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BEFORE THE HEARING EXAMINER FOR THE CITY OF LAKEWOOD

RE: Brady Louwien

Appeal of Issuance of Notice and Order
of Abatement of a Public Nuisance

File No. N0004

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) FINDINGS OF FACT, CONCLUSIONS OF
LAW AND FINAL DECISION
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Summary

Brady Louwien has appealed a Notice and Order of Abatement of a Public Nuisance (hereinafter referred to as "ABATEMENT ORDER") that directs him to remove all nuisances present, including all contractor supplies, contractor material, construction debris, lumber, concrete, metal, salvage material, scrap or like material from the exterior of his property located at 12626 47th Ave SW, Lakewood, WA 98499. Mr. Louwien's appeal is sustained and he is not found to be in violation of the code provisions identified in the ABATEMENT ORDER. The nuisance provisions cited in the ABATEMENT ORDER do not apply to outdoor storage of contractor materials, but rather generally only to solid waste. There is insufficient evidence in the record to establish that the materials stored outside on Mr. Louwien's property are solid waste as opposed to contractor materials.

In prevailing in his appeal, Mr. Louwien is cautioned that in lay terms he has gotten off on a technicality. The materials stored outside on his property are still likely in violation of City code, but not the code provisions listed in the ABATEMENT ORDER. Mr. Louwien's property appears to be zoned Multi-Family 2. Outdoor storage of contractor materials does not appear to be allowed in this zoning district. If Mr. Louwien continues to store contractor materials outdoors, the City could cite him for this activity as a violation of the zoning district regulations applicable to his property. Mr. Louwien should continue to work with City staff to ensure that his property is compliant with all applicable code provisions.

The parties should also note that the date of violation used to assess code compliance was January 9,

1 2020. The reason this date was chosen is that the ABATEMENT ORDER specified no violation date
2 and also because the ABATEMENT ORDER was issued prior to expiration of the compliance period
3 given to Mr. Louwien by City staff. According to the ABATEMENT ORDER itself, Mr. Louwien was
4 informed that he must abate violations “no later than October 31, 2019 in order to be in compliance with
5 the City’s property maintenance requirements.” Despite this assurance that Mr. Louwien would be in
6 compliance if he abated by October 31, 2019, the City issued the ABATEMENT ORDER on October
7 22, 2019, before expiration of the compliance deadline. Given the City’s assurance of no code violation
8 until October 31, it would be patently unfair to find his property in violation prior to that date.
9 Consequently, the violation date for purposes of assessing code violations was based upon the January
10 9, 2020 photographs provided by City staff, as the January 9, 2020 date provided Mr. Louwien a
11 reasonable opportunity to achieve compliance.

12 Testimony

13 Bill Mathies, Code Enforcement Officer, has worked for the City for four years. He first came to the
14 subject property when a prior owner lived there. He visited as an animal control officer. First contact
15 with the appellant was in August 31, 2017. He visited the property over a complaint regarding junk.
16 There was junk on the property. Mr. Mathies pointed to photos taken on that date. Outdoor storage
17 included wood, building materials, various amounts of miscellaneous debris, junk and wood debris
18 scattered throughout the property. He estimates the lot is 1/3 acre that was covered 80-90% in junk and
19 debris. Mr. Mathies called the appellant on September 7, 2019. Mr. Mathies stated he had a permit issued
20 by the City to build a 40’x40’ pole building on the property and that construction was planned for the
21 fall. Mr. Mathies asked to be kept updated on the progress. On September 26, 2017, at the request of the
22 appellant, Mr. Mathies was asked to do a walk through on the property and point out all the specific
23 violations. Mr. Mathies pointed to building materials, miscellaneous junk, vehicles, debris and other
24 items. He and the appellant agreed to a 90-day strategy for cleaning up the property, with the front and
25 side yards to be cleaned within 30-days. These were in view of the City street. Within 60 days after that
26 the rear should be cleaned up and an update given on the progress of the construction of the pole building.
On September 27, 2019 Mr. Mathies mailed the appellant a courtesy notice outlining the agreed upon
mitigation and timing. The date given was December 31, 2017.

