

TO: Marcia Moermond, Legislative Hearing Officer; Councilmember Amy Brendmoen; Kim O'Brian, Legislative Aide to Councilmember Brendmoen; Leanna Shaff, Inspections Supervisor; Ricardo Cervantes, Director of Fire Inspection Division

FROM: Juley Speed, owner of 730 Como Avenue

March 19th, 2012

## 730 Como Avenue, ref. # 105243

Second Appeal Hearing scheduled 3/20/12, 1:30pm

### EXECUTIVE SUMMARY--OUR RESOLUTION REQUESTS

1. We request a new inspector be assigned to complete our process and that Mr. Michael Urmann does not visit this property again or attempt to contact us in the future. Our reasons for this request are detailed in items 6, 7, and 14 of this document. We have valid reason (including written evidence) to doubt his intention to make a good faith effort to provide a fair and reasonable inspection of our property. Specifically, he has ADDED HIS OWN LANGUAGE to SPLC building code to attempt to require a \$10,000+ repair, and cited other NON-RESIDENTIAL CODE... submitted it in writing twice... and testified at an appeal hearing as though this was actual, applicable building code, depriving us of both our right to a fair inspection and fair appeal hearing.

We are happy to comply, and are currently complying, with legitimate, verifiable, measurable deficiencies in our property condition. Many parts of our original deficiency report are accurate and we do not dispute these.

However, we are not willing to continue taking time off work to attend inspections and hearings with an individual who continually makes incorrect statements and intentionally provides incorrect information which cannot be backed by appropriate building code citation. (Fully detailed in this document.) This is NOT the intent or mission of the building code or the inspections office.

2. Remove the following items from our deficiency report, as they have not been substantiated. The inspector has had months to come up with code defining what our specific, measurable, code-confirmed deficiencies are, and has failed to do so; therefore no repairs can be required. EXAMPLE: The inspector cannot simply say "Replace Garage Roof" without giving us measurable, verifiable, written, code-based evidence that the current condition of the roof is in any way deficient, or what would have to be different for the roof to be compliant. The roof does not leak. Building code is specific about deficiencies and compliances. He has not provided us the written specifics to which we are entitled. Please remove items:

- 4) Garage Roof
- 5) Retaining Wall
- 6) Parking space
- 7) Window
- 10) Sidewalks/Stairs

## 730 Como Avenue, ref. # 105243

The primary issues to address are the requirements by inspector Michael Urmann to repair/replace sidewalks, stairs, parking space, garage roof, window, and a retaining wall at 730 Como Avenue, St. Paul.

State building code 1300.0110 DUTIES AND POWERS OF THE BUILDING OFFICIAL

Subpart 1: General. "The building official shall enforce the code. The building official may render interpretations of the code and adopt policies and procedures in order to clarify its application. The interpretations, policies, and procedures shall be in conformance with the intent and purpose of the code. The policies and procedures shall not have the effect of waiving requirements specifically provided for in the code."

Many interpretations given do not conform with the intent and purpose of the code. Code is misapplied. In one case the inspector adds his own language to SPLC code to attempt to require a repair.

Subpart 4: Notices and Orders. "The building official shall issue all necessary notices and orders to ensure compliance with the code. Notices and orders shall be in writing....."

We HAVE NOT RECEIVED necessary notices regarding what SPECIFIC, CODE- VERIFIABLE deficiencies we have. We have only been given general code language, without written notice of how our property features are measurably deficient and what measurable changes must be made to be compliant.

Subpart. 5. Inspections. "The building official shall make all of the required inspections or accept reports of inspection by approved agencies or individuals. Results of inspections shall be documented on the job site inspection card and in the official records of the municipality, including type of inspection, date of inspection, identification of the responsible individual making the inspection, and comments regarding approval or disapproval of the inspection."

We have not been informed in writing who supervises our inspector, who is reviewing our inspection report to verify accurate code language and interpretation, and who is approving our inspection report.

730 Como Avenue South is an existing RESIDENTIAL property. Therefore only codes pertaining to existing residential property may apply.

