

Unsafe Building Hearing Authority Meeting
February 23, 2010
6:00 PM

The meeting was called to order by Chairman Konradi at 6:00 PM. The Pledge of Allegiance was recited. Roll call was taken. Members answering the roll call were James Konradi, Sean Brady, Richard Kelley, David Shilling and Chad Evenhouse. Also present were Town Attorney Greg Sobkowski, Director of Community Development Wilbur Cox, Board Attorney James Meyer and Recording Secretary Christine Marbach.

New Business:

Act on Unsafe Building Order for 525 E. Main Street. Wilbur Cox introduced himself as the Director of Community Development for the Town of Lowell and an ICC Certified Building Official as National Designation. He explained that this meeting was called to request the board to affirm his order issued on February 3, 2010 to demolish the structure at 525 E. Main Street. He handed out informational packets to the board and explained that he had given them an excerpt from the Unsafe Building Code Chapter 153 Lowell Code of Ordinances. He explained that the Enforcement Authority is the Director of Community Development, the Hearing Authority is the Board of Zoning Appeals and he has included the definition of an Unsafe Building structure in the packet. He read the definition and stated as a result of the inspections done by his office, that this building meets the requirements of the Unsafe Building and Structure definition. There is also an inspection in the packet that was done by Thomas Trulley, Certified Building Inspector for the Town of Lowell, with accompanied pictures showing the deterioration of the unsafe premises. There was also an inspection done by Dann Keiser on April 23, 2008 that was performed not only for the Town of Lowell but also for the Indiana Historic Landmark Foundation. He extracted a couple of sentences in the Assessment Summary portion that he feels is important which reads, ***“The current very poor condition of the roof has reached the point that the rate of structural deterioration could increase rapidly over the next several years to the point the building will not be in a repairable condition. The building is in need of immediate stabilization to prevent further deterioration and eventual demolition. Without stabilization this building poses a threat to community health & safety.”*** Mr. Cox stated that with all the pictures and the inspections that have been done, and no recent attempts to follow the rules of the Town of Lowell to attend to this building, he asks that they affirm the Order to Demolish. Attorney Sobkowski asked Mr. Cox to describe some of the other specific issues with the building that make it unsafe in his judgment. Mr. Cox stated that one of the issues was roof structure; there is a rafter that has deteriorated along with a ceiling tile. The brick facing has been falling off of the building for some time. There are cracks in the concrete sill plates of the windows. There are cracks down the side of the building and the limestone has fallen off the east side of building where the brickwork can be seen to the interior of the building. The mortar is giving away along with the brick and that part of the building is no longer supported by a foundation. There are broken windows open to the element. The roof has allowed the building to be open to the elements. The chimneys you could see through from one side to the other. Two years ago in April it was “iffy” if it could be saved, nothing has been done in two years and it has grown worse. He stated that it was sad

that the Town had to look at this building deteriorated and feels that this building is demolition by neglect. Attorney Sobkowski asked Mr. Cox if he was present when the report was done from Cornerstone Design in April of 2008. Mr. Cox stated that he was. Attorney Sobkowski asked Mr. Cox to describe the condition of the interior of the building. Mr. Cox stated that when the doors were opened in the front, there was a stairway leading to the first floor. At the first floor level most of the guys could not get through, except for two, the architect and the appraiser who were thin and had to enter most parts of the building through the transoms that were over the doors. There was enough room between the ceiling and the box tops to get to other areas in this building. Attorney Sobkowski asked if the code violations and the maintenance issues started in 2008. Mr. Cox stated that in 2004 there was another building official who had started some inspection violation reports, which resulted in a number of violations being issued against the owner. This ended up in court proceedings where the whole litigation ended up being dismissed. Attorney Sobkowski asked if any of the violations that were the subject of that enforcement action been corrected. Mr. Cox answered, "No, they have not". Attorney Sobkowski asked if any of the issues resulting from the report of 2008 have been corrected. Mr. Cox stated that they have not. Mr. Evenhouse asked if the violations were dismissed in the lawsuit along with the fines. Attorney Sobkowski stated that the violations were never dismissed. Attorney Sobkowski asked Tom Trulley to come forward and explain the inspection made 8-24-09. Tom Trulley, Code Enforcement Officer for the Town of Lowell, explained that he did an inspection on the exterior of the building on August 24, 2009 due to complaints of falling brick in neighbor's yards. He found many stress cracks in the brickwork due to the building starting to shift. There were shingles falling from the roof throughout the area along with rotting wood. There were broken windows. He stated that on one occasion on a previous inspection he encountered a very large raccoon coming out of the basement window. He felt that a child could gain entrance to the building very easily. He stated that not only was the rafter and ceiling joist cracked, the main girder was also cracked on the east side of the foyer. Attorney Sobkowski asked if the condition of the building had changed from 2008 to 2009. Mr. Trulley stated that there were more windows broken, more damage to the roof and more shingles missing. Attorney Sobkowski asked Mr. Trulley that based on the inspections made in 2008 and 2009, would he agree with Mr. Cox that the building is an unsafe building per the Town Ordinance. Mr. Trulley stated that he agreed with Mr. Cox. Attorney Sobkowski stated that they did not have anything else to present at this point.