27 The appellant did not make the timeline. Mr. Mathies forwarded the case on for abatement to the
28 Abatement Manager. Nothing happened in 2018. Mr. Mathies reopened the case on April 2, 2019. He
29 called the appellant to set up a meeting. The condition had deteriorated since 2017. The appellant stated
30 the neighbor put trash on his property. There were several junk vehicles and RVs being stored on the
31 right of way. He met with the appellant and neighbor on April 3, 2019. Mr. Mathies gave them a week
32 to remove the vehicles from the City right of way. He also stated he wanted to see progress in the next
33 2-4 weeks. He inspected on the 12th of April 2019. The appellant requested an additional time extension
34 due to snow. He returned on April 15, 2019 and found that the RV and building materials were still in
35 place. He issued a notice of infraction with listed fees.

36 After a hearing on the violation, on June 5, 2019 the judge reduced the fine from \$1,000 to \$750 with
an order to comply with the judgement on the violation. About a month later on July 9, 2019, Mr.

1 Mathies and a colleague again visited the site. There was a flatbed truck full of stuff on the right of way.
2 The property was still full of junk. The junk had extended to the City of Lakewood property to the north.
3 Mr. Mathies warned he would issue another letter of infraction. The hearing was scheduled for
4 September 4, 2019 but the defendant did not appear in court. The appellant returned to court later for a
5 different infraction.

6 On August 22, 2019 Mr. Mathies asked about nuisance abatement internally and learned no progress
7 had been made. There were many separate violations written at different times. He demonstrated 24
8 photos of the property.

9 In his opportunity to question Mr. Mathies' testimony, the appellant stated the photos were accurate.
10 He'd been working on the property. The first time he went to court was when he began moving things
11 around. He had a guy help sell his stuff. The judge declared his stuff a nuisance. In response to the
12 examiner, the appellant stated he's been moving stuff off of his property, sometimes on to neighboring
13 properties at their request. He doesn't dispute the City's testimony.

14 Jeff Gumm, Program Manager, City of Lakewood testified he is familiar with the property. He described
15 the code enforcement photos from 2015 forward, including before the appellant purchased the property,
16 until the day prior to the hearing. It is currently littered with scrap building supplies, perhaps from
17 outside jobs, on all sides of the property. Construction material debris is everywhere. The pole building
18 has been constructed. A storage container has also been brought in. It took about three years to get the
19 pole building permitted and constructed, which included an extension of the permit. In response to the
20 examiner, Mr. Gumm stated the photos from November 25, 2019 were representative of the property
21 though there has been some improvement at the site but there remains a lot of debris.

22 Mr. Hieb Phan, speaking for the appellant, stated the appellant had provided excellent work for him. He
23 stated Lakewood wanted to buy the subject property to expand the City's park through eminent domain
24 and were delaying permits for his storage building. He delayed building the storage building for fear of
25 losing his property. Mr. Phan stated he trouble understanding what the City wanted. English is Mr.
26 Phan's second language and the appellant is functionally illiterate, so he had difficulty understanding
the City's request. No real action was taken because the appellant felt in limbo. Also, the appellant's
household situation is complicated.

Mr. Louwien, the appellant, stated that Lakewood has been trying to buy his property for 2 years, 7
months. He/s not interested in selling. The City threatened eminent domain over the course of 150
separate interactions stating they'd only give him \$90,000-100,000 and would force him to pay for a
lawyer. The City was threatening eminent domain when they knew that it was illegal to use grant money
for that purpose. Once the grant expired, the City finally stopped threatening to take his property. He
had to extend his building permit five times. The president of the local homeowners association finally
took action and contacted the Mayor. The Mayor responded a couple of months ago saying the City was
no longer interested in buying his property. The appellant will just need to deal with the code
enforcement case. It wasn't until the Mayor's letter that he finally had a definitive word on getting to
keep his house. He couldn't build the garage because the City said they were going to take his property
and just knock it down anyway. He felt harassed.

