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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

No. 92715-4

SUPREME COURT OF THE STATE OF WASHINGTON

CITY OF WALLA WALLA,

Respondent,

vs.

TERRY KNAPP,

Petitioner.

PETITION FOR REVIEW

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SUPREME COURT OF THE STATE OF WASHINGTON

CITY OF WALLA WALLA,) No.
)
 Respondent,)
)
 vs.) PETITION FOR REVIEW
)
 TERRY KNAPP,)
)
)
 Petitioner.)

IDENTITY OF PETITIONER

COMES NOW the petitioner and submits his petition for review of the Court of Appeals decision in this case.

The City of Walla Walla brought suit against Terry Knapp (the petitioner) to condemn his property as a blight. The City's suit was grounded on RCW 35.80A.010.

On a motion by the City based only on documentary evidence, the trial court entered an order of public use and necessity. That order was appealed to the Court of Appeals which affirmed the trial court.

The petitioner, Terry Knapp, now seeks review of the Court of Appeals decision.¹

CITATION TO COURT OF APPEALS DECISION

The petitioner seeks review of the decision of the Court of Appeals filed September 10, 2015, as an unpublished opinion, a copy of which is found in the appendix.

A copy of the order denying the petitioner's timely motion for reconsideration is found in the appendix.

ISSUES PRESENTED FOR REVIEW

1. Whether the Court of Appeals misconceived Terry Knapp's case and misapprehended the record resulting in a decision that is constitutionally deficient and contrary to other decisions of the Court of Appeals and this Court.
2. Whether the Court of Appeals evaded the proper standard of review and denied Terry Knapp an authentic judicial inquiry concerning public use.
3. Whether the Court of Appeals, acting contrary to established authority, erroneously affirmed the trial court's resolution of disputed facts without a trial, and,

¹ Walla Walla County was initially named a party to this case because it held a lien on the petitioner's property. Walla Walla County has been dismissed in this case.

compounded the constitutional deficiency exposed by the record.

4. Whether by concluding that Terry Knapp's challenge to the trial court's treatment of contested factual issues necessitated nothing more than determining whether the trial court's factual findings are supported by substantial evidence, the Court of Appeals applied the wrong standard of review and denied the petitioner his right to an authentic judicial inquiry concerning public use.
5. Whether the Court of Appeals should be reversed with a determination that the city cannot acquire Terry Knapp's property by condemnation together with an award of his costs, including attorney fees.
6. Alternatively, whether this case should be remanded for trial of contested questions of fact.

STATEMENT OF THE CASE

Course of Proceedings

In April, 2014, the City of Walla Walla petitioned the Superior Court to condemn certain residential real property held by Terry Knapp.(CP 3) The petition alleged that the taking of Mr. Knapp's property was for a public use pursuant to RCW 35.80A.010.(CP 3)

That statute allows a municipality to condemn property that “constitutes a blight on the surrounding neighborhood,” on proof of any two of these three factors:

A “blight on the surrounding neighborhood” is any property, dwelling, building, or structure that meets any two of the following factors: (1) If a dwelling, building, or structure exists on the property, the dwelling, building, or structure has not been lawfully occupied for a period of one year or more; (2) the property, dwelling, building, or structure constitutes a threat to the public health, safety, or welfare as determined by the executive authority of the county, city, or town, or the designee of the executive authority; or (3) the property, dwelling, building, or structure is or has been associate with illegal drug activity during the previous twelve months.

The City moved for an order of public use and necessity based on the first two of the foregoing factors.(CP 24-29)

The trial court granted the City’s motion after hearing oral argument on June 16, 2014.(CP 1061) Although Terry Knapp appeared through counsel and contested by declaration under penalty of perjury factual submissions by the City, no trial was held. No testimony was heard. Instead, the trial court simply signed findings of fact, conclusions of law and an order of public use and necessity handed up by counsel for the City following oral argument on the motion docket of June 16, 2014.(CP 1061,1055)

The Court of Appeals affirmed the trial court. This petition seeks review of that decision pursuant to RAP 13.4(b)(1), (2), (3) and (4).

Facts

The record is replete with factual assertions by the City. Mainly, these assertions are a catalog of complaints about the person of Terry Knapp. Insofar as they pertain to the property in question they purport to fulfill two criteria of RCW 35.80A.010. The third factor involving illegal drug activity is not material to this case.

Concerning the first factor that could be one of two that must be proven before a property may be condemned as a blight, the City argues that its building official never issued a certificate of occupancy concerning a structure on the property. Based on the lack of a certificate of occupancy, the City contends that Terry Knapp's structure has not been lawfully occupied since 2005.(CP 1053-54) While there is nothing in the record to show that there are likely thousands of dwellings in Walla Walla that have never been issued a certificate of occupancy but which are lawfully occupied, the record affords an easy explanation of the legality of the situation at 712 Whitman Street.

The property in question has been under construction for several years.(CP 1054,1041-42) Indeed, the property is the subject of a building permit duly issued by the Walla Walla Joint Community Development Agency on December 27, 2013.(CP 1042,1047) Moreover, Mr. Knapp denies he lives there.(CP 1042:13) That Mr. Knapp's house may not occupied while under construction is merely true, but unsurprising and unprobative. Except for the City's assertion, how this situation fulfills the first factor specified in RCW 35.80A.010 that must be proven to condemn property as a blight is not shown in the record.

Subsidiary findings 2.10.1 and 2.10.2 concerning lack of city water service and a 2005 declaration that Mr. Knapp's property was dangerous and unfit for human occupancy (CP 1058-59) are connected to the first factor of RCW 35.80A.010 by the same conjecture that the City advances about the lack of a certificate of occupancy. How a lack of city water service signals blight as meant by the condemnation statute is shown only argumentatively in the record. How a declaration in 2005 that the property was dangerous and unfit proves that the property constitutes a blight in 2014 is similarly supported only by inferential speculation.

With respect to the second factor asserted by the City in support of its condemnation petition, a history of various city code violations is offered.(CP 8) On this basis the trial court concluded, as a finding of fact, that Mr. Knapp's property was properly determined by the executive authority of the City to "constitute a threat to public health, safety, and welfare based upon its well-documented years of repeated and continuous code violations."(CP 1067) Nowhere did a judicial body make that determination. The trial court merely recited what the city manager did as the executive. More crucial, Mr. Knapp described his property as free of any hazard to public health, safety or welfare.(CP 1042:4-7) This factual declaration is not directly contravened by the City. No submission by the City shows that Mr. Knapp's property "constitutes a blight" at the time the judicial inquiry and determination in this case ostensibly occurred.

ARGUMENT

I. THE COURT OF APPEALS MISCONCEIVED TERRY KNAPP'S CASE AND MISAPPREHENDED THE RECORD RESULTING IN A DECISION THAT IS CONSTITUTIONALLY DEFICIENT AND CONTRARY TO CONTROLLING AUTHORITY.

A. The Court of Appeals Specifically Mischaracterized Terry Knapp's Appeal as Consisting of Three Contentions None of which Concern Constitutional Substance.

Here is the opening sentence of the Court of Appeals opinion in this case:

Terry Knapp appeals from an order condemning his property, challenging the procedure used by the city of Walla Walla (City) in the exercise in its eminent domain authority. (Slip Opinion, 1)

This sentence implies that Mr. Knapp's appeal is "merely" procedural, and, thus, worthy of little attention. Moreover, this opening sentence obscures the undeniable principle that in cases presenting constitutional objections to the power of eminent domain, procedure is substance. *Washington Constitution, Article 1, §16.*

Yet, the Court of Appeals overlooked the two main points advanced by Mr. Knapp. (Brief of Appellant, i, 11, 12; copy of brief is in the appendix to this petition):

I. WHERE, AS HERE, NO JUDICIAL INQUIRY DETERMINED THAT TERRY KNAPP'S PROPERTY CONSTITUTES A BLIGHT, CONDEMNATION MUST BE DENIED.

- A. The Trial Court Conducted No Inquiry as Required by the Washington Constitution to Determine that the Condemnation Sought by the City was for a Public Use.
- B. The Record Shows that Terry Knapp's Property does Not Constitute a Blight.

