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Fight the Blight, and Make it Right

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To some degree, blight touches every neighborhood in our state. In some places, it is the exception, and in other places, it is the rule. There is no one answer to address the variety of problems caused by and resulting in blight, but it is the goal of this paper and the corresponding presentation to remind the reader of the tools that are available and to encourage innovation in finding new solutions.

I. An Ounce of Prevention: Property Inspection Policies.

One of the best devices in a municipality's toolbox to fight the rundown of residential structures is the adoption of a property inspection policy. The purpose of a property inspection policy is to require owners, landlords, tenants, and roomers to maintain and improve the quality and appearance of rental housing to protect the health and safety of persons. This purpose is accomplished by requiring a certificate of occupancy for the rental units covered by the policy.

To obtain a certificate of occupancy, the rental-housing unit must be inspected for compliance with all technical codes adopted by the municipality.

The *Code of Alabama* does not specifically address property inspection policies, but there is ample statutory authority to sanction such policies. First, a municipality has the express authority to enforce police or sanitary regulations within its city limits and within its police jurisdiction and to prescribe fines and penalties for the violations of the regulations. *See* ALA. CODE § 11-40-10(b) (1975). *See also* ALA. CODE §§ 11-53-1 thru 11-53-4 (1975). Second, a municipality may adopt ordinances, rules, and regulations as a code for the construction, erection, alteration, or improvement of buildings, the installation of plumbing or plumbing fixtures, installation of electric wiring or lighting fixtures, installation of gas or gas fixtures, fire prevention, health and sanitation, waterworks and sewers, mechanical, swimming pools, housing, elimination and repair of unsafe buildings, and other like codes. *See* ALA. CODE § 11-45-8(c) (1975).

In Opinion 2007-009, dated October 31, 2006, the Attorney General of Alabama issued an opinion to Mayor Ronald K. Davis of the City of Prichard in support of property inspection policies. The Attorney General opined that a municipality has the authority to adopt an ordinance (1) requiring the annual inspection of apartments and rental houses to ensure compliance with the local building code, (2) charging a reasonable fee to defray the expense of performing the inspections, and (3) charging a reasonable fine or revoking the certificate of occupancy of any apartment or rental house failing to comply with the local building and housing code. *See* ALA. A.G. OP. 2007-009 (Oct. 31, 2006).

Property inspection policies are consistent with the purposes of the Alabama Uniform Residential Landlord and Tenant Act, which became effective on January 1, 2007. *See* ALA.

CODE § 35-9A-101, *et seq.*, (1975). Section 35-9A-102(b) of the *Code of Alabama* (1975) states that one of the purposes of the Alabama Uniform Residential Landlord and Tenant Act is "to encourage landlords and tenants to maintain and improve the quality of housing." This purpose is carried out through the requirements made applicable to both landlords and tenants. Every landlord must "comply with the requirements of applicable building and housing codes materially affecting health and safety." ALA. CODE § 35-9A-204(a)(1) (1975). Likewise, every tenant must "comply with all obligations primarily imposed upon tenants by applicable provisions of building and housing codes materially affecting health and safety." ALA. CODE § 35-9A-301(1) (1975).

II. A Pound of Cure: Remediation.

Several available remedies allow municipalities to abate various forms of common nuisances. Below is a summary of the authorities for the abatements, discussion of key considerations in effecting the abatements, and most importantly for our clients, reference to the procedures for collecting the costs of performing the abatements.

A. Dangerous Buildings and Unsafe Structures.

Sections 11-40-30 through 11-40-36 of the *Code of Alabama* (1975) provide a means for any incorporated Alabama municipality to "**move** or **demolish** buildings and structures, or parts of buildings and structures, party walls, and foundations when found by the governing body of the municipality to be unsafe to the extent of being a public nuisance from any cause." ALA. CODE § 11-40-30 (1975) (emphasis added). Sections 11-53B-1 through 11-53B-16 of the *Code of Alabama* (1975), authorize any Alabama municipality to **demolish** or **repair** a structure under

similar circumstances. Each of these chapters of the *Code* offers an end to the hazards of a dangerous building. Their remedies are cumulative to other powers granted to municipalities, and when used purposefully, the remedies of these chapters can be used in coordination with one another.

