



**APPEALS BOARD FOR THE PROPERTY MAINTENANCE CODE  
FEBRUARY 12, 2020 @ 5:30pm  
CITY OF BISBEE COUNCIL CHAMBERS  
915 S. TOVREAVILLE ROAD BISBEE, AZ 85603**

**MINUTES**

**5:30 pm CALLED to ORDER**

**Roll Call - Board Members**

	<b>Present</b>	<b>Absent</b>	<b>Excused</b>
<b>Al Anderson, Vice Chair</b>	<b>X</b>		
<b>Todd Conklin, Secretary</b>	<b>X</b>		
<b>John Crow</b>			<b>X</b>
<b>Al Hopper, Chair</b>	<b>X</b>		
<b>Brian Hope</b>	<b>X</b>		
<b>Joe Ward, Code Official an ex-officio member</b>	<b>X</b>		
<b>David M. Smith, Council Liaison to Board</b>			<b>X</b>
<b>Theresa Coleman, City Manager</b>	<b>X</b>		
<b>Tosca Henry, City Attorney</b>	<b>X</b>		

**Mr. Hopper, Chair stated that the published agenda had housekeeping items, the general format of the posted agenda had the term applicant and it wasn't appropriate for this meeting. At the first meeting the Board had adopted the agenda that was similar to the Board of Adjustment. He wanted to proceed with this meeting based on that agenda.**

**Below are the hearing procedures:**

- A. Call of the Docket**
- B. Housekeeping items- Which documents accepted and time frames**
- C. Summarization of the issues and relevant data by City Staff**
- D. Presentation by the Appellant**
- E. Comments by other persons in favor of the Appellant's position**
- F. Comments by other person opposed to the Appellant's position. City Staff may respond to the substance of this appeal at this time**
- G. Rebuttal by the Appellant**
- H. Closure of the comments from the public**
- I. Discussion of the issues among the Board members**
- J. Call for motion and decision by the Board**

**Ms. Tosca Henry, City Attorney reminded the Board of the scope of the appeal; whether or not the code was correctly or incorrectly interpreted and applied, whether provisions of the code do not apply or do not fully apply and/or whether the requirements of the code are adequately satisfied by their needs.**

**Mr. John MacKinnon, representative to the appellant, Ms. Bovee said that they also raised the issue of whether an administrative proceeding was the decision made, and if the application was arbitrary, capricious and abuse of discretion as it relates to whether it was legal will be one of the standards that they will be speaking about.**

## **NEW BUSINESS**

**Item 1.** Appeal regarding corrective order and findings dated November 30, 2019 – Notice of Prohibition of Occupancy, 61 A Shearer Avenue; Owner Ms. Christianne Bovee. Loss of wall supporting property 61 A Shearer Avenue- Broken retaining wall Dangerous structure or premises 2012 Property Maintenance Code Section 108.1.5 (5).

**Mr. Hopper, Chair called for the Docket,**

- **Mr. Joe Ward, City Staff summarized the issues and gave relevant data.**

**Ms. Tosca Henry, City Attorney spoke regarding time frames of speakers to the Board. The representative for the Appellant Mr. MacKinnon stated that he would not recognize time limits and that he would appreciate the right to have due process.**

- **Mr. John MacKinnon, gave a presentation on the Appellant’s position.**
- **Witnesses who spoke regarding the Appellant’s position:**
  - **Lynn Kartchner, PE**
  - **Mr. Jon Sky**
  - **Ms. Christianne Bovee, Appellant spoke how this had impacted her.**
  - **William Bailey, neighbor who was below and to the left of Ms. Bovee spoke regarding the work that had been done and stated that he wasn’t concerned about the house coming down.**
  - **Steve Bovee, Appellant’s brother**
  - **Mr. Kenneth Budge stated he was there to advocate for Mr. Bovee**

**During the presentation and witnesses who spoke of the Appellant’s position the Board asked questions and they were answered by the Appellant’s representative and/ or witnesses.**

