

**CITY OF WEST CARROLLTON
BOARD OF ZONING APPEALS**

November 10, 2016

Members Present

Amanda Henry, Vice Chair
Leanne Nash, Secretary
Janet Myers

Staff

Greg Gaines, Director of City Planning
Carl Enterman, Chief Code Enforcement Officer
Bob Bobbitt, Code Enforcement Officer
Connie Lewis, Secretary

Members Absent

Steve Henley, Chair
Kim Hagerman

City Council Liaisons

Jill Tomlin

City Council Members

Jim Folker

The meeting was called to order at 6:30 p.m. by Ms. Henry. Following the Pledge of Allegiance, roll call revealed three members present. There was a motion by Ms. Henry and second by Ms. Nash to excuse Ms. Hagerman. A voice vote approved the motion. Mr. Gaines told the Board that Mr. Henley advised staff that he had moved out of the city and would be resigning from his position on the BZA.

APPROVAL OF AGENDA

Ms. Henry asked if there were any corrections to the agenda. There being no corrections, Ms. Myers made a motion, seconded by Ms. Nash, to approve the agenda as written. Roll call vote was unanimous for approval.

APPROVAL OF MINUTES

Ms. Henry asked for a motion to approve the minutes of the July 14, 2016 meeting. Ms. Nash noted that she had advised staff of a typographical error, which was corrected, and made a motion to approve the minutes as corrected. There was a second by Ms. Myers. Roll call vote was unanimous for approval.

PUBLIC HEARINGS

A-16-2, Appeal of Property Maintenance Orders (Carrollton Pointe, LLC)

Ms. Henry opened the public hearing and staff was sworn in for testimony. Carl Enterman presented the staff report. He advised that the applicant, Darlene Mates of Baltes Commercial Realty, was appealing the Code Official's determination that the timeframe for compliance regarding violations cited within the correction order 2016-H0173 is unrealistic. Under the statutory clause, Section 158.12 of the PMC authorizes the Board of Zoning Appeals to hear and decide appeals where it is alleged that there is an error in any interpretation, judgment, determination, or decision made by the Code Official in the administration or enforcement of the code and to render a decision sustaining, modifying, or overturning the decision of the Code Official. The decision must be by unanimous vote because only three Board members are present.

On September 9, 2016, the Division of Code Enforcement investigated a complaint regarding a squirrel infestation within 1312 unit #9 Camphill Way. This apartment is located in the Carrollton Pointe apartment complex. Carrollton Pointe is currently owned by Carrollton Pointe, LLC and is currently operated by the corporation's registered agent, Terry Baltes, owner of Baltes Commercial Realty. Darlene Mates is acting as an agent for the owner in this appeal.

As a result of this complaint, three separate inspections were conducted and numerous violations to the property maintenance code were identified. Over 70 photos were taken during these inspections. Mr. Enterman shared several photos related to the initial complaint and subsequent discovered violations. Photos included a squirrel which had fallen into an apartment through an opening; squirrels on the outside of buildings going to existing squirrel nests; numerous holes throughout six buildings; deteriorating paint; deteriorating sidewalk; rotting trim and joists on decks; numerous falling soffits; a detached guard on a deck posing a life-safety issues.

The correction order was served upon the corporation's agent and on-site manager on September 22, 2016. On September 26, 2016, a meeting was held to review the Correction Order and compliance times as indicated in Exhibit 5. At this meeting Mr. Baltes made it clear that the compliance times as required in the order were unrealistic. Staff explained that the code states that the citing officer is only permitted to allow up to 45 days in order to achieve compliance. Mr. Baltes was advised of his appeal rights and told that if this is not enough time, he should file a proper appeal.

On October 7, 2016, the appeal was received by the division of code enforcement. The applicant stated in the appeal application that the scope of work requires more time than allotted and, at this time of year, contractors are booked and the project cannot be completed in the required time. Staff is in partial agreement with the appellant's argument that the work outlined in the order requires more time to complete. However, staff contends that numerous exterior building permits are issued by the Planning and Building Department for which staff conducts inspections during the winter.

In conclusion, based on staff's analysis, staff recommends the Board modify the Code Official's determination as noted in Resolution PM-16-2 as follows:

1. Establish a new compliance date of January 9, 2017, by which the owner is to have completed the following:
 - a. Abatement of the squirrel infestation.
 - b. Replace all damaged and rotted wood siding, soffits and trim boards.
 - c. Reattach all loose and detached downspouts.
 - d. Repair and/or replace all loose and rotting deck trim and joists.
 - e. Reattach the deck handrail to 1332 unit #8 Camphill Way.
2. Establish a new compliance date of May 31, 2017, by which the owner is to have completed the following:
 - a. Replace the damaged concrete sidewalk in front of 1320 Camphill Way.
 - b. Scrape, prime and paint all building exterior surfaces where paint has failed.

