

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

KANAWHA COUNTY COMMISSION,

Plaintiff,

v.

Civil Action No. 22-C-949  
AKers

JF ENTERPRISES, LLC, JOHN W.  
MEADOWS, JR., AND DARLENE  
MEADOWS,

Defendants.

COMPLAINT

The Kanawha County Commission brings this action to enforce its Public Nuisance and Property Maintenance Ordinance and to eliminate the risk to public health, safety, and welfare presented by the recurring flooding in the 2000 block of Greenbrier Street. The frequent flooding is the result of a collapsed culvert system located under the parking lot of the real property occupied by the Capitol Flea Market, which is located in Kanawha County, West Virginia.

Preliminary Statement and Parties

1. The Kanawha County Commission strives to promote and protect the public health, safety, and welfare of Kanawha County and its residents.
2. The Capital Flea Market – located in Charleston, Kanawha County, West Virginia – is the site of a collapsed culvert system which causes recurring flooding in the 2000 block of Greenbrier Street, Charleston, West Virginia.
3. The flooding has resulted in the periodic blocking of portions of Greenbrier Street, rendering its residents with a lack of access to/from their homes/businesses and

obstructing emergency fire and medical services from accessing the homes and businesses located beyond the area of the flood waters.

4. These recurring floods also restrict residents and business patrons' ability to access emergency services, deprive them of the full enjoyment of their homes and businesses, and pose a significant risk to anyone who happens to be traversing the area when flooding occurs.

5. Each time that flooding occurs, Kanawha County Commission employees respond to the site of the flooding. Affected property owners and residents must immediately and continuously work to pump the waters and clear the resulting damage and debris.

6. The flooding originates from the tract of property located in Elk District, Tax Map 45, Parcel 58, 22-53/100A M/L SURF PT LT D CABELL EST CAPITOL FLEA MARKET (hereafter "subject property").

#### Parties

7. John W. Meadows, Jr. and Darlene Meadows, (hereinafter "Meadows Defendants") own the subject property together as joint tenants, which they acquired by the Last Will and Testament of Lillie B. Meadows. This document is recorded in the county record in Will Book No. 277 at page 732.

8. The subject property is encumbered by an easement and right-of-way agreement to River Ridge Church, recorded in Deed Book 2926 at page 6.

9. On or about March 27, 1972, a long-term land lease between Lillie B. Meadows, Lester Yerrid, and C. Donald Robertson was recorded in Lease Book 185 at page 479.

10. The lease was assigned to Gordon Billheimer, Lester Yerrid, and Ramon Fuentes, who later became stockholders in Meadowbrook Enterprises, Inc.

11. In January 2006, Meadowbrook Enterprises Inc.'s entire interest in the lease was assigned to Jaime Fuentes. Mr. Fuentes subsequently assigned his interest in the lease to JF Enterprises, LLC ("JF Enterprises"), a West Virginia Limited Liability Company.

12. Plaintiff Kanawha County Commission (hereinafter "Commission"), is a West Virginia political subdivision which may sue and plead in its own name<sup>1</sup> and has standing to take "appropriate and necessary actions for the elimination of hazards to public health and safety and to abate or cause to be abated anything which the commission determines to be a public nuisance." W. Va. Code § 7-1-3kk.

### **Jurisdiction**

13. This Court has jurisdiction to hear this matter pursuant to Article VIII, Section 6 of the West Virginia Constitution and West Virginia Code § 51-2-2.

14. Venue is proper in this Court as the subject property is located in Kanawha County, West Virginia and the Defendants maintain legal and/or equitable interests in the subject property.

### **Notice of Abatement**

15. In an effort to promote the public health, safety and welfare of its residents, the Commission passed the Public Nuisance and Property Maintenance Ordinance (the "Ordinance").

16. The Ordinance sets forth the minimum conditions and responsibilities for maintenance of structures, equipment, and exterior property.

17. Pursuant to the Ordinance, owners are obligated to adhere to the minimum conditions and responsibilities set forth by the Ordinance and by state law.

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<sup>1</sup> W. Va. Code § 7-1-1(a).

18. The Ordinance defines Owner as “[a]ny person, agent, operator, firm or corporation having a legal or equitable interest in the property; or recorded in the official records of the state, county or municipality as holding title to the property; or otherwise having control of the property . . . .” Ordinance § 202.

19. The Meadows Defendants are the property owners as recorded in the official record of the County.

20. Defendant JF Enterprises, LLC holds both legal and equitable interests through its Option and Lease of the property.

21. Therefore, the Defendants, as owners of the subject property, are obligated to maintain the property in compliance with the subject Ordinance and State law.

