

RE: Appeals for Special : BEFORE THE
 Exceptions to the :
 Zoning Regulations : COUNTY BOARD OF APPEALS

CUNNINGHAM SAND AND GRAVEL, : OF ANNE ARUNDEL COUNTY
 INC., CUNNINGHAM EXCAVATING :
 INC., & MICHAEL A. MAIATICO, : CASE NOS. BA 65-92S,
 : BA 66-92S, BA 68-92S,
 Petitioners : BA 69-92S

: HEARINGS: DECEMBER 9, 1992;
 Protestants' Appeal : FEBRUARY 2, 1993; MARCH 8, 1993;
 : MARCH 22, 1993; MARCH 29, 1993

:

MEMORANDUM OF OPINION

SUMMARY OF PLEADINGS

These are appeals from the conditional granting of a special exception to permit a sand and gravel operation on 184.25 acres and from the conditional granting of a special exception to permit a rubble landfill on the same property located 6,000 feet northwest of Maryland Route 3, 2,400 feet north of Route 424 (near Crofton), Odenton.

SUMMARY OF EVIDENCE

Edward Brown testified for the Petitioners as follows: He is the surveyor who prepared the site plan that conforms to the Administrative Hearing Officer decision. He described the location of the property and the location of the entrance. The site plan also conforms to the agreement with the Four Seasons community, including a berm to be constructed 600 feet long by 115 feet wide and 30 feet high at its highest point, and 20 feet high at its lowest point. A treed area buffers the remainder of the Four Seasons property from the operation. The project is scheduled to begin on the west side of the property and move to the east. It

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will be 15 to 20 years before its gets to the east side near the Four Seasons community. It is comprised of at least one hundred acres. There is no encroachment into the watercourse. There is no flood plain area present, and the plans show the existing and finished grades. There will be no detriment to the health, safety and welfare and the plans show the location of monitoring wells. Upon cross-examination, the witness testified that the berm is to be constructed of earth with no rubble included and will be planted in grass.

John Marshall testified for the Petitioners as follows: He is a geotechnical engineer and put into evidence plans which show the result of test borings taken on the site. The soil was sampled every five feet downward. When water was encountered, it was noted. The depth of the excavation appears to be 10 to 15 feet above water level. The soil is sand or clay between the bottom and the water. The clay is very impervious and no drainage will be able to permeate the clay layer. No liner will be needed because of the clay layer. Water found at the site is perched water, not part of the river aquifer. It is rain water that seeped through the sand and stopped at the clay. At one boring level, there was a 28 foot depth of perched water. Pollution would depend on the type of materials in the rubble landfill. There is a very minimal possibility of pollution. The state has stringent requirements, so the possibility is very remote. The existing landfill has monitoring wells that have shown no problem.

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Joe Rosendale testified for the Petitioners as follows: He is employed as a foreman by Cunningham Excavating and is also foreman of the sand and gravel operation. He has overseen the site since the early 1980's. Some of the sand and gravel is sold directly and some is stockpiled. The trucks mainly go north on Route 3 to the asphalt plant. The present operation is closer to the Patuxent River. He has seen no perched water at all in the mining operation. There are 13 existing monitoring wells and they are monitored quarterly. He described how the fill was checked. If the material in the fill is inappropriate, the truck is reloaded and sent back out. Upon cross-examination, he described the method for monitoring the wells. No one has ever been given permission to shoot on the property. Fill is accepted from every state, and every load is checked.

James Cunningham, a Petitioner, testified as follows: He has been operating a sand and gravel mine in the area since 1972. He later got a permit to fill the area with rubble. He is now moving the operation further away from the Patuxent River. He has never seen perched water on the existing site. He has contracts for the sand and gravel and for the rubble; therefore, there is public need. He reached an agreement with the Four Seasons community regarding the proposed operations and met all of their demands. He explained the process followed in order to be permitted to open the rubble landfill, starting with the special exception. It will take 25 to 30 years to complete the operation. Approximately 21 new

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wells will be needed according to the state. Upon cross-examination, he stated that they do not advertise for the rubble; much of it comes from the contractors and much of it is from the State of Maryland. Thomas A. Piccinini testified as a Protestant as follows: He put into evidence field reports from the Maryland Water Resources Administration and the Department of Natural Resources, as well as some site complaints. There was a memo dated February 16, 1990 that radioactive material in bags was found on the landfill. He called the police on February 13, 1990 because of bags with radioactive markings which were found on the site. He does not know what happened to the bags after the police came. He put into evidence photos taken from his house. Upon cross-examination, he stated that he lives about 2,000 feet from the property, and has lived there 16 years. He said that the current site will be 1,000 feet from his property line.

