

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

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| In re Appeal of: | : | PHILADELPHIA COUNTY |
| | : | COURT OF COMMON PLEAS |
| FRIENDS OF MARCONI PLAZA | : | |
| and | : | |
| RICH CEDRONE | : | |
| and | : | OCTOBER TERM, 2020 |
| JOSEPH Q. MIRARCHI | : | NO. 00295 |
| Appellants | : | |
| | : | |
| From a decision of: | : | |
| | : | |
| THE CITY OF PHILADELPHIA BOARD | : | |
| OF LICENSE AND INSPECTION REVIEW | : | |

ORDER

AND NOW, this 17th day of August, 2021, upon consideration of the foregoing Appeal of Friends of Marconi Plaza, Rich Cedrone, and Joseph Q. Mirarchi (“Appellants”) from a decision of the City of Philadelphia Board of License and Inspection Review (the “Board”) dated September 29th, 2020, after briefing and oral argument, it is hereby **ORDERED** and **DECREED** that said Appeal is **GRANTED**. The September 29th, 2020, decision of the Board affirming the July 24th, 2020, decision of the City of Philadelphia Historical Commission (the “PHC”) is **REVERSED** for the reasons set forth below.

FINDINGS

1. The Board committed an error of law by finding that Appellants did not have standing.¹ Appellants have standing under *Dowds v. Zoning Bd. of Adjustment*, 242 A.3d 683, 694 (Pa.Cmwlth. 2020). Appellants have been active caretakers of Marconi Plaza for the past ten

¹ Board’s Findings of Fact and Conclusions of Law at pg. 17, ¶ 25.



(10) years coordinating the park’s upkeep, beautification, and modernization.² Appellants regularly utilize Marconi Plaza for numerous social and fundraising events.³ Appellants are a recognized “friends” group of the Philadelphia Department of Parks and Recreation.⁴ Accordingly, Appellants have a substantial, direct, and immediate interest in the outcome of the litigation *sub judice* because removal of the Christopher Columbus Statue (the “Statue”) will impact the nature of the park.

2. The Board committed an error of law by affirming the PHC’s decision to remove the Statue without a detailed expert report on the process and effect of removal on the Statue and Marconi Plaza under Philadelphia Code § 14-1005(6)(e)(.3).⁵ The only report the PHC considered was an unauthenticated, unattributed, and cursory two (2) page document titled “Guidance for Marble Sculpture Removal” purporting to outline seven (7) generalized steps to remove the Statue.⁶ The purported “Guidance” document alludes at the fragility of the Statue: “There is a very good chance that parts of the sculpture may crack when it is removed.”⁷ The document further notes: “Cut mortar joints BEFORE rigging. Failure to do so can cause the marble to snap.”⁸ The document is void of any quantitative, dimensional attributes of the Statue and its present condition that otherwise would aid in determining the effect of removal on a statute more than 100 years old.

² Appellants’ May 17, 2021, Brief at pgs. 3-7.

³ *Id.*

⁴ <https://loveyourpark.org/park-friends-network#South>.

⁵ “In making its determination as to the appropriateness of proposed alterations, demolition, or construction, the Historical Commission shall consider the following: The effect of the proposed work on the building, structure, site, or object and its appurtenances”.

⁶ Marconi Record 01 at pgs. 198-199.

⁷ *Id.* at pg. 198.

⁸ *Id.*

3. The Board committed an error of law by affirming the PHC's decision to remove the Statue to the extent that it relied on the City of Philadelphia's ("Appellee") argument that Margot Berg's testimony combined with the two (2) page removal report was sufficient under Philadelphia Code § 14-1005(6)(e)(3).⁹
4. The Board committed an error of law by affirming the PHC's decision to remove the Statue to the extent that it relied on Appellee's argument that the PHC was permitted to approve removal without a detailed expert report because the PHC staff were qualified to offer their opinions on the condition of the Statue.¹⁰ To the contrary, those staff members were not independent experts with experience in analyzing historic marble sculpture and transportation.
5. The Board committed an error of law by affirming the PHC's decision to remove the Statue to the extent that it relied on Appellee's argument that the PHC was permitted to approve removal without a detailed expert report because a speculative "ultimate removal plan" would be presented at an undetermined future time.¹¹ To the contrary, the time to bring the "removal plan" was at the hearing so that it could be properly evaluated and vetted.
6. The Board committed an error of law by affirming the PHC's decision to remove the Statue without a detailed expert report on the process and effect of removal on the Statue in violation

⁹ Appellee City of Philadelphia's June 18, 2021, Brief at pg. 15: "Substantial evidence is present in both the testimony of Margot Berg and the conservator plans that were attached to the City's application".

