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20-216

IN THE SUPREME COURT OF ARKANSAS

CONVENT COPRORATION,
Individually and on Behalf of all
Others Similarly Situated **APPELLANT**

v. **CASE NO. CV-20-216**

City of North Little Rock, Arkansas, a Municipal Corporation, Joe Smith, Mayor, Individually and in his Official Capacity, - City Council Members Debi Ross, Beth White, Linda Robinson, Maurice Taylor, Steve Baxter, Bruce Foutch,' Murry Witcher, and Charlie Hight each Individually and in his or her Official Capacity, Tom Wadley, Director, Code Enforcement Division, Individually and in his Official Capacity, and Felicia McHenry, Code Enforcement Officer, Individually and in her Official Capacity. **APPELLEES**

ON APPEAL FROM THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
THE HONORABLE ALICE GRAY, CIRCUIT JUDGE NO. 60CV2013-1398

BRIEF OF APPELLEES AND SUPPLEMENTAL ADDENDUM

CITY OF NORTH LITTLE ROCK
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APPELLEES' RESPONSE TO JURISDICTIONAL STATEMENT

First, Appellees (hereinafter, the "City" or "City Council") challenge Appellant's (hereinafter, "Convent") standing to pursue the appeal of the City Council's condemnation action against the property located at 6615 Highway 70, North Little Rock, Pulaski County, Arkansas (hereinafter, "the Property"), or to pursue its claim for declaratory judgment. At the time, the City condemned the Property Convent was not the rightful owner. Nor was it the rightful owner at the time of Convent's appeal. Standing is a threshold issue that this Court must decide prior to considering this case. It is a question of law, and is subject to *de novo* review. The issue of Convent's standing was raised by the City early on in the case, as well as in its recent, successful motion for summary judgment, and is not an affirmative defense noted in Ark. R. Civ. P 8(c) that can be waived.

Second, if the Court determines that Convent has standing to pursue this case, the City takes exception to Convent's Jurisdictional Statement. The City takes exception to the extent the Jurisdictional Statement states as a basis of Supreme Court jurisdiction that:

> "[t]his matter involves questions regarding federal [and state] constitutional interpretation relating to the extent of due process protections, . . . protection of property rights, . . . to notice and due process prior to seizure of a property as applied to Convent, and whether a party is required to exhaust a judicial remedy before bringing constitutional

claims." Jurisdictional Statement at xi-xii.

The City submits that there are two appealable issues before this Court:

> (1) whether the Circuit Court's finding that there was substantial evidence to support the City Council's administrative action condemning Convent's property as a nuisance was an abuse of discretion; and
>
> (2) whether Chapter 8, Article 1, Section 7 of the City Code (the Code") is unconstitutional on its face and, therefore, the Code's condemnation procedures fail to provide constitutionally required due process prior to property condemnations. Add 779; R pt. 3 -74.

Any question related to whether exhaustion of administrative remedies is required prior to pursuing constitutional claims is moot, and Convent did not raise as an issue the City's condemnation procedures "as-applied" to Convent in its Amended and Reinstated Petition for Declaratory Judgment after non-suit of its original Complaint.

The Circuit Court heard the Ark. Dist. Ct. Rule 9 appeal of the City Council's condemnation action and rendered its decision in 2017, which exhausted the administrative remedy required under Rule 9 via Ark. Code Ann. § 14-56-425. There is no justiciable controversy related to exhaustion of administrative remedies on which an opinion of this Court would have a practical legal effect in this case. The Circuit Court, thereafter, took up Convent's amended and reinstated declaratory judgment cause of action seeking relief on its constitutional facial claim, and rendered its decision. Add 1166; R pt. 3:543. The sole issue raised in Convent's Amended and Reinstated

Petition for Declaratory Judgment is its facial challenge to the constitutionality of the Code. *Id.* Convent's Amended and Reinstated Petition for Declaratory Judgment did not raise an "as-applied" challenge to the constitutionality of the Code. The Circuit Court did not address constitutional issues in the Rule 9 appeal, and Convent's original complaint was non-suited. Add 778; R pt. 2-257. Convent's attempt to "amend and reinstate" a non-suited Complaint should not be permitted.

I express a belief, based on a reasoned and studied professional judgment, that the exceptions I have taken to the statements made by Convent in the Appellant's Jurisdictional Statement are material to understanding correctly the nature of this appeal and its disposition in the appropriate appellate court.

POINTS ON APPEAL

Threshold Issue

THIS CASE SHOULD BE DISMISSED FOR LACK OF STANDING BECAUSE CONVENT WAS NOT THE OWNER OF THE PROPERTY CONDEMNED BY THE CITY COUNCIL AT THE TIME OF CONDEMNATION OR WHEN IT FILED ITS NOTICE OF APPEAL.

Farm Bureau Ins. Co. of Ark., Inc. v. Running M Farms, Inc., 366 Ark. 480, 237 S.W.3d 32 (2006).

Freeman v. Freeman, 2013 Ark. App. 693, 430 S.W.3d 824 (2013)

Arkansas State Bd. of Election Comm'rs v. Pulaski Cty. Election Comm'n,

2014 Ark. 236, 437 S.W.3d 80 (2014).

1. **THE ARKANSAS CONSTITUTION DOES NOT REQUIRE THAT LAWS INVOLVING PROPERTY RIGHTS BE EVALUATED UNDER THE "STRICT SCRUTINY" STANDARD, AND THE CITY CODE IS CONSTITUTIONAL.**

City of Lowell, 323 Ark. 332, 336-337, 916 S.W.2d 95, 97 (1996)

Goldman & Co. v. City of North Little Rock, 220 Ark. 792, 249 S.W.2d 961 (1952)

United States v. Stevens, 559 U.S. 460, 472 (2010)

Hill v. City of El Dorado, 686 Fed. Appx. 381 (8th Cir. 2017)

2. **THE PROPER STANDARD OF REVIEW OF THE FINAL ACTION TAKEN BY THE CITY COUND IS TRIAL *DE NOVO* AS PROVIDED IN ARK. CODE ANN. § 14-56-425; THE RECORD IN THIS CASE DOES CONTAIN SUBSTANTIAL EVIDENCE TO SUPPORT THE CITY COUNCIL'S CONDEMNATION OF CONVENT'S PROPERTY.**

Talley v. City of North Little Rock, 2009 Ark. 601, 381 S.W.3d 753 (2009).

Ingram v. City of Pine Bluff, 355 Ark. 129 133 S.W.3d 382 (2003).

Green v. City of Jacksonville, 357 Ark. 517, 182 S.W.3d 124 (2004).

3. THE ISSUE AS TO WHETHER EXHAUSTION OF ADMINISTRATIVE REMEDIES IS REQUIRED PRIOR TO ASSERTING CONSTITUTIONAL CLAIMS IN AN APPEAL PURSUANT TO DISTRICT COURT RULE 9 IS MOOT.

Allison v. Lee County Election Com'n, 359 Ark. 388, 198 S.W.3d 113 (2004)

4. CONVENT'S ASSERTIONS THAT THE CIRCUIT COURT HELD THAT A RULE 9 APPEAL IS MERELY AN EXTENSION OF THE CITY'S ADMINISTRATIVE PROCEDURE AND, THEREBY, THE SEPARATION OF POWERS DOCTRINE IN ARTICLE 4, SECTION 2 OF THE ARKANSAS CONSTITUTION.

Goodall v. Williams, 271 Ark. 354, 356, 609 S.W. 2d 25 (1980)

5. EXHAUSTION OF ADMINISTRATIVE REMEDIES IS REQUIRED PRIOR TO BRINGING CERTAIN CLAIMS PURSUANT TO 42 USC. 1983.

Allison v. Lee County Election Com'n, 359 Ark. 388, 198 S.W.3d 113 (2004)

6. CONVENT WAS PROVIDED ADEQUATE NOTICE, A MEANINGFUL HEARING BEFORE CITY COUNCIL, AND AN OPPORTUNITY TO REPAIR THE PROPERTY PRIOR TO AND AFTER THE CITY'S DECISION TO CONDEMN THE PROPERTY.

Samuels v. Meriweather, 94 F.3d 1163 (8th Cir. 1996)

Cleveland Bd. Of Educ. v. Loundermill, 470 U.S. 532 (1985)

7. THE "RED-TAGGING" OF CONVENT'S PROPERTY, IN ACCORDANCE WITH THE CITY'S CODE, WAS NOT A SEIZURE OF CONVENT'S PROPERTY, BUT WAS THE CITY'S PRIOR NOTICE TO CONVENT THAT ITS PROPERTY WAS DEEMED A NUISANCE, WHICH INCLUDED THE TIME AND DEATE OF THE CITY COUNCIL MEETING THAT WOULD TAKE UP THE MATTER.

Lingle v. Chevron U.S.A., Inc., 544 U.S. 528 (2005)

8. THE CITY PROVIDED CONVENT ALL THE NOTICE TO WHICH IT WAS ENTITLED UNDER THE CITY CODE AND FEDERAL AND STATE LAW.

Memphis Light, Gas and Water Division v. Craft, 436 U.S. 1, 98 S. Ct. 1554, 56 L.Ed.2d 30 (1978)

9. THE CITY DID AFFORD CONVENT AN OPPORTUNITY TO REPAIR ITS PROPERTY PRIOR TO CONDEMNATION, AND AFTER CONDEMNATION. CONVENT'S PROPERTY WAS NOT "SEIZED" BY THE CITY.

Hagen v. Traill County, 708 F.2d 347 (8th Cir. 1983)

Samuels v. Meriweather, 94 F.3d 1163 (8th Cir. 1996)

Cleveland Bd. Of Educ. v. Loundermill, 470 U.S. 532 (1985)

10. THE CITY PROVIDED CONVENT WITH A MEANINGFUL HEARING.

Ingram v. City of Pine Bluff, 355 Ark. 129, 133 S.W.3d 382 (2003)

Samuels v. Meriweather, 94 F.3d 1163 (8th Cir. 1996)

11. THE CITY GAVE CONVENT AN OPPORTUNTIY TO BE HEARD PRIOR TO THE CITY COUNCIL'S DECISION TO CONDEMN ITS PROPERTY AS A NUISANCE, AND CONVENT WAS NOT ENTITLED TO A SO-CALL "PRE-DEPRIVATION" HEARING BECAUSE THERE WAS NO TAKING OF ITS PROPERTY.

City of Little Rock v. Alexander Apartments, LLC., 2020 Ark. 12, 592 S.W.3d 224, 231 (2020)

12. THE CITY'S ORDINANCE IS NOT UNCONSTITUTIONALLY VAGUE.

Abraham v. Beck, 2015 Ark. 80, *13

City of Los Angeles v. Patel, 135 S.Ct. 2443 (2015)

United States v. Marcavage, 609 F.3d 264 (3rd Cir. 2010)

13. THE CITY'S ORDINANCE IS NOT UNCONSTITUTIONALLY VAGUE, AND DOES NOT PROVIDE PUBLIC OFFICIALS WITH TOO MUCH DISCRETION.

Abraham v. Beck, 2015 Ark. 80, *13

City of Los Angeles v. Patel, 135 S.Ct. 2443 (2015)

United States v. Marcavage, 609 F.3d 264 (3rd Cir. 2010)

14. THE CITY'S ORDINANCE DOES NOT RESULT IN BILLS OF ATTAINDER AND THE RESOLUTION REGARDING CONVENT'S PROPERTY IS NOT A BILL OF ATTAINDER.

United States v. Lovett, 328 U.S. 303, 315 (1946)

Ingram v. City of Pine Bluff, 355 Ark. 129, 133 S.W.3d 382, 385, 386 (2003)

Ferreira v. Town of East Hampton, 56 F.Supp.3d 211 (E.D.N.Y 2014)

15. CONVENT'S RENEWED MOTION TO STRIKE AMENDED ANSWER AND AFFIRMATIVE DEFENSES (ADD 798; R PT.3 96; ADD 1173; R 770) SHOULD NOT HAVE BEEN GRANTED.

JurisDctionUSA, Inc. v. Loislaw.com, Inc., 357 Ark. 403, 183 S.W.3d 560 (2004)

White v. Minyard, 8 Ark. App. 269, 650 S.W.2d 599 (Ark. App. 1983)

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Statutes and Rules

STATEMENT OF THE CASE

The present matter is the appeal of the findings by the Honorable Ellen Brantley, sitting as Special Judge for the Honorable Alice Gray that, *inter alia,* found the structure located at 6615 Highway 70, North Little Rock, Arkansas owned by Convent ("the Property"), to be a nuisance, as determined by the North Little Rock City Council on February 25, 2013[1]. Add 778; R 257. Additionally, the Circuit Court found that Chapter 8, Article 1, Section 7, is constitutional on its face, and not a Bill of Attainder, or unconstitutionally vague. Add 1166; R pt 3: 543. This case has absolutely nothing to do with any resolved legal action or settlement between the City and Convent prior to November 14, 2012, Convent's reference to any resolved dispute with the City preceding the matter before this Court should be stricken or disregarded.

As a threshold issue, Convent was not the owner of the Property at the time of the City Council's vote or at the time of its appeal. Supp Add 001; Rec 00018.

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[1] The City continues to maintain that the standard of review—substantial evidence—applied by the Circuit Court, is incorrect. Appellees maintain that the proper standard of review pursuant to Arkansas District Rules Rule 9(f) appeals is *de nova* review as stated in Ark. Code Ann. § 14-56-425.

Thus, Convent does not have standing to pursue its appeal of the condemnation or its claim for declaratory relief. Further, if the Court determines to proceed with the matter, this case concerns two issues: (1) whether the Circuit Court's finding that the City Council's condemnation of Convent's property as a nuisance was supported by substantial evidence, and (2) whether the City Code, that is, Chapter 8, Article 1, Section 7, is unconstitutional on its face. After Convent non-suited its original Complaint for Declaratory Judgment and Injunctive Relief (Add 774; R pt 2: 256) alleging *inter alia,* that Chapter 8, Article 1, Section 7, is unconstitutional on its face, and as applied to Convent, it re-filed an Amended and Reinstated Petition for Declaratory Judgment. Add 779; R pt 3: 74. The sole issue pled in the new filing was Convent's facial challenge to the constitutionality of Chapter 8, Article 1, Section 7. Thus, the City submits that the Court, due to them either not being pled in Convent's new filing, or being moot, should only consider the two above issues.

Although, using the wrong standard of review, the Circuit Court, after considering the evidence, found that there was substantial evidence to support the City Council's decision to condemn the Property as a nuisance. Add 778; R pt 2:257. Further, this Court's prior holdings support the Circuit Court's finding that Chapter 8, Article 1, Section 7 of the Nuisance Abatement Code is constitutional

on its face. Finally, even if the Court should determine that Convent's "as applied" issue is viable, evidence supports that Convent received all of the rights to which he was constitutionally entitled.

ARGUMENT
I.

THRESHOLD ISSUE

Standing

Convent was not the owner of the Property at the time of the City Council's vote or at the time of its appeal. Thus, Convent does not have standing to pursue its appeal of the condemnation or its claim for declaratory relief. Standing is not a waivable affirmative defense noted in Ark. R. Civ. P. 8(c). With respect to the appeal of the condemnation, the City raised standing in its Motion to Dismiss filed on October 30, 2015. Supp Add 001; Rec 00018. With respect to the declaratory judgment action, the City raised standing in its Motion for Summary Judgment. Add 831; R pt 3: 202

Courts treat the question of standing as a threshold issue. *Farm Bureau Ins. Co. of Ark., Inc. v. Running M Farms, Inc.*, 366 Ark. 480, 485, 237 S.W.3d 32, 36 (2006). "It is fundamental in American jurisprudence that in order to bring a lawsuit against an opposing party, one must have standing to do so." *Id.* Otherwise, "[w]ithout standing, a party is not properly before the court to advance a cause of action." *Id.* The same is true for an appeal of a condemnation decision of a city council. *Talley v. City of North Little Rock*, 2009 Ark. 601, 381 S.W.3d 753, 757 (2009). In *Talley*, the Circuit Court found, and the Arkansas Supreme Court agreed, that these decisions are *only* appealable by the property owner at the time notice of

condemnation is given or when the City Council passes the condemnation resolution. *Id.*

At all times relevant, Convent Corporation was not the owner of the Property in question. Rather, the State of Arkansas served as the owner. Pursuant to Ark. Code Ann. § 26-37-101, failure to pay taxes for land for one (1) year following the date taxes are due causes the property to be forfeited to the State. Ark. Code Ann. § 26-37-101(a) (1) (A). "When property is transferred to the State due to unpaid taxes, title vests in the State." *Freeman v. Freeman*, 2013 Ark. App. 693, at *6, 430 S.W.3d 824, 829 (2013) (citing Ark. Code Ann. § 26-37-101(b), (c) (Repl. 2012)). "At that point, the owner's vested interest in the property is interrupted and he loses title." *Id.* (citing *Givens v. Haybar, Inc.*, 95 Ark. App. 164, 234 S.W.3d 896 (2006)).

Convent forfeited the Property to the State in 2010 according to the record before the Court. Add 916; R pt 3: 287. Convent did not pay its delinquent property taxes and regain title to the Property until on or about February 2, 2015. *Id.* The records from the Commissioner of State Lands presented to the Court demonstrate this. It is appropriate and proper for the Court to take judicial notice of matters of public record and reports. The Arkansas Supreme Court "takes judicial notice of the public records and reports of the several departments of the state, when required by law to be so made and filed." *State ex. Rel. Holt v. State Board of Education*, 195

Ark. 222, 112 S.W.2d 18, 20 (1937). *See also Brown v. State*, 375 Ark. 499, 503, 292 S.W.3d 288, 290 (2009); *Cloird v. State*, 349 Ark. 33, 76 S.W.3d 813 (2002). The Commissioner of State Lands on behalf of the State of Arkansas, and by operation of law, owned the Property in question at all times relevant for the actions complained of herein.

While Convent may allege it believed in good faith that it owned the Property at all relevant times, the records from the Commissioner of State Lands show that Convent forfeited the Property to the State in 2010 and the State scheduled the Property to be sold at an auction on April 14, 2015.

Convent did not re-acquire the Property until February 2, 2015, more than two years after the notice of condemnation and nearly two years after the challenged condemnation vote and subsequent appeal. *Id.* Convent was owed no rights or duties, despite its representations of ownership of the Property over the course of this litigation. The City's condemnation decision was not subject to challenge, appeal or constitutional challenge, by Convent. *Talley supra*..

The Court should dismiss Convent's appeal due to lack of standing to bring it. Although the trial court did not address the standing issue with respect to either the declaratory judgment action or the appeal of the condemnation, "[t]his court may affirm a circuit court where it has reached the right decision, albeit for the wrong reason, so long as the issue was raised and a record was developed below.

Arkansas State Bd. of Election Comm'rs v. Pulaski Cty. Election Comm'n, 2014 Ark. 236, 12, 437 S.W.3d 80, 87 (2014).

II

1. The Arkansas Constitution does not require that laws involving property rights be evaluated under the "strict scrutiny" standard, and the Code is constitutional.

A. Standard of Review

It is well-settled law that the standard of review for facial challenges to statutes or ordinances is the rational basis test, that is, whether the legislation is arbitrary or capricious.

Municipal Authority and Presumption of Constitutionality

The Arkansas General Assembly has granted cities of the first class the power to order, remove, and/or raze nuisances to protect the public health, safety, or welfare. Ark. Code Ann. § 14-56-203; *see also* Ark. Code Ann. § 14-54-103(1). Therefore, the North Little Rock Municipal Code, Chapter 8 (the "Code") is enacted by explicit authority of the Arkansas General Assembly. Furthermore, ordering, removing, and/or razing nuisances is a valid exercise of the City's police power in furtherance of the public health and welfare. *See generally Springfield v. City of Little Rock*, 226 Ark. 462, 290 S.W.2d 620 (1956). Additionally, the Legislature has authorized cities of the first class – which the City is—"to prevent, abate, or remove nuisances of every kind, and to declare what are nuisances, and also to punish the

authors or continuers thereof by fine or imprisonment, or both." Ark. Code Ann. § 14-54-104(4) (D).

Indeed, where the power being exercised by a city is effected via a public health and safety ordinance, due to an explicit State legislative enactment, ". . . municipal authorities have a wide discretion in such matters." *Goldman & Co. v. City of North Little Rock*, 220 Ark. 792, 796, 249 S.W.2d 961, 963 (1952); *See also City of Hot Springs v. Curry*, 64 Ark. 152, 41 S.W. 55, 57 (1897). In *Goldman & Co.*, the Court reiterated: "'Every intendment is to be made in favor of the lawfulness of the exercise of municipal power making regulations to promote the public health and safety, and it is not the province of the courts, except in clear cases, to interfere with the exercise of the power reposed by law in municipal corporations for the protection of local rights and the health and welfare of the people of the community.'" 220 Ark. at 797 (quoting *Dobbins v. City of Los Angeles*, 195 Ark. 223, 235-36 (1904)). The Court said: "'there is a presumption in favor of the ordinance, and one who challenges its validity, alleging it to be arbitrary, discriminatory, and unreasonable, should make it so appear by clear and satisfactory evidence.'" *Id.* at 796 (internal citation omitted) (emphasis added). *See Hodel v. Indiana,* 452 U.S. 314, 331–32 (1981).

In *City of Lowell v. M & N Mobile Home Park, Inc.,* this Court held that the legislative branch of a municipal body can enact laws for the protection and welfare

of the people, within constitutional limits, while the judicial branch can set aside legislation that is "arbitrary, capricious, or unreasonable" and cannot take away the legislative branch's discretion. 323 Ark. 332, 336-337, 916 S.W.2d 95, 97 (emphasis supplied, internal citations omitted).

Further, the United States Supreme Court has held that facial challenges are "disfavored" for a variety of reasons, as they often rest on speculation, run contrary to the fundamental principle of judicial restraint, and can prevent laws from embodying the will of the people. *Wash. State Grange v. Wash. State Rep. Party*, 552 U.S. 442, 449-52 (2008).

The Court should only review whether a municipal enactment has a rational basis, i.e., is arbitrary and capricious.

B. The Code is Constitutional

The Code is constitutional unless Convent can show "'no set of circumstances exists under which [the Code] would be valid'" or that it "lacks any 'plainly legitimate sweep . . . .'" *United States v. Stevens*, 559 U.S. 460, 472 (2010) (quoting *United States v. Salerno*, 481 U.S. 739, 745 (1987)). In *Anderson v. State*, the Arkansas Supreme Court ruled:

> It is well settled that there is a presumption of validity attending every consideration of a statute's constitutionality that requires the incompatibility between it and the constitution to be clear before we hold it unconstitutional. Any doubt as to the constitutionality of a statute must be resolved in favor of its constitutionality, and the ***heavy burden*** of demonstrating the unconstitutionality is on the one attacking

> it. If possible, this court will construe a statute so that it is constitutional. Invalidating a statute on its face is, manifestly, strong medicine that has been employed sparingly and only as a last resort.

2017 Ark. 357, *3-4, 533 S.W.3d 64, 66-67 (internal citations omitted) (emphasis added). Convent cannot meet this burden.

1. Due Process

Convent claimed that the Code at issue violates due process (specifically procedural due process). "The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). However, "the right to a hearing does not depend on a demonstration of certain success." *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 544 (1985). That is, a property owner is not entitled to his desired result; he is entitled to notice and an opportunity to be heard. Convent here got both, and the City's Ordinance facially shows that any persons facing condemnation get such as well. This defeats Convent's challenge.

In discussing due process, the United States Supreme Court has been clear: a hearing, "though necessary, need not be elaborate. . ." and the 'formality and procedural requisites for the hearing can vary, depending upon the importance of the interests involved and the nature of the subsequent proceedings." Id. at 545 (emphasis added).

On its face, the City's Code allows anyone facing condemnation to offer rebuttal evidence and, thereafter, a property owner is permitted *via* state law a subsequent Circuit Court appeal where the issue at hand (whether the property is a nuisance) can be challenged *de novo*. Under Supreme Court precedent, the Code is constitutional.

In *Hill v. El Dorado*, from the Western District of Arkansas, the Court there also was presented a facial challenge to a condemnation ordinance of the City of El Dorado. Case No. 13-cv-01089, Document Number 95, Order Granting Summary Judgment, pp. 11-12, 9/29/15, affirmed *Hill v. City of El Dorado*, 686 Fed. Appx. 381 (8th Cir. 2017). There, the Court said:

> "A facial challenge requires a showing that no set of circumstances exists under which the ordinance would be valid, or that the ordinance lacks any plainly legitimate sweep. United States v. Stevens, 559 U.S. 460 (2010). Plaintiffs allege that the ordinances do not give specific instructions on how the City is to carry out condemnations and, therefore, they are unconstitutional.

Hill v. El Dorado, Case No. 13-cv-01089, Document Number 95, Order Granting Summary Judgment, pp. 11-12, 9/29/15. The Court further said:

> The lack of specificity in the ordinances is insufficient to establish that the ordinance is unconstitutional on its face, as there are a myriad of circumstances in which the City could carry out the ordinances that would satisfy constitutional standards. Accordingly, Plaintiffs' facial challenge to any ordinance is without merit and should be dismissed.

Id.

So, given the above-noted standards and rulings, the question is: are there circumstances under which, on its face, the Code regarding condemnations can satisfy constitutional due process standards? The answer is indisputably: yes. The Code provides for notice that can be effected a number of ways: mail, certified mail, personal service, or publication. Clearly, such can satisfy constitutional standards in many circumstances if not all circumstances.

Are there circumstances under which, on its face, the Code can satisfy constitutional due process standards regarding hearings? Again, the answer is indisputably: yes. The Code says the hearing before the City Council shall include:

> A) A description of the structures; (B) The owner or owners of the structures; (C) Findings that the structures are unfit for human occupancy, or otherwise detrimental to the life, property or safety of the public.

Add 24; R. 30. Nothing on the Code's face precludes rebuttal evidence from a property owner. Nothing on the Code's face precludes a property owner from questioning the City's evidence supporting condemnation. There are, therefore, a "myriad of circumstances in which the City could carry out the ordinances that would satisfy constitutional standards." *Hill v. El Dorado*, *supra*. The City does not fail to give an appropriate hearing for condemnations, but that is not the question in a facial challenge unless the

Ordinance on its face would preclude the type of hearing Convent apparently desired. What Convent really wanted was the City not to condemn the Property. Due process, however, does not entitle Convent to a particular result. "The right to a hearing does not depend on a demonstration of certain success." *Cleveland Bd. of Educ. V. Loudermill supra.* Here, due process entitles someone to appear before the City Council and make whatever showing he or she wishes to make to rebut the evidence that condemnation is appropriate. On its face, the Ordinance provides for such, that is, proper due process.

