

1a

SUPREME COURT OF NEW JERSEY  
M-665 September Term 2018  
081256

State of New Jersey,

Plaintiff,

v.

ORDER

Rattan Nath,

Defendant-Movant.

It is ORDERED that the motion for reconsideration of the Court's order denying the petition for certification is denied.

WITNESS, the Honorable Stuart Rabner, Chief Justice, at Trenton, this 5th day of March, 2019.

CLERK OF THE SUPREME COURT

SUPREME COURT OF NEW JERSEY  
C-367 September Term 2018  
081256

State of New Jersey,

Plaintiff-  
Respondent,

v.

ORDER

Rattan Nath,

Defendant-  
Petitioner.

A petition for certification of the judgment in A-001178-16 having been submitted to this Court, and the Court having considered the same;

It is ORDERED that the petition for certification is denied.

WITNESS, the Honorable Stuart Rabner, Chief Justice, at Trenton, this 13th day of November, 2018.

CLERK OF THE SUPREME COURT

**NOT FOR PUBLICATION WITHOUT THE  
APPROVAL OF THE APPELLATE DIVISION**

This opinion shall not “constitute precedent or be binding upon any court.” Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW  
JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-1178-16T1

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

RATTAN NATH,

Defendant-Appellant.

---

Submitted January 30, 2018 – Decided April 26,  
2018

Before Judges Leone and Mawla.

On appeal from Superior Court of New Jersey,  
Law Division, Essex County, Municipal Appeal  
No. 2016-029.

Rattan Nath, appellant pro se.  
Trenk, DiPasquale, Della Fera & Sodono, PC,

attorneys for respondent (Richard D. Trenk, of counsel; Robert S. Roglieri, on the brief).

PER CURIAM

Defendant Rattan Nath appeals an October 5, 2016 Law Division order finding him guilty in a trial de novo. Defendant was found guilty of violating provisions of the Municipal Code of West Orange, N.J. (Code) pertaining to the maintenance of his property. The order imposed two \$1,250 fines for the violations.

I.

We first set forth the ordinances defendant was found to have violated. Code § 14-8.1, entitled “Maintenance of Exterior of Premises,” states:

- a. Hazards and Unsanitary Conditions. The exterior of the premises and all structures thereon shall be kept free of all nuisances, and any hazards to the safety of occupants, pedestrians and other persons utilizing the premises, and free of unsanitary conditions; and any of the foregoing shall be promptly removed and abated by the owner or operator. It shall be the duty of the owner or operator to keep the premises free of hazards which include but are not limited to the following:
1. Refuse, garbage and rubbish as defined in subsection 14-2.1 contained herein.<sup>1</sup>

---

<sup>1</sup> Code § 14-2.1 defines “Refuse” as “all putrescible and nonputrescible solid wastes,” “Garbage” as “putrescible animal and

2. Natural Growth. Dead and dying trees and limbs or other natural growth which, by reason of rotting or deteriorating conditions or storm damage, constitute a hazard to persons in the vicinity thereof. Trees shall be kept pruned and trimmed to prevent such conditions. All weeds shall be removed from the vicinity of any public sidewalk or roadway.

[Ibid. (emphasis added).]

Code § 14-8.2, entitled “Appearance of Exterior of Premises and Structures,” states:

a. Residential and Nonresidential. The exterior of the premises, the exterior of dwelling structures and the condition of accessory structures shall be maintained so that the appearance of the premises and all buildings thereon shall reflect a level of maintenance in keeping with the residential standards of the neighborhood or such higher standards as may be adopted as part of a plan of urban renewal by the Township, and it shall be the duty of the owner or operator to maintain the premises in the manner set forth herein, including, but not limited to the following:

....

---

vegetable waste,” and “Rubbish” as “nonputrescible solid wastes consisting of both combustible and noncombustible wastes, such as paper, wrappings, cigarettes, cardboard, tin cans, yard clippings, leaves, wood, glass, bedding, crockery and similar materials.” Ibid. (emphasis added).

2. Landscaping. Premises shall be kept landscaped and lawns, hedges and bushes shall be kept trimmed where exposed to public view, and shall be maintained so as not to obstruct public access to sidewalks and roadways. All trees shall be kept trimmed so that they do not encroach onto the sidewalk or roadway from the ground to a height of seven (7) feet. Hedges and bushes shall be maintained so that they do not encroach onto the sidewalk. Lawns shall be trimmed and maintained and shall not exceed a height of eight (8) inches from the ground. All lawns, trees, hedges and bushes in violation of any and all provisions of this Ordinance shall be removed, trimmed, or cut to conform to the requirements set forth herein.

[Ibid. (emphasis added).]<sup>2</sup>

On November 20, 2015, West Orange Township code enforcement officer William Ordonez, visited defendant's property and observed "the hedges were overgrown, [and] the bushes, ... lawn, [and] grass [were] high." Ordonez issued a Notice of Violation, which stated defendant should "landscape [the] entire property by November 30, 2015," and cited Code §14-8.2(a)(2)'s requirements that trees must not encroach onto the sidewalk below seven feet, and that lawns must not be more than eight-inches tall.

---

<sup>2</sup> Township Code Sections 14-8.1 and 14-8.2 (Apr. 11, 2018), <http://www.westorange.org/AgendaCenter/ViewFile/Item/70?fileID=282>.

Starting December 1, 2015, Ordonez repeatedly returned to the property and took photographs of the conditions. On January 8, 2016, defendant received a citation for an ongoing violation for “failure to landscape property.” Code § 14-8.2(a)(2). Defendant also received a citation for an ongoing violation for “failure to maintain exterior of property” regarding “refuse, garbage, rubbish, [and] material growth.” Code § 14-8.1(a)(1) and § 14- 8.1(a)(2).

At the June 22, 2016 trial in the Municipal Court, Ordonez testified that between December 1 and January 8, he observed the following, which was also depicted in his photographs. The grass and weeds were taller than the eight-inch limit, reaching as high as eighteen inches. There were piles of leaves extending from about eleven feet inside the property to beyond the curb, obstructing the sidewalk. Defendant had wire-mesh fencing strung between two trees that created “a dam” trapping mounds of leaves. Near the neighbor’s driveway, there was a very large pile of wood, including cut limbs, branches, and stumps, at least two feet high. There was a twenty-inch-high mound of wood chips near the street. There were tree branches below the seven-foot limit on both the north and south sides of the property, hanging over and obstructing the ability to walk on the sidewalks. There was a tree that was uprooted and leaning less than forty-five degrees above the ground. There were loose cinderblocks piled against a retaining wall. Lying around the property were a crate, a brick paver, several plastic containers, and plastic wrapping.

Ordonez testified that he continued to photograph the property from January 8 until April 11, 2016. The conditions persisted: the tall grass and weeds; the wire mesh trapping the leaves; the piles of leaves,

branches, wood chips, and tree stumps; the leaning tree; the brick paver, the plastic wrapping, and other rubbish. Ordonez visited the property and found it was still in violation of the ordinances on the date of trial, six months after defendant received the citations. The Municipal Court also heard testimony from defendant, his children, and his neighbor. The court found that defendant violated both ordinances. Prior to the sentencing hearing, defendant appealed to the Law Division.

On September 30, 2016, the Law Division heard argument and rendered an oral opinion affirming the Municipal Court's ruling as to both ordinances. The Law Division found "ample evidence that the defendant, indeed, violated the Township ordinances." The court found "defendant has not denied that the property was in the condition as testified to by the inspector and depicted by the photographs." The court found defendant did some remedial work but failed to abate the violations, and there "really seems to be a defiance by the defendant on abatement." The court then required defendant to pay a \$1,250 fine for each violation, plus \$30 in court costs.

On appeal, defendant presents the following arguments:

POINT I. THE LAW DIVISION  
COMMITTED HARMFUL ERROR BY  
IGNORING THE DENIAL OF DUE  
PROCESS.

1. Failure to Prove Each Element.
2. Shielding Hypocrisy.

3. Undermining Constitutional Protections.
4. Allowing Prosecutor to Testify.
5. Defendant Testimony Disrupted.
6. Irrebuttable Presumption of no Racism.
7. Speculative Factual Findings.
8. Ignoring Legislative and Federal Policy.

POINT II. THE LAW DIVISION COMMITTED HARMFUL ERROR BY IGNORING THAT THE UNDERLYING ORDINANCES ARE VOID FOR VAGUENESS.

POINT III. THE LAW DIVISION COMMITTED HARMFUL ERROR BY NOT REJECTING SYSTEMATIC MALFEASANCE BY STATE ACTORS AS AN IMPROPER PURPOSE FOR STATE'S RACIST ENFORCEMENT OF THESE ORDINANCES.

We have reviewed defendant's arguments in POINT I's subpoints 2, 3, 4, 5, 7, and 8, and find they lack sufficient merit to warrant discussion. R. 2:11-3(e)(2). We address his other points.

## II.

We first address whether the State proved each element of the violations. We must hew to our

“deferential standard” of review. State v. Stas, 212 N.J. 37, 48 (2012). The findings of trial courts in non-jury cases “must be upheld, provided they “could reasonably have been reached on sufficient credible evidence present in the record.” Deference is warranted because the “findings of the trial judge ... are substantially influenced by his opportunity to hear and see the witnesses and to have the ‘feel’ of the case, which a reviewing court cannot enjoy.”” State v. Reece, 222 N.J. 154, 166 (2015) (citations omitted).

The need for “deference is more compelling where” the Municipal Court and Law Division “have entered concurrent judgments on purely factual issues. Under the two-court rule, appellate courts ordinarily should not undertake to alter concurrent findings of facts and credibility determinations made by two lower courts absent a very obvious and exceptional showing of error.” Ibid. (citation omitted). “Therefore, appellate review of the factual and credibility findings of the municipal court and the Law Division ‘is exceedingly narrow.’” Ibid. (citation omitted).

Here, both the Municipal Court and the Law Division credited Ordonez’s testimony, and the Law Division “adopt[ed]” the Municipal Court’s findings of fact. The State supported Ordonez’s testimony with seventy-nine photographs depicting the violations. The facts constituting the violations were essentially uncontested by defendant and his witnesses. Accordingly, we uphold the findings of fact.

