

ONEONTA, NEW YORK - JANUARY 12, 2012 - 4:00 P.M.

SPECIAL MEETING OF THE BOARD OF PUBLIC SERVICE PG. 1

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

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

PURPOSE: Emergency Unsafe Building Hearing: 62 Elm Street – Martin Tillapaugh

Chair Merzig opened the Emergency Unsafe Building Hearing and said that under the authority granted to the board by the City Charter under Chapter 92 was to determine upon the testimony of representatives of the city as well as the property owner(s) of the property being considered for a determination as to whether this property was an unsafe building. She said following that letter the board would order certain activities to be undertaken by the property owner(s).

Chair Merzig stated under Chapter 92 one of the responsible parties for bringing unsafe notices to the city was the Fire Department and she believed the Fire Department was one of the first agencies to call attention to conditions of the property. She recognized Fire Chief Pidgeon for a report.

City of Oneonta Fire Chief Pidgeon reported that it was brought to the attention of the Fire Department on three separate occasions by alarms starting on 12/20, again on 12/22 and 12/24 of 2011. The Fire Department was summoned to the residence at 62 Elm Street, City of Oneonta, for alarms going off and was dispatched through 911. All three times access was made to the house with no one on location there. The Fire Department was assisted by the Oneonta Police Department on several occasions when the alarms were going. Several code violations were found and documented with numerous photos at the times the Fire Department was there. There continues to be a problem at that house from the three examples of having to respond there. Each time it took his staff approximately a ½ hour to search the structure and report back to the Code Enforcement Office. It's now been turned over to the Code Enforcement Office for handling.

Chair Merzig stated she believed the Code Enforcement Office had copies of the photographs that were taken by the Fire Department.

Code Inspector Hester responded that the Code Enforcement Office had those photographs. He said there were about 80-90 photos on a disc and did not have those with him. He said he did have the photos that were taken in 2009.

Chair Merzig stated that the board would request Code Inspector Hester to present the photos taken in 2011 that he had shown to the board at its January 5th meeting.

Code Inspector Hester said he would go and get the other photos from his office.

Commissioner Hayes stated he wanted to confirm for the record with the Fire Pidgeon that those were all false alarms and there was never any actual fire at the property.

Chief Pidgeon responded that was correct.

Commissioner Friedman questioned what it cost approximately, to the nearest \$500, for the Fire Department to go out on a false alarm.

Chief Pidgeon responded it all depended on what was going on at the time. He said a response with a crew and an officer was about a ½ hour in time and if another call comes in during that time additional crews would be called in as back up. He said he would have to refer to the Director of Finance for the overtime figures for that.

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Commissioner Friedman stated in other words if the primary crew goes on a false alarm and then if there was a real emergency someplace then another crew had to be called in as a starter crew for that emergency.

Chief Pidgeon responded that was correct.

Commissioner Friedman stated he had questions for the property owner and asked who the owner was.

Mr. Martin Tillapaugh, Attorney, Cooperstown, New York said he graduated from Hartwick College in 1973 and was a member of Alpha Delta Omega (ADO). He said ADO was probably the oldest fraternity in the city and was a local fraternity. He said in 1961 a corporation was formed and was a membership corporation under the old membership corporation law. He said as each member of the fraternity completes the ritual and the process to become a member of fraternity their name was entered into their books and they become an owner of the property. He said it was a corporation, the Alpha Delta Omega Corporation. He said everyone the board sees in the audience with one exception of the young lady next to him was a member of the corporation and an owner of the property. He said he believed there were 342 members on the books. He said he acts as just kind of a secretary and did the taxes for ADO each year. He said it was one of those oddities where once one becomes a brother in the fraternity one becomes an owner. He said one could not devise it and at one's death it falls back to the corporation. He said he believed 59 members of the fraternity lived in the county and 21 lived in the city. He said that was how the ownership runs in the house.

Commissioner Friedman asked Mr. Tillapaugh to explain what he meant with "could not devise it" and if this corporation like others was registered with the State of New York and if there were officers whose names were specifically registered with the State of New York.

Mr. Tillapaugh responded that was all correct about the corporation being registered. He said "could not devise" meant he could not sell his interest in the property. He said only the corporation following a meeting could sell it by majority vote.

Commissioner Friedman questioned if one could give it up.

Mr. Tillapaugh responded they could give it up. He said he believed that in their charter and bylaws that back in 1982 they provided that it had to go to a charitable entity and they amended that to say that in the event they cease to exist they had the right to turn it over to the college.

Commissioner Friedman stated if all of the members were owners and there were officers he asked if all of the members had the authority to speak as authorities for the corporation.