Furthermore, State law allows for an appeal to Circuit Court to challenge a condemnation. *Rosse v. City of Jonesboro*, 2016 Ark. App. 580, 2016 WL 6994814 (Nov. 30, 2016). Such is another opportunity for a property owner to challenge the City's determination a structure is a nuisance and provides an additional layer of due process. Additionally, our Supreme Court has already held that "'[w]here a property owner is given written notice to abate a hazard on his property and has been given an opportunity to appear before the proper municipal body considering condemnation of the property, no due process violation occurs when the municipality abates the nuisance pursuant to the condemnation notice.'" *Ingram v. City of Pine Bluff*, 355 Ark. 129, 136, 133 S.W.3d 382, 386 (2003) (quoting *Samuels v. Meriwether*, 94

F.3d 1163, 1166-67 (8th Cir. 1996)). Therefore, Convent's claim that the Code does not allow rehabilitation is irrelevant and meritless. The Code provided Convent, and anyone else maintaining a nuisance structure, due process and Convent's claim that the Code is unconstitutional on its face, fails.

2. Bill of Attainder

Convent also claims that the City's Code constitutes an unconstitutional Bill of Attainder. Add 782; R pt. 3: 77. An unconstitutional bill of attainder is a legislative act, no matter what the form, that applies "either to named individuals or to easily ascertainable members of a group in such a way as to inflict punishment on them without a judicial trial . . . ." *United States v. Lovett*, 328 U.S. 303, 315 (1946). However, Convent bases this allegation on its continued and incorrect assertion that the Code is facially invalid and fails to provide due process prior to condemnation and razing of a nuisance structure. The City has addressed that argument at length above and Convent's "bill of attainder" claim fails for the same reason. The Code provides more than sufficient due process and on its face; it is not unconstitutional in all of its applications.

Further, the meaning Convent ascribes to the "bill of attainder" clause was never intended. As the United States Supreme Court said:

> [E]very person or group made subject to legislation which he or it finds burdensome may subjectively feel, and can complain, that he or it is being subjected to unwarranted punishment. United States v. Lovett, supra, 328 U.S., at 324, 66 S.Ct., at 1083 (Frankfurter, J., concurring).

> However expansive the prohibition against bills of attainder, it surely was not intended to serve as a variant of the equal protection doctrine, invalidating every Act of Congress or the States that legislatively burdens some persons or groups but not all other plausible individuals. In short, while the Bill of Attainder Clause serves as an important 'bulwark against tyranny.' United States v. Brown, 381 U.S., at 443, 85 S. Ct., at 1712, it does not do so by limiting only benefits, or not legislating at all. Congress to the choice of legislating for the universe, or legislating at all. *Nixon v. Administrator of General Services*, 433

U.S. 425, 471 (1977).

The Code does not legislatively punish Convent or an identifiable group at all. It is a legitimate legislative enactment designed to protect the public health, safety, and welfare of the inhabitants of the City from, *inter alia*, nuisances. The Code prohibits any property owner from maintaining a nuisance. It allows for condemnation where a nuisance exists, after notice and a hearing. In addition, a person may be ticketed and tried in state district court, as permitted by State law. A district court trial also provides due process, and likewise, permits an appeal from a conviction in district court. Calling the Code a "bill of attainder" is, at best for Convent, exaggerated.

3. <u>Vagueness</u>

In *Abraham v. Beck*, the Arkansas Supreme Court said:

> It is well settled that a law is unconstitutionally vague under due-process standards if it does not give a person of ordinary intelligence fair notice of what is prohibited, and it is so vague and standardless that it allows for arbitrary and discriminatory enforcement.

2015 Ark. 80, *13. Again, the Court there ruled that a law must be "'impermissibly vague in all of its applications'" to be rendered invalid facially. *Id*. The Court further said:

> The subject matter of the challenged law also determines how stringently the vagueness test will be applied. For instance, if the challenged law infringes upon a fundamental right, such as liberty or free speech, a more stringent vagueness test is applied.

Id.

Here, the Code involves important public interests regarding the protection of the public health and welfare, and does not infringe upon the fundamental right of any person or entity. Convent cannot show that the Code is impermissibly vague "in all of its applications."

The Code defines the "hearing" and what it entails. The Code says, regarding the hearing:

> . . . a public hearing that shall include:
> (A) A description of the structures; (B) The owner or owners of the structures; (C) Findings that the structures are unfit for human occupancy, or otherwise detrimental to the life, property or safety of the public.

Add 24; R 30. The hearing, as defined, involves the City Council's determination that a structure is "unfit for human occupancy, or otherwise detrimental to the life, property or safety of the public." The Property was both. These terms give persons of ordinary intelligence fair notice about what a public hearing before the City Council regarding an alleged nuisance property will entail and further what the Code

prohibits. *See Iowa Drying & Processing, LLC v. The City of Sibley, Iowa*, 2019 WL 2357066, ___F.Supp.3d___ (N.D. Iowa June 4, 2019).

The Court in *City of Sibley* rejected a vagueness challenge against a City Odor Ordinance that prohibited an entity from emitting odors that were "offensive" and "injurious or dangerous to the health, comfort, or property of individuals or the public." *Id.* at *14. The Federal District Court found the Ordinance was not unconstitutionally vague on its face because those terms were commonly understood and effectively prohibited "public nuisances," the definition of which was also commonly understood. The Court there also held that plaintiff's "arbitrary enforcement" argument failed as against the language in the Ordinance for the same reason, that is, because the exercise of some discretion in enforcement does not make a statute vague. *Id.* at *16-18.

The language used in the Code is not void for vagueness. Like the *Sibley* case, it is clear that the terms used—"unfit for human occupancy" and "otherwise detrimental to the life, property, or safety of the public"— are not unconstitutionally vague in all of their applications and have a plainly legitimate sweep. For instance, a structure with a caved-in roof is, universally, unfit for human occupancy (whether it is a residential or commercial structure), and detrimental to life, property and the safety of the public. That is, one of a myriad of situations in which the definition of "public hearing" at issue in this case is clearly understandable, valid, and not vague.

Thus, under *Abraham*'s clear rule, the Code on its face is not unconstitutionally vague. For the same reason, the Code has a plainly legitimate sweep, which prohibits persons from maintaining nuisances. Finally, because the Code's terms are clear, any alleged discretion in enforcement is not unconstitutional.

Convent's shift to request the Court to look beyond the language of the Code and look at meeting agendas or discovery responses should not be considered. Reviewing the text of the Code is the proper way to analyze a facial challenge to the Code. "A facial challenge is [generally a constitutional] attack on a statute itself as opposed to a particular application." *City of Los Angeles v. Patel,* 135 S. Ct. 2443, 2449 (2015). In other words, "[a] facial attack tests a law's constitutionality based on its text alone and does not consider the facts or circumstances of a particular case." *United States v. Marcavage,* 609 F.3d 264 (3rd Cir. 2010). On its face, the Code is not vague regarding the hearings held for condemnations.

Convent next argues that the "notice" provisions of the Code are too vague. Convent states: "the code does not specify exactly what notices are required to condemn structures." Convent's argument lacks merit given the Code's clarity about notice. *Any* notice regarding a nuisance determination by an administrative official or a condemnation proceeding is effected *via* the Code, subsection 1.6.2, as the Code makes clear. The Code section Convent complains about, that is, Section 1.7, specifically states: "Notice will be provided by the method described in subsection

1.6.2." Add 275-277; R 337-339. The City has already argued herein why such notice found in subsection 1.6.2 is constitutionally valid.

Facially, the Code is constitutional under the appropriate legal standards governing such challenges. Thus, the Court should affirm the dismissal of Convent's Amended Declaratory Judgment Complaint.

In sum, the standard of review of a facial challenge to the Code is the rational basis test, that is, whether the legislation is arbitrary or capricious. The Court should find the Code to be constitutional on its face, in applying this standard of review.

2. The proper standard of review of the administrative action taken by the City Council is trial *de novo* as provided in Ark. Code Ann. § 14-56-425; the record in this case does contain substantial evidence to support the City Council's condemnation of Convent's property and the trial court's decision upholding the condemnation.

a. Standard of Review in Rule 9 Appeal

Convent has insisted over the years of this litigation that the standard of review for its appeal of the City Council's condemnation of its property is the review of the record as to whether the record provides substantial evidence to support the City Council's condemnation action. The City objected, without success.

The law is clear that the standard of review for an appeal of a condemnation is governed by Ark. Code Ann. 14-56-425, which mandates trial *de novo*. Dating back to 2003, this Court has held that review of condemnation actions is governed

by Ark. Dist. Ct. R. 9 *via* Ark. Code Ann. 14-56-425. *Ingram v. City of Pine Bluff* at 134. See also, *Talley v. City of North Little Rock supra* (2009).

The Circuit Court's reliance on *Clark v. Pine Bluff Civ. Serv. Comm'n,* 353 Ark. 810, 120 S.W.3d 541 (2003) is misplaced. *Clark* was a civil service commission employment matter, to which Section 14-56-425 had no relevance. Six months after the *Clark* decision this Court stated very plainly that "Rule 9 applies to city council and planning commission resolutions *via* Ark. Code Ann. § 14-56-425 (Repl 1998) . . ." *Ingram* at 134. The application of Section 14-56-425 to Convent's appeal could not be clearer. Convent's reliance on *Mt. Pure, LLC v. Little Rock Wastewater Util.,* 2011 Ark. 258, 383 S.W.3d 347 and *Clark,* or any of the cases cited by Convent in its support of its position that Section 14-56-425 does not apply to its appeal, is wrong.

b. Substantial evidence supports the City Council's action condemning Convent's property.

Despite using the wrong standard of review, the Circuit Court reviewed the record on the merits and found that the City Council's action to condemn Convent's property as a nuisance is supported by substantial evidence, and is not arbitrary or capricious. The facts support the Circuit Court's decision, and its ruling should be affirmed.

The City Council condemned Convent's property. Add 36; R 42. Convent timely appealed the City Council's condemnation decision pursuant to Arkansas

District Court Rule 9(f), on March 27, 2013. Add 34; R 40. In Convent's Rule 9(f) Notice of Appeal, the sole, appealable issue was the City Council's decision declaring Convent's property to be a nuisance and condemning the property. *Id.*

Convent claims that there was not substantial evidence to support the decision by the City Council finding Convent's property to be a nuisance, and condemning it. Yet, it is undisputed that at the City Council meeting, Convent, through counsel, made several admissions regarding the condition of its property. The record shows that Convent's counsel admitted to the City Council that: (1) people had broken into the property; (2) people had stolen copper wiring from the property; (3) people had fallen through the ceilings on the property; (4) Convent had no plans for use of the building; and (5) Convent was not even aware of the state of the property prior to the notice of condemnation. AB 1-5. During the meeting, the City Council members commented on the condition of the Property. AB 3-4. The Neighborhood Association had complained to Alderman Linda Robinson about the structure being neglected and in disrepair for a period of time, and the Association indicated to her that it was concerned that vagrants and homeless people had been using it. AB 3. Alderman Maurice Taylor stated that he drove by the Property quite often and "it has been a mess for a while." AB 4. Although, the Circuit Court excluded the photographs, which were a part of the record, obviously, it did not require them to

determine that there was substantial evidence to support the City Council's condemnation action. Supp Add 0023; Rec 00094

Further, in response to Convent's discovery request, City Code Enforcement Officer McHenry noted, in pertinent part:

> Upon entering the premises, we announced our presence as Code Enforcement Officers in the event that there were vagrants inside because we suspected they may be present due to the substantial holes in and on top of the building and because of complaints from the Neighborhood Association. . . .We documented the violations by photograph. We noted collapsing ceilings ... the structure was full of water from defective roof material and from multiple holes in the roof;] ... the ceiling was damaged throughout the structure... mold and mildew throughout the structure... collapsing ceiling joints.... it appeared the structure had been vandalized . . . The structure appeared to have sustained fire damage because of charred rooms, wood, and sheet rock. ... the floors were extremely weak and failing. There were also holes in the floors. The ceiling, walls, and floors were all collapsing throughout the second floor. We noted a rodent infestation throughout the building....

Add 248-249; R 310-311.

The evidence presented to the City Council and to the trial court established that Convent's property was a danger to the community and that people could be hurt. AB 1. It suffices to say the Property was an unsanitary building injurious to the public health and welfare of the citizens of the City and City Council exercised the state-delegated authority to exercise condemnation to protect the public health and welfare from the nuisance Convent created.

The Court defines substantial evidence as evidence of a sufficient force and character that it will compel a conclusion one way or another; it must force the mind beyond mere suspicion or conjecture." *Talley v. City of North Little Rock* at *6. Even without the excluded photographs, the undisputed evidence set forth in the record on appeal, under the standard of review applied by the Circuit Court compelled the Circuit Court to find Convent's property to be a nuisance. There was substantial evidence to support the City Council's decision, and the decision was neither arbitrary nor capricious. Add 774; 1: R 257.

c. The City had no duty to provide findings of fact and conclusions of law.

Convent cites no relevant cases supporting its assertion that the City Council has a duty to provide "findings of fact and conclusions of law" in the consideration of whether a property should be condemned as a nuisance. Arg 4. The City Council is under no legal compulsion to adhere to the procedures described by Convent and which are required for administrative agencies under the state's Administrative Procedures Act ("APA").[1] The APA does not apply to municipal bodies. *Mt. Pure, LLC*, 2011 Ark. 258 at *6, 383 S.W.3d at 352-53.

All of the case law cited by Convent in support of its argument that the City Council had a duty to provide findings of fact and conclusions of law or to give the

[1] Administrative Procedures Act, Ark. Code Ann. § 25-15-212-213.

property owner an opportunity to examine or cross-examine witnesses (*Bryant v. Ark. Pub. Serv. Comm'n,* 45 Ark. App. 56, 871 S.W.2d 414 (1994); *Arkansas Appraiser Licensing v. Quast,* 2010 Ark. App. 511, 6 (2010); *Ark. State Bd. Of Chiropractic Examiners v. Currie,* 2013 Ark. App. 612 (Ark. App. 2013)) involved state administrative agencies governed by the APA and have no relevance to this case.

The record in this case is not "sparse." Arg. 3. Except for the excluded photographs, the record contains the transcript of the City Council meeting, and the admissions of Convent, through its attorney. AB 1-5. The Circuit Court in its review of the record on the merits found the record adequate to compel it to find that there was substantial evidence to support the City Council's decision to condemn the Property. The Court should affirm the Circuit Court's decision on the merits.

c. **The Circuit Court used the proper standard of review in granting summary judgment to City in facial challenge to the Code.**

Earlier in its Brief, the City addressed the standard of review in a facial challenge to the Code, and sees no reason to repeat that argument, here. Arg. 4-16.

3. Whether Convent was required to exhaust its appeal administrative remedy pursuant to District Court Rule 9 prior to asserting its constitutional claims is moot.

The issue of whether the Circuit Court's determination that Convent was required to exhaust its appeal administrative remedy pursuant to District Court Rule

prior to asserting its constitutional claims is moot. "As a general rule, the appellate courts of this state will not review issues that are moot." *Allison v. Lee County Election Com'n,* 359 Ark. 388, 198 S.W.3d 113, 114 (2004) citing *Cotten v. Fooks,* 346 Ark. 130, 55 S.W.3d 290 (2001). To do so would be to render advisory opinions, which we will not do. *Id.* Generally, a case becomes moot when any judgment rendered would have no practical legal effect upon a then-existing legal controversy. *Id.*

From the time Convent appealed the City Council's condemnation action against the Property in 2013, Convent sought collaterally to attack the Code as being facially unconstitutional, and as-applied, alleging denial of procedural due process. Add 1; R 7. The Circuit Court determined that it lacked subject matter jurisdiction because Convent had not exhausted its administrative remedies pursuant to Rule 9 *via* Ark. Code Ann. § 14-56-425, that is, it had not completed its appeal of whether the Property was a nuisance as determined by the City. Add. 686; R pt 2: 94.

After 4 years of litigation, the Circuit Court took up Convent's appeal in 2017, and determined that there was substantial evidence supporting the City Council's condemnation action against the Property. Add 774; R pt 2: 256. The decision in Convent's appeal of the condemnation exhausted Convent's administrative remedies. In 2017, after the appeal of the condemnation was completed, the Circuit Court took up Convent's Amended and Reinstated Complaint for Declaratory

Judgment. Convent voluntarily non-suited Convent's original Complaint for Declaratory Judgment and Injunctive Relief in which it challenged the Code facially, and as-applied. Add 774; R pt 2: 257. In 2018, Convent filed its Amended and Reinstated Petition for Declaratory Judgment with its sole claim being that the Code was unconstitutional on its face. Add. 779; R pt 3: 74. The City filed a Motion to Dismiss or for Summary Judgment requesting dismissal or summary judgment as a matter of law. Add 790; R pt. 3: 88. Convent filed a Counter-Motion for Summary Judgment. Add 1129; R pt 3: 506. The Court denied Convent's countermotion for summary judgment and granted the City's motion for summary judgment. Add 1166; R. pt.3: 543. There remains no controversy regarding the exhaustion of administrative remedies – Convent exhausted its administrative remedies, and the Court heard and ruled on Convent's constitutional claim.

Because this issue is no longer a justiciable controversy, and any opinion rendered would have no practical legal effect upon this case, the Court should consider this issue, moot.

4. Convent's assertions that the Circuit Court held that a Rule 9 appeal is merely an extension of the City's administrative procedure and, thereby, a violation of the separation of powers doctrine in Article 4, Section 2 of the Arkansas Constitution, is meritless.

The City searched the voluminous record in this case for any holding by the Circuit Court stating that "a Rule 9 appeal is merely an extension of the City's administrative procedure", and has been unable to find such a statement by the

Circuit Court either in a written finding or in hearing transcripts. Convent, curiously, asserts that the Circuit Court held such, but fails to cite any Order by the Circuit Court containing such a holding. Arg 9.

Just as this Court has ruled on numerous occasions that it will not consider an issue if the appellant has failed to cite any convincing legal authority in support of its argument, so too, the Court should not consider an issue that asserts a holding by a Circuit Court that is not cited to in the record and cannot be found by the appellee in the record. *Craft v. City of Fort Smith,* 335 Ark. 417, 984 S.W.2d 22 (1998); *Porter v. Harshfield,* 329 Ark. 130, 948 S.W.2d 83 (1997); *Miller v. State,328* Ark. 121,942 S.W.2d 825 (1997). The City should not be forced to engage in a hunting expedition to locate an alleged holding by the Circuit Court on which an appeal is taken. The City can only assume that if such a holding existed, Convent would have cited to it in its Brief.

Notwithstanding the City's stated positon that this issue should not be considered by the Court, the City submits that the final decision of the City Council to declare Convent's property a nuisance is an administrative decision, that is, the City Council was applying legislation already passed, not creating legislation. In *City of Ft. Smith v. McCutchen,* this Court held that "a city council's action on its zoning regulations was properly reviewed de novo by the circuit court where the council's action was not an enactment, but an application of its

regulations." 372 Ark. 541, 279 S.W.3d 78 (2008) citing *City of Jonesboro v. Vuncannon*, 310 Ark. 366, 837 S.W.2d 286 (1992). *See also Goodall v. Williams,* 271 Ark. 354, 609 S.W.2d 25 (1980).

The City Council applied the Code in condemning Convent's property. An appeal of a condemnation decision by a municipal governing body pursuant to Ark Code Ann. § 14-56-425 is not a delegation of a city's authority, nor does judicial review of a city's application of its nuisance abatement law encroach on, or exercise the powers of the city, as argued by Convent. Clearly, there was no encroachment or usurpation of the City's legislative authority in the present case because the Circuit Court was reviewing the City Council's application of an existing law. There is absolutely no basis for Convent's argument that a Rule 9 appeal violates the separation of powers.

The Court should not consider this issue for the reasons stated, but if it does, the Court should deny Convent's claim of a violation of separation of powers.

5. Whether Exhaustion of administrative remedies is required prior to bringing certain claims pursuant to 42 U.S.C § 1983 is moot.

The issue of whether exhaustion of administrative remedies is required prior to bringing claims pursuant to 42 U.S.C. §1983 or the Arkansas Civil Rights Act is moot for the same reasons presented to the Court in Convent's Issue 3 at Arg 21-23. Additionally, the Court should not consider this issue because Convent, in its Amended and Reinstated Petition for Declaratory Judgment did not raise any

claims pursuant to 42 U.S.C. § 1983. Add 779; R pt 3: 74. Convent's sole claim in its Amended and Reinstated Petition for Declaratory Judgment is a facial challenge to the Code. The Circuit Court addressed the constitutional challenge brought by Convent, and rendered its decision in the denial of its counter motion for summary judgment, and the granting of the City's motion for summary judgment. Any opinion issued by the Court on this issue would be purely advisory having no practical effect on the present case. *See Allison, supra.*

6. Convent was provided adequate notice, a meaningful hearing before the City Council, and an opportunity to repair the Property prior to and after the City's decision to condemn the Property.

Convent, in its Amended and Reinstated Petition for Declaratory Judgment raised solely a facial challenge to the Code. Add 779; R pt 3: 74. The Court's review of Convent's Amended and Reinstated Petition will show that Convent made only a facial challenge, and the City so stated in its argument to Circuit Court on motions for summary judgment. AB 39. The Circuit Court did not take up its procedural due process claims in Convent's appeal of the City's condemnation action. Add 778; R pt 2: 257. With Convent's voluntary non-suit of its original Verified Complaint, the Circuit Court dismissed it, without prejudice, and Convent was free to refile its Complaint in accordance with the Arkansas Rules of Civil Procedure, which it did. *See* Ark. R. Civ. P 41(a); Add 774; R pt 2: 256. Convent did not raise a claim

challenging the application of the Code to the condemnation action against the Property, specifically.

Thus, Convent's specific issue regarding whether it received adequate notice, a meaningful hearing before the City Council, and an opportunity to repair the property should not be considered by the Court.

Assuming *arguendo,* the Court considers the issue, based on the evidence and law, Convent's claims have no basis.

a. Convent received adequate notice.

The City made its determination to condemn the Property after posting and serving on Convent a Notice of Public Nuisance or "red-tagging" the Property by the City's Code Enforcement, which included the date and time the City Council would take up the matter. Add 260; R pt 1: 322. Convent, through counsel, was present at the City Council meeting and the City Council gave him an opportunity to present its position on the determination, which he did.

Under Arkansas law, Convent received all of the "notice" to which it was entitled. In *Samuels v. Meriwether supra*, a property owner was given notice by the City of Hope, Arkansas that his building was unsafe and that he had thirty (30) days to bring the building up to code or else it would be demolished. The property owner did attend the City Council meeting, but claimed that because he did not

receive notice of the decision to destroy the building, he had been denied due process. The court held:

> Where a property owner is given written notice to abate a hazard on his property and has been given an opportunity to appear before the proper municipal body considering condemnation of the property, no due process violation occurs when the municipality abates the nuisance pursuant to the condemnation notice.

Id.

Further, where a plaintiff had notice that "the City intended to condemn the building, there [is] no procedural due process violation." *Id.*at 1167; *see also Mennonite Board of Missions v. Adams*, 462 U.S. 791, 800 (1983) and *Hroch v. City of Omaha* 4 F.3d 693, 696 (8th Cir. 1993). *Samuels v. Meriwether* controls the case at hand. 94 F.3d 1163. *See also Demming v. Housing and Redevelopment Auth.*, 66 F.3d 950, 954 (8th Cir. 1995) (plaintiff given notice and hearing on termination of employment); *Littlefield v. City of Afton*, 785 F.2d 596 (8th Cir. 1986) (applicants for building permit were given due process as they received notice of and attended hearing at which application was denied); *Marrero-Garcia v. Irizarry*, 33 F.3d 117, 124 (1st Cir. 1994) (prior to termination of water service for nonpayment, condominium residents attended meetings with officials where alternatives were discussed, were informed of how to resolve the situation and given opportunities to be heard).

Here, the City put Convent on notice that the Property was in violation of City ordinances, and Convent appeared at the City Council meeting, through counsel. In light of the evidence and the relevant law, Convent's claim of lack of adequate notice must fail.

b. Convent received a hearing at a meaningful time and in a meaningful manner.

The City previously set out the legal support for its argument against Convent's assertions that it did not receive due process. The City sees no need to repeat its arguments, here. *See* Arg 7-11. Suffice it to say, Convent received notice that the Property would be on the City Council agenda on February 25, 2013. Convent appeared, by and through counsel, and at that meeting, Convent's counsel stated his client's position to the City Council about the condition of the Property, and what Convent's plans were regarding abating the condition of the property. AB 1-5.

Convent has repeatedly alluded to the fact that during the City Council meeting no witnesses were called and there was no opportunity to cross-examine witnesses and, thereby, Convent did not have a meaningful hearing. Arg. 5. This Court already has held that "'[w]here a property owner is given written notice to abate a hazard on his property and has been given an opportunity to appear before the proper municipal body considering condemnation of the property, no due process violation occurs when the municipality abates the nuisance pursuant to the

condemnation notice.'" *Ingram v. City of Pine Bluff*, 355 Ark. 129, 136, 133 S.W.3d 382, 386 (2003) (quoting *Samuels v. Meriwether*, 94 F.3d 1163, 1166-67 (8th Cir. 1996)). Convent has not cited one case involving a municipal governing body, such as the City Council, in which the formality and procedural requisites he asserts are mandated.

Convent received a hearing at a meaningful time and in a meaningful manner.

c. The City Council gave Convent an opportunity to repair or demolish the property prior to its consideration of condemnation.

Convent's claim that the City denied Convent the opportunity to rehabilitate the Property is irrelevant but also, not true. Indeed, the City did provide Convent the opportunity to rehabilitate the Property both before and after the condemnation vote. Convent could have elected to rehabilitate the Property before the City took any action, of its own volition, which it should have done in any event. Add 360; R 322. Further, Convent could have, but refused, to enter into a rehabilitation agreement with the City to repair the Property. AB 1-3. Instead, Convent maintained years-long litigation rather than simply (1) not maintaining a nuisance; or (2) agreeing with the City to rehabilitate the Property on a proper schedule. See *Hagen v. Traill County*, 708 F.2d 347, 348 (8th Cir. 1983) (finding no due process violation after property owner was given notice, the opportunity to be heard, but nonetheless still refused to take any actions to abate the nuisance on the property).

In *Samuels, supra*, the Samuels were given 30 days after appearing at a Board meeting, where they "presented their position to the Board," to abate the nuisance on the property. 94 F.3d at 1166-67. The Samuels failed to do that, and the City razed the structure. Here, the City had not razed the structure on the date of Convent's Notice of Appeal in 2013, nor had the structure been razed on the date of its Notice of Appeal in 2020. Convent had years to enter into a rehabilitation agreement with the City and refused to do so. In those years, Convent prosecuted its appeal to Circuit Court in 2017 and failed, all before the City razed the structure in 2020.

