

APPROVED

**CITY OF URBANA
BUILDING SAFETY CODE BOARD OF APPEALS
THURSDAY, APRIL 11, 2013**

MEMBERS PRESENT: Scott Kunkel, Carl Webber and Keith Erickson

MEMBERS ABSENT: Brad Houk and David Crow

STAFF PRESENT: John Schneider, Building Safety Division Manager,
Mike Phillips, Fire Inspector

OTHERS PRESENT: Adam Dill, representing Platinum Group Properties
Diane Marlin, Robin Arbiter, Michael Pleck, Dhruv Chadha, Sakshi Jain, Kathy Wallig, and Peter Hood

CALL TO ORDER:

The meeting was called to order by Scott Kunkel at 4:03 p.m. and the roll called.

APPROVAL OF MINUTES:

Mr. Kunkel asked for a motion to approve the minutes of the meetings held on June 7, 2011 and February 20, 2013. Mr. Erickson asked for a correction of the spelling of his name to the February 20, 2013 minutes. Mr. Webber made the motion to approve the minutes with the correction and Mr. Erickson seconded the motion. All agreed and the minutes were approved.

PUBLIC HEARING:

Open the continuation of the public hearing that was held on February 2013 regarding BSCBA-13-A-01 in reference to fire code notices of violation for properties located at 2017 S. Philo Rd, 2018 Fletcher St., 1305 E. Silver St., 1304 E. Silver St., and 1302 E. Silver St., all in Urbana, Illinois. Hearing being held under the authority of Urbana City Code, Chapter 5, Article VIII, Sections 108.1, and F 108.2. Purpose is to hear an appeal of a decision by the Fire Code Official to impose fines against Platinum Group Properties, LLC for violations of the Fire Prevention Code of the City of Urbana at the above listed locations.

Mr. Adam Dill introduced himself as representing Platinum Properties, LLC in these proceedings. Mr. Dill was sworn in by Mr. Kunkel.

Mr. Webber stated he had forwarded a letter regarding any possible conflicts to Mr. Dill. Mr. Dill had no objection to Carl Webber's participation.

Mr. Kunkel asked for opening statement by city staff. Mr. Mike Phillips, fire inspector was sworn in by Mr. Kunkel.

Opening statement by City staff:

Mr. Phillips stated that the fire code violations were from various days in January. The fire department and Community Development department partake in a systematic inspection process in all areas of the city. This particular area is area 19, the southeast section of the city. In January, the inspections were done by him and various Community Development staff. They found various fire code violations that were cited and fines were assessed. We are here because the plaintiff states that due process was not followed and are appealing the fines.

Opening Statement by Appellant:

Mr. Dill stated that he has reviewed the documents and his involvement is relatively recent. Upon review of the notices and the violations, it is clear that on January 22, 2013, Platinum Properties was issued a notice of a possible violation. Looking at the language and the attached report from the fire officials, they were given the opportunity to comply by a certain day, January 24, 2013 and on the 24th a full inspection for whatever reason was not done, but on the 28th the violations that they were originally cited for were in compliance. The brief by the city attorney states that they want to retroactively apply the fines back to the 17th because they believe that Paul Zerrouki is not a good guy and did not cooperate with them. Sticking to the facts here and the burden of proof on the city and what they are being cited for, Platinum Property did what they were told to do and did comply. It should be that simple.

Staff presentation:

Mr. Phillips asked for direction from the board whether he could speak for all 5 appeals as one since they were essentially all the same except for the number of violations.

Mr. Kunkel stated that he could take that approach as long as Mr. Dill did not have any objections, which he did not.

Mr. Phillips stated that it is imperative to understand that the fines are assessed the moment the violations are witnessed by the Fire Department. That is key. The confusion he sees is that they feel they were fined because they had not corrected the violations. That is incorrect, in section 110-subsection K of the City Code gives them the right and authority to assess those fines at the time they are witnessed. What neither the city code nor the fire code gives is a specific time frame as to when that notification can be done. With this situation, there was a weekend and holiday involved.

Mr. Kunkel asked for a copy of section 110. Mr. Phillips gave the board a copy of this. He stated that this is also referenced on the notices that the fire department gives out.

Mr. Webber asked a question. When comparing to Illinois statutes, the fines are less than the maximum in the state statute, is that correct?. Mr. Phillips responded in the affirmative.

Mr. Phillips said the fines were assessed when the violations were witnessed. The notification to PGP was completed on the 22nd because of a delay in paperwork. He emphasized that they were not being assessed the fines on what they were notified. The reporting software the Fire Department allows for instant notification if it requires immediate attention. The appeal packet has incorrect dates. The actual violation dates are 1/15, 1/16 and 1/17. Mr. Phillips stated that what they found was somewhat of an epidemic. They determined on the third building to print copies from the reporting software and attach them to the carbon copies and hand deliver them that day on the 22nd. At that point, the fines were already assessed. We then give them 48 hours to correct them.

Mr. Phillips stated that on the 24th, they were not in full compliance. Some violations were corrected but staff had to go back on the 28th because not all noted violations were corrected.

