NOTICE
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2026 IL App (5th) 250085

NO. 5-25-0085

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE CITY OF MATTOON,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Coles County.
	)	
v.	)	No. 18-OV-164
	)	
TIM L. QUACKENBUSH,	)	Honorable
	)	Mark E. Bovard,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE SHOLAR delivered the judgment of the court, with opinion.
Presiding Justice Cates concurred in the judgment and opinion.
Justice Barberis concurred in part and dissented in part, with opinion.

OPINION

¶ 1 In this appeal, defendant, Tim L. Quackenbush, contends that the circuit court of Coles County erred when the court imposed $53,000 in fines for ongoing violations of the public nuisance ordinance found in the Mattoon City Code. Specifically, he alleges that the City of Mattoon did not follow the ordinance by filing separate failure to comply citations for the ongoing violations. Defendant also argues that the trial court's decision finding the defendant's properties in violation of the public nuisance ordinance was against the manifest weight of the evidence. For the following reasons, we affirm in part and reverse in part.

¶ 2 I. BACKGROUND

¶ 3 Defendant is the owner of two parcels of real property, located in the 2100-2400 blocks of

Broadway Avenue in Mattoon, Illinois. One property is located on the north side of Broadway Avenue (North Property), and the other property is located on the south side of Broadway Avenue (South Property). On September 12, 2018, the City of Mattoon (City) filed a non-traffic complaint against defendant. The complaint alleged that, on September 4, 2018, defendant was in violation of two city ordinances. Specifically, the complaint alleged that defendant was in violation of (1) section 159.46 of the Mattoon City Code § 159.46 (passed May 5, 2015) (Code) pertaining to special use permits,[1] and (2) section 95.02 regarding public nuisances. Mattoon City Code § 95.02(A) (passed June 1, 2004). Section 95.02(A) provides as follows: "No person shall erect, contrive, cause, continue, maintain or permit to exist any public nuisance within the city." *Id.*

¶ 4 Section 95.01(A) of the Code defines "public nuisance":

> "(A) As used in this chapter, a *PUBLIC NUISANCE* shall mean any act, thing, occupation, condition or use of property that shall continue for such length of time as to:
>
> (1) Substantially annoy, injure or endanger the comfort, health, repose or safety of the public;
>
> (2) In any way render the public nuisance in life or the use of property;
>
> (3) Greatly offend the public morals or decency; or
>
> (4) Unlawfully or substantially interfere with, obstruct or tend to obstruct or tender dangerous for passage any street, alley, highway, navigable body of water or other public way." Mattoon City Code§ 95.01(A) (passed Sept. 6, 2016).

[1]The North Property was zoned Industrial when purchased by defendant, and the South Property was zoned C-4 when purchased by defendant. The City changed the designation of both properties to C-3 in 2015. The City initially contended that defendant's continued use of the properties as Industrial and C-4 required a special use permit. The trial court found that defendant's use of the properties was grandfathered in and that he was not required to have a special use permit. The City did not appeal this finding.

Section 95.01(B) provided a nonexclusive list of 20 "acts, conduct, omissions, conditions or things" that are considered nuisances. Mattoon City Code § 95.01(B) (passed Sept. 6, 2016).

¶ 5 Initially, the matter was continued several times to allow the City and defendant to work toward a resolution. On November 16, 2018, the trial court ordered the City to provide defendant with a list of specific issues and violations. The City provided defendant with the list in a letter dated December 10, 2018. Regarding the North Property, the City listed the following "issues and violations":

> "Empty chemical totes; totes storing scrap wood, concrete and debris; a hot tub; steel tanks; refrigerators; inoperable vehicles; hundreds of wooden pallets; scrap metal of all sorts; plastic barrels; empty gasoline tanks; scrap wood of all sorts; empty rollers for electric cable; scrap plastic; used carpeting; scrap wooden fencing; trash containers and roll-offs full of various scrap and debris; steel barrels; wood and metal barricades of some sort outside the fence on City owned property."

Regarding the South Property, the City listed the following "issues and violations":

> "Numerous shipping containers used as a fence; dozens of wooden pallets; scrap asphalt; scrap metals of all sorts; masonry and brick scattered about; numerous chemical totes with various scrap stored inside; trash roll-off dumpster; steel beams; old Wareco gas station roof; inoperable vehicles; scrap wood of all sorts; semi-trailer."

The letter further noted that the list was not " 'all inclusive' but rather a starting point for violations that are alleged regarding City of Mattoon zoning and public nuisance ordinance violations."

¶ 6 The matter proceeded to a bench trial on November 22, 2019. Jason Taylor, Police Chief for the City, testified that defendant's properties had "basically been turned into a junkyard" and

that "[t]here is scrap metal, debris of all sorts. It's not a viable business entity. It's simply a scrap yard or a junkyard it appears to me." Taylor said that he spoke with defendant in May 2018 about the condition of the properties and followed up with a letter. According to Taylor, defendant was told that the conditions were such that properties were a public nuisance and that he needed to clean up his property. Taylor identified photographs from May 2018, showing the conditions on the properties, including one where that was "a critter of some sort jumping over a wall." The photographs showed wood pallets, a mattress, chemical totes, a couch, a hot tub, and various pieces of metal, including, but not limited to, a dumpster or trash can, a safe or a filing cabinet, a metal drum, a metal sign, and metal gas tanks. Scattered throughout the properties was vegetation in excess of the eight inches permissible under the Code. Taylor opined that majority of the materials present on the properties was "refuse, garbage or debris."

¶ 7 Chief Taylor also testified that defendant removed, per the City's request, certain items from the city-owned alleyway, but that he was using those items to build a wall around the property. Part of the property was fenced, and defendant used semitrailers, dozens of empty chemical totes, various pieces of wood fencing, and empty oil wells filled with scrap wood to create a barrier. Taylor testified that that the Code allows the owner of properties zoned C-4 and Industrial to erect chain link, screening, or privacy fences not to exceed eight feet in height, but that erecting such a fence requires a permit. Taylor testified that defendant never sought a permit.

¶ 8 Regarding the list of violations provided to defendant in December 2018, Chief Taylor testified that defendant had not brought the properties into compliance with the Code. Taylor identified a series of photographs of the properties taken on December 21, 2018. The photographs showed that the condition of the properties was largely unchanged. Taylor identified a series of photos taken in April 2019. The photos again demonstrated that the condition of the property was

largely unchanged. The photos show shipping containers being used for what Taylor characterized as a fence, several large steel beams, deteriorating wood, carpeting, a fuel tank, overgrown brush, and the roof to an old Wareco gas station. Finally, Taylor identified several photos of the properties that were taken in September 2019, which showed little change to the conditions on the property. Taylor characterized Defendant's progress on the property as "close to none."

¶ 9 On cross-examination, Chief Taylor was asked about other local businesses, Mervis Industries and Harris Metals, which are also engaged in the scrap metal business. When asked what distinguishes those businesses from defendant's business, Taylor responded that they did not involve public nuisances and that they were running "viable business[es]." Taylor acknowledged that scrap metal is valued by the pound and that the defendant owns a demolition and excavating business. On redirect, Taylor testified that he had not seen any business being operated out of the properties and that, although there was a building that could be used as an office, there was no indication of any sort of business activity. The City rested.

