

IN THE COURT OF COMMON PLEAS OF LANCASTER COUNTY, PENNSYLVANIA
CIVIL ACTION

MICHELLE VONNIEDA-LAGRASSA and :
BETH BATHE, :
Plaintiffs, :
 :
v. : NO. CI-24-01875
 :
CITY COUNCIL OF THE CITY OF :
LANCASTER, located in LANCASTER :
COUNTY, PENNSYLVANIA, :
Defendant. :

OPINION AND ORDER

By: Brown, J.

This dispute involves the enactment of an amended Tree Ordinance by the City of Lancaster (“City”) and whether there were procedural errors with its enactment that violated the Third Class City Code and the Sunshine Act. While the case is less than pristine procedurally, the result is that the court has the complete record before it and is able to decide the issues for the reasons that follow.

Procedural and Factual History

On February 27, 2024, the City, at a regularly scheduled city council meeting, adopted an ordinance amending certain provisions of Chapter 273 – Trees in the Code of the City of Lancaster (“amended Tree Ordinance”). On March 15, 2024, Michelle Vonnieda-LaGrassa and Beth Bathe, both residents of the City of Lancaster (“Residents”), began this litigation by filing a *pro se* document entitled “Notice of Appeal from the Decisions of the City Council of the City of Lancaster.”¹ (“Notice of Appeal”).

¹ While a declaratory judgment action would have been the better method of challenging the legality of the amended Tree Ordinance’s enactment pursuant to 42 Pa.C.S. §§ 7531-7541, the court is to liberally construe *pro se* materials. See *In re deLevie*, 204 A.3d 505, 511 (Pa. Super. 2019). Additionally, our Supreme Court has instructed that “[a]ctions brought in the wrong form should not be dismissed but

On March 27, 2024, Residents filed a Motion for Special and Preliminary Injunction (“Motion”) along with a supporting brief. The Motion asked the court to enjoin the City’s enactment of the amended Tree Ordinance because the City violated the Sunshine Act and the Third Class City Code when it adopted the amended Tree Ordinance. By order dated April 1, 2024, the court scheduled a hearing on the Residents’ Motion for May 10, 2024.

On April 2, 2024, the City, viewing the Residents’ filing as a land use administrative appeal, filed the certified record² and requested a Rule 27D conference.³ The City’s request for the Rule 27D conference was for the reasons that:

- a. The pending motion for an injunction is not authorized by the Sunshine Act in that it does not authorize equitable relief.
- b. The remedies under the Sunshine Act are limited to Section 714 to financial penalties.
- c. Even if the court were to find that a violation occurred, which the City expressly denies, any defect was cured by enactment at a duly convened public meeting February 27, 2024.
- d. The City intends to pursue a claim for attorney’s fees and costs ... in that this case is frivolous or brought without substantial justification....

On April 7, 2024, the City filed preliminary objections in the nature of a demurrer to the Notice of Appeal. In its preliminary objections the City contended that the

should be regarded as having been filed in the proper form, although amendment may be required if necessary for clarification.” Taylor v. Pa. State Police Com., 132 A.3d 590, 600 (Pa. Commw. 2016) (citing Commonwealth, Auditor General v. Borough of East Washington, 474 Pa. 226, 378 A.2d 301, 304 (1977)). Because Residents request declaratory and injunctive relief in their Notice of Appeal and Motion for Special and Preliminary Injunction, no amendment is necessary.

² As part of the Return of Record, the City incorporates the exhibits attached to the Residents’ “Notice of Appeal.”

³ Lancaster County Local Rule 27D is entitled “Land Use Appeals” and subsection “D,” entitled “Disposition,” permits a party to ask for a conference with the court if the party believes the appeal is not ready for disposition. L.C.R.C.P. 27D.

Sunshine Act was not violated and reiterated that the remedies sought by Residents are not authorized by the Sunshine Act. The City also filed an Answer to the Motion denying that the Sunshine Act was violated and that “[t]he issue before this Court is the amount of attorney’s fees to be awarded based upon Plaintiff’s conduct.”

