

MINUTES FOR ADMINISTRATIVE HEARING – 9/23/19

BUILDING CODE ADVISORY BOARD

3900 HOYT STREET

CITY OF WHEAT RIDGE, COLORADO

7500 WEST 29TH AVENUE

MUNICIPAL BUILDING

1. CALL THE MEETING TO ORDER

Chair Abo called the meeting to order at 8:09 am

2. ROLL CALL OF MEMBERS

Building Code Advisory Board present: Robert Phillips – Dist. II Representative
Ronald Abo – Dist. III Representative
John Kellow – Dist. IV Representative
Nathan Hoppe – At Large Representative

Staff Members Present: Randy Slusser – Chief Building Official
Nina Williams – City Attorney's Office
Dina Kemp – Recording Secretary

3. PUBLIC COMMENTS (This is the time for any person to speak on any subject not appearing on the agenda.)

Guy Nahmiach, local broker
3645 Ward Rd.

Mr. Nahmiach posed the question to the building department and asked how they are advising the public to attract new buyers on older homes. He also asked how stringent are inspectors for looking for asbestos and who makes the call. He asked that his questions be answered at a later date.

4. OLD BUSINESS

A. Approval of Minutes – September 11, 2019

It was moved by Mr. Abo and seconded by Mr. Hoppe to approve the minutes of September 11, 2019 as amended. Motion passed 4-0.

5. CONTINUATION OF APPEALS HEARING FOR 3900 HOYT STREET

Mr. Abo started the meeting for the appeals hearing by asking Mr. Vasquez if the 6 items requested from last meeting had been met.

Art Vasquez, Manager for DRP

3900 Hoyt Street

Mr. Vasquez explained that he provided a packet for the board with a budget, an approved line of credit secured by the property, and agreements with contractors which included general contractors and sub-contractors. Mr. Vasquez also stated that he has an agreement with Keith Gallegos who is acting as project manager/owner's representative. Mr. Abo requested the construction schedule and Mr. Vasquez confirmed there is a schedule with stipulations and dates.

Mr. Abo asked the board if the construction schedule was acceptable.

Mr. Hoppe started off the by stating that he did not feel it was acceptable because the schedule should include more than just three or four deadlines. Mr. Vasquez responded by stating that the IFC did provide a timeline for the work to be complete in a timely manner. Mr. Hoppe asked who is finalizing the construction schedule. Mr. Vasquez stated that Mr. Gallegos who is representing DRP as project manager with 12 years of experience and has communicated with all sub-contractors would be finalizing the project. Mr. Hoppe explained that an owner's representative was requested, not a project manager.

Mr. Abo asked if the city attorney had reviewed any of the project management agreement and proof of funds. Ms. Williams confirmed they had been requested and that she was currently reviewing.

Mr. Abo asked about proof of funds and asked if DRP defaults where the reassurance is. Mr. Vasquez said that they would face foreclosure if not met.

Mr. Healy, attorney for Mr. Vasquez explained that if there was a deficiency, Mr. Vasquez would be personally liable for the fees.

Mr. Abo explained that they wanted a cash bond, or a payment performance bond.

Mr. Healy explained that a construction loan would suffice since it shows a money trail.

The board members collectively wanted financial insurance for the project, and didn't feel a construction loan was sufficient and wanted financial insurance that the project gets completed.

Mr. Healy responded that they misunderstood what was requested and thought the construction loan would suffice.

Mr. Phillips agreed that if the loan goes into default the project would sit until the next party comes in and the project would sit untouched. He explained that the stipulation was to have a construction loan. Mr. Vasquez explained that he could not get an surety bond.

Mr. Hoppe continued by stating that there is no proof the person chosen met the criteria for the owner's representative and this was not agreed upon.

Mr. Vasquez said that Mr. Gallegos was not able to secure a bond. He explained he inquired for information on the bond but could not get one without a permit. He explained he did not call the bond company and ask questions.

