

IN THE MATTER OF  
PAUL SMITH, JOSEPH SMITH & SONS  
1600 SPARROWS POINT BOULEVARD  
BALTIMORE, MD 21219

\* BEFORE THE  
\* BOARD OF APPEALS  
\*e FORe

RE: Citation Case No.: 1709747

\* BALTIMORE COUNTYe  
\*e Case No. CBA-18-006e

\* \* \* \* \*

**OPINION**

This matter comes before the Board of Appeals for Baltimore County (the “Board”) as a Record Appeal from a code violation hearing regarding the Baltimore County Fire Prevention Code citing several violations of the National Fire Protection Association (NFPA 1) Fire Code for the property located at 1600 Sparrows Point Boulevard, Baltimore, MD 21219 (hereinafter “Property”) on August 11, 2017 before an Administrative Law Judge (hereinafter “ALJ”). The ALJ found that the property tenant, Paul Smith, Joseph Smith & Sons and Eastern Metal Recycling USA, (hereinafter “Eastern” or “Respondent”) failed to comply with a Citation issued on August 4, 2017, requiring it to pay a civil penalty assessed at Eleven Thousand Dollars (\$11,000.00). A timely appeal was filed. Eastern was represented by Howard L. Alderman, Jr., Esquire. Baltimore County was represented by Assistant County Attorney Marissa L. Merrick, Esquire.

**BACKGROUND**

This case comes before the Board as a record appeal. Accordingly, the Board’s review of the ALJ’s decision is solely based on the record of the August 11, 2017 hearing and the oral argument presented before the Board at the appeal hearing on November 14, 2017.

As was testified to at the August hearing, pursuant to the Baltimore County Fire Prevention Code, County Council Bill 3-17, Eastern was cited for the following violations:

1. Section 1:10.15.5 Combustible storage in the open shall not exceed 20ft. (6.1m) in height or 10,000 sq. ft.
2. Section 1.10.15.6 Approved aisles, driveways and uniform passageways shall be provided to permit access for fire-fighting operations.
3. Section 1.10.15.7 The Fire Chief or designee may require that storage upon any land of any combustible material in quantities that require a permit or that pose a fire exposure hazard shall be enclosed by an approved fence or other protective device. NFPA 1, 2015 Edition.
4. Section 1:18.3.1 An approved water supply capable of supplying the required fire flow for fire protection shall be provided to all premises upon which facilities, buildings, or portions of buildings are hereafter constructed or moved into the jurisdiction. The approved water supply shall be in accordance with Section 18.4.

This matter originated from a citation issued for alleged code violations regarding a fire which took place on the Property on Monday, July 31, 2017. Lawrence Majchrzak, Director of the Baltimore County Fire Marshal's Office, testified that 50 pieces of fire equipment worked for eight (8) hours to put out the fire.

Fire departments from Anne Arundel County and Baltimore City were called in to assist the Baltimore County Fire Department. There were no working hydrants near the site of the fire. Due to a water main break on Sparrows Point Boulevard that negated using any hydrants in that area, the Chesapeake Bay was the water source close enough to extinguish the fire. The fire was described in the Incident Report as being fifty (50) feet high and one-hundred (100) feet in diameter.

The cause of the fire was not determined. The fire appeared to be synthetic or petroleum based due to the dark, black smoke; there were refrigerators, stoves and other appliances involved in the fire. Ultimately, the Baltimore City fire boats supplied the amount of water necessary to extinguish the fire. Due to calls from citizens in the area, hazmat units were sent to investigate air quality in surrounding neighborhoods. The Director acknowledged there is a gate and the Property

is secured. The roads within the Property are made of slag, not asphalt, which means the roads can be very muddy when mixed with water.

When Lieutenant John Wallace visited the Property on August 9, 2017, he observed that the hydrants were painted black on top by the property owner, Tradepoint Atlantic (“Tradepoint”), which indicated that the hydrants were not operational. There are two pre-piped areas that can pump water from the bay on the shipyard area of the complex where Property is located. Tradepoint has not been directed to activate the dead fire hydrants.

