



City of Saint Paul

15 West Kellogg Blvd.
Saint Paul, MN 55102

Minutes - Final Legislative Hearings

Marcia Moermond, Legislative Hearing Officer
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Thursday, June 14, 2012

10:00 AM

Room 330 City Hall & Court House

10:00 a.m. Hearings

Marcia Moermond, Legislative Hearing Officer, stated there are two appeals from SMRLS and two appeals from the Tenants Union for the property at 1205 and 1225 Westminster Avenue. She said she would start with a staff report to get baseline information on the conditions that lead to the action and then hear what the appellants are looking for in this hearing. She said her job is to consider the appeals and develop a recommendation for the City Council. Her focus will be primarily on whether the conditions listed in the orders exists and, if they do exist, whether they merit condemnation of the structures. If they do merit condemnation, whether the vacate date makes sense for the order. The public hearing before the City Council on these matters is scheduled for July 3, 2012 at 5:30 p.m.

Peter Brown, Attorney for the Tenants Union said he would like to renew his motion that he made the previous day to continue this hearing until June 21 so the data requests that have been submitted to the city can be received and adequately reviewed. They are part and parcel of the merits of their claim, he said. A response was provided by Ms. Moermond on June 13 with respect to the first part of the motion having to do with the continuance. The second part had to do with the recusal of the legislative hearing officer in making decisions in meetings to condemn the buildings and the appearance of not being objective is raised.

Ms. Moermond responded that this is not a court of law and making motions is not consistent with what is before her today. Regarding her presence or non-presence at a meeting, she said she is not a decision maker in the issuance of an order. Decision making lies solely with the Department of Safety and Inspections (DSI). She does not agree and would not recommend that there be a continuance of the hearing. She feels Mr. Brown's concerns can be covered today and additional information can be presented. She would like him to explain how he thinks the material that would be gathered in a data practices request would pertain to any of the things she just addressed. That would be something for the City Council to consider. Ms. Moermond reiterated that her job is to make recommendations and create a record for the City Council as they are the decision makers in this matter.

Ms. Moermond said she found both of the appeals to be very non-specific as to what they are looking for and she would like the appellants to narrow down what they are look for and why they are appealing. She asked DSI staff to walk through the orders that were issued and why at this time the department chose to condemn and order the structures vacated.

Leanna Shaff, Fire Supervisor, explained what lead to the condemnation process. They were made aware of the conditions of the buildings when a team of inspectors

was sent through the buildings in December 2011. Since that time and until the middle of May, nine inspections have been done. Numerous life safety, maintenance, and habitability deficiencies were found. In the middle of May, it became apparent that some of the issues of on-going life safety were not being taken care of. This included the balconies which have been condemned but continue to be used. There are fire doors and fire separation that put the tenants at risk. There are also fire alarm systems, fire extinguishers, exiting issues that all impact the safety of the tenants.

Ms. Moermond said DSI has been writing orders for many years on this property and it peaked when a complete fire certificate of occupancy inspection was conducted in late December. Ms. Moermond said it was based on those lists that a work plan was established with the receiver. Ms. Shaff said the receiver was appointed on January 13, 2012.

Ms. Moermond asked how the list they are looking at today differs from the list that was developed based on the December and January inspections.

Inspector Westenhofer responded that in December and January, they did not get full access to all the units and all the areas. February 3, 2012 was the first time they did get full access. The orders in December and on January 18 were not full inspections but only the areas they could get into. Since that time, they have been able to get into all the units and the common areas.

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Ms. Moermond said the timing of the condemnation order to vacate is consistent with when the receiver was dismissed. The letter from the current owner and management let tenants know that their leases would be terminated effective July 1, 2012. She asked what role that played in the decision to issue an order to vacate.

Supervisor Shaff said it did play a role. In order to get tenants' help with various social services or to qualify for emergency assistance, there needs to be a condemnation on the buildings. Deficiencies constituted a condemnable issue. The other piece was whether the owners or management were going to proceed with vacating the buildings as they had sent out their letters. A lot of people were going to be served with unlawful detainers (UD) which are almost impossible to get rid of and makes it more difficult for people to find a place to live. Also, with the tenants still there it is difficult to get repairs done.

Tovah Flygare, attorney with Southern Minnesota Regional Services (SMRLS) said SMRLS is representing several of the tenants at these properties. She asked that the city recognize the state laws and remedies that are available to the tenants. The remedies, which were to an extent triggered by the condemnation, include Tenant Remedies Act (TRA) or Emergency Tenant Remedies Act (ETRA). SMRLS would like the city to extend the condemnation vacate date to allow the tenants to pursue their rights under Minnesota law.

Ms. Moermond asked if an ETRA or TRA has been filed on behalf of their clients. Ms. Flygare said they have not. They have been talking with people and as of June 12 have started talking with Hanbery and Carney, the attorneys for the property management and new owner. SMRLS does not feel the proposals Hanbery will be

making today address the needs of all of the tenants. If they are allowed to have the time to bring Emergency Tenant Remedies Action, which they would expect to file early next week, and if they are not able to reach a satisfactory resolution with the new property owners, they have permission from the tenants and agreement from District Council 5 that District 5 would enter has a neighborhood plaintiff therefore allowing SMRLS to represent the buildings. They feel they would have the capability to represent the broad interests of the tenants. The only issue is with the remedies under the law, including the Emergency Tenants Action, as it takes time for full enforcement from the initial court order through compliance hearings. She asked for enough time to allow the legal process to take place and the tenants to exercise their rights.

In December 2011 and January 2012, Ms. Moermond said she heard appeals and there was a question asked of SMRLS if they would file a Tenant Remedy Action at that time. She spoke with Jerry Kluzny on this and he indicated that SMRLS would not be doing that because of the appointment of a receiver. She's hearing from staff that there is a consistent level of problems between December, January and the present. She did not see any action in the intervening months from SMRLS and is wondering what changed for them.

Ms. Flygare responded that in December when a receiver was appointed, the understanding was that they were progressing and the receiver was addressing the repair issues. SMRLS does not make life safety determinations but relies on the city for that. At that time, there was a system in place to address the repair issues. At this time, there is a condemnation and vacate order where an Emergency Tenant Remedies Action would allow a multitude of alternative remedies. One option could be that the new owners house the tenants in one of the properties while the other property is fully vacated and able to be fully repaired. They could also ask the court to order housing for the tenants for the terms of their lease. There are many other remedies available under the Emergency Tenant Remedies Act. It comes down to preventing homelessness on a wide scale.

Ms. Moermond asked Ms. Flygare if the life safety issues and code violation are real to her and if they merit the vacation of the buildings. Ms. Flygare responded that she feels the units are in a serious condition of disrepair. The June 1 order for a July 2 vacate cites hundreds of repairs. They would like time to have, if not the repairs addressed, the tenants allowed to address their emergency situation that is caused by the condemnation.

Lesley McMurray, Executive Director, Payne-Phalen District 5 Planning Council, said the District 5 Board has determined that they want to appeal the condemnation orders. They have concerns about health and safety in the neighborhood that tie into that issue. They are prepared to assist with an ETRA or TRA. She outlined what the District 5 Planning Council is and does and said in keeping with their mission, she is present to appeal the condemnation. The apartment complex has long been a concern of the neighborhood, she said. District 5 filed a TRA about 18 months ago and about 200 violations were corrected.

Ms. Moermond asked if an administrator was appointed in that case and if the corrections were effectuated under the administrator to which Ms. McMurray said "yes." Ms. McMurray said they have a concern why that did not happen with the receiver since corrections were made in the past. The community has a concern with why the current process did not get completed as they hoped it would.

Ms. Moermond asked why a TRA had not been filed within the last six months because in the past there wasn't a condemnation order to vacate but there were

significant repairs to be done when District 5 asked for an administrator to be appointed.

Ms. McMurray said the District 5 Board's position was that the buildings should be brought up to code and they were concerned about displacement of about 60 families in a tight rental market. They are aware that many people at the buildings may have vulnerable circumstances that could lead to displacement or homelessness. They know that the city and all parties involved appear to be in agreement which is why the matrix that prioritized life safety and hazards was created so there was an appropriate approach for DSI to address issues so people would not be displaced. District 5 was copied on a letter from Ricardo Cervantes, DSI, to the mayor and city council that described the progress that was being made. It was from reading a recent article in the Pioneer Press newspaper that they learned there was new ownership and people had received letters to vacate. They are interested in the appeal because of their concern that people have rights. The only way they see those concerns can be addressed is to provide the time and any other accommodations to allow people to pursue their rights under the law. A TRI and ETRA would be an appropriate means of doing it. They question why a better result was not achieved between January to present. She said the buildings are in grave disrepair but noted that the outside debris has been removed. District 5 would like to see the vacate order extended. Displacing people will not lead to improved health and safety in the neighborhood, McMurray said, and she feels these people need to be at the table.

With respect to Ms. McMurray's comments on the vulnerable populations at the Westminster properties, Ms. Flygare said they welcome any steps to meet the tenants' needs and the requirements of the law. They have concerns that the return of security deposits, etc. by the owner, linked to a vacate date, will not address the issue of homelessness for many of the tenants. There are language barrier issues with some of the tenants and SMRLS is not aware that the proposal which was offered to the tenants was translated into different languages so there may be tenants who do not know of this option.

