

IN THE MATTER OF  
JOHN R. MULVANEY, JR.  
8822 GOLDEN TREE LANE

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BEFORE THE  
BOARD OF APPEALS  
FOR  
BALTIMORE COUNTY  
CASE No.: CBA-12-044

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**OPINION**  
**RE: MOTION TO DISMISS**

This matter comes before the Board as a Motion to Dismiss filed by Baltimore County in response to an appeal by John R. Mulvaney, Jr. (“Mulvaney”) in which he is seeking a refund for sewer service charges billed to his property located at 8822 Golden Tree Lane in the Essex section of Baltimore County, Maryland for Fiscal Year 2006 – 2007. A hearing on the County’s Motion to Dismiss was held on May 15, 2012, with Assistant County Attorney, Nancy West appearing for Baltimore County and John R. Mulvaney, Jr. appearing *pro se*.

**BACKGROUND**

It appears that from the evidence submitted at the May 15, 2012 hearing of this matter, Mr. Mulvaney received his tax bill for fiscal year 2006-2007 on July 1, 2006 for Parcel No. 18-00-005850. It was from this bill that Mr. Mulvaney was alerted to his sewer service charges which he now disputes. It is undisputed that Mr. Mulvaney did not notify the County of any claim for alleged sewer service overcharges for Fiscal Year 2006-2007 upon receipt of his July 1, 2006 tax bill, but rather waited until December 6, 2011 to make a claim in his letter to Edward C. Adams, Jr., Director of the Department of Public Works (“DPW”). It wasn’t until December 6, 2011 that Mr. Mulvaney notified the County in writing disputing his 2006-2007 sewer service

charge. Mr. Mulvaney's request for refund was denied by Baltimore County on January 31, 2012, citing that Mr. Mulvaney's raising of the issue was untimely and now barred by statute.

**DECISION**

Baltimore County Code ("BCC"), Section 20-5-110, Review of User Charges; Appeals: Refunds, Subsection (a), provides as follows:

Any person liable for the payment of the user charges imposed pursuant to this title and who disputes such charges **may, within ninety (90) days after mailing of the bill for such charges, request the Director of Public Works to review the charges imposed.** Such requests for review shall be in such form, contain such information, and be supported by such documents as the Director of Public Works may require. The Director of Public Works shall investigate the merits of all such requests, and the person requesting review shall be entitled to a hearing before the Director of Public Works or designee. After investigation and hearing, if requested, the Director of Public Works shall, by written notice, notify the person requesting review of the action taken. If the Director of Public Works or designee determines that all or any part of the charges were erroneously, mistakenly, or illegally charged or collected, such charges shall either be abated or refunded. (Emphasis added.)

To implement BCC Section 20-5-110, there were Executive Orders in place that, unchanged in the current 2010 Executive Order, Section III.C, Disputes, state as follows:

Any person disputing sewer service charges **shall submit a written protest to the Director of Public Works within 90 calendar days of (1) the issuance of the receipt for the charges paid in connection with the plumbing permit, or (2) the issuance of the tax bill or invoice for the charge being disputed, as the case may be.** Any disputes shall be governed by Section 20-5-110 of the Baltimore County Code, 2003.(Emphasis added).

As required by the Executive Orders, Mr. Mulvaney was obligated to dispute the charge within 90-days of either (a) the issuance of a receipt for charges paid in connection with the

relevant plumbing permit issued for his property located at 8822 Golden Tree Lane; or (b) the issuance of a tax bill or invoice for the charge being disputed. Consequently, Mr. Mulvaney's claim is barred as untimely because he failed to file the requisite written dispute of claim until December 6, 2011, which was over five years beyond the mandated 90-day statutory time limit of the Baltimore County Code and relevant Executive Orders.

Numerous decisions of the Maryland Court of Appeals have made it clear that the courts have no power or discretion to allow an appeal not filed within the prescribed time in the face of statutory language requiring an appeal be taken within a specified time. The time for filing an appeal is mandatory. *See Keynon v. Board of Zoning Appeals of Harford County*, 235 Md. 388 (1964), *Bushey v. State Roads Comm'n*, 231 Md. 154 (1963), *Gibson v. District of Columbia Public Employee Relations Board*, 785A.2d 1238 (D.C. 2001), *Hoggard v. District of Columbia Public Employee Relations Board*, 655 A.2d 320, 323 (D.C. 1995).

### CONCLUSION

The Board finds that Mr. Mulvaney's appeal of his sewer service charges was made untimely and that the County's Motion to Dismiss must be granted.

### ORDER

THEREFORE, IT IS THIS 7<sup>th</sup> day of September 2012 by the Board of Appeals of Baltimore County

**ORDERED** that the January 31, 2012 decision letter of Edward C. Adams, Director of Department of Public Works, stating that appeal in regard to sewer service charge billed to the


property located at 8822 Golden Tree Lane for the period 2006-2007, is beyond appeal period, be and the same is hereby **AFFIRMED**; and it is furthered

**ORDERED** that Respondent's Motion to Dismiss be and the same is hereby **GRANTED**; and it is further


**ORDERED** that the appeal of John R. Mulvaney, Jr., filed in Case No.: CBA-12-044 is **DISMISSED** with prejudice.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*.

**BOARD OF APPEALS  
OF BALTIMORE COUNTY**

  
Wendell H. Grier, Chairman

  
Lawrence S. Wescott

  
Andrew M. Belt