

RECORD OF ORDINANCES

Ordinance No. 2024-52Passed AUGUST 7, 2024

SPONSOR: FINANCE COMMITTEE

AN ORDINANCE LEVYING A SPECIAL ASSESSMENT AGAINST THE REAL PROPERTY LOCATED AT 3764 MOGADORE ROAD, MOGADORE, OHIO 44260, AND DECLARING AN EMERGENCY.

WHEREAS, in July 2021, the Village brought suit in the Summit County Court of Common Pleas against Kevin J. Landenberger, as the owner of the real property located at 3764 Mogadore Road, Mogadore, Ohio 44260, PPN 5501125 (the "Property"), seeking to enjoin Mr. Landenberger's use of the Property in violation of the Village's Codified Ordinances and further seeking to abate a nuisance upon the Property, said case being captioned as the Village of Mogadore, et al. v. Kevin J. Landenberger, Case. No. CV-2021-07-2243; and

WHEREAS, on February 4, 2022, the Court in the above-captioned matter issued an Order enjoining Mr. Landenberger's violations upon the Property, authorizing the Village to take necessary actions to abate the nuisance upon the Property, authorizing the Village to assess the costs of the Village in abating the nuisance upon the Property if the same are not timely paid by Mr. Landenberger, and further levying a tax in the amount of \$300.00 against the Property, in addition to the costs incurred by the Village to abate the nuisance, pursuant to Section 3767.08 of the Ohio Revised Code. A copy of said Order is attached hereto as Exhibit A; and

WHEREAS, on May 10, 2023, the Court in the above-captioned matter issued a Stipulated Order whereby, among other items, the Court ordered Mr. Landenberger to pay to the Village the sum of \$26,673, which includes the costs of the Village in abating the nuisance upon the Property and the tax levied pursuant to Section 3767.08 of the Ohio Revised Code, within sixty (60) days of the stipulated order. A copy of the Stipulated Order is attached hereto as Exhibit B; and

WHEREAS, pursuant to Resolution 2023-60, because said sum was unpaid by the Mr. Landenberger, this Council levied said unpaid sums as special assessments against the Property as permitted by the Stipulated Order; and

WHEREAS, unfortunately, Mr. Landenberger has failed to comply with the requirements in the Order and Stipulated Order, and, in February 2024 the Village was required to further abate the nuisance upon the Property by engaging Excellent Excavations Concrete and Construction at a cost of \$6,617.40; and

WHEREAS, Mr. Landenberger has not paid to the Village any portion of such \$6,617.40 incurred by the Village to abate the nuisance upon the Property in February 2024, and the Village is entitled to assess those costs against the Property pursuant to the Order and Stipulated Order; and

WHEREAS, Section 93.53 of the Codified Ordinance of the Village further authorizes the Village to assess an administrative fee of \$100.00 for each occurrence wherein the Village is required to serve notice of violation in addition to the charges for abatement of hazardous property conditions, and said administrative fee may also be placed upon the tax duplicate of said real property as a special assessment to be collected as other taxes and assessments upon such real property, and remitted to

RECORD OF ORDINANCES

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the Village for deposit into the General Fund; and

WHEREAS, to levy such costs as special assessments against the Property, this Council must certify said special assessments to the Summit County Fiscal Officer to be placed on the tax duplicate for the Property, collected as other taxes and assessments upon the Property, and remitted to the Village for deposit into the General Fund; and

WHEREAS, this Council finds and determines, after reviewing all pertinent information, that it is necessary and in the best interest of the Village of Mogadore to certify to the Summit County Fiscal Officer the aforementioned costs in the amount set forth in Exhibit C to be placed on the tax duplicate for the Property, collected as other taxes and assessments upon the Property, and remitted to the Village for deposit into the General Fund.

NOW, THEREFORE, BE IT ORDAINED, by the Council of the Village of Mogadore, Counties of Summit and Portage, State of Ohio, that:

SECTION 1: This Council hereby certifies to the Summit County Fiscal Officer the aforementioned unpaid costs in the amount set forth in Exhibit C, attached hereto and incorporated herein by reference, to be placed on the tax duplicate for the Property as a special assessment, collected as other taxes and assessments upon the Property, and remitted to the Village for deposit into the General Fund, as provided for in the Order and Stipulated Order.

SECTION 2: The special assessment in the amount set forth on Exhibit C against the Property is hereby adopted.

SECTION 3: The Clerk-Treasurer shall deliver a copy of this Ordinance to the Summit County Fiscal Officer within five (5) business days after its adoption.

SECTION 4: This Council finds and determines that all formal actions of this Council concerning and relating to the adoption of this Ordinance were taken in open meetings of this Council and any deliberations of this Council and any of its committees that resulted in this formal action were in meetings open to the public, in compliance with all legal requirements.

SECTION 5: This Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety of the residents of the Village of Mogadore and for the purpose of immediately authorizing said special assessment within the time period allowed by law so that the Village may recover its costs incurred in abating the nuisances upon the Property, and, provided this Resolution receives the affirmative vote of at least five (5) members elected or appointed to this Council, it shall take effect and be in force upon its passage by Council and approval by the Mayor, otherwise it shall take effect and be in force at the earliest period allowed by law.

