

Ely City Council Public Hearing Minutes – August 25, 2015

The Ely City Council Public Hearing was called to order by Mayor Novak at 5:00 p.m. on August 25, 2015 at the Council Chambers, Ely City Hall

PRESENT: Council members A.Forsman, Kess, Debeltz (Arrived at 5:32pm), Omerza, Polyner, D. Forsman and Mayor Novak (7)

ABSENT: None

The purpose of the public hearing is to discuss the real property located at 1041 E Washington Street.

The following people testified at the hearing George Burger City of Ely Police Officer, Doug Whitney City of Ely Building Official, Police Chief John Lahtonen, and Steve Jaffey from the Mesabi Humane Society. The following resolution was adopted at the hearing and contains the facts and findings of the hearing.

Kess/Debeltz moved to approve Resolution #2015-026 declaring the real property at 1041 East Washington Street Blight Pursuant to the Ely City Code.

RESOLUTION #2015-026

A RESOLUTION AND ORDER OF THE CITY OF ELY, MINNESOTA DECLARING THE REAL PROPERTY AT 1041 EAST WASHINGTON STREET BLIGHT PURSUANT TO THE ELY CITY CODE

WHEREAS, the City of Ely is a Municipal Corporation governed under the Charter of the City of Ely with powers vested in its City Council; and

WHEREAS, the City of Ely is authorized to exercise its municipal powers for the promotion of health and safety;

WHEREAS, pursuant to Ely City Code Sec. 10.22, subd. 3 “Interior areas of structures, including residential dwellings. a) The interior of every structure shall be maintained in a sanitary condition, free of accumulations of garbage and refuse. b) The interior of every structure shall be maintained free from infestation of noxious insects, rodents, and other pests and animal waste. c) All plumbing systems shall be properly installed, connected, and maintained in good working order, and must be kept free from obstructions, leaks, and defects.” **See the attached Exhibit A.**

WHEREAS, pursuant to Ely City Code Sec. 10.22 subd. 9, “Duties of City Officers. The Enforcement Officer(s) shall enforce the provisions of this Ordinance relating to blight and blighting factors and shall assist the other designated officer(s) in the enforcement of provisions relating to blight and blighting factors affecting public safety. Such officers shall have the power to inspect private premises and take all reasonable precautions to prevent the commission and maintenance of blight and blighting factors.”

WHEREAS, pursuant to the Ely City Code Sec. 10.22, Subd. 10(a)3, “Notice of City Council Order. Except for those cases determined by the City to require summary enforcement, written notice of any City Council order shall be made as provided in Minn. Stat. 463.17 (Hazardous and Substandard Building Act).”

WHEREAS, pursuant to the Ely City Code Sec. 10.22, Subd. 10(b) “Procedure. Whenever the Officer charged with enforcement determines that blight or blighting factors exist on premises in the City, the Officer shall notify in writing the owner of record or occupant of the premises of such fact and order that such blight or blighting factors be terminated or abated. The Notice of Violation shall specify the steps to be taken to abate the blight or blighting factors and the time within which the blight or blighting factor is to be abated. If the Notice of Violation is not complied with within the time specified, the enforcing Officer shall report that fact forthwith to the Council. Thereafter, the Council may, after notice to the owner or occupant and an opportunity to be heard, determine that the condition identified in the Notice of Violation is a blight or blighting factor and further order that if the blight or blighting factor is not abated within the time prescribed by the Council the City may seek injunctive relief by serving a copy of the City Council Order and Notice for Summary Enforcement.”

NOW, THEREFORE, the City Council of the City of Ely, finds that:

1. In January of 2015, City of Ely, Building Official Douglas Whitney “Whitney” received a phone call from Ann Hyrkas, Public Health Nurse for St. Louis County, “Hyrkas” notifying him of a complaint she received relative to the internal condition of a dwelling located at 1041 E. Washington Street, Ely, Minnesota 55731 “Dwelling.”
2. During the timeframe of January to July 2015, Whitney made numerous attempts to contact the owner to discuss the alleged health and safety concerns and inspect to Dwelling.
3. On July 20, 2015, Luthera Smith “Smith” owner of the Property met with Hyrkas and Whitney to discuss concerns relative to the Dwelling. The meeting initiated at City Hall and the parties traveled to the Dwelling to perform an inspection. Smith partially opened the door and consented to allow Hyrkas and Whitney to look through the open door into in the Dwelling. Whitney found there was an inordinate smell of ammonia and animal waste coming from the Dwelling, as well as, evidence of an excessive number of cats in the Dwelling. Whitney immediately issued a Notice of Hazardous Building to Smith. **See the attached Exhibit B.** Said notice was posted on the Dwelling door and sent via certified mail to Smith. The Notice indicated the Dwelling will be posted as uninhabitable and a hazardous building, posing an immediate threat to health and safety. Furthermore, that the hazards and unsanitary conditions must be abated. The Notice ordered Smith to correct the conditions by completing the following within 30 days:
 - a. Remove all excess animals from the Dwelling.
 - b. Completely clean the Dwelling.
 - c. Remove all waste and soiled household goods from the Dwelling and yard.
 - d. Remove all soiled carpet from the Dwelling and yard.
4. On July 21, 2015 Smith contacted Whitney acknowledging receipt of the Notice of Hazardous Building.
5. Along with the Notice of Hazardous Building, Smith also received a notice indicating her right to appeal by filing with the City. **See the attached Exhibit C.** To date, Smith has not filed an appeal with the City.
6. On July 24, 2015, the Dwelling was posted as uninhabitable. **See the attached Exhibit D.**
7. On August 3, 2015, a search warrant was issued by St. Louis County District Court Judge Florey allowing a search of the Dwelling to be performed on August 5, 2015. **See the attached Exhibits E and K.**

