

SPECIAL MEETING
AUGUST 29, 2012

A Special Meeting of the Town Board of the Town of Somerset, County of Niagara and the State of New York was held at the Town Hall, 8700 Haight Road, Barker, New York on the 29th day of August 2012.

Present:	Daniel M. Engert -----	Supervisor
	Randall J. Wayner -----	Councilman
	Gary R. Alt -----	Councilman
	Robin R. Jansen -----	Councilman
	Jeffrey M. Dewart -----	Councilman
	Rebecca A. Connolly ----	Clerk
	Mindy Austin -----	Confidential Asst. to the Supervisor
	Morgan Jones Jr. -----	Counsel

Attended by: Mark Remington, Code Enforcement Officer; 4 residents

Notice of said meeting sent to the Lockport Union-Sun & Journal on August 17, 2012 with same notice being posted at the Town Hall on the same day.

Supervisor Engert called the meeting to order at 6:00PM with the Pledge to the Flag.

HEARING FOR UNSAFE BUILDING – 8681 LAKE ROAD

Clerk Connolly read notice of hearing.

Supervisor Engert stated that this is a factual hearing called pursuant to Chapter 78 of the Code of the Town of Somerset to hear testimony of the Code Enforcement Officer regarding the condition of the above named property.

Attorney Jones gave a review of the procedural matters involved including the building being inspected by the Code Enforcement Officer on July 21, 23 and 24, 2012; written report of the Code Enforcement Officer and based on the report the building was thought to be unsafe or dangerous; July 27, 2012 a notice of unsafe and dangerous building was issued with notice sent to all parties via certified mail on July 27, 2012 that included an order to demolish or repair the premises by August 23, 2012; notice of such order posted on the building August 3, 2012 with said order again being sent via certified mail to Beverly Cox, Maranda Cox, MidFirst Bank and the Attorneys that represent the bank in the foreclosure and sale against the property; on August 14, 2012 the Town Board adopted a resolution tentatively scheduling this hearing in the event the Code Enforcement Officer determined the repairs had not been made by August 23, 2012; a notice of the tentative hearing was posted on the building on August 16, 2012 and mailed on same date to the parties via certified mail; August 23, 2012 was the date specified in the compliance order to have the property repaired or removed; on August 24, 2012 the Code Enforcement Officer determined the building had not been repaired nor removed; another notice was sent via Federal Express on August 24, 2012 stating the hearing would be held on August 29, 2012 with same notice being posted on the

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building with such notice being communicated to MidFirst Bank via email; and he spoke with Beverly Cox a couple times on the phone and made her aware of the hearing.

Supervisor Engert asked the timeframes of the emails and phone calls.

Attorney Jones said there are various emails to MidFirst and the first phone call from Beverly Cox was within 3 days of the original order, with the second call within the last week. He stated she was aware of the order and would not divulge where she was physically. He stated that she knew about the hearing tonight and had seen the notices posted on the building.

Attorney Jones stated neither Mrs. Cox nor a representative is present. He stated Timothy Seibold, an attorney with Frenkel Lambert, is present representing MidFirst Bank.

Clerk Connolly swore in the Code Enforcement Officer Remington.

Attorney Jones asked Mr. Remington to state his name, address and position for the record.

Mark Remington stated his name and said his address is 1885 Pallister Avenue, Barker New York.

Attorney Jones asked what his current position is.

Mr. Remington stated Code Enforcement Officer.

Attorney Jones asked if he was the Code Enforcement Officer on July 21st, 23rd and 24th of this year.

Code Enforcement Officer Remington stated yes.

Attorney Jones asked if on those dates he had the occasion of visiting the property at 8681 Lake Road.

Code Enforcement Officer Remington said yes.

Attorney Jones asked what he observed when he visited the property.

Code Enforcement Officer Remington gave an overview stating that he started to take pictures on July 21st and again on the 23rd. He said the roof had a tarp over it, holes in the roof, water damage, the porch area where there are holes in the soffit and the fascia is rotten and deteriorated, siding is coming off and I believe it has asbestos siding on it; no railings on the porch and the porch is in bad shape; no gutters on the house which determined water damage going down to the foundation of which is a stone foundation,

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trees are growing up close to it, the windows are broken and open which allow different things to get in including cats.

