



**CITY OF LA VISTA
BOARD OF APPEALS
FEBRUARY 4, 2013
6:00 P.M.**

The City of La Vista Board of Appeals held a meeting on Monday, February 4, 2013, in the Harold “Andy” Anderson Council Chamber at La Vista City Hall, 8116 Park View Boulevard. Chairman Dean Paulsen called the meeting to order at 6:02 p.m. with the following members present: Jordan, Karnik, Malmquist, Paulsen and Strittmatter. Also in attendance were John Herdzina, Hearing Examiner, Jeff Sinnett, Chief Building Official, Gerald Friedrichsen, City Attorney, and Ann Birch, Community Development Director, serving as Recording Secretary.

Legal notice of the public meeting and hearing were posted, distributed and published according to Nebraska law. Notice was simultaneously given to all members of the Board of Appeals and to those persons who had appeals pending before the Board. All proceedings shown were taken while the convened meeting was open to the attendance of the public.

1. Call to Order and Roll Call

The meeting was called to order by Chairman Paulsen at 6:02 p.m. and roll call was taken. Copies of the agenda and staff reports were made available to the public.

2. Approval of Meeting Minutes – January 16, 2013

Jordan moved, seconded by *Karnik* to approve the January 16, 2013, minutes with the following corrections: reflect the motion by Malmquist and a second by Jordan to appoint John Herdzina as the Hearing Examiner acting on behalf of the Board of Appeals for the appeals pending by each of Earl Hollins and the SR Group, LLC d/b/a Shadow Ridge Apartments and change the spelling of Board member Karnek to Karnik. **Ayes:** Jordan, Karnik, Malmquist, Paulsen and Strittmatter. **Nays:** None. **Abstain:** None. **Motion Carried.** (5-0)

3. Hearing of Appeal of Building Official Notice and Order

A. Earl Hollins – 7528 S. 88th Street

- i. **Recommendation:** At the January 16, 2013, meeting Sinnett made three recommendations to the Board, as follows: 1) The property owner must provide to the City a copy of their liability insurance certificate; 2) maintain fencing and secure the area around the foundation; and 3) by August 1, 2013, provide to the City either a) a building permit application; b) a demolition permit application; or c) file an

appeal to the Board for an extension. The hearing was continued until this meeting of February 4, 2013.

- ii. **Continuation of Hearing:** Sinnett came forward and advised the Board that he had received the certificate of insurance from the property owner and had spoken to the owner after the meeting held January 16, 2013. The property owner stated to Mr. Sinnett he was agreeable to the conditions outlined by the Board at the last meeting.

Karnik questioned if the owners would have until August 1, 2013, to comply with the conditions. Paulsen stated yes. Herdzina recommended the Board consider continuing the hearing to August 1, 2013, and not close the hearing so the Board can evaluate progress by that date, and depending on where the case stands, the Board could hear the appeal at a meeting on or about August 1st or hear it at another regular meeting of the Board.

- iii. Paulsen moved, seconded by Strittmatter to again continue the hearing to a date on or about August 1, 2013, or unless otherwise required. **Ayes:** Jordan, Karnik, Malmquist, Paulsen and Strittmatter. **Nays:** None. **Abstain:** None. **Motion Carried.** (5-0)

