

**HEALTH, HUMAN SERVICES AND HOUSING  
OPPORTUNITIES COMMITTEE**

**May 4, 2010**

**3:15 P.M.**

Councilwoman Robinson, Chairman, called the meeting of the Health, Human Services and Housing Opportunities Committee to order with Councilmen Rico, Benson, Ladd, Scott, Gilbert, Murphy, and Berz present. City Attorneys Michael McMahan and Ken Fritz; and Shirley Crownover, Assistant Clerk to the Council, were also present.

Others present included members of the Beer and Wrecker Board, Greta Hayes, Chief Maffett, Jerry Stewart, Gary Hilbert, Dickie Hutsell, Chief Rawlston, Jim Templeton, Dan Johnson, Solomon Hatch, Greg Haynes, Barry Bennett, Lee Norris, Dennis Malone, Chief Parker, Lt. Francis, Officer Dunn, Cathy Fulghum, Bill Payne, Richard Beeland, Steve Leach and Sgt. Haskins. Daisy Madison and Crystal Freiberg joined the meeting later.

Chairman Robinson stated that the purpose of this meeting was to discuss the 100 Day "Grandfather" Clause. She asked Councilman Murphy to identify his concerns.

Councilman Murphy stated that a lot of people were interested in what constitutes a vacancy for a "Grandfather" time period and what we are doing to administer this; that there are concerns that we are not looking at anything other than if the power meter is running; that the power can stay on, and the landlord will be billed; that some neighborhoods would like to see out of zone but non-conforming uses end, but they would never end if we are just going by the power meter. He mentioned a instance where there was a fire with partial damage to the structure, making it uninhabitable, but the power continues to run, and this seems to be the main factor we are looking at; that it had been repeatedly brought to our attention as to how we are applying these rules.

Adm. Leach read from the Ordinance concerning non-conforming uses and the 100 days. He stated that this was a very broad part of the Ordinance; that under State Law there is the continuing issue of non-conforming uses that are determined to be out of zone or pre-zoning and whether it is legal or illegal; that some had even gotten a Building Permit and the question would arise as to how they got the permit and whether it was an illegal non-conforming use or had lost its status and would have to go through the process again.

Councilman Murphy mentioned the incident on Crest Road in an R-1 Zone, where a Building Permit was pulled with good intentions. Adm. Leach responded that the whole Crest Rd. was R-3 and then rezoned back to R-1 with legal non-conforming uses, prompting Councilman Murphy to question vacating for 100 days, unless they had pulled a building permit?

Mr. Hutsell explained that they relied on the City Attorney's Office for intent before they rendered a decision; that on Crest Rd. they were advised that the property was in disrepair, and they got a Building Permit and were actively working on the property; that they were advised to allow them to continue to work. He went on to say that a lot of what we are dealing with in regards to duplexes is the result of what we have done in allowing them to come back for a Special Permit. He mentioned the Bailey Ave. property where one-half of the building is occupied; that one of the units burned, and they have one year to rebuild; that he had sent out e-mails; that they had four families, and the Electric Power Board meter is a tool; that this was illegally converted, and the City lost in Court (six units). He mentioned that in old areas of town like Highland Park, East Lake, etc. houses are often split up without the City having any knowledge of this; that if we don't have good proof, the Courts will err on the side of the landowner. He stated that each unit should be measured differently, and the City does not have the right of entry; that they were trying to do the best they could; that we had the most cases in Highland Park—27 cases in the last two years; that they were trying to satisfy the community and stop this use; that they had not been directed to cite Bailey Ave. to court.

Councilman Murphy mentioned the City Directory and Power Bills, asking if they had looked at the water meters? Mr. Hutsell responded that Banks could turn the power back on, and it would seem that something had been going on in the building. Councilman Murphy again asked if they looked at water bills. The answer was "no"—that water bills are relatively inexpensive. Councilman Murphy questioned if these were not worth going to Court for?

Attorney McMahan explained that our Ordinance reads broader than the Court allows. Councilman Murphy responded that if our Ordinance is over broad, then maybe we need to change the Ordinance. Attorney McMahan stated that the Court will say that it is a legal non-conforming use.

Councilwoman Scott asked if we could define what "occupancy" is. Attorney McMahan responded that we could to an extent but were subject to constitutional restraints; that we can define but there is only so far we can go. Councilwoman Scott asked if the State defines "occupancy"? Attorney McMahan responded that it was a refined or interpretational definition. She asked if it were the same as ours? Attorney McMahan explained that it was whatever evidence you can put together.

Councilman Benson suggested getting Legal to work with RPA and Codes Enforcement and look at what we have in place and then come back to the Council.

Adm. Leach stated that looking at the water bill was one suggestion that they should look at; that there was not a lot of evidence one way or the other.

Councilman Murphy noted that we have the power meters and water bills; that more than one water meter will reveal the truth faster than the power meters.

Mr. Hutsell added that in determining occupancy, they look in the windows for furniture and groceries, and if these are evident, they will take them to court; that all utilities might be separate—that we could not win in Court.

Chairman Robinson asked Councilmen Murphy and Rico if they had specific addresses that are chronic problems? Councilman Murphy responded that there would be no end to the list that are problems; that this should not be tailored to specific instances; that the Code is so overbroad and State Law is narrower; that we should see what we can deliver under State Law. Councilman Rico stated that it was not a big problem with him. Adm. Leach noted that State Law is broad, too. Councilman Murphy suggested that we go forward with the water meters. Adm. Leach stated that we could look at State Law, too—that we could study this and see what we get.

Mr. Hutsell stated that if it is a slum lord situation, they bring it to Neighborhood Services, and if they say demolish it—that we have to use a reasonable approach.

Chairman Robinson asked if the problem was illegal activities and/or not clean, affordable housing? Councilman Murphy responded that areas in R-1 zones do not want houses with eight units.

Mr. Hutsell explained that the system now with Electrical Inspectors is they will not approve power until we investigate; that they were working on this a little at a time to try to get it fixed; that they had had some successful cases but had had issues with this one.

Chairman Robinson thanked everyone for coming, stating that we would follow up with Councilman Benson's suggestion.

The meeting adjourned at 3:50 p.m.