Concluding Comments
Appeal by Twelve Tenants
DSI Orders Dated February 23, 2012
Re: 1205 and 1225 Westminster

I. The Decks

The decks on the two buildings that were condemned in the Orders issued February 23, 2012 were constructed at the same time the entire building was constructed and have been serving as a part of the rented premises since then, a period of over 30 years. Prior to February 23, 2012, not one of these decks had been condemned or deemed condemnable due to the design flaw now cited by the Department at the hearing as warranting condemnation of all the decks. In addition, there is nothing in the record to indicate that the asserted design flaw has resulted in any breakage or cracking or stress signs in the supporting structure resulting from the asserted design flaw. The history of continued use over so many years, together with the lack of evidence of any damage to the decks due to the asserted design flaw, demonstrates that the design flaw cited by the Department employee did not and does not present an imminent threat to tenant safety and does not justify condemnation of the decks.

At the hearing, it is my recollection that the Department witness testified that a senior structural engineer employed by the Department had inspected the decks and recommended in an e-mail received on February 14 that the decks be condemned. When it was asked whether the e-mail was in the record, the response was that it was not, but would be supplied. The Department did not introduce the e-mail at the hearing. Subsequent review of the e-mail , however, shows that the Department employee did not, in fact recommend that the decks be condemned. Nor did he say that the decks posed an imminent threat to the life and safety of anyone. Instead, he reported that the joists are laying flat, rather than in an "approved, upright position." He stated his conclusion that the joists were "not adequate to support the loads of the deck" but did not recommend, as reported at the hearing that this condition posed an imminent threat to anyone or warranted condemnation. **A copy of the e-mail in question is attached**.

Note that we are not questioning the veracity of the Department witness. Testifying to what an e-mail says without that document being present as a guide often can lead to an inadvertent misstatement. We simply note what that the e-mail does not say what it was represented to say and understood to say at the hearing, i.e., that condemnation was the structural engineer's recommendation,

It is further telling that after receiving this e-mail, the Department did not immediately issue an order condemning the decks, did not warn or take other steps to prevent tenants from stepping onto the decks, and (when inspectors re-inspected the premises on February 17did not inform tenants that the decks posed an imminent threat to their safety, and did not upgrade its "Benchmark" regarding the decks beyond the requirement to "submit a Work Plan." Instead, on

February 17, 2012, the Department, three days after receiving the e-mail simply updated its "Benchmarks" document by adding the note: "Not Completed" after the benchmark requiring a "work plan" regarding the decks and did not issue any Order regarding the buildings for another 6 days (February 23, 2012), nine days after receiving the structural engineer's e-mail which the Department now relies on as justifying its February 23, 2012 Order condemning the decks.

We do not conclude that this series of events results from the Department employees not taking timely action to prevent potential harm to tenants due to the design flaw cited in the February 14 e-mail. Instead, we suggest that in this case the actual trigger for the condemnation of the decks was because the Receiver did not meet the established Benchmark for the decks, i.e. had not submitted a Work Plan for the decks as required in the "Benchmarks" documents. (Attachments B and D to the tenants'document entitled "Timeline to Condemnation of the Decks", which were submitted at the hearing.)

This conclusion, that the Receiver's failure to supply a "Work Plan" within the time set in the "Benchmarks" document and not because the decks posed an imminent threat to tenant safety, is confirmed by the fact that the Department clarified at the hearing that the action of bolting the glass doors to the deck shut and placement of "Condemned" signs on the glass doors was taken unilaterally by the Management Company and was not urged or sanctioned by the Department.

We agree that there should be some consequence for failure to meet a Benchmark, but when the benchmark in question is to provide a "Work Plan", consequence for non-production should not be condemnation of the area that was to be the subject of the required Work Plan. This seems obvious, since if a Work Plan (not correction of whatever deficiency the Work Plan had addressed) had been submitted , no condemnation Order would have issued.

Recommendation: As a consequence, we respectfully request that the Order condemning the decks be amended to take more appropriate, reasonable escalating steps to secure correction of any deficiencies noted by Department inspectors.

II. Extermination of the Bedbugs and Correction of Livability Issues

Our presentation of the public record documenting numerous DSI inspections and re-inspections of the buildings over the past year was to indicate the long-standing notice DSI has had about the bedbug problem and to also indicate the notice Wells Fargo was on about the scope of the bedbug problem in the properties for which it sought appointment of a receiver to, supposedly, address those conditions.

As a consequence of the DSI and Wells Fargo's notice of this problem as well as the Court order directing Wells Fargo to provide the receiver with money adequate to defray the buildings'

operating expenses, DSI's acceptance of the Receiver's explanation that he was "waiting on …funding" before beginning to comply with repeated orders to exterminate the bedbugs was unreasonable. The record fully reflects that DSI was comfortable with the Receiver's on-going non-compliance with the Department's repeated orders to exterminate the bedbugs. This comfort level was expressed at the highest level within DSI as recently as March 2, 2012, nearly seven weeks after Wells Fargo's receiver was appointed on January 13, 2012 to take operational control of the buildings. See attached article **"Wells Fargo is target of protests from residents of bedbug-infested St. Paul apartments."** in which DSI Executive Director is quoted as follows:

> "From my perspective, I believe we are seeing progress there," Cervantes said.
>
> His department has urged the receiver to prioritize health-safety issues, such as heating and electricity, without disregarding basic maintenance concerns.
>
> Cash, however, has been a problem. The receiver turned to the mortgage lender, Wells Fargo, for about $35,000 to make the repairs. About $27,000 was eventually released, but not as quickly as anyone had hoped.
>
> "As it was explained to me, I understood there was no money available for repairs when the receiver took control of the property," Cervantes said. "The accounts were kind of dry. First, there needed to be some money to get some of this work done....As I understand it from our initial conversations with the receiver, that's about a six- to eight-week process."

