

**IN THE MATTER OF
WILLIAM (BILLY) T. JESMER, JR.**

*** BEFORE THE TOWN OF DENTON
* BOARD OF APPEALS**

v.

*** Appeal No. BOA-17-001**

TOWN OF DENTON

*** * * * ***

MINUTES, FINDINGS OF FACT, CONCLUSIONS AND DECISION

The Board of Appeals held a public hearing on Tuesday, March 7, 2017 at 6:30 p.m. at the Denton Town Office to consider an application for appeal of William “Billy” Jesmer, Jr. (hereinafter, “Mr. Jesmer” or the “Applicant”), from the adoption of Resolution No. 837 by the Denton Town Council on December 5, 2016; pursuant to the Town of Denton Property Maintenance Code, Town Code, Chapter 94 et. seq.

Board members present were Chairman, Troy Livingstone, Jennifer Shull, Florence Doherty, and the alternate member, Brian Tyler. Also present was counsel for the Board, Brynja Booth, and Administrative Aide, Donna Todd. The Applicant, Mr. Jesmer, was present, along with his attorneys, Michael Jacobs and Robert Schulte. The Denton Town Attorney, Chris Drummond, was also present and representing the interests of the Town of Denton. Members of the public were also present.

I. PROCEDURAL HISTORY – ALLEGATIONS OF ERROR

The Applicant is the stepson of Donald Alley, deceased, who was the owner of 700 Gay Street, Denton, Maryland (the “Property”), and the Personal Representative of the Estate of Donald Alley.

On January 13, 2017, the Applicant filed an appeal with the Denton Board of Appeals, appealing the adoption of Resolution No. 837 by the Denton Town Council on December 5, 2016. In his attachment to his Notice of Appeal, the Applicant alleges the following:

Resolution No. 837 seeks to impose a tax lien on the 700 Gay Street property for charges unlawfully assessed by the Town of Denton Department of Planning & Codes, for the Town’s storage of the personal property of Mr. Jesmer removed by the Town from the properties located at 700 Gay Street, 708 Gay Street and 12 North 7th Street by the Town in late January 2016.

See Attachment to Notice of Appeal. The Attachment to the Notice of Appeal alleges that the Resolution was not properly published in advance of its adoption, nor was it served on Mr. Jesmer. Id. The Attachment to the Notice of Appeal also sets forth the following specific bases for errors in connection with the Resolution:

1. The Resolution was improperly adopted in violation of the requirements of the Town Code for publication and notice to parties with a substantial interest in the matter.
2. The Resolution improperly seeks to impose a tax lien for fees charged in part for the Town's unlawful destruction of Mr. Jesmer's personal property.
3. The Resolution improperly seeks to impose a tax lien for fees improperly assessed by the involved Town officials for property unlawfully removed from Gay Street.
4. The Resolution improperly seeks to impose a tax lien for fees unlawfully assessed pursuant to an Ordinance which is unconstitutional both on its face and as applied to this situation.
5. The Resolution improperly seeks to impose a tax lien for fees unlawfully assessed by the Town, which assessment is the subject of ongoing litigation pending in the Circuit Court for Caroline County.

In connection with his notice of appeal, the Applicant attached some pleadings in connection with an ongoing case between the Town of Denton and Mr. Jesmer, which is pending in the Circuit Court for Caroline County, Case No. 05-C-14-017458 (hereinafter referred to as the "Circuit Court Case").

Because this appeal involved questions of law, on February 8, 2017, Board Attorney Brynja Booth provided counsel for the Applicant and the Denton Town Attorney with an opportunity to present legal memoranda to give the Board a better understanding of the parties' respective legal positions. On February 22, 2017, Mr. Jesmer, through counsel, filed a letter outlining Mr. Jesmer's position and included copies of three previous filings from the Circuit Court Case. On February 24, 2017, the Town of Denton, through counsel, submitted a Motion to Dismiss Appeal. On March 7, 2017, the Applicant filed a Response to the Motion to Dismiss Appeal.

In its Motion to Dismiss, the Town argues that this appeal should be dismissed because the Board of Appeals lacks jurisdiction to consider the Applicant's appeal. Specifically, the Town claims that Resolution No. 837 is an executive and/or legislative act of the Denton Town Council, which was specifically authorized by an order titled "Final Injunction", which was entered in the Circuit Court Case on December 10, 2015. The Town further contends that the Denton Property Maintenance Code does not authorize the Board of Appeals to hear or consider executive and/or legislative acts of the Town Council, but only authorizes appeals of decisions of the "Code Official". The Town's position is that the "Board of Appeals has no authority to second guess the executive functions or legislative actions of the Denton Town Council, particularly when the Town is acting as permitted by a final order of the Circuit Court for Caroline County." Town's Motion to Dismiss, ¶ 7. The Town also contends that the "constitutionality of Chapter 94 of the Town Code is beyond the power of the Board of Appeals and was or should have been raised by the [Applicant] before the Final Injunction was entered by the Court on December 10, 2015." Id.

