

BOARD OF APPEALS

SPECIAL MEETING MINUTES

September 29, 2015, 4:00 p.m.

Room 109, City Hall, 333 Civic Center Plaza

Web Site: www.ci.tracy.ca.us

1. Chair Alegre called the meeting to order at 4:00 p.m.
2. Board of Appeals Members Caling, Davis, Vice Chair Yerian and Chair Alegre present. Code Enforcement Officer Jim Decker, Code Enforcement Manager Ana Contreras, Building Inspector Supervisor Scott Owen, Secretary Adrienne Richardson, and Appellant Hines Anthony Prejean also present.
3. Items from the Audience - None
4. CONSIDER AN APPEAL OF A CITY OF TRACY NOTICE AND ORDER DATED JUNE 30, 2015, FOR HAZARDS ASSOCIATED WITH A FIRE IN TWO-BUILDINGS ON PROPERTY LOCATED AT 229. W. CARLTON WAY, TRACY, - APPELLANT ANTHONY HINES PREJEAN, CODE ENFORCEMENT CASE 15CD-0065 – Chair Alegre opened the hearing and asked all individuals in attendance to introduce themselves. Chairperson Alegre provided an overview of the hearing process and asked if the City and the Appellant had any additional documents to submit other than the packet provided prior to the meeting. The City representatives did not have any additional documents. Hines Anthony Prejean (Appellant) provided copies of photographs of fencing that has been erected.

Chair Alegre invited the City representatives to present their case. Scott Owen, Building Inspector Supervisor, deferred the presentation of evidence to Jim Decker, Code Enforcement Officer. Mr. Decker read from the Notice and Order. A fire started in a debris pile located at the south east corner of the back yard at the apartment building on 1630 Parker Ave, quickly spread along the back fence to the apartments at 229 West Carlton Way. Both of the wood frame buildings were heavily damaged and rendered non-habitable. The two unit building had partial roof collapse in both units and the west exterior wall was falling away from the building. The property owner was contacted at the site and directed to board up the buildings immediately. At the time, the property owner stated that he had no insurance on either structure and no idea of what to do with the buildings. State law provisions concerning dangerous buildings were explained to the property owner as were the two options relative to abatement of these properties; wither (a) rebuild or (b) demolish the structures. The property owner was contacted approximately three months after the fire and stated that he had not made a decision about the buildings yet. The property owner was informed that if no action was taken to either rebuild or demolish the structures, the City would have no further option but to move forward with abatement action.

During inspections at the damaged apartment building at 1630 Parker Avenue on August 21, 2014, and October 16, 2014, further structural failure of the roof and west wall was observed at the two unit building. A follow-up inspection performed on January 28, 2015, and March 17, 2015, found the plywood used as a board-up method at the

west wall of the two unit building had been removed and both structures were open and unsecured.

Mr. Owen referred to provisions in the 1997 Dangerous and Hazardous Buildings and referred to remediation. If the building itself falls down within confines of its own boundaries, it could be a matter of attractive nuisance, but being so close to other properties and property line, it would fail because it is not able to sustain further damage to high winds or the like.

Board Member Caling asked the age of the structure. Mr. Owen responded approximately 1930s or 1940s originally.

Board Member Caling asked if there were any hazard materials that can cause more damage. Mr. Owen responded he could not say without testing.

Chair Alegre invited Hines Anthony Prejean to present his case.

Mr. Prejean stated he sustained damage to three apartments and was a victim of criminal activity. A fire was deliberately started by unsupervised kids. There were witnesses to the fire. City of Tracy investigated but was unable to find culprits. Mr. Prejean added he has sustained considerable losses and lost three apartments and income of over \$1,700 a month. Mr. Prejean has retained legal counsel and has not done anything because he is negotiating a settlement with the insurance company for 1630 Parker Ave (First American Insurance Company). Mr. Prejean is following the dictate of his attorney who needs the structure as evidence in court. Mr. Prejean added Mr. Decker said the building was not boarded up on west side on the rear of the building but on the day of the fire he boarded that up and the pictures show evidence it was boarded up. Work has started in the adjacent apartment on 1630 Parker Ave and two burned trees have been removed and the fence that was burned down was reinstalled. Someone stole plywood panels. The west wall has been re-boarded and the fence has been reestablished, so there is a different configuration than most recent pictures.

