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**City of Morgantown
Fire Code Board of Appeals Meeting Minutes
February 10, 2017**

- **Appeals Board Hearing:** The Fire Appeals Board meeting was called to order in City Council Chambers on February 10, 2017 at 10 a.m.
- **Present:** Mr. Mike Wolfe, Mr. Pat Hathaway, Mr. Ed Heyden, Mr. Kyle Haugh, Mr. Pat Esposito and counsel for the Board-Ms. Wendy Adkins.
- **Absent:** Mr. JV Bartling and Mr. Mark Lambert
- Mr. Heyden motioned to accept the minutes from previous meeting-motion was seconded. Minutes were approved and stand as presented.
- Delaying the third agenda item-Election of Vice Chairman until next meeting.
- Chairman Esposito introduced the Board Members for today's Appeals hearing.
- Chairman Esposito explained in brief summary administrative appeal hearing, rules the Board has adopted and the consistent intent of NFPA 1 to adhere to public safety standards.
- The Board will hear the Appeals, has reviewed the written submissions by both parties. Each party will have an allocated 15 minutes to make presentation of facts.
- Hearing open to public-Board will accept public comment after presentations, Board will discuss merits of the appeal, and may ask questions of either party. Following deliberation the Board will vote and issue decision based on its reading of violation as well as appeal.
- **First comes the Appellant-**Mr. Giuliani-Ms. Catherine Loeffler of Houston Harbaugh representing Mr. Giuliani.
- Ms. Loeffler asks that we hold all questions until end of power point presentation.
- Ms. Loeffler states that Mr. Giuliani objects to hearing procedures-do not comply with WV State Fire Code hearing procedures which were adopted.
- Allowing Mr. Giuliani to testify formally, have witnesses testify and allow Board to hear things pursuant to rules of evidence that circuit courts would hear, permitted WV Fire Code.
- Mr. Giuliani objects because it violates his due process-not having opportunity to be heard-states Board is a quasi- judicial tribunal.
- Chairman Esposito stated understand objection and will show as being on record.
- **Three Reasons for objection of violations:**
 - A. Fire Marshal did not have legitimate life & safety bases to inspect Mr. Giuliani's rental property.
 - B. Mr. Giuliani's units are 1 and 2 family dwellings-governed by Ch.24 of NFPA.
 - C. Interpretations of Code and findings have arbitrary and unreasonable results.
- Notice of violation should be dismissed stating number of occupants in situation have nothing to do with protecting life and safety of occupants, as Code Enforcement has jurisdiction over these

dwelling. Every 3 years property owners submit renewal forms in order to comply with Code, and receive letters of compliance to operate.

- Mr. Giuliani presents renewal forms for 485 & 487 Forest Ave-duplex that has two separate units, 2 apts. Number of bedrooms 7 total.
- Mr. Giuliani only gave his consent for Code Enforcement to inspect-no other dept.
- November 2015 Fire Department inspected with Code Enforcement.
- One & Two Family Dwelling we live in with our families-as family unit-share same kitchen, dining room, bathrooms-own separate bedrooms.
- Lodging & Rooming House think like bed and breakfast-pay certain amount of money to stay one night-can't decorate.
- Mr. Giuliani's houses 1 and 2 family dwellings have property interest-huge difference-have right to privacy, have as many people there as they want-can decorate and change place.
- Provided pictures of 485-487 Forest Ave via power point.
- Chapter 26 governs these types of living situations-contractual interest not property interest Mr. Giuliani's tenants have.
- Definition of Family-constantly changing-don't know what constitutes family, boyfriend & girlfriend rent to three outsiders-five unrelated people in house considered one or two family dwelling. Sites Chapter 24.-Sublease, piece of paper how does that protect life and safety of occupants? Point of code treat people as family so that people are responsible for each other-Fire Department thinks four students not related wouldn't be responsible for each other.
- Chairman Esposito-States to Counselor 15 minutes is up-Mr. Loeffler-states please let me finish-I'm almost done.
- Classification of dwelling units should be related to building, construction of building and applicable building and housing codes enforced by Code Enforcement.
- If Board imposes the notices of violation Mr. Giuliani, his family and business would be severely impacted additional requirements of Chapter 26-would have to completely renovate these properties. Mr. Giuliani has a lot of properties that this decision might impact.
- For all these reasons Mr. Giuliani respectfully requests the Board dismiss the notices of violations issued by the Fire Marshal.
- Chairman Esposito-Thank you-we will now ask Fire Department to present any information they would like to be heard.
- Next Comes Ryan Simonton:-Counsel for City/Fire Department
- Repeated claims about hearing process before Board-process more than adequate to create record for review. The Board could not follow the rules in Title 87 of Code of State Rules as it would be inconsistent with specific rules provided for Board by NFPA.
- Constitutional violations, building codes, rental registrations and zoning codes.
- Next Comes City Fire Marshal:-Captain Ken Tennant.
- Respectfully disagree with Mr. Giuliani's appeal that inspections were completed in single-family dwellings but rather in occupancies identified as lodging and rooming.
- The inspections in question were scheduled by Code Enforcement Office-Mrs. Ann Skinner. Note that 18,604 joint inspections have been conducted between Fire Department & Code Enforcement over last 9 years, only been refused entry three times, having to get search warrants to do inspection. Mr. Giuliani's properties and his agents have always welcomed the fire department for inspections.
- Code Enforcement schedules the inspections State Fire Code requires provision where four people renting from landlord, lodging and rooming may apply.
- Dec. 11, 2015 Lt. Summers along with Code Enforcement arrived at Mr. Giuliani's properties and met Property Manager Rick Hanning.
- 491 Forest Ave is house with four bedrooms and four occupants. 485 and 487 is house divided into two rental units, each with four bedrooms. Top unit had a vacant bedroom with newly installed window and carbon monoxide detector. Since located within same building under same roof, if one or the other was identified as lodging and rooming, it would apply to both occupancies under the NFPA and State Fire Code-the most stringent requirements would apply to same building.

