OAH 71-6077-38339

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE CITY OF WEST ST. PAUL

In the Matter of the Administrative Citation and Civil Penalty Assessed Against Craig G. Sprafka	**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

This matter came before Administrative Law Judge Jessica A. Palmer-Denig for a hearing on June 27, 2022. The hearing was conducted in a hybrid format in person at the Office of Administrative Hearings in St. Paul, Minnesota, and via Microsoft Teams. The record closed on June 27, 2022, at the conclusion of the hearing.

Greta L. Bjerkness, Assistant City Attorney, LeVander, Gillen & Miller, P.A. appeared on behalf of the City of West St. Paul (City). Craig G. Sprafka (Appellant) appeared on his own behalf, without legal counsel.

STATEMENT OF THE ISSUES

1. Should the Administrative Citation issued to Appellant by the City on April 18, 2022, be affirmed?

2. If so, should Appellant be required to pay the administrative fine of $2,000, together with hearing costs, and abate the cited violations?

SUMMARY OF CONCLUSIONS

The City has demonstrated that Appellant failed to comply with the Administrative Citation by paying the fine and correcting the cited violation of West St. Paul City Code[1] § 94.19. Appellant must pay the City the assessed fine of $2,000, as well as $1,000 in hearing costs, and must abate the cited conditions, as provided in the Order below.

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

[1] Referenced hereafter as "City Code."

FINDINGS OF FACT

1. Appellant is the owner of a parcel of property located at 212 Thompson Avenue East, in West St. Paul, Minnesota (the Property).[2]

2. On March 19, 2021, the City's Chief Building Official, Dennis Schilling, was conducting a framing inspection at a development located at 240 Thompson Avenue East, which borders the Property to the south.[3]

3. From that vantage point, Mr. Schilling could see several structures on the Property, including two white sheds, and a pool and adjacent "pool house."[4] The pool house had peeling paint, and the structure was leaning to one side.[5] The surface of the pool had numerous cracks inside and out, there were vines growing on the outside of the pool, and trees were growing inside the pool.[6]

4. Mr. Schilling took photographs of the structures on the property from his location at 240 Thompson Avenue East.[7] A picture showing the pool and pool house as of March 2021 is reproduced below:[8]

5. Mr. Schilling forwarded a complaint about conditions at the Property to the City's code compliance staff.[9]

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[2] Testimony (Test.) of Craig Sprafka.
[3] Test. of Dennis Schilling.
[4] *Id.* Note that the parties have called the structure that adjoins the pool a pool house or bunk house. The record does not make the usage of the structure clear, and for the most part the Administrative Law Judge uses the term "pool house" here.
[5] *Id.*; Exhibit (Ex.) 1.
[6] Test. of D. Schilling; Exs. 1-2.
[7] Test. of D. Schilling; Exs. 1-2.
[8] Ex. 1.
[9] Test. of D. Schilling. Appellant argues that the complaint was really initiated by complaints made by the neighboring property owner. Even if that is true, Mr. Schilling documented the conditions and pursued further action by the City, rendering that possible earlier source of a complaint immaterial.

6. On March 22, 2021, the City sent Appellant a notice entitled "Correction Notice – Action Required" (First Correction Notice).[10] The First Correction Notice required compliance by June 24, 2021.[11]

7. The First Correction Notice identified a violation of City Code § 153.380, which limits the number of accessory structures that may be located on a property.[12] The City advised Appellant that no more than one accessory building or structure could be located on a lot and directed him to remove any additional accessory buildings.[13] The City considered the two white sheds as two accessory buildings, and the pool and pool house together to be a third accessory structure.[14]

8. The First Correction Notice also identified a violation of City Code § 94.19, which contains standards for building maintenance and appearance.[15] The First Correction Notice stated:

> Please remove all concrete walls of inground pool per [Minnesota Pollution Control Agency (MPCA)] requirements and back fill with dirt by the above date. Buildings, fences and other structures that have been so poorly maintained that their physical condition and appearance detract from the surrounding neighborhood are declared to be public nuisances because they: are unsightly; decrease adjoining landowners and occupants' enjoyment of their property and neighborhood; and adversely affect property values and neighborhood patterns.[16]

9. The First Correction Notice advised Appellant that the failure to comply could result in imposition of a minimum fine of $200, and that the City could abate the conditions itself and assess the cost against the Property.[17]