After several continuances, the Rule 27D conference was held on May 2, 2024, at which the City was represented by legal counsel and Residents appeared *pro se*. Following the conference, the court issued an order continuing the preliminary injunction hearing until the issue regarding the Sunshine Act is resolved and setting a briefing schedule. Subsequent to that order, the City filed its claim against the Residents for attorney’s fees. On June 17, 2024, Residents, now represented by counsel, filed their brief. On July 12, 2024, the City filed its brief, and on July 25, 2024, Residents filed their reply brief.⁴

The relevant facts show that the City, at its regularly scheduled city council meeting on February 27, 2024,⁵ adopted the amended Tree Ordinance, numbered as Administration Bill No. 02-2024, by a roll-call vote of 6-1. (See Notice of Appeal Exhibit F). Prior to its adoption, the bill was given its first public reading at the February 13, 2024, city council meeting. (See Notice of Appeal Exhibit C).

The record shows that the proposed amendment to the Tree Ordinance was first considered at a “Committees of Council Meeting” held on February 5, 2024. (See

⁴ On page 3 of its brief, the City mistakenly contends that the court already denied the Residents’ request for a hearing on the preliminary injunction, which the court did not do.

⁵ On December 22, 2023, the list of 2024 council meeting dates was published, which included February 13 and 27, 2024. (See Return of Record Item 3).

Return of Record Items 1 and 2). The description of the agenda for the public works committee for the online notice of the meeting states, “**Public works committee: (a) administration bill amending the City Tree Ordinance.**” The description of the agenda for the public works committee in Lancaster Newspaper online, (“LNP”) states “**amending the city tree ordinance.**” (See Notice of Appeal Exhibit B).

The minutes from that meeting show that the Director of the Public Works Committee, Stephen Campbell, addressed the need to amend the City’s Tree Ordinance. He explained that the City’s current ordinance allows for unlimited trespass rights for trees onto the property of another without the other property owner being able to exercise their rights to fully utilize their own property and alleviate the trespass, which is permitted under Pennsylvania law. In response to a question from a city council member, Director Campbell acknowledged that a tree on the College Avenue project is what brought the issue with the Tree Ordinance to the attention of City staff. The minutes also reflect that no permits had been applied for by the College Avenue project developer at that time. (See Return of Record Item 2).⁶

Director Campbell further explained that the current ordinance did not give a landowner the ability to cut back encroaching limbs and branches from a neighbor’s

⁶ The notarized affidavits of Resident Bathe and Resident Vonnieda-LaGrassa, attached to their brief, show that the tree on the “College Avenue Project” turned out to be Bathe’s Dutch Elm tree. In the affidavit, Bathe states that on April 8, 2024, without giving any advance notice to her, agents for the developer for the College Avenue construction project were behind her house trimming trees. Bathe had been called by Resident LaGrassa, who is her neighbor and who gave Bathe the number for the City Arborist, who was also on site. Bathe called the arborist who told her the tree would be trimmed immediately and it would kill the tree. Having consulted with other arborists, Bathe knew the tree would die after it was trimmed back and decided it would be best to cut down the tree since it would be killed anyway. The court notes with some concern that the City asked the court to continue the hearing on the Residents’ motion for injunctive relief when it requested the Rule 27D conference mere days before the developer’s workers’ unannounced entry onto Bathe’s premises and that the City’s legal counsel refused the Residents request to stop the tree work until the court held a hearing on the injunction.

tree, which he stated is in contradiction to existing Pennsylvania law. Director Campbell stated that “[t]he current ordinance prevents the issuance of a permit if City staff believes the trimming of the tree would likely result in the death of the tree.” (See Return of Record Item 2).

The first reading of the proposed amendment to the Tree Ordinance occurred at the city council meeting held on February 13, 2024. (See Notice of Appeal Exhibit C). The agenda for the February 13, 2024, meeting lists the ordinances being considered for a first reading which included “Administration Bill No. 02-2024, amending the City Tree Ordinance.”

