STATE OF MINNESOTA
COUNTY OF RAMSEY

DISTRICT COURT
SECOND JUDCIAL DISTRICT

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in Re:

Assessment of charges against Draco Properties, LLC,

v.

City of St. Paul,
County of Ramsey,

INTRODUCTION

Draco Properties, LLC ("Draco") submits this memorandum in opposition to the attempt to assess Draco $20,233.12 related to a demolition of a structure at 1136 Ross Ave., St. Paul, MN ("subject premises"). This matter is currently before the legislative hearing officer, Marcia C. Moermond for consideration as to whether Draco should be assessed for the demolition of the subject property.

FACTUAL BACKGROUND

1. Draco purchased the subject premises on or about March 02, 2010.
2. Prior to the purchase of the property by Draco, the City of St. Paul ("City") has issued a "code compliance report" on or about January 11, 2010.
3. Shortly after purchase, Draco submitted architectural plans to the City for its approval. The plans indicated that Draco would be removing the dwelling by removing the current structure to the first floor joists and sub flooring and then building a new structure on top of the existing foundation. The plans contained the stamp of the City approving the plans. See exhibit A.
4. John Skradski reviewed the plans on behalf of the City and approved the plans on March 10, 2010.
5. On March 10, 2010, permit #2010118376 ("first permit") was issued by the City to Bridgecore Asset Management, Inc. ("Bridgecore"). Bridgecore was hired by Draco to raze the dwelling as indicated in the plans and to rebuild the structure in accordance with the plans.
6. On or about March 11, 2010, Bridgecore began the process of removing the dwelling portion of the structure with the intent of leaving the existing foundation and the existing first floor joists and sub floor.
7. On March 11, 2010, Bridgecore is informed that a demolition permit is necessary. An application is made by Bridgecore for a demolition permit. The permit estimates

that the start time will be March 15, 2010 and the completion time will be March 20, 2010.

8. On or about March 12, 2010, the City issued a letter to Bridgecore in which it indicated that the first permit had been issued "in error" and issued a "STOP WORK ORDER" on the property. This letter was issued by Stephen Ubl.
9. Mr. Ubl further states in his letter that "the permit also included rebuilding a new structure on top of the existing first floor system that was to remain. This clearly is not the case given the equipment that is being used to remove the structure." Mr. Ubl continues to say in his letter that the structure is unstable and must be contained with a fencing to keep people away. He indicates that the permit is revoked and that if the foundation is to remain, an engineer's analysis must be submitted to the Building official for approval prior to the any structure being built on it.
10. Bridgecore immediately erects a fence around the site to keep intruders from getting near the property.
11. Bridgecore is informed that an asbestos demolition inspection is necessary and thereafter it immediately hires Angstrom Analytical & Environmental Services ("Angstrom") to conduct the inspection.
12. On or about March 12, 2010, Angstrom issued a report which indicates that there is minimal asbestos in the portion of the property it could inspect. Because the dwelling had been partially demolished, the second floor was inaccessible. However, the inspection report clearly indicated that in all areas of the property except the second floor, limited asbestos was found. The report indicates that the flue patch must be removed prior to demolition.
13. That Sewer Department for the City signs off on Bridgecore's demolition permit application.
14. On March 15, 2010 a pre-demolition inspection report is issued by Michael Reed from Department of Public Health ("Public Health"). This report indicates that the cease and desist order continues.
15. On March 17, 2010, Bridgecore hired Commercial Utilities, Inc. to cut the water and sewer for the property pursuant to the request of the City. Bridgecore continued the process of completing the pre-demolition requirements requested by the City.
16. That on or about March 17, 2010, Quint Pillai, Bridgecore's representative discusses the matter with Michael Reed, Public Health via telephone. Mr. Reed's email confirms that not all of the building contains asbestos and that it was possible to abate the minimal asbestos concerns without considering the entire structure as containing asbestos material.
17. On March 19, 2010, the Public Health issued a status report regarding the subject property. Mr. Reed's letter indicated that the entire property needed to be treated as containing "asbestos containing material" even though it had been determined that in the majority of the property limited asbestos had been found. The asbestos identified in the basement and the main floor could have been removed properly and easily prior to further demolition. This letter clearly indicates that the current cease and desist order continued in place but would be rescinded upon confirmation that proper demolition arrangements are in place.
18. On March 25, 2010, the City issued a letter indicating that the City had issued a new demolition permit for the subject property. Unlike previous communication, it does

not appear that this letter was emailed to Bridgecore. This letter does not put any restrictions on the permit issued.

19. Also on March 25, 2010, Public Health rescinded the cease and desist order on the subject property thus allowing the demolition to proceed. However, Public Health did not notify Bridgecore or Draco of the lifting of the cease and desist order.
20. Also on March 25, 2010, the City issued an emergency nuisance abatement order. The emergency order is addressed to both Bridgecore and Draco. However, this order was not received by either of these parties prior to the completion of the demolition.
21. On or about April 26, 2010 the City began the process of assessing Draco $20,233.12 for the work allegedly done by Semple Excavating ("Semple").

