



## FINAL ORDER

### ID#E31824-2 Kenneth & Phyllis Abney

Issued to: Kenneth & Phyllis Abney  
60 Holiday Road  
Winchester, KY 40391

Date of Issuance: March 18, 2024

**Narrative Description of Violation:** Kenneth and Phyllis Abney failed to maintain this property at 107 South Highland Street, and the original residence was dilapidated and not conducive to the health and safety of the residents, any other potential resident, surrounding properties, and the general public. The residence had to be demolished on or about November 21, 2016 as it was a safety hazard to the neighborhood

**Violation(s):** Failure to maintain property at 107 South Highland Street

**Code Section:** KRS 65.8825(6) failure to pay or contest, KRS 65.8828(1) failure to appear; KRS 99.705 blighted property, IPMC Code 108.1.1 Unsafe Structures; 108.1.3 Structure Unfit for Human Occupancy; 108.5 Prohibited Occupancy; 304.1 Exterior Structure; Winchester Code of Ordinances Sec. 2-402 Dangerous & Structurally Unsafe Buildings; 2-403 Repair, Vacation & Demolition. 304.7 Roofs and Drainage; 304.10 Stairs, Decks, and Balconies; 304.13 Window, Skylight and Door Frames.

**Code Title:** Winchester Code of Ordinances - Chapter 2 – Administrative Hearing Board ARTICLE VII, Section 2-401 Public Nuisances Related to Maintenance, Section 2-392 Hearing, Notice & Final Order

**Full Description:**

1. The Winchester Fire Chief inspected this residence and, due to its lack of maintenance for many years, found that it had deteriorated to the point where it had lost all structural integrity and was beginning to collapse around the occupants.
2. Exterior walls were not anchored to supporting and supported elements or not plumb and free of holes, cracks or breaks and loose or rotting materials, were not properly anchored or not capable of supporting all nominal loads and resisting all load effects.

3. The exterior stairway, deck, porch and balcony, and all appurtenances attached thereto, were not maintained structurally sound, in good repair, with proper anchorage and capable of supporting the imposed loads.
4. The roof and flashing were not sound, tight and had defects that admitted rain.
5. The windows, doors and frames were not in sound condition, good repair, and weather tight.
6. The original structure was found to be dangerous to the life, health, or safety of its occupants because it was deemed to be structurally unsafe or of such faulty construction that it was likely to partially or completely collapse.
7. The structure was deemed unfit for human occupancy or use in that it was found to lack maintenance, be in disrepair, vermin or rodent infested, lacked ventilation, illumination, sanitary or heating facilities or other essential equipment required by the code.

**99.705 Definitions for KRS 99.700 to 99.730.** As used in KRS 99.700 to 99.730:

1. "Alternative government entity" means an entity established by the legislative body of a local government pursuant to KRS 65.350 to 65.375, 99.330 to 99.510, 99.520 to 99.590, or 99.610 to 99.680, with a purpose compatible with the purposes expressed in KRS 99.700;
2. "Blighted" or "deteriorated" property means any vacant structure or vacant or unimproved lot or parcel of ground in a predominantly built-up neighborhood:
  - a. Which because of physical condition or use is regarded as a public nuisance at common law or has been declared a public nuisance in accordance with the housing, building, plumbing, fire, nuisance, or related codes;
  - c. Which, because it is dilapidated, unsanitary, unsafe, vermin-infested, or lacking in the facilities and equipment required by the housing ordinance code of the local government in which it is located, has been designated by the department responsible for enforcement of the housing or nuisance code as unfit for human habitation;
  - d. Which is a fire hazard, or is otherwise dangerous to the safety of persons or property;
  - f. Which by reason of neglect or lack of maintenance has become a place for accumulation of trash and debris, or a haven for rodents or other vermin;
  - h. Which has not been brought into compliance with the housing, building, plumbing, electrical, fire, or nuisance code of the local government within which it is located within the time constraints placed upon the owner by the appropriate code enforcement agency;

**Sec. 108.1.1 – Unsafe Structures.** An unsafe structure is one that is found to be dangerous to the life, health, property or safety of the public or the occupants of the structure by not providing minimum safeguards to protect or warn occupants in the event of fire, or because such structure contains unsafe equipment or is so damaged, decayed, dilapidated, structurally unsafe or of such faulty construction or unstable foundation, that partial or complete collapse is possible.