Mr. Tillapaugh responded he thought there was no question about that because they have always had that. He said he had been on the board since graduating law school and since he was local. He said the arrangement was that current matriculated students who were members of ADO may reside in the house and their obligation was to pay the taxes, the insurance, maintain it, and make repairs. He said as a result when issues come up they usually address them and he just seems to get these notices because he was listed with the city as a contact person, which was why he was at the meeting. He said but always in the past the brothers who lived there were allowed to come and address issues. He said typically his involvement as others as older members were just to run the corporation. He said about 4 or 5 years ago he thought they raised a little over \$100,000 when they did a fairly extensive revamping there. He said the last prior revamping was probably putting in the fire alarm system that the Chief talked about. He said when that alarm was put in it was a state-of-art fire alarm system. He said he could not address why it was sending false alarms.

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Commissioner Friedman questioned if any one of these resident members make a commitment on behalf of that corporation, for example for a contractor to put a new roof on the building.

Mr. Tillapaugh responded absolutely. He said they had done it for years.

Commissioner Friedman questioned that if those members made that commitment if the entire corporation was liable for that contract.

Mr. Tillapaugh responded that was a good question. He said probably not but the corporation has always honored any contracts. He said they have never been called on by the brothers there. He said the brothers that were there put new roofs on, the house has been painted, re-shingled much of it, landscaped it, did fire escapes and things to bring it into code compliance over the years. He said those were typically done by the brothers living in the home and sometimes with input from older brothers. He said he had an e-mail list of probably 130 persons he could immediately contact if they needed to see if they could raise funds to address an issue.

Commissioner Friedman questioned if there were any officers of the corporation in the audience.

Mr. Tillapaugh responded he was.

Commissioner Friedman asked Mr. Tillapaugh what his position was in the corporation.

Mr. Tillapaugh replied that he was treasurer and acts as secretary because there was a vacancy in that position. He said their president lived in Connecticut and the vice president lived in Virginia.

Chair Merzig asked if there was a different cost to the members who were living in the house as opposed to those who were not living in the house.

Mr. Tillapaugh replied there was no rent. He said he did not have obligation financially other than if he chose to make a contribution. He said the brothers were not charged who lived there. He said the day they become a brother of the fraternity through a process they become under the membership corporation law an owner of that house and their name gets listed on the books of the corporation.

Chair Merzig stated that the City Housing Code says 3 members only could live there. She questioned if there was a different cost for those who were living in the house as opposed to the other brothers.

Mr. Tillapaugh stated he wanted to make himself clear and said those brothers who were matriculated students at Hartwick College live in the home and they were responsible for taxes, insurance, payment of all the utility bills, trash removal, general maintenance which was to repair things and part of which why they were at this meeting. He said those costs were paid by the brothers living there in lieu of rent. He said their right to live there was predicated upon maintaining the house.

Chair Merzig asked the brothers who decided who lived there and who did not.

Mr. Nevin Price-Meader, President of the house currently, responded that it generally goes by seniority or who had been a brother the longest technically gets first pick if they wanted to live in the house.

Chair Merzig questioned if those who did not live in the house did not have to contribute anything and those who did live there did not have to contribute anything.

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Mr. Price-Meader stated they had a system of dues used to cover the cost of utilities and other expenses. He said the people who live in the house pay what was essentially equal to a semester's worth of rent for most apartments around here.

Chair Merzig stated so there was a cost that was different for those living in the house as opposed to those not living in the house.

Mr. Tillapaugh stated they were paying those costs.

Chair Merzig stated but Mr. Tillapaugh had said 'everybody' and that was why she was trying to determine if there was a different cost to those living in the house as opposed to those not living in the house.

Mr. Tillapaugh questioned if she meant those who were students.

Chair Merzig responded yes.

Mr. Tillapaugh apologized because he thought she meant each person.

Chair Merzig stated one of the board's concerns was if only the people living in the house were paying for what was going on in the house.

Commissioner Friedman stated he just wanted to be perfectly clear that the 3 brothers who live in the house pay a fixed amount that was based on comparably a rental cost in the city and the other brothers through their dues subsidize the cost of operating the house but not by paying as much as the 3 brothers living there.

Mr. Price-Meader responded exactly. He said the brothers living in the house pay a substantial amount more because they were the ones using the house as their primary residence. He said he did not live in the house so he did not pay as much.

Commissioner Friedman questioned approximately how much was paid through the current brothers enrolled at the college.

Mr. Price-Meader responded in-house pays \$3500 a person and out-of-house pays \$350 a person.

Commissioner Hayes questioned if there was a formal process beforehand to decide how much it would be based on what the insurance, maintenance, taxes and other costs would be.

Mr. Price-Meader responded yes, they just base it on previous years and adjust it for how they see money needed to be spent.

Commissioner Hayes stated the board heard from Mr. Price-Meader at it January 5th meeting that the brothers essentially did not have enough money to cover the maintenance for these things in question.

Chair Merzig stated the board needed to go on with its hearing and take real testimony and not just find out about how the house managers itself. She said the board was concerned about the safety of the property and would like some comment from the Code Enforcement Office on its recent inspection and then ADO would have a chance to speak.

