

**NEIGHBORHOOD AND COMMUNITY DEVELOPMENT
STANDING COMMITTEE MINUTES
Monday, March 30, 2015**

The meeting of the Neighborhood and Community Development Standing Committee was held on Monday, March 30, 2015, at 5:00 p.m., in the 5th Floor Conference Room of the Municipal Office Building. The following members were present: Commissioner McKiernan, Chairman; Commissioners Walters, Murguia and Townsend (via phone). The following officials were also in attendance: Ken Moore, Deputy Chief Legal Counsel; Patrick Waters, Senior Attorney; Gordon Criswell, Assistant County Administrator, Melissa Mundt, Assistant County Administrator, Emerick Cross, Interim Commission Liaison; Maureen Mahoney, Assistant to the Mayor/Chief to Staff; and George Brajkovic, Economic Development Manager.

Chairman McKiernan called the meeting to order. Roll call was taken and members were present as shown above.

Approval of standing committee minutes for February 2, 2015. **On motion of Commissioner Murguia, seconded by Commissioner Walters, the minutes were approved.** Motion carried unanimously.

Committee Agenda:

Item No. 1 – 150064... COMMUNICATION: LAND BANK APPLICATIONS

Synopsis: Communication requesting consideration of the following Land Bank applications, submitted by Chris Slaughter, Land Bank Manager. The Land Bank Advisory Board has recommended approval.

Chris Slaughter, Land Bank Manager, said first off out of this list that we've given you, we do need to take one off. We'll probably bring it back next month, but there was a request to have it removed for more information. The address is 2053 Springfield Blvd. We'll ask that that address not be considered tonight.

Applications for yard extension unless noted otherwise

4140 S. Minnie St. - Rosedale Development Association, Inc., for a garden
 1346 Quindaro Blvd. - Thelma Suber
 1508 Quindaro Blvd. - Charles Mills
 2324 N. 91st St. - Twin Oak Ventures, Inc.
 1910 Vermont Ave. - ZJ Enterprises, LLC
 63 S. 26th St. - Roy Brown
 2503 Springfield Blvd. - JaMia Developments, LLC
 3914 Sewell Ave. - Paul Johnson, Sr.
 1011 Quindaro Blvd. - Demetrius Austin
 2930 N. 31st St. - Wayman Bowning
 *228 S. 21st St. - Wade Lytch
 *228 S. 21st St. - ZJ Enterprises, LLC for future development
 *235 S. 21st St. - ZJ Enterprises, LLC
 *235 S. 21st St. - Brenda Jurado for a garden

*Best & Final

Chairman McKiernan said so any motion for approving properties as a bulk would not include that one—**Commissioner Murguia** said wait. **Jody Boeding, Legal Counsel**, said for the record is it 2503 Springfield. **Commissioner Murguia** said yes, because 2053 isn't on here. You're talking about 2503. **Ms. Boeding** said I think so. **Commissioner Murguia** asked is that right. **Chairman McKiernan** said second one, second page. **Mr. Slaughter** said I have 2053 on mine. **Chairman McKiernan** said mine said 2503. **Mr. Slaughter** said you're just talking about the agenda form right, not what's in your packet. **Commissioner Murguia** said well, we have the packet. **Ms. Boeding** said I think the attachment says 2051. **Mr. Slaughter** said is the applicant's address but the Land Bank is—I believe it's 2053. It's the one for JaMia Development, LLC. **Ms. Boeding** said this is correct and not the agenda. **Mr. Slaughter** said I don't put the agenda together. **Chairman McKiernan** said it is correct, so the attachment that is headed Wyandotte County Land Bank Applications list this property address as 2053 Springfield Blvd. so that is the one that's removed and will not be included in any votes tonight. **Mr. Slaughter** said correct. **Commissioner Townsend** asked, Mr. Chairman, which is the correct address? I see both. Is the address actually 2503 or is it 2053? **Chairman McKiernan** said, no the actual address is 2053. **Commissioner Townsend** said okay, same on the application. I just had a question of something generally, if this would be appropriate to raise it, that has to do with all of these. I was just wondering, Mr. Slaughter, just as a matter of standard practice is there any verification done by us, meaning the UG; that any of these LLCs or other corporations that

may make applications are in good standing or even valid entities before the applications are passed on to the Land Bank Advisory Board. **Mr. Slaughter** asked can you explain what you mean by good standing. Are you inquiring about if they have a business license or are we talking about registered with the state? **Commissioner Townsend** said more with the state. That was the reference that I actually meant, that they are a corporation and currently in good standing or there is such a thing as the LLC that's presented. **Mr. Slaughter** said generally, well, we don't get a lot of LLCs that are applying for properties so probably moving forward you know I agree, that's probably a good way to look. That's part of the request of why we're going to pull it off tonight is to vet it a little bit more. Again, a member of the Advisory Board thought there should be a little bit more vetting. That's why we're going to pull it off and we'll bring it back probably at the next meeting, but I'll look into that information. **Commissioner Townsend** said that would apply to any of the LLCs. That would be our practice. **Mr. Slaughter** said it should be, yes. **Commissioner Townsend** said okay, thank you.

Commissioner Murguia asked so then can I move for approval on everything but 2053. **Mr. Slaughter** said not yet. At the bottom we do have two properties that we're doing a best and final on. As usual I will give a recommendation on both. Let's go to the last one first, 235 S. 21st St. We have ZJ Enterprise, LLC for yard extension and Brenda Jurado for a garden.

Some history on this property, Ms. Jurado's parents had applied for this property at one point. It's right across the street from their house. At the time there were some substantial code violations in talking with the code officer in that area. There are still probably grounds for some current or future violations so I feel, or the Land Bank feels, that the best recommendation would be for ZJ Enterprises on this property.