On February 19, 2024, the City advertised the proposed amendment to the Tree Ordinance for adoption on February 27, 2024. (Return of Record Item 7). The proof of publication shows that the Publication Notice listing the ordinances for which City Council will vote whether to adopt included the following:

2. An ordinance of the Lancaster City Council amending Chapter 273 of the Code of the City of Lancaster – Trees to add a definition for encroaching tree and provide for permits under Chapter 273 to be issued by the Department of Public Works.

On February 22, 2024, Director Campbell issued an internal memo to City Council members and Tree Commission members. The City’s solicitor was copied on the memo. Director Campbell’s memo contends, *inter alia*, that the current Tree Ordinance does not permit the pruning of a trespassing tree if doing so will kill the tree according to the City’s Arborist, thereby violating Pennsylvania common law and opening the City up to a lawsuit which will completely invalidate the entire Tree Ordinance. (See Notice of Appeal Exhibit E).

On February 27, 2024, City Council had the second reading for the bill to amend the City Tree Ordinance. The agenda for the meeting lists “Administration Bill No. 02-2024, amending the City Tree Ordinance.” (See Return of Record Item 8). The minutes from both the February 13 and February 27, 2024, City Council meetings show that there was public comment, including comments from Resident Vonneida-LaGrassa. The minutes reflect that the main concerns expressed by various citizens who were in attendance were that the amendment will allow destruction of the protected historic trees. (See Notice of Appeal Exhibits C and F).

The preamble and the amendments to the existing Tree Ordinance are two-and-a-half pages in length. The preamble to the amended Tree Ordinance states:

WHEREAS, the present ordinance respecting trees contains obsolete terminology regarding which City offices administer the ordinance; and

WHEREAS, the present ordinance does not address the procedures by which property owners can trim trees that encroach on their property; and

WHEREAS, it is desirable that the trimming of encroaching trees be done pursuant to duly issued permits to protect public safety;

The amendments are summarized as follows:

Under §273-2 Word Usage, definitions is amended to include:

“Encroaching Tree”

A Protected Tree on Private Property whose branches, roots or canopy extend over the property line so as to encroach on adjacent properties in or under separate ownership.

Under §273-3 Administration and Enforcement (A) Permit Required, is amended to read:

“Permit required. No shade tree shall be planted, transplanted, cut, pruned, treated or removed ... without a written permit from the Department of Public Works. All persons shall first obtain a written permit from the Department in accordance with §273-11 of this chapter before doing or having done any work for the care, pruning of any tree

Under § 273-3 Administration and Enforcement (B) Enforcement, is amended to read:

B. Enforcement. The provisions of this chapter shall be administered and enforced by the City Arborist or other employees of the City as designated by the Director of the Department. It shall be the duty of the Arborist or designated officers or employees to cause any premises to be inspected or examined, to order, in writing, the remedying of any conditions found to exist in violation of any provisions of this chapter, and to issue permits in accordance with this chapter and to review permit applications as required by the Director of the Department and in accordance with the City’s Tree Manual.”

Under § 273.5, Notice to Prune or to remove tree, is amended to replace all references to the “Bureau” to the word “Department.”

Under §273.11, Application for permit (B) Application, is amended to read:

B. Application. The application for any permit shall be made in writing to the Department on the form provided. Such permit application shall describe the work to be done, specify species or variety, size, nursery grade and location and briefly specify the method of planting, method of support and pruning of all trees or shrubs concerned, contain a definite expiration date, and include a sketch plan showing the location of the tree, the portions of the tree to [sic] impacted by the work and the property lines of the site.

- (1) All applications for a tree work permit shall be reviewed by the City Arborist and issued by the Department.**
- (2) The application for a shade tree permit may be waived by the Director when the work is done at the direction of, and carried out by a City agency.**

Under §273-11 Application for permit, and under §273-17 Protected Trees on private property, both are amended to replace all references to the “Bureau” with the word “Department.”⁷

⁷ While it may seem obvious that “Department” refers to the Department of Public Works, it is unclear what “Bureau” is in reference to as the original Tree Ordinance defined “Bureau” as the Bureau of

The last substantive amendment is to add a section “H” to Section 273-17 entitled “Protected Trees on private property.” The addition states:

H. Nothing herein shall prevent the owners of properties encroached upon by an Encroaching Tree from removing, pruning, trimming parts of such encroaching trees to the extent necessary to eliminate the encroaching woody materials from their property providing, however, such individuals desiring to remove portions of the same received a permit from the Department in accordance with the provisions herein. Any permits issues [sic] for the pruning, trimming and removal of the Encroaching Tree woody materials shall only authorize such pruning, trimming and removal on the property encroached upon and shall not be deemed to authorize any activity in or upon the adjacent property.