Ms. Myers asked Mr. Enterman if he had visited the property in the last week. Mr. Enterman stated that last week staff had visited the site and found that one deck joist which had fallen had been replaced. Staff made contact with the complainant today to ask if she was having any more issues with squirrels. She advised that no more squirrels had come into the apartment. She does have another issue which is not part of the appeal.

Ms. Myers asked what percentage of the work had been completed so far. Mr. Enterman replied that less than one percent. Ms. Myers then clarified that the owners had been given 45 days and the work has not been finished. Mr. Enterman stated that was correct.

Ms. Nash asked if the owners had been in contact with staff to work with them, and Mr. Enterman stated that they had but he preferred to allow the owner's representatives to testify as to their intentions. The owners are currently marketing the property for sale and have a prospective buyer. The prospective owner has provided a letter that states if he does follow through with the purchase, he will take ownership of the order and make the corrections.

Ms. Henry asked if the prospective owner is also aware of the repair timelines. Mr. Enterman stated that he believed the owner was aware of the order.

Ms. Nash stated that she read in the staff report that an exterminator had been called to resolve the squirrel issue. She asked if management was aware of the city policy which prohibits leaving food out that may entice the squirrels or other animals. Mr. Enterman stated that at no time did he see evidence that anyone was leaving food for the squirrels.

Darlene Mates and Terry Baltes were sworn in for testimony. Ms. Mates stated that they did begin marketing the property for sale in the spring. She said that they had decided not to tell the staff that it was for sale until there was a contract, but someone had told the staff. The manager became upset that the property was for sale and Ms. Mates stated that the manager was "doing malice stuff". Ms. Mates stated that the tenants had called the manager every day about the failing deck and the tenants had children. The manager intentionally ignored the complaints and told the tenants to call code enforcement. Ms. Mates said that the day she found out about it, her contractors had the repair made in two hours.

Ms. Mates stated that the man in the photo showing a baby squirrel was the exterminator. That was the first time he had found a squirrel in an apartment and he removed it, fixed it, and it was done. The manager took those pictures. She had done nothing but malice things.

Ms. Mates stated that she could explain the rotted wood and holes. As part of the negotiation for the sale, they gave the prospective buyer \$100,000 in deferred maintenance to make the repairs, and this was done before September 9th ever happened. She said it was not the case that they were not going to fix it but that they had already signed a contract giving someone else money to fix it. As soon as they received the order, they did let the new buyer know.

Ms. Mates presented an email she had received today from the potential owner. She read the email into the record. The author is Ryan Dean of Penklor, and the email states:

"Darlene –

In regards to your zoning hearing tonight could you please relay the following:

Penklor Properties specializes in buying and holding properties that are in some need of repair. We like the location and the "bones" of the property located at 1308-1336 Camphill Way known currently as 'Carrollton Pointe Apartments.' We plan to close on this property by the end of November 2016. Our plan is to invest upwards of \$1.8 MM in an extensive rehab of both the exterior and the interior at this location. Included in our plans is to complete a facelift on the exterior including new balconies, railings, windows and doors. There will be an overhaul in the landscaping, repainting of the buildings, new parking lot, and a new clubhouse/office area. We plan to have all new interior common spaces and all units are slated to be redone. We anticipate the majority of the work on the exterior and common areas to be complete by the spring of 2017. The units will be done as current tenants move out.

We have no issue with the dates that are referenced in the staff report of compliance by January 9, 2017 and May 31, 2017 for the respective issues and will most likely have significantly more work complete by then. Penklor Properties is very excited about our upcoming acquisition and project. We look forward to working with local government to make a positive impact on both the property and the neighborhood.”

Mr. Gaines asked the chair to enter the email into the record as Exhibit 1.

Mr. Baltes stated that the original closing date was scheduled for November 8th. With the contract, they now have a substantial amount of money put up that is totally non-refundable if they do not close. So, the certainty of closing by November 29th is pretty certain.

Ms. Nash asked if the amount set aside is enough to cover the damages that would need to be fixed if this sale does not go through. Ms. Mates stated that when they bought the property, they planned to put in \$1.8 million. All but two roofs have been replaced and they are going to go in right away and replace those two roofs. One of the roofs that needs replaced is where the squirrel fell through.