- Occupants that were present at time of inspection welcomed the inspectors inside and had no issue with inspections as they occurred.
- Lt. Summers determined structure should be regulated as lodging and rooming houses and provided findings to Mr. Giuliani's representative. 90 days given to comply with Code.
- Lodging and Rooming provisions are part of NFPA Life Safety code as adopted by our state, one level of safety above a single-family dwelling. Requires fire alarm system rather than just smoke detectors, if stairway, it would need to be enclosed and separated from upper floor, with self-closing hinges on bedroom doors. All requirements for lodging and rooming.
- Within few days Mr. Hanning contacted Lt. Summers advised they were scheduling fire alarm company to provide estimates. Both Mr. Hanning and Mr. Giuliani are familiar with lodging and rooming provisions as many of other properties have these requirements already installed. Mr. Giuliani called a few days after Lt. Summers spoke to Mr. Hanning, said he would not comply with requirements of Code.
- Two weeks later Mr. Giuliani visited my office and informed me he would be taking legal actions against the fire department. In the meeting Mr. Giuliani became extremely angry and disruptive he was asked to leave by Fire Chief.
- End of 90 day period-Notice of Violation was issued to Mr. Giuliani-Exhibit 3. Spoke to Mr. Sausen regarding several items as he is local architect that represented Mr. Giuliani we disagreed with the findings of Mr. Sausen.
- At issue is whether or not the two structures in question are lodging and rooming houses or structures occupied by members of a single family. It doesn't appear any disagreement on what the requirements of rooming and lodging are.
- **Brief History Lodging & Rooming:**
- Dec 1977- A tragic fire killed three career college students at 49 Beechurst Ave. Eleven coeds were living in a two-story house. Housing code in effect at the time of fire was from 1923.
- In Early 1980's Captain Rick Hill-The Cities First Fire Marshal attempted to enforce needed Fire & Life Safety provisions of State Code to prevent any more tragedies. Capt Hill reported to then Fire Chief Nabors, lodging and rooming should be enforced where four or more individuals rent from landlord. Chief Nabors agreed but was overruled by Mayor and The City Administration at the time-declaring these structures were grandfathered as Non-Conforming Occupancies.
- In 1991 State Fire Marshal answered with Exh 8-No Authority for City Officials & Elected Officials could decide these rules-Zoning terminology to not comply to code.
- 10 Years Passed-Two More Tragic Fires Occurred taking the lives of two more College Students. Jan and August 2001-Brian Hohman and Tom Schwinn.
- In the 2nd case-Tom Schwinn-the Attorney's questioned the Fire Departments lack of enforcement in lodging and rooming. The Fire Department explained these structures were grandfathered as Non-Conforming Occupancies.-The Attorneys clearly provided and proved to City there was no grandfathering of State Fire Code.
- As result of information discovered-Fire Chief Fetty and Capt. Max Humphreys-City Fire Marshal in 2001, contacted State Fire Marshal-Exhibits 9 and 10, The Fire Marshal and The State Fire Marshal concluded more than three unrelated people occupying a structure is Lodging and Rooming. It also provided a Formal interpretation from the NFPA that still stands to this day. Four individuals renting from a landlord, the intent if for lodging and rooming to apply.
- Mr. Giuliani's lease-as provided-Lease says between him and four individuals-Each paying their part of rent.
- Exh. 13 and 14-Current 2012 Life Safety Handbook at the time clearly gives guidance to us on how to enforce this. A Family can sublease space to three outsiders. One or two people can rent a structure and then sublease to three other people.
- Important Fact-Paragraph Three of Interpretation: which says: Four individuals renting from a landlord, they have a common cooking area, the intent if for lodging and rooming to apply. We clearly understand why this is. The Life Safety Code Handbooks explains outsiders and individuals do not tend to keep each other informed as family members do with regards to the conditions in time of an emergency. As we have arrived on scene at a Fire in a student rental-the majority of the time

