

## **Barkeyville asphalt plant**

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# No ruling issued on asphalt plant restraining order

► **Meanwhile, construction continues at the Barkeyville site as the matter works its way through the court system.**

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The future of an asphalt plant is still up in the air following a hearing to determine if construction in the Barkeyville Industrial Park should temporarily come to a halt.

A judge did not issue a ruling on the matter following a hearing Friday, and it could be more than two weeks before one is handed down.

Meanwhile, as the matter works its way through the court system, crews will continue plugging away to construct the \$4.8 — \$5 million plant, according to the company's executive vice president.

Residents Carol and Bill Coursen, Randy and Susie Martin and Joe Jenkins have filed a petition for a restraining order against Glenn O. Hawbaker, Inc. — a State College-based business in the process of building the 25-plus-acre facility along Stevenson Road in Barkeyville

Borough. The petition asks the court to stop construction on the asphalt plant until a hearing before the Barkeyville Borough zoning appeal board is completed.

Robert Varsek, an attorney representing the residents, said his clients tried to take the matter to the borough's zoning hearing board, but had no luck.

"We're here because the board is doing absolutely nothing. I don't even know if there is a (zoning hearing) board," he said.

The petitioners requested a zoning appeal hearing in February challenging the legality of the zoning permit granted to Hawbaker from former Barkeyville Borough zoning officer Gary Dovey, an Oil Region Alliance of Business, Industry and Tourism employee, had an inherent conflict of interest in granting the zoning permit because the ORA was charged with selling the properties in the industrial park.

Bill Coursen, a resident of Barkeyville Borough and former Barkeyville Borough Planning Commission member, said the construction of the asphalt plant is in violation of the borough zoning ordinance.

"It was unacceptable because it re-

quired an air permit," Coursen said.

According to the petition, the asphalt plant will emit noxious and harmful gases that could cause cancer and pollute the local air and water ways, and is in direct violation of the borough zoning ordinance. The petition includes portions of the zoning ordinance that forbids "any noxious, toxic or corrosive fumes or gases nor shall it emit any offensive odors."

"I went to the borough council meeting. I asked council and the zoning officer to reconsider," Coursen said.

After talking to Dovey, Coursen said he was under the impression Dovey would talk to an attorney and get back to him in March.

"I went away from that meeting thinking, 'Hey, they are going to do what they said they're going to do,'" Coursen said. But he never heard anything from the zoning hearing board, he said.

After getting no response from the zoning hearing board, Coursen said he wrote a letter and hand-delivered it to the president of Barkeyville Borough Council.

"We were just trying to have someone address our appeal," he said.

Still, Coursen said, he received no response.

In the meantime, Dovey resigned and a new zoning hearing officer, William Walker, was hired. Coursen said he contacted Dovey, but Dovey knew nothing about the request to put a hold on building at the site while a hearing was pursued.

Getting nowhere with the borough, Coursen said he and other residents turned to the court.

"We didn't get any communication from anybody that they were going to address us in any way, shape or form," Coursen said. "We just want to be heard here."

But an attorney representing Hawbaker argued the petitioners did not have the authority to pursue the matter in court, that their arguments don't meet the criteria under Pennsylvania law for a common law injunction.

David L. Hotchkiss asked the court to dismiss the petition.

Varsek argued that the petitioners can pursue the matter in court because they

have exhausted other options to get the matter before the zoning hearing board.

"No one's done anything to acknowledge this appeal or the petitioners' right to appeal in this matter," Varsek said.

"This particular statute we're relying on here today indicates the stay has to be issued by the court," he said.

Visiting judge William F. Morgar president judge of the 37<sup>th</sup> Judicial District, is giving both sides time to file brief in the matter. Ultimately Morgan will decide if the restraining order will be granted.

Meanwhile, \$1.9 million has already been sunk into the asphalt plant, according to Mike Hawbaker, executive vice president of Glenn O. Hawbaker Inc. Work will continue, he said while the matter travels through the court system.

Hawbaker admits his company is taking a risk by continuing to build, but is confident what they have done has been in compliance with the law.

"There is a risk with everything," Hawbaker said. "We believe the work we have done there is within the rule of the law."