



**CITY OF SAINT PAUL**  
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February 14, 2014

James Bartholow  
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VIA EMAIL: [rfoster@fosterbrever.com](mailto:rfoster@fosterbrever.com)

Re: Appeals of Fire Certificate of Occupancy Revocation &  
Order to Vacate 328-330 Ninth Street East (also known as Schurmeier Lofts)

Dear Messrs. Bartholow, Bigler and Foster:

I have considered your appeals of the revocation of the Fire Certificate of Occupancy for 328 – 330 Ninth Street East and its attendant order to vacate the premise. What follows are my observations and recommendation to the City Council in this matter.

It has been slightly over one year that the city has been working with owners and representatives of 328 – 330 Ninth Street East to gain compliance with basic orders concerning life safety, habitability and maintenance. During this time period, the overall number of violations has decreased 19%, while the number of life safety violations has increased 33%. In fact, there were 53 such violations identified at the October 11, 2013 inspection – representing a 96% increase over the March 28, 2013 where 27 life safety violations were documented. The current life safety issues at 328-330 East Ninth Street fall into a several categories: the sprinkler system, heating systems, significant repairs requiring permits, and fire separations between units and between units and the common areas.

A plan to remedy the violations at the property was presented by James Bartholow, owner of 10 of the 27 units in Schurmeier Lofts and the current president of the homeowners association. This plan consisted of his notes on the January 28, 2014 orders condemning several units, revoking the certificate of occupancy and order the building vacated. The plan indicated items which he believed had been addressed, self-imposed deadlines for the completion of some items and notations where he believed he had no control over whether the items would be addressed. He also submitted

several bids. The Erickson Electrical Bid quotes between \$22,085 and \$28,725 for repairs, depending on how thoroughly the work is done. This bid expired January 13, 2014. Another item presented in this plan was the April 16, 2013 fuel burning equipment test results. The argument presented was that they were conducted in the past year and should suffice at this time. Given their age and the poor overall condition of the heating systems, I think it is reasonable for the City to require these reports be updated. Also, I am very concerned about the proposal to not rectify heating system problems until spring. These problems are significant and, in my view, have been allowed to continue too long. No documentation of the financial capacity to execute the repairs was provided. Given these concerns, I am unconvinced this plan will be able to address the immediate life safety concerns in the building, let alone the habitability and deferred maintenance issues.

Several owners of other units in the building indicate they have completed necessary repairs for the areas under their control. Unfortunately, as fire inspection staff said in the hearing, code violations in the common areas and other units at the property, only slightly mitigate the safety concerns for their units.

The City has exhausted significant resources over the course of the last year. There have been meetings, inspections, tours with inspectors to answer questions and two code compliance inspections for which there has been no charge. The City has invested significant resources in helping the people of Schurmeier Loft. In my estimation, additional resources will not increase the likelihood of eliminating life-safety and other code violations at the property.

During the last year, there have been many changes in ownership and the homeowners association. It is reported that the homeowners association lacks both financing and board insurance. Two ideas were floated at the Legislative Hearing to remedy the situation: getting a court-appointed receiver and/or a property manager. A property manager would not have the authority to force repairs against the will of the owners. Testimony at the hearing was that the homeowners association rejected the concept of a receiver being appointed. In the hearing, it became apparent there is rancor among the owners and they have a clear track record demonstrating an inability to work together to solve the problems they face. I note that a receiver was appointed for a similar situation experienced at the Westminster Court apartment complex, where the buildings were in extreme disrepair and foreclosure was imminent. However, the key difference is that there were a very limited number of owners and only one financial institution. In my view, the logistics of getting a court-appointed receiver are insurmountable.

I don't think it is within the power of the City to correct the life safety concerns at Schurmeier Lofts without the cooperation of the building's owners and occupants. Additionally, adequate financing is an absolute requirement. The two appeals of the City's orders ask that additional time be granted for the correction of the code problems. A February 28, 2014 deadline was established in the order to complete repairs or the building must be vacated on March 3, 2014. My recommendation to the Saint Paul City Council is to deny this appeal. In light of my recommendation, I do not think a hearing on February 18, 2014 will be necessary and am, therefore, cancelling it. The City Council will be considering this matter at 5:30 Wednesday February 19, 2014. This public hearing will be your next opportunity to present your appeal.

Sincerely,

MCM

Marcia Moermond  
Legislative Hearing Officer

copy:

Saint Paul City Council

Ricardo Cervantes, Director, Department of Safety and Inspections (DSI) (via email)

Phil Owens, Assistant Fire Marshal, DSI (via email)

Greg Schroeder, Deputy Director, DSI (via email)

Leanna Shaff, Residential Fire Inspection East Team Supervisor (DSI) (via email)

Therese Skarda, Assistant City Attorney (via email)

Steve Ubl, Building Official, DSI (via email)

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