22. On or about August 15, 2022, several homes and businesses were significantly flooded in the 2000 block of Greenbrier Street. During this period, many homeowners were prevented from entering and leaving their homes due to the high waters. Additionally, the residents and business patrons were restricted in their ability to access emergency services.

23. On August 16, 2022, the Defendants were personally served with an Emergency Notice of violation of the Ordinance. Ex. A.

24. On August 17, 2022, the Meadows Defendants advised the Commission that Defendant JF Enterprises, LLC is responsible for maintaining the property. Conversely, JF Enterprises, LLC advised that the Meadows Defendants were the responsible party.

25. On August 19, 2022, the Defendant JF Enterprises, LLC engaged a contractor to pump water out of the collapsed culvert system on the subject property to temporarily alleviate flooding to the surrounding properties.

26. On August 24, 2022, JF Enterprises, LLC was personally served with a second notice letter and advised that the conditions at the property are in violation of the Ordinance.

27. The letter also stated that JF Enterprises, LLC needed to obtain a building permit and engage an engineer to commence work and appropriately repair the culvert system. Ex. B.

28. The letter provided notice to Mr. Fuentes that he had ten (10) days to correct/abate the nuisance and/or submit a detailed plan of action and engineer review.

29. With the expiration of the ten-day (10) period, the Kanawha County Commission now seeks to abate the violation(s) of its Ordinance pursuant to Section 106.5.

**Count I**  
**Abatement of Public Nuisance**

30. The Commission has statutory standing to eliminate the hazards to the public health and safety to abate, or cause to abate, the public nuisance. W. Va. Code § 7-1-3kk; W. Va. Code § 8-12-5(23).

31. Pursuant to its authority, the Kanawha County Commission enacted the Public Nuisance and Property Maintenance Ordinance.

32. The County's nuisance Ordinance defines public nuisances and provides a procedure by which the County may seek to abate the same.

33. As alleged throughout this Complaint, the recurring flooding events which originate from/on the subject property constitute a public nuisance.

34. Due to the recurring flooding originating on/from the subject property, the Defendants are in violation of Ordinance.

35. Specifically, the Defendants are in violation of Section 108, as an "unsafe structure is one that is found to be dangerous to the life, health, property or safety of the public or the occupants of the structure by not providing minimum safeguards to protect or warn occupants

in the event of fire, or because such structure contains unsafe equipment or is so damaged, decayed, dilapidated, structurally unsafe, or of such faulty construction or unstable foundation, that partial or complete collapse is possible.” Ordinance § 108.1.

36. Defendants are also in violation of Section 109 of the Ordinance because there is “imminent danger of failure or collapse of a building or structure which endangers life, or when any structure or part of a structure has fallen and life is endangered by the occupation of the structure, or when there is actual or potential danger to the building or to the building occupants.” Ordinance § 109.1

37. Because the collapsed culvert system is a defective drainpipe, creating stagnant water, the Defendants are in violation of Sections 106(A)(3) and 106(A)(5).

38. Defendants are also in violation of Section 106(A)(9) because dangerous substances or liquids are accumulated as a result of the flooding.

39. Structure is defined as “[t]hat which is built or constructed or a portion thereof.”

40. The Ordinance goes so far as to enumerate specific nuisances. Although not exclusive, the Commission has stated that: “[a]ll buildings, bridges or other structures of whatsoever character kept or maintained, or which are permitted by any person owing or having control to be kept or maintained, in a condition unsafe, dangerous, unhealthy, injurious or annoying to the public,” is defined as and declared to be a nuisance. Ordinance § 307.1.

41. However, the nuisances described are not to be construed as exclusive. Any act of the Commission or omission and any condition which constitutes a nuisance by statute or common law of the state, when committed, omitted or existing within the unincorporated area of the county, is declared to constitute a nuisance. Ordinance § 307.2.

42. The recurring flooding originating on/from the subject property as a result of a collapsed culvert system violates the County's Public Nuisance and Property Maintenance Ordinance and creates an unreasonable risk to the public.

43. The Commission and the Community have a common right to be free from conduct that creates an unreasonable jeopardy to the public health, safety and welfare, and to be free from conduct that creates a disturbance and reasonable apprehension of danger to person and property.

44. Defendants' property injuriously affected – and continues to affect – public rights, including the right to public health, public safety, public peace, public comfort, and welfare of the people of the Commission's Community.

