



Date January 22, 2024

CONSIDERATION OF A REQUEST FROM MT HOME SERVICES LLC, REPRESENTED BY ASHLEY MARTINEZ TO DEMOLISH THE STRUCTURE AT 1410 19TH STREET PURSUANT TO SECTION 58-70 OF THE HISTORIC PRESERVATION ORDINANCE

WHEREAS, MT HOME SERVICES LLC recently purchased the property locally known as 1410 19th Street, upon which sits a single-family residential home building (“Building”) that is over 80 years old and has proposed to demolish the Building; and

WHEREAS, the Building is on the National Register of Historic Places, but the Building is not in a local historic district and is not a local landmark; and,

WHEREAS, in accordance with the Historic Preservation Ordinance, the City Council is required to consider oral and written comments from all interested parties and determine if the proposed demolition should be referred to the City’s Landmark Review Board for further study and review.

NOW THEREFORE, BE IT RESOLVED, by the City Council of the City of Des Moines, Iowa, as follows:

Upon due consideration of the facts, and any and all statements of interested persons and arguments of counsel, any objections to the proposed demolition, are hereby received and filed.

(Council Communication No. 24-022)



Date January 22, 2024

Alternative A

MOVED by _____ to adopt and **DENY** the request to demolish the Building at 1410 19th Street, and to refer the application for proposed demolition to the Landmark Review Board for further study and review. Second by _____.

Alternative B

MOVED by _____ to **APPROVE** the request to demolish the Building at 1410 19th Street, subject to all conditions and requirements set forth in City of Des Moines Municipal Code §58-70(d). Second by _____.

Approved as to Form:

/s/ Lisa A. Wieland

Lisa A. Wieland, Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
BOESEN				
VOSS				
COLEMAN				
WESTERGAARD				
MANDELBAUM				
GATTO				
TOTAL				

MOTION CARRIED

APPROVED

CERTIFICATE

I, LAURA BAUMGARTNER, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

Mayor

City Clerk





06/15/2018 11:47



09/05/2019 14:24



09/05/2019 14:42



Coupee, Jacob T.

From: Ashley G. Martinez Torres <mt.ashleyg@gmail.com>
Sent: Friday, January 12, 2024 12:11 PM
To: Coupee, Jacob T.
Subject: Re: 1410 19th Street Council Communication question

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Yes, we want the city to consider demolition of the building. I'm attaching our signed contract with a private demolition company to this email - the proposal was sent back in December to Dalton I believe.

Let me know if you have any further questions,

-Ashley

On Fri, Jan 12, 2024 at 10:55 AM Coupee, Jacob T. <JTCoupee@dmgov.org> wrote:

Hello Ashley,

I'm in process of finishing out the information that will go before Council regarding your request to demolish 1410 19th Street.

Can you confirm that you would like the City Council to consider demolition of the building at 1410 19th Street, which is a potential local landmark site, at the City Council meeting scheduled for January 22, 2024?

I know we have spoken directly about the project, but it looks like we don't have anything in writing to confirm the request, and we will need that for the Council Communications.

Thanks!

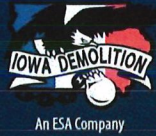
Jacob Coupee He/Him/His | CITY OF DES MOINES

Urban Planner | Development Services

JTCoupee@dmgov.org

Mobile: (515) 249-1743

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Proposal Submitted to Owner

Name: Ashley Martinez
Address: 214 Leland Avenue, Des Moines, IA
Phone: 515-512-6769
Email: mt.ashleyg@gmail.com

Proposal No.

