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July 25, 2011

**VIA HAND DELIVERY**

Andrea Hornung  
Interim Zoning Administrator  
1300 Courthouse Road  
County of Stafford  
Post Office Box 339  
Stafford, VA 22555-0339

RE: Tax Map Parcel 21-58 --Zoning Determination

Dear Ms.  Hornung:

I am writing on behalf of Smith Industries, Inc. ("Smith"), which seeks a determination regarding certain proposed uses on Tax Map Parcel 21-58. Because Tax Map Parcel 21-58 is currently zoned under two zoning classifications, this determination request presents two issues for your consideration:

- (1) Whether Smith's proposed use on the back portion of Tax Map Parcel 21-58, *i.e.*, the portion closest to the I-95 Corridor, (a) constitutes a recycling facility/center, and (b) is permitted by-right in the zoning district; and
- (2) Whether Smith's proposed use on the front portion of Tax Map Parcel 21-58, *i.e.*, the portion closest to the Jefferson Davis Highway corridor, (a) constitutes medium intensity commercial retail, and (b) is permitted by-right in the zoning district.

**Scrap Metal Recycling Facility/Center**

To begin, Smith seeks a determination that its proposed use of the back portion of Tax Map Parcel 21-58 (the "back portion"), constitutes a recycling facility/center, *i.e.*, a by-right use. The Stafford County zoning ordinance ("zoning ordinance") permits *recycling facilities* as a by-right use within the M-2 zoning district, which is the zoning classification for the back portion. However, the zoning ordinance does not define *recycling facilities*. Rather, the zoning ordinance defines *recycling center* as a "structure, or confined site or place where recycling activities . . . take place." The term *recycling center*, however, is not used outside the definitional section of

the zoning ordinance. Because of the similarity of terms, Smith contends that *recycling facilities* and *recycling centers* must be read as interchangeable terms under the zoning ordinance.

Smith proposes to separate and package ferrous and nonferrous scrap metal material, including automobile material, on a confined site, *viz*, the back portion.<sup>1</sup> Such separation and packaging constitutes the extraction of useful materials from waste, refuse, garbage, or other discarded materials. Therefore, Smith contends that the proposed activity is a recycling activity<sup>2</sup> under the zoning ordinance (*i.e.*, “the extraction and processing or reprocessing of useful materials from waste, refuse, garbage or other discarded materials”).<sup>3</sup> Accordingly, Smith maintains that the proposed activity transforms the confined site into a recycling facility, *i.e.*, a by-right use under the M-2 zoning classification and requests a determination that the aforementioned proposed use is permitted by right under the zoning ordinance.

### Sale of Scrap Metal

Smith seeks a further determination that another proposed use constitutes a by-right use on the front portion of Tax Map Parcel 21-58 (*i.e.*, the portion closest to the Jefferson Davis Highway corridor), which is currently zoned B-2. Smith proposes to purchase from persons (individuals, businesses, governments) scrap metals on such front portion. It is Smith’s position that the sale of such scrap metal at retail qualifies as *commercial retail* under the zoning ordinance.<sup>4</sup> Due to the square footage of the front portion of Tax Map Parcel 21-58, Smith does not expect more than 100 average daily trips per 1,000 square feet of gross floor area. Therefore, Smith contends that the proposed commercial retail use of such front portion will be of medium intensity. Accordingly, Smith seeks a determination that the foregoing use of such front portion of Tax Map Parcel 21-58 is medium-intensity commercial retail, which is permitted by right under the zoning ordinance.

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<sup>1</sup> From that confined site, Smith intends to ship such packages to a processing facility for preparation of “mill ready” product.

<sup>2</sup> The Michigan Department of Environmental Quality describes automobile recycling as follows:

When automobiles have outlived their usefulness, the majority (over 94%) are taken to *scrap yards* for reclamation of useable parts. What is left is shredded or compacted. This remaining material, consisting primarily of metals, is then recycled back into appliances, automobiles, and other products<sup>2</sup> (emphasis added).

[http://www.michigan.gov/deq/1,1607,7-135-3585\\_4130-12580--,00.html](http://www.michigan.gov/deq/1,1607,7-135-3585_4130-12580--,00.html) (last accessed on June 22, 2011). Also, the United States Environmental Protection Agency discusses automobile recycling in its **Model State Compliance Assurance Program Guide for Auto Recycling Facilities**, available at: <http://www.epa.gov/compliance/resources/publications/assistance/sectors/automodel.pdf> (last accessed on June 22, 2011).

<sup>3</sup> See § 28-25.

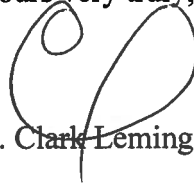
<sup>4</sup> See § 28-25 defining *commercial retail* as a “use that sells goods or services at retail.”

Andrea Hornung  
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July 25, 2011  
Page 3

### **Conclusion**

For the foregoing reasons, Smith requests a determination that Smith's proposed uses on Tax Map Parcel 21-58 are permitted by right. Please let me know if you have any questions or need any additional information or assistance.

Yours very truly,

A handwritten signature in black ink, appearing to read 'H. Clark Leming'. The signature is stylized with a large loop at the end.

H. Clark Leming