

City of Saint Paul

*15 West Kellogg Blvd.
Saint Paul, MN 55102*



Minutes - Final - Final

Thursday, October 28, 2010

9:30 AM

Room 330 City Hall & Court House

Legislative Hearings

Marcia Moermond, Legislative Hearing Officer

Mai Vang, Hearing Coordinator

Jean Birkholz, Hearing Secretary

legislativehearings@ci.stpaul.mn.us

651-266-8560

9:30 a.m. Hearings

Ms. Moermond wants the following information in her office by close of business on Monday, November 1, 2010: 1) Fire Certificate of Occupancy Inspection; and 2) the structural engineer's report. She will review Monday evening and give her recommendation on Tuesday, November 2, 2010.

STAFF PRESENT: Leanna Shaff, DSI – Fire Inspector; and Frank Berg, DSI – Structural Engineer (arrived 10:34 a.m.)

Jeffrey DeLisle, appellant and property owner; Anton Wazwaz, manager, MW1; Robert Foster, Law Firm of Foster & Brever; Warnetta Blair, tenant; Doctor Steven, tenant; Jeff Sullivan, Sullivan Construction; Ralph Tohm, tenant and caretaker, Ron Michaelson, SMERLS, appeared.

520 Rice Street (Vacate Order/Condemnation/Revocation of Fire Certificate of Occupancy)

Ms. Moermond needs: 1) a structural engineer's report; and 2) a C of O inspection (scheduled for Fri, Oct 29 at 10 am) for the whole building due in her office by close of business, Monday, Nov 1, 2010. Her recommendation will be made on Tuesday, Nov 2, 2010.

Ms. Moermond noted that in addition to Mr. DeLisle's appeal, the office has had a number of calls from interested parties. Whatever recommendation she makes today will stand until the City Council considers it at a public hearing.

Ms. Moermond requested a staff report. Inspector Shaff reported that Fire received a complaint for multiple code violations on October 19, 2010. Inspector Thomas responded to the complaint on October 21, 2010. The complaint cited health and sanitation issues of the commercial space on the first floor. During his inspection, Mr. Thomas also entered the basement and found problems that required more than his expertise regarding structural components. Frank Berg, the City's structural engineer and Fire Inspector Shaff joined Inspector Thomas to take a look at the structural issues with the building in the basement. They found many structural members (girders, joists, beams, flooring, etc.) that had extensive water damage in multiple places. There was a lot of deflection as you walked across the floor in the store. The structural members themselves were decayed to the extent that some parts were actually powdering; and some of the columns were punching up into the supporting members. Inspector Shaff asked Mr. Berg to make an analysis as to the safety and integrity of the building, which he did in an email to the Fire Marshal, the Deputy Director of DSI, the Assistant Fire Marshal, Inspector Shaff, etc. (The email was copied and provided at the hearing.) The following paragraph is a summary of his analysis:

The condition of the wood, however, that comprises this floor framing has deteriorated well beyond that which would allow it to react to fire in that manner. The normal time period, whatever that is, that fire fighters are accustomed to for framing of wood construction cannot be relied upon until this hazard has been eliminated. Or stated even more strongly, this floor framing in its current condition cannot be relied upon to absorb any additional distress, long term or short term.

Ms. Moermond added that Mr. Berg had shared this and more with her in a phone conversation that morning. She added that Orders were issued on October 21, 2010 with a Vacate date of October 29, 2010 at 12 Noon.

Mr. DeLisle, appellant, stated that he received Work Orders postmarked October 25, 2010; he didn't receive them in the mail until October 26, 2010. He went to DSI to pick them up himself because people were calling him about it. He said that he has the portion of Orders done that are his responsibility. He is appealing so that the twelve (12) families who live in the complex will be able to stay. Also, so that Tony Wazwaz will be able to continue his business. Currently, the three (3) commercial space entrances are placarded. The apartments are not included on the Work Orders. He added that he has had professional workers (heating system, electrical, etc.) go through the building to make sure that there are no hazards and that everything was in sound condition.

At this time, Ms. Moermond referred back to Inspector Shaff's inspection and asked whether the Fire Inspection crew investigated the complaint as well as other things en route; or whether they did a full C of O inspection for the whole building. Inspector Shaff responded that their first response was to the referral. Inspector Thomas noted that the floor had a lot of deflections which caused him to also check out the basement underneath the floor, etc. He did not inspect the dwelling units. Basically, DSI's policy is that it will not condemn a structure out of a referral; it needs to be done out of a Fire Certificate of Occupancy inspection. The Fire inspectors would also like to inspect the balance of the building, including the dwelling units. Based on what was seen, DSI issued the Condemnation. Ms. Moermond reiterated that the building itself is Condemned; not an individual unit or a specific use within the building, but the entire building (commercial and residential). Inspector Shaff stated that it is considered as one (1) Certificate of Occupancy.

Ms. Moermond asked Ms. Vang to distribute copies of the photos.

Mr. DeLisle continued to say that he did what he could in the residential part of the building: electrical, heating and plumbing, contractors. They don't see a need to condemn the residential part of the building. He has a commercial lease with the first floor tenant and the lease clearly says that he is responsible for any Orders that might be issued for the City of Saint Paul/ Department of Health. He can understand why the first floor should be vacated; he asks for 110 days to fix those issues before the building would be condemned. Mr. DeLisle asked whether Mr. Berg's opinion was put into the deficiency list.

Ms. Moermond asked Inspector Shaff if Mr. Berg's findings were incorporated into the deficiency list. Inspector Shaff noted #21. Ms. Moermond asked if Mr. DeLisle had any structural engineers come out to look at the structural members that compromise the floor framing. Mr. DeLisle responded, "No."

Mr. DeLisle added that he doesn't believe the building is in jeopardy of collapsing; he thinks that it's perfectly sound. He doesn't think the residents should move because one person didn't comply with his lease.

Robert Foster, attorney from the Law Firm of Foster and Brevier, representing commercial tenant, Anton Wazwaz, MW1 Inc., stated that he and Mr. Wazwaz had an opportunity to review the building with the list that was prepared by the Fire Inspector. Mr. Wazwaz' business began in April 2009. There are conditions in the building that are in the report that, obviously, pre-date Mr. Wazwaz' tenancy. Approximately 70 percent of the issues associated with the store are acknowledged by Mr. Wazwaz as his responsibility under the lease; he will repair them. Mr. Foster indicated to Mr. DeLisle that he and Mr. Wazwaz would like to meet with him to determine who has responsibility for the issues on the list. The main issue is the flooring which is a structural issue that pre-dates Mr. Wazwaz and MW1's tenancy. Because that's a

structural issue, it's the landlord's responsibility. They intend to meet after the hearing to discuss. Before the hearing, Mr. Foster reviewed Saint Paul Ordinance 640.01 Condemnation and Enforcement. He and Mr. Wazwaz agree with Mr. DeLisle in that it will take approximately three (3) months to complete the deficiency list, as authorized in the code. They agree that there is structural deterioration that has developed since the structure was built in 1889 that will need to be remedied, perhaps by adding additional beams and post; and then repairing the flooring that has been affected by the deterioration of the structural members. As he reads the Ordinance, a life safety issue is the only thing that would stop the hearing officer from giving them the extension of time needed in order to make all of the repairs. He does not think that a life safety issue currently exists; he doesn't think the floor will collapse in the very near future. There definitely are things that need to be fixed and that will be done. They request an 120-day extension to complete the work. Mr. Wazwaz business has six (6) employees and has worked for 1 ½ years to be successful; it's a valuable business for the community. Many of the local people buy their groceries from this store.

Tony (Anton) Wazwaz, commercial tenant, stated that if the store closes, it would devastate his whole family. He said that Mr. DeLisle blames him, saying that he's responsible according to the lease. Mr. Wazwaz brought the structural inadequacy of the building to Mr. DeLisle's attention at least three (3) times (May, June, July). Mr. DeLisle responded by saying he'd contact his attorneys. Mr. Wazwaz told Mr. DeLisle that the day would come that the building would be condemned because there was definitely something wrong with the floor. One doesn't need to be an engineer to know that there's something wrong with the floor. Mr. DeLisle has a habit of always blaming the tenants. Since Mr. Wazwaz has been there, Mr. DeLisle hasn't done anything for the building. Mr. Wazwaz added that he is kind of happy that the City is stepping in because Mr. DeLisle needs to do something for the building except accepting rent. As a landlord, one is supposed to put back into the building so that tenants feel as though they are actually living in a good place. Mr. Wazwaz is paying \$4,000 per month in rent; he expects something back from his landlord instead of him having to do everything. He thinks that if you own a building, you should also own up to the responsibility of owning a building. He signed a lease 16-18 months ago for the unit but this problem has been there long before he showed up.

Mr. Foster reiterated that they will make a determination as to who has responsibility for the structural damage; however, they clearly believe that structural issues are the landlord's responsibility.

Mr. Wazwaz added that if Mr. DeLisle decides that he isn't going to repair the structural damage, Mr. Wazwaz is pursuing purchasing the furniture store across the street as a back-up plan. In order for him to do that, it will take up to three (3) months for him to renovate it.

Ms. Moermond asked who MW1, Inc. was. Mr. Wazwaz replied that MW1 is he and his brother.

