

LAREW LAW OFFICE

LarewLawOffice.com

Phone: 319.337.7079

Fax: 319.337.7082

504 E. Bloomington St.
Iowa City, Iowa 52245-2858

210 Cedar St.
Muscatine, Iowa 52761-2504

252 E. 3rd Street
Des Moines, Iowa 50309-4114

James C. Larew
James.Larew@LarewLawOffice.com

Claire M. Diallo
Admitted only in NY and NJ

IOWA CITY BOARD OF APPEALS

Appellants seek determinations by Iowa City Board of Appeals that Building Official Doug Boothroy and the Fire Chief John Grier have erred by approving plans by F. Reed Carlson and Sandra Carlson to construct an entertainment venue at 101 Lusk Avenue when, in fact, there has been no showing of compliance with fundamental and mandatory provisions of the Iowa City Plumbing Code and the International Fire Code, as adopted by the City of Iowa City. More specifically, Appellants seek a determination by the Board of Appeals that:

- 1) The proposed building is not in compliance with the Plumbing Code's mandatory requirement that each structure must be connected with an independent private sanitary sewer line to the City's sanitary sewer main; and
- 2) That the proposed building is not in compliance with the International Fire Code's mandatory requirements that, for paved, 20-foot-wide dead-end streets longer than 150 feet, and, as applied to the size and materials specifications of the Carlsons' building, there must be:
 - a. A paved turnaround to assure that emergency vehicles can turn around efficiently and safely, in a configuration

specified by the IFC—yet the proposed building makes no provision for such a turnaround; and

- b. Sufficient water volume (“fire flow”) from nearby fire hydrants, in at least the minimum amounts specified by the IFC, to assure prompt fire mitigation—yet, by the City’s own testing of the nearby hydrants, it has been demonstrated that the fire flow fails to meet the IFCs minimum requirements.

Appellants will present evidence in support of their contention that the City’s Building Official and Fire Chief, that by waiving, or failing to apply, mandatory Code requirements, they have exercised discretion that the City Code does not grant to them. Plaintiffs seek a finding and determination by the Board of Appeals that the mandatory provisions of the Plumbing Code and International Fire Code, as described herein should be enforced and that the decision to Lift the Stay with respect to the suspended Building Permit should be rescinded.

For the purpose of their initial submission to the Board of Appeals, Appellants attach a series of Exhibits in support of three core arguments:

- 1) That the Board of Appeals has the jurisdiction and authority to rescind the decision to Lift Stay until such time as a showing has been made that the proposed building will comply with the mandatory provisions of the City’s Plumbing Code and the International Fire Code;

- 2) That there is no showing of compliance with the Plumbing Code’s requirement that a private sanitary sewer line be installed to connect the proposed building to the City’s sanitary sewer main, and that the Code requirement should not be waived; and

3) That there is no showing of compliance with the International Fire Code's requirements with respect to a turnaround and minimum fire flow, and that the Code requirements should not be waived.

THE IOWA CITY BOARD OF APPEALS HAS JURISDICTION AND AUTHORITY TO RESCIND THE DECISION TO LIFT STAY UNTIL SUCH TIME AS THERE HAS BEEN A SHOWING THAT THE PROPOSED BUILDING WILL COMPLY WITH THE MANDATORY PROVISIONS OF THE CITY'S PLUMBING CODE AND INTERNATIONAL FIRE CODE.

1. The Iowa City Board of Appeals has the Jurisdiction and Authority to reverse decisions and actions of a Building Official and the Fire Chief that have been based on incorrect interpretations of provisions of the Iowa City Code of Ordinances.

That the Iowa City Board of Appeals has jurisdiction to hear the submitted matters is clear. Iowa City Code Section 17-12-2.A states as follows:

Jurisdiction: Any person aggrieved by a decision of the building officials or the fire chief with regard to the building code or fire code may file an appeal to the board of appeals within thirty (30) days of said decision. "Decision" means any decision, determination, direction, notice, finding, or order of the building official or the fire chief.

The grounds for an appeal, under Iowa City Code Section 17-12-2.C.3, can be based on the following—that a provision of the Code has been incorrectly interpreted. Such is the case in this instance. Appellants challenge incorrect interpretations of the Building Code and Fire Code by Building Official Doug Boothroy and Fire Chief John Grier (and persons working under his direct supervision, Deputy Fire Chief Roger Jensen and Fire Marshal Brian Greer), resulting in a wrong decision to

order a Lift Stay Order that had prevented the Carlsons from moving forward with their planned building construction.

2. Appellants will provide evidence to prove that the City's Building Official has wrongfully interpreted the City's Building Code, including its Plumbing Code, by Lifting a Stay Order for a Building Permit that was issued to the Carlsons' for their proposed entertainment venue at 101 Lusk Avenue even though there is no showing that the building can or will have a private sanitary sewer line that connects with the City's sewer main.

More specifically, with respect to the Building Code, Appellants contest the failure of the Building Official to interpret the City's Plumbing Code in such a manner that would assure protection of the public's interest—not just the interest of property owners whose building must be built in conformity with the City Building Code. Chapter 2, Plumbing Code, section 17-5-2: Purpose, of the City Code, states as follows:

It is hereby declared that the purpose of the Iowa City housing code is to ensure that housing facilities and conditions are of the quality necessary to protect and promote *the health, safety and welfare of* not only those persons utilizing the housing, but *the general public* as well. It is hereby further declared that the purpose of this chapter is *to determine the responsibilities of owners, operators, occupants and the city* necessary to maintain and administer the standards of the housing code.

Iowa City Code section 17-5-3 sets forth a series of definition, one of which defines the term "Dwelling Unit," and which specifically requires the installation of a sanitation system. That section states as follows:

DWELLING UNIT: Any habitable room or group of adjoining habitable rooms located within a dwelling and forming a single unit with facilities which are used or intended to be used for living, sleeping, cooking, eating of meals and sanitation.

Although Plaintiffs contest the City's determination (and, they have contested that action in a proceeding before the Iowa City Board of Adjustment) that the Carlsons' proposed structure can be classified as a "dwelling"—the building should have been classified as an entertainment venue, something that is not permitted in the RS-5 zone where 101 Lusk Avenue is located, under Iowa City Code section 17-5-17.E certain minimum structure standards are imposed for all dwellings,, including a mandatory requirement for the connection of sanitation systems to the City's sanitary sewer main. That sanitary sewer connection provision states as follow:

Connection Of Sanitary Facilities To Water And Sanitary Systems: Every kitchen sink, toilet, lavatory basin, bath and clothes washer shall be properly connected to an approved water and sanitary sewer system.

Further, if one were to assume, arguendo, that the Carlsons' proposed building is a dwelling, the structure must have, under Iowa City Code section 17-5-17.E, the following:

Connect Of Sanitary Facilities To Water And Sanitary Sewer Systems: Every kitchen sink, toilet, lavatory, basin, bath and clothes washer shall be properly connected to and approved water and sanitary sewer system.

In this instance, the evidence provided by Plaintiffs will establish that the City wrongfully approved the Carlsons' Site Plan and issued a Building Permit under an errant and unlawful assumption that the Carlsons would, without the permission of their adjacent neighbors to the north (Anne Lahey; Craig Syrop & Anne Sadler), connect the

Kinnick Replica's private sanitary sewer line to the private sewer owned by those neighbors. The City's Building Official wrongfully continued with that assumption even after those neighbors demonstrated their opposition to that plan and served Notice on the Carlsons of the termination of any easement rights that the Carlsons' believed they might have to push the Kinnick Replica's sewerage through the Lahey / Syrop & Sadler properties.

The Carlsons have every right to establish a sanitary sewer line out to the nearest City sanitary sewer main, at their own expense, or, perhaps, subsidized by Iowa City taxpayers, but the City has required no plans as to how compliance with the City's Building Code will be achieved prior to issuing the Lift Stay Order, thereby allowing the Carlsons to proceed with construction.

