specifically listed that conform to the goals, purpose, and objective of the district are special uses in the M-1 and M-2 Districts, Staff suggests the following amendment to Section 10:01.B.21.k to clarify certain uses related to mulch:

"k) Building equipment, building materials, **mulch derived from plants,** lumber, coal, sand and gravel yards, and yards for contracting equipment of public agencies, or public utilities, or materials or equipment of similar nature."

Mr. Asselmeier read an email from Tom Gargrave from the IDNR Forestry providing a definition of forestry; no definition of forest was provided.

Mr. Asselmeier provided three (3) court cases from Boyd Ingemunson outlining definitions of forestry and agricultural uses and a County's ability to regulate such uses. The cases were *People ex rel. Pletcher v. Joliet*, *County of Kendall v. Aurora Nat'l Bank Trust No. 1107*, and *Tuftee v. County of Kane*. Mr. Asselmeier noted that the case involving Kendall County resulted in the court ordered mining classification on the Official Zoning Map. Mr. Asselmeier also noted that any definitions related to forestry or tree farming could be challenged in court and the State could create their own definitions for these terms. If a conflict existed between the County's definition and the State's definition, the State's definition would supersede the County's definition.

Mr. Asselmeier read a letter from Dan Kramer on the matter. Mr. Kramer felt that the County did not have the legal authority to establish definitions more restrictive than State law. He expressed concerns that the proposed definitions might be in conflict with State law. He also felt that his client at the corner of Route 52 and County Line Road in Seward Township would be lawfully non-conforming should the County establish a law.

Chairman Gengler asked about Mr. Asselmeier research on this matter. Mr. Asselmeier said that numerous definitions of forestry and forests exist. He said the State does not have a definition.

Member Gilmour asked about Tom Gargrave's comment on "standard worldwide definition". Mr. Asselmeier said a dictionary of forestry exists which Mr. Gargrave referenced. However, the State of Illinois has not officially adopted a definition.

Discussion occurred regarding the Downstate Forest Preserve District Act. This Act does not provide a definition of forestry. Mr. Asselmeier wanted to avoid creating a definition of forest because there are many definitions of forest.

Mr. Asselmeier explained the text amendment process.

Discussion occurred about other terms in the Zoning Ordinance that were not defined at the State level. Mr. Asselmeier noted the unique exemptions of agricultural uses and purposes in State law.

Member Koukol favored obtaining a State's Attorney's opinion on this matter since the State's Attorney's Office would have to defend the County in court.

Member Gilmour noted that Mr. Gargrave noted that forestry was more of a science than a business. She favored taking Mr. Gargrave's opinion under consideration.

Member Koukol made motion, seconded by Member Flowers, to ask the State's Attorney's Office for an opinion to see if the County has the authority to establish definitions for forestry and tree farm.

With a voice vote of five (5) ayes, the motion carried.

Approval of a Proposal from WBK Engineering to Evaluate the Kendall County Stormwater Management Ordinance for Possible Changes Due to the Revised Illinois Model Floodplain Ordinance at a Cost Not to Exceed $2,500; Related Invoices to Be Paid from the PBZ Department's Consultant Line Item 11001902-63630

Mr. Asselmeier read the proposal from WBK Engineering. Mr. Asselmeier said there was approximately Five Thousand Dollars ($5,000) available in the line item.

Member Gilmour made motion, seconded by Member Koukol, to approve the proposal.

With a voice vote of five (5) ayes, the motion carried.

Request for Guidance Regarding a Banquet Facility at 1126 Simons Road

Mr. Asselmeier summarized the issue and provided information from Facebook on the matter. He noted that the property owner has not submitted any information regarding future events and no future events were listed on business' Facebook page.

Member Koukol asked if the property was inside Plainfield. Mr. Asselmeier said the property was unincorporated, but bordered Plainfield on three (3) sides. Member Koukol felt that the use has been operating for a number of years.

The use is no longer in operation for new clients, but they want to honor existing contracts.

The consensus of the Committee was to have Staff send a letter to the property owners and see if a response is received by the July 11, 2022, PBZ Committee meeting.

Recommendation of a Proposal from Teska Associates, Inc. to Update the Kendall County Land Resource Management Plan in Its Entirety

Mr. Asselmeier summarized the request, timeline, and budge for the project. Mr. Asselmeier noted that ZPAC, Regional Planning Commission, and Zoning Board of Appeals have reviewed the proposal and were in favor.

Member Gilmour asked where the money to do the project would come from and if the townships would be involved. Mr. Asselmeier said the money would come from the General Fund and the intent was to engage the townships in the process. It was noted that the County Board might approve the funds to do one (1) corridor and a future County Board might not approve funds to do subsequent corridors.

The Land Resource Management Plan was completed updated in the 1990s and the update was finished in the mid-2000s not including minor changes since that time.

Mr. Asselmeier said final approval would be part of the budget for the next fiscal year and work on the project would start at the end of 2022 or beginning of 2023.

Mr. Asselmeier explained the importance of the Land Resource Management Plan in relation the vision of the County and in relation to approving zoning related requests.

Member Koukol asked if the proposal would address the Route 47 corridor. Mr. Asselmeier said the project could address issues on the Route 47 corridor. Member Koukol would like to see economic development issues incorporated in the project.

Discussion occurred regarding which corridor should be examined first. The consensus was to

start on the east side of the County and move west.

Member Gilmour noted that some County Board members would have two (2) year terms.

Member Gilmour made motion, seconded by Member Vickers, to forward the proposal to the July 14, 2022, Budget and Finance Committee meeting.

With a voice vote of five (5) ayes, the motion carried.

Approval of an Intergovernmental Agreement between the Village of Millbrook and the County of Kendall to Administer the County's Ordinances for Zoning, Building Code, Subdivision Control, Comprehensive Plan, and Stormwater Management within the Jurisdiction of the Village of Millbrook for a Term of One (1) Year in the Amount of $1.00 Plus Associated Costs Paid by the Village of Millbrook to the County of Kendall
Mr. Asselmeier summarized the request.

The agreement between the Village of Millbrook and Kendall County allowing the County to provide Planning, Building and Zoning Department related services expires in September.

No changes from the previous contract are proposed.

During the current agreement period, the County conducted 2 investigations in Millbrook and issued 4 permits with 9 inspections.

The Village of Millbrook approved the proposal at their meeting in July.

A copy of the proposed Intergovernmental Agreement was provided.

Member Koukol made motion, seconded by Member Flowers, to recommend approval of the agreement.

Member Koukol asked if the railroad issued a permit to demolish the old grain elevator. Jackie Kowalski, Village President of Millbrook, said the permit was in place.

With a voice vote of five (5) ayes, the motion carried.

The proposal goes to the County Board on July 19, 2022, on the consent agenda.

OLD BUSINESS

Update on Right-of-Way Dedication as Required by Condition 6 of Ordinance 2005-37 at 5681 Whitewillow Road (PIN: 09-31-100-005) in Seward Township
Mr. Asselmeier stated that he had spoken to Fran Klaas regarding the right-of-way dedication and Mr. Klaas said the Highway Department was working with a surveyor to prepare the necessary documents related to the dedication.

Discussion of Intergovernmental Agreements with Townships Regarding Additional Code Enforcement
Mr. Asselmeier summarized the request.

The Planning, Building and Zoning Department previously reached out to Oswego and Seward

Townships to see if they would each be in favor of paying Nine Thousand Dollars ($9,000) per year for five (5) hours per week of additional code enforcement in their respective township.

At their Annual Meeting in April, Oswego Township adopted a garbage dumping ordinance and a recreational vehicle and trailer parking ordinance. Oswego Township was considering adding additional hours to their Code Enforcement Officer.

Seward Township was still evaluating the proposal.

Related emails and Oswego Township's ordinances were provided.

Mr. Asselmeier said the application to fill the part-time inspector position will be posted on July 5, 2022.

Discussion of Having a Planning, Building and Zoning Committee Meeting in Boulder Hill in 2022
Mr. Asselmeier asked if the Committee wanted to have this type of meeting.

The consensus was to have more of a townhall type meeting with questions and answers.

The suggestion was made to set a limit on the number of questions on the same topic. The suggestion was also made to have attendees submit topics in advance when they enter the meeting room or during the meeting.

Representatives from Oswego Township and the Planning, Building and Zoning Department in attendance.

The consensus was to have a meeting in September or October.

Suggested meeting locations were the Oswego Township Office, Church of the Brethren, or St. Luke's School. Mr. Asselmeier will contact Oswego Township for possible meeting locations and times.

Update on Requiring Applicants to the Kendall County Planning, Building and Zoning Department to be Debt Free or Current on an Approved Payment Plan to the County at the Time of Application Submittal; Committee Could Approve a Policy on This Matter
Mr. Asselmeier stated the review has added a couple days to the permit approval process. To date, no debts have been found. There has been an issue with researching information in the Circuit Clerk's Office when the applicant has a common name, but does not live at the property. A proposed policy was provided. The building permit application and other zoning related applications would be amended to add a paragraph stating that the applicants were free of debt or current on an approved payment plan with the County.

Discussion occurred regarding time constraints to do the checks.

Mr. Asselmeier said the Department would still have to research if the party has a debt to the County, if the disclaimer is added to the policy.