We also agree with the Law Division that the evidence showed defendant violated the ordinances. The Law Division’s greatest concern was “the tree leaning in a 45 degree angle which was pictured to be in the same position from January 7th, 2016 to April 11, 2016.” The court found the roots were out of the

ground, the tree was not stable, and it “definitely constitute[d] a hazardous condition” for both the occupants and pedestrians in violation of Code § 14-8.1(a)(2). We agree.

The court properly found the weeds higher than eight inches, and the tree branches hanging over the sidewalk at a height less than seven feet, were both violations of Code § 14-8.2(a)(2). We need not address the court’s finding that the large pile of leaves behind the wire mesh also violated that subsection.

Finally, the court found the piles of leaves on the sidewalks, the plastic wrapping, plastic containers, and crates on the lawn, and the cinderblocks were all refuse, garbage, or rubbish in violation of Code § 14-8.1(a)(1). “Refuse, garbage and rubbish” is defined in Code § 14-2.1 to include “wrappings, ... yard clippings, leaves, wood, ... and similar materials.” The piles of leaves on the sidewalk were sufficient to show a violation, as they were “rubbish,” and they also posed “hazards to the safety of ... pedestrians.” Code § 14-8.1(a) & (a)(1). We need not address whether the cinderblocks, paver, crate, or plastic containers were “rubbish,” or whether they and the wrapping had to be “hazards” in order to violate this subsection. See Code § 14-2.1, -8.1(a).<sup>3</sup>

Defendant contends the ordinances were void for vagueness. “A law is void if it is so vague that “persons of common intelligence must necessarily guess at its meaning and differ as to its application.”” Two. of Pennsauken v. Schad, 160 N.J. 156, 181 (1999) (citations omitted). “To withstand a void-for- vagueness

---

<sup>3</sup> The State has not argued they were “unsanitary” or “nuisances” as defined in the Code. See ibid. The State did not charge defendant under Code § 14-8.2(a)(1) regarding commercial or industrial material.

challenge, a penal ordinance must define the offense ‘with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement.’” State v. Clarksburg Inn, 375 N.J. Super. 624, 633 (App. Div. 2005) (quoting State v. Golin, 363 N.J. Super. 474, 482-83 (App. Div. 2003)).

That said, “[a] municipal ordinance under review [for vagueness] enjoys a presumption of validity and reasonableness.” Id. at 632. “Municipal ordinances are liberally construed in favor of the municipality and are presumed valid.” Ibid. “However, because municipal court proceedings to prosecute violations of ordinances are essentially criminal in nature, penal ordinances must be strictly construed.” Ibid. (quoting Golin, 363 N.J. Super, at 482).

“In determining whether an ordinance is vague, ‘a common sense approach is appropriate in construing the enactment’” in terms of the persons who may be subjected to it and in context with its intended purpose. Hevert v. Taddese, 431 N.J. Super. 388, 424 (App. Div. 2013) (citations omitted). “The language of the ordinance ‘should be given its ordinary meaning absent specific intent to the contrary.’” Ibid. Where, as here, the provision itself defines its terms, courts look to that definition. See Schad, 160 N.J. at 168, 182; State v. Stafford, 365 N.J. Super. 6, 14-15 (App. Div. 2003). “When terms are defined, however, a vagueness argument generally fails.” Chez Sez VIII, Inc. v. Poritz, 297 N.J. Super. 331, 352 (App. Div. 1997).

We reject defendant’s claim that the specific aspects of the ordinances under which we have sustained his convictions are void for vagueness. Code § 14-8.1(a)(1) specifically incorporates the definition of “rubbish” in Code, which makes clear “rubbish”

includes “yard clippings, leaves, [and] wood.” Code § 14-8.1(a)(2) is clear in requiring that “[d]ead or dying trees” must be kept pruned to prevent hazard, as plainly posed by the leaning tree. Code § 14-8.2(a)(2) is precise in requiring that “trees shall be kept trimmed so they do not encroach onto the sidewalk ... to a height of seven (7) feet,” and that “[l]awns shall be trimmed” to not “exceed a height of eight (8) inches from the ground.”

“A statute may be challenged as being either facially vague or vague “as-applied.”” State v. Lenihan, 219 N.J. 251, 267 (2014) (citations omitted). “[I]f a statute is not vague as applied to a particular party, it may be enforced even though it might be too vague as applied to others.” Ibid. (citation omitted). Because the ordinances were not vague as applied to the conduct supporting defendant’s convictions, we need not consider whether the ordinances might be vague in other applications.

Defendant relies upon Golin to argue the ordinances are void for vagueness. However, Golin voided an ordinance that prohibited “[a]ny matter, thing, condition or act” that “may become an annoyance.” 363 N.J. Super at 480, 483-84. We ruled the ordinance was overbroad because it did not allow the enforcing officer “to point to objective facts that would lead a reasonable person to realize that his or her conduct was a violation of the ordinance.” Id. at 483 (citation omitted). Here, unlike the subjective and undefined criteria in Golin, the ordinances set forth objective facts which defendant could realize he was violating, such as the definition of rubbish, dead or dying trees, and tree branch height requirements.

Assessing whether there was a hazard required a qualitative assessment, but that does not render an

ordinance vague. See Clarksburg Inn, 375 N.J. Super, at 634-39 (finding “clearly audible” was not vague). Like statutes, ordinances “need not be meticulous in specificity, but should be afforded ‘flexibility and reasonable breadth,’ given the nature of the problem and wide range of human conduct.” Poritz, 297 N.J. Super. at 352 (citation omitted). Therefore, in our de novo review, we find the ordinances were not void for vagueness. Clarksburg Inn, 375 N.J. Super, at 631. In any event, the leaning tree, like the piles of leaves on the sidewalk, met the definition of a “hazard” as “a source of danger[.]” Merriam-Webster’s Collegiate Dictionary, 572 (11th ed. 2014).

Defendant argues “zoning provisions were void for vagueness because [the] State had diametrically opposite interpretations in 2011 and 2016 for them.” Defendant adds no details. He may be referring to his conviction for failing to trim his lawn in 2011, in violation of Code § 14-8.2(a)(2) (2000), which we previously upheld. State v. Nath, No. A-4659-11 (App. Div. Apr. 29, 2013), certif. denied, 216 N.J. 365 (2013), cert. denied, 134 S. Ct. 2736 (2014). In 2011, that section required “lawns, hedges and bushes shall be kept trimmed and from becoming overgrown and unsightly where exposed to public view and where the same constitute a blighting factor depreciating adjoining property and impairing the good residential character of the neighborhood.” Ibid. (slip op. at \*2 (quoting Code § 14-8.2(a)(2) (2000))). However, in 2012, the ordinance was amended to its current form. Code § 14-8.2(a)(2) (citing West Orange, N.J. Ord. No. 2352-12). The State properly applied the new language to defendant’s 2016 violations.

Further, defendant argues that because the ordinances are vague, the rule of lenity applies.

However, “the rule of lenity is applied only if a statute is ambiguous, and that ambiguity is not resolved by a review of ‘all sources of legislative intent.’” State v. Regis, 208 N.J. 439, 452 (2011) (citation omitted). Here, the rule of lenity does not apply because the ordinances are not ambiguous as applied to the conduct on which we have sustained defendant’s convictions.

#### IV.

Defendant also argues the Law Division ignored the denial of due process because the State did not prove other “required elements,” namely “intent and the presences of a legitimate State interest in interfering with private property.”

However, the ordinances do not make defendant’s intent an element. Rather, the ordinances provide the property owner “shall” keep the premises free of hazards and “shall” maintain the premises, including that dead or dying trees “shall be kept pruned,” and tree branches and lawns “shall be trimmed.” Code §§ 14-8.1(a), -8.2(a).

Moreover, “criminal intent is not necessary to support a finding of guilt in regulatory or public welfare criminal statutes.” State, Dep’t of Law & Pub. Safety, Div. of Gaming Enf’t v. Boardwalk Regency Corp., 227 N.J. Super. 549, 556 n.2 (App. Div. 1988). Strict liability is “an unexceptionable and appropriate legislative option where employed to implement a regulatory scheme designed to deal with a serious social problem.” United Prop. Owners Ass’n of Belmar v. Borough of Belmar. 343 N.J. Super. 1, 27 (App. Div. 2001) (quoting State v. Kiejdan, 181 N.J. Super. 254, 258 (App. Div. 1981)).

A legitimate State interest is also not an element

of the offense that must be proven at trial. In any event, it is a legitimate State interest to require a property owner "to keep the premises free" of "hazards to the safety of occupants, pedestrians and other persons utilizing the premises," such as the leaning tree and piles of leaves on the sidewalk. Code § 14-8.1(a)(1), (2). It is also a legitimate State interest to require owners to keep sidewalks free of low branches. Code § 14-8.2(a)(2).

There is also a legitimate State interest in requiring grass and weeds to be no higher than eight inches. Ibid. The purpose of the housing Chapter in the Code is "to protect the public health, safety, morals and welfare by establishing minimum standards governing the maintenance, appearance, [and] condition" of residential premises. Code § 14-1.3. In addition, the Township found that "lack of maintenance" and deterioration of the "appearance of exterior of [such] premises" also have the "effect of creating blighting conditions and initiating slums," which "will necessitate in time the expenditure of large amounts of public funds to correct and eliminate the same." Code 14-1.2. "[P]reservation of aesthetics and property values is a legitimate end for a municipal zoning ordinance." State v. Miller. 83 N.J. 402, 415 (1980). Thus, the ordinances address serious social problems, namely safety and blight. Therefore, there is no due process violation.

## V.

Defendant also claims that other properties, including those owned by the State, violate these ordinances and that the ordinances are enforced only against South Asians.