Because the provisions of the chapters set forth at Section 11-40-30, *et seq.*, and Section 11-53B-1, *et seq.*, apply to all Alabama municipalities, they are the focus of this part of the paper. However, there are other similar schemes that apply to limited classes of municipalities. Sections 11-53A-1 through 11-53A-6 of the *Code of Alabama* (1975) apply to the creation of a municipal housing abatement board in Class 5, Class 6, and Class 8 municipalities, and to the moving or demolition of dangerous buildings and unsafe structures. Class 4 municipalities with a Mayor-Council form of government can utilize Sections 11-53A-20 through 11-53A-26 of the *Code of Alabama* (1975), to move or to demolish a dangerous building or unsafe structure. Class 2 municipalities can utilize Sections 11-40-50 through 11-40-54 *Code of Alabama* (1975) for an additional remedy. If your municipality utilizes or desires to utilize one of these class-specific provisions, please consult the *Code* for further information, but the principles discussed below will still apply.

A comparison chart of the chapters set forth at Section 11-40-30, *et seq.*, and Section 11-53B-1, *et seq.*, is offered on the next page. There are key differences in the length of the notice required, the parties to whom notice must be given, and the manner in which assessments for costs of the remediation are collected. A well-designed ordinance to address dangerous buildings should satisfy the minimum requirements of both chapters to allow the council to utilize all of the available collection procedures.

Comparison of Dangerous Buildings/Unsafe Structures Remedies Available to All Municipalities

	Section 11-40-30, *et seq.*	**Section 11-53B-1, *et seq.***
Year enacted	1989 (amended in 1999).	2002.
Authorized Action	Demolish or move.	Demolish or repair.
Persons to Notify	Tax Collector's records.	Record owner at last known address & property address; owner of property; owner of interest in property; Tax Assessor's records; mortgagees of record.
Minimum Notice	30 days by certified mail.	45 days by certified or registered mail.
Additional Notice	Within 3' of entrance.	Within 3' of entrance.
Hearing	5-30 days after request.	5-30 days after request.
Appeal	To circuit court within 10 days.	To circuit court within 10 days.
Trial on Appeal	Without jury.	Without jury.
Notice of Costs	By 1st Class Mail.	By 1st Class Mail.
Effect of Costs	Special assessment/lien.	Special assessment/lien.
Priority of Lien	Superior to all but taxes.	Superior to all but taxes & prior mortgages.
Collection of Lien	Added to *ad valorem* bill or as assessment collected by the municipality.	Assessments collected by municipality.
Redemption	Does not discharge.	Does not discharge.
Assessment of the Costs	Per § 11-40-35 and § 11-48-48, if ≤ $1,000.00, to be paid within 30 days. If > $1,000.00, in 10 equal annual installments bearing interest at a rate not exceeding 12% per annum.	If ≤ $10,000.00, to be paid within 30 days. If > $10,000.00, in 10 equal annual installments bearing interest at a rate not exceeding 12% per annum.
Collection of the Assessment	Per § 11-40-35 and §§ 11-48-49 through 11-48-60, if property owner fails to pay assessments when due, city can sell the property to the highest bidder for cash. 2 years to redeem.	If property owner fails to pay assessments when due, city can sell the property to the highest bidder for cash, but in no event less than the amount of the lien plus interest through the date of default. Can be forced by any taxpayer. 2 years to redeem.
Special Classes	Class 2. *See* ALA. CODE § 11-40-35, (1975); ALA. CODE § 11-48-48.1 (1975); ALA. CODE § 11-40-50, *et seq.* (1975).	N/A.

Before demolishing a structure, a municipality should very carefully consider the notice provisions that it employs. A case out of the United States District Court for the Middle District of Alabama has made it impossible to rely on the relatively simple notice provisions required by the demolition chapters of the *Alabama Code* cited above. *See Ellis v. City of Montgomery*, 460 F. Supp. 2d 1301 (M.D. AL 2006). In *Ellis v. City of Montgomery*, the district court held that a municipality's procedure of using a county revenue commissioner's records to identify owners of property is unconstitutional. *Id.* The City of Montgomery's reliance on state law was not a valid defense.

