

Case No.: S.E. 4605

Applicant: Barnabas Road  
Associates, LLC

COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND,  
SITTING AS THE DISTRICT COUNCIL

**SECOND ORDER OF REMAND**

IT IS HEREBY ORDERED, after review of the administrative record, that Application No. S.E. 4605, for a special exception for a concrete recycling facility on property described as approximately 13.17 acres of land in the I-1 Zone, in a larger tract of about 45 acres, located at the intersection terminus of Clifton Road, 1,150 feet south of St. Barnabas Road, identified as 4763 Clifton Road, Temple Hills, is:

REMANDED to the Zoning Hearing Examiner, for a third public hearing or hearings on this application. This second remand of this matter is required because the Examiner was not able, after the Council's first remand, on 22 February 2010, to complete all inquiries listed in the remand order. The Examiner also did not put in the record evidence offered by parties about landfill and crushing operations on and adjacent to the subject property, and she did not allow evidence of alleged illegal activities on properties allegedly owned by the same individual owners of the larger 45-acre property (in a separate corporate form) of which the subject property is a part.

After the hearing or hearings on this second remand, the Examiner should amend her decision. This second remand is for appropriate supplementations of and additions to the administrative record, and for a new decision by the Examiner, for the following reasons:

A. The District Council concludes, after review of the record made on remand, that it is still not complete. The Examiner has not included in her decision – or in the administrative record – the recent District Court of Maryland proceedings concerning Recycled Aggregates, LLC. The District Council takes administrative notice of public records showing that a corporate entity, allegedly owned by the same individual or individuals who own Barnabas Road Associates, LLC, the special exception applicant, was before the District Court on or about 15 April 2010, allegedly pleaded guilty to criminal violations of Maryland air quality laws, and allegedly agreed to pay a \$50,000 fine to the State of Maryland for operating rock-crushing or similar operations on the 45-acre tract of which the subject property is a part, without the air quality permit or permits required by State law. It appears from widely circulated press reports, and is also alleged by parties of record in this case, that Recycled Aggregates, LLC, is owned by the same person or persons that own the applicant corporation in the present case.

B. The Council further notes that in her decision, the Examiner did not carefully summarize points in the record that are not favorable to the applicant. She spent a great deal of time reviewing points that are favorable. The Examiner did not make an effort to report on all evidence in the record, as the Council asked, in the February remand order. What the Examiner did instead, in the decision filed on 23 April 2010, was call out opposition witnesses at the remand hearing by name, and then state in her decision why she did not find their testimony probative, credible, or relevant.

C. The Examiner should also report to the District Council how the subject and nearby properties – the entire 45 acres, not just the subject 13 acres – have been used in recent years, prior to and during the processing of the application. If witnesses give

testimony that Class III fill or other operations on and near the subject land have been well carried out or poorly carried out, or that rock crushing has been good or bad or indifferent, or that truck traffic has had good or bad effects, then the Examiner should note and summarize that testimony in her decision.

In the decision of 23 April 2010, the Examiner summarizes the testimony of several persons of record who complain about Class III fill activities on or next to the subject property. The Examiner dismisses these complaints as not relevant. Decision (23 April 10) at 4-6, ¶¶ 16, 20, 21. But the complaints would be relevant if the same (individual) person or persons were responsible for past violations of environmental or land use regulations and now propose a new concrete recycling operation on the same property, or adjacent property, an operation subject to numerous conditions.

D. The Examiner is not correct in her statements that "complaints arising from the operation of the Class III fill cannot be imputed to the proposed use," because concrete recycling operations have "not yet come into being." Decision (23 April 10), at 4, ¶ 16. The District Council is authorized to consider cumulative adverse effects from nearby uses, as well as prior uses by this same applicant – or other entities in the same ownership as the applicant. If the person or persons who own and operate the applicant company also own and operate the company that operates the Class III fill, and also own and operate the company that operated rock crushers in violation of Maryland air quality requirements, then the District Council can take those facts into consideration.

The Examiner's decision of 23 April 2010 has 12 conditions, including reforestation and traffic control requirements. The Examiner, in response to complaints from Victoria Park Manor residents, says that "[e]xtensive reforestation will occur,"

decision at 3, ¶ 10. But the Examiner then allows off-site reforestation, *id.* at 18, ¶ 7, which would not benefit Victoria Manor. As to traffic conditions, the Examiner suggests that the same operators who – according to opposition parties – violate air quality standards on (or adjacent to) the subject property will abide by her condition 4, which limits morning and afternoon peak-hour truck traffic trips to and from the special exception use.

The District Council would direct, on this second remand, that the Examiner use common sense, and not restrict herself to what she erroneously regards as legal strictures on the evidence. If the evidence shows that this applicant, Barnabas Road Associates, LLC, is owned and operated by the same (individual) person or persons who own and operate Recycled Aggregates, LLC; and if the evidence further shows that Recycled Aggregates, LLC, pleaded guilty to and was found guilty of criminal charges in the District Court of Maryland, on or about 15 April 2010, for violating State of Maryland air quality requirements; then the Examiner should report those facts to the District Council. The Examiner should not permit persons who engage in criminal environmental activities – if the record shows there are any – on or near the subject property to obtain a concrete recycling special exception, on the theory that they are somehow presumed willing and able to comply with detailed conditions regarding woodland conservation, noise, traffic control, and the like. If the record contains evidence of criminal environmental activities (such as operating without required air quality permits) on or adjacent to the subject property, and if it also has evidence that the same person or persons who allowed the criminal activities are owners or operators of the applicant company in this case, then those facts should be reported to the District Council.

E. At the second remand hearing, the Examiner and the People's Zoning Counsel should assist persons not represented by counsel, in the giving of testimony and other evidence.

Ordered this 20<sup>th</sup> day of September, 2010, by the following vote:

In Favor: Council Members Dernoga, Bland, Dean, Exum, Harrison, Knotts, and Olson

Opposed:

Abstained:

Absent: Council Members Campos and Turner

Vote: 7-0

COUNTY COUNCIL OF PRINCE  
GEORGE'S COUNTY, SITTING AS THE  
DISTRICT COUNCIL FOR THE  
MARYLAND-WASHINGTON REGIONAL  
DISTRICT IN PRINCE GEORGE'S  
COUNTY, MARYLAND

BY: \_\_\_\_\_  
Thomas E. Dernoga, Chairman

ATTEST:

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Redis C. Floyd  
Clerk of the Council