

CAMBRIDGE LICENSE COMMISSION

831 Massachusetts Avenue, First Floor, Cambridge, Massachusetts 02139

MEETING MINUTES

**License Commission Hearing of
Monday, September 10, 2018 at 1:00 PM
Michael J. Lombardi Building
831 Massachusetts Avenue
Carmelia M. Vicente Conference Room (Basement Level)
Cambridge, Massachusetts**

Meeting Started at 1:06 p.m.

Board of License Commissioners Board Members: *Nicole Murati Ferrer (present), Gerard E. Mahoney (present), and Branville G. Bard (present).*

Staff Member Present: *Elizabeth Y. Lint, Executive Director.*

Note: *All votes, unless otherwise indicated, were 3-0.*

Hearings

Matters may have been called in a different order than that listed on the agenda. In addition, some matters may have required a second call.

1) Violation R & S Landscape Inc. holder of Leaf Blower Permit # 10702, for alleged violation of Cambridge Municipal Ordinance 8.16.081.2(a), operating during a prohibited period, on July 30, 2018 at 11:10 a.m. at 102 Putnam Ave.

Present: Not applicable – waiver of hearing filed.

Documents Considered: Hearing notice and documents attached thereto; and waiver of hearing and contents therein.

Summary: R&S Landscape filed a waiver admitting the violation as alleged. R&S had the same violation twice in 2017 and two similar violations in 2016.

Decision: Board found a violation and issued a \$300.00 fine.

2) Violation Garrick Santo Landscape Co. holder of Leaf Blower Permit # 10681, for alleged violation of Cambridge Municipal Ordinance 8.16.081.2(a), operating during a prohibited period and 8.16.081.2(f)- more than one employee utilizing a leaf blower within a 10,000 square foot area on August 25, 2018 at 1:00 p.m. at 222 Third Street.

Present: Stephen Santo, Garrick Santo Landscape; and Tyler Bubenik, Licensing Investigator.

Documents Considered: Hearing notice and documents attached thereto.

Summary: Mr. Bubenik testified that he observed two leaf blowers being operated simultaneously within feet of each other at 222 Third Street on August 25, 2018, at approximately 1:00 p.m. The truck with Garrick Santo Landscape Co. logo was at the location. Mr. Santo did not deny the violations. He was not permitted at the time but has now obtained a permit.

Decision: Board found a violation and issued a \$300.00 fine for each, for a total of \$600.00.

3) Violation Lesley University holder of Leaf Blower Permit # 10676, for alleged violation of Cambridge Municipal Ordinance 8.16.081.2(a), operating during a prohibited period, on July 13, 2018 at 12:53 p.m. at 34 Wendell Street.

Present: Andy Faulkner, Lesley University; Marco Sousa, MS Painting; and Andrea Boyer, Chief Licensing Investigator.

Documents Considered: Hearing notice and documents attached thereto.

Summary: Ms. Boyer testified that she received an email from Ed Abrams stating that Lesley University was using a leaf blower on July 13, 2018 at 12:53 p.m. at 34 Wendell Street. Andy Faulkner testified the leaf blower was not being used by Lesley University employees. He confirmed a leaf blower was used by a contractor who was using it to collect sawdust debris from repairs made at the location. Mr. Sousa, the contractor, admitted to the use and confirmed the information provided by Mr. Faulkner. Mr. Sousa is not a commercial leaf blower operator.

Decision: The Board found no violation as to Lesley University. The Board found the use of the leaf blower was a violation and voted to issue a warning letter to MS Painting, along with information regarding leaf blower usage in the City of Cambridge.

4) Violation S & R Landscape Inc. holder of Leaf Blower Permit # 10699, for alleged violation of Cambridge Municipal Ordinance 8.16.081.2(a), operating during a prohibited period, on July 14, 2018 at 10:20 a.m. at 46 Fayerweather Street.

Present: Not applicable – waiver of hearing filed.

