

IN THE COMMON PLEAS COURT OF CUYAHOGA COUNTY, OHIO  
CIVIL DIVISION

THOMAS K. BELL  
819 Jefferson Avenue  
Cleveland, Ohio 44113,

Plaintiff,

v.

CITY OF CLEVELAND, OHIO  
c/o City Law Director  
13601 Euclid Avenue  
Cleveland, Ohio 44113,

and

TREMONT WEST DEVELOPMENT CORPORATION  
c/o Statutory Agent Christine Krossel  
1734 Brainard Avenue  
Cleveland, Ohio 44109,

and

Stephanie Larkins (in her  
individual capacity and/or  
in her capacity as Inspector  
and/or Agent of the City of  
Cleveland in its Code  
Enforcement Division)  
c/o Code Enforcement Division  
601 Lakeside Avenue  
Cleveland, Ohio 44114,

and

John Moss (in his individual  
capacity and/or in his  
capacity with Tremont West  
Development Corporation)  
2457 W. 11th Street  
Cleveland, Ohio 44113,

and

2008 DEC 16 P 12:35

Case No.

JUDGE

COMPLAINT

JURY DEMAND ENDORSED HEREIN

Judge: HOLLIE L GALLAGHER

CV 08 679153

Jane/John Doe(s),

Defendants.

1. The plaintiff, Thomas K. Bell, is a property owner in the City of Cleveland, Cuyahoga County, Ohio, in the Tremont area.

2. The defendant, City of Cleveland, Ohio (hereinafter "City") is a municipal corporation and/or a Department, duly constituted and legally organized and recognized pursuant to the laws of the State of Ohio, and is a resident of and/or does business within Cuyahoga County, Ohio.

3. The defendant, Tremont West Development Corporation (hereinafter TWDC) is a corporation duly constituted and legally organized and recognized pursuant to the laws of the State of Ohio and is a resident of and/or does business within Cuyahoga County, Ohio.

4. The defendant, Stephanie Larkins (hereinafter "Larkins") is an Inspector for the City of Cleveland, Department of Building and Housing, Division of Code Enforcement, and/or is an officer, agent and/or employee of the City of Cleveland, Ohio and at all times relevant to this complaint was acting in such capacity, in furtherance of the business interests of said defendant and/or was acting in her individual capacity.

5. The defendant, John Moss (hereinafter "Moss") is a committee chair and/or a member of TWDC, and/or is an officer,

agent and/or employee of TWDC, Ohio and at all times relevant to this complaint was acting in such capacity, in furtherance of the business interests of said defendant and/or was acting in his individual capacity.

6. The defendant(s), John Doe(s), is/are a pseudonym for the other individuals who planned, participated in or otherwise engaged in the conduct complained of herein. The names of said defendants will be supplemented after discovery.

FIRST CLAIM

7. The plaintiff incorporates by reference the facts and law as alleged in paragraphs one (1) through six (6) as if fully rewritten herein.

8. Plaintiff has been the legal owner of the property known as 2441-2443 Professor Avenue Cleveland, Ohio 44113 since on or about November 29, 2002 and his name and current address have been on record with the Cuyahoga County Auditor and Cuyahoga County Recorder since that time. The said property has a value of approximately \$100,000 with the home and the lot; however, without the home on the lot, the subject property's value is approximately \$50,000.

9. In or about 2007 and/or 2008 and continuing to the present, defendants Moss and/or Doe(s) led a group or committee which is sanctioned and/or authorized by the TWDC and/or the City, which group creates a list of properties in

Tremont which are alleged to not be up to Cleveland City Code and presents the lists to the City of Cleveland with TWDC's approval.

10. In or about 2008, unbeknownst to plaintiff, defendants Moss and/or Doe(s) caused plaintiff's said property to be placed on the list, such to cause it to be subject to and scheduled for demolition.

11. During the period of over six years that the plaintiff has owned the subject property he has not received any type of citation, violation or written or verbal warning concerning the property with the exception of a notice in or about 2006 to remove debris which someone else had left on the property without his knowledge or consent, which debris was promptly removed.

12. On or about November 16, 2008 defendant Larkins, at the request of defendants Moss, TWDC, Doe(s) and/or the City, obtained a search warrant for the subject property, forced entry to the property and conducted a search of same.

13. The affidavit in support of the search warrant is misleading and/or is insufficient to support probable cause to search the subject property, including but not limited to the following bases:

a. Plaintiff has been the titled owner of the property for over six years, with address and telephone number readily

available; however, defendant Larkins did not make reasonable attempts to contact him for consent to search;

b. The exterior of the subject property is/was in good condition except for cosmetic repairs; and

c. Although the subject property is/was vacant, its doors and windows have continually been locked and secured such that there is no "open entry" to the property.

14. Thereafter, when Plaintiff inquired of defendant Larkins as to the reason for the search, she explained that the property was being condemned and scheduled for demolition. Said defendant further suggest that Plaintiff obtain building permits in order to stop the demolition proceedings.

15. In reliance on the statements of defendant Larkins, Plaintiff promptly obtained building permits from defendant City at a cost of approximately \$600.00.

16. Thereafter, Plaintiff received a Notice of Violation of Building and Housing Ordinances issued on November 20, 2008 listing approximately 30 items (interior and exterior) which needed to be repaired by December 20, 2008 to avoid demolition of his property. The Notice further indicated that the City's action was based upon "emergency".

17. Said Notice further indicated that the subject property constitutes a public nuisance because it constitutes "an eminent danger and peril to human life and public health,

safety and welfare" and that, therefore, the City is entitled to summarily abate the nuisance by demolition of the property.

18. The subject property is not a public nuisance as defined by Ohio law and City ordinances, nor do any of the alleged violations for which plaintiff was cited constitute an eminent danger or peril to human life, public health or public safety and welfare.

19. Further, the thirty day period for making repairs was unrealistic and unreasonable and the repairs demanded by the City had no relation to the safety and welfare of the public; therefore, plaintiff contacted the City who, through its Chief Building Officer, indicated that the permits would not stop the demolition process; rather, in order to stop the process, an appeal to the City's Board of Building Standards was required.

20. On December 3, 2008 Plaintiff filed an appeal with the said Board of Building Standards; however, at a meeting on or about December 9, 2008, the City's Assistant Building and Housing Director Ron O'Leary told the residents at a meeting of the Tremont Development Corporation that the appeal to the City's Board of Building Standards would not stop demolition.

21. The search warrant for plaintiff's property was without cause, justification or excuse and was so lacking in probable

cause such that the search was invalid and the resulting violation notice improper.

22. Ohio Revised Code Section 3103.09 is unconstitutional and/or unconstitutional as applied by defendant for several reasons, including but not limited to the fact that the same does not include effective and meaningful appeal rights and violates due process; further, it allows arbitrary and capricious action against property owners at the whim of defendants.

23. The entry on plaintiff's property and the notice scheduling his home for demolition and the conduct of defendants set forth foregoing are in violation of the Constitution and laws of the United States and of the State of Ohio.

