

January 28, 2010

Mr. Bobby Franklin, City Manager
City of Lakewood
3401 Hadley Avenue
Old Hickory, TN 37138

Re: Property Maintenance

Dear Mr. Franklin

MTAS provided the city with a model slum clearance ordinance drafted by MTAS Senior Legal Consultant Sid Hemsley. It has been a part of our model code of ordinances for many years and was patterned after the provisions of state law and those provisions have been upheld in a court of law. MTAS attorneys and management consultants recommend that Tennessee cities use the model slum clearance ordinance for effective property maintenance code enforcement. The city commission, in deciding whether or not to use this model ordinance or some other ordinance, must decide which best addresses the desirable level of safety, health and esthetic values that are important to the community.

MTAS does not recommend ordinance provisions that:

1. Remove the powers of the public officer to bring an action for compliance on his own motion.
2. Transfer administrative duties relating to enforcement efforts to the city commission. Once the public officer, using his/her professional training has identified a safety or health hazard, it is incumbent on the city to act. To do otherwise might expose the city to some potential liability. Such a modification should be vetted with the City's insurer. Also, it is not efficient or effective for the public officer to only act in an advisory role just as it would be inefficient and ineffective for a police officer to be required to seek the specific approval of the city commission prior to issuing a citation for the violation of a city ordinance. Would we want our fire inspector to only act in an advisory role in enforcing safety issues and seek approval of the city commission prior to taking any corrective actions on his own? The

administrative enforcement efforts are better left up to trained and certified staff.

3. Require that dilapidated structures must be 80% dilapidated before property maintenance efforts can be undertaken. This raises some real safety issues, especially if the property is abandoned. The city may not want to wait until the roof falls in to enforce its property maintenance standards.
4. Require unanimous consent of the city commission to enforce the city's property maintenance standards. Is this the standard for the City? Does the budget, pay raises, property taxes, etc. require a unanimous vote? Property owners with substandard properties would love this provision.
5. Agree that the owners be entitled to recover any damages and costs including reasonable attorney fees in the event such person prevails in the action. MTAS recommends that these matters can better be addressed by an impartial judge and jury and the city should not agree to them.
6. Rules of the court apply at all steps in the city's enforcement efforts. It is not in the best interest of the city to have rules of the court apply to the administrative levels of city government. This would lead to the city attorney having to administer the provisions of the slum clearance ordinance and it would substantially increase the cost of enforcement efforts.

MTAS recommends that the city commission seek the legal advice of the city's attorney as it considers how to best address, uphold, and preserve the safety, health and aesthetic values of the community.

Please call me if you have questions or comments. Thanks for consulting with MTAS.

Sincerely

Ron Darden
Municipal Management Consultant