

**JULY 26, 2016
REGULAR MEETING**

RECORD OF THE PROCEEDINGS OF THE REGULAR BOYNE CITY COMMISSION MEETING DULY CALLED AND HELD AT BOYNE CITY HALL, 364 NORTH LAKE STREET, ON TUESDAY JULY 26, 2016

CALL TO ORDER

Mayor Neidhamer called the meeting to order at 12:02 p.m. followed by the Pledge of Allegiance.

Present: Mayor Tom Neidhamer, Mayor Pro-Tem Gene Towne, Commissioners Ron Grunch, Laura Sansom and Hugh Conklin

Absent: None

Staff: Cindy Grice, Michael Cain, Scott McPherson, Mark Fowler, Andy Kovolski, Barb Brooks, Jeff Gaither, Kevin Spate, Patrick Kilkenny and City Attorney Jim Murray

Others: There was 16 citizens in attendance including representatives from the Charlevoix County News and the Petoskey News Review

CONSENT AGENDA

2016-07-083
Moved by Towne
Second by Sansom

Approval of the June 28, 2016 City Commission regular meeting minutes as presented

Ayes: 5
Nays: 0
Absent: 0
Motion carried

None

CITIZENS COMMENTS

Correspondence from the Premier of Ontario regarding their receipt of the Enbridge Pipeline resolution was received and filed.

CORRESPONDENCE

City Manager Cain reported:

- Three new full time members of the Boyne City team were hired to fill recent vacancies. Kelsey Sofia, our new Police Officer, Travis Lapeer, our new DPW Light Equipment Operator and Jane Halstead, our new General Office Clerk.
- The pavement markings at the Boyne City Airport were completed last week.
- The Safe Routes to School project to construct or improve 1.1 miles of new sidewalks in the City is underway and on schedule.
- The City Facilities project is also moving ahead and is on schedule.
- Work on the first phase of the non-motorized trail between Boyne City and Charlevoix continues to be running slightly ahead of schedule.
- The auditors were here earlier this month and all appears to have gone very well.
- Last week, we sent a check to Consumers Energy for \$12,251 along with the necessary contract documents to begin the LED conversion process for some 1496 streetlights throughout town.

**CITY MANAGERS
REPORT**

**REPORTS OF
OFFICERS, BOARDS
AND STANDING
COMMITTEES**

**204 S East Street –
Parcel # 051-341-143-00**

The June, 2016 Financial Statement; draft Minutes of the June 2, 2016 Main Street board meeting; the June 2, 2016 Parks & Recreation board meeting; the June 20, 2016 Historical Commission meeting and the June 22, 2016 Historic District Training Session were received and filed.

Public Hearing and City Commission action on findings and order of the Hearing Officer's decision and order dated April 28, 2016.

Mayor Neidhamer opened the Public Hearing at 12:08 p.m.

Attorney John Jarema objected to Planning Director Scott McPherson speaking regarding the subject.

Planning Director discussed the property located at 204 S. East St, Tax ID 15-051-341-143-00 that is a single family dwelling of unknown age. The structure is currently vacant and has been for many years. The owners of record listed for the property are Daniel A. Chapp and David W Chapp. Due to the removal / disconnection of utilities, age, dilapidation and neglect, the structure is uninhabitable and not safe for occupancy. On March 16, 2016, a dangerous structure complaint was received from Todd Wright. After review of the complaint and a visual inspection of the property, it was deemed the structure did meet the definition of a Dangerous Structure per section 14.19 of the City of Boyne City Dangerous Buildings and Structure Ordinance, and per that ordinance a dangerous structure hearing was scheduled for April 28, 2016, where the purpose of the hearing was to provide the property owner the opportunity to show cause why the Hearing Officer should not order the building be demolished, otherwise made safe or properly maintained. In 2011, the Mayor appointed a hearing officer, who, as required by ordinance may not be an employee of the enforcing agency and must have expertise in housing matters. Don Gilmet was appointed by the Mayor and City Commissioners unanimously approved that appointment. Mr. Gilmet is a licensed builder and is currently the Building Official for the City of Alpena.

