

## **Minutes of the Building Appeal Board Meeting of June 14, 2017**

The regular meeting of the Building Appeal Board was called to order at 3:00 p.m. Wednesday, June 14, 2017, in the City Council Chambers, 3rd Floor City Hall.

**MEMBERS PRESENT:** Jon Helstrom, presiding; Jim Herman, Pat Sowl, Nancy Kastelic, John Hinzmann, Bill Scalzo, John Miller and Dennis Edwards

**MEMBERS ABSENT:** Don O'Connor and Dan Nelson

**STAFF PRESENT:** Terri Lehr, Sarah Benning, Greg Smith and Ellen Kreidler

The minutes of the May 10, 2017 meeting were approved as mailed.

### **NEW MATTERS:**

**An appeal of Karen Lewis by Gerald Wallace, Attorney at Law to reverse a decision of the Life Safety Office to issue condemnation for human habitation orders for the upper apartment unit of property located at 120 W. 5th Street.**

Sarah Benning outlined the matter as indicated in the staff report which is attached to the file and considered a part of these minutes. Greg Smith, housing inspector, explained that immediately after the last board hearing the tenant and her attorney went to his office and created a compliance agreement which the tenant signed. This agreement stipulated inspections to be conducted on May 17<sup>th</sup>, May 25<sup>th</sup>, May 31<sup>st</sup> and June 7<sup>th</sup> to catalog any progress toward compliance regarding the condemnation orders. At the May 17<sup>th</sup> inspection small progress was made with an approximate 5' x 5' area in the living room and also an approximate 5' x 5' area in the front upper spare bedroom. Photos were taken. The subsequent three inspections revealed nothing had changed; no further areas had significant clearing. The main areas of the dwelling unit (living room, kitchen, bedrooms) all remained at the same level of storage which constituted an excessive fire load and blocking of egress.

Mr. Smith stated that he visited the property today prior to the hearing and was met by Ms. Lewis at the door. She stated that she had not done anything more toward compliance. He asked her if she wanted him to come in and document anything however she did not want him inside the dwelling so he left the property. Mr. Smith concluded that the dwelling unit was not in compliance and no proof of compliance has been submitted to his office.

Gerald Wallace, attorney representing Ms. Lewis addressed the board. He stated that they are seeking either relief from the condemnation for habitation order or a variance as per Section 10-5 of the city code. He believed that the board could lift the order based on 10-5 (e) (2): substantial compliance with the provisions of the code; no detriment to public health or safety will result from granting such relief; the intent of the code is not compromised; and the relief granted will not result in increased cost expense to the city. Alternately, he believed the board may grant a variance from the minimum requirements of the fire code if any of the three are found: there is substantial compliance with the provisions of the fire code; the safety of the building occupants and

general public will not be jeopardized; or undue hardship will result to the applicant if relief is not granted. *(Note: City code provides that the board may recommend a variance to the state fire marshal only if all three of these conditions are met.)*

Mr. Wallace stated that their position is that there is no detriment to public health or safety created by what is going on inside of her residence. All issues raised by the Life Safety inspector related to items inside her private residence; they were not related to anything outside the walls of the building. All photos taken and inspection compliance reports related to the interior of the property. He felt that the intent and purpose of the code was to ensure uniform standards for items such as plumbing, electrical, water, heat are all constructed in a safe manner. The content and what the content is are not something ordinarily of concern to the building code. Therefore, it was his position that the intent of the code was not compromised. Furthermore, he stated that granting Ms. Lewis relief does not create any increased cost to the city. To his knowledge, Ms. Lewis receives no public benefits from the city.

Mr. Wallace believed that Ms. Lewis would qualify for a variance. He stated that there was substantial compliance with the condemnation order. He added that he brought one copy of photos taken by Inspector Smith and provided by his office. He requested to submit them to the board. He believed they would show the board that Ms. Lewis has maintained clear hallways and stairs and there is a 36" clearance around all windows and doors and the windows are all accessible. He requested approval to submit the photos. President Helstrom explained that a motion would be required by the board to submit any documents or photos adding that Mr. Wallace would need to have enough copies for each board member to review. Mr. Wallace stated that he did not bring extra copies because he was told when he had spoken before that one copy would be sufficient.

President Helstrom explained that one copy would require the board to delay the meeting and pass the photos around. He asked the board if they wished to do this or to continue to hear the matter on the basis of the housing inspection report. There was no motion by a board member. Mr. Wallace stated that if he was considered the proper party he was comfortable making a motion to allow the board to take these under consideration. He added that they would not need to be inspected now if that aided with expediency. President Helstrom instructed that he should just continue with his presentation.