10. The City sent Appellant another notice on June 3, 2021 (Second Correction Notice), with the same title and language, but extending the date for compliance to July 30, 2021.[18]

11. Appellant removed the two white sheds from the property, so the violation of City Code § 153.380 is no longer at issue.[19]

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[10] Ex. 7.
[11] *Id.*
[12] Exs. 3, 7.
[13] Ex. 7.
[14] Test. of D. Schilling; Test. of Melissa Houtsma.
[15] Exs. 4, 7.
[16] Ex. 7.
[17] *Id.*
[18] Ex. 8.
[19] Test. of D. Schilling; Test. of M. Houtsma. Appellant submitted a statement in which he contended that the City issued citations and fines related to this violation even though he removed the structures. Ex. 113. The record is clear that the citations and fines were issued in connection with a different violation and that the notices related to the presence of too many accessory structures on the land have been fully resolved.

12. Appellant did not comply with the First and Second Correction Notices by correcting the condition of the pool and pool house.[20]

13. On August 30, 2021, Appellant had a telephone conversation with City Planner Melissa Houtsma,[21] Ms. Houtsma memorialized this conversation in an email sent to Appellant.[22] In the email, Ms. Houtsma advised Appellant that the City wished to have Appellant start the abatement process within two to three weeks of that date by finding a contractor, and then to have the conditions fully abated by November 1, 2021.[23] To aid Appellant, though it is out of the ordinary to do so, Ms. Houtsma provided a list of potential contractors for Appellant to contact.[24]

14. Around September 2021, Appellant contacted the City to request a hearing regarding the dispute about the Property.[25] No citation had been issued related to the Property, so no hearing could be held at that time.[26]

15. Appellant consulted with the MPCA regarding the standards for removal of the pool structure, and he was directed to speak to officials with Dakota County.[27]

16. On October 13, 2021, Terry Muller, an Environmental Specialist with Dakota County, sent Appellant a letter confirming a conversation between the two about the Property.[28] Mr. Muller stated that the Dakota County Environmental Resources Department has allowed in-place demolition of in-ground structures as "Qualified Clean Fill," when the demolition meets certain requirements.[29] Among the conditions Mr. Muller cited, the demolition would be required to comply with all City ordinances.[30]

17. Appellant obtained a bid for work on the pool and pool house, dated October 13, 2021, from a firm called Dirt Monkey Inc.[31] The bid included three options:

a. Total removal of the swimming pool and pool house for $17,270, including removing all "concrete/limestone" and disposing of these materials offsite; importing structural fill soil to fill in the swimming pool area to existing grade;

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[20] Test. of C. Sprafka; Test. of D. Schilling.
[21] Ms. Houtsma was known at the time as Melissa Sonnek and this document bears her prior name. Ex. 12; Test. of M. Houtsma.
[22] Ex. 12.
[23] *Id.*
[24] *Id.*
[25] Test. of C. Sprafka.
[26] Test. of M. Houtsma.
[27] Test. of C. Sprafka.
[28] Ex. 102. Appellant initially submitted exhibits by facsimile and some of the photographs and maps included within the exhibits were illegible. Appellant subsequently provided color copies of the exhibits. The Administrative Law Judge has substituted the later-submitted color copies of the exhibits to ensure a clear and accurate record.
[29] *Id.*
[30] *Id.*
[31] Ex. 114.

and importing a load of screened and pulverized black dirt to support vegetation growth;

b. Demolition of the concrete/limestone with burial of the materials on site for $11,100, including importing sand to fill on the voids in the debris, importing structural fill soil, and importing screened and pulverized black dirt to promote vegetation growth; and

c. Leaving the pool structure in place, with infill, for $9,450, including importing fill soil to fill in the pool area to existing grade and screened and pulverized black dirt to support the growth of vegetation.[32]

18. Appellant shared Mr. Muller's letter with Ms. Houtsma.[33] Ms. Houtsma responded by letter dated November 5, 2021, to note that while Dakota County might permit the burial of certain materials under some conditions, such demolition would need to comply with the City's ordinances.[34] Ms. Houtsma contended that because a landfill or partial landfill is not a permitted use of the Property, burying the concrete would not be a viable option.[35] She outlined Appellant's options as: (1) bringing the pool/foundation[36] and bunk house up to current code standards; and (2) complete removal of the pool/foundation and bunk house.[37]

