

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Keith Maydak, :  
Appellant :  
 :  
 :  
v. :  
 :  
City of Greensburg, Ronald E. Silvis, :  
Randy Finfrock, Robert Depasquale, :  
Kathleen McCormick, William Eger, :  
Bernard McArdle, and Leslie F. : No. 287 C.D. 2014  
Harvey : Submitted: October 3, 2014

BEFORE: HONORABLE DAN PELLEGRINI, President Judge  
HONORABLE MARY HANNAH LEAVITT, Judge  
HONORABLE ANNE E. COVEY, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY  
PRESIDENT JUDGE PELLEGRINI FILED: October 22, 2014

Keith Maydak (Maydak) appeals, *pro se*, from an order of the Court of Common Pleas of Westmoreland County (trial court) affirming the decision of the City of Greensburg Council (City Council), which upheld a notice of code violations and order to abate issued to Maydak pursuant to the City's Property Maintenance Code Ordinance.<sup>1</sup> For the reasons that follow, we affirm.

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<sup>1</sup> Section 205-2 of the Greensburg City Ordinance (Ordinance) adopts as the City's Property Maintenance Code Ordinance (Code) the International Property Maintenance Code of 2009 and incorporates the same into Chapter 205 of the Ordinance.

## I.

In June 2013, Leslie F. Harvey, the City's Building Code Official, issued Maydak a notice of code violations and order to abate with regard to residential property in the City which was deeded to Maydak in 2006. The notice enumerated seven violations of the Code, listed the necessary corrective actions, and ordered abatement within thirty days.<sup>2</sup> Maydak appealed to the City Council pursuant to Section 205-3(D) of the Code.<sup>3</sup>

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<sup>2</sup> Specifically, the notice set forth the following violations: (1) "Exterior wood surfaces are in poor condition and not protected from the elements. Paint is peeling and flaking"; (2) "Exterior walls and wood surfaces are in poor condition, have holes, breaks, loose or rotting materials, and are not weather tight"; (3) "Gutters and downspouts are in disrepair or are missing"; (4) "There is uncontrolled growth of weeds and noxious vegetation"; (5) "The front porch steps, deck and handrails are in disrepair and poor condition"; (6) "The front porch overhangs are in disrepair and poor condition and have loose materials that are not properly anchored"; and (7) "The dwelling is infested with bees." (Reproduced Record [R.R] at 144a-145a.)

<sup>3</sup> Section 205-3(D) of the Code provides, in pertinent part:

Any person directly affected by a decision of the code official or a notice or order issued under this chapter or any edition of the International Property Maintenance Code shall have the right to appeal to City Council by filing a written application for appeal with the City Administrator within 20 days after the date of the decision, notice or order. Provided a written application for appeal is timely filed, a hearing will be scheduled before City Council and the appellant will be provided at least 10 days' notice of the hearing.

Section 205-3(D) of the Code. Maydak filed a self-titled "Application for Appeal; Motion to Appear Telephonically or for the Appointment of Counsel; Motion to Recuse; Motion to Dismiss Pending Disposition of Judicial Proceedings; Motion for Refund of Unlawful Filing Fee; and Request for Production of Documents and Things" (notice of appeal). (R.R. at 146a.)

Maydak's appeal was scheduled to be heard at a City Council meeting on August 6, 2013, and written notice dated July 10, 2013, was provided to Maydak. After receiving the notice, Maydak sent an unsigned letter to the City Solicitor, City Administrator, and the members of City Council, seeking: recusal of the Solicitor and Council members; a sixty-day continuance due to Maydak's location outside the United States;<sup>4</sup> permission to appear telephonically or alternatively, to have counsel appointed on his behalf; withdrawal of the notice and order on the basis that the City had already filed a claim for Maydak's Code violations in the trial court;<sup>5</sup> a refund of the filing fee he paid to appeal; and copies of all documents supporting the City's contentions. Although Maydak did not provide a telephone number at which he could be reached, he did provide an e-mail address, facsimile number, and a return address in Seattle, Washington.