Mr. Abo asked Ms. Williams if the city could rely on the short term funding construction loan and agree that the project would be complete. Ms. Williams explained there is an agreement with the company but was not sure they would agree to using funds to complete project.

Mr. Hoppe verified where the budget numbers came from and Mr. Vasquez explained that Mr. Gallegos did the budget after reviewing the blue prints that will bring project to completion.

Mr. Hoppe questioned the budget of \$330,000 and the proof of funds for \$550,000 and why was there a discrepancy. Mr. Vasquez explained there was a loan amount of \$200,000 and the construction loan would pay this portion off and they would be in first position.

Mr. Vasquez explained there is a \$15,000 contingency and an additional \$85,000 that is with The City of Wheat Ridge in an escrow account.

Ms. Williams confirmed that the \$85,000 in the escrow account is not to be accessed but will be held with the city and will be released upon completion of the project and will be used if house is to be demolished. It is not to be used throughout the construction.

Mr. Vasquez had previously proposed that the escrow was to be put in to be used, and he mentioned that Community Development Director, Ken Johnstone said the escrow could not

be accessed until work is completed. He had requested the money be held and once they got to significant completion that half of the funds in the escrow be released.

Mr. Slusser confirmed this was a change, and Ms. Williams agreed the city had not approved this change but noted that in the last minutes it was proposed but not approved. The \$85,000 will be released at completion of the project. Any fines will be paid out of personal funds from Mr. Vasquez. Mr. Phillips commented that the fines were not reflected in the budget. Mr. Vasquez had not informed the loan officer apprised of the possible fines. Ms. Williams confirmed that the fines could not come out of the money in the escrow.

Mr. Abo then opened up the floor to the community members that were in attendance.

Steve Dratz, resident

4015 Holland Street

Mr. Dratz inquired about the personal guarantee that was attached to last meeting's minutes. Mr. Vasquez said that he did give a personal guarantee stating that he will be liable for any additional costs the lender would have. Mr. Abo disagreed and said the personal guarantee was a standard guarantee and means that if there is a default Mr. Vasquez would be fully responsible and that it is a standard release and not a non-recourse release. Mr. Vasquez relayed that he is the personal guarantor and confirmed his personal finances were not part of the budget he had provided. Mr. Dratz asked if the escrow amount would go up, would this appease the board. Mr. Phillips agreed that it would not be up to the board to decipher this, but would seriously entertain the offer.

Chris Covey, resident

3995 Holland Street

Mr. Covey started out by explaining that whatever the outcome is his immediate concerns were the security of the property. He explained that when he was on vacation, his wife had to call the police because people that were parked and they had trespassed on his property. He wanted to know what the security measure would be because his property is adjacent to 3900 Hoyt Street. He was concerned that there was possible drug activity. He has had to call the police three times and he has not seen a lot of response from the police department. He explained that there were squatters here for 10 years and he said he is beyond tired of the situation and is tired of this problem bleeding on to his property.

Paulette Cooper, resident

3890 Hoyt Street

Ms. Cooper explained that she lives south of the property and is concerned about the current walls that are up. She wondered if they are viable and if they are not, she wondered how the next owners would have a safe structure. Mr. Vasquez explained that he had provided an engineer letter to the board that explained it was structurally sound. Mr. Slusser confirmed that the engineer had reviewed the walls and that they are in sound condition structurally, but the outside foam is deteriorated and may need to have materials added on top to fix the problem.

Mr. Hoppe confirmed what the engineer's report and stated that the exterior expanded foam shows some signs of degradation but the foam does not lessen the integrity of the building.

Mr. Slusser added that he would require the manufacturer to come out and inspect the product and certain R-Values that need to be met. He also added that the fee would be half of the original permit fee to renew the permit for 6 months.

