

**MINUTES OF THE WORK SESSION AND REGULAR MEETING
OF THE SUBSTANDARD BUILDING BOARD
OF THE CITY OF NORTH RICHLAND HILLS, TEXAS
HELD IN THE COUNCIL WORKROOM, 4301 CITY POINT DRIVE
SEPTEMBER 11, 2018**

Work Session

The Substandard Building Board of the City of North Richland Hills, Texas met in work session on September 11, 2018 at 6:00 p.m. in the Council Workroom prior to the 6:30 p.m. regular Substandard Building Board meeting.

Present:	Brian Crowson	Chairman, Place 6
	Lynn Motheral	Place 1
	Bill Wait	Place 2
	Deryl Brown	Place 3
	Billy Parks	Place 5
	Robert McCary	Place 7
Staff Members:	Stefanie Martinez	Director of Neighborhood Services
	Audrey Cappallo	Executive Secretary
	Kellie Brady	Assistant City Attorney
	Dave Pendley	Chief Building Official

1. CALL TO ORDER

Chairman Crowson called the meeting to order at 6:00 p.m.

2. DISCUSS ITEMS FROM THE REGULAR SUBSTANDARD BUILDING BOARD MEETING

Stefanie Martinez, Director of Neighborhood Services, informed the Board that there is only one case on the agenda to discuss. The work session is being held so the Board has the availability to ask questions not specifically of this case but in general, of the request being made and options the Board has before them on cases similar to the case tonight.

Chairman Crowson asked Ms. Martinez if work sessions would be a regular occurrence. Ms. Martinez responded when we have unusual circumstances that we haven't encounter before, yes, we will then typical have one to gives us an opportunity to discuss the generality of the case but not the specific case on the agenda. We can speak in hypotheticals or discuss the process. Chairman Crowson replied for an

example a fine that has been imposed, we can decide not do what has been suggested. Ms. Martinez replied correct we can discuss all of that.

Mr. Billy Park asked if the Board could dismiss the penalty entirely, if that is an option. Chairman Crowson replied that he believes the Board had done that before or at least lowered the amount on the property located behind Painted Tree and we charged him like \$1,000 but the amount was imposed more. Ms. Martinez responded that was the initial amount requested and that was an active case. It was not a case that had already been assessed a civil penalty. For example, if someone should get a civil penalty, they could come back to this Board and asked for it to be reconsidered.

Ms. Martinez informed the Board the reason they are here at this hearing is per the request of the property owner and not by staff request. Chairman Crowson asked if the property owner was coming back to the Board because of the penalty imposed on them. Ms. Martinez responded that the property owner can explain that when they get here for the meeting.

Ms. Kellie Brady, Assistant City Attorney, advised the Board if a property owner is already assessed a civil penalty previously in an order and that person has not already either appealed or paid that penalty they can bring it back to the Board and ask for reconsideration of the penalty. Whether as the Board you all decide to uphold the existing penalty, whether as the Board you all decide to reduce the penalty or completely waive the penalty can be based off what the Board hears, or whatever factors the appiculate would like to bring forward. The only thing I caution the Board on is to make sure you take into consideration all factors not only those that are presented as how that could potentially affect future cases as well set presence if the Board is assessing penalties and then reconsidering and removing penalties back and worth. It kind of takes away the strike away from the citizens if we do something like so that would be my only caution but definitely take into consideration everything presented and then you can make your motion accordingly or decisions accordingly at that point.

Mr. Parks stated hypothetical if you've been assessed a penalty but you invested substantial amount of money, completed a project, employing people and you overall benefited the city, I would think that would cause us to think about being lenient compared to someone who just wasn't going to follow through with the repairs. Mr. Motheral asked Mr. Parks if he normally reward people for following the rules or do you penalize people who just do what they want to do, even though you have told them something different and set up guidelines and they just thumb their nose up at you. Mr. Parks replied that is a valid point.