Attorney Jones asked if the open and broken windows would let the elements like rain in.

Code Enforcement Officer Remington stated yes. He said when he was able to get inside; he was not able to spend too much time in there because of the condition it was in. He said it smelled of urine and feces with all the cats that were in there, there were a lot of bare walls, wiring, stains on the walls and ceilings due to either the rain and/or the cat urine, floors were saturated, and a lot of fire issues with the bare walls and wiring exposed.

Attorney Jones asked if he saw any areas on the roof where the cats could actually crawl through.

Code Enforcement Officer Remington said yes and they could crawl onto the roof from being inside.

Attorney Jones asked if he could estimate the number of cats.

Code Enforcement Officer Remington said he would guess 50 to 75 cats.

Attorney Jones asked if he was able to get to the second floor or basement.

Code Enforcement Officer Remington said he wasn't able to get upstairs because when you open up the door there was so much debris it went right to the ceiling and unable to get to the stairs. He said he started to go down and it was unsafe. He said actually when I was there; the SPCA officer actually started down first and advised everyone not to go down there because it looked like the floor was starting to cave in.

Attorney Jones asked if he could describe what condition the floor was as far as structural integrity.

Code Enforcement Officer Remington said the floor was sagging and was wide open to the basement which could cause rodents to get into the basement.

Attorney Jones said there was an area called the family room.

Code Enforcement Officer Remington said yes.

Attorney Jones asked him to describe the condition.

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Code Enforcement Officer Remington said that was the area where there was no drywall on it, no ceiling, bare to the studs, electricity exposed and a fire hazard, some of the supports going across the ceiling starting to come down, you could see the wood on that ceiling was pretty much rotten. He said this was a single story portion.

Attorney Jones asked if he felt that area was in danger of collapse.

Code Enforcement Officer Remington said yes.

Attorney Jones asked him to describe the condition of the woodwork inside.

Code Enforcement Officer Remington said it was pretty much bare and scratched up and chewed up from the cats that were in there.

Supervisor Engert said when you commented about the fact there was not a ceiling left and the walls were down to the studs, was there evidence that at some time there was dry wall there that had rotted off.

Code Enforcement Officer Remington said it is hard to tell because there was so much debris in the house. He said it was like going into a hoarder's house. He said he could not open up the doors because there was garbage. He said he could not spend a lot of time inside because he was not hazmat prepared with a suit and mask.

Supervisor Engert asked if he was there long enough to see and observe.

Code Enforcement Officer Remington said he was there long enough to see and take pictures that show the condition.

Attorney Jones asked if the building is dangerous for any first responders for a fire or any emergency.

Code Enforcement Officer Remington said absolutely with all the debris that was in there. He said you could not get to a lot of the windows.

Attorney Jones asked if the building is secure.

Code Enforcement Officer Remington said there are some open windows.

Attorney Jones asked if the building in any way poses a nuisance to teenagers that would venture in there.

Code Enforcement Officer Remington said not the way the condition of the inside is. He said you cannot even get close to it because of the ammonia smell.

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Attorney Jones asked all things considered, in your opinion is it considered unsafe and dangerous.

Code Enforcement Officer Remington said absolutely. He said it is the worst thing he has ever seen.

Attorney Jones asked as a result of your inspections did you prepare a report of inspection that you have on file listing many of the highlights that you observed.

Code Enforcement Officer Remington said yes.

Attorney Jones asked if there are some pictures and did you take them personally.

Code Enforcement Officer Remington said the pictures were taken by him personally and described them as they were being passed to the Board, including the deterioration; the tarp on the roof to prevent some of the water getting in there, with it being there for some time; that light hanging and if it is live it is a fire hazard; the hole in roof; inside condition of furniture and woodwork; stains on the walls; and the condition of the floors.

Supervisor Engert said it appears there was a Direct TV antenna on the ground and asked if it fell onto the ground.

Code Enforcement Officer Remington said it probably fell off the rotten roof.

Councilman Wayner asked if during your investigation there was a person from the SPCA there with you.

Code Enforcement Officer Remington said yes and that there were actually 2 people.

Councilman Wayner asked if there were any comments from them.

Code Enforcement Officer Remington said the person from the SPCA actually had the search warrant for the house. He said there were 2 people from the SPCA, a Niagara County Sheriff, a local police officer and himself that all went in.

