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June 26, 2012

Tovah Flygare
VIA EMAIL: tovah.flygare@smrls.org

Peter Brown
VIA EMAIL: peterb3121@hotmail.com

Re: Appeal for property at 1205 & 1225 Westminister Street
(Westminister Court Apartments)

Dear Ms. Flygare and Mr. Brown:

On Thursday June 14, 2012, I heard your appeals of the Condemnation and Order to Vacate 1205 and 1225 Westminister Street -- Westminister Court Apartments. At that time, I indicated I would be providing this written recommendation to the City Council for their consideration of your appeal, which this letter will provide. I have structured my consideration of your appeal by looking at 3 main questions, which are these:

- 1) Do the conditions outlined in the Fire Certificate of Occupancy Orders dated June 1, 2012 exist?
- 2) If the conditions do exist, do they rise to the level of requiring that the building be condemned and ordered vacated?
- 3) If the conditions do rise to the level of requiring the building be vacated, is the effective date of the Order to Vacate appropriate?

I will take these questions individually.

1) Do the conditions outlined in the Fire Certificate of Occupancy Orders dated June 1, 2012 exist?

There seems to be no dispute that the conditions outlined in the Fire Orders of June 1, 2012 exist. The conditions have persisted throughout the last 6 months, and new violations appear at almost the same rate as others are removed from the list. In the June 1, 2012 Orders, 294 violations were identified for 1205 and 306 violations for 1225 Westminister. These violations include severe life safety concerns, moderate scope repairs and minor repairs.

2) If the conditions do exist, do they rise to the level of requiring that the building be condemned and ordered vacated?

Several points were made in response to this question. The first is that the City did not order the property vacated until June 1, although the conditions existed for the last 6 months in more or less the same numbers and magnitude. Therefore, it is reasoned, that the City itself didn't believe the order to vacate was necessary prior to June 1. Thus, the timing of the order itself seemed to be the crux of the matter. Given that the ownership of the apartments had terminated leases effective July 1, one of two potential motives for the City's action exists. One possibility is that the City could have been acting in concert with the ownership and management of the apartments, in order to clear the buildings more quickly. It is reasoned that if the City considered the violations to be so serious, it should have pursued a tenant remedy action on behalf of the tenants, rather than using code enforcement to gain compliance.

The other possibility for the timing of the City action to condemn is that it in response to the decision terminating leases by ordering the building's vacated if ownership would not be adhering to existing work plans and deadlines. This notion is bolstered by the fact the City has worked diligently in trying to maintain occupancy of these buildings from the point the Council passed a resolution encouraging district court to appoint a receiver in order that repairs could be made, to prevent the displacement of tenants.

Two facts need to be explicitly stated. First, a condemnation has existed at the buildings for many months. The balconies have been condemned because they are structurally unsound and in a state of failure. Despite this condemnation, the balconies have been continually used in many units and I noted in the hearing I drove by the buildings on numerous occasions and saw the doors opening onto the balconies open, with furniture and even children's toys present. The second fact which needs to be stated is that as units have been vacated through attrition, no re-occupancy of these units has been allowed by the City, pending the completion of repairs for the entire complex.

Based on statements of the appellants, City staff, building ownership and management I have come to the conclusion that the order to vacate resulted from ownership and management "pushing their chairs away from the table." They made the determination that they would not be able to come into compliance with the City's orders by proceeding in the piecemeal fashion which had been used to date. Rather, they wanted to clear the buildings to allow for the rehabilitation of all of the units at the same time.

I find the condemnation and order to vacate was a natural outgrowth of ownership and management's position they would not continue their course of working with the City on individual repairs and in-depth regular monitoring on progress.

3) If the conditions do rise to the level of requiring the building be vacated, is the effective date of the Order to Vacate appropriate?

The Order to Vacate was issued on June 1 with an effective date of July 1, 2012. The majority of condemnations I see in the appeals process have a vacate date of 2 weeks. Some vacate dates are significantly faster, as is the case with a water shut-off. A few vacate dates are slower. Providing one month for an apartment complex to be vacated is consistent and perhaps a little longer than is seen in most cases.

The appellant(s) request, that if the buildings are found condemnable, the vacate date be extended as far into the future as practicable, in order that other remedies may be sought. Such remedies would likely include tenant remedy actions or emergency tenant remedy actions. At the time of the legislative hearing, no action had been filed in district court. Tovah Flygare, of Southern Minnesota Regional Services indicated I would be informed of such actions arising from that office and I have received no notification as of this date.

The benefit for tenants having temporary or longer term continued occupancy based on the prospect of a successful emergency tenant remedy action needs to be balanced against the concerns of ongoing occupation of unsafe and unsound structures. At this point, it is very likely that only the most rudimentary repairs will be undertaken on the buildings prior to July 1, and during this time additional violations will likely arise. Just as important is the example of the balconies, which are condemned but still in use, is troubling. If time were granted for a tenant remedy action, it does not seem likely that basic precautions will be observed to protect tenant safety prior to the completion of proposed repairs.

Taking these considerations together, I believe a period of one month between the issuance of a condemnation and order to vacate and the vacate date was reasonable and appropriate. It is longer than is the norm, which I believe this is justifiable given the magnitude of the number of individuals and families seeking housing. Because the City Council's hearing on this matter is scheduled for July 3, 2012, I am recommending that the City Council order the buildings vacated by Monday July 9, 2012.

It is possible that an arrangement could be made between the tenants, ownership and management and City enforcement staff about the continued occupation of 1 floor of 1 building for a limited period of time. This should have an absolute end of August 1, 2012. The buildings should not be considered habitable until all necessary repairs are completed under permit.

Additional Comments

I would like to note that Peter Brown of the Minnesota Tenants Union, requested that I recuse myself from acting as the hearing officer on this appeal, as I was present in a meeting where the potential of a condemnation and order to vacate was discussed. I declined to recuse myself the following reasons: I have no financial interest in this case, from a tenant or ownership perspective. Additionally, I was not decision maker in issuance of order, as Department of

Safety and Inspections inspection staff alone have the legal authority to make such an order. Lastly, I am not the decision maker in the disposition of this appeal. Rather, my role is to develop a recommendation for Council consideration in their deliberations.

As indicated in the Legislative Hearing, the City Council Public Hearing is scheduled for Wednesday, July 3, 2012 at 5:30 p.m. in City Council Chambers, Room 300 City Hall, if you wish to contest further.

As you are both attorneys and you are representing some of the tenants in the complex, and potentially the area's district council in future district court proceedings, I trust you will be contacting your clients and providing them a copy of this letter. If you have any further questions, you may contact me directly at marcia.moermond@ci.stpaul.mn.us or 651-266-8570.

Sincerely,

/s/

Marcia Moermond
Legislative Hearing Officer

C: City Council (email)
Ricardo Cervantes, Phil Owens, Leanna Shaff and Sean Westenhofer, Department of
Safety and Inspections (email)
Jerry Hendrickson and Therese Skarda, City Attorney's Office (email)
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