

DEMOLITION OF SUBSTANDARD STRUCTURES:
How to prove it's just a pile of junk being held together by the paint

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About the Author

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I. Introduction

A former Building and Standards Commissioner, who resigned from several boards to be on city council, once told me of all the boards and commissions he had served on, BSC was the worst. He also said that it was one of the most important. Not just anyone can do it, he said, because you have to be tough to order someone to tear down the house they grew up in.

One of the most difficult jobs a city has to do is abate substandard nuisance structures. The process can be drawn out and expensive. The costs of getting it wrong can be staggering. And as often as not, the very people you are trying to protect are the ones who are angriest with the city. But this process can be one of the most impactful ways a city can protect its citizens, improve its neighborhoods, and spur future growth. Like small fires that clear the underbrush and prevent future conflagrations, this process can either spur citizens to take the necessary action to remediate substandard structures or ultimately remove blighted structures that the owners are unable or unwilling to save.

In 2012, the Texas Supreme Court issued a landmark decision in the *City of Dallas v. Stewart* which in many ways changed the way cities approach the abatement of dangerous structures. But what was thought to be a curse may turn out to be a blessing. While the Court seemingly undermined the importance of this process, if the owner or lienholder does not avail his or herself of the process, they are barred from any collateral attack. Furthermore, because each case is entitled to a de novo review, errors in the process are less impactful, if not altogether moot, because the process is effectively incomplete. Ultimately the court did little to alter the requirements or mechanics of the administrative process or expand the scope of available appeals.

The purpose of this paper is to outline the variety of tools that city governments have to abate substandard, nuisance structures, including judicial and quasi-judicial processes, in light of the changed landscape after *Stewart*. Additionally, the paper will discuss alternative objectives, aside from demolition, such as securing properties, shutting off utilities, repair orders, and receivership. Finally we will address the potential litigation arising out of these processes.

II. Substandard Buildings Ordinances

A. Chapter 214

Texas Local Government code Chapter 214 is the older of the two enabling statutes that authorize the demolition or repair of dangerous structures.¹ While similar Chapter 54 is part of a broader authority to enforce health and safety ordinances, and Chapter 214 specifically addresses abatement of substandard structures.² In addition to differences in scope there are differences in process, so while the two processes are often seen as being the same, and seem to accomplish the same goals, they are not interchangeable.

Chapter 214 starts off with authorization to pass an ordinance that requires the vacation, securing, repair, or demolition of a building that is 1) dilapidated, substandard, or unfit for human habitation and a hazard to public health, safety, and welfare; or 2) unoccupied and unsecured such that it could be used by vagrants or children; or 3) a secured property that is still a danger to the public.³ The ordinance must establish minimum standards for the continued use and occupancy of all buildings, regardless of the date of their construction.⁴ Note that Chapter 245 vesting does not apply to uniform codes (e.g. building, plumbing electrical, etc.), so the purpose of this ordinance is to set the threshold at which point a structure has become dangerous and must be repaired in accordance with current codes.⁵

The ordinance must provide for a public hearing.⁶ The statute does not specify who conducts the hearing, so as often as not, it is the city council, or some board appointed by ordinance. Alternatively, the ordinance can designate a municipal court of record as the venue.⁷ The statute further requires notice be provided to each owner, lienholder, or mortgagee.⁸ The notice can be sent in two different ways. One process provides for notice to the owner prior to the hearing, and then notice to lienholders and mortgagees only after the owner fails to comply.⁹ In that scenario, the city must wait for the owner to fail to comply, but then provide a reasonable period of time for the lienholders or mortgagees to fail to comply as well.¹⁰ The better alternative is to send reasonable notice to any owner, mortgagee, and lienholder before the hearing.¹¹ This may be more expensive (e.g. more certified letters) but will ultimately be a more efficient process in the long run because in this case if no action is taken in the deadline given by the order, the city can proceed with self-help instead of sending another round of notices. In order to qualify, the city must make a diligent effort to identify each owner, lienholder, and mortgagee.¹² The diligent effort requirement is satisfied by searching six different databases, as

¹ Tex. Loc. Gov't Code § 214.001; § 54.001

² Id.

³ Tex. Loc. Gov't Code § 214.001(a).

⁴ Id at (b).

⁵ Tex. Loc. Gov't Code § 245.004(1).

⁶ Tex. Loc. Gov't Code § 214.001(b)(3)

⁷ Tex. Gov't Code § 30.00005.

⁸ Tex. Loc. Gov't Code § 214.001(c).

⁹ Id. (d).

¹⁰ Id.

¹¹ Id (e).

¹² Id.

applicable: 1) Property records; 2) appraisal records; 3) secretary of state; 4) assumed name records; 5) tax records; 6) utility records of the city.¹³

In each case, the notice must contain a statement that the parties are required to submit proof of the scope of work and the time it will take to perform the work at the hearing.¹⁴ In order to comply with due process rights, the notice must specify the date, time, and location of the public hearing.¹⁵ The statute specifically provides that notices returned as “refused” or “unclaimed” are considered delivered.¹⁶ Note that those designations indicate that there was no flaw in the address, which is different from “not deliverable as addressed”, “attempted not known”, or similar endorsements for undeliverable mail, which could indicate a bad address.¹⁷ Under the preferred course, it is permitted (but not required) to file a notice in the county property records that contains the name and address of the owner, legal description of the property, and a description of the hearing.¹⁸ This notice will effectively act like a *lis pendens* and place any subsequent purchasers/transferees on notice of the pending hearing.¹⁹

After the hearing, within ten days, the city must file a copy of the order in the office of the city secretary.²⁰ The city must also public a notice in the official paper the street address or legal description, date of the hearing, brief synopsis of results, and where a copy of the order can be obtained.²¹ The city must also send a copy of the order to the owner, lienholder, or mortgagee by certified mail return receipt requested, personal delivery, or US mail signature confirmation.²² Keep documentation of when the order is mailed, because the deadline for appeal is based on the date the order is mailed or personally delivered.²³

The hearing itself must be conducted with some degree of formality as it is a quasi-judicial hearing. Due process requires that the owner, lienholder, or mortgagee be given a meaningful opportunity to be heard. The hearing must be conducted before a body that is independent of city staff and in a position to render a meaningful decision. To comply with state law, the ordinance should give the city the authority to order the property vacated, secured, and repaired or demolished.²⁴ The order should require the building be repaired or demolished within thirty days, unless it is proven that deadline is not reasonable.²⁵ If more than thirty days are allowed for repair or demolition, the city shall require compliance with a time schedule for the work, and the site must be kept reasonably secure from unauthorized entry.²⁶ A city may not allow more than ninety days to repair or demolish a structure unless the owner/lienholder

¹³ Id (q).

¹⁴ Id (c).

¹⁵ *Secure Props. v. City of Houston.*, No. 14-11-00051-CV, 2012 Tex. App. LEXIS 245, at *10 (Tex. App.—Houston [14th Dist.] Jan. 12, 2012)

¹⁶ Tex. Loc. Gov’t Code § 214.001(r).

¹⁷ <https://pe.usps.com/text/dmm300/507.htm>

¹⁸ Tex. Loc. Gov’t Code § 214.001(e).

¹⁹ Id.

²⁰ Id (f).

²¹ Id.

²² Id (g).

²³ Tex. Loc. Gov’t Code § 214.0012(a).

²⁴ See Tex. Loc. Gov’t Code § 214.001(h)

²⁵ Id (h).

²⁶ Id (i).

submits a detailed plan for the repair (including schedule) and establishes at the hearing that the work cannot be performed in less than ninety days.²⁷ The owner, or other interested party, has the burden of proof at the hearing to establish the scope of work for repairs and the time frame required to finish same.²⁸ Also if the order provides more than ninety days to complete repairs, the owner shall be required to provide regular progress reports and the city may require subsequent appearances before the hearing official or designee.²⁹ As a practice tip, with the constitutional issues at play and the burden of proof on the owner et al, it is important that typical limitations for public hearings be relaxed. Restrictions on time limits, prohibitions against presentations, or similar rules applicable to a public comment period should be relaxed in this context. Similarly, formal guidelines typical to judicial proceedings should not be applied, for example no one should be barred from speaking for lack of an established, justiciable interest in property. As a default rule, allow the owner, lienholder, mortgagee, or person alleging such status, as much time as reasonable to make their case.

There are several provisions to ensure compliance. If the owner, lienholder, or mortgagee owns property (including improvements) collectively valued at more than \$100,000, the city may require security, either a cash/surety bond or a letter of credit, in an amount adequate to cover the cost of repair or demolition.³⁰ If the owner, lienholder, or mortgagee fails to take the required action in the time allowed, the city can take action to perform the required action and collect on the security.³¹ Alternatively, if the property is not a homestead, the city can invoice the owner for the costs and obtain a lien against the property.³² If the ordinance provides, there can be citations issued for failure to comply with the order, or alternatively civil penalties can be assessed.³³ Civil penalties can be assessed per day that the property remains in violation, making them an effective tool for encouraging compliance.³⁴

B. Chapter 54

An alternative process for enforcing health and safety ordinances, including those related to substandard structures, is to create a building and standards commission. The commission is a quasi-judicial body created by ordinance which enforces ordinances that are:³⁵

- a. for the preservation of public safety, relating to the materials or methods used to construct a building or improvement, including the foundation, structural elements, electrical wiring or apparatus, plumbing and fixtures, entrances, or exits;
- b. relating to the fire safety of a building or improvement, including provisions relating to materials, types of construction or design, warning devices, sprinklers or other fire suppression devices, availability of water supply for extinguishing fires, or location, design, or width of entrances or exits;
- c. relating to dangerously damaged or deteriorated buildings or improvements;

²⁷ Id (j)

²⁸ Id (l).

²⁹ Id (l).

³⁰ Id (k).

³¹ Id (m).

³² Id (n).

³³ Id § 214.0015-.002.

³⁴ Id.

³⁵ Tex. Loc. Gov't Code § 54.032.

- d. relating to conditions caused by accumulations of refuse, vegetation, or other matter that creates breeding and living places for insects and rodents;
- e. relating to a building code or to the condition, use, or appearance of property in a municipality;
- f. relating to animal care and control; or
- g. relating to water conservation measures, including watering restrictions.³⁶

The ordinance that creates the commission will:

- a. designate an appointing authority;
- b. create a number of positions, at least five, for one or more panels; and
- c. establish a eight or more alternate positions, to serve when a commissioner is absent.³⁷

Commissioners and alternates are appointed for two year terms, but may be removed for cause on the basis of a written charge.³⁸ Before a commissioner or alternate may be removed, they are entitled to request a public hearing before the appointing authority.³⁹ Vacancies in either position shall be filled for the remaining term.⁴⁰ Cases will be heard by a panel with a majority of its members present.⁴¹ Meetings shall be called by the chairman of each panel and shall be open to the public.⁴² The panel must keep minutes of each meeting, recording each commissioner’s vote, which must be kept along with the records of any acts of the commission as public records.⁴³ The chairman of each panel is entitled to administer oaths and compel attendance of witnesses.⁴⁴ Additional rules for the commission may be set by ordinance, or adopted by a majority of the entire commission.⁴⁵ The rules will establish procedures for hearings, providing for presentation of evidence, testimony by respondents, or testimony by persons opposing charges brought by the city or its building officials.⁴⁶ The ordinance will designate the appropriate municipal official to present the city’s cases before commission panels.⁴⁷

Each property owner or lienholder, of record is entitled to notice of a hearing before the commission.⁴⁸ The notice must be sent at least ten days before the date of the hearing and must identify the date, time, and place of the hearing.⁴⁹ Notice must be provided by personal delivery, certified mail return receipt requested (“CMRRR”), or USPS signature confirmation service.⁵⁰ The term “of record” means a person is entitled to notice if they are an owner, lienholder or

³⁶ Id.

³⁷ Id § 54.033.

³⁸ Id at (c).

³⁹ Id.

⁴⁰ Id at (d), (e).

⁴¹ Id § 54.034(a).

⁴² Id at (d).

⁴³ Id at (e).

⁴⁴ Id at (d).

⁴⁵ Id at (b). Note that rules for panels should be uniform and are adopted by/for the entire commission.

⁴⁶ Id.

⁴⁷ Id at (c).

⁴⁸ Id § 54.035.

⁴⁹ Id at (b).

⁵⁰ Id.

mortgagee whose interest is recorded, and not just in the real property records.⁵¹ Specifically, the city is required to check appraisal records, tax records, city utility records, county assumed name records, and registered agent records with the secretary of state.⁵² Just as with Chapter 214, if the letter is returned with the designation “unclaimed” or “refused” the notice is considered delivered.⁵³ Another notice must also be placed on the front door of each structure on the property, or as close as possible.⁵⁴ Notice must also be posted in a newspaper of general circulation.⁵⁵ While it is optional, it is strongly recommended that the city also provide notice in the official county property records that includes the name/address of the owner, address of the property, legal description of the property, and a description of the hearing.⁵⁶ This is important in order to ensure that the property cannot be sold to an innocent third party while a hearing before the commission is pending or after an order has been issued.⁵⁷ Lastly, it should also be noted that a commission panel is subject to the Texas Open Meetings Act as a deliberative body that has quasi-judicial power and is classified as a department, agency, or political subdivision of a city.⁵⁸ So in addition to the notices that must be posted regarding the properties subject to a hearing, an agenda must be posted in the manner provided in the Open Meetings Act.⁵⁹

The hearing must be conducted in a manner that permits the affected parties to have a meaningful review of the city’s position that the structure is dangerous and substandard.⁶⁰ The city must produce sufficient evidence to establish that the structure is dangerous and in violation of the city’s ordinance. While not required by statute, it is recommended that the ordinance shift the burden of proof, upon a showing by the city that a property is dangerous and substandard. The burden should shift to the owner or lienholder to establish that they are ready, willing, and able to make repairs to the property and that such repairs are economically feasible. Such a shift is a practical necessity because the city’s burden is to show that the property is substandard and make a recommendation for how that can be resolved. Demolition is still an appropriate remedy even in the case where repairs are feasible, if circumstances are such that repairs are not likely.⁶¹ Chapter 214 provides a good framework for establishing what an owner or lienholder should be required to prove to justify an order to repair. For example, requiring that repairs be completed within thirty days, or evidence produced that it is not reasonable to do so, or requiring attendance at hearings if the repair schedule is longer than ninety days.⁶² The result of the hearing is an order from the commission taking one or more of the following actions:

⁵¹ *Monroe v. City of San Antonio*, No. 04-09-00795-CV, 2010 Tex. App. LEXIS 7090, at *5 (Tex. App.—San Antonio Aug. 31, 2010, no pet.)

