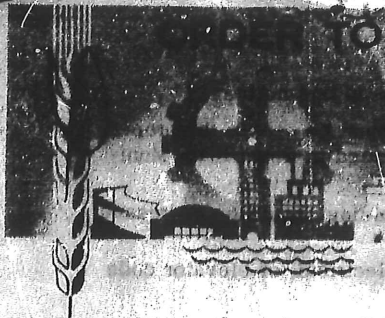


TO CORRECT CONDITION OF PREMISES

MILWAUKEE

DEPARTMENT OF
HEALTH, SANITATION AND SAFETY ENGINEERING
MILWAUKEE, WISCONSIN 53202



Date: November 12, 1980

TO: John Libera and Virginia h/v
3224 North Busholt Blvd.
Milwaukee, WI 53212

Re: 1634/90 North Franklin

(Location of Premises)

Dear Sir or Madam:

A recent inspection of the premises at the above address revealed conditions that are in violation of the Milwaukee Code of Ordinances for the City of Milwaukee.

Appeals from the violations noted below must be made within 20 days after service of this notice by written petition. Further details on back of this sheet.

Failure to correct the violations noted herein within the time set, or failure to comply with the notice as modified by an appellate board may subject you to prosecution and to penalties of \$25 to \$2,000 in the manner provided in Section 12-14. Also, rent withholding may result from failure to correct violations on time.

You are hereby notified to correct each violation listed below within 30 days of service of this notice, except as otherwise set forth below.

VIOLATION

Wisconsin State Plumbing Code violations listed below are part of the Milwaukee Code Section 40-1(v) by reference and cannot be appealed to the Milwaukee Standards and Appeals Commission.

M2.22(1) Properly seal the open waste connection where the basement toilet has been removed.

The above plumbing must be corrected by a licensed master plumber under permit.

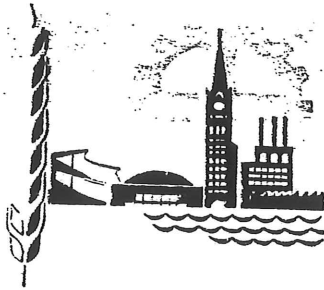
CJK:tw
I hereby certify that on the _____ day of _____, 19____, at the City of Milwaukee, State of Wisconsin, I duly served an order, of which the above is a true copy, upon _____ by delivering to and leaving with _____ personally said order

SIGNED _____

Per INSPECTOR OF BUILDINGS

By: Charles J. Kasperowky
Charles J. Kasperowky, Plumbing Insp.
Plumbing Division
Order was issued from office at
841 North Broadway

For further information call
278-5603
between 8:00 and 9:00 A.M. any weekday.



City of MILWAUKEE

BUILDING INSPECTION AND SAFETY ENGINEERING

MAINTENANCE INSPECTION SECTION • 931 WEST MADISON STREET • MILWAUKEE, WISCONSIN 53204
671-6420

ALEX P. LEGRAND
Inspector of Buildings

LEONARD E. SLOANE
Deputy Inspector of Buildings

DATE: December 2, 1980

TO: Milan Torbia
2824 East Newberry Blvd.
Milwaukee, WI 53211

SUBJECT: 1688/90 North Franklin

Dear Sir or Madam:

It has come to the attention of this office that you are the present owner of the above subject property which is subject to outstanding orders to correct certain violations of the City of Milwaukee Code of Ordinances or State of Wisconsin Administrative Rules:

Attached is a copy of said order letter and the district inspector's notes indicating which violations have been corrected, and those still remaining as of December 2, 1980.

Under the provisions of Section 12-20 and 51-2(3)(b)2d of the Code, this order is effective against any subsequent owner of premises as long as the violation exists. The complete text of these paragraphs of the Code read as follows:

"Such notice shall be effective notice to anyone having interest in the property whether recorded or not at the time of giving such notice; and shall be effective against any subsequent owner of premises as long as the violation exists and there remains an official copy of the notice in a public file maintained by the Inspector of Buildings."