occupants have no idea where other occupants are. They have no accountability. Often they don't even check to see if everyone has made it out.

- We understand other safety issues are commonplace in off-campus rentals-large parties and gatherings in violation of the Fire and Building Code. Hundreds of people inside of four and five bedroom rental houses.
- After two more deaths in 2001, our Community was outraged by the lack of regulations on these properties. With information from the State Fire Marshal and NFPA, then Fire Chief Fetty ordered Fire Marshal Max Humphreys to begin enforcing the lodging and rooming provisions of all places that were grandfathered and classified as non-conforming. Exhibit 11.
- To date we have conducted 15 years of consistent and fair lodging and rooming enforcement.
- In this case the Fire Department has asked to examine Mr. Giuliani's lease as far back as Jan 16, which he refused to comply on numerous occasions. Our municipal court has ruled on numerous occasions that it was appropriate to examine the lease to determine if structure was lodging and rooming.
- Chairman Esposito-asked Capt. Tennant if you would stay within our allotted time move toward closing. Capt. Tennant answered yes sir, they took twenty minutes we should be entitled to same amount of time. Mr. Giuliani agreed.
- Capt. Tennant supplied NFPA Code that states in any individual case we can determine the occupancy classification for the codes that we govern. The Code Enforcement office can legally assist us in our enforcement measures, share any internal information. All of these documents are all public records.
- Mr. Giuliani in in business renting to college students-renting to four individuals in each of these structures in question that are not members of a single family. The lease shows he is renting to individuals and operating as a business. This rental arrangement aligns with guidance provided in NFPA, Exhibit 14.
- I believe as your Fire Marshal-I must answer to the public we protect. It would be an injustice to the fire victims to change these interpretations of all of my predecessors when the code language is the same and hasn't changed. Such a change would negate fifteen years of hard work and pro-active enforcement.
- Chairman Esposito-Thanks both parties for their presentations-We will move into public comment portion-allows you to voice any thoughts you have relating to matter at hand. You do have four minutes each. We will ask each individual so speaking to identify themselves by name-address as well as any relationship to either party.
- With that said we will open the floor to comments.
- **Rick Hill-Retired Fire Captain Morgantown Fire Department:** My name is Rick Hill-I'm a retired Captain with Morgantown Fire Department and I was the City's First Fire Marshal. I am here today because I thought you needed clarity of the history of how these codes were not enforced and how they became important that we needed to enforce them. When I became the City Fire Marshal, The City sent me to extensive training. After returning we looked at where we were losing people and lodging and rooming was an area. Mayor at the time prevented us thru Fire Chief from enforcing Lodging and Rooming. WV State Fire Marshal sent clarification more than four unrelated people in a home constitutes lodging and rooming house, which needs minimal fire alarm system and an adequate means of egress. Unfortunately we still were not allowed to enforce this Code. Then City Mayor at next council meeting made motion to eliminate my position of Fire Marshal, but was told by Fire Chief no matter how many positions were eliminated the City Fire Marshal would remain active and would enforce the Code.
- **Josh Wisinski-Former Resident/Tenant-Mr. Giuliani Office Manager:** In 2009 moved to Morgantown into Dadisman Hall where I started my college career, I immediately met people on the floor of Dadisman and they became my effective family. From there we moved out and into one of Mr. Giuliani's houses, these people were my family, we shared a lot of experiences together, vacations-even after graduating still keep up with them. Graduated three years ago now. I show Mr. Giuliani's houses as part of my job-coming in as groups, with their families that they've met and come together with. They come in and pay rent together, sign leases together.

- **Dave Fetty-Retired Fire Chief:** I live in Cheat Lake Area of Morgantown, I am the past Fire Chief that Mr. Tennant referred to. I have an Associate Degree in Fire Science, Bachelors Degree in Safety Engineering and a Masters in Safety Management. I spent 33 years on Fire Department, first 21 years I served on suppression forces side. Unfortunately I was on the scene of all of the fire deaths that Mr. Tennant referred to, that being only partial of the fire deaths we were on the scene of. My last twelve years have been on the administrative end of the service as Fire Chief. I came to offer clarity on the Lodging and Rooming issues. Subsequent to the day that an attorney came to my office and demanded I enforce the lodging and rooming after Tom Schwinn died in a fire I was not very cognizant of the Code. I read the Code, Understand the Code and I applied the Code as I saw fit and as the State Fire Marshal directed me to do so. Subsequently to those Codes being followed we have not had a fire death in Morgantown in Lodging and Rooming Facilities even though the number of students at WVU has dramatically increased.
- **Karen Giuliani-Part Owner of the Proerties:** 256 Prairie Avenue Morgantown, WV. Ask a question since when does fire care about DNA? We own a small family business which James Giuliani, my husband, myself his wife, and our daughter and son are the proud owners. We employ eight full time employees and up to six part time. We pay employees decent salaries and wages, also pay City worker user fees and help provide insurance benefits. We rely heavily on income as our employees do to earn a living. Retired special educator receive small retirement. Morgantown Fire Dept has placed unfair and financially burdensome regulations on our business. They have consistently enforced codes that don't exist. City of Morgantown base occupancy on square footage and state ICC codes, permitting us rent our single-family homes and duplexes. We own student neighborhood but Fire Department didn't want to give up archaic definition of rooming and lodging continued to enforce the three unrelated rule. During this time Fire Department has unlawfully trespassed on our property giving us stop work orders we were working on an unoccupied four bedroom house, based on pure speculation of some wrongdoing. Because of unnecessary regulations family businesses suffer. Unlike the Fire Department we live off our own hard work, not the tax payer. We have been forced to lay off people, hirer fewer employees, and sometimes forgo cosmetic updates. Now you might think wow this family cares more about money than safety, nothing could be further from the truth. We maintain properties and neighborhood in very responsible manner. Worked very hard to buy eyesore property and improve it. However the Fire Department rules are wasteful and have nothing to do with safety. How many people living in single family homes or duplexes have sprinkler systems-self closing doors or fire alarms? Do you? Do the Firemen? I'll bet the answer would be no. We have added expenses of maintaining, repairing and having inspections. Now if we were traditional family, a tenant signed lease differently or said they were related to one another, these fire safety features no longer apply. The Fire Department refused to change when the three unrelated rule was no longer being used by City Code Enforcement and the adoption of the ICC Codes. I read the Fire Chief's report. He is desperately trying to justify his actions stating we are promoting large parties. That kind of logic leads me to believe the fire department is promoting dumpster fires because they happen. They speculate about things, how many people might live in a house, how the lease is signed, and saying were telling students to have large parties. My husband offered \$5000.00 reward when someone set a car on fire in our neighborhood. My husband had to have power pole removed because the road was too narrow for a fire truck. My husband requested a fire hydrant be placed on Forest Avenue because the closest hydrant is close to a thousand feet away from last house. Still no hydrant. We pay \$13,000 yearly in fire fees, we've gotten no service. What we got is trespassing, stop work orders, harassment and financial burden and fire department who is enforcing zoning on the pretense of safety. Ultimate goal was self- protection, the Fire Department has been questioned before going to absurd extremes at our expense to protect themselves for their legal liability.
- **Chairman Esposito:** Just moving forward we have in place require that neither party speak during the public comments period. So if we have any additional comments if they are in any way associated with the party or have contributed information that is already of record, we ask that you not provide additional comment during the public portion, we did accept this. I think we have a Lady that would like to come forward.