19. The letter further advised Appellant that, because the conditions remained unabated, it would begin issuing administrative citations monthly.[38] Recognizing that finding a contractor and performing the work would take time, Ms. Houtsma stated that if the Property was compliant by May 1, 2022, the City would waive any accumulated fines.[39]

20. The City has adopted an Administrative Citation Fee Schedule establishing that fines starting in the amount of $200 may be imposed for violations of the City Code.[40] Repeat violations within 12 months may be subject to fines of double the previously assessed amount, up to a maximum per citation of $2,000.[41]

21. The City issued an Administrative Citation on November 5, 2021 (First Citation).[42] The First Citation identified a violation of City Code § 94.19 and imposed a

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[32] *Id.*
[33] Test. of C. Sprafka.
[34] Ex. 15.
[35] *Id.*
[36] The pool is referenced as a "foundation" several places in the record. According to historical references, the Property was the site of the Gladstone School, built in 1887. Ex. 24 at 252. The school building was condemned in the early 1900s, and after purchasing the property in 1930, a new owner converted the open foundation into a swimming pool. *Id.*
[37] Ex. 15.
[38] *Id.*
[39] *Id.*
[40] Ex. 17.
[41] *Id.*; Test. of M. Houtsma.
[42] Ex. 16.

penalty in the amount of $200.[43] The First Citation notified Appellant of the "next steps" stating that Appellant could correct the violation and pay the fine within 30 days, or could contest the citation in writing within ten days of the date of mailing.[44]

22. The City issued another Administrative Citation to Appellant on December 6, 2021 (Second Citation).[45] The Second Citation contained identical language, except that it imposed a fine of $400.[46]

23. On December 13, 2021, Ms. Houtsma contacted Appellant by email to inform him that she had reached out to a contractor herself in an effort to assist him in correcting the violations.[47] Ms. Houtsma informed Appellant that the contractor, Bolander, was located in St. Paul and could demolish and remove the pool and pool house for around $20,000, with a timeline of two weeks.[48] She stated that the project would take a little longer due to the cold weather, which makes it more difficult to break up concrete, but that it would do less damage to the surrounding grass and ground.[49] She noted that the most difficult part of the project would be gaining access to the site, and she conveyed that the City would be willing to reach out to its contacts with Hyvee to gain access from its property to the west, rather than unnecessarily removing trees from Appellant's property to allow access.[50] Ms. Houtsma provided him with contact information for Bolander.[51]

24. The City issued a third Administrative Citation to Appellant on January 20, 2022 (Third Citation).[52] The Third Citation contained identical language, but imposed a fine of $800.[53]

25. The City issued a fourth Administrative Citation to Appellant on February 23, 2022 (Fourth Citation), which contained identical language to the prior citations, but imposed a fine of $1,600.[54]

26. Appellant did not correct the violation, pay any of the fines assessed, or notify the City that he wished to contest the First, Second, Third, or Fourth Citation.[55]

27. On April 18, 2022, the City issued a fifth Administrative Citation (Fifth Citation) to Appellant, also with identical language, but imposing a fine of $2,000.[56]

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[43] *Id.*
[44] *Id.*
[45] Ex. 18.
[46] *Id.*
[47] Ex. 23.
[48] *Id.*
[49] *Id.*
[50] *Id.*
[51] *Id.*
[52] Ex. 19.
[53] *Id.*
[54] Ex. 20.
[55] Test. of M. Houtsma.
[56] Ex. 21.

28. On April 27, 2022, the City received a notice of contest by email related to the Fifth Citation, along with a $200 filing fee[57]

29. The notice of contest and payment were submitted by Philip Dommer, owner and president of Prelude Holdings, LLC (Prelude).[58]

30. Mr. Dommer is a developer and Prelude has entered into a contract to purchase the Property.[59] The parties anticipate the closing for the sale of the Property will occur on July 27, 2022.[60]

31. Appellant and Prelude have entered into an agreement regarding the structures on the Property, with Prelude accepting responsibility to remedy their condition.[61]

32. Prelude plans to do so by converting the pool into a grotto and garden.[62]

33. While this case has been pending, Mr. Dommer contacted the City to assert that he is now responsible for remediating the condition of the pool and would take steps to do so, but Mr. Dommer and Prelude are not the Property's owners or a named parties in the Fifth Citation or this proceeding.[63]

34. The record does not definitively establish the construction materials used in the pool. Some portions of the pool are stone, referred to variously as flagstone and limestone, and the surface is covered with a veneer made of an unknown material.[64] At this time, portions of the veneer or fill material have been removed from the exterior of one side of the pool, revealing layers of stone.[65]

35. There is no historical designation attached to the structures on the Property, or the Property as a whole.[66]

36. On May 12, 2022, Mr. Schilling again visited the neighboring property at 240 Thompson Avenue East and observed the condition of the pool and pool house.[67] He documented the condition of the structures in photographs, which show no improvement.