Notwithstanding this unequivocally substantive position, the Court of Appeals treated Terry Knapp's case as consisting of three contentions concerning only the process of the trial court (Slip Opinion, 4):

Mr. Knapp contends that the trial court was required to hear testimony and resolve disputed facts at trial, and that the evidence did not support the ruling.

The first two contentions, termed "procedural challenges," are summarily dismissed as vain attempts to attack the trial court's discretion. (Slip Opinion 7, 8) The third contention is treated as requiring nothing more than a superficial search for substantial evidence that supports certain factual findings of the trial court.

- (1) By incorrectly describing the so-called first contention as a procedural challenge arising from the trial court's basing its decision only on documentary evidence, the Court of Appeals evaded the proper standard of review and denied the plaintiff his right to an authentic judicial inquiry concerning public use.

The primary question was not whether there should have been a trial of contested facts. The primary question is what should be done about the decision made by the trial court. First, that decision should be reviewed de novo. The trial court saw no witnesses, heard no testimony, weighed no evidence and reconciled no conflicting evidence in reaching its decision. Therefore, review is de novo.

Police Guild v. Liquor Control Bd., 112 Wn. 2d 30, 35-36, 769 P. 2d 283 (1989); *In re Estate of Nelson*, 85 Wn. 2d 602, 605, 537 P. 2d 765 (1975); *Amren v. City of Kalama*, 131 Wn. 2d 25, 32, 929 P. 2d 389 (1997). Second, the decision should be reversed because proper review shows that condemnation must be denied.

The Court of Appeals' reliance on *City of Blaine v. Feldstein*, 129 Wn. App. 73, 117 P. 3d 1169 (2005) is misplaced. *Blaine* did not involve proof of blight. *Blaine* did not involve proof of anything. In *Blaine*, no material issues of fact were disputed. In *Blaine*, issues of credibility were not before the trial court. *Blaine*, 129 Wn. App. at 77. Here, Mr. Knapp's evidence plainly contradicted that proffered by the City.(CP 1041-47) The Court of Appeals' decision is contrary to *Blaine*, 129 Wn. App. at 76 which allowed condemnation without an evidentiary hearing only because there were no issues of relevant fact or credibility.

The so-called contention concerning documentary evidence is not about whether, in the abstract, a case may be decided only on documentary evidence. Where, as here, documentary evidence is contrary to the City's position, an order of public use and necessity may not be entered, at least without further inquiry.

Where, as here, documentary evidence disproves the City's position, condemnation must be denied. The Court of Appeals avoids the constitutional question presented by Terry Knapp by assuming:

...that the trial judge accepted the truth of Mr. Knapp's allegations, but that information did not contradict the City's evidence and, thus, did not require the judge to conduct a testimonial hearing. (Slip Opinion at 7)

Plainly, Mr. Knapp's evidence contradicted that proffered by the City. As noted above, Mr. Knapp described his property as free of any hazard to public health, safety or welfare.(CP 1042:4-7) This factual declaration was never contravened. No submission by the City showed that Mr. Knapp's property "constitutes a blight" at the time the trial court ostensibly conducted a judicial inquiry concerning public use and necessity.

(2) By incorrectly describing the so-called second contention as a procedural challenge arising from the trial court's resolution of disputed facts without a trial, the Court of Appeals compounded the constitutional deficiency that is exposed by the record.

As shown in the foregoing section of this petition, the Court of Appeals made assumptions contrary to the record and, thereby avoided a judicial inquiry required by the *Washington Constitution, Article 1, §16*. Contrary to the Court of Appeals' view, Terry Knapp's

“allegations” did contradict evidence proffered by the city. Indeed, evidence submitted by Mr. Knapp showed that his property is not a blight. Absent proof of blight, the City has not proven a genuine public use. Condemnation must be denied.

In re Seattle, 96 Wn. 2d 616, 627, 638 P. 2d 549 (1981) is contrary to the Court of Appeals decision in this case. *Seattle, supra*, held that a genuine public use must be proven judicially “without regard to any legislative assertion.” Proof that the public interest will be advanced is insufficient. *Seattle, supra, at 627*.

Not only does the record reveal that Terry Knapp’s property does not constitute a threat to the public health, safety or welfare, the evidence does not show that the building has not been lawfully occupied for a period of one year or more. Contrary to the analysis of the Court of Appeals, the record establishes only that Mr. Knapp’s property has been unoccupied. It does not establish that it has been unlawfully unoccupied. Where, as here, that property was lawfully unoccupied, as it was under construction, statutory criteria cannot be met. RCW 35.80A.010.

- (3) By misconstruing the so-called third contention as requiring nothing more than determining whether the trial court's factual findings are supported by substantial evidence, the Court of Appeals applied the wrong standard of review and denied Mr. Knapp his right to an authentic judicial inquiry concerning public use.

Initially, the Court of Appeals misapprehended the record in determining that there were no issues of fact requiring an evidentiary hearing. (Slip Opinion at 7) After mistakenly determining that evidence submitted by Mr. Knapp not only did not defeat the City's petition, but did not warrant a hearing, the Court of Appeals writes as if the trial court made findings following a trial of disputed facts:

Mr. Knapp also argues that the evidence did not establish "blight" and therefore did not support the determination of public use and necessity.

...

We review this claim for substantial evidence. (Slip Opinion at 8)

Why?

The would-be findings of fact by the trial court as part of its order condemning Mr. Knapp's property were unnecessary and served to perpetuate the illusion that Mr. Knapp's property was condemned only after proper constitutional inquiry. Initially, it should be noted that the trial court heard no testimony and merely signed an order of public use and necessity after oral argument. This order contained "findings" and "conclusions." (CP 1056, 1059) Insofar as these

“findings” purport to be authentic findings of fact, they were unnecessary as the decision by the trial court resolved only a motion. CR 52 (a)(5)(B). Yet, they are treated by the Court of Appeals as if the trial court had actually resolved disputed factual issues following trial. This mischaracterization then serves to limit appellate scrutiny to a shallow search for substantial evidence, a test that has no place in this case

Where facts are undisputed, review should be de novo. The Court of Appeals erroneously invokes *Thorndike v. Hesperian Orchards Inc.*, 54 Wn. 2d 570, 343 P. 2d 183 (1959), and thereby rejects de novo review. (Slip Opinion at 8) If the Court of Appeals’ conclusion that Mr. Knapp’s evidence presented no factual conflicts (Slip Opinion at 7) is correct, “*Thorndike* is inapplicable.” *Peeples v. Port of Bellingham*, 93 Wn. 2d 766, 772, 613 P. 2d 1138 (1980).

Assuming that genuine issues of fact were resolved by the trial court, de novo review should, nevertheless, be accorded here as this case involves a constitutional right. As the *Washington Constitution, Article 1, § 16* mandates a judicial determination of public use, review of the trial court’s determination of public use should not be limited to a superficial search for substantial evidence. *See: State v. Kilburn*,

151 Wn. 2d 36, 52, 84 P. 3d 1215 (2004); *In re Marriage of Hadeen*, 27 Wn. App. 566, 619 P. 2d 374 (1980).

B. The Court Of Appeals Should Be Reversed with a Determination that the City Cannot Acquire Terry Knapp's Property by Condemnation Together with an Award of Costs, Including Attorney Fees.

As a consequence of applying the wrong standard of review and misapprehending the record, the Court of Appeals allowed condemnation of Mr. Knapp's property. This schizoid approach of treating the trial court as having resolved no issues of fact (thus, no need for an evidentiary hearing), and then as having resolved contested issues of fact (thus, review limited to substantial evidence) denied Mr. Knapp his right to a rigorous determination of public use that the Constitution requires. Contrary to the *Washington Constitution, Article 1, § 16* and *In re Port of Seattle*, 80 Wn.2d 392, 394, 495 P.2d 327 (1972) the constitutionally mandated judicial resolution never occurred. The Court of Appeals should be reversed.

As shown by the foregoing points and authorities, the decision by this Court should be nothing less than a "final adjudication that the condemnor cannot acquire the real property by condemnation." RCW 8.25.075(1)(a). Therefore, Terry Knapp should be awarded his costs, including reasonable attorney fees.

II. ALTERNATIVELY, THIS CASE SHOULD BE
REMANDED FOR TRIAL OF CONTESTED QUESTIONS
OF FACT.


As stated in Mr. Knapp's brief to the Court of Appeals, the lightest touch by this Court should result in remand for further proceedings. The facts show that condemnation should be denied. Alternatively, factual issues apparent in the record should be resolved only after an evidentiary hearing.