Mr. Kellow asked the citizens when the last time the police were called to the area, and Ms. Pacheco responded that she called six weeks ago. She stated that there are several people who go in and out of the area and have supplied a portable bathroom for the trespassers. She mentioned she is tired and the police have better things to do than continually come out to property.

Mr. Phillips brought to the table the matter of the schedule and the allocations of the fines and the total of \$30,000 dollars in fines. Mr. Vasquez agreed. Ms. Williams agreed that yes, if any of the milestones were not hit then we would go directly to demolition. She confirmed by October 4th, there were four fees deadlines, and if the first landmark is missed it does not further the next landmark date. Mr. Slusser confirmed if 90% of the work is completed by April 4th, a 60 day extension would be granted.

Mr. Healy explained that in reference to the security concerns that they would be willing to install a security system. They would circulate the security number to the neighbors and agreed to secure the area, primarily the fencing. Mr. Phillips agreed that getting the project to a working project would help with security. Mr. Vasquez confirmed the project manager will be on site when the project is underway.

Ms. Williams confirmed that the fee for Mr. Gallegos in the budget was \$5,000 and Mr. Abo stated that this comes to 20 hours of contractual work. Mr. Vasquez said that it was for the contractor and the project manager. Mr. Hoppe questioned this budget amount due to all the hours that will be required to finish the project. He stated that this amount is not realistic. Kennedy Homes and Mr. Gallegos will be managing the project according to Mr. Vasquez. The owner's representative's role was explained by Mr. Hoppe and stated that there is a lack of knowledge presented with the budget.

Larry Matthews, resident

3851 Hoyt Street

Mr. Matthews asked if the owner was going to have a full-time representative on-site. Mr. Vasquez responded that the project manager will be on-site while the sub-contractors will be working even with the other projects going on. Mr. Phillips confirmed that that the industry standard is 3 times a week and 2 hours on-site. Mr. Hoppe confirmed that the money allotted in the budgets reflects part-time hours.

Mr. Vasquez stated that Mr. Gallegos will have a flat fee of \$5000, and \$5,000 for the contractor. Mr. Hoppe confirmed the budget with Kennedy Homes and came to the conclusion that the amount set aside is not going to compensate the contractor and the project manager.

Mr. Phillips relayed that it is less than 2% for construction costs where it is the standard of 8% in the market for a general contractor.

Ms. Williams asked how much an owner's representative charges. Mr. Hoppe responded that the owner's representative is more of a contract basis and is typically an 8% fee and is a percentage versus a flat fee. He relayed that this the budget presented is not realistic and there is a huge gap in management of the project and a lack of knowledge of construction costs. Mr. Vasquez offered to go back and readjust the amount with Kennedy Homes if he miscalculated. Upon further review of the budget, Mr. Hoppe said that the amounts set aside for contractors, EZ Electric in particular was under budget versus the actual estimates given. Mr. Vasquez agreed.

Mr. Abo asked for the board to make a decision. Mr. Hoppe had one further question for legal and that was what how much of a blight on the community it would be if they decided to take the structure down. Ms. Williams responded that it would be 28 days to appeal and there would be a district court process or they could decide not go through with it, it could be a year. She added it could be a long process after appeals and they would have to go to municipal court to abate.

Mr. Abo asked the floor for final comments from the neighbors. Mr. Covey expressed he was concerned that they could be here in a year having the same discussion with an unfinished project. Mr. Phillips gave reassurance that Mr. Vasquez waives his rights if deadlines are not met. Ms. Williams says that if they sign the order today, they waive the right to appeal. Mr. Abo said that if the April deadline is not met, that the property would be scrapped. Mr. Covey said he did not have confidence that the project would not be done.

Mr. Phillips agreed and confirmed that in one year there will be a completed home or the house will be demolished.

Ms. Cooper agreed and stated that she could see the board has a hard decision to make and based on the numbers it was very iffy. Mr. Vasquez said it could be a year and a half if the board decides to do a demolition.

