

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
16 DSC 04634

Barrington Boyd Petitioner, v. Travis Morgan, Aaron Parks, & Town of Pineville Respondent.	FINAL DECISION
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THIS MATTER came on for hearing before the Undersigned, Selina M. Brooks, Administrative Law Judge, on October 5, 2016, in Charlotte, North Carolina. Respondent submitted a Proposed Decision, which the Undersigned has reviewed and where she is in agreement she has incorporated it into this Final Decision.

APPEARANCES

For Petitioner: Barrington Boyd
Pro Se
628 Maple Valley Court
Weddington, NC 28104

For Respondent: M. Janelle Lyons
Cranfill Sumner & Hartzog, LLP
Post Office Box 30787
Charlotte, North Carolina 28230

ISSUES

The Petitioner alleges issues concerning violations of free speech, harassment, and emotional distress, and both Parties allege issues concerning racial discrimination. These issues are outside the jurisdiction of the Office of Administrative Hearings pursuant to N.C.G.S. § 150B-23(a) and were not considered.

The remaining issues, as stated in the Pre-Trial Order, were:

1. Whether Barrington Boyd can challenge any decision made by a Pineville Zoning Administrator since the ten (10) days have passed within which Petitioner can file an appeal to the Board of Adjustments pursuant to section 2.4.1 of the Pineville Zoning Ordinances?

2. Whether the Town of Pineville can seek enforcement and/or collection/debt setoff from Barrington Boyd and/or Bridgette Hare, if only they have cited Haute Exclusive which is owned by Live Naturally, LLC whose members are Barrington Boyd and his wife Bridgette Hare, who is also manager?

APPLICABLE STATUTES AND RULES

N.C.G.S. § 160A-175
N.C.G.S. § 150B-23
N.C.G.S. § 105A
The Town of Pineville Zoning Ordinances

EXHIBITS

Respondent's Exhibits ("R. Ex.") 1, 2, and 4 were admitted into evidence.

WITNESSES

Barrington Boyd
Travis Morgan

BASED UPON careful consideration of the sworn testimony of the witnesses presented at the hearing, Barrington Boyd and Travis Morgan, the Town of Pineville Zoning Administrator, and the entire record in this proceeding, the Undersigned makes the following findings of fact. In making the findings of fact, the Undersigned has weighed all of the evidence and has assessed the credibility of the witnesses by taking into account the appropriate factors for judging credibility, including but not limited to, the demeanor of the witness, any interests, bias, or prejudice the witness may have, the opportunity of the witness to see, hear, know or remember the facts or occurrences about which the witness testified, whether the testimony of the witness is reasonable, and whether the testimony is consistent with all other believable evidence in the case.

FINDINGS OF FACT

1. On February 10, 2015, a Zoning Citation was issued to Carolina Parkway LLC for violations at Haute Exclusive for improper signage pursuant to Pineville Zoning Ordinance sections 5.1.1 and 5.3(R). The Zoning Citation informed the Petitioner that "[a]ppeals must be filed within 10 days of the date of this citation." (R. Ex. 2). The Petitioner had until February 21, 2015, to appeal; Petitioner did not appeal said citation.

2. On July 8, 2015, a Zoning Citation was issued to Carolina Parkway LLC for violations at Haute Exclusive for improper signage pursuant to Pineville Zoning Ordinance sections 5.1.1. The Zoning Citation informed the Petitioner that "[a]ppeals must be filed within 10 days of the date of this citation." (R. Ex. 2). The Petitioner had until July 19, 2016, to appeal; Petitioner did not appeal said citation.

3. On July 20, 2015, a Zoning Citation was issued to Carolina Parkway LLC for violations at Haute Exclusive for improper signage pursuant to Pineville Zoning Ordinance sections 5.1.1 and fined \$500.00 per sign for two signs in violation for a total fine of \$1,000.00. The Zoning Citation informed the Petitioner that “[a]ppeals must be filed within 10 days of the date of this citation.” (R. Ex. 2). The Petitioner had until July 31, 2015, to appeal; Petitioner did not appeal said citation or fine.

4. On August 6, 2015, a Zoning Citation was issued to Carolina Parkway LLC for violations at Haute Exclusive for improper signage pursuant to Pineville Zoning Ordinance sections 5.1.1 and fined \$200.00 per sign for two signs in violation for a total fine of \$400.00. The Zoning Citation informed the Petitioner that “[a]ppeals must be filed within 10 days of the date of this citation.” (R. Ex. 2). The Petitioner had until August 17, 2015, to appeal; Petitioner did not appeal said citation or fine.

5. On August 18, 2015, a Zoning Citation was issued to Carolina Parkway LLC for violations at Haute Exclusive for improper signage pursuant to Pineville Zoning Ordinance sections 5.1.1 and fined \$500.00 per sign for two signs in violation for a total fine of \$1,000.00. The Zoning Citation informed the Petitioner that “[a]ppeals must be filed within 10 days of the date of this citation.” (R. Ex. 2). The Petitioner had until August 29, 2015, to appeal; Petitioner did not appeal said citation or fine.