Mr. Phillips stated that this is not a direct attack against Mr. Zerrouki. That is not correct. The FD found "extreme life safety devices that were not operable," which is what brought this to the fire department attention. It needs to be understood that these fines are merely to help them do what needs done in the form of enforcement of these violations. It was clear that this would consume a lot of staff time, therefore, that is why fines were decided to be issued. That was decided the day of the inspection.

Appellant Presentation:

Mr. Kunkel asked Mr. Dill if he would like to provide his presentation for the appellant.

Mr. Dill stated that he disagreed with Mr. Phillips. After reviewing everything, he has looked at it in whether the city could prove Platinum Properties guilty beyond a preponderance of evidence of these violations. To do that, you would first have to be put on notice. When he reads the notices, his reaction is the complete opposite of what Mr. Phillips is saying now. Specifically for the one as 2017 Philo fire code notice of violations what he sees is a date of violation as 1/17/2013, now he is hearing that it may be 1/15 or 1/16. Violation that indicates clearly that is issued on 1/22/13. If the fire department had issued the fine on the date of inspection, the date should be noted in the notice itself. It also states that is only referring to detectors, smoke and CO, a \$50 fine for each detector listed. It then says to repair or replace by 1/24/13. It gives a time for corrective action and the total fine area is left blank. Any common sense reading of this is that if these specific violations are not corrected by 1/24/13, then you will be fined \$50 each per day. That is what is being told to them. And it is strengthened by the Urbana Fire Inspection notice dated 1/22/13 and where it states: order to comply, since these conditions are contrary to Urbana City Code, you must correct them upon receipt of this notice, after reinspection to determine compliance with this notice on 1/24/13. If you fail to comply with this notice by the reinspection date listed, you may be liable for the penalties provided for by law for such violations. This is akin to a warning.

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Each individual property has the same documents with the total fine being blank. Same language for each one.

A big issue of language of section K does not clearly read that the fines will start that day. By 1/28/13, everything was corrected.

Public Comment:

Mr. Kunkel asked for any public comment.

Diane Marlin – Ward 7 on council

The apartment buildings which are the subject being discussed here are located in Ward 7, so she is here to represent her constituents who live in these apartments, neighboring homes and businesses.

Urge the board to uphold the decision of the fire officials to impose fines against PGP. Apartments were not equipped with working smoke detectors and co detectors. These actions endanger the tenants and nearby residents and put 1st responders at increased risks. Fires that start in places without working smoke detectors, especially vacant apartments, can smolder and burn for a long time, getting a head start and creates a more dangerous environment for the residents of the building, nearby homes and businesses and firefighters. Urge the board to stand up for the Urbana citizens, our first responders and for the city of Urbana fire prevention code. Please deny this appeal and uphold the fines.

Peter Hood

Coordinator for McHenry neighborhood watch group. This topic was discussed at last meeting with one member of the Urbana Police Department and one member of the Urbana City Council. Unanimous agreement of the 21 members to recommend to the BSCBA to deny appeal and uphold fines imposed.

Robin Arbiter

President of the Lierman Neighborhood Action Committee.

As an advocate for housing issues, she doesn't want the nature of the violation to be trivialized in any way. For a landlord to not provide working detectors is really unforgivable. Basic obligation to provide working smoke and co detectors. This situation has disrupted a lot of people's lives. People have had to move. Take the fine, learn the lesson and let's make sure we have decent affordable and safe housing. Support to uphold the fines.

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Kathy Wallig

Spoke at the last meeting about the lives that have been put in danger by Mr. Zerrouki. Mr. Dill states that he is speaking about common sense.

It is common sense to have working fire and co detectors. Mr. Zerrouki was playing a shell game with alarms, moving them from one place to another. The fire department realized that and cited him in accordance with city ordinance. It's common sense that you uphold city ordinance.

Michael Pleck.

Steering committee member of SE Urbana Neighborhood Association-also known as SUNA. Mr. Pleck stated that there was a shell game going on here where fire safety equipment was being moved from one apartment to another after each inspection. Hope that the board won't lose sight of the unconscionable and illegal actions taken by Mr. Zerrouki as the owner/manager of Platinum Group Properties for these violations of the fire code.

Mike Dilley, Urbana Fire Chief, addressed the board. Mr. Kunkel asked Mr. Dilley to wait and provide his statement as part of the city staff closing statement.

Mr. Kunkel closed the public comment section.

Mr. Kunkel asked for closing statements.

Mr. Dill said he was not condoning not having smoke detectors. It is not clear if the Fire Department has the authority to issue the fines on the date of the inspection, but that is not what happened.

The fines are not for playing a shell game or for being difficult. The fines are for specific violations put forth on notices that were issued on the 22nd for an inspection that occurred on the 15th. Common sense reading would indicate that they had until the 24th to correct. Even if violations were not totally corrected on the 24th, they were on the 28th. Everyone agrees that the buildings should be protected. Specifically what they are charged with doing and what they are fined with, the City has not met the burden of proof.