To support their Appeal, Plaintiffs will be offering witnesses and Exhibits that will include the following attached documents:

- A. Decision of Building Official
- B. Carlson building plans
- C. Carlson bath remodel 6-23-16
- D. HBK Site Map with Proposed Sewer Improvements
- E. HBK Site Investigation Report including Option 3 and Option 4 fire turn-arounds
- F. Hart-Frederick Consultants, P.C. Sanitary Sewer Evaluation
- G. Letter to Carlsons' Attorney 10-3-16
- H. Email Druivenga to Havel RE: Oliveira request to subdivide lot
- I. Email Havel to himself RE: Lusk Ave Comments
- J. Email Havel to Oliveira RE: Lusk Sanitary Option
- K. Email Havel to Oliveira RE: Question about Easements
- L. Email Oliveira to Havel RE: Sewer Line Easement
- M. Email Overton to Havel RE: Questions from Ackerman regarding Sewer
- N. Affidavit of Anne Sadler and Craig Syrop
- P. Notices of Termination of Easement Interests

3. Appellants will provide evidence to prove that the City's Building Official and Fire Chief have wrongfully interpreted the City's Fire Code, by Lifting a Stay Order for a Building Permit that was issued to the Carlsons' for their proposed entertainment venue at 101 Lusk Avenue even though there is no showing that the building can or will comply with minimum requirements of the International Fire Code, as appear in Appendix Chapter D, that mandate the construction of emergency vehicle turnarounds and established minimal levels of water production ("fire flow) from nearby fire hydrants.

The City of Iowa City, in section 7-1-1 of its Code of Ordinances, adopted the International Fire Code, including appendix Chapter D. By doing so, the City Council assured the regulation and safeguarding of life and property from fire and explosion. Certain provisions of the International Fire Code impose public safety standards for streets and fire hydrants to assure that emergency vehicles are not damaged or stranded when called to locations and also to assure that, once arriving at the scene of a fire, adequate water pressures and quantities can be produced to mitigate fire damage.

Plaintiffs will produce evidence and expert testimony to prove that certain mandatory provisions of appendix Chapter D have been intentionally ignored by the Building Official and the Fire Chief to accommodate the Carlsons' plans to building a very large entertainment venue. The evidence will show that the same fire code provisions with respect to the mandated turnaround were applied to the owner of 101 Lusk Avenue immediately prior to the Carlsons' purchase of the property—causing that prior owner to abandon plans for the construction of two modest single family homes—but that, they have not been enforced in this instance. The mandatory provisions of the IFC with respect to turnarounds are triggered by the length of the street—it is

more than 150 feet long. It is undisputed that Lusk Avenue is longer than 156 feet.

Regarding the issue of fire flow, Plaintiffs believe that the objective requirements of the IFC are clear and that mandated flow for a structure of this size and materials composition impose a burden on the City's hydrant system that the City's own tests prove cannot be fulfilled. Nevertheless, the Building Official and the Fire Chief, exercising discretion that they do not have to over-rule a mandated provisions designed to protect the public safety, was ignored with the Lift Stay Order was issued.

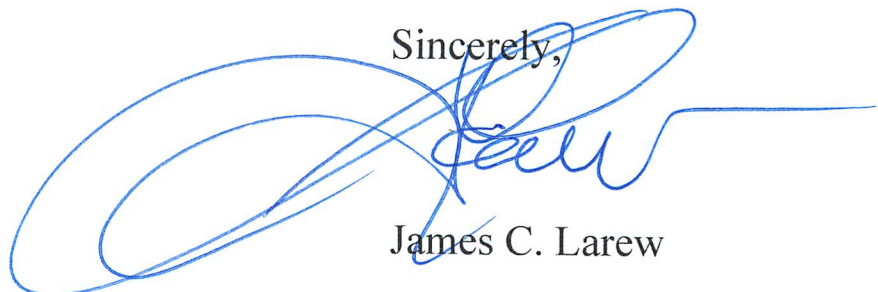
To support Plaintiffs' Appeal contesting the Building Official's and Fire Chief's wrongful interpretation of the International Fire Code and resulting wrongful decision to issue a Lift Stay Order, Plaintiffs will be presenting witness testimony and Exhibits that include the following:

- E. HBK Site Investigation Report
- O. Affidavit of Patricia Koza
- Q. Emails Re: Turnaround on Lusk Ave.

CONCLUSION

Upon the conclusion of the hearing, Plaintiffs ask that the Board of Appeals issue all appropriate opinions and Orders determining that the Building Official's and Fire Chief's interpretations of the Building Code and International Fire Code, as described herein, have been in error and direct said persons to re-impose the Stay Order earlier issued with respect to 101 Lusk Avenue until such time as the City Code of Ordinances shall be complied with fully.

Sincerely,



James C. Larew