Charles E. Matheny testified for the Protestants as follows: He is employed by the County Office of Inspection and Permits as an erosion control inspector. Mr. Piccinini called about erosion and asked if he knew about the bags of radioactive wastes. He inspected the following day and spoke with Joe Rosendale who stated that the bag incident happened before the county did its inspection. Mr. Rosendale further stated that one person had permission to shoot a gun, but that permission had been rescinded.

Carl E. Trump, Jr., testified for the Protestants as follows: He is the program director for Emergency Response - Radioactive

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Program for the Department of the Environment. On February 14, 1990 he received a call from the Department of Environment because several radioactive bags had been found at the site. He spoke with the police officer who told him to call the Cameron family. He met with Mr. Cameron and the police officer and learned that there were several bags marked that they were radioactive and he went to the area in the landfill where the bags were found. He met with Mr. Rosendale and drove to the area where he saw two yellow bags with radioactive markings on the outside. He tested the bags for dose rate or contamination. Neither bag registered. Inside the bags were rocks and rubble. He told Mr. Rosendale to remove the bags from the site. Several bags of the same kind were found on a roller and he put these in his truck. None of his staff has seen bags of this kind; they were heavy, but there were no markings to indicate where they had come from. However, the bags were not radioactive and Mr. Rosendale agreed to remove any more bags if he saw them. Upon cross-examination, he stated that the bags did not present a hazard to anyone and he was unable to ascertain how they got there.

John Garfola testified for the Protestants as follows: He is a police officer with Anne Arundel County Western District. On February 14, 1990 he was dispatched and met with the Cameron family because their son had found a yellow bag with radioactive markings on the landfill. The bags had rocks and paper in them. They were

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not radioactive, and the county police turned them over to the state.

John Peacock, a witness called by the Protestants, testified as follows: He is the Chief of Environmental Programs for the County Office of Inspections and Permits. He has inspected the landfill. An inspector under his supervision said that there was a situation at the landfill where raw sewage was found. He wrote a letter to the Petitioners stating that he wanted an investigation. He discussed the situation with the Petitioners who responded satisfactorily. The present landfill is filled to the limits within a Consent Agreement which was reached. There is a vegetative cover on top of the landfill, but there is not a cap as required by the Consent Order or the COMAR regulations. The goal is to get a closure cap on the landfill as soon as possible. There are no closure caps required on rubble landfills, but the County has closure agreements with the owners. Inspections have been made at the landfills since May, 1990. Rubble inspection was done daily until it was closed; there is now bi-weekly inspection for sediment control. There is also a program to inspect surface mining operations once every two weeks and there is cross-checking between the inspector for the landfill and the inspector for the surface mining operation. Noise level requirements do not exist for a rubble landfill for surface mining; however, they do inspect for noise and the decibel levels have been in accordance with the Code. He has seen reports of occurrences of dust and they have taken

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measures at this landfill to control dust. He has observed traffic in and out of the landfill, but does not have reports on this information because his group does not regulate or monitor traffic. There have been reports of impermissible items at the landfill from time to time. However, he has not observed these items incorporated into the landfill; they have been dumped, but the person dumping has been stopped. It is not uncommon for a hauler to bring in impermissible material, either unknowingly or otherwise. However, to his knowledge, the material has not been permitted to be incorporated into the landfill and has been required to be taken away. When the county began its rubble landfill inspection program in 1990, it did not think the state had the resources to give sufficient oversight. When the inspections began, the county found that the citizen concerns were true, and the landfills in the County were not in compliance. The Petitioners did not always agree with him regarding what measures were necessary; however, they were always able to cooperate and obtain compliance. When provided with specifics regarding the lack of compliance, their attorney agreed to the Consent Order. He explained the measures the Petitioners took to deal with dust control.