With respect to the appellants that SMRLS listed in their appeal, Ms. Moermond asked what the individual appellants are looking for. Ms. Flygare said the three tenants listed want decent housing and their rights under the law met so they are asking for more time for this. She does not feel any of those listed would oppose moving if they can find new housing.

Ms. Moermond asked Peter Brown, attorney representing Minnesota Tenants Union, to talk about why he's appealing. He spoke in support of the request made by Ms. Flygare, on behalf of some tenants, and District 5's position. The Tenants Union and tenants at the properties have not been pleased with the rate of progress. This was part of their appeal on March 17, 2012. A decision was rendered on March 30 and he quoted from a letter of Ms. Moermond dated March 30, 2012: "However, I find sufficient progress is currently being made and on an acceptable time table." He said he has always suggested that the city had an opportunity and full legal capacity and authority to bring a TRA at any time but they chose not to. Why other parties did not bring one in is understandable.

Ms. Moermond said Vera Ashley with the Tenants Union was before the City Council and she did not object to what Ms. Moermond was telling the Council. Ms. Ashley's statements were consistent with Ms. Moermond's.

Mr. Brown said city officials, consistently through the receivership, indicated satisfaction with the progress that was being made as late as March 30, 2012. On

February 8, the receiver reported a conversation with Fire Inspector Sean Westenhofer and stated the city was comfortable with the receiver's progress. On March 16, the report indicates that in a conference call which including the receiver, Leanna Shaff, and Ricardo Cervantes they discussed the progress being made on the property. The city was pleased with the progress and there was no displeasure expressed. He said it seems to indicate that the fact that other parties have waited until "the thunderclap came out of the blue" and the condemnation orders on June 1, nothing should be held against them that they waited until that time. They were expecting, as everyone else was hearing from official voices, that things were coming along. It has always been said that DSI had the authority and capacity to bring forth a TRI but they didn't do that. This was brought to the attention of St. Paul officials by the Tenants Union at the March 17 hearing. The least that can be provided on behalf of the tenants is more time and a TRI.

Mr. Brown said there are many good tenants at the Westminster apartments and the appeal is on their behalf. Their lives will be disrupted by this order. They have received a letter from the attorney speaking on behalf of the owner and the property manager saying, "We agree and have always agreed that there are many good tenants at the rental properties." When the issue is approached, Mr. Brown said it's incumbent on everyone to understand that about the tenants which he feels seems to get lost in the discussion. He questioned when there is discussion in the city to condemn a property, what kinds of things are in the air with respect to the tenants' welfare. Mr. Brown distributed public materials about the properties and quoted from a May 22 Pioneer Press article. Because of information contained in the article, tenants sent a letter asking for a retraction which was denied.

At a recent meeting, subsequent to the placarding of the building and condemnation, there was a reiteration of statements by DSI staff and the councilmember for the area. He said it was an improper factor that was part and parcel of the understandings about what it was the officials were dealing with – Westminster.

Mr. Brown said it was stated that Ms. Shaff did not feel it was possible for the new owner to make the repairs with the tenants there. He asked her what repairs in the orders could not be done.

Ms. Shaff said she may have been misunderstood as it would be up to the owners and their decision making process. They have been working around tenants and are finding it difficult to make some repairs with tenants present. She said she is not in a position to make that decision.

Mr. Brown said it was also mentioned that among the other reasons for the condemnation is that it was necessary in order for the tenants to qualify for emergency assistance.

Ms. Shaff said sometimes a condemnation is required to qualify for some kinds of assistance. Mr. Brown asked what assistance is available. Ms. Shaff said in the past there have been programs through the county or through various other programs in order to get the Tenants Remedy Action.

Ms. Flygare said the Emergency Tenant Action can be brought in cases of emergencies involving lack of water utilities, etc. and other essential services or facilities.

Ms. Moermond said the House Calls program is through Ramsey County Public Health that assists people with relocation and cleaning up their properties. They also often act as facilitators with child and adult protection.

Mr. Brown asked Ms. Shaff if she was thinking of child protection, what was in the mind of the department. Ms. Shaff said it has been clear that they feel there are some services they could get more assistance with.

Mr. Brown said that Ms. Flygare indicated that what the qualifications were for the ETRA did not require a condemnation.

Ms. Flygare responded that in this situation, SMRLS was made aware of the condemnation and has been in meetings and received calls from tenants more often for the notice to vacate and the condemnation.

Mr. Brown asked if the May 8 order reflects the conditions that were known to exist on that date. Ms. Shaff responded "yes." Brown further asked what additional corrective orders were found to exist or needed to be dealt with in the June 1 order. Ms. Shaff responded that the condemnation order is the difference.

Brown asked what condition on the premises not identified in the May 8 order is identified in the June 1 order. Ms. Shaff said the orders are the same with the exception of the condemnation order. It says the issues are ongoing and have not been rectified.

The property was inspected again on May 16 and an order issued on May 18, Brown said. He asked what the difference is between that order and the June 1 order and what condition was found on June 1.

Ms. Moermond said there was a condemnation on June 1 so the question is what's different from May or January to June or why wasn't it condemned earlier and allowed to continue if the conditions merited condemnation at that time.

Mr. Brown said what he thinks more logically flows is that the conditions on May 8 didn't warrant condemnation, they didn't warrant condemnation on May 18, and that they didn't warrant condemnation on June 1. That is the position of the Tenants Union. They are all the same order with the difference being new ownership in May. On May 21, the new ownership wants to terminate the tenants and vacate the buildings as of June 30. The same conditions that didn't warrant condemning and removing people by the city in early May, suddenly warrants "kicking them out" by the new owners by June 30. This is not right, he said. The condemnation is unwarranted. There were 304 orders on May 8, basically the same on May 18 except for the condemnation order added with 306. That's for building 1225.

The orders for 1205, May 18 - 293 orders and no condemnation. June 1 - one more order and the addition is the condemnation order. It didn't warrant condemnation then and didn't warrant condemnation now.

On May 30, 10:30 am, a meeting was held in City Hall to which tenant representatives were not invited, Brown said. It's his understanding that a consensus was reached among decision makers that the building would be condemned. He asked Ms. Shaff if that was an accurate statement to which he replied, "yes." The building was placarded and the condemnation notice issued on June 1. It's their position that a decision to condemn should be based on conditions rather than considerations as there have been a number of considerations "infecting" the decision to condemn. Mr. Brown asked Ms. McMurray, who was present at the May 30 meeting, whether it's a fair statement that comfort was taken by those present upon hearing that condemnation would trigger social services.

Ms. McMurray said she was comforted by that and she did not know why the condemnation was considered a better alternative to other remedies that were discussed. People did express satisfaction that it would trigger social services. Mr. Brown reiterated his concerns about support for vacating the buildings and again referred to the recent article in the St. Paul Pioneer Press.

Donna Hanbery, attorney with Hanbery & Carney, P.A., representing Equimax, the new owners of the property, said everyone has great ideas about how to run the

property. Her client has money in the property and they have the responsibility for the property. They are here in support of the condemnation, she said. The new owner went in with the best of intentions hoping to continue to work with the existing residents and do a lot of work. Shortly into the experience at the property, her client made a business decision that they cannot do the magnitude of the work that needs to be done in a safe and timely manner with the funds that are available with the tenants present and a decision was made to vacate the buildings.

They believe there are 39 occupied units. Three have committed to other properties which leaves 36. They believe there are 13 units with children. When her client acquired the property and tried to figure out the business records, it was found there are only three residents who have leases that are more than month-to-month. Therefore, they had a legal right to give one calendar month notice and ask people to vacate. That decision was made after management "threw in the towel" and decided they could not work with an occupied property. It has nothing to do with the character of the residents but has everything to do with construction in dangerous places. They made a business decision that from a standpoint of liability and safety, they cannot do what needs to be done with a full building. It is not her client's job to take care of the tenants, she said. Their job is to run the property and take care of it. They exercised their rights under the lease to vacate the property. It was done without cohesion; they did not talk to the city about it. When doing construction, there are also issues with securing the property if it is occupied.

Ms. Hanbery said her job is to help her client and not end homelessness but they did take a hard look at the issue of what tenants could get in court if they pursued their rights. They tried to make an offer to the residents that would give them as much or more as they would probably get if they went to court. A lot of people have been living there without paying all or even part of the rent for some time. Anyone who paid their June rent will get that back and they will try to assist all tenants. Trying to do construction work with a partially occupied property delays them by two to three times the normal time frame and work cannot be done in a safe manner when people are there. They support what the city has done, Ms. Hanbery said, because they would like to take over the property July 1 and begin work. If there continues to be delays, there will be less money to put into the renovation. They will be filing unlawful detainers (UDs) on the first business day of July because they feel they need a vacated property for the business good of the client and the safety of the property. She agrees with the city's orders that this has gone on too long. As people leave, it's getting less and less safe.

Ms. Flygare said they are not interested in filing any needless court action if they can come to a resolution for the tenants. There are Minnesota Statutes that require certain things such as return of security deposits and that rent can't be collected when the property has been condemned. They are more than happy to work with the new owners through their counsel. Their offer still leaves concerns that the tenants' rights are not being fully met and they have not had the chance to their due process under Minnesota state laws.