24. Said wrongful acts and conduct as alleged in the foregoing paragraphs of this complaint were performed under the direction and approval of the defendants, acting in furtherance of the defendants' individual interest and/or acting in furtherance of the business interests of the defendants.

25. Said wrongful acts and conduct of the defendants as set forth in the foregoing paragraphs of this complaint were performed on behalf of defendant City and/or TWDC, who through their respective officers, agents and/or employees knew or

should have known about said acts and conduct and should have taken appropriate action to stop and/or prevent such illegal acts and conduct from taking place.

26. Said wrongful acts and/or conduct by defendants were performed knowingly, wantonly, willfully, and/or intentionally and with reckless disregard for the rights of plaintiff and/or with intent to harass plaintiff, cause him to purchase worthless building permits, and deprive him of his property and his Constitutional and legal rights under color of law.

27. As a direct and proximate result of the wrongful acts and conduct and/or failures to act of defendants, plaintiff has suffered possible loss of the subject property, loss of income and investment and loss of monies expended for permits and repairs, loss of potential sale of the property, and has further suffered severe and intense emotional and physical distress, frustration, mental anguish, and loss of reputation and standing in the community; further, plaintiff has and will continue to incur legal fees and expenses to seek vindication of his legal rights.

SECOND CLAIM

28. The plaintiff incorporates by reference the facts and law as alleged in paragraphs one (1) through twenty-seven (27) as if fully rewritten herein.

29. The defendant City is responsible for the policies,



statements, ordinances, regulations, customs, and/or usages, which policies, statements, ordinances, regulations, customs and/or usages are pursued by agents and employees of the City of Cleveland, Ohio under color of law.

30. Said defendant has promulgated and/or adopted customs, usages, statements, ordinances, regulations and/or policies whereby malicious abuse of process, violations of due process, selective enforcement of laws and deprivation of interests in property and property rights by agents and/or employees of the City under color of law, have become the norm, the same being condoned, uncontrolled and unpunished.

31. The Defendant City has failed to adequately and properly train and supervise its officers in proper procedures with regard to condemnation and demolition of property and those matters complained of herein by plaintiff.

32. The plaintiff has been subjected, because of those actions and/or failures to act of defendants as set forth foregoing, to deprivation under color of law and of the custom an usage of the defendants of rights, privileges and immunities secured to plaintiff by the Constitution and laws of the United States and State of Ohio, and particularly his right to equal protection and due process of laws.

33. The extreme and outrageous acts and conduct of defendants were performed knowingly, intentionally, recklessly and

maliciously to the detriment and injury of plaintiff.

34. As a direct and proximate result of the defendants' extreme and outrageous acts and conduct the plaintiff has suffered those damages set forth in the foregoing paragraph twenty-seven (27).

#### THIRD CLAIM

35. The plaintiff incorporates by reference the facts and law as alleged in paragraphs one (1) through thirty-four (34) as if fully rewritten herein.

36. The extreme and outrageous acts and conduct of defendants as set forth foregoing did constitute abuse of process under color of law, all without cause, justification or excuse.

37. As a direct and proximate result of the wrongful acts and conduct of defendants plaintiff has suffered those damages set forth in the foregoing paragraph twenty-seven (27).

#### FOURTH CLAIM

38. The plaintiff incorporates by reference the facts and law as alleged in paragraphs one (1) through thirty-seven (37) as if fully rewritten herein.

39. Defendant Moss's wife is the Second Vice President of TWDC Board of Directors.

40. The decisions made by defendants Moss and/or Doe(s) on behalf of TWDC as to property with alleged Code violations are invalid, improper, and flawed by conflict of interest which

was know and/or should have been know to TWDC.

41. As a direct and proximate result of the wrongful acts and conduct and/or failures to act on the part of said defendants plaintiff has suffered those damages set forth in the foregoing paragraph twenty-seven (27).

FIFTH CLAIM

42. The plaintiff incorporates by reference the facts and law as alleged in paragraphs one (1) through forty-one (41) as if fully rewritten herein.

43. The actions of defendants constitute conspiracy of defendants to deprive plaintiff of his property.

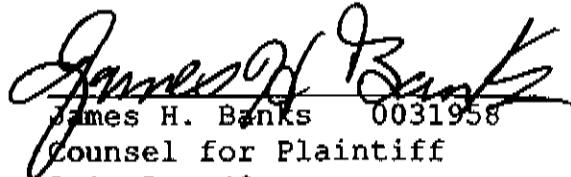
44. As a direct and proximate result of the wrongful acts and conduct and/or failures to act on the part of said defendants plaintiff has suffered those damages set forth in the foregoing paragraph twenty-seven (27).

WHEREFORE, plaintiff demands judgment on the foregoing claims, whether considered jointly and/or severally, against defendants jointly and/or severally as follows:

1. Awarding him compensatory damages in excess of Twenty-Five Thousand Dollars (\$25,000.00);
2. Awarding him punitive damages in excess of Twenty-Five Thousand Dollars (\$25,000.00) each;
3. Awarding plaintiff his reasonable attorney fees and costs and expenses of this action;

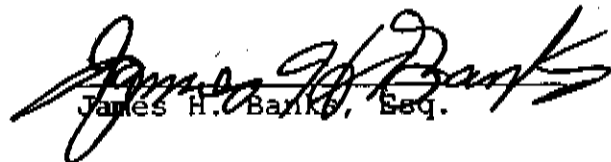
4. Granting injunctive relief ordering defendants to cease and desist all action toward demolition of plaintiff's property; and

5. Granting such other and further relief as may be deemed just by the Court.

  
James H. Banks 0031958  
Counsel for Plaintiff  
P.O. Box 40  
Dublin, Ohio 43017  
Tel. (614) 866-0666

JURY DEMAND

Plaintiff demands a trial by jury of this action.

  
James H. Banks, Esq.

IN THE COMMON PLEAS COURT OF CUYAHOGA COUNTY, OHIO  
CIVIL DIVISION

THOMAS K. BELL,

Plaintiff,

v.

JOHN MOSS, et al.,

Defendants.

Case No.

JUDGE

2008 DEC 16 P 12:34

CLERK OF COURT  
CUYAHOGA COUNTY

Judge: HOLLIE L GALLAGHER

CV 08 679153

PLAINTIFF'S APPLICATION  
FOR TEMPORARY RESTRAINING ORDER

Now comes plaintiff, by and through counsel, and upon the Complaint and application for temporary and preliminary injunctive relief contained therein, the Motion for Preliminary Injunction and Brief in Support and this Application, hereby move this Court for a Temporary Restraining Order enjoining the defendants, their agents, servants, employees, attorneys and all persons in active concert and participation with them from demolishing or otherwise destroying the home on plaintiff's property pending a ruling on Plaintiffs' Application for Preliminary Injunction.

In support of this Application, plaintiff states that in the absence of a temporary restraining order he will suffer irreparable harm and injury for which there is no adequate remedy at law.