Chairman Konradi asked the attorneys for the owner to state their case. Attorney Jared Tauber, 1415 Eagle Ridge Dr. Schererville, IN, representing Maria Bodar introduced his colleague Jack Kramer. Attorney Kramer stated that the Building Standard Order does not hold any water because his client has not received any notice of this meeting. Ms. Bodar is the owner of the property and Frank Lagace has some interest in the property but is not the owner. He explained that Mr. Lagace was bedridden and this kind of burden should not have been put on Mr. Lagace. He stated that according to the Town of Lowell Ordinance, which he found on line, the Building Standard Order is to be issued by the Town Manager or the Building Administrator, which, Mr. Cox is neither one of those. He stated because of the improper notice, the only way they found out about the meeting was because Mr. Lagace called Ms. Bodar. He stated that they do have an architect

present who will not represent them or the Town. The architect is Dann Keiser who did the Assessment Report in 2008. Attorney Tauber stated that there were two things that came out in this report, one was that the building needed to be stabilized really quickly and the other was that it needed to be renovated. The report also stated that the building structure is still good and in re-usable condition. He stated that they also have a petition that Ms. Bodar got from the neighbors asking that the building be saved from demolition. He further stated that Mr. Lagace has been talking to Mr. Cox and there was never any mention of demolition just condemnation. They have also heard that Town Employees were telling potential contractors that the building would be demolished and that there was no reason to bid on restoring the building. Attorney Sobkowski asked if he could address the "notice issue", in accordance with the ordinance notice was sent to Maria Bodar at a P.O. Box in Chicago Illinois and that address was obtained from Lake County and that is the address where tax bills are sent. The letter was unclaimed and it is the Town's position by here attendance at this meeting, she waives the lack of notice, had she not attended she would have to be notified in some other fashion. He further stated that he had the orders that were sent per certified mail, the green card was returned and Mr. Lagace was served on February 12, 2010 and Maria Bodar was returned unclaimed. Attorney Sobkowski stated that in Section 31.32 of the Lowell Code of Ordinances Subsection (C) it specifically indicates that all references to the Lowell Municipal Code and all other ordinances or resolutions that reference the title or position "Building Administrator" are hereby amended to replace such references with the new job title of "Director of Community Development" and that looks to be a change that occurred in 2006, therefore, Mr. Cox is the Director of Community Development and is the proper authority to issue this order.

Attorney Kramer asked Dann Keiser to come forward. Dann Keiser stated that he was a Registered Architect with Cornerstone Design and has done work with the historic reservation renovation for 25 years. Attorney Kramer asked what kind of training he had. Mr. Keiser stated that he had a professional degree from Ball State University, who has a Masters program in Historic Preservation, which he took all the courses in this program. Attorney Kramer asked how long had he been an architect. Mr. Keiser replied that he has been an architect for 21 years. Attorney Kramer asked in that time period had he looked at many structures. Mr. Keiser replied that he has looked at many structures from courthouses to private residences. Attorney Kramer asked if in April of 2008 did he do an inspection on the schoolhouse next door and he issued a couple of reports regarding his inspection. Mr. Keiser stated that he had. Attorney Kramer asked if he had been by the building today. Mr. Keiser stated that he did take a walk around it and did an exterior evaluation of the building compared it to what it was two years ago. Attorney Kramer asked in his professional opinion did he think that the building was in danger of falling over or things coming off of it. Mr. Keiser stated that from a structural standpoint it is not going to collapse, in the report regarding the roof needing repair, there is a truss in there that has collapsed and structural repair needs to be done. He further stated that the concern when the report was done that a no load or some load could cause that portion of the roof to collapse. He felt that according to the photographs taken two years ago he felt that it was basically in the same condition that it was then from a structural standpoint. Attorney Kramer asked what stabilization of the building means. Mr. Keiser

