

**IN THE FRANKLIN COUNTY MUNICIPAL COURT  
ENVIRONMENTAL COURT  
COLUMBUS, OHIO**

**City of Columbus, Ohio** :  
% Richard C. Pfeiffer, Jr. :  
Columbus City Attorney :  
90 West Broad Street, Room 200 :  
Columbus, Ohio 43215-9013 :  
:  
Plaintiff, :

: Case  
Number 2006 EVA 060018

-vs-

Judge Harland H. Hale

**Briggs Road Shopping Center Corp,** :  
% Thomas A. Tonti :  
34 North High Street :  
Columbus, Ohio 43215-3010 :

and

**Real Property Located At:** :  
2732-2744 Briggs Road :  
Columbus, Ohio 43204 (In Rem) :

Defendants. :

**DECISION and ENTRY**

This matter is before the Court concerning Defendant's Property at 2732-2744 Briggs Road. For the reasons stated below, Plaintiffs request that the Defendant's building be declared a public nuisance is **GRANTED**. Further, as a result of the Defendant's failure to bring this building into compliance in the last three years, Plaintiff's request for a permanent injunction ordering the structure demolished is **GRANTED**.

## **I. Facts**

The real property subject to this complaint is located at 2732-2744 Briggs Road, known as Parcel N<sup>o</sup> 010-089173, on which is constructed a commercial building, situated in the City of Columbus, Franklin County, Ohio.

Defendant Briggs Road Shopping Center Corp. is the property owner of record for this real property that is the subject matter of this complaint by virtue of a limited warranty deed filed with the Franklin County Recorder, and is therefore the owner defined by C.C.C. § 4101.15. Defendant has the responsibility for the management and control of the premises.

Thomas Tonti, as agent for Briggs Road Shopping Center Corp., is the owner as defined by the C.C.C. § 4101.15, and has responsibility for the management and control of the premises.

This property was inspected on April 8, 2005 by inspectors Richard Booker and Paul Cass (hereinafter “inspectors”) as a result of a complaint being filed with the City of Columbus. They found an unoccupied building that was not secured. The inspectors found fallen sheeting inside the building that once covered the bar joists and roof decking, and they saw signs that the sheeting that remained on the roof was waterlogged and likely to fall. The bar joists, beams, and columns had corroded due to their exposure to the weather and neglect. This roof, if it were not in disrepair, would provide lateral bracing for the cement block in the event of wind. Inspectors found that there were cracks in the cement block that forms the structure. These cracks, which stairstep up, indicate that the block is moving and the building is shifting.

The front of the structure is lined with a covered walkway that is rusted and in disrepair. Inspectors found that the material that forms this walkway covering is in danger of falling off and injuring a pedestrian or a passing car. Neighbors have indicated that material from the building has blown into their nearby yards.

As a result of the inspectors findings on April 8, 2005, they issued building order #05415-00000-00226 (hereinafter “building order”) on April 14, 2005 to Defendant Thomas A. Tonti, who has acknowledged receipt of the order. This building order told the findings of the inspectors and the determination that the building in its deteriorated state, presented a danger to the community. The order stated that the conditions observed by the inspectors caused the building to be an unsafe building in violation of the Columbus Building Code §4109.01. The order instructed the Defendant on the procedural process for bringing this property into compliance with the Columbus Building Code. The process would include submitting plans to the City of Columbus Department of Development for approval, obtaining a building permit, calling for all required inspections and obtaining final approval. The alternative option provided in the violation states, “If the decision is not to repair or rehabilitate the structure-then employ a licensed demolition contractor to obtain a demolition permit and raze the building to grade, leaving the site in a clear, safe and sanitary condition . . .”

The order instructed the Defendant to correct the violations within 30 days of service. If the Defendant wished to challenge this order it had to be filed within 30 calendar days. The Defendant has never attempted to correct the violations and did not appeal the building order until March 13, 2006 which was almost eleven months after receiving the building order. This building order was upheld by the Columbus Building Commission. Defendant appealed the Building Commission’s decision on December 16, 2006 here in the Franklin County Municipal Court, Environmental Division. On September 20, 2007, the court found that the Appellant failed to file a brief or otherwise prosecute the appeal, and the appeal was dismissed upon the motion of Plaintiff.

On October 10, 2006, David Holtzapple, a structural engineer, inspected the property in question at the request of Briggs Rd. Shopping Center Corp. He testified that he found a building

whose roof had, “caved in.” Holtzapple found that the roof decking had partially collapsed in over 70 percent of the building and the remainder was in very poor condition due to the fact that it was subjected to the weather. Tr. Vol II at 48:17-21. It was also his professional opinion that the roof would continue to deteriorate and is in worse condition now than it was when he was at the site in October 2006. Tr. Vol II at 51: 12-16.

According to Mr. Tonti, the building has been vacant since the late ‘70s. It has been subject to much community outrage and litigation ever since. Various neighbors living in the subdivision surrounding the Defendant’s building have testified as to the attractive nuisance that this property has brought to their community. For instance, Norma Carter who has lived in a house behind the Defendant’s building since 1962 testifies that she has witnessed illegal dumping and sex occurring behind the building. Tr. Vol II 19:4-21.

Attached are copies of photographs of the structure. The first two photographs depict the deteriorated ceiling which is open because there is no roof. The third photograph is a current picture of the deteriorated structure surrounded by high weeds and unmowed grass.