¶ 10 Defendant called Matthew Frederick as his first witness. Frederick was employed by the City as an electrical planning and zoning official. Frederick testified that the Code allowed Industrial and C-4 zoned properties to have a fence, but that a fence was not required. Frederick opined that scrap metal and wooden pallets were permissible on industrial property, but the pallets could only be there if they were made to withstand the elements. "[O]therwise you're just going to end up [with a] pile of rotten wood."

¶ 11 Frederick testified that the north side of the North Property had chain link fencing, but that he could not guarantee it ran the whole perimeter. The east side of the North Property had full chain link and some privacy fencing. Regarding the south side of the North Property, Frederick testified that he believed the fencing was patchy, but it was full chain link when the property

operated as a brickyard. With regard to the South Property, Frederick testified that the "fencing consists of shipping containers and [sea[2]] containers." On cross-examination, Frederick testified that he believed defendant had a small welding shop in one of the buildings on the properties, but that he had not seen a lot of fabrication occurring on the site. He also opined that "even if something" is permissible under a particular zone, it is still subject to the nuisance ordinance.

¶ 12 Defendant testified that he was the owner of T.Q. Demolition and Excavating, and that they tear down buildings, houses, and deep clean at the properties. He had been in the business since 1978. He bought the North Property in 2012 and the South Property in 1996. He sold salvaged metal when the price is up. He also recovered lumber, bricks, and electrical wiring from demolition jobs, and he sold those items through the years. Defendant testified that he burned wood in the winter for heat. Outdoors he used a barrel. He also had a pallet burner that he used to heat his shop.

¶ 13 Defendant testified that the City hired him to secure the scene of a fire using barriers made from some of the plastic totes that he kept on his property. Defendant testified that he had multiple uses for the plastic totes: he cut the tops off and filled them with brick to make barricades, and he used them for the storage of bulk wood, metal and wire. Some totes were filled with water, because the City fire department required him to have water on site, and the site lacked running water. The South Property was lined with storage container units around the perimeter.

¶ 14 Regarding the perimeter of the North Property, defendant testified that the 24th Street (west) side had a chain link fence. The south side of the property had some chain link, but there was also "more of a wall barricade fence" in portions. The east side of the North Property had a chain link fence, and the alley (north) side of the property contained chain link with an opening

[2]At various locations, the transcript refers to these containers as "c containers," "seed containers," and "sea containers." Written pleadings refer to them as "sea containers," which are the metal boxes used to transport goods by sea, rail, or road. Since many of the photographic exhibits depict sea containers, this court will use that terminology.

that he used for access to the property.

¶ 15 On cross-examination, when asked whether he sold salvage metal in the last year, defendant answered that the price was bad and said, "I'm going to say, no." When asked whether he sold any metal in the last two years, defendant stated that he would have to check his receipts. Defendant estimated that he sold metal 10-15 times in the last five years. He sold $20 worth to an individual about six weeks prior to the trial. Defendant testified that he did not try to sell wood. Defendant testified that he used 50-60 pallets for heating purposes during the previous winter. One pallet would burn for 90-120 minutes. He acknowledged that the pallets were exposed to the elements and that some of them may have been on the property since 2012.

¶ 16 In response to a question from the trial court, defendant acknowledged that there were portions of the North Property perimeter where he used totes or a semi container as a barrier or fence. He also used garage doors for this purpose. Defendant also acknowledged that there were weeds that appeared to be more than eight inches tall on his property.

¶ 17 During closing arguments, the City argued that defendant was simply using the properties as storage areas for junk and noted that while defendant claimed that he was waiting for the prices to go up or down, very little changed and defendant could only remember a handful of sales. The City contended that there was no wholesale or retail business operated out of the properties and that, even if the properties' use fit their respective zoning classifications, they were still subject to the nuisance ordinance. The City also argued that the vegetation on the properties created a nuisance.

¶ 18 The City also asserted that defendant violated the City's fencing Code by erecting a barrier and by both failing to secure a permit and by failing to use chain link. The City asked for the maximum fine of $750 and for a monthly cleaning schedule that would be subject to the trial

court's oversight. If the property were cleaned, the City asked that the fined be reduced to $100. The City concluded that it did not object to defendant "salvaging what he can and selling what he can, but [the properties] can't look like this."

¶ 19 Counsel for defendant argued that defendant "may be a little bit of a hoarder, and he has a right I think in the industrial section, especially to hoard as much metal and get it to the top of the dollar that he wants." Defendant also argued that he stored such material in compliance with the permitted uses for zones C-4 and Industrial. Although the citation alleged that the properties contained standing water, defendant argued that there was no evidence that there was standing water on the properties. Regarding the vegetation, counsel argued that some of the vegetation was small trees, and he believed that the City just did not like defendant "storing totes, and crates, and metal on his property." Just because defendant was waiting for the price of the materials to go up, counsel argued, did not mean that he was not a business and that defendant had not done anything wrong. The trial court took the matter under advisement.

¶ 20 On January 6, 2020, the trial court issued a detailed written order. The court found that although defendant had the right to use the properties consistent with their Industrial and C-4 classification, the properties "must be maintained and used in compliance with" the public nuisance ordinance. In that regard, the court found that defendant's use of the properties continually violated the ordinance. The court found that the properties became "a dumping ground for any and all types of scrap and waste products." The order listed the following specific items:

> "[E]mpty chemical totes, totes storing scrap wood, concrete and debris, a hot tub, steel tanks, refrigerators, inoperable vehicles, hundreds of wooden pallets, scrap metal of all sorts, plastic barrels, empty gasoline tanks, scrap wood of all sorts, empty rollers for electric cable, scrap plastic, used carpeting, scrap wood

fencing, trash containers and roll-offs full of various scrap and debris, steel barrels, wood and metal barricades.

These items, as maintained by the Defendant, constitute violations of Section 95.01 and 95.02. The violations included maintaining the accumulation of garbage and refuse in which disease-carrying insects, rodent and vermin may breed, and the keeping and storage of supplies, construction materials, salvageable metals, lumber and bricks *outside of a building, garage or shed*." (Emphasis in original.)

The court further found that the "use and maintenance of this property in this fashion has allowed for the growth of weed and vegetation, and the breeding ground for insects, vermin and rodents." Regarding the fence issue, the trial court noted defendant's use of totes, garage doors, metal panels and a semi-trailer as fencing did not comply with the Code.

¶ 21 The trial court concluded that defendant's maintenance of the properties "has been and continues to be in violation of Section 95.02 by being a public nuisance." The court noted that defendant was provided an opportunity to work with the City toward compliance and that he did not make progress. The court imposed a $750 fine but stated that its purpose was not to punish, but to achieve compliance. For this reason, the court stated that it would consider abatement of the fine if defendant made sufficient progress in rectifying the violations. If defendant did not make progress, the City was granted permission to seek a court order allowing it to remove noncompliant items and to place a lien on the property for expenses incurred in bringing the properties into compliance. The court set the matter for compliance review on a later date.