In its Response to the Town's Motion, the Applicant contends that the Resolution was not authorized by the Final Injunction Order in the Circuit Court Case because the Town removed the Applicant's property at 708 Gay Street, which was not included in the Final Injunction Order. The Applicant further contends that he is appealing the decision of the Code Official because it was the Code Official's unlawful actions that have now been reduced to a tax lien by virtue of the Town Council's adoption of Resolution No. 837. The Applicant alleges that "Resolution No. 837 is, at best, a ministerial effort by the Code Official using the Town's processes to try to unlawfully impose a tax lien on 700 Gay Street in a completely unjustified amount based on the unlawful decisions of that Code Official."

II. SUMMARY OF PROCEEDINGS AND ARGUMENTS OF COUNSEL¹

Board Member Livingstone opened the hearing, and the Board members introduced themselves. After introductions, Ms. Doherty made a motion to nominate Mr. Livingstone as the Chairman of the Board. Mr. Tyler seconded the motion and all were in favor.

Chairman Livingstone requested that Ms. Booth give an overview of the hearing process. Ms. Booth announced that the Board met in Closed Session with the Board's Attorney, Brynja Booth, from 5:36 p.m. until 6:16 p.m. to obtain legal advice.

Ms. Booth explained that the Board was present to hear Application No. BOA-17-001, an allegation of error appealing the alleged unlawful adoption of Resolution No. 837 by the Denton Town Council. Ms. Booth read the legal advertisement into the record, noted that the hearing had been advertised in the *Times Record* on February 15, 2017, and February 22, 2017, and that the property was properly posted and that neighboring properties had been notified of the hearing.

Ms. Booth then stated that due to the legal nuances involved in this appeal, she had given counsel for the parties an opportunity to submit legal memoranda outlining their respective positions. Ms. Booth noted that both Mr. Jesmer and the Town had submitted legal memoranda, and that the Town's memoranda had consisted of a Motion to Dismiss on the basis that the Board lacks jurisdiction to consider this appeal. Ms. Booth explained that because the issue of jurisdiction had been raised, it was appropriate for the Board to consider the Motion to Dismiss and the issue of jurisdiction before receiving evidence on the underlying appeal. Ms. Booth suggested that the Town present its argument and position on the Motion to Dismiss, and that after the Town presented its argument, Mr. Jesmer would have the opportunity to respond.

Mr. Drummond presented the Town's position on its Motion to Dismiss. Mr. Drummond stated that he was present on behalf of the Town of Denton and the Denton Town Council. He stated that his legal position was rather simple. He stated that Resolution No. 837 arose from a decision of the Town Council in its executive or legislative capacity on December 5, 2016. Mr. Drummond noted that Resolution No. 837 was adopted to authorize repayment of fees incurred

¹The summary contained herein is not intended to represent a verbatim transcript of the arguments of counsel. The verbatim arguments are set forth within the audio recording of this matter, or a certified transcript of the proceedings in the event that either party requests and pays for a transcript of this proceeding.

for collection, storage and disposal of material at 700 Gay Street, and that the procedure for removal and disposal was authorized in a Final Injunction issued by the Circuit Court for Caroline County on December 10, 2015.

Mr. Drummond stated that the Town's position is that the Board of Appeals does not have the jurisdiction to consider decisions of the Town Council acting in its legislative or executive capacity. Mr. Drummond explained that under the Denton Town Code, the Board has jurisdiction to hear variances, special exceptions, and appeals from administrative decisions of zoning officials, appeals from the Planning Commission, and appeals from administrative decisions of a Code Official. Mr. Drummond stated that the Board only has authority granted to it by the Denton Town Code or the Maryland Land Use Article. He noted that neither the Denton Town Code nor the Maryland Land Use Article gave the Board jurisdiction to hear the Applicant's appeal.

Mr. Drummond argued that even if the Board decided to entertain Mr. Jesmer's appeal, the allegation of error is a regurgitation of the legal arguments that Mr. Jesmer and his counsel previously and unsuccessfully argued in the Circuit Court Case. Mr. Drummond argued that the Board of Appeals does not have the authority to second-guess the actions of the Town Council or the decision of the Circuit Court. Mr. Drummond stated that all of Mr. Jesmer's motions filed in the Circuit Court Case were denied, and that his legal recourse was to file an appeal with the Court of Special Appeals. Mr. Drummond closed his argument by stating that Mr. Jesmer's appeal lies with the court and not the Board of Appeals.

