Circuit Court for Queen Anne's County
Case No.: C-17-CV-20-000077

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1078

September Term, 2020

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K. HOVNANIAN'S FOUR SEASONS AT KENT ISLAND, LLC

v.

ROBERT FOLEY, et al.,

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Berger,
Friedman,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Eyler, James, J.

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Filed: August 17, 2021

K. Hovnanian's Four Seasons at Kent Island, LLC ("Hovnanian"), appellant, a developer of a mixed-use age-restricted community project appeals from a judgment entered by the Circuit Court for Queen Anne's County, which reversed a decision by the Queen Anne's County Board of Appeals ("the Board of Appeals"). The Board of Appeals had ruled that the 20-year term in the 2002 Development Rights and Responsibilities Agreement ("the DRRA") between Hovnanian and the Queen Anne's County Board of Commissioners ("Board of County Commissioners") was tolled for eight years due to litigation. The circuit court held that the term was not tolled. Hovnanian noted an appeal to this Court. Appellees, opponents of the project, are Robert and Brian Foley, James and Karen Wimsatt, Hal Fischer and Molly McGlashan-Fischer, Andrea Prieto, and Queen Anne's Conservation Association. We agree with the circuit court. Accordingly, we affirm the circuit court's judgment.

## BACKGROUND

In 1995, the Maryland General Assembly enacted legislation creating a "Development Rights and Responsibilities Agreement" as a new land use tool for owners of real property and local political subdivisions. *See Queen Anne's Conservation, Inc. v. County Com'rs of Queen Anne's County*, 382 Md. 306, 308 (2004) ("*Conservation*"). *See also* Article 66B §13.01 (repealed and reenacted at Md. Code Ann., Land Use ("LU") Article, §§ 7-300 *et. seq*.). The resulting legislation was a balancing of the desire of developers/property owners for more certainty in the development process and the desire of local governments to receive greater public benefits on a more predictable schedule than that in the traditional development process. *Conservation*, 382 Md. at 308-09. The

legislation defined a DRRA as "an agreement between a local governing body and a person having a legal or equitable interest in real property to establish conditions under which development may proceed for a specified time." LU § 7-301(b).

This is the fifth appeal involving Hovnanian's Kent Island development project, which has been in the works for over two decades.[1] The project was first proposed in the late 1990's. As envisioned, it consisted of "1,350 single and multifamily dwelling units, an assisted living facility, and related community and recreational facilities, to be erected on two tracts comprising 562 acres that lie on the north side of U.S. Route 50 between the towns of Chester and Stevensville." *Board of Public Works v. Hovnanian*, 443 Md. 199, 204 (2015) (quotation marks and citation omitted). The project, however, was mired in lawsuits before it began.[2] While those lawsuits were pending, Hovnanian and the then three-person Board of County Commissioners negotiated the DRRA. It was executed on September 17, 2002.[3]

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[1] *See Board of Public Works v. Hovnanian*, 443 Md. 199 (2015); *Maryland Bd. Of Public Works v. Hovnanian*, 425 Md. 482 (2012); *Foley v. Hovnanian*, 410 Md. 128 (2009); and *Conservation*, 382 Md. 306 (2004).

[2] Roughly a year before Hovnanian and Queen Anne's County Commissioners signed a DRRA, five lawsuits were instituted challenging various aspects of the project. It appears opposition to the project was fierce because the project involved "the largest development in the history of the critical area law, consuming about one-quarter of the total growth allocation of Queen Anne's County." *Maryland Bd. of Public Works*, 425 Md. at 508.

[3] "A county is one of the public territorial divisions of the State [of Maryland], created and organized for public political purposes connected with the administration of the State Government, and especially charged with the superintendence and administration of the local affairs of the community[.]" *Spencer v. Maryland Jockey Club of Baltimore*
(continued …)

The DRRA between Hovnanian and the Board of County Commissioners is a comprehensive agreement spanning 70 plus pages. It states that "a principal purpose of this Agreement is to bind the Developer to long term off-site public improvements which it can make in consideration of and upon reliance that the County will not change the rules and regulations pertaining to the development of the [property] from those in effect when this Agreement was executed." Important to the case before us, the DRRA provides that the Agreement "shall run with and bind the Subject Property so long as the Four Seasons development is under construction and development, but in any event this Agreement shall be void 20 years after the effective date of this Agreement." (emphasis added).