Code Inspector Hester stated that Code Enforcement Officer Chiappisi would return with more pictures for the board. He said he walked through the house at 62 Elm Street on January 9th and

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found 46 violations 7 of which were preexisting violations. He said the other 39 violations ranged in severity. He said the experience he had with this house started with former Code Inspector Roodhof in 2009 that was another fire-related incident call. He said he went along with Ms. Roodhof then and took over 100 pictures and saw it in a worse condition than it was on January 9th but it still needed some work. He said there were water leaks going on since at least 2009. He said one particular room, room 101, had a big mold stain from what looked like the shower stall leaking and possibly 2 toilets leaking. He said there were a couple water leaks in the cellar, a broken floor joist in the cellar and numerous electrical violations according to him. He said as far as the exterior ever since he could remember in going by the property he keeps seeing the same stuff such as brush in the back between this property and another property, very sharp scrap metal that was rusted from being out there for over a year, a T.V., etc and was in need of cleanup.

Chair Merzig asked Code Inspector Hester to talk briefly about the Type A violations.

Code Inspector Hester stated the Type A violations were a window latch because it prevented access for people on the 1st floor, a water leak in the rear bathroom on the 1st floor that was actively leaking when he did the inspection, in the cellar the subfloor above and joist were rotted from the shower pan and the toilet, the fire alarm panel was in trouble mode with a note on it reading "trouble" and there was an alarm actively going off or picking up a faulty signal from somewhere. He said he would need a professional to tell him that. He said there was broken glass and discarded items in the boiler room, an electrical receptacle in the kitchen that was used for a dishwasher that looked like it was pulled out of the wall, and a light in the kitchen had wiring hanging down from it. He said one that really concerned him too was that there was a 2nd story exit and it had been used as an exit room that leads out to a metal fire escape and the window was difficult to lift up and the pulley system on it did not work and the window did not stay up and there was no exterior light for the fire escape. He said again there was the discarded scrap metal and the brush in the back and currently trash in the dumpster was scattered everywhere. He said there were multi-tap adapters. He said one particular room had old cardboard beer containers all over the ceiling and partly looked like it was covering the heat detector. He said he had no idea if the sprinkler system operates at this point.

Commissioner Hayes questioned if the heater detector shown in the photo was still covered by a cup.

Code Inspector Hester responded no.

Mr. Price-Meader asked about when the inspection date was before January 9th.

Code Inspector Hester responded it was September 2010.

Commissioner Hayes questioned of the 7 preexisting violations how many were Type A.

Code Inspector Hester responded there was just 1 at that point and there was the ceiling damage in room 101.

Commissioner Friedman questioned if those 7 violations were cited at the previous inspection to January 9th.

Code Inspector Hester responded no, they went back further than that. He said he had an inspection from March 2010 that had a few violations and the Type A violation was on it. He said the Code Enforcement Office agreed that especially with fraternities and sororities that it wanted to re-inspect them and at this time he had a signed in lieu of statement saying those things were corrected, including the mold violation.

Commissioner Friedman asked if Code Inspector Hester knew who signed it.

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Code Inspector Hester responded yes and presented the signed statement to the Chair.

Chair Merzig stated it was signed by Martin Tillapaugh.

Commissioner Friedman asked Mr. Tillapaugh about when he signed that in lieu of statement if it was based on somebody telling him everything was done.

Mr. Tillapaugh stated he had been in Oneonta a number of times over the summer to meet with people at the Code Office. He said his guess was that someone came to him with this statement and said things were corrected and he would have signed it.

Chair Merzig stated she would like to give the persons of the property a chance to respond and then the board could ask specific questions.

Mr. Jarrod Tollen, Secretary of the house, stated that Code Enforcement had only been by once to let them know their original problems and now in the past two days they had been working on fixing it. He said he did not know if someone was confused about this but in the last the two days they corrected way more than half of these problems.

Chair Merzig asked Mr. Tollen to tell the board which violations he believed were corrected. She said the board was most concerned about the Type A violations and asked Mr. Tollen to tell the board about those.

Mr. Tollen reported the following Type A violations on the inspection report he believed were fixed:

- Violation 2: They found screws were needed for opening the windows and they totally fixed that making them totally able to be opened and lockable.
- Violation 5: They called Tom Collier and he was going to work on all the mold and they were going to have a plumber in. That was already in the process and they just had to work on all mold and leaking problems.
- Violation 8: They called Susan at Fyr-Fyter today and they were coming early next week to do all the fire alarms and extinguishers that were not up to date.
- Violation 13: The boiler room was now empty and swept.
- Violation 17: They put the outlet back in and screwed it back up to the wall.

Mr. Dan Mele of 62 Elm Street added that the wire was not hazardously exposed but it was simply not fixing into the wall so they fixed that. He said the other thing regarding this violation was a light fixture from the ceiling which was exposed and they completely replaced that fixture and they were now functioning lights.

