

## **Procedural History**

**June 2, 2006:** EJ Spirtas Manitowoc LLC takes possession with Eric Spirtas as sole member

**May 4, 2010:** Spirtas sends demolition “plan” and admits property may currently be considered a nuisance

**August 4, 2011:** Spirtas file demolition plan dated January 2011 with the City with some proposed timeframes for demolition, which include window removal and asbestos abatement, also calls for demolition of 6 story

**December 6, 2013:** Demolition permit for three story building granted

**December 9, 2014:** Demolition permit for three story building expires

**January 15, 2015:** Niagara meets with City, indicates making progress on demolition, seeking to sell materials and wrap up in a few weeks, will demolish 6 story if no interest from developers

**January 26, 2015:** Sparacio sends letter addressing site concerns

**February 17, 2015:** Moriarity sends letter addressing concerns

**February 20, 2015:** Sparacio responds to Moriarity letter and incomplete permit

**February 24, 2015:** Demo permit renewal application submitted with letter from Moriarity

**March 3, 2015:** Demo permit renewed

**May 8, 2015:** Mayor sends letter demanding complete demolition permit by June 22, 2015

**June 22, 2015:** Spirtas sends incomplete application, and Council votes to begin condemnation process



# CITY OF MANITOWOC

WISCONSIN, USA  
www.manitowoc.org



June 26, 2015

EJ SPIRTAS MANITOWOC LLC  
c/o Jeffrey Gershman, Esq.  
7733 Forsyth Blvd, Suite 500  
St. Louis, MO 63105

Re: Raze Order for the Factory and Office Buildings located at 1512 Washington Street, Manitowoc

Dear Owner:

You are the owner of record of the above-referenced property. As you are aware, the property consists of a demolished three-story building, partially demolished five and seven-story buildings, and a six-story building exposed to the elements on one side. The City has received multiple complaints about the property and you have not achieved compliance on the Municipal Code violations brought to your attention on multiple occasions by the Fire Chief, Building Inspector, Community Development Director, and Mayor. You failed to file a complete application for demolition permit within the deadline given to you by Mayor Nickels, so the Common Council could not approve your incomplete application. In particular, the City's findings relative to your application submittal include:

1. A lack of sufficient detail as to the timing and intermediate steps in the demolition plans
2. No information with regard to project costs and revenues or the financial wherewithal to complete the demolition
3. Contractor commitments not provided
4. No form of financial surety provided.

On this basis, the Common Council concluded that the applicant lacks the expertise and financial wherewithal to complete the demolition project responsibly and timely, and that there is a substantial risk that stripped structures will remain standing. Enclosed is a Raze Order that the Fire Department and Building Inspection Division have asked me to prepare due to your lack of responsiveness.

Pursuant to state law, the City must give you reasonable time to correct the problems at the property. Your property must be razed, as it is not able to be repaired safely for less than 50% of the assessed value of \$200. If you fail to raze the property in compliance with City guidelines by October 5, 2015, I will be seeking an order to have the City demolish the building and assess the costs to your property.



Kathleen M. McDaniel, City Attorney

cc: Eric Spirtas  
Justin M. Nickels, Mayor  
Manitowoc Common Council  
Todd Blaser, Fire Chief  
Nic Sparacio, Community Development Director  
Rick Schwarz, Building Inspector

City Attorney Kathleen M. McDaniel  
CITY HALL • 900 Quay Street • Manitowoc, WI 54220-4543  
Phone (920) 686-6990 • Fax (920) 686-6999





1157108

ORDER TO RAZE

TO: EJ Spirtas Manitowoc LLC  
1101 Mill Street  
Niagara, WI 54151

STATE OF WI - MTWC CO  
PRESTON JONES REG/DEEDS  
RECEIVED FOR RECORD  
06/29/2015 8:48:00 AM

Name and Return Address:  
City Clerk  
900 Quay Street  
Manitowoc, WI 54220

YOU ARE HEREBY NOTIFIED that the factory complex on the following described property in the City of Manitowoc, Wisconsin, to-wit:

*All of Lots 1-18 encompassing all of Block 246 of the original plat of the City of Manitowoc, Manitowoc County, Wisconsin.*

which premises are owned by you and located at 1512 Washington Street, Manitowoc, Wisconsin, has become dilapidated and out of repair and consequently, dangerous, unsafe, unsanitary or otherwise unfit for human habitation.

