



THE

CITY of PELLA

STAFF MEMO TO COUNCIL

ITEM NO: E-2
 SUBJECT: Approve Filing of Citation with District Court for 813.5 Washington Street
 DATE: October 18, 2022

BACKGROUND:

On January 15, 2022, the building located at 813.5 Washington Street caught fire and was damaged beyond repair. After inspecting the property, staff determined that it was to be deemed a dangerous building per City Code criteria. On April 5th and July 19th, letters were served requiring the property owner to bring the structure into compliance. The property owner (A.G. Residential LLC) and mortgage holder (Leighton State Bank) have been unresponsive to these notices.

City Code: Dangerous Buildings

Chapter 145 of the City Code includes criteria regarding the designation of a dangerous building. In general, should a building become a hazard to those who could be inside of it or if it could present a hazard to other properties, the city can declare the property a dangerous building. The owners are to be notified and given an opportunity to abate the dangerous building; however, should the owners not remedy the problems, the city can order the dangerous building abated or demolished by seeking a court order to that effect. The city can then seek the costs for the abatement/demolition of the dangerous building from the property owner and, if need be, assess the affected costs to the property.

Citation

To-date, the property owner has not taken any steps to abate or remove the remains of the dangerous building; therefore, the next step is to file a citation with the District Court to order the property owner to abate the nuisance on the property. Filing of the citation requires approval of the City Council. The attached drafted citation includes a provision requesting the authority for the city to abate the nuisance if the property owner does not take action. Furthermore, the city requests the authority to bill the property owner for the cost of demolishing the property; staff estimates the cost to complete this action is approximately \$24,000. The demolition costs can be assessed against the property and property owner if permitted by court order. This citation will be subsequently indexed with a further action to notify lienholders and future buyers of the pending action and potential for assessment of costs. Once the costs are assessed, they will be collected via property taxes.

Summary

In summary, staff is recommending a motion to approve filing the attached citation with the District Court to order the property owner to abate the nuisance at 813.5 Washington Street. Should the property owner not comply, the citation includes a request from the city for the authority to abate the nuisance and to assess the property and property owner accordingly with the assessed costs collected via property taxes.

ATTACHMENTS: Citation
 REPORT PREPARED BY: Zoning Analyst
 REPORT REVIEWED BY: City Administrator, City Clerk, Planning and Zoning Director
 RECOMMENDATION: Motion approving filing of the attached citation with the District Court for 813.5 Washington Street

IN THE IOWA DISTRICT COURT FOR MARION COUNTY

CITY OF PELLA, IOWA)	
)	Case No.
Plaintiff,)	
)	
v.)	
)	
A.G. Residential, L.L.C., Leighton)	
State Bank, and All Parties In)	
Possession of)	PETITION
813.5 Washington St.)	(MUNICIPAL INFRACTION)
Pella, Iowa 50219)	
)	(Lis Pendens)
Defendants.)	

Plaintiff City of Pella, Iowa states in support of its Petition:

1. Plaintiff is an Iowa municipal corporation.
2. Defendant, A.G. Residential, L.L.C., is the titleholder of record of the property

legally described as:

The North 50 feet of the East 184 feet of Lot 1 in Block 27 in the City of Pella, Iowa, except property described in the Plat of Survey recorded in Book 261, Page 316, Deed Record, and also except the East 73.5 feet of the South 25 feet of the North 50 feet of said Lot 1.

and locally known as 813.5 Washington Street, Pella, Iowa (“the property”).

3. Defendant, Leighton State Bank, is the mortgage holder of the subject property.
4. The District Court has jurisdiction of this matter pursuant to Iowa Code section 364.22(6) because the total amount of civil penalties, inclusive of costs of demolition, exceeds the

jurisdictional amount for small claims set forth in section 631.1. The anticipated cost for demolition is approximately \$24,000.

5. The building located on the property was inspected on April 4, 2022, by the City of Pella Building Official.

6. Following inspection, the Building Official determined the building located on the property is in such dangerous and damaged condition so as to constitute an unsafe building that constitutes a hazard to safety, health, or public welfare under the Code of Ordinances of the City of Pella, Iowa.

7. Notice of said violations was served by certified mail upon Defendant A.G. Residential, L.L.C., c/o Andrew G. Aeilts, on April 5, 2022, a copy of which is attached hereto and by this reference incorporated herein as though set out in full.

