



CITY OF SAINT PAUL
OFFICE OF THE CITY COUNCIL
310 CITY HALL
15 WEST KELLOGG BOULEVARD
SAINT PAUL, MN 55102-1615
EMAIL: legislativehearings@ci.stpaul.mn.us
PHONE: (651) 266-8560 FAX: (651) 266-8574

March 30, 2012

Peter W. Brown, Minnesota Tenants Union
3121 Portland Avenue South
Minneapolis, MN 55407

VIA EMAIL: pbrown3121@hotmail.com

Re: Appeal for Property at 1205 and 1225 Westminster Street

Dear Mr. Brown:

I have reviewed the materials you provided in support of the March 2, 2012 appeal you filed on behalf of a group of tenants from both 1205 and 1225 Westminster Street. I have also reviewed the additional material and testimony you provided in the hearing itself on March 13, 2012. Lastly, I reviewed the March 16, 2012 email and attachments you provided. Below are my comments on the various portions of your appeal I excerpted. They appear in bold italics.

1. The Orders do not take reasonable steps to address the mice, roach, and bedbug problem in coherent, timely, effective way. The Orders simply restate previous orders on that subject. The Department takes no further reasonable step available to it to secure the speedy extermination of these pests. Given that repeating the Order is the only measure used by the Department to address the Violation, the Order is, especially when compared with the heavy direct action taken by the Department to condemn the decks and bolt the deck doors shut, is arbitrary and capricious.

There has been an ongoing concern with infestation of mice, bedbugs and cockroaches in these buildings for years. The history of reports/complaints to the City, and the City's resulting enforcement orders, show that although there have been numerous orders to address infestations over several years and the fixes have been temporary at best. It has been apparent since I became aware of these properties in December 2011 that a comprehensive approach with pest treatments over time would be necessary to abate this problem situation.

You commented specifically the City practice of re-stating violations throughout a series of orders is not an effective enforcement technique and you would like to see stricter enforcement measures on the infestation. You would also like to have seen a more rigorous compliance deadline.

In considering your appeal on this matter, I need to evaluate whether the conditions merited the orders, whether the orders and compliance deadlines were appropriate to address the conditions and the urgency with which they needed to be addressed. On balance, I conclude that although the deadlines have seemed long, the appeal you filed is in reference to orders issued on February 22, 2012. At the time of the hearing on March 13, 2012, the treatments were already underway and the receiver had secured nearly \$40,000 to accomplish this task. Therefore, at the time of the hearing the issue was largely moot. There is no more aggressive action I would recommend in these circumstances.

2. The Order takes the precipitous action of condemning all decks in the building even though only one of the decks had previously been cited as in violation. This, coupled with the immediate action of bolting the deck doors shut, is arbitrary and capricious.

In considering your appeal on this matter, I reviewed some of the orders which have been issued for this property over the years. The issue of the maintenance, repair and overall soundness of the balconies and their decks has appeared from time to time. In December 2011, as a result of Meriya Santamaria's appeal, a complete inspection was done of the entire premises. A follow-up inspection was performed by Steve Ubl, the senior building inspector on the state of the balconies. There was concurrence among the inspectors the balconies are unsafe and should not be used, thus a condemnation was issued. There are basically 2 methods for compliance with these orders. The first is to repair or replace the balconies and decking under permit. The second is to prevent their use. The receiver chose the latter, at least in the short run, and screwed the sliding doors leading to the balconies shut. While this action may seem heavy-handed, the danger presented by unsafe balconies is of paramount concern. It may be likened to circumstances where one hears of children falling out of windows with poor screens or no screens.