⁵² Tex. Loc. Gov’t Code § 54.035(e)

⁵³ *Id.* at (f).

⁵⁴ *Id.* at (a)(2).

⁵⁵ *Id.* at (b).

⁵⁶ *Id.* at (c).

⁵⁷ *Id.*

⁵⁸ Tex. Gov’t Code § 551.001(3)(D); *see also East Central ISD v. Bd. of Adjustment*, 387 S.W.3d 754, 761 (Tex. App.—El Paso 2012, pet denied); *City of Hedwig Vill. Planning & Zoning Comm’n v. Howeth Inves., Inc.*, 73 S.W.3d 389 (Tex. App.—Houston [1st Dist.] 2002, no pet.).

⁵⁹ *See* Tex. Gov’t Code § 551.041 et seq.

⁶⁰ *City of Houston v. Carlson*, 393 S.W.3d 350, 357 (Tex. App.—Houston [14th Dist.] 2012, no pet.) (*citing Tex. Workers Comp. Comm’n v. Patient Advocates of Tex.*, 136 S.W.3d 643, 658 (Tex. 2004)).

⁶¹ *Wood v. City of Texas City*, No. 14-11-00979-CV, 2013 Tex. App. LEXIS 1022, 2013 WL 440569, at *4 (Tex. App.—Houston [14th Dist.] Feb. 5, 2013, no pet.).

⁶² *See* Tex. Loc. Gov’t Code § 214.001

- a. declare the building to be substandard
- b. order repair, within a fixed period
- c. order the demolition or removal of the structure
- d. order the property be vacated and/or secured
- e. order any other action necessary to remedy, remove, or alleviate a substandard condition,
- f. issue orders to peace officers to enforce the lawful directives of the panel, and
- g. determine the amount and duration of any civil penalty.⁶³

A majority vote of the members voting is necessary for the commission to take any action.⁶⁴ If no appeals are taken from the decision of the commission within the required period, the decision of the commission is, in all things, final and binding.⁶⁵ The order is enforceable in the same manner as provided in Section 214.001(k), (m), (n), and (o).⁶⁶ Specifically, that means if the owner or lienholder fails to take the required action in the time allowed, the city may take such action and invoice the owner.⁶⁷ A lien for the cost of same can be filed in the property records and has priority over everything but tax liens.⁶⁸ Note that this lien cannot be filed against a homestead.⁶⁹ However, Chapter 54 also authorizes an abstract of judgment filed against the property owners, to cover the costs of repair as well as civil penalties.⁷⁰ To enforce the civil penalty, the city secretary files a copy of the order with the district clerk, which order must establish the amount and duration of the penalty.⁷¹ The Texas constitution protects homestead properties from forced sale, with exceptions, but that does not mean the liens cannot be filed.⁷² Therefore, if the abatement proceeding is against a homestead property, do not seek to file a statutory lien against that property, instead seek an abstract of judgment from District Court which is applicable to any property owned by the same person(s) within the county.

C. Chapter 54 Lawsuit

A city is empowered to bring a lawsuit in district court or a county court at law, in the county where the city is located, to enforce specific city ordinances.⁷³ The list of ordinances that can be enforced by this suit is not limited to substandard structures, and so the lawsuit is an ideal method to address properties with numerous issues. The lawsuit can be brought to enforce ordinances that are:

- a. related to building code, electrical code, fire code etc.;
- b. for zoning that provides for the use of land or classifies a parcel of land according to the municipality's district classification scheme;

⁶³ Tex. Loc. Gov't Code § 54.036.

⁶⁴ Id § 54.038.

⁶⁵ Id § 54.041

⁶⁶ Id § 54.040.

⁶⁷ Tex. Loc. Gov't Code § 214.001(n).

⁶⁸ Id.

⁶⁹ Tex. Loc. Gov't Code § 214.001(n).

⁷⁰ Tex. Loc. Gov't Code § 54.040.

⁷¹ Id § 54.037(b).

⁷² Tex. Const. art 16 § 50(a).

⁷³ Tex. Loc. Gov't Code § 54.013.

- c. establishing criteria for land subdivision or construction of buildings, including provisions relating to street width and design, lot size, building width or elevation, setback requirements, or utility service specifications or requirements;
- d. relating to dangerously damaged or deteriorated structures or improvements;
- e. grass, weeds, trash, or debris;
- f. sexually oriented businesses;
- g. relating to point source effluent limitations or the discharge of a pollutant, other than from a non-point source, into a city sewer system;
- h. relating to floodplain control and administration;
- i. relating to animal care and control; or
- j. relating to water conservation measures, including watering restrictions.⁷⁴

It is worth noting that although the subchapter is labeled “Municipal Health and Safety Ordinances” and the majority of the ordinances fall into that category, that designation is not exclusive.⁷⁵ The city may seek a preferential setting for the suit, if warranted, by filing a verified motion alleging facts that demonstrate a delay will unreasonably endanger people or property.⁷⁶ The petition must identify the real property involved, the relationship of the defendant to the real property or the activity, citation to the ordinance and a description of the violation, and a statement that Chapter 54 applies to the ordinance.⁷⁷ On a showing of substantial danger of injury or adverse health impact or to the property of any person other than the defendant, the city may obtain an injunction that prohibits specific conduct that violates the ordinance and require specific action necessary to comply with same.⁷⁸ The city is not required to exhaust other remedies before seeking this injunction.⁷⁹ The burden of proof is on the city and the standard is the same as other extraordinary remedies.⁸⁰ When the action is to compel the repair or demolition of a structure, the lawsuit may be brought *in rem* against the structure as well as against the defendant.⁸¹ The city should also file a notice of *lis pendens* in the county property records, making the lawsuit binding on any subsequent owner, lienholder, or mortgagee.⁸² If the defendant is the owner, or a representative with control over the premises, the city may obtain civil penalties if it proves the defendant was actually notified of the provisions of the ordinance and violated those provisions after notice was received.⁸³ In the context of dangerous structures, the civil penalty is up to \$1,000 per day.⁸⁴

⁷⁴ Id § 54.012.

⁷⁵ *City of Dallas v. TCI West End, Inc.*, 463 S.W.3d 53, 58 (Tex. 2015) (holding that a zoning ordinance related to land use restrictions for historical properties was enforceable through a claim for civil penalties); *see also In re Pixler*, 2018 Tex. App. LEXIS 5791 2018 WL 3580637 (Tex. App.—Fort Worth July 26, 2018, no pet.) (holding that a junked vehicle ordinance was sufficiently related to health and safety to be enforced under Chapter 54).

⁷⁶ Id § 54.014.

⁷⁷ Id § 54.015(a).

⁷⁸ Id § 54.016(a).

⁷⁹ Id at (b).

⁸⁰ Id § 54.015(b).

⁸¹ Id § 54.018(b)(2).

⁸² Id at (c).

⁸³ Id § 54.017(a).

⁸⁴ Id at (b).

D. Receivership

In addition to a Chapter 54 lawsuit, a home-rule city can bring an action in district court to appoint a receiver if a building is not in substantial compliance with city ordinances related to fire protection, structural integrity, zoning, disposal of refuse, building construction, or point source effluent limits/pollutant discharge restrictions.⁸⁵ The receiver must be a non-profit or individual with a demonstrated record of rehabilitating properties.⁸⁶ Any lienholder of record may intervene in the action and request appointment as the receiver under the same terms and conditions as a third party.⁸⁷ As a prerequisite, the structure(s) on the property must be in violation of the ordinance adopted under section 214.001, and the hearing provided for in that section must have been conducted.⁸⁸ This means notice must be provided as required by statute and the hearing must be conducted as if the owner appeared, regardless of whether he or she actually does.⁸⁹ The court may not appoint a receiver for a property that is an owner-occupied single-family residence.⁹⁰

In the court action, service must be personally obtained on all record owners and any lienholders, or if not available after due diligence, service must be obtained by publication.⁹¹ Service on record owners, whether by personal service or by publication, is deemed as notice to all unrecorded owners and lienholders.⁹² The rights of a receiver are superior in all respects, for the purpose of this action, to any unrecorded owner or lienholder.⁹³ If there is an imminent risk of injury to a person, either on the property or in the community, the court may issue temporary restraining orders and/or temporary injunctions as necessary to protect public health and safety.⁹⁴ The receiver has the authority to take control of the property, collect rents, make repairs, pay for maintenance or restoration of utilities, purchase materials for repairs, enter into renewal or new contracts or leases, obtain/renew insurance, and exercise all other powers of ownership excluding sale of the property.⁹⁵ On completion of repairs, or otherwise before terminating the receivership, the receiver shall file a full accounting of costs and expenses incurred in the repairs, including reasonable costs for labor/supervision, all income received from the property, and a receiver's fee of ten percent of such costs (at the receiver's discretion).⁹⁶ If the income exceeds the costs and fees, the balance shall be returned to the owners along with control of the property.⁹⁷ In the alternative, if the costs and fees exceed the income, the receiver may continue to maintain the property until said costs have been recovered, or until receivership has been

⁸⁵ Tex. Loc. Gov't Code § 214.003.

⁸⁶ Id at (b).

⁸⁷ Id at (l).

⁸⁸ Id at (b).

⁸⁹ Id at (d).

⁹⁰ Id at (k).

⁹¹ Id at (e).

⁹² Id.

⁹³ Id at (j).

⁹⁴ Id at (f).

⁹⁵ Id at (g).

⁹⁶ Id at (h)(1).

⁹⁷ Id at (h)(2).

terminated.⁹⁸ A receiver shall have a lien on the property under receivership for all unreimbursed costs and fees.⁹⁹

A property can be sold to repay the receiver if the court orders the sale and makes several findings.¹⁰⁰ The property must have been in receivership for over a year and the income collected has been insufficient to pay off the costs and fees.¹⁰¹ The record owner and lienholder must have been given notice of the petition for sale.¹⁰² No lienholder of record shall have intervened in the action and offered to repay the costs and fees.¹⁰³ The petitioner shall conduct the sale in the manner provided for liens generally under the Property Code.¹⁰⁴ This includes sending notice via certified mail to all known record owners and lienholders, unless they cannot be identified after due diligence, in which case notice can be served by publication.¹⁰⁵ The receiver may bid at the auction and can use its lien as a credit towards the purchase.¹⁰⁶ The petitioner does not consummate the sale, but instead shall make a report of the sale to the court.¹⁰⁷ The court will confirm the sale and order distribution of proceeds to pay (in this order) court costs, costs/fees of the receiver, and any other valid liens.¹⁰⁸ Any balance shall be paid to the owner, if known, or otherwise held in the registry of the court.¹⁰⁹ After distributing proceeds, the court consummates the sale and awards fee title to the purchaser, subject to any valid, recorded, bona fide liens that were not paid by the proceeds of the sale.¹¹⁰ Note that the receiver's lien does not have the priority customary for governmental liens.¹¹¹ Any indebtedness on the property not paid off as a part of the receivership, or proceeds from sale, would remain on the property.

E. Summary Abatement

Separate and apart from the processes described above, there is the question of emergency situations, i.e. structures that pose an imminent threat to public health and safety, where there is no time to comply with the notice and hearing procedures described above. Summary abatement is when the city takes action to address an imminent threat, without providing the property owner with pre-deprivation notice or hearing. There is a line of federal cases that supports such actions, but only in the context of a statutory scheme that provides post

⁹⁸ Id at (h)(3).

⁹⁹ Id at (h-1)

¹⁰⁰ Id at (n).

¹⁰¹ Id at (n)(2)

¹⁰² Id at (n)(1). The statute only says that they be provided notice, but it can be inferred that the notice must be of the proposed sale. Personal service is a requisite for the underlying action, as is notice and a hearing under § 214.001, so it stands to reason that this requirement refers to a new development about which the record owners and lienholders must be notified. There are no cases or opinions interpreting this section.

¹⁰³ Id at (n)(3).

¹⁰⁴ Id at (o).

¹⁰⁵ Id.

¹⁰⁶ Id.

¹⁰⁷ Id.

¹⁰⁸ Id at (p).

¹⁰⁹ Id at (q).

¹¹⁰ Id at (r).