Mr. Michaelson, Southern Minnesota Legal Services (SMERLS), addressed the hearing. At this time, he is representing a couple of the tenants, perhaps more. Warnetta Blair lives in Unit #10 of the residential area. She lives on a limited income and has a disability; she has lived here since 2005 and has a good relationship with the management. This is not the Taj Mahal of rental units in the city but the city needs places for people of her income level to live. He is here as an attorney representing residents and he is willing to do whatever the City feels in necessary, at this point; and he doesn't want to jeopardize the safety of any of these tenants or any of the public. He was at the building yesterday but he didn't get a chance to look at

the structural elements. He did, however, visit with Mr. DeLisle, who told him that he has had professionals check the place out. He didn't think that there were any structural problems. On the other hand, when he heard this morning that Mr. DeLisle hasn't had a professional structural engineer look at the place, he was concerned. Mr. Michaelson would like to hear what Mr. Frank Berg, the City's structural engineer, has to say about the residential areas. It seems clear to him that there is something wrong with the commercial parts of the building but he isn't sure that means that the center section (residential area) is in jeopardy of imminent demise – that it would be dangerous for the tenants. He would like to hear what Mr. Berg has to say about the center section before he suggests anything to his clients. Ms. Moermond explained that what he understood from her conversation with Mr. Berg earlier this morning was not that the individual residential units (don't think he inspected them) had soft floors or soft supporting members in and of themselves – not that he would think of immediate collapse of the building but if there were a fire, that the supporting members would not last very long. It would not support the upper floors for evacuation. Mr. Michaelson commented so then, people would not have as long a period to evacuate, especially, people with disabilities.

(At this time, Ms. Vang phoned Mr. Berg; left a message to see if he'd be available, now, to come to the hearing.)

Ms. Blair stated that she has lived in the building for five (5) years. Anytime there was a problem in the rental units, Mr. DeLisle would have it fixed.

Mr. Foster added that he has spoken with Mr. DeLisle about finding alternative housing for the residents if this doesn't work out. Moving out would be very disruptive for the residents but it's a better time than in the depth of winter. He thinks that if it isn't necessary for safety concerns at this point, giving Mr. DeLisle some time to remedy the situation would be a good alternative, but make sure that he hires someone who is a professional engineer, not just a guy off the street.

Mr. Ralph Tohm, resident and caretaker of the complex, addressed the hearing. He said that most of the repairs have been done. He has been supervising to make sure that all the repairs do get taken care of; they have been working to make it a better building for the tenants. Mr. Tohm has lived in the building for seven (7) years, off and on, but has been caretaker for about a year. Everyone who lives there loves the building; they all know each other and get along very well. The location of the building helps to make it easier for residents to get around because it's close to downtown. Mr. Tohm doesn't want everyone to lose their place.

Mr. Doctor Steven, resident, stated that he likes the building and he likes that he's close to the store. He has a good relationship with everyone there. If the place is condemned, he has nowhere to go. Mr. Tohm took Mr. Steven out of the homeless shelter and gave him a place to live and he's very grateful; people just don't do that anymore. The building is in a very convenient location for all of the residents.

Mr. Jeff Sullivan, Sullivan Construction, addressed the hearing. He stated that he is a contractor for Mr. DeLisle. He has done a lot of the fire inspection repair lists on many of his properties and has done repair work on 520 Rice numerous times. Mr. Sullivan doesn't think that Mr. DeLisle is neglecting this building. He said that he did go into the basement to look at the structural problems being addressed today. He is not a structural engineer; however, he does a lot of repairs and he likes to think he knows what he's looking at. There's definitely damage to the floor which needs to be corrected. It's his contention that the damage to the floor isn't throughout the whole store but specific to right underneath the butcher shop portion of the store. The butcher shop is a room approximately 10 x 25 feet with a tile floor and drain. The

floor is cleaned with a garden hose. There is no base tile that comes up the side of the wall to keep the water in, so, water can seep into the basement through the joists and supports. It is his contention that this is the reason why the floor is damaged. He feels that the damage is limited to this portion of the store; not throughout the whole store floor.

At this time (10:18 a.m.), Ms. Moermond took a 15 minute recess. She announced that Mr. Berg is on his way.

The hearing resumed at 10:34 a.m.

Ms. Moermond asked for Mr. Berg's report on his findings.

Frank Berg, structural engineer, DSI, stated that he has been with the City for 22-23 years in the position of structural engineer. Throughout the years, his role has been to review plans to build and remodel, approve the plans, hopefully, and inspect them when the work is finished. He has always worked closely with Fire; however, he has worked more closely with Fire over the past few years because Fire Inspection is now part of the Department of Safety and Inspections. Most of the time, his role comes from a planned review approach; however, while looking at an existing building with Fire, he must be looking at a building which, that very night, could be on fire. If there is any possibility at all of someone being in that building, firefighters need to enter that building; and they need to do it in the most safe manner as they can.

He explained that he inspected only the main floor and basement of this building. He cannot say that the building is safe today and will not safe tomorrow but it has a lot of deterioration. In this case, the question is, "Is the building stable enough for firefighters to enter when there's a fire without the floor collapsing?" In the bolded paragraph of his email, he is not saying that the building needs to be condemned. What he is saying is that you can't add more distress to what is there now, like a fire, underneath it. There is the possibility that if you added the fire distress and a firefighter enters the building, he could fall right through the floor. There's enough deterioration to the wood, that if a fire were added, it would be very dangerous.

Ms. Moermond asked for clarification. She said that she understood Mr. Berg's words: that he is not saying the building needs to be condemned to mean that he is not in a position to make that recommendation; that Fire must make that recommendation. Mr. Berg clarified that he is not in a position to be the one who recommends condemnation but he is in a position to give Fire expertise from his own background as a structural engineer. If he were looking at the building from a plan/review function, without considering the possibility of fire, he could see a time frame where this could be addressed; but it cannot be ignored. There is widespread deterioration; there's a lot there to take care of. But, if you look at it from a firefighter's standpoint, the building cannot absorb any more distress.

Ms. Moermond stated that when Mr. Berg talks about reviewing things from a plan/review perspective, her understanding is that happens when someone comes in to pull a building permit; and in this case, it would be a building permit to repair the building. She asked if his concern at that point would be inclusive of Fire concerns or would it be strictly concerns about collapse. Mr. Berg responded that in that case, he would be addressing an entirely different thing. He would be addressing what someone is saying they want to do with this building; and is there a structural engineer on board, which there would need to be in this case. He would be reviewing what they are proposing to do, which obviously, takes some time. Today, however, he is addressing the question of what if there's a fire in that building tonight? Ms.

Moermond asked for further clarification: If someone wanted to come and pull a permit to do the repairs on this building, what kinds of things would he be looking for? What considerations are taken in account? Mr. Berg replied that this is a project that would require a structural engineer being involved because there is so much judgment involved. When you're replacing some floor boards, some joists, and possibly, a beam and haunch, as well, a judgment call needs to be made as to where you leave off. You need qualified people to do this work. If Mr. Berg has any questions, he would be calling the structural engineer and asking about the job. In this case, it might be a good idea for the engineer to be on site to see how things are progressing. Knowing that a structural engineer was involved in the beginning and having his input, and his commitment to being involved while some of the site work is going on would be much more important to Mr. Berg than what the paper plan states. There are a lot of unknowns, and having an engineer on site, in this case, is more valuable than time spent with some very nice looking documents/plans that will probably not be correct later on anyway. Mr. Berg considers communication with the structural engineer up front to be very critical.

Ms. Moermond asked how extensive the damage was to the floor supports. Mr. Berg stated that first of all, the floor had soft spots on the main level right as you entered the store from the street. There were a number of locations in the store that had soft spots. They went down into the basement to look at the specific areas where they located soft spots. They found more widespread damage than just under the soft spot areas. They found moisture related areas of deterioration – decay significantly enough in scattered areas – areas where firefighters could fall right through in case of a fire. It's not an easy or cost-effective project to repair. Inspector Shaff stated that most of the damage seems to be down the middle of the store from the entrance, but the more they looked, they found more areas of damage: 1) pieces that are cut; 2) joists that are not resting on anything; 3) sister pieces that don't make sense to carry the load; 4) more moisture damage, etc. Ms. Moermond asked Inspector Shaff to state her qualifications. Inspector Shaff responded that she is a Minnesota State certified building official and a Minnesota State certified fire inspector.

Ms. Moermond's research found that the building was constructed in 1889 as a commercial building.

Mr. Foster stated that he is not here today to dispute the issues of condemnation but to determine whether it is appropriate on a life-safety issue to give both the tenant and the owner an opportunity to fix the problems that have been identified by the City. Mr. Berg said that if there's a fire, the structural components may not have the integrity needed to support the water and the firefighters who would be coming into the building. Mr. Foster asked if he was most concerned with the structural integrity of the first floor. Mr. Berg responded that's what he saw. At one location in the basement, there is a wood post with kind of a wood haunch with a beam over the haunch that is extremely deteriorated. That particular location is very critical to be looked at and addressed. The others are smaller, localized areas. Mr. Foster asked if in his opinion in a plan/review, would there be enough time left to give the tenant and landlord time to fix the structural members. From that perspective, Mr. Berg replied, "Yes, if addressed within the next couple of weeks," but added that from a fire-safety perspective, there would be an immediate concern.