¹⁰ August 10, 2021, Notes of Testimony ("N.T.") at pg. 20:78: "Dr. Farnham, the executive director of the [PHC], testified about both his specific qualifications and those of his staff regarding whether they have the experience or the ability to review whether or not something like the statue could be removed or packed or whatever in a safe manner."

¹¹ August 10, 2021, N.T. at pgs. 20:77-78: "So what the commission did was they specifically said in their decision, one of the conditions they placed upon their approval was the staff would review specific plans and assure that it was going to be done safely. [...] If the staff makes a determination that the ultimate removal plan, it cannot relocate the statue in a safe manner, then they have no authority to approve it."

of the PHC's public policy and purpose under Philadelphia Code § 14-1001(1)&(4).¹² The Board was not presented adequate information or evidence to conclude that safety was or is an ongoing concern at the Statute. In fact, only isolated incidences in the wake of the George Floyd protests were presented.

7. The Board committed an error of law by affirming the PHC's decision to remove the Statue because the Philadelphia Office of Arts, Culture and Creative economy failed to adhere to Managing Director's Directive 67 Section B(III)(2).¹³ The City failed to meet the directive requirement of no less than ninety (90) days for public input for this removal. In fact, there was only twenty-eight (28) days of public input thereby violating the City's own Managing Director's Directive 67.

STANDARD OF REVIEW

Under 2 Pa.C.S. § 752, any party aggrieved by an adjudication of a local administrative agency has the right to appeal to the trial court, which holds appellate jurisdiction in such matters. *King v. City of Phila.*, 102 A.3d 1073, 107 (Pa.Cmwlt. 2014). On appeal, if there was a full record at the agency level, the trial court reviews the agency's adjudication to determine whether there was a constitutional violation, an error of law, a failure to comply with statute, or an unsubstantiated material finding of fact. 2 Pa. C.S. § 754(b). *Johnson v. Lansdale Borough*, 146

¹² "It is hereby declared as a matter of public policy that the preservation and protection of ... objects [...] are public necessities and are in the interests of the health, prosperity, and welfare of the people of Philadelphia. The purposes of this Chapter 14-1000 are to: (1) Preserve [...] objects that are important to the education, culture, traditions, and economic values of the City" and "(4) Afford the City, interested persons, historical societies, and organizations the opportunity to acquire or to arrange for the preservation of [...] objects that are designated individually or that contribute to the character of historic districts".

¹³ "In the case of a proposal to remove due to public protest, an opportunity to solicit and obtain public input shall be provided by the Office of Arts, Culture and the Creative Economy or its successor agency prior to further action on the proposal. A period of no less than ninety (90) days shall be provided for public input on the matter."

A.3d 696, 711 (Pa. 2016). See *Mulberry Mkt., Inc. v. City of Philadelphia, Bd. of License & Inspection Rev.*, 735 A.2d 761, 767 (Pa.Cmwlt. 1999). Further, a substantial evidence inquiry requires that the Court “inquire whether there is such relevant evidence of record which a reasonable person might accept as adequate to support a conclusion.” *Mulberry Mkt., Inc. v. City of Philadelphia, Bd. of License & Inspection Rev.*, 735 A.2d 761, 767 (Pa.Cmwlt. 1999); see also *Cameron v. Dept. Of Labor and Industry, Bureau of Employer Tax Operations*, 699 A.2d 843 (Pa.Cmwlt. 1997).

With respect to statutory interpretation and errors of law, administrative agencies are traditionally given deference when applying their own guiding statutes absent “fraud, bad faith, abuse of discretion, or clearly arbitrary action.” *Winslow–Quattlebaum v. Maryland Insurance Group*, 752 A.2d 878, 881 (Pa. 2000). See *Turchi v. Philadelphia Bd. of License & Inspection Rev.*, 20 A.3d 586, 591 (Pa.Cmwlt. 2011). “However, when an administrative agency's interpretation is inconsistent with the statute itself, or when the statute is unambiguous, such administrative interpretation carries little weight.” *Lancaster Cty. v. Pa. Labor Relations Bd.*, 94 A.3d 979, 986 (Pa. 2014). Indeed, the agency’s interpretation is given “controlling weight unless it is plainly erroneous or inconsistent with the regulation.” *Forbes Health System*, 422 A.2d, 480, 482 (Pa. 1980). This Court finds that the agency’s decision was both an abuse of discretion and clearly arbitrary action.