"Two elements must be established to succeed

on a claim of unconstitutional enforcement of an ordinance – ‘a discriminatory effect and a motivating discriminatory purpose.’” United Prop. Owners Ass’n, 343 N.J. Super, at 25 (quoting Schad, 160 N.J. at 183). ““To prevail on a claim of selective prosecution, [the] defendant must provide ‘clear evidence’ to overcome the presumption that the prosecutor has not acted unconstitutionally, given the general deference to which prosecutorial decisions are entitled.”” State v. Heine, 424 N.J. Super. 48, 66 (App. Div. 2012) (citations omitted).

In the Municipal Court, defendant claimed discriminatory enforcement against South Asians. He proffered his neighbor, also a South Asian, to testify he had been prosecuted, but that would not show a pattern of ethnic discrimination. Defendant asserted other properties in the neighborhood looked like theirs but the owners were not prosecuted. The court allowed defendant to present photographs of nearby properties, but they had no sidewalks being encroached or violations comparable to those we have upheld. The court properly found defendant’s “anecdotal references to enforcement regarding certain properties falls far short of establishing a pattern of discrimination” against South Asians. See United Prop. Owners Ass’n, 343 N.J. Super, at 26.

In the Law Division, defendant again argued South Asians were being targeted. He contended there were low hanging branches outside the courthouse, but offered no evidence they obstructed sidewalks. He also asserted that enforcement limited his ability to worship as a Hindu by engaging in organic landscaping. The court noted there was no evidence how the conditions on his property were relevant to his religious beliefs, and properly rejected his claim of selective

enforcement. See State v. Cameron, 100 N.J. 586, 616 (1985) (finding the defendant made “no showing that the Ordinance in fact infringes upon the ... right to free exercise of religion”).

Lastly, we have considered the numerous other arguments presented in defendant’s submissions and conclude that they “are without sufficient merit to warrant discussions.” R. 2:11-3(e)(2). We “decline to consider arguments raised for the first time in [defendant’s] reply brief.” Bacon v. N.J. State Dep’t of Educ., 443 N.J. Super. 24, 38 (App. Div. 2015).

Affirmed.

19a

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION

MEMORANDUM

DATE: May 25, 2017

To: Rattan Nath  
1417 Pleasant Valley Way  
West Orange, NJ 07052

FROM: EVA SHUM  
(609) 815-2950, ext. 5-2655

RE: STATE OF NEW JERSEY V. RATTAN  
NATH  
A-001178-16

Mr. Nath,

Attached please find the order denying your motion to supplement the record. Please amend your brief to remove all supplemental items from the appendix and transcript table. Your transcript table should now only list 2 dates: 6/22/2016 municipal hearing and 9/30/2016 Superior Court hearing.

Your amended brief will be due 30 days from the date of this notice. Respondent's brief will be due 30 days from receipt of appellant's amended brief.

Thank you.

Eva Shum

cc: ROBERT S ROGLIERI - TRENK DIPASQUALE  
DELLA FERA & SODONO, PC



21a

DENIED

SUPPLEMENTAL:

FOR THE COURT:

---

ALLISON E. ACCURSO,  
J.A.D.

2016-029    ESSEX  
ES

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION, CIVIL PART  
ESSEX COUNTY, NEW JERSEY  
COMPLAINT NOS.: SC-2016-3228 & SC-2016-  
3229  
MUNICIPAL APPEAL NO.: MA-2016-029  
A.D. #: A-001178-16-T1

STATE	OF	NEW	)	
JERSEY,			)	
			)	
Plaintiff,			)	TRANSCRIPT
			)	OF
v.			)	TRIAL
			)	
RATTAN NATH,			)	
			)	
Defendant.			)	

Place: Veterans Courthouse  
50 West Market Street  
Newark, New Jersey 07103  
Date: September 30, 2016

BEFORE:

HONORABLE JOHN ZUNIC, J.S.C.

TRANSCRIPT ORDERED BY:

RATTAN NATH  
1417 Pleasant Valley Way  
West Orange, NJ 07052

APPEARANCES:

ROBERT S. ROGLIERI, ESQ.

JESSICA A. BUFFMAN, ESQ.

(Trenk, DiPasquale, Della Fera & Sadona PC)

Attorneys for the Township of West Orange.

RATTAN NATH, PRO SE DEFENDANT.

Transcriber: Lisa Kane  
Brittany Transcription, LLC  
60 Washington Street  
Morristown, New Jersey 07960  
(973)285-9690

Digitally Recorded

24a  
INDEX

	<u>PAGE</u>
Transcript of Proceeding	3
<u>THE COURT</u>	
Decision	14

THE COURT: On the record. This is State versus Rattan Nath, N-A-T-H. It's municipal appeal, 2016-029. It's on appeal from Complaint number SC-2016-3228 and 3229 from the West Orange Municipal Court.

Appearances please?

MR. ROGLIERI: Good morning, Your Honor. Robert Roglieri from Trenk, DiPasquale, Della Fera & Sodono on behalf of the Township of West Orange. Next to me is my colleague, Jessica Buffman.

THE COURT: Okay. Good morning. Yes, sir, your name?

MR. NATH: Rattan Nath. I'm a resident of West Orange.

THE COURT: Okay. Thank you.

All right. So this is an appeal filed by Mr. Nath. Let me just first summarize what the Court does have in its possession. I have the transcript of the trial which took place in the West Orange Municipal Court on June 22nd, 2016. It's the certified copy of the transcript and it's 173 pages.

I then have a letter brief from the defendant that was originally addressed to Judge Leath who had the case dated September 6th, 2016, consisting of 24 pages. And I have the defendant's letter brief addressed to me dated September 27th, 2016, which consists of 13 pages. I also have the exhibits from the trial court—from the Municipal Court which consisted of various photographs. And then I have the municipal Prosecutor's brief in opposition to the appeal dated September 20th, 2016. So I have all those items. I've reviewed all those items.

Mr. Nath, since it's your appeal, I would ask you if you have an additional argument to make other than what's in the papers. I already know what's in the

papers. But if you wish to highlight any portion of it, if you wish to tell me something new, the floor is yours.

MR. NATH: Okay. As you've already seen, it's basically based on due process because my testimony was interrupted and my witness was not allowed to complete his testimony.

THE COURT: Which witness?

MR. NATH: Mr. Azize. So he was just asked to step down which in the way we see the case, it makes reaching proof beyond a reasonable doubt impossible when the defendant is not allowed to actually make their case. That's the strongest and the most troublesome aspect of the trial.

In addition, we—as far as we can tell and the proceedings were already murky so we couldn't tell, a fast moving thing, what really happened. But as far as I can tell, I was convicted for having branches that were too low from a tree that was slowly falling and which we eventually stabilized. So the branches were below 7 feet which is what the Township ordinance calls for from a sidewalk. And that is the charge on which we were assessed a fine of \$5,000. As far as I know, the Township has insisted in its own documents that we don't have a sidewalk.

THE COURT: I'm sorry. That you—that you don't want?

MR. NATH: That we don't have a sidewalk.

THE COURT: Okay.

MR. NATH: So the criminal law is strictly construed then we cannot possibly be in violation. And that is recorded in Township documents and our property record card which was never produced as part of the discovery process and we could not introduce it into evidence because our time was terminated

prematurely.

So on its face, the charge is impossible. I don't believe I have been held guilty on other charges because the Court said they could live with the leaves, the branches, et cetera because they have a common place. But I'm not sure exactly what happened.

But I never could present my argument because it was, basically, terminated as soon as I started. And I believe there's no procedural or substantial due process. And that's a fatally flawed case.

THE COURT: Okay. Thank you. Sir?

MR. ROGLIERI: Good morning, Your Honor.

In terms of Mr. Nath's witness, Mr. Azize, as you'll see in the transcript, Judge Dowd found that the testimony that Mr. Azize was going to give was irrelevant. And it was because the first part of his testimony was that he didn't find a problem with the defendant's property. That's not a standard that is applicable under the Township code.

The second part that Mr. Azize was going to testify about was his experience in getting a plea agreement from myself or my colleague, Ms. Buffman, on his own property maintenance manner. Again, that's irrelevant. It was settlement discussions with regard to the plea agreement. And, if anything, it shows that the Township is more than willing to work with property owners within West Orange to remedy the issues on the property instead of going to trial.

In terms of Mr. Nath's presentation at trial being interrupted, again, Judge Dowd allowed for three witnesses to be direct—have direct examination. Mr. Nath also took the stand himself and testified at length regarding his position. And at the end of the—Mr. Nath's testimony, Judge Dowd, again, found that his

contentions were irrelevant to the matter. He—it's a lengthy transcript as I'm sure Your Honor is aware. And this isn't a case where Mr. Nath wasn't given the opportunity to present relevant arguments. The problem is that Mr. Nath's arguments weren't relevant at the time.

And then the final point that Mr. Nath made, with regard to being found guilty of only one of the summons, I think that the transcript is clear that he was found guilty on all three summons. There's a summons for failure to maintain the exterior under Township Code 14-8.1(a)1, 14-8.1(a)2, and 14-8.2(a)2. The first —

THE COURT: Two—two complaints or were there more than two?

MR. ROGLIERI: I'm sorry?

THE COURT: There were two complaints, right, not three?

MR. ROGLIERI: I think one of them charged with—had two —

THE COURT: Had two within it?

MR. ROGLIERI: Yeah.

THE COURT: Okay.

MR. ROGLIERI: Sorry, Your Honor.

So with regard to 14-8.1 (a)2, that has to do—or sorry, 8.1(a)1, that has to do with garbage, rubbish or refuse being on the property. The Court clearly found in the transcript that there was paper wrappings, leaves and wood on the property. There's abundant testimony from Mr. Ordonez, the Code Enforcement Officer to that effect. There's also a ton of photos which I tried to lay out as best as I could in the charts on page 6, 7, and 8 of my brief that matches the testimony with the photos for Your Honor. It's very clear that there's a ton of leaves. He even uses chicken wire to hold the

leaves on his property.

Then under 8.1(a)2, that has to do with a tree that was leaning at 45 degrees. It was marked by the Township as a hazardous tree. And it was never—it's a violation of the code because it says that trees shall be kept pruned and trimmed to prevent such conditions. It was never pruned or removed and it was marked for a long time as being a hazardous tree.

Finally —

THE COURT: One second. One second, I'm sorry. Just have them quiet down in there please, Officer. One second.