RECORD OF ORDINANCES

Ordinance No. 2024-52

Passed AUGUST 7, 2024

Michael Paddish 8-7-24
President of Council Date

Michael 8-7-24
Mayor Date

Attest:

[Signature]
Clerk-Treasurer

ORDINANCE #

2024-52

PARCEL
No #

5501125

FISCAL
USE

EFFECTIVE
TAX YEAR

2024

ANNUAL
AMOUNT

6,717.40

of Years

1

PROJECT
TYPE

87

OPTIONAL JURISDICTION USE

Address, Property Description, Notes, etc.
Rubbish Clean-Up. 3764 Mogadore Road

TOTALS

6,717.40

**IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO**

**THE VILLAGE OF MOGADORE,
OHIO,**

**STATE OF OHIO EX. REL.
MARSHAL PITCHFORD,**

Plaintiffs,

v.

KEVIN LANDENBERGER

Defendant

CASE NO. CV-2021-07-2243

JUDGE JOY MALEK OLDFIELD

ORDER

This matter comes before this Court upon Plaintiffs' Motion to Compel and Deem Requests for Admissions Admitted and Motion for Default Judgment. This Court will review Plaintiffs' motion in two parts, as follows:

MOTION FOR DEFAULT JUDGMENT

First, this Court will address Plaintiffs' Motion for Default Judgment. Upon review of Plaintiffs' motion, supporting exhibits, and this Court's docket, this Court finds that Plaintiffs have established the following facts:

1. Plaintiffs filed its Complaint against the Defendant Kevin Landenberger on July 19, 2021.
2. Kevin Landenberger was served with the Complaint on October 25, 2021.
3. Kevin Landenberger's Answer or response to the Complaint was due on November 3, 2021.
4. To date, Kevin Landenberger has not filed a response to the Complaint or sought leave to file its answer or responsive pleading.

Applying these facts to Civ.R. 12(A)(1), Landenberger was required to serve his "Answer within twenty-eight days after service of the summons and Complaint upon him..." Landenberger failed to Answer or request leave within twenty-eight days. Accordingly, Plaintiffs' motion requests default judgment pursuant to Civ. R. 55(A). Civ. R. 55(A) provides for the entry of default judgment against "a party against whom a judgment for affirmative relief is sought" when that party "has failed to plead or otherwise defend as provided by these rules..."

Applying the aforementioned facts to the applicable rules, this Court finds that Plaintiffs are entitled to default judgment and hereby enters Judgment in favor of Plaintiffs on the Complaint.

MOTION TO DEEM ADMISSIONS ADMITTED

Upon review of Plaintiffs' motion, supporting exhibits, this Court finds that Plaintiffs have established the following facts:

FINDINGS OF FACT

1. Plaintiffs served Interrogatories, Requests for Production of Documents and Requests for Admissions on November 9, 2021.
2. Plaintiffs' service letter advised Defendant Landenberger that his failure to respond to the discovery would result in the case being decided against him and recommended he seek assistance of counsel.
3. Kevin Landenberger's responses to written discovery were due on or about December 7, 2021.
4. To date, Kevin Landenberber has not responded to the written discovery, including the request for admission.

LAW AND DECISION

Pursuant to Civ. R. 36,

Each matter of which an admission is requested shall be separately set forth. **The matter is admitted unless, within a period designated in the request, not less than twenty-eight days after service thereof or within such shorter or longer time as the court may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by his attorney.** If objection is made, the reasons therefor shall be stated[.]

The language of this Rule unambiguously provides that the Requests are deemed admitted unless answered within a period of twenty-eight (28) days. Where a party has failed to respond to a request for admissions, “the admissions [become] facts of record, which the court must recognize.” *Cleveland Trust Co. v. Willis*, 20 Ohio St.3d 66, 67, 20 Ohio B. 364, 485 N.E.2d 1052. Accordingly, the following requests for admission are deemed admitted and recognized as facts as follows:

1. Kevin J. Landenberger owns the Premises located at 3764 Mogadore Road, Mogadore, Ohio.
2. The Premises contains two houses.
3. Kevin J. Landenberger resides in the house on the rear/back of the Premises.
4. Kevin J. Landenberger’s son resides in the house nearest the road/public thoroughfare on the Premises.
5. Kevin J. Landenberger received a Notice of Violation on February 26, 2020, for failure to obtain a permit to build an addition on the garage at the Premises.
6. Kevin J. Landenberger received a Notice of Violation on March 3, 2020, for failure to obtain a permit to build an addition on the garage at the Premises.
7. Kevin J. Landenberger received a letter from the Village of Mogadore Law Director Marshal M. Pitchford dated May 4, 2020 that warned you that your failure to bring the Premises into compliance with the Village of Mogadore’s Ordinances would result in your being penalized.

8. Kevin J. Landenberger received a Village of Mogadore Notice of Violation dated June 4, 2020 for failure to obtain a permit to build an addition on the garage at the Premises.
9. Kevin J. Landenberger received a citation and summons to appear before the Village of Mogadore Mayor's Court dated September 30, 2020, for failure to obtain a permit to build an addition on the garage at the Premises.
10. Kevin J. Landenberger appeared before the Village of Mogadore Mayor's Court on October 9, 2020.
11. Kevin J. Landenberger was fined for the condition of the Premises when you appeared before the Village of Mogadore Mayor's Court on October 9, 2020.
12. The Village of Mogadore Mayor's Court provided Kevin J. Landenberger thirty (30) days to bring the condition of the Premises into compliance with the Village of Mogadore Codified Ordinances.
13. The Village of Mogadore Police Department issued a citation and summons for Kevin J. Landenberger to appear before the Village of Mogadore Mayor's Court dated January 15, 2021.
14. Kevin J. Landenberger appeared before the Village of Mogadore Mayor's Court on January 21, 2021, regarding violations of the Village of Mogadore Codified Ordinances §93.26 and §93.55.
15. On January 21, 2021, the Mayor's Court Magistrate found Kevin J. Landenberger guilty for violating the Village of Mogadore Codified Ordinances §93.26 and §93.55.
16. On January 21, 2021 the Mayor's Court Magistrate provided Kevin J. Landenberger until March 1, 2021 to bring the Premises into compliance with the Village of Mogadore Codified Ordinances §93.26 and §93.55.

