1534 Yellow Sand Ln Odenton, MD 21113-6026 March 2, 2022

Board of Appeals Anne Arundel County 44 Calvert St. Annapolis, MD 21402

Re: Appeal Hearings, BA 12-13V & BA 13-13V (CTRL Project)

Thank you for the opportunity to express my views as a "concerned citizen", who owns a home in the Two Rivers development. My wife & I moved from Illinois to Odenton nearly three years ago when I retired. A few months later, I joined a small, grassroots group of volunteers in Two Rivers to oppose the landfill. Together, we have: (1) collected & reviewed historical documents as far back as 1989; (2) issued periodic communications to the homeowners within Two Rivers; (3) contacted other like-minded civic groups such as FOTPIA; and (4) corresponded with public officials & agencies regarding the Chesapeake Terrace Rubble Landfill Project (CTRL).

Mr. Chairman, as I understand the purpose of these hearings, as you stated in your opening remarks, the BOA wants to "correct the record" for the previous BOA process that led to the approval of the 4th Time Extension on 10/19/2018. You are doing this in response to a remand from the Maryland Courts. I suspect that the testimony will also satisfy the requirement to consider the impacts on the surrounding neighborhoods, if and when, the BOA considers an appeal of the Variance Application for the 5th Time Extension, sometime later this year.

The purpose of my remarks is to bring up a few things that have not been discussed during these current Public Hearings, and to suggest a possible path forward for the BOA.

After reviewing many of the documents from the past three decades, I am reminded of the repetition faced by Bill Murray in the movie <u>Groundhog Day</u>. Every few years, there are a new set of Public Hearings, Memorandums of Opinion, rulings, appeals, and Court decisions. For the most part, the same issues keep coming up. The local homeowners & many groups within AAC oppose the landfill project, while National Waste Managers continues to advocate for their landfill project. I think that we would all agree, that the permitting process for the CTRL Project, has gone on far longer than the BOA imagined when they issued their Memorandum of Opinion (MO), with its seven Special Exceptions and one Variance, on 12/23/93. Many of us, in the room today, have "landfill fatigue".

One of the recurring issues is "access". In my view, Ms. Henley is correct when she states that the original 12/23/93 BOA MO, did not *explicitly state* that there was one specific access on Conway Road under discussion. However, the BOA MO did include a reference to: "the two owners of property along Conway Road, and both have been in contact with the Petitioners" (Halle). Furthermore, in my view, the evidence presented by Mr. Devlin & Ms. Kenney, document some of the key discussions that

occurred during the sixteen Public Hearings that were conducted by the BOA from 1991-1993. The access that was agreed to by Mr. Stephen Fleischman, a VP of Halle Company, and the BOA, was through the properties owned by Mr. Frank Stachitas & the Piney Orchard Partnership. The properties & Board Approved Access route are depicted in the 1993 Area Map on display (Enclosure 1). Unfortunately for NWM, the managers at Halle did not have written contracts in place, with Mr. Stachitas & Piney Orchard, to acquire the properties that Halle needed to access the landfill area. That was a *big mistake* on the part of Halle's management.

As we all know, the Maryland Court of Appeals, in their 1995 Halle v Crofton Civic Association Opinion, approved of the BOA's *de novo* right to specify an access point in a Special Exception: "as it is justifiable in terms relating to the public health, safety, and welfare".

One document that I have not seen introduced during these Public Hearings is a five-page letter from Ms. Henley to Kevin Dooley of the AAC Dept. of Planning & Code Enforcement, dated 5/21/96 (Enclosure 2). This is the first document that I have seen where NWM is proposing an *alternative access* to the landfill from the west end of Conway Road near the historic St John AME Zion Church. In Ms. Henley's letter, she states that: "any discussions will not constitute a commitment by either party to approve an access different from that previously proposed". It seems obvious to me, that Ms. Henley recognized that there was only one "Board Approved Access" and now a new "Desired Access". This letter helped me further understand the context of the faxed sketch from Chisholm-Weber & Dooley-Pittman, that I found when reviewing landfill files in the AAC Planning & Zoning office in 2020 (Enclosure 3).

