

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

LYCOMING COLLEGE,	:	
	:	
Petitioner	:	DOCKET NO. 12-01,762
	:	CIVIL ACTION – LAW
vs.	:	
	:	
	:	ADMINISTRATIVE
CITY OF WILLIAMSPORT,	:	AGENCY APPEAL
	:	
Respondent	:	

**OPINION AND ORDER**

This matter comes before the Court on the appeal of Petitioner Lycoming College (College). The College appeals the July 12, 2012 decision of the Council (Council) of the Respondent City of Williamsport (City), denying three applications for demolition permits submitted by the College for properties located on Union Avenue in the City of Williamsport. After a review of the record and the applicable case law, the Court SUSTAINS the College’s appeal and REVERSES the City Council’s decision of July 12, 2012.

**I. Procedural and Factual Background**

This appeal pertains to three of the College’s adjacent properties on Union Avenue, Williamsport, Lycoming County, Pennsylvania (identified as 81 Union Avenue<sup>1</sup>, 91 Union Avenue<sup>2</sup>, and 97 Union Avenue<sup>3</sup>, and further referred to as the “properties”). The properties abut the southern boundary of the College’s athletic complex. Located in a R1B zoning district, the properties surround, primarily, single-family residences. Vacant, single-family residences stand on each of the properties.

On June 6, 2012, the College filed three applications with the City for demolition permits for the properties. Initially, the College wished to razor these properties to create an additional

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<sup>1</sup> Lycoming County Tax Parcel No. 75-004-204.

<sup>2</sup> Lycoming County Tax Parcel No. 75-004-203.

<sup>3</sup> Lycoming County Tax Parcel No. 75-004-200.

parking lot; after the Zoning Hearing Board denied its variance request, the College updated its plans to create a green space on the properties.

City Council held three public meetings during which these applications were addressed. At Council's June 14, 2012 meeting, the permits were brought before Council; however, the permits were tabled for the next meeting because not all Council members were present and because the College's variance request was pending before the Zoning Hearing Board. At the June 28, 2012 public meeting, Council took the applications off of the table for discussion. At the end of the discussion, the permits were tabled for a second time. Again, at Council's July 12, 2012 public meeting, the applications were taken off of the table for discussion. After this discussion, the permits were brought to a formal vote, resulting in a three-to-three vote; this vote was one vote shy of the four votes needed for approval. Council denied all three of the College's permit application requests by a three-to-three vote.

The City's Bureau of Codes issued a letter to the College on July 17, 2012, stating that the permits had been denied at the public meeting on July 12, 2012. The denial letter did not contain any explanation or reasoning. The College timely appealed the City's decision, and it is now before the Court for review.

## **II. Standard of Review**

The College properly appealed this decision pursuant to 2 Pa. C.S. § 752.<sup>4</sup> Section 754 of the law provides the procedure for disposing of an appeal; specifically, section (b) of the Section provides:

... the court shall hear the appeal without a jury on the record certified by the agency. After hearing the court shall affirm the adjudication unless it shall find that the adjudication is in violation of the constitutional rights of the appellant, or is not in accordance with the law, or that the provisions of Subchapter B of

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<sup>4</sup> It is undisputed that the City of Williamsport is a local agency as defined in the Local Agency Law, §§ 101-754. See 2 Pa. C.S. § 101.

Chapter 5 (relating to practice and procedure of local agencies) have been violated in the proceedings before the agency, or that any finding of fact made by the agency and necessary to support its adjudication is not supported by substantial evidence. If the adjudication is not affirmed, the court may enter any order authorized by 42 Pa.C.S. § 706 (relating to disposition of appeals).

2 Pa. C.S. § 754(b). *See Rainmaker Capital of Chestnuthill, LLC*, 23 A.3d 1117 (Pa. Cmwlth. Ct. 2011), *appeal denied*, 34 A.3d 834 (Pa. 2011). Section 706 of the Judicial Code reads:

[a]n appellate court may affirm, modify, vacate, set aside or *reverse* any order brought before it for review, and may remand the matter and direct the entry of any such appropriate order, or require such further proceedings to be had as may be just under the circumstances.

42 Pa. C.S. § 702.

Pursuant to this section, the parties agreed to dispose of the appeal on the City's record.

