

RECITATION OF FACTS

The Board finds, based on undisputed evidence in the record, that:

Appellant was issued civil citation number 5Z36217046 by Officer Terence L. Rhodes, DHCA Code Inspector, on October 5, 2016, for failure to eliminate a public nuisance on the Property, a violation of § 26-9(a)(12) of the County Code. See Exhibit 3(a). The public nuisance identified on the civil citation was a “hazardous tree limb which is stated in Davey’s Arborist Co. report.” See Exhibit 3(a).

MOTION FOR SUMMARY DISPOSITION—SUMMARY OF ARGUMENTS

1. Counsel for the County argued that the Appellant in this case has brought this appeal to the wrong venue. He argued that § 2-112 of the County Code does not provide the Board with jurisdiction to review a violation of Chapter 26 of the County Code, under which Appellant was issued civil citation number 5Z36217046. He explained that the civil citation has a trial date of January 24, 2017 in the Montgomery County district court, which is the proper venue to hear Appellant’s arguments against issuance of the citation. Because the Board does not have subject matter jurisdiction to review DHCA’s issuance of a citation under Chapter 26 of the County Code, he argued that the Board should dismiss this appeal.

2. Appellant argued that she was requesting that the civil citation be dismissed as arbitrary and capricious. She explained that she was trying to keep the matter at the administrative level and out of the courts.

CONCLUSIONS OF LAW

1. Section 2-112(c) of the Montgomery County Code provides the Board of Appeals with appellate jurisdiction over appeals taken under specified sections and chapters of the Montgomery County Code.

2. Section 2A-2(d) of the Montgomery County Code provides that the provisions in Chapter 2A govern appeals and petitions charging error in the grant or denial of any permit or license or from any order of any department or agency of the County government, exclusive of variances and special exceptions, appealable to the County Board of Appeals, as set forth in Section 2-112, Article V, Chapter 2, as amended, or the Montgomery County Zoning Ordinance or any other law, ordinance or regulation providing for an appeal to said Board from an adverse governmental action.

3. The Annotated Code of Maryland, Courts and Judicial Proceedings Article, § 4-401(10) provides that the district court has exclusive original civil jurisdiction over “[a] proceeding for adjudication of [a] municipal infraction...”


4. Under Section 2A-8 of the Montgomery County Code, the Board has the authority to rule upon motions and to regulate the course of the hearing. Pursuant to that section, it is customary for the Board to dispose of outstanding preliminary motions prior to the hearing. Board Rule 3.2 specifically confers on the Board the ability to grant Motions to Dismiss for Summary Disposition in cases where there is no genuine issue of material fact and dismissal should be rendered as a matter of law (Rule 3.2.2).

5. The Board finds that any controversy concerning DHCA's issuance of a civil citation to Appellant for a violation of Chapter 26 of the County Code does not involve any genuine issue of material fact to be resolved by the Board. Rather, the Board finds that the controversy surrounding DHCA's issuance of civil citation number 5Z36217046 is not a controversy for which the Board has appellate jurisdiction, and that a hearing on the merits of the issuance of this citation is scheduled to be heard by the Montgomery County district court on January 24, 2017. The Board finds that dismissal should be rendered as a matter of law.

6. The Motion for Summary Disposition in Case A-6508 is granted, and the appeal in Case A-6508 is consequently **DISMISSED**.

On a motion by Member Edwin S. Rosado, seconded by Member Stanley B. Boyd, with Chair Carolyn J. Shawaker, Vice Chair John H. Pentecost, and Member Bruce Goldensohn in agreement, the Board voted 5 to 0 to dismiss the administrative appeal and adopt 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.



Carolyn J. Shawaker
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for

Montgomery County, Maryland
this 19th day of December, 2016.



Barbara Jay
Executive Director

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 2A-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 (see Section 2-114 of the County Code).