



BOARD OF LICENSE, INSPECTION & REVIEW

NOTICE OF DECISION

APPLICANT: Matejaved Co.

APPLICATION NO: 2023-0068

HEARING DATE: March 14, 2023

DECISION DATE: March 14, 2023

DECISION ISSUANCE DATE: April 12, 2023

MEMBERS OF BOARD PRESENT: Toren Williams, John Grieshaber, Paul Watts, Charles McAllister

SUBJECT PROPERTY: Tax Parcel No. 0702600018, 4000 Springfield Lane, Wilmington, Delaware, 19807.

For the Applicant: Stanely Lowicki, Officer of Matejaved Co.

For the Department: Colleen Norris, Assistant New Castle County Attorney

I. THE APPEAL

Stanely Lowicki, on behalf of Matejaved Co. (the “Applicant”), appeals from the New Castle County Code Official’s Notice of Rule to Show Decision (the “RTSC Decision”) dated January 9, 2023. (Ex. A). In the RTSC Decision, the hearing officer found the Applicant responsible for two violations 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 4000 Springfield Lane, Wilmington, Delaware (the “Property”). (Ex. A). On January 30, 2023, the New Castle County Department of Land Use (“Department”) received Mr. Lowicki’s Application for Hearing before the Board of License Inspection and Review seeking review of the RTSC Decision. (Ex. B).

II. JURISDICTION AND LEGAL STANDARDS

The Delaware General Assembly enabled New Castle County Council to establish, by ordinance, a Board of License Inspection and Review (the “Board”) to provide an appeal procedure to any person directly affected “by any notice, order or other action as a result of any County inspection. . . .” 9 *Del. C.* § 1315. The appeal procedure shall allow the aggrieved party and the Department to offer such evidence either party desires the Board to hear. *Id.*

County Council established the Board and enumerated its powers and responsibilities in applicable chapters of the *New Castle County Code*. See *New Castle County Code* § 2.05.103 (establish the Board). Notably, County Council established that the Board may hear administrative appeals of violations of the *Property Maintenance Code*. § PM 106.3.1.6. 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. § PM 106.3.1.6.5.

Courts have 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)). “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)). 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.*

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. PROCEDURAL BACKGROUND¹

On September 2, 2022, the Department issued a Violation Notice to the Applicant citing four violations of the *Property Maintenance Code* that were observed on the Property by a New Castle County code enforcement officer.² (Ex. C). Regarding violation of § PM 302.8.3 (Inoperable or Unregistered Motor Vehicles), the code enforcement officer noted “2 Chevy pick-

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

² Two of the violations cited were not the subject of the RTSC Decision and were not considered by the Board: § PM 302.11 (Outside Storage of Debris) and § PM 302.4.2 (Prohibited Growth of Weeds).

ups on driveway with expired DE tags.” (Ex. C). The Applicant was provided until September 12, 2022 to properly register, enclose in a building, or remove the inoperable motor vehicles from the Property. (Ex. C). Regarding the violations of 304.7 (Roofs and Drainage), the code enforcement officer noted “Loose and damaged gutters on home. Rotted and damaged soffits and fascia.” (Ex. C). The Applicant was provided until October 5, 2022 to correct the violation. (Ex. C).

Because the Applicant failed to take any corrective measures regarding the two Chevy pickup trucks, the Department issued another violation notice on September 19, 2022 again citing the inoperable or unregistered vehicle violation and providing the Applicant an additional 10 days to take corrective action. (Ex. D). The violation notice also contained a tow notice that summarized the towing procedures and further stated that if corrective action was not timely taken, the County would act pursuant to its towing procedures. (Ex. D).

Because the Applicant failed to take any corrective measures regarding the two Chevy pickup trucks, the Department issued another violation notice on October 3, 2022, again citing the inoperable or unregistered vehicle violation and providing the Applicant an additional 10 days to take corrective action. (Ex. E). The violation notice also contained a tow notice that summarized the towing procedures and stated that if corrective action was not timely taken, the County would act pursuant to its towing procedures. (Ex. E).