Dr. Gustav Jackson testified for the Protestants as follows: He is a geologist and environmental specialist and qualified as an expert in hydrogeology. He has examined the engineering reports from 1982 through 1986 regarding the landfill. From the results of the Marshall engineering report from 1982, he believes that there

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are not optimal conditions for the initial landfill or the present use. He gave an overview of the geology pertaining to the area and stated that because of the geologic makeup of the area, the subsurface aquifer cannot be protected. He explained that with perched zones, there is a potential for contamination of wells. He believes that there is a perched situation which occurs at the site of the landfill. He made a site visit on January 26, 1993 and found evidence of leachate from the existing landfill at the edges of the landfill which suggests that groundwater flow has been altered because of materials in the landfill and the flow can go toward the wells. Based on his review of the two reports and his understanding of the geologic area, optimal conditions for the landfill do not exist at this site. Also, the Patuxent River is within the zone of influence and might be affected.

Robert B. Daniel testified for the Protestants as follows: He is employed by the Waste Management Administration of the Department of the Environment and has the records for this landfill from his department. From a lab analysis of a sample collected from a monitoring well on September 17, 1991, there was evidence of two volatile organic compounds (VOCs) which may indicate the presence of pollutants. A report of a lab analysis on April 8, 1992 indicates that there are high levels of vinyl chloride in one monitoring well. Upon cross-examination, he stated that the well which was tested and showed vinyl chloride was directed to be removed and replaced with a new well of a safe depth. Well tests

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on the new well showed traces of other VOCs. The contaminants in the well could have come from somewhere other than the landfill.

Thomas Smith testified for the Protestants as follows: He is head of the Greater Gambrills Improvement Association which has 50 members, the majority of which reside in the Evergreen Road area. The Association has voted unanimously against the expansion of the rubble landfill. If the state cannot assure that irreversible ground water contamination will not occur, then the rubble landfill should be closed. All residents within the membership of the association have wells.

Norman Harvey testified for the Protestants was follows: He is a member of the Greater Gambrills Improvement Association and acts as its Vice-President. He is concerned about the serious safety hazard. The landfill is less than 1/2 mile from seven to ten homes. His concern is the effect on the drinking water and he doesn't understand why the state has not done anything about this landfill.

Doris M. Johnson testified for the Protestants as follows: Her property abuts the landfill. She doesn't live there, but owns 20 acres. She would like to sell the property, but if the ground water is destroyed, she will have no chance of selling it.

Kathy Wehunt testified for the Protestants as follows: Her property is approximately 100 yards away and she does not want the expansion of the landfill. She has three children and it is important to her that they are healthy.

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Carol Hyman testified for the Protestants as follows: She lives approximately two miles from the landfill and is concerned about the well water.

Timothy Coates testified for the Protestants as follows: He lives 1800 to 3700 feet from the landfill and his property is within 900 feet of the stockpile. His house has been there since the 1960's. He is concerned about the contamination of well water and has had to put a purification system in because of the odor. He also has concerns about noise and dust. He has heard noise and banging at 10:00 p.m. at night on the landfill site.

Kevin Dooley testified for the County as follows: He is a Zoning Analyst with the County's Office of Planning and Zoning. He described the location of the property. Agency comments received were neither remarkable nor adverse. There was no objection to the special exceptions from the environmental section of his office. He reviewed the special exception standards. As to the sand and gravel operation, he reviewed the plan. There are approximately 184 acres total with a portion of the area to be mined. The current special exception, BA 22-88S, allows mining on 84 acres. There were changes to the area to accommodate the rubble landfill. The rubble landfill is located more than 1,000 feet from any dwelling and can meet all the special exception requirements for a rubble landfill operation. He recommended certain conditions to the granting of the special exception: An undisturbed buffer of 100 feet along the eastern edge; no clearing between the site and

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the Four Seasons Community along the northern edge; a buffer between the northern corner and the county park; all traffic be required to use Race Track; hours of operation from 7:00 a.m. to 5:00 p.m.; and the life of the operation no longer than 25 years. As to the rubble landfill, the interim requirements can be met with the same conditions plus granting the county the right to make daily inspections of the landfill and ordering a stop work order to be issued by Inspections and Permits if there is a violation of the sediment and erosion control. Bill 12-93 states the permanent rubble landfill regulations. He has reviewed it and its effective date is April 4, 1993. There are two significant modifications required in the bill: Excavation can not exceed 50 feet (this plan exceeds that depth) and the height of the rubble landfill is a 30 foot maximum, which this plan also exceeds. The bill also requires a sediment and erosion control plan. The bill states in Section 5 that any special exception granted after January 19, 1993 shall be governed by this law. Upon cross-examination, he stated that the 24 acres to be used would be used sequentially. The landfill is now 32 acres so it would double in size.

