



FINAL ORDER

ID#E92022-3 Danford Payton Estate

Issued to: Danford Payton Estate
149 Cook Avenue

Citation No. 7122012, 9052012

Date of Issuance: September 20, 2022

Narrative Description of Violation: Danford Payton Estate has failed to maintain the property at 149 Cook Avenue. Violation notices, invoices, liens, letters, etc. have all gone ignored.

Violation(s): Failure to maintain property at 149 Cook Avenue and failure to pay for past violations, including taxes

Code Section: KRS 65.8825(6) failure to pay or contest, KRS 65.8828(1) failure to appear; KRS 99.705 blighted property, IPMC 302.4 Weeds; 108 Unsafe Structures & Equipment; 304.1 - Exterior Structure General; 304.1.1 Unsafe Conditions; Section 110 Demolition; Section 302.1 Sanitation; Section 307.1 Accumulation of Rubbish or Garbage

Code Title: Winchester Code of Ordinances - Chapter 2 – Administrative Hearing Board
ARTICLE VII, Section 2-401 Public Nuisances Related to Maintenance, Section 2-402
Dangerous and structurally unsafe buildings; Section 2-392 Hearing, Notice & Final Order

Full Description:

1. Any exterior property or premise that is not maintained in a clean, safe and sanitary condition.
2. Any premises and exterior property that is not maintained free from weeds or plant growth in excess of ten inches (10") in height.
3. The original structure was found to be dangerous to the life, health or safety of its occupants because it was deemed to be structurally unsafe or of such faulty construction that it was likely to partially or completely collapse.
4. The structure was deemed unfit for human occupancy or use in that it was found to lack maintenance, be in disrepair, vermin or rodent infested, lacked ventilation,

illumination, sanitary or heating facilities or other essential equipment required by the code. Property was condemned and later demolished on or about March 17, 2014.

Sec. 108 – Unsafe Structures and Equipment – When a structure or equipment is found by the code official to be unsafe, or when a structure is found unfit for human occupancy, or is found unlawful, such structure shall be condemned pursuant to the provisions of this code.

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

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

(Ord. No. 10-2011, § 22, 7-27-11)

Sec. 302.4 Weeds – All premises and exterior property shall be maintained free from weeds or plant growth in excess of ten inches (10"). All noxious weeds shall be prohibited. Weeds shall be defined as all grasses, annual plants and vegetation, other than trees or shrubs provided; however, this term shall not include cultivated flowers and gardens.

Upon failure of the owner or agent having charge of a property to cut and destroy weeds after service of a notice of violation, they shall be subject to prosecution in accordance with Section 106.3 and as prescribed by the authority having jurisdiction. Upon failure to comply with the notice of violation, any duly authorized employee of the jurisdiction or contractor hired by the jurisdiction shall be authorized to enter upon the property in violation and cut and destroy the weeds growing thereon, and the costs of such removal shall be paid by the owner or agent responsible for the property.

Sec. 302.1 Sanitation – All exterior property and premises shall be maintained in a clean, safe and sanitary condition. The occupant shall keep that part of the exterior property which such occupant occupies or controls in a clean and sanitary condition.

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

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

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

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

DO NOT ENTER
UNSAFE TO OCCUPY

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

City Ordinance
Code Official
City of Winchester

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

- A. The city and county shall possess a lien on property owned by the person found by a final, nonappealable order issued based upon an uncontested citation; by a final, nonappealable order of the board; or by a final judgment of a court of competent jurisdiction, to have committed a violation of an ordinance which the board is authorized to adjudicate, for all fines assessed for the violation and for all charges, costs, penalties, and fees, including attorney's fees, incurred by the city and county in connection with the enforcement of the ordinance.
- B. The lien shall be recorded in the office of the county clerk. The lien shall be notice to all persons from the time of its recording and shall bear interest, at the rate of four (4) per cent interest, until paid.
- C. Pursuant to KRS 65.8835, the lien shall take precedence over all other liens on the property, except state, county, school board, and city taxes, and may be enforced by judicial proceedings or to the extent permitted by law administrative hearing board enforcement proceedings.
- D. In addition to the remedy prescribed in subsection (a), the person found to have committed the violation shall be personally responsible for the amount of all fines assessed for the violation, including a sixty dollar (\$60.00) administration fee, and for all charges and fees incurred by the city and county in connection with the enforcement of the ordinance. The city and county may bring a civil action against the person and shall have the same remedies as provided for the recovery of a debt.
- E. The city and county shall be entitled to recover from the responsible party or parties all reasonable attorney fees and other costs incurred by the city and county by reason of the collection upon and enforcement of the responsible party's or parties' liability hereunder and the lien which secures the same.
- F. Upon payment, determination of the board or court order, the city and county shall be authorized to release any lien filed hereunder and recorded in the office of the county clerk.

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

Sec. 2-233. - Additional penalties for litigation. In the event litigation or an enforcement proceeding of the administrative hearing board is instituted to compel compliance with

this section, the defendant, if found liable by a final order shall, in addition to taxes, penalty and interest, be responsible for all costs, including reasonable attorney's fees. Also, the city shall have a lien upon the property of the defendant for the entire amount determined to be delinquent. (Ord. No. 3-2005, § 1, 2-15-05; Ord. No. 10-2020, § I, 7-7-20)

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

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

(Ord. No. 10-2011, § 13, 7-27-11)

Facts Constituting the Offense: This property has violations on it since 2010. There has been no response to letters, violation notices or citations over the years. The house was condemned and ultimately demolished on or about March 17, 2014. Liens were attached to the property for demolition and asbestos testing. This property was before the Administrative Hearing Board on September 20, 2022, with proper notification given to Danford Payton Estate by a Police Officer posting the notification on the property, and no one responded to the Citation to appear.

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

1. The property is blighted as defined by KRS 99.705.
2. The parcel is vacant in a predominantly built-up neighborhood, which by reason of neglect or lack of maintenance has become a place for the accumulation of trash and debris and a haven for vermin.
3. The parcel has required continuing maintenance by the city for a prolonged period of time and will continue to require maintenance in the future. Encumbrance liens upon the property are delinquent.

4. The parcel has been tax delinquent for a period of more than three years and has not been rehabilitated within the time constraints placed upon the owner by the appropriate code enforcement agency.

Offense Number: 2020-041

ADMINISTRATIVE HEARING BOARD

Hearing Date: September 20, 2022 **Proof of Notice:** Yes

Hearing Contested: No **Judgment:** \$18,691.05

Default: Yes

Remediation Order: **Fine:** **Costs:**

Penalty Fees:

FINAL ORDER



George Carruba, Board Chair

Date: September 20, 2022