CITY OF DELAWARE
BOARD OF ZONING APPEALS
AGENDA

CITY COUNCIL CHAMBERS
1 S. SANDUSKY ST.
7:00 P.M.

REGULAR MEETING MARCH 9, 2016

1. ROLL CALL

2. APPROVAL of the Motion Summary of the Board of Zoning Appeals meeting held on June 10, 2015, as recorded and transcribed.

3. REGULAR BUSINESS

   A. 2015-0213: A request by Yoav and Schlomo Botach to appeal an administrative decision by the code official requiring the condemnation/demolition of 15 Flax Street on approximately 3.61 acres zoned M-1 (Light Manufacturing District) under the 2000 International Property Maintenance Code.

4. BOARD MEMBER COMMENTS AND DISCUSSION

5. ELECTION OF OFFICERS

6. NEXT REGULAR MEETING: April 13, 2016

7. ADJOURNMENT

BOARD OF ZONING APPEALS
MOTION SUMMARY
June 10, 2015

ITEM 1. Roll Call

Chairman Dick called the meeting to order at 7:00 p.m.

Members Present: Robert Badger, Adam Vaughn, Todd Daughenbauh, Crystal Brewer Councilman Joe DiGenova, Vice-Chairman Paul Junk, and Chairman Matt Dick

Staff Present: Lance Schultz, Zoning Administrator

ITEM 2. Approval of the Motion Summary of the Board of Zoning Appeals meeting held on March 11, 2015, as recorded and transcribed.

Motion: Vice-Chairman Junk moved to approve the Motion Summary for the April 8, 2015 meeting, seconded by Mr. Badger. Motion approved by a 7-0 vote.

ITEM 3. REGULAR BUSINESS

(A) 2015-0213:A request by Yoav and Schlomo Batch to appeal an administrative decision by the code official requiring the condemnation/demolition of 15 Flax Street on approximately 3.61 acres zoned M-1 (Light Manufacturing District) under the 2000 International Property Maintenance Code.

(1) This case needs to be removed from the table prior to any action taken by the Board.

Motion: Councilman DiGenova moved to remove 2015-0213 from the table, seconded by Mr. Vaughn. Motion approved by a 7-0 vote.

Chairman Dick swore in the following participants from the public:

James Mardis
6 Flax Street
Delaware, Ohio

Behzad Vedaie, Professional Engineer
IEG, Inc.
1901 E. Dublin-Granville Rd., Suite 304
Columbus, Ohio 43229

David Gordon, Attorney
82 North Franklin Street

Delaware, Ohio
Mr. Schultz provided a review of case 2015-0213, which included a map of the location, zoning map, and aerial photographs of the location from 2013. Mr. Schultz reviewed the discussion regarding 2015-0213 from the April 8, 2015 Board of Zoning Appeals meeting. Mr. Schultz reviewed the existing site plan and the Flax Street Property Improvement Plan provided by Mr. Vedaie. Mr. Vedaie confirmed that the Flax Street Property Improvement Plan was sent to Mr. Schultz approximately two weeks prior to the June 10, 2015 meeting. Mr. Schultz reviewed staff recommendations that improvements shall be completed by December 31, 2015 and meet all other City development improvements. Mr. Schultz also reviewed the requirement that the site is to be routinely mowed and clean of debris.

APPLICANT:
Behzad Vedaie, Professional Engineer
IEG, Inc.
1901 E. Dublin-Granville Rd., Suite 304
Columbus, Ohio 43229

David Gordon, Attorney
82 North Franklin Street
Delaware, Ohio

Mr. Badger voiced his concern, stating that he observed the property and found that the site was not being maintained as required. Mr. Gordon explained that the landscape company was stopped by a surrounding property owner stating that the landscape company was on their property.

Mr. Vedaie reviewed the contract for service for the hired landscape contractor. Mr. Vaughn requested that Mr. Vedaie provide a maintenance schedule to staff. Mr. Schultz is to have code enforcement staff monitor the site.

Mr. Schultz clarified that applicant must meet state building code.

Mr. DiGenova discussed the need to add stipulations to the recommendations for approval of an extension. Councilman DiGenova recommended that the applicant furnish a monthly report on progress of the building and present it to staff, and that there will be no further extensions after December 31, 2015 if the work is not completed per the "Flax Street Improvement Plan."

PUBLIC PARTICIPATION:
James Mardis
6 Flax Street
Delaware, Ohio

Mr. Mardis clarified on the location map the property boundaries. Mr. Mardis voiced his concerns regarding the septic tank and sewer lines. Mr. Schultz informed the Board that the City Engineer and Public Works Department will address these concerns when plans are submitted to ensure that the plans meet state and city code requirements.

Motion: Councilman DiGenova moved to add the conditions that the applicant will provide monthly progress report and completion status to staff and that no further extension will be granted after December 31, 2015 to approve the applicant an extension to December 31, 2015 to have all the work completed as documented in the "Flax Street Property Improvement Plan" that achieves compliance with the 2000 International Property Maintenance Code and the minimum building and zoning requirements or staff will insert this case on the January 13, 2016 BZA meeting agenda and request the condemnation/demolition of the above mentioned buildings as originally proposed in the March 11, 2015 BZA staff report, seconded by Mr. Badger. Motion approved by a 7-0 vote.

ITEM 4. BOARD MEMBER COMMENTS AND DISCUSSION

ITEM 5. NEXT REGULAR MEETING: July 8, 2015

ITEM 6. ADJOURNMENT

Motion: Vice-Chairman Junk moved to adjourn the Board of Zoning Appeals meeting, seconded by Ms. Brewer. Motion was approved by a 7-0 vote. The Board of Zoning Appeals meeting adjourned at 7:54 p.m.

_____

Matt Dick, Chairman

_____

Elaine McCloskey, Clerk

EST 1808

CITY OF

DELAWARE

OHIO

Date: March 1, 2016

To: Board of Zoning Appeals

From: Lance A. Schultz, Planning and Zoning Administrator (DE for LS)

CC: Dave Efland, Planning and Community Development Director (PE)

RE: 1 and 15 Flax Street and steel building – case 2015-0213

On June 10, 2015 the Board of Zoning Appeals (BZA) made the following decision pertaining to the subject case: "Councilman DiGenova moved to add the conditions that the applicant will provide monthly progress report and completion status to staff and that no further extension will be granted after December 31, 2015 to approve the applicant an extension to December 31, 2015 to have all the work completed as documented in the "Flax Street Property Improvement Plan" that achieves compliance with the 2000 International Property Maintenance Code and the minimum building and zoning requirements or staff will insert this case on the January 13, 2016 BZA meeting agenda and request the condemnation/demolition of the above mentioned buildings as originally proposed in the March 11, 2015 BZA staff report, seconded by Mr. Badger. Motion approved by a 7-0 vote."

The owner's engineer IEG submitted the attached "Flax Street Property Improvement Plan (see attached) and indicated the subject improvements would be made by December 31, 2015. Staff delayed the January and February BZA meetings because the owners were making some progress, albeit far slower than anticipated and committed to by the applicants, on initiating the improvements. The Owners have not come close to completing any of the improvements at this time however. Below is a summary timeline pertaining to the status:

- In general they have performed general maintenance to the building's exterior and site (repaired a portion of the roof at 15 Flax Street, boarded up some windows, cut grass, etc.) and from staff's perspective appears to be acceptable to the City's general standards. However, the applicant has not provided a monthly progress report and completion status to staff on a monthly basis per a requirement of the BZA.
- 1 Flax Street – (Building 1) 2015-2395 – The building permit (per the Flax Street Improvement Plan) was approved on January 6, 2016 after a several discussions and an adjudication letter from Chief Building Official (CBO) Jerry Warner.
    - The owner received a partial approval of an electrical building inspection (bathroom) on February 3, 2016
    - The owner received a second partial approval and an electrical building inspection (general electric) on February 18, 2016.

- 15 Flax Street – (Building 2) 2015-2554 – The building permit (per the Flax Street Improvement Plan) was approved on December 10, 2015.
    - No building inspections have been requested for this building.
- Steel Building – No building permits have been submitted for the subject building. Building inspections cannot be completed until after a building permit has been issued. Since no building permit application has been received from the owners no permit has been issued to date. Thus, any work done to date on this structure would likely have been technically illegally done with no permit and no inspections.

Obviously, the owner has not met their committed obligation of completing the "Flax Street Property Improvement Plan" they submitted last June 2015 to the BZA.

However, because the owner has made some progress, albeit minimal and with no consistent pattern, staff reluctantly recommends granting an extension to June 30, 2016 to have all the work completed as documented in the "Flax Street Property Improvement Plan" that achieves compliance with the 2000 International Property Maintenance Code and the minimum building and zoning requirements or staff will insert this case on the next available BZA meeting agenda and request the condemnation/demolition of the above mentioned buildings as originally proposed in the March 11, 2015 BZA staff report. Furthermore, staff would request requiring formal written monthly updates on the status showing a consistent pattern of making progress to achieve compliance with the "Flax Street Property Improvement Plan submitted by the owner's engineer. Failure to provide this documentation and progress could be considered grounds to bring the case back for formal hearing before the Board of Zoning Appeals for review as noted above in advance of June 30, 2016.

FLAX STREET PROPERTY IMPROVEMENT PLANS

General

- The site was cleaned from any debris and construction material.
- Yard was cleaned from small shrubs and unwanted vegetations.
- Lawn area is cut and maintained in a systematic manner.
- There have been staffs working daily on site within last 90 days.

Building #1 (1 Flax St.)

- All exterior of building elements are repaired (downspouts, gutter, exterior wall, wall penetration, seal joints.
- All interior of the building were cleaned and ready to finish. Currently we are working on drawing for interior improvements including but not limited, plumbing fixtures repair replacement, bathrooms fixture installation, setting kitchen cabinets, replace or repair floor finishes, and HVAC Equipment repair)
- Storage area is cleaned from all debris. Ready to be rented as individual storage rental.
- It is estimated that the drawings will be ready for construction by end of June for July and August renovation work.
- The entire building will be ready for occupancy by fall of 2015.

Steel Building

- All exterior of building elements are repaired (downspouts, gutter, exterior wall, wall penetration seal
- All interior of the building were cleaned and ready to be occupied.
- The space can be rented for use when the bathroom in Building #1 is finished.

Building #2 (15 Flax St.)

- A Structural drawing was prepared to replace damaged wood beams and roof rafters. The City approved the submitted drawing and contractor has delivered the material for installation to the site.
- All structural repairs will be completed by Mid-June and will be inspected by City official. The roof covering will be repaired by end of June.
- All exterior of building elements are repaired (downspouts, gutter, exterior wall, wall penetration seal, deteriorated walls were repaired. All windows and doors are secured and water tight.
- All interior of the building were cleaned and ready to be painted in the warehouse area.
- Following completion of Building #1, improvement for this building will start.
- End of summer shall be considered to prepare improvement drawing for this building.
- It is estimated that the construction improvement of this building may take about five to six months after city approval of drawing prior to occupancy.

EST 1808
CITY OF
DELAWARE
OHIO

2015-0213
Appeal of the 2000 International Property Maintenance Code
15 Flax Street
Existing Site Plan

N

CITY OF DELAWARE
BOARD OF ZONING APPEALS
AGENDA

CITY COUNCIL CHAMBERS
1 S. SANDUSKY ST.
7:00 P.M.

REGULAR MEETING JUNE 10, 2015

1. ROLL CALL

2. APPROVAL of the Motion Summary of the Board of Zoning Appeals meeting held on April 8, 2015, as recorded and transcribed.

3. REGULAR BUSINESS

   A. 2015-0213: A request by Yoav and Schlomo Botach to appeal an administrative decision by the code official requiring the condemnation/demolition of 15 Flax Street on approximately 3.61 acres zoned M-1 (Light Manufacturing District) under the 2000 International Property Maintenance Code.
      (1) This case needs to be removed from the table prior to any action taken by the Board.

4. BOARD MEMBER COMMENTS AND DISCUSSION

5. NEXT REGULAR MEETING: July 8, 2015

6. ADJOURNMENT

BOARD OF ZONING APPEALS
April 8, 2015
MOTION SUMMARY

ITEM 1. Roll Call

Chairman Dick called the meeting to order at 7:00 p.m.

Members Present: Robert Badger, Adam Vaughn, Todd Daughenbauh, Crystal Brewer (arrived at 7:24 p.m.), Councilman Joe DiGenova, Vice-Chairman Paul Junk, and Chairman Matt Dick

Staff Present: Dave Efland, Planning and Community Development Director, Jerry Warner, Chief Building Official, and Darren Shulman, City Attorney

Motion: Councilman DiGenova moved to excuse Ms. Brewer, seconded by Vice-Chairman Junk. Motion approved by a 6-0 vote.

ITEM 2. Approval of the Motion Summary of the Board of Zoning Appeals meeting held on March 11, 2015, as recorded and transcribed.

Motion: Mr. Badger moved to approve the Motion Summary for the March 11, 2015 meeting, seconded by Vice-Chairman Junk. Motion approved by a 6-0 vote.

ITEM 3. REGULAR BUSINESS

(A) 2015-0213:A request by Yoav and Schlomo Batch to appeal an administrative decision by the code official requiring the condemnation/demolition of 15 Flax Street on approximately 3.61 acres zoned M-1 (Light Manufacturing District) under the 2000 International Property Maintenance Code.

(1) This case needs to be removed from the table prior to any action taken by the Board.

Motion: Mr. Badger moved to remove 2015-0213 from the table, seconded by Councilman DiGenova. Motion approved by a 6-0 vote.

Chairman Dick swore in the following participants from the public:

Jerry Warner
653 Congress Court
Delaware, Ohio

James Mardis 6 Flax Street
Delaware, Ohio

Behzad Vedaie
1901 E. Dublin-Granville Rd.
Suite 304
Columbus, Ohio 43229

Scott Gordon Attorney
82 North Franklin Street
Delaware, Ohio

David Gordon, Attorney
82 North Franklin Street
Delaware, Ohio

Mr. Efland provided a presentation on the location of the property, the current zoning. Mr. Efland provided aerial photographs that show the three structures on the property. Mr. Efland reviewed the reasons for the appeal criteria of the demolition, and recommend denial of the appeal.

Mr. Shulman discussed the procedural elements that were met. Mr. Shulman reviewed the next step for the applicants if the appeal is denied by the Board of Zoning Appeals.

Mr. Warner provided a brief summary of the property, and history of working with the property owner on maintenance. Mr. Warner voiced concerns over multiple responses by the police and fire department, and incidents of individuals using the facilities with a warming fire inside. Mr. Warner did review some repairs that were made to prevent wall collapse, and some recent window replacement. Mr. Warner informed that the City of Delaware has been doing lawn maintenance.

Mr. Efland discussed the property as an attractive nuisance.

Applicant:
Scott Gordon, Attorney
82 North Franklin Street
Delaware Ohio

Mr. Gordon voiced concerns that the Board of Zoning Appeals is not the appropriate board to be discussing the property. Mr. Gordon referenced Section 111 of the City of Delaware's Adopted International Property Maintenance Code, means of appeals, and details the types of Boards that should hear the appeal, as well as the membership and qualifications of the Board. Mr. Gordon noted that the City has been paid by the Client to maintain the lawn. Mr. Gordon reviewed Section 108 in Property Maintenance Code that defines the authority that the Code Enforcer for vacant structures, and

discussed that the property is vacant. Mr. Gordon submitted that the property is not ready for occupied standards, but that 108.12 provides for the closing of vacant structure. Mr. Gordon does not feel that the building is a public or attractive nuisance, and the owners have done what is necessary to keep the building from collapse.

PUBLIC PARTICIPATION:

Behzad Vedaie, Professional Engineer for IEG Inc.
1901 E. Dublin-Granville Rd.
Suite 304
Columbus, Ohio Professional Engineer for IEG Inc.

Mr. Vedaie discussed his training and education in structural engineering, and experience in commercial and residential renovation projects. Mr. Vedaie discussed his experience working with the Ohio Building Code. Mr. Vedaie has worked with the applicant to determine what the City of Delaware is requesting. Mr. Vedaie felt that the building has structurally unique beams in the building. Mr. Vedaie felt that two of the three buildings are unfit for human occupancy. Mr. Vedaie discussed quotes received by property owners to replace or repair roofs. Mr. Vedaie stated that he was on the property recently, and that none of the buildings are in danger of collapse. Mr. Vedaie provided his opinion of the different provisions in the Property Maintenance Code for occupancy requirements and vacancy requirements.

Mr. Badger questioned the concern over the windows on the lower levels that have broken glass, and the degredation that can occur inside due to broken windows. Mr. Vedaie discussed water damage would be more concern to the second floor due to wood floor, and bottom floor there is not a concern due to concrete floor. Mr. Vedaie discussed that the floor on the second floor is not in danger of collapse.

Mr. Shulman recommended that Mr. Warner be able to access the buildings to follow up on improvements that the property owners state they have completed. Mr. Warner stated he was unable to enter property due to No Trespassing signage that was posted. Mr. Vedaie explained reason for the No Trespassing signage, and that he recommended to Mr. Warner that he ask for permission to permit access. Mr. Vedaie discussed the need to secure building from vandalism. Mr. Vedaie discussed the intent of the property owners to use the buildings.

Mr. Efland discussed that the building official, code enforcer and fire inspector and police should have access to the building to give a write up on recent repairs. Mr. Efland discussed the option to table the case to allow access by the building official to report on the property. Mr. Shulman clarified that the Applicant is not required to set up a tour of the building for the Appeal. Mr.

Vedaie discussed that the property needs cleaned up, and that the property is structurally sound. Mr. Vedaie stated plans by the property owners to use the structures for storage warehouse. Mr. Warner explained the need for permits to make the structure a warehouse to bring it to code. Mr. Efland explained that to make the property warehouse use it will need to be compliant and certified to make it appropriate for use.

Chairman Dick requested a break at 9:00 p.m. Chairman Dick reconvened the meeting at 9:06 p.m.