See full article at http://www.twincities.com/stpaul/ci_20088604?IADID=Search-www.twincities.com-www.twincities.com

Please note, therefore, that it was not DSI implementation of the housing code, including the Order at issue on this appeal, characterized by the above- quoted expression of patience with the lack of action to exterminate the bedbugs, that brought about the bank's March 2 release of funding for extermination and the commencement of extermination work in the following week. Note that the DSI witness reported at the hearing that she received an e-mail from the Receiver on March 3 reporting that funding for the extermination had been received "yesterday", i.e. on March 2. March 2, of course was the day that tenants, in sharp contrast to the DSI's acceptance of on-going delays in extermination, brought their criticism of Wells Fargo's foot-dragging on the extermination and building repairs to public attention, as documented in the above-cited Pioneer Press article.

Neil Gopher, center, a resident of 1225 Westminster St. in St. Paul, carries a sign during a protest rally Friday, March 2, 2012, in front of Wells Fargo's skyway lobby in downtown St. Paul. Members of Westminster Community Tenant United and Minnesota Tenants Union have ongoing concerns about housing code violations that were uncovered by the city at two bedbug-infested apartment buildings. They had hoped to deliver a report to the mortgage holder, Wells Fargo, about their living conditions, but they weren't allowed in. (Pioneer Press: Jean Pieri)

So the record is clear: commencement of the extermination work at the buildings in the week of March 10 [nearly 8 weeks after the receiver was appointed] was not the result of DSI prudent enforcement action (patience rewarded) but due to tenant public insistence on action. Tenants should not have to resort to public action to achieve extermination of bedbugs in St. Paul. This should be achieved via properly escalated regulatory enforcement, including the full range of policy options , including the timely convening of meetings between interested parties (tenants, owners, community group reps, council member, etc.) to get to the bottom of the non-compliance.

There is always the temptation to say, despite unwarranted delays, that eventual progress wipes away the problem, that "All is well that ends well." However, this ignores the needless bedbug bites that residents of the buildings have endured while the DSI was being patient with the Receiver's stance of "waiting on the funding" from Wells Fargo, acceptingWells Fargo's policy and practice (strategy) of responding to the Receiver's request for funding of needed repairs in

"six to eight weeks". The DSI's patience with the Bank's "six to eight week" turnaround establishes as new and very dangerous standard for landlord response to repair orders of this urgency: "six to eight weeks" or, basically, whenever the bank decides to fund compliance.

Recommendation: As a consequence of these considerations, we respectfully request that the Order of February 23, 2012, which merely re-iterates previously issued extermination directives, and which incorporates between the lines what is clearly articulated in the Benchmarks documents, i.e. acceptance of whatever timetable Wells Fargo establishes for providing funding to comply with the DSI's orders, be found and declared to be an unacceptable response to the on-going bedbug infestation and non-repairs at the buildings.

III. Transparency Issues

A. Orders

We respectfully request that a Working Group be formed, including tenant representatives, to examine improvements to the DSI Orders, with an eye to determining the best way these Orders can:

1) be made available to tenants;

2) be formatted in a way to facilitate public accountability, e.g., to permit tracking of compliance with identified deficiencies over the course of several inspections and re-inspections; and

3) be drafted to notify tenants of their right to appeal the orders, as they currently do inform landlords.

B. Communication

We note that at present, landlords and landlord representatives have a level of entrée to the DSI and regular communication with DSI that is denied tenants. For example, while tenants at Westminster were being denied a meeting with DSI officials and made to identify and request each DSI document relating to their homes via the formal Government Data Practices Act, similar treatment was not experienced by the Receiver.

In addition, throughout this period, landlord representatives have been accorded regular meetings with DSI officials to address their concerns about DSI policy and practice, a level of communication that has not been accorded tenants. See, for example, the February 7, 2012 Pioneer Press article that we provided at the hearing ["Landlords grumble; St. Paul listens"; http://www.twincities.com/stpaul/ci_19907303?IADID=Search-www.twincities.com-www.twincities.com] which states in relevant part:

> The divide between St. Paul landlords and the department has been dissected in the past year by a real estate committee of the Capital City Business Council, which has been meeting with Cervantes every few weeks.
>
> Committee members will meet with him again **today**, this time to review feedback cards that the department began giving landlords in January alongside written copies of inspection reports. The cards allow landlords to grade the department's 12 inspectors after each visit. Twenty-three cards have been returned to the department.

As the bundle of e-mail requests from tenants (provided at the hearing) requesting a meeting with DSI officials indicates, the tenant requests for a meeting were ignored.

C. Equal Access Promotes Cooperation and Improved Housing for All

We believe that the practice of giving landlords "feedback cards" alongside written copies of inspection orders is a potentially good one, but only if, in fairness, the same opportunity is provided to tenants. Opening regular channels of communication via such means as regular meetings and feedback cards is appropriately extended to tenants. We believe this would no doubt serve to reduce tenants' need to appeal orders, but would also improve the quality of the DSI effectiveness in housing code enforcement and inevitably foster he kind of cooperative, team-effort that is so important to improve and maintain St. Paul's housing stock for its residents.

Respectfully Submitted,

Peter W. Brown
612-824-6533