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**Petition update**

# Court proceedings last Friday



**Nittany Valley Environmental Coalition**  
State College, PA

Mar 7, 2016 — Folks, we had a good turnout last Friday at the Bellefonte courthouse.

Below is a summary of the court proceedings by Katherine Watt. This summary is also available on [steadystatecollege.wordpress.com](http://steadystatecollege.wordpress.com)

On Friday, March 4, Centre County Court of Common Pleas Judge Jonathan Grine heard oral arguments on the Toll Brothers' motion to quash a land use appeal filed in December by farmers and homeowners.

The land use plan calls for a new luxury student housing development to be built atop the recharge area for the Harter and Thomas water wellfields serving State College Borough Water Authority customers. The land is owned by Penn State University and under a sales contract to Toll Brothers' subsidiary Springton Pointe.

Concerned citizens actively opposed the project starting in March 2015, based on risks of water contamination, flooding, traffic, decreased property values and loss of farmland and open space. Citizens made extensive comments at public meetings and circulated petitions that have – to date – garnered more than 2,200 signatures. On November 16, 2015, the Ferguson Township Board of Supervisors ignored the citizen concerns and granted the project final approval.

The plaintiffs' land use appeal asks the Court to vacate the Ferguson Township supervisors' decision on several grounds, including noncompliance with other township zoning ordinances; noncompliance with the Pennsylvania Municipalities Planning Code; and violation of plaintiffs' property and environmental rights under Article 1, Sections 1 and 27 of the Pennsylvania Constitution.

Jordan Yeager, Esq. argued for the plaintiffs. Ron Lucas, Esq., argued for the Toll Brothers as intervenors. Joe Green, Esq., the township solicitor, appears to be allowing Lucas to handle the case; Green was at the hearing, but didn't make any substantive remarks.

Roughly 30 plaintiff families attended, along with a handful of township officials.

Lucas summarized the Toll Brothers project as a Planned Residential Development authorized by the Pennsylvania Municipalities Planning Code. He said the Toll Brothers moved quash the appeal based on two issues: timeliness of the appeal and standing of the plaintiffs.

He said the MPC lays out a two-step process for PRD approvals, including Tentative PRD approval and then Final PRD approval. In the Toll Brothers project, the Tentative PRD was approved March 2, 2015, and the Final PRD was approved November 16, 2015.

Lucas argued that there is only one window for appealing an approval decision, and it's the 30 days after the Tentative PRD approval, so time ran out on or about April 2, 2015.

He argued that there's only one exception to that rule, which is if the Final PRD is substantially different from the Tentative PRD, and said that the plaintiffs didn't claim that the two plans were substantially different, so they couldn't appeal the November 16 decision.

On standing, Lucas argued that plaintiffs had to have formally participated in the Tentative PRD review process in order to have standing – they had to have appeared at public hearings before March 2, 2015, and given sworn testimony, to be a recognized party with standing to sue. Lucas said none of the plaintiffs had standing under that procedural framework.

He also argued that plaintiffs can't get standing from having general concerns about water contamination, flooding, traffic, property values and farmland and open space preservation; instead, they must demonstrate a specific, direct, adverse impact.

Yeager argued, that the overarching issues that encompass zoning violations and plaintiff standing are property rights and due process. He conceded that there was no appeal filed from the Tentative PRD approved on March 2, 2015, but said plaintiffs may appeal from a Final PRD if the Final PRD doesn't comply with the conditions attached to the Tentative PRD.

In the Toll Brothers' case, the Tentative PRD included a condition requiring that the Final PRD “shall comply with all other Township Ordinances.” The development as planned violates the Ferguson Township Zoning Ordinance prohibiting stormwater management as a primary use in the Rural Agricultural district, and therefore is vulnerable to appeal.

On the issue of standing, Yeager cited case law supporting the rights of concerned neighbors based on proximity, and argued that the plaintiffs don't have to prove specific harms in appealing a municipal land use decision, because such claims must be brought before the harm occurs – based on the risks posed by the project – if there's to be any chance of preventing the harm. Further, Yeager pointed out that several of the plaintiffs are farmers who already cultivate land downhill from the site and already have flooding problems that they believe will be worsened by allowing the development.

As for party status, Yeager cited case law (*Miravich v. Township of Exeter*, 2010) supporting plaintiffs' “substantive” standing based on the fact that plaintiffs participated in public hearings on the planned land development and have a strong interest in the outcome of the decision, even though they weren't “procedurally” granted party status.

In *Miravich*, the court distinguished procedures for providing notice to affected parties (including how they can formally establish party standing) in Zoning Hearing Board proceedings – which are clearly laid out in the MPC – from MPC provisions about notice and party standing in subdivision and land development proceedings, which don't exist.

The *Miravich* court concluded: “because similar procedural protections are not required in subdivision and land development proceedings, it would be manifestly unfair, if not a denial of due process, to impose such a stringent rule as a prerequisite to subdivision and land development appeals.”

Judge Grine is currently deliberating.

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