



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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August 14, 2024

CBCA 8057-FEMA, 8058-FEMA, 8059-FEMA

In the Matter of CITY OF MARSHALLTOWN, IOWA

Diana Steiner, Finance Director, City Administrator's Office, Marshalltown, IA, appearing for Applicant.

Dennis T. Harper, Alternate Governor's Authorized Representative, Iowa Homeland Security and Emergency Management Department, Windsor Heights, IA, appearing for Grantee.

Christiana Cooley, Office of Chief Counsel, Federal Emergency Management Agency, Department of Homeland Security, Washington, DC, counsel for Federal Emergency Management Agency.

Before the Arbitration Panel consisting of Board Judges **LESTER**, **ZISCHKAU**, and **SULLIVAN**.

**LESTER**, Board Judge, writing for the Panel.

These three arbitration matters relate to the demolition of three contiguous commercial buildings in the central business district of City of Marshalltown, Iowa (Marshalltown or the City), which the City paid to have demolished for public safety reasons. The City has requested public assistance (PA) funding from the Federal Emergency Management Agency (FEMA) pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. §§ 5121–5207 (2018), to cover the demolition costs. The City asserts that demolition was necessary to protect the public from a hazard that was caused by a derecho that hit Marshalltown in October 2020, which the President designated a disaster. More than two years before the derecho, however, two of the three buildings suffered significant damage from a tornado, resulting in the City's condemnation of the buildings, and the third building was destabilized when an adjoining

fourth building, after being damaged by the tornado, was demolished. No significant repair, restoration, or restabilization work was performed on the buildings after the tornado, and they continued to deteriorate during the two-year period preceding the derecho.

Even in the best of circumstances, FEMA's provision of PA funding for emergencies involving privately-owned commercial properties is extremely limited and subject to efforts to recoup funds from the private property owners or their insurance companies. Here, the poor condition of the properties resulted from the 2018 tornado and their subsequent neglect and deterioration, precluding the panel from finding that the derecho caused the public safety emergency that necessitated demolition. Because the need for emergency demolition was not the direct result of the derecho, PA funding is not available for it. That Marshalltown voluntarily acquired title to the properties several months after the derecho and took them out of private ownership does not change the analysis.

### Background

#### I. The Buildings at Issue

These arbitrations involve three commercial structures that were located at 102–104 West Main Street, 15 South 1st Street, and 108–110 West Main Street in downtown Marshalltown. The three buildings, which were between 120 and 125 years old, stood next to each other on the corner of West Main Street and South 1st Street. The building at 15 South 1st Street stood to the south of, was adjacent to, and shared a common party masonry wall with the building at 102–104 West Main Street; and the building at 108–110 West Main Street stood to the west of, was adjacent to, and shared a common party masonry wall with the building at 102–104 West Main Street. The roof joists of the building at 108–110 West Main Street were tied into the building at 102–104 West Main Street.

To the west of the building at 108–110 West Main Street was 112 West Main Street, yet another contiguous building with which 108–110 West Main Street shared a common party masonry wall. Although that building affects the events that resulted in the demolition of 108–110 West Main Street, the City is not seeking any costs associated with 112 West Main Street.

In July 2018, the first floor of the building at 102–104 West Main Street housed a night club; the record before us contains no information about usage of the building's second floor. The first floor and basement of the building at 15 South 1st Street housed a clothing store, while the second floor housed an apartment that had been abandoned for several years and was not usable. The building at 108–110 West Main Street housed a record store, and its owner was working to create rental apartments on the upper floor. Each building was privately owned, with no overlap in ownership.

## II. The July 2018 Tornado

On July 19, 2018, a tornado with an EF-3 rating (on the Enhanced Fujita scale) struck Marshalltown and damaged all three of the commercial properties at issue in this matter, as well as the building at 112 West Main Street. Below, we discuss the effect of the tornado on each building and the efforts (or lack thereof) to remedy damage that the tornado caused.

