

IN THE DISTRICT COURT OF IOWA
IN AND FOR LEE COUNTY AT KEOKUK

CITY OF KEOKUK,

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Plaintiff,

KECICI000123

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CHRIST VISION, INC,
228 North 4th Street, Keokuk, IA d/b/a
TEMPLE TO WORLD PEACE, INC.

Ruling and Judgment Entry

Defendant,

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Appearances:

For Plaintiff: Douglas Dorando, Keokuk City Attorney

For Defendant: Curtis Dial

THE ABOVE CAPTIONED MATTER was commenced on April 27, 2016 by citation for municipal infraction issued by the City of Keokuk alleging violations of Keokuk Municipal Code §§ 5.24.020 (1, 8, 9, 10, and 11) and 5.24.020 (4 and 5). Additionally, the citation alleges violations of the Uniform Code for Abatement of Dangerous Buildings Chapter 3, §§ 302 (5, 8, 9, 14, 16, and 17). The defendant, a defunct Iowa Corporation as of the date of the filing, denied the alleged violations.

Overview:

This proceeding is simply the latest chapter of an ongoing set of legal / public disputes regarding the fate of the historic Unitarian Church building located at 228 North 4th Street in the City of Keokuk, Lee County, Iowa. The trial of this municipal infraction case has been continued several times to allow the parties to try to reach a mutually satisfactory settlement of the overriding issues, but no settlement as of the date of trial was reached. The hearing with regard to the municipal infraction commenced on September 29, 2016 and concluded on October 31, 2016.

The court received a substantial amount of witness testimony and documentary evidence during the hearing. Some of this evidence documents the efforts that have been made by a relatively small and dedicated group of community historic preservationists to raise funds and do work on the structure over the past decade. **See Defendant’s Ex. C.** Also, some of the evidence deals with past interactions between the parties, as well as the current goals of the preservationist community. **See submitted documents, arguments, and letters of support.** Though this testimony and documentation provides valuable context to explain the current situation, it is not directly relevant to the specific issue that the court has to decide – whether or not the evidence establishes that a municipal infraction exists. No matter what the Court decides regarding the alleged municipal infraction, however, *this ruling cannot resolve the fundamental problem presented by this situation.*

The historic Unitarian Church is an inspirational, important, and iconic Keokuk landmark which cannot be replaced if it is demolished. **See Defendant’s Ex. F.** The real problem is that it cannot be either properly repaired or demolished without the infusion of a *large* amount of money, expertise and resources. It is vital for the parties to understand that finding the resources

to deal with this deteriorating structure is *not a legal issue*, but rather is a social, business, and political decision for the community and its leaders to make.

The resources currently available to Christ Vision are inadequate to deal with any of the most serious and immediate deficiencies. [If the money had been available, those problems would have already been resolved. Christ Vision and its allies have wanted to restore the grandeur of the building for a long time.] “Punishing” the defendant for the structure’s problems through civil penalties for code violations is a meaningless and counter-productive act. Unless some type of functional public-private partnership can be created or a “white knight” with adequate resources can be found to fund rehabilitation of the structure, the entire burden of dealing with this building will fall to the City and its taxpayers to deal with on their own. Furthermore, the fate of the building also depends on creating a sustainable, long-term, and practical purpose for its future. It is clear that adversarial proceedings thus far have not achieved anyone’s goals. The elements of wind, rain, snow, freezing, and thawing will march relentlessly on until someone with adequate means takes effective action to either fix or remove the structure.

Findings of Fact and Analysis:

The citation in this case alleges several specific violations of the city code with regard to the structure. Based upon the entire record taken as a whole, the court finds that the allegations regarding violations of section 5.24.020 (1) [junk, waste and refuse], (9) [abandoned buildings], (11) [fire hazards] and Section 5.24.020 (4 & 5) [vermin harborage and vermin infestation] were either not proven by clear, satisfactory, and convincing evidence or that the conditions regarding these alleged violations have been addressed by the parties since commencement of this action. This leaves remaining allegations of nuisance 5.24.020 (8) [dangerous buildings] and 5.24.020 (10) [hazards] as the focus of this case.

Keokuk Municipal Code § 5.24.020 (8) declares “dangerous buildings or structures” as nuisances. Likewise, the Municipal Code also declares “hazards” as nuisances.

Hazards are defined as:

Any hazardous thing or condition on the property which may contribute to the injury of any person present on the property. Hazards include, but are not limited to open holes, open foundations, open wells ... See Keokuk Municipal Code § 5.24.020 (10).

The definition of a dangerous building is contained in the Uniform Code for Abatement of Dangerous Buildings which is adopted and incorporated by reference into the Keokuk Municipal Code through Keokuk Municipal Code § 15.22.010. A “dangerous building” is “any building or structure deemed to be dangerous under the provisions of Section 302 of the Uniform Code for Abatement of Dangerous Buildings”. The specific relevant provisions of this code alleged to have been violated are stated as follows:

[A]ny building or structure which has any or all of the conditions or defects hereinafter described shall be deemed a dangerous building, provided such conditions or defects exist to the extent that life, health, property, or safety of the public or its occupants are endangered...

