

IN THE SUPERIOR COURT OF BRYAN COUNTY
STATE OF GEORGIA

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Filed in Clerk's Office
Time 4:30

JAN 30 2012

Rebecca S. Crowe
Clerk of Courts
Bryan County, Georgia

Rec
1-31-12

ATLANTIC WASTE SERVICES, INC.)
and PMP, INC.,)

Plaintiffs,)

v.)

Civil Action No. 2012-V-032

BRYAN COUNTY, GEORGIA; BRYAN)
COUNTY BOARD OF COMMISSIONERS;)
JIMMY BURNS, JOE KENDRICK,)
WADE PIERCE, GLEN WILLARD,)
CARTER INFINGER and JIMMY)
HENDERSON, in their official capacities)
as members of the Board of)
Commissioners of Bryan County, Georgia,)

Defendants.)

ANSWER

COME NOW Defendants and hereby ANSWER Plaintiffs' Appeal to Superior Court, Complaint for Declaratory Relief, and Petition for Mandamus and respectfully show the Court as follows:

FIRST DEFENSE

Plaintiffs' Complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE

Plaintiffs' Count seeking Mandamus is improper because Plaintiffs have no clear legal right to the relief sought in this case.

THIRD DEFENSE

Plaintiffs' Count seeking Mandamus is improper because Plaintiffs have an adequate remedy at law.

FOURTH DEFENSE

Plaintiffs' Count seeking Mandamus is improper because Defendants' denial of Plaintiffs' request was a matter within the absolute discretion of Defendants, and there was no "gross abuse of discretion" as required under O.C.G.A § 9-6-21 (a).

FIFTH DEFENSE

Plaintiffs' Count seeking Declaratory Judgment is improper because there is no actual case or controversy causing uncertainty on Plaintiffs' part and requiring resolution by this Court.

SIXTH DEFENSE

Defendants Burnsed, Kendrick, Price, Willard, Infinger and Henderson are entitled to sovereign, qualified, and/or official immunity from suit in their personal capacities for any actions taken as public officials.

SEVENTH DEFENSE

Plaintiffs failed to previously raise all of the claims asserted in its Complaint before Defendants.

EIGHTH DEFENSE

Plaintiffs are guilty of unclean hands.

NINTH DEFENSE

Plaintiffs' Complaint should be dismissed because such an action is nugatory and fruitless.

TENTH DEFENSE

Defendants respond to the numbered allegations of Plaintiffs' Complaint, as follows:

1.

In response to Paragraph 1, Defendants can neither admit or deny the allegations contained in this paragraph for want of sufficient knowledge.

2.

In response to Paragraph 2, Defendants can neither admit or deny the allegations contained

in this paragraph for want of sufficient knowledge.

3.

In response to Paragraph 3, Defendants admit the allegations contained therein.

4.

In response to Paragraph 4, Defendants admit the allegations contained therein.

5.

In response to Paragraph 5, Defendants admit the allegations contained therein.

6.

In response to Paragraph 6, Defendants admit the allegations contained therein.

7.

In response to Paragraph 7, Defendants admit the allegations contained therein.

8.

In response to Paragraph 8, Defendants admit the allegations contained therein.

9.

In response to Paragraph 9, Defendants admit the allegations contained therein.

10.

In response to Paragraph 10, Defendants can neither admit nor deny the allegations contained therein for want of sufficient knowledge.

11.

In response to Paragraph 11, Defendants admit that Plaintiff proposes to operate a solid waste disposal facility; however, Defendants deny it would be accordance with all waste laws and regulations.

12.

In response to Paragraph 12, Defendants can neither admit nor deny the allegations contained therein for want of sufficient knowledge.

13.

In response to Paragraph 13, Defendants deny that the site is well suited for the proposed landfill facility. Defendants admit the submissions are attached to the Complaint.

14.

In response to Paragraph 14, Defendants deny that said acts, rules, and regulations are comprehensive regarding the proposed solid waste facility as Section 1116 of the Bryan County Zoning Ordinance and Bryan County's Solid Waste Management Plan are also applicable. Defendants admit that the requirements as stated in Paragraph 14 are also necessary.

15.

In response to Paragraph 15, Defendants deny that compliance with state laws, regulations and inspections are all that is required of the proposed solid waste facility as Section 1116 of the Bryan County Zoning Ordinance and Bryan County's Solid Waste Management Plan are also applicable. Defendants admit that the requirements stated in Paragraph 15 are also necessary.

16.

In response to Paragraph 16, Defendants admit the allegations contained therein.

17.

In response to Paragraph 17, Defendants admit the allegations contained therein.