### A. 102–104 West Main Street

As reflected in structural engineering reports prepared after the owner's insurance company sent structural engineers to visit the building on July 21 and August 15, 2018, the tornado caused the sidewalls on the south ends of the east and west walls, as well as the south end wall itself, to experience a loss of lateral support; portions of the walls in these areas had partially collapsed. Photographs that the structural engineers took also show that portions of the roof were missing, leaving at least a portion of the interior of the building open to the elements. Although the report from the insurance company indicated that the building could be repaired, the engineers indicated that the owner would first have to stabilize the building, including demolition of portions of some walls that would need to be reconstructed. In addition, a further, in-depth investigation of needed repairs would be required.

The City hired its own engineer who determined, following a visual inspection of the exterior of the building on September 14, 2018, that the building was unsafe because of cracked brick masonry walls, displaced walls, likely roof framing damage, and a displaced or leaning chimney. On September 20, 2018, the City red-tagged the building as dangerous, posting a "Dangerous Building" placard on the front door of the property pursuant to section 151:035 of the Code of Ordinances of the City of Marshalltown (City Code), barring individuals from occupying the property. As indicated in section 151:036 of the City Code, the City makes a "Dangerous Building" determination if "such conditions or defects exist to the extent that the life, health, property or safety of the public or its occupants are endangered." The building's owner had engaged in only limited stabilization efforts before the August 2018 structural engineering review, and there is no evidence in the record that he made any further efforts after the City's "Dangerous Building" designation.

On November 15, 2018, the owner obtained a payout of the policy limit on the building from his insurance company, and continuing insurance coverage on the building was terminated. The owner notified the City several times after receiving that payout that he planned to perform repairs. Despite those representations, the owner never undertook any repair actions.

On August 7, 2019, after continual inaction by the owner, the City issued a formal notice that the property was considered a dangerous building under chapter 95 of the City

Code and an order to abate the public safety hazard. The notice indicated that the rear and east sides of the building remained unstable following a partial roof collapse; that the roof and walls had not been replaced or repaired since the tornado on July 21, 2018; and that areas of the building remained open to the elements and vermin. According to the notice and order, the owner had thirty days to correct the identified problems through demolition of the building or rehabilitation. Failure to comply, the order indicated, could result in the City filing a municipal infraction action in the Iowa state district court for injunctive relief and/or civil penalties or, in the alternative, an award of title to the property to the extent that it is viewed as legally abandoned.

The owner met with the City Administrator on August 12, 2019, and, as a result of the owner's representations, the City issued a building permit on August 22, 2019, for repairs to the building. That building permit expired on February 22, 2020, without the owner having commenced any work on the site. The City then filed a municipal infraction action in the Iowa district court. After the court issued a scheduling order requiring the owner to appear on August 7, 2020, the owner notified the City of his renewed intent to repair the building and entered an early plea of "not guilty," which caused the August 7 proceeding to be cancelled.

There is no evidence in the record that, as of August 10, 2020, the owner had made any significant repairs to the building or taken any action to protect the facility from further damage or deterioration.

B. 15 South 1st Street

The building at 15 South 1st Street, which shared a common party wall with the building at 102–104 West Main Street, was also damaged by the July 2018 tornado. The City did not immediately designate it as a dangerous building after a structural engineer conducted a post-tornado visual inspection on November 1, 2018, but the structural engineer identified extensive water damage to the first-floor roof, wind and debris damage to the second-floor roof, and extensive damage to the shared common wall with the building at 102–104 West Main Street. The engineer also found that most contents in the basement and on the first and second floors were unsalvageable because of water intrusion from the damaged roof. The engineer recommended removal of all wet and damaged building materials and contents and the use of fans and dehumidifiers to dry out the masonry and framing. He warned that failure to perform at least temporary repairs to make the roof watertight before the onset of winter could affect the building's structural safety and noted that "the cost to reconstruct the building . . . would be greater than the building would be worth after it is reconstructed."