- **Comments by other persons opposed to the Appellant’s position (City Staff may respond at this time):**
  - **Mr. Jesus Haro, Public Works Director was asked by Mr. Hopper, Chair to speak regarding his conversations with Ms. Bovee.**

**During Mr. Haro’s comments Mr. MacKinnon, Representative of the Appellant asked Mr. Haro questions regarding his conversations with Ms. Bovee.**

**Mr. Haro answered Mr. MacKinnon’s questions and any that the Board had regarding his conversation with Ms. Bovee.**

- **Closure of the comments from the public**

**Mr. Hopper, Chair stated that there was talk with the City Attorney that the Board might want to go into Executive Session to talk about this issue.**

**Mr. MacKinnon, stated that he would suggest that it would be inconsistent with the Boards obligations under the Open Meeting Law. The Board was allowed to go into Executive Session for very limited situations, none of which would include deliberations of this particular matter.**

**Ms. Henry, City Attorney stated that it was properly agenzized that if the Board wished to consulate with their attorney for legal advice they were able to do so.**

**Mr. MacKinnon reiterated his position about going into Executive Session.**

**Ms. Henry reiterated that the Board had the right to go into Executive Session and stated to Mr. MacKinnon that his objection was noted into the record. She respectfully disagreed with Mr. MacKinnon and stated that they were well within their rights to go into Executive Session.**

**Mr. Anderson made the motion that the Board vote on whether they want to go into Executive Session for consultation or legal advice with the City Attorney.**

**Mr. Hopper seconded that motion**

**Roll Call:**

**Ayes: Mr. Hope and Mr. Conklin**

**Nays: Mr. Hopper and Mr. Anderson**

**Motion Fails: 2/2**

- **Discussion of the issues among the Board members**

**Mr. Hopper stated that whether it was the Fire Department or the Building Inspector he felt they were trying to carry out their jobs in good faith. The Board had heard absolutely nothing of the owners' intent on following through with stabilizing that area. The Building Inspector was correct in saying that this was a dangerous situation and that we couldn't let the owner live in the house until we had a definitive solution on the how to mitigate the ground and foundation of this house. It must be permanently stabilized.**

**Mr. Conklin stated that a current survey had not been issued, there hadn't been any finalization on who owned the property.**

**Mr. Hope stated that regardless of who's land it was, there was approximately 9 feet from the edge of the house to where that retaining wall was. Without an engineering study do we know that the house would fall with a 9 ft edge. He had a hard time believing that the house was unsafe.**

**Mr. Anderson stated that the City of Bisbee may have not conducted this process 100% correctly for the legal guidelines and there has been a lot of speculations and subjective opinions about the structural integrity of this property. It has been his experience that the only creditable opinion was the testing that engineers do, and he didn't see that Mr. Kartcher had based his report on any testing. Until testing was done, there could only be one objective opinion that was based on the evidence. The fact was that the retaining wall has collapsed so it was predictable that it would continue to collapse, given that there had been a complete lack of testing, the city had no choice, but to lean on the side of public safety. It was prudent that the structure remains vacant and the area be barricaded until a permanent repair was installed.**

- Call for motion and decision by the Board**

**Mr. Anderson made a motion to approve the City of Bisbee's decision of prohibiting occupancy to this house until such time as a retaining wall is replaced and someone proves that the new wall is structurally sound and can support any surcharge imposed on it by the house above it or that the house was not imposing a surcharge onto the wall.**

**Mr. Hopper said that Ms. Bovee's house was sitting on her property and that all construction to stabilize this house had to be done on her property. Ms. Bovee had the responsibility to respond to this situation in a promptly manner.**

**Mr. Hopper asked if there was a second to Mr. Anderson's motion. The motion fails for a lack of a second.**

**Mr. Hopper made a motion that the decision of the Building Inspector stand as written and that the appeal be denied.**

**Mr. Anderson seconded the motion**

**Mr. MacKinnon, and the Appellant spoke out of turn after the motion was seconded.**

**Ms. Henry, City Attorney called for a point of order the discussion was closed.**

**Ms. Coleman let the chair know that he could call for a point of order.**

**Mr. Hopper called for a point of order to proceed with the vote.**

**The Board asked for the motion to be restated, Ms. Henry said that the motion not verbatim was to approve the decision of the Building Inspector as written.**

