

**CITY OF MINNEAPOLIS
NUISANCE CONDITION PROCESS REVIEW PANEL**

**In the matter of the Appeal of
Director's Order To
Demolish the Property
Located at 2400 Dupont Avenue N.
Minneapolis, Minnesota.**

**AMENDED
FINDINGS OF FACT,
CONCLUSIONS, AND
RECOMMENDATION**

This matter came on for hearing before the Nuisance Condition Process Review Panel on August 9, October 4, November 8, and December 13, 2007 in City Council Chambers located in Minneapolis City Hall. At the August 9, 2007, hearing Acting Board Chair Patrick Todd presided and other board members present included Dave Dewall, Grant Wilson and Elfric Porte. At the October 4 hearing Patrick Todd presided and other board members present included Dave Dewall and Geri Meyer. At the November 8 hearing Grant Wilson presided and other board members present included Elfric Porte and Elizabeth Ryan. At the December 13, 2007, hearing Grant Wilson presided and other board members present included Geri Meyer, Jim Dahl and Pete Pelletier. Assistant City Attorney Lee C. Wolf was present as *ex officio* counsel to the board at all the hearings. Wayne Murphy represented the Inspections Division at all of the hearings. Leroy Smithrud, the owner of 2400 Dupont Avenue N. was present at all of the hearings. On December 13, 2007, this matter was before this Board and after consideration of all the facts this Board voted to uphold the Director of Inspections' Order to Raze the building located at 2400 Dupont Avenue N., Minneapolis, Minnesota. Findings of Fact, Conclusions and Recommendation were completed and signed by Acting Chair Grant Wilson. A review of the record by the Department of Inspections showed that there were some errors in the evidence presented to the Board; in addition, Mr. Smithrud informed Department staff that he had filed an appeal of the Zoning Board of Adjustment's decision denying a Certificate of Nonconforming

use to legally re-establish ten dwelling units at 2400 Dupont Avenue N. in the R2B two family district. Due to these two issues Department staff recommended that this matter be referred back to this Board after the outcome of the Zoning appeal, and an appeal was heard on May 8, 2008. At the May 8, 2008 hearing Board Chair Burt Osborne presided and other board members present included Bryan Tyner and Geri Meyer. Based upon the Board's consideration of the entire record, the Board makes the following:

FINDINGS OF FACT

1. 2400 Dupont Avenue N. is a 10 unit apartment complex. Four of the units are one bedroom units located in the basement. The other six units are two bedroom units. The building sits on a 50 x 157 foot lot and is zoned as R2B. The building has been on the Vacant Building Registration since January 20, 2004, and there has been no rental license on the property since May 2003.

2. The building located at 2400 Dupont Avenue N. was posted with Letters of Intent to Condemn for lack of maintenance on May 9, 2003, and December 29, 1998. The building located at 2400 Dupont Avenue N. was posted with Letters of Intent to Condemn for being a boarded building on August 3, 2005, and December 29, 2006. The building located at 2400 Dupont Avenue N. was never condemned by the Department of Inspections for being a boarded building or for lack of maintenance. There are 38 open housing violations, including illegal wiring, repair/replace windows, repair/replace fixtures, repair/replace roof, repair walls, repair ceilings, smoke detectors, repair floors, leaky faucets, nonworking door hinges and locks.

3. As the building has been vacant for over one year the building has lost its non-conforming rights to be an apartment complex. The owner would need to be granted a variance in order continue to use the property as a 10 unit apartment complex.

4. The Assessor rates the overall building condition as poor and indicates that there has been some fire damage in the building.

5. The Inspections Division of the City of Minneapolis determined that the property at 2400 Dupont 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; or*

(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.*

6. Pursuant to M.C.O. § 249.40(1) the building was examined by the Department of Inspections 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 market value after rehab according to the appraisal obtained from Minneapolis Community Planning and Economic Development staff is \$408,300. The taxable value of the property is \$240,000 (2006), \$260,000 (2007) and \$75,000 in 2008. The property was reviewed and exhibited no historical value.

b. Taxes on the property are current and there are no special assessments attached to the property. There is a \$1,207.08 water bill.

c. The Hawthorne Area Community Council and the owners within 350 feet of 2400 Dupont Avenue N. were mailed a request for a community impact statement. The Department of Inspections received three in return, two recommended demolition and one recommended repair/renovate. Two of the impact statements commented that the property has had a negative impact on the neighborhood and one commented that it had no effect on the neighborhood..

d. In 2000, the Hawthorne neighborhood had 2,015 housing units; 1,853 were occupied and 162 were vacant. The total number of housing units decreased by 608 between 1980 and 2000, as did the number of vacant units. The vacant housing rate was 5.8 percent in 1980 and reached its highest level in 1990 at 15 percent. In 2000 it dropped to 8.8 percent. Of the 944 houses on the City's Vacant Building Registration, 140 are in the Hawthorne neighborhood.

