

IN THE MATTER OF  
CHARLES G. AND MARY J. MACGILL-LO  
319 Gun Road  
Baltimore, MD 21227

\* BEFORE THE  
\* BOARD OF APPEALS  
\* OF  
\* BALTIMORE COUNTY  
\* Case No. CBA-13-018  
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**OPINION**

This matter comes before the Board of Appeals for Baltimore County (the “Board”) as an Appeal from an Administrative Law Judge’s December 11, 2012 decision from a citation for violations of the Baltimore County Code (B.C.C.), Sections 34-3-104 and 34-7-112, for failure to comply with the April 27, 2012 and August 3, 2012 Correction Notices requiring the owners to cease discharging sewage to a stream that is a tributary to the Patapsco River via a pipe to a storm drain outlet. The citation proposed a civil penalty of Twenty-Nine Thousand, Seven Hundred Dollars (\$29,700.00). That fine was upheld by the Administrative Law Judge, however, he suspended same and gave the property owners sixty (60) days to either construct a “drip dispersal system with advanced sewage pre-treatment”, the details of which were set out in the letter dated May 22, 2012 from Robert Powell, Supervisor, Soil Evaluation Section of the Baltimore County Department of Environmental Protection and Sustainability (DEPS) or apply for connection to the Baltimore County public sewer system and install a “holding tank system”, the details of which were set out in the August 3, 2012 letter from Robert Powell, Supervisor, Soil Evaluation Section of the Baltimore County Department of Environmental Protection and Sustainability (DEPS). It was further ordered by the Administrative Law Judge that if not paid

with in thirty (30) days, any civil penalty shall be imposed and placed as a lien upon the property. He also ordered that County be permitted to enter and inspect the property at 319 Gun Road to determine whether or not the requirements set forth in his Opinion and Order had been carried out. The Appellant filed a timely appeal. On April 10, 2013 the parties appeared before this Board for oral arguments, as this is an on the record appeal from the Administrative Law Judge, Lawrence Stahl's, Decision. The owner of the subject property, Mr. Charles Macgill, did appear at the hearing, pro se. His wife and co-owner, Mrs. Mary Macgill, did not appear. Jonny Akchin, Assistant County Attorney, Office of Law, and Robert Powell, Supervisor, Soil Evaluation Section, EPS, appeared on behalf of Baltimore County. The arguments presented were considered, the testimony from the hearing before the Administrative Law Judge was reviewed, and a non-public deliberation was held on April 25, 2013.

#### BACKGROUND

Testimony was presented to the Administrative Law Judge which showed that in the course of replacing a storm drain pipe, employees of the Baltimore County Bureau of Utilities observed a pipe running from the Appellant's property at 319 Gun Road and which was expelling toilet paper, fecal matter, and sewage. In response to the report, Mr. Robert Powell inspected the property personally on April 5, 2012 and confirmed that raw sewage was being discharged from Mr. Macgill's septic system into a storm drain and from there to the adjacent stream. Photographs taken by Mr. Powell were accepted into evidence by Judge Stahl.

Mr. Powell testified that on April 27, 2012 he sent a letter to the Appellant, informing him of the sewage discharge, and advising him that this was contrary to the Baltimore County Code (B.C.C.). He was ordered to immediately make repairs to eliminate the problem. The letter from Mr. Powell set out the steps Mr. Macgill needed to take to correct the situation. On

May 16, 2012, Mr. Powell conducted a second inspection, and was accompanied by a representative of Vogel's Septic Service, a sewage disposal contractor obtained by the Appellant. Additional photographs taken by Mr. Powell on that date were accepted into evidence. At that time it was determined that Mr. Macgill's property needed a "drip dispersal system with advanced sewage pre-treatment". A letter dated May 22, 2012 was sent to the Appellant by Mr. Powell, setting forth the procedure Mr. Macgill needed to follow to install the system and properly document it in the County Land Records.

Mr. Macgill advised Mr. Powell that instead of constructing a new system, he wanted to have his property connected to the public sewer system. By letter dated August 3, 2012 Mr. Powell advised Mr. Macgill that to connect to the public sewer system would require the support of the local community and could take a number of years. If Mr. Macgill wanted to pursue this, he would still have to install temporary holding tanks and remove the pipe which was the source of the outflow of illegal discharge. Mr. Macgill was given a deadline of September 5, 2012 to either construct a new system or install the necessary holding tanks to request connection to the public system. Mr. Powell then testified that he was advised orally by the Appellant that he was not going to install the temporary holding tanks.

