

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE CITY OF BLOOMINGTON

In the Matter of the City of Bloomington  
Annual Assessment Hearings

**FINDINGS OF FACT, CONCLUSIONS OF  
LAW AND RECOMENDATION  
REGARDING ORDER TO ABATE PUBLIC  
NUISANCE AT 5235 WEST 110th STREET,  
BLOOMINGTON, MINNESOTA**

The above matter came on for hearing before Administrative Law Judge James E. LaFave, on September 7, 2016, at 10:00 a.m. in the Dakota Conference Room of the Bloomington Civic Plaza, 1800 West Old Shakopee Road, Bloomington, Minnesota.

Melissa J. Manderschied, Bloomington City Attorney, appeared on behalf of the City of Bloomington (City). Alex Stephens, appeared pro se as the property owner (Property Owner).

**STATEMENT OF ISSUE**

Whether all or a portion of the City's cost of abating a public health nuisance at 5235 West 110<sup>th</sup> Street, Bloomington, MN 55437, pursuant to Minn. Stat. § 145A.04, subd. 8 (2014), should be properly collected as a special assessment.

**SUMMARY OF RECOMMENDATION**

The Administrative Law Judge concludes that the City failed to properly serve the Order to Abate Public Nuisance on the Property Owner as required by Minn. Stat. § 145A.04, subd. 8. Therefore, the Administrative Law Judge recommends that the Bloomington City Council **RESCIND** the staff recommendation and that the charge assessed **NOT** be collected as a special assessment.

**FINDINGS OF FACT**

1. The property at issue is located at 5235 West 110<sup>th</sup> Street, Bloomington, Minnesota 55437, State of Minnesota (Property).<sup>1</sup>

2. Hennepin County has assigned the property identification number (PIN) of 30-027-24-22-0074 to the Property.<sup>2</sup>

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<sup>1</sup> Exhibit (Ex.) D.

<sup>2</sup> *Id.*

3. According to Hennepin County property records, the Property is owned by Alex J. Stephens, who also resides at the Property.<sup>3</sup>

4. The Property Owner accumulated construction garbage, weighing over 100 pounds, and placed it in a truck bed liner for City wide annual garbage pickup day.<sup>4</sup>

5. The City maintained the Property Owner's garbage was not picked up on the date designated for his Property due to not meeting the conditions for pick up, specifically "[w]eight must not exceed 100 pounds per item/box" and "[n]o construction materials..."<sup>5</sup>

6. The Property Owner argued the garbage was properly set out for curbside cleanup under the City's policies because it was "construction material (lumber, windows and doors): pile limited to what fits in ONE standard-size pickup truck. Lumber stacked no longer than five feet."<sup>6</sup> The Property Owner points out the garbage was placed curbside in a pickup truck bed liner and that none of the lumber, as required by City policy, was longer than five feet.<sup>7</sup>

7. The Property Owner called the City early in the week of May 4, 2015, after the neighborhood's designated curbside collection day on Saturday, May 2, 2015, upset because the refuse placed at the curb by the Property Owner was not collected.<sup>8</sup>

8. On May 13, 2015, the City issued the Property Owner an Order to Abate Public Nuisance (Order to Abate) to "remove and dispose of all refuse on the property including but not limited to, box/tray of construction materials at the curb."<sup>9</sup> The Property Owner was given a deadline of May 24, 2015.<sup>10</sup> The Order to Abate was served on the Property Owner by regular U.S. Mail, not registered or certified mail.<sup>11</sup>

9. The Property Owner sent an email to Lynn Moore, Environmental Health Manager, on May 16, 2015, stating he believes the refuse associated with his construction project is acceptable to store because of the temporary stockpile exception in the City Code, Section 15.202.<sup>12</sup>

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<sup>3</sup> Testimony (Test.) of Alex Stephens.

<sup>4</sup> *Id.*; Ex. A.

<sup>5</sup> Ex. B.