Less than two months after signing the DRRA, the citizens of Queen Anne's County voted and unseated all three of their commissioners, primarily because of public backlash against the proposed development.[4] According to Hovnanian, between September 17, 2002, when the DRRA was signed, until October 2016, when the Board of Appeals[5]

*City*, 176 Md. 82, 86-87 (1939) (quotation marks and citation omitted). Queen Anne's County is a "Code home rule" county. *See Conservation*, 382 Md. at 320. *See also* XI-F of the Maryland Constitution, which was ratified by the voters in 1966.

[4] It appears that one week after each of the commissioners lost their primary election, they signed the DRRA.

[5] The Board of Appeals is a statutory creation composed of commissioners appointed by the QAC Commissioners to exercise "expressly delegated general powers," including the power to "hear and decide appeals when it is alleged there is an error in any order, requirement, decision, or determination made by an administrative officer or unit under this division or of any local law adopted under this division"; "hear and decide special exceptions to the terms of a local law on which the board is required to pass under the local law"; and authorize on appeal in specific cases a variance from the terms of a (continued …)

approved Hovnanian's final site plan and subdivision application for a particular part of the project, they have been hampered in completing the project due to lawsuits by those opposing the project.

In February 2019, Hovnanian petitioned the Board of County Commissioners to toll the expiration date of the Agreement for eight years because of litigation delays.[6] About

local law." *See Conservation*, 382 Md. at 321 (citation omitted), and LU §§ 4-301 and 305.

[6] Hovnanian directs us to four time periods totaling eight years that it claims tolled the term of the Agreement.

The first tolling period consists of roughly 13 months, from September 17, 2002 until October 28, 2003. Hovnanian explains that at the beginning of 2003, the newly elected Board of County Commissioners, after retaining counsel: 1) sent a letter to Hovnanian advising it not to proceed with development until the county had investigated the validity of the Agreement, and 2) sent a memorandum to all County department heads to not take any action on the development until further notice. Hovnanian filed suit against the Board of County Commissioners in circuit court. Following trial, in September 2003, the circuit court entered judgment for Hovnanian and ruled that the 20-year term of the Agreement was not to begin until the County withdrew its January 2003 memorandum. On October 28, 2003, the parties entered into a settlement agreement. Hovnanian argues that the Agreement was tolled for the roughly 13-months, the period between when the date the Agreement was signed and the date the parties entered into the settlement agreement.

The second tolling period consists of 46 months, from February 2006 until August 2009. According to Hovnanian, this is the time it took to complete a lawsuit brought by Kent Island neighbors challenging the validity of a county zoning ordinance which re-designated the land on which the project was to be built to a more intense development classification. In February 2006, the circuit court appointed an independent surveyor who found errors in the 2002 Overlay Maps. The circuit court then enjoined Hovnanian and the County from moving forward until the court approved corrected maps. We reversed the circuit court's injunction in an unreported opinion in March 2007, and the Court of Appeals affirmed our decision in August 2009. *See Foley v. K. Hovnanian at Kent Island, LLC.*, 410 Md. 128 (2009).

