

# Clean Fill Facility/Zoning: Pennsylvania Court Addresses Whether Activity Constitutes Violation



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A Pennsylvania court examined in a May 26th Opinion whether a town's zoning ordinance prohibited a Clean Fill Facility ("Facility") in a certain district. See *Greenview Properties 862, LLC v. Hamilton Township Zoning Board*, No. 799 C.D. 2020, 2021 WL 2135951 (Pa. Commw. Ct. ).

A key question was whether the deposited fill was for a commercial landfill purpose or to improve the property.

The Ordinance permits certain activities, including "[t]he collection, processing, re-processing, and/or storage of . . . soil . . ." in specific industrial zones. The landowner argued that the property was not located in one of these industrial zones.

The landowner purchased the property and obtained a permit to raise the grade of approximately six acres of the property. The same year the permit was given, the landowner entered into a "Clean Fill Facility Operation and Maintenance Agreement."

The Agreement provided that the parties would operate a "Clean Fill Facility" on the land. The Facility was permitted to accept about 300,000 tons of clean fill. Further, it indicated an intent to obtain additional permits to increase space for an added 2.7 million tons of clean fill. However, the landowner stated that the actual goal of the importation of fill was to grade the land in order to cultivate a tree farm.

The Township issued an enforcement notice to landowner. The notice alleged that the zoning ordinance had been violated by the operation of a landfill business for commercial gain in a non-industrial zone.

The landowner responded that the soil was needed to grade the lot for the tree farm. However, no explanation was stated to have been offered for the volume of soil utilized. The zoning board noted that the landowner was compensated for every truckload of fill brought into the Facility. Therefore, it concluded that the Facility operated as a landfill as opposed to a tree farm.

The Court of Appeals upheld this reasoning and determined the landowner had violated the zoning ordinance.

The landowner also argued that the language of the zoning ordinance was ambiguous as to whether it applied to the permanent placement of fill for a grade change. The zoning board and trial court in parsing the ordinance's language found it unambiguous. However, this issue was irrelevant since it was also determined that the landowner was not depositing the fill for mere grade changes. Instead, it was concluded that the fill was part of a landfill operation.

The Court of Appeals affirmed the zoning board and trial court's interpretations.

A copy of the Opinion can be downloaded [here](#).