Another provision of the City of Milwaukee Code of Ordinances which may be of interest to you is Section 12-22 which reads as follows:

"Seller must inform buyer of code violations. Every owner selling property must give notice to any prospective purchaser of the existence of any notice of violation of plumbing, electrical or other state or building codes. Any purchaser who has not been advised of the notice of violations has the right to make any repairs necessary to correct the violations cited and to recover reasonable costs of these repairs from the seller."

Before this office proceeds with any further enforcement action, we would appreciate receiving from you a statement in writing, outlining your time schedule for compliance with the outstanding orders.

Should you wish to arrange a meeting with the inspector or supervisor, you may do so by contacting this department at the address or phone number listed below.

INSPECTOR OF BUILDINGS

Phone: 278-5603
Section: Plumbing
Address: 841 North Broadway
Milwaukee, Wisconsin 53202

BY: Charles J. Kacerovsky, Plumbing Insp.
Plumbing Division

ENCROACHMENT: N. Franklin Pl. - E. Lyon St. to E. Brady St.

bcc: Field Engineers
Mr. J. Brengosz
Mr. D. Keller (2)
Mr. D. Novak
Mr. D. Burda

August 12, 1985

Mr. Milan Torbica
2824 East Newberry Boulevard
Milwaukee, Wisconsin 53211

Dear Mr. Torbica:

Subject: Hollow Sidewalk at 1688-90 North Franklin Place

The construction of variable thickness asphaltic concrete pavement on North Franklin Place from East Lyon Street to East Brady Street is included on the City of Milwaukee's 1985 Paving Program. The public hearing for this project was held on January 30, 1985 in accordance with Official Notice No. 158 which contained notification for the hearing. Subsequently, this project was approved by the Common Council.

City records show that you are the owner of the property with Tax Key Number 359-0619 with the subject address. An investigation of the premises revealed the existence of a covered vault (hollow sidewalk) attached to your building. Owners of hollow sidewalks are, in accordance with Section 45-5 of the Milwaukee Building Code, responsible for the maintenance, alteration, reconstruction, or removal of the hollow sidewalks. In order that the paving project may be undertaken without delay, it is necessary that the hollow sidewalks be removed or reconstructed by the owner at an early date.

This letter is to notify you that the hollow sidewalk must be removed and properly abandoned or reconstructed to proper condition, line, and grade within 30 days. The City of Milwaukee will cause removal and abandonment of the hollow sidewalk should you fail to do so. In that event, the cost will be charged to you. It is the City of Milwaukee's policy not to rebuild an encroachment. If you desire to reconstruct the hollow sidewalk, you will need to secure the services of a professional engineer or architect and private contractor.

Further information concerning the disposition of the hollow sidewalk may be obtained by contacting Mr. R. Sweet, Room 704 of the Municipal Building, 841 North Broadway, 278-2454. We will be glad to answer any questions and/or assist you in any way we can.

Very truly yours,

Jerome P. Zanoni
Deputy Commissioner of Public Works

EUL:DAN:RFS:vp

Microfilm



Standards and Appeals Commission

MEMORANDUM OF DECISION

NO. 4599

In the Matter of the Appeal of
John Abendroth

Subject: Premises - 1690 North Franklin Place

The above matter came on for hearing before the Standards and Appeals Commission on January 18, 1990, on an appeal from a denial of a request of the Commissioner of Building Inspection dated January 9, 1990, to expand existing parking area without providing drainage, as this is contrary to the following requirements of the Milwaukee Code of Ordinances:

- Section 252-71-2 All paved areas shall be drained to a sewer.
- Section 252-74 All parking lot, parking spaces or parking areas shall be paved.

The Commission having heard the evidence of the appellant and of the City of Milwaukee and being fully advised in the matter, a motion was duly made, recorded, and unanimously carried that a variance be granted for four years subject to the following conditions:

- 1 - No nuisance shall be created by the parking of cars on this unpaved area.
- 2 - The parking area in question shall be continually maintained in a dust-free and mud-free condition.

