

Englewood wins lengthy court battle with property owner

By [Doug Page](#), Staff Writer

Updated 5:56 PM Friday, December 25, 2009

DAYTON — After years of legal back and forth in federal and state courts, a Montgomery County jury has ruled Englewood had the right to demolish an abandoned group home and force the owner to pay for the demolition.

The Montgomery County common pleas jury unanimously agreed Dec. 18 that the preponderance of evidence showed the structure was a public nuisance and demolition was the only remedy. The eight-member jury waded through what City Manager Eric Smith called a “mountain of evidence from both sides” during the five-day trial.

“After dealing with this for 10 years, we’re ecstatic,” Smith said Thursday, Dec. 24.

The city claimed Stella Turner had abandoned the property, a three-story former nursing/group home, after evicting the tenant for nonpayment of rent. The property on North Union Boulevard was in the midst of a residential neighborhood. Because the building was vacant and deteriorating, the city rezoned the property to residential. Because Turner had not paid her water bill, the city turned off water to the building. Finally, the city issued an order to Turner to clean up the property. When she did not respond, the city moved to have the building condemned and demolished.

In her lawsuits in federal and state courts, Turner argued the city unfairly took her property. She claimed she was unable to clean up the structure because the city had turned off her water; the city’s rezoning was illegal and deprived her of a chance to lease the facility to another nursing or group home; the city’s ordinance did not provide her with an adequate avenue to appeal the initial city action; the city’s actions violated the Americans With Disabilities Act; and that the city illegally destroyed her property.

Turner’s federal lawsuit failed. Twice a Montgomery County judge found against her; each time that decision was overturned on procedural issues on appeal, leading to last week’s trial.

The 40-year-old building was demolished by the city in 2006 and a \$67,000 tax lien place on the property.

At trial, Turner argued all of her problems arose from the city’s actions, including rezoning the property so she could not use it and turning off the water so she could not clean and rehabilitate it.

The city argued Turner had abandoned the building, and the city had the right to rezone the

property to reflect the character of the neighborhood. It also noted Turner has yet to pay her water bill. According to the county auditor's Web site, Turner owes more than \$170,000 in property taxes and liens.

"They (the jurors) saw that we were doing our job," Smith said. "We were trying to preserve a neighborhood. We talk a lot about property rights. What about those people who had to live around that building?"

Find this article at:

<http://www.daytondailynews.com/news/dayton-news/englewood-wins-lengthy-court-battle-with-property-owner-464911.html>