stated that the stabilization just means getting the building so that it does not continue to deteriorate and not in danger of collapse. Putting a roof on the building, tuck pointing on some of the masonry, sealing off open windows, there is more glass broken out than it was before, would stabilize the building. He further stated that masonry buildings will stand for quite awhile as long as there is not a lot of moisture coming through it. Attorney Kramer asked in his professional opinion does this building need to be torn down. Mr. Keiser stated, no, comparing it to the photographs and the evaluation they did two years ago, it is not in that much worse condition than it was then. He further stated that one can see some places where moisture is getting into the building, there is effervescing on the brick where the salt comes out, but this can be cleaned off when they are tuck pointing. He stated that it was not in danger of collapsing and being a pile of brick in the next six months. He stated that he has been in buildings a lot worse that have been put back together. Attorney Kramer asked if he had spoken to the owner, Maria Bodar, of what needs to be done to this property. Mr. Keiser stated that other than his meeting her this evening for the first time he had not spoken to her. He further stating that it's not a matter of putting a new roof on the building, the structure has to be repaired first, the masonry is in good shape with the exception of the wall where the gym is and the bricks are coming off and a few other places where the brick is missing. Mr. Kramer asked if steps were taken to stabilize the building, would it improve the overall structure. Mr. Keiser stated he felt that the structural integrity of the building could be restored. Attorney Sobkowski asked Mr. Keiser if other than the additional windows that had been broken did he notice any other differences in the condition of the building from his 2008 inspection. Mr. Keiser stated that there was more effervescing on the brick especially by the front entrance, there is areas where the shingles are missing getting water down through the walls which then washes the salts out onto the brick. Attorney Sobkowski asked about the roof. Mr. Keiser stated that the roof did not look a lot different from the time he came in 2008. Attorney Sobkowski asked if he had any idea of what the cost would be involved stabilizing this building. Mr. Keiser stated that in the renovation feasibility study he did on April 27, 2008, the cost estimate was \$150,000 to \$200,000. Attorney Sobkowski stated that spending this kind of money would not make the building ready for use or occupancy. Mr. Keiser agreed and stated that it would cost around \$750,000 to a little over a million dollars for the stabilization and renovation.

Attorney Tauber called Maria Bodar to the podium. Maria Bodar stated her name and gave her address as P.O. Box 300674, Chicago, Illinois. Attorney Tauber asked when she became the owner of this property. Ms. Bodar stated she owned it about 15 years before she sold it to Frank Lagace in 2004. This was sold on a Land Contract Sale. Attorney Tauber asked her if she was still the owner of the property today. Ms. Bodar stated that she was because Mr. Lagace still owes her a small amount of money. Attorney Tauber asked if at some point during her ownership was there any preparation to get the roof replaced. Ms. Bodar stated that she did have a permit from the town and someone was working on it, but the roof did not get fixed because the permit expired. She stated that she asked for an extension of the permit and was never given the extension and was forced to sell the building. Attorney Tauber asked that since he had the land sale, did she have any involvement with the building. Ms. Bodar stated that she did not have any involvement with the building because she sold the building "as-is" and he was supposed