Because the Applicant failed to take any corrective measures regarding the two Chevy pickup trucks, and because the violations relating to the roofs and drainage remained, on November 1, 2022 the Department sent the Applicant notice of a pre-deprivation hearing to be held on December 6, 2022. (Ex. F). The notice again identified violations of § PM 302.8.3 (Inoperable or Unregistered Vehicles) and 304.7 (Roofs and Drainage). (Ex. F). The pre-

deprivation hearing was rescheduled to January 9, 2023 on which date the rule to show cause hearing (“RTSC Hearing”) was held and the RTSC Decision was issued. (Ex. G). The RTSC Decision indicates that the hearing officer heard evidence and reviewed exhibits offered by the code enforcement officer and Mr. Lowicki. (Ex. A). Mr. Lowicki conceded the violations concerning the Roofs and Drainage but contested the violations relating to Inoperable or Unregistered Vehicles. (Ex. A). Mr. Lowicki explained that the State of Delaware’s Department of Motor Vehicle informed him that it was lawful to maintain unregistered motor vehicles on private property. (Ex. A). He argued that State law preempts the County’s regulation of the storage of unregistered vehicles on private property. (Ex. A). He also argued that the streets in his community are private and because the vehicles are not visible from a public street, they are exempt from the *Property Maintenance Code* provisions relating to inoperable vehicles. (Ex. A). The hearing officer made findings of fact and concluded that the parking and storage of the two inoperable chevy pickup trucks violated the *Property Maintenance Code*. (Ex. A). The hearing officer directed that the violations be corrected no later than February 13, 2023. (Ex. A). The Applicant timely appealed the RTSC Decision.

IV. THE BOARD HEARING

The Board held a hearing on the appeal on March 14, 2023 (the “Board Hearing”). Prior to the Board Hearing, the record of the proceedings below was made available to the Board as well as the parties. Mr. Lowicki and the Department requested that the Board consider the submissions made to the hearing officer. Thus, the Board incorporates the submissions made to the hearing officer as part of the record before the Board.

1. Preliminary Matters

At the start of the Board Hearing, Mr. Lowicki requested that the hearing be postponed alleging that he had received notice of the hearing only at 5:00 p.m. the day before the Board Hearing was to occur (March 13) when he found the notice in the Property's mailbox. He also explained that a postponement would provide additional time for the Department and the Applicant to negotiate a resolution. The Department did not oppose the request but explained that additional time would not likely lead to a resolution. The Board's administrative assistant explained that on March 3, 2022, notice of the Board hearing was mailed to the Property address, which was the same address provided by Mr. Lowicki on the Application for Hearing. Article IV, section 13 of the Board Rules provides that once a hearing has been scheduled and noticed, a continuance may be granted only if a request is made in writing at least three days prior to the hearing date or if the Board determines exceptional circumstances warrant a rescheduling or continuance. The Board finds that the Applicant did not submit a written request at least three days prior to the Board hearing and no exceptional circumstances exist that warrant the requested postponement. The Board found that the hearing should proceed because quorum has been met and the Applicant has failed to show the existence of exceptional circumstances. The Applicant's request for postponement was therefore denied.

2. The Applicant's Presentation

Mr. Lowicki explained that the Property is owned by Matejaved Co. and he is an officer of the company. The corporate name is derived from letters of his children's names. Although no one currently lives at the Property, it has been available for use by members of the family when they needed a place to live. Mr. Lowicki contended that personal property considered by the Department to be debris was removed from the Property without proper notice to the owners of

the personal property. He explained that the personal property that was stored on the Property was not owned by the Property owner – Matejaved corporation - but was stored there with permission of the Property owner. Thus, Mr. Lowicki argued, the owners of the personal property were entitled notice by the County, apart and separate from notice provided to the Property owner, of any items that were removed. The Board’s attorney explained to Mr. Lowicki that he appealed from findings of the hearing officer that are contained in the RTSC Decision and the RTSC Decision did not address this issue. He was advised to limit his argument to the issues that were before the hearing officer. He was also informed that he should address the issue with the Department in the first instance. Mr. Lowicki agreed to move on and but stated he would like to preserve the issue for appeal.

Mr. Lowicki next stated that he was not aware whether he was granted an extension to correct the violations concerning the roof and drainage. He conceded the violations existed but believed the question of the extension remained open.

Mr. Lowicki then moved to the violations concerning violations of § PM 302.8.3 (Inoperable or Unregistered Vehicles). He explained that *New Castle County Code* § PM 101.7 states:

Nothing in this Chapter or in any of the codes hereby adopted shall be construed to affect any suit or proceeding pending in any court or any rights acquired or liability occurred or any causes of action acquired or existing, under any act or ordinance hereby repealed, nor shall any just or legal remedy of any character be lost, impaired, or affected by this Chapter.

Relying on this section, he argued that the Applicant has a right to store the two Chevy pickup trucks on the Property because he was informed by the Delaware Department of Motor Vehicles that a vehicle that does not have a current registration may be kept on

private property, including the private property of another with the owner's permission. He explained that the Delaware Code only prohibits unregistered motor vehicles or abandoned vehicles to be parked on a public highway, public road, or public street. He explained the pickup trucks are parked on a private driveway and are being used on private property. He argued that because Delaware law does not prohibit the use or storage of the unregistered vehicles on private property, § PM 302.8.3 conflicts with State law.