(See Notice of Appeal Exhibit A).

Discussion

Residents contend that the City violated the Sunshine Act, 65 Pa. C.S. §§ 701-716, when it enacted the amended Tree Ordinance because the City did not follow the requirements for publication found in the Third Class City Code. 11 Pa.C.S. §§ 10108.1 to 10118.17. Residents’ brief argues that the Sunshine Act and the Third Class City Code, pertaining to publication requirements for ordinances, should be read *in pari materia* and that a violation of the Third Class City Code is therefore a violation of the Sunshine Act. Residents further contend that the Sunshine Act was violated as evidenced by Director Campbell’s internal memo demonstrating that city council had already decided upon the amendment in advance of the February 27, 2024, city council meeting. Residents seek attorney’s fees which are mandatory under the Sunshine Act

Operations of the City of Lancaster but then refers to the “Bureau of Parks and Public Property” in the section regarding administration and enforcement. See Lancaster City Code, §273-2 and §273-3.

when the local government agency acts willfully or with wanton disregard in violating a provision of the Sunshine Act.

The City does not dispute the facts but contends that it has complied with the requisite statutes. The City argues that the Residents' appeal is frivolous and brought without justification thereby justifying an award of attorney's fees in its favor.

A. Statutory Procedure.

The issue raised by Residents implicates the procedure by which the City amended the Tree Ordinance. The relevant statute is set forth in Section 5571.1 of the Judicial Code which provides, in relevant part:

Appeals from ordinances, resolutions, maps, etc.

(a) Applicability; court of common pleas.—

(1) This section shall apply to any appeal raising questions relating to an alleged defect in the process of or procedure for enactment or adoption of any ordinance, resolution, map or similar action of a political subdivision.

(2) An appeal pursuant to this section shall be to the court of common pleas.

(b) Appeals of defects in statutory procedure.—

(1) Any appeal raising questions relating to an alleged defect in statutory procedure shall be brought within 30 days of the intended effective date of the ordinance.

....

(d) Presumptions.--Notwithstanding any other provision of law, appeals pursuant to this section shall be subject to and in accordance with the following:

(1) An ordinance shall be presumed to be valid and to have been enacted or adopted in strict compliance with statutory procedure.

....

(3) An ordinance shall not be found void from inception unless the party alleging the defect in statutory procedure meets the burden of proving the elements set forth in subsection (e).

(e) Burden of proof.--Notwithstanding any other provision of law, an ordinance shall not be found void from inception except as follows:

(1) In the case of an appeal brought within the 30-day time limitation of subsection (b), the party alleging the defect must meet the burden of proving that there was a failure to strictly comply with statutory procedure.

....

(f) Void ordinances.--A determination that an ordinance is void from inception shall not affect any previously acquired rights of property owners who have exercised good faith reliance on the validity of the ordinance prior to the determination.

(g) Definitions.--As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

....

“Ordinance.” An ordinance, resolution, map or similar action of a political subdivision.

“Statutory procedure.” The preenactment and postenactment procedures prescribed by statute or ordinance in adopting an ordinance.

The procedure to be followed by the City for enacting ordinances is found in Section 11018.9 of the Third Class City Code provides:

§11018.9 Publication of proposed ordinances

(a) Publication required.—A proposed ordinance, except as otherwise provided in this chapter, shall be published in a newspaper of general circulation not more than 60 days nor fewer than seven days prior to enactment.

(b) Contents.—

(1) Except as otherwise provided by law, the publication of a proposed ordinance shall include either:

- (i) The full text; or
- (ii) The title and a summary of the ordinance setting forth the provisions in reasonable detail and a reference to a place

within the city where copies of the proposed ordinance may be examined.