P23-661

Date

12/08/23

Project

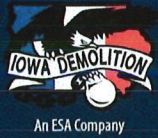
House 1410 19th Street
1410 19th Street
Des Moines, IA 50314

PROPOSED SCOPE OF WORK – Earth Services & Abatement (ESA) hereby proposes to:

- Obtain state and local permits for demolition of structure.
- Ensure gas and electric have been properly disconnected (disconnects to be called in by customer).
- Disconnect one water and one sewer source per local requirements.
- Notify Iowa One Call before starting project.
- Mobilize equipment to jobsite.
- Demolish, remove, and haul away structure, slab, footings, and foundations to a state approved landfill or recycling facility.
- Demolish, remove, and haul away two sheds located on alley way side of property to a state approved landfill or recycling facility.
- Demolish, remove, and haul away driveways to sidewalk area to a state approved landfill or recycling facility.
- Provide backfill to fill in basement area.
- Rough grade site when complete.
- Provide hydroseeding of disturbed areas.

ASSUMPTIONS – This Proposal is subject to and provided based upon the following assumptions:

- All storage containers and salvage items to be removed prior to start.



EXCLUSIONS – This Proposal is subject to and provided based upon the following exclusions:

- Remove or manage the removal of items identified to be hazardous materials by any governmental agency. In the event Contractor encounters hazardous materials, Contractor may, at its sole discretion, discontinue work on the site. Contractor will promptly notify General Contractor of the identification of hazardous materials. In the event work by Contractor is delayed, Contractor shall be entitled to an increase in the contract price for additional mobilization to the site. In the event the delay due to hazardous materials exceeds 30 days, Contractor shall be entitled to payment for work performed from the commencement of the project to the time work is suspended.
- Be responsible for any asbestos surveys or removal.
- Be responsible for any testing.
- Be responsible for any soil erosion prevention plan or execution thereof.
- Be responsible for any utility disconnections not stated in the scope of work.
- Be responsible for any damaged paving from normal demolition activity.
- Be responsible for the removal of debris below grade without the negotiation of a change order to the quote contained herein.
- Be responsible for any weather proofing.
- Be responsible for any build back.
- Be responsible for any shoring.
- Be responsible for any soil compaction or compaction testing.
- Be responsible for final grading and seeding of site.
- All scrap and items are the property of Iowa demolition.

DOCUMENTS INCORPORATED BY REFERENCE, if any:

- None, based on site visit

PROPOSED DURATION OF WORK:

- Three business days

CONTRACT PRICE – ESA proposes to provide the above-described Scope of Work for the sum of:

\$34,426.00

Additional Terms

Payment shall be due within thirty (30) days after the above-described Scope of Work is complete. Owner's obligation to pay ESA under this agreement may be secured by a general mechanics' lien. Interest shall accrue on all overdue balances at the rate of 1.5% per month. In the event payment is not made as required herein, ESA shall be entitled to recover all costs of collection, including, but not limited to, reasonable attorney fees. Retainage, if any, shall be paid within thirty (30) days of completion of the Scope of Work as defined above. Owner and ESA may agree to changes in the Scope of Work. Any modifications to the Scope of Work shall be approved by both Parties. Change orders made pursuant to this provision shall be incorporated herein and become part of this agreement. ESA's ability to perform in accordance with this agreement is subject to and contingent upon strikes, accidents, or delays beyond our control. Owner shall carry fire, tornado, or other necessary loss insurance. ESA is not the generator of waste, Owner is the generator of waste and hereby gives ESA authority to sign waste disposal documents on Owner's behalf. To the extent this proposal is incorporated by reference in and/or may conflict with other project or contract documents, this agreement shall control.



Authorization


Submitted by ESA Representative –
Name: Mr. Tracey A. Harbert
Title: Sr. Project Manager
Phone: 352-978-1688
Address: 1901 Easton Blvd.
Des Moines, IA 50316

Tracey A. Harbert
Authorized Signature

NOTE: This proposal shall be deemed withdrawn
by ESA if not accepted within thirty (30) days.

Acceptance

Acceptance of Proposal - The above terms and conditions are satisfactory and hereby accepted. ESA is authorized to do the work as described. Payment will be made as specified above. Should you accept this proposal, please sign and return via email.



Authorized Signature

Date: 12/15/23

Printed Name: Ashley Martinez

Title: MT Homes Services LLC Service Manager

CLIENT'S NOTE: A department of the city of Des Moines is seeking to preserve the house as a "historic monument," while the city and the department go through this process we have to wait to tear the house down. A representative of the city will get a hold of you and us to let us all know whether we can go ahead with the demolition.

