



Board of Appeals of Baltimore County

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December 28, 2015

Jonny Akchin, Assistant County Attorney
Department of Permits, Approvals and Inspections
County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

RMP, LLC
c/o Douglas Carroll
1117 Greenspring Valley Drive
Lutherville, Maryland 21093

RE: *In the Matter of: RMP, LLC*
Case No.: CBA-16-023

Dear Mr. Akchin and Mr. Carroll:

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 cursive script that reads "Sunny Cannington".

Krysundra "Sunny" Cannington
Administrator

KLC/tam
Enclosure
Duplicate Original Cover Letter

c: Lawrence M. Stahl, Managing Administrative Law Judge
James Blevins, Inspector/Code Enforcement/PAI
Lionel Van Dommelen, Chief of Code Enforcement/PAI
Arnold Jablon, Deputy Administrative Officer, and Director/PAI
Nancy C. West, Assistant County Attorney/Office of Law
Michael E. Field, County Attorney/Office of Law

IN THE MATTER OF:
RMP, LLC
c/o DOUGLAS CARROLL
1117 GREENSPRING VALLEY ROAD
LUTHERVILLE, MD 21093

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No. CBA-16-023

RE: Citation No.: 1500088

* * * * *

OPINION

This matter comes to the Baltimore County Board of Appeals (the “Board”) as a Record Appeal from the Administrative Law Judge’s Findings of Fact and Conclusions of Law, Final Order issued on October 19, 2015 following a hearing concerning the above-referenced citation on October 8, 2015 (the “ALJ Hearing”). The underlying citation, issued to the Appellant named above, identified the following violations under Baltimore County Code, Article 33, Title 5, Section 105: (1) Grading within 100 feet of a stream without a grading permit; (2) Installing a pipe in the stream; and (3) Noncompliance with the Stop Work Order given on June 24, 2015. The property at issue for the citation is located at 19233 Resh Mill Road, Hampstead, MD 21074.

In the Final Order, the Honorable Lawrence M. Stahl, Managing Administrative Law Judge, ordered the following: (1) a civil penalty of \$10,000.00 be imposed; (2) of the \$10,000.00 civil penalty, \$9,000.00 be suspended, with an immediate imposition of a \$1,000.00 fine; (3) the remaining \$9,000.00 to be imposed “if a permit for the new pipe installed within 100 feet from the subject stream is not obtained by October 26, 2015;” and (4) if the subject property is brought into compliance pursuant to the Order, the remaining \$9,000.00 civil penalty will be imposed if there is a subsequent finding against Respondent/Appellant for the same violation.

Respondent/Appellant appealed and a Record Appeal hearing was held on December 15, 2015. Appellant appeared *pro se*. Baltimore County was represented by Assistant County Attorney Jonny Akchin.

Background

A review of the documentary record and audio recording of the October 8, 2015 hearing revealed the following:

In mid-June 2015, the County received a call from someone that reported grading work being done at the property at issue, identifying the person operating the equipment as Appellant Douglas Carroll. The person reporting the activity stated that Mr. Carroll was informed that a permit was needed, at which point, Mr. Carroll became confrontational. The complaint was investigated by Inspector Jerry Blevins, as well as two other inspectors, who visited the site on June 24, 2015. Inspector Blevins saw that an old concrete pipe was taken out and a new 24" corrugated pipe was installed at the stream. The pipe was subsequently identified as a culvert pipe. Inspector Blevins checked and did not find any permit(s) on file for the installation of the new pipe. Inspector Blevins issued a Stop Work Order to Appellant on the same day. The Stop Work Order required Appellant to stop all grading work and to obtain all permits from the State and County required for the work that had been done. Shortly after the Stop Work Order, Inspector Blevins had a conversation with a consultant, Mike Hollins, an environmental engineer, who contacted him on behalf of Appellant. The consultant spoke to Inspector Blevins about applying for a permit. However, by August 26, 2015, no permit had been applied for. Consequently, Inspector Blevins issued the citation described above and a hearing on the citation was scheduled.

Appellant, appearing *pro se*, testified that he denied access of his property to the County and State inspectors. Appellant argued that discovery of the new pipe was an incidental finding

from the initial complaint. When asked about the identity of the person/party that put in the new pipe, Appellant testified he was advised not to answer any questions about who put in the new pipe.

Appellant testified that he made an effort to comply with the Stop Work Order by hiring the consultant, who began the process to obtain the permit. Appellant testified that his consultant was told by the Director of the Baltimore County Soil Conservation District that he did not need a permit because it was an agricultural repair of a culvert. On the basis of that, he stopped seeking the permit. Appellant added that the Director and another person from Soil Conservation came to the property and said everything looked fine. Appellant's testimony implied that there were at least two conversations with the Director of the Soil Conservation District and Appellant or Appellant's consultant in between the issuance of the Stop Work Order and the ALJ Hearing below.