Ms. Brady advised the Board that one thing they should really take into consideration is the type of penalties that can be assessed. There are monetary civil penalty and repair orders. Typically, you ask for a civil penalty when your repair order has not been followed or when someone, as we have seen in the past, kind of thumb their noses at everything and refuses to do it and here comes the civil penalty that gets assessed. What normally that does not happen is the city comes in asking for a civil penalty right

off the bat. There has obviously been some time working with these people trying to get them to comply prior to us assessing any kind of penalty because a civil penalty monetary penalty is just that, a penalty for not doing what they were supposed to be doing. Once it gets to the Board, the Board gives time to do that and then that penalty gets assessed after that for someone who typically hasn't done what they were supposed to be doing. When you are reconsidering a penalty, you are reconsidering the punishment that has already been assessed for noncompliance. It is not someone that has come into compliance after the fact and you are now assessing a new penalty. You are reconsidering a penalty that was already assessed for noncompliance and at that time that penalty that was assessed there were factors involved as to why the Board pick that number. Was it based on the number of days or was it based on \$1,000 day or \$10 a day. What was the processed that lead the Board to that specific amount? It is all those kind of things the Board needs to take in consideration in a hearing like this.

Mr. Parks asked Ms. Brady what course of action do they have to appeal if we draw a hard line on the matter and what is the likelihood they would be successful in an appeal. Ms. Brady responded anytime the Board assesses any kind of penalty or order, the person has 30 days from the date of the order to comply or the number days order by the Board to comply and has 30 days from date of the order to appeal. They can always appeal the Board decision to the District Court. So let say you have an instant that you order a person to make repairs in x amount of days and you've Order civil penalties on that property, they have 30 days from that date of the Order to appeal it to the District Court and say no I don't like this order or I want to appeal the Order or I want the District Court to look at it. The whole process at the District Court is called De Novo and it is a whole new hearing. The District Court would look at all the evidence that the Board looked at and would make their ruling. They get a second bite of the apple in a way because they can appeal whatever order you already put in place. They have 30 days by ordinance. Whether they do that or not is up to them. Mr. Motheral asked Ms. Brady whom do they appeal it to. Ms. Brady replied they appeal it to the Tarrant County District Court. Chairman Crowson asked Ms. Brady if the Board would have to present if a person appeals an order from the Board. Ms. Brady responded no, the City would go to the District Court and present their case as they do here in front of the Board and the District Court would then make their ruling based on the evidence presented.

Chairman Crowson informed the Board he met with Ms. Brady and Ms. Martinez to go over some the procedures in Robert's Rules of Order on to make sure are meetings are handled properly and we will be following guidelines set out in Roberts Rules of Order.

4. ADJOURNMENT

Chairman Crowson adjourned the meeting at 6:16 p.m.

REGULAR MEETING

Present:	Brian Crowson	Chairman, Place 6
	Lynn Motheral	Place 1

Substandard Building Board Meeting
September 11, 2018
Page 3 of 8

Bill Wait	Place 2
Deryl Brown	Place 3
Billy Parks	Place 5
Robert McCary	Place 7

Staff Members:	Stefanie Martinez	Director of Neighborhood Services
	Audrey Cappallo	Executive Secretary
	Kellie Brady	Assistant City Attorney
	Dave Pendley	Chief Building Official

1. CALL TO ORDER

Chairman Crowson called the meeting to order at 6:30 p.m.

2. APPROVAL OF MINUTES OF THE JULY 10, 2018 SUBSTANDARD BUILDING BOARD MEETING.

MR. ROBERT McCARY MOVED TO APPROVE THE MINUTES OF THE JULY 10, 2018 SUBSTANDARD BUILDING BOARD MEETING. MR. BILL WAIT SECONDED THE MOTION.

MOTION TO APPROVE CARRIED 6-0.

3. SBB 2015-51 PUBLIC HEARING AND CONSIDERATION OF THE \$91,000.00 CIVIL PENALTY THAT WAS ORDERED BY THE SUBSTANDARD BUILDING BOARD ON AUGUST 27, 2015 FOR FAILURE TO MAKE THE NECESSARY REPAIRS TO THE STRUCTURE WITHIN THE TIMEFRAME ORDER BY THE SUBSTANDARD BUILDING BOARD LOCATED AT 8250 BEDFORD EULESS ROAD, KNOWN AS BLOCK 1, LOT 1A, BENNIGANS ADDITION IN THE CITY OF NORTH RICHLAND HILLS, TARRANT COUNTY, TEXAS.

APPROVED

Chairman Crowson called on Stefanie Martinez, Director of Neighborhood Services, to present the case.

Ms. Martinez informed the Board they are present at the meeting at the request of the property owner regarding the \$91,000.00 civil penalty that was assessed by this Board on August 27, 2015 for failure to repair the structure within the required timeframe that the Board had ordered. Ms. Martinez also informed the Board that she is going to step aside to allow the property owner and their agent to speak on behalf the property and to address the request. In the packet, provided to the Board today includes everything

presented to the Board on the August 27, 2015 hearing when this penalty was assessed along with the property owners' presentation displayed on the current screen.

