

July 25, 2011

City of St. Paul  
Attn: Steve Manger  
Vacation/Nuisance Buildings  
Code Enforcement Officer  
375 Jackson Street, Suite 220  
St. Paul, MN 55101

Re: Nuisance Property - 580 Minnehaha Avenue East, St. Paul, Minnesota  
Our File No. 11590-30903

Dear Mr. Manger:

Please be advised that our firm represents DRS Investments, LLC ("DRS") with respect to the property located at 580 Minnehaha Avenue East, St. Paul, Minnesota (the "Property"). It is my understanding that the Property is now the subject of an abatement order and that the City of Saint Paul has scheduled public hearings to consider demolition of the building on the Property. DRS hereby requests that the City of Saint Paul grant it additional time to complete the repairs to the Property.

#### HISTORY OF PROPERTY

As you are aware, the Property is a vacant multi-unit building that was previously owned by Daniel T. Niezgocki. Mr. Niezgocki defaulted on his loan with JP Morgan Chase Bank and JP Morgan Chase Bank began foreclosure proceedings in March 2010 and subsequently had a receiver appointed for the Property in 2010. It is my understanding that Mr. Niezgocki made few, if any, repairs during this time as the Property was in foreclosure.

In December of 2010, DRS took an assignment of JP Morgan Chase Bank's mortgage and loan with Mr. Niezgocki. The assignment of the mortgage in favor of DRS was recorded in January 2011. DRS intended to complete the foreclosure or, alternatively, obtain a deed-in-lieu of foreclosure.

On or about March 16, 2011, one of the City's code enforcement officers requested an inspection of the Property. Doug Simek, on behalf of DRS, met with the inspector at the Property to review the condition of the Property. To the extent that the City of Saint Paul did not already know of DRS's interest in the Property, the City became aware of its interest in the Property at that time. Mr. Simek informed the code enforcement officer of his intent to obtain legal ownership of the Property and upon doing so, to make all necessary repairs.

Although the condition of the building had not deteriorated between the Code Compliance Inspection in October 2010 and the March 16, 2011 inspection, the City of St. Paul, for some unknown reason, arbitrarily changed the status of the Property from a Category 2 vacant building, to a Category 3 vacant building. The City made this change knowing that

#### Office

7300 West 147th Street  
Suite 600  
Apple Valley, MN 55124  
(952) 432-3136 Phone  
(952) 432-3780 Fax

[www.seversonsheldon.com](http://www.seversonsheldon.com)

#### Attorneys

Larry S. Severson  
James F. Sheldon<sup>1</sup>  
Michael G. Dougherty<sup>2</sup>  
Michael E. Molenda<sup>3</sup>  
Loren M. Solfest<sup>1,2</sup>  
Sharon K. Hills  
Robert B. Bauer<sup>1,2</sup>  
Terrence A. Merritt<sup>3</sup>  
Annette M. Margarit  
Stephen A. Ling<sup>2</sup>  
Gary L. Huusko<sup>2</sup>  
Christine J. Cassallius  
Brian J. Wisdorf<sup>2</sup>  
Michael D. Klemm<sup>1,2</sup>  
Emily Fox Williams  
Matthew J. Schaap  
Thomas R. Donely<sup>2</sup>  
Jessica L. Sanborn  
Ryan J. Bles  
William M. Topka  
Erin E. Boerschel

<sup>1</sup> Qualified Neutral Under Minn. Gen. R. Prac. 114 | <sup>2</sup> MSBA Board Certified Real Property Specialist

<sup>3</sup> Registered Patent Attorney | Individual Attorneys also licensed in Iowa, Wisconsin and Missouri

DRS intended to make all necessary repairs when it obtained legal title to the Property.

On May 11, 2011 Daniel Niezgocki signed a deed in favor of DRS, which DRS subsequently recorded. On May 19, 2011, the City sent a letter to Daniel Niezgocki, JP Morgan Chase Bank and JP Morgan's attorneys, Leonard, Street & Deinard with an "Order to Abate Nuisance Building" ("Abatement Order"). The Abatement Order was "excerpted from the October 28, 2010 Fire Inspection Code Compliance Notice." The Abatement Order did not identify any additional code compliance matters or a deterioration of the Property that would suggest that the building should have been classified as a Category 3 building that would justify it being demolished. Moreover, the Order to Abate the Nuisance Building provides less than thirty (30) days for the owner and the responsible parties to correct the defects, as all defects were to have been corrected by June 20, 2011. The Abatement Order was not sent to DRS.

### **DRS OBJECTS TO THE ABATEMENT AND DEMOLITION PROCESS**

1. **ST. PAUL FAILED TO FOLLOW ITS OWN ORDINANCE WITH REGARD TO THE ABATEMENT PROCEDURES SET FORTH IN CHAPTER 45.11.**

Pursuant to Chapter 45.11 of the St. Paul Legislative Code, the enforcement officer is required to "serve" the written abatement order upon the owner, all interested parties and any responsible parties known to the officer. As indicated previously, DRS took assignment of JP Morgan Chase Bank's loan on the Property in December 2010 and that assignment was properly recorded with the Ramsey County Recorder's Office on or about January 2011. Because DRS had recorded its assignment of mortgage, DRS was entitled to notice as an "interest party" as defined by St. Paul's ordinances.

As stated previously, Doug Simek, on behalf of DRS, had previously discussed DRS' mortgage upon the Property with the code enforcement officer and DRS' plans to complete the foreclosure or obtain a deed-in-lieu of foreclosure so that DRS could repair the Property and rent it out. Additionally, Mr. Simek attended the inspection conducted on or about March 16, 2011 during which he discussed his foreclosure and improvement plans with the enforcement officer. Accordingly, the City of Saint Paul's enforcement officer also knew that DRS had an ownership interest in the Property.