Inspector Blevins was asked if he heard from the Soil Conservation District and relayed that he had not. Inspector Blevins testified that the County receives permit exemptions for agricultural land practices. Appellant produced no letter or other document from the Soil Conservation District about their position or whether a permit exemption was applicable here, had one been sought prior to the installation of the new pipe. Appellant stated that he informed Inspector Blevins a week before the hearing what he had been told. Inspector Blevins told him it was Appellant's responsibility to have the Soil Conservation District contact him and tell him about any exemption. Inspector Blevins again testified that he did not hear from Soil Conservation. Appellant said he would contact them and get them to contact Inspector Blevins. Inspector Blevins explained that exemptions are supposed to be obtained before the work is done, and are not typically given after the work has been done.

Following the testimony and receipt of all evidence, Judge Stahl said that he would give Appellant 15 days to have the person/agency who issues the exemption contact Inspector Blevins to convey that Appellant was entitled to the exemption subsequent to the work, even if the exemption paperwork was not yet completed but was "on the way." Alternatively, if Appellant obtained the permit for the work, that would also satisfy the condition for the suspension of the \$9,000.00. In the absence of both, the \$9,000.00 fine would be imposed in addition to the \$1,000.00 fine.

Decision

The Baltimore County Code § 3-6-304 states:

(a) Disposition options. In a proceeding under this subtitle, the Board of Appeals may:

- (1) Remand the case to the Hearing Officer;
- (2) Affirm the final order of the Hearing Officer; or
- (3) Reverse or modify the final order if a finding, conclusion, or decision of the Code Official, the Director, or the Hearing Officer:
 - (i) Exceeds the statutory authority or jurisdiction of the Code Official, the Director, or the Hearing Officer;
 - (ii) Results from an unlawful procedure;
 - (iii) Is affected by any other error of law;
 - (iv) Subject to subsection (b) of this section¹, is unsupported by competent, material, and substantial evidence in light of the entire record as submitted; or
 - (v) Is arbitrary or capricious.

As required by Code § 3-6-303, the hearing in this matter is based solely on the record created before Judge Stahl, which includes the recorded testimony and any documents filed or received, as well as the written findings and final order of Judge Stahl.

¹ Subsection (b) is not relevant to this Opinion.

Because the culvert pipe work had taken place in the stream and, by necessity, within 100' of the stream, Inspector Blevins had concluded a County grading permit was required and that a Maryland Department of Environment permit was also required. Because no permit was obtained prior to August 26, 2015, Inspector Blevins issued the citation for violating § 33-5-105, which identifies general requirements for grading, excavating and sediment control.

Section 33-5-105, however, does not identify all situations for which a grading permit is required. Section 33-5-201, for example, sets forth that a grading permit is required for all land-disturbing activities not exempted under § 33-5-106 or qualifies under a listed exception in § 33-5-201. Notably, § 33-5-106(b) is entitled "Exemptions" and subsection (1) concerns agricultural land management practices. And thus, we reach the crux of the dispute --- if Appellant was exempt from obtaining a grading permit, then the citation would be unfounded.

It is undisputed that there was no permit on file for the installation of the new culvert pipe. There was ample evidence that the installation was recent. When asked for the identity of the person/party responsible for installing the pipe, Appellant refused to answer. It is uncontested that Appellant failed to obtain a permit for the work prior to its commencement. Appellant contends that a permit would not have been required had he applied.

Following the inspection and issuance of the Stop Work Order, Appellant retained an expert and started to apply for the necessary permit(s) as required by the Stop Work Order. Sometime thereafter, he and/or his consultant were verbally told by the Director of the Soil Conservation District that a permit would not have been needed to replace the culvert pipe as it concerned agricultural land practices, an exemption to the permit requirements. At that point, Appellant ceased its attempt to obtain a permit. Curiously, it is clear that neither Appellant, nor anyone on Appellant's behalf, attempted to contact Inspector Blevins regarding the possible

exemption prior to the issuance of the citation. Appellant did not have someone from the Soil Conservation District contact Inspector Blevins at any time prior to the hearing below. Nothing in writing was submitted by the Soil Conservation District to the County. Likewise, Appellant failed to produce at the time of the hearing below any document or correspondence from the Soil Conservation District that conveyed that position.

Importantly, Appellant confirmed that he never applied for an exemption², whether before the culvert pipe work started, after the inspection, or prior to the hearing below. In the absence of an exemption disposing of the permit requirements, Appellant was required to have a permit. Therefore, the evidence in the record more than supports the findings of law and conclusions of law set forth in Judge Stahl's Final Order. More particularly, the evidentiary record supports the conclusion that culvert pipe work was done in violation of grading permit requirements, and therefore, Appellant violated § 33-5-105.