Chairman Gengler made a motion, seconded by Member Flowers, to approve the policy with an amendment adding a disclaimer to applications stating the applicant are current or free of debt to Kendall County.

Update from WBK Engineering Regarding Drainage Issue at 7405 Audrey Avenue (PIN: 05-02-201-006) in Kendall Township

Mr. Asselmeier read the memo from WBK. He noted that WBK did not recommend that the County take any action at this time and the matter was a private property matter.

Frank Badus discussed the installation of a swale. He requested a survey, inspection report, or permit showing the original grading in the area. Member Koukol said the information in the original survey would be outdated. Mr. Badus was advised to do a Freedom of Information Act request for the original survey.

Member Flowers left the meeting at this time (7:13 p.m.).

REVIEW VIOLATION REPORT

The Committee reviewed the violation report. A fine of Eight Hundred Dollars ($800) was assessed by the court at 2543 Simons Road for operating a banquet facility without a special use permit. They have until mid-January 2023 to pay the fine. Mr. Asselmeier also reported that the special use permit and variances for 1038 Harvey Road will on the Committee's July 11, 2022, agenda.

REVIEW NON-VIOLATION REPORT

The Committee reviewed the non-violation report.

UPDATE FOR HISTORIC PRESERVATION COMMISSION

Mr. Asselmeier said the Historic Preservation Commission will have a meeting with other historic preservation organizations on August 15, 2022, at 6:00 p.m., at the Fern Dell School and Museum.

He also stated that the bids for the historic structure survey in unincorporated Bristol and Kendall Townships will be opened on June 30, 2022. The County received one (1) bid.

REVIEW PERMIT REPORTS FROM APRIL AND MAY 2022

The Committee reviewed the reports.

REVIEW REVENUE REPORT

The Committee reviewed the report.

CORRESPONDENCE

June 17, 2022 Email from Dave Altosino Pertaining to the Vacation of Easements Granted by Ordinance 2022-12 (Formerly Petition 22-08)

The Committee reviewed the correspondence. Mr. Asselmeier said that the last time this type of issue occurred, the matter was referred to the County Board and noted the minutes of the County Board meeting. The item will be on the consent agenda for the July 19, 2022, County Board meeting.

COMMENTS FROM THE PRESS

None

EXECUTIVE SESSION

None

ADJOURNMENT

Member Gilmour made a motion, seconded by Member Koukol, to adjourn. With a voice vote of four (4) ayes, the motion carried.

Chairman Gengler adjourned the meeting at 7:20 p.m.

Minutes prepared by Matthew H. Asselmeier, AICP, CFM Senior Planner

Encs.

KENDALL COUNTY
PLANNING, BUILDING, & ZONING COMMITTEE
JUNE 29, 2022

IF YOU WOULD LIKE TO BE CONTACTED ON FUTURE MEETINGS REGARDING THIS TOPIC, PLEASE PROVIDE YOUR ADDRESS OR EMAIL ADDRESS

NAME	ADDRESS (OPTIONAL)	EMAIL ADDRESS (OPTIONAL)
Anne Vickery	[redacted]	
Pat Bascom		
Sharon Smith		
Jacki Rowski		
Seth Wormley		
Frank Bass		

Law Offices
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Daniel J. Kramer

Kelly A. Helland
D.J. Kramer

June 29, 2022

Matt Asselmeier
Kendall County Planning, Building, & Zoning
masselmeier@co.kendall.il.us

RE: Kendall County Zoning Ordinance regarding Excavating & Landscaping Business

Dear Matt:

I applaud the Committees efforts in regard to cleaning up the language about defining what a Landscaping and Excavating Business happens to be. I have two points I would like to suggest, one, eliminating the weight restriction that you put in the proposed Ordinance for Excavating in that I don't think that is relevant. Plus going forward who knows what size machines will be for various functions in many different aspects of Excavating. I could see equipment that is not normal for local Excavators when Wind Towers are being undertaken and again future activities that there is no reason to limit weight.

Second I would strongly recommend that the Excavating Business be added as a Special Use under the A1 Zoning Ordinance. My reasoning is we have many Commercial size farm buildings that are in existence out in the County at this point in time where a Farmer passes away or no longer desires to keep farming. It is a wasted asset to let the buildings go in to disrepair and is a plus to keep them on the tax rolls. I feel you can protect neighbors in an agricultural setting with the Excavating/Landscaping Special Uses by screening with natural materials or fencing and adhering to those requirements in the Special Use process.

I know this has been a long simmering issue, but we have had some experience of Excavators operating out in the County that are small one man bands, that have no Zoning and keep their equipment in buildings and have very attractive homesteads with it. I think adding the Excavating and Landscaping Sections that you are proposing to the A1 Ordinance as Special Uses is advantageous to the County both in keeping our Citizens employed and enhancing out Real Estate Tax base.

Very truly yours

Daniel J. Kramer

Daniel J. Kramer
Attorney at Law

DJK:rg

Matt Asselmeier

From: Gargrave, Tom <Tom.Gargrave@Illinois.gov>
Sent: Tuesday, June 28, 2022 4:17 PM
To: Matt Asselmeier
Cc: Hayek, Jay C; Whittom, Chris; Bill Ashton; Scott Koeppel; Scott Gengler; Latreese Caldwell
Subject: RE: [External]Re: Tree Farm Definition

I do not, but a forest must have trees, can be simple or complex, urban or rural, native plants or otherwise. I would just use a standard definition, one you prefer.... but include that "act of forestry" is science and considered the practice of planting, growing, and managing the forest.

From: Matt Asselmeier <masselmeier@kendallcountyil.gov>
Sent: Tuesday, June 28, 2022 3:49 PM
To: Gargrave, Tom <Tom.Gargrave@Illinois.gov>
Cc: Hayek, Jay C <jhayek@illinois.edu>; Whittom, Chris <Chris.Whittom@illinois.gov>; Bill Ashton <w.ashton62@gmail.com>; Scott Koeppel <skoeppel@kendallcountyil.gov>; Scott Gengler <sgengler@kendallcountyil.gov>; Latreese Caldwell <LCaldwell@kendallcountyil.gov>
Subject: RE: [External]Re: Tree Farm Definition

Tom:

Thank you for you input.

Do you have a preferred definition of forest?

Matthew H. Asselmeier, AICP, CFM
Senior Planner
Kendall County Planning, Building & Zoning
111 West Fox Street
Yorkville, IL 60560-1498
PH: 630-553-4139
Fax: 630-553-4179

From: Gargrave, Tom <Tom.Gargrave@Illinois.gov>
Sent: Tuesday, June 28, 2022 3:40 PM
To: Matt Asselmeier <masselmeier@kendallcountyil.gov>
Cc: Hayek, Jay C <jhayek@illinois.edu>; Whittom, Chris <Chris.Whittom@illinois.gov>
Subject: RE: [External]Re: Tree Farm Definition

Matt,
Thank you for the invite, I cannot make that meeting. I agree some changes should be considered.

I would however like to add that the standard worldwide accepted definition of Forestry reflects a "*sound science or practice of managing, planting, and caring for forests*". This involves principles of silviculture, ecology, cover types, stand succession, complex nutrient/energy systems and many other classification dynamics.

The ***business of growing and selling wood is a byproduct of the forest*** and by definition ***Forestry does not need to be considered a business***. Cutting timber or firewood is a commodity but is not always considered a business.

The act processing any forest products should have nothing to do with the art and science of growing trees/habitats. Harvesting deer from your woods does not make your land a deer processing facility.

I would move that you consider defining forestry as "the practice of Silviculture based on the sound science of well managed natural resource systems including flora and fauna, soil/water benefits, carbon sequestration, recreation, and others..." Many Kendall County landowners fit into this.

-A wood chipping, lumber production (sawmill), firewood processor, or other production facilities does not fit under "Forestry" definition. **These facilities are industrial complexes that *are* considered agricultural businesses. Same as a grain elevator.**

-Tree Farms are a bit different but can also be in on both sides of business or forest. Tree Farms usually sell trees for profit but also can produce the same befits as a forest. A wood chipping or sawmill facility does not fit here either. Many Kendall Co landowners fit into this.
-Nurseries produce a multitude of products for landscape purposes and are defined clearly.

Please feel free to reach out if you need any further assistance
Best regards
tom
Tom Gargrave
IDNR Forestry Division Chief
State Forester
30550 Boathouse Rd
Wilmington, Il 60481
630-399-3249

From: Matt Asselmeier <masselmeier@kendallcountyil.gov>
Sent: Monday, June 27, 2022 9:07 AM
To: Hayek, Jay C <jhayek@illinois.edu>; Gargrave, Tom <Tom.Gargrave@Illinois.gov>
Subject: RE: [External]Re: Tree Farm Definition

Jay and Tom:

The Kendall County Planning, Building and Zoning Committee will be holding a meeting on Wednesday, June 29th, at 5:30 p.m., in the County Boardroom, at 111 W. Fox Street, Yorkville, to discuss the following:

1. Discussion of Adding Definitions of Forestry, Tree Farm, and Related Text Amendments to the Kendall County Zoning Ordinance; Committee Could Initiate Text Amendments Related to These Terms and Uses or Forward the Proposal to the Comprehensive Land Plan and Ordinance Committee

Would either of you be able to attend the meeting? There is no remote attendance option.