11 Pa. C.S.A. §11018.9.

The parties dispute whether the published notice sets forth the title and a summary of the ordinance's provisions. The City acknowledges in page 10 of its brief that it did not publish the full text of the amended Tree Ordinance due to the expense, but that the published notice provided a title, *albeit* not a catchy one, and an adequate summary of the proposed ordinance. The court agrees that the City published a title; however, the issue remains whether the City published a summary of the amended ordinance setting forth its provisions in "reasonable detail."

The City relies on Streck v. Lower Macungie Twp. Bd. Of Commissioners, 58 A.3d 865 (Pa. Commw. 2011), to support its argument that what the City published was sufficient to satisfy Section 11018.9. As a part of the various holdings in that case, the Commonwealth Court held that a summary of a proposed new zoning ordinance, contained in pre-enactment notices, provided reasonable detail as required by the municipal planning code. In that case, neighbors brought an action to challenge their township's new zoning ordinance on the basis that the newspaper notices published in advance of the public meeting were deficient because the summary of the ordinance contents did not provide reasonable detail. While that case involved Section 10610(a) of the Municipal Planning Code ("MPC"), 53 P.S. §10610(a), as opposed to Section 11018.9 of Third Class Cities Code, both statutes require publication of either the full text or the title and a summary.⁸

⁸ While Section 10610(a) of the MPC requires a "brief summary" and the Third Class City Code requires a "summary," the difference is negligible.

While the trial court agreed with the neighbors that the summary that was published lacked reasonable detail, the Commonwealth Court reversed. The Court noted that the case was one of first impression in that the trial court invoked the strict compliance standard when determining whether an ordinance summary has “reasonable detail” and further stated, “as far as can be determined, there has never been a case where an ordinance has been invalidated on procedural grounds because the summary of the ordinance contents was not ‘reasonably detailed.’” Id. at 878. The Court found that the trial court’s objections were semantic and bordered on the “picayune.” Id. The Court went on to opine that the summary gave the reader notice that there would be a major rezoning of land located within the township, and it advised any citizen interested in more information where to obtain a free copy of the new zoning map and the complete text of the ordinance. Id.

The City argues that this case is like Streck because the notice advised the reader that city council would consider adopting an ordinance, that the ordinance would amend Chapter 273 of the City Code, that a definition of “encroaching trees” would be added and that the ordinance would provide for permits to be issued by the Department of Public Works. The City further contends that “the practice of phrasing the title in a manner that includes the summary is an extremely common if not universal practice in Lancaster County.” (See City’s brief p. 11).⁹

⁹ The City asks the court to take judicial notice pursuant to Pennsylvania Rule of Evidence 201(b) that nearly all municipal ordinances are styled with a block title that includes a summary of the provisions and the court can confirm this by consulting the classified ad section of the daily newspaper and looking at copies of proposed ordinances in the County Law Library. While the court may accept that published ordinances are published in “block title,” the court cannot agree to universally accept that the title alone contains “reasonable detail.”

The City's reliance on Streck is ultimately unavailing because that case is distinguishable. There, a lengthy summary of the ordinance was published as opposed to just the title of the ordinance which is what was published here. For purposes of contrast, the summary contained in the notice provided:

Notice is hereby given that the Lower Macungie Township Board of Commissioners will consider for possible adoption an Ordinance amending the Township Zoning Ordinance entitled Zoning Ordinance/Map Amendment. The proposed amendment, of which this Notice is a summary proposes the following: establish four new zoning districts: Highway Industrial-Spring Creek (HI-SC), Commercial-Spring Creek (C-SC), Agricultural Protection Overlay (APO), and Urban Residential Overlay (UO); provide within these new zoning districts uses permitted by right, uses permitted by condition, uses permitted by special exception, and accessory uses; provide for regulations within these new zoning districts covering lot area, lot width, building coverage and height, minimum yard requirements, and off-street parking, along with other additional standards; amend the official Zoning Map, including the rezoning of lands to these new zoning districts and/or the Urban Residential District; add a definition of a 'fast food restaurant'; amend the definition of 'warehouse and whole trade' to become the new definition of 'warehouse, wholesale, storage or distribution use'; revise requirements regarding signs; provide for conditions for warehouse, wholesale, storage or distribution use, amend the requirement that applicants provide security services to shopping centers; repeal requirements regarding traffic impact studies;

Streck, 58 A.3d at 877 (italics in the original).

