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November 26, 2007

Council Member Don Samuels  
Chairperson, Public Safety & Regulatory Services Committee  
350 South Fifth Street  
Room 307  
Minneapolis MN 55415

Re: *Andrew Ellis v. City of Minneapolis*  
File No. A06-1063

Dear Chairperson Samuels:

I represent Andrew Ellis, the owner of the property in the above-noted case on remand from the court of appeals, which is on the agenda for this Wednesday's Public Safety and Regulatory Services Committee ("Committee") meeting. Based upon a November 14, 2007 letter I received from Assistant City Attorney Erik Nilsson, it is my understanding that your committee will be considering a "proposed Findings of Fact and Recommendation", a copy of which Mr. Nilsson enclosed with his letter. In his letter, he stated that I would be allowed, on behalf of my client, to make "written and/or oral arguments to the Committee." In lieu of appearing before your committee on Wednesday afternoon, I am writing this letter to urge you to reject the proposed findings and recommendation due to their incompleteness and failure to provide a good reason for their adoption.

In reviewing the proposed findings drafted by the City Attorney's office, it quickly became clear that these "facts" are more than a little one-sided and that they fail to present nearly all of the facts that were presented by Mr. Ellis at the time the committee first considered this matter in May of 2006. In order to make an informed, intelligent decision on the ultimate recommendation to demolish, I believe that you should be provided with all of the facts, not just those that support the City's position.

Rather than recite all of the facts that are not included in the proposed findings, I have attached to this letter the "timeline" (to which corresponding documents and letters are attached) that was submitted to the Committee a few days before its initial consideration of this matter on May 17, 2006. In this timeline, Mr. Ellis recounts the series of events that followed the fire at his building on January 10, 2006, the same day Mr. Olson, from Inspections, was trying to knock it down without knowing the extent or severity of the damage. It is not clear from the available record why Mr. Olson rushed a crew down to this building within hours of the fire, but it would seem to indicate a desire to knock this building down without waiting to see if it was capable of being rehabilitated or repaired to its former condition.

As you can see from the timeline, Mr. Ellis was able to get a structural engineer in the building within a week of the fire, one who was able to draft a letter to Mr. Olson on January 18<sup>th</sup>, in which the engineer stated that "After inspecting the fire damage, it is my professional opinion that *much* of the *building* is *salvageable* and can be *safely cleaned up and rebuilt* in compliance with the *structural requirements of the building code* under the direction of a structural engineer." (emphasis added) (Bernie Stroh's 1-18-06 letter).

Having received a “demolition” permit on January 13<sup>th</sup>, Mr. Ellis hired an individual to clean out the interior of the building, since the temporary shoring had been completed to the apparent satisfaction of Mr. Olson. Beginning in early February, Mr. Ellis began receiving letters and notices from different people at Inspections, letting him know that his building was boarded and that he needed to get a permit before doing any further work. Some of the letters indicated that he needed to get a code compliance inspection before he could even get a permit, others gave him until early April to do the work, after which he would have to get the code compliance inspection. As you will see in his affidavit, Mr. Ellis was trying to talk to these individuals as he was getting these letters and later ones.

After getting bids for a replacement roof (a flat, rubber one like the one destroyed by the fire) and other structural work, and having a good idea of what was needed to repair this building, Mr. Ellis went down to the “One-Stop Shop” on February 28<sup>th</sup> and walked out (two hours later) with a “remodeling” permit that would have allowed him to do the structural work, including putting on a roof. The very next day, it was rescinded, ostensibly because he had not had a design professional “review” or “design” his project. After being notified of the rescission of this permit on March 3<sup>rd</sup>, Mr. Ellis sent a letter to its author, James Edin (the person who had originally given Ellis the permit) asking for all of Inspections’ documents relating to this property, in an effort to figure out what was going on and what was expected of him. He did not receive these documents until around March 21<sup>st</sup>, at which time he sent another letter to Mr. Edin, asking how Inspections could require him to hire a structural engineer to supervise this work and generally commenting on the poor attitude and obstacles he was encountering in this matter. He never received an answer to that basic question from anyone at Inspections.

On March 25, 2006, trying in good faith to proceed with the work necessary to repair his building, Mr. Ellis entered into a contract with a contractor who was prepared to do the structural work necessary to get the building ready for a new roof and stucco work. Included in this work was repairing windows and getting new glass into the windows, so as to eliminate the boards on the exterior. Within a few weeks, however, this contractor was forced to end this work because of a “stop work” order that was posted on the building on April 11, 2006. No work has been done since that time, since Mr. Ellis was never able to get the “stop work” order lifted. Ten days after this order was posted, Tom Deegan sent a letter to Mr. Ellis, telling him that his property had been declared a nuisance and that he would (it appeared) recommend to the Committee that it be knocked down at its meeting on May 17<sup>th</sup>, but that if Ellis wanted to “contest” this recommendation, he should submit “a statement itemizing the cost to rehabilitate the building in order to demonstrate the *feasibility* of rehabilitation.”