## Important Facts/Documentation

1. The inspector must provide the written code language which confirms the authority to inspect/dictate/require any repairs or construction at any site. He must also show, in specifics, citing building code, what is specifically non-compliant ("defective") about a feature, and what must be done to make it compliant ("non-defective"). The inspector HAS NOT PROVIDED building code which states, in independently verifiable terms, what specifically is non-compliant, yet he is requiring repairs.
2. State and city building code DO NOT REQUIRE that residential properties have retaining walls, stairs (other than primary access to the home, if necessary) or sidewalks. A sidewalk, or stairs, instead of grass to walk on, is a convenience to the homeowner, at their discretion.... NOT a building code requirement. At any time a homeowner may remove those features and simply have any non-erosive surface they choose. If these WERE REQUIRED, the inspector would have to cite the code which requires them. He has not provided any such code. He has not provided any measurements or code language to substantiate his claims of deficiency.
3. Because building code does not REQUIRE sidewalks, stairs, or retaining walls on this property, there are no code provisions which describe the threshold for what constitutes code-legal, or non-code-legal condition. It is up to the inspector to provide to us the code language which shows that we have a hazardous condition. He has not provided such code language.

As the inspector has not provided code-based language which describes the parameters which cause a hazardous condition, **he cannot declare that one exists**. He also cannot, and is not, describing what would constitute an acceptable condition. Repairs cannot be made without written description FROM BUILDING CODE of what change in condition is required to go from hazardous to non-hazardous. Again, these features are NOT REQUIRED AT ALL and are therefore NOT subject to city approvals or inspections.

Because they are NOT REQUIRED OR REGULATED by building code, a description of acceptable vs non-acceptable DOES NOT EXIST in the building code. If the inspector wishes to enforce an alteration to any property features, he must provide us code-based documentation as to how he is determining that a deficiency exists, and how he will determine when one does not exist. He has not provided such.

4. Since building code does not REQUIRE these features, an acceptable solution, if these features could be shown via building code to be deficient (which they haven't been), would be to simply REMOVE the features. The inspector has not offered this option. He is REQUIRING that these features be torn down and replaced, but he has not provided any code language which substantiates his authority to make this requirement. The inspector cannot require something be built without showing what code requires it. The option to REMOVE an offending, non-required structure, must always be given. We have not been given this option.
5. ITEM 5: RETAINING WALL: Retaining walls under 48 inches are considered LANDSCAPING. There are NO PROVISIONS in state or city building code for landscaping. The wall at 730 Como Avenue is 42 inches (see PHOTO SECTION 1 in the photos section). It is not adjacent to public sidewalks or alleys and therefore is a totally private feature to this home. As a private landscaping feature, it is not subject to ANY code enforcement. The homeowner needs no permission or approval to build, keep, remove, or maintain a 42-inch retaining wall. Please see the following code citation/explanation to verify:

State building code 1300.0120 Subpart 4 identifies activities that do not require a permit. Item A. Building (4) exempts retaining walls not over four feet in height.

#### 1300.0120 PERMITS

Subpart 1. Required. An owner or authorized agent who intends to construct, enlarge, alter, repair, move, demolish, or change the occupancy of a building or structure, or to erect, install, enlarge, alter, repair, remove, convert, or replace any gas, mechanical, electrical, plumbing system, or other equipment, the installation of which is regulated by the code; or cause any such work to be done, shall first make application to the building official and obtain the required permit.

....

Subpart 4. Work exempt from permit. Exemptions from permit requirements of the code do not authorize work to be done in any manner in violation of the code or any other laws or ordinances of this jurisdiction. Permits shall not be required for the following:

.... (4) retaining walls that are not over four feet (1,219 mm) in height measured from the bottom of the footing to the top of the wall, unless supporting a surcharge or impounding Class I, II, or III-A liquids;

Our comment: Since retaining walls not over four feet do not require permit, and this wall does not support liquids, it is NOT REGULATED

BY CODE, as stated above, in the code itself. This wall is 42 inches; it is not subject to inspection/regulation. Its existence and maintenance is solely at the owner's discretion, and requires no approval or inspections.

6. ITEM 5: RETAINING WALL: The inspector attempts to use two codes to require that this retaining wall be replaced. SPLC 34.31 is only for "NONRESIDENTIAL, INDUSTRIAL, and INSTITUTIONAL" uses. See St. Paul Code website screenshot (photo section 1—retaining wall) for confirmation. 730 Como Avenue is RESIDENTIAL, therefore SPLC 34.31 does not apply.