Thanks,

Matthew H. Asselmeier, AICP, CFM
Senior Planner
Kendall County Planning, Building & Zoning
111 West Fox Street
Yorkville, IL 60560-1498
PH: 630-553-4139

LexisNexis

User Name: Boyd Ingemunson
Date and Time: Monday, June 20, 2022 10:52:00 AM EDT
Job Number: 173580104

Document (1)

1. *People ex rel. Pletcher v. Joliet, 321 Ill. 385*
Client/Matter: -None-
Search Terms: zoning & forestry
Search Type: Terms and Connectors
Narrowed by:

Content Type	Narrowed by
Cases	Court: State Courts > Illinois

Questioned
As of: June 20, 2022 2:52 PM Z

People ex rel. Pletcher v. Joliet

Supreme Court of Illinois

April 23, 1926

No. 17341.

Reporter
321 Ill. 385 *; 152 N.E. 159 **; 1926 Ill. LEXIS 918 ***

THE PEOPLE *ex rel.* Henry S. Pletcher *et al.* Appellants, *vs.* THE CITY OF JOLIET, Appellee.

Subsequent History: [*1]** Rehearing denied June 4, 1926.

Prior History: APPEAL from the Circuit Court of Will county; the Hon. FRANK L. HOOPER, Judge, presiding.

Disposition: *Reversed and remanded.*

Core Terms

tract, territory, subdivision of land, annexed, agricultural purposes, subdivided, words, agricultural, embraced, bounded, farm

Case Summary

Procedural Posture
Appellants, a property owner and others, challenged the judgement of the Circuit Court of Will County (Illinois), which found appellee City of Joliet, Illinois, not guilty in the appellants' quo warranto proceeding to test the validity of the City's proceeding to annex territory under Ill. Smith's Stat. 1925, p. 377.

Overview
The City attempted to annex the territory of the property owner. The act for the annexation of territory to a city provided that territory that was contiguous could be annexed but excluded lands used exclusively for agricultural purposes without the owner's consent, unless the agricultural lands were bounded on at least three sides by subdivided lands. Appellants claimed that the property owner's lands were agricultural and that the act was void because it was not passed in accordance with the requirements of the Illinois Constitution. Reversing and remanding, the court concluded that the property owner's land could not be annexed without his consent. The court concluded that the property owner's land was not subdivided because there was nothing in the plat showing that it was subdivided and the property owner's conversation with a real estate salesman about subdividing part of his land did not mean that it was subdivided. The use of the property owner's land for growing grapes and for hay was an agricultural purpose. The court found that there was no need to determine the constitutional questions.

Outcome
The court reversed the judgment of the circuit court and remanded.

LexisNexis® Headnotes

Governments > Local Governments > Boundaries

HN1[⬇] **Local Governments, Boundaries**

Smith's Stat. 1925, p. 377 provides for the annexation of territory, conforming to the limitations fixed by the act, to a city to which the territory is contiguous, excluding, however, lands used exclusively for agricultural purposes where the owner does not consent to its inclusion, unless such agricultural lands are bounded on at least three sides by subdivided lands also embraced in such territory to be annexed.

Governments > Public Lands > Forest Lands

Governments > Legislation > Interpretation

HN2[⬇] **Public Lands, Forest Lands**

The definition for "agriculture" given by Webster is, of or pertaining to agriculture; connected with, or engaged in tillage. "Agriculture" is defined as the art or science of

cultivating the ground, including harvesting of crops and rearing and management of livestock; tillage; husbandry; farming; in a broader sense, the science and art of the production of plants and animals useful to man, including to a variable extent the preparation of the these products for man's use. In this broad use it includes farming, horticulture and ***forestry***, together with such subjects as butter and cheese making, sugar making, etc. Unless restricted by the context, the words "agricultural purposes" have generally been given this comprehensive meaning by the courts of the country. The words "agricultural purposes" are descriptive of the nature of the use to which the land is put, and so the amount of land involved will have no bearing on the meaning of the words.

Counsel: HJALMAR REHN, State's Attorney, and SAMUEL W. KING, for appellants.

FRANK J. WISE, City Attorney, (WILLIAM C. MOONEY, of counsel,) for appellee.

Opinion by: THOMPSON

Opinion

[*386] **[**159]** Mr. JUSTICE THOMPSON delivered the opinion of the court:

This appeal is from a judgment of not guilty entered by the circuit court of Will county in a *quo warranto* proceeding brought to test the validity of certain proceedings to annex territory to the city of Joliet, pursuant to the provisions of the act of June 20, 1921, providing an additional method of annexing territory to cities in this State. (Smith's Stat. 1925, p. 377.) *HN1*[⬆] This act provides for the annexation of territory, conforming to the limitations fixed by the act, to a city to which the territory is contiguous, excluding, however, lands "used exclusively for agricultural purposes" where the owner does not consent to its inclusion, "unless such agricultural lands are bounded on at least three sides by subdivided lands also embraced in such territory to be annexed."

[*2]** It is contended by appellants that a judgment of ouster should have been entered because (1) the lands of relator Henry S. Pletcher are agricultural lands which are not bounded on three sides by subdivided lands and he has not given his consent to the annexation; and (2) the act under which the annexation proceedings were had is void because it was not passed in the manner prescribed by the constitution, is a local and special law which delegates executive duties to the judge of the county court, is so uncertain that it is incapable of administration, and is so unreasonable that it deprives the owners of property within the territory sought to be annexed, of their property without due process of law.

The lands sought to be annexed lie east of the city of Joliet. Pletcher owns a 2 1/2-acre tract, the east line of which is the east line of the territory sought to be annexed. His residence and other buildings occupy about one-eighth of the tract. Three-fourths of an acre is a grape vineyard and the remainder of the tract is in meadow. He harvests hay from this tract and sells it to his neighbors. As soon **[*387]** as his vineyard is old enough to produce he proposes to sell **[***3]** grapes. That part of the tract now in meadow was in oats in 1924. East of this tract are farm lands not embraced in the territory sought to be annexed. North of the tract is an 80-acre farm which is embraced in the territory sought to be annexed. West of the tract is an acre tract which Pletcher formerly owned. West of the acretract and south of both tracts are lots forming a part of Hyde Park subdivision.

The first question of fact to be determined is whether Pletcher's tract is "bounded on at least three sides by subdivided lands." Just what the legislature meant by subdivided lands is difficult to determine. Under the congressional system of surveying, most of the lands of this State are divided into townships, which in turn are subdivided into sections, and these are in turn subdivided into half-sections, quarter-sections and quarter-quarter-sections. It is clear that the legislature did not mean to include within the words "subdivided lands," subdivisions of 40 acres or more. Among dealers in real estate, lands divided into blocks and lots are often called subdivided lands, but no such definition is given in any standard dictionary. The parties to this litigation seem **[***4]** to treat the words as meaning lands divided into city lots, and for the purposes of this discussion we shall so treat them.

[160]** It is conceded by appellee that the 80-acre tract north of the Pletcher tract is not subdivided land, but it is contended that Pletcher has subdivided the north third of his tract into city lots and that this brings his lands within the language of the statute. This contention is based upon the testimony of Ben Brunning, who is a real estate salesman. He states that he assisted Pletcher to stake out six lots across the north end of the tract of land and that Pletcher listed them for sale with him. Pletcher testifies on this point that Brunning's employer, Fred Walsh, was interested in the annexation of the territory and requested witness to **[*388]** withdraw his objections; that he refused to do this, and Walsh asked him what it would take to make him neutral; that he replied that he would be neutral when he did not own any property in the territory; that Walsh asked him to put a price on his property, and he priced it at $800 a lot; that Brunning came to his place a few days later and inquired what part of his tract was for

sale; that together **[***5]** they measured a strip off the north end of this tract to ascertain how many lots could be carved out of it, but that nothing further was done; that no lots were staked off and no effort was made to sell the lots; that no portion of his land had been surveyed with the intention of subdividing it into lots and none of it had ever been subdivided; that he had not prepared a plat showing a subdivision of his land into lots nor had any such plat been prepared. John M. Wolfrom, an abstracter, testified that he had examined the records in the office of the recorder of Will county but found no recorded plat showing a subdivision into lots of Pletcher's tract. From his knowledge of the territory in question and from the records, he testified that the land north of Pletcher's was unsubdivided farm land and that there was an acre-tract west of Pletcher's land. It is clear from this evidence that Pletcher's tract is not bounded on three sides by subdivided lands, as the term "subdivided" is used in the statute.