¶ 22 The trial court held status hearing on July 28, 2020, to address defendant's progress in remediating the nuisances found on his properties. The City noted that, while defendant had "put a lot of effort into moving stuff around," it did not think he had "gotten rid of anything." Noting

that the Code allowed for an additional fine for each day the nuisance was maintained, the City asked for an additional fine of $750. Defendant argued that there had been significant progress. The court heard testimony from both Chief Taylor and defendant. Taylor testified regarding the current conditions and introduced photographs depicting conditions on the property earlier that week. Defendant testified regarding the efforts that he made, including the removal of some items and the reorganization of other items.

¶ 23 After hearing the evidence and the arguments of the parties, the trial court found that while some items had been removed from the property, defendant had not made sufficient progress to abate the original $750 fine. The court said it was not interested in reorganization, but removal. The court declined to levy an additional $750 fine, but granted the City leave to file a petition alleging an ongoing violation and request an additional fine. The court stated that defendant could abate an additional fine with further compliance.

¶ 24 On May 14, 2021, this matter was set for a hearing on matters previously filed by the parties—specifically, defendant's "Petition for Determination of Compliance or, in the Alternative, for Clarification" and the City's response thereto. That matter was also set on the City's "Motion of Payment of Fines and Assessment of Additional Fines." The City's motion asked that defendant pay the $750 fine ordered on January 6, 2020, and confirmed by the trial court on July 28, 2020. The City's prayer for relief also asked that defendant be fined $750 for "each and every day that the property at issue is maintained in a state that is not in accordance with the Mattoon City Code nuisance violation provisions."

¶ 25 Regarding his "Petition for Determination of Compliance or, in the Alternative, for Clarification," defendant testified that he had been cleaning and organizing the properties and introduced photos showing the progress that he made. He also testified regarding various objects

on his property and their uses. For example, there were mattresses on the property that he used as brooms to sweep large areas. He did this by picking a mattress up with a claw on a piece of heavy equipment and dragging it across the ground. He also had several containers of firewood that he burned, and several wood burners, some of which were store bought and others that were fashioned from barrels. He used these on the property or took them to job sites to use as a heat source.

¶ 26 When asked whether he completed the clean-up, defendant stated, "Well, it depends on what you call done." He explained that he cleaned up areas and that he was allowed to keep "all these items" but that he did not know why "the City seems to think that I have to put them in a certain order, or I have to get rid of a certain amount." Following a recess, it was agreed that the judge could do an onsite inspection of the premises, and that a representative from the City could be present. The visit was scheduled for July 2021. The court then took a recess.

¶ 27 On September 14, 2021, the trial court resumed the hearing. The court noted that it completed an onsite inspection on July 27, 2021, and that the parties previously filed their respective position and remediation proposals. After hearing argument from both parties, the court took the matter under advisement and indicated that it would issue a written order.

¶ 28 On October 18, 2021, the trial court issued its "Comprehensive Order." The court began by discussing the procedural history of the case before finding that defendant's "use and maintenance of each set of properties has been and continues to be" in violation of the public nuisance ordinance as alleged by the City. Regarding the North Property, the court found, notwithstanding the fact that defendant had cleaned up the southeast corner of the property, that "there still remains a significant amount of items on the property which constitute a nuisance." The court noted that "the property remains in substantially the same condition it was when the Court issued its January 6, 2020, Order." The court continued:

"This Court had the benefit of conducting a walk through and seeing the properties first-hand. Again, while there has been some remediation on the northside properties, and, there are certain items which Defendant uses in his business, there are an inordinate number of items of junk and scrap that have no apparent purpose or use. These items, as maintained by the Defendant, constitute violations of Section[s] 95.01 and 95.02. In addition, the use and maintenance of the property in this fashion has allowed for the growth of weeds and vegetation, and the breeding ground for insects, vermin and rodents. While the Defendant suggests this is speculation, the Court is comfortable inferring from its personal observation that the conditions would more likely than not allow or promote insect and rodent infestation.

The Court notes that Defendant again claims that almost all of these items have uses in his business. It remains difficult for the Court to discern what items have a legitimate use in the Defendant's business, and what items are stored there to be used at some indeterminate day in the future. ***

As stated in the Court's Order of 2020, a property's 'use' contemplates the operation of a viable business entity out of that property. Throughout the Code the terms 'retail', 'wholesale' and other business terms are used. In this case, there was little to no evidence that the Defendant operated a viable business entity on these parcels. While it is apparent that the Defendant 'uses' the property by storing huge amounts of scrap items on the property, it appears to the Court that many of the items have substantially no viable business use. The business of demolition by its nature does carry with it unique necessities and characteristics. However, the

> northside property can still be characterized as nothing less than a disorganized scrap yard. The photographs provided show items strewn throughout several blocks—wood, metal, concrete, plastics, fabrics, weeds, possibly carcasses—any imaginable compound scattered with neither rhyme nor reason in mind. While the defendant insists that each of these items has a proper purpose or use, his degree of specificity remains tentative."

¶ 29 The trial court concluded that defendant made insufficient progress to abate the previously imposed fine of $750 and affirmed the fine. Noting that the parties each submitted remediation schedules, the court ordered defendant to complete several activities defendant himself proposed, including (1) trimming trees that intruded upon or hung over public ways; (2) properly disposing of all cardboard, unusable plastic, unusable furniture; (3) killing unwanted vegetation inside and outside the properties; (4) removing the salvageable parts of appliances and dispose of the remaining portions thereof; (5) cutting and stacking salvageable loose metals currently stored on the ground; (6) placing opaque items on the perimeter of the property to prevent the public from viewing the interior of the property; (7) stacking and fitting loose firewood into containers; and (8) continuing the reorganizing and stacking of materials used in and generated by the salvage, demolition, and building project business. The court also ordered defendant to remove the following:

> "[E]mpty chemical totes, concrete and debris, the hot tub, any appliances such as refrigerator units, inoperable vehicles, wooden pallets not otherwise in containers or stacked, scrap metal of all sorts, plastic barrels, empty gasoline tanks, scrap wood of all sorts, empty rollers for electric cable, scrap plastic, used carpeting, wood and metal barricades, an old Wareco gas station awning/roof ***."

¶ 30 On March 22, 2022, the trial court issued its "Supplemental Order." The court again recounted the history of the case. The court noted that the City filed a "Petition for Payment of Fines or Assessment of Additional Fines" on April 16, 2021, putting defendant on notice that the City would seek additional penalties for defendant's continued noncompliance. The court noted that the Code provided that each day of noncompliance constituted a separate violation, and the court found that requiring the City to file a separate citation to defendant on a daily basis "would be impractical and unreasonable." The court further found that the City's April 16, 2021, request for additional fines "sufficiently placed the Defendant on notice of the City's allegation that there was ongoing non-compliance." The court further noted that as of July 26, 2021, the date that the court conducted its walk through, that defendant failed to correct the conditions on the properties. Accordingly, the court found that defendant remained in continuous violation of the nuisance ordinance from April 16, 2021, through July 26, 2021. The court reaffirmed the original $750 fine and assessed additional fines of $50 per day for 101 days beginning on April 16, 2021, through the court's walk through on July 26, 2021. As before, the court gave defendant the opportunity to abate the fines provided defendant followed a schedule for the removal of certain items from the property.

