

## MINUTES OF THE SPECIAL MEETING OF THE AMES CITY COUNCIL

AMES, IOWA

OCTOBER 19, 2010

The Ames City Council met in special session at 7:00 p.m. on the 19<sup>TH</sup> day of October, 2010, in the City Council Chambers in City Hall, 515 Clark Avenue, pursuant to law with Mayor Ann Campbell presiding and the following Council members present: Davis, Goodman, Larson, Mahayni, Orazem, and Wacha. *Ex officio* Member England was also present.

**RESOLUTION ENDORSING IOWA DEPARTMENT OF ECONOMIC DEVELOPMENT APPLICATION FOR FINANCIAL ASSISTANCE FOR WEBFILINGS, LLC, WITH LOCAL MATCH IN THE FORM OF ABATED PROPERTY TAXES UNDER THE INDUSTRIAL TAX ABATEMENT:** Moved by Davis, seconded by Mahayni, to endorse the Iowa Department of Economic Development application for financial assistance for WebFilings, LLC, with local match in the form of abated property taxes under the Industrial Tax Abatement Program.

Roll Call Vote: 5-0-1. Voting aye: Orazem, Goodman, Mahayni, Davis, Larson. Voting nay: None. Abstaining: Wacha. Resolution declared adopted, signed by the Mayor, and hereby made a portion of these Minutes.

**RESOLUTION APPROVING APPOINTMENTS TO THE BUILDING BOARD OF APPEALS:** Moved by Davis, seconded by Mahayni, to approve appointments to the Building Board of Appeals.

Roll Call Vote: 6-0. Resolution declared adopted unanimously, signed by the Mayor, and hereby made a portion of these Minutes.

**ROUNDTABLE DISCUSSION REGARDING RENTAL HOUSING CODE:** City Manager Steve Schanker explained that there were initially 28 issues raised by the Ames Rental Association (ARA) regarding the adoption of the new Rental Housing Code. He indicated that there are 11 items out of the 28 where major differences remain and discussion is still needed. There were a number of items that City staff was willing to move on, and the ARA has adjusted its position on some as well. The next step is to go through the issues one at a time to make sure that there is no confusion.

Issue Number 1: Section 13.108(1), Application for appeal. Chuck Winkleblack, on behalf of the ARA, explained that the ARA wanted the appeal time increased from 20 to 60 days because some owners live out of town, and it would give them more time to receive the letter and make plans for filing an appeal. However, the ARA is agreeable to staff's suggestion of 30 days. City staff and the Property Maintenance Appeals Board (PMAB) also agreed to change the word "increase" in paragraph (c) to "equal".

Issue Number 2: Section 13.301, Letter of Compliance (LOC). City staff adjusted its position and is in agreement with the ARA to remove paragraph 6(b).

Issue Number 3: Section 13.302(7), Transfer of ownership. City staff agreed to remove paragraph (7).

Issue Number 4: Section 13.302(10), Interior cleanliness. Mr. Winkleblack said that landlords do not want to be held responsible for things that are beyond their control. A Letter of Compliance should not be held up if a property is considered "unclean". The City Council agreed with the City staff and PMAB

recommendation to keep the language as is. Mr. Schainker noted that a decision regarding cleanliness can be appealed to the Building Official or the PMAB if a landlord disagrees with it. Fire Chief Clint Petersen said that staff would try to schedule an appeal within 30 days of a request.

Issue Number 5: Section 13.402(3), Approved pre-existing conditions. Mr. Winkleblack indicated that issue numbers 5, 6, and 28 are all similar. He said that landlords want to be able to keep and maintain properties that have been good rentals for many years. Most of the properties that have significant issues are the older properties in town, which are also affordable from a rent perspective. These properties would end up incurring significant costs which would eventually filter down to the tenants, or the properties will be lost as rentals if they cannot comply. These conditions are being portrayed as major safety issues on the properties. The ARA's contention is that a lot of these problems are widespread throughout the neighborhoods, rental and residential. The ARA does not think that rental properties should be singled out. Mr. Winkleblack said that "safe is safe, and unsafe is unsafe". If the City knows that a condition exists and feels that passionate about it, then the rules should apply for all houses.