The second code he cited reads as follows--- this is cut and pasted from the city code website, see screenshot, PHOTO SECTION 1—RETAINING WALL:

"Exterior - SPLC 34.08 (5) - *Accessory structures*. All accessory structures including, but not limited to, detached garages, sheds and fences, shall be maintained structurally sound and in good repair. All exterior wood surfaces, other than decay-resistant woods, shall be protected from the elements and decay by paint which is not lead-based paint or by other protective covering or treatment. Service doors to accessory structures shall be provided with securing locks.

The intent of this code is that the wood exterior surfaces of a house or garage be free of holes or damage, and be protected against the elements. Please notice the words RETAINING WALLS are not in that code. However, in the inspection report, the words RETAINING WALLS have been added by the inspector. Let me repeat that. **The phrase RETAINING WALLS has been added by the inspector, but it is NOT IN THE CITY BUILDING CODE.**

Since RETAINING WALLS are NOT provided for in SPLC 34.08 (5), this code DOES NOT APPLY to this property.

Neither code cited by the inspector applies to the property. The retaining wall deficiency has not been justified and therefore cannot be enforced. We have cited building code which confirms that this wall is a private feature and not subject to city approval or acceptance. There is no code basis to require any change to this wall.

7. Having discovered that this inspector has added his own language to city code, which would potentially cause a \$10,000+ expense, **WE NO LONGER ACCEPT THAT HE IS OPERATING IN GOOD FAITH.** Every element of his deficiency report must now receive scrutiny. Bear in mind--- the inspector also presented this information to the previous

appeal hearing as LEGITIMATE CODE, depriving us of our right to both a fair inspection and a fair appeal hearing.

Many hours and thousands of dollars have already been spent making "required" repairs--- how do we know whether these are actually required by code? We hereby ask that a different inspector take over the process after this appeal hearing. Whatever bias, personal issue, or beliefs this inspector has which would cause him to make incorrect statements both to us and at the appeal hearing, and give us incorrect code in writing, we can only guess. We surely cannot be expected to place faith in the judgment of such an individual. This is precisely why building code itself stipulates that ACTUAL CODE must be provided to measurably PROVE that a hazard exists, and what specifically must be done to remediate the hazard.

8. ITEM 10: SIDEWALKS/STAIRS: Private residential ("non accessible" in the words of state building code, where "accessible" refers to handicap accessibility standards for commercial buildings) sidewalks and stairs fall under the same non-permit-required category as retaining walls under four feet. No permit is required to build, maintain, or remove any private sidewalks or stairs at a residential property. State building code confirms this, as follows:

State building code 1300.0120 Subpart 4 identifies activities that do not require a permit. Item A. Building (4) exempts retaining walls not over four feet in height.

#### 1300.0120 PERMITS

Subpart 1. Required. An owner or authorized agent who intends to construct, enlarge, alter, repair, move, demolish, or change the occupancy of a building or structure, or to erect, install, enlarge, alter, repair, remove, convert, or replace any gas, mechanical, electrical, plumbing system, or other equipment, the installation of which is regulated by the code; or cause any such work to be done, shall first make application to the building official and obtain the required permit.

.....

Subpart 4. Work exempt from permit. Exemptions from permit requirements of the code do not authorize work to be done in any manner in violation of the code or any other laws or ordinances of this jurisdiction. Permits shall not be required for the following:

.....

(6) sidewalks and driveways that are not part of an accessible route

Our Comment: "Accessible Route" refers to nonresidential, industrial, and institutional uses where handicap accessibility is required. So this code plainly states that private residential sidewalks ARE NOT REGULATED BY BUILDING CODE. Therefore, permits and inspections are not required. There is no code which explains what is or is not acceptable about a sidewalk, because sidewalks/steps are not regulated. Therefore repairs to these property features cannot be required. NO CODE HAS BEEN PROVIDED which proves otherwise.

9. ITEM 10: SIDEWALKS/STAIRS: The code cited regarding the sidewalks and stairs is as follows: "34.08 (10) Exterior sidewalks, walkways and stairs. All sidewalks, walkways and exterior stairs shall be maintained in a safe, sound condition, free of defects and hazards.

This code implies that the inspector may now go anywhere on the property and declare things defective and hazardous, even though state building code says that sidewalks and stairs are not regulated by code. The INTENT of this code is to ensure that required entrances and exits be maintained in safe, sound condition. It was not meant to be applied to non-required features. If it were, there would be supporting code describing how to judge what a defect or a hazard is.

