



**Request for City Council Committee Action  
From the City Attorney's Office**

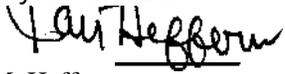
Date: October 18, 2006  
To: Ways & Means/Budget Committee  
Referral to:

**Subject:** Joseph H. Welp vs. City of Minneapolis  
Court File No. AP 05-14757

**Recommendation:** That the City Council approve the settlement of this case by confirming legal nonconforming use rights to the property at 421 6<sup>th</sup> St. SE at seven (7) dwelling units limited to 21 tenants over the age of one (1); issuing building permits for work previously completed at 421 6<sup>th</sup> St. SE without fees or penalties; making the Settlement Agreement part of land use records of the City; withdrawing the September 2, 2005, *Unlawful Occupancy Order* and any similar orders; approving the Settlement Agreement, attached as Exhibit A; and authorizing the City Attorney's Office to execute any documents necessary to effectuate settlement.

**Previous Directives:** None.

Prepared by: Timothy S. Skarda Phone: (612) 673-2553

Approved by:   
Jay M. Heffern  
City Attorney

Presenter in Committee: Jay M. Heffern, City Attorney

**Financial Impact** (Check those that apply)

No financial impact (If checked, go directly to Background/Supporting Information).

Action requires an appropriation increase to the \_\_\_\_\_ Capital Budget or \_\_\_\_\_ Operating Budget.

Action provides increased revenue for appropriation increase.

Action requires use of contingency or reserves.

Business Plan: Action is within the plan. \_\_\_\_\_ Action requires a change to plan.

Other financial impact (Explain):

Request provided to department's finance contact when provided to the Committee Coordinator.

**Community Impact**

Other: Build Community

**Background/Supporting Information**

This case involves a rental property located at 421 Sixth Street SE owned by the Plaintiff, Joseph H. Welp. The property had been divided into seven apartments and one rooming unit and was being used as a boarding house as a legal nonconforming use. The City had denied a request from the prior owner to conduct extensive remodeling that included alteration of the exterior, determining that the work would constitute an expansion of the nonconforming use.

The Plaintiff purchased the property and submitted plans to remodel the interior of the property. The remodeling would result in the elimination of the rooming unit and reconfiguration of the seven apartments. Zoning staff would not approve the work without a conditional use permit to expand a nonconforming use. The

Plaintiff, operating under the assumption that permits had been issued, completed the remodeling. The application for an expansion of the nonconforming use was denied and an *Unlawful Occupancy Order* was issued on September 2, 2005, requiring that the units be vacated. Throughout the application process and subsequent litigation, the Plaintiff asserted that the interior work done on the property did not require a conditional use permit because it was not an expansion of the building or a change in the use of the property. The Plaintiff asserted the remodeling was a reduction of the nonconforming use because the boarding unit had been eliminated. The Plaintiff filed the current lawsuit and was granted a temporary restraining order by the court on September 30, 2005, allowing continued occupation of the units pending resolution of the underlying litigation.

At issue in the litigation is a conflict between Minneapolis ordinances and Minnesota statutes. Minneapolis Code of Ordinances ("M.C.O."), § 531.20 provided that, "[n]o structure or use, or part thereof, shall hereafter be erected, constructed, altered, enlarged, relocated, used or intensified in character or operation except in conformity with the provisions of this zoning ordinance." M.C.O. § 531.20 also provided a general prohibition on "the enlargement, expansion, restoration, relocation, structural alteration or intensification of nonconforming uses and structures ..." and that the chapter does "not prevent a legal nonconforming residential use located in a residence district from reducing the number of dwelling or rooming units on the subject property." M.C.O. § 531.50 provided that "[s]tructures containing one or more legal nonconforming uses shall not be ... expanded, enlarged or structurally altered in any way, nor shall such use be intensified ... ." The City maintained that the reconfiguration of the interior units amounted to an intensification in the use of the property.

Minn. Stat. § 462.357 provides that "[a]ny nonconformity ... may be continued, including through repair, replacement, restoration, maintenance, or improvement, but not including expansion ...." Minnesota statutes do not contain language limiting the intensification of use, but speak only to expansion of the nonconforming use. On December 2, 2005, M.C.O. §§ 531.20 and 531.50 were amended to remove references to restoration or structural alteration to bring the ordinances into conformity with Minnesota statutes.

The interpretation that an interior remodeling constituted an intensification of the nonconforming use is inconsistent with the Minnesota statute allowing "restoration, maintenance, or improvement." Reconfiguring the permitted rental units does not appear to amount to an expansion of the use. Minnesota courts have consistently interpreted an expansion of a nonconforming use to mean a physical expansion of the structure or change in the nature of the use. The City would not be able to prove that the building was expanded because the footprint of the building remained the same, the use as a rental property remained the same, the number of units was decreased and the total number of allowable tenants did not increase.

The parties engaged in mediation on September 15, 2006, and arrived at a proposed settlement of the litigation. The City was represented by Zoning Supervisor Steve Poor and Assistant City Attorney Timothy Skarda. The City has agreed to withdraw the *Unlawful Occupancy Order*, that the property has nonconforming use rights to seven apartment units; and that the Settlement Agreement will become part of the City land use records. The Plaintiff has agreed that occupancy will be limited to up to 21 tenants over the age of one (1); that he will maintain a Rental Dwelling License and abide by the provisions of the Code relating to Rental Dwelling Licenses; that he will maintain a reasonable and functional parking surface with appropriate setbacks; that parking will not be allowed at the side of the building; that all parking will be located between the rear wall and the rear property line and no closer than five feet from the east property line; and the terms of the agreement related to the number of units and tenants will apply to future owners of the property.