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[57] Ex. 22.
[58] *Id.*; Ex. 117; Test. of Philip Dommer.
[59] Test. of P. Dommer; Test. of C. Sprafka.
[60] Test. of C. Sprafka.
[61] *Id.;* Test. of P. Dommer.
[62] Test. of C. Sprafka; Test. of C. Dommer. The Administrative Law Judge makes no finding that this would correct the violation.
[63] *See* Ex. 119; Test. of P. Dommer. Exhibit 119 contains information arising in the context of settlement discussions. The Administrative Law Judge has not considered terms offered to settle this matter in connection with reaching this decision. Minn. R. Evid. 408.
[64] Test. of C. Sprafka; Exs. 114, 120. Appellant testified that he believes that the veneer material could be stucco, but there is no evidence that clearly establishes the type of material at issue. Test. of C. Sprafka.
[65] Ex. 120.
[66] Test. of C. Sprafka.
[67] Test. of D. Schilling.

Mr. Schilling's photographs depicting the condition of the pool and pool house in May 2022, are reproduced below:[68]

[68] Exs. 10-11.

37. Mr. Schilling viewed the Property on the morning of the hearing in this matter, April 27, 2022, and the condition of the pool and pool house have not been remediated.[69]

38. Appellant has never paid the fine assessed in the Fifth Citation.[70]

39. Any Conclusion of Law more properly considered to be a Finding of Fact is adopted as such.

40. Any portion of the accompanying Memorandum that is more properly considered to be a Finding of Fact is incorporated herein.

Based on these Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. The Administrative Law Judge has jurisdiction in this matter pursuant to Minn. Stat. § 14.55 (2020) and City Code § 10.98(G).

2. The City has complied with all procedural requirements of law and rule, and all parties had due and proper notice of the hearing in this matter.

3. This matter is properly pending before the Administrative Law Judge.

4. City Code § 10.17(B), (D), allows authorized persons, including officials with City Code Enforcement and the City Planner, to inspect properties and determine the condition and buildings and premises within the City.

5. Under City Code § 94.19(A), buildings, fences, and other structures may be declared a public nuisance when they "have been so poorly maintained that their physical condition and appearance detract from the surrounding neighborhood." This section also provides that such nuisances "are unsightly; decrease adjoining landowners and occupants' enjoyment of the property and neighborhood; and adversely affect property values and neighborhood patterns."[71]

6. A "public nuisance" is:

> [a]ny substance, matter, emission or thing that creates a dangerous or unhealthy condition or that threatens the public peace, health, safety or sanitary condition of the city or that is offensive or has a blighting influence on the community and is found upon, in, being discharged or flowing from

[69] *Id.*, Test. of D. Schilling.
[70] Test. of M. Houtsma; Test. of C. Sprafka.
[71] City Code § 94.19(A).

or onto any street, alley, highway, vehicle, water, excavation, building, erection, lot, grounds or other property located within the city.[72]

7. The City Code further outlines that a structure is a public nuisance when its exterior surface shows "deterioration, holes, breaks, [or] gaps."[73]

8. The City may issue compliance letters and administrative citations for violations of the City Code.[74]

9. The City may issue an administrative citation when a violation specified in a compliance letter has not been corrected within the time frame established by the compliance letter.[75] The administrative citation must contain:

a. A description or address of the property on which the City Code violation has occurred;

b. Reference to the City Code that is alleged to be violated;

c. The amount of the administrative civil penalty for the specific city code violation, which shall be due and payable to the City within 30 days of the date the citation is mailed or personally served;

d. A statement that the violation must be corrected or a subsequent administrative or a criminal citation may be issued;

e. A statement that the City Code violation and the amount of the administrative civil penalty may be contested to be heard before an independent hearing officer by notifying the City Clerk in writing within ten days after the citation was mailed or personally served; and

f. A statement that failure to pay the administrative civil penalty may result in it being assessed against the property as provided in Minn. Stat. ch. 429 (2020), as it may be amended from time to time.[76]

10. The Fifth Citation contained all elements required by City Code § 10.98(E)(1).

11. The City has adopted a fee schedule for penalties for violations of the City Code providing that the minimum penalty for the violation at issue here is $200, and that for subsequent violations within a 12-month period, the City may double the amount of the fine previously assessed up to a maximum of $2,000.[77]

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[72] City Code § 94.15(A).
[73] City Code § 94.19(B)(1).
[74] City Code § 10.98(C).
[75] City Code § 10.98(E)(1).
[76] City Code § 10.98(E)(1)(b).
[77] Ex. 17.