The next question is whether Pletcher's tract is used "for agricultural purposes." "Agricultural" is another indefinite word which renders the statute more or less uncertain. ***HN2***[⬆] The **[***6]** definition given by Webster is, "of or pertaining to agriculture; connected with, or engaged in tillage." "Agriculture" is defined as the "art or science of cultivating the ground, including harvesting of crops and rearing and management of livestock; tillage; husbandry; farming; in a broader sense, the science and art of the production of plants and animals useful to man, including to a variable extent the preparation of the these products for man's use. In **[*389]** this broad use it includes farming, horticulture and ***forestry***, together with such subjects as butter and cheese making, sugar making, etc." Unless restricted by the context, the words "agricultural purposes" have generally been given this comprehensive meaning by the courts of the country. (*State v. Stewart, 58 Mont. 1, 190 Pac. 129*; *Davis v. Industrial Com. 59 Utah, 607, 206 Pac. 267*; *Cook v. Massey, 38 Ida. 264, 220 Pac. 1088*; *Northern Cedar Co. v. French (Wash.) 230 Pac. 837*; *Binzel v. Grogan, 67 Wis. 147, 29 N.W. 895*; *Slycord v. Horn, 179 Ia. 936, 162 N.W. 249*; *McNeeley v. State, 50 Tex. Crim. 279, 96 S.W. 1083*; *Simons* v. *Lovell,* 7 Heisk. (Tenn.) 510; **[***7]** *Dillard v. Webb, 55 Ala. 468.*) The words "agricultural purposes" are descriptive of the nature of the use to which the land is put, (*Lerch v. Missoula Brick and Tile Co. 45 Mont. 314, 123 Pac. 25,*) and so the amount of land involved would have no bearing on the meaning of the words. No one can seriously contend that land devoted to the production of grapes and hay and oats is not used for agricultural purposes. If the legislature desires to limit the application of the words to tracts containing more than two and one-half acres then it must fix the limitation. We have no authority to do so.

The lands of Pletcher are "used exclusively for agricultural purposes" and are not "bounded on at least three sides by subdivided lands also embraced in such territory to be annexed," within the meaning of the statute, and can not be embraced in territory to be annexed to appellee without his written consent.

Inasmuch as it is not necessary to a proper disposition of this case to consider or determine the constitutional questions presented we do not decide them. *People v. Small, 319 Ill. 437.*

The judgment is reversed and the cause is remanded to the circuit court **[***8]** of Will county.

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Document (1)

1. *County of Kendall v. Aurora Nat'l Bank Trust No. 1107, 170 Ill. App. 3d 212*

Client/Matter: -None-
Search Terms: zoning & forestry
Search Type: Terms and Connectors
Narrowed by:

Content Type	Narrowed by
Cases	Court: State Courts > Illinois

County of Kendall v. Aurora Nat'l Bank Trust No. 1107

Appellate Court of Illinois, Second District

June 1, 1988, Filed

No. 2-87-0720

Reporter
170 Ill. App. 3d 212 *; 524 N.E.2d 262 **; 1988 Ill. App. LEXIS 791 ***; 120 Ill. Dec. 497 ****

THE COUNTY OF KENDALL, Plaintiff-Appellee, v. AURORA NATIONAL BANK TRUST NO. 1107 et al., Defendants-Appellants

Subsequent History: [***1] Rehearing Denied June 29, 1988.

Prior History: Appeal from the Circuit Court of Kendall County; the Hon. Douglas R. Engel, Judge, presiding.

Disposition: Reversed and remanded with direction.

Core Terms

pond, sod, agricultural purposes, agricultural, sand and gravel, site, ***zoning***, excavation, irrigation, farming, Soil, planted, acres, sludge, quarry, sand, land use, regulations, exemption, mining, injunction, defendants', removal, dig, ***zoning*** ordinance, cultivating, planned, storage, feet, lake

Case Summary

Procedural Posture
Defendants, beneficiaries of a land trust, sought review of orders of the Circuit Court of Kendall County (Illinois), which temporarily and permanently enjoined them from conducting certain activities on property they own in an unincorporated county. The land trust was held by defendant bank.

Overview
The parcel of land owned by defendants was ***zoned*** agricultural pursuant to the Kendall County ***zoning*** ordinance. The county sought to restrain defendants from excavating and/or removing sand from the premises. The county's complaint alleged essentially that defendants planned to mine sand on their property and that mining was prohibited in an agricultural ***zone***. In its order, the trial court found that defendants were planning to engage in mining activities in an agricultural ***zone*** and, thus, were in violation of the county ***zoning*** ordinance. Defendants argued, however, that their excavation goal was to create a pond to serve as a source of irrigation for sod they had already planted. Creation of such a pond, defendants insisted, was an agricultural use of the land, which was exempt from county regulations. On appeal, the court reversed the trial court's orders. The court ruled that the evidence presented had persuaded it that the pond defendants' wanted to dig would be used for agricultural purposes to an extent that brought their property within the exemption created by Ill. Rev. Stat. ch. 34, para. 3151 (1985).

Outcome
The court reversed the trial court orders, which enjoined defendants from excavating or removing sand from their property. The court remanded the case with directions to vacate the injunction.

LexisNexis® Headnotes

Business & Corporate Compliance > ... > Environmental Law > Land Use & ***Zoning*** > Agriculture & Farmland

Environmental Law > Land Use & ***Zoning*** > Equitable & Statutory Limits

Governments > Agriculture & Food > General Overview

HN1[] **Land Use & Zoning, Agriculture & Farmland**

Agricultural land uses are controlled by the statutory provisions for county ***zoning***, Ill. Rev. Stat. ch. 34, para. 3151 (1985) rather than by the county ***zoning*** ordinance. Section 1 of "An Act in relation to county ***zoning***" indicates that a county may not exercise its ***zoning*** powers so as to impose regulations or require permits with respect to land used or to be used for agricultural purposes or with respect to structures used or to be used for agricultural purposes upon such land except that structures for agricultural purposes may be required to conform to building or set back lines. Ill. Rev.

Stat. ch. 34, para. 3151 (1985). Accordingly, other than setback lines, a county may not regulate land used for agricultural purposes.

Business & Corporate Compliance > ... > Environmental Law > Land Use & ***Zoning*** > Agriculture & Farmland

Environmental Law > Land Use & ***Zoning*** > Judicial Review

HN2[] **Land Use & Zoning, Agriculture & Farmland**

In deciding if a challenged use is for an agricultural purpose the courts have not concerned themselves with the property owners' business activities or ultimate business objectives. Rather, the courts have focused on the nature of the specific activity in light of the definition of agriculture.

Business & Corporate Compliance > ... > Environmental Law > Land Use & ***Zoning*** > Agriculture & Farmland

HN3[] **Land Use & Zoning, Agriculture & Farmland**

"Agriculture" is defined as the art or science of cultivating the ground, including harvesting of crops and rearing and management of livestock; tillage; husbandry; farming; in a broader sense, the science and art of the production of plants and animals useful to man, including to a variable extent the preparation of these products for man's use. In this broad use it includes farming, horticulture and ***forestry***, together with such subjects as butter and cheese making, sugar making, and others. Unless restricted by the context, the words "agricultural purposes" have generally been given this comprehensive meaning by the courts of the country.

Business & Corporate Compliance > ... > Environmental Law > Land Use & ***Zoning*** > Agriculture & Farmland

HN4[] **Land Use & Zoning, Agriculture & Farmland**

Whether an activity involving use of the land has an agricultural purpose is to be determined from the activity itself and not from such external considerations as the property owner's intent or other business activities.

Counsel: Puckett, Barnett, Larson, Mickey, Wilson & Ochsenschlager, of Aurora (Bernard K. Weiler and Joseph H. Barnett, of counsel), for appellants.

Dallas C. Ingemunson, State's Attorney, of Yorkville (William L. Browers, of State's Attorneys Appellate Prosecutor's Office, of counsel), for appellee.

Judges: JUSTICE HOPF delivered the opinion of the court. LINDBERG, P.J., and DUNN, J., concur.

Opinion by: HOPF

Opinion

[*213] **[**263]** **[****498]** Defendants, Donald and Carol Hamman, are the beneficiaries of a land trust held by defendant Aurora National Bank. All of the defendants appeal from orders of the circuit court of Kendall County which temporarily and permanently enjoined them from conducting certain activities on property they own in unincorporated Kendall County. We reverse.

The parcel of land owned by defendants is ***zoned*** agricultural pursuant to the Kendall County ***zoning*** ordinance. Early in April of 1987 Donald Hamman planted sod on 90 acres of the 250-acre site at a cost of $ 58,900. Hamman intended to excavate a portion of the property for the asserted purpose **[***2]** of creating a pond from which he could irrigate the sod. Before he could begin digging, however, the county sought both a preliminary and permanent injunction restraining defendants from excavating and/or removing sand from the premises. The county's complaint alleged essentially that the Hammans planned **[*214]** to mine sand on their property and that mining was prohibited in an agricultural ***zone***.

At the hearings on the complaint, George Bell, the county ***zoning*** administrator, testified that he did not have jurisdiction over lands used to grow sod because the cultivation of sod is an agricultural use. He had never before exercised jurisdiction over a farmer digging a pond or creating a lake. **[**264]** **[****499]** Nor had he concerned himself with whether the materials removed from the ground in order to develop such ponds was sold or given away. The only reason he attempted to enforce the ***zoning*** regulations relative to the Hammans' pond was because he knew Donald Hamman owned and operated a sand and gravel mining business elsewhere in the county and Hamman had told him that he would probably sell the sand and gravel he planned to remove from the subject property. Bell was also aware that Hamman **[***3]** had previously applied to have the subject site rezoned from an agricultural classification to a mining classification. Pursuant to Hamman's request the application had been on hold for sometime, but it had not been withdrawn. Bell thought Hamman might be planning to mine,

rather than farm, the subject site.

