

**BEFORE THE ZONING BOARD OF APPEALS OF THE CITY OF
CINCINNATI, OHIO**

The Paddock Hills Assembly, Inc. and North
Avondale Neighborhood Association,

Appellant,

-v-

KM Real Estate Holding Co. Ltd,

Appellee

Case No.: ZH20220159

MOTION TO DISMISS AND EXPEDITE

I. INTRODUCTION

Dismissal of this Appeal is proper. Appellants lack the capacity to invoke this Board’s jurisdiction because no person shall be permitted to practice as an attorney and counselor at law, or to commence, conduct, or defend any action or proceeding in which the person is not a party concerned, either by using or subscribing the person's own name, or the name of another person, unless the person has been admitted to the bar by order of the supreme court in compliance with its prescribed and published rules pursuant to R.C. 4705.01. We will show that (1) when a non-lawyer purports to represent another person in a quasi-judicial proceeding, that person is engaged in the unauthorized practice of law, (2) an appeal to the Zoning Board of Appeals is a quasi-judicial proceeding, meaning that all parties must either represent themselves or be represented by an attorney, (3) because an organization cannot be represented *pro se*, the appellants in this case must be represented by counsel, and (4) because a quasi-judicial body’s jurisdiction cannot be invoked by a non-lawyer engaged in the unauthorized practice of law, the appeal must be dismissed for lack of jurisdiction. Accordingly, Appellee, KM Real Estate Holding Co. Ltd (“Owner”), respectfully request that this Board dismiss this Appeal.

II. STATEMENT OF RELEVANT FACTS

This case relates to property located at 4106 Victory Parkway, Cincinnati, Ohio 45229. On October 5, 2022, Owner filed an Application for Zoning Relief whereby Owner requested a variance and special exception for parking, two setback variances, and a locational variance for a dumpster. On November 10, 2022, Weston Munzel, the Zoning Plan Examiner, released a Staff Report. Recommendations by staff were to APPROVE all five (5) variances/special exemptions. On December 14, 2022, a Decision was ordered by David Sturkey, the Zoning Hearing Examiner. In his decision, Mr. Sturkey conditionally APPROVED all five (5) variances/special exemptions. On January 12,

2023, Paddock Hills Assembly and North Avondale Neighborhood Association filed an Appeal Application to the Zoning Board of Appeals. On January 30, 2023, Paddock Hills Assembly and North Avondale Neighborhood Association filed a Motion to Submit Additional Evidence of CAGIS map Inaccuracy and (2). On January 31, 2023, Paddock Hills Assembly and North Avondale Neighborhood Association filed a Motion for Summary Judgement.

III. ARGUMENT

An appeal to the Zoning Board of Appeals is a quasi-judicial proceeding, meaning that all parties must either represent themselves or be represented by an attorney. The term “quasi-judicial” signifies that the administrative boards from which an appeal may be taken act similarly to a court, to wit, witnesses are examined, a hearing is had and a finding or decision made all in accordance with statutory authority (*M. J. Kelley Co. v. Cleveland*, 32 Ohio St.2d 150, 153, 290 N.E.2d 562 (1972)). In deciding whether an act by an administrative agency is quasi-judicial the most common test is to determine whether the function under consideration involves the exercise of discretion and requires notice and hearing (*Id.*). Here, the Zoning Board of Appeals Rules of Procedure provide for a quasi-judicial hearing in which notice is given, evidence is offered, witnesses are examined, and an appealable decision is issued. All parties in front of the Zoning Board must either represent themselves or be represented by an attorney.

When a non-lawyer purports to represent another person in a quasi-judicial proceeding, that person is engaged in the unauthorized practice of law. We can look to law involving other quasi-judicial bodies to guide us. The preparation and filing of a complaint with a board of revision on behalf of a taxpayer constitutes the practice of law (*Sharon Vill. v. Licking County Bd. of Revision*, 78 Ohio St.3d 479, 678 N.E.2d 932 (1997)). There, the tax agent was not an attorney; his actions were found to constitute the unauthorized practice of law (*Id.*). Similarly, board of elections, like a board of revision, is a quasi-judicial body when it considers protests. Therefore, based on *Sharon Village*, the preparation and filing of a statutory protest with a board of elections constitute the practice of law. *State ex rel. Cooker Rest. Corp. v. Montgomery County Bd. of Elections*, 80 Ohio St.3d 302, 306, 686 N.E.2d 238 (1997). The conclusions drawn by *Sharon Village* lends to the conclusion that the filing of motions in front of the Zoning Board of Appeals by a non-lawyer is engaging in the unauthorized practice of law.

