

Before the City of Columbia, Missouri

In the Matter of:)
509 CLINKSCALES ROAD)
Columbia, Missouri)
)

Findings of Fact, Conclusion of Law and Final Order

Pursuant to Ordinance Section 6-72, Subsection 107.6, this matter came before me, Timothy Teddy, Director of Community Development for the City of Columbia, Missouri, on January 26, 2018 at 9.00 a.m. for a hearing on:

- Whether the property located at 509 Clinkscates Road, Columbia, Missouri (the Property), should be found to be a nuisance and a detriment to the health, safety or welfare of the residents of the City; and
- Whether, on behalf of the City, I should therefore order the building to be repaired, reconditioned, remodeled, totally or partially vacated, demolished or placed in a sanitary condition, as provided under Ordinance 6-72, Subsection 107.7.

The hearing was held at Columbia City Hall, 701 E. Broadway, Columbia, Missouri, in the Community Development Department, Fifth Floor, Conference Room 5D.

At the hearing, the City was represented by City Prosecutor Robert Rinck. Neither the property owner nor any persons claiming an interest in the property were present. Testimony was provided at the hearing by City of Columbia Senior Code Enforcement Specialist David Brockhouse who works for the City of Columbia, Community Development Department. For the reasons stated below, I am ordering the building on the Property demolished and all debris removed in order to assure the Property is returned to a sanitary and safe condition, as well as imposing other conditions described below.

Findings of Fact

1. I find the evidence supporting the following findings of fact is both competent and substantial.
2. A certified copy of the applicable ordinances along with copies of the International Property Maintenance Code, incorporated by reference to the ordinances, were accepted into evidence as Exhibits 1 and 2.

3. The Property has the following legal description:

The North 60 feet of Lots One Hundred Fifteen (115), One Hundred Sixteen (116) and One Hundred Seventeen (117) of Alamo Place as shown on Plat of said subdivision recorded in Plat Book 3, Page 34, Records of Boone County Missouri.

Said Property title is vested in Heather DeMian, a married person by Quit Claim Deed recorded November 4, 1999 in Book 1576, Page 994 Records of Boone County Missouri as noted in a title search and Boone County Assessor's web page referenced in Exhibit 3.

4. On September 25, 2017, the City applied for, was granted, and served a search warrant on the Property to determine what, if any property maintenance code violations existed. Senior Code Enforcement Specialist David Brockhouse served the warrant and prepared an Administrative Search Warrant Return which was filed with the Columbia Municipal Court on September 28, 2017. The Return noted ten (10) violations:

- a. The detached garage is in a deteriorated condition by having rotted materials and peeling paint on the siding, trim, and doors;
- b. The deck on the back of the dwelling is not structurally sound or in good repair. The deck is not properly anchored and not capable of supporting nominal loads and resisting all load effects;
- c. The dwelling is not in a secure condition by having the back door open and having a side and rear window missing glass;
- d. The exterior of the structure has numerous areas of broken siding and rotted windows and window trim;
- e. The foundation walls have multiple cracks that exceed 3/8 inches and are not resisting all load effects;
- f. There are multiple areas throughout the dwelling on the walls and ceiling that are deteriorated;
- g. There are no plumbing fixtures in the kitchen or bathroom that are properly installed or functional;
- h. The Property does not have a heating system or hot water heater;
- i. There is exposed and improperly installed electrical wiring throughout the Property;
- j. The Property is in an unsanitary condition by having rubbish throughout the interior and an excessive amount of raw sewage backing up in the basement.

Mr. Brockhouse testified as to each of these conditions and a certified copy of the search warrant was entered into evidence as Exhibit 4.

5. Mr. Brockhouse That on September 18, 2017, he obtained utility records for the Property and those records indicated that there has been no water or electricity

to the Property since July 2013.

6. Mr. Brockhouse testified that he prepared a Notice of Violation and mailed it certified mail to Heather Demian. Mr. Brockhouse also testified that as the mail was never claimed, the Notice of Violation was published in the newspaper. A copy of the Notice of Violation, the unclaimed certified mail, and the affidavit of Publication was entered into evidence as Exhibit 5.
7. Mr. Brockhouse testified that he received no response to the Notice of Violation and had a hearing set for the Property. Mr. Brockhouse testified that the original hearing date was set for January 5 but had to be continued to the January 26 date due to a scheduling conflict. Mr. Brockhouse testified that for each hearing date, a Notice of Hearing was sent by certified mail, the Property was posted with the Notice of Hearing, and the Notice of Hearing was also published in the newspaper. Mr. Brockhouse testified that the certified letter giving notice of the January 5 hearing date was claimed but not the certified mail giving notice of the January 26 date. A copy of the Notice of Hearing, photos of the posting on the Property, and affidavits of publication were admitted as Exhibit 6.
8. Photos of the property taken during execution of the September 25, 2017 search warrant were presented illustrating the overall condition of the property including the violations noted on the search warrant return and the Notice of Violation. Mr. Brockhouse testified as to each photograph in detail. In addition to the violations noted on the search warrant return, Mr. Brockhouse explained one photo that was of the flooring where an air grate had been removed, the picture illustrated a large hole in the floor leading directly to the basement. The hole was covered with an unsecured board in an effort to keep anyone from falling through. The photos were entered into evidence as Exhibit 7.
9. Mr. Brockhouse testified that the initial investigation of the Property began in 2012. He also testified that based on that initial investigation and his subsequent investigations, it appeared no work had been done to remediate any of the violations.
10. Mr. Brockhouse testified that the owner of the Property was made aware of the condition of the Property as far back as 2012 and had not made any attempts to repair or secure the property and that the property would be dangerous to anyone who enters it.
11. Mr. Brockhouse testified that it was his belief that the Property is not habitable or safe and is a blight to the neighborhood and due to the excessive amount of money it would take to correct the violations, the house should be demolished.
12. I find that Mr. Brockhouse's testimony is credible regarding the condition of the Property and supported by the photos and that these conditions exist at the Property.