Mr. Powell testified as to an inspection on September 5, 2012 of the storm drain outlet. Water samples were taken from above and below the storm drain pipe. The sample from below the pipe revealed discoloration and fecal odor. Employees from the Bureau of Utilities were also present at that time. They removed the lid from the storm drain drop box, said box collects discharge emanating only from the Appellant's property. In the box, was fecal waste and toilet paper and little to no water which confirmed to Mr. Powell that whatever is flushed from Mr. Macgill's property is piped into the storm drain and then into the stream.

Mr. Macgill testified on his own behalf before the Administrative Law Judge. He testified that he has owned the property at 319 Gun Road for 46 years and has never seen or smelled anything which would suggest that there was an improper outflow from his septic system. Mr. Macgill presented signed statements from his neighbors stating that they had also never smelled any sewage coming from his property. Mr. Macgill testified that he is not convinced that if the problem does exist, that it is coming from his property. A dye test was offered to Mr. Macgill to see if the discharge was coming from his property but he declined. He did not remember anyone from the Bureau of Utilities ever informing him of the problem and he has personally never seen anything but clear water coming from the pipe. He suggested that any discoloration could be as a result of the existence of older, terracotta pipes in the system. He also suggested that perhaps the original construction of the septic system may have been connected to the storm drain itself.

Mr. Macgill entered into evidence drawings of the system and a hand-drawn topography exhibit sheet comparing the “drip system” and connection to the County’s sewer system. He testified as to the problems with the County’s solutions. He believes the only real solution, if a solution is necessary, is for him to connect his property to the County’s public sewer line, which is approximately 700 feet from his property. However, he also testified that Mr. Powell’s option of the “holding tank and waste pick-up” system during the interim was too expensive, rendering it an unacceptable option.

After hearing and weighing all of the evidence presented to him, the Administrative Law Judge found by clear and convincing evidence that the raw sewage shown in the photographs and testified to by Mr. Powell did come from the Appellant’s property and his failed sewage system. The Administrative Law Judge considered the personal observations of Mr. Powell, the activities

on the September 5, 2012 property visit and the fact that the Appellant declined to have a dye test when same was offered to him in reaching his decision. He stated in his opinion that he found the Appellant's objections to the problem's existence and to any short term or long term repairs to not be supported by any competent, expert, or authoritative evidence. He found that the Appellant must take one of the options offered to him by the County to correct the situation.

### DECISION

An appeal to the Board of Appeals for a code violation is on the record made before an Administrative Law Judge. The responsibility of this Board in Code Enforcement cases has been set forth in Baltimore County Code § 3-6-304, which states:

In a proceeding under this subtitle, the Board of Appeals may:

- (i) Remand the case to the Administrative Law Judge;
- (ii) Affirm the final order of the Administrative Law Judge; or
- (iii) Reverse or modify the final order if a finding, conclusion, or decision of the Administrative Law Judge:
  1. Exceeds the statutory authority or jurisdiction of the Administrative Law Judge;
  2. Results from an unlawful procedure;
  3. Is affected by any other error of law;
  4. Subject to paragraph (2) of this section, is unsupported by competent, material, and substantial evidence in light of the entire record as submitted; or
  5. Is arbitrary or capricious.

This Board is not entitled to substitute its judgment for that of the Administrative Law Judge, and deference is due the totality of the Administrative Law Judge's decision in examining the Appellant's petition for appellate review and considering the oral arguments.

Appellant argues before this Board that he did not get to present all of his evidence at the hearing before the Administrative Law Judge. This case is about septic outflow and discharge into a public stream. Mr. Macgill argues that he should have been able to present evidence as to the cause of the outflow and that he is not responsible for the problem. While he acknowledges that the sewage probably does come from his property, he wanted to be able to argue that the County caused the problem. He wants to have the case reversed and remanded so he can call witnesses and introduce evidence which proves the County caused the problems. Neither he nor any of his neighbors with whom he has spoken has ever seen or smelled any odor of sewage.

Appellant argues that his septic system, which was built in the 1900's, worked until the County's construction caused the problems. It is the same septic system used in Washington D.C. In March of 2012, the county replaced an 18 inch storm drainage pipe with a 12 inch pipe. There was no level of toxicity prior to the pipe being replaced. It is Mr. Macgill's contention that the issue should be who is at fault for the stream being polluted.

