

Lawrence A. Wilford[†]
James A. Geske
Eric D. Cook
David R. Mortensen
Christina M. Snow[†]
Michael R. Sauer
Orin J. Kipp*
Greta L. Bjerckness‡•

Wilford Geske & Cook
A PROFESSIONAL ASSOCIATION

Telephone: (651) 209-3300
Fax: (651) 209-3339
www.wgcmn.com

ATTORNEYS AT LAW
7616 Currell Boulevard
Suite 200
Woodbury, Minnesota 55125

[†]Real Property Specialist – Certified by
Minnesota State Bar Association

*Also admitted in Wisconsin

‡Also admitted in North Dakota

•Qualified Neutral under Rule 114 of the
Minnesota General Rules of Practice

Received
August 5, 2015
3:18 pm

HAND DELIVERED

Coon Rapids City Council and
Board of Adjustment and Appeals
11155 Robinson Drive NW
Coon Rapids, MN 55433

Re: Objection to Pending Assessments
PIN #: 14-31-24-11-0015
Property Address: 798 Northdale Boulevard NW
Coon Rapids, MN 55448 (“Property”)
Our File No. 030119L03

Dear City Council and Board of Adjustment and Appeals:

Our firm serves as counsel for CitiMortgage, Inc. (“CitiMortgage”), on whose behalf this objection to pending assessments is submitted. The City of Coon Rapids is currently considering the assessment of \$3,000 to the above-referenced property, which includes amounts for a citation to remove and dispose of miscellaneous items (\$2,400) as well as a vacant building monitoring fee (\$600).

CitiMortgage respectfully objects to the citation fee of \$2,400 for removal and disposal of miscellaneous items issued on January 9, 2015. At the time of the citation, CitiMortgage was not in possession of the Property and had no legal authority to move, remove or dispose of the exterior items giving rise to the citation. However, once CitiMortgage possessed the appropriate legal authority provided by Minnesota law, it took immediate steps to resolve the citation, which work was completed on or about March 27, 2015 and confirmed by the City of Coon Rapids on March 31, 2015. Therefore, CitiMortgage should not be penalized and the \$2,400 fee should not be assessed to the Property.

CitiMortgage commenced a non-judicial foreclosure of the Property, which culminated in a Sheriff’s Sale on May 2, 2014, subject to a six month redemption period. During this

redemption period, CitiMortgage was the owner and holder of the Sheriff's Certificate to the Property subject only to the mortgagor's possession and right of redemption. But despite holding a Sheriff's Certificate, it is unlawful for a mortgagee (i.e. CitiMortgage) to take possession of an occupied Property (or clean it up), whether because an individual continues to reside in the Property or because personal property and items remain inside, until an eviction action is completed following the expiration of redemption (here, November 3, 2015). However, before taking possession of Property through eviction, a mortgagee is authorized to take prescribed steps to protect the Property from waste and trespass, but only when the Property is abandoned, and even then said actions are extremely limited and must be done cautiously and consistent the law so as not to violate the prior owner's or tenant's rights. See Minn. Stat. § 582.031. Notably, these actions do not include cleaning up miscellaneous personal property. Minn. Stat. § 582.031, Subd. 2. Moreover, there is the real concern by foreclosing lenders that by moving or disposing of personal property prior to an eviction, it is interfering with the owner's legal rights.¹ CitiMortgage was notified as part of the foreclosure process that tenants occupied the Property, which would require CitiMortgage to complete an eviction before having a right to possess or clean up the Property. Therefore, before CitiMortgage could legally or lawfully take remedial action on the January 9, 2015 citation, it was required to complete an eviction.

Compounding the issues experienced by CitiMortgage, it was precluded by federal law from commencing an eviction action until it gave the tenant a 90-day period to vacate. The Protecting Tenants at Foreclosure Act of 2009 ("PTFA") permits a tenant to remain in a foreclosed property for 90 days before eviction proceedings can be commenced. On November 10, 2014, our firm provided a letter to the tenant that her 90-day period would expire on February 8, 2015. Thus, CitiMortgage was unable to take remedial action as to the Property and the January 9, 2015 citation until *after* February 8, and completion of an eviction action.

After February 8, 2015, CitiMortgage learned that the tenants no longer wanted to reside at the Property and that they were going to remove all personal items. CitiMortgage worked diligently with the tenants so they could retrieve their items and we could confirm whether all personal items were removed. CitiMortgage was concerned that the exterior items may be those of the tenants, which they would want to take with them. After determining in March 2015 that the tenants had likely removed all of their personal belongings, CitiMortgage elected – even while

¹ Minnesota law strongly upholds the rights of individuals concerning their personal property, specifically stating that lenders who gain ownership of property through foreclosure cannot resort to self-help (thus requiring eviction actions in court), and that even after an eviction is completed, the law requires lenders to store personal property for a period of time and follow a specific process before disposing of it. See *Berg v. Wiley*, 264 N.W.2d 145 (Minn. 1978) (holding that one must always resort to the judicial process to enforce his statutory remedy against a tenant wrongfully in possession); Minn. Stat. §504B.365.