Contrast that notice in Streck to the City's notice which is set forth again here as follows:

2. An ordinance of the Lancaster City Council amending Chapter 273 of the Code of the City of Lancaster – Trees to add a definition for encroaching tree and provide for permits under Chapter 273 to be issued by the Department of Public Works.¹⁰

(See Return of Record Item 7).

¹⁰ Both the City's notice and notice in Streck also included the mandatory language stating where the text of the ordinance could be found and that if adopted the ordinance shall provide for repeal of inconsistent ordinances and take effect as provided by Pennsylvania law. Hence, that portion of the notice is not at issue here.

The deficiency in the published summary's detail is best illustrated through Director's Campbell's memo. Director Campbell justifies the need for the amendment based upon Pennsylvania common law, citing two Pennsylvania decisions for the proposition that an affected landowner is able to trim or cut a neighbor's tree that trespasses or overhangs the neighbor's property, and he claims: **"The City ordinance cannot take away common law rights—only state legislation can do that."** (See Notice of Appeal Exhibit E, p.2). The preamble to the amendment does mention that the present ordinance does not address the procedures by which property owners can trim trees that encroach on their property.

The next portion of the memo reveals why the Department of Public Works will be making permit decisions instead of the City Arborist, who made permit decisions under the original ordinance. The relevant memo portions state:

The current ordinance *requires* a permit for pruning any protected tree, yet in effect *prohibits our issuing one* if pruning to comply with common law will harm or kill the tree. The current ordinance requires that all permits be reviewed and approved by the City Arborist. This creates an obstacle in the fact that a licensed arborist may NOT approve pruning that they know will harm the tree. It is a "Catch-22" where a permit is required to prune a trespassing tree, but it cannot be issued if it will kill the tree.

....

The proposed modification of the tree ordinance intends to:

- Add a definition of "Encroaching Tree" consistent with common law language
- Clarify and keep permitting process in place for what is called a "Protected Tree", while eliminating the obstacle to the issuance of that permit in the instance where a City staff member (arborist or urban forester) is of the professional opinion that the trimming might or likely will result in the killing of the tree. ***This is accomplished by having the permit issued by the Department of Public Works....*** (emphasis added).

(See Notice of Appeal Exhibit E, pp.2-4).

After a careful review of both the amended Tree Ordinance and original Tree Ordinance, no language can be found to substantiate Director Campbell's concern that a permit cannot be issued by the City Arborist for an "Encroaching Tree." Specifically, §273.11, Paragraph F. governing denial of permits contains no provision stating that a permit will be denied if pruning a tree would cause its condition to be impaired.

Instead, resort must be made to the City's "Tree Manual" which contains the City's regulations and standards for "arborculture" work. (See Lancaster Code, Chapter 273, §273-2, Definitions). Both the original ordinance and amended ordinance require that "[a]ll tree work shall be done following the City's Tree Manual."¹¹ (See Lancaster Code, Chapter 273, §273-3 Administration and Enforcement, Paragraphs A. Permit Required, and B. Enforcement). The Tree Manual goes on to state that the Tree Manual "should be considered best management practice for tree work by owners of private property ... as well as others in the performance of tree work on private property." (See Lancaster Code, supra, Paragraph B.).

The "Catch 22", described by Director Campbell can only be found by resort to the Tree Manual, Section 5.00. Pruning Specification for Trees, which states:

B. Specific requirements pertaining to the pruning of trees.

1. No tree shall be pruned in such manner that its present or future condition is impaired.

¹¹ The Tree Manual can be found at https://www.cityoflancasterpa.gov/wp-content/uploads/2015/01/Tree-Manual-Standards-for-Arborculture-Work_0.pdf. Under General Requirements, the Tree Manual states that it is supplemental to Chapter 273. It further states that the regulations and standards have been compiled from professional sources including the Penn State University Cooperative Extension publications on tree pruning.

