

CITY OF LA VISTA

LA VISTA BOARD OF APPEAL MEETING

November 4, 2009

The Board of Adjustment of the City of La Vista, Nebraska was convened at 6:00 p.m. on November 4, 2009 at the La Vista City Hall, 8116 Park View Boulevard. Members present: Malmquist, Jordan, Paulsen, Brown and McEnearney. Also present was John Herdzina, Hearing Examiner and Jeff Sinnett, Chief Building Official.

Legal notice of the public meeting was published in The Papillion Times. Notice was simultaneously given to all members of the Board of Adjustment. All proceedings shown were taken while the convened meeting was open to the public.

1. Call to Order and Roll Call

The meeting was called to order by Paulsen at 6:01pm and roll call was taken.

2. Approval of Minutes of September 23, 2009

Jordan moved to approve the minutes of September 23, 2009 as presented. McEnearney seconded. Ayes: Malmquist, Jordan, Brown, McEnearney and Paulsen. Nays: None. Minutes were approved.

3. Old Business

a. Reconvene for and Continuation of Hearing of Appeal of Building Official Notice & Order – 7121 Harrison Street

i. Staff Report: This continuation is led by Hearing Examiner, John Herdzina and is an appeal by Appellants Longs Sales & Service, Earl Long and Cyrus Long of the Notice & Order dated July 8, 2009. The property owner is Mr. Earl Long and the property is Lot 1C Ex Pt To Rd, La Vista Replat addressed as 7121 Harrison Street. This property is zoned C-2, General Commercial District.

Legal council for both the City of La Vista and Long's were present.

To update and clarify the exhibits for the case, the following was noted:

Exhibit #15	Application for the Roof Permit
Exhibit #16	Report of Proposed Decisions submitted by John Herdzina
Exhibit #17	Notice of Meeting and Agenda sent out by the City of La Vista regarding Nov. 4, 2009 Meeting
Exhibit #18	Exceptions Filed by Attorney Barber on behalf of Long's
Exhibit #19	Attorney Barber's letter sent to the Board of Appeals
Exhibit #20	Official Transcript submittal

Legal council, Attorney Barber and Attorney Friedrichsen agreed to accept these additional exhibits above.

By motion from Paulsen and seconded by Jordan, the Board of Appeals agreed to hear oral arguments from legal council on behalf of the City of La Vista and the Long's.

Attorney Barber referred to his written statement of exceptions that were taken to the recommendations made by Herdzina.

He stated that the bottom line from the Longs point of view is that whatever else may or not be said, communication was less than stellar. He said that the bottom line from the city's point of view was that an ample opportunity was given. He felt sufficient confusion and sufficient lack of good communication regarding the matter of demolishing this building is premature, to say the least.

Barber reviews the testimonies that were made a number of weeks ago at the time the record was made. First the Fire Chief testified with respect to his opinions and observations about the property. Barber thinks that there were a couple of things that are significant that were relatively clear. First of all is the matter, that in the way of hazards, there was nothing on this property that could not be cleaned up or fixed up. He felt it was also clear that there had been a lot of time passed. There have not been any events, nothing extreme, nothing that would constitute an emergency, and nothing, certainly, that could not be taken care of if someone chooses to do so.

In the testimony of Mr. Squire, there were two reports; an original and an update to that. He assumed that when an engineer makes a written report that they likely have put some time and calculation into that and what they say in their report. There were a couple of things that were noteworthy. One is that there isn't anything that was found to be structurally deficient about the structure that is on this property. Obviously, there were extremely deferred maintenance issues but as far as the structure was concerned there was no question about that. He didn't know if the engineer had studied exactly the extent, the nature of the repairs that would need to be made but everything concentrated essentially on the rough and then the portion of the wall on the west end of the building where someone ran into it with a car. The bottom line from the engineer reports was that the structure was sound as a matter of structural engineer. Mr. Squire had also made comments with respect to whether there was a danger of the roof departing under the right set of circumstances, as far as wind was concerned. He did agree with that proposition. However, Barber felt it was significant that this was not part of either one of the reports that the engineering firm made in this instance.

Mr. Withers testimony from the valuation company concluded in the report that this property would be better off without the structure than with it. And, he placed a value of \$100,000 odd thousand dollars. But, in his further evaluation he increased the value of the property some \$33,000, if, in his estimate, this was spent demolishing the structure. It arrived at a conclusion that this would amount to an improvement. Barber understands the testimony and report, but one of the serious questions that remains is that he is not sure exactly what the size of the check is that would be given to the department that would go forward with the demolition. The cost of demolition is essentially not under control, not being monitored, and who knows what it could end up being. He feels it should be done in a much more thorough manner than the way this case has been handled.

Finally the testimony that he collects together for purposes of discussion, which is the testimony of Earl Long, Cyrus Long and Jeff Sinnett.

Barber understands the proposition that you give somebody notice of what they need to do and if they ignore it then you have to go ahead and take care of the problem. But, he thinks it was clear that the communication was not all that good, not all that clear. Cooperation and effort was lacking in trying to get a job done. It was handled in a way that would bring into question whether the building and safety might have a little bit of a public relations problem.

When you take all of these things and wrap them up, it is in a run-a-way status. Barber is taking exceptions to the findings. He doesn't hold out a great deal of hope, but he thinks that if the testimony and the documents are studied, he felt it is out of control and needs to be slowed down.

They would ask that the appeal made on behalf of the parties Long be sustained and to see if there is not another way to handle the real, or perceived, problem is.

Jordan voiced concern about a hole in the wall on the west side of the building that had been there since 1999 and didn't have the capital to repair the hole in the wall. Where would they get the capital to take care of the problems the Longs have now?