- Rachel Fetty-Housing Commission:** I have concerns related to my participation in the community. Understand landlords going thru difficult time right now, think important we understand that a lot of the frustration is doubly reflected in many concerns that are unrelated to the Fire Marshal and actions taken regarding fire safety. I am sympathetic to that, I understand how you can feel as if regulations are being applied arbitrarily. I would like to address my personal interest as a child-I was in a fire with my family-I have specific fondness for firemen. Lived in Nebraska I owe my life and that of my family to that fire department, and have utmost appreciation for what fire department does. Secondly as a Citizen of Morgantown we live in unique community, many of us rent to students, housing allowances and money contributed is subsidized by taxpayer form of student loans family payments grants and other things. Every student who comes here has little more money market is better and landlords make more money than people in less populated areas. I have a great concern in way in which a family is being approached in this matter. Contrary to what some folks have said idea of family has been somewhat fluid recently. All of these changes have been hard fought, changes not easily made. I would like to tape specific umbrage with counsel's example regarding the homosexual family. A gay couple that adopts children in not five unrelated people, family bonds are hard fought, hard won and have massive responsibilities._The idea concept of family is defined under Fair Housing and Urban Development. Finally like to touch on group of unrelated persons might not have same consideration and care for each other that family would. I had a family member a year ago had severe drug and alcohol problems set fire to house in Morgantown. It was an accident, but it resulted in harm to her and damage to landlord's house. It also resulted in harm to her roommates and she wasn't aware or paying enough attention to be rescue or save anyone involved in fire. I saw the consequences of that, I saw the Fire Marshals response which both were compassionate and reasonably concerned. I appreciate the Fire Marshal and the enforcement of the Code. I do think if Commission or Board has recommendations how we can make enforcement less arbitrary would definitely help the City of Morgantown to address this issue, because all things fire safety should not be political issue and it should not result in litigation that uses up the funds of the City of Morgantown.
- Chairman Esposito-** Asked if we have any other members of public and once again remind you hold it to four minutes so we can stay on course.
- John Sausen-Omni Associates Architects:** Licensed since 1985 done a lot of work here and I am the guy having the professional argument with Captain Tennant here. My interest in whole thing is enforce the law also. I'm licensed I have to do this. When I see projects or issues I have to find out the law. In Exhibit 11 clearly says dwelling that occupies more than three people but less than 17 shall be regulated as lodging and rooming. All these dwelling have four people. Lease thing confusing to me referring to annex of NFPA, if you read it, it says Annex A is not part of NFPA. State Fire Marshal made rulings which is correct, Joe Leake still there good guy._The use of the building determines occupancy classification. An architect, building inspector, Fire Marshal can walk into structure determines their uses. Same structure has four people sleeping there can be bedroom-single family bedroom or it can be rooming and lodging-what's the difference? All these innuendos that is in affidavit of Captain Tennant brings in social issues, says college students inherently less safe. That's discriminatory statement. You can't enforce Fire Code based on social lifestyles, irrelevant to Life safety Code. You can't say block party down the street building might be inherently unsafe, have to regulate occupants on this piece of property in specific terms. The Life Safety code says have to regulate as single family house you have to regulate as that, can't make up rules because you have the authority.
- Sam Simon-Central Place 6200 Mid Atlantic Drive, Morgantown, WV:**
- Chairman Esposito-** Asked Mr. Simon for the record could you express your relationship to counsel for the appellant? She works with me.
- Sam Simon:** I'm not sure how that relevant but getting to my point we have heard about tragedies that occurred twenty years ago, heard a nice story, or sad story about a tragedy in Nebraska, but thankfully it seems people survived. I'm not sure how they relate to three properties were dealing with. The evidence if this was evidence taking situation would be much, much, more narrow than looking at now. We have no evidence of dead bolts anywhere. Other point that is really telling to me and that I get a little bit bothered by as I continue to think about constitutional issues and arbitrary

and capricious applications of law, when we look at four people---it can be the four of you, to live in same place together, So you know they sign lease and they sign sublease that's four people living in the house. Sublease is permitted. If four of you walk into Mr. Giuliani or Central Place and say I want to sign together, live together that's not okay? That piece of paper that sublease will in no way protect any of the four of you if a fire breaks out. You won't put fire out with piece of paper. We're literally talking something as logic without reason or distinction without a difference. I mean that's another term. Or just arbitrary and capricious. I can't get behind how if four 80 year olds walk into place and rent it versus four 18 year olds how there is any distinction. Shouldn't be-law doesn't look at these people differently. So when we look at family structure-heard a lot about family structure or not, I think definition of family has been so fluid in country over twenty years this Board should be very careful where it goes with regards to defining the term family. With regards to part I can't shake is how sublease Captain Tennant instructed people to sign a sublease-one person signs the main lease, he goes and gets three more friends to live with him, its ok-it's a single family. However if people go in and sign together the same four people that is not single family that's lodging and rooming. Doesn't make any sense.