Jordan Harding testified as a Proponent as follows: He is Town Manager of Crofton and he visited the site on two separate occasions. The owner has shown responsiveness to the community and made an agreement with the Four Seasons Community Association which was concerned about the intersection of Route 3 and Route 424 and about the rubble landfill. The report from the Department of

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Environment was favorable. If the plan meets all standards and is closely monitored, the Crofton Community Association has no objection. The Association passed a resolution authorizing his representation.

Jack Meyers testified as a Proponent as follows: He is on the rubble landfill committee. Race Track is a clean, wide road with no bad turns. Because of that access, there will be no impact on Route 3/Route 424. It is probably the best place in the area for a landfill. It is a clean operation; he has walked the site and has seen no sign of leachate and has seen no violations. There is a good agreement with the Four Seasons Community. That agreement along with the bill should protect the area.

Burt Rice testified as a Protestant as follows: The Greater Odenton Improvement Association voted to oppose the request. There will be a negative impact from the landfill and the sand and gravel operation. There is an unsatisfactory past history on the site and numerous violations in the past.

Joe Rosendale testified for the Petitioners in rebuttal as follows: There are 13 monitoring wells on the site and samples are sent in quarterly. The well which tested for vinyl chloride was a shallow well which was damaged in excavation. It was repaired and they were later told that they shouldn't have used glue. The well was tested, as well as a nearby deep well. They received analyses and then abandoned both wells and drilled two new wells.

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Donald A. Jackson testified for the Petitioners in rebuttal as follows: He was employed by the Maryland Water Resource Administration issuing hazardous water permits. He was acting chief of the section until 1980. He qualified as an expert in geology and hydrogeology. He reviewed the various reports prepared by Marshall Engineering and reviewed the testimony of Dr. Jackson who testified for the Protestants. In his opinion, Dr. Jackson was incorrect. He believes there is a clay layer underneath the area which is continuous. When he worked for the state, he cited rubble landfills. Based on the recent regulations for landfills, this facility meets all of the requirements from a geologic standpoint.

All testimony was stenographically recorded and the recording is available to be used for the preparation of a written transcript of the proceedings.

FINDINGS AND CONCLUSIONS

In this case, the granting of special exceptions for a sand and gravel operation and a rubble landfill were appealed by two separate Protestants. Although the Four Seasons Community was initially opposed to the granting of the special exceptions and appealed, it signed an agreement with the Petitioners and withdrew its appeal. However, two remaining individuals continued to appeal the granting of the special exceptions.

To further complicate the issues, the County Council passed Bill No. 12-93, which was signed February 26, 1993 and which became effective April 12, 1993. The bill proposed more stringent

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regulations for a rubble landfill. However, §5 of the bill specifically states "that any special exception for a sanitary landfill operated solely for the disposal of rubble granted on or after January 19, 1993 shall be governed by the provisions of Bill No. 12-93." This Board finds that the new requirements of Bill No. 12-93 do not apply, because the Administrative Hearing Officer granted the special exception for a rubble landfill to the Petitioners on July 24, 1992. However, §3 of Bill No. 12-93 does apply and reads as follows:

That each sanitary landfill operated solely for the disposal of rubble that received a special exception for a sanitary landfill, including a rubble landfill, before January 19, 1993 shall be discontinued not later than January 19, 1998 unless the operation is:

1. in compliance with the criteria set forth in Bill No. 12-93;
2. subject to a closure agreement or inspection agreement with the County; or
3. subject to a community benefit agreement entered into with the County that, in the opinion of the County Executive and the County Council, protects and benefits the County and the communities located near the operation.