Mr. Tollen continued:

- Violation 20: They opened the exit sign up and replaced the bulbs and now it was lit up.
- Violation 22: They put the light fixture back, put a new bulb in and a new cover on it.
- Violation 24: That was being processed and that was something the contractor would have to do.
- Violation 27: Casella's came today and found a spot to put a commercial dumpster tomorrow so they could get rid of the metal that Code Inspector Hester talked about.
- Violation 29: Their garbage day was Wednesday and they dumpster was a little overflowed because they were fixing up the house and the dumpster was taken away yesterday.
- Violation 31: They took out the multi-tab adapter.
- Violation 32: The boxes were now all off the ceiling.

Mr. Tollen stated that they needed to get someone to fix the window in Violation 35. He continued saying:

- Violation 36: They put a new light fixture up and put light bulbs in.
- Violation 6 on page 5: That was also in the process with the contractor.

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Commissioner Tisenchek questioned if all of those repairs were done recently.

Mr. Tollen responded all of that was done since the inspection.

Mr. Sam Tollen stated he was Jarrod's twin brother. He said he knew there was a rule that 3 unrelated individuals could live in the house but they were related and there were actually 4 of them living in the house. He said they do pay \$3500 a semester so it was not like they had no money. He said last year there were only 3 people living in the house and obviously they did not keep up with what needed to be done. He said he saw the mold problem last year and then those people had no money to pay to fix it. He said the tax bill was not paid last year so this year they had to pay that off which was close to \$5000 and have to worry about paying the current tax bill. He said the contractor has been to the house about twice in the last week to look at the problem and he spoke him about 5 times. He said the contractor and the plumber were supposed to go to the house at some point and they had been sent a copy of the inspection as well. He said the issue was that a bunch of the windows were out and they did not have the money at the time to replace them. He said when the alarm went off there was no one there because they went home for Christmas break. He said when they all went home they got money together to help pay for repairs and came back, bought materials and fixed all the windows. He said 46 violations were pretty embarrassing but in their situation they did pretty well and fixed a lot of stuff even before there were 46 violations. He said they put a lot of time into it. He said they did have money to pay for stuff. He said the contractor will give them an appraisal. He said they did not have the expertise to fix the mold and leaks on their own but the contractors were in the process of fixing that. He said he guaranteed that all that trash in the back yard will be thrown out tomorrow.

Chair Merzig stated at the board's regular meeting on January 5th the Code Enforcement Office asked the board to have an emergency meeting not necessarily because of the water damage and the mold but because there were some fairly significant electrical violations. She said on top of that there was some pretty significant grease buildup that could have caused a fire. She said that alone did not make the house unsafe but put together it did. She said she personally was concerned that the residents did not have somebody who knew what they were doing electrically for those repairs. She said shoving the outlet back into the wall did not necessarily stop a fire and may cause a fire because she did not know what that wire was doing and now that it's back in the wall who knows what it is doing. She said there have been fire deaths in the city and students die in fires because they did not take care of their electrical violations. She said there were some classic places where fires start that were kitchen walls, fixtures above the bathroom because they become deteriorated from the water and those were some of the violations the board sees in the report. She said the board was impressed that since the students came back from vacation they got right on it but somehow those who were living in the house before the Fire Department got there were living in the same conditions were saying it was not going to be that way anymore. She said the board wants to make sure the residents did not die in the house because it did not do its job. She said the board was glad the residents have taken the effort but whether or not it was enough the board was not sure.

Commissioner Tisenchek stated what he was concerned with was if there was only one individual owner he would be well aware of the electrical, water damage and things that needed to be taken care. He said cleaning up the place and making it livable was something the residents should be doing. He said fire was a very big concern. He said there being a number of owners was why the conditions exist at this point.

Commissioner Friedman stated the commissioner talked about an important issue, the issue of ownership. He said this was a situation that he thought was fairly typical of membership associations but maybe more typical of this group because everybody was an owner. He said when everyone was responsible, nobody was responsible. He said that was the way it worked. He said that was unfortunate for those living there because they wind up living in conditions a private owner would not allow. He said he sees the history of this property going back many years and it always

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goes from barely okay to terrible and never seems to get above barely okay. He said two of the residents were twins and if kids die in a fire it was a terrible thing. He said he thought the board had a situation where it had to stop what was happening at this house until having some way of being sure everybody was going to be safe there.

Commissioner Hayes stated he personally did not care about a dirty sink but when he sees pictures of dangling fixtures from the ceiling with loose wires he gets terrified. He said the board had takes its role here very seriously. He said it was commendable the residents there did as much work as they had 3 days after the inspection and that they were in the audience to speak with the board but the board takes its role seriously because Type A violations were in fact safety of life violations.

