

Construction Board of Appeals

Regular Meeting Minutes

Monday, May 5, 2014
4:00 PM, Council Chambers
City Hall, 539 Phoenix Street



1. Call to Order by Morse at 4:00 p.m.

2. Roll Call

Present: DeVinney, Dibble, Niephaus, Morse
Absent: None

Also present: Doug Gritter, Pine Creek Construction; Ron Brouwer, Pine Creek Construction

3. Approval of Agenda

Motion by DeVinney, second by Dibble to approve the agenda as presented.

All in favor. Motion carried.

4. Approval of Minutes – November 6, 2013

Due to omission of November 6, 2013 minutes, the above-referenced minutes will be presented for approval at the next meeting of the CBA.

5. Interested Citizens in the Audience Will be Heard on Items Not on the Agenda

None at this time.

6. NEW BUSINESS

a) Sherman Hills

Anderson introduced the item, including the history of action taken:

Background Information: On October 28, 2013, the city building official sent a notice to the owners of Sherman Hills notifying them that the building permit on the duplex structure had expired and the building needed to either be demolished or completed. On November 11, 2013, the city hearing officer reviewed the actions of the building official

and determined that the owner needed to secure the building and replace/repair the weather barrier wrap within ten (10) days (November 22, 2013). That work was completed. The hearing officer also stated that the owner needed to present a plan for completion of the project on or before December 16, 2013 or the matter would be revisited in spring of 2014. No formal plans have been received as of this date so the matter has been forwarded to the Construction Board of Appeals (CBA).

In accordance with the City Code of Ordinances, Article IX, Dangerous Buildings and Structures, Sec. 10-226, the Construction Board of Appeals (CBA) has been convened to hear the final local appeal to the building completion/demolition order. Attached to the agenda, you will find the cost comparison for repair and for demolition as prepared by John Brush as well as the city assessor's determination of value.

Staff recommends that the CBA uphold the hearing officer and John Brush report to order completion or demolition of the building at Sherman Hills' development.

Butch Kelly, Hearing Officer noted that making the repairs was discussed but he has not heard anything regarding completion taking place.

Doug Gritter, Pine Creek Construction, 3392 Maplegreens Drive, Saugatuck introduced himself and his partner, Ron Brower, 11559 North Lake Drive, Holland MI.

Gritter stated that this meeting caught him by surprise. Talked about taking his parents to Florida and then he was in Florida preparing to bring them back when he was emailed by Brower regarding the meeting. As he recalls, he was asked to go out to the structure, repair vandalism and take care of loose Tyvek. He said he takes issue that there have been no contacts since with the building department. Talked with Rogien who said Gritter was good for now; "at least that was my understanding." Stated that he spoke with Anderson and sent an email from Florida. He felt he complied with what he was asked to do.

Gritter also noted that Cindy Compton is working with an engineer to develop a plan concept. Repeated that the house wrap has been secured; he assumed that everything was taken care of; in his defense, he felt he did comply with what the building department required. Noted he has been in a six year litigation, since June 2008. Explained that Pine Creek entered into a consent judgment with Judge Buehl to satisfy the other lienholders. Pine Creek bought out several of the lienholders so ended up with a majority interest. Lienholders, LLC has owned the majority of the property since.

After Judge Buehl ruled in our favor on the liens and allowed the sale to Lienholders, LLC, the original owner, Augie Zolezzi, appealed to the Court of Appeals. Gritter ended up with three (3) lawsuits; the one with Mr. Zolezzi, which was a four (4) year process, and then the Department of Environmental Quality (DEQ), said Mr. Zolezzi owed them \$200,000 which they stated was now Gritter's debt. Gritter stated, "We just didn't get paid; we didn't do any of this (environmental damage). We ended up with an extended trial against the DEQ." Judge Buehl threw off the DEQ's consent judgment but left on the environmental provisions, according to Gritter, they have had no complaints. The two other partners/shareholders, Infrastructure LLC and Milbocker have not given any funds toward the litigation, according to Gritter. After four (4) years, Gritter stated, "we told them they needed to come up with their pro rata share or no longer be a partner."

