



KEVIN KAMENETZ
County Executive

LAWRENCE M. STAHL
Managing Administrative Law Judge
JOHN E. BEVERUNGEN
Administrative Law Judge

January 14, 2015

David L. Woody, Esq.
11245 Lockwood Drive
Silver Spring, Maryland 20901

RE: Baltimore County, Md. v. Ft. Howard Development, LLC
PAI Code Enforcement Citation & Notice to
Abate Nuisance – November 20, 2015

Dear Mr. Woody:

Enclosed please find a copy of the decision rendered in the above-captioned matter.

In the event the decision rendered is unfavorable to any party, please be advised that any party may file with the Office of Administrative Hearings an appeal to the Baltimore County Board of Appeals within fifteen (15) days from the date of this Order. If you require additional information concerning filing an appeal, please feel free to contact our office at 410-887-3868.

Very truly yours,

LAWRENCE M. STAHL
Administrative Law Judge
for Baltimore County

LMS:dlw
Enclosure

c: Donald E. Brand, Chief Code Administrator, PAI, 111 West Chesapeake Avenue,
Room 112, Towson, Maryland 21204
R. Brady Locher, Assistant County Attorney, PAI, 111 West Chesapeake Avenue,
Room 112, Towson, Maryland 21204

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

In the Matter of:

BALTIMORE COUNTY, MARYLAND

v.

FT. HOWARD DEVELOPMENT, LLC
Respondent

**FINDING OF FACT AND
FINAL ORDER OF THE ADMINISTRATIVE LAW JUDGE**

This matter came before the Administrative Law Judge on November 20, 2015 for a Hearing on a Citation issued on July 31, 2015 by the Baltimore County Department of Permits, Approvals and Inspections ("PAI") for the failure of the Respondent to comply with the Order of the Baltimore County Fire Department ("BCFD") dated December 24, 2014, for which a civil penalty was proposed of \$43,800.00; as well as for a Citation/Notice to Abate Nuisance pursuant to Baltimore County Code ("BCC") Sections 13-7-111 through 13-7-117, dated July 31, 2015, for which a civil penalty of \$1,000.00 was proposed; said Citation/Notice alleging that the Respondent created and has allowed a nuisance to exist on its property known as Ft. Howard, in Baltimore County, Maryland.

The following persons appeared for the Hearing: Respondent/Resident Agent Timothy S. Munshell, Carl Williams, and David L. Woody, Esq., counsel for the Respondent. Also in attendance on behalf of the County was R. Brady Locher, Esq., Assistant County Attorney, John Bryan, Captain Ronald Haley, Lt. John G. Wallis, Bruce Schultz, and Donald E. Brand. In addition, the following persons appeared: Jim Stewart, James Robinson, Stephanie Williams, Dave Fitzpatrick, Kathleen Labuda and S. Pappas.

The basic history of this property is not in question. Ft. Howard is a 100-acre former military and health care campus operated by the Veterans Administration ("VA"). As noted in the brief of the Respondent, there are 35 abandoned structures and one 7,000 sq. ft. metal building housing a VA outpatient clinic. A 75-year Enhanced Use Lease was executed in July, 2014 between the Respondent and the VA; including, but not limited to, site development and maintenance.

Testimony and submitted documents established that, upon complaints received, and prior fire events on the property, the BCFD did an extensive inspection of the subject property, revealing no less than 10 hydrants (of a total of 22) on the site which were out of service and in need of repair. The BCFD issued an Order dated December 24, 2014, in which the Respondent was directed to repair and/or replace any damaged or otherwise defective fire hydrants by January 2, 2015; to carry out flow tests to confirm the repairs, providing copies to the BCFD; and to maintain a "fire watch" on the site until repairs were completed. It is also uncontested that the BCFD carried out a re-inspection of the site on November 19, 2015 (the day before the hearing in this matter) and found that 11 of the 22 hydrants (including the same as were initially noted as defective) were still out of service; and that no reports of any "flow tests" whatsoever were submitted by the Respondent to the BCFD.

There are two separate tracks being pursued by Baltimore County in this case. The first is prosecution of the Respondent for allowing the subject property to constitute a continuing "nuisance", under Sections 13-7-111 through 13-7-117 of the Baltimore County Code (B.C.C.). Notice to that effect was communicated to the Respondent by a letter dated July 31, 2015 from Donald E. Brand, Chief Code Administrator, to Timothy S. Munshell, Resident Agent for the Respondent Ft. Howard Development, LLC. It cites the Respondent for a number of ongoing issues; to wit:

Failure to sufficiently secure the perimeter of the instant property where repeated acts of arson have occurred destroying many structures on site, thereby placing the health, safety and welfare of the public at large in jeopardy, including the residential neighborhood surrounding the instant property, the daily patients of the onsite Outpatient Clinic, as well as those members of the public who visit the adjacent Fort Howard County Park.

