

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
KENTUCKY, CENTRAL DIVISION

Melvin Terrel Nethery and Laura Nethery v. H. Troy Ethington, et al.

Case No. 3:24-cv-00058-GFVT-EBA · No. 3:24-cv-00058-GFVT-EBA · Decided March 18, 2026

SUMMARY

The United States District Court for the Eastern District of Kentucky grants the defendants’ motion for summary judgment and denies the plaintiffs’ cross-motion in a dispute concerning historic-district regulations and a Stop Work Order issued against the plaintiffs’ property. The court holds that the plaintiffs’ takings claim based on the Stop Work Order is unripe because they did not apply for a Certificate of Appropriateness. The court further concludes that the historic-district ordinance does not constitute a regulatory taking under the Penn Central factors.

CASE DETAILS

COURT	United States District Court for the Eastern District of Kentucky, Central Division
WRITING FOR THE COURT	Gregory F. Van Tatenhove
JURISDICTION	United States District Court for the Eastern District of Kentucky, Central Division
DECIDED	March 18, 2026
DOCKET	3:24-cv-00058-GFVT-EBA
DISPOSITION	other
PROCEDURAL POSTURE	The parties filed cross-motions for summary judgment after removal from Shelby Circuit Court and completion of discovery.
STANDARD OF REVIEW	Summary judgment is appropriate when the record shows no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The court considered each cross-motion independently, drew reasonable inferences against the party whose motion was under consideration, and applied de novo legal analysis to the constitutional claims.
PRECEDENTIAL VALUE	Unpublished district court memorandum opinion; persuasive but not binding outside the case.
PARTIES	Melvin Terrel Nethery, Laura Nethery v. Shelbyville City Council, Shelbyville Historic District Commission, H. Troy Ethington, Mayor

TOPICS

summary judgment

takings clause

procedural due process

void for vagueness

zoning

PRACTICE AREAS

constitutional law

real estate

municipal law

civil procedure

QUESTIONS PRESENTED

1. Whether the takings claim based on the Stop Work Order was ripe when plaintiffs had not applied for a Certificate of Appropriateness or obtained a final decision from the Historic District Commission.
2. Whether the designation of plaintiffs' property within Shelbyville's historic district constituted a partial regulatory taking under the United States or Kentucky Constitutions.
3. Whether plaintiffs possessed a protected property interest in making exterior repairs without governmental interference and, if so, whether the Stop Work Order provided constitutionally sufficient procedural due process.
4. Whether Shelbyville Code of Ordinances § 72.004(B), considered with related provisions, was unconstitutionally vague.
5. Whether plaintiffs could obtain summary judgment on a claim that the Stop Work Order was unenforceable because the Historic District Commission allegedly failed to follow the ordinance's issuance procedure when that claim was not pleaded in the complaint.

HOLDINGS

1. The takings claim based on the Stop Work Order was not ripe because the defendants had not reached a final, definitive decision concerning the permissible uses of the property. Plaintiffs were required to apply for a Certificate of Appropriateness before the regulatory process could produce a final decision.
2. The creation and enforcement of the Shelbyville Historic District did not constitute a taking of plaintiffs' property as a matter of law.
3. Plaintiffs did not possess a protected property interest in making exterior alterations without governmental interference because the repairs were unauthorized under the municipal code and plaintiffs had no legitimate claim of entitlement to perform them without first obtaining a Certificate of Appropriateness.
4. Even assuming plaintiffs had a protected property interest, the Stop Work Order provided constitutionally sufficient process.
5. Section 72.004(B) was not unconstitutionally vague, either because of its relationship to the repair requirement in § 72.005 or because it allegedly failed to specify who could issue a Stop Work Order.
6. Plaintiffs could not obtain summary judgment on the theory that the Stop Work Order was unenforceable because the Historic District Commission allegedly failed to follow the ordinance's procedure; that claim

was not pleaded and could not be raised for the first time at summary judgment.

KEY QUOTATIONS

“As such, the Defendants have not reached a “final, definitive decision,” and the Netherys takings claim with regards to the Stop Work Order is not ripe for adjudication.” (Part II(B)(2))

“There is an important distinction between temporary, non-final interferences—like stop work orders—and permanent, final ones—like permit revocation.” (Part II(C)(2)(a))

“Far from vague, the Code provides a very simple if/then test: if a property owner alters the exterior of their home without obtaining a COA, then the SHDC asks that a Stop Work Order issue.” (Part II(D))

“A new claim cannot be raised for the first time in a motion for summary judgment.” (Part II(E))

FACTUAL BACKGROUND

Shelbyville established a Historic District Commission and designated the plaintiffs' property as part of a historic district in 1991, before the plaintiffs acquired it in 2005. The municipal code required owners to obtain a Certificate of Appropriateness before making exterior alterations. In 2024, plaintiffs began exterior repairs without obtaining a certificate, and the City issued a Stop Work Order. Plaintiffs declined to apply for a Certificate of Appropriateness and instead filed suit seeking monetary and declaratory relief.

PROCEDURAL HISTORY

Plaintiffs filed suit in Shelby Circuit Court asserting regulatory-taking, procedural-due-process, and void-for-vagueness claims arising from a Shelbyville historic-district ordinance and a Stop Work Order. Defendants removed the action to the Eastern District of Kentucky on August 28, 2024. After discovery, both sides moved for summary judgment. The court granted defendants' motion, denied plaintiffs' motion, dismissed the Stop Work Order takings claim without prejudice as unripe, and entered judgment for defendants on the remaining claims.