Vice Chair Yerian asked if Mr. Prejean had a copy of the letter from his attorney stating he needed the buildings for evidentiary needs. Mr. Prejean responded he did not bring the letter.

Mr. Owen said the Building Department was very concerned about structural stability of all three structures. The care that the attorney is trying to provide for Mr. Prejean to maintain the evidence for the insurance people, does not out way the concerns for the general public.

Board Member Caling asked for a sketch of the area. Mr. Decker drew a sketch of the area on the white board.

Vice Chair Yerian asked if it was possible to have a temporary cyclone fence built around the property so no one can access it. Mr. Owen responded the biggest concern is the structural stability of the units. The west side sustained the majority of the damage and it is not known if the barrier is adequate enough to be able to sustain any impact of load from the structure itself if it decides to go.

Chair Alegre asked if there was a law suit with 1630 Parker Ave. Mr. Prejean responded yes, kids were playing in a debris pile and lighting matches which was witnessed by his tenants.

Chair Alegre asked if Mr. Prejean owned 1630 Parker Ave. Mr. Prejean responded no.

Chair Alegre asked if it was the owner Mr. Prejean is trying to deal with to get them to pay for it. Mr. Prejean responded yes, they did send out an adjuster to examine the fire. Negotiations were going along swimmingly and all of a sudden they stopped. The owner said there needed to be more investigation and that was the last he heard from them. Mr. Prejean did get estimates on the building and one is from Eagle Construction who specializes in remediation of properties and they are of the opinion that the property is stable enough to renovate. Mr. Prejean handed copies of the estimate from Eagle Construction to the board members.

Mr. Owen referred to the estimate stating Eagle Construction indicated the building and foundation system are substantial enough to be able to be reconstructed, and asked if that was the opinion of a licensed engineer. Mr. Prejean was not sure but indicated the company has access to a licensed engineer.

Mr. Owen stated Page 31 of Eagle Construction's estimate provided a floor plan of the duplex. All the walls of the duplex that face east west are gone except for the one front main wall off of C bedroom.

Chair Alegre asked if east west runs towards the adjacent property. Mr. Owen responded Carlton runs east west, Parker runs north south. Those walls that provide structural integrity for those buildings would be non-existent.

Board Member Caling asked if they were deemed to be share walls. Mr. Owen responded back in those days they were not called share walls. Mr. Owen provided other ways that were used to support structures back in the day. The structural aspect is the concern. The attractive aspect can be fenced and gated.

Mr. Decker referred to page 31 of Eagle Construction's estimate indicating the space between these two buildings is not nearly what is shown. Mr. Decker expressed his concern regarding the exposed area with wind and unknown particles being blown through the buildings.

Chair Alegre asked Mr. Decker if he could confirm the fire started on the other property. Mr. Decker used the diagram on the white board to show where the fire started.

Mr. Prejean added the neighbor adjacent to 1630 Parker Ave witnessed kids starting the fire. Mr. Owen asked about positive identification of the kids. Mr. Prejean responded in the fire report it said they saw the kids but he did not know if they followed up.

Board Member Davis stated the report said plywood was missing in March and asked if staff let Mr. Prejean know. Mr. Decker responded he was going back and forth on the inspections for the apartment for 1630 Parker Ave, and this was just noted as a side note. Mr. Decker said he was waiting for Mr. Prejean to come forward with a remediation plan. Mr. Prejean responded he did not know the boards were missing.

Ana Contreras, Code Enforcement Manager, added the Notice and Order that is contained in the information packet provided to the Board, dated June 30, 2015 is the Notice and Order sent to Mr. Prejean. Any information contained in the Notice and Order was relayed to Mr. Prejean.

