

# Waugh Chapel development endures hurdles, set to open in March

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Brian Gibbons says he likes to work on "projects that have stories."



By Laura-Chase McGehee — The Capital

A worker walks across the roofline of a Wegmans grocery store that's under construction at the Waugh Chapel Towne Centre on Route 3 South in Gambrills. The center is being built on top of a coal fly ash landfill that contaminated nearby drinking water wells.

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Boy, did he ever find a story in Gambrills.

In a few months, Gibbons and his company, Greenberg Gibbons Commercial, will open the first store at the Waugh Chapel Towne Centre - a Target - followed several months later by a much-anticipated Wegmans.

The company and its development partners have weathered zoning challenges, battles with anti-Wegmans union activists, a class-action lawsuit, a major environmental contamination and bad publicity.

Through more than a decade of drama over the Waugh Chapel site, Gibbons said he never lost faith.

"I don't think we have had a doubt along the way."

Today, the Waugh Chapel site is a hive of activity.

Inside the Target, workers install fixtures. The signs for departments hang from the ceiling and the green Starbucks mermaid logo is in place where cappuccinos will be served.

The Dick's Sporting Goods is nearing completion, too, while the Wegmans supermarket is a shell of steel beams.

A fire pit and outdoor entertainment area is being bricked in and a spot for next year's Christmas tree has been picked.

The path began in 1994 when Reliable Contracting started excavating sand and gravel from the site. The Crofton-west county area is rich in sand and gravel reserves, and several mining operations are active in the area.

Digging out the sand and gravel leaves a giant hole, and the plan was to fill it in and build a development on top, said Jay Baldwin, Reliable's president.

In 1995, a Reliable-affiliated company called BBSS arranged for Constellation Energy to start filling in the holes with fly ash from its power plants, including Brandon Shores in Pasadena. Powdery fly ash is a by-product of burning coal. Constellation also had used fly ash as fill material at what is now an industrial park across from the power plant in Pasadena.

By 1999, monitoring wells operated by Constellation found high levels of sulfate in the groundwater - an indication of possible leaching of fly ash into the groundwater. And in 2003, Constellation put in a system to treat some of the groundwater.

Meanwhile, Reliable struck a deal with Greenberg Gibbons to be the developer for the Waugh Chapel site.

Baldwin said Reliable, at the time, was doing work on the original Village at Waugh Chapel, which sits next door to the mine-turned-fly ash-landfill. Baldwin liked the work that Greenberg Gibbons was doing.

At worst, Baldwin thought his biggest challenge would be dealing with worries from neighbors about increased traffic on Route 3. The fly ash problem proved a much bigger hurdle.

In 2003, Reliable got the County Council to approve changes to the county general development plan that would pave the way for the land to eventually be rezoned for a mixed use development.

By 2006, though, the county's Health Department got involved after more of Constellation's monitoring wells showed possible contamination. The county tested wells at private homes near the site and found high levels of heavy metals. In mid-2007, the fly ash was definitively fingered as the cause.

The state slapped Constellation with a \$1 million fine and set out strict rules for minimizing the spread of contamination. Capping and paving over the site for the Waugh Chapel Towne Centre was a central part of a consent decree signed by the Maryland Department of the Environment, Constellation and BBSS.

Nearby residents also sued, and eventually got hooked to the public water supply by Constellation as part of their multimillion-dollar settlement.

## **More challenges**

But the legal issues for Reliable and Greenberg Gibbons were just beginning.

After the resolving the first legal troubles and some routine zoning objections, Reliable and Greenberg Gibbons faced more hurdles.

The challenges included appeals and lawsuits on every front possible: mining permit renewals, the zoning change, a tax financing deal, the consent decree, even grading and building permits for tenants at the Waugh Chapel Towne Center.

The appeals were filed by local residents, all represented by environmental attorney G. Macy Nelson of Towson.

Only two of the challenges remain.

Greenberg Gibbons officials have alleged in a federal lawsuit that the series of challenges were bankrolled by grocery store unions opposing the non-union Wegmans store. Greenberg Gibbons claims the environmental concerns raised in the challenges are just window dressing - that the real attempt is to get Wegmans to withdraw or to disrupt financing.

Nelson denies the allegations.

"I represent citizens in this case. Give me a break," he said. "I'm so sick of that crap."

Nelson is not named in the federal lawsuit, nor are his clients. Rather, the lawsuit is aimed at three grocery unions.

The union officials could not be reached for comment last week, and they have not returned calls from The Capital in the past.

In court filings, attorneys for the unions claim that if such actions were taken by the unions, they don't qualify as illegal.

The complaints from Nelson's clients have dwindled as the opening of the Waugh Chapel Towne Centre approaches.

This fall, Nelson's clients tried to appeal grading and building permits, but he withdrew the appeal after he saw how far along the construction was. It's clear that the Waugh Chapel Towne Centre can't be blocked, but Nelson thinks he'll be vindicated.

His experts claim the groundwater contamination might be stretching farther away from the site. And they say the cap-and-redevelop approach won't work.

"Fifteen years from now, people will say we were right and they were wrong," Nelson said.

## **Extra precautions**

Gibbons and Baldwin are convinced that they are the ones who are right.

They believe the state-mandated precautions they've taken will prevent the groundwater contamination from getting worse.

About 40 percent of the Waugh Chapel Towne Centre has no fly ash beneath it.

On the other 60 percent, there's a cap below the surface. As well, the site has special features designed to keep any rainfall or other water from seeping down to where the fly ash sits.

"We had a lot of extra precautions that worked," said Robert Scrivener, who heads up Reliable's asphalt operations and is involved with Waugh Chapel.

The extra requirements added about \$8 million to the cost of the Waugh Chapel Towne Centre. The project's value is pegged at \$250 million to \$300 million.

The bills also have piled up for fending off the legal challenges. Asked for specifics on his legal fees, Gibbons would only say, "We have several million dollars of damages."

In the federal lawsuit, Greenberg Gibbons is seeking \$25 million in damages from the unions for Waugh Chapel and \$2 million for a project in Prince George's County.

## **'Great project'**

The fact that the Village at Waugh Chapel has survived a uniquely intense set of zoning and legal battles and a downturn in the economy is a testament to the project's strengths, Gibbons said.

The area surrounding Waugh Chapel - Crofton, Gambrills, Odenton - has a developer's dream demographics: affluent, educated and growing, thanks to new jobs coming to nearby Fort George G. Meade.

"Design a great project in a great market and you'll do fine," Gibbons said.