

ONEONTA, NEW YORK - SEPTEMBER 6, 2012 - 4:00 P.M.

REGULAR MEETING OF THE BOARD OF PUBLIC SERVICE PG. 1

PRESENT: Chair Margery K. Merzig
Commissioner Peter Friedman
Commissioner Louis Tisenchek
Commissioner Joseph Temming
Council Member Madolyn Palmer

ABSENT: Commissioner David Hayes

Chair Merzig called the regular meeting to order and asked the Clerk to call the roll.

Chair Merzig stated she needed to leave by 5:30 and that Commissioner Tisenchek would take over the meeting if it should run past that time.

PETITIONERS

The Chair indicated there were no petitioners for matters other than those listed on the agenda.

CORRESPONDENCE

The following Memorandum, dated September 6, 2012, was received from Code Inspector Hester:

“To: Board of Public Service

Subject: September 6, 2012 Board of Public Service Items

Updates:

128 Chestnut Street Rear- (Alan Rubin: 138 Balford Drive, Oneonta 13820)- On May 3rd, 2012 the Board ordered that this property be vacated within 30 days and all exterior safety violations be taken care of as well as having a licensed engineer review the property’s structural safety. This office has received an engineers report from Bernard O’Neill stating that this property conforms to all applicable codes and meets minimum life safety standards.

13 Baker Street- (Margo Heck: 13 Baker Street, Oneonta 13820)- The Code Enforcement Office would like to inform the board on Ms. Heck’s progress in cleaning out the barn.

Administrative Fee Appeals:

10-12 Forest Avenue- (Jammathon Snyder: 2334 County Highway 35 Maryland, NY 12116)- The Code Enforcement Office would like to request an administrative appeal be heard at the Board’s September 6, 2012 meeting.

91 Main Street- (Alan Rubin: 138 Balford Drive Oneonta, NY 13820)- Mr. Rubin would like to appeal the administrative fees attached to this property at the Board’s September 6, 2012 meeting.

251 Chestnut Street- (David Freed: 83 Lower River Street Oneonta, NY 13820)- Mr. Freed would like to appeal the administrative fees associated with this property. The Code Enforcement Office would request that this appeal be heard at the Board’s September 6, 2012 meeting.

Other:

6 North Seventh Street- (Orris Root-Deceased)- The Code Enforcement Office would like to discuss this property at the Board’s September 6, 2012 meeting.”

APPROVAL OF MINUTES

The board approved the minutes of the regular meeting held August 2, 2012 without benefit of a motion.

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OLD BUSINESS

1. Follow-up on fire safety/plan for cleanup: Margo Heck – 13 Baker Street
2. Follow-up on planned subdivision - City View Drive (288.19-1-42.01): Dmitriy Litvinenko & Marjorie Louissaint wish to subdivide and purchase a 4.78A parcel owned by Thomas Oliver to build a single family home with entryway by North Fifth Street. This requires review and approval by the board for the extension of the water and sewer lines to North Fifth Street as well as to look at the requirements for fire hydrants.

1. Follow-up on fire safety/plan for cleanup: Margo Heck – 13 Baker Street

Chair Merzig thanked Ms. Heck for coming. She said the board would hear from the Code Enforcement Office about the plan received. She said she noticed that there was work being done.

Code Enforcement Officer Chiappisi stated there was work being done on the garage and removing combustibles. He said it was progressing but it still had a ways to go. He said he thought that work had started to make a little more garbage outside in the backyard which he would like to see cleaned up. He said it did look like the back addition has collapsed even further now. He said he did not know if someone went inside and caused the collapse or happened naturally but it was getting worse.

Chair Merzig asked Ms. Heck if she had an expectation that within the next month she could finish.

Ms. Heck replied she hoped so. She said they have taken a big rollout and 3 pickup trucks out besides what was taken to the junkyard.

Chair Merzig asked Ms. Heck what her plan was for the back of the house at 13 Baker Street.

Ms. Heck replied she would like to get it fixed.

Chair Merzig asked if Ms. Heck had contacted any agencies to help here with the financing on that property.

Ms. Heck responded no she had not.

Chair Merzig stated she really recommended that Ms. Heck do that. She said the board would direct to have that part of the house taken down if Ms. Heck was unable to. She said the board really did not want to have to do that but it was collapsing and it was hazardous. She said the board did not want that structure to continue that way over the winter because by spring it would be really gone. She said the board would want something to be done there. She said the board was very pleased about the work Ms. Heck was doing in the garage, which was the board's primary fire safety concern and need to have that finished as well. She said that if by September 27th the garage was not substantially emptied the city would be going in to start cleaning it out for Ms. Heck. She said Ms. Heck needed to continue to clean it out.

Ms. Heck questioned why she needed to have it empty.

Chair Merzig stated she meant emptied of combustibles and the trash that was causing the hazardous condition that was talked about it at the board's August meeting. She said the board was not asking Ms. Heck to empty it but was asking that she get rid of the things that were combustible and to secure the garage.

MOTION, made by Chair Merzig and seconded by Commissioner Temming, that based on testimony heard from the Code Enforcement Office and the property owner Margo Heck, that the Board of Public Service is to receive a report on the condition of this garage at 13 Baker Street by October 1, 2012 and if the clean-out of combustibles and trash causing the hazardous condition was not completed and the garage secured the board will order that the clean-out be completed by the city under the supervision of the Oneonta Fire Department.

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(Voting) continued

Voting Ayes: Chair Merzig
Commissioner Temming
Commissioner Friedman
Commissioner Tisenchek
Noes: None
Absent: Commissioner Hayes

MOTION CARRIED

Voting followed this discussion.

Chair Merzig stated the board was very pleased that Ms. Heck was making progress but she couldn't stop.

Ms. Heck stated she knew that.

