

IN THE CIRCUIT COURT FOR HARFORD COUNTY

MARYLAND RECLAMATION ASSOCIATES, INC.

Plaintiff

v.

HARFORD COUNTY, MARYLAND

Defendant

Case No.

12-C-13-509

**AMENDED COMPLAINT FOR INVERSE CONDEMNATION  
AND DEMAND FOR JURY TRIAL<sup>1</sup>**

Plaintiff Maryland Reclamation Associates, Inc. (“MRA”), by and through undersigned counsel, submits this Amended Complaint for Inverse Condemnation against the Defendant Harford County, Maryland, a body corporate and politic of the State of Maryland (the “County”), and states:

**INTRODUCTION AND SUMMARY**

1. This is an action in inverse condemnation seeking just compensation for the County’s taking of MRA’s 62.35 acre property located adjacent to Gravel Hill Road and south of Webster Road in Aberdeen, Maryland with State Department of Assessments and Taxation Account Identifiers 02-069687 and 02-086816 and identified as Tax Map 44, Parcels 457 and 439 (the “Property”).

2. Having run for re-election and won on the promise that MRA will never be permitted to operate a rubble landfill on its Property, the County Council has engaged in a systematic, 20-year legislative assault on MRA in what has now become a successful attempt to wipe MRA’s rubble landfill off the County’s Solid Waste Management Plan (“SWM Plan”). Although the County has kept its political promise through the use of its legislative power, the results of its actions were to condemn MRA’s Property, depriving MRA of its

<sup>1</sup> Pursuant to Maryland Rule 2-341(e), a redlined copy comparing MRA’s Amended Complaint for Inverse Condemnation and Demand for Jury Trial dated June 15, 2015 to MRA’s Civil Complaint and Demand for Jury dated February 19, 2013 is attached hereto as *Exhibit A*.

beneficial use and interfering with its investment backed business expectations. So after 20 years, the County must now pay to MRA just compensation for the taking of its Property. Just compensation under these circumstances is an amount not less than \$100,000,000.00.

3. The County's taking of the Property violated MRA's rights under § 40 of Article III of the MARYLAND CONSTITUTION and Articles 19 and 24 of the MARYLAND DECLARATION OF RIGHTS. Specifically, the County unlawfully deprived MRA of the beneficial use of its Property. The County's actions caused the non-renewal of a permit to operate a rubble landfill on the Property issued to MRA by the Maryland Department of the Environment ("MDE").

4. Beginning on February 13, 1990, certain bills and resolutions adopted by the Harford County Council (the "County Council") set in motion a chain of events concluding with the decision of the Maryland Court of Appeals on May 7, 2010 in the case captioned *MRA v. Harford County*, 414 Md. 1 (2010), through which Bill 91-10 (Harford County Code § 267-40.1) was made applicable to the Property for the purpose of depriving MRA of the beneficial use of its Property.

5. The County's actions over many years constituted arbitrary and capricious *post hoc* zoning changes specifically and intentionally targeted and aimed at MRA to prevent MRA from operating a rubble landfill on its Property.

6. MRA demands the entry of judgment against the County and seeks an award of just compensation for the unlawful taking of the Property from MRA.

#### **THE PARTIES**

7. MRA is a Maryland corporation in good standing with its principal place of business in Harford County at 3243 Level Road, Churchville, MD 21028. MRA owns the Property.

8. The County is (a) a chartered county pursuant to Article XI-A of the MARYLAND CONSTITUTION and §§ 10-102 *et seq.* of the MD. LOCAL GOVT. CODE ANN., (b) a body corporate and politic of the State of Maryland, and (c) composed of an executive branch and a legislative branch known as the County Council.

9. The County through § 40 of Article III of the MARYLAND CONSTITUTION and § 12-401(b) of the MD. LOCAL GOVT. CODE ANN. possesses the power of eminent domain.

10. Venue is proper in this judicial district because the acts and events alleged occurred within Harford County, the Property which is the subject of this action is located within Harford County, and MRA has its principal place of business in Harford County.

**MRA'S ACQUISITION OF THE PROPERTY  
TO OPERATE A RUBBLE LANDFILL**

11. In August 1989, MRA contracted to purchase the Property with the intent to construct and operate a rubble landfill on it. The land had been mined extensively since the mid-1950s, pursuant to a valid surface mining permit issued by the State for a 7.39 acre portion of the Property. The State also had issued an industrial waste management permit covering a 28 acre portion of the property, allowing interment of broken concrete, tree stumps, and brush. This section of the Property had been used as a rubble landfill for more than four years.