7. LeRoy Smithrud has owned the property at 2400 Dupont Avenue N. since 1970.

8. In 2003 the property had two fires and the rental license for the property was closed. The property has not had a rental license since May 9, 2003, and has remained vacant since that time.

9. Taking into account the criteria listed in § 249.40(1) a notice of the Director's Order to Demolish was mailed on June 6, 2007 to LeRoy Smithrud at Freeway Realty, Inc.

10. On June 25, 2007 LeRoy Smithrud filed an appeal of the Director's Order to Demolish. A hearing was scheduled for August 9, 2007.

11. On August 9, 2007 the hearing was continued to October 4, due to health issues of the owner LeRoy Smithrud and to allow the Fire Marshall to enter the property to ensure that all hazardous materials had been removed from the building. Mr. Smithrud also indicated that

there was a potential buyer for the property and that they would need to look into filing for a variance to allow the building to remain a ten unit apartment building.

11. On October 4 the hearing was continued 30 days and on November 8 the hearing was continued another 30 days as there was not a quorum of Board Members available to vote.

12. On December 13 Mr. Smithrud stated that he had filed for a variance and that was confirmed by a call to the City's Zoning & Planning Department. Mr. Smithrud argued that the building was not a nuisance and should not be torn down and that he had a buyer in place as long as the property could be used as a 10 unit apartment complex.

ADDITIONAL FINDINGS FROM THE MAY 8, 2008 HEARING

1. The building located at 2400 Dupont Avenue N. was posted with Letters of Intent to Condemn for being a boarded building on August 3, 2005, and December 29, 2006.

2. The building located at 2400 Dupont Avenue N. was posted with Letters of Intent to Condemn for lack of maintenance on May 9, 2003, and December 29, 1998.

3. The building located at 2400 Dupont Avenue N. was never condemned by the Department of Inspections for being a boarded building or for lack of maintenance.

4. The water at 2400 Dupont Avenue N. was turned off for non-payment and the current amount due is \$2,720.46. There are also pending assessments in the amount of \$3,188 for 2008 and \$4,550 for 2007.

5. On March 27, 2008 the City of Minneapolis Zoning and Planning Department denied Mr. Smithrud's appeal for a Certificate of Nonconforming use to legally establish ten dwelling units at 2400 Dupont Avenue N. in the R2B two family district.

6. On April 4, 2008 the Minneapolis City Council voted to uphold the recommendation of the Zoning Board of Adjustment to deny a Certificate of Nonconforming

Use to legally establish ten dwelling units at 2400 Dupont Avenue N. in the R2B two family district.

7. The property located at 2400 Dupont Avenue N. has lost its nonconforming use rights and cannot legally have a 10 unit building on the site.

CONCLUSIONS

1. The building located at 2400 Dupont 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.

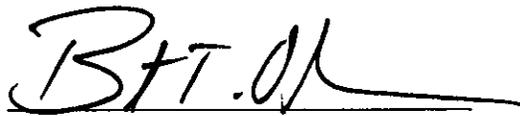
2. The building located at 2400 Dupont Avenue N. meets the definition of nuisance condition as set forth in M.C.O. § 249.30(a)(4) as evidence, including but not limited to rehab assessments completed by CPED, clearly demonstrates that the cost of rehabilitation is not justified when compared to the after rehabilitation resale value of the building. The cost of renovating the building into a duplex from a ten unit building (due to the loss of nonconforming rights) would not be justified when compared to the after rehabilitation resale value of the building.

3. Pursuant to M.C.O. § 249.40 *Abatement of nuisance condition*, the Director of Inspection's order to demolish the building located at 2400 Dupont Avenue N. is appropriate. The building 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 demolition of the building is appropriate. The building has been vacant for over four years and therefore has lost its nonconforming rights to remain a ten unit apartment building. The building has no value as it is, if it cannot be used as a ten unit apartment building.

RECOMMENDATION

That the Director of Inspections' Order to Raze the building located at 2400 Dupont Avenue N., Minneapolis, Minnesota be upheld.

A handwritten signature in black ink, appearing to read "B+T.O.", with a long horizontal flourish extending to the right.

Burt Osborne
Chair,
Nuisance Condition Process Review Panel