Commissioner Friedman stated the city had a fire on West Street that was caused by a contractor with 40 years experience but not a licensed electrician re-installing the light fixture on the ceiling. He said doing house wiring was just something the residents of this house should not do because they were putting themselves at risk and everybody else that goes to that house.

Commissioner Friedman asked about what the current use of the property was. He asked if it was the unrelated individuals living there and if there were any group activities there at all now.

Mr. Tollen responded all they had was like house meetings. He said every brother that was currently around will meet every Sunday and just talk about things like this. He said besides that it was just the four of them living there and obviously the brothers come in and out because it was their house too.

Commissioner Friedman stated he was glad these residents were being honest with the board but he thought the things he has heard them say were exactly the things that make him so nervous about these situations. He said when the group said it had group meetings and every brother had the right to come to the house, that was not true of a single family house and he thought that was contrary to the Common Council directive when it said there could not be more than 3 unrelated individuals. He said using the house for any kind of group activity was a violation of the City Zoning Code and he believed it was a violation of the State Building Code and City Housing Code as well, which were fire safety issues. He said he thought the issue for him was more a matter since nobody has gotten hurt yet and the group taking it upon themselves to think that was okay without checking with the Code Office as to what they were entitled to use the house for. He said he looked at Common Council minutes from about 1½ years ago and there were almost 10 pages of evidence as to why this house was closed down. He said it appeared that while the Council closed the house down as a fraternity house there were still some fraternity activities going on. He said he really thought the board ought to move to order the building vacated until it had control over what was going on. He said he did not think the board had control over it from the assurances of what work was going to be done.

Chair Merzig stated she was torn about that because she thought that the work has not been certified and that worried her. She said she thought the question, which was beyond the board's purview today, of the status of the property and whether it was a commercial property in a non-conforming use in an otherwise residential zone now that it was a corporation and owned by a corporation and not a membership organization.

Mr. Tillapaugh stated it had not really changed the form of it. He said it was a membership and had been a membership since 1961.

Chair Merzig stated if it was a membership organization then it falls under the city's fraternity requirements but it does not.

Commissioner Friedman stated that in 2010 the Common Council took the Special Use Permit away from this fraternity.

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Chair Merzig stated that meant that no membership activities could take place there and that it was limited to residential only. She said in fact she wondered why the fraternity's name was still on the door of that house.

Chief Pidgeon stated the board has indicated it was concerned about these students and he would like to reiterate and say that his concern with these types of alarms that his department and staff had to respond to puts them at risk and also puts the neighbors and general public at risk. He said because of limited staff it also takes away the opportunity for delay in service to another alarm

Commissioner Friedman stated the city was seriously talking about cutting back services. He said he thought the services that the city provides to the membership association houses cost a fortune and the benefit to the community was negative to having these houses relative to having a swimming pool in Neahwa Park. He said he thought the Common Council really needed to consider what was going on in this house and see it as probably very similar to what was going on at 56 Maple Street and across the street at 61 Elm Street and think about pulling back the money the city was spending to make sure these young people stay alive.

Chair Merzig stated she hears what the commissioner was saying but that was not exactly the issue that the board was considering at this time.

Commissioner Tisenchek stated maybe after this meeting these young people would understand what code enforcement means in the city because that was what the board was talking about and it involves the Fire Department as well as other departments of the city. He said with these people being a group he questioned how the board could be assured things would be corrected and taken care because the board had to support the Code Enforcement Office people, there were the people who keep rentals safe.

Mr. Tallon stated the only way to possibly assure the board was what he said earlier that within the last 2 days they not only fixed the Type A violations but those they had not fixed were under contract.

Commissioner Tisenchek stated the group could call the Code Enforcement Office at any point in time when it was going to have a meeting or whatever the case may be so they knew they were in line.

Mr. Tillapaugh stated he practiced law for 40 years and he could see where this matter tends to be headed. He said he believed that all of the Type A violations that had been corrected or all the immediate ones, the mold issue was not something that was going to cause damage eminently and they have contracted to fix it. He said if he may with all due respect answer "how did the board assure itself" said the board had the ability to close the house if they did not accomplish it. He said with all due respect he thought the point the board was missing here was that these gentlemen, and he had spoken with them in the last few days, have been working as hard as they knew how to correct all of those problems. He said if the problems were corrected he thought that was what they were concerned with. He said he did not know that the board needed to punish someone because they may have lived in a bad situation. He said as it relates to electrical these gentlemen could have an electrical inspection. He said he was certain everyone in the room fixed a light fixture, put up a new light in their home or put in a receptacle. He said he had done that for years in his home in Cooperstown and did that when he lived in this house for 3 years back in the 1960's and 1970's. He said this house unlike many others that they may end up in did have a state-of-the-art alarm system. He said interesting it failed but he had not heard why it failed but it was interesting it failed when they were not there. He said obviously if there was an issue that someone that had not fully

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articulated it in terms of a complaint they could have a fire inspection done of that alarm panel. He said the only point he was making was he thought was to immediately determine that this was unsafe and direct its immediate vacation was going to put a real burden on 4 fellows who have already spent a lot of their funds on fixing this house up. He said he believed that if the city's inspectors went there they would find that most things had been corrected, they had an agreement with the contractor to fix the mold and if those things were done they were back to a point where they were in compliance with the code. He said he just wanted to make that point extremely clear here.