McPherson added that the owners were sent notices of the hearing by certified mail, return receipt requested and the property was posted with the hearing notice on March 22, 2016. Prior to the hearing the City repeatedly requested permission to enter the property for the purpose of conducting an inspection of the premises. The property owners did not grant permission so the City obtained a search warrant to inspect the premises. At approximately noon on April 28, 2016, City Planning Director Scott McPherson, Boyne City Police Chief Jeff Gaither, Assistant Boyne City Police Chief, Kevin Spate, Charlevoix County Building Official Kevin Stark and Charlevoix County Building Inspector Kevin Schlickau met David Chapp at the property for inspection. Prior to entering the property, Mr. Chapp requested those entering the structure to sign a waiver, then guided the inspection through the structure pointing out areas the inspectors should not go as it was unsafe. At that time, based on visual inspection of the exterior, pictures and video obtained from the inspection, and testimony, the hearing officer found overwhelming evidence that the structure was a dangerous structure and ordered that the structure be demolished and site cleaned up by June 30, 2016. It should be noted that in the finding, that the building should be demolished was consistent with the property owners belief that the structure must come down, as stated in the April 26, 2016 letter from their attorney.

The Hearing Officer's decision contained two deadline dates. The first was May 20, 2016 required the exterior of the property including damaged tree, debris and construction materials be cleaned up. The second date was June 30, 2016 and required the structure be demolished in accordance with the City of Boyne City and County of Charlevoix demolition permit requirements and the property restored. On May 20, 2016, the property was visually inspected by the Hearing Officer and it was determined the first deadline of the order was complied with. On July 1, 2016, the property was visually inspected by City Staff and it was confirmed with the hearing officer that the second deadline of the order was not complied with. On July 1, 2016, the Hearing Officer submitted to the City Commission a report of his findings and a copy of the April 28, 2016 order and request for enforcement of the order to demolish the structure. A hearing was scheduled for today's meeting to review the hearing officer's determination. At the hearing, the property owner shall be given the opportunity to show cause why the order should not be enforced. The City Commission shall approve, disapprove or modify the order. If the order is approved or modified, the property owner shall comply with the order with 60 days. For an order of demolition, if the City Commission determines the structure has been substantially destroyed by fire, wind, flood, deterioration, neglect, abandonment or other cause, and the cost or repair of the structure is greater than the State Equalized Value, the owner shall comply with the order of demolition with 21 days after the City Commission hearing. If the estimated cost of repair exceeds that State Equalized Value of the structure, a rebuttable presumption that the structure requires immediate demolition exists. The 2016 State Equalized Value for the property is \$22,800. An estimate for the cost of repair of the structure for \$163,231.88 was received from Legacy Construction.

Attorney John Jarema, on behalf of Daniel and David Chapp said this ordinance is asking this Commission to demolish the structure, private property and his clients have the right to make sure this ordinance is correct, due process is followed to the letter of the law. He has issues with the ordinance, how it was applied, and the recommendation from Mr. Gilmet. He can't figure out what Mr. McPherson's duties are as Planning Zoning Director. Is he the secretary for the board? That is why he objected to Scott McPherson speaking adding he doesn't believe Mr. McPherson has the authority to enforce this and the Commission needs to fix it. Mr. Jarema discussed the powers allowed by the City Charter and provision of permissions under State Law and it's lack of provisions to enforce it's ordinance. The Charter does define what a municipal infraction is.

Mr. Jarema quoted City Charter section 17.9. Does the City have a Board of Health? This is violation of his clients' due process rights. Boyne City has not adopted a property maintenance code. He wants to know how the Planning Director can enforce Ordinance 14.9. This historic building is a two building structure that used to be three individual apartments.