Chairman Dick swore in the following individual for public participation:

Ali Alghothani Professional Engineer for Star Consultants, Inc.
1910 Crown Park Court
Columbus, Ohio 43235 Professional Engineer for Star Consultants, Inc.

Mr. Alghothani discussed his experience as a structural engineer. Mr. Alghothani discussed his opinion of the structural integrity of the building, and felt that the condition was in excellent condition with the exception of the roof.

James Mardis
6 Flax Street
Delaware, Ohio

Mr. Mardis discussed the property boundaries. Mr. Mardis discussed his property boundaries. Mr. Mardis voiced concern over the deterioration of the buildings, and felt that the buildings will be burden to the city. Mr. Mardis voiced concerns over sewage concerns on the property.

Mr. Shulman recommended that the case be continued to the next meeting to allow Mr. Warner access to the building as discussed. Chairman Dick recommended that Mr. Warner take along during access to the building Fire and Police representatives.

Motion: Mr. DiGenova moved to table 2015-0213 for the applicant to allow for Mr. Warner to have access to the three buildings for inspection with the Fire and Police Department, seconded by Vice-Chairman Junk. Motion approved by a 7-0 vote.

ITEM 4. BOARD MEMBER COMMENTS AND DISCUSSION

ITEM 5. NEXT REGULAR MEETING: May 13, 2015

ITEM 6. ADJOURNMENT

Motion: Mr. Badger moved to adjourn the Board of Zoning Appeals meeting, seconded by Ms. Brewer. Motion was approved by a 7-0 vote. The Board of Zoning Appeals meeting adjourned at 9:35 p.m.

_____

Matt Dick, Chairman

_____

Elaine McCloskey, Clerk

EST 1808

CITY OF

DELAWARE

OHIO

Date: June 3, 2015

To: Board of Zoning Appeals

From: Lance A. Schultz, Planning and Zoning Administrator

CC: Dave Efland, Planning and Community Development Director

RE: 15 Flax Street

The May 13, 2015 Board of Zoning Appeals (BZA) meeting was tabled by a request of the applicant and staff to allow the applicant more time to prepare a schedule of upgrades to the property which would include specific improvements to each building with time frames for completion that can be presented at the June 10, 2015, BZA meeting.

Attached are the "Flax Street Property Improvements Plan" (see attached) for the general site, Building #1 (1 Flax Street), the Steel Building and Building #2 (15 Flax Street) as prepared by the owners engineer IEG Inc. Staff has reviewed the upgrades and believes the upgrades would achieve compliance with the 2000 International Property Maintenance Code if all the upgrades were completed as proposed per the time schedule submitted. Per the" Flax Street Property Improvement Plans," the engineer indicated it would take 5-6 months to complete all the improvements. Furthermore, this site needs to be mowed and cleared of trash and debris regularly that achieves compliance with all City codes. Also, when the "Flax Street Property Improvements Plan" is completed they need to be maintained to achieve compliance with all City code requirements. **Therefore, staff recommends granting an extension to December 31, 2015 to have all the work completed as documented in the "Flax Street Property Improvement Plan" that achieves compliance with the 2000 International Property Maintenance Code and the minimum building and zoning requirements or staff will insert this case on the January 13, 2016 BZA meeting agenda and request the condemnation/demolition of the above mentioned buildings as originally proposed in the March 11, 2015 BZA staff report.**

FLAX STREET PROPERTY IMPROVEMENT PLANS

General

- **The site was cleaned from any debris and construction material.**
- **Yard was cleaned from small shrubs and unwanted vegetations.**
- **Lawn area is cut and maintained in a systematic manner.**
- **There have been staffs working daily on site within last 90 days.**

Building #1 (1 Flax St.)

- **All exterior of building elements are repaired (downspouts, gutter, exterior wall, wall penetration, seal joints.**
- **All interior of the building were cleaned and ready to finish. Currently we are working on drawing for interior improvements including but not limited, plumbing fixtures repair replacement, bathrooms fixture installation, setting kitchen cabinets, replace or repair floor finishes, and HVAC Equipment repair)**
- **Storage area is cleaned from all debris. Ready to be rented as individual storage rental.**
- **It is estimated that the drawings will be ready for construction by end of June for July and August renovation work.**
- **The entire building will be ready for occupancy by fall of 2015.**

Steel Building

- **All exterior of building elements are repaired (downspouts, gutter, exterior wall, wall penetration seal**
- **All interior of the building were cleaned and ready to be occupied.**
- **The space can be rented for use when the bathroom in Building #1 is finished.**

Building #2 (15 Flax St.)

- **A Structural drawing was prepared to replace damaged wood beams and roof rafters. The City approved the submitted drawing and contractor has delivered the material for installation to the site.**
- **All structural repairs will be completed by Mid-June and will be inspected by City official. The roof covering will be repaired by end of June.**
- **All exterior of building elements are repaired (downspouts, gutter, exterior wall, wall penetration seal, deteriorated walls were repaired. All windows and doors are secured and water tight.**
- **All interior of the building were cleaned and ready to be painted in the warehouse area.**
- **Following completion of Building #1, improvement for this building will start.**
- **End of summer shall be considered to prepare improvement drawing for this building.**
- **It is estimated that the construction improvement of this building may take about five to six months after city approval of drawing prior to occupancy.**

EST 1808
CITY OF
DELAWARE
OHIO

2015-0213
Appeal of the 2000 International Property Maintenance Code
15 Flax Street
Existing Site Plan

N

CITY OF DELAWARE
PLANNING & COMMUNITY DEVELOPMENT

BOARD OF ZONING APPEALS / STAFF REPORT

CASE NUMBERS: 2015-0213
REQUEST: Appeal to an Administrative Decision
PROJECT: 15 Flax Street
MEETING DATE: June 10, 2015

APPLICANT/OWNER

Yoav and Schlomo Botach
5011 W. Pico Boulvard
Los Angeles, CA 90019

David Gordon
82 North Franklin Street
Delaware, OH 43015

REQUEST

2015-0213: A request by Yoav and Schlomo Botach to appeal an administrative decision by the code official requiring the condemnation/demolition of 15 Flax Street on approximately 3.61 acres zoned M-1 (Light Manufacturing District) under the 2000 International Property Maintenance Code.

PROPERTY LOCATION & DESCRIPTION

The subject 3.62 acre parcel is located on the north side of Flax Street just northwest of Milo Street. The subject property is zoned M-1 (Light Manufacturing District). The zoning to the north across the river is R-3 (One-Family Residential District), to the south the zoning is B-3 (Commercial Business District), to the east the zoning is R-4 (Medium Density Residential District) and R-6 (Multi-Family Residential District), to the west across the river the zoning is B-2 (Central Business District).

BACKGROUND

This case was tabled at the March 11, 2015 Board of Zoning Appeals meeting at the request of the applicant.

The subject property and buildings have had several violation notices the last 5 years (see attached) or so to repair and secure the building and to mow or remove rubbish and garbage from the site. None of the building improvements have been made and City services have been and continue to be burdened with securing the structures and mowing violations. In addition, the vacancy and state of disrepair of the building(s) and property has become a nuisance and danger to the neighborhood and City. The City Police Department has 59 documented police reports at this property since 2010 (see attached). Therefore the City had no recourse but to write a Condemnation/Demolition Notice on March 11, 2014 (see attached) based on the City adopted 2000 International Property Maintenance Code for the subject property and buildings to ensure the health, safety and general welfare of the City. The owner is appealing the Condemnation/Demolition Notice to the Board of Zoning Appeal per the City Codified Ordinances and the 2000 International Property Maintenance Code. The owner's attorney have supplied a written response to each violation (see attached).

STAFF ANALYSIS

- **MEANS OF APPEAL – 2000 International Property Maintenance Code**
  - **Section 111.1: Application of Appeal.** Any person affected by a decision of the code official or a notice or order issued under this code shall have the right to appeal to the board of appeals, provided that a written application for appeal is filed within 20 days after the day the decision, notice or order was served. An application for appeal shall be based on a claim that the true intent of this code or the rules legally adopted there under have been incorrectly interpreted, the provision of this code do not fully apply, or the requirements of this code are adequately satisfied by other means.
    - *Although the deadline to appeal this case was technically April 15, 2014 per the letter dated March 11, 2014 per the City Code Official The applicant has filed an appeal for this case only just recently. A potential reason for denying this appeal (and upholding the decision and order of the Code Official) is the failure of the applicant to seek an appeal within the required timeframe.*
- **VIOLATIONS – 2000 International Property Maintenance Code**
  - The subject property and buildings do not achieve compliance with Section 108 Unsafe Structures and Equipment, Section 110 Demolition, Section 301 General Requirements and Section 501 Plumbing Facilities and Fixture Requirements of the City adopted 2000 International Property Maintenance Code. The subject property and buildings have the following specific 15 property violations in the above four sections of the 2000 International Property Maintenance Code as documented in the Code Official's notice and reproduced (in part) herein:

1. **Section 108.1 Unsafe Structures and Equipment.** When a structure or equipment is found by the code official to be unsafe, or when a structure is found unfit for human occupancy, or is found unlawful, such structure shall be condemned pursuant to the provisions of this code
2. **Section 108.1.1: Unsafe structures.** An unsafe structure is one that is found to be dangerous to the life, health, property or safety of the public or the occupants off the structure by not providing minimum safeguards to protect or warn occupants in the event of fire, or because such structure contains unsafe equipment or is so damaged, decayed, dilapidated, structurally unsafe, or of such faulty construction or unstable foundation, that partial or complete collapse is possible.
   - *This structure is found to be unsafe and dangerous to the life, health or safety of the public due to its decay and dilapidation. The buildings lack minimum safe guards by not providing lighting or emergency lighting within the structures, heating or ventilation, running hot and cold water, operable bathroom facilities.*
3. **Section108.1.3: A structure is unfit for Human Occupancy.** Whenever the code official finds that such structure is unsafe, unlawful or, because of the degree to which the structure is in disrepair or lacks maintenance, is unsanitary, vermin or rat infested, contains filth and contamination, or lacks ventilation, illumination, sanitary or heating facilities or other essential equipment required by this code, or because the location of the structure constitutes a hazard to the occupants of the structure or to the public.
   - *This structure is unfit for human occupancy by not providing adequate ventilation, illumination, sanitary or heating facilities or other essential equipment. No lighting or emergency lighting is in the buildings and the structures are unlawful due to the lack of repairs.*
4. **Section 108.2: Closing of vacant structures.** If the structure is vacant and unfit for human habitation and occupancy, and is not in danger of structural collapse, the code official is authorized to post a placard of condemnation on the premises and order the structure closed up so as not to be an attractive nuisance. Upon failure of the owner to close up the premises within the time specified in the order, the code official shall cause the premises to be closed and secured through and available public agency or by contract or arrangement by private persons and the cost thereof shall be charged against the real estate upon which the structure is located and shall be a lien upon such real estate and may be collected by any other legal resources.
   - *The structures were condemned as of March 11, 2014 and may not be occupied until all violations of the City adopted 2000 International Property Maintenance Code achieve compliance.*
5. **Section 110.01: Demolition General**: The code official shall order the owner of any premises upon which is located any structure, which in the Code Official's judgment is so old, dilapidated and has become so out of repair as to be dangerous, unsafe, insanitary or otherwise unfit for human habitation or occupancy, and as such it is unreasonable to repair the structure, to demolish and remove such structure; or if such structure is capable of being made safe by repairs, to repair and make safe and sanitary or to demolish and remove at the owner's option.
   - *The buildings are so out of disrepair it is in the Code Officials judgment that they are unreasonable to repair, and if the owner feels the structures can be made safe and habitable and in compliance with the Building Codes of Ohio and the City adopted 2000 International Property Maintenance Code, then the owner may make the buildings safe and habitable. Building Permits are required and Plans must be prepared by design professionals registered in Ohio. The structures were required to be made compliant by April 15, 2014.*
6. **Section 301.2: General Responsibility.** The owner of the premises shall maintain the structures and exterior property in compliance with these requirements, except as otherwise provided for in this code. A person shall not occupy as owner-occupant or permit another person to occupy premises which are not in a sanitary and safe condition and which do not comply with the requirements of this chapter. Occupants of a dwelling unit are responsible for keeping in a clean, sanitary and safe condition that part of the dwelling unit or premises which they occupy and control.

7. **Section 303.1: Exterior Structure General.** The exterior property of a structure shall be maintained in good repair, structurally sound and sanitary so as not to pose a threat to the public health, safety or welfare.
   - *This property poses a threat to the public welfare by becoming an attractive nuisance, it is not in good repair and areas on the exterior are not structurally sound. The gutters on the south side of the building need to be removed or replaced. All exposed bare wood must be primed and painted.*
8. **Section 303.2: Protective Treatment**. All exterior surfaces, including but not limited to, doors and window frames, cornices, porches, trim, balconies, decks and fences shall be maintained in good condition. Exterior wood surfaces, other than decay-resistant woods, shall be protected from the elements and decay by painting or other protective covering treatment. Peeling, flaking and chipped paint shall be eliminated and surfaces repainted. All siding and masonry joints as well as those between the building envelope and the perimeter of windows, doors, and skylights shall be maintained weather resistant and water tight. All metal surfaces subject to rust or corrosion shall be coated to inhibit such rust and corrosion and all surfaces with rust or corrosion shall be stabilized and coated to inhibit future rust and corrosion. Oxidation stains shall be removed from exterior surfaces. Surfaces designed for stabilization by oxidations are exempt from this requirement.
   - *The loose and peeling paint needs to be scraped on the exterior siding, overhangs, fascia, windows and doors, all bare wood and metal needs to be primered, the outside of the buildings need to be painted to prevent further decay, and the all the work needs to be completed in a lead safe manner.*
9. **Section 303.4: Structural Members.** All structural members shall be maintained free from deterioration, and shall be capable of safely supporting the imposed dead and live loads.
10. **Section 303.5: Foundation Walls**. All foundation walls shall be maintained plumb and free from open cracks and breaks and shall be kept in such condition so as to prevent the entry of rodents and other pest.
    - *The stone foundation and walls need to be tuck pointed to prevent the entry of water.*
11. **Section 303.6: Exterior Walls**. All exterior walls shall be free from holes, breaks, and loose or rotting materials; and maintained weather proof and properly surface coated where required to prevent deterioration.
    - *The deteriorated cornices, box beams, fascia and siding on the structures need to be repaired and/or replaced. Remove all holes or cover with new siding to prevent water infiltration and rodents.*
12. **Section 303.11: Chimneys and towers**. All chimneys, cooling towers, smoke stacks, and similar appurtenances shall be maintained structurally safe and sound, and in good repair. All exposed surfaces of metal or wood shall be protected from the elements and against decay by periodic application of weather-coating materials, such as paint or similar surface treatment.
    - *The chimney that deteriorated and fell off of the roof needs to be rebuilt and repair the roof area around the chimney and check chimneys to make certain they are structurally sound, repair brick, mortar and flashings where necessary to make structurally sound..*
13. **Section 303.13: Window, skylight and door frames**. Every window, skylight, door and frame shall be kept in sound condition, good repair and weather tight.
    - *Replace all broken panes of glass in windows and doors, repair window sashes/frames and jambs, make operable windows and doors, and use proper glazing and paint jambs and sashes to protect from weather.*
14. **Section 304.3: Interior Surfaces**. All interior surfaces, including windows and doors, shall be maintained in good, clean and sanitary condition. Peeling, chipping, flaking, or abraded paint shall be repaired, removed, or covered. Cracked or loose plaster, decayed wood, and other defective surface conditions shall be corrected.

- *All loose and peeling paint from the inside of the building needs to be removed. All holes where the plaster has broken loose from the lath need to be repaired. Prepare the walls, windows and doors for new paint, and paint interior to comply with this code.*

15. **Section 505.1: Water Systems General.** Every sink lavatory, bathtub or shower, drinking fountain, water closet or other plumbing fixture shall be properly connected to either a public water system or to an approved private water system. All sinks, lavatories, laundry facilities, bathtubs and showers shall be supplied with hot or tempered and cold running water.
    - *Water and hot or tempered water must be provided to all of the plumbing fixtures.*

DECISION CRITERIA

Section 111.1 of the 2000 International Property Maintenance Code provides four elements upon which the BZA should base any decision on. Staff recommends a clear and concise consideration of each by the BZA so that there decision is well documented. To that end, staff provides each element below with staff's conclusion for each. Ultimately, the BZA must decide individually and then collectively its conclusion to these elements.

1. The intent of this code or the rules legally adopted thereunder have been incorrectly interpreted.
    a. Staff finds beyond a reasonable doubt that the evidence presented clearly demonstrates that the Code Official acted within the intent of the Property Maintenance Code and that the Code Official has correctly interpreted them. The entirety of the Property Maintenance code is premised upon the preservation of the general public health, safety, and welfare both on the property itself and as it may impact property and individuals off property. The evidence clearly indicates that this property was and continues to be an attractive nuisance as the Police Report runs clearly demonstrate in addition to the violations themselves. The applicants have not provided evidence adequately addressing these issues over the course of multiple years. The applicants failed to address these issues within the prescribed time frame outlined in the Code and in the latest notice of violation and they failed to avail themselves of the opportunity to appeal the decision within the prescribed time frame. Section 110.3 *Failure to comply* indicates that if an owner of a premises fails to comply with a demolition order within the prescribed time frame the code official shall cause the structure to be demolished and removed. This is what the order of the Code Official indicates and the record clearly shows failure of the applicants to comply including seeking an appeal within the allotted time frame.

2. The provisions of this code do not fully apply.
    a. Staff finds beyond a reasonable doubt that the evidence presented clearly demonstrates that the provisions of the Property Maintenance Code apply to this property as they do to any other property within the City of Delaware. The Property Maintenance Code was legally adopted and does not conflict with the provisions of the Ohio Revised Code as noted in the Code Official's response (dated 2/24/2015) to the applicant's appeal. The Code Official has pursued the process and procedures outlined within the Property Maintenance Code adopted by the City and as applicable by Section 102.1 of that code to this property where it indicates that the provisions of this code shall apply to all matters affecting or relating to structures and premises, as set forth in Section 101. Where, in a specific case, different sections of this code specify different requirements, the most restrictive shall govern. Finally, the code official did not pursue enforcement under provisions contained with the Ohio Revised Code or the State of Ohio Building Code for property maintenance and thus these are not germane to this action or this appeal.