The City Council did not respond to Maydak's correspondence but proceeded with the scheduled hearing. In his opening remarks, the City Solicitor stated that the Council is under no obligation to allow Maydak to appear telephonically and that doing so would impair the Council's ability to identify the speaker and to assess his credibility. Likewise, the Solicitor explained that the

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<sup>4</sup> Maydak's letter states that he was "unable to attend in the United States," and referenced his previously submitted notice of appeal for further explanation. (R.R. at 159a.) The notice of appeal states that Maydak lives outside of the United States pursuant to Article 12 of an unspecified extradition treaty between the United States and Canada. (R.R. at 148a.)

<sup>5</sup> In 2010, the City notified Maydak of numerous Code violations. After Maydak declined to abate the violations, the City directed that the property's grass be cut and trimmed and then filed a claim against Maydak in 2012 for the associated costs and other relief. Maydak filed preliminary objections which remained pending at the time he received the 2013 notice and order, but the City has since discontinued the action.

Council was under no legal obligation to appoint counsel for Maydak. The Solicitor further advised that the prior action in the trial court had been discontinued and that he mailed the documents which were the subject of Maydak's discovery request to Maydak several weeks in advance of the hearing.

The Solicitor presented the testimony of the Building Code Official, who stated that he prepared and sent the subject notice of violations and order to abate to Maydak. The Building Code Official further testified that the violations listed were accurate, that as of the date of his testimony, none of the violations had been abated, and therefore, that Maydak's property continued to be in violation of the Code. The Solicitor also submitted a deed dated March 16, 2006, documenting a transfer of the subject property to Maydak. Neither Maydak nor anyone on his behalf appeared at the hearing, and no evidence was presented to contradict the Building Code Official's testimony or to otherwise challenge his credibility.

At the conclusion of the hearing, the Solicitor advised City Council:

You have before you, for decision, this appeal from the code enforcement notice issued by [the Code Official]. And you can either grant the appeal or some aspect of it, which would result in the enforcement notice being withdrawn or amended, or deny the appeal, which would permit the City to proceed to enforce the violations. That is before you at this time.

(R.R. at 148a.) The Council voted unanimously to deny Maydak's appeal, and it adopted the findings and decision drafted by the Solicitor in their entirety.

## II.

On appeal to the trial court, Maydak raised eight issues, none of which challenged City Council's findings on their merits.<sup>6</sup> Based on the record developed below, the trial court affirmed City Council's decision denying Maydak's appeal, determining that substantial evidence supports the finding that the physical conditions of Maydak's property violate the Code's provisions and that Maydak failed to abate the violations within the thirty days provided. With regard to the other issues raised by Maydak, the trial court found them without merit. Raising the same issues as he did before the trial court, Maydak filed this appeal.<sup>7</sup>

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<sup>6</sup> Maydak argued that: (1) he does not own the subject property; (2) the City Solicitor was required to recuse himself or otherwise be disqualified from participating in the proceedings before City Council; (3) the Council members were required to recuse themselves because they previously instituted an action against Maydak for other Code violations and therefore had a conflict of interest; (4) the City failed to provide public notice of the hearing, thereby violating the Sunshine Act, 65 Pa. C.S. §§701–716; (5) the City violated Maydak's due process rights by failing to advise him in advance of the hearing that he would not be permitted to participate by telephone and that counsel would not be appointed on his behalf; (6) the City lacked authority to direct Maydak to abate the subject violations while simultaneously prohibiting Maydak from performing the work without purchasing permits; and (7) the notice of violation and order to abate violates Maydak's due process rights and constitutes a regulatory taking without just compensation.

<sup>7</sup> Because a complete record was developed before the City Council, our scope of review is limited to determining whether constitutional rights were violated, whether an error of law or violation of agency procedure occurred, and whether necessary findings of fact are supported by substantial evidence. Section 754(b) of the Administrative Agency Law, 2 Pa. C.S. §754(b); *Schuylkill Township v. Pennsylvania Builders Association*, 935 A.2d 575, 580 n.12 (Pa. Cmwlth. 2007), *aff'd*, 7 A.3d 249 (Pa. 2010).

### **III.**

#### **A.**

At the outset, we find Maydak's argument that he disposed of the subject property prior to the issuance of the notice and order without merit. A copy of the 2006 deed documenting transfer of the subject property to Maydak was submitted to the Council. Maydak failed to present *any* evidence of the purported sale and has not so much as specified the date of the alleged sale or the purchaser's name. Therefore, the finding that Maydak is the record owner of the property at issue is supported by substantial and uncontroverted evidence.

