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Petition update

Update on status of lawsuit against Toll Brothers and Ferguson Township



Nittany Valley Environmental Coalition State College, PA

May 3, 2016 — The suit to stop the Toll Brothers development on W. Whitehall housing the Zone 2 wellheads that supplies our drinking water has become a fight against Toll Brothers now that they have two law firms working on this case and Ferguson's lawyer has become inactive, allowing TB to carry the ball. Toll Brothers hired another attorney, Mark Kaplin, who has a reputation for being highly aggressive. So now there are two Philadelphia-based law firms, Spring Pointe LLC (attorney Ron Lucas) and Marc Kaplin (head of a large firm specializing in real estate and land use law) working for Toll Brothers. We are literally in the position of David going up against Goliath. Fortunately our champion (Jordan Yeager) is a very effective land-use and environmental attorney.

The latest move by Lucas was to file a petition asking Judge Grine to vacate the "opinion" he wrote when he issued his denial of the motions to dismiss our suit filed by Toll Brothers' lawyer. Lucas claims that the judge's rationale for denying their motions to dismiss indicates that he has already formed an opinion on the merits of our case by stating that we do have a right to sue. TB lawyers argued in their motions to dismiss that we had to file suit at the time that the proposed development plan was considered a Tentative Plan; filing our suit after the plan was approved at the Final Plan stage was too late. However, the law further states that this assumes that all other municipal ordinances have been followed. They weren't. The development plan Ferguson Township Supervisors approved last November includes a parcel of land zoned Rural Agriculture (RA) that would be used for the stormwater basins for the development. This is not an allowed use of land zoned RA, so it is in violation of the Township's Zoning Ordinance. It is unclear how the judge could give a rationale for denying the motions to dismiss without saying why our suit is timely under the law.

Yeager will be filing his written arguments in support of our suit at the end of the month. The Toll Brothers lawyers will have 30 days to file a rebuttal, and then Yeager will have 10 days to file a rebuttal to the rebuttal. The case will likely be argued in Court about mid-July, with a decision by sometime in August. When we know the exact date of the Court hearing, it will be posted on this page, so watch this space.

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