



BOARD OF LICENSE, INSPECTION & REVIEW

NOTICE OF DECISION

APPLICANT: Ding Wu

REFERENCE: Application 2022-0339

PUBLIC HEARING DATE: July 27, 2022

DATE OF DECISION: July 27, 2022

DATE DECISION FILED: August 17, 2022

MEMBERS OF BOARD PRESENT: Toren Williams, Jonathan Cochran, Charles McAllister, Paul Watts

SUBJECT PROPERTY: 1414 Old Lancaster Pike, Hockessin, DE 19707

Parcel No.: 11-013.00-012

Applicant Ding Wu (the “Applicant”) appeals from the post-deprivation hearing decision (the “Decision”) of the New Castle County Department of Land Use (the “Department”) issued on April 4, 2022. In the Decision, the Department’s Hearing Officer found the Applicant responsible for a violation of chapter 7 of the *New Castle County Code* (commonly referred to as the “*Property Maintenance Code*” and specific sections herein designated as “§ PM xx”) for a property located at 1414 Old Lancaster Pike, Hockessin, DE Road, Newark, DE 19702 (the “Property”).

I. PROCEDURAL HISTORY AND POSTURE¹

On November 23, 2021, the Department issued a Notice of Violation (“NOV”) to the Applicant, citing the existence of weeds and grass in excess of eight (8) inches in height within twenty (20) feet of a developed parcel in violation of the *Property Maintenance Code* section pertaining to weeds and grass on an undeveloped parcel (§ PM 302.4.1). Specifically, the Code

¹ The information in this section is derived from the record below that was submitted to the Board.

Enforcement Officer, Christopher Yasik, noted on the NOV that the “entire property [was] overgrown with weeds,” further directing the Applicant to “maintain 20’ perimeter around the property [with grass heights] at 8” or less.” The NOV afforded the Applicant until December 2, 2021 to correct the violation. The NOV also stated, in bold type, that if the violation should continue, “a County vendor may abate the violation(s) at owner’s expense,” and invited the Applicant to contact the County should the owner wish to be heard by an “administrative tribunal on the issues of why the County should not immediately abate” the violation. Attached to the NOV were two pictures that showed the condition of the Property.

On December 7, 2021, Code Enforcement Officer Yasik inspected the Property again and found that the Property remained overgrown with weeds in violation of the *Property Maintenance Code*. Code Enforcement Officer Yasik took additional pictures evidencing the condition of the Property and arranged for the Property to be abated by a third-party vendor. On December 8, 2021, a civil penalty (“Civil Penalty”) was issued to Applicant, fining him \$50 for failing to address the issues set forth in the NOV. The Civil Penalty incorrectly contained the original pictures included in the NOV taken November 23, 2021 instead of the photographs taken by Code Enforcement Officer Yasik on December 7, 2021 that documented the Property. The Civil Penalty noted, however, that the Property still had high weeds in violation of the *Property Maintenance Code*, including the presence of weeds up to 36” tall along the left side of the Property. On December 9, 2021, the Property was abated by Patterson’s General Services, a third-party vendor, who cut the weeds found on the Property.

On December 17, 2021, the Applicant filed an appeal of the Civil Penalty with the Department, noting that the pictures attached to the Civil Penalty were the same as the ones

included with the NOV. Moreover, the Applicant's appeal stated that the citation was corrected within the required timeframe, with four photographs detailing the condition of the Property on November 28, 2022 – before the deadline set forth in the NOV to cut the weeds. Accordingly, the Applicant submitted, the penalty should not have been assessed. The Applicant's appeal of the Civil Penalty was granted, and the \$50 fine was waived by the Department due to the incorrect photographs being included in the Civil Penalty.