Ms. Mates said that there is no way to keep squirrels off the property. Ms. Mates said that the property backs up to Cox Arboretum. She said that they removed eight of the rubber roofs and put plastic material on, and they are going to continue doing that. They are going to change the soffits, so she said all of that was already in place before September 9th. The contracts were signed in August. She said it is hard to spend that money and also give it to somebody else. She said they felt kind of stuck for the last 60 days. They fix any life issues such as the squirrel, the broken rail or a broken window, as she is notified about it. The problem is that the manager was notified three weeks before she herself had found out about it. The Fire Department came in two weeks before that. They called her and sent a report that day. She said everything the Fire Department has asked be done was done within seven days.

Ms. Nash again said she was asking that if, for some reason, the sale did not go through, will the money that Ms. Mates' company had encumbered cover the expense of everything that needs to be fixed. Mr. Baltes stated that there is more than enough money.

Mr. Baltes stated that there were a couple issues he would like to address. He said they had been accused of having a squirrel infestation, so he Googled the word “infestation”. Mr. Baltes recited his finding: *“Infestation is an invasion of insects on a place like a house or an attack by insects on a plant.”* An infestation is a huge amount of insects going where they are not supposed to be. If a house is full of cockroaches or other bugs, that's an infestation. One or two bugs don't count. An infestation means lots of bugs are invading, and it's a huge problem. He does not think that one incident of a squirrel getting into one apartment after owning these apartments for twelve years in a community of 96 units would constitute an infestation. The squirrel issue was resolved long before the city was ever notified. He said they took the initiative and contacted the exterminator. He said they have been very proactive.

Mr. Baltes said he would also like to go on record regarding the September 26th meeting at his office. He said he was very much misquoted in the staff report. In the meeting with Officer Carl Enterman and Code Enforcement Officer Robert Bobbitt, he said that he was very disappointed that there was no communication, either verbal or written, from the City of West Carrollton regarding the Carrollton Pointe Apartments prior to the correction order being issued. This issuance of the correction order was the first time they were made aware that the city had any concerns about Carrollton Pointe. These items could have and would have been corrected in a timely manner. He never stated that he had no intention of complying.

What he stated was they needed a reasonable amount of time to make the requested repairs. They had just given concession to the buyers for these repairs and wasn't prepared to pay for these repairs twice. Once again, if there had been any kind of communication from the City it would never have gotten this far. He said that they own properties in Washington Township, the City of Centerville, Miami Township, the City of Vandalia, the City of Elyria, and the City of Sidney. If there has ever been a problem there has been a phone call or a letter sent. Those issues have been immediately resolved. They have never had a correction order issued. He said Ms. Mates mentioned about the Fire Department. They got the letter and within a week's time it was all corrected.

He said that they are being billed here as a slum landlord. He said he did apologize to whoever they may have offended at the City. He did not know what they did, but apparently they have offended someone to be treated this poorly. They have been a corporate citizen and improved the property. When he originally bought it twelve years ago, it was an absolute dump. They had put over \$1 million in it almost immediately, in addition to all the repairs they have made over the years. The real estate taxes are current so they make sure the school system is good. Over the years they have paid over \$800,000 in real estate taxes. And he is just very disappointed that there couldn't have been some kind of communication from the City saying that maybe we needed to do a little painting or sidewalk work rather than just giving us a citation order. The bottom line is that they do have a buyer. If there had been some communication from the City they could have explained to the city that there is a buyer in process and that is why they are not making the repairs.

Ms. Myers said that perhaps she was seeing things a little differently than Mr. Baltes because she sees the violations as an ongoing thing. If he has had this property for twelve years, the holes didn't just become opened in the last two or three weeks as was shown in the photos, as well as all the wood work. She said she understood the cement deteriorates, especially if there is a kid with a skateboard, but that is not just a recent thing. The wood falling down from the decks, some of these things have been around for a while. She said Mr. Baltes would have to admit that because they are not recent events. Mr. Baltes replied that they have had insurance companies out there to check the property every year. If they thought that there was some kind of safety hazard they would have brought it to their attention. Ms. Myers commented that it wasn't just safety, it is aesthetics, too. Ms. Mates said that, honestly, they chose to fix things that weren't aesthetic. There was \$75,000 put into new air conditioners, \$219,000 put into the roofs, and \$22,000 just moving the tree line back three feet. Ms. Myers said she understood that and this is a business. You put money in the business, that's what people do. Ms. Mates stated that is what they were doing and this wasn't a facelift; when they do things they do it right. They were not going to just spot paint on rotted wood. And that's when they decided. They got the quotes and knew how much money that was going to cost and it wasn't an easy decision. That's when they decided to sell. They have put over \$400,000 in there in the last 18 months and maybe it's time to find someone else. They were very picky about their buyers. They had 19 people come through in four days and every one of them wanted it. They picked a local construction person who wanted to put money into it. They didn't pick the guy from Chicago who was just looking to make a buck because he can't afford anything there.