Commissioner Tisenchek stated that was true and that will be accomplished but there was going to be more as inspections were made.

Code Inspector Hester stated if the board was going to make an order in a motion he would like to ask for a copy of the scope of work that was being done such as a signed contract. He said he did not know what was involved below these floors in this house and with the sprinkler system therefore he would like to have a professional opinion.

Chair Merzig asked if there were anymore comments or questions.

Commissioner Friedman stated he did not think the question was whether or not these fellows were going to fix what was wrong there now but thought the testimony had shown and the history has shown that there was a reliability issue in the nature of the organization in terms of taking care of things. He said secondly this was not a punishment, there was not intention to punish anybody but he thought nobody on this board wanted to wake up in the morning to a notification that anybody got hurt and did not want to explain it to anybody's parents.

Chair Merzig stated once the city declares the property unsafe by the Code Enforcement Office or the Fire Department the board assumes a certain level of liability for what happens after that because the city had determined that the property was in a certain condition and then it was the board's job to either act or not act.

Chair Merzig stated she would close the testimony part of the hearing and then have a discussion.

Mr. Tallon stated he wanted to address two things that Commissioner Friedman said about what happened in the past. He said they were totally different this year and what happened in the past was why their house was like it was now. He said but they were showing the board right now that was not what they were like. He said they were going to fix these things. He said he had been working for the last 5 days, 24/7, along with all these guys and there was nothing they want more than to be living in their own safe house. He said obviously this needed to be addressed because they were not living safe so they were not mad that it happened because they needed to fix the things but they guess they just wanted the board to realize they were going to fix the things.

Chair Merzig stated she did not understand what was just said and she asked if a different group lived in the house in the fall as opposed to now.

Mr. Tallon responded no he was saying in the spring because they did not have enough money to pay in the fall because they were paying their tax bill. He said now they were catching up with everything.

Mr. Tallon stated in regard to the Fire Department he said obviously that was bad and they did not want them coming to fake alarms but that would never happen literally and the only time it did happen was when they were on break. He said they did not leave the house empty then because there was one brother living there but he worked during the day and the alarm must have happened to go off at the wrong time.

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SPECIAL MEETING OF THE BOARD OF PUBLIC SERVICE PG. 11

(Emergency Unsafe Building Hearing – 62 Elm Street)

Chair Merzig stated the board did not want to give the group the impression that if the alarm goes off it wanted them to turn it off. She said if the fire alarm goes off the board wanted them all to get out of the house. She said the board was just concerned that there may be some malfunction with it because it was going off when there was a false alarm.

Commissioner Friedman asked if there was a local agent for this property.

Mr. Tillapaugh stated the corporation needed to have a local name and he was on the city's records which was why he was served with the paperwork.

Chair Merzig stated having heard the testimony of the Fire Department, the Code Enforcement Office, the residents of the house and corporate officials she said she would like to close the hearing portion and then get to the determination portion.

Chair Merzig stated that under Chapter 92, *Unsafe Buildings*, of the Code of the City of Oneonta the board had the responsibility of determining, based on testimony that the board has heard, whether or not the property in question was determined to be unsafe based on the 11 characteristics outlined in Section 92-1.

Chair Merzig stated she would read those characteristics as defined under Section 92-1 for the benefit of indicating what those conditions could be.

Chair Merzig stated that based on the testimony the board heard today, January 5, 2012, she believed that there were conditions in the house which were unsafe based on those characteristics but which may or may not have been corrected. She said the board did not have any evidence of that other than the testimony heard. She said what she would like to propose was that based on these characteristics the board declares the property unsafe and order it repaired within a period of time and an inspection done. She said having determined that the property was unsafe and ordered activities to take place to make it not unsafe and then revisit the matter at the board's February 2nd meeting and see what the Code Enforcement Office has received in terms of plans or being able to actually inspect it and determine whether the property had actually been repaired in those violations which the board had identified as being outstanding.

MOTION, Chair Merzig and seconded by Commissioner Tisenchek, that based on testimony heard from the Code Enforcement Office and others the Board of Public Service under Chapter 92, *Unsafe Buildings*, of the Code of the City of Oneonta, declares the property unsafe of Alpha Delta Omega at 62 Elm Street, Oneonta, NY under Section 92-1 sections C, D, E, F, G, I and J, as follows:

C. Those which have improperly distributed loads upon the floors or roofs or in which the same are overloaded, or which have insufficient strength to be reasonably safe for the purpose used.