1 He also asked if he was supposed to get notice if his property was going to be rezoned. The examiner
2 answered that the City is required to notify property owners. He said he's never received any notice
3 from the City. The City promised to get it to him. His neighbor received notice, but he, the appellant,
4 did not. The neighbor was notified of the potential rezoning in March 2019. That letter stated the City
5 already owned the appellant's house and that it would be demolished in 30 days. For almost three years
6 he didn't build the garage and get the lot cleaned up because the City was continuously threatening to
7 take his home and in fact act as if they already have. He's made frequent and continuous attempts to
8 contact the City to find out the legal status of his property. When he finally got definitive word from the
9 Mayor, he proceeded with the shed which was finished in October 2019. He then reached out to the code
10 enforcement to ask for a three-day extension to put wiring and a floor in. The City denied him with
11 prejudice saying specifically they "don't feel sorry for him".

12 Mr. Phan stated some of the construction materials are his because the appellant is working for him.

13 Mr. Louwien stated he had 50 days to complete the garage after finding out his home was safe from
14 eminent domain. He tried to extend the permit. He was told the permit technician was banned from
15 further conversation with him.

16 In response to the examiner Mr. Louwien stated the materials on his property are left over but still
17 valuable building materials from several of his jobs. He's been selling it off. None of it should be
18 considered trash. All of it will be stored in the garage. His property will be cleaned within a few more
19 days.

20 Mr. Phan entered a letter to the City Council written by an advocate. It wasn't about the Notice and
21 Order but instead about the process and history.

22 City staff responded that Mr. Louwien was told it would be from eminent domain and would be grant
23 money. Mr. Louwien stated that was not the case.

24 The City noted the shed was finished on October 15, 2019 but a picture taken before the hearing showed
25 construction materials are still on the site. Mr. Louwien stated he'll have the property cleaned up in a
26 couple of days. The City asked for the record to stay open for further evidence related to the potential
27 acquisition.

28 In response to the examiner, the City stated the building materials are still considered a nuisance under
29 the code. It is similar to discarded material given its been exposed to the weather and degraded.

30 In response to the examiner, the City stated they would provide evidence of the examiner's jurisdiction
31 in this case. See Appendix A for summary of testimony.

32 **Exhibits**

- 33 Exhibit 1: Notice and Order of Abatement of a Public Nuisance (October 23, 2019).
34 Exhibit 2: City Photos, 1-24

- 1 Exhibit 3: Louwien Letter to Council (undated)
2 Exhibit 4: Notice of Hearing (November 4, 2019)
3 Exhibit 5: Appeal Request (October 28, 2019)
4 Exhibit 6: Dodsworth Letter (May 15, 2018)
5 Exhibit 7: Wachter Letter (May 16, 2018)
6 Exhibit 8: Louwien Letter (December 27, 2018)
7 Exhibit 9: Dodsworth Letter (June 13, 2019)
8 Exhibit 10: Dodsworth Letter (July 2, 2019)
9 Exhibit 11: Hearing Examiner Authority
10 Exhibit 12: January 9, 2020 Photos
11 Exhibit 13: Post Hearing Correspondence

Findings of Fact

Procedural:

- 12 1. Appellant. Brady Louwien, 12616 47th Ave SW, Lakewood, WA 98499.
13 2. Hearing. The hearing examiner held a hearing on the appeal on November 26, 2019.

Substantive:

14 1. Appeal. This an appeal of a Notice and Order of Abatement of a Public Nuisance
15 (“ABATEMENT ORDER”) dated October 23, 2019, issued by the City of Lakewood against Brady
16 Louwien. The ABATEMENT ORDER directs him to remove all nuisances present, including all
17 contractor supplies, contractor material, construction debris, lumber, concrete, metal, salvage material,
18 scrap or like material from the exterior of his property located at 12626 47th Ave SW, Lakewood, WA
19 98499. Mr. Louwien filed a handwritten note dated October 28, 2019, referring to the file number of the
20 ABATEMENT ORDER, and asking for a hearing in front the of hearing examiner. The ABATEMENT
21 ORDER asserts that the materials stored outdoors on Mr. Louwien’s property qualify as nuisances under
22 City regulations.

23 2. Solid Waste. There is no evidence of outdoor storage of solid waste on January 9, 2020 on Mr.
24 Louwien’s property.

