

IN THE FRANKLIN COUNTY MUNICIPAL COURT
ENVIRONMENTAL DIVISION
FRANKLIN COUNTY, OHIO

STATE EX. REL
COLUMBUS CITY ATTORNEY
RICHARD C. PFEIFFER, JR.
77 North Front Street
Columbus, Ohio 43215,

Relator-Plaintiff,

Case No.

2017 EV H 60448

v.

Judge Daniel R. Hawkins

CHANNINGWAY PROPERTIES, INC.
c/o Elizabeth A. Schwarzbach, SA
2853 Lakewood Drive
Columbus, Ohio 43226

and

HETZBACH CORPORATION
c/o Ramona Hetzel, SA
4393 May Apple Court
Dublin, Ohio 43016

and

FRANZ J. SCHWARZBACH
2853 Lakewood Drive
Columbus, Ohio 43226

and

RAMONA C. HETZEL
4393 May Apple Court
Dublin, Ohio 43016

and

SOCIETY BANK

c/o Ohio Secretary of State
180 East Broad Street
Columbus, Ohio 43215

and

FRANKLIN COUNTY TREASURER

373 South High Street, 17th Floor
Columbus, Ohio 43215

and

REAL PROPERTY LOCATED AT:

6065 Channingway Boulevard
Columbus, Ohio 43232,

Parcel No: 010-016135

Respondents-Defendants.

COMPLAINT FOR PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF

1. This complaint concerns enforcement of the Ohio Revised Code ("ORC") Chapter 3767 *et seq.*, other code provisions, and common law so as to be within the exclusive jurisdiction of the Environmental Division of the Franklin County Municipal Court pursuant to ORC 1901.183.

2. The real property that is the subject matter of this complaint is located at 6065 Channingway Boulevard, Columbus, Ohio, Parcel No 010-046619 (hereinafter "the Premises" or "Rachel's"), situated in the City of Columbus, Franklin County, Ohio.

PARTIES

3. Relator Richard C. Pfeiffer, Jr. is the duly-elected, sworn, and acting City Attorney for the City of Columbus, Ohio and is a party charged at both common law and by ORC 3767.03

with the prevention, prosecution, and abatement of any public nuisance within the City of Columbus, Franklin County, Ohio.

4. Respondent Channingway Properties, Inc., is the property owner of record of the Premises by virtue of two general warranty deeds filed with the Franklin County Recorder. (*See attached Plaintiff's Exhibits A and B*).

5. Said general warranty deeds expressly prohibit a strip club being operated at the Premises. See Exhibits A and B.

6. Respondent Hetzbach Corporation ("Hetzbach") operates a strip club known as "Rachels" at the Premises. Hetzbach is also the holder of the liquor permit issued by the Ohio Division of Liquor Control for the Premises. Hetzbach has, at all times relevant to this action, used, occupied, controlled, and conducted business at the Premises.

7. Respondents Franz J. Schwarzbach and Ramona C. Hetzel are presently, and have been at all times relevant to this action, owners of Hetzbach, and have used, occupied, controlled, and conducted business at the Premises.

8. Respondent-Defendant Society Bank may claim an interest in the Premises which could be adversely impacted by this action by virtue of a mortgage filed with the Franklin County Recorder, Instrument No. 13079, Page A06.

9. Respondent-Defendant Franklin County Treasurer may claim an interest in the Premises which could be adversely impacted by this action by virtue unpaid real estate tax.

FACTS

10. The Premises is located on the far east side of Columbus near the intersection of Interstate 70 and Brice Road.

11. Respondents-Defendants operate a strip club known as "Rachel's" at the Premises.

12. The Columbus Police Department (CPD) began investigating Rachel's several years ago as the result of excessive calls for police service to the Premises, including multiple reports of violent criminal activity.

13. On February 1, 2015, an employee of Rachel's reported that she was robbed and assaulted by fellow employees at the Premises.

14. On March 1, 2015, a customer of Rachel's reported that she was robbed and assaulted at the Premises.

15. On March 18, 2015, an employee of Rachel's reported that she was assaulted with a bottle at the Premises.

16. On March 27, 2015, CPD officers were dispatched to the Premises where a man reported that he was walking out of Rachel's when a group of four or five men began accosting him. Someone from the group then fired several gunshots into the man's vehicle as he was leaving the Premises' parking lot.

