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December 9, 2020

**Kelly Phillips Kenney**  
**Supervising County Attorney**

Douglas Clark Hollmann, Administrative Hearing Officer  
Arundel Center  
Annapolis, Maryland 21401

*Via email only*

Re: National Waste Managers/Chesapeake Terrace

Dear Mr. Hollmann:

By letter dated December 4, 2020, you asked this Office to weigh in on the December 2, 2020 letter from Joseph Devlin on behalf of Forks of the Patuxent Improvement Association, Inc. We reviewed that letter, along with the December 4, 2020 response from Susanne Henley on behalf of National Waste Managers ("NWM").

While the prior time extension is still under appeal, this Office agrees that it would be prudent to delay a hearing on NWM's most recent request for time extension variances. As discussed below, our Office is of the opinion that would be premature to consider the new time extension requests given the posture of the last time extension requests, and moving forward at this point could possibly lead to illogical results.

The last time extensions are still pending final decision on remand to the Board of Appeals (the "Board"), and any such decision will have a bearing on the most recent time extension application. The outcome of the remand may very well have an impact on whether a further time extension is necessary, as well as the scope of any future time variance. More or less, a final decision on the prior time extension seems to be a prerequisite to considering a further time extension. This Office notes that Ms. Henley and Mr. Devlin have disputing views as to whether the prior time extension is valid or whether it has been vacated. Regardless of which position is correct, the matter has clearly been remanded back to the Board for further consideration and elaboration, and until that occurs and any associated appeals are exhausted, there is no final decision.

Until is known what the ultimate final decision is on the prior time extension, it would be hard to move forward to render a decision on a further time extension. Whether or not the question is seen as “jurisdictional”, it seems clear to this Office that going forward at this time could lead to potentially conflicting results. For example, if the ultimate decision of Board is to grant the prior time extension, the time frame of that extension is currently unknown, so the time frame for your Office to grant any further extension is also unknown. If this were to happen, there could theoretically be conflicting time frames for which the time extension might be valid if you were to grant a time extension variance before the Board renders a determination on the prior time extension. Similarly, if the Board decides not to grant the time extension, but your Office did grant a further time extension, it would result in a time extension being granted by your Office on a special exception that might end up no longer being valid. Further, granting a time extension at this point presumably would be of no consequence without the intervening time extension being finally decided.

Postponing the hearing to a time when the current appeal is resolved appears to be most prudent course of action. NWM has still preserved their rights by requesting a time extension so that in the event that a further time extension is needed after the current appeal is resolved, it can be after that point. The position of the County or this Office is not taken with any ill will or to interfere with NWM’s application, but merely to set forth our legal opinion on this issue.

If I can be of any further assistance, please do not hesitate to contact me. I am happy to answer any questions you have, and can be present at the January 5<sup>th</sup> hearing as necessary.

Very truly yours,

*/s/ Kelly Phillips Kenney*

Kelly Phillips Kenney  
Supervising County Attorney

cc: Joseph Devlin, Esq.  
Susanne Henley, Esq.  
Rob Konowal, Office of Planning and Zoning