Where is the proof of rodent infestation, the damaged wood behind the siding? There aren't any pictures of this. This is not a dwelling. It is not habitable. What has the right of someone in town to not use it to store stuff? It's a garage, a place to store paint stain, business files.

Mr. Jarema added that he couldn't find an approved fire code of the City. He could find no evidence that part of the building is likely to fall or dislodge. The City's ordinance doesn't identify what occupied means. The City of

Charlevoix's ordinance specifically defines what a dangerous building is. East Jordan adopted a property maintenance code clearly defining enforcement and who has the rights.

Charlevoix County Building Electrical Inspector Kevin Schlickau said the County doesn't feel this building is likely to fall down soon. Everything is fixable. City Attorney Jim Murray asked Mr. Schlickau if permits were applied for roofing and was informed yes, on July 21, 2016. Mr. Murray asked Mr. Schlickau if the electrical wiring appeared safe and was informed that he was not there to inspect the electrical.

Commissioner Sansom asked regarding items stored, if the paints were oil based. She is concerned about the products stored there and Mr. Schlickau said he couldn't answer that.

Charlevoix County Building Official Kevin Stark said the last time he was at 204 S. East Street was April 28, 2016. He made observations. The foundation was in the shape you'd expect for an older foundation. He saw no signs of near collapse and didn't observe any bowing. He was there to identify if the structure was repairable or not and believes it is repairable. He said by their definition, it is not a dangerous building and is no different than any other structure that needed repairs. There is an area of about 10 x 12 that is damaged. Everything was viable around it. It looked like something that could be repaired. This repair would exceed the minimum repairs and he was said he is not willing to give an opinion on the cost of over \$22,800 to repair this structure.

Kevin Larsen, from Larsen Construction said he is working at 204 S. East Street for the Chapp building. He is working to reframe the section that collapsed. The present condition of the building is that it is dried in, no open holes and is weathertight. He will also do floor repairs. He has not submitted a proposal for siding. He will install 4.5 square of shingles where the hole was at the roof section behind the house. He said he doesn't feel this house is going to fall down. He is working for Lowes, for Mr. Chapp and is being paid somewhere around \$3,000 for this roof job.

Daniel Chapp said he doesn't know how long he has owned this property. He believes he's owned it in the 90's and 80's. The electricity was removed during the repaving of Ray Street. That two story building was built around 1910. The building was constructed to look like a Pullman car. Above that was the second floor. The hole in the roof was in the section built in 1951. That building was never made for occupancy. The floor was thick, made of maple. The first roof has a cupula with a round window. Smoke and soot left that part of the building due to the use of that as a blacksmith shop.

Mr. Chapp added that the driver was stopped from delivering the load of shingles by Bardens and said the Wrights blocked the driveway. He added that Mr. McPherson was talking to the Lowes truck delivery driver and told the driver the house was condemned, would be bulldozed and there was no need for materials. \$7,800 was the contract price he paid to Lowes to fix this roof and was not quoted a price to fix the floor.

MOTION

2016-07-084

Moved by Neidhamer

Second by Towne

To take a brief recess beginning at 1:26 p.m.

Ayes: 5
 Nays: 0
 Absent: 0
 Motion carried

2016-07-085
 Moved by Neidhamer
 Second by Towne

MOTION

To reconvene at 1:30 p.m.

Ayes: 5
 Nays: 0
 Absent: 0
 Motion carried

Mr. Jarema asked why the fence was put around this property and was informed by Mr. Chapp that the zoning department asked him to put up the fence. He took the fence down because he was given a deadline to clean the yard and left the shingles. Mr. Chapp added that someone took the no trespassing signs down after the inspection. The only way someone could see the floor joists were gone is if they were on the roof. The house was broken into three separate times.