On March 4, 2022, the Department issued a post-deprivation hearing notice to the Applicant, noting that the weeds were not addressed by the Applicant prior to the deadline set in the NOV. On March 30, 2022, the Department held the post-deprivation hearing ("PD Hearing") before its Hearing Officer to address the violations set forth in the NOV and the fees incurred by the County in abating the violation. At the PD Hearing, the Applicant testified that he already cut the weeds at issue before the Department abated the Property. Moreover, the Applicant testified that the appeal of the Civil Penalty was granted and that the photographs included in the Civil Penalty were incorrect. He also testified that there were not weeds on the Property, but bushes, and that there was a property boundary that bisected the area cut, so he was being held responsible for his neighbor's land.

Code Enforcement Officer Yasik testified on behalf of the Department, and he stated that he observed high weeds and grass at the Property on December 7, 2021. While the photographs he took that day were not included in the Civil Penalty issued later due to error, the weeds remained after the deadline set by the NOV to have them remediated. Accordingly, Code Enforcement Officer Yasik submitted a vendor request to have the Property abated. The third-

party vendor submitted an invoice and an affidavit as to the condition of the Property and the work performed by the vendor on December 9, 2021.

In addition to the evidence from the third-party vendor, Code Enforcement Officer Yasik submitted his photographs from December 7, 2021 that showed high weeds in violation of the *Property Maintenance Code*. While the Applicant submitted photographs dated November 28, 2021 suggesting the Property was clear of the weeds in question as of that date, the Applicant was unable to explain how the weeds had grown so quickly after he had remediated the issue. In addition, the Hearing Officer determined that the metadata of the Applicant's photographs showed that they actually were taken on December 17, 2021 – after the abatement had occurred. On April 4, 2022, the Hearing Officer issued her Decision, finding that the Applicant did not provide clear or convincing testimony or evidence that the violation was corrected prior to the Department abating the Property. Accordingly, the Hearing Officer directed the Applicant to reimburse the Department the cost of the abatement and an administrative fee, totaling \$1,249.00. This appeal followed.

II. LEGAL STANDARDS

The Board is authorized by 9 *Del. C.* § 1315 and Section 2.05.103 of the *New Castle County Code* to hear administrative appeals of violations of the *Property Maintenance Code*. The Board may affirm, modify, reverse, vacate, or revoke the action appealed, provided that such action be affirmed if the action was neither arbitrary or capricious nor contrary to law. *Property Maintenance Code* § PM 106.3.6.5. The Board shall not have the authority to waive any requirement of the *Property Maintenance Code*. *Property Maintenance Code* § PM 106.3.1.6.1.

“An arbitrary or capricious decision is one that is ‘willful and unreasonable and without consideration or in disregard of the facts.’” *Brandywine Innkeepers, L.L.C. v. Bd. of Assessment Review of New Castle Cty.*, 2005 WL 1952879, at *4 (Del. Super. Ct. June 3, 2005) (quoting Black’s Law Dictionary 96 (5th ed. 1979)). Courts have also found that an arbitrary or capricious decision is one that is taken without consideration of and in disregard of the facts and circumstances of the case. *Liborio, L.P. v. Sussex Cty. Planning & Zoning Comm’n*, 2004 WL 2191052, at *3 (Del. Super. Ct. June 8, 2004) (citing *Willdel Realty, Inc. v. New Castle County*, 270 A.2d 174, 178 (Del. Ch. 1970)). The arbitrary or capricious standard is satisfied when a decision-making body has “a decision-making process rationally designed to uncover and address the available facts and evidence that bear materially upon the issue being decided.” *Harmony Constr., Inc. v. State Dep’t of Transp.*, 668 A.2d 746, 751 (Del. Ch. 1995). In reviewing whether a decision is arbitrary or capricious, the reviewing body should consider the adequacy of (i) “the evidence considered by the [decision maker]” and (ii) “the process by which the relevant evidence and facts were obtained.” *Fox v. CDX Holdings, Inc.*, 2015 WL 4571398, at *31 (Del. Ch. July 28, 2015), *aff’d*, 141 A.3d 1037 (Del. 2016) (quoting *Harmony Constr. Inc.*, 668 A.2d at 750). If a decision-maker relies “solely upon facts or evidence that would support one particular outcome while at the same time blinding itself – or refusing to inquire into – material facts or evidence that might compel an opposite outcome,” the decision may be arbitrary or capricious. *Id.*

