

CITY OF EL PASO
BUILDING & STANDARDS COMMISSION BOARD PANEL "B"
April 27, 2016
5:30 P.M.

MINUTES

The Building & Standards Commission Panel "A" held a public hearing at the El Paso City Council Chambers, Wednesday, April 27, 2016, at 5:30 p.m. with the following members present:

Board Members Present:

Michael Bray
Randy Boggs
Alejandro F. Ganen
Angel Miguel Ochoa
Al Jurado (Alternate)
Chuck Taylor

Others Present:

Laura Gordon, Deputy City Attorney
John Batoon, Senior Assistant City Attorney
Wendi Vineyard, Assistant City Attorney
Larry Nichols, Director
Laura Foster, Architect
Nathan Walsh, Chief Building Inspector
Orlando Arriola, Fire Marshall
Nellie Avalos, Building Inspector
Fredo Alejandre, Building Inspector
Nancy Spencer, Recording Secretary

Board Members Absent

Ulises Estrada
Sam Guido
Conrad Conde

AGENDA

I. Call to Order

The meeting was called to order by Chairman Michael Bray at 5:40 p.m.

Chairman requested all those who wished to give testimony on cases to be presented at this meeting were sworn in.

II. Approval of the October 28, 2016 minutes

Motion made by Chuck Taylor, seconded by Al Jurado to approve the October 28, 2015 minutes, unanimously passed.

III. Presentation of the Vacant Building Ordinance by the Fire Department

A request was made to move the presentation of the Vacant Building Ordinance before hearing the case of 105 N. Oregon. Chief Building Inspector Nathan Walsh also informed the commission that the presentation for 10321 Thor was being deleted from the agenda as the property has come into compliance. In addition, the board was advised that Item 7 involving 716 Myrtle Ave. would be heard first. Mr. Larry Nichols, Director for the Planning and Inspection Department, advised the presentation on the Vacant Building Ordinance can be made as part of any of the cases to be heard, but the specifics of the ordinance itself will have to be put as an agenda item at a future meeting. Assistant City Attorney Wendi Vineyard, advised it will be presented at the City Council meeting and Deputy City Attorney Laura Gordon advised that the ordinance will be discussed in the near future.

Regular Items:

- IV. Public hearings to determine if the property located at 10321 Thor St. in the City of El Paso (legal description on file with the City Clerk) is a dangerous structure and determine if the owner will be ordered to secure, repair, remove or demolish the property. The owners of this property have been identified as Cirilo Zavala and Maria Guadalupe Zavala (record owners), and they have been notified of this hearing.

Nathan Walsh, Chief Building Inspector informed the commission that this case was being deleted from the agenda as the property has been brought into compliance.

Chief Building Inspector Nathan Walsh requested that the Presentation of the Vacant Building Ordinance by the Fire Department be postponed until the next meeting. Chairman Bray commented that the Fire Department has made previous presentations on the ordinance. Fire Chief Fire Marshal Orlando Arriola advised that the Vacant Building Ordinance presentation was to be part of the case involving the property located at 105 N. Oregon. Chief Arriola advised that he can provide a general review of the ordinance. Chief Arriola advised that building and fire codes are being applied to the buildings and that there have been several presentations of a proposed draft of the revised Vacant Building Ordinance. The board was advised that this ordinance has not come before City Council this year. Chief Arriola advised that the emphasis is to provide guidance as to how to properly board and secure a vacant building. If it becomes an issue, then it would go to the permit phase, where the fire department will periodically go inspect the property at which a fee would then be charged. ...Chairman Michael Bray asked if there were some areas of the ordinance that are not being enforced as the Fire Department would like. Chief Arriola advised that the current vacant building ordinance has a current registration component, strict requirements for placard placed on the building and also a requirement for a sprinkler system in the building. Registration of a vacant building requires an owner to pay a fee for having a vacant building. The proposed ordinance is to ensure that the building is properly secured and boarded up. Chief Arriola advised his concern is that by putting a placard on the building, it may encourage something to occur at the building.

Larry Nichols, Director of Planning and Inspection advised if there is going to be a discussion the Vacant Building Ordinance itself, it would need to be listed on the agenda for discussion which presently is not. If the ordinance being discussed is part of one of the cases being heard, it would be appropriate. Further discussion on the proposed Vacant Building Ordinance can be addressed when it is listed accordingly on the agenda. Chairman Bray asked the Assistant City Attorney Wendi Vineyard if the Vacant Building Ordinance as listed was appropriate to be discussed as listed and was advised it was not. An update on the proposed revision of the Vacant Building Ordinance can be given; however, the discussion on details of the ordinance will have to go before City Council. City Attorney Laura Gordon advised that the Vacant Building Ordinance is being evaluated and amended and will be presented at City Council in the near future.

- V. Public hearings to determine if the property located at 5854 Rio Dulce Ave. in the City of El Paso (legal description on file with the City Clerk) is a dangerous structure and determine if the owner will be ordered to secure, repair, remove or demolish the property. The owner of this property has been identified as The Secretary of Housing and Urban Development c/o Michaelson, Conner and Boul (record owner), and he has been notified of this hearing.

Nathan Walsh, Chief Building Inspector introduced the case to the commission.

Nellie Avalos, Building Inspector presented the case and gave a brief chronology on the history of the property and the condition that it was found in. .