Chair Merzig stated the board also wanted a real plan by that time of what Ms. Heck was going to with the house because Ms. Heck just saying she wanted to fix it up was not sufficient. She said Ms. Heck may have to rebuild it and the board did not want it to collapse over the winter. She said speaking as a private citizen and not as the Chair of the Board of Public Service but she asked herself over and over when she drives by this property why doesn't she sell it because there was a lot more money in it than there will be if it was in a completely devastated condition.

Ms. Heck stated actually she would like to be back in Oneonta.

Chair Merzig stated they would like her back in Oneonta but she cannot go back into a house that was collapsing.

Ms. Heck stated it was just the addition that was bad and the rest of the house was sturdy.

2. Follow-up on planned subdivision - City View Drive (288.19-1-42.01): Dmitriy Litvinenko & Marjorie Louissaint

Chair Merzig reported she had been in touch with the Engineering Department and they were working with the engineer of the property owners and things were coming along. She said the city did not yet have a cost for the extension of the water and sewer lines or the provision of a fire hydrant therefore this matter would need to stay on the board's agenda at least one more month.

NEW BUSINESS

1. Administrative Fee Appeal: Jammathon Snyder – 10-12 Forest Avenue
2. Administrative Fee Appeal: Alan Rubin – 91 Main Street
3. Administrative Fee Appeal: David Freed – 251 Chestnut Street
4. Trash Report for 6 North Seventh Street

Chair Merzig addressed the items under New Business as follows:

1. Administrative Fee Appeal: Jammathon Snyder – 10-12 Forest Avenue

The following letter of appeal, dated June 14, 2012, was received from Jammathon Snyder, 2334 County Highway 35, Maryland, NY 12116:

“City of Oneonta Code Enforcement

To Whom It May Concern:

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(Administrative Fee Appeal – 10-12 Forest Avenue) continued

I am requesting an appeal regarding the administrative fee that incurred for the rental property located at 10-12 Forest Avenue in the city of Oneonta. I, Jammathon Snyder, recently acquired the said premise through a divorce proceeding with Bonnie S. Snyder. I have not been involved nor had interest in the said property for the last six years. I have enclosed a copy of the settlement offer dated February 17, 2011 which states that Bonnie Snyder was responsible for maintaining said property and accrued approximately \$5,000.00 (five thousand dollars) for not complying with code requirements. Through attorneys as well as a verbal agreement with Bonnie S. Snyder, I was not to assume oversight or control of said property until July 1, 2012.

I received a registered letter from the code enforcement office on June 2, 2012 stating that there were penalties that were accruing at the rate of \$7.00 (seven dollars) per day for a required electrical inspection that was over due. Following receipt of the letter, I personally went to the office on June 4, 2012 to inform them that I did not have control of the said property until July 1, 2012 but assured them that I would address any issues as quickly as possible. I immediately contacted Mr. Ed Hoag, Electrical Inspector, on that same day and the inspection was completed the following day June 5, 2012. I have since contacted Erik Silvernail to correct all deficiencies noted for said property. The correction as well as the re-inspection should be complete no later than June 29, 2012.

I have attached documents to support this request. I greatly appreciate your assistance.

Respectfully,”

Chair Merzig stated between the August meeting and this meeting she had asked Mr. Snyder to bring in his divorce settlement, which she had reviewed and other board members could also review. She said the settlement holds harmless each party for debts incurred and Mr. Snyder was now the lawful owner of that property that was not until June 30th. She said the documents the board received previously were all that the board would get. She said according to the divorce agreement Mrs. Snyder continues to be responsible for the \$3,617.00 in Administrative Fees. She said that was the situation and Mr. Snyder did not own the house when the fees were incurred but he owns it now.

Chair Merzig asked how the repairs were going at 10-12 Forest Avenue.

Code Inspector Schlafer stated that he believed everything was done and that Mr. Snyder was just waiting on his electrical certificate. He said most of all the items on the electrical inspection were done when he went back to do a re-inspection. He said this property was good on Code Enforcement's end.

Chair Merzig stated this puts the board in a dilemma because this should have been taken care as part of the divorce but was not. She said in the Code related to Administrative Fees it indicates the following conditions under which the board could decide to change a fee “...the factual determination of the code enforcement officer was either incorrect, without factual basis or why compliance created undue hardship to an owner-occupied property....” She said the board had set a precedent that if the owner did not have control of the property while the appeals were being accumulated than they could be waived. She said this case had every appearance of falling under that criteria but the previous owner had taken responsibility for this debt. She said she did not think the board could take action against this debt. She said the board could include in the motion that it would attempt to collect it against Mrs. Snyder, waive the debt from Mr. Snyder because he did not have control of the property and ask the Finance Department to collect it against the previous owner who in the divorce settlement agreed to hold Mr. Snyder harmless.

Chair Merzig stated there were specific questions the board needed to ask before making a decision. She said one was if there was proof the mailing of the final notice. She said the board was in receipt of a copy of that. She asked if there were any violations currently at this property.

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(Administrative Fee Appeal – 10-12 Forest Avenue) continued

Mr. Snyder stated he did not believe so because he fixed all the electrical and corrected what was pending against Mrs. Snyder.

Code Inspector Schlafer concurred and said once they get the electrical certificate Code Enforcement could issue a Certificate of Compliance.

Chair Merzig asked Mr. Snyder if he was the owner of 10-12 Forest Avenue.

Mr. Snyder replied yes.

Chair Merzig asked if the property was currently occupied.

Mr. Snyder replied no.

Chair Merzig asked if Mr. Snyder was in residence at that property.

Mr. Snyder replied no.

Chair Merzig stated that the documentation regarding the extenuating circumstances in the matter was the divorce decree presented by Mr. Snyder which she examined and any member of the board could do that.

