

APPENDIX A

- 1. JUDGE BELTRAMI COURT OPINION AND ORDER –
COMMON PLEAS COURT 181 CD. 2017**
-

**IN THE COURT OF COMMON PLEAS OF
NORTHAMPTON COUNTY, PENNSYLVANIA
CIVIL ACTION**

CITY OF BETHLEHEM)	
Petitioner)	No.C-48-CV-2016-9376
)	
v.)	
)	
ALVIN S. KANOFSKY and)	
The UNITED STATES OF AMERICA)	
Respondent's)	

OPINION OF THE COURT

This matter is before the Court on Petitioner's Petition for Appointment of Conservator ("Petitioner ") , filed on October 28, 2016. A hearing on the Petition was held on January 5, 2017, and the matter is ready for disposition.

FINDINGS OF FACT

1. Petitioner is the City of Bethlehem ("City") , a third class city located in the counties of Lehigh of Northampton.
2. Respondent Alvin S. Kanofsky ("Kanofsky") owns real estate located at 30 East Third Street (Building") and 32 East Third Street (Vacant Lot") in Bethlehem, Northampton County, Pennsylvania, with parcel ID numbers P6SE1A1180204 and P6SE1A1190204.
3. Respondent the United States of America has filed three tax liens on the building and Vacant Lot.
4. Kanofsky has not legally occupied the Building or Vacant Lot for at least twelve months prior to the filing of the Petition.
5. Kanofsky has not actively marketed the Building o Vacant Lot during the sixty days preceding the filing of the petition and has

- not made a good faith effort to seek the Building or Vacant Lot at a price which reflects the circumstances and market conditions.
6. AS of the date of the filing of the Petition, nether the Building nor thew vacant lot was subject to a pending foreclosure action by an individual or nongovernmental entity.
 7. At the current time, neither the Building nor the Vacant Lot is subject to a pending foreclosure action by an individual or nongovernmental entity.
 8. Kanofsky did not acquire the Building or Vacant Lot within the six months preceding the filing of the Petition.
 9. Due to years of neglect by Kanofsky, the Building's structural integrity has severely deteriorated, mortar is missing from various parts of the exterior wall of the Building, bricks have fallen from the exterior wall of the building onto the sidewalk below, the missing mortar permits water to seep. Into the Building's interior, sections of the roof of he building have collapsed and the roof leaks, he collapsed sections of the roof are adding substantial weight and distress to the third floor of the building, there are holes in the roof of the building, stucco plaster is loosening from the east exterior wall of the Building, the condition of the building has caused water damage to the adjoining building, the Building and Vacant lot are overgrown with vegetation which has grown into the interior of the Building, the window pane in the front of the Building is broken, the Building is in need of substantial rehabilitation to prevent it from collapsing, and this court has previously determined that the Building is "blighted" pursuant to the Urban Redevelopment Law.
 10. The Building requires substantial repairs to the roof structure, ceilings, walls and floors.
 11. The Building is at risk of collapsing.
 12. For the reasons outlined in paragraphs nine through eleven above, the Building and Vacant Lot are public nuisances.
 13. For the reasons outlined in paragraphs nine through eleven above, the Building and Vacant Lot are in need of substantial rehabilitation, yet Kanofsky has not performed any such rehabilitation during the twelve months preceding the filing of the Petition.

14. For the reasons outlined in paragraphs nine through eleven above, neither the Building nor the Vacant Lot are fit for human habitation, or use.
15. The condition and vacancy of the Building and Vacant lot materially increase the risk of fire to the Building and to adjacent properties.
16. The Building is subject to unauthorized entry leading to potential health and safety hazards, requiring the City to secure the Building in order to prevent such hazards after Kanofsky failed to do so.
17. The building and Vacant Lot are attractive nuisances to children due to the unsafe structure of the building and its risk of collapsing onto the Vacant Lot, which includes an area of underbrush with a tunnel leading to an area for children and vagrants to congregate.
18. The accumulation of debris, uncut vegetation, and physical deterioration of the Building and Vacant Lot have created potential health and safety hazards and Kanofsky has failed to take reasonable necessary measures to remove the hazards.
19. The dilapidated appearance and condition of the Building negatively affects the economic well-being of residents and residents and businesses in close proximity to it, including decreases in property value and loss of business, and Kanofsky failed to take reasonable and necessary measures to remedy the Building or its condition.
20. The Building and vacant Lot are nuisances for illicitly purposes, including prostitution, drug use, and vagrancy.
21. Kanofsky has been convicted of the violating multiple municipal codes as a result of the deteriorating condition of the Building and Vacant Lot.
22. The water service to the Building has been shut off 1994,
23. There is no water service at the Vacant Lot
24. There is no electricity service at the Building or Vacant Lot.

CONCLUSIONS OF LAW

1. City and met all operating and notice requirements of the abandoned and Blighted Property Conservatorship Act 68 P.S. Sec 1101-1
2. City has et its burden of proving that the Building and Vacant Lot are in need of a a conservator pursuant to the Abandoned and Blighted Property Conservatorship Act, 68 PS. Sec. 1101-1.

WHEREFORE, the Court enters the following:

Beltrami Order on Case 181 CD
COURT OF COMMON PLEAS OF NORTHAMPTON COUNTY

City of Bethlehem	:	
	:	
v.	:	
	:	No, C-48-CV-2016-9376
Alvin S.Kanofsky	:	
	:	
United States of America	:	
	:	
RESPONDENTS	:	

ORDER OF COURT

And now, this 13th day of January, 2017, Petitioner's Petition for Appointment of Conservator (Petition) filed on October 28,20016, is hereby
GRANTED.

The City of Bethlehem is hereby appointed as conservator for 30 East Third Street ("Building") and 32 East Third Street in Bethlehem, Northampton County, Pennsylvania with parcel ID numbers of P6SE1A11801204 and P6SE1A1190204 respectively. The conservator shall promptly take possession of the Building and Vacant Lot.

The Court here by certifies the schedule of encumbrances against the building and vacant lot attached to the Petition as Exhibits "G" and "H".

Respondent Alvin S. Kanofsky shall reimburse Petitioner for all costs incurred by Petitioner in preparing and filing the Petition.

BY THE COURT:

ANTHONY S. BELTRAMI

APPENDIX B

2. JUDGE BROBSON DECISION COMMONWEALTH COURT OF PENNSYLVANIA, NOVEMBER 29, 2017

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

City of Bethlehem and the	:	
United States of America	:	
	:	NO. 181 C.D. 2017
v.	:	Submitted: August 11,
2017	:	
	:	
Alvin S. Kanofsky	:	
	:	
Appellant	:	

BEFORE: HONORABLE P. BROBSON, Judge
HONORABLE ANNE P. COVEY, Judge
HONORABLE DAN PELLEGRINI, Senior Judge

OPINION BY JUDGE BROBSON FILED: NOVEMBER 29, 2017

APPELLANT ALVIN S. KANOFKSY (KANOFSKY), pro se, appeals from an order of the Court of Common Pleas of Northampton County (trial court), dated January 13, 2017. The trial court granted the City of Bethlehem's(City) Petition for the appointment of a conservtor(Petition) and appointed the City as conservator for Kanofsky's commercial property located at 30 East Third Street(Building) and 32 East Third Street (Vacant Lot) (collectively, the Property). For the reasons set forth below, we affirm the trial court's order.