¹¹¹ See Tex. Health & S. Code § 342.007; see also Tex. Tax Code § 32.05.

deprivation due process.¹¹² In an “emergency”, the notice and hearing requirements must yield to the need for expediency with summary administrative action.¹¹³ Protection of public health and safety is a paramount governmental interest and is one of the oldest examples of permissible summary action.¹¹⁴ Where it is necessary for the government to act quickly, or where it would otherwise be impractical to provide pre-deprivation process, a post-deprivation process satisfies the requirements of the due process clause.¹¹⁵ The critical inquiry in evaluating the statutory scheme for such summary process is whether there is a post-deprivation process that allows for a hearing and judicial review.¹¹⁶

Following that line of reasoning, in an unpublished opinion, the Fifth Circuit determined that the San Antonio summary abatement ordinance was presumptively valid on its face.¹¹⁷ The ordinance provided that a building may be summarily demolished if two of three designated officials concur that the building presents an imminent danger to the life, safety, or property of any person.¹¹⁸ Both the Fifth Circuit and a Federal District Court in a later opinion found that those provisions provided procedural safeguards against unjust deprivation.¹¹⁹ However, it should be noted that in neither of those cases was a facial challenge made by the plaintiff, and so the inquiry instead became an analysis of whether the determination by the city officials was an abuse of discretion.¹²⁰ The *Kinnison* case resulted in a verdict against the city because the facts did not support the contention that the structure was imminently dangerous, specifically citing, among other things, the fact that it took nine days to actually complete the demolition, when the ordinance require demolition within three.¹²¹ Alternatively the *Amaya* case noted that in complying with the ordinance completely, the city had established compliance with the procedural safeguards for the owner’s constitutional rights.¹²²

There is one state court case out of Houston which provides some further guidance.¹²³ In that case, the City of Houston issued an order to condominium owners to vacate the property due to its allegedly substandard condition which threatened imminent danger to health and safety.¹²⁴ However, at the time, Houston had no summary abatement ordinance and instead invoked a section of its building code ordinance which authorized the building official to order the structure vacated immediately in the case of a serious and immediate hazard to life or property.¹²⁵ Houston argued that the appeal provisions of Chapter 214 were inapplicable because its action

¹¹² *Hodel v. Va. Surface Mining and Reclamation Ass’n*, 452 U.S. 264, 299—300 (1981).

¹¹³ *Id.*

¹¹⁴ *Hodel*, 452 U.S. at 300,

¹¹⁵ *Gilbert v. Homar*, 520 U.S. 924, 931 (1997).

¹¹⁶ *Hodel* at 303.

¹¹⁷ *Kinnison v. City of San Antonio*, 480 F. App’x 271, 276 (5th Cir. 2012)

¹¹⁸ *Id.*, citing City of San Antonio Code of Ordinances § 6-175. Emergency cases; summary abatement by city officials.

¹¹⁹ *Amaya v. City of San Antonio*, No. SA:12-CV-574-DAE, 2014 U.S. Dist. LEXIS 176572, at *13 (W.D. Tex. 2014) (citing *Kinnison*, 480 F.App’x. at 277).

¹²⁰ *Id.* at 278.

¹²¹ *Id.* at 279. This case was an appeal from a summary judgment motion in favor of the city, so the issue was whether or not the reasonableness of the city’s actions was a fact issue.

¹²² *Amaya* at *11; *20-21

¹²³ *Carlson v. City of Houston*, 309 S.W.3d 579, 588 (Tex. App.—Houston [14th Dist.] 2010, no pet.)

¹²⁴ *Id.*

¹²⁵ *Id.* at 584.

was taken in respect to the building code, not the dangerous structures process.¹²⁶ They lost. While the court in that case did not analyze the “emergency” question in depth, it did indicate in dicta a possibility that it might be applicable in other circumstances, but that it would not be applicable in the present case.¹²⁷ The critical distinction to be drawn from that case is that an “emergency exception” to the statutory schemes provided above is not going to be applicable without specific ordinance provisions providing due process protections after the fact. Note that Chapter 214 does not necessarily require that the notice and hearing required by that chapter occur before the deprivation occurs so it would be advisable to have two different process under the umbrella of the Chapter 214 ordinance.¹²⁸ This is especially important after the *Dallas v. Stewart* decision, and the cases that follow, because any process will have to include an opportunity for judicial review, and if it is included within the Chapter 214 ordinance, it is also subject to the appeal provisions of section 214.0012.¹²⁹

When reviewing or drafting a summary abatement ordinance for a client city, there are several issues to consider. First, you can reduce the risk of liability by limiting the summary abatement to orders to vacate and/or secure property. The city could also consider shutting off any city utilities. Circumstances will vary, but in most cases an order to vacate and secure is going to put the city at less risk than a demolition. That is because the economic impact of a demolition (and the ensuing lien) is typically much greater, and also because it is possible to have a post-deprivation notice and hearing that walks back the order (which is not possible if the building is demolished). Second, adding procedural safeguards will help ensure that the city is not acting arbitrarily. Some examples include requiring concurring opinions from multiple officials or requiring a seizure warrant from an independent magistrate. As mentioned above, such safeguards will help ensure the ordinance is not unconstitutional on its face, and it will be a bulwark against mistakes. Ultimately the most important safeguard for the city is to make sure that the property is in fact an imminent danger, and that you maintain documentation and evidence to prove it. Document document document. Photographs of the property from every angle. Maintain copies of emails, memos, or other documentation of concurrences between city officials regarding the condition of the property. Reference fire run reports, police reports, code enforcement records, and any other documentation related to the condition of the structure. If the ordinance that authorizes the process is drafted well, there will be a clear deadline for any appeals to be filed. After that point, it is only necessary to retain sufficient documentation to establish compliance with the procedures and that the appeal was not timely filed.

III. Litigation

A. Statutory appeal

Both Chapter 54 and 214 provide for an appeal to district court, and the process is basically identical. The record owner, lienholder, or mortgagee may file a verified petition for writ of certiorari in district court.¹³⁰ The petition must state that the decision was illegal, in

¹²⁶ Id.

¹²⁷ Id at 587.

¹²⁸ See Tex. Loc. Gov’t Code § 214.001(b).

¹²⁹ See *City of Dallas v. Stewart*, 361 S.W.3d 562 (Tex. 2012).

¹³⁰ Tex. Loc. Gov’t Code § 54.039(a); id at § 214.0012(a).

whole or in part, and specify the grounds of the illegality.¹³¹ The petition must be filed within thirty days of the date the order is delivered by personal delivery, mailed CMRRR, or delivered by USPS signature confirmation service.¹³² On the filing of a petition, the court may issue a writ directing the city/commission to provide a sworn copy of the order and the papers relied upon it within a period of time not less than ten days.¹³³ The return should set forth other facts as may be pertinent and material to show the grounds for the decision appealed from, and the return shall be verified.¹³⁴ While the statute provides that an appeal does not stay proceedings on the decision appealed from, it also says that the review is limited to the substantial evidence standard, and as we discuss below, the *Dallas v. Stewart* case may have changed that.¹³⁵ The court may reverse, affirm, or modify the decision, in whole or in part.¹³⁶ Costs may not be awarded against the city/commission, but if the decision is affirmed or not substantially reversed, the district court shall allow an award of attorney's fees and costs.¹³⁷

The thirty day requirement is a statutory prerequisite to suit, as affirmed by *Stewart*, which has resulted in a lot of litigation providing guidance on what that means. The thirty day deadline runs from the date of notice, so do not issue conditional orders, i.e. complete repairs by X date or the city will demolish. The City of Beaumont had such a situation, where the property owner had ninety days to complete repairs and failed to meet the deadline.¹³⁸ When the city sent the notice of its intent to demolish, the owner appealed and the Court of Appeals reasoned that the city had issued a new order triggering a new deadline to appeal.¹³⁹ The issue is that an official, department, or body of the city had to determine that the repair had failed and therefore demolition is justified, and it is that decision that the owner has a right to appeal. A better practice is to treat repair orders and demolition orders separately. An order of a building and standards commission does not preclude further actions by the city or subsequent hearings.¹⁴⁰ In response to an argument that a commission order was res judicata if not appealed by the city, the 1st District disagreed, saying that the subsequent action was a separate case.¹⁴¹ If an owner fails to complete repairs, you are better off having a new hearing and a new order. First off, you don't avoid the appeal, secondly, you avoid conflicting findings regarding feasibility of repairs, and third you have new evidence of the owner's demonstrated inability or unwillingness to complete repairs.

Be sure to document your notice to the owners and lienholders, because that is the trigger for the appeal deadline, not the date of the decision itself. The deadline to appeal is based on the date the decision is personally delivered, mailed CMRRR, or delivered via USPS signature confirmation service. In the event of an appeal, you will want to be able to establish how notice was provided to the plaintiff in order to determine whether the appeal was timely filed. While it

¹³¹ Id.

¹³² Id.

¹³³ Id at § 54.039(b)-(c); id at § 214.0012(b)-(c).

¹³⁴ Id at (d).

¹³⁵ Id at (e)-(f).

¹³⁶ Id at (f).

¹³⁷ Id at (g)-(h)

¹³⁸ *Bates v. City of Beaumont*, 241 S.W.3d 924, 929 (Tex. App.—Beaumont 2007, no pet.).

¹³⁹ Id.

¹⁴⁰ *Whallon v. City of Houston*, 462 S.W.3d 146 (Tex.App.—Houston [1st Dist.] 2015, pet. denied).

¹⁴¹ Id.

is the plaintiff's burden to establish jurisdiction, in one recent court of appeals case from the tenth district, the court held that even though the city demonstrated the plaintiff had actual notice of the order, they were unable to counter plaintiff's claim that they were not provided notice as required by statute.¹⁴² Another court held that the deadlines are not mutually exclusive, and that if there are multiple methods of delivery, the plaintiff can establish jurisdiction by filing within thirty days of any one of the methods used.¹⁴³ The author believes that the court in that case was conflating signature confirmation service with the return receipt part of CMRRR, but nevertheless, this bad case is floating out there like a fart in the air conditioning. By this reasoning, if you provide the notice in more than one way, the owner can respond within thirty days of the latest notice. So personally delivery years later, say in response to a request, hypothetically reopens the thirty day deadline. This was likely a 'bad facts make bad law' situation as the plaintiff filed the appeal within thirty days of delivery by CMRRR, so the court may have been intentionally obtuse.¹⁴⁴ Thankfully it was not designated for publishing so it is not precedential. The take away from this is to document in some way the day the order to the record owner, lienholder, or mortgagee was mailed. The green card from the CMRRR will show when it was received and USPS tracking information will provide some indication of when it was placed in the mail, but the postmark on the envelope would be the best evidence.

B. Statutory appeal after *Stewart*

In 2012, the Supreme Court issued a landmark decision in *City of Dallas v. Stewart*, which changed the way cities approach substandard demolitions.¹⁴⁵ When it first came down, the decision was distressing to many municipal law attorneys.¹⁴⁶ However, the original opinion was withdrawn and a substituted opinion clarified the Court's position in response to amicus briefs filed by several cities and the illustrious Texas Municipal League.¹⁴⁷ In substance, the *Stewart* case held that nuisance determinations are mixed questions of law and fact that must be made by a court in order to have preclusive effect.¹⁴⁸ A determination that a property constitutes a nuisance is a mixed question of fact and law, with the outcome impacting constitutionally protected rights.¹⁴⁹ When considering questions of law mixed with constitutionally relevant facts, agency determinations are reviewed de novo.¹⁵⁰ Just as appellate courts will conduct a de novo review of trial court determinations of this nature, a trial court review of an agency or board decision will similarly be de novo.¹⁵¹ In the substituted opinion, the Court added some guidance in an effort to alleviate concerns raised by amici.¹⁵² The Court stated that a de novo review is

¹⁴² *House of Praise Ministries v. City of Red Oak*, No. 10-15-00148-CV-2017 Tex. App. LEXIS 4095 (Tex. App.—Waco May 3, 2017, no pet.).

¹⁴³ *HDW2000 256 E. 49th St., LLC v. City of Houston*, No. 01-10-00942-CV-2012 Tex. App. LEXIS 5776 (Tex. App.—Houston [1st Dist.] 2012, no pet.).

¹⁴⁴ *Id.* at *9.

¹⁴⁵ *Stewart supra.*

¹⁴⁶ I freaked out a little bit.

¹⁴⁷ *City of Dallas v. Stewart*, 54 Tex. Sup. Ct. J. 1348 (July 1, 2011), *opinion withdrawn, substituted opinion* at 361 S.W.3d 562 (Tex. 2012).

¹⁴⁸ *Id.* at 580-81.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.* at 576.

¹⁵¹ *Id.*

¹⁵² *Id.* at 579.

only required if someone appeals, and property owners rarely appeal.¹⁵³ The Court further stated that a failure to comply with the appeal process is a failure to comply with statutory prerequisites for judicial review.¹⁵⁴

Subsequent cases have further illustrated what was dicta in *Stewart* and provided guidance to courts and cities. In a companion case, *City of Beaumont v. Como*, a lawsuit for a number of constitutional claims was dismissed because it was filed over a year after the City of Beaumont's decision to declare her property a nuisance, and no statutory appeal had been filed.¹⁵⁵ If a party fails to exhaust administrative remedies, they are barred from later bringing a takings claim because a party cannot attack collaterally, what he or she does not attack directly.¹⁵⁶ The failure to appeal the nuisance determination directly, within the time allowed by law, precludes a party from later collaterally raising constitutional claims.¹⁵⁷ Additionally, the party must exhaust the administrative remedies, it is not enough to have filed the appeal.¹⁵⁸ In *Patel v. City of Everman*, the owner filed a timely appeal which was later nonsuited.¹⁵⁹ The subsequently filed constitutional claims were precluded by collateral estoppel.¹⁶⁰ The same reasoning applies to subsequent owners, who purchase property subject to an order that has not been appealed.¹⁶¹ In addition to the deadline, there is case law that indicate the other statutory requirement for the appeal are prerequisites for suit. For example, only a record owner, lienholder, or mortgagee has standing to file suit.¹⁶² Three different courts of appeals have denied claims from renters, subsequent owners, or alleged heirs.¹⁶³ So there are still a number of statutory prerequisites to suit that must be satisfied for an appeal to be valid, and an appeal must be filed for any constitutional claims to be raised. In that context, the plea to the jurisdiction is the city's best friend as it allows for the appeals to be resolved quickly without regard to the merits.¹⁶⁴

One issue the Court has not yet settled is whether the *Stewart* case overturned the portion of the statutes that limit the district court's review under substantial evidence review or simply held that it is not entitled to preclusive effect.¹⁶⁵ In other words, are appeals considered de novo, or just the takings or other constitutional claims raised, which must be raised at the same time?

¹⁵³ Id at 580.

¹⁵⁴ Id.

¹⁵⁵ *City of Beaumont v. Como*, 381 S.W.3d 538 (Tex. 2012).