Documents Considered: Hearing notice and documents attached thereto; waiver of hearing and contents therein.

Summary: S&R Landscape, Inc. admitted to the violation. They had the same offense in 2016.

Decision: Board found a violation and issued a \$300.00 fine.

5) Violation JM Horticulture holder of Leaf Blower Permit # 10669, for alleged violation of Cambridge Municipal Ordinance 8.16.081.2(a), operating during a prohibited period, on July 28, 2018 at 8:45 a.m. between Linnaean Street and Madison Avenue and on August 27, 2018 a.m. at 10:20 a.m. at 54 Highland Street.

Present: Joseph Miner, JM Horticulture; Andrea Boyer, Chief Licensing Investigator; and Tyler Bubenik, Licensing Investigator.

Documents Considered: Hearing notice and documents attached thereto.

Summary: Ms. Boyer testified that she received an email complaint from Virginia Coleman that JM Horticulture employees were operating a leaf blower on July 28, 2018 at 8:45 a.m. between Linnaean Street and Madison Avenue. Mr. Bubenik testified he observed an employee of JM Horticulture operating a leaf blower on August 27, 2018 a.m. at 10:20 a.m. at 54 Highland Street.

Mr. Miner, owner of JM Horticulture, did not contest the violations. He explained that he did not become aware of the July incident until he received the notice of hearing. When he spoke to his crew, they admitted to using the leaf blower and explained they did so at the request of the client. Mr. Miner confirmed with the client that the use of the leaf blower was at their request. As to the August incident, Mr. Miner testified his crew used the leaf blower because they were 'trying to do a good job since this was Yo-Yo Ma's house and he was coming back from a summer concert tour.' Mr. Miner's crews are aware of the Ordinance and its limitations.

Decision: Board found (3-0) violations as to both incidents. The Board issued a warning (2-1, dissent was Chair Murati Ferrer who voted for a \$300 fine) for the July incident. The Board issued (3-0) a \$300.00 fine for the August incident.

6) Violation Landscape Collaborative of NE, Inc. holder of Leaf Blower Permit # 10704, for alleged violation of Cambridge Municipal Ordinance 8.16.081.2(a), operating during a prohibited period, on August 16, 2018 at 8:39 a.m. and 2:14 p.m. at 74 Sparks Street.

Present: No one appeared for Landscape Collaborative; and Chief Licensing Investigator Andrea Boyer.

Documents Considered: Hearing notice and documents attached thereto; and email communications between Chief Licensing Investigator Boyer and Michael Piering of Landscape Collaborative.

Summary: Matter given second call at 1:40 p.m. (it was noticed for 1:00 p.m. start time). Based on an email sent by Mr. Piering to Chief Boyer, it was established that on August 16, 2018 at 8:39 a.m. and 2:14 p.m., an employee of Landscape Collaborative operated a leaf blower at Buckingham, Brown & Nichols. Mr. Piering explained that they thought schools were exempt from the Ordinance (as they are in Brookline). Landscape Collaborative was fined for improper use of blowers earlier in 2018, and in 2017 (neither on school campuses).

Decision: Board found a violation and issued a combined \$300.00 fine.

7) Violation Massachusetts Institute of Technology holder of Leaf Blower Permit # 10689, for alleged violation of Cambridge Municipal Ordinance 8.16.081.2(a), operating during a prohibited period, on July 30, 2018 at the Sloane Building located at 50 Memorial Drive.

Present: Norman Magnuson and Michael Seaberg, of MIT; and Andrea Boyer, Chief Licensing Investigator.

Documents Considered: Hearing notice and documents attached thereto.

Summary: Ms. Boyer testified that she received a complaint from Vice Mayor Jan Devereaux that she observed a leaf blower operating at the grounds of the Sloane Building on July 30, 2018. Mr. Magnuson stated that he wasn't there, so he could not dispute it. The employee responsible for the area could not recall whether a leaf blower was used. Mr. Seaberg apologized for the infraction and took responsibility for it. MIT has no disciplinary record.

