

December 13, 2013

City of Oak Hill Tennessee
Mr. Kevin Helms
City Manager
5548 Franklin Pike, Suite 102
Nashville, Tennessee 37720

VIA ELECTRONIC MAIL

Dear Mr. Helms:

In response to your question regarding authorities available to address an uncompleted building, the answer hinges on whether the abandoned structure is safe or unsafe for occupancy or use, as follows:

Unsafe Building - If the building is unsafe, the process of ordering its repair by the owner and failing that, declaring it unfit for human occupancy or use and proceeding to either cause (1) its repair or (2) demolition are available to the city under authority of TCA § 13-21-101 *et seq.* To do so, however, requires passage of a local ordinance under authority of this slum clearance statute which has not been enacted in Oak Hill.

Please be mindful that once the structure is made safe, it still can lawfully remain in its uncompleted status. Given your summary of the situation, that seems not to be the issue at point – the structure is safe – so none of this applies. As to your second question, any enforcement action to address an unsafe structure would be with the property owner.

A note of caution – while authority is granted to the city to cause an unsafe structure to be “repaired, altered, or improved,” best practices are to tread lightly and only do so when deemed absolutely necessary, using a contractor hired to undertake the repairs rather than using city crews. The use of city crews will open your liability exposure wider and can create other public relation and appearance problems best avoided by the city.

Safe Building - If the building is safe, the city is powerless to do anything to cause removal or completion of the uncompleted home. There is no statutory authority applicable to Oak Hill to do so.

To assist you going forward, please find enclosed the slum clearance ordinance adopted in neighboring Forest Hills and a municipal administrative hearing officer (AHO) ordinance from Knoxville if you intend to advance your authorities in this area. TCA Title 6, Chapter 54, Part 10 authorizes a municipality to create an administrative hearing officer program to adjudicate building and property maintenance code violations. Administrative hearing officers are not subject to the \$50 fine limitation imposed by the Tennessee Constitution and may levy a penalty of up to \$500 per offense per day for

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violations on commercial properties and up to \$500 cumulatively for violations on residential properties. The AHO program could be a useful tool in Oak Hill to process code and property violations for unsafe structures and other building and property code violations in the future.

Parenthetically, you will be interested in knowing that TCA § 13-21-102(b)(1) provides authority to address abandoned or suspended construction within two counties – Williamson and Sumner. Unfortunately the statute does not apply in Oak Hill.

In accordance with this statutory provision, when a city finds that structures are unfit for occupancy or use because of suspended construction, it may order “that construction resume or that the owner make the unfinished structure safe by boarding up the structure, removing construction debris and other safety hazards from the construction area, and otherwise removing or neutralizing health or safety hazards.” If the owner fails to take the actions, the city may cause the unfinished structure to be boarded up and the debris and other health and safety hazards removed or neutralized. The costs of doing are assessed against the owner. Suspended construction means that construction of an unfinished structure has ceased and that no good faith effort has been made to complete the construction for a period of sixty days.

When a city finds that structures are unfit for occupancy or use because of abandoned construction, which is defined as construction of an unfinished structure has ceased and no good faith effort has been made to complete the construction for a period of 180 days, it may “use all the procedures, remedies and rights in this part to deal with the unfinished structure and the abandoned construction,” which includes demolition.

Accordingly, you may be interested in seeking the introduction of legislation in the upcoming session of the Tennessee General Assembly to expand the applicability of TCA § 13-21-102(b)(1) to within Davidson County. With such authority, the necessary resource will be available to remedy the situation giving rise to your question.

Please let me know if you have further questions or require additional assistance on this matter. Thank you for seeking the advice and counsel of MTAS.

Very truly yours,



Jeffrey J. Broughton
Municipal Management Consultant