Infrastructure LLC and Milbocker went to Augie Zolezzi who forwarded funds to enable them to sue their partner, Pine Creek Construction. Gritter stated that now Pine Creek Construction is in an extended lawsuit for \$21M from their own partners. Gritter noted this has been a long tough journey. "After two years, the judge in Ottawa County ruled in our favor, dismissed Infrastructure's claim and we settled out of court. Eight or nine months later they wanted to "un-sign" so appealed the judge's decision." Gritter noted that the judge refused the appeal; so now Infrastructure LLC has appealed to the State Court of Appeals. Gritter explained that he and Brouwer are not trying to protract anything, but hesitate to invest more money without the assurance that the property is theirs.

Anderson appreciates the problems but stated that the city is also concerned, beyond this body, for the building that is there. "What we wanted then, and want now, is some sort of plan for how the property is going to be developed; building finished or building demolished. The city needs some assurance that something is going to be done."

Gritter said they have looked at the building and it does not deserve to be demolished. Stated that the structure is solid and usable. Reiterated, "We don't want to invest more money when we don't know whether we will be the sole owners. Need to know that it is ours."

Gritter asked if it is the appearance or the structure. Rogien said structurally it is fine; but it is the aesthetics. The city wants to know when the structure will be sided and windows and doors installed. Dibble pointed out that the Tyvek only has a 6 month life. Gritter said the Tyvek has been replaced several times.

Dibble asked what Infrastructure LLC's and Milbocker's interest is in the property. Gritter said Augie Zolezzi entered into an agreement with Milbocker but never paid. What was signed gave thirteen per cent (13%) to Milbocker, another percentage to Infrastructure LLC and the balance to Gritter dba Pine Creek Construction. The judge required that everybody including the bank be satisfied so Pine Creek bought out the bank, per Gritter.

In response to a question by Dibble as to what Gritter's total investment is Gritter stated he is not sure but his legal bill is huge. Dibble commented that he would have cut his losses long ago.

Gritter said he is hearing that the city is not talking about safety but aesthetics. Anderson responded, "That is basically true; the building has been abandoned for a long period of time, which is against city code.

Gritter questioned what the city wants Pine Creek Construction to do. Anderson said it is her understanding that the city wants to see the exterior completed or the building demolished. Dibble agreed, stating, "Even if it were finished with cheap single hung vinyl windows and vinyl siding, something should be done with the exterior." Gritter responded that it is difficult, in terms of funds being contributed to a project that is not settled yet. Gritter noted that the subject structure is just one structure in an incomplete project. Dibble and Morse noted that many complaints are received by the city.

Gritter said the second issue is we have a project Mr. Zolezzi never finished; Zolezzi gave us his word that the rest of the infrastructure and roads would be in. "We started that home as a Parade of Homes in 2006. Now we have water there; the water is usable as a complete line cycle, but there is no sewer, no roads etc." Gritter explained that the lift station and forced main were designed to carry that subdivision and another project Zolezzi had across the street. According to Gritter, the investment to complete the sewer alone is a sizable investment.

Neiphaus commented, "You have already invested in the home; all we are asking you to do is put some siding and windows on it. That's what they are asking you to do. The idea that you have money invested in lawyers etc. has nothing to do with the building. The building is an inanimate object, it's ugly, and people are complaining about it. If you put the siding and windows on, I believe the city would work with you on the rest of the things you are talking about. The city has an investment in that project also."

Gritter responded, "Part of the dilemma is we honestly don't know what the property is going to be used for. That is why Cindi Compton, most of you know who she is, she's a straight shooter, is working with a multi-use engineer to determine what will go on there. We understand it could be all multi-family; that would dramatically change the original plan. The multi-use is something we are in favor of. We don't think the property will be sold in one chunk, but may be separate sales for separate uses."

Gritter stated that the city is asking them to invest in something that he does not know will even fit into the final plan.

Morse pointed out that there is not direction at this point. Consider the options and all your options are on the table.

Gritter responded, "We do not know who will purchase the property; we need to have clear title on the property. You can't sell anything without clear title."

Dibble asked if the clear title is on the house only; Gritter responded negatively, stating that the property is all in one piece including two pieces that are located in the township. Gritter wants to get the legal process out of the way; noted they are trying to sell it and Cindi Compton is working on it.

DeVinney asked Gritter for a time frame to which Gritter responded there is a time frame in which the appeals court can accept or deny the appeal and added, "We hope they will deny it."

