

IN THE MATTER OF	*	BEFORE THE
<u>CHRISTIAN LIFE CHURCH – LEGAL OWNER</u>	*	BOARD OF APPEALS
(FKA DEER PARK RESERVE;	*	OF
IRON HORSE PROPERTIES, LLC)	*	BALTIMORE COUNTY
W/S DEER PARK RD, AT W END	*	CASE NO.: 11-311-SPHA
OF WINANDS ROAD	*	with
3 RD ELECTION DISTRICT	*	CASE NO.: CBA-12-012
2 ND COUNCILMANIC DISTRICT	*	
PETITION FOR SPECIAL HEARING/	*	
and DEVELOPMENT PLAN	*	
HOH Case No.: 02-705	*	

* * * * *

ORDER OF DISMISSALS

This matter comes to the Board of Appeals by way of a (Protective) Notice of Appeal filed by Lisa C. Heimlicher, Esquire, on behalf of The Hampton Utilities Company, LLC, a Maryland limited liability company, Protestant/Appellant, from the decision of the Administrative Law Judge (ALJ), dated August 11, 2011 on a Motion for Reconsideration in which the request was denied and the Petition for Special Hearing was granted and the redline Development Plan for Christian Life Church was approved, in the decision of the Administrative Law Judge (ALJ), John E. Beverungen, dated July 1, 2011. The Plan proposes a 2,100 seat church building and 553 parking spaces on approximately 12.35 acres, more or less, split-zoned B.R., D.R.3.5, B.L.1 and R.C. 5. The Petition was amended pursuant to Section 500.7 of the Baltimore County Zoning Regulations (BCZR) for: approval pursuant to BCZR Section 238.C of a building that exceeds the height permitted in Section 238.C.1, and (2) pursuant to Section 1B01.1.B.1.g(6) of the BCZR for a finding that the proposed improvements are planned in such a way that compliance, to extent possible with RTA requirements, will be maintained and that said plan can otherwise be expected to be compatible with the charter and general welfare of the surrounding residential premises, if necessary. The Developer had originally filed a Petition for

Variance from Section 409.4 of the BCZR to allow parking spaces in an off-street parking facility to have direct access to a driveway, but withdrew this request at the ALJ's hearing.

In 2006, the Deputy Zoning Commissioner approved a Development Plan for the construction of forty (40) houses on the subject property, known as "Deer Park Reserve", PDM Case No.: II-705. Those homes were never constructed, and the Developer now seeks to construct a 2,100 seat church sanctuary. Then Director of Permits and Development Management, Timothy Kotroco, advised Counsel for the Developer that this constituted a "material" amendment to the Development Plan and that the Developer would need to comply with the Baltimore County Development Regulations.

After the decision was issued by the ALJ, granting the requested zoning relief, the Baltimore County Council passed legislation that eliminated the need for the zoning relief requested in case number 11-311-SPHA. (See Council Bill No. 68-11). The requested zoning relief was no longer needed to pursue development of the property as shown on the Development Plan. The Board received a voluntary letter of withdrawal of the Petition for Special Hearing, filed November 30, 2011 and signed by David H. Karceski, Counsel for Christian Life Church, Petitioner, (a copy of which is attached hereto and made a part hereof).

Petitioner contended that since the *de novo* portion of the hearing involved in case number 11-311-SPHA should now be canceled; an "on the record" Development Plan hearing should go forward as scheduled.

During the hearing before the ALJ, Lisa C. Heimlicher, Esquire, of Windegrad, Hess, Friedman & Levitt, LLC, on behalf of The Hampton Utilities Company, LLC, located at 525 Esst Seminary Avenue, Baltimore, MD 21286 ('Hampton') a Maryland limited liability company, contended that the Developer was indebted to her client, the utility company "Hampton", for

certain infra-structure costs. The ALJ took the position that this was a civil matter over which he had no jurisdiction and therefore refused to entertain the request.

The sole appeal with respect to this matter is filed by Ms. Heimlicher on behalf of "Hampton".

The Appellant/Protestant contends that her client, "Hampton", is a lien holder on the subject property by virtue of a Declaration of Covenants and Lien for Water and Sewer Facilities Charges, dated September 23, 2009 and recorded in the Land Records for Baltimore County in Liber S.M. 28692, Folio 342 *et seq.* The Declaration of Covenants and Lien for Water and Sewer Facilities Charges was filed with the Appeal of "Hampton" before this Board. "Hampton" contends that under the authorization of the *Baltimore County Code* (BCC), Section 32-4-310, "Hampton" established a lien on the property for the benefit of the Company to secure sewer and water facilities charges of Six Hundred (\$600.00) Dollars per year for forty (40) years, to be paid by each of the forty (40) lots within the property, established under the Plat entitled "Deer Park Reserve", recorded among the Land Record for Baltimore County in Liber S.M. 78, Folio 325.

Appellant contends that Note 19 on the Record Plat, which notifies persons that the Lots established by the Record Plat are subject to a fee or assessment which, pursuant to the BCC, Section 32-4-310, runs with the land and is a contractual obligation between the developer and each owner of the property. Appellant contends that the developer's rights were assigned in the Utility Declaration to the Appellant/Protestant.

The Developer/Petitioner contends that the Covenant is not valid and disputes the fact that there should be any notations on the Development Plan with respect to the construction of the Church on the aforesaid property.

A hearing was held before the Board on December 13, 2011. The Petitioner was

represented by David H. Karceski, Esquire and Daniel Moylan, Esquire of Venable LLC.

