

NATIONAL WASTE MANAGERS, INC. * IN THE
Plaintiff * CIRCUIT COURT FOR
v. * ANNE ARUNDEL COUNTY
ANNE ARUNDEL COUNTY, ET AL. * MARYLAND
Defendants * Case No.: C-02-CV-20-002291

* * * * *

MEMORANDUM OPINION

This matter came before the Court on April 19, 2021 for a motions hearing. Plaintiff, National Waste Managers, Inc. (“NWM”), filed a Motion for Summary Judgment, Defendants Anne Arundel County, Steuart Pittman, Gregory Swain, and Steve Kaii-Ziegler (collectively the “County”) filed a Cross-Motion for Summary Judgment, and Defendants Maryland Department of the Environment and Andrew Grenzer (collectively “MDE”) filed a Motion to Dismiss. The issues and arguments from each party are closely intertwined. Therefore, for the purpose of procedural expedience and judicial economy, the Court heard all pending motions at the same time.

Upon consideration of the record, arguments of the parties, testimony taken, evidence presented, and all pending motions and responses thereto, the Court makes the following conclusions.

BACKGROUND

This case concerns the continuous efforts of NWM to develop the Chesapeake Terrace Rubble Landfill (the “landfill”) in Anne Arundel County. Since first filing for its permit in December 1988, NWM has been in near constant litigation with the County for the past 30 years. The issues involved around the landfill permit application process have been brought before the

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Anne Arundel County Circuit Court, Court of Special Appeals, and Court of Appeals involving multiple separate cases. The crux of this 30-year endeavor has revolved specifically around the special exception that was granted to NWM by the Anne Arundel County Board of Appeals (the “Board”) which allows NWM to continue the permit process. Below is a brief summary of the procedural history.¹

In December 1988 NWM applied for a refuse disposal permit from MDE to construct and operate the landfill. In 1990 NWM sought a special exception and variance from the County because the district was zoned for rural agricultural usage. A County Administrative Hearing Officer initially denied the request, but on appeal the Board granted the special exception. The Board stated that the exception is contingent on NWM using a portion of Conway Road as the entrance to the landfill and NWM must purchase the land used as the access point in fee simple. The Board specified that the land must be purchased before beginning “operations.”

The County appealed the Board decision while also refusing to include the landfill in their Solid Waste Management Plan (“SWMP”) as well as refusing to send a letter to MDE stating that NWM is in conformance with all local zoning regulations. This letter of compliance is required by Section 9-210(b) of the Environment Article of the Maryland Code to continue the application process. In 1995 the Court of Appeals affirmed the Board’s decision to grant the special exception. *See Halle Companies v. Crofton Civic Ass’n*, 339 Md. 131 (1995).

The County continued its resistance against NWM and still refused to send the conformance letter or include the landfill in the SWMP. NWM then filed a Complaint in the

¹ The factual background and procedural history of this action, which are well known to the parties, will not be repeated here in detail. To the extent necessary for the Court to rule on the motions, any facts set forth in this Memorandum Opinion are as alleged in the Plaintiff’s Complaint, Defendants’ Answers, Plaintiff’s Motion for Summary Judgment, Defendant County’s Cross-Motion for Summary Judgment, and Defendant MDE’s Motion to Dismiss, and all responses thereto.

Anne Arundel Circuit Court seeking a mandamus and declaratory judgment. Partial summary judgment was granted for NWM and the County once again refused to issue a conformance letter or include the landfill in the SWMP. NWM then filed for contempt and in 1997 the Court issued a Contempt Order fining the County \$250,000.00 and stating that they can purge the contempt by issuing the conformance letter and including the landfill in the SWMP. The Contempt Order also stated that NWM met all zoning regulations even though the property for the access point was owned by third parties and that NWM did not have to purchase the property for the entrance until landfill operations began.

The County finally complied with the numerous Court Orders and sent the conformance letter on August 4, 1997. However, three months later the County sent another letter to MDE stating that the exception had expired. In 2000 the Court of Special Appeals held that the deadline for the exception was tolled during litigation. *See Nat'l Waste Managers, Inc. v. Anne Arundel Cty.*, 135 Md. App. 585 (2000). Following the Court of Special Appeals' decision, the County sent another conformance letter in 2001 and added the landfill to the SWMP.

