

5640 Dailey Ave.



BUILDING AND STANDARDS BOARD AGENDA ITEM # 9 FOR
WEDNESDAY, March 28, 2007

DEVELOPMENT SERVICES
BUILDING PERMITS AND INSPECTIONS

MEMORANDUM

Date

TO: The Honorable Chairman and Board Members

THROUGH: Larry Nichols, C.B.O. – The Director for Building Permits and Inspections

FROM: Bill Stern, C.B.O., Residential Inspector Supervisor

SUBJECT: (Address) 5640 Dailey Avenue

On November 29, 2006 a hearing was held before the Building and Standards Commission at City Council Chambers and it was found that the structure located on said property is substandard, unfit for human habitation or use and a hazard to the public health, safety, and welfare, and the structure is not in substantial compliance with the Municipal Ordinances regulating fire protection, structural integrity, and disposal of refuse. The Building and Standards Commission ordered the owners to vacate, secure and clean the premises of all weeds, trash and debris within (30) days. The owners were ordered to appear before Building and Standards Commission on March 21, 2007, to determine if the Building and Standards Commission Order of November 29, 2006 has been complied with and to determine penalties if the Building and Standards Commission Order has not been complied with.

To date the Building and Standards Commission Order has not been complied with.

The Department recommends that the Building and Standards Commission make the following findings:

- 1) That the owners of said property Jesus Melendez and Consuelo Melendez, 5640 Dailey Avenue, El Paso, Texas 79905 were notified of the requirements of Section 18.50 and their need to comply with these requirements; and
- 2) That after notification, the structures were vacated and secured, the owners failed to clean the property of all weeds, trash and debris within 30 days; and

The Department recommends that the Building and Standards Commission order:

- 1) That the owner have not complied with the Building and Standards Commission Order of November 29, 2006; and
- 2) That the Building and Standards Commission Order the Deputy Director of Development Services to clean and maintain the premises clean of all weeds, trash and debris.
- 3) That the City Clerk file a certified copy of the Order with the County Clerk of the County of El Paso; and

ORDER OF THE BUILDING AND STANDARDS
COMMISSION OF THE CITY OF EL PASO

WHEREAS, the Director for Building Permits and Inspections of the City of El Paso has conducted an investigation and has reported to the Building and Standards Commission in writing that he is of the opinion that the structures located on the property at **5640 Dailey Avenue**, in El Paso, Texas, which property is more particularly described as follows:

Legal Description: Lot 19, Block 3, of Hughes Subdivision of Block 1 of Alameda Acres in the City of El Paso, El Paso County, Texas known as 5640 Dailey Avenue.

are dilapidated, substandard, and unfit for human habitation; are a hazard to public health, safety, and welfare; does not meet the minimum standards for continued use and occupancy contained in 18.50 of the El Paso City Code; and

WHEREAS, Jesus Melendez and Consuelo Melendez, 5640 Dailey Avenue, El Paso, Texas, 79905-1722, record Owners, and all mortgagees and lienholders were duly notified according to law to appear at a public hearing before the Building and Standards Commission at 5:30 p.m. on November 29, 2006; and

WHEREAS, Henry L. Deguire Sr. and Henry Deguire Jr. appeared.

IT IS THEREFORE, ORDERED ADJUDGED AND DECREED BY THE BUILDING AND STANDARDS COMMISSION OF THE CITY OF EL PASO:

1. That the Building and Standards Commission hereby orders the Owner(s) to comply with the following requirements:
 - A. That the buildings be vacated and secured and maintained secured within thirty (30) days; and
 - B. That the premises be cleaned of all weeds, trash, and debris within thirty (30) days; and
 - C. That the owners or any other person having interest in the property to appear at a compliance hearing on January 31, 2007, to determine if the property is in compliance with the Building and Standards Commission order and if not, to establish a penalty schedule for noncompliance.
2. That upon failure of the Owner(s) to comply with this Order, any mortgagees, lienholders, and/or other persons having an interest in the property have an additional ten (10) days to clear the property of all weeds, trash, and debris, demolish all the structures on the property.

3. That upon failure of the Owner(s), mortgagees, lienholders, and/or any other person having an interest in the property to comply with this Order, the City of El Paso, through its Director for Building Permits and Inspections, shall:
 - A. Secure the structures; and
 - B. Clean the property of all weeds, trash and debris; and
 - C. Assess the cost of the work noted above as a lien against the property which will become due and payable within thirty (30) days of the date the City of El Paso completes the work; and
 - D. Provide for any other remedies permitted by State law.