When the City performed an exterior inspection of the building on August 6, 2019, it discovered that, as it wrote in a notice to the property owners, “[s]ince the July 19, 2018, tornado[,] no work has been completed” to protect the building. The City red-tagged the building as dangerous on August 6, 2019, with a notice to the owners on August 13, 2019, and placed a “Dangerous Building” placard on the front of the building, precluding further occupancy.

The building’s owners subsequently hired an engineer to conduct a review, and his report from November 1, 2019, indicated that the building was “safe to enter and to work on now.” The engineer indicated, however, that there was extensive damage to the common wall with the building at 102–104 West Main Street. Further, the November 2019 report identified extensive roof damage, including loss of roof gravel and roofing membrane, which had resulted in mold and water damage to the plywood roof sheathing, roof trusses, floor joists, floorboards, and wiring. Contemporaneous photographs in the record show damage to and open areas in the roof. The report noted that it “appears there has been no tarp or plastic installed over either the lower or higher roof since the tornado.” Nevertheless, the structural engineer recommended that necessary repairs to the roof should wait until the owner of 102–104 West Main Street repaired the shared common wall between the buildings, but he indicated that either the roof repair or the work to install a temporary watertight tarp or watertight membrane needed to occur “as soon as possible before winter.”

By August 10, 2020, the owners of the property had still not performed any corrective or restoration work, and the property continued to deteriorate. The owners held no insurance for the property.

### C. 108–110 West Main Street

The building at 108–110 West Main Street suffered only limited damage from the 2018 tornado. The owner worked to have much of that damage repaired but deferred the repair of apartments and the lower roof of the back storage rooms because of the severity of the damage to the shared common wall with 102–104 West Main Street. Nevertheless, the neighboring properties to the east (102–104 West Main Street) and west (112 West Main Street), with which it shared common party masonry walls, were significantly damaged.

The adjacent building at 112 West Main Street was sufficiently damaged by the tornado that, in late 2019, its owner demolished it. This demolition left the former common party wall at 108–110 West Main Street (now an exterior wall) exposed, with a need for repair and stabilization. In January 2020, the owner of 108–110 West Main Street notified the City that structural engineers had determined that it would be impossible to restore the former common party wall because footing depths that would be necessary to comply with

required building codes for exterior walls could not be met.<sup>1</sup> The owner indicated that he could not fund restoration of the former party wall or demolition, an inability that was compounded when, in March 2020, the insurer for the building cancelled the building's policy because of underwriting risks. The owner expressed interest in selling the property to the City, but no sale had been consummated by August 10, 2020.

### III. The 2020 Derecho

On August 10, 2020, the State of Iowa experienced a derecho that caused damage in several counties, including Marshall County, where the City of Marshalltown is located. On August 17, 2020, the President declared the derecho a major disaster, FEMA-4557-DR-IA.

As discussed below, the 2020 derecho impacted the three contiguous commercial buildings at issue in these arbitrations. Marshalltown applied for PA funding to cover the costs of demolishing the three structures, and FEMA prepared a separate grants management project (GMP) for each property: GMP 16670 for 102–104 West Main Street, GMP 166764 for 15 South 1st Street, and GMP 166766 for 108–110 West Main Street. We discuss each of those projects below.

#### A. 102–104 West Main Street

The derecho tore off the remaining roof structure from 102–104 West Main Street and deposited much of it on top of the building at 15 South 1st Street. A subsequent structural engineering survey of the building showed that the building's north elevation was no longer connected to the building, creating a risk that the building would collapse into the public right-of-way. The structural engineer, though, reported his belief that the building could be salvaged except for the fact that the owner “doesn't want to spend any money to do the repairs and doesn't have the backing that would be required for them.”

On August 14, 2020, the owner of the building called the City Administrator to say that he “want[ed] out” of the building following the structural engineer's inspection and asked the City to take the property over. After the structural engineer provided the City with his report about the building's condition, the City, on August 14, 2020, again red-tagged the building as dangerous.

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<sup>1</sup> The City notes that, despite this representation from the insurance company, the owner never applied for a building permit for repairs and never obtained a determination from the City that it would not grant an exemption for this building. The City indicates that the owner might have saved the building had he pursued repairs.