Whether you agree or disagree with our interpretation, clearly there needs to be a way to define what is a safe, sound or hazardous condition. Building code is very specific in these areas. For example, if a front stoop (a REQUIRED primary access point to a house) is five steps, or 30" high, it requires a handrail. The steps of that stoop must be between 5" and 8" in height, and must not vary by more than 1/4". Code provides very specific measurements and guidelines such that a non-compliant condition can be measured and confirmed independently. Code also provides specifics about what IS compliant.

So what is a sidewalk defect? One crack could technically be a defect. Certainly the INTENT of this code is not to require replacement of an entire sidewalk because it has one crack. Is two cracks a defect? Who decides what is a defect? Building code decides. We need to be shown building code which explains what is or is not a defect. SPLC 34.08 (10) as written is unenforceable. Without code to define what the specific measurable problem is, no such problem can be identified or corrected. Since residential sidewalks are not regulated by building code, no code exists which can substantiate that residential sidewalks are non-compliant. There is no code to comply to.

The inspector has provided no code-based compliance criteria for the non-required stairs and sidewalks at 730 Como Avenue. It is not feasible to make repairs without being provided specific code requirements

which would make a feature acceptable. Therefore no repairs can be required.

10. ITEM 10: SIDEWALKS/STEPS--- OUR INTENT: We have been provided no measurements, descriptions, or building code basis which requires any change to the sidewalks or steps. They are private features which exist for the convenience of the owner/tenants. Let's be absolutely clear on this--- There is no standard in building code for what makes a private, residential sidewalk or non-required steps "acceptable".

HOWEVER:

The steps are in good condition and need no improvement (see PHOTO SECTION 2 – SIDEWALK AND STAIRS.) But the sidewalks are not up to our own standard for aesthetics. Functionally, they are fine, in that they can be shoveled easily and walked on--- so we do not wish to remove the sidewalks. But since building code does not provide for what is an acceptable standard for a private residential sidewalk, we are left to create our own standard.

As a GUIDE only, we could look at what the code requires for a nonresidential/industrial/institutional property sidewalk. The MN Accessibility Code (MN SBC Chapter 1341) provides for a floor surface "change in elevation of  $\frac{1}{4}$  " vertical and up to  $\frac{1}{2}$  " with a beveled slope not steeper than 1:2."

In other words, cracked/sunken sidewalks are okay as long as the change in vertical height does not exceed  $\frac{1}{2}$ ". Height changes can be fixed by adding some solid patching material so they are a tiny ramp instead of an immediate vertical height change (which would presumably be hard to roll a wheelchair over.)

We went around our sidewalks and took measurements. We did not find areas with vertical height changes greater than  $\frac{1}{2}$  " (see accompanying photos.) While we cannot be REQUIRED to change anything with our sidewalks, we INTEND to add patching material to make them more level, similar to what is described in the MN Accessibility Code.

We ARE NOT WILLING (nor required by code), however, to have this patching material subject to inspection, because the sidewalks themselves are NOT REQUIRED, their acceptable condition is not defined or provided for in any building code, and the inspector has not provided building code which proves differently.

We will, of our own accord, make this patching improvement, because we believe it will provide a better experience for our

tenants--- better than if we remove the sidewalk entirely and leave grass. But we cannot be required by code to do so.

11. ITEM 6: DRIVEWAY: The inspector cited 34.08 (7), which reads *"Parked or stored vehicles. All parking spaces shall be paved with asphalt, concrete or other suitable durable and dustless surfacing, as determined by the enforcement officer."* He then calls for the parking spot to be PAVED, before which a SITE PLAN must be submitted. He HAS NOT PROVIDED code which stipulates that a site plan is required, or that PAVEMENT is required.

Please note the inspector DOES NOT provide language which describes how our existing parking place is deficient. We cannot therefore confirm that it is deficient or agree to make any changes.

Please note that the code DOES NOT REQUIRE pavement. It requires dustless surfacing. Compacted gravel is a dustless, common, acceptable parking surface alternative. We already have compacted gravel in place, as does the adjoining neighbor's driveway (see PHOTO SECTION 3 -- PARKING).