The water drains under the road. The County does not own the property under the road, they do not have a right of way, they only have a prescriptive right to maintain the road. The property belongs to Mr. and Mrs. Macgill. When the County workers discovered the sewage, they should have stopped working and spoken with the Appellant.

The County is required to monitor the use of streams, which they have failed to do. By failing to properly monitor the streams, the County has failed the Gun Road watershed area. As the county has never tested the stream, there is no way to know whether there was any pollution

previously in the stream. The County did not check the outflows from his neighbors' septic systems. The toxicity level might be higher because of his neighbors.

As for one of the County's proposed solutions, Appellant argues that he has now found three people who will join in his petition to join the county's public sewage. Mr. Macgill argues that county sewage will be coming into his area eventually, so why should he waste money paying for a septic system with no guarantee that it will ever work.

In response to Appellant's arguments, the County argues that there really is no dispute as to the source of the sewage. Following the replacement of a storm drain pipe in March of 2012, they discovered discharge from a pipe on the Appellant's property leading into the storm drain. Raw sewage was being drained from Mr. Macgill's property. His septic system was not functioning. The terra cotta pipes had open joints and the sewage was running under the street, where oyster shells were supposed to clean everything before it entered into the stream bed.

The County offered Mr. Macgill a number of options to fix the problem. The petition to connect to the County's sewer system was a nonstarter because his neighbors have working septic systems. A drip dispersal system is pricey because of the slopes on Mr. Macgill's property but it makes the most sense as it is the only way to properly treat the waste. The last solution is to take a temporary system and install it as a standing system until County sewage comes to his neighborhood, but that can also get expensive as it must be cleaned every couple of months. The Bay Restoration System can provide some money to help offset the costs for these systems.

It is the County's position that Mr. Macgill never had a functioning system. The County may have made the dispersal more obvious by replacing the storm drain under the road but the obligation is on the property owner to maintain his system and make sure it is functioning properly. There are a number of pollutants which do not give off an odor. Soap water, for

example, is still sewage. The County argues that the issue before the Board is whether Judge Stahl erred in finding the source of the problem. The County may have exacerbated the problem but the outflow is still coming from the Appellant's property. Mr. Macgill received the citations because of his illegal connection into the county's storm drain. He is using the storm drain as a connection between his private drain, on his property, and the stream bed.

There is no telling if or when public sewage will come to Mr. Macgill's neighborhood. The County won't extend the sewer system without a petition or an immediate public health issue. The properties surrounding Mr. Macgill have adequate septic systems. The County performed soil percolation tests to check soil conditions. There is no evidence of sewage coming from other houses. Regardless, the county argues that the issue is whether there is waste and what is the source of the waste. The level of or the quantity of the waste is irrelevant.

Section 34-3-104(a) of the Baltimore County Code state that "The owner of any property in the County is responsible for maintaining the property in such a manner that no overflow of sewage, wash water, or other liquids or solids shall be discharged onto any ground surface, streets, or roads or into any waters of the county, except as authorized by a valid permit from the State Department of the Environment". Section 34-3-104(b) states that "When any overflow condition is found to exist, the Director Environmental Protection and Sustainability shall notify the owner that a state of nuisance exists on the owner's property and that correction and cessation of the nuisance shall be made within such time as the notice shall specify". Section 13-7-112 states "An owner may not create or allow to exist on the owner's property a nuisance determined by the County Health Department or the Department of Environmental Protection and Sustainability to be detrimental to public health, safety, welfare or the environment".

At the hearing before Administrative Law Judge, Appellant stated that he is the one who



contacted the County to repair a section of Gun Road which was collapsing over top of what appeared to be a storm drain. He was present when the work crew came, and at no time did anyone mention an odor or say they saw waste material. It was his position that, at that time, there was no outflow of sewage. He was also present months later when the County workers returned. They removed the cap from the storm drain vault and he saw a portion of waste and a piece of toilet paper sitting in clear water at the bottom of the well.

Mr. Macgill testified before Judge Stahl as to the history of his septic system. It appears that when they put the plumbing in, they connected the house to the sewer and the storm water system. The problems, as he saw them, did not develop until the County replaced the pipe in March of 2012. At this point, Judge Stahl stopped the Appellant. Judge Stahl explained that it is his job to determine if there is sewage where the county says there is sewage, and if so, what needs to be done to correct it. Judge Stahl explained to Mr. Macgill that he was not there to resolve the problems Mr. Macgill may have with the County. His function is to determine whether the citations issued by the County are accurate. He told Mr. Macgill that if he could prove the sewage was not coming from his property, he would listen to that evidence. For anything else, Mr. Macgill must find a different forum. He clearly stated to Mr. Macgill that he was trying to focus him on the issue, the validity of the citation, not limit his presentation. If Mr. Macgill felt wronged by the county, he could file suit but that that is not a matter for an Administrative Law Judge to hear or decide.