**Roll Call:**

**Ayes: Mr. Hopper and Mr. Anderson**

**Nays: Mr. Hope and Mr. Conklin**

**Motion Failed 2/2**

**Mr. Hopper motioned to Adjourn.**

**Mr. Conklin Seconded.**

**Mr. MacKinnon, and the Appellant Ms. Bovee asked if another motion could be made.**

**Mr. Conklin withdrew his motion to second adjournment.**

**Mr. Hopper motioned to adjourn.**

**Mr. Anderson seconded.**

**Roll Call:**

**Ayes: Mr. Hopper and Mr. Anderson**

**Nays: Mr. Hope and Mr. Conklin**

**Motion Failed 2/2**

**Mr. MacKinnon asked if there could be more discussion. Ms. Henry, City Attorney answered no.**

**Mr. Conklin made a motion to go into Executive Session.**

**Mr. Hope seconded the motion.**

**Roll Call:**

**Ayes: Mr. Hope, Mr. Conklin, Mr. Hopper and Mr. Anderson**

**Nays: 0**

**Motion Passed: Unanimously**

**Mr. MacKinnon, asked if his objection was noted for the record.**

**Ms. Henry, City Attorney stated, yes.**

**Mr. Hopper asked for a motion to reconvene.**

**Mr. Conklin seconded that motion.**

**Ms. Henry, City Attorney said that the Board had just reconvened after Executive Session, which was very narrow just for some legal advice. She reminded the governing Board of the scope of this appeal; whether or not the code was correctly or incorrectly interpreted and applied.**

**Ms. Henry, City Attorney pointed out to the Board they are without a successful motion.**

- Call for Motion and decision by the Board**

**Mr. Hopper asked if there was a motion.**

**Mr. Anderson made a motion to allow Ms. Bovee to occupy her house until such time as construction begins on the wall and not return until such time as the retaining wall was replaced and someone proves that it is structurally sound and it can support any surcharge imposed on it by the house above or that the house is not imposing the surcharge onto the wall.**

**Mr. Conklin asked that the motion be read again.**

**Mr. Anderson stated that his motion was to modify the City's decision of prohibition of occupancy to allow Ms. Bovee to occupy her house until such time as the construction begins on the wall and not return back into her house until such time as the retaining wall is replaced and someone proves that the new wall was structurally sound and it can support any surcharge imposed on it by the house above or that the house is not imposing the surcharge onto the wall.**

**Mr. Conklin wanted clarification of the motion; that Ms. Bovee could occupy the home as of now until engineering or infrastructure was to be brought about to build the wall, she would actually be allowed to live in the house.**

**Mr. Anderson stated that he wanted some common ground to support our Building Inspector's decision. At the time he made the decision that the building was in danger of falling down. There had been some remedial action and dirt piled against it, he was trying to find some medium ground for Ms. Bovee to go back into her house and occupy it until such time that construction begins. Also not allow her to go back into that house until after the construction was finished and certified by a structural engineer not a civil engineer that the wall could support a surcharge that was the weight of the foundation of that house pushing up against that wall or her foundation was not being jeopardized.**

**Ms. Henry, City Attorney said that in order to entertain this motion and clarification for staff the motion should be tied to that.**

**Mr. Hopper asked what if due to the fact ownership of the area, were that wall existed will take a year to determine who owns, who has to pay for the reconstruction of that wall and this goes on in litigation for a year or two that Ms. Bovee can live in the house and the final decision was that rebuilding that wall was not relevant for the safety of the house she could live there forever.**

**Mr. Hopper also asked Mr. Anderson why he was tying the retaining wall to this decision of the Building Inspector.**

**Mr. Anderson stated there was a nexus in that; the retaining wall and the soil that was piled against her foundation has provided some structural support and/or maybe it hasn't he was not a structural engineer. If the owner wanted to hire a structural engineer and do the proper test to prove that her house was independently supported on its own and has nothing to do with the retaining wall, then maybe she could move back in at that time and the retaining wall issue of who owns it and who's going to pay for it was mute.**