Property Maintenance Appeals Board Member Pat Brown said that there is a difference between the commercial application of the law and the private property application. City Attorney Doug Marek added that the *State Code* makes a distinction between the two, and the City is required to have a rental property code. Ms. Brown said that this is not an issue of affordability or aesthetics - it is about health and safety. She said that a smoke alarm saved two young boys' lives in a rental property fire last week, which may not have been the case if there were no regulations. She wants to focus the discussion on health and safety.

In regards to inspections past and their effects on a property's future compliance, Mr. Marek said that there is no vested right for a property owner who has had a rental inspected and approved to have that approval continue. When a rental property inspection results in a Letter of Compliance (LOC), it is not a certification that the property complies with all applicable codes. If the City Council decides that an LOC is permanent, then inspectors would have to inspect for all of those things, which would be significantly different than what is done now. Inspectors do miss things, especially if they're not obvious. Chief Petersen said that through the two year process of adopting the new code, staff looked at what other communities do and based their actions on the *International Code*. He emphasized that it is an inspector's responsibility to continually adhere to the *Code*.

Council Member Orazem thought that this section was dealing with records. He noted that there was previously some confusion as to where some records are and how complete they are. Chief Petersen said that official records are on file with the City Clerk's Office. A property owner could also bring forward evidence that they were given a Variance, Administrative Approval, etc. Council Member Davis does not think that the *Code* should state that the owner "shall" submit a copy of the document. He thinks that the wording should be less restrictive, in case some do not have their documents anymore. Council Member Goodman said that every landlord should know that they need to keep copies of important documents. Mayor Campbell noted that all records in the Clerk's Office are public records; Mr. Winkleblack said he had understood that many of those records have been purged. Mr. Marek said that Retroactive Conversion Permits and Variances granted by the Housing Board of Appeals are permanent records and would not have been purged. Administrative Approvals or Letters of Compliance would not be on file with the Clerk. Council Member Goodman said that someone needs to keep and be able to provide a record of what has happened.

Mr. Winkleblack said that landlords may not have known that they needed to seek any other kind of document if they had an LOC in hand. He is not asking for the City to look past blatant hazards just because a property has an LOC; rather, he wants conditions that have met the standard in the past to be able to continue. He reiterated that what is unsafe for one is unsafe for all; if a property is considered uninhabitable and an LOC cannot be obtained, then it should not be allowed to be sold either.

Mr. Goodman said that it is an inspector's job to enforce the *Code*. Just because something is missed once doesn't mean that it should be missed again. Mr. Winkleblack said that the ARA does want new rentals to have to comply to a rental code, but it is not fair to expect the same of a place that can't possibly comply. Jim Gunning, also on behalf of the ARA, said that they would like for an LOC to substitute as an Administrative Approval. He is worried that some conditions that have been allowed will all of a sudden be non-compliant. An LOC should mean that a property is in compliance with the *Code*. Chief Petersen said that he has found no other community that went to the extent that the ad hoc committee did to document pre-existing conditions and allow them to continue to exist.

Mr. Orazem said that the issues are related to Administrative Approvals that aren't written. Mr. Larson would like to see a description of what an Administrative Approval is, including whether or not it needs to be in writing. People may have interpreted an inspector's verbal approval as an Administrative Approval. Some of these things may need to be appealed to the Board. Mr. Marek said that there are currently no parameters set out for the Board - the Council needs to tell the Board through passage of an ordinance to what degree it can grant variances and based on what information. Mr. Marek read an example of such an ordinance that has been adopted by the City of Iowa City.