CONCLUSION

On the basis of the foregoing argument, this petition for review should be granted. The Court of Appeals decision should be reversed and the petition for condemnation by the City of Walla Walla should be dismissed. Terry Knapp should be awarded his costs, including reasonable attorney fees.

Dated this 20th day of November, 2015.

Respectfully submitted,


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Counsel for Petitioner

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WA State Court of Appeals, Division III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

CITY OF WALLA WALLA,)	
)	
Respondent,)	No. 32604-7-III
)	
v.)	
)	
TERRY KNAPP, property owner, and)	UNPUBLISHED OPINION
Walla Walla County, lienholder,)	
)	
Appellant.)	

KORSMO, J. — Terry Knapp appeals from an order condemning his property, challenging the procedure used by the city of Walla Walla (City) in the exercise of its eminent domain authority. We affirm.

FACTS

Mr. Knapp owned a house at 712 Whitman Street that had been subject to complaints by neighbors dating to the 1990s. The neighborhood was characterized as one with quality older homes in generally good maintenance only five blocks from Pioneer Park in Walla Walla.

City involvement with the property dates to 1995 when it placed a “stop work” order on the property because work in progress exceeded the scope of a permit. In 2001, the City declared a shed of substandard construction to be dangerous. In 2003, the house

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City of Walla Walla v. Terry Knapp

was in disrepair, violated several building codes, and the property was being used to store at least 15 vehicles. Mr. Knapp made efforts to comply with the City's codes and standards at the City's request, but the subsequent inspection revealed additional problems not observable from the exterior. These included unauthorized and incomplete additions to the building, as well as structural, plumbing, electrical and mechanical violations that rendered the dwelling unsafe. Clerk's Papers (CP) at 323-328. The resulting problems were extensive and included inadequate safety exits and fire hazards, inadequate ventilation for sewage, inadequate temperature control, exposed live wiring, and creation of an attractive nuisance. Consequently, Mr. Knapp was ordered to vacate. CP at 324.

Mr. Knapp did not correct the substandard conditions, but in 2005 he obtained a permit for repairs. He, however, failed to get inspections and the permit was revoked. By that time, he also had stopped paying the utility bill, leading to the water being disconnected in February of 2005. The City again declared the house dangerous and ordered its abatement. CP at 331-339. Mr. Knapp removed the notices and continued to live there.¹ In 2007, the City again issued a "stop work" order and posted notices of danger. CP at 397. In addition to the problems with the structure, the property had

¹ Since the property was without water, its backyard began being used by occupants to defecate. See CP at 760, 765, 767.

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City of Walla Walla v. Terry Knapp

regressed back toward its pre-2003 condition, with numerous junk vehicles, bee hives and debris. The City cited Mr. Knapp for these conditions.²

The conditions persisted until the City began instituting condemnation proceedings. On September 3, 2013, the City Manager determined the property to be a threat to public health, safety, and welfare. The City notified Mr. Knapp of the proceedings and then set the matter for consideration before the City Council on September 11, 2013. CP at 969, 971. After due consideration, the City Council determined that the property was a blight because it had not been lawfully occupied since 2005, and was a threat to the public health, safety and welfare. Accordingly, the council approved acquisition of the property. CP at 975-977.

The City first unsuccessfully attempted to acquire the property by negotiations. On February 12, 2014, the City Council authorized condemnation proceedings. CP at 986-988. Two months later the City filed the condemnation petition in Walla Walla County Superior Court. On June 16, a hearing was held to determine public use and necessity. The trial court did not take live testimony, but considered submissions from the City and from Mr. Knapp and heard argument from the parties. The trial court found:

2.9 The executive authority of the City of Walla Walla properly determined on September 3, 2013 that the dwellings, buildings, other structures, and real property located at 712 Whitman Street in Walla Walla, Washington,

² In addition to the physical conditions, the property became the site of criminal activity including possession of stolen property and a marijuana grow. CP 446, 449-596.

constitute a threat to public health, safety, and welfare based upon its well-documented years of repeated and continuous code violations.

2.10 A dwelling, building, and other structures exist on the property, and such dwelling, building, and other structures have not been lawfully occupied for a period of one year or more.

2.10.1 The property has been without water since 2005, and it has been without water ever since. Any occupancy of the property since 2005 unlawfully violated the International Maintenance Code.

2.10.2 The dwelling on the property was properly declared to be dangerous and unfit for human occupancy in 2005. Any occupancy of the property since 2005 unlawfully violated the Uniform Code for the Abatement of Dangerous Buildings.

2.11 The dwelling, buildings, other structures, and real property located at 712 Whitman Street in Walla Walla, Washington are a blight on the surrounding neighborhood.

CP at 1058-1059.³

Based on these findings, the trial court concluded that condemnation of the property was a public use and its acquisition by the City was a matter of public necessity. CP at 1059. Mr. Knapp then timely appealed to this court.

ANALYSIS

Mr. Knapp contends that the trial court was required to hear testimony and resolve disputed facts at trial, and that the evidence did not support the trial court's ruling. He also

³ Mr. Knapp assigns error to these noted findings and four additional findings not recited here.

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seeks attorney fees. We treat the first two contentions as one, and consider these arguments in the noted order, after first reviewing the statutory process governing this action.

The process for condemning “blighted property” is set forth in chapter 35.80A RCW. RCW 35.80A.010 allows condemnation of allegedly blighted property only on proof of any two of the following three “blight” factors:

(1) If a dwelling, building, or structure exists on the property, the dwelling, building, or structure has not been lawfully occupied for a period of one year or more; (2) the property, dwelling, building, or structure constitutes a threat to the public health, safety, or welfare as determined by the executive authority of the county, city, or town, or the designee of the executive authority; or (3) the property, dwelling, building, or structure is or has been associated with illegal drug activity during the previous twelve months.

The City relied upon the first two factors in this action.

Condemnation must occur “in accordance with the notice requirements and other procedures for condemnation provided in Title 8 RCW.” RCW 35.80A.010. Procedurally, the local governing body must first adopt a resolution declaring that the acquisition of the property is necessary to eliminate a neighborhood blight. *Id.* Once a resolution is adopted, condemnation requires three separate judgments from the local county court. RCW 8.12.050; *City of Des Moines v. Hemenway*, 73 Wn.2d 130, 138, 437 P.2d 171 (1968). The first and most relevant here, is a decree of public use and necessity. *Des Moines*, 73 Wn.2d at 138. The second and third determine the amount of compensation and transfer title for the property. *Id.* A decree of public use and necessity may be entered

upon proof that “(1) the use is really public, (2) the public interest requires it, and (3) the property appropriated is necessary for that purpose.” *In re Condemnation Petition of Seattle Popular Monorail Auth.*, 155 Wn.2d 612, 629, 121 P.3d 1166 (2005). The legislature’s declaration that a use is a “public use” is not dispositive although it will be accorded great weight. *Des Moines*, 73 Wn.2d at 138. The concept of “public use” is a fluid one:

The words “public use” are neither abstractly nor historically capable of complete definition. The words must be applied to the facts of each case in the light of current conditions.

Miller v. City of Tacoma, 61 Wn.2d 374, 384, 378 P.2d 464 (1963).

Procedural Challenges

With these principles in mind, it is time to turn to Mr. Knapp’s arguments. Two of them address the procedure followed in the trial court—consideration of the evidence on paper without hearing testimony and resolution of disputed facts without trial. These arguments also were raised, and rejected, in *City of Blaine v. Feldstein*, 129 Wn. App. 73, 117 P.3d 1169 (2005). In *Blaine*, the city petitioned to condemn a portion of the Feldstein property for use as a boardwalk. The property owner sought an evidentiary hearing, but the trial court rejected the request. *Id.* at 75. On appeal from an order of public use and necessity, appellant initially challenged the decision to deny an evidentiary hearing. Division One of this court upheld the trial court, finding no statutory requirement that testimony be taken at the hearing even while noting that many courts had conducted

evidentiary hearings on condemnation motions. *Id.* at 76-77. Instead, the motion procedure to be followed was one left to the discretion of the trial court under CR 7(b). *Id.* at 76. If there are questions of credibility and factual issues requiring testimony, the court should take testimony. *Id.*

Mr. Knapp relies upon the latter observation, contending that he raised factual questions justifying a trial on the merits of the “blight” allegation. *Blaine* also answered this contention. There the property owner took issue with the boardwalk project and requested that testimony be taken, but did not put his objections and evidence into the record on paper. *Id.* at 75-77. This court determined that “the facts necessary to resolve the case are not in dispute” and that there were “no credibility issues before the court.” *Id.* at 77. The critical facts were whether the boardwalk constituted a public use and whether the Feldstein property was a necessary part of that use. *Id.*

We reach a similar conclusion here. Although Mr. Knapp presented evidence that he was trying to bring the building up to code and that no one was living there, these facts do not present factual conflicts requiring testimony to resolve them. We assume that the trial judge accepted the truth of Mr. Knapp’s allegations, but that information did not contradict any of the City’s evidence and, thus, did not require the judge to conduct a testimonial hearing.