Mr. Chapp said he used the house for storage, he stored red carpet, desks, office materials, tax records. Three boxes of tax records were taken during one of the break ins. He had a five gallon pail of deck sealer and a kerosene heater they used in the winter while they were doing taxes. The doors are locked to this place. One of the break-ins was done thru the front window.

Mr. Murray asked Mr. Chapp if he had any personal knowledge who was driving the City vehicle that stopped the Lowes delivery truck and was informed the city car was whitish with seals on the door. He was in Hawaii at the time but his friend was there with his phone at the time of that incident. City Manager Cain stated that Scott McPherson does not have a City vehicle and the City does not have any white vehicles.

Mr. Murray asked Mr. Chapp if prior to the roof being fixed, was it unsafe and informed not, it was unlocked. Mr. Murray asked if it would be safe with someone on a roof with a hole in it and was informed from Mr. Chapp that while they were cleaning up items in the basement, they found a two-headed axe buried 1/3 of the way up from the bottom of the pile in the basement. There was also a 40 lb. sledge hammer that was used to beat a hole in the roof. He knows that, not speculating. Tape was around the ax was ripped by jagged edge and he has personal knowledge of when the ax and sledgehammer were found – when cleaning up, the hole wasn't there before he left.

David Chapp said he did notice the hole when they were doing the walk – thru with Scott McPherson and doesn't believe it is a dangerous building and can be repaired. The \$18,000 estimate for the floor and roofing permit was because he prefers it being high on the permit rather than low. The reason he

had waivers signed during the walk thru was due to the materials stored inside that he was concerned would be trip hazards. The plan for the house is to fix this house, get everything done. No paint and hazardous materials have removed. At this point it could be put into functional shape.

Mr. Murray asked Mr. David Chapp if he was a licensed builder and was informed no.

Mr. Chapp said an office to him, is where he stores his records, an office is the same as storage. David Chapp said nothing is going on in there right now. It will need a new electrical mast. The City has to reattach the water that was disconnected. David Chapp said he protested the City enter these premises. Did you advise the city you were actively pursuing demolition – no we looked at revitalization versus demolition.

Paul Barden, said he takes exception to his name being brought up here. He would like to correct that when the first truck arrived at the house was a Wimsatt truck and the driver was instructed to put shingles on the roof, but they were not going on the roof. Then the Lowes truck showed up. Mr. Barden said he heard over a year ago that there was a hole on the roof. He added that he had a purchase agreement that Chapp never signed. They had a verbal agreement. Bardens had people in place to restore this building. So many stories are a contradiction of what was said over a year ago. If he was to buy it, there are people in the vicinity that would restore it. He physically watched stuff get put into this building. No one had to trespass.

Todd Wright said he was the one who brought the complaint forward. What he sees every day is reality. What he sees is a decaying building. When Wrights offered in the 1996 to buy the property but were told by Chapps they would do something with the property. The fence was put up after that. The shingles and other garbage have been there since 1996. He would buy it in a heartbeat to fix it up. Mr. Chapp has demonstrated by past performance to do just a little and then let it go. This building has been vacated for years. These houses will bring a neighborhood down. The last use was a residence. It's being said it's an office. That changes the use. If you leave it up to Mr. Chapp, what you see now, you'll see in 10 years.

Mr. Jarema said he agrees with Mr. Wright. He doesn't like houses that are considered a blight. His client has been harmed. He hasn't heard anything about who the enforcing officer is. He doesn't think the Commission can legislate this. He proposes the City Commission deny the order for demolition, then put policies and procedures in place to do this. By the time this Council adopts a legally viable and enforceable ordinance, these repairs will be done. The order should be denied because it is faulty. The roof will be done today. This board needs to take a look at what they have on the books as an ordinance.