<sup>6</sup> *Id.*; Test. of A. Stephens.

<sup>7</sup> Test. of A. Stephens.

<sup>8</sup> *Id.*

<sup>9</sup> Ex. D.

<sup>10</sup> *Id.*

<sup>11</sup> Test. of A. Stephens; Ex. I.

<sup>12</sup> Ex. E.

10. Lynn Moore responded to the Property Owner's email in a letter dated May 21, 2015, addressing the temporary stockpile rule, the issues with the Property Owner's refuse and the actions the City took to clean up his property.<sup>13</sup>

11. The City hired Universal Cleaning Services, Inc. (Universal) to remove the refuse from the Property Owner's property. Universal removed the refuse on May 31, 2015. Universal billed the City \$155 plus tax of \$11.28. The City has a standard abatement inspection fee of \$100 that it added.<sup>14</sup>

12. The City sent the Property Owner an invoice on June 11, 2015 in the amount of \$266.28 to cover Universal's charge, tax, and the City's abatement inspection fees.<sup>15</sup>

13. After receiving the June 11, 2015 invoice from the City, the Property Owner called the City to dispute the legality of the charges alleging he did not receive proper legal notice.<sup>16</sup>

14. After a series of calls between City staff and the Property Owner, on August 6, 2015, the City Attorney at the time wrote a letter to the Property Owner addressing his concerns and advising the Property Owner that the assessment against his Property will be placed on the assessment roll in 2016 and that if the Property Owner disagrees with the assessment at that time, he can follow the requirements to appeal.<sup>17</sup> The City Attorney rejected the Property Owner's argument that he was not properly served with the Order to Abate stating, "You were mailed such notice as allowed under section 12.04 which states that 'the Abatement Order may be mailed ... if the post office address thereof is known.'"<sup>18</sup>

15. On June 30, 2016, the City sent the Property Owner a Notice of Assessment Hearing for Abatement or Removal of a Public Nuisance in the amount of \$266.28. The June 30, 2016 letter advised the Property Owner of the hearing and that it would be conducted pursuant to City Code, Section 1.20. It also advised the Property Owner that he needed to contact the City before August 29, 2016, in order to register to attend the hearing.<sup>19</sup>

16. This property was listed in the Notice of Assessment Hearing for Abatement or Removal of a Public Nuisance in the *Bloomington Sun Current*, August 11, 2016 edition.<sup>20</sup>

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<sup>13</sup> Ex. F.

<sup>14</sup> Ex. G.

<sup>15</sup> Ex. H.

<sup>16</sup> Test. of A. Stephens.

<sup>17</sup> Ex. I.

<sup>18</sup> *Id.*

<sup>19</sup> Ex. J.

<sup>20</sup> Ex. K.

## CONCLUSIONS OF LAW

1. The Administrative Law Judge and the Bloomington City Council have jurisdiction over this matter under Bloomington City Code § 1.20.

2. City Code, Section 1.20 provides that the role of the Administrative Law Judge is “to make a report that includes recommendations to the City Council as to whether or not the charge should be collected as a special assessment against the real property.”

3. City Code, Section 1.20(b) provides the Administrative Law Judge the authority to conduct this proceeding and to determine whether all or a portion of the city’s cost of abating a public health nuisance pursuant to Minn. Stat. § 145A.04, subd. 8, is properly subject to special assessment against the benefited real property and if so, whether the special assessment procedure set forth in Minn. Stat. ch. 429 (2014) was properly followed by the city.

4. Pursuant to Minn. Stat. § 145A.04, subd. 8, the City is authorized to order the owner of a property to remove or abate the threat to public health within a time specified in the notice but not longer than ten days. If the property owner fails to remove or abate the public health threat, then the City shall remove or abate the nuisance from the property that is described in the notice.