While the factual circumstances of this case differ enough from *Blaine* that whether a hearing should have been held presented a closer question than in that case, there is an

additional significant fact here that was not present in *Blaine*. There the property owner sought an evidentiary hearing with testimony. *Id.* at 75. Here, there is no evidence that Mr. Knapp sought testimony. Absent a request for an evidentiary hearing, there is no basis for finding that the court failed to exercise discretion in denying one.

Accordingly, for all of the noted reasons, we conclude that the trial judge did not abuse his discretion in considering the extensive⁴ record without testimony. There were no procedural irregularities.

Sufficiency of the Evidence

Mr. Knapp also argues that the evidence did not establish “blight” and therefore did not support the determination of public use and necessity. Properly viewed, the evidence supported that determination.

We review this claim for substantial evidence. *Id.* at 79. Substantial evidence exists if the evidence is sufficient to persuade a fair-minded rational person of the truth of the evidence. *In re Estate of Jones*, 152 Wn.2d 1, 8, 93 P.3d 147 (2004). Appellate courts do not find facts and cannot substitute their view of the facts in the record for those of the trial judge. *Thorndike v. Hesperian Orchards, Inc.*, 54 Wn.2d 570, 575, 343 P.2d 183 (1959). Accordingly, the presence of conflicting evidence does not prevent evidence from being “substantial.” *E.g., Merriman v. Cokeley*, 168 Wn.2d 627, 631, 230 P.3d 162 (2010).

⁴ The City presented over 1,000 pages of written material. CP at 30-1037.

The City relied upon the first two factors found in RCW 35.80A.010: (1) the building had not been lawfully occupied for a period of one year; and (2) the building constituted a threat to the public health, safety, or welfare as determined by the executive authority. It did not rely upon the third factor—use of the property as a drug house—although the City did present evidence that Mr. Knapp had grown marijuana there and had been convicted of using the property to sell marijuana.⁵

As to the first factor, the City presented evidence that the building had been repeatedly tagged as uninhabitable and that lawfully no one could live in the building since it did not have a water supply. In response, Mr. Knapp does not actually challenge the sufficiency of that evidence, but, instead, reconstructs the language of the statute in four syllogisms. He contends that the property was “lawfully unoccupied” because no one was living there and Mr. Knapp still was trying to rehabilitate the building. While we appreciate counsel’s use of formal logic and, indeed, encourage all attorneys to make use of logic where appropriate, this argument does not avail Mr. Knapp on this occasion. First, we conclude that counsel’s efforts, while creative, present false syllogisms. More critically, the statute does not bear the syllogistical construction counsel placed on it.

In relevant part, the factor is satisfied if the “building . . . has not been lawfully occupied for a period of one year or more.” RCW 35.80A.010. This language is clearly

⁵ Presumably this was because the noted drug offenses occurred more than 12 months before the condemnation action.

directed to abandoned buildings that have not been “lawfully” (*i.e.*, no trespassers) occupied for a period of time. Mr. Knapp agreed that the building was unoccupied and that the water had been cut-off since 2005, making the building uninhabitable as a matter of law. The question was whether or not the building was “unoccupied” for the requisite time period, not whether the lack of occupancy was lawful or unlawful. Substantial evidence supported the determination that the building had “not been lawfully occupied” for at least one year.

The second factor is whether the executive authority had determined that the building constituted a threat to the public health, safety, or welfare. Again, the evidence supported that determination. Not only had the City Manager and City Council expressed their own findings along those lines, the City presented plentiful evidence of the city’s building codes and Mr. Knapp’s building’s failure to satisfy the requirements of those codes, rendering the building uninhabitable. In response to this evidence, Mr. Knapp argues that the City’s evidence did not address the present circumstances of the building and did not consider his own affidavit that the building was not a threat to the public due to his repairs.

The short answer is that the statute requires lack of occupancy over a substantial period of time, thus making the building’s history relevant to the executive’s determination that the building currently is a threat to the public interest. The building had, for quite some time, been suffering from a number of substantial defects rendering it unable to

shelter humans and Mr. Knapp had never remedied the defects by obtaining the necessary permits and receiving approval from the relevant building code inspectors. The existence of documented long-term problems and the lack of approved, permitted corrections to those problems amply supported the executive authority's determination that the building could not currently be inhabited. The trial court correctly concluded that the evidence supported the executive's ruling.

Substantial evidence supported the determination of public use and necessity. The trial court did not err.

Attorney Fees

Finally, Mr. Knapp requests attorney fees under the authority of RCW 8.25.075(1)(a). However, he has not prevailed as required by that section of the statute.

The provision states:

(1) A superior court having jurisdiction of a proceeding instituted by a condemnor to acquire real property shall award the condemnee costs including reasonable attorney fees and reasonable expert witness fees if:

(a) There is a final adjudication that the condemnor cannot acquire the real property by condemnation.

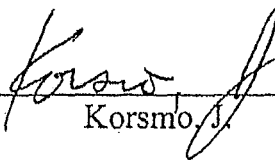
When a court rules that the condemnation has failed, the property owner can recover his costs, including attorney fees and expert witness fees. That did not happen in this action since we affirm the ruling of public use and necessity. Accordingly, Mr. Knapp has no basis for recovering attorney fees for this action to this point. Whether he may recover

No. 32604-7-III
City of Walla Walla v. Terry Knapp

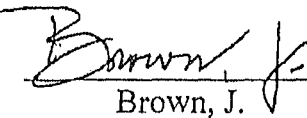
fees in the future for the valuation and title transfer aspects of this case awaits those developments.

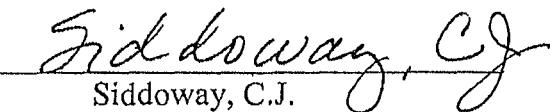
The judgment is affirmed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.


Korsmo, J.

WE CONCUR:


Brown, J.


Siddoway, C.J.

FILED
OCTOBER 27, 2015
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

CITY OF WALLA WALLA,)	No. 32604-7-III
)	
Respondent,)	
)	
v.)	ORDER DENYING
)	MOTION FOR
TERRY KNAPP, property owner, and)	RECONSIDERATION
Walla Walla County, lienholder,)	
)	
Appellant.)	

THE COURT has considered appellant's motion for reconsideration and is of the opinion the motion should be denied. Therefore,

IT IS ORDERED, the motion for reconsideration of this court's decision of September 10, 2015 is hereby denied.

DATED: October 27, 2015

PANEL: Judges Korsmo, Brown, Siddoway

FOR THE COURT:


LAUREL SIDDOWAY
Chief Judge

No. 326047

COURT OF APPEALS, DIVISION III,
OF THE STATE OF WASHINGTON

CITY OF WALLA WALLA and
COUNTY OF WALLA WALLA,

Respondents,

vs.

TERRY KNAPP,

Appellant.