Coon Rapids City Council and
Board of Adjustment and Appeals
August 5, 2015
Page 3

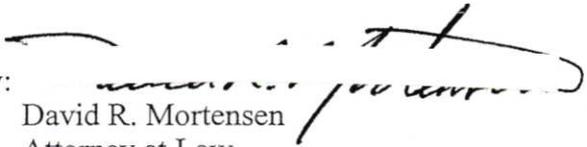
still subject to some legal risk - to move the exterior miscellaneous items into the garage, to be further addressed once the April 6, 2015 eviction hearing was held. On March 31, 2015, the City of Coon Rapids confirmed that the Property was in compliance and the citation had been addressed.

Since the issuance of the January 9, 2015 citation, CitiMortgage has worked with urgency to resolve a difficult situation concerning the Property, including retaining counsel to directly communicate and work with the City. It has already incurred substantial attorneys' fees to achieve compliance with the City's requirements and to ensure that the Property continues to be in compliance. There is no need to further penalize CitiMortgage through an assessment to the Property as the end goal of ongoing compliance has been achieved.

Thank you for your consideration.

Very truly yours,

WILFORD, GESKE & COOK, P.A.

By: 

David R. Mortensen
Attorney at Law

Email: dmortensen@wgcmn.com

Enclosures: Sheriff's Foreclosure Certificate
Notice to Vacate
Letter to Tenants

cc: client



Property Report

Report Date: 8/31/2015

PIN: 143124110015

CLOSED

PROPERTY ADDRESS: 798 NORTHDAL BLVD

Work Order #59611

Yard And Lot Issues

Task Name	Projected Start	Actual Start	Assigned To	COMMENTS
INSPECTION 1		1/9/15	MITLYNG, ADAM	
CITATION ISSUED		1/9/15	MITLYNG, ADAM	junk and debris
CITATION REINSPECT	1/19/15	1/26/15	MITLYNG, ADAM	no change, will follow up when weather permits
CITATION FEE APPLIED		1/26/15	MITLYNG, ADAM	\$2400 for non-compliance
COMMUNICATE W OWNEF		3/12/15	HINTZE, CINDY	Attorney Dave Mortensen 651-209-3317 sent email stating a crew will be cleaning property by noon Friday. Also asked if additional penalties have been issued (no) and when the date is for the next round of appeals (not set yet).
COMMUNICATE W OWNEF	3/20/15	3/20/15	DEGRANDE, KRISTIN	Attorney David e-mailed asking about timeline for clean up. He stated they can't remove items yet. I responded that he might want to consider moving items into garage as spring enforcement will be resuming soon (with early snow melt).
COMPLIANCE		3/30/15	DRABCZAK, LEYA	Id checked yard and all items have been removed.
COMMUNICATE W OWNEF	7/28/15	7/28/15	DEGRANDE, KRISTIN	Attorney David Mortenson requested on 5/14/15 he be informed when assessment letters go out. I sent him an e-mail today that assessment letters were sent out last week and appeal deadline is next week 8/5/15.

~ ADMINISTRATIVE CITATION INFORMATION ~ If blank, no Administrative Citation was issued on this work order.

City Code	Inspection Date	Fine	Inspected By	Compliance Date & Instructions	Citation Issued To
Citation # 24896					
8-109 Building Materials, Junk and Debris.	1/9/15 1/16/15 compliance date	2400	MITLYNG, ADAM	Remove building materials, mattresses, misc junk and debris from exterior storage	CITIMORTGAGE INC Issue Date: 1-09-2015 1000 TECHNOLOGY DR STE 314 O'FALLON, MO 63368