(continued …)

two months later, the Board of County Commissioners confirmed that the DRRA had been tolled until October 2023 (see first tolling period in footnote 6) but the Board of County Commissioners took "no action" as to any further tolling. Hovnanian appealed the ruling to the Board of Appeals. On February 25, 2020, following arguments by counsel, the Board of Appeals issued an opinion and order in which it agreed with Hovnanian that the DRRA was tolled for the four time periods claimed, for a total of eight years. Accordingly, the DRRA was extended from a 20-year term to a 28-year term, terminating on September 17, 2030. Appellees petitioned for judicial review of the Board of Appeals' ruling in circuit court. Following oral argument, the circuit court entered an order on November 5, 2020,

The third tolling period consists of 59 months, from May 2007 until April 2012. In May 2007, the Maryland Board of Public Works ("the Board of Public Works"), consisting of the Governor, the State Comptroller, and the State Treasurer, denied Hovnanian's application for a license to fill and dredge certain State wetlands in a two-to-one vote. Hovnanian sought judicial review. The circuit court declined to rule on Hovnanian's lawsuit until after the Court of Appeals issued its decision regarding the Overlay Maps. When the Court finally issued its ruling, the circuit court reversed the Board of Public Works' decision. S*ee Maryland Bd. of Public Works v. K. Hovnanian's Four Seasons at Kent Island, LLC.*, 425 Md. 482, 509-10 (2012). The Board of Public Works appealed. In April 2012, on bypass review, the Court of Appeals affirmed the circuit court's decision and remanded for the Board of Public Works to reconsider Hovnanian's wetland license application. *Id*. at 522.

The fourth tolling period consists of 11 months, from November 2015 to October 2016. According to Hovnanian, this tolling period concerned a January 2006 appeal to the Board of Appeals by conservation groups when the Queen Anne's County Planning Commission granted final site plan and subdivision approval for a certain phase of the project. The Board of Appeals stayed any decision until after resolution of the wetlands permit litigation. Therefore, the 11-month tolling began in November 2015, when the Board's stay was lifted upon approval of the wetlands license by the Maryland Board, until October 2016, when the Board of Appeals affirmed the site plan and subdivision approvals.

reversing the Board of Appeals' decision and remanding with directions to dismiss Hovnanian's petition for tolling. Hovnanian noted an appeal to this Court.

## DISCUSSION

Hovnanian asks us to reverse the order of the circuit court and affirm the Board of Appeals' decision to toll the DRRA's 20-year term for eight years based on litigation covering four time periods. Hovnanian cites, *inter alia*, *National Waste Managers, Inc. v. Anne Arundel County*, 135 Md. App. 585, 608 (2000) in support of its argument. The appellees ask us to affirm the order of the circuit court reversing the Board of Appeals' decision and cite, *inter alia, Lillian C. Blentlinger, LLC v. Cleanwater Linganore, Inc.*, 456 Md. 272, 293 (2017) in support of their argument. While we are not unsympathetic to Hovnanian's position, the clear and unambiguous language of the DRRA statute and the terms of the DRRA itself compel us to hold that tolling is not available. We explain.

### A. Standard of Review

When reviewing an agency proceeding, the issue before an appellate court "is not whether the circuit court erred, but rather whether the administrative agency erred." *Bayly Crossing, LLC v. Consumer Protection Division*, 417 Md. 128, 136 (2010) (quotation marks and citation omitted). *See also Abbey v. University of Maryland*, 126 Md. App. 46, 53 (1999). When reviewing the decision of an administrative agency, we make two determinations: "(1) the legality of the decision and (2) whether there was substantial evidence from the record as a whole to support the decision." *Baltimore Lutheran High School Ass'n v. Employment Sec. Admin.*, 302 Md. 649, 662 (1985). We owe the agency's conclusions of law "no deference." *Bennett v. Zelinsky*, 163 Md. App. 292, 299 (2005).

*See also Stansbury v. Jones*, 372 Md. 172, 184 (2002) ("a decision of an administrative agency, including a local zoning board, is owed no deference when its conclusions are based upon an error of law.") (quotation marks and citations omitted). Accordingly, we review an agency's legal conclusions *de novo*. *Bayly Crossing*, 417 Md. at 138-39. However, "a degree of deference should often be accorded the position of the administrative agency" on some legal issues. *Blentlinger*, 456 Md. at 293. Accordingly, "an administrative agency's interpretation and application of the statute which the agency administers should ordinarily be given considerable weight by reviewing courts[,]" but we will not "affirm an agency['s] decision premised solely upon an erroneous conclusion of law." *Id*.