3. The requirements of this code are satisfied by other means.
    a. Staff finds beyond a reasonable doubt that the evidence presented clearly demonstrates that the requirements of this code cannot be adequately satisfied by other means. The Property Maintenance Code was legally adopted and does not conflict with the provisions of the Ohio Revised Code as noted in the Code Official's response (dated 2/24/2015) to the applicant's appeal. The Code Official has pursued the process and procedures outlined within the Property Maintenance Code adopted by the City and as applicable by Section 102.1 of that code to this property. The code official did not pursue enforcement under provisions contained with the Ohio Revised Code or the State of Ohio Building Code for property maintenance and thus these are not germane to this action or this appeal.

4. The strict application of any requirement of this code would cause an undue hardship.
    a. Staff finds beyond a reasonable doubt that the evidence presented clearly demonstrates that strict application of this code would not cause an undue hardship. The Code Official's response (dated 2/24/2015) to the applicant's appeal specifically addresses this issue adequately. Additionally, the applicant has provided no evidence, other than an assertion of hardship, that a true hardship exists either monetarily or for other reasons. A simple internet search of publically available information reveals that the applicants have robust financial means at their disposal which could potentially be used to address the violations. The issues have been long standing and thus the applicants have literally had years to adequately address these issues and they have failed to do so. Finally, if a hardship truly existed the applicants could have sought, and never did, an appeal to any one of the numerous orders issued including the most recent one which they failed to appeal within the prescribed time frame.

CONCLUSION

Staff supports the Code Officials decision requiring condemnation/demolition of the buildings for the following reasons: 1.The property and buildings have 15 specific violations of the City adopted 2000 International Property Maintenance Code in the last five years; 2. The City has worked with the owner for five years to mitigate the violations without any success; 3. The property and buildings has become an attractive nuisance and dangerous to the neighborhood and City because the City Police Department have 59 documented police reports at this property since 2010; 4. The general health, safety and welfare of the neighborhood and City is at risk without the condemnation/demolition and removal the structures on this site.

STAFF RECOMMENDATION – APPEAL OF ADMINSTRATIVE DECISION (2015--0213)

Staff recommends approval of the decision of the code official requiring the condemnation/demolition of 15 Flax Street on approximately 3.61 acres zoned M-1 (Light Manufacturing District) under the 2000 International Property Maintenance Code and therefor the denial of this application based upon the evidence presented and the decision criteria.

COMMISSION NOTES:

MOTION: _____ *1st* _____ *2nd* *approved* *denied* *tabled*_____

CONDITIONS/MISCELLANEOUS:

FILE:
ORIGINAL: 6/3/15
REVISED:

CITY OF DELAWARE

Wednesday, March 11, 2014

Yoav & Schlomo Botach
5011 W Pico Blvd.
Los Angeles CA 90019

Re. Violations of 1303.01 of the adopted 2000 International Property Maintenance Code, 15 Flax St., Condemnations/ Demolition notice.

Dear Mr. Yoav & Schlomo Botach:

For the past 4-5 years the City has sent you several notices to repair, secure, mow or remove rubbish and garbage from the above referenced property. No improvements have been made and our City Services continue to be burdened with mowing violations, securing the structures, and dispatching our Police Department to chase off juveniles/vandals.

Vacant structures such as yours are an attractive nuisance and are a higher risk of fire and for illegal activity to occur within them. The blight caused by the lack of maintenance and deterioration devalued the structures and the surrounding properties.

PM-301.2: The owner of the premises shall maintain the structures and exterior property in compliance with these requirements.

PM 108.1: When a structure or equipment is found by the code official to be unsafe, or when a structure is found unfit for human occupancy, or is found unlawful, such structure shall be condemned pursuant to the provisions of this code.

PM-108.1.1: Unsafe structure; an unsafe structure is one that is found to be dangerous to the life, health, property or safety of the public or the occupants off the structure by not providing minimum safeguards to protect or warn occupants in the event of fire, or because such structure contains unsafe equipment or is so damaged, decayed, dilapidated, structurally unsafe, or of such faulty construction or unstable foundation, that partial or complete collapse is possible.

This structure is found to be unsafe and dangerous to the life, health or safety of the public due to its decay and dilapidation. The buildings lack minimum safe guards by not providing lighting or emergency lighting within the structures, heating or ventilation, running hot and cold water, operable bathroom facilities.

PM-108.1.3: A structure is unfit for Human Occupancy whenever the code official finds that such structure is unsafe, unlawful or, because of the degree to which the structure is in disrepair or lacks maintenance, is unsanitary, vermin or rat infested, contains filth and contamination, or lacks ventilation, illumination, sanitary or heating facilities or other essential equipment required

by this code, or because the location of the structure constitutes a hazard to the occupants of the structure or to the public.

This structure is unfit for Human Occupancy by not provided adequate ventilation, illumination, sanitary or heating facilities or other essential equipment. No lighting or emergency lighting is in the buildings, the structures are unlawful due to the lack of repairs.

PM- 108.2: If the structure is vacant and unfit for human habitation and occupancy, and is not in danger of structural collapse, the code official is authorized to post a placard of condemnation on the premises and order the structure closed up so as not to be an attractive nuisance. Upon failure of the owner to close up the premises within the time specified in the order, the code official shall cause the premises to be closed and secured through and available public agency or by contract or arrangement by private persons and the cost thereof shall be charged against the real estate upon which the structure is located and shall be a lien upon such real estate abs may be collected by any other legal resources.

The structures are condemned as of the writing of this letter and may not be occupied until all violations of the City's adopted Property Maintenance Code are complied with.

PM-110.1: The code official shall order the owner of any premises upon which is located any structure, which in the Code Official's judgment is so old, dilapidated and has become so out of repair as to be dangerous, unsafe, insanitary or otherwise unfit for human habitation or occupancy, and as such it is unreasonable to repair the structure, to demolish and remove such structure; or if such structure is capable of being made safe by repairs, to repair and make safe and sanitary or to demolish and remove at the owner's option.

The buildings are so out of disrepair it is in the Code Officials judgment that they are unreasonable to repair, if you as the owner feel the structures can be made safe and habitable and in compliance with the Building Codes of Ohio and the City's adopted Property Maintenance Code, then you may make safe and habitable the buildings. Building Permits are required and Plans must be prepared by design professionals registered in Ohio. The structures must be made compliant by April 15, 2014.

PM-303.1: The exterior property of a structure shall be maintained in good repair, structurally sound and sanitary so as not to pose a threat to the public health, safety or welfare.

This property poses a threat to the public welfare buy becoming an attractive nuisance, it is not in good repair and areas on the exterior are not structurally sound. The gutters on the south side of the building need to be removed or replaced. All exposed bare wood must be primed and painted.

PM-303.2: All exterior surfaces, including but not limited to, doors and window frames, cornices, porches, trim, balconies, decks and fences shall be maintained in good condition.

Exterior wood surfaces, other than decay-resistant woods, shall be protected from the elements and decay by painting or other protective covering treatment. Peeling, flaking and chipped paint shall be eliminated and surfaces repainted. All siding and masonry joints as well as those between the building envelope and the perimeter of windows, doors, and skylights shall be maintained weather resistant and water tight. All metal surfaces subject to rust or corrosion shall be coated to inhibit such rust and corrosion and all surfaces with rust or corrosion shall be stabilized and coated to inhibit future rust and corrosion. Oxidation stains shall be removed from exterior surfaces. Surfaces designed for stabilization by oxidations are exempt from this requirement.

Scrape the loose and peeling paint on the exterior siding, overhangs, fascia, windows and doors, primer all bare wood and metal, paint the outside of the buildings to prevent further decay, work in a lead safe manner.

PM-303.4: All structural members shall be maintained free from deterioration, and shall be capable of safely supporting the imposed dead and live loads.

PM-303.5: All foundation walls shall be maintained plumb and free from open cracks and breaks and shall be kept in such condition so as to prevent the entry of rodents and other pest.

Tuck point the stone foundation and stone walls to prevent the entry of water.

PM-303.6: All exterior walls shall be free from holes, breaks, and loose or rotting materials; and maintained weather proof and properly surface coated where required to prevent deterioration.

Repair and replace the deteriorated cornices, box beams, fascia and siding on the structures. Remove all holes or cover with new siding to prevent water infiltration and rodents.

PM-303.11: All chimneys, cooling towers, smoke stacks, and similar appurtenances shall be maintained structurally safe and sound, and in good repair. All exposed surfaces of metal or wood shall be protected from the elements and against decay by periodic application of weather-coating materials, such as paint or similar surface treatment.

Check chimneys to make certain they are structurally sound, repair brick, mortar and flashings where necessary to make structurally sound. Rebuild chimney that deteriorated and fell off of the roof and repair the roof area around the chimney.

PM-303.13: Every window, skylight, door and frame shall be kept in sound condition, good repair and weather tight.

Replace all broken panes of glass in windows and doors, repair window sashes/frames and jambs, make operable windows and doors, and use proper glazing and paint jambs and sashes

CITY OF DELAWARE

to protect from weather.

PM-304.1: All interior surfaces, including windows and doors, shall be maintained in good, clean and sanitary condition. Peeling, chipping, flaking, or abraded paint shall be repaired, removed, or covered. Cracked or loose plaster, decayed wood, and other defective surface conditions shall be corrected.

Remove all loose and peeling paint from the inside of the building. Repair all holes where the plaster has broken loose from the lath. Prepare the walls, windows and doors for new paint, and paint interior to comply with this code.

PM 505.1: Every sink lavatory, bathtub or shower, drinking fountain, water closet or other plumbing fixture shall be properly connected to either a public water system or to an approved private water system. All sinks, lavatories, laundry facilities, bathtubs and showers shall be supplied with hot or tempered and cold running water.

Water and hot or tempered water must be provided to all of the plumbing fixtures.

PM-111.1: Any person affected by a decision of the code official or a notice or order issued under this code shall have the right to appeal to the board of appeals, provided that a written application for appeal is filed within 20 days after the day the decision, notice or order was served. An application for appeal shall be based on a claim that the true intent of this code or the rules legally adopted there under have been incorrectly interpreted, the provision of this code do not fully apply, or the requirements of this code are adequately satisfied by other means.

All of the structures must be repaired and made into compliance with the minimum standards of the City's Property Maintenance Code by April 15, 2014; failure to comply will result in the City removing the structures. All salvage rights will be at the discretion of the City.

Should you have questions, I may be reached at 740-203-1651.

Respectfully,

Jerry Warner, C.B.O.
Chief Building Official and Code Enforcement Officer

Planning and Community Development • City Hall • 1 South Sandusky Street • Delaware, Ohio 43015
PlanningAndDevelopment@delawareohio.net • 740.203.1600 • Fax 740.203.1699
Planning & Zoning 740.203.1620 • Building & Inspections 740.203.1650 • Code Enforcement 740.203.1630

CITY OF DELAWARE

3/27/2014

Yoav & Schlomo Botach
5011 W Pico Blvd.
Los Angeles CA 90019

Re. Violations of 1303.01 of the adopted 2000 International Property Maintenance Code, 15 Flax St., Condemnations/ Demolition notice.

Dear Mr. Yoav & Schlomo Botach:

Mr. Botach, we talked Monday 3/24/14 about the violation notice dated 3/11/14 that you received. You requested that I work with you and your representative Raymond Bahrami. I reluctantly agreed, due to our past history of promises made and broken with no repairs made or improvements to the property.

You stated your representative Raymond was to walk through the buildings with a contractor on Tuesday or Wednesday of this week to look at the scope of work necessary to bring all of the structures into compliance with the City's adopted property codes. I requested that you give Mr. Bahrami my cell phone number and that he contact me so that I could meet with them at the site and define the scope as to what needed to be done. I was not notified of a meeting and once again another broken promise, it is now my understanding Raymond is out of the country until June. I have decided to move forward with my intentions to demolish the buildings as I stated in our conversation. This is due to the continued lack of follow through and action on your part as he owner. These structures are attractive nuisances, they are areas of drug activities, they are an unsecured fire risk, and other potential illegal activities.

All Structures must be repaired by April 15, 2014 with proper architectural drawings and permits or an appeal filed within 20 days or by April 12th. An application for appeal shall be based on a claim that the true intent of this code or the rules legally adopted there under have been incorrectly interpreted, the provision of this code do not fully apply, or the requirements of this code are adequately satisfied by other means.

Should you have questions, I may be reached at 740-203-1651.

Respectfully,

Jerry Warner
Chief Building Official
Code Enforcement Officer

Planning and Community Development • City Hall • 1 South Sandusky Street • Delaware, Ohio 43015
PlanningAndDevelopment@delawareohio.net • 740.203.1600 • Fax 740.203.1699
Planning & Zoning 740.203.1620 • Building & Inspections 740.203.1650 • Code Enforcement 740.203.1630

CITY OF DELAWARE

Friday, October 24, 2014

Yoav & Schlomo Botach
5011 W. Pico Blvd.
Los Angeles, CA 90019

RE: Violations of 1303.01 of the adopted 2000 International Property Maintenance Code, 15 Flax St., Condemnation/Demolition Notice.

Dear Mr. Yoav & Schlomo Botach:

Per our agreement on March 24, 2014 I was to meet Mr. Rahman Bahrami on his return to the states in May of 2014. During our meeting, we were to discuss items that needed to be remedied to bring the structures into compliance with the City's Property Maintenance Code on or by July of 2014. The only persons I have spoken to is Mrs. Bahrami on 4/1/14, who explained that when her husband returned we would discuss the issues, but that in the meantime the buildings would be secured. I also spoke with your attorney, Mr. Romain who confirmed Mrs. Bahrami's statements I was to meet Mr. Bahrami when he returned and she was getting the buildings secured, I never heard from Mr. Bahrami..

The buildings were secured in April as Mrs. Bahrami had promised, shortly thereafter, they were broken into again; the structures are no longer secured. You have been sent notices over the past several years, and two this year with no attempts to repair the buildings, in each notice you were given your right to appeal and each notice you waived that right.

With the above said, I am moving forward with the appropriation of funds to raze the buildings, there will be no further notices to repair the structures only notices to mow the field, the City assumes all salvage rights. The demolition will or may be over a period of time, you will be billed accordingly, if the bills are not paid, the cost will be placed as a lien on the property.

Should you have questions, please have your attorney Mr. Stanley Romain contact me directly, I may be reached at 740-203-1651.

Respectfully,

Jerry Warner, C.B.O.
Chief Building Official and Code Enforcement Officer

Cc. Stanley R. Romain, Esquire

CITY OF DELAWARE

Wednesday, February 24, 2015

Dave and Scott Gordon
82 N. Franklin St.
Delaware, Ohio 43015

Re: Response to your 15 Flax St. Appeal Application received Monday, February 9, 2015

Each subject item is responded to in their respectful order, each response is in italic.

1) **The Owners believe that the Code sections referenced and alleged to have been violated do not fully apply to the Property; that the true intent of the Code sections have been misinterpreted in this instance; the requirements of these Code sections are adequately satisfied by other means than those sought by City officials; and strict application of the Code sections referenced certainly would cause undue hardship upon the Owners and make strict adherence to such Code sections economically unfeasible.**

The City believes the code has been properly enforced and interpreted correctly, that the ongoing intentional neglect of the property has created a self-inflicted hardship. The owner has been notified over past years of the condition and necessary repairs needed to the structures and has simply failed to do anything. Mr. Botach lives in Beverly Hills, according to court records, Mr. Botach co-owns 144 commercial and other properties in Los Angeles, as well as Botach Tactical, a nationwide distributor of police and military equipment. Mr. Botach's net worth is estimated $700 million. The City does not believe that repairing the buildings is an undue hardship for Mr. Botach, simply a choice.

2) **The Notice references the common address of "15 Flax St." and indicates an intention to condemn and demolish the structure located at that address. However, further communication with Mr. Warner indicated the City's intention to condemn and demolish other structures not commonly referred to as "15 Flax St." Instead, there is an additional structure located on the Property commonly known as "1 Flax St." and a third structure – a metal building on the north end of the Property, which bears no common street address. Therefore, the Owners respectfully submit that the Notice fails to properly put them on**

notice of the City's intention to condemn and demolish all three (3) structures located on the Property. This belief is supported because the sole reference to any particular address within the Notice is "15 Flax St." and all alleged violations included within said Notice reference only the one structure commonly referred to as "15 Flax St."

The notice sent and dated March 11, 2014 regarding 15 Flax St., speaks about structures (plural) meaning more than one. Mr. Yoav Botach, the owner and his representative Mr. Raymond Bahrami understood that the three structure(s) had to be secured and repaired. That understanding was documented in a letter to Yoav and Schlomo Botach, dated 3/27/04 from Mr. Warner. The Delaware County Auditor recognizes the property as 15 Flax St., which is the legal address. There are four (4) address points in the Auditor's Geographical Information System on that property; one on the old stone structure and three on what is being called 1 Flax St., and believed to be the apartment that was abandoned, each point is shown as 15 Flax St. and the property is recognized by one Parcel number of 51943128075000. The structure in the rear of the property that has no point address is one of the Structure(s) noted and included in the violation notice. There has been no misunderstanding as to the scope of work until Mr. Botach hired a new consultant, Mr. Behzad Vedaie, from the Innovative Engineering Group, who is attempting to find an innovative way for his client to get out of his responsibility.

