

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

FILED
JUN 24 2008
[Signature]
CLERK

YANKTON SIOUX TRIBE HEAD
START CONCERNED PARENTS,

Plaintiff,

vs.

LONG VIEW FARMS, LLP,

Defendant.

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CIV 08-4058

ORDER

The Court held a hearing on June 18, 2008, to determine the location of the real property upon which the swine facility is being constructed in Charles Mix County, South Dakota. Plaintiffs appeared *pro se*, appearances being made by Frances Zephier, Robin Bair, and Rachel Bernie, with the Defendant Long View Farms, LLP, appearing by its attorney, David Nadolski, with Thomas Tobin also being present and indicating that he was going to file a Notice of Appearance with the Court to appear with Mr. Nadolski.. The attorneys appeared only for Long View Farms, LLP. The Court received exhibits from the parties and also received testimony from Arlan Moss, and heard argument from the Plaintiffs and counsel for the Defendant.

The Court determined that the hog confinement facility being built is located in the Southwest Quarter of the Northwest Quarter less lot R1 of Section 9, in Township 95 North, Range 64 West of the 5th principal meridian in Charles Mix County, South Dakota, this commonly being referred to as within Section 9 of Highland Township. The testimony indicated that the record owner of that real property is now Long View Farms, LLP. The Court, for purposes of determining whether the approximately 40 acres in question had been found by the Court to be part of the Yankton Sioux Reservation, considered the map which is Plaintiff's Exhibit 12 to Civil 98-4042, *Yankton Sioux Tribe v. Gaffey, et al.*, CIV 98-4042. The approximately 40 acres in question is not a part of what the Court found to be the current Yankton Sioux Reservation in *Yankton Sioux Tribe*

v. Gaffey, et al., CIV 98-4042.

The Court further concludes and finds that the road on the west side of the above-described real property has been commonly referred to as "BIA Road 29". The record shows that this road was the subject of an agreement in 1995 whereby Charles Mix County was to transfer any interest it had in twelve and nine-tenth miles of that road, including the road in front of the real property in question, to the Bureau of Indian Affairs (BIA) in return for the BIA spending substantial amounts of money for the repair and maintenance of the road. Apparently the BIA has spent almost one million dollars on repair and maintenance of this road since 1995, but Charles Mix County did not transfer its interest in the road to the BIA and the BIA on May 3, 2008, demanded that the transfer agreed to in the 1995 agreement take place.

Even if Charles Mix County's interest in the road in question had been or is subsequently transferred to the BIA as had been agreed, such transfer would not make the road in front of the approximately 40 acres in question Indian Country.

The Plaintiffs claim to be concerned parents with regard to the Yankton Sioux Tribe Head Start which Plaintiffs stated at the hearing is located in Section 29 of Highland Township, Charles Mix County, South Dakota. No further designation was specified as to where in Section 29 the Head Start facility is located within Section 29. If the location of the Head Start facility becomes material to this litigation, then there will have to be evidence taken as to the location of that Head Start facility within Section 29. Section 29 is about two and one half miles south of the hog confinement facility and on the west side of BIA Road 29.

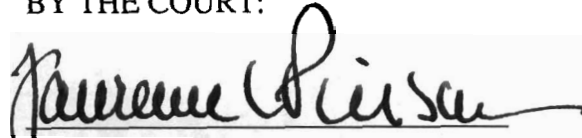
As was stated in the Order for the hearing, the hearing was not to determine whether or not a preliminary or permanent injunction should or should not be issued, but rather was to determine the location of the hog confinement facility. In addition, the hearing was not to determine whether or not the lawsuit should be dismissed. Accordingly, Plaintiffs' lawsuit was not dismissed.

Plaintiffs had made various claims including claims under the Clean Air Act and other

federal statutes. It is Plaintiffs' burden to show jurisdiction under those various federal statutes as well as to show any violation of those statutes and regulations which would warrant the relief requested.

Dated this 24th day of June, 2008.

BY THE COURT:



Lawrence L. Piersol
United States District Judge

ATTEST:
JOSEPH HAAS, CLERK

BY: Colleen Schulte
DEPUTY