

**COUNTY COUNCIL OF CECIL COUNTY, MARYLAND
LEGISLATIVE SESSION DAY 13-11**

RESOLUTION NO. 57-2013

Title of Resolution: Litigation Settlement – York Building Products, Co., Inc. v. Cecil County, Maryland

Synopsis: A Resolution to settle litigation in York Building Products, Co., Inc. v. Cecil County, Maryland by restoring the zoning designation on York Building Products, Co., Inc.'s parcel 122 on Tax Map 35, Election District 5, to M-2 Heavy Industrial and to revise the County's zoning maps to reflect such zoning restoration.

Introduced by: Council President on behalf of the County Executive

Introduced and ordered posted on: June 4, 2013

Scheduled for consideration on: June 18, 2013

Notice and title of Resolution having been posted by June 7, 2013 at the County Administration Building, 200 Chesapeake Blvd., Elkton and consideration by the Council having been scheduled on June 18, 2013.

By: _____
Council Manager

1 **WHEREAS**, On April 13, 2010, the Cecil County Board of County Commissioners (the “Board”), now
2 the County Council for Cecil County, Maryland, a body corporate and politic, adopted the Cecil County
3 Comprehensive Plan (“2010 Comprehensive Plan”) in accordance with Article 66B of the Annotated Code
4 of Maryland (“Art. 66B”); and,

5 **WHEREAS**, following the adoption of the 2010 Comprehensive Plan, the Cecil County Office of
6 Planning & Zoning (“P&Z”) initiated a comprehensive rezoning process; and,

7 **WHEREAS**, following the comprehensive rezoning, York Building Products Co. Inc. (“York”), found
8 that Tax Map 35, Parcel 122 (“York’s Parcel” or “the Parcel”) continued to be zoned M-2, Heavy Industrial,
9 a zoning designation that does not allow for mineral extraction activity; and,

10 **WHEREAS**, York desired to use the Parcel in its surface mining business, and therefore submitted
11 to the Board a Comprehensive Rezoning Request, Form 05-51 (“York’s Request”); and,

12 **WHEREAS**, York’s Request sought to have the Parcel rezoned to Mineral Extraction District A
13 (“MEA”); and,

14 **WHEREAS**, MEA zoning would allow for mineral extraction on the property in question as a matter
15 of right; and,

16 **WHEREAS**, on February 9, 2011, the Cecil County Planning Commission held a public hearing at
17 which it considered York’s Request; and,

18 **WHEREAS**, following York’s presentation on its requested rezoning, the Planning Commission
19 recommended that York’s Request be disapproved; and,

20 **WHEREAS**, following the Planning Commission’s recommended disapproval of York’s Request, the
21 Board held three public meetings at which the matter of the rezoning of York’s Parcel was the subject of
22 public comment; and,

23 **WHEREAS**, on March 9, 2011, York again presented its request to have the Parcel rezoned to MEA;
24 and,

25 **WHEREAS**, after York’s presentation, the Board heard public comment on the matter; and,

26 **WHEREAS**, on April 5, 2011 and on April 19, 2011, the Board held additional public hearings at
27 which public comment was heard on York’s Request; and,

28 **WHEREAS**, following the period for public comment, a motion was made, seconded, and put to a
29 vote to rezone York’s Parcel to Northern Agricultural Residential (“NAR”); and,

30 **WHEREAS**, the motion to rezone York’s Parcel to NAR carried, and York’s Parcel was designated
31 NAR as a part of the comprehensive rezoning process; and,

32 **WHEREAS**, York subsequently filed a Petition for Judicial Review in Circuit Court for Cecil County,
33 Case Number 07-C-11-000177, and a Complaint for Declaratory Judgment and Injunctive Relief in Circuit
34 Court for Cecil County, Case Number 07-C-11-000395 (collectively, the “Litigation”); and,

