

**City and Borough of Juneau
Building Code Board of Appeals**

Minutes

**Thursday, January 3, 2013 – 1 p.m.
City Hall Conference Room 224**

Call to Order: Mike Story, Chair, called to Building Code Board of Appeals to order at 1:06 p.m.

Roll Call:

Members Present: Todd Kollar, Randy Walling, Brad Austin, Mike Story, Darrell Weatherall (arrived at 1:10 p.m.)

Members Absent: Jeff Wilson.

Others Present: John Hartle, City Attorney; Laurie Sica, Municipal Clerk; Charlie Ford, Building Official; Ron Schramm, Code Enforcement Officer.

Approval of Minutes: Hearing no objection, the Board approved the minutes of its October 31, 2012 meeting.

Hearing - Ann Lee Appeal of Building Official's Order to Demolish Structure at 9018 Long Run Drive.

The Board took a few moments to review the meeting packet, which included the agenda and minutes, a letter from the Building Official to Ms. Lee at the 47084 Holt Lamplight Road, Kenai, AK, 99611 address, dated November 2, 2012 transmitting all previous correspondence from his office. In addition, that letter transmitted the draft minutes of the October 31, 2012 Building Code Board of Appeals meeting and the copies of police and fire department reports along with several pictures of the mobile home at 9018 Long Run Drive. The November 2, 2012 letter outlined a ten day period to receive the enclosed information and a 30 day period after receiving the information for Ms. Lee to respond to the Building Official with a plan of action. A Certified Return Receipt for the November 2, 2012 letter, signed by Ms. Ann M. Lee, was also in the packet.

Mr. Hartle asked if all the documents been delivered to Ms. Lee. Mr. Ford said yes, they were sent certified mail, first class mail and email.

Mr. Story asked if there had been any further communication from Ms. Lee. Mr. Ford said that Ms. Lee signed for the certified letter on November 9, and she sent an email on November 13 saying that she had not received the police and fire reports. Mr. Ford responded to that email by saying the reports were included in the letter that Ms. Lee signed for and asked her to contact him. He had heard nothing further than a fax providing a phone number for this meeting.

1:11 p.m. – Ms. Lee phoned in to the meeting.

Mr. Story said that this meeting was the hearing on this matter before the board.

Ms. Lee said she was making arrangements to travel to Juneau. She hoped to be in Juneau during the next week – week and a half.

Mr. Story said he would chair the meeting. The other members introduced themselves. Mr. Story noted that Charlie Ford, Building Official, John Hartle, City Attorney, Laurie Sica, Municipal Clerk and Ron Schramm, Code Compliance Officer, CDD, were present. Mr. Story said this was a hearing on Ms. Lee's appeal of the Building Division's decision to tear down the building at 9018 Long Run Drive.

Ms. Ann Lee said her phone signal was marginal. Ms. Lee said she understood all of this and she was working hard to get to Juneau. The property was still hers and she understood it was her responsibility. She was still incredulous that someone set it on fire. She had to see what was left of the building and she had property in the building and she wanted to salvage what she could. She did not make a high wage and it had been hard. Her mother had agreed to help her as much as she could.

Mr. Story said Ms. Lee had been aware of the situation for approximately nine months. Ms. Lee said that mail delivery was very unreliable in the area in which she was living, so did not necessarily agree with the timelines. She was working diligently to make amends for this and to get there to salvage property.

Mr. Story said the city had determined the building to be unsafe. He understood the question of when the documents were received but there was a written notice that Ms. Lee picked up the November 2 letter on November 9, 2012. Ms. Lee said she did not have that record that she picked anything up and she had had trouble with someone else picking up her mail, and she will make a decision on how to address the property after she came to Juneau.

Mr. Story said the documents were emailed and mailed. Ms. Lee said she had no internet where she lived and had to drive to a location to get internet service. She had an unreliable phone service.

