

Tooele City Board of Appeals  
**DRAFT** Minutes  
April 17, 2003

**Board Attendees:** Steve Bunn, Bob Childs, Barry Formo, Ken Spence, Tony Flippo

**Staff Attendees:** Cary Campbell, Community Development Director/Building Official  
Roger Baker, City Attorney  
Susan Howard, Office Administrator  
Richard Jorgensen, Land Use Technician  
Larry McFarland, Fire Chief  
Brad Carpenter, Building Inspector  
John Adams, Building Inspector  
Andrea Cahoon, Contract Secretary

Minutes prepared by Andrea Cahoon.

Chairman Bunn called the meeting to order at 5:35 P.M.

1. Minutes from April 8, 2003

Mr. Bunn read the minutes from April 8, 2003.

**Mr. Childs moved to approve the minutes as presented.** Mr. Flippo seconded the motion. All members present voted, "Aye."

2. Property Located at 155 North Broadway, Tooele, Utah, belonging to Derrell Westbrook Found by Building Official to be Dangerous Under the Provision of Section 302 of the Uniform Code for the Abatement of Dangerous Buildings, 1997 Edition, as Adopted by Tooele City

Mr. Campbell gave a brief history of the actions taken with regards to the building at 155 North Broadway. In 1996, the City went through a procedure to evacuate the building due to health reasons and so forth. In the meantime the property had been sold to Mr. Chapman. The City worked for quite a while with Mr. Chapman to try and find an acceptable means to fix the building. The City finally issued a building permit, and certain things were done to the building including stripping out things on the top floor. The building has since been open to the weather. The Chapman people did not follow through on the building permit to keep it active and it expired after 180 days. The City got a warrant and went into the building to see what shape it was in. After seeing the shape of the building they felt that condemnation was the only way to take care of the building. Mr. Campbell stated that they had a video of that inspection available for them to view if they wished.

This building went before the Land Use Commission and they put requirements on the project that have not been met. One of those was to have adequate parking. The former building permit applicant did have parking, but that property is no longer available. There are several other issues. This building was an existing nonconforming use that no longer has the grandfather rights due to interruption of the use. The way it is currently zoned, that particular structure could not be built because it would only sit on 6,500 square feet. Mr. Westbrook has asked to be able to rebuild 15 units there, but that would be a

nonconforming use, and the existing nonconforming use has expired and is no longer available on that property.

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The City has determined that the building needs to be condemned and torn down.

Chairman Bunn asked if there is a way to grandfather that use back in? Mr. Campbell replied that they could not have that building because that is a zoning issue. If within one year a property owner has not done something with the property, they lose their nonconforming use privileges.

Mr. Formo asked if the building has been abandoned for a year? Mr. Campbell said that no one has been in the building for at least two years. The windows are all out and you can see up through the building that the top floor has been stripped down to bare walls. Mr. Baker said the building has not been occupied since about 1997.

Mr. Campbell stated there are issues other than the condemnation that apply to this building that must be taken care of by a different board.

Chairman Bunn asked if there were any exceptions allowed under the rules? Mr. Campbell stated that technically the only board that could possibly address this is the Planning Commission, but they can't override the rules as they are. Mr. Baker affirmed that was his understanding as well.

Mr. Flippo asked about the work done on the building under the building permit? Mr. Campbell said the applicant wanted to rebuild all three floors of the building, but the only work that has been done is a certain amount of stripping the plaster off of the walls. Probably 75% of the top floor has been stripped. Mr. Flippo asked how much of the work that constituted? Mr. Campbell stated that constituted less than 5 percent of the work. He explained that they also cut two basement entrances and poured the foundation wall around the staircase, but there was next to no work done on the building permit.

Mr. Spence asked how the scope of work was defined when the building permit was issued? Mr. Campbell said they worked for quite a while on that because the former Director wanted to make the building a local historic building and be allowed some leniency. It was not registered as such, but they spent a considerable amount of time trying to figure out a way for the City to accept what the applicant wanted to do. The design professional had certain things that he wanted done, and the Planning Director had made conditions on what had to be done to the outside. Mr. Spence asked if it was designed? Mr. Campbell stated that it was.

Chairman Bunn asked that they watch the video taken of the inside of the building. Mr. Adams was the one who took the video and narrated their findings.

Mr. Campbell explained that a fence was constructed to keep people out of the new stairwells that were constructed. Mr. Adams said that the upper stories have boards covering some of the windows and open areas that go right into the building. The boxes along the sidewalks are old coal chutes and have been covered some what to prevent people from falling in. The west end of the building encroaches slightly onto the public way. The basement is full of boxes and miscellaneous furniture. Part of the fence is coming down on the northwest side of the building. Mr. Campbell stated that many of the windows are open to the weather and have been for some time. There is broken glass on the public sidewalk.