to get the work done. Attorney Tauber asked since she had gotten notice of the demolition 2 weeks ago, has she been doing anything to try to get the building stabilized. Ms. Bodar stated that when she found out about the order, a week and a half ago, she called a lawyer to represent her and Mr. Lagace had called several roofing contractors to come out for estimates. She further stated that contractors was told by the town hall employees that the owner was unreliable and do not pay their bills and that the building is being demolished and it is a done deal. She also stated that the contractors that she contacted for bid were told by her not to go to the Town Hall for any information about the permit and to just look at the building. She stated that she had made arrangements with Dann Keiser to do a walk through in the building to make sure that it is structurally sound. She further went on to say that there was no way that anyone could get inside the building and felt that it is secured. Attorney Tauber asked Ms. Bodar if she wants this building repaired. She replied "yes", the building should be saved. Attorney Tauber asked is she was prepared to repair this building. Ms. Bodar stated "yes" and wants to see it saved, as do all the people that signed the petition. She stated that she needs time to get a contractor to work on the building without interference from the town. Attorney Sobkowski asked Ms. Bodar when she sold the property to Mr. Lagace. Ms. Bodar stated that it was in 2004. Mr. Sobkowski stated that she had said that there was roof repairs started prior to the sale and those repairs were never completed. Ms. Bodar stated because the permit expired and it wasn't renewed. Attorney Sobkowski stated then that means that the roof was never completed. Mr. Bodar stated that the roof could not be completed in a week and yes the roof was never completed because they needed more time. Attorney Sobkowski stated that the roof needed repair back as far as 2003 and no roof repairs have been performed on that building since the permit expired. Ms. Bodar stated there has been no repairs done but that there was a meeting with Stoney Construction, Wilbur Cox, and Tiffany from the Historical Society. Stoney Construction had to get a Lake County License to be able to do the job and did not pass the test to get the license. Attorney Sobkowski stated that in 2004 the Town had identified a lot of maintenance issues that still have not been corrected. Ms. Bodar stated, "I'm sure they did". Attorney Sobkowski stated that there was also a lawsuit over those maintenance issues where they sought fines from you because the building was not maintained per the town code and the repairs that were noted by the town still have not been made up to today. Ms. Bodar stated "no because the permit wasn't being issued". Attorney Sobkowski asked if she heard the cost that Mr. Keiser stated to repair this building to make it usable. Ms. Bodar stated, "yes". Attorney Sobkowski stated that it would cost \$750,000 to 1 million dollars. Ms Bodar stated, "which you do not have to pay" and "yes I heard". Attorney Tauber asked Ms. Bodar if she had the ability to fund a re-stabilization and renovation of this property. Ms. Bodar stated, "yes".

Chairman Konradi stated that if that were all that they had from the attorney, he would open up questions from the board. Mr. Evenhouse asked Mr. Cox how long a permit would be good for. Mr. Cox stated that permits issued by the Town are good for two years. Mr. Evenhouse asked if the repairs were done in two years. Mr. Cox answered stating that he started on 2005 and did not know when that permit was issued, he just knew that something was not completed. Chairman Konradi asked Ms. Bodar if she had the petition she spoke of with the signatures. Ms. Bodar stated that she did. Chairman

Konradi also asked her if she had any written contracts from any contractors to show that there was work in progress. Ms. Bodar stated that there was supposed to be another contractor there and asked if a Mr. Doppler was present. Chairman Konradi asked if there was anything other that she had because the board could not deal with hearsay. A discussion between Ms. Bodar and Mr. Doppler followed regarding his inspection of the property. Ms. Bodar's attorneys suggested that Mr. Doppler address the board. Mr. Doppler introduced himself as Chuck Doppler, Roofing Contractor. He said he had a Lake County License but not a Lowell License. Attorney Tauber asked if he a chance to look at the building. Mr. Doppler stated that he just looked at the outside. Attorney Tauber asked Mr. Doppler if assuming the building does not get demolished, as a roofing contractor would he want to look at it and provide an estimate. Mr. Doppler stated that he would be willing to do that. Mr. Brady asked about the ownership of the building with two names on it, were they partners in the building? Attorney Tauber stated that they are not partners and that she sold the property to Mr. Lagace through a land sale contract, until that contract is paid, Ms. Bodar still owns it. Mr. Kelley stated that since she's owned this building since 1988, 22 years, and the building is steadily deteriorating and nothing really has been accomplished in 22 years. She further stated to Mr. Keiser that any building could be renovated if you have the funds to do it. It seemed to him that this has gone on for more than 2 decades with nothing happening and he cannot understand how she can defend her position. Mr. Shilling asked Mr. Keiser in his opinion is the value of the complete restoration, is it more than the cost of the restoration? Mr. Keiser answered that he thinks he estimated it as part of the study to build a building of the same square footage, not to mention the historic character of the masonry bearing the quality of the construction, to build a building with that same square footage would be over 2 million dollars. He further stated that renovation of that building would be economically feasible because it would be less that the two million to build a new one. Historic character and heritage plays a large part of this too as far as the value of the building. Mr. Evenhouse asked Mr. Keiser about Mr. Trulley's inspection-involving stress cracks in the brick and did he see any of that when he did his inspection? Mr. Keiser answered that there was some especially on the south facade and those were noted in the initial study, which may have happed with the impact load when the truss collapsed and the ceiling collapsed at that level. He further stated that comparing photographs from two years ago and looking at it again today, he did not notice a lot of new stress cracks. Mr. Evenhouse asked if he thought it was a foundation issue. Mr. Keiser stated that he did not. Mr. Evenhouse asked if any renovation would be done to the building, would this problem happen again. Mr. Keiser stated that it would not because he felt an impact load and not the foundation caused it.

