



AlaFile E-Notice

21-CV-2011-900033.00

Judge:

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NOTICE OF ELECTRONIC FILING

IN THE CIRCUIT COURT OF CONECHU COUNTY, ALABAMA

TOWN OF REPTON, ALABAMA ET AL V. CONECHU COUNTY COMMISSION ET AL
21-CV-2011-900033.00

The following matter was FILED on 10/25/2011 7:55:49 AM

Notice Date: 10/25/2011 7:55:49 AM

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IN THE CIRCUIT COURT OF CONECH COUNTY, ALABAMA

TOWN OF REPTON, ALABAMA,)	
TERRI CARTER MAYOR OF REPTON,)	
Plaintiffs,)	
)	
V.)	Case No.: CV-2011-900033.00
)	
CONECH COUNTY COMMISSION,)	
CONECH WOODS, LLC,)	
ALABAMA-TOMBIGBEE REGIONAL)	
COMMISSION,)	
Defendants.)	

ORDER

ORDER

This matter is before the Court on various motions filed by Defendants Conecuh County Commission and Conecuh Woods LLC ("Defendants") and on a motion to compel filed by Plaintiffs Town of Repton, Alabama and Terri Carter ("Plaintiffs"). Plaintiffs filed the current action against Defendants requesting declaratory and injunctive relief and a writ of certiorari on the grounds that Defendant Conecuh County Commission acted illegally, arbitrarily and capriciously in approving Conecuh Woods' Application for Approval of Proposed Conecuh Woods Solid Waste Management Facility, Conecuh County, Alabama (the "Application") and entering into the "Municipal Solid Waste Landfill Development and Host Fee Agreement" (the "Host Fee Agreement"). Plaintiffs have filed three amendments to their Complaint to add allegations and parties, including Conecuh County and the Alabama-Tombigbee Regional Commission.

Defendants have filed Motions to Dismiss, Renewed Motions to Dismiss and Supplements to their Motions to Dismiss requesting that the Complaint, and its amendments, be dismissed on various grounds including that: (1) Plaintiffs lack standing to sue because they have not identified a judicially cognizable injury; (2) Plaintiffs have failed to exhaust their administrative remedies; (3) Plaintiffs have failed to comply with the notice-of-claims statutes, *Ala. Code* § 6-5-20 and § 11-12-8; (4) Plaintiffs' claims were due to be dismissed under Alabama's abatement statute, *Ala. Code* § 6-5-440; and (5) Plaintiffs failed to identify a statutory private right to sue. Plaintiffs addressed each of these arguments in Plaintiffs' Opposition to Defendants' Motions to Dismiss and Plaintiffs' Response to Conecuh Woods LLC's Second Supplement, showing that these motions were due to be denied because: (1) Plaintiffs have standing to bring their action inasmuch as they have suffered and alleged judicially cognizable injuries which can be redressed by this Court; (2) Plaintiffs are not required to exhaust administrative remedies because there are

no administrative remedies for review of local host government approval and the administrative remedies for state agency approval are inapplicable as local host government approval is "separate and apart" from any permit granted by a state agency for a proposed landfill; (3) the notice-of-claims statutes, *Ala. Code* § 6-5-20 and § 11-12-8, are inapplicable to Plaintiffs' causes of action because the Commission is not empowered to perform the judicial function of passing upon the validity and legality of its own actions and Plaintiffs are seeking equitable and declaratory relief - not monetary relief; (4) Alabama's abatement statute, *Ala. Code* § 6-5-440, is inapplicable as the previously filed action was dismissed prior to the filing of the current action; and (5) Plaintiffs have the right to sue because they have been aggrieved by the actions of the Conecuh County Commission and the Alabama Supreme Court has repeatedly recognized that aggrieved parties have a right to challenge the actions taken by local governments in violation of statutory requirements.

Additionally, Defendants filed Motions to Strike Plaintiffs' amendments to the Complaint on the grounds the Court allegedly lacks subject matter jurisdiction and has no authority to receive amended pleadings. Plaintiffs filed oppositions to the motions to strike stating that Defendants' argument lacked merit because Plaintiffs had standing when they filed the original complaint and the cases cited by Defendants state only that a plaintiff without standing at the time the original complaint was filed cannot amend the complaint to allege standing arising after the filing of the original complaint.

Finally, Defendants filed Motions to Stay Discovery pending resolution of their motions to dismiss. Plaintiffs in turn filed an Opposition to the Motions to Stay and a Motion to Compel requesting that the Court compel Defendants' responses to written discovery and compel Defendants to submit to depositions as noticed by Plaintiffs.