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

**CITY OF DES MOINES, IOWA,
Plaintiff,**

No. EQCE086040

vs.

RULING

**US BANK, N.A.;
CALVIN L. SALE,
Defendant(s).**

This matter came on for trial on September 5, 2023, with the Plaintiff, City of Des Moines, Iowa, appearing by and through Molly E. Tracy, Assistant City Attorney, and with Defendant, Calvin Sale, appearing pro se. Defendant U.S. Bank filed a Consent to entry of a decree prior to trial and did not appear for trial. Having heard and considered the evidence presented at trial, the court issues this Ruling.

I. Findings of Fact

Defendant Calvin Sale (“Sale”) owns property at 1410 19th Street, Des Moines, Iowa, legally described as follows:

Lots 13, 14 and 15 in Block 1 in MARQUARDTS 2nd ADDITION to North Des Moines, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa

Sale acquired sole title to the subject property via quit claim deed from Kristian Mikesell on September 29, 2020. Before becoming the sole title holder via quit claim deed, Sale had been one of the title holders since at least 2007. Sale was living in the house and was in the process of trying to rehabilitate the structure.

The house came to the City’s attention on June 13, 2018, because of a complaint about the condition of the structure. City Inspector Matthew Stock (“Stock”) inspected the exterior of the property on June 15, 2018. Stock was concerned the property was then or could become very

soon a public nuisance if certain repairs were not completed. Among other things, Stock observed the front door was boarded up, the porch was in danger of collapse, the paint was peeling, and there were openings in the roof and other areas of the structure that allowed weather and potentially animals to enter. Stock talked to Sale about the repairs needed, and informed Sale he would follow-up in October.

Stock conducted another inspection on October 15, 2018. None of the conditions he observed at the first inspection in June had been remedied. Sale told Stock he had applied for state grants to help finance repairs, but so far had been unsuccessful. Sale said he first applied for grants in 2009 or 2010. Because he lacked financial means, Sale said he did not expect to do the most urgent repairs Stock identified, including the soffit, siding, and front porch, until 2020. On October 29, 2018, Stock sent a letter to Sale identifying the repairs that needed to occur to avoid the structure being found in violation of the City's Public Nuisance Code.

At a reinspection on or about June 3, 2019, Stock observed the exterior of the property remained in essentially the same condition of disrepair as when he first saw it approximately one year before. He was concerned about the safety of the structure, and requested from Sale permission to enter, which Sale denied. Stock applied for an administrative search warrant, which the court granted on August 27, 2019. On September 5, 2019, Stock and a City of Des Moines police officer executed the administrative search warrant. The officer called Sale before they entered the property to offer him the opportunity to be present, but Sale declined. Upon inspecting the inside of the structure, Stock observed multiple Municipal Code violations and unsafe conditions, which he recorded in his notes and with photographs. After the inspection, Stock placarded the property as a public nuisance, as required by the Des Moines Municipal Code, § 60-103.

On September 26, 2019, Stock sent to Sale a Public Nuisance Notice of Inspection, informing Sale the property constituted a menace to health and safety, was a public nuisance, and was unfit for habitation. The Notice informed Sale the dwelling must remain vacant, or if occupied, it must be vacated immediately. The Notice contained a list of the Municipal Code Violations, recommendations of remedial action, and an order to correct the violations within 30 days.

Stock continued to monitor the condition of the property after September 26, 2019. On July 1, 2020, the City filed the present action. Both before and after the lawsuit was filed, Stock observed some repairs had been done, but not enough to abate the public nuisance. Sale did not apply for or obtain any building permits after September 26, 2019, which would have been required for some of the more significant repairs required to abate the nuisance. Stock testified the condition of the property has worsened since the time of his first inspection in June 2018. At this time, he believes part of the building is in danger of collapse, it is a fire hazard, and remains unfit for human habitation.