12. MRA initiated the process of obtaining another rubble landfill permit for the entire Property from the MDE pursuant to §§ 9-204 through 9210 and §§ 9-501 through 9-521 of the MD. ENVIR. CODE ANN. and COMAR 26.03 through 26.04.

13. MRA requested that the County include the Property as a rubble landfill in the County's SWM Plan. The County Department of Public Works, which is part of the County's executive branch, supported MRA's application and requested that the proposed landfill include a cell for asbestos interment because the County's SWM Plan

had no designated asbestos interment sites. MRA agreed to the County Department of Public Works' requests. On November 14, 1989, the County Council passed a motion that approved the amendment of the County's SWM Plan to include MRA's Property as a rubble and asbestos landfill. The County Council also mandated 27 conditions governing the landfill's operation. MRA agreed to these conditions in discussions with the County executive branch and the County Council.

14. After County officials, including the County Executive and the County Council, indicated a positive response to MRA's proposal to operate a rubble landfill on the Property, MRA hired engineers and hydro geologists to prepare Phase I, II and III plans, as required by statute. The Phase I engineering fees were approximately \$25,000. MRA also incurred attorneys' fees and other costs associated with the Phase I study. The County encouraged MRA to go forward with Phases II and III by amending the SWM Plan to include MRA's Property.

15. On November 16, 1989, the County Council advised the MDE that MRA's Property had been included in the County's SWM Plan as a rubble landfill site as required by state law.

16. On November 20, 1989, MRA received Phase I permit approval from the MDE.

17. MRA subsequently filed its Phase II and III plans and reports with the MDE. The Phase II and III engineering fees were in excess of \$300,000, and MRA incurred additional attorneys' fees and costs.

18. Relying on the Property's inclusion in the County's SWM Plan and MDE's Phase I permit approval, MRA purchased the Property on February 9, 1990 for \$732,500, financed by an \$800,000 mortgage loan from the Bank of Maryland. A copy of the Deed is recorded among the land records of Harford County at Book 1609, Page 640.

**RESOLUTION 4-90: THE COUNTY COUNCIL'S  
ELECTION PROMISE TO PREVENT MRA FROM  
OPERATING A RUBBLE LANDFILL ON THE PROPERTY**

19. On February 13, 1990, that is four days after MRA purchased the Property, the then newly appointed County Council President, Jeffrey D. Wilson, and a then County Council Member, Joanne Parrott, introduced Resolution 4-90 which provided for the deletion of MRA's Property as a rubble landfill from the County's SWM Plan. Mr. Wilson was neither a member nor the President of the County Council when the County Council previously had voted three months earlier on November 14, 1989 to amend the County's SWM Plan to include MRA's Property as a rubble landfill. Then Council Member Parrott had abstained from the November 14, 1989 vote of the County Council.

20. The County Council adopted Resolution 4-90 on May 8, 1990, and upon notification from the County Council, the MDE stopped processing MRA's application for an expanded rubble fill permit before it completed its technical evaluation of MRA's Phase II applications.

21. MRA filed suit against the County Council and the County in the Circuit Court for Harford County (the "Circuit Court"). The Circuit Court granted MRA's motion for summary judgment and declared Resolution 4-90 void based on its determination that the County Council could not delete the proposed rubble landfill Property from its SWM Plan because (a) doing so exceeded its delegated authority, and (b) MRA had vested rights with which the County Council could not interfere. The Court of Special Appeals affirmed the Circuit Court's decision. *Holmes v. MRA*, 90 Md. App. 120 (1992), *cert. dismissed sub nom.*, 328 Md. 229 (1992).

**BILLS 91-10 AND 91-16 AND RESOLUTION 15-91:  
THE COUNTY'S ASSAULT ON MRA'S RIGHTS**

22. Between the time that MRA entered into its contract to purchase the Property in August 1989 and it closed on that Property in February 1990, the membership of the

County Council had changed. The County Council underwent further change in the November 1990 general election, when most of the former council members were replaced by newly elected members who had campaigned in opposition to MRA's operation of a rubble landfill on the Property.

23. While the litigation over Resolution 4-90 was pending in the appellate court, Bill 91-10 was introduced before the new County Council on February 12, 1991. Bill 91-10 was an emergency measure intended to make it impossible for MRA to operate the Property as a rubble landfill by proposing to amend the rubble landfill zoning requirements to increase the minimum acreage requirements, buffer requirements, and height requirements. The bill, *inter alia*, established a minimum rubble fill size of 100 acres and a buffer zone of 1,000 feet, which the sponsor of the bill, Counsel Member Theresa Pierno, knew MRA could not meet. Indeed, MRA's property is 62.35 acres in size and one of the conditions established by the County Council for the Property's inclusion into the County's SWM Plan on November 14, 1989 was that MRA establish a minimum buffer of only 200 feet.

