

IN THE PROBATE COURT OF SHELBY COUNTY, ALABAMA

COLUMBIANA, ALABAMA)

v.)

AGNES ELIZABETH STEWART;)

JAMES P. STEWART;)

MARTHA E. STEWART;)

COLUMBIANA WATER)

See below.)

FINDING OF PUBLIC NUISANCE, NOTICE AND ORDER TO REMEDY,
AND NOTICE OF *LIS PENDENS*

TAKE NOTICE that:

COMES NOW, Columbiana, Alabama ("the City"), by and through its Appropriate Municipal Official, its Clerk, and its Attorney to provide notice pursuant to the City's Ordinance No. 05-14-06 that the Appropriate Municipal Official has made a finding that a building located within the City is a dangerous building because it is unsafe to the extent that it is a public nuisance and subject to demolition. The building is located on the following described property, to wit, which will be described hereafter as "the Subject Property":

STREET ADDRESS:

460 Chelsea Road, Columbiana, AL

LEGAL DESCRIPTION:

Commence at the point where that certain drain ditch forming the South boundary of E.D. Farr's land intersects the East right of way line of Columbiana-Chelsea paved highway and run in a Northwesterly direction along the East line of said highway 243 feet to the point of beginning; thence run in a Northeasterly direction and almost perpendicular to said highway and along a drain ditch to that certain branch forming the Easterly boundary of E.D. Farr land; thence in a Northerly direction along said branch to the North line of SE $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 23, Township 21 South, Range 1 West; thence run West along said forty acres line to the East line of said highway; thence along same in a Southeasterly direction to the point of beginning.

PARCEL IDENTIFICATION NUMBER:

The City provides further notice as follows:

1. In *Ellis v. City of Montgomery*, the United States District Court for the Middle District of Alabama stated that, in cases such as this where a municipality seeks the demolition of building by use of its police powers, “A simple *lis pendens* filing after sending notice to the current owner of a property would place subsequent purchasers on record notice that demolition could occur.” *Ellis v. City of Montgomery*, 460 F.Supp.2d 1301, 1307 (M.D. Ala. 2006). Here, the City is invoking the procedure recommended by the District Court.

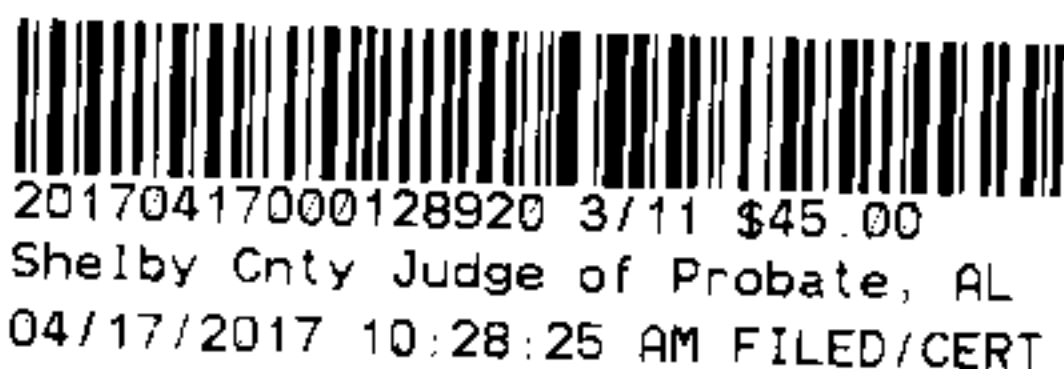
2. By the filing of this Notice, the City is not claiming any right, title, or interest in the Subject Property. Rather, the purpose of this Notice is to put all interested parties on notice of the City’s intent to exercise its authority provided by law and specifically by the City’s ordinances.

3. Ordinance No. 05-14-06 of the City is “An Ordinance Concerning Unsafe Structures and Dangerous Buildings.” The below-signed Appropriate Municipal Official is the person designated to exercise the authority and perform the duties delegated by Ordinance No. 05-14-06.