5. Minn. Stat. § 145A.04, subd. 8, requires that the notice for abatement or removal must be served on the owner, occupant or agent of the property in one of the following ways:

1. by registered or certified mail;
2. by an officer authorized to serve a warrant; or
3. by a person aged 18 years or older who is not reasonably believed to be a party to any action arising from the notice.<sup>21</sup>

6. Minn. Stat. § 429.101, subd. 1(b), requires that the owner be notified before the work is undertaken and for collection of the charges before those charges are made a special assessment.

7. The City sent the Property Owner the Order to Abate on May 13, 2015, by regular U.S. Mail, not registered or certified mail.

8. The City failed to provide the Property Owner proper notice under Minn. Stat. § 145A.04, subd. 8.

9. The City failed to comply with all substantive and procedural requirements of law and code.

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<sup>21</sup> Minn. Stat. § 145A.04, subd. 8.

## RECOMMENDATION

The Administrative Law Judge respectfully recommends that the City of Bloomington, Minnesota's public health nuisance abatement charge of \$266.28 to Alex Stephens, the owner of the real property located at 5235 West 110<sup>th</sup> Street, Bloomington, Minnesota 55437 **NOT** be collected as a special assessment against the real property located at 5235 West 110<sup>th</sup> Street, Bloomington, Minnesota 55437 (PIN: 30-027-24-22-0074).

Dated: September 19, 2016

  
\_\_\_\_\_  
JAMES E. LAFAVE  
Administrative Law Judge

Reported: Digitally Recorded  
No transcript prepared

## NOTICE

This Report is a recommendation, not a final decision. The Bloomington City Council will make a final decision after a review of the record and may adopt, reject, or modify these Findings of Fact, Conclusions of Law, and Recommendation. Pursuant to Bloomington City Code § 1.20, the City Council shall not make a final decision until the property owner had an opportunity to be heard before the City Council. Parties should contact the City Clerk's Office, City of Bloomington, 1800 West Old Shakopee Road, Bloomington, Minnesota 55431, (952) 563-8729, to ascertain the procedure for presenting arguments.

## MEMORANDUM

The pivotal question in this case is whether the City properly served the Property Owner with the Order to Abate. There is a Minnesota statute and a section of the Bloomington City code which apply in this matter. They are Minn. Stat. § 145A.04, subd. 8, which addresses the removal and abatement of public nuisances, and City Code § 12.04, which covers the declaration of a public nuisance and abatement order.

The City served the Order to Abate on the Property Owner by regular U.S. Mail. The City maintains that meets the requirements of City Code § 12.04 and regardless, because the Property Owner admits he received the Order to Abate, he had actual knowledge of the Order. The Property Owner admits he received the Order to Abate,

but argues the City failed to meet the service requirements of Minn. Stat. § 145A.04, subd. 8.<sup>22</sup>

Minn. Stat. § 145A.04, subd. 8, governs the removal and abatement of public health nuisances. It requires that the notice for abatement or removal **must** be served on the owner, occupant, or agent of the property in one of the following ways:

1. by registered or certified mail;
2. by an officer authorized to serve a warrant; or
3. by a person aged 18 years or older who is not reasonably believed to be a party to any action arising from the notice.<sup>23</sup>

When interpreting a statute, one must “construe the statute’s word and phrases according to their plain and ordinary meaning.”<sup>24</sup> The Minnesota Legislature has given certain words specific meanings when used in a statute.<sup>25</sup> “Must” when used in a Minnesota statute is mandatory.<sup>26</sup> As applied here, Minn. Stat. 145A.04, subd. 8, requires that the notice for abatement or removal “must” be served one of three ways. Service by regular mail was not one of them.

The City, however, argues service by regular mail is allowed under City Code § 12.04. In a letter dated August 6, 2015, from former Bloomington City Attorney, Sandra Johnson, to the Property Owner, the City Attorney rejects the Property Owner’s claim that he was not properly served and states, “You were mailed such notice as allowed under Section 12.04 which states that ‘the Abatement Order may be served by mail ... if the post office address thereof is known.’”<sup>27</sup> The passage of the Code as quoted in the letter is inaccurate and mischaracterizes the Code’s actual meaning. The passage omits important relevant language.