The amended Tree Ordinance resolves the “Catch 22” by taking away the City Arborist’s authority to approve applications for tree work and replacing the Arborist with the Department of Public Works. This is found by comparing the original and amended §273.11. The original Tree Ordinance provides:

(1) All applications for a tree work permit shall be reviewed and *approved by the City Arborist.*

The amended ordinance for this subsection now provides:

(1) All applications for a tree work permit shall be *reviewed by the City Arborist and issued by the Department* [of Public Works].

(emphasis added).

Without Director Campbell’s internal memo, a reader would not be able to understand the changes that are being made to the original Tree Ordinance, much less comprehend those changes by reading the summary that was published. It is evident that the amendment allows the Department of Public Works to now issue permits for tree trimming on “Encroaching Trees” when the City Arborist will not do so because the City Tree Manual prohibits trimming a tree if it will damage the tree. There is nothing in the amendment that advises the reader that the Department of Public Works is not going to follow the City Tree Manual when it comes to “Encroaching Trees.” It is further evident that the Department of Public Works, in an unseemly rush, issued a permit to the developer for the College Avenue project to prune Resident Bathe’s tree knowing that the work would kill the tree and prior to any hearing while litigation was pending.¹²

¹² While the court recognizes the validity of the amended ordinance is not before it, the court is perplexed how the City believes that its amendment enables the Department of Public Works to issue permits knowing the work can damage or kill a tree when the amended ordinance still requires compliance with the City Tree Manual. This further begs the question why a more transparent approach was not pursued since that would better accomplish the goal of bringing the City Tree Ordinance in line with common law regarding trespassing trees if indeed that was the intended purpose.

To sum up, the City contends that the summary, or the title in this instance, provides enough information such that a resident would know that city council was considering adopting an ordinance on February 27; that the ordinance would amend the City Code relating to trees by adding a definition of “encroaching trees”; and the ordinance would provide that permits would be issued by the Department of Public Works.

The problem for the City, however, is that the summary does not provide reasonable detail regarding what changes are being made to the original ordinance through the amended ordinance. Specifically, stating that the Department of Public Works will issue permits does not inform the reader that this authority formerly belonged to the City Arborist. Further, stating that a definition for encroaching tree will be added does not tell the reader that the Department of Public Works will not follow the City Tree Manual’s prohibition against pruning trees if it will damage the tree, which is precisely what the Department of Public Works did when it issued the permit to trim Resident Bathe’s tree, or in Director Campbell’s words, resolved the “Catch-22.”

Because the amendment itself does not spell out what the Department of Public Works intends to do regarding the regulations in the Tree Manual, which is to ignore at least one of them when there is a conflict between the regulation and Pennsylvania common law, the summary can hardly be said to provide “reasonable detail.”¹³

¹³ It may be that the City intended to ensure that its Tree Ordinance was not in conflict with common law; however, removing the City Arborist and replacing it with the Department of Public Works to administer and enforce the City Tree Ordinance so that the Department of Public Works can ignore certain provisions of the City Tree Manual, cannot be said to reflect the type of transparency that makes constituents feel more trusting and positive about their local leadership and their intentions to govern with the best interest of the community members in mind.

Accordingly, the court holds that the City did not comply with Section 11018.9(b)(ii) of the Judicial Code. Because Residents filed their appeal within 30 days of the City's enactment of the amended Tree Ordinance, they were only required to "meet the burden of proving that there was a failure to strictly comply with statutory procedure," which they have done. Therefore, the amended City Tree Ordinance is void from inception. 42 Pa. C.S. §5571.1(d)(3) and (e)(1).

B. Sunshine Act Violations.

Having found that the City failed to strictly comply with statutory procedure regarding the "reasonable detail" needed to be included in the summary contained in the published notice, the court need not address Residents' argument that the amended Tree Ordinance should be found *void ab initio* on the basis that the Sunshine Act and the Third Class City Code are to be read *in pari materia*.

The court will next address the Residents' claim that the memo written by Director Campbell violated the Sunshine Act by engaging in non-public deliberations meant to sway city council by falsely misrepresenting the law prior to the February 27, 2024 city council meeting.