Mr. Foster asked Inspector Shaff if there were a way to indicate to firefighters, that while this building is being fixed, the concern about the structural integrity of the first floor in case of a fire. Could the Chief make a notification to firefighters that there is this problem. Inspector Shaff asked, "What about the occupants?" Mr. Foster responded that he heard that it is only the first floor that's a concern, not the structural integrity of the second floor or any of the stairs leading in and out. Mr. Berg repeated

that all he saw was the basement and the first floor and was not asked to look any further, so he couldn't comment on the other floors. Mr. Foster stated again that his goal is to give his client the opportunity to work with the landlord to acknowledge and correct deficiencies in the building. It appears to him that the only objection to giving them time is the possibility that the structural integrity of the first floor would be compromised in the event that there is a fire during that repair period; and is that enough to kick out the tenants on the second floor and the first floor tenant – making the tenants homeless and forcing his client out of business.

Inspector Shaff stated that she has been posing some of these same questions to her supervisor, the Assistant Fire Marshal, who said, "That's not going to happen; our firefighters are going to go in."

Mr. Michaelson, SMERLS, stated that the tenants would like to stay, obviously, because this fairly low rental housing is hard to find in the City of Saint Paul but he doesn't want his people to be unsafe. On the other hand, Mr. Berg has not checked out the other floors to see whether or not they're sagging. From what Mr. Berg has said so far, he feels that there is a possibility that this place can be fixed and that it can be done within a reasonable period of time that wouldn't subject people for any long period of time. It seems that Mr. DeLisle hasn't had a chance to hire a structural engineer and although Mr. DeLisle is a good landlord who does a good job, he must understand that this can't be the guy down the street; it has to be someone who specializes in something like building restoration, not new buildings – this is a whole different thing. This building has to be renovated – restored. He knows that the cost factor will be important to Mr. DeLisle, too. Mr. DeLisle will need to hire a qualified person to come in and give an opinion in a very short period of time. Everyone ought to know from this structural engineer whether or not the building can be remedied, and whether it can be temporarily shored-up so that it isn't going to collapse if/when a firefighter walks in. Mr. Michaelson asked Mr. Berg if it makes any sense for Mr. DeLisle to hire a qualified structural engineer to come in very quickly and take a look at this building and make a determination as to whether or not it can be remedied, how long it's going to take and whether or not sufficient measures can be taken in the interim to make the building safe, such as putting in a temporary beam or something of that nature. Mr. Berg replied that yes, this problem can be addressed but it may or may not be cost effective. It's a very old building and it will take a lot of judgment calls. That's why a qualified structural engineer is required; it's a very complex engineering problem.

Inspector Shaff added that when Mr. Berg, Inspector Thomas and she were in the basement, the main gird down the center of the basement was probably the worst area of decay of the members. That decay is compromising the second and third floor; Mr. Berg agreed. Inspector Shaff continued to say that if there is a situation on the first floor and it becomes compromised by the addition of fire and water to structural members of the building that can't support it any more, firefighters' safety as well as the occupants' safety would be jeopardized.

Mr. Michaelson asked if they were talking about a wood beam. Both Inspector Shaff and Mr. Berg answered, "Yes." Mr. Michaelson noted that he has done a lot of construction work before he became a legal aid attorney, and he knows that there are ways to jack up the floor with a steel beam and put a new beam and some girders in there which may not take very long. That probably should have done long ago but certainly it can be done now. Of course, it will depend upon whether Mr. DeLisle is able to get good, professional advice on it and how much it will cost. He thinks that it can be done in a couple of weeks. Mr. Berg responded that what Mr. Michaelson is saying is correct. He reiterated that most of what they saw really pertains to the first floor: floor boards, joists, etc. The wood haunch on which sets the main beam is very deteriorated and needs immediate attention; it would be top priority.

Inspector Shaff added that people are the most vulnerable when they are sleeping. This building is not sprinklered and obviously has some structural issues. The City does not want twelve (12) occupied apartments endangered.

Ms. Moermond asked Mr. DeLisle for his comments. Mr. DeLisle asked if they were saying that if the post were removed, the building would collapse. Mr. Berg responded that there is the potential of that happening. The post and beam framing and their members are supporting the floors up above. Mr. DeLisle added that the walls in the basement go all the way up to the top floor; he asked if that would not offer some strength. Mr. Berg replied that he did not know enough about the over all framing to answer that question, but the wood post is not part of the wall. Mr. DeLisle said that he thinks the job can be done while the residents are still living there, and in a reasonable time period. He feels that asking all of the residents to move is unreasonable. If he felt that the tenants were in danger, he'd have them moved. The building has been there over 100 years and it probably will still be there in another 100 years. Mr. Michaelson asked Mr. DeLisle whether he'd be willing to hire a structural engineer. Mr. DeLisle answered that he would. Mr. Michaelson added that he wants to make sure that this gets done quickly and that Mr. DeLisle takes responsibility for it instead of passing the buck to someone else. Mr. DeLisle asked Mr. Wazwaz if he were willing to cooperate. Mr. Wazwaz stated that he is not willing to pay for the landlord's obligation. Mr. DeLisle needs to own up to the problem. Mr. Foster added that he and Mr. DeLisle will go over the list and make a determination as to who has responsibility for what.

Mr. Michaelson asked Ms. Moermond if there would be a possibility to reconvene after Mr. DeLisle gets his report from the structural engineer. Mr. Berg clarified that there are two (2) different types of reports: 1) a condition survey (here's what we've got); and the next phase, 2) construction documents from which to pull a permit. STAFF PRESENT: Leanna Shaff, DSI – Fire Inspector; and Frank Berg, DSI – Structural Engineer (arrived 10:34 a.m.)

Jeffrey DeLisle, appellant and property owner; Anton Wazwaz, manager, MW1; Robert Foster, Law Firm of Foster & Brever; Warnetta Blair, tenant; Doctor Steven, tenant; Jeff Sullivan, Sullivan Construction; Ralph Tohm, tenant and caretaker, Ron Michaelson, SMERLS, appeared.

520 Rice Street (Vacate Order/Condemnation/Revocation of Fire Certificate of Occupancy)

Ms. Moermond needs: 1) a structural engineer's report; and 2) a C of O inspection (scheduled for Fri, Oct 29 at 10 am) for the whole building due in her office by close of business, Monday, Nov 1, 2010. Her recommendation will be made on Tuesday, Nov 2, 2010.

Ms. Moermond noted that in addition to Mr. DeLisle's appeal, the office has had a number of calls from interested parties. Whatever recommendation she makes today will stand until the City Council considers it at a public hearing.

Ms. Moermond requested a staff report. Inspector Shaff reported that Fire received a complaint for multiple code violations on October 19, 2010. Inspector Thomas responded to the complaint on October 21, 2010. The complaint cited health and sanitation issues of the commercial space on the first floor. During his inspection, Mr. Thomas also entered the basement and found problems that required more than his expertise regarding structural components. Frank Berg, the City's structural engineer and Fire Inspector Shaff joined Inspector Thomas to take a look at the structural

issues with the building in the basement. They found many structural members (girders, joists, beams, flooring, etc.) that had extensive water damage in multiple places. There was a lot of deflection as you walked across the floor in the store. The structural members themselves were decayed to the extent that some parts were actually powdering; and some of the columns were punching up into the supporting members. Inspector Shaff asked Mr. Berg to make an analysis as to the safety and integrity of the building, which he did in an email to the Fire Marshal, the Deputy Director of DSI, the Assistant Fire Marshal, Inspector Shaff, etc. (The email was copied and provided at the hearing.) The following paragraph is a summary of his analysis:

The condition of the wood, however, that comprises this floor framing has deteriorated well beyond that which would allow it to react to fire in that manner.

The normal time period, whatever that is, that fire fighters are accustomed to for framing of wood construction cannot be relied upon until this hazard has been eliminated. Or stated even more strongly, this floor framing in its current condition cannot be relied upon to absorb any additional distress, long term or short term.

Ms. Moermond added that Mr. Berg had shared this and more with her in a phone conversation that morning. She added that Orders were issued on October 21, 2010 with a Vacate date of October 29, 2010 at 12 Noon.

Mr. DeLisle, appellant, stated that he received Work Orders postmarked October 25, 2010; he didn't receive them in the mail until October 26, 2010. He went to DSI to pick them up himself because people were calling him about it. He said that he has the portion of Orders done that are his responsibility. He is appealing so that the twelve (12) families who live in the complex will be able to stay. Also, so that Tony Wazwaz will be able to continue his business. Currently, the three (3) commercial space entrances are placarded. The apartments are not included on the Work Orders. He added that he has had professional workers (heating system, electrical, etc.) go through the building to make sure that there are no hazards and that everything was in sound condition.

At this time, Ms. Moermond referred back to Inspector Shaff's inspection and asked whether the Fire Inspection crew investigated the complaint as well as other things en route; or whether they did a full C of O inspection for the whole building. Inspector Shaff responded that their first response was to the referral. Inspector Thomas noted that the floor had a lot of deflections which caused him to also check out the basement underneath the floor, etc. He did not inspect the dwelling units. Basically, DSI's policy is that it will not condemn a structure out of a referral; it needs to be done out of a Fire Certificate of Occupancy inspection. The Fire inspectors would also like to inspect the balance of the building, including the dwelling units. Based on what was seen, DSI issued the Condemnation. Ms. Moermond reiterated that the building itself is Condemned; not an individual unit or a specific use within the building, but the entire building (commercial and residential). Inspector Shaff stated that it is considered as one (1) Certificate of Occupancy.

Ms. Moermond asked Ms. Vang to distribute copies of the photos.

Mr. DeLisle continued to say that he did what he could in the residential part of the building: electrical, heating and plumbing, contractors. They don't see a need to condemn the residential part of the building. He has a commercial lease with the first floor tenant and the lease clearly says that he is responsible for any Orders that might be issued for the City of Saint Paul/ Department of Health. He can understand why the first floor should be vacated; he asks for 110 days to fix those issues before

the building would be condemned. Mr. DeLisle asked whether Mr. Berg's opinion was put into the deficiency list.