4. The Appropriate Municipal Official finds that the building located on the Subject Property is a “dangerous building” within the meaning of Ordinance No. 05-14-06 because of the following defects:

- (1) The interior walls or other vertical structure 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 of its base;
- (2) The building has improperly distributed loads upon the floors or roofs, or in which the same are overloaded, or has insufficient strength to be reasonably safe for the purpose used;
- (3) The building has been damaged by fire, wind, earthquake, flood, sinkhole, deterioration, neglect, abandonment, vandalism, or any other cause so as to have become dangerous to life, health, property, morals, safety, or general welfare of the public or the occupants;

- (4) The building has become or is so damaged, dilapidated, decayed, unsafe, unsanitary, lacking in maintenance, vermin or rat infested, containing filth or contamination, lacking proper ventilation, lacking sufficient illumination, or so utterly fails to provide the amenities essential to decent living that it is unfit for human habitation, or is likely to cause sickness or disease, so as to work injury to the life, health, property, morals, safety, or general welfare of the public or the occupants;
- (5) The building has light, air, heating, cooling, and sanitation facilities which are inadequate to protect the life, health, property, morals, safety, or general welfare of the public or the occupants;
- (6) The building does not provide minimum safeguards to protect or warn occupants in the event of fire;
- (7) The building contains unsafe equipment, including any boiler, heating equipment, elevator, moving stairway, electrical wiring or device, flammable liquid containers, or other equipment on the premises or within the structure which is in such disrepair or condition that such equipment is a hazard to the life, health, property, morals, safety, or general welfare of the public or the occupants;
- (8) The building is so damaged, decayed, dilapidated, structurally unsafe, or of such fault construction or unstable foundation that partial or complete collapse is possible;
- (9) The building has parts thereof which are so attached that they may fall and damage property or injure the public or the occupants;
- (10) The building, or any portion thereof, is clearly unsafe for its use or occupancy;
- (11) The building is neglected, damaged, dilapidated, unsecured, or abandoned so as to become an attractive nuisance to children who might play in or on the building, structure, part of building or structure, party wall, or foundation to their danger, has become a harbor for vagrants, criminals, or immoral persons, or enables persons to resort to the building, structure, part of building or structure, party wall, or foundation for committing a nuisance or an unlawful act;
- (12) The building is, because of its condition, unsafe, unsanitary, or dangerous to the life, health, property,



morals, safety, or general welfare of the public or the occupants; and

- (13) The building has a condition or conditions that violate the City's technical codes adopted from time to time if such violation(s) are unsafe to the extent of becoming a public nuisance.

5. The Appropriate Municipal Official finds that the building on the Subject Property is substantially damaged or decayed, or deteriorated from its original value or structure (not including the value of the land).

6. The Appropriate Municipal Official finds that the building on the Subject Property cannot be reasonably repaired within a reasonable time and at a reasonable cost relative to the value of the structure so that it will no longer exist in violation of the terms of Ordinance No. 05-14-06.

7. The Appropriate Municipal Official finds that the building on the Subject Property is a fire hazard existing in violation of the terms of Ordinance No. 05-14-06.

8. For purposes of this Notice, the term "building" is deemed to include all structures, appurtenances, improvements, and items on the property, whether or not attached to or apart of the main structure, including, but not limited to, houses, garages, sheds, carports, other accessory structures, pools, as well as any items located therein or on the Subject Property, including, junk, rubbish, trash, litter, grass and weeds as defined by the City's grass and weed abatement ordinance, junked motor vehicles, and/or any other matter declared a nuisance under existing law. For further particulars of what the "building" on the Subject Property includes, please contact the Appropriate Municipal Official.

9. Notice is hereby given to remedy the unsafe or dangerous condition by demolition of the building on the Subject Property within forty-five (45) days of the date of this Notice to the Appropriate Municipal Official's satisfaction. In the event the owner does not comply within the time specified herein to the Appropriate Municipal Official's satisfaction, the demolition shall be

accomplished by the City and the cost thereof assessed against the Subject Property and such cost shall constitute a lien against the Subject Property.

10. The Appropriate Municipal Official finds that the building on the Subject Property is in such condition as to make it dangerous to the life, health, property, morals, safety, or general welfare of the public or the occupants. Therefore, the Appropriate Municipal Official orders that the building on the Subject Property and/or the entirety or other portion of the premises upon which it is located be and remain vacated until demolished.