The Board listened to testimony at five hearings, made an on-site inspection of the property, and reviewed the numerous exhibits entered in this case. It is this Board's finding, for the reasons which will be stated, that the Petitioners have met the burden of proving that they are capable of meeting the standards for a sand and gravel operation and a rubble landfill.

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In order to grant the sand and gravel operation and rubble landfill, the Board must find that the Petitioners meet all of the general requirements for a special exception found in §12-104 of the Zoning Article of the Anne Arundel County Code. These standards apply to both the sand and gravel operation and the rubble landfill. For the sand and gravel operation, the Board must also make findings regarding the specific criteria found in §12-212 of the Zoning Article; for the rubble landfill, the specific regulations are found in §12-242(b).

As to the general special exception standards for the sand and gravel operation and the rubble landfill, the issues are essentially the same for both operations because they are located on adjacent parcels comprising 184 total acres. It is also important to note that there is an existing sand and gravel operation for which a special exception was granted in November, 1988. There is also an existing landfill on the site, comprising 32.8 acres which was approved in June, 1981. Since both operations are already in existence and the requested special exceptions are modifications of the existing special exceptions, the Petitioners have the ability to show that they have complied with the law; however, it is the Protestants' contention that they have not always done so.

As to §12-104, this Board finds that the uses will not be detrimental to the public health, safety, and welfare. The issue which most concerns the Protestants is fear of groundwater contamination because all of the houses in the area (which are

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located the required 1,000 feet from the site) are served by wells. The Board heard expert testimony from a witness for the Protestants and from a witness for the Petitioners regarding hydrology. Based on the testimony of the Petitioners' expert, and the answers to the Board's questions, this Board is satisfied that the clay layer which is part of the soil makeup of the area is sufficient to block leachate from contaminating nearby wells. The witness for the Petitioners satisfactorily explained the reason for the finding of contamination in one of the wells, and there was no finding that the contamination was due to the landfill. However, because the Protestants' concern about groundwater contamination is a legitimate concern, the Board will condition the granting of the special exceptions to not permit any excavation to exceed a depth of 50 feet below the existing surrounding grade. Furthermore, the excavation may not enter into the clay layer base.

Another public health issue in terms of the rubble landfill is concern about what is actually dumped at the site. There was testimony that radioactive waste was found on the existing landfill; however, the testimony of several witnesses satisfied the Board that, although bags displaying writing and logos for radioactive waste were found at the site, investigation by the proper authorities found the bags to be filled with non-radioactive debris. Because of this concern, however, the Board will add additional conditions to help monitor the material that is being dumped at the site.

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The Board received the necessary information on site plan, revealing the location, nature, and height of buildings, fencing, berms, etc., and the nature and extent of landscaping on this site as well as the information regarding the intensity of each phase of the uses. Because of concern for the communities which are adjacent to the site, the Board will add further conditions regarding extensive vegetative buffering between the site and the communities. As to access to the operations, the Board will further condition the granting of the special exceptions to permit access only from Race Track. The Board finds that with the conditions imposed, the use is compatible with the appropriate and orderly development of the district in which it is located. It is to be noted again that these are existing operations.

The Board further finds that these operations are no more objectionable with regard to noise, fumes, vibrations, or light to nearby properties than operations in permitted uses. Farming operations and animal husbandry, both permitted uses for AA and RLD zoned property, would yield noise and odors. The hours of operation will be limited by Code regulations so that there is no operation on Sunday, nor in the evening. The Petitioners must continue to use the current methods to keep the dust under control, and the conditions imposed by the Board regarding the vegetative berm and the testimony indicate that the noise will not be a factor. In fact, there was no testimony from the Protestants indicating that noise, vibration or light was a problem.

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The Board further finds that the proposed use will not conflict with an existing or programmed public facility, public service, school, or road. The existing operations have not caused any concerns with regard to these issues.

The evidence indicates that the electric service is adequate to service the proposed uses and there is suitable access; however, there is not public water or sewer at this location. The Petitioners have placed into evidence a satisfactory plan for stormwater drainage. Since the site does not have public water or sewer, there is no concern about overburdening existing facilities. The testimony, which was uncontradicted by the Protestants, indicates that the on-site water supply, sewerage treatment and storm drainage disposal is adequate to serve the proposed use. Furthermore, placed into evidence were the written recommendations and comments of the Health Department, the Department of Public Works, and the Department of Utilities.

