



Roll Call Number

11-0040

Agenda Item Number

35

Date January 10, 2011

RESOLUTION DECLARING THE DES MOINES BUILDING AT 405 6th AVENUE
AND 513 LOCUST STREET TO BE A PUBLIC NUISANCE,
AND AUTHORIZING THE LEGAL DEPARTMENT TO PURSUE A COURT ORDER
FOR THE ABATEMENT OF SUCH NUISANCE,
AND AUTHORIZING THE LEGAL DEPARTMENT TO PURSUE A COURT ORDER
DECLARING THE BUILDING ABANDONED AND AWARDED TITLE TO THE CITY

WHEREAS, Deputy Building Official Cody J. Christensen and Fire Marshal Thomas S. Patava inspected the Des Moines Building at 405 6th Avenue and 513 Locust Street on December 7, 2010, and determined the building to be in violation of the 2006 International Building Code, the 2009 National Electrical Code, and the 2006 International Fire Codes as adopted by the City of Des Moines, all as more specifically described in their affidavits attached hereto as Exhibits "A" and "B"; and,

WHEREAS, on December 10, 2010, the titleholders, lienholders, and other parties with a known interest in the Des Moines Building were notified by mail, and where possible, by fax, e-mail or personal delivery, that the Fire and Building Code violations within the Des Moines Building created an imminent threat to fire department personnel, the public, neighboring properties and the Skywalk System, and constituted an emergency requiring immediate abatement, and were ordered to immediately take such action as is necessary to remedy and abate the violations, all as more specifically described in the letter attached hereto as Exhibit "C"; and,

WHEREAS, none of the parties with an interest in the Des Moines Building have taken any action to remedy or abate the violations of the Fire and Building Code.

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

1. The City Council hereby makes the following findings of fact regarding the condition of the Des Moines Building:
 - a) The Des Moines Building at 405 6th Avenue and 513 Locust Street is owned by Des Moines Tria Tower, LLC (originally represented by Alex Gershbeyn, Alex Shapiro and Anna Shapiro), and is more specifically described as follows:

Lots 3 and 4, Block C, Commissioner's Addition to Fort Des Moines, an Official Plat, all now included in and forming a part of the City of Des Moines, Polk County, Iowa.
 - b) The Des Moines Building is 14 stories tall, contains over 132,000 square feet of interior space formerly used for offices and retail uses, and is currently vacant.

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- c) The Des Moines Building is in close proximity to, and is physically connected by the Des Moines Skywalk System to the private garage at 518 Grand Avenue, the private City parking garage at 500 Grand Avenue, the Liberty Building at 418 6th Avenue and the Ruan Two Building at 601 Locust Street. This elevates the danger presented by the potential of a fire in the Des Moines Building.
 - d) The heating system in the Des Moines Building was turned off and in disrepair, allowing the temperature within the building to fall below freezing, and placing the fire sprinkler system in the building in imminent danger of freezing.
 - e) The City Legal Department obtained an emergency court order on December 10, 2010, authorizing the City to immediately enter the Des Moines Building to provide adequate heat to prevent severe damage to the sprinkler system. A copy of that order is attached as Exhibit "D".
 - f) Promptly upon issuance of the court order, City employees and representatives entered the building and began the repairs necessary to start the boiler. When the heating system was sufficiently repaired to begin heating the building in the late afternoon of December 10th, ice had already begun to accumulate in the building fixtures. Had the heating system not been repaired and placed into service that afternoon, the plumbing and fire sprinkler system would have been severely damaged.
 - g) The continued maintenance of the fire sprinkler system, and the provision of sufficient heat to keep that system from freezing and breaking, is essential for the safety of the Des Moines Building and those buildings in close proximity, and physically connected to the Des Moines Building by the Skywalk System.
 - h) The continuing failure of the titleholder and all other parties with an interest in the Des Moines Building to maintain the Des Moines Building in a safe condition causes the building to pose a significant and imminent threat to fire department personnel, the public, neighboring properties, and the Skywalk System.
 - i) The Des Moines Building is suitable for redevelopment for housing or for a mix of housing and commercial uses.
2. The City Council hereby ratifies and affirms the prior determination by the Deputy Building Official and Fire Marshal that the Des Moines Building is a public nuisance requiring immediate emergency action by the City to mitigate the significant and imminent threat to fire department personnel, the public, neighboring properties, and the Skywalk System.
 3. The City Legal Department is hereby authorized to maintain an action in district court to obtain a decree ordering the abatement of the public nuisance, and allowing the City to take all necessary action to temporarily prevent any further nuisance situations.

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4. The City Legal Department is hereby further authorized to petition the district court pursuant to Iowa Code §657A.10A for an order declaring the Des Moines Building to be an abandoned building, and granting the City title to the property for redevelopment to include a housing component.
5. The City Manager is hereby authorized to take the necessary actions in compliance with the orders of the district court to maintain the heating system in the Des Moines Building and to temporarily abate the nuisance conditions upon the property that constitute an imminent danger as described above. In the event the building is not conveyed to the City, the costs of all such actions shall be brought before the City Council at a later date for levy as a special assessment against the property.
6. The City Manager is hereby further authorized to negotiate with the principal lienholder, PNC Bank, as successor to National City Bank, for the donation and assignment to the City of its interests in the Des Moines Building.

(Council Communication No. 10- 005)

MOVED by Mahaffey to adopt.

FORM APPROVED:

Roger K. Brown
 Roger K. Brown
 Assistant City Attorney

Exhibits:

- "A" Affidavit of Deputy Building Official
- "B" Affidavit of Fire Marshall
- "C" Letter of December 10, 2010
- "D" Order of the Polk County District Court

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COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE	✓			
COLEMAN	✓			
GRIESS	✓			
HENSLEY	✓			
MAHAFFEY	✓			
MEYER	✓			
MOORE	✓			
TOTAL	7			

MOTION CARRIED APPROVED
T. M. Franklin Mayor

CERTIFICATE

I, DIANE RAUH, 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.

Diane Rauh City Clerk