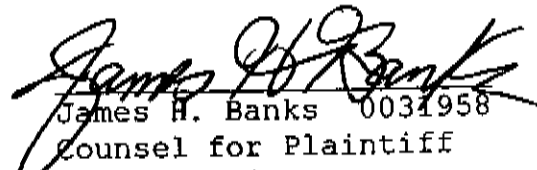
Counsel for plaintiff certifies to this Court that prior to the filing of the Complaint herein that to have

notified defendants to cease their illegal conduct would have been a futile act, since, at all times, to the best of plaintiff's knowledge and belief, defendants purported to act pursuant to and under color and pretense of the statutes, ordinances, regulations customs and usages of the State of Ohio and the City of Cleveland.

Notice that this Application for a Temporary Restraining Order would be filed was given to the defendants by telephone call to counsel for defendants and/or defendants on December 16, 2008.

The issuance of a Temporary Restraining Order at this early stage of the dispute will prevent irreparable damage to plaintiff and will not seriously prejudice the defendants. A Temporary Restraining Order in this case will do nothing more than preserve the status quo until this matter can be more fully addressed at the hearing on Plaintiff's Motion for Preliminary Injunction. A short preservation of the status quo, until the ruling on the preliminary injunction, will serve the interest of justice and the interests of the parties involved.

Respectfully submitted,

  
James H. Banks 0031958  
Counsel for Plaintiff  
P.O. Box 40  
Dublin, Ohio 43017  
Tel. (614) 866-0666

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing was duly served by facsimile, delivery or ordinary U.S. Mail upon each defendant this 16th day of December, 2008.

  
James H. Banks, Esq.

IN THE COMMON PLEAS COURT OF CUYAHOGA COUNTY, OHIO  
CIVIL DIVISION

THOMAS K. BELL,

Plaintiff,

v.

JOHN MOSS, et al.,

Defendants.

2008 DEC 15 12:38

Case No.

JUDGE

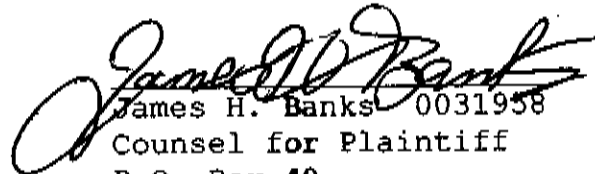
Judge: HOLLIE L GALLAGHER

CV 08 679153

PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

Now comes plaintiff, by and through counsel, and moves this Court pursuant to Civil Rule 65 for a Preliminary Injunction requiring defendants to cease and desist all demolition proceedings on plaintiff's property for good cause, as set forth more fully in the Memorandum In Support attached hereto and incorporated herein as if fully rewritten and as will be set forth more fully at hearing of this cause.

Respectfully submitted,



James H. Banks 0031958

Counsel for Plaintiff

P.O. Box 40

Dublin, Ohio 43017

Tel. (614) 866-0666

MEMORANDUM IN SUPPORT

Plaintiff in this case is the owner of residential property in Tremont, Cleveland, Ohio.

As set forth in the affidavit attached hereto, incorporated herein as if fully rewritten and marked as



Exhibit A and the documents attached thereto, and as will be set forth more fully at hearing of this cause, defendants have condemned plaintiff's property and intend to demolish same on or after December 20, 2008, all without cause, justification or excuse and without reasonable notice nor reasonable opportunity to contest same.

As further set forth therein, the emergency statute upon which defendants rely to support demolition is unconstitutional as it does not provide due process and effective appeal procedures.

The actions of defendants are violative of due process, equal protection and the City of Cleveland's Housing Code and act as unconstitutional deprivations of plaintiff's property rights, such to require the injunctive relief requested in order to protect the plaintiff's constitutional rights and avoid irreparable harm and injury to him.

It is well settled that due process and reasonable notice is required before a municipality can take action against its citizens. Memphis Light, Gas and Water Division v. Craft, 98 S. Ct. 1554 (1978).

As set forth in plaintiff's attached affidavit, neither reasonable notice nor due process of any type was afforded him before his property was scheduled for demolition. Further, although defendants appear to offer an appeal process to plaintiff, according to defendants, said process does not halt the demolition process. Accordingly, even if plaintiff were successful on his appeal, his home would have already been

demolished, thus causing him irreparable harm and injury.

In evaluating a motion for injunctive relief, Courts are generally guided by equitable principles of fairness that are set out in varying lists, all of which are of great similarity. Accordingly, the following guidelines are appropriate for the Court to consider:

1. The likelihood or probability of the movant's success on the merits;
2. Whether the movant has an adequate remedy at law;
3. Whether the issuance of the preliminary injunction will prevent the claimed irreparable injury;
4. What injury to the parties and others will be caused by the granting of the preliminary injunction;
5. The public interest that will be served by the grant of the injunctive relief; and
6. Whether or not the injunctive relief sought is for the purpose of maintaining the status quo pending trial on the merits. Diamond Company v. Gentry Acquisition Corp., Inc., 48 Ohio Misc. 2d 1, 531 N.E. 2d 777 (1988). The purpose of preliminary injunctive relief is to protect an effective judgment on the merits, and it functions to serve as a means of preserving the Court's ability to grant effective, meaningful relief after a determination of the merits. Id., citing Gobel v. Laine, 12 Ohio App. 2d 93, 94, 231 N.E. 2d 341 (1967).

In the case at bar, preservation of the status quo requires the issuance of injunctive relief in the form of a

cease and desist order on the demolition, particularly inasmuch as no emergency exists as to demolition. Further, despite the City's allegation of emergency, no such emergency or danger to the public exists, as set forth in the affidavit of plaintiff and as is evidenced from the fact that the City was willing to allow a thirty day period for plaintiff to make repairs to the property.

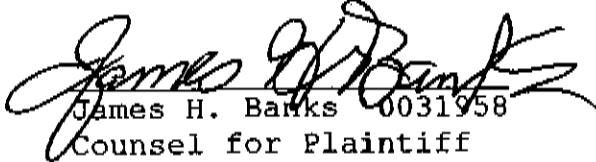
Applying these standards to the facts of this case, it is clear that preliminary injunctive relief is appropriate. Preservation of the status quo pending trial on the merits requires that plaintiff be permitted to retain the home on his property.

Irreparable harm and injury to the plaintiff will surely result from the demolition of his home. Further, no prejudice will result to the defendants should such relief be granted pending trial on the merits or until this matter can be heard further.

Based upon the foregoing and upon the facts and circumstances of this case, it is clear that the defendants' actions are improper and illegal and should be restrained, forthwith.

Accordingly, based upon the foregoing and as will be set forth more fully at hearing of this cause, this Court should issue a preliminary injunction in order to protect the plaintiff's constitutional and legal rights.