Vice Chair Yerian asked Mr. Prejean about the \$123,645.00 estimate to rebuild. Mr. Prejean responded the estimate was not to rebuild but to refurbish or remodel to get it back to the way it was.

Vice Chair Yerian asked Mr. Prejean how he planned to bring the building back to a safe structure in a timely manner without insurance. Mr. Prejean responded he had some money and did not have insurance because he paid off the mortgage. Mr. Prejean added he was paying \$5,000 insurance, the recession got tough and if tenants lose their job, landlords do not have any income. Mr. Prejean stated there were issues with insurance so he cancelled with the insurance company.

Chair Alegre asked if it was Mr. Prejean's attorney or the insurance company's attorney for 1630 Parker Ave dealing with it. Mr. Prejean responded his attorney is dealing with the insurance attorney.

Chair Alegre asked by taking pictures, Mr. Prejean's attorney did not feel it would stand up in court. Mr. Prejean responded had he destroyed the structures in June of last year, they would not have been able to adjust the fire. They sent in an adjuster and adjusted the fire.

Chair Alegre asked if the buildings have been adjusted. Mr. Prejean responded he thought so but did not get much communication as it is between lawyers. Mr. Prejean said he met the adjuster on May 27.

Vice Chair Yerian asked Mr. Prejean if his attorney had given him a date that he will be able to do something. Mr. Prejean responded no as he is dependent on the time schedule of the insurance company who want to investigate.

Vice Chair Yerian added insurance companies move quickly because they do not want any liability of the building being open. Mr. Prejean responded hopefully they will do that in this particular case. Mr. Prejean added he is trying to get this resolved because he understands the predicament it puts the City of Tracy in but he is being pulled in two opposite directions.

Mr. Owen stated although staff understands Mr. Prejean's predicament, staff's duty to the City is to protect everyone. Mr. Owen added something needed to be done to secure this building to prevent coming to a hazard. Mr. Owen said there are options, remediate the building in accordance with the Notice and Order.

Chair Alegre asked if the City representatives had any rebuttal or closing statement.

Mr. Owen responded it is the City's duty is to protect the general public. This has been going on for a year plus with no movement.

Chair Alegre asked Mr. Prejean if he had a closing statement.

Mr. Prejean responded he is an innocent victim. A fire rolled onto his property. He did not have insurance at the time, but is willing to mitigate any damages to the general public. If there is anything he can do to wrap the property. This should be resolved shortly.

Chair Alegre closed the public hearing at 4:39 p.m.

Board discussion followed.

Vice Chair Yerian stated the structure is 70 or 80 years old. The City has given Mr. Prejean a year to get it fixed. Vice Chair Yerian asked if Eagle Construction was brought in by the 1630 Parker Ave folks or by Mr. Prejean. Mr. Prejean responded he brought Eagle Construction in.

Vice Chair Yerian stated Mr. Prejean has had ample time to do something. Vice Chair Yerian added he did not have evidence to say the attorney is asking to leave the structure in one piece so they can put a law suit together. Vice Chair Yerian asked who the law suit would be against. Mr. Prejean responded the insurance company and property owner of the building at 1630 Parker Ave.

Vice Chair Yerian asked about the assailant that started the fire. Mr. Prejean responded there is a kid who is living in the apartments. Vice Chair Yerian asked if that tied him to 1630 Parker Ave.

Board Member Davis asked how they know the kid lived in the apartment.

Mr. Prejean responded in addition to that they have maintained an attractive nuisance and had a lot of boxes and debris stored against a wooden fence, which kids lit on fire. The fence and trees caught on fire.

Vice Chair Yerian responded the building cannot sit as a public nuisance forever. There has to be some kind of time frame and no one is giving anything in letter form. Mr. Prejean responded he could get the letter form.

Board Member Davis said he agreed with the City. The building is not structural anymore. There is nothing there holding the building up yet it is still standing. The pictures indicate there is no share wall and a good wind will push it over.

