STATE OF MICHIGAN

COURT OF APPEALS

WAYNE COUNTY EXECUTIVE, COUNTY OF WAYNE and WAYNE COUNTY PROSECUTOR,

Plaintiffs-Appellees,

v

19159 CARDONI, ACORN INVESTMENT CO.,

Defendant-Appellant.

UNPUBLISHED
January 4, 2005

No. 248925
Wayne Circuit Court
LC No. 01-130498-CH

WAYNE COUNTY EXECUTIVE, COUNTY OF WAYNE, MAYOR, CITY OF DETROIT, CITY OF DETROIT and WAYNE COUNTY PROSECUTOR,

Plaintiffs-Appellees,

v

15708 PARKSIDE, REX CONSTRUCTION CO.

Defendant-Appellant.

No. 248926
Wayne Circuit Court
LC No. 01-142603-CH

WAYNE COUNTY EXECUTIVE, COUNTY OF WAYNE and WAYNE COUNTY PROSECUTOR,

Plaintiffs-Appellees,

v

19236 HANNA, REX CONSTRUCTION,

Defendant-Appellant.

No. 248927
Wayne Circuit Court
LC No. 02-206625-CH

WAYNE COUNTY EXECUTIVE, COUNTY OF WAYNE, MAYOR, CITY OF DETROIT, CITY OF DETROIT and WAYNE COUNTY PROSECUTOR,

Plaintiffs-Appellees,

v

No. 248928
Wayne Circuit Court
LC No. 02-206637-CH

19180 KEATING, OAK MANAGEMENT CORP. and ACORN INVESTMENT,

Defendants-Appellants.

Before: Meter, P.J., Wilder and Schuette, JJ.

PER CURIAM.

In these consolidated appeals, defendants appeal as of right, following a bench trial, from an order mandating the demolishment and razing as nuisances four structures owned by defendants. We affirm.

I.

These nuisance abatement actions initially arose from the December 4, 2000, Detroit City Council order of demolition for the property located at 15708 Parkside (Docket No. 248926).[1] In July 2001, defendants filed a motion for an injunction to defer demolition before Wayne Circuit Court Judge Kaye Tertzag.[2] Subsequent Detroit City Council orders for demolition were issued for property owned by defendants located at 19236 Hanna (Docket No. 248927), 19180 Keating (Docket No. 248928) and 19159 Cardoni (Docket No. 248925) on March 19, 2001, June 20, 2001, and October 24, 2001, respectively.

In September 2001, plaintiffs, Wayne County Executive (county executive), County of Wayne (county), and the Wayne County Prosecutor (prosecutor) on behalf of the People of the State of Michigan, filed a complaint (Docket No. 248925) pursuant to MCL 600.2940,[3] MCL

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[1] It is unclear from the record exactly by which ordinance(s) the Detroit City Council authorized the demolition. The orders of demolition do not provide the exact provisions under which the council acted. Defendants have attached two ordinances to their brief on appeal, Ordinance 290-H, 1984 Detroit City Code, § 12-11-28.0 *et seq.* (pertaining to dangerous buildings) and Detroit City Code, § 37-1-1 (pertaining to public health).

[2] *Rex Construction Co, et al v City of Detroit*, Wayne County Circuit Court, No. 01-125498-CZ.

[3] MCL 600.2940 provides:

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600.3801[4], MCL 333.7521 and MCL 333.7406 against defendant Acorn Investment Co. which alleged, among other things, that defendant Acorn Investment Co. fostered and maintained an

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(…continued)

> (1) All claims based on or to abate nuisance may be brought in the circuit court. The circuit court may grant injunctions to stay and prevent nuisance.
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> (2) When the plaintiff prevails on a claim based on a private nuisance, he may have judgment for damages and may have judgment that the nuisance be abated and removed unless the judge finds that the abatement of the nuisance is unnecessary.
>
> (3) If the judgment is that the nuisance shall be abated, the court may issue a warrant to the proper officer, requiring him to abate and remove the nuisance at the expense of the defendant, in the manner that public nuisances are abated and removed. The court may stay the warrant for as long as 6 months to give the defendant an opportunity to remove the nuisance, upon the defendant giving satisfactory security to do so.
>
> (4) The expense of abating and removing the nuisance pursuant to such warrant, shall be collected by the officer in the same manner as damages and costs are collected upon execution, excepting that the materials of any buildings, fences, or other things that may be removed as a nuisance, may be sold by the officer, in like manner as goods are sold on execution for the payment of debts. The officer may apply the proceeds of such sale to defray the expenses of the removal, and shall pay over the balance thereof, if any, to the defendant upon demand. If the proceeds of the sale are not sufficient to defray the said expenses, he shall collect the residue thereof as before provided.
>
> (5) Actions under this section are equitable in nature unless only money damages are claimed.