Mr. Jacobs then addressed the Board on behalf of his client, Mr. Jesmer. Mr. Jacobs advised that before getting to the components of what Mr. Drummond contended, he wanted to give the Board the context for what brought the Applicant to this stage. He stated that the Applicant did not file the appeal based on the Circuit Court Case but rather that the law of Maryland required the Applicant to file this appeal to the Board.

Mr. Jacobs stated that Mr. Alley was Mr. Jesmer's stepfather, who owned 700 Gay Street prior to his death. Mr. Jacobs stated that the home was once owned by Mr. Jesmer's grandmother, and became dilapidated over time. Mr. Jacobs stated that sometime in the early 2000's, Mr. Jesmer closed his construction business in Baltimore and moved back to Denton to

help Mr. Alley renovate his home and clean up the Property. Mr. Jacobs explained that Mr. Alley had agreed to give the Property to Mr. Jesmer if Mr. Jesmer renovated the Property.

Mr. Jacobs stated that on October 10, 2015, the Town adopted Ordinance No. 656 as a direct result of their dissatisfaction with Mr. Alley. Mr. Jacobs stated that with the adoption of Ordinance No. 656, the Town Council expanded the definition of “rubbish” provided by the International Property Maintenance Code. Mr. Drummond then interrupted and objected to the introduction of evidence due to the fact that Mr. Jacobs was only to be responding to the Motion to Dismiss at that time. Ms. Booth told Mr. Jacobs that a little context was fine, but that he should limit his arguments at this stage to address the jurisdictional issues.

Mr. Jacobs stated that in July of 2014, the Town brought a lawsuit against Mr. Alley and Mr. Jesmer for multiple property maintenance violations. Mr. Jacobs noted that Mr. Alley passed away prior to the entry of the Final Injunction Order on December 5, 2015. Mr. Jacobs stated that the Final Injunction Order authorized the Town only to remove and store property located on 700 Gay Street and 12 North 7th Street. Mr. Jacobs stated that two months after the Final Injunction Order was entered, the Town went onto those properties and removed valuable construction tools and materials. Mr. Jacobs stated that the Town removed property from not only 700 Gay Street and 12 North 7th Street, but also 708 Gay Street, which he contends was not authorized by the Final Injunction Order. Mr. Jacobs noted that the Town took and disposed of 16.5 tons of property and sold off another 4 tons for about \$160. He further stated that the injunction did not permit the Town to destroy any property, but it did so based on its interpretation of the Ordinance. Mr. Jacobs stated that the Town had removed some fairly substantial property from 708 Gay Street, which was not authorized by the Court, and incurred storage charges. Mr. Jacobs stated that the Code Official is using the resolution process of the Town to sell the Property at tax sale based on money that it was not entitled to recover arising out of storage charges related to property removed from 708 Gay Street. He also stated that the charges calculated by the Code Official were flat out wrong as they included storage charges for property taken from 708 Gay Street, such as a boat and a few trailers. Mr. Jacobs stated that the Resolution is simply an action implementing the Code Official’s action, which seeks to impose a tax lien to recover money that the Town is not entitled to recover.

Mr. Jacobs stated that in his written memoranda, he has set forth the Applicant's position in response to the Town's Motion to Dismiss. Mr. Jacobs stated that this proceeding is not a continuation of the Circuit Court case. He said that during a prior hearing in the Circuit Court, the Town argued to the court that the constitutional validity of an ordinance must first be presented to the Board. He stated that Mr. Jesmer never received a citation and accordingly had nothing to appeal to the Board of Appeals until the Town passed the Resolution. He noted that under Maryland law, the constitutional validity of an ordinance must be presented to the Board of Appeals before it can be considered by a court, and that the Board is authorized, required, and competent to hear the matter. Mr. Jacobs further stated that the Court of Appeals has found it to be error when a Board has not considered the constitutionality of an ordinance raised before it.

On the constitutionality issue, Mr. Jacobs stated that by adopting Ordinance No. 656, the Town expanded the definition of "rubbish" to include vehicles, construction materials and equipment, and which could be interpreted to include antique cars, and could be disposed of after 30 days. He stated that the Town has interpreted the ordinance to say not only can the Town remove the property, after 30 days, but that the Town can dispose of the property, such as an antique mustang car, or construction materials or equipment, without just compensation. Mr. Jacobs reiterated that the Board is required to consider the constitutional issues.