ARGUMENT

I. THE CITY OF ST. PAUL CAUSED THIS MESS AND SHOULD BE HELD ACCOUNTABLE FOR THE MISTAKES IT MADE.

The City approved Bridgecore's plans and issued a permit knowing that Bridgecore would be demolishing the structure but saving the foundation. The City knew that Bridgecore would be razing the structure but leaving the foundation when it submitted its architectural plans to the City. Building inspector, John Skradski, reviewed the plans, approved the plans and issued the permit. Furthermore, Mr. Skradski stated to Quint Pillai, representative of Bridgecore, that no demolition permit was necessary when Pillai inquired. Only after the approved demolition began, did the City indicate that a demolition permit and pre-demolition inspection was necessary. Since Bridgecore complied with all of the requirements issued by the City in obtaining the permit, it should not be held responsible for any errors of the City.

The City did not issue its permit in error as it knew precisely what Draco intended to do with the property when the permit was issued. The City acknowledged in its March 12, 2010 letter that it knew that the structure above the foundation and the first floor joists. Specifically, this letter states "the remodel permit that was issued…was for removal of the dwelling unit down to but not including the first floor joists and sub flooring of the first

floor. The permit also included rebuilding a new structure on top of the existing first floor system that was to remain." Bridgecore began the process of performing these exact duties but then was issued a stop work order without explanation. Bridgecore followed every requirement from the City and yet, without any evidence to the contrary, the City ordered them to cease. Furthermore, when the City requested that they erect a fence to safeguard the project, Bridgecore immediately complied and, at their own cost, erected the fence. Since the permit was not issued in error and since Draco had not violated the requirements of the permit, Bridgecore should have been allowed to complete its project as contracted for.

Any suggestion that Bridgecore had not complied with the terms of the permit when it began removing the upper structure is not only unfounded but absurd. As indicated in the pictures taken by the City on March 10, 2010, only a small portion of the demolition had begun. Bridgecore had not gone far enough to determine any violation of the permit before it was ordered to stop. This claim by Mr. Ubl that Bridgecore was not proceeding as allowed under its permit is simply a pretense and completely unsupported. In suggesting this, Mr. Ubl is not be forthright to Draco, Bridgecore or to the legislative hearing officer. Any claims of wrongdoing by Bridgecore in the demolition of the structure should be ignored and not be used as a basis for determining whether Draco should be assessed.

If the City's concern regarding the razing of the structure was the potential of asbestos in the structure, they should have raised this issue prior to the partial demolition of the property and prior to issuing the permit. Raising this issue prior to the partial demolition would have allowed for the full inspection of the property and the abatement of any found material in an efficient and cost effective manner. Additionally, it would have avoided the

placement of the structure in a hazardous position thus avoiding the need to even consider the emergency abatement procedure.

The City entered into a contract with Draco and Bridgecore by issuing a permit to remove the structure above the first floor sub flooring and to replace it with a new structure. Draco and Bridgecore did not breach the terms of that contract but conversely, began the process of removing the house exactly as agreed upon by the parties. The City refused to honor their side of the bargain by refusing to allow Draco to proceed with the removal of the top structure. The City's breach of the contract has damaged Draco and caused the City to incur a needless expense. The City should not benefit from their breach and should not be allowed to assess these costs to the property.

II. THE CITY FAILED TO ABIDE BY THE REQUIREMENTS OF MINN. STAT. §463.15 ET SEQ. IN RAZING THE PROPERTY

Minn. Stat. §463.15 et seq. clearly sets out the requirements for the removal of a hazardous building; the City did not comply with the statutory requirements. Minn. Stat. §463.15 defines a hazardous building or a hazardous property as any building or property which because of inadequate maintenance, dilapidation, physical damage, unsanitary condition, or abandonment, constitutes a fire hazard or a hazard to public safety or health." The city removed the entire structure and basement indicating that the property was a "dangerous structure" thus constituting an emergency situation. The definition of hazardous building as defined by the statute encompasses the subject property and therefore the City's actions are controlled by this section of the statute.

Under Minn. Stat. §463.151, a municipality can only remove or raze a hazardous building upon obtaining the consent in writing of all owners of record, occupying tenants

and all lienholders of record…." It is undisputed that the City did not obtain the consent of Draco or its representative, Bridgecore.

If consent is not provided, then the City's alternative is to order the owner to correct or remove the hazardous condition or to raze or remove the building (Minn. Stat. §463.16) or to exercise its right to eminent domain (Minn. Stat. §463.152). The City can abate the hazardous condition by following the procedures in this section of the statute. At a minimum, the City must serve an order on Draco or Bridgecore specifying 1) the grounds for the order, 2) the necessary repairs and 3) "a reasonable time for compliance." Minn. Stat. §463.18. The service of that order must be done in accordance with eh rules of civil procedure and upon the owner or its agent. If the owner disagrees with the order, it can interject an answer denying the facts. Finally, if there is a denial, an expedited case may be commenced in the District Court. This procedure was completely ignored by the City.