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<sup>22</sup> Test. of A. Stephens.

<sup>23</sup> Minn. Stat. § 145A.04, subd. 8 (emphasis added).

<sup>24</sup> *In re the Fin. Responsibility for the Out-of-Home Placement Costs for S.M.*, 812 N.W.2d 826, 829 (Minn. 2012) quoted in *Martin v. Dicklich*, 823 N.W.2d 336, 342 (Minn. 2012).

<sup>25</sup> See Minn. Stat. § 645.44 (2014).

<sup>26</sup> Minn. Stat. § 645.44, subd. 15a.

<sup>27</sup> Ex. I.

The full language of City Code § 12.04 relating to service by mail provides as follows: “The abatement order may be served by mail **in all cases where such owner or other interested part is not in the city or cannot be found therein**, and if the post office address thereof is known”<sup>28</sup> That sentence in City Code §12.04, by its plain terms, only applies to situations where the owner is not in the city.<sup>29</sup> That is not the case here. The Property Owner was clearly in the City and the letter sent by the City Attorney was mailed to the Property Owner at the property address in the City. Service by regular mail of the abatement order on the Property Owner was not authorized by City Code § 12.04 and was not proper in this case.

The City’s argument that the Property Owner had actual knowledge also fails. The Minnesota Supreme Court, within the past month, reiterated that service rules are interpreted “in accordance with their plain language regardless of whether the intended recipient has received actual notice of the action.”<sup>30</sup> Moreover, there is no exception in the City Code or Minn. Stat. § 145A.04, subd. 8, for instances where the Property Owner had actual knowledge of the Order to Abate.

Minn. Stat. § 145A.04, subd. 8, details the three ways a notice of abatement or removal “must” be served. They are:

1. by register or certified mail;
2. by an officer authorized to serve a warrant; or
3. by a person aged 18 years or older who is not reasonably believed to be a party to any action arising from the notice.<sup>31</sup>

By using the word “must” Minn. Stat. § 145A.04, subd. 8, mandates strict compliance with its terms. The City served the Property Owner by regular U.S. Mail. That is not in one of the three ways to effect service listed in the statute. The fact the Property Owner had actual notice is irrelevant. The City failed to properly serve the Property Owner with the Order to Abate.

The Administrative Law Judge therefore respectfully recommends that the City of Bloomington, Minnesota’s public health nuisance abatement charge of \$266.28 to Alex Stephens, the owner of the real property located at 5235 West 110<sup>th</sup> Street, Bloomington, Minnesota 55437 **NOT** be collected as a special assessment against the

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<sup>28</sup> Bloomington City Code § 12.04. (Emphasis added. The bold faced section highlights the portion of City Code § 12.04 omitted in the letter of August 6, 2015.)

<sup>29</sup> Minn. Stat. § 145A.04, subd. 8, expressly excludes service by regular U.S. Mail when serving a notice for abatement or removal. The general rule is an ordinance cannot authorize what a statute forbids or forbid what a statute expressly permits. *Power v. Nordstrom et al*, 184 N.W. 967, 969 (Minn. 1921). As service by mail was not authorized in this case under City Code § 12.04, further analysis of the propriety of service by mail of an order to abate a public nuisance is unnecessary.

<sup>30</sup> *Jaeger v. Palladium Holdings, LLC.*, \_\_\_ N.W.2d \_\_\_, \_\_\_ 2016 WL 4536499, at \*7 (Minn. Aug. 31, 2016).

<sup>31</sup> Minn. Stat. § 145A.04, subd. 8.

real property located at 5235 West 110th Street, Bloomington, Minnesota 55437  
(PIN: 30-027-24-22-0074).

**J. E. L.**