

Appeals and Statements Summary 705 Summit – Dr. Ken Doyle

August 19, 2017

I submit this document to make sure all appeals bases are covered.

1. I appeal Inspector Shaff's decision to revoke my Certificate of Occupancy.

As she came up the porch steps on August 1, before she even began her inspection, Inspector Shaff declared that she was shutting down the property – revoking my Certificate of Occupancy -- because the roofing and sheet rock permits were not “finaled out” by July 31, even though the work was done by that time. All her other arguments – including the allegations of hazardous conditions -- came well after that declaration.

The reason those permits were not finaled out on time is that, although we requested final inspections on July 27 or 28, plenty early, the Building Inspector said he was too busy and couldn't come until August 10-11, after the July 31 deadline. He told us not to worry, that DSI's practice was to “accommodate” customers who were on deadline. Inspector Shaff made it clear that our missing the administrative deadline was the reason she was revoking my Certificate of Occupancy. She did not accommodate me in any way.

In fact, Inspector Shaff didn't even mention the alleged hazardous conditions during or after her inspections, including the final August 1 inspection. There was no mention of hazardous conditions until the Hearing Officer's August 16 letter.

We had a final inspection of the capped gas line scheduled for August 18, but the gas inspector told my property manager at the last minute that a “higher-up” ordered him to cancel the inspection because of “police activity on the premises.” The only police activity was the presence of the two officers who accompanied Mr. Dornfeld, and neither of them seemed very active. It's hard to escape the conclusion that *somebody* in DSI didn't want a city inspector to confirm Mr. Hedquist's observation that there was no gas hazard.

Failure to meet an administrative deadline is certainly not grounds for revoking a Certificate of Occupancy if there are no hazardous conditions. There were and are no hazardous conditions. If there were, I assume that Inspector Shaff would have pointed them out in person during her August 1 inspection and in writing soon afterwards.

I request that my Certificate of Occupancy be reinstated.

2. I appeal Hearing Officer Moermond's decision to force owner and tenants to vacate the property.

Vacating a property is properly done when and only when there are hazardous conditions. There were and are no hazardous conditions in 705 Summit.

None of Inspector Shaff's deficiency lists indicated any hazardous conditions, specifically including her most recent report (August 1). Clearly Inspector Shaff had decided to revoke my Certificate of Occupancy before she even arrived at the building, and for a spurious reason (missed administrative deadline). During her inspections, she made no comment on and wrote no orders about any hazardous conditions. Suddenly, right after the August 15 hearing and just in time to influence the Hearing Officer's decision, Inspector Shaff and another DSI official determined *from photographs* that hazardous electrical code violations exist. They did not specify where or what those violations were, and they did not give us an opportunity to rebut their evidence. When we asked Ms. Mai Vang, the Hearing Officer's assistant, what the violations were, she said we'd have to ask Inspector Shaff. When we asked Mr. Dornfeld, who was about to placard the building, he said he didn't know. We will certainly ask Inspector Shaff, since we are curious to know what hazards she saw in photographs that she apparently did not see in person, or what conditions that she had previously seen that suddenly became hazardous enough to justify vacating the building immediately.

My lawyer's asked Mr. Don Hedquist, widely respected building expert and a Certified Minnesota Building Official, to inspect the property and look for electrical or gas code violations or hazards. Mr. Hedquist's in-person inspection on August 17 found no such violations or hazards.

With regard to the Order to Vacate, please note that some of my tenants are protected by state civil rights laws and city policy because they are elderly, families with young children (including a seriously autistic child), or Black. It is entirely inappropriate to force them (and me) out of our homes when there are no hazardous conditions.

Sadly, it has been suggested that some neighbors do not like the idea of Blacks, families with young children, or disabled persons living on Summit Avenue. The idealistic part of me believes that could never be the case. The realistic part still wonders.

I hate to say it, but I am concerned that the many ex parte conversations between Inspector Shaff and Hearing Officer Moermond have disadvantaged me. Ex parte communications are not a sign of a fair hearing and are widely prohibited. For the same reason, I am concerned about repeated expressions of anger and hostility toward me from both Inspector Shaff and Hearing Officer Moermond. I am also concerned that Hearing Officer Moermond rebuffed my property manager's effort to introduce into the record relevant photographs of the premises. All these events make it very hard for me to believe that I have been getting a fair hearing.

3. I appeal Hearing Officer Moermond's decision to place my building into the Vacant Buildings Program.

The Vacant Buildings Program is for buildings that are hazardous or in serious disrepair. We have already argued that the building is not hazardous, and it is certainly not in serious disrepair. In fact, we completed all the repairs listed on Inspector Shaff's deficiency lists, and we have undertaken various improvements. We are prepared to show further evidence that the building is neither hazardous nor in disrepair, and I would welcome an unbiased inspection at any time.

Inspector Shaff's and Hearing Officer Moermond's position that the building should be placed in the Vacant Buildings Program is neither supported by evidence nor in keeping with the spirit of the program. Inspector Shaff's quibble that the building should be vacated and placed in the Vacant Building Program simply because an administrative deadline was not met for reasons beyond my control, is simply silly. In fact, coupled with the anger and hostility mentioned above, the decision suggests a punitive, even personal motive.