Daniel Chapp said he's citizen of Boyne City for a lot of years. He came into this town on the back of a model T truck to get spring water. He came back to town in the 80's and starting buying homes that are historical and were going to be destroyed. He's not the only one. He and Ed May said they need to teach the people. He always works on the houses he has. He has always been working on this house. The houses that he bought were because of an historical significance or occurrence in the house. Boyne City has history. A lot of people have left town to move out to farms. He helped someone move

old wood out to the street because she had only 24 hours to remove the wood or she would get a ticket. He is asking to let them work on the houses. That house was worked on in the 80's and he was stopped. A homes is a person's only real privilege. His four houses are going to be updated and given water. He did an update on the Maple / Morgan Street house and now a family lives there. Anyone saying they have 30 houses is a liar.

Shaynee Chapp said she has heard a lot and has seen what they have done. Why can others purchase and fix their houses and they can't? They are just asking for a chance to fix it. If they pay for it, they should have the right to fix it. They just want the chance and never received a warning.

David Chapp said if you allow the house to be there, it will be fixed. No one talks to him. He finds out about everything after the fact. If anything needs to be done, talk to him. The house is on their repair schedule.

Don Gilmet, the Hearing Officer said he relied on what he saw in the pictures. There are shingles blowing off the roof on the sidewalk. Is that imminent danger. He didn't go inside. He saw the video. He didn't trespass on the public properties, he saw what he observed from the public way. It's not the economics, it's the time to accomplish something. It's a vacant structure that no one comes around. Is it going to cost more than \$22,000 to repair? Absolutely. You need electricity, even if it's storage. The hole in the roof could be a danger to firefighters. It's a vacant structure that no one is around very often. That makes it an attractive nuisance for someone to do misdeeds there. Mr. Chapp said it has been broken into three times.

Mayor Neidhamer closed the Public Hearing at 3:22 p.m.

Mr. Murray said we are here because the Hearing Officer made a decision. We procedurally followed Chapter 14 in the Ordinance.

City Manager Cain said you have the time when you want to decide. You can take as much time as you want to decide. He is very confident that all procedures and policies are in place. We are not East Jordan or Charlevoix. We are Boyne City. We don't have to adopt another code. You hire and City Manager and City Attorney – The City Manager is responsible for the day to day responsibilities. One of those positions he hires is the Planning and Zoning Administrator. This position was confirmed by the City Commission. The job description allows him to do exactly what he's doing. To enforce the codes of the City of Boyne City, along with other duties as assigned. The Hearing Officer was approved as well. Scott has kept the City Manager very informed. He's operating under his job description.

MOTION

2016-07-086
 Moved by Conklin
 Second by Towne

That the April 28, 2016 demolition order as presented on the property at 204 S East Street be approved by the City Commission and authorize the City to take all action to carry out the order, adopting the findings of the Hearing Officer

Ayes: 5
 Nays: 0

Absent: 0
Motion carried

MOTION

2016-07-087
Moved by Neidhamer
Second by Towne

To take a brief recess beginning at 3:37 p.m.

Ayes: 5
Nays: 0
Absent: 0
Motion carried

MOTION

2016-07-088
Moved by Neidhamer
Second by Towne

To reconvene at 3:43 p.m.

Ayes: 5
Nays: 0
Absent: 0
Motion carried

**City Manager
Compensation /
Evaluation**

City Manager Compensation / Evaluation

Mayor Neidhamer said in the past, the Mayor appoints a committee to address the City Manager's compensation. Recently, the form of evaluation was presented and given to the Commissioners for their approval.

All Commissioners are in approval of the evaluation form presented.

2016-07-089
Moved by Grunch
Second by Conklin

To accept the City Manager evaluation form, complete and return to the City Clerk / Treasurer by 4:30 p.m. on August 12, 2016

Ayes: 5
Nays: 0
Absent: 0
Motion carried

Good of the Order

ADJOURNMENT

None

Motion by Mayor Neidhamer seconded by Commissioner Grunch to adjourn the Regular City Commission meeting of Tuesday, July 26, 2016 at 3:56 p.m.


Tom Neidhamer
Mayor


Cindy Grice
Clerk / Treasurer