This case is the latest of many involving the City's attempts over the years to address the deteriorated and blighted condition of the Property.

See,e.g. Commonwealth v. Kanofsky (Pa. Cmwlt., No. 1938 C.D. 2016, filed August 14, 2017) (involving summary criminal charges for violations of City's codified ordinances relating to maintenance of Building and failure to obtain certificate of occupancy;; Kanofsky v. City of Bethlehem (Pa. Cmwlt., No. 1503 C.D. 2016, filed May 17, 2017).

(Involving blight certification); Kanofsky v. City of Bethlehem (Pa. Cmwlt., No. 2163 C.D. 2015, filed Sept. 28, 2016 (involving violations of City's codified ordinances relating to Maintenance of building and failure to obtain a certificate of occupancy). Most recently, the on October 26, 2016, the City filed its Petition with the trial court, seeking its appointment as conservator for the property pursuant to the Abandoned and Blighted Property Conservatorship Act (Act)¹ The trial Court held a hearing on the City's Petition on January 5, 2017.

At the hearing, the City resented the testimony of Craig B. Hynes (Hynes), the City's chief code official.. Hynes testified that the Building is a three-story L-shaped structure with full basement and that the Vacant Lot fits inside the L of the building. (Certified Record (C.R.), Tr. At 14-16.) Hynes stated that on June 15, 2016, he entered the building with two appraisers, Barry Cohen (Cohen) who is a civil structural engineer and another building official to evaluate the Property to determine its fair market value. (I'd. At 17-18, 62) Hynes explained that the evaluation was part of the blighted property process undertaken by the City and Redevelopment Authority. (I'd. at 18.) At the time of the evaluation, Hynes discovered that the roof in the front portion of the Building had partially collapsed, thereby creating a dangerous situation and unstable walls. (I'd. at 17. He explained that a truss had failed causing the roof to collapse and fall onto the third floor. (Hynes stated further that water had been pouring into the building through the hole in the roof and mold had begun to grow on the walls. (C.R. Tr. At 24-25; C.R. City Ex. 2) Due to the partial roof collapse, Hand delivered a letter to Kanofsky on June 16, 2016 advising him that the building was unsafe and in imminent danger of failure, and therefore the building had to be razed or repaired within five days. (C.R.Tr. at 17-19, C.R., City Ex.1)

Hynes also testified regarding additional issues and defects he found observed at the property at the time of the evaluation on June 15, 2016. Hynes explained that the ceiling and soffit of the left side of the entry door on the first floor of the building had completely deteriorated due to water intrusion. (C.R. Tr. At 20-21; C.R. City Ex. 2) He explained further that Kanofsky was storing materials in the building without a certificate of occupancy and that those materials

could combust and require firefighters to enter a structure that had been condemned for quite some time and was not capable of being occupied. (C.R., Tr. At 21-22; C.R. City Ex.2) He also explained that there was some deterioration on the second floor, where the plaster ceilings had dropped and come down and the lath had rotted and broken due to water intrusion (C.R. Tr. At 22-24;C.R. City Ex. 2) Hynes stated that the wood flooring on the second floor had buckled significantly and there were Thirty -gallon garbage cans in various locations on the second floor to catch water coming down through the third floor. (C.R. Tr. At 23-24 ;C.R. City Ex. 2)

On cross examination , Hynes explained that t no time during the sixteen yeas that he has worked for the city did Kanofsky have a certificate of occupancy for the Building.

Hynes testified further that theBuilding was insecure at the time of the June 15, 2016 evaluation, so he secured it by installing a lock on the door. (C.R. Tr. At 26-27, 68-69 City Ex 2). Hynes indicated that there was buckling paint on the common wall shared between the Building and the neighbor building, as well as evidence that water was leaking into the neighboring building. (C.R. Tr at 27-28, 35 C.R. City Exs. 2,5) Hynes also indicated that the mortar and bricks on the south side of the building had severely deteriorated,causing some bricks to fall off the building, (C.R. Tr. At 28-29, 36 C.R. City Exhibit 5) .He stated. Further that there were missing and deteriorated bricks, missing mortar, and exposed wood on the north face of the building's K. H=(C.R., TR at 31; C.R. City Ex. 5) He also stated that on the east side of the Building there was a four to six inch gap in a section of the stucco, where the stucco was pulling away from and was in danger of falling off of the side of the Building, as well as a section where the stucco had bowed and cracked. (C.R., Tr at 31-33; C.R. City, Ex 5) Hynes testified further there was a large crack in one of the Windows on the north side of the Building a long the public sidewalk and that (there was potential for that window to pop off and cause severe damage." (C.R. Tr. At 33-34; C.R. City Ex.5) Hynes also indicated that at the conclusion of the evaluation on June 15, 2016, he placed a Condemned notice on the Building because he did not want entering the

Building due to the roof collapse and the potential for floor collapse(C.R., Tr. At 36; C.R. City Ex. 5)

By August 2, 2016 the crack in the stucco on the east side of the building had moved significantly and no the R frack had form (C.R., Transcript at 37-38; C.R. , City Ex. 15)

Hynes testified further that Kanofsky did not make any attempt to repair or demolish the Building within five days of delivery. Of the June 16, 2016 letter (C.R., Tr. At 19,38) Hynes explained that due to severity of the situation and fear that the Building would not make it through the winters own load, the City put out a bid to have the roof repairs and the stucco removed (Id at 38-39) Ultimately, the City accepted a bid from Serfass Construction Company (Serfass) in the amount of \$135, 536. (I'd at 40; C.R., City Ex. 3) In October 2016, Serfass rebuilt the roof system and installed temporary structural supports to support the new truss and the adjacent roof trusses. (C.R., Tr. At 41-43; C.R., City Ex. 8) Hynes explained that the purpose of the work was not to repair all of the defects in the building, but rather to stabilize the Building to prevent collapse and to remove the stucco on the east side of the Building. (C.R. Tr. At 43) Hynes also explained that the repairs were emergency repairs to prevent total failure and collapse of the Building (I'd. At 76) Hynes explained further that the City was ~~not responsible for making the Building habitable and, that following~~ those emergency repairs, there were at least four sections of the roof where water continued to enter the Building when it rained. (I'd. At 76-77)

Hynes explained further that while Serfass was performing the repairs on the Building in October 2016, Serfass discovered a partial roof failure and buckling of the parapet wall in the southeast corner of. The Building. (I'd. At 64) By. Letter dated October 6, 2016, Hynes notified Kanofsky that the rear parapet which was in danger of collapse, and the partially failed roof constituted. A violation of the city's codified ordinances and had to be repaired immediately (I'd at 64-66; C.R. City Ex. 8) Hynes indicated that after receiving the October 6, 2016 letter, Kanofsky did not make any repairs to the rear parapet or the partially

collapsed roof(C.R. Tr. At 66) Hynes stated that he was concerned that the parapet wall would collapse, so he closed the sidewalk and put up some temporary material”
(I’d at 67; C.R. , City Ex. 7)