Nevertheless, under *Samuels,* the City was not required even to provide the opportunity to rehabilitate the Property. "Due process does not require additional opportunities to abate nuisances or to meet with City officials after the notice and hearing have been provided." *Id.* at 1167 (emphasis added); see also *Trice v. City of Pine Bluff*, 2017 Ark. App. 638, *12-13, 536 S.W.3d 139, 146 and fn.2 (finding no due process violation where the City refused to give a rehabilitation permit because the plaintiff refused to submit plans from an architect and refused to provide an estimated cost of repair of the nuisance properties).

In this case, Convent received more than adequate notice, an opportunity to be heard, and an opportunity to rehabilitate the Property before and after the City

Council determined the Property to be a nuisance, and condemned it. Convent did nothing to comply.

7. The City "red-tagged the Property in accordance with the Code, noticed Convent that the Property was deemed a nuisance, and informed Convent of the time and date of the City Council meeting that would take up the matter; the Property was not seized by the City.

The Court should not consider this issue, for the reasons stated in Issue 6. Moreover, this issue is repetitive in that Convent's claim of lack of "adequate," and here, "reasonable" notice also was addressed above in point 6. *See* Arg 27-29. There is no relevant legal basis for Convent's contention that it was entitled to any more notice than was received.

Further, the Court should note that no "seizure" of the Property by the City occurred. Convent, in its use of the term "seizure," attempts to invoke the Takings Clause of the Arkansas Constitution. *See* Art. 2, §22. Convent's claim that it "could no longer occupy, utilize, or repair the Property is disingenuous. Arg. 15. Unlike the cases Convent cites to support its argument, Convent was not occupying or utilizing the property at the time of the Notice of Public Nuisance, and claimed not to know the condition of the property prior to the Notice of Public Nuisance, which means that it had not been to the Property in years. AB 1. See *City of Little Rock v. Alexander Apartments, LLC*, 2020 Ark. 12, 59 S.W.3d 224 (2020). At all times during the 7 years of litigation, Convent had the opportunity to enter into a rehabilitation plan with the City, or to demolish the structure in order to abate the

nuisance. Prior to the City Council meeting, Convent had an opportunity to abate the condition of the Property, but only wanted to "clean up" the Property, which was unacceptable to the City. Add 162; R. 221.

No one has a fundamental right in maintaining a nuisance, and Convent cannot state a takings claim against its maintenance of a nuisance that was condemned or against the Code, which regards nuisances. See *Lingle v. Chevron U.S.A., Inc.*, 544 U.S. 528, 538 (2005) (noting that takings are compensable under the Takings Clause "except to the extent that 'background principles of nuisance and property law" independently restrict the owner's intended use of the property.") (quoting *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1029-1030 (1992)). Here, the City did not act to demolish the condemned property at the time of condemnation. Indeed, due to the interminable litigation, the Property was not demolished until early 2020, by agreement of the parties; hence, there was no "seizure" or "taking" or "deprivation" of Convent's property interest.

8. The City provided Convent all the notice to which it was entitled under the Code and federal and state law.

For the reasons stated in Issue 6, the Court should not consider this issue. Further, this issue is repetitive, and the City has responded to it in Issue 6.

Assuming *arguendo* the Court does take up this issue, Convent's assertion that the City did not provide it notice of specific violations or rights to appeal prior to condemnation of the Property, must fail.

The Notice of Public Nuisance informed Convent that the Property was in violation of the Code Articles 1 and 5 "for it is an unsafe and vacant structure that is not fit for human habitation." Add 260; R 322.[2] At the City Council meeting, Convent, through its attorney, readily outlined the condition of the Property with particularity. AB 1. Further, the Notice of Public Nuisance apprises Convent of the nature of its violations and the date and time the City Council will address the matter of condemnation. Finally, the Notice of Public Nuisance is a notice that the City is **considering** condemning the Property if it does not abate the condition of the Property. At that time, a decision had not been rendered by the City Council, thus, information related to any appeal process was unnecessary. Convent, clearly, knew it had a right to appeal the decision of the City Council because at the beginning of the meeting its attorney stated that Convent only had 30 days to appeal any decision by the City Council. AB 1.

Convent's contention in this issue is without merit.

9. The City did afford Convent an opportunity to repair its property prior to condemnation, and after condemnation. Convent's property was not "seized" by the City.

For the reasons stated in Issues 6 and 7, the Court should not consider

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[2] Indeed, Convent previously had been notified of the condition of the property in November 2012 by Code Enforcement. Add 242, 245, 254; R. pt. 1: 304, 307, 316.

this issue. Further, Convent raised this issue previously, and the City has responded, respectively, at Arg 30-33.

10. The City provided Convent with a meaningful hearing.

For the reasons stated in Issue 6, the Court should not consider this issue. Further, the City responded at Arg 29-30 to this repetitive issue.

11. The City gave Convent an opportunity to be heard prior to the City Council's decision to condemn its property as a nuisance, and Convent was not entitled to a so-called "pre-deprivation" hearing because there was no Taking of the Property.

For the reasons stated in Issue 6, the Court should not consider this issue. Assuming *arguendo* the Court does consider this issue, Convent was not entitled to a pre-deprivation hearing.

A pre-deprivation hearing is only required where a person is deprived of their property by state action. The City, by condemning the Property, did not deprive Convent of its property. Condemnation of property is not a deprivation of property; razing or removing is. *Pitchford v. City of Earle,* 2007 WL 3256851 (E.D. Ark. 2007, *aff'd,* 320 Fed. Appx. 477 (8th Cir. 2009); *Heidorf v. Town of Northumberland,* 935 F. Supp. 250, 257 (N.D.N.Y 1997). Indeed, "[c]ondemning a dilapidated building does not deprive a citizen of property rights – but destroying the building does." *Id.* Therefore, a "city council is not required to give Plaintiff a hearing before concluding that his property is a nuisance – but Plaintiff is entitled to notice and an opportunity to be heard before the city dispatches bulldozers to his property." *Id.*

The City Council determined in light of the evidence presented to it at the meeting that the Property posed a threat to the public health and welfare of the citizens of the City. Thus, no taking took place, and Convent was not entitled to a pre-deprivation hearing.

12. The City's ordinance is not unconstitutionally vague.

The City has responded to this issue above at Arg 12-16.

13. The City's ordinance is not unconstitutionally vague, and does not provide public officials with too much discretion.

The City has responded to this issue above at Arg 12-16.

14. The City's ordinance does not result in Bills of Attainder and the Resolution regarding Convent's property is not a Bill of Attainder.

The City has responded to Convent's facial challenge to the Code as being a Bill of Attainder above at Arg 11-12. Now, Convent shifts from the Code being a Bill of Attainder to the Resolution finding the Property a nuisance being a Bill of Attainder. Arg 35. A resolution condemning property is not legislation. Arkansas District Court Rule 9 (which only applies to administrative/quasi-judicial actions and not to legislative acts) applied in this case because the City enacted a resolution condemning the Plaintiff's structure. *Ingram v. City of Pine Bluff*, is directly on point. There, the Court held that Rule 9 applied because the Property was condemned by the City per a *resolution*. 355 Ark. 129, 132, 133 S.W.3d 382 (2003). Thus, the resolution in necessarily *Ingram* was not a *legislative* act because Rule 9

does not apply to legislation regarding land-use issues. *See also King's Ranch of Jonesboro v. City of Jonesboro*, 2011 Ark. 123, *3-4, 2011 WL 1177097 (finding that granting or denying a conditional-use permit is a decision reached by applying the facts to the provisions of the existing Ordinance, i.e., it is not legislative). A resolution condemning property is an administrative or quasi-judicial act and, as such, is not *legislation*. The Bill of Attainder Clauses do not apply because they only apply to legislation.

In this case, the City Council applied the facts to the existing Code and passed a resolution that the Property was a nuisance. That is, an administrative or quasi-judicial decision, not a legislative decision. Therefore, the City's decision by resolution necessarily does not contravene either Bill of Attainder Clause. And, in any event, any resolution condemning a nuisance serves many non-punitive purposes and, for that independent reason, could not constitute a "bill of attainder" even if it were legislation, which as a matter of uncontested law it is not. *Ferreira v. Town of East Hampton*, 56 F.Supp.3d 211, 223-24 (E.D.N.Y. 2014) (finding bill of attainder clause only applies to legislation that constitutes the *punitive* confiscation of property and abating nuisances is not punitive) (citing *Nixon*, 433 U.S. at 473-74)).

Convent's citation to *Crain v. City of Mountain Home*, does not help its case. There, the Council passed two *ordinances* specifically regarding the City Attorney,

that is, the Council *legislated* because it made new law. 511 F.2d 726 (8th Cir. 1979); *see PH, LLC v. City of* Conway, 2009 Ark. 504, *7, 344 S.W.3d 660 ("crucial test for determining what is legislative and what is administrative is whether the ordinance is making a new law, or ***executing a law already in existence***.) (*emphasis added)*. The Council's resolutions referred to in this case are purely administrative.

15. Convent's Renewed Motion to Strike Amended Answer and Affirmative Defenses (Add 798; R pt.3, 96; See also Add 1173; R 770) should not have been granted.

Convent filed its Complaint for Declaratory Judgment seeking relief for it alleged constitutional claims simultaneously with its appeal of the City's administrative action. Add 1; R 7. The City removed the case to U.S. District Court, and filed its Answer. Add 381; R 482. Thereafter, the U. S. District court remanded the case to Circuit Court for lack of subject matter jurisdiction. Convent filed a Motion for Judgment on the Pleadings or in the Alternative Motion for Summary Judgment. Add 87; R 185. The City filed its response and included in its response its Answer filed in federal court. Add 375; R 476. The City filed an Amended Answer on June 18, 2014. Add 513; R 620. The City satisfied the pleading requirements for submitting their Amended Answer; thus, Convent's assertion is without merit.

The City is not explicitly required to re-file what they have already filed in the first place. Ark. R. Civ. P. 55(f); *JurisDctionUSA, Inc. v. Loislaw.com, Inc.*, 357

Ark. 403, 183 S.W.3d 560 (2004). Further, it may rely on their federal pleadings. *Id.* And, as the 2004 notes to Ark. R. Civ P. 55 state, if a defendant responds to a complaint in federal court while the case was pending there, Rule 55(f) prohibits entry of judgment by default upon remand and a defendant need not respond **again** in Circuit Court within the grace period contemplated by Ark. R. Civ. P. 12(a)(3) to avoid such a judgment. *See Laguna Village, Inc. v. Laborers International Union*, 672 P.2d 882 (Cal. 1983); *Banks v. Allstate Indemnity Co.*, 757 N.E.2d 776 (Ohio App. 2001) (supporting citations).

The notes to the 2011 amendment to Ark. R. Civ. P. 12 contemplate an extension of 30 days upon remand in which to file a responsive pleading or answer **if no answer or Rule 12 pleading already has been filed**. *See* Ark. R. Civ. P. 12. It is undisputed the City timely filed its Answer, thus it was not required to re-file its answer after remand. The City's inclusion of its Answer as an exhibit placed the Circuit Court on notice that an Answer, as well as a Motion to Dismiss, previously had been filed in response to Convent's complaint in the case. *See e.g. White v. Minyard*, 8 Ark. App. 269, 270-71, 650 S.W.2d 599, 600 (Ark. App. 1983). Nor was the City required to seek leave from the Court to amend that which it had already filed.

Additionally, even if challenged, "[t]his rule vests **broad discretion** in the trial court to permit amendment to pleadings." *Wingfield v.* Page, 278 Ark. 276, 282,

644 S.W.2d 940, 944 (1983) (emphasis added). Furthermore, even assuming *arguendo*, the City was required to request leave of the Court to amend what they've already plead, Convent still fails to demonstrate any prejudice that resulted from the City's Amended Answer, as there was no undue delay or prejudice by submitting its Amended Answer. *Id.*; *Turner v. Stewart*, 330 Ark. 134, 138-39, 952 S.W.2d 156, 158-59 (1997).

The Court should affirm the Circuit Court's decision to deny Convent's motion to strike the City's amended answer.

CONCLUSION

For the reasons discussed above, this Court either should dismiss this appeal for Appellant's lack of standing, or should affirm the Circuit Court's findings that the Property is a nuisance, and that the Code is constitutional on its face, and in its application to Convent Corporation.

Respectfully submitted,

AMY FIELDS
CITY ATTORNEY
CITY OF NORTH LITTLE ROCK

BY: s/s Marie-Bernarde Miller
Marie-Bernarde Miller (84107)
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Attorneys for Appellees

CERTIFICATE OF SERVICE

I, Marie-Bernarde Miller, Deputy City Attorney, hereby certify that I served a copy of the foregoing Appellees' Brief by electronically filing the foregoing with the Clerk of the Court using the AOC/efex system, which shall send notification of such filing to counsel of record listed below, and by mailing a copy *via* first-class U.S. Mail, postage prepaid, to Counsel of Record, and the Honorable Alice Gray, Pulaski County Circuit Judge, as addressed below, on this 22nd day of September, 2020:

Mickey Stevens
Attorney at Law
2615 Prickett Rd., Ste 2
Bryant, AR 72022

Honorable Alice Gray, Circuit Judge
Pulaski County Courthouse
401 West Markham Street, Room 350
Little Rock, AR 72201

/s/ Marie-Bernarde Miller
Marie-Bernarde Miller (84107)

20-216

IN THE SUPREME COURT OF ARKANSAS

CONVENT COPRORATION,
Individually and on Behalf of all
Others Similarly Situated **APPELLANT**

v. **CASE NO. CV-20-216**

City of North Little Rock, Arkansas, a Municipal Corporation,
Joe Smith, Mayor, Individually and in his Official Capacity,
- City Council Members Debi Ross, Beth White, Linda
Robinson, Maurice Taylor, Steve Baxter, Bruce Foutch,'
Murry Witcher, and Charlie Hight each Individually and in
his or her Official Capacity, Tom Wadley, Director,
Code Enforcement Division, Individually and in his Official Capacity,
and Felicia McHenry, Code Enforcement Officer, Individually and
in her Official Capacity. **APPELLEES**

ON APPEAL FROM THE CIRCUIT COURT OF
PULASKI COUNTY, ARKANSAS
THE HONORABLE ALICE GRAY, CIRCUIT JUDGE
NO. 60CV2013-1398

APPELLEES' SUPPLEMENTAL ADDENDUM

CITY OF NORTH LITTLE ROCK
AMY BECKMAN FIELDS, City Attorney

By: Marie-Bernarde Miller (84107)
Deputy City Attorney
116 Main Street, P.O. Box 5757
North Little Rock, Arkansas 72114
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SUPPLEMENTAL ADDENDUM INDEX

Appellees substitute Appellant's Addendum ADD 048-073 with the following photographs.

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60CV-13-1398
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IN THE CIRCUIT COURT OF PULASKI COUNTY
TWELFTH DIVISION

CONVENT COPRORATION **PLAINTIFF**

v. **CASE NO. 60CV-13-1398**

CITY OF NORTH LITTLE ROCK, ARKANSAS, et al. **DEFENDANTS**

MOTION TO DISMISS RULE 9 APPEAL

COMES NOW Defendants (hereinafter "the City"), by and through their attorney, Assistant City Attorney Daniel L. McFadden, and for their Motion to Dismiss Rule 9 Appeal, state:

1. On or about March 27, 2013, Plaintiff filed with this Court its notice of appeal.

2. The City affirmatively pleads that Convent Corporation does not have standing to pursue this appeal.

3. In addition, and/or in the alternative, the City affirmatively pleads the administrative record and admissions by party opponent demonstrate the North Little Rock City Council has a rational basis to condemn the subject property at the time of condemnation.

4. Therefore, for these reasons which are more fully described in the accompanying brief, this appeal is not made by the proper party, is moot, is nevertheless supported by a rational basis, and must be dismissed.

5. In support of this motion, the City relies upon:

   a. the notice of appeal;

   b. the record of the administrative proceedings;

c. Exhibit A in Support of Motion to Dismiss Rule 9 Appeal, Certified Commissioner of State Lands Redemption File for 6615 Highway 70, North Little Rock, AR 72117; and

d. Brief in Support of Motion to Dismiss Rule 9 Appeal.

Wherefore, the City respectfully requests this Court grant the Motion to Dismiss, deny this remaining appeal against it, and for all other just and proper relief to which there is entitlement.

Respectfully submitted,

CITY OF NORTH LITTLE ROCK, ARKANSAS, a Municipal Corporation, JOE SMITH, Mayor, Individually and in his Official Capacity, City Council Members DEBI ROSS, BETH WHITE, LINDA ROBINSON, MAURICE TAYLOR, STEVE BAXTER, BRUCE FOUTCH, MURRY WITCHER, and CHARLIE HIGHT, each Individually and in his or her Official Capacity, TOM WADLEY, Director, Code Enforcement Division, Individually and in his Official Capacity, and FELECIA MCHENRY, Code Enforcement Officer, Individually and in her Official Capacity
Defendants

By: /s/ Daniel L. McFadden, ABA #2011035
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P.O. Box 5757
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CERTIFICATE OF SERVICE

I, Daniel L. McFadden, hereby certify that on this 30th day of October, 2015, I electronically filed the foregoing with the Clerk of the Court using the AOC/eflex system, which shall send notification of such filing to all counsel of record listed below:

Mickey Stevens
720 West Sixth Street
Pine Bluff, AR 71601

/s/ Daniel L. McFadden, ABA #2011035

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IN THE CIRCUIT COURT OF PULASKI COUNTY
TWELFTH DIVISION

CONVENT COPRORATION **PLAINTIFF**

v. **CASE NO. 60CV-13-1398**

CITY OF NORTH LITTLE ROCK, ARKANSAS, et al. **DEFENDANTS**

BRIEF IN SUPPORT OF MOTION TO DISMISS RULE 9 APPEAL

COMES NOW Defendants (hereinafter "the City"), by and through their attorney, Assistant City Attorney Daniel L. McFadden, and for their Brief in Support of Motion to Dismiss Rule 9 Appeal, state:

I. INTRODUCTION

Pursuant to Resolution 8272, the North Little Rock City Council determined property located at 6615 Highway 70 in North Little Rock, Arkansas, to be a nuisance and voted to condemn the nuisance on February 25, 2013. Alleging to be the property owner of the property at 6615 Highway 70, Convent Corporation filed a notice of appeal of Resolution 8272 on or about March 27, 2013. For the reasons stated below, the Court should affirm the decision of the North Little Rock City Council and dismiss the appeal.

II. STANDARD OF REVIEW

A. Judicial notice of matters of public record.

It is appropriate and proper for the Court to take judicial notice of matters of public record and reports of administrative bodies in this matter. The Arkansas Supreme Court has long held that courts may consider certain types of matters to be considered. Indeed, the Arkansas Supreme Court "takes judicial notice of the public records and reports of the several departments of the state, when required by law to be so made and filed." *State ex. Rel. Holt v. State Board of*

Education, 195 Ark. 222, 112 S.W.2d 18, 20 (1937). *See also Brown v. State*, 375 Ark. 499, 503, 292 S.W.3d 288, 290 (2009); *Cloird v. State*, 349 Ark. 33, 76 S.W.3d 813 (2002); *Mid-State Homes, Inc. v. Knight*, 237 Ark. 802, 803, 376 S.W.2d 556, 557 (1964) ("We take judicial notice of record required to be kept by the Secretary of State."); *Public Loan Corp. v. Stanberry*, 224 Ark. 258, 262 n. 2, 272 S.W.2d 694, 697 n. 2 (1954) ("We take judicial notice of public records required to be kept.").

B. Abuse of discretion standard for challenging condemnation actions.

The standard the Court applies to parties challenging decisions of municipal bodies in accordance to Ark. Dist. Ct. R. 9(f) is abuse of discretion. *Mt. Pure, LLC v. Little Rock Wastewater Util.*, 2011 Ark. 258, 383 S.W.3d 347, 353 (2011); *Court Order*, ¶ 8. *See also Little Rock Ry. & Elec. Co. v. Dowell*, 101 Ark. 223, 142 S.W. 165 (1911); *City of Little Rock v. Breeding*, 273 Ark. 437, 619 S.W.2d 664 (1981); *City of Lowell v. M & N Mobile Home Park*, 323 Ark. 332, 916 S.W.2d 95 (1996); *Murphy v. City of West Memphis*, 352 Ark. 315, 101 S.W.3d 221 (2003). However, "[j]udicial review of a legislative enactment is limited to determining whether legislation is arbitrary, capricious, or unreasonable." *Phillips v. Town of Oak Grove*, 333 Ark. 183, 190, 968 S.W.2d 600, 603-04 (1998). "The legislation is not arbitrary if there is *any* reasonable basis for its enactment." *Id. See also Moore v. East Cleveland*, 431 U.S. 494, 498, fn. 6 (1977). There is a presumption that the city council acted reasonably and the burden is on the landowner to show that there could be no reasonable basis. *Breeding*, 273 Ark. 437, 445, 619 S.W.2d 644, 668 (1981). As such, the burden of the party challenging a municipal body's decision is to state facts showing that there is *no* reasonable basis for the city council's decision. *Id.* Therefore, the challenged vote of the North Little Rock City Council by Resolution 8272 is valid so long as there is any reasonable basis for it.

III. ARGUMENT

Convent Corporation was not the rightful owner of the condemned property at the time of the City Council's vote. Nor was it the rightful owner at the time of appeal. Thus, Convent Corporation does not have standing to pursue this appeal. Additionally, or even in the alternative, the City is entitled to dismissal because reasonable bases support the City Council's vote to condemn the property Convent Corporation claims to have owned. Therefore, the City did not act arbitrarily or capriciously in determining the property is a nuisance and condemning the property as such.

A. Convent Corporation has no standing.

Convent Corporation, as the only named plaintiff or appellant in this matter, does not have standing. Courts treat the question of standing as a threshold issue. *Farm Bureau Ins. Co. of Ark., Inc. v. Running M Farms, Inc.*, 366 Ark. 480, 485, 237 S.W.3d 32, 36 (2006). "It is fundamental in American jurisprudence that in order to bring a lawsuit against an opposing party, one must have standing to do so." *Id.* Otherwise, "[w]ithout standing, a party is not properly before the court to advance a cause of action." *Id.* The same is true for an appeal of a condemnation decision of a city council. *Talley v. City of North Little Rock*, 2009 Ark. 601, 381 S.W.3d 753, 757 (2009). In *Talley*, it was acknowledged that resolutions passed by the North Little Rock City Council are appealable orders. *Id.* But, the Circuit Court had found, and the Arkansas Supreme Court agreed, that these decisions are *only* appealable by the property owner, either at the time notice of condemnation is given or when the condemnation resolution is passed. *Id.*

At all times relevant, Convent Corporation was not the owner of the property in question. Rather, the State of Arkansas served as the owner. Pursuant to Ark. Code Ann. § 26-37-101,

failure to pay taxes for land for one (1) year following the date taxes were due causes the property to be forfeited to the State. Ark. Code Ann. § 26-37-101(a)(1)(A). "When property is transferred to the State due to unpaid taxes, title vests in the State." *Freeman v. Freeman*, 2013 Ark. App. 693, at *6, 430 S.W.3d 824, 829 (2013) (citing Ark. Code Ann. § 26-37-101(b) & (c) (Repl. 2012)). "At that point, the owner's vested interest in the property is interrupted and he loses title." *Id.* (citing *Givens v. Haybar, Inc.*, 95 Ark. App. 164, 234 S.W.3d 896 (2006)).

Convent Corporation was delinquent on its property taxes beginning in 2010. *See Exhibits A-1, A-7.* Pursuant to Ark. Code Ann. § 26-37-101(a)(1)(A), the Commissioner of State Lands owned the property beginning on or about October 15, 2010. *Id.* Convent Corporation did not pay its delinquent property taxes until on or about February 5, 2015. *Id.* As such, the Commissioner of State Lands on behalf of the State of Arkansas, and by operation of law, owned the property in question at all times relevant for the actions complained of herein. Indeed, Convent's failure caused it to forfeit the subject property to the Arkansas Commissioner of State Lands. Ark. Code Ann. § 26-37-101. Thus, Convent Corporation did not have standing as the owner of the property at the time of condemnation or for the duration of the appeal up to on or about February 5, 2015, when it did redeem the property as the party who actually owned it. *Freeman*, 2013 Ark. App. *6, 430 S.W.3d at 829.

An accurate timeline can be constructed as follows;

Prior to October 15, 2010	Convent Corporation owns the subject property.
October 15, 2010	Title of subject property transfers to State Land Commissioner on behalf of State of Arkansas for Convent Corporation's failure to pay taxes

	on the subject property.
February 25, 2013	North Little Rock City Council condemns subject property.
March 27, 2013	Convent Corporation through counsel files administrative appeal.
February 5, 2015	Convent Corporation pays delinquent taxes and redeems property.

It cannot be disputed that Convent Corporation failed to pay property taxes on the property at 6615 Highway 70 from 2010 through 2013 and that it was on notice of the consequences of this failure. *See Exhibits A-1, A-7.* However, Convent Corporation has led all parties, and the Court, to believe for the duration of its appeal and litigation that it owns this property. While it may allege that it in good faith believed it owned the property at all times relevant, it bears noting Convent Corporation filed a petition for redemption for the subject property clearly indicating that title was forfeited to the State **in 2010** and was scheduled to be sold by the State at auction on **April 14, 2015**. *See Exhibits A-7, A-1.*

Unbeknownst to the City, Convent lost title to the subject property for failure to pay its taxes years before the subject condemnation – and years after. *Id.* It did not re-acquire the property until February 5, 2015, more than two years after the notice of condemnation and nearly two years after the challenged condemnation vote and subsequent appeal. *Id.* Any duty or rights attendant thereto were owed to the Commissioner of State Lands as owner, not Convent

Corporation, despite the misrepresentations over the course of this appeal and litigation.[1] The City's condemnation decision was not subject to challenge, appeal or constitutional, by Convent Corporation. *Talley v. City of North Little Rock*, 2009 Ark. 601, 381 S.W.3d 753, 756-57 (2009). Nor was it an appealable order by Convent Corporation. *Id.*; *Freeman v. Freeman*, 2013 Ark. App. 693, at *6, 430 S.W.3d 824, 829 (2013). As demonstrated, Convent Corporation does not have standing; this Rule 9 appeal must be dismissed.