**B. DRRA Statute**

In *Blentlinger* the Court of Appeals discussed in detail the use of DRRAs. The Court stated that their purpose is to "allow developers and local governing bodies, such as a county, to negotiate terms and conditions under which development may occur" and "to streamline the various approval processes that must occur for a complex development project." 456 Md. at 277. The Court added that to this end, one of the "key aspects" of a DRRA is a "freeze provision," "which permits parties to agree to freeze certain laws, rules, regulations, and policies as of the time of the execution of the DRRA." *Id*. (citing LU § 7-304(a)).

The statute lists the terms required in a DRRA and specifies the procedure for creating, amending, and terminating a DRRA. Specifically, the statute lists the following nine required conditions that "shall" be included in each DRRA:

(1) a legal description of the real property subject to the agreement;

(2) the names of the persons having a legal or equitable interest in the real property subject to the agreement;

**(3) the duration of the agreement**;

(4) the permissible uses of the real property;

(5) the density or intensity of use of the real property;

(6) the maximum height and size of structures to be located on the real property;

(7) a description of the permits required or already approved for the development of the real property;

(8) a statement that the proposed development is consistent with the comprehensive plan and development regulations of the local jurisdiction;

(9) a description of the conditions, terms, restrictions, or other requirements determined by the local governing body of the local jurisdiction to be necessary to ensure the public health, safety, or welfare; and

(10) to the extent applicable, provisions for the:

(i) dedication of a portion of the real property for public use;

(ii) protection of sensitive areas;

(iii) preservation and restoration of historic structures; and

(iv) construction or financing of public facilities.

LU, § 7-303 (emphasis added). Section 7-305 sets forth the procedure for bringing a DRRA into existence, specifically: a developer files a petition for a DRRA with the local jurisdiction on which the property is located; a public hearing is held; a local planning commission reviews the agreement; and the agreement is recorded.

Of particular relevance to the case before us, the General Assembly provided specific terms of duration for a DRRA:

> An agreement shall be void 5 years after the date on which the parties execute the agreement **unless**:
>
> (1) **otherwise established under § 7-303 of this subtitle; or**
>
> (2) **extended by amendment under subsection (f) of this section.**

LU § 7-305(e) (emphasis added). Additionally, the General Assembly provided for a specific mechanism to amend a DRRA:

> **(1) Subject to paragraph (2) of this subsection and after a public hearing, the parties to an agreement may amend the agreement by mutual consent.**
>
> **(2) Unless the planning commission of the local jurisdiction determines whether the proposed amendment is consistent with the comprehensive plan of the local jurisdiction, the parties may not amend an agreement.**

LU § 7-305(f). Lastly, the statue also specifies how a DRRA may be terminated:

> (1) The parties to an agreement may terminate the agreement by mutual consent.
>
> (2) If the public principal or the local governing body determines that suspension or termination is essential to ensure the public health, safety, or welfare, the public principal or the local governing body may suspend or terminate an agreement after a public hearing.

LU § 7-305(g).

**C. Analysis of Statute**

The question before us involves statutory interpretation, specifically, whether the DRRA before us may be tolled. Accordingly, we shall set forth the relevant rules of statutory construction:

> The cardinal rule of statutory construction is to ascertain and effectuate the intent of the General Assembly.
>
> As this Court has explained, to determine that purpose or policy, we look first to the language of the statute, giving it

its natural and ordinary meaning. We do so on the tacit theory that the General Assembly is presumed to have meant what it said and said what it meant. When the statutory language is clear, we need not look beyond the statutory language to determine the General Assembly's intent. If the words of the statute, construed according to their common and everyday meaning, are clear and unambiguous and express a plain meaning, we will give effect to the statute as it is written. In addition, we neither add nor delete words to a clear and unambiguous statute to give it a meaning not reflected by the words that the General Assembly used or engage in forced or subtle interpretation in an attempt to extend or limit the statute's meaning. If there is no ambiguity in the language, either inherently or by reference to other relevant laws or circumstances, the inquiry as to legislative intent ends.