Ms. Moermond asked if the condemnation order to vacate changes that. Ms. Flygare said two, if not three, of SMRLS' clients have leases that extend to September and January so there will be rights that will not be met under the current proposal. Ms. Hanbery asked Ms. Flygare to provide those to her as she does not have records for those tenants other than month-to-month leases.

Peter Brown said in this forum he has no quarrel with the owners. The issue is not what their plan is for the building; whether their use of the building and plans for the units should take precedence over the tenants. It's a question of if it's justified as a

matter of regulatory exercise of power. The owners are comfortable with the condemnation order and that shouldn't be the issue. Their goal of getting started on the work is aside. He said to let the landlord file UD's if it comes to that. The property status report he distributed shows that 14 leases were provided by the former owner but that is irrelevant. The real issue is the use of regulatory power and what's before the hearing officer at this time.

Ms. Moermond said she did not hear anyone wanting to make people homeless or continue bad housing conditions; she heard people defending rights. A very bad situation was inherited by everyone present from the previous owners. The City Council was fully in support of the appointment of a receiver in hopes that a receiver could effectuate faster repairs. In the fall, the court denied a motion by attorney Andrew Holly to have a receiver appointed. A receiver was appointed later which was a step in the right direction.

The Department of Safety and Inspections has had different inspectors over time. Ms. Moermond said. Two of them retired and the conditions were very bad at that time and she was surprised to learn that complete inspections had not been conducted for several years. She said she sympathized with the department not wanting to displace tenants and waiting to take actions based on that concern. She has met on-site with various people and she was present when the condemnation decision was discussed. That decision was in the hands of the director of DSI and his staff and does not lie with a committee or a group of people. This is time sensitive. If the conditions are as bad as she believes many of them are, they need to act in the interest of people's safety as quickly as possible and she is not going to ask for a different City Council public hearing date. She said she will not make a decision at this time but make one quickly and e-mail it to the interested parties.

Ms. Murray said as a person and a concerned resident of the neighborhood, the conditions that she saw on the previous Saturday and Sunday are things that could be remedied immediately. Tenants that she spoke with, including children, expressed to her that the conditions have been long standing but they are worse since the new property owner came on. She has a concern with this. Also, she has been told that maintenance of common areas have not been done at all.

Ms. Moermond stated that she can't believe with the unsafe state the balconies are in that doors remain open and there are children's things on the balconies. The doors need to be secured and she would like a commitment from everyone that the balconies not be used. People need to take steps to protect themselves and management needs to take steps to make sure that they've done everything they can.

*Adjourned at 12:07 p.m.
(mce)*

Orders To Vacate, Condemnations and Revocations

- 1** **RLH VO** Appeal of Southern Minnesota Regional Legal Services (SMRLS), on behalf
12-47 of several tenants, to a Notice of Condemnation and Order to Vacate at 1205
WESTMINSTER AVENUE.

Sponsors: Brendmoen

Forthcoming

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Ms. Moermond asked if an administrator was appointed in that case and if the corrections were effectuated under the administrator to which Ms. McMurray said "yes." Ms. McMurray said they have a concern why that did not happen with the receiver since corrections were made in the past. The community has a concern with why the current process did not get completed as they hoped it would.

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The property was inspected again on May 16 and an order issued on May 18, Brown said. He asked what the difference is between that order and the June 1 order and

what condition was found on June 1.

Ms. Moermond said there was a condemnation on June 1 so the question is what's different from May or January to June or why wasn't it condemned earlier and allowed to continue if the conditions merited condemnation at that time.

Mr. Brown said what he thinks more logically flows is that the conditions on May 8 didn't warrant condemnation, they didn't warrant condemnation on May 18, and that they didn't warrant condemnation on June 1. That is the position of the Tenants Union. They are all the same order with the difference being new ownership in May. On May 21, the new ownership wants to terminate the tenants and vacate the buildings as of June 30. The same conditions that didn't warrant condemning and removing people by the city in early May, suddenly warrants "kicking them out" by the new owners by June 30. This is not right, he said. The condemnation is unwarranted. There were 304 orders on May 8, basically the same on May 18 except for the condemnation order added with 306. That's for building 1225.

The orders for 1205, May 18 - 293 orders and no condemnation. June 1 - one more order and the addition is the condemnation order. It didn't warrant condemnation then and didn't warrant condemnation now.

On May 30, 10:30 am, a meeting was held in City Hall to which tenant representatives were not invited, Brown said. It's his understanding that a consensus was reached among decision makers that the building would be condemned. He asked Ms. Shaff if that was an accurate statement to which he replied, "yes." The building was placarded and the condemnation notice issued on June 1. It's their position that a decision to condemn should be based on conditions rather than considerations as there have been a number of considerations "infecting" the decision to condemn. Mr. Brown asked Ms. McMurray, who was present at the May 30 meeting, whether it's a fair statement that comfort was taken by those present upon hearing that condemnation would trigger social services.

Ms. McMurray said she was comforted by that and she did not know why the condemnation was considered a better alternative to other remedies that were discussed. People did express satisfaction that it would trigger social services. Mr. Brown reiterated his concerns about support for vacating the buildings and again referred to the recent article in the St. Paul Pioneer Press.

Donna Hanbery, attorney with Hanbery & Carney, P.A., representing Equimax, the new owners of the property, said everyone has great ideas about how to run the property. Her client has money in the property and they have the responsibility for the property. They are here in support of the condemnation, she said. The new owner went in with the best of intentions hoping to continue to work with the existing residents and do a lot of work. Shortly into the experience at the property, her client made a business decision that they cannot do the magnitude of the work that needs to be done in a safe and timely manner with the funds that are available with the tenants present and a decision was made to vacate the buildings.

They believe there are 39 occupied units. Three have committed to other properties which leaves 36. They believe there are 13 units with children. When her client acquired the property and tried to figure out the business records, it was found there are only three residents who have leases that are more than month-to-month. Therefore, they had a legal right to give one calendar month notice and ask people to vacate. That decision was made after management "threw in the towel" and decided they could not work with an occupied property. It has nothing to do with the character of the residents but has everything to do with construction in dangerous places. They

made a business decision that from a standpoint of liability and safety, they cannot do what needs to be done with a full building. It is not her client's job to take care of the tenants, she said. Their job is to run the property and take care of it. They exercised their rights under the lease to vacate the property. It was done without cohesion; they did not talk to the city about it. When doing construction, there are also issues with securing the property if it is occupied.

Ms. Hanbery said her job is to help her client and not end homelessness but they did take a hard look at the issue of what tenants could get in court if they pursued their rights. They tried to make an offer to the residents that would give them as much or more as they would probably get if they went to court. A lot of people have been living there without paying all or even part of the rent for some time. Anyone who paid their June rent will get that back and they will try to assist all tenants. Trying to do construction work with a partially occupied property delays them by two to three times the normal time frame and work cannot be done in a safe manner when people are there. They support what the city has done, Ms. Hanbery said, because they would like to take over the property July 1 and begin work. If there continues to be delays, there will be less money to put into the renovation. They will be filing unlawful detainers (UDs) on the first business day of July because they feel they need a vacated property for the business good of the client and the safety of the property. She agrees with the city's orders that this has gone on too long. As people leave, it's getting less and less safe.

Ms. Flygare said they are not interested in filing any needless court action if they can come to a resolution for the tenants. There are Minnesota Statutes that require certain things such as return of security deposits and that rent can't be collected when the property has been condemned. They are more than happy to work with the new owners through their counsel. Their offer still leaves concerns that the tenants' rights are not being fully met and they have not had the chance to their due process under Minnesota state laws.

Ms. Moermond asked if the condemnation order to vacate changes that. Ms. Flygare said two, if not three, of SMRLS' clients have leases that extend to September and January so there will be rights that will not be met under the current proposal. Ms. Hanbery asked Ms. Flygare to provide those to her as she does not have records for those tenants other than month-to-month leases.

Peter Brown said in this forum he has no quarrel with the owners. The issue is not what their plan is for the building; whether their use of the building and plans for the units should take precedence over the tenants. It's a question of if it's justified as a matter of regulatory exercise of power. The owners are comfortable with the condemnation order and that shouldn't be the issue. Their goal of getting started on the work is aside. He said to let the landlord file UD's if it comes to that. The property status report he distributed shows that 14 leases were provided by the former owner but that is irrelevant. The real issue is the use of regulatory power and what's before the hearing officer at this time.

Ms. Moermond said she did not hear anyone wanting to make people homeless or continue bad housing conditions; she heard people defending rights. A very bad situation was inherited by everyone present from the previous owners. The City Council was fully in support of the appointment of a receiver in hopes that a receiver could effectuate faster repairs. In the fall, the court denied a motion by attorney Andrew Holly to have a receiver appointed. A receiver was appointed later which was a step in the right direction.

The Department of Safety and Inspections has had different inspectors over time.

