

STATE OF INDIANA)
) SS:
COUNTY OF WAYNE)

IN THE WAYNE CIRCUIT COURT
CAUSE NO. 89C01-1911-MI-000145

CORNERSTONE TRADING GROUP, LLC,)
an Indiana Limited Liability Company, and)
SETH SMITH,)

Plaintiffs)

v.)

CITY OF RICHMOND,)
an Indiana Municipality, and)
RICHMOND UNSAFE BUILDING)
COMMISSION, a Municipal)
Subdivision of City of Richmond,)

Defendants.)

ORDER AFFIRMING RICHMOND UNSAFE BUILDING COMMISSION ORDERS

This matter comes before the Court on Petitioners', Cornerstone Trading Group, LLC's ("Cornerstone"), and Seth Smith's *Verified Complaint for De Novo Review* filed November 1, 2019. On July 24, 2019, the City of Richmond, Indiana, acting through the Richmond Unsafe Building Commission issued an Order to Repair, Demolish, or Vacate to interested parties in real property located at 358 N.W. F Street, Richmond, Indiana 47374. On July 25, 2019, the Commission issued Orders to Repair, Demolish, or Vacate to interested parties of 310 N.W. F Street, Richmond, Indiana 47374, and 308 N.W. F Street, Richmond, Indiana 47374. The foregoing properties are referred to collectively herein as the "unsafe properties."

The Commission convened for hearings on the above-referenced properties on September 24, 2019, and October 22, 2019.¹ Following the hearing on October 22, 2019, the Commission issued Findings of Fact, Action Taken, and Order on all of the unsafe properties. The Plaintiffs then sought judicial review of the Commission's Orders. The Defendants submitted their Answer to Complaint on November 21, 2019. Additionally, the Defendants submitted a Notice of Submission of Record, and, in conjunction, therewith, filed Exhibits "A" through "K" which constitute the record of all papers, entries, and other parts of the record relating to the September 24, 2019, and October 22, 2019, Hearings of the Unsafe Building Commission for the unsafe properties.

¹ The record reveals that the October 22, 2019 hearing was a continuation of the hearing held on September 24, 2019.

The Court called this matter for status conference on December 18, 2019 at which time the Plaintiff's Counsel advised that the Plaintiff intended on presenting new evidence to the trial court. Defendants' Counsel argued that the term "de novo" in these circumstances would not allow for such an approach. The Court ordered that the parties brief the issue of whether the Plaintiff is entitled to submit new evidence to the trial court following the Unsafe Building Commission Hearings within forty-five (45) days. The Defendants timely submitted their Brief on January 31, 2020. The Plaintiff failed to file a Brief with the Court. On January 30, 2020 the Defendants filed a Supplement to the Record, which supplement contained the transcript of the Unsafe Building Hearings previously requested by Counsel for Plaintiffs.

Prior to analyzing, and issuing, facts and making conclusions of law, the Court notes that following the Briefing deadline referenced above, Plaintiffs' Counsel advised Court staff that he no longer sought to introduce additional evidence; and further, that he did not desire to have a hearing on the Complaint. Rather, the Plaintiffs have indicated a willingness for the Court to decide the issues raised in the Complaint without a formal hearing, and Counsel to the Defendants has asserted that they have no objection to such an approach. The Court acknowledges that it could call this matter for hearing; however, when considering the stipulation of the parties that the Court rule without a formal hearing, as well as the plethora of evidence contained in the record, which has been submitted to the Court, the Court determines that it may dispense with a hearing.

And the Court having considered the transcript of all papers, entries, and other parts of the record submitted to the Court in relation to the Plaintiffs' Verified Complaint for De Novo Review, and the Defendants' Answer thereto, and having considered the Brief of the Defendants, and now being duly advised in the premises, issues the following Findings of Fact, Conclusions of Law, and Judgment as follows, to-wit:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Court has jurisdiction over the parties and the subject matter of this cause of action.
2. Following a permitted inspection on May 15, 2019, the City of Richmond Building Commissioner, as the Enforcement Authority under I.C. §36-7-9 et. seq., issued three (3) preliminary orders or "pre-hearing" orders to the owners and known interested parties of each of the unsafe properties.
3. The above-referenced preliminary orders were dated July 24, 2019 and July 25, 2019, and were issued and recorded on August 14, 2019.
4. The parties do not dispute that the Defendants have asserted a "substantial property interest", as contemplated by I.C. § 36-7-9-8.