An organization cannot be represented *pro se* so the appellants in this case must be represented by counsel. R.C. 4705.01 states that no person shall be permitted to practice as an attorney and counselor at law, or to commence, conduct, or defend any action or proceeding in which the person is not a party concerned, either by using or subscribing the person’s own name, or the name of another person, unless the person has been admitted to the bar by order of the supreme court in compliance with its prescribed and published rules (R.C. 4705.01). With rare exceptions that are not applicable here, a

corporation is not permitted to maintain litigation and appear in court represented by non-attorney corporate officers or agents (State ex rel. Army of the Twelve Monkeys v. Warren Cty. Court of Common Pleas, 156 Ohio St.3d 346, 2019-Ohio-901, 126 N.E.3d 1113, ¶ 6). Here, The Paddock Hills Assembly, Inc. (“Paddock Hills”) and North Avondale Neighborhood Association (“NANA”) are both non-profit corporations, per the Ohio Secretary of State’s records and neither Paddock Hills nor NANA has disclosed any attorney who is representing them in this appeal, despite filing a notice of appeal and numerous motions.

Since a Quasi-judicial body’s jurisdiction cannot be invoked by a non-lawyer engaged in the unauthorized practice of law, the appeal must be dismissed for lack of jurisdiction. Filings that violate R.C. 4705.01 may be stricken from the record because they have no legal effect (Union Sav. Ass'n v. Home Owners Aid, 23 Ohio St.2d 60, 64, 262 N.E.2d 558 (1970)). Further, dismissal for lack of jurisdiction is the proper remedy when a non-attorney files a notice of appeal with a quasi-judicial body (Sharon Vill. v. Licking County Bd. of Revision, 78 Ohio St.3d 479, 483, 678 N.E.2d 932 (1997); Bd. of Educ. of Worthington City Sch. Dist. v. Bd. of Revision, 85 Ohio St.3d 156, 160-61, 707 N.E.2d 499 (1999)). Ohio courts have found that when a filing constitutes the unauthorized practice of law, the court is deprived of jurisdiction to rule on that filing (See, e.g., State ex rel. Hadley v. Pike, 7th Dist. Columbiana No. 14 CO 14, 2014-Ohio-3310 (civil complaint filed by an attorney not licensed to practice in Ohio should have been dismissed for lack of subject-matter jurisdiction); Norwalk MK, Inc. v. McCormick, 6th Dist. Huron No. H-04-041, 2005-Ohio-2493 (municipal court lacks jurisdiction to hear claims filed by non-attorney officer of corporation); Bureau of Support v. Brown, 7th Dist. Carroll No. 00APO742, 2001-Ohio-3450, 2001 WL 1497073 (Nov. 6, 2001) (trial court improperly exercised jurisdiction when it granted motion filed by a non-attorney)). Here, like in State ex rel., Norwalk MK, Inc., Bureau of Support the Appeal by Appellants should be dismissed due to lack of jurisdiction.

IV. CONCLUSION

The Zoning Board of Appeals should dismiss Appellants appeal. The Zoning Board of Appeals lacks jurisdiction to hear this appeal.

In addition, we ask that a determination of this matter be expedited. It is a threshold issue and delay has significant ramifications. The Owner and Developer are in a position to break ground after finalization of this last remaining item as they have coordinated with the City, State, and lending institutions to be in such position. In the current economic environment, delay can be expensive in the best case and fatal in the worst. Because the issues raised here is one that affects the propriety of the appeal, we ask that the appeal be dismissed prior to the March 16, 2023 date that is currently on the schedule.

Respectfully submitted,

/s/ Thomas Bergman

Thomas Bergman (0015752)

Josh Robinson (100401)

Thomas H. Bergman & Assoc., LLC

4695 Lake Forest Drive, Suite 200

Cincinnati, Ohio 45242

Tel: (513) 563-0906

tbergman@thbergman.com

jrobinson@thbergman.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Dismiss and Expedite was served upon the following by electronic mail on this 10th day of February, 2023:

Paddock Hills Assembly
P.O. Box 16028
Cincinnati, OH 45229
paddockhillsassembly@gmail.com

North Avondale Neighborhood Association
P.O. Box 16152
Cincinnati, OH 45216
nanacincinnati@gmail.com

/s/ Thomas Bergman

Thomas Bergman