B. The City has reasonable bases for the challenged condemnation.

Should the Court disagree on the issue of standing, the City still has a reasonable basis for enacting the challenged condemnation resolution. Pursuant to an abuse of discretion standard, plead by Convent Corporation and acknowledged by the Court, when a condemnation action of a city is challenged the Court is to determine only whether the City acted "arbitrarily, capriciously or unreasonably." *City of Lowell*, 323 Ark. 332, 337, 916 S.W.2d 95, 97; *Breeding*, 273 Ark. 437, 442, 619 S.W.2d 644, 667. It is undisputed at the condemnation hearing that counsel himself for Convent Corporation advised the North Little Rock City Council that (1) people had broken into the property; (2) people had stolen copper wiring from the property; (3) people had fallen through the ceilings on the property; (4) Convent Corporation had no plans for use of the building; and (5) Convent Corporation was not even aware of the state of the property prior to the notice of condemnation. *See Supplement to Record – Video of February 25, 2013, North Little Rock City Council Meeting.* The Arkansas General Assembly has granted cities of the first class the power to order, remove, and/or raze nuisances in favor of the public welfare. Ark. Code Ann. § 14-56-203. Furthermore, ordering, removing, and/or razing nuisances is a valid exercise of the City's police power in furtherance of the public welfare. *See generally*

[1] The City submits it notified the Commissioner of State Lands of the scheduled condemnation. However, as the record indicates, no representative of the Land Commissioner or the State attended the condemnation hearing. Nor has it filed an appeal within the applicable period in accordance to Ark. Dist. Ct. R. 9.

Springfield v. City of Little Rock, 226 Ark. 462, 290 S.W.2d 620 (1956). Convent Corporation's admissions by and through its counsel to the North Little Rock City Council alone establish a rational basis for the City; the City is entitled to summary judgment as a matter of law.

The validity of ordinances and resolutions established by city councils is a matter open to judicial review. *See generally Delony v. Rucker*, 227 Ark. 869, 302 S.W. 2d 287 (1957). However, Article 4 of the Arkansas Constitution expressly prohibits the judiciary's intrusion upon the domain of the legislative branch of government. *Arkansas State Highway Commission v. White Advertising International*, 173 Ark. 364, 367, 620 S.W.2d 280, 281 (1981) (citing *Wenderoth v. City of Fort Smith*, 251 Ark. 342, 472 S.W.2d 74 (1941); *City of Batesville v. Grace*, 251 Ark. 342, 534 S.W.2d 224 (1976)). Consequently, "[t]his is a limited power, and the judiciary, in acting under this limited power, cannot take away the discretion that is constitutionally vested in a city's legislative body." *City of Lowell*, 323 Ark. 332, 337, 916 S.W.2d 95, 97 (citing *Breeding*, 273 Ark. 437, 619 S.W.2d 664)). *See also Reinman v. City of Little Rock*, 237 U.S. 171, 176-77, 35 S.Ct. 511, 513 (1915). "Absent arbitrariness or unreasonableness, [a] local ordinance should stand because the judiciary does not review the wisdom or rightness of legislation." *Johnson v. Sunray Services, Inc.*, 306 Ark. 497, 506, 816 S.W.2d 582, 587 (1991) (citing *Wenderoth*, 251 Ark. 342, 472 S.W.2d 74). *See also West Coast Hotel Co. v. Parrish*, 300 U.S. 379, 397-98, 5 S.Ct. 578, 584-85 (1937).

In *City of Lowell*, the majority held that an enactment of the City Council is not arbitrary "if there [is] ***any*** reasonable basis for its enactment." *Lowell*, 323 Ark. 332, 339, 916 S.W.2d 95, 99 (emphasis added). "It is not constitutionally appropriate for a court to determine the substantive merits." *Id.* at 341. There, the dissenting Justice also noted that a City Council is not required to provide the reasoning for its action. *Id.* at 348 (Jesson, C.J. dissenting).

As stated, the majority in *City of Lowell* held that the city council's action is to be upheld if the Court can find *any* "rational basis for it." *Id. See also Town of Oak Grove*, 33 Ark. 183, 190, 968 S.W.2d 600, 603-04. "[U]nless the city council has acted arbitrarily and unreasonably ... there is a prima facie presumption in favor of their correctness, and the burden is on the complainant to show otherwise." *Lawrence v. Jones*, 228 Ark. 1136, 1141, 313 S.W.2d 228, 231 (1958). As long as the Court can discern any rational (i.e. reasonable) basis, the council's decision should be upheld and it is irrelevant if the reason the Court can discern was relied upon by the City Council. *See generally U.S.R.R. Retirement Bd. v. Fritz*, 449 U.S. 166, 179 (1980). In *Fritz*, the United States Supreme Court, discussing rational basis review in general, said:

> Where, as here, there are plausible reasons for Congress' action, our inquiry is at an end. It is, of course, "constitutionally irrelevant whether this reasoning in fact underlay the legislative decision," because this Court has never insisted that a legislative body articulate its reasons for enacting a statute.

Id. (internal citation omitted). Further, in the context of rational basis review of state statutes, the Arkansas Supreme Court has said that it is "not limited to the rational basis suggested by the parties, rather we have the power to *hypothesize* a rational basis for the legislations." *Weiss v. Geisbauer*, 363 Ark. 508, 514, 215 S.W.3d 628, 632 (2005) (emphasis added) (citing *Medlock v. Lathers*, 311 Ark. 175, 842 S.W.2d 428 (1992), *rehearing denied* (1993); *Streight v. Ragland*, 280 Ark. 206, 655 S.W.2d 459 (1983)).

Cities have the "plenary duty to exercise [their] police power in the interest of the public health and safety of [their] inhabitants." *Skallerup v. City of Hot Springs*, 2009 Ark. 276, 309 S.W.3d 196, 203 (2009) (quoting *Phillips v. Town of Oak Grove*, 33 Ark. 183, 189, 968 S.W.2d 600, 603 (1998) (citing *Springfield v. City of Little Rock*, 226 Ark. 462, 290 S.W.2d 620 (1956)). "The concept of the public welfare is broad and inclusive." *Yarbrough v. Arkansas State*

Highway Commission, 260 Ark. 161, 165, 539 S.W.2d 419, 422 (1976) (quoting *Berman v. Parker*, 348 U.S. 26, 33 (1954)). The exercise of a city's police power "is always justified when it can be said to be in the interest of the public health, public safety, public comfort, and when it is, private rights must yield to public security, under reasonable laws." *Id.* (citing *City of Little Rock v. Smith*, 204 Ark. 692, 695, 163 S.W.2d 705, 707 (1942) (quoting *Beaty v. Humphrey*, 195 Ark. 1008, 115 S.W.2d 559 (1938)).

Municipalities have long been authorized to enact ordinances pursuant to their police power. Ark. Code Ann. § 14-55-102. Statutory law recognizes ordering, razing, and/or removing property deemed to be a nuisance is in the interest of the public welfare. Ark. Code Ann. § 14-56-203. Indeed, "[i]t is within the power of the legislature to determine that the community should be beautiful, as well as healthy, spacious as well as clean, well balanced as well as carefully patrolled." *Yarbrough*, 260 Ark. 161, 165, 539 S.W.2d 419, 422 (quoting *Berman*, 348 U.S. 26, 33)).

Counsel for Convent Corporation advised the North Little Rock City Council (1) that the property in question had been vandalized; (2) its alleged owners were not even aware of the condition of the property; (3) the property had been broken into by multiple people; (4) people had fallen through the ceiling of the property; (5) copper had been stolen; and (6) that the property had been damaged by water. *See Supplement to Record – Video of February 25, 2013, North Little Rock City Council Meeting.* In response, the City exercised its police power in the interests of the public health, safety, and welfare to condemn the property as a nuisance. As previously stated, the State recognizes that votes of condemnation are in the interest of the public welfare. The City lawfully exercised its police power when the City Council, consistent with the powers expressly granted to it by the Arkansas General Assembly, voted in favor of Resolution

8272 to condemn the property. Clearly, in light of preceding law and the admissions Convent Corporation's attorney made to the City Council, the City has a rational basis for the challenged condemnation vote. As such, the City Council did not act arbitrarily or capriciously as a matter of law. As such, the City submits Convent Corporation is estopped from appealing the City's condemnation order because the testimony its attorney provided to the North Little Rock City Council stated the property met the requirements to be condemned. Therefore, for all these reasons this appeal is without merit and supported by rational bases.

Furthermore, the opinions of local residents provide a reasonable basis. Indeed, a city council may consider the opinion of local residents, when they reflect logical and reasonable concerns. *City of Lowell*, 323 Ark. 332, 342-344. In the instant case, concerns of the Meadowpark Neighborhood Association were raised. In particular, the association was concerned of the status of the structure and believed it to be a distraction to the community. *See Supplement to Record – Video of February 25, 2013, North Little Rock City Council Meeting.* Certainly, the views of the local residents living nearby the structure provide a reasonable basis. This rings particularly true in this matter when Covent Corporation altogether admits to the North Little Rock City Council that the property was an attractive nuisance for vandalism, crime, and threats to the public welfare (e.g. people falling through the floor boards). However, as stated, the Court is free to supply any reasonable basis for the City Council's decision from the facts at hand. *See City of Lowell*, 323 Ark. at 340. Altogether, it is clear pursuant to the record that the City Council did not act arbitrarily in making its decision and there are numerous rational bases to support the denial of Convent Corporation's request, notwithstanding Convent Corporation does not have standing.

IV. CONCLUSION

Convent Corporation does not have standing. And, despite this fatal flaw and/or in the alternative, the record demonstrates numerous rational bases to support the City Council's decision to condemn the subject property, most particularly the admissions made by counsel for Convent Corporation. This appeal must be dismissed.

Respectfully submitted,

CITY OF NORTH LITTLE ROCK, ARKANSAS, a Municipal Corporation, JOE SMITH, Mayor, Individually and in his Official Capacity, City Council Members DEBI ROSS, BETH WHITE, LINDA ROBINSON, MAURICE TAYLOR, STEVE BAXTER, BRUCE FOUTCH, MURRY WITCHER, and CHARLIE HIGHT, each Individually and in his or her Official Capacity, TOM WADLEY, Director, Code Enforcement Division, Individually and in his Official Capacity, and FELECIA MCHENRY, Code Enforcement Officer, Individually and in her Official Capacity
Defendants

By: /s/ Daniel L. McFadden, ABA #2011035
Assistant City Attorney
300 Main Street
P.O. Box 5757
North Little Rock, Arkansas 72119
Tel: (501) 975-3755
Fax: (501) 340-5341
Email: dmcfadden@northlittlerock.ar.gov

CERTIFICATE OF SERVICE

I, Daniel L. McFadden, hereby certify that on this 30th day of October, 2015, I electronically filed the foregoing with the Clerk of the Court using the AOC/eflex system, which shall send notification of such filing to all counsel of record listed below:

Mickey Stevens
720 West Sixth Street
Pine Bluff, AR 71601

/s/ Daniel L. McFadden, ABA #2011035

ELECTRONICALLY FILED
Pulaski County Circuit Court
Larry Crane, Circuit/County Clerk
2015-Oct-30 08:31:14
60CV-13-1398
C06D12 : 7 Pages

REDEMPTION DEED NO. 334286

JOHN THURSTON
COMMISSIONER OF STATE LANDS
STATE OF ARKANSAS
Issued under the provisions of Act 151 of 1891,
Act 626 of 1983 and Act 814 of 1987

THE STATE OF ARKANSAS
To All Whom these Presents Shall Come ~ GREETINGS
KNOW YE THAT, WHEREAS The following described lands situated in the County of **PULASKI** in the State of Arkansas, to Wit
Description: SEE ATTACHED

Parcel Number: **23N0150004100** Year Forfeited **29-4 2010** Receipt #: **398103**

were certified to the Commissioner of State Lands, by the County Collector for the non-payment of taxes for the years hereinbelow set forth; and that the taxes, penalties, interest and cost outline below have been paid to the Commissioner of State Lands;

AND WHEREAS **CONVENT CORP**
19 LORIAN DRIVE
LITTLE ROCK, AR 72212

claiming to be the owner(s) of said real property, filed a petition to redeem duly verified according to the law, showing such ownership.

NOW THEREFORE, I, JOHN THURSTON, Commissioner of State Lands within the State of Arkansas, for and in consideration of **$9,089.51** so paid and by virtue of the authority in me vested by law, do hereby release and quitclaim unto the said **CONVENT CORP** and their heirs and assigns forever all right, title and interest the State of Arkansas acquired under any forfeiture, sale or condemnation for taxes.

WITNESS MY HAND AND OFFICIAL SEAL **02/05/2015**

Taxes	2010 - 2013	$6,997.79
ID Taxes		$0.00
Interest		$1,198.62
Penalty		$699.78
County Costs		$24.50
State Costs		$168.82
Total Paid:		$9,089.51

John Thurston
Commissioner of State Lands

kwilliams
Deputy Commissioner of State Lands

Deed Mailed to:

CONVENT CORP
19 LORIAN DRIVE
LITTLE ROCK, AR 72212

Commissioner of State Lands
CERTIFIED COPY

EXHIBIT A1

REDEMPTION DEED NO. 334286

JOHN THURSTON
COMMISSIONER OF STATE LANDS
STATE OF ARKANSAS
Issued under the provisions of Act 151 of 1891,
Act 626 of 1983 and Act 814 of 1987

LEGAL DESCRIPTION ATTACHMENT

County: PULASKI

Parcel #: 23N0150004100 Year Forfeited: 2010 Code: 29-4

Property Description:

6615 HIGHWAY 70 N LITTLE ROCK, AR 72117 PT NW1/4 SE1/4 FROM THE INTERSECTION OF NLN OF HWY 70 WITH TH WLN OF SE RUN E'RLY AL HWY 100' TO POB TH CONT E'RLY AL HWY 100' TH N TO SLN OF CRI&P RY TH W'RLY AL RY TO A PT DIRECTLY N OF POB S TO BG Section: 28 Township: 2N Range: 11W Acreage: 0.5 Lot: Block: City: NORTH LITTLE ROCK Addition: SD: 4

State Capitol Building • 500 Woodlane Street, Suite 109 • Little Rock, Arkansas 72201
501-324-9422 • FAX 501-324-9421

EXHIBIT A2

John Thurston
Commissioner of State Lands
State Of Arkansas

Receipt Only

Receipt Number: 398103

Receipt Date: 2/03/2015

Name: CLAUDE WILLIAM; SKELTON, TTTE
19 LORIAN DR
LITTLE ROCK, AR 72212-2660

Payment Type: Check
Check Number: 1001

Receipt Type: Redemption Payment
COSL User Id: caugustine

Walkin Receipt #: 17970

County	Year	Code	Parcel #	Amount
PULA	2010	29-4	23N0150004100	$9,089.51

Receipt Total: $9,089.51

State Capitol Building • 500 Woodlane Street, Suite 109 • Little Rock, Arkansas 72201
501-324-9422 • FAX 501-324-9421

EXHIBIT A3

Supp Add 0017 Rec 00035

John Thurston
Commissioner of State Lands
State Of Arkansas

Receipt Only

Walk-in Receipt Number: 17970

Receipt Date: 02/02/2015

Name: CLAUDE WILLIAM SKELTON, TTTE
19 LORIAN DR
LITTLE ROCK, AR 72212-2660

Payment Type: Check
Check Number: 1001

Receipt Type: Redemption Payment
COSL User Id: caugustine

County	Year	Code	Parcel Number	Amount
PULA	2010	29-4	23N0150004100	$9,089.51

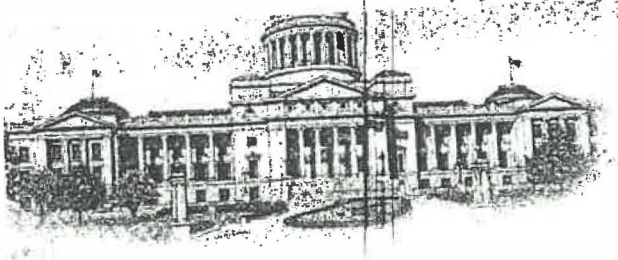
Receipt Total: $9,089.51

State Capitol Building • 500 Woodlane Street, Suite 109 • Little Rock, Arkansas 72201
501-324-9422 • FAX 501-324-9421

EXHIBIT A4

Arkansas Secretary of State

23N01S00041 00



ARKANSAS
SECRETARY OF STATE
Mark Martin

Search Incorporations, Cooperatives, Banks and Insurance Companies

Printer Friendly Version
LLC Member information is now confidential per Act 865 of 2007

Use your browser's back button to return to the Search Results

Begin New Search

For service of process contact the Secretary of State's office.

Corporation Name	CONVENT CORPORATION
Fictitious Names	
Filing #	100101946
Filing Type	For Profit Corporation
Filed under Act	Dom Bus Corp; 958 of 1987
Status	Good Standing
Principal Address	6615 HWY 70 NORTH LITTLE ROCK, AR 72117
Reg. Agent	CLAUDE SKELTON
Agent Address	19 LORIAN DR LITTLE ROCK, AR 72212
Date Filed	02/09/1993
Officers	MICHAEL ROSEN , Incorporator/Organizer CLAUDE SKELTON , President
Foreign Name	N/A
Foreign Address	
State of Origin	N/A

Purchase a Certificate of Good Standing for this Entity

Pay Franchise Tax for this corporation

EXHIBIT A5

Supp Add 0019 Rec 00037

CLAUDE WILLIAM SKELTON TTTE
U/A DTD 01/11/1995
CLAUDE WILLIAM SKELTON REV TR
19 LORIAN DRIVE
LITTLE ROCK, AR 72212-2660

1001
62-15/311

2-02-2015
Date

Pay to the Order of COMMISSIONER OF STATE LANDS $ 9089.51/64

Nine thousand eighty nine + 51/100 Dollars

Security Features Details on Back.

E C

Edward Jones

6241689014

For 23N015000400

⑆031100157⑆ 187813227241" 1001

PETITION TO REDEEM

JOHN THURSTON
COMMISSIONER OF STATE LANDS
STATE OF ARKANSAS
500 Woodlane St., Suite 109, Little Rock, AR 72201
501-683-3053 Fax: 501-324-9421

Sale Date: 04/14/2015
Sale Number:
Parcel Number:
23N0150004100

Date: 01/27/2015 **By:** dryder **Code:** 29-4 **Year Forfeited:** 2010 **County:** PULASKI

According to the records of the Commissioner of State Lands Office **CONVENT CORP** was the owner of the following described real property at the time the same was forfeited and certified to the State of Arkansas for the non-payment of taxes, to wit:

Description: *6615 HIGHWAY 70 N LITTLE ROCK, AR 72117* PT NW1/4 SE1/4 FROM THE INTERSECTION OF NLN OF HWY 70 WITH TH WLN OF SE RUN E'RLY AL HWY 100' TO POB TH CONT E'RLY AL HWY 100' TH N TO SLN OF CRI&P RY TH W'RLY AL RY TO A PT DIRECTLY N OF POB S TO BG Section: 28 Township: 2N Range: 11W Acreage: 0.5 Lot: Block: City: NORTH LITTLE ROCK Addition: SD: 4

These amounts are valid for 30 days, unless the parcel has been sold or additional fees have accrued

SEE OTHER SIDE FOR INSTRUCTIONS
THIS SECTION TO BE COMPLETED BY THE PETITIONER

ALL PETITIONERS MUST COMPLETE ALL OF THIS FORM. INCOMPLETE PETITIONS WILL BE RETURNED

[signature]

Name in which redemption deed should be issued.

[signature]

If the owner is different than the name printed on this form, send copies of recorded deeds showing how the title transferred from the name listed on this form to the new owner.

Tax statement will be mailed here:

c/o Claude Skelton
19 Lorian Drive
Little Rock AR 72212

Address: Redemption Deed will be mailed here:

TAXES	**2010 - 2013**	**$6,997.79**
Interest		**$1,198.62**
Penalty		**$699.78**
County Costs		**$4.50**
Recording Fee		**$20.00**
State Costs		**$168.82**

RECEIVED
FEB 2 2015
Commissioner of State Lands

Total Due	**$9,089.51**

All payments made within 60 days PRIOR TO the sale date or during the Redemption Period following the sale date must be CASH, MONEY ORDER OR CASHIERS CHECK.

I state that the foregoing information is true and correct to the best of my knowledge and that I am the owner of the above described property, or I am the owner's authorized agent to redeem the above-described property.

Record Owner Signature: [signature]

Authorized Agent Signature:

Printed Name

Company Name

Subscribed and sworn before me this 2nd *day of* February, 20 15

[signature: Nancy W. Branson]
Signature of Notary Public
My commission expires Aug. 18, 2024

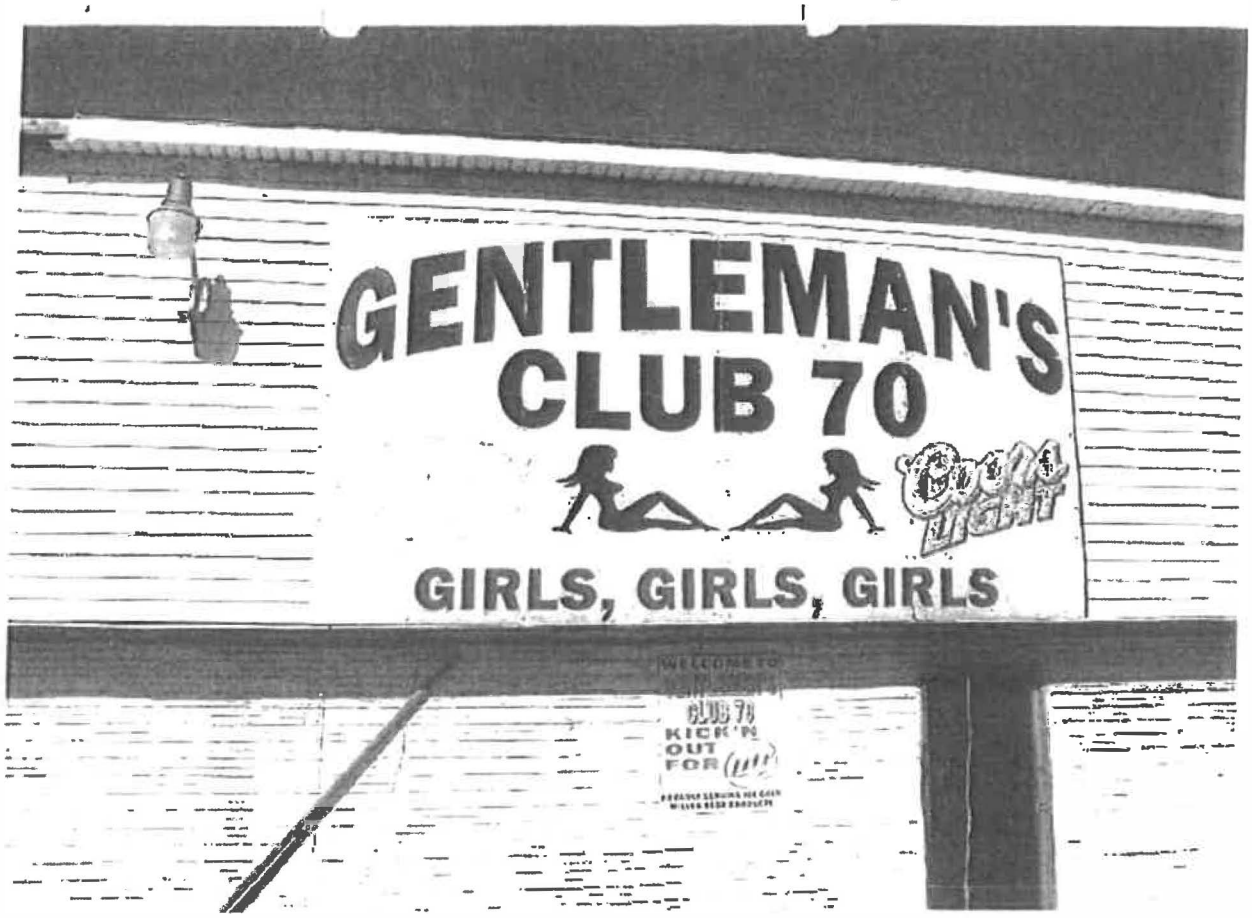
NANCY W. BRANSON
PULASKI COUNTY
NOTARY PUBLIC - ARKANSAS
My Commission Expires August 18, 2024
Commission No. 12400018

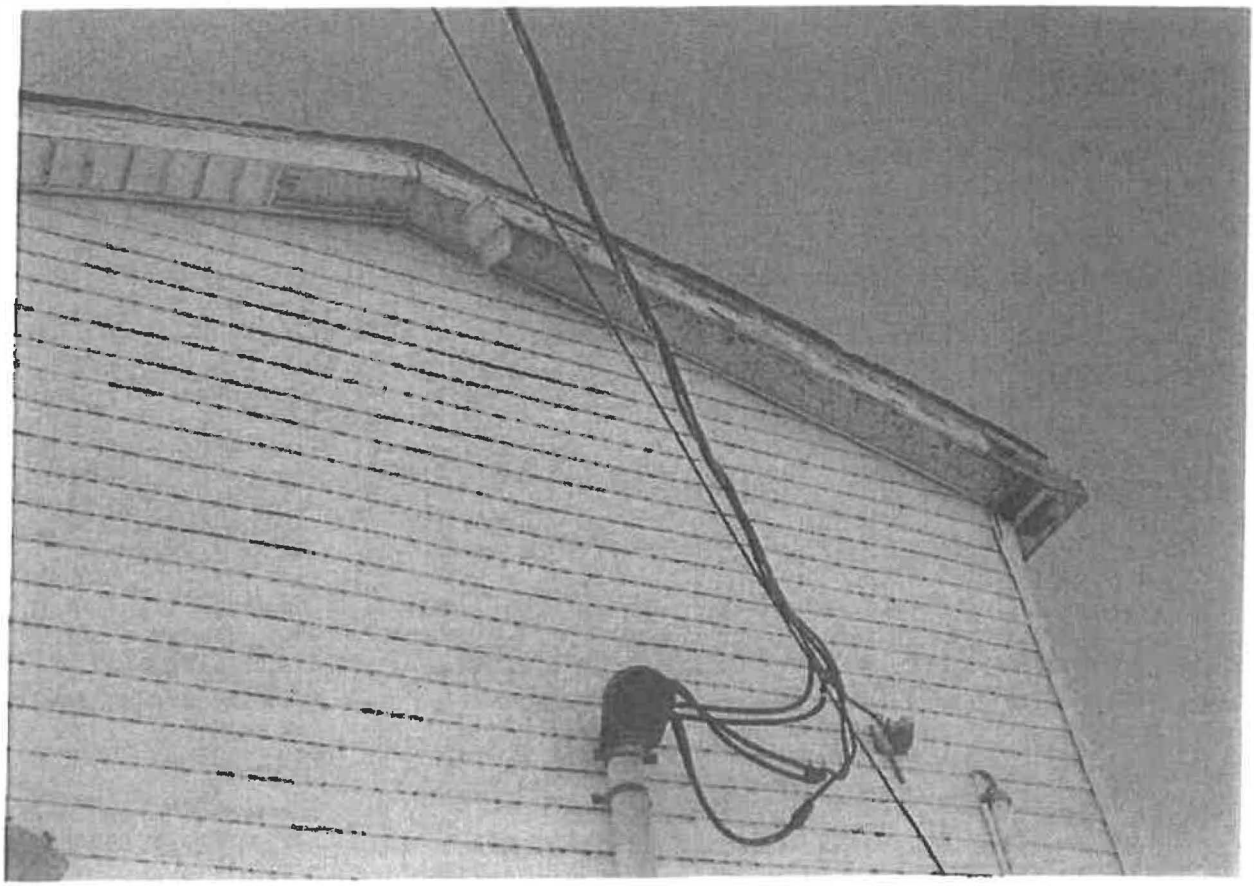
Mail to:

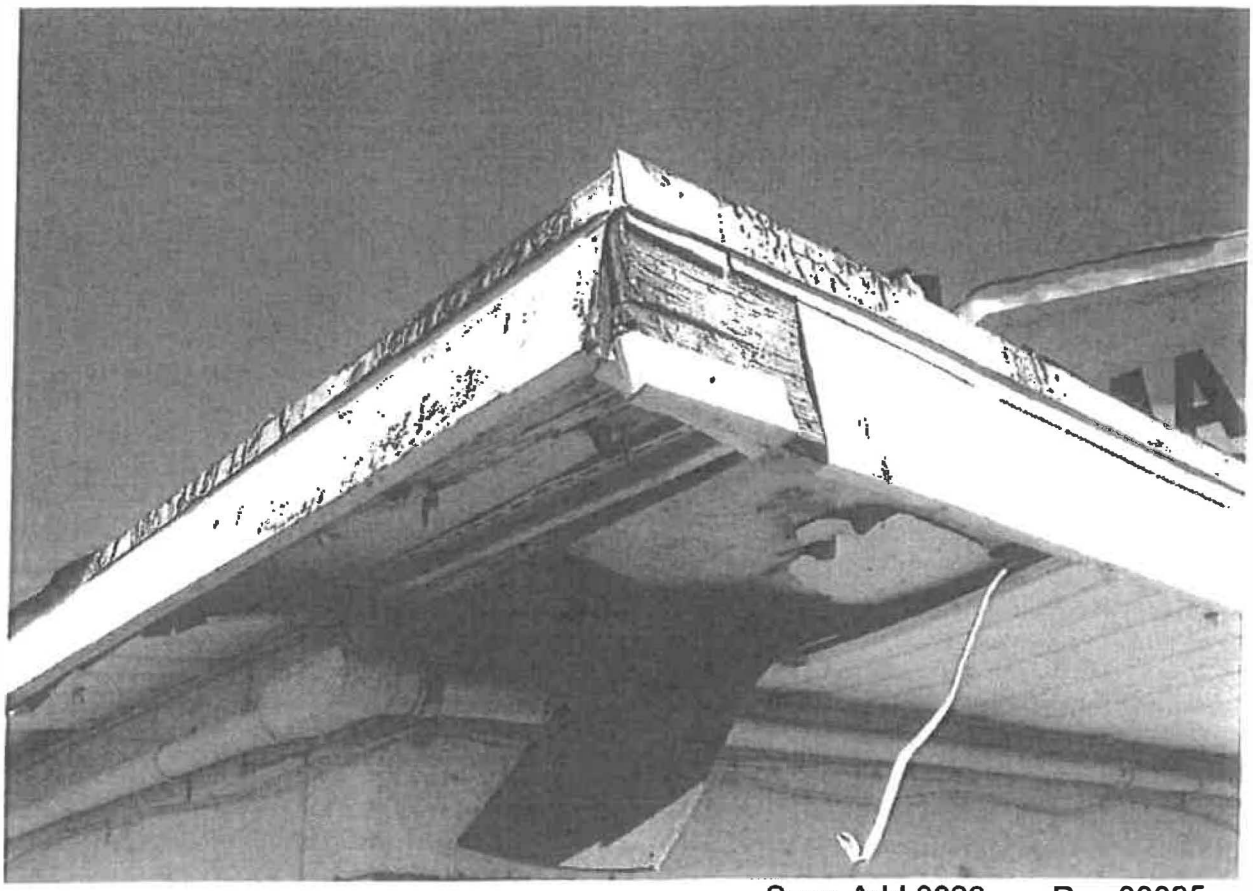
CONVENT CORP
19 LORIAN DR
LITTLE ROCK, AR 72212

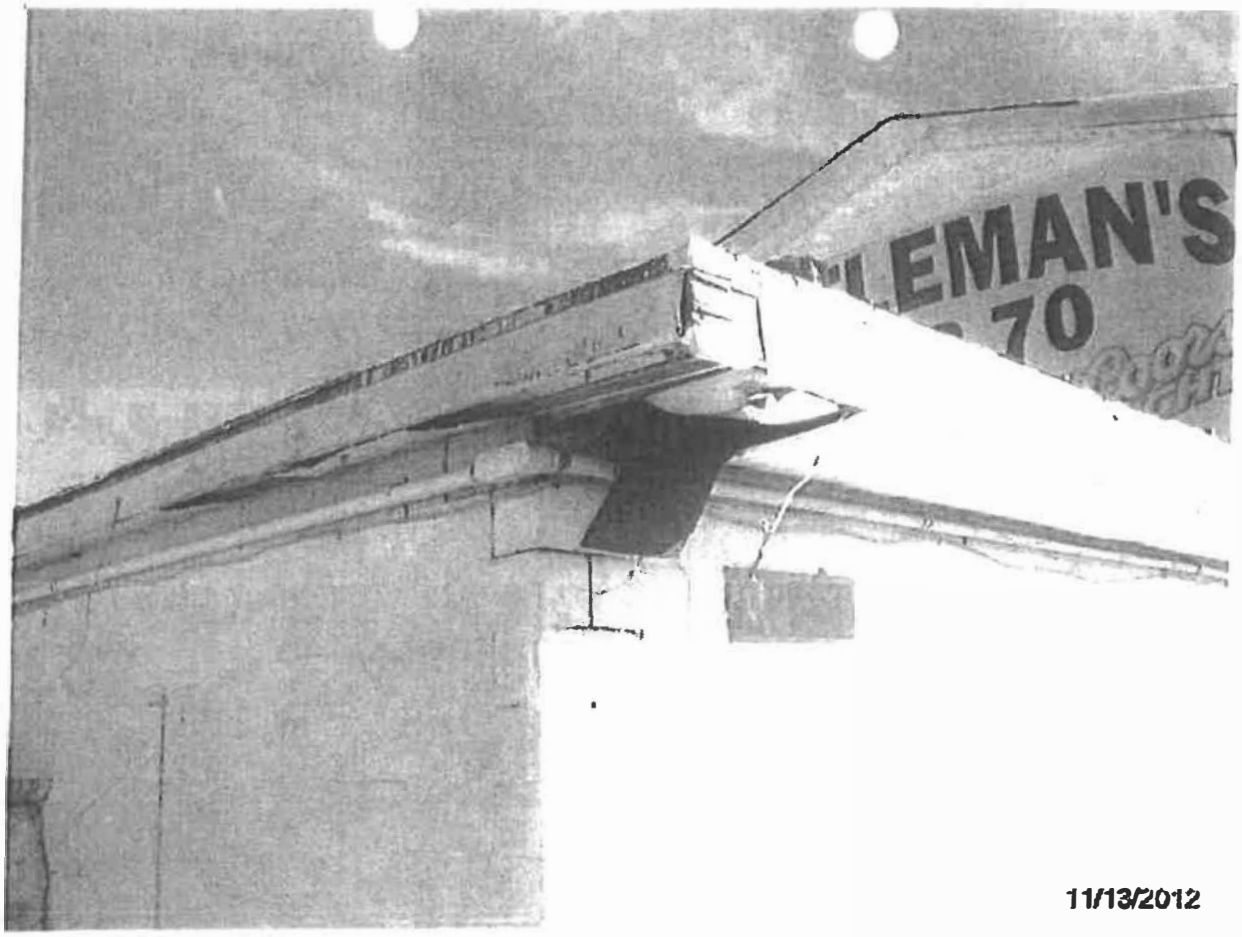
EXHIBIT A7

12-18-12









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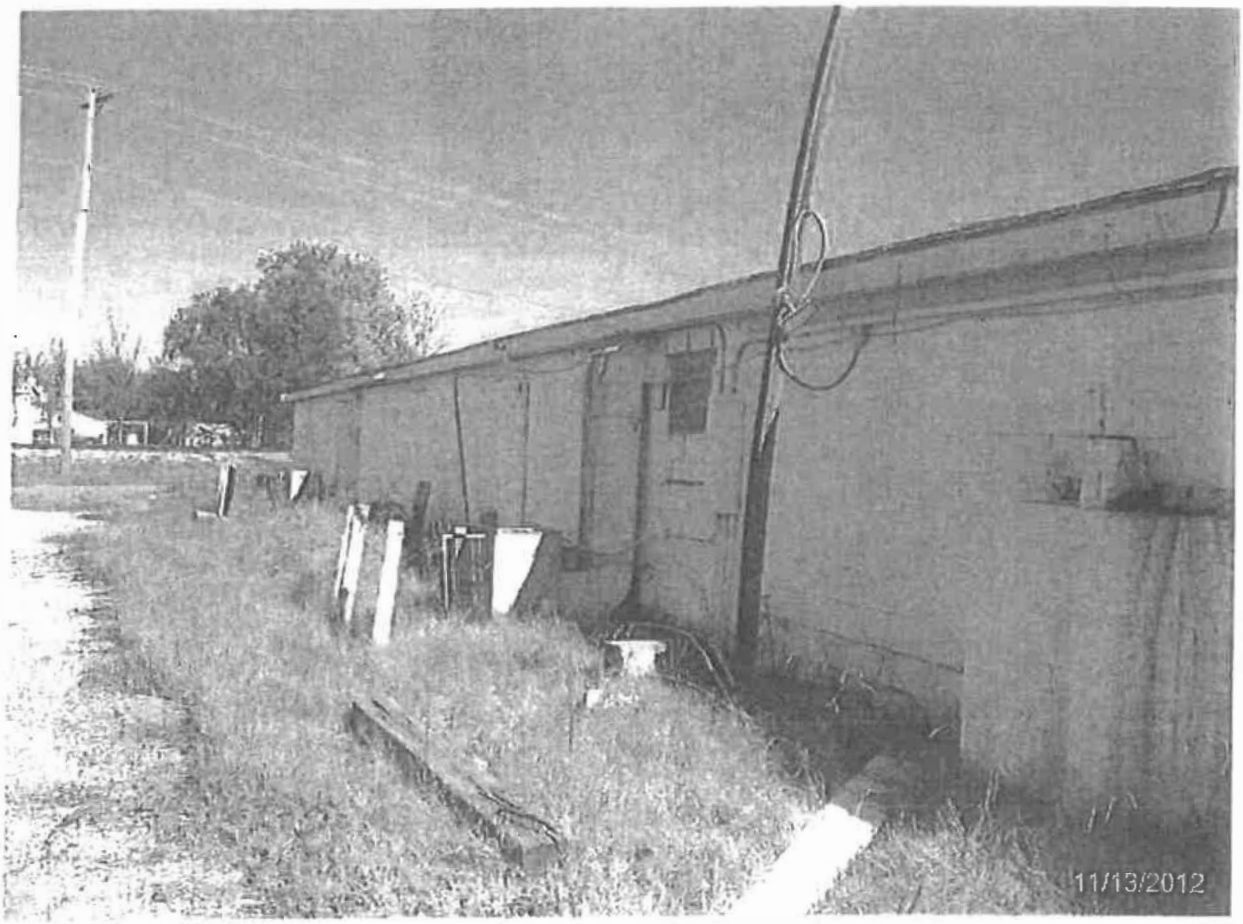

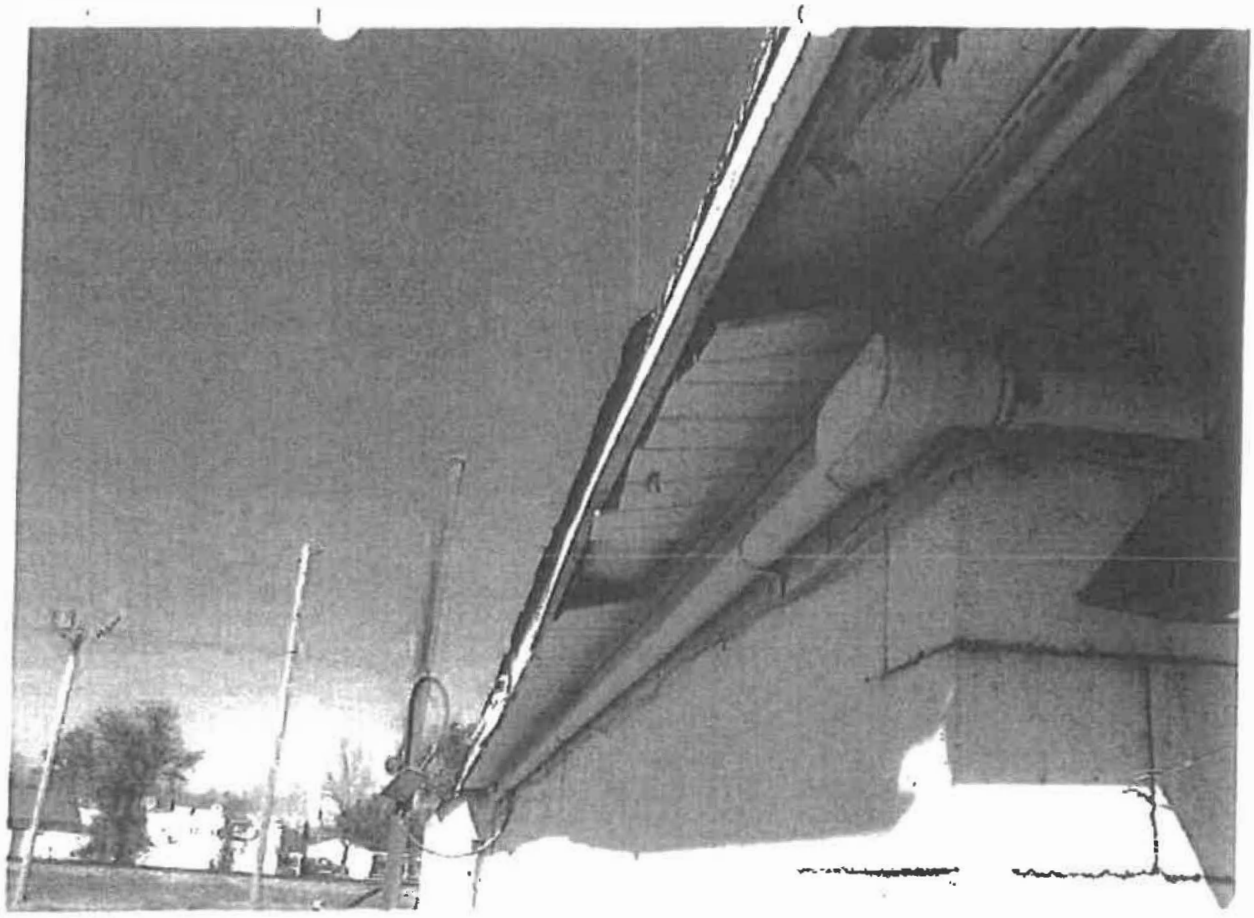

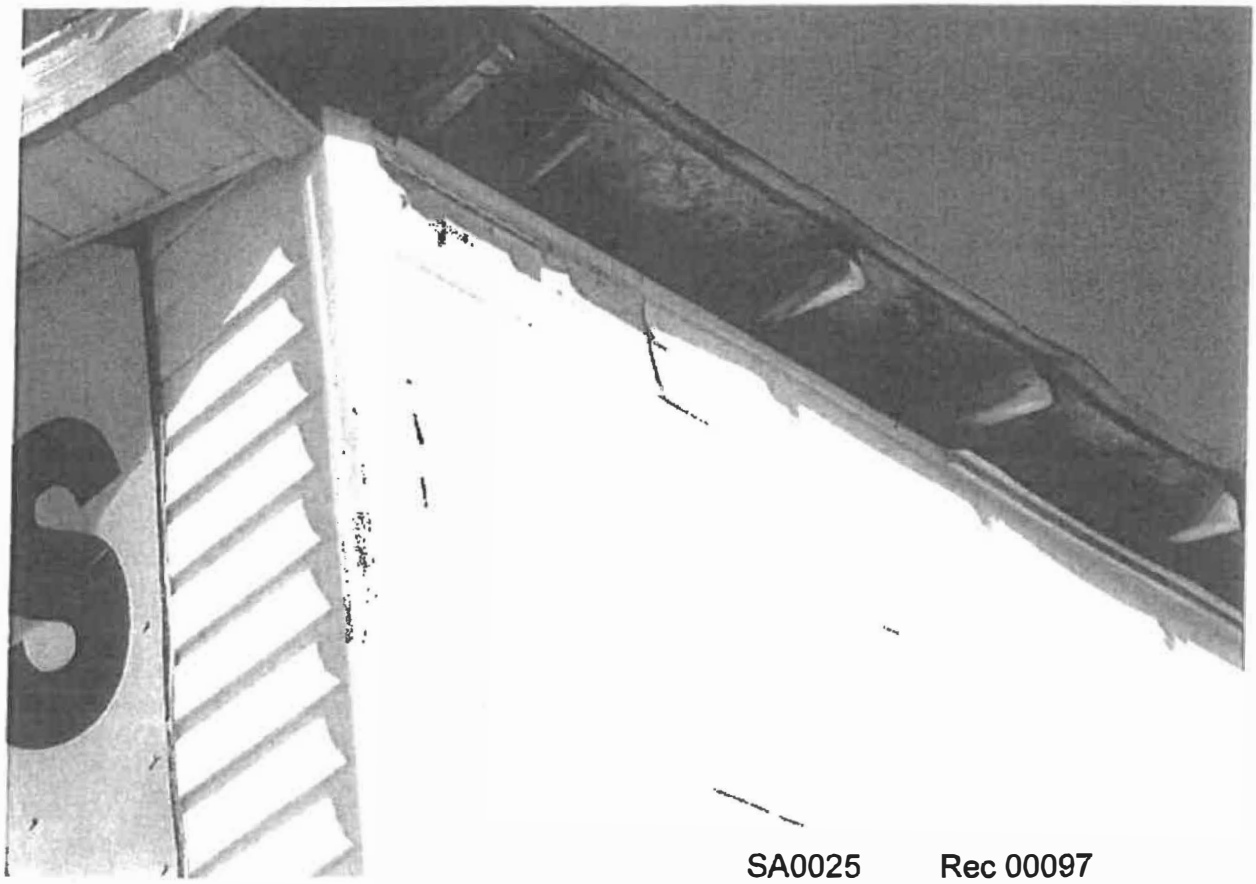

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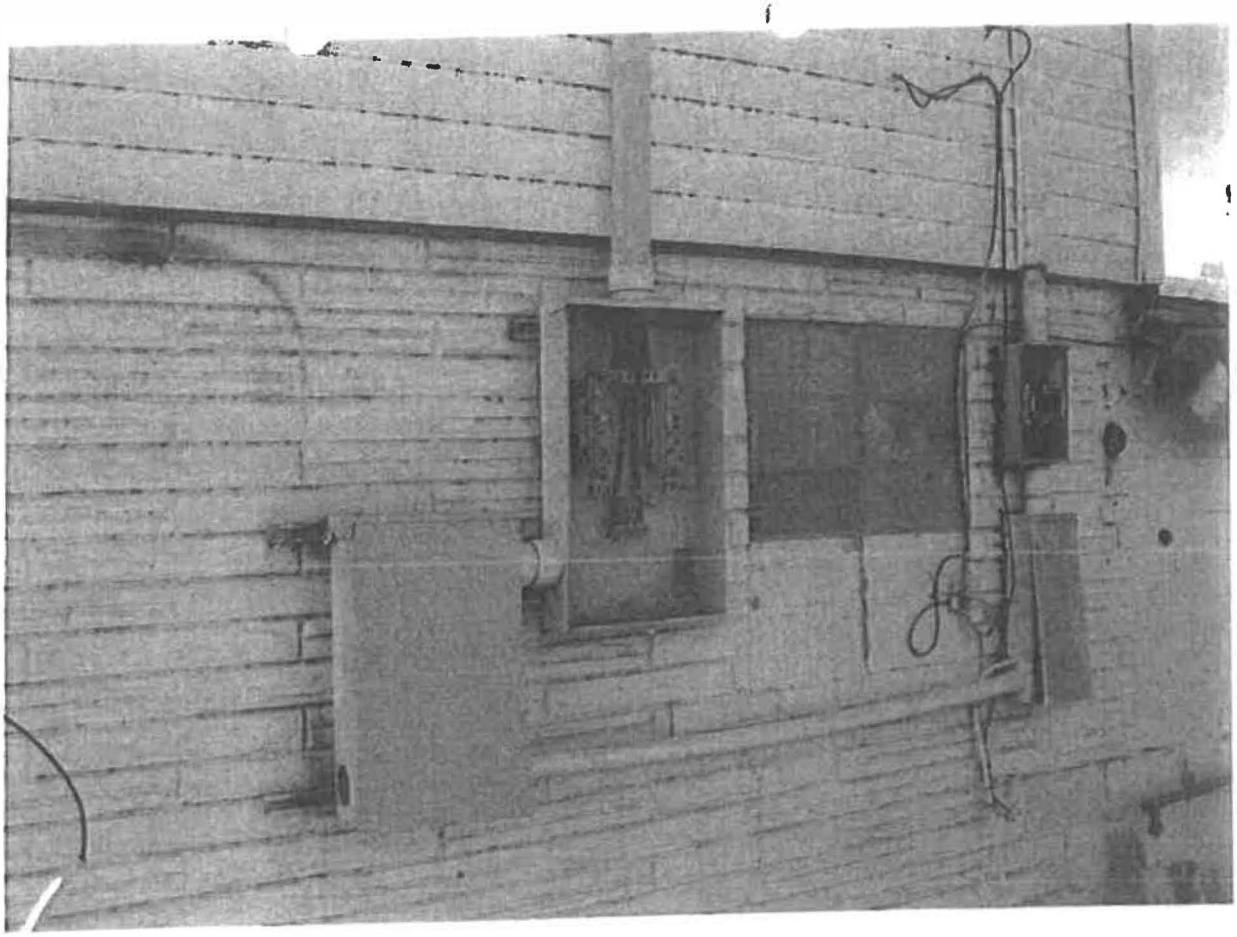

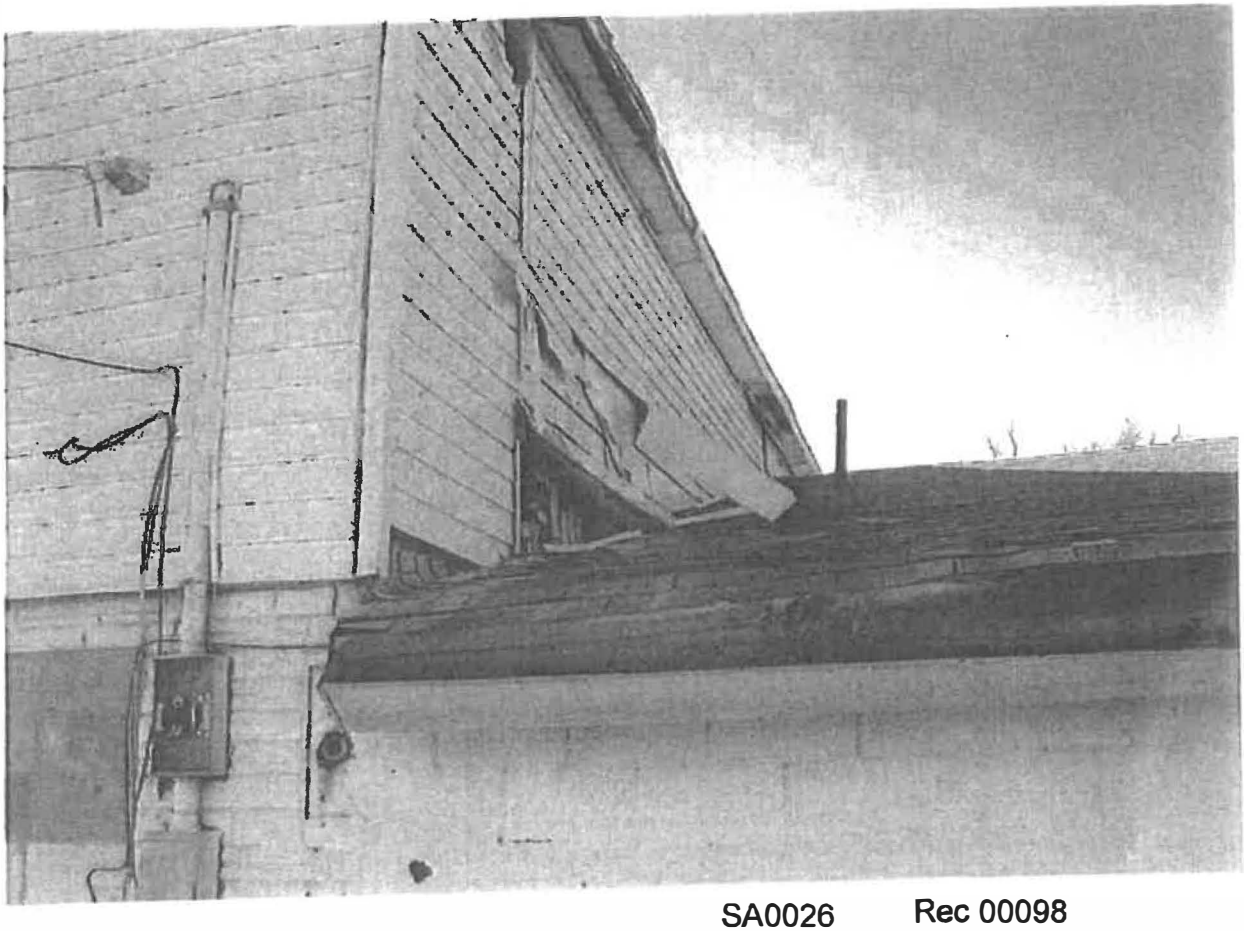

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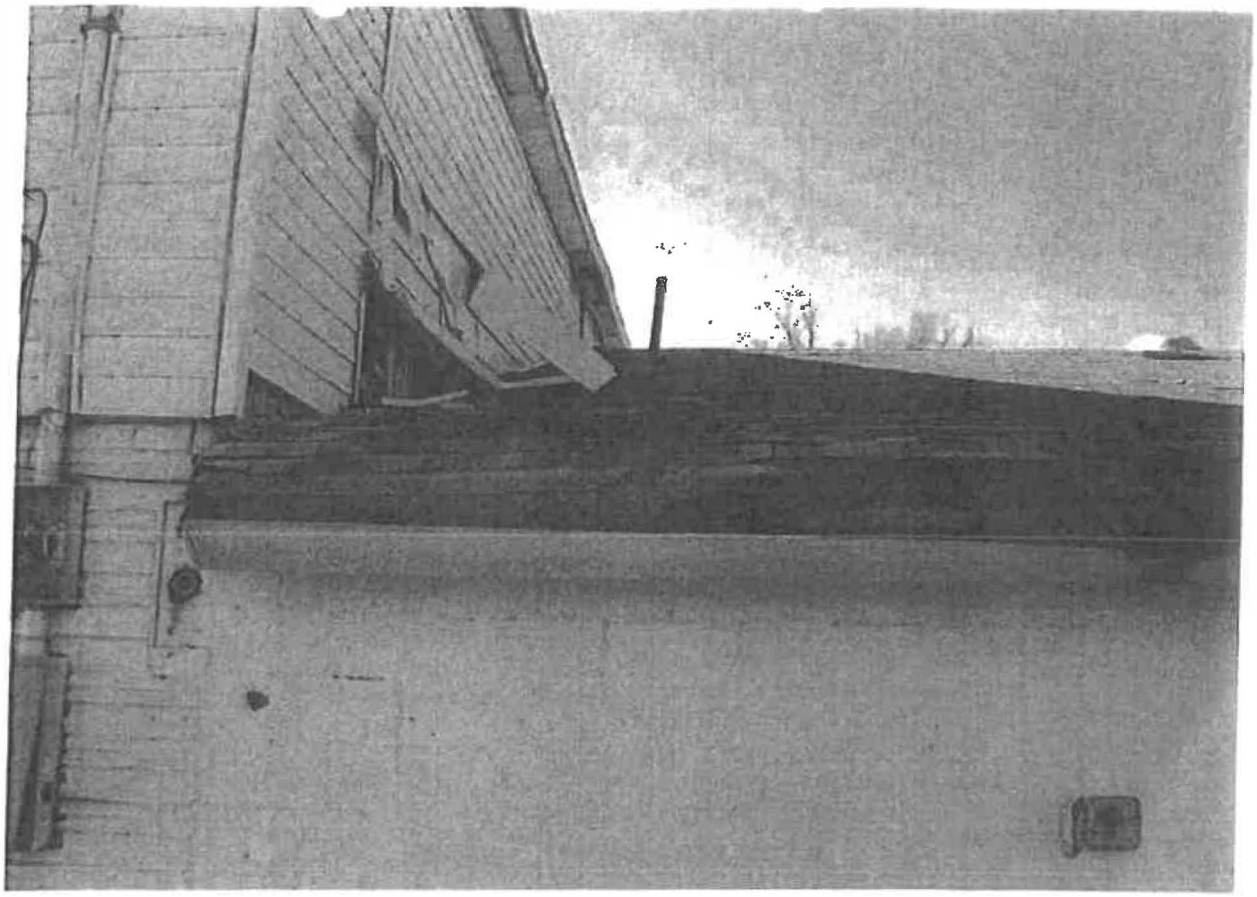