Ms. Moermond said. Two of them retired and the conditions were very bad at that time and she was surprised to learn that complete inspections had not been conducted for several years. She said she sympathized with the department not wanting to displace tenants and waiting to take actions based on that concern. She has met on-site with various people and she was present when the condemnation decision was discussed. That decision was in the hands of the director of DSI and his staff and does not lie with a committee or a group of people. This is time sensitive. If the conditions are as bad as she believes many of them are, they need to act in the interest of people's safety as quickly as possible and she is not going to ask for a different City Council public hearing date. She said she will not make a decision at this time but make one quickly and e-mail it to the interested parties.

Ms. Murray said as a person and a concerned resident of the neighborhood, the conditions that she saw on the previous Saturday and Sunday are things that could be remedied immediately. Tenants that she spoke with, including children, expressed to her that the conditions have been long standing but they are worse since the new property owner came on. She has a concern with this. Also, she has been told that maintenance of common areas have not been done at all.

Ms. Moermond stated that she can't believe with the unsafe state the balconies are in that doors remain open and there are children's things on the balconies. The doors need to be secured and she would like a commitment from everyone that the balconies not be used. People need to take steps to protect themselves and management needs to take steps to make sure that they've done everything they can.

*Adjourned at 12:07 p.m.
(mce)*

Referred to the City Council due back on 7/3/2012

**2 RLH VO
12-48**

Appeal of Southern Minnesota Regional Legal Services (SMRLS), on behalf of several tenants, to a Notice of Condemnation and Order to Vacate at 1225 WESTMINSTER STREET.

Sponsors: Brendmoen

Forthcoming

Marcia Moermond, Legislative Hearing Officer, stated there are two appeals from SMRLS and two appeals from the Tenants Union for the property at 1205 and 1225 Westminister Avenue. She said she would start with a staff report to get baseline information on the conditions that lead to the action and then hear what the appellants are looking for in this hearing. She said her job is to consider the appeals and develop a recommendation for the City Council. Her focus will be primarily on whether the conditions listed in the orders exists and, if they do exist, whether they merit condemnation of the structures. If they do merit condemnation, whether the vacate date makes sense for the order. The public hearing before the City Council on these matters is scheduled for July 3, 2012 at 5:30 p.m.

Peter Brown, Attorney for the Tenants Union said he would like to renew his motion that he made the previous day to continue this hearing until June 21 so the data requests that have been submitted to the city can be received and adequately reviewed. They are part and parcel of the merits of their claim, he said. A response was provided by Ms. Moermond on June 13 with respect to the first part of the motion having to do with the continuance. The second part had to do with the recusal of the

legislative hearing officer in making decisions in meetings to condemn the buildings and the appearance of not being objective is raised.

Ms. Moermond responded that this is not a court of law and making motions is not consistent with what is before her today. Regarding her presence or non-presence at a meeting, she said she is not a decision maker in the issuance of an order. Decision making lies solely with the Department of Safety and Inspections (DSI). She does not agree and would not recommend that there be a continuance of the hearing. She feels Mr. Brown's concerns can be covered today and additional information can be presented. She would like him to explain how he thinks the material that would be gathered in a data practices request would pertain to any of the things she just addressed. That would be something for the City Council to consider. Ms. Moermond reiterated that her job is to make recommendations and create a record for the City Council as they are the decision makers in this matter.

Ms. Moermond said she found both of the appeals to be very non-specific as to what they are looking for and she would like the appellants to narrow down what they are look for and why they are appealing. She asked DSI staff to walk through the orders that were issued and why at this time the department chose to condemn and order the structures vacated.

Leanna Shaff, Fire Supervisor, explained what lead to the condemnation process. They were made aware of the conditions of the buildings when a team of inspectors was sent through the buildings in December 2011. Since that time and until the middle of May, nine inspections have been done. Numerous life safety, maintenance, and habitability deficiencies were found. In the middle of May, it became apparent that some of the issues of on-going life safety were not being taken care of. This included the balconies which have been condemned but continue to be used. There are fire doors and fire separation that put the tenants at risk. There are also fire alarm systems, fire extinguishers, exiting issues that all impact the safety of the tenants.

Ms. Moermond said DSI has been writing orders for many years on this property and it peaked when a complete fire certificate of occupancy inspection was conducted in late December. Ms. Moermond said it was based on those lists that a work plan was established with the receiver. Ms. Shaff said the receiver was appointed on January 13, 2012.

Ms. Moermond asked how the list they are looking at today differs from the list that was developed based on the December and January inspections.

Inspector Westenhofer responded that in December and January, they did not get full access to all the units and all the areas. February 3, 2012 was the first time they did get full access. The orders in December and on January 18 were not full inspections but only the areas they could get into. Since that time, they have been able to get into all the units and the common areas.

Ms. Moermond asked how things have progressed from February to now. Inspector Westenhofer said a matrix was designed to show deficiencies throughout each building including life safety, habitability, and general maintenance or other issues. Each inspection depends on where they go and when they go. The same issues can come up again if things are once again broken after repairs were made.

Ms. Moermond said the timing of the condemnation order to vacate is consistent with when the receiver was dismissed. The letter from the current owner and management let tenants know that their leases would be terminated effective July 1,

2012. She asked what role that played in the decision to issue an order to vacate.

Supervisor Shaff said it did play a role. In order to get tenants' help with various social services or to qualify for emergency assistance, there needs to be a condemnation on the buildings. Deficiencies constituted a condemnable issue. The other piece was whether the owners or management were going to proceed with vacating the buildings as they had sent out their letters. A lot of people were going to be served with unlawful detainers (UD) which are almost impossible to get rid of and makes it more difficult for people to find a place to live. Also, with the tenants still there it is difficult to get repairs done.

Tovah Flygare, attorney with Southern Minnesota Regional Services (SMRLS) said SMRLS is representing several of the tenants at these properties. She asked that the city recognize the state laws and remedies that are available to the tenants. The remedies, which were to an extent triggered by the condemnation, include Tenant Remedies Act (TRA) or Emergency Tenant Remedies Act (ETRA). SMRLS would like the city to extend the condemnation vacate date to allow the tenants to pursue their rights under Minnesota law.

Ms. Moermond asked if an ETRA or TRA has been filed on behalf of their clients. Ms. Flygare said they have not. They have been talking with people and as of June 12 have started talking with Hanbery and Carney, the attorneys for the property management and new owner. SMRLS does not feel the proposals Hanbery will be making today address the needs of all of the tenants. If they are allowed to have the time to bring Emergency Tenant Remedies Action, which they would expect to file early next week, and if they are not able to reach a satisfactory resolution with the new property owners, they have permission from the tenants and agreement from District Council 5 that District 5 would enter has a neighborhood plaintiff therefore allowing SMRLS to represent the buildings. They feel they would have the capability to represent the broad interests of the tenants. The only issue is with the remedies under the law, including the Emergency Tenants Action, as it takes time for full enforcement from the initial court order through compliance hearings. She asked for enough time to allow the legal process to take place and the tenants to exercise their rights.

In December 2011 and January 2012, Ms. Moermond said she heard appeals and there was a question asked of SMRLS if they would file a Tenant Remedy Action at that time. She spoke with Jerry Kluzny on this and he indicated that SMRLS would not be doing that because of the appointment of a receiver. She's hearing from staff that there is a consistent level of problems between December, January and the present. She did not see any action in the intervening months from SMRLS and is wondering what changed for them.

Ms. Flygare responded that in December when a receiver was appointed, the understanding was that they were progressing and the receiver was addressing the repair issues. SMRLS does not make life safety determinations but relies on the city for that. At that time, there was a system in place to address the repair issues. At this time, there is a condemnation and vacate order where an Emergency Tenant Remedies Action would allow a multitude of alternative remedies. One option could be that the new owners house the tenants in one of the properties while the other property is fully vacated and able to be fully repaired. They could also ask the court to order housing for the tenants for the terms of their lease. There are many other remedies available under the Emergency Tenant Remedies Act. It comes down to preventing homelessness on a wide scale.

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to her and if they merit the vacation of the buildings. Ms. Flygare responded that she feels the units are in a serious condition of disrepair. The June 1 order for a July 2 vacate cites hundreds of repairs. They would like time to have, if not the repairs addressed, the tenants allowed to address their emergency situation that is caused by the condemnation.

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The orders for 1205, May 18 - 293 orders and no condemnation. June 1 - one more order and the addition is the condemnation order. It didn't warrant condemnation then and didn't warrant condemnation now.

On May 30, 10:30 am, a meeting was held in City Hall to which tenant representatives were not invited, Brown said. It's his understanding that a consensus was reached among decision makers that the building would be condemned. He asked Ms. Shaff if that was an accurate statement to which he replied, "yes." The building was placarded and the condemnation notice issued on June 1. It's their position that a decision to condemn should be based on conditions rather than considerations as there have been a number of considerations "infecting" the decision to condemn. Mr. Brown asked Ms. McMurray, who was present at the May 30 meeting, whether it's a fair statement that comfort was taken by those present upon hearing that condemnation would trigger social services.

Ms. McMurray said she was comforted by that and she did not know why the condemnation was considered a better alternative to other remedies that were discussed. People did express satisfaction that it would trigger social services. Mr. Brown reiterated his concerns about support for vacating the buildings and again referred to the recent article in the St. Paul Pioneer Press.

