

NICK SHARP	:	BEFORE THE
Appellant	:	HOWARD COUNTY
vs.	:	BOARD OF APPEALS
HOWARD COUNTY,	:	HEARING EXAMINER
MARYLAND, DEPARTMENT	:	
OF PLANNING	:	BA Case No. 662-D
AND ZONING	:	
Appellee	:	

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DECISION AND ORDER

On June 22, 2009, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, conducted a hearing on the departmental appeal of Nick Sharp (the "Appellant"). The Appellant is appealing the March 27, 2009 letter from the Department of Planning & Zoning's Kent Sheubrooks, Division of Land Development, to property owners Mr. and Mrs. Barry Downy and Mr. Michael Breslin and Mrs. Amy Breslin (the "Subdividers"). The letter informed the Subdividers DPZ had recorded the final subdivision plats for F-08-169, Lot 1, Downey Property, and Lot 6, Harrison's Forest, Section One, on March 27, 2009. The Appellant claims the recordation violates the long-standing county policy of not recording subdivisions when adjoining property is landlocked and further, that he was not notified of the subdivision approval.

The Petitioner certified to complying with the notice requirements of the Howard County Code.

The Appellant was not represented by counsel. Paul T. Johnson, Esquire, and Deputy County Solicitor, represented the Department of Planning and Zoning ("DPZ").

As a preliminary matter, DPZ moved for dismissal of the case. Upon consideration of DPZ's motion to dismiss and oral arguments heard on June 22, 2009, and for the reasons stated below, I have determined to grant the motion and dismiss.

Background

The Appellant is the property owner of 400 Morgan Station Road. The Downeys reside at 410 Morgan Station Road, the Breslins, at 500 Morgan Station Road. Based on the appeal petition, the Appellant is apparently involved in litigation relating to F-08-169.

By letter of September 24, 2008 from Cindy Hamilton, Chief of DPZ's Division of Land Development, to the Subdividers, DPZ granted approval of their final subdivision plans for F-08-169, subject to certain conditions and corrections.¹ The final subdivision plans consisted of two lots (the Downey Property and Harrison's Forest, Section One, Lot 6) located on Morgan Station Road. The letter additionally instructed the Subdividers to comply with all attached conditions and corrections prior to DPZ's acceptance of the plats for signature approval.

On March 27, 2009, DPZ's Kent Sheubrooks (Division of Land Development) informed the Subdividers the final subdivision plats for F-08-169 had been recorded in the Land Records of Howard County, as Plat Nos. 20494-20495, on March 26, 2009.

DISCUSSION

A. The DPZ March 27, 2009 letter is not an appealable decision or order

For the following reasons, I conclude I have no jurisdictional authority for the purposes of Article 25A, § 5(U) to hear Mr. Sharp's appeal because the March 27, 2009 DPZ letter is not an "appealable event" within the meaning of *United Parcel Service, Inc.*

¹ The Appellee submitted the September 24, 2008 letter to the Appellee with its motion to dismiss.

The threshold question in this appeal is whether DPZ's March 27, 2009 letter is an appealable decision. The answer requires a brief outline of the relevant statutory framework, which encompasses a Maryland statute, the Howard County Charter, the Howard County Code, and Howard County subdivision regulations. As a first matter, Article 25A, § 5(U) of the Annotated Code of Maryland authorizes boards of appeal to hear and decide in pertinent part applications for the issuance, renewal, denial, revocation, suspension, annulment, or modification of any license, permit, approval, exemption, waiver, certificate, registration, or other form of permission or of any adjudicatory order. By implementing legislation enacted by the County Council as Section 501(b) & (f) of the Howard County Charter, the Howard County Board of Appeals is authorized to hear such matters as set forth in Article 25A, § 5(U) of the Annotated Code of Maryland. As the Board of Appeals Hearing Examiner, I am authorized to hear only matters that are otherwise within the jurisdiction of the Howard County Board of Appeals. Section 16.302(a) of the Howard County Code ("HCC").

With respect to actions taken by DPZ in the subdivision process, the County Council has enacted a regulation limiting the right to appeal to persons aggrieved by an order or decision taken during the subdivision process. Such appeal must be filed with the County within 30 days of the date the order or decision is issued. HCC Section 16.105(a).