3) Further, the Owners hereby give Notice that they do not believe the City of Delaware Board of Zoning Appeals is the proper and appropriate Board to hear this Appeal. By the City of Delaware's own Ordinances, the 2000 International Property Maintenance Code Sections 111.1 and 111.2, which was adopted by the City of Delaware by City on October 27, 1997 and incorporated by City Ordinance §1303.01, mandates that any appeal of a decision, notice, or order of the code official be appealed to the Board of Appeals, ie: the Board of Building Appeals.

However, although the City of Delaware has created a Board of Building Appeals, there are no current appointments to said Board and said Board does not comply with the mandated standards imposed by Property Maintenance Code (hereinafter "PM Code") Sections 111.2.1 through 111.2.5.

The current Delaware Codified Ordinance 1303.1, and International Code Council's (ICC) International Property Maintenance Code (IPMC)-2000, states that appeals must be made to the Board of Appeals, not ie: "Board of Building Appeals". The City's Board of Zoning Appeals

hears appeals regarding interpretation or enforcement of, Zoning Codes, the Property Maintenance Code and the Residential Code of Ohio, which is customary in many Ohio Municipalities. The City's Board of Building Appeals was repealed in the late 1990's.

4) **The Owners further submit that any appeal of a decision, order, or notice by the City of Delaware's code enforcement official which directly involves condemnation and/or demolition of real property shall be appealed to the State Board of Building Appeals, pursuant to Ohio Revised Code §3781.19 and §3781.20.**

The City of Delaware nor Delaware County, Ohio have Boards of Building Appeals which are certified by the State Board of Building Appeals. Additionally, by adopting the 2000 International Property Maintenance Code, in total, some sections of the PM Code - specifically those regarding condemnation and/or demolition of structures - are in direct conflict with the Ohio Building Code, and, therefore, unlawful as provided by R.C. §3781.01.

The State Board of Building Appeals pursuant to 3781.19 and 3781.20 only hears cases to the enforcement of Chapters 3781 & 3791 of the ORC.

The Notice of Violation was written under the purview of a locally adopted national property maintenance code; this code has its own appeals process. If the code official was acting as a Certified Building Official and had written an Adjudication to enforce Chapters 3781 and 3791 of the Revised Code the owner would then appealed to the State Board of Building Appeals.

There is no conflict between the adopted property maintenance code and the Ohio Revised Code. See the below Ohio Building Code, Section 102.2 and Ohio's commentary that follows to help explain.

102.2 Other laws. The provisions of this code shall not be deemed to nullify any provisions of state or federal law. Municipal corporations may make further and additional regulations, not in conflict with Chapters 3781 and 3791 of the Revised Code or with the rules of the board of building standards. However approval by the board of building standards of any fixture, device, material, system, assembly or product of a manufacturing process, or method or manner of construction or installation shall constitute approval for their use anywhere in Ohio.

Confusion has also occurred in determining to what extent municipal corporations may make additions or alterations to the Ohio Building Code. The Ohio Revised Code (ORC), in section 3781.01, specifies that municipalities may make further and additional regulations not in conflict

with the rules and regulations of the Board of Building Standards. The conflict "test" was established in Village of Struthers vs. Sokol, 108 Ohio St. 263 (1923). The Sokol test is stated correctly as: ***"A conflict exists when the local ordinance permits or licenses that which the statute forbids and prohibits, or when the statute permits or licenses that which the local ordinance forbids and prohibits."*** *Therefore, the answer to the question of the degree to which changes can be made is answered in the court's definition of a conflict. Many cities have addressed issues in their local ordinances without creating a conflict. Municipalities have established subsidence (landslide prevention) requirements, surface water and gutter/downspout sizing requirements based upon local rainfall data, snow loading requirements, demolition requirements, wind loading requirements, foundation requirements for frost depth, establishment of fees, determining inspection schedules that are not in conflict with the rules of the Board – the OBC.*

> **PM-301.2: The owner of the premises shall maintain the structures and exterior property in compliance with these requirements.**
>
> **PM 108.1: When a structure or equipment is found by the code official to be unsafe, or when a structure is found unfit for human occupancy, or is found unlawful, such structure shall be condemned pursuant to the provisions of this code.**
>
> **PM-108.1.1: Unsafe structure; an unsafe structure is one that is found to be dangerous to the life, health, property or safety of the public or the occupants off the structure by not providing minimum safeguards to protect or warn occupants in the event of fire, or because such structure contains unsafe equipment or is so damaged, decayed, dilapidated, structurally unsafe, or of such faulty construction or unstable foundation, that partial or complete collapse is possible.**

Specifically, the Owners contest the determination that the Property is not in compliance with the PM Code, as will be explained below. The Owners submit that PM Code 108.1 is in direct conflict with the Ohio Building Code §109.4, and, therefore, any determination that a structure is condemned or unsafe must be done so in strict compliance with the Ohio Building Code and may be appealed to, in this case, the Ohio Board of Building Appeals. The Owners submit that the structure located at 15 Flax Street is no danger to the public, nor does it lack minimum safeguards for its current use. The structure is not unsafe nor does it have an unstable foundation or in any danger of falling down or collapsing.

> **PM-108.1.3: A structure is unfit for Human Occupancy whenever the code official finds that such structure is unsafe, unlawful or, because of the degree to which the structure is in disrepair or lacks maintenance, is unsanitary, vermin or rat infested, contains filth and contamination, or lacks ventilation, illumination, sanitary or heating facilities or other essential equipment required by this code, or because the location of the structure constitutes a hazard to the occupants of the structure or to the public.**

I refer back to the previous response above and add that after speaking with the Staff of the Board of Building Standards they too agree that the orders were written under local ordinance and not enforcing Chapter 3781 & 3791 of the Revised Code. Therefore no appeal can be made to the State Board of Building Appeals. If the Building Official had enforced the Ohio Building Code, Section 109.4, 111.1 & 111.4, the owner had lost their right to an appeal after 30 days or

April 24, 2014. The state of Ohio would not have offered to extended another opportunity for an appeal.

The Ohio Building Code is equal to or more restrictive than the City's Adopted Property Maintenance Code. In Ohio, the structure and its service equipment shall be maintained in accordance with its approval. Section 111.1, OBC applies whether the building is occupied or not.

If Section 109.4 OBC was sited due to the unsanitary conditions, lack of light and ventilation, in adequate means of egress, or are otherwise dangerous to human life, shall be deemed a serious hazard. Where a building is found to be a serious hazard, such hazard shell be eliminated or the building shall be vacated, and where such building, when vacated, remains a serious hazard, it shall be razed.

The Owners submit that the structure located at 15 Flax Street is currently vacant and unoccupied, and therefore, not currently being used for Human Occupancy. Pursuant to PM Code 301.3 – Vacant structures and land:

> **All vacant structures and premises thereof or vacant land shall be maintained in a clean, safe, secure and sanitary condition as provided herein so as not to cause a blighting problem or adversely affect the public health or safety.**

Here, the Property is a "vacant structure" and therefore need only comply with PM Code 301.3. The allegations that the Property is not fit for Human Occupancy is irrelevant given the current use and state of the Property.

We agree the property must comply with PM 301.3 or be razed. This section states the structures and premises shall be maintained as "provide herein". "Herein" refers to the remainder of the code's provisions. The code does not matter whether the building is occupied or vacant; it simply requires the structures to be maintained. If they are not maintained to the minimum standards the owner is not permitted to allow occupancy until the item(s) are in compliance. It does not permit an owner to allow a building to deteriorate whether he/she chooses to not allow it to be occupied or not. A building can set unoccupied at the owner's choice as long as it is maintained and ready for occupancy and it is secured.

The owner's argument supports the poor conditions of the properties due to the statement "the allegations that the property is not fit for human occupancy given the current use and state of the property". There is no current use due to the "state of the property".

> **PM-110.1: The code official shall order the owner of any premises upon which is located any structure, which in the Code Official's judgment is so old, dilapidated and has become so out of repair as to be dangerous, unsafe, insanitary or otherwise unfit for human habitation or occupancy, and as such it is unreasonable to repair the structure, to demolish and remove such structure; or if such structure is capable of being made safe by repairs, to repair and make safe and sanitary or to demolish and remove at the owner's option.**

As stated above, the Property is currently unoccupied and vacant. However, the Property nor any of the structures located thereon are in any danger of collapsing nor pose any other safety threat to the public. Further, the Chief Building Inspector was to abide by §109 of the Ohio Building Code if he determined that the Property, or any structure thereon, was a "serious hazard" or an "unsafe building".

Again the Ohio Building Code does not apply. The buildings are dilapidated and have become so out of disrepair as to be dangerous, unsafe, insanitary or otherwise unfit for human habitation or occupancy and as such is unreasonable to repair the structures.

Additionally, the date which was included within the Notice of April 15, 2014, by which time the Owners were to comply with all of the Notice's requirements, was unreasonably close in time to the Notice's date of March 11, 2014. This date to remedy the alleged violations would have been impossible for the Owners to make all the necessary improvements to the Property as the Notice stated. Therefore, the Notice was not in compliance with PM Code Sections 107.1 and 107.2. Moreover, even assuming the alleged violations were found to be substantiated, the Notice failed to comply with the true intent of the Ohio Building Code Standard §109.1 by not providing a reasonable amount of time to remedy all of the alleged conditions.

The date in which the owner was to comply coincides with the required date of the appeal deadline, which the owner failed to respond to.

During that time between April 15, 2014 and March 11, 2014, the owner can either choose to appeal or make other arrangements with the code official. The owner choose to make other arrangements, this is supported in the Code Officials letter dated 3/27/2014 to Mr. Botach. In this letter he was again reminded of his right to an appeal and that his representative did not follow through. The notice was in compliance with Sections 107.2 & 107.3. Again the Ohio Building Code, Section 109.1 does not apply, and if all things being the same would have missed his appeal and would not be permitted by the State of Ohio to apply almost one year after the first notice.

PM-303.1: The exterior property of a structure shall be maintained in good repair, structurally sound and sanitary so as not to pose a threat to the public health, safety or welfare.

The Owners disagree with the above stated assertion that the grounds of the Property were a threat to the public health, safety or welfare. A tall metal fence surrounds the northern most metal building upon the Property. Following the receipt of the Notice, the Owners instituted repairs to the Property to secure any and all doorways as best as possible to deter potential trespassers' entry into the structures. Owners further replaced all window glass which was in danger of potentially falling out of window frames with plexi-glass. Lastly, the Owners had representatives visit the Property on a weekly basis to inspect the structures upon the Property for signs of any breaking and entering by trespassers. Additionally, the City's official complained of exposed bare wood needing to be freshly painted and the need to replace on structure's gutter: those circumstances can hardly be said to constitute a threat to the public's safety or health.

The owner has no idea as to how secure the structure is, he admittedly has not seen it. There have been 52 police reports at the property known as 15 Flax St. in the past 4-years, it is constantly broken into. The owner did not replace any glass in the windows; sheets of glass were sitting in the window openings a month ago ready to fall out. The owner has no idea if anyone is looking at the property on a weekly base. The wood and gutters do need to be repaired and painted to prevent further deterioration of the building. The continued rotting of the wood and the water from the gutters has caused additional foundation problems on the southwest side of the stone building. Had the windows and other bare wood been painted maybe the glass wood have stayed in their openings. The lack of maintenance is causing the buildings to literally fall apart which is a public, health, and safety concern. The roof has at least 3 holes, of the three two have rooted structural supports which are collapsing and failing inside, this damage did not happen overnight.

> **PM-303.2: All exterior surfaces, including but not limited to, doors and window frames, cornices, porches, trim, balconies, decks and fences shall be maintained in good condition.**
>
> **Exterior wood surfaces, other than decay-resistant woods, shall be protected from the elements and decay by painting or other protective covering treatment. Peeling, flaking and chipped paint shall be eliminated and surfaces repainted. All siding and masonry joints as well as those between the building envelope and the perimeter of windows, doors, and skylights shall be maintained weather resistant and water tight. All metal surfaces subject to rust or corrosion shall be coated to inhibit such rust and corrosion and all surfaces with rust or corrosion shall be stabilized and coated to inhibit future rust and corrosion. Oxidation stains shall be removed from exterior surfaces. Surfaces designed for stabilization by oxidations are exempt from this requirement.**

Again, PM Code 301.3 specifically provides the standard to which a vacant and used structure is to be held by the City of Delaware. The structures upon the Property pose no sanitary risks nor pose any danger of collapse to the public. So long as the structures upon the Property comply with PM Code 301.3, the additional alleged violations and their corresponding code sections do not apply to this circumstance and property. Nevertheless, the exterior walls of the structures upon the Property are in good repair, and the one particular wall which had been identified by the Chief Building Official in need of repair has, in fact, been repaired and finished.

The structures must be maintained per PM 301.3, whether the structure is vacant or not. The exterior and interior of a structure and equipment must be maintained. They are unsanitary and unsafe to occupancy due to their lack of maintenance. The exterior masonry wall was repaired approximately 2-months ago, keep in mind the appeal is on a letter that is almost one-year old.

> **PM-303.4: All structural members shall be maintained free from deterioration, and shall be capable of safely supporting the imposed dead and live loads.**
>
> **PM-303.5: All foundation walls shall be maintained plumb and free from open cracks and breaks and shall be kept in such condition so as to prevent the entry of rodents and other pest.**

The City's official stated in the Notice that tuck pointing some stone walls was necessary. However, such improvements and repairs, while potentially beneficial to the Owners and the Property, are not necessary to ensure the safety and structural integrity of the Property and the structures thereon. Furthermore, there are no signs of any water penetration through the foundation or structures' walls.

Structural member of the stone building are failing due to water infiltration. Areas in the other buildings where the ceilings and wall finish have fallen off due to water infiltration. We want the holes in the walls repaired to stop water infiltration and freeze thaw cycles from deteriorating the stone and brick structures. To allow this to continue is what caused the rear wall to almost fail. Had the City not written orders it is pretty apparent nothing would have been done and it would have collapsed. Maintenance of the buildings is necessary to ensure the safety and structural integrity of the property and structures thereon. Further there are signs of water infiltration into the building's west brick structure addition and this is causing severe deterioration of the wall.

PM-303.13: Every window, skylight, door and frame shall be kept in sound condition, good repair and weather tight.

As stated above, following the Notice the Owners had all broken glass which may have been in danger of falling from any window frame replaced with plexi-glass to eliminate the risk of a trespasser or lawful invitee from being hurt by any falling window glass.

The window openings and frames are not in good repair, weather tight and in sound condition and replaced with plexi-glass.

PM-304.1: All interior surfaces, including windows and doors, shall be maintained in good, clean and sanitary condition. Peeling, chipping, flaking, or abraded paint shall be repaired, removed, or covered. Cracked or loose plaster, decayed wood, and other defective surface conditions shall be corrected.

PM Code 301.3 causes the above section not to apply to the Property and the structures thereon.

Code has been misinterpreted by owner. PM-304.1 does apply per Section PM-301.3

PM 505.1: Every sink lavatory, bathtub or shower, drinking fountain, water closet or other plumbing fixture shall be properly connected to either a public water system or to an approved private water system. All sinks, lavatories, laundry facilities, bathtubs and showers shall be supplied with hot or tempered and cold running water.

PM Code 301.3 causes the above section not to apply to the Property and the structures thereon.

Code has been misinterpreted by owner. PM-505.1 applies due to PM-301.3, PM-304.1 equipment must be maintained per PM-501.2 whether building is occupied or not. The owner cannot permit the occupancy of a building that does not have the necessary sanitary facilities. But it is still the owner's responsibility to maintain them.

The Owners submit that PM Code 111.1 is in direct conflict with terms of Ohio Building Code Standard 109 which provide, specifically, for the appellate process against a determination related to condemnation, demolition, or the need to raze a structure. Therefore, the procedure as provided within the Notice was unlawful and unenforceable given its direct conflict with the provisions of the Ohio Building Code and Ohio Revised Code §3781.01 *et seq.*

The alleged violations of the 2000 International Property Maintenance Code, as adopted by the City of Delaware, which actually apply to the Property and the structures thereon, have all been remedied as provided by Ohio law. The Property is currently in compliance with the laws of the State of Ohio and City of Delaware ordinances. The vacant and unoccupied, yet secured and safe structures upon the Property pose no threat to the public's safety nor health. The City of Delaware lacks the proper compliance and authority to institute and maintain an effort to condemn and demolish the structures upon the Property. The City's requested relief is improper due to its failure to follow the clearly expressed procedures found within the Ohio Revised Code and the Ohio Building Code.

Moreover, the City of Delaware Board of Zoning Appeals lacks the appropriate authority to hear any appeal of alleged violations of the Property Maintenance Code as PM Code Section 111 clearly provides. It is the Owners position that this appeal from the Notice should be heard by the Ohio State Board of Building Appeals pursuant to R.C. §3781.19 and §3781.20.

However, if this Board believes it is, in fact, the appropriate governing Board to hear this appeal the Owners respectfully submit that any and all alleged violations which pertain to the structures upon the Property, and which are specifically referenced in the Notice – 15 Flax Street, have been satisfactorily brought into compliance with the Ohio Building Code and the 2000 International Property Maintenance Code.

CITY OF DELAWARE

There is not conflict with the City Adopted ICC, International Property Maintenance Code and the Ohio Building Code, based off of the 2009 ICC, International Building Code or the Ohio Revised Codes. The Violation Notice was written under a Home Rule adopted code; all legal notices were served and received.

The structures are not in compliance with the State of Ohio's law nor the City's Ordinances with respect to existing buildings and the maintenance thereof.

Further the Board of Zoning Appeals is the proper board to hear such case per Section PM-111.2 and not the Ohio Board of Building Appeals.