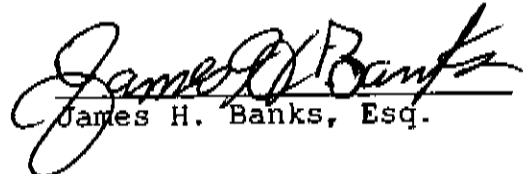
Respectfully submitted,



James H. Banks 0031958  
Counsel for Plaintiff  
P.O. Box 40  
Dublin, Ohio 43017  
Tel. (614) 866-0666

NOTICE OF HEARING

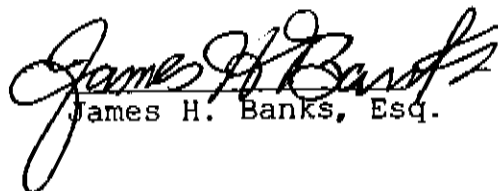
Please take notice that the foregoing Motion will come on for hearing before the Honorable Judge \_\_\_\_\_, Cuyahoga County Common Pleas Court, 1200 Ontario Street, Cleveland, Ohio 44113, on the \_\_\_ day of \_\_\_\_\_, 200\_\_ at \_\_\_\_\_ .m. You may appear at that time.



James H. Banks, Esq.

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing was duly served on the 16th day of December, 2008, personally and/or via U.S. Mail, upon the City Law Director, 13601 Euclid Avenue, Cleveland, Ohio 44113, Christine Krossel, 1734 Brainard Avenue, Cleveland, Ohio 44109, Stephanie Larkins, c/o Code Enforcement Division, 601 Lakeside Avenue, Cleveland, Ohio 44114, and John Moss, 2457 W. 11th Street, Cleveland, Ohio 44113.



James H. Banks, Esq.

EXHIBIT A

IN THE COMMON PLEAS COURT OF CUYAHOGA COUNTY, OHIO  
CIVIL DIVISION

THOMAS K. BELL,

Plaintiff,

v.

JOHN MOSS, et al.,

Defendants.

Case No.

JUDGE

AFFIDAVIT OF PLAINTIFF  
THOMAS K. BELL

STATE OF OHIO  
COUNTY OF CUYAHOGA, SS:

Now comes affiant, Thomas K. Bell, being first duly sworn according to law, and deposes and states the following to be true based upon his personal knowledge:

1. I am the owner of the real property known as 2441-2443 Professor Avenue, Cleveland, (Tremont) Ohio, am the plaintiff in the above-captioned case and am competent to give this affidavit;
2. I bought the 2-family dwelling at 2441-2443 Professor Avenue Cleveland, Ohio 44113, permanent parcel number 004-17-121, on or about November 29, 2002 for the amount of \$50,000.00 from Joseph Zieja and promptly caused title to transfer to my name; further, my name and current address have been on record with the Cuyahoga County Auditor and Cuyahoga County Recorder since that time;
3. I am aware that John Moss is a member of a group or committee which is sanctioned and/or authorized by the TWDC

and has taken it upon himself to "decide" which/when houses in Tremont are not up to Code and to present lists with property addresses to the City of Cleveland, despite the fact that if he has any expertise in the area, I am unaware of same; further, his wife, Karen, is Second Vice President of TWDC Board of Directors;

4. The subject property has not been appraised; however, I received an unsolicited offer approximately two years ago for \$90,000.00 for the property, which offer I declined, and it is worth at least that amount at this time;

5. I have always kept the subject property in good condition, including the windows, doors, landscaping, vinyl siding and shingle roof; further, I own adjacent property to the subject property so I am able to visually check on the subject property on a daily basis. Pictures of the subject property are attached hereto, incorporated herein and marked as Exhibits A-1 through A-3;

6. During the period of over six years that I have owned the property at 2441-2443 Professor Avenue, I have not received any type of citation or violation concerning the property with the exception of a notice approximately two years ago to remove debris which someone else had left on the property without my knowledge or consent. The debris was removed promptly;

7. Except for the foregoing, I have never received any written or verbal warnings from either the Cleveland Building/Housing Department or the local Community Development Corporation, Tremont West Development Corporation, regarding any concern about my property, and if I had received any citations, violation, notices, or warnings I would have promptly corrected any issue;

8. Although the subject property is vacant, its doors and windows have continually been locked and secured such that unauthorized entry is not possible;

9. On or about November 16, 2008 I arrived at the subject property to find a window on the entrance door broken, plywood nailed across the doors and a search warrant fastened to the house, a copy of which is attached hereto, incorporated herein and marked as Exhibit A-4;

10. With the exception of "foundation needs repair", the items on the search warrant at No. 5 are all cosmetic repairs and have nothing to do with the structure of the home on the property or the safety of the public. Further, the foundation is structurally sound and needs no repair and nothing on the exterior of the property supports a conclusion that the property is or may become hazardous to the public health, safety or welfare;

11. I therefore called the inspector listed on the Search Warrant, Stephanie Larkins, and asked her to explain what was going on with my house. She explained that it was being condemned and scheduled for demolition;

12. She went on to suggest that I obtain four building permits and indicated that obtaining the permits would stop the demolition proceedings;

13. The following day I went to Cleveland City Hall and obtained the four building permits which she suggested, those permits being Nos. H08042493, P08042495, E08042492, and B08042491, at a cost of approximately \$600.00, with the purpose of using the permits to renovate the subject property and make the repairs listed on the search warrant;

14. Thereafter, I received a Notice of Violation of Building and Housing Ordinances issued on November 20, 2008 listing approximately 30 items which needed to be repaired by December 20, 2008 to avoid demolition of my property, a copy of which is attached hereto, incorporated herein and marked as Exhibit A-5;

15. The 30 day period for making repairs is unrealistic and unreasonable; further, the repairs demanded by the City have no relation to the safety and welfare of the public, particularly inasmuch as the building is not inhabited at this time and has never been open to entry;



16. Upon review of the building permits I obtained, I noticed a stipulation contained thereon that all work must be completed within 30 days. Since the repairs could not possibly be completed within such a short period, I called the Cleveland Building Department and spoke with Chief Building Official David Cooper and asked him if the permits would stop the demolition process;

17. He replied that having the permits would not stop the demolition process and that I would have to make an appeal to the Board of Building Standards;

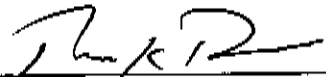
18. On December 3, 2008 I filled out an appeal application at the Board of Building Standards and submitted the Appeal Statement attached hereto, incorporated herein and marked as Exhibit A-6. A hearing date before the Board has been scheduled for January 21, 2009, in Docket # A208-08;

19. Assistant Building and Housing Director Ron O'Leary told the residents at a meeting last week of the Tremont Development Corporation that the appeal to the Board of Building Standards would not stop demolition;

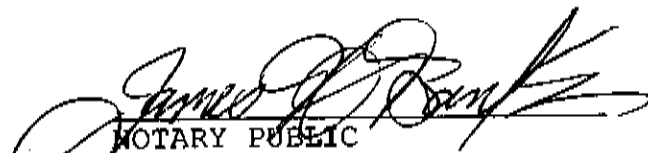
20. If the subject property is demolished by the City, I will suffer irreparable harm and injury for which I have no adequate remedy at law, including but not limited to loss of the subject property, loss of income and investment and loss

of monies already expended for permits and repairs in reliance on the Inspector's representations.

Further, affiant sayeth naught.

  
\_\_\_\_\_  
Thomas K. Bell, Affiant

Sworn to and subscribed before me this 16 day of December, 2008.

  
\_\_\_\_\_  
NOTARY PUBLIC



JAMES H. BANKS, Attorney at Law  
NOTARY PUBLIC-STATE OF OHIO  
My commission has no expiration date

EXHIBIT A-1

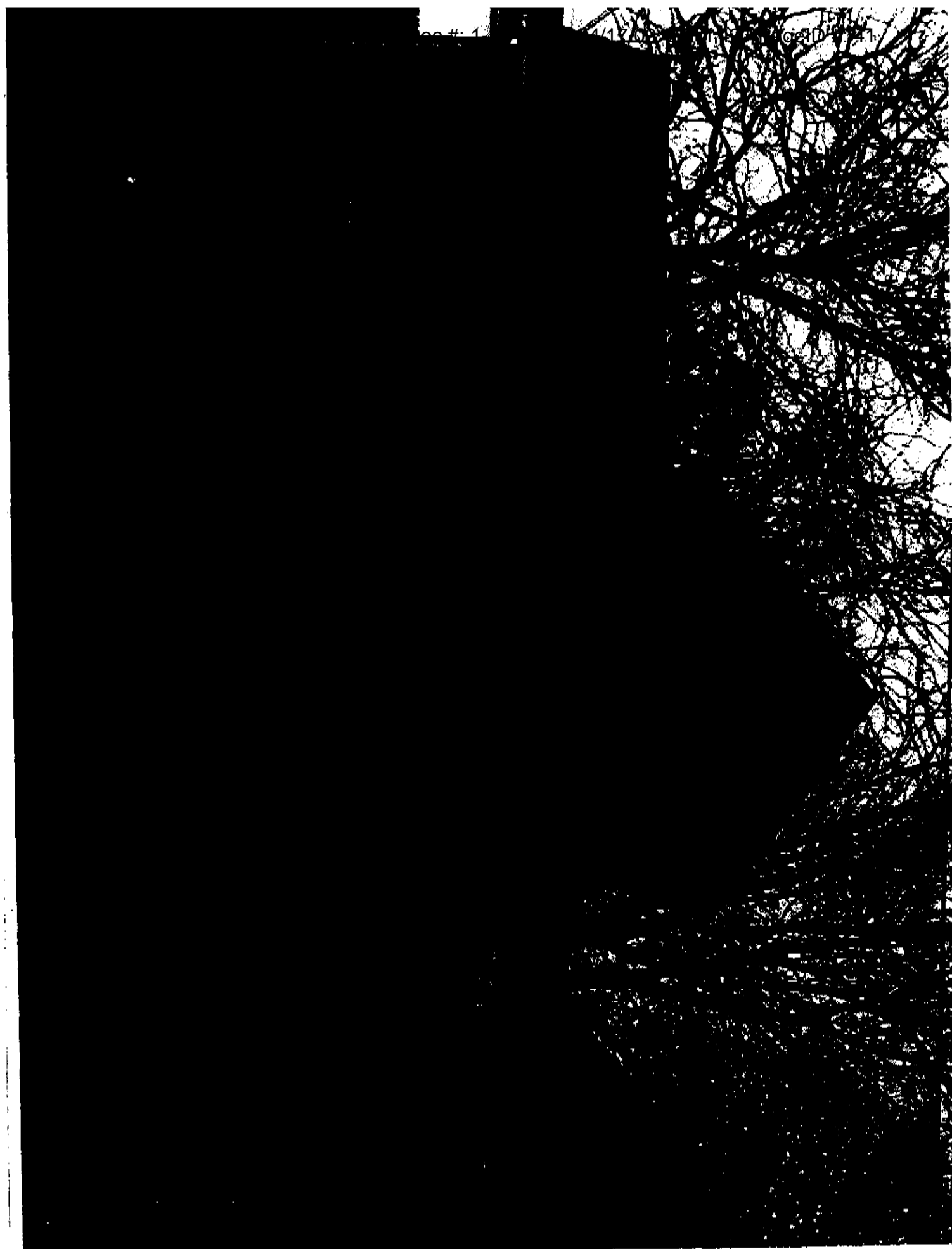


EXHIBIT A-2

photo # 42

EXHIBIT A-3



EXHIBIT A-4

STATE OF OHIO  
COUNTY OF CUYAHOGA

)  
)  
)  
SS: SEARCH WARRANT

**TO: Representatives of the City of Cleveland - Department of Building and Housing, Department of Public Safety - Divisions of Police and Fire, Department of Aging, Department of Public Health, and any other officials deemed necessary.**

**WHEREAS**, an affidavit has been filed and a copy is attached.

**WHEREAS**, I am satisfied that there is sufficient probable cause for the issuance of a search warrant for the premises known as **2441-3 Professor Street**, Cleveland, Ohio.

**NOW, THEREFORE**, you are commanded in the name of the State of Ohio, with the necessary and proper assistance, including officials from the City of Cleveland, Departments of Public Health, Building and Housing, Public Safety, Aging, and any other agency of the City of Cleveland deems necessary to enter in the daytime into the premises at **2441-3 Professor Street**, Cleveland, Ohio, and then diligently search and inspect the premises, including the exterior and interior, for violations of the Codified Ordinances of the City of Cleveland, and for conditions which are, or may become, hazardous to the general public and which may be violations of Building, Housing, Health, Fire and Safety Codes of the City of Cleveland. This warrant must be executed within three days of the following date:

Given under my hand this 13 day of November, 2008.

  
\_\_\_\_\_  
JUDGE RAYMOND L. PIANKA  
Cleveland Municipal Court  
Housing Court Division  
Cuyahoga County, Ohio

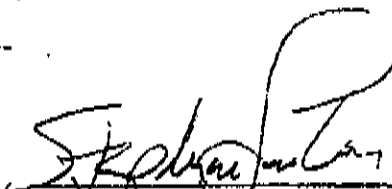
STATE OF OHIO )  
 )  
COUNTY OF CUYAHOGA ) SS: AFFIDAVIT

**Stephanie Larkins** testifies, under oath:

1. I am currently employed as a Housing Inspector for the City of Cleveland.
2. A check of the Auditors page indicated that Irene D. Zieja, Joseph Zieja, Todd Zieja, Irene Zieja, Apolonia Osowiecki are the owners of the premises located at **2441-3 Professor Street** ("Premises"). However, a check of the Recorders Page and additional research reveals that Thomas K. Bell is the owner of the premises. The premises is a single-family dwelling unit.
3. I checked the White Pages and I was able to find a number for Irene D. Zieja and Todd A Zieja, 330-887-5524. I called the number on 10/10/08 and spoke to Todd Zieja. He claimed that the property was sold about five years ago, and therefore could not give permission to enter. The Recorders page was checked, and the last deed was to a Thomas K. Bell. I called a number from the white pages for Thomas K. Bell, but it just rang and rang with no answer or voice mail. I also checked the criss-cross directory, but did not find a number. I also called the Water Department, and they did not have a number either. I have made reasonable and diligent efforts to obtain consent.
4. The Water Department informed me that the water has been turned off since 2003.