The Anne Arundel County Code requires NWM to continually request an extension for their special exception. Anne Arundel, Md., Administrative Hearings § 18-16-405(a). The Board has granted an extension to the special exception three times. In 2013 the Board denied the fourth extension with a 2-2 vote and NWM appealed. In 2017 the Court of Appeals remanded the case back to the Board. *See Nat'l Waste Managers, Inc. v. Forks of the Patuxent Improvement Ass'n, Inc.*, 453 Md. 423 (2017). The Board then granted the extension in 2018. In response, the County appealed the Board decision and in October of 2020 the Court of Special Appeals remanded the case back to the Board once again for further consideration. *See Nat'l Waste Managers, Inc. v. Forks of the Patuxent Improvement Ass'n*, 2020 WL 5870525 (Md. Ct. Spec.

App. Oct. 2, 2020). The Board has not yet made their decision regarding the fourth extension. A hearing is currently scheduled for June 23, 2021. NWM has also applied for a fifth extension.

The impetus of this current litigation occurred in March 2020 when the County purchased three parcels of land for the alleged purpose of constructing a school. The land acquired is part of the access point that NWM would need to acquire to comply with the special exception. The County has repeatedly stated they have no intention of selling the property to NWM. Additionally, the County owns the WB&A Trail which runs across the across the access point and the County believes the trail cannot be used for the purpose of the landfill.

The County then proceeded to send two letters to MDE stating that NWM was no longer in conformance with the special exception and the permit process should be halted. One letter was sent by County Executive Steaurt Pittman on August 21, 2020 and a second letter was sent by County Attorney Gregory Swain on October 2, 2020. Upon receiving the letters, MDE stopped NWM's application process. NWM once again filed a Complaint for declaratory relief and mandamus requesting the Court to declare the landfill to be in compliance, to declare the County has a statutory duty to issue a written statement to MDE certifying compliance, to declare that MDE violated its statutory duty by halting the review process, and issue an injunction ordering that the County send the conformance letter and ordering MDE to continue the permit application review process.

NWM filed a Motion for Summary Judgment, MDE filed a Motion to Dismiss, and the County filed a Cross Motion for Summary Judgment. After a hearing on April 19, 2021, the Court held the matter *sub curia*.

STANDARD OF REVIEW

In order to withstand a motion to dismiss, the Complaint must “allege facts which, if proven, would entitle the plaintiff to relief.” *Dick v. Mercantile-Safe Deposit & Trust Co.*, 63 Md. App. 270, 272 (1985) (quoting *Tadger v. Montgomery Cnty.*, 61 Md. App. 492, 502-03 (1985) (internal brackets in original removed). Where the facts and allegations, even if proven, would nonetheless fail to afford the plaintiff relief, dismissal is proper. See *Bd. of Educ. v. Browning*, 333 Md. 281, 286 (1994). In reviewing the Complaint, “courts must assume the truth of all well-pleaded facts in the complaint, along with any reasonable inferences derived therefrom.” *Allied Inv. Corp. v. Jasen*, 354 Md. 547, 555 (1999).

On a motion pursuant to Md. Rule 2-501, summary judgment is only appropriate “where there is no dispute as to any material fact and the moving party is entitled to judgment as a matter of law.” *Nationwide Mut. Ins. Co. v. Scherr*, 101 Md. App. 609, 694 (1994). A material fact is one “which will somehow affect the outcome of the case.” *Lynx, Inc. v. Ordnance Prods., Inc.*, 273 Md. 1, 8 (1974). In determining whether a genuine dispute of material fact exists, “the court examines the pleadings, admissions, and affidavits, etc., resolving all inferences to be drawn therefrom against the moving party.” *Gross v. Sussex, Inc.*, 332 Md. 247, 256 (1993). “In order for there to be disputed facts sufficient to render summary judgment inappropriate, ‘there must be evidence on which the jury could reasonably find for the plaintiff.’” *Homes Oil Co. v. Maryland Dep’t of Env’t*, 135 Md. App. 442, 454 (2000). “[T]he mere existence of a scintilla of evidence ... is insufficient to preclude the grant of summary judgment....” *Beatty v. Trailmaster Prod., Inc.*, 330 Md. 726, 738 (1993).