17. On April 18, 2015, CPD officers responded to the Premises on report of an assault. He stated that he was assaulted by an employee of Rachel's immediately outside the front door. The victim's face was covered with blood and his chest showed bruising.

18. On August 9, 2015, a customer of Rachel's reported that he was assaulted by an employee of Rachel's at the Premises. Officers observed the customer had a swollen eye.

19. On August 19, 2015, CPD officers were dispatched to the Premises on the report of a shooting. Upon arrival, officers found the victim, who had been shot multiple times, lying in the parking lot of the Premises. Officers determined that the victim had been involved in a fight that began in Rachel's, which then spilled into the parking lot, where he was shot.

20. On August 28, 2015, a former employee of Rachel's reported that she was assaulted by a current employee of Rachel's at the Premises.

21. On September 26, 2015, CPD officers responded to Mount Carmel East hospital, where a woman reported that she had been assaulted by a man while at Rachel's earlier that evening. The woman suffered a broken clavicle from the assault.

22. On November 10, 2015, a man pointed a gun at the occupants of a vehicle at the Premises. Employees of Rachel's disarmed the man, tazered him, and handcuffed him until CPD arrived.

23. On September 14, 2016, the Ohio Division of Liquor Control denied and rejected the renewal of Hetzbach's Liquor Permit for Rachel's based upon the following grounds:

- a. "The place for which the permit is sought is so located with respect to the neighborhood that substantial interference with public decency, sobriety, peace, and good order would result from the renewal of the permit and operation thereunder by the applicant."
- b. "The permit holder has operated the business and liquor permit business in a manner that demonstrates a disregard for the laws, regulations, or local ordinances of this state."

24. Hetzbach was granted a stay of this decision pending appeal to the Liquor Control Commission.

25. On January 31, 2017, CPD responded to the Premises on the report of a shooting. Upon arrival, officers determined that the incident was not a shooting, but a physical altercation between the security staff and several patrons of the club.

26. On February 8, 2017, CPD officers found illegal narcotics in a vehicle parked in the Premises' parking lot.

27. On February 21, 2017, CPD Vice, utilizing a confidential informant under the age of 21, observed Tabatha Weyant, a bartender working at Rachel's, illegally sell an alcoholic beverage to said underage confidential informant.

28. Also on February 21, 2017, CPD Vice sent certified letters to defendants notifying them of this underage purchase of alcohol.

29. On March 3, 2017, CPD Vice, utilizing a confidential informant under the age of 21, observed Eden Tache, a bartender working at Rachel's, illegally sell an alcoholic beverage to said underage confidential informant.

30. Also on March 3, 2017, CPD Vice sent certified letters to defendants notifying them of this underage purchase of alcohol.

31. On March 20, 2017, a female former employee reported that she was assaulted at the Premises by a current employee. The current employee stated that the former employee had caused a disturbance and had to be escorted off the Premises.

32. On April 11, 2017, CPD responded to a report of a robbery at the Premises.

33. On April 27, 2017, CPD responded to a report of shots fired at the Premises.

34. On May 6, 2017, CPD responded to a report of a person with a gun at the Premises.

35. On May 27, 2017, CPD responded to a report of shots fired at the Premises.

36. On June 1, 2017, CPD responded to a report of a shooting at the Premises. Officers found the victim in a parking lot immediately adjacent to the Premises. The victim later died as a result of his gunshot wounds.

37. Since 2015, CPD has received 135 calls for service to the Premises. This is an excessive amount of calls for service and represents a drain on CPD resources. Furthermore, these calls for service include offenses of violence, including gun violence. This type of criminal behavior substantially interferes with the public decency, sobriety, peace, and good order.

FIRST CLAIM FOR RELIEF

The Premises constitutes a statutorily defined public nuisance

38. Relator-Plaintiff incorporates the preceding paragraphs 1 through 37 as if fully incorporated herein.

39. By reason of the foregoing, the Premises constitutes a nuisance subject to abatement pursuant to ORC 3767.01(C), and CCC 4703.01(F)(1).

