

MEMORANDUM

TO: Cass County Commissioners

FROM: Tracy J. Peters
Chief Deputy Attorney
Cass County State's Attorney

DATE: November 5, 2021

RE: Forfeited property in Argusville

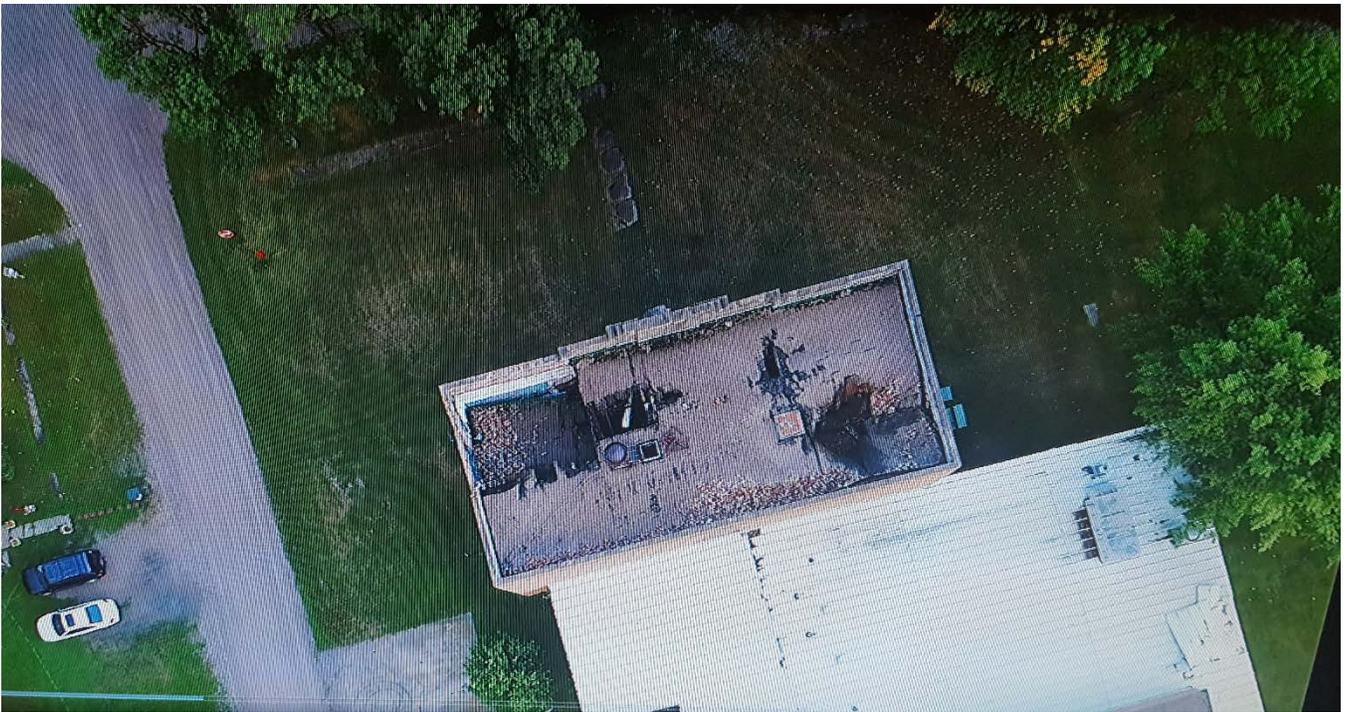
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At the commission meeting on November 1, 2021, a public hearing was held on a number of tax forfeited properties including two properties in Argusville, ND. These properties are scheduled for public auction on November 16, 2021. The abandoned school building on these two properties is in poor condition. The cost to demolish it, including the cost of asbestos removal, is estimated by the city of Argusville to be between \$250,000 and \$450,000.

Under N.D.C.C. 57-28-28, "if property sold by the county under [Chapter 57-28] is sold for less than the total amount of the taxes due and the costs to improve salability of the property which were incurred by the county in cleanup, repairs, demolition, or other action necessary because of damage, neglect, or waste by the prior owner, those costs incurred by the county to improve salability which were not recovered by the county from the sale constitute a lien on any real property owned, or later acquired, in the county by that prior owner."

In this case, the county commission could elect to leave the property on for public auction on November 16, 2021. If the property does not sell, the county could elect to complete the demolition, cleanup, and/or repairs and sell the property. The county commission could also forgo selling the property at the November 16th sale and elect to complete the demolition, cleanup, and repair prior to any sale.