The Commission in arriving at this decision took into consideration the following:

- 1 - The gravel parking area in question is approximately 600 square feet.
- 2 - The storm drainage for both the multi-family structure and the garage are directly drained to the city storm sewer.

IT IS SO ORDERED

STANDARDS AND APPEALS COMMISSION

Dated at Milwaukee, Wisconsin
January 18, 1990

PRS:sp

Thomas Bentley, III
Thomas Bentley, III, Chairman

(#13-0101). Photographed 4/18/90 Operator JAMES PRINCE

Microfilm



**City
of
Milwaukee**

Standards and Appeals Commission

MEMORANDUM OF DECISION

NO. 4992

In the Matter of the Appeal of
John Abendroth

Subject: Premises - 1688-90 North Franklin

The above matter came on for hearing before the Standards and Appeals Commission on November 18, 1993 on an appeal from a denial of a request of the Commissioner of Building Inspection dated November 9, 1993 to use the existing parking area without providing drainage and hard pavement, as this is contrary to the following requirement(s) of the Milwaukee Code of Ordinances:

- Section 252-71-2 All paved areas shall be drained to a sewer.
- Section 252-74 All parking lots and parking spaces shall be paved.

The Commission having heard the evidence of the appellant and of the City of Milwaukee and being fully advised in the matter, a motion was duly made, seconded, and unanimously carried that a variance be granted for 3 years subject to the following conditions:

- 1 - No nuisance shall be created by the parking of cars on the unpaved area.
- 2 - The parking area in question shall be continually maintained in a dust-free and mud-free condition.

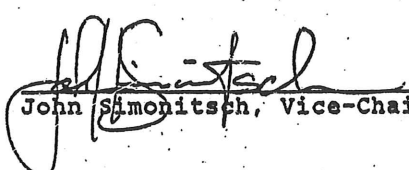
The Commission, in arriving at this decision, took into consideration the following:

- 1 - Previous variance granted by the Commission in 1990 for 3 years has expired, and this is a request for a renewal.
- 2 - The gravel parking area in question is approximately 600 sq. ft.
- 3 - In the previous 3 years, the parking area was not used.
- 4 - The request for variance is made in case the area is needed for parking, but at the present time, the need does not exist.

IT IS SO ORDERED

STANDARDS AND APPEALS COMMISSION

Dated at Milwaukee, Wisconsin
November 18, 1993


John Simonitsch, Vice-Chairman

(#73-0101) • Photographed 5-17-94 • Operator *WIM*

INSPECTION REPORT AND ORDER TO CORRECT CONDITION

9.2.99

CITY OF MILWAUKEE
DEPARTMENT OF NEIGHBORHOOD SERVICES
Construction Section
841 N. Broadway
Milwaukee, WI 53202

DEPARTMENT COPY

OK
9/20/99
SF

Serial #: 002573531
Inspection Date: February 09, 1999
District #: 605
CT: 110

962-8138

cityd-com

Recipients:
MILAN TORBICA, 2824 E NEWBERRY BLVD, MILWAUKEE WI 53211-0000

Re: 1588-1690 N FRANKLIN PL

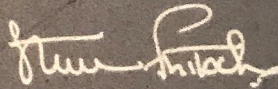
Taxkey #: 359-0619-000

A recent inspection of the premises at the above address revealed conditions that violate the Milwaukee Code of Ordinances. You are hereby ordered to correct each violation listed below within 30 days of service of this order.

1. 200-24-1
Work was done on the premises without obtaining permits (conversion of third floor storage space to a residential unit). You must obtain all necessary permits or restore the space to its original condition.
2. 200-42-1
Third floor storage space converted to a residential unit without obtaining an occupancy permit. Vacate this space and restore it to its original condition or obtain an occupancy permit.

For any additional information, please phone Assistant Supervisor Steven Fritsche at [414]-286-2535 between the hours of 7:00am-5:00pm Monday through Friday.