18.

In response to Paragraph 18, Defendants deny the allegations contained therein. By way of further Answer, Defendants deny Section 1116 of the Bryan County Zoning Ordinance is a *de facto* prohibition of any Waste Management District in Bryan County. Also, Defendants deny that it is in conflict with the Georgia Comprehensive Solid Waste Management Act, the State of Georgia Department of Natural Resources, Environmental Protection Division, Rules for Solid Waste Management, or the Solid Waste Management Plan adopted by Bryan County.

19.

In response to Paragraph 19, Defendants admit the allegations contained therein.

20.

In response to Paragraph 20, Defendants admit that Plaintiffs filed a Petition for Text Amendment and amendment on September 27, 2011; however, Defendants deny that the Bryan County Zoning Ordinance is in conflict with the Georgia Comprehensive Solid Waste Management Act, the State of Georgia Department of Natural Resources, Environmental Protection Division, Rules for Solid Waste Management, and the Solid Waste Management Plan adopted by Bryan County.

21.

In response to Paragraph 21, Defendants admit the allegations contained therein.

22.

In response to Paragraph 22, Defendants admit the allegations contained therein.

23.

In response to Paragraph 23, Defendants admit the allegations contained therein.

24.

In response to Paragraph 24, Defendants deny that any items in its ordinance are inconsistent with state law or the Solid Waste Management Plan. Defendants admit the remaining allegations.

25.

In response to Paragraph 25, Defendants admit the allegations contained therein.

26.

In response to Paragraph 26, Defendants admit the allegations contained therein.

27.

In response to Paragraph 27, Defendants incorporate by reference their Responses to Paragraphs 1 through 26 to Plaintiffs' complaint, supra, in response to Paragraph 27, as fully and completely as if set forth herein with particularity.

28.

In response to Paragraph 28, Defendants deny that said acts, rules, and regulations are comprehensive regarding the proposed solid waste facility as Section 1116 of the Bryan County Zoning Ordinance and Bryan County's Solid Waste Management Plan are also applicable.

29.

In response to Paragraph 29, Defendants deny that the code section is completely and accurately stated.

30.

In response to Paragraph 30, Defendants admit the allegations contained therein.

31.

In response to Paragraph 31, Defendants admit the allegations contained therein; however, by way of further answer, Defendants deny that any local ordinance in question if in conflict with state law.

32.

In response to Paragraph 32, Defendants deny that said rule completely and accurately stated.

33.

In response to Paragraph 33, Defendants admit that a portion of the rule is as stated.

34.

In response to Paragraph 34, Defendants deny that in their application, said acts, rules,

regulations, guidelines, and ordinances would not require the landfill facility to have primary access on a federal or state highway.

35.

In response to Paragraph 35, Defendants deny the allegations contained therein. By way of further answer, Defendants deny that Section 1116 of the Bryan County Zoning Ordinance is contrary to any state law.

36.

In response to Paragraph 36, Defendants admit that a portion of the ordinance is as stated.

37.

In response to Paragraph 37, Defendants deny the allegations contained therein. By way of further answer, Defendants deny that Section 1116 of the Bryan County Zoning Ordinance is contrary, or conflicts, or impairs any state law.

38.

In response to Paragraph 38, Defendants deny the allegations contained therein. By way of further answer, Defendant contends public interest is protected by the prohibition.

39.

In response to Paragraph 39, Defendants deny the allegations contained therein.

40.

In response to Paragraph 40, Defendants incorporate by reference their Responses to Paragraphs 1 through 39 to Plaintiffs' complaint, supra, in response to Paragraph 40, as fully and completely as if set forth herein with particularity.

41.

In response to Paragraph 41, Defendants deny the allegations contained therein.

42.

In response to Paragraph 42, Defendants admit this section is the only zoning classification in Bryan County that permits a landfill facility and waste disposal; however, Defendants deny all remaining allegations contained therein.

43.

In response to Paragraph 43, Defendants deny the allegations contained therein. By way of further Answer, Defendants deny that Section 1116 of the Bryan County Zoning Ordinance is a *de facto* prohibition of landfills in Bryan County.

44.

In response to Paragraph 44, Defendants admit the allegations contained therein.

45.

In response to Paragraph 45, Defendants admit the allegations contained therein.

46.

In response to Paragraph 46, Defendants deny that in their application, said acts, rules, regulations, guidelines, and ordinances would not require the landfill facility to have primary access on a federal or state highway.

47.

In response to Paragraph 47, Defendants deny the allegations contained therein.

48.

In response to Paragraph 48, Defendants deny the allegations contained therein.

49.