17. Kevin J. Landenberger received a letter from the Village of Mogadore Zoning Inspector dated January 26, 2021, reiterating the Magistrate decision to provide you until Marcy 1, 2021 to bring the Premises into compliance with the Village of Mogadore Codified Ordinances §93.26 and §93.55.
18. The house on the Premises located closest to the street caught fire on February 12, 2021.
19. The Village of Mogadore Fire Department responded to the fire in the house on the Premises located closest to the street on February 12, 2021.
20. The Village of Mogadore Fire Department had the proper authorities disconnect the electricity to the house on the Premises located closest to the street on February 12, 2021.
21. After the fire, Kevin J. Landenberger had the electricity restored to the house on the Premises located closest to the street.
22. First Energy did not reconnect electricity to the Premises.
23. Kevin J. Landenberger did not obtain the requisite permits to reconnect the electricity to the Premises after the February 2021 fire.
24. Kevin J. Landenberger did not obtain a permit to upgrade the interior electricity in the house located closest to the street on the Premises.
25. Kevin J. Landenberger received a letter from the Village of Mogadore Zoning Inspector dated January 26, 2021.
26. The letter Kevin J. Landenberger received from the Village of Mogadore Zoning Inspector dated January 26, 2021 reiterated the Mayor's Court Magistrate's decision ordering you to bring the Premises into compliance with with the Village of Mogadore Codified Ordinance §93.26 and §93.55.

27. The letter dated January 26, 2021 provided Kevin J. Landenberger until March 1, 2021 to bring the Premises into compliance with the Village of Mogadore Codified Ordinance §93.26 and §93.55.
28. The current state of the electrical system in the front house on the Premises is in violation of the National Electric Code.
29. The current state of the Premises creates an imminent danger to itself.
30. The current state of the Premises creates an imminent danger to the neighboring buildings.
31. The current state of the Premises creates an imminent danger to the residents of the Village.
32. The current state of the Premises creates an imminent danger to the occupants.
33. The current state of the Premises creates an imminent danger to fire personnel.
34. The current state of the Premises creates an imminent danger to itself, the neighboring buildings, the residents of the Village, the occupants, and fire personnel.
35. The current state of the Premises violates provisions of the Mogadore Codified Ordinances.
36. The current state of the Premises violates provisions of the Summit County Building Code.
37. The current state of the Premises violates provisions of the National Electric Code.
38. The Premises is a Public Nuisance.
39. The Premises is a fire hazard.
40. The Village of Mogadore provided Kevin J. Landenberger time to correct the condition of the Premises.
41. The Village of Mogadore provided Kevin J. Landenberger time to bring the Premises into compliance with the Village of Mogadore Codified Ordinances.

42. Kevin J. Landenberger failed to bring the Premises into compliance with the Village of Mogadore Codified Ordinances.
43. The natural gas was disconnected to the front house on the Premise.
44. The front house on the Premises has unprotected, visible electric wiring running throughout the house.
45. The house on the back of the Premises received its electricity sharing the electric meter on the front house.
46. The front house on the Premises has an open hole in the yard with a ladder going down into it.
47. The open hole in the yard of the front house on the Premises is used to bury items.

In addition, this Court has been provided no evidence to contradict any of these facts.

DECISION

Based on the undisputed facts as established by Plaintiffs and deemed admitted, this Court finds that the Village has established that:

1. Kevin J. Landenberger is the owner of the property located at 3764 Mogadore Road, Mogadore, Summit County, Ohio (hereinafter “the Premises”).
2. Kevin J. Landenberger has maintained the Premises in violation of Mogadore Ordinances § 93.26 and §93.55, Ohio Revised Code § 715.44, common law provisions protecting the rights and privileges of neighboring properties, the Summit County Building Code and the National Electric Code for more than two years.
3. Kevin J. Landenberger has been ordered by the Village Municipal Court on multiple occasions to correct the violations and clean up the Premises.
4. Kevin J. Landenberger ignored the Village Municipal Court Orders and all requests of the Village to bring the Premises into compliance with Mogadore Ordinances § 93.26 and §93.55, Ohio Revised Code § 715.44, common law provisions protecting the rights and privileges of neighboring

properties, the Summit County Building Code and the National Electric Code.

5. The condition of the Premises directly and proximately causes a life-threatening, dangerous, and hazardous condition for the inhabitants of the Village of Mogadore and is a direct threat to their health, safety, and welfare.
6. Kevin J. Landenberger's conduct demonstrates that a clear intention to continue to maintain the Premises in a condition which creates a continuing danger of harm to neighboring properties and the inhabitants of the Village of Mogadore.
7. The Village has exhausted all remedies available to it and it has no other adequate remedy at law.
8. The Village is entitled to relief in this matter.