5. Whenever any portion or member or appurtenance thereof is likely to fail, or become detached or dislodged, or to collapse and thereby injure persons or damage property.

8. *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 partially or completely collapse.*

9. *Whenever, for any reason, the building or structure, or any portion thereof, is manifestly unsafe for the purpose for which it is being used.*

14. *Whenever any building or structure which, whether or not erected in accordance with all applicable laws and ordinances, has in any non-supporting part, member or portion less than 50 percent, or in any supporting part, member or portion less than 66 percent of the (i) strength, (ii) fire-resisting qualities or characteristics, or (iii) weather-resisting qualities or characteristics required by law in the case of a newly constructed building of like area, height and occupancy in the same location.*

16. *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 fire marshal to be a fire hazard.*

17. *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.*

See Chapter 3, Section 302 (5, 8, 9, 14, 16, and 17), Uniform Code for Abatement of Dangerous Buildings.

Municipalities, such as the City of Keokuk, in the exercise of their police powers, may declare and abate nuisances by adopting and enforcing reasonable ordinances. **Hancock v. City Council of City of Davenport, 392 N.W.2d 472, 475 (Iowa 1986)**. This case presents an example of the exercise of that authority. In this case the city alleges that the conditions of the Christ Vision building meet those definitions.

The building first came to the attention of city officials in July of 2015. On July 18, 2005 the city sent a notice of nuisance letter requesting the Defendant to address a hazardous condition caused by disrepair of brick corners and moldings (that were falling). **See Plaintiff's Ex. 1.**

On December 29, 2008 the City declared the building at 228 North 4th St. as "Unsafe to Occupy" due to structural hazards, nuisance, and weather protection issues. Notices were sent to the city municipal waterworks, Atmos Energy (gas), and Alliant Energy (electric) that the building was not safe for human habitation. **See Plaintiff's Ex. 2.**

On April 26, 2010 a grass and weed notice was given to the Defendant by the City. **See Plaintiff's Ex. 3.** Apparently, that issue was adequately resolved.

On January 21, 2011 a letter was sent to the Christ Vision board suggesting that the building be demolished and that the City was taking bids from demolition companies in the area. **See Plaintiff's Ex. 4.** This letter was followed shortly thereafter by another letter on February 7, 2011 again raising the matter of taking bids for demolition and noting specific conditions of deficiency of windows needing to be covered, the roof caving in, interior problems, and steeples which were not secure and presenting a hazard to passersby. **See Plaintiff's Ex. 5.**

The City sent a letter to Mr. Dailey noting its objections to a news interview on WGEM-TV that involved entry into the building. The City warned that the unsafe to occupy notice forbid anyone not working on repair or demolition of the building from entering the structure. The City specifically requested that any interviews in the future take place outside the structure. **See Plaintiff's Ex. 6.**

On March 11, 2011 a structural evaluation report was sent to Melanie Wells by engineer Charles S. Bach, Jr. His report indicated several key findings regarding the building's structural features. Those findings included:

1. *Foundation: The foundation appears to be sound. No cracks were noted in the exterior walls and no settlement was noted in the roof or wall structures. The rubble foundation is in good condition.*
2. *Side Walls: The side walls are masonry (brick). No cracks suggesting movement are noted in the side walls. Areas over windows or other openings are deteriorated and collapsing. These areas need to be repaired. The entire exterior needs to be tuckpointed and missing brick replaced. The windows, bell tower opening and other openings need to be painted, replaced and refurbished. All steeples need to be refurbished with a new finish, shingles, and louvers.*
3. *Roof: The roof is slate or asphalt shingles over wood sheathing over wood purlins running the length of the building. The roof structure, sheeting, and shingles need to be replaced. Some of the materials may be salvaged. The structure today looks good. No sags in the ridges or valleys. The steeples are straight with no signs of leaning. The structure has been exposed to the weather because of the areas that do not have a waterproof surface.*
4. *Floor in Sanctuary: The floor structure appears sound. When renovation is started a new flooring system needs to be installed. The floor joist may need to be replaced and the building investigated for termites.*

*Summary: The building needs a new roof and repairs to the roof structure, the masonry walls need tuckpointing and repair to damaged areas, all the trim needs painting or replaced, the windows and entrance doors need refurbished, and selected replacement of glass panels. The structure is in remarkably good condition considering its lack of maintenance. I do not notice any conditions that would suggest the possible collapse of the structure. **Defendant's Ex. A.***

It is clear from this report that if adequate action had been taken in 2011 (primarily the roof replacement to protect the interior of the building), the situation currently in existence would have been significantly mitigated. Over the past five years, however, the big issue – roof deterioration and its consequences – have taken a progressively severe toll on the structure. Ms. Mahoney testified that the structure has holes in its roof (ceiling), holes in the sanctuary floor), bricks falling from the structure, water in the basement, junk piled in the building, missing windows, damage to the steeple caps, unsecure stones and damage to the front steps. These observations are supported by photographic evidence. **See Plaintiff's Ex. 8.**