Donna Hanbery, attorney with Hanbery & Carney, P.A., representing Equimax, the new owners of the property, said everyone has great ideas about how to run the property. Her client has money in the property and they have the responsibility for the property. They are here in support of the condemnation, she said. The new owner went in with the best of intentions hoping to continue to work with the existing residents and do a lot of work. Shortly into the experience at the property, her client made a business decision that they cannot do the magnitude of the work that needs to be done in a safe and timely manner with the funds that are available with the tenants present and a decision was made to vacate the buildings.

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delays, there will be less money to put into the renovation. They will be filing unlawful detainers (UDs) on the first business day of July because they feel they need a vacated property for the business good of the client and the safety of the property. She agrees with the city's orders that this has gone on too long. As people leave, it's getting less and less safe.

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Ms. Murray said as a person and a concerned resident of the neighborhood, the conditions that she saw on the previous Saturday and Sunday are things that could be remedied immediately. Tenants that she spoke with, including children, expressed to her that the conditions have been long standing but they are worse since the new property owner came on. She has a concern with this. Also, she has

been told that maintenance of common areas have not been done at all.

Ms. Moermond stated that she can't believe with the unsafe state the balconies are in that doors remain open and there are children's things on the balconies. The doors need to be secured and she would like a commitment from everyone that the balconies not be used. People need to take steps to protect themselves and management needs to take steps to make sure that they've done everything they can.

Adjourned at 12:07 p.m.
(mce)

Referred to the City Council due back on 7/3/2012

**3 RLH VO
12-61**

Appeal of Peter W. Brown, on behalf of several tenants, to a Notice of Condemnation and Order to Vacate at 1205 WESTMINSTER STREET.

Sponsors: Brendmoen

Forthcoming

Marcia Moermond, Legislative Hearing Officer, stated there are two appeals from SMRLS and two appeals from the Tenants Union for the property at 1205 and 1225 Westminster Avenue. She said she would start with a staff report to get baseline information on the conditions that lead to the action and then hear what the appellants are looking for in this hearing. She said her job is to consider the appeals and develop a recommendation for the City Council. Her focus will be primarily on whether the conditions listed in the orders exists and, if they do exist, whether they merit condemnation of the structures. If they do merit condemnation, whether the vacate date makes sense for the order. The public hearing before the City Council on these matters is scheduled for July 3, 2012 at 5:30 p.m.

Peter Brown, Attorney for the Tenants Union said he would like to renew his motion that he made the previous day to continue this hearing until June 21 so the data requests that have been submitted to the city can be received and adequately reviewed. They are part and parcel of the merits of their claim, he said. A response was provided by Ms. Moermond on June 13 with respect to the first part of the motion having to do with the continuance. The second part had to do with the recusal of the legislative hearing officer in making decisions in meetings to condemn the buildings and the appearance of not being objective is raised.

Ms. Moermond responded that this is not a court of law and making motions is not consistent with what is before her today. Regarding her presence or non-presence at a meeting, she said she is not a decision maker in the issuance of an order. Decision making lies solely with the Department of Safety and Inspections (DSI). She does not agree and would not recommend that there be a continuance of the hearing. She feels Mr. Brown's concerns can be covered today and additional information can be presented. She would like him to explain how he thinks the material that would be gathered in a data practices request would pertain to any of the things she just addressed. That would be something for the City Council to consider. Ms. Moermond reiterated that her job is to make recommendations and create a record for the City Council as they are the decision makers in this matter.

Ms. Moermond said she found both of the appeals to be very non-specific as to what they are looking for and she would like the appellants to narrow down what they are look for and why they are appealing. She asked DSI staff to walk through the orders

that were issued and why at this time the department chose to condemn and order the structures vacated.

Leanna Shaff, Fire Supervisor, explained what lead to the condemnation process. They were made aware of the conditions of the buildings when a team of inspectors was sent through the buildings in December 2011. Since that time and until the middle of May, nine inspections have been done. Numerous life safety, maintenance, and habitability deficiencies were found. In the middle of May, it became apparent that some of the issues of on-going life safety were not being taken care of. This included the balconies which have been condemned but continue to be used. There are fire doors and fire separation that put the tenants at risk. There are also fire alarm systems, fire extinguishers, exiting issues that all impact the safety of the tenants.

Ms. Moermond said DSI has been writing orders for many years on this property and it peaked when a complete fire certificate of occupancy inspection was conducted in late December. Ms. Moermond said it was based on those lists that a work plan was established with the receiver. Ms. Shaff said the receiver was appointed on January 13, 2012.

Ms. Moermond asked how the list they are looking at today differs from the list that was developed based on the December and January inspections.

Inspector Westenhofer responded that in December and January, they did not get full access to all the units and all the areas. February 3, 2012 was the first time they did get full access. The orders in December and on January 18 were not full inspections but only the areas they could get into. Since that time, they have been able to get into all the units and the common areas.

Ms. Moermond asked how things have progressed from February to now. Inspector Westenhofer said a matrix was designed to show deficiencies throughout each building including life safety, habitability, and general maintenance or other issues. Each inspection depends on where they go and when they go. The same issues can come up again if things are once again broken after repairs were made.

Ms. Moermond said the timing of the condemnation order to vacate is consistent with when the receiver was dismissed. The letter from the current owner and management let tenants know that their leases would be terminated effective July 1, 2012. She asked what role that played in the decision to issue an order to vacate.

Supervisor Shaff said it did play a role. In order to get tenants' help with various social services or to qualify for emergency assistance, there needs to be a condemnation on the buildings. Deficiencies constituted a condemnable issue. The other piece was whether the owners or management were going to proceed with vacating the buildings as they had sent out their letters. A lot of people were going to be served with unlawful detainers (UD) which are almost impossible to get rid of and makes it more difficult for people to find a place to live. Also, with the tenants still there it is difficult to get repairs done.

Tovah Flygare, attorney with Southern Minnesota Regional Services (SMRLS) said SMRLS is representing several of the tenants at these properties. She asked that the city recognize the state laws and remedies that are available to the tenants. The remedies, which were to an extent triggered by the condemnation, include Tenant Remedies Act (TRA) or Emergency Tenant Remedies Act (ETRA). SMRLS would like the city to extend the condemnation vacate date to allow the tenants to pursue their rights under Minnesota law.

Ms. Moermond asked if an ETRA or TRA has been filed on behalf of their clients. Ms. Flygare said they have not. They have been talking with people and as of June 12 have started talking with Hanbery and Carney, the attorneys for the property management and new owner. SMRLS does not feel the proposals Hanbery will be making today address the needs of all of the tenants. If they are allowed to have the time to bring Emergency Tenant Remedies Action, which they would expect to file early next week, and if they are not able to reach a satisfactory resolution with the new property owners, they have permission from the tenants and agreement from District Council 5 that District 5 would enter has a neighborhood plaintiff therefore allowing SMRLS to represent the buildings. They feel they would have the capability to represent the broad interests of the tenants. The only issue is with the remedies under the law, including the Emergency Tenants Action, as it takes time for full enforcement from the initial court order through compliance hearings. She asked for enough time to allow the legal process to take place and the tenants to exercise their rights.

In December 2011 and January 2012, Ms. Moermond said she heard appeals and there was a question asked of SMRLS if they would file a Tenant Remedy Action at that time. She spoke with Jerry Kluzny on this and he indicated that SMRLS would not be doing that because of the appointment of a receiver. She's hearing from staff that there is a consistent level of problems between December, January and the present. She did not see any action in the intervening months from SMRLS and is wondering what changed for them.

Ms. Flygare responded that in December when a receiver was appointed, the understanding was that they were progressing and the receiver was addressing the repair issues. SMRLS does not make life safety determinations but relies on the city for that. At that time, there was a system in place to address the repair issues. At this time, there is a condemnation and vacate order where an Emergency Tenant Remedies Action would allow a multitude of alternative remedies. One option could be that the new owners house the tenants in one of the properties while the other property is fully vacated and able to be fully repaired. They could also ask the court to order housing for the tenants for the terms of their lease. There are many other remedies available under the Emergency Tenant Remedies Act. It comes down to preventing homelessness on a wide scale.

Ms. Moermond asked Ms. Flygare if the life safety issues and code violation are real to her and if they merit the vacation of the buildings. Ms. Flygare responded that she feels the units are in a serious condition of disrepair. The June 1 order for a July 2 vacate cites hundreds of repairs. They would like time to have, if not the repairs addressed, the tenants allowed to address their emergency situation that is caused by the condemnation.

Lesley McMurray, Executive Director, Payne-Phalen District 5 Planning Council, said the District 5 Board has determined that they want to appeal the condemnation orders. They have concerns about health and safety in the neighborhood that tie into that issue. They are prepared to assist with an ETRA or TRA. She outlined what the District 5 Planning Council is and does and said in keeping with their mission, she is present to appeal the condemnation. The apartment complex has long been a concern of the neighborhood, she said. District 5 filed a TRA about 18 months ago and about 200 violations were corrected.

Ms. Moermond asked if an administrator was appointed in that case and if the corrections were effectuated under the administrator to which Ms. McMurray said "yes." Ms. McMurray said they have a concern why that did not happen with the

receiver since corrections were made in the past. The community has a concern with why the current process did not get completed as they hoped it would.