[4] MCL 600.3801 states:

> Any building, vehicle, boat, aircraft, or place used for the purpose of lewdness, assignation or prostitution or gambling, or used by, or kept for the use of prostitutes or other disorderly persons, or used for the unlawful manufacture, transporting, sale, keeping for sale, bartering, or furnishing of any controlled substance as defined in [MCL 333.7104] or of any vinous, malt, brewed, fermented, spirituous, or intoxicating liquors or any mixed liquors or beverages, any part of which is intoxicating, is declared a nuisance, and the furniture, fixtures, and contents of the building, vehicle, boat, aircraft, or place and all intoxicating liquors therein are also declared a nuisance, and all controlled substances and nuisances shall be enjoined and abated as provided in this act and as provided in the court rules. Any person or his or her servant, agent, or

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abandoned property that posed a nuisance and an imminent danger to the health, safety and welfare of the community "by permitting a vacant, deteriorated and dangerous (hereinafter "abandoned") dwelling, structure, or building that is open to trespass to exist." Plaintiffs sought equitable relief and/or compensatory and exemplary damages. In plaintiffs' claim for equitable relief, they sought, inter alia, a declaratory judgment declaring the property a nuisance and orders requiring (1) defendant Acorn Investment Co. to submit fully executed contracts evidencing its good faith intention to immediately rehabilitate the subject property and its intended completion date within thirty days of the trial court's order; (2) defendant Acorn Investment Co. to authorize the county to enter and abate the nuisance at defendant Acorn Investment Co.'s expense, (3) a forced sale or demolition of the property; and/or (4) the transfer of title to the property to the county as compensation to defray costs of demolition and removal.

Meanwhile, pursuant to defendants' motion for an injunction to defer demolition, Judge Tertzag issued a temporary restraining order (TRO) which included approximately eighteen additional properties owned by defendants per the parties' stipulation agreement on December 10, 2001.[5] Judge Tertzag held in abeyance defendants' subsequent motion to amend the injunction to add six properties (including 19326 Hanna). Notwithstanding Judge Tertzag's TRO, plaintiffs proceeded with the commencement of circuit court actions against defendants for the properties located at 15708 Parkside (Docket No. 248926), 19236 Hanna (Docket No. 248927), and 19180 Keating (Docket No. 248928) and filed separate complaints on December 17, 2001, and February 25, 2002, respectively. Because the four cases raised identical allegations and requests for relief, they were treated unofficially as consolidated cases and assigned to Wayne Circuit Court Judge Michael Sapala.

On August 27, 2002, plaintiffs filed motions for summary disposition under MCR 2.116(C)(10), arguing no genuine issue of fact existed that the structures were nuisances requiring immediate abatement. Defendants opposed the motion and sought summary disposition in their favor, asserting among other things, that the structures were not nuisances as they were boarded up and secured from trespass and the fact that the structures were vacant is insufficient as a matter of law to justify a nuisance determination. Defendants further argued the trial court lacked subject matter jurisdiction and was barred from using its equitable powers because of the prior disposition of the issue by the Detroit City Council, which limited the trial court's review and prevented defendants from filing original abatement actions in circuit court. Finally, defendants argued Judge Tertzag retained jurisdiction of the matter by virtue of the existing TRO.

On December 13, 2002, the trial court held a hearing on the parties' respective motions and denied the motions, finding that an issue of fact existed on the issues of whether the properties were nuisances, utilized as rental properties or abandoned. After the trial court was informed that the TRO was still in place and that the parties were currently involved in

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> employee who owns, leases, conducts, or maintains any building, vehicle, or place used for any of the purposes or acts set forth in this section is guilty of a nuisance.