MOTION, made by Chair Merzig and seconded by Commissioner Temming, that upon hearing testimony from both the Code Enforcement Office and from the property owner or petitioner in the Administrative Fee Appeal by Mr. Jammathon Snyder at 10-12 Forest Avenue, the Board of Public Service recommends that the magnitude of the fees be reduced based on the following findings: that the property was not in Mr. Snyder's control and that the fees be continued however against the previous owner of the property if possible

Voting Ayes: Chair Merzig
Commissioner Temming
Commissioner Friedman
Commissioner Tisenchek

Noes: None

Absent: Commissioner Hayes

MOTION CARRIED

Voting followed this discussion.

Commissioner Temming questioned if the fees could not be levied against the taxes.

Chair Merzig stated they would not be levied against Mr. Snyder.

2. Administrative Fee Appeal: Alan Rubin – 91 Main Street

The following letter, dated June 19, 2012, was received from Bernard and Alan Rubin:

"I am writing this letter to appeal all bills associated with the property located on 91 Main St., Oneonta, NY 13820.

Back in 2010 we hired Gary Richter to work diligently with Code Office to bring all of our properties into compliance.

At that time we were informed all issues would be communicated to him and we would rectify such.

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(Administrative Fee Appeal – 91 Main Street) continued

Electrical Violations: This was breakdown in communication between electrical inspector Ed Hoag and licensed electrician Joe Rico. Commonwealth had certificate in their possession for over 2 years. We had thought this issue was cleared 2 years ago until recent fines were assessed. Code has backdated certificate in their possession.

Smoke Detectors: This was absolutely done and handed in prior. I ask that a review of this file take place. To allow fines to accumulate for this is careless and it did not occur. If it is a requirement to have copies made every time an item is dropped off, please let me know. Understanding how busy this office is all items handed in, we will now have copies made.

Thanks!

Mr. Rubin stated he wanted to present the board with a notarized letter from the general contractor and master plumber who could not attend the meeting who was also the liaison with the Code Office.

The following is the aforementioned letter received from Gary Richter, 607-435-4507, dated September 6, 2012:

“Subject: Property compliance Rubin/Freed

In mid-2010 Alan Rubin hired me as a liaison to the city code enforcement office related to bringing his properties as well as David Freed's properties. My duties were as follows:

- 1. Review all paperwork and inspections due to the city*
- 2. Complete these inspections*
- 3. Turn in all applicable paperwork in a timely fashion*
- 4. Handle general contracting needs and plumbing needs*
- 5. Work closely with electrical inspector and electrician to complete inspections*
- 6. Work diligently to obtain Certificate of Occupancy for every property*

Aside from the paperwork sent to Mr. Rubin and Mr. Freed in the mail regarding inspections or property use forms I would routinely visit the code office to obtain this paperwork as well. I can say with 100 percent certainty that all smoke detector certifications and property use certification forms were submitted timely to the code office to avoid any fees or penalties charged to Mr. Rubin or Mr. Freed.

I admit that upon turning in these items into the city code office I did not request copies of said items. Mr. Rubin and Mr. Freed have been working diligently and spending a lot of money trying to bring their properties into compliance and build a bridge of communication with the code office to foster a strong working relationship. I am continuing to work with Mr. Rubin and Mr. Freed on these items and other staff that they have taken on and expect that all of their properties will be in full compliance in the near future.

Please contact me directly with any questions related to these matters at 607-435-4507.

Sincerely yours,”

Chair Merzig stated the appeal was against electrical violations and smoke detectors. She read those sections in the handwritten letter submitted by Bernard and Alan Rubin.

Mr. Rubin stated he had also submitted to Code a much neater, typed letter than that one.

Code Inspector Hester stated the documents were included in the large packet for all three appeals that was presented to the board.

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(Administrative Fees Appeal – 91 Main Street) continued

The following is the aforementioned typed letter from Alan Rubin:

To: Board of Public Service

From: Alan Rubin

Subject: Appeal of Fines/Penalties 91 Main St.

Date: June 19th, 2012

This appeal is for fees placed upon this property.

Smoke Detectors

I personally completed this inspection, and Gary Richter our liaison to the code office claims he submitted it to code to avoid any issue of fines. Gary Richter was contracted by myself to keep us up to date on all inspections required by city for the specific purpose of avoiding fines as we had a levy of close to \$12,000.00 forthcoming. Understanding how busy the code office is, could it be possible item was mishandled? Is it required by property owner to obtain copy of documents submitted to code office?

Electrical Inspection

This inspection was complete and cleared of violations in July of 2010 (document enclosed). A clear issue between inspector Ed Hoag and electrician Joe Rico led to this delay, which I was not aware of until I received letter for fees on June 1st, 2012. This issue already created a levy of \$1041.00 in 2011, and generated an expected levy of \$1,498.00 which has since accrued to \$1,589.00. That being said we feel we have a credit for \$1,041.00 with the city for amount paid in 2011. These inspectors are suggested by the city for use, as well as electricians are licensed by the city. As owners we should expect that the work they perform is up to the city's standards (not just the labor, but the paperwork as well)."

Commissioner Friedman questioned if Mr. Freed was not at the meeting.

Mr. Rubin responded correct.

Commissioner Friedman questioned if Mr. Rubin did not own the same properties that Mr. Freed did.

Mr. Rubin responded right but he did have a notarized statement from Mr. Freed giving him, as his 50 percent partner, to speak on behalf of those properties.

Commissioner Friedman questioned if they were 50 percent partners but not in these two properties.

Mr. Rubin responded in 251 Chestnut he was.

Chair Merzig read the letter from Mr. Rubin regarding smoke detectors.

Chair Merzig asked if Code Enforcement had a copy of a stamped electrical report.

Code Inspector Hester stated he had a copy of that saying that it was submitted June 14, 2012 and entered by Sue in Code Enforcement June 14, 2012 and the inspection date was July 28, 2010.

Chair Merzig stated that was in regard to the electrical violation. She asked about the smoke detector report.