¶ 31 The parties and the court conducted a second on-site inspection of the properties on July 25, 2022. On August 29, 2022, the trial court held another status hearing. The City argued that it wanted defendant to comply with the court order regarding remediation and that although defendant moved items around, the properties were not getting cleaned up. Defendant testified that he had metal ready for sale, and that the buyer was supposed to pick it up that day. He added that he was selling the metal at a loss. Defendant had wooden pallets stacked and ready for transport, but he had not yet disposed of any of them. Under questioning by the court, defendant stated that

he was unaware of any metal sales since 2019. The court decided to give defendant more time to clean the properties.

¶ 32 Between August 2022 and January 2023, the court and the parties participated in status hearings, and the court received photographs of the properties and a receipt from defendant demonstrating the sale of some scrap metals. On January 27, 2023, the court held an in-person hearing. The court again received photographs and a receipt from defendant indicating the sale of scrap metals. On January 30, 2023, by virtue of a docket order, the court ordered defendant to refrain from bringing new materials onto the properties and again ordered defendant to comply with his own plan submitted to the court on August 30, 2021.

¶ 33 On February 6, 2023, defendant filed a "Request of Clarification," seeking clarification of the January 30, 2023, court order. In his request, defendant took the position that—although he intended to reduce his inventory of scrap metal and wood—interpreting the court order as requiring the removal of scrap metal and wood stored on the property would eliminate the portion of his business that included the salvage and sale of those materials. Defendant argued that the appropriate remedy was to store any such unsold materials in an organized fashion.

¶ 34 By way of a docket entry dated February 8, 2023, the trial court noted that it received defendant's motion and that the matter would be fully addressed during the hearing set on April 10, 2023. It then noted that the January 30, 2023, order "specifically referenced Defendant's own remediation plan from 18 months ago and he is to make progress on completing those items." The docket entry continued:

> "To the extent the Defendant is now claiming any item to be remedied or removed pertains to his business(es) the Court again noted that throughout this proceeding the Defendant has failed to adequately show that he has been contemporaneously

> operating any businesses from this property other than one receipt for the sale of metals; rather, the evidence has shown a stockpiling of scrap metal, pallets and wood amongst other things. To the extent Defendant disputes this finding, he may present evidence on 4/10/23."

¶ 35 During the April 10, 2023, hearing, in addition to receiving" testimony regarding defendant's clean-up efforts, the trial court reiterated that it wanted "to have some evidence that you're doing business out of this location." The court acknowledged that defendant "had started to trade metals" but expressed concern about the "huge volume of wood" located on the North Property. The court stated, "[I]f something would happen there, that block would go up in no time *** just because [of] the amount of wood that's there." The matter was set for further review.

¶ 36 On March 4, 2024, after several more status hearings to monitor defendant's efforts at abating the nuisance, the trial court entered its "Order on Compliance Review." The court found that, despite certain efforts, the properties remained noncompliant with the nuisance ordinance. The court explained:

> "This Court has found that the northside property is zoned Industrial and the Defendant seems to continue to argue that because this property is zoned Industrial, he can essentially use it for any purpose. *This* is the true dispute in this case. While the Defendant asserts he is 'using' the property for recycling purposes, there remains little evidence to show that he has in fact conducted any business from this property; rather, it has remained a dumping ground for these past five years for wood, metal and a variety of scrap." (Emphasis in original.)

After ordering defendant to continue with his clean-up efforts and calling for the removal of vegetation, rotten wood pallets, "inoperable vehicles, rusted/damaged metal drums/containers and

the Wareco [gas station] awning," the court noted that "[f]ailure to comply with this Order by Defendant could result in the Court issuing fines of $75 for each day of non-compliance dating back to its last Order of March 22, 2022."

¶ 37 After additional compliance status hearings, once again, both the City and defendant filed proposed plans for compliance. On September 11, 2024, the trial court entered yet another order detailing a lack of progress and a schedule for compliance. The court again noted that defendant remained noncompliant and was subject to additional fines for each day of noncompliance dating back to its last order of March 22, 2022.

¶ 38 The trial court held a final status hearing on November 7, 2024. After receiving exhibits, hearing testimony from defendant, and arguments from the parties, the trial court took the matter under advisement. On January 7, 2025, the court issued its final judgment. In this order, the court laid out the history of the case and its prior findings. The court noted that it tried to work with defendant, and it gave defendant numerous opportunities to bring the properties into compliance, often adopting defendant's proposed timeline for so doing. Because defendant did not comply with his own proposal, the court concluded that defendant did not intend to comply with the court's orders. For this reason, the court decided to enter a final judgment. The court determined that defendant remained noncompliant since it last imposed fines on March 22, 2022, and that 959 days had elapsed since that date. The court imposed a fine of $50 for each of the 959 days for new fines totaling $47,950. When added to the previously imposed fines of $750 and $5,050, the court ordered defendant to pay total fines of $53,750 for the nuisance violation.

¶ 39 This timely appeal followed.

¶ 40 II. ANALYSIS

¶ 41 On appeal, defendant raises several arguments regarding the nuisance ordinance and the fines imposed. First, defendant argues that the trial court erred by finding that each day of noncompliance constituted a separate violation allowing for the imposition of $53,750 fine. Second, defendant argues that the trial court erred by finding that many of the items stored on his property did not have a business use, noting that what the court considered to be "scrap" was not "scrap" to defendant. Third, defendant contends that this was a selective prosecution and that his constitutional right to equal application of the law has been violated. Finally, defendant maintains that the court's finding of a nuisance was against the manifest weight of the evidence. For the following reasons, we affirm in part and reverse in part. We address each argument in turn.

¶ 42 We first address defendant's claim that the trial court's finding that the conditions on the properties constituted a public nuisance was against the manifest weight of the evidence. Municipal violations are tried and reviewed as civil proceedings. *Village of Beckemeyer v. Wheelan*, 212 Ill. App. 3d 287, 289 (1991). The burden of proof in an ordinance violation case "is that of the civil standard, a preponderance of the evidence." *Id.* at 290. "Generally, the standard of review in a bench trial is whether the order or judgment is against the manifest weight of the evidence." *Reliable Fire Equipment Co. v. Arredondo*, 2011 IL 111871, ¶ 12; see also *County of Kankakee v. Anthony*, 304 Ill. App. 3d 1040, 1048 (1999) ("On review, a trial court's factual determinations regarding the violation of an ordinance will not be reversed unless they are contrary to the manifest weight of the evidence."). "A decision is against the manifest weight of the evidence only when an opposite conclusion is apparent or when the findings appear to be unreasonable, arbitrary, or not based on the evidence." *Eychaner v. Gross*, 202 Ill. 2d 228, 252 (2002).