[5] The TRO did not include the property located at 19326 Hanna (Docket No. 248927), but included the three remaining properties at issue in this appeal.

settlement proceedings, the parties agreed that, if a resolution was not reached by settlement, all the cases would proceed to trial. Immediately before evidence was presented at the bench trial, the trial court denied defendants' emergency motion to dismiss, again rejecting their arguments that the trial court lacked jurisdiction. At the close of proofs, the trial court found that the four structures constituted public nuisances. The trial court's May 16, 2003, order provided that title to the lots would remain with defendants; however, they were required, at their own expense, to demolish the structures situated on the properties within thirty days. Following entry of the trial court's order, defendants filed a claim of appeal with this Court on June 3, 2003, and this Court on July 9, 2003, granted the motion to consolidate the cases on appeal.[6]

On June 19, 2003, in light of defendants' failure to demolish the structures, plaintiffs filed, in the trial court, a motion for defendants to show cause for failing to comply with the trial court's May 16, 2003, order. At the July 3, 2003, show cause hearing, defendants argued that compliance with the trial court's order would render their appeal mute. Defendants further contended that because an adequate remedy at law existed under MCL 600.2960, the trial court lacked jurisdiction to find them in contempt for failing to demolish the structures. With regard to the trial court's potential finding of contempt against Ernest Karr, who expressed a limited ownership interest in the properties at trial, defendants argued that he could not be found in contempt as an owner because he was never a named defendant in the action. Rejecting defendants' arguments, the trial court denied their motion to stay the proceedings, found Karr in contempt and ordered Karr to report for incarceration on July 10, 2003, unless the properties were demolished or this Court granted a stay of proceedings. On July 9, 2003, this Court denied defendants' emergency motion for a stay of proceedings;[7] vacated the order of contempt against Karr; and remanded the case for the trial court to conduct a second show cause hearing to allow Karr to attend and present a defense. Failing to obtain a stay of proceedings, the structures on the properties were demolished at defendants' expense. Defendants now seek damages and review of the trial court's rulings.

II.

This Court reviews de novo the issue whether a trial court has subject-matter jurisdiction. *Atchison v Atchison*, 256 Mich App 531, 534; 664 NW2d 249 (2003). Similarly, whether a party has standing to bring an action involves a question of law that is reviewed de novo. *In re KH*, 469 Mich 621, 627-628; 677 NW2d 800 (2004). This Court reviews equitable actions under a de novo standard. *Webb v Smith*, 224 Mich App 203, 210; 568 NW2d 378 (1997). However, we review for clear error the findings of fact supporting the decision. *Id.* The trial court's findings will be sustained unless this Court is convinced that it would have reached a contrary result. *Orion Charter Twp v Burnac Corp*, 171 Mich App 450, 459; 431 NW2d 225 (1988).

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[6] *Wayne County Executive v 19159 Cardoni*, unpublished order of the Court of Appeals, entered July 9, 2003 (Docket Nos. 248925, 248926, 248927, 248928).

[7] *Wayne County Executive v 19159 Cardoni*, unpublished order of the Court of Appeals, entered July 9, 2003 (Docket Nos. 248925, 248926, 248927, 248928).

This Court reviews de novo matters of statutory construction, including the interpretation of court rules and ordinances. *Soupal v Shady View, Inc*, 469 Mich 458, 462; 672 NW2d 171 (2003); *Webb v Holzheuer*, 259 Mich App 389, 391; 674 NW2d 395 (2003). "The primary goal of statutory interpretation is to give effect to the intent of the Legislature. This determination is accomplished by examining the plain language of the statute itself. If the statutory language is unambiguous, appellate courts presume that the Legislature intended the meaning plainly expressed and further judicial construction is neither permitted nor required." *Atchison, supra* at 535 (internal citations omitted). On the other hand, statutory language is deemed ambiguous if reasonable minds could differ with regard to its meaning, i.e., the language is susceptible to more than one interpretation. *In re MCI*, 460 Mich 396, 411; 596 NW2d 164 (1999). Where statutory language is ambiguous, judicial construction is permitted. *Deschaine v St Germain*, 256 Mich App 665, 669; 671 NW2d 79 (2003).