¹⁵⁶ Id at 540

¹⁵⁷ Id at 540.

¹⁵⁸ *Patel v. City of Everman*, 361 S.W.3d 600 (Tex. 2012).

¹⁵⁹ Id at 601.

¹⁶⁰ Id.

¹⁶¹ *1707 N.Y. Ave., LLC v. City of Arlington*, No. 02-14-00259-CV, 2015 Tex. App. LEXIS 10908, WL 6457569, (Tex. App.—Fort Worth October 22, 2015, no pet.)

¹⁶² *Henderson v. City of Houston*, No. 14-13-01025-CV, 2015 Tex. App. LEXIS 1961 (Tex. App.—Houston Mar. 3, 2015, pet. denied); *City of Beaumont v. Ermis*, No. 09-15-00451-CV, 2017 Tex. App. LEXIS 2731 (Tex. App.—Beaumont Mar. 30, 2017, no pet.); *Monroe v. City of San Antonio*, No. 04-09-00795-CV, 2010 Tex. App. LEXIS 7090 (Tex. App.—San Antonio Aug. 31, 2010, no pet.)

¹⁶³ Id.

¹⁶⁴ It should be noted that a plea to the jurisdiction is not appropriate if the appeal was properly filed. See *City of Bryan v. Cavitt*, No. 10-13-00259-CV, 2014 Tex. App. Lexis 5003, 2014 WL 1882765 (Tex. App.—Waco May 8, 2014 no pet.) (holding that a court must determine whether a property is in fact a nuisance, thus if an appeal is properly filed the court has jurisdiction to make that determination based on a de novo review).

¹⁶⁵ Tex. Loc. Gov't Code § 54.039(f); §214.0012(f).

In the *Stewart* case, the trial court reviewed the record before the URSB under the substantial evidence rule, and upheld the decision.¹⁶⁶ Over Dallas' objection, the trial court separately tried the takings claim and determined that the issue was not res judicata.¹⁶⁷ The Supreme Court upheld the trial court's decision to uphold the URSB order under the substantial evidence rule as well as its determination that the issue was not res judicata, and the takings claim was not barred.¹⁶⁸ In the *Como* case, the Court said that a de novo review is required only when a nuisance determination is appealed.¹⁶⁹ A party must avail herself of statutory remedies that may moot her takings claim.¹⁷⁰ But, if the city elects not to proceed with any enforcement until the appeal is resolved, is there a ripe takings claim that can be filed as a part of the same lawsuit? Hypothetically, yes, an inverse condemnation claim could be raised by virtue of the cloud on title created by the record notice. By that untested reasoning, a court would still conduct a review under the substantial evidence rule, and it is incumbent on the plaintiff to raise constitutional claims before the decision is upheld and plenary jurisdiction expires.¹⁷¹

But as they say, bad facts can make bad law. If a situation arose where a decision would be upheld under substantial evidence review, a court has an argument to support a de novo review if they really wanted one.¹⁷² Dicta from the *Stewart* case indicates that the trial court should review the fact record presented by the administrative body, but reach its own conclusion based on the law as applied to those facts.¹⁷³

“An analysis of whether a structure is a nuisance requires fairly subtle consideration. There are initial question of historical fact—whether or not the structure had foundation damage, for example. These questions are within the competence of the administrative agency and are accorded deference. But the second-order analysis, which applies those historical facts to the legal standards, are questions of law that determine the constitutionality of a property's demolition. These legal-factual determinations are outside the competence of administrative agencies.”¹⁷⁴

Pursuant to the statute, the review of an administrative decision is not a new hearing, but a review of the decision, and the evidence that was relied upon.¹⁷⁵ The decision of the board, as well as the evidence deemed by the agency to be supportive of the decision, constitute the historical facts which are within the agency's discretion.¹⁷⁶ The review itself however, should be conducted de novo, which is without deference to the agency's determination that the property is a nuisance as a matter of law, based on the facts presented.¹⁷⁷ Take further note of the distinction between a de novo review and a trial de novo.¹⁷⁸ A trial de novo is a completely new

¹⁶⁶ *Stewart*, 361 S.W.3d at 565.

¹⁶⁷ *Id.*

¹⁶⁸ *Id.* at 580.

¹⁶⁹ *Como*, 381 S.W.3d at 540 (citing *Stewart supra*).

¹⁷⁰ *Id.*

¹⁷¹ *Stewart*, 361 S.W.3d at 579.

¹⁷² For example if a sympathetic pro se plaintiff had a good case, filed an appeal on time, but did not raise any additional constitutional claims beyond the appeal.

¹⁷³ *Id.*

¹⁷⁴ *Id.* at 578, citations omitted.

¹⁷⁵ See Tex. Loc. Gov't Code §54.039(c)-(d).

¹⁷⁶ See *Stewart*, 361 S.W.3d 578.

¹⁷⁷ *Id.*

¹⁷⁸ *Sanchez v. Huntsville ISD*, 844 S.W.2d 286, 289 (Tex. App.—Houston [1st Dist.] 1992, no writ.).

proceeding.¹⁷⁹ For example, appeals from justice courts to county court result in a de novo trial, where the judgment below is vacated, and the plaintiff has the burden of proving his case again.¹⁸⁰ Similarly, a de novo hearing in child protection cases under Family Code Chapter 201, requires the parties to reintroduce the evidence so the court can try the case on its merits.¹⁸¹ By comparison, a de novo review is an appellate review of the record without deference to the previous determination.¹⁸² In analogous probate cases, there was historically an option for a writ of certiorari from the district court, which orders a review of the action of the probate court...which is de novo but restricted to errors of the court.¹⁸³ Only the record below is considered, no new evidence.¹⁸⁴ Because the Court emphasized the need for a de novo review of the nuisance determination, in the absence of a takings claim, a court would have to deem the statute overruled to conduct such a review. However, there is ample language from the *Stewart* case to support such a conclusion. But even in that case, the city has an option for a speedy resolution of the case. A motion for summary judgment based on the record submitted in response to the writ of certiorari would be something that could be filed quickly without needing to wait for discovery assuming there are no constitutional claims that raise fact issues.

Conventional wisdom has always been that there is statutory authority to proceed with enforcing administrative orders, even though an appeal is pending.¹⁸⁵ So most cases have involved situations where a takings claims were ripe. However, in light of the *Stewart* decision, doing so creates a substantial risk. Choosing instead to wait until the appeal has been resolved, i.e. by a de novo review of the order and the evidence in support by the district court, means that there will be a preclusive nuisance determination by the court that will prevent future constitutional claims. Not just in state court. Federal constitutional claims are not ripe until state law remedies have been exhausted.¹⁸⁶ That means any state law claims must have been litigated as well.¹⁸⁷ In the context of an inverse condemnation claim, i.e. unlawful demolition, the same reasoning applies.¹⁸⁸ So the ultimate take away is that the city is best protected by ensuring the decision has reached a final conclusion, one way or the other, prior to taking any significant enforcement action.

The good news is that the final conclusion is often easier to reach than one might expect. There are a number of statutory prerequisites for a valid appeal, failure to satisfy any can result in dismissal. That means that within about thirty days of a decision, you will know if an appeal is possible. Properly filed appeals can still be resolved through motion practice by submitting a record (or a return on a writ) and arguing that the decision is supported by more than a scintilla of evidence, and/or in the alternative, that the property constitutes a nuisance as a matter of law

¹⁷⁹ Id.

¹⁸⁰ Id citing *Knight v. Texas Dep't of Pub. Safety*, 361 S.W.2d 620, 623 (Tex. Civ. App.--Amarillo 1962, no writ); *Greenfield v. Chas. K. Horton, Inc.*, 64 S.W.2d 369, 370 (Tex. Civ. App.--Waco 1933, no writ).

¹⁸¹ *In re J.L.S.*, No. 04-12-00011-CV, 2012 Tex. App. LEXIS 8980 (Tex. App.—San Antonio, Oct. 31, 2012, no pet.)

¹⁸² See *Farias v. Garza*, 426 S.W.3d 808, 814 (Tex. App.—San Antonio 2014, pet. filed).

¹⁸³ *Chuck v. Hester*, 521 S.W.2d 845, 848 (Tex. 1975).

¹⁸⁴ See id.

¹⁸⁵ See Tex. Loc. Gov't Code § 54.039(e); § 214.0012(e).

¹⁸⁶ *Williamson County Regional Planning Comm'n v. Hamilton Bank*, 473 U.S. 172 (1985)

¹⁸⁷ Id.

¹⁸⁸ *John Corp. v. City of Houston*, 214 F.3d 573, 585 (5th Cir. 2000).

based on the record. While the law still permits enforcement of orders while an appeal is pending, and while demolition is strongly discouraged, actions can be taken to shut off utilities, vacate tenants, or secure a property from unauthorized entry. In most cases the risk to the city in the event the appeal is lost is significantly less. The principal advantage to not proceeding with enforcement is that the plaintiff is left with fewer issues to raise on appeal.

C. Trespass/Fourth Amendment Violations

The Fourth Amendment of the U.S. Constitution protects against unreasonable searches and seizures and, separately provides that, when necessary, warrants must be based on probable cause and must describe the place to be searched or things to be seized.¹⁸⁹ The Fourth Amendment does not require a warrant for every search or seizure.¹⁹⁰ In the *Freeman* case, the Fifth Circuit concluded that while a demolition is a seizure, the constitutional protections afforded by the nuisance abatement process ensured that the resulting demolition was reasonable, and therefore a warrant need not be obtained.¹⁹¹ That said, administrative search warrants are necessary for any inspections, searches, or summary actions (i.e. securing the property, going onto the property to shut off utilities, etc.).¹⁹²

While permission from the property owner is sufficient to resolve the need for a warrant, permission can be revoked.¹⁹³ Revocation need not be explicit, it can be implied by conduct.¹⁹⁴ That means a fact issue can be created very easily. As a matter of good public policy, seeking property owner consent is advisable so that doors can be opened without damage and the owner can meet with city officials to discuss the property as inspections are being conducted. However, if no warrant is obtained, the city is reliant upon the consent, presence, and cooperation of the owner. Therefore as a matter of practice, it is recommended that arrangements be made with property owners when reasonably feasible, but warrants be obtained for each inspection, regardless. Additionally, warrants should be obtained prior to demolition so as to provide an independent affirmation that the city has the authority, i.e. confirmation of the order and the absence of an appeal.

D. Negligence

Don't demolish the wrong structure. It should go without saying but you would be surprised. Also, don't hit anybody. You are probably using motor driven equipment when you do that, and that would be a bad thing.¹⁹⁵ If unsecure, be sure to check for unauthorized occupants. Have police officer assistance, if necessary, in enforcing the seizure warrant.¹⁹⁶

¹⁸⁹ *Freeman v. City of Dallas*, 242 F.3d 642, 648 (5th Cir. 2001).

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² *Id.* at 650.

¹⁹³ *U.S. v. Al Dac Ho*, 94 F.3d 932, 949 (5th Cir. 1996).

¹⁹⁴ *Id.* (finding consent was withdrawn when, after initially agreeing to a search of his person and portfolio, the defendant made a grab for the portfolio, which was enough to show consent had been revoked).

¹⁹⁵ Tex. Civ. Prac. & Rem Code § 101.021(1)(A).

¹⁹⁶ *See e.g.* Tex. Pen Code § 38.15(a)(7) interference with public duties; § 30.05 criminal trespass; § 42.01 disorderly conduct. Depending on the circumstances other citations might be applicable as well.

While not strictly required, having a demolition/seizure warrant in hand may make a peace officer more comfortable asserting the city's authority to proceed, and thus willing to arrest any occupants who refuse to leave.

E. Bankruptcy

Another collateral attack on remediation cases which must be addressed in greater detail is bankruptcy. This can impact both the timing of abatement actions and also what actions a city can take. The automatic stay of bankruptcy will inhibit the process (i.e. hearings and appeals) but also the enforcement of existing orders (e.g. demolition). The discharge in bankruptcy will impact the fines, penalties, fees, or other charges a city can typically impose and/or collect. There are exceptions to bankruptcy provisions that will enable the city to protect public health and safety and enforce penal provisions of statutes, but federal law prevails over state law and so care must be taken to make sure that those exceptions apply.

In the event that the property owner files for bankruptcy protection, the owner (and the property) fall under the protection of the automatic stay.¹⁹⁷ The automatic stay prohibits a wide range of actions that would affect or interfere with property of the estate/debtor, including demolition.¹⁹⁸ There are exceptions that allow relief from the automatic stay, including when a government is exercising its regulatory or police power.¹⁹⁹ This exception enables governments to protect public health and safety, but it is not a tool to protect a government's pecuniary interest in property of the debtor/estate.²⁰⁰ This means the city will likely be able to proceed with hearings to determine whether a property is a nuisance and can proceed with remediation efforts such as securing properties, shutting off utilities, vacating occupants, and/or demolition. These are non-pecuniary government interests, unlike invoicing for costs of remediation and filing liens, which is an attempt to collect on a financial obligation. There is another exception from the automatic stay for the creation or perfection of statutory liens for an ad valorem property tax, or a special tax, or special assessment on real property whether or not ad valorem, imposed by a governmental unit, if such tax or assessment comes due after the date of the filing of the petition.²⁰¹

While it is arguable that the lien authorized by Texas law for remediation costs is a "special assessment", there is authority that contradicts that position. The 7th Circuit considered the question in the context of a government utility authorized by state law to impose liens for unpaid bills.²⁰² The court considered whether such a lien was a "special assessment" for purposes of the exception to the automatic stay.²⁰³ Looking at case law examining the term in

¹⁹⁷ 11 U.S.C. § 362(a).

¹⁹⁸ *Diaz v. Texas*, 327 B.R. 796, 801 (Bnkr. S.D. Tex. 2005); *In re Javens*, 107 F.3d 359, 367 (6th Cir. 1997).

¹⁹⁹ 11 U.S.C. § 362(b)(4).