8. Plaintiff reinspected the property on July 19, 2022 and determined the property was still in violation as the structure was still an unsafe building, it constitutes a public nuisance under the Code of Ordinances. Plaintiff served final notice of said violations by certified mail on July 21, 2022.

9. The structure constitutes a public nuisance as defined by City of Pella Municipal Code Chapter 145 for the following reasons:

- a. Whenever any portion or member or appurtenance thereof is likely to fail, or to become detached or dislodged, or to collapse and thereby injure persons or damage property.
- b. Whenever any portion of a building, or any member, appurtenance, or ornamentation on the exterior thereof is not of sufficient strength or stability or is not so anchored, attached or fastened in place so as to be capable of resisting a wind pressure of twenty (20) pounds per square foot.
- c. Whenever any portion thereof has wracked, warped, buckled or settled to such an extent that walls or other structural portions have materially less resistance to winds or earthquakes than is required in the case of similar new construction.

- d. Whenever the building or structure, or any portion thereof, because of (i) dilapidation, deterioration or decay; (ii) faulty construction; (iii) the removal, movement or instability of any portion of the ground necessary for the purpose of supporting such building; (iv) the deterioration, decay or inadequacy of its foundation; or (v) any other cause, is likely to collapse partially or completely.
- e. Whenever, for any reason, the building or structure, or any portion thereof, is manifestly unsafe for the purpose for which it is being used.
- f. Whenever the exterior walls or other vertical structural members list, lean or buckle to such an extent that a plumb line passing through the center of gravity does not fall inside the middle one-fourth (1/4) of the base.
- g. Whenever the building or structure, exclusive of the foundation, shows thirty-three percent (33%) or more damage or deterioration of its supporting member or members, or fifty percent (50%) damage or deterioration of its non-supporting members, or of its enclosing or outside walls or coverings.
- h. Whenever the building or structure has been so damaged by fire, wind, earthquake or flood, or has become so dilapidated or deteriorated as to become (i) an attractive nuisance to children; (ii) a harbor for vagrants, criminals or immoral persons; or (iii) as to enable persons to resort thereto for the purpose of committing unlawful or immoral acts.
- i. Whenever any building or structure, because of obsolescence, dilapidated condition, deterioration, damage, inadequate exits, lack of sufficient fire-resistive construction, faulty electric wiring, gas connections, or heating apparatus, or other cause, is determined by the State Fire Marshal or City Fire Chief to be a fire hazard.
- j. Whenever any building or structure is in such a condition as to constitute a public nuisance known to the common law or in equity jurisprudence.

10. The building should be immediately vacated, and the public nuisances should be abated at the owner's expense pursuant to Code of Ordinances of the City of Pella, Iowa, sections 145.03, 155.01, and 50.13, and Iowa Code sections 364.12(3)-(4).

11. The Plaintiff has no plain, speedy and adequate remedy at law.

12. The court may take judicial notice of the Code of Ordinances of the City of Pella, Iowa, since it was compiled pursuant to Iowa Code Section 380.8. Iowa Code Section 622.62(1) (2021).

THEREFORE, the Plaintiff requests that the Court declare the building located upon this property a dangerous building and public nuisance, find the Defendant(s) in violation of the Code

of Ordinances of the City of Pella, Iowa, and enter an order directing the Defendants who hold title and/or are contract purchasers, to immediately vacate and secure the structure and take the appropriate steps to abate the nuisance.

Further, the Plaintiff requests that if the nuisance has not been abated in the time ordered by the Court, the Plaintiff be authorized and directed to abate the public nuisance by entering upon the property and demolishing and removing the structure and leveling the ground upon which it stands, and for all other relief deemed equitable under the circumstances.

Further, the Plaintiff requests that the Court assess all said costs against the Defendants who hold title and/or are contract purchasers as a personal judgment and assess in rem against the property for the costs of this action and the costs incurred in the enforcement of the Code of Ordinances of the City of Pella, Iowa, inclusive of any costs incurred in the abatement of the public nuisances, all with interest.

Further, the Plaintiff requests that any Defendants who hold an interest by virtue of a lien or mortgage be ordered to allow the abatement of the public nuisances.

CITY OF PELLA, IOWA

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