Mr. Rubin stated he went ahead and inspected it but he took care of it when he was supposed to go through Gary Richter. He said Gary's duties, all the inspections and his role with the Code Office were explained in the notarized statement from Gary that he had presented to the board. He said they have

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(Administrative Fees Appeal – 91 Main Street) continued

been aggressive since 2010 in dealing with all these properties because of fines that they saw come to pass for that upcoming tax bill.

Commissioner Friedman asked Mr. Rubin if when he says they had been aggressive with all these properties did he mean with regard to everything about the properties or did he mean with regard to the Administrative Fees items.

Mr. Rubin replied no, not just the Administrative Fees items, everything to bring the properties into full compliance. He said the Code Officer that was sitting here could vouch for the fact that they had been communicating with them on a regular basis on each and every one of their properties to get them into compliance and expect to have it done in the near future. He said they have a large crew working, they were working with the plumber for any kind of heating system inspections and they were looking for another electrician for electrical inspections because of what took place over the last few years waiting for electrical inspections. He said the board was talking about one property now but he was eager to set a timeline for each and every property that David and he owned together to be fully compliant. He said he thought the Code Office could tell the board since they had been to some of his properties 3 times in the last 4 months just so he could get a Certificate of Occupancy for it because every time they come and there were little things he fixes them and have Codes come back and then get issued the COC. He said they were going to continue to do that until all the properties were 100 percent complaint.

Commissioner Friedman questioned if Mr. Rubin was saying there had been a change in his aggressiveness with regard to the maintenance of his properties. He said he was the Code Enforcement Officer for many years and for many years Mr. Rubin did not take care of the properties generally speaking. He said this was something new. He said Mr. Rubin was saying also that there were factual things that had occurred recently that the Code Enforcement Office could attest to that signifies a change in his aggressiveness with his maintaining properties.

Mr. Rubin responded absolutely. He said when the commissioner was the former Code Enforcement Officer David and he had bought properties within an 18 month time span, dilapidated houses that they converted and put in a lot of money. He said those properties did obtain COCs, some were sold and some they kept. He said they had to go to banks then, refinance the houses and take the money and fix the properties. He said that was a few years process and as the market tumbled obtaining the funds to rehab the properties aggressively as they did it was a little tougher and the process became a little slower. He said he thought that was what former Code Enforcement Officer Friedman experienced at the end of his tenure. He said they now have gathered the funds available to get this done properly.

Chair Merzig asked if the Administrative Fees amount of \$5,407 for 91 Main Street was correct.

Code Inspector Hester replied yes, he said that was a total of the combined 2 years.

Mr. Rubin spoke briefly about the money and taxes and substantial portion and he said the house cleared inspection in July 2010.

Commissioner Temming questioned how much was levied in the prior year on this property.

Mr. Rubin responded \$1,041 for the electrical inspections and the total fine was \$2,539.

Chair Merzig stated the board was talking about both issues. She said whatever was relieved against the taxes the board could not take that into consideration. She said the appeal was for \$3,105 which was total of \$1,589 and \$1,526.00

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(Administrative Fees Appeal – 91 Main Street) continued

Commissioner Friedman stated he would like to know more specifics about what Mr. Rubin about getting their properties all up to code and he asked Mr. Rubin if he was willing to commit to getting all of their properties up to code by the end of December 2012.

Mr. Rubin replied that he would like to say realistically by the end of February 2013. He said he would make a commitment in writing and would be willing to be back charged on fees, fines or penalties to that effect.

Chair Merzig stated that the board cannot act on that.

Mr. Rubin stated he was trying to make a deal.

Chair Merzig stated that as government the board cannot make a deal.

Commissioner Friedman questioned if the board could grant some relief based on whether or not Mr. Rubin complies with the arrangement.

Chair Merzig responded she believed the board could not because it would be setting a precedent that the board would not like brought back to them. She said she thought based on the documentation Mr. Rubin has provided that it was likely that there will be some adjustment but she the board had to determine whether the document had been sufficient. She said the board could certainly not bind itself or the city for anything that was before the board. She said what the board had before them was what the board could decide on. She said additionally the Finance Department did not like holding things over a calendar year because then it would be another year before something could go on the taxes if it needed to.

The board held a brief discussion on the matter.

Chair Merzig stated the way the legislation reads the board's decision-making was based on did the Code Enforcement Office send Mr. Rubin a fee incorrectly based on the documentation or if an owner-occupier of the property had extenuating circumstances. She said the legislation allowed the board to support owner-occupancy and would then have flexibility. She said otherwise the board did not have a lot of flexibility. She said Mr. Rubin would either have to have documentation and prove that the Code Enforcement Office levied this fee incorrectly or not. She said that was the basis of the board's decision. She said the board served as sort of a court and the legislation has not given the board a whole lot of flexibility. She said one criteria for a little flexibility was if Mr. Rubin had a building permit on a property.

Mr. Rubin stated he thought treating each individual property for now may be their best approach because each individual property had its own story. He said talking about extenuating circumstances tenants who cannot get into the home, they destroyed the home and then there was a vacant house and they were not getting paid and Social Services put the tenants in, and things of that nature. He said the board would see as it goes through their package here but they did have numerous properties and they had that many more. He said he knew what the Chair said the board's purview was and what it could do but his thought was to maybe involve the City Attorney and see if possibly his attorney could come up with some type of agreement that the city could commit to.

Chair Merzig stated that would be beyond the board's decision.

Mr. Rubin stated he thought he would like to present that to a different venue.

Chair Merzig responded that he go right ahead because that was beyond the board.

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(Administrative Fees Appeal – 91 Main Street) continued

Mr. Rubin stated he thought his appeals were genuine and thought he had legs to stand on related to them. He said if the board determined what fees are assessed then at that point he could address it further.