**Sec. 108.1.3 Structure Unfit for Human Occupancy.** A structure is unfit for human occupancy whenever the code official finds that such structure is unsafe, unlawful or, because of the degree to which the structure is in disrepair or lacks maintenance, is unsanitary, vermin or rat infested, contains filth and contamination, or lacks ventilation, illumination, sanitary or heating facilities or other essential equipment required by this code, or because the location of the structure constitutes a hazard to the occupants of the structure or to the public.

**Sec. 108.5 Prohibited Occupancy.** Any occupied structure condemned and placarded by the code official shall be vacated as ordered by the code official. Any person who shall occupy placarded premises or shall operate placarded equipment, and any owner or any person responsible for the premises who shall let anyone occupy placarded premises or operate placarded equipment shall be liable for the penalties provided by this code.

**Sec. 304.1 Exterior Structure General.** The exterior of a structure shall be maintained in good repair, structurally sound and sanitary so as not to pose a threat to the public health, safety, or welfare.

**Sec. 2-402. - Dangerous and structurally unsafe buildings.**

- A. Definitions. As used in this ordinance, the following words and phrases shall have the following meanings, unless the context clearly indicates that a different meaning is intended:
1. Dangerous building means any building structure, or portion thereof, which threatens the life, health, safety, or property of the public or its occupants by reason of inadequate maintenance, dilapidation, obsolescence, fire hazard, disaster, damage, infestation, or abandonment shall be deemed a "dangerous building." The conditions which may cause a structure to be classified as a "dangerous building" include, but are not limited to the following conditions:
    - d. The building or structure has been so damaged by fire, wind, earthquake or flood, or has become so dilapidated or deteriorated as to become an attractive nuisance to children, or a harbor for transients, vagrants, or criminals;
    - e. The building or structure, used or intended to be used for dwelling purposes, is unsanitary, unfit for human habitation, or in such a condition that is likely to cause sickness or disease because of inadequate maintenance, dilapidation, decay, damage, faulty construction or arrangement, inadequate light, air or sanitation facilities or other cause.
    - f. The building or structure creates a fire hazard by virtue of its obsolescence, dilapidated condition, deterioration, damage, inadequate exiting, lack of sufficient fire-resistive construction, faulty electric wiring, gas connections or heating apparatus, or other cause;
    - g. The building or structure constitutes a public nuisance as defined by law;
    - k. The existing use or occupancy violates the fire, health or building regulations of applicable city ordinances.

(Ord. No. 10-2011, § 22, 7-27-11)

**Sec. 2-403. - Repair, vacation, and demolition.**

- b. Posting of signs. (1) When the code official orders the vacation of tenants and when the building is secured, signs shall be posed at or near each entrance of the building and shall be in substantially the following form (copy attached):

DO NOT ENTER  
UNSAFE TO OCCUPY

It is unlawful to occupy this building  
or to remove or deface this notice.

City Ordinance  
Code Official  
City of Winchester

**Sec. 304.7 Roofs and Drainage.** The roof and flashing shall be sound, tight, and not have defects that admit rain. Roof drainage shall be adequate to prevent dampness or deterioration in the walls or interior portion of the structure. Roof drains, gutters and downspouts shall be maintained in good repair and free from obstructions. Roof water shall not be discharged in a manner that creates a public nuisance.

**Sec. 304.10 Stairways, decks, porches and balconies.** Every exterior stairway, deck, porch and balcony, and all appurtenances attached thereto, shall be maintained structurally sound, in good repair, with proper anchorage and capable of supporting the imposed loads.

**Sec. 304.13 Window, skylight and door frames.** Every window, skylight, door and frame shall be kept in sound condition, good repair and weather tight. All glazing materials shall be maintained free from cracks and holes. Every window, other than a fixed window, shall be easily openable and capable of being held in position by window hardware.