He next argued that the "parking exemption" contained in § PM 302.8.3.6.1 allows for the parking of the trucks on the Property. This section addresses the notice procedures for towing inoperable, unregistered, or abandoned vehicles from private property and provides:

If an abandoned vehicle is on private property with the consent of the owner or occupant thereof, or if an abandoned vehicle is owned by the owner or occupant of the private property where the vehicle is located, Code Enforcement Officers may enter upon the property where such vehicle is located to ascertain its ownership. The Code Enforcement Officer shall notify the owner of the inoperable, unregistered or abandoned vehicle by certified mail sent to the owner's last known address to remove such vehicle within seven (7) days from the date of the mailing. If the vehicle is not removed within seven (7) days or if the owner cannot be located for the purpose of sending the written notice, then the Code Enforcement Officer may enter upon the property where the vehicle is located and conspicuously affix thereto a sticker or tag showing the time and date of its affixing, advising the owner that if the vehicle is not removed within twenty-four (24) hours from the time of the affixing of the sticker the vehicle will be towed. This Section shall not apply to any vehicle on private property which is not visible from the street or road and is not otherwise a nuisance or a health or fire hazard. (Emphasis added).

Mr. Lowicki argued that the Board should use the terms "street or road" as defined in the Delaware Code. He then explained the definition of "Highway" in the Delaware Code excludes "a road or driveway upon grounds owned by private persons, colleges, universities, or other institutions." 21 *Del. C.* § 101(28). He testified that the Property is located in a community known as Hillside

Farms and the internal subdivision streets are all private. At its entrance, Hillside Farms connects to Hillside Road, the closest public road. The trucks, however, are not visible from Hillside Road. Because the trucks are parked on private property and cannot be seen from a public street or road, and because they are not a nuisance or a health or fire hazard, Mr. Lowicki contends that the parking exemption applies.

3. The Department's Presentation

The Department argued that the RTSC Decision was not arbitrary or capricious or contrary to law. The code enforcement officer, Christopher Yasik, testified that he was assigned to investigate two complaints concerning the condition of the Property. He visited the Property and observed that it is located in residential community with homes located on both sides of the Property as well as across the street. He testified that occupants of vehicles and pedestrians travelling on the private road that runs along the front of the Property can observe the condition of the Property. During his inspection, Mr. Yasik observed a large amount of debris on the ground, deteriorating conditions the house including gutters falling off, as well as the two Chevy pickup trucks. Mr. Yasik testified that the trucks had flat tires and were filled with debris both in the cabs and the truck beds. Mr. Yasik issued a violation notice that listed the observed violations and mailed it to the Property address. Mr. Yasik inspected the Property on several other occasions and issued subsequent violation notices and tow notices. He testified that the two trucks remain on the Property and have not yet been towed. Mr. Yasik stated that he also testified at the RTSC Hearing.

Mr. Lowicki cross-examined Mr. Yasik. He asked Mr. Yasik about the complaints received regarding the Property. Mr. Yasik then read the complaints into the record. The complaints referenced high weeds and grass, debris, and the trucks. Mr. Lowicki then asked how

the Department defines debris. Mr. Yasik explained that debris is defined both generally and specifically in the *Property Maintenance Code*. Mr. Lowicki questioned Mr. Yasik whether he identified the owner of the trucks. Mr. Yasik stated that he does not know if he identified or noticed the owner of the trucks. Mr. Lowicki admitted that he is the owner of the trucks and although he received the violation notices and tow notices, they were addressed to the corporation – not to him personally. Mr. Lowicki then asked Mr. Yasik if the vehicles were visible from public property. Mr. Yasik testified that he could not see the Property from Hillside Road. But, the Property and the trucks were visible from the private subdivision street in front of the Property.

The hearing officer, Debra Phillips, next provided testimony. She explained that she reviewed the violation notices and tow notices during the RTSC Hearing. The transcript of the RTSC Hearing was then moved into the record. Concerning the Inoperable or Unregistered Vehicles, Ms. Phillips explained that she considered the facts presented by the code enforcement officer, including evidence that the truck registrations expired in 2020 and 2019. Section PM 302.8.3 provides that:

In any zoning district, it shall be unlawful to park, store, or permit to be parked or stored, other than in a fully enclosed permanent building, any vehicle that is inoperable or incapable of being legally operated on any public roadway. A rebuttable presumption is hereby created that any vehicle that does not visually display a valid registration and inspection decal is inoperable until such time as a valid registration is provided.