Chair Merzig stated she believed there were some decisions the board could make on the appeals before them. She said she thought that Mr. Rubin did have the electrical inspection before the date in which the fees were charged and there was evidence of that inspection with the date on it. She said she believed that served as evidence that the electrical fees could be waived. She said regarding the smoke detector inspection fees there was no written evidence.

Mr. Rubin stated he read previous minutes where Mr. Richter had been before the board on behalf of others, himself, and his properties where it had been said openly by members of the board that Mr. Richter was an honorable man and his word was as good as gold and he should be taken on that. He said he knew what this man did but it was a he said/she said if the Code Enforcement Office was not requiring. He said he was getting charged for inspections and everything else included in that should be a copy or an email of the information he handed in or it should be in the Code that it was the responsibility of an owner to get a copy of it. He said as it stands it was not. He questioned if the Code Enforcement Office never lost an item before that was handed in. He said if this batch of items was handed in on the same day he questioned why it was not realistic that the items got mishandled. He said it could be.

Chair Merzig stated when Mr. Rubin received the final notice someone at that time should have gone to the Code Enforcement Office and said they had handed the paper in because the fees did not start until after Mr. Rubin got his final notice. She said at that point Mr. Rubin should have gone into the Code Enforcement Office and said for them to stop it and say he knew he handed it in.

Mr. Rubin stated it would be absolutely careless and ridiculous for them not to have done smoke detector forms and property use certification forms. He said for the amount of money that accrued on that it did not happen and again it was he said/she said and based on Gary Richter's word. He said he trusted Code but he knew it was an overburdened office in a lot of ways. He said he thought decisions could be made on the idea that it certainly was responsible that an item was missing and it has happened before.

Chair Merzig stated four members of the board could make those decisions. She said she needed to go through the standard questions.

Commissioner Friedman stated he wanted to ask Code Enforcement Officer Chiappisi what could be said about losing documents. He said his experience was that documents did not get lost in the Code Enforcement Office.

Code Enforcement Officer Chiappisi stated it was something people tend to fall back on when they are put in this position. He said he had a number of property management companies that do regular business in his office on their own and managed properties and every time a piece of paper comes through the office window they stamp it, make a copy for .25¢ a page. He said some may have 20-25 properties they deal with and they spend a lot of quarters in his office getting copies of all these things. He said not one of those people every accused the Code Office of losing a piece of paper. He said sometimes people send their papers in by mail and return receipt requested might be more expensive but considering the fees involved he did not think it was extraordinary. He said regarding creating another law on the books about requiring copies to be made he said he thought owners had to step up and take responsibility for that. He said many do. He said there were management companies in the city that he suspects the board will never see before them because they tend to business immediately. He said when he got hired he heard numerous things such as "when I get

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(Administrative Fees Appeal – 91 Main Street) continued

letters from Code I throw them in the garbage without even opening.” He said he responded saying he strongly recommended they not do that anymore.

Chair Merzig stated that was not exactly relevant to the board’s consideration. She said the board had to say whether the documents were there or not and that was all the board had to go on.

Commissioner Friedman stated he would like to get the Code Enforcement Office’s position on the legitimacy of the electrical inspection.

Mr. Rubin stated he could tell the board that was not Code’s fault.

Commissioner Friedman stated he wanted to ask the Code Enforcement Office the question and said as far as this electrical inspection that was submitted he asked if Code’s was a legitimate report, that the date was legitimate and that the inspector signed it when he said he did.

Code Inspector Hester responded that was Ed Hoag the electrical inspector and he was sure it was done on July 28, 2010 and it sounded like Joe Rico or the Code Enforcement Office did not get that information.

Chair Merzig stated the most important thing was that an electrical inspection took place. She said that was the purpose of the Administrative Fees to make sure these inspections took place. She said if this inspection took place in 2010 and were in receipt of a report of it she said she thought the board could legitimately go with that.

Chair Merzig stated she would go through the additional standard questions. She asked about when was the latest inspection of this property.

Code Inspector Hester responded the one in the packet was the latest one.

Mr. Rubin stated they just scheduled one last week when they received the notice from the Code Office.

Chair Merzig asked if there was a current building or plumbing permit on this 91 Main Street property .

Mr. Rubin responded no.

Chair Merzig asked Mr. Rubin if he was the owner of the property.

Mr. Rubin responded yes.

Chair Merzig asked if the property was currently occupied.

Mr. Rubin responded yes.

Chair Merzig asked if Mr. Rubin resided at the property.

Mr. Rubin responded no.

Chair Merzig stated that Mr. Rubin provided documentation related to the electrical inspection therefore she would entertain a motion upon hearing testimony from both the Code Enforcement Office and the property owner/petitioner.

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(Administrative Fees Appeal – 91 Main Street) continued

MOTION, made by Chair Merzig and seconded by Commissioner Friedman, that in the review of the Administrative Fees appeal by Alan Rubin for 91 Main Street, that upon hearing testimony from both the Code Enforcement Office and the property owner/petitioner, the Board of Public Service finds that documentation by the petitioner has successfully defended the appeal on the electrical inspection but not on the smoke detector certification and therefore the appeal regarding the Administrative Fees on this property will be granted and the fees reduced to just the smoke detector certification based on the documentation received.

Voting Ayes: Chair Merzig
Commissioner Temming
Commissioner Friedman
Commissioner Tisenchek

Noes: None

Absent: Commissioner Hayes

MOTION CARRIED

Voting followed this discussion.

Commissioner Friedman stated in the future if inspections were received long after they were theoretically done that the signature be an original when sent in. He said secondly he really did not like having to do it this way because he did think the board should be in the position that it could negotiate that work be done to then get relief from the fees. He said he liked the idea of the fees being a penalty generally and the city being able to use those fees generally as a way of making the owner comply not necessarily even just on this one property but on any other properties. He said he did think the board needed to be able to work that out because he thought that was in the city's best interest.