12. An administrative citation may be contested by notifying the City Clerk, within ten calendar days after the citation is mailed or personally served, that the recipient contests the violation, amount of the penalty, or both, and upon the payment of a $200 non-refundable filing fee.[78]

13. Appellant, via Mr. Dommer, timely contested the Fifth Citation.

14. The City has the burden to show by a preponderance of the evidence that it properly issued the Fifth Citation and fine of $2,000.

15. The City established by a preponderance of the evidence that Appellant has violated City Code § 94.19 by maintaining on the Property a structure that is a public nuisance, and that it properly issued the Fifth Citation.

16. The City established that Appellant has failed to correct the violation identified in the Fifth Citation and has failed to pay the fine of $2,000.

17. Under City Code § 10.98(G)(6), if the violation is upheld, the offender must pay for hearing costs, not to exceed $1,000. The hearing costs accrued in connection with this matter exceed $1,000. Therefore, Appellant must pay $1,000 toward the cost of this proceeding.

18. Any Finding of Fact more properly considered to be a Conclusion of Law is adopted as such.

19. Any portion of the accompanying Memorandum that is more properly considered to be a Conclusion of Law is incorporated herein.

Based upon these Conclusions of Law, and for the reasons explained in the accompanying Memorandum, which is incorporated herein, the Administrative Law Judge makes the following:

ORDER

1. The Fifth Citation is **AFFIRMED**.

2. Appellant shall pay the fine assessed by the City in the Fifth Citation, in the amount of $2,000.

3. Appellant is assessed $1,000, for hearing costs to be paid to the City.

4. By **4:30 p.m.** on **Friday, July 15, 2022**, Appellant shall make a payment to the City of $3,000, by check made to the order of the City of West St. Paul at the following address:

[78] City Code § 10.98(F).

City of West St. Paul
Attn. Admin Citation
1616 Humboldt Avenue
West St. Paul, MN 55118

5. Not later than **Sunday, July 31, 2022**, Appellant shall correct the violation of City Code § 94.19 cited in the Fifth Citation by either bringing the pool and pool house into compliance with that section or by removing the pool and pool house from the Property.

Dated: June 30, 2022

JESSICA A. PALMER-DENIG
Administrative Law Judge

Reported: Digitally Recorded
No transcript prepared

NOTICE

This decision is the final order in this case. Pursuant to West St. Paul City Code § 10.98(H), this order may only be appealed to the Minnesota Court of Appeals.

MEMORANDUM

This matter concerns the Fifth Citation issued to Appellant by the City, the only one of the five citations that was appealed.[79] The Fifth Citation requires Appellant to pay $2,000, and to correct the violations of City Code § 94.19 at the Property. The City has advised Appellant that he must bring the Property up to code, or demolish the pool and pool house.[80]

Appellant challenges the Fifth Citation on several grounds. Appellant argues that the Fifth Citation is procedurally deficient because the City did not conduct an inspection

[79] Appellant contends that he sought a hearing in or around September of 2021, but at that time no citation had been issued and no right to an administrative hearing existed. Once Appellant received the First through Fifth Citations, he had a right to contest each of the citations and receive a hearing as provided in the City Code. Appellant did not submit a notice of contest as to the First through Fourth Citations. Therefore, the Administrative Law Judge lacks jurisdiction to hear a challenge to those citations, or as Appellant requests, to rescind all of the fines assessed thus far. This Order also does not require payment of the fines assessed in the First though Fourth Citations, as those citations are outside the scope of this proceeding. This does not mean Appellant is not obligated to pay these amounts, it simply means that this Order does not impose that requirement.
[80] Ex. 15.

on the Property, and that such an inspection is required before a citation may be issued. Appellant contends that the City has never specified what he could do to correct the condition of the structures on the Property. He also argues that the City has refused to allow him to collapse and bury the pool's materials, based on an erroneous assertion that doing so would convert the property to a landfill.