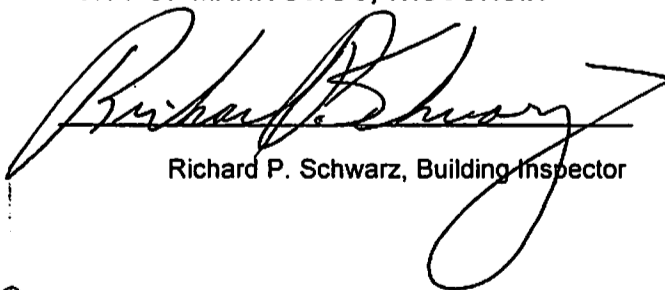
THEREFORE, YOU ARE HEREBY ORDERED to raze the entire Mirro Building complex, to include the five, six, and seven-story buildings and the remaining rubble from the three-story buildings, within 100 days from the date of service of this order upon you. Raze means you must demolish and remove the complex and restore the site to a dust-free and erosion-free condition, remaining in compliance with the City of Manitowoc ordinances and any mandates from the Wisconsin Department of Natural Resources.

YOU ARE FURTHER NOTIFIED that this order is served upon you pursuant to the terms and provision of Section 66.0413 of the Wisconsin Statutes. If you shall fail or refuse to comply within the time prescribed in this order, the complex shall be razed and removed and the site restored to a dust-free and erosion-free condition by the City of Manitowoc or its agents or contractors, and the cost of such razing, removal and restoration of the site to a dust-free and erosion-free condition shall be charged against the property, shall be a lien thereon, and may be assessed and collected as a special tax.

YOU ARE FURTHER NOTIFIED that pursuant to Sections 66.0413(1)(h) and 893.76 of the Wisconsin Statutes, you must make application to the Manitowoc County Circuit Court within 30 days of service of this order if you wish to contest this order.

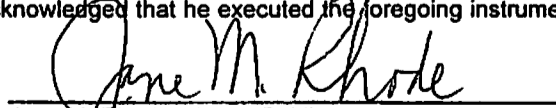
Dated at Manitowoc, Wisconsin, this 26 day of June, 2015.

CITY OF MANITOWOC, WISCONSIN

  
Richard P. Schwarz, Building Inspector

STATE OF WISCONSIN )  
                                  ) ss.  
COUNTY OF MANITOWOC )

Personally came before me this 26th day of June 2015, the above signed Richard P. Schwarz, Building Inspector of the City of Manitowoc, Wisconsin and acknowledged that he executed the foregoing instrument as such Officers of said City, by its authority.

  
Jane M. Rhode, Notary Public  
Manitowoc County, Wisconsin  
My commission expires 5/1/2016

cc: Manitowoc County Clerk, 1010 S 8<sup>th</sup> Street, Manitowoc WI 54220

This instrument was drafted by Kathleen M. McDaniel, City Attorney

STATE OF WISCONSIN

CIRCUIT COURT  
BRANCH \_\_\_\_\_

MANITOWOC COUNTY

In Re:

REAL PROPERTY LOCATED AT:  
1512 WASHINGTON STREET  
MANITOWOC WI 54221

E.J. SPIRTAS MANITOWOC, LLC  
11469 OLIVE BOULEVARD - SUITE 124  
CREVE COEUR, MISSOURI 63141

CASE NO. 15 CV ~~15 CV~~ 292

Code No. 30704

Applicant,

v.

CITY OF MANITOWOC  
MANITOWOC CITY HALL  
900 QUAY STREET  
MANITOWOC WI 54220-4543

**FILED**

JUL 27 2015

CLERK OF CIRCUIT COURT  
MANITOWOC COUNTY, WI

Defendant.