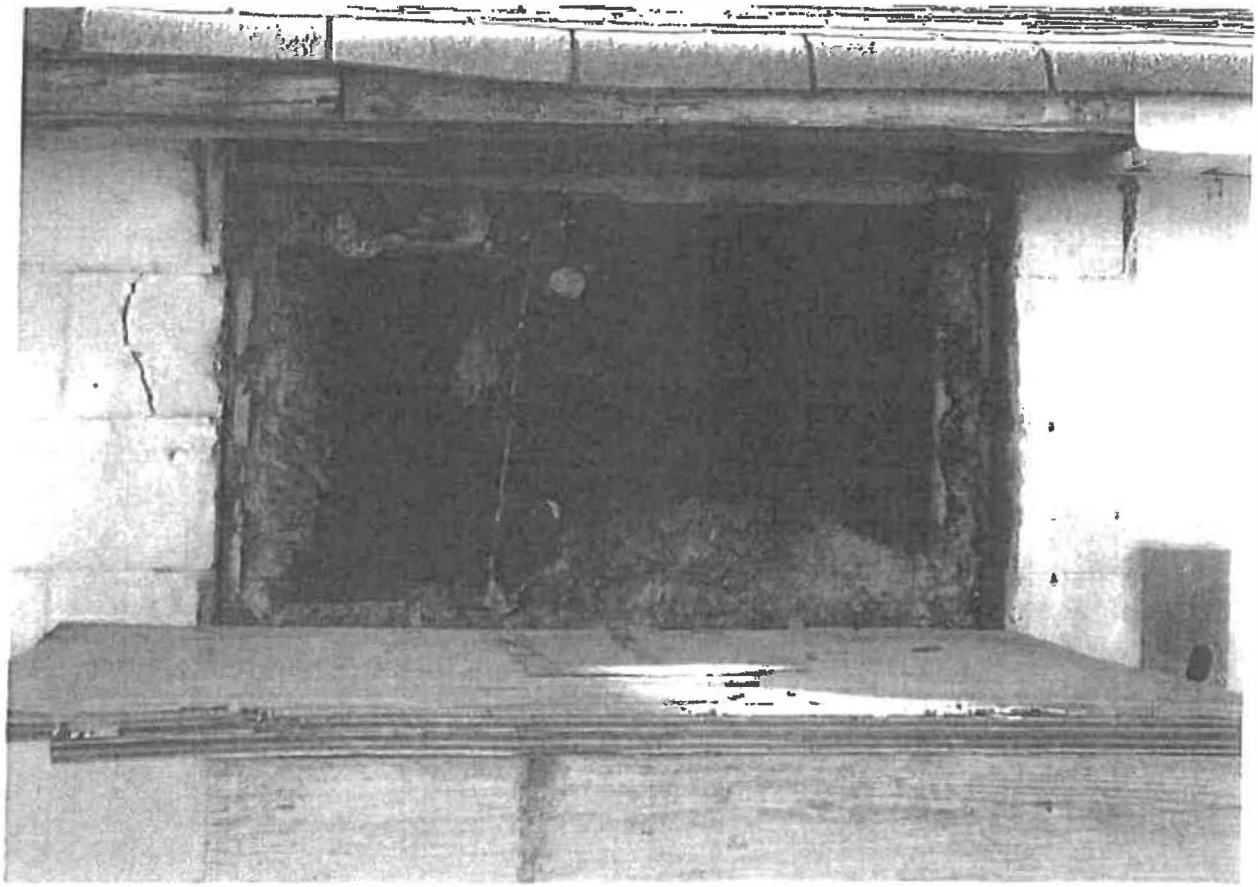

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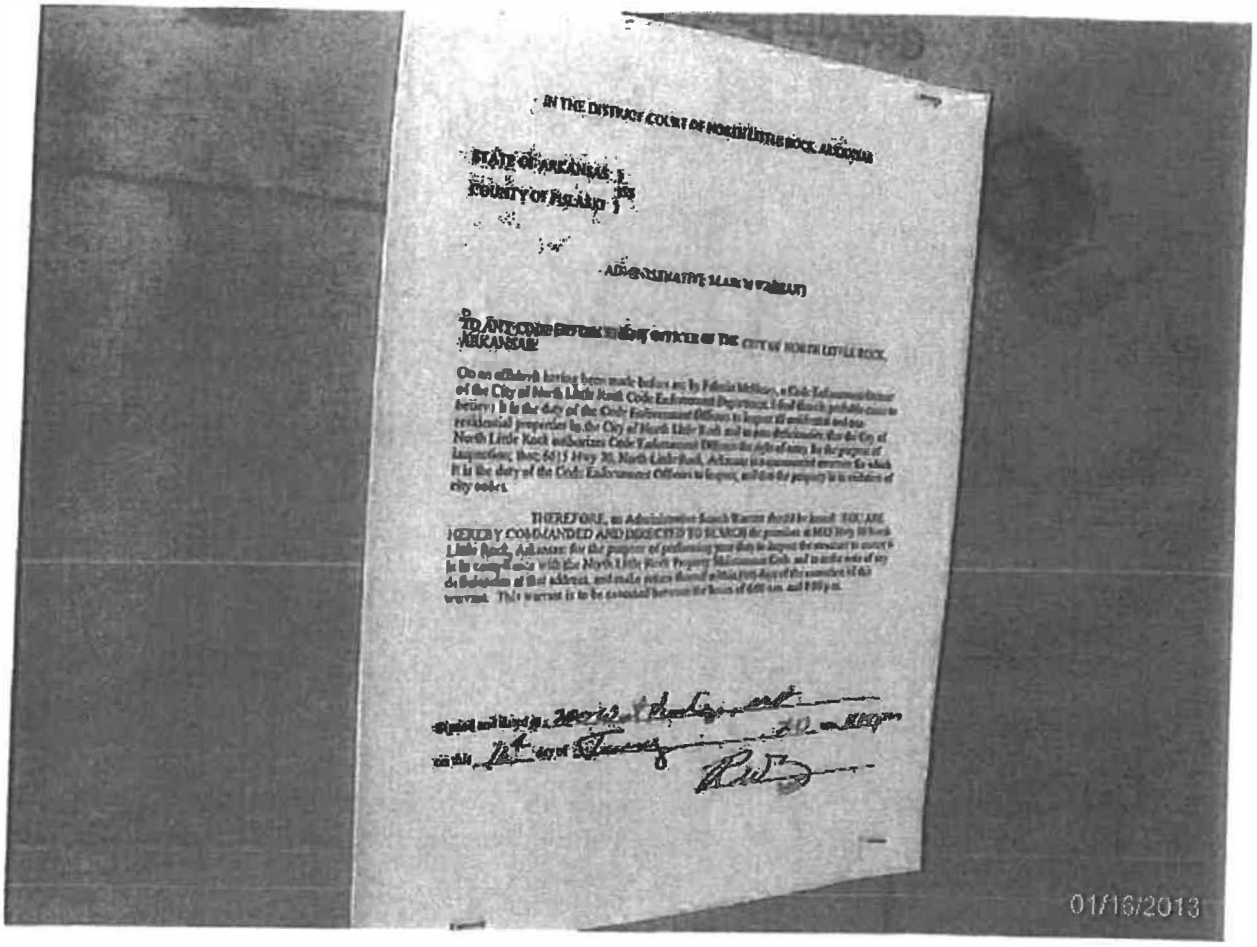


IN THE DISTRICT COURT OF NORTH LITTLE ROCK, ARKANSAS

STATE OF ARKANSAS }
COUNTY OF PULASKI } ss

ADMINISTRATIVE SEARCH WARRANT

TO ANY CODE ENFORCEMENT OFFICER OF THE CITY OF NORTH LITTLE ROCK, ARKANSAS:

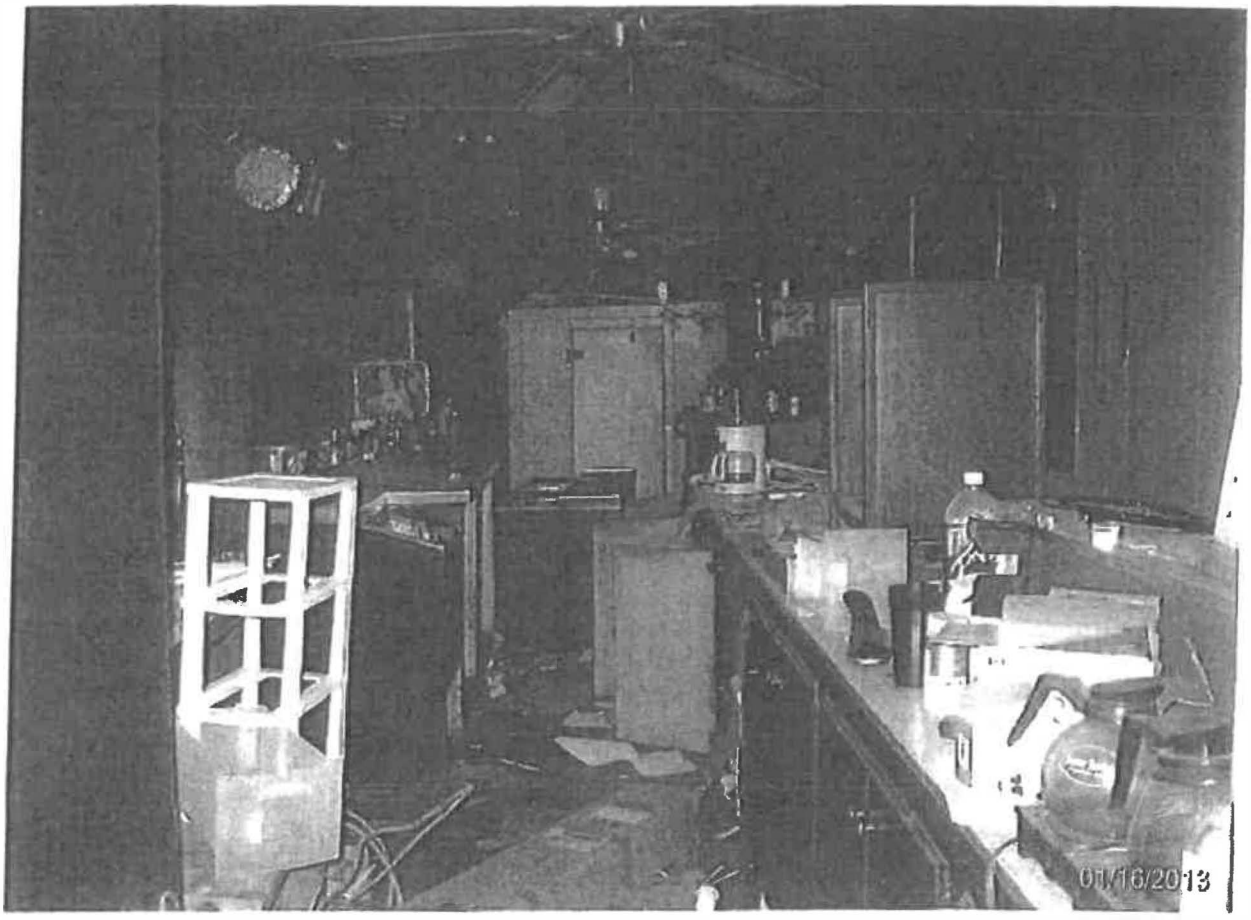
On an affidavit having been made before me by Felicia Millsap, a Code Enforcement Officer of the City of North Little Rock Code Enforcement Department, I find there probable cause to believe it is the duty of the Code Enforcement Officers to inspect all residential and non-residential properties in the City of North Little Rock and to note deficiencies that the City of North Little Rock authorizes Code Enforcement Officers the right of entry for the purpose of inspections; that: 6615 Hwy 30, North Little Rock, Arkansas is a commercial structure for which it is the duty of the Code Enforcement Officers to inspect, and that the property is in violation of city codes.

THEREFORE, an Administrative Search Warrant should be issued. YOU ARE HEREBY COMMANDED AND DIRECTED TO SEARCH the premises at 6615 Hwy 30 North Little Rock, Arkansas; for the purpose of performing your duty to inspect the structure to ensure it is in compliance with the North Little Rock Property Maintenance Code, and to make note of any deficiencies at the address, and make return thereof within ten days of the execution of this warrant. This warrant is to be executed between the hours of 6:00 a.m. and 8:00 p.m.

Signed and dated this 2nd day of January, 2013 at 10:00 AM

on this 2nd day of January

01/16/2013



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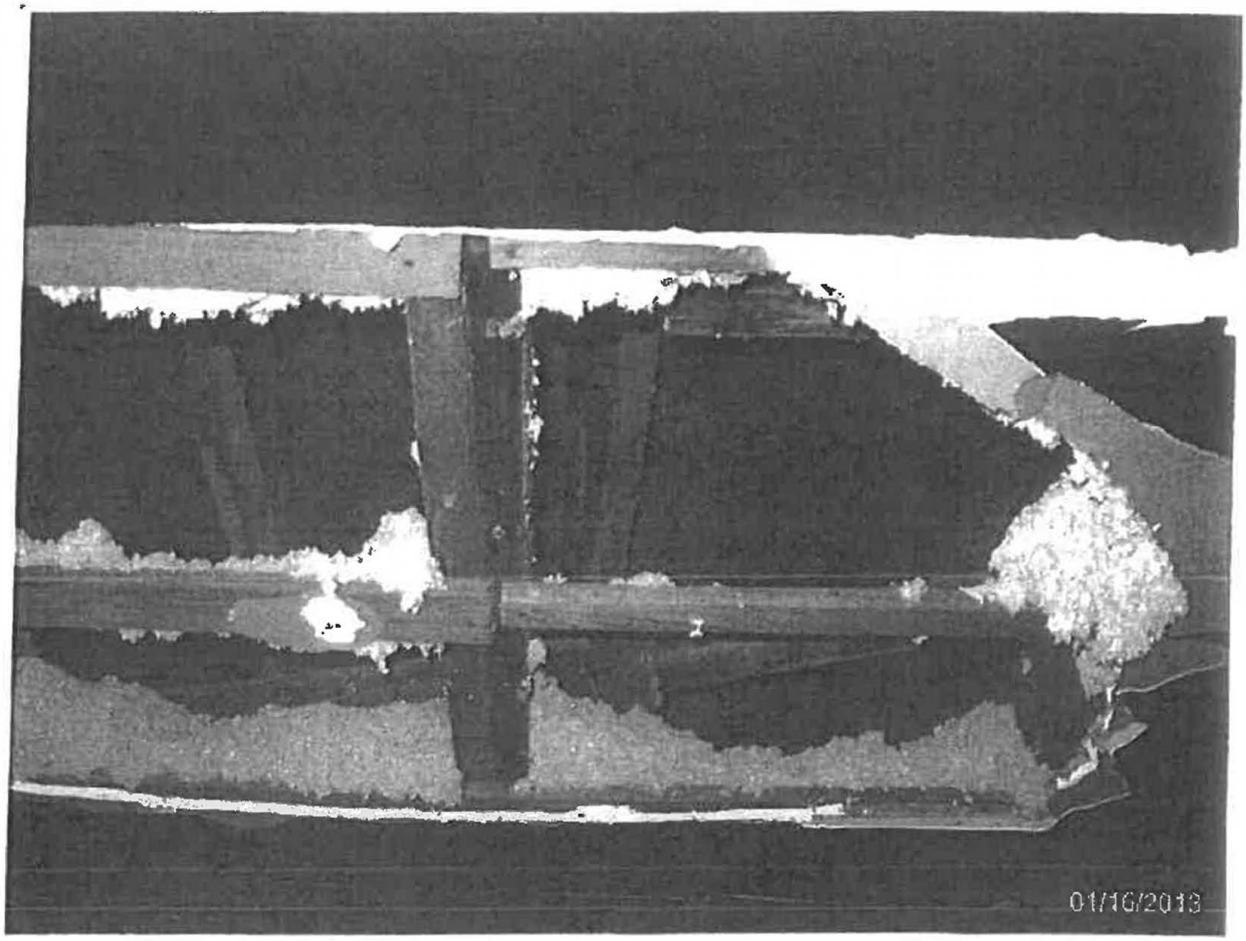
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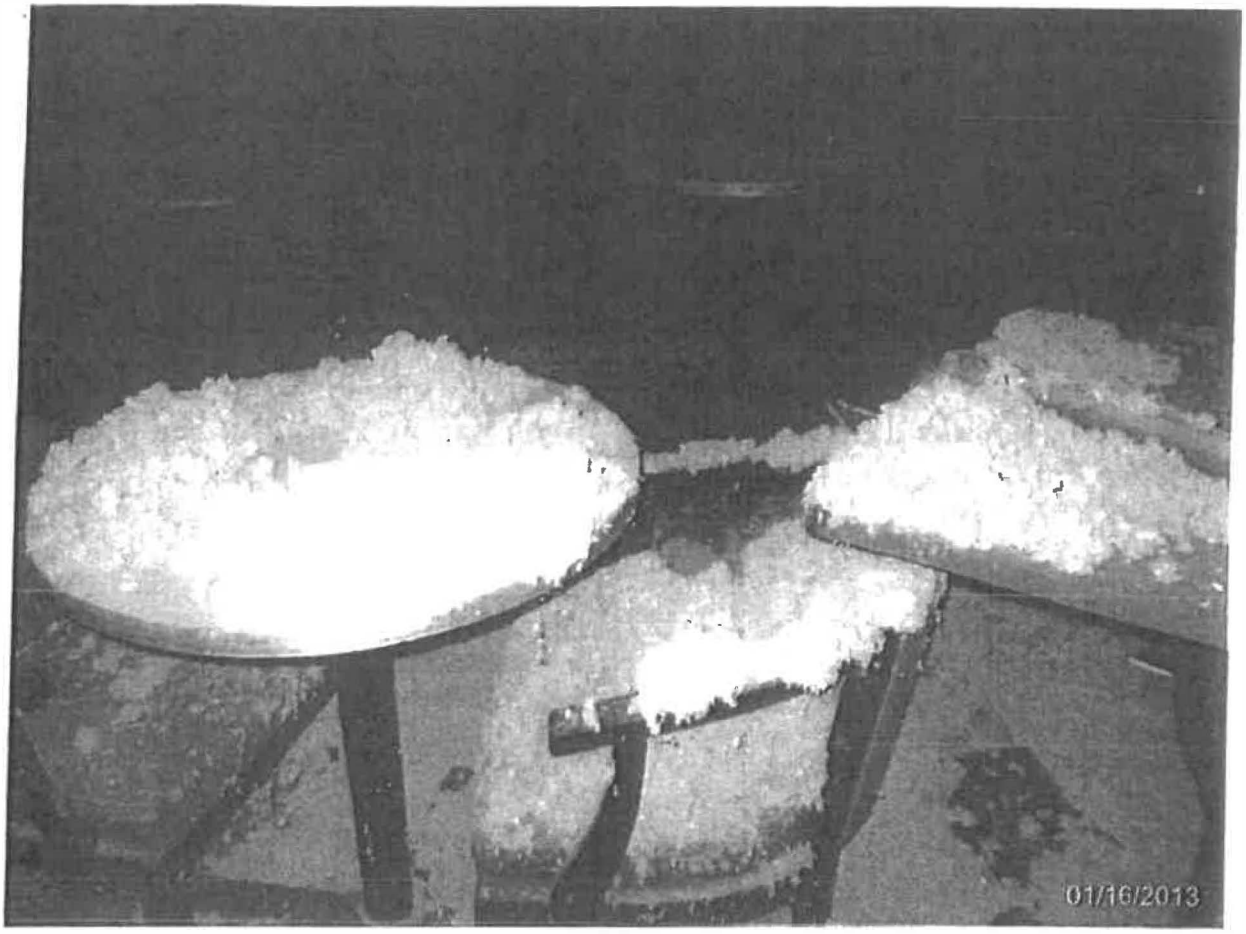
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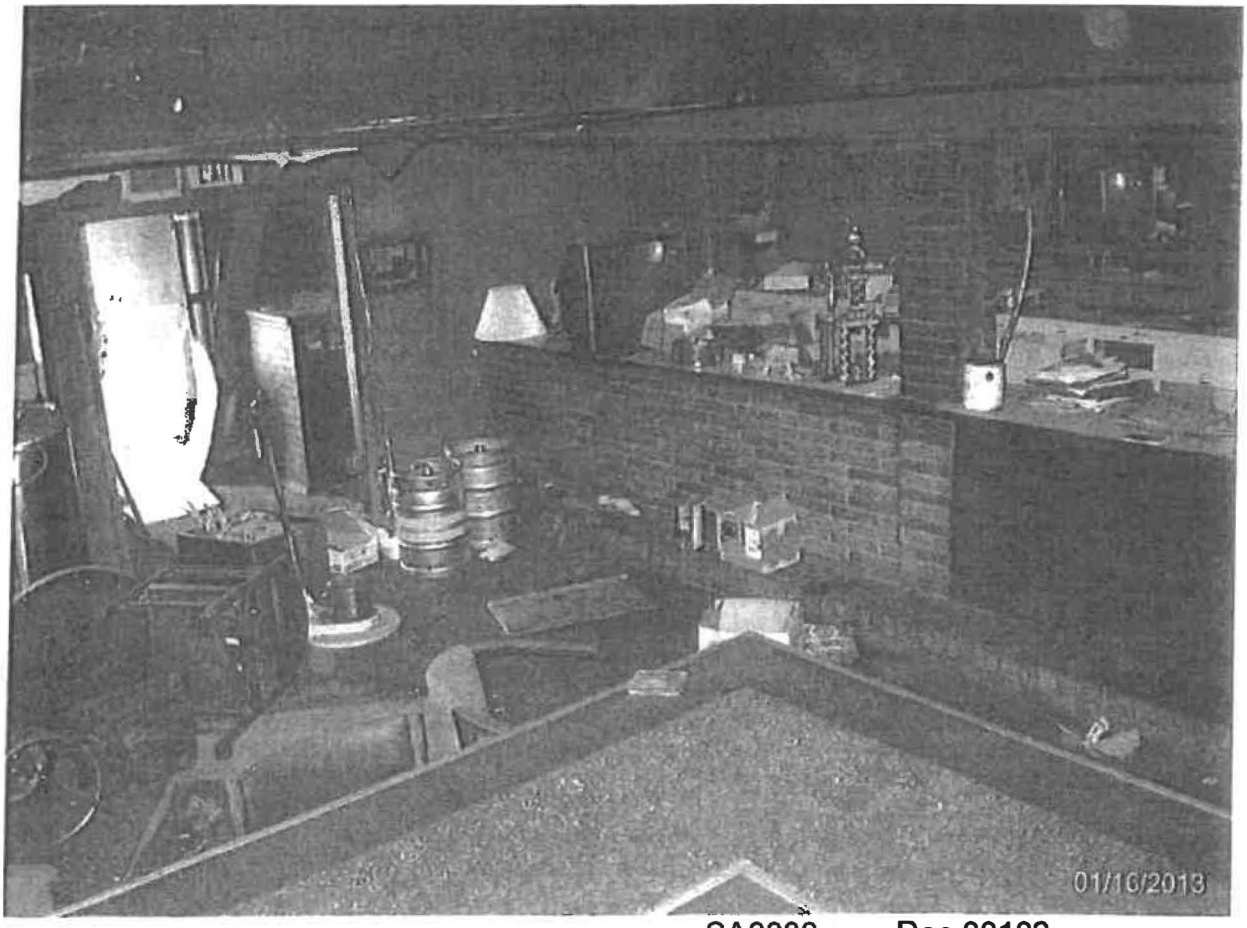
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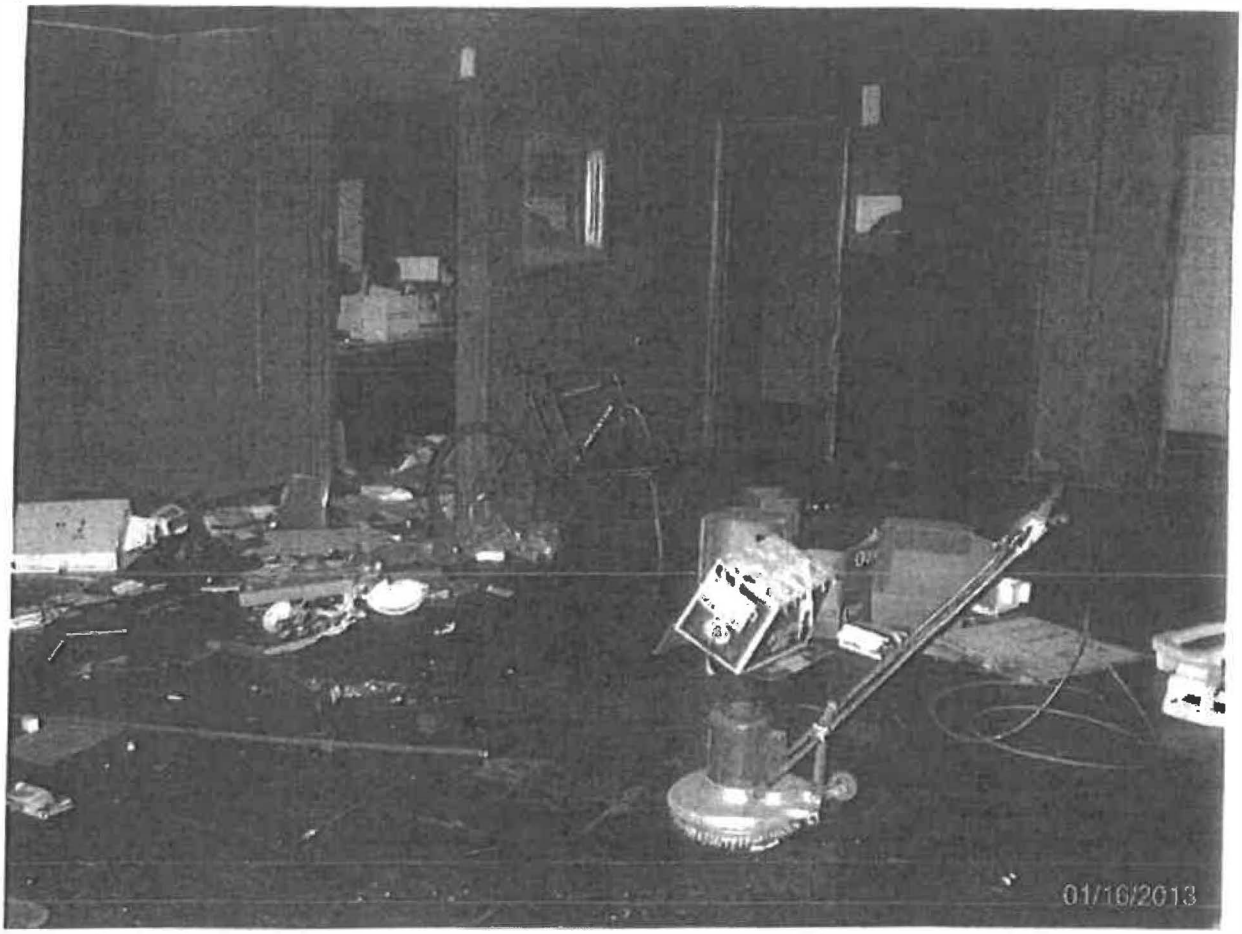
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01/16/2013