Karla Navarette, realtor, representing the owner, advised that she obtained the property to put it up for sale on March 17, 2016. A notification was received that the rockwall was down. Ms. Navarette informed the board that the sale contract on the property was to approximately close on the 11th or 15th of May. An extension of time was requested so that they close on the sale and take care of the rockwall. Ms. Navarette advised that if the sale does not go through, HUD would be notified so that they can hire a contractor to either repair or demolish the rockwall. Chairman Bray asked if the prospective owner has been made aware of rockwall issue. Ms. Navarette advised they needed the time to close on the house so that owner can take possession hopefully by the 15th or if not; HUD will need time to get estimates to fix or tear the rockwall down.

Chief Building Inspector Nathan Walsh advised that the staff would consider granting 60 days to allow time for the sale of the property and address the issue of the rockwall. Board member Al Jurado asked Ms. Navarette if both parties would agree to those recommendations. Ms. Navarette advised that HUD has agreed if they need to fix the rockwall. She advised that she spoke with the agent for the buyer and the agent was unable to speak with the buyer but is aware that the rockwall needs to be repaired. Chairman Bray advised that the city is willing to work with the owner. Mr. Larry Nichols, Director of Planning and Inspection stated the wall had collapsed and asked if any of the debris was on the right of way. Inspector Nellie Avalos advised a portion was on the sidewalk. Mr. Nichols requested to remove any debris on the right of way as soon as possible.

Motion made by Angel Miguel Ochoa, seconded by Al Jurado to accept staff recommendations with the modifications that the debris be cleaned up from the sidewalk within 30 days and 60 days to close on the sale of the property, unanimously passed.

The owners have been notified of the property violations at this property; to date there has been no corrective action taken, and therefore the Department recommends:

1. That the rockwall be condemned as substandard and a hazard to the public health, safety, and welfare; and
 2. That the rockwall is not in substantial compliance with the municipal ordinances regulating structural integrity and disposal of refuse; and
 3. Rebuild or demolish the rockwall within sixty (60) days; and
 4. That the premises be cleaned of all weeds, trash, and debris within thirty (30) days and maintained clean thereafter; and
 5. That upon failure by the owner or any other interested party to comply with the order of the Building and Standards Commission the City may take whatever action is necessary to bring the property into compliance, and place a lien on the property for the work which will be done by the City.
- VI. Public hearings to determine if the property located at 6002 Antler Dr. in the City of El Paso (legal description on file with the City Clerk) is a dangerous structure and determine if the owner will be ordered to secure, repair, remove or demolish the property. The owners of this property have been identified as Ruben A. Flores and Maria A. Flores (record owners), and they have been notified of this hearing.

Nathan Walsh, Chief Building Inspector introduced the case to the commission.

Fredo Alejandre, Building Inspector, presented the case and gave a brief chronology on the history on the property and the condition that it was found in.

Ms. Rebecca Flores, daughter of the owner advised that she is aware that the mobile home is in dire need for repair. Ms. Flores advised that she was given the property and the responsibility to maintain it. However, due to financial issues, she has been unable to do so. Ms. Flores requested an extension of time. She informed the board that the property was rented out and the former tenants vacated the property in November. The tenants left the property in a damaged state. Now due to financial issues she did not have the funds to rehabilitate the property. Ms. Flores requested an extension of 60 days so that she can determine whether to rehabilitate the mobile home or demolish it. She advised that she has interested parties wanting to purchase the land.

Chief Building Inspector Nathan Walsh advised that he would stay with the staff recommendations. The commission was advised that the property is abandoned. Mr. Walsh advised that the owner be given the option to secure the property within 30 days and submitting an engineer's report on the feasibility to rehabilitate the property within 60 days. If the property is not taken care of within 60 days, to then proceed with the demolition of the mobile home.

Chairman Bray asked Ms. Flores if she understood the recommendations and she advised that she did. Chairman Bray advised Ms. Garza to get in contact with the Texas Housing Board and apply for a salvage title on the mobile home as it is required for the demolition.

Motion made by Angel Miguel Ochoa, seconded by Chuck Taylor to accept staff modified recommendation, unanimously passed.

The owners have been notified of the property violations. To date there has been no corrective actions taken, and therefore the Department recommends:

1. Secure the structures within thirty (30) days and maintain secure thereafter, and
 2. To provide an engineer's report and plans for rehabilitation within sixty (60) days; and
 3. If the owners fail to comply with this order;
 4. That the main structure and detached storage shed be demolished after sixty (60) days; and
 5. Revoke the certificate of occupancy; and
 6. Premises be cleaned of all weeds, trash, and debris, within 30 days & maintained clean thereafter.
 7. That upon failure by the owners or any other interested party to comply with the order of the Building and Standards Commission, the City may take whatever action is necessary to bring the property into compliance, and place a lien on the property for the work which will be done by the City.
- VII. Public hearings to determine if the property located at 716 Myrtle Ave. in the City of El Paso (legal description on file with the City Clerk) is a dangerous structure and determine if the owner will be ordered to secure, repair, remove or demolish the property. The owner of this property is identified as Maria Elena Garza a/k/a Maria Elena Garza de Vargas (record owner), and she has been notified of this hearing.

As requested, Item 7, 716 Myrtle Avenue, was presented first.

Nathan Walsh, Chief Building Inspector introduced the case to the commission.

Nellie Avalos, Building Inspector, presented the case and gave a brief chronology on the history on the property and the condition that it was found in. The commission was advised that this property was previously condemned by the Building Standards Commission on June 5, 2014.