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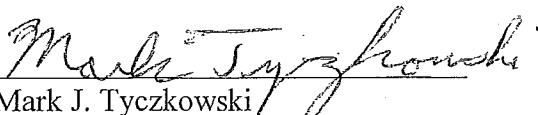
MOTION AND/OR APPLICATION FOR RESTRAINING ORDER  
PER WIS. STAT. 66.0413(1)(h)

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The applicant, E.J. Spirtas Manitowoc, LLC by its attorneys, Remley & Sensenbrenner, S.C., by Mark J. Tyczkowski, does hereby apply to the Manitowoc County Circuit Court for an order restraining the Building Inspector of the City of Manitowoc from razing the real property owned by the applicants located at 1512 Washington Street, Manitowoc, Manitowoc County, Wisconsin as more fully set forth in the Order to Raze dated June 26, 2015 and executed by Richard P. Schwarz, City of Manitowoc Building Inspector, a copy of which is attached hereto as Exhibit A. This application is being filed pursuant to Wis. Stat. 66.0413(1)(h), because the applicant is affected by Mr. Schwarz's June 26, 2015 Order to Raze.

Dated at Neenah, Wisconsin, this 27<sup>th</sup> day of July, 2015.

REMLEY & SENSENBRENNER, S.C.  
Attorneys for the Applicant

  
Mark J. Tyczkowski  
State Bar No. 1011571

219 E. Wisconsin Avenue  
Neenah WI 54956  
920-725-2601

In Re:

REAL PROPERTY LOCATED AT:  
1512 WASHINGTON STREET  
MANITOWOC WI 54221

E.J. SPIRTAS MANITOWOC, LLC  
11469 OLIVE BOULEVARD - SUITE 124  
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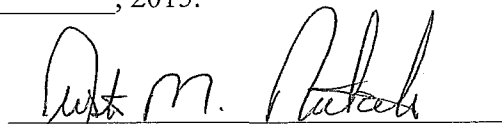
CITY OF MANITOWOC  
MANITOWOC CITY HALL  
900 QUAY STREET  
MANITOWOC WI 54220-4543,

Defendant.

**ADMISSION OF SERVICE**

I, Justin M. Nickels, hereby admit to due and sufficient personal service of the Motion And/Or Application For Restraining Order Per Wis. Stat. 66.0413(1)(h) filed with the Manitowoc County Clerk of Court on July 27, 2015 concerning the above-entitled action.

Dated this 27 day of July, 2015.



City of Manitowoc  
Mayor's Office

**COPY**

**STATE OF WISCONSIN**

**CIRCUIT COURT**

**MANITOWOC COUNTY**

In Re:

REAL PROPERTY LOCATED AT:  
1512 WASHINGTON STREET  
MANITOWOC, WI 54220

**BRIEF**

**FILED**

Case No. 15-CV-292

**AUG 24 2015**

E.J. SPIRTAS MANITOWOC, LCC  
11469 OLIVER BOULEVARD – SUITE 124  
CREVE COEUR, MISSOURI 63141,

Code No. 30704

**CLERK OF CIRCUIT COURT  
MANITOWOC COUNTY, WI**

Applicant,

v.

CITY OF MANITOWOC  
MANITOWOC CITY HALL  
900 QUAY STREET  
MANITOWOC, WI 54220-4543,

Defendant.

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**BRIEF OF RESPONDENT, CITY OF MANITOWOC, RESPONDING TO THE COURT'S  
QUESTIONS PRESENTED AT THE SCHEDULING CONFERENCE**

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NOW COMES the respondent, City of Manitowoc, by City Attorney Kathleen M. McDaniel, and submits this brief in support of the City's position per the Court's request.

