

BBS MEMO

Ohio Board of Building Standards

September 1991

2626 West Fifth Ave., Box 825, Columbus, Ohio 43216

Middleburg Heights vs. Board of Building Standards

HISTORY - In February, 1989, the Board of Building Standards held an adjudication hearing on the complaint filed by Mr. Regis Korba and Flair Corporation that the City of Middleburg Heights had enacted a city ordinance which was in conflict with the Ohio Basic Building Code (OBBC). By unanimous vote the Board adopted a motion scheduling the city's rule of certification for a repeal after public hearing.

On April 21, 1989, a public was held by the Board and on May 5, 1989, the Board voted to revoke the city's certification with an effective date of July 1, 1989, on the grounds that provisions of Chapter 1351 of the Middleburg Heights Building Code were in conflict with provisions of the OBBC and Chapters 3781. and 3781. of the Ohio Revised Code, and because the city's subsequent repeal of these provisions in Chapter 1351 and the re-enactment of these provisions as zoning requirements by Ordinance No. 1989-118 did not resolve the conflict.

The City then appealed the decision to the Franklin County Court of Common Pleas where in September of 1990, the action was upheld.

The city then appealed the Common Pleas Court decision to the 10th District Court of Appeals. Oral arguments were heard on March 20, 1991.

10th DISTRICT COURT OF APPEALS - A decision was handed down on July 16, 1991, sustaining two of the city's claims of lower court error such that:

1. The Court of Common Pleas erred in affirming the decision of the Board decertifying the building department of Middleburg Heights on the basis that the city's ordinances are in conflict with Chapters 3781. and 3791. of the ORC and the OBBC.
2. The Court of Common Pleas erred in affirming the Board's finding that the city's ordinances are not in conflict with the general laws of the State of Ohio and are therefore invalid.

PRESENT - The Board decided unanimously to authorize the Chairman of the BBS to appeal this 10th District Court of Appeals decision to the Ohio Supreme Court and on July 15, 1991, a request was delivered to Attorney General Lee Fisher's office.

COURT OPTIONS - Upon the filing of the appeal, the Supreme Court has three courses of action available. It could simply refuse to hear the case and allow the lower court decision to stand; it could issue a per curiam opinion on the merits of the case based on case law; or it could agree to hear the case and receive both party's written and oral arguments.

The Attorney General's office did receive permission to cite the Springdale vs. BBS decision as additional authority in the Middleburg Heights vs. BBS case. However the appeals court did not refer to that case in rendering its decision but rather cited the appeals court decision in the Springdale case (which was decided on different grounds than the Supreme Court decision).

The failure of the appeals court to consider the recent (April 24, 1991) Springdale vs. BBS decision is one of the grounds for the BBS appeal.

IN THE INTERIM - What happens during the time between the 10th District Court of Appeals decision and the Supreme Court's decision whether or not to hear the appeal? Affected parties should consider the following in determining any action: 1) The Attorney General's office has indicated that 10th District Court of Appeals decision is not controlling law but rather persuasive authority outside the court's jurisdiction, 2) the Board has clearly stated its intent by appealing the decision to the Supreme Court, 3) the Attorney General's office has filed the appropriate documentation to appeal the appeals court decision to the Ohio Supreme Court, 4) the Ohio Supreme Court must now decide how to dispose of the appeal, a 2 to 4+ month process, 5) the Attorney General's office will next file a Notice of Appeal and a Memorandum of Jurisdiction with the court now that it has filed its notice of appeal, 6) if heard, the Supreme Court will set a briefing schedule for the filing of all briefs.

Individuals should discuss *both* the 10th District Court of Appeals Middleburg Heights vs. BBS decision *and* the Ohio Supreme Court Springdale vs. BBS decision with legal council before making deletions or additions to municipal building code ordinances, rules, etc.