This Board finds that the Petitioners have presented sufficient evidence of public need for the sand and gravel and rubble landfill uses; they are currently in existence and have been viable businesses for a number of years.

Since the property is not located within the critical area, any regulations regarding such properties do not apply.

After making findings that the proposed operations meet all of the general standards found in §12-104, the Board then must make findings based on specific performance standards for a sand and

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gravel operation found in §12-212, and a rubble landfill found in §12-242(b).

As to the sand and gravel operation, this Board finds that the petitioners have presented evidence which indicates that they are capable of meeting all of the performance standards of §12-212. Specifically, the Board finds that the extraction and removal operation is not noxious, offensive, or otherwise objectionable to the surrounding land uses. The Board will impose a number of conditions, the purpose of which is to add further assurance to the surrounding communities that there will not be problems caused by the landfill. The Board will require a 100 foot buffer, which shall be undisturbed and remain in its natural condition, along the common property line with the Petitioners' property and parcels 289, 290 and 291. Also, the area between the northern edge of the operation and the Four Seasons subdivision shall not be cleared of trees and shall remain in a natural condition. The Board will also require an undisturbed buffer of at least 300 feet between the edge of the operation and the county park which is located on parcel 4. All truck traffic which is entering or exiting the site shall be restricted to Race Track. Furthermore, the Board will require all planting and fencing which is to be done to be completed prior to the commencement of the operation. Since the Four Seasons community is no longer in opposition to the granting of the special exceptions because of an agreement with the Petitioners, the Board believes that it is also appropriate to make the adherence to the

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agreement one of the conditions to the granting of the special exception. Also, as to the fencing issue, the Board believes that a single access gate from Race Track is appropriate. As the Code requires, the fencing, which will surround the entire site, is to be a minimum of six feet in height. The evidence and testimony indicate that all dwellings are located at least 1000 feet from the operations. As to the berms which are to be used at the site, the Board shall require as a condition that the berm be constructed with acceptable fill material limited to: a. Rock and similar irreducible materials such as concrete, non-refractory brick, and asphalt created as a result of construction activities, mining, or regrading projects without limit as to size, provided voids are not formed into which overlaying soils may be washed; and b. Topsoil intermittently layered with non-organic soil. Furthermore, at least 12 inches of soil shall cover all rock or irreducible materials with a maximum dimension greater than eight inches. Also, the proposed berm shall be stabilized with suitable vegetation. Furthermore, the Board will condition that the proposed berm will be a minimum of 20 feet in height, as the Petitioners' land planning expert testified. The Board will also require that the excavation, which according to Code may not exceed a depth of 50 feet below the existing surrounding grade, not enter into the clay layer base.

Addressing the specific criteria for a rubble landfill as found in §12-242(b), the Petitioners have provided the information

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required by §12-242(b)(1)(i); as to (ii), the Board finds that there will not be any material negative impact on the environment if the Petitioners follow the plan as approved by this Board. The Petitioners have provided an approved erosion and sediment control plan, and this Board has already addressed the fencing and screening issues.

All of the conditions for the sand and gravel operation also apply to the rubble landfill as well as some additional conditions which the Board will impose. The Petitioners shall grant Anne Arundel County the right to make daily inspections of the rubble landfill; also, the Department of Inspections and Permits may issue a stop work order to the rubble landfill operation if any violations of the sediment and erosion control plan occur. Furthermore, because of the concern about what is being deposited into the rubble landfill, the Petitioners shall maintain records specifying the material deposited and its place of origin for each truckload. The records shall be available for inspection by Anne Arundel County inspectors. One of the persons who spoke against the special exception, Mr. Tim Coates, indicated particular concerns about his well. Prior to the commencement of the operation, Mr. Coates' well is to be inspected at the expense of the Petitioners. The Board will also condition the special exception by limiting the height of the rubble landfill so that it does not exceed 30 feet above the natural grade of the surrounding land, and the finished slope shall be four to one or less. With those safeguards in

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place, this Board believes that the Petitioners are capable of meeting all of the performance standards of §12-242(b) and that, if there is any violation of the Code sections, particularly where the groundwater is concerned, there is a mechanism in place to prevent any further damage.