**STATEMENT OF FACTS**

The City of Manitowoc issued a raze order to Plaintiff regarding the real property captioned above on June 26, 2015. The raze order gave the Plaintiff 100 days from the date of service to demolish and remove the structures on the property and restore the site to a dust-free and erosion-free condition. The City recorded the raze order at the Manitowoc County Register of Deeds on June 29, 2015 and had the order served on the owner's registered agent on July 1, 2015, causing Plaintiff's 100 days to expire on Friday, October 9, 2015. The plaintiff filed an application for a restraining order on July 27, 2015, causing the beginning of this court proceeding.

## QUESTIONS PRESENTED

The parties in this case met for a scheduling conference on August 13, 2015. At that time, the court asked the parties to brief the following two issues:

1. Is the analysis that the cost to repair the building would exceed 50% of the assessed value ratio described in Wis. Stat. §66.0413(1)(c) sufficient for the court to uphold the raze order?
2. Must the court allow the property owner reasonable time to demolish the property beyond what was issued in the City's raze order?

## ARGUMENT

1. **The Court's analysis of the statute is correct and a determination that the cost to repair the building would exceed 50% of the assessed value is sufficient for the Court to uphold the raze order.**

It is the position of the City of Manitowoc that the answer to question one is yes, analysis that the cost to repair the building would exceed 50% of the assessed value ratio described in Wis. Stat. §66.0413(1)(c) is sufficient for the court to uphold the raze order. This argument is supported by the plain language of the statute as well as case law. The relevant statute reads

Except as provided in sub. (3), if a municipal governing body, building inspector or designated officer determines that the cost of repairs of a building described in par. (b) 1. would exceed 50% of the assessed value of the building divided by the ratio of the assessed value to the recommended value as last published by the department of revenue for the municipality within which the building is located, the repairs are presumed unreasonable for purposes of par. (b) 1.

*Wis. Stat. §66.0413(1)(c)*. The property is currently assessed at \$200. *City of Manitowoc Property Record, available online at <http://assessor.manitowoc.org/CityAssessor/main.aspx?Parcel=000246000>, accessed August 25, 2015*. No reasonable person could expect the property to be rehabilitated for the full assessed value, given that would require removing trees from the interior of the complex, replacing hundreds of windows, replacing wiring, and restoring electrical service to the property. As this work is not possible for \$200, it certainly would not be possible at the lesser statutory amount of 50% of the assessed value divided by the ratio. The exception “provided in sub. (3)” does not apply as that section pertains to historic buildings. The property in question, locally referred to as the Mirro Building, is neither on the National Register of Historic Places nor the State Register of Historic Places, nor is it a contributing structure to any historic district. *Wisconsin Historical Society Architecture and History Inventory, available online at <http://www.wisconsinhistory.org/Content.aspx?dsNav=N:1189>, accessed August 24, 2015*. Since the property does not meet the historic exemption under the statute, the 50% analysis causes repairs to be presumed unreasonable for purposes of the raze order.

The Wisconsin Supreme Court has held that “if repairs to a building are unreasonable as defined in the statute the building must be razed even though it could be made safe by the expenditure of unreasonable cost of repairs.” *Appleton v. Brunschweiler*, 52 Wis. 2d 303, 309, 190 N.W.2d 545 (Wis. 1971). Repairs to the Mirro Building are not reasonable as defined by the statute, and therefore the building must be razed. While the presumption itself is rebuttable under law, the presumption expressed in the statute of 50% of the assessed value being the threshold for reasonableness is not challengeable. *Posnanski v. West Allis*, 61 Wis. 2d 461, 467, 213 N.W.2d 51 (Wis. 1973). The question presented was whether the 50% analysis is sufficient for the court to uphold the raze order. The City would contend that it is and expects that when the Court applies the analysis it will determine the application for the restraining order must be denied and the building must be razed.