¶ 43 With regard to the trial court's finding that defendant's properties were in violation of the City's nuisance ordinance, defendant argues that there was no evidence that (1) there was stagnant water on the premises and (2) insects, rodents, or other animals were inhabiting the property. We disagree and find that circumstantial evidence supported the trial court's conclusion.

¶ 44 " 'Circumstantial evidence is the proof of facts and circumstances from which a [fact finder] may infer other connected facts which usually and reasonably follow, according to the common experience of mankind.' " *Olson v. Williams All Seasons Co.*, 2012 IL App (2d) 110818, ¶ 26 (quoting *Housh v. Swanson*, 203 Ill. App. 3d 377, 381 (1990)). "Circumstantial evidence does not need to exclude all other possible inferences or support only one logical conclusion." *Id.* (citing *Kunz v. Little Company of Mary Hospital & Health Care Centers*, 373 Ill. App. 3d 615, 620 (2007)).

¶ 45 During the bench trial, the City introduced numerous photographs into evidence. Many of the photos were taken from above the properties and show, as Chief Taylor testified, that the properties had "basically been turned into a junkyard." The photos also showed significant vegetation on both properties, including weeds and tree saplings. Ultimately, the trial court found that the "violations included maintaining the accumulation of garbage and refuse in which disease-carrying insects, rodent and vermin may breed." The court further found that the "use and maintenance of this property in this fashion has allowed for the growth of weed and vegetation, and the breeding ground for insects, vermin and rodents."

¶ 46 Although defendant later suggested that the court's conclusion was based upon speculation, the court stated that it was "comfortable inferring from its personal observation that the conditions would more likely than not allow or promote insect and rodent infestation." The photographs introduced at trial also support this conclusion: one of the photos introduced into evidence during

the bench trial actually depicted "a critter of some sort jumping over a wall." The photographs also depict open plastic totes, open plastic and metal barrels, an open dumpster, a hot tub, piles of wooden pallets and other various refuse of such a magnitude that any conclusion finding a lack of standing water would defy common sense. A photograph from the City's exhibit 1, showing the conditions on the property and admitted into evidence during the trial, is included below. Given the evidence presented, we cannot say that the trial court's conclusion that the properties violated the nuisance ordinance was against the manifest weight of the evidence.



¶ 47 We recognize that defendant's argument that the zoning classifications of the properties as Industrial and C-4 allows him to keep many of the items stored on the property as scrap. That may be true, but defendant's argument in this regard fails. First, we note that although the trial court

tried to coerce compliance by staying the imposition of the fine and allowing defendant the opportunity to remove what it deemed to be the offending materials, the final order did not require abatement of the nuisance or the removal of any property. Rather, it simply imposed fines. Second, in its January 6, 2020, order following the bench trial, the trial court correctly noted that while defendant had a right to use his properties consistent with their applicable zoning classifications, the properties "*must still be maintained* and used in compliance with the Public Nuisance Code Section 95.01." (Emphasis added.) The trial court specifically concluded that "[t]hese items, *as maintained* by the Defendant, constitute violations of Sections 95.01 and 95.02" and that "the use *and maintenance* of the [properties] in this fashion has allowed for the growth of weeds and vegetation, and, the breeding ground for insects, vermin and rodents." (Emphasis added.) While defendant may have the right to store salvaged material that has a future use, the trial court's efforts at gaining compliance were directed at defendant's methods of storing an overabundance of these materials and his doing so in such a fashion that it created a nuisance.

¶ 48 Defendant also claims that the public nuisance ordinance is being applied "to him in a selective, unequal matter in violation of his right to equal protection and equal application of the law guaranteed by both the U.S. Constitution and the Illinois Constitution." As the United States Supreme Court had explained, "[t]he purpose of the equal protection clause of the Fourteenth Amendment is to secure every person within the State's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents." (Internal quotation marks omitted.) *Village of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000) (*per curiam*). The analysis of an equal protection claim is the same under both the United States and Illinois Constitutions. *Jacobson v. Department*

of Public Aid, 171 Ill. 2d 314, 322 (1996). "The guarantee of equal protection requires that the government treat similarly situated individuals in a similar manner." *Id.*

¶ 49 In support of his position, defendant argues that "[t]he uncontroverted testimony is that the only difference between [defendant's] use of his property and the use of properties owned by Mervis [Industries] and Harris [Metals], is [Chief] Taylor's opinion of whether there is an ongoing business being conducted on the property." Defendant's mischaracterizes Taylor's testimony. While Taylor did distinguish those properties based upon his opinion that Mervis and Harris were both "running a viable business," he also opined that those businesses were properly zoned and, in reference to Harris, stated it was "not a public nuisance." Contrary to defendant's assertion, the evidence in this matter does not support his claim that Mervis and Harris were similarly situated. While both companies were engaged in the same or similar business as defendant, Chief Taylor's explanation as to the difference between defendant and the two other companies was not arbitrary: Taylor believed that the conditions on defendant's properties constituted a public nuisance, and that claim was supported by the evidence. Accordingly, defendant's claim that his right to equal protection was violated fails.

¶ 50 We next consider defendant's claim that the trial court erred and violated his due process rights by imposing fines of $53,750. Defendant argues that the court did not have the authority to impose fines for any violations beyond the original citation. Specifically, defendant contends that the public nuisance ordinance, Chapter 95 of the Code, required the City to issue a separate citation for each day that the City claims the property violates the ordinance. The City argues that the general penalty provision found in Chapter 10 of the Code allows for the imposition of a separate fine for each day that the properties are found to be noncompliant. Generally, a trial court's imposition of a fine is reviewed for an abuse of discretion. *County of Du Page v. Arjmand*, 2026

IL App (3d) 240408, ¶ 101 (citing *Village of Barrington Hills v. Life Changers International Church*, 354 Ill. App. 3d 415, 420 (2004)).

¶ 51 Having found that there is sufficient evidence supporting the finding that defendant's maintenance of the property was a violation of the nuisance ordinance, we do not address the original fine of $750 beyond noting that the ordinance allows for a fine of up to $750, and we do not find, under the facts of this case, that the imposition of a $750 fine was an abuse of discretion.

¶ 52 The crux of the issue before this court regarding the imposition of fines relates to the imposition of the fines for the violations that occurred *after* the conclusion of the November 22, 2019, bench trial. Since the resolution of this issue depends upon the interpretation of the ordinances relied upon in the trial court, we review this issue *de novo*. *Raintree Homes, Inc. v. Village of Long Grove*, 389 Ill. App. 3d 836, 850 (2009).

¶ 53 We begin by noting that the complaint filed in this matter alleged a nuisance violation occurring on one date: September 4, 2018. We further note that, during closing argument of the bench trial, the City stated that the maximum fine it could request was $750. In fact, the City stated that a fine in this amount could be reduced to $100 if defendant cleaned up his property. In its January 6, 2020, order, the trial court imposed a $750 fine but allowed the defendant the opportunity to reduce the fine by bringing the properties into compliance with the ordinance. It was only after several hearings regarding defendant's noncompliance over the next several years that the court imposed additional fines of $53,000 for ongoing violations.

