

Appeals Committee With City Council

03/06/96

7:00 A.M.

Present were: Appeals Committee- Charles Cartmill, Dick Dyer, John Watson, Bart Stevens, Ted Hill
City Council: Mayor, Nile Boyle; Council members, Glen Pond; Kay Beck; Bruce Sutherland; Farrell Young; Nyle Fullmer; Marsha Bjornn.
Attorney Stephen Zollinger; Engineer Joe Laird; City Clerk Rose Bagley.

Joe gave some background. He, Blair, Fire Chief and the Electrical inspector made an inspection of Steve Clark apartments. They came up with quiet a list of problems with the development. Things that were wrong were things that were not done right under the 1985 U.B.C. when it was constructed or under the more recent 1991 U.B.C. Steve Clark asked that he have a chance to appeal his concerns to the Board of Appeals, so they met with the Appeals Board and the subsequently went up to the building and made their own evaluation. They then sent him a letter stating all of the problems Joe had listed are in fact problems and they needed to be taken care of. The Appeals Board wrote a subsequent letter to Joe stating the items in the letter. The Board of Appeals would like to be sure of the direction the council wants them to head, whether it is just to look at the items covered strictly by the very limited definition in the U.B.C. or if the council would like them to expand further to allow them to look at other situations. They wanted to find some consensus as to where we are heading. One of the things we need to resolve is how strongly the city council feel about the Steve Clark situation and where are they are heading with that. The board of appeals were concerned when they looked at it as they indicate in there letter that there are structural aspects of it that the inspectors did not evaluate.

Farrell asked if the Board of Appeals were asked to serve as a temporary thing or if it was on going? The mayor told him they are on going and permanent as prescribed by the U.B.C.

Glen stated back in 1985 before Joe and Blair came on staff, as a city we were lax in the type of inspection we did. He felt more comfortable now than he had been on the council with the inspectors and the type of inspections. His feeling is that in some point in time we have to move forward and enforce what we have on the books and use the committee and move forward with what is right. We did a poor job of inspecting when that unit was built. The reasons were we did not have qualified people to do it. Now we have qualified people we need to use the board and move forward.

The mayor asked if there are other items in the U.B.C. that need to be changed, such as do his units have what is classified as a basement; exits for more than 10 people? Most cities require that the work be done by a licensed contractor, do we want to adopt a Contractors License?

Ted stated that they had not discussed it except in the meeting last spring. Nile said we don't really care if they are licensed per say,

except you have to have something to control the workmanship that goes into the construction.

Bart stated he felt the city had eliminated a lot of that problem with the inspections that are taking place. That type of work would never get a permit for one thing and would never be allowed to continue. Nile stated that now Steve Clark has a permit to repair some of these things and the problem he has is unless you have your inspector up there every day is it going to be done correctly this time? Joe stated that it is worse than that unless you are up there telling him what to do every day and we shouldn't be doing that because it puts liability back to the city.

Bart stated at that point Joe needs to tell him to go out and hire a professional that knows what to do and then go out and do the inspections and make sure that type of work is carried out if not put a stop order on the construction. You need enough teeth to stop the issue.

John Watson stated that a lot of the discussion the Appeal Board had is the liability. He felt the city had their neck out a mile when they let Joe or Blair tell these building people how to build. They should not be doing it. Their job is plan review and inspection and go out and identify what you see and you don't tell him how to fix it. In his logic the reason this is developing, is because there a lot of Ricks College professors that want a summer job building houses and apartment complexes and that is why we are where we are, we have unqualified people. Mr Clark was totally unqualified. We don't have a contractors license scenario when they start building, they have problems and come and ask Joe how do I fix all this stuff and that makes the city liable. So he is in favor of licensing for contractors building commercial buildings. Glen stated he did not want to limit a person from building his own home.

Charles stated he was in favor also because it would take the liability from the city. The board had a concern that the structural aspect of his complex was more serious than the other violations which we are treating with the respect of his appeal. Someone is going to get killed eventually.

The mayor stated that the structural and mechanical really concerns him. He asked if there were some things in the U.B.C. that we should exempt in Rexburg or how do we grandfather them if we don't exempt them? Charles stated the issues they covered were safety issues from the standpoint of this particular appeal.

John- Ask if the contractors that would be building apartment complex had a group and were they unified? He questioned if the city of Rexburg we were going to modify or change the U.B.C. for specific issues? To him if the people that building apartments were to meet and say these are some things that are really biting them and make some recommendations, then that would be a good process to analysis it as oppose to a body getting together and arbitrary going through. There is not that much wisdom in going back to the U.B.C.

Dick stated he agreed. He would like to see when Joe has concerns about certain provisions of the code then they could set as a panel of experts and evaluate that change, but to arbitrarily monkey with the code is another liability issue. Were we to do so then some tragic event happened there would be all kinds of questions as to why. Especially new buildings. Stephen agreed to change the requirements for new structures we can't monkey with the U.B.C. because that is putting these five men up against a National panel of experts in their exact same field that come up with the U.B.C. For existing structures we need to make a decision fairly quickly because if we go in and tell Steve Clark you have structural problems or you have specific identified issues, he is going to tell us the same thing he has been telling us that different apartments has this problem or that problem. We have to have something in place such this administrative fire, life safety or one of the addendums to the U.B.C. that gives us some teeth to go in and start dealing with retro fittings.