Planning and Community Development • City Hall • 1 South Sandusky Street • Delaware, Ohio 43015
PlanningAndDevelopment@delawareohio.net • 740.203.1600 • Fax 740.203.1699
Planning & Zoning 740.203.1620 • Building & Inspections 740.203.1650 • Code Enforcement 740.203.1630

FEB - 9 2015

GORDON LAW OFFICE
ATTORNEYS AT LAW
82 NORTH FRANKLIN STREET
DELAWARE, OHIO 43015

DAVID J. GORDON
LINDA M. GORDON
SCOTT M. GORDON

(740) 363-8988
FAX (740) 369-7810

Dave@Gordon-Law.com

Monday, February 9, 2015

Jerry Warner, C.B.O.
City of Delaware
1 S. Sandusky St.
Delaware, Ohio 43015

RE: 1 and 15 Flax Street, Delaware, Ohio 43015

Dear Mr. Warner:

Enclosed please find our clients' Master Application Form requesting an appellate hearing on the issues regarding 15 Flax Street. As you will see, we have included some additional explanation of our positions regarding the complained of issues of 15 Flax Street. We assume the same will be submitted to the board for its review. We thank you for your kind and professional attention to these matters and look forward to hearing from you and/or the appeals board.

Very Truly Yours,

Scott M. Gordon

cc: Behzad Vedaie, Innovative Engineering Group, Inc.

Jerry Warner, Chief Building Official
City of Delaware, Ohio
1 South Sandusky St.

RE: Appeal of Condemnation / Demolition Notice issued March 11, 2014 for 15 Flax Street, Delaware, Ohio 43015

Appeal of Condemnation / Demolition Notice and Determination

Now comes the undersigned, as counsel for the owners of the real property located at 15 Flax Street, Delaware, Ohio 43015 (hereinafter "the Property") – Yoav and Schlomo Botach (hereinafter "the Owners"), and hereby appeal the Condemnation / Demolition Notice, dated March 11, 2014 (hereinafter "the Notice"), which was issued to the Owners regarding the structures upon the Property. The Notice was issued by Chief Building Official and Code Enforcement Officer, Jerry Warner, and cited sixteen (16) different 2000 International Property Maintenance Code section violations.

1) The Owners believe that the Code sections referenced and alleged to have been violated do not fully apply to the Property; that the true intent of the Code sections have been misinterpreted in this instance; the requirements of these Code sections are adequately satisfied by other means than those sought by City officials; and strict application of the Code sections referenced certainly would cause undue hardship upon the Owners and make strict adherence to such Code sections economically unfeasible.
2) The Notice references the common address of "15 Flax St." and indicates an intention to condemn and demolish the structure located at that address. However, further communication with Mr. Warner indicated the City's intention to condemn and demolish other structures not commonly referred to as "15 Flax St." Instead, there is an additional structure located on the Property commonly known as "1 Flax St." and a third structure – a metal building on the north end of the Property, which bears no common street address. Therefore, the Owners respectfully submit that the Notice fails to properly put them on

notice of the City's intention to condemn and demolish all three (3) structures located on the Property. This belief is supported because the sole reference to any particular address within the Notice is "15 Flax St." and all alleged violations included within said Notice reference only the one structure commonly referred to as "15 Flax St."

3) Further, the Owners hereby give Notice that they do not believe the City of Delaware Board of Zoning Appeals is the proper and appropriate Board to hear this Appeal. By the City of Delaware's own Ordinances, the 2000 International Property Maintenance Code Sections 111.1 and 111.2, which was adopted by the City of Delaware by City on October 27, 1997 and incorporated by City Ordinance §1303.01, mandates that any appeal of a decision, notice, or order of the code official be appealed to the Board of Appeals, ie: the Board of Building Appeals.

However, although the City of Delaware has created a Board of Building Appeals, there are no current appointments to said Board and said Board does not comply with the mandated standards imposed by Property Maintenance Code (hereinafter "PM Code") Sections 111.2.1 through 111.2.5.

4) The Owners further submit that any appeal of a decision, order, or notice by the City of Delaware's code enforcement official which directly involves condemnation and/or demolition of real property shall be appealed to the State Board of Building Appeals, pursuant to Ohio Revised Code §3781.19 and §3781.20.

The City of Delaware nor Delaware County, Ohio have Boards of Building Appeals which are certified by the State Board of Building Appeals. Additionally, by adopting the 2000 International Property Maintenance Code, in total, some sections of the PM Code - specifically those regarding

condemnation and/or demolition of structures - are in direct conflict with the Ohio Building Code, and, therefore, unlawful as provided by R.C. §3781.01.

Nevertheless, without waiving Owners' objections to the Delaware City Board of Zoning Appeals hearing this appeal but in the interest of attempting to resolve the pending issues alleged in the Notice, the Owners hereby submit the following responses to the alleged violations stated in the Notice dated March 11, 2014.

The Notice included the following citations of the PM Code as alleged violations upon the Property:

> PM-301.2: The owner of the premises shall maintain the structures and exterior property in compliance with these requirements.
>
> PM 108.1: When a structure or equipment is found by the code official to be unsafe, or when a structure is found unfit for human occupancy, or is found unlawful, such structure shall be condemned pursuant to the provisions of this code.
>
> PM-108.1.1: Unsafe structure; an unsafe structure is one that is found to be dangerous to the life, health, property or safety of the public or the occupants off the structure by not providing minimum safeguards to protect or warn occupants in the event of fire, or because such structure contains unsafe equipment or is so damaged, decayed, dilapidated, structurally unsafe, or of such faulty construction or unstable foundation, that partial or complete collapse is possible.

Specifically, the Owners contest the determination that the Property is not in compliance with the PM Code, as will be explained below. The Owners submit that PM Code 108.1 is in direct conflict with the Ohio Building Code §109.4, and, therefore, any determination that a structure is condemned or unsafe must be done so in strict compliance with the Ohio Building Code and may be appealed to, in this case, the Ohio Board of Building Appeals. The Owners submit that the structure located at 15 Flax Street is no danger to the public, nor does it lack minimum safeguards for its current use. The structure is not unsafe nor does it have an unstable foundation or in any danger of falling down or collapsing.

PM-108.1.3: A structure is unfit for Human Occupancy whenever the code official finds that such structure is unsafe, unlawful or, because of the degree to which the structure is in disrepair or lacks maintenance, is unsanitary, vermin or rat infested, contains filth and contamination, or lacks ventilation, illumination, sanitary or heating facilities or other essential equipment required by this code, or because the location of the structure constitutes a hazard to the occupants of the structure or to the public.

The Owners submit that the structure located at 15 Flax Street is currently vacant and unoccupied, and therefore, not currently being used for Human Occupancy. Pursuant to PM Code 301.3 – Vacant structures and land:

> All vacant structures and premises thereof or vacant land shall be maintained in a clean, safe, secure and sanitary condition as provided herein so as not to cause a blighting problem or adversely affect the public health or safety.

Here, the Property is a "vacant structure" and therefore need only comply with PM Code 301.3. The allegations that the Property is not fit for Human Occupancy is irrelevant given the current use and state of the Property.

PM- 108.2: If the structure is vacant and unfit for human habitation and occupancy, and is not in danger of structural collapse, the code official is authorized to post a placard of condemnation on the premises and order the structure closed up so as not to be an attractive nuisance. Upon failure of the owner to close up the premises within the time specified in the order, the code official shall cause the premises to be closed and secured through and available public agency or by contract or arrangement by private persons and the cost thereof shall be charged against the real estate upon which the structure is located and shall be a lien upon such real estate abs may be collected by any other legal resources.

The Owners again hereby submit, that the provisions cited above are in direct conflict with the Ohio Building Code Standards, specifically, §109.4 and, therefore, any determination regarding the same shall be appealable to the Ohio State Board of Building Appeals pursuant to Ohio Building Code §109.1. However, it is clear that the Property and all structures thereon are currently vacant and unoccupied, and not in danger of structural collapse. Further, upon receipt of the Notice, no placard of condemnation was

ever placed upon the Property, the structure located at 15 Flax Street, the structure located at 1 Flax St., nor the metal building at the north end of the Property.

> PM-110.1: The code official shall order the owner of any premises upon which is located any structure, which in the Code Official's judgment is so old, dilapidated and has become so out of repair as to be dangerous, unsafe, insanitary or otherwise unfit for human habitation or occupancy, and as such it is unreasonable to repair the structure, to demolish and remove such structure; or if such structure is capable of being made safe by repairs, to repair and make safe and sanitary or to demolish and remove at the owner's option.

As stated above, the Property is currently unoccupied and vacant. However, the Property nor any of the structures located thereon are in any danger of collapsing nor pose any other safety threat to the public. Further, the Chief Building Inspector was to abide by §109 of the Ohio Building Code if he determined that the Property, or any structure thereon, was a "serious hazard" or an "unsafe building".

Additionally, the date which was included within the Notice of April 15, 2014, by which time the Owners were to comply with all of the Notice's requirements, was unreasonably close in time to the Notice's date of March 11, 2014. This date to remedy the alleged violations would have been impossible for the Owners to make all the necessary improvements to the Property as the Notice stated. Therefore, the Notice was not in compliance with PM Code Sections 107.1 and 107.2. Moreover, even assuming the alleged violations were found to be substantiated, the Notice failed to comply with the true intent of the Ohio Building Code Standard §109.1 by not providing a reasonable amount of time to remedy all of the alleged conditions.

> PM-303.1: The exterior property of a structure shall be maintained in good repair, structurally sound and sanitary so as not to pose a threat to the public health, safety or welfare.

The Owners disagree with the above stated assertion that the grounds of the Property were a threat to the public health, safety or welfare. A tall metal fence surrounds the northern most metal building upon the Property. Following the receipt of the Notice, the Owners instituted repairs to the Property to secure any and all doorways as best as

possible to deter potential trespassers' entry into the structures. Owners further replaced all window glass which was in danger of potentially falling out of window frames with plexi-glass. Lastly, the Owners had representatives visit the Property on a weekly basis to inspect the structures upon the Property for signs of any breaking and entering by trespassers. Additionally, the City's official complained of exposed bare wood needing to be freshly painted and the need to replace on structure's gutter: those circumstances can hardly be said to constitute a threat to the public's safety or health.

> PM-303.2: All exterior surfaces, including but not limited to, doors and window frames, cornices, porches, trim, balconies, decks and fences shall be maintained in good condition.
>
> Exterior wood surfaces, other than decay-resistant woods, shall be protected from the elements and decay by painting or other protective covering treatment. Peeling, flaking and chipped paint shall be eliminated and surfaces repainted. All siding and masonry joints as well as those between the building envelope and the perimeter of windows, doors, and skylights shall be maintained weather resistant and water tight. All metal surfaces subject to rust or corrosion shall be coated to inhibit such rust and corrosion and all surfaces with rust or corrosion shall be stabilized and coated to inhibit future rust and corrosion. Oxidation stains shall be removed from exterior surfaces. Surfaces designed for stabilization by oxidations are exempt from this requirement.

Again, PM Code 301.3 specifically provides the standard to which a vacant and used structure is to be held by the City of Delaware. The structures upon the Property pose no sanitary risks nor pose any danger of collapse to the public. So long as the structures upon the Property comply with PM Code 301.3, the additional alleged violations and their corresponding code sections do not apply to this circumstance and property. Nevertheless, the exterior walls of the structures upon the Property are in good repair, and the one particular wall which had been identified by the Chief Building Official in need of repair has, in fact, been repaired and finished.

> PM-303.4: All structural members shall be maintained free from deterioration, and shall be capable of safely supporting the imposed dead and live loads.
>
> PM-303.5: All foundation walls shall be maintained plumb and free from open cracks and breaks and shall be kept in such condition so as to prevent the entry of rodents and other pest.

The City's official stated in the Notice that tuck pointing some stone walls was necessary. However, such improvements and repairs, while potentially beneficial to the Owners and the Property, are not necessary to ensure the safety and structural integrity of the Property and the structures thereon. Furthermore, there are no signs of any water penetration through the foundation or structures' walls.

> PM-303.6: All exterior walls shall be free from holes, breaks, and loose or rotting materials; and maintained weather proof and properly surface coated where required to prevent deterioration.

This section does not apply to the Property nor the structures thereon given that all structures are currently vacant and unoccupied.

> PM-303.11: All chimneys, cooling towers, smoke stacks, and similar appurtenances shall be maintained structurally safe and sound, and in good repair. All exposed surfaces of metal or wood shall be protected from the elements and against decay by periodic application of weather-coating materials, such as paint or similar surface treatment.

There is no indication that any appurtenances as listed above were in any danger of collapsing or deteriorating nor posed a threat to the public health or safety. The applicability of this section has been misinterpreted.

> PM-303.13: Every window, skylight, door and frame shall be kept in sound condition, good repair and weather tight.

As stated above, following the Notice the Owners had all broken glass which may have been in danger of falling from any window frame replaced with plexi-glass to eliminate the risk of a trespasser or lawful invitee from being hurt by any falling window glass.

> PM-304.1: All interior surfaces, including windows and doors, shall be maintained in good, clean and sanitary condition. Peeling, chipping, flaking, or abraded paint shall be repaired, removed, or covered. Cracked or loose plaster, decayed wood, and other defective surface conditions shall be corrected.

PM Code 301.3 causes the above section not to apply to the Property and the structures thereon.

> PM 505.1: Every sink lavatory, bathtub or shower, drinking fountain, water closet or other plumbing fixture shall be properly connected to either a public water system or to an approved private water system. All sinks, lavatories, laundry facilities, bathtubs and showers shall be supplied with hot or tempered and cold running water.

PM Code 301.3 causes the above section not to apply to the Property and the structures thereon.

> PM-111.1: Any person affected by a decision of the code official or a notice or order issued under this code shall have the right to appeal to the board of appeals, provided that a written application for appeal is filed within 20 days after the day the decision, notice or order was served. An application for appeal shall be based on a claim that the true intent of this code or the rules legally adopted there under have been incorrectly interpreted, the provision of this code do not fully apply, or the requirements of this code are adequately satisfied by other means.

The Owners submit that PM Code 111.1 is in direct conflict with terms of Ohio Building Code Standard 109 which provide, specifically, for the appellate process against a determination related to condemnation, demolition, or the need to raze a structure. Therefore, the procedure as provided within the Notice was unlawful and unenforceable given its direct conflict with the provisions of the Ohio Building Code and Ohio Revised Code §3781.01 *et seq.*

The alleged violations of the 2000 International Property Maintenance Code, as adopted by the City of Delaware, which actually apply to the Property and the structures thereon, have all been remedied as provided by Ohio law. The Property is currently in compliance with the laws of the State of Ohio and City of Delaware ordinances. The vacant and unoccupied, yet secured and safe structures upon the Property pose no threat to the public's safety nor health. The City of Delaware lacks the proper compliance and

authority to institute and maintain an effort to condemn and demolish the structures upon the Property. The City's requested relief is improper due to its failure to follow the clearly expressed procedures found within the Ohio Revised Code and the Ohio Building Code.

Moreover, the City of Delaware Board of Zoning Appeals lacks the appropriate authority to hear any appeal of alleged violations of the Property Maintenance Code as PM Code Section 111 clearly provides. It is the Owners position that this appeal from the Notice should be heard by the Ohio State Board of Building Appeals pursuant to R.C. §3781.19 and §3781.20.

However, if this Board believes it is, in fact, the appropriate governing Board to hear this appeal the Owners respectfully submit that any and all alleged violations which pertain to the structures upon the Property, and which are specifically referenced in the Notice – 15 Flax Street, have been satisfactorily brought into compliance with the Ohio Building Code and the 2000 International Property Maintenance Code.

Lastly, the Notice only refers to the structure commonly referred to as "15 Flax St." The absence of any reference to the two (2) remaining structures located upon the Property causes the City of Delaware to be prohibited from pursuing condemnation / demolition procedures as to these two (2) remaining structures. The City shall be prohibited from pursuing condemnation / demolition efforts regarding these two (2) additional structures without first issuing additional notices specifically referencing those structures and which adhere to the mandates of the Ohio Building Code and the Property Maintenance Code.

