

**STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS**

**Thomas C. Green,
Petitioner Below, Petitioner**

vs) **No. 11-0421** (Harrison County No. 10-C-142-2)

**City of Clarksburg,
Respondent Below, Respondent**

FILED

October 11, 2011
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioner Thomas C. Green (petitioner below) appeals from the circuit court's order upholding the decision of Respondent City of Clarksburg (respondent below), which ordered the condemnation and demolition of a structure located on real property owned by petitioner ("the subject property"). Petitioner seeks a reversal of the circuit court's order and a reversal of respondent's condemnation and demolition order. Respondent has filed a response.

This Court has considered the parties' briefs and the record on appeal. Pursuant to Rule 1(d) of the Revised Rules of Appellate Procedure, this Court is of the opinion that this case is appropriate for consideration under the Revised Rules. The facts and legal arguments are adequately presented in the parties' written briefs and the record on appeal, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the briefs, and the record presented, the Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision is appropriate under Rule 21 of the Revised Rules.

On September 25, 2007, respondent issued a condemnation and demolition order on the subject property having determined that the structure was unfit for human occupancy under respondent's Property Maintenance Code. Petitioner purchased the subject property approximately two months later.

The record reflects that petitioner appeared before respondent's BOCA Appeal Board¹ ("BOCA Board") on May 21, 2008, at which time he submitted plans to bring the subject property "up to Code." Respondent states that petitioner was given several extensions of time to complete those repairs, but that inspections by city officials revealed that little

¹ In the record on appeal, this Board is referred to as the "BOCA Code Appeal Board" and as the "Building Code Appeals Board."

progress was being made. Petitioner contends that he made substantial repairs to the dwelling at a cost of more than \$21,000.

A BOCA Board meeting was scheduled for March 17, 2010, and the subject property was once again on the meeting agenda. Petitioner states that he did not receive a notice of this meeting, but he was nonetheless aware that it was scheduled since he advised respondent's Code Enforcement Office and BOCA Board that he could not attend and sought a continuance. Petitioner adds that he believed the meeting was to be a status update.

At the March 17, 2010 meeting, the BOCA Board voted to reinstate the condemnation and demolition order previously issued on September 25, 2007. Neither petitioner nor anyone on his behalf was in attendance.

Petitioner challenged the BOCA Board's decision in the circuit court arguing that he did not receive proper notice of the March 17, 2010 meeting; that the BOCA Board had an illegal number of members; and that there was no factual basis in the record for the condemnation. On October 15, 2010, the circuit court entered an order affirming the BOCA Board's decision to enforce its condemnation and demolition order.

In his petition for appeal, petitioner argues that the condemnation and demolition order issued on September 25, 2007, is not a part of the record and, therefore, the circuit court should have ruled in his favor because no condemnation order existed. The circuit found that the condemnation and demolition order was a part of the record filed with the circuit court.

Next, petitioner asserts that his due process rights were violated because he did not receive notice of the BOCA Board meeting held on March 17, 2010, during which the September 25, 2007 condemnation and demolition order was reinstated. Respondent states that it sent a notice of the meeting to petitioner by certified mail on March 5, 2010, which included the date, time, and place of the meeting, along with the meeting agenda. Respondent asserts that petitioner clearly had notice since he advised the BOCA Board that he could not be present for the meeting, but adds that petitioner neither attended nor sent a representative to protect his interests. The circuit court found that respondent's notice of the meeting sent by certified mail to petitioner, coupled with petitioner's statement that he advised the BOCA Board that he could not be present on that date, refuted petitioner's argument that he did not receive notice.

Next, petitioner asserts that he was never notified of deficiencies in either the structure of the subject property or the repairs he had performed, which was contrary to his due process rights and the International Property Management Code (2006). Respondent argues that petitioner was well aware of the deficiencies, as reflected in the minutes of BOCA Board

meetings held on May 21, 2008, and on November 19, 2008,² and in a letter written by petitioner dated October 12, 2008, in which he conceded that there were still many repairs to be made to the property. Respondent notes that the BOCA Board gave petitioner extensions of time totaling twenty-two (22) months to complete the repairs to the subject property and that he failed to do so. The circuit court found that petitioner was afforded constitutionally sufficient notice of the deficiencies in the subject property given the numerous times the BOCA Board discussed the condition of the subject property with petitioner and the numerous extensions of time given to petitioner to complete the repairs to the property. The circuit court also noted that petitioner did not attempt to refute the BOCA Board's factual determination that the subject property is unfit for human occupancy.

Last, petitioner argues that there was neither statutory nor regulatory authority for respondent to reduce its BOCA Board from five members to three members and no legal authority that a two-person BOCA panel can uphold a demolition order. Respondent argues that it had the authority to reduce its BOCA Board to three members. The circuit court found that the BOCA Board had acted under its own properly promulgated and adopted rules when it met with three members on March 17, 2010. Regardless, this Court finds that under the particular facts and circumstances of this case, petitioner cannot be heard to complain about the composition of the BOCA Board at its March 17, 2010 meeting when he knew in advance when and where the meeting would be held and that the subject property would be discussed, yet he neither attended the meeting nor sent anyone to represent his interests. *See Schmehl v. Helton*, 222 W.Va. 98, 106 n.7, 662 S.E.2d 697, 705 n.7 (2008) (“[T]his Court may in any event affirm the circuit court on any proper basis, whether relied upon by the circuit court or not.”).

In the analogous context of reviewing decisions of a board of zoning appeals, this Court has previously held that, “[w]hile on appeal there is a presumption that a board of zoning appeals acted correctly, a reviewing court should reverse the administrative decision where the board has applied an erroneous principle of law, was plainly wrong in its factual findings, or has acted beyond its jurisdiction.” Syllabus Point 5, *Wolfe v. Forbes*, 159 W.Va. 34, 217 S.E.2d 899 (1975).” Syl. Pt. 1, *Far Away Farm, LLC v. Jefferson County Board of Zoning Appeals*, 222 W.Va. 252, 664 S.E.2d 137 (2008) (per curiam); *see also* Syl. Pt. 2, *Sams v. City of White Sulphur Springs*, 226 W.Va. 723, 704 S.E.2d 723 (2010)(per curiam). Having reviewed the arguments of the parties, the record on appeal, and having considered the decision of the circuit court under this standard of review, the Court hereby affirms the decision of the circuit court.

² The Court notes that the record contains minutes of several other BOCA Board meetings where discussions took place between the BOCA Board and petitioner concerning the subject property.

Affirmed.

ISSUED: October 11, 2011

CONCURRED IN BY:

Chief Justice Margaret L. Workman

Justice Robin Jean Davis

Justice Brent D. Benjamin

Justice Menis E. Ketchum

Justice Thomas E. McHugh