Hynes also testified regarding the various court orders entered against Kanofsky related to defects to the property: (1) on September 16, 2015, the trial court found that Kanofsky violated the City’s codified ordinances by failing to maintain the Building, and by storing materials in Building without a certificate of occupancy; (2) on March 14, 2016, the trial court affirmed the decision of the City’s Blighted Property Review Committee (BPRC) which concluded that the Building was blighted; (3) on March 16, 2016, the trial court denied Kanofsky’s appeal from a decision of the City’s Code Board of Appeals, (on May 26, 2016, the trial court found Kanofsky guilty of summary criminal charges for violations of the City’s codified ordinances; and (5) on August 24, 2016, the trial court found Kanofsky guilty of summary criminal charges for violations of the City’s codified ordinances.(C.R. Tr. At 44-54; C.R., City Exs. 10, 12-13, 16-17, 19) Hynes also testified that the findings upon which the BPRC concluded that the building was blighted – i.e. The building had been vacant for over twenty years, the Building was being used illegal for storage, mortar was missing from bricks on the exterior of the Building, the Building’s roof was leaking, there was no water or electricity at the Building – were true and correct. (C.R. Tr. At 55-58; C.R. City Ex. 18)

Hynes testified further : (1) he has never noticed a for sale sign posted on the property (2) the building is not fit for human habitation or occupancy;(there has been uncut vegetation on the vacant lot;(4) the Vacant Lot cannot lawfully be used in its present state(5 the building is physically deteriorated and could cause health and safety hazards; (6) Kanofsky has not taken any steps to remedy the structural defects in the Building (7) the condition of the Building has adversely affected the neighboring building – i.e. Water infiltration, odor, mold, and peeling paint on the common wall; (8) Kanofsky has not taken any measure to prevent water from continuing to seep into the neighboring building (9) the current state of the Property could attract vagrants and other nuisances; and (10)it appeared that at one point of time someone had

been storing materials or residing in a tunnel that had been created in an overgrown area on the Vacant Lot.(C.R. Tr. At 67-71)

Hynes explained that at the time of his initial entry in 2007, the Property was certainly not the condition it is in today.” (I’d. At 71-72) He acknowledged, however, that at that time water had already begun to enter the Building and the Property was not up to code and could not be lawfully occupied. (I’d. At 72) Hynes indicated that after the City issued citations for the condition of the Building in 2007, Kanofsky are moved a significant amount of the material from inside the building and performed some repairs to the roof. (I’d at 73-74)

Hynes stated further that in his opinion the stucco damage to the Building could not have been caused by snow being piled against the Building (I’d. At 78). When asked whether the owner of the neighboring building was growing vines on the Building, Hynes stated “there are vines on almost all sections of the building, yes. I can’t assign who’s growing them. (I’d. At 86).Hynes admitted that it was possible that the vines could have removed some of the mortar on the side of the building, but that he did not believe that they could have caused the roof to collapse or the internal floors to bulge (I’d. At 86-87, 95). When asked whether the vines could have caused the building to fill with mold and other debris, Hynes stated “it might, I mean if it were severe and would let water in the wall system.” (I’d. At 95-96) In addition, although he admitted that it was possible, Hynes stated that he has not seen vines grow under the flashing or through the holes in the roof. (I’d. At 96-98).

The City also presented the testimony of Cohen, who is a structural engineer, forensic engineer, and code official employed by Base Engineering, Inc. (Id at 99-100). Cohen explained that Hynes contacted him to perform a structural survey assessment of the Building (I’d at 102-03) Cohen stated that he evaluated the ease building on June 16, 2016, at which time he observed: (1) the stucco on the sat side of the Building had failed, buckled peeled and cracked; (the bricks on the south side of theBuilding had deter imparted and delaminates and the mortar had deteriorated (3) the interior flooring had collapsed and buckled; (4) the plaster had come down off the

interior walls and ceiling; (5) the presence of mold, humidity, and dampness inside Building; (6) a whole bay of the roof had collapsed at the front of the Building; (7) the presence of severe rot at the roof and the front and east and west sides of the Building; and (8) the rear, south facing wall of the building has lost large portions of brick and mortar and had buckled and bulged and the parapet was showing signs of distress and bowing and “appeared to be a little bit out of plumb” (I’d at 103-06) Based on his observations, Cohen made the following recommendations: (1) shoring up to floors to prevent further damage and collapse (2) removing the debris from the floor and roof collapses to lighten the load on the floors; and (3). Gutting the entire interior of the building to expose the structure and determine the extent of the water infiltration and mold(I’d at 104-05) Cohen explained that his recommended repairs , which would cost approximately \$400,000, were merely to ensure that the Building was structurally safe and could support its assumed loads. They did not address the water infiltration and mold issues. (Id. At 106-07, 109)

Cohen testified further that he returned to the Property after Serfass performed the emergency repairs in October 2016. (Id. at 107) . When asked whether Serfass shored up the Building in accordance with his recommendations, Cohen stated: “ Not totally,no.” (I’d) Cohen explained that there were still holes in the roof and additional repairs needed to be performed to ensure that the Building could continue to support its assumed loads. (I’d. At 107-08.) Cohen indicated that he also observed additional damage to the Building . (Id. at 108). He stated that the back wall appeared to have suffered additional deterioration, the parapet appeared to have moved a little, the floor had further deteriorated, and it seemed like the interior of the Building was continuing to rot. (I’d) Cohen explained that the parapet is the portion of the wall that sticks above the roof, and that it was his professional opinion that the parapet wall was going to fall onto the street below; he just did not have any way of knowing how soon it would occur . (I’d at 108-09) Cohen also stated that the holes in the roof could not have been caused by the ivy growing on one the walls of the building, and the roof collapse could not have been caused by impact to the side of the building. (I’d. At 109-10)

The City also presented the testimony of Alicia Miller Karner (Karner), the City's Director of Community and Economic Development.(I'd at 111-112). Karner explained that the property which has been vacant for a long time, occupies a very prominent location in the City's central business district. (I'd.at 113.) She explained further that the Property "stands in the way of community revitalization" in an area that has seen investment in the past several years. (I'd.) Karner stated further that the City receives consistent complaints about the condition of the Property, at least monthly, and sometimes more frequently, from multiple business owners. (Id. at 113-14) She explained that. 'It was almost as if when she took the position with the City it as a long discussed problematic property.' (I'd at 114.) Karner explained further that, as the Property continued to deteriorate and the City saw new evidence of problems with th e Property it was important the City to enforce its codified ordinances to enable a change on the Property.(I'd)

Karner also testified that she believes that the City would be an appropriate conservator for the Property because the " City can look at (the property comprehensively and its impact on not just the individual property but the street, the neighborhood, and the City as a whole. " Karner also stated that she believes that the City has the experience overseeing renovations and the depth of knowledge and resources to serve as conservator of the Property. (I'd at 115). When asked to give example of situations where the City was involved in rehabilitation and repairing properties, Karner explained that the most recent examples were overseeing the emergency repairs performed to the Property and the renovation of an 8,000 square foot space known as the " Pi Center" (Id) Karner testified further that the City has also issued requests for proposals on several recent occasions, including in connection with the renovation of the armory property in West Bethlehem and the Eastern Gateway sustainability project.(Id.at 116-17) Karner also indicated that she is not aware of any party other than the City that is interested in becoming a conservator for the property . (Id. at 117-18) Karner explained that the City funded the emergency repairs performed on the property through the a federal funding source, the Community Development Block Grant, and that if the City is approved as the