During the period of the 4th Time Extension, there has been a *very important* development. The Stachitas property was sold to AAC. This property was subsequently transferred to the AAC School Board. Plans are underway to build a sorely needed, new elementary school on that property with a target opening in the fall of 2024. At that time, there will be close to one thousand "All Ages Homes" in the nearby Two Rivers development. These homes have many school-aged kids who are currently bussed to Piney Orchard Elementary School, five miles away.

During these Public Hearings, we have not heard of any plausible plan from NWM to acquire landfill access through the properties formerly owned by Mr. Stachitas and Piney Orchard. Therefore, in my view, it is painfully obvious that NWM will be unable to comply with one of the key Special Exceptions that was set forth in 1993 in the BOA MO.

In Enclosure 4, I have included a sketch that was created by the Two Rivers grassroots committee where I work as a volunteer. The sketch includes the landfill area, its proximity to the Two Rivers development area, the new elementary school, the BOA Approved Access route, and the Alternate Routes that have been proposed by NWM in their MDE Phase III Plan.

On 10/20/20, MDE sent a letter to NWM stating that MDE had ceased processing the State's environmental permit based on letters from Mr. Steuart Pittman & Mr. Gregory Swain stating that the landfill did not meet AAC zoning & land use requirements (Enclosure 5).

MDE resumed processing the State permit after Judge Richard Trunnell issued his Circuit Court Memorandum Opinion & Order on May 25, 2021 (Enclosure 6). Judge Trunnell ruled that Mr. Pittman & Mr. Swain did not have the authority to tell MDE to stop processing the State permit based on non-compliance with AAC development requirements.

Furthermore, Judge Trunnell went on to say that: "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". Two pages later in the Opinion, Judge Trunnell reiterates: "The Court finds that the Board is the proper avenue to consider any and all modifications or recissions to NWM's Special Exception".

In my view, Judge Trunnell has described an avenue for the BOA to stop the CTRL Project, when a decision is made regarding the Variance Application for the 5th Time Extension. According to the Judge, you have the authority to stop the 30-year nightmare, if you are so inclined.

Over the years and during these most recent Public Hearings, you have heard so many good reasons why the CTRL Project is a bad idea and is opposed by the residents who live in the surrounding residential areas. Perhaps you have had an opportunity to visit this area in the last month. If so, you may have a better understanding how this proposed landfill, a massive industrial operation, would negatively impact the local residents' enjoyment of their homes, their properties & their neighborhoods.

Over the last three decades, we have all witnessed a continuing abuse of the process & the normal time limits that AAC code sets forth between the granting of Special Exceptions & the start of construction. This abuse has been punishing to the County, the BOA, the Courts, and most importantly, the citizens & communities surrounding the landfill site. In my view, Judge Trunnell has articulated a possible path forward to finally stop this madness. I hope that you will consider the Judge's Opinion carefully as you discuss your next Memorandum of Opinion.

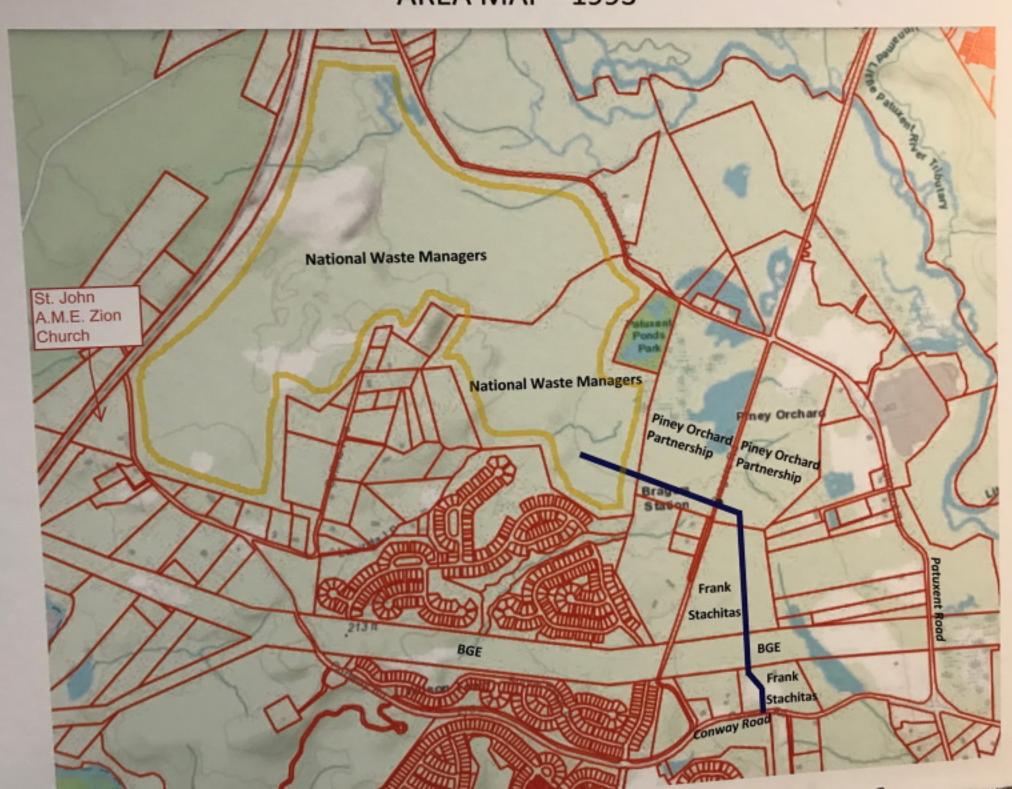
Thank you for the opportunity to express my views as a Concerned Citizen.