In response to Paragraph 49, Defendants deny the allegations contained therein.

50.

In response to Paragraph 50, Defendants incorporate by reference their Responses to

Paragraphs 1 through 49 to Plaintiffs' complaint, supra, in response to Paragraph 50, as fully and completely as if set forth herein with particularity.

51.

In response to Paragraph 51, Defendants admit that Plaintiffs applied for a rezoning petition; however Defendant deny all further allegations contained therein.

52.

In response to Paragraph 52, Defendants admit that Defendants effectively denied the Plaintiffs' request; however, Defendants deny that no evidence was presented that the planned use would in any manner adversely affect the health, safety, morals or general welfare of the public.

53.

In response to Paragraph 53, Defendants deny the allegations contained therein.

54.

In response to Paragraph 54, Defendants deny the allegations contained therein.

55.

In response to Paragraph 55, Defendants deny the allegations contained therein. By way of further answer, the denial was substantially related to public health, safety, morality, and the general welfare of the community.

56.

In response to Paragraph 56, Defendants incorporate by reference their Responses to Paragraphs 1 through 55 to Plaintiffs' complaint, supra, in response to Paragraph 56, as fully and completely as if set forth herein with particularity.

57.

In response to Paragraph 57, Defendants deny the allegations contained therein.

58.

In response to Paragraph 58, Defendants deny the allegations contained therein.

59.

In response to Paragraph 59, Defendants incorporate by reference their Responses to Paragraphs 1 through 58 to Plaintiffs' complaint, supra, in response to Paragraph 59, as fully and completely as if set forth herein with particularity.

60.

In response to Paragraph 60, Defendants deny the allegations contained therein.

61.

In response to Paragraph 61, Defendants deny the allegations contained therein.

62.

In response to Paragraph 62, Defendants deny the allegations contained therein.

63.

In response to Paragraph 63, Defendants deny the allegations contained therein.

64.

In response to Paragraph 64, Defendants deny the allegations contained therein.

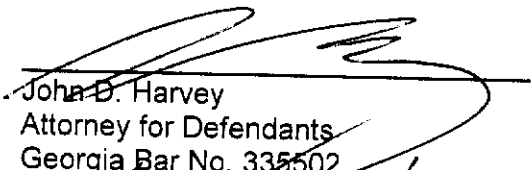
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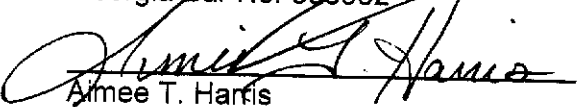
Any allegation of the Plaintiffs not specifically responded to is hereby denied.

WHEREFORE, Defendants respectfully pray as follows:

- a. that Plaintiffs' Complaint be dismissed as a matter of law and that Defendants be discharged without any liability to Plaintiffs whatsoever;
- b. that Defendants be awarded their attorneys' fees and cost; and
- c. for such other and further relief as deemed appropriate by this Honorable Court.

Respectfully submitted this 30th day of January, 2012.


John D. Harvey
Attorney for Defendants
Georgia Bar No. 335502


Aimee T. Harris
Attorney for Defendants
Georgia Bar No. 329396

P.O. Box 1680
Richmond Hill, GA 31324
Telephone: 912-756-0103
Facsimile: 912-756-0113

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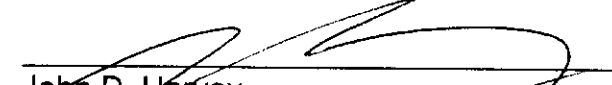
CERTIFICATE OF SERVICE

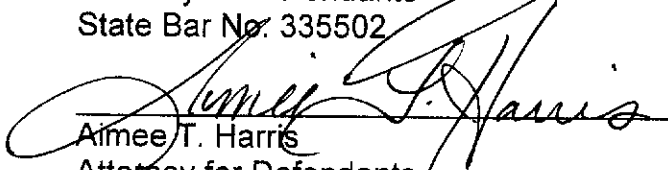
This is to certify that I have this day served all counsel of record with a copy of the foregoing Answer by depositing same in the United States Mail in an envelope with adequate postage thereon and properly addressed as follows:

Harold B. Yellin
P.O. Box 9848
Savannah, GA 31412

Jeffery Arnold
Tyler L. Randolph
128 S. Main Street
Hinesville, GA 31313

This 30th day of January, 2012.


John D. Harvey
Attorney for Defendants
State Bar No. 335502


Aimee T. Harris
Attorney for Defendants
Georgia Bar No. 329396

Post Office Box 1680
Richmond Hill, GA 31324
Telephone: 912-756-0103