In addition, a decision is “contrary to law if it violates a statute, legal regulation, or settled common law principle.” *Brandywine Innkeepers, L.L.C.*, 2005 WL 1952879, at *4. The fact that a reviewing body might have not reached the same conclusion does not make a decision

contrary to law. *Ferrara v. Bd. of Assessment Review for New Castle Cty.*, 1995 WL 945549, at *4 (Del. Super. Ct. June 29, 1995).

III. THE BOARD HEARING

A. Applicant's Presentation

The Board held a hearing on the appeal on July 27, 2022 at 3:30 PM (the "Board Hearing"). At the Board Hearing, the Applicant testified that he received the NOV on November 23, 2021, directing him to cut the weeds and grass on the Property by December 2, 2021. He stated that he did cut the grass as required on November 27, 2021 but, despite his compliance, he wrongfully received a Civil Penalty of \$50. The Applicant appealed the Civil Penalty, as he provided evidence the grass had been cut and that the photographs included in the Civil Penalty were incorrect. Because the Department waived the penalty, he thought everything was satisfactory. He was surprised to receive a hearing notice and a directive to pay the Department's costs when he believed everything was fine from the Department's perspective.

B. Department's Presentation

Through its attorney, the Department led the Board through the procedural history of the NOV and the administrative hearing process. The Applicant was provided until December 2, 2021 to address the high weeds and grass found at the Property and as described in the NOV. On December 7, 2021, Code Enforcement Officer Yasik returned to inspect the Property and noted that high weeds and grass remained on the Property, issuing the Civil Penalty on December 8, 2021. On December 9, 2021, the Department's third-party vendor cut the grass and weeds at the Property, and the Applicant filed his written appeal of the Civil Penalty on December 17, 2021. The penalty was waived due to the incorrect photographs being included, but the violation itself

remained. At the PD Hearing, the Applicant submitted that because the Civil Penalty was waived, the abatement bill should not have been assessed to him. The Applicant also submitted that he cut the grass prior to the abatement on December 9, 2021. The metadata for the photographs provided by the Applicant, however, showed that they were taken after the abatement. The Hearing Officer found that while the Civil Penalty was waived, the charges for the abatement should stand. Put another way, the mistaken photographs included on the Civil Penalty did not waive the abatement charges; the additional evidence included by the Department, including the testimony of the Code Enforcement Officer and the third-party vendor's invoice and affidavit, showed the Property remained in violation of the *Property Maintenance Code*.

Next, the Department went through the evidence provided to the Hearing Officer at the PD Hearing. While the Civil Penalty did not explicitly state that the Department was going to abate the Property, it did not need to; the Department stated that the original NOV gave notice that the County could send a vendor to correct the violation should it be unaddressed by December 2, 2021. Here, the inspection by Code Enforcement Officer Yasik confirmed that the violation remained on the Property after the deadline set in the NOV, and the Department then abated the Property.

When asked by Mr. Watts as to whether there was additional evidence provided by the Applicant, the Department responded that the only evidence supplied by the Applicant were the pictures that were dated November 28, 2021 but appeared to be taken on December 17, 2021. Conversely, the Department supplied photographs as well as the third-party vendor invoice and affidavit as to the condition of the Property at the time of the abatement.

The Appellant then interjected that his photographs dated November 28, 2021 were correct and showed that he had addressed the issues on the Property in advance of the deadline. In regard to the date discrepancy of his photographs, the Appellant stated that the December 17, 2021 date was not the date the pictures were taken, but was the date that he accessed them on his computer to contest the Civil Penalty. Moreover, the Appellant noted that he did not receive the correct pictures with the Civil Penalty, so he thought it was issued in error.