Mr. Story said he understood Ms. Lee's interest in having more time to address the situation but that was one of the issues at the last meeting and to date, no one has heard a timeline that she could commit to. Ms. Lee said that she would be in Juneau within a week or week and a half. She reiterated her phone situation. She spoke about the arrangements she was trying to make to get to Juneau. She was calling her mother today to make arrangements.

Mr. Story said the building was determined to be unsafe. Ms. Lee said she understood and it had been unsafe all this time but she had to make sure her daughter could go by and check on the property. She knew she was responsible if something happened. She needed to find a way to get to Juneau and assess the property and go from there.

Mr. Story asked Mr. Ford if Ms. Lee had been given time following the June 20 letter to contact the building department. Ms. Lee said her phone was beeping and she was about to lose service.

Mr. Story said that the structure was out of compliance with the building code, and per the code, needed to come down within a timeline. The Board's role was to determine whether the decisions made by the Building Code Official were fair and reasonable and if they were, to agree with the determination. Ms. Lee said she needed to get her property out of the trailer, including a money order her mother gave her that she could use to get the building taken down.

Mr. Story said that is what Ms. Lee told the Board on October 31, 2012. Ms. Lee said she would be in Juneau within the next week to week and a half and something would be done.

Mr. Story said that considerable time had been given to Ms. Lee. Ms. Lee said her phone was beeping and she would call the Board back. Mr. Story said he would like to hear from the other Board members. Ms. Lee said she was going to let the Board do what they had to do and she would try to get to Juneau. She would get a lawyer because she had to get some things out of the trailer and she wanted half a change to get into the building. She would be back in touch. She said she had to call her mother and her mother should be involved with the call.

Mr. Story said the Board would continue with the meeting if she was dropped from the call and the purpose of the Board was to determine whether the appeal had merit and the appeal indicated she disagreed with the ruling of the building division, although verbally Ms. Lee had said she did not disagree with the ruling of the building division. Ms. Lee said she could not say for sure if she felt things had to be done this way. She did not know what the building codes were. Her phone was beeping.

Mr. Story asked when she would call back, 5 minutes? Ms. Lee said she could not get anywhere in Nikiski in 5 minutes. She estimated 15 minutes. The Board agreed to wait for 15 minutes for Ms. Lee to call back. Ms. Lee disconnected from the call at 1:23 p.m.

Mr. Hartle recommended that if Ms. Lee reconnected, the Board should ask if there was anything the Board needed to know about the basis of the appeal of the decision, and was there anything to show the Building Official was wrong. The Board could take that into consideration. The Board needed to rule on the decision, and Mr. Hartle would assist in drafting. She would have a right to appeal the Board's decision and she would have to state the grounds for that appeal.

Mr. Story asked if assuming she would not offer anything to expand on the decision, it seemed one of the letters indicated that CBJ would remove the building if Ms. Lee did not, and was there a timeline for that. Mr. Hartle said that the Building Code Board of Appeals decision would include the timeframe for her to appeal the matter to the Assembly.

Mr. Walling asked what authority the Board had in ordering the building demolished, as it was a safety hazard. Mr. Hartle said the role of the Board was to rule on the appeal of the building official's decision. At the October 31, 2012 meeting, the Board attempted to work out a settlement and that had not happened.

The Board discussed the return receipt and noted Ms. Lee's signature.

Mr. Kollar asked if it was the responsibility of the Board to make a site visit to verify the building condition. Mr. Walling and Mr. Weatherall said they had been by the property and Mr. Weatherall said he did not believe anything inside the building could be valuable at this point.

Mr. Story said the building official had cited the unsafe sections of the code and it was the Board's duty to determine whether it concurred. Mr. Hartle said the burden of proof was on Ms. Lee to show that the Building Official was incorrect, so that the Board did not have to confirm that the Building Official was right. Mr. Hartle said the Board had to determine if the record before the Board supported the Building Official's decision or if Ms. Lee had shown that the record did not support the decision. Ms. Lee had to prove that Mr. Ford's decision was not supported by the information.