Mr. Jacobs stated that the Court's Final Injunction entered in December 2015 does not include the ability to remove and dispose of property located at 708 Gay Street, and does not permit the Town to destroy property.

Mr. Jacobs stated that the Town Council's action could not be taken by resolution and was required to be undertaken by the adoption of an ordinance. Mr. Jacobs stated that resolutions have a lot less due process protections than ordinances. Mr. Jacobs stated that ordinances have due process protections, such as publication requirements, and that under Maryland law, including the Town's Charter, the Town can only impose a tax lien by ordinance and not by resolution. Mr. Jacob's stated that the Town's action in imposing a tax lien by resolution was legally impermissible.

Mr. Jacobs stated that Resolution No. 837 would not have been adopted but for the decisions of the Code Official. He stated that the Code Official was the individual who is responsible for charging Mr. Jesmer for the removal, storage and disposal of his property. Mr.

Jacobs stated that the Resolution is the manifestation of the Code Official's decisions. Mr. Jacobs stated that Resolution No. 837 would not have been adopted if it wasn't for certain actions of the Code Official. Mr. Jacobs stated that the Resolution is simply the device used by the Code Official to impose a tax lien on Mr. Jesmer's Property.

Mr. Jacobs then argued the timeliness of the appeal. He stated that the Applicant complied with Section PM 111.1 of the Denton Town Code, which requires that a notice of appeal be filed within 20 days because Mr. Jesmer appealed the Resolution within 20 days of being put on notice of its adoption.

Mr. Jacobs then stated that the Town's Motion to Dismiss missed the applicable Maryland law and that Resolution No. 837 was legally impermissible. He stated that the appeal does include decisions of the Code Official, and accordingly, the Town's Motion to Dismiss should be denied. Mr. Jacobs stated that the appeal dealt with a combination of decisions by the Code Official, one of which involved using a Resolution No. 837 which was a legally impermissible method to try to accomplish something under a clearly unconstitutional ordinance.

After Mr. Jacobs concluded his remarks, Mr. Drummond distributed to the Board copies of the Opinion and Order entered in the Circuit Court Case on February 3, 2017, as well as an Order issued on February 23, 2017. Mr. Drummond stated that through this appeal, Mr. Jesmer is trying to find another forum because he was unsuccessful in the Circuit Court Case.

With respect to Mr. Jesmer's position that the Final Injunction Order did not include 708 Gay Street, Mr. Drummond referred the Board to page 7 of the Circuit Court's February 3, 2017 Opinion and Order, which states as follows:

Another of Mr. Jesmer's complaints is that the Town improperly entered and removed items from an adjacent property, 708 Gay Street, titled in the name of David Benchoff, deceased, not authorized by the Final Injunction. Some of those items, such as a boat and construction trailer, may not fall within the definition of rubbish under the Town Code. However, Mr. Jesmer has failed to demonstrate, a) that he is the title owner of such property, or b) that he was licensed or permitted to store material on the Benchoff's property...The Court is satisfied that the remaining items of personal property removed from the Benchoff property are rubbish and an overflow of the public nuisance on 700 Gay Street, in violation of the Town Code.

Mr. Drummond stated that the Circuit Court had already heard and decided the Applicant's issue related to 708 Gay Street.

Mr. Drummond stated that Mr. Jesmer raised the impropriety of the Town's disposal of alleged valuable construction material with the Circuit Court, and that the Judge made findings of fact and legal conclusions regarding those arguments, and accordingly the matter had already been raised and adjudicated in the Circuit Court Case. Mr. Drummond reiterated that the February 3rd Opinion and Order entered in the Circuit Court Case already dealt with all of the issues the Applicant was attempting to have the Board determine.

Mr. Drummond stated that the Circuit Court has determined that Mr. Jesmer's constitutional claims regarding the definition of "rubbish" were barred by *res judicata*, and the Applicant is now attempting to have the Board of Appeals determine the issue.

With regard to Mr. Jesmer's argument that Resolution No. 837 was an act of the "Code Official", Mr. Drummond stated that the Applicant appealed an action taken by the Town Council, not the Code Official. He argued that the Denton Town Code gives the Town Council the authority to adopt Resolution No. 837 and that if Mr. Jesmer believes that Resolution No. 837 was improperly enacted, his remedy is across the street at the Circuit Court, and not before the Board of Appeals.

