



**PROPERTY MAINTENANCE BOARD
Minutes of October 29, 2009**

The Property Maintenance Board met on the above date at 7:00 p.m. with the following members answering roll call:

Present:	Rick Carr	Board Member
	Bernie Macke	Board Member
	Bob Simon	Board Member
Also Present:	Mike Duncan	City Attorney
	Karen Barto	City Clerk
	Daniel McGinley	Mayor
	Carol Hofstetter	Zoning Administrator
	John Jewell	P&Z Chair
	Gail Jewell	Ethics Board
	Dave Hart	Council Member
	Lloyd Rogers	Council Member
	Bill Rachford	Council Member

Mike Duncan explained the reason for this Board is because a few years ago, the City of Alexandria passed an ordinance adopting the Property Maintenance Code, which is one of the tools to enforce safety for housing and buildings. Very rarely are there any citations or action under the ordinance.

Recently, our code enforcement officer made a decision that a particular property in the City violates the code and they condemned the property without a structural engineer's report. Our code states that if a person disagrees with the decision that was made, they can appeal to a Property Maintenance Code Appeals Board.

The jurisdiction of the Board is very narrow. They will not hear appeals related to zoning or the nuisance code, only the International Property Maintenance Code. Karen is ordering this book for the three members of the Board.

Mike said the decision made by the Code Enforcement Officer and the Building Inspector is very detailed and recites what is alleged to be wrong with this particular property. A hearing will be set within a 20-day period from the date of the order (9/28/09). Each member will get a copy of the order from the Code Enforcement Officer and the Building Inspector, the appeal of what is alleged, and the response.

Rick Carr asked whether it would be a conflict if he knows or deals with the appellant. If it's decided there is a conflict because of Mr. Carr's relationship with Mr. Seibert, then it can be handled now. The Mayor has the authority to appoint up to two alternate members. Mr. Duncan read the wording in the Ordinance that relates to conflict of interest:

"Disqualification of a Member: A member shall not hear an appeal in which the member has a personal, professional, or financial interest."

Mr. Duncan said this is Mr. Carr's decision. The property in question is for 8280 E. Main Street and owned by Dan Seibert and his brother under the company name of Mid Town Center Inc. However, tonight's meeting is an organizational meeting to adopt a hearing procedure as per the

Ordinance requirements, to swear in the members, elect a chairman, and to set a hearing date for this matter.

ELECTION OF OFFICERS:

MOTION: Bernie Macke made a motion to nominate Bob Simon as Chairman, seconded by Rick Carr. All in favor, the motion passed 3-0-0.

Mr. Duncan then turned the agenda over to Chairman Bob Simon.

MOTION: Rick Carr made a motion to nominate Bernie Macke as Vice-Chairman, seconded by Bob Simon. All in favor, the motion passed 3-0-0.

Mr. Duncan said Section 111.4.1 says "the board shall adopt and make available through the secretary procedures under which a hearing can be conducted." He had drafted a proposed hearing procedure, which is attached, and then read and explained the draft. All board members had copies of this document.

Mr. Duncan explained that any part of these procedures could be modified, and a discussion followed of different scenarios that could come up.

MOTION: Bernie Macke made a motion to adopt the Hearing Procedure, seconded by Rick Carr. All in favor, the motion passed 3-0-0.

NEW BUSINESS:

Appeal - 8280 East Main Street, Mid Town Center Inc. – Mr. Duncan said the appeal on this property was filed on October 19, 2009, and not the date mentioned earlier in the meeting. The appeal needed to be heard soon, and a special meeting was set up for Tuesday, November 3, 2009 at 6:00 p.m.

Mayor McGinley will look into getting an alternate board member as Mr. Carr did recuse himself.

Mr. Duncan said the board members may look at the property, but not go onto the property.

Mr. Simon asked about a meeting schedule. Mr. Duncan said Kentucky Open Meetings Law requires every public agency to set a schedule of regular meetings. He suggested setting it for once every quarter and if there is no business to conduct, the meeting can be canceled.

MOTION: Rick Carr made a motion to set the regular meeting schedule quarterly on the fourth Thursday, seconded by Bernie Macke. All in favor, the motion passed 3-0-0.

Mr. Duncan advised that since this is a special meeting, the only discussion should be items that are on the agenda. The next item is adjournment.

Mr. Rachford asked why council is not required to approve the appointments to this board. Mr. Duncan explained that in the ordinance itself, the wording is "the board shall be appointed by the chief appointing authority, and shall serve staggered and overlapping terms." This is an exception that is strictly within the Mayor's purview to appoint.

The board members shared a little background information on themselves. Mr. Simon said he has lived in Alexandria all his life and is a general contractor. Mr. Macke said he has been in construction for 35 years, has owned his own business, and is now with Fischer Homes. Mr. Carr said he has been a resident for a long time, and he is a civil engineer licensed in the State of Kentucky.

Mr. Simon asked what the procedure is for discussion after the evidence is heard. Mr. Duncan said they would discuss it in public as per the open meeting requirements. The decision does not have to be made that night and there is no deadline in the ordinance for making a decision.

Mr. Rogers asked what if the appellant does not like the ruling. Mr. Duncan quoted from Section 111.7, Court Review: "Any person, whether or not a previous party of the appeal, shall have the right to apply to the appropriate court for a writ of certiorari to correct errors of law." He explained the legal term as being discretionary for the court whether or not they take the appeal. "Correct error of law" means they cannot second guess your judgment on the facts, only determine that the law was incorrectly applied. Circuit Court is who would have jurisdiction in these kinds of matters.

Mr. Duncan also pointed out that if at the end of the hearing, the board wants the parties to bring in more evidence because they have questions, then they should leave the hearing record open, recess, and come back at a later time to hear the remainder of the evidence.

Mr. Simon asked if the appellant could be compared to other property in the city. Mr. Duncan said they can, and it would be up to the board whether or not it carries much weight. The materials that the board will be given will cite the sections of the code that they believe have been violated. The limits of the board's jurisdiction are to decide if it is a violation based on that part of the code.

Mr. Duncan stressed that outside of the meeting, two of the board members should not meet, e-mail, or call each other to discuss the matter. All evidence and discussion needs to be on the record.

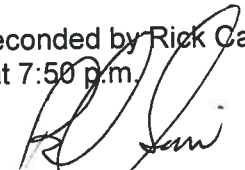
Everything the board members need for next week's meeting is included in the packets they received at this meeting.

ADJOURNMENT:

MOTION: Bernie Macke made a motion to adjourn, seconded by Rick Carr. All in favor, the motion passed with a 3-0-0 vote. Meeting adjourned at 7:50 p.m.



KAREN M. BARTO
CITY CLERK



BOB SIMON, CHAIRMAN

DATE: 9-23-2010

DATE: 9-23-10