#### **B.**

Next, Maydak contends that the City Solicitor should have recused himself or should otherwise have been disqualified from participating in the appeal due to a conflict of interest which arose from the Solicitor's roles in: instituting the prior action for Code violations against Maydak in the trial court; drafting Section 205-3(D) of the Code providing that appeals be taken to the City Council; "[g]host writ[ing]" the notice and order signed by the Building Code Official; scheduling Maydak's hearing before City Council; stating the procedural and factual history at the hearing and submitting evidence into the record; prosecuting the Council hearing against Maydak, advising the Council against allowing Maydak to appear telephonically and against appointing counsel on his behalf; authoring the proposed findings and order, which the Council ultimately adopted; and representing the Council before the trial court and this Court. (Br. for Appellant, at 20.) Maydak argues that the Solicitor skewed the proceedings unfavorably against

him and therefore, the Council and trial court should have precluded the Solicitor's further involvement.

Disqualification is a "serious remedy" which is generally employed when a lawyer represents conflicting interests and thereby breaches his ethical duties under the Pennsylvania Rules of Professional Conduct, 204 Pa. Code §81.4. *Slater v. Rimar, Inc.*, 338 A.2d 584, 589–90 (Pa. 1975); *see also* Pa. R.P.C. 1.7, 204 Pa. Code § 1.7 (conflicts of interest regarding current clients); Pa. R.P.C. 1.8, 204 Pa. Code §1.8 (conflicts of interest regarding former clients).

While Maydak has failed to specify the Rules of Professional Conduct which the Solicitor allegedly breached, we construe Maydak's argument to challenge the propriety of the Solicitor's dual role in representing the City before the Council and acting as legal advisor to the Council.<sup>8</sup> While "[m]unicipal

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<sup>8</sup> Section 5-18 of the Ordinance provides for the appointment of a City Solicitor and confers upon him the following duties:

- A. Advise the Council, the City Administrator and the Fiscal Director or any other City officer, when thereto requested, upon all legal questions arising in the conduct of City business.
- B. Prepare or revise ordinances as requested by the Council, the City Administrator, the Fiscal Director or any other officer thereof.
- C. Give his written opinion on any legal matter or question submitted to him by the Council or the City Administrator, the Fiscal Director or any of its committees or by any other City officer.
- D. Attend all Council meetings in their entirety for the purpose of giving the Council legal advice.

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adjudicative bodies must avoid unnecessary conflicts and commingling of incompatible functions whenever possible,” the current record does not suggest an impermissible commingling of functions by the Solicitor. *Appeal of Sweigart*, 544 A.2d 74, 78 (Pa. Cmwlth. 1988).

We considered similar circumstances in *Appeal of Sweigart*, where homeowners appealed from a town council’s grant of a curative amendment to a zoning ordinance, claiming that the amendment should be voided because the town solicitor comingled his functions in acting as a presiding officer at the hearing on the petition for curative amendment and in advising council members of the

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- E. Prepare for execution all contracts and instruments to which the City is a party and approve as to form all bonds required to be submitted to the City.
- F. Represent the City in all legal actions brought by or against the City.
- G. Have the power to adjust, settle, compromise or submit to arbitration any action or causes of action, accounts, etc., in which the City is concerned, as directed by the Council.
- H. Make an annual report to the Council of all pending litigation in which the City has an interest and the condition thereof.
- I. Keep records and deliver all records and documents and property of every description in his possession, belonging in his office or to the City to his successor in office.
- J. Requests for purchase orders will be made to the Fiscal Director, and they will be cosigned by the Mayor.