BRIEF OF APPELLANT

Michael E. de Grasse
Counsel for Appellant
WSBA #5593

P. O. Box 494
59 South Palouse Street
Walla Walla, Washington 99362
509.522.2004

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INTRODUCTION

Substantive and procedural errors converge to require reversal of the order of public use and necessity and dismissal of the City of Walla Walla's petition to condemn Terry Knapp's property as a blight. This case involves the interpretation and application of the statute that declares condemnation of blighted property to be for a public use and prescribes criteria that a city must meet to acquire blighted property by condemnation. That statute, RCW 35.80A.010, allows condemnation of allegedly blighted property only on proof of any two of three "factors" that are set forth in the statute. The two on which this case turns require the City to prove that: (1) the property has not been lawfully occupied for a period of a year or more; and (2) the property "constitutes a threat to the public health, safety, or welfare." RCW 35.80A.010. The trial court entered an order of public use and necessity based on findings of fact and conclusions of law that were made at the conclusion of oral argument of the City's motion.(CP 1061) Although factual assertions by the City purporting to meet the factors required by RCW 35.80A.010 were contravened on the record, no trial was held, no witnesses testified and no

conflicting evidence was weighed or reconciled.

Had a genuine judicial inquiry, as required by the *Washington Constitution, Article 1, § 16*, been conducted by the trial court, the City's failure of proof would have been starkly exposed. Notwithstanding this procedural deficiency, the record shows grounds for denying the petition on the merits. That Mr. Knapp's property has not been lawfully occupied for a period of a year or more was not proven. His property does not constitute a threat to public health, safety or welfare. Therefore, the trial court should be reversed and the petition for condemnation should be dismissed. Mr. Knapp should be awarded his costs, including reasonable attorney fees.

ASSIGNMENTS OF ERROR, ISSUES
AND STANDARD OF REVIEW

Assignments of Error

1. The trial court erred by entering its order of public use and necessity in the condemnation case brought by the respondent City of Walla Walla against the appellant, Terry Knapp, with respect to certain property held by him in the City of Walla Walla.(CP 1055-1060)
2. The trial court erred by determining that the condemnation of Terry Knapp's property is necessary to eliminate a blight on the surrounding neighborhood. (CP 1059)
3. The trial court erred by determining that the condemnation of Terry Knapp's property is for a use that is really public.(CP 1059)
4. The trial court erred in concluding that the contemplated use of Terry Knapp's property justifies condemnation of that property as a matter of public necessity.(CP 1059)
5. The trial court erred by entering finding of fact no. 2.4:

The Walla Walla City Council City [sic] adopted City Resolution 2013-110 on September 11, 2013 after appropriate notice declaring that the dwelling, buildings, other structures, and property located at 712 Whitman Street in Walla Walla, Washington, constitute a blight on the surrounding neighborhood

and that acquisition by the City of the property located at 712 Whitman Street is necessary to eliminate neighborhood blight. (CP 1057)

6. The trial court erred by entering finding of fact no. 2.5:

A reasonable effort was made by the City of Walla Walla to acquire the property located at 712 Whitman Street. The property owner was non-responsive to the City's attempt to negotiate and has thereby rejected the City's efforts to acquire the property located at 712 Whitman Street by negotiation.(CP 1057)

7. The trial court erred by entering finding of fact no. 2.6:

Notice of planned final action was mailed on January 24, 2014 and published on January 29, 2014 and February 5, 2014 in compliance with RCW 8.25.290 that the Walla Walla City Council would consider whether or not to authorize condemnation of the property located at 712 Whitman Street during its regularly scheduled City Council meeting for February 12, 2014.(CP 1057-58)

8. The trial court erred by entering finding of fact no. 2.9:

The executive authority of the City of Walla Walla properly determined on September 3, 2013 that the dwellings, buildings, other structures, and real property located at 712 Whitman Street in Walla Walla, Washington, constitute a threat to public health, safety, and welfare based upon its well-documented years of repeated and continuous code violations.(CP 1058)

9. The trial court erred by entering finding of fact no. 2.10:

A dwelling, building, and other structures exist on the property, and such dwelling, building, and other

structures have not been lawfully occupied for a period of one year or more.(CP 1058)

10. The trial court erred by entering finding of fact no. 2.10.1:

The property has been without water since 2005, and it has been without water ever since. Any occupancy of the property since 2005 unlawfully violated the International Maintenance Code.(CP 1058-59)

11. The trial court erred by entering finding of fact no. 2.10.2:

The dwelling on the property was properly declared to be dangerous and unfit for human occupancy in 2005. Any occupancy of the property since 2005 unlawfully violated the Uniform Code for the Abatement of Dangerous Buildings.(CP 1059)

12. The trial court erred by entering finding of fact no. 2.11:

The dwelling, buildings, other structures, and real property located at 712 Whitman Street in Walla Walla, Washington are a blight on the surrounding neighborhood.(CP 1059)

Issues

1. Whether the trial court erred by entering its order of public use and necessity in the condemnation case brought by the respondent City of Walla Walla against the appellant, Terry Knapp, with respect to certain real property held by him in the City of Walla Walla.

2. Whether the trial court erred by determining that the condemnation of Terry Knapp's property is necessary to eliminate a blight on the surrounding neighborhood.

3. Whether the trial court erred by determining that the condemnation of Terry Knapp's property is for a use that is really public.

4. Whether the trial court erred in concluding that the contemplated use of Terry Knapp's property justifies condemnation of that property as a matter of public necessity.

5. Whether the trial court erred by entering certain findings of fact in support of its order of public use and necessity, specifically, findings of fact nos. 2.4, 2.5, 2.6, 2.9, 2.10, 2.10.1, 2.10.2, and 2.11.

Standard of Review

The trial court saw no witnesses, heard no testimony, weighed no evidence and reconciled no conflicting evidence in reaching its decision. Therefore, review is de novo. *Police Guild v. Liquor Control Bd.*, 112 Wn. 2d 35-36, 769 P. 2d 283 (1989); *In re Estate of Nelson*, 85 Wn. 2d 602,605, 537 P. 2d 765 (1975); *Amren v. City of Kalama*, 131 Wn. 2d 25,32, 929 P. 2d 389 (1997).

STATEMENT OF THE CASE

Course of Proceedings

In April, 2014, the City of Walla Walla petitioned Superior Court to condemn certain residential real property held by Terry Knapp.(CP 3) The petition alleged that the taking of Mr. Knapp's property was for a public use pursuant to RCW 35.80A.010.(CP 3) That statute allows a municipality to condemn property that "constitutes a blight on the surrounding neighborhood," on proof of any two of these three factors:

A "blight on the surrounding neighborhood" is any property, dwelling, building, or structure that meets any two of the following factors: (1) If a dwelling, building, or structure exists on the property, the dwelling, building, or structure has not been lawfully occupied for a period of one year or more; (2) The property, dwelling, building, or structure constitutes a threat to the public health, safety, or welfare as determined by the executive authority of the county, city, or town, or the designee of the executive authority; or (3) the property, dwelling, building, or structure is or has been associated with illegal drug activity during the previous twelve months.

The City moved for an order of public use and necessity based on the first two of the foregoing factors.(CP 24-29)

The trial court granted the City's motion after hearing oral argument on June 16, 2014.(CP 1061) Although Terry Knapp appeared through counsel and contested by declaration under penalty of perjury

factual submissions by the City, no trial was held. No testimony was heard. Instead, the trial court simply signed findings of fact, conclusions of law and an order of public use and necessity handed up by counsel for the City following oral argument on the motion docket of June 16, 2014.(CP 1061,1055) This appeal ensued.

Facts

The record is replete with factual assertions by the City. Mainly, these assertions are a catalog of complaints about the person of Terry Knapp. Insofar as they pertain to the property in question they purport to fulfill two criteria of RCW 35.80A.010. The third factor involving illegal drug activity is not material to this case.

Concerning the first factor that may be one of two grounds that must be proven before a property may be condemned as a blight, the City argues that its building official has never issued a certificate of occupancy concerning a structure on the property. Based on the lack of a certificate of occupancy, the City contends that Terry Knapp's structure has not been lawfully occupied since 2005.(CP 1053-54) While there is nothing in the record to show that there are likely thousands of dwellings in Walla Walla that have never been issued a certificate of occupancy but which are

lawfully occupied, the record affords an easy explanation of the legality of the situation at 712 Whitman Street.

The property in question has been under construction for several years.(CP 1054,1041-42) Indeed, the property is the subject of a building permit duly issued by the Walla Walla Joint Community Development Agency on December 27, 2013.(CP 1042,1047) Moreover, Mr. Knapp denies he lives there.(CP 1042:13) That Mr. Knapp's house that is under construction may not be lived in until final approval by the building inspector is merely true, but unsurprising and unprobative. Except for the City's assertion, how this situation fulfills the first factor specified in RCW 35.80A.010 that must be proven to condemn property because it is a blight is not shown in the record.

