

IN THE DISTRICT COURT FOR POLK COUNTY

LATRICE LACEY,

Petitioner,

vs.

CITY OF DAVENPORT, IOWA,

Respondent.

No._____

PETITION FOR JUDICIAL REVIEW

Petitioner, Latrice Lacey, pursuant to Iowa Code 17A, seeks judicial review from the adverse decision of the City of Davenport concluding that the nuisance abatement carried out on September 16, 2018 pursuant to Davenport Municipal Code 8.14.015.

1. This is a proceeding for judicial review under and pursuant to Davenport Municipal Ordinance 2.86.070 and Iowa Code Section 17A.19, seeking judicial review of the final agency action of the City of Davenport - entered on December 4, 2018 by Susanne Knutsen, City Representative Administrative Hearing Officer.¹
2. Venue is proper in Polk County, Iowa pursuant to Iowa Code Section 17A.19(2) and Davenport Ordinance 2.86.070 stating that "Any decision entered by the administrative hearing officer shall constitute a final determination and decision for purposes of judicial review and shall be subject to review as provided by Iowa law."
3. The Petitioner owns the property at 128 Hillcrest Ave, Davenport, Iowa ("the property").
4. On August 24, 2018, the Respondent performed a property inspection on the front lawn of 128 Hillcrest Ave where it determined that it was non-compliant with Davenport Municipal Code 8.14.015 (Maintenance of boulevard and private property).
5. The Respondent did not provide notice of the non-compliance to the Petitioner.
6. The Respondent did not provide notice of the abatement of the non-compliance and fee assessment.

¹ Exhibit A.

7. On August 25, 2018, the front lawn was mowed by the Petitioner.
8. On September 14, 2018, contractors sent by the Respondent were captured by surveillance footage at the property, opening two gates to enter the rear of the property, and leaving without performing any work. The Respondent's contractors left the gates opened, the Petitioner's dog escaped through the opened gate.
9. On September 16, 2018, the Respondent's contractors were again on the property, on this occasion, the contractors began to mow the lawn of the property. After being confronted regarding their presence on the property, the contractors stated that they were sent by the city as "nuisance mowers".
10. On December 4, 2018, the Hearing Officer entered Findings, Conclusion and a Decision finding that the Respondent's actions were appropriate when they:
 - (a) Declared a violation of Davenport Municipal Code 8.14.015;
 - (b) Issued a work order to perform weed abatement, billed to the Petitioner.
11. The violation of Davenport Municipal Code 8.14.015 was abated by the Petitioner on August 25, 2018.
12. The December 4, 2018 Final Order is erroneous and prejudicial to the Substantive Due Process Rights of Petitioner on the following grounds as specified in Iowa Code 17A.19 in that:
 - (a) The agency action of the City of Davenport is unconstitutional on its face or as applied because it violates the Home Rule Authority granted under Article III Section 38A of the Iowa Constitution, the Petitioner's procedural due process and equal protection rights as set forth in the Iowa and United States Constitutions; which states, "Municipal corporations are granted home rule power and authority, not inconsistent with the laws of the General Assembly, to determine their local affairs and government, except that they shall not have power to levy any tax unless expressly authorized by the General Assembly. The rule or proposition of law that a municipal corporation possesses and can exercise only those powers granted in express words is not a part of the law of this state.";
 - (b) The agency action of the City of Davenport is beyond the authority delegated to it and violates the laws of the State of Iowa;

- (c) The agency action of the City of Davenport in abating a nuisance and assessing costs without notice is inconsistent with Iowa Code 364.12(2)(h);
- (d) The agency action of the City of Davenport was inconsistent with the agency's prior practice or precedents in that the Code Enforcement Officer failed to post notice of the alleged nuisance on the door of the property;
- (e) The agency action of the City of Davenport was so illogical as to render it irrational;
- (f) The agency action of the City of Davenport was inconsistent with the notice procedure as outlined in Davenport Municipal Ordinance 2.86.020;
- (g) The agency action of the City of Davenport was the product of a decision in which the agency did not consider the constitutional implications of failing to provide notice, an opportunity to be heard and notice of the basis of the decision;
- (h) The agency action of the City of Davenport was based on a procedure or decision making that was prohibited by law;
- (i) The agency action of the City of Davenport was unreasonable, arbitrary, capricious or an abuse of discretion.

13. This Petition is timely filed as it is filed within 30 days after the Final Order.

14. Petitioner requests that this Court establish a briefing schedule for the parties.

WHEREFORE, Petitioner Latrice Lacey prays the Court order Respondents to transmit to the Polk County Clerk of Court the entire record of the administrative proceedings before it, and upon hearing, the Court reverse and modify the Final Order, award Petitioner costs, and other relief as may be just and equitable under the premises.

/s/ Latrice Lacey
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Davenport, IA 52803
llacey21@gmail.com
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Certificate of Service

The undersigned certifies that this document was served upon the attorneys of record for each party to the above entitled cause at the address shown below on January 3, 2019:

City of Davenport
Attn: Tom Warner
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BY: X Email

/s/ Latrice Lacey