SECOND CLAIM FOR RELIEF

Respondents-Defendants are guilty of maintaining a nuisance at the Premises

40. Relator-Plaintiff incorporates the preceding paragraphs 1 through 39 as if fully incorporated herein.

41. By reason of the foregoing, Respondents-Defendants have used, occupied, established, or conducted a nuisance, have aided or abetted in the use, occupancy, establishment, or conduct of a nuisance, are the owner, agent, or lessee of an interest in a nuisance, and/or are in control of a nuisance.

42. Furthermore, Respondents-Defendants negligently or knowingly acquiesced to, and/or participated in, the creation or perpetuation of the nuisance.

43. Respondents-Defendants are guilty of maintaining a nuisance as defined in ORC 3767.02 at the Premises.

THIRD CLAIM FOR RELIEF

Common law public nuisance

44. Relator-Plaintiff incorporates the preceding paragraphs 1 through 43 as if fully incorporated herein.

45. By reason of the foregoing, Respondents-Defendants are operating at the Premises in ways that unreasonably interfere with public health, welfare, and safety in Columbus.

46. Respondents-Defendants' business practices substantially interfere with the public decency, sobriety, peace, and good order and constitute a common law public nuisance.

47. As a direct and proximate cause of the Respondents-Defendants' business practices, Relator-Plaintiff has suffered damages and losses.

JUDGMENT AND RELIEF DEMANDED

WHEREFORE, Relator-Plaintiff demands judgment as follows:

48. The Court find that the Premises constitutes a nuisance as defined by O.R.C. 3767.01(C) and C.C.C. 4703.01(F).

49. The Court find that Respondents-Defendants are all guilty of maintaining a public nuisance at the Premises.

50. The Court order that Respondents-Defendants and any other persons are permanently and perpetually enjoined from maintaining a public nuisance at the Premises.

51. The Court order that Respondents-Defendants are permanently and perpetually enjoined from maintaining a public nuisance within the territorial limits of Franklin County, Ohio.

52. The Court specify that its judgment is entered pursuant to ORC 3767.05(E).

53. The Court order, pursuant to ORC 3767.05(E)(2), that no beer or intoxicating liquor may be manufactured, sold, bartered, possessed, kept, or stored at the Premises.

54. The Court order, pursuant to ORC 3767.05(E)(3), that the Premises not be occupied or used for one year after its judgment is rendered.

55. The Court order, pursuant to ORC 3767.05(E)(4), that notice of its judgment be sent to the Ohio Division of Liquor Control, the Ohio Liquor Control Commission, and the Liquor Enforcement Division of the Ohio Department of Public Safety.

56. The Court order, pursuant to ORC 3767.05(G), that a certified copy of its judgment be filed with the Franklin County Board of Elections.

57. The Court order, pursuant to ORC 3767.06(A), that the nuisance located at the Premises be abated.

58. The Court order, pursuant to ORC 3767.06(A), that all personal property and contents used in conducting or maintaining the nuisance at the Premises be removed and sold, without appraisal, at a public auction to the highest bidder for cash.

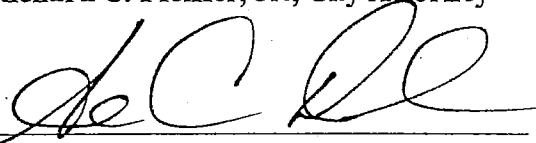
59. The Court order, pursuant to ORC 3767.06(A), that the Premises be closed against its use for any purpose for a period of one year.

60. That the Court tax Respondents-Defendants \$300 in accordance with ORC 3767.08, plus the costs of this action;

61. The Court grant Relator-Plaintiff all such further equitable and other relief this Court determines Relator-Plaintiff to be entitled pursuant to ORC 1901.131, and by law.

Respectfully submitted,

City of Columbus, Department of Law
Richard C. Pfeiffer, Jr., City Attorney



Stephen C. Dunbar (0076730)

Assistant City Attorneys

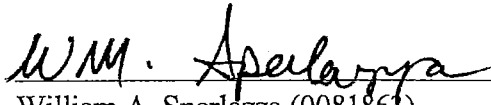
77 North Front Street, 4th Floor

Columbus, Ohio 43215

Phone: (614) 645-6914

Fax: (614) 645-6949

scdunbar@columbus.gov



William A. Sperlazza (0081863)