Ms. Mates said she agreed with Mr. Baltes that they must have offended someone and the City is treating them like slumlords. The city doesn't see how much money or what they did because of a couple pieces of weathered wood. Ms. Myers said that was her point. Maybe if the money would have been put in gradually through the years. Ms. Mates said they spent \$250,000 last year but you just can't see it. Ms. Myers explained the first ten years that they owned the business, for instance. Ms. Myers said that she didn't know because today was the first day that she toured the property. She went around the circle. She was not even aware that the property was there and she was surprised at the condition of it. Ms. Mates replied that

if they want to go that route, she could say that those holes and the weathering had been there since she started at the company five years ago. She just finds it very ironic that everything happened in one month. Why was no one there three years ago? Ms. Myers replied that was her point. That the property probably had some deficits for many years that were not repaired. Mr. Baltes said the bottom line is that they have a buyer, a signed contract, they have non-refundable money put up, and there is a letter from the buyer that they will take responsibility for the repairs. All they are asking for is the dates that staff has already prepared.

Ms. Nash said that with this being a maintenance concern, Mr. Baltes said that their insurance company had come out on an annual basis and done an inspection. She asked if there is a maintenance person on staff that might have seen these things and brought them to their attention. Mr. Baltes said there had always been a full-time maintenance person on staff. Many times they have had one and one-half, and they have a full time manager. Ms. Myers asked if that was doing yard work also or it is just maintenance. Mr. Baltes replied that it was just strictly maintenance.

Ms. Henry asked if there was any public comment in favor of or opposed to the application. There were no comments. She then closed the public hearing.

Ms. Myers said she would like to discuss the correction dates. Instead of the compliance date of January 9, 2017 she would recommend that the compliance date be December 1, 2016. For the outside work, she would recommend that the compliance date be May 10, 2017 instead of May 31, 2017. She said that she knew concrete contractors were doing work in West Carrollton as recently as two weeks ago so there was a chance that this work could have been done and it was not.

Mr. Gaines recommended to the Chair that when the Board was done discussing this, staff and the applicant be given an opportunity to address the correction dates to make sure the Board has all of the information.

Ms. Nash said that her concern is that they are being told that it is going to be done, and the new owner may complete the repairs ahead of those dates. Ms. Henry commented that the closing date is November 29th and that a December 1st deadline doesn't give them any time to really take over the property. Ms. Myers said that she understood that and that five weeks is not a long time for a new owner to do this work, although they said some of the things have already been done and the handrail has already been reattached. Ms. Myers said that she understands the other things will take a while. Ms. Nash said that getting the handrail repaired appeared to be the most safety-conscious item so that there wouldn't be any injuries. Ms. Henry added that the decks could be as well.

Mr. Enterman stated that late this afternoon he had an opportunity to speak to the prospective buyer and had a good conversation with him. In talking to him, he finds him genuine in following through in purchasing the property. In discussing with him the other properties he has in the area, it is Mr. Enterman's belief that the owner will follow through. As the Chief Code Official, he has no problem with the dates that they have provided. As we are going into winter, currently there are no life-safety issues that he is aware of and the issues are aesthetics with the exception of the concrete. However, cones could be placed around the sidewalk as a warning.

Mr. Baltes said that while they still have ownership of the property they will make sure there are no life-safety issues. They do not want anyone getting hurt.

Mr. Gaines said that he appreciated Ms. Myers comments but he respectfully requested that the

recommended dates be maintained. Ms. Myers said that she understood and agreed.

Ms. Henry asked for a motion to approve Resolution A-16-2. Ms. Nash made a motion to approve the resolution; seconded by Ms. Myers. Roll call vote was unanimous for approval.

DECISION ITEMS

There were no decision items.

DISCUSSION ITEMS

Report by Director

BZA: Mr. Gaines reported that Steven Henley had let staff know that he had moved out of the city and would be resigning from the BZA. He has advised the City Manager and a replacement will be found at some point in the future. Ms. Henry will assume the chairperson duties.

The annual Planning & Zoning Workshop is December 2 at Sinclair. It is a good opportunity to network with other local planning and elected officials, and lunch is provided. Kim Hagerman is attending. If anyone is interested please let staff know.

