

CITY OF LITTLETON
BUILDING BOARD OF APPEALS

TRANSCRIPT OF PROCEEDINGS
Wednesday, December 19, 2018

Proceedings had on Wednesday,
December 19, 2018, at Littleton Center, 2255 West Berry
Avenue, Littleton, Colorado 80120, commencing at the
hour of 6:32 p.m., before DAVID MITCHELL, Chairman;
DUSTIN HUBBARD, Board Member; RANDY HOUCHEN, Chair Pro
Term; DONNA FLAHERTY, Alternate 1; MATT TREINEN,
Alternate II; KEN FELLMAN, Attorney for BBAA; and
DENISE CIERNIA, Recording Secretary.

A P P E A R A N C E S

For The City of	STEVEN KEMP, ESQ.
Littleton	City Attorney
	2255 W. Berry Avenue
	Littleton, Colorado 80210
	(303) 795-3725

1 P R O C E E D I N G S

2 DAVID MITCHELL: Calling to order the
3 December 19th, 2018, Building Board of Appeals Board.
4 Would you please call the roll.

5 DENISE CIERNIA: Board Member Treinen.

6 MATT TREINEN: Here.

7 DENISE CIERNIA: Board Member Houchen.

8 RANDY HOUCHEN: Here.

9 DENISE CIERNIA: Board Member Mitchell.

10 DAVID MITCHELL: Here.

11 DENISE CIERNIA: Board Member Hubbard.

12 DUSTIN HUBBARD: Here.

13 DENISE CIERNIA: Board Member Flaherty.

14 DONNA FLAHERTY: Here.

15 DENISE CIERNIA: And tonight we have absent
16 board members Manske and Eaby.

17 DAVID MITCHELL: Okay. So the alternates
18 will be voting tonight. Okay. Are there comments?
19 Okay. Go ahead.

20 Oh, we have minutes to be approved. There
21 was a meeting on April 18th, if someone is comfortable
22 having read them and making a motion.

23 RANDY HOUCHEN: I make a motion that we
24 accept the minutes of 4/18/18.

25 MATT TREINEN: I'll second that.

1 DAVID MITCHELL: Thank you. Would you call
2 the roll. Thank you.

3 DENISE CIERNIA: Board Member Treinen.

4 MATT TREINEN: Aye.

5 DENISE CIERNIA: Houchen.

6 RANDY HOUCHEN: Aye.

7 DENISE CIERNIA: Hubbard.

8 DUSTIN HUBBARD: Aye.

9 DENISE CIERNIA: Flaherty.

10 DONNA FLAHERTY: Aye.

11 DENISE CIERNIA: Board Member Mitchell.

12 DAVID MITCHELL: Aye.

13 DENISE CIERNIA: Vote's unanimous, and the
14 motion carries.

15 DAVID MITCHELL: Okay. Now is the time for
16 public comment. We have three minutes, if you'd like.
17 Is there a sign-up list? We have Pam Chambord.

18 PAM CHAMBORD: Good evening, Building Board
19 of Appeals. My name is Pam Chambord. I live a block
20 and a half from here.

21 I haven't heard any of the testimony in this
22 case, so I'm at a disadvantage. My understanding is
23 that this is an appeals process, and therefore, it's
24 under state rules for proceedings, and the technical
25 matter is under the International Building Code.

1 So the Littleton procedures that were
2 included in the packet are there to remind people not
3 to discuss the case out of the group and things like
4 that. So I haven't heard any of the -- I'm not going
5 to be able to hear any of the testimony before I speak.
6 There was no public hearing in this appeals process.

7 That said, if I were a stranger coming in and
8 looking at a community and saying, Well, should we
9 demolish a house? That seems pretty extreme to me.

10 And while I understand that there's a
11 six-year process here going on, it's still a house that
12 can function with a certain amount more of work.

13 I drove by, and, honestly, that little circle
14 is pretty close together. There's houses in a lot of
15 various states. I saw some that, to me, looked worse
16 from driving by than the subject house.

17 And so it seems to me this house is
18 redeemable. I would hate to lose a house in a
19 community for process things or things not having
20 happened on time.

21 So what I'd like to ask you to think about is
22 to give them enough time for the work to be completed.
23 And I understand that this has taken longer than it
24 should have, so that might be -- you know, that might
25 seem long.

1 But it's definitely a shorter investment for
2 the community than tearing down a house and then having
3 something new built. That's a pretty big change.

4 And as a taxpayer, you have to think all the
5 people in Littleton would be paying for this
6 demolition, I believe. And that doesn't seem like a
7 good use of our money.

8 Again, that seems like a house that can be
9 usable in a certain amount of time. We've just got to
10 get enough support for this process to make that -- get
11 that finished.

12 So I have known enough to be able to speak
13 from knowledge on this. But that, to me, is the big
14 picture. Demolishing this house is an expense, and
15 it's a loss of a dwelling, which is unnecessary if the
16 work is completed.

17 It seems like work has been started. There's
18 a reasonable expectation. It can be completed in a
19 reasonable time if we just get the right support.
20 That's what I prefer as a taxpayer and citizen.
21 Thanks.

22 KEN FELLMAN: May I make a comment and
23 provide some advice --

24 DAVID MITCHELL: Yes.

25 KEN FELLMAN: -- to the board? Ms. Chambord

1 is correct that this is a quai-judicial proceeding.
2 She's incorrect that there's a state law that governs
3 this.

4 The City has adopted the international code
5 that is going to be the subject of this hearing, but it
6 is an appeal. And it is the Board's responsibility to
7 make a decision based solely on the evidence that you
8 receive in the context of a quasi-judicial proceeding.

9 The Appellant has the opportunity to put on
10 evidence and introduce witnesses. And if Ms. Chambord
11 is not one of the Appellant's witness and not one of
12 the City's witnesses, you are precluded by law, and any
13 decision that you make has the potential to be
14 challenged in court if any part of your decision is
15 influenced by what you just heard.

16 So with no disrespect intended to
17 Ms. Chambord, because I know she is speaking as a
18 concerned citizen, it is my advice to you that when you
19 open the public hearing in this matter, you acknowledge
20 that we have heard comments from a citizen during a
21 public comment who gave suggestions about how this
22 proceeding could go or things that should be considered
23 by the Board, but that the Board understands that none
24 of what you just heard can be considered in your
25 decision-making process.

1 And it would helpful to have each of the
2 Board members acknowledge that they understand that on
3 the record.

4 MATT TREINEN: I recognize that.

5 KEN FELLMAN: Well, no, no, no. Once we hold
6 the public hearing, we will raise that again and get
7 that on the record.

8 DAVID MITCHELL: Thank you. I'd like to now
9 open the public hearing. And we will hear from the
10 Appellant.

11 KEN FELLMAN: Okay. Now that the public
12 hearing is done -- again, sorry to -- just, let's get
13 this preliminary matter out of the way.

14 So the public hearing is now open in the
15 matter that is identified as ID Number 18-468,
16 7874 South Windermere Circle. And before we hear from
17 the Appellant, I will just ask the Board to restate
18 what -- generally, what we just talked about.

19 DAVID MITCHELL: We will -- I will not be
20 influenced by the public comment made in my decision.

21 MATT TREINEN: I also recognize the public
22 comment, and I will not be influenced by it.

23 RANDY HOUCHEN: I also recognize the fact
24 that we cannot consider it in our decision.

25 DUSTIN HUBBARD: I also recognize that I

1 cannot be influenced by the public comment.

2 DONNA FLAHERTY: I will also recognize that I
3 will not be influenced by the public comment.

4 KEN FELLMAN: Thank you, Board Members.
5 Please proceed.

6 LINDA BIRCH: Good evening, Chairman Mitchell
7 and Board Members of the Building Code Board of
8 Appeals. My name is Linda Birch. I personally thank
9 you for your time and the service that you give in
10 serving the community of Littleton on these matters.

11 There appears to be an additional matter that
12 I would like to bring before you.

13 THE REPORTER: Please put the microphone up
14 to your mouth. I can't hear you. Thank you.

15 MS. BIRCH: There appears to be an initial
16 matter which was brought to my attention by the City
17 Attorney; and that is, whether my participation during
18 this hearing on Mr. Lynch's behalf amounts to the
19 unauthorized practice of law.

20 Mr. Kemp has provided certain Colorado laws;
21 specifically, the case that you received in memorandum,
22 the case of the Denver Bar Association versus the
23 Public Utilities Commission, in which the Colorado
24 Supreme Court considered whether or not non-attorneys
25 can represent parties at administrative hearings such

1 as this.

2 I recognize that, learning recently that this
3 is a quasi-judicial hearing and under this case law,
4 which involves property, which is a substantive right
5 of any individual, that it is not proper for me to
6 proceed.

7 When I filed this appeal for Mr. Lynch, I did
8 so as a friend and as an elder of my church in trying
9 to preserve his right to appeal. Therefore, I just
10 filed the document before you, talking about setting --
11 listing the code violations and talking about what he's
12 been doing.

13 I have done nothing further. I've not
14 advised him in any way with legal advice. But based on
15 my conversation with Mr. Kemp and this law, I believe I
16 can proceed no further, and I will not be doing so.

17 DAVID MITCHELL: Thank you. Would the
18 property owner like to present?

19 DAVID LYNCH: No. If what I am --

20 DAVID MITCHELL: Thank you. Please step to
21 the microphone.

22 DENISE CIERNIA: Please state your name and
23 address.

24 MR. LYNCH: My name is Dave Lynch, and I own
25 the property at 7874 South Windermere Circle. And

1 based on what we received yesterday about this law
2 stuff, legalese, if -- from what Ms. Birch has
3 determined, and she's been advised, if that's the case
4 and the City wants to proceed, then I'm requesting that
5 they provide a lawyer.

6 If this is what we understand correctly, a
7 quasi-judicial, whatever board is a legal proceeding,
8 then I need legal advice.

9 DAVID MITCHELL: Okay.

10 DAVID LYNCH: So I'm not going to represent
11 myself because this is way too complicated, because of
12 a number of Constitutional issues that have been -- you
13 know, I've been dragged under, over, through, and that
14 type of situation.

15 DAVID MITCHELL: Thank you. Would you like to
16 comment, Ken, on representation?

17 KEN FELLMAN: Yeah. It's certainly
18 appropriate for the Board to continue this hearing to a
19 date certain to allow the property owner, Mr. Lynch, to
20 obtain legal counsel.

21 He's asked, if I understood him correctly,
22 for the City to appoint legal counsel. Did I
23 understand that correctly?

24 DAVID LYNCH: Correct.

25 KEN FELLMAN: I will defer to the City

1 Attorney on whether that is even a possibility.

2 MR. KEMP: Mr. Chairman, Members of the
3 Board, generally, in both the United States
4 Constitution and the Colorado Constitution, the right
5 to appointed counsel only exists in criminal cases.

6 There is no right to appointed counsel in a
7 civil case such as this. Now, Mr. Lynch could contact,
8 for example, the Colorado Bar Association, and they
9 many times will work with people to find lawyers who
10 will represent individuals in civil matters at reduced
11 or no fees. It's known as pro bono.

12 But there would no right for this board to
13 appoint an attorney at City expense to represent
14 Mr. Lynch in this proceeding.

15 DAVID MITCHELL: Thank you. What I'm going
16 to do then, is continue this to the 3rd Wednesday of
17 January, which is the 16th. And that will give you
18 time, then, to sort out how you want to be represented.
19 Okay?

20 MR. LYNCH: (Nodded head up and down.)

21 MR. KEMP: Mr. Chairman, if it's permissible,
22 we will go ahead and prepare a Notice and Order for
23 your signature so that there will be something in the
24 official file indicating the Commission's intent to
25 continue this matter.

1 DAVID MITCHELL: Thank you. Are there any
2 other issues?

3 KEN FELLMAN: I think, just to be clear for
4 the record, it would be helpful to get Mr. Lynch's
5 acknowledgement on the record that that continuance to
6 that date is acceptable to him.

7 MR. LYNCH: Yes. I looked on the schedule
8 already. And this is already tentatively scheduled for
9 next month.

10 So we -- we were anticipating some kind of
11 snafu, based on just how I've experienced the City has
12 dealt with me in the past. So I accept the continuance
13 till January 16th of 2019.

14 DAVID MITCHELL: Yes. Okay. Thank you. Are
15 there any other issues before the Board? Okay. We
16 adjourn. We're going to have a short study session in
17 the community room.

18 DENISE CIERNIA: We're actually going to stay
19 in here. We'll continue in here for the study session.

20 DAVID MITCHELL: Okay. Fine. Okay.

21 KEN FELLMAN: Steve? I'll defer to the City
22 Attorney as to whether I have a continued role in this
23 meeting.

24 MR. KEMP: At this point, I would ask you
25 that -- Mr. Fellman's retained to act as the attorney

1 for the Board only in this appeal. Now that the appeal
2 proceedings are concluded for the evening, I would like
3 to ask that you excuse him, and for the remainder of
4 the night you have me because there's no longer a
5 conflict.

6 DAVID MITCHELL: We're not going to pay any
7 longer.

8 KEN FELLMAN: All right. The meter is off.

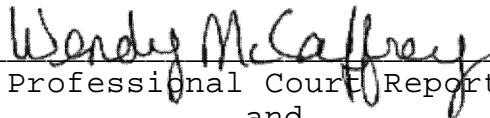
9 (The proceedings were concluded at 6:48 p.m.
10 on Wednesday, December 19, 2018.)
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

REPORTER'S CERTIFICATE

I, Wendy McCaffrey, Registered Professional Reporter and Notary Public in and for the State of Colorado, do hereby certify that said proceedings were taken in shorthand by me at the time and place hereinabove set forth and were thereafter reduced to typewritten form under my supervision, as per the foregoing transcript; that the same is a complete, true, and correct transcription of my shorthand notes then and there taken.

I further certify that I am not related to, employed by, nor of counsel for any of the parties or attorneys herein, nor otherwise interested in the event of the within action.

My commission expires January 31, 2020; and I have hereunto set my hand this January 3rd, 2019.


Professional Court Reporter
and
Notary Public



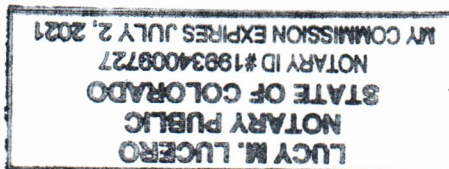
Amendment to Hearing

Case Number Building Board of Appeals, December 19, 2018

Page	Line	Should Read	Reason
1	11	Alternate II; KEN FELLMAN, Attorney for BBOA; and	BBBA
1	14	For the City of <u>STEPHEN KEMP, ESQ.</u>	STEVEN
3	17	Is there a sign-up list? We have Pam Chadbourne.	Chambord
3	18	PAM CHADBOURNE: Good evening, Building Board	CHAMBORD
3	19	of Appeals. My name is Pam Chadbourne. I live a block	Chambord
5	25	KEN FELLMAN: - - to the board? Ms. Chadbourne	Chambord
6	1	is correct that this is a quasi-judicial proceeding.	quai
6	10	evidence and introduce witnesses. And if Ms. Chadbourne	Chambord
6	17	Ms. Chadbourne, because I know she is speaking as a	Chambord

Subscribed and sworn to before me
this 10th day of January, 20 19.

My commission expires:



Denise Cierria
Signature of Deponent
Lucy M. Lucero
Notary Public Signature

Address: 2255 W. Berry Ave.
Littleton, CO 80120