Mr. Adams stated that when they went in the building it was snowing, and the snow was coming into the building. In the supporting section of the roof a number of headers had been removed. There was a fire

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damaged area and some of the joists supporting the roof had been damaged. Mr. McFarland said there was a fire in an upstairs apartment a few years back. Mr. Westbrook said that the fire a few years ago was when they closed Mr. Johnson down and one of the tenants was upset and left a bag of microwave popcorn in a regular oven and turned it on. Some of the black was from the old coal furnace that has been there for a thousand years.

Mr. Campbell stated that the bearing wall supporting the roof and the top floor was bowed and very spongy. Mr. Adams continued that the roof is sagging, and a number of headers are missing along the center supporting structure of the roof. The floor slopes and has rotted out in the center of the structure.

Mr. Adams pointed out that there are missing parts in the middle section including headers and the top plate. He was not sure if that was part of the reconstruction process or if they were just missing. Mr. Adams then pointed out animal feces in a closet in the upper story that still had dry wall. On the east side, at some point they had rebuilt portions of the roof and the attachment to the walls was done with a strap. The strap was attached to a 2x4 that didn't continue across the top. He did not know what was inside the wall that held the strap, but was concerned. Mr. Campbell said that the majority of the floor joints are embedded in the masonry. Mr. Adams said that on the east end of the building in the upper floor approximately 25% of the dry wall was still intact.

The footage then showed going down into the basement and it was cluttered with debris. There is an old boiler in the basement that was the heat source for the building. The entire basement was covered with books, barrels, and other items. Water damage was evident in the area. There was a large mound of grain on the floor. There was not a space to walk anywhere where you weren't walking on something. On the west end of the building there was discarded furniture and they couldn't get past it. There were also a number of empty barrels and buckets inside the building.

Chairman Bunn asked if there have been any complaints about public safety? Mr. Campbell stated yes, that over the years there have been many complaints about people breaking in and the police having to chase them out.

Mr. Westbrook stated that all of this time they have been showing this film, that was Mr. Johnson's apartment. When he was forced out by the City he left with only the clothes on his back. The City gave them a 30 day notice at that time because they were going to tear the apartments down. He told the City he would sue if they did, and so the buildings were returned to him. Then he resold the property to the Johnsons after much hassle. That is when Chapman got into the situation. If somebody went into your house and ransacked it, and you had food storage and everything else, it would look like this too. There were two apartments in the basement and three upstairs that have not been showed on the video that were redone after the popcorn fire. The reason the areas are exposed is because they were going to work on them.

Mr. Adams indicated that some of the floor joists show evidence of severe burning or deterioration, possibly beyond usefulness. They have been sistered with others, but the sister joists have not gone from support to support. At some point in time there had been another fire in the boiler room.

Mr. Adams asked Mr. Westbrook when the Johnsons vacated the building? He answered that he thought it was 1997 or 1998.

Chairman Bunn asked if this building was salvageable? Mr. Adams stated that he was not qualified to make the determination if it is structurally sound. Chairman Bunn asked Mr. Westbrook if had someone

who said it could be? Mr. Westbrook said that the people who got the building permit had an engineer that said it was O.K., and the things that they needed to do. Mr. Westbrook said he just had this jumped in his lap. He asked the people (Chapmans) what was happening, and they have not received any information about 180 days. They still think that everything is O.K.. The City pointed out that they did sign the building permit and knew about the 180 days. The City has not given any notification to himself or to Mr. Chapman or any of them that any of this situation was going to take place. The City mentions in the letter that the middle stairs are spongy. It may be a little spongy, but the stairs haven't been used. They had an outside entrance that they used for the upstairs three apartments. They tore the outside stairs down because they needed to cut the basement. Mr. Westbrook claimed that Mr. Campbell said that they were a few inches off into the right-of-way. That building is 100 years old and he asked how they could rectify that problem?

Mr. Adams continued his narration that there is a portion of the building that supports the first and upper floor. It is a barn beam and has a number of cracks. He can't determine if it is structurally sound. The parapet is crumbling. The bricks are crumbling all around the building. There is a foundation crack that goes from the top to the bottom. These all need to be addressed by an engineer. Whether or not they were addressed by Mr. Chapman he could not say. There is a crack in the brick that extends from the foundation to the parapet. That would have to be addressed by someone with cognizance of structural integrity.