Conservator of the property, the City has resources available to cover the costs of repairs and maintenance to the Property.(I'd.at 118-20)

When asked whether the Building and Vacant Lot are used together in a single,interacted manner, Karner stated that the “ use of both of these lots would maximize the value of the Property and benefit to the community” (I'd at 120) She also indicated that she believed that developers who were interested in the Property were under the assumption that the Building and Vacant Lot would go together.(I'd at 120-21) Karner testified that if the City were selected as conservator for the Property, the City would issue request for proposals to work toward improving and selling the Property. (I'd at 120) She explained that the Building would be fully renovated because it is located in a historic district and the City discourages demolition of any property located therein. (I'd. At 121-22). She also explained that step one in the process would be for the private developer to comply with the recommendations set forth in Cohen's report. (I'd.) Karner testified further that the City has proceeded with the eminent domain and Conservatorship processes in tandem, but it is currently pursuing a Conservatorship because it will save the City money by allowing a private developer to come in and renovate the Property . (I'd at 123-24.) Karner also stated that as of June 8, 2016 the Vacant Lot was overgrown and appeared to have luggage or debris located within the overgrowth. (I'd at 124) She stated further that the City filed a Maintenance lien against the property of \$135,356 for the cost of energy repairs performed by Serfass. (I'd at 124-25) Lastly, Karner testified that she was not aware of any foreclosure actions filed against the Property (I'd at 125)

On January 13, 2017, the trial court issued an opinion and order, granting the City's Petition and appoint the City as conservator for the Property. In so doing, the trial court made the following relevant finds of fact:

4. Kanofsky has not legally occupied the Building or Vacant Lot for at least twelve months prior to the filing of the Petition.
5. Kanofsky has not actively marketed the Building o Vacant Lot during the sixty days preceding the filing of the petition and has not made a good faith effort to seek the Building or Vacant

Lot at a price which reflects the circumstances and market conditions.

6. As of the date of the filing of the Petition, neither the Building nor the vacant lot was subject to a pending foreclosure action by an individual or nongovernmental entity.
7. At the current time, neither the Building nor the Vacant Lot is subject to a pending foreclosure action by an individual or nongovernmental entity.
8. Kanofsky did not acquire the Building or Vacant Lot within the six months preceding the filing of the Petition.
9. Due to years of neglect by Kanofsky, the Building's structural integrity has severely deteriorated, mortar is missing from various parts of the exterior wall of the Building, bricks have fallen from the exterior wall of the building onto the sidewalk below, the missing mortar permits water to seep. Into the Building's interior, sections of the roof of the building have collapsed and the roof leaks, the collapsed sections of the roof are adding substantial weight and distress to the third floor of the building, there are holes in the roof of the building, stucco plaster is loosening from the east exterior wall of the Building, the condition of the building has caused water damage to the adjoining building, the Building and Vacant lot are overgrown with vegetation which has grown into the interior of the Building, the window pane in the front of the Building is broken, the Building is in need of substantial rehabilitation to prevent it from collapsing, and this court has previously determined that the Building is "blighted" pursuant to the Urban Redevelopment Law.
10. The Building requires substantial repairs to the roof structure, ceilings, walls and floors.
11. The Building is at risk of collapsing.
12. For the reasons outlined in paragraphs nine through eleven above, the Building and Vacant Lot are public nuisances.
13. For the reasons outlined in paragraphs nine through eleven above, the Building and Vacant Lot are in need of substantial rehabilitation, yet Kanofsky has not performed any such rehabilitation during the twelve months preceding the filing of the Petition.

14. For the reasons outlined in paragraphs nine through eleven above, neither the Building nor the Vacant Lot are fit for human habitation, or use.
15. The condition and vacancy of the Building and Vacant lot materially increase the risk of fire to the Building and to adjacent properties.
16. The Building is subject to unauthorized entry leading to potential health and safety hazards, requiring the City to secure the Building in order to prevent such hazards after Kanofsky failed to do so.
17. The building and Vacant Lot are attractive nuisances to children due to the unsafe structure of the building and its risk of collapsing onto the Vacant Lot, which includes an area of underbrush with a tunnel leading to an area for children and vagrants to congregate.
18. The accumulation of debris, uncut vegetation, and physical deterioration of the Building and Vacant Lot have created potential health and safety hazards and Kanofsky has failed to take reasonable necessary measures to remove the hazards.
19. The dilapidated appearance and condition of the Building negatively affects the economic well-being of residents and residents and businesses in close proximity to it, including decreases in property value and loss of business, and Kanofsky failed to take reasonable and necessary measures to remedy the Building or its condition.
20. The Building and vacant Lot are nuisances for illicitly purposes, including prostitution, drug use, and vagrancy.
21. Kanofsky has been convicted of the violating multiple municipal codes as a result of the deteriorating condition of the Building and Vacant Lot.

(Trial Ct. Op. At 2-5 (footnote added)) Based on these findings of fact, the trial court concluded, inter Alia, that the City had met its burden of proving that the Property was in need of a conservator. (Trial Ct. Op. At 5.) Kanofsky appealed the trial court's decision to this Court.

On appeal⁸, Kanofsky appears to argue that the City's appointment as conservator for the property was improper because the City, not he, was responsible for the condition of and damage to the property, the City has repeatedly trespassed on the Property, and the City has engaged in concerted efforts to remove him from the Property so that the City could deliver it to a developer for further expansion of Saint Luke's Hospital and Lehigh University⁹. In response, the City argues that the trial court acted properly and did not abuse its discretion when it appointed the City as conservator for the Property because the record evidence in support thereof was overwhelming.

The Act authorizes a trial Court to appoint a conservator to rehabilitate a deteriorating building, thereby incurring debt that ultimately may be the owner's responsibility (provided that certain conditions have been met).

The Conservator is responsible for bringing the building into municipal code compliance when owners fail to do so" In re Conservator Proceeding in Rem by Germantown Conservancy, Inc. 995 A.2d 451, 453 (Pa Cmwlth. 2010). "Matters of credibility and evidentiary weight are entirely within the exclusive discretion of the fact-finder below...." Carr v. State Bd. Of Pharmacy, 409, A.2d 941, 944 (Pa. Cmwlth. 1980) "The fact finder is free to believe all, part, or none of the evidence presented." Commonwealth v. Hoffman, 938 A.2d 1157, 1160 n. 10 (Pa. Cmwlth. 2007).