Very respectfully,

Enclosures

- 1. **Area Map–1993** depicting the landfill access route through the properties owned by Mr. Frank Stachitas & the Piney Orchard Partnership.
- 2. **Ms. Susanne Henley's letter** to Mr. Kevin Dooley dated 5/21/96 (5 pages).
- 3. **Faxed sketch** from Chisholm-Weber & Dooley-Pittman, found in AAC Planning & Zoning landfill files, depicting "BOA Approved Access" & NWM's new "Desired Access".
- 4. **Two Rivers prepared aerial sketch** depicting the proximity of Two Rivers, the Landfill, the new Elementary School, the BOA Approved Access, and NWM's proposed Alternative Access points by the historic St John AME Zion Church & Patuxent Rd.
- 5. Letter from MDE to NWM dated 10/20/20.
- Circuit Court Memorandum of Opinion in Case No: C-02-CV-20-002291, NWM v AAC, E-Filed Anne Arundel Circuit Court Docket 5/26/2021.

AREA MAP - 1993



1996-08

SUSANNE KOSTER HENLEY
ATTORNEY AT LAW
P.O. BOX 2356
47 WEST STREET
ANNAPOLIS, MARYLAND 21404-2356

CATHY DUNCAN ADMINISTRATIVE ASSISTANT LOCAL (410) 280-0530 BALT. (410) 269-1516 FAX (410) 280-2029

May 21, 1996

RECEIVED

MAY 22 1996

Kevin Dooley
Anne Arundel County
Department of Planning and
Code Enforcement
2664 Riva Road, Box 6675
Annapolis, Maryland 21401

PLANNING & CODE ENFORCEMENT

Re: Chesapeake Terrace

Dear Mr. Dooley:

Enclosed please find copies of the report from the Traffic Group on an extension of the entrance to the sand and gravel and rubble landfill facility farther up Conway Road. Please forward these to the appropriate person for review and comment. I understand that any comments will be preliminary and that any discussions will not constitute a commitment by either party to approve an access different from that previously proposed.