Chairman Michael Bray requested a clarification of when this case was first investigated. Mr. Bray also asked if any recommendations were made to rehabilitate this property. Inspector Avalos advised that the property has extensive damage; however, if the owner brings in an engineer's report advising that it can be rehabilitated, they would be willing to work with the owner. The property is located in the Empowerment Zone and there are funds from Economic Development available for that area.

Board member Al Jurado asked when was the last time the owner was asked to take action on the property. Inspector Avalos advised that property was condemned in June, 2014, and the owner installed the chain link fence on the property in October, 2014. However, at some point the fence was removed. Inspector Avalos advised that the owner would board up the property but the boarding keeps being removed. In April of this year, a new fence was installed.

Ms. Elena Garza, owner of the property, was present for public comment. Ms. Garza advised that she had the property fenced in, but that after a year, the fence was taken down. Ms. Garza advised she had pictures of what has been done up to now to secure the property and at present, was seeking assistance for someone to advise her if the property can be rehabilitated or should she demolish it. Ms. Garza also advised that she did not have the funds to hire someone to advise her one way or another. Inspector Avalos advised that the pictures shown on the presentation are similar to the ones Ms. Garza brought to show to the commission. The pictures show that it has been boarded up. However, the fence has about a 12" gap allowing access into the property. Board member Randy Boggs asked about the pit on the ground. He was advised that it previously was used an outdoor out house.

Chairman Bray questioned a slide showing what used to be part of a sewer system where there now an existing hole in the ground is. Chief Building Inspector Nathan Walsh advised it may present a safety concern. Inspector Walsh advised that the property keeps being boarded up and secured and reopened again creating a fire hazard for the Fire Department. Chairman Bray commented that any order given at this meeting would also have to address the hole as part of the order. Mr. Bray advised the owner that there have many attempts to secure the property and that it has now become an issue. The owner was advised that the orders would recommend demolishing the property. Ms. Garza stated that she was not certain that would be the right decision to do. She advised that the demolition may cost around \$40,000.00 to \$45,000 and was seeking professional advice to determine if that was the best option. Chairman Bray informed Ms. Garza that there were two options, either to board and secure the property and obtain professional help to determine if the property can be rehabilitated or demolish the property. He also advised Ms. Garza that if the orders given at this meeting are not complied with, the City of El Paso would demolish the property and in doing so, would cost more. Ms. Garza advised that she understood and requested additional time so that she could get someone to advise if the property can be rehabilitated or how much it would cost to demolish it. Chairman Bray advised Ms. Garza that she has had sufficient time to make that determination. He recommended to her that she needs to obtain two estimates on the cost of demolition. Ms. Garza was advised that she has 30 days to make a decision to demolish the property. Chief Building Inspector Nathan Walsh advised that he would be willing to work with the Ms. Garza, but that something needed to be done within 30 days to show that there is significant progress on the rehabilitation or demolition of the property.

Board member Chuck Taylor commented that he was concerned that Ms. Garza may not understand what the city wanted her to do with the property. Mr. Taylor asked Ms. Garza if she wanted to rehabilitate the property and was advised that yes she did if it was worth

rehabilitating. Ms. Garza was advised that the orders will list what she needs to do but that the decision has to be hers as the City cannot make that determination. Inspector Nellie Avalos advised that the Empowerment Zone may be able to assist her. Lt. Albert Ruiz from the Fire Department advised that it would be acceptable if the property was to be properly boarded up and secured until she takes care of it.

Motion made by Miguel Angel Ochoa, seconded by Chuck Taylor to accept staff recommendations with the modifications that the property be boarded up and secured within 30 days and 60 days for either demolition or an engineer's report to be submitted to determine the feasibility if the property can be rehabilitated, unanimously passed.

The owner has been notified of the property violations at this property and attempts to maintain the structures secure have become unsuccessful; to date there has been some corrective action taken, and therefore the Department recommends:

1. That the structures remain condemned as substandard, and unfit for habitation or use and a hazard to the public health, safety, and welfare; and
 2. That the structures are not in substantial compliance with the municipal ordinances regulating fire protection, structural integrity, and disposal of refuse; and
 3. That the structures' certificate of occupancy remain revoked; and
 4. Secure the structures within thirty (30) days and maintain secure thereafter; and
 5. To provide an engineer's report to rehabilitate the structure's or demolish the structures within sixty (60) days; and
 6. That the premises be cleaned of all weeds, trash, and debris within thirty (30) days and maintained clean thereafter; and
 7. That upon failure by the owner or any other interested party to comply with the order of the Building and Standards Commission the City may take whatever action is necessary to bring the property into compliance, and place a lien on the property for the work which will be done by the City.
- VIII. Public hearing to determine if the Building and Standards Commission Order for the property located at 105 N. Oregon in the City of El Paso (legal description on file with the City Clerk) is in compliance with the orders of March 31, 2010, and if not, to determine adjustments and action to be taken on the non-compliance of the orders. On March 31, 2010, the Building and Standards Commission ordered that that an electrician be hired to evaluate the entire electrical system and make the required repairs and remove all non-permitted or illegal wiring, equipment or distribution systems within sixty (60) days; and that a contractor be hired to repair all noncompliant plumbing installations and repair the required restrooms, install a ventilation system in the restroom and provide access from all occupied tenant spaces to the restrooms within sixty (60) days; and that all non-permitted installations of partitions and ceilings be removed within sixty (60) days; and that all non-permitted mechanical systems be removed within sixty (60) days; and that all broken window glass be removed and the openings be protected by covering with plywood within sixty (60) days; and that all components of all egress paths shall be restored to the required rating and the required panic hardware be installed within sixty (60) days; and that all non-permitted storage and accumulations of materials, articles, trash and debris be removed within sixty (60) days; and that the fire code violations listed in the Fire department correction notice of January 19, 2010 be corrected and the fire escape be repaired; and that if the requirements of the items listed herein are not brought into compliance with within sixty (60) days the structures certificate of occupancy be revoked; and that the structure be vacated; and that the structure be secured and maintained secure until rehabilitated. The owner of the property is identified

as Caples Land Company, LLC (record owner), and he have been notified of this hearing.