- Chairman Esposito-Asked any other public comment-Mr. Giuliani spoke up Whoa, Whoa, Can I comment? Chairman Esposito stated actually not according to our rules-I'm sorry. Ms, Loeffler I'd like to enter our objection that was said to rules in beginning not properly letting Mr. Giuliani's rights being deprived from testifying on his own behalf. Mr. Giuliani states there's been many accusations made against me by other people. Chairman Esposito so noted. We will have opportunity to pose questions to both parties during deliberation by the Board. We can clarify anything you wanted to provide as public comment, but according to our rules we cannot accept any additional public comment from either party. With that Said the Board will....
- Mr. Giuliani speaks-I'd actually-like to speak in behalf of one of my other companies that weren't involved in this-Mr. Esposito responds-I'm sorry we cannot do that Sir, I understand, but again, we will have the opportunity to pose questions to you during our deliberations. We ask that you take a seat so we can continue deliberation. Next up in our....
- Mr. Giuliani speaks----No, No-we're not done yet, we still have---
- Chairman Esposito Speaks-I'm sorry the public comment period has been closed. Mr. Giuliani speaks-There's other people to comment,
- Chairman Esposito: We are moving into---I'm sorry, we gave everyone the opportunity to speak. The deliberation—
- Mr. Giuliani Speaks-He's right here.
- Chairman Esposito: The deliberations part - -
- Mr. Giuliani Speaks-So you're going to tell me, sir, that there's people in the audience that wants to speak and you're going to go that far to not allow them to speak?
- Chairman Esposito Speaks-We are continuing to move forward.
- Mr. Loeffler: -I object to that, too.
- Chairman Esposito Speaks-I understand. Objection so noted.
- Ms. Loeffler:- I mean, I understand your objection to Mr. Giuliani –
- Chairman Esposito Speaks- Objection so noted
- Ms. Loeffler:- but they should be able to speak.
- Chairman Esposito Speaks: Ma'am, objection so noted, We're moving forward with deliberation. The next step in our process brings it back to the Board to ask questions of either party and to bring clarification. Just to try to cast this into our pathway forward, you'll recall that the first hearing-on June 24, 2016. At the request of the appellant, we continued that to second continuation date of August 19, which was further continued to November 18th, bringing it to December 2, again continuing to today's Fifth meeting whereby we're attempting to address this. With that said, the properties in question and again trying to put context around this for discussion for Board the properties were classified as lodging and rooming houses because of fact were more than three unrelated individuals. The Fire Code Board of Appeals is considering and attempting to interpret if, in fact, one of the three claims provides the basis for the appeal. The three bases can be used are:
One- The true intent of Code has been incorrectly interpreted

Two- Provisions of the Code do not fully apply

Three- A decision is unreasonable or arbitrary as it applies to alternatives or new materials.

The claim that has been submitted by the appellant is the third position and that's the claim and basis for appeal. With that said—

- Ms. Loeffler: Actually, I think we submitted that all three- - we object on the basis of all three.
- Chairman Esposito: Initially it was. The third claim, you've now modified that to use as the basis of all three, It's up to the Board then to determine - -
- Ms. Loeffler: I just wanted to clarify that for the record.
- Chairman Esposito: Thank you, Appreciate the clarification. So with that said, one more note of information since we've had several discussions this morning, according to the Life Safety Code, a residential building that is occupied by four or more individuals, but not more than 16, each renting from a landlord without separate cooking facilities, should be considered and regulated as lodging and rooming house in accordance with Chapter 26, That's the foundation and basis of our discussion this morning. With that said, we'll bring it back to the Board of Discussion and deliberation as well as questions to either party. With that said, yes?
- Board Member Heyden: Yes, bases upon what we've heard today and first, I congratulate your approach and your take on your deliberation, also the City's.
How was the City informed that these particular properties did not meet the requirement set forth by room and lodging?
- Captain Tennant: I'll answer that. We received notification, as we do in our inspection scheduling process, with the Code Enforcement office. I believe it was the first exhibit in your packet-or I'm sorry Exhibit 2. We receive notifications by email from Ann Skinner in Code Enforcement as to where our inspector should meet their inspectors. She correctly identified there were two structures in question that we should attend inspection because listed as four or more people. They don't determine that it was lodging and rooming. We made the determination. They provide us the schedule to follow.
- Board Member Heyden: So the Code Enforcement shares information between departments- Correct?
- Captain Tennant: Correct, if you'll recall, I mentioned in 2007 the Property Owners Association requested that the Fire Department conduct joint inspections with Code Enforcement for the purpose of- - to be more efficient. So both agencies were there at the same time. They enforce the Housing Code, which is the International Code Council's Residential Code and Property Maintenance Code, the Fire Department enforces the State Fire Code and the NFPA national codes are adopted by the State.
- Board Member Heyden: My next question-Would there be an instance where one department can over rule another department's decision? Does one have more authority than the other? In other words, Fire Department over Code Enforcement, or vice versa-based on occupancy?
- Captain Tennant: Whenever the State Code says there's a conflict between the Building Code and Fire Code, the Fire Code supersedes the Building Code. When there's an issue of State Law as it relates to the State Fire Code, that would supersede any local code, whether it be housing, zoning, whatever it may be.
- Board Member Heyden: And to make it clear to me, the Morgantown Fire Department, the authorities having jurisdiction, the code inspection – interprets and enforces these codes in the City of Morgantown?
- Captain Tennant: Yes, we do.
- Board Member Heyden: Okay.
- Ms. Loeffler: May I comment on that?
- Chairman Esposito: Sure.
- Ms. Loeffler: I'd just like to point out that WV Fire Code does create an exception for one and two family dwellings. They do not have jurisdiction over one and two family dwellings, which this is. So the Fire Department does not have jurisdiction over one- and two-family dwellings. It's the Code Enforcement.

- **Chairman Esposito:** Questions, Patrick? Mike? I'm sorry, I looked at you Pat. Sorry Patrick? Okay, if there's no other questions for either party, I'll bring it back to the Board for your thoughts. Do you think the Code and the claims by the appellant, I guess we need to make a determination as to the acceptance of those claims as it relates to the violation that has been reported.
- **Board Member Heyden:** Well, I guess my thoughts are is it possible for not just Mr. Giuliani's properties but other properties in the City of Morgantown to be operating and not be in compliance with the rooming and lodging codes set forth by Mr. Hill back - - back how many years ago? With that being said, it was reported at this point and found that these did not meet the one-and two-family dwelling requirements based upon NFPA 101, and a decision made by the City of Morgantown to enforce these. So my thought is it may be not just an isolated case but other cases, again, not with Giuliani's Properties but other properties not been found yet. So I believe that these are just the properties based upon sharing of information of Code Enforcement were found.
- **Chairman Esposito:** Okay, good point. So bringing it back to the Board, does the Board believe that the interpretation is the correct interpretation in terms of the basis of violations? If so I think the Board needs to make decision one way or the other regarding that. Additional questions? If not I think we need some type of focus on a motion.
- **Board Member Wolfe:** I would state that going by what we are tasked as this Board to do, I find a lot of the information that has been presented knowledgeable helpful but useless as to what we are supposed to be doing, I'm only looking at the classification given here, what we have been determined and what we agree to do serving as Board Members on this, and it's been approved by legal, that I would make a motion that the Board accept, if this is the correct wording to do, to accept the violations that were given as proper and for all three of the residences listed.
- **Chairman Esposito:** Okay, so that's the motion on the floor. We'll need a second regarding that.
- **Board Member Haugh:** Seconded the motion.
- **Chairman Esposito:** We have a second, continue the discussion on that, additional discussion by the Board, relative to the motion that's on the floor. If there's no other discussion, call for a question. All those in favor of the motion presented indicate by aye.
- **Chorus of Ayes.**
- **Chairman Esposito:** Any opposed, please indicate so.
- **No audible response.**
- **Chairman Esposito:** The motion carries unanimously. So the appellant does have the appeal process that's identified. Again, you can appeal the decision by the Board, the Board has acted. We appreciate the efforts by Mr. Giuliani to bring this forward, by the Fire Department in presenting its information, as well as the comments from the public.
- **Mr. Giuliani:** Yes, with all due respect to the Board, to the Commission, to everybody, it's nice to have just a chance to talk, okay, for just a second, because here's what I'm going to ask you folks: What did you just do? What did you just do? For 15 months, okay, these violations have been over my head. Now, in the past, you were issued a citation and somebody had to move out because it was life and safety. Now, obviously nobody's been forced to move out in 15 months, okay? Everything's changed - - stayed the same. And I'll answer the question for you, okay? I have 12 other properties - 13, 14 other properties that have four or more bedrooms, okay, that they've been inspecting for 15 years. I've purchased properties in the last year that have four bedrooms in them. One of the kids when I bought the property, they said to me, we just go through the whole house, okay, I've gone and I had the documentation where they told people don't release it to four people next year, okay? But yet arbitrarily and capriciously, they did nothing with those people, all right? Now I had a piece of property at 453 Pine Street, all right, they gave a stop work order to that this gentleman would have referred to but he wasn't allowed to speak, all right? So my questions to you is: What is the enforcement here? He can't make me put in any life safety systems, okay? And he was wrong again, okay? But that's inconsistent with what Mr. Tennant says. Mr. Tennant says, okay, that all I have to do is sign a paper. Now, so here's what I'm going to tell you: I'm not going to sign these sublease agreements, all right? What we are going to do, we're going to sign an agreement. You'll look at the same lease that you just had in front of you, okay, and you'll have one person, head of household. Is that what you want? Because here's the deal: Mrs. Fetty, I want to refer to the public, because this is important. I want to know about the single mother with three small children, okay, that's in an