Failure to sufficiently secure all fire damaged structures upon the instant property, thereby placing the health, safety and welfare of the public at large in jeopardy, including the residential neighborhood surrounding the instant property, the daily patients of the onsite Outpatient Clinic, as well as those members of the public who visit the adjacent Fort Howard County Park,

Failure to provide adequate water supply to the fire hydrants servicing its property thereby placing the health, safety and welfare of the public in jeopardy, including the residential neighborhood surrounding the instant property, the daily patients of the onsite Outpatient Clinic, as well as those members of the public who visit the adjacent Fort Howard County Park, and

Failure to clear combustible materials in the form of dead vegetative debris in various open areas including the parking lot at the southeast corner of Antietam Street and San Juan Avenue, thereby placing the health, safety and welfare of the public in jeopardy, including the residential neighborhood surrounding the instant property, the daily patients of the onsite Outpatient Clinic, as well as those members of the public who visit the adjacent Fort Howard County Park.

The notice directed the Respondent, pursuant to Section 13-7-113(b), to: "(i) begin abatement of the nuisances described above within five days after service of the notice; and (ii) complete the abatement within 30 days thereafter unless you can demonstrate to the satisfaction of the County that abatement is being pursued, time being of the essence."

Finally, it advised, "Please take notice that Ft. Howard Development, LLC may within five days after receiving this notice request a hearing before the Director of the Department of Permits, Approvals and Inspections. Such request shall be made in writing and state with particularity an explanation for the nuisance or defenses the owner intends to raise." (Emphasis Added)

The Respondent determined to request a hearing in a letter from its counsel to Mr. Brand dated August 10, 2015. It contained an "explanation" that the Respondent was notified by email from the VA on August 7, 2015 that the VA had turned off the water lines to the subject property "due to additional water leaks" and attached the email received to that effect as an exhibit. Counsel attributed his client's delay in making partial repairs to his client's ignorance of the cutoff by the VA, as well as the age of the existing water lines on the site. He concluded that his client was currently in the process of addressing the repair of the "newly discovered water leaks". No response, defense, or explanation was provided for any of the other alleged "failures" listed in Mr. Brand's letter, other than that related to the water connections to the site's hydrants.

The second track in this case is by virtue of a Code Enforcement Citation dated July 31, 2015. The citation alleges that the Respondent failed to comply with all of the requirements of the December 24, 2014 Order of the BCFD noted above; and further alleged that repairs had still not been done and that no 24/7 fire watch was maintained from January through May, 2015. A civil penalty at the rate of \$200.00 per day was assessed.

At the hearing, testimony was presented by Lt. Wallis of the BCFD, that upon an order he went to the Ft. Howard site on December 24, 2014 to evaluate the water system. He issued the Fire Inspection Report and Order in which the Respondent was directed to correct repairs on all damaged and defective hydrants by January 2, 2015 and thereafter conduct the flow tests to establish full function; and to provide the documentation of those tests to the BCFD. He further stated that he returned on January 13, 2015 and "tagged" all hydrants that were not functioning. He reconfirmed the requirement that a 24/7 fire watch be maintained until those repairs were completed and confirmed.

On January 20, 2015, he again returned to the site and sent to the Respondent a detailed list of no less than 10 hydrants that were not functioning. He concluded by noting that, given the state of the hydrants and water system, the requirement of a 24/7 fire watch was necessary then and is still necessary at the present time.

On cross-examination, the witness emphasized that the non-working hydrants were essential, considering the abandoned vacant buildings and debris then and now still on the site. He reiterated that the 24/7 fire watch must be maintained until all repairs are completed. In response to questions from Respondent's counsel, he related that he has returned on several occasions to the site, both to see if repairs are being made and that the 24/7 fire watch is being maintained.

He observed that sometimes there was no fire watch evident to him. He acknowledged that security personnel could be moving about the property, but noted that he "wandered the property" and that he would have discovered a fire watch if it had in fact existed. Moreover, he stated that sometimes security was at the gate, sometimes it wasn't; and that he was unable to confirm the 24/7 fire watch through building or main gate log books.