Board Training: Mr. Gaines is working the Law Director, Lori Denlinger, on a Board training session with Steve McHugh, who had provided training last year. Hopefully, there will be a joint session with City Council. They will try to set something up after the first of the year.

Rental Inspection Program: Staff has developed an alternative concept for the Rental Inspection Program. They have met with the rental industry and reached agreement on a proposal that staff believes will accomplish the City's goals and at the same time, address some of the industry's major concerns with the prior proposal. The concept was presented to City Council and they supported the idea. The formal proposal will be presented to City Council on November 22nd. If they support it, the second reading will be at the first Council meeting in December and effective 30 days later. The program would be rolled-out in 2017.

Landlords will be asked to register their rental properties through Montgomery County as is required by state law. A full exterior inspection of all units as well as all interior common areas of buildings will be done. The only time an interior inspection will be done is by request or if there is reasonable suspicion occurring during the course of the exterior inspection to suspect violations on the inside. There will also be an educational initiative with the rental industry. They will be assisting staff with that, and hosting a panel similar to what is done in the City of Kettering. There would be an in-house program manager. Money has been budgeted to supplement that person, whether by contract or hiring another part-time employee.

Ms. Myers asked if the educational component would be mandatory. Mr. Gaines said there was discussion about having a mandatory course for repeat offenders, but there have been no final discussions yet. Ms. Myers asked if it would be sufficient to keep landlords in line. Ms. Nash expressed skepticism that the landlords would attend without some incentive. Ms. Myers asked if the percentage of attendance is known for Kettering's educational forums, but Mr. Gaines did not know. Ms. Nash said it would be nice if the City could make attendance mandatory. Mr. Gaines said the mandatory portion is the registration. If they don't register, there is \$150 fine. Staff can also file criminal complaints, take them to court, or condemn

the property. The City would receive the fine payment.

Ms. Myers said she believed it is a weak plan from the way the program began and she is not very pleased with it. Mr. Gaines said it is not as aggressive as the prior proposal but it may be more implementable. Staff felt that with the original proposal, they may have ended up in court for years. Mr. Enterman also said that it is staff's understanding that Council will leave the original proposal tabled. Mr. Gaines said the revised proposal will be operated on a trial basis for perhaps two years. There will be metrics set up at the beginning to help determine if it has been effective. If it hasn't, then Council may choose to go back to the prior proposal.

Ms. Myers stated that just like the case that was just heard, those issues were not recent and were long time failures. They could have been rectified a long time ago.

Montgomery County Land Bank: Mr. Gaines reported that the city submitted an application to participate in the Land Bank's Neighborhood Initiative Program. Basically, the city will be receiving funding to demolish some vacant, abandoned and blighted houses. There are an unfortunate number of restrictions on what houses would be eligible, so at the moment staff has only identified about six properties.

Briefing by City Council Representatives

Ms. Tomlin wished to let the BZA know that all information regarding the Rental Registration Program was taken into consideration. She said she feels like the original proposal would be a good plan to revisit if need be and by tabling it, staff does not have to start over. She suggested that staff provide the outline to BZA regarding the latest proposal because there may be more of the appeal hearings as presented at tonight's meeting. Ms. Nash commented that she thought that was only fair. If someone is told they must make extensive repairs within a certain period of time but have not budgeted for it, they will do everything they can to appeal it. Both Ms. Tomlin and Mr. Folker advised BZA members to be prepared.

Ms. Myers asked if this apartment complex was part of the vocal group in opposition to the Rental Registration Program. Mr. Enterman said that they had never shown at previous public meetings for the program. Mr. Folker asked if they were part of the apartment association. Mr. Bobbitt and Mr. Enterman said that he did not believe that they are. They are considered a vendor, but not a member.

Ms. Tomlin said that she also drove to the apartments before the appeal heard this evening, and that she appreciated Ms. Myers' comments. Ms. Nash stated that the property had been that way for a long time.

Mr. Gaines advised BZA members that he would email them a copy of the Rental Inspection Program outline.

Unscheduled Business

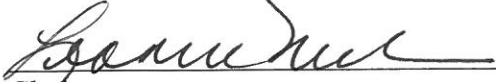
There was no unscheduled business.

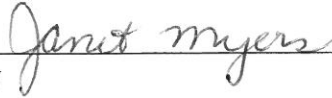
COMMENTS BY THE AUDIENCE

There were none.

ADJOURNMENT

A motion was made by Ms. Myers and second by Ms. Nash to adjourn the meeting at 7:19 p.m. The vote was unanimous to adjourn.


Chair


Secretary

Date: 1/12/17

Date: 1-12-17

