

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

DONALD L. HAMILTON, JR. and KATHERINE HAMILTON,	:	NO. 08 - 02,862
Plaintiffs	:	
	:	
vs.	:	CIVIL ACTION - EQUITY
	:	
BOROUGH COUNCIL OF SOUTH WILLIAMSPORT,	:	
Defendant	:	

OPINION AND ORDER

Before the Court is Plaintiffs' Complaint in Mandamus, which seeks to require the Borough of South Williamsport to enforce certain property maintenance code provisions. A hearing was held January 29, 2010, and further argument was heard February 10, 2010.

In their Complaint, Plaintiffs contend that certain neighboring properties¹ are not in compliance with the Borough's Property Maintenance Code² and seek to require the Codes Officer to issue notices of violation and pursue prosecution should the violations continue after due notice. Specifically, Plaintiffs complain about unusable tires, junked automobiles, and debris which are stored or strewn about the properties. The relevant sections of the Property Maintenance Code provide as follows:

302.8 Motor vehicles. Except as provided for in other regulations, no inoperative or unlicensed motor vehicle shall be parked, kept or stored on any premises,

308.1 Accumulation of rubbish or garbage. All exterior property and premises, and the interior of every structure, shall be free from any accumulation of rubbish or garbage.

¹ Plaintiffs' Complaint names the properties at 1221 West Front Street, 127 Reynolds Street and 124 Reynolds Street, all in South Williamsport, Pennsylvania.
² Although the Complaint references a zoning ordinance, it is undisputed that the Borough has adopted the International Property Maintenance Code, and that that code provides the relevant regulations in this matter. A copy of that code was not introduced into evidence but counsel for the Borough loaned a copy of the Code to the Court for purposes of the instant proceeding.

2009 International Property Maintenance Code, Sections 302.8, 308.1. Photographs introduced into evidence by Plaintiffs clearly demonstrate that unlicensed motor vehicles and rubbish are present on the properties at issue. The Borough contends, however, that the Codes Officer's enforcement of the Code is completely discretionary and that mandamus thus does not provide a remedy, citing South End Enterprises, Inc. v. City of York, 913 A.2d 354 (Pa. Commw. 2006). The Court does not agree.

Mandamus is an extraordinary remedy that compels official performance of a ministerial act or a mandatory duty. South End Enterprises, Inc., *supra*. A ministerial act has been defined as one which a public officer is required to perform upon a given state of facts in a prescribed manner in obedience to the mandate of legal authority and without regard to his own judgment or opinion concerning the propriety or impropriety of the act to be performed. *Id.* In the Property Maintenance Code at issue, the Codes Officer is "authorized and directed to enforce the provisions" thereof, and while the officer is given authority to "render interpretations" of the Code, such interpretations are to be "in compliance with the intent and purposes" of the Code. Section 104.1. The Codes Officer is specifically directed to "make all of the required inspections", or to accept reports of inspection by approved agencies, Section 104.2, to "issue all necessary notices or orders to ensure compliance" with the Code, Section 104.5, and to "institute the appropriate proceeding at law or in equity to restrain, correct or abate" violations which continue after notice is given. Section 106.3. Thus, while the Codes Officer is certainly given some discretion by the Code, these provisions make it clear that he does not have the discretion to not enforce the Code at all. Indeed, such was recognized by the Court in the case relied upon by Plaintiffs, as it was stated that, "Where the governmental action sought involves the exercise of discretion, *the court may direct the agency to do the act* but may never direct the exercise of discretion in a particular way. South End Enterprises, Inc., *supra* at 360 (emphasis added).

In fact, this difference, between directing the agency to "do the act" and directing the exercise of discretion "in a particular way", is what distinguishes South End Enterprises from the instant case. There, a codes official posted and boarded up a double house after determining that one side was in danger of imminent collapse. The plaintiff, owner of the side which was

structurally sound, sought a writ of mandamus to require the city to make the necessary repairs to the house in order that it might again be occupied. The Court held that mandamus was not appropriate after finding that the code at issue provided for various solutions to the problem and gave the officer discretion in choosing a solution. The officer *had* pursued a remedy of the problem, and the Court declined to second-guess his choice of remedy. In the instant case, it is clear from the photographic evidence that the Codes Officer has not complied with the directives of the Code to “issue all necessary notices or orders to ensure compliance” and/or to “institute the appropriate proceeding at law or in equity to restrain, correct or abate” violations which continue after notice is given.

Accordingly, the Court will enter the following:

ORDER

AND NOW, this 25th day of February 2010, for the foregoing reasons, Plaintiffs’ request for a Writ of Mandamus is hereby GRANTED. The Borough of South Williamsport is hereby DIRECTED to take the steps required by the International Property Maintenance Code to ensure compliance with Sections 302.8 and 308.1 thereof, with respect to the properties at 1221 West Front Street, and 124/127 Reynolds Street, South Williamsport, Pennsylvania.

BY THE COURT,

Dudley N. Anderson, Judge

cc: Anthony Miele, Esq.
Joseph Orso, III, Esq.
Gary Weber, Esq.
Hon. Dudley Anderson