25 Mr. Louwien contested at hearing that the building materials stored on site qualify as nuisances pursuant
26 to LMC 8.16.010 and 8.40.020. He stated there was no debris or trash remaining on the property and
that all the remaining materials are usable construction materials that are neither discarded nor valuable
only as scrap or salvage. Mr. Gumm stated these items are similar to discarded materials and are of
questionable quality because they have been outside and exposed to the weather. Neither party provided
any proof as the usability of the materials in question. Mr. Gumm’s argument is that all construction
materials, lumber, construction supplies, scrap, salvage, garbage, trash, etc. should be regarded as
nuisances.

Photos from the January 9, 2020 inspection show construction materials neatly stacked and stored on

1 and under tarps on all portions of the subject property. Mr. Louwien testified that each of these items are
2 usable building materials in serviceable condition. The City testified these items are similar to discarded
3 materials and are of questionable quality because they have been outside and exposed to the weather.
4 The City did not provide specific examples of which items were no longer usable, and therefore similar
5 to trash or salvage. The January 9, 2020 photographs show intact concrete materials and bagged soil,
6 which are clearly serviceable construction materials. The quality and character of the materials under
7 the tarps is unknown. No obvious, non-construction related, trash or debris was apparent in the January
8 9, 2020 inspection photos. The presence of tarps above and below neatly arranged materials suggests the
9 appellant does not regard any of the building materials as discarded. Some materials, such as wood
10 paneling open to the weather, are arguably salvaged and may or may not be usable.

11 3. Property Ownership. Mr. Louwien is the owner of the property located at 12626 47th Ave SW,
12 Lakewood, WA 98499.

13 **Conclusions of Law**

14 1. Authority. The property maintenance codes pursuant to Section 8.40 LMC are enforced pursuant
15 to Section 8.16 LMC. LMC 8.16.050 designates the City Manager decision making authority for
16 nuisances. LMC 1.36.020 authorizes the hearing examiner to act in a decision-making role involving
17 administrative matters as referred by the City Manager. The City Manager has delegated decision making
18 authority for this administrative appeal the hearing examiner. The examiner therefore has jurisdiction in
19 this case.

20 2. Review Criteria. Chapters 8.16 and 8.40 LMC governs the validity of the ABATEMENT
21 ORDER. Pertinent sections of Chapters 8.16 and 8.40 LMC are quoted below in bold italics and applied
22 through corresponding conclusions of law.

23 **LMC 8.16.010 Nuisances affecting public health.**

24 *The following specific acts, omissions, places, conditions and things are declared to be nuisances: the*
25 *erecting, maintaining, using, placing, depositing, causing, allowing, leaving, or permitting to be or*
26 *remain in or upon any private lot, building, structure, or premises, or in or upon any street, avenue,*
alley, park, parkway, or other public or private place in the City, any one or more of the following places,
conditions, things or acts to the prejudice, danger, or annoyance of others:

B. Filthy, littered or trash-covered premises, including all buildings and structures thereon and areas
adjacent thereto;

C. Tin cans, bottles, glass, cans, ashes, small pieces of scrap iron, wire, metal, articles, bric-a-brac,
broken stone or cement, broken crockery, broken glass, broken plaster and all other trash or abandoned
material unless the same are kept in covered bins or metal receptacles approved by the City; provided,
that any such receptacles approved by the Pierce County Health Officer or designee shall be deemed
approved by the City;

1 *D. Trash, litter, rags, debris, accumulations of empty barrels, boxes, crates, packing cases, mattresses,*
2 *bedding, excelsior, packing hay, straw, or other packing material, lumber not neatly piled, scrap iron,*
3 *tin and other metal not neatly piled which provides harborage for rodents, or other pests;*

4 *F. All places used or maintained as junkyards or dumping grounds, or for the wrecking, disassembling,*
5 *repair or rebuilding of automobiles, trucks, tractors or machinery of any kind, or for the storing or*
6 *leaving of worn out wrecked or abandoned automobiles, trucks, tractors or machinery of any kind or of*
7 *any of the parts thereof, or for the storing or leaving of any machinery or equipment used by contractors*
8 *or builders or by other persons, which places are kept or maintained so as to provide harborage for*
9 *rodents excluding properly zoned and licensed wrecking yards, junkyards or machinery being used;*

