

Date: September 14, 2020

Subject: Landfill Update

Thanks to all who viewed the Court of Special Appeals (COSA) webcast on 9/3/20, CSA-REG-1327-2019, National Waste Managers (NWM) v. Forks of the Patuxent Improvement Association (FOTPIA).

If you missed it, a 47 minute audio of the proceedings has been posted at -

https://www.mdcourts.gov/sites/default/files/import/cosappeals/media/20200903_1327.mp4

You can listen to the arguments from NWM attorneys (Henley & Resnick) & FOTPIA's attorney Meneely. To save you 47 minutes, please read on.

This case centers on a previous court ruling that required the AA County Board of Appeals (BOA) to:

"...take into account the impact, if any, of the requested extension beyond 2017, on the character of the neighborhood, the appropriate use or development of adjacent property, and the public welfare."

FOTPIA's case states that the BOA did not comply with this directive from the Circuit Court.

NWM disagreed on the requirement & appealed FOTPIA's case.

During the Sep 3rd proceedings, the COSA judges did not seem very sympathetic to NWM's arguments.

If the COSA denies NWM's appeal, this case will likely be returned to the AA County BOA to address. That should involve public testimony where citizens can prepare arguments describing impact to the community.

There is another very important revelation from the proceedings on Sep 3rd. NWM acknowledged that they will not complete the landfill permitting process by the deadline of 5 PM on Monday, October 19th, 2020. Therefore, NWM will have to submit a "Variance Application" to AAC Planning & Zoning to request restarting the permit clock and extending the permitting time (typically 2 years).

MDE will stop processing the State's Environmental Permit after 5 PM on October 19th, 2020.

Under AAC rules & regulations, Variance Applications are reviewed through an Administrative Hearing process. This process typically requires several months to complete.

A meeting notice will be posted on signs around the landfill site & property owners in the immediate vicinity of the landfill will be notified by mail. At the public hearing, citizens may attend & offer their viewpoints. FOTPIA's attorneys will certainly be there and offering arguments to permanently stop the proposed project.

There are lots of great arguments to present during the Administrative Hearing. TRR-LOC plans to help articulate these arguments. We plan to provide more information to Two Rivers homeowners during this time & will encourage your written letters to the AAC Board of Appeals.

Ultimately, in 2021, we expect the Board of Appeals to render their decision regarding the time clock restart/extension. While we anticipate a favorable decision to permanently stop the landfill project, the losing party will undoubtedly appeal the BOA decision to the Maryland Circuit Court. That appeal will take at least another year to be processed. The decision of the Circuit Court (2022) will most

likely be appealed to the Maryland Court of Appeals for a "final" decision. At that point, we are well into 2023.

NWM has a lot of hurdles to overcome. If they cannot get all of the State & County permits by December 31, 2023, then their federal permit from the Army Corps of Engineers (ACOE) expires on that date. ACOE has notified NWM that they will not consider an extension of the federal permit since they no longer grant federal permits to construct landfills in wetland areas. At that point, NWM would have to appeal to a federal court to overturn the ACOE decision.

We like our odds.

In the meantime, stay tuned. We will let you know when it is time for your letters.

For more information or comments, you are welcome to contact the TRR-LOC at tworiversLOC@gmail.com.

Thank you.

Two Rivers Residents - Landfill Opposition Committee (TRR-LOC)