Here, the trial court concluded the city had met its burden of proving that the Property was in need of a conservator – i.e. that all the conditions necessary for appointment of a conservator under Section 5

(d) of the Act had been met. Although the the trial court did not set forth its credibility determinations in writing, we can infer that the trial court found the un rebutted testimony for Hynes, Cohen, and Karner to be credible. The credible testimony of Hynes, Cohen, and Kramer supports the trial court's conclusions in this matter. By arguing that the City's appointment as Conservator for the property was improper, because the City, not he , is responsible for the condition and damage to the Property, the city has repeatedly trespassed on the property, and the City has engaged in concerted efforts to remove him from the property so that the City could deliver it to a developers for further expansion of Saint Luke's Hospital and Lehigh University, Kanofsky is not only asking this Court to reject the credible testimony of Hynes, Cohen, and and Karner , but also to adopt a version of events that is not supported by the evidence of record, i.e. Kanofsky did not introduce any evidence into the record to support his arguments on appeal. For these reasons, we cannot conclude that's the trial court erred in granting the City's petition and appointing the City as Conservator of the Property.

Accordingly, we affirm the trial Court's order.

P. Kevin Brobson, Judge

⁸ Our review is limited to determining whether the trial court abused its discretion to committed an error of law necessary to the outcome of the case. In re conservatorship proceeding in Rem boy Germantown Conservancy Inc

⁹ In the Questions Asked and Further Questions Asked sections of his brief Kanofsky identifies sixty issues for consideration by this Court on appeal. The vast majority of Kanofsky issues, however involve matters that are irrelevant and in no way relate to this appeal or have no basis in the record, have not been developed by Kanofsky in the argument section of his brief, and/or were not raised before the trial court. As a result, such issues are waived and/or are not properly before this court and would not be addressed in this opinion.

In *Daddona v. Third*, 891 A.2d 786 (pa Cmwltth) appeal denied, 909 A.2d 306 (Pa. 2006), a case in which the appellant raised more than 25 issues for review, this court stated:

Where an appellant raised sixteen issues in his appellate brief, our Superior Court directed the appellant to the insights of the Honorable Ruggero J. Aldisert of the United States Court of Appeals for the Third Circuit noting:

Judge Aldisert has stated that "When I read an appellant's brief that contains ten or twelve points, the presumption arises that there is no merit to any of them. I do not say that is an irrebuttable presumption, but it is a presumption that reduces the effectiveness of appellate advocacy."

Daddona, 891 A.2d at 798 n.3 (quoting *Kenisha v. Perini Corp.*, 682 A.2d 845, 848 n.3 (pa Super. 1996))

¹⁰Pursuant to section 5(d) of the act. The trial court may appoint a conservator if all of the following conditions have been met:

- 1) The building has not been legally occupied for at least the previous 12 months.
- 2) The owner fails to present compelling evidence that he has actively marketed the property during the preceding 60 day period ADid made a good faith effort to sell the property at a price which reflects the circumstances and market conditions
- 3) The property is not subject to a pending foreclosure action by an individual or nongovernmental entity
- 4) The current owner fails to present sufficient evidence that he has acquired the property within the preceding six months.
- 5) The court finds at least three of the following:
 - I. The building or structure is a public nuisance
 - II. The building is in need of substantial rehabilitation and no rehabilitation has taken place in the previous 12 months.
 - III. The building is unfit for human habitation, occupancy, or use
 - IV. The condition and vacancy of the building materially increase the risk of fire to the building and adjacent properties
 - V. The building is subject to unauthorized entry leading to potential health and safety hazards and one of the following applies
 - (A) The owner has failed to take reasonable and necessary measures to secure the building.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

City of Bethlehem and the :
United States of America :

v. :

No. 181 CD 2017

Alvin S. Kanofsky :

ORDER

AND NOW, This 29th day of November, 2017, the order of
the Court of Common Pleas of Northampton County is hereby
AFFIRMED.

P. KEVIN BROBSON, Judge

APPENDIX C

3. FILING FOR RECONSIDERATION OF COMMONWEALTH COURT OPINION DEC 13, 2017

Reconsideration on Judge Brobson Opinion filed November 29, 2017

Case 181 CD 2017

1. Surprisingly, it is only very recently that the Petitioner realized that the Hon. Judge Brobson ruled against this Petitioner on an earlier somewhat similar case regarding a Philadelphia Residential Property. This involved a situation where the house had been broken into by the City of Philadelphia and valuable Kanofsky family items were removed from the house under the pretext that it was an imminent danger to the neighborhood.

That Judge Brobson was involved in the earlier case is shown in the following Exhibits given in Appendix A: The Opinion written by Judge Brobson on the Case and portions of the Appeal to the State Supreme Court.

The house was the home to the Kanofsky family for forty years, where the three Kanofsky brothers, Paul, Alvin, and Daniel had grown up. All three brothers had attended Central High School which is only two blocks from the house at 1904 Conlyn Street. Paul Kanofsky, who contracted Polio at the age of five years, and never totally recovered from it, leaving him with a paralyzed right arm, was the youngest attendee ever at Central High School, having been home schooled when he was initially housebound and getting hot packs to treat his paralyzed body by his mother, Mollie. He graduated from Central at the top of his class and went on to Temple, University of North Carolina (In between, amazingly he worked as a statistician for the city.) where he got his PhD degree in Bio Statistics, and went on to have an illustrious career, but his honesty was his undoing. Alvin, this Petitioner, followed Paul to Central, class of 207, with the youngest brother, Daniel, class of 227 finally following.

Because of this earlier case involvement, which resulted in an adversarial position of this Petitioner and Judge Brobson there is reason to doubt his impartiality in ruling on this present case, and consequently he should recuse himself.

The Whistleblowing Case at New Jersey University Medicine and Dentistry. (UMDNJ)

Dr. Paul Kanofsky found fraudulent billing as the monitor of the Billing Records for UMDNJ. He was then transferred to a basement office with hot clanging pipes and given projects with impossible deadlines. He eventually had a nervous breakdown and cancer and in 1994 at only age 56 passed away.

The surviving Kanofsky brothers then moved his personal effects, writings, research papers, and creative poems and stories into the Conlyn Street house. Their father was now living in the Old Age Home York house, and then their father passed away at age 89. In 1997, with the surviving sons inheriting the Conlyn Street house.

Extensive litigation has resulted as a result of the City of Philadelphia corrupt and fraudulent actions, which is still ongoing.

2. The Case Caption is incorrectly given in the Filing of Brobson et al. The Caption is not "The City of Bethlehem and the United States of America v. Alvin S. Kanofsky" but rather the City of Bethlehem v. Alvin S. Kanofsky and the United States of America. The Petitioner gives several pieces of evidence to support this in Appendix B.

Among these are the correspondence from the Justice Department confirming that the U.S.A are co-defendants with Kanofsky and not a co-Plaintiff with the City as well as all other court filings and appeals.

Thus, Alvin S. Kanofsky and the United States of America are Co-defendants in this case, as is explained in the accompanying letter from the U.S. Attorney, Louis Lappen. This simple fraudulent transposition perpetrated by Judge Brobson can contribute greatly to a

strong bias against the Petitioner. Again, the Plaintiff is the City of Bethlehem.

Also, the later related cases to 181 CD 2017 have the correct Captions. It is possible that Judge Brobson is trying to gain some advantage in his pleadings by having the United States of America on his side or else to muddle any following proceedings and arguments by somehow eliminating the proper caption.

3. Further, more recent developments have now occurred in the Federal Case headed by U.S. Attorney Lappen against the Allentown Mayor, Pawlowski for fraud and Corruption.