Chairman Crowson opened the public hearing and asked for anyone wishing to speak on the item to come forward.

Shannon Watt came forward. He is serving as a facilitator for the owners of Sushi Axiom, who are present. He works at Frost Bank in North Richland Hills. He served in the past as a Chairman for the Northeast Chamber, which the property owners are a member. He provided an introduction of the three owners of Sushi Axiom, Joe Trinh, Nhon "Lee" Nguyen, and Tran Diep and provided a little background history of Sushi Axiom and its businesses.

Mr. Watt provided the following data information:

- Total Construction Costs: \$1,677,650
- Total Project Investment: >\$3,000,000
- Employee Count: 45 (28 full time & 17 part time)
- Anticipated Sales for 2018: >\$1,800,000

Mr. Watt presented several photos of the property. Photos included:

- Street view photos when the restaurant was Bennigans and of Sushi Axiom when construction was completed;
- Photos of the completed construction at Sushi Axiom;
- Exterior construction pictures during construction; and
- Interior construction pictures during construction.

Mr. Watt presented the following request to the Board:

- The delay was due primarily to this project being the first building owned by Sushi Axiom and the project expanded in size. The Ownership being debt adverse opting to pay cash for the majority of the building project costs and restaurant working capital.
- They apologize to the Substandard Building Board for the delays and appreciate the City's patience with the now completed project.
- The project is completed and represents a \$3 million long-term investment, the renovation of vacant property, and the addition of a new and exciting restaurant in the City of North Richland Hills.
- They respectfully request dismissal of the civil penalty that was ordered by the Substandard Building Board on August 27, 2015.

Chairman Crowson asked for anyone else wishing to speak on the item to come forward. Mr. Nhon Nguyen, property owner, stepped forward.

Mr. Nguyen stated he is one of the property owner of DTNN Holdings LLC. When they bought the property, it was in bad shape. They did not know what to do. It took them

some time to come up with a plan. The first plan was not the right plan when they started. His partner Joe Trinh said they needed to do something when they received the fine. The City told them that they needed to speed up. Before they hired Mr. Allen, they had already been through two contractors. They were trying to figure out what look they were going for in the building so it took some time to get the design down. They also did not want to deal with the bank at first because they thought they could handle that but the more work they did the bigger the project got. They final got a bank loan from Frost Bank. They are here asking for the fee to be waived with all the work they have done.

Chairman Crowson asked Mr. Nguyen why they never replaced the Bennigans sign or covered it up, as per the Board request in 2015, prior to the completion of the project. Mr. Tran Diep replied they never received notification on this matter. This is the first time they are hearing this.

Mr. Deryl Brown asked if the property owners present today are the same owners that the Order was issued to in 2015. Ms. Martinez responded correct. At the previous meeting, the contractor spoke on behalf of the owners and at least one of the owners was present at those meetings.

Mr. Parks asked if the contractor, Mr. Allen, was the one who completed the entire construction job or was someone else brought in to finish the job. Mr. Watt replied that Mr. Allen was the one who got the job started with the demolition and the exterior of the building. They brought in another contractor to finish the interior of the building.

Chairman Crowson asked for anyone else wishing to speak on the item to come forward. Mr. Joe Trinh, property owner, stepped forward.

Mr. Trinh informed the Board that he is one of the owners of Sushi Axiom and is the Restaurant Operating Manager. The reason they had to get a new contactor is because their contractor had bought a house in Florida and at that time there was a hurricane in Florida and he could not get back. That is why the project was delayed for 2 months.

Mr. Parks asked if there were any miscommunications issues with the property owners and the previous contractor that contributed to this. Mr. Watt replied yes that was the case and that is one reason why Mr. Watt is present on behalf of the owners because communication is important. These gentlemen have put forth a great investment in this City. Thank you again for taking into consideration of the dismissing the penalty.

Chairman Crowson asked if they knew the amount of tax revenue, they bring into the City. Mr. Watt replied he would like city staff help on that but they had at one point estimated sales and beverage tax to be \$66,000. This is a viable investment, great employment and a great tax source for the City. Mr. Nguyen commented that the business is growing about 10% each month.

