CITY OF MINNEAPOLIS
NUISANCE CONDITION PROCESS REVIEW PANEL

In the matter of the Appeal of Director's Order To Demolish the Property Located at 2639 Oliver Avenue N. Minneapolis, Minnesota.	**FINDINGS OF FACT, CONCLUSIONS, AND RECOMMENDATION**

This matter came on for hearing before the Nuisance Condition Process Review Panel on August 8, 2013, in City Council Chambers located in Minneapolis City Hall. Noah Schuchman, chair, presided and other board members present included Patrick Todd, Mike Rumpe and Edie Oliveto-Oates. The Matter was heard on remand from the Minnesota Court of Appeals and the Minneapolis City Council. Assistant City Attorney Lee C. Wolf was present as *ex officio* counsel to the board. Kellie Jones represented the Inspections Division. Mahmood Khan, owner of 2639 Oliver Avenue N., was present. Based upon the Board's consideration of the entire record, the Board makes the following:

FINDINGS OF FACT

1. 2639 Oliver Avenue N. is a duplex in the Jordan neighborhood. The 2 ½ story structure was built in 1914. The building is 3,422 square feet and sits on a 5,365 square foot lot.

2. The property has been determined to be in substandard condition. The structure was damaged by a tornado in Minneapolis on May 22, 2012, with damage to the roof, soffit, fascia, chimney, siding, windows, rear entry and fencing.

3. The City Assessor's Office rates the overall building condition as fair.

4. On November 18, 2011, a Director's Order to Demolish the property, located at 2639 Oliver Avenue N. was sent to Mahmood Khan, owner of the property, based upon the

Inspections Division of the City of Minneapolis' determination that the property at 2639 Oliver Avenue N. met the definition of a Nuisance under Minneapolis Code of Ordinances (hereinafter "M.C.O.") § 249.30. The applicable sections of M.C.O. § 249.30. provide that *(a) A building within the city shall be deemed a nuisance condition if:*

(1) It is vacant and unoccupied for the purpose for which it was erected and for which purpose a certificate of occupancy may have been issued, and the building has remained substantially in such condition for a period of at least six (6) months.

(2) The building is unfit for occupancy as it fails to meet the minimum standards set out by city ordinances before a certificate of code compliance could be granted, or is unfit for human habitation because it fails to meet the minimum standards set out in the Minneapolis housing maintenance code, or the doors, windows and other openings into the building are boarded up or otherwise secured by a means other than the conventional methods used in the original construction and design of the building, and the building has remained substantially in such condition for a period of at least sixty (60) days.

(3) Evidence, including but not limited to neighborhood impact statements, clearly demonstrates that the values of neighborhood properties have diminished as a result of deterioration of the subject building.

(4) Evidence, including but not limited to rehab assessments completed by CPED, clearly demonstrates that the cost of rehabilitation is not justified when compared to the after rehabilitation resale value of the building.

5. On December 5, 2011, the owner, Mahmood Khan filed an appeal of the Director's Order to Demolish, stating "Due Process, Equal Protection, Interference with Contract, 4th Amendment."

6. Based on the condition of the property, the cost to rehabilitate and the after-market rehab value, the Department recommended that the property should be demolished in order to eliminate the nuisance condition the property constituted. The owner, Mahmood Khan appeared at the February 9, 2012, appeals hearing and requested time to put together a rehabilitation plan for the property and present it to Department staff, the hearing was then continued to April 12, 2012.

7. At the April 12, 2012, Kellie Jones, Director of the Problem Properties Unit stated that staff had met with the owner and had come up with an acceptable rehabilitation plan for the property that addressed the concerns of Department staff, the rehabilitation agreement would include a $10,000.00 deposit to be held in escrow by the city in the event the owner fails to complete the rehabilitation.

8. The matter was brought before the Regulatory, Energy and Environment Committee of the Minneapolis City Council (RE & E Committee) on May 14, 2012. The matter was continued until the June 4, 2012, RE & E Committee hearing so that the RE & E Committee could see the "history with this particular property owner of rehabilitation agreements involving the City."

9. On June 4, 2012, the RE & E Committee reviewed the Findings of Fact, Conclusions and Recommendation of the Review Panel as well as information regarding Relator's prior restoration agreements entered into with the Department and heard from Relator himself. After reviewing this information the RE & E Committee voted to demolish the Property and on June 15, 2012, the City Council approved the demolition and the City Council action was finalized when the Mayor signed the action on June 19, 2012.

10. On August 22, 2012, Relator filed a certiorari appeal to the Minnesota Court of Appeals, challenging the June 19, 2012, quasi-judicial decision of the Minneapolis City Council to demolish the Property.

11. On June 3, 2013, the Minnesota Court of Appeals reversed the City Council's decision to demolish the property and remanded it to the City Council for a determination based upon the record created and provided by this panel.

12. In July of 2013, the City Council, based upon the Court of Appeals' decision and the length of time that had expired since the property had last been inspected, remanded the matter to this panel for new findings on the condition of the property and a recommendation as whether the property should be rehabilitated or demolished.