Ms. Moermond asked why a TRA had not been filed within the last six months because in the past there wasn't a condemnation order to vacate but there were significant repairs to be done when District 5 asked for an administrator to be appointed.

Ms. McMurray said the District 5 Board's position was that the buildings should be brought up to code and they were concerned about displacement of about 60 families in a tight rental market. They are aware that many people at the buildings may have vulnerable circumstances that could lead to displacement or homelessness. They know that the city and all parties involved appear to be in agreement which is why the matrix that prioritized life safety and hazards was created so there was an appropriate approach for DSI to address issues so people would not be displaced. District 5 was copied on a letter from Ricardo Cervantes, DSI, to the mayor and city council that described the progress that was being made. It was from reading a recent article in the Pioneer Press newspaper that they learned there was new ownership and people had received letters to vacate. They are interested in the appeal because of their concern that people have rights. The only way they see those concerns can be addressed is to provide the time and any other accommodations to allow people to pursue their rights under the law. A TRI and ETRA would be an appropriate means of doing it. They question why a better result was not achieved between January to present. She said the buildings are in grave disrepair but noted that the outside debris has been removed. District 5 would like to see the vacate order extended. Displacing people will not lead to improved health and safety in the neighborhood, McMurray said, and she feels these people need to be at the table.

With respect to Ms. McMurray's comments on the vulnerable populations at the Westminster properties, Ms. Flygare said they welcome any steps to meet the tenants' needs and the requirements of the law. They have concerns that the return of security deposits, etc. by the owner, linked to a vacate date, will not address the issue of homelessness for many of the tenants. There are language barrier issues with some of the tenants and SMRLS is not aware that the proposal which was offered to the tenants was translated into different languages so there may be tenants who do not know of this option.

With respect to the appellants that SMRLS listed in their appeal, Ms. Moermond asked what the individual appellants are looking for. Ms. Flygare said the three tenants listed want decent housing and their rights under the law met so they are asking for more time for this. She does not feel any of those listed would oppose moving if they can find new housing.

Ms. Moermond asked Peter Brown, attorney representing Minnesota Tenants Union, to talk about why he's appealing. He spoke in support of the request made by Ms. Flygare, on behalf of some tenants, and District 5's position. The Tenants Union and tenants at the properties have not been pleased with the rate of progress. This was part of their appeal on March 17, 2012. A decision was rendered on March 30 and he quoted from a letter of Ms. Moermond dated March 30, 2012: "However, I find sufficient progress is currently being made and on an acceptable time table." He said he has always suggested that the city had an opportunity and full legal capacity and authority to bring a TRA at any time but they chose not to. Why other parties did not bring one in is understandable.

Ms. Moermond said Vera Ashley with the Tenants Union was before the City Council and she did not object to what Ms. Moermond was telling the Council. Ms. Ashley's statements were consistent with Ms. Moermond's.

Mr. Brown said city officials, consistently through the receivership, indicated satisfaction with the progress that was being made as late as March 30, 2012. On February 8, the receiver reported a conversation with Fire Inspector Sean Westenhofer and stated the city was comfortable with the receiver's progress. On March 16, the report indicates that in a conference call which including the receiver, Leanna Shaff, and Ricardo Cervantes they discussed the progress being made on the property. The city was pleased with the progress and there was no displeasure expressed. He said it seems to indicate that the fact that other parties have waited until "the thunderclap came out of the blue" and the condemnation orders on June 1, nothing should be held against them that they waited until that time. They were expecting, as everyone else was hearing from official voices, that things were coming along. It has always been said that DSI had the authority and capacity to bring forth a TRI but they didn't do that. This was brought to the attention of St. Paul officials by the Tenants Union at the March 17 hearing. The least that can be provided on behalf of the tenants is more time and a TRI.

Mr. Brown said there are many good tenants at the Westminster apartments and the appeal is on their behalf. Their lives will be disrupted by this order. They have received a letter from the attorney speaking on behalf of the owner and the property manager saying, "We agree and have always agreed that there are many good tenants at the rental properties." When the issue is approached, Mr. Brown said it's incumbent on everyone to understand that about the tenants which he feels seems to get lost in the discussion. He questioned when there is discussion in the city to condemn a property, what kinds of things are in the air with respect to the tenants' welfare. Mr. Brown distributed public materials about the properties and quoted from a May 22 Pioneer Press article. Because of information contained in the article, tenants sent a letter asking for a retraction which was denied.

At a recent meeting, subsequent to the placarding of the building and condemnation, there was a reiteration of statements by DSI staff and the councilmember for the area. He said it was an improper factor that was part and parcel of the understandings about what it was the officials were dealing with – Westminster.

Mr. Brown said it was stated that Ms. Shaff did not feel it was possible for the new owner to make the repairs with the tenants there. He asked her what repairs in the orders could not be done.

Ms. Shaff said she may have been misunderstood as it would be up to the owners and their decision making process. They have been working around tenants and are finding it difficult to make some repairs with tenants present. She said she is not in a position to make that decision.

Mr. Brown said it was also mentioned that among the other reasons for the condemnation is that it was necessary in order for the tenants to qualify for emergency assistance.

Ms. Shaff said sometimes a condemnation is required to qualify for some kinds of assistance. Mr. Brown asked what assistance is available. Ms. Shaff said in the past there have been programs through the county or through various other programs in order to get the Tenants Remedy Action.

Ms. Flygare said the Emergency Tenant Action can be brought in cases of emergencies involving lack of water utilities, etc. and other essential services or facilities.

Ms. Moermond said the House Calls program is through Ramsey County Public Health that assists people with relocation and cleaning up their properties. They also often act as facilitators with child and adult protection.

Mr. Brown asked Ms. Shaff if she was thinking of child protection, what was in the mind of the department. Ms. Shaff said it has been clear that they feel there are some services they could get more assistance with.

Mr. Brown said that Ms. Flygare indicated that what the qualifications were for the ETRA did not require a condemnation.

Ms. Flygare responded that in this situation, SMRLS was made aware of the condemnation and has been in meetings and received calls from tenants more often for the notice to vacate and the condemnation.

Mr. Brown asked if the May 8 order reflects the conditions that were known to exist on that date. Ms. Shaff responded "yes." Brown further asked what additional corrective orders were found to exist or needed to be dealt with in the June 1 order. Ms. Shaff responded that the condemnation order is the difference.

Brown asked what condition on the premises not identified in the May 8 order is identified in the June 1 order. Ms. Shaff said the orders are the same with the exception of the condemnation order. It says the issues are ongoing and have not been rectified.

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12-50**

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Sponsors: Brendmoen

Forthcoming

Marcia Moermond, Legislative Hearing Officer, stated there are two appeals from SMRLS and two appeals from the Tenants Union for the property at 1205 and 1225 Westminster Avenue. She said she would start with a staff report to get baseline information on the conditions that lead to the action and then hear what the appellants are looking for in this hearing. She said her job is to consider the appeals and develop a recommendation for the City Council. Her focus will be primarily on whether the conditions listed in the orders exists and, if they do exist, whether they merit condemnation of the structures. If they do merit condemnation, whether the vacate date makes sense for the order. The public hearing before the City Council on these matters is scheduled for July 3, 2012 at 5:30 p.m.

Peter Brown, Attorney for the Tenants Union said he would like to renew his motion that he made the previous day to continue this hearing until June 21 so the data requests that have been submitted to the city can be received and adequately reviewed. They are part and parcel of the merits of their claim, he said. A response was provided by Ms. Moermond on June 13 with respect to the first part of the motion having to do with the continuance. The second part had to do with the recusal of the legislative hearing officer in making decisions in meetings to condemn the buildings and the appearance of not being objective is raised.

Ms. Moermond responded that this is not a court of law and making motions is not consistent with what is before her today. Regarding her presence or non-presence at a meeting, she said she is not a decision maker in the issuance of an order. Decision making lies solely with the Department of Safety and Inspections (DSI). She does not agree and would not recommend that there be a continuance of the hearing. She feels Mr. Brown's concerns can be covered today and additional information can be presented. She would like him to explain how he thinks the material that would be gathered in a data practices request would pertain to any of the things she just addressed. That would be something for the City Council to consider. Ms. Moermond reiterated that her job is to make recommendations and create a record for the City Council as they are the decision makers in this matter.

Ms. Moermond said she found both of the appeals to be very non-specific as to what they are looking for and she would like the appellants to narrow down what they are look for and why they are appealing. She asked DSI staff to walk through the orders that were issued and why at this time the department chose to condemn and order the structures vacated.

Leanna Shaff, Fire Supervisor, explained what lead to the condemnation process. They were made aware of the conditions of the buildings when a team of inspectors was sent through the buildings in December 2011. Since that time and until the middle of May, nine inspections have been done. Numerous life safety, maintenance, and habitability deficiencies were found. In the middle of May, it became apparent that some of the issues of on-going life safety were not being taken care of. This included the balconies which have been condemned but continue to be used. There are fire doors and fire separation that put the tenants at risk. There are also fire alarm systems, fire extinguishers, exiting issues that all impact the safety of the tenants.

Ms. Moermond said DSI has been writing orders for many years on this property and it peaked when a complete fire certificate of occupancy inspection was conducted in late December. Ms. Moermond said it was based on those lists that a work plan was established with the receiver. Ms. Shaff said the receiver was appointed on January 13, 2012.