Chairman Michael Bray advised that for the discussion and action for 105 N. Oregon, those wishing to give public comment on the case, each will be allowed three minutes to speak. In addition, the commission will only discuss and take action on what the board is enable to take action on.

Nathan Walsh, Chief Building Inspector, introduced the case to the commission. The commission was informed that Deputy City Attorney Laura Gordon will address the board first followed by John Batoon and then Chief Fire Marshal Orlando Arriola.

Deputy City Attorney Laura Gordon addressed the board by giving a chronology of what City of El Paso has been dealing with for the past 6 years on this property. Ms. Gordon advised that the original investigation started in 2009 when the city became aware of problems with the property. Meetings were held with the property owner to call attention on the issues that needed to be corrected. One of the concerns is that there are tenants occupying the 1st floor of the building and the condition of the building that it is in poses a danger to them. In March, 2010, emergency action was taken and the tenants were ordered not to occupy the premises, then later, they were allowed to go back and occupy the building. Although the owner had ample time to address these issues, he instead proceeded with legal litigation. At the Building Standards Commission meeting of March, 31st 2010, the owner was provided with a specific list of what needed to be addressed and repaired. Another hearing was set for July 25, 2010. 55 days after the first hearing, a lawsuit was filed and the proceedings for this case stopped. An Injunction was filed preventing the city from taking further action. The City appealed and the 8th Court of Appeals on January 23, 2013, reversed the injunction, thus allowing the city to proceed and impose action on the owner. The owner appealed to the Supreme Court of Texas and the court denied the petition for review in September, 2013. The case was remanded back to trial court. Some minimal cosmetic changes have been made and the tenants still occupy the building. In November, 2015, the court ruled in favor of the City of El Paso. The City filed and prevailed and reinstated the original orders from March, 2010. Ms. Gordon asked the commission to hear the case and assess civil penalties against the owner for 1000 days from March 31, 2010 which totaled 1058 days for a total of \$2,158,000.00

Chairman Michael Bray asked that if any civil penalties are assessed, there is a ten percent interest accrued a year from the date of assessment until it is paid in full. Mr. Bray asked if the interest would start accruing from 2010 or from the time the penalties is affirmed. Ms. Gordon advised it would be from the time it is assessed. The commission will be asked to assess the penalties.

Board member Chuck Taylor asked if the building was still being occupied now and was advised that it was. Mr. Taylor commented that he did not hear that the city condemned the property. Ms. Gordon advised that the city did take emergency action where the tenants were ordered to close and vacate the building. The owner came in and met with staff and made the minimal sort of repairs which allowed the tenants back in the building on March 15, 2010. The owner was given the list of things which needed to be addressed, however, on the 55th day filed an injunction and the city did not proceed with enforcing the codes.

Board Al Jurado asked if the violations being presented are hurting the tenants occupying the building. Mr. Jurado was advised that the tenants are making do with the situation they are in.

Chairman Bray advised the original order has been reaffirmed by the judicial system and what will be presented is to determine if the original order has been complied with. Senior Assistant City Attorney John Batoon will present and make the recommendations.

Laura Foster, Architect for Planning and Inspection was introduced. Ms. Foster advised that she presently manages the Building Safety Division. A chronology of inspections conducted, notifications sent and taxes owed for the property between 2015 and 2016 for the property located at 105 N. Oregon was presented. The board was advised that a total of \$48,939.64 is owed in taxes.

Oscar Pedregon, Electrical Inspector Supervisor was called by Mr. Batoon as the next witness. He was asked what his job function is and he advised that he oversees all electrical inspections conducted by the inspectors. He also advised that he had made numerous inspections at 105 N. Oregon. The board was advised that the orders given at the March 31, 2010 meeting stipulated that an electrical contractor be hired to evaluate the electrical systems and obtain permits for repairs of the noncompliant system. Inspector Pedregon advised that very minimal corrections had been made. An inspection conducted on April 15th, 2016, showed the electrical system had deteriorated.

The following exhibits were presented.

Exhibit 2-The existing electrical system can cause electrical shock and fire.

Exhibit 3-The electrical conduits are not properly supported; telephone and electrical wiring close together which could compromise the telephone lines and create a shock hazard.

Exhibit 4-Improper ceiling light fixtures can cause a buildup of heat and electrical fires.

Exhibit 5-Open electrical wiring and light fixtures have been modified outside of their use and can create a fire hazard and electrical shock.

These items were to be corrected as part of the March 31, 2010 orders but have not been done so.

Chief Building Inspector Adrian Garcia was introduced as the next witness. Mr. Garcia advised that he oversees all plumbing, mechanical, and building inspectors for commercial buildings in the City of El Paso. Mr. Garcia also advised that he has made numerous inspections of 105 N. Oregon including the one conducted on April 15, 2016.