5. The preliminary orders advised property owners and interested parties that the unsafe properties have been found to be unsafe in accordance with the minimum standards established and set forth in Chapter 98 of the Richmond Code and I.C. § 36-7-9-1 et. seq.
6. The preliminary orders ordered that the following actions be accomplished in regard to the unsafe properties within thirty (30) days from the date of the orders²:
 - i. Repair all roofs, walls, and any structural components to comply with City of Richmond Code and all applicable State laws or remove structures.
 - ii. Remove materials inside and outside of structures to bring all means of egress and fire lanes in compliance with all applicable City Codes and State laws.
 - iii. Install fire suppression and fire alarms to comply with City Codes and all applicable State laws or vacate and remove materials out of buildings.
 - iv. Removal all materials on premises to the amount that is allowed by all applicable codes.
 - v. Remove all material to comply with all applicable City Codes and State laws.
 - vi. Remove all materials to open all means of egress and fire lanes to a public way.
 - vii. Building needs to comply with all existing signage and all fire prevention codes for exiting and fire protection.
 - viii. Building needs to comply with all emergency lighting.
 - ix. Repair and activate all fire suppression and fire alarms to comply with City Code and all applicable State laws or vacate and remove materials out of buildings.
7. Following a continuance of the originally scheduled Unsafe Building Hearing Scheduled for August 27, 2019, no objections as to manner of service were raised by the Plaintiffs.
8. The Commission called for hearing the preliminary orders on September 24, 2019, at which the Plaintiff appeared, with Counsel. A quorum of the Commission was present.
9. The underlying record in this cause makes clear that evidence was presented to the Commission as the Hearing Authority under I.C. §36-7-9-1 et seq.

² It is noted that the preliminary orders for the unsafe properties are not identical. Certain of the properties are subject to various actions of the preliminary orders set forth above, while others are not. The Court relies upon Defendants' Exhibits "B", "C", and "D" and incorporates the same into this Order for purposes of reflecting the exact remedial measures as they pertain to each property.

10. This evidence included testimony of the Plaintiffs and Plaintiffs' attorney, and testimony of other individuals with non-ownership interests or non-recorded interests.
11. Photographic evidence and testimony were presented by the City's Building Commissioner, Aaron Jordan, by the Deputy Chief of Fire Prevention, Doug Gardener, and by the City's Director of Infrastructure and Development, Beth Fields.
12. No material objections to the testimonial and photographic evidence presented by the City's Enforcement Authority or administration were raised by Plaintiffs. Testimonial evidence as set forth in the transcript of the September 24, 2019, Commission Hearing that is a part of the Record in this cause and listed as Defendants' Exhibit "L" to Defendants' Notice of Submission of Record is incorporated into this Order by reference and made a part hereof. The photographic evidence and all other Exhibits submitted by the Defendants and made a part of the Record and listed as Defendants' Exhibits "A" through "K" are incorporated into this Order by reference and made a part hereof. The record contains adequate and sufficient evidence that the preliminary orders were properly issued and affirmed by the Unsafe Building Commission as the hearing authority as further explained by this Order.
13. A one (1) month continuance was ultimately granted by the Unsafe Building Commission as the hearing authority to explore, among other things, a plan of action by Plaintiffs to be relayed to the Building Commissioner.
14. The Unsafe Building Commission as the hearing authority (hereinafter "Commission") recessed on September 24, 2019, and reconvened on October 22, 2019, at which time it affirmed and modified the three (3) preliminary orders to permit additional time in the amount of sixty (60) days in which owners or interested parties may comply with the orders.
15. The Notices of Action Taken at Hearing were executed on October 22, 2019, and recorded on October 23, 2019, which Notices are a part of the record herein.
16. Findings of Fact, Action Taken, and Orders were issued relative to the unsafe properties on October 22, 2019.
17. All of the Preliminary Orders issued by the Commission referenced in Paragraph sixteen (16) find that the properties are "unsafe" as defined by Richmond Code 98.07 and I.C. §36-7-9-4.