The other one is 228 S. 21st St. If you look at the map that's up on the screen, do we have a pointer? **Chairman McKiernan** asked can we have one click worth of zoom in. **Mr. Slaughter** said that's perfect. I will say after I get done speaking both applicants are here and if you feel it's necessary for additional questions or comments from them, I believe they're available for comment. **Chairman McKiernan** said show us again the first one which was— **Mr. Slaughter** said the first one we just talked about, this is the property that's being requested. 235. This is the Jurado residence and this is one of the properties zoned in the area by ZJ Enterprises. Our recommendation is for ZJ for the award.

The next property we're talking about here is 228 S. 21st and we have the same applicant here at 1914 and we have 234. They're requesting a yard extension. ZJ is requesting to hold it for a future development. The development, I've heard a lot about it. There have been discussions with other groups, departments within the UG, but I also think we're still in some infancy stages that at this point I see more credence to turn around and make a recommendation to award this to the neighbor for yard extension. The neighbor, I believe it's Lytch has no taxes

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that are owned, has no code violations that are outstanding. He wants to just expand his yard and I think that's a stronger recommendation for—than a future development that just is still, in my opinion, in the infancy stages. Again, both applicants are here and if you want to get more additional information that's up to you. My recommendation would be for Mr., Lytch for 228 and ZJ Enterprise for 235 S. 21st.

Commissioner Walters asked, Chris, did you say that 235 S. 21st was for a future development also. **Mr. Slaughter** said no. Being the proximity to the 1914 I've went ahead and listed that as a yard extension. A lot of this is, I mean, this road comes to about right here and that's it, so a lot of this is just kind of rough terrain and being that he's already the owner here, he's applied also in the packet for 1910 which we wish to move forward on. We just felt that he would probably be a better steward of the property. Again, this house here, there's been issues with codes. If you drive here off the highway, you'll see what I'm talking about; various construction, equipment and supplies that are highly visible from the highway. Again, in speaking with the Code Enforcement Officer in that area, there has been issues in the past and again they are just wanting it for a garden. This is a pretty rocky, rough terrain. We're just going to stand by our recommendation for ZJ. **Commissioner Walters** said thank you.

Commissioner Murguia asked does ZJ Enterprise still want 235 if they're not going to get 228. **Mr. Slaughter** said I believe they—yes, they want all three. I just feel that the best suite for 228 is going to be the neighbor. **Commissioner Murguia** asked are you ready for a motion? **Chairman McKiernan** said at this point would we want to hear from either of the applicants who are here. Let's do that. I believe we have two applicants who are here tonight and if I could ask each of you, one by one to come to the podium here in the middle of the room. If you'd just state your name and your city of residence for the record and then—before we get to that, might I suggest we can take the first block down to these two best and finals and we could approve those, get those out—we could have a motion on those, get those out of the way and then just focus on these two best and finals, then take each of them one by one, hear from whatever applicants are here and move on those. **Commissioner Murguia** said okay, this is the fourth time. Would you like me to make a motion? **Chairman McKiernan** said yes I would.

Action: Commissioner Murguia made a motion, seconded by Commissioner Walters, to approve the applications minus 2053 Springfield and minus best and final. Roll call was taken and there were four “Ayes,” Walters, Murguia, Townsend, McKiernan.

Chairman McKiernan said then that brings us down on this list of Land Bank applications to 228 S. 21st and 235 as a best and final. On the property 228, which is the property on the west side of the street, correct, do we have—and you said this one was yard expansion from 234. Do we have the resident of 234 here? Sir, could you come on up to the podium and state your name and your city of residence for the record and then just give us a brief background on why you wish to acquire this property for a yard expansion.

Wade Lytch, 234 S. 21st St., said I do have the property that would be to the south. That property would be to my north. I’ve been in the neighborhood quite some time. It’s actually been a grandmother’s house and then I got it from her so we’ve been kind of been maintaining the property for some time and we’d like to continue on with that and get the property awarded to us so we can—**Chairman McKiernan** said and so just a direct expansion of your yard northward on to the next lot. **Mr. Lytch** said yes, correct. I plan on retiring in the home so the taxes will be there every year until I—for the record. **Chairman McKiernan** said always a good thing. Thank you sir, appreciate it very much. Then we have the other applicant is here as well. If you again can state your name, city of residence for the record, and then just explain your application for 228.

Dean Siggorts, 7425 Juniper, Prairie Village, KS, said I’m one of the partners of ZJ Enterprises and we have already completed one redevelopment area next to City Park Drive so we office at 361 City Park Drive. Let me just say I think I have a few minutes. Let me just say something real quick. Number one, I’m a big fan of Mr. Lytch. If this is what he wants to do, that’s fine. If we purchase the property, I just want him to know we wouldn’t ask him to move. We wouldn’t ask him to take anything off of it; it’s just merely the start of the process for us. You know development starts with an acquisition, it’s a big leap of faith and we’re just trying to seize the moment. The delays that happened, they close the window of opportunity. I’ve met

with David Haley, Pam Curtis, Mayor Holland is quite aware of what we're doing, Joe Reardon, ex-mayor, Murray Rhodes, obviously not in order of importance right, Paul Soptic with WCAC, very close with Marty Finnes with CABA, he's really kind of spearheading this whole thing and then I've been working with the Economic Development group of Greg Kindle and Jay Matlack.

We would not even be touching this if they hadn't added a mixed zoning because we want to come in with some nice retail and some low rise buildings that will have retail as well as office, apartment and condo. Then we want to do a high density upscale apartment area combined with a regular workforce apartment area, kind of in the same area so they're not set off. We're very aware of being correct I think is the word.