Captain Ronald Haley of the Edgemere Fire Station (on North Point Road near Ft. Howard) testified at length. He noted that there have been seven fires in the last several years on the Ft. Howard site. He stated that given the number of vacant buildings on the site, problems of vandalism and the reclamation of materials (leaving gaps and holes in walls and floors) on Ft. Howard property, an effective fire watch was vital to catch a fire as early as possible, which is often caused by arson, vagrants and kids trespassing on the property.

He described in some detail his company's response to a fire at the site on May 5, 2015. They arrived at 6:21 AM, could not locate any security and had to use a wire cutter to open the gate to allow fire trucks to enter the property. Based upon that need to cut the gate open, the extent of the fire at their arrival, and the lack of contact on site with any security personnel, he is both concerned and convinced that no fire watch of any kind was on duty.

He related that his unit responded to the area of the office trailers, which were surrounded by vegetation and debris, much of which was on fire. He estimated that the fire was 30% engulfed at their arrival. He recalled that they could not properly fight the blaze until other tanker units arrived because

the hydrant at the location was not working properly. He observed that, by then, the fire was 50% engulfed and his men could not get in to fight it optimally due to the heat emanating from the fire and the condition of the building.

He recalled another fire in December, 2014 in which his company had faced the same issues on the Ft. Howard site as on May 21, 2015. He confirmed that his unit had done the November 18, 2015 pre-hearing inspection which identified 11 of the 22 hydrants on the site as not working; and observed that with only two working hydrants near the VA clinic, it would be difficult and dangerous to fight a fire in that structure. He concluded by stating that the conditions of the hydrant system and evident lack of 24/7 fire watch put firemen at extreme risk. Finally, he reported that a review of the security logs of the two entities (allegedly providing fire security for the site) did not show full 24/7 fire watch coverage. Among other deficiencies of time, he noted a consistent 2-hour gap from 6:00 AM to 8:00 AM.

Stephanie Williams, who lives across the road from the main gate of the site, testified that she had been hired by Client Services, LLC (one of the security companies allegedly providing security to the site) to provide fire watch from 8:00 AM to 6:00 PM, when another company (Trinity Protection Services) ["Trinity"] took over, observing that often they were late in arriving. She related that the 6:00 AM to 8:00 AM gap occurred each and every day. She recalled seeing crews on the property "scrapping" the structures on the site. She ultimately related that she left Client Services, LLC a considerable time before the May, 2015 fire and stated that for an extended period of time she saw no fire watch security at the site from her home.

She stated that on May 5, 2015 at approximately 6:00 AM, she was awakened by the sound of fire engines going into Ft. Howard. She went to the front gate, and seeing no one apparently on duty called Jim Gay (who had been her site supervisor at Client Services, LLC) who eventually came to the site. He asked her if she would stay at the main gate and secure the property for the next two hours; she stated that he was apparently aware that there was no security until Trinity arrived at 8:00 AM. She declined to do so. She did recall however that a "security officer" arrived sometime later at the gate. She testified that from her home she could recognize "Trinity" vehicles and that they were often not present, either at the gate or driving in and out of the site. She did however recall numerous instances where people she described as "trespassers" were walking through the gate and through the fence.

James Robinson, a federal police officer attached to the Department of Veterans Affairs, testified that he was assigned to patrol the Ft. Howard grounds and clinic until September, 2014, when he was

assigned solely to the existing VA clinic. He was further assigned to take pictures for his supervisors when there were fires. He took photos of both the May 5th and July 21st fires. He stated that after the July 21st fire he was ordered to once again patrol the entire property because of trespassers and fire safety issues.

He testified that on May 5, 2015 he received a phone call from his supervisors to respond to Ft. Howard and take pictures of the fire event. He arrived sometime after 8:00 AM and met a female guard, who informed him that she had just gotten there and that the prior shift had left at 6:00 AM.

On cross-examination, he confirmed that he and other assigned federal officers had ceased patrolling the entire site (which had been walked and patrolled by the federal officers) when Trinity and Client Services, LLC had been hired.

On redirect, he recalled that considerable "scrapping" had been taking out of the building; and observed that many of the effect structures were (to his prior knowledge) "historical" and not to be demolished.

Having reviewed the documents and testimony in this matter, I make a number of findings.