(Pause in proceeding.)

THE COURT: All right. You may continue. Sorry.

MR. ROGLIERI: Thank you, Your Honor.

Under 7, this has to do with the tree hanging below 7 feet over a sidewalk. Mr. Ordonez testified defendant's property is on the corner, so the front of the—the part that faces the front street, Pleasant Valley Way, does not have a sidewalk, but Underwood Terrace on the side does. And that tree, Mr. Ordonez testified was hanging below 7 feet.

Also under that ordinance is the issue of the grass being over 8 inches high. And Mr. Ordonez also testified that the grass was over 8 inches high. There are also photos which are documented in a chart on number—on page 9 of my brief where there's actually a yardstick being used to demonstrate that it's over 8 inches high.

So Judge Dowd found guilt on all three of those. And the only point that—I think that adequately addresses Mr. Nath's points.

The only point I want to point out is that Mr.

Nath argues in his briefs that there's a \$5,000 fine that was entered by Judge Dowd. Judge Dowd never got to the sentencing phase. This appeal was filed prior to sentencing, so any finding—there had been mention and you'll see in the transcript of a potential \$5,000 fine. But Judge Dowd was willing to—as I said before, the Township's goal is to abate these violations. We're not ever looking for a gigantic fine. So under Judge Dowd's method, he wanted us to meet with Mr. Nath to point out each issue that we have before entering a fine because if Mr. Nath had abated some of these issues, it would affect the fine.

So this appeal was filed—was filed before then, so no —

MR. NATH: No, that's not right.

THE COURT: One second, sir, you'll get an opportunity.

MR. ROGLIERI: So no fine was ever entered on this. And you'll see from, I believe, Mr. Nath's Notice of Appeal doesn't even mention a fine. It says that we're trying to take his property or something like that.

THE COURT: So there was talk about coming back in a month for a court date. That never transpired then?

MR. ROGLIERI: It never transpired —

THE COURT: Okay.

MR. ROGLIERI:—because the Notice of Appeal was filed and, obviously, removes jurisdiction to this court.

THE COURT: Okay.

MR. ROGLIERI: Thank you, Your Honor.

THE COURT: Thank you.

Did you want to respond, sir?

MR. NATH: Yes.

THE COURT: Okay.

MR. NATH: The Township's method of enforcement, the law, as we understand it, and we've put it down in the brief which you've read is that this really is zoning comes out of the law of nuisances. So the Township is arguing that our conditions are a nuisance, in effect, because we own the property. Ordinarily, the default condition would be—we control what goes on it.

If there's a nuisance, we agree, they have a right to, you know, insist on abatement and we do it. We have absolutely no reservations about it. What we pointed out was at trial and this is what we were trying to do was that by selecting these salvations and that grouping over 10 years, the abatement process is not focused on zoning issues, it's focused on getting us to hire certain companies. And that has been the case for a long time. That is exactly what Mr. Azize was going to testify about and that's what I was going to point out. And we have now evidence of that conduct. That is not permissible. In fact, it doesn't even establish a nuisance under which they can even come to our property.

The second thing, a property record card which is an official document maintained by the Township which was litigated in 2014 to correct it and the Township refused to do it, insist that we do not have a sidewalk. And the point was specifically raised. If we do not have a sidewalk, how can we have branches getting too low to the sidewalk.

Thirdly, and I believe this is in the page, a tree that is slowly falling that we are trying to stabilize. We don't want to lose the tree. We don't want to cut it down. There's nothing in the code that says you have to cut it down. We managed to stabilize it and plus

continually being trimmed. The four sequence of photograph shows that the tree was continuously trimmed until it became stable.

THE COURT: You think that's a stable tree?

MR. NATH: Yes, it is. At this point it is. And at this point, actually, we are curious to see how well it works finally. We have short it out. It was a three trunk tree, it is down to one trunk and the branches now have support from the ground. It is entirely on our property now. It doesn't encroach the sidewalk at all. All those portions have been trimmed off. And this was happening in the normal course. There was no crime here. There was no intent of any type.

Lastly, I point out this. The tree is such a big issue and the branches are such a big issue, the officers have branches below 5 feet right outside and so does the Court itself. The Municipal Court has trees on the sidewalk and the front on the main street with branches that are below my height. I'm only 5 feet high. I cannot even reach 7 feet to cut anything.

But be that as it may, assuming that there is a 7 foot person somewhere in Underwood Drive that is going to walk down the sidewalk that according to Township does not exist and here's a property record card which they never produced, but they should have and they insisted on saying there's no sidewalk.

So I would say they don't have a case. There was no intent to commit anything. There was continuous activity to control the tree. If we want to preserve the tree it's not a crime. It cannot possibly be a crime that they can come into our property any time without notice and do anything they feel like and we are actually helpless and they specifically pick on the South Asian.

Mr. O'Leary at trial mentioned one and three examples of enforcement that were not against South Asians. Now, that is misleading. Those properties are abandoned properties, they're unoccupied. There was no real enforcement.

THE COURT: Sir, with all due respect, we're talking about your property and whether your property violated the ordinance. I'm not discussing other cases, other summons issued by the Town. We're discussing whether your property violated on the days the inspector —

MR. NATH: I understand, Your Honor.

THE COURT:— went to the premises.

MR. NATH: But there is no clear line to get to our property without looking at others. The Court calls for neighborhood standards. And, furthermore, even the right to enforce the Code depends on having a uniform enforcement elsewhere. If you do not have uniform enforcement elsewhere, you cannot do it.

The Court requires strict enforcement meaning on anybody and everybody. They don't do that. He admitted in court they don't do that. Before this in 2011 they do not do it. You would say maybe it's because they don't have the manpower, that is not the case. They were specifically asked with two inspectors, can you site every property. The Township said yes, they just don't do it.

So we established our case of discrimination. The only question is why. It's not a question of whether.

THE COURT: Thank you. Any response?

MR. ROGLIERI: Just very briefly, Your Honor.

First, I 100 percent agree with your comment that this is about Mr. Nath's property. It isn't about the

Township's property. It isn't about Mr. Azize's property across the street or 1 and 3 Powell up the street from him. The question is did—was his property in violation on the day that the inspectors were there.

The photos conclusively show and Mr. Ordonez's testimony shows that it was in violation.

With regard to the sidewalk, it's confusing because Mr. Nath just said that the tree hangs over the sidewalk, but then he says that he doesn't have a sidewalk. But if there's any debate to it, if you look at the first photo in the series of S-4, you can clearly see the sidewalk running along the side of his property. And you can also see all of the leaves, the high grass and whatnot. So there's clearly a sidewalk on the property.

I have nothing to do with the tax records. I'm not even sure if that's relevant or how it's relevant.

And then, finally, with regard to selective enforcement, there's no evidence before this Court or before Judge Dowd that there was selective enforcement. Judge Dowd specifically said and it's pointed out in the brief that his courtroom, especially on property maintenance days, has Italians, Irish, African-Americans. This is not a case of selective enforcement.

Mr. Nath solely points to his—his area of town which he calls PV1 or something to that regard and says oh, two South Asian people were summonsed in this area. If you take any tiny section of something, you'll be able to find or make up some type of evidence that there was discrimination.

But here there—it—these property maintenance inspectors have 15,000 properties in the Township of West Orange that they have to review. There's 50,000 residents in West Orange. This isn't a tiny town.

The fact that—I don't know what Mr. Nath points to that they said in the transcript that they can look at every property. I don't recall that testimony ever being elicited in this trial.

But it's just the fact of the matter they can't get to every town—property. But this is pretty egregious when you look at the leaves, the fact that he's purposely putting up wire fences to hold the leaves in place. This isn't an accident where they're an elderly couple and they can't, you know, go out there and rake leaves. He's purposely trying to keep these leaves on the property.

And then the only thing with the stable tree, he go—he states that he wants to see how well his stabilization works. That—that's not how this Township code operates. We can't just allow a tree that's at a 45 degree angle to sit on a property and see how well it works while it's running up along a sidewalk. It's dangerous. If that tree—if this doesn't work, his stabilization doesn't work, it's a hazard to anyone walking on that sidewalk. Thank you, Your Honor.

THE COURT: All right. Thank you.

MR. NATH: Your Honor, can I respond?

THE COURT: One last point.

MR. NATH: Okay. Here's the transcript from earlier trial in which the inspector was specifically asked if you can site—

THE COURT: What page, sir?

MR. ROGLIERI: It's a previous trial that he engaged in 2011.

MR. NATH: Your Honor, it is relevant.

THE COURT: One second.

MR. NATH: It's a ruling—it's a statement by the State.

THE COURT: What's the date of the transcript?

MR. NATH: This is December 21, 2011.

THE COURT: It's a different hearing,  
right?

MR. NATH: Not entirely, it's the same—

THE COURT: Different summons.

MR. NATH: Not the different summons.

THE COURT: Different summons.

MR. NATH: It's the same department  
explaining how they enforced the statute.

THE COURT: Go ahead, read it for me.

MR. NATH: "The maintenance  
inspector"—this is—let me read it.

THE COURT: Is it Inspector Ordonez?

MR. NATH: No, it's Mr. Randomski  
(phonetic).

MR. ROGLIERI: Randomski.

MR. NATH: So he's being asked by the  
prosecutor "In your estimation, can you site every  
violating condition at any given time in the Township?

INSPECTOR: "Yes."

MR. PROSECUTOR: "You can? Let me  
rephrase the question. Is every condition that exists  
which violates Township code sited?"

"No."

I would say at that point you know they  
deliberately don't site it. But, again, to the angle about  
the tree angle, there must be a couple of hundred trees  
at that angle within our neighborhood because all of us  
have slopes. Trees grow at that angle normally.

The reason that tree is coming down is because  
there was erosion on the surrounding property. When  
they came to our property on June 25th, we ask them to  
photograph not just our property, but the surrounding  
area to accurately depict what is happening. They flatly  
refuse. They said, "No, we will only photograph what's

favorable to us, nothing us.”