The principal stated purpose of the Sunshine Act is to improve the quality of democratic institutions by increasing the knowledge of the electorate as to the critical issues faced by their elected representatives and appointed officials. 65 Pa.C.S.A. § 702. "Public access to government in action 'is vital to the enhancement and proper functioning of the democratic process [just as] secrecy in public affairs undermines the faith of the public in government and the public's effectiveness in fulfilling its role in a

democratic society.” Kennedy v. Supper Milford Tp. Zoning Hearing Board, 575 Pa. 105, 121, 834 A.2d 1104, 1114, n.22 (2003).

Residents argue that it can be inferred from the memo that a majority of city council members had already decided to vote for the amendment because of the sentence reading in part: “The City of Lancaster **has elected** to modify and strengthen the City’s tree ordinance...” (See Notice of Appeal Exhibit E, p. 1).

With regard to attorney’s fees, the relevant portion of the Sunshine Act states:

If the court determines that an agency willfully or with wanton disregard violated a provision of this chapter, in whole or in part, the court shall award the prevailing party reasonable attorney fees and costs of litigation or an appropriate portion of the fees and costs.

65 Pa. C.S.A. §714.1.

The court is also mindful that there is a presumption of regularity and legality that exists with proceedings of local agencies. “Sunshine Act cases tend to be highly fact-sensitive, and the plaintiff bears the burden to proving that deliberations took place at a private meeting.” Kennedy v. Upper Milford Twp. Zoning Hearing Bd., 575 Pa. 105, 135, 834 A.2d 1104, 1123 (2003).

While the record suggests that there has not been full transparency as to the drafting of the amendment and the summary, the court cannot conclude that Director Campbell’s memo proves that a private meeting took place. Instead, the record shows that, on February 5, 2024, Director Campbell participated in the Committees of Council meeting which included the Department of Public Works. As can be seen from the minutes, the Public Works Committee approved a motion to send the amended Tree Ordinance for a first reading at the February 13, 2024. Director Campbell spoke at that meeting and the majority of his comments are contained in his memo, including the

reason for amending the ordinance being due to the conflict between the ordinance and Pennsylvania common law regarding self-help and trespassing trees.

Of course, missing from his public comments at both the Public Works Committee meeting and city council meeting on February 13, 2024, is the portion of the memo regarding the “Catch-22.” The “Catch-22” was remedied by amending the Tree Ordinance to give the authority for issuance of permits to the Department of Public Works because the City Arborist would follow the City Tree Manual’s prohibition against pruning trees if it would damage the tree. Nonetheless, the court cannot connect the comment in the memo as proof that a secret meeting took place. The court finds that the Residents do not meet their burden of proof for an award of attorney’s fees under the Sunshine Act.

Accordingly, for the foregoing reasons, the Court hereby enters the following order:

IN THE COURT OF COMMON PLEAS OF LANCASTER COUNTY, PENNSYLVANIA
CIVIL ACTION

MICHELLE VONNIEDA-LAGRASSA and :
BETH BATHE, :
Plaintiffs, :
 :
v. : NO. CI-24-01875
 :
CITY COUNCIL OF THE CITY OF :
LANCASTER, located in LANCASTER :
COUNTY, PENNSYLVANIA, :
Defendant. :

ORDER

AND NOW, this 29th day of August 2024, upon consideration of the filings and
briefs of the parties and the Return of Record, it is hereby ORDERED as follows:

1. The Lancaster City amended City Tree Ordinance, Administrative Ordinance
No. 02-2024, amending Chapter 273 of the Code of the City of Lancaster –
Trees, adopted by Lancaster City Council on February 27, 2024, is hereby
declared to be void from inception for the City’s failure to strictly comply with
statutory procedure; and
2. Plaintiffs’ request for attorneys’ fees for violation of the Sunshine Act is
DENIED.
3. Defendant’s request for attorneys’ fees is DENIED.

BY THE COURT:



LEONARD G. BROWN, III, J.

ATTEST:

Copies to:

Eric L. Winkle, Esquire

Neil L. Albert, Esquire