



COUNTY COUNCIL OF TALBOT COUNTY

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March 15, 2022

The Honorable Luke Clippinger
Chair, House Judiciary Committee
Taylor House Office Building, Room 101
6 Bladen Street
Annapolis, MD 21401

The Honorable David Moon
Vice-Chair, House Judiciary Committee
Taylor House Office Building, Room 101
6 Bladen Street
Annapolis, MD 21401

RE: SUPPORT of HB 1448, *District Court – Concurrent Civil Jurisdiction – Violation of Ordinances*

Dear Chair Clippinger, Vice-Chair Moon, and Members of the House Judiciary Committee:

TALBOT COUNTY SUPPORTS HB 1448. This bill arises from a recent court case, *Angel Enterprises Limited Partnership, et al. v. Talbot County, Maryland, et al.* In *Angel Enterprises*, the Court stated that violations of County ordinances cannot be appealed to a County agency, invalidating \$700,000 in fines levied by Talbot County regarding a construction matter. The Court cited a State law requiring that appeals go directly to State court.

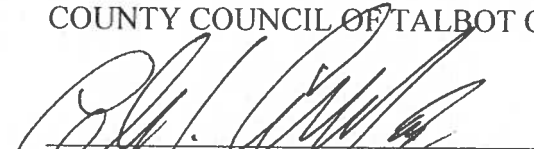
As noted by Talbot's County Attorney in the informational letter attached to this testimony, if enacted, HB 1448 would resolve the jurisdictional issues relied upon in *Angel Enterprises*, by granting the Talbot County Council, along with several other Counties and Baltimore City, concurrent jurisdiction with the District Court over violations of ordinances for which a civil penalty is provided under the Local Government Article.

This bill is needed to allow counties to maintain their current appeals processes and potentially prevent the overturning of their local enforcement activities. As such, Talbot County respectfully requests a **FAVORABLE** report on HB 1448.

The Honorable Luke Clippinger
The Honorable David Moon
March 15, 2022
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Sincerely,


COUNTY COUNCIL OF TALBOT COUNTY




Chuck F. Callahan, President




Pete Leshner, Vice President



Frank Divilio



Corey W. Pack



Laura E. Price

Enclosure



TALBOT COUNTY, MARYLAND
OFFICE OF LAW

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March 10, 2022

VIA E-MAIL ONLY (lprice@talbgov.org)

The Honorable Laura E. Price, Councilmember
County Council of Talbot County
11 N. Washington Street
Easton, Maryland 21601

Re: House Bill 1448

Dear Councilmember Price:

The purpose of this letter is to summarize the impact of House Bill 1448 (“HB 1448”) on Talbot County, Maryland (the “County”). HB 1148 was introduced in response to the Court of Appeals’ opinion in *Angel Enterprises Ltd. P’ship, et al. v. Talbot County, Maryland*, 474 Md. 237 (2021) (“*Angel Enterprises*”), filed on July 9, 2021.

In *Angel Enterprises*, the Court of Appeals held that, under the Express Powers Act¹, charter counties such as the County are authorized to enact local laws on any matter authorized thereby and to enforce such laws by civil or criminal fines; however, the General Assembly has conferred exclusive, original jurisdiction over the adjudication of such matters in the courts pursuant to §§ 4-401(10)(vi) and 4-402(d)² of the Courts and Judicial Proceedings Article. Thus, the Court held that that the fines at issue, which exceeded \$700,000, were invalid and unenforceable because they were subject only to review by the County’s Board of Appeals, which lacked jurisdiction to adjudicate them. The Court further held that those provisions of Chapter 58 of the County Code establishing an administrative review process for civil penalties by the County’s Board of Appeals were inconsistent with State law and thus void. An Amicus Summary of *Angel Enterprises* enclosed herewith provides a more detailed summary of the case’s facts and holding.

¹ The Express Powers Act is set forth in Title 10 of the Local Government Article of the Annotated Code of Maryland.

² Section 4-401(10)(vi) confers original jurisdiction in the District Court over the adjudication of violations of ordinances enacted by charter counties and the Mayor and City Council of Baltimore for which a civil penalty is provided and ordinances enacted by code counties for which a civil citation is issued. Section 4-402(d) confers concurrent jurisdiction in the District Court and the Circuit Court where the amount in controversy exceeds \$5,000, exclusive of interest and attorney’s fees.

Letter to the Honorable Laura E. Price

March 10, 2022

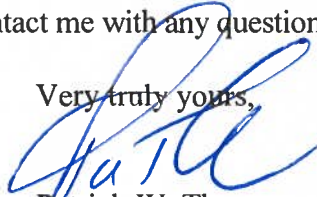
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HB 1148, if enacted, would amend § 4-401 of the Courts and Judicial Proceedings Article and § 10-305 of the Local Government Article and enact a new § 4-406 of the Courts and Judicial Proceedings Article for the purposes of: 1) conferring concurrent jurisdiction over the adjudication of violations of certain ordinances for which a civil penalty is provided in the District Court and with the governing body of a county, or the Mayor and City Council of Baltimore; and 2) authorizing the governing body of a county or the Mayor and City Council of Baltimore to delegate its authority over such violations to a board, commission, agency, or officer under its jurisdiction and control.

Accordingly, HB 1148, if enacted, would resolve the jurisdictional issues relied upon by the Court of Appeals in *Angel Enterprises* by granting the County Council concurrent jurisdiction with the District Court over violations of ordinances for which a civil penalty is provided under § 10-202 of the Local Government Article and authorizing the County Council to delegate such authority to the County's Board of Appeals as currently set forth in Chapter 58 of the County Code.

Please do not hesitate to contact me with any questions or concerns regarding the foregoing.