The City then dismissed its pending municipal infraction action and, on September 30, 2020, filed a petition in the Iowa state district court for title to abandoned property. The owner originally announced plans to contest the abandonment determination but eventually acquiesced, and the district court issued an order on April 12, 2021, granting default judgment against the owner and awarding title of the property to the City.

On February 8, 2021, while the district court action was still pending, the City identified the building as a threat to public health and safety and submitted to the Iowa Department of Homeland Security and Emergency Management (Iowa DHSEM) a formal request for demolition funding and debris removal assistance under section 403 of the Stafford Act for what was then still a privately-owned commercial facility. The Iowa DHSEM forwarded that request to FEMA on February 26, 2021. FEMA created GMP 166760 on May 13, 2021, and on May 19, 2021, conducted an inspection of the property. On July 29, 2021, the City submitted additional information to FEMA in response to a request for information (RFI), including pre-disaster and post-disaster engineering inspection reports, dangerous building notifications, and sections of the Iowa Code pertaining to petitioning for title of abandoned or unsafe buildings and demolition.

On May 3, 2021, while its petition for funding was pending with FEMA, the City filed a complaint with the Iowa Insurance Division alleging that when the insurance carrier for the property paid out the entirety of available insurance proceeds to the then-owner in November 2018 before terminating coverage, the carrier failed to create a required insurance reserve. The City claimed that action violated Iowa Code 515.139 and that the City was entitled to the missing amount of the reserve. The Iowa Insurance Division denied that complaint on May 24, 2021, finding that no insurance reserve was required.

#### B. 15 South 1st Street

When the derecho hit, the building was still red-tagged from the 2018 tornado. The property had remained unoccupied since the tornado but was being used as a storage facility for inventory from the building's prior use as a clothing store. Further roof damage resulted from the derecho. When contacted by the City after the derecho, the owners expressed a desire to sell the building. After the City obtained title to 102-104 West Main Street through the district court action, the City, on May 13, 2021, purchased the building at 15 South 1st Street.

On July 12, 2021, the City obtained a structural engineering review of the property, which reported that “[t]here has been water damage for an extended period of time due to the roof leaking” and that the remaining roof was beginning to fail structurally, the interior and exterior walls were in poor condition, the interior walls were deteriorated and full of mold, and the floors on the main level were in very poor condition and not safe. The report

indicated that, although the building was still salvageable, it would cost more to restore the building than it would be worth.

On February 8, 2021, the City identified the building as a threat to public health and safety and submitted to the Iowa DHSEM a formal request for demolition funding and debris removal assistance under section 403 of the Stafford Act. The Iowa DHSEM forwarded that request to FEMA on February 26, 2021. FEMA created GMP 166764 on May 13, 2021, and, on May 19, 2021, conducted an inspection of the property. On July 29, 2021, the City submitted additional information to FEMA in response to a RFI, including pre-disaster and post-disaster engineering inspection reports, dangerous building notifications, and sections of the Iowa Code pertaining to petitioning for title of abandoned or unsafe buildings and demolition.

#### C. 108–110 West Main Street

The 2020 derecho caused damage to the roof of the building at 108–110 West Main Street. On August 17, 2020, the City red-tagged the building, declaring it as dangerous and directing the owner to repair or demolish the building.

On February 8, 2021, the City identified the building as a threat to public health and safety and submitted to the Iowa DHSEM a formal request for demolition funding and debris removal assistance under section 403 of the Stafford Act. The Iowa DHSEM forwarded that request to FEMA on February 26, 2021. FEMA created GMP 166766 on May 13, 2021, and, on May 19, 2021, conducted an inspection of the property. On July 29, 2021, the City submitted additional information to FEMA in response to a RFI, including pre-disaster and post-disaster engineering inspection reports, dangerous building notifications, and sections of the Iowa Code pertaining to petitioning for title of abandoned or unsafe buildings and demolition.

On January 31, 2022, after the owners of the property at 108–110 West Main Street filed notices of disclaimer of interest in the property, the Iowa district court issued an order awarding title of the property to the City.

