

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Appeal No. 01-0004 of Waste Management of Maryland, Inc. and Caslin Associates, LP pursuant to 11 DCMR § 3203.1, of the administrative decision of the Administrative Decision and Order of the Office of Adjudication dated May 14, 1999, finding the appellants liable for operating a solid waste handling facility without a valid certificate of occupancy permit in the C-M-2 District at premises 2160 Queens Chapel Road, N.E. (Square 4259, Parcels 154/72, 154/110, 154/112 and Lot 3).

PUBLIC HEARING(S): July 7, 1999, September 22, 1999

DECISION DATE(s): October 6, 1999, November 3, 1999, December 1, 1999

DECISION DATE ON CONSENT MOTION: January 4, 2005

SUMMARY ORDER ON CONSENT MOTION

BACKGROUND

On January 22, 2004, the Board of Zoning Adjustment ("Board"), received a consent motion to reverse a decision of the Office of Adjudication ("OAD") filed on behalf of Waste Management of Maryland, Inc. and Caslin Associates, LP (collectively (Appellants") by Carolyn Brown, Esq. with the law firm of Holland & Knight LLP. The Appellants requested that the Board reverse the Decision and Order entered May 14, 1999, by Administrative Law Judge ("ALJ") finding Appellants liable for operating a solid waste transfer station without a valid Certificate of Occupancy ("C of O").

On August 11, 2003, Appellants filed a consent motion requesting that the OAD vacate the May 14, 1999 decision and order since the D.C. Court of Appeals ruled that the C of O was wrongfully revoked. By order dated September 5, 2003, the ALJ denied such consent motion, ruling the OAD no longer had jurisdiction over the matter since Appellants appealed the decision and order to the Board in June 1999. By amended order dated September 15, 2003, the ALJ noted that, absent action by the Board regarding the appeal of the ALJ's decision and order, the OAD did not have jurisdiction to act in the matter.

Because the ALJ decision finding the Appellants' liable was based on a premise that has now been overturned by the court, Appellants requested that the Board reverse the May 14, 1999 ALJ decision. The Appellants proffered that they

consulted with Arthur Parker, Esq., of the Office of the Attorney General , and with J. Sinclair Long, Esq., of the General Counsel's office for DCRA, and both consent to the motion to vacate. Since the government concedes legal error, the Board will vacate the decision. The Board does not, however, reach the merits of the issue of whether a court's invalidation of a revocation bars the enforcement of notices of infraction issue for operating after the revocation, but prior to the court ruling. See, e.g. *Wisconsin v. LeClair*, 324 N.W.2d 832 (Wis. Ct. App. 1982) (dismissal of driving after revocation not warranted because respondent had not demonstrated his right to drive at time of incident).

For the reasons stated above, it is hereby **ORDERED** that the **CONSENT MOTION** to Reverse the Decision of the Office of Adjudication is **GRANTED**.

VOTE: 4-0-1 (Geoffrey H. Griffis, Curtis L. Etherly, Jr., Ruthanne G. Miller, and John A. Mann II to Grant the motion, the Zoning Commission member not participating, not voting)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

Each concurring member has approved the issuance of this Decision and Order.

ATTESTED BY:


JERRILY R. KRESS, FAIA
Director, Office of Zoning

FINAL DATE OF ORDER: JAN - 6 2005

PURSUANT TO 11 DCMR § 3125.6, THIS ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL. rsn

GOVERNMENT OF THE DISTRICT OF COLUMBIA
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BZA APPEAL NO. 01-0004 Summary Order on Consent Motion

As Director of the Office of Zoning, I hereby certify and attest that on JAN - 6 2005 a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

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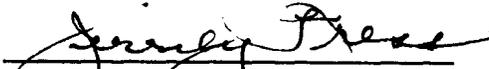
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rsn