Exhibit 6-The plumbing and mechanical system and the walls are nonabsorbent with waste and fecal matter all around. The plumbing system is inadequate and the valves leaking water. This creates an unsanitary condition and compromises the floor assemblies. Senior City Attorney John Batoon advised that part of the March 31, 2010 order was to hire a plumbing contractor to repair the plumbing system, restrooms and ventilation system. One of the restrooms was for use by the first floor tenants.

Exhibit 7- The wall has collapsed compromising the drainage system for the toilets due to water seepage going through the wall and floor compromising the floor assembly. There was also water that has pooled from the mechanical system. This creates mold which can have airborne diseases throughout the building affecting the tenants. The inspectors had to use masks and boots to enter and conduct their inspections.

Exhibit 8-There is an open and abandoned drainage system with missing plumbing fixtures and water has seeped in from above which is causing the floor to lift off and may create an asbestos issue. Mr. Garcia also stated that this was also part of the March, 2010 orders that needed to be repaired.

Exhibit 9-The non-working restroom facilities on the second floor were to be used by the tenants located on the first floor. They have no water and floors had been compromised due to water and fecal matter. They were to be fixed.

Exhibit 10-The abandoned mechanical system has not been used or maintained for several years. This was supposed to be repaired within 30 days as part of the March 2010 orders.

Exhibit 11-There is an unmaintained mechanical system for the two tenants on the first floor. This was to be fixed as part of the March 2010 orders.

Exhibit 12- Shows an abandoned mechanical system

Exhibit 13-The boiler located in the basement has not been maintained.

Exhibit 14-A report was shown stating the mechanical was inactive and had not been in service for some time. Mr. Garcia advised that with the electrical, plumbing and mechanical systems being inactive and not maintained, this may result in gas release, ruptured pipes and create a fire hazard. None of the violations have yet been repaired. These types of violations exist throughout the building.

These were the items that were to be corrected as part of the March 31, 2010 orders.

Laura Foster, Architect with the City of El Paso was called for testimony on the slide presentations for 105 N. Oregon. Laura Foster advised that the building is dilapidated, non-maintained with the following violations.

Exhibit 15-Shows many building and safety violations throughout the building. There is severe dilapidation throughout the building indicating a long term pattern of neglect. The slide presentation shows that due to waste water, the ceiling has collapsed and was never repaired. There is also one of many unpermitted, unrated partitions throughout the building that includes unpermitted electrical, plumbing and mechanical systems. The unpermitted partitions and ceilings were to be removed as part of the March 2010 orders. Repairs have not been made. There is danger of health issues, ceilings collapsing and fire.

Exhibit 16-The ceiling is damaged and in disrepair. The ceilings are damaged and have unpermitted and unrated repairs posing a health and safety risk. As per the March 2010 orders, repairs were supposed to be done but have not been done so.

Exhibit 17-There are wall partitioning for uses which are unpermitted. Mold may be present throughout the walls which was evident throughout the building.

Exhibit 18-There is an illegal installation of a structural system consisting of cinderblock which is holding a structure above making it dangerous.

Exhibit 19-Many unpermitted partitions using plywood, creating a fire hazard.

Exhibit 20-There is an installation of an unpermitted staircase which may collapse.

Exhibit 21-There is unpermitted electrical work and old plastered finishes which is severely damaged creating a fire, health and safety risk.

Exhibit 22-There is an unpermitted wall with an exterior window to the outside. There are many openings throughout the area. There is an illegal construction of a window on an unrated wall creating a fire hazard.

Exhibit 23-There is severe water damage through the roof and plumbing system.

Exhibit 24-There is long term neglect and evidence of rust indicating the failing of a structural system.

Exhibit 25-There is water rust and water damage on the floors possibly from a failing plumbing system and structural system.

Exhibit 26-There are partitions but due to illegal entry, they has been damaged and vandalized and because of the unrated walls, as part of the March 2010 orders they were to be removed.

Exhibit 27-There is evidence of unauthorized occupation and abandoned mechanical equipment.

Exhibit 28-There is unpermitted combustible storage, creating a safety concern for emergency first responders.

Exhibit 29-There is unpermitted storage.

Exhibit 30-Another slide shows unpermitted storage creating a fire hazard.

Exhibit 32-The floors shows evidence of intrusion not only by weather, but also by animals creating a health risk. Many floors have large quantities of animal dropping and bird and animal carcasses. It is also a not only a health risk to those occupying the building but also to the neighboring properties.

Exhibit 33-There is evidence of dead birds throughout the building including carcasses and skeletons from a dog and cat.

Exhibit 34-Evidence of graffiti indicating that there is illegal entry into the building. The machine room has pigeon droppings a foot deep. A canine jaw was on the stairway. This was supposed to be cleaned up as per the March 2010 orders

Exhibit 35-The exit way from the street on the ground floor which is occupied is locked. Should there be a fire; the individual would be locked in. There is no proper egress and the exit sign is missing. The exterior shell shows that the window has been broken out and improper boarding had been performed and taken down allowing illegal entry. Inspection of the floors showed evidence of broken glass.

Exhibit 36-Shows some of boarding done since February is insufficient and incomplete. It was done without interior cleanup of all the debris, dead animals, and combustibles. If the boarding was done properly, it would have been secured from illegal entry.

Exhibit 37-There is evidence of missing and improperly installed openings windows and doors that were not properly secured. A machine room which opening is unsecured allows access into the building.

