

CAUSE NO. 05-47

NAME: MILLER POULTRY

ADMINISTRATIVE LAW JUDGE: WILLIAM K. TEEGUARDEN

DATE: OCTOBER 13, 2006

COMMISSION ACTION: The Commission revised the nonfinal order and found as a matter of law that the activities in the building were not agricultural in nature.

FINDINGS OF FACT

1. The Division of Fire and Building Services of the Indiana Department of Homeland Security is an agency within the meaning of IC 4-21.5.
2. IC 4-21.5 and IC 22-12 apply to this proceeding.
3. The Fire Prevention and Building Safety Commission (“Commission”) is the ultimate authority within the meaning of IC 4-21.5 over reviewable decisions of the Agency.
4. At all times relevant to this decision, Miller Poultry operated a large chicken farm and processing plant in Steuben County, Indiana.
5. In 2005, Miller Poultry decided to construct the Building as an addition to its business activities.
6. A major dispute over occupancy classification of the Building has led to this administrative review in which the Building now asserts the Agency has no jurisdiction to regulate construction of the Building and that the CDR issued in this matter is void.
7. The basic principles of law in this dispute are very simple; their application is not.
8. IC 22-15-3 requires a CDR be issued by the Agency for the construction of any Class I structure.
9. IC 22-15-3-7 provides a penalty for commencing construction of a Class 1 structure without a CDR.
10. IC 22-12-1-4 defines a “Class 1 structure” as “A building . . . that is intended to be or is occupied . . . by any of the following . . .

(c) One (1) or more persons who act as employees of another”.

11. However IC 22-12-1-4(c) goes on to say “[Class 1 structure] does not include a building of structure that:
 - (1) Is intended to be or is used solely for agricultural purposes on the land when it is located; and
 - (2) Is not used for retail trade . . . for eight (8) or less consecutive months in a calendar year.”
12. IC 12-1-2 defines “Agricultural purpose” as “. . . farming, dairying, pasturage, apiculture, horticulture, floriculture, vita culture [viticulture], olericulture, pomiculture, animal husbandry, and poultry husbandry.”
13. The parties agree that employees of Miller Poultry will work in the Building.
14. The parties also agree the business which will be conducted in the Building is the slaughter, preparation, packaging and storage of chickens which are

ultimately sold to grocery stores for resale to the public.

15. No cooking takes place on-site and the processing is regulated by the Department of Health and the FDA.
16. No portion of the Building is open to the public at large, i.e., no retail sales, showrooms, etc.
17. One of the reasons the Agency wanted an evidentiary hearing was because of the corporate structure of the Farm/Plant.
18. The Agency had a legitimate concern about whether the process was controlled by one entity or several entities which might or might not have involved common ownership.
19. Galen Miller somewhat clarified the corporate structure which was designed by counsel for tax and financing purposes.
20. Without going into all the details, Miller Poultry is a trade name for the finished product.
21. The actual titled owner of the property is Pine Manor, Inc.
22. Galen Miller is the CEO of both and he and his wife own the business.
23. Previously, his father and uncle were co-owners. Pine Manor, Inc. has been in business for 50 years.
24. Another business entity owned by Miller produces feed for fowls. This is important in that Miller requires his chickens to be raised on all vegetable feeds with no additives.
25. For this reason, the processing plant in question only processes chickens hatched and raised under Miller's control and direction so Miller Poultry chickens can be marketed as "organic". Co-mingling chickens would prevent this marketing strategy as Miller could not guarantee what a chicken raised outside the system had been fed.
26. Miller purchases the eggs from a supplier in Arkansas.
27. In approximately 3 weeks, the eggs hatch in a Miller hatchery.
28. Miller then transports the hatched chicks in Miller vehicles staffed by Miller employees to area farms under contract to raise chickens as per Miller's guidelines.
29. Miller releases possession of the chicks but not title.
30. Miller provides the feed for the chicks.
31. Once grown to the desired size, Miller uses his trucks and employees to retrieve the chickens and return them to the slaughter house for processing.
32. A casual reading of the facts could easily lead a person to believe the slaughter house is more like a factory than part of an agricultural operation in which case the Agency is correct and the Building is regulated as a Class 1 structure.
33. In general, the trier of facts agrees with the Agency's contention that the mandate of the Commission and the Agency should be liberally construed since public safety is involved.
34. However, the Indiana Court of Appeals, in a published decision, applied the agricultural exemption very broadly.
35. The one and only published decision construing "agricultural exemption": is the Indiana Fire Prevention and Building Safety Commission, et al. v. Rose Acre