THEREFORE, this Court grants Judgment in favor of Village of Mogadore, and provides Plaintiffs the following rights:

- A. The Premises located at 3764 Mogadore Road Mogadore, Ohio, 44236, constitutes a public nuisance as defined by Mogadore C.O. § 93.26 and §93.55 and R.C. § 3719.10.
- B. Kevin J. Landenberger is enjoined from continuing to maintain the Premises as a public nuisance in violation of Mogadore C.O. § 93.26 and §93.55 and R.C. § 3719.10.
- C. Kevin J. Landenberger has refused to comply with all prior efforts of the Plaintiffs' to have him bring his property in compliance with law, to clean up his property, or abate the nuisance.
- D. The Village is permitted to abate the public nuisance and bring the Premises into compliance with all applicable local, state, county, and federal laws.
- E. To abate the nuisance, the Village is granted authority to take any or all of the following actions to abate the public nuisance:

- 1) Disconnect or have the electric service and other utilities disconnected to the property pending inspection(s);
- 2) Retain a certified building inspector or other necessary professionals to inspect the Premises, including all structures thereon, to determine the nature and extent of the hazards created by both houses, other structures, and the real property;
- 3) Retain properly licensed professionals, laborers, other personnel, or use Village Employees to bring the property into compliance with all local, state and federal laws;
- 4) Remove all debris, trash, vehicles, boats, and rubbish sitting on the Premises and dispose of the same in any manner deemed appropriate by the Village;
- 5) Remove all debris, trash, furniture, vehicles, boats, rubbish, or other items maintained in holes in the real property, fill in the hole, and level out and grade the yard, i.e., fill in the hole with clean fill;
- 6) Demolition of all structures, residences, and buildings on the property;
- 7) Remove the debris caused by demolition of all structures, residences and buildings on the property;
- 8) All other actions necessary to abate the nuisance and bring the Premises into compliance with the Village of Mogadore Codified Ordinances, Summit County Building Code, the National Electric Code, and other applicable laws; and,
- 9) Invoice Kevin J. Landenberger for the costs associated with all actions taken by the Village to abate the public nuisance on the Premises.

F. All costs associated incurred by the Village of Mogadore to abate the public nuisance shall be paid by Defendant within thirty (30) days of the date on the Village's

invoice. The Defendant's failure to tender payment of any invoice from the Village within thirty (30) days shall cause the amount of the invoice to be added to the tax duplicate on said Premises for collection with other real estate taxes and assessments.

- G. That a tax of three hundred dollars (\$300.00) be imposed upon said nuisance and against Defendant pursuant to R.C. § 3767.08.

IT IS SO ORDERED, ADJUDGED AND DECREED.



JUDGE JOY MALEK OLDFIELD

Copies to all counsel of record and unrepresented parts.

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

THE VILLAGE OF MOGADORE, OHIO,)	CASE NO.: CV-2021-07-2243
)	
and)	JUDGE JOY M. OLDFIELD
)	
STATE OF OHIO EX. REL MARSHAL M. PITCHFORD,)	<u>ORDER FOR PLAINTIFFS' MOTION</u>
)	<u>FOR APPROVAL OF STIPULATED</u>
Plaintiffs,)	<u>ORDER</u>
)	
-vs.-)	
)	
KEVIN J. LANDENBERGER)	
)	
Defendant.)	

Upon Plaintiff's Motion for Approval of Stipulated Order and for good cause shown, this Court hereby executes and enters the Stipulated Order of the Plaintiffs the Village of Mogadore, Ohio, State of Ohio Ex. Rel Marshal M. Pitchford, and Defendant Kevin J. Landenberger on all Counts.

IT IS SO ORDERED.

JUDGE JOY MALEK OLDFIELD

Approved:

Kathryn A. Vadas, Esquire (0071510)
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

THE VILLAGE OF MOGADORE,
OHIO,

and

STATE OF OHIO EX. REL
MARSHAL M. PITCHFORD,

Plaintiffs,

-vs.-

KEVIN J. LANDENBERGER

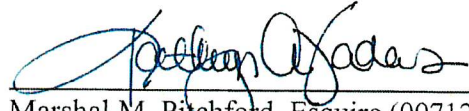
Defendant.

) CASE NO.: CV-2021-07-2243
)
) JUDGE JOY M. OLDFIELD
)
)
)
) PLAINTIFFS' MOTION FOR
) APPROVAL OF STIPULATED ORDER
)
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Now comes Plaintiffs the Village of Mogadore, Ohio and State of Ohio Ex. Rel Marshal M. Pitchford (“The Village”), by and through undersigned counsel, and hereby moves this Court for approval and entry of the attached Stipulated Order. The parties in this matter have negotiated and executed the Stipulated Order, which is a variation of the original Order granting the Village of Mogadore the right to abate the public nuisance located at 3764 Mogadore Road, Mogadore, Ohio. The Stipulated Order, which is attached hereto as Exhibit 1, provides Defendant Kevin Landenberger the opportunity to abate the nuisances inside both houses on the property at times that are convenient to him within the time parameters identified in the Stipulated Order. By allowing the Defendant to abate the nuisance, it will lessen the inconvenience to him associated with the abatement. As such, the Parties respectfully request that this Honorable Court approve and execute the attached Stipulated Order.

Respectfully submitted,

DICAUDO, PITCHFORD & YODER, LLC



Marshal M. Pitchford, Esquire (0071202)

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Kathryn A. Vadas, Esquire (0071510)

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Akron, OH 44308

Telephone: (330) 762-7477

Facsimile: (330) 762-8059

Attorneys for Plaintiff

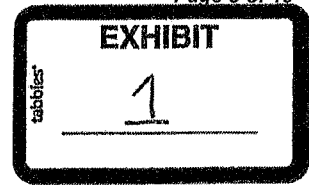
CERTIFICATE OF SERVICE

I certify that on this 1ST day of May, 2023, the foregoing was served via regular

U.S. mail upon:

Kevin J. Landenberger
3764 Mogadore Road
Mogadore, OH 44260


Kathryn A. Vadas



**IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO**

**THE VILLAGE OF MOGADORE,
OHIO**

CASE NO. CV-2021-07-2243

**STATE OF OHIO EX. REL.
MARSHAL PITCHFORD,**

JUDGE JOY MALEK OLDFIELD

Plaintiffs,

v.

