

**OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS**  
**Stella B. Werner Council Office Building**  
**100 Maryland Avenue, Suite 200**  
**Rockville, Maryland 20850**  
**240 777-6660**

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The case arose under the “Prevailing Wage Requirements” of Montgomery County Code Section 11B-33C, and involves an appeal to the CAO of a determination by the Montgomery County Department of General Services that Appellant Milestone Construction Services, Inc.,

had violated the Prevailing Wage Law provisions in carrying out Contract No. 1007235 – the Olney Library Renovation.

The matter was referred to the Office of Zoning and Administrative Hearings (OZAH) by memorandum from the Chief Administrative Officer (CAO) dated September 29, 2015, and received by OZAH on September 30, 2015. Exhibits 1 and 2. The CAO's memorandum designates OZAH as the Hearing Officer in the case and directs OZAH to conduct a hearing in accordance with Chapter 2A of the County Code and make a report and recommendation for the CAO's consideration.

On October 5, 2015, the Hearing Examiner issued a Scheduling and Procedures Order, which set up a scheduling conference for October 15, 2015, and suggested alternative schedules for the hearing and prehearing proceedings in this case. The scheduling conference was held on October 15, 2015, and was attended by Associate County Attorney, Trevor Ashbarry, on behalf of Montgomery County, and by David B. Wonderlick, Esquire, attorney for Milestone Construction Services, Inc. As a result of that conference, on October 16, 2015, the Hearing Examiner issued a revised scheduling order and notice of hearing (Exhibit 8). At the request of the parties, all the prehearing and hearing dates suggested in the Hearing Examiner's original Scheduling and Procedures Order were pushed back by two months to allow time for negotiations between the parties.

As mentioned above, those negotiations proved fruitful, and on February 25, 2016, the parties signed a "Joint Stipulation of Dismissal," reciting that they had "reached a negotiated agreement to resolve the above-captioned Appeal" and noting that "This Appeal accordingly can be DISMISSED WITH PREJUDICE." Exhibit 12(a).

The enforcement provisions of the Prevailing Wage Law (Montgomery County Code §11B-33C (i) (7)) provide for the CAO to refer an appeal under the law to a Hearing Officer, who must review the case pursuant to the County's Administrative Procedures Act (MC-APA), which is in Chapter 2A of the County Code:

*(7) A contractor may appeal a written decision of the Director that the contractor violated a provision of this Section to the Chief Administrative Officer within 10 working days after receiving a copy of the decision. The Chief Administrative Officer must designate a hearing officer to conduct a hearing under Chapter 2A upon receipt of a timely appeal. If the contractor does not appeal a written decision within 10 working days after receipt, the decision of the Director becomes final and binding.*

Section 2A-10 (a) of the MC-APA provides in pertinent part that "any decision stipulated to or consented to by the parties need only be reflected by an appropriate written order or consent decree." Section 2A-10 (g) of the MC-APA provides:

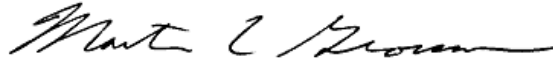
*(g) Informal disposition. Where appropriate to the nature of the proceedings and the governing laws, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order or default.*

The Hearing Examiner concludes that the parties' Joint Stipulation of Dismissal is an appropriate "informal disposition" of the case as provided in Section 2A-10(g), and as a result, there is no reason to conduct a formal hearing. Therefore, the Hearing Examiner accepts the parties' Joint Stipulation of Dismissal and all other previously filed documents into the administrative record and hereby closes the record.

Since the Hearing Examiner does not have the authority to issue a final decision on behalf of the CAO, the Hearing Examiner is returning this matter to the CAO with the recommendation that the CAO accept the parties' Joint Stipulation of Dismissal and dismiss this case with prejudice.

Dated: March 2, 2016

Respectfully submitted,



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Martin L. Grossman  
Hearing Examiner  
Director, Office of Zoning and Administrative Hearings

Serve:

David B. Wonderlick, Esquire  
Attorney for Appellant

Trevor Ashbarry, Esquire  
Associate County Attorney

Taggart B. Hutchinson  
Assistant County Attorney

Ramona Bell-Pearson  
Assistant Chief Administrative Officer