The county elicited further testimony from Bell that was meant to show that ponds dug by other farmers in the county had involved the extraction of clay and dirt but not gravel or sand, and that the ***zoning*** ordinance regulated extraction of the latter but not the former. On cross-examination, however, it became evident the witness did not really know what was removed from the earth for other ponds because he had never concerned himself with such excavations.

Donald Hamman's testimony indicated that he had grown up on a farm and that he and his sons now farm about 900 acres, mostly in corn and soybeans. The Hammans' acreage is situated in several different locations. At one of these locations, other than the site involved in this suit, Donald Hamman operates a commercial sand and gravel quarry. The year before the hearing Hamman's sons had persuaded him to diversify crops. **[***4]** As a result he planted 100 acres of sod on the site of his sand and gravel quarry. Water from the gravel pit is used to water the sod. When questioning him as an adverse witness, the State's Attorney prompted testimony from Hamman to show that he had applied for a ***zoning*** change which would allow him to also put a sand and gravel quarry on the subject site but had changed his mind when he became aware that he probably could not get his rezoning application approved. The witness denied that was the reason for changing his mind about the use of his land and indicated that he might again seek rezoning at a future time. He reiterated that he now **[*215]** wished to plant sod on the subject site because of his sons' urging to diversify his farming operation. Hamman explained that the site has a subsurface of sand that goes down to 27 or 28 feet, at which point clay begins.

Much testimony was offered by witnesses from nurseries and sod farms regarding the need for irrigation for such farms, the methods used to irrigate, and the feasibility and pros and cons of the various methods. Expert testimony was offered by both parties regarding the size of the lake which would be needed to supply **[***5]** water for the 90 acres of sod planted by Hamman and the adequacy of the lake proposed by the defendants.

Following the first hearing the court entered an order temporarily restraining defendants from excavating or removing sand from the site. In the order the court found that the Hammans were planning to engage in mining activities in an agricultural ***zone*** and thus were in violation of the county ***zoning*** ordinance. Subsequently, a permanent injunction issued which set forth the same findings and restraints as had been recited in the temporary order. Both injunction orders were preceded by letter opinions from the trial judge in which he enunciated the following reasons for his conclusion that the Hammans were mining their property rather than farming it: (1) Donald Hamman already operated a sand and gravel operation at another location in Kendall County; (2) Hamman had previously submitted and never withdrawn an application for a ***zoning*** change which would allow the mining of sand and gravel on the subject property; (3) construction of the pond would require removal of 2 1/2 feet to 3 feet of topsoil and 24 feet to 25 feet of sand; (4) Hamman intended to remove the sand from the **[***6]** subject site and probably would sell it commercially; (5) the pond proposed by defendant would be inadequate **[**265]** **[****500]** for the purpose of watering sod. The court concluded:

> "The above facts indicate to the Court that the Defendant would not be making an economic or business decision after digging a pond to provide water for sod but was, in fact, intending to mine sand and gravel."

Subsequent to entry of the permanent injunction defendants filed this timely appeal.

It is not contested that defendants intend to excavate and remove sand and gravel from their site. Defendants argue, however, that their goal in such excavation is to create a pond to serve as a source of irrigation for the sod they have already planted. Creation of such a pond, defendants insist, is an agricultural use of the land which is exempt from county regulations. The county does not dispute that agricultural **[*216]** land uses are exempt from county regulation, or that generally the creation of a pond for watering sod is an agricultural use, or that the Hammans' activities on their property will result in a pond. Plaintiff is, however, adamant that the primary purpose of the excavation planned by the Hammans **[***7]** is not to construct an irrigation pond but rather to remove sand and gravel from the site as part of a mining operation. The pond is perceived by plaintiff as merely an incidental effect of mining activity. In fact, the entire sod operation is viewed by plaintiff as secondary to defendants' mining business. There is no disagreement that generally the mining of sand and gravel may be regulated by the county. Plaintiff concludes that since creation of the pond is a mining use of the property, it is subject to the county ***zoning*** regulations. After carefully reviewing the facts of this case and the controlling law, we are persuaded that defendant must prevail.

It is well established that *HN1*[↑] agricultural land uses are controlled by the statutory provisions for county ***zoning*** (Ill. Rev. Stat. 1985, ch. 34, par. 3151) rather than by the county ***zoning*** ordinance. Section 1 of "An Act in relation to county ***zoning***" indicates that a county may not exercise its ***zoning*** powers "so as to impose regulations or require permits with respect to land used or to be used for agricultural purposes * * * or with respect to * * * structures used or to be used for

agricultural purposes upon such land except **[***8]** that * * * structures for agricultural purposes may be required to conform to building or set back lines." (Ill. Rev. Stat. 1985, ch. 34, par. 3151.) Accordingly, other than setback lines, a county may not regulate land used for agricultural purposes. Thus, if the Hammans are pursuing an agricultural purpose, as they insist they are, the county may not restrict their activities, and the injunction must be dissolved. The issue in this case, then, is not whether the Hammans intend to mine the sand and gravel from their land, as the county would have us believe, but whether the excavation of sand and gravel in this particular instance constitutes use of the land for an agricultural purpose. We think it does.

That the Hammans' pond-building project necessarily involves certain activities which appear to be more characteristic of a sand and gravel mining operation than of farming is not determinative of the issue before us. HN2[↑] In deciding if a challenged use is for an agricultural purpose the courts have not concerned themselves with the property owners' business activities or ultimate business objectives. Rather, the courts have focused on the nature of the specific activity in light **[***9]** of the definition of agriculture. We recognized and followed this approach in *Tuftee v. County of Kane (1979), 76 Ill. App. 3d 128, 394 N.E.2d 896*. The county in *Tuftee* attempted to restrain plaintiff from **[*217]** using her property to board and train show horses on grounds that such activities did not constitute an agricultural purpose. We examined the definition of "agricultural purpose" which had been set forth in *People ex rel. Pletcher v. City of Joliet (1926), 321 Ill. 385, 152 N.E. 159*, and was based on Webster's definition of the word "agriculture." According to the *City of Joliet* court:

> HN3[↑] "'Agriculture' is defined as the 'art or science of cultivating the ground, including harvesting of crops and rearing and **[**266]** **[****501]** management of livestock; tillage; husbandry; farming; in a broader sense, the science and art of the production of plants and animals useful to man, including to a variable extent the preparation of these products for man's use. In this broad use it includes farming, horticulture and ***forestry***, together with such subjects as butter and cheese making, sugar making, etc.' Unless restricted **[***10]** by the context, the words 'agricultural purposes' have generally been given this comprehensive meaning by the courts of the country." (*City of Joliet*, 321 Ill. App. at 388-89.)

In light of this definition we found that the feeding, training, and boarding of horses fell within the scope of the agricultural purpose of "rearing and management of livestock." We indicated that the purpose for which horses are raised should have no bearing on whether the activities involved in raising them constitutes "rearing and management of livestock."

In *Tuftee*, we also analyzed *County of Grundy v Soil Enrichment Materials Corp. (1973), 9 Ill. App. 3d 746, 292 N.E.2d 755* (*Soil Enrichment* I), and a companion case, *Soil Enrichment Materials Corp. v. Zoning Board of Appeals (1973), 15 Ill. App. 3d 432, 304 N.E.2d 521* (*Soil Enrichment* II). Both cases explored the scope of an "agricultural purpose." In *Soil Enrichment* I the county sought unsuccessfully to enjoin the spreading of sludge on farmland on the basis that the defendant was primarily in the business of contractual sludge disposal. Therefore, **[***11]** the county argued, defendant was not engaged in agriculture. In *Soil Enrichment* II the court refused to enjoin construction of a holding pit for storage of the digested sludge. In neither case was the court persuaded by the argument that the soil company's principal activities were not agricultural in nature. Rather, the court's inquiry was limited to the precise conduct being challenged. In *Soil Enrichment* I the spreading of sludge accomplished the fertilization of the land. In *Soil Enrichment* II the sludge that was stored ultimately became fertilizer. It is clear in the opinions that the court considered fertilizer and fertilization to be integral and beneficial aspects of agriculture. Therefore, it did not matter that the soil company's **[*218]** primary objective was not agricultural. As stated by the *Soil Enrichment* I court: "The issue is not what appellant's main business interest is but solely whether or not the application and use of digested sludge on farm lands is serving an agricultural purpose." *County of Grundy, 9 Ill. App. 3d at 753*.

In *Soil Enrichment* II the court looked upon storage of the sludge as one **[***12]** part of a broader process. In the court's words: "[If] the spreading of digested sludge on farmland is in itself a use for an agricultural purpose, then the use of land to accommodate the immediate and necessary facilities by which sludge is transported to such farmlands is also for an agricultural purpose." (*Soil Enrichment Materials Corp., 15 Ill. App. 3d at 434*.) In sum, the cases teach that HN4[↑] whether an activity involving use of the land has an agricultural purpose is to be determined from the activity itself and not from such external considerations as the property owner's intent or other business activities.

Applying the principles of *Tuftee* and the *Soil Enrichment* cases to the matter at hand, we find that the conduct challenged by the county constitutes use of the land for an agricultural purpose. It is undisputed that the Hammans have already planted sod on 90 acres of the subject property. The testimony from witnesses for both parties is totally consistent that, while sod will grow with only natural rainfall for irrigation, a supplementary water supply is essential for the optimum growth necessary to a financially sound sod farm. **[***13]** Wells, ponds, lakes, rivers, and other streams, or any combination thereof, are used by sod growers for

supplemental water. Apparently none of these water sources presently exists on the Hamman property. Donald Hamman testified that the pond he intended to create would be 7 to 10 acres in size.