Ms. Moermond asked how the list they are looking at today differs from the list that was developed based on the December and January inspections.

Inspector Westenhofer responded that in December and January, they did not get full access to all the units and all the areas. February 3, 2012 was the first time they did get full access. The orders in December and on January 18 were not full inspections but only the areas they could get into. Since that time, they have been able to get into all the units and the common areas.

Ms. Moermond asked how things have progressed from February to now. Inspector Westenhofer said a matrix was designed to show deficiencies throughout each building including life safety, habitability, and general maintenance or other issues. Each inspection depends on where they go and when they go. The same issues can come up again if things are once again broken after repairs were made.

Ms. Moermond said the timing of the condemnation order to vacate is consistent with when the receiver was dismissed. The letter from the current owner and management let tenants know that their leases would be terminated effective July 1, 2012. She asked what role that played in the decision to issue an order to vacate.

Supervisor Shaff said it did play a role. In order to get tenants' help with various social services or to qualify for emergency assistance, there needs to be a condemnation on the buildings. Deficiencies constituted a condemnable issue. The other piece was whether the owners or management were going to proceed with vacating the buildings as they had sent out their letters. A lot of people were going to be served with unlawful detainers (UD) which are almost impossible to get rid of and makes it more difficult for people to find a place to live. Also, with the tenants still there it is difficult to get repairs done.

Tovah Flygare, attorney with Southern Minnesota Regional Services (SMRLS) said SMRLS is representing several of the tenants at these properties. She asked that the city recognize the state laws and remedies that are available to the tenants. The remedies, which were to an extent triggered by the condemnation, include Tenant Remedies Act (TRA) or Emergency Tenant Remedies Act (ETRA). SMRLS would like the city to extend the condemnation vacate date to allow the tenants to pursue their rights under Minnesota law.

Ms. Moermond asked if an ETRA or TRA has been filed on behalf of their clients. Ms. Flygare said they have not. They have been talking with people and as of June 12 have started talking with Hanbery and Carney, the attorneys for the property management and new owner. SMRLS does not feel the proposals Hanbery will be making today address the needs of all of the tenants. If they are allowed to have the time to bring Emergency Tenant Remedies Action, which they would expect to file early next week, and if they are not able to reach a satisfactory resolution with the new property owners, they have permission from the tenants and agreement from District Council 5 that District 5 would enter has a neighborhood plaintiff therefore allowing SMRLS to represent the buildings. They feel they would have the capability to represent the broad interests of the tenants. The only issue is with the remedies under the law, including the Emergency Tenants Action, as it takes time for full enforcement from the initial court order through compliance hearings. She asked for enough time to allow the legal process to take place and the tenants to exercise their rights.

In December 2011 and January 2012, Ms. Moermond said she heard appeals and there was a question asked of SMRLS if they would file a Tenant Remedy Action at

that time. She spoke with Jerry Kluzny on this and he indicated that SMRLS would not be doing that because of the appointment of a receiver. She's hearing from staff that there is a consistent level of problems between December, January and the present. She did not see any action in the intervening months from SMRLS and is wondering what changed for them.

Ms. Flygare responded that in December when a receiver was appointed, the understanding was that they were progressing and the receiver was addressing the repair issues. SMRLS does not make life safety determinations but relies on the city for that. At that time, there was a system in place to address the repair issues. At this time, there is a condemnation and vacate order where an Emergency Tenant Remedies Action would allow a multitude of alternative remedies. One option could be that the new owners house the tenants in one of the properties while the other property is fully vacated and able to be fully repaired. They could also ask the court to order housing for the tenants for the terms of their lease. There are many other remedies available under the Emergency Tenant Remedies Act. It comes down to preventing homelessness on a wide scale.

Ms. Moermond asked Ms. Flygare if the life safety issues and code violation are real to her and if they merit the vacation of the buildings. Ms. Flygare responded that she feels the units are in a serious condition of disrepair. The June 1 order for a July 2 vacate cites hundreds of repairs. They would like time to have, if not the repairs addressed, the tenants allowed to address their emergency situation that is caused by the condemnation.

Lesley McMurray, Executive Director, Payne-Phalen District 5 Planning Council, said the District 5 Board has determined that they want to appeal the condemnation orders. They have concerns about health and safety in the neighborhood that tie into that issue. They are prepared to assist with an ETRA or TRA. She outlined that the District 5 Planning Council is and does and said in keeping with their mission, she is present to appeal the condemnation. The apartment complex has long been a concern of the neighborhood, she said. District 5 filed a TRA about 18 months ago and about 200 violations were corrected.

Ms. Moermond asked if an administrator was appointed in that case and if the corrections were effectuated under the administrator to which Ms. McMurray said "yes." Ms. McMurray said they have a concern why that did not happen with the receiver since corrections were made in the past. The community has a concern with why the current process did not get completed as they hoped it would.

Ms. Moermond asked why a TRA had not been filed within the last six months because in the past there wasn't a condemnation order to vacate but there were significant repairs to be done when District 5 asked for an administrator to be appointed.

Ms. McMurray said the District 5 Board's position was that the buildings should be brought up to code and they were concerned about displacement of about 60 families in a tight rental market. They are aware that many people at the buildings may have vulnerable circumstances that could lead to displacement or homelessness. They know that the city and all parties involved appear to be in agreement which is why the matrix that prioritized life safety and hazards was created so there was an appropriate approach for DSI to address issues so people would not be displaced. District 5 was copied on a letter from Ricardo Cervantes, DSI, to the mayor and city council that described the progress that was being made. It was from reading a recent article in the Pioneer Press newspaper that they learned there was new ownership and people had received letters to vacate. They are interested in the

appeal because of their concern that people have rights. The only way they see those concerns can be addressed is to provide the time and any other accommodations to allow people to pursue their rights under the law. A TRI and ETRA would be an appropriate means of doing it. They question why a better result was not achieved between January to present. She said the buildings are in grave disrepair but noted that the outside debris has been removed. District 5 would like to see the vacate order extended. Displacing people will not lead to improved health and safety in the neighborhood, McMurray said, and she feels these people need to be at the table.

With respect to Ms. McMurray's comments on the vulnerable populations at the Westminster properties, Ms. Flygare said they welcome any steps to meet the tenants' needs and the requirements of the law. They have concerns that the return of security deposits, etc. by the owner, linked to a vacate date, will not address the issue of homelessness for many of the tenants. There are language barrier issues with some of the tenants and SMRLS is not aware that the proposal which was offered to the tenants was translated into different languages so there may be tenants who do not know of this option.

With respect to the appellants that SMRLS listed in their appeal, Ms. Moermond asked what the individual appellants are looking for. Ms. Flygare said the three tenants listed want decent housing and their rights under the law met so they are asking for more time for this. She does not feel any of those listed would oppose moving if they can find new housing.

Ms. Moermond asked Peter Brown, attorney representing Minnesota Tenants Union, to talk about why he's appealing. He spoke in support of the request made by Ms. Flygare, on behalf of some tenants, and District 5's position. The Tenants Union and tenants at the properties have not been pleased with the rate of progress. This was part of their appeal on March 17, 2012. A decision was rendered on March 30 and he quoted from a letter of Ms. Moermond dated March 30, 2012: "However, I find sufficient progress is currently being made and on an acceptable time table." He said he has always suggested that the city had an opportunity and full legal capacity and authority to bring a TRA at any time but they chose not to. Why other parties did not bring one in is understandable.

Ms. Moermond said Vera Ashley with the Tenants Union was before the City Council and she did not object to what Ms. Moermond was telling the Council. Ms. Ashley's statements were consistent with Ms. Moermond's.

Mr. Brown said city officials, consistently through the receivership, indicated satisfaction with the progress that was being made as late as March 30, 2012. On February 8, the receiver reported a conversation with Fire Inspector Sean Westenhofer and stated the city was comfortable with the receiver's progress. On March 16, the report indicates that in a conference call which including the receiver, Leanna Shaff, and Ricardo Cervantes they discussed the progress being made on the property. The city was pleased with the progress and there was no displeasure expressed. He said it seems to indicate that the fact that other parties have waited until "the thunderclap came out of the blue" and the condemnation orders on June 1, nothing should be held against them that they waited until that time. They were expecting, as everyone else was hearing from official voices, that things were coming along. It has always been said that DSI had the authority and capacity to bring forth a TRI but they didn't do that. This was brought to the attention of St. Paul officials by the Tenants Union at the March 17 hearing. The least that can be provided on behalf of the tenants is more time and a TRI.

Mr. Brown said there are many good tenants at the Westminster apartments and the

appeal is on their behalf. Their lives will be disrupted by this order. They have received a letter from the attorney speaking on behalf of the owner and the property manager saying, "We agree and have always agreed that there are many good tenants at the rental properties." When the issue is approached, Mr. Brown said it's incumbent on everyone to understand that about the tenants which he feels seems to get lost in the discussion. He questioned when there is discussion in the city to condemn a property, what kinds of things are in the air with respect to the tenants' welfare. Mr. Brown distributed public materials about the properties and quoted from a May 22 Pioneer Press article. Because of information contained in the article, tenants sent a letter asking for a retraction which was denied.