The Court held a hearing on October 16, 2012; at this hearing, the Court entertained oral arguments and did not receive testimony. After the hearing, the Court granted the parties time to submit briefs. After a review of the parties' briefs and the applicable case law, the Court REVERSES the City's decision.

### **III. Discussion**

Presently, the College raises five arguments in its appeal. Initially, the College claims that the City's denial violated its own demolition ordinance, along with the Commonwealth's local agency law. Secondly, the College claims that the City's reasoning behind its denials was not supported by substantial evidence. Also, the College claims that the City did not have the authority to enact the demolition ordinance, and, thus, the City's denial is void. Lastly, the College claims that the City's denials amount to an unlawful taking and a violation of the College's substantive due process rights. The Court will address each of these arguments in turn.

a. **Decision Violates City’s Demolition Ordinance and Local Agency Law**

As a local agency, the City is required to explain any decision that it makes. *Hinkle v. Philadelphia*, 881 A.2d 22 (Pa. Cmwlth. Ct. 2005). Federal due process requires as much. *Goldberg v. Kelly*, 397 U.S. 254 (1970). Also, section 555 of the Commonwealth’s Local Agency Law requires an agency’s decision to be in writing; specifically, that section provides:

[a]ll adjudications of a local agency shall be in writing, shall contain findings and the reasons for the adjudication, and shall be served upon all parties or their counsel personally, or by mail.

2 Pa. C.S. § 555. Additionally, the City’s own demolition ordinance<sup>5</sup> provides that Council is to issue a written explanation regarding its decisions; the applicable section of the ordinance provides:

1705.08 PUBLIC MEETING.  
\* \* \* \* \*  
(b) Decision of Council.  
(1) City Council shall, within five business days following the conclusion of the meeting or meetings at which the application is reviewed, either:  
\* \* \* \* \*  
c. *Issue a written denial to the application with a decision setting forth the reason for the denial of the demolition permit.*

Ordinance 1705.08(b) (emphasis added).

In this matter, it is undisputed that the City failed to adopt findings supporting its denial of the College’s applications. Therefore, the City violated the Commonwealth’s Local Agency Law, along with the City’s own ordinance, when it issued these three decisions. However, the City argues that it could not adopt findings because it lacked a majority vote of Council. Thus, it appears that a remand of this matter will not dispose of the issue. For the purposes of judicial economy, the Court will consider the appeal, and, pursuant to 42 Pa. C.S. § 702, the Court will

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<sup>5</sup> Ordinance 1705.01-1705.99.

reverse the matter, for the reasons stated herewith. *See Siegel v. City of Philadelphia Bd. of Pensions and Retirement*, 539 A.2d 503 (Pa. Cmwlth. Ct. 1988) (trial court and appellate court considered an adjudication that did not have written findings because the courts could imply the reasoning behind the adjudication based upon the agency's record).

**b. Decision Lacks Substantial Evidentiary Support**

A local agency's adjudication should contain findings that are supported by substantial evidence. 2 Pa. C.S. § 754(b); *Rainmaker*, 23 A.3d at 1122. Additionally, a local agency's determination must be in accordance with the law; in *Rainmaker*, our Commonwealth Court provided:

Although the "abuse of discretion" scope of review is not expressly provided for in ... the Local Agency Law, it is included in the requirement that the agency decision be "in accordance with law." To be "in accordance with law," an agency's decision must not represent a manifest and flagrant abuse of discretion or a purely arbitrary execution of its duties or functions ....

23 A.2d at 1122-23 (citing *Leckey v. Lower S. Hampton Township Zoning Hearing Bd.*, 864 A.2d 593, 596 n.4 (Pa. Cmwlth. Ct. 2004) (citations omitted)). In this matter, the Court finds that the City's decision was neither supported by substantial evidence nor in accordance with the law.