Morse asked whether once the court of appeals gets this request they have a time frame to respond to you to which Gritter responded that he does not know.

Neiphaus asked what Gritter thought it would cost to put the siding and windows in the structure. Gritter said twenty to thirty thousand dollars (\$20,000 to \$30,000) easily. Dibble said the person who did the costing said (\$50,000 to \$60,000). Gritter noted that Dibble seemed to have experience in construction and asked what Dibble thinks is a fair figure. Dibble responded that, inexpensively, maybe forty grand (\$40,000). Gritter asked if it could satisfy for a period of time to replace the Tyvek again.

After discussion by the board members regarding a time frame, Anderson asked whether the six (6) months the board is considering extending would culminate in the board meeting again, or if at six (6) months the city would receive a plan. Dibble responded that the board would want to have a plan and a time frame for the plan. Anderson pointed out that there should not be extensions.

DeVinney, Dibble and Morse commented on the difficulties Gritter has been through, indicating some understanding but being conflicted by the need to bring closure to this issue.

Gritter stated he wants from the city what the requirements are for the building permits, noting that he took out permits for many lots. "Are any of those funds recoupable?" Anderson said "No, the building permits have all expired. To do the additional work, siding and windows, would require taking out new permits."

Dibble asked Rogien about Gritter putting blueskin, a self-adhering membrane, on it instead of Tyvek. Rogien noted that is up to the board.

Dibble addressed Gritter, noting that he needs to understand the city's position; it has been ten (10) years. "Somewhere, somebody, has to draw a line." Morse noted his concern is that it was started in 2006 and been through this protracted legal problem; they are almost at the conclusion and want to keep the building but do not know what they are going to do. Morse said maybe they should wrap the house in Tyvek again and in six (6) months come before the board again with a plan.

Gritter asked the process for demolition.

Anderson said if the Construction Board of Appeals (CBA) rules demolition, the file will be turned over to our attorney who in turn gets an order from the court permitting the city to demolish the structure. The cost of demolition is added to the property as a lien or special assessment.

Gritter said, "I'm not saying this to carry this long term, but if we agree that we need to Tyvek it again then at the end of six (6) months we have to come up with a game plan as to what we plan to do."

Rogien cautioned the board to be very clear in their motion so Gritter and Brouwer know exactly what is meant and the building department knows exactly what is meant.

Kelly asked if the outside was finished, siding and windows, how long the city would allow the structure to stay in that condition. Anderson said finishing the exterior would buy them time; if the windows and siding looks completed on the exterior, the city would accept that in the short term as long as it was maintained.

Kelly asked whether, if the structure is sided and Gritter comes in with a plan, and the inside hasn't been finished, the city would still pursue demolition to which Anderson responded, "Not without an order from the Construction Board of Appeals (CBA)."

Gritter said in six months, even if the litigation is passed, and we own the property, he is still a little nervous. Stated that Compton has something moving forward, whatever multi-

use they come up with; he does not want to put fifty thousand dollars (\$50,000) into that project and then still have the threat of demolition. Anderson said if he sides the house and installs windows it would buy him time.

Gritter said having something defined is better for him and for the committee. He does not want to put forty thousand dollars (\$40,000) into the house and still have the threat of demolition hanging over his head. "We are hopeful things will all work out."

DeVinney asked if there is any length of time that the house can sit there empty and unfinished. Anderson said that is the board's determination. DeVinney reiterated that if they side the structure and add windows at the end of six months; then it will be the commission's call what time frame things are done in.

DeVinney asked if the site itself will be an issue for people. Anderson said it needs to be maintained, if the yard is not maintained, the code enforcement officer will notify and then send someone in to mow it. Then the cost will be tacked onto the property's taxes as a lien. After discussion, Anderson clarified that the property around the house does not have to be seeded or landscaped, just maintained; just keep the weeds mowed down.

Kelly pointed out that to save the structure, the siding and windows need to be put in. Dibble said put soffit and fascia and vinyl siding over the window openings; even that would improve the aesthetics. DeVinney asked if a sided building and windows, weeds kept mowed down, will satisfy the neighbors who have been complaining. Kelly asked what about windows on the road side only. Dibble said no one is living in it so does not need egress windows; noted that road side windows would be helpful but it's a hard call, because the house can be seen from three (3) sides.