Mr. Orazem asked how one could have a Board Variance if they are not allowed to exist. Chief Petersen said that there was a process in the past. Mr. Larson reiterated that Administrative Approvals need to be defined in the *Code*. Mr. Winkleblack concurred; when landlords met with inspectors in the past and were given a list of what items needed to be resolved, that was an Administrative Approval in their minds. Some properties have had continuous LOCs for decades, but now they are not complying. Council Member Goodman said that some property owners know that something doesn't comply, but yet they have been allowed to operate without complying for years. That is not adhering to the *Code*, and he is not sure that Administrative Approvals are even legal in some cases. However, if a Retroactive Conversion, Board Variance, or Administrative Approval can be produced, the *Code* should have some flexibility to allow that nonconformity to continue. Mr. Orazem said that the language should be kept as-is, but an appeals process should be established, particularly to address the situations where there is no written record.

City Building Official David Brown noted that authority has been granted to the Building Official to make certain interpretations of the *Code*. Layers of approval and decision making authority already exist; the first level is the Inspector, the second is the Building Official, the third is a board of appointed citizens. The *Code* states that the Building Official shall have authority as necessary in the interest of public health, safety and general welfare to interpret and implement the provisions of the *Code*; to grant *Code* modifications in individual cases due to practical difficulties. Mr. Brown indicated that this decision making authority has been followed and adhered to since he has been with the City, and he has seen only one Administrative Approval in that same period. *Code* modifications are made regularly, most ordinarily in building remodeling situations when something such as proper ceiling height or stair dimensions cannot be obtained, and he has approved those administratively because the *Code* grants him the authority to do so. Council Member Wacha asked if those approvals are in writing, and Mr. Brown indicated that they are. Mr. Marek noted that some things such as ceiling height are specifically listed in the *Code*, and if they are

continuing conditions, they may continue as long as no modifications are made.

Mr. Schainker noted that the issue lies with things that are not approved by the Building Official. Mr. Marek said that it is possible to submit an appeal of the decision of the Building Official to the PMAB. Lad Grove, on behalf of the Ames Rental Association, said that the Board does not have the authority to grant a variance for these issues. Mr. Schainker said that it is currently possible to appeal if the Building Official says something does not meet the *Code*; the Board has the power to determine if the Building Official correctly interpreted and applied the *Code* and overrule a decision if it sees fit. Mr. Wacha would like the City's Legal staff to work on language that would allow for specific criteria for an appeals process for variances. Mr. Larson thinks that the language about Administrative Approvals needs to be cleaned up.

Council Member Mahayni said that the PMAB's similarity to the Zoning Board of Adjustment function is very valid. He thinks that it is an important function; however, the parameters should involve obvious things that cannot be helped, and financial hardship is not one of them. He emphasized that verbal approvals do not mean anything. The City inspectors should not be issuing them, and owners should not abide by them.

City Manager Schainker clarified that for Issue Nos. 5, 6, and 28, the Council would like for the language in the *Code* to remain the same - with the addition of clarifying Administrative Approvals - and increase the authority of the Property Maintenance Appeals Board to handle variances, with guidelines similar to those listed in the Iowa City ordinance. Mr. Orazem added that this would be for existing rental housing. Chief Petersen said that this direction is much more preferable than the idea of a "blanket" LOC.

Issue Number 6: Section 13.402 (3)(d)&(h), Approved pre-existing conditions. Mr. Winkleblack said that Issue Number 6 is slightly different and should not be lumped in with numbers 5 and 28. He is concerned that houses in areas like Old Town have problems meeting current standards such as egress requirements. These houses cannot be rented because they don't meet today's standard. Chief Petersen said that if a house is on the rental registry with non-compliant egress windows, those can be documented as pre-existing and can continue. New rentals are required to meet current *Code* and current egress requirements.

Mr. Winkleblack said that properties eventually leave the rental registry, and the *Code* makes it prohibitive for others to ever come on. It is not fair to allow the stock of rental houses to diminish while owner-occupied houses in the neighborhood are allowed to continue with the same conditions. Chief Petersen said that this subject was widely debated on the ad hoc committee. Some landlords said that they did not need more competition, some neighborhoods did not want more houses being converted to rentals, nor did either side want to see new rentals brought in that were non-compliant. Those investing in a new property should know what the regulations and expenses are, and they can decide whether to move forward. Council Member Davis asked what the rules would be for a house that has dropped off the rental registry and then comes back on. Chief Petersen indicated that it would have to meet the new *Code*. Mr. Orazem added that the owner could also apply for a variance. He also noted that houses in Old Town would likely not be able to install newer egress windows, as that would be a violation of the Old Town covenants.