Very truly yours,



Patrick W. Thomas

County Attorney for Talbot County

Enclosure

cc: D'Paul Nibber, Maryland Association of Counties (via e-mail only)

Angel Enterprises Limited Partnership, et al. v. Talbot County, Maryland, et al., No. 45, September Term, 2020, filed July 9, 2021. Opinion by Booth, J.

<https://www.courts.state.md.us/data/opinions/coa/2021/45a20.pdf>

IMPOSITION OF CIVIL PENALTIES – ORIGINAL JURISDICTION OVER
ADJUDICATION OF PENALTIES IN THE MARYLAND COURTS – JURISDICTION OF
BOARD OF APPEALS ESTABLISHED BY CHARTER COUNTY

Facts:

In September 2002, Angel Enterprises Limited Partnership (“Angel”) purchased an unimproved lot located in Talbot County, Maryland (the “County”). Though the lot was located along Maryland Route 33 (Route 33), a deed restriction prohibited Angel from constructing a driveway with direct access to Route 33 unless approved by the Maryland State Highway Administration, the Talbot County Department of Planning and Zoning, and the Talbot County Public Works Department. After obtaining a building permit to construct a residence on the property, Angel tried, without success, to obtain the approval necessary to build a driveway with direct access to Route 33. Undeterred, Angel decided to construct the driveway anyway and hired a contractor to clear trees and build a driveway.

The project did not go unnoticed. Not long after construction began, the Maryland Department of the Environment (“MDE”) learned of the project and alerted the County. Shortly thereafter, the County Chief Code Compliance Officer (“CCCO”) mailed Angel two administrative abatement orders for conduct related to the unapproved construction project. The abatement orders identified two types of violations: one for cutting trees outside the Critical Area, and the other for cutting trees in the Critical Area. Notably, the abatement orders directed Angel to remediate and restore the property and advised Angel that failure to comply with the abatement orders could result in the assessment of civil penalties under the Talbot County Code (the “Code”) of up to \$1,000 per calendar day. The abatement orders also stated that Angel had the right to appeal the CCCO’s decision to issue abatement orders to the Talbot County Board of Appeals (the “Board”). Angel opted to appeal the abatement orders to the Board, who affirmed the CCCO’s decision to issue abatement orders.

After the Board affirmed the CCCO’s decision, but prior to Angel filing a petition for judicial review of the Board’s decision to affirm the abatement orders, the CCCO issued six penalty assessment notices to Angel, each of which advised Angel that a civil penalty had been assessed for violations of the Code. The assessments indicated that fines would accrue daily until such time the violations of the Code were brought into compliance. Like the abatement orders, the assessments provided Angel with a right to appeal each assessment to the Board.

Angel ultimately decided to appeal the CCCO’s penalty assessments, though the appeal was stayed by agreement, pending resolution of the abatement order appeal. Once the stay was lifted,

the Board conducted several evidentiary hearings on the civil penalties assessed by the CCCO's notices. During the Board hearings, Angel's counsel made several legal arguments challenging the County's process for imposing civil penalties. At the conclusion of the evidentiary hearing, the Board determined that the CCCO had the authority to issue the civil assessments under the Code and found Angel's due process rights were not violated by the County's procedure for adjudicating civil fines. However, the Board determined that, under the applicable provisions of the Code, the daily accrual of fines was stayed when Angel appealed the CCCO's penalty assessments.

After the County filed a petition for judicial review of the Board's decision that the daily accrual of fines was stayed during the pendency of the appeal, the circuit court reversed that portion of the Board's determination and entered an order authorizing the County to enforce the civil assessments "in the amount of \$713,400[.]" Unsurprisingly, Angel filed an appeal to the Court of Special Appeals. The intermediate appellate court agreed with the circuit court that, under the plain language of the Code, the Board erred in concluding that the penalties were stayed upon the filing of the administrative appeal. The Court of Special Appeals further determined that, because this case was an administrative appeal and the Board did not "mak[e] a factual finding that [Angel] owed \$713,400[.]" the circuit court erred in making such a factual finding. Accordingly, the Court of Special Appeals vacated the portion of the judgment providing that Angel owed \$713,400, concluding that the amount owed "is a determination to be made in a separate proceeding." The Court of Special Appeals also remanded the case to the Board for the Board to consider additional issues pertaining to the County's authority to assess penalties for daily violations of the particular code in question.

Held: Vacated and remanded with instructions to dismiss.

The Court of Appeals vacated the judgment entered by the circuit court, but for reasons different from those expressed by the Court of Special Appeals.

Under the authority granted to charter counties by the Express Powers Act, charter counties, like Talbot County, only possess those powers conferred upon it by the General Assembly. And while the Express Powers Act authorizes charter counties to enact local laws on any matter authorized by the Express Powers Act and provides the requisite authority to enforce such laws by civil or criminal fines, the Legislature has conferred exclusive, original jurisdiction over the adjudication of such fines in the courts rather than county boards of appeal. It follows that because Talbot County established a procedure for the administrative imposition and adjudication of civil fines by assessment notices issued by a CCCO, with a right to an administrative appeal to the Talbot County Board of Appeals, Talbot County expanded the jurisdiction of its Board beyond the jurisdictional limits established by the General Assembly. Because Talbot County lacked the authority to vest the Board with the authority to review civil penalties, the Board lacked subject matter jurisdiction over the assessment appeal. The Court of Appeals further observed that because the adjudication of civil penalties fell within the jurisdiction of the courts, the assessment notices issued by the CCCO that purported to assess

civil penalties subject only to administrative review by the Board of Appeals were facially invalid and unenforceable as were any provisions of the Code that established a process for the administrative assessment of civil penalties that were inconsistent with the applicable provisions of State law.