The City's demolition ordinance provides the required information for a demolition permit; section 1705.06 states:

1705.06           REQUIRED INFORMATION FOR CITY COUNCIL REVIEW.

- (a) In addition to any proof and information required in Section 1705.03, applications for a demolition permit shall include the following information:
- (1) Name and address of the owner;
  - (2) Date of acquisition of the property by the current owner;
  - (3) Name and address of any equitable owner, if applicable;
  - (4) Current use of the lot or part thereof occupied by the building or structure proposed for demolition and, if vacant, number of years vacant and years and description of most recent use;

- (5) Reason(s) for the demolition;
- (6) Explanation why rehabilitation, reuse, plan alteration, or stabilization with the intention to market or sell the property is not feasible or not desirable;

...  
Ordinance 1705.06. Here, the College supplied the requisite information under the ordinance to the City. Initially, the College requested demolition applications for the properties so that they could be used “to expand the institutional parking area and create a less congested drop-off area for fans.” Request, 1. The College reasoned that “[t]he additional parking provided through this project will improve the parking situation for the neighborhood dramatically.” *Id.* In explaining why the proposed demolition is desirable, the College noted:

student-athletes must park on the residential streets. While these spaces are open to City residents, the College appreciates that the student-athlete parking disrupts the local neighbors and prevents many residents from being able to park near their homes when they return from work or on errands. The College appreciates that housing is limited in the City of Williamsport. However, the only option to create additional parking at the athletic complex rests with these properties.

*Id.* at 1-2. The proposed demolition would create an additional 87 parking spaces. *Id.* at 2.

In this instance, Council discussed these applications at three public meetings. Initially, Council considered the demolition of the properties on June 14, 2012. At that time, Council tabled the applications because a Council member was absent and because a variance for the parking lot was to be considered the following week by the City’s Zoning Hearing Board. Pet. Bf., Ex. B, pgs. 1-2. The Zoning Hearing Board subsequently denied the College’s variance request. Pt. Bf., Ex. C, pg. 3.

On June 28, 2012, Council discussed the applications again. Pt. Bf., Ex. C, pgs. 3-7. At that time, Council addressed the Zoning Hearing Board’s denial of the College’s variance request; Council further identified that the College was now requesting demolition in order to create green space on the properties. *Id.* A lengthy discussion ensued regarding the potential

impact that this demolition would have on the surrounding property values. Council tabled the applications in order to give the College time to address their intentions regarding the property due to the denial of their variance application. *Id.* at 7.

On July 12, 2012, Council again removed the applications from the table for a discussion. Pt. Bf., Ex. D, pg. 2. After another lengthy discussion about how this green space would allegedly affect property values, Council denied the applications by a vote of 3-to-3. *Id.* at 6.

The City's demolition ordinance provides the criteria by which Council will review a demolition application:

1705.07      REVIEW CRITERIA.

City Council will review the application utilizing the following criteria, consistent with the health, safety and welfare of citizens and their property:

- (a)      Compatibility with the enumerated objectives of the City's Comprehensive Plan;
- (b)      Consistency with the Zoning Ordinance and the Building Ordinance requirements;
- (c)      Potential impact on surrounding structures and property; and
- (d)      Public safety considerations, including the integrity, stability, and habitability of the structure.

Ordinance 1705.07. Based upon the totality of Council's discussions, the Court concludes that Council denied the College's applications because of the potential impact on the surrounding structures and properties. *See Seigel*, 539 A.2d at 504-05. Council properly considered the effect that the proposed demolition would have on the surrounding structures and property. *See* Ordinance 1705.07(c). However, the Court finds that Council's decisions were unsupported by substantial evidence of record; also, the Court finds that Council's decisions constitute an abuse of discretion.

In this matter, Council received no evidence supporting its decisions. During the three public meetings, in particular those held on June 14, 2012, and June 28, 2012, Council generally

discussed their personal feelings on how the demolition would impact the neighborhood surrounding the properties. Neither testimony nor physical evidence was presented to support the conclusions held by Council. The only testimony received by Council during these three meetings was that of Ms. Gaylor, a representative of the College; Ms. Gaylor answered questions regarding the College's relationship with its neighbors and parking issues facing the College. Pt. Bf., Ex. C, pgs. 1, 4-6. The testimony does not support the denial of the three applications. Therefore, the Court finds that the record is devoid of *any* evidence, let alone substantial evidence, supporting the denial of the demolition applications. Therefore, based upon the evidentiary deficiency supporting Council's decisions, the Court REVERSES.