#### IV. The Demolition

On May 3, 2022, before FEMA had issued a decision on the City's PA funding requests, the City obtained a bid to demolish the three buildings at 102–104 West Main Street, 15 South 1st Street, and 108–110 West Main Street in an effort to remediate what it said was an immediate threat to life, health, and safety. The demolition of all three buildings occurred on May 18, 2022.



FEMA denied the City's requests for demolition funding in three separate decisions dated January 11, 2023. In its determination memoranda, FEMA explained that the severely deteriorated conditions of the buildings resulted from the 2018 tornado, the owners' subsequent failures to take action to prevent continuing deterioration after the tornado, and other factors, rather than the derecho.

The City submitted its first appeal of the denial to the Iowa HSEMD on March 2, 2023, and the Iowa HSEMD forwarded it to FEMA on April 25, 2023. By decision dated February 2, 2024, the Regional Administrator for FEMA's Region 7 denied the first appeal, finding that "[t]he demolition work was not required as the result of the disaster because of (1) the significant pre-existing damage caused by the 2018 tornado, and (2) the continued deterioration since 2018," which rendered the work ineligible for funding.

On March 28, 2024, the Board docketed three requests for arbitration from the City of Marshalltown, Iowa (Marshalltown), pursuant to the authority set forth at 42 U.S.C. § 5189a(d) (2018), as CBCA 8057-FEMA, 8058-FEMA, and 8059-FEMA. After briefing was complete, the parties elected to have the panel issue a decision based on the written record, without the presentation of live testimony, as permitted by Board Rule 611 (48 CFR 6106.611 (2023)).

## Discussion

### I. Authority to Arbitrate

At the initial conference, FEMA indicated that it intended to dispute Marshalltown's claim of being a "rural area" and the Board's authority to entertain any of these three arbitration matters. When FEMA later filed its arbitration brief, however, it did not address the issue. Although FEMA apparently has decided to abandon the issue, we consider it here to ensure that we possess authority to arbitrate.

Although this decision collectively addresses the City's three arbitration requests, Marshalltown originally submitted a single collective PA funding request that sought demolition costs for all three buildings, which was then divided into separate GMPs that are the subject of the three arbitrations here. The City indicated in its requests for arbitration that the amount in dispute in CBCA 8057-FEMA is \$215,000, the amount in dispute in CBCA 8058-FEMA is \$115,000, and the amount in dispute in 8059-FEMA is \$215,000. Pursuant to 42 U.S.C. § 5189a(d)(3), for the Board to entertain an arbitration where the amount in dispute is over \$100,000 but under \$500,000, the applicant must be in a "rural area," which is defined by statute as "an area with a population of less than 200,000 outside an urbanized area." *Id.* § 5189a(d)(4). Were we to view each arbitration request individually, the amount

in dispute in each would fall below the \$500,000 threshold, meaning that Marshalltown would have to qualify as a “rural area” for us to consider any of these arbitrations.

In the circumstances here, however, we need not decide whether Marshalltown qualifies as a “rural area.” As the Board recently recognized in *City of St. Cloud, Florida*, CBCA 7952-FEMA, et al., 24-1 BCA ¶ 38,559, if an applicant, either on its own initiative or as directed by FEMA, has divided and allocated costs caused by a particular disaster across separate GMPs or project worksheets, each of which is being presented to us for arbitration, we will not, in determining whether the applicant’s dispute meets the arbitration dollar threshold, rotely limit our review of the amount in dispute under the specific GMP at issue in a particular docket number. *Id.* at 187,408. Instead, we will more broadly consider “the substance of the underlying dispute or disputes” in the various projects at issue before us. *Id.* If “[t]here is enough commonality that it is logical to examine the costs on a unified basis,” such that there is, “in essence, one dispute as to the eligibility of costs,” we will look to the total dollar amount of the entire dispute in determining arbitration eligibility. *Id.* at 187,409.