Ms. Williams confirmed that the deadline for repairing the fencing will be October 4th. Mr. Vasquez agreed. The next deadline will be on November 10th for completion of the ICF work. Mr. Dratz was positive about the project going forward to completion and asked if the scrape would include the home as well as the garage since the verbiage says structure. Mr. Vasquez said that the garage structure would stay and needed some esthetic work to match the property.

Mr. Matthews responded that he wants the band-aid to come off now and did not want to endure any further delays.

Mr. Hoppe added that in his 20 year experience he had not seen a budget off by 40%. The line items did not match up, namely the stairs according to Mr. Hoppe.

Mr. Healy and Mr. Vasquez assured the board with the facts that this is not the first time he has used Project Manager Mr. Gallegos and that he had agreed to penalties and the \$85,000 in escrow. Mr. Hoppe responded that the amount allotted in the budget comes out to 20 hours. He continued to ask for proof from Mr. Vasquez.

Ms. Williams confirmed it was \$30,000 for the total fines if deadlines are not met. If any deadlines were not met, the project would be going to demolition.

Mr. Phillips decision was that the budget is not acceptable and that Mr. Vasquez could go forward with project, but he feared it could go as long as 5 years.

Mr. Abo responded that there has been no performance from Mr. Vasquez and if the board decided to scrape today, it could be longer in court. Mr. Abo continued that if they waited to the April deadline, and Mr. Vasquez did not meet the deadline as he predicted Mr. Vasquez would waive his right to appeal and it could be demolished in April.

Ms. Williams confirmed the fines would be each step missed would be \$10,000 and if there is no CO for March date, they would forfeit the \$35,000 and immediately abandon the property and the demolition would go forward. And if the progress was not determined to be 90% done, at the discretion of the building department then the extra 60 days would not be granted.

Mr. Vasquez said he would not agree to demolition if the first deadline was not met. He mentioned that he was already agreeing to hefty fines and huge financial loss if not met.

Mr. Phillips confirmed what Mr. Abo was proposing to the board that the stipulations have not been met and at each meeting, the board is not comfortable with what is being presented and the requests are not being met by Mr. Vasquez.

Mr. Healy brought up the matter of the performance bond and that this was never a possibility. Mr. Hoppe disagreed and said that Mr. Vasquez did not do his due diligence in finding getting a construction bond as the board has requested. Mr. Healy said that Mr. Vasquez had confirmed with Mr. Gallegos had gone over the construction timeline and the budget so that all the requests were met. Mr. Vasquez said he is willing to go forward and has agreed to all the fines and to take his medicine and didn't feel going to court would be worth it as it could take 2 years.

Mr. Kellow mentioned that putting the money in escrow as soon as possible would be a sign of good faith. Mr. Vasquez agreed.

Ms. Williams said the escrow would be released when the owner fails to have a final inspections.

Mr. Phillips agreed that the money in escrow will finish the project. Mr. Healy agreed.

Mr. Kellow finished his comments to Mr. Vasquez by stating that the things the board asked for have not been provided. He asked that the \$85,000 stays in escrow until the project is finished.

Mr. Vasquez asked for final requests. Mr. Kellow responded that the main request would be to secure the property to meet the neighborhood needs.

Ms. Williams stated that the matter of security, and the project will be secured and will be addressed and will be in the written agreement.

Mr. Healy asked for a full list from Mr. Kellow so they can meet the board's needs.

Ms. Williams asked for a 10 minute break so that the agreement from the meeting could be put in writing in regards to fencing and security.

Mr. Covey asked what he was supposed to do with a security number. Mr. Vasquez said to use the number to call the police. Mr. Covey said they have brought in go-carts and there

have been several squatters. Mr. Vasquez replied that the police department would be called and standard procedure would ensue with the security company, and that the squatter had been evicted.

Ms. Williams summed up the requests the following assurance.