Board Attorney James Meyer asked Mr. Keiser if he practiced in the Lowell area. Mr. Keiser stated that he goes all over the State of Indiana. Attorney Meyer asked if he was familiar with the Building Code for the Town of Lowell. Mr. Keiser stated that he has not done any project in the Town of Lowell and he is familiar with the State Building Code. Attorney Meyer asked if there were any conditions in this building that violate the State Building Code. Mr. Keiser stated that as stated in his report, there are numerous.... Attorney Meyer asked if he had heard Mr. Cox and Mr. Trulley saying that there were bricks falling off the building and did he notice any bricks missing from the

walls on the exterior. Mr. Keiser stated that there were in two locations but they were that way in his photographs of two years ago. Attorney Meyers asked if he was stating to the board that not another brick has fallen in the last two years. Mr. Keiser stated that he could not say that. Attorney Meyer asked if he was contesting what Mr. Trulley said. Mr. Keiser stated that he was not and knows that there is some deterioration, but does not think it that the brick wall will fall into the street. He further stated that there was one place where they put a door into the basement and it did not have proper header and that has collapsed. Mr. Konradi asked Mr. Trulley what size the girder was that was damaged and was it a major support girder? Mr. Trulley stated that Mr. Keiser stated that there was a girder that was cracked. Mr. Keiser stated that the roof structure is of heavy timber similar to a barn structure so they would pin their joints and tie the joints together, there was a major beam that handled the corner that has collapsed, but the rafters are still carrying the load above that. That truss was also supporting the ceiling load so that the ceiling load pulled that down and it collapsed onto the floor of that second floor room. Mr. Konradi asked what size that was a 9 X 9? Mr. Keiser stated that it was probably an 8 X 8, which, is fairly large. Mr. Brady asked if Mr. Keiser went inside the structure today. Mr. Keiser stated that he did not because he could not get into it. Mr. Brady pointed out that it has been two years of open roof also and felt that it certainly could cause more deterioration to what he saw two years ago. Mr. Keiser agreed that there would be some more additional deterioration to the building. Attorney Meyer stated that Mr. Keiser said that there not that many more stress cracks than what he saw two years ago, and wanted to know how many stress cracks did he notice the first time. Mr. Keiser stated that in the lintels and in the sills there is maybe 5 or 6 of those that need to be repaired and there may have been 3 or 4 before. He further stated that compared to the overall building this is minor with the overall masonry. Attorney Meyer asked is there or is there not more stress cracks on the outside wall brick today than there were in 2008. Mr. Keiser stated that he would have to say that if there were 5 before there are probably 7 now and one stone may have 3 cracks in it. Attorney Meyer asked Mr. Keiser in his experience, what would it cost to demolish this building. Mr. Keiser stated that he really did not know and it depends on who is paying for it, for instance if you have Federal money to pay for it and he would think it would be \$100,000 to demolish it. Attorney Meyer asked Ms. Bodar who has been paying the taxes on this building. Ms. Bodar stated that Mr. Lagace had been paying the taxes since 2003 and got in arrears. Attorney Meyer asked if she had been getting the tax bills. Ms. Bodar stated that she had not been getting any of the tax bills. Attorney Meyer stated that she said she had sufficient funds to stabilize the building and if the board were interested, would she be able to post a bond of \$100,000 to fund the demolition of the building in the event that she could not get the building stabilized in whatever time the board, if it decides to go that way, would set. Ms. Bodar stated, " If I had to, yes". Mr. Evenhouse asked how many notifications were given since 2004 to Ms. Bodar renovating this project and how often were those sent to her. Mr. Cox answered that there was one sent just recently because we just recently got her address. He further stated that the address on the building is 525 E. Main and the address in the County for Ms. Bodar is 525 E. Main, there was one notice sent to Maria Bodar and contract purchaser Frank Lagace which was sent in November of 2009, which Mr. Lagace signed for. The only address that the town has now is what they got from the County when the back taxes were due and she had made arrangements to pay them; we got the P.O. Box