> It therefore appears that the city, in sending notice to the property owner as reflected in the revenue commissioner's records, was following state and local law.
>
> But, as previously stated, the State is not empowered to determine what constitutes adequate notice under the due process clause of the Federal Constitution. "[B]ecause minimum procedural requirements are a matter of federal law, they are not diminished by the fact that the State may have specified its own procedures that it may deem adequate for determining the preconditions to adverse official action." *Logan*, 455 U.S. at 432, 102 S.Ct. 1148 (internal quotation marks and brackets omitted). Notwithstanding the language of the state statute, any notice procedure must be reasonably certain to inform real property owners of the pendency of demolition proceedings. The city's notice procedure [(i.e., to follow state law)], at the time Ellis's property was condemned and demolished, fell far short of that standard.

Id. at 1310-1311. Unfortunately, most Alabama municipalities are currently employing the procedure described in *Ellis* in their reliance upon the *Code*.

The *Ellis* Court found that in Alabama it is the county probate office, and the probate office alone, that can provided "record notice" of when real property undergoes a change in ownership or becomes encumbered. *Ellis*, 460 F. Supp. 2d at 1306. Therefore, the court concluded that, before demolishing a structure, a municipality should search the probate office's

records at the time that it declares a property unsafe and send notice to its owners. *See id.* As for relying upon the procedures contained in the *Alabama Code*, the district court found that "by using the public records of the county revenue commissioner to identify the property owner, the City of Montgomery did not employ notice procedures 'reasonably certain to inform those affected' by its action." *Id.* at 1305.

The district court was also concerned about notice given to subsequent purchasers of the subject property after a finding that the property should be demolished. Consequently, the district court opined that the municipality should go one-step further to put potential future purchasers on notice.

> The city's notice procedure would be "reasonably calculated" to inform the person whose interests are affected by the demolition if, in addition to searching title in the probate office before sending notice to the property owner, the city were to take some additional measures to ensure that subsequent purchasers are on notice of pending demolition proceedings.
>
> For instance, the city could itself record, in the probate office, notice of the pending demolition proceedings. That way, any subsequent purchaser of the property would be on record notice that demolition could occur. Once notice from the city becomes a part of the public record, properly filed with the probate office, the city would be under no further obligation to ensure that the property did not change hands prior to demolition. "[A] purchaser or other person to whom notice is imputed by recordation is presumed to have examined the records in the office of the judge of probate." Jesse P. Evans III, *Alabama Property Rights & Remedies* § 5.4[e], at 5-16 (3d ed. 2004).

Id. at 1307. The district court hypothesized that such notice might be given through a *lis pendens* type of filing as is used with civil actions involving an interest in real property. *See id.*

However, the district court conceded that it was relying upon some degree of conjecture as to whether a *lis pendens*[1] filing would be required (or even accepted by the probate court). *See id.*

Based upon the *Ellis* decision it is recommended that all dangerous buildings/unsafe structures ordinances (1) require a title report and (2) require a *lis pendens* filing in the probate court to give notice to any subsequent purchasers of the demolition proceedings. In reliance upon this decision, we have found that the Jefferson County Probate Court will accept *lis pendens* filings for this purpose.

A dangerous buildings/unsafe structures ordinance should also make it a violation of the ordinance for any person who has received a notice pursuant to the ordinance to sell, transfer, mortgage, lease, encumber, or otherwise dispose of such building, structure, part of building or structure, party wall, or foundation that is the subject of notice to another until such person shall first provide the grantee, transferee, mortgagee, or lessee a true copy of the notice and shall provide to the city building inspector official a signed and notarized statement from the grantee, transferee, mortgagee, or lessee acknowledging the receipt of the notice and fully accepting the responsibility without condition for making the corrections or repairs required by such notice. Similarly, the *International Property Maintenance Code*, which many municipalities have adopted, prohibits the sale or transfer of any property that is under a "compliance" order from the municipality.