- Fix and secure construction fence by October 4, 2019
- Hire security system to install security system
- Supply neighbors with number to security company

Mr. Abo took the floor asking for final comments. Mr. Kellow questioned the budget and schedule. Mr. Dratz stated that he was fine with waiting 9 months after waiting 38 years to have the property fixed and agreed the property should be secured for the neighbors who are closer.

Mr. Hoppe finalized his statements indicating that he wanted more teeth in this project and felt that the schedule/budget that was requested was not brought forward and did not have faith the deadlines would be met and the funds to complete project.

Mr. Phillips circled back to the issues on the table of final changes and security issues. He finished with final comments on landscaping and that the money in escrow would be sufficient for the landscaping and called for a motion.

Ms. Williams stated that the vote would be on the appellant's recommended changes in Section 15.

Mr. Phillips made a motion to include bold items as revisions and to add security. Mr. Abo added to accept appeal in his motion. Ms. Williams clarified that this stipulation order resolves the appeal.

Mr. Kellow expressed his concerns about the end of the stipulations. Ms. Williams confirmed that if by April 4th if it was not substantially completed according to the building official then they do not get the extra 60 days. The owner at that time would forfeit the \$85,000 and immediately obtain permits to demolish the structure. The original date was March 21st and changed to April 4th by appellant.

Mr. Abo asked for a motion to agree to stipulations and to accept the security changes. The motion did not carry.

Mr. Kellow and Mr. Hoppe both agreed the schedule and the budget was not firm enough. The board was conflicted on both issues. The four dates on the schedule was a matter of concern for Mr. Hoppe.

Mr. Phillips asked Mr. Slusser how the building department would define 90% completion and would that include landscaping. Mr. Slusser replied that 90% completion would include the structure being complete, including interior work and pending any trim work, but this would not include landscaping. He added that escrow could be added for landscaping.

Mr. Healy added when the \$40,000 was released, the \$20,000 would be allotted for landscaping. Mr. Kellow was pleased with this and asked for a time frame. Mr. Healy responded that the \$20,000 would indeed be used for landscaping.

Ms. Williams stated that the stipulation was very clear if indeed the 90% completion was not done, the structure would be up for demolition.

Mr. Kellow expressed that this was their chance to give back to the community so someone could not interfere with the sale of the home, and given the hatred that has been developed, and the vagrants are gone that there could be repercussions if the changes are not done. Mr. Kellow agreed that it was a good proposal, along with Mr. Healy.

Mr. Phillips asked if they are adding the landscaping clause.

Ms. Williams confirmed that the stipulations for the landscaping was in the proposal and when the work was substantially completed, the \$40,000 would be released and the \$20,000 would go towards final landscaping.

Mr. Healy and Mr. Vasquez confirmed that the \$20,000 will be used for landscaping.

Mr. Kellow asked what the intent of the property was to sell it or to live in it. Mr. Vasquez said it was to sell originally and now he may move in with his family. He thinks they will be selling it upon completion.

Mr. Abo was not confident the project would get there and felt that the property may be ultimately scraped next summer.

Mr. Kellow confirmed that in the construction loan there could pose some issues if it was not budgeted correctly. He expressed concern for the security of the property and that the issue of transients needs to stop now. Mr. Kellow continued that once the property was being worked on and there was no security it could be a threat to his project as he is putting money into the home. He suggested having an armed security guard on-site.

Mr. Vasquez agreed he would hire a security company. Mr. Kellow asked if there could be a security guard with a machete. Ms. Williams did not recommend this suggestion and opted for the original stipulation of security.

Mr. Hoppe made the motion to accept the new stipulations as amended upon signing, Mr. Phillips seconded and Ms. Williams called for a 10 minute recess to make changes to the paper work so that all parties could sign.

It was moved by Mr. Hoppe and seconded by Mr. Phillips to accept the new stipulations as amended.

Motion passed 4-0.

Meeting adjourned at 10:10 am

The next meeting will be November 13, 2019 at City of Wheat Ridge Municipal Building.