Mr. Jacobs then requested the opportunity to clarify a few matters. He stated that the Circuit Court did not address Resolution No. 837. He further stated that the Board was the proper forum for addressing the Applicant's appeal of the adoption of Resolution No. 837. Mr. Jacobs said that the Applicant was objecting to the Code Official's actions of taking property from 708 Gay Street and destroying it and that issue could not have been heard during the Circuit Court Case because the hearing in that case was in December and the property had not yet been removed from 708 Gay Street. He closed by stating that Mr. Drummond's argument that the Board could avoid the legal requirements of Maryland law to consider issues including the constitutionality of ordinances did not work.

After hearing the respective arguments of counsel, Ms. Shull made a motion to adjourn the regular meeting and to go into Closed Session with the Board of Appeals Attorney, Brynja Booth, to obtain legal advice. The motion was seconded by Ms. Doherty and was passed unanimously. The Board of Appeals members relocated from the Council meeting room to the Training Room.

The Board adjourned into Closed Session convened at 7:15 p.m. and concluded at 7:33 p.m.

At 7:33 p.m., the Board re-adjourned in Open Session. Ms. Shull then thanked everyone for attending the hearing and advised that the Board needed time to read and digest all of the information that had been given to them during the hearing. Ms. Shull made a motion to continue the hearing to April 4, 2017, at 6:30 p.m. Ms. Doherty seconded, which motion unanimously carried. At 7:34 p.m., Ms. Doherty made a motion to adjourn the regular meeting, which was seconded by Ms. Shull. The motion passed unanimously and the meeting was adjourned for the evening.

On April 4, 2017, the Board reconvened the hearing at 6:30 p.m. Board members present were Chairman, Troy Livingstone, and Board Members Jennifer Shull, and Florence Doherty. Also present was counsel for the Board, Brynja Booth, and Administrative Aide, Donna Todd. The Applicant, Mr. Jesmer, was present, along with his attorneys, Michael Jacobs and Robert Schulte. The Denton Town Attorney, Chris Drummond, was also present and representing the interests of the Town of Denton. Members of the public were also present.

Mr. Livingstone announced that the Board met in Closed Session with the Board's Attorney, Brynja Booth, from 6:00 p.m. until 6:19 p.m. to obtain legal advice. Ms. Booth announced that after the initial hearing but prior to the continuation hearing, Applicant's counsel raised concerns about whether Alternate Board Member Brian Tyler, who had a small business loan through the Town's small business loan program, would create a potential conflict of interest. Ms. Booth advised that while she did not believe the loan created a conflict of interest in the matter, out of an abundance of caution, Mr. Tyler had been excused from participation in the appeal and had not participated in any deliberations on the matter.

Ms. Doherty made a motion to nominate Ms. Shull as the Vice Chairperson of the Board. Mr. Livingstone seconded the motion and all were in favor. Mr. Drummond noted that Mr. Jesmer had set up a video camera. Ms. Booth advised that under the Open Meetings Act video equipment was permissible, but that the camera was duly noted for the record. The Board proceeded to discuss the application and made its decision.

Board Member Shull stated that the Board had received and reviewed a lot of information in preparation of making its decision. She stated that she did not believe that the Board has

jurisdiction to consider this appeal and that the Board does not have the authority to consider this appeal. She noted that there is a court case pending, and that the court is the appropriate forum for a resolution on this matter. Mr. Livingstone stated that he agreed with Ms. Shull as he does not believe that the Board has jurisdiction, and that it's a matter for the Circuit Court or the Appellate Court. Ms. Doherty stated that the appeal does not fall within the scope of what the Board considers. She noted that the matter has already gone to the courts, which supersedes the decisions of the Board. Ms. Shull added that decisions of the Town Council are legislative or executive decisions and that the Board does not consider actions of the Town Council. She stated that Resolution No. 837 was not a decision of a Code Official, but was a decision of the Town Council. Ms. Doherty stated that she cannot imagine any action that the Board could take that would fit within the purview of its authority.

Ms. Doherty made a motion to grant the Town's Motion to Dismiss on the basis of jurisdiction, which was seconded by Ms. Shull and unanimously carried. Ms. Doherty made a motion that the Board Attorney prepare a written decision for circulation and approval by the Board, which was seconded by Ms. Shull and unanimously carried. Ms. Booth advised that an appeal could be filed within thirty (30) days from the date the written opinion was issued. There being no further business, the meeting was adjourned at 6:41 p.m.

III. APPLICABLE PROVISIONS OF THE TOWN CODE

By Ordinance No. 672, adopted on June 5, 2015, the Town adopted the 2015 International Property Maintenance Code as the Town of Denton Property Maintenance Code, which is codified with local modifications, in Chapter 94 of the Denton Town Code.² Under Section 94-2.1 (Property Maintenance Section 111.1), a person has the following right to appeal to the Board of Appeals:

²Prior to the adoption of Ordinance No. 672, by Ordinance No. 656, the Town had previously adopted the 2012 Edition of the Property Maintenance Code. While Mr. Jesmer is challenging the constitutionality of Ordinance No. 656, that ordinance was repealed by Ordinance No. 672. Regardless, the substantive provisions of the Property Maintenance Code were unchanged between the 2012 Edition and the 2015 Edition and the legal analysis is the same under either Ordinance and either version of the International Property Maintenance Code.