35 **WHEREAS**, the County has, to-date, incurred substantial expense in defense of York’s suit, and
36 amicable resolution of the Litigation before trial will substantially benefit the citizens of Cecil County by
37 saving thousands of additional dollars in costs, attorneys’ fees, and staff time that would be required in
38 order to continue in the defense of the Litigation, including defense or prosecution of an appeal to the
39 Court of Special Appeals in Annapolis; and,

40 **WHEREAS**, restoration of the zoning designation on York’s Parcel to M-2 Heavy Industrial will not
41 allow York to engage in surface mining operations as a matter of right but, rather, will still require that
42 York apply for an MEB overlay and, further, obtain a special exception, as conditions predicate to the
43 operation of surface mining activity on York’s Parcel; and,

44 **WHEREAS**, in order to establish certainty of outcome, and to save the substantial time and
45 expense of going to trial and of defending and/or prosecuting an appeal, York and the County now desire
46 to resolve the Litigation without the necessity of a trial; and,

47 **WHEREAS**, on May 25, 2013, the Circuit Court for Cecil County entered a Consent Order (the
48 “Order”) in the Litigation, thereby vacating the Board’s April 19, 2011 rezoning of York’s Parcel from M-2
49 Heavy Industrial to Northern Agricultural Residential; and,

50 **WHEREAS**, the Order remanded the matter back to the County Council in order to restore the
51 zoning designation on York’s Parcel to M-2 Heavy Industrial and to revise the County’s zoning maps to
52 reflect the same.

53 **NOW, THEREFORE, BE IT HEREBY RESOLVED** that the zoning designation on property identified as
54 Parcel 122 on Tax Map 35, Fifth Election District, Cecil County, Maryland, be and it is hereby, restored to
55 M-2 Heavy Industrial; and,

56 **BE IT FURTHER RESOLVED** that the zoning maps for Cecil County, Maryland, be and they are
57 hereby revised to reflect the restoration of M-2 Heavy Industrial zoning of Parcel 122 on Tax Map 35, Fifth
58 Election District, Cecil County, Maryland.

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61 INTRODUCED: June 4, 2013

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63 ADOPTED: _____

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President of the Council

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69 ATTEST:

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72 Council Manager

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76 By the Executive:

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79 County Executive

Date

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PETITION OF
YORK BUILDING PRODUCTS CO., INC.
FOR JUDICIAL REVIEW OF THE DECISION
OF THE CECIL COUNTY BOARD OF
COUNTY COMMISSIONERS

IN THE CASE OF 2010 COMPREHENSIVE
REZONING REQUEST NO. 05-51,
REGARDING TAX MAP 35, PARCEL 122,
ELECTION DISTRICT 5

* * * * *

YORK BUILDING PRODCUCTS CO., INC.
Plaintiff

v.

THE BOARD OF COUNTY COMMISSIONERS
OF CECIL COUNTY, MARYLAND

Defendant

* * * * *

* IN THE CIRCUIT COURT
* FOR
* CECIL COUNTY, MARYLAND

* Case No. 07-C-11-000177

* IN THE CIRCUIT COURT

* FOR

* CECIL COUNTY, MARYLAND

* Case No. 07-C-11-000395

* * * * *

CONSENT ORDER

NOW COME the Parties, Petitioner and Plaintiff, York Building Products Co., Inc. ("York"), by and through its attorneys, Stephen Z. Meehan, Esquire and Andrew C. Meehan, Esquire, and Cecil County, Maryland, a body corporate and politic (the "County"), formerly constituted as the Board of County Commissioners of Cecil County, Maryland (the "Board"), Substitute Respondent and Defendant, by and through its attorneys, Jason L. Allison, Esquire, Jason L. Allison, P.A., the County Attorney for Cecil County, Maryland, and Clara E. Campbell, Esquire and Cameron A. Brown, Esquire, Clara E. Campbell, LLC, and consent to the entry of this Order resolving all issues in this action, and say:

1. The Parties consent to this Court vacating the Board's April 19, 2011 rezoning of property identified as Tax Map 35, Parcel 122, Election District 5 ("York's Parcel") from M-2 Heavy Industrial to Northern Agricultural Residential and, further, remanding the matter back to the County (specifically, the County Executive and the County Council) in order to restore the zoning designation on York's Parcel to M-2 Heavy Industrial and to revise the County's zoning Maps to reflect same.