²⁰⁰ *In re Porter*, 42 B.R. 61 (Bnkr. S.D. Tex. 1984).

²⁰¹ 11 U.S.C. § 362(b)(18).

²⁰² *Reedsburg Util. Comm'n v. Grede Foundries, Inc. (In re Grede Foundries, Inc.)*, 651 F.3d 786, 795-96 (7th Cir. 2011).

²⁰³ *Id.*

similar contexts, the court found the term typically refers to charges imposed upon property within a limited area for the payment for a local improvement that is supposed to enhance the value of property within that area.²⁰⁴ In other words, the special assessments are taxes (above and beyond generally applicable ad valorem taxes) imposed on a particular area in a jurisdiction to pay for an improvement in/for that area.²⁰⁵ Based on those cases and the reading of the exception, the court found that the exception is for taxes, or special assessments that are essentially the same thing, and a lien authorized by law to secure unpaid utilities did not fall within that exception to the automatic stay.²⁰⁶ Therefore, cities can seek relief from the automatic stay for actions to protect public health and safety and enforce police/regulatory power, but not for actions to protect their financial interests.

In addition to protection from the automatic stay, a property owner may be protected from charges, fines, or penalties normally assessed by cities in the process of nuisance abatement. While there are exceptions that permit such charges, they are not the same as the exception to the automatic stay.²⁰⁷ This means that just because there is a public health exception that allows a city to proceed with remediation, it does not necessarily mean the city can collect money from the debtor. Because cities are governmental entities, they can impose fines, penalties, or forfeitures which will not be discharged in bankruptcy, provided they are not compensation to the government for actual pecuniary loss.²⁰⁸ Fines and penalties can be charged to the debtor and/or the bankruptcy estate, like any other expenses or charges incurred during the pendency of bankruptcy.²⁰⁹ So again, while it is within the city's power to assess penalties, the city will not be given the same advantage to protect its financial position. That said, any existing judgment liens or statutory liens will be considered secured debts enforceable in the same manner as other securities.

Unlike the automatic stay, the exceptions are narrowly construed and not automatic.²¹⁰ State courts normally refrain from proceeding once notified of bankruptcy, but the burden is on the creditor to not violate the stay.²¹¹ So it is incumbent on the city to seek a ruling from the bankruptcy court providing relief from the automatic stay. That is applicable to proceedings, remediation, imposing fines/penalties, and collecting on same. Because so much of the process of abating substandard structures is a matter of routine, it is advisable to interrupt that routine in the face of a bankruptcy filing. Routine processes such as issuing citations or sending invoices following a remediation action may cross a line that the remediation itself does not. Furthermore, it may be risky to assume that there is an applicable exception to the bankruptcy stay or discharge. So it is advisable to seek relief from the bankruptcy court before proceeding with any action to abate a nuisance or against the property owner.

²⁰⁴ *Id.* (citing *Illinois Central R.R. v. City of Decatur*, 147 U.S. 190, 197-98 (1893)).

²⁰⁵ *Id.*

²⁰⁶ *Id.*

²⁰⁷ *In re Parsons*, 505 B.R. 540 (Bnkr. Hawaii 2014).

²⁰⁸ 11 U.S.C. § 532(a)(7).

²⁰⁹ *In re Porter supra.*

²¹⁰ *See In re Sutton*, 250 B.R. 771, 774 (Bankr. S.D. Fla. 2000).

²¹¹ *Id.*

IV. Practice Tips

Beyond the case law and statutory authority previously discussed, there are a number of practical lessons that can be drawn from experience and history.

A. Give more than is required.

An ounce of prevention prevents a pound of litigation. In the context of due process, you cannot complain about a violation of due process if you had notice and a genuine opportunity to be heard. It is better to notify more people about a pending hearing than less. Do not restrict notice to record owners, lienholders, and mortgagees because the situation could change and the statutes require you to cast a wide net anyway. Provide more than ten day's notice that a property is a problem. Do not let the required notice of the hearing be the only discussion that you have had, or attempted, with the owner. Give more people an opportunity to speak at the hearing. While order and efficiency in hearings are important, it is even more important to ensure that everyone who might have an interest in the property is given notice and that anyone who cares gets a full and adequate opportunity to be heard. So it is better to give a the owner's sister's neighbor's left-handed cousin a three minute opportunity to weigh in on a house she doesn't appear to own rather than finding out after the fact that she was in fact the owner and was deprived of her right to speak. It is better to let the record owner ramble for ten minutes rather than cutting him off after three only to find out later that he was A) well prepared with plans; but also B) so bad at public speaking he didn't get to them.

B. Have rules in advance.

If you want time limits for public hearings, deadlines for submission of evidence, or other guidelines for the process of abatement hearings, set them out in advance. Remember the first tip and do not make the rules so restrictive that there is no flexibility. But having rules can ensure the process runs smoothly. For example:

- Time limit for speakers who are not the record owner.
- Closure of public hearing at the conclusion of evidence to allow uninterrupted deliberation.
- Deadline for submittal of documents in advance of hearing.

C. Building repair is an organic process.

As lawyers, we like things to be laid out in black and white, as thoroughly as possible, in advance. That way it is fair because everyone knows, or has the opportunity to know, what they are agreeing to or will be bound by. So when we agree on, or a court orders, a list of repairs, we expect a complete list, and if it is not on the list, then it is not part of the agreement/order. But that is simply not possible because this is an organic process that must change as it progresses. After repairs begin, inspections are conducted in stages to ensure that defective work is not covered up. Previously hidden problems can be uncovered or new problems can be created by substandard work. There is no such thing as a "Final" repair order.

D. It is not just cosmetic.

As attorneys, it is our job to translate issues listed by building officials into problems that judges and juries will understand and take seriously. “Damaged finishes” and “chipping paint” are easy to dismiss superficial issues. But unpainted wood rots, and the gaps that creates allow insects and other vermin to penetrate, thrive, and expand. The city is not just trying to make things prettier, they are preventing a situation that will create real health problems for other properties in the future.

Similarly, even the most mundane code issues have reasons behind them. Finding that reason provides a more compelling argument than simply saying “not up to code”. Additionally, a structure does not need to be in imminent danger of collapse to be dangerous. Just because a structure has stood for years without incident does not mean it is “safe”. Finding out the underlying reason behind code requirements will enable you to make a more compelling argument.

V. Summary

There are few things more impactful on a city that removing nuisance properties. It can reduce crime, increase property values, protect public safety, and bolster your tax base. It is a core exercise of the police power, and is a tremendous tool. But never forget that your clients are fundamentally altering someone’s property, which can be both a financial burden as well as an emotional blow. Due process must be respected in order to ensure that this tool is not used lightly, and that citizens are given every opportunity to protect their rights.

VI. Appendix

- A. Initial notice**
- B. Inspection Warrant**
- C. Survey Report**
- D. Statutory notice**
- E. Newspaper notice**
- F. Property record notice**
- G. “Repair checklist” flier**
- H. “What to submit at the hearing” flier**
- I. Staff report**
- J. Staff recommendation**
- K. Opening statement from chair**
- L. Opening statement from staff**
- M. Findings and order**
- N. “How to Appeal” flier**
- O. Notice of Compliance**
- P. Demolition Seizure Warrant**
- Q. Lien Affidavit**
- R. Lien Release**
- S. Substandard Structure Abatement Flow Chart**

A. Initial notice

DEVELOPMENT SERVICES

VIA CERTIFIED AND FIRST CLASS MAIL
RETURN RECEIPT REQUESTED

Case: 2346

April 2, 2019

Andy Dwyer
1234 Ashbury Ave
Reseda, CA 91335-2558

LOCATION: 411 HALL STREET; HAMMOND, BLOCK 1, LOT 28

Dear Owner,

The City of Pawnee became aware of and inspected the dilapidated building(s) located on the above-referenced property. According to real property records of Brazos County, Texas, you are the owner of the real property described in this notice.

City staff found that one or more of said buildings appear to be unsafe and believes said building(s) to be in violation of one or more of the minimum building standards specified in the City of Pawnee's Code of Ordinances Sections 14-224 and 14-225. **City staff therefore intends to seek an order from the City's Building and Standards Commission that the dilapidated buildings(s) on this property be repaired or removed.**

The City of Pawnee's Building and Standards Commission is composed of five citizens appointed by the City Council to hear and make determinations regarding unsafe structures. **You will be notified, in writing, once the hearing date for your property before that Commission has been scheduled.** At the hearing, the Commission will make a determination whether or not the structure(s) on the above-referenced property is/are unsafe and, if found unsafe, consider any and all available remedies, including, but not limited to, ordering repair or demolition, vacation of the property, securing the property, shutting off public utilities, and/or the assessment of civil penalties.

You must attend this public hearing to present argument and evidence that your structure is not dangerous, or can be made safe. You may appear in person or through an authorized representative. You will be allowed the opportunity to present your argument any previously submitted evidence, and to rebut and test the City's evidence and argument by cross-examination or other appropriate means.

At the hearing, you must be prepared to present the Commission with a previously submitted proof of the scope of any work required to repair your structure to minimum building standards, including a written plan for the repairs and reasonable timeframe needed to complete such work. If the Commission

finds that a structure on the subject property is unsafe, the Commissioners may give you the opportunity to repair the structure based on the repair plan that you provide.

Any bids, plan of repair, timeline or supporting documents you wish to submit for consideration by the Commission must be received by the City's Development Services Department at least ten (10) business days prior to the hearing. You must provide ten (10) copies of any documentation submitted.

Any documentation that you would like to present to the Commission may be hand-delivered to the Municipal Office Building at 300 S. Texas Avenue, Development Services Department, or via mail to the following address:

City of Pawnee
Development Services
ATTN: Building & Standards Commission
PO Box 1000
Pawnee, TX 77777

Enclosed with this notice are two handouts: one that suggests what you should submit prior to the meeting and a "contractor checklist" which is meant to assist you in preparing a plan for building repairs. Also, please be advised it is your responsibility as the owner to keep the structures secured at all times.

Please be advised that if there is too much damage, if the structure cannot be safely repaired, or if you fail to provide the required plan for repairs, the Commission will order the structure demolished. Please also note that if you fail to demolish the structure within the timeframe ordered by the Commission, the City may complete the demolition and bill you for the cost, and a lien will be filed on the subject property.

As you know, as members of the Pawnee community, we all have responsibilities to the city where we live. Your attention to this matter will be greatly appreciated and help us maintain and enhance the quality of life and safety of the neighborhoods we share, City staff will help in any way we can regarding this issue, but we will need your prompt response.

If you have any questions regarding this notice, please contact Leslie Knope by phone at (555) 555-5555 or email at mKnope@Pawneetx.gov.

If you no longer own the property described in this notice, you must execute an affidavit stating that you no longer own the property and stating the name and the last known address of the person who acquired the property from you. The affidavit must be delivered in person or by certified mail, return receipt requested, to my attention at City of Pawnee, Planning and Development Services Department, 001 Main St, Pawnee, Texas, 77803, no later than the 20th day after the date you receive this notice.

Sincerely,

Mark Brendanawicz
Chief Building Official

Enclosures

Contractor Checklist
"What to Submit Prior to the Meeting" Form

B. Inspection Warrant

STATE OF TEXAS §

§

COUNTY OF WAMAPOKE §

AFFIDAVIT FOR ADMINISTRATIVE SEARCH WARRANT:
SUBSTANDARD BUILDING

The undersigned Affiant is the duly appointed Chief Building Official for the City of Pawnee, Texas, and being duly sworn makes the following affirmations:
My name is Ben Wyatt, I am the Chief Building Official for the City of Pawnee. I have personal knowledge of the facts stated herein and they are true and correct.

There is a property in the City of Pawnee located at **123 Rundown St.**, Pawnee, Texas on which is located a structure that I believe to be dangerous in violation of the City of Pawnee Code of Ordinances.

The structure is intended for a **[circle one]** *single-family / multi-family / commercial* use. The property **[circle one]** *is / is not* located in a zoning district which permits that use.

The structure was built in _____, and currently appears to be **[circle one]** *occupied / unoccupied*.

City staff became concerned about this property and the structure because of the following **[check all that apply]**:

- _____ previous violations or hazards on the premises
- _____ complaints made by other citizens
- _____ public safety concerns raised by fire or law enforcement personnel
- _____ other; [please describe] _____

I believe that the structure is in violation of the City of Pawnee Code of Ordinances because of the following **[check all that apply]**:

- _____ reports of visible structural damage on the exterior of the structure
- _____ complaints from citizens, fire department personnel, or law enforcement
- _____ the existence of previous violations and/or inspections of the interior
- _____ the age of the structure combined with the current/intended use
- _____ other; [please describe] _____

For the above reasons, I believe that there is sufficient reason to believe probable cause exists that the owner of the property is in violation of the City of Pawnee Code of Ordinances.

WHEREFORE PREMISES CONSIDERED, Affiant asks for the issuance of an Administrative Search Warrant for the purpose of conducting an inspection to determine if the Property is in violation of the City of Pawnee Code of Ordinances.

Signed this ____ day of _____, 20__.

Affiant

STATE OF TEXAS §
 §
COUNTY OF WAMAPOKE §

Subscribed and sworn to before me, the undersigned authority, by Affiant on this the ____ day of _____, 20__.

Notary Public

STATE OF TEXAS §
 §
COUNTY OF WAMAPOKE §

ADMINISTRATIVE SEARCH WARRANT:
SUBSTANDARD BUILDING

To any code enforcement officer, building official, fire marshal, or designee of any of the foregoing for the City of Pawnee, Texas:

WHEREAS, there is a piece of property located at **123 Rundown Street** in the City of Pawnee, County of Wamapoke, Texas (“Property”);

WHEREAS, an affidavit from the Chief Building Official for the City of Pawnee was attached to this warrant alleging facts that would go to show that there is a dangerous structure on the Property in violation of the fire, building, and/or health and safety ordinances of the City of Pawnee Code of Ordinances;

WHEREAS, there is probable cause that evidence on the Property is essential to allow determination whether the Property is in violation of the fire, building, and/or health and safety ordinances of the City of Pawnee Code of Ordinances;

WHEREAS, the affidavit presented the necessary evidence establishing the existence of property grounds for the issuance of this Administrative Search Warrant pursuant to the Texas Code of Criminal Procedure, Article 18.05 and the City of Pawnee Code of Ordinances.