If the language of the statute is ambiguous, however, then courts consider not only the literal or usual meaning of the words, but their meaning and effect in light of the setting, the objectives, and the purpose of the enactment under consideration. We have said that there is an ambiguity within a statute when there exist two or more reasonable alternative interpretations of the statute. When a statute can be interpreted in more than one way, the job of this Court is to resolve that ambiguity in light of the legislative intent, using all the resources and tools of statutory construction at our disposal.

If the true legislative intent cannot be readily determined from the statutory language alone, however, we may, and often must, resort to other recognized indicia—among other things, the structure of the statute, including its title; how the statute relates to other laws; the legislative history, including the derivation of the statute, comments and explanations regarding it by authoritative sources during the legislative process, and amendments proposed or added to it; the general purpose behind the statute; and the relative rationality and legal effect of various competing constructions.

In construing a statute, we avoid a construction of the statute that is unreasonable, illogical, or inconsistent with common sense.

> In addition, the meaning of the plainest language is controlled by the context in which it appears. As this Court has stated, because it is part of the context, related statutes or a statutory scheme that fairly bears on the fundamental issue of legislative purpose or goal must also be considered. Thus, not only are we required to interpret the statute as a whole, but, if appropriate, in the context of the entire statutory scheme of which it is a part.

*Blentlinger*, 456 Md. at 294-95 (citation omitted).

Under the clear language of the DRRA statute, all DRRAs "shall expire" after five years, except in limited and explicitly stated circumstances. Specifically, the parties may extend the five-year mandatory expiration date by **either**: 1) providing for a greater term in the DRRA itself, **or** 2) by amendment as provided for in § 7-305. In § 7-305, the statute explicitly sets forth the administrative procedure that must be followed to amend a DRRA: 1) the parties to the DRRA must mutually agree to the amendment, 2) a public hearing must be held, and 3) the planning commission of the local jurisdiction must determine whether the proposed amendment is consistent with the comprehensive plan of the local jurisdiction. *See* § 7-305(f).

Applying the guiding law on statutory construction to the DRRA statute, we conclude that the statute clearly states how the parties may extend the five- year duration of a DRRA for a longer period. The parties did that by bargaining for and agreeing to a 20-year term. The statute specifically provides for amending a DRRA and specifically proscribes the administrative steps the parties must follow. This the parties did not do.

Because the plain language of the statute is clear, we need not look to the legislative intent of the Maryland General Assembly in enacting the DRRA statutory scheme. We

note, however, that our conclusion is fully supported by the legislative history and purpose of the DRRA statute. House Bill 700's bill file contains Bill Analysis's by the House Commerce and Government Committee, and the Senate Economic and Environmental Affairs Committee. Both committees reference the proposed amendment provisions of the bill and state in their letters of support that "The bill also provides for the amendment, termination, and voiding of an agreement made by a . . . local government[.]"[7] Additionally, the file contains a letter of support from the Maryland Association of Counties, Incorporated, noting: "The DRRA occurs in an open public environment. Development review is subject to public hearing and comment. Public hearings are required at all approval stages and for exercise of termination and modification rights[.]"[8] Ultimately, when the General Assembly enacted the DRRA statute in 1995, it did so for the following purposes:

> FOR the purpose of authorizing certain local governments ... to enter and amend [DRRAs] with certain persons; authorizing the local governments to establish, by ordinance, certain procedures and requirements for the consideration, execution, and amendment of [DRRAs]; requiring certain procedures before entering and amending [DRRAs]; requiring [DRRAs] to contain certain provisions; establishing that under certain conditions a [DRRA] is void after a certain number of years; authorizing the parties to a [DRRA] to suspend or terminate the agreement under certain circumstances; authorizing the local government to unilaterally suspend or terminate a [DRRA] under certain circumstances; establishing that certain laws, rules, regulations, and policies shall govern [DRRAs] under certain circumstances; providing that the recording of an agreement within a certain number of days has a certain effect; establishing the rights of parties to enforce a [DRRA]; defining certain terms; providing for the application of certain provisions of this Act; providing that this Act is not intended to abrogate certain laws,

[7] *See* Bill file for HB 700 (regular session 1995) pages 25-30/251.

