

IN THE PROBATE COURT OF SHELBY COUNTY, ALABAMA

TOWN OF INDIAN SPRINGS VILLAGE,)
ALABAMA)
)
v.)
)
RICHARD O. BROWN;)
JOY BROWN;)
STATE OF ALABAMA;)
AFFINITY HOSPITAL, LLC D/B/A)
GRANDVIEW MEDICAL CENTER;)
NORTH SHELBY FIRE DISTRICT;)
)
SEE BELOW FOR LEGAL DESCRIPTION)

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

TAKE NOTICE that:

COMES NOW, Town of Indian Springs Village, Alabama ("the Town"), by and through its Appropriate Municipal Official, its Clerk, and its Attorney to provide notice pursuant to the Town's Ordinance No. 2022-02 ("the Ordinance") that the Appropriate Municipal Official has made a finding that a building located within the Town 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:

5533 Double Oak Lane, Indian Springs Village, Alabama 35124.

LEGAL DESCRIPTION:

Lot 2, Block 3, according to Cherokee Forest, First Sector, as recorded in Map Book 5, Page 17, in the Probate Office of Shelby County, Alabama. (5533 Double Oak Lane, Birmingham, AL 35243)

Subject to:

Public utility easements as shown by recorded plat, including a 7.5 foot easement on the East and South sides of subject property.

Restrictions, covenants and conditions as set out in instrument recorded in Deed Book 243, Page 25, and amended in Deed Book 263, Page 172, in Probate Office.

Transmission Line Permit to Alabama Power Company and South Central Bell as shown by instrument recorded in Deed Book 243, Page 761, in Probate Office.

PARCEL IDENTIFICATION NUMBER:

10-8-27-0-001-016.000

The Town 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 Town is invoking the procedure recommended by the District Court.
2. By the filing of this Notice, the Town 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 Town's intent to exercise its authority provided by law and specifically by the Town's ordinances.
3. The Ordinance 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 the Ordinance.
4. The Appropriate Municipal Official finds that the building located on the Subject Property is a "dangerous building" within the meaning of the Ordinance because of the following defects:

- (1) Exclusive of the foundation, the building shows thirty-three (33) percent, or more, of damage or deterioration of one (1) or more supporting members, or fifty (50) percent of damage or deterioration of the non-supporting enclosing or outside walls or covering;
- (2) 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;
- (3) 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;
- (4) The building has inadequate facilities for egress in case of fire or panic, or has insufficient stairways, elevators, fire escapes, or other means of ingress and egress to and from said building;
- (5) The building does not provide minimum safeguards to protect or warn occupants in the event of fire;
- (6) 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;
- (7) The building has parts thereof which are so attached that they may fall and damage property or injure the public or the occupants;
- (8) The building, or any portion thereof, is clearly unsafe for its use or occupancy;
- (9) 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;

- (10) The building has a portion remaining on a site after the demolition or destruction of the same or is abandoned so as to constitute such building, structure, part of building or structure, party wall, or foundation as an attractive nuisance or hazard to the public;
- (11) 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
- (12) The building has a condition or conditions that violate the Town'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 the Ordinance.

7. The Appropriate Municipal Official finds that the building on the Subject Property is a fire hazard existing in violation of the terms of the Ordinance.

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 a part of the main structure, including, but not limited to, houses, mobile or manufactured homes, trailers, 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, 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 Town 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 the Ordinance shall be held on the finding of the Appropriate Municipal Official in the Council Chambers at the Indian Springs Village Town Hall, 2635 Cahaba Valley Road, Indian Springs Village, Alabama 35124 on the 21st day of June, 2022, at 7:00 p.m. At that time, the Town 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 Town 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 Town 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 [Name of County] County, Alabama, upon filing with the Clerk of the Circuit Court of [Name of County] 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 the Ordinance.

