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Ashe County v. Ashe County Planning Board

Supreme Court of North Carolina - March 21, 2025 - S.E.2d - 2025 WL 879903

County sought review of decision of county planning board granting applicant's permit to operate an asphalt plant under county's then-existing polluting industries development ordinances which were changed following a temporary moratorium.

The Superior Court affirmed. County appealed. The Court of Appeals affirmed. County's petition for discretionary review was allowed. The Supreme Court reversed in part and remanded. On remand, the Court of Appeals reversed. Applicant appealed.

The Supreme Court held that:

- Permit application was complete when it was initially submitted to county director of planning;
- Impermanence of mobile shed on quarry adjacent to site of proposed asphalt plant supported finding that it was not a "commercial building" for purpose of county's polluting industries development (PID) ordinance set-back requirements;
- Barn on farm near site of proposed asphalt plant was not a "commercial building" for purpose of PID ordinance set-back requirements; and
- County failed to show that applicant made material misrepresentation in its application.

Reasoning provided in dissenting opinion from Court of Appeals for why it would have affirmed county planning board's decision to grant applicant's permit to operate an asphalt plant under county's polluting industries development ordinance in effect when application was submitted conferred jurisdiction on Supreme Court to hear applicant's appeal of Court of Appeals' reversal of board's decision; although dissent did not address whether moratorium that temporarily prohibited all development of polluting industries while applicant's application was pending affirmatively authorized or compelled denial of application, it did hold that county planning director lacked authority to approve the application during moratorium and stated that it agreed with board's resolution of issues of law that were before Court of Appeals, necessarily rejecting any notion that moratorium required denial.