Chair Merzig stated she heard what the commissioner was saying but that was not the purpose of the Administrative Fees. She said the purpose of those fees was to get the inspections and certifications done.

Council Member Chip Holmes stated earlier in the year Mr. Rubin and he discussed the properties and talked about the goal. He said Administrative Fees were discussed in the Finance & Operations Committee and the intent was to have some leeway. He said to him someone paying a \$5000 fine to the city and the property stays a dump the city does not accomplish what it wanted to. He said the goal was to get the money into the properties that need to be and Mr. Rubin has worked very hard to do that. He said regarding the intent maybe it was the way the legislation was written but when this was discussed by Finance he thought the goal was to give the Board of Public Service the ability to see the big picture and to act appropriately to better the community as opposed to the stringent standards.

Chair Merzig stated she was really glad to hear that. She said the board did not get the legislative intent and only got the legislation. She said these large fee amounts were a huge responsibility for a citizen board and the board was trying to be very, very careful. She said the board has been criticized in the past for some of the actions that the board had felt were very justified and they were turned over by the Common Council. She said when this job was given to the board the board got a lecture from the Mayor saying be careful because this was a big job. She said the board has taken that very seriously. She said the board looks very carefully at the documentation. She said the documentation was all the board had. She said it was just like on water bill appeals, the meter gets tested and that was the proof. She said the board did not have the authorization to be flexible. She said her motion she proposed on this matter was what she saw the documents telling the board but the rest of the board had the right to make a counter motion.

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(Discussion) continued

Commissioner Friedman stated he thought the legal issue needed to be settled. He said if the board did not have the authority to do it the board should not do it but he thought the board needed to find that out. He said he thought the board had a serious problem in that the tools of code offices generally speaking did not include the court system. He said the courts did not consider code issues of any real significance. He said these fees were a lot of money and could be used as a way of forcing compliance. He said if one looks at 91 Main Street it looked pretty crummy and it was the kind of thing a judge would not take all that seriously because they were not major safety issues but they were terrible in terms of how it reflects upon the city as a community. He said it was right next to the police station and there was no ceiling in that porch, the trim was not painted and the porch columns were leaning. He said it was terrible and an embarrassment and he would be glad to have the fees even higher if they could be used in a reasonable way and to force compliance.

Chair Merzig stated that the board had recommended that the fees be reduced last year because the board thought they were extremely high. She said they were one of way of continuing compliance protecting the legitimacy of the whole program and still getting what the city wanted out of it of inspiring the property owners to do something with their property. She said the board takes each property individually as it comes. She said the board had the right to delay implementation of the fees but Director of Finance Hungerford had said to not let these cases go over into the next year.

Commissioner Friedman stated he was fine with the motion.

Commissioner Tisenchek stated he thought the Chair described the matter in the proper way,

Commissioner Temming stated he agreed and thought the board had been approaching this in the same way for most properties this year and he thought it would be difficult to change that now.

Mr. Rubin stated as a property owner with 14 holdings within the city they were talking about getting every single one of them up to compliance. He said he did not know if the board faced owners with Administrative Fees where they had come to the table and said they would take every single one of their properties and bring them to 100 percent compliance whether there were Administrative Fees or not. He said he knew about the electrical inspection and that it was done but he did not need a vote on that right now and he asked that the board maybe not vote and let him have a legal document drawn up for the City Attorney to review so that maybe they could set a precedent to what this unorthodox approach might be to bring in 14 properties into 100 percent compliance without all these fees and fines because ultimately they were cutting into the property to do the work.

Chair Merzig stated the board only had one other property to consider at this time. She said she knew Mr. Rubin had another appeal and he had a month before the board looked at that so he could do whatever he wanted to do in the meantime.

Commissioner Temming questioned if Mr. Rubin should attend the Finance/Administration Committee.

Chair Merzig stated that the Finance/Administration Committee did not see these appeals anymore. She said it was solely the board.

Chair Merzig stated it was time for the board to vote on the motion.

The Clerk called the roll.

Mr. Rubin asked what the decision was.

Chair Merzig replied the decision was to waive the electrical fees.

Mr. Rubin asked what was kept.

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(Administrative Fees Appeal – 91 Main Street) continued

Chair Merzig replied the smoke detector.

Mr. Rubin stated the board was rushing the vote. He said they had \$1,041 that was levied and that was levied unjust and again the board did not look at that but he did. He said because the electrical inspection was done and the fines were levied for 2010 and 2011 and they had a smoke detector amount of \$1,500 and he questioned why not take that into consideration when determining what the final fee should be and knock the other \$1,041 off in reality.

Chair Merzig suggested that the board make a motion that Mr. Rubin could go to the Finance/Administration Committee and ask for that based on the board's decision.

Mr. Rubin stated he thought the board had the right to make that decision.

Chair Merzig stated the board did not have the right because that had already been levied and collected by the county.

The consensus of the board was in agreement of the Chair's suggestion and that a motion was not needed for Mr. Rubin to go to the Finance/Administration Committee.

3. Administrative Fee Appeal: David Freed – 251 Chestnut Street

The following letter was received from David Freed, dated June 19, 2012:

*“To: Board of Public Service
Subject: Appeal of Fines/Penalties - 251 Chestnut Street*

This appeal is for fees placed upon this property.

Smoke Detectors/Property Use certification

I personally completed these inspections, and Gary Richter our liaison to the code office claims he submitted it to code to avoid any issue of fines. Gary Richter was contracted by Alan Rubin to keep us up to date on all inspections required by city for the specific purpose of avoiding fines as we had a levy of close to \$12,000 forthcoming on all properties our group is involved with. Understanding how busy the code office is, could it be possible items were mishandled? Is it required by property owner to obtain copy of documents submitted to code office?