On these facts we have no doubt that the water from the pond contemplated by defendants will serve as a supplementary water **[**267]** **[****502]** supply for the sod planted on defendants' property. As an essential part of the process of sod farming, the provision of supplemental water certainly falls within the scope of the *City of Joliet* definition of "agriculture" in that it is a necessary part of the "art or science of cultivating the ground" and of "the science and art of the production of plants and animals useful to man." (*City of Joliet, 321 Ill. at 388*.) Not unlike the storage pit for the sludge in *Soil Enrichment* II, the pond here will collect and store water until it is needed to irrigate defendants' sod. The storage of water, then, is just one facet of the broader cultivation process. It follows that creation of the pond for storage, including the necessary **[***14]** excavation of sand and gravel, is still another facet of that process. As such, even the removal of sand and **[*219]** gravel has an agricultural purpose and is beyond the county's ***zoning*** powers.

As we mentioned earlier the county does not dispute that cultivating sod or providing an irrigation pond for sod is an agricultural use. Instead, the plaintiff asks us to focus on defendants' intent and attempts to persuade us that defendants are creating the pond primarily for its value as a sand and gravel quarry and that its irrigation function will be carried on only to facilitate the quarry operation. We acknowledge the potential for the problem the county apparently envisions in a case like this. The precise activity we focus on is the removal of sand and gravel from defendants' property. Obviously, some sand and gravel must be taken out in order to create an adequate irrigation pond. However, extraction of great amounts of material could result in creation of a quarry, or pit, of the type associated with gravel mining, with the irrigation pond located at the bottom. Alternatively, sand and gravel could be removed to the extent that the acreage of the lake would be far greater **[***15]** than the acreage planted in sod. Either of these scenarios could effectively change the basic agricultural character of the sod operation while still retaining the pond for irrigation purposes. The question is, at what point, if ever, does excavation which results in an irrigation pond cease to constitute a use of the land for an agricultural purpose as that phrase is used in the statute? We believe, first of all, that such excavation can lose its protected status.

The statute exempts land used for agricultural purposes from the effect of the county ***zoning*** regulations. The language of the statute makes it quite clear that land used for agricultural purposes is the *only* land covered by the exemption. In the case at bar there is the potential for a *de facto* quarry operation to be carried on in violation of the Kendall County ***zoning*** ordinance. If defendants did start quarrying their land and the agricultural purpose exemption was found to be applicable, the county would be powerless to stop the improper use. To enforce the exemption under such circumstances would be to frustrate the obvious intent of the legislature to allow agriculture, and only agriculture, to be pursued **[***16]** without ***zoning*** restrictions. To hold otherwise would be to allow the statutory exemption to be manipulated and twisted into a protection for virtually any use of the land as long as some agricultural activity was maintained on the property. The county's ***zoning*** power would thus be rendered meaningless. The legislature cannot have intended such a result when it created a protected status for land used for agricultural purposes.

The question of when a use for an agricultural purpose no longer **[*220]** warrants the protection of the statute will depend on the facts of each case. Here, the Hammans planted 90 acres, or more than one-third of their property, in sod at a cost close to $ 60,000. The county did not show that 90 acres is insufficient for a successful sod farming operation. On the contrary, several witnesses testified that they grow sod commercially on similar acreage. The county attempted to show that a pond is not needed on the subject site since a well would be the more efficient and dependable and usual water source for the defendants to install for the benefit of their sod. But the evidence also indicated that ponds are used, both alone and in combination with other **[***17]** water sources, by Illinois sod farmers and **[**268]** **[****503]** that it would be considerably more economical for the Hammans to dig a pond than to install a well.

Conflicting expert testimony was offered as to the adequacy of the proposed pond for irrigating 90 acres of sod. Cross-examination, however, revealed that both parties based their calculations on the same 1979 soil borings and that both calculations suffered from similar weaknesses. Donald Hamman testified, and it was not disputed, that a seven- to eight-acre pond had been sufficient to water 100 acres of sod he had planted the previous fall in another location in Kendall County. He had no well on that site. The pond envisioned by Hamman for the subject site would be 7 to 10 acres in size or approximately one-twenty-fifth of the total site.

The evidence presented in this case persuades us that the pond the Hammans wish to dig will be used for agricultural purposes to an extent which brings their property within the exemption created by the statute. We are well aware that the use of the land is subject to change depending on what the defendants do on the site. Based on the evidence presented by the parties at the injunction hearings, however, **[***18]** the

pond need not be constructed in such a way as to change the basic agricultural nature of the present use of the land. We note in this regard Donald Hamman's testimony that he will dig an auxiliary well if it becomes necessary.

Since the excavation to be undertaken by the Hammans serves an agricultural purpose, we need look no further into their intent, or any of their other business activities, or their ultimate business objective. Despite the county's urging to the contrary, under the *Soil Enrichment* cases, as well as *Tuftee*, it does not matter that the pond excavation may resemble in some ways defendants' existing sand and gravel quarry operation or that defendants applied for rezoning to a mining classification. Nor does it matter whether defendants removed sand and gravel from their site as opposed to clay and dirt. Equally irrelevant **[*221]** is what defendants do with the sand and other materials they remove from the site. We believe the trial court was mistakenly persuaded to focus on the factors just listed rather than on whether or not defendants wish to use their land for an agricultural purpose.

In light of our determination that the proposed use of their **[***19]** land is for an agricultural purpose, we need not discuss the other issues raised by defendants. For the reasons set forth above, the order of the circuit court of Kendall County enjoining defendants from excavating and/or removing sand from their property is reversed, and this cause is remanded with direction to vacate said injunction.

Reversed and remanded with direction.

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User Name: Boyd Ingemunson
Date and Time: Tuesday, June 28, 2022 10:13:00 AM EDT
Job Number: 174147249

Document (1)

1. *Tuftee v. County of Kane, 76 Ill. App. 3d 128*
   Client/Matter: -None-

Tuftee v. County of Kane

Appellate Court of Illinois, Second District

September 10, 1979, Filed

No. 78-457

Reporter
76 Ill. App. 3d 128 *; 394 N.E.2d 896 **; 1979 Ill. App. LEXIS 3205 ***; 31 Ill. Dec. 694 ****

BETTY TUFTEE, Plaintiff-Appellee, v. THE COUNTY OF KANE, Defendant- Appellant

Prior History: [*1]** Appeal from the Circuit Court of Kane County; the Hon. JOHN S. PAGE, Judge, presiding.

Disposition: Judgment affirmed.

Core Terms

agricultural purposes, agricultural, horses, zoning, training, acres, trial court, exemption, barn, rearing, building permit, livestock, animals, farm, zoning ordinance, sludge

Case Summary

Procedural Posture
Plaintiff landowner filed an action against defendant county for declarative and injunctive relief after the county denied the landowner's application for the construction of a horse barn. The county sought review of the order of the Circuit Court of Kane County (Illinois), which enjoined the county from interfering with the landowner's construction of the barn.

Overview
The landowner sought to erect a training barn for show horses on a seven-acre parcel of property. The county claimed that its zoning ordinance denied agricultural exemptions for property less than 15 acres and that the training of horses was not an agricultural purpose. The landowner claimed that the county had no authority to impose the 15-acre limitation on property that was entitled to a statutory agricultural exemption. The court affirmed the trial court's judgment. The court held that the county's power to regulate the landowner's property rights through zoning regulations was expressly limited by Ill. Rev. Stat. ch. 34, para. 3151 (1975), that the rearing of livestock was an agricultural purpose, that horses were livestock, that the landowner's use of the property was agricultural, and that the county had no authority to establish acreage minimums or to require the landowner to obtain building and special use permits. The court also held that the county's zoning ordinance was invalid and that the care and training of horses for show was within the contemplation of para. 3151.

Outcome
The court affirmed the trial court's judgment enjoining the county from interfering with the landowner's construction of the barn.

LexisNexis® Headnotes

Business & Corporate Compliance > ... > Real Property Law > Zoning > Regional & State Planning

Governments > Local Governments > Duties & Powers

HN1[] **Zoning, Regional & State Planning**

A municipal government may exercise only those powers conferred upon it by a state. The municipal government's right to restrain the use of private property is limited to properly promulgated enactments. No rights exist and no powers are conferred with respect to zoning except by statute.

Business & Corporate Compliance > ... > Real Property Law > Zoning > Ordinances

Governments > Local Governments > Duties & Powers

Business & Corporate Compliance > ... > Real Property Law > Zoning > Regional & State Planning

HN2[] **Zoning, Ordinances**

Ill. Rev. Stat. ch. 34, para. 3151 (1975) provides that zoning

powers shall not be exercised so as to deprive an owner of any existing property of its use or maintenance for the purpose to which it is then lawfully devoted. The powers shall not be exercised so as to impose regulations or require permits with respect to land used or to be used for agricultural purposes, or with respect to the erection, maintenance, repair, alteration, remodeling or extension of buildings or structures used or to be used for agricultural purposes upon such land, except that such buildings or structures for agricultural purposes may be required to conform to building or setback lines.