Ellsworth John Bryan, Jr., Chief Fire Protection Engineer for Baltimore County, testified regarding Violation #2. Mr. Bryan stated that he and Lt. Wallace

...were able to access the surface. I did observe areas that there were low areas, areas that were wore, muddy; that – that could be problematic for fire apparatus to extend beyond that point; as well as the -- the ability of the – the tenant or the – the property owner, whoever, to maintain snow removal and ice removal. It’s basically looking at the – the road surface needs to be repaired and enhanced to make sure it’s all weather surface and capable... [TR.141:5]

Upon further questioning by the ALJ as to whether the road was an all-weather surface, Mr. Bryan stated that part of the road appeared to be all-weather surface, other parts of the road are in need of maintenance and repair:

...a civil engineer verifying this can be an all surface and support the weight of 70,000 pounds. So, it – it’s a good thing. It probably needs to be repaired and enhanced in some certain areas to be honest... [TR: 141:20].

As to Violation #3 regarding the requirement for an approved fence, Mr. Bryan stated:

...there may need to be a higher level of—such as they – they have guards or employees working 24/7 there that are – that are at the site can challenge... the site has the potential of being freely accessed other than by vehicle. [TR: 143:7]

\* \* \* \*

...typically, it's either a security barrier such as a fence or its 24/7 guard service.

[TR:149:5].

As to Violation No. 4, Mr. Bryan explained that the correction of the water supply issue is to "have a fire hydrant of adequate volume and pressure available adjacent to the site." [TR: 156:8]

Dennis Strohl testified on behalf of Eastern that roving security guards are present on the Property during business hours and off-business hours. He stated that the cranes located on the Property and used in Eastern's business do not reach over nineteen (19) feet in height. As a result, the combustible materials stored on the Property could not exceed twenty (20) feet in height. He further testified the roads are composed of slag as a result of the prior steel manufacturing process conducted at Bethlehem Steel, and that: "as with any aggregate road, you're going to have potholes and water standing." Mr. Strohl verified that there is fencing around the perimeter of the Property and all three access point are manned by security personnel who have a list of persons authorized to enter the Property. Homeland Security visits the site has performed inspections for security breaches.

Baltimore County introduced exhibits into evidence, which included the Incident Report, maps, pictures, the citation, and specific sections from the Baltimore County Fire Prevention Code and NFPA 1 Fire Code.

After hearing and reviewing all the evidence, the ALJ ordered an Eleven Thousand Dollar (\$11,000.00) penalty against Eastern to be paid within thirty (30) days of billing; to put into place appropriate security arrangements as approved by BCFD; to upgrade access roads and aisles upon approval by BCFD (to include certification by a civil engineer if required by BCFD); to provide sufficient water supply to the site; and to allow Baltimore County to enter the Property to inspect and determine whether the violations have been corrected. A timely appeal was noted.

**BOARD'S OPINION**

An appeal to the Board of Appeals for a code violation is an appeal on the record made before the ALJ. Section 3-6-303 (a) of the Baltimore County Code provides in pertinent part:

(a) *Hearing on the record.*

(1) (i) Except as provided in subsection (b) of this section, the Board of Appeals hearing shall be limited to the record created before the Hearing Officer, which shall include:

1. Except as provided in paragraph (2) of this subsection, the recording of the testimony presented to the Hearing Officer;
2. All exhibits and other papers filed with the Hearing Officer;  
and
3. The written findings and final order of the Hearing Officer.

(ii) If the violator requests a transcription of the recording, the violator shall pay the cost of the transcription...

All of the items delineated in § 3-6-303(a) are included in the record before the Board.

After hearing the argument on the record, this Board has the authority under BCC, §3-6-304 to do the following:

(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 section, is unsupported by competent, material, and substantial evidence in light of the entire record as submitted; or
  - (v) Is arbitrary or capricious.

After consideration of the record and oral arguments, this Board affirms the ALJ's Order as to Violation #2 (Approved aisles, driveways and uniform passageways shall be provided to

permit access for fire-fighting operations), and reverses the ALJ's order as to Violations #1, #3 and #4 as there was not competent, substantial or material evidence from facts in the record to support these alleged violations by direct proof or by permissible inference. We find the ALJ's decisions with regard to Violations #1, #3 and #4 were arbitrary, unreasonable and capricious.

Violation No. 1:

There was no testimony to substantiate the combustible storage pile exceeded twenty (20) feet in height or that the storage pile exceeded 10,000 sq. ft. as alleged in Violation 1 of the Incident Report. Director Majchrzak testified from the report, not any personal observation or independent knowledge. On the other hand, Dennis Strohl, Operations Manager for Eastern, testified that the cranes used on the Property to stack materials for recycling had a maximum reach or lift of nineteen (19) feet, making it impossible for the storage pile to reach fifty (50) feet. Mr. Strohl's responsibilities include ensuring that combustible materials that are stock piled do not exceed twenty (20) feet in height.