ORDER

For the reasons set forth in the foregoing opinion, it is this 8th day of DECEMBER, 1993, by the County Board of Appeals of Anne Arundel County, ORDERED that the appeals are hereby denied, and the specials exceptions for a sand and gravel operation and a rubble landfill are hereby granted, with the following conditions:

A. For both operations:

1. A 100 foot buffer shall be provided along the common property line with parcels 289, 290, and 291. This buffer shall be undisturbed and shall remain in its natural condition.
2. The area between the northern edge of the operation and the Four Seasons subdivision shall not be cleared of trees and shall remain in a natural condition.
3. A minimum undisturbed buffer at least 300 feet in depth shall be provided between the edge of the operation and the county park located on parcel 4.

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4. All truck traffic entering or exiting the site shall be restricted to Race Track.
5. The proposed operations shall not commence until all fencing, plantings, and construction of the berm are complete.
6. The proposed berm shall be constructed with acceptable fill material limited to:
 - a. Rock and similar irreducible materials such as concrete, non-refractory brick, and asphalt created as a result of construction activities, mining, or regrading projects, without limit to size, provided voids are not formed into which overlaying soils may be washed; and
 - b. Topsoil intermittently layered with non-organic soil.
7. Regarding the proposed berm, at least 12 inches of soil shall cover all rock or irreducible materials with a maximum dimension greater than eight inches.
8. The proposed berm shall be stabilized with suitable vegetation.
9. The proposed berm will be a minimum of 20 feet in height.
10. Any excavation shall not exceed a depth of 50 feet below the existing surrounding grade, and may not enter into the clay layer base.

11. The conditions of the agreement between the Four Seasons Community Association and the Petitioners are adopted as further conditions for the granting of the special exceptions. The agreement is attached to this Opinion and is incorporated herein.

12. The proposed fencing to surround the entire site shall be a minimum height of six feet, and shall have a single access lockable gate from Race Track.

13. Before the operation commences, the well owned by property owner Timothy Coates shall be tested at the expense of the Petitioners.

B. Additional conditions for rubble landfill operation:

1. The Petitioners shall grant to Anne Arundel County the right to make daily inspections of the rubble landfill.

2. The Department of Inspections and Permits may issue a stop-work order to the rubble landfill operations if any violations of the sediment and erosion control plan occur.

3. The height of the rubble landfill may not exceed 30 feet above the natural grade of the surrounding land and the finished slope shall be four to one or less.

4. The Petitioners shall maintain records specifying the material deposited and its place of origin for each

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truckload. Such records shall be available for inspection by Anne Arundel County.

Any appeal from this decision must be in accordance with the provisions of Section 604 of the Charter of Anne Arundel County, Maryland.

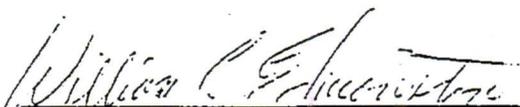
If this case is not appealed, exhibits must be claimed within 60 days of the date of this Order; otherwise they will be discarded.

Any notice to this Board required under the Maryland Rules shall be addressed as follows: Anne Arundel County Board of Appeals, Arundel Center, P.O. Box 2700, Annapolis, Maryland 21404, ATTN: Mary M. Leavell, Clerk.

COUNTY BOARD OF APPEALS
OF ANNE ARUNDEL COUNTY


F. George Deuringer, Chairman

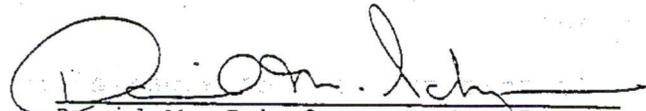

John W. Boring, Vice Chairman


William C. Edmonston, Member

- Cunningham Sand & Gravel, Inc.


Joseph A. Johnson, Member


Anthony V. Lamartina, Member


David M. Schafer, Member

(Barbara M. Hale, Member; did not participate in this appeal.)