Ms. Moermond asked Inspector Shaff if Mr. Berg's findings were incorporated into the deficiency list. Inspector Shaff noted #21. Ms. Moermond asked if Mr. DeLisle had any structural engineers come out to look at the structural members that compromise the floor framing. Mr. DeLisle responded, "No."

Mr. DeLisle added that he doesn't believe the building is in jeopardy of collapsing; he thinks that it's perfectly sound. He doesn't think the residents should move because one person didn't comply with his lease.

Robert Foster, attorney from the Law Firm of Foster and Brever, representing commercial tenant, Anton Wazwaz, MW1 Inc., stated that he and Mr. Wazwaz had an opportunity to review the building with the list that was prepared by the Fire Inspector. Mr. Wazwaz' business began in April 2009. There are conditions in the building that are in the report that, obviously, pre-date Mr. Wazwaz' tenancy. Approximately 70 percent of the issues associated with the store are acknowledged by Mr. Wazwaz as his responsibility under the lease; he will repair them. Mr. Foster indicated to Mr. DeLisle that he and Mr. Wazwaz would like to meet with him to determine who has responsibility for the issues on the list. The main issue is the flooring which is a structural issue that pre-dates Mr. Wazwaz and MW1's tenancy. Because that's a structural issue, it's the landlord's responsibility. They intend to meet after the hearing to discuss. Before the hearing, Mr. Foster reviewed Saint Paul Ordinance 640.01 Condemnation and Enforcement. He and Mr. Wazwaz agree with Mr. DeLisle in that it will take approximately three (3) months to complete the deficiency list, as authorized in the code. They agree that there is structural deterioration that has developed since the structure was built in 1889 that will need to be remedied, perhaps by adding additional beams and post; and then repairing the flooring that has been affected by the deterioration of the structural members. As he reads the Ordinance, a life safety issue is the only thing that would stop the hearing officer from giving them the extension of time needed in order to make all of the repairs. He does not think that a life safety issue currently exists; he doesn't think the floor will collapse in the very near future. There definitely are things that need to be fixed and that will be done. They request an 120-day extension to complete the work. Mr. Wazwaz business has six (6) employees and has worked for 1 ½ years to be successful; it's a valuable business for the community. Many of the local people buy their groceries from this store.

Tony (Anton) Wazwaz, commercial tenant, stated that if the store closes, it would devastate his whole family. He said that Mr. DeLisle blames him, saying that he's responsible according to the lease. Mr. Wazwaz brought the structural inadequacy of the building to Mr. DeLisle's attention at least three (3) times (May, June, July). Mr. DeLisle responded by saying he'd contact his attorneys. Mr. Wazwaz told Mr. DeLisle that the day would come that the building would be condemned because there was definitely something wrong with the floor. One doesn't need to be an engineer to know that there's something wrong with the floor. Mr. DeLisle has a habit of always blaming the tenants. Since Mr. Wazwaz has been there, Mr. DeLisle hasn't done anything for the building. Mr. Wazwaz added that he is kind of happy that the City is stepping in because Mr. DeLisle needs to do something for the building except accepting rent. As a landlord, one is supposed to put back into the building so that tenants feel as though they are actually living in a good place. Mr. Wazwaz is paying \$4,000 per month in rent; he expects something back from his landlord instead of him having to do everything. He thinks that if you own a building, you should also own up to the responsibility of owning a building. He signed a lease 16-18 months ago for the unit but this problem has been there long before he showed up.

Mr. Foster reiterated that they will make a determination as to who has responsibility for the structural damage; however, they clearly believe that structural issues are the landlord's responsibility.

Mr. Wazwaz added that if Mr. DeLisle decides that he isn't going to repair the structural damage, Mr. Wazwaz is pursuing purchasing the furniture store across the street as a back-up plan. In order for him to do that, it will take up to three (3) months for him to renovate it.

Ms. Moermond asked who MW1, Inc. was. Mr. Wazwaz replied that MW1 is he and his brother.

Mr. Michaelson, Southern Minnesota Legal Services (SMERLS), addressed the hearing. At this time, he is representing a couple of the tenants, perhaps more. Warnetta Blair lives in Unit #10 of the residential area. She lives on a limited income and has a disability; she has lived here since 2005 and has a good relationship with the management. This is not the Taj Mahal of rental units in the city but the city needs places for people of her income level to live. He is here as an attorney representing residents and he is willing to do whatever the City feels in necessary, at this point; and he doesn't want to jeopardize the safety of any of these tenants or any of the public. He was at the building yesterday but he didn't get a chance to look at the structural elements. He did, however, visit with Mr. DeLisle, who told him that he has had professionals check the place out. He didn't think that there were any structural problems. On the other hand, when he heard this morning that Mr. DeLisle hasn't had a professional structural engineer look at the place, he was concerned. Mr. Michaelson would like to hear what Mr. Frank Berg, the City's structural engineer, has to say about the residential areas. It seems clear to him that there is something wrong with the commercial parts of the building but he isn't sure that means that the center section (residential area) is in jeopardy of imminent demise – that it would be dangerous for the tenants. He would like to hear what Mr. Berg has to say about the center section before he suggests anything to his clients. Ms. Moermond explained that what he understood from her conversation with Mr. Berg earlier this morning was not that the individual residential units (don't think he inspected them) had soft floors or soft supporting members in and of themselves – not that he would think of immediate collapse of the building but if there were a fire, that the supporting members would not last very long. It would not support the upper floors for evacuation. Mr. Michaelson commented so then, people would not have as long a period to evacuate, especially, people with disabilities.

(At this time, Ms. Vang phoned Mr. Berg; left a message to see if he'd be available, now, to come to the hearing.)

Ms. Blair stated that she has lived in the building for five (5) years. Anytime there was a problem in the rental units, Mr. DeLisle would have it fixed.

Mr. Foster added that he has spoken with Mr. DeLisle about finding alternative housing for the residents if this doesn't work out. Moving out would be very disruptive for the residents but it's a better time than in the depth of winter. He thinks that if it isn't necessary for safety concerns at this point, giving Mr. DeLisle some time to remedy the situation would be a good alternative, but make sure that he hires someone who is a professional engineer, not just a guy off the street.

Mr. Ralph Tohm, resident and caretaker of the complex, addressed the hearing. He said that most of the repairs have been done. He has been supervising to make sure that all the repairs do get taken care of; they have been working to make it a better

building for the tenants. Mr. Tohm has lived in the building for seven (7) years, off and on, but has been caretaker for about a year. Everyone who lives there loves the building; they all know each other and get along very well. The location of the building helps to make it easier for residents to get around because it's close to downtown. Mr. Tohm doesn't want everyone to lose their place.

Mr. Doctor Steven, resident, stated that he likes the building and he likes that he's close to the store. He has a good relationship with everyone there. If the place is condemned, he has nowhere to go. Mr. Tohm took Mr. Steven out of the homeless shelter and gave him a place to live and he's very grateful; people just don't do that anymore. The building is in a very convenient location for all of the residents.

Mr. Jeff Sullivan, Sullivan Construction, addressed the hearing. He stated that he is a contractor for Mr. DeLisle. He has done a lot of the fire inspection repair lists on many of his properties and has done repair work on 520 Rice numerous times. Mr. Sullivan doesn't think that Mr. DeLisle is neglecting this building. He said that he did go into the basement to look at the structural problems being addressed today. He is not a structural engineer; however, he does a lot of repairs and he likes to think he knows what he's looking at. There's definitely damage to the floor which needs to be corrected. It's his contention that the damage to the floor isn't throughout the whole store but specific to right underneath the butcher shop portion of the store. The butcher shop is a room approximately 10 x 25 feet with a tile floor and drain. The floor is cleaned with a garden hose. There is no base tile that comes up the side of the wall to keep the water in, so, water can seep into the basement through the joists and supports. It is his contention that this is the reason why the floor is damaged. He feels that the damage is limited to this portion of the store; not throughout the whole store floor.

At this time (10:18 a.m.), Ms. Moermond took a 15 minute recess. She announced that Mr. Berg is on his way.

The hearing resumed at 10:34 a.m.

Ms. Moermond asked for Mr. Berg's report on his findings.

Frank Berg, structural engineer, DSI, stated that he has been with the City for 22-23 years in the position of structural engineer. Throughout the years, his role has been to review plans to build and remodel, approve the plans, hopefully, and inspect them when the work is finished. He has always worked closely with Fire; however, he has worked more closely with Fire over the past few years because Fire Inspection is now part of the Department of Safety and Inspections. Most of the time, his role comes from a planned review approach; however, while looking at an existing building with Fire, he must be looking at a building which, that very night, could be on fire. If there is any possibility at all of someone being in that building, firefighters need to enter that building; and they need to do it in the most safe manner as they can.

He explained that he inspected only the main floor and basement of this building. He cannot say that the building is safe today and will not safe tomorrow but it has a lot of deterioration. In this case, the question is, "Is the building stable enough for firefighters to enter when there's a fire without the floor collapsing?" In the bolded paragraph of his email, he is not saying that the building needs to be condemned. What he is saying is that you can't add more distress to what is there now, like a fire, underneath it. There is the possibility that if you added the fire distress and a firefighter enters the building, he could fall right through the floor. There's enough deterioration to the wood, that if a fire were added, it would be very dangerous.