In-Lieu of Statement

Property was in fact inspected by the code office when required. Fee is for in-lieu of statement yet enclosed is bill for \$1741.00 for housing inspection. Once again I reiterate the fact that housing inspection was completed. Are administrative fees assessed for in-lieu of statements, and are notices sent out to owners indicating such specifically? I was not aware of fees for this violation until I received letter from code dated June 1st, 2012.”

Mr. Rubin stated he did not know if the board had a recent code report for that property but he did which said it was basically one step away from compliance.

Chair Merzig stated in this case Mr. Freed was appealing the property use form, the in-lieu of statement and smoke detectors. She said Mr. Freed was sent final notification on September 13, 2011 that fees would be levied and Mr. Freed received and signed for that certified mail. She said the board was also in receipt of the violation report dated 8/16/2012, a smoke detector report on this property dated 5/17/12 and a property use certificate form dated 5/20/12. She reviewed the letter of appeal

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(Administrative Fees Appeal – 251 Chestnut Street) continued

from Mr. Freed. She said it seemed from the letter that the entire basis of the appeal was that documents were lost and the in-lieu of statement.

Mr. Rubin stated they were not fined for an in-lieu of statement but fined for a housing inspection.

Commissioner Friedman stated that the bill the appellant got said housing inspection not in-lieu of statement.

Mr. Rubin stated that was correct. He said they knew the housing inspection was done. He said the itemized line that said amount due it said housing inspection.

Code Inspector Schlafer stated Mr. Freed did not have an in-lieu of statement.

Commissioner Friedman stated he could not understand what Code Enforcement was saying because Mr. Rubin keeps talking. He said he wanted to get answers from Code Enforcement in terms of what they know. He asked if it was just that the bill did not state that it was for an in-lieu of statement and not a housing inspection.

Chair Merzig stated the final notification says “schedule appointment and provide access for required housing inspection.” She said it does not say submit in-lieu of statement.

Commissioner Friedman stated he did not think that was a significant reason.

Mr. Rubin stated that it was because they had the housing inspection.

Code Inspector Schlafer stated that was in 2011 and he questioned if Mr. Rubin knew how many years they owned this house without a Certificate of Compliance or rented without a Certificate of Compliance plus the other properties.

Chair Merzig stated the board did not have a copy of the documents that went with the cover letter. She said apparently an in-lieu of statement was mailed along with the final notice.

Code Inspector Hester stated no, the in-lieu of statement was sent 5/12/2010 along with the inspection report and it said correct all “A” violations within 30 days, “B” violations to be done within 6 months and the owner was supposed to submit that back to Code Enforcement Office. He said Code Enforcement received it in 2012.

Chair Merzig stated again the board this was a question of documentation and all of the documents that were needed to avoid the fee were ones that the property owner could fill out; the property use form, the smoke detector certification and the in-lieu of statement. She questioned if the in-lieu of statement was needed as reiterated in the letter the owner received.

Code Inspector Schlafer stated the in-lieu of statement could have been signed and sent back and the Code Enforcement Office could have gone and done an exterior inspection and all the items were not done that should have been done or the in-lieu of statement was never signed and sent back and that was why another inspection was required in September 2011 and obviously Code Enforcement never did another inspection because the owner did not schedule one.

Chair Merzig asked if there were outstanding violations on this property.

Code Inspector Schlafer replied yes.

Mr. Rubin stated they were very minimal. He said the inspector did not even need to go back inside the house. He said the accessory building was the only issue and a very small one. He said he spoke to the inspector last week about this when he set the new appointment.

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(Administrative Fees Appeal – 251 Chestnut Street) continued

Chair Merzig reviewed with the board the type “A” violations that were not corrected according to the report.

Mr. Rubin stated they were related to the accessory building, the garage, and he believed the inspection date was October 3rd.

Chair Merzig stated it seemed to her that somehow the smoke detector certification and the property use form were not received. She said she still did not understand what was going on with the in-lieu of statement.

Commissioner Friedman stated he did not see that in the certified mail.

Code Inspector Schlafer stated because the in-lieu of statement was over a year old and that was why the final notification to the owner was to schedule an appointment for an inspection.

Commissioner Friedman stated the fee was actually then for an outstanding inspection.

Mr. Rubin stated the fee reads housing inspection.

Chair Merzig stated that the city did not charge for the required housing inspection. She said she thought that was where she thought there was a little paperwork glitch.

Code Enforcement Officer Chiappisi stated maybe he could clear this up some. He said if Code Enforcement does an inspection and did not get the in-lieu of statement back saying all of the violations had been corrected the Code Enforcement Office was under the assumption the violations were not corrected. He said if someone was not going to sign off saying they corrected all the violations the Code Enforcement Office assumes they were not corrected. He said even though the “A” violations take 30 days the Code Enforcement usually accepts that for over 6 months but at that point Code Enforcement will say they needed to get back in to certify that the violations were corrected if the owner was not going to certify that the violations were corrected. He said that was what triggered the fees when Code Enforcement said the owner had 60 days to let them back in or would be assessed a fine.

Commissioner Friedman questioned if the fees were for not letting Code Enforcement back in to inspect.

Code Enforcement Officer Chiappisi responded for not scheduling the housing inspection.

Chair Merzig stated the report to the owner said in-lieu of statement and not housing inspection but she saw how those two things were connected.

Commissioner Friedman stated he did not see why the fee was not valid.

Chair Merzig stated she thought it was a technical question. She said obviously this was not one of the properties Mr. Rubin owned.

Mr. Rubin stated it was his property, 50 percent of it. He said this property should have a COC after the inspection on October 3rd.

Chair Merzig stated the board was faced with somewhat of the same dilemma with this. She said the board had a statement from Mr. Richter that he put them in but she did not see that they were.

Commissioner Temming questioned if there had been prior reports submitted in the past on this property.

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(Administrative Fees Appeal – 251 Chestnut Street) continued

Code Inspector Hester responded there was one in June, one in 2010 and they had been sporadic in the past.