First, the Notice to Abate Nuisances dated July 31, 2015 to the Respondent alleged no less than four separate allegations. As pointed out by counsel for Baltimore County in his Post-Hearing Memorandum, once notice of a nuisance is issued, pursuant to Section 3-7-113 of the B.C.C., the Respondent may, within five days of receiving the notice request a hearing under Section 13-7-114. Subsection (b) of 13-7-114 specifically, and with no exception, requires the particularity and explanation noted in the quotes from that nuisance notice set out above. However, counsel for Respondent's letter addresses only one of the four allegations which the County included in its July 31, 2015 notice. Furthermore, the one allegation addressed, that without adequate water supply, simply alleges that the repairs required were completed, alleges that the leaks continue and that in the broadest of terms notes that "Ft. Howard is currently in the process of addressing the repair of the newly discovered leaks". Since Section 13-7-113(b) however requires abatement to be completed within 30 days unless the Respondent satisfactorily demonstrates to the County that abatement is being pursued, time being of the "essence"; the bare statement in the hearing request that the Respondent was "in the process of addressing" the repairs in no way may be considered an indication that the "essence" of the time required was

satisfactorily being addressed by the Respondent. Accordingly, I find that the allegations of nuisance are sustained and that the County may pursue abatement under Section 13-7-115 of the B.C.C.

Even assuming the response to the notice of nuisance as it relates to the failure to provide adequate water supply was sufficient to bring that issue to hearing, it was, in any event resolved at the hearing, in the context of the citation issued by the Baltimore County Department of Permits, Approvals and Inspections.

Turning therefore to that document, it is clear that the Respondent failed to comply with the BCFD Order of December 24, 2014. No written results of testing or evidence of any repairs to the water system were presented at the hearing. Moreover, no documentation of any flow tests or other inspections whatsoever were presented. The Respondent's proffer (in its letter to Mr. Brand or in its Post-Hearing Memorandum) that they were not aware that the VA had closed "some of the water lines", and that therefore that knowledge was "unknown to Ft. Howard Development during the months of January through May, 2015 and unknowable by Ft. Howard Development, LLC during that time", leads to a simple question. If true, how could they not know if, in response to the December 24, 2014 BCFD Order, they were supposedly fixing and flow testing the water delivery system? Put another way, the Respondent's explanations, in view of absolutely no evidence of repair or testing by them after the December 24, 2014 Order, simply does not, as the expression goes, "hold water".

Finally, there is the issue of whether or not a 24/7 "fire watch" required by the BCFD Order until repairs were completed and flow tested, was maintained by the Respondent. It should be noted that again no testimony was presented by any representative of either of the two companies alleged by the Respondent to be providing security services, nor were any logs or any other documentation of the security coverage provided by them at the hearing. In addition, the testimony of Ms. Williams, Captain Haley and Officer Robinson convinced me that there were significant lapses of fire watch coverage at the Ft. Howard site. I am also convinced that these lapses in security coverage continued until, according to Officer Robinson, the federal police assumed patrol of the site after the July fire:

Accordingly, it is the Order of the Administrative Law Judge this 14th day of **January, 2016**, that the allegations of nuisance set out by Baltimore county in its notice of July 31, 2015, be and hereby are **SUSTAINED**.

IT IS FURTHER ORDERED that a civil penalty in the amount of One Thousand Dollars (\$1,000.00) be imposed against the Respondent.

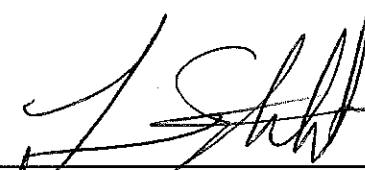
IT IS FURTHER ORDERED that Baltimore County be and hereby is authorized to remove the nuisances or cause of nuisances on the Ft. Howard site; and that the costs of such removal shall be imposed pursuant to B.C.C. Section 13-7-115(a)(b).

IT IS FURTHER ORDERED that as to the Baltimore County Department of Permits, Approvals and Inspections' Citation dated July 31, 2015, a civil penalty be imposed against the Respondent in the amount of Forty-Three Thousand, Eight Hundred Dollars (\$43,800.00).

IT IS FURTHER ORDERED that the Respondent Ft. Howard Development, LLC take all immediate steps to make all repairs to the subject property as set forth in the December 24, 2014 Order of the BCFD.

IT IS FURTHER ORDERED that at its sole discretion, the Baltimore County Department of Permits, Approvals and Inspections, be and hereby is authorized to take any and all steps to enforce the December 24, 2014 Order of the BCFD; and that the costs and expenses arising therefrom to be the responsibility of, and be assessed against the Respondent.

Signed: _____



LAWRENCE M. STAHL
Managing Administrative Law Judge

NOTICE: Pursuant to §3-6-301(a) of the Baltimore County Code, the Respondent or Baltimore County 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 \$225.00 and the posting of security in the amount of the penalty assessed.

LMS/dlw