Barber responded that since there is not going to be any more evidence taken on this case all he can say is he didn't think this was clear and with lack of clarity you run the risk of essentially taking a piece of property and ending up potentially in a situation where the whole thing is a loss as far as the Longs are concerned. By the time the bills are paid there is nothing left so you have a condemnation that has taken place. Cyrus under testimony thought he was in a better way to have some funds available. Barber realizes that doesn't necessarily sew the matter up. It is in the record that there was some intention on the Longs part, especially Cyrus to do some of the work himself. He realizes the argument that these people had all sorts of opportunities, but he also realizes that when they came, in their way and wanted to apply for a permit, that permit languished. The record shows that although there was some attempt to get a permit going it didn't happen until the Longs lawyer contacted the building department to find out what was going on. It is important to consider that things are out of control. The best solution is to try to work together a little bit more than what has been done.

Jerry Friedrichsen appeared to argue that they had focused on evidence being brought to the board in support of the decision by the Chief Building Official Sinnott that enough time has passed that this building needs to be demolished because of the condition that exist and have existed out there longer than since September 2005. The interior was seen through the windows, the photographs were seen of the interior, not only all of the debris that the Fire Chief concluded was a potential or serious fire hazard if the building should ever catch fire. The evidence of the opening in the roof, the corner that had been damaged which could allow anyone to get into the building whenever they like. Cyrus Long testified that there has been vandalism at the building and police were called five or six times. This is a circumstance that has been in existence for a substantial period of time. The city, perhaps to its fault, should have moved sooner, but didn't. But, this situation is by no means out of control. If there is lack of control it is because there has been no response from the civic obligations of the Longs in complying with the ordinances and requirements for maintaining buildings in a proper and safe manner like every other citizen of the City of La Vista does or is required to do. We have brought evidence of the condition of the building as viewed by the Fire Chief. The condition of the building as viewed by an engineer. And, condition of the building as viewed through its highest and best use in an effort to determine whether a demolition of this building would be appropriate.

The idea that there has been some miscommunication and dropping of the ball, with a very subtle suggestion, that it is the city's responsibility is not born out by the record. When the Longs were given notice, in September of 2005, that the condition existed then that still exists today and needed to be remedied. They were told specifically that they were to stop doing business but that they were to get necessary permits, but that they could go in during the meantime to clean it up. They got notice of that because the following October of 2005, exhibit #15, there is the communication to Mrs. Cyrus Long, who did not testify, about looking into the issue about what was needed to be done with the roof.

There was a response from Mr. Sinnett after that which talked about what they needed to do. Then there is nothing in the record of the Longs coming back to the city and respond to that issue. The city has no obligation to go out and reach out. The property owner is the one who is responsible for maintaining that property for compliance with ordinances. It is not the cities responsibility to not only make the assessment but to go out to the property owner and say 'how can we help you do the work, what can we do to help you with this circumstance.' It is the property owners' responsibility. That was not done here, despite more than four years of an opportunity to do so. Then, when we conducted another inspection this summer under the protection of a warrant issued by a judge, the same circumstances were identified. We identified four years have passed and nothing has occurred. We tell them this time that the condition of the property is a danger to the public and to the firefighters who may show up, a danger to the kids or vandals who may be caught in that circumstance. It is time for that building to come down. They were given another opportunity to come here and present evidence and to show you why 1.) That it is not a problem out there. They have conceded that. 2.) This is how we are going to fix it. And, they didn't present any evidence that would allow you to make a conclusion that there is a realistic basis for all of the violations out there that are going to be fixed.

You have before you the Uniform Dangerous Building code, and if you look at Jeff Sinnetts letter he identifies in five or six paragraphs he found to be applicable, and the building in its present condition violates. We are not making this decision willy-nilly. We have established through the evidence, the summary that Mr. Herdzina prepared for you, that it is fair, its accurate, discusses both sides of the issue, both sides of the facts. But, if you look at his findings and conclusions and recommendations they are all well supported by the evidence we presented. We ask that the appeal be dismissed and that we be allowed to proceed.

Barber passed on any rebuttal.

Herdzina explained that with the Abatement of Dangerous Buildings Code directs that the board may adopt, or reject the proposed decision submitted by Herdzina. It can be done in its entirety, or it may be modified as seen fit.

Paulsen reiterated to the board that they would now vote on whether to accept the hearing examiners report or not accept it. First, if there are any amendments to that report, or changes that the board would like to do it would be the time to do that.

Brown questioned that he had not gotten a copy of Barbers written statement of exceptions that were taken to the recommendations made by Hearing Examiner Herdzina.

These ultimately were handed out to the board and reviewed before any motion was made.

Malmquist made a motion to accept the report and the proposed decisions as submitted by the hearing examiner including the recommendations, conclusions and proposed decisions on page 8 and continued on page 9 which 1.) to resolve the board of deciding that the appeal for the additional time is denied. 2.) That the city may immediately proceed to cause the demolition of the building premises to be done and charge the cost of the demolition against the real property and its owner. McEnearney seconded. Ayes: Malmquist, Paulsen, Jordan and McEnearney. Nays: Brown. Motion carried.

4. New Business

None.

5. Adjournment

Malmquist motioned to adjourn the meeting. McEneaney seconded the motion. Ayes: Malmquist, McEneaney, Jordan, Brown and Paulsen. Nays: None. Meeting adjourned at 6:43 pm.

Reviewed by BOA Secretary: Loretta McEneaney

Recording Secretary

Board of Adjustment Chair

Approval Date

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