address from the County at that time. Attorney Sobkowski stated that just to supplement that answer when talking about notices, there was a lawsuit filed by the Town as a result of the code violations to the building, that lawsuit was pending from May 13, 2004 until March 4, 2008, so for that almost 4 year period, the action in regard to code violations were taken in the context of that lawsuit.

Chairman Konradi asked for closing arguments.

Attorney Sobkowski stated that Mr. Keiser made the comment that the building was not structural unsound, but it is important to point out that a building having an impaired structural condition is only one thing that can make the building an unsafe building under the Unsafe Building Ordinance. A building can also be unsafe if it is dangerous to person or property because of a violation of a statute or ordinance that is concerning building condition or maintenance or if it is vacant and not maintained in a manner that would allow human habitation, occupancy or use under the requirements of a statute or ordinance. Also if it is a public nuisance, he thinks that there has been ample evidence presented which establishes that under that alternative definition, even though the structure may be sound, that this building qualifies as an unsafe building under the ordinance and under the State Statute Sections 1 thru 6 under Town Code under the definition of an unsafe building or structure mirror those in State Law defined under Unsafe Buildings. He further stated that in a perfect world it would be wonderful if that building could be restored and put to some good use. Ms. Bodar started making repairs to the roof back in 2003 and as early as 2003 there were maintenance issues at that building. The roofs repairs were never completed and the Town cited her for code violations and had a lawsuit filed in 2004 and she admitted that no repairs had been done to this building since here building permit for the roof expired in 2003. He does not think it realistic that now these repairs are going to made to this building especially when just stabilizing the building is going to cost more in the vicinity of \$200,000, making the building usable is going to cost anywhere from \$750,000 to one million dollars. This building qualifies as an unsafe building and it is time that something happen to this building before the walls does fall down or someone gets injured. He asked the board to reaffirm the order issued by Mr. Cox determining that this is an unsafe building and directing that it be demolished.

Attorney Tauber stated that he had told his client, Maria Bodar that if she thought that they were coming in to get an order rescinded she has to stabilize this building immediately, she told him that this is what she wants to do. If the building is demolished that could never happen, if the board rescinds the order and nothing happens, then she cannot come back and ask for another chance. He was asking the board to give Ms. Bodar another chance to stabilize and renovate this historic building.

Attorney Meyer told the board that they had three options to decide on:

1. They could confirm the order,
2. They could modify the order by changing dates and posing conditions, or
3. They could rescind the order.

Chairman Konradi asked Attorney Meyer to read the building order, which will be made part of these minutes. He stated that Ms. Bodar would have 30 days from the time she was notified which would be a week and a half ago to demolish the building if the board affirms the order. Mr. Brady wanted to know if a stipulation can be made that Ms. Bodar could come up with the funds to stabilize the building. Attorney Meyer stated that the board has the authority to say it's an unsafe building and then they can find what the appropriate action would be to take whether to demolish it within 30 days or some period of time, put up a bond within a short period of time to secure the stabilization that they talked about. They can make a recommendation to make the bond as much as the demolition would cost of \$100,000. Mr. Kelley moved to act on this and affirm this unsafe building order for 525 E. Main St. Seconded by Mr. Evenhouse. Chairman Konradi asked for a roll call vote. James Konradi – yes, Sean Brady – no, Richard Kelley – yes, David Shilling – yes, Chad Evenhouse – yes. Voting was 4 yes, with Sean Brady voting no. Motion passed to confirm the order.

Mr. Kelley moved to adjourn at 7:15 PM.

James Konradi, Chairman

Sean Brady, Vice Chairman