NOW, THEREFORE, I do hereby order that any code enforcement officer, building official, fire marshal, or designee of any of the foregoing for the City of Pawnee, Texas execute this Administrative Search Warrant and go on to the Property (and into any structures thereon) to inspect and determine if evidence exists that the Property is substandard or dangerous in violation of the City of Pawnee Code of Ordinances.

Issued at _____ o’clock __.M., on the _____ day of _____, 20__

MAGISTRATE

RETURN

STATE OF TEXAS §

§

COUNTY OF WAMAPOKE §

The undersigned affiant being duly sworn, certifies that the foregoing Administrative Search Warrant was executed, within three whole days of issuance as required by law, on the ____ day of _____, 20__, by making the inspection directed therein.

Affiant

Subscribed and sworn to before me, the undersigned authority, by Affiant on this the ____ day of _____, 20__.

Notary Public

DETERMINATION

_____ 1. It has been determined upon inspection and investigation that the structure is dangerous, unsafe, or a hazard to public health and must be secured and:

___ Be vacated OR ___ remain unoccupied; and

___ Be repaired OR ___ be demolished.

_____ 2. It has been determined that utilities are currently connected and must be disconnected.

_____ 3. It has been determined that the structure is unsecured and must be boarded up or otherwise secured in a manner that will prevent unauthorized entry.

Signature

Printed Name

Date

D. Statutory notice

DEVELOPMENT SERVICES

VIA FIRST CLASS AND CERTIFIED MAIL

RETURN RECEIPT REQUESTED

Case: 2342

March 25, 2019

Jerry Wayne Gergich
1234 Parks Street
Pawnee, TX 77777-1426

RE: NOTICE OF PUBLIC HEARING REGARDING YOUR PROPERTY

Dear Property Owner(s):

According to records of the Wamapoke County, Texas Appraisal District, you are the responsible owner(s) of property located at **1234 Parks Street; Phase 1, Block C, Lot 5 & S. ½ of 4** in Pawnee, Wamapoke County, Texas.

City of Pawnee staff became aware of and inspected one or more dilapidated structures located on the above-referenced property. Staff found that one or more of said structures appear to be unsafe and believes said structure(s) to be in violation of one or more of the minimum building standards specified in the City of Pawnee's Code of Ordinances Sections 14-224 and 14-225.

The City of Pawnee's Building and Standards Commission is composed of five citizens appointed by the City Council to hear and make determinations regarding unsafe structures. Consideration of the allegedly unsafe structure(s) on the above-referenced property by that Commission has been scheduled for a public hearing on **Monday, April 22, 2019, at 5:30pm**. The meeting will be held in the **City Council Chambers on the first floor of the Pawnee Municipal Office Building** located at **1234 Main St**. At the hearing, the Commission will make a determination whether or not the structure(s) on the above-referenced property is/are unsafe and, if found unsafe, consider any and all available remedies, including, but not limited to, ordering repair or demolition, vacation of the property, securing the property, shutting off public utilities, and/or the assessment of civil penalties.

You must attend this public hearing to present argument and any previously submitted evidence that your structure(s) is/are not dangerous, or can be made safe. You may appear in person or through an authorized representative. You will be allowed the opportunity to present your argument and any previously submitted evidence, and to rebut and test the City's evidence and argument by cross-examination or other appropriate means.

Representatives from the City's Building Services and Fire departments will present their inspection reports, detailing specific building standard violations, to the Commission. Copies of these inspection reports are enclosed with this notice.

Any bids, plan of repair, timeline or supporting documentation you wish to present to the Commission must be received by the City's Development Services Department at least ten (10) business days prior to the meeting, by 5pm on Monday, April 8, 2019. You must provide ten (10)

copies of any documentation submitted. At the hearing, you must be prepared to present the Commission with a previously submitted proof of the scope of any work required to repair your structure(s) to minimum building standards, including a written plan for the repairs and reasonable timeframe needed to complete such work. If the Commission finds that a structure on the subject property is unsafe, the Commissioners may give you the opportunity to repair the structure based on the repair plan that you provide. Any documentation that you would like to present to the Commission may be hand-delivered to the Municipal Office Building at 300 S. Texas Avenue, Development Services Department, or via mail to the following address:

City of Pawnee
Development Services
ATTN: Building & Standards Commission
PO Box 1000
Pawnee, TX 77777

If the Commission finds that a structure on the subject property is unsafe, the Commissioners may give you the opportunity to repair the structure based on the repair plan that you need to provide prior to the hearing.

Please be advised that if there is too much damage, if the structure cannot be safely repaired, or if you fail to provide the required plan for repairs, the Commission will order the structure demolished. Please also note that if you fail to demolish the structure within the timeframe ordered by the Commission, the City may complete the demolition and bill you for the cost. If payment arrangements are not made for the invoice, then a lien will be filed on the subject property.

Please visit www.Pawneetx.gov/pscagendas beginning **Wednesday, April 17, 2019**, to view the Commission's meeting agenda and staff report regarding this case.

If you have any questions regarding this notice, please contact Megan Hancock by phone at (555) 555-5555 or by email at mhancock@Pawneetx.gov.

For information on sign language interpretation, TDD or other translation or accessibility information, please contact the City of Pawnee Communications Department at 979.209.5120 at least 48 hours before the scheduled time of the meeting so that your request may be accommodated.

Para información en la interpretación de lenguaje por señas, TDD o otra información de traducción o accesibilidad, por favor contacte al Departamento de Comunicaciones de la Ciudad de Pawnee al 979.209.5120 por lo menos 48 horas antes del tiempo planificado de la reunión para que su petición pueda ser acomodada.

Sincerely,

Mark Brendanawicz
Chief Building Official

Enclosures:

Dangerous Structures Survey Report – Building Division
Dangerous Structures Survey Report – Fire Department
“What to Submit Prior to the Meeting” Form
Contractor Checklist

E. Newspaper notice

Legal Ad – One run – Thursday, August 20, 2010

Affidavit – City of Pawnee

Tearsheet Run

**CITY OF PAWNEE
BUILDING AND STANDARDS COMMISSION**

The City of Pawnee's Building and Standards Commission will meet on August 30th, 2010 at 6:00 pm at the Pawnee Municipal Building in the Council Chambers. The purpose of this meeting is to consider the request of the Chief Building Official to declare 1234 Blueberry, 1234 Raspberry Street, 1234 Strawberry, 1234 Blackberry, and 1234 Dewberry to be unsafe structures and to order the same be vacated, repaired, secured, or demolished and/or shut off utilities.

F. Property record notice

STATE OF TEXAS §
COUNTY OF WAMAPOKE §

NOTICE OF UNSAFE STRUCTURE HEARING
CITY OF PAWNEE BUILDING AND STANDARDS COMMISSION

The City of Pawnee’s Building and Standards Commission will meet on January 27, 2014 at 6:00 p.m. in Council Chambers of the Pawnee Municipal Building, 123 Main St.. The purpose of this meeting is to consider the request of the Chief Building Official to declare structures on the following properties to be unsafe and to order the same be vacated, repaired, secured, or demolished:

- [name and address of owner], 1111 E. 1st Street, [legal description]
- [name and address of owner], 2222 E 2nd Street, [legal description]
- [name and address of owner], 3333 E 3rd Street, [legal description]
- [name and address of owner], 4444 E 4th Street, [legal description]
- [name and address of owner], 5555 E 5th Street, [legal description]
- [name and address of owner], 6666 E 6th Street, [legal description]
- [name and address of owner], 7777 E. 7th Street, [legal description]
- [name and address of owner], 8888 E 8th Street, [legal description]
- [name and address of owner], 9999 E 9th Street, [legal description]
- [name and address of owner], 1010 E 10th Street, [legal description]
- [name and address of owner], 1111 E 11th Street, [legal description]

STATE OF TEXAS §
COUNTY OF WAMAPOKE §

This instrument was acknowledged before me on the ____ day of _____20__ by Ron Swanson, Chief Building Official of the City of Pawnee, a Texas home-rule municipal corporation on behalf of said Corporation.

Notary Public in and for the State of Texas

G. "Repair checklist" flier



Building and Standards Commission

Repair Estimate Checklist Address: _____

This checklist is meant to be a guide, but is not necessarily everything you need to prove that you are ready, willing, and able to complete repairs to your property. Please contact the Development Services Department if you have any questions. **Please fill out this checklist and attach copies of any written estimates, receipts, plans or other evidence you wish to submit to the Commission to the Development Services Department in accordance with the timeframe established in your Meeting Notification Letter.**

A. Electrical

1. Licensed electrical contractor's company name: _____
2. Bid for electrical work: \$ _____
3. Estimated date for electrical work to start: _____
4. Estimated date for electrical work to be complete: _____

B. Plumbing

1. Licensed plumbing contractor's company name: _____
2. Bid for plumbing work: \$ _____
3. Estimated date for plumbing work to start: _____
4. Estimated date for plumbing work to be complete: _____

C. Heating, Ventilation, and Air Conditioning (HVAC)

1. Licensed HVAC contractor's company name: _____
2. Bid for HVAC work: \$ _____
3. Estimated date for HVAC work to start: _____
4. Estimated date for HVAC work to be complete: _____

D. Other Professionals (e.g. foundation repair, engineer, etc.)

1. Licensed professional's company name: _____
2. Bid for professional's work: \$ _____
3. Estimated date for work to start: _____
4. Estimated date for work to be complete: _____

E. Carpentry/Other

1. General contractor's company name: _____
2. Bid for work (if you are doing the repairs, list cost of materials: \$ _____
3. Estimated date for work to start: _____
4. Estimated date for work to be complete: _____

Signature

Date

H. “What to submit at the hearing” flier



Building and Standards Commission

What to Submit Prior to the Meeting

You have received a notice about a meeting of the City of Pawnee’s Building and Standards Commission. At the meeting, the Commission will discuss the demolition or repair of a structure, or structures, in which you appear to have an ownership interest.

If you wish to protect your property rights, it is recommended that you appear at the meeting. It is also recommended that you submit the following items prior to the meeting according to the timeline established in your meeting notification letter so that your evidence may be provided to the Commission. The following are some items you may wish to include:

- If you own the property but do not have a recorded deed, any documentation that shows that you have an interest in the property.
- Building permits from the City of Pawnee, or a receipt showing payment for a permit.
- A plan of repair specifically detailing work that must be performed and a schedule of when you expect to complete different stages of the work.
- An estimate of the cost of repairs, including a Contractor Checklist.
- Documentation showing what financial resources you have to complete the work, and what financial resources you are still trying to obtain.
- Photographs of the progress of any repair or demolition work being done.

Please refer to your meeting notification letter for specific due dates for submittal deadlines. You must provide ten (10) copies of any documentation submitted. Any documentation that you would like to present to the Commission may be delivered to the Municipal Office Building at 1234 Main St, Development Services Department, or via mail to the following address:

City of Pawnee
Development Services
ATTN: Building & Standards Commission
PO Box 1000
Pawnee, TX 77777

If you have any questions regarding this notice, please contact Leslie Knope by phone at (555) 555-5555 or email at lknope@pawneetx.gov .

I. Staff report
BUILDING AND STANDARDS COMMISSION
STAFF REPORT

October 27, 2014



Case # 2057 – 1234 The Pit St.



LEGAL DESCRIPTION: AAA #1, Block 1, Lot 1

STRUCTURE(S): single-family residence
 multi-family residence
 mixed use
 commercial
 accessory structure(s)

PROPERTY OWNER(S): Tom Haverford

**LIENHOLDER(S)/
MORTGAGEE(S):** none

ACTIVE UTILITIES: yes no **DISCONNECTED ON:**

WAMAPOKE COUNTY APPRAISAL DISTRICT/TAX OFFICE INFORMATION:

PROPERTY ID:	99042
IMPROVEMENT VALUE:	\$26,040
YEAR BUILT:	1935
SF OF LIVING AREA:	1,075
CURRENT OWNER SINCE:	1987
PROPERTY TAXES OWED:	\$0.00

BACKGROUND:

ATTACHMENTS:

staff recommendation
pictures
dangerous structures survey reports

**BUILDING AND STANDARDS COMMISSION
STAFF RECOMMENDATION**



October 27, 2014

Case #: 2057

Building Address: 1234 The Pitt St

Record Owner(s): Tom Haverford

The City's Chief Building Official has requested this Commission hearing to discuss the building and _____ [insert applicable #] accessory structure(s) on this property, and all legal notices of the hearing were provided to record owners, lienholders, and mortgagees. They were also notified that if they wanted to repair the building and/or accessory structure(s) they needed to meet with City staff and come to the hearing with a detailed plan for repairs, including cost estimates. Based on the surveys, reports, photographs, and other evidence provided to the Commission, the City recommends that the Commission find the building unsafe based on the standards set forth in Pawnee Code of Ordinances Section 14-224 subsection(s):

- The building, structure, or any part thereof is likely to partially or fully collapse.
- The structure or any part thereof was constructed or maintained in violation of any provision of the City's Building Code, or any other applicable ordinance or law of the city, county, state or federal government.
- One or more walls or other vertical structural members list, lean, or buckle to such an extent that a plumb line passing through the center of gravity falls outside of the middle third or its base.
- The foundation or the vertical or horizontal supporting members are twenty five percent (25%) or more damaged or deteriorated.
- The non supporting coverings of walls, ceilings, roofs, or floors are fifty percent (50%) or more damaged or deteriorated.
- The structure has improperly distributed loads upon the structural members, or they have insufficient strength to be reasonably safe for the purpose used.
- The structure or any part thereof has been damaged by fire, water, earthquake, wind, vandalism, or other cause to such an extent that it has become dangerous to the public health, safety and welfare.
- The structure or any part thereof has inadequate means of egress as required by the City's Building Code.
- The structure does not have adequate light ventilation, or sanitation facilities as required by the City's Building Codes and Plumbing Code.