Chairman Bunn asked if in his opinion it could be reconstructed? Mr. Adams stated he could not make that determination. Mr. Campbell stated that in his opinion they would have a hard time doing so. Mr. Formo asked if there was a report with the building permit application? Mr. Campbell stated, "Yes." Mr. Formo asked what it said. Mr. Campbell stated that they felt comfortable that they could pull the parapet and roof section together. The architect and the engineer said it was his problem to make sure it would work. The engineer would not say that he was comfortable it would work. They left it up to Mr. Campbell to accept or deny it.

Mr. Flippo asked if it was safe to say that once you issued the building permit you felt that the scope of work would bring the building back up to a safe standard? Mr. Campbell said that under normal circumstances, no, but the designers said it could be brought up to historic building standards. Mr. Flippo said that the building permit was issued with the presumption that once that scope of work was completed it would be safe. Mr. Campbell stated that is what they hoped, but they never got to do any of the inspections. They would have to inspect as the work progressed to see what other issues came up, but the work never did progress. There have been years pass with nothing done on this building.

Chairman Bunn asked why the City would issue a building permit if they didn't think they could bring it back up? Mr. Campbell worked with the architect, and at that time the building was not pulled apart to see what they were up against. They were under the assumption that they would be in there watching to see how things work and they would deal with it as they went.

Chairman Bunn asked how much the building permit was? Mr. Campbell said it was around \$3,000.00. Mr. Bunn said \$3,853.00. Mr. Campbell said that was just the building permit, but there were also impact fees and such. Mr. Spence asked if it was based on the structural details? Mr. Campbell stated that a building permit is a living document. Chairman Bunn stated that the total was almost \$40,000.00. Somebody must have felt confident that they could put it back together. Mr. Campbell stated that was his opinion as well, but for whatever reason they decided not to follow through.

Mr. Westbrook was invited to address the Board of Appeals.

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Mr. Westbrook explained that he received the apartments back from the Chapmans. He didn't know anything about them. They said they have been doing things to the building and he has been watching it and it has been deteriorating, but not really. No different than any other building in the town. When Mr. Johnson got in trouble with the City he left. Mr. Westbrook told Mr. Johnson right away that there would be 30 days notice and they would tear it down. Mr. Westbrook then told the City that they couldn't tear it down or he would sue them. The building directly south has been condemned a lot longer than this building has been. Mr. Johnson signed it back over to him. At that time all of the apartments were occupied. The interim owner quit making payments 18 months ago but promised him that they would pay him off in full, but their money was in the stock market and they lost a lot of it.

Chairman Bunn asked who was the most recent owner? Mr. Westbrook said it was John Chapman who is a partner or something. They've owned it from the time that he got the property back from Mr. Johnson. John Chapman signed the Quit Claim Deed. The reason Chapman did that is because he thought that if he issued it back to him then he would have to pay the bills if they tore the building down. The reason he was here is Chapman paid a \$28,000.00 fee to the City and that works pretty good for the City if you charge \$28,000.00 and harass the people, and the City will say they didn't, but Chapman will say they did.

Mr. Westbrook claimed that he has been in on two or three of these deals with the City and he claimed the last one cost him \$327,000.00. That wasn't his figures, but the figures from the County Court House. His apartments used to be worth \$360,000.00, they are now worth \$60,000.00 and it cost him 24,000.00. He claimed that he was promised by the Board of Appeals that if the buildings were tore down he would be notified before the collection date came along. On October 23, the lady at the courthouse had to call the City and asked if they were going to put these on or not, and they did. He got the notice on the first of November. He paid it on time, and his apartments were not released for 15 months.

He further explained that he had a set of apartments that the City tore down and the City changed the zoning law while he was gone in the summer. One year went by and he thought that he was doing well when the taxes went down. What had happened is that they had changed the zoning permit from 32 units to 1 building lot. The same thing is happening here. It will cost him \$150,000.00 plus the cost of tearing the buildings down. They will come back as two lots. These apartments were occupied and would still be occupied if there hadn't been the problem with Mr. Johnson and the City. They were going to keep them open but the City said things like, you are a few inches off here, we don't want you entering from the outside, and all this other stuff. They would have remodeled them, and the three upstairs apartments were new anyway. When he was told that he could sell them he advertised them and told people that they could just take over Johnson's contract. The potential buyers came down to the City and found out the City was going to tear them down. He wanted to know why no one was coming back so he went to the City and found that the City was telling everybody that they were going to tear them down. Chapman spent three years trying to get this going and spent \$28,000.00 and now he returned them to Mr. Westbrook. Mr. Westbrook's lawyer stated that he was going to have to fight a little bit to see what was going to happen. Whatever he doesn't get out of the apartments he is going to charge them for it. If it is torn down it will go against the taxes.