10 *G. Garbage disposed of in any manner other than provided in the Sanitary Code;*

11 *M. Any accumulation of combustible, explosive or flammable substances which are stored in a way that*
12 *poses a threat or danger to life or property.*

13 **LMC 8.40.020 Duty to maintain property.**

14 *A. No person owning, or responsible for any property by virtue of leasing, renting, occupying, or being*
15 *in possession or having charge of any property in the City, including vacant lots, shall maintain or allow*
16 *to be maintained on such property, except as may be permitted by any other City ordinance, any of the*
17 *following conditions visible from any public street or alley, or from any other private property:*

18 *1. Junk, trash, litter, boxes, discarded lumber, salvage materials, or other similar materials in*
19 *any front yard, side yard, rear yard or vacant lot;*

20 *3. Broken or discarded furniture, household equipment and furnishings in any front yard, side*
21 *yard, rear yard or vacant lot;*

22 *6. Vehicle parts or other articles of personal property which are discarded or left in a state of*
23 *partial construction or repair in any front yard, side yard, rear yard or vacant lot;*

24 *7. Vehicles or vehicle bodies which are up on blocks and have not been moved for a period of*
25 *30 days;*

26 *9. Any accumulation of weeds, brambles, berry vines, or other vegetation which is over-growing*
any structure or which exceeds an average height of 15 inches, or any accumulation of junk,
litter, trash, dead organic matter, debris, offal, rat harborages, stagnant water, combustible
materials and similar materials or conditions constituting fire, health or safety hazard;

10. Dilapidation or state of filthiness or uncleanness of any dwelling or other structure which
endangers health or life or which permits entrance by rats, mice or other rodents.

B. For the purposes hereof, the duty to maintain property extends to and includes the area of the public
right-of-way adjacent to and between the property of the person owning, leasing, renting, occupying,

1 *being in possession or having charge of the private property and the paved roadway. The City Manager,*
2 *or the designee thereof, may make exceptions subject to available budget funds as deemed necessary*
3 *and appropriate under circumstances such as accident, extreme danger, or Acts of God, but in no case*
4 *for routine maintenance.*

5 3. The ABATEMENT ORDER alleges violations to LMC 8.16.010 sections B-D, F, G and M.
6 According to Post Hearing Photos and testimony (Ex. 12 and 13), the property is not filthy, littered or
7 trash covered. All items are neatly stacked, almost all are on tarps, many are covered by tarps. Therefore,
8 LMC 8.16.010(B, C, D and G) do not presently apply. There is no evidence that the property has been
9 used as a junkyard or dumping ground for machinery, therefore LMC 8.16.010(F) does not apply. The
10 record shows no accumulation of combustible, explosive or flammable substances stored on site. There
11 is no evidence pursuant to LMC 8.16.010(F). LMC 8.40.020(A)(3, 6, 7, 9, and 10) similarly do not apply
12 for lack of evidence in the record. Nothing in the record suggests there are currently any violations
13 located within the right of way. Therefore, LMC 8.40.020(B) does not apply.

14 The primary code compliance issue is for this appeal is whether the materials stored outdoors on Mr.
15 Louwien's property on January 9, 2020 qualify as discarded lumber, salvage materials or other similar
16 materials pursuant to LMC 8.40.020(A)(1). As determined in Finding of Fact No. 2, there is no bases to
17 conclude that Mr. Louwien had any of these items stored on his property on January 9, 2020.

18 In the absence of any apparent violation of any code provision cited in the ABATEMENT ORDER,
19 there is no bases to uphold the ABATEMENT ORDER.

20 **Decision**

21 Mr. Louwien's appeal is sustained. He is not found to be in violation of any of the code
22 provisions cited is the ABATEMENT ORDER.

23 DATED this 30th day of January 2020.

24 

25 Phillip Olbrechts
26 Hearing Examiner for Lakewood