Bart asked if the difference is those other complexes have not been asked by the college for us to inspect and make sure their complex is safe so they are not liable if someone is killed. Stephen said right now we have no authority to deal with the existing structure. Bart said in his wildest imagination he did not know how you could compare that apartment.

Bruce stated as Steve Clark has gone over the list of deficiencies and come back and then he has gone out and looked at other complexes and for example looked at the number of exits. The problem we have right now is if we force him to comply with everything, if we don't do the same with the others the city could have a problem.

Marsha stated we are dealing with this issue and she did not know how he could pull everyone else in.

John stated the city is making a move saying we have the Steve Clark problem so now we are going to put this panel together and we are going to go make some decisions to show that we are fair with everyone else. He is the specific issue now and he thought we should take it on a one by one bases. If there is another issue then this panel functions, but he has a concern about this panel or even the city going back and looking at existing buildings regardless unless there is an open invitation and we are concerned or if there is a complaint of other safety issues. He felt then you deal with it but otherwise he was sure you would find code violations in every building in this town. He did not see that it strengthens Steve Clarks position because there are violations out there.

Kay stated he thought it was putting the city on a spot to give this guy an occupancy permit or not. If they put the city on a spot for someone else then we will talk about that guy. Joe said the college is continually asking us to come look at such and such a building and we will find some of these problems.

Charles stated then lets treat everyone individually as they come along we treat them. Stephen said the only problem he sees with that is

putting bandages on bandages. He did not think the city should be in the position of doing Ricks College's bidding, because we have gotten ourselves in an ugly position right now. Steve Clark is saying I don't care what the college is saying, it is you guys that is shutting me down. Once we have seen it we do have to shut him down. If we open it up that any complaint will generate an inspection, Blair and Joe will not be able to keep up. Charles said he would think if it has safety and fire issues with it and if it does the the city should have concern and treat the problem.

Stephen stated the point is liability but we have to at least give it a look because that is what we have to do to take ourselves out of the liability. We have to do a balancing. Bart stated what you have to do is when the building is built make him comply with the code that was in effect at that time. The ones that are 20 and 30 years old are not in the same boat with this one unless it is a safety issue.

Joe stated if it is a safety issue the U.B.C. says they have to be treated now. Glen stated we looked at the issue of basement apartments and cutting the windows to size, then you are putting a big burden on some folks that probably don't have the means to do that now.

Stephen asked if there are areas where basement windows were if the landlord tenants could come in and say these are the things that the U.B.C. safety book would require of us to do and we don't think we need to accomplish nor do we feel it is necessarily to maintain safe use. They come in with the things they want to see waived or adopted, then as a panel of experts we say despite the financial end of it the balancing test says we have to still require it. You could do the same thing with contractors on new structure. He thought we do have to do something. Stephen thought the best thing would be to authorize Joe with the input from the U.B.C. Appeals Board to draft a letter to all existing structures which we may believe may be in noncompliance and tell them this issue is boiling and we want them to take a big long look at what they have and get back with us.

John Watson stated if we look at every single commercial building you will find violations even in City Hall. He thought it was unreasonable of Steve Clark to go to these other people and find problems. He liked the idea of sending a letter. Maybe in that process and the new buildings, somewhere in the process there will be a number of buildings that will have problems of exits and we will want the appeals board to look at them and then make a judgement call. Bart said there are a lot of things they could do that are less cost compacting. Kay felt that we should wait until we have a complaint and then send a letter.

Charles said if the city keeps letting him go as he is going then the city's liability is compounded. Stephen stated that in taking action with him we have to be consistent.

John Watson stated that he needs to get a professional to tell him what to do and get a stamp of approval from the professional and take the liability off the city. (discussion on requiring architect and engineers to design or review construction of commercial or apartments)

On number 3 of the letter the appeals board is requesting a clarification of the building as if it is a 2 or a 3 story building? Glen said as he remembered it was according to him doing certain things. Charles said he apparently did on comply with the requirement. (discussion) John Watson said he needs to get an expert to tell him what to do.

Number 4 of the letter is one we need to discuss because it will be hard to get him to hire an architect or engineer to do it. Stephen said down the line we will want to send out a letter stating we have identified deficiencies with respect to the U.B.C. the city's recommendation is that you have 30 days to obtain a professional to do a review and tell him how he needs to rectify or repair or change this so it is brought into compliance.

Nyle stated that when we send out the letters we are sending it to her or him and they need to deal with the issue at hand.

Nile said if we have a complaint we need to check it out.

Charles said that brings up a question as to what you want the board to do they are limited on what they are suppose to do. They are very limited to what they are suppose to do in reviewing an appeal. They feel they are limited as how to treat what the appeal directly. The board wants to know if that is what the city wants?

Farrell stated that he thought the board was set up to handle individual appeals and once the appeal is handled then it is back to the Planning & Zoning and City Council until another appeal comes and then it goes back to the board. Stephen told them that when they are not working on an appeal we would like to look to them as a panel of experts who could give us advise.

Dick stated that the fact is Mr Clark never made an appeal he just said I don't like this letter tell me what I can get away with. They didn't have anything specific to deal with and were frustrated in dealing with general terms of Joe's report.

Stephen told them there response was very good. You did the job as designed. Dick asked if the city will pass their recommendations on? Stephen stated that the city would get back with Clark and address the concerns.