Respectfully submitted,

David J. Gordon (0031856)
Scott M. Gordon (0085247)
Counsel for Plaintiffs
82 North Franklin Street
Delaware, Ohio 43015
740/363-8988
740/369-7810 – Fax
Scott@Gordon-Law.com

Delaware City Police

DISPATCH CLOSED INCIDENT LIST

Printed On: 03/06/2015 10:57 AM

Date Range From: 76340 Through: 78230

C	Incident No.	Date	Time	Nature	Common Name	Address
☐	15-00004273	01/13/2015	01:38:48	911 Cellular Hang-Up/Open/Misdial	COMPUTRADE INTERNATIONAL	15 FLAX ST DELAWARE
☐	14-00047881	05/03/2014	20:18:39	Suspicious Activity	COMPUTRADE INTERNATIONAL	15 FLAX ST DELAWARE
☐	14-00039830	04/13/2014	18:24:04	Business / House Check	COMPUTRADE INTERNATIONAL	15 FLAX ST DELAWARE
☐	14-00033321	03/28/2014	14:27:05	Suspicious Activity	COMPUTRADE INTERNATIONAL	15 FLAX ST DELAWARE
☐	14-00012106	02/02/2014	16:18:59	Open Door	WEST OF	15 FLAX ST DELAWARE
☐	13-00078753	07/20/2013	21:56:52	Suspicious Vehicle	COMPUTRADE INTERNATIONAL	15 FLAX ST DELAWARE
☐	13-00070239	06/30/2013	19:14:15	Suspicious Vehicle	COMPUTRADE INTERNATIONAL	15 FLAX ST DELAWARE
☐	13-00062607	06/13/2013	00:56:31	Suspicious Person	COMPUTRADE INTERNATIONAL	15 FLAX ST DELAWARE
☐	13-00061911	06/11/2013	09:37:52	Traffic Stop	DEAD END	15 FLAX ST DELAWARE
☐	13-00056652	05/29/2013	18:54:21	Follow-Up/Investigation	COMPUTRADE INTERNATIONAL	15 FLAX ST DELAWARE
☐	13-00040111	04/20/2013	20:33:39	Business / House Check	COMPUTRADE INTERNATIONAL	15 FLAX ST DELAWARE
☐	13-00035456	04/09/2013	16:13:18	Special Detail	COMPUTRADE INTERNATIONAL	15 FLAX ST DELAWARE
☐	13-00023801	03/08/2013	17:12:46	Juvenile Complaint	OLD MATHIS BUILDING	15 FLAX ST DELAWARE
☐	13-00005720	01/17/2013	16:14:17	Animal Call	COMPUTRADE INTERNATIONAL	15 FLAX ST DELAWARE
☐	12-00127490	11/04/2012	09:32:57	Open Door	COMPUTRADE INTERNATIONAL	15 FLAX ST DELAWARE
☐	12-00121109	10/17/2012	18:23:55	Business / House Check	COMPUTRADE INTERNATIONAL	15 FLAX ST DELAWARE
☐	12-00084928	07/19/2012	00:55:54	Suspicious Person/Vehicle	COMPUTRADE INTERNATIONAL	15 FLAX ST DELAWARE
☐	12-00078220	07/03/2012	02:00:11	Open Garage/Prev. Patrol Notice	COMPUTRADE INTERNATIONAL	15 FLAX ST DELAWARE
☐	12-00055942	05/11/2012	20:56:57	Extra Patrol		15 FLAX ST DELAWARE
☐	12-00055922	05/11/2012	20:00:45	Burglary In Progress	COMPUTRADE INTERNATIONAL	15 FLAX ST DELAWARE
☐	12-00041444	04/05/2012	11:03:53	Vandalism		15 FLAX ST DELAWARE
☐	12-00039781	04/01/2012	13:43:51	Open Door		15 FLAX ST DELAWARE
☐	12-00039710	04/01/2012	08:40:31	Open Door		15 FLAX ST DELAWARE
☐	12-00038797	03/30/2012	02:07:47	Business / House Check	ALLIED MOVING & STORAGE	15 FLAX ST DELAWARE
☐	12-00024462	02/27/2012	21:11:28	Business / House Check		15 FLAX ST DELAWARE
☐	12-00003865	01/11/2012	10:47:03	Vandalism		15 FLAX ST DELAWARE
☐	12-00000789	01/03/2012	12:07:50	Business / House Check		15 FLAX ST DELAWARE
☐	11-00139222	12/30/2011	14:32:47	Follow-Up/Investigation		15 FLAX ST DELAWARE
☐	11-00139128	12/30/2011	10:49:09	Business / House Check		15 FLAX ST DELAWARE
☐	11-00138283	12/28/2011	10:14:20	Business / House Check		15 FLAX ST DELAWARE
☐	11-00138215	12/28/2011	03:44:34	Business / House Check		15 FLAX ST DELAWARE

Delaware City Police

DISPATCH CLOSED INCIDENT LIST

Printed On: 03/06/2015 10:57 AM

Date Range From: 76340 Through: 78230

C	Incident No.	Date	Time	Nature	Common Name	Address
☐	11-00135479	12/19/2011	16:47:42	Suspicious Person/Vehicle		15 FLAX ST DELAWARE
☐	11-00131161	12/08/2011	15:03:57	Extra Patrol		15 FLAX ST DELAWARE
☐	11-00129380	12/03/2011	14:20:36	Warrant		15 FLAX ST DELAWARE
☐	11-00128226	11/30/2011	11:38:36	TRAINING		15 FLAX ST DELAWARE
☐	11-00122555	11/15/2011	10:43:15	Business / House Check		15 FLAX ST DELAWARE
☐	11-00121594	11/12/2011	17:18:03	Business / House Check		15 FLAX ST DELAWARE
☐	11-00120921	11/11/2011	02:57:43	Open Door		15 FLAX ST DELAWARE
☐	11-00117707	11/02/2011	13:54:54	Open Garage/Prev. Patrol Notice		15 FLAX ST DELAWARE
☐	11-00115786	10/28/2011	13:59:44	Juvenile Complaint		15 FLAX ST DELAWARE
☐	11-00114716	10/25/2011	18:50:27	Follow-Up/Investigation	ALLIED MOVING & STORAGE	15 FLAX ST DELAWARE
☐	11-00087645	08/16/2011	12:04:13	Open Door		15 FLAX ST DELAWARE
☐	11-00084189	08/07/2011	08:08:12	Open Door		15 FLAX ST DELAWARE
☐	11-00083972	08/06/2011	18:01:41	Suspicious Activity		15 FLAX ST DELAWARE
☐	11-00083546	08/05/2011	16:39:23	Follow-Up/Investigation		15 FLAX ST DELAWARE
☐	11-00083223	08/04/2011	21:32:52	Business / House Check		15 FLAX ST DELAWARE
☐	11-00082888	08/04/2011	01:33:02	Extra Patrol		15 FLAX ST DELAWARE
☐	11-00082780	08/03/2011	19:43:48	Burglary		15 FLAX ST DELAWARE
☐	11-00082773	08/03/2011	19:24:06	Business / House Check		15 FLAX ST DELAWARE
☐	11-00082096	08/02/2011	00:22:16	Business / House Check		15 FLAX ST DELAWARE
☐	11-00081648	07/31/2011	17:39:59	Juvenile Complaint		15 FLAX ST DELAWARE
☐	11-00063769	06/17/2011	12:56:39	Business / House Check		15 FLAX ST DELAWARE
☐	10-00097761	09/22/2010	19:43:37	Juvenile Complaint		15 FLAX ST DELAWARE
☐	10-00086560	08/26/2010	09:50:12	Follow-Up/Investigation		15 FLAX ST DELAWARE
☐	10-00080569	08/11/2010	12:24:52	Suspicious Activity		15 FLAX ST DELAWARE
☐	10-00071371	07/20/2010	00:38:14	Follow-Up/Investigation		15 FLAX ST DELAWARE
☐	10-00069447	07/15/2010	00:35:16	Business / House Check		15 FLAX ST DELAWARE
☐	10-00068801	07/13/2010	13:55:59	B&E	MATHIS	15 FLAX ST DELAWARE
☐	10-00039900	05/05/2010	00:38:52	Open Garage/Prev. Patrol Notice		15 FLAX ST DELAWARE

Total calls: 59

CITY OF DELAWARE

Previous Violation Notices Pertaining to 15 Flax Street From the City of Delaware

CITY OF DELAWARE • PLANNING AND COMMUNITY DEVELOPMENT

Monday, November 23, 2009

Yoav & Schlomo Botach
5011 West Pico Blvd.
Los Angeles, CA. 90019

Re: 15 Flax Street

Dear Gentlemen,

I was notified by our Fire Department that the buildings located at 15 Flax Street are not secured, the door locks have been broken and one of the windows on the second floor is broken out, as you can imagine we are concerned of vandalism or arson. Please secure the buildings with in one week or by December 2, 2009.

On another matter, Officer John Hartman with our Police Department was asking if they could obtain permission to use the two older buildings for non-destructive Simunition training. I informed him that I would be contacting you about securing the buildings and would ask. With that said, is there anyway we can make arrangements to use your facilities for training and once we are through, secure the buildings behind us.

Please consider my request; I look forward to hearing from you.

Respectfully,

Jerry Warner, C.B.O.
Chief Building Official
740-203-1651
jwarner@delawareohio.net

City Hall • 1 South Sandusky Street • Delaware, Ohio 43015 • PlanningAndDevelopment@delawareohio.net
Tel: 740.203.1600 • Fax: 740.203.1699
www.delawareohio.net

CITY OF DELAWARE • PLANNING AND COMMUNITY DEVELOPMENT

Tuesday, May 11, 2010

Yoav & Schlomo Botach
5011 West Pico Blvd.
Los Angeles, CA. 90019

Re: 15 Flax Street, Notice of Violations, mowing, garbage and waste material, property maintenance codes

Dear Gentlemen,

As you know I sent you a notice dated November 23, 2009 regarding the condition of the above referenced property. The City agreed to secure the structure if we could use it for Simunition Training but we never received the signed agreement.

Vacant structures such as yours located at 15 Flax Street are an attractive nuisances and in danger of vandalism or arson.

PM-301.2: The owner of the premises shall maintain the structures and exterior property in compliance with these requirements.

PM 108.1: General; when a structure or equipment is found by the code official to be unsafe, or when a structure is found unfit for human occupancy, or is found unlawful, such structure shall be condemned pursuant to the provisions of this code.

PM-108.1.1: Unsafe structure; an unsafe structure is one that is found to be dangerous to the life, health, property or safety of the public or the occupants off the structure by not providing minimum safeguards to protect or warn occupants in the event of fire, or because such structure contains unsafe equipment or is so damaged, decayed, dilapidated, structurally unsafe, or of such faulty construction or unstable foundation, that partial or complete collapse is possible.

This structure is found to be unsafe and dangerous to the life, health or safety of the public due to it being decayed and dilapidated and structurally unsafe.

PM-108.1.3: A structure is unfit for Human Occupancy whenever the code official finds that such structure is unsafe, unlawful or, because of the degree to which the structure is in disrepair or lacks maintenance, is unsanitary, vermin or rat infested, contains filth and contamination, or lacks ventilation, illumination, sanitary or heating facilities or other essential equipment required by this code, or because the location of the structure constitutes a hazard to the occupants of the structure or to the public.

This structure is unfit for Human Occupancy by not provided adequate ventilation, illumination, sanitary or heating facilities or other essential equipment required by this code.

City Hall • 1 South Sandusky Street • Delaware, Ohio 43015 • PlanningAndDevelopment@delawareohio.net
Tel: 740.203.1600 • Fax: 740.203.1699
www.delawareohio.net

PM- 108.2: If the structure is vacant and unfit for human habitation and occupancy, and is not in danger of structural collapse, the code official is authorized to post a placard of condemnation on the premises and order the structure closed up so as not to be an attractive nuisance. Upon failure of the owner to close up the premises within the time specified in the order, the code official shall cause the premises to be closed and secured through and available public agency or by contract or arrangement by private persons and the cost thereof shall be charged against the real estate upon which the structure is located and shall be a lien upon such real estate abs may be collected by any other legal resources.

The structure must be secured on or before 5/21/10. The method used to secure the structure must match the structure in material and color.

PM-110.1: The code official shall order the owner of any premises upon which is located any structure, which in the Code Official's judgment is so old, dilapidated and has become so out of repair as to be dangerous, unsafe, insanitary or otherwise unfit for human habitation or occupancy, and as such it is unreasonable to repair the structure, to demolish and remove such structure; or if such structure is capable of being made safe by repairs, to repair and make safe and sanitary or to demolish and remove at the owner's option..

PM-303.1: The exterior property of a structure shall be maintained in good repair, structurally sound and sanitary so as not to pose a threat to the public health, safety or welfare.

This property poses a threat to the public welfare buy becoming an attractive nuisance, it is not in good repair and areas on the exterior are not structurally sound. The gutters on the south side of the building needs to be removed or replaced.

PM-303.2: All exterior surfaces, including but not limited to, doors and window frames, cornices, porches, trim, balconies, decks and fences shall be maintained in good condition. Exterior wood surfaces, other than decay-resistant woods, shall be protected from the elements and decay by painting or other protective covering treatment. Peeling, flaking and chipped paint shall be eliminated and surfaces repainted. All siding and masonry joints as well as those between the building envelope and the perimeter of windows, doors, and skylights shall be maintained weather resistant and water tight. All metal surfaces subject to rust or corrosion shall be coated to inhibit such rust and corrosion and all surfaces with rust or corrosion shall be stabilized and coated to inhibit future rust and corrosion. Oxidation stains shall be removed from exterior surfaces. Surfaces designed for stabilization by oxidations are exempt from this requirement.

Scrape the loose and peeling paint on the exterior siding, overhangs, fascia, windows and doors, primer all bare wood and paint the outside of the home to prevent further decay, try to work in a lead safe manner. Paint all bare metal on the outside of the home to protect from further deterioration.

PM-303.4: All structural members shall be maintained free from deterioration, and shall be capable of safely supporting the imposed dead and live loads.

PM-303.5: All foundation walls shall be maintained plumb and free from open cracks and breaks and shall be kept in such condition so as to prevent the entry of rodents and other pest.

Re-tuck point the stone foundation walls where necessary..

PM-303.6: All exterior walls shall be free from holes, breaks, and loose or rotting materials; and maintained weather proof and properly surface coated where required to prevent deterioration.

Repair and replace with new wood where necessary the deteriorated cornices, box beams and fascia around the structure

PM-303.11: All chimneys, cooling towers, smoke stacks, and similar appurtenances shall be maintained structurally safe and sound, and in good repair. All exposed surfaces of metal or wood shall be protected from the elements and against decay by periodic application of weather-coating materials, such as paint or similar surface treatment.

Check other existing chimneys to make certain they are structurally sound, repair brick, mortar and flashings where necessary to make structurally sound. Rebuild chimney that deteriorated and fell off of the roof and repair the roof area around the chimney.

PM-303.13: Every window, skylight, door and frame shall be kept in sound condition, good repair and weather tight.

Replace all broken glass and install glass in openings where missing, repair windows, and make operable along with all exterior doors, use proper glazing and paint to protect.

PM-304.1: All interior surfaces, including windows and doors, shall be maintained in good, clean and sanitary condition. Peeling, chipping, flaking, or abraded paint shall be repaired, removed, or covered. Cracked or loose plaster, decayed wood, and other defective surface conditions shall be corrected.

Remove all loose and peeling paint from the inside of the building. Repair all holes where the plaster has broken loose from the lath. Prepare the walls, windows and doors for new paint, and paint interior to comply with this code.

PM-111.1: Any person affected by a decision of the code official or a notice or order issued under this code shall have the right to appeal to the board of appeals, provided that a written application for appeal is filed within 20 days after the day the decision, notice or order was served. An application for appeal shall be based on a claim that the true intent of this code or the rules legally adopted there under have been incorrectly interpreted, the provision of this code do not fully apply, or the requirements of this code are adequately satisfied by other means.

PM-106.3: Any person failing to comply with a notice of violation or order served in accordance with Section 107 shall be deemed guilty of a misdemeanor, and the violation shall be deemed guilty a strict liability offense. If the notice of violation is not complied with, the code official shall institute the appropriate proceedings at law or in equity to restrain, correct, or abate such violation, or to require the removal or termination of the unlawful

occupancy of the structure in violation of the provisions of this code or of the order or direction made pursuant thereto.

PM-106.4: Any person, who shall violate a provision of this code, or fail to comply therewith, or with any of the requirements thereof, shall be prosecuted within the limits provided by state or local laws. Each day that a violation continues after due notice has been served shall be deemed a separate offense.

Other than the date of compliance referenced in PM-108.2, I must request the structure be repaired and brought into full compliance with the adopted City Property Maintenance Code by 6/11/10 or be razed.

Notice to Mow:

905.01 - WEEDS-CUTTING REQUIRED

Our office has also received a complaint regarding **weeds and/or high grass** on the above property. We must request the high grass and/or weeds be cut or destroyed and removed within the ***next five (5) days, or by May 3, 2010. This is the only notice you will receive this year.***

It is a prima-facie violation of the Delaware Codified Ordinances if high grass and/or weeds of twelve inches or more exist on any lot on any of the following dates: May 15, June 1, June 15, July 1, July 15, August 1, August 15, September 1 or September 15. Failure to comply with this notice will result in our hiring the work to be performed and billing the property owner of this land.

Such cutting and removing shall be at the owner's expense and the costs, together with an administrative fee of twenty percent (20%) shall be assessed against the lot or land. Such administrative fee shall not exceed two hundred dollars ($200.00).

Notice of such assessment shall be given to the owner of the lot or land charged therewith, or his agent, either in person or left at the usual place of residence or sent by mail, and all assessments not paid within ten days after the giving of such notice shall, after approval by Council, be certified by the Clerk of Council to the County Auditor to be placed on the tax duplicate and collected as other taxes are collected.

Notice to Remove Waste Materials:

521.08 LITTERING AND DEPOSIT OF GARBAGE AND WASTEFUL MATERIAL.

(a) No person, except as permitted in Chapter 929 of the Streets, Utilities and Public Services Code, being the owner, person in charge, tenant or occupant of premises, shall place or allow to be placed, accumulated or deposited upon any public property, premises of another or any lots or lands in the City, any paper, trash, garbage, waste, refuse or any substance which is, or may be noxious, offensive, injurious or dangerous to the public health, comfort or safety.

(b) No person shall place or allow to be placed or deposited upon any lots or lands in the City any waste, debris or material resulting from the demolition, repair or alteration of any building, or trees or limbs

resulting from the removal of trees, or any other waste material without written permission of the City Manager or designated representative.

(c) Upon determination that such an accumulation or deposit of material specified in subsections (a) or (b) hereof exists, the City Manager or designated representative shall cause a written notice of such violation to be posted at the site of the violation giving the owner, person in charge, tenant or occupant forty-eight hours to remove such deposit or accumulation. In addition to physically posting the site of the violation, the City Manager or designated representative shall seek to personally notify the owner, person in charge, tenant or occupant of such violation during such forty-eight hour period. Posting the property shall be deemed sufficient notice of violation whether or not personal notice is given.

(d) In the event that the owner, person in charge, tenant or occupant of any premises, having been notified under subsection (c) hereof, does not remove the deposit or accumulation specified in the notice of violation and removal order within the forty-eight hour time period, the City Manager or designated representative shall cause such deposit or accumulation to be removed and shall charge the cost of such removal, together with the administrative costs incurred with regard to such removal, to the owner, person in charge, tenant or occupant, if such cost is not paid by the owner, person in charge, tenant or occupant within a reasonable time, the sum may be certified by the proper City official to the County Auditor and placed upon the tax duplicate for collection as a special assessment against such premises, to be collected as other taxes and assessments are collected. The City may also collect such costs through a civil action in the appropriate court of law having jurisdiction thereof. Such remedies shall be in addition to the penalty provided in subsection (e) hereof. (Ord. 80-6. Passed 3-10-80).

(e) Whoever violates any provision of this section is guilty of a minor misdemeanor. A separate offense shall be deemed committed each day during or on which a violation occurs or continues. (Ord. 89-13. Passed 2-27-89).

Remove couch and furniture on the grounds around the buildings.

Should you have questions, I may be reached at 740-203-1651.