[1] *Black's Law Dictionary* defines a "*lis pendens*," in pertinent reference, as "A notice, recorded in the chain of title to real property, required or permitted in some jurisdictions to warn all persons that certain property is the subject matter of litigation, and that any interests acquired during the pendency of the suit are subject to its outcome. LIS PENDENS, *Black's Law Dictionary* (9th ed. 2009).

B. Grass and Weeds.

Sections 11-67-60 through 11-67-67 of the *Code of Alabama* (1975) govern the abatement of weeds in any Alabama municipality. Grass and weeds to be abated under the state law include "a growth of grass or weeds, other than ornamental plant growth, that exceeds 12 inches in height," so long as the grass or weeds are not located on property that has been zoned for an agricultural use. ALA. CODE §§ 11-67-60, 11-67-61 (1975). The council must order the abatement through a resolution that references the location of the weeds by "the street by the name under which it is commonly known or describe the property upon which or in front of which the nuisance exists by giving a legal description of the property." ALA. CODE § 11-67-61 (1975).

Many municipalities complain that the procedure outlined by Section 11-67-62 of the *Code of Alabama* (1975) takes too much time and costs too much money to provide the required notice. Notice becomes costly because the state law requires potential newspaper publication for two weeks, certified mailing, and the posting of two signs large enough to accommodate lettering of not less than one inch in height. *See* ALA. CODE § 11-67-62(c)-(d) (1975). The council has to pass a resolution setting a public hearing, and then give notice by certified mail, return receipt requested, at least twenty-one days prior to the hearing. *See* ALA. CODE § 11-67-62(a) (1975). Depending upon when the problem is discovered in relation to the council meeting calendar, it is not uncommon for it to take well-over a month before the abatement of the weeds gets set for a public hearing. Of course, during that time, the grass and weeds continue to do what they do: they grow higher and higher. The only light at the end of the tunnel is that the "weed lien" that is created for the cost of the abatement can be lumped on to the property owner's *ad valorem* tax bill. *See* ALA. CODE § 11-67-66 (1975). For a step-by-step description of the process to employ

Sections 11-67-60 through 11-67-67, please see Alabama League of Municipalities, *Selected Readings for the Municipal Official*, "Abatement of Nuisances," p. 326-327 (2008 ed.).

In 2010, the Alabama Legislature created a new article that allows Class 7 municipalities to adopt their own procedures for abating grass and weed nuisances. *See* ALA. CODE § 11-67-80 (1975). Class 7 municipalities taking advantage of this provision have the freedom to strip down the process to the most essential provision of due process, greatly speed up the timeline for abatement, and significantly reduce the cost of making it all happen. The best part is that Class 7 municipalities still get to add their "weed lien" to the property owner's *ad valorem* tax bill, just as it would have using the procedures set forth in Sections 11-67-60 through 11-67-67. *See* ALA. CODE § 11-67-80 (1975).

A special procedure is provided for Class 2 municipalities in Sections 11-67-1 through 11-67-7, which is not any shorter but maybe a little less costly to provide notice. *See* ALA. CODE §§ 11-67-1 thru 11-67-7 (1975). Sections 11-67-20 through 11-67-28 apply to Class 5, 6, and 8 municipalities, which is really no better method than that set forth for all municipalities. Sections 11-67-40 through 11-67-45 apply to Class 4 municipalities with a Mayor-Council form of government, and although it specifies the procedures to be used, the procedures set forth are less costly and less time-consuming than those offered for all municipalities.

C. Abandoned Motor Vehicles.

Chapter 13 of Title 32 of the *Code of Alabama* (1975) addresses "abandoned motor vehicles." *See* ALA. CODE § 32-13-1 through 32-13-8 (1975). According to the *Code of Alabama*, an "abandoned motor vehicle" includes, in pertinent part, any motor vehicle

> (2) Which is left unattended on a public street, road, or highway or other public property for a period of at least seven days; or left

