

FILED

OCT 02 2014

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

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 Stoebeck, “. . . 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.

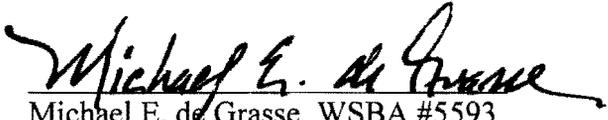
As shown by the foregoing points and authorities, the decision by this Court should be nothing less than "a final adjudication that the condemnor cannot acquire the real property by condemnation." RCW 8.25.075(1)(a). Therefore, Terry Knapp should be awarded his costs, including reasonable attorney fees.

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

FILED
KATHY MARTIN
COUNTY CLERK

2014 JUN 13 A 9:42

Copy received and service acknowledged

this day of June, 2014

Signed [Signature]

Attorney for [Signature]

WALLA WALLA COUNTY
WASHINGTON
BY [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 5. The only reason my property was ever determined to be unsafe was because the
15 City shut off my water supply and then almost immediately removed the water
16 connection, as is described in their own documents filed in this court. I disputed
17 why I should have to pay the reconnection fee because the City often shuts off
18 service when bills go unpaid, but does not remove the connection as they did in
19 my case. Thereafter, the actions against my property have always involved
20 either my attempts to improve the property or accusations that I or others am
21 living there in spite of the City's efforts to drive me away by removing my water
22 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.

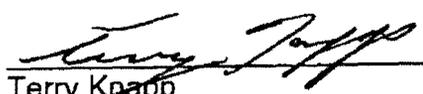

Terry Knapp

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

- | | | |
|-------------------------------------|--|---|
| <input type="checkbox"/> APPROVED | <input type="checkbox"/> NO ACCESS/ENTRY | <input type="checkbox"/> NOT READY |
| <input type="checkbox"/> VIOLATIONS | <input type="checkbox"/> CORRECTIONS | <input type="checkbox"/> 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

email end

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>
<p><i>Residence cannot be lived in prior to final inspection approval.</i></p> <p>TOTAL FEE \$207.96 TOTAL FEES PAID \$207.96 TOTAL FEES DUE \$0.00</p>		
<p>The WWJCDCA 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><i>[Signature]</i> <u>12-27-13</u> Signature of Owner / Contractor / Authorized Agent Date</p>		

0-000001047

FILED
BY TERRY 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;

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 6-16-14

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

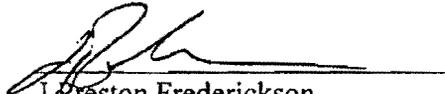
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0-000001059


JUDGE

Presented by:


J. Preston Frederickson
Assistant Walla Walla City Attorney
WSBA #36921

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

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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.