

Conservation Easement: Kentucky Appellate Court Addresses Whether Utility Easement is Compatible with Conservation Easement



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The Court of Appeals of Kentucky addressed in a June 17th opinion whether the Hardin County Water District No. 2 (“the District”) was authorized to take possession of an easement across appellant’s property. *See Crain v. Hardin County Water District No. 2*, 2016 WL 3453206.

The Court was required to decide whether an agricultural conservation easement precludes a taking for a non-agricultural purpose.

Appellants, the Crains, owned a 270-acre farm. In 2004, the Crains conveyed an agricultural conservation easement to the Purchase of Agricultural Conservation Easement (“PACE”) Corporation. PACE is a subdivision of the Kentucky Department of Agriculture.

The easement “committed the Crains and their successors to maintain the farm for agricultural, forest, or conservation purposes.”

In 2013, the District decided to build a sewage line through the Crains’ property to connect a neighboring area to an existing sewer system. The District approached the Crains about plans for the sewer line. The Crains initially prepared a list of conditions, to which the District counteroffered. The District based its counteroffer on a policy used by another local water district. The parties were unable to negotiate a price.

The District subsequently filed a petition in July 2014 to obtain the easement through a condemnation action. The District named both the Crains and the PACE Corporation [as owner of the agricultural conservation easement] in its petition.

PACE did not challenge the District’s right to take. Instead, it asserted that any easement granted to the District would be secondary to PACE’s easement.

The Crains, however, challenged the District’s right to take, arguing that:

1. The condemnation was barred because the District failed to negotiate in good faith prior to bringing the petition;
2. The taking was prohibited because the agricultural conservation easement precluded the District from condemning any portion of the property for non-agricultural purposes; and

3. The condemnation was prohibited by the prior public use doctrine.

The trial court rejected Crains' arguments. The appellate court affirmed.

First, regarding the Crains' contention that the District had failed to negotiate in good faith, the court acknowledged that, in some instances, the failure to negotiate in good faith can serve as a basis for dismissal of the condemnation action. Nevertheless, the court found that the District had made a reasonable effort in good faith to acquire the land by private sale at a reasonable price. Although the District had maintained its offer of \$2 per linear foot, which was based on a policy used by another water district, the District had repeatedly asked the Crains to make a counteroffer. The District engaged the Crains in negotiations for nearly a year. Therefore, substantial evidence supported the finding that the District had not negotiated in bad faith.

Second, in response to the Crains' argument that the agricultural conservation easement precluded any taking for a non-agricultural purpose, the court held that the proposed use of the easement for a sewer line was "clearly permitted under the terms of [Kentucky] statute". This provision allows the Commonwealth to grant rights of way through restricted land "for the installation of, transportation of, or use of, lines for water, sewage, electric, telephone, gas, oil..." Thus, the court held that PACE and the USDA were within their rights when they did not object to the District's proposed easement.

Third, the Crains contended that when they conveyed the agricultural conservation easement to the PACE Corporation, an interest in the property was turned over to the Commonwealth for a public use. The public use doctrine provides that land devoted to a public use may not be taken for another public use under the power of eminent domain.

The Crains argued that, because that interest was dedicated to a prior public use, the District was precluded from condemning the interest for a different public use. The court rejected this argument. It reasoned that there was not "public use" because the public was not granted a right to come onto the Crains' property. Instead there was only a public purpose or public benefit, both of which was distinctly different from public use.

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