

PLANNING AND ECONOMIC DEVELOPMENT COMMITTEE

12-0456R

REPLACEMENT

RESOLUTION AFFIRMING THE DECISION OF THE BUILDING APPEAL BOARD TO UPHOLD AN ORDER OF CONDEMNATION FOR HUMAN HABITATION AT 2001 WEST SUPERIOR STREET (THE SEAWAY HOTEL) AND DENY A REQUEST FOR AN EXTENSION OF THE DEADLINE FOR TENANTS TO VACATE THE BUILDING BY 180 DAYS.

CITY PROPOSAL:

RESOLVED, that the city council finds as follows:

(a) The records of the life safety division of the Duluth fire department show that, for over the past two years (March 2010), the owner of the building located at 2001 West Superior Street (the Seaway Hotel) has failed to meet a housing code and fire-safety obligation to repair or replace the leaking roof of the structure, which has caused several interior housing code and fire-safety violations resulting from water damage. Life safety and rental licensing inspectors have conducted at least 14 inspections and reinspections of the premises since January 2010, but to date, the leaking roof, and several interior housing code and fire-safety violations stemming from it, have not been remedied;

(b) Most recently, on July 3, 2012, Lead Housing Inspector Jim Mlodozyniec conducted a life safety inspection at 2001 West Superior Street (the Seaway Hotel). Inspector Mlodozyniec found that the roof of the building was severely deteriorated and leaking in several areas in violation of the Duluth Housing Code (Duluth City Code Chapter 29A), which in turn incorporates the provisions of the 2000 International Property Maintenance Code (IPMC). As a result of the roof leaks, Inspector Mlodozyniec found ceiling and wall damage in several areas in violation of housing code. He found damaged or missing ceiling tiles compromising the effective operation of the fire suppression system (sprinkler system) in violation of the housing code and the fire code. He found several areas of water or repair-damaged corridor walls compromising the fire rating of the building in violation of the housing code's fire safety requirements. Inspector Mlodozyniec further found that structural failure was possible due to a large area of badly deteriorated exterior wall in the front courtyard of the building. Due to substantial water leaks into the wall and

ceiling cavities for a long period of time, Inspector Mlodozyniec deemed the electrical system compromised and mold growth likely to occur in violation of the housing code;

(c) Based on Inspector Mlodozyniec's findings, the life safety division of the Duluth fire department issued the owner of the building a notice and order of condemnation for human habitation on July 10, 2012. The order condemned the building as unfit for human habitation and revoked its certificate of occupancy. The order further noted that all occupants of the building needed to vacate the premises by July 27, 2012. The order noted that the building must remain unoccupied until the housing and fire code violations were corrected and the building passed a subsequent inspection by life safety;

(d) On July 23, 2012, the owner of the property appealed the habitation order to the building appeal board. With the exception of Life safety's findings related to the compromised status of the electrical system, the property owner did not contest the habitation order. Rather, the owner asked that the deadline for occupants to vacate the building be extended by 180 days, during which time the owner planned to secure financing to replace the roof, rebuild the exterior wall, and complete the remaining interior repairs once the roof was made water-tight;

(e) A public hearing was held by the building appeal board at its August 8, 2012, meeting. At this meeting, the board voted to deny the owner's appeal, i.e., to uphold the habitation order and deny the request for an extension of the deadline for tenants to vacate the building. The basis for the board's decision was its conclusion that:

(1) Section 10-5(e) of the City Code provides authority for the board to remedy any error it has found the building official has made in the interpretation of the housing code;

(2) The board may also grant such relief as it deems reasonable from strict compliance with each provision of housing code, but no relief shall be granted unless it is found that:

(A) There is substantial compliance with the provisions of the Code;

(B) No detriment to public health or safety will result from granting such relief;

(C) The intent of the Code is not compromised;

(D) The relief granted will not result in increased cost expense to the city;

(3) The board determined that the evidence presented at the public hearing did not demonstrate that an error had been made by the code official in the issuance of the habitation order. Substantial compliance with code orders, specifically repair of the leaking roof, had not been attained;

(f) On August 22, 2012, the property owner appealed the building appeal board's affirmance of the habitation order to the council. In the appeal to council, the owner did not contest the underlying findings of the life safety inspection resulting in the habitation order. Rather, the owner cited evidence of ongoing efforts to complete the required repairs, asserted that the building appeal board and the council possessed the authority to allow tenants to stay in the building while repairs are being completed, and repeated the request for a 180-day extension of the deadline for tenants to vacate the premises while repairs required by the habitation order were completed.

RESOLVED FURTHER, that based on the council's consideration of the entire record before it, including the record presented to the building appeal board, the clerk's record here, and presentations by city staff and representatives of the property owner, the decision of the building appeal

board to uphold the habitation order and deny the request for an extension of tenant occupancy is affirmed on the following grounds:

(a) The building appeal board heard and considered all relevant evidence and arguments presented at its August 8, 2012 meeting;

(b) Based on the council's review and consideration of the entire record before it, the council finds no error in the building appeal board's affirmance of Life Safety's July 10, 2012 Notice and Order of Condemnation for Human Habitation;

(c) The council finds no error in the board's denial of the owner's request for tenants to stay in the building for an additional 180 days while the roof is repaired and housing and fire-safety code violations are corrected.

Approved as to form:


Attorney

CONST SERV & INSP DWN:ek 9/04/2012

STATEMENT OF PURPOSE: This resolution affirms the decision of the building appeal board to uphold an order of condemnation for human habitation at 2001 W. Superior St. (the Seaway Hotel) and deny a request for an extension of the deadline for tenants to vacate the premises by 180 days.