

BURLINGTON FIRE COMMISSION

Minutes of the Meeting

October 15, 2014

The Meeting of the Burlington Fire Commission convened at 08:30 hours in the Chief's Office at the Burlington Fire Department with Commissioners J. Perkinson, K. McLaughlin, J. Vincent, L. Sheehey and S. Sweeney were present. Also present were Chief S. Lasker, Deputy Chief D. Roberts, Fire Marshal B. Simays, City Attorney Richard Haesler, Defendant's Attorney David Sunshine, Defendant/Property Owner Don Harrington, Real Estate Agent Peter Yee, and Administrative Assistant M. Sweeney. The reason for the Commission Meeting was to convene to hear and decide on an appeal regarding the Fire Marshal's Office Violation Order on the property of 62 South Union Street.

Attorney David Sunshine: This appeal is in reference to violation order issued by Fire Marshal Barry Simays. Client, Don Harrington, has investigated different ways to satisfy order and has narrowed it down to a couple of different ways. Would like to have direction as to what way the order is looking for a response. The order indicates that there must be an exterior water installation by the Burlington Water Department for the installation of source to be used to supply the sprinkler system. There has been no response when contacting the water department. Property owner Don met with employee, Ed, who advised there is nothing that can be done this year and the first estimated time the work could begin would be May of next year. This does not allow for violation order to be complied with within the time frame given by the Fire Marshal's Office.

Property Owner Don Harrington: The violation was found due to a Time-of-Sale Inspection, and that he did not know he was in violation until this inspection happened. Many other changes have been made to fulfill the requirements of fire and safety code since he bought the building including hardwired smoke and carbon dioxide detectors, egress windows, and others. Would like to know if this is something that is new, and is it being done everywhere. He would like some explanations. The best thought was to appeal the decision to get a discussion to find out more information about the violations.

Fire Marshal Barry Simays: The Fire Marshal has received two phone calls from different sprinkler system companies looking at different options. The Fire Marshal pointed out that the NFPA13D System using a pump and tank is allowed by the Life Safety Code and would not require the Water Department to install a new water line to the building. The Fire Marshal laid out the timeline of events for everyone in the meeting:

- The Fire Marshal's Office received a request for a Residential Time-Of-Sale Inspection. The Fire Marshal's Office has been conducting these inspections since 2008. The Fire Marshal's Office responds to requests for inspections in accordance with the Vermont State Statues and the Vermont Fire and Building Safety Code.
- The inspection was scheduled and took place on September 19, 2014 at 1:00 pm at which time the violations were noted. Fire Inspector William McNamara who conducted the inspection returned to the office and notified Fire Marshal Barry Simays of violations found:
 1. There were seven separate bedrooms suspected of housing seven unrelated individuals with common cooking facilities. According to NFPA 101 Life Safety Code, 2012 edition this meets the definition of a rooming and lodging facility. Code Enforcement (minimum housing) and Planning and Zoning definitions are different from the Life Safety Code definition of a rooming and lodging occupancy.

A written order of violation was then drafted. This violation falls under City of Burlington ordinances 13-1. NFPA 101 (2012) 26.3.6.1 requires new rooming and lodging facilities to have an automatic sprinkler system installed in the building. According to the records back to 2004, the Burlington Fire Department has had no previous inspection contact with this property. The Fire Marshal's Office was not conducting residential time-of-sale inspections in 2001, when the building was purchased by the current owner. As Fire Marshal he has to write the order to the strictest requirement. Sprinkler designer can select design criteria and design system.

Commission Chair Jacob Perkinson: Is the question about interpretation or application of the fire code, or is there any dispute to the facts brought forth so far?

Don Harrington: There is no dispute that the building has seven bedrooms, is three stories, and is a single family home. He does not agree it should be classified as a boarding house.

Attorney David Sunshine: What he and his client are looking for is some flexibility in the date of compliance.

Don Harrington: The Time-of-Sale Inspection triggered the issue and the violation order. The sale is no longer on the table. Does that still trigger it?

Fire Marshal Simays: Once a violation has been issued it cannot be closed until all violations have been corrected.

Don Harrington: If property was still for sale could money be escrowed or is it still his responsibility?

Commissioner Perkinson: The party responsible for the fixes can be worked out between the seller and the buyer. The concern of Commission is if compliance is met by deadline.

Don Harrington: If a bedroom was changed from two back to one would that make property compliant?

Commissioner Perkinson: To clarify; the question is if there is a way to meet compliance without installing the sprinkler system.