STIPULATED ORDER

KEVIN LANDENBERGER,

Defendant.

On February 4, 2022, this Honorable Court issued an Order declaring that Defendant, Kevin Landenberger’s (“Defendant”) property located at 3764 Mogadore Road, Mogadore, Ohio (hereinafter the “Premises”) constituted a public nuisance. The Order, which is attached hereto as Exhibit A and incorporated by reference as if fully rewritten herein, provides for the abatement of the public nuisance. The Parties have reached stipulations/agreements as to the further handling of the abatement, which stipulations/agreements the Court adopts as its Order of Execution in accordance with Ohio Civil Rule 70 herein:

1. The Village of Mogadore (hereinafter “Village”) retains all the rights granted it by the Court in its February 4, 2022 Order as if fully rewritten herein.
2. The Village has cleaned up the grounds and exterior of the real property located at 3764 Mogadore Road, Mogadore, Ohio 44236 (hereinafter the “Premises”).
3. The expenses for the aforementioned cleanup incurred by the Village and/or taxed in the Order to be paid by Defendant are as follows:
 - a. Village Employment Costs:

10.26.2022	\$23.52 x 5 emp x 5 hrs = \$588.00	Exhibit B
10.28.2022	\$23.52 x 5 emp x 5 hrs = \$588.00	Exhibit C
11.1.2022	\$23.52 x 5 emp x 6.5 hrs = \$764.40	Exhibit D
11.10.2022	\$23.52 x 3 emp x 1.5 hrs = \$105.84	Exhibit E
Total = \$2,046.24		

b. Village Equipment Rental Fees:

10.26.2022	Backhoe \$50.00 x 5 hrs = \$250.00	Exhibit B
	Dump Truck \$21.00 x 2 hrs = \$42.00	
10.28.2022	Backhoe \$50.00 x 5 hrs = \$250.00	Exhibit C
	Dump Truck \$21.00 x 2 hrs = \$42.00	
11.1.2022	Backhoe \$50.00 x 6.5 hrs = \$325.00	Exhibit D
11.10.2022	Bobcat \$30.00 x 1.5 hrs = \$45.00	Exhibit E
Total = \$954.00		

c. Kimble Dumpster Rental Fees:

10.26.2022	\$793.49	Exhibit F
10.28.2022	\$793.49	Exhibit G
11.1.2022	\$793.49	Exhibit H
Total = \$2,380.47		

**Grand total with below tax but absent Attorney Fees:
\$5,680.71**

d. The three hundred dollars (\$300.00) taxed by the Court Order.

e. Village Attorney Fees billed at \$165.00 per hour:

June 2021	DPY Invoice # 3693	\$2,227.50
July 2021	DPY Invoice # 3751	\$2,892.25
August 2021	DPY Invoice # 3813	\$82.50
September 2021	DPY Invoice # 3873	\$536.25

October 2021	DPY Invoice # 3922	\$742.50
November 2021	DPY Invoice # 3949	\$948.75
January 2022	DPY Invoice # 4028	\$2,598.75
February 2022	DPY Invoice # 4074	\$1,402.50
March 2022	DPY Invoice # 4138	\$3,135.00
April/May 2022	DPY Invoice # 4220	\$907.50
June 2022	DPY Invoice # 4244	\$453.75
July 2022	DPY Invoice # 4295	\$1,476.75
August 2022	DPY Invoice # 4357	\$371.25
September 2022	DPY Invoice # 4418	\$1,155.00
October 2022	DPY Invoice # 4436	\$3,506.25
November 2022	DPY Invoice # 4494	\$825.00
February 2023	DPY Invoice # 4618	\$330.00
March 2023	DPY Invoice #	XXXXX
		\$20,992.75

Total Due the Village: \$26,673.46

4. Defendant agrees to tender payment to the Village of the above amounts within sixty (60) days of signing this Order.
5. Because the Village is legitimately concerned that Defendant will allow the Premises to fall into disrepair and again constitute a public nuisance, the parties agree that the Village shall have the right to continued inspection of the grounds and exterior of the Premises for a period of at least five (5) years.
 - a. The Village may inspect the Premises up to six (6) times per year.
 - b. The Village shall provide Defendant written notice of the inspection at least forty-eight (48) hours before entry onto the Premises, which shall be taped by a police officer to the front door of the rear house on the Premises.

- c. If the Village inspection reveals that the Premises is falling into disrepair or constitutes a public nuisance, it has the right to order Defendant to clean the Premises up within thirty (30) days.
 - d. The Village will reinspect the Premises thirty-one (31) days after ordering Defendant to clean up the Premises.
 - e. If the Premises remains in disrepair or constitutes a nuisance upon such further inspection, the Village has the right to immediately clean up the Premises and dispose of all items creating the disrepair or nuisance.
 - f. If the Premises remains in compliance with all applicable local, state, county and federal laws for a period of five (5) years, the Village's right to inspection will terminate.
 - g. If the Premises fails to remain in compliance with all applicable local, state, county and federal laws for a period of five (5) years, the Village receives an additional year of inspection rights for each failure and Order to clean up the premises.
 - h. Any costs incurred by the Village as a result of Defendant's non-compliance with this Section may be recovered by the Village as set forth in Section 8 of this Order.
6. In return for granting the Village the right to continued inspection of the Premises, the Village will provide Defendant the right to abate the nuisance and bring the front house into compliance with all local, state and federal laws.
 - a. Defendant has the right to retain properly licensed professionals to inspect the electrical, plumbing, and HVAC systems in the front house, provided that said inspections shall be completed within one hundred twenty (120) days from the date Defendant signs this Order.