Mr. Westbrook reported that he has a guy who is interested in the property, but he wants to buy it as building lots for about \$20,000.00 a piece. Perhaps that's all they are worth, but they did have 15 units on them. There were 6 apartments on the ground floor, and Mr. Johnson had a really nice mother-in-law apartment where they showed all of the stuff. They can't keep people out of the apartments. He has put

signs up, kept the doors closed and checks the building daily.

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Mr. Westbrook said his letter was self explanatory. He feels that when he deals with the City he is the lucky one who gets picked on. Other people's buildings, like the building directly south which has been vacant for a long time, have been scheduled for demolition but haven't gone down. There is another building that has been vacant since 1964 and was finally demolished this past year. When his stuff comes up it has to be thirty days.

Mr. Westbrook claimed that he came to the City with the quit claim deed and asked them what he could do. They answered not much and told him they would let him know. Three weeks later he got a notice that they were going to demolish it. They didn't tell him anything about that, and they claimed they didn't have time to tell him what he could do. They just had time to figure out that they wanted the building demolished. Whatever the problem has been, the City does really well by prolonging, extending, keeping the money, or changing the zone. He doesn't know who the City was working for, but evidently there are people who would like to see the building torn down. They have condemned the building and the land by rezoning.

He will go after Chapman for whatever is left, but there is not a very good chance of recovery. He explained he would lose \$150,000.00 unless he can build or sell the rights to rebuild 15 units. If the building is in such shape that it cannot be remodeled, they should have thought about that three years ago. Evidently they had an engineer on that project that thought it could be done. The City got \$28,000.00, but if it couldn't be done they should not have taken the money. If the building is in such bad shape that it can't be redone, there's not a problem to him if they knock it down and put 15 new units up. The City says there is no parking, but he can buy parking, he has the money to buy the parking. Either the apartments should be allowed to be rebuilt, or they should be knocked down and 15 new units constructed, or at least he needs his money back. The City says they can't give it to him, but Mr. Westbrook said he could get a note from Mr. Chapman that says it is O.K. to give him the \$28,000.00 because that will come off what they already owe him. He realized that there is enough blame to go around to 50 people, but the City can't just take the money.

Mr. Formo asked Mr. Westbrook for the time line of ownership of the property. Mr. Westbrook stated that he had owned them since the 1970s. He sold them in the 1980s to Mr. Johnson who kept them for about 18 years. He got in trouble with the City and left town and it defaulted back to Mr. Westbrook. The Chapmans then purchased them from Mr. Westbrook. The Chapmans haggled with the City for 2-3 years and they paid them and got the building permit and went forward. Then it was quit claimed back to Mr. Westbrook. He received it in January or February of 2003. As soon as he received it he went to the City to see what was going on. The City told him they would get back to him, and they did when they told him they were going to demolish it. He asked them a couple three questions and he did receive a letter later stating some of the things he could do, but basically it's a one-lot building lot, and that is only worth \$15,000.00-\$20,000.00. If that is all it's worth, then the City should not have taken \$28,000.00.

Mr. Formo asked if when Chapman owned it, if it was trust-deeded? Mr. Westbrook answered it was on a contract. They went through a title company and wrote up a contract. Mr. Chapman would pay all of the taxes, take care of it, and make sure everything was O.K.. It took the better part of four years to get things taken care of to build on it and when they cut the holes in the wall, he thought everything was O.K.. They had been to the property and cleaned things up and stripped some plaster.

Mr. Formo asked if the building permit was taken out by Chapman? Mr. Westbrook said it is in Mr.

Chapman's name, but it was also taken out by a contractor Mylan Holmes. Then Chapman was listed as an attorney for Central Commercial Enterprises. At one place it showed that he was a partner, and then they found a disclaimer that said he wasn't an owner. Now he is trying to say he is not an owner or a partner.

Chairman Bunn asked if he still had legal recourse to go after Johnson? Mr. Westbrook said no. He has moved to California and made himself scarce. He said that Chapman claimed they had a million dollars in stock.

Mr. Formo asked that they limit their discussion to the building.

Mr. Westbrook apologized but said that they had asked about Chapman and he was trying to explain. Mr. Formo said he was trying to figure out Chapman's involvement in this. Mr. Westbrook stated that on the original deal it says partner, and he signed another paper as an attorney in fact. He is who they collect the money from as well. Chapman also purchased Charlie Brown's apartments for somebody and they have since repossessed that as well.

