

October 26, 2010

Kevin Starnner, CEP
Skelly and Loy Inc.,
449 Eisenhower Boulevard
Suite 300
Harrisburg, PA 17111-2302

RE: Draft EIS

Dear Mr. Starnner:

Please see the enclosed letter from Centre County Judge Bradley P. Lunsford deeming the preliminary plan for the proposed road noted in Section 2.3.2 in the draft EIS.

"No - Build Alternative - Local Road System Upgrade"

A final plan for the proposed road has not been submitted to Centre County planning as of this date.

Also, please note that the name is Black Rock Road.

Sincerely,

RESOURCE RECOVERY, LLC



E.B. Abel Jr.

Enclosures

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

RESOURCE RECOVERY, LLC

Plaintiff

v.

CENTRE COUNTY PLANNING COMMISSION
and
CENTRE COUNTY BOARD OF COMMISSIONERS

Defendants

No. 2009-2069

IN EQUITY

Attorney for Plaintiffs:
Attorney for Defendants:

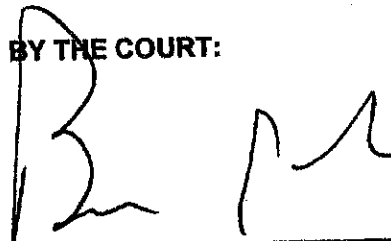
Ronald M. Lucas, Esq.
Louis T. Glantz, Esq.

Lunsford, J.

ORDER OF COURT

AND NOW, this 4th day of March, 2010, upon review of the Masters Report filed on March 1, 2010, this Court adopts the Statement of Facts, Legal Discussion and recommendation made by the Master. The Planning Commission failed to render or communicate a decision to Resource Recovery, LLC within ninety (90) days of the regular meeting of the Planning Commission next following the date of the submission; therefore, the Preliminary Subdivision is deemed approved and Resource Recovery, LLC's Motion for Peremptory Judgment is hereby GRANTED.

BY THE COURT:



Bradley P. Lunsford, Judge

cc. James Rayback, Esq., Master

DEBRA C. IMEL
PROTHONOTARY
CENTRE COUNTY, PA

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FILED FOR RECORD

JAMES M. RAYBACK, INC.

ATTORNEY AT LAW

102 East College Avenue
State College, Pennsylvania 16801

phone 814 238-3053

fax 814 237-3227

jmrlaw@verizon.net

February 26, 2010

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STEVENS & LEE

Ronald M. Lucas, Esquire
Stevens & Lee
17 North Second Street
16th Floor
Harrisburg, PA 17101

Re: Resource Recovery, LLC vs. Centre County Planning Commission and Centre County
Board of Commissioners

Dear Mr. Lucas:

Please find enclosed with this letter a copy of the Masters Report, Certificate of Filing of Masters Report, and Statement of Facts which is being filed in the Prothonotary's Office in regard to the above noted matter.

Very truly yours,

JAMES M. RAYBACK, INC.

By


James M. Rayback

JMR/slb

Enclosure

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

RESOURCE RECOVERY, LLC

Plaintiff

vs.

CENTRE COUNTY PLANNING COMMISSION

and

CENTRE COUNTY BOARD OF COMMISSIONERS

Defendants

No. 2009-2069

IN EQUITY

MASTERS REPORT

James M. Rayback, Esquire was appointed by Bradley P. Lunsford, Judge of the Court of Common Pleas of Centre County, Pennsylvania by Order dated the 7th day of December, 2009 to perform the duties of a Master in the above matter and to report his conclusions and recommendation to the Court. Specifically the Court charged the Master to determine whether a material issue of fact exists before ruling on the Motion for Peremptory Judgment filed by Plaintiff, and if no issue of material fact exists, to recommend or not whether a deemed decision should be approved or not granting or not granting Plaintiff's subdivision plan.

The parties previously appeared before the Court and submitted motions and briefs supporting their respective positions. On January 18, 2010, attorneys for the respective parties argued their respective positions before the Master.

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

RESOURCE RECOVERY, LLC

Plaintiff

vs.

CENTRE COUNTY PLANNING COMMISSION

and

CENTRE COUNTY BOARD OF COMMISSIONERS

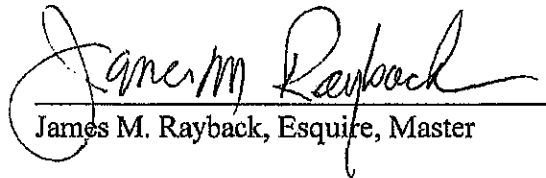
Defendants

No. 2009-2069

IN EQUITY

CERTIFICATE OF FILING OF MASTERS REPORT

On the 26 day of FEBRUARY, 2010 true and correct copies of this report were
served upon all council of record, a copy of which is attached in accordance with the Order of the
Court dated December 7, 2009.


