Office of Administrative Hearings of Baltimore County
105 West Chesapeake Avenue Ste 103
Towson, Maryland 21204
Baltimore County, Maryland

In the Matter of

Civil Citation No. D3-11-17383

Diana Ervin
11565 Philadelphia RD
White Marsh, MD 21162

11565 Philadelphia RD

Respondent

FINDINGS OF FACT AND CONCLUSIONS OF LAW
FINAL ORDER OF THE ADMINISTRATIVE LAW JUDGE

This matter came before the Administrative Law Judge on September 20, 2011 for a Hearing on a citation for violations under the Baltimore County Code (BCC) 34-3-101, 34-3-104, 34-3-103; failure to eliminate sewage overflow; failure to correct failing septic system on residential property.

On , 2011, pursuant to § 3-6-205, Baltimore County Code, Inspector Cheryl Ecker issued a Code Enforcement & Inspections Citation. The citation was sent to the Respondent by 1st class mail to the last known address listed in the Maryland State Tax Assessment files.

The citation proposed a civil penalty of $ 200.00 per day (Two hundred dollars)

The following persons appeared for the Hearing and testified: Diana Ervin, Respondent(s); Lenard Hutton, Cheryl Ecker, Baltimore County Code Enforcement Officer.

Testimony was presented that upon complaints received,an inspection of the property took place on 3/21/11. That inspection revealed a sewage overflow into a nearby stream from the ground as well as the septic tank cleanout. A Correction Notice was issued for a failing septic system, with the instruction to contact Groundwater Management and have the system pumped by a licensed scavenger; with proof of the pumping provided to the County. The foodservice at the site, Donna Mite Inn was closed until compliance occurred. It was determined that there was public sewer service available for connection by the property owner. On 3/22/11, the owner stated that that the system had

been pumped. An inspection that day, along with written proof of the pumping resulted in permission being granted to reopen. The Owner confirmed that she was contacting the plumbing Inspector and obtaining a plumber to connect her property to the public system, while ceasing any overflow in the interim. On 5/6/11 a re-inspection showed the system to be overflowing once again into the stream. Another Correction Notice was issued, with the instruction that pumping to keep any further damage from happening was to take place a often as necessary, until the system was connected to the public sewer. The foodservice was again also closed. On 9/15/11 Inspector Ecker re-inspected the property, finding no overflow, but providing no documentation of either pumping or connection of the site to the sewer system.

Witness Hutton, of Lenny's Plumbing testified that he was hired to make the connection to the public sewer system but could not find the "tap" in which to connect. He contacted the County and was informed that the nearest tap was located on the other side of Philadelphia Road from the site. After some investigation, he related that in the course of development of the property across Philadelphia Road from the site, Merritt Development Corporation requested the use of a portion of the Respondent's property for an easement. In return, they agreed to provide a "tap" on her side of the street to allow her to easily connect to the County sewer system. He further stated that after repeated calls he has still not heard from the Developer. He concluded by testifying that without the "tap" brought to Respondent's side of Philadelphia Road, the cost of connection would be tremendously expensive.

The Respondent briefly took the stand, confirmed the testimony of Mr. Hutton, and noted that the restaurant and the menu has been downgraded to use less water.

It is clear that this situation cannot be ignored. The public health demands that that no further sewage be allowed to overflow from the site; and that connection with the public sewer system be achieved. There is obviously a difference of opinion between the Respondent and the Developer as to who bears what cost---but that is between them.

Having heard the testimony and evidence presented at the Hearing:

IT IS ORDERED by the Administrative Law Judge that a civil penalty lien be imposed in the amount of $1,400.00 (One Thousand Four Hundred Dollars).

IT IS FURTHER ORDERED that the entire civil penalty lien be suspended.

IT IS FURTHER ORDERED that the remaining $ 1400.00 civil penalty lien will be imposed if, within thirty days of this Order Respondent has not obtained Counsel and/or initiated legal action to determine who is responsible for the cost of providing connection of the subject site to the public sewer system.

IT IS FURTHER ORDERED that the remaining $1400.00 civil penalty lien will be imposed if, until the subject site is properly connected to the County Public sewer system, the Respondent does not keep the property in compliance by periodic pumping; written proof of each pumping to be provided to the Inspector within seventy-two hours of it's occurrence.

IT IS FURTHER ORDERED that the remaining $1400.00 civil penalty lien will be imposed if there is a subsequent finding against the Respondent for the same violation.

IT IS FURTHER ORDERED that if not paid within thirty days of billing, the civil penalty lien AND any expenses incurred by Baltimore County, as authorized above, shall be imposed and placed as a lien upon the property.

IT IS FURTHER ORDERED that the County inspect the property to determine whether the violations have been corrected.

ORDERED this __3rd__day of October 2011

Signed: Original signed 10/03/11
Lawrence Stahl
Managing Administrative Law Judge

NOTICE TO RESPONDENT: The Respondent is advised that pursuant to §3-6-301(a) of the Baltimore County Code, the Respondent may appeal this order to the Baltimore County Board of Appeals within fifteen (15) days from the date of this order; any such appeal requires the filing of a petition setting forth the grounds for appeal, payment of a filing fee of $150 and the posting of security in the amount of the penalty assessed.

TMK/lnw