Exhibit 38-There are openings that are not properly secured. Entry can be gained through the fire escape.

Exhibit 39-The roof entrance door is unsecured. There is also a window that is open allowing unauthorized entry. The roof is littered with loose debris and objects causing damage to the roof. The building is adjacent to the tower next to it.

Exhibit 40-Shows the lobby area that is occupied, the exit way chained and locked shut, with no egress out of the building. In addition, a midcentury façade remodeling was done; the fasteners are starting to fail creating a safety hazard to the street below. The pieces may become unanchored and fall on someone.

Exhibit 41-There is ponding water on the roof causing ongoing water damage. The roof also showed many layers of repairs which has improper drainage and is deteriorating. There is a retrofit with improper drainage.

Exhibit 42-There is debris on the roof and abandoned mechanical equipment.

Exhibit 43-There is machinery on the roof and signs of human habitation and bird infestation with bird droppings. It is also adjacent to the tower creating an environmental hazard.

Ms. Foster advised that none of the repairs have been done as ordered.

There was public comment from Fire Marshal Orlando Arriola.

Fire Marshal Arriola advised that the presentation slides showed a vacant, unsecured building. There is access from the outside to the inside. Sliding doors have been compromised and damaged. There is improper safeguarding to the building. There is roof access. Emergency response would be in danger if they need to enter the premises. The accumulation of combustibles and storage found throughout the building would present a high fire danger. The building is dark, creating a traffic hazard to emergency first responders. These issues were to be corrected within 60 days from the March 2010 orders, but have not been done so. The building's fire sprinkler systems were found to be non-working. The last inspection of the system was conducted in 2009. There are openings in the ceiling which would allow fire to spread throughout the building. The floor may collapse. There are pigeon carcasses, droppings and waste which would present a health hazard to emergency responders. The vacant portions of the building are unsecured from authorized entry and considered unsafe. There is evidence of unauthorized entry and criminal activity.

Senior Assistant Attorney John Batoon advised that based on the long history of the non-compliance the department is recommending.

- That the owner be assessed the following civil penalties: A total of \$1,000.00 a day for 2, 158 days, during which time the Building and Standards Commission Order of March 31, 2010 was not complied with for a total of \$2,158,000.00; and

- That the March 31, 2010 Order of the Building and Standards Commission be adjusted to order the following:
 - - a. An electrician shall be hired to evaluate the entire electrical system and make the required repairs and remove all non-permitted or illegal wiring, equipment or distribution systems within thirty (30) days; and
 - b. A contractor shall be hired to repair all noncompliant plumbing installations and repair the required restrooms, install a ventilation system in the restroom and provide access from all occupied tenant spaces to the restrooms within thirty (30) days; and
 - c. All non-permitted installations of partitions and ceilings shall be removed within thirty (30) days; and
 - d. All non-permitted and abandoned mechanical systems be removed within thirty (30) days; and
 - e. All broken window and door glass shall be removed and the openings be protected as per board and secure standards illustrated in the International Property Maintenance Code within thirty (30) days; and
 - f. All components of all egress paths shall be restored to the required rating and the required panic hardware shall be installed within thirty (30) days; and
 - g. All non-permitted storage and accumulations of materials, articles, animal droppings and remains, trash and debris shall be removed within thirty (30) days; and
 - h. The fire code violations listed in the Fire Department correction notice of January 19, 2010 shall be corrected within thirty (30) days; and
 - i. If the requirements of #a through #h are not brought into compliance within thirty (30) days, that the structure shall be vacated, cleared of debris and waste products, secured and maintained secure for no longer than one (1) years, after which period of time if the requirements have not been met, the structure must be demolished or is subject to other remedies available as established by the state; and
 - j. That upon failure by the owners or any other interested party to comply with the order of the Building and Standards Commission, the City may take whatever action is necessary to bring the property into compliance, and place a lien on the property for the work which will be done by the City.

Chairman Michael Bray advised if orders are not complied with, that the building to be vacated and Mr. Batoon also requested after the 30 days that the certificate of occupancy be revoked if the orders are not complied with.

Robert Skipworth, legal representative for Caples Land Company LLC, was present for public comment. Mr. Skipworth advised that there have been electricians and plumbers that have been hired and that the building has been boarded up. They may have to return to ensure that the boarding up is in compliance with the code. Mr. Skipworth commented that to clean up the debris and do all the required repairs of the building within 30 days would not be possible. Mr. Skipworth advised that the owner has a right to seek recourse through the court system. He also stated that the assessment of penalties in the amount of \$2,158,000 is outrageous and unconstitutional based on Chapter 41 of the Civil Practices and Remedies Code. He stated if the owner had to pay that amount of penalties then he would be unable to make the repairs. He called Laura Foster to testify reference the repairs on the building. Miss. Foster advised that in her discussions with Mr. Abraham in February, she recommended that he hire a team of licensed trades; a plumber and a mechanical and electrician contractor and a crew to board up and secure the building. Ms. Foster also stated that the repairs can be done in 30 days. She also advised that the city does work with the owners and managers to do phased rehabilitation of the buildings if they show efforts in complying with the codes. Ms. Foster advised there has

been no effort in securing the building and obtaining these contractors. Mr. Skipworth advised that Mr. Abraham cannot attend to this, but Ms. Foster stated that he can fund the repairs and direct this through the two agents that he appointed to oversee this property.

Chairman Bray asked if the owner is Caples Land Company, LLC and if Mr. Abraham is the only owner of this property or if there is some type of management structure in place to manage the property. Mr. Skipworth advised he was representing Caples LLC.