PM 111.1 Application for appeal. Any person directly affected by a decision of the Code Official or a notice or order issued under this chapter or any applicable portion of the Denton Town Code by which a decision of the Code Official is based, shall have the right to appeal.... An application for appeal shall be based upon a claim that the true intent of this Chapter, or regulations of the Denton Town Code, or the rules legally adopted thereunder, have been incorrectly interpreted, or the provisions of this chapter or the Denton Town Code do not fully apply or the requirements are satisfied by other means.

(emphasis added).

Section PM 111.1(b) of the Denton Town Code provides that an “owner or person affected by the decision and penalties of the *Code Official* pursuant to Section PM 106 may submit an application for appeal *within 20 days* of the receipt of a ticket or citation to the Denton Town Board of Appeals.” (emphasis added). A “Code Official” is identified in Chapter 94 (Property Maintenance Code) of the Denton Town Code as “the official who is charged with the administration and enforcement of the Denton Property Maintenance Code or any duly authorized representative, otherwise known as the Property Maintenance Inspector for the Town of Denton.”

IV. FINDINGS AND CONCLUSIONS

The Board finds that the Town’s Property Maintenance Code does not give the Board of Appeals jurisdiction to hear this appeal. As set forth above, the Board only has the authority granted to it by the Town Code and the Land Use Article of the Maryland Annotated Code.

In this instance, the Applicant has filed this appeal pursuant to the Denton Property Maintenance Code. Section PM 111.1(b) of the Denton Town Code provides that an “owner or person affected by the decision and penalties of the Code Official pursuant to Section PM 106 may submit an application for appeal within 20 days of the receipt of a ticket or citation to the Denton Town Board of Appeals.” A “Code Official” is identified in Chapter 94 (Property Maintenance Code) of the Denton Town Code as “the official who is charged with the administration and enforcement of the Denton Property Maintenance Code or any duly authorized representative, otherwise known as the Property Maintenance Inspector for the Town of Denton.”

Mr. Jesmer's appeal involves the Town Council's legislative or executive action in adopting Resolution No. 837, which, by its terms, assessed the real property known as 700 Gay Street with a lien in the amount of \$16,431.56, as authorized by the Circuit Court for Caroline County, and directs the Town/Clerk Treasurer to forward this Resolution to the Caroline County Finance/Tax Office for the purpose of collecting the lien in the same manner as property taxes due to the Town of Denton...". The Town Council's action in adopting Resolution No. 837 was not a decision of a Code Official. Accordingly, this Board lacks jurisdiction to consider this matter under the Property Maintenance Code.

Resolution No. 837 was a legislative or executive act adopted by the Town Council in furtherance of the express authorization granted by the Circuit Court for Caroline County, which entered a Final Injunction on December 10, 2015, which specifically authorized the Town of Denton:

to enter the property at 700 Gay Street and the property at 12 North 7th Street to effect the removal and storage of these materials. All costs of removal and storage incurred by the Town of Denton shall be the responsibility of the Defendant, William Jesmer, and the Estate of Donald Alley which, if not paid in 90 days, shall be collected by the Town of Denton in the same manner in which delinquent taxes against such real estate call be collectible, or by any action at law as appropriate.

See Final Injunction Order attached as Exhibit B to the Town's Motion. The Town Council's executive or legislative enactment was undertaken pursuant to the authority of the Circuit Court, and does not constitute an action of the "Code Official".

To the extent that the Applicant is seeking in this appeal to challenge the underlying lawfulness of the Code Official's removal and/or destruction of personal property from 700 Gay Street, 12 N. 7th Street, or 708 Gay Street in the spring of 2016, which actions were taken pursuant to the authority granted by the Final Injunction Order, those matters have been raised by Mr. Jesmer in the context of the Circuit Court Case, were finally adjudicated by the Circuit Court in its Opinion and Order dated February 3, 2017, and which has now been appealed to the Court of Special Appeals. Those matters have been litigated or should have been litigated in the Circuit Court case. This Board does not have jurisdiction to second-guess the decision of the Circuit Court or any other court.

In conclusion, the Town Council's legislative or executive action in adopting Resolution No. 837 is not a decision by the Code Official. It was a legislative or executive action for which the Board of Appeals has no jurisdiction to consider.