11. A public hearing as provided for by Section 8(a) set forth in Ordinance No. 05-14-06 shall be held on the finding of the Appropriate Municipal Official in the Council Chambers at the Columbiana City Hall, 107 Mildred Street, Columbiana, Alabama, on the 6th day of June, 2017, at 6:00 p.m. At that time, the City Council shall hold a public hearing to receive any objections to the finding by the Appropriate Municipal Official that the building or structure is unsafe to the extent of becoming a public nuisance. A written request for a public hearing is not necessary. At the public hearing, the Council shall also receive any written objections to the finding by the Appropriate Municipal Official. Any such written objection must be submitted to the City Clerk prior to the start of the Council meeting at which the public hearing is held. No action shall be taken on the finding of the Appropriate Municipal Official until determination thereon is made by the Council. Upon holding the hearing, the Council shall determine whether or not the building or structure is unsafe to the extent that it is a public nuisance. If it is determined by the Council that the building or structure is unsafe to the extent that it is a public nuisance, the Council shall order demolition of the building at the expense of the City and assess the expenses of the move or demolition on the land on which the building stands or to which it is attached. Any person aggrieved by the decision of the Council at the hearing may, within ten (10) days thereafter, appeal to the Circuit Court of Shelby County, Alabama, upon filing with the Clerk of the Circuit Court of Shelby County, Alabama, notice of the appeal and bond for security of

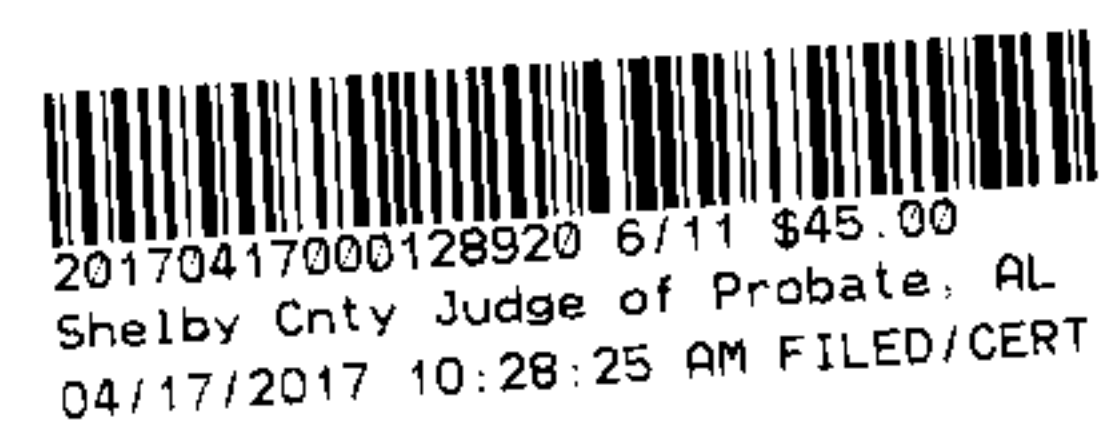
costs in the form and amount to be approved by the Circuit Clerk. For further particulars, see Ordinance No. 05-14-06.

12. A failure by the Council to act on the findings of the Appropriate Municipal Official within one hundred twenty (120) days from the date of this "Finding of Public Nuisance, Notice and Order to Remedy, and Notice of *Lis Pendens*" shall constitute an abdication of the Appropriate Municipal Official's findings. However, this shall in no way prevent the City from reinitiating the proceedings authorized by Ordinance No. 05-14-06 at any time so long as all the requirements of Ordinance No. 05-14-06 are satisfied anew. Furthermore, this does not require that the ordered demolition take place within one hundred twenty (120) days from the date of this "Finding of Public Nuisance, Notice and Order to Remedy, and Notice of *Lis Pendens*." A failure by the City to accomplish the demolition of the building within one hundred eighty (180) days of the passage of the resolution by the Council ordering the same shall constitute an abdication of the Council's order unless certain conditions further explained in Ordinance No. 05-14-06 are satisfied. For further particulars, see Ordinance No. 05-14-06. Anyone interested in the status of these proceedings should inquire with Columbiana's Clerk at (205) 669-5801 or at 107 Mildred Street, Columbiana, Alabama.