Per Commissioner of Neighborhood Services By-


Steven Fritsche
Assistant Supervisor

FAILURE TO COMPLY

Failure to correct the violations noted herein within the time set, or failure to comply with the order as modified by an appellate board and maintain compliance, may subject you to prosecution and to daily penalties of \$150 to \$10,000 in the manner provided in Section 200-19.

RIGHT TO APPEAL

This order may be appealed provided an application for appeal is received within 20 days of service. For further information, contact the Code Appeals Secretary, Municipal Building, 10th Floor, 841 N. Broadway, Milwaukee, Wisconsin, 53202 (Phone 286-2503). There is a fee for filing this application.

OFFICIAL NOTICE OF VIOLATION

The City of Milwaukee - Department of Neighborhood Services

8/15

City of Milwaukee
DEPARTMENT OF BUILDING INSPECTION

CHRONOLOGICAL RECORD OF ENFORCEMENT

SERIAL NO. _____

DATE OF INSPECTION _____

ADDRESS _____

DATE	ACTIVITY AND REMARKS	TYPE OF CONTACT	INSP. NUMBER	INITIALS
2/9/99	Searched regular mail / Fritsch			
3/8/99	Mr TORBICA came into the office. He owns the property and received the order - We reviewed microfilm records together and verified there was no evidence of habitable space on the third floor on those records / Fritsch - extend 30 days			
3/17/99	Received attached fax / Fritsch			
4/26/99	Letter sent to the City Attorney's office from Lee Jensen requesting a legal opinion of the letter from Attorney Frank Gumbel / Fritsch			
7/21/99	Attached letter from City Attorney John Heinen to Frank Gumbel responding to Attorney Gumbel's letter / Fritsch			
8/2/99	Spoke to Milan Torbica requesting a reinspection - he refused indicating he was not going to obtain permits to legalize the unit or remove plumbing and furnace to make the unit unuseable - he said he would fight the order in court -			
8/2/99	OK for precourt / Fritsch			
	SECTION REINSPECTION FEE			
	\$ 0 / reinspection fees / Fritsch			
8-19-99	SUGGEST A PRE-COURT CONFERENCE			
9-2-99	Pre court - owner appeared - said unit will be kept vacant. Return to inspector. Messhardt			
9/21/99	Met owner at the property - all plumbing has been removed - O.K. / Fritsch			

GIMBEL, REILLY, GUERIN & BROWN

LAW OFFICES

March 17, 1999

FRANKLYN M. GIMBEL

RICHARD E. REILLY

D. MICHAEL GUERIN

THOMAS E. BROWN

JEFFREY A. KAUFMAN

C.R. REILLY (1901-1983)

DENIS J. REGAN

KATHRYN A. KEPPEL

PATRICK J. KNIGHT

*RAYMOND M. DALLOSTO

MICHAEL D. JACKELIN

AARON M. HURVITZ

*ALSO LICENSED IN ILLINOIS

PARALEGALS

STEVEN M. LANT

SUE M. SOCZKA

ANGELA D. JANSSEN

JACQUELYN A. RICHARDS

Assistant Supervisor Steven Fritsche
Department of Neighborhood Services
Construction Section
841 N. Broadway
Milwaukee, WI 53202

Re: 1688-90 N. Franklin Pl.
Tax Key No.: 359-0619-000
Owner: Milan Torbica
Inspection Date: February 9, 1999

Dear Mr. Fritsche:

Milan Torbica has retained Gimbel, Reilly, Guerin, & Brown regarding the "Inspection Report And Order To Correct Condition" he received from you. (Copy Attached).

As you know, the inspection report listed two violations concerning the conversion of "third floor storage space" to a "residential unit." What you may not know is that the third floor residential unit has existed since 1955 and was converted before Mr. Torbica purchased the property in 1983. (Attached is an affidavit showing the condition has existed since 1955).