BOARD OF APPEALS

AGREEMENT PETITIONERS

THIS AGREEMENT is dated this 23 day of ^{EXHIBIT # 4} ~~April~~ 1992 by and between the FOUR SEASONS COMMUNITY ASSOCIATION, INC. (hereinafter referred to as the "Association") and CUNNINGHAM EXCAVATING, INC. (hereinafter referred to as "Cunningham");

WHEREAS, on July 24, 1992 the Administrative Hearing Office of Anne Arundel County approved a Special Excavation application filed by Cunningham for approval of a Rubble Landfill operation on property located adjacent to the Four Seasons Community; and,

WHEREAS, the above decision contained certain conditions under which the approval was granted; and

WHEREAS, one condition was that an agreement must be in place between the Association and Cunningham providing for protection for the Community from the operation of the Landfill; and

WHEREAS, the parties have agreed to certain additional conditions on the operation of the Landfill, and desire to put those conditions in writing between the parties.

THEREFORE, in consideration of the covenants and conditions contained herein, it is hereby agreed between the parties as follows:

1. All traffic shall enter and exit the site using Race Track Road. There shall be no access to the property for the purpose of sand and gravel, or landfill operations via Maytime Drive or Evergreen Road.

2. A berm shall be constructed in the area indicated on Exhibit A, which is attached to and made a part of this Agreement, before the sand and gravel operation begins and shall remain in

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RICHMAN, P.A.
ATTORNEYS AND
COUNSELORS AT LAW
7 WILLOW STREET
POLIS, MD 21401

place indefinitely. The berm shall be constructed entirely of dirt. The earth berm shall be a minimum of 20 feet high and shall be as wide as required by soil conservation and sediment control and the fence at the base of the berm shall not be closer than 900 feet from the community. The length of the berm shall extend from the existing tree line to the north, to the existing tree line on the south, an approximate distance of 600 feet, as shown on Exhibit A. The berm, in combination with other screenage, will prevent the operation from being seen by the residents of Four Seasons.

3. Trees shall be planted and maintained with annual replacement of dead or diseased trees as indicated on Exhibit A.

1) The trees abutting with Four Season Estates will consist of one (1) row of twenty-six (26) Red Maples at thirty (30) feet apart and three (3) rows of two hundred twelve (212) Black Pines at ten (10) feet apart, 2) the trees abutting with the berm will consist of one (1) row of fourteen (14) Red Maples at thirty (30) feet apart and three (3) rows consisting of eighty-seven (87) Black Pines at ten (10) feet apart.

4. Neither the sand and gravel operation, nor the rubble landfill operation will ever be operated in the 1000 foot setback area indicated on the Special Exception site plan.

5. The site shall be fenced by a six foot high chain link fence as required by the County in order to protect public safety. The fence shall be placed so as to enclose the berm separating it from the community. Further, Cunningham will coordinate with the

Recreation and Parks Department concerning the location of the fence at their property.

6. The County shall inspect the site on a daily basis during landfill operations, and otherwise as required by the County. A copy of the agreement between the County and Cunningham is appended as an Addendum of this agreement. Further, that Cunningham shall provide the Four Seasons Community Association with quarterly (four times per year) reports highlighting the County's findings.

7. Cunningham, or its representative, shall provide the Four Seasons Community Association with copies of the results of the groundwater tests taken from the monitoring wells at least quarterly (four times per year).

8. Within twenty-four (24) hours after contacting Cunningham Excavating, Inc., representatives of the Four Seasons Community Association will be allowed to visit the operation. Such visits will be coordinated with Cunningham Excavating, Inc. Further, that such visits may be in conjunction with the County and/or State Inspectors.

9. As long as this agreement is valid and effective, the Association shall withdraw its appeal of the decision of the Administrative Hearing Officer and not oppose Cunningham's use of the property consistent with this agreement at any appeal hearing of said decision.

10. The construction of the berm shall not result in any additional water drainage to property owned by residents of Four Seasons.

11. This agreement shall survive the current special exception and become part of any subsequent exception.

WITNESS the hands and seals of the parties to this Agreement.

ATTEST:

FOUR SEASONS COMMUNITY
ASSOCIATION, INC.

Wesley R. Smith

John C. Berry (SEAL)
By:

CUNNINGHAM EXCAVATING, INC.

Carolyn Marino

James Cunningham (SEAL)
By: