

**MINUTES OF THE SPECIAL MEETING
OF THE CITY COUNCIL
OF THE CITY OF FAIRWAY, KANSAS**

The Council of the City of Fairway, Kansas, held a special meeting at 5:30 P.M. at 4210 Shawnee Mission Parkway, Fairway, Kansas, on Monday, March 4, 2013.

Present: Council Members J.D. Fair, Jeff Armstrong (via telephone), Gail Gregory, Melanie Hepperly, Jim Poplinger, Ky Weekley, Tony Liu and Jim Poplinger (arrived at 5:35 P.M.).

Absent: Dane Lee.

Presiding: Mayor Jerry W. Wiley.

Staff Present: Kate Gunja, City Administrator/City Clerk; Steve Chinn, City Attorney; Mike Fleming, Chief of Police; Bill Stogsdill, Director of Public Works; Joe Levin, City Treasurer.

Visitors: Mike Tansey, 5635 Suwanee, Kurt Brack, Holbrook and Osborn, 7400 W. 110th Street, Overland Park, Kansas; Ronald L. Stein, R.L. Stein Company, 7209 Central, Kansas City, Missouri.

PLEDGE OF ALLEGIANCE

Mayor Wiley asked Chief Fleming to lead the Council in the Pledge of Allegiance.

PUBLIC COMMENT

Mayor Wiley asked if there were members of the public who would like to make a comment.

Mike Tansey, 5635 Suwanee

Mr. Tansey stated that he appreciates what the City is doing in terms of looking into the water problems. He believes it is important that a hydrologist be involved so the hydrology can be understood before actions are taken that could cause problems that the City has to pay for. Mr. Tansey also stated that he appreciates the attitude of staff and City Administrator/City Clerk Gunja in terms of assisting residents. When it comes to water problems, he hopes that the City tries to help people rather than preventing or obstructing them from getting the services they need. He also believes that insurance should be made available to help residents when problems occur.

Mayor Wiley asked if there were others who wished to make a public comment. Hearing none, he closed the public comment portion of the meeting.

Councilman Poplinger joined the meeting at 5:35 P.M.

NEW BUSINESS

Consider Claim for Damages at 5440 Windsor Lane.

Mayor Wiley introduced Kurt Brack, attorney for Joyce Hirt and Bill Cooper. He asked Mr. Brack to discuss the claim for damages at 5440 Windsor Lane.

Mr. Brack stated that his clients, Joyce Hirt and Bill Cooper, have asserted a claim against the City. He attended the last Finance Committee meeting and discussed the extent of the damages and related issues during that meeting. He would like to treat this meeting like a settlement conference with hopes of sharing ideas to get the matter resolved. He explained that he has had an opportunity to review the White Star Construction bid and hopes that the Council has had an opportunity to review the notice of claim and demand letter that he previously sent to the City.

Mayor Wiley recalled that problems with the roof were discussed at the Finance Committee meeting and asked Mr. Brack what his position was on the roof being part of the claim.

Mr. Brack stated that part of the dilemma is that additional fact finding is needed to determine the cause of the problems. That will involve examination of the foundation and possibly boring holes in the front and back yard to determine what is causing the movement of the house. Because of the inclement weather, no inspection has been made of the roof. He stated that Ron Stein, a builder with 30 years of experience who has built and remodeled homes in Fairway, Leawood and Overland Park, is present at the meeting to answer questions more technical in nature. Someone will need to examine the roof as well as the remainder of the home because obviously, if the wall is moving it is connected to the roof and movement is never good in a home.

Mayor Wiley asked if Mr. Brack had reviewed the timeline of events and what his position was on those.

Mr. Brack stated that they have been trying to put together a chronology. He explained that the construction activity on the Windsor Box took place from 2008 to 2010. Charles Logan, an engineer selected by the City, inspected the property prior to any construction taking place.

Mayor Wiley asked for clarification that Mr. Logan was hired by the City at the request of Ms. Hirt and Mr. Cooper.

Mr. Brack confirmed that to be correct. He stated that Mr. Logan's report showed there were no structural or foundation issues with the property. Mr. Logan was impressed with the quality of the home, which was built in 1989.

In April 2010, heavy rains hit the area and his clients have pictures of water spewing out of multiple holes in their back yard.

Mr. Logan returned to the home in June 2010 and his report, dated June 28, finds significant cracks in the exterior of the property.

Responding to Mayor Wiley's question, Mr. Brack confirmed that the June report is inspection report number 3. Inspection report number 2 was conducted on March 5 and sent to the City on April 13, 2010.

Continuing, Mr. Brack stated that the June report outlines significant cracks in the exterior and significant erosion of the property due to stormwater runoff. His clients also learned in June that a relocated pipe was somehow not connected to the box culvert in their backyard. The engineer at that time recommended that the pipe be fixed and that the house be monitored for a year for movement, which was done. Mr. Brack pointed out that the pipe was repaired by the use of a sleeve, which is inserted into the pipe like a stint. This caused concern to his clients as to whether that fix was appropriate and whether it would last the test of time.