18. The Preliminary Orders issued by the Commission further find that the “cumulative effect of the code violations present” on the premises render “the premises unsafe, substandard, or a danger to the health and safety on the public as defined by I.C. § 36-7-9-4.” As such, the Preliminary Orders to Repair or Demolish and Vacate were affirmed and modified by the Commission allowing for an additional sixty (60) days to either repair or remove and vacate the unsafe properties.
19. An action taken by the Commission as the hearing authority is subject to review by the circuit or superior court of the county in which the unsafe premises are located on request of any person who has a substantial property interest in the unsafe premises; or any person to whom that order or finding was issued. I.C. §36-7-9-8.
20. The parties do not argue or dispute that the Plaintiffs have a substantial property interest in the unsafe properties, and it is clear that the orders and findings were issued by the Defendants to the Plaintiffs. The parties do not argue or dispute that the properties are properties that require cleanup and compliance with the orders issued by the Defendants to the Plaintiffs as evidenced by the testimony set forth in the transcript.
21. A person requesting judicial review must file a verified complaint including the findings of fact and the action taken by the hearing authority. I.C. §36-7-9-8. An appeal under this section is an action de novo. *Id.* The court may affirm, modify, or reverse the action taken by the hearing authority. *Id.*
22. In its plain and ordinary sense, the meaning of a hearing “de novo” is rather straightforward: a new hearing of a matter, conducted as if the original hearing had not taken place. *Utility Center, Inc. v. City of Fort Wayne, Indiana* 985 N.E.2d 731, 734 (Ind. 2013); citing Black’s Law Dictionary 789 (9th ed); (stating that, “[a]t first blush it would seem that this case is a ‘no brainer’” when considering the legal definition of “de novo”; however, the Court went on to provide that Courts in certain contexts have determined that this term does not mean a new hearing).
23. In the usual sense of that phrase [de novo] one might envisage a complete retrial of the issues involved. *Id.*; citing *Stiller v. LaPorte Hospt., Inc.*, 570 N.E.2d 99, 108 (Ind. Ct. App. 1991). In a variety of contexts concerning judicial review of a decision by an administrative body our courts have essentially determined that de novo review does not mean “a new hearing...as if the original hearing had not taken place.” *Id.* Rather, Indiana appellate courts have repeatedly confirmed the propriety of limited review of administrative decisions. *Id.*
24. A review or appeal to the courts from an administrative order or decision is limited to a consideration of whether or not the order was made in conformity with proper legal

procedure, is based upon substantial evidence, and does not violate any constitutional, statutory, or legal principle. *City of Mishawaka v. Stewart*, 310 N.E.2d 65 (1974).

25. Insofar as the findings of fact by an administrative board are concerned, the reviewing court is bound by them, if they are supported by the evidence. *Id.* This Court may not substitute its judgment for that of the board.” *Id.* The evidence will be heard and the facts determined but once. *Id.*
26. The trial court is to determine if the findings of fact are capricious, arbitrary, and abuse of discretion, in excess of statutory authority, or unsupported by substantial evidence. *Uhlir v. Ritz*, 264 N.E.2d, 314 (Ind. Ct. App. 1970).
27. Paragraphs nineteen (19) through twenty-six (26) are set forth within this Order so as to highlight the fact that the Court’s decision to affirm the Commission’s Order is made within the legal standards set forth therein.
28. The Plaintiff, Seth Smith, had “admit[ted] openly” during the September 24, 2019, hearing that his properties were “out of control.” Additionally, insofar as the Plaintiff, Seth Smith, acknowledged that the properties required cleanup and compliance with the preliminary orders, the sixty (60) day additional time period extended by the modification of the preliminary orders in addition to the thirty (30) day period in which the matter was tabled by the hearing authority was reasonably applied by the Commission.
29. Defendants’ Exhibit “A” contains numerous photographs and descriptions supporting their position that the unsafe properties are “unsafe” and render them “substandard, or a danger to the health and safety on the public as defined by I.C. § 36-7-9-4.” Exhibit “A” was presented to the Commission for its consideration prior to the Commission issuing, affirming and modifying the preliminary orders.
30. Defendants’ Exhibit “A” provides photographic evidence of the following general conditions as they relate to the unsafe properties³:
 - i. Substantial amounts of materials strewn about the properties such that combustible materials are located within ten (10) feet of a lot line.
 - ii. Excessive plastic materials stored in and around the buildings constituting a fire hazard.

³ The descriptions contained herein are not intended to represent a full and detailed account of the status of the unsafe properties as the unsafe nature of these conditions are too vast to accurately capture via this Order; however, the Court does rely upon this Exhibit in making its determination.

- iii. Significant waste materials housed near and in the premises.⁴
 - iv. Insufficient means of ingress and egress due to materials stored in and near the premises, as well as combustible material being stored near exits and in enclosures for stairways or ramps.
 - v. Insufficient fire suppression.
 - vi. Insufficient illumination of means of egress.
 - vii. Loose materials blowing around the unsafe premises.
 - viii. Roof damage allowing water to infiltrate, leaning walls, decaying foundation, and masonry falling out.
31. The aerial photographs set forth within Defendants' Exhibit "A" make overwhelmingly clear the substantial amount of materials scattered about the unsafe properties, and further reflect the appropriateness of the Commission's determination to affirm the preliminary orders issued by Defendants to the Plaintiffs.
32. The Commission has determined that the sheer volume of materials on the unsafe properties constitutes a fire hazard as are the positions of Doug Gardner, Deputy Chief of Fire Prevention; Aaron Jordan, Unsafe Building Commissioner; and Beth Fields, Director of Infrastructure and Development. (Hearing Transcript, pgs. 32, 39, 45, 52).
33. Doug Gardner addressed possibilities associated with a fire event at the unsafe properties, which includes a multi-agency possibility involving resources of the health department, emergency management, and local departments outside of the City. (Hearing Transcript, pg. 55).
34. Doug Gardner caused the National Oceanic and Atmospheric Administration to conduct an "air plume study" relative to the unsafe properties, which reflect the density of particles in the air in the event that a fire was to occur, which caused concerns for possible evacuations of the area. (Hearing Transcript, pg. 53).

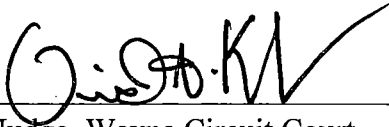
⁴ The Court acknowledges that the Plaintiffs do not view these materials as "waste" when considering the nature of their business in selling recyclable materials, but the substantial amount of the materials haphazardly located at these properties as set forth in Defendants' Exhibit "A" cannot be overlooked.

35. The evidence presented at the Unsafe Building Hearings, which is now a part of the record in this cause, clearly established that the structures in which the Plaintiffs have an interest are unsafe to people and property; constitute a fire hazard; are a hazard to public health; constitute a nuisance; and are dangerous to people or property because of violations of statute and City Ordinance concerning building condition and maintenance.
36. The photographic evidence presented at the Unsafe Building Hearing, in conjunction with testimony by Aaron Jordan and Doug Gardner, reflect the clear unsafe nature of these properties such that Commission's Orders are not arbitrary, capricious, an abuse of discretion, in excess of statutory authority, or unsupported by substantial evidence.
37. There exists no evidence in the record that the Commission's Orders were not issued in conformity with proper legal procedures.

JUDGMENT

IT IS THEREFORE ORDERED that the decision of the Richmond Unsafe Building Commission was not arbitrary, capricious, an abuse of discretion, in excess of statutory authority, or unsupported by substantial evidence, and is therefore, AFFIRMED.

Dated: March 3, 2020



Judge, Wayne Circuit Court

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