

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

Building Code Appeals Board  
Docket No. 08-564

_____	)
Maurice V. Spear, Jr.,	)
Appellant	)
	)
v.	)
	)
City of Holyoke,	)
Appellee	)
_____	)

BOARD'S RULING ON APPEAL

Procedural History

This matter came before the State Building Code Appeals Board ("Board") on Appellant's appeal filed pursuant to 780 CMR §122.1. In accordance with 780 CMR §122.3, Appellant has requested that the Board to review Appellee's decision to require the Appellant to remove the structure located at 20 Worcester Place, Holyoke ("Property").

By letter dated January 30, 2008, Paul Healy, Building Commissioner for the City of Holyoke, ("Holyoke"), informed Appellant that 780 CMR §§103.0 and 121.0 had been violated and ordered the Appellant to demolish the property.

In accordance with G. L. c. 30A, §§10 and 11; G. L. c. 143, §100; 801 CMR 1.02 et. seq.; and, the Board convened a public hearing on May 1, 2008 where all interested parties were provided with an opportunity to testify and present evidence to the Board.

Present at the hearing were Michael Moriarity, Esq. on behalf of Appellant, Kara Lamb Cunha, Esq., Paul Healy and Joseph Beaulieu on behalf of Appellee.

Exhibits in Evidence

- Exhibit 1: State Building Code Appeals Board Appeal Application Form, dated February 22, 2008, including supporting materials.
- Exhibit 2: State Building Code Appeals Board decision dated April 28, 2006.
- Exhibit 3: Eight colored photos of the property.
- Exhibit 4: Memorandum from the City of Holyoke Building Commissioner in Opposition of Appeal.
- Exhibit 5: Instrument of Taking dated February 28, 1996.
- Exhibit 6: Letter dated January 17, 2001 from the Land Court Department of the Trial Court.

Exhibit 7: Letter dated February 13, 2008 from John Harrington of the Land Court Tax Department to the City of Holyoke.

### Findings of Fact

1. Maurice V. Spear, Jr. ("Spear") at one time owned the property.
2. The Appellant first appealed to this Board from a notice by Steven Reno, former Building Commissioner for the City of Holyoke, dated July 13, 2005, ordering him to remove the building located at 20 Worcester Place Holyoke, MA as a result of a 780 CMR §§121.0 violation.
3. The public hearing took place on December 30, 2005, and a decision was issued on April 28, 2006, docket number 05-163. The decision was based on the following facts which are hereby incorporated herein:
  - a. The Appellant appears as counsel to the real party in interest, who is Maurice V. Spear, Jr. ("Spear"). Spear was, for a time, the owner of the premises located at 20 Worcester Place, Holyoke, Massachusetts, the property affected by this Decision.
  - b. The Appellant appealed to this Board from a notice by Steven Reno, Building Commissioner for the City of Holyoke ("the City"), dated July 13, 2005, ordering him to remove the building located at 20 Worcester Place, in Holyoke, MA.
  - c. In January of 1990, Spear purchased the premises by deed recorded at the Hampden County Registry of Deeds at Book 7365, Page 580.
  - d. On July 3, 1996, the Tax Collector for the City recorded an Instrument of Taking as a result of unpaid real estate taxes for the FY 1994. The Instrument of Taking is recorded at 9408, Page 63 in said Registry.
  - e. Spear took no action to pay the past due taxes and essentially abandoned the property. Accordingly, in January, 2001, the City filed a Petition in Land Court pursuant to General Laws Chapter 60, Section 65, seeking to foreclose Spear's rights of redemption.
  - f. In August of 2005, Spear, through counsel, filed a pleading in the Land Court proceeding called "Consent and Waiver" wherein Spear stated that he "waives any and all rights of redemption, defenses and rights to notice and hearing to which he is entitled in this action, and prays that this Honorable Court issue a decree without further hearing." He further stated in the pleading that he "consents to the entry of a decree in favor of the City of Holyoke's petition to foreclose his tax lien."
  - g. Although this City of Holyoke was notified in a timely fashion of the hearing date for December 20, 2005, and has further given notice of the entry of a Preliminary Order by the Board dated February 14, 2006, and invited to present the City's memorandum to contradict the Appellant's assertions of law, the City of Holyoke has taken no actions to challenge Spear that he is not the responsible party herein.

