BEFORE THE BOARD OF ADJUSTMENT FOR THE CITY OF KENAI

IN THE MATTER OF THE APPEAL OF SANDRA LASHBROOK OF ENFORCEMENT ORDER AND CONDEMNATION NOTICE DATED AUGUST 21, 2012	)))))

Case No. BA-12-01

DECISION ON APPEAL

I. INTRODUCTION

The Board of Adjustment for the City of Kenai (Board) convened on October 23, 2012 to hear an appeal by Sandra Lashbrook of an Enforcement Order and Condemnation Notice dated August 21, 2012 regarding 5125 Silver Salmon Drive-Tract B, Highland Pride Park, Highland Subdivision (5120 Silver Salmon Drive, Space #44.) Board Chair Pat Porter, Vice Chair Ryan Marquis, and Board Members Mike Boyle, Robert Molloy, Tim Navarre, Terry Bookey and Brian Gabriel, Sr. were present, constituting a quorum. The Appellant, Sandra Lashbrook was present for the hearing, represented by attorney Danny Burton. Ms. Lashbrook testified on her own behalf. The City administrative staff was represented by attorney Joseph Leveque. Building Official Larry Floyd, City Planner Marilyn Kebschull, and City Manager Rick Koch testified on behalf of the City administrative staff.

Prior to the start of the hearing on this matter, Board Chair Porter disclosed certain prior interactions with Ms. Lashbrook to the Board. Board Chair Porter stated that she could make a fair and impartial decision on the matter before the Board without prejudice

or personal bias. No objections were raised by either party at the hearing, and Vice Chair Marquis determined, without objection from other Board Members, that Chair Porter did not need to be disqualified from participating in the appeal hearing.

Ms. Lashbrook requested at the hearing that she be allowed to introduce new evidence that was not previously provided to the City Clerk. The Clerk had notified the party's that evidence to be considered, other than that already on file with the Clerk, would need to be provided to the Clerk prior to October 12, 2012. R.43. Counsel for the City administration objected to the introduction of the new evidence arguing that it was both lengthy and prejudicial. The Board Chair ruled that the evidence would not be considered by the Board.[1]

Prior to the presentation of the case, three members of the public provided statements to the Board, requesting generally that the Board be fair and reasonable in its decision. Public speaker Mark Schrag further requested the City be more welcoming to businesses like Ms. Lashbrook's that provided housing for lower income residents.

II. BACKGROUND

Sandra and Michael Lashbrook own Highland Pride Mobile Home Park (Park) located at 5125/ 5120 Silver Salmon Drive, Kenai, AK. This appeal focuses on Space #44 within the Park. R.5. Kenai Peninsula Borough records indicate that the improvements on Space #44 were owned by James Williams as of January 1, 2012. R. P1. Ms. Lashbrook in her evidence and testimony indicated that she was in possession

[1] Ms. Lashbrook had previously submitted a motion to continue the hearing which was opposed by the City administration. Ms. Lashbrook withdrew her motion at the hearing prior to consideration by the Board.

and was an owner of interest in the improvements as they had been abandoned by the title owner after he was evicted for non-payment of rents. R. P84.

On May 7, 2012 Larry Floyd, Building Official for the City wrote an Enforcement Order and Condemnation Notice regarding Space #44. R. P75-76. Testimony from both parties indicated that there were two structures occupying the space joined by a 'hallway.' The testimony further indicated that the larger structure was in substantially better shape than the smaller. The Order and Notice state that Mr. Floyd responded to a report from ENSTAR Natural Gas Company (ENSTAR) that gas supply was going to be turned off to the mobile home on Space #44. R. P75. However, during his testimony before the Board, Mr. Floyd indicated the inspection was instigated by a tenant complaint. Upon inspection, Mr. Floyd determined the property was unfit for occupancy. R. P75. His Notice and Order dated May 7, 2012 indicate the home was considered a non-conforming structure pursuant to Kenai Municipal Code (KMC) 14.20.050(a)(2) and as such, repairs were limited to an amount not exceeding 10 percent of the current replacement value per KMC 14.20.050(g)(3). *Id.* The Order and Notice state that due to the extensive repairs required to make the residence habitable, the repairs would be in excess of the allowable 10 percent. *Id.* Photos in the record show that a notice was posted on the property as of May 22, 2012. R. P36.