On September 21, 2011, the Court held a hearing on all pending motions and heard the arguments of counsel for the parties. Upon consideration of the pleadings, motions, briefs, written submissions of the parties, and the oral arguments of counsel, the Court is of the opinion that Defendants' Motions to Dismiss, Motions to Strike, and Motions to Stay Discovery are due to be denied. The Court has subject matter jurisdiction over the Complaint, as amended, because Plaintiffs have standing to bring their claims, in part, because they have alleged a procedural injury that could impair Plaintiffs' concrete interests, including, among other things, negative impacts on property values, social and community perceptions, commerce, tax revenues and public health and safety. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 572 (1992) (recognizing the right of a party to bring an action to "enforce a procedural requirement[,] the disregard of which could impair a separate concrete interest of theirs."); [\[1\]](#) *see also Orange v. Bailey*, 548 So. 2d 424 (Ala. 1989) (finding that county commission violated the statutory requirement that the sheriff's office be in city courthouse by failing to make facilities at the courthouse available for the sheriff); *Ala. Dep't of Env'tl. Mgmt. v. Town of Lowndesboro*, 950 So. 2d 1180, 1184 (Ala. Civ. App. 2002) (affirming summary judgment that declared that a landfill permit issued by the Alabama Department of Environmental Management was null and void for failure of the department to comply with its regulations governing the issuance of such

permits); *Fitzjarrald v. City of Huntsville*, 597 So. 2d 1378, 1379 (Ala. Civ. App. 1992) ("citizens affected by the government entity's decision to locate a solid waste landfill in its jurisdiction have due process rights to both notice and a hearing"). Plaintiffs' claims are not barred by: (1) failure to exhaust administrative remedies, because there are none to exhaust; (2) the abatement statute, because there was no action pending at the time Plaintiffs filed their initial Complaint; (3) the notice-of-claims statutes, because they are not applicable to Plaintiffs' claims, but even if they were, the Conecuh County Commission denied Plaintiffs' claim by failing to allow it within 90 days of filing; or (4) any of the other grounds argued by Defendants. The Court further finds that the amendments to the Complaint are proper. The Court concludes finally that there is no reason to delay discovery. Accordingly, it is hereby ORDERED, ADJUDGED and DECREED that:

1. Defendants' Motions to Dismiss are denied as to each and every ground stated;

2. Defendants' Motions to Strike are denied;

3. Defendants' Motions to Stay Discovery are denied;

4. Plaintiffs' Motion to Compel is granted; and

5. Defendants shall answer the Complaint, as amended, within 14 days of the date of this order, shall respond to Plaintiffs' interrogatories and requests for production within 30 days of the date of this order, shall make witnesses available for deposition, and otherwise participate in the discovery process thereafter.^[2]

^[1] The Court in *Lujan* recognized that the violation of procedural requirements, similar to those alleged by Plaintiffs in their Complaint, can cause an injury to a party's concrete interest as required to confer standing upon a party:

There is this much truth to the assertion that "procedural rights" are special: The person who has been accorded a procedural right to protect his concrete interests can assert that right without meeting all the normal standards for redressability and immediacy. **Thus, under our case law, one living adjacent to the site for proposed construction of a federally licensed dam has standing to challenge the licensing agency's failure to prepare an environmental impact statement, even though he cannot establish with any certainty that the statement will cause the license to be withheld or altered, and even though the dam will not be completed for many years.**

504 U.S. at 573, n. 7 (emphasis added).

^[2] The day of the hearing, Defendant Alabama-Tombigbee Regional Commission ("ATRC") filed a motion adopting Defendants' Motions to Dismiss and Motions to Strike. To the extent that ATRC seeks relief based on these motions, the relief is denied.

DONE this 25th day of October, 2011.

/s/ HON. BURT SMITHART
CIRCUIT JUDGE

IN THE CIRCUIT COURT OF CONECHU COUNTY, ALABAMA

TOWN OF REPTON, ALABAMA,)	
TERRI CARTER MAYOR OF)	
REPTON,)	
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Plaintiffs,)	
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V.)	Case No.: CV-2011-900033.00
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Supreme Court has repeatedly recognized that aggrieved parties have a right to challenge the actions taken by local governments in violation of statutory requirements.

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1. Defendants' Motions to Dismiss are denied as to each and every ground stated;
2. Defendants' Motions to Strike are denied;
3. Defendants' Motions to Stay Discovery are denied;
4. Plaintiffs' Motion to Compel is granted; and
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DONE this [To be filled by the Judge].

/s/[To be filled by the Judge]

CIRCUIT JUDGE