Upon review of the pictures of the fire, it is clear the flames may have appeared to exceed fifty (50) feet in height, but it does not appear probable or likely that the stock pile of materials would have exceeded nineteen (19) feet in height as there is no equipment capable of greater than a nineteen (19) foot lift. The County did not rebut Mr. Strohl's testimony regarding the maximum lift height of the cranes or the height of the storage pile located on the subject site. Thus, the ALJ's Order lacks substantial evidence to support the ALJ's finding of violation of Code § 1:10.15.5. Without such substantial supporting evidence, the decision of the ALJ as to Violation 1 is arbitrary, unreasonable and capricious. *Maryland Reclamation Associates, Inc. v. Harford County*, 414 Md. 1, 50 (2010).

Violation No. 2:

Violation No. 2 asserts that Eastern failed to provide [a]pproved, aisles, driveways and uniform passageways to permit access for fire-fighting operations as required by Baltimore County Fire Prevention Code § 1:10:15.6.

Director Majchrzak testified that the Property roads are made of slag, not asphalt, which means the roads can be very muddy when mixed with water. He answered in the affirmative when asked if a roadway “being made of slag and water” could become muddy making it often difficult for the 30 to 60 ton equipment utilized by the BCFD to move.

When Ellsworth Bryan, Jr. testified on August 11, 2017, he observed areas that were low areas, muddy, and could be problematic for fire apparatus. He also noted the ability of the tenant or the property owner to maintain snow removal and ice removal could be limited; the road surface needs to be repaired and enhanced. Mr. Bryan further testified a civil engineer could assist BCFD in verifying the sufficiency of the surface its ability to support the weight of 70,000 pounds. Eastern’s witness, Mr. Strohl, confirmed the slag composition of the Property’s surface. The Board finds there was substantial evidence to support the ALJ’s findings regarding Violation No. 2.

Violation No. 3:

The County alleges that the Eastern is in violation of Baltimore County Fire Code § 1:10.15.7 which provides that the “Fire Chief or designee may require that storage upon any land of any combustible material in quantities that require a permit or pose a fire exposure hazard shall be enclosed by an approved fence or other protective device.” County witnesses acknowledged that access to the Tradepoint property and the subject site was by one of three manned gatehouses.

Access is available to the Tradepoint property on a 24/7 basis if one is authorized to be on the property; otherwise, an escort or permission by security is required.

The remainder of the Tradepoint property, other than the shoreline of the Patapsco River and Chesapeake Bay, is completely enclosed by a fence. Additionally, there are roving patrols that traverse the Trade Point property 24 hours a day, 7 days per week; one roving patrol during business hours of 7:00 a.m. to 4:00 p.m. and two roving patrols during other off business hours. As indicated previously, Mr. Strohl testified that the Department of Homeland Security inspects the overall property for security issues and would advise the owner if there were any security concerns.

The Board finds the security standard has been met by Eastern. As a result, the ALJ's decision that the appropriate security arrangements for the site be approved by BCFD was arbitrary, unreasonable and capricious.

Violation No. 4:

With regard to alleged Violation No. 4, the Citation provides as follows:

(4) Section 1:18:3.1 An approved water supply capable of supplying the required fire flow for fire protection shall be provided to all premises upon which facilities, buildings, or portions of buildings are hereafter constructed or moved into the jurisdiction. The approved water supply shall be in accordance with Section 18.4.

Section 18.4 states:

18.4 Fire Flow Requirements for Buildings.

18.4.1 Scope.

18.4.1.1 The procedure determining fire flow requirements for buildings hereafter constructed or moved into the jurisdiction shall be in accordance with Section 18.4.

18.4.1.2 Section 18.4 shall not apply to structures other than buildings.



The required fire flow for fire protection refers to buildings, not the Property at hand. There are no buildings on the Property and therefore the Board finds Eastern should not be subject to Violation No. 4 of the citation. BCFD was aware of the “dead” fire hydrants in prior communication with Tradepoint, the property owner; Tradepoint painted the “dead” hydrants black in concert with direction from BCFD. BCFD was aware the hydrants were not a fire-fighting water source for the Property. Eastern, as a tenant, was not in a position to make the hydrants operable; therefore, Eastern was not properly cited for Violation 4. In addition, even if the fire hydrants were operable, the nearby water main break on Sparrows Point Boulevard would not have provided a sufficient water source to extinguish the fire through the hydrants. According to Director Majchrzak, the Chesapeake Bay was the only “true water source.”