The trial has been set for mid-January and will take place in Allentown in the Federal Courthouse. Judge Sanchez has ruled against dismissing the charges against Pawlowski.

As well, the U.S. Government is requesting as many as 54 witnesses to testify on their behalf. U.S. Attorney Lappen is the same lawyer representing the U.S. (with Assistant Attorney Anthony St. Joseph) as in the Petitioner's case.

It is worth noting that it wasn't until Petitioner started seeking assistance from numerous government entities and non-profits in the Lehigh Valley in developing his two properties utilizing government assistance and grants that the full force of the City and Commonwealth and County Prosecution was brought to bear against him. Because of earlier local efforts to unify government and non-profits, these are the same entities that have strongly supported Mayor Pawlowski's methods and efforts.

For example, the Chamber of Commerce for Allentown, Bethlehem, and Easton is the same for all three of these cities of the Lehigh Valley. The Economic Development Office is the same. Don Cunningham is the ex-mayor of Bethlehem. His wife, Lynn

Cunningham is the head of the Bethlehem Office of the Chamber of Commerce. Similarly, the court systems are closely connected. Bethlehem is both in Lehigh and Northampton County. The Petitioner's building and lot are only a couple of hundred feet from the boundary line between Lehigh and Northampton County.

4. In regard to Judge Beltrami presiding over the case, the Petitioner just recently discovered a previous case over which he presided but that's is strikingly similar to the Petitioner's Case and represents a major travesty of justice. The case was presented as one of the most egregious cases by the Univ. of Michigan Exoneration Group. This involved a young 13 year old boy, Zachery Handley, who was sentenced to incarceration for one whole year for supposed arson and sentenced by Judge Beltrami to also make \$625 K restitution for setting fire to a house.

He had at first confessed under pressure from the arresting officers that he would be incarcerated for Christmas if he didn't confess. Instead, he was arrested and incarcerated, despite his later retracting his confession and professing his innocence.

Several years later, a woman, Karla Dewey, had been arrested for Arson, but fortunately, the Judges' stenographer, Ms. Jane Walker, recalled she was the one who had been the main witness against the young boy several years earlier. Finally, after some lengthy investigating and soul searching Judge Beltrami realized that he had convicted the wrong person and recused himself from the case. The boy was eventually awarded \$175,000 in a civil rights lawsuit in 2015.

The similarities to the Petitioner's case are striking, Where the so called evidence is supposedly iron clad, even though it is false and fraudulent.

Here, apparently, the City Lawyer, Atty. Matt Deschler,

prosecuting the Petitioner's case is the former law clerk of Judge Beltrami. The cast of witnesses perjuring themselves, presenting false testimony etc. are all friends of Atty. Deschler and the the Judge.

The head of the Parking Authority at Lehigh, involved in the nearby new City Parking Garage, is the ex - wife of a long time boyhood friend of the Judge, John Conahan, who grew up with Judge Beltrami in Hazelton, PA.

Here again, as before, it would be proper for Judge Beltrami to recuse himself.

5. The Case with Judge Murray of Common Pleas Court involving the broken Front Display Show window of the building is now appealed up to Common pleas Court. Here, Judge Murray sided with the Petitioner in stating that he did have the right to sue for damages by the city to the window and the building due to their front loader hitting the side wall of his building during snow removal onto his lot after the record breaking January 22, 2016 32 inch snow storm.

The Petitioner has already in effect supposedly paid for the repairs by the city in this Conservator case, adding it onto the ~~expenses with a lien for the cost of repairs on the building (\$135,000~~ from a Federal Grant). This is also invalidating the city's so called expenses.

Consequently, the Murray decision has been appealed to Commonwealth Court by the Petitioner as it has a significant bearing on the the Conservator Hearings. This is case 1467 CD 2017 before the court as shown in Appendix C.

It is worth mentioning, that the city lawyers continually attempted to delay any trial on this matter of the broken front show window, and who was responsible for it.

6. The City Garage and the Lehigh University and St. Lukes Hospital office building 200 feet from the Petitioner's properties are now almost completed and the Development Staffs of both Lehigh University and St. Lukes Hospital are now involved in preparing to occupy the new building.

The Lehigh University group is located on the fourth floor of the building. The St. Lukes Hospital Group is located on the next two upper floors. According to appraisers, the value of the Petitioner's two properties have at least tripled as a result of this development, thus invalidating the estimates given in the Conservator hearings a year ago. Realtors and Appraisers have informed the Petitioner that he is entitled to the value of the property when title is transferred, if that does ever actually occur in these proceedings.

7. Voter Revolt in Bethlehem

In the months preceding the November Statewide election for City Council and Judges statewide, there was a voter revolt in Bethlehem to reform the City government, providing more transparency, openness, to mitigate the fraud and corruption.

8. Recent State efforts to reform the Criminal Justice System.

State Senior Senator Greenleaf, head of the State Judiciary Committee, is now holding hearings on reforming the corrupt state criminal justice system. He is the individual responsible for many of the criminal justice laws, but now realizing the false, fraudulent, and corrupt practices prevalent in the state as a result of these laws.

9. Petitioner refutes Judge Brobson's opinion. In his opinion, Judge Brobson disregards the facts, makes misrepresentations, and false and fraudulent statements. To read his findings is to enter a fantasy world which can lead to the downfall of all of our cities.

There are no falling bricks (as testified by Sargeant

Hackett), there are no vermin and prostitutes and druggies. There is certainly mortar that has deteriorated from the neighbor Saraceno's grape vines growing on the Petitioner's brick wall. The evidence of where the vines come from is not difficult to determine – clearly Saraceno's Courtyard in plain view. He cut them years before when the Petitioner complained, but recently he refused to cut them again when, and they come up the entire side and part of the back wall and cause deterioration of the wall and roof area, causing leaks.

There is no structural support provided by the Stucco wall. Cracks in the Stucco do not contribute to the strength of the brick wall. The function is only cosmetic. The east brick wall is standing now just fine with the stucco wall entirely removed. The broken Front window was clearly broken with the impact of the City Front loader removing snow (and trespassing) on the Petitioner's lot. (This is the subject of a further appeal to the courts.) The fragment remains of the Sewer Cover from being demolished by the city's front loader laying next to the wall is clear evidence of this.

The roof collapse was caused by the repeated impact of the front loader on the building wall directly by the front window. The opening to the building was caused by the Redevelopment Director ,Hanna, forcing open the door in July when he wanted to gain entry.

This is the same individual who In 2003 covered over the Arson evidence of his Cousin and the neighbor's building from the site now occupied by the Lehigh and Saint Luke's Office Building two hundred feet from the Petitioner's building, with clear pictures by the Petitioner taken of this.

Building occupancy for storage of the Petitioner's possessions had been allowed back in 2008 after Petitioner had cleared out the building and made extensive repairs to it . Both Magistrate Matos and the City Inspector at that time (and the original inspector in these actions) Michael Palos(City Head housing inspector) can testify to this as can John Rohal (head of the Redevelopment Authority at the time) who recently informed the Petitioner of these actions by the Blight

Committee headed by Ex-Mayor Gordon Mowrer (Head of the Blight Committee at the time) in detail.