Board member Randy Boggs asked if the amount of money owed was obsessive and would Mr. Abraham put it into an escrow account. Mr. Skipworth commented that would be a good suggestion, however, he does not agree with the amount of money owed.

Board member Chuck Taylor commented about people living in the building from time to time since the boarding of the building is removed giving access to enter it. He also asked since there is a time line to meet the recommendations, what means were to be used to secure the property so that no further destruction and entry would be occurring. He stated that if the boarding up of the windows and doors was done properly, there would be less likely for entry into the building. However, as shown, it has not been done properly.

Chairman Bray asked Mr. Skipworth if Mr. Abraham represents Caples Land Company would he not have a sense of duty to do whatever in his means to protect the integrity of his assets and securing the building. Mr. Skipworth advised that Mr. Abraham's duty is to the shareholders of the corporation to assure that the assets are protected. Chairman Bray commented that the condition of the building is much worse now than before. He also asked reference the restroom facilities offered to the tenants, would Mr. Skipworth use them. Mr. Skipworth advised that he would not. Skipworth advised the duty of the landlord is based on the lease and he doesn't know what the lease states. Mr. Bray asked if in any lease would there be at least include meeting the minimal code levels of safety and health code. Mr. Skipworth replied that in a lease there are maintenance requirements for the landlord and tenant. He continued stating that there have been leases where the responsibility of maintenance of the building falls on the tenant and if the landlord had the duty to maintain the restrooms, they should be maintained. Mr. Skipworth was asked reference the leases for the two different tenants located on the first floor, if they have the responsibility for the maintenance on portions of the building. Mr. Skipworth advised no they do not. Chairman Bray commented on Mr. Skipworth's statement that the amount of penalty being charged was illegal. Mr. Skipworth stated he agreed what the municipal code states reference a \$1000.00 a day penalty, however, if they charge more in penalties than what the building is worth, that would be excessive. He advised that in Chapter 41 of the Civil Practices and Remedies Code, it requires penalties to be reasonable and there are certain standards in the CPRC that have to be found before penalties can be assessed. Skipworth commented that the penalty is outrageous, considering the location of the property and the condition that it is in. He stated a buyer will not pay \$2,000,000. In addition, Mr. Abraham should be given time to correct the situation and agreed with Laura Foster's recommendations and consideration to what can and cannot be done.

Chairman Bray commented that he has not seen Mr. Abraham taking care of his buildings. He also stated that Mr. Abraham had previously requested additional time to take care of what needed to be done on the buildings but has failed to do so. Mr. Skipworth advised that he is trying to prevent an order being issued requiring Mr. Abraham to correct all the violations within 30 days. Chairman Bray commented on the toilets, bird droppings being a foot thick and the building being open. He stated he was concerned that the conditions have not been corrected and the adverse effect on the tenants if the building is vacated. Mr. Skipworth commented his concern is on the orders given that will set up Mr. Abraham to not be able to comply with the orders. He asked if within 30 days, a substantial amount of work has been done on the building, would the commission consider an extension of time. Chairman Bray advised that the

commission does not have the authority to make that decision. He stated their authority is on an order, whether it has been complied with or not, and if there is going to be a fine or are staff recommendations will be accepted. The staff determines whether the owner has made significant progress and whether the city is willing to work with the owner.

Board member Alejandro Ganen asked what the value of the building was. City Attorney Batoon advised that the property was valued at \$846,000.00 based on the information from the Central Appraisal District.

Mr. Batoon stated that yes Mr. Abraham and Caples LLC does have the right to pursue legal remedies, however, with legal rights comes responsibilities. He stated Mr. Abraham has a responsibility to keep the building safe and fix what needs to be repaired. He commented the reason that the legislature and the city ordinance provided for civil penalties, is because of the serious nature of these types of cases and because they involved dilapidated, dangerous, uninhabitable buildings, which pose a fire and health risk to both the occupants and the people in the surrounding area. The legal result of that litigation where he lost to the Supreme Court and the court of appeals stated that the March 31, 2010 orders given stands. There have been six years of non-compliance. As of today, no permits have been obtained. Ms. Foster had been working with Mr. Abraham since February, 2016 and if there were some signs of compliance, they would have worked with him on a phased development plan. Mr. Batoon requested for the board to accept staff recommendations. He also advised that the law allowing \$1000.00 a day in penalties is allowed as long as the basis is there. The board was advised that Mr. Abraham knows of the order and has failed to comply with it. Both of those requirements have been met.

Chairman Bray asked if there was anyone present for public comment.

