

BOARD OF APPEALS
for
MONTGOMERY COUNTY
Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6600

Case No. A-5793

APPEAL OF KINGWARD KUO

OPINION OF THE BOARD

(Hearing Date: October 16, 2002)

(Effective Date of Opinion: January 29, 2002)

Case No. A-5793 is an administrative appeal in which the appellant charges administrative error on the part of the County's Department of Housing and Community Affairs (DHCA) in its issuance of a Demolition Notice dated June 14, 2002.

A public hearing was set pursuant to Section 59-A-4.3 of the Zoning Ordinance. Associate County Attorney, Clifford Royalty, represented Montgomery County, Maryland (the County). Michael Campbell, Esq., of Miller, Miller & Canby, represented the appellant, Kingward Kuo.

Decision of the Board: **appeal dismissed.**

EVIDENCE PRESENTED TO THE BOARD

The Board finds by a preponderance of the evidence that:

1. The subject property is a vacant commercial building located at 8222 Fenton Street, Silver Spring, Maryland.

2. On or about September 7, 2001, DHCA inspector Andrew Jakab inspected the property. This inspection resulted in DHCA's issuing a Condemnation Notice dated September 28, 2001 which concluded that: the property was unsanitary, unsafe, and a hazard to the health and safety of the public, the property contained unsafe wiring and other hazards, and the utilities at the property had been shut off (Exhibit 6).

3. The September 28 Condemnation Notice stated that the building was "unfit for human habitation", and directed the owner to secure all windows and doors. The Condemnation Notice further stated that the owner's failure to securely board up the building and keep it secured could result in demolition of

the building and that condemnation would be rescinded only if the owner corrected the defective conditions at the property.

4. The owner never appealed or challenged the Condemnation Notice.

5. On or about June 14, 2002, DHCA issued a Demolition Notice to the owner, notifying him that DHCA intended to demolish the building if the building conditions were not corrected. The Demolition Notice was posted at the property, and mailed to the owner and his counsel on June 14, 2002. The owner does not dispute that he received the Demolition Notice on June 15, 2002 (see Exhibit 9c), and the owner acknowledged receipt of the Demolition Notice in a letter through his counsel to DHCA on June 27, 2002 (Exhibit 9h).

6. The owner filed an appeal of the Demolition Notice with this Board on July 2, 2002. The County moved to dismiss the appeal, contending that it was untimely filed and that the Board, therefore, lacked jurisdiction to hear the appeal.

FINDINGS OF THE BOARD

1. The Board does not have jurisdiction to hear this case because it lacks authority to hear appeals arising out of Chapter 26 of the County Code.

At the time this appeal was filed, on July 2, 2002, determinations under Chapter 26 (Housing and Building Maintenance Standards) could be appealed to the Board under Section 2-112(c) of the Code. In addition, Section 26-14(b) allowed for appeals to the Board of any notice issued under Chapter 26, and Section 26-18 specifically provided for appeals of demolition notices. However, the authority for the Board to hear this appeal was eliminated effective September 16, 2002, when the County Council repealed those portions of Sections 2-112, 26-14, and 26-18 authorizing appeals stemming from Chapter 26 and replaced them with provisions which did not authorize such appeals. At the time of the public hearing on October 16, 2002, the amended Chapter 26 was in effect. It did not provide for any appeals to the Board arising out of its enforcement. Nor did the amended Section 2-112 authorize the Board to hear appeals arising out of Chapter 26.

Since this administrative appeal was heard and decided after September 16, 2002, the effective date of the above amendments, the Board must apply the new law. The new law did not authorize administrative appeals under Chapter 26. A legislative enactment is presumed to operate prospectively from its effective date absent a clear expression of legislative intent that the statute is to be applied retroactively. *Holland v. Woodhaven Bldg. & Dev.*, 113 Md. App. 274 (1996), citing *Arundel Corp. v. County Comm'rs of Carroll County*, 323 Md. 504, 510 (1991); *Mason v. State*, 309 Md. 215 219 (1987); *WSSC v. Riverdale*

Heights Volunteer Fire Co., 308 Md. 556 (1987). Another line of cases holds that the law to be applied is the law in effect at the time a case is decided, provided that its application does not affect intervening vested rights. *Holland*, supra., citing, *O'Donnell v. Bassler*, 289 Md. 501, 508 (1981), *County Council for Prince George's County v. Carl Freeman Assocs., Inc.*, 281 Md. 70, 76 (1977), *Rockville Fuel & Feed Co. v. City of Gaithersburg*, 266 Md. 117, 127 (1972); *Yorkdale v. Powell*, 237 Md. 121, 124 (1964). Following these principles, this Board must apply the new provisions in Chapters 2 and 26, and these new provisions do not authorize the Board to hear the appeal.

2. Even were this Board to apply the old law authorizing the appeal, it would still lack jurisdiction because the appeal would be time-barred.

Assuming *arguendo* that the former Chapter 26 applies, Section 26-14(b) provides for a 15 day statute of limitations period. The provision reads: "Appeal. Any person affected by **any notice** issued in connection with the enforcement of . . . Chapter [26] may appeal to the County Board of Appeals within 15 days after service is first effective. . ." (emphasis supplied). The demolition notice was served on June 14, or at the latest, June 15, 2002. The appeal was not filed until July 2, 2002 – at least 17 days later. The Board agrees with the County that compliance with the 15 day time limit is an absolute prerequisite to pursuing an administrative appeal and that the Board has no jurisdiction over an appeal that is not timely filed. *United Parcel Service, Inc. v. People's Counsel for Baltimore County*, 336 Md. 569 (1994); *National Institutes of Health Federal Credit Union v. Hawk*, 47 Md. App.189 (1980). Thus, even were this Board authorized to hear the appeal, it would lack jurisdiction because the appeal was untimely filed. Accordingly, the appeal must be dismissed.

By consensus, the Board finds that Montgomery County's motion to dismiss the appeal should be **granted**, and adopts the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above be adopted as the Resolution required by law as its decision on the above entitled petition.

Donald H. Spence, Jr.
Chairman, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 29th day of January, 2003.

Katherine Freeman
Executive Secretary to the Board

NOTE:

Any request for rehearing or reconsideration must be filed within ten (10) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 2-A-10(f) of the County Code).

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.