



Lonzo Lester <lonzo.lester@russellcountyva.us>

Re: Russell County Landfill 1991 questions.

1 message

Steve Breeding <steve.breeding@russellcountyva.us>

Wed, Jun 5, 2024 at 10:26 AM

To: Lou Wallace <lou.wallace@russellcountyva.us>

Cc: Lonzo Lester <lonzo.lester@russellcountyva.us>, "Southard, Jeffrey C." <JSouthard@gentrylocke.com>, "David K. Paylor" <dkpaylor@potesta.com>

Lou,

It is my understanding that several attorneys at Gentry Locke have looked at this situation and have agreed that once a new ordinance is enacted, it cancels out the previous ordinance. If not, how would you ever know which ordinance to follow. You would have to look back through all ordinances on the subject to determine what is allowed. However, if this is not the case, it should certainly be looked at and reported back to the BOS. I would ask Jeff to follow up on this issue. Also, to provide a letter to Lonzo for the Board to be used in response to this question. But, I can't imagine such a cumbersome system of ordinances be acceptable under the law.

Thanks Lou,

Steve

On Mon, Jun 3, 2024 at 1:17 PM Lou Wallace <lou.wallace@russellcountyva.us> wrote:

Good afternoon all,

I am sending you this message because I have had several questions on this topic. In the beginning, Ms Jennifer Chumley found a 1991 landfill ordinance. It's assumed the 2011/ 2017 ordinances surely revoked and replaced the 1991 ordinance. Once she digested the 2011/2017 ordinances, she realized the former boards did not.

From what I understand, when an old law is not expressly revoked, it continues to be valid and is read together with the newer law, to the extent that they do not contradict, unless it is very clear that the new law was intended to replace the old. When they contradict, the newer portion of the law is usually viewed as replacing the old, but other parts of the old law will be read with the new. Any construction otherwise would be "implied revocation" and Virginia Courts generally disfavor this legal theory.

Anyway, in this case, the 1991 ordinance expressly says no private landfills. There is a catch-all in 1991 that says however, if a court throws the "no landfills" portion out, these enumerated additional environmental concerns must be considered and it enumerates many additional requirements the Moss 3 site likely cannot meet. Quote, "It also prescribes requirements of this board and the developer- some of which the host agreements are already trying to violate!"

Quote...."The 2010/2017 ordinances simply say private landfills must be permitted by DEQ. That is a restatement of Virginia Law. It does not revoke the 1991 ordinance language outright banning private landfills. Rather, it would likely be construed to apply to the additional environmental requirements if the provision of the 1991 ordinance banning landfills is thrown out by a court".

The existing Russell County ordinances are very explicit: no private landfill in Russell County. If this is unenforceable, are there additional steps that both the board and the developer must take. Quote from this letter...."This was the first place your special counsel should have looked before continuing with any host agreement negotiations, public hearings, or meetings. I worry special counsel simply reviewed 2017 and went on about their business".

If this is the case, here is a question/ comment....."The only legal path forward for this landfill is for the 1991 ordinance to be voted down or challenged in court. Imagine the fuss that would create".

Lonzo, has special counsel and consultant fully answered this question about the issue with the 1991 ordinance. Quote from the letter...." If they inform you 1991 would not be read together with 2017, perhaps it would be beneficial to ask them to draft a legal memo detailing their position about why that is so".

I'm not so sure these questions have been fully addressed by Gentry Locke. Steve, I'm asking for Mr Southard to extensively research the 1991 Ordinance and all others in order to have full understanding on the "No Landfill in Russell

County ". If this has already been fully addressed by Special Council, then I must have missed it somewhere along the way. Would you send it to me?

Sincerely,
Lou