> unattended continuously for at least seven days in a business district or a residence district; or if left unattended in a business district that has at least one posted notice in an open and conspicuous place indicating that there is a time limitation on the length of time a motor vehicle may remain parked in the district and the motor vehicle remains unattended for a period of time in excess of that posted on the notice; or left unattended in a business district or residence district that has at least one posted notice indicating that only authorized motor vehicles may park in that district and the owner of the motor vehicle or his or her agent has not received the required authority prior to leaving the motor vehicle unattended; or left unattended on a private road or driveway without the express or implied permission of the owner or lessee of the driveway or their agent. . . .
> (3) Which has been lawfully towed onto the property of another at the written request of a law enforcement officer and left there for a period of not less than 60 days without anyone having made claim thereto.
> (4) Which has been abandoned, has an expired license plate, or is inoperable in a parking area on private property maintained by the property owner or his or her agent for use by his or her tenants, residents, or their guests. A vehicle shall be defined as abandoned or inoperable under this subdivision if it has an expired license plate or has remained in the same parking lot for a period of 30 days or more. . . .

ALA. CODE § 32-13-1 (1975). Under Alabama's abandoned motor vehicle law, the term "motor vehicle" includes "[e]very automobile, motorcycle, mobile trailer, semitrailer, truck, truck tractor, trailer and other device that is self-propelled or drawn, in, upon, or by which any person or property is or may be transported or drawn upon a public highway except such as is moved by animal power or used exclusively upon stationary rails or tracks." ALA. CODE § 32-8-2(10) (1975). The term also includes "[e]very trailer coach and travel trailer manufactured upon a chassis or undercarriage as an integral part thereof drawn by a self-propelled vehicle." *Id.* The provisions of the *Code* should be consulted directly for the specifics of the notice required for addressing an abandoned motor vehicle.

Abandoned motor vehicles can be sold at public auction. *See* ALA. CODE § 32-13-3(a)(1) (1975). The proceeds from the sale are to be paid "to the license plate issuing official of the county in which such sale is made to be **distributed to the general fund of the county**." *See* ALA. CODE § 32-13-6(a) (1975) (emphasis added). Accordingly, the proceeds are going to the county, not to the municipality. The only monies that can be deducted from the sale of the proceeds are "the reasonable cost of repair, towing, storage, and all expenses incurred in connection with such sale." *See id.* To make matters worse, there is no incentive for municipalities to engage in repairing, towing, storing, or otherwise bearing the expenses involved with the sale of abandoned motor vehicles because governmental entities are not permitted to recover such monies. *See id.* Accordingly, a municipality should consider enacting an ordinance that makes it a violation to leave an abandoned motor vehicle in the municipality, and then, prosecute the owner of the vehicle (or the owner of the property where it has been abandoned) in municipal court.

D. Nuisances.

There is a general power to abate nuisances offered to all municipalities.

> All cities and towns of this state shall have the power to prevent injury or annoyances from anything dangerous or offensive or unwholesome and to cause all nuisances to be abated and assess the cost of abating the same against the person creating or maintaining the same.

ALA. CODE § 11-47-117 (1975). *See also* ALA. CODE § 11-47-131 (1975). The procedures for exercising this remedy are not set forth by statute. However, any municipality relying upon this statute should heed the holding of the decision in *Ellis v. City of Montgomery* as explained in Part II.A., above.

Municipalities always have the option to abate or enjoin a nuisance by judgment of the court rather than acting on their own resolve.

> All municipalities in the State of Alabama may commence an action in the name of the city to abate or enjoin any public nuisance injurious to the health, morals, comfort, or welfare of the community or any portion thereof.

ALA. CODE § 6-5-122 (1975). *See also* ALA. CODE § 11-47-118 (1975). This provision can be useful where the nuisance involved does not fit into one of the categories specifically addressed by statute (i.e., dangerous buildings, abandoned vehicle, grass and weeds, etc.). However, it can also be employed as a conservative approach to let a court sanction the municipality's proposed abatement before it is undertaken.

III. Creating a "Clean Break" from the Past to Enforce the Zoning Ordinance of the Future.

For many municipalities, there comes a time when they look around and realize that they have not been as ardent in the enforcement of their zoning ordinances as they should have been. They want to repent and change their ways, but they wonder whether having ignored their zoning problems for many years will prevent them from beginning to enforce their zoning laws again.