City Code § 10.17(D)(1) provides that "it is the duty of any authorized officer to conduct inspections to determine the condition of the buildings and premises located within the city." That section further provides that "[f]or the purpose of making the inspection, the authorized officer is authorized to enter, examine and survey the building and premises at all reasonable times."[81] Appellant argues that the City had an obligation to perform an on-site inspection of the pool and pool house before issuing a citation, and that it failed to do so.

Appellant is incorrect. Under section 10.17(D)(1), the City may conduct on-site inspections in order to fulfill its duties, but it is not required to do so. Here, Mr. Schilling observed the condition of the pool and pool house from the property next door. There can be no dispute that the pool is currently in extremely poor condition, with extensive cracking along the surface of the walls and trees growing within the structure. Mr. Schilling was able to observe the pool house as well, including that it had peeling paint and was listing to one side. Mr. Schilling documented these conditions in March 2021, and again in May 2022. Mr. Schilling was not required to enter the Property or these structures to be able to determine their condition because the deficiencies are in plain sight.

Appellant contends that the City has been intractable and that it has failed to provide specific advice as to what he must do to bring the structures up to code. It is not the City's responsibility to develop Appellant's abatement plan. The City identified the poor condition of the pool and pool house beginning in March 2021, and sought to have Appellant bring the Property into compliance. Ms. Houtsma provided Appellant with a list of contractors,[82] and even contacted a contractor on Appellant's behalf in an effort to assist Appellant in making a plan.[83] The City did not start issuing citations until November 2021, eight months after its first correction notice, and even then, Ms. Houtsma advised Appellant that the City would waive all fines if the violations were abated by May of 2022.[84] In response, other than obtaining a bid, Appellant has not undertaken any efforts to comply with the Fifth Citation.

Appellant argues that the City has presented only one real option, deconstruction of the pool and pool house, but that it has unlawfully prohibited him from burying the materials. Appellant obtained a letter from Dakota County noting that it has allowed in-place demolition of in-ground concrete structures under some circumstances, and detailing the requirements for such a demolition.[85] The letter from Dakota County did not

[81] City Code § 10.17(D)(1).
[82] Ex. 12.
[83] Ex. 23.
[84] Ex. 15.
[85] Ex. 102.

state that it would permit such a demolition of the pool on the Property and it does not appear that Dakota County was reviewing or approving a specific plan put forward by Appellant. Dakota County's letter also advised Appellant that any such demolition would need to comply with all city ordinances. Ms. Houtsma's letter regarding the City's review of Dakota County's position indicates that such a solution would not be consistent with the City Code because no property within the City may be used as a landfill or partial landfill.[86]

Appellant points out that the City Code has no definition describing a landfill and that the City's assertion that burying the pool's materials would constitute use of the property as a landfill is arbitrary and capricious. This is one of Appellant's better arguments. Notwithstanding the City's assertion that burying the materials would constitute a landfill, at the hearing the City was unable to provide a clear definition of that term to support its statement. Ms. Houtsma eventually testified that she used a common sense understanding of the term landfill in writing her letter.

The term "landfill" has been given the following dictionary definitions: "a system of trash and garbage disposal in which the waste is buried between layers of earth to build up low-lying land,"[87] a "low area of land that is built up from deposits of solid refuse in layers covered by soil;"[88] and "the process of getting rid of large amounts of trash by burying it, or a place where trash is buried,"[89] "a large deep hole in which very large amounts of garbage are buried."[90] Though the City Code does not define the term landfill, its ordinance governing its municipal solid waste abatement program states that the regulation's purpose is "intended to reduce the amount of waste going into *landfills*, improve the quality of materials recycled to strengthen the market, and make progress towards the state's recycling goals."[91] This suggests that the City considers the term "landfill" to arise in the context of waste disposal, rather than more generally as filling in land. Minnesota law regulating waste disposal sites uses slightly different terms. A "solid waste land disposal facility," or more generally a landfill, is "a facility used to dispose of solid waste in or on the land."[92] Notably, the state's regulatory definition of solid waste does not include earthen fill, boulders, or rock.[93]

It is problematic for the City to deny Appellant an opportunity to remedy the violation, categorically, by determining that burying the pool's materials would constitute a landfill when the City has not adopted a definition of that term and has not referenced any other source to support its position. The difference between the cost estimates for demolition and removal versus demolition and burial are substantial, approximately

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[86] Ex. 15.
[87] *Landfill*, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/landfill.
[88] *Landfill*, DICTIONARY.COM, https://www.dictionary.com/browse/landfill.
[89] *Landfill*, CAMBRIDGE DICTIONARY, https://dictionary.cambridge.org/us/dictionary/english/landfill.
[90] *Landfill*, COLLINS DICTIONARY, https://www.collinsdictionary.com/us/dictionary/english/landfill.
[91] City Code § 92.11(B) (emphasis added).
[92] Minn. R. 7035.0300, subp. 102 (2021).
[93] *Id.*, subp. 100 (2021).