Assistant City Attorney

375 South High Street, 7th Floor

Columbus, Ohio 43215

Phone: (614) 645-7479

Fax: (614) 645-8902

wasperlazza@columbus.gov

EXHIBIT

A

tabbies

11374E01

MAIL

MAIL: GARY W. LYONS, 336 E. HIGH STREET, COLUMBUS, OHIO 43215

GENERAL WARRANTY DEED

(Sections 5302.05 and 5302.06 Ohio Revised Code) 029863

WALNUT HILL, INC, an Ohio corporation, Grantor, of Franklin County, Ohio for valuable consideration paid, grants, with general warranty covenants, to CHANNINGWAY PROPERTIES, INC., An Ohio corporation, Grantee, whose tax mailing address is 2853 Lakewood Drive, Columbus, Ohio 43229

the following REAL PROPERTY: Situated in the County of Franklin in the State of Ohio and in the City of Columbus (the "Premises"):

Being a 1.312 acre tract described in Exhibit A attached hereto and made a part hereof.

Subject to real estate taxes and assessments; zoning ordinances; public rights-of-way; and restrictions, conditions, and easements of record.

This conveyance is made by the Grantor and accepted by the Grantee subject to the restriction that the Premises shall not be used for an adult bookstore, adult motion picture theater, adults only entertainment establishment, billboards or off-premises graphics, garage repair shop, or used car (or any any used vehicle) salesroom or lot, not shall any entertainment, events, or activities that are sexually suggestive, exploitive or oriented, take place on the Premises, including, by way of example and not limitation, "go-go" dancing, male or female revue events, strip tease, belly dancing, wet T-shirt contests, or any other such events. Non-sexually oriented entertainment including, by way of example and not limitation, dance bands, disc jockies, or comedians are permitted on the Premises.

This restriction shall last for a period of forty five (45) years from the date hereof and such longer period as may be extended by Grantor, its successors and assigns, during said forty five (45) year period.

It is mutually agreed that the foregoing restriction is intended for the benefit and protection of the property (other than the Premises) conveyed to Grantor in the deed recorded at Deed Book 3139 Page 150 and Deed Book 2552 Page 686, Franklin County Recorder's Office (the "Benefitted Parcel"), and said restriction shall be deemed to run with and bind the Premises in favor of the Benefitted Parcel and shall be enforceable by Grantor and its successors and assigns.

Prior Instrument Reference: Deed Book Vol. 3139 Page 150, Franklin County Recorder's Office.

Witness the hand of Grantor's duly authorized officer this 31st day of March, 1988.

Signed and acknowledged in the presence of:

WALNUT HILL, INC,
an Ohio corporation

Timothy M. Kelley
witness

4727

BY Donald W. Kelley
Donald W. Kelley, Executive Vice President

Patrick J. Kelley
witness

CONVEYANCE TAX

\$120.00 SPK
PALMER C. McNEAL
CLERK OF COURT, SENIOR

STATE OF OHIO, COUNTY OF FRANKLIN

The foregoing instrument was acknowledged before me this 31st day of March, 1988, by Donald W. Kelley, Executive Vice President of Walnut Hill, Inc., an Ohio corporation, on behalf of the corporation.

TRANSFERRED

APR 1 1988

Timothy M. Kelley
Notary Public
My commission expires never

PALMER C. McNEAL
This instrument was prepared by:
Timothy M. Kelley, Attorney at Law
250 E. Broad St., Columbus, Oh. 43215

EXHIBIT A

Situate in the State of Ohio, County of Franklin, City of Columbus, being located in Section 23, Township 12, Range 21, Refugee Lands and being part of that tract of land conveyed to Walnut Hill, Inc., by deed of record in Deed Book 3139, Page 150, all references being to records in the Recorder's Office, Franklin County, Ohio, and bounded and described as follows:

