

## **CITY OF MILWAUKEE ADMINISTRATIVE REVIEW APPEALS BOARD**

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**In re: Cost Referral Letter Appeal of Marcos Ramos-Garcia, MRG Group, LLC for the property located at 1619 S. 1<sup>st</sup> Street, Milwaukee, WI (Points View Boite)**

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### **APPELLEE RESPONSIVE BRIEF IN OBJECTION TO APPEAL**

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NOW COME Appellees, The Milwaukee Police Department District 2 (MPD) by undersigned counsel, and respectfully responds to the Appellant's Brief In Support of Appeal of Cost Referral Letter.

Appellant, MRG Group, LLC ("MRG") has submitted a brief in support of their appeal of MPD's denial of MRG's abatement plan and their attempt to appeal the nuisance designation itself. MPD asserts that the nuisance designation had been previously appealed and the matter settled and therefore, MRG cannot revisit this appeal; and further, the submission of the plan was allowed in accordance with a settlement between parties and not the ordinance and therefore untimely; MPD's decision to reject the plan was proper.

MRG brings forward this appeal at the end stages of the nuisance designation set to expire on March 10, 2021. An adequate amount of time was given to MRG to submit a plan in response to the nuisance designation; yet MRG failed to do so. MRG's argument that the ARA Board should impose upon MPD a statutory definition of a 10-day deadline might prevail if this was an appropriate appeal; however, MRG is appealing a term of a settlement agreement entered between parties and therefore the appeal must be dismissed.

## BACKGROUND

The timeline for the nuisance designation is as follows:

- March 10, 2020      Nuisance Designation is made and MRG is noticed of the designation. The designation provided MRG with notice of five (5) qualifying incidents for the designation. Incident #1 was a battery that occurred on April 7, 2019 contrary to MCO 80-10-2-c-1-k. Incident #2 was an entry, burglary and firearm discharge that occurred on May 19, 2019 contrary to MCO 80-10-2-c-1-L. Incident #3 was a physical altercation that occurred on July 7, 2019 contrary to MCO 80-10-2-c-1-k. Incident #4 was a trouble with subject and discharge of a firearm that occurred on February 24, 2020 contrary to MCO 80-10-2-c-1-L. Incident #5 was a shooting that occurred on March 8, 2020 contrary to MCO 80-10-2-c-1-L. MCO 80-10-3 provides that *“whenever the chief of police determines that the police department has responded to 3 or more nuisance activities that have occurred at a premises during a 30-day period or that the police department has responded to 2 or more nuisances of the types defined in sub.2-c-1-e, I to L that have occurred at the premises within one year, the chief of police may notify the premises owner or other responsible party in writing that the premises is a nuisance.”* All five (5) incidents that occurred at the premise qualified as the “two in a year” nuisance activities for the designation. A true and correct copy of Original Designation is attached as **Exhibit A**.
- March 25, 2020      MRG petitions the Administrative Review Appeals Board for an appeal of the nuisance designation. A true and correct copy of the March 25, 2020 appeal is attached as **Exhibit B**. It should be noted that MRG, in its brief in support of its appeal, states “there are two incidents which MRG acknowledges occurred...” (page 4 of 8 of original appeal brief) in reference to incident numbers one and five listed on the nuisance designation. Both incidents acknowledged by MRG are “two in a year” nuisance activities; even if MRG prevailed on kicking the other three of the five incidents that occurred at the premises, these two alone would qualify the nuisance designation.
- June 17, 2020      MRG’s appeal is scheduled to be heard before the Administrative Review Appeals Board. Counsel for MRG cannot accommodate that date and therefore, the appeal is adjourned and rescheduled for September 9, 2020 (six months after the designation is made).
- September 1, 2020      MRG, through counsel, agrees to dismiss the appeal and the appeal of the nuisance designation is settled. A copy of the e-mail sent to the Administrative Review Appeals Board outlining the settlement is attached as **Exhibit C**. The parties agreed to the following settlement terms: Once MRG confirmed dismissal of the appeal, MPD agreed to host a meeting

with MRG to discuss an appropriate abatement plan. As per the terms of the settlement (**not** the nuisance ordinance), MRG would have ten (10) days after that meeting date to submit a plan to MPD, and the nuisance designation clock would remain from the date of the original designation, meaning the designation would expire March 10, 2021. MPD counsel was made aware at this time that MRG counsel would be on vacation until September 6, 2020.