Sincerely,

Susanne Koster Henley

SKH:cd

Enclosure

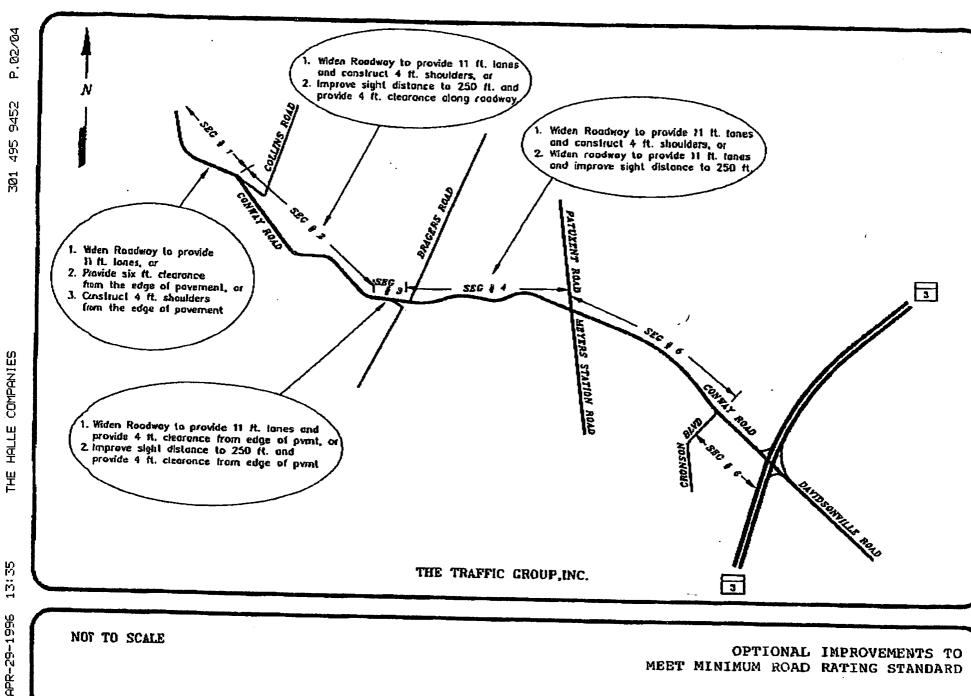
cc: Mr. Halle



286-2029

IMPORTANT FAX MESSAGE:

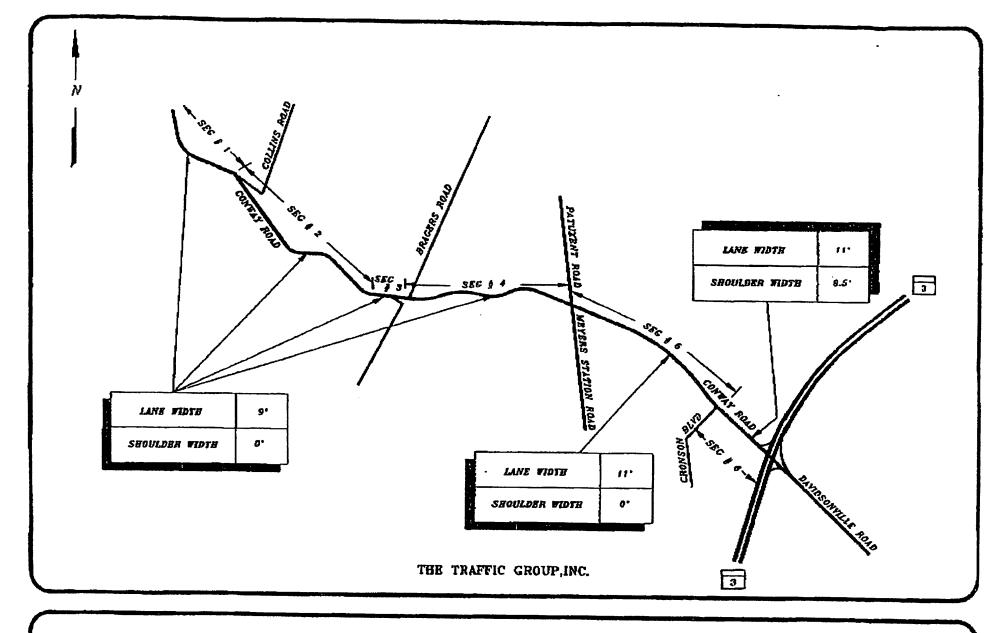
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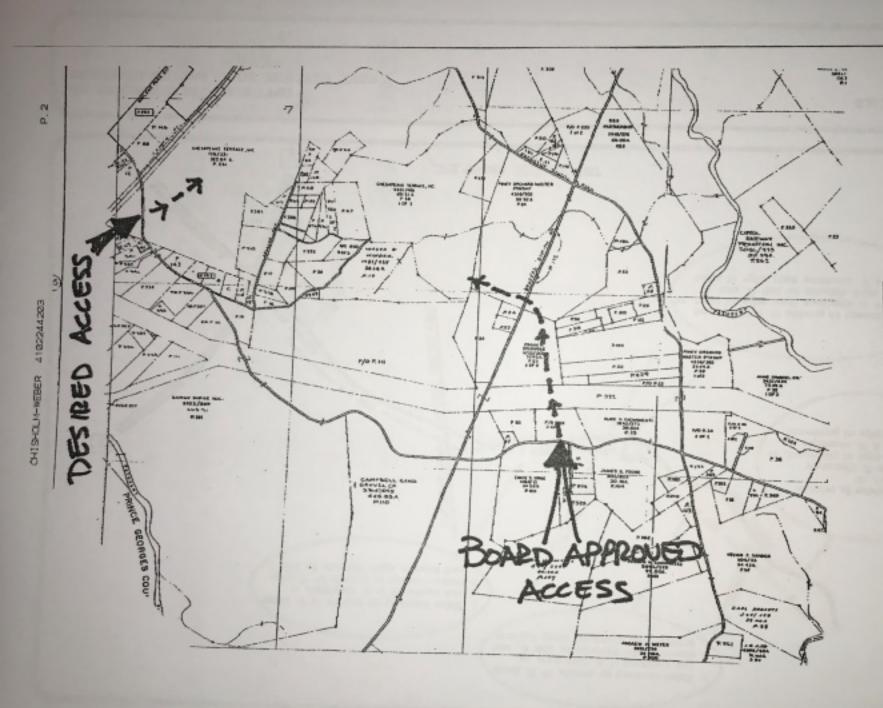
OPTIONAL IMPROVEMENTS TO MEET MINIMUM ROAD RATING STANDARD