Board Member Caling told Mr. Prejean he was sorry this happened to him. The building has no structural integrity. With the high winds in Tracy it is a matter of time before the building falls over. Because of the age of the buildings and materials that were used back then, they may have hazardous in them which may cause more damage to the kids living around there areas. Board Member Caling asked if buildings F, D and E were occupied and if buildings A and B are protected by fence. Mr. Prejean responded that F, D and E are occupied and A and B are not protected by fence. Board Member Caling confirmed he agreed with the City.

Chair Alegre asked if the board upholds the City's position what would be the next step.

Mr. Owen responded staff would expect the buildings to be abated. An option, even if the buildings were going to be repaired would minimally require a certain amount of remediation to stabilize the structures so they do not sustain any further damage or pose threat to general public. There would have to be a time line because of the nature of materials that may be in the building.

Ms. Contreras responded it would depend if the board were to uphold Code Enforcements recommendation; then a new time line would be established for the property owner to either pull the demolition permit or to submit plans along with engineers' drawings.

Chair Alegre asked what would happen if Mr. Prejean did not do either after that time line. Ms. Contreras responded Mr. Prejean could begin accruing both administrative citations and criminal citations. Staff could also look at taking the property into receivership process which would take it out of the City's and property owners hands, and can continue citing every day the property is in violation, which costs could add up quickly.

Chair Alegre asked if the board upheld the recommendation, would the next step be to give Mr. Prejean a certain amount of time to do one of two things and if it was to rebuild there is a certain amount of time to make it safe. Mr. Owen responded that is immediate and then of course plans and submittals for reconstruction would follow shortly after.

Chair Alegre asked how long it would take to get plans. Mr. Prejean responded the time limitations are much too short.

Ms. Contreras added if the buildings continue to deteriorate where it is an eminent hazard and the City is required to abate the nuisance, the cost would be borne by the property owner along with any administrative charges. The City has to pay prevailing wage to the contractor who does the abatement. If taken into City's hands to abate, it could cost the property owner a lot more than if he would abate himself.

Chair Alegre stated he had a problem with a fire starting on someone else's property and now Mr. Prejean is feeling the brunt, but a year to take care of it is a substantial amount of time. Chair Alegre added he did not believe the buildings are going to fall over and damage the other property, but a child is shown in one of these pictures playing on the porch of one of burnt ones which bothered him. Those three buildings should have been separated from the other buildings on Mr. Prejean's property. The property has been seen by an adjuster for the other company. There is a lot of pictures and paperwork to substantiate that this burned down. Chair Alegre did not see the need to keep the building as evidence for court as the whole site can be videoed.

Vice Chair Yerian made a motion to uphold the City's Notice and Order. Board Member Calings seconded the motion. Voice vote found all in favor; passed and so ordered. The board's decision is to uphold the Cities position.

Mr. Prejean asked what the Boards decision meant. Chair Alegre responded Mr. Prejean needed to get with the Building Department and come to a quick resolution to solve their concerns.

Ms. Contreras stated staff spoke to Mr. Prejean prior to the hearing and explained everything that was explained to the Board today. Ms. Contreras added staff will meet with Mr. Prejean within a few days and establish a timeline for submitting plans or demolition. In the meantime, staff will put together a schedule of events that need to happen to at least sure up the building until Mr. Prejean decides whether he wants to demolish or rebuild. Staff has provided Mr. Prejean ample time to come up with a decision of what he is going to do. Staff will continue to work with Mr. Prejean in an expedient fashion so there can be a final resolution on the issue.

Mr. Prejean asked how many days he had to appeal to Council

Ms. Contreras responded staff will provide Mr. Prejean with the appeal process information and guidance on how to file that appeal.

5. Adjournment – It was moved by Vice Chair Yerian and seconded by Board Member Davis to adjourn. Voice vote found all in favor; passed and so ordered. Time: 4:55 p.m.

The above agenda was posted at the Tracy City Hall on September 22, 2015. The above are action minutes.

Attest:

Dennis Alegre, Chair

Secretary