Also bearing on the issue of whether the March 27, 2009 letter is an appealable decision is the Maryland Court of Appeals definition of what constitutes an "appealable event" under Article 25A, § 5(U) of the Maryland Code, as set forth in *United Parcel Service, Inc. v. People's Counsel for Baltimore County*, 336 Md. 569, 650 A.2d 226 (1994) ("UPS"). The agency action at issue in *UPS* was a likewise a letter, one drafted by the county zoning commissioner in response to a neighboring landowner's letter of opposition to his prior decision to grant a building permit. The

opposing landowner appealed the commissioner's response letter to the board of appeals, claiming it was an appealable decision because it explained and defended at some length the commissioner's decision to approve the permit.

The Court held the commissioner's response letter was not an "issuance, renewal, denial, revocation, suspension, annulment, or modification of any license, permit, approval ... or other form of permission" within the meaning of Article 25A, § 5(U); rather it was "at most a reiteration or reaffirmation of the final administrative decision or order" granting the permit. As the Court reasoned, an appealable event must be a final administrative decision, order, or determination. "If this were not the case an inequitable, if not chaotic, condition would exist. All that an appellant would be required to do to preserve a continuing right of appeal would be to maintain a continuing stream of correspondence, dialogue, and requests ... with appropriate departmental authorities even on the most minute issues of contention with the ability to pursue a myriad of appeals ad infinitum." 336 Md. at 584-585, *quoting from Nat'l Inst. Health Fed. Cr. Un. v. Hawk*, 47 Md. App. 189, 422 A.2d 55, 58-59 (1980), *cert. denied* 289 Md. 738 (1981). *See also Meadows of Greenspring Homeowners Association v. Foxleigh Enterprises, Inc.*, 133 Md. App. 510, 758 A.2d 611 (2000).

Relying on *UPS*, DPZ bases its motion to dismiss on the argument that the March 27, 2009 letter was not an appealable event within the meaning of Article 25A, § 5(U) because it was not a final administrative order or decision.² I agree.

Mr. Sheubrooks' March 27, 2009 letter was not a final administrative order or appealable event. It was DPZ's ministerial notification to the Subdividers that it had recorded the final

² The Appellant did not respond to DPZ's motion to dismiss. At the proceeding, he claimed to have sent DPZ a written request to inform him of any action taken on F-08-0169, but failed to produce any copies of such a letter from the file dated prior to September 24, 2008.

subdivision plats for F-08-169, as mandated by Section 16.147(b)(9) of the Howard County Subdivision and Land Development Regulations. This Section expressly instructs DPZ to record the final plats in the land records of Howard County, and, importantly for this appeal, to notify the developer by mail of the date of recording and the plat numbers. Consequently, Mr. Sheubrooks' March 27, 2009 letter did not "grant, deny, or decide or order anything"; at best it "reiterat[ed] or reaffirm[ed]" a previous decision, the September 24, 2008 letter from DPZ approving F-08-169. DPZ's September 24, 2008, letter approving the final subdivision plans for F-08-169, however, was an appealable event within the meaning of § 25A, Section 5(U) and HCC Section 16.105(a), being a final administrative decision.³

B. Appellant's April 23, 2009 administrative appeal petition is untimely

DPZ further argues in its motion to dismiss that the Appellant's April 23, 2009 petition of appeal is untimely if the March 27, 2009 letter is not an appealable decision, as the 30-day period to take an appeal began to run on September 25, 2008, the day following DPZ's letter of decision approving the final subdivision plans for F-08-169.

The March 27, 2009 letter not being an appealable event, the Appellant had 30 days from September 25, 2008 to appeal DPZ's action letter approving F-08-109. The Appellant, however, filed his administrative appeal petition some six months after September 25, 2008, in violation of HCC Section 16.105(a)'s 30-day time to appeal requirement. I am therefore dismissing the Appellant's administrative appeal as untimely.

³ During the proceeding, the Appellant argued that he had sent DPZ a written request to inform him of any action taken on F-08-0169, so that he may appeal the action, but he failed to produce any such copies of letters from the file dated prior to September 24, 2008.

ORDER

Based upon the foregoing, it is this 29th Day of June 2009, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the Petition of Appeal of Nick Sharp in BA Case No. 662-D is hereby **DISMISSED**.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**



Michele L. LeFaivre

Date Mailed: 7/1/09

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.