24. After public hearings, the County Council passed Bill 91-10 on March 19, 1991, and the County Executive signed the bill into law on March 27, 1991. The ordinance, which was specifically designed to prohibit use of MRA's Property as a rubble landfill, became effective immediately, and was codified as § 267-40.1 of the Harford County Code.

25. On April 2, 1991, Bill 91-16 was introduced in the Harford County Council. This bill would have authorized the County Council to remove a specific site from the County's SWM Plan if (a) the site did not comply with certain zoning ordinances, (b) a permit had not been issued by MDE within eighteen months of the site being placed in the County's SWM Plan, or (c) the owner of the site had not placed the site in operation as a rubble landfill within eighteen months of the site being placed in the

County's SWM Plan. Bill 91-16 was passed by the County Council, signed into law by the County Executive on June 10, 1991, and was codified as § 109-8.4 of the Harford County Code.

26. In an attempt to halt the permitting process the President of the County Council, on April 25, 1991, sent a letter to the MDE, enclosing a copy of enacted Bill 91-10, and advising MDE that the provisions of the bill could call into question the status of MRA's Property which was in the process of obtaining a rubble landfill permits.

27. On May 2, 1991, the MDE advised the County Council that if a permit were to be issued to MRA, such permit would not authorize MRA to violate any local zoning or land-use requirements.

28. Also on May 2, 1991, the County's Director of Planning sent a letter to MRA informing it of Bill 91-10 and indicating that MRA's Property would fail to meet the new requirements established by Bill 91-10. MRA appealed the decision in this letter to the Harford County Board of Appeals on May 21, 1991.

29. On May 14, 1991, Resolution 15-91 was introduced in the County Council. This resolution purported to interpret local law and determine that the Property was not in compliance with law; the resolution went on to remove MRA's Property from the County's SWM Plan. The County Council passed Resolution 15-91 on June 11, 1991.

**MRA FOUGHT THE COUNTY'S UNILATERAL ATTEMPT  
TO CONDEMN ITS PROPERTY FOR NEARLY 20 YEARS UNTIL  
FINALLY EXHAUSTING ITS ADMINISTRATIVE REMEDIES  
AND JUDICIAL REVIEW THEREOF ON MAY 7, 2010**

30. On June 20, 1991, MRA filed suit in the Circuit Court against the County Council and the County seeking declarations that Bills 91-10 and 91-16 and Resolution 15-91 are invalid and inapplicable to MRA's Property.

31. On February 28, 1992, the MDE issued to MRA a permit to operate a rubble landfill on its Property. MDE expressly conditioned the permit upon MRA's compliance with all local land-use requirements.

32. On May 19, 1994, the Circuit Court upheld Bills 91-10 and 91-16 as valid but declared Resolution 15-91 invalid on its face. MRA appealed the Circuit Court's decisions that Bills 91-10 and 91-16 were valid. The County Council did not appeal the Circuit Court's decision declaring Resolution 15-91 invalid.

33. The Maryland Court of Appeals vacated the Circuit Court's decision as to the validity of Bills 91-10 and 91-16 on grounds that MRA's claims were not ripe for a judicial decision because there had not been a governmental determination that MRA could not proceed to operate a rubble landfill on its Property under its MDE permit. The Court of Appeals remanded the case for MRA to seek an interpretation as to whether Bill 91-10 applied to MRA's property or to request a zoning variance. *MRA v. Harford County*, 342 Md. 476 (1996).

34. Thereafter, MRA asked the County Zoning Administrator as whether the zoning ordinance and Bill 91-10 applied to MRA's operation of a rubble landfill on its Property. MRA also sought a zoning certificate. Following a lengthy gestation period, the Zoning Administrator ruled in a February 22, 1999 letter that Bill 91-10 applied to MRA's proposal and denied the zoning certificate application.

35. MRA filed an appeal from the Zoning Administrator's decision to the County Board of Appeals. Through its Zoning Hearing Examiner, the Board of Appeals conducted a hearing and issued a decision dated April 2, 2002 that Bill 91-10 (a) could be applied to MRA's Property, and (b) did not violate federal, state, or local laws.

36. On June 11, 2011, the County Council, sitting as the County Board of Appeals, adopted the Zoning Hearing Examiner's decision. The County, therefore,



refused to issue to MRA a grading permit or zoning certificate for the operation of a rubble landfill on the Property because it was precluded by the application of Bill 91-10.