4. I appeal Hearing Officer Moermond's decision to require full code compliance before re-occupation.

Requiring full code compliance is appropriate only for buildings that are either hazardous or in serious disrepair. It is certainly not appropriate for a building whose owner has completed all work required by a DSI inspector, and then some.

We are aware that state law, which governs, says that buildings should have to meet whatever code was in force when the building was built or extensively updated, not current code. The reason for this is that bringing older buildings, especially historical buildings, up to modern code is likely to be prohibitively expensive and could even bankrupt owners. It could also discourage buying and improving historic buildings. By placing older buildings in the Vacant Building Program and requiring full code compliance, DSI is able to disregard state law. Again, this action is punitive and certainly not in keeping with the spirit of the programs or the values of the City of St. Paul.

5. I appeal Hearing Officer Moermond's decision to include the owner's residence in her recent orders.

From the beginning, Inspector Shaff, Hearing Officer Moermond, and the City Council were clear, that their inspections and orders applied exclusively to the rental apartments and not to the owner's homestead. Completely unexpectedly and without warning, when Mr. Dornfeld arrived to placard the building on August 16, he announced that the owner's homestead was now included and that the owner must vacate immediately, because the alleged hazardous conditions affected the entire building. No mention of including the owners unit had ever been made.

My suspicion is that the goal has been to force my house into Vacant Buildings to require code compliance to force me out of the building – perhaps to sell it to someone at deep discount. The only way to force code compliance for my homestead would be to claim a common hazard affecting the entire property.

I have already argued, and presented evidence, that there were and are no hazardous conditions. In addition, I noted that I am elderly (74) and disabled and hence protected by state civil right laws and city policy.

Accordingly, I request that the order to vacate the owner's unit be withdrawn.

6. I challenge the August 14 e-mail letter to Mai Vang from neighbor Michael Hartoonian.

Mr. Hartoonian alleges that work has been done on 705 Summit without proper permits from the city or authorization from the Historical Preservation Commission (HPC). He is concerned that at least one person is still occupying the building. He worries that "drug exchanges" may be continuing.

The permit allegations are false. We obtained permits for all work that required permits -- roofing the carport, sheet rocking in the basement, and capping a gas line in the basement that had fed a clothes dryer now removed -- and we obtained HPC authorization as required. The permits were taken out at the proper times and final inspections were made as quickly as the inspector's schedule permitted.

There was drug traffic on the premises for a short period of time, but we worked with the St. Paul Police and our lawyers to evict the problem tenants as soon as we became aware of their misbehavior. We talked with the police in January and February, 2017, collected evidence, and served the tenants in early March. Some resisted, but most left in March or early April, the last ones at the end of April. There has been no such activity since the problem tenants moved out.

At least one person is still occupying the premises under advice of counsel and for the reasons discussed above.

We learned recently that there was a meeting at Mr. Hartoonian's home to discuss 705 Summit. We would have welcomed the opportunity to discuss the problems with our neighbors and explain our efforts to solve them. We are disappointed that we were neither informed of the meeting nor invited to it.

7. Statement on the History of My Ownership of 705 Summit, and Plans for the Future.

I bought the property about 30 years ago – in terrible disrepair – and immediately started working with the city and my bankers to turn the building into a residence worthy of Summit Avenue. It took a few years and tens of thousands of dollars, but I finally got the building into excellent condition and the rental units occupied by excellent tenants.

Over the years I enjoyed a very good reputation with city authorities. The house would be inspected ever few years, and the few deficiencies the inspectors noted would be remedied immediately.

A Cass Gilbert creation, the house has been the subject of academic papers and historical tours, and the focus of a Cass Gilbert special on Twin Cities Public Television.

In 2010 I contracted Legionnaires' Disease, an aggressive and often fatal pneumonia. I spent a month in a coma and a year in a nursing home learning how to walk and talk again. I never fully regained my abilities or my energy, but I am back at work at the University under ADA accommodation (Americans with Disabilities Act).

Because I could no longer manage the building as well as I wanted – I have a hard time getting up and down stairs -- I hired a building manager. Because I can't get around the building, it took a long time for me to discover that he was not an effective manager. Indeed, there were many visits from inspectors and deficiency lists that I didn't even hear about, and which I discovered only last week when I petitioned DSI for all 2017 records concerning my house.

As soon as it became clear that he was not up to the job – perhaps a month ago -- I hired a new manager, who has done an excellent job turning things around in a short period of time. In just a month we have completed all the repairs Inspector Shaff asked us to do, and we have begun other improvements.

I expect to continue improving the property and managing it tightly, and to restore my excellent reputation. Besides aesthetic improvements throughout the building, I am designing a new patio for the west side and a new gazebo for the rear, and performing some prophylactic repairs. In the past our gardens were nominated for a Blooming St. Paul award, and I hope to repeat that honor soon.