

# **Bond Case Briefs**

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## **LAND USE & ZONING - OHIO**

### **State ex rel. Rocky Ridge Development, L.L.C. v. Winters**

**Supreme Court of Ohio - September 21, 2017 - N.E.3d - 2017 WL 4182961 - 2017 -Ohio-7678**

Township filed a complaint for declaratory and injunctive relief against permittees under Land Application Management Plan (LAMP), alleging permittees were violating terms of LAMP, were in violation of local ordinances, and were creating a public nuisance.

The Court of Common Pleas issued a temporary restraining order. Permittees commenced an original proceeding for a writ of prohibition.

The Supreme Court of Ohio held that:

- Environmental Review Appeals Commission (ERAC) had exclusive jurisdiction over allegations by township directly challenging the wisdom of the LAMP permit;
- Allegations by permittees that local zoning ordinances were preempted fell within jurisdiction of trial court; and
- Writ of prohibition as to township's nuisance claim was improper.

Environmental Review Appeals Commission (ERAC) had exclusive jurisdiction over allegations by township directly challenging the wisdom of a Land Application Management Plan (LAMP) permit issued to permittees, and therefore, trial court lacked jurisdiction to consider such matters.

Township claimed that the LAMP was issued to an improper party, that one of the permittees was violating the express terms of the LAMP, and that such permittee was conducting operations in violation of state law, and these allegations all directly challenged the validity of the LAMP or the permittee's compliance with the LAMP and so fell under ERAC's exclusive jurisdiction.

Allegations by permittees under Land Application Management Plan (LAMP) that local zoning ordinances were preempted fell within jurisdiction of trial court, and therefore, prohibition did not lie as to township's declaratory action asserting violations of the ordinances. Preemption was not a question committed to the exclusive jurisdiction of the Environmental Review Appeals Commission (ERAC).

Permittee under Land Application Management Plan (LAMP) would not be issued a writ of prohibition relating to nuisance claim alleged by township arising out of permittee's excavation activities pursuant to the permit. Trial court did not patently and unambiguously lack jurisdiction to determine whether the nuisances alleged by township were a result of permissible operations or a consequence of permittee breaching the conditions in its LAMP, permittee had an adequate remedy by way of appeal from any decision the trial court rendered, and governing statute did not support assertion that the Environmental Review Appeals Commission (ERAC) had exclusive jurisdiction over the claim.