Beginning at a point in the southerly right-of-way line of Channingway Boulevard (being 80 feet in width) at the northwesterly corner of the 0.470 acre tract conveyed to Walnut Hill, Inc., by deed of record in Deed Book 3441, Page 266;

thence South $0^{\circ} 29' 40''$ East, along the westerly line of said 0.470 acre tract and a westerly line of the 1.907 acre tract conveyed to Donald R. Kenny, Trustee, by deed of record in Official Record 5108116, a distance of 216.23 feet to a corner of said 1.907 acre tract;

thence South $89^{\circ} 30' 20''$ West, along a northerly line of said Donald R. Kenny, Trustee 1.907 acre tract, a distance of 326.12 feet to a point in the easterly right-of-way line of Lake Club Drive (being 60 feet in width);

thence along said right-of-way line, being the arc of a curve to the left (Sub-Delta = $6^{\circ} 29' 03''$, Radius = 1560.0 feet), a chord bearing and distance of North $14^{\circ} 05' 35''$ East, 176.45 feet to a point of reverse curvature;

thence along the arc of a curve to the right (Delta = $87^{\circ} 49' 25''$, Radius = 20.0 feet), a chord bearing and distance of North $54^{\circ} 45' 46''$ East, 27.74 feet to a point of reverse curvature in the southerly right-of-way line of Channingway Boulevard;

thence along said right-of-way line of Channingway Boulevard, being the arc of a curve to the left (Delta = $27^{\circ} 36' 11''$, Radius = 440.0 feet), a chord bearing and distance of North $84^{\circ} 52' 23''$ East, 209.93 feet to a point of reverse curvature;

thence continuing along said right-of-way line, being the arc of a curve to the right (Sub-Delta = $8^{\circ} 09' 41''$, Radius = 360.0 feet), a chord bearing and distance of North $75^{\circ} 09' 09''$ East, 51.24 feet to the place of beginning, containing 1.312 acres, more or less.

Subject, however, to all legal rights-of-way and/or easements, if any, of previous record.

This survey was prepared by Thomas D. Sibbalds, Registered Surveyor No. 5908

TIME 2:15 P
RECORDED FRANKLIN CO., OHIO

APR - 1 1988

JOSEPH W. TESTA, RECORDER

RECORDER'S FEE \$ 10.00

| | |
|-----------------------|------------|
| DESCRIPTION | 0-104-C |
| PLAT | SPLIT |
| FRANKLIN COUNTY, OHIO | 1.312 A.C. |
| DATE | OUT OF |
| 3-30-88 | 12680.55 |
| SPLIT | ColS. |
| TRANSFER | |

| |
|---------------------------|
| NO PLAT REQUIRED |
| JOBS DEVELOPMENT CENTER |
| CITY OF COLUMBUS, OHIO |
| DATE <u>3-30-88</u> |
| <u>R. Lorella</u> |
| BY: <u>D.B. Perry</u> |
| CONDITIONS: <u>88-036</u> |

13017B10

017863

GENERAL WARRANTY DEED
(Sections 5302.05 and 5302.06 Ohio Revised Code)

WALNUT HILL, INC, an Ohio corporation, Grantor, of Franklin County, Ohio for valuable consideration paid, grants, with general warranty covenants, to CHANNINGWAY PROPERTIES, INC., an Ohio corporation, Grantee, whose tax mailing address is

the following REAL PROPERTY: Situated in the County of Franklin in the State of Ohio and in the City of Columbus (the "Premises"):

Being that certain 0.470 acre tract of land described in Exhibit "A" attached hereto and made a part hereof together with the tract of land described in Exhibit "B" attached hereto and made a part hereof.

Subject to real estate taxes and assessments; zoning ordinances; public rights-of-way; and restrictions, conditions, and easements of record.

This conveyance is made by the Grantor and accepted by the Grantee subject to the restriction that the Premises shall not be used for an adult bookstore, adult motion picture theater, adults only entertainment establishment, billboards or off-premises graphics, garage repair shop, or used car (or any any used vehicle) salesroom or lot, nor shall any entertainment, events, or activities that are sexually suggestive, exploitive or oriented, take place on the Premises, including, by way of example and not limitation, "go-go" dancing, male or female revue events, strip tease, belly dancing, wet T-shirt contests, or any other such events. Non-sexually oriented entertainment including, by way of example and not limitation, dance bands, disc jockies, or comedians are permitted on the Premises.

This restriction shall last for a period of forty five (45) years from the date hereof and such longer period as may be extended by Grantor, its successors and assigns, during said forty five (45) year period.

It is mutually agreed that the foregoing restriction is intended for the benefit and protection of the property (other than the Premises) conveyed to Grantor in the deed recorded at Deed Book 3139 Page 150 and Deed Book 2552 Page 686, Franklin County Recorder's Office (the "Benefitted Parcel"), and said restriction shall be deemed to run with and bind the Premises in favor of the Benefitted Parcel and shall be enforceable by Grantor and its successors and assigns.