**2. The Court has no obligation to allow the property owner reasonable time to demolish the property beyond what was issued in the City’s raze order.**

State law provides that when a raze order is issued, it must “specify a time within which the owner of the building is required to comply with the order and shall specify repairs, if any.” *Wis. Stat. §66.0413(1)(f)*. The order in this case gave the Plaintiff 100 days to demolish the property. The Court is under an obligation to determine whether the raze order is reasonable. *Wis. Stat. §66.0413(1)(h)*. If the




court finds the raze order reasonable, it shall dissolve the restraining order. *Id.* If the raze order is found not reasonable, the court shall modify the order. *Id.* If the order is found to be reasonable and the Plaintiff fails to comply, the City may then take action to raze the property by razing the property itself and assessing the costs to the property, or by asking the Court to order Plaintiff to comply. *Id.*, *Wis. Stat. §66.0413(1)(g)*. The City argues that the court must first make a determination as to whether the City's raze order was reasonable in the first place. If the order is reasonable, no time extension need be granted.

Dated this 24<sup>th</sup> day of August, 2015.

**CITY OF MANITOWOC**

**MAILING ADDRESS**

900 Quay Street  
Manitowoc, WI 54220-4543  
Phone (920) 686-6990  
FAX (920) 686-6999

  
\_\_\_\_\_  
Kathleen M. McDaniel, City Attorney  
State Bar No. 1060850  
Attorney for Defendant, City of Manitowoc

In Re:  
REAL PROPERTY LOCATED AT:  
1512 WASHINGTON STREET  
MANITOWOC, WI 54220

**ORDER**

Case No. 15-CV-292

E.J. SPIRTAS MANITOWOC, LCC  
11469 OLIVER BOULEVARD – SUITE 124  
CREVE COEUR, MISSOURI 63141,

Code No. 30704

Applicant,

v.

CITY OF MANITOWOC  
MANITOWOC CITY HALL  
900 QUAY STREET  
MANITOWOC, WI 54220-4543,

Defendant.

FILED  
2015 OCT 12 PM 12:58  
MANITOWOC COUNTY, WI  
CLERK OF CIRCUIT COURT

**ORDER**

WHEREAS, the City of Manitowoc issued a raze order to Plaintiff regarding the real property captioned above on June 26, 2015, giving Plaintiff 100 days from the date of service to demolish and remove the structures on the property and restore the site to a dust-free and erosion-free condition, and subsequently properly served the order on the owner’s registered agent on July 1, 2015, causing the 100 days to expire on Friday, October 9, 2015; and

WHEREAS, the plaintiff filed an application for a restraining order on July 27, 2015, asking the Court to issue an injunction prohibiting the City from enforcing the raze order; and

WHEREAS, the Court heard arguments and testimony on the plaintiff’s requested restraining order on September 29, 2015.

NOW, THEREFORE it is hereby ordered as follows:

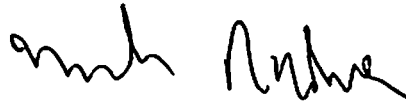
**ORDER**

1. The raze order issued by the City of Manitowoc is deemed reasonable.
2. Any stay imposed by the Plaintiff’s application for a restraining order is lifted.

3. Plaintiff's petition for a restraining order is denied.
4. The City is authorized to seek bids for demolition services at the real property in question.
5. The City shall not begin demolition until the deadline for an appeal has expired. Should the plaintiff appeal, the City shall not begin demolition until the Court of Appeals has issued a ruling.
6. The Plaintiff is granted the right to remove personal property from the structure subject to Wis. Stat. §66.0413(1)(i). Plaintiff shall provide City with a list of personal property to be removed by October 31, 2015. The City will make arrangements with Plaintiff to remove that property, with a City inspector present, within one month of receiving the list from Plaintiff. Failure to provide a list by October 31 shall be considered a waiver of claim to any personal property.
7. The City and the Plaintiff will reach agreement on the need for Plaintiff to insure the property until demolition. The City will require any demolition contractors to carry liability insurance and worker's compensation insurance.

Dated this 12<sup>th</sup> day of October, 2015.

BY THE COURT:



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Mark R. Rohrer  
Circuit Court Judge, Branch 1  
Manitowoc County, WI

This order was drafted by:

Kathleen M. McDaniel, City Attorney  
State Bar No. 1060850  
900 Quay Street  
Manitowoc, WI 54220  
phone: (920) 686-6990  
fax: (920) 686-6999