You know we all know private land ownership is the biggest obstacle in planning implementation. Land assembly is seen as a tool and that's to regulate prices and to implement the plan. The main advantage of the development actually takes place and with this group behind me, we've been so politically correct that it's been very fun. We've gone through sewers. 60% of this group, this area does not even have infrastructure, it is a jungle. It's an elevation of over 120 ft. difference.

We're working on putting in the road and we want to put a nice face on this part of the county. This might not pertain to this piece but I had the feeling that I'm going to be in front of this group for quite some time and I just want you to know that our intent is sincere, okay.

The average house cost in this area is \$40,000. There are 42 residences, there are 60 vacant lots. Again, the biggest problem we have is going to be the elevation differences, but we know how to handle that. The people from sewers have given me words that I'm so happy that the word horizontal boring has come into play that I can't believe, but we're going to go through this project and we look forward to it in the future.

Again, with Mr. Lytch, upstanding person, great guy, I know his lot. I know all these lots and if he wants to purchase it and use it for side storage or whatever, then I'll withdraw. If you would like for me to purchase it and give him an agreement that until it comes time for this development to move, you know back into his neighborhood, then he is free to use it 100%. We won't touch a thing.

Action: Commissioner Murguia made a motion, seconded by Commissioner Walters, to approve staff's recommendation.

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Chairman McKiernan said staff's recommendation is...restate that please. **Mr. Slaughter** said for 228, our recommendation is for the owner at 234 and for 235 we are recommending the owner at 1914 Vermont. **Chairman McKiernan** said which is the gentleman that just spoke. **Mr. Slaughter** said correct. I believe it would be—I picked the wrong time to break my reading glasses. For 228, we recommend for Mr. Lytch and for 235, ZJ Enterprises, LLC. **Chairman McKiernan** asked do you want one or two motions on that. Do you want to move to accept both of staff's recommendations or simply one?

Action: **Commissioner Murguia made a motion, seconded by Commissioner Walters, to approve both of staff's recommendation on both best and finals.** Roll call was taken and there were four "Ayes," Walters, Murguia, Townsend, McKiernan.

Chairman McKiernan said now we're into the next section which is measurable goals. Mr. Ken Moore is here to follow-up an item. We started some discussion last month about code violations and maybe looking at some renewed enforcement for serial or habitual violators. Mr. Moore had followed up on some of the items that we had discussed last month and just wanted to bring that information back to us. This is for information only, for the discussion.

Measurable Goals

Item No. 1 – 150038... RESPONSE/DISCUSSION: CODE ENFORCEMENT

Synopsis: Response and continuing discussion of code enforcement from the March 9, 2015 standing committee meeting.

Ken Moore, Deputy Chief Counsel, said at the last meeting there was a request to bring some additional information about eminent domain and the reasons that the city could exercise their authority. I thought it would be good to kind of give a background of how we got to the current state of the law.

*KSA 26-201. Cities; authority to condemn;
interest acquired; resolution, notice, ordinance;
exercise of power*

- A city shall have the right to acquire by condemnation any interest in real property, including a fee simple title thereto ... **for the use of the city for any purpose whatsoever...**

That's really been the state—that statute has been in existence in that form for probably fifty years.

125 S.Ct. 2655
Supreme Court of the United States
Susette KELO v. CITY OF NEW LONDON, CONNECTICUT
Decided June 23, 2005

- City's exercise of eminent domain power in furtherance of **economic development** plan satisfied constitutional "public use" requirement, even though city was not planning to open condemned land to use by general public, where plan **served public purpose.**

In 2005 the Supreme Court had the Kelo case and that has been called one of the most despised Supreme Court cases ever. It was a five to four split decision and they—the reason it's called that is because the city acquired property solely from one private landowner and gave it to another solely for economic development purposes. There really wasn't a public purpose there except for economic development. Now, the thing about that case is as I showed you in that first statute, that's really the status of the law from forever. It just kinds of made it very clear. It kind of resulted in a public uprising, if you will, so Kansas and 43 other states either adopted changes

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to their laws or their constitutions to restrict how the government can acquire properties through eminent domain.

In that 26-501a is a new statute adopted in 2006 and it says that, and the key word there in that title is transfer to private entity. It prohibited the transfer from one private property owner to another private property owner and then in paragraph b it says the taking of private property by eminent domain for the purpose of selling, leasing or otherwise transferring is prohibited except and that it has some exceptions.

KSA 26-501b. Eminent domain; transfer to private entity authorized, when

- **On and after July 1, 2007, the taking of private property** by eminent domain for the purpose of selling, leasing, or otherwise transferring such property to any private entity **is authorized** if the taking is:
 - (lists 6 exceptions)
- **(e) by any municipality for the purpose of acquiring property which is unsafe for occupation by humans under the building codes of the jurisdiction** where the structure is situated;

Now, when that statute came into effect on July 1, 2017, Commissioner Murguia, you might remember we had some action where we were just under the deadline and we acquired Indian Springs, Prescott Plaza and some other projects. There is an exception. There are six exceptions listed but I think the key one for the purpose of this group's discussion is that the Unified Government can acquire property if it's unsafe for occupation by humans under our building codes. Again, that is a situation where you can acquire from one property, from one property owner to transfer to another private property owner.

*International Property Maintenance Code 2009
as adopted by Ordinance Section 8-24:*

- **108.1.3 Structure unfit for human occupancy.** A structure is unfit for human occupancy whenever the code official finds that such structure is unsafe, unlawful or, because of the degree to which the structure is in disrepair or lacks maintenance, is insanitary, vermin or rat infested, contains filth and contamination, or lacks ventilation, illumination, sanitary or heating facilities or other essential equipment required by this code, or because the location of the structure constitutes a hazard to the occupants of the structure or to the public.

We've adopted the International Property Maintenance Code, Ordinance 8-24 and it really kind of defines and outlines what we consider unfit for human occupancy. It's unsafe, it lacks maintenance, disrepair, infested, unsanitary, improper heating, ventilation or other equipment required by the code. **Commissioner Murguia** said so am I wrong, not to interrupt your presentation, and I'm really not trying to be a smart aleck here, but would I be right then to interpret it that we have a lot of property that fits that criteria in Wyandotte County. **Mr. Moore** said I would imagine so, yes. I think so. **Commissioner Murguia** said okay, I just want to make sure I wasn't misinterpreting anything. **Mr. Moore** said now in our code we have an unfit process where it's posted to have hearings. This is really the process used for demolition but it's also a process used to get the property owner to make repairs to their property. This is separate from the Municipal Court prosecution. This is an administrator process to either get repairs or to give us authority to demolish the property. **Commissioner Walters** said, Ken, just for my understanding, so if a house is vacant and there is no electricity to it, that automatically fits that definition, does it not? **Mr. Moore** said it would. **Commissioner Walters** said thanks.

Chairman McKiernan said if I could kind of piggyback on that, if you could go back to the unfit process there. That process really is mainly to encourage the property owner to make whatever corrective action is necessary to bring it back from unfit status. Is that right? **Mr. Moore** said that's correct. If they post it unfit, and Colin's our resident expert, he handles that process; but if they post a property unfit they still set it for an administrative hearing before the

codes officer. That's an opportunity to come in and really have explained all of the deficiencies in the property and then given a deadline to submit a plan as to how they're going to remedy those things. It falls that administrative process.

If they fail to do so and the property meets certain criteria, which essentially is at the cost of the repairs exceeds the appraised value as shown in our tax records, if that's the case then they'll initiate the demolition process; which is really the same process but they do more of the publications and official notices. They notify mortgage companies and other parties of interest. Whereas, when they're just trying to get a repair they just go through that process with the property owner itself. **Chairman McKiernan** said well, two things come to mind. First of all, if it's posted unfit and the property owner acknowledges that the repairs need to be made but then simply doesn't make them, then what recourse do we have other than ultimately to tear it down. I guess to back up from that would be what, if any, means do we have to try to arrest that slide toward demolition so that before it's even posted unfit if a house is creating a blight in a neighborhood, there is a corrective action that can be taken earlier so it doesn't just sit there and fester discouraging people from moving in and encouraging people to move out? **Mr. Moore** said well, the same authority we have to ultimately demolish we have the authority to go in and make the repairs. We can eliminate the blight or the unsafe condition but as a practical matter, I think it just gets to a point where it goes to demolition. **Chairman McKiernan** said wait a minute. We have the capacity, if we would choose to do it—**Mr. Moore** said we can issue an order to repair—**Chairman McKiernan** said to make the repairs. **Mr. Moore** said of course access those costs against the property. It's always a fine line if you're throwing good money after bad. **Chairman McKiernan** said well, but okay, so once we've made those repairs then what. Can we acquire the property having brought it from that status up? **Mr. Moore** said there are no provisions to transfer ownership in this process with it at all. **Chairman McKiernan** asked are there any other judicial or court processes that might transfer ownership at any point. **Mr. Moore** said well, as a demolition assessment it becomes a lien on the property and if it's delinquent, then we can foreclose like it's part of the tax foreclosure sale and acquire it in that fashion but that's it, that's, well, I don't know. Is there—we might be able to do a private foreclosure that says any private debt if we didn't want to acquire the property. **Colin Welsh, Assistant Attorney;** said I think that's right. **Mr. Moore** said in my time here I've never, or I shouldn't say never, because I think sometimes we'll do that to a—it's the same authority we use

to board structures up to secure them is pretty much under this authority. **Chairman McKiernan** said okay. Thank you.

Commissioner Murguia said, Ken, can you give us—you don't have a timeline associated with that process. Can you flip back real quick? So there are statutory timeframes. I know the next slide says in total but I'm not talking about in total. I'm talking about if I have a house in my district where I want to track it from beginning to end through this unfit structures process, once a notice is issued how long before it can go to demolition; 30 days, 60 days, 90 days? **Mr. Moore** said for demolition, well—**Commissioner Murguia** said once you notice it up, how many days do you have before I can tear it down? **Mr. Moore** said we use this process in two ways. One is to get the owner to repair and that is kind of more an abbreviated process because we don't go through the title search, the publications and that part; to do a demolition though we go through the full-fledged process by getting a title report and doing the publication of the notices. Colin, can you answer that question, what is our timeframe for the demolition process. **Mr. Welsh** said I can't give you an accurate idea about what our timeframe is on that depiction just because we have such a backlog of them that—**Commissioner Murguia** said doesn't statute indicate that though. I'm not asking for our timeline personal. I'm asking isn't there a statutory timeframe that's required before we can—**Mr. Welsh** said I believe that it's notices that the item that the statutes most concerned with. I don't think there's any specific set of days in which we have from noticing to tearing it down. It's reasonable, I believe, but I can get back with you on that to be more specific. That's just off the top of my head. **Commissioner Murguia** said because reasonable is relative. **Mr. Welsh** said it certainly is. **Commissioner Murguia** said so I would be curious that the statute would probably—if you could tell me. The statute should indicate or define reasonable if it's 14 days or 30 days. I know it does with a lot of our other notices. **Mr. Welsh** said again, we're going forward on projects that we're certainly—we do have notice so as far as people that we can't get a hold of, I think we've been, we have plenty of other ones to go out here I guess is what I'm saying.

Commissioner Murguia said in this process it looks all clean, neat and easy, the way you have it written up there. **Mr. Moore** said it's the font. **Commissioner Murguia** said it's got to be the font because it's not the process. After you notice, when you say define notice, what constitutes

notice? **Mr. Welsh** said hopefully they've been in for the unfit hearing so we have lots of documentation that they're aware of the situation but then we make an order to them that they need to get it. I mean they have the opportunity to demo it on their own but if they don't do so by a certain date, we'll take that on and then of course then we're communicating with the contractors and then we're dealing with their schedule as far as when they can get it in. So, did that answer your question? **Mr. Moore** said the 8-451 on notice says that you provide them notice in writing by publication of a hearing not less than 10 days, no more than 30 days. So that's of the initial hearing. **Commissioner Murguia** asked why not more than 30 because we go way longer than 30. **Mr. Moore** said I understand. I mean this is for the initial hearing. **Commissioner Murguia** said oh, they have to be heard in 30 days and that's the ticket process. **Mr. Moore** said no. **Commissioner Murguia** said that's the notice process. **Mr. Moore** said this is completely separate from Municipal Court. **Commissioner Murguia** said so when you send them notice you send them a court date to show in court to be heard about the unfit process or do we do that in a different system? **Mr. Moore** said this is done, it's an administrative process at the NRC. **Commissioner Murguia** asked with the administrative judge. **Mr. Moore** said no, with the code inspector that issued the unfit citation, unfit notice or maybe a supervisor. **Mr. Welsh** said yes. A code officer working for the public officer is Mr. Talkin right now. **Commissioner Murguia** said so after they've been heard, after they've been noticed up, you have 30 days, you have to set a hearing date within 30 days, they go to the hearing, let's say they comply and go to the hearing in 30 days and they say I'm not fixing it up and I'm not tearing it down. I don't have any money to do either. So when can we demolish, the 31st day? **Mr. Moore** said well then—**Mr. Welsh** said the order would be given after that 30th day and again, if they don't respond then we're kind of in a lurch where we don't have necessarily have notice. Now we can publish it and we can go forward and—although I have some reservations I suppose we could go forward pretty quickly but again, we don't have any—we can't be assured that we've properly notified them, then they're going to come back and potentially have a cause of action against us. **Mr. Moore** said there is a 30 day appeal time also. So we will not take any action for that period of time.

Commissioner Walters said at the hearing isn't a decision made and the owner notified of that decision at the hearing. **Mr. Welsh** said again, we're working at it from here are the repairs you

need to have made unless, as Ken was saying, the cost for the repairs exceed 100% of the appraised value and then at that point then the officer or the demolition coordinator, I suppose, would be saying that's it, we're going to demo this. You need to have this demolished within this certain timeframe. If you don't then we're going to go forward. We also at that time often provide a form where they can kind of waive their rights, accept that we're going to demolish it and access the value to the property. That happens fairly frequently.

ARTICLE IX. - UNFIT STRUCTURES PROCESS

- Sec. 8-451. - Notice.
- Sec. 8-452. - Order to repair, remove or demolish.
- Sec. 8-453. - Repair, removal or demolition by public officer.
- Sec. 8-454. - Emergency action and waivers.
- Sec. 8-455. - Service, posting and filing of complaints and orders.
- Sec. 8-456. - Appeals.
- Sec. 8-457. - Violation; penalty.

Commissioner Murguia said sorry to belabor this, but for me this process is important and I did not get this presentation in my packet. Can I have this? **Mr. Moore** said sure. **Commissioner Murguia** said okay. **Chairman McKiernan** said all of us please. Thank you. **Commissioner Murguia** said I'm better with scenarios than just ambiguous process, okay. So you've sent me a notice. I'm the property owner. You sent me a notice. I got a letter in the mail and I've got a court—I'm sorry administrative hearing date, okay. I show up to that administration hearing, at that hearing it's simply to provide me with an order to repair, remove or demolish my property. You're ordering me to repair, remove or demolish one of those things, correct? That's the order that you're talking about. **Mr. Welsh** said right. **Commissioner Murguia** said so now I have my order and I have to do one of those things and that order, in that order it will specify how many days I have to do one of those three things, correct? **Mr. Welsh** said yes. **Commissioner Murguia** asked is there a statutory timeframe? **Mr. Welsh** said no. That's really up to the Codes Officer determining on the representations of who they're dealing with, when can you have this done by. **Commissioner Murguia** asked can we make—so in local government can

we set a policy directing our administrative officer to give everyone the same amount of time. **Mr. Welsh** said I would suppose so. **Commissioner Murguia** asked do you think that would be helpful in lawsuits because I know we try to be really flexible and often time that works against us. Jim gets 60 days to fix up his property. I get 30 days so when it's sort of just out there like that, it seems to bring out questions. **Mr. Welsh** said I think it cuts both ways. It's nice to be able to tell the judge like you know, all we asked them to do was this and you know to think about it could practically should have only taken this period of time but we gave them this and this and this and finally we put the hammer down. I mean that looks good as far as the judge is concerned. **Commissioner Murguia** asked if it goes to court, what court does it go to. **Mr. Welsh** said it goes across the street. **Commissioner Murguia** said to our District Court in our county. Okay, so the notices to appear, the order is to do one of those things and you gave them 60 days and they don't do it. So on the 61st day does section 8-453 allow you to demolish the structure, repair, remove or demolish the structure? **Mr. Welsh** said and they failed to file the appeal. **Commissioner Murguia** said yes. **Mr. Welsh** said then at that point, yes, I believe it would. Again, I'm sorry I haven't really thought about it in these terms because of the stack of these that are on the Demolition Coordinators desk. **Commissioner Murguia** asked how much is the stack, how many. **Mr. Welsh** said I can't answer that. I have no idea. I would feel safe saying it's a stack. **Commissioner Murguia** said like a hundred or thousands. **Mr. Welsh** said I'm going to say hundreds, but a thousand I don't know. I'm sorry.

Chairman McKiernan said but realistically and it's not the focus of this particular presentation but realistically, any structure that gets to the unfit process has been in the system for a while and that kind of goes back to some of my continuing frustration is it's not the first time we've ever seen a property when it shows up to this unfit hearing. There have undoubtedly been, or I would guess there have been, code violations, previous notices; previous attempts to have someone comply. That's what I would really like is stop the slide toward unfit so that we arrest the process before it ever gets up to this notice but once it gets here, accelerate the process.

Commissioner Murguia asked can you explain to me what emergency action and waivers are. **Mr. Welsh** said that's basically when time doesn't allow notifying all the parties. There's an eminent of danger—**Chairman McKiernan** said so would that be like when I had a building

burn in my district, that night there was an assessment made that it presented an eminent danger of collapse and we demolished it the next day and then assessed the demolition charge as a lien against that property. **Mr. Moore** said that's correct. **Commissioner Murguia** said so that's really—I'm reading it from top to bottom as in first step, second step but that's not really the case. 453 and 454 really are parallel. **Mr. Moore** said they are. **Commissioner Murguia** said thanks. **Mr. Moore** said one is an emergency and one is not. **Commissioner Murguia** said service posting and filing of complaints in order. **Mr. Welsh** said that goes to notice and you're posting it on the property, you're sending it by registered or certified mail. **Commissioner Murguia** asked is that part of the notice. **Mr. Welsh** said yes. **Commissioner Murguia** said so that is parallel to notice. **Mr. Welsh** said right so that'd go back. **Commissioner Murguia** said that's the definition of notice. **Mr. Welsh** said yes. **Commissioner Murguia** said and then appeals, can you appeal? You want to appeal after the order, correct? **Mr. Welsh** said yes. **Commissioner Walters** asked who do you appeal to. **Mr. Welsh** said to the District Court. **Commissioner Murguia** said right here in Wyandotte County. What is the violation or penalty? **Mr. Welsh** said penalty, well, technically we could be you know issuing a summons for violating these orders—**Commissioner Murguia** said for not demolishing, repairing or removing. **Mr. Welsh** said yes. **Ms. Boeding** said that would be Municipal Court. **Mr. Welsh** said yes, right. **Commissioner Murguia** said that'd be like a ticket to court where they'd have to pay a fine in addition. **Mr. Welsh** said correct. **Commissioner Murguia** said okay. That's very good you guys. I've been here for a long time. That's really good.

Commissioner Walters asked is this a Kansas City, Kansas program or policy or is it a county. **Ms. Boeding** said this is a Kansas City, Kansas ordinance. **Commissioner Walters** said thank you.

Eminent Domain/Condemnation Process

- Process takes a minimum of **5** months
- Adopt Resolution declaring legal authority and purpose.
- Adopt Ordinance authorizing and identifying property interest to be condemned.
- File lawsuit in Wyandotte County District Court.
- Hold Court hearing to approve legal authority to condemn and to appoint 3 appraisers
- Hold Appraisers Hearing to determine fair market value of property interest taken.
- Pay award, Court costs and Appraiser fees into Court.
- Owner can appeal award and have a jury trial.

Mr. Moore said and then that's the eminent domain condemnation process and a lot of that is really governed by the notice periods you have to give before any of the court hearings and it has to be published and mailed so it's hard to reduce it below that 5 month period. **Ms. Boeding** said this is all state law. **Mr. Moore** said yes, this is all state—those state statutes that I referenced earlier about the authority; this is the process that implements that authority.

Commissioner Murguia said this is a little harder because it's a little more information at one time. So the second one adopting resolution declaring legal authority and purpose, what's the legal authority and purpose? **Mr. Moore** said well, anything in that statute. I mean we have general authority for any public purpose. Later tonight on your next committee agenda you have one for a sewer repair and it's you know for that public purpose and a—**Commissioner Murguia** asked do you have a legal definition for public purpose? **Mr. Moore** said it's outlined in those statutes earlier. For a public purpose it could be, it is primarily used for as long as the government retains that interest in the property, it's for any infrastructure improvement, things of that nature and then you have those six exceptions in the unsafe or unfit structure as one of those exceptions. **Commissioner Murguia** said a new retail shopping center. **Mr. Moore** said only if the property there that you're condemning would meet one of those six exceptions. **Commissioner Murguia** said which is. **Mr. Moore** said other than that you cannot condemn for economic development purposes solely to get it taken from one property owner to give it to another. It has to be one of those six exceptions. **Commissioner Murguia** said and the six again are. **Mr. Moore** said I only showed you one. **Commissioner Walters** said the sixth exception is the one that probably has the most applicability. **Commissioner Murguia** said

public purpose you mean. **Commissioner Walters** said well, it defines a house that is in ill repair and doesn't have proper ventilation, illumination, that sort of thing. It was on an earlier slide. This process on this slide, would this be a county or city program. **Mr. Moore** said it could be either way. The other way we exercise that power as a city because Bonner Springs and Edwardsville have their own authority to do the same thing.

Commissioner Murguia said so I'm a little confused because when Jim was using as example unfit, you would stamp a home unfit and resolve that through the three options repair, removal or demolition; but condemnation and unfit even after you do all that you don't get ownership of the property in an unfit situation. Brian's already asked that. In condemnation my understanding is you do get ownership. **Mr. Moore** said that's correct. **Commissioner Murguia** said so there is a big difference. If the lights aren't working and it's boarded up, you can condemn it because it's a public safety issue. **Mr. Moore** said because it's unfit. **Commissioner Murguia** said oh good Lord. **Mr. Moore** said the six exceptions are, one is for KDOT, one is for utilities, the third is when the owner agrees in writing, the fourth is if there is a title defect that you have to clear the title defects so by condemning you eliminate other potential claimants from it. The fifth is when it's unsafe for occupation by humans and the seventh is when the legislature specifically authorizes it. **Commissioner Murguia** asked so we can condemn property that's unsafe for humans. **Commissioner Walters** said yes, exception number six. **Commissioner Murguia** said which is the one you were talking about and condemnation gets us ownership. **Mr. Moore** said yes, that's exactly right.