Section 5-18 of the Ordinance.



options available to them in ruling upon the petition. *Id.* Noting that the solicitor merely “contributed procedural direction at the hearing,” “placed into the record various documents,” and “advised Council of various options available to them [sic] in reaching a final determination,” but did not participate in the decision making or attempt to influence council members, we found no support for the contention that he comingled his functions. *Id.* at 78–79. *But see Newtown Township Board of Supervisors v. Greater Media Radio Co.*, 587 A.2d 841, 843 (Pa. Cmwlth. 1991) (finding that a radio company was denied due process when a township solicitor aggressively cross-examined the company’s witnesses, presented his own witnesses, engaged in several arguments with the company’s counsel, and acted as legal advisor to the board of supervisors at a hearing on the company’s application); *Kresge v. Pocono Township Supervisors, Monroe County*, 501 A.2d 345, 346 (Pa. Cmwlth. 1985) (finding that landowners who sought a curative amendment were denied due process when the township solicitor opposing the amendment produced and examined witnesses, ruled on the landowners’ objections, objected to the landowners’ presentation of evidence, and rendered legal advice to the board of supervisors both during and after the hearings). We find the instant case akin to *Appeal of Sweigart*, 544 A.2d 74, in that there exists no evidence of record that the Solicitor participated in the final decision making or attempted to influence the Council’s decision. To the contrary, the Council made an independent decision to deny Maydak’s appeal after the Solicitor presented it with an unbiased list of options available. Therefore, we find no error in the trial court’s refusal to disqualify the Solicitor.

### C.

Similarly, we find Maydak's argument that the Council members were required to recuse themselves because they previously instituted an action against Maydak for other Code violations without merit. First, the list of violations at issue in the prior litigation is not identical to the list of violations presently before us. Regardless, the issue of whether the property's physical conditions violated the Code in 2010–2012 is a separate and distinct issue from whether the property's physical conditions violated the Code in June 2013 because each Code violation gives rise to a new and separate cause of action. *See* Section 205-3(C) of the Code ("Each day that a violation continues after due notice has been served in accordance with the terms and provisions hereof shall be deemed a separate offense."); Section 106.4 of the International Property Maintenance Code of 2009 ("Each day that a violation continues after due notice has been served shall be deemed a separate offense."). Therefore, the fact that the City, by and through its Council, filed an action with regard to the 2010–2012 violations does not mean that the Council has a *per se* conflict of interest and cannot render an unbiased decision in reviewing the 2013 violations.

### D.

Maydak further claims that because the City failed to provide any public notice of its intention to hold a hearing on Maydak's appeal, the action it took at the meeting regarding his appeal is invalid under the Sunshine Act, 65 Pa. C.S. §§701–716.<sup>9</sup> Section 704 of the Sunshine Act generally requires that official

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<sup>9</sup> We reject the Council's argument that Maydak failed to preserve this issue on appeal. In Maydak's letter to the Council, which he sent after receiving notice that his hearing had been  
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action and deliberation by agency members occur at a meeting open to the public. 65 Pa. C.S. §704. Section 709(a) of the Sunshine Act further states: “An agency shall give public notice of its first regular meeting of each calendar or fiscal year not less than three days in advance of the meeting and shall give public notice of the schedule of its remaining regular meetings.” 65 Pa. C.S. §709(a). Contrary to Maydak’s position, the Sunshine Act does not impose a requirement that an agency advise the public of each matter to be addressed at each meeting. Further, as our Supreme Court recently explained, “in view of the presumption of regularity and legality that obtains in connection with proceedings of local agencies, the challenger [of an agency meeting] bears the burden to prove a violation” of the Sunshine Act. *Smith v. Township of Richmond*, 82 A.3d 407, 416 (Pa. 2013) (internal quotation and citation omitted).

At the hearing before City Council, the Solicitor noted that the proceeding was “a public meeting being conducted during a regularly scheduled and advertised work session meeting of City Council.” (R.R. at 165a.) Maydak failed to present any evidence to the contrary. As such, the trial court did not err in declining to find a violation of the Sunshine Act, 65 Pa. C.S. §§701–716.

### E.

Moreover, Maydak contends that City Council violated his due process rights by failing to advise him in advance of the hearing that he would not

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scheduled, he expressly stated his objection “[t]o the extent that no publication occurred.” (R.R. at 158a.) Further, he reiterated this argument before the trial court. (*See* R.R. at 203a–204a.)

be permitted to participate telephonically and that counsel would not be appointed on his behalf. “While incapable of exact definition, the essential elements of procedural due process are notice and opportunity to be heard and to defend in an orderly proceeding adapted to the nature of the case before a tribunal having jurisdiction of the cause.” *Bornstein v. City of Connellsville*, 39 A.3d 513, 519 (Pa. Cmwlth. 2012) (internal quotation and citation omitted). Adjudications of local agencies are valid only when the parties “have been afforded reasonable notice of a hearing and an opportunity to be heard.” Section 553 of the Local Agency Law, 2 Pa. C.S. §553.