Respectfully,

Jerry Warner, C.B.O.
Chief Building Official and Code Enforcement Officer

05.05.2010

05.05.2010

CITY OF DELAWARE

NOTICE OF VIOLATION
COMPLIANCE REQUIRED ON OR BEFORE
August 18, 2011

August 4, 2011

BOTACH YOAV SCHLOMO
5011 W PICO BLVD
LOS ANGELES CA 90019

Parcel ID:	**51943128075000**
Address:	**15 FLAX ST** **DELAWARE, OHIO 43015**
Reference Number:	**20111543**

During a recent inspection of the above referenced property address, the following violation(s) of the Codified Ordinances of the City of Delaware was found to exist on the property. A corrective action can be found immediately after each violation.

Violation:

Section 305.1. Accumulation of Rubbish and Garbage. All exterior property and premises, and the interior of every structure, shall be free from any accumulation of rubbish or garbage.

Violation Detail:

Please remove and dispose of properly the scrap wood and loose trash.

Remedy:

Violator shall remove all rubbish and/or garbage.

Failure to satisfactorily complete the corrective action(s) and fully remedy the violation(s) listed above on or before **August 18, 2011** may result in the City of Delaware taking corrective action, assessing the cost of such action together with incurred administrative costs to the owner of the property, and/or seeking correction action(s) and penalty(s) in the appropriate court of law.

Certain interpretations of the Codified Ordinances of the City may be appealed to the Board of Zoning Appeals within thirty (30) days after the date of this notice of violation. Interpretations of the ICC International Property Maintenance Code may be appealed to the Board of Zoning Appeals within twenty (20) days after the date of this notice of violation.

Thank you in advance for your timely response to this matter. Please contact the Planning & Community Development Department at (740) 203-1630 with any questions or to discuss this notice of violation. Please

have the reference number available when calling.

CITY OF DELAWARE

POSTED

NOTICE OF VIOLATION & REMOVAL ORDER
COMPLIANCE REQUIRED ON OR BEFORE

August 28, 2011

Posting Date: August 19, 2011

Parcel ID: 51943128075000

Reference Number: 20111543

Property Owner: BOTACH YOAV SCHLOMO
5011 W PICO BLVD
LOS ANGELES CA 90019

Address: 15 FLAX ST
DELAWARE, OHIO 43015

By posting of this notice of violation at the above referenced property address, notice is hereby given that this property is found to be in violation of Section 521.08 of the Codified Ordinances of the City of Delaware, which prohibits the placement, accumulation or depositing upon any property any paper, trash, garbage, waste, refuse or any substance which is, or may be noxious, offensive, injurious or dangerous to the public health, comfort or safety, including any waste, debris or material resulting from the demolition, repair or alteration of any building, or trees or limbs resulting from the removal of trees, or any other waste material.

As required by Section 521.08(c), the owner, person in charge, tenant, or occupant notified by this posting is hereby ordered to remove the following items from the property:

Please remove and dispose of properly the scrap wood and loose trash.

Failure to remove these items on or before **August 28, 2011** will result in the City of Delaware causing said items to be removed and shall charge the cost of such removal, together with the administrative costs incurred with regard to such removal, to the owner, person in charge, tenant, or occupant. If such cost is not paid, the sum may be placed upon the tax duplicate for collection as a special assessment against such premises, to be collected as other taxes and assessments are collected. The City may also collect such costs through a civil action in the appropriate court of law having jurisdiction thereof.

Additional penalties may also be sought in an appropriate court of law. Whoever violates any provision of this section is guilty of a minor misdemeanor. A separate offense shall be deemed committed each day during or on which a violation occurs or continues.

Please contact the Planning & Community Development Department at (740) 203 1630 with any questions or to discuss this notice of violation and removal order. Please have the reference number available when calling.

CITY OF DELAWARE

NOTICE OF VIOLATION
COMPLIANCE REQUIRED ON OR BEFORE
May 11, 2011

May 06, 2011

BOTACH YOAV SCHLOMO
5011 W PICO BLVD
LOS ANGELES CA 90019

Parcel ID: **3569769**

Address: **15 FLAX ST**

Reference Number: **20110752**

905.01 - WEEDS-CUTTING REQUIRED

Our office has received a complaint regarding **weeds and/or high grass** on the above property. We must request the high grass and/or weeds be cut or destroyed and removed ***by*** **May 11, 2011.** ***This is the only notice you will receive this year.***

It is a prima-facie violation of the Delaware Codified Ordinances if high grass and/or weeds of twelve inches or more exist on any lot on any of the following dates: May 15, June 1, June 15, July 1, July 15, August 1, August 15, September 1 or September 15. Failure to comply with this notice will result in our hiring the work to be performed and billing the property owner of this land.

Such cutting and removing shall be at the owner's expense and the costs, together with an administrative fee of twenty percent (20%) shall be assessed against the lot or land. Such administrative fee shall not exceed two hundred dollars ($200.00).

Notice of such assessment shall be given to the owner of the lot or land charged therewith, or his agent, either in person or left at the usual place of residence or sent by mail, and all assessments not paid within ten days after the giving of such notice shall, after approval by Council, be certified by the Clerk of Council to the County Auditor to be placed on the tax duplicate and collected as other taxes are collected.

We look forward to your anticipated cooperation. If you have any questions or need assistance, please do not hesitate to call. We may be reached at 740-203-1630.

CITY OF DELAWARE • PLANNING AND COMMUNITY DEVELOPMENT

October 27, 2011

BOTACH YOAV
SCHLOMO
5011 W PICO BLVD
LOS ANGELES, CA 90019

Re: Property located at 15 Flax Street

Violation of Section 1321.09 of the Codified Ordinances of Delaware Ohio

Dear Yoav and Schlomo Botach:

We have received a complaint regarding electrical service work conducted without approval at this location. We are obligated to report this t the local power company (AEP). This will result the electric service being discontinued at this location.
According to section 1321.09 of the Codified ordinances of Delaware Ohio:
1321.09 ELECTRICIANS.
No person shall install new or temporary electrical service without first applying for and obtaining a permit from the Building Inspector, and shall at the time the permit is issued, pay a fee in accordance with the fee schedule in Section 1321.01.
(Ord. 04-200. Passed 12-20-04.)

Please call us at 203-1650 at your earliest convenience.

Section 1128.01 of the Delaware City Codified Ordinances states, *"Appeals to the Board of Zoning Appeals may be taken by any person, or by any government officer, board or department of the City, deeming himself or itself to be adversely affected by a decision of the Director of Planning and Community Development, or by any administrative officer of the City deciding matters relating to this Zoning Ordinance."*

Under Section 111 of the 2000 International Property Maintenance Code, *"Any person directly affected by a decision of the code official or a notice or order issued under this code shall have the right to appeal to the board of appeals, provided that a written application for appeal is filed within 20 days after the day the decision, notice or order was served. An application for appeal shall be based on a claim that the true intent of this code or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of this code do not fully apply, or the requirements of this code are adequately satisfied by other means, or that the strict application of any requirement of this code would cause an undue hardship."*

Respectfully,
Marvin Phipps
Electrical Safety Inspector
City of Delaware
Building Department
740 203-1650
mphipps@delawareohio.net

NOT APPROVED
Electric Service
10-26-2011
NOT APPROVED
Delaware City
Elds Dept
740-203-1650
DANGER PELIGRO
DANGER PELIGRO
DANGER PELIGRO

CITY OF DELAWARE
PLANNING & COMMUNITY DEVELOPMENT

MEMORANDUM

DATE: April 3, 2015

TO: Board of Zoning Appeals

FROM: Lance A. Schultz, Planning and Zoning Administrator

RE: Demolished Structures Since 2010

Attached is a list of structures (both residential and commercial buildings) that were demolished in the City since 2010. The cases with a check mark next to them are the structures the City wrote orders on to be demolished while the other cases were demolished by the owner without orders from the City.

X DEMOLISHED PER CITY ORDERS

	Number	Type	Sub Type	Tag	Status
X	20100084	R-DEMO		demo delaware hotel	COMPLETED
	20100329	R-DEMO		Henkel 421 london rd	COMPLETED
	20100330	R-DEMO		Henkel demolition	CLOSED
	20100332	R-DEMO		Henkel	COMPLETED
	20100334	R-DEMO		Henkel	COMPLETED
	20100386	R-DEMO			COMPLETED
	20100979	R-DEMO			COMPLETED
	20101004	R-DEMO		4137 Columbus Pike DEMOLITION	COMPLETED
X	20101862	R-DEMO		188 S Liberty St DEMOLITION	COMPLETED
	20110636	R-DEMO		92 N Sandusky St DEMOLITION	COMPLETED
X	20110877	R-DEMO		110 Bernard Ave	COMPLETED
	20110967	R-DEMO		2740 Stratford Rd DEMOLITION	ADMINCLOSE
X	20111106	R-DEMO		Demo 68 High St	COMPLETED
X	20111138	R-DEMO		55 David St DEMOLITION	COMPLETED
	20111330	R-DEMO		114 Rowland Ave.	COMPLETED
	20111331	R-DEMO		110 Rowland Ave.	COMPLETED
	2011-1691	R-DEMO		demolition	COMPLETED
X	2011-1789	R-DEMO		89 Eaton St DEMOLITION	COMPLETED
	2011-1948	R-DEMO		85 Chamberlain St DEMOLITION	ADMINCLOSE
X	2011-2072	R-DEMO		96 E William St DEMOLITION	COMPLETED
X	2011-2073	R-DEMO		100 E William St DEMOLITION	COMPLETED
	2011-2074	R-DEMO		319 London Rd DEMOLITION	COMPLETED
X	2011-2075	R-DEMO		57 Stilson St DEMOLITION	COMPLETED
	2011-2076	R-DEMO		116 N Sandusky St DEMOLITION-on hold	OPEN
	2012-0001	R-DEMO		980 W Central demo	ADMINCLOSE
	2012-0130	R-DEMO		273 E. Central Ave.	ADMINCLOSE
	2012-0153	R-DEMO		7 Smith St DEMOLITION	ADMINCLOSE
	2012-0254	R-DEMO		46 W Winter St DEMOLITION GARAGE	COMPLETED
X	2012-0280	R-DEMO		ordered demo 212 E Winter	ADMINCLOSE
	2012-0448	R-DEMO		Dismantle Clarks greenhouse	ADMINCLOSE
	2012-1088	R-DEMO		2885 Pollock Rd DEMOLITION	ADMINCLOSE
	2012-1105	R-DEMO		225 S Sandusky St LOT 11 DEMOLITION	ADMINCLOSE
	2012-1449	R-DEMO		221 S Franklin demo garage	COMPLETED
	2012-1591	R-DEMO		292 N Liberty garage demo	COMPLETED

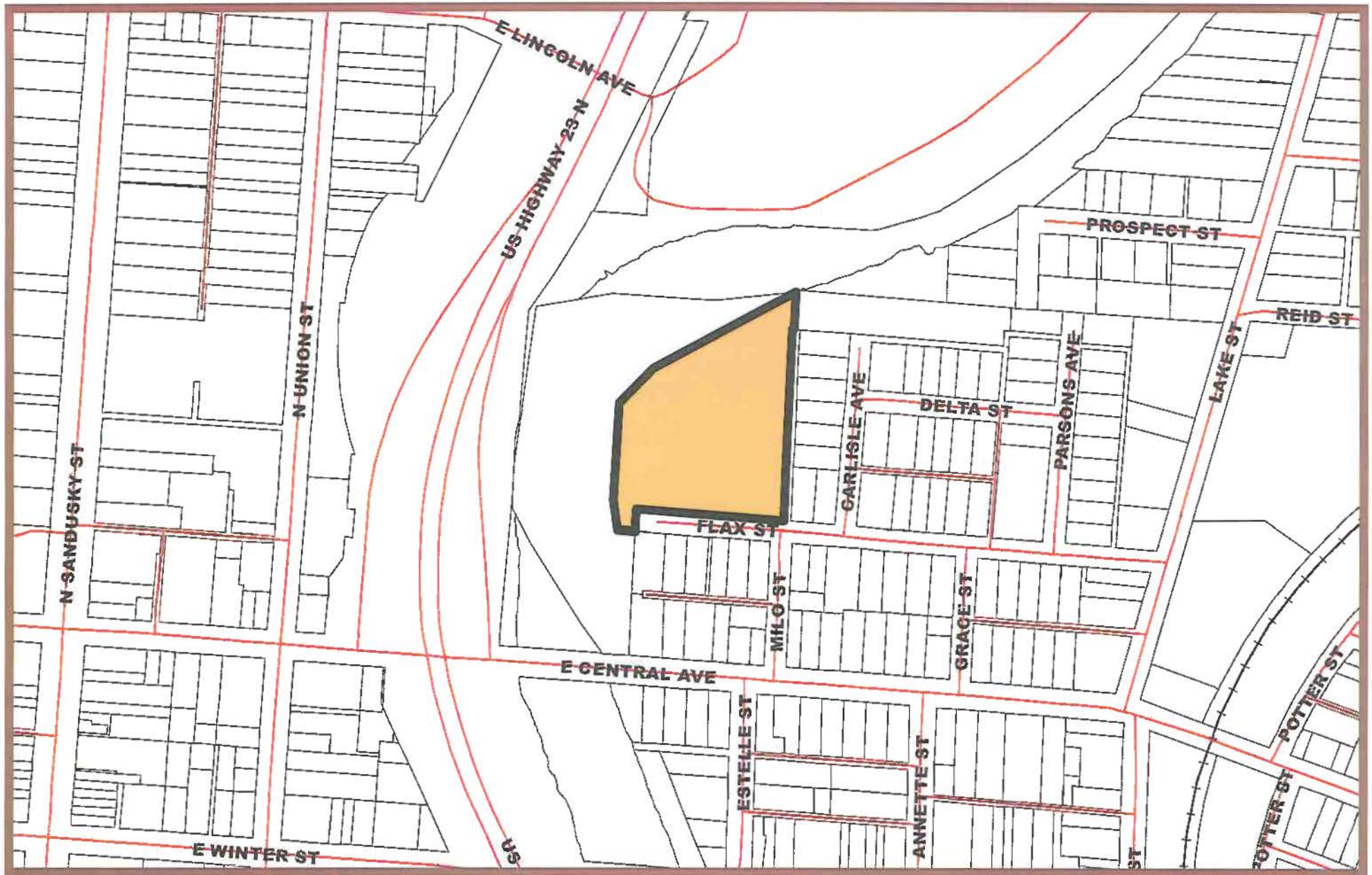
☐	2012-2069	R-DEMO	51 Toledo St	ADMINCLOSE
☒	2012-2070	R-DEMO	34 HIGH ST	ADMINCLOSE
☐	2012-2182	R-DEMO	39 n washington	ADMINCLOSE
☐	2013-0098	R-DEMO	301 w. central demo	ADMINCLOSE
☐	2013-0153	R-DEMO	44 Euclid DEMOLITION	ISSUED
☐	2013-0178	R-DEMO	116 N Sandusky St DEMOLITION	ISSUED
☐	2013-0895	R-DEMO	61 vandeman ave	ISSUED
☐	2013-1037	R-DEMO	641 W Central DEMOLITION	ISSUED
☐	2013-1373	R-DEMO	481 W William DEMOLITION	ISSUED
☐	2013-1454	R-DEMO	1960 cheshire	ISSUED
☒	2013-1498	R-DEMO	69 n franklin	COMPLETED
☐	2013-1801	R-DEMO	55 W Central ZION demo	COMPLETED
☐	2013-2347	R-DEMO	132 W Heffner Demolition	COMPLETED
☐	2014-0357	R-DEMO	216 S Sandusky DEMOLITION arbys	ISSUED
☒	2014-0429	R-DEMO	28 Lewis DEMOLITION	ISSUED
☒	2014-0430	R-DEMO	39 Eaton DEMOLITION	ISSUED
☒	2014-0431	R-DEMO	43 Eaton DEMOLITION	ISSUED
☒	2014-0432	R-DEMO	535 W William DEMOLITION	ISSUED
☒	2014-0433	R-DEMO	2 King DEMOLITION	ISSUED
☐	2014-0435	R-DEMO	93 N Franklin DEMOLITION	ISSUED
☐	2014-1961	R-DEMO	102 Firestone demo+ temp elect	ISSUED
☒	2014-2318	R-DEMO	2483 Pollock DEMOLITION	COMPLETED

Size: 561(Go 1 Found: 56 Displaying: 1 to 56

Jerry Warner, C.B.O.