The Appellant was represented by Lisa C. Heimlicher, Esquire. A Public Deliberation was held on January 10, 2012.

DECISION

Appellant raises five (5) issues on appeal. They are as follows:

1) The Petitioner failed to provide a note on the Development Plan concerning private utility assessments or fees as required by the *Baltimore County Code* (BCC) § 32-4-310 *et seq.*;

2) The Development Plan did not comply with other county laws as required by the BCC § 32-4-114, by failing to comply with BCC § 32-4-310 *et seq.*;

3) The BCC § 32-4-222(b) requires that the Development Plan contain a certification under oath that there are no delinquent accounts for any other development with respect to: 1) the applicant, 2) a person with a financial interest in the proposed development; because of the lien established under the Declaration, the Development Plan could not contain such a certification;

4) Approval of the Development Plan's special exceptions and the Development Plan was contrary to the purpose and intent of the BCZR to provide "greater certainty about dwelling types and densities within existing communities" as required by the BCZR § 1B00.2; and

5) Approval of the Development Plan was contrary to the purpose of development plans to "protect those who have made decisions based on such plans from inappropriate changes therein" as required by the BCZR § 1B01.3.

During the hearing before the Board, the Board indicated to Counsel for the Appellant, that it felt that it did not have the authority to rule with respect to the Covenant, which the Appellant urged as a basis for the Board to deny the approval of the Development Plan.

The Developer disputes the validity of the Covenant with respect to the development of

the property as a Church. The Developer contends that under Maryland law, questions of enforcement of private covenants is not an aspect of the zoning process. He cites several cases in support of his position that in order to enforce the lien they contend exists on the property, the Appellant must file an action in Circuit Court for Baltimore County. The Developer contends that there are no Notes on the Development Plan since they are not required until a plat is prepared with respect to the development of the property. The Developer contends that the *County Code* does not require a Note on the development plan and that his client was not required to deal with the Covenant at the Development Plan meeting.

Counsel for the Appellant contended that she was not allowed to argue below and therefore was denied due process. She was not allowed to present any testimony or evidence with respect to the Covenant.

OPINION

The Board has reviewed the arguments and testimony presented at the hearing before the Board. The Board notes the decision of Court of Appeals in Maryland in *Perry v. Montgomery County Board of Appeals* 127 A2nd 507, at page 509. There the Court stated:

"the enforcement of restrictive covenants is a matter for the exercise of the discretion of an equity court in light of attendance circumstances.

The validity of the zoning ordinance, the granting of a variance or exception, should be considered independently of its effect upon covenants and restrictions in deeds."

The Board also notes that the Covenant which the Appellant seeks to enforce states on page

15, paragraph 21, entitled Limited Right of Use of Sewer and Water Facilities and Additional Remedies...

In addition to the remedies provided in the previous Paragraphs, enforcement of the obligation of payment of the Sewer and Water Facilities Charges and other enforcement of compliance with all covenants, agreements and conditions of this Declaration (and compliance with all rules and regulations promulgated pursuant to this Declaration) may be made by any action at law for damages or a suit in equity to enjoin any breach or violation or to enforce performance of any covenants, agreements, conditions, rule or regulations. Upon referral of an enforcement matter to an attorney, the Owner shall be responsible for the Utility Company (or its successors or assigns) costs of collection and/or enforcement, including without limitation, attorney's fees of not less than twenty percent (20%) of any and all fees or charges due hereunder regardless of whether litigation is initiated..."

Therefore, it is the opinion of this Board that it is without jurisdiction to enforce the Covenant which the Appellant contends should require the Board to deny the granting of the Development Plan in this matter. The Board also finds that Appellant has not been denied due process, since neither the ALJ or this Board had jurisdiction to enforce the Covenant.

For the reasons cited, the Board will "Dismiss for Lack of Jurisdiction," the appeal filed in Case No.: CBA-12-012, and will so order.

ORDER

THEREFORE, FOR THE REASONS STATED ABOVE, it is this 24th day of January, 2012 by the Board of Appeals of Baltimore County

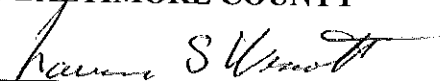
ORDERED, that the Petition for Special Hearing in Case No. 11-311-SPHA be and the same is hereby **DISMISSED without prejudice**; and it is further

ORDERED, that the appeal filed in Case No. CBA-12-012, by The Hampton Utilities Company, LLC, a Maryland limited liability company, Protestant, from the decision of the Administrative Law Judge, dated July 1, 2011, in regard to the Development Plan for Christian Life Church in HOH Case No.: 02-705, be and the same is **DISMISSED** for the reasons as set forth above; and it is further

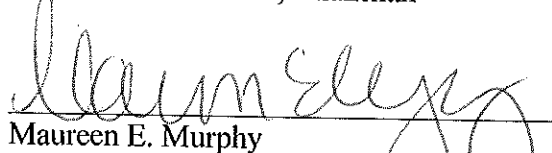
ORDERED, that the decision of the ALJ in Case No. CBA-12-012 approving the Development Plan in that case be and is hereby **AFFIRMED**.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*.

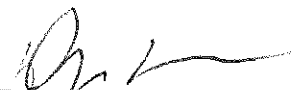
**BOARD OF APPEALS
OF BALTIMORE COUNTY**



Lawrence S. Wescott, Chairman



Maureen E. Murphy



David L. Thurston