Based on this section, the Department demonstrated that a violation existed. Ms. Phillips explained that she then considered Mr. Lowicki's legal arguments, which were the same arguments made before the Board. He, however, cited no legal authority justifying the storage of the trucks on the Property. Specifically, he provided no support for his argument that state law pre-empted the

Property Maintenance Code. Additionally, none of the exceptions provided in §§ PM 302.8.3.1-5 were applicable.

Under cross-examination, Ms. Phillips explained that she did not consider the effect of § PM 302.8.3.6.1, the “parking exception” to the towing notice provisions because the provisions of the section were not yet implemented, and the trucks were not towed from the Property. The issue before her was the existence of unregistered vehicles on the Property. She considered the parking exception to be inapplicable to the issue before her.

The Department summarized by arguing that the Applicant cannot hide behind non-existent state law to justify the storage of inoperable and unregistered vehicle on private property. The policy of the state is to eliminate abandoned vehicles from both public highways and private property “that interfere with the enjoyment of, and reduce the value of, private property, to invite plundering, to create fire hazards and other safety and health hazards to children as well as adults, to interfere with the comfort and well-being of the public and to create, extend and aggravate urban blight.” 21 *Del. C.* § 4401(a). The state law specifically addresses the removal of vehicles that are situated on private property separately from vehicles that are located on public roads. 21 *Del. C.* § 4401(b). The “parking exemption” to the tow notice provisions contained in 21 *Del. C.* § 4401(d) contains substantially the same language as the parking exemption contained in § PM 302.8.3.6.1. Again, the language applies to “any vehicle on private property which is not visible from the street or road and is not otherwise a nuisance or a health or fire hazard.” 21 *Del. C.* § 4401(d). The Department argued that contrary to Mr. Lowicki’s statutory interpretation, the word “public” does not appear before “street or road” and

the State's definition of highway is irrelevant. What is relevant is that the Property is located in a residential neighborhood and the entire neighborhood can observe the vehicles from the street.

The Department further summarized by explaining that a rebuttal presumption is created that any vehicle that does not visually display a valid registration and inspection decal is inoperable. § PM 302.8.3. Here, the trucks' registrations have long expired. Under the *Property Maintenance Code*, it is owner of the Property, Matejaved Co., that a is responsible for the violations existing on the Property and Matejaved Co. received notice of the violations sent to the Property address. Any argument that Mr. Lowicki was entitled to personal notice of the *Property Maintenance Code* violations because he allegedly owns the unregistered trucks is contrary to law. The question of whether he is entitled to notice of towing is not before the Board and the towing procedures have not yet been implemented.

Mr. Lowicki summarized by stating the trucks were not abandoned but were on the Property with the permission of the Property owner. He contended the trucks may not be operable, but their inoperable condition is temporary, they look like any other truck, and are not up on blocks. He argued that the trucks are not registered for use on the highway, but they are registered and can be used on private property according to the verbal representation of the administrative staff working at the Department of Motor Vehicles. He understands the County is concerned about aesthetics but under state and county law, Mr. Lowicki argued, the trucks can be parked legally on the Property if they cannot be seen from a public road. He concluded by stating the trucks could not be seen from a public road.

V. THE BOARD'S DECISION

Upon the conclusion of the presentations of both the Applicant and the Department, the

members of the Board conducted discussion on the issues before it. The Board is required to affirm the RTSC Decision if the action was neither arbitrary or capricious nor contrary to law. § PM 106.3.6.5. Mr. Watts moved that the Board affirm the September 9, 2022 RTSC Decision because it was neither arbitrary and capricious nor contrary to law. Mr. McAllister seconded the motion.

The Board finds that despite the myriad arguments presented by Mr. Lowicki during the Board hearing, the issue before the Board is relatively simple: whether the hearing officer properly found that a violation of § PM 302.8.3 (Inoperable or Unregistered Vehicles) exists on the Property. This section provides:

In any zoning district, it shall be unlawful to park, store, or permit to be parked or stored, other than in a fully enclosed permanent building, any vehicle that is inoperable or incapable of being legally operated on any public roadway. A rebuttable presumption is hereby created that any vehicle that does not visually display a valid registration and inspection decal is inoperable until such time as a valid registration is provided.