DISPOSITION

other

CASES CITED

- Celotex Corp. v. Catrett, 477 U.S. 317, 323-25 (1986)
- Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 251-52, 255 (1986)
- Street v. J.C. Bradford & Co., 886 F.2d 1472, 1479-80 (6th Cir. 1989)
- J.B-K.-1 v. Secretary of Kentucky Cabinet for Health & Family Services, 462 F. Supp. 3d 724, 731 (E.D. Ky. 2020)
- In re Morris, 260 F.3d 654, 665 (6th Cir. 2001)
- Chao v. Hall Holding Co., Inc., 285 F.3d 415, 424 (6th Cir. 2002)
- Booker v. Brown & Williamson Tobacco Co., 879 F.2d 1304, 1310 (6th Cir. 1989)

- Logan v. Denny's, Inc., 259 F.3d 558, 566 (6th Cir. 2001)
- Dawson v. Dorman, 528 Fed. Appx. 450, 452 (6th Cir. 2013)
- Mitchell v. Toledo Hospital, 964 F.2d 577, 584-85 (6th Cir. 1992)
- Profit Pet v. Arthur Dogswell, LLC, 603 F.3d 308, 312 (6th Cir. 2010)
- Ohio State University v. Redbubble, Inc., 989 F.3d 435, 442 (6th Cir. 2021)
- Murr v. Wisconsin, 582 U.S. 383, 392 (2017)
- Armstrong v. United States, 364 U.S. 40, 49 (1960)
- Cedar Point Nursery v. Hassid, 594 U.S. 139, 147-48 (2021)
- Pennsylvania Coal Co. v. Mahon, 260 U.S. 393 (1922)
- Andrews, Trustee of Gloria M. Andrews Trust Dated April 23, 1998 v. City of Mentor, Ohio, 11 F.4th 462, 468-71 (6th Cir. 2021)
- Lucas v. South Carolina Coastal Council, 505 U.S. 1003, 1012-13, 1019, 1029, 1031 (1992)
- Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency, 535 U.S. 302, 324-25, 330 (2002)
- Waste Services of the Bluegrass, LLC v. City of Georgetown, Kentucky, No. 5:20-cv-410-KKC, 2024 WL 843959, at *5 (E.D. Ky. Feb. 28, 2024)
- Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City, 473 U.S. 172, 194 (1985)
- Bannum, Inc. v. City of Louisville, 958 F.2d 1354, 1362-63 (6th Cir. 1992)
- Palazzolo v. Rhode Island, 533 U.S. 606, 621 (2001)
- Coalition for Government Procurement v. Federal Prison Industries, Inc., 365 F.3d 435, 481 (6th Cir. 2004)
- Keystone Bituminous Coal Association v. DeBenedictis, 480 U.S. 470, 497 (1987)
- Atkins v. Parker, 472 U.S. 115, 130 (1985)
- United States v. Causby, 328 U.S. 256 (1946)
- Howard v. Grinage, 82 F.3d 1343, 1350 (6th Cir. 1996)
- Cleveland Board of Education v. Loudermill, 470 U.S. 532, 542 (1985)
- Kentucky Department of Corrections v. Thompson, 490 U.S. 454, 460 (1989)
- Board of Regents of State Colleges v. Roth, 408 U.S. 564, 571, 577 (1972)
- Connecticut Board of Pardons v. Dumschat, 452 U.S. 458, 465 (1981)
- Jahn v. Farnsworth, 617 Fed. Appx. 453, 459 (6th Cir. 2015)
- Hart v. Township of Presque Isle, 761 F. Supp. 3d 1011, 1020-22, 1028 (E.D. Mich. 2024)
- Moody v. Michigan Gaming Control Board, 790 F.3d 669, 677 (6th Cir. 2015)
- Wolff v. McDonnell, 418 U.S. 539 (1974)
- R.S.W.W., Inc. v. City of Keego Harbor, 397 F.3d 427, 435 (6th Cir. 2005)
- Med Corporation, Inc. v. City of Lima, 296 F.3d 404, 409 (6th Cir. 2002)
- United States v. Avant, 907 F.2d 623, 625 (6th Cir. 1990)
- United States v. Kernell, 667 F.3d 746, 750 (6th Cir. 2012)

- United States v. Krumrei, 258 F.3d 535, 537 (6th Cir. 2001)
- Platt v. Board of Commissioners on Grievances & Discipline of Ohio Supreme Court, 894 F.3d 235, 252 (6th Cir. 2018)
- United Food & Commercial Workers Union, Local 1099 v. Southwest Ohio Regional Transit Authority, 163 F.3d 341, 359 (6th Cir. 1998)
- White Oak Property Development, LLC v. Washington Township, Ohio, 606 F.3d 842, 848 (6th Cir. 2010)
- Rose v. Locke, 423 U.S. 48, 49 (1975)
- Smith v. Goguen, 415 U.S. 566, 575 (1974)
- Hill v. Colorado, 530 U.S. 703, 733 (2000)
- Naples v. Lowellville Police Department, 125 Fed. Appx. 636, 644 (6th Cir.)
- Kinsey v. Ohio, No. 2:17-cv-982, 2020 WL 1066633, at *4 (S.D. Ohio Mar. 5, 2020)
- Thomas v. United Steelworkers Local 1938, 743 F.3d 1134, 1140 (8th Cir. 2014)
- Guiffre v. Local Lodge No. 1124, United Steelworkers of America, 940 F.2d 660, 1991 WL 135576, at *5 (6th Cir. July 24, 1991) (Table)
- McPherson v. Kelsey, 125 F.3d 989, 995-96 (6th Cir. 1997)

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