We believe that the proposed settlement is in the best interests of the City and recommend approval by this Committee and the City Council. The proposed settlement reduces total occupancy to 21 tenants from 35 that could be allowed under zoning ordinances and addresses parking issues. Issues related to tenant behavior can be addressed through rental licensing enforcement. The proposed settlement is consistent with Minnesota statutes and Minneapolis ordinances, as amended in 2005.

**Exhibit A**

**STATE OF MINNESOTA**

**DISTRICT COURT**

**COUNTY OF HENNEPIN**

**FOURTH JUDICIAL DISTRICT**

**Joseph H. Welp, IV,**

**Case Type: Declaratory Judgment**

**Plaintiff,**

**Court File No.: AP 05-14757**

**v.**

**SETTLEMENT AGREEMENT**

**The City of Minneapolis,**

**Defendant.**

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This Agreement is made this 10 day of Oct, 2006, between the City of Minneapolis ("City") and Joseph H. Welp, IV ("Welp").

**RECITALS**

1. Welp owns a rental property located at 421 Sixth Street Southeast in the City of Minneapolis ("421 6<sup>th</sup> St. SE").

2. 421 6<sup>th</sup> St. SE was divided into seven apartments and one rooming unit prior to ownership by Welp. The property was subsequently zoned R2B, which allows single-family houses and duplexes, but does not allow 8-unit dwellings.

3. 421 6<sup>th</sup> St. SE continued to be used as an 8-unit dwelling *as a* pre-existing nonconforming use.

4. Welp sought building permits to remodel the interior of 421 6<sup>th</sup> St. SE.

5. The City determined that a conditional use permit was required for the remodeling work and that the work constituted an expansion of a legal nonconforming use.

6. On September 2, 2005, the City issued an Unlawful Occupancy Order ordering that 421 6<sup>th</sup> St. SE be vacated.

7. Welp filed the instant lawsuit seeking a Writ of Mandamus directing the City to allow continued use of seven apartment units at 421 6<sup>th</sup> St. SE; enjoining the City from requiring

Welp to obtain conditional use permits to using the dwellings at 421 6<sup>th</sup> St. SE; and enjoining the City from requiring the vacation of units located partially or wholly in the basement or on the third floor (also known as the attic).

8. On September 30, 2005, the Hon. Thomas W. Wexler issued a Temporary Restraining Order enjoining the City from enforcing the Unlawful Occupancy Order.

9 On September 15, 2006, the Welp and the City participated in mediation and arrived at a settlement of all claims under the terms set forth herein.

**NOW, THEREFORE, THE PARTIES HEREBY AGREE AS FOLLOWS:**

1. The property at 421 6<sup>th</sup> St. SE has legal non-conforming use rights to seven (7) dwelling units.

2. The legal non-conforming use rights at 421 6<sup>th</sup> St. SE include occupancy by up to 21 tenants over the age of one (1).

3. Welp agrees to maintain a Rental Dwelling License related to 421 6<sup>th</sup> St. SE and abide by the provisions of Article XVI of the Minneapolis Code of Ordinances, Rental Dwelling Licenses.

4. Welp agrees to maintain a reasonable and functional parking surface with appropriate setbacks at 421 6<sup>th</sup> St. SE. Parking shall be located between the rear wall of the existing building at 421 6<sup>th</sup> St. SE and the rear property line, and no closer than five(5) feet to the property line to the east.

5. The City will issue building permits for work previously completed at 421 6<sup>th</sup> St. SE without fees or penalties.

6. The City will make this Settlement Agreement part of land use records of the City.

7. The rights of any future owner of 421 6<sup>th</sup> St. SE are not restricted by this Agreement except for the terms relating to non-conforming rights and maximum occupancy set forth in paragraph 1 and paragraph 2.

8. The City will withdraw the September 2, 2005, *Unlawful Occupancy Order* ordering that 421 6<sup>th</sup> St. SE be vacated and any similar orders.

9. The Agreement is subject to approval by the City Council and Mayor of the City of Minneapolis.

10. Upon approval of this Agreement by the City Council and Mayor of the City of Minneapolis, the parties agree to dismiss this action in its entirety with prejudice and without further fees or costs.

Dated:

b/d/A) (9

MARTY LAW FIRM L.L.C.

By



KAREN E. MARTY

Attorney Reg No. 205746

Attorney for Plaintiff

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Bloomington, Minnesota 55435

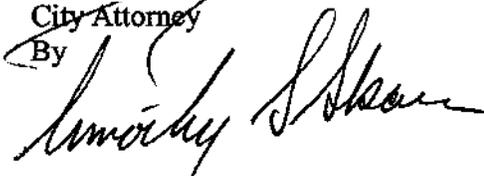
(952) 921-5859

Dated: jilf/.200

JAY M. ~~HEFFERN~~

City Attorney

By



TIMOTHY SKARDA

Assistant City Attorney

Attorney Reg No. 10176X

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