If the county incurs the expense of demolition and removal of the building on the property, the difference between the cost of demolition, cleanup, and repairs plus the amount of taxes owing to the county and the purchase price would become a lien on any real property in Cass County owned by the previous owners.



members, or fifty percent of damage or determination of the non-supporting enclosing or outside walls or covering; 2) the building(s) has improperly distributed loads upon the floors or roofs or in which the same are overloaded, or which have insufficient strength to be reasonable safe for the purpose used; 3) the building(s) has been damaged by fire, wind or other causes so as to have become dangerous to life, safety, morals, or the general health and welfare of the occupants or the people of the city; 4) the building(s) has become, or is, so dilapidated, decayed, unsafe or unsanitary or which so utterly fails to provide the amenities essential to decent living that they are unfit for human habitation or are likely to cause of aggravate sickness or disease, so as to work injury to the health, morals, safety, or general welfare of those living therein; 5) the building, because of its condition is unsafe, unsanitary or dangerous to the health, morals, safety or general welfare of the people of this city; 6) the building(s) has parts thereof which are so attached that they may fall and injure members of the public or property; and 7) the building(s) exists in violation of provisions of the Building Code, zoning ordinances, the Fire Prevention Code, or other ordinances of this city.

4. The Notice of Dangerous Building was sent to the Baumlers by certified mail on September 29, 2017. The Notice of Dangerous Building ordered the Baumlers to vacate, repair, or demolish said building by October 31, 2017.

5. On or about January 29, 2018, Christine Rose inspected the building(s) located on Lots 7-12 and 13-24, Block 9, Original Townsite to the City of Argusville, parcel numbers 09-0100-11883-000 and 09-0100-11882-000 to check on whether the owner had complied with the Notice of Dangerous Building. Ms. Rose found that the Notice had not been complied with and issued a report of non-compliance to the City.

6. On or about February 26, 2018, a notice of hearing was sent to the Baumlers notifying them that, because of their failure to comply with the abatement of the nuisance, a hearing would be held before the City Council of the City of Argusville on March 12, 2018 to show cause why the building(s) or structure(s) reported to be a dangerous building described herein should not be repaired, vacated, or demolished.

7. On March 20, 2018, an amended notice of hearing was sent to the Baumlers notifying them that the hearing was rescheduled from March 12, 2018, to April 2, 2018.

8. On April 2, 2018, the City Council of the City of Argusville held a hearing on this matter, at which time the Baumlers, or anyone having an interest in Lots 7-12 and 13-24, Block 9, Original Townsite to the City of Argusville, parcel numbers 09-0100-11883-000 and 09-0100-11882-000, were given the opportunity to present any evidence or argument it wished concerning the same.

9. At the hearing on April 2, 2018, the City Council of the City of Argusville received evidence, including written statements and testimony from Ms. Rose concerning the condition of the building(s) on Lots 7-12 and 13-24, Block 9, Original Townsite to the City of Argusville, parcel numbers 09-0100-11883-000 and 09-0100-11882-000, located within the city limits of the City of Argusville, North Dakota. The Baumlers, or a representative therefrom, did appear by telephone.

10. The Baumlers provided testimony that they were attempting to sell the property and requested more time. The City Council determined to continue the show cause hearing to May 7, 2018, at 7:00 p.m.

11. On April 16, 2018, a letter was sent, along with an email containing a copy of the letter, to the Baumlers indicating the show cause hearing was continued to May 7, 2018, at 7:00 p.m.

12. On May 7, 2018, the City Council of the City of Argusville the continued hearing on this matter was held, at which time the Baumlers, or anyone having an interest in Lots 7-12 and 13-24, Block 9, Original Townsite to the City of Argusville, parcel numbers 09-0100-11883-000 and 09-0100-11882-000, were given the opportunity to present any evidence or argument it wished concerning the same.

13. At the continued hearing on May 7, 2018, the City Council of the City of Argusville received evidence, including written statements and testimony from Ms. Rose concerning the condition of the building(s) on Lots 7-12 and 13-24, Block 9, Original Townsite to the City of Argusville, parcel numbers 09-0100-11883-000 and 09-0100-11882-000, located within the city limits of the City of Argusville, North Dakota. The Baumlers, or a representative therefrom, did appear in person and provided testimony.