Conclusions of Law

13. As indicated at the hearing, all exhibits presented at the hearing, Exhibits 1 through 7, have been admitted and are part of the record of this case.
14. Pursuant to Ordinance 6-72, Subsection 107.7, findings in this case must be based on competent and substantial evidence. I conclude that this standard has been met based on the evidence cited for all facts found in this matter.
15. I find all procedural obligations have been met including the requirements of Section 6-72, Subsections 107.2, 107.3, 107.4, 107., and 107.6.
16. I find that the condition of the Property as noted in the Exhibits presented and the testimony of David Brockhouse constitute violations of Ordinances 6-71 and 6-72.
17. I further find that the Property constitutes a nuisance under Ordinance 6-72, Subsection 107.1:
 - a. Subsection 107.1(5) "Those structures which are so dilapidated or decayed that they are a danger to the life, safety, health or welfare of the occupants or the residents of the city" in that the Property is dilapidated with missing flooring, open holes from the interior to the exterior, deteriorated ceilings and walls;
 - b. 107.1(8), "Those structures which exist in violation of any provision of the Building Code of Columbia, Missouri or other ordinances of this city and which are a danger to the life, safety, health or welfare of the occupants or residents of the city" in that The 2015 Edition of the International Property Maintenance Code, Section 301.3, the structure is not in a clean, safe, and sanitary condition by having windows with either missing or broken glass, and the interior not being in a sanitary condition by having rubbish throughout the interior and an excessive amount of raw sewage within the dwelling; Section 304.2 by having the detached garage in a deteriorated condition by having rotted materials and peeling paint on the siding and trim and doors; Section 304.1, the deck on the back of the dwelling is not structurally sound, is not properly anchored and is not capable of supporting all nominal loads and resisting all load effects; Section 304.6, the exterior of the structure has numerous areas of damaged siding; Section 304.13 by having windows with broken or missing glass and deteriorated sashes; Section 304.1.1, foundation walls that have cracks that exceed 3/8 of an inch and are not capable of resisting all load effects; Section 305.3, areas of throughout the interior including walls, ceiling and trim that are deteriorated; 603.1, in that there are no plumbing fixtures in the kitchen or bathroom that are properly installed or functional and the sewer line and/or floor drain are allowing raw sewage to

back up covering the basement floor; Section 602.2 The Property does not have a heating system and Section 605.1, improperly installed and deteriorated electrical systems, all as noted in the Notice of Violation;

- c. 107.1(9), "Those structures which, if occupied, would constitute a hazard to the safety, health, or welfare of the occupants because they lack maintenance, are in disrepair, are unsanitary, vermin infested or rodent infested, lack of sanitary facilities or equipment or otherwise fail to comply with the minimum provisions of this code" in that there are no working plumbing fixtures creating an unsanitary condition and raw sewage in the basement; and
- d. 107.1(10), "Those structures which have unsafe equipment including any boiler, heating equipment, elevator, moving stairway, electrical wiring or device, flammable liquid containers or other equipment on the premises or within the structure which is in disrepair or conditions that such equipment is a hazard to life, health, property or safety of the public or occupants of the premises or structure" in that the Property contains no heating equipment and inadequate or improperly installed electrical wiring.

18. I further find that demolition is the appropriate remedy for the Property based on the standards enumerated in Ordinance 6-72, Subsections 107.3(2), the structure is in such a condition as to make it dangerous to the health, safety or general welfare of its occupants or any other person and 107.3(4), the structure is a hazard to the safety, health or welfare of its occupants or of any other person because it lacks sanitary facilities and equipment.

19. I believe demolition is the appropriate remedy for the following:

- a. The property is vacant;
- b. The Property is not in a condition to be occupied;
- c. Unoccupied and in its present condition, the Property will remain a nuisance and detrimental to the residents of the city; and
- d. Despite notice, no action has been taken by any party with an interest in the Property to remedy any of the existing conditions.

20. In addition, Ordinance 6-72, Subsection 107.9 provides additional remedies, including authority for the City to conduct the demolition if the work required by this order is not completed and to impose a special tax bill if those costs are not paid.

Order

Pursuant to Ordinance 6-71, Subsection and 107.3, I order the building on the Property demolished and all debris removed in order to assure the Property is returned to a sanitary condition. Grading and filling shall be conducted to the extent needed to assure that the property has no hazards. The work shall commence within 30 days of the date of this notice. All demolition and removal shall be completed within 60 days of the date of this notice.

I order the Department of Community Development staff to mail a copy of this decision to the property owner, Heather Demian, and to post a copy of this order upon the Property.

Pursuant to Ordinance 6-72, Subsection 107.9, if the demolition and removal are not done within the time stated above, and if no appeal of this order is pending, I will certify those facts to the City Council for the purpose of seeking authority for the City to conduct the demolition and other work required by this order and to seek reimbursement or a special tax bill as provided in that section. If so authorized by the City Council, the City may take the actions described in Ordinance 6-72, Subsection 107.9. This is not a waiver of other rights of the City, including rights granted by Ordinance 6-72, Subsections 107.10 and 107.11.



Timothy Teddy,
Director of Community Development
City of Columbia, Missouri

Notice of Appeal Rights

An aggrieved party may appeal to the Circuit Court pursuant to the procedures established in Chapter 536, Revised Statutes of Missouri.