Governments > Legislation > Interpretation

HN3[] **Legislation, Interpretation**

In the absence of a contrary definition, a word used in a statute is to be given its popularly understood meaning or commonly accepted dictionary definition.

Governments > Agriculture & Food > General Overview

HN4[] **Governments, Agriculture & Food**

"Agriculture" is defined as the art or science of cultivating the ground, including harvesting of crops and rearing and management of livestock, tillage, husbandry, farming, and in a broader sense, the science and art of the production of plants and animals useful to man, including to a variable extent the preparation of these products for man's use. Unless restricted by the context, the words "agricultural purposes" are given this comprehensive meaning.

Business & Corporate Compliance > ... > Real Property Law > Zoning > Variances

Real Property Law > Zoning > General Overview

HN5[] **Zoning, Variances**

In deciding whether a specific use of property constitutes an agricultural purpose, the courts relate the nature of the immediate activity to the definition of agriculture. If the use bears some relation to the "cultivation of ground" or the "rearing or management of livestock" or the "production of plants and animals useful to man," it falls within the meaning of "agricultural purpose." The courts do not rely on an analysis of the ultimate business objectives of the property owner.

Governments > Agriculture & Food > Animal Protection

HN6[] **Agriculture & Food, Animal Protection**

The rearing of livestock is an agricultural purpose. Horses are livestock. The purpose for which they are raised shall have no bearing on a determination of whether the activities of raising them fall within the scope of the definition of the rearing and management of livestock.

Civil Procedure > Appeals > Reviewability of Lower Court Decisions > Preservation for Review

HN7[] **Reviewability of Lower Court Decisions, Preservation for Review**

The theory upon which a case is tried in the lower court cannot be changed on review. An issue not presented to or considered by a trial court cannot be raised for the first time on review. However, an appellee is permitted to defend a judgment on review by raising an issue not previously ruled upon by the trial court if the necessary factual basis for the determination of such point was contained in the record.

Civil Procedure > Appeals > Reviewability of Lower Court Decisions > Preservation for Review

HN8[] **Reviewability of Lower Court Decisions, Preservation for Review**

Where a litigant obtains the relief he has sought, he may rely upon any ground appearing in the record to support his judgment for purposes of defending an appeal.

Counsel: Gene Armentrout, State's Attorney, of Geneva (G. William Richards, Assistant State's Attorney, of counsel), for appellant.

Joseph H. Barnett and Bernard K. Weiler, both of Puckett, Barnett, Larson, Mickey, Wilson & Ochsenchlager, of Aurora, for appellee.

Judges: Justice Lindberg delivered the opinion of the court. Guild, P.J., and Rechenmacher, J., concur.

Opinion by: LINDBERG

Opinion

[*129] **[**897]** **[****695]** Defendant, County of Kane, appeals from an order of the Circuit Court of Kane County enjoining it from interfering with the operation of a public stable by the plaintiff, Betty Tuftee, for the care and training of 19 show horses. We affirm.

On January 15, 1976, the plaintiff entered into a contract for the sale of all but seven acres of her 76-acre tract. The plaintiff also entered into a contract with a construction company for the erection of the shell of a training barn on the seven acres calling for an expenditure of $ 48,000. On or about April 23, 1976, plaintiff became aware that a building permit might be necessary for the erection of **[***2]** the barn. On that date her son-in-law, Thomas Hoish, who was to operate the stable, called upon the county's zoning office and talked with Stanley Henderson, the director. The testimony of Hoish was that Hoish advised Henderson of the characteristics of the barn and that the purpose of the barn was for the care and training for show of 19 horses.

Henderson advised Hoish that based upon the zoning maps and his knowledge of the 76 acres that no building permit was required and that upon the filing of an affidavit the plaintiff would be granted an agricultural exemption. The record further shows that the matter of the sale of all but seven acres was probably not discussed in detail if at all on April 23, 1976, nor was such a revelation required in the affidavit form provided by the zoning office nor was it disclosed by the plaintiff in the affidavit. Further, the record fails to disclose that the plaintiff knew that such information was relevant or that the information was purposely withheld.

On May 5, 1976, the plaintiff received from the zoning office a letter granting her an agricultural exemption for the construction of her horse barn. She then began construction of the shell **[***3]** of the barn pursuant to her earlier contract. By June 7, 1976, the construction of the shell of the barn was virtually completed, obligating the plaintiff to an expenditure of approximately $ 48,000 of the anticipated total cost of $ 100,0000.

June 7, 1976, the plaintiff received another letter from the zoning office that she would have to stop construction until she secured a building permit. The property was "red tagged" by a zoning official the same day. It appears that the zoning office learned of the contract for the sale of 69 of the original 76 acres and the plan to have the 69 acres annexed to North Aurora. The county zoning ordinance provides that agricultural exemptions are given only for property of not less than 15 acres in size.

The plaintiff stopped construction and was granted a building permit on August 25, 1976, at which time she concluded the remaining construction, principally of the interior of the barn. However, the permit only authorized private use of the facility or, for commercial use, limited the **[*130]** number of horses to 10. The plaintiff then applied for a special use permit of the building to accommodate 19 horses. The hearing for the permit **[***4]** was held April 11, 1977. An adverse recommendation was rendered on June 7, and on June 14 the county board denied her application for a special use. Plaintiff thereafter filed a two-count complaint for declarative and injunctive relief. Count I alleged the relevant provisions of the zoning ordinance as applied to her property were unconstitutional. Count II sought injunctive relief on the basis of equitable estoppel. At the conclusion of the bench trial the trial court found for the **[****696]** **[**898]** plaintiff on grounds of equitable estoppel and granted the injunctive relief sought by the plaintiff. The trial court made no findings as to count I regarding the constitutional issue.

Defendant alleges that both the May 5, 1976, agricultural exemption and the August 25, 1976, building permit were invalidly issued by its zoning officer. This is because the zoning ordinance does not permit agricultural exemption of properties of less than 15 acres and, because building permits must be secured before and not after, construction has commenced and the special use procedure must be favorably concluded before a building permit can issue.

Defendant's theory on appeal is that ordinarily **[***5]** a governmental entity is not bound by the unauthorized conduct of its officials in issuing invalid building permits. Defendant maintains that since its ordinance denies agricultural exemptions to property of less than 15 acres, the seven acres that will eventually be retained by the plaintiff do not qualify for the exemption. Further, defendant argues that the use of the barn for the care and training of horses for show is not an agricultural purpose. Defendant acknowledges that under special circumstances equitable estoppel can be invoked to prevent the government entity from denying the validity of its acts. However since we affirm on other grounds we need not discuss the issue of equitable estoppel relied upon by the trial court.

Plaintiff maintains that the care and training of horses for show is an agricultural purpose and she argues and, we believe convincingly, that a county has no authority to impose a 15-acre limitation as to property which is entitled to the statutory agricultural exemption.

1 *HN1*[↑] A municipal government may exercise only those powers conferred upon it by the State, and its right to restrain the use of private property is limited to properly promulgated **[***6]** enactments. (*City of Chicago v. Rumpff*

(1867), 45 Ill. 90; Village of LaGrange v. Leitch (1941), 377 Ill. 99, 35 N.E.2d 346.) No rights exist and no powers are conferred with respect to zoning except by statute. (People v. Ferris (1958), 18 Ill. App. 2d 346, 152 N.E.2d 183.) The only limitations which may be placed upon the use of plaintiff's property, therefore, are those which have been enacted within the **[*131]** authority granted by the General Assembly and circumscribed by statute.

Therefore, the central issue in this case is whether defendant county may properly restrain the plaintiff from using her seven acres to board and train 19 show horses. Defendant contends that it may do so by virtue of its ordinance. The power of the county to regulate the plaintiff's property rights, however, is expressly limited by the terms of the enabling acts under which its ordinances are authorized. This limitation as found in section 1 of "An Act in relation to county zoning" (Ill. Rev. Sat. 1975, ch. 34, par. 3151) is as follows:

> HN2[↑] "The powers by this Act given shall not be exercised so as to deprive the owner of any existing property of its use or maintenance for the purpose **[***7]** to which it is then lawfully devoted; nor shall they be exercised so as to impose regulations or require permits with respect to land used or to be used for agricultural purposes, or with respect to the erection, maintenance, repair, alteration, remodeling or extension of buildings or structures used or to be used for agricultural purposes upon such land except that such buildings or structures for agricultural purposes may be required to conform to building or setback lines; * * *."

If, therefore, the erection and use of a barn for the boarding and training of fine harness horses is an agricultural purpose, the defendant has no authority to interfere with this endeavor through zoning regulations, and the relief which it sees must be denied.

The horses which plaintiff proposes to board and train are American Saddle breeds which are bred and trained to pull fine harness buggies as well as for show purposes. The process includes breaking a colt, training it, monitoring its development, and placing it in appropriate categories to maximize its development, and value. In addition **[****697]** **[**899]** to training, the plaintiff intends to feed, bed, clean, and otherwise care for **[***8]** the horses. Two of the 19 stalls in the barn are occupied by horses owned by the plaintiff. The remaining 17 stalls are to be occupied by horses owned by third parties.

