

Repton Council
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HEADLINE: Supreme Court denies Conecuh Woods' petition

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Repton Mayor Terri Carter said at Monday night's council meeting the lawsuit against landfill developer Conecuh Woods and the Conecuh County Commission will carry on, with the Alabama Supreme Court denying the defendant's petition to change the circuit court's ruling.

Conecuh Woods and the commission filed a petition for a writ of mandamus - an order telling a lower court to either do what they are supposed to do or refrain from doing what they aren't authorized to do - asking the Supreme Court to "compel" Circuit Judge Burt Smithart to change his ruling to move into depositions and discovery.

The order from the state's high court, issued last Thursday, says the writ of mandamus is denied, and the stay entered by the court Nov. 22 be vacated.

In their appeal to the Supreme Court, Conecuh Woods says the circuit court lacks jurisdiction and, in several instances, the disclosure of information about the company would prove detrimental.

Carter said she is excited about the ruling and looks forward to moving forward with the case. Depositions and discovery could take anywhere from several months to a year or even more.

This is the second victory for Repton and its co-plaintiffs this year after Smithart denied the defendants' motions to dismiss the case earlier this year.

Repton filed its suit against the Conecuh County Commission, Conecuh Woods LLC and the Alabama-Tombigbee Regional Commission (ATRC) April 21 under the guidance of attorneys with Balch and Bingham in Montgomery and Birmingham and Greg L. Albritton, the town's attorney from Evergreen, citing deficiencies in the procedure the commission used to evaluate and take public comment.

The defendants filed a motion asking Smithart to dismiss the case, saying the court doesn't have jurisdiction and there was limited public opposition to the landfill, but he denied.

Smithart's ruling says, "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."

The county commission voted 3-2 to approve the landfill application of Conecuh Woods in April, paving the way for the company to construct a landfill on a 5,115-acre tract stretching from just south of Repton nearly to Range along Alabama Highway 41.

A short time later ATRC's board voted to give the landfill a favorable report to the Alabama Department of Environmental Management (ADEM).

The town's suit alleges, among other things, that the county failed to accept adequate public comment and did not provide adequate public notice.

The suit also says there are factual errors in the application which prevent the commission from making a rational decision.

The town is seeking a declaratory judgment that the commission didn't have adequate information to properly consider and approve the application, and asking for a writ of certiorari, which is an order by a higher court directing a lower court, tribunal or public authority to send the record in a given case for review, because there is no right to appeal the commission's decision.

They are also asking for an injunction requiring the commission to follow the law when considering and acting the application, and barring the commission from acting in an arbitrary and capricious manner when considering the application or the resubmission of the application.

In a prayer for relief, the town's attorneys are asking the court to declare the commission acted arbitrarily and capriciously by failing to provide adequate public notice, denying the public adequate opportunity to comment, in approving the application for the proposed landfill and to declare that the commission's approval of the landfill is null and void.

They also ask the court to set aside the decision of the commission to approve the application and require the commission to follow applicable law for any future consideration of the application and to award attorneys' fees and all of the costs associated with this litigation to plaintiffs.

Supporters of the Conecuh Woods project say the commission's action will prove to be an important step for boosting the economic future of Conecuh County, with the project generating millions in local payroll and over \$250 million in new revenue for the county.

Citizens for a Clean Southwest Alabama (CCSA), a grassroots group organized to fight the landfill over four years ago, filed a lawsuit May 25 against each commissioner and Conecuh Woods.