Attorney Jones asked what all the brown is all over the floor.

Code Enforcement Officer Remington said cat feces.

Supervisor Engert said it appears in one photo the interior door appears to be one foot high of water damage?

Code Enforcement Officer Remington said yes. He said he thought if some one was living in there they would have been passed away.

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Councilman Jansen asked in your opinion is the house in such condition that a contractor could go in there and clean it up and get it ready for renovation, is it safe enough for a contractor to do that?

Code Enforcement Officer Remington said not in the condition that it is now. He said there is no kind of cleaner that could take the smell of urine and feces out.

Attorney Timothy Seibold of Frankel/Lambert, representing MidFirst Bank, asked prior to your inspections of July 21st, 23rd and 24th, were there any other housing and code violations that were levied against this property?

Code Enforcement Officer Remington said in the past there was and he just took over the position. He said in 2008 and 2009 for property maintenance on the outside.

Attorney Seibold said that you mentioned the SPCA had a search warrant and was that based upon the knowledge of cats or the condition of the interior?

Code Enforcement Officer Remington said the SPCA was called by neighbors that saw cats and noticed the smell.

Attorney Seibold stated that you said you observed the cats coming in and out and that the smell was obvious. He asked if there was any way to foresee such a condition from the curb.

Code Enforcement Officer Remington said you would probably pass right by it because of the overgrowth.

Attorney Seibold said your report is two pages. He asked if there is an addendum that talks about the size of holes, amount of water damage, or anything specific. He said pictures speak a lot of words.

Code Enforcement Officer Remington said the pictures show the conditions. He said it is hard to say what water damage versus urine damage is. He said it is all discolored.

Attorney Seibold asked if he saw any personal effects that would be evidence of someone living there 2, 4 or 6 months ago.

Code Enforcement Officer Remington said someone was going in there. He said there were bags of food and it was recent because of the amount of (cat) food. He said the bank had a third party come out to look over the property. He said he spoke with that person on the phone and the person told him that he would not go into the house because of the appearance and condition.

Attorney Seibold said it appears there is a Winnebago and car in the driveway. He asked if they were his.

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Code Enforcement Officer Remington said he assumes they are the owners.

Attorney Seibold said one of the pictures looks like a rafter and asked if he was able to get into the attic.

Code Enforcement Officer Remington said that is the family room that is all exposed.

Attorney Seibold asked if there was ever any drywall.

Code Enforcement Officer Remington said it is hard to tell and it could have fallen down.

Attorney Seibold asked if there are any records of construction or building permits.

Code Enforcement Officer Remington said no.

Attorney Jones said the Board has to make a determination if the building is unsafe and dangerous.

Councilman Wayner said in his mind the building does qualify as unsafe with it's exposed wiring, sagging floors, collapsing roof and the overall condition of the building along with Code Enforcement Officer Remington's testimony that you need hazmat equipment to enter the building. He said he believes it is unsafe for our first responders.

Attorney Seibold said he represents MidFirst Bank and said they have been working on a judgment foreclosure on the property but was held up by the bankruptcy of Ms. Cox. He said his client is working on getting bids and was under the understanding that someone was living there up until March as they periodically do drive bys. He said it was not until recently that his client was aware of the condition of the property. He said the client would like additional time to review the property to determine if it would like to demolish or rehab the house. He said that given the asbestos and cat feces, 10 to 15 days is not enough time. He said he is not aware if the original notice was sent and received.

Supervisor Engert said he appreciates his comments. He said the property has been sited numerous times over the past three years for property violations that are visible from the road and the property was certainly in questionable condition. He said he would like to continue to proceed forward to solicit for bids in the same manner while the bank looks into their options. He said our code does not call for additional time being allowed after the hearing.

Councilman Jansen said this house has property next door as well as a trailer park with children down the road and she does not want to see anyone get hurt.

Attorney Jones said the board needs to make a determination, decide if the property should be demolished, and decide if they would like to grant more time.

RESOLUTION 93-2012

8681 LAKE ROAD – DECLARE BUILDING IS UNSAFE AND DANGEROUS

On a motion of Supervisor Engert, seconded by Councilman Alt, the following resolution was

ADOPTED Ayes 5 Engert, Wayner, Alt, Jansen, Dewart
Nays 0

Resolved the report of Code Enforcement Officer Remington is accepted and the building located at 8681 Lake Road, Barker, New York is declared dangerous and unsafe.