13. Pursuant to M.C.O. § 249.40(1) the building was examined by the Department of Inspections, in the July of 2013, to ascertain whether the nuisance condition should be ordered for rehabilitation or demolition. Considering the criteria listed in M.C.O. § 249.40(1) the Inspections Department found:

a. The estimated cost to rehabilitate the building is $111,472.00 to $156,672.00 based on the MEANS square footage estimate. The assessed value of the property in 2013, was $28,500.00. The assessed value of the property in 2012, was $30,000.00 and in 2011 it was $92,000.00. The after rehabilitation value of the property is estimated at $165,000.00 per the CPED contracted appraiser.

b. The Jordan Area Community Council and property owners within 350 feet of 2639 Oliver Avenue N. were mailed a request for community impact statements. The Department of Inspections received seven (8) in response. Seven say the property has

had a negative impact on the community and should be demolished. One comment stated that "No neighborhood needs this type of neglected slumlord property."

c. The Preservation and Design Team staff conducted a historic review of the property finding that the property does not constitute a historic resource and the demolition permits have been signed and returned to Minneapolis Development Review.

d. The vacant housing rate in the Jordan neighborhood was around 19.5% in 2010, of the approximately 608 houses on the City's Vacant Building Registration 83 are in the Jordan neighborhood, a neighborhood of approximately 2,569 housing units.

The owner, Mahmood Khan, has entered into seven restoration agreements with the City of Minneapolis in the recent past. Two of the restoration agreements are active and not due for completion until November of 2013. The other five restoration agreements entered into by Mr. Khan were completed but all were completed well past the timelines established in the agreements. Additionally, Mr. Khan has not always abided by the conditions set out in the agreements, for example using windows from different manufacturers some of which were different colors, during the restoration at 1237 Knox Avenue N.

On July 2, 2013, Mr. Khan met Department staff at the property and presented a rehabilitation plan for the property that included everything that the Department would require in a plan. Based upon the plan presented by Mr. Khan the Department recommends rehabilitation of the property if Mr. Khan were to comply with the following conditions:

- Mr. Khan must deposit $13,500.00 or 10 % of the final construction costs- whichever is greater, in escrow by August 23, 2013.
- Mr. Khan must submit signed proposals by licensed tradespeople consistent with the plans and estimates submitted by Mr. Khan, by August 23, 2013.

- Any restoration agreement would include specific and tight timelines and specifications that must be met or the agreement would be made null and void.
- Mr. Khan agrees not to increase the number of bedrooms in either of the units being rehabilitated.

CONCLUSIONS

1. The building located at 2639 Oliver Avenue N. meets the definition of nuisance condition as set forth in M.C.O. § 249.30(a)(1) as the building is vacant and unoccupied for the purpose for which it was erected and the building has remained in such a condition for a period of at least six months.

2. The building located at 2639 Oliver Avenue N. meets the definition of nuisance condition as set forth in M.C.O. § 249.30(a)(2) as the building is unfit for occupancy as it fails to meet the minimum standards set out by city ordinances before a certificate of code compliance could be granted, or is unfit for human habitation because it fails to meet the minimum standards set out in the Minneapolis housing maintenance code, and the doors, windows and other openings into the building are boarded up or otherwise secured by a means other than the conventional methods used in the original construction and design of the building, and the building has remained substantially in such condition for a period of at least sixty (60) days.

3. The building located at 2639 Oliver Avenue N. meets the definition of a nuisance condition as set forth in M.C.O. § 249.30(a)(4) as evidence, including but not limited to rehab assessments completed by CPED, clearly demonstrates that the cost of rehabilitation is not justified when compared to the after rehabilitation resale value of the building.

5. The building located at 2639 Oliver Avenue N. meets the definition of a nuisance condition as defined by M.C.O. § 249.30 and a preponderance of the evidence, based upon the criteria listed in M.C.O. § 249.40, demonstrates that the building should be rehabilitated if the owner meets the conditions set out by the Department in the timeframe set out by the Department. A failure to follow the conditions and deadlines set out by the Department would show that the owner is not serious about his statements that he can complete a timely rehabilitation of the property and to follow the specifications set by the Department.

RECOMMENDATION

That the building located at 2639 Oliver Avenue N. Minneapolis, Minnesota, be rehabilitated if the owner meets the conditions set out by the Department, specifically:

- Mr. Khan must deposit $13,500.00 or 10 % of the final construction costs- whichever is greater, in escrow by August 23, 2013.
- Mr. Khan must submit signed proposals by licensed tradespeople consistent with the plans and estimates submitted by Mr. Khan, by August 23, 2013.
- Any restoration agreement would include specific and tight timelines and specifications that must be met or the agreement would be made null and void.
- Mr. Khan agrees not to increase the number of bedrooms in either of the units being rehabilitated.

If Mr. Khan fails to meet the above listed conditions the recommendation of the panel is to demolish the property

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Noah Schuchman
Chair,
Nuisance Condition Process Review Panel