Additional inspections were conducted in November 2011 and January 2012. The situation today is that doors do not close, nails are popping throughout the house, there are multiple cracks, and there is movement in the foundation and stucco. He explained that every contractor who has looked at the property has concluded that peering will need to be done to stabilize the property before the other issues can be corrected.

Mayor Wiley asked if Mr. Brack knew of any contractor who would guarantee that the home would not move after it is peered.

Mr. Brack responded that there is no guarantee but most of the contractors would warrant for little, if any, movement on the property for the lifetime of the home.

Mr. Brack pointed out that peering is the first step in a series of steps that will need to take place, including fixing the walls, fixing the cracks and correcting the floor and the heating in the floor in the basement and the garage. The process is in the early stages as far as having contractors look at the property and Mr. Stein, who was recently contacted by his clients, is prepared to discuss what he has seen so far.

Mr. Brack stated that he would be happy to respond to questions from the Council.

Mayor Wiley asked if Councilmembers had questions for Mr. Brack.

Referring to Mr. Brack's comments concerning the roof, Councilwoman Hepperly asked if Mr. Brack had read the letter from White Star Construction where it is determined that the interior water stains are not from settlement of the foundation but are related to workmanship, weathering and/or maintenance.

Mr. Brack responded that he had read the letter from White Star Construction. He noted that the approximate cost to fix the roof problem as suggested by White Star Construction is \$5,000, which, when looking at the entirety of the claim is a very small portion of the problem.

Responding to Mayor Wiley's comment, Mr. Brack stated that they are still getting estimates to determine how long his clients will need temporary housing because of the construction activity and the potential need to replace the concrete slabs in the basement and garage. He is not sure anyone would willingly subject themselves to live in their home when it is going through that type of construction. The estimate for temporary housing in the demand letter was for a two to four month period; however, in speaking with Mr. Stein prior to the meeting, that could be increased to as long as six months. He believes it will be very difficult for his clients to live in the home during the construction process.

Councilwoman Gregory stated that it was explained during the Finance Committee meeting that there was no definitive answer as to the cause of the problem. Because of the significant dollars involved, she wondered whether it would be an insurance issue.

Mayor Wiley agrees that the matter should be submitted to the insurance company. He pointed out that the City's first 50-year flooding event occurred on April 5, 2010 and the property was last inspected in March of that year. His main concern is determining whether the problems occurred because of the construction.

Responding to Mayor Wiley's question, Mr. Brack stated that he is not familiar with Charles Logan; however, from reviewing his reports, he knows that he is a professional engineer. He confirmed that Mr. Logan is not a specialist on hydrology.

Mayor Wiley stated that he was previously unaware that Charles Logan was suggested to the City by the firm of Foth & Orrick. Mr. Logan was then retained by the City on behalf of Joyce Hirt.

Mr. Brack stated wondered if they should be directing the claim information to the insurance carrier.

City Attorney Chinn responded that the Council has essentially reached a determination that the insurance carrier will become involved. He believes that City Administrator/City Clerk Gunja has had conversations with the carrier and pending some further investigation on their part concerning coverage, they will step in and handle the claim on the City's behalf.

Mr. Brack asked that the City notify him of the name of the claims adjuster so he can provide documentation concerning the claim. They are looking to get a resolution as soon as possible before there are additional problems.

City Attorney Chinn stated that the City changed insurance carriers several years ago and both the previous and current carriers have been contacted. Once the claims adjuster has been assigned, the City will provide the contact information to Mr. Brack or will authorize the claims adjuster to contact him.

Responding to Mayor Wiley's question, Mr. Brack stated that he did convey the message Mayor Wiley asked that he convey to Bill Cooper. He explained that Joyce Hirt is taking the lead in this matter. He cannot go into the reasons why Mr. Cooper has not been present at the meetings. He did confirm that if a resolution is reached, he does not anticipate any problem getting consent from both clients involved.

Mayor Wiley asked that the contractor address the Council.

Ronald L. Stein, R.L. Stein Company, 7209 Central, Kansas City, Missouri, stated that he is a licensed contractor. He discussed his background and construction experience. He has completed eight or nine projects in Fairway, and has worked in surrounding cities, including Kansas City, Missouri. He has a broad range of exposure and has been involved with other attorneys as an expert witness in the construction field.

Responding to Mayor Wiley's question, Mr. Stein stated that he has walked through the interior of the house but because of the snow, he has not had an opportunity to inspect the foundation or the roof. He plans to meet with a geotechnical engineer at the home on Monday. He has also talked with a structural engineer and they have discussed what processes should be used to put the house back the way it was in the beginning. He explained that the geotechnical engineer would be involved to determine what the current conditions are. They will then pier the house to bring it to level and stabilize it. They will also do some borings in the garage and basement to determine the condition of the soil underneath the slab. Their suspicion is that the cement slab will need to be removed. A structural engineer will be involved to deal with the conditions underneath the floor.

Responding to Mayor Wiley's question, Mr. Stein stated that as they go through the review process, they would have a good handle on whether the home was correctly constructed in the beginning. Mr. Stein added that he sees no signs that there were flaws in the construction.

Mayor Wiley asked if Mr. Stein had seen the front steps.

Mr. Stein responded that he did see the front steps and determined that the problem is from settlement.

Mayor Wiley asked if the front steps were tied in properly because the first step is coming up to the landing.

Mr. Stein responded that the front steps do not necessarily need to be tied to the stoop and they rarely are.

Mayor Wiley asked what standard indicates that it is not necessary to tie the front steps to the stoop of the house. He wondered if the steps would have been tied in if that would have prevented the situation.

Mr. Stein stated that if the steps would have been tied in, they would have cracked off and there would have been a void underneath the steps. He explained it could not have been that way in the beginning or it would not have passed the City's inspection because the step is too tall and would have had to be moved.

Mayor Wiley asked whether, irrespective of structurally doing something with the basement, the roof would be repaired first.

Mr. Stein stated that if they do anything to the roof of the house it would be a temporary fix to stop infiltration of water. If the roof problems were related to rafters that are pulling or separating, then the roof would also be addressed later on.

Mayor Wiley asked if there were other questions for Mr. Stein.

Councilwoman Hepperly asked if Mr. Stein could tell whether the damage is due to drought or whether it is from the construction. She wondered how someone could determine the cause because the Windsor Box construction began in 2008 and it is now five years later.

Mr. Stein responded that he could not answer that question because it is not his expertise.

Councilwoman Hepperly wondered if the engineers that would be involved would have an opinion about the cause.

Mr. Stein responded that he would hope they could arrive at the cause. From his conversation with the engineers, it is a difficult task to figure out what happened. Again, that is not his expertise and an expert would have to testify to that.

Mayor Wiley asked if there were many possibilities as to the cause of the problem.

Mr. Stein agreed there could be, but stated that he has worked on several residences that have had settlement issues and he has never seen anything as severe as this property. He stated that it appears the house was racked because in addition to settling, it appears to be twisted based on the living room floor where the subfloor and hardwood floor have tilted and popped up.

Mayor Wiley asked if Mr. Stein had viewed the separation in the cabinet panels.

Mr. Stein responded that he has not looked at the cabinet panels. He has looked at the door openings and noticed how the cracks are not consistent around the door on the sides or top. If the doors are reset and the side that is hitting is planed off, there is still a strange crack at the top or the side and that is not putting the property back to the way it was, which is the insurance industry standard.

Mayor Wiley asked if there were other questions from the Council for Mr. Stein. Hearing none, he thanked Mr. Stein for his comments. He then asked for discussion from the Council.

Councilman Weekley believes that determining the cause of the situation is beyond the ability of the Council and is something that the insurance coverage would take care of. He thinks the most reasonable way to proceed is to turn the matter over to the insurance company.

Mayor Wiley agreed that it is a difficult situation and should be escalated to the insurance company.

Councilman Liu agreed. He believes that the insurance company should be contacted sooner rather than later so a resolution can be reached before the spring rains.

City Administrator/City Clerk Gunja responded that both insurance carriers have been contacted so the process has been initiated.

Responding to Mayor Wiley's question, Director Stogsdill stated that the City's engineer is well aware of the situation.

Mayor Wiley noted that the original claim was for \$205,000, plus the cost to repair the roof.

Mr. Brack responded that is correct, however, they are gathering additional estimates and once those are obtained, they will be provided to the claims representative.

Mayor Wiley asked how much the home was worth.

Mr. Brack responded that according to the City, before the Windsor Box construction began, the home was worth \$417,000.

Mayor Wiley stated that he is not talking about the value of the home in 2007. He would like to know what the home value is today.

Mr. Brack responded that he does not think an appraisal has been done on the property. He noted that Kansas law looks at the cost to repair or replace or the diminution in value between what existed before and what exists now. Those are the two measures of damages in Kansas and ultimately, that amount would be negotiated with the insurance carriers.

Councilman Weekley asked how the Council would be kept apprised of what happens by way of the insurance company's work.

City Attorney Chinn stated that in order to control legal costs, City Administrator/City Clerk Gunja would be the primary contact with the insurance company. He explained that insurance companies have a pool of law firms they hire based on the nature of the claim and that law firm would definitely make contact with him along the way. The insurance company's counsel would be in the driver's seat.

Mayor Wiley stated that no formal motion would be needed as this item was a discussion concerning the claim.

ADJOURNMENT

Councilman Liu moved to adjourn. Councilman Fair seconded the motion and the motion carried unanimously.

There being no further business to come before the Council, the meeting was adjourned at 6:09 P.M.

Mayor Jerry W. Wiley

Attest:

Barb Fox, Recording Secretary