Decision: Board found a violation and issued a warning.

8) Violation Cunniff Landscaping holder of Leaf Blower Permit # 10728, for alleged violation of Cambridge Municipal Ordinance 8.16.081.2(a), operating during a prohibited period, on August 6, 2018 at 12:00 p.m. at 120-124 Rindge Avenue.

Present: Not applicable – waiver of hearing filed.

Documents Considered: Hearing notice and documents attached thereto; and waiver and contents therein.

Summary: Cunniff Landscaping admitted to the violation as alleged. The violation was observed by Investigator Tyler Bubenik.

Decision: Board found a violation and issued a \$300.00 fine.

9) Violation Nicolazzo and Sons holder of Leaf Blower Permit # 10685, for alleged violation of Cambridge Municipal Ordinance 8.16.081.2(a), operating during a prohibited period, on August 15, 2018 at 9:40 a.m. at Highland Avenue and Sparks Street.

Present: Not applicable – waiver of hearing filed.

Documents Considered: Hearing notice and documents attached thereto; and waiver and contents therein.

Summary: Nicolazzo has a significant history of violations in the past and aside from a fine the matter may be ripe for a suspension of the permit. Nicolazzo has been fined twice for the same type of violation this year, once in 2016, and once in 2014. It could be that at the time Nicolazzo admitted to the two previous violations, it was not aware of this one which was observed by Investigator Bubenik on the same day (August 15, 2018) that the Board was considering the other two.

Decision: Board found a violation and issued a \$300.00 fine. If any further violations are alleged, Nicolazzo will have to appear for a hearing and will not have the benefit of submitting a waiver.

Note: *Chief Mahoney recused himself from the next matter.*

10) Violation Hassey Landscaping, for alleged violations of Failing to Comply with a Cease and Desist Order of June 28, 2018 and Cambridge Municipal Code 8.16.081.1(1)(b), 8.16.081.2(c), and 8.16.081.2(a)- operating without a permit and operating during a prohibited period on August 10, 2018 at approximately 2:00 p.m. and August 24, 2018 at approximately 4:00 p.m. at 19 Appleton Street.

Present: No one appeared for Hassey Landscaping; and Tyler Bubenik, Licensing Investigator.

Documents Considered: Hearing notice and documents attached thereto.

Summary: Second call was given at 1:43 p.m. Mr. Bubenik testified that he observed employees of Hassey operating leaf blowers on August 10, 2018 at approximately 2:00 p.m. and August 24, 2018 at approximately 4:00 p.m. at 19 Appleton Street. The company received 2 cease and desist letters in 2017. A case had not proceeded against the company as a representative called to inform the License Commission that they did not use leaf blowers. The owners of 19 Appleton have been informed about the limitations within the leaf blower ordinance.

Decision: The Board discussed that the company's practices could have changed and wanted to give it the benefit of doubt and decided not to take action on the allegation for failure to abide by the cease and desist letter. The Board found a violation (2-0) on two counts of operating without a permit and two counts of operating during a prohibited period. It issued a \$300.00 fine per count for a total fine of \$1,200.00.

Note: *A day after the hearing, the notice sent to Hassey Landscaping was returned to the License Commission as undeliverable. There was a clerical error in the address, and the notice has been resent. The matter will be heard again in October 2018.*

11) Violation Baystate Lawn and Landscape, for alleged violations of Failing to Comply with a Cease and Desist Order and Cambridge Municipal Code 8.16.081.1(1)(b), 8.16.081.2(c), and 8.16.081.2(a)- operating without a permit and operating during a prohibited period on August 13, 2018 at approximately 10:52 a.m. at 19 Craigie Circle.

Decision: No action – this matter was continued to the October 3, 2018 hearing at the request

of Baystate Lawn and Landscape. It was noted that there is no cease and desist order in place and the Board will only hear the allegations of operating without a permit and during a prohibited period.

