

# What To Do When Unsafe Properties Pose a Threat to the Welfare of the Citizens in Your Township

By: M. Neal Smith, Jr.

Robbins Schwartz Nicholas Lifton & Taylor, Ltd.

**T**HE CURRENT VOLUME of vacant properties in some state of foreclosure is one of the most significant issues affecting local housing markets and the general health of communities. When properties remain vacant for extended periods, they often fall into serious disrepair, become tax delinquent and are eventually abandoned. Abandoned properties are unsafe in many ways, especially as fire hazards, and as magnets for vandalism and criminal activity. It is no wonder that communities are scrambling to find tools to deal with unsafe and abandoned properties.

When a structure becomes unsafe, whether abandoned or not, the citizens of a community will look to their local elected officials to take action. In Illinois, when a property is located in an incorporated area, it is the municipality that must address the dangerous nature of the property. However, in unincorporated areas townships can and should play a forceful role to ensure that dangerous properties do not threaten the safety and welfare of citizens.

## Requesting the County to Take Action

The Illinois Township Code authorizes townships to cause the demolition, repair or enclosure of unsafe buildings and buildings that are uncompleted and abandoned, by the initiation of litigation in the circuit court. 60 ILCS 1/85-50(a) (2011). Before it can initiate such litigation, the township must first send a formal request to the county in which the township is situated requesting that the county take action with respect to the unsafe property. *Id.* The county must consider the township's request at the next county board meeting (if the request is received at least 10 days before the next county board meeting) and the county board must either commence litigation or decline to do so, and notify the township of its decision. 55 ILCS 5/5-1121 (2011). If the county does not take formal action, it is deemed to have declined the township's request if the county does not initiate litigation within 60 days of the township's request. *Id.*

Townships, positioned as they are at the grassroots of governance in Illinois, are often the first place citizens turn when they have community concerns. Thus, township officials play an important role in listening to citizen concerns, identifying properties that are unsafe, bringing the unsafe properties to the attention of county officials and following up with county officials to encourage appropriate action to remediate those properties. Town-

ship officials must be aware of this authority and be ready to interact with county officials as necessary.

## Township Litigation to Cause Properties to Be Made Safe

If after receiving a township request a county decides not to act, then the township may proceed on its own to make the property safe. First, the township must send a "15-day notice" to the owners and lien holders of record for the unsafe property, advising the owners and lien holders that if the structure is not repaired or demolished within 15 days from the date of the notice, the township will take court action to force the property to be demolished or otherwise put in a safe condition. 60 ILCS 1/85-50(b) (2011).

If the owner (or a lien holder of record) does not demolish or repair the property within the 15 day period, the township can then file a complaint for demolition and other relief with the circuit court naming as parties the owners and lien holders of record. *Id.* Litigation would then ensue and the township would need to prove its case by showing either (i) that the building is unsafe; or (ii) that the building is uncompleted and abandoned. 60 ILCS 1/85-50(b). Further, for a demolition order to be entered (as opposed to a repair order), a township would need to prove that the building is "beyond reasonable repair." *Village of Franklin Park v. Aragon Management, Inc.*, 298 Ill. App. 3d 774, 699 N.E.2d 1053 (1st Dist. 1998). The courts have held that a building is "beyond reasonable repair" if the cost to make the building safe is more than half of the value of the building. *Id.*

So, for example, a court might find that a building is dangerous because it is structurally unsound or that it has electrical violations that pose an electrocution hazard; the court would then determine the cost to repair the unsafe building conditions and determine the value of the building. If the court finds that the building is valued at \$20,000 and the cost to repair the unsafe building conditions is \$12,000, the court could deem the building "beyond reasonable repair" and order that the building be demolished.

## Costs to Demolish, Repair or Enclose

If the court agrees with the township that the building is unsafe and "beyond reasonable repair," the court is empowered to enter a demolition order authorizing the township itself to demolish the structure. While demolition may seem attractive, such a remedy raises

certain practical concerns for the township about the cost of demolition. For example, a township that obtains a demolition order must pay for demolition costs up front (in addition to any court costs and attorney fees incurred in initiating the litigation) if the township actually wants to see the building come down, since it will often be the case that the owner of the building is absent or financially incapable of demolishing the structure. These costs can be substantial for a township, especially since asbestos abatement is often involved and since the township is required to pay prevailing wages for demolition work.

In order to prevent an unjust outcome, the legislature has provided that the costs and attorney fees incurred by a township are a lien on the property if a "notice of lien" is recorded with the county recorder within 180 days after the costs have been incurred. *Id.* The lien can be foreclosed upon in the same litigation, or a township can foreclose on the lien in a separate foreclosure action initiated at some later time. 60 ILCS 1/85-50(c) (2011). Of course, the township could just keep the lien on the property until the property is next conveyed, at which time the lien would likely be paid off in order to clear title. Ultimately, the lien is not a guarantee of repayment for costs advanced by the township, but it provides some security that the township will not have to bear the full cost of making a property safe.

## Conclusion

Townships by their very nature are the most accessible and responsive form of government in Illinois. When vacant properties become abandoned and abandoned properties then become dangerous, township officials must be prepared to act. When it comes to unsafe properties, being prepared to act means knowing how to go to court to secure a demolition or repair order when the county will not do so.



**M. NEAL SMITH, JR.**  
ASSOCIATE, JOLIET  
815-722-6560  
nsmith@rsnlt.com

*Neal Smith practices in the areas of municipal law and labor and employment law. He provides legal advice to municipalities, townships and local governmental boards and commissions. Prior to joining Robbins, Schwartz, Neal concentrated his practice in the areas of municipal law, labor law, election law and litigation. He has represented municipalities and local governmental entities in State and Federal Court, before the Illinois Commerce Commission and in employer-employee disputes involving EEOC charges and unfair labor practice charges.*

## RAISING THE BAR ON QUALITY. STANDARD.

Bonnell Industries is a leading manufacturer of snow plows, snow pushers, tailgate and v-box spreaders, scrapers, wings, hitches, road drags, flow gates, road wideners, and windrow eliminators. Bonnell also carries a full line of truck equipment, power equipment, municipal/contractor supplies and equipment.

For our complete line of equipment please visit us online at:  
[www.bonnell.com](http://www.bonnell.com)

**BONNELL INDUSTRIES INC.**  
TRUCK AND ROAD EQUIPMENT

1385 Franklin Grove Rd. • Dixon, IL 61021  
(800) 851-9664 • (815) 284-3819  
[www.bonnell.com](http://www.bonnell.com)