Even on our property they did not photograph the part that they had left undone. There was a whole bunch of gravel and other debris that was deposited with—which had not been cleared up for six weeks. They flatly refuse to the Court that.

Now, I would say that is way too much power. But more than that across the street there was a tree that was two feet off the ground, refused to photograph that either. I would say it's the only issue here is why is this there in a neighborhood that has a peculiar characteristic that should be reflected in the record. It should not be out of the record. There's no authority for any state worker.

In fact, I will find out something. James Artist, back in early 1700's when the record of support was set up, his argument was against two intrusive estate government which is what John Adams said was the starting point of the American revolution. That is when people really got upset about people walking onto their property without permission and doing anything they feel like. This is exactly what was ruled allowed to be perfectly okay that the inspector could trespass rather than identify himself, take photographs whenever he feels like, and we just get surprised by summons, not even a notice is needed. That is not correct.

The statute doesn't have to be construed. Nothing else would be really laid out. I don't have to be allowed to testify. I will say that's a—where you cannot have a proof beyond a reasonable doubt.

THE COURT: Thank you.

MR. NATH: There's no point in having a defense if one can be seen rule that way.

THE COURT: All right. Thank you.

All right. The Court will now render its decision.

Defendant, Rattan Nath, was sent a Notice of Violation in order to correct on or about November 20th, 2015. The Notice of Violation stated that defendant must landscape the entire property by November 30th, 2015.

On January 8th, 2016, over one month later when the defendant did not comply with the Notice of Violation, Township Code Enforcement Officer William Ordonez issued two summonses. Defendant was charged with an ongoing violation for failure to landscape property in violation of West Orange Code 14-8.2 (a)2 under Complaint Number 0722-SC-032228.

Defendant was also charged with an ongoing violation for failure to maintain exterior property in violation of West Orange Code 14-8.1 (a)1 and 14.8.1(a)2 under Complaint Number 0722-SC-032229.

On June 22nd, 2016, the Honorable Dennis O. Dowd, the Municipal Court Judge for the Township of West Orange, conducted a trial where various witnesses testified. The defendant represented himself in the matter. Robert Roglieri, Esq. appeared on behalf of the State. After the trial, Judge O'Dowd found the defendant guilty of the violations.

The sentencing, there was a fine mentioned of \$5,000, but apparently that was not imposed. It was to be held over for another hearing a month later, but prior to that the defendant filed an appeal. And on June 29th, 2016, one week after Judge Dowd's decision, the defendant filed his Notice of Appeal.

The facts giving rise to the matter are somewhat undisputed really. Defendant—some are disputed, some are not. Defendant owns certain real property within the Township located at 1-3 Underwood Drive in West Orange. He was sent the Notice of Violation on or about November 20th, 2015. He failed to abate the violations on his property although it looked like some work was

done with regard to leaves on the sidewalk, you know, despite given the additional time. It did look from the photographs that some work was done. Therefore, over one month later since the entire work was not completed, defendant was issued two summonses by Inspector Ordonez.

During trial, the Municipal Court heard testimony from Mr. Ordonez, the inspector, on behalf of the state. Defendant called as witnesses a neighbor, Arshad Azize, his daughter, Ursula Nath, and his son Nehal Nath. Defendant also testified.

On behalf of the Township, Mr. Ordonez testified as to the issuance of the summons and testified that the conditions existed on the defendant's property when he went there on at least two occasions.

In his opinion, the defendant failed to meet his obligations to maintain his property in good repair with respect to landscape and exterior maintenance. The inspector testified as to various items of rubbish that existed on the defendant's property, tree branches that obstructed the sidewalk and fell below 7 feet to the ground, weeds that were over 8 inches high, and a tree which was leaning in a 45 degree angle. Photographs were submitted—introduced into evidence depicting these conditions.

Defendant's witnesses consisted of his two children and the neighbor, Mr. Azize. Both children testified that the wire mesh holding the leaves and mulch was to stop the water flow on this sloped property. The children testified that this was done for experimental and educational purposes.

At the conclusion of the trial, Municipal Court Judge Dowd reviewed the photographs submitted into evidence by the Township and found the defendant guilty under both ordinances.

Defendant contends that the Municipal Court erred and denied in due process of law. He contends also that the West Orange ordinances are void for vagueness. He further contends that the Municipal Court record is defective in that the charges should be dismissed because he did not have a fair opportunity to present his defense.

Moreover, the defendant claims that the West Orange violations placed unjustifiable limitations on his liberty to worship and express himself. He contends that he is of Hindu origin practicing Karma Yoga which he claims involves organic landscaping as a form of expression. He claims that such worship helps sustain and rejuvenate nature and these beneficial acts are used to perform religious obligations.

Therefore, the defendant contends that the Municipal Court's verdict must be reversed. And he also submits that if he is found guilty for any violation then the maximum punishment should be imposed which by his calculation is over \$350,000 given the daily penalty that may be imposed.

In his various arguments, defendant has not denied that the property was in the condition as testified to by the inspector and depicted by the photographs. The State contends that the record sufficiently established the condition of defendant's property and showed that—showed the defendant's failure to maintain such property in accordance with the Township's Property Maintenance Code.

The State asserts that all elements of the applicable ordinance which were required to be proven were proven and evidenced by the record.

Moreover, the State contends that the defendant's challenge to the ordinance as void for vagueness must be rejected because the language other

relevant sections of Chapter 14 of the Township's code are clear and unambiguous.

Lastly, the State contends that defendant's contention that the Township seeks to infringe on defendant's first amendment rights relating to religion as a Hindu Karma Yoga must similarly—similarly be rejected because defendant failed to establish any evidence that the Township's property maintenance and zoning code interfered with his religion. Therefore, the State maintains that the Municipal Court's verdict must be affirmed.

Testimony during the trial, Mr. Ordonez testified that he was a Township inspector for West Orange and his occupation entails code enforcement. He further testified that he has worked for the West Orange Township for six years on and off. He testified that he issued a notice of violation and order to correct to the address at 1-3 Underwood Drive in West Orange on November 20th, 2015. A notice was issued to the defendant due to the hedges, bushes, and grass on the property being overgrown.

When viewed by Mr. Ordonez on November 20th, 2015, Mr. Ordonez testified that the notice gave the defendant 10 days to fix the landscaping on the property. Mr. Ordonez testified that commencing December 1, 2015, when the first set of pictures were taken, defendant was being charged with an ongoing violation. He testified that the ordinance violation were issued on January 8th, 2016, which was more than the 10 days expressed on the initial notice.

Mr. Ordonez took multiple photos of the property from December 1, 2015, to April 11th, 2016. Each set of photographs were introduced into evidence by the State.

Mr. Ordonez testified that the photos dated

December 1, 2015, Exhibit S-4, show leaves on both sides of the sidewalk. Another photo showed a very large pile of wood that was just placed on the property as well as cinderblocks that were also placed on the property which is construction material that should be stored away.

Mr. Ordonez testified that the photos dated December 21, 2015, Exhibit S-5, showed that the wood piles were still present, but had been spread out a bit. He also testified that there was a mesh lining between two trees holding up mounds of leaves. He testified as to—that he was unsure as to the purpose for the mesh wire holding the leaves.

Mr. Ordonez testified that the photos dated December 28th, 2015, Exhibit S-6, showed the picture of the wood chips with the yardstick in front of it which showed it was at least 3 feet high. He further testified that the picture showed the accumulation of branches, tree stumps, and tree limbs that were cut and placed on the edge of the property.

Mr. Ordonez testified further that the photos dated April 11, 2016, Exhibit S-15, showed that there was still wood branches, leaves, and a brick paver and black plastic wrapping on the edge of the sidewalk.

Lastly, a tree leaning in a 45-degree angle was taped off and deemed a nuisance after being in such position for several months. Mr. Ordonez testified that defendant failed to trim a tree on the property in accordance with the Township code and that the tree branches fell below the 7 feet required by the ordinance. He testified that the defendant never got in contact with him to discuss the violations.

There was cross-examination by Mr. Nath of Mr. Ordonez. Much of the questioning and information sought was deemed to be irrelevant by Judge Dowd.

Arshad Azize was called as a witness by the defendant. Defendant asked Mr. Azize about a previous ordinance violation that Mr. Azize had pled guilty to which the judge did not allow. The defendant asked Mr. Azize if he had helped him work on his property to which he responded yes. Mr. Azize further testified that he saw nothing wrong with the property besides growing organic landscaping. Mr. Azize testified that he lived across the street from the defendant.

Ursula Nath testified that she is the defendant's 11-year old daughter who attended Edison—who attends Edison Middle School. She testified that they put branches into different old socks to slow the water down when it would pass through. She testified that she was doing it for a school project. She further testified that the mesh wire they have—they put up was to stop storms and reduce floods since they live on a sloped property. The house appears to be on top of the slope, so that any water would flow away from the house.

Nehal Nath testified that he interacted with Mr. Ordonez when he came onto their property to take pictures. Nehal also testified that the experiments on their property were educationally beneficial.

Defendant, Rattan Nath, testified that he has—that he experienced a similar violation in the past, specifically in 2012. He testified that he believes that he is being unfairly targeted and that this case is about selective enforcement. He testified that all the properties in PLV-1 which I guess would be his neighborhood look like his, but only he is receiving the ordinance violations while other property owners are not.

Defendant contends that in December he was—he and his family were out of town in District—

Washington DC and that is why the leaves were all over the property. He further testified that the wind blows the leaves around, but that they generally keep their lawn clear. He also testified that the tree stumps on his property were as a result of a falling tree around November 30th, 2015, which they decided to help clean up even though the driveway is not entirely owned by him.

He also testified as to the scientific purposes for the mesh and mulch on his property.

He further alleged that he is not treated equally because he is being targeted for his religious beliefs. He also testified that South Asians are targeted in his community.

The Municipal Judge's factual findings were as follows. The Judge found that there was "buckets of proof" that defendant was in violation of the ordinance for having leaves piled up more than 8 inches and weeds over 8 inches high. The Judge found that defendant was also in violation of the ordinance by having tree branches hang below 7 feet. The Judge found defendant was in violation by placing the mesh wiring that accumulated the mounds of leaves.

