

DATE: (021695)

APPEALS BOARD REVIEW HEARING  
STEVE CLARK  
02-16-96  
7:45 a.m.

Present:

Board Members: John Watson  
Charles Cartmill  
Dick Dyer  
Bart Stevens  
Ted Hill  
City Engineer: Joe Laird  
Building Inspector: Blair Manwaring  
City Attorney: Steven Zollinger  
Minutes: Janet Williamson  
Others: Steve Clark  
Paul Clark

Steven Zollinger stated that this Board could decided misapplication or misinterpretation of the code.

Steve Clark said that he had called asking for an inspection to clear him on a few violations he had been sited for and then the College and the City decided that it was time for a full scale investigation. He did not ask for one.

Steven Zollinger said that he was present when Mr. Clark called. Mr. Clark said the College had told him he couldn't continue without the City's "blessings" and he then contacted Joe and Blair on two separate occasions and told them he had to have an inspection in order to get the College approval. Mr. Clark said that the inspection he wanted was the one that they had listed.

Mentioning several other apartment buildings that do not have 2 exits off of the second floor, Mr. Clark asked is this the board that will decide is that law going to be applied equally to everyone in Rexburg or is this another attempt at harassment.

Mr. Zollinger said there is no attempt to harass. If any one of them calls and asks us to inspect their buildings, for whatever reason, and while there we determine there are violations they will be given exactly the same treatment you are being given. Are we going to go out and aggressively review these apartments? As of right now that has not been determined. We did not come out and aggressively review your apartments. That came as a result of a call from you. This board can look at: does the UBC require 2 stairways out for more then 10 occupants. Is the rule properly interpreted. If their decision is yes then they have to put that in their ruling. As far as can you receive a waiver of that, this board has no authority to grant waivers. That would be the City Council. Mr. Clark said that he went through that already with the City Council on his buildings.

Mr. Zollinger said there was a difference of opinion there. He could not find anything in the record that says he went through and received any type of waivers from the City. You received inspections, you received occupancies. Do you have anything in writing that says an inspection team went back in and said you had complied with the UBC in these areas?

Mr. Clark said that every single request they have had from the City of Rexburg they have responded to. That began in 1986 when they began building and they worked with Nile Brown. Everything he requested they did and they received an occupancy permit in 1986. Everything that was asked of them by Glen Bean, Building Inspector, Tom Matthews, Electrical Inspector, and John Meyers an independent building inspector, they did. Those men requested that he put a 4 hour fire wall between every tri plex. Those were done and approved. When Joe was there the other day he asked why we did this, you only need one of those every 3000 feet. (More was said on various other things they have been asked to do.) They have had no less then 7 inspectors, they have been inspection no less then 6 major times and his question is: at what point do you say I think we are going to have to grandfather something. None of our competitors are being put through this.

John Watson asked: Who are you using as an expert or do you have copies of the UBC where you are going back yourself and checking.

Mr. Clark said he personally reviewed the code in 1990. He didn't have a general contractor. He did have Bill Bergener draw the plans and the engineering firm they used was G & S Structural Engineers.

John asked, on other issues such as area separation walls, fire ratings, etc., what have you done as far as that. Are you the general contractor that has the building code in hand and are trying to interpret the UBC yourself. Mr. Clark said that in 1986 the relied heavily on Nile Brown. In 1990 he bought the 1988 UBC and worked through with that. The hardest thing he has found is the personal interpretation that is put in by each inspector of the moment. (Examples sited.)

Paul Clark, Contractor in Colorado, said in years of working with inspectors that, even with an OSHA inspector, they are required to look at items that were requested and are unable to perform an entire inspection on a unit or community complex. Looking at the situation, he sees that they met all the requirements of the building officials at that time. Now, are there some issues in the mean time that have changed - maybe safety issues that they need to take care of? As far as going back through and discussing issues that at the time passed inspections I don't think is right. What are the issues that have come up since that time that are real safety issues? 90% of these issues have gone through the process that is required.

Dick Dyer asked Joe if the City had adopted the UBC at those times and was that the standard in effect in the City of Rexburg? Joe said that Rose had told him the UBC has been adopted since back in the '70's.

When a revised version of the code comes up is it automatically adopted because the City long ago adopted it or does each have to be individually accepted and ruled upon by the City Council? Mr. Zollinger said the procedure is that the City attempts to adopt the UBC as soon after it is published as possible. The '83' code may have been in force for the first few buildings. Strictly speaking, none of that applies to eminent health and safety issues. There is no grandfathering of health and safety issues.

Mr. Zollinger said that one thing he can't do is allow Joe and Blair and Scott Richter to go out and do a spot inspection which is what Mr. Clark is saying he wanted. Once this City crew walks on to a job from this point forward, we are going to - on request for an inspection - treat them all just as harshly as we have treated you and that is - that it is all or nothing, until we get our ordinance back in place to give us further direction.

Dick asked if they (Steve and Paul Clark) felt there was anything in these inspection reports that might be arbitrary or capricious in nature? Yes, they feel that is what happened. Do you take issue that any of these are not set forth in the Code? Paul said that all of the safety issues they have taken care of.

Dick asked Joe if the review was oriented towards Health and Safety issues and Joe said it was primarily oriented towards the Health and Safety issues. If they happened to see something else at the time they also listed it. They didn't get into such things as looking at the structure itself.

Dick asked if the Clarks had a specific list of issues that you feel the City has over stepped their bounds or that for some reason, having met earlier codes are not required to be met at this point and time? Do you have a specific list or are you just making a general appeal today?

Mr. Clark said their basic appeal is that they were singled out in '90' and gone through completely and approved by the City Council and based on that we would like to appeal that we are there as far as the requirements.

John Watson asked if an independent inspector were to make an inspection, without any knowledge of this, would they come up with a similar list just using the UBC as an evaluation? Mr. Clark said it would depend on how thorough they would want to be.

John said that the UBC says that a City may adopt the Code but that the building official has the right to make a decision - he can waive any portions of the code except for health and safety issues. Mr. Zollinger said that the building official does not have the authority on his own to waive something. The way the Code is presented the City can adopt it in its entirety or with exceptions and the City of Rexburg does adopt it with exceptions each time.

Mr. Zollinger stated again that as far as this committee is concerned they can only look at interpretation and application.

Paul Clark said that right now is a crucial time in the business. This is the time they set up all their contracts for next year. Without any revenue they cannot function. To drag this process out for the next 2 months will shut this apartment complex down. Based on the Codes and numerous inspections they have passed, they would ask that the City give the College a clean bill of health and they would be happy to work with every single issue on the list.

Mr. Zollinger said the City cannot give them a clean bill of health. However, we can give you a much quicker time line to reach a point where, in fact we could give you a conditional bill of health if we sit down and review this list together and see if we can come to some sort of agreement.

John asked if the board could take a week and come by and inspect the apartments and then meet and evaluate if there has been any misinterpretation or misapplication. Mr. Clark gave the board permission to inspect the apartments.

Paul agreed to meet with the building inspectors today to go over the entire list.

Appeals board will meet again for a work session Tuesday, February 20th, at 6:00 a.m.

Appeals board and the Clarks will meet again Friday, February 23rd, at 6:00 a.m. (Minutes to be taken at this meeting.)