4. By decision dated April 28, 2006, the Board held that Spear was not legally obligated to remove the structure located at 20 Worcester Place, Holyoke, MA. For reasons that are not clear from the record, the City of Holyoke was not represented at the hearing.
5. Paul Healy, Building Commissioner for the City of Holyoke, by letter dated January 30, 2008, informed Appellant that 780 CMR §§103.0 and 121.0 had been violated and ordered the Appellant to demolish the property.
6. The Appellant appealed Building Commissioner Paul Healy's order on February 22, 2008.

### Decision

The issue is whether the Appellant is legally obligated to demolish the property. For the following reasons, the Board **DENIES** the appeal for lack of jurisdiction. Pursuant to M.G.L. c. 143, § 100, the Board has the authority to decide appeals by those "aggrieved by an interpretation, order, requirement, direction or failure to act by any state or local agency or any person or state or local agency charged with the administration or enforcement of the state building code." However, M.G.L. c. 143, § 100 does not provide the Board with jurisdiction over matters relative to the ownership of the property in question. Instead, ownership of property issues are to be resolved by the Land Court. See M.G.L. c. 185, § 1.

The Board concluded in its decision dated April 28, 2005, that the Appellant was not legally obligated to remove the structure since it appeared that he was not the owner of the structure. However, where no counter argument was presented by Holyoke, the Board did not have a clear picture of the state of affairs relative to this property. Now, it does. Here, the parties do not dispute that 780 CMR §§103.0 and 121.0 of the Code have been violated, nor do they disagree that the property must be demolished. That is, the Appellant has not raised any issue relative to the structural integrity of the property in his appeal application. The issue now on appeal relates solely to the ownership of the property and the corresponding responsibility of demolishing it. This decision is best left to the Land Court, which holds original jurisdiction over complaints for rights in land. See M.G.L. c. 185, § 1 (Land Court holds exclusive original jurisdiction over complaints of title and rights in land). Accordingly, the Board **DISMISSES** the appeal for a lack of jurisdiction.

### Conclusion

The Chair entertained a motion that the Board refer this issue to the Department of Public Safety legal counsel for guidance on the Board's jurisdiction ("Motion"). Following testimony, and based upon relevant information provided, Board members voted unanimously to allow the Motion, as described on the record. After review, legal counsel determined that the ownership of the property is outside the jurisdiction of this Board. Accordingly, the Board voted as indicated below.

..... Granted

..... Denied

..... Rendered Interpretation

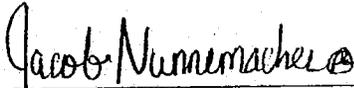
.....Granted with conditions

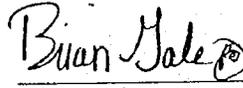
..... Dismissed

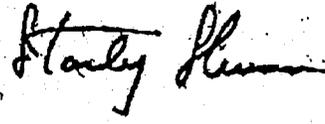
The vote was:

.....Unanimous

..... Majority

  
\_\_\_\_\_  
Jacob Nunnemacher

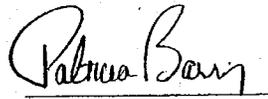
  
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Brian Gale

  
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Stanley Shuman

Any person aggrieved by a decision of the State Building Code Appeals Board may appeal to a court of competent jurisdiction in accordance with Chapter 30A, Section 14 of the Massachusetts General Laws.

A complete administrative record is on file at the office of the Board of Building Regulations and Standards.

A true copy attest, dated: June 6, 2008

  
\_\_\_\_\_  
Patricia Barry, Clerk

All hearings are audio recorded. The digital recording (which is on file at the office of the Board of Building Regulations and Standards) serves as the official record of the hearing. Copies of the recording are available from the Board for a fee of \$5.00 per copy. Please make requests for copies in writing and attach a check made payable to the Commonwealth of Massachusetts for the appropriate fee. Requests may be addressed to:

Patricia Barry, Coordinator  
State Building Code Appeals Board  
BBRS/Department of Public Safety  
One Ashburton Place – Room 1301  
Boston, MA 02108