[8] See Bill file for HB 700 (regular session 1995) pages 46-47/251.

> except under certain circumstances; providing that this Act is not intended to abrogate certain powers of certain local governments; and generally relating to [DRRAs].

*See* 1995 Md. Laws 3242 (Vol. V, Ch. 562, H.B. 700) (emphasis added). *See also Blentlinger*, 456 Md. at 313. It is clear that one of the legislative purposes of the statute was to require parties to determine the term of their agreement, and should they wish to extend the term of their agreement, the legislature provided a specific mechanism to accomplish that.[9]

**D. Analysis of the Agreement**

Maryland case law treats DRRAs as contracts. *See Conservation*, 382 Md. at 322 ("A DRRA is not an ordinance or legislation as those terms are commonly understood; rather, it is a contract[.]"). *See also 75-80 Properties, LLC v. Rale, Inc.*, 470 Md. 598, 617 n.6 (2020) ("The DRRA gave the Developer contractual rights to develop the property" under certain conditions) and *Blentlinger*, 456 Md. at 277 ("[T]o be valid a DRRA must contain certain requirements. And, like any other contract, a DRRA must be supported by consideration.").[10] "It is a fundamental principle of contract law that it is improper for the court to rewrite the terms of a contract, or draw a new contract for the parties, when the

[9] We infer that the General Assembly set forth a specific administrative procedure for amending DRRAs in order to balance the "freezing" of relevant land use laws during the course of the Agreement for the benefit of the developer/property owner and the democratic, public right to voice objections or recommendations to the use of land in their community.

[10] Additionally, House Bill 700's bill file contains a letter from the House Commercial and Government Matters Committee in support of the legislation, noting that "The Development Agreements are contracts that are voluntarily entered into by the affected parties." *See* House Bill file for HB 700 (regular session 1995) page 45/251.

terms thereof are clear and unambiguous, simply to avoid hardships." *Calomiris v. Woods*, 353 Md. 425, 445 (1999) (quotation marks and citation omitted). *See also Phoenix Services Ltd. P'ship v. Johns Hopkins Hosp.*, 167 Md. App. 327, 393 (2006). Additionally, Maryland appellate courts have refused to provide a party with equitable relief that is contrary to the express terms of a contract. *See Caroline County v. Dashiell*, 358 Md. 83, 100-01 (2000) (Express contract with county barred general contractor's claim of unjust enrichment, based in part on county's refusal to pay for extra work, which is "nothing more than a unilateral attempt to amend" the clear provisions of the agreement).

Here, the clear and unequivocal language of the DRRA states that "in any event this Agreement shall be void 20 years after the effective date of this Agreement." (emphasis added). This language was adopted by the parties after multiple hearings and extensive administrative reviews and all while the project was subject to multiple lawsuits. We agree with appellees that the DRRA is a "lengthy, complicated, and intensely negotiated agreement." Moreover, the language of the DRRA is controlled by an unambiguous, statutory scheme whose main purpose was to counterbalance the often- competing agendas of developers and county officials, who represent those living in the county. Plainly put, to adopt the position proposed by Hovnanian would violate the statute and the express language of the DRRA itself.

In *Blentlinger*, a developer asked the Court of Appeals to hold that because the DRRA statute does not expressly require DRRAs to include "enhanced public benefits," such benefits are not a required term to make a DRRA valid. The Court agreed. The Court found that "there is no evidence in the DRRA statute, its legislative history, or case law

demonstrating an intent to require" a developer to provide "an enhanced public benefit as part of a DRRA[.]" *Blentlinger*, 456 Md. at 278. In reaching this holding, the Court stated that the DRRA statute is "unambiguous" and declined appellant's invitation to "read into the DRRA statute . . . a requirement that is not evidenced by the clear language and plain meaning of the statute[.]" *Id*. at 308.

