

BEN PORTO & SON, LTD., et al.,

Petitioners,

v.

MONTGOMERY COUNTY, MARYLAND,

Respondent.

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IN THE

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MARYLAND TAX COURT

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Case No. 18-MI-00-0911 (1-3)

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### **MEMORANDUM AND ORDER**

After consideration of the testimony and evidence presented at trial, as well as the arguments and briefs of the parties, the salient facts are as follows:

1. Petitioners filed for credits and appealed the Water Quality Protection Charge charged by Respondent to Petitioners for the years 2016, 2017 and 2018 for property parcels with Account Identifiers 00860200, 01592674 and 01592685.
2. Petitioners presented a civil engineer as an expert witness in the area of stormwater runoff, and Respondent conceded that the witness is an expert in stormwater runoff. The civil engineer expert witness designs and consults on engineering plans for Respondent on how to control 100% of stormwater runoff.
3. The same civil engineer was hired by Petitioners to design and oversee implementation of Petitioners' stormwater runoff. Petitioners followed this civil engineer's plans and created a stormwater system pursuant to these plans.
4. According to the civil engineer's uncontested testimony, Petitioners have controlled and still control 100% of their stormwater runoff. In fact, the civil engineer testified

that Petitioners controlled and continue to control and treat stormwater runoff from adjacent property owners' lands.

5. The stormwater treatment mechanisms on Petitioners' property include an enormous excavated quarry pit with two (2) wet ponds, swales, culverts, berms, filtered traps and areas that act like dry ponds which comprise Petitioners' stormwater management system. In addition, a large berm was built to prevent flooding and erosion.
6. The Respondent did not present an engineer as a witness to contest the testimony of Petitioners' expert witness. The Respondent did not visit or inspect Petitioners' property to determine if Petitioners controlled 100% of their stormwater.

### **Relevant Statutes and Regulations**

**Section 19-35** of the Montgomery County Code provides:

(e) (1) A property owner may apply for, and the Director of Environmental Protection **must grant**, a credit equal to a percentage, set by regulation, of the Water Quality Protection Charge if:

(A) the property contains a stormwater management system for which the County does not perform structural maintenance that either treats on-site drainage only or both on-site drainage and off-site drainage from other properties located within the same drainage area;

(B) the property does not contain a stormwater management system but is located in the same drainage area as another that contains a stormwater management system for which the County does not perform structural maintenance, and both properties have the same owner;

(C) the property contains a stormwater management system built as part of a County-approved stormwater management participation project; or

(D) the property does not contain a stormwater management system but is located in the same drainage area as a property containing a stormwater management system built as part of a County-approved stormwater management participation project and both properties have the same owner.

**Section 19-21** of the Montgomery County Code provides:

*Stormwater management system:* Natural areas, environmental site design practices, stormwater management measures, and any structure through which stormwater flows, infiltrates, or discharges from a site.

*Stormwater management* is defined as the collection, conveyance, storage, treatment and control of stormwater as needed to reduce accelerated stream channel erosion, increased flood damages, or water pollution.

**Section 19.35.01.05** of the Montgomery County Regulations provides:

B. Credit Awards.

(2) A nonresidential property or a multifamily residential property must be credited for treatment of off-site drainage from other properties located within the same drainage area as that property, not to exceed 100 percent of the Charge billed to the property owner, if the stormwater management system located on the nonresidential property or multifamily residential property treats the required on-site environmental site design storage volume while at the same time providing additional storage volume for off-site drainage. The total credit will be determined by applying the percent credit of off-site property to the impervious area of that off-site property and then adding that computation to the credit for the on-site impervious area, not to exceed 100 percent of the total Charge billed to the property owner as specified in the Water Quality Protection Charge Credit Procedures Manual.

### **Conclusions of Law**

First, the Court finds that Petitioners have demonstrated both onsite treatment of all of its stormwater and additional treatment of offsite stormwater and is thus entitled to credit pursuant to Section 19-35 of the Montgomery County Code.

The Petitioners' expert prepared stormwater calculations which were included in the Water Quality Protection Charge credit applications submitted to the Respondent. The stormwater was

treated based on the properties' development with a changing final impervious area. Consequently, the County Design Manual recommendations could not apply from an engineering standpoint. The stormwater treatment practices comply with best management practices as well as the Clean Water Act. Therefore, Petitioners have substantially complied with the requirements of the Montgomery County Regulations and are entitled to a 100% Water Quality Protection Charge credit.

Accordingly, it is, this 24<sup>th</sup> day of August 2021, ORDERED, by the Maryland Tax Court, that the decision of the Respondent in denying the credit is REVERSED and:

- A. The Petitioners have failed to establish that their properties are exempt from the Water Quality Protection Charge imposed by Montgomery County, Maryland;
- B. The Petitioners are entitled to a 100% credit for the Water Quality Protection Charge imposed by Montgomery County, Maryland to Petitioners for the years 2016, 2017 and 2018 for property parcels with Account Identifiers 00860200, 01592674, and 01592685;
- C. The Maryland Tax Court lacks jurisdiction to grant any relief with respect to tax years 2019, 2020 and 2021; and
- D. There is no statutory authority for an award of attorney's fees to the prevailing party in an appeal before the Maryland Tax Court.