

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL

STATE OF WYOMING

IN THE MATTER OF THE OBJECTION)
TO THE ISSUANCE OF SOLID WASTE)
PERMIT RENEWAL AND MAJOR)
AMENDMENT TO EASTERN LARAMIE)
COUNTY SOLID WASTE DISPOSAL)
DISTRICT LANDFILL (SHWD FILE #10-330))

DOCKET NO. 09-5801

FILED
JAN 19 2010
Jim Ruby, Executive Secretary
Environmental Quality Council

PETITIONERS' PRE-HEARING BRIEF

COME NOW the Petitioners, Barbara and Robert ("Bob") Musgrave ("Petitioners") and pursuant to the request of the Environmental Quality Council ("Council"), respectfully file this Pre-Hearing Brief.

A. Background

The Petitioners filed an objection on October 26, 2009, opposing a request by the Eastern Laramie County Solid Waste Disposal District ("Landfill") for renewal and expansion of the present landfill. Petitioners objected to the expansion of the landfill on the grounds that Petitioners are the landowners of the property bordering the entire east side of the Landfill, and the Landfill has encroached and fenced a portion of their property without permission nor ownership of the property. A hearing was set for January 14, 2010 before the Council.

B. Issue

At the Pre-Hearing Conference held on January 7, 2010, a question arose as to

whether the Council and the Wyoming Department of Environmental Quality (“DEQ”) had jurisdiction to hear this matter. Petitioners contend that the DEQ cannot grant an expansion permit for the Landfill until the issues of ownership of the property are decided by a court of law.

C. Argument

Does The Environmental Quality Council Have
The Jurisdiction To Hold This Hearing Before
Ownership Of The Land Is Decided?

Petitioners purchased 480 acres of Section 28 from Robert and Yvonne Steege in March, 1993. The Steeges also owned Section 29 which is the Landfill property. Both of these sections had been in the Steege family for many years and were used as a combination of pasture and farmland. In the early 80’s, Bob Steege opened a landfill on just 40 acres of Section 29, using the remaining acreage in the section for farming and raising cattle.

In late 1992, the Steeges decided to sell part of their holdings. In January of 1993 Bob Steege and Petitioner Bob Musgrave walked the property and discussed what the Steeges’ were selling and the boundaries between the Landfill (in Section 29) and Section 28, the property the Musgraves were interested in. The men found the south section line survey pin between sections 29 and 28 in the road (County Road 215). The Petitioners purchased the property in March, 1993 and received a Certificate of Title Insurance showing the Special Exceptions. (Pet. Ex. L, bs 000064). A right-of-way to Laramie County was not listed in the exceptions. The Steeges did not intend to sell any part of

Section 29 which the Landfill occupies, nor did the Musgraves have any intention of purchasing a landfill. They purchased their property in good faith. If Laramie County had any right-of-way, it has never been platted and registered in the Laramie County Clerk's office nor did it appear as an exception on the Petitioners' Certificate of Title Insurance. Petitioners purchased the 480 acres in Section 28 free of a right-of-way encumbrance to Laramie County. Before a right-of-way can be claimed or taken, it must be recorded. WYO. STAT. ANN. § 34-1-120 states:

Every conveyance of real estate within this state, hereafter made, which shall not be recorded as required by law, shall be void, as against any subsequent purchaser or purchasers in good faith and for a valuable consideration of the same real estate or any portion thereof, whose conveyance shall be first duly recorded.

1882 Sess. Laws, ch. 1, § 15.

Sometime after Petitioners purchased their property, the ownership of the Landfill passed from the Steeges to Laramie County. To the best of the Petitioners' knowledge, the Landfill has always been aware of all its boundaries. It operates a business for profit.

Both the Landfill and Petitioners have introduced as an exhibit the minutes of meetings of the Board of Laramie County Commissioners held during the month of December, 1923, which declared rights-of-way through many sections of land for public roads running throughout Laramie County. One of the roads declared was County Road 1-34 which later became County Road 150, as it is known today. These rights-of-way were described as the center line of an 80 foot right-of-way for a public road between sections. Sections 29 and 28 are mentioned several times in these minutes. (Pet. Ex. E,

bs 000010, 000011, 000013 and 000014.) Right-of-way is described as “The right to pass through property owned by another.” BLACK’S LAW DICTIONARY 1351 (8th ed. 2004).

For several years, the Petitioners have notified the various managers of the Landfill of the fact that the Landfill has put wells and a construction site on their property and requested the Landfill cease and desist from this practice. After getting no satisfaction following that path, Petitioners contacted an attorney and on December 15, 2007, the Landfill was formally notified that all permission to use their property for the dump near Burns was withdrawn and the Landfill should relocate the fence to the boundary line as soon as possible. A settlement could not be reached in the matter and on November 20, 2008, Petitioners were notified by the Landfill that further negotiations would not be constructive.

On August 17, 2009, the Landfill filed an application for a renewal permit and a permit to expand the Landfill from its present boundaries. The Landfill does not hold title to all the property they claim for the dump expansion. Without ownership, the Landfill cannot expand without permission of the landowner. Since Petitioners have withdrawn permission for the Landfill to occupy their property, Petitioners had no choice but to file their objection to this expansion on October 26, 2009.

At the Pre-Hearing Conference, the Landfill presented as an exhibit a document entitled Resolution #100105-10 stating “Resolution acknowledging and confirming the use of property owned and controlled by Laramie County by the Eastern Laramie County

Solid Waste Disposal District”, signed and adopted on January 5, 2010 , by the Board of Laramie County Commissioners (“Commissioners”). The Commissioners’ resolution in essence says Laramie County owns the entire 80 foot right-a-way between the land belonging to the Petitioners and Laramie County and gives permission to the Landfill to use it as part of the Landfill. They cannot be more incorrect. An easement has never shown up, registered nor platted in favor of Laramie County for the Petitioners’ property in Section 28.

Even if there was a legitimate road right-of-way, allowing the Landfill to expand onto this right of way would be improper. WYO. STAT. ANN. § 24-1-101(a) and (b) define public highways and how they must be established:

- (a) On and after January 1, 1924, all roads within this state shall be highways, which have been or may be declared by law to be state or county highways. It shall be the duty of the several boards of county commissioners, within their respective counties, prior to said date, to determine what, if any, such roads now or heretofore travelled but not heretofore officially established and recorded, are necessary or important for the public use as permanent roads, and to cause such roads to be recorded, or if need be laid out, established and recorded, and all roads recorded as aforesaid, shall be highways. No other roads shall be highways unless and until lawfully established as such by official authority. Except, nothing contained herein shall be construed as preventing the creation or establishment of a public highway right-of-way with reference to state and county highways under the common-law doctrines of adverse possession or prescription either prior to or subsequent to the enactment hereof. If any such board shall resolve the creation or establishment of a public highway right-of-way based upon the common-law doctrines of adverse possession or prescription, it shall, following the filing of a plat and accurate survey required in accordance with the terms and provisions of W.S. 24-3-109,

proceed with the publication of the proposed road for three (3) successive weeks in three (3) successive issues of some official newspaper published in the county, if any such there be, and if no newspaper be published therein, such notice shall be posted in at least three (3) public places along the line of the proposed road, which notice shall be exclusive of all other notices and may be in the following form: (form omitted)

....
(b) The county commissioners shall cause a copy of the above notice to be mailed by registered or certified mail to all persons owning lands or claiming any interest in any lands over or across which the road is proposed to be created or established. The publication, posting and mailings of such notice shall be a legal and sufficient notice to all persons owning lands or claiming any interest in lands over which the proposed road is to be created or established. No viewers or appraisers shall be appointed, nor shall any damage claims be considered or heard, and the sole objections to be heard by the board shall be directed against the creation or establishment of such right-of-way under the common-law doctrines of adverse possession or prescription. Any objector may appeal from the final decision of the board of the county commissioners to the district court of the county in which the land is situated. Notice of such appeal must be made to the county clerk within thirty (30) days after such decision has been made by the board, or such claim shall be deemed to have been abandoned. Within ten (10) days after the notice of an appeal is filed in his office, the county clerk shall make out and file in the office of the clerk of the district court, in his county, a transcript of the papers on file in his office, and the proceedings of the board in relation to such creation and establishment. The proceedings on appeal shall be governed by the Wyoming Administrative Procedure Act. If the appeal is upheld the appellant shall be reimbursed by the county for all reasonable costs of asserting his claim.

The Board of Laramie County Commissioners cannot issue an order for use of property it does not own, nor have any legal right to. A landfill is an inappropriate use of any road right-of-way. A right-of-way is the right to pass through property owned by another.

Ownership of the land under the right-of-way is owned by the record property owner.

As a matter of interest concerning the placement of County Road 150, the road has never been on the 80 foot public right-of-way as mentioned in the December, 1923, minutes of meetings the Board of Laramie County Commissioners. County Road 150 sits entirely on Petitioners' property—Section 28. It would appear the County is trying to get 2 bites of the apple.

The Petitioners have attempted to settle this matter several times, including after the Pre-Hearing. To settle this matter, the Petitioners, in addition to the disputed property within the fenced area of the construction site, offered the Landfill the acreage north of that site between Section 29 and the present County Road 150 thereby giving the Landfill an extra buffer zone, possibly 4-5 acres of Petitioners' Section 28. The compensation requested by Petitioners for the property would be free dumping of only household trash for as long as the Petitioners lived within the Landfill district. (The Landfill fee is \$12.50 per visit and since the Petitioners use the Landfill approximately six (6) times a year; this would amount to an estimated cost to the Landfill of \$75 a year.) The Landfill refused the offer.

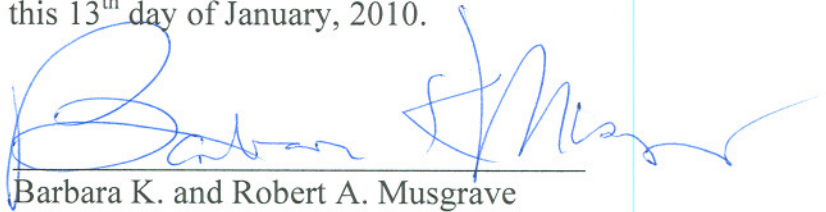
D. Conclusion

This matter is a dispute over ownership of land. The Petitioners assert this ownership must be first be decided in Court of Law before the Council can hear the objection to a renewal and expansion permit requested by the Landfill.

Additionally, the document presented by the Landfill entitled Resolution #100105-10 stating “Resolution acknowledging and confirming the use of property owned and

controlled by Laramie County by the Eastern Laramie County Solid Waste Disposal District" signed and adopted on January 5, 2010, by the Board of Laramie County Commissioners is premature, as ownership of the property they are attempting to give to the Landfill has not been decided. Petitioners' request that Mr. Davison, the attorney for the Landfill, immediately take steps to contact the Board of Laramie County Commissioners to rescind this resolution #100105-10 and remove it from the records of the Laramie County Clerk.

RESPECTFULLY SUBMITTED this 13th day of January, 2010.



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CERTIFICATE OF SERVICE

I certify that on this 13th day of January, 2010, the foregoing PETITIONERS' PRE-HEARING BRIEF was served by hand delivery to the following:

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