For all of the foregoing reasons, the Board does not find a Violation 4 was properly cited to Eastern and the ALJ’s decision as to Violation No. 4 was arbitrary, unreasonable and capricious.

### CONCLUSION

Based on the findings stated above, the Board finds that the ALJ’s decision of September 11, 2017 as to Violation Nos. 1, 3 and 4 were unsupported by competent, material and substantial evidence. The ALJ decision is therefore **REVERSED** as to Violation Nos. 1, 3 and 4. As to the ALJ decision regarding Violation 2, that decision is **AFFIRMED**. Eastern has paid the \$11,000.00 penalty; \$8,000 should be refunded.

### ORDER

**THEREFORE, IT IS THIS** 15<sup>th</sup> day of February, 2018 by the Board of Appeals of Baltimore County hereby:

**ORDERED**, that the September 11, 2017 decision of the Administrative Law Judge, with regard to Violation #1: Section 1:10.15.5 Combustible storage in the open shall not exceed 20ft. (6.1m) in height or 10,000 sq. ft., be and the same is hereby **REVERSED**; and it is further,

**ORDERED**, that the September 11, 2017 decision of the Administrative Law Judge, with regard to Violation #2: Section 1.10.15.6 Approved aisles, driveways and uniform passageways shall be provided to permit access for fire-fighting operations, be and the same is hereby **AFFIRMED**; and it is further,

**ORDERED** that the September 11, 2017 decision of the Administrative Law Judge, with regard to Violation #3: Section 1.10.15.7 that the Fire Chief or designee may require that storage upon any land of any combustible material in quantities that require a permit or that pose a fire exposure hazard shall be enclosed by an approved fence or other protective device. NFPA 1, 2015 edition, be, and the same is hereby **REVERSED**; and it is further,

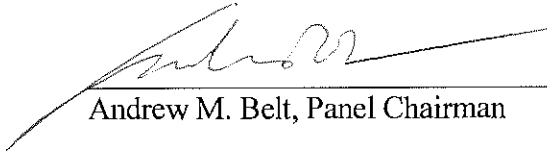
**ORDERED**, that the September 11, 2017 decision of the Administrative Law Judge, with regard to Violation #4: Section 1:18.3.1 that an approved water supply capable of supplying the required fire flow for fire protection shall be provided to all premises upon which facilities, buildings, or portions of buildings are hereafter constructed or moved into the jurisdiction, be, and the same is hereby **REVERSED**; and it is further,

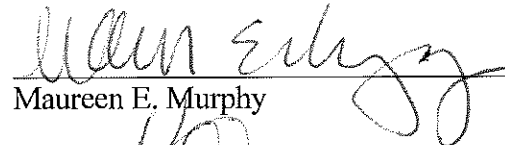
**ORDERED** that the civil penalty issued by the Administrative Law Judge with regard to Violations #1, #3 and #4 be, and the same are hereby **DISMISSED**; and it is further,

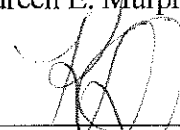
**ORDERED** that the civil penalty issued by the Administrative Law Judge with regard to Violation #2, be and the same is further **AFFIRMED** and Respondent shall pay the sum of Three Thousand Dollars (\$3,000.00) calculated at a rate of Five Hundred Dollars (\$500.00)/day for six (6) days.

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**

  
\_\_\_\_\_  
Andrew M. Belt, Panel Chairman

  
\_\_\_\_\_  
Maureen E. Murphy

  
\_\_\_\_\_  
Kendra Randall Jolivet



## Board of Appeals of Baltimore County

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February 15, 2017

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Towson, Maryland 21204

RE: *In the Matter of: Paul Smith, Joseph Smith & Sons*  
Case No.: CBA-18-006

Dear Counsel:

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/taz  
Enclosure  
Duplicate Original Cover Letter

c: Paul Smith, Joseph Smith & Sons  
Kyrle W. Preis, III, Chief/Baltimore County Fire Department  
Lawrence J. Majchrzak, Director/Fire Marshal's Office  
Lawrence M. Stahl, Managing Administrative Law Judge  
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