$6,000.[94] It is not entirely clear what all of the materials used to construct the pool are,[95] and to some degree the City seems to have operated on the assumption that the pool is made of concrete,[96] but the record shows that some portions of the pool were constructed of stone. Appellant claims that the stone is indigenous to the area,[97] and there is no evidence in the record contradicting that assertion. It does not appear that the City considered whether burying stone native to the area would qualify the Property as a landfill.

Yet, the Administrative Law Judge determines that this issue does not require a result in Appellant's favor. Appellant did not further pursue the City's approval of the pool burial plan by presenting the City with facts and argument that would support this proposed resolution.[98] If Appellant had pursued the remedy of burying the stone and filling in the pool's area, as outlined in the middle-ground option on the bid he received, Appellant might have been able to assert that the violation could be corrected in this manner. Appellant could have a colorable defense if the City continued to pursue the citations on the basis that the City has not defined landfill in a manner that would prohibit this solution, so long as the project complied with other applicable standards. That is not what happened. Instead, Appellant did not pursue this course and took no other action to correct the violation. Therefore, Appellant cannot defend against the Fifth Citation on this basis.

Appellant argues that the pool has historical importance because it was once the foundation of a school, but there is no historical designation attached to the structure. Further, the condition of the pool and pool house show that they have not been maintained in a manner consistent with preservation. The surface of the pool is extensively pitted and cracked, vegetation is growing on the outside of the pool, and trees are growing within it. The pool house has peeling paint and is listing to one side. Mr. Schilling testified that he did not believe that it would be safe to enter the pool house even to conduct an inspection.[99]

The City has clearly established that the condition of the pool and pool house violate City Code § 94.19, in that they have been so poorly maintained that their physical condition and appearance detract from the surrounding neighborhood. The City had the authority to issue the Fifth Citation and impose a penalty of $2,000. Therefore, the Fifth Citation is **AFFIRMED**. Further, because this Order finds a violation and the hearing costs

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[94] Ex. 114.

[95] Appellant notes that the City never had the building materials tested to determine their composition. This was not the City's responsibility. Appellant is the owner of the Property, and the Property has been in Appellant's family for 70 years. Test. of C. Sprafka. Appellant was well positioned to have the pool's materials examined.

[96] The First and Second Correction Notices both state: "Please remove all concrete walls of inground pool . . . ." Exs. 7-8. Ms. Houtsma's letter of November 5, 2021, states: "burying the concrete is not a viable option." Ex. 15.

[97] Test. of C. Sprafka.

[98] It is possible that the City might have denied Appellant a permit for such work, but then the City would be subject to Appellant's counter arguments based on the absence of a definition for the term landfill.

[99] Test. of D. Schilling.

accrued in this matter exceed $1,000, Appellant must pay hearing costs in the amount of $1,000 to the City.[100]

On a final note, Appellant asked that this Order require the City to meet with him to work out a plan to remediate the Property. The Administrative Law Judge has no authority to Order such a meeting. The record shows that the City's efforts in this case were designed to obtain compliance with the Code. With an eye toward that goal, the Administrative Law Judge suggests that the parties carefully consider their positions regarding the appropriate method to correct the violation, and to engage in constructive problem-solving to reach a resolution. Even if no such efforts occur, however, Appellant remains obligated to comply with this Order.

J. P. D.

[100] City Code § 10.98(G)(6). This ordinance requires that a party found in violation of the City Code pay hearing costs not exceeding $1,000. The Fifth Citation erroneously stated that Appellant would be required to pay only $100 in hearing costs. Ex. 21. However, the City informed Appellant prior to the hearing that he could be assessed $1,000 in costs for the hearing. Ex. 119 (email from Greta Bjerkness to Philip Dommer, Craig Sprafka, and Jon Lockner (May 27, 2022, 10:40 a.m. CST)).