

STATE OF NORTH CAROLINA
COUNTY OF PERSON

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
08 CVS _____

PERSON COUNTY PRIDE,)	
Petitioner,)	
)	
v.)	PETITION FOR WRIT
)	OF CERTIORARI
PERSON COUNTY, JOHNNY M.)	
LUNSFORD, <i>in his capacity as Chairman</i>)	
<i>of the Board of County Commissioners,</i> and)	
JIMMY B. CLAYTON, KYLE W. PURYEAR,)	
LARRY H. BOWES, LARRY E.)	
YARBOROUGH JR., <i>in their capacity as</i>)	
<i>members of the Board of County</i>)	
<i>Commissioners,</i>)	
Respondents.)	

PURSUANT TO G.S. 1A-1, Rule 3, and G.S. 153A-345(e2), now come the Petitioner, the Person County PRIDE (“PC PRIDE”) by and through the undersigned attorney, with a petition for writ of certiorari and review of the decision by the Respondent, Person County granting a special use permit to Republic Services of North Carolina LLC (“Republic”) for an expansion of its Upper Piedmont Environmental Landfill (the “Landfill”) on December 3, 2007. In support of this petition, Petitioner alleges and says as follows:

THE PARTIES

1. The Petitioner, PC PRIDE, is an unincorporated association is duly registered pursuant to G.S. 66-68. It is a chapter of the Blue Ridge Environmental Defense League, Inc., a not-for-profit corporation duly organized under North Carolina law. PC PRIDE’s purpose is to protect the citizens and environmental quality of Person County. Its office is

c/o Betty Blalock, Treasurer, 144 Tirzah Ridge Road, Rougemont, North Carolina 27572.

2. PC PRIDE brings this action on behalf of its members and is representing their rights and interests. Members of PC PRIDE reside throughout Person County and elsewhere in North Carolina. Some members of PC PRIDE reside in the Mt. Tirzah Community in close proximity to the Landfill property and some of these members own property adjoining the Landfill property.

3. Members of PC PRIDE participated in the public process to the extent possible and some members testified at the public hearing on the special use permit. Some of the members of PC PRIDE and other members of the public were not given the opportunity to speak at the hearing.

4. PC PRIDE and its members are currently, and will be in the future, directly and adversely affected by the operation of the existing Landfill and its expansion because of, but not limited to, the noise, lights, dust, the potential contamination of drinking water wells, increased truck traffic on rural roads, the loss of the use and enjoyment of their property, the loss of property values and interference with their health, safety and general welfare.

5. The Respondent, Person County, is a county government organized under G.S. Chapter 153A. Among its powers, Person County, through the Person County Board of Commissioners (hereinafter the "Board of Commissioners"), has the authority to issue or deny special use permits.

6. The individual Respondents are Johnny M. Lunsford, in his capacity as the Chairman of the County Commissioners, and Jimmy B. Clayton, Kyle W. Puryear, Larry H. Bowes, Larry E. Yarborough Jr., in their capacities as the members of the Board of Commissioners.

BACKGROUND

7. The present Landfill is located on a 573.96-acre tract located at 9650 Oxford Road (U.S. Route 158) in the eastern part of Person County, North Carolina. The property is owned by Republic and is operated as a regional solid waste landfill. The Landfill has been in operation since the late 1990's.

8. The Landfill receives approximately 660 tons of solid waste each day of operation. Republic has recently requested that Person County allow the Landfill to expand to 1750 tons per day.

9. Person County residences and business generate less than 100 tons of solid waste each day.

10. Pursuant to a franchise ordinance and contract, Person County receives a tipping fee for solid waste received at the Landfill.

11. The expansion of the Landfill, proposed Cell No. 11, that is the subject of the special use permit, is approximately 13.9 acres.

12. The Landfill and the expansion are located in a rural area called the Mt. Tirzah Community. The Landfill is bordered by undeveloped woodland to the west and south, with farming tracts interspersed with single-family dwellings to the north and east.

13. The Mt. Tirzah Community is rural and residential. Several of the families have resided and farmed in the community for generations.

14. All of the residences surrounding the Landfill are on well water.

15. The Landfill and the surrounding properties are subject to the Person County Planning Ordinance ("Planning Ordinance") and are zoned in the R-C (Rural Conservation) District. Section 70 of the Planning Ordinance states that "the purpose of this district shall

be to provide for only limited land use controls in areas with limited nonagricultural development.”

16. The area of the expansion is designated Rural Residential/AG (poor soils) on the Future Land Use Map in the Person County Land Use Plan (“Land Use Plan”). The Land Use Plan was adopted by the Board of County Commissioners on October 15, 2001.