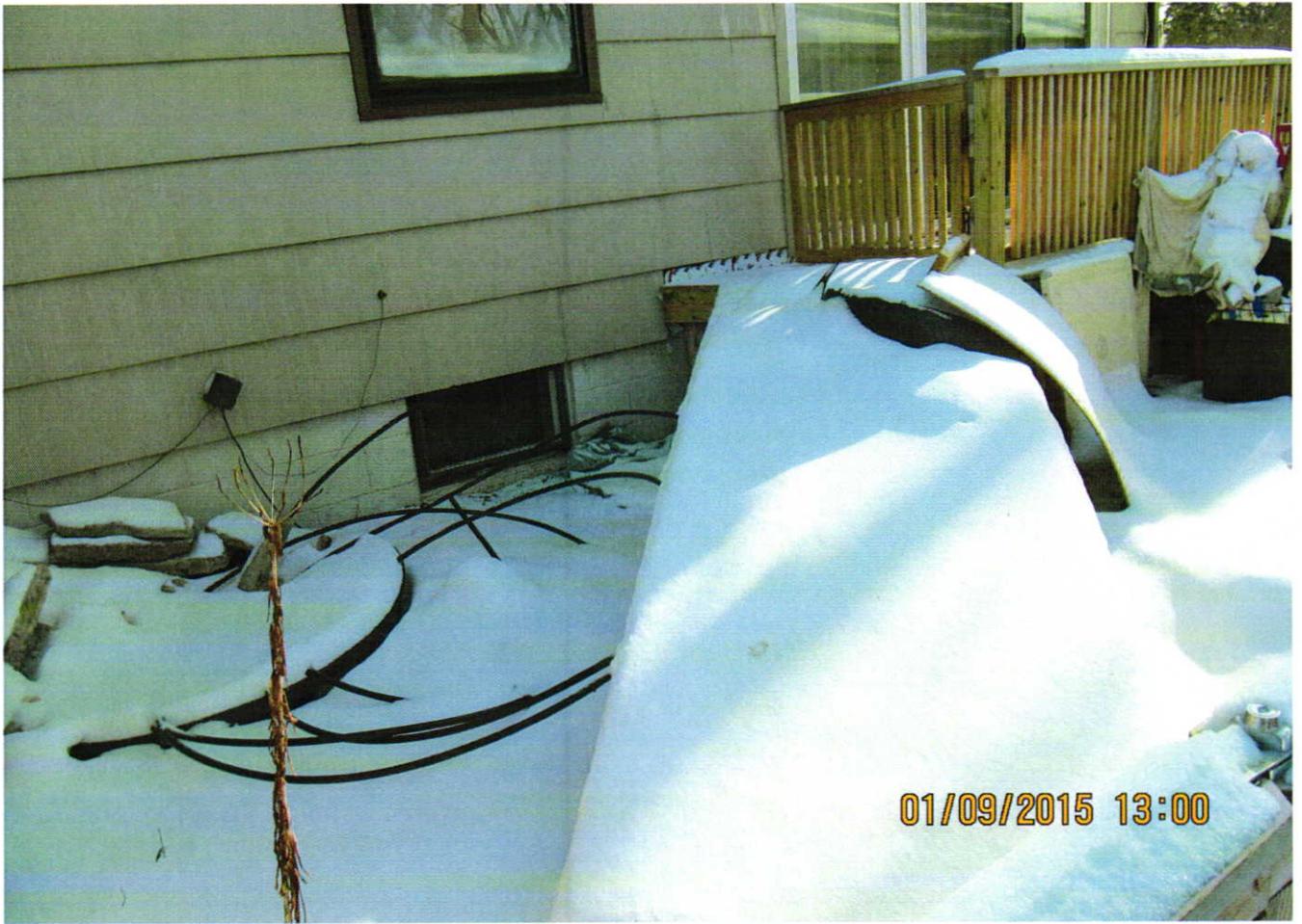
End of Report for 798 NORTHDAL BLVD



01/09/2015 13:00



01/09/2015 13:09





FOURTH VIOLATION ADMINISTRATIVE CITATION

Citation # 59611-24896

Violation Notice

CITIMORTGAGE INC Issue Date: 1-09-2015
 1000 TECHNOLOGY DR STE 314
 O'FALLON, MO 63368

Property Address: **798 NORTHDAL BLVD**
 COON RAPIDS, MN
 PIN: 143124110015

This is an Administrative Citation issued under Coon Rapids City Code Chapter 2-1100. On 1/9/15 the following violation(s) of Coon Rapids City Code was found at the above property address:

<u>Compliance Date</u>	<u>Violation & Corrective Action</u>	<u>Code Section & Summary</u>	<u>Penalty</u>
01/16/2015	Remove building materials, mattresses, misc junk and debris from exterior storage	8-109 Building Materials, Junk and Debris. -- Any item not intended for outdoor storage is not permitted to be stored outdoors. (Vehicle parts, fluids and accessories, building materials, upholstered furniture, brush, etc.)	\$2400

To avoid the above penalty/penalties, you **must** do one of the following:

1. Correct the violation(s) **on or before** the Compliance Date noted above. To be sure all issues are resolved, you may arrange for a City inspection **before** the Compliance Date noted above.
2. Contact the inspector below to arrange a time extension for compliance. You must sign a time extension agreement **on or before** the Compliance Date noted above.
3. Appeal the inspector's decision **on or before** the Compliance Date.

Refer to the attached/enclosed Administrative Citation Program brochure for the Notice of Appeal form, including instructions for requesting a time extension, and additional information.

If a second or subsequent Citation is issued within 180 days of the same or similar violation, the penalty will double. If you correct the conditions leading to the subsequent Citation prior to the Compliance Date, one half of the penalty will be waived. In addition to any penalties, you may also be subject to Excessive Consumption of Services fees as allowed by City Code Section 12-317 and/or abatement costs.

You can view the full City Code online at www.coonrapidsmn.gov/citycode or you can obtain the City Code Section(s) at Coon Rapids City Hall at 11155 Robinson Dr NW, Coon Rapids, MN 55433.

798 NORTHDALÉ BLVD
CITATION # 59611-24896
PAGE 2

Please note that if your property is not brought into compliance by the Compliance Date listed above, the City may enter your property to abate the violation (correct the conditions leading to the violation). If the city abates the violation, all costs of the abatement, along with any unpaid penalty, will be charged to your property taxes in a form of a Special Assessment.

Inspectors are often not in the office. If you would like to speak with, or schedule an appointment with, the inspector regarding this citation, please call the number below.

Adam Mitlyng
Code Enforcement
763-767-6470

cc: