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RECORD NO. 21-0579



IN THE
**SUPREME COURT OF APPEALS
OF WEST VIRGINIA**

CITY OF MARTINSBURG,

FILE COPY

Defendant below,

Petitioner,

vs.

**COUNTY COUNCIL OF BERKELEY COUNTY,
a West Virginia public corporation,**

Plaintiff below,

Respondents.

ON APPEAL FROM THE CIRCUIT COURT OF BERKELEY COUNTY
(CIVIL ACTION NO. 21-C-14)

**REPLY BRIEF OF PETITIONER,
CITY OF MARTINSBURG, WEST VIRGINIA**

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I. POINTS AND AUTHORITY

THE CIRCUIT COURT WAS CLEARLY WRONG IN EXEMPTING THE COUNTY FROM COMPLYING WITH THE CITY OF MARTINSBURG'S STORMWATER MANAGEMENT ORDINANCE.

The Respondent and the Court confuse the requirement to comply with the Stormwater Ordinance and a Building Permit. The Stormwater Ordinance requires that the Respondent provide an Erosion & Sediment Control Plan, Stormwater Management Plan and Maintenance Schedule of said facilities to protect the public from excessive runoff and ensure the quality of the Stormwater that will be entering into the public waterways.

Further, the Respondent has postulated that the matter is moot because they have completed the project. The construction of the project is complete; however, the County continues to violate the Stormwater Ordinance by failing to provide the Stormwater Management Plan and Maintenance Schedule. The continued non-compliance shows the Respondent's intentional disregard of the requirements imposed by the US Environmental Protection Agency and the West Virginia Department of Environmental Protection upon the City of Martinsburg as MS4 permit holder. The failure of the City to enforce these requirements will result in fines and required corrective actions that will cost the Citizens of Martinsburg millions of dollars.

The Respondent is correct that they hold an MS4 permit; however, it expressly excludes their authority and responsibility to enforce the stormwater regulations within the corporate limits of the City of Martinsburg.

West Virginia Department of Environmental Protection, under general permit WV030017, as authorized by 47 CSR 10. The City of Martinsburg was designated a MS4 community and is required to comply with the MS4 permitted requirements, including the requirement that it enact and enforce a Stormwater Management Ordinance. Failure to have

compliance with its Stormwater Management Ordinance and its MS4 permit can result in sanctions to the City.


II. CONCLUSION

The Circuit Court clearly erred by disregarding the plain and unambiguous language of West Virginia Code § 8A-7-1. The Stormwater Management Ordinance is authorized by authority granted to the City of Martinsburg pursuant to West Virginia Code § 8A-7-1, et seq., and MS4 permit WV030017, issued by the West Virginia Department of Environmental Protection under the authority of 47 CSR 10. The requirement that the County comply with the Stormwater Management Ordinance is not prohibited by West Virginia Code § 8-12-14.

The Court should dissolve the permanent injunction and require that the County comply with the requirements of the Stormwater Management Ordinance, including the filing of the Stormwater Management Plan and Maintenance Schedule.

Further, this Court should find that the County comply with the Stormwater Management Ordinance.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that I served this **Reply Brief of Petitioner, City of Martinsburg**, upon the below-named individual on the date indicated by email this 29th day of December 2021.

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