Ms. Moermond asked for clarification. She said that she understood Mr. Berg's words: that he is not saying the building needs to be condemned to mean that he is not in a position to make that recommendation; that Fire must make that recommendation. Mr. Berg clarified that he is not in a position to be the one who recommends condemnation but he is in a position to give Fire expertise from his own background as a structural engineer. If he were looking at the building from a plan/review function, without considering the possibility of fire, he could see a time frame where this could be addressed; but it cannot be ignored. There is widespread deterioration; there's a lot there to take care of. But, if you look at it from a firefighter's standpoint, the building cannot absorb any more distress.

Ms. Moermond stated that when Mr. Berg talks about reviewing things from a plan/review perspective, her understanding is that happens when someone comes in to pull a building permit; and in this case, it would be a building permit to repair the building. She asked if his concern at that point would be inclusive of Fire concerns or would it be strictly concerns about collapse. Mr. Berg responded that in that case, he would be addressing an entirely different thing. He would be addressing what someone is saying they want to do with this building; and is there a structural engineer on board, which there would need to be in this case. He would be reviewing what they are proposing to do, which obviously, takes some time. Today, however, he is addressing the question of what if there's a fire in that building tonight? Ms. Moermond asked for further clarification: If someone wanted to come and pull a permit to do the repairs on this building, what kinds of things would he be looking for? What considerations are taken in account? Mr. Berg replied that this is a project that would require a structural engineer being involved because there is so much judgment involved. When you're replacing some floor boards, some joists, and possibly, a beam and haunch, as well, a judgment call needs to be made as to where you leave off. You need qualified people to do this work. If Mr. Berg has any questions, he would be calling the structural engineer and asking about the job. In this case, it might be a good idea for the engineer to be on site to see how things are progressing. Knowing that a structural engineer was involved in the beginning and having his input, and his commitment to being involved while some of the site work is going on would be much more important to Mr. Berg than what the paper plan states. There are a lot of unknowns, and having an engineer on site, in this case, is more valuable than time spent with some very nice looking documents/plans that will probably not be correct later on anyway. Mr. Berg considers communication with the structural engineer up front to be very critical.

Ms. Moermond asked how extensive the damage was to the floor supports. Mr. Berg stated that first of all, the floor had soft spots on the main level right as you entered the store from the street. There were a number of locations in the store that had soft spots. They went down into the basement to look at the specific areas where they located soft spots. They found more widespread damage than just under the soft spot areas. They found moisture related areas of deterioration – decay significantly enough in scattered areas – areas where firefighters could fall right through in case of a fire. It's not an easy or cost-effective project to repair. Inspector Shaff stated that most of the damage seems to be down the middle of the store from the entrance, but the more they looked, they found more areas of damage: 1) pieces that are cut; 2) joists that are not resting on anything; 3) sister pieces that don't make sense to carry the load; 4) more moisture damage, etc. Ms. Moermond asked Inspector Shaff to state her qualifications. Inspector Shaff responded that she is a Minnesota State certified building official and a Minnesota State certified fire inspector.

Ms. Moermond's research found that the building was constructed in 1889 as a commercial building.

Mr. Foster stated that he is not here today to dispute the issues of condemnation but to determine whether it is appropriate on a life-safety issue to give both the tenant and the owner an opportunity to fix the problems that have been identified by the City. Mr. Berg said that if there's a fire, the structural components may not have the integrity needed to support the water and the firefighters who would be coming into the building. Mr. Foster asked if he was most concerned with the structural integrity of the first floor. Mr. Berg responded that's what he saw. At one location in the basement, there is a wood post with kind of a wood haunch with a beam over the haunch that is extremely deteriorated. That particular location is very critical to be looked at and addressed. The others are smaller, localized areas. Mr. Foster asked if in his opinion in a plan/review, would there be enough time left to give the tenant and landlord time to fix the structural members. From that perspective, Mr. Berg replied, "Yes, if addressed within the next couple of weeks," but added that from a fire-safety perspective, there would be an immediate concern.

Mr. Foster asked Inspector Shaff if there were a way to indicate to firefighters, that while this building is being fixed, the concern about the structural integrity of the first floor in case of a fire. Could the Chief make a notification to firefighters that there is this problem. Inspector Shaff asked, "What about the occupants?" Mr. Foster responded that he heard that it is only the first floor that's a concern, not the structural integrity of the second floor or any of the stairs leading in and out. Mr. Berg repeated that all he saw was the basement and the first floor and was not asked to look any further, so he couldn't comment on the other floors. Mr. Foster stated again that his goal is to give his client the opportunity to work with the landlord to acknowledge and correct deficiencies in the building. It appears to him that the only objection to giving them time is the possibility that the structural integrity of the first floor would be compromised in the event that there is a fire during that repair period; and is that enough to kick out the tenants on the second floor and the first floor tenant – making the tenants homeless and forcing his client out of business. Inspector Shaff stated that she has been posing some of these same questions to her supervisor, the Assistant Fire Marshal, who said, "That's not going to happen; our firefighters are going to go in."

Mr. Michaelson, SMERLS, stated that the tenants would like to stay, obviously, because this fairly low rental housing is hard to find in the City of Saint Paul but he doesn't want his people to be unsafe. On the other hand, Mr. Berg has not checked out the other floors to see whether or not they're sagging. From what Mr. Berg has said so far, he feels that there is a possibility that this place can be fixed and that it can be done within a reasonable period of time that wouldn't subject people for any long period of time. It seems that Mr. DeLisle hasn't had a chance to hire a structural engineer and although Mr. DeLisle is a good landlord who does a good job, he must understand that this can't be the guy down the street; it has to be someone who specializes in something like building restoration, not new buildings – this is a whole different thing. This building has to be renovated – restored. He knows that the cost factor will be important to Mr. DeLisle, too. Mr. DeLisle will need to hire a qualified person to come in and give an opinion in a very short period of time. Everyone ought to know from this structural engineer whether or not the building can be remedied, and whether it can be temporarily shored-up so that it isn't going to collapse if/when a firefighter walks in. Mr. Michaelson asked Mr. Berg if it makes any sense for Mr. DeLisle to hire a qualified structural engineer to come in very quickly and take a look at this building and make a determination as to whether or not it can be remedied, how long it's going to take and whether or not sufficient measures can be taken in the interim to make the building safe, such as putting in a temporary beam or something of that nature. Mr. Berg replied that yes, this problem can be addressed but it may or may not be cost effective. It's a very old building and it will take a lot of judgment

calls. That's why a qualified structural engineer is required; it's a very complex engineering problem.

Inspector Shaff added that when Mr. Berg, Inspector Thomas and she were in the basement, the main gird down the center of the basement was probably the worst area of decay of the members. That decay is compromising the second and third floor; Mr. Berg agreed. Inspector Shaff continued to say that if there is a situation on the first floor and it becomes compromised by the addition of fire and water to structural members of the building that can't support it any more, firefighters' safety as well as the occupants' safety would be jeopardized.

Mr. Michaelson asked if they were talking about a wood beam. Both Inspector Shaff and Mr. Berg answered, "Yes." Mr. Michaelson noted that he has done a lot of construction work before he became a legal aid attorney, and he knows that there are ways to jack up the floor with a steel beam and put a new beam and some girders in there which may not take very long. That probably should have done long ago but certainly it can be done now. Of course, it will depend upon whether Mr. DeLisle is able to get good, professional advice on it and how much it will cost. He thinks that it can be done in a couple of weeks. Mr. Berg responded that what Mr. Michaelson is saying is correct. He reiterated that most of what they saw really pertains to the first floor: floor boards, joists, etc. The wood haunch on which sets the main beam is very deteriorated and needs immediate attention; it would be top priority.

Inspector Shaff added that people are the most vulnerable when they are sleeping. This building is not sprinklered and obviously has some structural issues. The City does not want twelve (12) occupied apartments endangered.

Ms. Moermond asked Mr. DeLisle for his comments. Mr. DeLisle asked if they were saying that if the post were removed, the building would collapse. Mr. Berg responded that there is the potential of that happening. The post and beam framing and their members are supporting the floors up above. Mr. DeLisle added that the walls in the basement go all the way up to the top floor; he asked if that would not offer some strength. Mr. Berg replied that he did not know enough about the over all framing to answer that question, but the wood post is not part of the wall. Mr. DeLisle said that he thinks the job can be done while the residents are still living there, and in a reasonable time period. He feels that asking all of the residents to move is unreasonable. If he felt that the tenants were in danger, he'd have them moved. The building has been there over 100 years and it probably will still be there in another 100 years. Mr. Michaelson asked Mr. DeLisle whether he'd be willing to hire a structural engineer. Mr. DeLisle answered that he would. Mr. Michaelson added that he wants to make sure that this gets done quickly and that Mr. DeLisle takes responsibility for it instead of passing the buck to someone else. Mr. DeLisle asked Mr. Wazwaz if he were willing to cooperate. Mr. Wazwaz stated that he is not willing to pay for the landlord's obligation. Mr. DeLisle needs to own up to the problem. Mr. Foster added that he and Mr. DeLisle will go over the list and make a determination as to who has responsibility for what.

Mr. Michaelson asked Ms. Moermond if there would be a possibility to reconvene after Mr. DeLisle gets his report from the structural engineer. Mr. Berg clarified that there are two (2) different types of reports: 1) a condition survey (here's what we've got); and the next phase, 2) construction documents from which to pull a permit.

