

CLEARFIELD CITY COUNCIL MEETING MINUTES
6:00 P.M. BUSINESS LICENSE APPEAL HEARING
(Acting in Quasi-Judicial Capacity as the Appeal Authority
For a Decision by the Business License Official)
November 1, 2011

PRESIDING:	Don Wood	Mayor
PRESENT:	Marilyn Fryer	Councilmember
	Kathryn Murray	Councilmember
	Mark Shepherd	Councilmember
	Doyle Sprague	Councilmember
	Bruce Young	Councilmember
STAFF PRESENT:	Brian Brower	City Attorney
	Adam Lenhard	Community Development Dir.
	Stacy Reel	Business License Official
	Nancy Dean	City Recorder

Visitors: Pauline Warner – Clearfield Mobile Home Park

Mayor Wood called the meeting to order at 6:02 p.m.

HEARING ON APPLICANT'S APPEAL OF BUSINESS LICENSE OFFICIAL'S DECISION
TO REMOVE THE APPLICANT FROM THE CITY'S GOOD LANDLORD PROGRAM

Mayor Wood explained the City Council was meeting in its Quasi-Judicial capacity as the Appeal Authority for a business license appeal. Brian Brower, City Attorney, explained the proceedings would allow both parties to address the legislative body in its quasi-judicial capacity after which there could be deliberations, findings and a decision. He stated the deliberations could take place at a future time if necessary and then the findings would be written and presented to the body for approval. He directed the Appeal Authority members to the code which stipulated the burden of proof was the appellant's responsibility and the level of that burden was based on substantial evidence and not illegal.

Pauline Warner, representative of the Clearfield Mobile Home Park, read a letter from the manager of the site, Mike Douglas, describing the success experienced by the facility through adherence to the Good Landlord Program. She explained the facility had experienced computer problems and miscommunication that contributed to its failure to meet the requirements of the program. He asked that the facility not be removed from the program.

Ms. Warner commented she had lived at the facility for years and there had been positive changes since joining the Good Landlord Program. She stated the computer was still down making it difficult for the police to send necessary information to the manager to remain compliant. She reported the owner had been notified and agreed to have the resolution of the computer issues take top priority. Mayor Wood asked if there were a reason the park owner was

not present at the meeting. He asked if the park owner were aware of the proceedings. Ms. Warner stated she did not know if the owner was aware of the issue.

Valerie Claussen, Acting Community Development Director, explained participation in the Good Landlord Program was optional and the program offered discounted fees for licensing to its members. She stated the reduced fees were in effect as long as the members abided by the rules of the program as outlined in the agreement signed by participants. She continued that agreement stipulated that landlords would be removed if they failed to meet the criteria as specified by the program.

Ms. Claussen explained calls-for-service reports were prepared and sent to landlords that participated in the Good Landlord Program who had units in violation of the terms of the agreement. She continued landlords were given 14 days to respond to the business license official regarding the violations. She stated if no responses to violations were received, an additional five days final notice was extended, with the notice being sent certified mail and email to the landlord. She explained if there were still no response to the final notice, the landlord was sent certified mail and email notification that removal from the program had taken place.

Ms. Claussen spoke to the specifics of the case before the Appeal Authority. She stated a case specific report was issued on September 6, 2011, with a letter to the landlord of the Clearfield Mobile Home Park. She continued the letter required the landlord to contact the business license official to communicate what actions would be taken to address problems occurring in two rental units. She stated the letter indicated the business license official needed to be contacted by no later than September 20, 2011. She explained no response had been received by September 20, 2011, so final notice was sent to the landlord on September 27, 2011, certified mail and email, which extended the time for response to October 4, 2011. She added the letter stated Clearfield Mobile Home Park would be removed from the program if the issues were not resolved. She reported the business license official was contacted by the landlord, Mike Douglas, on October 5, 2011, and asked for an extension to October 10, 2011. She stated the city granted the extension. She continued that on October 12, 2011, the business license official attempted to make contact with the landlord via telephone and the call was directed to voicemail. She stated the message notified the landlord the deadline extension had been missed. She explained on October 17, 2011, the landlord was sent official notification of removal from the Good Landlord Program for failing to communicate with the business license official and address what action was taking place in order to alleviate problems at two rental units. She continued Clearfield Mobile Home Park was then invoiced the balance of licensing and disproportionate fees (a total of \$5,514.25) that were previously reduced by the City for participation in the program. She stated the landlord contacted the City on October 18, 2011 and was directed to the appeal procedures. She reported an appeal was filed by the landlord on October 20, 2011. She asked the Appeal Authority to uphold the business license official's decision to terminate the landlord's participation in the Good Landlord Program.

Mayor Wood asked if Mr. Douglas set the October 10, 2011 date for follow-up contact. Ms. Claussen replied Mr. Douglas had asked the City to extend the response date to October 10, 2011 which was granted. Mayor Wood stated the documents showed that Mr. Douglas notified the

City that the reason he did not respond by the date agreed upon was he was out of town. Ms. Claussen stated that was the reason supplied by Mr. Douglas.