17. The Rural Residential/AG areas in the Land Use Plan are for low density residential, single site built and manufactured homes. Residential developments in these areas are restricted. Uses include agriculture, forestry, and churches, with very limited commercial, office or public/institutional uses. The Land Use Plan requires locational criteria, such as highway access, proximity to similar uses and buffers between the above-mentioned low intensive uses to existing residential development. The Land Use Plan states that the residents in these areas as stated rely on private drinking water wells.

18. The entire Landfill is within the Tar River Watershed in the WS IV Protection area. Section 30 of the Planning Ordinance restricts development within the watershed area.

19. The Landfill required a special use permit prior to its construction and operation in the R-C District. The expansion of the Landfill requires a special use permit from Person County.

20. Section 74-4 of the Planning Ordinance states that the Board of Commissioners must find make four findings before it can grant a special use permit:

(1) that the use will not materially endanger the public health or safety if located where proposed and developed according to the plan as submitted and approved.

(2) that the use meets all required conditions and specifications.

(3) that the use will not substantially injure the value of adjoining or abutting property, or that the use is a public necessity, and

(4) that the location and character of the use if developed according to the plan as submitted and approved will be in harmony with the area in which it is to be located and in general conformity with comprehensive plan.

21. Section 74-5 of the Planning Ordinance allows the Board of Commissioners to designate conditions that “assure the use in its proposed location will be harmonious with the area in which it is proposed to be located and with the spirit of this ordinance.”

PROCEDURAL HISTORY

22. In early 2007, Republic applied for the special use permit for the expansion of the Landfill. It subsequently withdrew the application, and then reapplied on or about August 1, 2007.

23. The application for the special use permit was accompanied by a vested rights application plan that, if approved by the Board of Commissioners, would guarantee Republic the right to develop the expansion for a period up to five years.

24. The application for the special use permit was accompanied by a Landfill Siting Study to comply with G.S. 153A-136(c).

25. The Person County Planning Board (“Planning Board”) met on September 13, 2007, to hear Republic’s request for the special use permit for the expansion of the Landfill. After a public hearing and discussion, the Planning Board voted to recommend a denial of the permit on the grounds that it would have a negative impact on health and safety and that it was not in compliance with the Land Use Plan, and further recommended a public referendum on the matter.

26. The Planning Board vote was 4:3 although two of the votes in opposition to the motion were made because those Planning Board members were opposed to a public referendum.

27. A public hearing was scheduled for September 12, 2007, by the Board of Commissioners on the special use permit.

28. Counsel for PC PRIDE sent a letter on September 12, 2007, asking for that members of the Board of Commissioners who had made up their minds recuse themselves from the deliberations and vote on the special use permit.

29. The hearing on September 12, 2007, was summarily and indefinitely postponed even though more than 100 citizens were present and prepared to testify.

30. A second hearing was duly called and held before the Board of Commissioners on November 27, 2007. Both the proponents and the opponents of the special use permit were given equal time to present witnesses, and have counsel cross-examine witness and make closing arguments.

31. At the hearing, evidence was presented by members of PC PRIDE and other members of the public, including more than 3000 signers of a petition, that showed conclusively that: (1) the operation of the Landfill and its expansion will endanger the public health or safety; (2) the Landfill expansion will substantially injure the value of adjoining or abutting property; (3) the Landfill is not a public necessity; (4) the Landfill is not in harmony with the rural and residential area in which it is to be located; and (5) the Landfill does not conform to either the Planning Ordinance or the Land Use Plan.

32. Because of the lateness of the hour and the need by the members of the Board of Commissioners to review the evidence, the decision was continued until the

next regular meeting of the Board of Commissioners on December 3, 2007. Both Republic and PC PRIDE were given the opportunity to submit proposed findings.

33. Prior to the meeting on December 3, 2007, the County Manager, Steve Carpenter, and the County Attorney, C. Ronald Aycock, edited the proposed findings of the parties and submitted the edited findings and the proposed findings of the parties to each member of the Board of Commissioners.

34. At the December 3, 2007 meeting, Mr. Puryear made the motion to grant the special use permit and vested rights application plan, and Chairman Lunsford seconded it. ATTACHMENT 1. Mr. Puryear stated that his motion to grant the special use permit was based on Republic's proposed findings, as edited by the County Manager and County Attorney.

35. The motion also included provisions which postponed taking action on other actions until the County conducted a study of alternatives to waste disposal and a study of the impacts of pollutants and the effect of an increased landfill size on those impacts.

36. After discussion, the motion was passed on a 3:2 vote with Mr. Puryear and Chairman Lunsford both voting affirmatively.

37. Affidavits and newspaper articles showed conclusively that at least two members of the Board of Commissioners, Chairman Lunsford and Mr. Puryear, had unequivocally made up their minds in support of the special use permit for the Landfill.

38. Several of the speakers supporting the special use permit testified under oath that they had talked to each of the members of the Board of Commissioners.