¶ 54 The City contends that fines for ongoing violations are permissible under section 10.99 of the Code. Section 10.99 is the Code's general penalty provision. It provides, in pertinent part:

"(A) Unless another penalty is specifically provided by this code for violation of any particular provisions, section or chapter, any person violating any provision of this code *** shall be subject to one or more of the following:

(1) A fine of not less than $50, nor more than $750 for each offense, and a separate offense shall be deemed committed during or on which a violation occurs or continues.

* * *

(C) Each day of violation and each day upon which a violation occurs constitutes a separate offense." Mattoon City Code § 10.99 (passed Feb. 7, 2012).

Based upon section 10.99, the City contends that it need not issue a separate citation for each day before seeking fines for continuing violations.

¶ 55 As noted above, relying on Chapter 95, defendant contends that the City must file a separate citation for each day that the City believes a property is in violation of the public nuisance ordinance. We agree with defendant.

¶ 56 Subsection 95.05(B) provides that "[a] failure to comply citation may be issued for each day the violation continues." Mattoon City Code § 95.05 (passed June 1, 2004). With regard to the imposition of a fine for failing to comply with a request to abate or remove a nuisance, subsection 95.06(C) states that the claim can be settled by paying $50 and correcting the violation prior to the court appearance date. Finally, subsection 95.06(D) provides that "[u]pon conviction, the person shall be subject to a fine of not less than $75 nor more than $750 for *each violation for which the person was previously issued a failure to comply citation* that was not paid prior to a complaint being filed with the Circuit Court." (Emphasis added.) Mattoon City Code § 95.06(D) (amended Feb. 7, 2017).

¶ 57 Chapter 95 includes a specific list of penalties and remedies available to the City. Section 10.99, by its own language, lists the general penalties available for persons found to have violated an ordinance and specifically states that these penalties are available "[u]nless another penalty is specifically provided by this code." Mattoon City Code § 10.99 (passed Feb. 7, 2012). Since the City charged defendant under subsection 95.02, the penalties provided in Chapter 95 control.

¶ 58 Insofar as a Chapter 95 violation is concerned, the trial court erred in its March 22, 2022, "Supplemental Order," when it stated "that the Code provides that each day of non-compliance is a separate violation." This language does not appear in Chapter 95. The court erred again when it found that "issuing a separate citation to the Defendant each and every day would be impractical and unreasonable[ ]" and that defendant was placed on notice regarding ongoing noncompliance by the City's April 16, 2021, "Motion for Payment of Fine and Assessment of Additional Fines." The court's findings are contrary to the plain language of the public nuisance ordinance, which expressly states that "[a] failure to comply citation may be issued for each day that the violation continues" (Mattoon City Code § 95.05(B) (passed June 1, 2004)) and fines may only be imposed "for each violation for which the person was previously issued a failure to comply citation that was not paid prior to a complaint being filed with the Circuit Court." Mattoon City Code § 95.06(D) (amended Feb. 7, 2017). For these reasons, we find the court erred by imposing a fine for ongoing and continuing violations.

¶ 59 Moreover, the imposition of fines for defendant's posttrial failure to abate the nuisance is a violation of defendant's due process rights. Proceedings to enforce ordinances are quasi-criminal. *County of Kendall v. Rosenwinkel*, 353 Ill. App. 3d 529, 549 (2004), *overruled on other grounds by City of Rock Falls v. Aims Industrial Services, LLC*, 2024 IL 129164 (citing *Anthony*, 304 Ill. App. 3d at 1048). Chapter 95 of the Code is penal in nature, providing, in addition to traditional

equitable relief, that a violation of the public nuisance ordinance is punishable by a fine of up to $750. Mattoon City Code § 95.06(D) (amended Feb. 7, 2017). A fundamental principle of our system of jurisprudence is that no person shall be deprived of property without due process of law. U.S. Const., amend. XIV; Ill. Const. 1970, art. I, § 2. The trial court's order assessing fines beyond the date and the occurrence alleged in the complaint punishes defendant for conduct that was never properly cited or charged by the City and did so without affording the defendant to a trial. U.S. Const., amend. XIV; Ill. Const. 1970, art. I, § 2. "As *Rosenwinkel* explains, fines can be imposed only through the close of evidence." *Arjmand*, 2026 IL App (3d) 240408, ¶ 104 (citing *Rosenwinkel*, 353 Ill. App. 3d at 548).

¶ 60 In support of its conclusion that we have erred in finding that the imposition of the $53,000 in additional fines was inappropriate, the dissent relies upon *Village of Downers Grove v. Village Square III Condominium Ass'n*, 2022 IL App (2d) 210098. Respectfully, we find the dissent's reliance to be misplaced. In *Downers Grove*, the defendant was issued three citations, one for each of its three buildings, alleging that it had failed to provide an annual fire alarm inspection report for each building. *Id.* ¶ 11. Attached to each citation was "an addendum that informed defendant that the Village was requesting the court to issue a penalty between $75 and $750 for each day the violation continued." *Id.* The trial court ultimately imposed an aggregate fine of $23,475 for the violations, reflecting 313 days of continuing violations. *Id.* ¶ 42. On appeal, the defendant argued, in part, that the ordinances in question precluded the imposition of daily fines in the absence separate notices being issued for each day that the Village sought a fine. *Id.* ¶ 95.

¶ 61 The resolution of this question turned on two of the Village's ordinances. Section 109.4 of the Fire Prevention Code (Downers Grove Municipal Code § 17.45 (amended Aug. 12, 2017) (deleting and replacing Int'l Fire Code § 109.4 (2015), as amended)) provided that, upon a

conviction for a violation of the Fire Prevention Code, the offender " 'shall be punished as provided in *** Section 1.15 of the Downers Grove Municipal Code' " and that " '[e]ach day that a violation continues, after service of notice as provided in this Code, shall be deemed a separate offense.' " *Id.* ¶ 97 (quoting Downers Grove Municipal Code § 17.45 (amended Aug. 12, 2017)). Section 1.15(a) of the Downers Grove Municipal Code provided, in relevant part, that " '[e]xcept in cases where a different penalty is prescribed by any ordinance of the Village, any person who *** is found guilty of an offense under the ordinances of Downers Grove shall be punished by a fine of not less than [$75] nor more than [$750].' " *Id.* (quoting Downers Grove Municipal Code § 1.15(a) (adopted Aug. 21, 2012)). Section 1.15(b) also provided that each day of a continuing violation constituted a separate offense. *Id.*

¶ 62 The *Downers Grove* court rejected the defendant's argument that section 109.4 required the Village to serve separate notices in order to impose a daily fine. *Id.* ¶ 99. The court noted that section 109.4 prescribes a penalty for violations of the code "by expressly incorporating the general penalty provision contained in section 1.15 of the Downers Grove Municipal Code, and it certainly does not prescribe a *different* penalty than that set forth in section 1.15." (Emphasis in original.) *Id.* The court also noted that "nothing in section 109.4 *** indicates a separate notice of violation is required for each day the Village seeks a fine." *Id.* ¶ 100. The court also observed that the Village had put defendant on notice that it was subject to a fine for each day of a continuing violation by attaching an addendum so stating to each citation. *Id.* ¶ 101.

