

Neighbors dispute Arundel Wegmans store over fly ash concerns

Developer says it is following all rules, points to union opposition



Developers Greenberg and Gibbons are building a \$300 million shopping center on 80 acres of land in Gambrills that has been approved by Anne Arundel. Picture is taken from east side of the development near Route 3 and Brickhead Road. The Village South At Waugh Chapel will include a Wegman's, Target, Dick's Sporting Goods and a movie theater. However, that are several lawsuits filed against the development over environmental concerns that threaten to slow down the construction. (Kenneth K. Lam, Baltimore Sun / December 29, 2010)

By Nicole Fuller, The Baltimore Sun

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It's the sort of project that might soften objections to suburban development: a Wegmans supermarket that peddles everything from \$6 takeout meals to black truffles that can retail for \$400 per pound.

But the planned Wegmans in Anne Arundel County, part of a \$300 million project called The Village at Waugh Chapel South, has sparked protests from some nearby residents. They fear that fly ash soil contamination at the site — a former dump — could pollute their drinking water.

A flurry of legal activity questions the impact of construction on underground pollution from fly ash, a toxic byproduct of coal that has seeped into area groundwater in places. Just two years ago, Constellation Energy Group paid tens of millions of dollars to residents near the former dump, who found carcinogens in their privately owned wells, and signed a cleanup agreement with state and local officials.

The 80-acre Waugh Chapel South project in Gambrills, which includes office space, residences, a Target and movie theater, is slated for a March 2012 opening and has been granted the necessary permits from county officials.

And the developer, Owings Mills-based Greenberg Gibbons Commercial Corp., says it has complied with state regulations on fly ash. It argues that the local supermarket union is fighting the project under the guise of environmental concerns because Wegmans is not unionized.

Local residents, though, maintain that the Maryland Department of the Environment has been lax in enforcement and that the health and safety of residents is at the heart of the issue over Wegmans — not where people buy their veggies and chicken.

Fred Tutman, the Patuxent Riverkeeper, contends that county and state officials have brushed off concerns about groundwater contamination. He noted that the development is in the midst of an "underserved community," including a predominantly African-American cluster of homes on wells that were tainted by the ash dumping.

Tutman argued that if the development went forward before the cleanup was properly done, there would be "looming potential" for damaging a significant water supply for the county.

"In their haste to build a shopping center, [officials] really have forestalled or put aside the things they were supposed to do," he said.

Greenberg Gibbons says it has taken all required precautions on the 80-acre site to prevent any harm to the water supply from the fly ash, complying with Maryland Department of the Environment guidelines. The real agitators in the dispute, the developer says, are members of the United Food and Commercial Workers.

"No one is more concerned about the environment than our company," said Brian Gibbons, company CEO and a managing partner of the project. "[Union officials] don't want Wegmans to open unless Wegmans goes union. That's the bottom line.

"I'm not saying that there aren't some people that are concerned about the water. We all are. But building on top of fly ash is the best way to stop it and cap it."

G. Macy Nelson, a lawyer for the opponents, won't say whether the union is involved in the suit, as it has been with other area challenges to Wegmans. Union officials could not be reached for comment. Still, Nelson argues that the most important concern is that the cleanup is conducted properly, regardless of who is challenging the project.

A pair of recent groundwater studies commissioned by project opponents have found that contamination from the fly ash buried beneath the project site has spread beyond the well network set up to monitor it — and that toxic metals in the power plant waste could migrate into deeper aquifers serving nearby municipal and private wells.

In response, County Executive John R. Leopold, who calls the Waugh Chapel South project "worthy," asked the MDE last Tuesday to implement a remediation plan consistent with the new findings. The following day, he sent a memo to the county Department of Inspections and Permits, which has given the developer the necessary grading permits, saying the study raises "significant concerns" and directing the department to conduct the "necessary reviews" to ensure the safe handling of the fly ash.