D. Those which have been damaged by fire, wind or other causes so as to have become dangerous to life, safety, morals or the general health and welfare of the occupants or the people of the City of Oneonta.

E. Those which have become or are so dilapidated, decayed, unsafe, unsanitary or which so utterly fail to provide the amenities essential to decent living that they are unfit for human habitation, or are likely to cause sickness or disease, so as to work injury to the health, morals, safety or general welfare of those living therein.

F. Those having light, air and sanitation facilities which are inadequate to protect the health, morals, safety or general welfare of human beings who live or may live therein.

G. Those having inadequate facilities for egress in case of fire or panic or those having insufficient stairways, elevators, fire escapes or other means of escape.

I. Those which, because of their condition, are unsafe, unsanitary or dangerous to the health, morals, safety or general welfare of the people of this city.

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SPECIAL MEETING OF THE BOARD OF PUBLIC SERVICE PG. 12

(Motion) continued

J. Those buildings existing in violation of any provision of Chapter 300, entitled "Zoning," and any other provisions of the Code of the City of Oneonta.

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

Noes: None

Absent: None

MOTION CARRIED

Voting followed this discussion.

Commissioner Hayes offered a friendly amendment that repairs be made by licensed professionals.

Mr. Price-Meader stated there seemed to be some issue regarding a responsible party and he thought it would be beneficial to have the organization designate a responsible party for each semester each school year. He said that should be someone who could speak for and represent the organization.

Chair Merzig stated she thought that existed but she believed he was asking that it be someone who lived in the house to be a direct contact.

Mr. Price-Meader responded yes. He said also when this house was considered a fraternity recognized by the school they were subject to certain requirements and now it seems it has fallen out of that he would suggest reconsideration of that.

Chair Merzig stated that in a separate motion the board could direct the Common Council to reinstate this fraternity as a membership organization because of their testimony heard today.

Commissioner Friedman stated he would be opposed to doing that.

Commissioner Friedman stated he would like to offer three friendly amendments, 1) that on a weekly basis the organization hires a professional safety expert to inspect the property for living conditions and for maintenance, smoke detectors, etc and file a report with the Code Enforcement Office, 2) that a local agent designee certify to the Code Enforcement Office weekly what activities were or were not going on in the house on a weekly basis and, 3) that for the February 2nd the neighbors residing within 300' be notified of that hearing.

Chair Merzig stated she agreed with everything but the membership activities and asked the commissioner to drop that amendment and then it could be added as a separate motion if the commissioner chose to.

Commissioner Friedman stated he would agree to that.

City Clerk Koury asked the Chair to restate her motion.

Chair Merzig stated that based on remedy the board's choices were to order it repaired, vacated or demolished.

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SPECIAL MEETING OF THE BOARD OF PUBLIC SERVICE PG. 13

(62 Elm Street) continued

MOTION, made by Chair Merzig and seconded by Commissioner Hayes, that based on the board's determination at the January 5, 2012 meeting that the property located at 62 Elm Street was unsafe the board orders the following:

- The property to be repaired and the owners to file a plan with the Code Enforcement Office that includes contracts.
- Repairs are to be made by licensed professionals.
- The organization hires a professional safety expert to inspect the property for living conditions and for maintenance, smoke detectors, etc and files a report with the Code Enforcement Office on a weekly basis.
- That a local agent designee for the property files with the Code Enforcement Office on a weekly basis what activities were or were not going on in the house.

Furthermore, for the board's follow-up on the property at the February 2, 2012 regular meeting the property owners residing within 300' of said property to be notified.

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

Noes: None

Absent: None

MOTION CARRIED

Chair Merzig stated that the house did not have to be vacated but the group had to be very serious about repairs and get in touch with the Code Enforcement Office immediately and give them a plan and items indicated.

Commissioner Hayes thanked the group for attending the meeting.

MOTION, made by Commissioner Friedman that if the organization fails to have a weekly inspection report delivered to the Code Enforcement Office starting with not receiving one within two (2) weeks from the date of the meeting held on January 5th that they vacate the house at the end of the two week period.

Chair Merzig stated she hears what the commissioner was saying but thought the board's February meeting gave opportunity to visit that situation. She said she did not think it was necessary to do that now but it was necessary that they submit that report.

Commissioner Friedman stated he would accept that.

Mr. Tillapaugh stated in terms of that inspection report he asked that if the group had been in contact with the Code Enforcement Office and Code Enforcement had gone through the house on a Friday afternoon and makes a determination was that adequate in lieu of the group paying a person to do that.

Chair Merzig stated she thought the point Commissioner Friedman was making was that the Code Enforcement Office was not going to instruct the owners related to safety. She said Code Enforcement were specialists in housing and the board's intention was to insure that the residents had some kind of training about fire safety and how dangerous conditions were. She suggested that the owners contact the Fire Department about the kind of conditions that would cause a fire. She said what the commissioner was concerned about was that every time city departments get called out it cost the city money instead of the responsibility falling on the owners. She said there was probably someone at the college who would be happy to do safety training for them at no cost and then the owners could certify with Code Enforcement that they met with them and understand the need for safety.