Mr. Winkleblack said that if the language in 13.402 (3)(d)&(h) remains the same, there will never be any more rental properties in areas like Old Town, and people who might want to rent a home will be forced to live in apartment complexes. He philosophically disagrees with the idea of cutting off certain areas of town from the rental market. Mr. Grove thinks that Old Town is a perfect scenario for a variance.

Mr. Orazem said that the language should remain the same, but an appeals process should be established. Mr. Schainker noted that the Code does not currently have a variance process established for new rentals. Council Member Larson agreed that there should be a process; Board Member Brown disagreed. Mr. Goodman said that the current language is a compromise, whereby those already in the rental market are not punished with new regulations, but those not in the market have to meet the current standards. He thinks that it is a reasonable expectation. Mr. Orazem thinks that current rental owners and new rental owners should have the same right to an appeals process. Mr. Brown agreed with Mr. Goodman; the current language is a compromise. The initial language indicated that as standards in the *Code* are raised, even those with an LOC would have to make improvements in order to keep the LOC valid.

Moved by Wacha, seconded by Mahayni, to keep the language in Section 13.402 (3)(d)&(h) as written. Mr. Goodman thinks that a lot of the major, recurring issues can be addressed by the Council, and *Code* changes can be made. It seems like the Council is “passing the buck” with an appeals process. Council Member Larson does not support the motion, because it is setting up two different standards. Everybody should have the opportunity for an appeal or variance.

Vote on Motion: 4-2. Voting aye: Goodman, Wacha, Mahayni, Davis. Voting nay: Orazem, Larson. Motion declared carried.

Issue Number 7: Section 13.403(1)(b), Gas fired appliances. Mr. Grove indicated that the ARA would like the words “open directly into” to be deleted. The ARA agrees with the PMAB suggested language, but wants to make sure that the *Code* indicates that separation by a wall with a closeable door is also permitted. City staff agreed to the general concept; Mr. Brown would like the language to specify that the wall has to be sealed up at the ceiling continuously and not permit air to go under or around it. Chief Petersen said that this issue was a lack of clarity in how the *Code* was written.

Issue Number 8: Section 13.403(1)(c), Fire alarm systems. All parties agreed to retain the current language.

Issue Number 9: Section 13.403(1)(d), Driveway approaches. All parties agreed that the language in paragraph (d) should be removed from the Rental Housing Code.

Issue Number 10: Section 13.406(8)(b), Approval of pre-existing parking areas. All parties agreed to the deletion of the words “rearranged” and “rearrangement”.

Issue Number 11: Section 13.406(10), Maintenance of Detached Garages, Sheds. Mr. Grove said that the ARA would like for buildings on the property that are not leased to not be governed by the Rental Housing Code. If a building becomes a problem, it can be addressed through the Abatement of Dangerous Buildings section in Chapter 5 of the *Municipal Code*. Mr. Goodman said that the dangerous building process is slow and laborious; he thinks the current language should be retained. The Council agreed.

Issue Number 12: Section 13.407(3), Protective treatment - paint. Mr. Gunning indicated that the ARA’s main concern was the language regarding oxidation stains. After discussion, the Council agreed to remove references to oxidation.

Issue Number 13: Section 13.407(11), Stair rise and run - exterior; and Issue Number 15: Section 13.408(2), Stair rise and run - interior. It was revealed that there was a misunderstanding regarding the

rise requirements; Chief Petersen clarified that the 3/8 inch threshold is for consecutive stairs, not cumulative in the entire rise. Mr. Gunning asked if something could be added to clarify this. City Inspector Ed Gillott indicated that there is a four page information sheet on this subject available on the Inspections website. The language in the *Code* will remain as-is.

Issue Number 14: Section 13.408(1), Interior Surfaces - Paint, Occupant & Owner Responsibilities. It was determined that this section will remain unchanged.