- September 11, 2020 Not having a response from MRG, MPD counsel reaches out to MRG counsel requesting the meeting to discuss the abatement plan, as per the settlement ten days prior. A copy of the e-mail is attached as **Exhibit D**.
- September 13, 2020 Two days later, and 12 days after the settlement is entered, MRG counsel responds indicating he will speak to his client and respond once that happens. A copy of the e-mail is attached as **Exhibit E**.
- September 14, 2020 Thirteen (13) days after a settlement is entered, MPD counsel sends an e-mail to MRG counsel stating that **time is of essence**. A copy of the e-mail is attached as **Exhibit E**.
- September 16, 2020 Fifteen (15) days after settlement, MRG counsel responds stating that he will be submitting a plan in the next ten days (as per the settlement terms). That same day, Counsel for MPD responds and agrees to the submission. MRG does not clarify that his e-mail indicating his client's plan would be submitted within ten days meant the statutory definition of ten days. A copy of the e-mail is attached as **Exhibit E**.
- September 29, 2020 MPD sends out the cost referral notification to MRG that a plan had not been received timely and accordingly, all future costs associated with nuisance activities would be billed as per the ordinance. A true and correct copy of the notification is attached as **Exhibit F**.
- September 30, 2020 MRG e-mails plan to MPD counsel. A copy of the e-mail and plan is attached as **Exhibit G**.
- October 15, 2020 MRG petitions Administrative Review Appeals Board for an appeal
- December 11, 2020 Appeal is scheduled to be heard before the Administrative Review Appeals Board. At the hearing, Board requests briefing and reschedules the matter to be heard January 22, 2021 (less than two months before the nuisance designation itself is set to expire).

## ARGUMENT

### **I. After settlement of the nuisance designation appeal, an abatement plan was rejected at MPD's discretion as untimely and the rejection was proper.**

This appeal must be dismissed because the rejection of the plan is not an appealable and it was within MPD's discretion to reject the plan for untimely submission given that the timeline was agreed upon by the parties in a settlement of a nuisance designation appeal.

MCO 80-10-5 provides for the appeal of nuisance designations. MCO 80-10-5 states:

- a. Appeal of a **determination that a premises is a nuisance** under sub. 3-a-1 shall be submitted to the administrative review appeals board as provided in s. 320-11 within 10 days from the date of the notice.*
- b. Appeal of the **subsequent cost referral** by the chief of police pursuant to sub. 3-d shall be submitted to the administrative review appeals board as provided in s. 320-11 within 30 days from the date of the cost referral letter.*

MRG already appealed the nuisance determination and that matter was settled by the parties. MPD and MRG agreed to a delayed plan submission and settled the original appeal. MPD went beyond the requirements of the ordinance and agreed to accept a plan from MRG six months after the nuisance designation was made. MCO 80-10 requires that a plan be submitted within ten (10) days of the designation (see MCO 80-10-3-c). MRG's argument about the statutory definition of a timely submission might prevail if MRG indeed submitted their plan close to that ten (10) day deadline from the March 10, 2020 designation. However, the plan submission that occurred on the last day of September of 2020 was based upon a **settlement between the parties**. Certainly, MPD did not act arbitrarily or capricious in agreeing to accept a plan half way through the entire year-long designation, six months post-nuisance designation.

MCO 80-10-3-c-2 provides, "if the premises owner or other responsible party fails to respond, proposes a course of action that is rejected by the chief of police, or fails to implement an accepted written course of action, the chief shall notify the premises owner or other

responsible party that the cost of future enforcement may be assessed as a special charge against the premises, or referred for collection and that the owner or other responsible party may be cited under sub.6.” The requirements for the cost referral notification enumerated under 80-10-4-e (e-1 through e-5) do not require that MPD provide any explanation or notification for the basis of MPD’s decision to reject a plan. Within the ordinance, the notifications are mandatory; however, the decisions (i.e., rejecting a plan) are MPD discretionary.

Given that the abatement plan was accepted by MPD as per a settlement agreement between the parties, and that MPD agreed to accept the plan six months after the designation, MRG’s argument that this Board should overturn MPD’s decision to reject the plan as untimely fails.

**II. MRG’s request that the Board consider the underlying nuisance designation in a second appeal should be denied in the interest of justice.**

MRG asks the Board to consider the merits of the March 10, 2020 nuisance designation. The Board must reject this request. MRG had previously appealed the nuisance designation and entered into a settlement with MPD to dismiss the appeal. MRG states in their brief that because they entered into a settlement and this matter was not heard, they cannot petition the circuit court for a certiorari review. MRG being represented by competent counsel, entered into a settlement knowing full well that a stipulation between parties meant that the appeal would not be heard. MRG’s regrets should not be this Board’s responsibilities to fix to allow them another kick at the can.

Further, MPD argues that an appeal of the nuisance designation, even if it were the first appeal, would be untimely. This petition came to the Board in October of 2020. The nuisance designation was made March 10, 2020. Therefore, the appeal of the nuisance designation is untimely and this Board must reject MRG’s request.

### CONCLUSION

MRG's appeal of MPD's abatement plan rejection is unfounded because the plan came in six months after the nuisance designation and as per a settlement agreement between parties. Further, their request that the nuisance designation be considered by this Board should be denied because the designation had already been appealed and the October appeal is untimely.

Dated and signed at Milwaukee, Wisconsin, this 11<sup>th</sup> day of January, 2021.

*Electronically signed by:*

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