The Supreme Court of Alabama has considered under what circumstances a municipality can take a renewed approach in the enforcement of its zoning. In *City of Foley v. McLeod*, the City of Foley, Alabama, "sought to enforce nonconforming-use provisions of its zoning ordinance to prevent the replacement of mobile homes in a nonconforming mobile home park." *City of Foley v. McLeod*, 709 So.2d 471, 472 (Ala. 1998). The mobile home park in that case was built in 1955 and preexisted the city's original zoning ordinance, adopted in 1967. *See id.* Foley later adopted a new zoning ordinance in 1987. *See id.* Although both ordinances

generally prohibited the location of the mobile home park in the zone in which it was placed, the mobile home park was allowed to continue to operate as a preexisting use. *See id.* In 1994, the owners of the mobile home park replaced six of the existing manufactured homes located in the park with new manufactured homes. *See id.* The city objected, contending "that its zoning ordinance prohibits the replacement of mobile homes within a mobile home park if the replacement would extend the life of a nonconforming use." *Id.*

The *McLeod* Court first examined the relevant provisions of the city's zoning ordinance, which reads as follows:

> "6.2 Non-Conforming Uses of Land and Buildings
>
> "Within the districts established by this Ordinance or amendments that may be later adopted, there exist lots, structures, uses of land and structures, and characteristics of use which were lawful before the Ordinance was passed or amended, but which would be prohibited, regulated or restricted under the terms of this Ordinance or future amendment. It is the intent of this Ordinance to permit these non-conformities to continue until they are removed, but not to encourage their survival. It is further the intent of this Ordinance that non-conformities shall not be enlarged upon, expanded, nor be used as grounds for adding other structures or uses prohibited elsewhere in the same district.
>
> "6.2.1 Continuance. A lawful non-conforming use existing at the effective date of this Ordinance may be continued, except as hereafter provided, although such use does not conform with the provisions of this Ordinance.
>
> "6.2.2 Restoration to Safe Condition. Nothing in this Ordinance shall prevent the restoration of any building or structure to a safe or sanitary condition when required by the proper authorities.
>
> "6.2.3 Restoration After Damages, No non-conforming building or structure which has been damaged by fire or other causes to the extent of more than 50 percent of its current replacement value at the time of such damage shall be rebuilt or restored except in conformity with the provisions of this Ordinance. If a non-conforming building is damaged less than 50 percent of its current replacement value it may be rebuilt or restored and used as before

> the damage, provided that such rebuilding or restoration is completed within 12 months of the date of such damage."

McLeod, 709 So.2d at 473. The court held that, under the language of the zoning ordinance, "the City may generally enforce the zoning ordinance to prevent the [owners of the mobile home park] from replacing mobile homes at [the mobile home park]." *Id.* at 474. This allows for a municipality to take advantage of a type of "clean break" approach by the adoption of a new zoning ordinance.

For the City of Foley, unfortunately, that was not the end of the court's analysis. The court next considered whether "the City should be estopped from enforcing the ordinance because the City has allowed similar replacements at various times since the ordinance was adopted in 1987." *McLeod*, 709 So.2d at 474-475. Furthermore, the owners of the mobile home park argued that the city had never previously objected to the replacement of mobile homes at the park and that they informed the city's building inspector of their plan to purchase the replacement mobile homes and the building inspector did not object. *See id.* at 474. Under these facts, the court found that the City of Foley was estopped from enforcing its zoning ordinance:

> Thus, although the doctrine of estoppel is rarely applied against a municipal corporation, it may be applied in a proper case when justice and fair play demand it and where there has been a misrepresentation or concealment of material fact. In the present case, the evidence indicates that numerous mobile homes had been moved into and out of [the mobile home park] over the years. Nonetheless, the City had declined to enforce the zoning ordinance against [the mobile home park] after [the mobile home park] became a nonconforming use in 1967. Even when the City objected in 1994, it objected only after the [mobile home park owners] had already purchased the mobile homes and had prepared them for rental. Taken as a whole, these factors cause us to conclude that the City's continued acquiescence amounted to a misrepresentation of a material fact, namely that it would not enforce the zoning ordinance to prevent the [mobile home park owners] from replacing mobile homes at [the mobile home park]. Moreover, it would be unjust and unfair at this point to allow the

> City to force the [mobile home park owners] to remove the six mobile homes. Therefore, we hold that as to the installation of these six mobile homes the City is estopped from enforcing the zoning ordinance against the [mobile home park owners].