As in *Blentlinger*, there is no language in the DRRA statute that would extend a statutorily mandated expiration date by the principles of tolling. Even more compelling, and unlike the facts of *Blentlinger*, the statute contains express language providing for two mechanisms by which a DRRA expiration date may be extended beyond five years — the parties may contract on a mutually agreeable longer term and/or the parties may follow the specifically delineated administrative procedures for extending the term of the contract. *Cf. Fitzgerald v. Bell*, 246 Md. App. 69, 87 (2020) ("[a]bsent legislative creation of an exception to the statute of limitations, we will not allow any implied and equitable exception to be engrafted to it.") (quotation marks and citation omitted), and *Booth Glass Co. v. Huntingfield Corp.*, 304 Md. 615, 623 (1985) ("We have long adhered to the principle that where the legislature has not expressly provided for an exception in a statute of limitations, the court will not allow any implied or equitable exception to be engrafted upon it.").

In arguing that tolling principles should be applied in the present case, Hovnanian cites *National Waste Managers, Inc. v. Anne Arundel County*, 135 Md. App. 585 (2000) in support of its argument. Additionally, Hovnanian quotes from a case decided by the Court of Appeals that the "regulatory process is not designed to be a spider's web, snaring one

who follows all the regulations and statutes, obtains all the necessary permits, and successfully defends a series of appeals, but then loses his right to proceed because the passage of time has caused the permits to expire." *City of Bowie v. Prince George's County*, 384 Md. 413, 437 (2004) (quotation marks and citation omitted). We are persuaded that *National Waste* and *City of Bowie* do not parallel the case before us.

*National Waste* concerned a rubble landfill project in Anne Arundel County. The developer had obtained a necessary special exception from the County, which it needed to receive a permit from MDE to operate the landfill. After it received the special exception, however, Anne Arundel County initiated actions to delay issuance of the permit. The developer sued the County, which argued, among other things, that the special exception, which required action within two years, had expired. *Id*. at 598. The developer argued that the time period set forth in the county code was tolled during the litigation because of the County's conduct. We agreed that the two-year period was tolled during the litigation, noting that although the County argued that National Waste failed to seek a variance from the exceptions time limit, there was no specific process for a renewal of the exception. *Id*. at 606-07. *See also City of Bowie*, 384 Md. at 417, 420 n.6 (2004) (where the Court of Appeals held that the county code two-year time period -- and a one-time, one year extension -- in which an applicant for a subdivision must take further action after receiving preliminary plat approval was tolled while litigation challenging the preliminary plat approval is filed and pending).

*National Waste* and *City of Bowie* involved planning and zoning permits with short (one or two year), inflexible, unilaterally imposed terms with no statutory mechanism

allowing for meaningful extensions. In sharp contrast, the DRRA here was a bilaterally negotiated instrument with an explicit term, signed in the context of a comprehensive DRRA legislative scheme that specifically designated the procedure for amendments. We are aware of no statute or regulation (and Hovnanian has directed us to none) like the situation here where the governing statute expressly provides that the parties may negotiate a termination date, and, just as or more importantly, also provides a mechanism by which their agreement may be extended. Additionally, we are aware of no case law (nor has Hovnanian directed us to any) that impose an equitable excuse for a plain and unambiguous negotiated contract term like the circumstances presented.

For the reasons stated above, we shall affirm the judgment of the Circuit Court for Queen Anne's County.

**JUDGMENT OF THE CIRCUIT COURT FOR QUEEN ANNE'S COUNTY AFFIRMED. CASE REMANDED TO THAT COURT TO REVERSE THE DECISION OF THE QUEEN ANNE'S COUNTY BOARD OF APPEALS.**

**COSTS TO BE PAID BY APPELLANT.**