45. West Virginia has adopted a "broad and flexible definition" of nuisance which is "adaptable to a wide variety of factual situations":

A public nuisance is an act or condition that unlawfully operates to hurt or inconvenience an indefinite number of persons. The distinction between a public nuisance and a private nuisance is that the former affects the general public, and the latter injures one person or a limited number of persons only. Ordinarily, a suit to abate a public nuisance cannot be maintained by an individual in his private capacity, as it is the duty of the proper public officials to vindicate the rights of the public.<sup>2</sup>

46. A public nuisance results from conduct that caused an unreasonable and substantial interference with a right common to the general public, which is the proximate cause of, and/or substantial factor leading to Plaintiff's injury. *See* Restatement Second, Torts § 821B.<sup>3</sup>

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<sup>2</sup> *Sharon Steel Corp. v. City of Fairmont*, 334 S.E. 2d 616, 620 (W. Va. 1985) (citing Restatement (Second) of Torts § 821B (1979)); *see also State ex rel. Smith v. Kermit Lumber & Pressure Treating Co.*, 488 S.E. 2d 901, 921 (W. Va. 1997).

<sup>3</sup> *See also Rhodes v. E.I. du Pont de Nemours and Company*, 657 F.Supp.2d 751, 768 (S.D. W.Va. 2009) (West Virginia's definition of nuisance is "consistent with the Restatement (Second) of Torts § 821B(1)." (quoting *Duff v. Morgantown Energy Assocs. (M.E.A.)*, 187 W.Va. 712, 421 S.E.2d 253, 257 n.6 (1992)).

47. Circumstances that may sustain a holding that an interference with a public right is unreasonable include the following:

- d. Whether the conduct involves a significant interference with the public health, the public safety, the public peace, the public comfort or the public convenience, or
- e. Whether the conduct is proscribed by a statute, ordinance or administrative regulation, or
- f. whether the conduct is of a continuing nature or has produced a permanent or long-lasting effect, and, as the actor knows or has reason to know, has a significant effect upon the public right.<sup>4</sup>

48. The interference is unreasonable because Defendants' property is creating a nuisance which:

- a. Involves a significant interference with the public health, the public safety, the public peace, the public comfort, and/or the public convenience;
- b. At all relevant times was and is proscribed by state and federal laws and regulations; and/or
- c. Is of a continuing nature and, as Defendants know, has had and is continuing to have a significant effect upon rights common to the general public, including the public health, the public safety, the public peace, the public comfort, and/or the public convenience.

49. The public nuisance – i.e., the recurring flooding originating on the subject property – can be abated and further recurrence of such harm and inconvenience can be abated by Defendant(s).

50. Defendants' property continues to create a public nuisance which proximately causes injury to the Commission and her residents.

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<sup>4</sup> RESTATEMENT (SECOND) OF TORTS § 821B (1979); *Barker v. Naik*, No. 2:17-CV-04387, 2018 WL 3824376, at \*3 (S.D.W. Va. Aug. 10, 2018) (noting the consistency with the West Virginia Supreme Court's definition of public nuisance); *see also Rhodes v. E.I. du Pont de Nemours & Co.*, 657 F. Supp. 2d 751, 768 (S.D.W. Va. 2009) *aff'd in part*, appeal dismissed in part, 636 F.3d 88 (4th Cir. 2011).



51. Defendants' property continues to create a public nuisance as the flooding occurs during heavy rainfall and continues to trap residences and business owners on their respective properties. This results in harm to the property owners as emergency services are prevented from access, thus interfering with the public health, safety, and welfare of the Community.

52. Additionally, Defendants' property continues to create a public nuisance as the flooding creates a hazard to any individual traversing the area – including County employees, State employees, and/or residents of Kanawha County – thus interfering with the public health, safety, and welfare of the Community.

53. As a direct and proximate result of the conditions existing on Defendants' property, the Commission and the citizens of Kanawha County have suffered and will continue to suffer property damages, loss of access, inability to provide and/or access emergency services, danger and apprehension to anyone traversing the area.

54. The nuisance originating on Defendants' property has not been abated.

55. The nuisance originating on Defendants' property is abatable.

56. The failure to abate the nuisance(s) is ongoing and periodic in nature.

57. The condition(s) originating on Defendants' property – and causing the public nuisance – do not concern a discrete event or discrete emergency of the sort a political subdivision would reasonably expect to occur and is not part of the normal and expected costs of a local government's existence. The Commission alleges wrongful acts which are neither discrete nor of the sort a local government can reasonably expect.

58. The Commission seeks all legal and equitable relief as allowed by law, including *inter alia* injunctive relief, compensatory and punitive damages and all damages allowed by law to be paid by the Defendants, attorney fees and costs, and pre- and post-judgment interest.

**Prayer For Relief**

59. The Commission respectfully requests that this Court enter an order of judgment granting all relief requested in the Complaint and/or allowed at law or in equity, including:

- a. abatement of the nuisance;
- b. actual damages;
- c. equitable and injunctive relief in the form of Court-enforced corrective action, program(s) and communication(s);
- d. attorneys' fees;
- e. pre- and post-judgment interests; and
- f. such other and further relief as this Court deems appropriate.

Respectfully submitted,



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