Id. at 474-475. However, even where estoppel applied for this discrete occurrence and even where the city had failed to previously uniformly enforce its zoning ordinance, there was light at the end of the tunnel.

> Although we hold that the City is estopped in this case, we note that the City will not be forever barred from enforcing the zoning ordinance against the [mobile home park owners] or against mobile home parks generally. While the City had long remained silent in the face of the perpetuation of [the mobile home park] as a nonconforming use, the City's action in the present case indicates a departure from that acquiescence. Consequently, even though the [mobile home park owners] may retain and use the six mobile homes that are the immediate subject of this case, the City is not estopped from taking prospective action to prevent future replacements, repairs, or similar activities that violate the zoning ordinance.

Id. at 475. Thus, by making its plan of enforcement known, the City of Foley was able to set the stage for a "clean break."

For any municipality considering making its own "clean break," there are several important lessons to learn from the *McLeod* case. First, take an inventory of the existing exceptions in the municipality. Second, pass an amended ordinance that includes a section similar to that in the *McLeod* case to address grandfathered uses and that expresses a strong disfavor for the continuance of nonconforming uses. Announce the new policy, and tell everyone. If you live in Birmingham, shout it from the mountains; if you live on the coast, shout it from the dunes. Third, once the ordinance is adopted, do not deviate from it. Do not allow the new placement (or replacement) of exceptions where they are not allowed (or no longer allowed) under the new zoning ordinance. Apply the ordinance uniformly and without discrimination.

Fourth, do not turn a blind eye to information that an exception is being moved in or is under construction. If the municipality remains silent and the exception is installed, it may be too late.

IV. Presentation References.

For further information regarding efforts and resources to address and remedy urban blight and the overall condition of our cities and neighborhoods, I recommend the following resources, which are also included, in part, in my presentation:

- Martin Swant, *The Birmingham News*, "Alabama Poverty Rate Hits 17.3 Percent," http://blog.al.com/businessnews/2011/09/post_99.html (Sep. 14, 2011).
- Firehouse Shelter, http://www.firehouseshelter.com/.
- Habitat for Humanity, http://www.habitat.org/.
- Birmingham Hospitality Network, http://birminghamhospitalitynetwork.com/.
- "Finding Simon and Garfunkel's 'America' In Saginaw, Mich.," *All Things Considered*, http://www.npr.org/2010/12/19/132168299/finding-simon-garfunkels-america-in-saginaw-mich (NPR Dec. 19, 2010).
- "Envisioning a Prosperous Future for Detroit," *Talk of the Nation*, http://www.npr.org/templates/story/story.php?storyId=113398823 (NPR Oct. 1, 2009).
- Kelly Nolan, *The Wall Street Journal*, "Alabama County's Woes Threaten Its Neighbors" (June 21, 2011).
- Ohio City Farm, http://www.ohiocityfarm.com/.
- Kristin Choo, *ABA Journal*, "Plowing Over: Can Urban Farming Save Detroit and Other Declining Cities? Will the Law Allow It?," http://www.abajournal.com/magazine/article/plowing_over_can_urban_farming_save_detroit_and_other_declining_cities_will/ (Aug. 2011).
- Madison, Wisconsin, Graffiti Removal Program, http://www.cityofmadison.com/bi/grafProg.html.
- Long Beach, California, Free Paint/No-Cost Graffiti Removal Program, http://www.longbeach.gov/cd/neighborhood_services/free_graffiti_removal.asp.

- The Hypothetical Development Organization, http://hypotheticaldevelopment.com/.

CONCLUSION

As leaders in government, we are called to be good stewards of those things that have been entrusted to us. Accordingly, this paper, more than a presentation, is a prayer; for our families, our friends, our neighbors, and this world in which we live.