On May 9<sup>th</sup>, Mr. Ellis went to Inspections in an effort to obtain a code compliance inspection, since it appeared that he needed one in order to get back to work on his building. He ended up talking to Mr. Deegan, who told him that there would be no code compliance on this building and that he needed to have a structural engineer submit some sort of rehabilitation plan for the building. This was news to Mr. Ellis, who asked how and when that requirement had been imposed. Mr. Deegan responded by telling him that he had given him some sort of document, months ago, which made it clear how he needed to proceed with a structural engineer. When asked to produce this document, Mr. Deegan said he didn’t have time to go look for it, but would do his best to find it later that week. He finally provided me with a copy of this document (which is attached to Mr., Ellis’ affidavit) two days before the May 17<sup>th</sup> Committee meeting. How this document provided any authority or guidance for the involvement of a structural engineer is beyond my understanding. Mr. Ellis doesn’t remember ever receiving such a document from Mr. Deegan.

At the Committee meeting on May 17, 2006, Mr. Deegan again claimed, in addressing the Committee, that Mr. Ellis had been told early on that he needed a structural engineer to submit plans for his building. There is simply no evidence in the record to support such a claim. There are numerous letters and notices that mention the need for a code compliance inspection, but not a single document from any person at Inspections directs Mr. Ellis to proceed under the supervision of a structural engineer. Despite this fact, Mr. Ellis was somehow supposed to know that he needed to do so.

Having received Mr. Ellis' itemized, detailed statement of the estimated costs of repairing his building (in the amount of \$135,000) a few days earlier, Mr. Deegan then stated that his estimate for the cost of rehabilitating this building was more than a half a million dollars, maybe closer to \$600,000. When asked later about the huge difference between his estimate and the one submitted by Mr. Ellis, Deegan responded that it was because of the cost of "union labor", but provided no other reason for his general, non-specific estimate (which was around \$400,000 higher than that of Mr. Ellis) other than a quick reference to the possible need for a sprinkler system in the building (the cost for which Mr. Ellis had received an oral bid of around \$8,000.).

After hearing from some neighborhood residents who were vaguely critical of Mr. Ellis' past maintenance of the building, as well as the poor appearance of the building in the months since the fire, the Committee then voted to approve Inspections' recommendation to demolish the building, after one member commented that it was an "eyesore." While it is true that this building could fairly be called an eyesore, it is not through the fault of Mr. Ellis, who has faced one roadblock after another as he has tried to rebuild and restore this building. When he earlier asked Vicky Carey, the person who issued the "stop work" order, why he couldn't replace the windows in the building and get rid of the unsightly boards, she told him that it wouldn't be good for security.

Among the numerous criteria of Chapter 249.50 –which are to be used in deciding if a property should be rehabilitated or demolished – the only one that is mentioned in Inspections' April 21<sup>st</sup> letter regarding the Committee's discussion of this property was the "economic feasibility" of rehabilitation. This criterion seemed to be the focus of the Committee's attention at the meeting. Mr. Ellis provided a detailed, itemized estimate of the cost of repairing this building to its prior condition, with a total cost of around \$135,000. His estimate was based upon some bids that he had received, as well as his years of experience as a housing inspector and a property owner. He was in the process of obtaining additional written bids for electrical and plumbing work on the building, all of which would have been in line with his estimates for this work.

In response, Mr. Deegan threw out the sum of \$506,000 (maybe as much as \$573,800) as the cost of rehabilitation. He provided no breakdown of this huge amount, no itemization of the different parts of this project, as Mr. Ellis did. In response to the question of why there was this \$400,000 difference, he provided the standard response, which was the cost of "union" labor. It is preposterous to believe that this was the real reason, but the Committee did not ask Mr. Deegan to provide any other explanation for this absurdly inflated estimate. Aside from Mr. Deegan's estimate and the complaints of a few neighbors, there was no other "evidence" presented in support of the recommendation to knock this building down.

I would submit that, based upon the record in this case, Mr. Ellis carried his burden of demonstrating the economic feasibility of repairing this building, one that had provided affordable housing in this neighborhood for many years. I would ask that you carefully read and consider all of the information in the record regarding this building before making your decision on whether or not to adopt the proposed findings and

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recommendation recently submitted by the City Attorney's office. I believe that after doing so, you will agree that the decision should be to vote against demolishing this building because there is no good reason presented for voting to demolish it.

Mr. Ellis was willing and able to repair it; he was just not allowed to do so through a series of miscommunications, misunderstandings and obstacles. He spent around \$15,000 on this building from the time of the fire until the eventual decision to demolish it. A licensed structural engineer believed that it was capable of being repaired, notwithstanding Inspection's ongoing desire to knock it down beginning the very day that it was damaged in the fire. A clear reading and review of all of the facts present in this matter lead to the conclusion that Andrew Ellis should have been allowed to repair and restore this building to its former, pre-fire condition, no matter how much it might have cost him to do so. He was wrongfully prevented from doing so and should not have had this building demolished against his wishes.

For all of these reasons, I would ask you to reject the proposed findings of fact and recommendation to demolish this building.

Sincerely,

Dennis Schertz

copy: Andrew Ellis  
Paul Ostrow  
Diane Hofstede  
Barbara Johnson  
Gary Schiff  
Cam Gordon