

SUPREME COURT OF SOUTH DAKOTA

Croell Redi-Mix, Inc. v. Pennington County Board of Commissioners

Croell Redi-Mix, Inc. v. Pennington Cty. Bd. of Comm'rs, 2017 S.D. 87 (2017) · No. #28173 · Decided
December 13, 2017

SUMMARY

The South Dakota Supreme Court held that the Pennington County Board of Commissioners properly entertained an appeal from the Planning Director's approval of Croell Redi-Mix's construction permit. The Court interpreted the county zoning ordinance to require a mining permit for extraction exceeding 100 cubic yards, rather than authorizing the proposed quarry expansion through a construction permit. The Court reversed the circuit court's decision and reinstated the Board's denial of the construction permit.

CASE DETAILS

COURT	Supreme Court of South Dakota
WRITING FOR THE COURT	Gilbertson, Chief Justice; Zinter, Justice; Severson, Justice; Wilbur, Retired Justice; Swanson, Circuit Court Judge
JURISDICTION	South Dakota
DECIDED	December 13, 2017
DOCKET	#28173
DISPOSITION	reversed
PROCEDURAL POSTURE	Croell appealed the Pennington County Board of Commissioners' reversal of the Planning Director's construction-permit approval. The circuit court reversed the Board and ordered reinstatement of the permit. The Board appealed to the South Dakota Supreme Court.
STANDARD OF REVIEW	Interpretation of a zoning ordinance is reviewed de novo. An appeal under SDCL 7-8-30 is heard and determined de novo. The Court held that arbitrariness or substantial-evidence review was unnecessary because the circuit court's conclusion rested on an erroneous interpretation of the controlling ordinances.
PRECEDENTIAL VALUE	published and precedential South Dakota Supreme Court opinion
PARTIES	Pennington County Board of Commissioners, Mark DiSanto, Lloyd LaCroix, Deb Hadcock, George Ferebee, Ron Buskerud v. Croell Redi-Mix, Inc.

TOPICS

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QUESTIONS PRESENTED

1. Whether the County Board of Commissioners properly entertained the appeal from the Planning Director's issuance of the construction permit.
2. Whether Croell's proposed expansion and extraction operation in an A-1 General Agriculture District could be authorized by a construction permit rather than a mining permit.
3. Whether the County Board's decision reversing the construction permit was arbitrary or unsupported by substantial evidence.

HOLDINGS

1. Pennington County Zoning Ordinance § 507(A)(7)(f) authorized an appeal by any person affected by any action taken by the Planning Director in administering § 507(A), and the appealing residents and businesses satisfied that requirement.
2. Croell's intended extraction of more than 100 cubic yards could not be authorized by a construction permit; under Pennington County Zoning Ordinance § 507(B), a mining permit issued by the Commission was required.
3. The circuit court erred in holding that the Board's decision was arbitrary because that conclusion was based on an erroneous interpretation of the zoning ordinance and an improperly narrowed view of the issue before the Board.

KEY QUOTATIONS

“No extraction of any mineral or substance exceeding 100 cubic yards from the earth shall be conducted without a Mining Permit issued by the Commission.” (§ 18)

“When the meaning of an ordinance is unambiguous, the contrary interpretation of those administering the ordinance is not entitled to deference.” (§ 20)

FACTUAL BACKGROUND

Croell Redi-Mix operates Perli Quarry, a 40-acre mining operation extracting sand, gravel, and construction aggregate in Pennington County. The quarry began operating in the 1970s, before the County adopted zoning ordinances, and Croell acquired it in 2015 intending to expand the operation. The Planning Director issued construction permit CP 15-17 under the County's zoning ordinance, but area residents appealed and the County Board reversed the approval after hearing concerns about dust, traffic, groundwater, runoff, and property values.

PROCEDURAL HISTORY

The Pennington County Planning Director approved Croell's construction permit to continue and expand its quarry operation. The County Board of Commissioners entertained an appeal by affected residents and reversed the permit approval. On appeal under SDCL chapter 7-8, the circuit court concluded that the residents lacked standing, disagreed with the Board's interpretation of the zoning ordinances, and held the Board's decision arbitrary; it reversed and remanded with instructions to affirm the permit. The Supreme Court reversed the circuit court.

DISPOSITION

reversed

CASES CITED

- Pennington County v. Moore, 525 N.W.2d 257 (S.D. 1994)
- Cable v. Union County Board of County Commissioners, 2009 S.D. 59, 769 N.W.2d 817
- State v. Kvasnicka, 2013 S.D. 25, 829 N.W.2d 123
- Atkinson v. City of Pierre, 2005 S.D. 114, 706 N.W.2d 791
- Wegner Auto Co. v. Ballard, 353 N.W.2d 57 (S.D. 1984)
- Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837 (1984)
- Hoffman v. Van Wyk, 2017 S.D. 48, 900 N.W.2d 596
- State, Department of Game, Fish & Parks v. Troy Township, 2017 S.D. 50, 900 N.W.2d 840
- Armstrong v. Turner County Board of Adjustment, 2009 S.D. 81, 772 N.W.2d 643
- Arnel Development Co. v. City of Costa Mesa, 620 P.2d 565 (Cal. 1980) (en banc)
- Mustang Run Wind Project, LLC v. Osage County Board of Adjustment, 387 P.3d 333 (Okla. 2016)
- Chioffi v. Winooski Zoning Board, 556 A.2d 103 (Vt. 1989)

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