Commissioner Murguia said so Commissioner McKiernan's been asking this question for a long time. He just asked it again, unless I'm missing something, he just said we have lots of property, for example; in his district that's boarded up, maybe it's not too far gone but there's a party that's interested in it, why can't we condemn that because it's unsafe, fix it up and then give it to someone else? **Mr. Moore** said we can. That may be the key is that we essentially buy it from them because if you go back to the process, the court appoints three appraisers. They go in and inspect the property. They determine what the value of the property is, the fair market and they got a laundered list of factors that they use and in order to acquire the property we have to pay that to the owner including the appraiser's fees and the court cost. **Commissioner Murguia**

said so you've condemned it now you own this property that you've condemned so you own it. **Commissioner Walters** said you had to pay for it. **Commissioner Murguia** said right, you pay for it. Now we want to give it to someone else or sell it to someone else. Can we do that? **Mr. Moore** said yes. The reason I put that Kelo case up there, kind of for a reason, is that I think it's the same sentiment that if the person, the bottom point there, is that the owner if they don't like what they get they can appeal and have a jury trial and a jury is going to determine how much their property's worth. I think that you know their—I guess on one hand you have a property owner who says I didn't take care of it, but on the other hand it's the government taking property from one property owner to give it to another, which is not really—the course I think that the legislature's on, aren't very keen on that idea. **Commissioner Murguia** said so the same person, it's really just a question, probably more your opinion. So the same person that doesn't have the money to fix up their property, that it's so bad that we have to board it up is going to have money to sue us and take us to court. **Mr. Moore** said well it depends on the award of course because the other thing is if they win, we pay their attorney's fees. If they get more of them as a ward, it's a one dollar or more thing, we pay their attorney's fees. **Mr. Welsh** asked we're filing the lawsuit of condemnation right. **Mr. Moore** said we file the condemnation and if they don't like the award they file a separate appeal. They are entitled if they get more than the award, they are entitled to the attorney's fees. **Commissioner Murguia** said but that's no different than the process we've always followed with condemnation. **Mr. Moore** said correct. **Commissioner Walters** said but best if you can negotiate a price and get everybody in agreement rather than having conflict. **Commissioner Murguia** said well, that's what we did in 2007 with Indian Springs and 18th & I-70 so nothing's really different in my mind. **Mr. Moore** said no, well, right, the only difference, if you will, is I guess the money was budgeted for those purposes and we knew they were there. **Commissioner Murguia** said yes, but that's, okay—**Chairman McKiernan** said but if we chose to budget money again for similar purposes it would seem that we still have the legal capacity under a certain set of circumstances to do what we've done before. **Commissioner Murguia** said we've just been asking that question—I've been asking that question for eight years and what I've been told since I came on in 2007 is that the action taken by the state legislature in 2007 prohibited us from doing condemnation, not that it's a budgetary issue. It's a condemnation issue and it really isn't because exactly the definition that Brian has now been talking about for four years is the same issue that we have a public safety

issue with blocks and blocks of blight and dilapidation, property that may be structurally unsound, at minimum vacant and boarded up. And we've been told repeatedly that we could not condemn because it didn't meet the condemnation statute, but that's not true. What really is the truth is we just have to make a good case in court during the condemnation hearing about why this property is a public safety issue. **Mr. Moore** said that is unfit.

Chairman McKiernan said wow! I really appreciate this discussion because now I've got a lot to think about because it would appear that we have a tool we may not have been leveraging as fully as we could have up to this point. May I muddy the water just a little more. **Commissioner Murguia** said oh please do. **Chairman McKiernan** said well, what I'd like for you to is, if you wouldn't mind, I'd love to learn a little more about the process and I keep picking on Baltimore because I have read about their process of receivership that is a judicial decision to award control but at first not the deed and then later the deed to someone other than the owner because the property is abandoned and creating a blight in that neighborhood and they have definitions that go with those. Now it's my understanding that a third party not-for-profit can make the petition to the court. **Mr. Moore** said in Kansas, correct. **Chairman McKiernan** said but the government cannot make petition to the court. Is that correct? **Mr. Welsh** said that's correct as it stands now. **Chairman McKiernan** said I would love to learn a little bit more about the private third party not-for-profit versus the government in terms of what the procedures are and what the differences in the procedures are for the receivership process, which ultimately gets us to the same place which is a house that's sliding toward demolition that gets stopped, rehabilitated and reinhabited. I would love to kind of get a little more about that as well because I think that's another tool that we potentially have that we may not fully understand and be fully leveraging.

Commissioner Walters said well it certainly addresses the house that is abandoned but is in the process or the thinking that we have to wait three years to get it in the tax sale. **Chairman McKiernan** said if I so chose I could rattle off several addresses of houses that do not yet fit our eligibility for tax sale and yet—**Commissioner Walters** said are unfit. **Chairman McKiernan** said are unfit, well, yes, they're posted, but they do not yet fit and that's been part of my

frustration is what do you mean I have to wait another year to take action on this house which is a danger to the neighborhood and even then, who knows how that's all going to turn out.