Mr. Rubin stated that had house had been totally remodeled from top to bottom.

Chair Merzig asked if there was an outstanding building permit on the property.

Mr. Rubin replied no.

Chair Merzig reviewed the facts saying there was a final mailing to the owner September 13, 2011, a spreadsheet for the Administrative Fees, a date stamp on the relevant in-lieu, smoke detector and property use certificates, there were some code violations on this property but apparently they would be done by the next inspection and the next board meeting and there was not a current Certificate of Compliance. She said there was not a current building permit on this property and apparently there was an order for a plumbing permit for something that was installed on the property.

Code Inspector Schlafer stated that permit was for the hot water heater.

Commissioner Temming stated he thought they should do away with the in-lieu of statement things because he did not think that was entirely clear even though he sees the connection.

Chair Merzig stated she agreed with the commissioner and thought also that it was a little ambiguous.

Code Inspector Hester asked the board if that meant the wording needed to be changed because he wanted to avoid confusion in the future.

Chair Merzig replied no but that in the letter Code Enforcement had to ask the owner for whatever they were going to get the fees on. She said in this case the fees were on the in-lieu of statement instead of housing inspection. She said it was a technicality on this property because the owner sees a final notice sent from Code Enforcement that says housing inspection and then not get charged for housing inspection but charged for in-lieu of statement.

Chair Merzig asked the following standard questions.

Chair Merzig if Mr. Rubin was the owner of the property or an authorized representative.

Mr. Rubin replied yes.

Chair Merzig asked if the property was currently occurred.

Mr. Rubin replied yes.

Chair Merzig asked if Mr. Rubin was in residence of the property.

Mr. Rubin replied no.

Chair Merzig asked if Mr. Rubin had any additional documentation to submit.

Mr. Rubin replied just what he submitted so far.

MOTION, made by Commissioner Temming and seconded by Commissioner Tisenchek, that in the review of the Administrative Fees appeals by Mr. David Freed for the property at 251 Chestnut Street, that based on testimony from the Code Enforcement Office and the owner/petitioner and Mr. Alan Rubin, the Board of Public Service waives the Administrative Fees for the in-lieu of statement only in the amount of \$1,741.00.

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(Voting)

Voting Ayes: Chair Merzig
Commissioner Temming
Commissioner Tisenchek
Noes: Commissioner Friedman
Absent: Commissioner Hayes

MOTION CARRIED

Chair Merzig stated the board waived the fees just for the in-lieu of statement and the other remain.

Mr. Rubin asked if he could approach the Finance/Administration Committee about the others.

Chair Merzig replied he could approach the Finance/Administration Committee for anything he wanted before November 1st.

Water Emergency Guidelines

Chair Merzig recognized the press and stated she had distributed to each board member copies of the Emergency Plan for Water Supply, which was confidential. She said Water Department Supervisor Stan Shaffer was required to report to the Board of Public Service when the reservoir level has reached 66" below the spillway. She said that it has not reached that yet and Supervisor Shaffer has been in formal discussions with the board related to water and drought emergency action but an emergency did not need to be declared yet. She said the city was currently 26" below the level in both the upper and lower reservoirs. She said the city was no long using the West End Well and was completely offline due to having a lot of problems and being flooded in the 2006 flood. She said the city only has the Catella Well. She said there were two wells in Catella but the second well has never been finished. She said if the city wanted to actuate that well it would have to ask permission from the Susquehanna River Basin Commission and they would probably say no. She said the fee just for that application was \$18,000. She said all the plans for that second well were on hold however she understands that in the budget for 2012 the Mayor was proposing to upgrade the Catella Well that was already working. She said the Emergency Plan was based on 3 million gallons a day usage and based on the current pricing system people have done a lot of conservation and were currently using only just over 2 million gallons a day. She said the city was probably in better shape than it was when the plan was put into effect.

The board held a brief discussion on the matter.

Chair Merzig stated she would keep the board informed about the reservoir levels and if the board needed to declare an emergency she may have to call a special meeting.

Commissioner Friedman stated he wanted to return to the 251 Chestnut Street issue and said he did not think a Certificate of Compliance should not be issued because there was still no siding on parts of the garage and still had parking in the area there was supposed to be no parking.

Code Inspector Schlafer stated that was in the report.

Code Inspector Hester stated Code Enforcement could not issue a COC because it was over-occupied.

4. Trash Report for 6 North Seventh Street

Code Inspector Hester stated that Code Enforcement Officer Chiappisi did not tell him the details as to why he referred this matter to the board but did know that the property owner died, the son lived at the property but was not the rightful owner of the property and there was so much garbage that the

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(Trash Report – 6 North Seventh Street) continued

city's contractor spent about 2 full days removing garbage. He said there was still a lot of garbage there.

Chair Merzig stated what Code Enforcement Officer Chiappisi would like was a motion from the board to notify the owners that the trash has to be picked up within 15 days to support his action. She said there was probably a trust set up by the deceased property owner regarding this property but the bills will be levied against the taxes.

Code Inspector Hester stated the bills for trash pickup so far was probably in the thousands.

MOTION, made by Commissioner Friedman and seconded by Commissioner Temming, that based on the discussions regarding the trash problem at 6 North Seventh Street, the Board of Public Service agrees to notify the property owner that trash needs to be picked up within 15 days.

Voting Ayes: Chair Merzig
Commissioner Temming
Commissioner Friedman
Commissioner Tisenchek

Noes: None

Absent: Commissioner Hayes

MOTION CARRIED

Chair Merzig stated she was not going to be able to attend the October 4th meeting. She said if the majority was able to meet on the 4th it should do so but if not they could meet on the 11th. She said they could decide that through emails and let the Clerk know.

There being no further business to come before the board, Chair Merzig adjourned the regular meeting at approximately 5:30 p.m.

JAMES R. KOURY, City Clerk

JRK/pab