

BEFORE THE
BEDFORD COUNTY PLANNING COMMISSION

Bedford Regional Water Authority)	SRP Nos. 140001 & 140002
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**BEDFORD REGIONAL WATER AUTHORITY’S RESPONSE
TO COMMENTS OF BEDFORD WEAVING**

Bedford Weaving’s comments filed with members of the Planning Commission on January 23, 2014 request that the Commission stay or suspend its decision on the Smith Mountain Lake Project (the “Project”). Bedford Weaving makes two arguments in support of this request. First, it requests that the Planning Commission stay its decision on the Project until Bedford Weaving’s separate lawsuit against the Bedford Regional Water Authority (the “Authority”) in Circuit Court is resolved. Second, Bedford Weaving argues that the Authority must prepare an environmental impact report before the Planning Commission can recommend the Project. Both contentions lack merit.

I. The Planning Commission Should Not Entertain Bedford Weaving’s Claim that the Authority Lacks the Power to Undertake the Project

Bedford Weaving’s first argument is an attempt to litigate the same issue simultaneously in two different forums. Bedford Weaving already has challenged the Authority’s power to proceed with the Project in Bedford County Circuit Court. That litigation is pending. Bedford Weaving’s attempt to raise the same challenge before the Planning Commission is inappropriate.

The Virginia Code tasks the Planning Commission with the responsibility to “promote the orderly development of the locality and its environs.” Va. Code § 15.2-2210. In particular, the Planning Commission has the power to review public utility facilities’ proposed projects to ensure that a project is “substantially in accord with the adopted comprehensive plan or part

thereof.” Va. Code § 15.2-2232(A). Bedford County Ordinance Sec. 30-8-1(a) affirms this purpose, stating that the Planning Commission has the responsibility to continuously review updates to the County’s Comprehensive Plan “to ensure that the plan remains a current statement of county development goals, objectives, and policies.” In fact, Bedford Weaving acknowledges that “the charge of the Commission in this matter is solely limited to determining if the *general* location, character, and extent of the proposed public facility is in *substantial* accordance [with] the provisions of the County’s adopted *comprehensive plan*.” See Bedford Weaving’s Comments at 8 (emphasis and brackets in original).

Bedford Weaving’s argument that the Authority lacks the power under its Articles of Incorporation to undertake the Project does not pertain to the objective in Section 15.2-2200. Bedford Weaving’s argument also does not relate to whether the Project is in accordance with the County’s Comprehensive Plan. The scope of the Authority’s power is not an appropriate subject for consideration by the Planning Commission. Bedford Weaving’s lawsuit in Circuit Court remains pending and that Court ultimately will determine whether or not the Authority is exceeding its powers. The Planning Commission should limit its review of the Project to a determination of whether the Project is in substantial accordance with the County’s Comprehensive Plan.

Further, the Planning Commission may not have the power to stay or suspend its determination. Both Virginia Code § 15.2-2232 and Bedford County Zoning Ordinance 30-25-2 require that the Planning Commission recommend approval or disapproval of a proposed project to the Board of Supervisors. If the Planning Commission does not act within sixty (60) days of the submission of the application, the application is deemed approved. Va. Code § 15.2-2232; Bedford County Zoning Ordinance 30-25-2. These provisions suggest that the Planning

Commission does not have the power to suspend its recommendation without having the application deemed approved.

II. The Authority Is Not Required to Obtain an Environmental Impact Report

Bedford Weaving's second argument, that the Authority was required to obtain an environmental impact report before seeking approval of the Project, is mistaken for two reasons. First, Bedford Weaving is incorrect that Virginia Code § 10.1-1188 requires that the Authority obtain an environmental impact report for this Project. Second, Bedford Weaving is incorrect that the Planning Commission does not have sufficient information before it concerning the environmental impact of the Project to evaluate whether the Project is in substantial accordance with the County's Comprehensive Plan.

A. Virginia Code § 10.1-1188 Does Not Apply Here

Bedford Weaving points to Virginia Code § 10.1-1188, entitled "State agencies to submit environmental impact reports on major projects" in support of its argument that the Authority was obligated to obtain such a report. That Section states that "[a]ll state agencies, boards, authorities and commissions or any branch of the state government shall prepare and submit an environmental impact report to the Department on each major state project." This provision does not apply to the Authority because the Authority is not a state agency and the Project is not a state project.

