

SCANNED

6-5-12
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IN THE ADMINISTRATIVE HEARING BY CITY MANAGER
OF CITY OF NAPOLEON, OHIO

Case No. 12-ADM005

IN THE MATTER OF:

Nuisance Abatement Hearing
JOURNAL ENTRY

Michael Mullholand
131 Railroad Street
Napoleon, Ohio

The matter of an alleged nuisance existing on the property located at 131 Railroad Street, Napoleon, Henry County, Ohio, being a (✓) Residential Property, () Commercial Property consisting of: weeds, grass or plants, other than trees, bushes, flowers or other ornamental plants growing to a height exceeding eight inches (8") came on for hearing this 20th day of April, 2012 at the Napoleon City Conference Room. Present were Tom Zimmerman, Zoning Administrator; Trevor M. Hayberger, City Law Director.

Michael Mullholand, the property owner, () present and represented; () present but not represented by legal counsel; (✓) property owner, not present.

Evidence was produced to the satisfaction of this Hearing Officer as was presented by the Zoning Administrator and/or others, by way of photographs, testimony, and/or writings all as solicited by City Law Director Trevor M. Hayberger. () the property owner or his/her representative was given an opportunity to be heard and produce evidence () and did so (✓) however, failed to appear.

FINDING(S): "THAT"

- () Notice in regard to this hearing was properly served upon the property owner(s) and all interested parties in accordance with law;
- (✓) The owner of the property or legal counsel failed to appear, constituting a default and a summary finding that a nuisance exists; or, in the alternative, only to the extent required by law to consider the evidence, based on the evidence presented, it is the finding of this Hearing Officer that the premises condition fits the definition of nuisance under 503.02; further, that the nuisance is specific and exists pursuant to 503.03(4) and that there exists a violation of 503.08(f), all of the sections of the City's Codified Ordinances. That sufficient evidence exists that a nuisance does in fact exist at the premises that was the subject of this Hearing.
- () The owner of the property or legal counsel appeared, however, based on the evidence presented, it is the finding of this Hearing Officer that the premises condition fits the definition of nuisance under 503.02; further, that the nuisance is specific and exists pursuant to 503.03(f) and that there exists a violation of

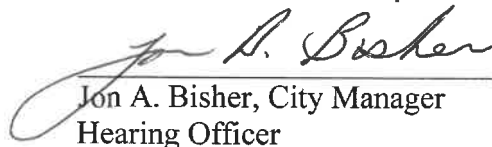
503.08(f), all of the sections of the City's Codified Ordinances. That sufficient evidence exists that a nuisance does in fact exist at the premises that was the subject of this Hearing.

- () The owner of the property or legal counsel appeared and based on the evidence presented, it is the finding of this Hearing Officer that the premises condition does not fit the definition of nuisance under 503.02; further, that the nuisance is not specific and does not exist pursuant to _____ and that there exists no violation of _____, all of the sections of the City's Codified Ordinances.

ORDER(S):

- () this matter is dismissed without prejudice to the parties, costs abated.
- () The nuisance shall be abated as follows:
- () All nuisance conditions shall be abated so that there is complete compliance with the property maintenance code and the nuisance code at the location of 131 Railroad Street, Napoleon, Ohio, within thirty (30) calendar days from the making of this Order, abatement to include, but not be limited to demolition and cleanup;
 - () In the event that the compliance is not accomplished, subject to further review of this hearing officer, then the City officials may seek injunctive relief or take other legal action as may be permitted by law, and/or to the extent permitted by law, abate the nuisance by razing the subject () building(s) () structure(s) and disposal of the debris. Cost to be assessed pursuant to Napoleon's Codified Ordinances Chapter 503.
 - () The Hearing officer retains jurisdiction in this matter in the event it becomes necessary to have additional hearings.

It is so **ORDERED**.


Jon A. Bisher, City Manager
Hearing Officer
Dated: April 20, 2012

NOTICE

You may appeal this decision in accordance with Section 503.11 of the Codified Ordinances of the City of Napoleon, Ohio, within ten (10) business days by filing notice with the City Finance Director.