Subsidiary findings of fact 2.10.1 and 2.10.2 concerning lack of city water service and a 2005 declaration that Mr. Knapp's property was dangerous and unfit for human occupancy (CP 1058-59) are connected to the first factor of RCW 35.80A.010 by the same argument the City makes about the lack of a certificate of occupancy. How a lack of city water service signals blight as meant by the condemnation statute is shown only argumentatively in the record. How a declaration in 2005 that the property was dangerous and unfit proves that the property constitutes a blight in 2014 is similarly supported by bare inference.

With respect to the second factor asserted by the City in support of its condemnation petition, a history of various city code violations is offered.(CP 8) On this basis the trial court concluded, as a finding of fact, that Mr. Knapp's property was properly determined by the executive authority of the City to "constitute a threat to public health, safety, and welfare based upon its well-documented years of repeated and continuous code violations."(CP 1067) Nowhere did a judicial body make that determination. The trial court merely recited what the city manager did as the executive. More crucial, Mr. Knapp described his property as free of any hazard to public health, safety or welfare.(CP 1042:4-7) This factual declaration is not directly contravened by the City. No submission by the City shows that Mr. Knapp's property "constitutes a blight" at the time the judicial inquiry and determination in this case ostensibly occurred.

ARGUMENT

I. WHERE, AS HERE, NO JUDICIAL INQUIRY DETERMINED THAT TERRY KNAPP'S PROPERTY CONSTITUTES A BLIGHT, CONDEMNATION MUST BE DENIED.

A. The Trial Court Conducted no Inquiry as Required by the Washington Constitution to Determine that the Condemnation Sought by the City was for a Public Use.

As noted by Professor Stoebuck, “. . . since Washington has, except in urban renewal cases, adopted a very restrictive view of public use, there is a greater possibility of obtaining a finding of no public use in Washington than in most jurisdictions.” 17 *Wash. Prac., Real Estate* § 928 (2d). This observation follows from the command of the *Washington Constitution, Article 1, § 16* which specifically provides that “whenever an attempt is made to take private property for a use alleged to be public, the question whether the contemplated use be really public shall be a judicial question, and determined as such, without regard to any legislative assertion that the use is public. . . .”

As shown by the trial court's order of public use and necessity, the decision below did not flow from an authentic, actual judicial inquiry concerning the reality of the proposed public use. Indeed, the trial court

decision merely endorsed, in conclusory terms, the action by the executive authority of the City.(CP 1058-59)

Condemnation may not be allowed on a showing that nothing more than the public interest will be advanced. A genuine public use must be proven. *In re Seattle*, 96 Wn. 2d 616,627, 638 P. 2d 549 (1981). The determination of public use “depends on the particular facts in each case.” *In re Port of Seattle*, 80 Wn. 2d 392,394, 495 P. 2d 327 (1972). The constraints imposed by the *Washington Constitution* and controlling cases do not allow condemnation of Terry Knapp’s property. The trial court should be reversed and the City’s petition for condemnation should be dismissed.

B. The Record Shows that Terry Knapp’s Property does Not Constitute a Blight.

The record shows that the City’s position fails to meet governing, statutory criteria set forth in RCW 35.80A.010. The contention that the property in question has not been lawfully occupied for a period of one year or more fails on logic and fact. The City’s argument appears to follow this syllogism:

- (1) The owner of any real property must have a certificate of occupancy before that property may be lawfully occupied.
- (2) Terry Knapp was never issued

a certificate of occupancy with
with respect to the property in
question.

- (3) Therefore, the property in
question has not been lawfully
occupied.

There is no support in logic, law or fact for the major premise as applied to
this case. That the owner of real property lacks a certificate of occupancy,
in and of itself, does not prove lack of lawful occupancy or blight.

The record shows that the City has failed to meet the first factor for
proof of blight that is required by statute. That factor requires the city to
show that a “dwelling, building, or structure on the property has not been
lawfully occupied for a period of one year or more.” RCW 35.80A.010.
Logical analysis of the phrase “not been lawfully occupied” produces
these categories:

- (1) A property might be lawfully occupied;
- (2) A property might be lawfully unoccupied;
- (3) A property might be unlawfully occupied;
- (4) A property might be unlawfully unoccupied.

The facts of this case show that the first and second categories should be
disregarded. The City does not advance the fatal proposition that any
occupation or unoccupation of the property has been lawful. Thus, the
inquiry must focus on the third and fourth analytical categories.

As to the third category, there is no proof and no finding that Mr. Knapp's property has ever been occupied for a period of one year or more. Indeed, Mr. Knapp has declared, without rebuttal, that he does not occupy the property.(CP1042:13) Only speculation grounds a contention that the property has been unlawfully occupied for a period of a year or more. Therefore, the City has failed to show unlawful occupation.

As to the fourth category, the law and the facts do not show that Mr. Knapp's property has been unlawfully unoccupied for a year or more. The City's assertion that the property lacks a certificate of occupancy, lacks connected water service and bears a declaration of unfitness, avails it nothing, absent proof that the property has been occupied. Where, as here, a valid building permit has been issued covering construction on Mr. Knapp's property, that property should be regarded as necessarily, naturally and lawfully unoccupied. Therefore, the City's proof fails to establish the first factor imposed by RCW 35.80A.010 as a prerequisite to condemnation for blight.

Not only does the City's proof fail the criterion concerning lawful occupancy imposed by the governing statute, the City's proof shows that the property does not constitute a threat to public health, safety or welfare. First, the City's contention with respect to this factor is based on a history of code violations. The statute requires proof in the present tense.

Specifically, the City must show that the property “constitutes a threat to the public health, safety, or welfare.” That the property might have “constituted” a threat is insufficient. The word “constitutes” is not defined in the statute. Therefore, it must be accorded its ordinary meaning. *Dahl-Smyth, Inc. v. Walla Walla*, 148 Wn. 2d 835,842-43, 64 P. 3d 15 (2003). Clearly, “constitutes” is in the present tense. That something might have “constituted” blight in the past does not satisfy the statutory requirements set forth in the clear language of RCW 35.80A.010.

As shown by the declaration of Terry Knapp (CP 1041-47), his property does not threaten public health, safety or welfare. The City must concede this point as its own regulatory agency has issued a building permit for the very property in question. The trial court should be reversed and the petition for condemnation should be dismissed.

II. ALTERNATIVELY, THE TRIAL COURT FAILED TO RESOLVE CONTESTED QUESTIONS OF FACT, AND, THEREFORE, THE CASE SHOULD BE REMANDED FOR FURTHER PROCEEDINGS.

While Terry Knapp has shown that condemnation of his property should not be allowed, the lightest touch by this Court should result in remand for further proceedings. Clearly, the trial court failed to resolve contested questions of fact. The order of public use and necessity should

not have been granted based on a motion, where, as here, factual deficiencies in the City's position were exposed by Mr. Knapp's submissions, including the granting of a building permit for the property in question.(CP 1041-47) The *Washington Constitution* and governing case law allow condemnation of private property only after all material questions of fact are resolved judicially. *Washington Constitution, Article 1, § 16; In re Port of Seattle*, 80 Wn. 2d at 394. The constitutionally mandated judicial resolution never occurred. The trial court should be reversed.

III. THE APPELLANT SHOULD BE AWARDED HIS COSTS, INCLUDING ATTORNEY FEES, PURSUANT TO RCW 8.25.075(1)(a), BECAUSE THE CITY CANNOT ACQUIRE TERRY KNAPP'S REAL PROPERTY BY CONDEMNATION.

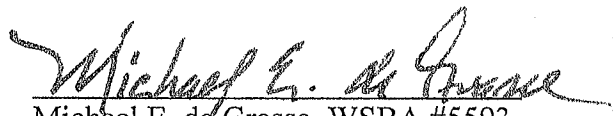
As shown by the foregoing points and authorities, the decision by this Court should be nothing less than "a final adjudication that the condemnor cannot acquire the real property by condemnation." RCW 8.25.075(1)(a). Therefore, Terry Knapp should be awarded his costs, including reasonable attorney fees.

