



Interdepartmental Memorandum

CITY OF SAINT PAUL

ATTORNEY-CLIENT COMMUNICATION

TO: Marcia Moermond
FROM: Kyle Lundgren, Assistant City Attorney
DATE: July 27, 2011
RE: 929 Summit Avenue - procedural issues

Marcia, you had asked for advice as to whether you are required to forward your decision in ALH 10-323, "Appeal of Brian D. Alton to a Fire Certificate of Occupancy Condemnation at 929 Summit Avenue," to the Council for its consideration, despite the fact that the Council had heard a similar appeal on the same property only weeks before. (ALH 10-203).

The following is my understanding of the facts. On October 13, 2010, you heard an appeal involving 929 Summit - ALH 10-203, "Appeal of Greg Ertz, representing Haverson & Blaiser Group, to a Fire Certificate of Occupancy Correction Notice at 929 Summit Avenue". The notice, issued by Mitchell Imbertson on 9/29/10, listed four problems, chief of which was that there was only one means of egress from Unit #6. Your ruling was "the orders had been out there too long and should have been appealed in June, and she would recommend that the Council deny the appeal". ALH 10-203 was forwarded to Council.

On October 26, Mr. Imbertson re-inspected the property and found the same four deficiencies, and prepared another correction notice. There appeared to be no change in the physical condition of the property, but there was a change in the correction notice - Unit #6 was condemned as unsafe, due to the inadequate number of exits. By this time, Haverson & Blaiser had hired an attorney - Brian Alton - who filed an appeal of the correction notice. A hearing (ALH 10-323) was held before you on November 11, 2010, at which Mr. Alton presented several new arguments about Unit #6. Most of them, as you noted, could have been raised at the earlier hearing, but some addressed the condemnation. You took those issues under advisement and eventually determined no new information existed which justified the Council revisiting the determination from ALH 10-203. So, ALH 10-323 was not forwarded to Council.

My advice would be for forward it to Council for their consideration. All of the trappings of a formal legislative hearing - the correction notice, the application for appeal, the file ID, placing on an agenda, and the hearing before you - are present in both ALH 10-203 and ALH 10-323. I concur that there appears to have been no appreciable change in the property between the two hearings and that almost all of the subject of the ALH-323 hearing was something that could have been heard at an earlier proceeding. But since an appeal was filed, a hearing was held, and there was at least one distinguishable difference between the two correction notices - the condemnation - I believe that both Chapter 18.01 of the Legislative Code and procedural due process require forwarding ALH 10-323 to the Council.

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