8. Pursuant to the search on August 5, 2015, Whitney amended the Notice of Hazardous Building issued on July 20, 2015. **See the attached Exhibit F.** Whitney left a copy at the Dwelling and sent via certified mail. To date, Whitney has not received a receipt acknowledging the certified mail was received. Whitney, in his capacity as Building Official for the City of Ely, deemed the Dwelling an immediate threat to health and safety and ordered that the hazards and unsanitary conditions must be abated. The property should not be entered without protective clothing and a masks. The conditions which led to this determination are:
 - a. The Dwelling had an excessive smell even before entering the door.
 - b. There is an inordinate smell of ammonia and animal waste in the Dwelling.
 - c. The front hall floor covered with trash, food, household goods and animal waste.
 - d. Two dogs and 21 cats were rescued by the Mesabi Humane Society. The cats had been in the walls and basement ceiling. An unknown number of dead cats remain in the Dwelling.
 - e. The many of Dwelling windows are all covered with black plastic. There was no natural light or ventilation for the animals.
 - f. The kitchen, dining, bath, and bed rooms had 2 feet of trash, food, household goods and animal waste covering the floor. Flies covering the ceiling.
 - g. The stairs has up to 12 inches of trash, food, clothes and animal waste covering the treads.
 - h. The back room in the basement had 6 inches of water soaked animal waste. The water coming from leaking water pipes.
 - i. The detached garage had 4 feet of trash, food, goods and animal waste covering the floor.
 - j. Overall the property is in a state of extreme filth and squalor.
9. The August 5th amended Notice of Hazardous Building further stated that owner was ordered to correct the conditions by completing the following within 30 days:
 - a. Remove all animals from the Dwelling.
 - b. Disconnect all utilities.
 - c. Completely remove the Dwelling, garage and shed, including the foundation.
 - d. Remove all demolition materials and personal property from the yard.
 - e. Back fill any open excavation, cover with topsoil and seed.
10. As of August 25, 2015, Smith has not requested an appeal nor has she attempted to clean or abate the conditions found at the Dwelling. Smith has not contacted City Officials regarding access or personal items. No attempt by Smith has been made to feed or water animals.
11. On August 18, 2015 and pursuant to Ely City Code Section 10.22 subd. 10(a) 2, a hearing before the Ely City Council was scheduled and Smith was personally served notice of said hearing and notice of her opportunity to be present. **See the attached Exhibit I.** Smith, along with the notice of hearing, was also served a copy of the inspection report. **See the attached Exhibit J.**
12. On August 25, 2015, a hearing was held at 5 pm at City Hall. All members of the Ely City Council present. Testimony was received by Officer George Burger, Whitney, Officer Lahtonen and Steve Jaffee (Mesabi Human Society). Smith was present and afforded the opportunity to testify, but refused. Smith indicated that she has sought legal counsel and requested a continuance of the hearing. Testimony was received from City Staff that no correspondence from Counsel for Smith has been received by the City, nor

was a continuance of this hearing requested in writing. Betty Firth was afforded opportunity to address the Council on Smith's behalf. **See the attached Exhibits A through K** were entered into evidence and are made part of this Order.

THE ELY CITY COUNCIL finds that:

1. The tax parcel code for the real property is 030-0200-00720. The registered owner pursuant to St. Louis County tax and real property records is Luthera A. Smith, P.O. Box 471, Ely, MN 55731.
2. The conditions that exist on the real property located at 1041 E. Washington Street are blight and pose an imminent public health hazard in violation of Ely City Code Section 10.22.
3. Smith was served and notified on July 20, 2015 and as amended on August 5, 2015 of the factors and conditions of blight existing on the property. To date, Smith has not abated or terminated the blighting factors.
4. The blight or blighting factors create an unreasonable danger to public health, safety and welfare. The building is unfit for human habitation or entry due to extreme filth and squalor and hazard to the neighborhood.
5. Based on the blight conditions, the following must be performed to abate the conditions:
 - a. Remove all animals from the Dwelling.
 - b. Disconnect all utilities.
 - c. Completely remove the Dwelling, garage and shed, including the foundation.
 - d. Remove all demolition materials and personal property from the yard.
 - e. Back fill any open excavation, cover with topsoil and seed.
6. A Minnesota State Licensed Contractor (s) must be used for the work as required by law.

BE IT ORDERED, by the City Council of the City of Ely, that:

The conditions that exists on the real property located at 1041 East Washington Street are blight and poses an imminent and unreasonable danger to public health, safety and welfare. Notice is hereby given to Ms. Luthera Smith that the City of Ely will move for Summary Enforcement of this Order unless the specified corrective action is taken within 15 days of the execution of this Resolution and Order or unless an injunction is filed and granted by the District Court. The City of Ely will seek reimbursement for abatement and all costs incurred in obtaining and enforcing this Order.

Roll called: A.Forsman-yes, Kess-yes, Debeltz-yes, Omerza-yes, Polyner-yes, D.Forsman-yes and Mayor Novak-yes. Motion carried unanimously.

Public Hearing was closed by the Mayor at 5:46pm.

Casey Velcheff
Deputy Clerk