Please note that **the alley which serves this property IS NOT PAVED** (see photo section 3 -- parking.) This causes much mud and dirt to get tracked into our garage and onto our gravel parking. If you see dirt on our parking place, that is the city's dirt, from the alley. We have never once complained to the city about this even though it costs us to keep the garage floor clean.

Our parking is currently compliant. It has a dustless surface. We have not been provided code which proves otherwise. We are willing to add some more gravel to the parking surface, but we ARE NOT REQUIRED by code to do so, and we DO NOT AGREE to have this area re-inspected, as we are already in compliance.

The inspector is attempting to require full pavement, even though the existing gravel is acceptable. He HAS NOT offered other, code-legal solutions, than actual pavement. We again are forced to wonder --- Why is this inspector attempting to require features at this property which are not required at other similar properties? Clearly the city feels that driving on a dirt alley is fine--- yet the inspector wants to force us to pave our driveway? We further lose faith in the ability of this individual to provide a fair interpretation.

12. ITEM 4: GARAGE ROOF: It is unclear whether the requirement to replace the garage roof falls under item 4 which states "Exterior - SPLC 34.09 (1) e, 34.32 (1) d - Provide and maintained the roof weather tight

and free from defects. - Repair or replace the roof, soffit, and fascia in an approved manner this work must be done under permit" or item 5 which states "Exterior - SPLC 34.08 (5), 34.31 (3) - Repair, replace and maintain all exterior surfaces on fences, sheds, garages, sidewalks, retaining walls, and other accessory structures free from holes and deterioration. Provide and maintain exterior unprotected surfaces painted or protected from the elements. -Repair and repaint the garage replace the deteriorating retaining wall."

In any case, SPLC code says the roof must be weather tight and free from defects. **The roof is currently weather tight and free from defects—therefore no repair is required.** The inspector has provided no specifics as to what defects there are or what specifically need be done to fix them. But clearly, a roof which does not leak cannot be called defective. If we put a whole new roof (or a whole new garage) here, surely THAT roof will also not leak. Can the inspector then tell us THAT roof is defective? Surely not.

International Property Maintenance Code (IPMC) is the starting point for any property maintenance code. Regarding exterior maintenance, IPMC 304.1: General reads as follows:

"The exterior of a structure shall be maintained in good repair, structurally sound and sanitary so as not to pose a threat to the public health, safety or welfare. As it pertains specifically to unsafe conditions of a roof 304.1.1 (8) Roofing or roofing components that have defects that admit rain, roof surfaces with inadequate drainage, or any portion of the roof framing that is not in good repair with signs of deterioration, fatigue or without proper anchorage and incapable of supporting all nominal loads and resisting all load effects."

The roof of the garage does NOT admit rain, is pitched to allow proper drainage with the rafters and decking in excellent condition. Replacement of a roof because the shingles are showing signs of aging is NOT required by building code. If the code were to require replacement of a roof that is not leaking then technically ANY roof could be required to be replaced regardless of age or appearance. The inspector has not provided code language which proves otherwise, therefore no repair can be required.

13. ITEM 7: WINDOW: Inspector cites two codes and instructs "Repair and maintain the window glass". He does not specify what window, what is wrong with the current glass, what maintenance need occur, or what subsequent condition of said glass will be deemed to be code compliant.

Absent specific, measurable, code-based description of deficiency, we cannot confirm that such deficiency exists. We cannot remediate an unidentified deficiency. Therefore no repair can be required.

14. GENERAL INSPECTION CONSISTENCY AND FAIRNESS: We had the opportunity to consult with both the Minnesota Nursery and Landscape Association, and the Minnesota Multi-Housing Association, to get their opinions on our deficiency report. Representatives of both groups agreed with our interpretation of city code and how it applies to our non-required steps, retaining walls, sidewalks, and parking area. Both organizations described this inspector's interpretations as non-typical. The MNLA has never heard of an instance where an inspector REQUIRED a private retaining wall or sidewalk on a residential property. They reminded us that a stepping stone path, or a mulch path, or just grass, are all perfectly acceptable walking surfaces. In other words, we can have whatever sidewalks we want, or none at all. We wish to keep the ones we have. The MMHA confirms that gravel is a readily accepted parking surface.