Judge Stahl then re-questioned Mr. Powell. Mr. Powell reiterated that there is contamination and it is coming from Appellant's house. He testified that there are two or three lines coming from Appellant's property into the storm drain. They come from his property only. The storm drain inlet does not collect run off from the road. There was toilet paper and solid fecal waste.

In response, Mr. Macgill stated that there probably was fecal matter in the vault, but the vault is on his property, not the County's property, and that should make a difference. Judge Stahl explained that it does not make a difference if it goes into the ground and into a public system. Mr. Macgill stated that this was never a problem with the old pipe, it is the new pipe which is causing all the problems. Judge Stahl explained to Mr. Macgill that if he thinks someone else's actions are ultimately responsible then he still needs to take it to another forum.

At the end of the hearing, Appellant conceded that the sewage was probably coming through his property but that he just wanted to be able to resolve the issue of who is responsible. The County Code sections which the Appellant is charged with violating clearly state the obligation of the property owner. It is the owner's obligation to prevent the overflow of sewage. It is the County's obligation to offer ways to correct the problem. This Board does not find that Judge Stahl erred in limiting the evidence to the sole issue of whether the sewage was coming from the Appellant's property. He correctly advised the Appellant as to his remedies should he believe it was the actions of the County or another individual which caused the problem. Mr. Macgill failed to produce any evidence to suggest the sewage was not coming from his property, and even acknowledged that it probably was coming from his property.

#### CONCLUSION

The decision of the Administrative Law Judge was neither arbitrary nor capricious and was supported by competent, material and substantial evidence. The Board does not find any error of law or unlawful procedure. The Administrative Law Judge did not exceed his authority or jurisdiction.

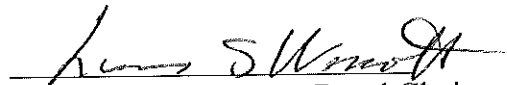
#### ORDER

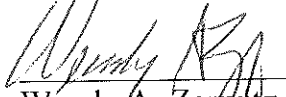
**THEREFORE, IT IS THIS** 30th day of April, 2013, by the County Board of Appeals of Baltimore County

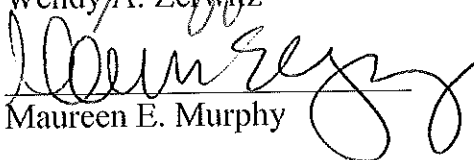
**ORDERED** that the decision of the Administrative Law Judge dated December 11, 2012 be same hereby is **AFFIRMED**.

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, Panel Chairman

  
Wendy A. Zerwatz

  
Maureen E. Murphy



## Board of Appeals of Baltimore County

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April 30, 2013

Charles and Mary Macgill  
319 Gun Road  
Baltimore, MD 21227

Jonny Akchin, Assistant County Attorney  
Dept. of Permits, Approvals and Inspections  
Real Estate Compliance Section  
111 W. Chesapeake Avenue  
Towson, MD 21204

RE: *In the Matter of: Charles and Mary Macgill – Appellant*  
Case No.: CBA-13-018

Dear Messrs Macgill and Akchin:

Enclosed please find a copy of the final Opinion and Order issued this date by the Board of Appeals of Baltimore County in the above subject matter.

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*, **with a photocopy provided to this office concurrent with filing in Circuit Court. Please note that all Petitions for Judicial Review filed from this decision should be noted under the same civil action number.** If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

A handwritten signature in black ink that reads "Theresa Shelton/kc".

Theresa R. Shelton  
Administrator

TRS/klc  
Enclosure  
Duplicate Original Cover Letter

c: Robert Powell, Supervisor, Soil Evaluation Section, EPS  
Kevin Koepenick, Supervisor, Ground Water Management Section, EPS  
Lawrence M. Stahl, Managing Administrative Law Judge  
Vincent J. Gardina, Director/EPS  
Nancy West, Assistant County Attorney  
Adam Rosenblatt, Assistant County Attorney  
Michael Field, County Attorney