- b. These licensed professionals shall prepare reports of the violations in the electrical, plumbing, and HVAC systems along with a detailed explanation of the steps, cost, and timeline needed to bring each system into compliance with all applicable local, state, and federal laws, including without limitation the Village of Mogadore Codified Ordinances, Summit County Codified Ordinances, which incorporate the 2006 Residential Code of Ohio for One-, Two- and Three-Family Dwellings, as amended, and the the National Electric Code, as amended.
- c. Defendant agrees to have the systems brought into compliance no later than December 31, 2023 unless the Village consents, in writng, to a later date.
- d. Defendant agrees to provide the Village with updates on the work performed on the front house every thirty (30) days.
- e. Defendant agrees to personally obtain or have his professional contractors obtain all permits necessary to complete the work on the Premises.
- f. Defendant agrees to have both houses properly hooked up to all available public utilities no later than December 31, 2023 unless the Village consents to a later date.
- g. As part of this process, the two houses on the Premises shall each have, and operate upon, separate electric meters and be properly hooked up to obtain electricity.
- h. In the event Defendant fails to follow the above plan set forth in this Section, then the Village may enter upon the Premises and complete the work set forth in this Section.

- i. Any costs incurred by the Village as a result of Defendant's non-compliance with this Section, including the completion of the work as provided in the preceding paragraph, may be recovered by the Village as set forth in Section 8 of this Order.
7. Defendant shall comply with all Village of Mogadore Codified Ordinances in the abatement of the nuisance, including the Planning and Zoning provisions.
8. The failure to comply with the requirements of this Order shall constitute contempt and subject the violating party or parties to sanctions, including but not limited to, attorney fees, penalties and/or interest. Further, this Court shall have the immediate right to grant Plaintiff, the Village of Mogadore, an order to: prohibit Defendant from violating the Village's Zoning Code; grant access to the Village to bring the Premises into compliance with the Village's Zoning Code; award the costs of any such remediation costs and legal fees to the Village; and/or to declare the award of such costs and legal fees as a lien or assessment against the Premises.
9. The Court retains jurisdiction to enforce the stipulations/agreements as set forth above.

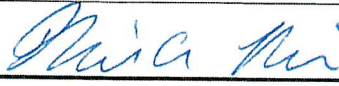
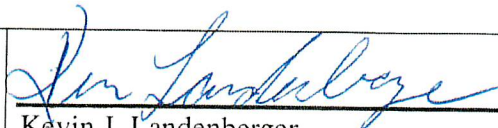
Court costs shall be paid by Defendant.

There is no just cause for delay. This is a final appealable Order.

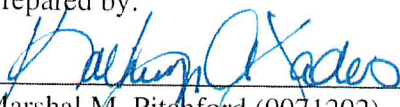
IT IS SO ORDERED.

JUDGE JOY MALEK OLDFIELD

Approved by and so stipulated:

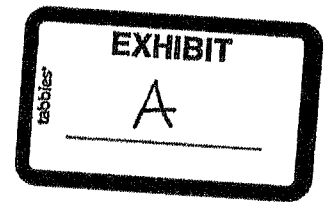
 <hr/> Mayor Mike Rick Village of Mogadore 4-17-23	 <hr/> Kevin J. Landenberger Defendant 4-17-23
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Prepared by:



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**IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO**

**THE VILLAGE OF MOGADORE,
OHIO,**

**STATE OF OHIO EX. REL.
MARSHAL PITCHFORD,**

Plaintiffs,

v.

KEVIN LANDENBERGER

Defendant

CASE NO. CV-2021-07-2243

JUDGE JOY MALEK OLDFIELD

ORDER

This matter comes before this Court upon Plaintiffs' Motion to Compel and Deem Requests for Admissions Admitted and Motion for Default Judgment. This Court will review Plaintiffs' motion in two parts, as follows:

MOTION FOR DEFAULT JUDGMENT

First, this Court will address Plaintiffs' Motion for Default Judgment. Upon review of Plaintiffs' motion, supporting exhibits, and this Court's docket, this Court finds that Plaintiffs have established the following facts:

1. Plaintiffs filed its Complaint against the Defendant Kevin Landenberger on July 19, 2021.
2. Kevin Landenberger was served with the Complaint on October 25, 2021.
3. Kevin Landenberger's Answer or response to the Complaint was due on November 3, 2021.
4. To date, Kevin Landenberger has not filed a response to the Complaint or sought leave to file its answer or responsive pleading.

Sandra Kurt, Summit County Clerk of Courts

Sandra Kurt, Summit County Clerk of Courts

Applying these facts to Civ.R. 12(A)(1), Landenberger was required to serve his "Answer within twenty-eight days after service of the summons and Complaint upon him..." Landenberger failed to Answer or request leave within twenty-eight days. Accordingly, Plaintiffs' motion requests default judgment pursuant to Civ. R. 55(A). Civ. R. 55(A) provides for the entry of default judgment against "a party against whom a judgment for affirmative relief is sought" when that party "has failed to plead or otherwise defend as provided by these rules..."

Applying the aforementioned facts to the applicable rules, this Court finds that Plaintiffs are entitled to default judgment and hereby enters Judgment in favor of Plaintiffs on the Complaint.