The Milwaukee Ordinances permit the Department of Neighborhood Services to grant "a certificate of legality for the continuance of an existing occupancy or use of any existing building, structure, premises, or part thereof . . ." Milwaukee City Ordinance 220-45 (1998). Although the specific language contemplates a "lawful occupancy or use under current code requirements," it is clear that the ordinance must comport with legal principles outside of the code.

Because the condition for the violations has existed since 1955, the violations must be barred under equitable estoppel and laches. In other

2400 MILWAUKEE CENTER
111 EAST KILBOURN AVENUE
MILWAUKEE, WISCONSIN 53202

TELEPHONE: (414) 271-1440
FACSIMILE: (414) 271-7680
E-MAIL: grgb@exccpc.com

RIDGEVIEW CENTER I
N16 W23217 STONE RIDGE DRIVE
WAUKESHA, WISCONSIN 53188

GIMBEL, REILLY,
GUERIN & BROWN
LAW OFFICES

March 17, 1999
Page 2

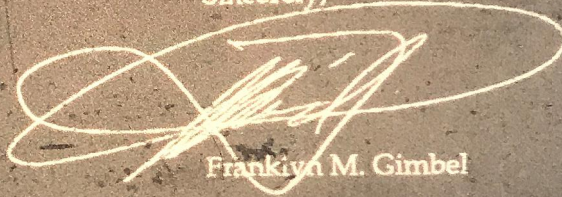
words, a violation found in 1999 is impermissible because of the incredible lapse of time since the condition's creation in 1955 coupled with the injury and prejudice to Mr. Torbica. The Wisconsin Supreme Court outlined this legal principle in *Diehl v. Dunn*, 13 Wis. 2d 280, 286, 108 N.W.2d 519, 522 (1961).

I request that the violations for 1688-90 N. Franklin Pl. be removed or that the Department of Neighborhood Services provide Mr. Torbica with a certificate of legality under Milwaukee City Ordinance 220-45.

If you have any questions, please feel free to call me or my associate, Aaron M. Hurvitz. I hope that this may be resolved amicably, without any need for litigation.

Thank you for your attention to this matter.

Sincerely,



Franklyn M. Gimbel

cc: Building Commissioner Lee Jenson

State of Wisconsin
Milwaukee County

AFFIDAVIT

I, TONY MAZONY of 1688 N. FRANKLIN PL. Milwaukee
Understand that the property located at 1688 N. FRANKLIN PL. Milwaukee
Milwaukee, Wisconsin may qualify for relief under chapter 78-9 of the municipal code of
Milwaukee; and that, said building contained _____
dwelling units on July 8, 1957.

Further proof is established by the following:

I lived in the apartment 1688 N. Franklin Pl.
at ap. of III Floor since 1955 to 1957
there were no doors, only a front
door at 1990 to '92 III Floor 1688 N. Franklin,

Subscribed & Sworn to before me this day of:

Notary Public

x Tony Mazony
Applicant Signature

Milton Tonbico

Witnessed by: Milton Tonbico,

CITY OF MILWAUKEE

Form CA-40

GRANT F. LANGLEY
City Attorney

RUDOLPH M. KONRAD
Deputy City Attorney

THOMAS E. HAYES
PATRICK B. McDONNELL
CHARLES R. THEIS
Special Deputy City Attorneys



OFFICE OF CITY ATTORNEY
800 CITY HALL
200 EAST WELLS STREET
MILWAUKEE, WISCONSIN 53202-3551
TELEPHONE (414) 286-2601
TDD 286-2025
FAX (414) 286-8550

July 21, 1999

BEVERLY A. TEMPLE
THOMAS O. GARTNER
LINDA ULISS BURKE
BRUCE D. SCHRIMPF
ROXANE L. CRAWFORD
SUSAN D. BICKERT
HAZEL MOSLEY
HARRY A. STEIN
STUART S. MUKAMAL
THOMAS J. BEAMISH
MAURITA F. HOUREN
JOHN J. HEINEN
MICHAEL G. TOBIN
DAVID J. STANOSZ
SUSAN E. LAPPEN
DAVID R. HALBROOKS
JAN A. SMOKOWICZ
PATRICIA A. FRICKER
HEIDI WICK SPOERL
VINCENT J. BOBOT
KURT A. BEHLING
GREGG C. HAGOPIAN
ELLEN H. TANGEN
MELANIE R. SWANK
JAY A. UNORA
DONALD L. SCHRIEFER
EDWARD M. EHRlich
CHRISTOPHER J. CHERELLA
LEONARD A. TOKUS