## II. Law and Analysis

The Columbus Building Code § 4109.01 states in part, “[a]ll buildings or structures which are structurally unsafe . . . or are otherwise dangerous to human life . . . are for the purpose of this Building Code, ‘unsafe buildings.’ All such unsafe buildings are declared to be public nuisances pursuant to the definition in Chapter 4101 and shall be abated by repair and rehabilitation or by demolition in accordance with the procedure of this chapter.” C.C.C. § 4109.01.

In the present case, Defendant Thomas Tonti admits that the building in question is not structurally safe. “If people feel that’s a safety issue, and I can certainly see where that would be, that we would remove that. And then to make the property structurally safe *again* (emphasis added) and

so that nobody—the wall doesn't fall over, we would, you know, brace the building . . .” Tr. Vol II at 79:5-14. This opinion was further supported by the defense witness David Holtzapple. Holtzapple stated in his testimony that when he inspected the site he, “found a building whose roof had caved in.” Tr. Vol II at 48:17-21. He further stated that the roof decking was in, “very poor condition.” Inspector Richard Booker, who inspected for the City of Columbus, testified that this concrete block structure needed a roof to provide a lateral brace in the event of wind. Tr. Vol I at 15:2-11. He further noted that he noticed cracks in the blocks in a “stairstep pattern,” which indicated to him that the block was moving and the building was shifting. Tr Vol I at 23:11-18. Since this building is moving and shifting, and is in a deteriorated state, it poses a significant safety risk to the surrounding community. The lack of a roof, and thus lateral support, makes this building structurally unsafe. Defendant's building can be deemed an ‘unsafe building’ in accordance with Columbus Building Code §4109.01, and is therefore a public nuisance. Frankly, this building is much more than just an eyesore. It is, and has been, a serious safety issue as well as a harborage of prostitution and criminal mischief. Despite prior litigation and repeated attempts to encourage Defendant to at least roof and board the building, nothing has been done. Now, this building is a partial shell, with no roof reminiscent of the Berlin Wall during its collapse.

There is no evidence that any work has been performed on this building since the building order was issued on April 14, 2005. C.C.C. §4109.02 requires that work, “shall commence within thirty (30) days and continue work, either to complete the specified repairs or improvements or to demolish and remove the building or structure, or portion thereof, leaving the premises in a clean, safe, and sanitary condition.” The building order required that the violations listed (including the deteriorating roof) be corrected within 30 days of service.

Defendant argues that he was not provided proper notice that the City of Columbus was

requiring the Defendant to replace or repair the roof structure. Defendant acknowledges receipt of the building order but argues that the “focus” of this order was on the fact that the building was unsafe, and that Defendant had hired an engineer to draw plans fix this problem without replacing the roof. The problem with this argument is that even if the Defendant were allowed to ignore the parts of the building order in which the Defendant deemed not to be “the focus,” he was still required to commence work within thirty (30) days of service. Work never commenced to correct the violations listed on the building order, and in fact, Defendant has done nothing.

The Ohio Basic Building Code as incorporated by the Columbus Building Code in §4103.03(A), does require that the Defendant’s roof be maintained. The Ohio Building Code provides for the requirements of a roof and states in part:

Roof decks shall be covered with approved roof coverings secured to the building or structure in accordance with the provisions of this chapter. Roof coverings shall be designed, installed and maintained in accordance with this code and the approved manufacturer’s instructions such that the roof covering shall serve to protect the building or structure.

O.B.C. § 1503.1.

Further, the Ohio Building Code requires that, “[b]uildings, structures, equipment and parts thereof, shall be maintained in a safe and sanitary condition and in accordance with the condition(s) established in current and any previous plan approvals and Certificates of Occupancy.” O.B.C. § 3401.2. Defendant’s building, without 70% of its roof, has not remained in accordance with the conditions established in current and previous plan approvals and Certificates of Occupancy and has not been maintained in a “safe condition.” Richard Booker testified as to the deterioration of the roof and stated that it would continue to deteriorate because, “water is going to continue to wash into the building.” Tr. Vol I 17:14-19. The lack of a proper roof on the Defendant’s building is a violation of O.B.C. § 1503.1.

Finally, Columbus Building Code provides the city the right to demolish when it states in pertinent part:

In case the owner of record, or the purchaser under a land contract if that be the case, shall fail, neglect or refuse to comply with the notice to repair, rehabilitate or demolish and remove such building or structure or portion thereof, and where such person, either the owner of record or the purchaser under a land contract fails to file an appeal as provided herein in C.C. 4109.02 of the Columbus City Codes, or having filed an appeal, the order is affirmed by the building commission, the owner of record, or the purchaser under a land contract shall be subject to the penal provisions of the Building Code and the building official shall proceed to have the building or structure or portion thereof demolished and removed from the premises, leaving the premises in a clean, safe, and sanitary condition and the cost of such work shall be paid by the city.

C.C.C. § 4109.06.

The Defendant Thomas Tonti has not complied with the notice to repair. Defendant filed an appeal and his appeal was denied. It is now over three years after the Defendant received the building order, and the property has only continued to deteriorate and become more of a nuisance to the surrounding community. Defendant is therefore ordered to demolish the building and remediate the site in compliance with all applicable laws by August 1, 2008. Thereafter, Plaintiff may enter upon the premises and remove, remediate and restore the property including demolition of the building, the costs of which shall be paid by the Defendant and may be taxed as costs of this action.

III. **Conclusion**

Based on the foregoing, Plaintiffs request that the Defendant's building be declared a public nuisance is **GRANTED**. Further, as a result of the Defendant's failure to bring this building into compliance in approximately 30 years, Plaintiff's request for a permanent injunction ordering the structure demolished is **GRANTED**, consistent with the decision herein. Costs to the Defendant.

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DATE

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JUDGE HARLAND H. HALE

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