14. The Baumlers were given more time to gather more information regarding demolition or sale of the property.

15. On June 4, 2018, the City Council of the City of Argusville received additional information regarding the condition of the building(s) on Lots 7-12 and 13-24, Block 9, Original Townsite to the City of Argusville, parcel numbers 09-0100-11883-000 and 09-0100-11882-000, located within the city limits of the City of Argusville from Jane Kagnas from the North Dakota Department of Health.

16. The building(s) and structure(s) located on Lots 7-12 and 13-24, Block 9, Original Townsite to the City of Argusville, parcel numbers 09-0100-11883-000 and 09-0100-11882-000, located within the city limits of the City of Argusville, North Dakota, is a substandard building(s) because the building(s) on the property have a collapsed roof on the southern portion of the building, windows are covered in plywood, and the exterior of the building is failing. Accordingly, Ms. Rose notified the Baumlers that the building(s) constituted a dangerous building(s) because 1) the building(s) shows thirty-three percent or more of damage or deterioration of the supporting member or members, or fifty percent of damage or determination of the non-supporting enclosing or outside walls or covering; 2) the building(s) has improperly distributed loads upon the floors or roofs or in which the same are overloaded, or which have insufficient strength to be reasonable safe for the purpose used; 3) the building(s) has been damaged by fire, wind or other causes so as to have become dangerous to life, safety, morals, or the general health and welfare of the occupants or the people of the city; 4) the building(s) has become, or is, so dilapidated, decayed, unsafe or unsanitary or which so utterly fails to provide the amenities essential to decent living that they are unfit for human habitation or are likely to cause or aggravate sickness or disease, so as to work injury to the health, morals, safety, or general welfare of those living therein; 5) the building(s), because of its condition is unsafe, unsanitary or dangerous to the health, morals, safety or general welfare of the people of this city; 6) the building(s) has parts thereof which are so attached that they may fall and injure members of the public or property; and 7) the building(s) exists in violation of provisions of the Building Code, zoning ordinances, the Fire Prevention Code, or other ordinances of this city.

17. A reasonable time for the Baumlers, or a representative therefrom, to demolish and remove and repair the dilapidated and dangerous building and structure will be by August 1, 2018.

CONCLUSIONS OF LAW

1. The Baumlers, the owners of a dilapidated and dangerous building and structure located on Lots 7-12 and 13-24, Block 9, Original Townsite to the City of Argusville, parcel numbers 09-0100-11883-000 and 09-0100-11882-000, located within the city limits of the City of Argusville, Cass County, North Dakota, was given proper and timely notice of the hearing held on this matter on April 2, 2018, and May 7, 2018.

2. Pursuant to the Ordinances of the City of Argusville, North Dakota, the dilapidated and dangerous building and structure referred to above must be demolished and removed in a reasonable time.

3. Pursuant to the Ordinances of the City of Argusville, North Dakota, if the Baumlers, or a representative thereof, does not demolish and remove the dilapidated and dangerous building and structure, as indicated above, located on the above-referenced property within a reasonable time, the City may do so and may certify the costs associated therewith to the County Auditor as a special assessment levied upon the property and to be spread upon the taxes against the property.

4. Pursuant to the Ordinances of the City of Argusville, North Dakota, the Baumlers will have thirty (30) days from the date of this Order in which to appeal this decision to the District Court of the County of Cass, State of North Dakota (if they so desire), and the City may

not demolish and remove or repair the dilapidated and dangerous building or structure prior to that time.

ORDER

Based on the above and foregoing Findings of Fact and Conclusions of Law, the City Council of the City of Argusville, North Dakota, hereby

ORDERS AND DECREES that the Baumlers, being the owners of the real property located at Lots 7-12 and 13-24, Block 9, Original Townsite to the City of Argusville, parcel numbers 09-0100-11883-000 and 09-0100-11882-000, located within the city limits of the City of Argusville, Cass County, North Dakota, must demolish and remove the dilapidated and dangerous building(s) which is located thereon and which is more than 50 percent damaged or decayed or deteriorated from its original value of structure and which cannot be repaired so that it will no longer exist in violation of the terms of the Ordinances of the City of Argusville, within a reasonable time but not later than August 1, 2018; and

FURTHER ORDERS AND DECREES that if the Baumlers do not so demolish and remove the dilapidated and dangerous building and structure by August 1, 2018, then the City Council of the City of Argusville, North Dakota, may cause the same to be demolished and removed and the costs related to the same be certified to the Cass County Auditor as a special assessment levied upon the property and to be spread upon the taxes against the property.

Dated: _____, 2018.

Randy Teberg, Mayor of the City of Argusville, North
Dakota

ATTEST:

Mary Howatt, City Auditor