**Sec. 2-395. - Lien; fines, charges, and fees.**

- A. The city and county shall possess a lien on property owned by the person found by a final, nonappealable order issued based upon an uncontested citation; by a final, nonappealable order of the board; or by a final judgment of a court of competent jurisdiction, to have committed a violation of an ordinance which the board is authorized to adjudicate, for all fines assessed for the violation and for all charges, costs, penalties, and fees, including attorney's fees, incurred by the city and county in connection with the enforcement of the ordinance.
- B. The lien shall be recorded in the office of the county clerk. The lien shall be notice to all persons from the time of its recording and shall bear interest, at the rate of four (4) per cent interest, until paid.

- C. Pursuant to KRS 65.8835, the lien shall take precedence over all other liens on the property, except state, county, school board, and city taxes, and may be enforced by judicial proceedings or to the extent permitted by law administrative hearing board enforcement proceedings.
- D. In addition to the remedy prescribed in subsection (a), the person found to have committed the violation shall be personally responsible for the amount of all fines assessed for the violation, including a fifteen dollar (\$15.00) administration fee, and for all charges and fees incurred by the city and county in connection with the enforcement of the ordinance. The city and county may bring a civil action against the person and shall have the same remedies as provided for the recovery of a debt.
- E. The city and county shall be entitled to recover from the responsible party or parties all reasonable attorney fees and other costs incurred by the city and county by reason of the collection upon and enforcement of the responsible party's or parties' liability hereunder and the lien which secures the same.
- F. Upon payment, determination of the board or court order, the city and county shall be authorized to release any lien filed hereunder and recorded in the office of the county clerk.

(Ord. No. 10-2011, § 15, 7-27-11; Ord. No. 9-2020, 7-7-20)

**Sec. 2-233.** - Additional penalties for litigation. In the event litigation or an enforcement proceeding of the administrative hearing board is instituted to compel compliance with this section, the defendant, if found liable by a final order shall, in addition to taxes, penalty and interest, be responsible for all costs, including reasonable attorney's fees. Also, the city shall have a lien upon the property of the defendant for the entire amount determined to be delinquent. (Ord. No. 3-2005, § 1, 2-15-05; Ord. No. 10-2020, § I, 7-7-20)

**Sec. 2-393. - Appeals; final judgment.**

- A. An appeal from any final written order of the board may be made to the Clark County District Court within thirty (30) days of the date the order is issued. The appeal shall be initiated by the filing of a complaint and a copy of the board's final order in the same manner as any civil action under the Kentucky Rules of Civil Procedure.
- B. The action before the district court shall be de novo. If the court finds that a violation occurred, the offender shall be ordered to remedy the violation and pay to the city or county all fines, charges, fees, including attorney's fees, and penalties occurring as of the date of the judgment. The district court judge shall provide the offender a reasonable time to remedy the violation. If the offender does not remedy in the time provided, another notice of violation may be issued, in accordance with subsection 2-391(2), for another violation of the code.
- C. If no appeal from a final order of the board is filed within the time period set in subsection (a) above, the board's order shall be deemed final for all purposes.

(Ord. No. 10-2011, § 13, 7-27-11)

**Facts Constituting the Offense:** This property has violations on it since 2012. The residence had to be demolished in 2016 since it was in such a dilapidated condition that it was a safety hazard to its occupants as well as the neighborhood. There was no outlook of repairs or upkeep being made to this property. This property was before the Administrative Hearing Board on March 18, 2024, with proper notification given through the mail, as well as posting the notification on the property.

The Administrative Hearing Board, in its capacity as a Vacant Property Review Commission, has found:

1. The property is blighted as defined by KRS 99.705.
2. The parcel is vacant in a predominantly built-up neighborhood, which by reason of neglect or lack of maintenance has become a place for the accumulation of trash and debris and a haven for vermin.
3. The property has not been rehabilitated within the time constraints placed upon the owner by the appropriate code enforcement agency.

**Offense Number:** 2024-019

**ADMINISTRATIVE HEARING BOARD**

<b>Hearing Date:</b>	March 18, 2024	<b>Proof of Notice:</b>	Yes
<b>Hearing Contested:</b>	No	<b>Judgment:</b>	\$23,164.68
<b>Default:</b>	Yes		
<b>Remediation Order:</b>	<b>Fine:</b>	<b>Costs:</b>	
	<b>Penalty Fees:</b>		

**FINAL ORDER**

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Don McCarty, Board Chair

Date: March 19, 2024