"Experts in the field disagree," said Leopold, who first banned fly ash in the county in 2007. "Let's make absolutely certain that our citizens are not going to be exposed."

In 2006, traces of carcinogens were found in privately owned wells in the area, and county officials determined that fly ash had been dumped into pits on the site by Baltimore Gas and Electric Co. and Constellation Energy since the 1990s. A 2007 consent decree between the MDE, Constellation and BBSS Inc., the landowner, created development guidelines pertaining to the fly ash. Constellation settled with residents in 2008 for \$45 million.

Robert E. Smith, whose home is nearby and is one of several plaintiffs in the pending lawsuit in county Circuit Court against the MDE, said the agency has not worked expeditiously to ensure proper safeguards are in place.

"They've been very slow," said Smith, who has lived at his home for nearly a decade and said his greatest concern is "the potential that in 25 to 30 years the fly ash could contaminate the public water."

Smith said that while he doesn't oppose the development, "We want to make sure the safeguards are in place, that the contamination is understood, and things are in place to keep it from spreading. And that it's continually monitored."

The author of one of the recent studies, Edward J. Bouwer, chairman of geography and environmental engineering at the Johns Hopkins University, said that recently installed monitoring wells in the median of Route 3 show elevated levels of sulfates in the groundwater — most likely from fly ash dumped in pits at the project site years ago.

In a separate study, Grant Garven, a geology professor at Tufts University near Boston, found that there is potential for the contaminants now in relatively shallow groundwater to sink into deeper aquifers that are more commonly tapped for drinking water.

Bouwer said the current monitoring well network was inadequate to tell just how far the ash contamination has spread. And he said it was a bad idea to build over the area that has the most tainted ground water until officials have determined the full extent of the plume.

"From an engineering point of view, you want to have access to the site to be able to locate where contaminants are coming from," Bouwer said. "By developing the site, you may be eliminating some of the options to go in and retrofit some of the hotspots."

He noted that heavy metals found in fly ash don't break down on their own and some travel

easily through groundwater and are "quite toxic."

Kim Potember, a senior vice president at Greenberg Gibbons, said in an e-mail, "We expect that the Constellation and MDE experts will prepare a thorough and convincing rebuttal to Drs. Bouwer and Garven once they have had an opportunity to review and analyze their opinions."

Jay Apperson, spokesman for the Maryland Department of the Environment, noted that the landowner, BBSS, and Constellation are bound by a consent decree requiring them to deal with contamination caused by the former ash dump. The state has also spelled out conditions under which the tract might be redeveloped, Apperson said, to limit the disturbance of a "cap" put over the old dump to keep rain water from soaking in and spreading more contaminants.

"We would not approve any remediation plan that would be impeded by the development," Apperson said. "We don't believe what they're doing at this point would have any long-term effects on the groundwater remediation."

Nelson, the lawyer for the opponents, said they want contamination from the old ash dump cleaned up before any development is given the green light. Asked whether the lawsuit is being underwritten by unions opposed to the opening of another nonunion Wegmans in the metro area, Nelson declined to say.

"How I get paid and how much I earn is a private matter," he said.

In a November court filing, Anne Arundel County Attorney Jonathan A. Hodgson sought to have the pending suit dismissed, calling it a "poorly camouflaged attempt by the union to prevent a nonunion grocery store from being built."

Officials with the union, which represents employees of Safeway and Giant locally, sued unsuccessfully to stop Wegmans and other stores proposed in Howard and Prince George's Counties.

Gibbons, meanwhile, says that the project will create 2,600 permanent jobs and generate about \$20 million in annual revenue for the county. Gibbons said his company has spent "millions of dollars" to adhere to the MDE's standards, including "creating storm water management ponds off-site, and buying special concrete and asphalt."

He added, "We spent years worth of discussion on how to do this. It's a great economic engine in difficult economic times. And it creates a great permanent solution to put the cap on the fly ash."