Although Maydak does not contest that he received notice of the August 6, 2013 hearing, he argues that had he been notified of the Council’s decision in advance, “he could have made a decision to retain legal counsel, asked a legal aid organization for assistance, appointed a power of attorney or land manager to appear for him, or filed bankruptcy.” (Br. for Appellant, at 26.)<sup>10</sup> However, due process does not require that the Council advise him in advance of its decision regarding counsel, only that it provides advance notice of the hearing, *itself*. Section 553 of the Local Agency Law, 2 Pa. C.S. §553.

Additionally, it is well-settled law that an individual is entitled to appointed counsel only when he establishes his indigence and when a deprivation of his physical liberty may result. *See Lassiter v. Department of Social Services of*

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<sup>10</sup> We find this argument disingenuous considering that Maydak asserted in his letter preceding the Council hearing that he is “presently unemployed” and has “no income that would enable [him] to retain a representative.” (R.R. at 159a.)

*Durham County, North Carolina*, 452 U.S. 18, 26–27, 101 S. Ct. 2153, 2159 (1981), *rehearing denied*, 453 U.S. 927, 102 S. Ct. 889 (1981); *see also Gotthelf v. Toyota Motor Sales, U.S.A., Inc.*, 525 F. App’x 94, 100 n.11 (3d Cir. 2013) (“Supreme Court precedent firmly establishes there is no Due Process right to counsel unless the individual may be incarcerated as a result of the litigation.”). Because Maydak failed to establish that he is indigent or that the hearing before the Council may have resulted in deprivation of his *physical* liberty, he was not entitled to appointed counsel. The notice of the hearing, sent nearly a month before the hearing date, provided Maydak with more than sufficient notice to retain his own representative if he desired to do so.

While due process certainly required City Council to provide Maydak a meaningful opportunity to respond, he failed to demonstrate why he did not have such an opportunity by appearing in person at the August 6, 2013 hearing. The record contains no evidence regarding why he was precluded, indefinitely, from appearing before the Council, except for vague assertions that an unspecified treaty between the United States and Canada forbade his attendance. As such, the trial court did not err in rejecting Maydak’s due process argument.

## F.

Maydak also argues that the City lacked authority to direct him to abate the Code violations while simultaneously prohibiting him from performing the work without the requisite permits.<sup>11</sup> Therefore, he implores this Court to remand the order

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<sup>11</sup> In this regard, the notice and order states,

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to City Council with instructions to remove the requirement that Maydak obtain a permit.

As Maydak concedes, the language in the notice requiring one to obtain a permit is standard, form language. Maydak has made no argument that this language is applicable to the subject violations. However, to the extent the repair work does require a permit, building and occupancy permits are expressly authorized under Sections 403.62 and 403.65 of the Uniform Construction Code. *See* Sections 403.62 of the Uniform Construction Code, 34 Pa. Code §403.62 (setting forth permit exemptions and requirements); Sections 403.65 of the Uniform Construction Code, 34 Pa. Code §403.65 (setting forth the requirement of a certificate of occupancy);

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You must obtain any necessary permits prior to commencing the abatement work.

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NOTE: It shall be unlawful for the owner of any dwelling unit or structure who has received a compliance order or upon whom a notice of violation has been served to sell, transfer, mortgage, lease or otherwise dispose of such dwelling unit or structure to another until such owner shall first furnish the grantee, transferee, mortgagee or lessee a true copy of any compliance order or notice of violation issued by the code official and shall furnish to the code official a signed and notarized statement from the grantee, transferee, mortgagee or lessee, acknowledging the receipt of such compliance order or notice of violation and fully accepting the responsibility without condition for making the corrections or repairs required by such compliance order or notice of violation. IPMC, Section 107.6.

(R.R. at 145a.)