III.

Defendants first contend that the trial court lacked subject-matter jurisdiction. We disagree. "Jurisdiction involves the two different concepts of subject-matter jurisdiction and personal jurisdiction." *People v Eaton*, 184 Mich App 649, 652; 459 NW2d 86 (1990). Subject-matter jurisdiction encompasses those matters upon which the court has power to act, whereas personal jurisdiction deals with the authority of the court to bind the parties to the action. *Omne Fin v Shacks, Inc*, 226 Mich App 397, 402; 573 NW2d 641 (1997). In this case, the record shows that, defendants, in their answers to each of plaintiff's complaints, affirmatively agreed that the trial court had jurisdiction. Nonetheless, because lack of subject-matter jurisdiction by the court is not subject to waiver and may be raised by a party at any time, MCR 2.116(D)(3); *Traveler's Ins Co v Detroit Edison Co,* 465 Mich 185, 204; 631 NW2d 733 (2001), defendants' assertion that the trial court lacked subject-matter jurisdiction is properly reviewed on appeal.

MCL 600.2940(1) provides that "all claims based on or to abate nuisance may be brought in the circuit court." Thus, contrary to defendants' contentions that a city council order of demolition precludes a circuit court action, i.e., that the circuit court was limited to exercising superintending control over the city council, MCL 600.2940(1) expressly confers original subject-matter jurisdiction on the trial court. While it is the case that the Michigan Constitution, Const 1963, art 7, § 22, and the Home Rule City Act, MCL 117.1 *et seq*., provide municipalities the authority to enact any ordinance or charter provision deemed necessary for the public interest, such authority does not extend to permit the municipality to adopt an enactment which is contrary to or preempted by the state constitution or state laws. *Rental Property Owners Ass'n of Kent Co v Grand Rapids,* 455 Mich 246, 270-271; 566 NW2d 514 (1997). In addition, the fact that a home rule city may act as a quasi-judicial body by ordering a structure demolished does not alone negate the circuit court's authority to hear and decide original nuisance and abatement actions. See, *id.* at 268-270. Defendants erroneously contend that trial court was limited to a determination whether the city council decision was authorized by law and supported by competent, material and substantial evidence on the record. Const 1963, art 6, § 28; *Rental Property Owners Ass'n, supra at* 269. Had defendants initiated an appeal from the city council's decisions to demolish the structures defendants' contention might have some merit. Instead, this action commenced following plaintiffs' complaints seeking declaratory judgments that the structures were nuisances and requests for equitable relief and/or compensatory and exemplary damages. Because these were matters within the trial court's original jurisdiction, rather than

appellate jurisdiction, MCL 600.2940(1), the trial court was not obligated to apply the limited review accorded appellate proceedings.

We also reject defendants' next assertion that the doctrine of collateral estoppel precluded the circuit court action. Because defendants failed to raise this issue below,[8] it is forfeited and need not be addressed by this Court as it is not decisive to the outcome of the case. *Fast Air, Inc v Knight*, 235 Mich App 541, 549-550; 599 NW2d 489 (1999).[9]

Defendants also claim that the county, the mayor, and the prosecutor each lacked standing to bring suit. We disagree. "As a general rule, a public nuisance gives no right of action to any individual, but must be abated by a proceeding instituted in the name of the State, or at the suit of some proper officer or body as its authorized representative . . . . [and] an individual may bring an action on account of public nuisance when and only when he can show that he has sustained therefrom damage of a special character, distinct and different from the injury suffered by the public generally." *Morse v Liquor Control Com*, 319 Mich 52, 58-59, 29 NW2d 316 (1947), overruled in part on other grounds *Bundo v Walled Lake,* 395 Mich 679, 691-692; 238 NW2d 154 (1976).

MCL 49.153 states in relevant part:

* * *

> The prosecuting attorneys shall, in their respective counties, appear for the state or county, and prosecute or defend in all the courts of the county, all prosecutions, suits, applications and motions, whether civil or criminal, in which the state or county may be a party or interested.