The Court specifically finds, based upon the entire record taken as a whole, that the building itself, in its current state of disrepair and deterioration is in fact a “dangerous building” as that term is defined by Chapter 302 of the Uniform Code for Abatement of Dangerous Buildings. The UCADB has been adopted into the Keokuk Municipal Code by K.M.C. § 15.22.010. The major problems of the building include large holes in the roof of the structure,

fallen plaster in many parts of the interior of the structure, holes in the sanctuary floor, water in basement areas, fallen bricks, and an assemblage of boards, debris, moldings, and other parts of the structure that have fallen or which have otherwise been scattered throughout much of the structure. These conditions make the old Unitarian Church at 428 N. 4th St. a “dangerous building”. Additionally, several of the conditions, such as falling bricks and other materials, holes in the sanctuary floor, and accumulations of rubble within the building, “may contribute to the injury of any person present on the property” and are, therefore, “hazards” as defined by the municipal code. In its present condition, the building is a nuisance subject to abatement order and a finding that a municipal infraction has occurred and is continuing to occur.

Though the building’s problems are obvious, finding the solution to the dilemma posed is the real problem presented in this case. If the parties decide that demolition rather than rehabilitation of the building must occur, the proposals suggested in the memorandum from Mr. Dailey to Keokuk city officials dated April 25, 2016 embody several meritorious and thoughtful ideas that would help preserve key parts of the history and legacy of the historic Unitarian Church for the Keokuk community and its citizens. **See Plaintiff’s Exhibit 7.**

ACCORDINGLY, THE COURT ENTERS THE FOLLOWING JUDGMENT:

1. The city has proven that the condition of the property located at 428 N. 4th Street (old Unitarian Church) and owned by the defendant is a nuisance for the reasons stated above and that the municipal infraction of dangerous building / hazards has occurred and has not yet been abated.
2. A civil penalty of \$250 is hereby imposed against the defendant. **See Iowa Code § 364.22 (10) (a) (1).**
3. The civil penalty is suspended subject to compliance with the abatement order.
4. The defendant, or any successor person or entity who assumes ownership of the property without approval of the City of Keokuk, shall abate all significant violations of the municipal code (those making the structure a dangerous building or presenting a hazard). Minimum abatement for compliance under this order shall include the following steps:
 - a. Replace roof on building in a manner complying with applicable building codes and sufficient to keep rain, snow, and other precipitation out of the interior areas of building in order to protect its contents and to prevent further damage to structure.
 - b. Secure any portion of structure at serious risk of falling on the ground, sidewalks, or other areas outside the building which present a hazard to passersby or persons in proximity of the building. The exact actions needed to meet this requirement shall be specified in writing by the City of Keokuk through its officers or agents.
 - c. Remove or repair any hazardous condition within the structure that makes it unsafe to occupy. The exact hazards to be abated under this requirement shall be specified in writing by the City of Keokuk through its officers and agents.
5. Defendant, or any successor owner not prior approved by the City of Keokuk, shall abate the conditions set forth in paragraph 4 above within a period of time set forth

by and subject to conditions specified in a written plan of abatement to be agreed upon by the defendant or its successor and the City of Keokuk.

6. Abatement may be accomplished either by making the repairs set forth in paragraph 4 or by code compliant demolition of the building and restoration of the lot to a legal condition.
7. If no agreement between the parties with regard to a written plan of abatement and timeline for completion of abatement is reached by March 1, 2017 (or by any additional period of time mutually agreed by the parties), then the City may take any action needed to abate the conditions set forth above and may assess up to \$5000 of the cost of abatement (jurisdictional limit of small claims court) to the Defendant or its successor and to the property. **See Iowa Code § 364.22 (10) (a) (4-5)**. Said abatement costs shall be taxed as costs and shall become a lien on the property.
8. If the City seeks to be reimbursed for any amount in excess of \$5000 for costs of abatement, it must seek such reimbursement by appropriate action in District Court [court of general jurisdiction] with appropriate procedure, hearing, and notice to all effected parties.
9. If the Defendant or its successor, elects to sell and deed, or to donate and deed, the property to the City of Keokuk or to an entity or person approved in writing in advance by the City of Keokuk, then all abatement obligations under this order shall be deemed fulfilled and the Defendant or its successor will no longer be considered to be subject to this order.

Court costs are assessed to the defendant.

Appeal may be taken in the manner and within the time limits as provided in Iowa Code § 631.13 and any other applicable law. **See Iowa Code § 364.22 (10) (c)**.

SO ORDERED AND ADJUDGED.



State of Iowa Courts

Type: OTHER ORDER

Case Number **Case Title**
KECICI000123 CITY OF KEOKUK MVS CHRIST VISION, INC

So Ordered

A handwritten signature in cursive script, reading "Gary R. Moneman". The signature is written in black ink and is positioned above a horizontal line.

Gary R. Moneman, District Associate Judge,
Eighth Judicial District of Iowa