Mr. Formo asked if Chapman was the one who paid the building permit fees? Mr. Westbrook stated, "Yes."

Mr. Formo asked if Central Commercial Enterprises was who picked up Johnson's property? Mr. Westbrook answered, "Yes."

Mr. Baker stated that Mr. Chapman represented himself to him as the owner of the property.

Chairman Bunn said that Mr. Westbrook has stated three possible scenarios that he sees. He could work on it, but the Community Development Department feels it has deteriorated to the point that it needs to be torn down. The other option was that they could tear it down and put 15 new units on, or he could get a note from Chapman stating that he can receive the money from the City. If they are not going to build this, and there won't be an apartment building, why can't the impact fees be returned? Mr. Baker said they very well may be able to. However, it is outside the realm of the board to address it here. They don't have any request to return the fees, and there has been no dialogue with the person who paid the fees with regards to the possibility of returning them, and without any of that kind of information he was not comfortable discussing that they return the fees to Mr. Westbrook.

Chairman Bunn asked Mr. Baker if Mr. Westbrook went to Mr. Chapman, and Mr. Chapman then signed those things over to Mr. Westbrook, if he would open a dialogue with Mr. Westbrook to be able to return those fees to him? Mr. Baker answered that was a valid question. The fees are paid towards the project and remain valid toward that project. Anyone who came along and implemented the project, those fees have been paid and that person would have the benefit of those fees having been paid. Again, it gets into some legalities that he is not sure about, but are outside the question of this hearing.

Chairman Bunn asked Mr. Westbrook to tell the Appeals Board what he would like done? Mr. Westbrook answered that the building hasn't changed one iota since the day Chapman took out the building permit except a few more rocks up through the windows. They have exposed some of the beams that they were going to do. If an engineer thought it was O.K. then, it should still be O.K. now. The City shouldn't have allowed a building permit if they weren't going to allow it to proceed forward. If they won't allow it, then it needs to be torn down. If it is torn down then the 15 unit rights should still be there as long as the parking is addressed. He can get parking. The fees could then stay with it. If

you don't allow either of those options, then keeping the \$28,000.00 in fees is highway robbery. He asked the City about this and received a letter from Mr. Campbell stating that building permits are non-refundable.

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Mr. Formo was concerned that he saw an attractive nuisance, a dilapidated building with lack of maintenance, that has existed for some time, and nothing has been done. He couldn't see why it hasn't been done for 5 years. He was trying to determine what it would take to resolve the problem, not hypothesize about the situation. Mr. Westbrook said he has owned it most recently for two months. He knew it hadn't been taken care of, but there are other buildings in town that are like this, and you can't keep people out of them. Mr. Formo said that is why it is an attractive nuisance. He asked Mr. Westbrook what his intentions were for the building? Mr. Westbrook answered that his intentions are either to rebuild it or to sell the rights to rebuild it. If not, then he wants his money back and will back out.

Mr. Baker explained that with regard to the impact fees, for the record, the City has no intention of keeping impact fees that they don't have a right to keep. They go with a project or they get returned to someone who has a right to receive them. He does not know who that is. The City is not just trying to keep the money. Back on August 12, 1997, the attorney's office posted a notice to vacate the building. They had previously informed the residents that based on the findings of the Health Department and the Fire Department that the building was not safe to live in. Those families living there were at risk. Due to a variety of factors including personnel turnover, lack of funds, and lack of political will, the action to demolish or abate the dangerous building was not pursued aggressively, but it was not forgotten. The ordinance enforcement officer (Karen Richards) kept reminding them of the building. They finally got a warrant and went to look at the building. The building permit that was issued in 2000 was issued on the representation of the engineer of the owner. The City doesn't have structural engineering expertise in the stabilization of old buildings that have cracks from the ground to the roof.

In some instances the City does not have the expertise to make that determination and doesn't hire it out at the City's expense. They require the owner who wants to do the project to certify to the City through a licensed engineer that it is O.K., and get the engineer's stamp on the plans. They take their word for it. As the reconstruction is going along they make sure it follows the codes and the engineered plans.

Brad Carpenter stated that any time you get into an old building and open it up you find things that you didn't expect to have to address. He gave the example of the L.D.S. church on Utah Avenue. They found substantial things that they didn't expect. They stopped the project and got an engineer to come in to fix the problem. Those plans are a living document and they change as the inspectors determine the condition of the structure. Mr. Flippo asked who stopped this project? Mr. Carpenter said they never proceeded. They made two soft cuts in the foundation, and poured a little bit of concrete and quit.

Mr. Baker said that the project was not done, and the building permit lapsed. The City determined that they should see the condition of the building based on what they saw on the outside. They obtained an administrative warrant to go inside to inspect it. Mr. Campbell has written up the code violations that were found on the premises. The City's work came some time after that building permit was issued and lapsed and after the representations of the engineer. If they had searched the building prior to the issuance of the building permit, and found the same conditions, they would be more concerned. The building is dangerous in its current condition.

Chairman Bunn asked if there was a way to make this building whole again? If Mr. Westbrook wanted to tear it down and build 15 more he can't do that? Mr. Baker answered, "No." Mr. Bunn asked if there

is a way to get an agreement so he could do that? Mr. Baker answered no, that is how the zoning law works. It must comply with the City's current zoning if it loses its grand-fathering.

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Mr. Flippo asked if there was time available here? He felt that Mr. Westbrook was not clear in his mind about what he wanted to do. Is the City committed to take it down? Mr. Baker said they have had discussions about the options for this building. It is the conclusion of the Building Official that the best alternative is to take the building down. Mr. Flippo asked if Mr. Westbrook was willing to commit the funds and resources, wouldn't it behoove the City to give him some time? Mr. Campbell said that by zoning law, if it was in good condition and it burned down tomorrow, they would have one year to begin rebuilding it. However, this building has sat for several years, and nothing has been done. It has lost its nonconforming use status.

Mr. Baker answered Mr. Flippo's question and said that [giving more time] is certainly something they could do. They have talked about this over and over again. Mr. Flippo felt that there was a resolution available, but that Mr. Westbrook was not ready to make a decision tonight. Mr. Baker said this isn't the first time this building has been discussed with Mr. Westbrook. He expressed that the City has not ever had a successful experience in working with Mr. Westbrook. They have consistently been accused of things that they didn't do or didn't say. The City has gone overboard with courtesies, extra notices, and he didn't want to indicate that he has some bias against Mr. Westbrook for this project, but that previous experience has made them feel that a resolution will not be found.

Mr. Formo stated that they must do things by the book and wanted to make sure that the City had followed that. He asked if the notice had been served to Mr. Westbrook? Mr. Baker answered, "Yes." Mr. Formo asked when? Mr. Baker stated that he did not do it personally, and asked Mr. Campbell how it was served? Mr. Campbell stated that it was served by Karen Richards and a copy of the affidavit was in their packets. Mr. Baker stated that his office wanted to make sure that the notice was properly given for this hearing because that was an important part of due process. Mr. Formo stated that the dates must be spelled out in the notice and asked if that was done? Mr. Baker answered yes. Mr. Westbrook said that three weeks after he met with the City, they put the signs up, but he didn't receive notice of it. Mr. Baker referred them to an order dated March 21, 2003. He said on page 1, in large type it states the Notice and Order information. The second page indicates the dates that allow for different things to occur. Mr. Campbell was careful to indicate the three time periods which code allowed. The City would then react based on which the owner chose to do or failed to do. The time frames are spelled out in the code. Mr. Baker said that the findings of the Building Official and the procedure followed under the code were done correctly. The code also allows for some time for the appeals process so that it doesn't eat up all of the time.

Mr. Formo asked if Mr. Westbrook had made application for a permit to rectify the problems? Mr. Westbrook answered that he asked the City what he could do, and the City said they would write him a letter that would tell him. He claimed that he didn't receive any word from them, but they condemned the apartments and are going to have them torn down on April 25<sup>th</sup> or 26<sup>th</sup>. He said he did not hear that they were going to be torn down until the 19<sup>th</sup> of March—or April. Mr. Baker stated that the point remains that they did things by the book. Chairman Bunn asked if they served him with a notice because he is saying that he didn't get that notice. Mr. Bunn asked for proof that the notice was served. Mr. Baker explained that Karen Richards delivered it and if there was any question about that, the person who signed the affidavit would be called to testify. The affidavit tells what she did. Mr. Westbrook said the only notice he got was on the building. Mr. Formo said that he also saw a written request for a Hearing before the Board of Appeals was received on the same day that the notice was served. It is dated March 25, 2003. Mr. Baker stated that Mr. Westbrook knew of this [the abatement

action.]

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Mr. Flippo said that Mr. Westbrook still has some time on this. Mr. Baker stated that the dates are listed in the notice.

Chairman Bunn saw that in Mr. Westbrook's letter dated April 8, 2003 he requested an extension. He asked if an extension was possible and if Mr. Westbrook knew how long it would take? Mr. Westbrook said certainly a little over a week would be nice. He went to them on March 25, 2003 to see what they could do to resolve the problem. He didn't receive a letter back from them, but he did receive a notice on his building that they were going to tear it down. Then later Karen delivered that notice. He asked the City why they didn't answer his letter, and they answered that they didn't have time. He said they had time to condemn the building, but no time to write him a letter. He is trying to decide what is going on.

Mr. Formo said that your building has been condemned for the third time. Mr. Campbell said that one of the things he wrote in the letter he sent to Mr. Westbrook on March 25, 2003 was that his intent was to not let this drag on forever. He also assured him that as soon as the date of the hearing was set he would be notified. He further explained to Mr. Westbrook that unless ruled otherwise by the Board of Appeals that this appeal does not stop the time frame as listed above. He explained to him that if the Board feels comfortable they can set back the time a little bit, but he told him in the letter that he wouldn't set it back. Mr. Baker said it is not inappropriate to consider the appeals period to be a waiting period, and the Board can grant him more time if they wish.

Chairman Bunn said he was confused about what Mr. Campbell said about if the building burned down, they could rebuilt it within a year to 15 units? Mr. Campbell explained that if the building had not lost its existing nonconforming use and it was being occupied, the owner would have a year to get a permit and rebuild it. However, in this case the existing nonconforming use has not been continued for the past 6 to 7 years, and it can't be rebuilt. It has lapsed. The owner needs to show that they are making an earnest effort to get the building done.

Mr. Flippo stated that Mr. Westbrook had this notice since March 25, 2003. He asked him if he had done anything or talked to anybody with regards to this building and its structural integrity? Mr. Westbrook answered yes and no, but he has had it since March 25<sup>th</sup> and he asked the City what he could do, and they were going to write him a letter. The letter he received back was a demolition letter. Mr. Flippo explained that he was looking for some equity, but an owner needs to take responsibility, and you have turned your back on this and waited for the City to tell you what to do. Mr. Westbrook said that he did not do it yet, and why, because "He's lying. He's (Mr. Baker) a liar. I'll call him a bald-faced liar right here. He hasn't told the truth for half his life." I've done everything I can do. The last time they gave me one of these they gave me 90 days and tore it down in 60. Not only did they railroad Mr. Johnson out of town, the lawyer has been railroaded out of town as well. Mr. Westbrook read part of a letter from Chapman to the Board that dealt with the purchase arrangements. In 1997 they went to the City and they would not have purchased the land if the City had not agreed to give them a building permit. It took three years for them to get the permit. Mr. Westbrook requested to have until June to get things done, and then he got the notice.

Mr. Baker stated for the record that he was not a bald-faced liar. Mr. Westbrook retorted, "Well, and I'll agree that he is. That's not the only problem he has, but I can show you where he has."

Mr. Flippo moved, and asked for Mr. Formo's help, that they set a date that this will happen and state

that the Appeal Board has the right to set the date. Mr. Formo said the first thing they need to determine is if the Building Official for Tooele City has issued a proper and correct notice in order. They need to make a determination as to the correctness of his application of the law. He feels that he has done that. The next issue is they haven't seen the fruition of that order, partly because we haven't stated what the intent of the abatement code is at this point. The property owner is given 60 days from the notice as a standard to take action on that notice. Mr. Westbrook has made the appeal at this point, and it is being heard. He presumed that by the City attorney's statement that the City Attorney is willing to take that appeals time out of the compliance time. Mr. Baker stated that he didn't have any problem with that and said that they could replace the notice of order date on the notice given with today's date so that Mr. Westbrook gets additional time. Mr. Formo said that they are looking at some resolution as per the options available by the abatement code. Those options are prescribed, and it was his finding that if things have been instituted as per the abatement code that they continue to progress that way. That will give Mr. Westbrook a period of time to come into compliance and develop a compliance program with the City for the rehabilitation or abatement of the building. Mr. Formo told Mr. Westbrook that he had to clean up the mess and keep it from being an attractive nuisance, a public health problem, and a life and fire safety problem. That is what he saw here. That building constitutes those problems and it must be resolved. It doesn't necessarily have to be torn down, but the problem must be rectified. You have a time frame in which to do that which is prescribed by law. Mr. Westbrook said he has 8 days to do whatever he can to fix the building. Mr. Formo stated that he had 60 days to formulate a program and establish an application for a building permit.