12) Violation Carney Horticulture, for alleged violations of Cambridge Municipal Code 8.16.081.1(1)(b), 8.16.081.2(c), and 8.16.081.2(a)- operating without a permit and operating during a prohibited period on August 6, 2018 at approximately 8:50 a.m. at 18 Ash Street.

Present: Bruce Carney, Carney Horticulture; and Tyler Bubenik, Licensing Investigator.

Documents Considered: Hearing notice and documents attached thereto.

Summary: Mr. Bubenik testified that he observed Mr. Carney operating a leaf blower on August 6, 2018 at approximately 8:50 a.m. at 18 Ash Street. Mr. Carney did not dispute the violation. He stated that he works alone and has no employees. He also stated that there are other companies that service nearby locations/addresses. Mr. Carney had not received a cease and desist letter but the owners of the property which he services had. The owners did not tell him about the cease and desist letter until receipt of the violation hearing notice.

Decision: The Board found no violation for operating without a permit because Carney Horticulture is not a commercial leaf blower operator. The Board found a violation for operating during a prohibited period and issued a \$300.00 fine to be held in abeyance until the end of the year. If there are no further violations, the fine will be suspended.

13) Violation E.C. Hathaway and Associates, for alleged violations of Cambridge Municipal Code 8.16.081.1(1)(b), 8.16.081.2(c), and 8.16.081.2(a)- operating without a permit and operating during a prohibited period on August 1, 2018 at approximately 10:50 a.m. at the corner of Brattle Street and Channing Street.

Present: No one appeared for E.C. Hathaway; and Tyler Bubenik, Licensing Investigator.

Documents Considered: Hearing notice and documents attached thereto; and previous history as to E.C. Hathaway and Associates.

Summary: Second call was given at 1:46 p.m. Mr. Bubenik testified that he observed an employee of E.C. Hathaway operate a leaf blower on August 1, 2018 at approximately 10:50 a.m. at the corner of Brattle Street and Channing Street. Mr. Bubenik testified the employee asked for a "break."

The Board has issued 12 fines to E.C. Hathaway, none of which have been paid or appealed. E.C. Hathaway has also received cease and desist letter which it has ignored. The pending overdue fines have been sent to the law department for affirmative recovery action.

Decision: The Board found a violation for each count and issued a \$300.00 fine for each, for a total fine of \$600.00.

14) Violation John's Landscaping Service Inc., for alleged violations of Cambridge Municipal Code and 8.16.081.2(a)- and operating during a prohibited period on August 6, 2018 at approximately 9:00 a.m. at 154 Vassell Lane. In addition, John's Landscaping Service Inc. renewal application is incomplete in violation of 8.16.081.1(1)(b), 8.16.081.2(c).

Present: No one appeared for John's Landscaping; Andrea Boyer, Chief Licensing Investigator; and Tyler Bubenik, Licensing Investigator.

Documents Considered: Hearing notice and documents attached thereto; and email communications between John Tighe and Chief Boyer.

Summary: On August 6, 2018, Investigator Bubenik observed an employee of John's Landscaping operating a leaf blower at 154 Vassell Lane at approximately 9:00 a.m. The original hearing notice stated the violation was at 152 Vassell Lane. The hearing notice was amended to properly state the observation was made at 154 Vassell Lane. Mr. Tighe, owner of John's Landscape sent an email on the morning of September 10 stating he could not appear at the hearing and asking that the violation be dismissed.

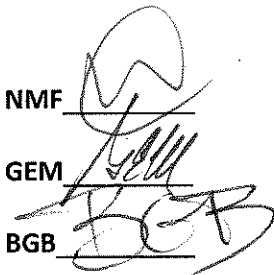
Decision: The Board denied the request for dismissal and continued the matter to the October 3, 2018 agenda.

Board's Approval of Minutes:

NMF

GEM

BGB



Date Minutes Approved: _____

OCT 03 2018

Date Approved Minutes Were Posted: _____

OCT 04 2018