Here, the three buildings at issue, each of which is the subject of one of these arbitration requests, were contiguous and were demolished at the same time. The building located at 15 South 1st Street (the subject of CBCA 8058-FEMA) shared a common party wall with the building at 102–104 West Main Street (the subject of CBCA 8057-FEMA), which shared a separate common party wall with the building at 108–110 West Main Street (the subject of CBCA 8059-FEMA). Two of those buildings were demolished for the same, interconnected safety reasons, and the third was demolished because it could not be allowed to stand if the building next to it was demolished. Marshalltown paid the demolition company \$545,000 to demolish the three buildings and then had to allocate that charge across the three separate projects, which evidences the interconnected nature of the costs at issue here. Because the combined cost of demolishing those three buildings exceeded the \$500,000 arbitration threshold for a non-rural area, we have authority to consider this arbitration without regard to whether Marshalltown is in a “rural area.”

## II. Rules Regarding PA Funding for Demolition

The Stafford Act authorizes FEMA to provide to states, localities, tribes, and territories (SLTTs) PA funding for “[p]erforming on public or private lands or waters any work or services essential to saving lives and protecting and preserving property or public health and safety, including . . . demolition of unsafe structures which endanger the public.” 42 U.S.C. § 5170b(a)(3). “To be eligible for [this type of] financial assistance, an item of work must: (1) Be required as the result of the emergency or major disaster event; (2) Be located within the designated area of a major disaster or emergency declaration . . . ; and

(3) Be the legal responsibility of an eligible applicant.” 44 CFR 206.223(a); *see* Public Assistance Program and Policy Guide (PAPPG) (June 2020) at 51.

The PAPPG provides the following guidelines regarding PA funding for a state or local government’s demolition of private structures:

Emergency demolition of structures located on private property may be eligible when partial or complete collapse is imminent, and that collapse poses an immediate threat to the general public.

In some instances, restricting public access to an unsafe structure and the surrounding area, such as securing the area with a fence, is sufficient to alleviate the immediate threat and is more cost-effective than demolition. In these cases, demolition is ineligible.

If a structure is condemned prior to the incident, emergency protective measures related to that structure are ineligible.

PAPPG at 128. The PAPPG places additional restrictions, though, on PA funding for the demolition of privately-owned *commercial* structures, as follows:

Demolition of structures owned by commercial enterprises, including businesses, apartments, condominiums, and mobile homes in commercial trailer parks, are generally ineligible as it is expected that the commercial enterprises retain insurance that cover the cost of demolition. In very limited, extraordinary circumstances, FEMA may provide an exception. In such cases, the Applicant must meet the requirements of Chapter 7:I.G. *Debris Removal from Private Property*.

PAPPG at 129. Pursuant to chapter 7:I.G, which the PAPPG’s demolition provisions reference, debris removal from private property (including demolition) is “the responsibility of the property owner and is usually ineligible under the PA Program,” but the PAPPG provides that, “[i]n limited circumstances, based on the severity of the impact of an incident and whether debris on private property is so widespread that it threatens public health and safety or the economic recovery of the community, FEMA may determine that debris removal from private property is eligible under the PA Program.” PAPPG at 107. “[T]he Applicant does not need to wait for FEMA approval to start work,” with one exception: “debris removal from commercial property.” *Id.* at 108.

FEMA does not provide PA funding for damage caused by deterioration, deferred maintenance, failure to take measures to protect a facility from further damage, or

negligence. PAPPG at 52. “If a facility was functioning prior to the disaster and the disaster caused damage that rendered the facility non-functional, the facility may be eligible provided the pre-disaster condition was not a significant contributing factor in the cause of failure.” *Id.*

The applicant is responsible for showing that work is required as a result of an immediate threat resulting from the declared incident or to address damage caused by the declared incident. PAPPG at 51-52, 97-98. The applicant must also “demonstrate that damage was caused directly by the declared incident.” *Id.* at 52.