Segment	Segme	nt Limits	Road	Rating
No.	Frem	To	Existing	Total
1	West End	Collins Road	73	64
2	Collins Road	West Quarry access	59	56
3	West Quarry access	Bragers Road	71	61
4	Bragers Road	Patuxent Road	59	61
5	Patuxent Road	Cronson Boulevard	79	75
6	Cronson Boulevard	MD 3	63	73



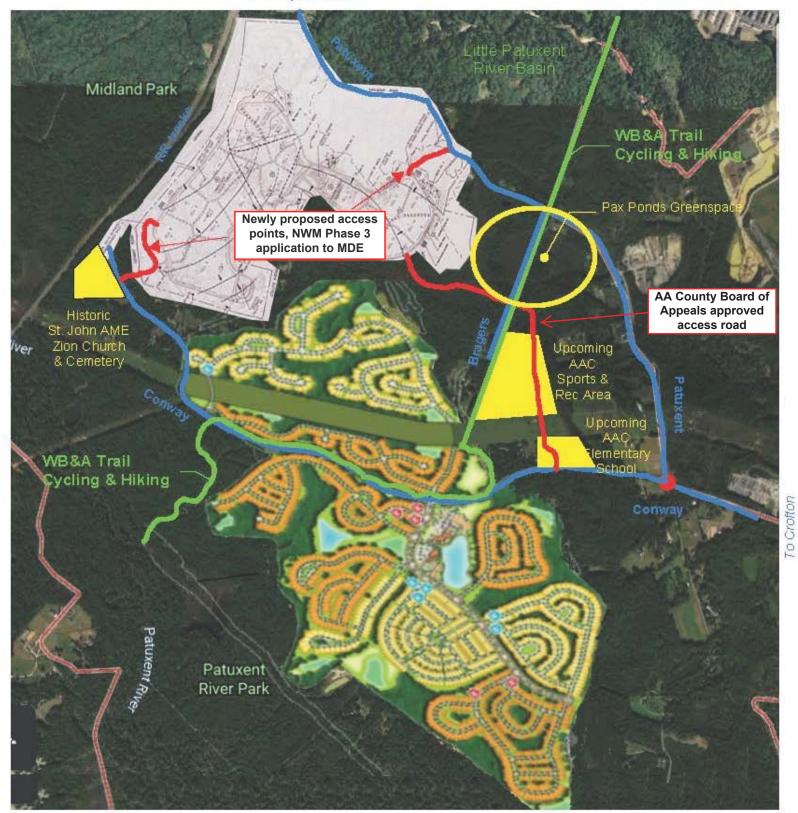
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ROAD SEGMENTS EXISTING CONDITIONS