Mr. Craig Hulse, Director of Economic Development, stepped forward. Mr. Hulse informed the Board that there are multiple tax entities such at the state, school district,

hospital and Tarrant County. In their perspective, the numbers they provided to the Board incumbencies all those government entities. From the City standpoint, small shares come from the property tax. I'm estimating the property is worth about 3 million, which would equate to just little under \$20,000 for the city property tax. Based on their anticipated sales, the City gets 2 cents per every \$1.00 taxable sale. A portion of it goes to the general fund; half of it goes to Crime and to parks. It is estimated about \$32,000 in sales tax.

Mr. Dave Pendley, Chief Building Official, informed the Board that once the contractor Rick got on board, they did not have any problems with the construction. If there was something we needed them to do, it was taken care. There was some staff time with the meetings but typical the fines are to get people off centered to get them moving forward and the City is not here to make money off fines. They did a fine job doing what we asked them to do it. It did take them longer and we had a couple of meetings I wish we did not have to have. Chairman Crowson asked did not you all make them move a wall. Mr. Pendley said yes, there was incident with the walls. There were some alternations that were made that we were not aware of and we found out about them. They step up to the plate and made the repairs that we asked them to do.

Ms. Martinez advised the Board that she did not have anything additional to add as far as the staff presentation but would like to say that she is pleased with the project completed; however, it did take a while to get it completed. This property ownership took place back in 2011 and Code Compliance did not start the process with getting the project remedy until 2015 so within those 4 years we did not see any improvements on the property. In 2015, is when we began taking action and brought them to this Board when there was a lack of work being done out there. Ms. Martinez agreed with Mr. Pendley that there was an initial contractor on site that made promises and never came through with those promises and had time making contact with him until we got the ball rolling with the Board and got the Order issued. There was some headway made but 2016 is finally when we started to see more activity. From February 2015, from when this case started, until April 2018, when the case was completed, Code Compliance staff was required to continue to monitor this and return to do inspections. Ms. Martinez calculated out that the property had remained substandard for 940 days. Staff is not saying not to reduce the penalty but staff is not for removing the penalty. It is staff belief, if the property had not been brought to the Board and gotten an Order to the owners to repair it, the project would not have commenced when it did. Mr. Nguyen commented back in 2011 the highway was under construction and they did not want to do anything until the highway was finished.

Chairman Crowson closed the public hearing.

Mr. Brown commented that what he had to say Mr. Martinez articulated perfectly as that is the position he had in his mind as well. Mr. Brown recalled meeting after meeting where a commit was made that was never even attempted to be resolved and driving by being frustrated that no action had been taken. Also definitely proud of the work they have accomplished and does not want to do anything to implead their ability to do

business in the City and be successful in that. Mr. Brown is open to reducing the fine but cannot imagine dissolving the fine completely.

Mr. Billy Park moved that the Board enter the following order concerning the property located at 8250 Bedford Euless Road legally described as Block 1, Block 1A, Bennigans Addition in the City of North Richland Hills, and Tarrant County, Texas by reducing the civil penalty amount from \$91,000 to \$22,750.00.

The Board discussed the current motion and amending the civil penalty amount.

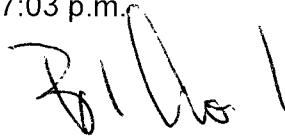
MR. BILLY PARK MOVED TO ENTER THE FOLLOWING AMENDED ORDER FOR SBB 2015-51 PROPERTY LOCATED AT 8250 BEDFORD EULESS ROAD KNOWN AS BLOCK 1, LOT 1A, BENNIGANS ADDITION IN THE CITY OF NORTH RICHLAND HILLS, TARRANT COUNTY, TEXAS, ORDERED THAT THE PREVIOUSLY ISSUED ORDER FOR CIVIL PENALTIES DATED AUGUST 27, 2015 BE AMENDED TO SHOW THAT THE OWNER, DTNN HOLDINGS, LLC, REPAIRED THE STRUCTURE LOCATED AT 8250 BEDFORD EULESS ROAD AND REDUCED THE CIVIL PENALTY AMOUNT FROM \$91,000.00 TO \$1,000.00.

MR. LYNN MOTHERAL SECONDED THE MOTION.

MOTION TO APPROVE CARRIED 6-0.


3. ADJOURNMENT

Chairman Crowson adjourned the meeting at 7:03 p.m.



Brian Crowson, Chairman

ATTEST:



Audrey Cappallo, Executive Secretary