### III. Demolition of 102–104 West Main Street and 15 South 1st Street

The City claims that the 2020 derecho caused the buildings at 102–104 West Main Street and 15 South 1st Street to become public safety hazards and necessitated their demolition. It is the City’s burden to establish that it was the derecho that caused the public safety hazard. PAPPG at 51-52. Having reviewed the evidence of record, including photographs of these two properties taken after the 2018 tornado but before the 2020 derecho, it is clear to the panel that the City cannot establish that it was the derecho, rather than the 2018 tornado and the owners’ failures to perform the type of restoration work that structural engineers had recommended, that caused the buildings to become a public safety hazard. Photographs taken months after the tornado show broken walls, piles of broken brick that had fallen from the buildings, and openings in the walls and roofs that left at least portions of the buildings open to the elements. Further, the buildings were left essentially exposed to the elements for a year-and-a-half after the derecho—from October 2020 until May 2022—before the City demolished them, during which time the buildings further deteriorated as a result of continuing storms and weather events that FEMA has identified in its briefing. The City cannot show that it was the derecho, rather than this pre-derecho damage and exposure and post-derecho exposure, that caused further deterioration and that destabilized the buildings to the extent that they needed to be demolished.

Further, the PAPPG provides that, “[i]f a structure [located on private property] is condemned prior to the incident, emergency protective measures related to that structure are ineligible.” PAPPG at 128. The word “condemned” means “officially declared to be unfit for use.” <https://www.merriam-webster.com/dictionary/condemned> (last visited Aug. 9, 2024). Here, the City had officially declared the buildings at both 102–104 West Main Street and 15 South 1st Street to be unfit and red-tagged them to preclude any occupancy well before the derecho hit. This rule further precludes PA funding for the demolition of these two buildings.

Marshalltown argues that, because it acquired title to both of these buildings after the derecho, different rules should apply than those that limit PA funding for the demolition of

private commercial properties. That is, although these buildings were privately owned when the derecho hit, the City (and therefore the public) owned them at the time of demolition. Because we have determined that the City's failure to establish that the derecho, rather than the 2018 tornado and subsequent deterioration (plus more than a year-and-a-half of continued deterioration after the derecho), necessitated demolition of these buildings, it is unnecessary for us to consider the City's argument. The failure to tie the demolition to the declared incident precludes PA funding, regardless of whether the demolished buildings were publicly or privately owned. *See* PAPPG at 51 ("The Applicant is responsible for showing that work is required . . . [d]ue to an immediate threat *resulting from the declared incident* (Emergency Work).") (emphasis added).<sup>2</sup>

#### IV. Demolition of 108–110 West Main Street

It is clear, based upon the record before us, that the building at 108–110 West Main Street was demolished only because it could not independently stand once the adjoining buildings were demolished. As previously discussed, the building at 112 West Main Street, which stood to the west of 108–110 West Main Street, was demolished in 2019 because of the 2018 tornado, meaning that the loss of stability on the west side of 108–110 West Main Street was tied to the 2018 tornado, not the 2020 derecho. With regard to the building at 102–104 West Main Street, which stood to the east of 108–110 West Main Street and shared its roof joists, destruction of the one made it virtually impossible, without significant engineering work, to maintain the other. We have previously discussed how 102–104 West Main Street was condemned before the 2020 derecho and how PAPPG policy precludes attributing its demolition to the derecho. Because the loss of the two buildings on either side of 108–110 West Main Street is attributable to events other than the 2020 derecho, PA funding is not available to fund demolition of this building.

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<sup>2</sup> In light of these findings, we need not evaluate FEMA's additional argument that the real reason that the buildings at issue were demolished was not because they posed a public safety risk but because it was not economically viable to restore them, which, according to FEMA, would preclude PA funding. We also need not evaluate FEMA's argument that PA funding is unavailable because the City demolished the commercial buildings before FEMA had authorized funding.

Decision

For the foregoing reasons, we deny Marshalltown's request for PA funding.

*Harold D. Lester, Jr.*

HAROLD D. LESTER, JR.

Board Judge

*Jonathan D. Zischkau*

JONATHAN D. ZISCHKAU

Board Judge

*Marian E. Sullivan*

MARIAN E. SULLIVAN

Board Judge