Councilmember Sprague asked when businesses could reapply to the program if participation were revoked. Ms. Claussen explained reapplication for the program could be made at the next licensing year if the landlord resolved the items of disqualification and paid all amount disallowed from the prior year. Mayor Wood asked if the appellant would be eligible for the program on January 1, 2012 if the items discussed were resolved. Ms. Claussen reiterated the appellant would be eligible if the problems were resolved and the fees paid.

Councilmember Sprague asked if the two issues had been resolved by the landlord. Ms. Claussen responded the landlord took the suspension straight to appeal without having resolved the issues. Councilmember Sprague referred to his experience working for the phone company and said a phone grounded improperly could have accidentally called 911 which would have made one of the calls for service an error. Ms. Claussen stated that type of information was taken into account if the landlord made the necessary communication with the business license official.

Councilmember Young asked if a suspicious person report were used against the landlord. Ms. Claussen replied a suspicious person report was not generally held against a landlord. Councilmember Young requested clarification that the City was not discouraging people from calling the police when help was needed. Ms. Claussen stated the City did not hold those types of calls against landlords. Councilmember Murray asked if welfare calls were held against landlords. Ms. Claussen replied they were also not held against landlords.

Councilmember Fryer asked if Mr. Douglas had an occupation in addition to property manager. Ms. Warner explained Mr. Douglas was also a real estate agent so he was in and out of the office a lot adding to the difficulties of reaching him. Councilmember Sprague asked if Mr. Douglas lived on site. Ms. Warner responded he did not live on site.

Mr. Brower explained Mayor Wood had questions about recent legislation that addressed the removal of a landlord from the program based on calls for service. He asked Adam Lenhard, City Manager, to address Mayor Wood's question. Mr. Lenhard reported recent legislation would prohibit the City from removing a landlord from the program based on the number of calls for service. He explained no number of calls regardless of the cause would result in the removal of a landlord from the program. He clarified that removal from the program in this case was based solely on the fact that the landlord failed to comply with the regulation of the program specific to following up with the business license official and giving information on what was being done to address the tenant issue, specifically the concern about the sex offenses listed. He reiterated the City would not remove a landlord from the program based solely on the number of calls for service. Councilmember Murray asked if the calls were based on a per unit basis. Mr. Lenhard stated number of calls was not the issue rather doing nothing about calls where the violation was proven to be the tenant's fault. He explained failure to do something about the proven violation could result in removal from the program. Councilmember Sprague asked if the City ordinance was in compliance with State Law. Mr. Lenhard explained the ordinance did comply because it used the number of calls for service as a trigger to open communication between the City and the

landlord but the problems arose when the landlord failed to follow-up with the City on the issues and resolve valid violations.

Ms. Warner acknowledged the landlord made a mistake by not following up properly with the City on the issues. She stated the penalty would be difficult for the landlord to meet because occupancy was low and the funds were unavailable to pay it. Mayor Wood acknowledged the concern and referred back to his question about whether the property owner was aware of the problem. Ms. Warner stated she was unaware if the owner knew about the problem. Mayor Wood expressed his concern that the property manager was not present at the hearing.

Mayor Wood asked if there were a process in place that notified property owners about problems if the property manager did not act responsibly such as an additional notice that was sent to the property owner. Ms. Claussen responded the agreement sets up the representative for the notices and it was the City's assumption that the property owner provided appropriate representation for his/her interests. Councilmember Murray asked who signed the contract. Ms. Claussen stated the agreement was signed by the property manager. Councilmember Young stated the owner set up the property manager as his representative and it was his/her responsibility for the properties.

Councilmember Sprague expressed his opinion that the property manager should have resolved the issues with the City. He believed the suspension should be upheld. Councilmember Young expressed his opinion there were a series of incidents that showed the manager missed opportunities to resolve the problems with the City. He stated the whole idea behind the Good Landlord Program was to keep communication open between the two parties. Councilmember Fryer agreed. Councilmember Murray agreed. Councilmember Shepherd agreed.

Councilmember Shepherd moved to uphold the decision of the business license official to remove Clearfield Mobile Home Park from the Good Landlord Program, seconded by Councilmember Young. The motion carried upon the following vote: Voting AYE – Councilmembers Fryer, Murray, Shepherd, Sprague and Young. Voting NO – None.

Councilmember Sprague commented he believed the outcome would not have been different had the property manager been in attendance. He complimented Ms. Warner's efforts to address the Appeal Authority on the issue.

Councilmember Shepherd stated being removed from the program did not prevent the mobile home park from continuing to follow the guidelines of the program. Mayor Wood urged the managers to resolve the issues before the new business license year was upon them.

The meeting adjourned at 6:39 p.m.