37. MRA sought judicial review of the County Board of Appeals' decision. The Circuit Court affirmed the decision of the County Board of Appeals on October 22, 2003. MRA appealed to the Court of Special Appeals. The Court of Appeals, however, on its own initiative issued a writ of certiorari principally to determine whether the Circuit Court properly affirmed the County Board of Appeals. The Court of Appeals vacated the Circuit Court's decision holding that the doctrine of administrative remedies required MRA to seek zoning variances or exceptions. The Court of Appeals explained that MRA had only exhausted one of its two administrative remedies and thus the Circuit Court should not have issued a ruling on the merits when it did. *MRA v. Harford County*, 382 Md. 348 (2004).

38. On May 12, 2005, MRA requested variances before the County Zoning Hearing Examiner to provisions of the County Zoning Code. The Hearing Examiner held hearings over a period of 10 months and thereafter issued a decision dated February 28, 2007 that denied several of MRA's variance requests.

39. MRA appealed the County Zoning Hearing Examiner's decision to the County Board of Appeals. On June 5, 2007, the County Board of Appeals voted 7-0 to deny the variances requested by MRA, and adopted the County Zoning Hearing Examiner's decision. MRA then noted an appeal to the Circuit Court, which affirmed the findings of the County Board of Appeals in an Order filed on July 11, 2008.

40. Because MRA had sought and been denied variances, it renewed its 2003 appeal to the Circuit Court from the County Board of Appeals. On September 3, 2008, the Circuit Court affirmed its October 2003 decision.

41. MRA appealed its variance denials and the Circuit Court's affirmation of its October 2003 decision to the Court of Special Appeals. On its own initiative, the Maryland Court of Appeals granted certiorari in both matters and addressed both matters in its March 11, 2010 decision. The Court of Appeals found *inter alia* that the doctrine of zoning estoppel did not apply to prevent the County's changes to its local zoning laws, thereby confirming that Bill 91-10 did and could be applied to MRA's Property. The Court of Appeals denied MRA's reconsideration motion on May 7, 2010. *MRA v. Harford County*, 414 Md. 1 (2010).

42. Having exhausted all administrative procedures and judicial review thereof on May 7, 2010, MRA's remaining remedy is to now seek just compensation for the deliberate actions of the County Council and the County which unlawfully deprived MRA of the beneficial use of its Property by precluding it from utilizing its MDE permit to operate a rubble landfill on its Property in Harford County.

43. The County's unlawful taking of MRA's Property without payment of just compensation occurred on May 7, 2010. Through its pre-condemnation activity beginning with the introduction of Resolution 4-90 on February 13, 1990, the County interfered with MRA's beneficial use and enjoyment of its Property for more than 20 years. MRA is entitled to receive as part of its just compensation in this proceeding any diminution in value or loss caused by the actions and inactions of the County between February 13, 1990 and May 7, 2010.

**FIRST CAUSE OF ACTION  
FOR INVERSE CONDEMNATION**

**(VIOLATIONS OF § 40 OF ARTICLE III OF THE MARYLAND CONSTITUTION  
AND ARTICLES 19 AND 24 OF THE MARYLAND DECLARATION OF RIGHTS)**

44. MRA re-alleges and incorporates by reference as if fully set forth herein the allegations contained in paragraphs 1 through 43 of this Complaint.

45. In reliance on the County's existing zoning laws and the County's inclusion of MRA's Property into its SWM Plan and its MDE permit approval, MRA acquired the Property on February 9, 1990 and irrevocably committed financial resources so that it could operate a rubble landfill on the Property and ensure certainty of the income to be produced therefrom and the expected business relationships established as a result.

46. The County's actions and inactions as set forth herein were outrageous, egregious, callous, irrational, arbitrary, capricious, abusive and deliberately indifferent governmental acts in violation of the due process clauses of the MARYLAND CONSTITUTION and MARYLAND DECLARATION OF RIGHTS which assure MRA, as a property owner, the right to be free from arbitrary or irrational zoning and government actions.

47. In the absence of the County's actions and inactions which were intentionally targeted and aimed at MRA to prevent MRA from operating a rubble landfill on its Property, MRA would have achieved the beneficial use and enjoyment of its Property as a rubble landfill as well as the profit expectation commensurate with that use subsequent to November 1989.

48. The County through § 40 of Article III of the MARYLAND CONSTITUTION, and § 12-401(b) of the MD. LOCAL GOVT. CODE ANN. possesses the power of eminent domain.