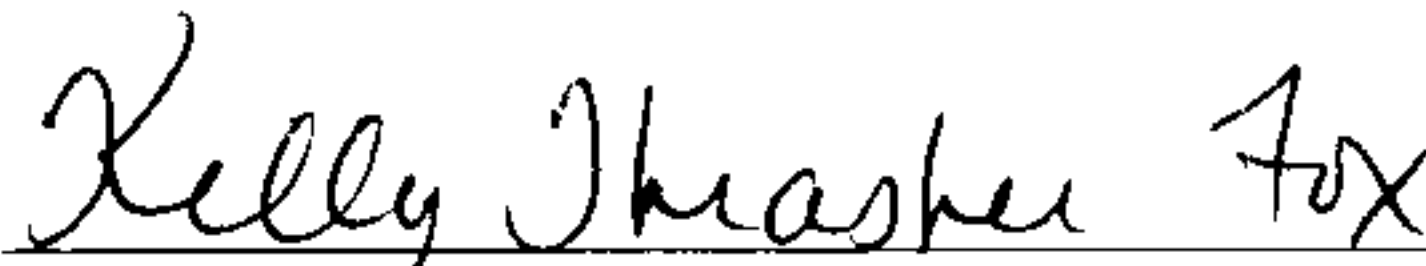
13. It is unlawful for any person, or for any agent, servant or employee of such person, to obstruct or interfere with the Appropriate Municipal Official in carrying out the purposes of Ordinance No. 05-14-06.

14. It is unlawful for any person, or for any agent, servant or employee of such person, to mutilate, destroy, tamper with this "Finding of Public Nuisance, Notice and Order to Remedy, and Notice of *Lis Pendens*."

15. It is unlawful for any person to enter, access, or be upon the Subject Property that the Appropriate Municipal Official has ordered to be vacated pursuant to this "Finding of Public Nuisance, Notice and Order to Remedy, and Notice of *Lis Pendens*" except for the purposes of demolishing the same.




16. It is unlawful for any person who has received this "Finding of Public Nuisance, Notice and Order to Remedy, and Notice of *Lis Pendens*" to sell, transfer, mortgage, lease, encumber, or otherwise dispose of the building that is the subject of the same to another until such person shall first furnish the grantee, transferee, mortgagee, or lessee a true copy of this "Finding of Public Nuisance, Notice and Order to Remedy, and Notice of *Lis Pendens*" and shall furnish to the Appropriate Municipal Official a signed and notarized statement from the grantee, transferee, mortgagee, or lessee acknowledging the receipt of this "Finding of Public Nuisance, Notice and Order to Remedy, and Notice of *Lis Pendens*" and fully accepting the responsibility without condition for making the corrections or repairs required by this "Finding of Public Nuisance, Notice and Order to Remedy, and Notice of *Lis Pendens*."



Kelly Thrasher Fox, Attorney
Columbiana, Alabama

OF COUNSEL:

Kelly Thrasher Fox
Hand Arendall LLC
1801 Fifth Avenue North, Suite 400
Birmingham, AL 35203
205-502-0122


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Shelby Cnty Judge of Probate: AL
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VERIFICATION OF THE APPROPRIATE MUNICIPAL OFFICIAL

I, the undersigned, Allen Reynolds, state as follows: For purposes of administering the City's Ordinance No. 05-14-06, I am the "Appropriate Municipal Official." I hereby offer the findings made in this "Finding of Public Nuisance, Notice and Order to Remedy, and Notice of *Lis Pendens*," make such orders as are offered herein, and provide such notice as is specified herein.

DONE this the 17 day of April, 2017.