ANALYSIS

It is baffling to this Court as to how the City of Philadelphia wants to remove the Statue without any legal basis. The City’s entire argument and case is devoid of any legal foundation. The Board and the PHC’s primary justification for removal was the civil unrest that occurred near

2700 South Broad Street between June 13th and June 19th, 2020, as well as a protest on June 23rd, 2020, as a result the murder of George Floyd on May 25th, 2020, in Minneapolis, Minnesota.¹⁴

In this case, the PHC was charged to interpret the phrase “necessary in the public interest”¹⁵ with respect to the Statue’s removal. Under Philadelphia Code § 14-1005(6)(d): “No building permit shall be issued for the demolition of a historic [...] object [...] unless the [PHC] finds that issuance of the building permit is necessary in the public interest”. It is undisputed¹⁶ in this case that removal of the Statue is defined as a “demolition” pursuant to Philadelphia Code § 14-203(88).¹⁷ Therefore, in order to approve removal of the Statue under the Philadelphia Code, the PHC must find that the removal is “necessary in the public interest”. In this case, the Board erred by affirming the PHC’s decision to remove the statue because there was insufficient evidence in the record to make the determination that it was “necessary in the public interest”.

Here, the PHC interpreted the isolated civil unrest as making removal of the Statue necessary in the public interest. However, the PHC’s interpretation is inconsistent with Philadelphia Code § 14-1001(1),(3),&(4) delineating the PHC’s duty to preserve and protect historical objects, such as the Statue.¹⁸ Therefore, approving removal without a detailed, expert report containing *any* quantitative data with respect to the state of the Statue and removal

¹⁴ Appellee City of Philadelphia’s June 18, 2021, Brief at pgs. 3-4.

¹⁵ Philadelphia Code § 14-1005(6)(d).

¹⁶ See Board’s Findings of Fact and Conclusions of Law at pg. 14, ¶ 3.

¹⁷ “Demolition includes the removal of a building, structure, site, or object from its site or the removal or destruction of the façade or surface.”

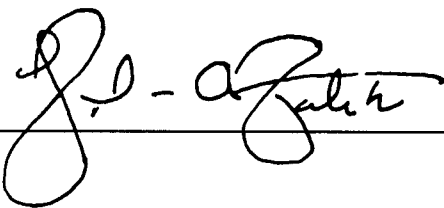
¹⁸ “It is hereby declared as a matter of public policy that the preservation and protection of [...] objects [...] are public necessities and are in the interests of the health, prosperity, and welfare of the people of Philadelphia. The purposes of this Chapter 14-1000 are to: (1) Preserve [...] objects that are important to the education, culture, traditions, and economic values of the City” and “(4) Afford the City, interested persons, historical societies, and organizations the opportunity to acquire or to arrange for the preservation of [...] objects that are designated individually or that contribute to the character of historic districts”.

thereupon, was clearly erroneous, arbitrary, and inconsistent with the guiding purpose of the Historical Preservation Ordinance under Philadelphia Code § 14-1000, *et seq.*

In addition, the City failed to allow the ninety (90) day requirement for public input pursuant to the Managing Director's Directive 67. To the contrary, there was only twenty-eight (28) days for this input. The City of Philadelphia and all of its agencies have an obligation to comply with the law and regulations that may have been enacted to govern or guide the orderly process of justice. This did not happen here. This is clearly an abuse of discretion as well as arbitrary action.

Moreover, the record before this Court was devoid as to any ongoing civil unrest. Accordingly, it was arbitrary for the PHC to interpret that the Statue's removal was necessary in the public interest based on those transient and isolated incidents. This Court notes that no evidence was presented to the PHC or the Board that a history of civil unrest surrounding, and with respect to, the Statue existed, nor has any been present since June 23rd, 2020. Therefore, it was an error of law for the Board to affirm the PHC and it would be error for this Court to affirm the same.

BY THE COURT:



J.