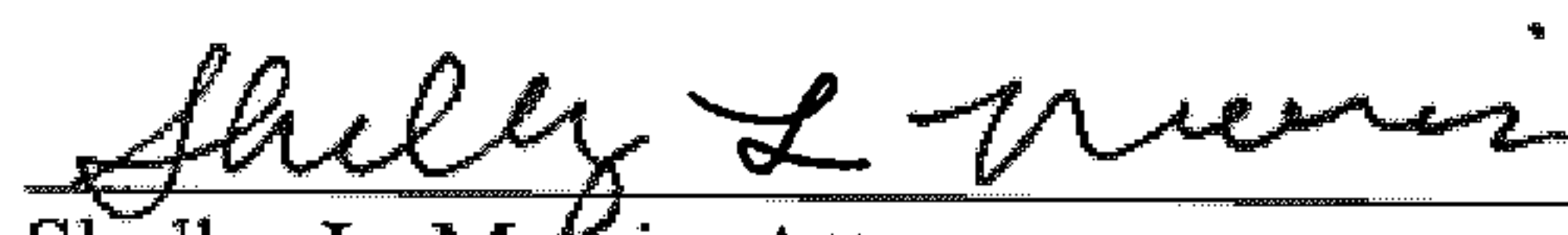
12. A failure by the Council to act on the findings of the Appropriate Municipal Official within one hundred twenty (120) days from the date of this "Finding of Public Nuisance, Notice and Order to Remedy, and Notice of *Lis Pendens*" shall constitute an abdication of the Appropriate Municipal Official's findings. However, this shall in no way prevent the Town from reinitiating the proceedings authorized by the Ordinance at any time so long as all the requirements of the Ordinance 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 Town 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 the Ordinance are satisfied. For further particulars, see the Ordinance. Anyone interested in the status of these proceedings should inquire with Indian Springs Village's Clerk at (205) 982-1755 or at 2635 Cahaba Valley Road, Indian Springs Village, Alabama 35124.

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 the Ordinance.

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*."


Shelby L. Morris, Attorney
Town of Indian Springs Village, Alabama

OF COUNSEL:


HAND ARENDALL HARRISON SALE, LLC

1801 5th Ave. North, Suite 400
Birmingham, Alabama 35203
(205) 324-4400
smorris@handfirm.com

VERIFICATION OF THE APPROPRIATE MUNICIPAL OFFICIAL

I, the undersigned, Benny McKenzie, state as follows: For purposes of administering the Town's Ordinance, 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 29 day of March, 2022.



Benny McKenzie
Appropriate Municipal Official
Town of Indian Springs Village, Alabama

This Instrument Prepared By:

Shelby L. Morris

HAND ARENDALL HARRISON SALE, LLC

1801 5th Ave. North, Suite 400

Birmingham, Alabama 35203

(205) 324-4400

smorris@handfirm.com

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 29 day of March, 2022:

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 Property Tax Commissioner's Office:

Richard O. and Joy Brown
362 Cahaba Farms Drive
Indian Springs Village, AL 35124

State of Alabama
c/o Don Armstrong, Shelby County Property Tax Commissioner
102 Depot Street
Columbiana, AL 35051

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:

Richard O. and Joy Brown
362 Cahaba Farms Drive
Indian Springs Village, AL 35124

Richard O. and Joy Brown
5533 Double Oak Lane
Indian Springs, AL 35242

C. 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:

Affinity Hospital, LLC d/b/a Grandview Medical Center
c/o James Joseph Eufinger
PO Box 10110
Columbia, MO 65205

D. 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:


North Shelby Fire District
4617 Valleydale Road
Birmingham, AL 35242

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 four public places located within the Town: Indian Springs Village Town Hall, Oak Mountain Elementary School, Shelby County Fire Station No. 1, and Shelby County Fire Station No. 2.

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*.


Benny McKenzie
Appropriate Municipal Official
Town of Indian Springs Village, Alabama


Joan Downs Clerk
Town of Indian Springs Village, Alabama



Filed and Recorded
Official Public Records
Judge of Probate, Shelby County Alabama, County
Clerk
Shelby County, AL
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