In addition to finding that Council's decision is unsupported by substantial evidence, the Court also finds that Council abused its discretion. *See Rainmaker*, 23 A.2d at 1122-23. After a review of the record, the Court believes that Council denied the College's applications merely because it had the authority to do so. A discussion occurred during the June 28, 2012 public meeting that, under their Solicitor's advice, Council should not deny the permits; also, Council members provided their acknowledgement that this Court would only reverse its denial. Pt. Bf., Ex. D, pgs.2-6. Yet, at a 3-to-3 vote, Council denied these applications based upon the ambiguous negative effect these demolitions would have on the community. Based upon the record being devoid of anything even remotely supporting Council's decision, the Court finds that Council abused its discretion, committed an error of law, and capriciously disregarded evidence. *See Hinkle*, 881 A.2d at 27 (providing that an agency capriciously disregards evidence when it fails to explain why overwhelming evidence was not accepted). Based upon these findings, the Court REVERSES.



**c. City Lacks Statutory Authority to Enact Demolition Ordinance**

Additionally, the College argues that the City did not have the authority to enact the demolition ordinance. Section 753 of the Local Agency Law provides:

[a] party who proceeded before a local agency under the terms of a particular statute, home rule charter, or local ordinance or resolution *shall not be precluded from questioning the validity of the ... local ordinance...* in the appeal, but if a full and complete record of the proceedings before the agency was made such party may not raise upon appeal any other question not raised before the agency (notwithstanding the fact that the agency may not be competent to resolve such question) unless allowed by the court upon due cause shown.

2 Pa. C.S. § 753(a). *See also Roomet v. Bd. of License and Inspection Review*, 928 A.2d 1162, 1165 n.2 (Pa. Cmwlth. Ct. 2007); *Korsunsky v. Housing Code Bd. of Appeals*, 660 A.2d 180, 184 (Pa. Cmwlth. Ct. 1995). In this instance, the College does not question the City's ability to control the demolition of houses within the City's historic district(s). *See* 53 P.S. §§ 8001-06 (Municipal Historic Districts Law). However, the College contends that the City does not have the authority to decide whether properties may be razed outside of these historic districts; the College believes that these demolition issues are within the purview of the City's Zoning Hearing Board, citing to 53 P.S. § 10603(b)(2). After careful review, the Court does not believe that it has the authority to address such an issue, regardless of its merit, because the College did not raise the issue or elicit testimony concerning it before City Council. *See id.*

**d. Constitutional Arguments: Unlawful Taking and Substantive Due Process**

Pursuant to the general precept that the Court will not address constitutional challenges if the claims may be disposed of on other grounds, the Court will not address the College's constitutional arguments. *See In Re: Nomination of Stevenson*, 12 A.3d 273, 275 (Pa. 2010) (“[A]s a general matter, it is better to avoid constitutional questions if a non-constitutional ground for decision is available”); *Commonwealth v. Karetny*, 880 A.2d 505, 519 (Pa. 2005)

(“[T]his Court seeks to avoid constitutional issues if the claim may be resolved on alternate grounds.”); *In Re: Fiori*, 673 A.2d 905, 909 (Pa. 1996) (It is “the sound tenet of jurisprudence that courts should avoid constitutional issues when the issue at hand might be decided on other grounds.”). Additionally, the Court notes the College did not raise these issues before Council and, therefore, waiver applies. *See* 2 Pa. C.S. § 753(a); *Roomet*, 928 A.2d at 1165 n.2; *Korsunsky*, 660 A.2d at 184.

The Court appreciates the difficulty of Council’s duties and has no doubt that all have acted in a way believed to be in the City’s best interest. However, given the law as recited above, Council’s decision cannot stand.

The Court enters the following Order.

**ORDER**

AND NOW, this 11<sup>th</sup> day of January, 2013, after review of the record, for the reasons stated above, it is hereby ORDERED and DIRECTED that the July 12, 2012, decision of the Council of the City of Williamsport is REVERSED, and Lycoming College’s appeal is SUSTAINED. Within five (5) business days, the Clerk of the City of Williamsport shall issue to the College demolition permits for all structures situated on the College’s properties located at 81 Union Avenue, 91 Union Avenue, and 97 Union Avenue, Williamsport, Lycoming County, Pennsylvania.

BY THE COURT,

\_\_\_\_\_  
Date

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Richard A. Gray, J.

cc: Brian J. Bluth, Esq.  
Norman M. Lubin, Esq.  
Gary L. Weber, Esq. – Lycoming County Reporter