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To Piney Orchard



Location of (Proposed) Chesapeake Terrace Landfill shown in relation to Two Rivers, Patuxent River watershed, St. John AME Zion Church and cemetery, WB&A Trail,





Larry Hogan, Governor Boyd Rutherford, Lt. Governor

Ben Grumbles, Secretary Horacio Tablada, Deputy Secretary

October 20, 2020

0CT 27 2020

AA OFFICE OF LAW

Mr. Steve Fleischman National Waste Managers, Inc. 2900 Linden Lane, Suite 300 Silver Spring, Maryland 20910

Dear Mr. Fleischman:

This letter is to update you on the status of the Maryland Department of the Environment's (MDE) review of National Waste Managers' (NWM) permit application for the proposed Chesapeake Terrace Rubble Landfill.

Under §9-210(a)(3)(i) of the Environment Article, Annotated Code of Maryland, MDE may not issue a permit for a refuse disposal system unless the County has provided a written statement that the refuse disposal system meets all applicable county zoning and land use requirements. On November 8, 2018, MDE received a letter from the Anne Arundel County Office of Law transmitting a copy of a two-year extension of the zoning special exception until October 19, 2020. The letter also noted that despite a 2014 change in county law removing rubble landfills as special exception use in residential areas, "the proposed [Chesapeake Terrace Rubble Landfill] is grandfathered and, therefore, permissible under applicable County zoning laws." MDE considered this to be a statement that the project meets applicable county zoning and land use requirements, as required under § 9-210(a)(3), and therefore proceeded with reviewing the permit application.

On July 22, 2020, MDE received the revised Phase III Engineering Plans and Specifications Report (Report) as part of NWM's permit application. MDE distributed the Report to interested agencies as listed under COMAR 26.04.07.06C on July 29, 2020. In response to our distribution, MDE received a comment letter on the Phase III permit application dated August 31, 2020 from Anne Arundel County Executive Steuart Pittman which stated, "[t]he proposed project has, in point of fact, not satisfied all applicable county zoning and land use requirements because the applicant has not acquired access to the site as required by a special exception...", granted in 1992.

Additionally, Anne Arundel County Attorney Gregory Swain, in a letter to the Maryland Office of the Attorney General (OAG) dated October 2, 2020, stated that the site does not meet all applicable County zoning requirements because NWM has not secured fee simple ownership of the access road to satisfy the 1992 special exception. In addition, the letter advised MDE that MDE's reliance on a November 2018 letter from the Anne Arundel County Office of Law that the project meets zoning requirements was in error as the Anne Arundel County Office of Law, "has no authority to grant any type of zoning approval (that authority rests with the County Planning and Zoning Officer)..."

Subsequently, MDE received from NWM a copy of an October 14, 2020 email from the Office of Planning and Zoning, which indicated that due to tolling of the special exception extension under County COVID-19 executive orders, the special exception now expires on January 14, 2021. However, based on the enclosed letters of August 31, 2020 and October 2, 2020 stating that the project does not meet all county zoning and land use requirements, MDE has ceased processing your application. Unless MDE receives an explicit statement from the Anne Arundel County Planning and Zoning Officer indicating that the project does, in fact, meet all applicable county zoning and land use requirements we will not proceed with further action on the permit application.

If you have any questions regarding this matter, please contact me at (410) 537-3315 or andrew.grenzer@maryland.gov.

Sincerely,

Andrew Grenzer, Chief

Solid Waste Operations Division

Enclosures

cc: The Honorable Steuart Pittman, Anne Arundel County Executive

Gregory Swain, Anne Arundel County Attorney Steve Kaii-Zeigler, Planning and Zoning Officer

Kaley Laleker, Director, Land and Materials Administration (LMA)

Brian Coblentz, Chief, Compliance Division, LMA

Edward Dexter, P.G., Administrator, Solid Waste Program, LMA

Samuel Ogbogu, Project Manager, Solid Waste Operations Division, LMA

Paul G. Stratman, Geologist Consultant, Advanced Geoservices

Docket: 5/26/2021 9:37 AM; Submission: 5/26/2021 9:37 AM

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

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 *Tadjer 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

05/25/2021 3:39:44 PM

Richard Trunnell

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.