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SPECIAL MEETING OF THE BOARD OF PUBLIC SERVICE PG. 14

(Discussion on 62 Elm Street) continued

Commissioner Friedman stated it was also a major liability. He said once they leave this table and if something happens at this property the board had very little to excuse itself and certainly not to any parents. He said the sooner the owners get a person in there with expertise in safety inspections not just a college liaison, to do that the better it was. He suggested they contact the Code Enforcement Office for a list of retired professional firefighters and code officials.

Chair Merzig asked if Mr. Tillapaugh got the board's intent.

Mr. Tillapaugh replied he got the board's intent.

Commissioner Friedman stated he would also be satisfied if the person was a licensed New York State engineer.

Mr. Tillapaugh stated when they had to do this in the past they used a relative of his who was an engineer.

Chair Merzig stated in regard to the issue of the classification of this property does not fall to this board but she thought it behooves the board to make a recommendation to the appropriate Common Council committee to revisit the classification of this property. She said she thought the limbo that this property was in of it not really being a home and it was not really a business although she personally thought it was a business because it was a corporation and it was not a fraternity anymore because it was not recognized. She said whether it was a membership organization, which Mr. Tillapaugh says it was, which falls under the fraternity statute or whether it was a business or residence needed to be addressed by city government in a way the board could not.

MOTION, made by Chair Merzig that the board transmits to the Common Council that some legal determination needed to be made on the classification of the property at 62 Elm Street , i.e. was it a membership organization, business or residence so the appropriate inspections could take place.

Commissioner Friedman stated he did not think the Common Council made a determination that the 62 Elm Street ownership was not a membership association but made a determination that its occupancy must be in compliance with the regulations controlling occupancies of single-family rentals.

Chair Merzig stated but that should not have stopped the inspections.

Commissioner Friedman stated Code Enforcement continued to inspect it but on a cyclical pattern of single-family rentals.

Code Enforcement Officer Chiappisi stated Code Enforcement Office inspected the property in 2010 and as a single-family home would re-inspect in 6 years.

Chair Merzig stated the purpose of her motion to the Council was because the board heard testimony changing what that decision because she did not believe it was a single-family home and did not think they did either.

Commissioner Friedman stated but 62 Elm Street was not operating in accordance with what the Council said.

Chair Merzig stated yes they were because they had not had inspections for 2 years and had not come for Special Use Permits.

Commissioner Friedman stated he did not hear that other than when the residents there said they were having group meetings, which he thought was clearly a violation. He said he would like to add

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(Discussion on 62 Elm Street) continued

to the Chair's motion because he thought there was another closely related issue of the conversion from a fraternity house to a single-family house and what in the State Building Code applies as it would apply to a conversion of a restaurant to a gymnasium.

Chair Merzig stated that was out of the board's purview.

Commissioner Friedman stated he thought it was important because the board was really viewing a list of code violations relative to its code maybe that was not the full list of violations and what he was concerned about was if something bad happens at the house caused by something that had not been cited as a violation because the scope of the inspection was incomplete.

Chair Merzig stated the board just needed to have this property redefined.

Mr. Tillapaugh stated it was still a fraternity. He said the fraternity may not be recognized by the college but the definition says it was still a fraternity. He said he was also a mason and that was a fraternal organization and those kinds of organizations were fraternity organizations. He said this membership corporation was a fraternal organization with a mechanism to become a member this corporation and that was to become a member of the fraternity through their initiation process.

Commissioner Friedman questioned if Mr. Tillapaugh was addressing the nature of the ownership or the nature of the use.

Mr. Tillapaugh responded that was the nature of the use, a fraternal organization.

Chair Merzig stated she appreciated his being upfront about that but she was really concerned that as an entity the city government has missed something here and she would like city government to revisit it.

Mr. Tillapaugh stated in the past they had to get the Special Use Permit and he did not quite understand why they did not have to go through that process anymore and he figured the residents were taking care.

Chair Merzig stated she asked that question too and she thought the surrounding property owners would feel better if they knew there was a regular view instead of assuming that this was a single-family home, which it certainly was not because it was not owned that way. She said she did not think it could be anything but a fraternity because of the way the corporation was set up.

Commissioner Friedman stated he disagreed completely. He said the nature of ownership did not imply anything about the nature of use.

Commissioner Tisenchek stated that after the board's February meeting that it should have a discussion with Council Liaison Council Member Palmer regarding the discussion on the matter and then something could be sent to Council instead of sending something to Council before going through that special person.

Chair Merzig stated she would take the matter to the special person and did not need the motion.

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

JAMES R. KOURY, City Clerk

JRK/pab