The City further recommends that the Commission make a finding and issue an order that:

- the building and/or accessory structure(s) is/are unsecured and must be boarded up and/or fenced in such a manner to prevent unauthorized entry by a person, including a child, through missing or unlocked doors or windows or through other openings into the building or structure(s) within ___ days.
- the building and/or accessory structure(s) is/are occupied and poses a hazard to health, safety, or general welfare of the occupants and/or the general public and must be vacated within ___ days.
- the building and/or accessory structure(s) is/are connected to public utilities, including water and electricity and utilities must be disconnected within ___ days.

the building is a manufactured home which may be safely removed from the property to another location outside the city limits of Pawnee.

the building may not be feasibly repaired in compliance with City ordinances and must be demolished and all debris must be lawfully removed within ___ days.

the building may feasibly be repaired so that it is no longer in violation of City ordinances and must be repaired within ___ days in accordance with the schedule below:

Deadline	Task

Other requirements or conditions:

appear before the Commission at each regularly scheduled meeting to demonstrate compliance with the time schedule, until the preceding orders have been fulfilled.

The City further recommends that the Commission order that:

In the event that the owner, mortgagee, or lienholder fails to timely comply with an order to a) secure the building(s); b) vacate the property; c) disconnect utilities; or d) demolish the building(s) and remove the debris, then the City may take action to fulfill the order and attach a lien to the property for the expense of same pursuant to Pawnee Code of Ordinances 14-233.

In the event that an owner, mortgagee, or lienholder fails to comply with an order to repair, the City may bring the property back before the Commission for further orders, including but not limited to demolition of the building and in addition to the foregoing, the City may also issue a citation under Pawnee Code of Ordinances Section 14-219 for failing to comply with the order.

PICTURES:



J. Staff recommendation

**CITY OF PAWNEE
BUILDING AND STANDARDS COMMISSION
STAFF RECOMMENDATION**

Case #: _____
Record Owner(s): _____
Building Address: _____
Hearing Date: _____

The City’s Chief Building Official has requested this Commission hearing to discuss this building, and all legal notices of the hearing were provided to owners, lienholders, and mortgagees. They were also notified that if they wanted to repair the building they needed to meet with City staff and come to the hearing with a detailed plan for repairs, including cost estimates. Based on the surveys, reports, photographs, and other evidence provided to the Commission, the City recommends that the Commission find the building unsafe based on the standards set forth in Section 14-224 subsection(s) [*identify subsections by number*]:

- _____ The building, structure, or any part thereof is likely to partially or fully collapse.
- _____ The structure or any part thereof was constructed or maintained in violation of any provision of the City’s Building Code, or any other applicable ordinance or law of the city, county, state or federal government.
- _____ One or more walls or other vertical structural members list, lean, or buckle to such an extent that a plumb line passing through the center of gravity falls outside of the middle third or its base.
- _____ The foundation or the vertical or horizontal supporting members are twenty five percent (25%) or more damaged or deteriorated.
- _____ The non supporting coverings of walls, ceilings, roofs, or floors are fifty percent (50%) or more damaged or deteriorated.
- _____ The structure has improperly distributed loads upon the structural members, or they have insufficient strength to be reasonably safe for the purpose used.
- _____ The structure or any part thereof has been damaged by fire, water, earthquake, wind, vandalism, or other cause to such an extent that it has become dangerous to the public health, safety and welfare.
- _____ The structure or any part thereof has inadequate means of egress as required by the City’s Building Code.
- _____ The structure does not have adequate light ventilation, or sanitation facilities as required by the City’s Building Codes and Plumbing Code.

The City further recommends that the Commission find that the building:

_____ is occupied and poses a hazard to health, safety, or general welfare of the occupants and/or the general public and must be vacated.

_____ is unsecured and must be boarded up and/or fenced in such a manner to prevent unauthorized entry by a person, including a child, through missing or unlocked doors or windows or through other openings into the structure.

_____ may feasibly be repaired so that it is no longer in violation of City ordinances.

_____ may not be feasibly repaired in compliance with City ordinances.

The City recommends that Commission issue an order to the owner, lienholder, or mortgagee to:

_____ vacate the structure within _____ days.

_____ secure the structure from unauthorized entry within 30 days.

_____ demolish/remove or repair [*circle one*] the structure within 30 days.

_____ demolish/remove or repair [*circle one*] the structure within ____ days, in accordance with the schedule below:

<u>Deadline</u>	<u>Task</u>
-----------------	-------------

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

_____ appear before the Commission at each regularly scheduled meeting to demonstrate compliance with the time schedule, until the preceding orders have been fulfilled.

The City further recommends that the Commission order the City to demolish the building and remove the debris in accordance with Chapter 14 of the City's Code of Ordinances if the owner, lienholder, or mortgagee fails to comply with the Commission's order.

K. Opening statement from chair



Building and Standards Commission

Opening Statement from the Chairperson

This Commission holds public hearings to discuss structures the City believes are dangerous and a threat to citizens' health and safety. At the beginning of each public hearing, the City will present its evidence and recommendation. After that, anyone can address the Commission regarding the same property. The structure will most likely be ordered demolished unless someone presents evidence that the structure is safe, or that it can be repaired. Owners who want to repair the structure must have a detailed plan for the repairs, including an estimated cost and a schedule for completion.

Only people recognized by me and duly sworn in may address the Commission. Speakers shall move to the podium when directed, state their name and address, and then present their evidence or make their argument. The commissioners may ask questions of any speaker, including City staff, during the public hearing. Speakers may also ask any questions of the Commission or of City staff.

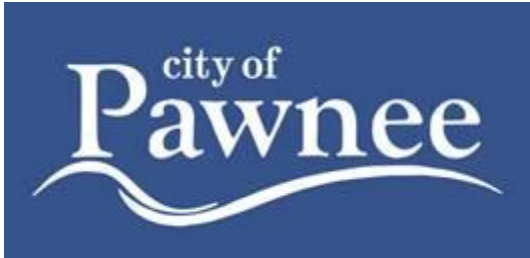
After the public hearing is closed, only commissioners will be allowed to speak. The Commission will have a discussion and a vote to determine if the structure is dangerous and issue an order to either secure and repair the structure or to demolish it. An order by this Commission is final, and any appeals must be filed in District Court.

At this time I would ask anyone who wants to speak to the Commission to stand up, raise their right hand, and be sworn in.

Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth so help you God?

Thank you, be seated.

L. Opening statement from staff



The City of Pawnee's Chief Building Official has requested this Building and Standards Commission hearing to discuss the properties listed on this meeting's agenda. All legal notices of this hearing were provided to record owners, lienholders, and mortgagees along with notice that if they wanted to repair their buildings, they needed to meet with City staff and come to this hearing with detailed plans for repairs, including cost estimates. City staff has made a recommendation for each property listed in this meeting's agenda based on the surveys, reports, photographs, and other evidence in the file.

I will announce the properties for consideration in the order that they are listed on the agenda. If you are here to address the Commission, please step forward to the podium when the property you are here for is being called out.

While you step to the podium, I will be reading the staff recommendation into the record. You may then address the Commission after you have been recognized by the Chairperson.

If no one comes forward when a property is called out, we will assume that no one is here to address the Commission regarding that property. The Commission will then consider that property towards the end of the meeting.

Are there any attorneys present?

M. Findings and order

CITY OF PAWNEE
**BUILDING AND STANDARDS COMMISSION'S
FINDINGS AND ORDER**

BE IT REMEMBERED THAT ON February 27, 2012, the City of Pawnee's Building and Standards Commission conducted a public hearing regarding the structure located at 123 N 1st A & B. Case#1824

After considering the evidence presented, the Commission finds that the structure is:

_____ a safe structure.

_____ an unsafe structure based on the standards set forth in Section 14-224 subsection(s)]:

_____The building, structure, or any part thereof is likely to partially or fully collapse.

_____The structure or any part thereof was constructed or maintained in violation of any provision of the City's Building Code, or any other applicable ordinance or law of the city, county, state or federal government.

_____ One or more walls or other vertical structural members list, lean, or buckle to such an extent that a plumb line passing through the center of gravity falls outside of the middle third or its base.

_____The foundation or the vertical or horizontal supporting members are twenty five percent (25%) or more damaged or deteriorated.

_____The non supporting coverings of walls, ceilings, roofs, or floors are fifty percent (50%) or more damaged or deteriorated.

_____The structure has improperly distributed loads upon the structural members, or they have insufficient strength to be reasonably safe for the purpose used.

_____The structure or any part thereof has been damaged by fire, water, earthquake, wind, vandalism, or other cause to such an extent that it has become dangerous to the public health, safety and welfare.

_____The structure or any part thereof has inadequate means of egress as required by the City's Building Code.

_____The structure does not have adequate light ventilation, or sanitation facilities as required by the City's Building Codes and Plumbing Code.

Having found the structure to be unsafe, the Commission also finds that the structure:

_____ is occupied and poses a hazard to health, safety, or general welfare of the occupants and/or the general public and must be vacated

___ ___ is unsecured and must be boarded up and/or fenced in such a manner to prevent unauthorized entry by a person, including a child, through missing or unlocked doors or windows or through other openings into the structure

_____ may feasibly be repaired so that it is no longer in violation of the City's Dangerous Structures Ordinance

_____ _____ may not be feasibly repaired in compliance with the City's ordinances

IT IS THEREFORE ORDERED THAT THE OWNER, MORTGAGEE OR LIENHOLDER SHALL:

_____ vacate the structure within _____ days.

_____ secure the structure from unauthorized entry within 30 days.

_____ **demolish/remove** or repair [*circle one*] the structure within 30 days.

_____ demolish/remove or repair [*circle one*] the structure within ____ days, in accordance with the schedule below:

<u>Deadline</u>	<u>Task</u>
_____	_____
_____	_____
_____	_____

_____ appear before the Commission at each regularly scheduled meeting to demonstrate compliance with the time schedule, until the preceding orders have been fulfilled.

_____ Since the building is being ordered demolished, the Commission recommends that the City disconnect water and electric utilities.

IT IS FURTHER ORDERED BY THE COMMISSION THAT:

In the event that the owner, mortgagee, or lienholder shall fail to comply with this Order in the allotted time, the City may secure the structure, and may cause the structure to be demolished, and may attach a lien to the property for the expense of same in accordance with City ordinances.

Entered this 27th day of February, 2012.

Chairperson

Building and Standards Commission

HOW TO APPEAL A COMMISSION ORDER

At this evening’s Building and Standards Commission hearing, one or more structures belonging to you (or in which you have an interest) was ordered demolished by the Commission. If you would like to appeal the Commission’s order, here are some answers to frequently asked questions:

1. **How do I file an appeal?** A lawsuit must be filed in district court by filing a petition with the District Clerk.
2. **Where do I file an appeal?** The lawsuit should be filed with the District Clerk, at the Wamapoke County, Texas courthouse on 123 Main Street, Pawnee, Texas.
3. **Where can I get the form I should use?** There is no set form, so neither the City nor the District Clerk will be able to provide you with one. If you need help preparing the lawsuit, you should speak with a lawyer, because the City cannot prepare legal documents for you.
4. **How much time do I have to file the appeal?** You have thirty (30) calendar days from the date the Commission’s order is mailed to you. Usually that is within one or two days following the hearing.
5. **How much will it cost?** The filing fees charged by the District Clerk total \$267.00, which will be required at the time you file your appeal. Additionally, a citation fee of \$8 will be required for service on the City. Process can be served by a either a constable or a process server, and they will have their own fees.
6. **What does “service” mean?** As with any lawsuit, the other party must be served with a citation for the lawsuit to include them. In the case of the city, citations can be served on the City Secretary.
7. **What are the requirements of an appeal?** State law includes a list of criteria that must be included in the appeal, and they include:

- a. You must provide your name, address, and other contact information;
 - b. You must provide a request for issuance of citation to the City, and a statement that the citation may be served on the City Secretary at 321 Second Ave., Pawnee, Texas 77777.
 - c. The appeal must be notarized (you will be swearing under oath that the facts stated in the appeal are true);
 - d. The appeal must provide grounds for why the decision of the Commission, or a portion of it, is illegal; and
 - e. The appeal must request a writ of certiorari directed to the City requiring the City to provide a certified copy of the decision, as well as any evidence considered by the Commission in reaching its decision.
8. **How long will the appeal take?** Once the appeal is filed, the district court will give the City a deadline to respond, which will be at least 10 days from the day the “writ” is issued. After the City provides its response to the Court, and to you, a hearing will need to be scheduled. Depending on the court’s schedule, it could take several months before a hearing on the appeal is held.
9. **Do I need to have an attorney?** As with any lawsuit, you can represent yourself (this is called appearing “pro se”). However, the City will be represented by an attorney, so it may be in your best interests to hire one of your own.
10. **If I hire an attorney, can I get my attorney’s fees?** State law does not allow an award of attorney’s fees against the City, so even if you win, you will have to pay your own attorney’s fees. NOTE: if you lose the appeal and the Commission’s decision is upheld, the court can hold you responsible for the City’s attorney’s fees.
11. **Can the Commission change its order without an appeal?** If no appeal is filed by the 30-day deadline, the decision is final. The City does not bring items back to the Commission once a decision has been reached.

NOTE: this guide is provided for informational purposes only and is not intended to be legal advice. This guide is not intended to be comprehensive and is not a replacement for legal counsel. You should consult with an attorney if you have any questions about this process, your case, or any other options that might be available to you. The information in this notice is current as of March, 2016.