Assistant City Attorneys

Franklyn M. Gimbel, Esq.
Gimbel, Reilly, Guerin & Brown
2400 Milwaukee Center
111 E. Kilbourn Avenue
Milwaukee, WI 53202-6616

Re: 1688-90 North Franklin Place
Owner: Milan Torbica

Dear Mr. Gimbel:

Your letter to Department of Neighborhood Services (DNS) Assistant Supervisor Steven Fritsche, dated March 17, 1999, was forwarded to this office for response. Assistant City Attorney Heinen discussed the matter briefly with Mr. Hurvitz of your office who asked that the City's position be put in writing. The City disagrees with the position taken by your client and the arguments advanced in the March letter regarding the DNS' Order to Correct Condition, issued February 9, 1999 to the above-addressed property. Conversion of third floor storage space to a residential unit without obtaining the necessary permits can create serious danger to life, health, or safety, not only to the residents of the property, but to its neighbors as well. We also differ regarding the applicability to this property of the legal principles enunciated in the decision in Diehl v. Dunn, 13 Wis. 2d 280 (1961), cited in your letter.


The Diehl case involved a dispute between two private parties regarding the open and notorious construction and use of a cement plant for some three and a half years prior to the plaintiff's attempt to enjoin it. With respect to private parties with knowledge, the court there did conclude that unreasonable delay coupled with injury or prejudice constituted defenses to an action in equity. We believe, however, that the decision in Milwaukee v. Leavitt, 31 Wis.

Franklyn M. Gimbel, Esq.
July 21, 1999
Page 2

2d 72, 142 N.W. 2d 169 (1966), is directly on point and stands for the opposite proposition when the party sought to be enjoined is a municipal government without prior knowledge of the illegal use of the property. In Leavitt, Milwaukee was permitted to revoke an occupancy permit it had earlier issued despite plaintiff's 18 years of illegal nonconforming use and his substantial expenditures in reliance on the permit. The supreme court said it is "firmly committed to the principle that estoppel will not lie against a municipality so as to bar it from enforcing an ordinance enacted pursuant to the police power." Id. at 76.

Once you have had an opportunity to review the Leavitt decision, please direct your client to comply with the Order or to provide the City with proof either that the property is vacant and will remain so or that the gas heat and plumbing utilities have been removed. Feel free to contact the undersigned if you have any further questions regarding this matter.

Very truly yours,


GRANT F. LANGLEY
City Attorney


JOHN J. HEINEN
Assistant City Attorney

JJH:jjj
Encl:
cc: Lee C. Jensen, Commissioner of Building Inspection
Steve Fritsche, Commercial Code Enforcement
22862

(#3-010) - (1010-5) #
Photographer
Operator

08/25/99

MILAN TORBICA
2824 E NEWBERRY BLVD
MILWAUKEE, WI 53211

The Department of Neighborhood Services has issued an order against your property located at:

1688 90 N. FRANKLIN PL.

A pre-court conference concerning the order has been scheduled with CLARENCE MASSHARDT, Enforcement Coordinator, on

THURSDAY, 09/02/99 at 8:15 AM

at 1673 South 9th Street, (9th and Mitchell), 3rd floor, Milwaukee, Wisconsin. Your failure to appear at this conference will result in legal action. Please be advised that the average fine in a Building Code case in Municipal Court in 1997 was \$658.00.

PLEASE NOTE: IF YOU HAVE ANY QUESTIONS REGARDING THIS CONFERENCE, CALL MR. MASSHARDT AT 286-3859.

c: S. FRITSCHÉ