DISCUSSION

The main issue for this Court to determine is whether the County had the authority to send the two letters of non-conformance to MDE. The sole issue for Defendant MDE's Motion to Dismiss concerns whether they have a legal duty to cease the application process upon receiving said letters from Mr. Pittman and Mr. Swain.

I. Authority to Send the Letters

NWM argues that Mr. Pittman and Mr. Swain had no authority to send the letters to MDE demanding that the application process be ceased because the Planning and Zoning Officer had already stated in 2001 that NWM is in compliance with all zoning regulations. They further state that there is no statute or regulation that allows the County to change the status of NWM's conformity with the zoning regulations unless a motion is filed with the Board. The County contends that it is incumbent on County officials to notify MDE when a property is not in compliance. The County also states that the Planning and Zoning Office is under the authority of Mr. Pittman and the County is the final authority to declare if property is in compliance with any zoning regulations. Further, they argue that the letters were not making demands, but rather simply informing MDE of the facts of the case.

The Court disagrees with the County and finds that County Executive Steuart Pittman and County Attorney Gregory Swain overstepped the bounds of their authority by sending letters to MDE demanding they halt NWM's application process to operate the landfill. The Court explains its reasoning below.

First, the Court finds that the County's letters were in fact a demand to stop the application process and not merely comments as the County contends. Not only did Mr. Pittman and Mr. Swain make specific requests of MDE, they also stated conclusions of law in an attempt

to persuade MDE. In Mr. Pittman's letter he states, "The proposed project has, in point of fact, *not* satisfied all applicable county zoning and land use requirements." Mr. Pittman then continues with the reasoning for his legal conclusion, "because the applicant has *not* acquired access to the site as required by a special exception that is now more than 26 years old."

Further, Mr. Swain's letter contains even more demands and legal conclusions that the Court finds problematic. Mr. Swain states:

[T]he County Office of Planning and Zoning . . . advised that the zoning compliance was conditioned on the applicant securing specified fee simple access to the site, and nineteen years later . . . this condition has still not been satisfied. *For this reason*, the site does not have the necessary zoning approval.

(emphasis added). Mr. Swain continues, "This letter is to *request* that, at a minimum, MDE follow State law and cease processing this permit application until the statutory zoning prerequisite is satisfied." (emphasis added). Mr. Swain concludes by requesting that the entire application be denied. "Furthermore, in light of the applicant's continued failure to satisfy the zoning condition regarding access, the application should be denied. It is simply not fair to the public to allow the application to proceed under these circumstances."²

In addition to the excerpts above, MDE itself viewed the letters as an order. MDE states both in their pleadings and during the hearing that the sole reason they halted the application was due to the two letters. Further, the entire basis of their Motion to Dismiss is that they had a non-discretionary duty to simply blindly follow the County's instructions, without any analysis of the issues, and halt the application process.

The Court additionally does not find compelling the County's arguments regarding the County Executive's authority over the Planning and Zoning Office and that the County has final

² The Court finds it especially problematic and concerning that a county official would attempt to not only halt the application process, but pressure MDE to completely end NWM's application without any due process.

authority on all zoning regulations. The issue in this case is not whether Mr. Pittman has the authority to approve zoning regulations, but rather whether he has the authority to rescind or modify that approval. It is undisputed that in 2001 the Planning and Zoning Officer, Denis Canavan, sent a letter to Barry Schmidt, MDE Administrator, explicitly stating NWM “meets all applicable county zoning and land use requirements subject to the performance of the conditions required by the special exception approval” This letter clearly fulfilled the requirements of Environment Article Section 9-210(a)(3) of the Maryland Code requiring the County to provide MDE with a written statement of conformance. If the County now believes that the conditions of the special exception cannot be performed, that is a matter solely for the County Board of Appeals to determine.

The Anne Arundel County Code is clear that the proper method to suspend or rescind a zoning application with a special exception is through the Board. “On motion of the County . . . approval of an application for a . . . special exception shall be rescinded, suspended, or modified if the Administrative Hearing Officer determines, *after a hearing*, that . . . the use of the property deviates from . . . any conditions imposed.” Anne Arundel, Md., Administrative Hearings § 18-16-404 (emphasis added). Additionally, the Court has not found, and the County has not provided, any cases, statutes, rules, or regulations that allow a County Executive to circumvent the processes of the Board and order that a permit application be rescinded or halted.³ Therefore, the Court finds that the letters sent by Mr. Pittman and Mr. Swain overstepped the bounds of their authority and violated the due process rights of NWM.