The MNLA and MMHA both expressed interest in the outcome of this appeal process. If these non-typical interpretations are upheld and therefore set new precedent, it will change the face of both landscaping and rental property management in St. Paul. The MNLA and MMHA will want to inform their members so they can prepare for it. Anyone applying for permit-required work in St. Paul could be subject to forced replacement of their retaining walls or steps, for example, so landscape companies will want to be ready to service those properties. Potential property investors take city license enforcement practices into account when deciding in what city to make an investment, and they will need to be informed that ANY undefined defect could result in the forced replacement of an entire private sidewalk/stair system.

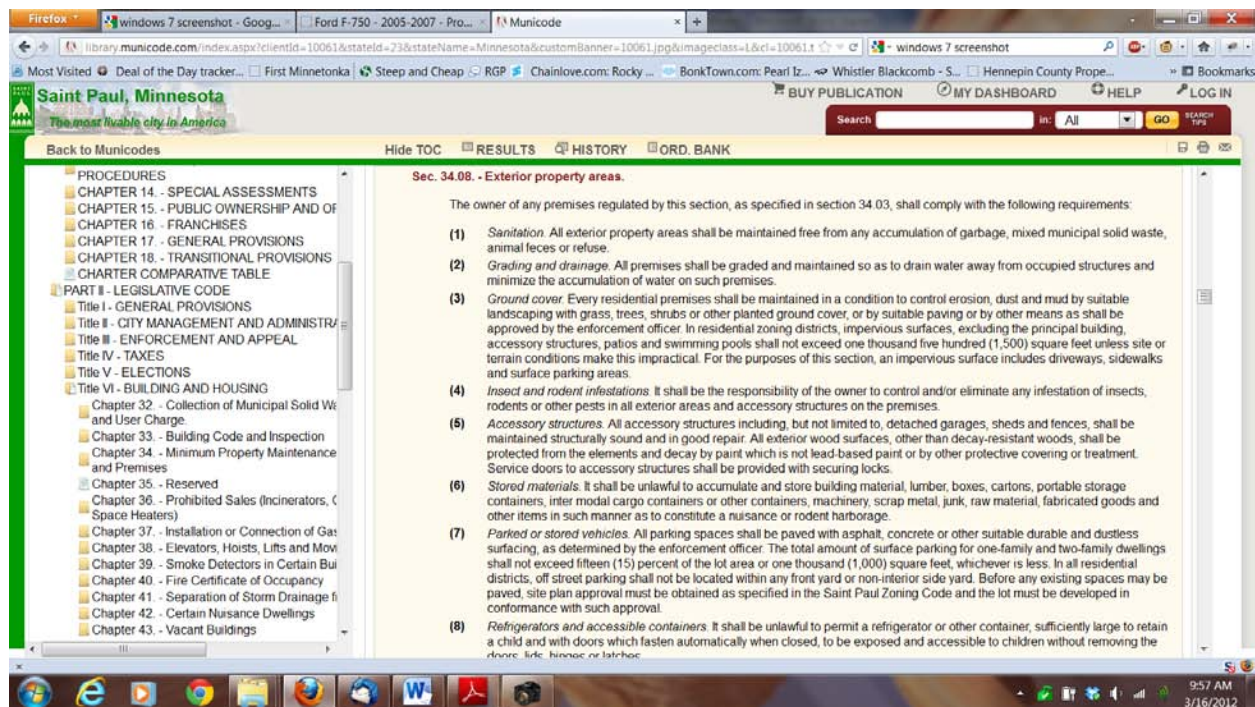
15. GENERAL INSPECTION CONSISTENCY AND FAIRNESS: Please understand that a rental property is a small business. It has expenses and incomes, in the form of rents. A rental property competes in the market against other similar properties in its area

It is of vital importance, therefore, that building maintenance guidelines be FAIRLY AND CONSISTENTLY enforced among rental properties. If our property is forced to incur costs which other similar properties are not, WE LOSE OUR ABILITY TO COMPETE FAIRLY IN OUR MARKET. This is NOT the intent of building code enforcement, yet it is currently happening with 730 Como Avenue.