O. Notice of Compliance

State of Texas §

County of Wamapoke §

NOTICE OF COMPLIANCE WITH BSC ORDER

Case: 1902, 1903, 2118, & 2119

Street Address: 123 A Street #1, 7, 6, & 8

Lot: 1-2 & 4-5 & 7-8 (pts of) **Block:**

Addition: Roberts

Owner: **Name:** Ann Perkins, % Andy Dwyer

Address: 12345 Somewhere St. Pawnee, TX 77777-1234

The Chief Building Official for the City of Pawnee has determined that the structure or building located on the above described property has been demolished, removed, or repaired in compliance with the order of the Building and Standards Commission.

Details of the Building and Standards Commission Meeting to determine compliance with Pawnee City Code:

Hearing Date and Time March 26, 2012 & January 28, 2013

Location: Council Chambers of the Municipal Office Building at 1234 Main St, Pawnee, Texas

The Building and Standards Commission required the following:

The Commission ordered that the structure was to be demolished, and all trash and debris removed within 30 days.

Mark Brendanawicz
Chief Building Official

STATE OF TEXAS §

COUNTY OF WAMAPOKE §

This instrument was acknowledged before me on _____ 2017 by Ron Swanson, Chief Building Official of the City of Pawnee, a Municipal Corporation on behalf of said Corporation.

Notary Public in and for the State of Texas

Commission found that the structure located 123 Rundown Drive was unsafe and ordered the property to be secured, a demolition permit obtained, and the building demolished within 30 days. The Building and Standards Commission also ordered that if the owner of the structure failed to comply with this order to secure and demolish within the allotted time, the City of Pawnee may demolish the structure, without further action by this Commission.

10. The time for appeal of the Commission's order to district court under Chapter 14-228 of the Pawnee City Code has expired and no appeal has been taken.

11. A copy of the Order was filed in the office of the city secretary on November 29, 2016.

12. On November 29, 2016, an unsafe building placard was placed in a conspicuous location at the entrance to the structure located at 123 Rundown Drive.

13. A notice containing a legal description of the property, the date of the hearing, and a brief statement indicating the results of the order and instruction stating where a complete copy of the order may be obtained was published in *The Eagle*, Pawnee-Eagleton, a newspaper of general circulation.

14. I re-inspected this property April 10, 2017 and the property still has not been demolished and remains essentially in the same condition as at the time of the public hearing on November 28, 2016.

WHEREFORE, based on the foregoing conditions that the Building and Standards Commission for the City of Pawnee found and based upon their order, I request that the Justice Court of Wamapoke County grant a judicial warrant to enter unto the above-described property and seize its structure by demolition.

Ben Wyatt
Building Inspector
City of Pawnee

SUBSCRIBED AND SWORN TO BEFORE ME, on the _____ day of _____, 2017
at _____ o'clock a.m. to certify which witness my hand and official seal.

Justice of the Peace

Wamapoke County, Texas

THE STATE OF TEXAS	§	A PROPERTY LOCATED AT:
	§	<u>123 Rundown Drive</u>
	§	CITY OF PAWNEE
COUNTY OF WAMAPOKE	§	WAMAPOKE COUNTY, TEXAS

JUDICIAL WARRANT

WHEREAS, the Affiant whose name appears on the attached affidavit is the for the Development Services Department of the City of Pawnee, Wamapoke County, Texas, and did heretofore this day submit said Affidavit to me (which said Affidavit is by this reference incorporated herein for all purposes), and WHEREAS, I find that the verified facts stated by Affiant in said Affidavit show that the Affiant has probable cause for the belief expressed therein and establishes the existence of proper grounds for the issuance of this Warrant.

NOW THEREFORE, you are commanded to enter upon 123 Rundown Drive, Pawnee, Wamapoke County, Texas and seize the structure located on this property by demolition.

NOW THEREFORE, you are ordered to execute this warrant.

ISSUED THIS THE ____ day of _____, A.D., 2017, at ____ o'clock __.m. to certify which witness my hand this day.

Justice of the Peace,
Wamapoke County, Texas

THE STATE OF TEXAS	§	A PROPERTY LOCATED AT:
	§	<u>123 Rundown Drive</u>
§	CITY OF PAWNEE	
COUNTY OF WAMAPOKE	§	WAMAPOKE COUNTY, TEXAS

RETURN OF WARRANT

The undersigned Affiant, being the building inspector for the City of Pawnee, Wamapoke County, Texas, on oath certifies that the foregoing warrant came to hand on the day it was issued and that it was executed on the ____ day of _____, A.D., 2017, by seizing the structure located at 123 Rundown Drive, Pawnee, Wamapoke County, Texas.

Ben Wyatt
Building Inspector

City of Pawnee, Texas

SUBSCRIBED AND SWORN TO BEFORE ME, on the ____ day of _____, A.D., 2017 at ____ o'clock __ m. to certify which witness my hand and official seal.

Notary Public, State of Texas
My commission expires:_____

Q. Lien Affidavit

STATE OF TEXAS
COUNTY OF WAMAPOKE

IN-13.5 Rev. 6/07
City Funds

LIEN AFFIDAVIT
DEMOLITION OF DANGEROUS STRUCTURE

WHEREAS, the City of Pawnee, Wamapoke County, Texas, a home rule city organized pursuant to Article 11, Section 5 of the Constitution of the State of Texas, has the power, pursuant to Chapter 54 of the Local Government Code, Vernon’s Texas Civil Statutes Annotated, to require the demolition or repair of buildings which are dilapidated, substandard, or unfit for human habitation and which constitute a hazard to the health, safety, and welfare of the citizens; and

WHEREAS, the City Council of the City of Pawnee, Texas, has passed Chapter 14, Sections 208 through 236, of the Pawnee City Code of Ordinances for the purpose stated above; and

WHEREAS, the above said Sections of the Code of the City of Pawnee require the owner of any building found to be a dangerous building under the terms of the above-referenced sections to demolish the building upon the direction of the Building and Standards Commission; and if such owner fails or refuses to do so within the amount of time given by the Commission, the City of Pawnee, Texas, may do such work or cause same to be done and charge the expenses incurred in doing or having such work done to the owner, lienholder, or mortgagee of such property as herein provided; and

WHEREAS, the owner, **Ben Jones Wyatt**, of the hereinafter described property did fail to demolish such dangerous structure as directed by the Building and Standards Commission; and

WHEREAS, the City of Pawnee, Texas, did cause the dangerous structure to be demolished, such buildings described more fully as follows: **123 Recreation Street, Grove Park, Block 5, Lot 1, and** the work performed as follows: Demolished structure and removed debris to landfill and left lot in mowable condition.

WHEREAS, the City of Pawnee, Texas, incurred the following expenses:

\$	180.00	TITLE SEARCH
\$	5,513.94	DEMOLITION OF BUILDING/CLEAN UP OF PROPERTY
\$	<u>26.00</u>	FILING OF LIEN
\$	5,719.94	TOTAL COST

THAT the City of Pawnee, Texas, by and through its General Code Inspector/Code Enforcement Officer, hereby makes oath and says that the above amount is a true and correct amount of the labor performed by the City of Pawnee, Texas, and that said amount is set forth above is just and reasonable and that the same is unpaid after allowing all just and lawful offsets, payments, and credits known to the City of Pawnee, Texas. That pursuant to state law and the city’s ordinances, such a sum shall incur interest at the rate of ten percent (10%) per annum from the date this lien is filed until the date paid.

Signed this day of _____, 2017.

By _____
Code Enforcement Officer
City of Pawnee, Texas
STATE OF TEXAS
COUNTY OF WAMAPOKE

Subscribed and sworn to before me, the undersigned authority, on this the _____ day of _____, 2017, to certify which witness my hand and seal of office.

Notary of Public, State of Texas

I, **Walter Gunderson**, Mayor of the City of Pawnee, Texas, hereby direct that the above statement be filed with the county clerk as a lien on described property for the balance stated therein.

ATTEST: _____
City Secretary

Mayor

R. Lien Release

RELEASE OF LIEN

STATE OF TEXAS §
COUNTY OF WAMAPOKE §

KNOW ALL PERSONS BY THESE PRESENTS

That the City of Pawnee, Texas ("City") a home-rule municipal corporation, acting by and through its duly authorized mayor, of the County of Wamapoke, State of Texas, is the legal and equitable owner and holder of certain liens against the real property described as [INSERT ADDRESS], being [INSERT LEGAL DESCRIPTION], previously owned by _____, which liens are more particularly described as follows:

- A. Lien Affidavit, filed for record on Lien DATE in the amount of _____, Vol. _____, Pg. _____, Official Records of Wamapoke County, Texas;

For and in consideration of the final payment of the indebtedness secured by the aforesaid liens, the receipt of which is hereby acknowledged, City has released and discharged and by these presents hereby releases and discharges, the above described property from the above described liens held by the City securing said indebtedness.

EXECUTED this ____ day of _____, 20 ____.

ATTEST:

CITY OF PAWNEE, TEXAS

Leslie Knope, City Secretary

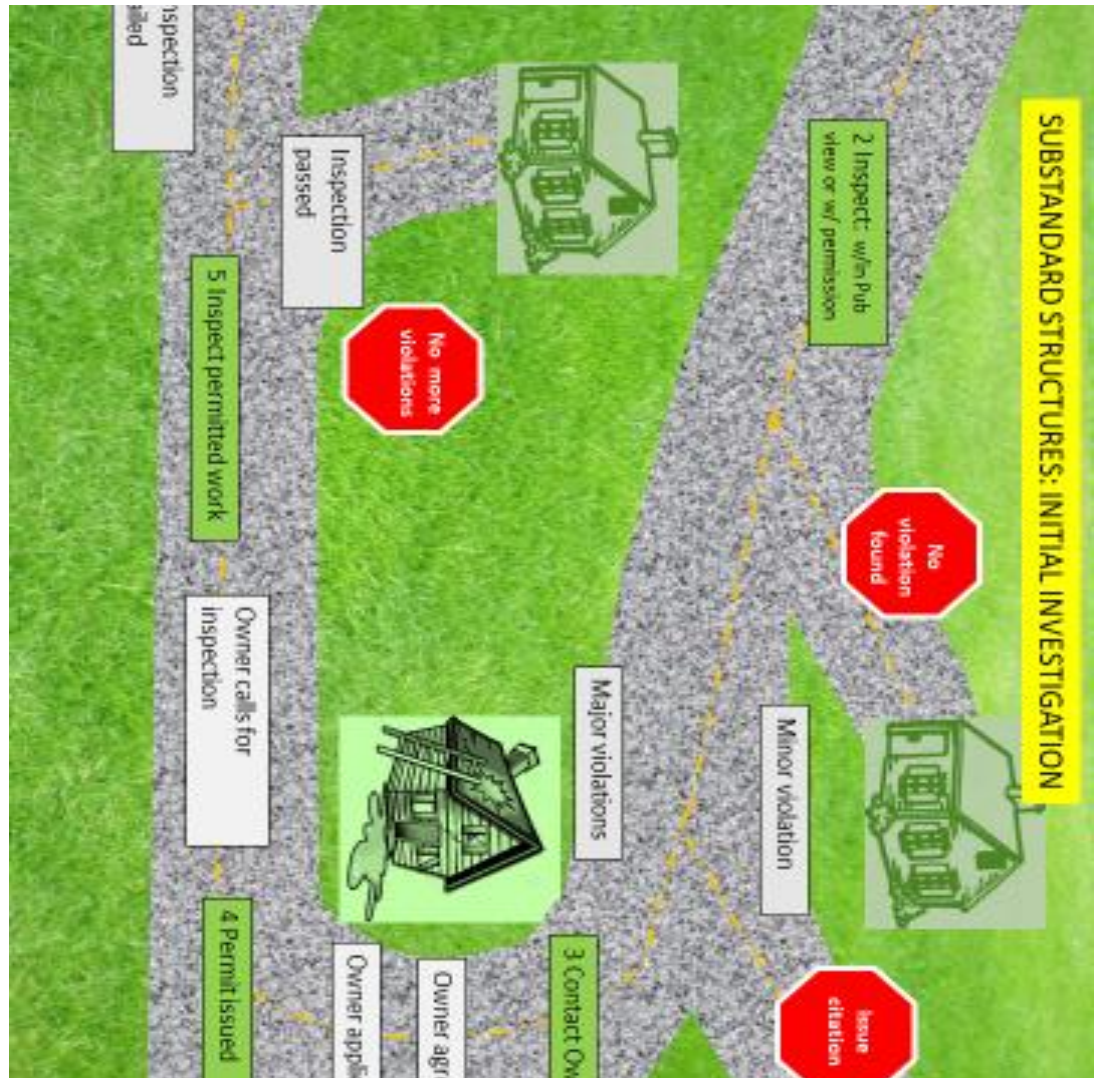
Walter Gunderson, Mayor

STATE OF TEXAS §
COUNTY OF WAMAPOKE §

This instrument was acknowledged before me on _____, 20____, by Walter Gunderson, Mayor of the City of Pawnee, Texas, a municipal corporation, on behalf of said corporation.

Notary Public, State of Texas

S. Substandard structure abatement flow chart



LECTURES: HEARING:



- Search required by law
- Property records
 - Utility records
 - Secretary of state records
 - Assumed name records
 - Tax records
 - Appraisal records



7 Research owners and lienholders

- Additional databases to search
- Manufactured home registration
 - Computer Taxable Entity Search
 - Obituaries

Prepare for hearing
evaluate owner's submissions
prepare recommendation
prepare presentation

10 Conduct inspection
Prep reports, surveys,
photographs, video?

9 Obtain warrant
Code
Fire
PD
Health Dept
Building official

Statutory Notice:
CMRRR
Paper Gen. Cir.
Lis Pendens?
Front Door
OMA Agenda?

If CMRRR returned for any other reason, resend until rec'd, refused or unclaimed.

If CMRRR rec'd, refused, or unclaimed, proceed to hearing.

13

**SUBSTANDARD STRUCTURES:
HEARING AND APPEAL**