The purpose of this section of the statute is too provide due process and provide the owner with the opportunity to dispute the City's position; due process was ignored by the City. The City created an "emergency" when no emergency existed and used this alleged emergency as a basis for razing the building and removing the foundation without any notice to the owner or its agent. Bridgecore complied with every request made by the City including pulling a permit, stopping when the City ordered them to stop, pulling a second demolition permit when the City stated it was necessary, having an asbestos inspection performed, placing a fence around the property and finally proceeding with requirements of the demolition application so that a permit could be pulled. The City ignored this effort being made by Draco and simply razed the property through the use of improper methods. The City must be held accountable for its improper actions.

Minn. Stat. §463.25 identifies the proper process to deal with hazardous excavations; the City again did not comply with this statute. Remember, the City had agreed that the foundation could stay in this property and that only the upper structure would be razed. However, the City razed both the structure and removed the foundation. None of it was done in compliance with Minn. Stat. §463.25 as no notice was provided to the owner. Moreover, the statute specifically grants the owner a fifteen day period to have the excavation filled to grade or protected after service of the order requiring this to be done. The City blatantly violated this portion of the statute.

III. THE CITY FAILED TO ABIDE BY REQUIREMENTS OF CITY CODE SECTION 45 PRIOR TO RAZING THE PROPERTY.

Section 45 of the City code provides a structure for abating nuisances. The city ignored any due process requirements of Section 45 and declared this a nuisance under section 45.12 requiring emergency abatement procedures. Section 45 is unconstitutional as to those parts that attempt to supersede Minn. Stat. §463.15 et seq. and to the extent is does not provide any due process. Section 45 attempts to avoid the requirements of Minn. Stat. §463.15 et seq. by providing a different set of requirements for abating a nuisance. It is obvious that section 45 has requirements of the City which are less than what are required by Minn. Stat. §463.15 et seq. As Section 45 cannot impose requirements which are less than those imposed by the Minnesota Statute to protect the owner of real property, section 45 must be found unenforceable. Section 45.12, to the extent that it is meant not to provide any notice to the owners or to provide them an opportunity to correct or dispute any claimed problems, is unenforceable. To the extent that section 45.12 requires that notice be provided to the owners prior to the emergency abatement by providing the notice required by section 45.09, the City failed to comply with these requirements.

Section 45.09 describes a process for service or an order; this section was not complied with. It is undisputed that the service of the emergency abatement occurred on the same date as the abatement work commenced providing no opportunity for Draco to dispute the order or to make corrections as appropriate.

The claim that this was an emergency issue is simply a pretense. Even accepting the City's expected argument that they had the right to stop the work being performed under the initial permit, Bridgecore had begun the process of obtaining a demolition permit through the City to continue the demolition of the structure. The City kept on putting requirements on Bridgecore that it was meeting. The latest communication from Public Health was a requirement as to how to treat the remaining demolition. However, prior to being able to meet these requirements and without any notice, the property was razed.

The initial demolition began on March 10, 2010 pursuant to the permit issued. At no time between March 10, 2010 and March 25, 2010 did the City consider this property to be an emergency or notify the owner that it was considering it to be an emergency. Rather, the City simply decided that it wanted to remove the property and made an order to do so. If this had truly been an emergency, they would have not had waited until the 25th but would have razed the property on the 11th or any day in between as the condition of the property did not change prior to razing the property on the 25th. The emergency order was simply invoked so that Draco could not have an opportunity to dispute the claim or to make any necessary corrections.

IV. THE EXCAVATOR DID NOT FOLLOW THE PROCEDURES MANDATED BY PUBLIC HEATH IN PERFORMING THE EXCAVATION.

Semple Excavating did not comply with the requirements set out by Public Health. Public health held Draco to a standard that it did not require of Semple. In its letter dated March 25, 2010, Michael Reed from public health outline the procedure required of the contractor. However, the contractor did not follow these requirements in doing its job.

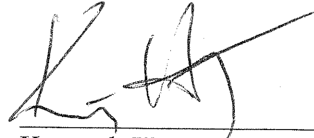
V. THE AMOUNT BILLED BY SEMPLE EXCAVATING WAS EXCESSIVE FOR THE WORK PERFORMED AND THE WORK THAT WAS REQUIRED TO BE PERFORMED.

At a minimum, Semple's invoice for the work performed fails to contain sufficient information to determine the validity of the invoice or the work claimed to be performed. The invoice does not contain any hours worked, the cost of labor or a sufficient description to determine precisely what was done. The invoice clearly indicates that there are duplicative charges as Semple is charging for its labor and labor for some other entity. On the permit, it was estimated that it would cost $10,000.00 to perform the services and yet the invoice is twice that amount. Finally, the entire foundation was removed on the property despite the agreement that it could remain. Although there might have been a nominal amount of asbestos in the basement on the flue patch, this did not mean that the whole foundation needed to be considered asbestos. The invoice does not reflect the true cost to do this work but an overinflated bill that Semple knew would be paid by the City without question. Draco should not be responsible for this cost.

CONCLUSION

For the above reasons, Draco requests that the assessment to the subject property be denied.

Dated: October 17, 2010



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