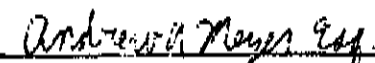
5. I conducted an exterior inspection of the Premises on October 22, 2008 and observed the following:
- Side steps peeling paint;
  - Roof overhang, missing gutters and drain spout.;
  - Porch columns peeling paint;
  - Porch floor peeling paint;
  - Foundation needs repair;
  - Fascia deteriorated
  - Missing lattice; and
  - Soffit needs repair.
6. Based on my experience as a Housing Inspector and the foregoing facts, I believe it is likely that the conditions of the interior of the premises known as **2441-3 Professor Street**, are in violation of the City's Building and Housing Codes, and are or may become hazardous to the public health, safety, or welfare.

**THIS CONCLUDES MY TESTIMONY.**

  
 \_\_\_\_\_  
 STEPHANIE LARKINS

~~621-~~  
 420-  
 8503

**SWORN TO AND SUBSCRIBED** in my presence this 12 day of <sup>November</sup>~~October~~, 2008.

  
 \_\_\_\_\_  
 Notary Public  
 My Commission does not expire  
 ORL 147.03



**SEARCH WARRANT RETURN**

I received the attached Search Warrant on \_\_\_\_\_  
and have executed it as follows:

On \_\_\_\_\_ at \_\_\_\_\_ o'clock a.m./p.m., I  
searched the premises described in the warrant and I left a copy of the warrant for  
**2441-3 Professor Street**, Cleveland, Ohio with:

\_\_\_\_\_  
(Owner or Person in Control)

\_\_\_\_\_  
Affiant

**SUBSCRIBED AND SWORN** to and returned before me this \_\_\_\_\_ day of

\_\_\_\_\_, 2008.

\_\_\_\_\_  
**JUDGE RAYMOND L. PIANKA**  
Cleveland Municipal Court  
Housing Division  
Cuyahoga County, Ohio

THE CITY OF CLEVELAND  
DEPARTMENT OF BUILDING & HOUSING  
DIVISION OF CODE ENFORCEMENT  
601 LAKESIDE AVE. CLEVELAND, OH 44114

NOTICE OF VIOLATION OF BUILDING AND HOUSING ORDINANCES

WARD: 13

CT: 1046

PROP. ADDRESS: 2441 - 43 PROFESSOR ST. CLEVELAND, OH 44113

ISSUE DATE: 11/20/2008

PPN: 03417121

AKA:

RESPONSIBLE PARTY(S)

② THOMAS K BELL  
435 COLUMBIA  
BAY VILLAGE, OH 44140

EXHIBIT A-5

THOMAS K. BELL  
2441-43 PROFESSOR ST.  
CLEVELAND, OH 44113

IRENE D. ZIEJA  
2441-43 PROFESSOR ST.  
CLEVELAND, OH 44113

TODD ZIEJA  
2441-43 PROFESSOR ST.  
CLEVELAND, OH 44113

APOLONIA OSOWIECKI  
2441-43 PROFESSOR ST.  
CLEVELAND, OH 44113

IRENE ZIEJA  
2441-43 PROFESSOR ST.  
CLEVELAND, OH 44113

APOLONIA OSOWIECKI  
2441 PROFESSOR ST  
CLEVELAND, OH 44113

TO CONTACT YOUR INSPECTOR CALL MONDAY THRU FRIDAY.

INSPECTOR: Stephanie Larkins - DIST 3

PHONE: 420-8503

THE CITY OF CLEVELAND  
DEPARTMENT OF BUILDING & HOUSING  
DIVISION OF CODE ENFORCEMENT  
601 LAKESIDE AVE. CLEVELAND, OH 44114

**NOTICE OF VIOLATION OF BUILDING AND HOUSING ORDINANCES**

JOSEPH ZIEJA  
2441 PROFESSOR ST  
CLEVELAND, OH 44113

APOLONIA OSOWEICKI  
435 COLUMBIA  
BAY VILLAGE, OH 44140

IRENE D. ZIEJA  
435 COLUMBIA  
BAY VILLAGE, OH 44140

JOSEPH ZIEJA  
435 COLUMBIA  
BAY VILLAGE, OH 44140

IRENE D. ZIEJA  
7900 WEST FIELD RD  
MEDINA, OH 44256

JOSEPH ZIEJA  
7900 WEST FIELD RD  
MEDINA, OH 44256

THOMAS K. BELL  
7900 WEST FIELD RD  
MEDINA, OH 44256

APOLONIA OSOWEICKI  
7900 WEST FIELD RD  
MEDINA, OH 44256

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TO CONTACT YOUR INSPECTOR CALL MONDAY THRU FRIDAY.

INSPECTOR: Stephanie Larkins - DIST 3

PHONE: 420-8503

**THE CITY OF CLEVELAND  
DEPARTMENT OF BUILDING & HOUSING  
DIVISION OF CODE ENFORCEMENT  
601 LAKESIDE AVE. CLEVELAND, OH 44114**

**NOTICE OF VIOLATION OF BUILDING AND HOUSING ORDINANCES**

CHEAP ESCAPE CO INC  
DBA JB DOLLAR STRETCHER  
3105 FARNHAM RD  
RICHFIELD, OH 44286

TODD ZIEJA  
435 COLUMBIA  
BAY VILLAGE, OH 44140

TODD ZIEJA  
7990 WEST FIELD RD  
MEDINA, OH 44255

CAPITAL ONE BANK  
140 EAST SHORE DR  
GLEN ALLEN, VA 23059

FAIRHILL CENTER  
12200 FAIRHILL RD  
CLEVELAND, OH 44124

FRANK RUSSO  
CUYAHOGA COUNTY AUDITOR  
1219 ONTARIO  
ROOM 307  
CLEVELAND, OH 44113

OCCP/USE.2DU Two-family Residence  
KIND OF STRUCTURE 2.5 Sty. Frame  
ZONING DISTRICT: Two Family  
NUMBER OF DWELLING UNITS: 1  
TYPE OF VIOLATION: 30 Day Condemnation MS

INSP. DATE: 11/12/2008  
VIOLATION #: V08041477

---

TO CONTACT YOUR INSPECTOR CALL MONDAY THRU FRIDAY.

INSPECTOR: Stephanie Larkins - DIST 3

PHONE: 420-8503

THE CITY OF CLEVELAND  
DEPARTMENT OF BUILDING & HOUSING  
DIVISION OF CODE ENFORCEMENT  
601 LAKESIDE AVE. CLEVELAND, OH 44114

**NOTICE OF VIOLATION OF BUILDING AND HOUSING ORDINANCES**

THIS NOTICE SHALL BE COMPLIED WITH AND ALL VIOLATIONS CORRECTED BY THE BELOW LISTED "COMPLY DATE".

