

Airstrip plus helipad doesn't equal airport

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An airstrip plus a helicopter landing pad does not equal an "airport" the Court of Special Appeals held yesterday, denying a special zoning exception for a helicopter-landing pad used by the former chairman of Rite Aid Corp.

The intermediate appeals court affirmed the Baltimore County Circuit Court, which last year upheld the denial of a special exception for an airport on Helmore Farm in Greenspring Valley — a thoroughbred horse farm where former Rite Aid CEO Martin Grass commuted by helicopter to his office in Harrisburg, Pa.

"This case illustrates how hard people have to fight to uphold their rights," said **G. Macy Nelson**, attorney for several clients opposed to the airport, including Douglas Carroll, who owns property two parcels west of Helmore Farm.

"If it weren't for Doug Carroll, Marty Grass and [Helmore Farm owner] Dale Lucas would be flying a helicopter out of there," **Nelson** added. "The county didn't fight it the state didn't fight it. Everyone was ready to roll over and let him do this. Doug Carroll, Doug's neighbors and the Baltimore County people's counsel fought this."

Peter Max Zimmerman, the people's counsel for Baltimore County, called the opinion "significant." "We really made the point that helicopter operations aren't allowed in agricultural zones," said Zimmerman, who defends zoning laws in the public interest and was co-counsel on the case with **Nelson**.

"The opinion will settle this potential problem issue for rural areas," Zimmerman said. "It also helped define the definition of 'neighborhood' in a flexible way and showed that it's important not only to consider existing uses, but to also consider potential uses."

Lucas' attorney, G. Scott Barhight, did not return a phone call seeking comment.

The court's unreported opinion rejected Lucas' argument that because the proposed facility would handle both fixed-wing aircraft and helicopters — and did not fit into a more distinct-use category for helicopters and helistops — that it must be considered an "airport," which is allowed by special exception.

"The marriage of an airstrip with a helistop and helipad does not create an airport," wrote Judge James A. Kenney in for the court. "We affirm the decision of the Board that the proposed use of Helmore Farm was not that of an airport."

Zoning regulations define a "helistop" as an area of land designated for no more than 15 helicopter takeoffs and landings a month and without "major support operations."

The 87-acre farm is used for breeding, raising and training thoroughbred horses and acts as a "quasi-hospital" where thoroughbred horses are "laid up" during their rehabilitation process, the opinion noted. The farm is located within a National Register Historic District and participates in the county's agricultural preservation program.

As part of the thoroughbred horse business, aircraft have operated in and out of the farm since 1956. In 1997, the late Edgar Lucas added a helicopter landing pad in a fenced-in area on the southwestern edge of the farm, about 23 feet away from the property of one of the appellees, for the use of his neighbor Grass, who has since been indicted on federal fraud charges stemming from his tenure at Rite Aid.

Citizens' opposition to Grass' helicopter use led Edgar Lucas to file a petition with the Baltimore County zoning commission for a special exception for operation of both fixed-wing aircraft and helicopters.

Edgar Lucas died in August 1999 and his son, Dale, was substituted as the appellant. A Baltimore County Circuit Court judge last year affirmed an earlier ruling by the Baltimore County Board of Appeals that denied the special exception. Yesterday's opinion affirmed.

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