At the trial before Judge Beltrami, the Petitioner was not allowed present any statements or evidence to counter the claims of the other witnesses brought forth by the City of Bethlehem. For this and all of the above reasons Petitioner begs this court to rule in his favor.

December 14, 2017

Respectfully Submitted,
Alvin S. Kanofsky

APPENDIX D

4. JUDGE LEVITT OPINION AND DECISION ON ADJACENT LOT - APRIL 4, 2018

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

City of Bethlehem

v.

Alvin S. Kanofsky

United States of America

Appeal of Alvin S. Kanofsky:

No. 777 CD 2017

Submitted : December 15, 2017

BEFORE: HONORABLE MARY HANNAH LEAVITT, President Judge
HONORABLE MICHAEL H. WOJCIK, Judge
HONORABLE J. WESLEY OLER, JR., Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY PRESIDENT JUDGE LEAVITT

FILED: April 4, 2018

Alvin S. Kanofsky, pro se, appeals an order of the Court of Common Pleas of Northampton County (trial court) addicting a decision of the City of Bethlehem Blighted Property Review Committee of the City finding that his property located at 32 East Third Street is blighted(1). For the following reasons, we reverse.

(1) Although named as a party, the United States of America is precluded from filing a brief in this matter due to its failure to comply with this Court's October 30, 2017, order directing it to file a brief within 14 days of the exit date of said order.

Notably, in a separate decision, *City of Bethlehem v. Kanofsky*, (Pa Cmwlth, No. 1034 C.D. 2017, filed March 23, 2018) this Court affirmed the trial court's order which granted an application by the City a conservator of the subject property, to sell the property to Collaboration 3, LLC. In light of that decision, the issues Kanofsky raises in the instant appeal may become moot when and if he loses his title interest in the Property.

(2) The building has been the subject of several actions in the trial court pertaining to alleged code violations as well as appeals to this Court. See, e.g. *Commonwealth v. Kanofsky* (Pa Cmwlth., No 1938 CD.2016, Filed August 14, 201) (involving summary criminal charges for violations of City's codified ordinances to

maintenance of Building and failure to obtain certificate of occupancy; Kanofksy v. City of Bethlehem, (Pa. Cmwltth.No. 1503 C.D. 2016. , filed May 17, 2017 (quashing appeal of blight certification for Building; Kanofsky v. City of Bethlehem, (Pa. Cmwltth. No. 2163 C.D. 2015, filed September 28, 2016) (ordinance violations relating to maintenance of Building and failure to obtain certificate of occupancy); City of Bethlehem v. Kanofsky (Pa. Cmwltth., No181 C.D. 2017, filed November 29, 2017) (affirming appointment of the City as conservator for the Lot and Building). (3) Act of May 24, 1945, P.L. 991, as amended, 35 P.S. Sec. 1701-1719.2 (4) This Court's review determines whether the trial court abused its discretion or committed an error of law. Smacker v. Lancaster City Planning Commission, 74 A.3d 349, 352 n. 8 (Pa. Cmwltth. 2013)

(5). It states in pertinent part:

If the judge entering the order giving rise to the notice of appeal ("judge") deserves clarification of the errors complained on appeal, the judge may enter an order directing the appellant to file of record in the trial court and serve on the judge a concise statement of the errors complained of on appeal ("Statement") PA. R.A.P. 1925 (b)

(6) To the extent that Kanofsky's statement of errors raises new issues not asserted before the trial court, such issues are waived for appellate review. See Oa. R.A.P. 302 (a); Commonwealth v. Ali, 10 A. 3d 282, 293 (Pa. 2010)

(7) Rule 1925(a) (1) states, in relevant part, as follows:

Upon receipt of the notice of appeal, the judge who entered the order giving rise to the notice of appeal, if the reasons for the order do not already appear of record, shall forthwith file of record at least a brief opinion of the reasons for the order, or for rulings or other errors complained of, or shall specify in writing the place in the record where such reasons may be found. Pa R.A.P. 1925 (a) (1)

(8) Added by the act of June 23, 1978, P.L. 556.

(9) A finding that a specific property is blighted is not necessary to support a condemnation proceeding if the property lies within a declared blighted area. In re Condemnation by Urban Redevelopment Authority of Pittsburgh, 822 A.2d 135, 138 (Pa. Cmwltth. 2003)

The subject property is a vacant, unimproved lot (Lot) adjacent to an L-shaped commercial building at 30 East Third Street (Building)2 , which is also owned by Kanofsky. On January 20, 2017 the City notified Kanofsky that the lot is Blighted and ordered him to eliminate the blight causing conditions. The City's notice stated, in pertinent part, as follows:

- 1) The lot is blighted within the meaning of the City Certified Ordinance Article 149, as amended, and the Pennsylvania Urban Redevelopment Law
- 2) The owner of the subject property is ordered to eliminate the following conditions causing the blight within twenty (20) days.
 - a. Correct property condition so it is no longer a public nuisance per local housing, building, plumbing, fire and related codes.
 - b. Correct dilapidated, unsafe, vermin-infested conditions at the property.
 - c. Improve lot conditions so it is no longer a place for accumulated trash and/or debris or for rodents and/or vermin.
 - d. Pay delinquent taxes so property is no longer a tax delinquent property.
- 3) Failure to Eliminate the conditions stated above. In #2 within ~~the stated period of time may render the property subject to~~ condemnation by the Redevelopment Authority of the City under the Urban Redevelopment Law.

Reproduce Record at 34 (R.R.__).

Kanofsky appealed to the trial court , which held a hearing on May 8, 2017. The City presented the testimony of Tony Hanna, Executive Director of the City's Redevelopment authority. He describe the lot as vacant, unpaved, unfinished, and not code compliant to be used as a parking lot. Notes of testimony at . Hanna stated that the building that once stood on the lot had burned down 18 years ago and the lot was left in its place since then.

The City submitted several violation notices issued to Kanofsky acted respectively, July 20, 2006, October 8, 2013, October 22, 2014, and June 13, 2016, concerning garbage, rubbish, and weeds on the Lot. In response, Kanofsky submitted pictures of the lot, showing that he had corrected the conditions cited in the notices. Hanna acknowledged that at the time the City had issued the blight notices, all of the weed and rubbish had been removed from the Lot. N.T. 30; R.R. 67. The City's counsel then proposed that to "streamline thing , (the City) will proceed on the blighted property solely with regard to the unpaid taxes" N.T. 32; R.R. 67.

In support, the City presented the testimony of Linnea Lazarchak, director of financial services, who oversees was the collection of tax delinquencies. Lazarchak testified that Kanofsky had not paid real estate taxes on the Lot for the years 2015 and 2016. The City submitted a notice of nonpayment issued to Kanofsky dated September 30, 2015, along with an annual report se to to the City's Collection Agency in January of 2016, showing that Kanofsky owed real estate taxes on the lot in the mount of 647.88 for 2015. The City also submitted documents showing a \$662.17 delinquency for 2016. Kanofsky acknowledged that the Lot is vacant and that he has not paid real estate taxes of the lot for the years 2015 and 2016.

