

CITY OF HERMANTOWN
BOARD OF APPEALS & ADJUSTMENTS
February 23, 2016 Special Meeting Summary
7:00 PM

1. ROLL CALL

Members Present: Robert Kanuit; Cyndy Reno; Joe Peterson; Councilor Gloria Nelson

Members Absent: Anna Tanski

Others Present: Jim Rich, Building Official; Lara Nygaard, City Attorney; Wayne Johnson, 3617 Secora Rd.

2. APPROVAL OF AGENDA

Motion made by Bob Kanuit to approve the February 23, 2016 agenda as presented. Seconded by Cyndy Reno. Motion carried.

3. APPROVAL OF MINUTES

4. PUBLIC DISCUSSION

There was no one present for public discussion.

5. PUBLIC HEARING

Appeal taken by Great Lakes Alarm & Wayne Johnson from the Directive of the Building Official of the City of Hermantown that the Hermantown General Store Canopy located at 5105 Morris Thomas Road is hazardous and unsafe and directing its removal.

Jim Rich, Building Official – This issue was brought to the attention of the City by residents that the canopy is listing and it's been getting worse. We felt it was time to make the order to have it removed because it is becoming an unsafe structure. I have been in communication with Mr. Johnson for the last couple of years regarding this issue. He has been sent correspondence and I have made site visits and we have discussed the problem. I have addressed the situation with the City Council, City Attorney and City Staff and we have made the decision to move forward. We understand that it could have negative effects on his business but we take it very seriously.

Chair Kanuit – He asked Jim if he has examined the canopy.

Rich – He stated that he has.

Cyndy Reno – She asked how he determined if it should be removed or fixed and why it is deemed unsafe.

Rich – He referred to the pictures provided and stated that the southeast corner of the canopy is tilting on the picture dated Feb. 18, 2016. These structures are designed to hold only so much weight, whether it's snow or water. The listing and the chances of rotating or tipping grow because of the dead load on the roof system. The other portion to consider is the posts that hold the structure up. When they rotate out of the ground, they will take the gas pumps with it. There is a concern about fuel pumps torn out of the ground which would increase the chance of fire. What started this initial action was several years ago, there was a loss of a canopy in Duluth at a gas station.

Wayne Johnson, 3617 Secora Rd. - He stated that the pictures are not accurate. He also stated that Jim Rich did not give him a direct answer on how or why this was becoming an issue. He stated that

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Jim isn't an engineer and he doesn't know if it's going to fall down. He said it is insured and he takes measurements and watches it and it hasn't shifted more than ¼ inch since 2010 when he bought it. There is no standing water on top, the water comes off the side. I can see it is leaning, but it costs money.

Kanuit – He asked Mr. Johnson if he had a structural engineer look at it.

Johnson – He stated he got an estimate for \$4,000 for an engineering analysis. He knows its leaning and he knows it needs to be fixed, but he doesn't want to be strong armed into doing something that costs a lot of money and under a timetable.

Reno – She asked Mr. Johnson if he talked to anyone that has told him it is a hazard and not safe.

Johnson – Nobody will give you a professional opinion until they start probing around, but they wanted money to do that. Why spend the money to be told its leaning when I could use the money to fix it or tear it down.

Joe Peterson – He asked Mr. Johnson about the rainwater coming off the roof.

Johnson – He stated that it's supposed to come down the gutters, but it leans so much, it comes off the side.

Peterson – He stated that he looked at the property this morning from the road and was surprised at how far it was leaning.

Johnson – He stated it has been leaning for 14 years. He also stated that a nearby resident told him that it has been leaning since the 1990's. All of a sudden it has become an issue and he doesn't understand why.

Peterson – He stated that his major concern was the water. If it doesn't come off the roof appropriately, it would add a lot of weight to that roof.

Johnson – He stated he finds this whole issue blown way out of proportion. If you leave me alone, I'll take care of it on my own time. I don't have piles of money. It has to be my way and I don't need to be forced into it.

Councilor Nelson – She asked if he's had conversations with Mr. Rich or other people from the City.

Johnson – He stated that Mr. Rich stopped by for 3 minutes to talk to me.

Nelson – She asked Mr. Rich if there have been records of communications.

Rich – He stated that he has the letters that were sent.

Johnson – He stated he's not doubting that Mr. Rich is not doing his job properly or that he hasn't been professional.

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Nelson – She stated she understands as a small business person in regards to expense. However, you can also appreciate the safety concerns that we represent. We would like to work with you, not against you.

Johnson – He stated that if you are working with me, we wouldn't be doing this. We could've had this conversation off the record.

Reno – She stated that the correspondence from the Spott Law Office states that they're interested in discussing a resolution to this matter that is mutually beneficial and asked if there has been any communication between them and Mr. Rich.

Rich – He stated no.

Lara Nygaard, City Attorney – She stated there was communication between her and Mr. Spott to arrange a meeting prior to this hearing with all parties involved through several emails and phone calls, but that didn't happen and we were put in a place to set up this hearing.

Nelson – She stated that she would like to see that meeting take place before any further action is taken.

Rich – He stated that he and Mr. Johnson had a conversation about a year and a half ago. He stated his insurance carrier had no issues with the structure. I asked him to get a letter from his insurance carrier stating that they had no issues or from a structural engineer and we would be done. We have not received this documentation.

Johnson – He stated that if he brought this to his insurance company's attention, they might drop my coverage.

Nelson – She stated that there is a very important matter of responsibility and accountability for all of the things being talked about.

Johnson – He stated he just doesn't have the money. He also isn't sure exactly how much it would cost. He stated he's upset how this blew out of proportion.

Peterson – He brought up the fact that it was leaning again and asked if it would put undue stress on everything underground.

Johnson – He stated he would think so but every year it has passed a leak test. He stated he's taken measurements and it hasn't moved more than ¼ inch.

Peterson – He stated it seems like it's leaning more than ¼ inch.

Reno – She stated that she doesn't feel unsafe when goes to the store and she wants to see the business stay, but she's concerned about Mr. Johnson's lack of concern regarding safety issues. She asked Mr. Johnson how many times has he's been contacted by the city about this issue.

Johnson – He stated that he's been contacted two or three times since 2010.

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Reno – She stated that there seems to be a better way to go about this but is also concerned about the lack of concern of safety.

Johnson – He stated he is looking to resolve this and move forward.

Rich – In response to Commission Reno's comments, the communication has been going on over a couple years. I would suggest he contact his insurance carrier or speak to an engineer. A few months would go by and I would stop in again. Part of my responsibilities and duties as the Building Official for the City and for the State is to deal with hazardous structures. I could have stopped in two years ago and deemed this structure hazardous and started a condemnation hearing right then and there. I felt we have been working with him to give him an opportunity to respond and he's indicated there are plans to do something in the future. We are open to negotiation if he would provide us with information on what his plans are.

Johnson – He stated he didn't get the letter from two years ago. He stated he doesn't even know what it's going to cost.

Kanuit – He stated that we could table this to give all parties involved a chance to work this out. This Board is appointed by the citizens to keep them safe. Our Building Official is telling us that this structure is unsafe. We are being told by you is that you don't want to spend any money to get experts to tell us anything and you'll just have to trust me. You may be correct but I have an expert telling me that you're not and you don't have an expert telling me that you are. If you want additional time to bring someone, who is an expert, tell us that the structure is safe, I would be willing to give you additional time to do that. If I don't have an expert report, I can't disregard the Building Official's decision.

Johnson – He stated that it is Mr. Rich's opinion.

Nelson – She stated that Mr. Rich has earned the knowledge and we respect his decision.

Reno – She told Mr. Johnson that he is going to have to spend some money to make sure that it is safe. We can't make this decision based on financial issues. If you think this is an opinion, then you're going to have to prove it.

Johnson – He asked if his opinion means nothing. You don't know my background.

Kanuit – He stated that Mr. Rich is the Building Official and we know his qualifications, we don't know yours.

Reno – She stated it's not going to cost hundreds of thousands of dollars to get an engineering report. It would put your mind at ease for the safety of the citizens.

Johnson – He stated he is concerned, but he's not worried it's going to fall over.

Peterson – He stated that his opinion is that the structure has to come down. He stated he's worked with Mr. Rich for over 10 years and he's been wonderful to work with and he's an expert in his field. You will have to hire someone to give us a report. It may go in your favor and everyone will be happy.

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Johnson – If it has to come down, then the business is gone. There can't be a convenience store in the middle of nowhere without gas.

Peterson – He stated that if we table this tonight, it will give you time to hire an engineer to determine whether or not the structure is safe. Everybody here is going to trust that engineer. It is not on us to spend that money, it is on you.

Johnson – He asked why doesn't the City spend that money to determine that if they're so concerned about it? He doesn't have unlimited resources to raise the money. He doesn't agree that he should have to do this.

Kanuit – He stated that we should table this to give all parties a chance to meet and agree on some sort of process.

Nygaard – She stated that it would be useful for all parties to sit down and discuss this issue and for Mr. Rich to amend the directive. We could table this until the next regular meeting on April 12, 2016.

Rich – He stated he is not a registered engineer, he can't tell you whether it will tip over in 30 days or three years, but in his opinion it is failing and it's getting worse and it's time to take action.

Motion made by Bob Kanuit to table this issue and amend the Building Official's directive until April 12, 2016. Seconded by Cyndy Reno. Motion carried.

6. CONTINUING BUSINESS

7. NEW BUSINESS

8. COMMUNICATIONS

Communication 16-23 from Patrick Spott, Spott Law Office to Jim Rich, Building Official regarding Notice of Appeal, Hermantown General Store, 5105 Morris Thomas Rd.

9. COMMISSION MEMBER REPORTS

Cyndy Reno –	No report
Joseph Peterson –	No report
Anna Tanski –	Absent
Robert Kanuit –	No report
Gloria Nelson –	No report

ADJOURN

Motion made by Cyndy Reno to adjourn the meeting. Seconded by Bob Kanuit. Meeting adjourned at 7:45 pm.

Officiated by:

Transcribed by:

Robert Kanuit, Chairman
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Bonnie Engseth, Administrative Assistant

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