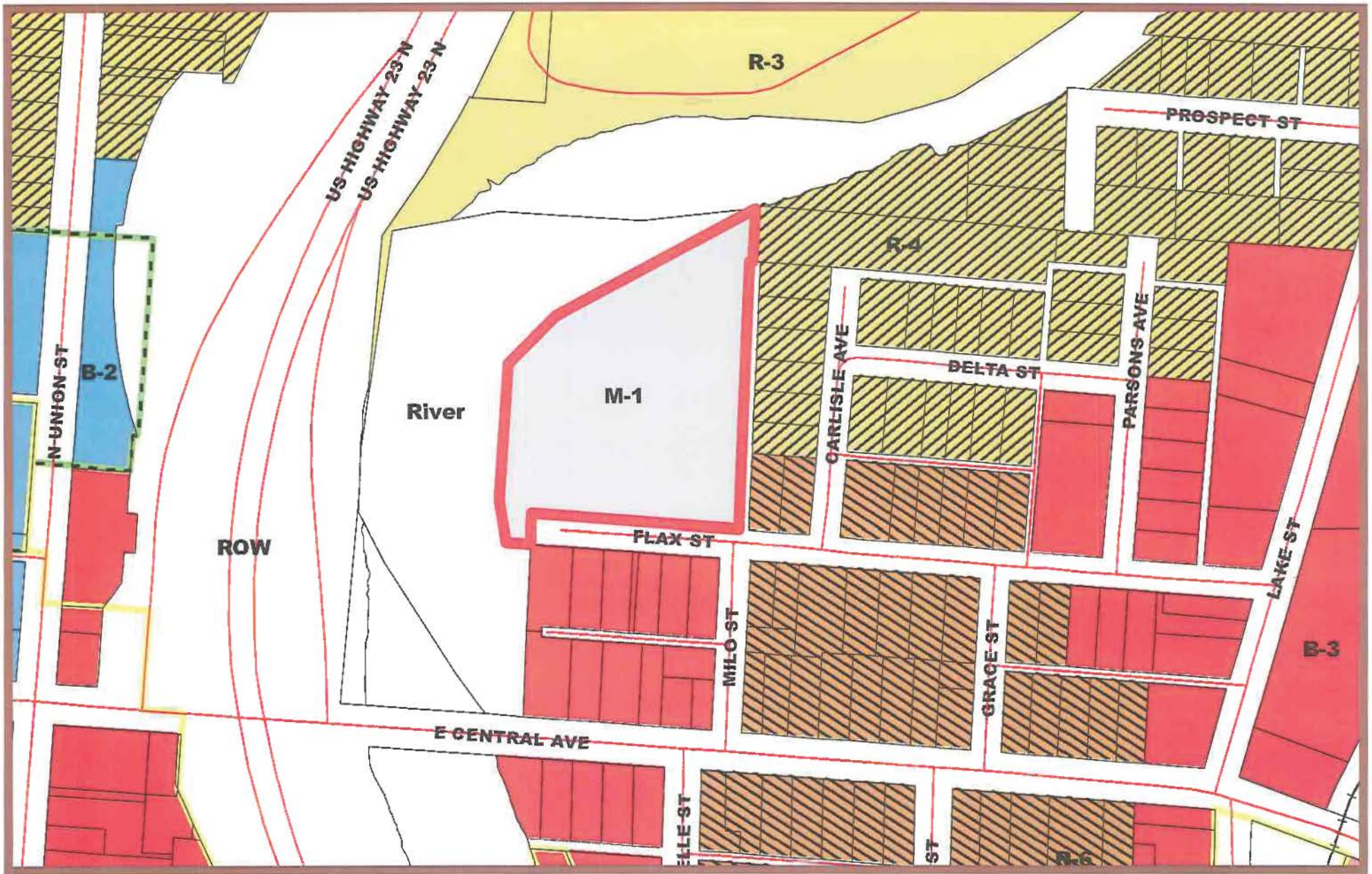
Chief Building Official
Floodplain Administrator
Construction Manager
Office: 740-203-1651
Cell: 740-816-0900
Email: jwarner@delawareohio.net
Web: www.delawareohio.net

This message may contain confidential and/or proprietary information and is intended for the person/entity to whom it was originally addressed. Any use by others is strictly prohibited.



CITY OF DELAWARE
PLANNING & COMMUNITY DEVELOPMENT

2015-0213
Appeal of the 2000 International Property Maintenance Code
15 Flax Street
Location Map



CITY OF DELAWARE
PLANNING & COMMUNITY DEVELOPMENT

2015-0213
Appeal of the 2000 International
Property Maintenance Code
15 Flax Street
Zoning Map

N

CITY OF DELAWARE
PLANNING & COMMUNITY DEVELOPMENT

2015-0213
Appeal of the 2000 International Property Maintenance Code
15 Flax Street
Aerial (2013)

N

05.05.2010

05.05.2010

05 05 2010

05 05 2010

05.05.2010

2
05 05 2010

05.05.2010

05.05.2010

03.05.2015 13:36

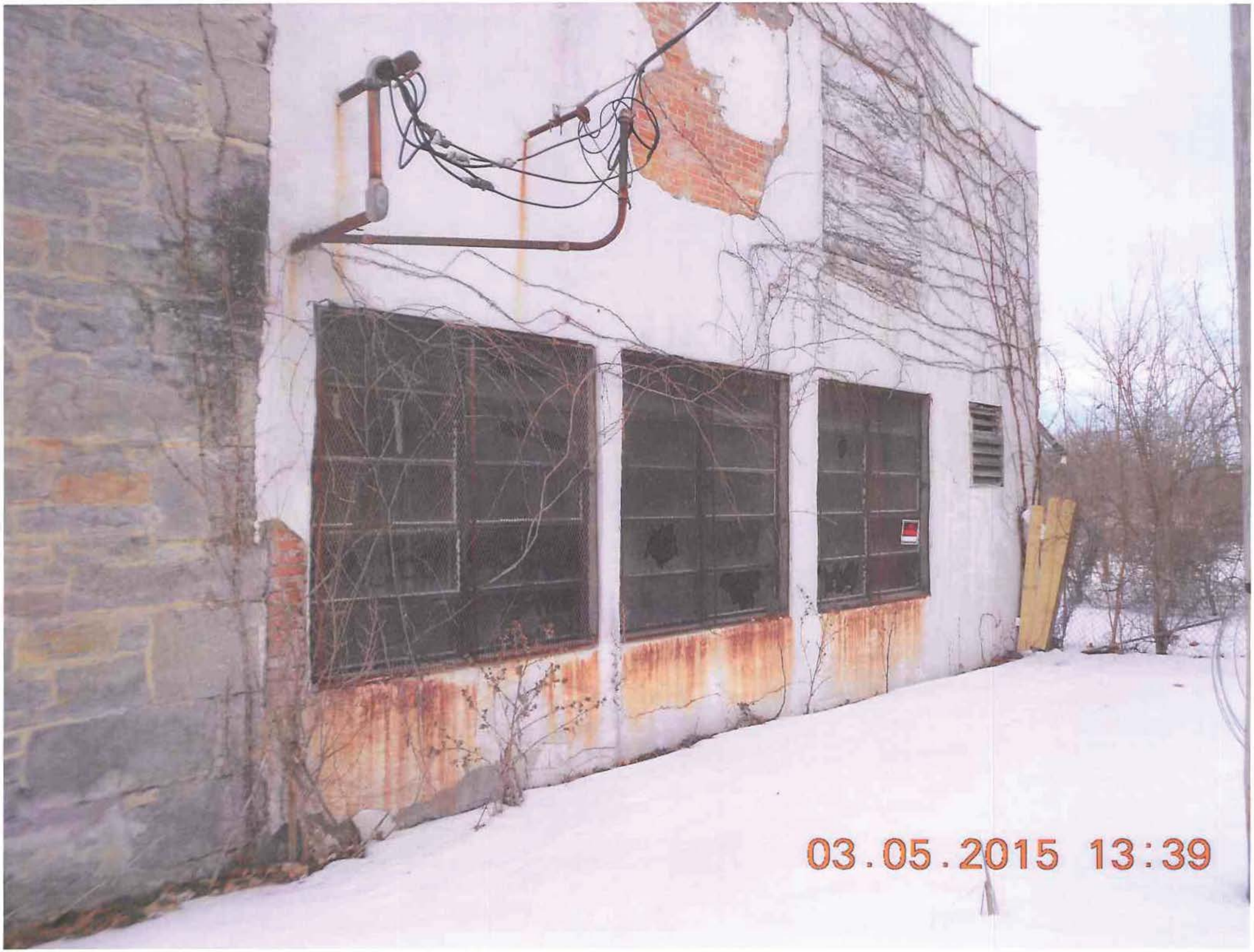
NO
03.05.2015 13:37

03.05.2015 13:37

03.05.2015 13:38

03.05.2015 13:39

03.05.2015 13:39


03.05.2015 13:39

03.05.2015 13:40

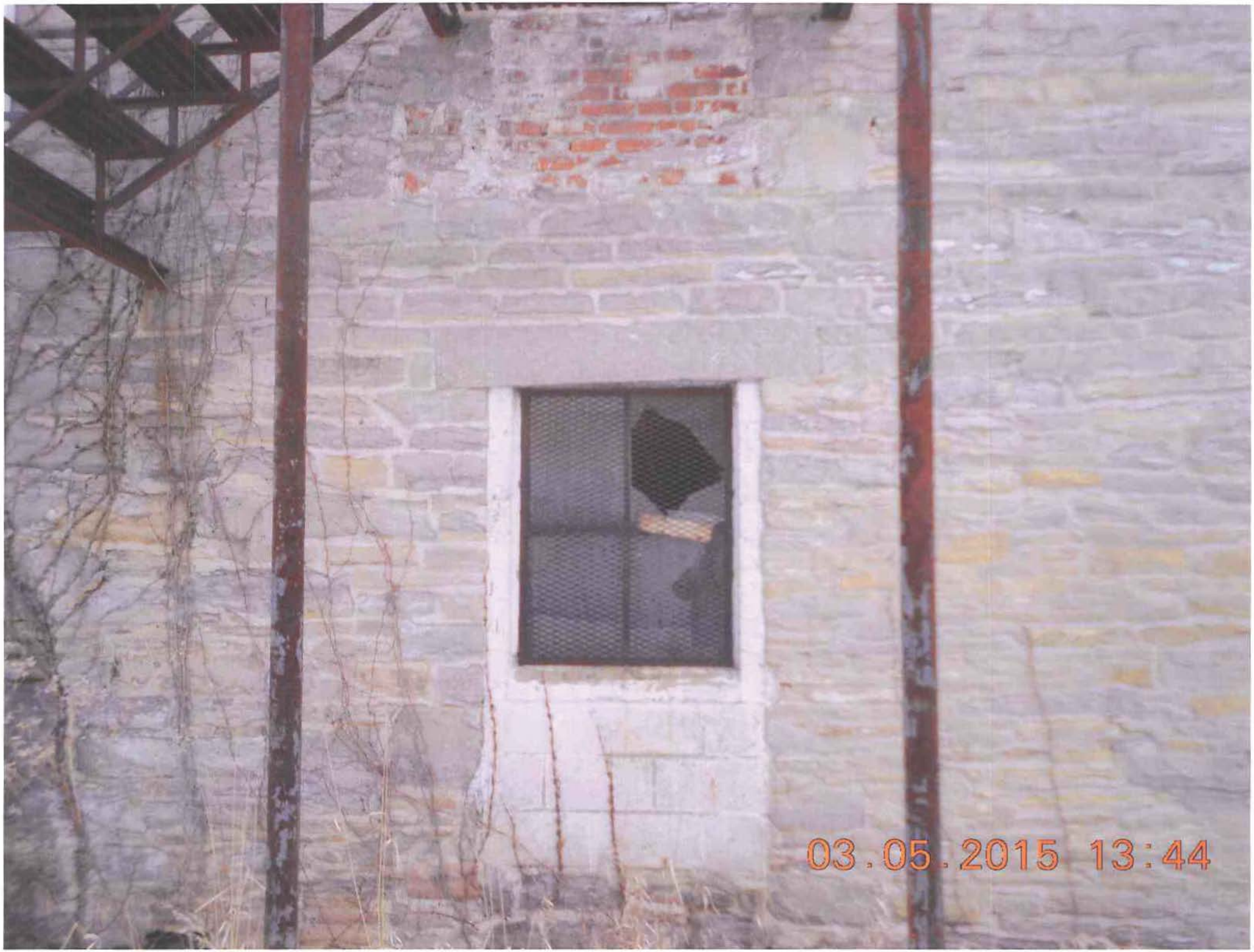
03.05.2015 13:41

03.05.2015 13:41

03.05.2015 13:42

03.05.2015 13:43

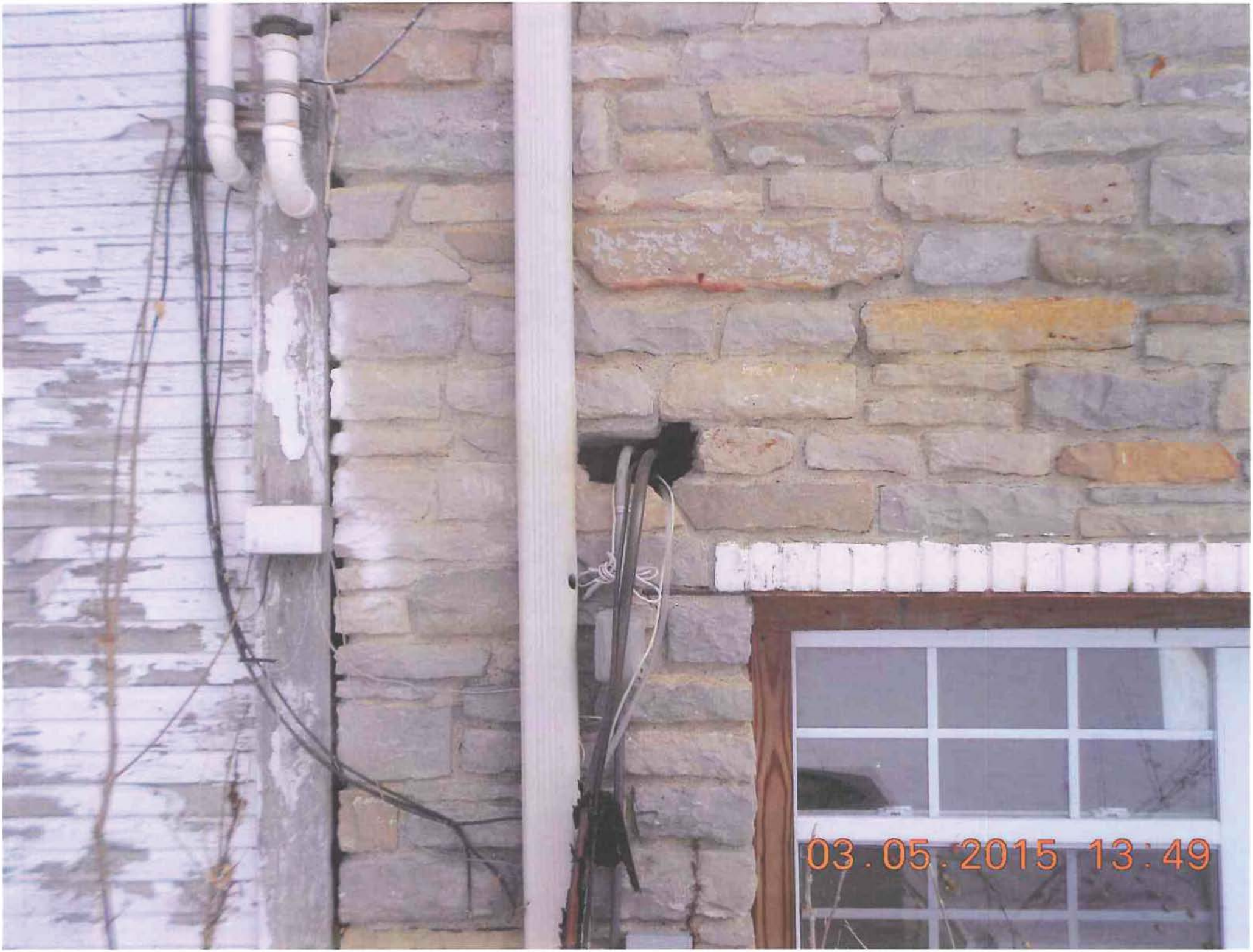
03.05.2015 13:43


03.05.2015 13:44

03.05.2015 13:44

03.05.2015 13:45

03.05.2015 13:45


03.05.2015 13:49

CITY OF DELAWARE, OHIO
PLANNING & COMMUNITY DEVELOPMENT
MASTER APPLICATION FORM

Planning *and* Community Development
CITY OF DELAWARE, OHIO

Project # _____ Case # 2015-0213

Planning Commission

- ☐ Amended Final Development Plan
- ☐ Amended Final Subdivision Plat
- ☐ Amended Preliminary Development Plan
- ☐ Amended Preliminary Subdivision Plat
- ☐ Annexation Review
- ☐ Combined Preliminary & Final Development Plan
- ☐ Comprehensive Plan Amendment
- ☐ Concept Plan
- ☐ Conditional Use Permit
- ☐ Determination of Similar Use
- ☐ Development Plan Exemption
- ☐ Final Development Plan
- ☐ Final Development Plan Extension
- ☐ Final Subdivision Plat
- ☐ Final Subdivision Plat Extension
- ☐ Floodplain Permit
- ☐ Lot Split
- ☐ Pre-annexation Agreement
- ☐ Preliminary Development Plan
- ☐ Preliminary Dev Plan Extension
- ☐ Preliminary Sub Plat
- ☐ Preliminary Sub Plat Extension
- ☐ Rezoning
- ☐ Subdivision Variance
- ☐ Substitution of a Non- Conforming Use
- ☐ Vacation-Alley
- ☐ Vacation-Easement
- ☐ Vacation-Street

Board of Zoning Appeals

- ☒ Appeal Administrative Decision or Interpretation
- ☐ Conditional Use Permit
- ☐ Substitution of Equal or Less Non-Conforming Use
- ☐ Variance

Subdivision/Project Name _____ Address 15 Flax Street, Delaware, Ohio 43015

Acreage _____ Square Footage _____ Number of Lots _____ Number of Units _____

Zoning District/Land Use _____ Proposed Zoning/Land Use _____ Parcel # _____

Applicant Name Yoav and Schlomo Botach Contact Person: David J. Gordon, attorney at law

Applicant Address 5011 W. Pico Blvd., Los Angeles, CA 90019

Phone 740-363-8988 Fax 740-369-7810 E-mail dave@gordon-law.com

Owner Name same as above Contact Person same as above

Owner Address same as above

Phone _____ Fax _____ E-mail _____

Engineer/Architect/Attorney David J. Gordon, attorney at law Contact Person _____

Address 82 North Franklin Street, Delaware, Ohio 43015

Phone 740-363-8988 Fax 740-369-7810 E-mail dave@gordon-law.com

The undersigned, do hereby verify the truth and correctness of all facts and information presented with this application and authorize field inspections by City Staff.

Owner Signature _____ Owner Printed Name _____

Agent Signature _____ Agent Printed Name Scott M. Gordon

Sworn to before me and subscribed in my presence this 9th day of February, 2015

MY COMMISSION EXPIRES 9-17-16

Notary Stamp _____ Notary Public _____