The Judge also found that based on "the pictures I've seen and I'm going to say it again clearly show unequivocally violations of the ordinance." Thus, based on the above, Judge Dowd found the defendant guilty of failure to maintain exterior property in violation of West Orange Code 14-8.1(a)1 and 14-8.1(a)2 and guilty of failure to landscape property in violation of West Orange Code 14-8.2(a)2.

The defendant was given 30 days to get the property in compliance and then return for sentencing in 30 days. If nothing was done, the Judge stated that a fine of \$5,000 would be imposed. But as I mentioned,

the appeal was filed seven days later by the defendant. Therefore, there was no sentencing argument made for sentence opposed.

This appeal is subject to de novo review under Rule 3:23-8a. Although the Law Division is required to make its own findings and rulings of the evidence, it is bound the evidentiary record of the Municipal Court. See State versus Loce, L-O-C-E, 267 N.J. Super. 102 Law Division 1991.

The Court, therefore, must give due although not necessarily controlling regard to the assessments of the judge below who had the opportunity to observe the credibility of the witnesses at the time of trial. State versus Johnson, 42 N.J. 146. 1964 State Supreme Court case.

According to Rule 3:23-8a, if a verbatim record or sound recording was made pursuant to Rule 7:8-8 in the courtroom from which the appeal is taken, the original transcript, thereof, duly certified as correct shall be filed by the Clerk of the Court below with the Criminal Division Manager's Office and a certified copy served on the prosecuting attorney by the Clerk of the Court below within 20 days after the filing of the Notice of Appeal or within any extension of time as the Court permits.

A Municipal Ordinance under review by a Court enjoys a presumption of validity and reasonableness. State v. Clarksburg Inn, 375 N.J. Super. 624, 2005 Appellate Division case. Since Municipal Court proceedings to prosecute violations of ordinances are essentially criminal in nature, penal ordinances must be strictly construed. State versus Gollen, 363 N.J. Super. 474 2003 Appellate Division case.

The applicable ordinances here read as follows.  
14-8.1 "Maintenance of exterior of premises, Subsection

A, Hazards and unsanitary conditions. The exterior of the premises and all structures thereon shall be kept free of all nuisances and any hazards to the safety of occupants, pedestrians and other persons utilizing the premises and free of unsanitary conditions and any of the foregoing shall be promptly removed and abated by the owner or operator. It shall be the duty of the owner or operator to keep the premises free of hazards which include, but are not limited to the following.

Number 1) Refuse garbage and rubbish as defined in subsection 14-2.1 contained herein. Refuse shall mean all putrescible and non-putrescible solid waste except body wastes including, but not limited to garbage, rubbish, ashes, street cleaning, dead animals, abandoned automobiles, and side market and industrial wastes.

Garbage shall mean putrescible animal and vegetable waste resulting from the handling preparation, cooking and consumption of food. Rubbish shall mean non-putrescible solid wastes consisting of both combustible and non-combustible wastes such as paper, wrappings, cigarettes, cardboard, tin cans, yard clippings, leaves, woods, glass, bedding, crockery and similar materials.

Number 2) Natural growth: Dead and dying trees and limbs or other natural growth which by reason of rotting or deteriorating conditions or storm damage constitute a hazard to persons in the vicinity thereof. Trees shall be kept pruned and trimmed to prevent such conditions. All weeds shall be removed from the vicinity of any public sidewalk or roadway."

14-8.2 "Appearance of exterior of premises and structures. Subsection A, residential and non-residential. "The exterior of the premises, the exterior of dwellings, structures, and the condition of accessory

structures shall be maintained so that the appearance of the premises and all buildings thereon shall reflect a level of maintenance in keeping with the residential standards of the neighborhood or such higher standards as may be adopted as part of a plan of urban renewal by the Township. And it shall be the duty of the owner or operator to maintain the premises in the matter set forth herein including, but not limited to the following:

1) Storage of commercial and industrial material. There shall not be stored or used at a location visible from the sidewalk, street or other public areas equipment and materials related to commercial or industrial uses unless permitted under the zoning ordinance for the premises;

2) Landscaping. Premises shall be kept landscaped and lawns, hedges, and bushes shall be kept trimmed where exposed to public view and shall be maintained so as to not obstruct the public access to sidewalks and roadways. All trees shall be kept trimmed, so that they do not encroach onto the sidewalk or roadway from the ground to a height of 7 feet. Hedges and bushes shall be maintained so that they do not encroach onto the sidewalk. Lawns shall be trimmed and maintained and shall not exceed a height of 8 inches from the ground. All lawns, trees, hedges, and bushes in violation of any and all provisions of this section shall be removed, trimmed or cut to conform to their requirements set forth herein."

Under Ordinance 1-5.1 maximum penalty. "For violation of any provision of this chapter and any other provision of this"—strike that—"and any other chapter of this provision or any other ordinance of the Township with no specific penalty is provided regarding the section violated, the maximum penalty shall on conviction of a violation be one or more of the following:

A fine not exceeding \$1,250 or imprisonment for a period not exceeding 90 days or a period of community services for a period not exceeding 90 days.”

In the present case, the record is complete as the transcript of the trial before Judge Dowd on June 22nd, 2016, was included. Although this case is reviewed de novo, this Court is satisfied and agrees with the rulings of the Municipal Court judge as to the finding of the fact in this matter.

And as I said before, the condition of the property as depicted by the photographs is essentially undisputed. Defendant makes other arguments as to why he believes the complaints should be dismissed. But none of them really address the authenticity of the photographs or the fact that the condition—that the premises was in that condition on the dates that the inspector visited the premises.

The record reflects that the Court was provided with ample evidence that the defendant, indeed, violated the Township ordinances. The pictures are dated and show that defendant failed to properly remedy his property once given notice. Although it appears to me from the photograph that some remedial action was taken, but it wasn't full.

Specifically, I guess of most concern to the Town and to this Court is that the defendant failed to remedy the tree leaning in a 45 degree angle which was pictured to be in the same position from January 7th, 2016 to April 11th, 2016. I've seen the photographs of it. Defendant argues that it is stable. I don't see it. The—just from the photographs itself, you can tell that the roots are out of the ground. It's a hazard. That tree will definitely constitute a hazardous condition under 14-8.1(a)2 either for the homeowner or occupants or for

any pedestrians walking near that area. It's a significant tree. It's tall. You don't know where it's going to fall, but it's not stable.

Moreover, the pictures dated December 1, 2015, show that the weeds are piled up next to a ruler that indicates it is higher than 8 inches as required under 14-8.2 (a)2. The picture is dated January 7th, 2016 also show the mesh holding together a large pile of leaves which is in violation of 14-8.2 (a)2.

Additionally, there are pictures which show the tree branches encroaching onto the sidewalk hanging below 7 feet in violation of Section 14-8.2 (a)2.

Furthermore, there are pictures which show that there is black wrapping on the edge of the property, leaves falling onto the sidewalk, tree stumps along the lawn. A blue garbage container and crates on the lawn as well as cinderblock from the outside area of the property all in violation of Section 14-8.1 (a)1.

Defendant alleges that his home was targeted due to his religious beliefs and his organic landscaping preference. However, he never explained how the landscaping was relevant to his religious beliefs. But even so the Court below or even this Court has not been provided with any evidence that he is being targeted because of his religious beliefs. Again, the condition of the property it's undisputed even by the defendant.

Moreover, the Township Ordinances are not vague as they are detailed as to what is not allowed on the property and how the property is to be maintained.

The — therefore, the Court finds that the record is complete and this Court finds no reason to disrupt the factual findings made by the Municipal Court. This Court adopts those factual findings and, therefore, the defendant is found guilty of failure to maintain exterior

of property in violation of Code 14-8.1 (a)1 and 8.1 (a)2 and failure to landscape property in violation of 14-8.2 (a)2.

Now, sentencing was never reached, so this is also a de novo sentencing. I'll hear the Prosecutor. What do you think an appropriate sentence is here? I know compliance and abatement, I get that. That's a two-way street, I guess. But as far as fines, what is your recommendation?

MR. NATH: 350,000 is a good number.

THE COURT: Sir, I'll get to you, sir. You'll get your chance.

MR. ROGLIERI: Your Honor, from—based on the photos that Mr. Ordonez testified to and are before Your Honor, the violation was from December 1st, 2015, through April 11th, 2016. As Your Honor read, the code allows for a fine of \$1,250 per day that the violations existed. As Your Honor knows, there has been some, but not total cleanup on the property, so this is continuing until now, but, obviously, the pictures only go up until April. On my count that's about 130 days. The Township is not looking to impose a gigantic fine on Mr. Nath. Again, our goal is to get this abated, to clean up the property. I—based on that, my recommendation would be the same recommendation that we sought below from Judge Dowd which was a \$5,000 fine.

THE COURT: Thank you. Mr. Nath I'll hear you as to sentencing.

MR. NATH: Yeah, I disagree. I think the fine should be out because we're not going to change anything. Not only that, since his office has a tree that is below 5 feet outside and so does the courthouse, the whole thing is BS.

THE COURT: Sir, right now—

MR. NATH: I would say 350,000 because I'm really not a gamble.

THE COURT: You want 350,000?

MR. NATH: Under the statute that's—under what circumstances would the fine raise to 350?

THE COURT: I don't know, you mentioned that figure, he didn't.

MR. NATH: I'm say—they're saying we have abated something. We always abate things either it should be an acquittal or it should be 350.

THE COURT: All right. Thank you. Well, it's not an acquittal because I already found you guilty, but I do think the \$5,000 amount is high.

I looked at the photographs a couple of times. Yes, I do find the defendant guilty. I think the tree is the biggest concern. There was some attempt at abatement, but, again, it wasn't full abatement. It really seems to be a defiance by the defendant on abating which I think will only lead to additional summons being issued by the Township unfortunately and we may find ourselves back here again.

But I think the \$5,000 fine is excessive, so my ruling is as follows on 0722-SC-03228 it's \$1,250; on 0722-SC-03229 it's \$1,250, \$30 court cost on each.