4. That upon failure of the Owner(s) to comply with this Order, the City of El Paso through its Director for Building Permits and Inspections may request a hearing before the Building and Standards Commission to:
 - A. Determine the amount and duration of civil penalties the City of El Paso may recover for failure to comply with this Order as allowed by Texas Local Government Code Chapter 54; and
 - B. Provide any other remedies permitted by State law.

5. **RIGHT TO APPEAL:** *The decision of the Building and Standards Commission is final (see discussion of rehearing, below). An appeal may be filed by verified petition in State District Court, setting forth that the decision of the Commission is illegal, in whole or in part, and specifying the grounds of the illegality. Petition for appeal must be filed by the owner(s) or interested party within twenty (20) days of receipt of notice of the Order of the Commission. Appeals in District Court are limited to hearings under the substantial evidence rule.*

A rehearing by the Building and Standards Commission may only be granted in the following circumstances:

- A. *Proper request is made within twenty (20) days of receipt of notice of the Order of the Commission; and*
- B. *Rehearing fees of five hundred and forty dollars (\$540.00) are furnished with the rehearing request. The Building and Standards Commission may waive these fees in cases of financial hardship based on written affirmation from the applicant.*

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that the City Clerk shall cause copies of this Order to be served on the record owner(s) and all other persons having interest in the property as provided by law.

According to the real property records of El Paso County, you own or have an interest in the property described in this notice. If you no longer own or have an interest in the property, you must execute an affidavit stating that you no longer own the property and stating the name and last known address of the person who acquired the property from you. The affidavit must be delivered in person or by certified mail, return receipt requested, to this office no later than the twentieth (20th) day after the date you receive this notice. If you do not send the affidavit, it will be presumed that you own the property described in this notice.

ADOPTED on this 29th day of November, 2006.

BUILDING AND STANDARDS COMMISSION

Tedd Richardson Chairman, Panel A

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Roberta Cross
Assistant City Attorney

Bill Stern, C.B.O., Chief Building Inspector
Development Services Department
Building Permits & Inspection Division

NOTICE OF PUBLIC HEARING

To All Interested Parties:

You are hereby notified that at 5:30 p.m. on the **28th** day of **March, 2007** in the Council Chambers of City Hall, #2 Civic Center Plaza, El Paso, Texas, the Building and Standards Commission of El Paso will hold a public hearing on the question of whether the building located on the property at **5640 Dailey Avenue**, in El Paso, Texas, which property is more particularly described as:

Legal Description: Lot 19, Block 3, of Hughes Subdivision of Block 1 of Alameda Acres in the City of El Paso, El Paso County, Texas known as 5640 Dailey Avenue.

and which is subject to that certain Building and Standards Commission Order dated November 29, 2006 has been brought into compliance with said Order, and if not to determine penalties.

According to the real property records of the County of El Paso, Texas, **Jesus Melendez and Consuelo Melendez** (the "Owners"), **5640 Dailey Avenue, El Paso, Texas 79905**, are listed as the Owners of the real property described herein.

The Owners of said property is hereby ordered to appear before the Building and Standards Commission and any mortgagees, lien holders, and other persons having an interest in said property are entitled to appear before the commission at said date, hour, and place.

If the Owners fail, neglect or refuse to comply with the order of the commission the City may pursue one, or more of the following actions:

- I) the City will perform any and all work needed to bring the property into compliance with this order, at its own expense, but for and on account of the Owner, of said property, the cost of which shall be assessed as a lien against the property and;
- II) assess a civil penalty against the property Owner for failure to repair, remove or demolish said Building in an amount not to exceed \$1,000.00 a day for each violation, or \$10.00 a day if the Owner shows that the property is the Owner's lawful homestead and;
- III) appoint a receiver as permitted by state law; and
- IV) any other remedies permitted by state law.

Any civil penalty or assessment imposed will accrue interest at a rate of ten (10) percent a year from the date of the assessment until paid in full;

The City Clerk is ordered to provide notice of this hearing to the record Owner and all other persons having an interest in the property as provided by law.

According to the real property records of El Paso County, you own or have an interest in the real property described in this notice. If you no longer own or have an interest in the property, you must execute an affidavit stating that you no longer own or have an interest in the property and stating the name and last known address of the person who acquired the property or interest from you. The affidavit must be delivered in person or by certified mail, return receipt requested, to the Building Standards Enforcement Division of the Building Permits and Inspections, 5th floor, City Hall, no later than the 20th day after the date you receive this notice. If you do not send the affidavit, it will be presumed that you own the property described in this notice.