Mr. Cochran asked about the third-party vendor cutting the grass at the Property on December 9, 2021 and, specifically, the invoice from the vendor that noted the grass was over 24" high – the vendor would have no reason to do work that was not required or to otherwise inflate their estimate of the length of grass. In response, the Applicant stated that the vendor cut too much of the grass; the vendor inappropriately cut the bushes to the boundary of the Property that were not weeds and were not part of the pictures shown in the original NOV.

The Department noted that section 304.11 of the *Property Maintenance Code* requires a 20' perimeter on an undeveloped parcel, and the original NOV stated that the entire property was rife with weeds. Then, looking at the Appellant's photographs that were purportedly taken on November 28, 2021 (but disputed by the Department), the Department stated that Appellant cut all the vegetation that he claimed were bushes and not weeds. The Appellant, the Department argued, was trying to have it both ways, claiming that he cut the correct weeds on November 28, 2021 but then stating the abatement done by the County on December 9, 2021 cut too much of the Property's vegetation.

Mr. McAllister then asked the Appellant if he had spoken to the Department after he cut the grass on November 28, 2021, and the Appellant said that he sent an email to the Department

and called Code Enforcement Officer Yasik but was unable to reach him. The Appellant reiterated that he only had notice of the two pictures of the NOV and he believed he had properly addressed the issues shown in the NOV. Mr. Williams then asked Code Enforcement Officer Yasik if he noticed a difference at the Property from when the NOV was issued on November 23, 2021 and when he reinspected the Property on December 7, 2021. Code Enforcement Officer Yasik testified that he noticed that work had been done at the Property during his reinspection, but it was clear that the *Property Maintenance Code* violation remained. Code Enforcement Officer Yasik further noted that it would be impossible to take adequate pictures of the entire Property during his initial inspection, but that the entire Property was in violation due to the high weeds and grass found there and as stated in the NOV. The Appellant restated that he did not cut to the boundary and that he did not receive notice that he ought to have cut the entire Property.

IV. THE BOARD'S DECISION

Upon the conclusion of the presentations of both the Applicant and the Department, the members of the Board discussed the violation alleged. The Board is required to affirm the Decision if the action was neither arbitrary or capricious nor contrary to law. *Property Maintenance Code* § PM 106.3.6.5. The Board understood the Applicant's arguments regarding the confusion of the photographs included in the NOV and Civil Penalty, but the NOV itself stated that the entire Property ought to be cut.

Mr. Williams noted that the evidence presented conflicts but, as a whole, the Department's evidence at the PD Hearing was more convincing. The Appellant's evidence of the Property's condition after he cut the grass and weeds was lacking, especially compared to the photographs taken by the Department on December 7, 2021 and the third-party vendor's invoice

and affidavit. While the Appellant cut some of the weeds at the Property, the evidence showed that the Property remained in violation of the *Property Maintenance Code*.


Mr. McAllister said that upon receiving the NOV and performing work to address the violation, it would have been reasonable to confirm the work performed was sufficient. Appellant failed to contact the Department to address the situation, and the Department, upon its reinspection of the Property, determined the violation remained.

Mr. Cochran stated that additional evidence would have been needed to see exactly what the Appellant did at the Property. The Appellant did not provide sufficient evidence to show that the violation did not remain at the Property, and the Department supplied evidence that it did. Mr. Watts, when asked by Mr. Williams, stated he agreed with the points raised by the fellow members of the Board.

Based on the foregoing, the Board finds that the Department did not act in an arbitrary or capricious manner or contrary to law when it issued the NOV, and therefore, affirms the Decision below.

VOTE: 4-0 (Mr. Williams, Mr. Cochran, Mr. McAllister, and Mr. Watts)

BOARD OF LICENSE, INSPECTION AND REVIEW



Toren Williams, Chairperson

Dated: August 17, 2022

NOTE: Appeals from a decision of the Board shall be taken in accordance with § 2.05.105 of the *New Castle County Code* and Art. VI, § 1 of the Rules of Procedure of the Board of License, Inspection and Review.