By order of May 11, 2017, the trial court affirmed the City's determination that the lot is blighted. Kanofsky appealed to this Court. The trial court issued an order directing him to file a statement of errors complained of on appeal. See Pa R.A.P. 1925 (b). Kanofsky filed a statement on July 5, 2017 asserting inter Alia that the lot was neither vacant no overgrown with weeds, and there were no other ordinance violations. H. R.R. 52 The trial court issued an opinion pursuant to Pa. R.A.P. 1925 (a) (1) ss grating that under Section 12.1(c) (7) of the Urban Redevelopment Law " any unoccupied property which has. Been tax delinquent for a period of two years is a blighted property. 35 P.S. Sec. 1712.1 (c) (7). Because Kanofsky conceded that the lot is on occupied and has a two year tax delinquency, the trial court concluded the Lot is blighted.

On appeal to this court, Kanofsky contends that the trial court erred. He argues that the pictures he presented during the hearing show the lot "was in a decent condition, with hard packed soil and trimmed grass. Appellant's Brief at 5. He maintains he was never notified by the City of any violation. (With regard to the lot being vacant" I'd. At 9. The City responds that it provided succinct et evidence³ that the Lot is unoccupied and tax delinquent for a two year period, accordingly the trial court did not err in determining that the lot is blighted under section 12.1 of the Urban Redevelopment Law.

We begin with the applicable provisions of the urban Redevelopment Law. Under the law, the elimination of blighted areas constitutes a proper public purpose for which the power of eminent domain may be exercised. The law provides procedures for determines whether a particular area or property is blighted, and thus a candidate for rehabilitation In re Condemnation for Redevelopment Authority of Lawrence County, 962 A.2d 1257, 1260 (Pa. Cmwlth.2008), appeal denied 973 A2d 1008(Pa 2009)

Section 12.1 of the law sets forth several criteria for determining whether an individual property located outside a designated redevelopment are may be deemed blighted. Section 12.1 © states that blighted property shall include:

~~(6) Any vacant or unimproved lot or parcel of found In a~~
predominantly built-up neighborhood, which by reason of neglect or lack of maintenance has become a place for accumulation of trash or debris, or a haven for rodents or other vermin.

(7) Any unoccupied property which has been tax delinquent for a period of two years prior to the effective date of this act, those in the future having a two year tax delinquency.

35 P.S. Sec. 1712© (6)-(7) (emphasis added). The property owner shall be served with notice of the determination that the property is blighted , together with a n appropriate order to eliminate the conditions and notification that failure to do so would render the property subject to condemnation under the law" 35 P.S. Sec 1712.1 (e)(2); "the owner or

his agent shall have the right of appeal under the determination in the same ,manner as an appeal from the determination of a public nuisance”

The blighted property review committee and the appropriate planning Commission upon making a determination that any property is blighted within the terms of this section, must certify said blighted property to the Redevelopment Authority, except that:

(1) No property shall be certified to the Redevelopment Authority unless it is vacant. A Property shall be considered vacant if:

(i) The property is unoccupied or its occupancy has not been authorized by the owner of the property;

(ii) in the case of an *unimproved lot or parcel of ground*, a lien for the cost of demolition of any structure located on the property remains unpaid for a period of six months; or

(iii) In the case of an *unimproved lot or parcel of ground*, the property has remained in violation of any provision of the local building ,property maintenance or related codes applicable to such lots or parcels including licensing requirements for a period of six months.

35 P.S. Sec 1712. E, (1) (emphasis added). Once a property is certified to the redevelopment authority as blighted, a condemnation proceeding may begin if other conditions under the Urban Redevelopment Law are met.

Here, the City determined and the trial court affirmed that the lot is blighted pursuant to Section 12.1 © (7) of the Urban Redevelopment Law because it was unoccupied and tax delinquent for a period of two years.” 35 P.S. Sec. 1712.1 © (7). In so holding the trial court misapplied the law because occupancy is not. A factor in the case of an unimproved lot or parcel.” 35 P.S. Sec 1712.1 e(1)

In *Redevelopment Authority of City of York v, Bratic*, 45 A.3d 1168 (Pa. Cmwlth. 2012), the City Redevelopment authority certified a

building as blighted Und brought a condemnation action against the property owner. The property owner filed preliminary objections arguing, inter Alia, that the property should not have been certified because the parking lot behind the building was rented out pursuant to a rental agreement; thus the property was not vacant so thin the meaning of Section 12.1(e) of the Urban Redevelopment Law. The trial court overruled the property owner's preliminary objections, and this court affirmed. Interpreting Section 12.1(e). We observed:

(Property Owner's) reliance is misplaced; there is no need to go searching for a definition of vacant when it is provided in the statute. Parts (i) through (iii) in Subsection (e)(1) of the statute clearly differentiate between property that has a structure, such as the commercial building located on the property and properties that do not; both can fall within the definition of vacant, but an unimproved lot or Parcel is addressed separately from properties where occupancy is a factor. Id at 1178 (emphasis added)

In short, Section 12.1 of the Urban Redevelopment Law distinguishes between parcels that have buildings on them and those the do not. Both can be vacant. However, for an unimproved lot or parcel, occupancy is not a factor. It is only a factor where the parcel holds a building.

Although the instant case involves a blight determination rather than a blight certificate, our interpretation of Section 12.1 as set forth in Bratic is never the less dispositive. The trial court found that the City established that the Lot is unoccupied and has a two year tax delinquency. In so finding, the trial court credited the testimony of the City's witnesses. Hanna testified that the Lot is "Vacant" unpaved, unfinished (and) not code compliant to be used as a parking lot" N.T. 14; R.R. 63. He further testified that building that once stood on the Lot had burned down 18 years ago and the Lot "was left in its place" since then. N.T. 14-15 R.R. 63.. In short, the testimony established that the Lot is vacant and unimproved.

The trial court erred in deeming the Lot blighted under Section 12.1 ©(7) of the Urban Redevelopment Law. As used in Section 1.1© (7),

the term unoccupied property refers to property "that has a structure" or "where occupancy is a factor" Bratic, 45. A.3d at 1178. It has nothing to do with a "vacant or unimproved lot or parcel" which is explicitly addressed in different subsections of the law i.e. Section 12.1 (6) I'd.

The object of all construction of statutes is to ascertain and effectuate the intention of the legislature. "It is axiomatic that in determining legislative intent, all sections of a statute must be read together and in conjunction with each other and construed with reference to the entire statute *Allstate Life Insurance Company v. Commonwealth*. Section 12.1 must be viewed in its entirety. It is unreasonable to conclude that the General Assembly would differentiate between an unimproved lot or parcel in and unoccupied property in one subsection of a statute, only to conflate them in another.

For all of the foregoing reasons, we reverse the trial court's decision.

Mary Hannah LEAVITT, President Judge

APPENDIX E

5. STATE SUPREME COURT DENIAL OF RECONSIDERATION

SUPREME COURT OF COMMONWEALTH OF PENNSYLVANIA

City of Bethlehem

v.

Alvin S. Kanofsky

United States of America

;
:
:
:
:
:
:

106 MAL 2018

ORDERS: SUPREME COURT OF PENNSYLVANIA

Per Curiam

Comments:

AND NOW, this 27th day of September, 2018, the Petition for
Reconsideration is denied