39. Each of the members of the Board of Commissioners submitted a list of individuals with whom they had discussed the Landfill expansion and special use permit

application prior to the hearing.

40. Proponents at the hearing and in discussions with members of the Board of Commissioners advocated for the Landfill expansion because they believed it would generate funds for Person County.

41. Upon a direct request from counsel on behalf of PC PRIDE at the hearing on the special use permit, Chairman Lunsford and Mr. Puryear refused to recuse themselves.

42. Upon information and belief, representatives of Republic and/or proponents of the Landfill expansion discussed its application with members of the Board of Commissioners between the hearing on November 27, 2007, and the meeting when the decision was made on December 3, 2007.

CAUSES OF ACTION

43. Paragraphs 1 through 42 above are adopted herein.

44. The expansion of the Landfill is not in harmony with the existing agricultural and residential uses in the Mt. Tirzah Community.

45. The proposed Landfill expansion will constitute a nuisance to the members of PC PRIDE and other members of the public, and otherwise interfere with the use and enjoyment of their property.

46. The members of PC PRIDE and other residents and property owners adjacent to and in close proximity to the proposed landfill had a reasonable expectation that their property would be protected by the R-C District and be compatible with the permissible uses in that district.

47. The members of PC PRIDE and other residents and property owners adjacent to and in close proximity to the proposed landfill had a reasonable expectation that their property would be protected by the provisions in the Land Use Plan.

48. Each of the grounds for denying the special use permit to Republic are compelling and were uncontroverted by testimony and evidence submitted by Republic.

49. The testimony and evidence given by PC PRIDE and other members of the public demonstrate the proposed Landfill expansion's lack of compliance with the Land Use Plan.

50. The Board of Commissioners did not make the required findings prior to issuing the special use permit for the expansion of the Landfill.

51. Arguments by proponents that the Landfill expansion would generate funds for Person County were irrelevant to the findings required for granting the special use permit and were prejudicial to the decision.

52. Members of the Board of Commissioners were required by law to recuse themselves from the deliberations and vote on the special use permit because they were biased.

53. Members of the Board of Commissioners were required by law to recuse themselves from the deliberations and vote on the special use permit because they had been tainted by extensive *ex parte* communications.

54. The members of PC PRIDE were not given a fair and unbiased hearing.

55. The action taken by the Board of Commissioners was quasi-judicial in nature and judicial review of the decision in issuing the special use permit is in the nature of certiorari in accordance with G.S. 153A-345(e2).

56. The decision of the Board of Commissioners acting on behalf of Person County to grant the special use permit was arbitrary and capricious, contrary to law and in a manner that was an abuse of discretion, and made with disregard for the due process and equal protection rights of the members of PC PRIDE.

THEREFORE, the Petitioners pray that they are granted the following relief:

1. This Court issues the attached order granting the writ of certiorari requiring Person County to file the hearing record with the Court and with the Petitioner;
2. This Court finds that the granting of the special use permit was improper and is therefore void;
3. This Court grants them any other relief that is just and reasonable, including attorneys' fees and expenses if appropriate.

This is the 2nd day of January, 2008.

John D. Runkle
ATTORNEY FOR THE PETITIONER
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Chapel Hill, North Carolina 27515
NC State Bar No. 10503
Telephone & fax: 919-942-0600
jrunkle@pricecreek.com

CERTIFICATE OF SERVICE

Pursuant to G.S. 1A-1, Rule 4(j)(1) and (5)(a), I hereby certify that I have served this PETITION FOR WRIT OF CERTIORARI by certified mail, return receipt requested, or by authorized delivery on the following:

Steve Carpenter
Person County Manager
304 S. Morgan Street, Room 212
Roxboro, NC 27573

Faye T. Fuller
Clerk to the Board
Person County
304 S. Morgan Street, Room 212
Roxboro, NC 27573

Johnny M. Lunsford
179 Carrington Lane
Roxboro, NC 27573

Jimmy B. Clayton
717 Berman Clayton Rd.
Timberlake, NC 27583

Kyle W. Puryear
10515 Virgilina Rd.
Roxboro, NC 27574

Larry H. Bowes
581 McGhees Mill Rd.
Roxboro, NC 27574

Larry E. Yarborough Jr.
87 Duck Pointe Dr.
Roxboro, NC 27574

A copy of the COMPLAINT was also sent to:

C. Ronald Aycock
Person County Attorney
304 S. Morgan Street
Roxboro, NC 27573

Steven D. Weber
Attorney for Republic Services of NC LLC
Parker Poe Adams & Bernstein LLP
Three Wachovia Center, Suite 30000
401 S. Tryon Street
Charlotte, NC 28202-1935

This is the 2nd day of January, 2008.

Attorney at Law