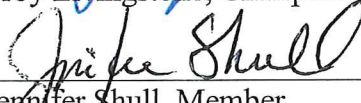
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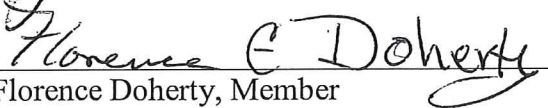

Brynja Booth, Board of Appeals Attorney

Dated: 4/25/17

DENTON BOARD OF APPEALS:


Troy Livingstone, Chairperson


Jennifer Shull, Member


Florence Doherty, Member

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2 WILLIAM (BILLY) T. *
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4 TOWN OF DENTON * APRIL 4, 2017

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8 BOARD MEMBERS PRESENT:

9 TROY LIVINGSTONE, CHAIRMAN

10 JENNIFER SHULL, BOARD MEMBER

11 FLORENCE DOHERTY, BOARD MEMBER

12 BRYNJA BOOTH, COUNSEL FOR THE BOARD

13 DONNA TODD, ADMINISTRATIVE AIDE

14 CHRIS DRUMMOND, ON BEHALF OF THE TOWN OF DENTON

15 MEMBERS OF THE PUBLIC

16 ALSO PRESENT:

17 WILLIAM T. JESMER, JR., APPLICANT

18 MICHAEL JACOBS, ESQUIRE

19 ROBERT SCHULTE, ESQUIRE

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1 CHAIRMAN LIVINGSTONE: Everybody rise for the
2 pledge of allegiance.
3 (The pledge of allegiance was had.)
4 CHAIRMAN LIVINGSTONE: All right. I just want
5 to make note that from 6:00 to 6:19, we were in closed
6 session. We were getting legal advice from the Board's
7 counsel. I guess we are going to continue with the
8 continuation of our March 7th public hearing.
9 MS. BOOTH: Can I actually just make one
10 comment before I forget?
11 CHAIRMAN LIVINGSTONE: Okay.
12 MS. BOOTH: Mr. Tyler, who's the alternate, is
13 not present here this evening. He was here for the
14 first hearing. And after the hearing, it was brought
15 to our attention that he has a loan through the -- his
16 business has a loan through the small business loan.
17 And the question was raised whether that would create a
18 conflict. And while I concluded it didn't create a
19 conflict, out of an abundance of caution, he was
20 excused from further proceedings, and he -- and just
21 for the record, he did not participate in any of the

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1 deliberations. So that's why Mr. Tyler isn't here.
2 And as a practical matter as the alternate, he wouldn't
3 have been voting anyway. He was just here in case one
4 of you were unable to deliberate this evening.
5 MS. DOHERTY: We're going to get a vice
6 chairperson.
7 CHAIRMAN LIVINGSTONE: All right. We also need
8 to have a vote on our vice chairperson.
9 MS. DOHERTY: I'd like to nominate Jennifer
10 Shull.
11 CHAIRMAN LIVINGSTONE: I would like to second
12 that.
13 MS. BOOTH: Did you see my lips moving?
14 CHAIRMAN LIVINGSTONE: All in favor.
15 (All members were in favor.)
16 CHAIRMAN LIVINGSTONE: Congratulations.
17 MR. DRUMMOND: Members of the Board, I would
18 note that Mr. Jesmer appears to have set up a video
19 camera, and I don't -- I don't know if it's running or
20 not.
21 MS. BOOTH: Okay.

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1 MR. DRUMMOND: You might want to address that.
2 MS. BOOTH: I believe that under the Open
3 Meetings Act, video equipment is permissible, but duly
4 noted for the record.
5 CHAIRMAN LIVINGSTONE: Now as far as
6 continuation.
7 MS. SHULL: Correct. Okay. We had a lot of
8 stuff to cover. Well, there's a lot of information and
9 information that we received, even after the meeting.
10 So we have a lot to go through.
11 One of the things that I've struggled with is
12 the fact that I don't feel that the Board of Appeals
13 has jurisdiction over the matter before us, and I, you
14 know, looked at that several different ways. And with
15 all the different information, obviously there's a lot
16 of time was put into this. But I just don't feel that
17 this is something that the Board of Appeals has the
18 authority to review, and it seems that it's been to
19 court several times. There's another court case
20 pending. Those are the people that, in my opinion,
21 need to make that decision. I don't know how you guys

