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FORKS OF THE PATUXENT
IMPROVEMENT ASSOCIATION,
INC., ET AL.

Petitioner

v.

NATIONAL WASTE MANAGERS, INC.

Respondent

* IN THE
* CIRCUIT COURT FOR
* ANNE ARUNDEL COUNTY
* MARYLAND
* Case No.: C-02-CV-18-003469

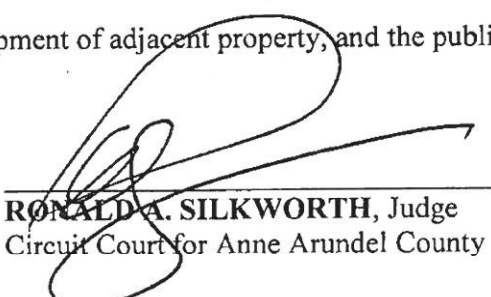
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ORDER

This matter came before the Court on April 29, 2019, for a hearing on Petitioner's administrative appeal from a decision entitled Supplemental Memorandum of Opinion by the Anne Arundel County Board of Appeals, issued on October 19, 2018. The Court held the matter *sub curia*. Upon consideration of the oral and written arguments submitted, it is this 19th day of June 2019, by the Circuit Court for Anne Arundel County, hereby

ORDERED, that the Supplemental Memorandum of Opinion by the Anne Arundel County Board of Appeals, issued on October 19, 2018, is **REMANDED** to the Board of Appeals with instructions to comply with the remand instruction of the Court of Appeals and take into account the impact, if any, of the requested extension beyond 2017 on the character of the neighborhood, the appropriate use or development of adjacent property, and the public welfare.¹

6/19/2019
Date


RONALD A. SILKWORTH, Judge
Circuit Court for Anne Arundel County

¹ Respondent National Waste Managers, Inc. ("National Waste") has been working towards developing a landfill on a certain 481-acre site in Odenton, Maryland, since 1990. For the past 25 years or so, the parties have been embroiled in contentious litigation involving numerous administrative hearings. In 2017, the case came before the Court of Appeals, *Nat'l Waste Managers, Inc. v. Forks of the Patuxent Improvement Ass'n, Inc.*, 453 Md. 423, 162 A.3d 874 (2017), which aptly summarized the history of these parties' ongoing conflict. As such, this Court shall only review the history of the case that is immediately relevant to the instant matter.

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To build a landfill, National Waste needs a permit from the State and another from the county. For various reasons detailed in the Court of Appeals' 2017 opinion, since the case's inception, National Waste has received several variances extending the time for National Waste to complete the permit process with the State. In 2012, National Waste once again sought an extension of time to complete the State permit process. An Administrative Hearing Officer denied the request, and National Waste appealed to the Anne Arundel County Board of Appeals ("the Board"). On December 27, 2013, the Board issued a split decision, wherein half the four (4) sitting members voted to approve the extension, and the other half voted to deny it. When, as here, the Board reaches a split decision, the result is denial for the appealing party. National Waste again appealed, and the case eventually reached the Court of Appeals, where the Board's decision was reversed. *Nat'l Waste*, 453 Md. at 446, 162 A.3d at 887-88.

This matter came to the Anne Arundel County Board of Appeals ("the Board") on July 25, 2018, on remand from the Court of Appeals. See *Nat'l Waste Managers, Inc. v. Forks of the Patuxent Improvement Ass'n, Inc.*, 453 Md. 423, 446, 162 A.3d 874, 887-88 (2017). On remand, the Court of Appeals instructed the Board to:

address and resolve the relevant issue which, in 2013, when the decision was made, was what the impact, if any, the requested two-year extension to 2015 would have on the character of the neighborhood, the appropriate use or development of adjacent property, or the public welfare, accepting as fact that there was no lack of diligence on the part of National [Waste] or adverse impact on the neighborhood or adjacent property warranting a rejection of an extension as of the Board's decision in 2011. That, of course, has become more complicated by the passage of time and the effect of tolling. In some manner, the Board will have to take into account the impact of the requested extension beyond 2017.

Nat'l Waste Managers, Inc., 453 Md. at 446, 162 A.3d at 887.

In its Supplemental Memorandum of Opinion issued on October 19, 2018, the Board approved and adopted the findings and reasoning of the two (2) members who voted to grant the extension and rejected, as clearly erroneous, those of the two (2) members who voted to deny it. The Board then turned to the issue of the impact of the further passage of time on the appeal. The Board reviewed and analyzed both the County Code and case law in considering whether tolling is appropriate. As to the County Code, the Board found that the plain language of § 18-16-405(c) clearly allowed for tolling during the "pendency of litigation." As to case law, the Board noted a "rare occurrence" in which the Court of Special Appeals had previously concluded that tolling is appropriate in a case involving National Waste and this very landfill. See *Nat'l Waste Managers, Inc. v. Anne Arundel Cty.*, 135 Md. App. 585 (2000). The Board pointed out that the Court of Appeals cited the Court of Special Appeals' 2000 *Nat'l Waste* opinion in *City of Bowie v. Prince George's Cty.*, 384 Md. 413, 439, 863 A.2d 976, 991(2004), where the Court of Appeals, in granting a similar variance, declared the following:

[W]e are confident that we have not occasioned any mischief because such a provision serves to protect the rights of the developer, while permitting a challenging party to proceed with its petition for judicial review, by avoiding a war of attrition, motive or effect. What we do is to avoid the mischief that could otherwise occur if litigation is used solely to cause administrative deadlines to be missed.

The Board found this reasoning compelling and, having already determined that the County Code permitted tolling during ongoing litigation, held that tolling is still appropriate despite the passage of time.

While this Court finds the Board's treatment of the issue of tolling to be sound, nowhere in the Board's supplemental opinion does it address the impact of the requested extension beyond 2017 on the character of the neighborhood, the appropriate use or development of adjacent property, or the public welfare, as the Court of Appeals directed it to do. Accordingly, this Court shall remand this case back to the Board so that it may address and articulate its findings as to these issues that the Court of Appeals directed it to consider.