The parties are in agreement that HN3[↑] in the absence of a contrary definition, a word used in a statute is to be given its popularly understood meaning or commonly accepted dictionary definition. (Bowman v. Armour & Co. (1959), 17 Ill. 2d 43, 160 N.E.2d 753; Beck v. Board of Education (1975), 27 Ill. App. 3d 4, 325 N.E.2d 640, *affirmed* (1976), 63 Ill. 2d 10, 344 N.E.2d 440.) The parties also agree that in applying this principle the supreme court in **People ex. rel. Pletcher v. City of Joliet (1926), 321 Ill. 385, 152 N.E. 159**, defined the term "agricultural purpose" as it was used in a portion of the annexation statute of June 20, 1921 (Ill. Rev. Stat. 1925, ch. 34, §370 (Smith-Hurd)), and that such definition should **[*132]** be considered by this court in construing section 1 of the county zoning statute. (County of Lake v. Cushman (1976), 40 Ill. App. 3d 1045, 353 N.E.2d 399.) This definition, which is based on Webster's definition of the word agriculture, is set out and discussed in **City of [***9] Joliet, at page 388**. In that opinion the court said:

> HN4[↑] "'Agriculture' is defined as the 'art or science of cultivating the ground, including harvesting of crops and rearing and management of livestock; tillage; husbandry; farming; in a broader sense, the science and art of the production of plants and animals useful to man, including to a variable extent the preparation of these products for man's use. In this broad use it includes farming, horticulture and forestry, together with such subjects as butter and cheese making, sugar making, etc'" (**321 Ill. 385, 388-89**),

and,

> "Unless restricted by the context, the words 'agricultural purposes' have generally been given this comprehensive meaning * * *." **321 Ill. 385, 389**.

"Livestock" is defined by Webster's New World Dictionary of the American Language (2d ed. 1973) as "domestic animals kept for use on a farm or raised for sale or profit." "Horse" is defined as a "domestic animal." "Rear" is defined "to grow or breed (animals or plants), to bring to maturity by educating, nourishing, etc." We agree with plaintiff that to exclude the feeding, training, and boarding of horses for show from the meaning of the phrase "rearing **[***10]** and management of livestock" strains the popular conception of that phrase.

Defendant argues that the courts of this State have interpreted "agricultural purpose" in such a way as to emphasize the aspect of "production or preparation of products for man's use." HN5[↑] In deciding whether a specific use constitutes an agricultural purpose, the courts have related the nature of the immediate activity to the definition of agriculture. Generally, if the use bears some relation to the "cultivation of ground" or the "rearing or management of livestock" or the "production

of plants and animals useful to man" it has been found to fall within the meaning of "agricultural purpose." The courts have not relied on an analysis of the ultimate business objectives of the property owner. For example, in *County of Grundy v. Soil Enrichment Materials Corp. (1973), 9 Ill. App. 3d 746, 292 N.E.2d 755*, the county sought to enjoin the soil company from spreading raw sludge on farm land in violation of its zoning ordinances. The county argued that the soil company's principal business was the disposal of sludge pursuant to a contract with a local waste treatment plant, and as such was not engaged in agriculture. **[***11]** In rejecting this argument the court said:

> "The fact that an organization may have many major objectives **[*133]** which have no agricultural connection would not operate to characterize the sale or gift of a fertilizer if, in fact, the fertilizer as applied has an agricultural purpose. The issue is not what appellant's main business interest is, but solely whether or not **[****698]** **[**900]** the application and use of digested sludge on farm lands is serving an agricultural purpose." *9 Ill. App. 3d 746, 753*.

In a companion case, *Soil Enrichment Materials Corp. v. Zoning Board (1973), 15 Ill. App. 3d 432, 304 N.E.2d 521*, the court held that the construction of a 4-million-gallon holding pit for the purpose of storing digested sludge was an agricultural purpose. The court held that its storage and subsequent application to farm soil were agricultural purposes without making a distinction between the two. The rationale for the court's holding in *Soil Enrichment Materials Corp.* is simply that sooner or later the sludge became fertilizer, and fertilizer is clearly an element of agriculture. Its nature in that regard is unaffected by the objectives of those who **[***12]** deal with it.

2, 3 Likewise, *HN6*[⬆] the rearing of livestock is an agricultural purpose. Horses are livestock. The purpose for which they are raised should have no bearing on a determination of whether the activities of raising them fall within the scope of the definition of "the rearing and management of livestock." The legislature elected to use the phrase "agricultural purpose" without expressly limiting the varied activities contemplated by its commonly accepted definition. In withholding from the county the authority to regulate the use of property dedicated to agricultural purposes, the legislature did not distinguish the rearing of animals for consumption from the rearing of animals for show. The legislative silence in this regard does not authorize the creation of such distinction by governmental entities. *County of Lake v. Cushman (1976), 40 Ill. App. 3d 1045, 353 N.E.2d 399*.

4-6 We conclude that the purpose for which the plaintiff's property was to be used is agricultural. It follows, under our holding in *Cushman*, that the county has no authority to establish acreage minimums to which it will grant the statutory right of exemption from zoning regulations. Further **[***13]** the county has no zoning authority to require the plaintiff to obtain building and special use permits or to restrain her agricultural use of the property other than as to statutorily permitted building or set-back lines.

The defendant maintains that plaintiff's argument regarding the invalidity of the county's ordinance denying agricultural exemptions to properties with acreage of less than 15 acres was not contained in her complaint nor argued in the trial court. The defendant draws our attention to the language of *Kravis v. Smith Marine, Inc. (1975), 60 Ill. 2d 141, 147, 324 N.E.2d 417, 420*, wherein the supreme court said:

> "It has frequently been held that *HN7*[⬆] the theory upon which a case is **[*134]** tried in the lower court cannot be changed on review, and that an issue not presented to or considered by the trial court cannot be raised for the first time on review. [Citations.] A corollary to this rule permits an appellee to defend a judgment on review by raising an issue not previously ruled upon by the trial court if the necessary factual basis for the determination of such point was contained in the record."

However, defendant attempts to qualify this rule by **[***14]** suggesting that the corollary rule of *Kravis* is available only to appellees who were *defendants* in the trial court. While defendant cites no authority for this restriction on the rule referred to in *Kravis*, we note an earlier supreme court case wherein, affirming judgment for the appellee who was the *plaintiff* in the trial court, the court held *HN8*[⬆] "here a litigant obtains the relief he has sought, he may rely upon any ground appearing in the record to support his judgment. [Citations.]" (*La Salle National Bank v. Village of Grayslake (1963), 29 Ill. 2d 489, 492, 194 N.E.2d 250, 252*.) Similarly, and after *Kravis*, the appellate court in *Harris Trust & Savings Bank v. Joanna-Western Mills (1977), 53 Ill. App. 3d 542, 368 N.E.2d 629*, held that the *plaintiff-appellee* could urge any point on appeal in support of its judgment though not raised in the trial court, but where the facts to support the point were before the trial court. (*53 Ill. App. 3d 542, 554*.) **[****699]** **[**901]** We find no distinction exists as between *plaintiff* or *defendant*

appellees for the application of the general rule.

In sum, the plaintiff- appellee may raise for the first **[***15]** time on appeal any legal issue to defend her judgment for which there was a factual basis in the trial court. The defendant's zoning ordinance denying plaintiff the statutorily authorized agricultural exemption from zoning because the property would eventually consist of less than 15 acres is invalid, as are the requirements that she qualify for building or special use permits. The care and training of horses for show is an agricultural purpose within the contemplation of section 1 of "An Act in relation to county zoning." Ill. Rev. Stat. 1975, ch. 34, par. 3151.

For these reasons we affirm the judgment of the Circuit Court of Kane County.

Affirmed.

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June 29, 2022

Matt Asselmeier
Kendall County Planning, Building, & Zoning
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RE: Forestry Issue

Dear Matt:

I have reviewed the proposed Agenda for this evening and in particular the item referencing discussion of Forestry, Tree Farm, and related text Amendments.

I have spoken with Attorney Boyd Ingemunson in regard to the same since apparently he has a Client going through that process currently.

I like he question the wisdom of adopting the Ordinance that is proposed with the language contained in the same. Illinois has long had an Enactment in a Counties Act, stating that Governmental bodies shall pass no law limiting Agriculture in the State of Illinois other than front road setbacks for safety purposes. In the preamble to the Act it relates Agricultural Uses and Zoning to being a prime Industry in the State of Illinois and one that should be encouraged and not subject to Government restriction in terms of Zoning.

Although I think you are making an honest attempt to adopt language from a totally different Act, I do not believe as a Non-home Rule County; that you have legal authority to make a definition that is tighter than the existing State Law in Illinois. In other words I believe the State Regulation through the Illinois Department of Agriculture pre-empts any limiting of activities that the County would have jurisdiction to impose in relation to Agriculture.

When you read the definition that they have in the Illinois Act as far as Forestry; Tree Farming it talks about end products arrived therefrom and is covered under the State Act.

I have an existing client that predates the proposed change I the Ordinance so in any event I do not believe it would be applicable to that Client given that they are a legal

existing use. However I wanted to make sure our position is noted and in in the comments that Attorney Ingemunson has given the Committee as well.

Very truly yours

Daniel J. Kramer

Daniel J. Kramer
Attorney at Law

DJK:rg