Mr. Welsh said you're talking about the changes that Frownfelter has been trying to make essentially because right now you can't do that receivership. The bight and the vacancy is not alone on a residence. It has to also be qualified. It has to qualify for the tax sale. Of course for local government the tax sale is the route to take because we do that already. **Commissioner Murguia** said not through condemnation. **Mr. Welsh** said right, but then we have to pay them for it. I guess the only other thing I'd say to that line is most of these properties that we might and, Ken's the resident expert on condemnation, if we're trying to go through condemnation with a property and it needs to be unfit for human habitation; by the time we get everything filed, if there were just minor problems with the house then they're going to bring it up to code and then be able to come into court and say it's not unfit so you can't go this route. So we're only going to be—ultimately we're only going to get the properties that are big problems, right. Now if we have other ideas for them that's fine. **Chairman McKiernan** said but you know if somebody brought it up to code, I'd be happy. That's irrespective of paying the taxes. That's a whole different issue, but if we simply have code violations that are longstanding and are remedied, I think that's a win. **Mr. Welsh** said I agree with you.

Commissioner Murguia said this is the concern I have again, which is the concern I have with Land Bank and then I'll obviously let you finish. This has been very educational. I've been here a long time and I did not know this. I just think it's really interesting, especially when I've specifically been told we cannot condemn property unless it's a public purpose and was led to believe that was for sewer line, road or a bridge. That's very enlightening.

The concern I have is what you said about, and I'm really not holding you to this, I don't care if it's a hundred. I don't really care if it's ten, but you said there are probably hundreds of these. Were you talking about unfit or condemnation? **Mr. Welsh** said no, I'm talking about properties that are in the demo queue and I haven't gotten a number for a long time on that so please take that with a grain of salt. **Commissioner Murguia** said yeah, and that's okay. I guess what I'm saying is we already are paying hundreds of thousands of dollars a year in

demolition, we already are paying thousands of dollars, at least tens of thousands of dollars to take properties through the tax sale.

I think the concern you've heard from Commissioner McKiernan, myself and Commissioner Markley is that we have a lot of tools available to use to take back control of our city and we're not being strategic in the way that we're using them. So we do have money to condemn property and take it. We could take it from demolition and we could not demolish some that we don't care about and acquire and demolish the ones we care about and be much more strategic about it. That's what concerns me is that yes we have a list of property on the demolition but does the city, collectively does our community really care if half of those get demolished or would their priorities be in another area of demolition.

It just doesn't seem to be—it seems like everybody is working within their department. I'm here to demolish houses. I'm going to do it and I don't care how it affects the rest of the city. I'm here to stamp houses on foot and it doesn't matter to me how that happens and then the repeat thing I continue to hear from our Administrator is that we're short on staff, their overworked and they don't have enough time to get their job done, just a comment. Anyway, you go ahead.

Mr. Moore said okay, if you want to talk about this. **Commissioner Murguia** said I'd just like a copy of it in writing and all the detail, all the extra definitions that you gave me. It doesn't have to be neat or anything, if you could just send it to me, even highlighting what you read. That'll be great. I'd just love to have it in a file.

Chairman McKiernan said you know and to go back to the structures for demolition, in the last four years there's been 51 structures demolished just in my district. Let's say that's 12 a year and it was told to me one time that any moment in time we have enough money to tear down about a fourth of the structures that are eligible or posted for demolition. That would make it roughly 50 a year and if we take that times the number of districts that would suggest that there could be in the low hundreds of numbers of properties that are currently eligible for demolition. I agree with Commissioner Murguia, this has been a really, very eye-opening discussion. I appreciate the information. If we could talk about receivership a little bit, I would appreciate that and we will just continue the discussion of using all of our tools.

Commissioner Murguia said I know this is not meant for us to take action but I would like to request that you bring something back for us for consideration. I know you already turned that off, but in the process of the unfit process when you stamp the home unfit, I would no longer—I would like to set a timeframe for each. So like when you notice the person you've already said you got to give them more than 14 days. **Mr. Moore** said more than 10 less than 30. **Commissioner Murguia** said more than 10 less than 30. You have a very specific timeframe and then when you give the order there is no timeframe. I would like us to establish a timeframe because I'm assuming that if they want to appeal that timeframe, they can appeal that through the appeal process. **Mr. Moore** said yes, when the order is entered that's when their 30 day clock to appeal starts. **Commissioner Murguia** asked but do you see what I'm saying. Right now it's just arbitrary. I give Jim 60 days and myself 30 days. Why wouldn't we just eliminate that option and say everybody gets 30 days to repair, remove or demolish and if they need longer than that, they need to go through the appeal process. That way there's no favoritism. **Mr. Moore** said I understand. **Commissioner Murguia** said there's no hey, this guy got 60 days and I only got 30 and plus staff can just move them through faster. **Mr. Moore** said I think, at least back in the days when I used to be more involved in this, the length of time, the orders are very incremental. You have to do these things by this date and if you do that you were given more things to do as the time went on. It was also kind of somewhat coinciding because they didn't give them like a year to fix everything. You have used a certain amount by this time, if you did that then you get an additional period of time. One of the problems is you don't want, again, the homeowner to throw good money after bad thinking they can do it and then they don't really—the bottom line is we're going to demolish it anyway.

Commissioner Walters said it seems to me that one of the things we should think about is a strategy. If we really think this condemnation is a tool that it sounds like it is, at the same time I don't think we want to condemn hundreds and hundreds of houses either. As you said, the idea is to try to figure out a way to get them repaired, stabilized and improved but there might be a reason for us to condemn some. So how we come up with that strategy would be very helpful. Is it neighborhood based, is it value based, whatever that strategy might be. **Chairman McKiernan** said I absolutely agree and look forward to continuing this discussion.

March 30, 2015

Action: For information only.

Adjourn

Chairman McKiernan adjourned the meeting at 6:05 p.m.

tpl