Maryland common law takes seriously the fundamental rights and obligations of landowners and their ability to acquire, use, and maintain their land as permitted within the

³ During the hearing, after being explicitly asked by the Court, the County stated that they were not aware of any cases or statutes that allowed Mr. Pittman or Mr. Swain to send the letters to MDE.

confines of their property interest. The County has no authority to unilaterally decide that NWM no longer has a right to develop the property without a proper hearing by the Board. To do so would place the County as the sole arbiter in determining the rights of landowners seeking a special exception and completely invalidate the right to a hearing as put forth in the Anne Arundel County Code. NWM must be given the opportunity to plead their case before the Board and the County cannot unilaterally ignore NWM's procedural due process right to a hearing by sending what the Court sees as demand letters to MDE.

Finally, during the hearing the County additionally argued that the fourth extension period for the special exception has ended and will only be tolled if the Board makes that decision during their June 23, 2021 meeting. The Court does not find this argument compelling. On October 19, 2018 the Board granted NWM a fourth extension for two years while stating that the extension is tolled during litigation. The County appealed the Board's decision and the Court of Special Appeals remanded the issue and reaffirmed the Board's decision to have the fourth extension remain tolled. *See Nat'l Waste Managers, Inc. v. Forks of the Patuxent Improvement Ass'n*, 2020 WL 5870525 (Md. Ct. Spec. App. Oct. 2, 2020). The Board will not make their decision on the fourth extension until the June meeting and thus the Court agrees with the Board and the Court of Special Appeals that the fourth extension is tolled until then. Therefore, the County's argument is moot.

II. MDE's Motion to Dismiss

In support of their Motion to Dismiss, Defendant MDE argues that they were simply following the letter sent from Mr. Pittman that stated NWM was not in compliance with the proper zoning regulations. MDE points to Environment Article 9-210(b) which requires them to cease processing the application after the initial Phase I until they receive a written statement

from the County. Additionally, MDE states that they do not have the authority to make any determination regarding the legal arguments of NWM or the validity of the County's statements.

The Court does not find MDE's arguments persuasive. While the Court agrees that MDE should cease the application process until the County provides a written statement of compliance, it is undisputed that the County already did in fact send a written statement of compliance per Mr. Canavan's letter in 2001. As previously stated, the County has no authority to unilaterally rescind their statement of compliance and halt the application process. Nevertheless, the Court does recognize that MDE has a non-discretionary duty to follow the information given to them. However, MDE also has a duty to know and follow the proper procedure, and this duty takes precedence to any attempts of the County to skirt the due process rights of landowners.

III. Other Pending Issues

In addition to the letters sent to MDE, the parties have brought forth other issues regarding whether the special exception is still applicable given the current state of affairs. The Court shall not make a determination concerning any other pending issues in this matter. As repeatedly stated, the Court finds that the Board is the proper avenue to consider any and all modifications or rescissions to NWM's special exception. If the Court made a ruling on any other issues besides the authority of the letters, the Court would be allowing the County to go around a Board hearing, which we have already iterated is a crucial procedure in the due process rights of NWM and other landowners.

CONCLUSION

The Court finds that County Executive Steuart Pittman and County Attorney Gregory Swain had no authority to send letters to MDE demanding that NWM's permit application process be halted after a letter of compliance was previously sent by the Planning and Zoning

Office. Further, any issues concerning the relevancy, applicability, or conformity of the special exception should be brought before the Board using the proper procedures as set forth in the Anne Arundel County Code. Finally, the Court does not find it proper to issue an injunction to the County to send a new letter of conformance. Instead, the letters shall be deemed unlawful and void and the Court shall issue an injunction to MDE. The status quo shall be returned to before the letters were sent, and as agreed to, MDE will continue NWM's permit application process.⁴

For the reasons stated in this Memorandum Opinion, the Court shall enter the Order attached hereto.

5/25/21

Date



RICHARD R. TRUNNELL, Judge
Of the Circuit Court for Anne Arundel County, MD

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⁴ During the hearing counsel for MDE stated that if the Court ordered MDE to disregard the letters, they would continue NWM's permit application.