It is clear from the plain language of MCL 49.153 that the prosecutor had standing to prosecute and initiate a cause of action to enforce state abatement and nuisance actions. See also Const 1963, art 7, § 4.

The county also clearly had standing in this matter. In Michigan, "local governments are vested with general constitutional authority to act on all matters of local concern not forbidden by state law." *Wayne Co v Hathcock*, 471 Mich 445, 460; 684 NW2d 765 (2004), citing *Airlines Parking v Wayne Co,* 452 Mich 527, 537 n 18; 550 NW2d 490 (1996). The charter county act, MCL 45.501 *et seq*., states that county charters may expressly provide for

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[8] Although defendants, in their reply brief, state they preserved the issue in their motion to dismiss, this is an inaccurate statement. Defendants never argued, raised or briefed the issue below.

[9] Moreover, because defendants have not provided this Court with the transcripts of, or records from the prior proceeding, we would conclude that collateral estoppel does not apply to bar the litigation in this case because the basis of the former judgment cannot be "clearly, definitely, and unequivocally ascertained." *Ditmore v Michalik,* 244 Mich App 569, 578; 625 NW2d 462 (2001).

> the authority to perform at the county level any function or service not prohibited by law, which shall include, by way of enumeration *and not limitation*: Police protection, fire protection, planning, zoning, education, health, welfare, recreation, water, sewer, waste disposal, transportation, abatement of air and water pollution, civil defense, *and any other function or service necessary or beneficial to the public health, safety, and general welfare of the county*. [Powers granted solely by charter may not be exercised by the charter county in a local unit of government which is exercising a similar power without the consent of the local legislative body.] [*Wayne Co, supra* at 460-461, citing MCL 45.515(c) (emphasis added to emphasis in original and next sentence in statute added).]

Here, the county as a party-plaintiff sought to enforce a state law of potential benefit to the public health, safety, and general welfare of the county. MCL 45.515(c); MCL 600.3801; *Morse, supra* at 58-59. Nothing in the plain language of MCL 45.515(c) prohibited the county from joining the instant action, and because the complaints in these nuisance abatement actions were filed to seek enforcement of state law and statutes, defendants' contentions that the county is pre-empted by local law and that MCL 45.515(c) requires the county to obtain the consent of the local legislative body to participate in the instant suit are untenable. See also *In re Certified Question*, 465 Mich 537, 543; 638 NW2d 409 (2002) ("Pursuant to art 7, § 1, the Michigan Legislature at MCL 45.3 has granted each of the state's counties the power to sue and to be sued.")

With regard to defendants' assertion that the mayor lacked standing, we deem the issue abandoned. Defendants have briefed this issue in cursory fashion and failed to cite any relevant authority in support of their argument. A party may not announce a position and leave it to this Court to discover and rationalize the basis for the claim. *Houghton v Keller*, 256 Mich App 336, 339; 662 NW2d 854 (2003).

Next, we reject, as unsupported by the record, defendants' contention that the trial court erred because it was obligated to defer from ordering the structures demolished in light of Judge Tertzag's issuance of the TRO. While the record shows that, at the hearing on the parties' respective motions for summary disposition, defendants informed the trial court that the TRO remained in effect and that the action pending before Judge Tertzag was currently in settlement proceedings, the record also shows that the trial court, in part, denied the motions for summary disposition because of the pending case before Judge Tertzag. Significantly, the record also establishes that the case proceeded to trial because defendants acquiesced to the trial court's stated intent to hear the four cases together if the settlement proceedings were unsuccessful. Notably, defendants did not inform the trial court that the action before Judge Tertzag was still pending or raise this issue in their emergency motion to dismiss at the start of trial. Stated differently, defendants placed the properties in issue by failing to raise this claim before the start of trial. An appellant cannot contribute to error by plan or design and then argue error on appeal. *Phinney v Perlmutter*, 222 Mich App 513, 537; 564 NW2d 532 (1997). see also *Fast Air, supra*

at 549 (issue forfeited when not raised before the trial court). Hence, defendants are not entitled to appellate relief on this basis.[10]