Issue Number 16: Section 13.503(5), Limits based on Zoning District - Maximum Occupancy. Mr. Schainker said that over-occupancy is a major issue that requires a lot of dialogue. It is not related to the Rental Code per se; it is still in the Zoning Code even if it were removed from the Rental Code.

Issue Number 17: Section 13.600(3), Plumbing - New Work Must Comply. After much discussion, a number of issues remained unresolved. It was determined that City staff would work with the ARA to develop clearer alternatives to present to the City Council at a meeting in the near future.

Issue Number 18: Section 13.602(3), Toilet Rooms - Floor surface. The ARA would like for carpeting to be allowed in bathrooms. The Council supports the PMAB's recommendation of allowing existing carpet in a bathroom to be a "noted" item in an inspection; replacement will be required by the next inspection cycle.

Issue Number 19: Section 13.702(6), Furnaces/re-circulated ventilation air. Mr. Gunning indicated that the ARA does not think that shared-air furnaces should be treated differently or inspected more frequently than non- shared-air furnaces. Discussion ensued as to whether the inspection cycle should be changed. Council Members agreed to support the PMAB recommendation of keeping the current language but inserting the word "shared" after the word "all" in paragraph (d).

Issue Number 20: Section 13.704(5)(b), Electrical Equipment - Kitchens. The ARA has yielded its initial position; the *Code* language will remain unchanged.

Issue Number 21: Section 13.801(3)(b), Above grade egress windows. City Manager Schainker questioned whether this issue has already been addressed with the establishment of a variance process. Chief Petersen said that this is not a gray area, and he is not sure how a variance would work on something specific as the size opening of an egress window. Mr. Marek said that if there is a variance provision for this issue, it would require the Board to make factual findings. Board Member Bert Schroeder said that egress is not only important for allowing people to escape, but also for firemen to get in for a rescue. Mr. Winkleblack cautioned that the decision to require newly-registered rentals to comply to the egress requirements would effectively take entire sections of town out of the rental picture. He restated his position that if it is truly unsafe, the requirements should be the same for all houses, not just rentals. Mr. Wacha disagrees with that philosophy; different standards are accepted in various commercial industries, such as restaurants. Mr. Goodman added that industries in which cash flow is produced are regulated in order to protect the consumer. The Council elected to retain the language as written.

Issue Number 22: Section 13.802(2)(b); and, Issue Number 23: Section 13.802(3), Fire Protection Systems. The ARA conceded both of these issues.

Issue Number 24: Section 13.802(4), Emergency access key boxes (Knox boxes). Mr. Grove said that the

*Code* currently requires that Knox boxes be installed on buildings of six units or more. City staff has indicated that this only applies to buildings with a locked entrance. The PMAB recommended that the requirement be increased from six to nine units or more. Chief Petersen said that at the time of said recommendation, there was no data available to indicate what kind of effect that change would have. If the requirement was lowered to 6, there would be 98 fewer buildings with 660 total living units that would not have this protection. PMAB Members indicated that they would not have supported the change from six to nine if they had been given that data.

All parties agreed to the addition of the language “when equipped with lockable common entrances” as a condition of requirement; however, the completion deadline was debated at length.

Moved by Goodman, seconded by Mahayni, to require compliance with Section 13.802(4) by no later than July 1, 2012.

Vote on Motion: 5-1. Voting aye: Orazem, Goodman, Mahayni, Davis, Larson. Voting nay: Wacha. Motion declared carried.

Issue Number 25: Section 13.802(5), Fire alarm system retrofitting. The ARA conceded this issue.

City Manager Schainker indicated that Issue Numbers 26 and 27 were accomplished with the recent change in the Uniform Plumbing Code.

Mr. Schainker noted that plumbing remained an outstanding issue; City staff will work with the PMAB and the ARA to resolve the plumbing issues and come back to the Council with recommendations.

**COMMENTS:** There were no comments by the Council.

**ADJOURNMENT:** The Special Meeting adjourned at 10:21 p.m.

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Diane R. Voss, City Clerk

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Ann H. Campbell, Mayor

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Emily Burton, Recording Secretary