Ms. Moermond stated that it is clear that this is about the safety of the business and the business's interest in survival and the safety for the residents in living there; and also, the safety of people who are coming to visit the residents or to buy from the store. She realizes that it takes about three (3) times longer to work with an old

building. This building needs a structural engineer on site. Speaking directly to Mr. DeLisle, she added that if the floor is failing, he is responsible for figuring out that he needs a structural engineer to take care of that. It is not the City's responsibility.

Ms. Moermond said that the first thing which needs to be done is to have the Fire Certificate of Occupancy Inspection staff go through the entire building (scheduled for 10 a.m. tomorrow, Friday, October 29, 2010). Second, is to get a structural engineer's report on the floor – one that Mr. DeLisle hires. Ms. Moermond wants more information on the egress windows, stairways, doors, etc., the areas that could further complicate getting out of the building in case of a fire.

Ms. Moermond wants the following information in her office by close of business on Monday, November 1, 2010: 1) Fire Certificate of Occupancy Inspection; and 2) the structural engineer's report. She will review Monday evening and give her recommendation on Tuesday, November 2, 2010 at the Legislative Hearing. If her recommendation is that the building must be vacated, it will probably be a 48 hour vacation. She needs to see a structural engineer's report that shows that getting a beam will stabilize the building while a more complete repair is done and Mr. DeLisle is willing to do that right away, then she will continue a conversation about keeping the building occupied. If Mr. DeLisle is not willing to go with a structural engineer's report and getting all of the units inspected, Ms. Moermond needs to know now in order to take other action. Mr. DeLisle responded that he is willing.

Inspector Shaff asked Mr. Berg how long it would take him to review and evaluate a report. Mr. Berg replied that he can read the report and give his opinion given almost no notice at all. He added that he will not be in the office beginning Friday, November 5 until the middle of the following week.

The hearing adjourned at 11:32 a.m.

Orders to Vacate, Condemnations and Revocations

ALH 10-277

Appeal of Jeffrey DeLisle to a Notice of Condemnation Unfit for Human Habitation and Order to Vacate at **520 Rice Street**.

Sponsors: Carter III

Attachments: [520 Rice St.Appeal.10-26-10.pdf](#)
[520 Rice.Appeal.11-9-10.pdf](#)
[520 Rice St.Vacate Order.10-22-10.pdf](#)
[520 Rice St.Vacate Order.11-2-10.dot](#)
[520 Rice St.Photos #1.11-2-10.pdf](#)
[520 Rice St.Photos #2.10-20-10.pdf](#)
[520 Rice St.Photos #3.10-21-10.pdf](#)
[520 Rice St.Photos #4.10-29-10.pdf](#)
[520 Rice St.Photos #5.10-29-10.pdf](#)
[520 Rice St.Photos #6.11-2-10.pdf](#)
[520 Rice St.Photos #7.11-2-10.pdf](#)
[520 Rice St.Engineering Rept.11-1-10.pdf](#)
[520 Rice St.Frank Berg Email.10-21-10.pdf](#)
[520 Rice St.Frank Berg Email.10-29-10.pdf](#)
[520 Rice St. structural engineer email 11-4-10.pdf](#)
[520 Rice St.Attorney letter11-17-10.pdf](#)

Ms. Moermond wants the following information in her office by close of business on Monday, November 1, 2010: 1) Fire Certificate of Occupancy Inspection; and 2) the structural engineer's report. She will review Monday evening and give her recommendation on Tuesday, November 2, 2010 at the Legislative Hearing.

STAFF PRESENT: Leanna Shaff, DSI – Fire Inspector; and Frank Berg, DSI – Structural Engineer (arrived 10:34 a.m.)

Jeffrey DeLisle, appellant and property owner; Anton Wazwaz, manager, MW1; Robert Foster, Law Firm of Foster & Brever; Waretta Blair, tenant; Doctor Steven, tenant; Jeff Sullivan, Sullivan Construction; Ralph Tohm, tenant and caretaker, Ron Michaelson, SMERLS, appeared.

520 Rice Street (Vacate Order/Condemnation/Revocation of Fire Certificate of Occupancy)

Ms. Moermond needs: 1) a structural engineer's report; and 2) a C of O inspection (scheduled for Fri, Oct 29 at 10 am) for the whole building due in her office by close of business, Monday, Nov 1, 2010. Her recommendation will be made on Tuesday, Nov 2, 2010.

Ms. Moermond noted that in addition to Mr. DeLisle's appeal, the office has had a number of calls from interested parties. Whatever recommendation she makes today will stand until the City Council considers it at a public hearing.

Ms. Moermond requested a staff report. Inspector Shaff reported that Fire received a complaint for multiple code violations on October 19, 2010. Inspector Thomas responded to the complaint on October 21, 2010. The complaint cited health and sanitation issues of the commercial space on the first floor. During his inspection, Mr. Thomas also entered the basement and found problems that required more than his expertise regarding structural components. Frank Berg, the City's structural engineer and Fire Inspector Shaff joined Inspector Thomas to take a look at the structural issues with the building in the basement. They found many structural members (girders, joists, beams, flooring, etc.) that had extensive water damage in multiple places. There was a lot of deflection as you walked across the floor in the store. The structural members themselves were decayed to the extent that some parts were actually powdering; and some of the columns were punching up into the supporting members. Inspector Shaff asked Mr. Berg to make an analysis as to the safety and integrity of the building, which he did in an email to the Fire Marshal, the Deputy Director of DSI, the Assistant Fire Marshal, Inspector Shaff, etc. (The email was copied and provided at the hearing.) The following paragraph is a summary of his analysis:

The condition of the wood, however, that comprises this floor framing has deteriorated well beyond that which would allow it to react to fire in that manner. The normal time period, whatever that is, that fire fighters are accustomed to for framing of wood construction cannot be relied upon until this hazard has been eliminated. Or stated even more strongly, this floor framing in its current condition cannot be relied upon to absorb any additional distress, long term or short term.

Ms. Moermond added that Mr. Berg had shared this and more with her in a phone conversation that morning. She added that Orders were issued on October 21, 2010 with a Vacate date of October 29, 2010 at 12 Noon.

Mr. DeLisle, appellant, stated that he received Work Orders postmarked October 25, 2010; he didn't receive them in the mail until October 26, 2010. He went to DSI to

pick them up himself because people were calling him about it. He said that he has the portion of Orders done that are his responsibility. He is appealing so that the twelve (12) families who live in the complex will be able to stay. Also, so that Tony Wazwaz will be able to continue his business. Currently, the three (3) commercial space entrances are placarded. The apartments are not included on the Work Orders. He added that he has had professional workers (heating system, electrical, etc.) go through the building to make sure that there are no hazards and that everything was in sound condition.

At this time, Ms. Moermond referred back to Inspector Shaff's inspection and asked whether the Fire Inspection crew investigated the complaint as well as other things en route; or whether they did a full C of O inspection for the whole building. Inspector Shaff responded that their first response was to the referral. Inspector Thomas noted that the floor had a lot of deflections which caused him to also check out the basement underneath the floor, etc. He did not inspect the dwelling units. Basically, DSI's policy is that it will not condemn a structure out of a referral; it needs to be done out of a Fire Certificate of Occupancy inspection. The Fire inspectors would also like to inspect the balance of the building, including the dwelling units. Based on what was seen, DSI issued the Condemnation. Ms. Moermond reiterated that the building itself is Condemned; not an individual unit or a specific use within the building, but the entire building (commercial and residential). Inspector Shaff stated that it is considered as one (1) Certificate of Occupancy.

Ms. Moermond asked Ms. Vang to distribute copies of the photos.

Mr. DeLisle continued to say that he did what he could in the residential part of the building: electrical, heating and plumbing, contractors. They don't see a need to condemn the residential part of the building. He has a commercial lease with the first floor tenant and the lease clearly says that he is responsible for any Orders that might be issued for the City of Saint Paul/ Department of Health. He can understand why the first floor should be vacated; he asks for 110 days to fix those issues before the building would be condemned. Mr. DeLisle asked whether Mr. Berg's opinion was put into the deficiency list.

Ms. Moermond asked Inspector Shaff if Mr. Berg's findings were incorporated into the deficiency list. Inspector Shaff noted #21. Ms. Moermond asked if Mr. DeLisle had any structural engineers come out to look at the structural members that compromise the floor framing. Mr. DeLisle responded, "No."

Mr. DeLisle added that he doesn't believe the building is in jeopardy of collapsing; he thinks that it's perfectly sound. He doesn't think the residents should move because one person didn't comply with his lease.

Robert Foster, attorney from the Law Firm of Foster and Brever, representing commercial tenant, Anton Wazwaz, MW1 Inc., stated that he and Mr. Wazwaz had an opportunity to review the building with the list that was prepared by the Fire Inspector. Mr. Wazwaz' business began in April 2009. There are conditions in the building that are in the report that, obviously, pre-date Mr. Wazwaz' tenancy. Approximately 70 percent of the issues associated with the store are acknowledged by Mr. Wazwaz as his responsibility under the lease; he will repair them. Mr. Foster indicated to Mr. DeLisle that he and Mr. Wazwaz would like to meet with him to determine who has responsibility for the issues on the list. The main issue is the flooring which is a structural issue that pre-dates Mr. Wazwaz and MW1's tenancy. Because that's a structural issue, it's the landlord's responsibility. They intend to meet after the hearing to discuss. Before the hearing, Mr. Foster reviewed Saint Paul Ordinance 640.01 Condemnation and Enforcement. He and Mr. Wazwaz agree with Mr. DeLisle

in that it will take approximately three (3) months to complete the deficiency list, as authorized in the code. They agree that there is structural deterioration that has developed since the structure was built in 1889 that will need to be remedied, perhaps by adding additional beams and post; and then repairing the flooring that has been affected by the deterioration of the structural members. As he reads the Ordinance, a life safety issue is the only thing that would stop the hearing officer from giving them the extension of time needed in order to make all of the repairs. He does not think that a life safety issue currently exists; he doesn't think the floor will collapse in the very near future. There definitely are things that need to be fixed and that will be done. They request an 120-day extension to complete the work. Mr. Wazwaz business has six (6) employees and has worked for 1 ½ years to be successful; it's a valuable business for the community. Many of the local people buy their groceries from this store.