James M. Rayback, Esquire, Master

STATEMENT OF FACTS

The owner of the property in question, Resource Recovery, LLC, owns approximately five thousand seven hundred fifty (5,750) acres of land located partially in Rush Township and partially in Snow Shoe Township, Centre County, Pennsylvania. On or about January 10, 2009, Resource Recovery through its agent, RETTEW Associates, Inc., delivered a preliminary subdivision plan, with accompanying documents to the Centre County Planning Office. Included in the submission were (1) a fifty two (52) sheet plan titled Preliminary Subdivision Plan for Resource Recovery, LLC, (2) a completed application form, (3) Preliminary Storm Water Management Report (four copies), (4) Wetland Report (four copies), (5) Flood study (four copies), (6) traffic analysis (four copies), (7) Planning waiver and non-binding declaration for sewer planning (four copies), (8) copy of submission letter to Snow Shoe Township Zoning Officer, (9) copies of submission letters to Rush Township, Snow Shoe Township Board of Supervisors, the Postmaster, and Centre County 911, (10) check in the amount of \$140.00 made payable to Centre County for review fees.

Resource Recovery submitted an eight (8) lot non-residential subdivision plan. Four (4) lots are located entirely within Snow Shoe Township and four (4) lots were located entirely within Rush Township. The materials that were submitted did not propose development or improvement of any of the proposed lots or the approval of any use of the proposed lots.

The Centre County Planning staff reviewed the materials between January 8 and January 15, 2009 and issued a letter to Resource Recovery rejecting the submission of the plan and materials as an incomplete submission. The planning staff listed a number of technical deficiencies and a failure to list the ultimate intended use of the property by Resource Recovery

as the reasons for the issuance of the incomplete submission notice.

The staff's incomplete submission notice that was sent to Resource Recovery was issued on the 10th day of January, 2009, and the next meeting of the Centre County Planning Commission was on January 20, 2009. The minutes of the January 20, 2009 meeting of the Centre County Planning Commission do not reference any discussion on the plan as submitted or the staff notice of an incomplete submission, nor do they indicate the Planning Commission took any action as to the plan or staff notice of incomplete submission. The Planning Commission did not take any formal action in regard to Resource Recovery submission or the staff incomplete submission notice between January 20, 2009 and April 20, 2009, a period of ninety (90) days.

On May 26, 2009, at the meeting of the Centre County Planning Commission, an attachment was added to the minutes of the meeting which reports to be a verbatim copy of the tape made at the Centre County Planning Commission meeting of January 20, 2009, at which Mr. Anson Burwell, the County Subdivision Officer spoke, and updated the situation regarding Resource Recovery. The report was made by Mr. Burwell, but there is no indication that the report was accepted, nor is there any indication that the report and its contents were voted upon.

A communication from the Planning Commission was not sent to Resource Recovery to state the position of the Planning Commission or giving reasons for a decision. There is no record of a decision being made by the Planning Commission.

The record indicates the procedural history taken by the parties during and subsequent to the submission to the planning staff on or about January 8, 2009.

LEGAL DISCUSSION

The master will recommend to the Court that a deemed decision in favor of Resource

Recovery be issued based upon the facts stated above and the legal discussion below. There is no material issue of fact which would deny a deemed decision. The subdivision plan as submitted should be approved.

The Municipalities Planning Code in Section 501, 53 P.S. §10501, et seq grants the County as a municipality the power to regulate subdivisions and land development within its borders. It is directed to do so as a governing body or by delegation to its planning agency, both of which are to act in accordance with the County Subdivision and Land Development Ordinance. The Centre County Board of Commissioners did make such a delegation of authority to its Planning Commission and did adopt a subdivision and planning ordinance. Subdivision and Land Development Ordinance No. 3 of 1983. Section 503(1) 53 P.S. §10503(1) of the Municipalities Planning Code provides that the County Subdivision and Land Development Ordinance may contain criteria for the submittal and processing of plats.

The Subdivision and Land Development Ordinance of Centre County in Sections 504, Preliminary Plan Submission for Major Residential Subdivisions and Section 705, Land Development, each requires that when preliminary subdivision plans are submitted to the Centre County Planning Office that the following must be provided by the applicant:

1. Seven copies of the Preliminary Plan;
2. A completed application form;
3. Four copies of a sewage disposal report;
4. Payment of the payment processing fee.