6. On March 8, 2016, Respondent mailed a “Notice of Debt to: Town of Pineville. Intent to set off debt against N.C. STATE TAX REFUND for: Barrington Boyd” to Petitioner. (R. Ex. 4).

7. The Notice of Debt included the following statements:

You have the right to contest this action by filing a written request for a hearing with Town of Pineville. Your request must be filed at the following address no later than 30 days from the postmarked date of this letter. ... Failure to request a hearing within the 30 day time limit will result in the setoff of the above debt(s), and the addition of the applicable local collection assistance fee. (R. Ex. 4).

8. On May 5, 2016, Petitioner filed a Petition for a Contested Case Hearing with the Office of Administrative Hearings. A copy of the March 8, 2016, Notice of Debt was filed with the Petition.

9. On October 5, 2016, this contested case hearing was held in Charlotte, North Carolina.

10. Petitioner testified that he received the Zoning Citations (R. Ex. 2); that the signs referenced in the Zoning Citations were signs for Haute Exclusive; that Haute Exclusive’s landlord, Carolina Parkway LLC, gave Petitioner permission to set up the signs; that the Zoning Citations were issued for his business and not for him; that the Zoning Citations should have been issued to Haute Exclusive’s landlord, Carolina Parkway LLC, rather than to the tenant, Haute

Exclusive; and that Haute Exclusive is owned by Live Naturally, LLC, whose members are Petitioner and his wife, Bridgette Hare, and is operated by Petitioner.

11. Travis Morgan, employed by Respondent in the area of zoning enforcement, testified that he had personally explained the zoning ordinances to Petitioner in February 2015 before enforcement action was taken; that it is practice to send Zoning Citations to both landlord and tenants; and that Respondent is not seeking collection from the landlord, Carolina Parkway LLC, because the tenant, Haute Exclusive, is at fault.

12. To date, Petitioner has not paid the fine owed in the amount of \$1,500.00 to Respondent.

CONCLUSIONS OF LAW

BASED UPON the foregoing Findings of Fact, the Undersigned Administrative Law Judge makes the following Conclusions of Law:

1. The Office of Administrative Hearings does not have jurisdiction to determine the propriety of Respondent's administration or enforcement of the Pineville Zoning Ordinance. Petitioner failed to file an appeal of the Zoning Citations within ten (10) days to the Board of Adjustments pursuant to section 2.4.1 of the Pineville Zoning Ordinance.

2. The Office of Administrative Hearings has jurisdiction to determine whether the Town of Pineville can seek enforcement and/or collection/debt setoff from Barrington Boyd for the citations issued by the Town of Pineville to Haute Exclusive pursuant to N.C.G.S. § 105A.

3. Pursuant to N.C.G.S. § 160A-175, the Town of Pineville has "the power to impose fines and penalties for violation of its ordinances."

4. The Setoff Debt Collection Act allows a local agency to submit a debt owed by a debtor for collection by setoff after notice to the debtor pursuant to N.C.G.S. § 105A-5.

5. In a contested case involving the imposition of civil fines or penalties by a State agency for violation of the law, the burden of showing by clear and convincing evidence that the person who was fined actually committed the act for which the fine or penalty was imposed rests with the Respondent pursuant to N.C.G.S. § 150B-25.1(b).

6. Respondent has met its burden of proof and established by clear and convincing evidence that Petitioner committed the act for which the fine or penalty was imposed in accordance with N.C.G.S. § 150B-25.1(b).

FINAL DECISION

NOW THEREFORE, based on the foregoing, the Undersigned determines that the Petitioner committed the violations of the Pineville Zoning Ordinance for which the fine or penalty was imposed and that the Respondent can seek collection of said debt owed by Petitioner pursuant to N.C.G.S. § 105A.

NOTICE

This is a Final Decision issued under the authority of N.C. Gen. Stat. § 150B-34.

Under North Carolina General Statute § 150B-45, any party wishing to appeal this Final Decision must file a Petition for Judicial Review in the Superior Court of the county where the person aggrieved by the administrative decision resides, or in the case of a person residing outside the State, the county where the contested case which resulted in the Final Decision was filed. **The appealing party must file a Petition for Judicial Review within 30 days after being served with a written copy of this Final Decision.** In conformity with the Office of Administrative Hearings' rule, 26 N.C. Admin. Code 03.0102, and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, **this Final Decision was served on the parties the date it was placed in the mail as indicated by the date on the Certificate of Service attached to this Final Decision.** Under N.C. Gen. Stat. § 150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. N.C. Gen. Stat. § 150B-46 describes the contents of the Petition for Judicial Review, and requires service of the Petition for Judicial Review on all parties. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

This the 9th day of November, 2016.

Selina Malherbe Brooks
Administrative Law Judge