II. Conclusions of Law

The court finds the structure at 1410 19th Street, Des Moines, Iowa, is a public nuisance as defined in the Des Moines Municipal Code. The evidence is overwhelming the house is an unsafe and dangerous structure in one or more ways as defined in the Municipal Code § 60-192, including, but not necessarily limited to, subsections 1, 2, 3, 4, 7, 8, 17, 18, 21, 22, 23, 24, and 26.

Despite the overwhelming evidence the structure qualifies as a public nuisance, Sale denies the City is entitled to any relief under the City's Public Nuisance Code, for three reasons: First, he contends the City's inspection of the interior of the structure on September 5, 2019 was

illegal because the City did not serve him with the administrative search warrant. Therefore, Sale argues any evidence obtained during that inspection should be suppressed and cannot be relied upon in this proceeding as a basis for a finding of public nuisance. Second, Sale claims he was entitled to a hearing before the Housing Appeals Board pursuant to Municipal Code § 60-33(b)(8), and entitled to notice of a March 23, 2020 hearing before the City Council relating to his property, pursuant to § 60-207(2). Sale contends the failure to grant him a hearing or give notice of the hearing that actually occurred, violated his Constitutional right to due process. Third, Sale contends the City acted unreasonably in allowing him only 30 days to make the required repairs to the structure, and 7 days to vacate the home, both actions which he claims violate the “doctrine of reasonableness.” Each of Sale’s argument is discussed below.

A. Administrative Search Warrant

Iowa Code § 808.14 permits a court to issue an administrative search warrant to a governmental agency or body expressly or impliedly provided with statutory authority for inspections necessary for the agency or body to carry out such authority. The Des Moines Municipal Code § 1-19 provides a general grant of authority for administrative search warrants to conduct inspections. Section 60-8 authorizes a “right of entry” under the Housing Code to make inspections.

Administrative warrants are held to a lesser standard of probable cause than criminal search warrants. *State v. Green*, 540 N.W.2d 649, 654 (Iowa 1995), *citing Camara v. Municipal Court*, 387 U.S. 523, 537–38, 87 S.Ct. 1727, 1735, 18 L.Ed.2d 930, 940 (1967). The purpose of such a warrant is not to discover evidence of crime but to secure compliance with code standards. *Id.* Thus a finding of probable cause turns on the reasonableness of the inspection, not on proof that a violation would be found in a particular location. *Id.* at 534–35, 87 S.Ct. at 1734,

18 L.Ed.2d at 939. This test involves merely “balancing the need to search against the invasion which the search entails.” *Id.* at 537, 87 S.Ct. at 1735, 18 L.Ed.2d at 940.

The evidence in this case shows Stock had reasonable cause to believe an inspection of the interior of the structure would show a violation of the Municipal Code. Having inspected the outside of the house and monitored its condition from the outside for over a year, Stock had reason to believe it was a public nuisance even before inspecting the inside. Stock observed openings in the roof and other places in the house that he reasonably believed would allow weather and animals to get inside and cause damage. He was aware the home had been in disrepair for many years and had not been materially improved during Sale’s ownership. Stock applied to the court for a search warrant with an affidavit presenting these facts. There is no legal requirement the City provide notice to the property owner before executing the warrant, although the evidence shows the City did inform Sale and give him the opportunity to be present during the inspection. The City obtained the administrative search warrant using legal means, and no evidence resulting from the September 5, 2019 inspection will be suppressed.

B. Right to a Hearing and/or Notice of a Hearing

Sale did not have a right to a hearing in connection with the City’s efforts to have his property declared a public nuisance. Section 60-33(b)(8) upon which Sale relies is contained in the Rental Property Maintenance Code, not the Public Nuisance Code, and in any event does not grant the right to a hearing. Section 60-207(2) provides for a notice of hearing and appeal, but only in those cases where the City is seeking administrative removal of a structure. In this case, the City is not seeking administrative removal of Sale’s house, but instead filed this lawsuit and is asking the court for relief. The March 20, 2023 City Council action about which Sale

complains he did not get notice was merely a decision by the Council to authorize this legal action. Sale is not entitled to notice of such action.