B. Shadow Ridge Apartments – 8500 Granville Parkway

- i. **Continuation of Hearing:** This matter came on for hearing as a result of the motion for continuance granted at the meeting of the Board held January 16, 2013. Herdzina stated that present tonight were attorneys Gerry Friedrichsen for the City and Max Burbach for the appellant regarding the Notice of Violation letter dated October 3, 2012, and appeal letter dated November 1, 2012. The original hearing scheduled to be held January 16, 2013, was continued to this date. Herdzina requested the record show the notice of the meeting was properly given and served on Mr. Friedrichsen and Mr. Burbach. He further stated that for the purpose of this appeal the Board acknowledges the ordinances of the City of La Vista which include the International Property Maintenance Code and the Rental Inspection Program code. He noted that the proceedings are recorded but the tape recording serves as a back-up only and the minutes of the Recording Secretary will serve as the official minutes of the meeting. Should the appellant desire a court reporter it would be at its expense. Herdzina also noted that Board member Mr. Strittmatter had acknowledged his employer company has used the Koley Jessen law firm, of which Max Burbach is a partner. Strittmatter explained his employer, Olsson & Associates, has used this same law firm for corporate matters, however nothing related to this case. Herdzina asked whether the City or the appellant had any objection to Mr. Strittmatter hearing this case. Mr. Friedrichsen stated there was no issue from the City's perspective. Mr. Burbach stated no objection. Herdzina confirmed both parties waive any objection. Herdzina explained to the Board he had talked to counsel for both parties and gleaned there were some positive developments concerning this matter and a chance that the parties could work things out.

Sinnett came forward and presented a copy of a Memo from SR Group, Stephen F. Elken, dated January 28, 2013. Herdzina marked the letter "Exhibit 1, SR Group" and made it part of the record for this hearing. Sinnett explained he had met with Mr. Elken, who represents the owners of the Shadow Ridge apartments, and discussed how to remedy the violations. Sinnett stated he was agreeable to a 60 day extension to see if the owners make progress on the repairs and follow through to fruition as they promised. Sinnett explained the owners were working on the fire-rating of the furnace rooms, the furnace replacements, changing the material supporting the furnaces with those in the worst shape to be done immediately, fire door replacement, and the entry decks and balconies need a campus plan to replace them throughout the year. Sinnett stated he needs a more detailed plan and that the worst need to be done first.

Paulsen asked if any of the furnaces had been replaced yet. Sinnett stated none of the ones noted on the inspection report. Mr. Burbach stated the owner has every intention of fulfilling the requirements. Herdzina asked for a recommendation on time needed to complete, and there are two issues, first that the City see progress and, secondly, that the requirements are finished. Mr. Burbach stated there is both inside and outside work and the outside work is contingent upon weather. Karnik questioned how much life or safety is at risk. Sinnett explained the inspectors did not do a carbon monoxide test however there are problems with fire rating, some furnace units are leaning, and some units need to be repaired due to age. Karnik asked how many units are occupied. Laura Miller, manager of the apartment complex, stated approximately ninety-five percent. Karnik questioned if the worst case scenario happened, a fire, what is the City's exposure. Sinnett stated the owners had been issued notice to do the repairs and been given sixty to ninety days to get it done. Sinnett further stated the owners need to identify the worst decks and get them fixed first. Jordan asked why it has taken the owners so long. Sinnett deferred to the owners for an answer. Paulsen questioned why Sinnett did not just issue red tags. Sinnett stated the inspectors did not see anything that bad. Herdzina asked Sinnett what needs to be done in sixty to ninety days. Sinnett stated a good faith effort to correct the items on pages one through four of the inspection report (the Notice of Violation). Herdzina questioned whether or not realistically it can be done in that amount of time. Sinnett stated yes.

Laura Miller, manager of the Shadow Ridge apartments, came forward and stated a lot of work has been done since the initial inspection. Ms. Miller stated she has gone through the items which need to be done and made a spreadsheet, checking off items as they are done. She stated most of the furnaces have been replaced already but missed the fact the contractor had not called the City to inspect them. Paulsen asked how many of these furnaces have been replaced. Ms. Miller stated not all of them in the first inspection report, but presented to the Board a photograph of an example of the new work. Herdzina marked the photograph "Exhibit 2, SR Group" and made it a part of the record for this hearing. Paulsen questioned the condition of the boxes under the units to keep them upright. Ms. Miller stated they were also replacing them including the one next to it in order to meet the code. Karnik questioned if Black Hills Energy has ever red-tagged any