Once the subdivision plan is submitted as provided above in Sections 504 and Section 705, then under Sections 507 and 708 the Planning Commission is required to "The Preliminary

Plan shall be accepted for processing upon receipt of the following.” After the plan is accepted “The Commission shall review the Preliminary Plan, render its decision and communicate said decision to the applicant not later than ninety (90) days after such application for preliminary approval is accepted or such additional period of time as may be agreed upon by the Commission and the applicant in writing.” The applicant is to be notified within fifteen (15) days following the Planning Commission’s decision. The Plan “if conditionally approved, shall specify any changes which shall be required before the submission of the final plan. If disapproved, the commission shall specify the defects found and describe the requirements which have not been met and shall, in each case, cite the provisions of the statute or when its relied upon.”. §507 Subdivision and Land Development Ordinance. Under Sections 504, 705 and 507 of the Subdivision and Land Development Ordinance, once the applicant provides the four enumerated items that are required, the plan is to be accepted upon presentation. The fact that the Planning Commission staff may complete a review of the plan prior to the Planning Commission making a decision, while efficient and logical, does not affect acceptance of the plan by the Planning Commission. The staff has no authority to reject a plan unless it fails to meet one of the four conditions noted above (§504 and 705), but the staff has the authority under the Subdivision and Land Development Ordinance to review the plan, and present their comments to the Planning Commission to allow the Planning Commission to make a decision on whether to approve a plan.

The facts as submitted indicate that D. Eric Brinser delivered the required items to the Centre County Planning Office on January 8, 2009 and the Planning Commission admitted that such is the case as stated in their answer to Complaint in Mandamus in paragraph 9.

Only the portion of the subdivision located in Snow Shoe Township is covered by this

appeal inasmuch as Rush Township has its own subdivision ordinance governing its lands. 53 P.S. §10502(h); Atlantic Richfield Co. V. Della Vechia, 450 A.2d.792,795 (Pa Comwlth 1982).

Section 508 of the Municipal Planning Code, 53 P.S. §10508 requires the following:

All applications for approval of a plat . . . whether preliminary or final, shall be acted upon by the governmental body or by the planning agency within such time limits as may be fixed in the Subdivision and Land Development Ordinance but the governing body or the planning agency shall render its decision and communicate it to the applicant not later than ninety (90) days following the date of the regular meeting of the governing body or the planning agency (which ever first reviews the application) next following the date of application as filed . . .

Section 307 of the Subdivision and Land Development Ordinance states "The date of submission shall be the date upon which the application form, the fees, if any, and the requisite number of plans and other documentation is submitted." A second paragraph of Section 307 states "The staff review shall take place as soon as practicable. Commission review and actions shall not be less than twelve (12) calendar days nor more than ninety (90) calendar days after the submission date."

The required documents were submitted on January 8, 2009. The date of the next Planning Commission was January 20, 2009. Therefore, the Planning Commission was obligated to render its decision and communicate said decision to the applicant not later than ninety (90) days following the January 20, 2009 Planning Commission meeting date. The ninety (90) day date would be April 20, 2009.

The Planning Commission did not render a decision by April 20, 2009 and it did not

communicate a decision from the Planning Commission to the applicant by April 20, 2009.

(Answer to Complaint paragraphs 13, 28, 33, and 34.)

It is argued that staff of the Planning Commission rejected the submitted application and plan, but there is no provision in the Municipal Planning Code permitting or authorizing the staff of a Planning Commission to reject a plan. Under the Municipal Planning Code in Sections 508, 53 P.S. §10508 only the Planning Commission or governing body, whichever one is tasked with the duty of reviewing the plans may actually make a decision to accept or reject submitted plans.

When the Planning Commission failed to reply to the applicant as required by Section 508 of the Municipal Planning Code, such "failure of the governing body or agency to render a decision and communicate it to the applicant within the time and in the manner required herein shall be deemed an approval of the application in terms as presented . . ."

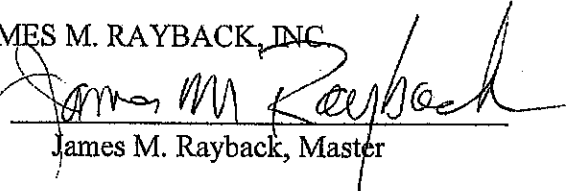
Inasmuch as it appears from the facts that the Centre County Planning Commission did not take any action on the submitted plan within the time constraints, and did not inform the applicant of an acceptance or rejection, the plan is deemed accepted as presented.

Respectfully submitted,

Date Feb 26, 2010

JAMES M. RAYBACK, INC

By


James M. Rayback, Master