*see also* Section 135-2 of the Ordinance (adopting and incorporating into the City Ordinance the Uniform Construction Code).<sup>12</sup>

### G.

Finally, Maydak argues that the notice of violation and order to abate violates his due process rights because it constitutes a regulatory taking without just compensation. Maydak contends that the City lacks authority to enforce its Property Maintenance Code unless the violations it seeks to prosecute involve safety hazards or nuisances because enforcement for any other reason is not a legitimate use of the City's police power.

The City's authority, however, is not so limited. Pursuant to the Municipal Housing Ordinance Authorization Law, Act of April 14, 1937, P.L. 313, *as amended*, 53 P.S. §§4101–4103, the General Assembly has authorized the City to enact property maintenance ordinances. Specifically, Section 1 of the Municipal Housing Ordinance Authorization Law provides:

In addition to other remedies provided by law, and in order to promote the public health, safety, morals, and the general welfare, all cities of the first, second, and

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<sup>12</sup> Section 102 of the Pennsylvania Construction Code Act, Act of November 10, 1999, P.L. 491, *as amended*, 35 P.S. §§7210.101–7210.1103, authorized the Department of Labor and Industry to promulgate the Uniform Construction Code. Section 102 of the Pennsylvania Construction Code Act, 35 P.S. §7210.102. It further required that municipalities adopt the Uniform Construction Code within ninety days of its publication. Section 501 of the Pennsylvania Construction Code Act, 35 P.S. §7210.501(a). To the extent the Uniform Construction Code differs from construction standards established in local ordinances, the Uniform Construction Code preempts them. Section 104 of the Pennsylvania Construction Code Act, 35 P.S. §7210.104(d).

second class A, incorporated towns, boroughs, and townships in this Commonwealth are hereby authorized and empowered to enact and enforce suitable ordinances to govern and regulate the construction, alteration, repairs, occupation, maintenance, sanitation, lighting, ventilation, water supply, toilet facilities, drainage, use and inspection of all buildings and housing and to the sanitation and inspection of land appurtenant thereto, and the said ordinances may provide proper penalties not exceeding five hundred dollars (\$500) for the violation of their provisions.

Such ordinances may adopt any standard building code and any standard housing code, published and printed in book form, covering any or all of the above items, without incorporating such building code and such housing code in the ordinance; or any such city, borough, town or township may enact any such building code and such housing code as its ordinance authorized under the provisions of this act. In either event, such building code and such housing code shall not be published or advertised in full as required by law in the case of the adoption of ordinances: Provided, [t]hat a notice of the adoption of such standard building code and such standard housing code as the building ordinance and the housing ordinance of the city, borough, town or township, together with a brief summary thereof setting forth the principal provisions of said ordinance in such reasonable detail as will give adequate notice of its contents pursuant to a uniform form which shall be prepared or approved by the Department of Labor and Industry, and a reference to the place or places within the municipality or township where copies of the building code and the housing code adopted are deposited and may be examined shall be published in the manner provided by law for the publication of ordinances. Not less than three such copies shall be made available to public inspection and use, during business hours, for a period of not less than three months after the adoption of such building code and such housing code.



53 P.S. §4101. Section 2 also enables the City to “institute appropriate actions or proceedings at law or in equity to prevent and restrain [any violations], or use and to restrain, correct, or abate such violation, and to prevent the occupancy of said building, housing or structure.” 53 P.S. §4102. As such, the City is expressly authorized by law to enact ordinances that regulate the maintenance of buildings situated in its perimeter, regardless of whether the conditions those ordinances regulate escalate to the threshold of a nuisance or health hazard.

Accordingly, we affirm the trial court’s order upholding City Council’s denial of Maydak’s appeal.

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DAN PELLEGRINI, President Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Keith Maydak,	:
Appellant	:
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v.	:
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City of Greensburg, Ronald E. Silvis,	:
Randy Finfrock, Robert Depasquale,	:
Kathleen McCormick, William Eger,	:
Bernard McArdle, and Leslie F.	:
Harvey	: No. 287 C.D. 2014

ORDER

AND NOW, this 22<sup>nd</sup> day of October, 2014, the order of the Court of Common Pleas of Westmoreland County dated January 27, 2014, in the above-captioned matter is affirmed.

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DAN PELLEGRINI, President Judge