FAILURE TO COMPLY WITH THIS NOTICE WILL RESULT IN PROSECUTIVE ACTION OR OTHER PENALTY AS PROVIDED BY LAW.

\*\*\* \*\*  
FAILURE TO COMPLY WITH THIS NOTICE SHALL RESULT IN THE DEMOLITION OF THE BUILDING(S). ANY AND ALL COSTS INCURRED BY THE CITY FOR THE DEMOLITION OF THE BUILDING(S) SHALL BE PAID BY THE OWNER(S) OF RECORD. IF THE OWNER(S) FAILS TO PAY FOR THE COSTS WITHIN THIRTY (30) DAYS, LEGAL ACTION SHALL BE INITIATED TO COLLECT THE DEBT.  
\*\*\* \*\*

PLEASE CONTACT THE INSPECTOR UPON RECEIPT OF THIS NOTICE.

**RIGHT TO APPEAL**

You have the right to appeal this notice. If you wish to appeal, you must file a written appeal within 30 days of the issuance date on this notice. The appeal must be filed at:

Cleveland City Hall  
601 Lakeside Avenue, Room 516  
Cleveland, Ohio 44114

SEQ NO.	COMPLY DATE	BP#(SECTION VIOLATED)/ NATURE OF VIOLATION	COMMENTS
1	12/20/2008	NOTICE OF VIOLATION OF BUILDING ORDINANCES, PURSUANT TO SECTION 3103.09, 367.04, 369.19 AND 369.21 OF THE CODIFIED ORDINANCES OF THE CITY OF CLEVELAND, THE COMMISSIONER OF BUILDING AND HOUSING DOES HEREBY DECLARE THE STRUCTURE KNOWN AS AND LOCATED AT STATED PROPERTY ADDRESS TO BE A PUBLIC NUISANCE IN THAT IT CONSTITUTES AN EMINENT DANGER AND PERIL TO HUMAN LIFE AND PUBLIC HEALTH, SAFETY AND WELFARE, AND THAT THE AFORESAID CONDITION CONSTITUTES AN EMERGENCY. THEREFORE, YOU ARE HEREBY NOTIFIED THAT THE CITY OF CLEVELAND PURSUANT TO SAID SECTION 3103.09, 367.04, 369.19 AND 369.21 OF THE CODIFIED ORDINANCES WILL SUMMARILY ABATE SAID PUBLIC NUISANCE CREATED AS A RESULT OF SAID EMERGENCY BY DEMOLITION OF THE STRUCTURE IF THE VIOLATIONS LISTED IN THE ATTACHED NOTICE ARE NOT ENTIRELY CORRECTED BY THE DATE SET FORTH IN SAID NOTICE.	

TO CONTACT YOUR INSPECTOR CALL MONDAY THRU FRIDAY.

INSPECTOR Stephanie Larkins - DIST 3

PHONE: 420-8503

**DEPARTMENT OF BUILDING & HOUSING  
DIVISION OF CODE ENFORCEMENT  
601 LAKESIDE AVE. CLEVELAND, OH 44114**

**NOTICE OF VIOLATION OF BUILDING AND HOUSING ORDINANCES**

SEQ NO.	COMPLY DATE	BPM(SECTION VIOLATED)/ NATURE OF VIOLATION	COMMENTS
2	12/20/2008	[3103.09/369.21][367.04/367.07]: THE DANGEROUS CONDITIONS PRESENTED BY THIS STRUCTURE SHALL BE ABATED DEMOLISHING THE STRUCTURE AND REMOVING ALL DEBRIS FROM THE PREMISES OR CORRECTING THE VIOLATIONS SET OUT BELOW AFTER ALL REQUISITE PLANS AND SPECIFICATIONS HAVE BEEN SUBMITTED TO THE DIVISION OF BUILDING AND HOUSING, AND ALL REQUISITE PERMITS HAVE BEEN OBTAINED, ALL IN CODIFIED ORDINANCES OF THE CITY OF CLEVELAND AND WITH THE OHIO BASIC BUILDING CODE. PENDING THE CORRECTION OF VIOLATION, THIS STRUCTURE MAY BE EFFECTIVELY BOARDED PURSUANT TO THE PROVISIONS OF SECTION 3103.09(C) OF THE CODIFIED ORDINANCES OF THE CITY OF CLEVELAND, OHIO, 1976, PROVIDED A PERMIT TO EFFECTIVELY BOARD IS OBTAINED WITHIN SEVEN (7) DAYS OF RECEIPT OF THIS NOTICE. FAILURE TO ACQUIRE A REHABILITATION PERMIT WITHIN (90) DAYS OF THE ISSUANCE OF A PERMIT TO BOARD SHALL RESULT IN THE STRUCTURE BEING SCHEDULED FOR DEMOLITION.	
3	12/20/2008	[367.08/369.21] THIS STRUCTURE CONSTITUTES AN IMMEDIATE HAZARD TO HUMAN LIFE AND HEALTH AND SHALL BE VACATED.	
4	12/20/2008	[369.06]: THE KITCHEN SINK IS DAMAGED, DETERIORATED, MISSING OR INOPERABLE	
5	12/20/2008	[369.06]: THE SANITARY FACILITIES ARE DAMAGED, DETERIORATED, MISSING OR INOPERABLE	
6	12/20/2008	[369.07]. THERE IS NO SUPPLY OF HOT WATER	
7	12/20/2008	[369.07]: THERE IS NOT PROPER PROVISION FOR RUNNING WATER, DAMAGED FACILITIES	
8	12/20/2008	[369.09]: THE HEATING FACILITIES ARE UNAPPROVED, DAMAGED, DETERIORATED, AND/OR MISSING	
9	12/20/2008	[369.12]: THE ELECTRICAL FACILITIES ARE DAMAGED AND DETERIORATED	
10	12/20/2008	[369.13]. THE BASEBOARDS, WINDOW TRIM, WINDOW SILLS AND INTERIOR TRIM IS DETERIORATED, DAMAGED OR MISSING	
11	12/20/2008	[369.13]: THE CHIMNEY HAS LOOSE, MISSING UNITS, NEEDS REPAIR AND/OR POINTING:	
12	12/20/2008	[369.13]: THE DOOR JAMBS, CASINGS ARE DAMAGED OR MISSING	
13	12/20/2008	[369.13]: THE ENTRANCE DOOR AND DWELLING UNIT DOOR LOCKS ARE DAMAGED OR MISSING	

TO CONTACT YOUR INSPECTOR CALL MONDAY THRU FRIDAY.