All right. Sir, you do have 45 days from today within which to appeal if you are not satisfied with the decision of the Court. The Court will prepare an order reflecting my decision today and we'll provide it to both of you. Okay.

MR. NATH: Do I need to give my email to get the order?

THE COURT: Do we have a physical address we can mail it there?

MR. NATH: I just want to make sure I get it.

THE COURT: If you want the email you can just write it down and the Officer will give it to my Clerk.

MR. NATH: Okay.

THE COURT: Thank you. Have a good day.

MR. NATH: Your Honor, you too.

MR. ROGLIERI: Thank you, Your Honor.

MR. NATH:—we're never going to address, but that's okay.

(Matter concluded.)

CERTIFICATION

I, Lisa Kane, the assigned transcriber, do hereby certify the foregoing transcript of proceedings, Digitally Recorded, index number from 10:41:44 to 11:31:25 is prepared in full compliance with the current Transcript Format for Judicial Proceedings and is a true and accurate non-compressed transcript of the proceedings as recorded.

\_\_\_\_\_  
Lisa Kane

665 cc  
\_\_\_\_\_  
AOC Number

Brittany Transcription, LLC  
Agency Name      Date

December 8, 2016

**14-1.2 Findings and Declaration of Policy.**

It is hereby found and declared that there exists in the Township structures used for residential and nonresidential use which are, or may become in the future, substandard with respect to structure, equipment or maintenance, or further that such conditions including but not limited to structural deterioration, lack of maintenance and appearance of exterior of premises, infestation, lack of essential heating, plumbing, storage or refrigeration equipment, lack of maintenance or upkeep of essential utilities and facilities, existence of fire hazards, inadequate provisions for light and air, unsanitary conditions and overcrowding, constitute a menace to the health, safety, morals, welfare and reasonable comfort of the citizens and inhabitants of the Township. It is further found and declared that by reason of lack of maintenance and progressive deterioration, certain properties have the further effect of creating blighting conditions and initiating slums, and that if the same are not curtailed and removed, the conditions will grow and spread and will necessitate in time the expenditure of large amounts of public funds to correct and eliminate the same, and that by reason of timely regulations and restrictions as herein contained, the growth of slums and blight may be prevented and the neighborhood and property values thereby maintained the desirability and amenities of residential and nonresidential uses and neighborhoods enhanced and the public health, safety and welfare protected and fostered.

It is further found and declared that by reason of the peculiar and special conditions existing in lodging houses, boarding houses and nursing homes as herein defined, the licensing and regulation of same is necessary so that the regulations may be better

enforced in the public interest for the protection of health, safety and welfare of the public to prevent slum and blighted conditions from expanding in the Township and for the social and economic stability of the Township. (1972 Code § 16-1.2)

#### **14-1.3 Purposes.**

The purpose of this Code is to protect the public health, safety, morals and welfare by establishing minimum standards governing the maintenance, appearance, condition and occupancy of residential and non-residential premises, to establish minimum standards covering utilities, facilities and other physical components and conditions essential to make the facilities fit for human habitation, occupancy and use; to fix certain responsibilities and duties upon owners and operators, and distinct and separate responsibilities and duties upon occupants to require the licensing and regulation of lodging houses, boarding houses and nursing homes; to authorize and establish procedures for inspection of residential and nonresidential premises; to fix penalties for the violations of this Code; to provide for the right of access across adjoining premises to permit repairs; and to provide for the repair, demolition or vacation of premises unfit for human habitation or occupancy or use. This Code is hereby declared to be remedial and essential for the public interest and it is intended that this Code be liberally construed to effectuate the purpose as stated herein. (1972 Code § 16-1.3)

#### **14-2.1 Meaning of Certain Words.**

The following terms wherever used in this Code shall have the respective meanings assigned to them unless a different meaning clearly appears from the context:

*Accessory structure* shall mean any structure, the use of which is incidental to that of the main building and which is attached thereto or located on the same premises.

*Basement* shall mean the portion of the building that is partly underground which has more than one-half (1/2) of its height, measured from clear floor to ceiling above the average adjoining ground level. Where the natural contour of the ground level immediately adjacent to the building is interrupted by ditching, pits or trenching, then the average adjoining ground level shall be the nearest natural contour line parallel to the walls of the building without regard to the levels created by the pitching, pits or trenching.

*Bathroom* shall mean an enclosed space containing one (1) or more bathtubs, showers, or both, and which shall also include toilets, lavatories, or fixtures serving similar purposes.

*Boarding house* shall mean any dwelling unit in any zoning district in which any room is offered for rent or lease.

*Building* shall mean a combination of materials to form a construction adapted to permanent or continuous occupancy or use for public, institutional, residence, business or storage purposes.

*Building Code* shall mean the Building Code of the Township of West Orange.

*Cellar* shall mean the lowermost portion of the building partly or totally underground, having half (1/2) or more of its height measured from clear floor to ceiling below the average adjoining ground level. Where the natural contour of the ground level immediately adjacent to the building is interrupted by ditching, pits or trenching, then the

average adjoining ground level shall be the nearest natural contour line parallel to the walls of the building without regard to the levels created by the ditching, pits or trenching.

*Central heating system* shall mean a heating system in a fire resistant enclosed space or spaces, separate and apart from the area to be heated, which system is permanently affixed on a fireproof base and connected by breaching to a stack in accordance with the Building Code. Direct electric or gas heating systems without the use of a boiler, serving all dwelling units in a structure, are exempt from the above requirements.

*Community kitchen* shall mean kitchen facility shared by occupants of one (1) or more rooming units or dwelling units.

*Deterioration* shall mean the condition of a building or part thereof, characterized by holes, breaks, rot, crumbling, cracking, peeling, rusting or other evidence of physical decay or neglect, lack of maintenance or excessive use.

*Disabled person* shall mean any person who by reason of his or her physical or mental condition is not sufficiently ambulatory, or otherwise by reason of physical or mental incapability, to reach or use the two (2) means of egress most accessible to his or her living quarters without assistance and with reasonable facility, or who is unable to attend to his or her daily personal and bodily needs.

*Dwelling* shall mean a structure, or part of a structure, arranged, intended or designed to be occupied as a residence.

*Dwelling unit* shall mean a single unit providing facilities for one (1) or more persons including

provisions for living, sleeping, eating, cooking, and sanitation.

*Emancipated minor* shall mean any person under the age of eighteen (18) years of age who is gainfully employed and self-supporting or who is married to a spouse who is gainfully employed and who supports the minor, or who is a student living away from home and in regular attendance at an institution of higher learning.

*Establishment subject to licensing* shall mean any lodging house, boarding house or nursing home which is required to be licensed pursuant to this Code.

*Exposed to public view* shall mean any premises, or part thereof, or any building or any part thereof, which may be lawfully viewed by the public, or any member thereof, from a sidewalk, street, alleyway, licensed open air parking lot or from any adjoining or neighboring premises.

*Exterior of the premises* shall mean open space on the premises outside of any building thereon.

*Extermination* shall mean the control and elimination of insects, rodents and vermin by eliminating their harborage places; by removing or making inaccessible material that may serve as their food; by poisoning, spraying, fumigating, trapping or by other approved means of pest elimination.

*Family.* ( See *Immediate family.*)

*Fire Chief* shall mean the Fire Chief of the Township of West Orange.

*Fire hazard* shall mean:

- a. Any device or condition likely to cause fire and which is so situated as to endanger either persons or property.

b. The creation, maintenance or continuance of any physical condition by reason of which there exists a use, accumulation or storage of combustible or explosive material sufficient in the amount or so located or in such a manner as to put in jeopardy, in event of ignition, either persons or property.

c. The obstruction to or of fire escape ladders which may be used as escape stairways, aisles, exits, doors, windows, passageways or halls, likely in the event of fire to interfere with the operations of the Fire Department or of the safety and ready egress of occupants.

d. The violation of any rule now or hereafter promulgated by the Fire Department, or the Township.

*Floor area, superficial* shall mean the net floor area, within the enclosing walls of the room, excluding built-in equipment such as wardrobes, cabinets, kitchen units or fixtures which are not readily removable and excluding the floor area where the floor to ceiling height is less than seven (7) feet.

*Garbage (See also Refuse, Rubbish)* shall mean putrescible animal and vegetable waste resulting from the handling, preparation, cooking and consumption of food.

*Habitable rooms* shall mean rooms used or designed for use by one (1) or more persons for living or sleeping or cooking and eating, but not including bathrooms, water closet compartments, laundries, serving and storage pantries, corridors, foyers, vestibules, cellars, heater rooms, boiler rooms, utility rooms, and other rooms or spaces that are not used frequently or for an extended period of time or that have less than fifty (50) square feet of

superficial floor area shall not be considered as habitable rooms.

*Health Officer* shall mean the Health Officer of the Township of West Orange.

*Hotel* shall mean any building kept, maintained, advertised as, or held out to be a place where sleeping accommodations are supplied for pay to transient or permanent guests in which fifteen (15) or more rooms are rented furnished or unfurnished, including any room found to be arranged for or used for sleeping purposes, with or without meals, for the accommodation of such guests, or every building, or part thereof, which is rented for hire to thirty (30) or more persons for sleeping accommodations. There shall not be included rooms which are physically a part of a self-contained and enclosed dwelling unit. This definition shall not be construed to include any building defined as a tenement house pursuant to Title 55 of the Revised Statutes of New Jersey, or any amendments now or hereafter enacted thereto.

*Housing inspectors* shall mean all officials, officers or employees of the Township entrusted with the enforcement of this Code.

*Immediate family* shall mean the head of the family, spouse, the parents and the children (including adopted children) of either the head of the family or spouse. There shall be a rebuttable presumption that three (3) or more persons occupying any dwelling unit or rooming unit are not related to one another so that any two (2) or more shall be members of an immediate family, and the burden of proving such relationship shall be on the person or person asserting it.

*Incidental cooking* shall mean cooking facilities containing no more than two (2) plates or burners not exceeding six (6) inches in diameter.

*Independent rooming unit* shall mean a rooming unit in other than a single family dwelling which opens directly to the exterior of the premises by way of a common hallway, common areaway or common stairway or door to the exterior of the premises without passing through any other rooming unit or dwelling unit.

