

C.A. No. 110718

NOVA SCOTIA COURT OF APPEAL
Cite as: Kings (County) v. D&M Lightfoot Farms Ltd.,
1995 NSCA 75

Clarke, C.J.N.S., Chipman and Freeman, J.J.A.

BETWEEN:

MUNICIPALITY OF THE CO. OF KINGS)	Robert Grant, Esq.
)	for the Appellant
Appellant)	
)	
- and -)	
)	
)	Byron Balcom, Esq.
)	for the Respondent
)	
D&M LIGHTFOOT FARMS LIMITED)	
)	
Respondent)	
)	
)	Appeal Heard:
)	April 11, 1995
)	
)	Judgment Delivered:
)	April 11, 1995
)	
)	
)	

THE COURT: The appeal is dismissed with costs fixed at \$1,000 plus disbursements, per reasons given orally by Freeman, J.A; Clarke, C.J.N.S. and Chipman, J.A. concurring.

Freeman, J.A.:

This is an appeal by the Municipality of the County of Kings from a Supreme Court judgment upholding the validity of a permit issued under its land use bylaw for the appellant's 11,000 chicken broiler breeder operation in a newly constructed barn.

The purpose of such an operation is to produce fertilized eggs which are hatched elsewhere to raise broiler chicks for market.

The respondent company is operated by Donald Lightfoot and his son Michael, 24, who have been involved in the chicken broiler business for three years. In June, 1944, the respondent entered into a contract with ACA Cooperative Limited for a broiler breeder facility, subject to obtaining a development permit. A permit for a two-storey "44 by 300 foot broiler barn (non intensive)" was issued June 28, 1994 and construction was begun with a view to commencing operations in October. The barn cost \$200,000 and the equipment another \$185,000.

After receiving complaints from several local residents that the barn was too close to their homes the Municipality sought to revoke the permit on the basis that the use planned by the respondents would be "intensive" rather than "non intensive."

The respondents applied for a declaratory judgment. Expert evidence was called as to the poultry industry and land use planning. By decision of October 7 and order of November 7, 1994, Justice Donald Hall found the intended use was "not an 'intensive livestock operation' within the meaning of the land use by-law of the Municipality of the County of Kings."

The Kings County land use strategy emphasizes the importance of agriculture to the area. The Lightfoot operation is in an A1 agricultural zone which under s. 11.1.1 of

the municipality's land use by-law "is to provide for agriculture as a dominant use which is to have priority over all other uses." However intensive livestock operations are not permitted under certain conditions, and in particular (s. 11.1.9) cannot be located within 1,000 feet of non-farm residences. The Lightfoot barn is much closer than that to some homes.

An intensive livestock operation is defined by s. 1.65.2 of the by-law as follows:

1.65.2 Intensive Livestock Operation means an operation consisting of only one type of livestock in which a minimum of thirty (30) animal units are confined to feedlots or poultry facilities for feeding, breeding, milking, or holding for eventual sale or egg production. The following chart shall be used for calculation of total animal units:

ANIMAL UNITS OF PRODUCTION

Column 1 On Farm for Complete Year	Column II Marketed During Year
---------------------------------------	-----------------------------------

Type of Livestock	Number Equal to 1 Animal Unit	Type of Livestock	Number Equal to 1 Animal Unit
Dairy Cow (plus calf)	1	Beef Cows (400-1000 lb)	2
Beef Cow (plus calf)	1	Beef Feeders (gain 400-750 lb)	3
Bull	1	Beef Feeders (gain 750-1100 lb)	2
Horse	1	Hogs (gain 40-200 lbs)	15
Sheep (plus lambs)	4	Broiler Chickens or Roasters (4-5 lbs)	1000
Sows (plus litter to weaning)	4	Turkey Broilers (11-12 lb)	300
Laying Hens	125	Heavy Turkey Hens (19-20 lb)	150
Female Mink (plus associated males and kits)	100	Heavy Turkey Toms (30-32 lb)	100
Female Rabbits (plus associated males)	40	Veal Calves (gain 90-300 lb)	40
		Pullets	300

Animal units are calculated from the amount of manure containing 1.35 per cent nitrogen produced by each animal. One unit is based on the amount of manure produced by one cow and calf, or one bull, or one horse, on a farm for a complete year.

The municipality argues that the chart does not apply to chicken broiler breeders and that the respondent's chickens are laying hens.

Laying hens are used to produce eggs for human consumption. They are kept during their peak laying period of fifty-two weeks or more and sold as meat. The evidence of Herb Jansen, a leading poultry expert, is that broiler breeders are kept for only 44 weeks before they are sold as meat. Under the chart laying hens are distinguished from broiler chickens or roasters on the basis of how long they

are kept on the farm: laying hens are on the farm for a complete year, broiler chickens or roasters are marketed during the year. The merits of this distinction do not concern us; this is the scheme adopted by the Municipality of Kings for determining whether livestock operations are intensive. The length of time classes of birds are kept on the farm before they are marketed appears to be a fundamental consideration under the chart adopted as part of s. 1.65.2..

Breeding is one of the purposes recognized by s. 1.65.2 of the Kings land use by-law; obviously it is part of the life-cycle of broiler chickens that was taken into account by the council in adopting the by-law. Whether they are kept for feeding, breeding or holding, it takes 1,000 broiler chickens weighing 4-5 pounds to equal one animal unit under the chart. Therefore the 11,000 chickens - 10,000 hens and 1,000 roasters - used in the respondent's operation are well within the limits of 30 units set by the by-law for

non intensive use.

The appellant's arguments that breeder broiler chickens should be classed as laying hens are not persuasive. Justice Hall considered these arguments in detail. He assumed s. 1.65(a) did not include a chicken broiler breeder operation and reasoned that such an operation could therefore not be an intensive use. He did not err in arriving at his conclusion that the respondents' intended use of their facility was "not an 'intensive livestock operation' within the meaning of the land use by-law of the Municipality of the County of Kings." The appeal is dismissed with costs which we fix at \$1,000 plus disbursements.

Freeman, J.A.

Concurred in:

Clarke, C. J. N.S.

Chipman, J.A.