INSPECTOR: Stephanie Larkins - DIST 3

PHONE: 420-8503

**THE CITY OF CLEVELAND**  
**DEPARTMENT OF BUILDING & HOUSING**  
**DIVISION OF CODE ENFORCEMENT**  
**601 LAKESIDE AVE. CLEVELAND, OH 44114**

**NOTICE OF VIOLATION OF BUILDING AND HOUSING ORDINANCES**

<b>SEQ NO.</b>	<b>COMPLY DATE</b>	<b>MP#(SECTION VIOLATED)/ NATURE OF VIOLATION</b>	<b>COMMENTS</b>
14	12/20/2008	[369.13]: THE ENTRANCE, INTERIOR AND STORM DOORS ARE DAMAGED, DETERIORATED AND/OR MISSING	
15	12/20/2008	[369.13]: THE FRONT AND REAR PORCH SPINDLES, FLOOR, CEILING, STEPS, LATTICE, SUPPORT POSTS AND STRINGERS ARE WEAK, DETERIORATED AND/OR MISSING	
16	12/20/2008	[369.13]: THE INTERIOR STAIR RAILINGS, TREADS AND RISERS, SPINDLES ARE DAMAGED, DETERIORATED AND/OR MISSING	
17	12/20/2008	[369.13]: THE KITCHEN CABINETS, MEDICINE CABINETS ARE DAMAGED AND/OR MISSING	
18	12/20/2008	[369.13]: THERE ARE DAMAGED, DETERIORATED AND/OR MISSING WINDOW LIGHTS, SASHES, WEIGHTS, FRAMES, AND SILLS	
19	12/20/2008	[369.14]: THE EXTERIOR AND/OR INTERIOR FOUNDATION IS FAILING, NEEDS POINTING, HAS MISSING MASONRY UNITS, PERMITS THE ENTRANCE OF RODENTS	
20	12/20/2008	[369.15(b)]: THE INTERIOR OF THIS STRUCTURE IS NOT MAINTAINED IN A SANITARY MANNER AND:	
21	12/20/2008	[369.15]: THE EXTERIOR WALLS OF MAIN STRUCTURE ARE NOT MAINTAINED WEATHER TIGHT SO AS TO RESIST DETERIORATION	
22	12/20/2008	[369.15]: THE GUTTERS AND DOWNSPOUTS ARE DECAYED, MISSING OR DETERIORATED	
23	12/20/2008	[369.15]: THE ROOF IS NOT MAINTAINED WEATHER TIGHT OR DEVOID OF LEAKS (MISSING ROOFING MATERIAL)	
24	12/20/2008	[369.15]: THERE IS MISSING, DETERIORATED SIDING AND/OR EXTERIOR WOOD TRIM	
25	12/20/2008	[369.16]: THE BATHROOM FLOOR IS NOT WATER RESISTANT	
26	12/20/2008	[369.16]: THE INTERIOR WALLS AND FLOORS ARE WEAK, DAMAGED AND CRACKED (MISSING MATERIAL)	
27	12/20/2008	[369.19]: THE SIDE, REAR, FRONT FENCE IS NOT MAINTAINED IN GOOD REPAIR	

TO CONTACT YOUR INSPECTOR CALL MONDAY THRU FRIDAY.

INSPECTOR: Stephanie Larkins - DIST 3

PHONE: 420-8503

**THE CITY OF CLEVELAND  
DEPARTMENT OF BUILDING & HOUSING  
DIVISION OF CODE ENFORCEMENT  
601 LAKESIDE AVE. CLEVELAND, OH 44114**

**NOTICE OF VIOLATION OF BUILDING AND HOUSING ORDINANCES**

PURSUANT TO SECTION 3103.09, 367.04, 369.19 AND 369.21 OF THE CODIFIED ORDINANCES OF THE CITY OF CLEVELAND, THE DIRECTOR OF BUILDING AND HOUSING DOES HEREBY DECLARE THE STRUCTURE KNOWN AS AND LOCATED AT: 2441 - 43 PROFESSOR ST, CLEVELAND, OH 44113 TO BE A PUBLIC NUISANCE IN THAT IT CONSTITUTES AN EMINENT DANGER AND PERIL TO HUMAN LIFE AND PUBLIC HEALTH, SAFETY AND WELFARE, AND THAT THE AFORESAID CONDITION CONSTITUTES AN EMERGENCY. THEREFORE, YOU ARE HEREBY NOTIFIED THAT THE CITY OF CLEVELAND PURSUANT TO SAID SECTION 3103.09, 367.04, 369.19 AND 369.21 OF THE CODIFIED ORDINANCES WILL SUMMARILY ABATE SAID PUBLIC NUISANCE CREATED AS A RESULT OF SAID EMERGENCY BY DEMOLITION OF THE STRUCTURE IF THE VIOLATIONS LISTED IN THE ATTACHED NOTICE ARE NOT ENTIRELY CORRECTED BY THE DATE SET FORTH IN SAID NOTICE.

\_\_\_\_\_  
DIRECTOR OF BUILDING AND HOUSING

THIS NOTICE WAS PERSONALLY DELIVERED BY THE UNDERSIGNED ON THIS

\_\_\_\_\_ DAY OF \_\_\_\_\_ 2007 AT \_\_\_\_\_ O'CLOCK BY LEAVING

WITH \_\_\_\_\_

TO CONTACT YOUR INSPECTOR CALL MONDAY THROUGH FRIDAY

INSPECTOR, Stephanie Larkins - DIST 3

PHONE, 420-8503



EXHIBIT A-6

12/3/08

TO: Board of Building Standards  
City of Cleveland

FROM: Thomas Bell  
819 Jefferson Ave.  
Cleveland, OH 44113  
216.322.6806

RE: 2441-3 Professor Avenue Cleveland, OH 44113  
PPN: 00417121

### APPEAL STATEMENT

Board Members:

The subject property which I own has been issued a demolition notice. I am appealing the citation of this property for demolition and the 30 day requirement to complete needed repairs. I request a twelve-month extension to complete needed repairs and/or cancellation of the demolition citation based on the following circumstances:

1. I found a Search Warrant posted to my property on Monday, November 17, 2008. The next business day I pulled HVAC Permit #H08042493, Plumbing Permit #P08042495, Electrical Permit #E08042492, and Alterations Permit #B08042491. The permits call for 30 days to complete the work. This timeframe is unreasonable, unattainable, and unrealistic. I am requesting 12 months.
2. I received no violation notice or any other communication of any kind from the Department of Building and Housing prior to finding the Search Warrant posted on my property. My home mailing address, which can be found on the Cuyahoga County Auditor's website, should have been used to communicate any violations that the inspector felt needed attention. If the inspector had communicated with the local CDC, Tremont West Development Corporation, then they could have provided the inspector with my cell phone number.

3. There are issues of due process, capricious and arbitrary code enforcement, burden of proof regarding sufficient probable cause, and dereliction of duty on the part of officials from the Department of Building and Housing that I will need time to research and seek out legal advice and/or action.
4. I have asked for and received the support of Chris Garland, Katie Hough, and Sammy Catania from Tremont West Development Corporation as well as Councilman Joe Cimperman.

Sincerely,

Thomas K. Bell