Section 10.1-1188 plainly only governs state entities. The word "state" modifies the words agencies, boards, authorities and commissions. Section 10.1-1188 defines "Major state project" as the acquisition of an interest in land for a state facility construction, or the construction or expansion of a facility undertaken by "any state agency, board, commission, authority or any branch of state government." Again, the word "state" modifies the other terms

in that sentence. Local entities are only included in this chapter if the project relates to highway construction: “For the purposes of this chapter, branch of state government shall include any county, city or town of the Commonwealth only in connection with highway construction, reconstruction, or improvement projects affecting highways or roads undertaken by the county, city, or town on projects estimated to cost more than \$2 million.” Va. Code § 10.1-1188. This language makes clear that local projects are not considered “state” projects unless they relate to highways.

Virginia Code § 10.1-1190 also demonstrates that the chapter only applies to state projects. That Section provides that “[t]he State Comptroller shall not authorize payments of funds from the state treasury for a major state project unless the request is accompanied by the written approval of the Governor after his consideration of the comments of the Department on the environmental impact of the facility.” Thus, the statute requires an environmental impact report where the project is being funded (at least in part) by the state. This confirms that the chapter is concerned with the state spending money on major state projects without first considering the environmental impact of those projects. The Project here is not funded by the state and the Authority is not a state agency. The Authority, thus, was not required to obtain an environmental impact report.

B. The Authority obtained Extensive Information Concerning the Environmental Impact of the Project

Bedford Weaving contends that the Planning Commission cannot determine whether the Project is in substantial accordance with the comprehensive plan because the Authority’s permit applications do not contain substantive information about the environmental impacts of the Project. *See Bedford Weaving’s Comments at 8.* In particular, Bedford Weaving argues that the

Authority has not complied with chapter 5 of the County's Comprehensive Plan, which addresses protection of environmental quality. *Id.* Bedford Weaving is incorrect.

The Authority complied with chapter 5 of the County's Comprehensive Plan in the water withdrawal permit process. Chapter 5 states that "the County strives to preserve these natural water quality 'assets' through the Virginia Water Protection Permit Program that is administered jointly by the Virginia Department of Environmental Quality (DEQ) and the U.S. Corps of Engineers (COE)." The permit, number 96-0707, states that it was issued after an examination of compliance with the Clean Water Act and the State Water Control Law and regulations. The DEQ specifically held that the "effect of the impact, together with other existing or proposed impacts to surface waters, will not cause or contributed to a significant impairment to state waters or fish and wildlife resources." The permit also specified numerous requirements for environmental protection, including requiring that any construction be accomplished in a manner to minimize waste materials from entering surface waters and setting forth specific requirements that the water be monitored regularly. (The permit is posted on the website www.brwa.com.) Thus, Bedford Weaving is simply incorrect that the Planning Commission has no information concerning the likely environmental impact of the Project and is incorrect that the Authority has not complied with chapter 5 of the County's Comprehensive Plan.

In addition, the Planning Commission also can review Appalachian Power Company's Environmental Assessment of the Project, which Appalachian Power filed in connection with its application to the Federal Energy Regulatory Commission for an amendment of the commission's Order approving Non-Project Use of the Project Lands and Waters. (This document also is posted on the website www.brwa.com.) In preparing the application, the Authority received comments from the Virginia Department of Environmental Quality and the

U.S. Army Corps of Engineers. The application contains 93 pages of information, including several exhibits, and details the projected environmental impact of the Project, including the impact on fish and other wildlife, water resources, terrestrial resources, human recreation, and cultural resources.

The Planning Commission has ample information concerning the potential environmental impact of the Project. The Authority is not obligated to collect or provide any additional information.

III. Conclusion

For these reasons, the Planning Commission should not stay its decision concerning the Smith Mountain Lake Project. The Commission should limit its review of the Project to the question of whether the Project is in substantial accordance with the County's Comprehensive Plan and should not entertain Bedford Weaving's improper argument that the Authority lacks the power to undertake the Project. The Planning Commission has sufficient information concerning the environmental impact of the Project to render a decision.

Respectfully Submitted,

BEDFORD REGIONAL WATER AUTHORITY

By:  _____
Of Counsel

Harwell M. Darby, Jr. (VSB # 14737)
Email: hdarby@glennfeldmann.com
Mark E. Feldmann (VSB # 13259)
Email: mfeldmann@glennfeldmann.com
Andrea K. Hopkins (VSB # 85093)
Email: ahopkins@glennfeldmann.com
Glenn, Feldmann, Darby & Goodlatte
37 Campbell Avenue, S.W.

P.O. Box 2887
Roanoke, Virginia 24001-2887
Telephone: (540) 224-8000
Facsimile: (540) 224-8050

Counsel for Bedford Regional Water Authority