MOTION TO DEEM ADMISSIONS ADMITTED

Upon review of Plaintiffs' motion, supporting exhibits, this Court finds that Plaintiffs have established the following facts:

FINDINGS OF FACT

1. Plaintiffs served Interrogatories, Requests for Production of Documents and Requests for Admissions on November 9, 2021.
2. Plaintiffs' service letter advised Defendant Landenberger that his failure to respond to the discovery would result in the case being decided against him and recommended he seek assistance of counsel.
3. Kevin Landenberger's responses to written discovery were due on or about December 7, 2021.
4. To date, Kevin Landenberber has not responded to the written discovery, including the request for admission.

LAW AND DECISION

Sandra Kurt, Summit County Clerk of Courts

Sandra Kurt, Summit County Clerk of Courts

Pursuant to Civ. R. 36,

Each matter of which an admission is requested shall be separately set forth. **The matter is admitted unless, within a period designated in the request, not less than twenty-eight days after service thereof or within such shorter or longer time as the court may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by his attorney.** If objection is made, the reasons therefor shall be stated[.]

The language of this Rule unambiguously provides that the Requests are deemed admitted unless answered within a period of twenty-eight (28) days. Where a party has failed to respond to a request for admissions, "the admissions [become] facts of record, which the court must recognize." *Cleveland Trust Co. v. Willis*, 20 Ohio St.3d 66, 67, 20 Ohio B. 364, 485 N.E.2d 1052. Accordingly, the following requests for admission are deemed admitted and recognized as facts as follows:

1. Kevin J. Landenberger owns the Premises located at 3764 Mogadore Road, Mogadore, Ohio.
2. The Premises contains two houses.
3. Kevin J. Landenberger resides in the house on the rear/back of the Premises.
4. Kevin J. Landenberger's son resides in the house nearest the road/public thoroughfare on the Premises.
5. Kevin J. Landenberger received a Notice of Violation on February 26, 2020, for failure to obtain a permit to build an addition on the garage at the Premises.
6. Kevin J. Landenberger received a Notice of Violation on March 3, 2020, for failure to obtain a permit to build an addition on the garage at the Premises.
7. Kevin J. Landenberger received a letter from the Village of Mogadore Law Director Marshal M. Pitchford dated May 4, 2020 that warned you that your failure to bring the Premises into compliance with the Village of Mogadore's Ordinances would result in your being penalized.

8. Kevin J. Landenberger received a Village of Mogadore Notice of Violation dated June 4, 2020 for failure to obtain a permit to build an addition on the garage at the Premises.
9. Kevin J. Landenberger received a citation and summons to appear before the Village of Mogadore Mayor's Court dated September 30, 2020, for failure to obtain a permit to build an addition on the garage at the Premises.
10. Kevin J. Landenberger appeared before the Village of Mogadore Mayor's Court on October 9, 2020.
11. Kevin J. Landenberger was fined for the condition of the Premises when you appeared before the Village of Mogadore Mayor's Court on October 9, 2020.
12. The Village of Mogadore Mayor's Court provided Kevin J. Landenberger thirty (30) days to bring the condition of the Premises into compliance with the Village of Mogadore Codified Ordinances.
13. The Village of Mogadore Police Department issued a citation and summons for Kevin J. Landenberger to appear before the Village of Mogadore Mayor's Court dated January 15, 2021.
14. Kevin J. Landenberger appeared before the Village of Mogadore Mayor's Court on January 21, 2021, regarding violations of the Village of Mogadore Codified Ordinances §93.26 and §93.55.
15. On January 21, 2021, the Mayor's Court Magistrate found Kevin J. Landenberger guilty for violating the Village of Mogadore Codified Ordinances §93.26 and §93.55.
16. On January 21, 2021 the Mayor's Court Magistrate provided Kevin J. Landenberger until March 1, 2021 to bring the Premises into compliance with the Village of Mogadore Codified Ordinances §93.26 and §93.55.

17. Kevin J. Landenberger received a letter from the Village of Mogadore Zoning Inspector dated January 26, 2021, reiterating the Magistrate decision to provide you until Marcy 1, 2021 to bring the Premises into compliance with the Village of Mogadore Codified Ordinances §93.26 and §93.55.
18. The house on the Premises located closest to the street caught fire on February 12, 2021.
19. The Village of Mogadore Fire Department responded to the fire in the house on the Premises located closest to the street on February 12, 2021.
20. The Village of Mogadore Fire Department had the proper authorities disconnect the electricity to the house on the Premises located closest to the street on February 12, 2021.
21. After the fire, Kevin J. Landenberger had the electricity restored to the house on the Premises located closest to the street.
22. First Energy did not reconnect electricity to the Premises.
23. Kevin J. Landenberger did not obtain the requisite permits to reconnect the electricity to the Premises after the February 2021 fire.
24. Kevin J. Landenberger did not obtain a permit to upgrade the interior electricity in the house located closest to the street on the Premises.
25. Kevin J. Landenberger received a letter from the Village of Mogadore Zoning Inspector dated January 26, 2021.
26. The letter Kevin J. Landenberger received from the Village of Mogadore Zoning Inspector dated January 26, 2021 reiterated the Mayor's Court Magistrate's decision ordering you to bring the Premises into compliance with with the Village of Mogadore Codified Ordinance §93.26 and §93.55.