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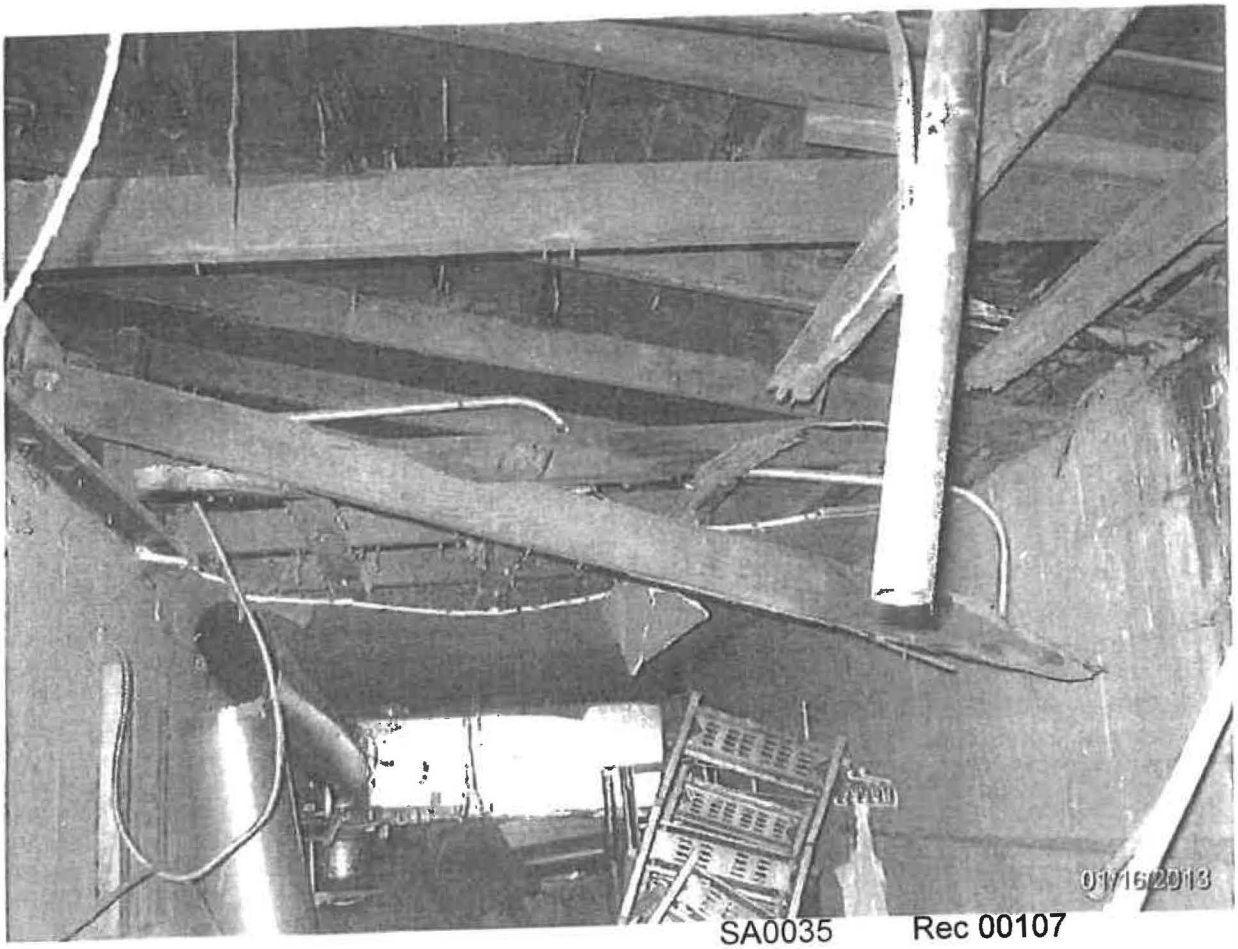
01/15/2013


01/15/2013


01/16/2013


01/16/2013


BUD LIGHT
Michelob
01/16/2013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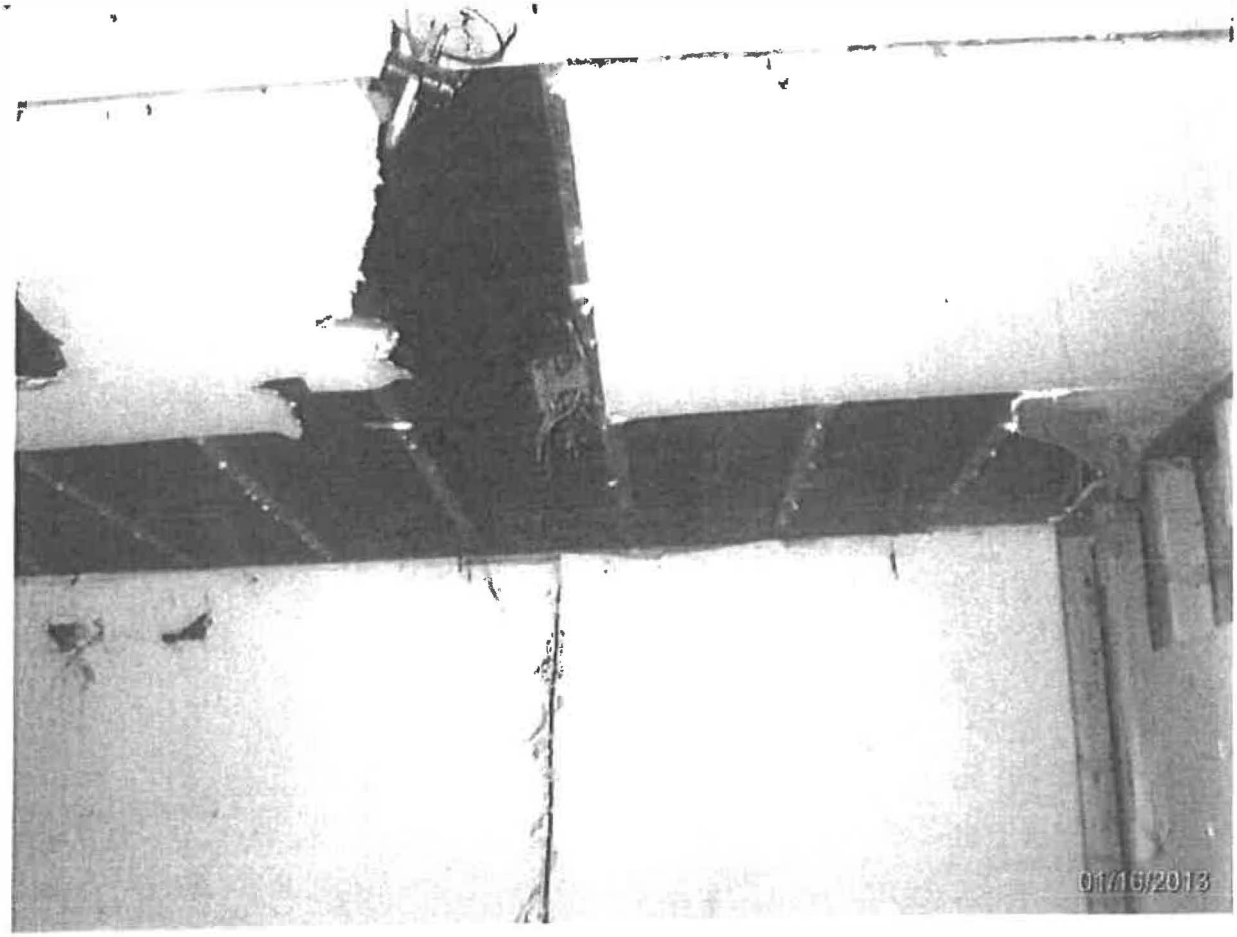
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01/16/2013


HOURS
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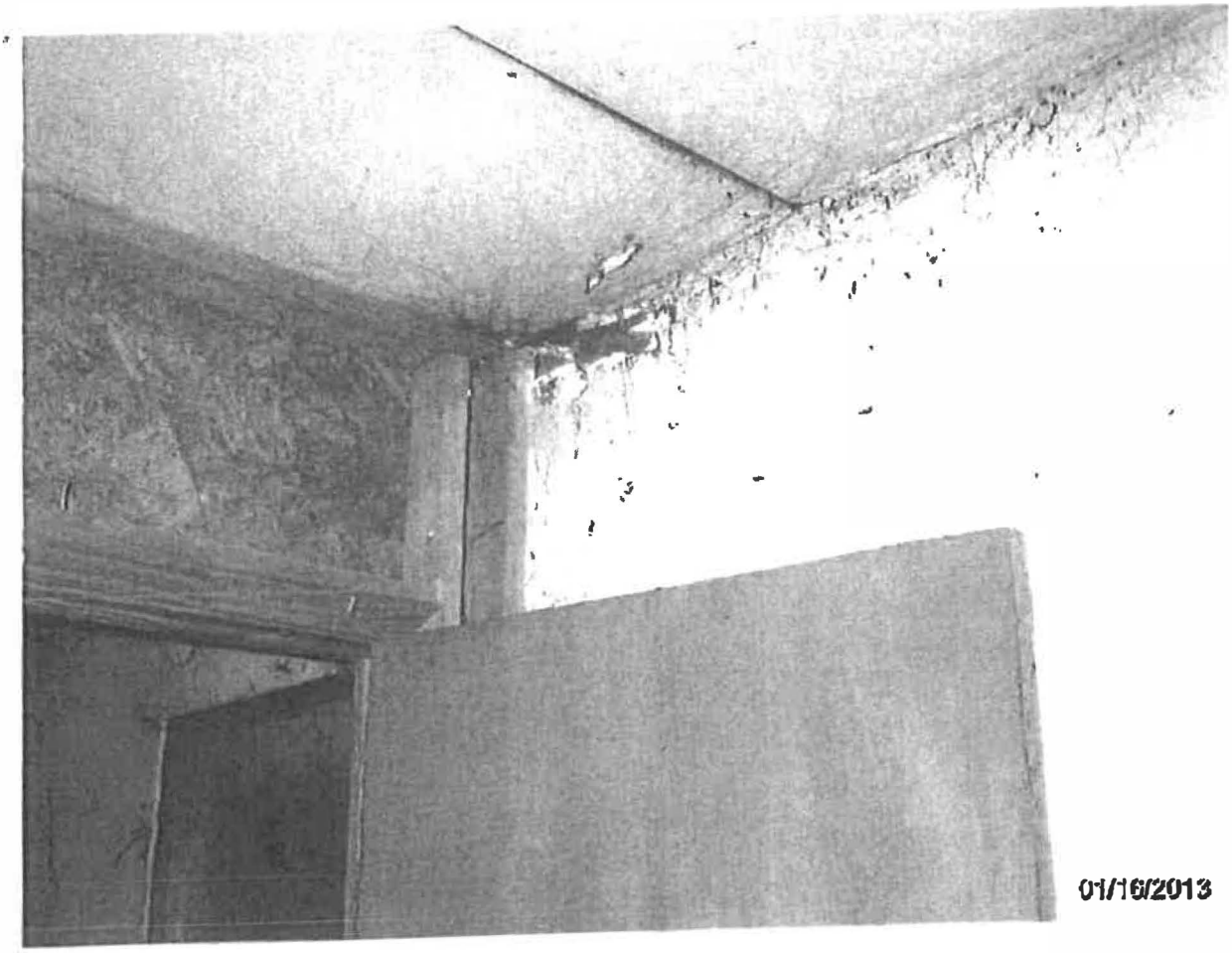
- 1am
01/16/2013