Maybe the forms are bad, and the fire department should address that and fix it. They should not give opportunities to comply then retroactively apply fines.

Fire Chief Mike Dilley was sworn in by Mr. Kunkel.

He stated the City attempts to get voluntary compliance and by and large, they do get that. But when it comes to the point that we are finding numerous violations that put the citizens of the

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buildings at risk, then it takes on a more serious note. The reason for the fines is not to offset man hours, but to get compliance. In this case, we had to serve a search warrant to get into a portion of the property because entrance was denied during the initial inspection. We received information from maintenance people that they were moving detectors from one apartment to another instead of buying new detectors. We knew the violations were there but we did not issue the fines until the 22nd when we were sure this was happening.

The violations still existed on the 22nd when the inspector returned. That is when he physically handed them the papers. When the fines were handed out, compliance was achieved. .

Mr. Phillips clarified the dates of inspection, 2017 Philo Road was inspected on the 15th and 2018 Fletcher on the 16th. Mr. Phillips stated that there are five (5) properties in question, and 17 inspections were conducted in a 2 week period. The fines are modest, the City could charge up to \$750 per device per day.

Scott Kunkel stated that the board could now ask questions and have discussion.

Mr. Erickson asked Mr. Phillips to elaborate on how and to whom the notifications were delivered.

Mr. Phillips stated that it was delivered to Mr. Jimmy Gaskin, who identified himself as the maintenance manager.

Mr. Webber said that it seems that the Illinois smoke detector act and the others referenced apply here. He does not see any requirement for notice in that statute. Mr. Dill said he did not see any requirement for notice either, but said that the way the Fire Department did the notice changed the circumstances.

Mr. Webber said the last line of Section K said that fines should be provided unless the court finds that the violator is an indigent person. Is there any reason for the board to reduce any fines if we find there should be one because the appellant is an indigent person? Mr. Dill said he did not believe that Platinum Group Properties is an indigent person.

Mr. Erickson asked if there was total agreement by all parties that on the date of inspection there were a significant number (80 total) of smoke detectors not in place and/or not operating.

It was agreed.

Mr. Kunkel asked what the total amount of fines was. Mr. Phillips stated it was around \$4,000.

Mr. Kunkel asked if it was the intent of the 48 hours that if compliance was not met in the time frame, you would view it as a separate violation per Urbana ordinance and issued additional

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fines related to that. He asked if any additional fines were levied. Mr. Phillips stated there were not.

Mr. Kunkel closed the discussion portion of the meeting. He then stated that he would address each portion of the appeal, as it was applied for as 5 separate appeals.

Mr. Webber asked for an exact number of violations for the buildings. Mr. Phillips stated he could get those numbers.

Mr. Webber stated that the City needs to rewrite the documents and have written policies on how this is done so that people who own property in town will know what to inspect. Bringing up that the owner was playing a shell game caused Mr. Webber to “tip over” to focus on violations. Mr. Webber cited state statute on smoke detectors.

A discussion followed on the number of violations.

Mr. Phillips numbers:

2017 Philo: 18

2018 Fletcher: 17

1305 Silver: 10

1304 Silver: 10

1302 Silver: 10

Mr. Dill asked for clarification on numbers.

Mr. Phillips changed 2017 Philo to 19.

Mr. Kunkel then went through the questions before the board individually for each property.

Mr Kunkel requested a motion to either uphold or reverse the fines imposed by the fire code official against Platinum Group Properties for:

2017 Philo Rd. Mr. Erickson made a motion to uphold the fine. Mr. Webber seconded it. Roll was taken. Fines were unanimously upheld.

2018 Fletcher. Mr. Erickson made a motion to uphold the fine. Mr. Webber seconded it. Roll was taken. Fines were unanimously upheld.

1305 E. Silver St.. Mr. Erickson made a motion to uphold the fine. Mr. Webber seconded it. Roll was taken. Fines were unanimously upheld.

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1304 E. Silver St. Mr. Erickson made a motion to uphold the fine. Mr. Webber seconded it. Roll was taken. Fines were unanimously upheld.

1302 E. Silver St. Mr. Erickson made a motion to uphold the fine. Mr. Webber seconded it. Roll was taken. Fines were unanimously upheld.

Mr. Kunkel stated that all fines have been upheld. That concludes the public hearing portion of the meeting.

NEW BUSINESS:

A draft set of bylaws was prepared and sent in the packet. Mr. Kunkel stated that this is an amalgamation of what was already in place as well as some information that was garnered from the City of Champaign's bylaws and changed. The thought is that the board could review these and then we could have the next scheduled meeting and get through these and get something in place to be adopted. The board asked for this to be sent electronically in a Word document.

Mr. Kunkel asked Mr. Schneider if he had any comments on the bylaws. Mr. Schneider stated that he welcomed any suggestions and that there were no formal bylaws adopted for this board at this time.

There was no public comment for this section of the meeting.

ADJOURNMENT: Mr. Kunkel adjourned the meeting at 5:20 p.m.

Respectfully submitted,

John Schneider

Approved on July 11, 2013 (with corrections).