¶ 63 *Downers Grove* is distinguishable. There, the Fire Prevention Code contained a penalty provision in section 109.4. The Village's code also contained a general penalty provision, section 1.15. Section 109.4 specifically referenced the general penalty provision. Both section 109.4 and

section 1.15 also provide that each day of a continuing violation is a separate offense. This is in stark contrast to the ordinances before this court.

¶ 64 Here, the City's general penalty provision is section 10.99. Subsection 10.99(A) expressly states that it applies "[u]nless another penalty is specifically provided by this code." Mattoon City Code § 10.99(A) (amended Feb. 7, 2012). Defendant was charged under Chapter 95 of the Code, which provides its own penalty provision and does not incorporate the general penalty provisions contained in section 10.99. Mattoon City Code § 95.06 (amended Feb. 7, 2017). Section 10.99(C) provides, in part, that "each day upon which a violation occurs constitutes a separate offense." Mattoon City Code § 10.99(C) (amended Feb. 7, 2012). This arguably allows for the imposition of fines for ongoing violations. Subsection 95.06(D), by contrast, allows, upon conviction, for the imposition of a fine "for each violation for which the person was *previously issued a failure to comply citation that was not paid prior to a complaint being filed with the Circuit Court*." (Emphasis added.) Mattoon City Code § 95.06(D) (amended Feb. 7, 2017). Here, defendant was issued only one citation; therefore, only one fine may be imposed. The City could have issued multiple citations. It did not. The City could have pursued other remedies under the Code. It did not. Instead, the City chose to issue one citation despite the long-term and ongoing nature of defendant's violations. Under the plain reading of the ordinances and the pleadings in this matter, the City is entitled to only one fine for defendant's violation of the ordinance.

¶ 65 With regard to *Rosenwinkel* and *Arjmand*, the dissent argues that "[t]hose cases stand for the proposition that 'potential future violations cannot be punished.' " *Infra* ¶ 78 (quoting *Arjmand*, 2026 IL App (3d) 240408, ¶ 104). We respectfully disagree with this interpretation. In *Rosenwinkel*, Kendall County filed a complaint alleging "ordinance violations beginning 'on August 14, 2000, and at all times since.' " *Rosenwinkel*, 353 Ill. App. 3d at 548. The ordinance in

question provided, in part, that " 'each week the violation remains uncorrected [constitutes] a separate offense.' " *Id.* at 547. The trial court imposed fines for violations occurring after the close of evidence and ordered that the fine would continue to accrue until the violation was corrected. *Id.* On appeal, the appellate court found that the imposition of fines through the end of the trial was permissible, as the continuing nature of the offense was properly pled and allowed by the ordinance. *Id.* at 548. The appellate court also found that the imposition of the continuing fines was a violation of the defendants' due process rights, since they penalized the defendants for "ordinance violations that have not occurred and have not been pleaded or proven by the County, without affording defendants a trial." *Id.* at 549.

¶ 66 In *Arjmand*, on October 14, 2020, the County filed a 14-count complaint against the defendant, alleging a variety of ordinance violations relating to the conditions on the defendant's property. *Arjmand*, 2026 IL App (3d) 240408, ¶ 30. On August 4, 2021, the trial court granted summary judgment in favor of the County but reserved the issue of the imposition of fines "pending compliance." *Id.* ¶¶ 51-52. Ultimately, the building in question was demolished, and the County sought fines for a period of time extending from the date summary judgment was granted through the date that the County was granted the authority to demolish the building. *Id.* ¶¶ 53, 56. The trial court imposed fines for the violations that occurred after entry of summary judgment in favor of the County. *Id.* ¶ 101.

¶ 67 On appeal, the *Arjmand* court, citing *Rosenwinkel* for the proposition that "fines can be imposed only through the close of evidence," found that "fines must be calculated for violations proven up to the date of summary judgment, *but not after judgment*." (Emphasis in original.) *Arjmand*, 2026 IL App (3d) 240408, ¶ 104. Accordingly, the *Arjmand* court reversed the fines for violations that were alleged to have occurred after the entry of summary judgment on August 4,

2021. *Id.* The court then considered the propriety of prejudgment fines. *Id.* ¶ 105. Notably, and with regard to count I of the complaint, the appellate court reversed and remanded for calculation of the fines, not to exceed the 10 days identified in the amended complaint. *Id.* ¶ 106.

¶ 68 Contrary to the dissent's assertion that *Rosenwinkel* and *Arjmand* stand for the proposition that potential future violations cannot be punished, we find that they stand for the proposition that due process does not allow imposition of fines *after judgment*. We also find that *Arjmand* is correct in its conclusion that fines can be imposed only for the violations alleged in the complaint. In the case before this court, the City filed a complaint alleging a violation occurring on one day only. At trial, the City acknowledged that the maximum fine it could seek was $750. It was only after defendant's continued noncompliance that the City sought fines for uncharged violations and did so in violation of section 95.06(D)'s requirement that fines could only be imposed "for each violation for which the person was previously issued a failure to comply citation that was not paid prior to a complaint being filed with the Circuit Court." Mattoon City Code § 95.06(D) (amended Feb. 7, 2017). As noted, there is only one complaint alleging a single date before this court. The imposition a fine beyond that single allegation is not appropriate.

¶ 69 For these reasons, we find the trial court abused its discretion by imposing additional fines for ongoing daily violations occurring after the close of evidence during the November 22, 2019, bench trial. The original $750 fine is affirmed. However, the $53,000 in fines assessed for subsequent violations is vacated.

¶ 70 III. CONCLUSION

¶ 71 For the foregoing reasons, we affirm the trial court's finding that defendant's maintenance of the properties constituted a violation of the public nuisance ordinance, and we reverse the imposition of $53,000 in fines for uncited violations.

¶ 72 Affirmed in part and reversed in part.

¶ 73 JUSTICE BARBERIS, concurring in part and dissenting in part:

¶ 74 I concur with the majority's judgment insofar as it affirms the finding that defendant's maintenance of the properties constituted a violation of the public nuisance ordinance. I respectfully dissent from the majority's decision to vacate the $53,000 in additional fines imposed by the trial court. In my view, those fines were authorized by the Mattoon City Code, supported by the record, and in accord with procedural protections. As such, I would affirm the additional fines.

