

MORRISTOWN TOWN COUNCIL
Minutes – February 22, 2023, Hearing on Unsafe Building
FIRE STATION TRAINING ROOM

President David Benefiel called the Hearing to order. Present were Town Council members, David Benefiel, Ralph Henderson, and Larry Tracy. Also present were Town attorneys, Grace Dillow and Cynthia Bedrick, Clerk-Treasurer, Don Roberts, Building and Planning Director, Jesse Berling (“Berling”), witness, Kelly Fair (“Fair”), and attorney for Receiver and Lender, DLP Lending Fund, LLC and Trigild IVL, LLC, Michael Boring (“Boring”).

Hearing held under Town of Morristown Ordinance 102 and Indiana Code chapter 36-7-9 with regard to the property located at 217 E. Fletcher Street, Morristown, Indiana 46161 (the “Property”).

Town attorney Cynthia Bedrick called Berling as first witness.

- Town attorney Grace Dillow swore in the witness.
- Berling testified to the state of the Property.
 - Berling became aware of the Property’s issues by way of complaints made by neighbors.
 - The Property has been abandoned for more than four (4) years and has not been maintained by any owner.
 - Berling has attempted contact with the owners of the Property on numerous occasions.
 - Berling was unsuccessful in his attempts to make contact with the Property owners to have issues with the Property addressed.
 - Berling issued an order for demolition under the Unsafe Building Code on February 8, 2023.
 - Berling sent notice of this order to all interested parties by certified mail. Certified mail receipts were entered into the record and offered to Boring for review. Boring declined to review. Such certified mail receipts are attached hereto as Exhibit A.
 - The Property is unsafe in that it is not properly sealed against vermin, including raccoons and opossums, or persons not authorized access to the Property.
 - The lot on which the Property sits is in poor condition in that it has tall weeds and grass, overgrown trees, and vermin, including raccoons and opossums. Photographs of the exterior of the Property were entered into the record and are attached hereto as Exhibit B. Boring was offered an opportunity to review the photos, which he declined to do.
 - The overgrown trees are in close proximity to neighboring properties and present a risk of damage to those neighboring properties. Specifically, Berling called attention to two (2) trees which are represented in Exhibit B.
 - Vermin have reportedly spread to neighboring properties and, therefore, the risk of infestation in neighboring properties is high.
 - The not-kept-up nature of the lot invites dumping of garbage, trash, and other debris, which the Town has previously cleaned up.
 - The condition of the Property contributes to blight in the area and causes a decrease in property values.

- The blighting influence of the Property adversely affects the tax revenues of local government.
- The Property has created serious and substantial problems in the Town and is a public nuisance.
- The Property has deteriorated to the point that demolition of the structure is required.
- The Property constitutes a hazard to public health, safety, and welfare.
- The general condition of the Property, in light of the nature and use of surrounding properties, warrants removal of the vacant structure. Specifically, neighboring properties are occupied residences, so the nuisance and risk posed by the vacant structure, unkempt grounds, and vermin, is more acute and more likely to negatively affect property values, desirability of the neighborhood, and town resident health and safety.

Town attorney Cynthia Bedrick called Fair as second witness.

- Fair testified that:
 - She lives next door to the Property.
 - With the exception of potentially a 1-year period, the Property had been vacant the entire 10 years she had lived next door to the Property.
 - The Property created a nuisance in her neighborhood and specifically with respect to her own house because of the vermin that it attracted.
 - The Property was unsightly and a problem for the Town and neighborhood.
 - The trees on the Property were in imminent danger of damaging her house and the house on the Property.

Boring, attorney for the Receiver and Lender, is given an opportunity to present evidence. He declines to cross-examine Berling or Fair and declines to put on any evidence on the condition of the Property or the appropriateness of the Town's request for demolition. Boring testifies to the Town that the Receiver took over the Property in December and just recently learned of the pending Town action. He requests more time to market and sell the Property. Boring discusses the nature of the Receivership and contends that this matter is not properly before the Town Council because the courts in Northampton County, Pennsylvania, have exclusive jurisdiction over the Property because of the pending receivership order. Boring further requests that the Town delay its ruling on this matter in order to allow the Receivership to sell the Property to get it fixed up. Boring suggests perhaps posting a bond to allow for this occur.

Town Council members and the Town Council attorneys ask Boring various questions on the intentions of the Receiver, including what proof does the Town have that the Receiver will fix the Property? How can the Town trust that the Property will be cleaned up quickly rather than just sold to another out-of-state investor who will leave it vacant and in disrepair? Discussions occur between the Town Council and Boring on what the Receiver would be willing to do to clean up the Property. The Town requests that the Property be sealed against vermin, that a tree that is in danger of falling down be taken out, and that the other trees be trimmed immediately.

The Town attorneys ask Boring if the sole bases of his objection are the timing of the order and the perceived lack of jurisdiction over the Property due to the Receivership. Boring answers

affirmatively. The Town has discussion of an appropriate bond. Town Manager, Don Roberts, states that he has researched the cost to demolish the building on the Property and it is about \$30,000. The Town Council notes that existing liens against the Property total approximately \$6,000. The Town Council determines that an appropriate bond to stay the demolition for an additional 50 days would be \$40,000 based on demolition costs, existing liens on the Property, and other fees. Boring did not object to the proposed bond amount or to the need for demolition of the Property.

After hearing and considering the evidence of the Enforcement Authority and allowing the Property Owner to present evidence, cross-examine opposing witnesses, and make argument, the Hearing Authority determined that the Property is a hazard to public health and is a public nuisance. The Hearing Authority further determined that the general condition of the building, as well as the nature and use of nearby properties, warrants removal. The Hearing Authority will sign an order affirming and modifying the findings of the Enforcement Authority and ordering the demolition within 10 days, which time shall be extended to 60 days provided that the Receiver and/or owner of the Property immediately removes the referenced tree, trims the remaining trees, seals the house, and posts a \$40,000 cash bond. Council Member Larry Tracy moved to accept said findings. Council Member Ralph Henderson seconded. Motion approved. Vote 3/0.

Boring agrees to accept service of the Order on behalf of the Receiver and Lender. Town Council attorneys will draft the Order and get it signed no later than Thursday, February 23, 2023. The hearing is adjourned and the regular Town Council meeting resumes.