CONCLUSION

On the basis of the foregoing argument the trial court order of public use and necessity should be reversed and the petition for condemnation by the City of Walla Walla should be dismissed. Terry Knapp should be awarded his costs, including reasonable attorney fees.

Dated this 30th day of September, 2014.

Respectfully submitted,


Michael E. de Grasse WSBA #5593
Counsel for Appellant

APPENDIX

RECEIVED

JUN 13 2014

WALLA WALLA
CITY ATTORNEY

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NATHY MARTIN
COUNTY CLERK

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WALLA WALLA COUNTY
WASHINGTON
BY [Signature]

Copy received and service acknowledged
this 13 day of June, 2014
Signed [Signature]
Attorney for [Signature]

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF WALLA WALLA

CITY OF WALLA WALLA,

Plaintiff,

vs.

TERRY KNAPP, property owner, and WALLA
WALLA COUNTY, lienholder,

Defendants.

No: 14-2-00275-1

DECLARATION OF TERRY
KNAPP IN OPPOSITION TO
MOTION FOR DETERMINATION
OF PUBLIC USE

The undersigned, TERRY KNAPP, does certify under penalty of perjury under
the laws of the State of Washington as follows:

1. I am the defendant and the owner of the property located at 712 Whitman, Walla Walla, Washington. I make this declaration on my personal knowledge of the facts set forth herein and am competent to be a witness.
2. I have spent many years working to improve the property at 712 Whitman so that an occupancy permit will be granted. It was in extremely poor shape when I first acquired it. I have installed new electrical systems, new plumbing, a new kitchen, new bathrooms, a new roof and siding, a new heat system, insulation and sheetrock and have painted and refinished the old floors.

- 1 3. My house is not a danger to anybody. The Walla Walla Joint Community
2 Development Agency recently inspected my property for compliance on
3 November 5, 2013. Attached hereto as Exhibit A is a true and correct copy of the
4 inspection report. There are only five items identified to bring the property into
5 compliance and I intend to complete all of the items. None of the items poses
6 any immediate risk to the health, safety or welfare of any person.
7
- 8 4. The Walla Walla Joint Community Development Agency granted me a building
9 permit on December 27, 2013 for the purpose of "Repairs to make residence
10 liveable." As a condition of the permit, it is stipulated that the residence cannot
11 be lived in prior to final inspection approval. Attached hereto as Exhibit B is a
12 true and correct copy of the building permit. I am not living at the property.
13
14
- 15 5. The only reason my property was ever determined to be unsafe was because the
16 City shut off my water supply and then almost immediately removed the water
17 connection, as is described in their own documents filed in this court. I disputed
18 why I should have to pay the reconnection fee because the City often shuts off
19 service when bills go unpaid, but does not remove the connection as they did in
20 my case. Thereafter, the actions against my property have always involved
21 either my attempts to improve the property or accusations that I or others am
22 living there in spite of the City's efforts to drive me away by removing my water
23 connection.
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6. I can, and will, restore the water connection to the property, although I still believe I should not have to pay the reconnection fee.

Signed and sworn this 12 day of June, 2014 at Walla Walla, Washington.

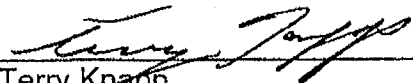

Terry Knapp

EXHIBIT A

0-000001044



Walla Walla
Joint Community Development Agency
55 E. Moore Street, Walla Walla, WA 99362



INSPECTION REPORT

Inspection Request Line:

County: (509)524-4722 or online @ http://etrakit.wwjcd.org:8080/Permit_Search.asp

City: (509)524-4729 or by email at inspections@wwjcd.org

To cancel an inspection call: (509)524-4710

Inspections requested before 3:30 P.M. will be scheduled the next business day.

Date: NOV 5, 2013 Permit #: N

Inspection Type: COMPLIANCE

Owner or Contractor: TERRY KNAPP

Site Address: 712 WHITMAN

APPROVED
 VIOLATIONS

NO ACCESS/ENTRY
 CORRECTIONS

NOT READY
 PARTIAL APPROVAL

Re-inspection Fee: Owner Contractor \$ _____

Comments ① REMOVE RIGID FOAM INSULATION
AND INSULATE ATTIC (BLOWN IN)
② FRAME IN WINDOW ABOVE TUB
IN UPSTAIRS BATH
③ CLOSE UP FLOOR & WALL OPENINGS UPSTAIRS
④ BUILD ROOF TO CONNECT HOUSE TO STORE
ROOM
⑤ SEAL UP ANY OPENINGS TO
MAKE WEATHER TIGHT

Inspector: [Signature]

Printed Name: WD Collette

0-000001045

EXHIBIT B

0-000001046

Walla Walla Joint Community Development Agency

BUILDING PERMIT

55 E. Moore St.
Walla Walla, WA 99362
Phone: 509-524-4710

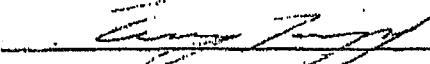
Parent Project No.

Permit No. B13-1259

Inspection request line: 509-524-4729

Parent Permit No.

Site Address: 712 WHITMAN ST		Valuation: \$2,500.00	Parcel No. 360728220013	
Owner: KNAPP, TERRY L		Description of Work:		
Mailing Address: 712 WHITMAN ST WALLA WALLA WA 99362-		Repairs to make residence liveable.		
Phone:				
Setbacks	Front	Back	Left Side	Right Side
Required	0	0	0	0
Actual	0	0	0	0
Contractor:		Address:		
Phone:		State Contractor Lic#:		Lic. Expires:
Type of Construction:		Occupancy Group:		Sprinkler Req'd:
				Fire Alarm Req'd:
Garage SF: 0	1st Floor SF: 0	Covered Deck: 0	Metal Bldg. SF: 0	Porch SF:
Bsmnt SF: 0	2nd Floor SF: 0	Uncovered Deck: 0	Pole Bldg. SF: 0	Remodel SF: 0
				Total SF: 0
Sub Permits:				

FEES	Receipt # & Date	Disclaimer
CITY BUILDING - GENERAL	207.96 R2212 12/27/2013	<p>"Per IBC Section 105.5 - Every permit issued shall become invalid unless the work on the site authorized by such permit is commenced within 180 days after its issuance, or if the work authorized on the site by such permit is suspended or abandoned for a period of 180 days after the time the work is commenced. The building official is authorized to grant, in writing, one or more extensions of time, for periods not more than 180 days each. <u>The extension shall be requested in writing and justifiable cause demonstrated.</u>" _____ Initials</p> <p>"All work performed under this permit must conform to the approved plans and specifications filed by the owner or his/her authorized agent with the building division. I certify that I have read the application and state that the information given is true and correct. I agree to comply with all local ordinances and state laws relating to building construction and make this statement under penalty of law."</p>
TOTAL FEE	\$207.96	
TOTAL FEES PAID	\$207.96	
TOTAL FEES DUE	\$0.00	
<p>The WWJCDA is not responsible for reviewing the applicability of private covenants to this permit. Compliance with private plat covenants is the sole responsibility of the applicant/owner. _____ Initials</p> <p style="text-align: center;">  12-27-13 </p> <p>Signature of Owner / Contractor / Authorized Agent Date</p>		

0-000001047

FILED
KATHY J. MARTIN
COUNTY CLERK

2014 JUN 16 A 10:17

WALLA WALLA COUNTY
WASHINGTON

SUPERIOR COURT OF WASHINGTON
FOR WALLA WALLA COUNTY

City of Walla Walla,

Petitioner,

vs.

Terry Knapp, property owner, and
Walla Walla County, lienholder,

Respondents,

No. 14-2-00275-1

ORDER OF PUBLIC USE AND
NECESSITY

I. HEARING

1.1 Date. June 16, 2014.

1.2 Purpose. To consider the City of Walla Walla's MOTION FOR A DETERMINATION OF PUBLIC USE AND NECESSITY.

1.3 Appearances. The City of Walla Walla appeared through its Assistant City Attorney, J Preston Frederickson. Defendant Walla Walla County ^{DID NOT APPEAR} appeared through the Office of the ~~Walla Walla County Prosecuting Attorney, by _____~~. Defendant Terry Knapp appeared through his attorney, Jeff Burkhart.