At a recent meeting, subsequent to the placarding of the building and condemnation, there was a reiteration of statements by DSI staff and the councilmember for the area. He said it was an improper factor that was part and parcel of the understandings about what it was the officials were dealing with – Westminster. Mr. Brown said it was stated that Ms. Shaff did not feel it was possible for the new owner to make the repairs with the tenants there. He asked her what repairs in the orders could not be done.

Ms. Shaff said she may have been misunderstood as it would be up to the owners and their decision making process. They have been working around tenants and are finding it difficult to make some repairs with tenants present. She said she is not in a position to make that decision.

Mr. Brown said it was also mentioned that among the other reasons for the condemnation is that it was necessary in order for the tenants to qualify for emergency assistance.

Ms. Shaff said sometimes a condemnation is required to qualify for some kinds of assistance. Mr. Brown asked what assistance is available. Ms. Shaff said in the past there have been programs through the county or through various other programs in order to get the Tenants Remedy Action.

Ms. Flygare said the Emergency Tenant Action can be brought in cases of emergencies involving lack of water utilities, etc. and other essential services or facilities.

Ms. Moermond said the House Calls program is through Ramsey County Public Health that assists people with relocation and cleaning up their properties. They also often act as facilitators with child and adult protection.

Mr. Brown asked Ms. Shaff if she was thinking of child protection, what was in the mind of the department. Ms. Shaff said it has been clear that they feel there are some services they could get more assistance with.

Mr. Brown said that Ms. Flygare indicated that what the qualifications were for the ETRA did not require a condemnation.

Ms. Flygare responded that in this situation, SMRLS was made aware of the condemnation and has been in meetings and received calls from tenants more often for the notice to vacate and the condemnation.

Mr. Brown asked if the May 8 order reflects the conditions that were known to exist on that date. Ms. Shaff responded "yes." Brown further asked what additional corrective orders were found to exist or needed to be dealt with in the June 1 order. Ms. Shaff responded that the condemnation order is the difference.

Brown asked what condition on the premises not identified in the May 8 order is identified in the June 1 order. Ms. Shaff said the orders are the same with the exception of the condemnation order. It says the issues are ongoing and have not been rectified.

The property was inspected again on May 16 and an order issued on May 18, Brown said. He asked what the difference is between that order and the June 1 order and what condition was found on June 1.

Ms. Moermond said there was a condemnation on June 1 so the question is what's different from May or January to June or why wasn't it condemned earlier and allowed to continue if the conditions merited condemnation at that time.

Mr. Brown said what he thinks more logically flows is that the conditions on May 8 didn't warrant condemnation, they didn't warrant condemnation on May 18, and that they didn't warrant condemnation on June 1. That is the position of the Tenants Union. They are all the same order with the difference being new ownership in May. On May 21, the new ownership wants to terminate the tenants and vacate the buildings as of June 30. The same conditions that didn't warrant condemning and removing people by the city in early May, suddenly warrants "kicking them out" by the new owners by June 30. This is not right, he said. The condemnation is unwarranted. There were 304 orders on May 8, basically the same on May 18 except for the condemnation order added with 306. That's for building 1225.

The orders for 1205, May 18 - 293 orders and no condemnation. June 1 - one more order and the addition is the condemnation order. It didn't warrant condemnation then and didn't warrant condemnation now.

On May 30, 10:30 am, a meeting was held in City Hall to which tenant representatives were not invited, Brown said. It's his understanding that a consensus was reached among decision makers that the building would be condemned. He asked Ms. Shaff if that was an accurate statement to which he replied, "yes." The building was placarded and the condemnation notice issued on June 1. It's their position that a decision to condemn should be based on conditions rather than considerations as there have been a number of considerations "infecting" the decision to condemn. Mr. Brown asked Ms. McMurray, who was present at the May 30 meeting, whether it's a fair statement that comfort was taken by those present upon hearing that condemnation would trigger social services.

Ms. McMurray said she was comforted by that and she did not know why the condemnation was considered a better alternative to other remedies that were discussed. People did express satisfaction that it would trigger social services. Mr. Brown reiterated his concerns about support for vacating the buildings and again referred to the recent article in the St. Paul Pioneer Press.

Donna Hanbery, attorney with Hanbery & Carney, P.A., representing Equimax, the new owners of the property, said everyone has great ideas about how to run the property. Her client has money in the property and they have the responsibility for the property. They are here in support of the condemnation, she said. The new owner went in with the best of intentions hoping to continue to work with the existing residents and do a lot of work. Shortly into the experience at the property, her client made a business decision that they cannot do the magnitude of the work that needs to be done in a safe and timely manner with the funds that are available with the tenants present and a decision was made to vacate the buildings.

They believe there are 39 occupied units. Three have committed to other properties which leaves 36. They believe there are 13 units with children. When her client acquired the property and tried to figure out the business records, it was found there are only three residents who have leases that are more than month-to-month. Therefore, they had a legal right to give one calendar month notice and ask people to vacate. That decision was made after management "threw in the towel" and decided

they could not work with an occupied property. It has nothing to do with the character of the residents but has everything to do with construction in dangerous places. They made a business decision that from a standpoint of liability and safety, they cannot do what needs to be done with a full building. It is not her client's job to take care of the tenants, she said. Their job is to run the property and take care of it. They exercised their rights under the lease to vacate the property. It was done without cohesion; they did not talk to the city about it. When doing construction, there are also issues with securing the property if it is occupied.

Ms. Hanbery said her job is to help her client and not end homelessness but they did take a hard look at the issue of what tenants could get in court if they pursued their rights. They tried to make an offer to the residents that would give them as much or more as they would probably get if they went to court. A lot of people have been living there without paying all or even part of the rent for some time. Anyone who paid their June rent will get that back and they will try to assist all tenants. Trying to do construction work with a partially occupied property delays them by two to three times the normal time frame and work cannot be done in a safe manner when people are there. They support what the city has done, Ms. Hanbery said, because they would like to take over the property July 1 and begin work. If there continues to be delays, there will be less money to put into the renovation. They will be filing unlawful detainers (UDs) on the first business day of July because they feel they need a vacated property for the business good of the client and the safety of the property. She agrees with the city's orders that this has gone on too long. As people leave, it's getting less and less safe.

Ms. Flygare said they are not interested in filing any needless court action if they can come to a resolution for the tenants. There are Minnesota Statutes that require certain things such as return of security deposits and that rent can't be collected when the property has been condemned. They are more than happy to work with the new owners through their counsel. Their offer still leaves concerns that the tenants' rights are not being fully met and they have not had the chance to their due process under Minnesota state laws.

Ms. Moermond asked if the condemnation order to vacate changes that. Ms. Flygare said two, if not three, of SMRLS' clients have leases that extend to September and January so there will be rights that will not be met under the current proposal. Ms. Hanbery asked Ms. Flygare to provide those to her as she does not have records for those tenants other than month-to-month leases.

Peter Brown said in this forum he has no quarrel with the owners. The issue is not what their plan is for the building; whether their use of the building and plans for the units should take precedence over the tenants. It's a question of if it's justified as a matter of regulatory exercise of power. The owners are comfortable with the condemnation order and that shouldn't be the issue. Their goal of getting started on the work is aside. He said to let the landlord file UD's if it comes to that. The property status report he distributed shows that 14 leases were provided by the former owner but that is irrelevant. The real issue is the use of regulatory power and what's before the hearing officer at this time.

Ms. Moermond said she did not hear anyone wanting to make people homeless or continue bad housing conditions; she heard people defending rights. A very bad situation was inherited by everyone present from the previous owners. The City Council was fully in support of the appointment of a receiver in hopes that a receiver could effectuate faster repairs. In the fall, the court denied a motion by attorney Andrew Holly to have a receiver appointed. A receiver was appointed later which was a step in the right direction.

The Department of Safety and Inspections has had different inspectors over time. Ms. Moermond said. Two of them retired and the conditions were very bad at that time and she was surprised to learn that complete inspections had not been conducted for several years. She said she sympathized with the department not wanting to displace tenants and waiting to take actions based on that concern. She has met on-site with various people and she was present when the condemnation decision was discussed. That decision was in the hands of the director of DSI and his staff and does not lie with a committee or a group of people. This is time sensitive. If the conditions are as bad as she believes many of them are, they need to act in the interest of people's safety as quickly as possible and she is not going to ask for a different City Council public hearing date. She said she will not make a decision at this time but make one quickly and e-mail it to the interested parties.

Ms. Murray said as a person and a concerned resident of the neighborhood, the conditions that she saw on the previous Saturday and Sunday are things that could be remedied immediately. Tenants that she spoke with, including children, expressed to her that the conditions have been long standing but they are worse since the new property owner came on. She has a concern with this. Also, she has been told that maintenance of common areas have not been done at all.

Ms. Moermond stated that she can't believe with the unsafe state the balconies are in that doors remain open and there are children's things on the balconies. The doors need to be secured and she would like a commitment from everyone that the balconies not be used. People need to take steps to protect themselves and management needs to take steps to make sure that they've done everything they can.

*Adjourned at 12:07 p.m.
(mce)*

Referred to the City Council due back on 7/3/2012