Although screwing the doors closed is admittedly not a great long-term solution, it is an acceptable solution according to the relevant codes. However, there are 2 clarifications I would like to make. First, there is one unit, Meriya Santamaria's, where the living room has been designated as a sleeping space. The Council granted a variance allowing a greater occupancy of the unit. In this situation, the sliding doors must be usable for emergency egress. In other units, emergency egress would be provided by the windows in the bedrooms. The living rooms could not be used for sleeping purposes, because of the lack of egress. I am aware of no other over-occupancy violation necessitating the use of the sliding doors for egress. The second clarification I want to mention is that the sliding doors can be openable. It would be acceptable for them to be open up to 4 inches wide. Ultimately, the receiver decides how to come into compliance with the orders and the City must determine whether those measures are adequate. Non-compliance with the orders would result in additional enforcement measures at the discretion of the department and cannot be appealed until they occur.

3. The Order winks at (ignores) the on-going failure to correct the repair violations cited repeatedly over a period of many re-inspections that occur within the tenants' units and to maintain common areas in a cleanly state. These violations directly affect the livability of the tenant's home. Failure to take reasonable corrective measures to achieve correction of these violations makes the Order arbitrary and capricious.

In the hearing, department staff described the orders over the last several months, as well as the workplan the receiver developed coming into compliance. Staff noted they have reviewed this workplan, and in turn outlined their expectations, priorities and deadlines. Based on your appeal, I asked DSI to provide more specific information on compliance, as the orders are extremely voluminous. Looking at the orders themselves, and the additional compliance information received, I made several findings. First, the number of specific orders for the buildings peaked in early February, with 797 items listed between the 2 buildings. As of March 5, the number of specific items listed was down to 648 – a decrease of nearly 20% in 3 weeks. On further review, decreases of 20% were seen for items categorized as life safety, and 36% for health and sanitation items. (I need to note that this decrease takes into account additional items which have come were newly identified in subsequent re-inspections.) Given the exorbitant number of items which need to be addressed, this progress must be hard to see on a daily basis. However, I find sufficient progress is currently being made, and on an acceptable time table. Moving forward, the complex does deserve close monitoring by DSI to ensure continued progress on an aggressive schedule.

4. The fact that Wells Fargo has an obligation under Paragraph 9 of the 1/13/12 Court Order Appointing the Receiver to provide funds to the receiver necessary to the reasonable operation of the buildings, any acceptance of an excuse for non-compliance with the Department's repair orders such as "waiting on funds" is arbitrary and capricious.

In my review of this appeal, I have heard no more or less about funds to address ordered corrections than I do with other appeals. I find that a reasonable accommodation has been provided for securing financing, without allowing undue delays. This accommodation is consistent with the treatment of other cases. I would note that the relevant parties involved IMPAC CBM Trust as the servicer of the mortgage, and secondarily Wells Fargo as the holder of the mortgage holder.

5. The Orders are not provided to tenants affected by the Orders. In addition, they are not presented in a way that allows building-wide tracking of progress toward correction of the deficiencies cited. As a result, the orders are arbitrary and capricious.

There was testimony in the hearing that on at least 2 occasions, the City's orders have been posted within the buildings, but they were subsequently removed. The orders are now viewable in the office at the complex during regular business hours. Additionally, it was noted that the orders are available online for those with computer access.

In the hearing, we agreed that it is difficult for a lay person to navigate fire inspection orders. However, all of the necessary information is present. In the short run, it is evident the City cannot re-organize the presentation of inspection results given the lack of funding for re-programming. That being said, the Department of Safety and Inspections committed to merging the existing orders on the buildings and the work plan in place. It is my hope that by doing this, we may all be able to better gauge progress. I have not yet received a revised set of orders, and will look for follow-up from the department.

In summation, I am recommending the City Council deny your appeal. However, I must be clear several aspects of your appeal are not within the purview of Council action. The City Council Public Hearing is scheduled for Wednesday, April 4, 2012 at 5:30 p.m. in Room 40A & B. If you have any further questions, you may contact me at 651-266-8560.

Sincerely,

Marcia Moermond
Legislative Hearing Officer

cc: Saint Paul City Council
Ricardo Cervantes, Director, Department of Safety and Inspections (DSI)
Phillip Owens, Assistant Fire (DSI)
Occupants of 1205 Westminster Street – Units 7, 15, 20, 24, 27, 29
Occupants of 1225 Westminster Street – Units E2, 7, 10, 16, 23