Mr. Lowicki admitted the trucks were not registered in such a way to allow them to be operated on a public roadway. Furthermore, the Department provided evidence that the trucks have not been lawfully registered since 2019 and 2020. Mr. Lowicki provided no evidence to demonstrate the trucks were operable. In fact, he explained that although the trucks were currently inoperable, they could at some point be made operable and they were not on blocks. This does not change the fact that at the time the violation notices were issued, the trucks had expired registrations and were not operable. The code enforcement officer further demonstrated the vehicles were inoperable with photographs showing the truck cabins and beds filled with debris and flat tires on both trucks.

The Board further finds that the “parking exception” to the tow notice provisions in *New Castle County Code* § PM 302.8.3.6.1 do not provide a safe harbor for the Applicant. This section provides:

If an abandoned vehicle is on private property with the consent of the owner or occupant thereof, or if an abandoned vehicle is owned by the owner or occupant of the private property where the vehicle is located, Code Enforcement Officers may enter upon the property where such vehicle is located to ascertain its ownership. The Code Enforcement Officer shall notify the owner of the inoperable, unregistered or abandoned vehicle by certified mail sent to the owner's last known address to remove such vehicle within seven (7) days from the date of the mailing. If the vehicle is not removed within seven (7) days or if the owner cannot be located for the purpose of sending the written notice, then the Code Enforcement Officer may enter upon the property where the vehicle is located and conspicuously affix thereto a sticker or tag showing the time and date of its affixing, advising the owner that if the vehicle is not removed within twenty-four (24) hours from the time of the affixing of the sticker the vehicle will be towed. This Section shall not apply to any vehicle on private property which is not visible from the street or road and is not otherwise a nuisance or a health or fire hazard. (Emphasis added).

The hearing officer testified that she did not consider the parking exception because it was not applicable. We agree.

Mr. Lowicki testified that the internal subdivision streets of the Hillside Farms subdivisions are all private. He then argued that the pickup trucks were not visible from any public street; thus, the Department could not enforce its prohibition against parking or storage of inoperable vehicles on private property. To support this argument, he argued that the term “Highway” in the Delaware Code excludes “a road or driveway upon grounds owned by private persons, colleges, universities, or other institutions.” 21 *Del. C.* § 101(28). The Department argued that the word “public” does not appear in the *Property Maintenance Code* language. But, if one were to refer to state law, it is the policy of the state is to eliminate abandoned vehicles from both public highways and private property. 21 *Del. C.* § 4401(a). The state law specifically addresses the removal of vehicles that are situated on private property separately from vehicles that are located on public roads. 21 *Del. C.* § 4401(b). There is no conflict between state law and *Property Maintenance Code* and both recognize a parking exception but only if the vehicle is not visible from any street

or road – private or public.

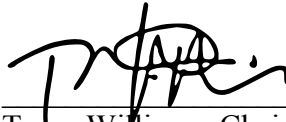
If the Board were to adopt Mr. Lowicki's reasoning, it would require imputing the word "public" where it does not exist, ignoring the public purpose of eliminating abandoned vehicles, and treating the public health, safety and welfare of residents living in communities with private streets differently than residents living in communities with public streets. First, there is no basis to read the word "public" into the parking exception. The General Assembly recognizes the existence of private roads and streets that have not been dedicated to public use. *See, e.g., 17 Del. C. § 131.* Where a distinction is to be made between public and private roads and streets, the *Delaware Code* does so. It has not done so here. Second, as pointed out by the Department, there is clear public policy reasons enunciated in *9 Del. C. § 4401(a)* for the elimination of abandoned vehicles from private property. Regardless of Mr. Lowicki's argument that the vehicles were not abandoned, *9 Del. C. § 4401(b)* provides as a matter of law that a vehicle situated on private property which displays expired registration plates which are at 30 days expired, or which displays no registration plate, shall be considered abandoned. Whether considered inoperable or abandoned, the same public policy applies to the elimination of the vehicles. And third, investigation of the violations was initiated by two complaints received by the Department. Whether or not this constitutes a nuisance or a fire hazard, the violations were visible to someone – either from the street or from a neighboring property. There is no policy reason or legal justification that the public health, safety, and welfare concerns of neighbors residing on private roads or streets should be treated differently than those residing on publicly dedicated streets.

Finally, the Mr. Lowicki indicated that he was awaiting a decision from the Department concerning an extension of time to complete repairs to resolve the roof and drainage violation.

The Board will not make any findings or rulings on this issue since it appears to be unresolved and there is no decision to review.

VOTE: Affirming the RTSC Decision: Yay 4-0 (Mr. Williams, Mr. Grieshaber, Mr. Watts, Mr. McAllister).

BOARD OF LICENSE, INSPECTION AND REVIEW

A handwritten signature in black ink, appearing to read 'Toren Williams', written over a horizontal line.

Toren Williams, Chairperson