RESOLUTION 94-2012

ORDER TO DEMOLISH 8681 LAKE ROAD

Attorney Seibold said his client is restricted by NYS law to enter a property if it is inhabited. He said they will secure the property and they would like to streamline the process. He said that if the Town does decide to demolish the property, all fees be levied against Ms. Cox as she is still the owner. He also stated they feel that proof of service (of the first mailing) was not completed according to the law.

Attorney Jones said that all items are in the file and shared the file with Attorney Seibold.

Councilman Jansen said based upon Code Enforcement Officer Remington's opinion that it is unsafe for a contractor to enter the property to provide remediation she believes the house should be demolished.

Councilman Alt said just by the pictures, the house is dangerous.

Councilman Dewart stated as a first responder, we go into a building. He said this is clearly an unsafe building and should be demolished.

Supervisor Engert asked Attorney Seibold what is his definition of a reasonable amount of time.

Attorney Seibold said in his experience it could take a while being a month or 6 months. He said it was an aggressive demolition but got held up because of New York State with the asbestos review. He said his client would like to parallel the timeline established by the Town.

Code Enforcement Officer Remington said his concern is the neighbors. He said how long they are supposed to put up with that smell.

Attorney Seibold said they are not looking for any additional time other than the time it takes the Town to do their own review. He understands the smell is absolutely horrid and the property from the curb is disturbing.

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Attorney Jones said 20 – 30 days for an emergency order is all that is needed and can be done under one permit. He said there is an exemption.

On a motion of Councilman Alt, seconded by Councilman Dewart, the following resolution was

ADOPTED Ayes 5 Engert, Wayner, Alt, Jansen, Dewart
Nays 0

Resolved MidFirst Bank is ordered to complete demolition or repair of the building located at 8681 Lake Road within 30 days or the building will be demolished at Town expense with all expenses, including legal fees as per the code, to be levied against the property owners, Beverly J. Cox and Maranda L. Cox.

Discussion ensued regarding time needed to prepare the request for proposals, time allowed for contractors to bid on the project, request of the bank for additional time and the time needed for actual demolition.

RESOLUTION 95-2012

REQUEST FOR PROPOSALS FOR DEMOLITION

On a motion of Supervisor Engert, seconded by Councilman Wayner, the following resolution was

ADOPTED Ayes 5 Engert, Wayner, Alt, Jansen, Dewart
Nays 0

Resolved the Town Attorney is authorized to draft a Request for Proposals for contractors to bid on the demolition of the property located at 8681 Lake Road with the notice to be posted within 7 days.

Attorney Jones said he has discussed the demolition with the Town Engineer and there is an exemption under Rule 56 to demolish the entire building with all the debris going to a registered landfill that is authorized to accept asbestos. He said a certified letter from the Engineer would need to be filed with the Department of Labor.

On a motion of Councilman Dewart, seconded by Councilman Jansen, the following resolution was

ADOPTED Ayes 5 Engert, Wayner, Alt, Jansen, Dewart
Nays 0

Resolved the hearing for the property at 8681 Lake Road is closed at 6:53PM.

EVERY OTHER WEEK RECYCLING

A presentation was made by Dawn Timm, Environmental Specialist of the Niagara County Public Works Department, and Joe Hickman, Modern, on the advantages of having recycling picked up every other week. Mr. Hickman provided a demonstration of the recycling container used.

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Extensive discussion ensued regarding cost benefits, amount of increased recyclable materials received, prices of containers, options for purchasing containers, and distribution of the containers to the residents.

Supervisor Engert asked Mr. Hickman to provide a proposal to the Board for discussion at the next meeting.

PRIVILEGE OF THE FLOOR

Dale Howard asked what has happened to the town website and said the hackers should be prosecuted.

Jon Hotaling stated he is opposed to having a bin for every other week recycling at his home. He asked the Board what is happening to the property across the street (Kenyon's) as the roof is caving in.

Supervisor Engert stated that he has not received a response to his letter.

On a motion of Councilman Jansen, seconded by Councilman Alt, the meeting adjourned at 8:07PM. Carried unanimously.

Rebecca A. Connolly, MMC
Town Clerk