

Yes it is Demolition by Neglect – a response to *End of Useful life vs. Demolition by Neglect*

The applicant has provided a document suggesting that they are not guilty of demolition by neglect. Quite to the contrary the information provided in that document and other submissions by the applicant clearly show the current condition of 127 W. Gilman is the result of the neglectful actions of Steve Brown and SBA.

That Steve Brown and SBA would be surprised by the City Inspector's report of July 1, 2013 is perhaps the real surprise as the report simply states the facts;

- The building is located in a historic district
- Demolition may not be possible
- (the owner) plans on using the deteriorated conditions as justification and support for demolition at a future date (as Steve Brown and SBA are currently doing)
- The owner is attempting to allow the building to erode through neglect

On this last point Steve Brown and SBA acknowledge that they bought a property which was rented and occupied, continued to rent the building to tenants for 8 years and have used the building for storage for the last 11 years. In their introduction they acknowledged that the building has been in poor condition for years and that their response to this has not been to make repairs but rather to make "numerous efforts to garner support for more appropriate housing at this location." In other words to garner support to demolish the building. They further state that over this last 11 years the total amount spent on building up-keep has been a mere \$11,000.

Webster's dictionary provides these definitions of neglect; "to give little attention or respect to: Disregard" and "to leave undone or unattended to especially through carelessness". Webster's goes on to state that "Neglect implies giving insufficient attention to something that has a claim to one's attention". Clearly an asset that is continuing to deteriorate and loose value has a claim on the attention of a prudent manager.

Steve Brown and SBA's statements that they have spent \$4.4 million dollars on properties in historic districts indicates that they have the requisite knowledge and resources to recognize that the condition of their building was deteriorating and the ability to take remedial action. A lack of action is clearly as much a self-created condition as an action that in and of itself directly caused the deterioration of the building at 127 W. Gilman.

The Standards for Demolition state that the" Landmarks Commission shall consider and may give decisive weight to "any or all of seven standards." Most relevant here is Standard "f" which reads:

“Whether the building or structure is in such a deteriorated condition that it is not structurally or economically feasible to preserve or restore it provided that any hardship or difficulty claimed by the owner which is self-created or which is the result of any failure to maintain the property in good repair cannot qualify as a basis for the issuance of a Certificate of Appropriateness.”

In considering this standard the applicant has made several claims which fail to be persuasive.

They suggest that the Landmarks Commission must prove that the current condition of the building “is the result of ...” Steve Brown or SBA. Whereas Steve Brown freely purchased a functional and inhabited rental property at fair market value for such. Steve Brown continued to operate the building as a residential rental building for years without investing significantly in maintenance of the structure. The claim is now that the building is uninhabitable though it continues to be used for business purposes.

During the ownership tenure of Steve Brown and SBA the building has gone from a viable residential rental to its current condition as a result of the actions or inactions of the owner. Apparently prior to the purchase neither Steve Brown nor SBA chose to have the condition of the building evaluated yet now claim that these deteriorated conditions must have existed at that time.

The applicant suggests that they cannot be found to have failed to perform a duty or expected action because somehow they were unaware of the deteriorating condition of the building. For a property owner of the stature of Steve Brown and SBA to suggest this is on its face preposterous. In fact they state that over the last several years Steve Brown and SBA have invested \$4.4 million into buildings in Madison’s historic districts. Including 18 of the 19 contributing buildings owned in the Mansion Hill Historic District. Yet they would have us believe that somehow they were unaware of any need to maintain or make repairs to 127 W. Gilman.

They go on to suggest that since the City has only issued citations relating to painting the exterior of the building they would be unaware of the structural issues with the building. The City enforces only minimum building standards and only issues citations when owners fail to meet these minimal requirements. Fortunately most owners in the city do not require that the city spend its resources to compel reasonable maintenance of their properties. If property maintenance only occurred upon orders from the city this would be a very sorry place and the cost to the city for enforcement would be staggering.

Standard language in financing documents and insurance policies for properties is that the owner is responsible to maintain the property. Yet Steve Brown and SBA who have decades of experience, own 20 neighboring properties and have spent \$4.4 million in the last seven years on physical improvements and rehabilitation to buildings, don't believe they have failed in this regard with respect to 127 W. Gilman. They cite the lack of evidence that they "should have been aware of the expected duty" and "that failure to perform the duty had not been noted by the appropriate authorities". Suggesting that they would have maintained the building if only they had been made aware of the poor condition or if the City had told them to do so.

The applicant goes on to dissect the word 'good' using Webster's definition of "high quality". Consider the phrase 'good-better-best' and perhaps good is not that high quality after all. Webster also defines good as "correct or proper". Within this definition it is clearly evident that the "failure to maintain the property in good repair" of Standard "f" is met.

The wording of the standard is to maintain in good repair. The use of the word repair implies that there is an expectation that an owner will need to take proactive measures in this regard. Rather than the Commission needing to prove that the condition of the property is the result of a failure on behalf of the owner, the owner must show that the current condition exists despite their effort to maintain the building in good repair.

The 2002 Buss report, prepared for Steve Brown and SBA, notes that conditions "continue to deteriorate rapidly due to the settling of the building and failure of the building over time." In the 11 years since receiving this report Steve Brown and SBA have apparently made no effort to stem this rapid deterioration and stabilize the building.

In the Buss estimate only \$87,750 of the high budget number of \$358,150 is attributable to structural repairs and the foundation. The balance of the budget is for items with limited lifespans or items subject to normal ongoing repairs such as; roofing, siding, interior finishes and upgrades to mechanical systems.

One reason cited for not proceeding with this work is that "the odds that the work would be successful were slim to none". Apparently Steve Brown and SBA had no faith in the ability of their chosen contractor to actually complete the proposed work yet expect the Commission to take on faith the judgment of the same contractor that the building should be demolished.

The November 2013 Pierce Engineering report notes that "the current building structure under existing ... loads is stable." The report offers two options for the building one is demolition. The other "is to selectively replace and repair the current structure to insure the structural integrity."

The professional reports provided by Steve Brown and SBA have noted that the building continues to deteriorate and that it is possible to repair and stabilize this structure.

In the information provided to the Landmarks Commission Steve Brown and SBA have shown that they are experienced and successful property owners and managers. They have acknowledged that they purchased 127 W. Gilman as a viable rental property in 1994 and continued to rent it. A 2002 professional report advised them that the building would continue to rapidly deteriorate without attention. Since that report Steve Brown and SBA have stated that they have spent only \$11,000 on up-keep of the building. Instead of making repairs their stated response to the condition of the building was to spend the last 11 years trying to garner support for demolition and redevelopment on this site. So now after 19 years of ownership and a failure to invest in this property, as they have in their other properties, Steve Brown and SBA claim that the only viable option for this building is demolition.

Rather than not being demolition by neglect, as Steve Brown and SBA suggest, this set of circumstances is the poster child for the term 'demolition by neglect'. This is precisely the set of circumstances that was on the minds of those who drafted the Landmarks ordinance when they wrote that a deteriorated condition that it is not structurally or economically feasible to preserve or restore cannot be a basis for approving a demolition when this condition is self-created.