Tony (Anton) Wazwaz, commercial tenant, stated that if the store closes, it would devastate his whole family. He said that Mr. DeLisle blames him, saying that he's responsible according to the lease. Mr. Wazwaz brought the structural inadequacy of the building to Mr. DeLisle's attention at least three (3) times (May, June, July). Mr. DeLisle responded by saying he'd contact his attorneys. Mr. Wazwaz told Mr. DeLisle that the day would come that the building would be condemned because there was definitely something wrong with the floor. One doesn't need to be an engineer to know that there's something wrong with the floor. Mr. DeLisle has a habit of always blaming the tenants. Since Mr. Wazwaz has been there, Mr. DeLisle hasn't done anything for the building. Mr. Wazwaz added that he is kind of happy that the City is stepping in because Mr. DeLisle needs to do something for the building except accepting rent. As a landlord, one is supposed to put back into the building so that tenants feel as though they are actually living in a good place. Mr. Wazwaz is paying \$4,000 per month in rent; he expects something back from his landlord instead of him having to do everything. He thinks that if you own a building, you should also own up to the responsibility of owning a building. He signed a lease 16-18 months ago for the unit but this problem has been there long before he showed up.

Mr. Foster reiterated that they will make a determination as to who has responsibility for the structural damage; however, they clearly believe that structural issues are the landlord's responsibility.

Mr. Wazwaz added that if Mr. DeLisle decides that he isn't going to repair the structural damage, Mr. Wazwaz is pursuing purchasing the furniture store across the street as a back-up plan. In order for him to do that, it will take up to three (3) months for him to renovate it.

Ms. Moermond asked who MW1, Inc. was. Mr. Wazwaz replied that MW1 is he and his brother.

Mr. Michaelson, Southern Minnesota Legal Services (SMERLS), addressed the hearing. At this time, he is representing a couple of the tenants, perhaps more. Warnetta Blair lives in Unit #10 of the residential area. She lives on a limited income and has a disability; she has lived here since 2005 and has a good relationship with the management. This is not the Taj Mahal of rental units in the city but the city needs places for people of her income level to live. He is here as an attorney representing residents and he is willing to do whatever the City feels in necessary, at this point; and he doesn't want to jeopardize the safety of any of these tenants or any of the public. He was at the building yesterday but he didn't get a chance to look at the structural elements. He did, however, visit with Mr. DeLisle, who told him that he has had professionals check the place out. He didn't think that there were any structural problems. On the other hand, when he heard this morning that Mr. DeLisle

hasn't had a professional structural engineer look at the place, he was concerned. Mr. Michaelson would like to hear what Mr. Frank Berg, the City's structural engineer, has to say about the residential areas. It seems clear to him that there is something wrong with the commercial parts of the building but he isn't sure that means that the center section (residential area) is in jeopardy of imminent demise – that it would be dangerous for the tenants. He would like to hear what Mr. Berg has to say about the center section before he suggests anything to his clients. Ms. Moermond explained that what he understood from her conversation with Mr. Berg earlier this morning was not that the individual residential units (don't think he inspected them) had soft floors or soft supporting members in and of themselves – not that he would think of immediate collapse of the building but if there were a fire, that the supporting members would not last very long. It would not support the upper floors for evacuation. Mr. Michaelson commented so then, people would not have as long a period to evacuate, especially, people with disabilities.

(At this time, Ms. Vang phoned Mr. Berg; left a message to see if he'd be available, now, to come to the hearing.)

Ms. Blair stated that she has lived in the building for five (5) years. Anytime there was a problem in the rental units, Mr. DeLisle would have it fixed.

Mr. Foster added that he has spoken with Mr. DeLisle about finding alternative housing for the residents if this doesn't work out. Moving out would be very disruptive for the residents but it's a better time than in the depth of winter. He thinks that if it isn't necessary for safety concerns at this point, giving Mr. DeLisle some time to remedy the situation would be a good alternative, but make sure that he hires someone who is a professional engineer, not just a guy off the street.

Mr. Ralph Tohm, resident and caretaker of the complex, addressed the hearing. He said that most of the repairs have been done. He has been supervising to make sure that all the repairs do get taken care of; they have been working to make it a better building for the tenants. Mr. Tohm has lived in the building for seven (7) years, off and on, but has been caretaker for about a year. Everyone who lives there loves the building; they all know each other and get along very well. The location of the building helps to make it easier for residents to get around because it's close to downtown. Mr. Tohm doesn't want everyone to lose their place.

Mr. Doctor Steven, resident, stated that he likes the building and he likes that he's close to the store. He has a good relationship with everyone there. If the place is condemned, he has nowhere to go. Mr. Tohm took Mr. Steven out of the homeless shelter and gave him a place to live and he's very grateful; people just don't do that anymore. The building is in a very convenient location for all of the residents.

Mr. Jeff Sullivan, Sullivan Construction, addressed the hearing. He stated that he is a contractor for Mr. DeLisle. He has done a lot of the fire inspection repair lists on many of his properties and has done repair work on 520 Rice numerous times. Mr. Sullivan doesn't think that Mr. DeLisle is neglecting this building. He said that he did go into the basement to look at the structural problems being addressed today. He is not a structural engineer; however, he does a lot of repairs and he likes to think he knows what he's looking at. There's definitely damage to the floor which needs to be corrected. It's his contention that the damage to the floor isn't throughout the whole store but specific to right underneath the butcher shop portion of the store. The butcher shop is a room approximately 10 x 25 feet with a tile floor and drain. The floor is cleaned with a garden hose. There is no base tile that comes up the side of the wall to keep the water in, so, water can seep into the basement through the joists and supports. It is his contention that this is the reason why the floor is damaged.

He feels that the damage is limited to this portion of the store; not throughout the whole store floor.

At this time (10:18 a.m.), Ms. Moermond took a 15 minute recess. She announced that Mr. Berg is on his way.

The hearing resumed at 10:34 a.m.

Ms. Moermond asked for Mr. Berg's report on his findings.

Frank Berg, structural engineer, DSI, stated that he has been with the City for 22-23 years in the position of structural engineer. Throughout the years, his role has been to review plans to build and remodel, approve the plans, hopefully, and inspect them when the work is finished. He has always worked closely with Fire; however, he has worked more closely with Fire over the past few years because Fire Inspection is now part of the Department of Safety and Inspections. Most of the time, his role comes from a planned review approach; however, while looking at an existing building with Fire, he must be looking at a building which, that very night, could be on fire. If there is any possibility at all of someone being in that building, firefighters need to enter that building; and they need to do it in the most safe manner as they can.

He explained that he inspected only the main floor and basement of this building. He cannot say that the building is safe today and will not safe tomorrow but it has a lot of deterioration. In this case, the question is, "Is the building stable enough for firefighters to enter when there's a fire without the floor collapsing?" In the bolded paragraph of his email, he is not saying that the building needs to be condemned. What he is saying is that you can't add more distress to what is there now, like a fire, underneath it. There is the possibility that if you added the fire distress and a firefighter enters the building, he could fall right through the floor. There's enough deterioration to the wood, that if a fire were added, it would be very dangerous.

Ms. Moermond asked for clarification. She said that she understood Mr. Berg's words: that he is not saying the building needs to be condemned to mean that he is not in a position to make that recommendation; that Fire must make that recommendation. Mr. Berg clarified that he is not in a position to be the one who recommends condemnation but he is in a position to give Fire expertise from his own background as a structural engineer. If he were looking at the building from a plan/review function, without considering the possibility of fire, he could see a time frame where this could be addressed; but it cannot be ignored. There is widespread deterioration; there's a lot there to take care of. But, if you look at it from a firefighter's standpoint, the building cannot absorb any more distress.

Ms. Moermond stated that when Mr. Berg talks about reviewing things from a plan/review perspective, her understanding is that happens when someone comes in to pull a building permit; and in this case, it would be a building permit to repair the building. She asked if his concern at that point would be inclusive of Fire concerns or would it be strictly concerns about collapse. Mr. Berg responded that in that case, he would be addressing an entirely different thing. He would be addressing what someone is saying they want to do with this building; and is there a structural engineer on board, which there would need to be in this case. He would be reviewing what they are proposing to do, which obviously, takes some time. Today, however, he is addressing the question of what if there's a fire in that building tonight? Ms. Moermond asked for further clarification: If someone wanted to come and pull a permit to do the repairs on this building, what kinds of things would he be looking for? What considerations are taken in account? Mr. Berg replied that this is a project that

would require a structural engineer being involved because there is so much judgment involved. When you're replacing some floor boards, some joists, and possibly, a beam and haunch, as well, a judgment call needs to be made as to where you leave off. You need qualified people to do this work. If Mr. Berg has any questions, he would be calling the structural engineer and asking about the job. In this case, it might be a good idea for the engineer to be on site to see how things are progressing. Knowing that a structural engineer was involved in the beginning and having his input, and his commitment to being involved while some of the site work is going on would be much more important to Mr. Berg than what the paper plan states. There are a lot of unknowns, and having an engineer on site, in this case, is more valuable than time spent with some very nice looking documents/plans that will probably not be correct later on anyway. Mr. Berg considers communication with the structural engineer up front to be very critical.