On May 10, 2012 Ms. Lashbrook sent an email to Mr. Floyd and Nancy Carver, the City's Planning and Zoning Assistant, stating that she received the Order and Notice on May 9, 2012 and that there was not enough time to comply. R. P27-29. Her email

further requested that she either be allowed a waiver of the requirement in the Order and Notice that the structures be boarded up, or that she be allowed 14 days to do so. R. P28. Her email also requested that the City specifically cite its authority for the Order and Notice. R. P28-29. On May 11, 2012 Mr. Floyd responded to Ms. Lashbrook, agreeing to waive the requirement that the structures be boarded up, but stating that the other requirements and deadlines remained in effect. R. P25. Mr. Floyd's response provided citations to the 2006 International Building Code and explained that the two mobile homes had been modified and joined together and were considered a single residence because they were attached, occupied a single space, had a single tenant, one front door for both units, were served by common water, sewer, gas and electrical supplies and had a single kitchen. R. P27. He further explained that he observed that the floor had collapsed, the ceiling was sagging, the roof was leaking, mold was growing, gas appliances were improperly installed, plumbing was out of service, the foundation/ support was failing, and the electrical components were unsafe. R. P26. He concluded that the structure was unfit for human habitation and needed to be demolished and removed. *Id.*

On May 24, 2012 Ms. Lashbrook filed an appeal of the May 7, 2012 Order and Notice. R. P74. Aside from arguing that Chair Porter should not sit on the Board, Ms. Lashbrook's appeal indicated that she had begun the demolition of the smaller mobile home and 'hallway' and that these structures were almost completely removed from the property. R. P77 & 84. Her appeal further indicated that she desired to remodel and keep

the larger mobile home. R. P84. Ms. Lashbrook also noted that ENSTAR had turned off the gas to the improvements on Space #44 for regular maintenance of a meter, not due to the condition of the property itself. R. P86 & 94. Her appeal explained that she understood that Mr. Floyd agreed the larger trailer could be repaired but because all three structures were connected, (the smaller trailer, the hallway, and the larger trailer) the entire improvement had to be condemned. R. P88. She also questioned Mr. Floyd's determination that the home could not be repaired for 10 percent of the value of the improvement. R. P91. Her May 24, 2012 appeal additionally attacked many of the City's ordinances and enforcement of the same with regard to mobile home parks, alleging they were unconstitutional, otherwise illegal, and selectively enforced. R. P 87-93.

The appeal was accepted by the Clerk and set for a hearing by the City Council for June 25, 2012. R. P114. Testimony indicated that the parties to the appeal had discussed a resolution to the situation telephonically. On June 15, 2012 Ms. Lashbrook emailed the City Clerk and City Manager Rick Koch, stating that she intended to "take you up on your offer to 'end the matter' and withdraw my Appeal in the condemnation of #44 at Highland mobile home park, per our discussion yesterday, but in addition to your requirements, I would like to make a few thoughtfully worded requests in exchange." R. P141. She stated that there was no need for the Clerk to distribute the appeal packets to the City Council and "waste their time." *Id.* She further indicated that she would draw up a more formal letter. *Id.* That same day, the Clerk emailed Ms. Lashbrook thanking

her for advising her of the withdrawal of her appeal. *Id.* On June 18, 2012 Mr. Floyd sent an email to ENSTAR notifying them that Mr. Koch had reached an agreement with Ms. Lashbrook and that the condemnation order was being lifted. R. P142.

On June 20, 2012 Ms. Lashbrook wrote to the City that per her telephone conversation with Mr. Koch on June 14, 2012 and their "mutual verbal agreement" she was providing the letter that was requested. R. P127. The letter summarized that the City was willing to forego the condemnation of the better mobile home if the second was removed from the premises in a reasonable amount of time and the two structures were separated. *Id.* The letter also indicates that the City required that Mr. Floyd be allowed to inspect the trailer that remained on the property. *Id.* In her letter, Ms. Lashbrook stated in relevant part under a Heading labeled "MY TACIT AGREEEMENT."