*503.11 APPEALS.

- (a) **Right to Appeal:** An appeal to the City Council may be taken by any person aggrieved where it is alleged there is an error in any order, requirement, decision or determination made by the City Manager in the enforcement of this chapter.
- (b) **Notice of Appeal:** An appeal shall be taken within ten (10) City business days from the determination complained of by filing with the City Finance Director a notice of appeal, specifying the grounds thereof. The City Finance Director, upon receipt of notice, shall forthwith transmit to the Council and the City Manager true copies of all the paper constituting the record of the matter. Upon receipt of the record, the City Finance Director shall set the matter for public hearing before the Council. Notice of said public hearing shall be given by publication once in a news paper of general circulation in the City, and by sending regular U.S. mail to the last known address of the appealing party at least three (3) days in advance of the hearing. A thirty-five dollar (\$35.00) deposit is required for an appeal, refundable should the appealing party prevail; moreover, if expenses are incurred by the City in removing personal property as the subject of abatement, a bond covering the expense must be posted by the owner if release of the property is requested pending appeal. Said deposit and/or bond may be waived by the City Finance Director upon a showing of indigence.
- (c) **Council Action:** The Council shall hold a public hearing and may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as is consistent with this Ordinance and all other applicable resolutions, ordinances and statutes. The concurring vote of a majority of the current members of the Council shall be necessary to reverse any order of the City Manager.
- (d) **Stay of Proceedings:** An appeal stays all proceedings in furtherance of the action appealed from, unless the City Manager from whom the appeal is taken certifies to the Council, after the notice of appeal shall have been filed with him/her, that by reason of facts stated in writing, a stay would in his/her opinion cause imminent peril to life or property.

131 Railroad

**NOTICE TO ABATE NUISANCE
GRASS & WEEDS
(503.08 (e) NAPOLEON CITY CODE)**

The City of Napoleon to the following property owner and interested parties:

**Michael Mullholand
834 Daggett Dr.
Napoleon, OH 43545**

You are hereby notified that the property at **131 Railroad St.**, that is maintained, operated or permitted to exist by you has been declared a nuisance as defined in the City's codified Ordinance Section 503.03(4) Any weeds, grass, or plants, other than trees, bushes, flowers, or other ornamental plants, growing to a height exceeding ten inches (10") on lots zoned business, commercial or industrial, or eight inches (8") on lots zoned residential. This paragraph (4) does not apply to sloped areas of properties requiring excessive lengths to maintain the integrity of the slope; and must be abated by removal of the same and that if this notice is not complied with within 2 days of service of this notice (being this publication date), you are directed to appear before the undersigned in the Conference Room at City Hall located at 255 W. Riverview, Napoleon, Ohio 43545 on **April 20, 2012 at 1:00 pm** and to show cause why the same shall not be abated and that upon your failure to so appear the undersigned will take necessary steps to abate such nuisance. The cost of abatement incurred by the City shall be assessed against you, and a lien may be imposed on the property to secure such payment. In addition to any other penalty, there may be imposed by the City Manager, upon the person that is the named party in the abatement action under this Chapter 503, a civil fine in an amount not to exceed \$750.00 upon the finding of the City Manager during the administrative hearing held in accordance with 503.08 (f) that a nuisance exists.

You are notified that abatement has been initiated involving real or personal property of which you have a recorded interest; therefore, to protect your interest therein you may appear at the above noted hearing. If you have any questions, please call Tom Zimmerman, Building Official, 255 W. Riverview Ave. from 7:30 am to 4:00 pm Monday through Friday (419) 592-4010.

Tom Zimmerman

Tom Zimmerman, Building & Zoning



Photo taken by Tom Zimmerman on 4-17-12

Plaintiffs
Exhibit B



Plaintiff's
Exhibit A

Photo taken by Tom Zimmerman on 4-17-12