**Mr. Hopper stated that this was a better motion.**

**The Board didn't second Mr. Anderson's first motion; motion failed for a lack of a second.**

**Mr. Anderson moved to allow Ms. Bovee to re-occupy her house immediately and until such time as construction on the wall starts and is completed.**

**Mr. Hopper said that the Building Inspector wrote a letter to Mr. MacKinnon and stated that on February 4<sup>th</sup> the City was willing to accept Mr. Kartchner's letter regarding the stability of Ms. Bovee's home at 61 A Shearer Avenue in Bisbee with two pre-conditions.**

- **Engineered plans for the rebuild shall be prepared and submitted with a building permit application no later than 8am on the 10<sup>th</sup> of February, 2020 and paid for no later than 8am on 2/11/2020.**
- **The final inspection for the replacement retaining wall must be completed no later than June 15<sup>th</sup> 2020.**

**Mr. Hopper suggested that's what the motion would be.**

**Ms. Coleman, City Manager stated to Mr. Hopper that he would need to call for a second of the motion from Mr. Anderson.**

**The Board didn't second Mr. Anderson's motion; the motion failed for a lack of a second.**

**Mr. Hopper motioned to allow Ms. Bovee to move back into her house with the condition that if after sixty (60) days she has not provided engineer plans to rebuild/ stabilize the side of her house that has been designed by a registered structural engineer then she would have to move out.**

**Mr. Anderson seconded the motion**

**Mr. Anderson said to clarify she has sixty (60) days in which to prove that her house was stable.**

**Mr. Hopper stated that she could either prove what she has already was a permanent solution or she has to make modifications.**

**Mr. Anderson said so regardless of what happens to the retaining wall.**

**Mr. Hopper stated that the retaining wall was irrelevant because it was not on her property**

**Mr. Conklin said that he wanted to have more time.**

**Mr. Hopper reiterated what his motion was.**

**Mr. Conklin moved to amend the motion to give more time, give her ninety (90) days instead of sixty (60). He didn't feel that sixty (60) days was enough time to sort this out.**

**Mr. Anderson seconded**

**Roll Call: (Amendment)**

**Ayes: Mr. Hope and Mr. Conklin**

**Nays: Mr. Hopper and Mr. Anderson**

**Motion Failed 2/2**

**Mr. Conklin asked for the motion to be restated.**

**Ms. Henry, City Attorney said the motion was to allow Ms. Bovee to inhabit the property and within sixty (60) days she has to ensure she has... Mr. Conklin interrupted Ms. Henry and voted nay.**

**Roll Call: (Mr. Hoppers Motion including the sixty (60) days' timeline)**

**Ayes: Mr. Hope and Mr. Hopper**

**Nays: Mr. Conklin and Mr. Anderson**

**Motion Failed 2/2**

**Mr. Anderson said that he liked Mr. Hoppers motion and it was reasonable, it was finding some middle ground. He also, thought sixty (60) days was a reasonable time frame to find a structural engineer to determine if the house was safe or not in its current condition. He didn't think sixty (60) days was an appropriate amount of time to make repairs.**

**Mr. Hopper and Mr. Anderson reiterated their thoughts on the sixty (60) days.**

**Mr. Hopper motioned that Ms. Bovee can live in her house for the next sixty (60) days as she makes a good faith effort by acquiring a structural engineer to determine whether or not the existing foundation of her house is stable for a permanent basis or a structural engineer will design a solution that will provide for permanent stability. That is it whatever happens between the City and her.**

**Mr. Anderson seconded the motion**

**Roll Call: (Final Motion)**

**Ayes: Mr. Hope, Mr. Hopper and Mr. Anderson**

**Nays: Mr. Conklin**

**Adjournment: 7:30PM**

**Mr. Hopper motioned to adjourn.**

**Mr. Conklin seconded.**

**Pursuant to A.R.S. § 38-431.03(A)(3), the Board may vote to enter executive session at any point during this meeting for discussion or consultation for legal advice with its attorney(s).**