Ms. Moermond asked how extensive the damage was to the floor supports. Mr. Berg stated that first of all, the floor had soft spots on the main level right as you entered the store from the street. There were a number of locations in the store that had soft spots. They went down into the basement to look at the specific areas where they located soft spots. They found more widespread damage than just under the soft spot areas. They found moisture related areas of deterioration – decay significantly enough in scattered areas – areas where firefighters could fall right through in case of a fire. It's not an easy or cost-effective project to repair. Inspector Shaff stated that most of the damage seems to be down the middle of the store from the entrance, but the more they looked, they found more areas of damage: 1) pieces that are cut; 2) joists that are not resting on anything; 3) sister pieces that don't make sense to carry the load; 4) more moisture damage, etc. Ms. Moermond asked Inspector Shaff to state her qualifications. Inspector Shaff responded that she is a Minnesota State certified building official and a Minnesota State certified fire inspector.

Ms. Moermond's research found that the building was constructed in 1889 as a commercial building.

Mr. Foster stated that he is not here today to dispute the issues of condemnation but to determine whether it is appropriate on a life-safety issue to give both the tenant and the owner an opportunity to fix the problems that have been identified by the City. Mr. Berg said that if there's a fire, the structural components may not have the integrity needed to support the water and the firefighters who would be coming into the building. Mr. Foster asked if he was most concerned with the structural integrity of the first floor. Mr. Berg responded that's what he saw. At one location in the basement, there is a wood post with kind of a wood haunch with a beam over the haunch that is extremely deteriorated. That particular location is very critical to be looked at and addressed. The others are smaller, localized areas. Mr. Foster asked if in his opinion in a plan/review, would there be enough time left to give the tenant and landlord time to fix the structural members. From that perspective, Mr. Berg replied, "Yes, if addressed within the next couple of weeks," but added that from a fire-safety perspective, there would be an immediate concern.

Mr. Foster asked Inspector Shaff if there were a way to indicate to firefighters, that while this building is being fixed, the concern about the structural integrity of the first floor in case of a fire. Could the Chief make a notification to firefighters that there is this problem. Inspector Shaff asked, "What about the occupants?" Mr. Foster responded that he heard that it is only the first floor that's a concern, not the structural integrity of the second floor or any of the stairs leading in and out. Mr. Berg repeated that all he saw was the basement and the first floor and was not asked to look any further, so he couldn't comment on the other floors. Mr. Foster stated again that his goal is to give his client the opportunity to work with the landlord to acknowledge and

correct deficiencies in the building. It appears to him that the only objection to giving them time is the possibility that the structural integrity of the first floor would be compromised in the event that there is a fire during that repair period; and is that enough to kick out the tenants on the second floor and the first floor tenant – making the tenants homeless and forcing his client out of business.

Inspector Shaff stated that she has been posing some of these same questions to her supervisor, the Assistant Fire Marshal, who said, "That's not going to happen; our firefighters are going to go in."

Mr. Michaelson, SMERLS, stated that the tenants would like to stay, obviously, because this fairly low rental housing is hard to find in the City of Saint Paul but he doesn't want his people to be unsafe. On the other hand, Mr. Berg has not checked out the other floors to see whether or not they're sagging. From what Mr. Berg has said so far, he feels that there is a possibility that this place can be fixed and that it can be done within a reasonable period of time that wouldn't subject people for any long period of time. It seems that Mr. DeLisle hasn't had a chance to hire a structural engineer and although Mr. DeLisle is a good landlord who does a good job, he must understand that this can't be the guy down the street; it has to be someone who specializes in something like building restoration, not new buildings – this is a whole different thing. This building has to be renovated – restored. He knows that the cost factor will be important to Mr. DeLisle, too. Mr. DeLisle will need to hire a qualified person to come in and give an opinion in a very short period of time. Everyone ought to know from this structural engineer whether or not the building can be remedied, and whether it can be temporarily shored-up so that it isn't going to collapse if/when a firefighter walks in. Mr. Michaelson asked Mr. Berg if it makes any sense for Mr. DeLisle to hire a qualified structural engineer to come in very quickly and take a look at this building and make a determination as to whether or not it can be remedied, how long it's going to take and whether or not sufficient measures can be taken in the interim to make the building safe, such as putting in a temporary beam or something of that nature. Mr. Berg replied that yes, this problem can be addressed but it may or may not be cost effective. It's a very old building and it will take a lot of judgment calls. That's why a qualified structural engineer is required; it's a very complex engineering problem.

Inspector Shaff added that when Mr. Berg, Inspector Thomas and she were in the basement, the main gird down the center of the basement was probably the worst area of decay of the members. That decay is compromising the second and third floor; Mr. Berg agreed. Inspector Shaff continued to say that if there is a situation on the first floor and it becomes compromised by the addition of fire and water to structural members of the building that can't support it any more, firefighters' safety as well as the occupants' safety would be jeopardized.

Mr. Michaelson asked if they were talking about a wood beam. Both Inspector Shaff and Mr. Berg answered, "Yes." Mr. Michaelson noted that he has done a lot of construction work before he became a legal aid attorney, and he knows that there are ways to jack up the floor with a steel beam and put a new beam and some girders in there which may not take very long. That probably should have done long ago but certainly it can be done now. Of course, it will depend upon whether Mr. DeLisle is able to get good, professional advice on it and how much it will cost. He thinks that it can be done in a couple of weeks. Mr. Berg responded that what Mr. Michaelson is saying is correct. He reiterated that most of what they saw really pertains to the first floor: floor boards, joists, etc. The wood haunch on which sets the main beam is very deteriorated and needs immediate attention; it would be top priority.

Inspector Shaff added that people are the most vulnerable when they are sleeping. This building is not sprinklered and obviously has some structural issues. The City

does not want twelve (12) occupied apartments endangered.

Ms. Moermond asked Mr. DeLisle for his comments. Mr. DeLisle asked if they were saying that if the post were removed, the building would collapse. Mr. Berg responded that there is the potential of that happening. The post and beam framing and their members are supporting the floors up above. Mr. DeLisle added that the walls in the basement go all the way up to the top floor; he asked if that would not offer some strength. Mr. Berg replied that he did not know enough about the over all framing to answer that question, but the wood post is not part of the wall. Mr. DeLisle said that he thinks the job can be done while the residents are still living there, and in a reasonable time period. He feels that asking all of the residents to move is unreasonable. If he felt that the tenants were in danger, he'd have them moved. The building has been there over 100 years and it probably will still be there in another 100 years. Mr. Michaelson asked Mr. DeLisle whether he'd be willing to hire a structural engineer. Mr. DeLisle answered that he would. Mr. Michaelson added that he wants to make sure that this gets done quickly and that Mr. DeLisle takes responsibility for it instead of passing the buck to someone else. Mr. DeLisle asked Mr. Wazwaz if he were willing to cooperate. Mr. Wazwaz stated that he is not willing to pay for the landlord's obligation. Mr. DeLisle needs to own up to the problem. Mr. Foster added that he and Mr. DeLisle will go over the list and make a determination as to who has responsibility for what.

Mr. Michaelson asked Ms. Moermond if there would be a possibility to reconvene after Mr. DeLisle gets his report from the structural engineer. Mr. Berg clarified that there are two (2) different types of reports: 1) a condition survey (here's what we've got); and the next phase, 2) construction documents from which to pull a permit.

Ms. Moermond stated that it is clear that this is about the safety of the business and the business's interest in survival and the safety for the residents in living there; and also, the safety of people who are coming to visit the residents or to buy from the store. She realizes that it takes about three (3) times longer to work with an old building. This building needs a structural engineer on site. Speaking directly to Mr. DeLisle, she added that if the floor is failing, he is responsible for figuring out that he needs a structural engineer to take care of that. It is not the City's responsibility.

Ms. Moermond said that the first thing which needs to be done is to have the Fire Certificate of Occupancy Inspection staff go through the entire building (scheduled for 10 a.m. tomorrow, Friday, October 29, 2010). Second, is to get a structural engineer's report on the floor – one that Mr. DeLisle hires. Ms. Moermond wants more information on the egress windows, stairways, doors, etc., the areas that could further complicate getting out of the building in case of a fire.

Ms. Moermond wants the following information in her office by close of business on Monday, November 1, 2010: 1) Fire Certificate of Occupancy Inspection; and 2) the structural engineer's report. She will review Monday evening and give her recommendation on Tuesday, November 2, 2010 at the Legislative Hearing. If her recommendation is that the building must be vacated, it will probably be a 48 hour vacation. She needs to see a structural engineer's report that shows that getting a beam will stabilize the building while a more complete repair is done and Mr. DeLisle is willing to do that right away, then she will continue a conversation about keeping the building occupied. If Mr. DeLisle is not willing to go with a structural engineer's report and getting all of the units inspected, Ms. Moermond needs to know now in order to take other action. Mr. DeLisle responded that he is willing.

Inspector Shaff asked Mr. Berg how long it would take him to review and evaluate a report. Mr. Berg replied that he can read the report and give his opinion given almost

no notice at all. He added that he will not be in the office beginning Friday, November 5 until the middle of the following week.

Laid Over to the Legislative Hearings, due back on 11/2/2010