¶ 75 First, as to defendant's notice of daily fines, I disagree with the majority's restrictive reading of the Mattoon City Code. The majority determines that the City's use of section 95.02 in charging defendant excludes any use of section 10.99. Our colleagues in the Second District encountered a similar situation in *Village of Downers Grove v. Village Square III Condominium Ass'n*, 2022 IL App (2d) 210098. In that case, a municipality charged a condominium association with violations of the municipality's fire code. Following a bench trial, the trial court imposed a daily fine for each day the violation continued after the notice. *Id.* ¶ 95. To do this, the court read two ordinances in conjunction: one that stated that each day a violation continued after notice is deemed a separate offense, and the second that established the range of fines for each day of offense. *Id.* ¶ 97. The condominium association balked at this and pointed to language in one of the ordinances which stated, " 'Except in cases where a different penalty is prescribed by any ordinance of the Village, any person who *** is found guilty of an offense under the ordinances of Downers Grove shall be punished by a fine of not less than [$75] nor more than [$750].' " *Id.* ¶ 98 (quoting Downers Grove Municipal Code § 1.15 (adopted Aug. 21, 2012)). The condominium association argued that this language prevented the trial court from reading the two ordinances

together when it imposed daily fines. *Id.* The appellate court disagreed and found that the two ordinances were intended to be read together. *Id.* ¶¶ 99-100.

¶ 76 I find the reasoning of *Village of Downers Grove* persuasive. While the ordinance language here is muddier, it is my view that section 95.02 does not require total exclusion of section 10.99. Where the court in *Village of Downers Grove* faced "different penalty" language and determined that the ordinances were still read together, I would similarly conclude that the "another penalty" language of section 10.99(A) does not preclude the congruous reading of the two ordinances. The ordinances are complementary: Section 10.99(C) provides that each day of a violation constitutes an offense but gives way to the "another penalty" of section 95.06(D), which specifies the amounts imposed for nuisance violations. Contrary to the majority's black-and-white reading of these ordinances, I would join the *Village of Downers Grove* court's more natural reading of two congruous ordinances.

¶ 77 Further, I do not agree that section 95.05(B) mandates a per-day citation issuance. As the majority notes, the plain language of the public nuisance ordinance expressly states that "[a] failure to comply citation may be issued for each day that the violation continues." Mattoon City Code § 95.05(B) (passed June 1, 2004). "Legislative use of the word 'may' is generally regarded as indicating a permissive or directory reading, whereas use of the word 'shall' is generally considered to express a mandatory reading." *Commonwealth Edison Co. v. Illinois Commerce Comm'n*, 2014 IL App (1st) 132011, ¶ 41 n.2. The City was permitted, but not required, to issue daily citations to defendant after the first citation put defendant on notice. I agree with the trial court in this matter that issuing per-day citations after initial notice was already given is "impractical and unreasonable." As I read the ordinance, it is also not mandatory. Instead, again joining our colleagues in the Second District, I conclude that "a notice of violation starts the clock

for the imposition of daily fines, and a violator who allows a violation to continue, after receipt of that notice, is subject to [daily fines].” *Village of Downers Grove*, 2022 IL App (2d) 210098, ¶ 100. For these reasons, I would conclude that the trial court did not err in imposing daily fines.

¶ 78 Second, I do not believe the trial court deprived defendant of due process. The majority holds that imposing fines for noncompliance occurring after the November 2019 bench trial violated due process, citing *County of Kendall v. Rosenwinkel*, 353 Ill. App. 3d 529, 549 (2004), and *County of Du Page v. Arjmand*, 2026 IL App (3d) 240408. Those cases stand for the proposition that “potential future violations cannot be punished.” *Arjmand*, 2026 IL App (3d) 240408, ¶ 104. In *Rosenwinkel*, the trial court “imposed fines for $500 per week, commencing on the date the complaint was filed and ‘continuing to accrue until the grain bin is removed from the subject property.’ ” *Id.* ¶ 102 (quoting *Rosenwinkel*, 353 Ill. App. 3d at 538). The appellate court reversed these posttrial fines because the ordinance violations had not occurred and were not proven. *Id.* ¶ 103.

¶ 79 The majority concludes that these cases prevent the trial court’s posttrial imposition of fines. I disagree. *Rosenwinkel* and *Arjmand* preclude any open-ended or indefinite fines. Forward-looking fines like the one found in *Rosenwinkel* are impermissible. However, no such forward-looking, open-ended, or indefinite fines are present in this case. Here, the trial court supervised defendant’s nuisance for more than six years through a continuous evidentiary process—the bench trial; the January 6, 2020, order; the October 18, 2021, comprehensive order entered after a July 2021 on-site visit; the March 22, 2022, supplemental order; the second on-site visit in July 2022; the March 4 and September 11, 2024, compliance orders; numerous status hearings; and the final status hearing on November 7, 2024. Throughout this process, the court made its own personal inspections, reviewed videos and photographs, and heard testimony. At no point did the trial court

issue an order similar to *Rosenwinkel*—a forward-looking order that indefinitely accrued fines until compliance. Instead, the court looked *back* in time and imposed fines based upon evidence presented to it or personally observed by it. In its March 22, 2022, supplemental order, the court found that defendant was put on notice of his continuing nuisance violations. The court did not open an indefinite period of potential fines. Instead, the court reaffirmed the original $750 fine and assessed additional fines of $50 per day for 101 days, beginning on April 16, 2021, and continuing through the court's walk through on July 26, 2021—a finite period supported by evidence presented to and observed by the court. In its January 2025 final order, the court determined that defendant remained noncompliant since it last imposed fines on March 22, 2022, and that 959 days had elapsed since that date. Those 959 days close on November 5, 2024, shortly *before* the final evidentiary hearing. Every fined day fell within the period the court heard and adjudicated evidence; none occurred after that period. The trial court never opened an indefinite future of fines but rather carefully looked back at definite periods of noncompliance supported by evidence. Therefore, the trial court's fine impositions are not contrary to *Rosenwinkel* and *Arjmand*.

¶ 80 Finally, I would contend that defendant received sufficient notice and due process regarding the possibility that his continued noncompliance would result in daily fines. In addition to the views set forth above, I would find that the City's April 2021 petition placed defendant on notice for potential future fines. Further, the court—both before and after the City's petition—stated multiple times that defendant may face additional fines for noncompliance. Furthermore, the record demonstrates six years of defendant's notice and due process. The record shows six years of hearings, status hearings, a trial, photographs, sales receipts, testimony, cross-examination, site visits, and proposed remediation schedules. For six years defendant was nudged forward to compliance by the City and court. Defendant vigorously litigated his compliance until

the trial court's final order in January 2025. His notice and due process claims must fail where the record demonstrates that, throughout the six years of litigation, he was repeatedly afforded an opportunity to be heard and consistently placed on notice that his continued noncompliance would result in further fines. It is for the foregoing reasons that I respectfully dissent from the majority's decision to vacate the additional $53,000 in fines.

City of Mattoon v. Quackenbush, **2026 IL App (5th) 250085**

Decision Under Review:	Appeal from the Circuit Court of Coles County, No. 18-OV-164; the Hon. Mark E. Bovard, Judge, presiding.
Attorneys for Appellant:	Frank H. Byers II, of Frank H. Byers II, Ltd., of Decatur, for appellant.
Attorneys for Appellee:	Daniel C. Jones, of Smith, Pappas & Jones, Ltd., of Charleston, for appellee.