Sale is entitled to due process before the City is entitled to demolish the structure on his property. *See Walker v. Johnson County*, 209 N.W.2d 137, 139 (Iowa 1973). But Sale's due process rights were not violated here. The City provided Sale with notice that his house violated the Municipal Code and the opportunity to remedy the nuisance. The City Council did not pursue an administrative remedy, but is seeking relief from this court, where Sale was provided an opportunity at a hearing to present his defense. The City did not violate Sale's due process rights by ordering him to abate the public nuisance or by seeking relief in this lawsuit.¹

C. Doctrine of Reasonableness

In claiming the City acted unreasonably on September 26, 2019 when it gave him 30 days to repair the structure to abate the nuisance, and 7 days to vacate the premises, Sale relies upon a so-called "doctrine of reasonableness." The court is not aware of any such "doctrine of reasonableness" under Iowa law, whether in connection with public nuisance statutes or otherwise. Sale cited no authority to support the existence of such a doctrine or what it means.

Regardless, the evidence shows the City acted reasonably as it relates to providing Sale opportunities to remedy the public nuisance. The September 26, 2019 formal notice was not the first time the City notified Sale the condition of his house may violate the Municipal Code. Stock informed Sale after his first inspection in June 2018 about the issues that could create a public nuisance, and encouraged Sale to remedy them. Even after September 26, 2019, the City took no action to enforce the Public Nuisance Code until it filed this action on July 1, 2020. It

¹ Nor did the City's order to vacate the premises violate Sale's right to due process. The order to vacate was based upon the City's findings the structure presented a threat to the health or safety of anyone living there, and thus was an emergency circumstance that did not require a prior hearing. *See Walker*, 209 N.W.2d at 139 (summary abatement of a nuisance permissible when foundationed on emergency circumstances).

took the matter more than three years to reach a trial. Between the date Stock first inspected Sale's property and the date of the trial in this case, more than five years elapsed. There is no evidence Sale took any meaningful action during those five years to remedy the issues the City had told him about. Sale has no basis to contend the City has acted unreasonably.

III. Ruling

THEREFORE, the court finds and orders as follows:

The main structure located upon the real estate legally described as:

Lots 13, 14 and 15 in Block 1 in MARQUARDTS 2nd ADDITION
to North Des Moines, an Official Plat, now included in and
forming a part of the City of Des Moines, Polk County, Iowa

and locally known as 1410 19th Street, Des Moines, Iowa, is a public nuisance which shall be abated by demolishing and removing the structures.

Defendant(s) shall immediately vacate the main structure of all occupants if not vacant, and keep the property vacant and secured until such time as the public nuisance has been abated.

Defendant(s) must abate the public nuisance by demolishing and removing the main structure and any debris on the property and leveling the ground upon which it stands within 60 days from the date of this Order, and should Defendants herein fail to demolish and remove the main structure thereon, the City of Des Moines is hereby authorized to do so.

Defendant U.S. Bank shall allow the abatement of the public nuisance and no judgment for costs shall be entered against U.S. Bank, unless U.S. Bank should take title to the subject property and stand in the position of titleholder.

The costs of this action and the costs incurred in the enforcement of the Municipal Code, inclusive of the costs of demolition and removal, as shown on the records of the Community Development Department and the Engineering Department of the City of Des Moines, Iowa, will

be charged to the Defendant(s) as a judgment and assessed against the property in rem, with interest.

The judgment will not be considered satisfied until the public nuisance is abated and all costs are paid.

IT IS SO ORDERED.



State of Iowa Courts

Case Number
EQCE086040
Type:

Case Title
CITY OF DES MOINES V CALVIN L SALE ET AL
ORDER FOR JUDGMENT

So Ordered

A handwritten signature in black ink, appearing to read "Patrick D. Smith".

Patrick D. Smith, District Court Judge,
Fifth Judicial District of Iowa

Electronically signed on 2023-09-25 15:49:31