

**CITY OF SOMERVILLE, MASSACHUSETTS
SOMERVILLE CONDOMINIUM REVIEW BOARD**

*JOSEPH A. CURTATONE
MAYOR*

Staff

Hannah Carrillo
Sustainable Neighborhoods Coordinator

Board Members

Daniel Maltzman
William Medeiros
Marlene Smithers
Zachary Zasloff

Meeting Minutes

July 31, 2017 Meeting – 6:00 PM

Visiting Nurses Association, Third Floor Conference Room
259 Lowell St. Somerville, MA 02144

Board Members Present: Daniel Maltzman, William Medeiros, Marlene Smithers, Zachary Zasloff

City staff present: Hannah Carrillo (Sustainable Neighborhoods Initiative Program Coordinator), Michael Feloney (Director of Housing)

Board Chair Zachary Zasloff convened the meeting at 6:05 PM.

1. Approval of Meeting Minutes

A motion was introduced and PASSED 4-0 to approve the meeting minutes for the June 5, 2017 meeting.

2. New Business – Applications for Certificates of Exemption and/or Removal Permits

Board members moved to review each removal permit application before the Board.

WARD 5 PRECINCT 2

Application of Oak Hill LLC, Atty. Anne Vigorito representing, seeking a Removal Permit for Unit #1, Unit #2, & Unit #3 located at 11-13 Roberts St. The \$500 per unit application fee was paid and no real estate taxes or water bills were owed to the City. Anne Vigorito stated that all units are now vacant, with the last tenants moving out in October, 2015. The engineer/architect's report and the master deed were included. The Condominium Review Board (CRB) did not receive any tenant complaints.

On a motion duly made and seconded, it was:

VOTED 4-0 to grant Removal Permits for Unit #1, Unit #2, and Unit #3 located at 11-13 Roberts St.

WARD 5 PRECINCT 2

Application of JSS Realty Corp., Atty. Anne Vigorito representing, seeking Removal Permit for Unit #1, Unit #2, and Unit #3 located at 109 Josephine Ave. The \$500 per unit application fee was paid and no real estate taxes or water bills were owed to the City. The property was purchased vacant in June 2017. The condominium master deed and engineer/architect's report were not included with the application. The CRB did not receive any tenant complaints.

On a motion duly made and seconded, it was:

VOTED 4-0 to grant Removal Permits for Unit #1, Unit #2, and Unit #3 located at 109 Josephine Ave. conditioned on the applicant submitting a master deed and engineer/architect's report.

WARD 1 PRECINCT 3

Application of Brad Cangiamila, Atty. Ryan Kelly representing, seeking Removal Permit for Unit #1 & Unit #2 located at 5 Montgomery St. The \$500 per unit application fee was paid and no real estate taxes or water bills were owed to the City. The property was purchased vacant in June 2016. The condominium master deed and engineer/architect's report were included with the application. The CRB did not receive any tenant complaints.

On a motion duly made and seconded, it was:

VOTED 4-0 to grant Removal Permits for Unit #1 & Unit #2 located at 5 Montgomery St.

WARD 4 PRECINCT 3

Application of Brad Cangiamila, Atty. Ryan Kelly representing, seeking Removal Permit for Unit #1 and Unit #2 located at 10 Florence Terrace. The \$500 per unit application fee was paid and no real estate taxes or water bills were owed to the City. The property was purchased vacant in June, 2016. The CRB noted that the Certificate of Good Standing was not date stamped. This appeared to be a clerical error by City staff and will not affect the applications validity. The master deed and engineer/architect's report were included with the application. The CRB did not receive any tenant complaints.

There was a question posed by a member of the public. Steven Repp asked if the CRB was going to be approving documents during this meeting and whether or not the CRB is involved if there is potential harm to the buyer. Michael Feloney, Director of Housing, clarified that the CRB ensures that the condo documents are submitted, as called for under the City's condo conversion ordinance. He noted that the CRB does not approve condo documents themselves. Counsel for the owner stated his client's intent to continue to work with the buyer and that the removal permit was the first step in the process. Board chair Zasloff then asked if there was further public comment, and there was none.

On a motion duly made and seconded, it was:

VOTED 4-0 to grant Removal Permits for Unit #1 and Unit #2 located at 10 Florence Terrace.

WARD 6 PRECINCT 3

Application of 79 Irving LLC, Atty. Kosta Ligris representing, seeking Removal Permit for Unit #1 & Unit #2 located at 79 Irving St. The \$500 per unit application fee was paid and no real estate taxes or

water bills were owed to the City. The property was purchased vacant in September 2015. The condominium master deed and engineer/architect's report were not included with the application, but the engineer's report was provided at the meeting. The CRB did not receive any tenant complaints.

On a motion duly made and seconded, it was:

VOTED 4-0 to grant Removal Permits for Unit #1 & Unit #2 located at 79 Irving St. conditioned on the applicant submitting a master deed.

WARD 1 PRECINCT 3

Application of Satoko Hirai, Mike Zarren, and Dorothy Zarren/Sean OhEigartaigh seeking Removal Permit for Unit #1 & Unit #2 located at 66 Pearl St. The \$500 per unit application fee was paid and no real estate taxes or water bills were owed to the City. The property was purchased vacant and both units were immediately owner occupied in May 2017. The condominium master deed and engineer/architect's report were not included with the application. The CRB did not receive any tenant complaints.

On a motion duly made and seconded, it was:

VOTED 4-0 to grant Removal Permits for Unit #1 & Unit #2 located at 66 Pearl St. conditioned on the applicant submitting a master deed and engineer/architect's report.

WARD 7 PRECINCT 3

Application of Maria Deslandes, Atty. Nicole Starck representing, seeking Removal Permit for Unit #2 located at 159 Walnut St. The \$500 per unit application fee was paid and no real estate taxes or water bills were owed to the City. The property is currently occupied by the applicant's daughter, who has confirmed, via email included in the application, that she is aware of the permit application. There is no intent to sell the unit at this time. The condominium master deed and engineer/architect's report were not included with the application. The CRB did not receive any tenant complaints.

On a motion duly made and seconded, it was:

VOTED 4-0 to grant a Removal Permit for Unit #2 located at 159 Walnut St. conditioned on the applicant submitting a master deed and engineer/architect's report.

WARD 1 PRECINCT 1

Application of Afarin Bellisario, Atty. John M Iacoi representing, seeking Removal Permit for Unit #1 & Unit #2 located at 167 Willow Ave. The \$500 per unit application fee was paid and no real estate taxes or water bills were owed to the City. Currently both units are occupied; tenants were served with notice regarding their right to 1 year notice on 5/17/17. Atty. Iacoi noted the tenants planned to move out of the units by the end of August, and provided affidavits documenting that they waived their right to stay for the allowed year, waived their right of first refusal, and were planning to move prior to receiving notice regarding the conversion application. The condominium master deed was included but the engineer/architect's report was not included with the application. The CRB did not receive any tenant complaints.

On a motion duly made and seconded, it was:

VOTED 4-0 to grant Removal Permits for Unit #1 & Unit #2 located at 167 Willow Ave. conditioned on the applicant submitting an engineer/architect's report.

WARD 5 PRECINCT 2

Application of Chupacabra LLC, Atty. Anne Vigorito representing, seeking Removal Permit for Unit #1 & Unit #2 located at 15 Warwick St. The \$500 per unit application fee was paid and no real estate taxes or water bills were owed to the City. The property was purchased vacant July 2015. The condominium master deed and the engineer/architect's report were included with the application. The CRB did not receive any tenant complaints.

On a motion duly made and seconded, it was:

VOTED 4-0 to grant Removal Permits for Unit #1 & Unit #2 located at 15 Warwick St.

WARD 7 PRECINCT 1

William McDermott, Atty. Nicole Starck representing, seeking Removal Permit for Unit #1 & Unit #2 located at 88-90 Electric Ave. The \$500 per unit application fee was paid and no real estate taxes or water bills were owed to the City. The last tenant at the property moved out of Unit #1 in July 2016 and Unit #2 was vacant at the time of purchase. The property is now vacant. One unit will be owner occupied, and the other unit will be sold. The condominium master deed and the engineer/architect's report were included with the application. The CRB did not receive any tenant complaints.

On a motion duly made and seconded, it was:

VOTED 4-0 to grant Removal Permits for Unit #1 & Unit #2 located at 88-90 Electric Ave.

WARD 1 PRECINCT 2

New application of Somer Hill LLC, Atty. Anne Vigorito representing, seeking a Removal Permit for Unit #2 located at 17 Glen St. The previous application for 17 Glen St. Unit #2 was filed with the Board on December 14, 2016 and resulted in a denial of a Removal Permit in January 2017. The \$500 per unit application fee was paid and no real estate taxes or water bills were owed to the City. The property remains occupied by tenant Christopher Poteet. The condominium master deed and the engineer/architect's report were included with the application. Mr. Poteet received notice of the intent to convert Unit #2 on or about December 11, 2015.

The CRB did receive a tenant complaint on behalf of Mr. Poteet. Attorney Katz began the discussion by requesting that the board wait to vote until a determination had been made regarding the appeal of the removal permit for unit #1; he indicated that legal arguments made regarding #1 would ultimately apply to unit #2 as well. Attorney Katz called them 'twin cases' and cited that this had happened in the past, and the board had opted to wait to vote for a court decision.

Through the chair, Housing Director Mike Feloney explained that Attorney Katz had called CRB Staff Hannah Carrillo prior to the meeting to request that this application not be heard by the board since an appeal for the application for a removal permit for Unit #1 of the same property is pending. Staff subsequently consulted the City's legal department on this request. Mr. Feloney noted that

Assistant City Solicitor David Shapiro's response was that the two units involve separate cases with their own fact patterns, and that postponement was not warranted from a legal standpoint.

Mr. Feloney noted that his understanding of the other case referenced (regarding Unit 1), was that the court actually had indicated that the Board should proceed to make a decision on the application, which either party would then be free to appeal in the appropriate jurisdiction. Attorney Vigorito expressed agreement with that view, stating that she opposes any continuance and reiterating that the cases are separate. Attorney Vigorito further stated that her client was ready to proceed, and requested that there be no continuance and a vote be held that evening.

Attorney Katz requested an opportunity to explain why the two cases are effectively 'twins'. CRB Chair Zachary Zasloff informed Attorney Katz that the board is very well versed on the facts of this case, and that public comment should be limited to new facts, rather than information previously shared. Tenant Christopher Poteet indicated he wished to offer testimony and was recognized by the chair.

Mr. Poteet began by thanking board members and stating he appreciated their time. He noted that, while board members had stated they have heard all of the facts of the case, there are many instances that have not yet been brought up to the Board. Mr. Poteet stated that some board members had indicated they are only concerned with how long this matter is taking, and that he has issues with the master deed for unit #2, which is the same master deed for unit #1 that is the subject of litigation.

Mr. Poteet then asked how he should bring concerns regarding the master deed to the CRB, as he believed it to contain incorrect information. Zachary Zasloff stated that as noted in regard to an earlier case, per the Ordinance, the CRB does not review the master deed for substance. Content of the master deed should be taken up by respective counsel to a potential transaction.

Board member Daniel Maltzman stated that the board did not intend to prevent new information from being presented; it simply was limiting presentations to only new information for the Board. Mr. Poteet then stated that new evidence will take time to go over and walk through, and reiterated the request to wait until a court decision is issued. He went on to say that according to the law the cases are intertwined.

Mr. Poteet further noted that his financing for potential purchase of Unit 2 is on hold due to the pending litigation, and that he is not able to enjoy the protections available to him as a tenant. He expressed concern that he may run out of time to purchase because his financing is on hold, as the time period for an offer would begin if the removal permit is granted and invitation to offer is made. In his view the board would cause injury to him and his right of purchase if a vote on Unit #2 occurs, while litigation that affects his ability to purchase is pending.

Mike Feloney offered remarks in an effort to reiterate his understanding from the City Solicitor's office -- that the two cases referenced involve separate fact patterns. Board Chair Zasloff asked if it would be possible to have Assistant City Solicitor Shapiro at the next board meeting if the board opted not to vote July 31st. Mr. Feloney said staff could follow up to make that request. Board

member Medeiros stated that the applicant was supposed to fill out a new application; Mike Feloney let him know that was completed.

Ward 5 Alderman Mark Niedergang offered public comment that, while he thought the appeal was relevant to the case under consideration, he understood if the City Solicitor's office felt differently. He stated that he would feel more comfortable if Mr. Shapiro was present, and that it seems to make more sense to wait a month and have him present at the next meeting.

Board Chair Zachary Zasloff then closed public comment so the board could discuss the matter. Mr. Maltzman noted that in his view tabling the case beyond the next meeting, and until a ruling on Unit 1, could create the same circumstance that the Board encountered previously when the Board was directed by the court to make a decision. His sense was that the court would want the Board to make a decision. Board member Marlene Smithers stated that the case seemed to involve hearing the same information. Mr. Medeiros stated he was ready to make a decision.

After further exchanges on prior history of the case, Board Chair Zasloff stated that board questions and discussion were closed. Chair Zasloff then asked for confirmation that fines previously imposed on Glen St. Unit 1 had been paid. Mr. Feloney said yes and that verification was sent to Attorney Katz. Mr. Zasloff stated that he would make a motion to hold a vote August 28th, with the understanding that previously the judge considering litigation on Unit 1 indicated that a decision should be issued by the Board.

Attorney Katz asked to make three points, that:

1. The case referred to was not referred back to the Board; it was dismissed from superior court;
2. If the board does expect to vote, that in anticipation of an appeal attorney Katz asked that all material previously submitted be included in the record;
3. No removal permit be given before a written decision is issued indicating that the ordinance was followed.

Mr. Zasloff noted his intent to introduce a motion that the vote be tabled until the next meeting and further noted that, with many legal points made by applicant and tenant's respective counsel, it would be helpful to have the City Solicitor's office represented. Attorney Katz stated he will be out of the country on the date of the next meeting; the chair noted the other option would be to vote now.

On a motion duly made and seconded, it was:

VOTED 4-0 to table a vote on the case under consideration until the Board's next meeting.

3. Other business

Chair Zasloff moved to other business and stated that Board Member Medeiros had recommended a change to the start time of regular meetings. Member Medeiros recommended a start time of 6PM, instead of 5:30PM.

On a motion duly made and seconded to change the meeting start time, it was:

VOTED 4-0 to change the meeting start time to 6:00 PM going forward.

On a motion duly made and seconded to adjourn, it was:

VOTED 4-0 to adjourn the meeting at 7:30 PM.