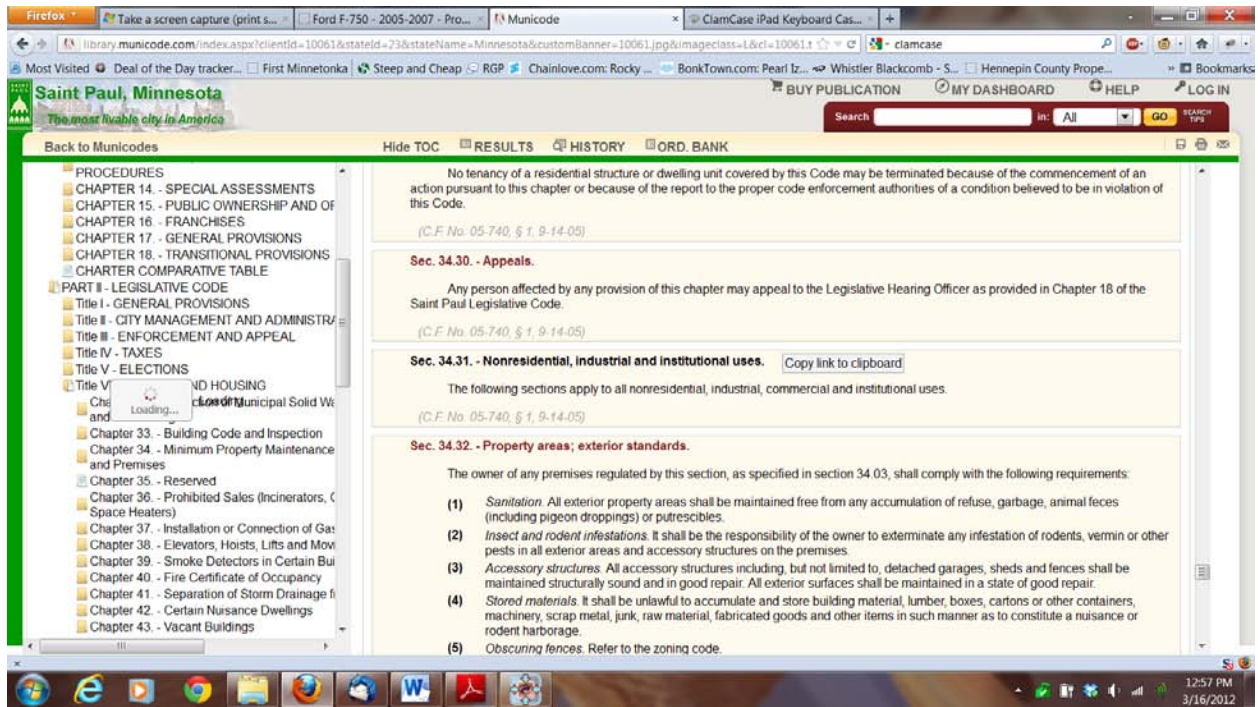
This is of very serious concern to us. We have an inspector who has invented his own code language to attempt to force some very expensive repairs on us. He has issued the same false code language on two separate reports which bear his name. He has spent nearly six months trying to defend that code language, so it is clearly no accident or oversight. It is intentional. This is a very serious issue and we take our right to compete fairly in our market very seriously. We do not accept being forced to make changes to our property which are not required by code, and which are not required of owners of similar properties. We provide good quality housing to tenants at a fair price. We have happy tenants. We are good people. We do not accept being treated otherwise.

## PHOTO SECTION 1—RETAINING WALL

SPLC 34.08 (5): Accessory Structures does not say retaining wall.



SPLC 34.31 --- Reserved for nonresidential, commercial, institutional uses.



Retaining walls under 48" are not regulated by building code





String line  
clearly shows the  
wall is NOT  
BOWED out.

The inspector  
claims this wall  
is bowed out  
by 3-4  
FEET



**Level clearly  
shows the  
wall is NOT  
bowed out.**

**Inspector  
claims the  
wall is bowed  
out 3-4  
FEET**

## PHOTO SECTION 2 – SIDEWALKS AND STAIRS

Private (non-primary) stairs and sidewalks are NOT regulated by building code







This measurement is irrelevant as private sidewalks are not regulated by building code. Nonetheless it shows that with very minor repair this sidewalk would comply with industrial/commercial handicapped accessibility standards.

## PHOTO SECTION 3 – PARKING

Parking surface is dustless gravel. It is currently compliant.



Lack of tire tracks on our parking area indicate a firm, dustless surface.

Visible tire tracks in the alley indicate a soft, dusty surface.



## PHOTO SECTION 4 – GARAGE