1.4 Materials considered. The SUMMONS and PETITION TO CONDEMN BLIGHTED PROPERTY filed herein on April 16, 2014; the DECLARATION OF SERVICE upon Terry Knapp filed herein on April 18, 2014; the DECLARATION OF

PUBLIC USE & NECESSITY ORDER
14-2-00275-1;

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Tim Donaldson
Walla Walla City Attorney
15 N. Third Ave.
Walla Walla, WA 99362
(509) 522-2843

0-000001055

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SERVICE upon Walla Walla County filed herein on April 18, 2014; the DEPUTY CITY CLERK DECLARATION filed herein on May 16, 2014, and the SUPPLEMENTAL DECLARATION OF KATHY KOPF filed herein on May 16, 2014; and the MOTION FOR A DETERMINATION OF PUBLIC USE AND NECESSITY filed herein on May 16, 2014; and the DEFENDANT TERRY KNAPP'S OPPOSITION TO MOTION FOR DETERMINATION OF PUBLIC USE filed herein on June 13, 2014; and the DECLARATION OF TERRY KNAPP IN OPPOSITION TO MOTION FOR DETERMINATION OF PUBLIC USE filed herein on June 13, 2014; and the BUILDING OFFICIAL DECLARATION filed herein on June 16, 2014.

II. FINDINGS

2.1 Walla Walla is a non-chartered code city organized under Title 35A of the Revised Code of Washington (RCW). It is a public body.

2.1.1 The City of Walla Walla adopted the Uniform Code for the Abatement of Dangerous Buildings in 1998, and it has been continuously in effect for properties located in the City of Walla Walla since that time.

2.1.2 The City of Walla Walla adopted the International Maintenance Code in 2004, and versions of the International Maintenance Code have been continuously in effect for properties located in the City of Walla Walla since that time.

2.2 Terry Knapp is a natural person who is competent and over twenty-one (21) years of age.

2.3 Terry Knapp is the owner of property in the City of Walla Walla commonly located at 712 Whitman Street and legally described as:

Beginning at a point in the South line of Whitman Street in the City of Walla Walla, Washington, which is 30 feet South and 660 feet West of the Northeast corner of the Northwest quarter of the Northwest quarter of section 28 in Township 7 North of Range 36 East of the Willamette Meridian, and running thence South, parallel to the West line of said Northwest quarter of the Northwest quarter, a distance of 150 feet; thence West, parallel to said South line of Whitman Street, a distance of 82.5 feet; thence North, parallel to the West line of said Northwest quarter of the Northwest quarter, a distance of 150 feet to a point in the said South line of Whitman Street; thence East, along said South line of Whitman Street, a distance of 82.5 feet to the point of beginning.

Situate in the City and County of Walla Walla, State of Washington.

Walla Walla County Assessor's Property Tax Parcel/Account number 360728220013

2.4 The Walla Walla City Council City adopted City Resolution 2013-110 on September 11, 2013 after appropriate notice declaring that the dwelling, buildings, other structures, and property located at 712 Whitman Street in Walla Walla, Washington, constitute a blight on the surrounding neighborhood and that acquisition by the City of the property located at 712 Whitman Street is necessary to eliminate neighborhood blight.

2.5 A reasonable effort was made by the City of Walla Walla to acquire the property located at 712 Whitman Street. The property owner was non-responsive to the City's attempt to negotiate and has thereby rejected the City's efforts to acquire the property located at 712 Whitman Street by negotiation.

2.6 Notice of planned final action was mailed on January 24, 2014 and published on

January 29, 2014 and February 5, 2014 in compliance with RCW 8.25.290 that the Walla Walla City Council would consider whether or not to authorize condemnation of the property located at 712 Whitman Street during its regularly scheduled City Council meeting for February 12, 2014.

2.7 The Walla Walla City Council adopted Ordinance 2014-04 on February 12, 2014 condemning the property located at 712 Whitman Street and authorizing commencement and prosecution of these proceedings.

2.8 Terry Knapp was properly served with the Summons and Petition to Condemn Blighted Property in this matter on April 17, 2014. Walla Walla County was properly served with the Summons and Petition to Condemn Blighted Property in this matter on April 17, 2014.

2.9 The executive authority of the City of Walla Walla properly determined on September 3, 2013 that the dwellings, buildings, other structures, and real property located at 712 Whitman Street in Walla Walla, Washington, constitute a threat to public health, safety, and welfare based upon its well-documented years of repeated and continuous code violations.

2.10 A dwelling, building, and other structures exist on the property, and such dwelling, building, and other structures have not been lawfully occupied for a period of one year or more.

2.10.1 The property has been without water since 2005, and it has been without

water ever since. Any occupancy of the property since 2005 unlawfully violated the International Maintenance Code.

2.10.2 The dwelling on the property was properly declared to be dangerous and unfit for human occupancy in 2005. Any occupancy of the property since 2005 unlawfully violated the Uniform Code for the Abatement of Dangerous Buildings.

2.11 The dwelling, buildings, other structures, and real property located at 712 Whitman Street in Walla Walla, Washington are a blight on the surrounding neighborhood.

III. CONCLUSIONS

3.1 This Court has jurisdiction over this matter and venue is proper in this Court.

3.2 The contemplated use by the City of Walla Walla of the dwelling, buildings, other structures, and real property located at 712 Whitman Street in Walla Walla, Washington is public and acquisition of the property by condemnation is a matter of public necessity.

IV. ORDER

Based upon the forgoing findings and conclusions, the court hereby determines and decrees and that the condemnation of the property described in paragraph 2.3 herein is necessary to eliminate a blight on the surrounding neighborhood and the property's contemplated use by the City of Walla Walla is really public.

DATED 8-16-14

PUBLIC USE & NECESSITY ORDER
14-2-00275-1:

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Tim Donaldson
Walla Walla City Attorney
15 N. Third Ave.
Walla Walla, WA 99362
(509) 522-2843

0-000001059

RCW 35.80A.010. Condemnation of blighted property

Every county, city, and town may acquire by condemnation, in accordance with the notice requirements and other procedures for condemnation provided in Title 8 RCW, any property, dwelling, building, or structure which constitutes a blight on the surrounding neighborhood. A “blight on the surrounding neighborhood” is any property, dwelling, building, or structure that meets any two of the following factors: (1) If a dwelling, building, or structure exists on the property, the dwelling, building, or structure has not been lawfully occupied for a period of one year or more; (2) the property, dwelling, building, or structure constitutes a threat to the public health, safety, or welfare as determined by the executive authority of the county, city, or town, or the designee of the executive authority; or (3) the property, dwelling, building, or structure is or has been associated with illegal drug activity during the previous twelve months. Prior to such condemnation, the local governing body shall adopt a resolution declaring that the acquisition of the real property described therein is necessary to eliminate neighborhood blight. Condemnation of property, dwellings, buildings, and structures for the purposes described in this chapter is declared to be for a public use.

FILED

NOV 23 2015

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

COURT OF APPEALS, DIVISION III,
OF THE STATE OF WASHINGTON

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CITY OF WALLA WALLA and)
COUNTY OF WALLA WALLA,)
Respondents,)
vs.)
TERRY KNAPP,)
Appellant-Petitioner.)

No. 326047

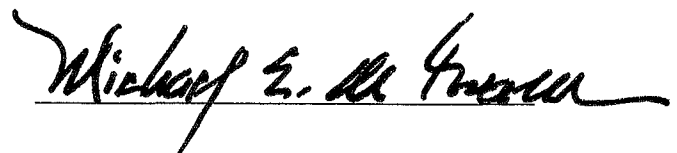
CERTIFIED STATEMENT OF MAILING

I, Michael E. de Grasse, under penalty of perjury pursuant to the laws of the State of Washington, RCW 9A.72.085, certify as follows: I am a citizen of the United States, of the State of Washington, over the age of majority, not a party to the above-entitled proceedings and competent to be a witness therein.

On the 20th day of November, 2015, I deposited in the mails of the City of Walla Walla, State of Washington, first class postage prepaid, a copy of the Petition for Review to the address as shown below:

Timothy J. Donaldson
Walla Walla City Attorney
15 N. Third Ave.
Walla Walla, WA 99362

Certified and signed on this 20th day of November, 2015, at Walla Walla, Washington.



Michael E. de Grasse
Lawyer
P.O. Box 494
Walla Walla, WA 99362
(509) 522-2004