49. Section 40 of Article III of the Maryland Constitution provides:

The General Assembly shall enact no Law authorizing private property to be taken for public use without just compensation, as agreed upon between the parties, or awarded by a jury, being first paid or tendered to the party entitled to such compensation.

50. Article 19 of the Maryland Declaration of Rights provides:

That every man, for any injury done to him in his person or property, ought to have remedy by the course of the Law of the Land, and ought

to have justice and right, freely without sale, fully without any denial, and speedily without delay, according to the Law of the Land.

51. Article 24 of the Maryland Declaration of Rights provides:

That no man ought to be taken or imprisoned or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or, in any manner, destroyed, or deprived of his life, liberty or property, but by the judgment of his peers, or by the Law of the land." (*amended by Chapter 681, Acts of 1977, ratified Nov. 7, 1978*).

52. Section 12-105(b) of the MD. REAL PROP. CODE ANN. defines fair market value as:

The price of the valuation date for the highest and best use of the property which a vendor, willing but not obligated to sell, would accept for the property, and which a purchaser, willing but not obligated to buy would pay, excluding any increment in value proximately caused by the public project for which the property condemned is needed. In addition, fair market value includes any amount by which the price reflects a diminution in value occurring between the effective date of legislative authority for the acquisition of the property and the date of actual taking if the trier of facts finds that the diminution in value was proximately caused by the public project for which the property condemned is needed, or by announcements or acts of the plaintiff or its officials concerning the public project, and was beyond the reasonable control of the property owner.

53. The County's unlawful taking which deprived MRA of the beneficial use of its Property without payment of just compensation occurred on May 7, 2010.

54. Through its pre-condemnation activity beginning with the introduction of Resolution 4-90 on February 13, 1990, the County interfered with MRA's beneficial use and enjoyment of its Property for more than 20 years. MRA is entitled under § 12-105(b) of the MD. REAL PROP. CODE ANN. to receive as part of its just compensation in this proceeding any diminution in value or loss caused by the actions and inactions of the County between February 13, 1990 and May 7, 2010.

55. As a direct and proximate result of the County's violations of MRA's property rights associated with the beneficial use and enjoyment of its Property, the County (a) unlawfully rendered the MRA's Property valueless, (b) caused the MDE permit authorizing the operation of rubble landfill on MRA's Property not to be renewed, and (c) deprived MRA of its investment backed business expectations associated with its Property and the rubble landfill permit previously issued to MRA by the MDE.

56. Accordingly, MRA seeks an award of just compensation for the County's violations of MRA's rights under § 40 of Article III of the MARYLAND CONSTITUTION and Articles 19 and 24 of the MARYLAND DECLARATION OF RIGHTS.

### **PRAYER FOR RELIEF**

WHEREFORE, MRA respectfully requests:

- (1) the entry of judgment for inverse condemnation against the County;
- (2) the payment of just compensation by the County to MRA for the unlawful taking of MRA's Property, in an amount not less than One Hundred Million Dollars (\$100,000,000.00), and all losses and damages due to such taking, including but not limited to, an award of the fair market value of the Property as of May 7, 2010, together with interest thereon, and all losses and damages incurred by MRA including any diminution in value or loss caused by County's pre-condemnation activity between February 13, 1990 and May 7, 2010, plus the costs of this proceeding including reasonable attorneys' fees, appraisal fees, engineering fees, other costs, pre-judgment interest, and post-judgment interest;
- (3) that further proceedings be had in this cause under the authority of and pursuant to the provisions of § 40 of Article III of the MARYLAND CONSTITUTION, § 12-401(b) of the MD. LOCAL GOVT. CODE ANN., Title 12 of the MD. REAL PROP. CODE ANN., and Subtitle 12 of the Maryland Rules; and

(4) such other and further relief as may be appropriate or as justice requires.

Respectfully submitted,



John R. Greiber, Jr. *(MCM)*

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*Counsel for the Plaintiff, MRA*

Dated: June 15, 2015

IN THE CIRCUIT COURT FOR HARFORD COUNTY

MARYLAND RECLAMATION ASSOCIATES, INC.

Plaintiff

v.

HARFORD COUNTY, MARYLAND

Defendant

Case No.

12-C-13-509

DEMAND FOR JURY TRIAL

Plaintiff elects trial by jury in this inverse condemnation action.

Respectfully submitted,



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*Counsel for the Plaintiff, MRA*

Dated: June 15, 2015

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of June, 2015, copies of the foregoing Amended Complaint for Inverse Condemnation and Demand for Jury Trial (and a redlined copy showing the changes from the original Complaint) were delivered via electronic mail and first class mail, postage prepaid, to:

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