*Infestation* shall mean the presence of insects, rodents, vermin or other pests on the premises which constitute a health hazard.

*Kitchen* shall mean any room or part of a room used for cooking or the preparation of food.

*Lodging house* shall mean any dwelling, whether furnished or unfurnished, in which there are one (1) or more independent rooming units where there are sleeping accommodations for occupancy or available for occupancy by four (4) or more persons, and where there is no agreement between the operator and any occupant for feeding, personal care or special supervision or attention, except that hotels as defined by N.J.S.A. 29:1-11 containing fifteen (15) or more rooms or accommodating thirty (30) or more persons shall be excluded therefrom.

*Mixed occupancy* shall mean any building containing one (1) or more dwelling units or rooming units and also having a portion thereof devoted to nondwelling uses or as a hotel.

*Nuisance* shall mean:

- a. Any public nuisance known at public law or in equity jurisprudence, or as provided by the Statutes of the State of New Jersey, or the ordinances of the Township.

- b. Any attractive nuisance which may prove detrimental to the health or safety of children whether in a building, on the premises of a building, or upon an unoccupied lot. This includes, but is not limited to: abandoned wells, shafts, basements, excavations, abandoned iceboxes, refrigerators, motor vehicles, any structurally unsound fences or structures, lumber, trash, debris, or vegetation such as poison ivy, oak or sumac, which may prove a hazard for inquisitive minors.
- c. Physical conditions dangerous to human life or detrimental to health of person on or near the premises where the conditions exist.
- d. Overcrowding of a room with occupants in violation of this Code.
- e. Insufficient ventilation or illumination in violation of this Code.
- f. Inadequate or unsanitary sewage or plumbing facilities in violation of this Code.
- g. Unsanitary conditions or anything offensive to the senses or dangerous to health, in violation of this Code.
- h. Whatever renders air, food or drink unwholesome or detrimental to the health of human beings.
- i. Fire hazards.

*Nursing home* shall mean any building in which two (2) or more disabled persons are housed for purposes of care, special attention, treatment or supervision, and are housed for such purposes overnight or longer, but dwellings where not more than two (2) disabled persons live with members of their families to whom they are related by blood or marriage, shall be excluded therefrom.

*Occupant* shall mean any person living, sleeping, or having actual possession of a dwelling unit or rooming unit.

*Operator* shall mean any person who has charge, care or control of a dwelling or premises, or a part thereof, whether with or without the knowledge and consent of the owner.

*Owner* shall mean any person who, alone or jointly or severally with others, shall have legal or equitable title to any premises, with or without accompanying actual possession thereof; or shall have charge, care or control of any dwelling or dwelling unit, as owner or agent of the owner, or as executor, administrator, trustee, receiver or guardian of the estate, or as a mortgagee in possession, regardless of how such possession was obtained. Any person who is a lessee subletting or reassigning any part or all of any dwelling or dwelling unit shall be deemed to be a co-owner with the lessor and shall have joint responsibility over the portion of the premises sublet or assigned by the lessee.

*Person requiring special care* shall mean any person who does not suffer from such physical or mental incapacity as to be classified as a disabled person, but by reason of physical or mental limitations, or advanced years, does require a limited degree of care and attention to assure personal safety at all times.

*Plumbing* shall mean all of the following supplies, facilities and equipment: gas, pipes, gas-burning equipment, water pipes, garbage disposal units, waste pipes, water closets, sinks, installed dishwashers, lavatories, bathtubs, shower baths, installed clothes washing machines, catch basins,

vents and any other similar supplied fixtures, together with all connections to water, sewer or gas lines, and water pipes and lines utilized in conjunction with air conditioning equipment.

*Premises* shall mean a lot, plot or parcel of land including the buildings or structures thereon.

*Public Officer* shall mean the Planning Director of the Township or such other person as the Town Council may specifically designate and such other officials as the Public Officer may designate to act in his/her behalf.

*Refuse (See also Garbage, Rubbish)* shall mean all putrescible and nonputrescible solid wastes (except body wastes), including but not limited to: garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles and side market and industrial wastes.

*Registered mail* shall mean registered mail or certified mail.

*Room* shall mean space in an enclosed building or space set apart by a partition or partitions, and any space in a building used or intended to be used as a bedroom, dining room, living room, kitchen, sewing room, library, den, music room, dressing room, enclosed sleeping porch, sun room, party room, recreation room, breakfast room, study, storage room and similar uses.

*Rooming house.* (See definition of *Lodging house* and *Boarding house*.)

*Rooming unit* shall mean a group of rooms forming a single habitable unit other than a dwelling unit, which is rented or available for rent for sleeping purposes, with or without cooking facilities.

*Rubbish* (Also see *Garbage, Refuse*) shall mean nonputrescible solid wastes consisting of both

combustible and noncombustible wastes, such as paper, wrappings, cigarettes, cardboard, tin cans, yard clippings, leaves, wood, glass, bedding, crockery and similar materials.

*Sanitary sewer* shall mean any sanitary sewer owned, operated and maintained by the Township and available for public use for the disposal of sewage.

*Sewage* shall mean waste from a flush toilet, bathtub, sink, lavatory, dishwashing or laundry machine, or the water-carried waste from any other fixture or equipment or machine.

*Single family dwelling* shall mean any dwelling containing one (1) and only one (1) dwelling unit, but which may contain in addition thereto one (1) rooming unit with incidental cooking facilities.

*Sleeping room* shall mean any room within a dwelling unit which contains a bed and/or other furniture which is or may be used by persons for sleeping.

*Smoke detector* whenever used in this chapter shall mean a fire alarm device capable of sensing visible and invisible particles of combustion providing an alarm suitable in all sleeping areas.

*Story* shall mean that portion of a building included between the upper surface of any floor and the upper surface of the floor next above, except that the topmost story shall be that portion of a building, included between the upper surface of the topmost floor and the ceiling or roof above. If the finished ceiling level directly above a basement or cellar is more than six (6) feet above grade, such basement or cellar shall be considered a story.

*Structure* shall mean any combination of any materials, whether fixed or portable, forming a construction, including buildings.

*Superficial floor areas.* (See *Floor area, superficial*).

*Ventilation* shall mean supply and removal of air to and from any space by natural or mechanical means.

*Ventilation, mechanical* shall mean ventilation by power-driven devices.

*Ventilation, natural* shall mean ventilation by opening to outer air through windows, skylights, doors, louvres, or stacks with or without wind-driven devices.

*Washrooms* shall mean enclosed space containing one (1) or more bathtubs, showers, or both, and which shall also include toilets, lavatories or fixtures serving similar purposes.

*Water closet compartment* shall mean enclosed space containing one (1) or more toilets which may also contain one (1) or more lavatories, urinals and other plumbing fixtures.

*Weathering* shall mean deterioration, decay or damage caused by exposure to the elements.

(1972 Code §§ 16-2.62, 16-20.1; Ord. No. 579-80 § 1; Ord. No. 1456-97 § 1; Ord. No. 1637-99 § 1; Ord. No. 1690-00 § 1; Ord. No. 1827-02 § 1)

### 14-3 APPLICABILITY.

Every residential and nonresidential building and the premises on which it is situated in the Township, used or intended to be used for dwelling, commercial business or industrial occupancy shall comply with the provisions of this Code, whether or not such building shall have been constructed, altered or repaired before or after the enactment of this Code, and irrespective of

any permits or licenses which shall have been issued for the use or occupancy of the building or premises for the construction or repair of the building, or for the installation or repair of equipment or facilities prior to the effective date of this Code. This Code establishes minimum standards for the initial and continued occupancy and use of all such buildings, and does not replace or modify standards otherwise established for the construction, repair, alteration or use of the building, equipment or facilities contained herein except as provided in Section 14-4. Where there is mixed occupancy, residential or nonresidential use therein shall be nevertheless regulated by and subject to the provisions of this Code. (1972 Code § 16-3)

...  
**14-8.1 Maintenance of Exterior of Premises.**

a. *Hazards and Unsanitary Conditions.* The exterior of the premises and all structures thereon shall be kept free of all nuisances, and any hazards to the safety of occupants, pedestrians and other persons utilizing the premises, and free of unsanitary conditions; and any of the foregoing shall be promptly removed and abated by the owner or operator. It shall be the duty of the owner or operator to keep the premises free of hazards which include but are not limited to the following:

1. Refuse, garbage and rubbish as defined in subsection 14-2.1 contained herein.
2. Natural Growth. Dead and dying trees and limbs or other natural growth which, by reason of rotting or deteriorating conditions or storm damage, constitute a hazard to persons in the vicinity thereof. Trees shall be

kept pruned and trimmed to prevent such conditions. All weeds shall be removed from the vicinity of any public sidewalk or roadway.

3. Overhangings. Loose and overhanging objects, and accumulations of ice and snow which by reason of location above ground level constitute a danger of falling on persons in the vicinity thereof.b

**14-8.2 Appearance of Exterior of Premises and Structures.**

a. *Residential and Nonresidential.* The exterior of the premises, the exterior of dwelling structures and the condition of accessory structures shall be maintained so that the appearance of the premises and all buildings thereon shall reflect a level of maintenance in keeping with the residential standards of the neighborhood or such higher standards as may be adopted as part of a plan of urban renewal by the Township, and it shall be the duty of the owner or operator to maintain the premises in the manner set forth herein, including, but not limited to the following:

...

2. Landscaping. Premises shall be kept landscaped and lawns, hedges and bushes shall be kept trimmed where exposed to public view, and shall be maintained so as not to obstruct public access to sidewalks and roadways. All trees shall be kept trimmed so that they do not encroach onto the sidewalk or roadway from the ground to a height of seven (7) feet. Hedges and bushes shall be

69a

maintained so that they do not encroach onto the sidewalk. Lawns shall be trimmed and maintained and shall not exceed a height of eight (8) inches from the ground. All lawns, trees, hedges and bushes in violation of any and all provisions of this section shall be removed, trimmed, or cut to conform to the requirements set forth herein.

(a)

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.