In the hearing before the Board, Mr. Carroll failed to show that the findings of fact and conclusions of law rendered by Judge Stahl exceeded his authority, were the result of any unlawful procedure, were affected by any other error of law, were unsupported by competent, material, and substantial evidence in the light of the entirety of the record, or otherwise were arbitrary and capricious. Accordingly, there is no basis for reversing Judge Stahl's findings of fact and conclusions of law.

For the foregoing reasons, the Board AFFIRMS the imposition of the \$10,000.00 civil penalty and AFFIRMS the suspension of \$9,000.00 of the \$10,000.00 penalty, with an immediate \$1,000.00 fine imposed at this time.

² To be clear, the Board is not taking any position on whether Appellant may or may not have been entitled to the exemption claimed or whether that exemption would have been formally approved by the proper agency/agencies.

However, as to the events that would cause the imposition of the \$9,000.00 civil penalty, there is a discrepancy between the verbal order as communicated at the ALJ Hearing and the written Final Order.

In order to encourage compliance, Judge Stahl gave Appellant the opportunity to avoid the \$9,000.00 penalty if Appellant would have the proper agency contact Inspector Blevins within fifteen days to convey that an exemption would have applied to the culvert pipe work if submitted at the appropriate time and that the exemption paperwork, though submitted after completion, was nevertheless being completed by the agency. By necessity, to satisfy this condition, Appellant would have to formally apply for the exemption. In the alternative, Judge Stahl allowed Appellant to apply for and obtain the required permit(s) to satisfy the condition as well. In the absence of both, the \$9,000.00 civil penalty would be imposed.

In the Final Order, there is no mention of Appellant having the option to apply for the exemption and, within 15 days, to have the agency in charge of the exemption contact Inspector Blevins as a way to avoid the penalty.

Further, while obtaining the permit was another option, the Final Order states that Appellant would have to obtain the permit by October 26, 2015. At the Board hearing, both the Appellant and County agreed that obtaining the permit in that time period (18 days from the date of the hearing, one week from the Final Order once issued) was an impossibility. Both, the Appellant and the County, discussed possible adequate deadlines to apply for the permit and have the permit issued, but the Board is not in position to render a decision as to what deadline may be reasonable or acceptable. Moreover, the Board's authority in these cases does not permit it to take evidence on the subject.

Therefore, there appears to be an error in the transcription of Judge Stahl's verbal order as communicated at the ALJ Hearing and the written Final Order. Ordinarily, the Board may have

elected to modify the Final Order so that it reflected Judge Stahl's intent as expressed at the hearing. However, with both parties agreeing that it would be impossible for Appellant to comply with the third part of the Final Order, as written, this part of the Final Order is REMANDED so that the two alternatives by which Appellant can avoid the \$9,000.00 civil penalty can conform to the verbal order communicated by Judge Stahl at the ALJ Hearing and so that there is an evidentiary hearing to identify a reasonable deadline by which Appellant can apply for and obtain a permit for the work at issue.

The Board further AFFIRMS the remaining parts of the Final Order.

ORDER

THEREFORE, IT IS THIS 28th day of December, 2015, by the Board of Appeals of Baltimore County,

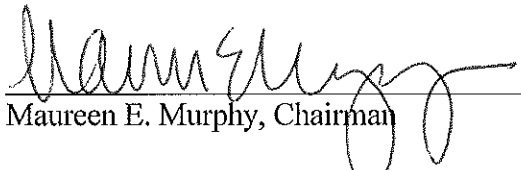
ORDERED that the Final Order is hereby **AFFIRMED** in part; and **REMANDED** in part; as follows:

- (1) The imposition of a civil penalty of \$10,000.00 is **AFFIRMED**;
- (2) The conditional suspension of \$9,000.00 of that \$10,000.00 civil penalty, with an immediate \$1,000.00 fine is **AFFIRMED**;
- (3) This case is **REMANDED** so that the Final Order can be amended to conform to the Order as expressed by Judge Stahl issued at the hearing below, and
- (4) This case is **REMANDED** for an evidentiary hearing to determine a reasonable deadline by which Appellant can apply for a permit (or permits) for the work at issue and obtain such permit(s) in order to avoid the imposition of the \$9,000.00 presently suspended; and
- (5) The remaining parts of the Final Order are **AFFIRMED**.

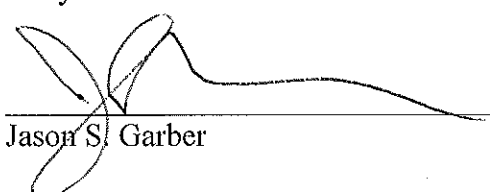
In the matter of: RMP, LLC/CBA-16-023

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**


Maureen E. Murphy, Chairman


Meryl W. Rosen


Jason S. Garber