Next, defendants contend that the trial court erred in ordering the extreme remedy of demolition when the structures may have been abated by other possible methods, including additional security, and monitoring of the properties. We disagree. Generally, a property owner's right to the unrestricted use of his property is subject to reasonable regulation by the state in the legitimate exercise of its police powers to enact laws protecting health, safety, welfare, and public morals. *Gora v City of Ferndale*, 456 Mich 704, 711; 576 NW2d 141 (1998); see also *Woodland v Michigan Citizens Lobby*, 423 Mich 188, 201; 378 NW2d 337 (1985). Defendants correctly assert that a court sitting in equity has the power to enjoin a nuisance, but, as a matter of policy, will attempt to tailor the remedy to the problem and, where possible, to abate the nuisance without completely destroying the legitimate activity, *Eyde Bros Dev Co v Roscommon Co Bd of Rd Comm'rs*, 161 Mich App 654, 670; 411 NW2d 814 (1987); however, defendants' claim fails because the legal remedy that they seek "cannot be said to give full and ample relief if it is not as effectual as that which equity affords." *Mooahesh v Dept of Treasury*, 195 Mich App 551, 561; 492 NW2d 246; (1992) overruled in part on other grounds in *Silverman v Univ of Michigan Bd of Regents*, 445 Mich 209, 215-217; 516 NW2d 54 (1994).

Specifically, we find no error and we are not persuaded that the demolition order was inappropriate. The trial court heard considerable evidence of the structures' poor and unsafe conditions. In its findings, the trial court found, as credible, the witnesses' accounts of the presence of debris, bulk garbage, rats, drug activity, and repeated drug raids by law enforcement. Photographic evidence further demonstrated the structures' dilapidated conditions. Despite defendants' claims that the conditions creating the nuisance could be corrected with additional security and monitoring and that the structures were merely vacant, Karr testified that the properties were uninhabitable. Karr further testified that once a prospective tenant expresses an interest in renting the house, then and only then, are any efforts made to make the house habitable and improve the property for the tenant's move-in date. On the basis of this evidence, we cannot conclude that the trial court clearly erred in finding a nuisance and ordering the properties demolished while rejecting defendants' claims that the conditions could be remedied when and if the properties were rented, particularly in light of the record evidence establishing defendants' reluctance to make improvements or to prepare the uninhabitable houses for occupancy.

Defendants further contend that a distinction must be made between a public nuisance due to the improper use of a building and a public nuisance due to structural defects. Defendants contend it is illogical to allow a property that is used for criminal activities to be abated by padlocking it for one year under MCL 600.3825(1); but nonetheless require a structure to be demolished for the lesser offenses of trespassing, loitering and excessive debris. We disagree. Assuming we were to make such a distinction, defendants would not necessarily benefit because evidence of structural deficiencies or improper use are not the only conditions to constitute a

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[10] Judge Tertzag entered an order of dismissal in Case No. 01-125498-CZ on June 12, 2003.

nuisance. MCL 600.3801; see also *Ebel v Bd of County Rd Comm'rs*, 386 Mich 598, 606; 194 NW2d 365 (1972) (the term "nuisance" has been variously defined and is so comprehensive that its existence must be determined from facts and circumstances of each case); *Garfield v Young,* 348 Mich 337, 342; 82 NW2d 876 (1957) (a public nuisance constitutes an activity harmful to public health, or creates an interference in the use of a way of travel, or affects public morals). In this case, the structures were declared to constitute nuisances requiring abatement, and MCL 600.2940(3) plainly provided the trial court authority "to abate and remove the nuisance" at defendants' expense. See also 58 Am Jur 2d, Nuisances, § 358, p 949 ("equity may deal with property used in maintaining a nuisance in any way reasonably necessary to suppress the nuisance"). Because the evidence, as discussed previously, supports the trial court's determinations, defendants' claims must fail.

We need not address defendants' remaining claim of error regarding plaintiffs' ability to initiate a civil contempt proceeding in light of this Court's July 9, 2003, order vacating the order of contempt against Karr.

Because the trial court's determination was a valid exercise of jurisdiction in an action to enforce state laws, and the testimony and evidence supported its findings, we conclude that the trial court did not err in determining that the structures constituted nuisances subject to demolition at defendants' expense.

Affirmed.

/s/ Patrick M. Meter
/s/ Kurtis T. Wilder
/s/ Bill Schuette