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1 feel about that.
2 CHAIRMAN LIVINGSTONE: I agree with you on
3 that. I believe we don't have jurisdiction over this.
4 I think it's more of a decision that Circuit Court or
5 the Appeals Court needs to hear. I think this is a
6 property maintenance issue that we can't hear.
7 MS. DOHERTY: I don't see in any way this can
8 be under the scope of what we do, and I think we don't
9 have jurisdiction on it. And it's already gone to the
10 state level, and whatever the State does always
11 supersedes what we would do anyway. So I don't -- I
12 can't see any way that we can deal with this, have
13 jurisdiction over it and make decisions on this.
14 MS. SHULL: I think the other thing that needs
15 to be pointed out is that, you know, the Town Council,
16 regardless the decisions that they make are executive
17 decisions or, you know, legislative decisions, they
18 make those, and that is not something that the Board of
19 Appeals hears. They don't interpret what the Town
20 Council has done as a legislative action because it
21 goes back part of this -- I refer back to that

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1 resolution. I wrote the number down.
2 CHAIRMAN LIVINGSTONE: 837.
3 MS. SHULL: Was that it? Okay. Resolution.
4 And that's not something that the Code Enforcement
5 Officer did. That was something that the Town Council
6 decided to do. And then, you know, to further that
7 action, the Court upheld that.
8 So again, who is this Board to reverse or
9 overturn or even agree with. But, you know, the Court,
10 which is a higher authority on it.
11 MS. DOHERTY: Yeah, I can't imagine any action
12 that we could take that would fit under a purview,
13 so --
14 CHAIRMAN LIVINGSTONE: So are you suggesting
15 that we should have a motion on this?
16 MS. DOHERTY: I think we need to move to say we
17 can't make any judgment on this appeal. You know, we
18 can't -- we can't let -- we can't -- we can't make any
19 statements about it. It's not part of our
20 jurisdiction. It doesn't fall within our purview.
21 MS. SHULL: Are you saying --

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1 MS. DOHERTY: I would like to move a motion --
2 I would like to move that we dismiss the appeal from
3 Mr. Jesmer for the reasons we stated. We just don't
4 feel like we have any jurisdiction over this matter.
5 MS. SHULL: I'll second that motion.
6 CHAIRMAN LIVINGSTONE: Right. All in favor.
7 (Chorus of ayes.)
8 MS. DOHERTY: I'd like to recommend that
9 because of all the legal pleadings that we ask that our
10 attorney to put in motion and the statements in the
11 right legal terms to make it clear. I move that we do
12 that.
13 MS. SHULL: I'll second that motion.
14 CHAIRMAN LIVINGSTONE: All in favor.
15 (Chorus of ayes.)
16 CHAIRMAN LIVINGSTONE: Is there any other
17 business that we need to take care of?
18 MS. DOHERTY: I don't think so.
19 MS. SHULL: I don't think so.
20 CHAIRMAN LIVINGSTONE: Okay. All right.
21 MS. DOHERTY: We need to close the meeting.

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1 CHAIRMAN LIVINGSTONE: Yes.
2 MS. BOOTH: Before you close, just I want to
3 make sure I'm clear. You all typically reduce the
4 decision, the findings of fact in a decision, to a
5 written decision prepared by me, and I think that's
6 what your last motion was.
7 MS. DOHERTY: That was -- that was the intent
8 of my motion.
9 CHAIRMAN LIVINGSTONE: Yes.
10 MS. BOOTH: So any appeal arising from this
11 decision would be within 30 days of the date of the
12 written decision?
13 MS. DOHERTY: Correct.
14 MS. BOOTH: Okay.
15 MS. SHULL: Because normally, we don't have --
16 MS. DOHERTY: We try to phrase it right --
17 MS. BOOTH: Sure.
18 MS. DOHERTY: -- while we're here.
19 MS. BOOTH: Okay.
20 CHAIRMAN LIVINGSTONE: All right. Thank you
21 everyone for coming. It's, let's see, 6:41. And a

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1 motion to adjourn.
2 MS. SHULL: So moved.
3 MS. DOHERTY: Yeah, I'll second.
4 CHAIRMAN LIVINGSTONE: All in favor.
5 MS. DOHERTY: Aye.
6 CHAIRMAN LIVINGSTONE: Aye.
7 SPEAKER: Thank you.
8 (The hearing was concluded.)
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CERTIFICATE OF NOTARY

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I, Linda J. Carroll, a Notary Public, do hereby certify that the foregoing proceeding was transcribed by me and reduced to typewriting under my supervision; that I am neither of counsel for, related to, nor employed by any of the parties to the action in which these proceedings were transcribed; and further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of the action.

My Commission expires:

May 10, 2018

Linda Joyce Carroll

LINDA JOYCE CARROLL

NOTARY PUBLIC IN AND FOR

THE STATE OF MARYLAND



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