27. The letter dated January 26, 2021 provided Kevin J. Landenberger until March 1, 2021 to bring the Premises into compliance with the Village of Mogadore Codified Ordinance §93.26 and §93.55.
28. The current state of the electrical system in the front house on the Premises is in violation of the National Electric Code.
29. The current state of the Premises creates an imminent danger to itself.
30. The current state of the Premises creates an imminent danger to the neighboring buildings.
31. The current state of the Premises creates an imminent danger to the residents of the Village.
32. The current state of the Premises creates an imminent danger to the occupants.
33. The current state of the Premises creates an imminent danger to fire personnel.
34. The current state of the Premises creates an imminent danger to itself, the neighboring buildings, the residents of the Village, the occupants, and fire personnel.
35. The current state of the Premises violates provisions of the Mogadore Codified Ordinances.
36. The current state of the Premises violates provisions of the Summit County Building Code.
37. The current state of the Premises violates provisions of the National Electric Code.
38. The Premises is a Public Nuisance.
39. The Premises is a fire hazard.
40. The Village of Mogadore provided Kevin J. Landenberger time to correct the condition of the Premises.
41. The Village of Mogadore provided Kevin J. Landenberger time to bring the Premises into compliance with the Village of Mogadore Codified Ordinances.

42. Kevin J. Landenberger failed to bring the Premises into compliance with the Village of Mogadore Codified Ordinances.
43. The natural gas was disconnected to the front house on the Premise.
44. The front house on the Premises has unprotected, visible electric wiring running throughout the house.
45. The house on the back of the Premises received its electricity sharing the electric meter on the front house.
46. The front house on the Premises has an open hole in the yard with a ladder going down into it.
47. The open hole in the yard of the front house on the Premises is used to bury items.

In addition, this Court has been provided no evidence to contradict any of these facts.

DECISION

Based on the undisputed facts as established by Plaintiffs and deemed admitted, this Court finds that the Village has established that:

1. Kevin J. Landenberger is the owner of the property located at 3764 Mogadore Road, Mogadore, Summit County, Ohio (hereinafter "the Premises").
2. Kevin J. Landenberger has maintained the Premises in violation of Mogadore Ordinances § 93.26 and §93.55, Ohio Revised Code § 715.44, common law provisions protecting the rights and privileges of neighboring properties, the Summit County Building Code and the National Electric Code for more than two years.
3. Kevin J. Landenberger has been ordered by the Village Municipal Court on multiple occasions to correct the violations and clean up the Premises.
4. Kevin J. Landenberger ignored the Village Municipal Court Orders and all requests of the Village to bring the Premises into compliance with Mogadore Ordinances § 93.26 and §93.55, Ohio Revised Code § 715.44, common law provisions protecting the rights and privileges of neighboring

properties, the Summit County Building Code and the National Electric Code.

5. The condition of the Premises directly and proximately causes a life-threatening, dangerous, and hazardous condition for the inhabitants of the Village of Mogadore and is a direct threat to their health, safety, and welfare.
6. Kevin J. Landenberger's conduct demonstrates that a clear intention to continue to maintain the Premises in a condition which creates a continuing danger of harm to neighboring properties and the inhabitants of the Village of Mogadore.
7. The Village has exhausted all remedies available to it and it has no other adequate remedy at law.
8. The Village is entitled to relief in this matter.

THEREFORE, this Court grants Judgment in favor of Village of Mogadore, and provides Plaintiffs the following rights:

- A. The Premises located at 3764 Mogadore Road Mogadore, Ohio, 44236, constitutes a public nuisance as defined by Mogadore C.O. § 93.26 and §93.55 and R.C. § 3719.10.
- B. Kevin J. Landenberger is enjoined from continuing to maintain the Premises as a public nuisance in violation of Mogadore C.O. § 93.26 and §93.55 and R.C. § 3719.10.
- C. Kevin J. Landenberger has refused to comply with all prior efforts of the Plaintiffs' to have him bring his property in compliance with law, to clean up his property, or abate the nuisance.
- D. The Village is permitted to abate the public nuisance and bring the Premises into compliance with all applicable local, state, county, and federal laws.
- E. To abate the nuisance, the Village is granted authority to take any or all of the following actions to abate the public nuisance:

- 1) Disconnect or have the electric service and other utilities disconnected to the property pending inspection(s);
 - 2) Retain a certified building inspector or other necessary professionals to inspect the Premises, including all structures thereon, to determine the nature and extent of the hazards created by both houses, other structures, and the real property;
 - 3) Retain properly licensed professionals, laborers, other personnel, or use Village Employees to bring the property into compliance with all local, state and federal laws;
 - 4) Remove all debris, trash, vehicles, boats, and rubbish sitting on the Premises and dispose of the same in any manner deemed appropriate by the Village;
 - 5) Remove all debris, trash, furniture, vehicles, boats, rubbish, or other items maintained in holes in the real property, fill in the hole, and level out and grade the yard, i.e., fill in the hole with clean fill;
 - 6) Demolition of all structures, residences, and buildings on the property;
 - 7) Remove the debris caused by demolition of all structures, residences and buildings on the property;
 - 8) All other actions necessary to abate the nuisance and bring the Premises into compliance with the Village of Mogadore Codified Ordinances, Summit County Building Code, the National Electric Code, and other applicable laws; and,
 - 9) Invoice Kevin J. Landenberger for the costs associated with all actions taken by the Village to abate the public nuisance on the Premises.
- F. All costs associated incurred by the Village of Mogadore to abate the public nuisance shall be paid by Defendant within thirty (30) days of the date on the Village's

invoice. The Defendant's failure to tender payment of any invoice from the Village within thirty (30) days shall cause the amount of the invoice to be added to the tax duplicate on said Premises for collection with other real estate taxes and assessments.

- G. That a tax of three hundred dollars (\$300.00) be imposed upon said nuisance and against Defendant pursuant to R.C. § 3767.08.

IT IS SO ORDERED, ADJUDGED AND DECREED.



JUDGE JOY MALEK OLDFIELD

Copies to all counsel of record and unrepresented parts.