units. Ms. Miller stated Black Hills Energy checks them and if she gets a red tag, that unit gets replaced. Paulsen asked how old the units are and how many apartment units are in the complex. Ms. Miller stated she believed the complex was constructed in 1972 and there are 276 rental units. Herdzina questioned if it was reasonable to continue the hearing for sixty days and determine if the items on the memo are corrected. Ms. Miller stated they have hired someone who specifically will take care of this and then note it on the spreadsheet. Ms. Miller offered to give a copy of the spreadsheet to the City. Herdzina suggested she give a copy to Mr. Sinnett, keeping Mr. Sinnett updated on an ongoing basis. Mr. Friedrichsen had no objection.

Strittmatter asked, of the units fixed and the ones on the spreadsheet, how many units could still be bad. Ms. Miller estimated about forty percent need repairs. Strittmatter questioned with the cycle of repairs, how many years it will take to fix or replace all of them, and questioned if the situation is potentially dangerous. Ms. Miller replied they will replace thirty to forty per year and they are on a five year plan. She further stated Black Hills Energy comes out twice a year to turn on and off the furnaces and they have their eyes on them. Paulsen asked if the continuance was for just 28 apartments. Herdzina stated yes, this meeting is on the notice Mr. Sinnett issued. Strittmatter stated the problems continue and they need a back-up plan because this seems dangerous. Ms. Miller stated the Board saw one picture in their packet and that was the worst case. Paulsen stated the units in the letter may not be fixed and asked if these could get priority. Herdzina asked what efforts the SR Group will give to the 28 units in the notice so that they are addressed first.

Herdzina suggested a motion to continue the hearing to April 10, 2013, when the Board will reconvene and get a formal update and hold the appeal hearing if necessary. Karnik asked if a fire did occur, what is the exposure of the City. Friedrichsen stated he has not researched this matter and he did not represent the insurer, but the City's obligation is to act on the extent of their knowledge, how well the inspection was done and what an inspection should entail. He further explained if Mr. Sinnett is looking at the right things and what he has seen so far he has told the owners about what needs to be done, the City may have little or no exposure. The standard is to do what is reasonable. Friedrichsen recommended to the extent Black Hills Energy gives reports, a copy should be given to Mr. Sinnett of what Black Hills has found regarding bringing the units up to code. Herdzina asked Mr. Burbach if SR Group would be willing to give these reports to the City. Burbach answered yes however if there were red tags or an immediate danger, they would have required the occupants to leave. Herdzina stated it sounds like the City has agreed with what SR Group needs to do within the next 60 days.

- ii. Jordan moved, seconded by Paulsen to continue the hearing to April 10, 2013. **Ayes:** Jordan, Karnik, Malmquist, Paulsen and Strittmatter. **Nays:** None. **Abstain:** None. **Motion Carried.** (5-0)

4. Election of Officers

Chairman Paulsen asked for a nomination for Secretary. Strittmatter moved, seconded by Malmquist to nominate Jim Karnik as Secretary. **Ayes:** Jordan, Karnik, Malmquist, Paulsen, Strittmatter. **Nays:** None. **Abstain:** None. **Motion Carried.** (5-0)

5. New Business

Karnik asked the other Board members if any had attended the training offered through NPZA. He had received the conference materials and was interested in attending. Strittmatter indicated he had attended previously as a member of the Planning Commission. Malmquist stated she had also attended. Jordan expressed an interest in attending. Birch stated that materials related to the conference would be mailed to the members so that they could contact staff if they are interested in attending, and their conference expenses would be paid by the City.

6. Adjournment

Jordan moved, seconded by Karnik, to adjourn. **Ayes:** Jordan, Karnik, Malmquist, Paulsen and Strittmatter. **Nays:** None. **Abstain:** None. **Motion Carried.** (5-0) The meeting was adjourned at 6:45 p.m.

Reviewed by Board of Appeals:

Secretary

Chairman

Approval Date