Mr. Wallace stated that the photos provide proof of substantial compliance. He stated that safety of building occupants and the general public will not be jeopardized. The issues identified related to the interior of one unit which is not accessible to the general public. There is no nuisance to the public passing by on the street or sidewalk. He stated that there is undue hardship as to the advanced age of his client, the fact that she is single and has no family. If the condemnation order stands, she would be forced to move in a short period of time and acquire a different means of living. He added that there may be wait lists which could result in her being out on the street. It was his opinion that in no way shape or form does this create a general nuisance, there are no criminal or unruly/reckless behavior. He stated that the condemnation order related solely to the contents and the building inspector's feelings that this constituted an

inappropriate fire load. He noted that there have been changes to the property since the initial inspection with the stairs and halls cleared.

Karl Wyant, owner of the property addressed the board. He stated that he has resided in Duluth since approximately 1994. He stated that the actions taken against Ms. Lewis greatly disturbed him. He was reminded of a time when he was in the second grade and read a story about communists which was designed to impress upon the children all the horrible things people in a communist society must live with so they would conclude that the United States was the best form of government. He believed that this type of interference with a person's desire to pursue happiness figured prominently in the story he read in the second grade. He felt that in his 50 years he has witnessed a great nation fall and this was a small example.

Mr. Wyant stated that the contents of Ms. Lewis' dwelling unit have not changed much since she moved in approximately 12 years ago. He stated that the laws have changed. He referenced the diagnostic statistical manual of psychology adding that one of his degrees from Purdue University is in psychology. At that time, it was the DSM-TR now it is the DSM-IV which lists hoarding as a mental disease. He stated that if the city condemns the property and makes Ms. Lewis homeless it will be because this board has deemed that she is mentally ill and must be homeless as a result. He stated that the DSM4 states that the act of throwing away a scrap envelope can cause physical pain to a person who suffers from hoarding. He stated that he was told by the inspection department that we can finally do something about this because now it is a mental illness. He stated that we are making her homeless, condemning her property not because of something wrong with the building. The roof and electrical systems are good; there is no sewage backing up; the building passed all code standards. It is just her possessions causing the orders. He felt this was an unequal protection under the law. He added that perhaps every member of the board is a hoarder too, but the city does not enter a home to evaluate whether or not you are a hoarder unless it is a rental. He referenced DSM-IV – 300.3.

President Helstrom explained that the board does not have the power to investigate the DSM or evaluate mental health; that is not the issue before the board. In reference to the danger present, President Helstrom asked what would happen if an event required emergency personnel to enter the dwelling. He believed their safety would be imperiled by the obstructions within the building. He added that the matter before the board did not relate to any of the board members' residences. The matter before the board was one dwelling unit which has been inspected and according to the code does not have clearance for safe passage for the owner, the tenant or any emergency responders such as police or fire. Mr. Wyant replied that under a United States citizen's pursuit of happiness it is not their obligation to make the interior of their home safe for others. He added that if this was heard by a jury they would have the authority to find the code unconstitutional and it could be thrown out. He hoped this council had the same ability.

President Helstrom explained that this board does not have the power to overturn a code or law. Mr. Wyant questioned this as he was under the understanding that the codes and laws originate from this board. President Helstrom replied that the code does not originate from this board and he requested that legal counsel expound on this. Ms. Lehr clarified that some of the rules for this board are contained in Chapter 10 of

the Legislative Code which was passed by the city council. The city council is a legislative body. This board is separate and apart from the council and is considered a quasi-judicial body as they apply the laws under a given set of facts. Mr. Wyant replied that he was confused perhaps because he sees many of the same names and faces on this board as the city council.

Chief Edwards stated that he understood there was another tenant in the building. Mr. Wyant replied this was correct.

A motion was made by Mr. Hinzmann to uphold the condemnation order. He stated that the fire code protects occupants of a structure along with the firefighter's ability to control or extinguish a fire. He stated that no apparent progress has been made in the 14 months since the first inspection and therefore he made a motion to uphold the decision to condemn the dwelling unit for human habitation and deny the appeal.

MOTION: Hinzmann: To deny the appeal  
SECOND: Kastelic  
MOTION PASSED: Unanimously

There being no further business the meeting adjourned at 3:23 pm.

Respectfully submitted,



Ellen Kreidler  
Acting Recording Secretary

Approved:



Dan Nelson  
Ex Officio Member/Secretary

DWN:ek