Farms, Inc. 530 N.E.2d 131 (In. App. 1988)¹

36. Rose Acre Farms was (and is) a huge egg producing operation.
37. The State Building Commissioner and the Commission agreed that the egg laying and collecting portion of the Farm operation was covered by the agriculture operation.
38. The regulators, however, refused to acknowledge the exemption for 3 separate buildings owned by Rose Acre Farms.
39. Two of the Rose Acre Buildings were on egg farm property. They were a storage shed and a grader building.²
40. The third building was a repair garage which was owned by Rose Acre but not physically located on or adjacent to any of the egg farms.
41. Rose Acres contended, as does Miller, that the buildings were farm service buildings and thus exempt from Commission regulation.
42. In Rose Acres, the Commission held the 3 buildings in question were not directly part of the farming operation and not used for agricultural purposes and since the law requiring design filings and releases involves public welfare; it should be liberally construed to require filing.
43. The Court of Appeals held that as a matter of law (as opposed to Commission interpretation), the buildings were an integral part of the egg production process and therefore were farm service buildings.
44. It also held that the size and nature of a farming operation does not remove it from exemptions granted to an agricultural enterprise and if the SBC or the Commission are unhappy with this statute, they need to present their issues to the legislature.³
45. In short, in the Rose Acres case, the Court of Appeals found that egg production is an agricultural operation, buildings used to further the farm operation must be considered as farm service buildings, and therefore the exemption to design filing and release applies.
46. In the Miller case, we have a business which hatches, slaughters, and packages poultry and then ships the chickens to retailers.
47. IC 22-12-1-2 includes poultry husbandry in the definition of “Agricultural Purpose.”
48. Hatching and slaughtering chickens is just as much an agricultural purpose as egg production and grading. Both would appear to fall under the heading of “poultry husbandry”.
49. IC 22-12-1-4(c)(1) exempts buildings used for agricultural purposes from regulation by the Commission as a Class 1 structure.
50. The Rose Acre decision also exempts any auxiliary building which is an integral part of the farming operation.
51. The Building in question clearly is an important part of the chicken farm.

¹ IC 22-12-1-4 has been modified somewhat over the last 20 years but the portions of it which are relevant to agricultural exemptions are still the same.

² The grader building is the place where eggs were washed, inspected, sorted, and placed in cartons after which they would be transported to customers. It contained employees but no retail sales were conducted there.

³ The Agency asked that State Supreme Court for transfer which was denied in September of 1989.

52. Miller's testimony established that roughly 10 years previously on this site, construction projects were treated as exempt because of their agricultural purposes.
53. A change of local administration led to a change of local policy and requirements for state CDRs before local permits would be issued.
54. Evidence presented by the Agency indicted concern over the size of the expanded building and the number of employees who would work in the expansion.
55. This is a perfectly sensible concern, however Rose Acres held that the size and nature of a farming operation does not remove it from the exemption.
56. The trier of fact, then, sees no measurable difference between the Miller issue and the Rose Acres issue and, somewhat reluctantly, concludes the expanded slaughter house is exempted by stature as a Class I structure.

NONFINAL ORDER

Construction Design Release 302579 is void for the reason that the structure in question is an integral part of a poultry husbandry agricultural operation.