Mr. Westbrook said that was great but when he came to the City they told him that it was over and they were going to tear the building down in no less than 90 days and he asked that they give him until June. Mr. Formo stated that he would get 60 days. The Appeals Board is granting him 60 days, and as per the City Attorney the clock begins ticking tonight. Mr. Westbrook asked, "Sixty days to do what?" Mr. Formo answered to commence rectification of the problem. Either to rehabilitate the building after obtaining a building permit, or obtain a building permit for the demolition and commence the demolition.

Mr. Westbrook replied that the City had already said he can't have a building permit, is that being opened up? What about the fees that have already been paid? Mr. Formo answered that he didn't pay those fees someone else did, and they signed it. Mr. Westbrook stated that he was the Quit Claim Deed holder and he could get a note from Chapman saying that they want the money to come to him. Mr. Formo stated that based on the building permit, and the signature that indicates that they had read that, it would expire if the work was abandoned or not commenced. Mr. Westbrook stated that they lost \$28,000.00. Mr. Formo explained that was the building permit fee and he would not attempt to deal with the impact fee issue.

Chairman Bunn thought that he would have to pay the building permit fees again, but not the impact fees if he could get Chapman to assign those fees to him. Mr. Baker stated that was correct. Mr. Campbell said that the notice and order says that these things will happen if Mr. Westbrook doesn't appeal. He has appealed and he has addressed it and now the Board is addressing it. If he hadn't appealed, the actions would go through as the notice stated.

Mr. Campbell also let Mr. Westbrook know that if he doesn't come in with a design professional and address this, he hasn't addressed it. He will also have to go in front of the Planning Commission. The Planning Commission said that it could be rebuilt, but it needed to have parking. These are the things that need to be done within the sixty days, and he will have to make a reasonable effort to do this.

Chairman Bunn asked if Mr. Westbrook understood that? He stated that he did.

Chairman Bunn said he could choose to take the building down himself and go after the people who owe you money. That was some further recourse he could consider. He could also try to get the impact fees assigned to him from Chapmans and Mr. Baker isn't going to hold that up. Mr. Baker said that the impact fees could be returned to the people who paid for them.

Mr. Baker said that the impact fees have increased substantially over the last little while and are two to three times more than was paid. He [the project owner] has a right to utilize the fees. Mr. Bunn asked that the new fees be given to him in written form. Mr. Baker said that he [Mr. Westbrook] could obtain the fee schedule from the Community Development Department. He further explained that a demolition permit requires a state permit, and that addresses that the asbestos and any other harmful items have been removed from the building properly. That letter must be received before they will even deal with a demolition permit. Even the City goes through that. Mr. Baker wanted Mr. Westbrook to understand that obtaining a demolition permit takes some time, and would have to be obtained soon, and not to wait.

Mr. Formo said that in these circumstances, there is the Engineer's Licencing Act, and the Construction Trade Licensing Act. These require that for this particular type of structure those doing design work or construction and demolition must be licensed by the state. Self doesn't work on a commercial building. Mr. Westbrook said that is better than 7 days.

Mr. Formo said the compliance of this order is to take the required action to resolve the problems. He reiterated that there was a problem there. For a community these types of situations should be rectified for the public welfare.

**Mr. Formo moved that as provided in the abatement code, that the 60 day time period for commencing the work on either demolition or construction to rehabilitate the building. This means that you don't wait for 60 days, you start the operation at this point. Waiting for 60 days is non-compliance.** Mr. Westbrook asked if he began construction for the 15 units within the 60 day period, then he could build the 15 units? Mr. Formo answered, "No. You have to get a building permit." Mr. Campbell added that he also has to comply with the planning and zoning. Mr. Westbrook said that this building permit here was already signed by the Planning and Zoning committee. Mr. Formo stated that the permit was expired. Mr. Flippo seconded the motion. All members present voted, "Aye."

Mr. Flippo stated that the Appeals Board has heard the appeals with regard to this building and he strongly recommended that Mr. Westbrook, the Building Official and the City Attorney work together. There will be no more appeals heard for this building by this body. There is already friction, and the Appeals Board should not hear any more appeals on this building. Mr. Formo said that they have found that Mr. Westbrook had been properly served that all of the rules were applied. Mr. Flippo stated that he simply wanted to make sure that Mr. Westbrook knew there were no more appeals available to this Board.

Chairman Bunn said he appreciated Mr. Westbrook coming in to make them aware of his side of the issues.

### 3. Adjournment

**Mr. Flippo moved to adjourn the meeting.** Mr. Formo seconded the motion. The meeting adjourned at 7:42 p.m.

# DRAFT

Approved by: \_\_\_\_\_

Date: \_\_\_\_\_