01/16/2013


01/16/2013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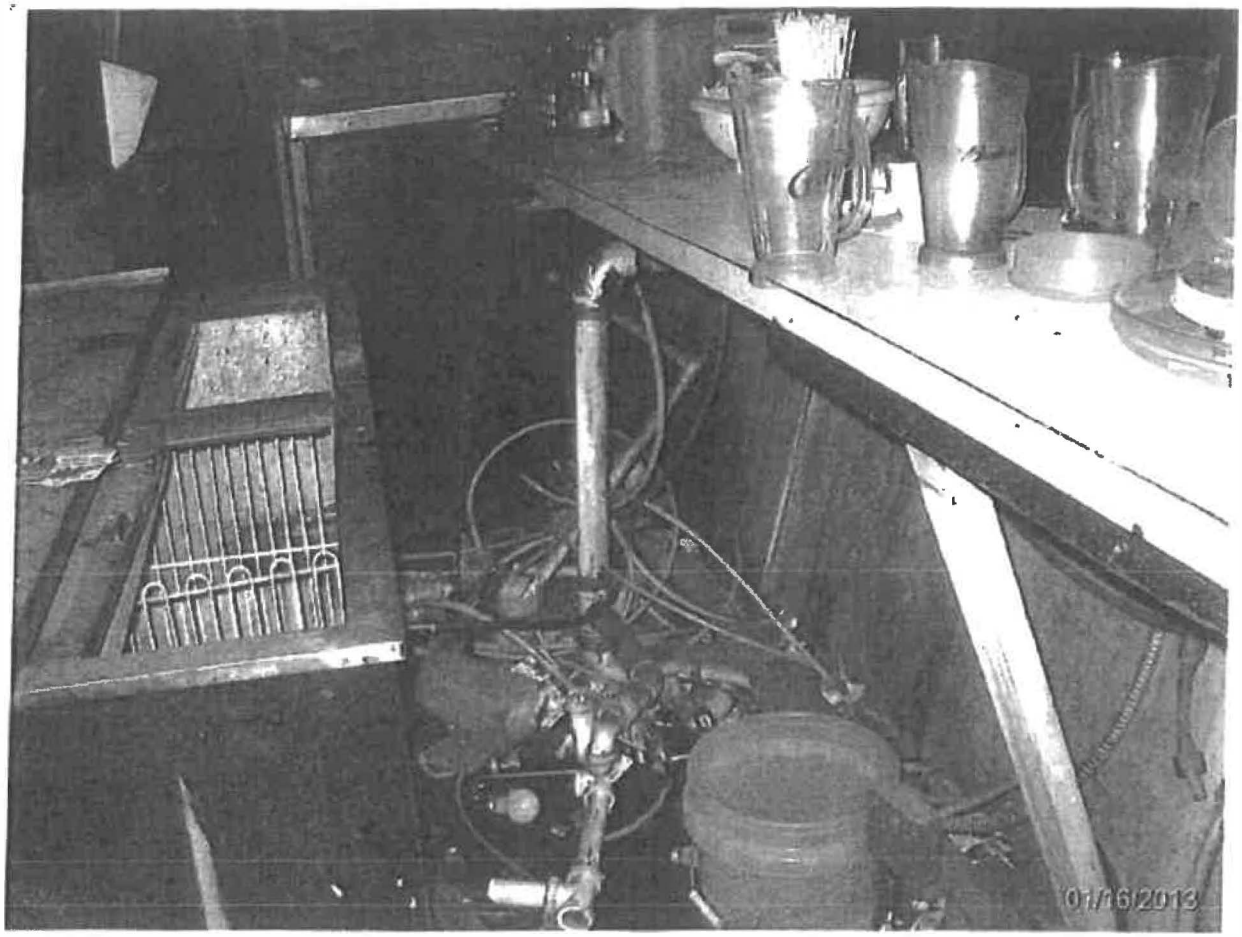
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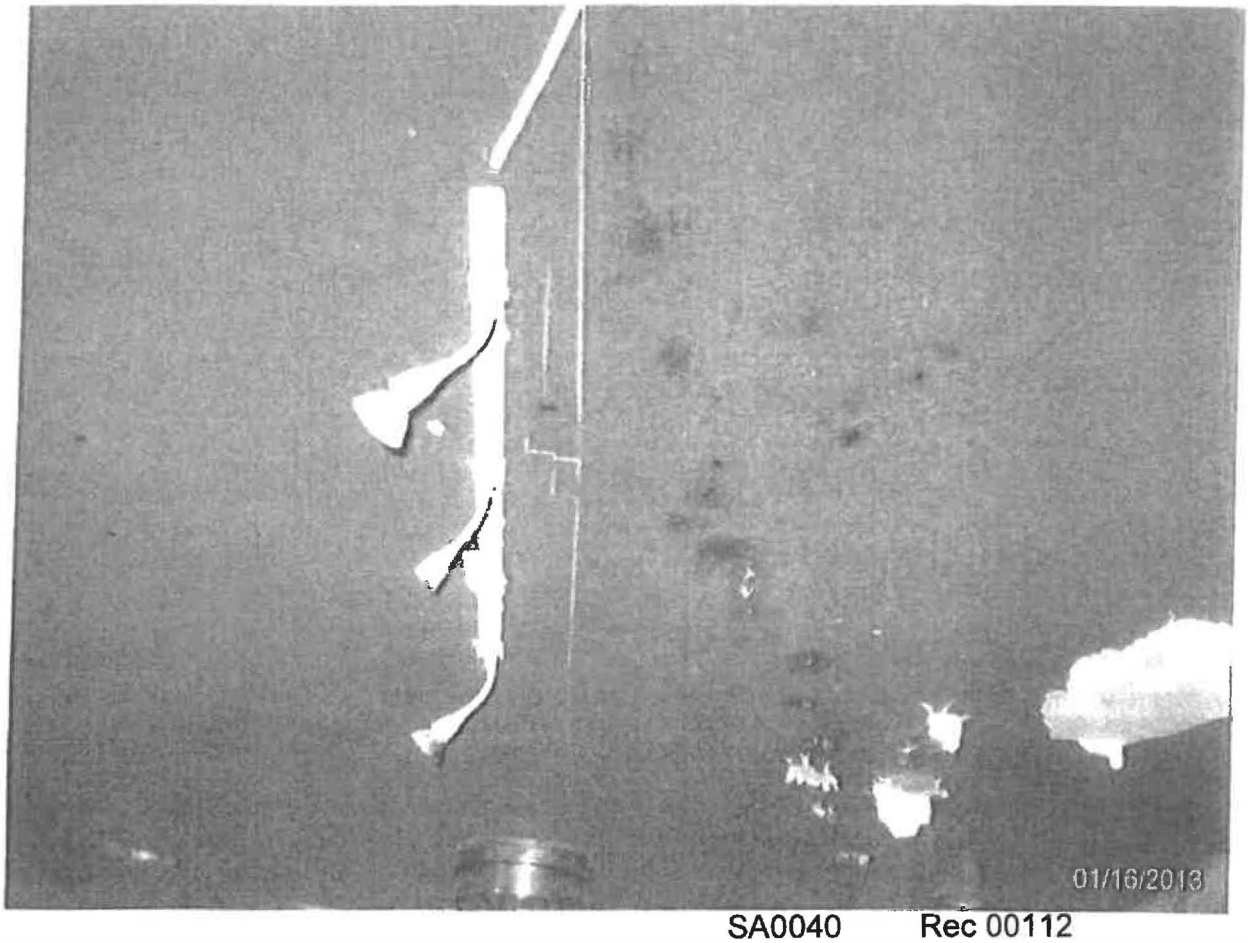
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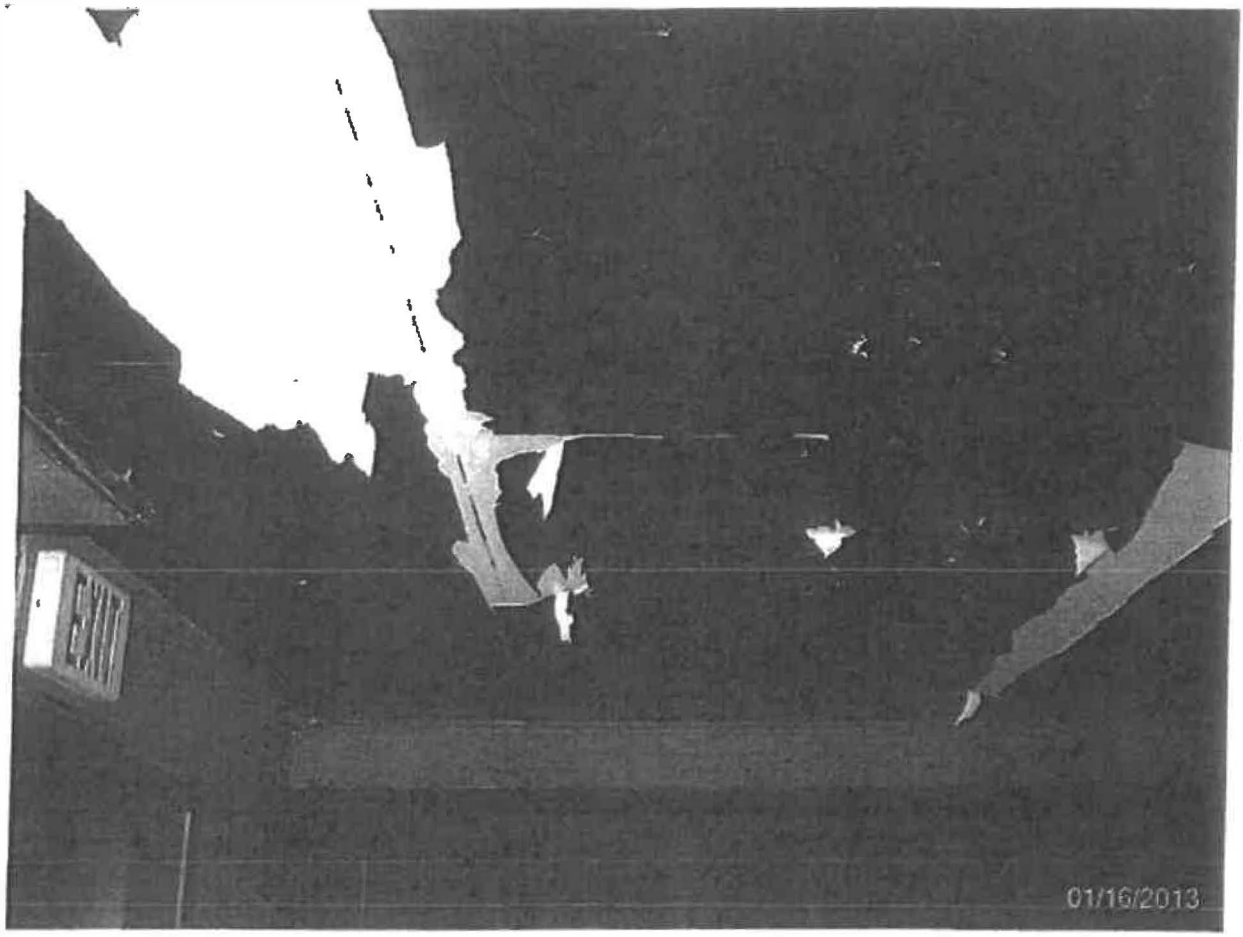
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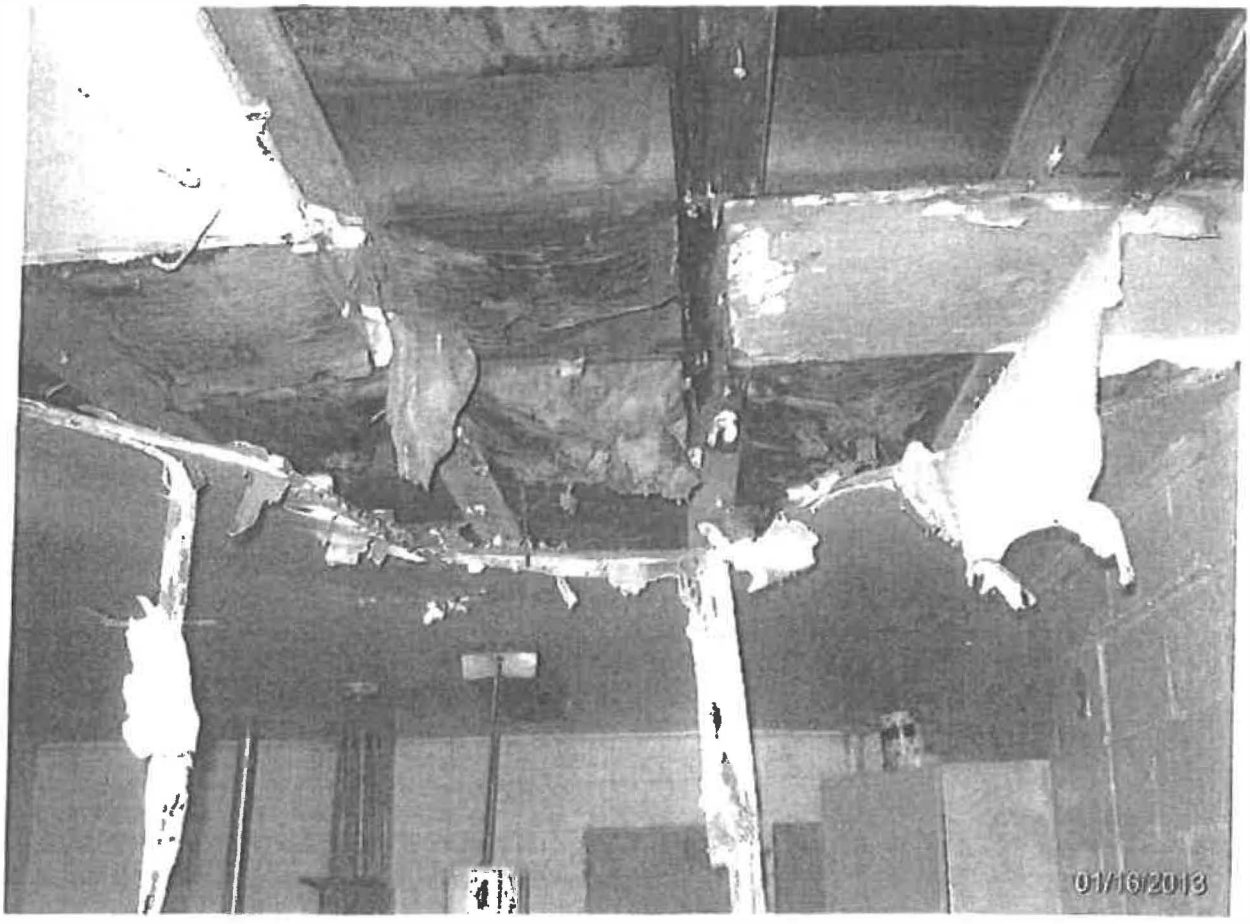
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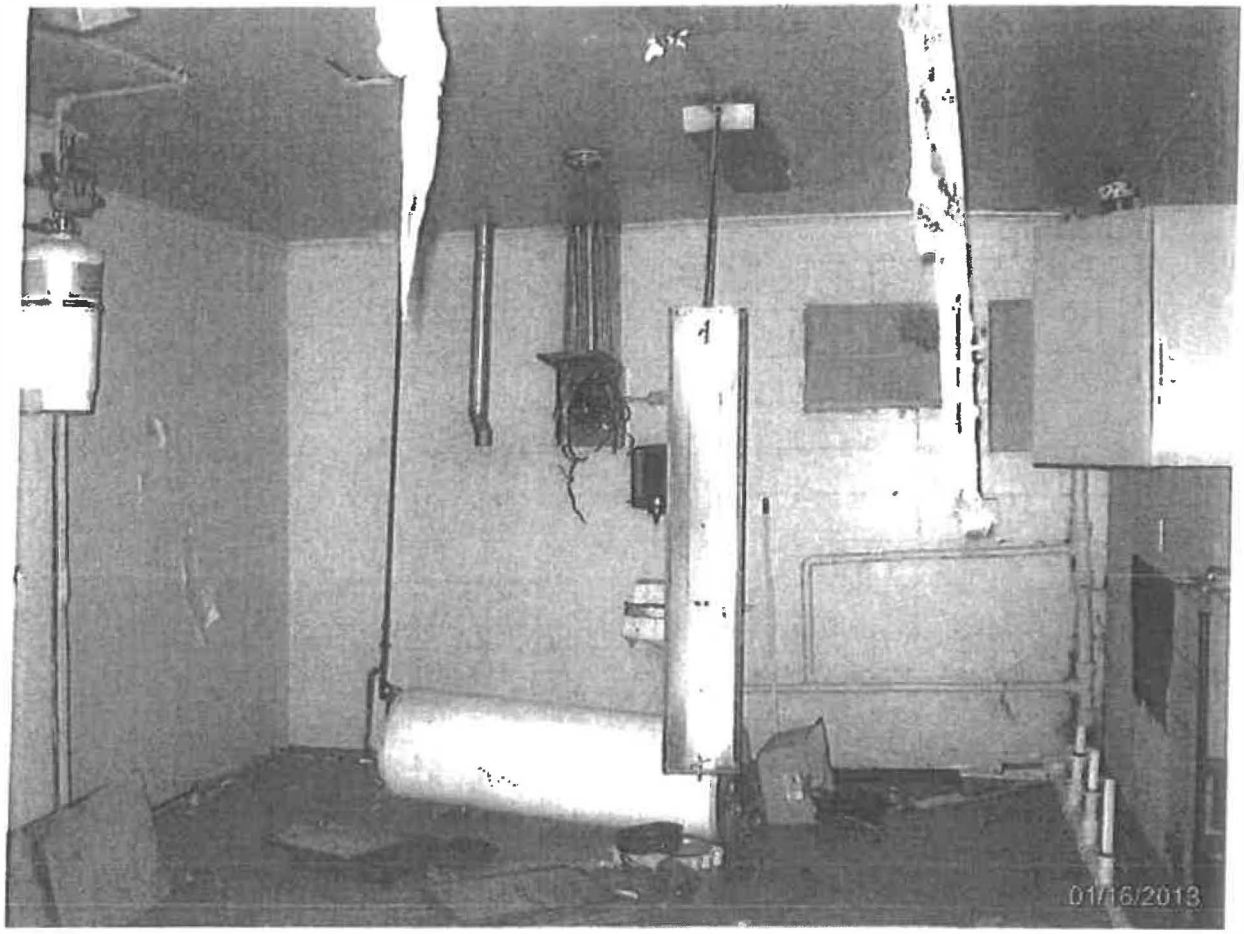
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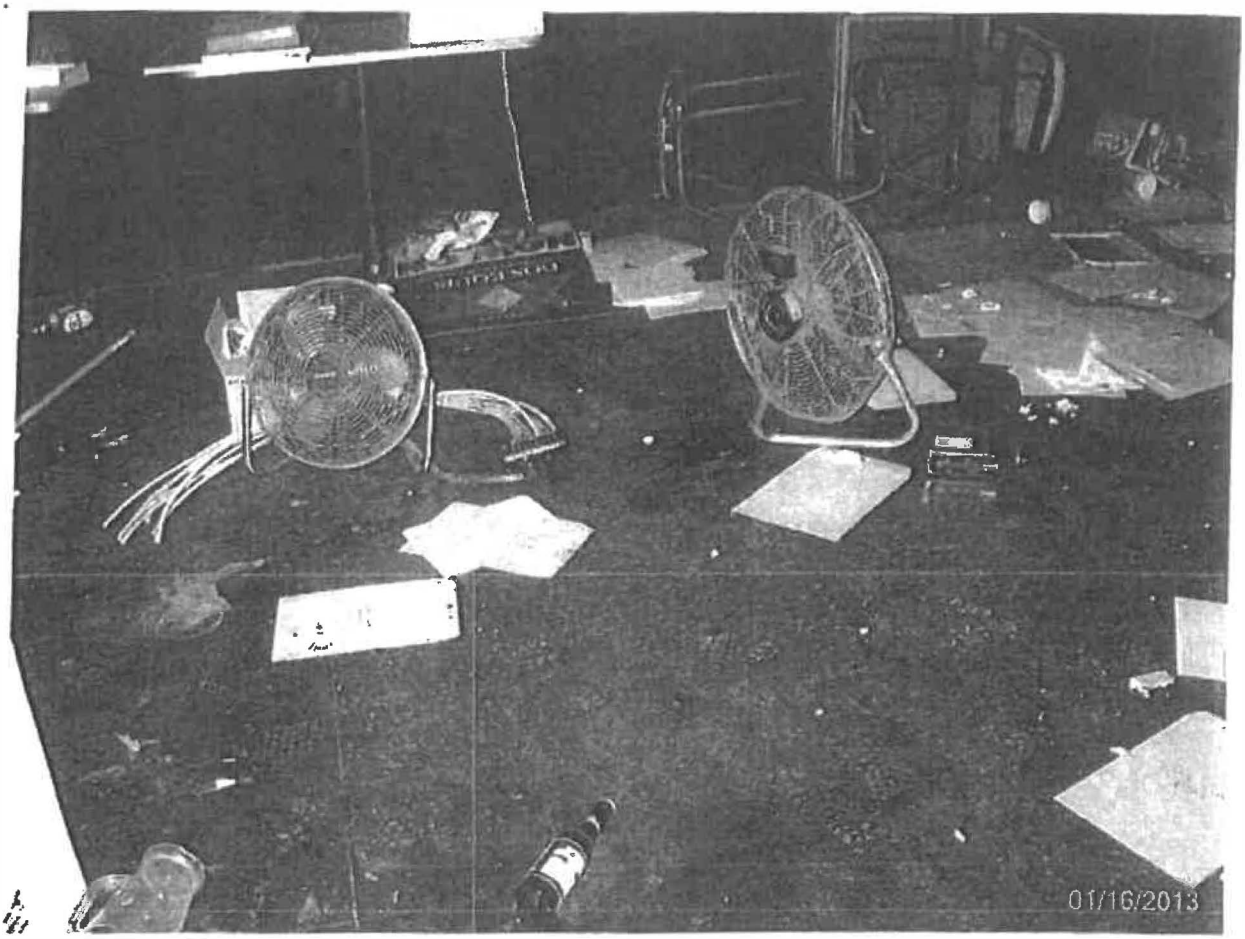
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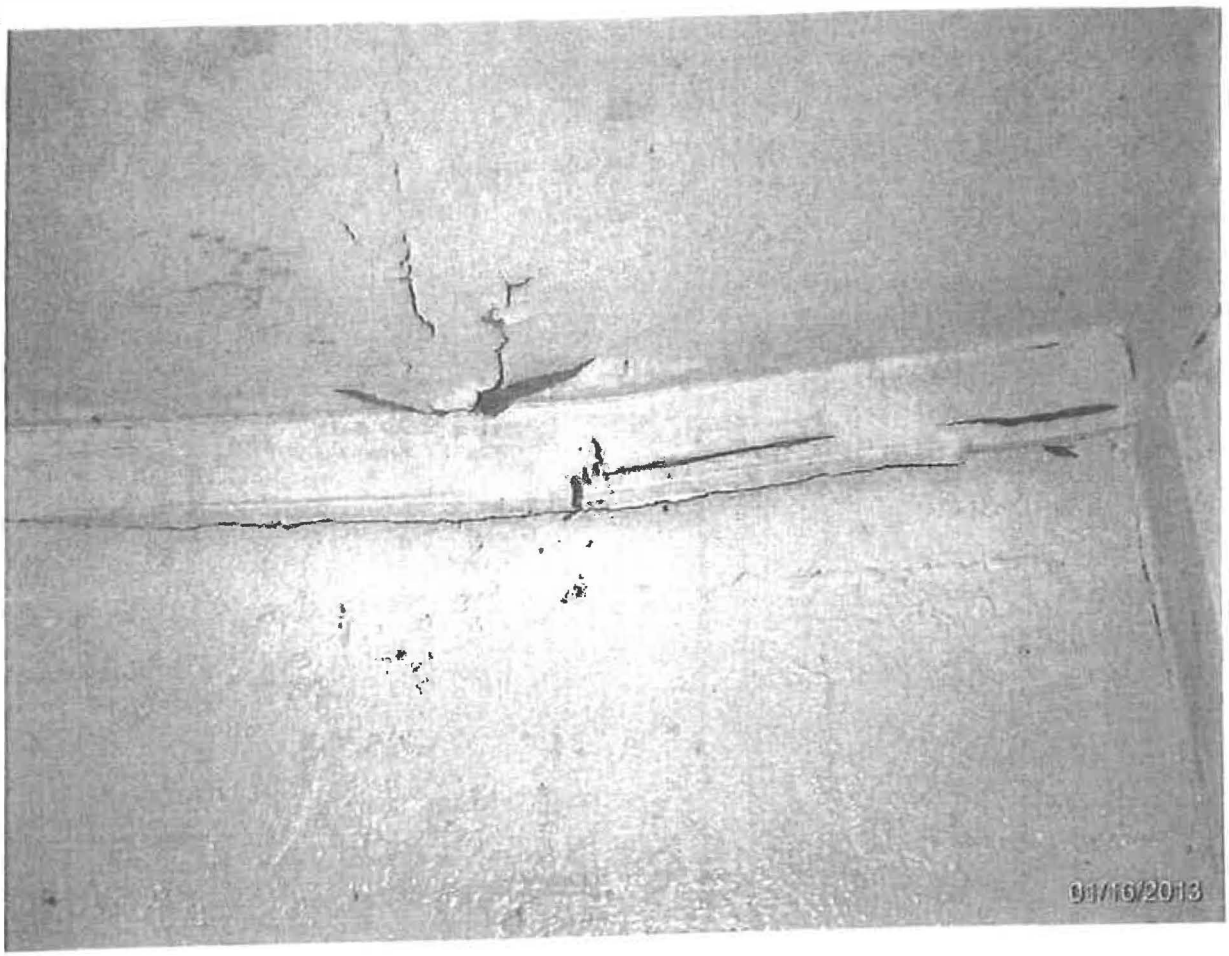
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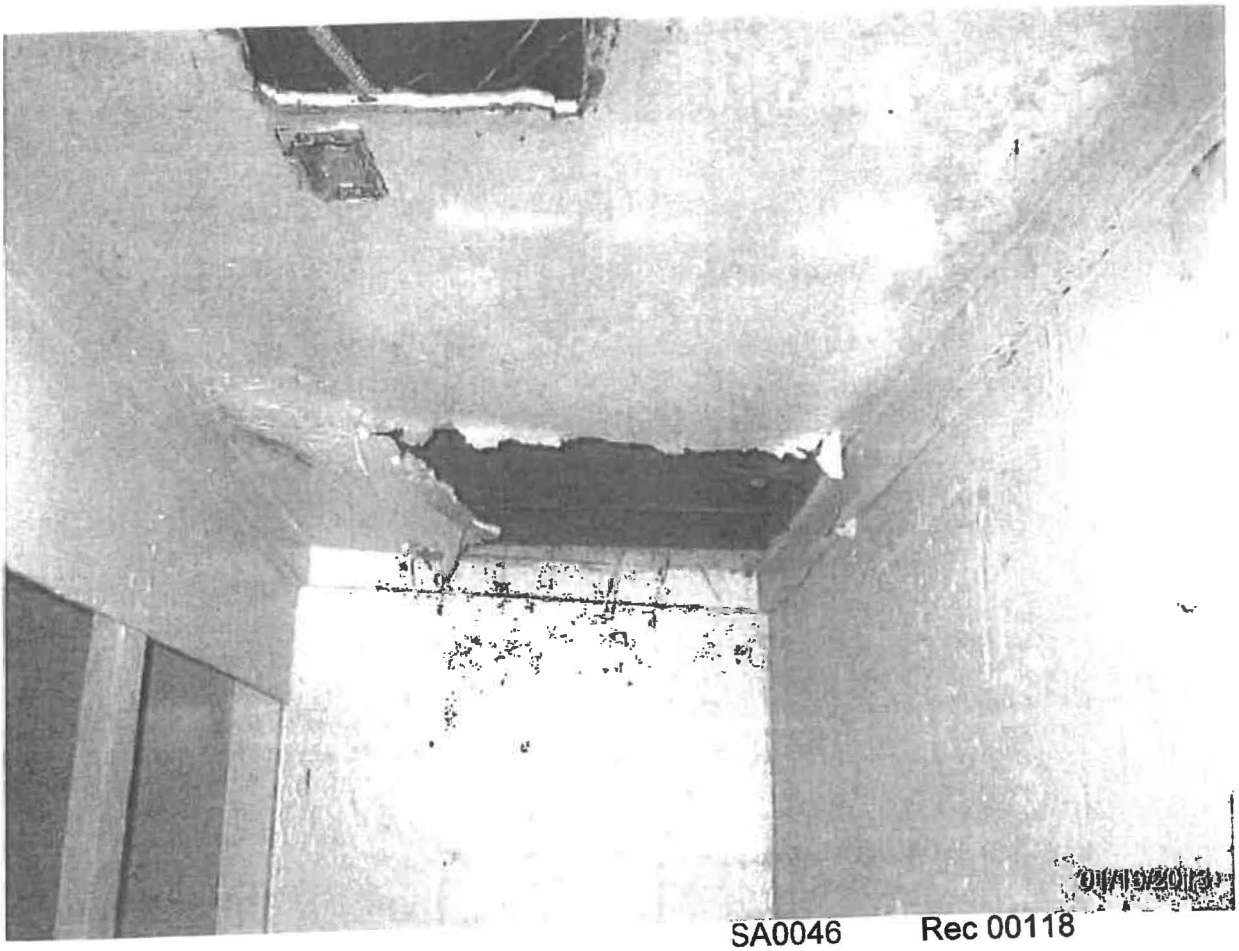
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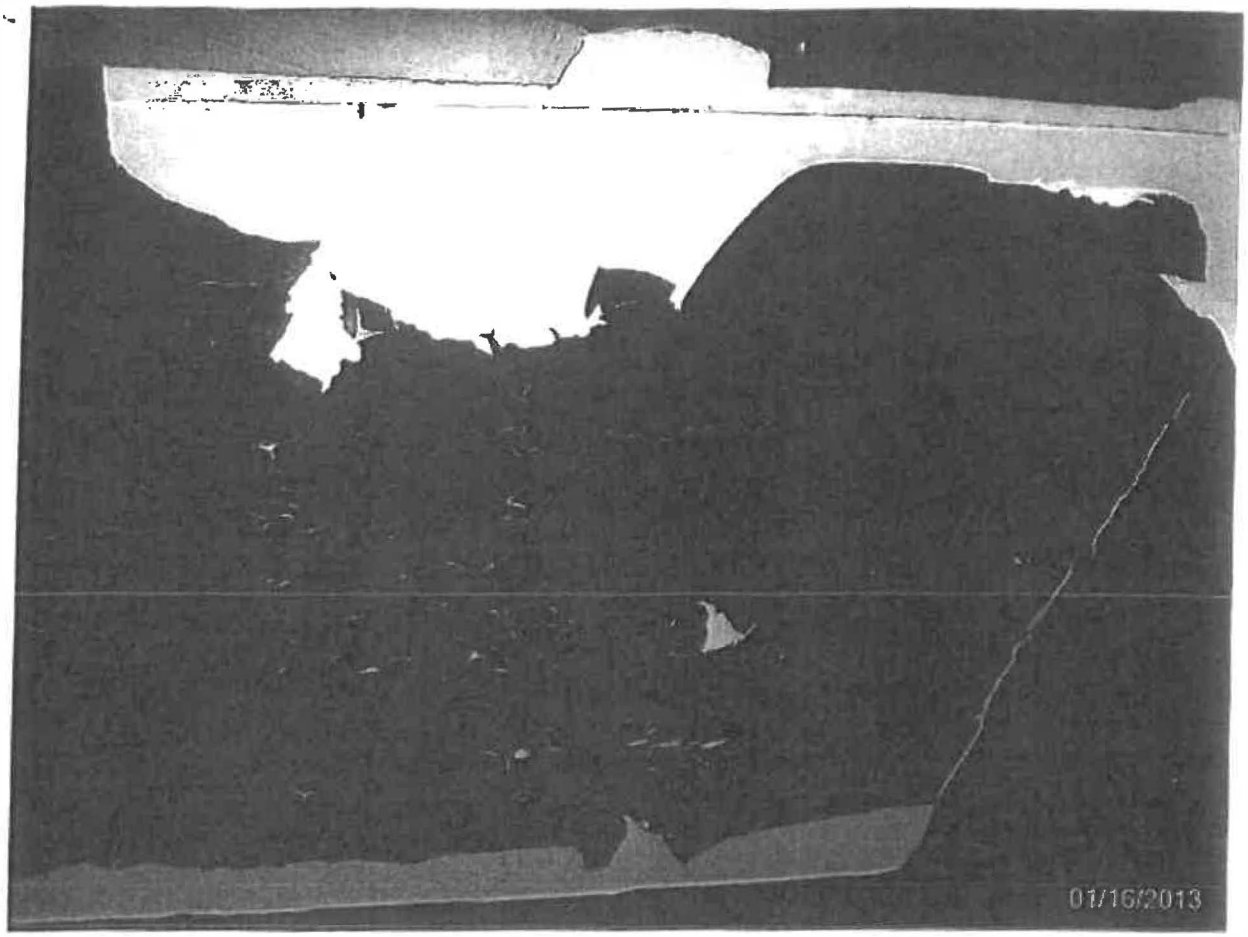
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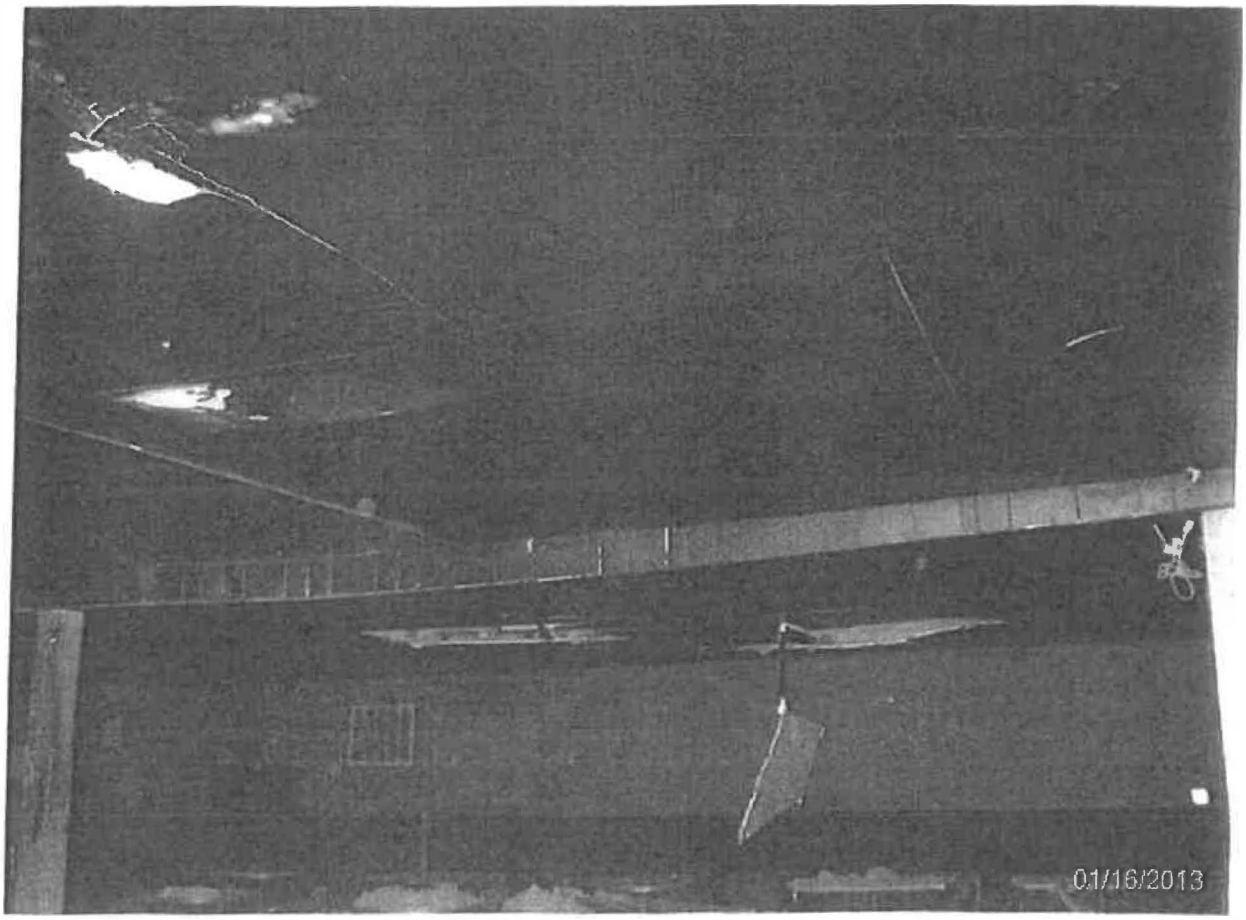
01/16/2013

CERTIFICATE OF SERVICE

I, Marie-Bernarde Miller, Deputy City Attorney, hereby certify that I served a copy of the foregoing Supplemental Addendum by electronically filing the foregoing with the Clerk of the Court using the AOC/efex system, which shall send notification of such filing to counsel of record listed below, and by mailing a copy *via* first-class U.S. Mail, postage prepaid, to the Honorable Alice Gray, Pulaski County Circuit Judge, as addressed below, on this __th of September, 2020:

Mickey Stevens
2615 Prickett Rd., Ste 2
Bryant, AR 72022

Honorable Alice Gray, Circuit Judge
Pulaski County Courthouse
401 West Markham Street, Room 350
Little Rock, AR 72201

/s/ Marie-Bernarde Miller
Marie-Bernarde Miller (84107)