Allen Reynolds
Appropriate Municipal Official
City of Columbiana, Alabama

This Instrument Prepared By:

Kelly Thrasher Fox
Hand Arendall LLC
1801 Fifth Avenue North, Suite 400
Birmingham, AL 35203



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Shelby Cnty Judge of Probate, AL
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CERTIFICATE OF SERVICE

Contemporaneously with the filing of this "Finding of Public Nuisance, Notice and Order to Remedy, and Notice of *Lis Pendens*," a copy of the same has been sent via certified mail, properly addressed and postage prepaid to all of the following persons on this the 17 day of April, 2017:

A. The person or persons, firm, association, or corporation last assessing the Subject Property for state taxes to the address on file in the Shelby County Revenue Commissioner's Office:

Ms. Agnes Elizabeth Stewart
1345 Americana Dr.
Birmingham, AL 35215

B. The record property owner or owners (including any owner or owners of an interest in the Subject Property) as shown from a search of the records of the office of the Judge of Probate of Shelby County, Alabama, at the owner or owners' last known address and at the address of the Subject Property:

Ms. Agnes Elizabeth Stewart
1345 Americana Dr.
Birmingham, AL 35215

Ms. Agnes Elizabeth Stewart
460 Chelsea Road
Columbiana, AL 35051

C. All mortgagees of record as shown from a search of the records of the office of the Judge of Probate of Shelby County, Alabama, to the address set forth in the mortgage or, if no address for the mortgagee is set forth in the mortgage, to the address determined to be the correct address by the Appropriate Municipal Official:

There are no mortgagees of record.

D. All lien holders of record as shown from a search of the records of the office of the Judge of Probate of Shelby County, Alabama to the address set forth in the statement of lien or, if

no address for the lien holder is set forth in the statement of lien, to the address determined to be the correct address by the Appropriate Municipal Official:

There are no lien holders of record.

E. Such other persons who are otherwise known to the Clerk or to the Appropriate Municipal Official who could have an interest in the Subject Property:

James P. Stewart
Martha E. Stewart
1345 Americana Dr.
Birmingham, AL 35215

Columbiana Water
50 Water Works Street
Columbiana, AL 35051

No other person is otherwise known to the Clerk or to the Appropriate Municipal Official to have an interest in the Subject Property.

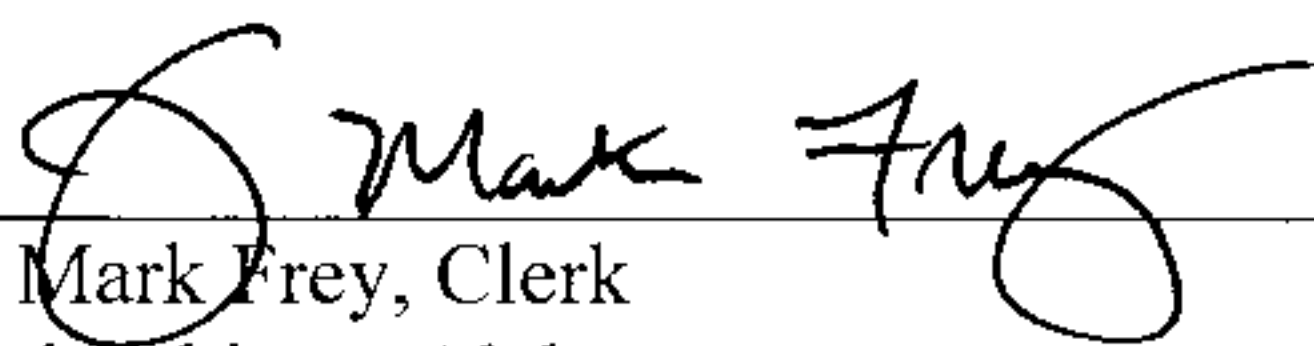
Contemporaneously with the filing of this "Finding of Public Nuisance, Notice and Order to Remedy, and Notice of *Lis Pendens*," a copy of the same has been posted at or within three feet of an entrance to the building on the Subject Property.


Contemporaneously with the filing of this "Finding of Public Nuisance, Notice and Order to Remedy, and Notice of *Lis Pendens*," a copy of the same has been posted in three public places located within the City: Columbiana City Hall, Columbiana Public Library, and Columbiana Water Works.

Notice that the Appropriate Municipal Official has made a finding that the Subject Property is a dangerous building because it is unsafe to the extent that it is a public nuisance and is subject to demolition and that a public hearing will be held on the date assigned herein will also be given to all interested parties and to the public at large by publication in the *Shelby County Reporter*.



Allen Reynolds,
Appropriate Municipal Official
Columbiana, Alabama


J. Mark Frey, Clerk
Columbiana, Alabama


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