Mr. Story said Ms. Lee had not provided any evidence to that support her appeal. Mr. Hartle said the Board could say that the decision of the Building Official was supported by the record and referred to the photographs of the structure.

Mr. Austin said that Ms. Lee said she would have her daughter stop by at the last meeting and she said it again today but that was sixty days ago.

Mr. Kollar said the Board could at this point just hear anything further she might add.

Mr. Walling said if all the Board heard was that she wanted another two weeks, he would move to make a decision to require action on her part.

Mr. Austin said the Board would only decide to reverse or uphold the Building Official's decision.

Mr. Story asked what the next steps would be if the Board denied the appeal. Mr. Ford said assuming the city liened the property, it would tear the building down and try to get the money back if and when she sold the property or paid the lien. Mr. Hartle said a recent court decision put the municipal property lien in question but there were other methods. The main thing was to protect the property owner's rights through due process.

Mr. Story said Ms. Lee suggested that there were already liens on the property and the property had some value. Mr. Schramm said Ms. Lee was not at the point of owing the CBJ more than the property assessment and there was a restitution order on file for a cleanup that had been performed by the CBJ.

Mr. Austin asked about the utilities and property taxes. Mr. Schramm said the utilities were disconnected and staff was not sure about the property tax situation.

Mr. Hartle asked if the building was boarded. Mr. Schramm said the building was wide open. On the basic incident report from the Fire Department said it was damaged 75 – 100% by fire and it qualified as a dangerous building. Mr. Walling said the wanagan had collapsed and it did not appear to be safe to enter the building. He saw it as a safety hazard for the entire area.

Tom, a neighbor, said the fire started in the wanagan, it burned the middle of the trailer to the front and there was a back room in the back that might have some items in it but it was waste deep in trash for the past 15 years. The windows and doors were broken before the fire and kids and dogs had been through the property.

Mr. Walling said he supported the Building Official's decision. Mr. Hartle said a good record should be made and the Board should keep an open mind until Ms. Lee had heard everything she could provide for her due process.

Mr. Story asked if it would be necessary to reschedule if she continued to say the same things.

The Board asked Mr. Ford which code was cited. Mr. Ford said the Property Maintenance Code, which requires safe and sanitary condition with a heating system, doors and other basic items. CBJ Title 19 adopted the Property Maintenance Code.

Mr. Hartle said the Board should schedule one more meeting, following deliberations, and review a draft decision prepared by Mr. Hartle and Mr. Story, the Board would adopt the decision at that time and send it to Ms. Lee, and her time for appeal would run from that point, as stated in the final decision.

Mr. Austin suggested having a process server or courier service deliver the Board's decision to Ms. Lee, and the board was in agreement.

Mr. Story confirmed with Mr. Ford that he had not received a plan from Ms. Lee in the 30 days provided to Ms. Lee at the October 31 meeting. Mr. Ford said the only deadline met was the deadline to appeal.

Ms. Sica attempted to call Ms. Lee at 1:50 p.m. without success and left a message on Ms. Lee's voice mail to call back in ten minutes.

Mr. Hartle said he believed Ms. Lee had been provided with every opportunity to make her statements to the Board. He recommended the board deliberate and make a decision in executive session.

The Board went off the record and into executive session at 1:51 p.m.

The Board returned to open session and at 2:05 p.m. Chair Story noted that Ms. Lee did not call back into the meeting at any time since she disconnected. He said the Board deliberated and directed Mr. Hartle to draft a decision within a week or two. The board scheduled a meeting for Noon on Wednesday, January 30, 2013, in City Hall Conference Room 224. The purpose of the meeting was to review the decision and either adopt , or modify and adopt the decision.

Board Comments – Questions – None.

Adjournment – 2:07 p.m.

Submitted by
Laurie Sica,
Municipal Clerk