environment that she needs to help to pay the rent. She rents to three outsiders that she doesn't know? There's three young children cannot get themselves out of the house. We've already discussed it, unrelated people. And according to you, according to the decision you just made, it doesn't make a difference. Well it does make a huge difference about each other. So why – and I'm asking this Board - - this begs the question that is bigger than this, okay? You're telling me, and you all have in your written documentation the Supreme Court ruling, so do you believe that you're wiser - - wiser? And have you read that? That the Supreme Court of Massachusetts who says - - it is absurd - - it is absurd to say that four related people are any different than four unrelated people. It's absurd, it's totally absurd.

- **Chairman Esposito: Mr. Giuliani**
- **Mr. Giuliani: So my question to you today**
- **Chairman Esposito: Mr. Giuliani, with respect**
- **Mr. Giuliani: What is it you're asking me to do now? Are you telling me I have to put systems in? Because they don't do it? They allow me to write a piece of paper - -**
- **Chairman Esposito: I understand, Mr. Giuliani, the Board - -**
- **Mr. Giuliani: And a piece of paper is not going to make it safe.**
- **Chairman Esposito: The Board has fulfilled its responsibility.**
- **Mr. Giuliani: So I want to know what did we solve here today, sir?**
- **Chairman Esposito: His responsibility was an administrative appeal hearing which we have done. We have - - we have concluded to the best of our knowledge that we thought the appropriate ruling would be.**
- **Mr. Giuliani: And you didn't give any information to base your decision on, Sir.**
- **Chairman Esposito: Mr. Giuliani, you have options - -**
- **Mr. Giuliani: I want this in the record that you did not give any reasons for why you did it.**
- **Chairman Esposito: You have options for appeal, with that said.**
- **Mr. Giuliani: What are the options for appeal? Can you please explain those to us?**
- **Chairman Esposito: Those are in the - -**
- **Member-I move for adjournment.**
- **Chairman Esposito: Yes, Those are in rules and procedures, and if you don't already have a copy, I think you have a copy, but please, Sandy-please send him a copy of those. With that said, we have a motion for adjournment.**
- **Board member Heyden: Seconded it.**
- **Chairman Esposito: Motion has been seconded, The meeting stands adjourned. Thank you again for your participation. Thank you.**

Fire Code Board of Appeals

Sign-in Sheet

February 10, 2017

1. Rick Hill
2. Catherine Loeffler
3. Karen J. Stulman - 256 Prairie Ave Magn.
4. James F. Giuliani
5. Dale Fields
6. Ricky Hanning
7. Keith Summers
8. John Sausen Omni Assoc.
9. Josh Wereszynski
10. Sam Simon
11. R. Kelly 131 Wautman St
12. ~~Michael St...~~
13. Paul Louvasos
14. Tim P...
15. Joe S.
- 16.
- 17.