There was public comment from Max Grossman, County Architectural Historian, professor and vice chairman of the County Historical Commission and Executive Board of Texas Trust Society. Mr. Grossman stated that he was here to represent the County Historical Commission. He showed a slide presentation of the American Furniture building dated 1913. He informed the board he was joined by the executive director and vice-president representing the 29 member architectural preservation committee and Trust society to give his support to the staff recommendations. He stated the building can be rehabilitated and commented on the cultural and economic importance of this building. The board was informed that Henry Trust constructed 38 buildings in downtown El Paso of which 27 of those buildings are still standing. Several have been declared landmarks and others have been declared non-contributing. The American Furniture building has been declared non-contributing. He stated it is a very important building making it the largest bank and is considered an architectural masterpiece. It was considered a financial icon in the region. In 1949, the American National Bank became the American Furniture Building and an ugly veneer was applied to the exterior. It is unknown much of the building exterior is still surviving today would depend on having to go underneath the exterior or if the building could be rehabilitated. He commented on the discussion regarding the outrageous code violations and on the negligence on the part of the owner. Mr. Grossmann stated that on behalf of the County historical Society and the Texas Trust Society supports staff recommendations. Mr. Grossman also commented on the numerous violations found in the building and the economic damage it has caused. He advised that El Paso only attracts 2.1 percent of tourism with El Paso being the 6th largest city in the state. The board was advised that a architectural survey will be done and downtown El Paso will be a national historic district sometime in 2018 with millions of dollars are being used to restore buildings. Although not for discussion, the Kress, Caples, Haymon Krupp and J J Newberry buildings are in a dilapidated, dangerous condition. He commented that the American Furniture building will eventually become a contributing building in a national historic district with tax credits that will pay up to 45% when the building is rehabilitated. He also stated that the level of penalty being given is not outrageous.

There was public comment from David Stout, County Commissioner, Precinct 2, who represents the downtown area where this building is located. He advised that the County of El Paso has stated that historic preservation is a priority and realize the importance of this building, the downtown area and the significance of all the Trost buildings. He stated the County of El Paso supports the recommendations of the staff. A letter stating the County of El Paso support was provided.

Larry Nichols, Director of Planning and Inspection addressed the commission. He advised that he has been with the city 11 years and involved with this particular case for 7 years. He added that he is not in favor of granting extra time to Mr. Abraham. He advised that Mr. Abraham had in the past requested for more time. Mr. Nichols stated that he hopes that in 30 days, they can see some type of compliance.

Chairman Bray stated that although the board has heard a lot of testimony regarding the historic significance of this building, the issue at hand is strictly the code violation that comes under 18.5 of the municipal code. The decision made will be solely on whether city staff has presented a compelling argument to show that the owner of this building is in violation and to decide that the requested fine is appropriate given the nature of this particular case. He asked if the commission had any questions or concerns

Board member Ganen asked how the maximum penalty was accessed. Mr. Batoon stated that based on the history of non-compliance and dangerous conditions being allowed to exist over 6 years, the staff is requesting the maximum penalty allowed by law.

Board member Randy Boggs asked when this penalty ceases. Mr. Batoon advised that the penalty is accrued 60 days after the March 31, 2010 orders. The staff is not asking for a continuation of penalty although under the code if there are further violations and non-compliance, the city can return and request additional civil penalties. The city is asking for penalties from the time he was supposed to comply up to today.

Motion made by Ochoa, seconded by Jurado to accept staff recommendations, unanimously passed.

The Department further recommends that since the owner has not complied with the Building and Standards Commission Order of March 31, 2010:

- A. That the structure is substandard; and
 - B. That the structure is not in substantial compliance with municipal ordinances regulating fire protection, structural integrity, and disposal of refuse; and
 - C. That the structure can be rehabilitated; and
 - D. That in order to be made safe, all of the aforementioned violations must be corrected.
2. That the Building and Standards Commission hereby orders the Owner(s) to comply with the following requirements:
 - A. That the owner be assessed the following civil penalties: A total of \$1,000.00 a day for 2,158 days, during which time the Building and Standards

Commission Order of March 31, 2010 was not complied with for a total of \$2,158,000.00; and

- B. That an electrician be hired to evaluate the entire electrical system and make the required repairs and remove all non-permitted or illegal wiring, equipment or distribution systems within thirty (30) days; and
- C. That a contractor be hired to repair all noncompliant plumbing installations and repair the required restrooms, install a ventilation system in the restroom and provide access from all occupied tenant spaces to the restrooms within thirty (30) days; and
- D. That all unpermitted installations of partitions and ceilings be removed within thirty(30) days; and
- E. That all unpermitted and abandoned mechanical systems be removed within thirty (30)days; and
- F. That all broken window and door glass be removed and the openings be protected as per board and secure standards illustrated in the International Property Maintenance Code within thirty(30) days; and
- G. That all components of all egress paths shall be restored to the required rating and the required panic hardware be installed within thirty(30) days; and
- H. That all unpermitted storage and accumulations of materials, articles, animal droppings and remains, trash and debris be removed within thirty(30) days; and
- I. That the fire code violations listed in the Fire department correction notice of January19, 2010 be corrected; and
- J. That if the requirements of #B through #I are not complied with within thirty(30) days that the structure be vacated, cleared of debris and waste products, secured and maintained secure for no longer than one (1) year, after which period of time if the requirements have not been met, the structure must be demolished or is subject to other remedies available as established by the state; and
- K. That if the requirements of #B through #I are not complied with within thirty (30) days that the structures' certificate of occupancy be revoked; and
- L. That upon failure by the owner or any other interested party to comply with the order of the Building and Standards Commission the City may take whatever action is necessary to bring the property into compliance, and place a lien on the property for the work which will be done by the City.

II. Update(s)

Chief Building Inspector Nathan Walsh provided an update on the following properties, 5649 Saplinas Rd., the structure has been demolished and on 2316 Wyoming Avenue, permits have been obtained. In addition, Mr. Alejandro Ganen was introduced as the new member of the Building Standards Commission.

IX. Adjournment

Motion made by Alejandro Ganen seconded by Angel Miguel Ochoa to adjourn this meeting was unanimously carried. The meeting adjourned at 9:22 p.m.

Michael Bray
Chairman

Nathan Walsh
Chief Building Inspector, CBO