2. The Parties have the authority to consent to the entry of this Order and to comply with the instructions contained herein.

NOW THEREFORE IT IS, this 2nd day of May, 2013,
by the Circuit Court for Cecil County,

ORDERED, by consent of the Parties, that the April 19, 2011 decision of the Board of County Commissioners of Cecil County rezoning York's Parcel from M-2 Heavy Industrial to Northern Agricultural Residential be and is hereby VACATED; and, it is further,

ORDERED, by consent of the Parties, that this matter be and is hereby remanded back to Cecil County, Maryland (specifically, the County Executive and the County Council) for the purpose of having the County Council restore the zoning designation on York's Parcel to M-2 Heavy Industrial and revise the Cecil County zoning Maps to reflect the restoration of said zoning designation to M-2 Heavy Industrial; and, it is further,

ORDERED, by consent of the Parties, that the Plaintiff's action for Declaratory Judgment and Injunctive Relief be and is hereby **DISMISSED**, without prejudice; and, it is further,

ORDERED, by consent of the Parties, that this Consent Order is a final judgment pursuant to Rule 2-601.



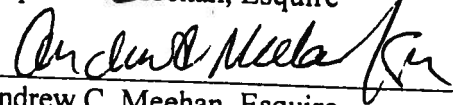
JUDGE

[APPROVAL BY COUNSEL AS TO FORM AND CONTENT ON FOLLOWING PAGE]

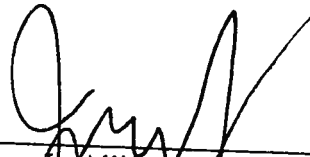
APPROVED AS TO FORM AND CONTENT:



Stephen Z. Meehan, Esquire

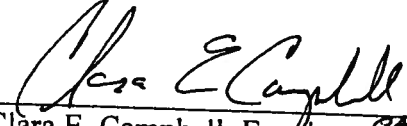


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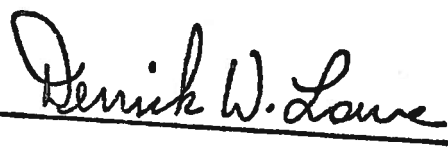


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TEST 

13 MAY 23 PM 12: 18

CECIL COUNTY, MD.
PER DERRICK W. LOWE
CLERK

LITIGATION SETTLEMENT-YORK BUILDING PRODUCTS CO.,INC. V. CECIL COUNTY,MD.

A Resolution to settle litigation in York Building Products Co., Inc. v. Cecil County, Maryland by restoring the zoning designation on York Building Products,Co. Inc.'s parcel 122 on Tax Map 35, Election District 5 to M-2 Heavy Industrial and to revise the County's zoning maps to reflect such zoning restoration.

BENEFITS OF SETTLING LITIGATION:

- 1) Eliminates the necessity of trial and associated additional expenses
 - a) Deposition of York's witnesses= 2 days,(one day of preparation (7 hours), one day of depositions (7 hours))
 - b) Preparation of trial= 2 lawyers @\$205/hr. (\$125/hr. JLA, \$80.00/hr. CB); 70-80 hrs.= \$16,400
 - c) Estimated 3 day trial=2 lawyers @\$205/hr. (\$125/hr. JLA, \$80.00/hr. CB);60 hrs. = \$12,300
 - d) Potential appeal is estimated to cost County \$10-\$12,000 in legal fees and an \$4-5,000 in additional costs.

- 2) Restoration of the zoning designation on York's parcel to M-2 Heavy Industrial will not allow York to engage in surface mining operations as a matter of right but, rather, will still require that York apply for an MEB overlay and obtain a special exception as conditions predicate to the operation of surface mining activity on York's Parcel.