DeVinney suggested that the board discuss the steps; he is hearing six (6) months for a plan; a total of nine (9) months for siding and windows to be installed; if not done then demolition. The board entered into discussion of Blueskin vs. Tyvek; aesthetics of the wrap versus actual siding. Blueskin was dismissed as being unattractive and obtrusive.

The board began to toss out some parameters:

1. New Tyvek in thirty (30) days
2. Written plan for completing the exterior including a building permit in six (6) months
3. Exterior to be completed, including siding, soffit and fascia and windows in nine (9) months

The board made it very clear that the nine (9) months they are referring to is a total of nine (9) months, or three (3) months after the written plan and building permit application are submitted.

Neiphaus asked, "Then what?" Dibble responded, "Then we (the board) will see where they are." Neiphaus commented that he does not think the board went far from Plan A to Plan B.

Neiphaus reiterated, "All we are asking is Tyvek in thirty (30) days and then at the end of six (6) months, what is the plan?"

Gritter asked the board to define “the plan.” Neiphaus said the board is concerned at this point with the house only. Gritter expressed that he understood

Gritter said he understands the eyesore thing. This house is part of the development; Gritter wants to know whether the plan the board is referring to incorporates Phase I of the overall plan. Dibble responded, “No, we are asking the exterior (of the house) to be finished with siding and windows.”

Gritter expressed his agreement to taking the eyesore away by finishing the shell but does not want the plan to go beyond that.

DeVinney said we need to clarify in our motion that the plan is for the exterior work on that house which Gritter agreed with. DeVinney reiterated that at the end of six months the city wants a plan for that structure. And at the end of nine months we want completion.

Rogien pointed out that it would be difficult to get a judge to order demolition of a house that is roofed, sided and has windows. Rogien said it is mainly about aesthetics and cautioned the board to be clear with their motion.

Morse called for a motion.

Motion by Dibble, second by DeVinney to require that Pine Creek Construction complete the following steps in regard to the unfinished structure located at the defunct Sherman Hills development:

1. New Tyvek in thirty (30) days;
2. Written plan for completing the exterior of the existing structure, including acquiring a building permit in six (6) months, and
3. Exterior to be completed, including siding, soffit and fascia and windows in nine (9) months.

The board clarified that the nine (9) months they are referring to is a total of nine months or three (3) months after the written plan is submitted and the building permit is acquired.

All in favor. Motion carried.

Anderson expressed hope that as Pine Creek Construction’s lawsuit progresses Gritter and Brouwer will keep the city informed. They agreed to do that.

b) 229 Elkenburg

The owner of record, Jimmy Karrip, was not in attendance.

Anderson explained that the city needs a new order to demolish. “You (the board) have done this before and then it was discovered that the code of ordinances had a sunset clause and it had expired before the board made that order. The city started over again; the city is going to take it down, and is investigating possible state funding to assist with

expenses.”

DeVinney questioned some of the dates on notices and letters included in the packet. After discussion, Anderson said, “This is a do-over.”

DeVinney assumes there is a legal time span that the city has to follow. Anderson said a minimum of twenty-one (21) days is required in a demolition order according to the code but you can give it as much time as you want. Anderson explained that, if the board gives the owner ninety (90) days that puts a stop to everything for ninety (90) days, during which the city cannot move forward in any way.

Motion by Dibble, second by Neiphaus for the owner, Jimmy Karris, to demolish 229 Elkenburg in twenty-one (21) days, or by May 27, 2014.

All in favor. Motion carried.

The board discussed how the demolition will be funded. Anderson said the city is looking at a variety of funding options at this time, including possible funds through the agency that is funding the church demolition.

Dibble asked who paid for the asbestos removal at the church to which Anderson responded that the state paid for the asbestos abatement. DeVinney asked whether the city has to wait then for their money. Anderson said if we do put a lien on the property and it could be a long time before we see that money returned. DeVinney asked about a revolving fund from the state; explained that when the project is completed, the revolving fund is replenished and the city would have funds again. Rogien said Brian probably is familiar with revolving fund accounts.

7. Adjourn

Motion by Neiphaus, second by Dibble to adjourn at 5:15 p.m.

All in favor. Motion carried.

RESPECTFULLY SUBMITTED,

Marsha Ransom
Recording Secretary