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Roberta Cross
Assistant City Attorney

Bill Stern, C.B.O.
Chief Building Inspector
Building Permits and Inspections

Department

I, RICHARDA DUFFY MOMSEN, City Clerk of the City of El Paso, hereby certify that a true and correct copy of the foregoing Notice regarding the property located at 5640 Dailey Avenue was PUBLISHED in the official City newspaper on the ____ day of _____, 2007.

Richarda Duffy Momsen

I certify that a true and correct copy of the foregoing Notice regarding the property at 5640 Dailey Avenue was MAILED CERTIFIED-RETURN RECEIPT REQUESTED to:

Jesus Melendez
5640 Dailey Avenue
El Paso, Texas 79905-1722

Date:
Time:

Inspector

I certify that a true and correct copy of the foregoing Notice regarding the property at 5640 Dailey Avenue was MAILED CERTIFIED-RETURN RECEIPT REQUESTED to:

Consuelo Melendez
5640 Dailey Avenue
El Paso, Texas 79905-1722

Date:
Time:

Inspector

I certify that a true and correct copy of the foregoing Notice regarding the property at 5640 Dailey Avenue was MAILED CERTIFIED-RETURN RECEIPT REQUESTED to:

Miriam K. Mottelson
C/O Theodore E. Thal
825 S. Mentor Avenue
Pasadena, CA 91106

Date:
Time:

Inspector

I certify that a true and correct copy of the foregoing Notice regarding the property at 5640 Dailey Avenue was MAILED CERTIFIED-RETURN RECEIPT REQUESTED to:

Leon Kotosky
C/O Theodore E. Thal
825 S. Mentor Ave.
Pasadena, CA 91106

Date:
Time:

Inspector

I certify that a true and correct copy of the foregoing Notice regarding the property at 5640 Dailey Avenue was MAILED CERTIFIED-RETURN RECEIPT REQUESTED to:

Henry Deguire
5329 Big Horn
El Paso, Texas 79924

Date:
Time:

Inspector

I certify that a true and correct copy of the foregoing Notice regarding the property at 5640 Dailey Avenue was MAILED CERTIFIED-RETURN RECEIPT REQUESTED to:

Daniel Rodriguez
C/O B.E. Schwarzbach
3809 Hillcrest
El Paso, Texas a 79902-1706

Date:
Time:

Inspector

I certify that a true and correct copy of the foregoing Notice regarding the property at 5640 Dailey Avenue was MAILED CERTIFIED-RETURN RECEIPT REQUESTED to:

B. E. Schwarzbach
2313 Dampton
Plano, Texas 45025

Date:
Time:

Inspector

I certify that a true and correct copy of the foregoing Notice regarding the property at 5640 Dailey Avenue was MAILED CERTIFIED-RETURN RECEIPT REQUESTED to:

Linbarger, Goggan, Blair & Sampson
215 N. Stanton Street, 2nd Floor
El Paso, Texas 79901

Date:
Time:

Inspector

I certify that a true and correct copy of the foregoing Notice regarding the property at 5640 Dailey Avenue was HAND-DELIVERED to:

City of El Paso
C/O City Clerk
#2 Civic Center Plaza
El Paso, TX 79901

Date:
Time:

Inspector

I certify that a true and correct copy of the foregoing Notice regarding the property at 5640 Dailey Avenue was MAILED CERTIFIED-RETURN RECEIPT REQUESTED to:

Governor of the Ysleta Del Sur Pueblo Indian Tribe
AKA Tigua Indian Community
119 S. Old Pueblo Road
El Paso, Texas 79907

Date:
Time:

Inspector

I certify that a true and correct copy of the foregoing Notice regarding the property at 5640 Dailey Avenue was MAILED CERTIFIED-RETURN RECEIPT REQUESTED to:

El Paso Central Appraisal District
5801 Trowbridge Ave.
El Paso, Texas 79925

Date:
Time:

Inspector

I certify that a true and correct copy of the foregoing Notice regarding the property at 5640 Dailey Avenue was MAILED CERTIFIED-RETURN RECEIPT REQUESTED to:

El Paso County Probate Court
500 E. San Antonio Avenue, Suite 703
El Paso, Texas 79901

Date:
Time:

Inspector

I certify that a true and correct copy of the foregoing Notice was POSTED at _____, El Paso, Texas.

Date:
Time:

Inspector