Based upon the foregoing, the City of St. Paul has failed to follow the service requirements set forth in Chapter 45.11(1) of St. Paul's Legislative Code by failing to serve a copy of the abatement order upon DRS. Not only did DRS have a recorded mortgage interest in the Property, but the enforcement officer had knowledge of DRS' interest in the Property. As such, the City of Saint Paul was required to serve the Abatement Order upon DRS.

2. **THE CITY OF SAINT PAUL FAILED TO ALLOW ADEQUATE TIME TO ABATE THE NUISANCE.**

Chapter 45.11(1)(e) of Saint Paul's Legislative Code states that the Abatement Order shall provide an abatement deadline "allowing a reasonable time for the completion of any act required." The City's May 19, 2011 Abatement Order provides a list 78 items that need to be corrected in order to avoid demolition of the building. Those 78 items include numerous exterior repairs, plumbing and electrical repairs, as well as other general repairs and mechanical matters. The repairs require the Property owner to obtain multiple permits from the City of St. Paul and require several contractors from various trades to perform the work.

While the list of repairs is significant, the repairs can and should be performed to prevent the destruction of a valuable building. Those repairs, however, cannot be performed in a short period of time and the

City of Saint Paul's abatement order failed to grant a reasonable amount of time for the repairs to be made before the City moved forward with its process to seek demolition of the building. The City allowed for less than 30 days to make all of the repairs listed in the Abatement Order. It was inconceivable to think that all permits could have been obtained and work completed prior to June 20, 2011. Once again the City of St. Paul has failed to properly follow its own ordinances because it failed to allow sufficient time for the repairs to be made.

### **DRS REQUESTS MORE TIME TO REPAIR THE PROPERTY**

#### **1. DRS HAS BEGUN ABATING THE NUISANCE.**

As stated previously, DRS obtained title to this building on or about May 11, 2011. After obtaining title, DRS closed on a loan that provides adequate funds to complete the code compliance issues listed in the Abatement Order. DRS paid the \$5,000.00 performance bond to the City and has already obtained all of the permits required to make the improvements to the Property. Moreover, DRS has made some significant improvements to the exterior portions of the building and has also begun making the interior improvements. DRS is continuing to make the improvements to bring the Property back into compliance. Unfortunately, due to the timing of the Abatement Order and the lack of sufficient notice to correct the problems identified in the Abatement Order, DRS has been unable to complete the repairs on or before June 20, 2011. Nevertheless, DRS continues to make the improvements and has a work plan in place, sub-contractors lined up, and all necessary bids to complete code compliance repairs to the Property. The Property is in a condition that should be fixed and demolition of the building appears to be inappropriate at this time. DRS simply needs the time to make the improvements.

#### **2. CASE LAW SUPPORTS ALLOWING DRS ADDITIONAL TIME TO COMPLETE THE REPAIRS TO THE PROPERTY.**

Existing case law supports DRS's request for additional time to complete the improvements on the Property. In DLJ Mortgage Capital, Inc. v. St. Paul City Council, a mortgage holder obtained title to a condemned property after foreclosure. In that case, like the one currently before the City, the mortgage holder was not notified of the abatement order. Nevertheless, the mortgage holder subsequently posted a performance bond, paid vacant property fees, provided a work plan and evidence of financial capacity to repair the Property. In DLJ, the City of St. Paul ultimately issued its order to demolish the building but the Court of Appeals overturned the City Council's decision because the mortgage holder was denied due process and because it was not given ample opportunity to abate the nuisance. The Court found that the City Council's decision was "a thinly veiled zoning action based solely upon the neighbors' complaints, which were outdated, pertained only to a prior owner, and were irrelevant to Relator's current ownership."

The DLJ case is nearly identical to the situation with DRS and the City of Saint Paul. It is readily apparent that the neighborhood group adamantly desires to have the Property, now owed by DRS, demolished. DRS has learned that the neighborhood group appears to be pressuring the local council member to seek demolition of the building. The neighborhood group appears to be upset with the past history of the tenants at the Property and the former owner of the building. DRS has concerns that this pressure may have unnecessarily contributed to the City's decision to convert the building to a Category 3 classification and subsequent actions to seek demolition. On its face, these actions seem arbitrary and capricious in light of DRS's actions to obtain title to the Property and to rehabilitate the same. Once again, this appears to be a situation where the City may be attempting to exert its will in connection with the Property, rather than its judgment. See Hiawatha Aviation of Rochester, Inc. v. Minnesota Department of Health, 375 NW2d 496, 501 (Minn. App. 1985), *aff'd*, 398 NW2d 507 (Minn. 1986). An

agency's decision is arbitrary and capricious if the decision represents the agency's will and not its judgment. *Id.*

While DRS understands that the prior owners of the Property may not have been diligent in making repairs and screening tenants that lived at the Property, DRS should not be held responsible for the actions of the prior owners. Moreover, in cases like this where DRS has begun substantial improvement of the Property, and is taking timely steps to abate the nuisance and improve the Property, the City should provide additional reasonable time for DRS to complete the abatement of the nuisance. DRS has a work plan in place, has posted the bond, has begun obtaining permits and has already performed substantial work upon the Property.

### CONCLUSION

For the foregoing reasons, DRS requests that the City of Saint Paul grant additional time to DRS to complete the improvements to the Property and repair the issues identified in the Abatement Order. If you need any further information from DRS regarding its commitment to timely repair this Property, please let me know.

Very truly yours,

SEVERSON, SHELDON, DOUGHERTY & MOLEND, P.A.



Stephen A. Ling  
SAL/jlt

cc: DRS Investments, LLC