Prior Instrument Reference: Deed Book Vol. 3139 Page 150, Franklin County Recorder's Office.

Witness the hand of Grantor's duly authorized officer this 10th day of February, 1989.

Signed and acknowledged in the presence of: WALNUT HILL, INC, an Ohio corporation
Harold K. Scott 1:30 P BY Donald W. Kelley
 witness FEB 21 1989 Donald W. Kelley, Executive Vice President
Timothy M. Kelley 12:00
 witness

STATE OF OHIO, COUNTY OF FRANKLIN, ss:

The foregoing instrument was acknowledged before me this 10th day of February, 1989, by Donald W. Kelley, Executive Vice President of Walnut Hill, Inc, an Ohio corporation, on behalf of the corporation.

2608

| | |
|---|-----------------------------|
| CONVEYANCE TAX \$225.00 PM | TRANSFERRED FEB 21 1989 |
| PALMER C. McNEAL FRANKLIN COUNTY AUDITOR | PALMER C. McNEAL AUDITOR |

This instrument was acknowledged by:
 Timothy M. Kelley, Attorney at Law
 250 E. Broad St., Columbus, Oh. 43215

Timothy M. Kelley
 Notary Public
 My commission expires

TIMOTHY M. KELLEY
 Attorney at Law
 Notary Public, State of Ohio
 License Commission

HAVENS / CARDINAL TITLE BOX

13017811

EXHIBIT "A"

The following is the description of the 0.470 acre tract located on the southerly side of Channingway Boulevard and west of the City National Bank 0.912 acre tract.

Situate in the County of Franklin, State of Ohio, City of Columbus and being located in Section 23, Township 12, Range 21, Refugee Lands, and being 0.470 acre of the lands conveyed to "WALNUT HILL, INC.", by deed of record in Deed Book 2552, Page 686, all references being to records of the Recorder's Office, Franklin County, Ohio, and being more particularly bounded and described as follows:

Beginning at an iron pin in the southerly right-of-way line of Channingway Boulevard, (as dedicated by plat of record in Plat Book 43, Page 68 and being 80 feet in width), that is located, South 89° 30' 20" West, 26.0 feet from the northwesterly corner of the City National Bank and Trust Company 0.912 acre tract;

thence South 0° 29' 40" East, 206.0 feet to an iron pin;

thence South 89° 30' 20" West, 100.0 feet to an iron pin;

thence North 0° 29' 40" West, 200.23 feet to an iron pin in the southerly right-of-way line of said Channingway Boulevard;

thence along the southerly right-of-way line of said Channingway Boulevard, being the arc of a curve to the right, (Radius = 360.0 feet, Sub-Delta = 10° 16' 21"), a chord bearing and distance of, North 84° 22' 09" East, 64.46 feet to an iron pin at the point of tangency of said curve;

thence continuing along the southerly right-of-way line of said Channingway Boulevard, North 89° 30' 20" East, 35.80 feet to the place of beginning, containing 0.470 acre, more or less.

Subject, however, to all legal highway rights-of-way and/or easements, if any, of previous record.

EXHIBIT A & B

6-104-C

ALL OF

15135

Colo.

13017B12

EXHIBIT "E"

Situata in the State of Ohio, County of Franklin, City of Columbus, being located in Section 23, Township 12, Range 21, Refugee Lands and being a strip of land twenty-six (26) feet in width across part of the Walnut Hill, Inc. tract, of record in Deed Book 2552, Page 686, all references being to records in the Recorder's Office, Franklin County, Ohio, the centerline of said strip being described as follows:

Beginning at a point in the southerly right-of-way line of Channingway Boulevard, (80.0 feet in width), as dedicated by plat of record in Plat Book 43, Page 68, said point also being located South 89° 30' 20" West, 11.0 feet from the northwesterly corner of the 0.912 acre tract conveyed to The City National Bank and Trust Co. by deed of record in Deed Book 3193, Page 526;

thence South 0° 29' 40" East, 422.0 feet to the point of terminus.

This description was prepared by Thomas D. Sibbalds, Registered Surveyor No. 5908, Evans, Mechwart, Hambleton & Tilton, Inc.