Fire Marshal Simays: The fact remains at this time there are seven different bedrooms with seven unrelated people living together causing a current violation.

Attorney David Sunshine: Can we choose to have it re-inspected and if there are only six bedrooms in the house will that be sufficient?

Fire Marshal Simays: I will refer back to the Commission regarding this.

Commissioner Perkinson: That argument can be made to Commission.

Don Harrington: There was one bedroom that was a large bedroom that has been made into two bedrooms. If that was changed back to one is that sufficient? Is compliance based on bedrooms or number of people?

Commissioner Perkinson: This is all hypothetical. The violation is ordered based on the current findings and facts found by the Fire Marshal.

Attorney David Sunshine: If we ask for a continuance and made those changes would the Commission accept that procedure?

Commissioner Perkinson: We would have to go into executive session since he can't speak for whole Commission to decide what the answer would be.

Don Harrington: Was not expecting this. Had thought he was in compliance with current Fire Alarm system. Confirmed the 13D system was allowed. Don confirmed with Fire Marshal Simays that he has sufficient fire alarm system.

Fire Marshal Simays: State fire and building safety code requires an alarm that notifies from outside and inside to notify the public and occupants if sprinkler system activates.

Don Harrington: Is this a policy you are going to try to do beyond the Time of Sale or only during Time of Sale?

Fire Marshal Simays: We do it during Time-of-Sale Inspections and requested inspections.

Chief Seth Lasker: Confirms that the department and Fire Marshals do not go into every building in the city without a starting factor. There has to be either an invitation, complaint, or a scheduled inspection.

Don Harrington: Why is it possible that building permits have been closed out and these did not trigger anything?

Attorney David Sunshine: When the city goes in and does housing inspections and finds building not in compliance is there a referral?

City Attorney Richard Haesler: Code Enforcement may not know to communicate with the Fire Marshal's Office and does not get complete fire inspection training that the Fire Marshals get. For example the minimum housing requirements references the smoke alarms but does not look at entire inspection the way the Fire Department does.

Commissioner Perkinson: Commissioner Perkinson does understand the frustration of the differences between a code inspection and fire inspection, but that is not something the Commission is able to address at this time.

Commissioner John Vincent: Suggests looking at private companies instead of just having to go through the Water Department. In the past there have been other options and suggests looking to see if still a possibility.

Commissioner Perkinson: Are there any questions for the Commissioners or Fire Marshal?

Don Harrington: Are there any financing options the Commission knows of? Fire Marshal Simays suggests checking to see if building is on historical registry. If it is there may be money available in a federal grant.

Attorney David Sunshine: Asks to speak with client in private regarding what requests will be made.

While Attorney Sunshine meets with Mr. Harrington and Mr. Peter Yee the Commission goes into executive session to request legal advice on the pending matter. Executive session begins at 08:56.

The meeting comes out of executive session at 09:02. Attorney Sunshine is back with his clients, and the Commission has had a chance to discuss matters regarding the hearing so far.

Attorney David Sunshine: He and his client would like to ask for an extension on date of compliance for the violations. For violations 1 & 2 which include the sprinkler system they would like a date extension through June 1, 2015. This is so they have time to work with the Water Department if that is the option they decide to go with. The work would be done no later than June 1, 2015 and would have a 13D or 13R system installed. It would be very difficult to meet current date of compliance of January 31st. For violations 3 & 4 client would like a fifteen day extension from current date of October 17, 2014. This would give time to have a locksmith come and install proper locks on the doors.

Don Harrington: Due to the significance of the sprinkler violation the date of compliance for the locks was not remembered and would like a few extra days to be able to complete that item.

Commissioner Perkinson: To summarize the Defendant is looking to have an extension for date of compliance for violations 1 & 2 by June 1, 2015. For violations 3 & 4 the date of compliance changed to fifteen days past current deadline.

Fire Marshal Simays: Would like to clarify that 13D system can be supplied by a hard water line, however it can use a pump and water tank for supply as well. It's recommended to speak to a sprinkler designer to go over different options.

Commissioner Perkinson: The Commission will take the appeal under consideration. The Commission will advise of decision as quickly as possible.

Attorney David Sunshine, Property Owner Don Harrington, and Real Estate Agent Peter Yee exit. The Commission goes into executive session at 09:08 to make a decision regarding appeal.

Commission comes out of executive session at 09:10 with appeal decision made.

Commission Meeting comes to an end by motion to adjourn made by Commissioner Scot Sweeney, seconded by Commissioner Sheehey at 09:11.