> I agree that the "bad" mobile home should be removed, and I'm willing to relinquish it, leaving the Arctic Entry and the 14x70 home, if the City will pay for it to be removed, which I estimate to be somewhere between $500 to $1,000 at most....I have the four tires and special 5-lug wheels needed for the numerous trips to the dump, and a contractors' fees, I do not have money to remove it myself.... *Id.*

The letter goes on to fault the City with its treatment of her, its applications of ordinances and laws with regard to mobile home parks, and takes issue with Mr. Floyd's inspection. R. P127-135. The letter further states:

> BELOW ARE MY REQUESTS-NOT IN EXCHANGE FOR TERMINATING THE CONDEMNATION AND THE APPEAL, WHICH I'VE STATED I WILL DO ANYWAY, BUT IN THE SPIRIT OF COOPERATION AND FOR THE SAKE OF TRULY "BURYING THE HATCHET" AND STARTING OVER "FRESH" WITH A GENUINE, SINCERE EFFORT TO WORK TOGETHER IN THE FUTURE TO SOLVE PROBLEMS: R. P135.

The letter then lists 11 requests of the City, many with subparts. R. P135-139. The letter concludes that "these are not "demands" in exchange for ending my Appeal...they are requests, but they also constitute my expectations at this point." R. P139.

On July 6, 2012 Mr. Koch responded to Ms. Lashbrook's June 20, 2012 letter. R. P42. Mr. Koch's response states that the City agreed in principal to the second paragraph of Ms. Lashbrooks letter and restates it. *Id.* The letter further states the City agreed to withdraw the enforcement action if: (1) the "bad mobile home" is removed within 45 days, or by August 20, 2012; (2) Mr. Floyd is allowed access to inspect the "good mobile home" before July 13, 2012; and (3) that the City would provide for disposal of the "bad mobile home" at the landfill, but that it was Ms. Lashbrook's responsibility to transport the "bad mobile home" to the facility. R. P42-43.

On August 21, 2012 a second Enforcement Order and Condemnation Notice was issued to Michael and Sandra Lashbrook. R. 13. The Order and Notice briefly summarized some communications between the parties and stated the parties had "basically" agreed that the "bad" mobile home would be removed in 45 days or by August 20, 2012, that access would be granted to inspect the 'good' mobile home by July 13, 2012 and that the City would pay the disposal fee at the landfill for the 'bad' mobile home, but that it was Ms. Lashbrook's responsibility to transport it. *Id.* The Order and Notice state that Mr. Floyd conducted a site inspection on August 20, 2012 and found the 'bad' mobile home still occupied Space #44 and the good mobile home was being

occupied and no inspection had been allowed. R. 13-14. The Order and Notice state that failure to remove the bad mobile home was a violation of KMC 14.20.050 and KMC Title 4- Uniform Codes. *Id.* The Order and Notice go on to state that it was ordered that the structure on Space #44 be removed that construction or preparatory use of the other structure on Space #44 be discontinued. *Id.* The failure to remove the older structure and discontinue improvements of the newer structure was cited as a violation of KMC 14.20.260 punishable by a fine of $250 per day commencing August 21, 2012. *Id.* The Order and Notice indicate that the infractions were considered flagrant violations of the City's order and that the City Police Department had been asked to issue a citation as provided for in KMC 13.05.010 and KMC 14.20.260 which required a mandatory court appearance and fine of up to $500. *Id.*

On September 12, 2012 Mr. Koch wrote to Ms. Lashbrook acknowledging her phone call the day before and setting up a follow-up-conversation. R. P55. On September 14, 2012 Mr. Burton, an attorney for Ms. Lashbrook wrote to the City providing a Notice of Appeal of the August 21, 2012 Order and Notice and argued that the International Property Maintenance Code (IPMC) or rules adopted there under had been incorrectly interpreted and that the provisions of the code did not fully apply. R. P56. Mr. Burton argued that Section 111.8 of the IPMC stated that enforcement should be stayed during an appeal and that because Ms. Lashbrook had submitted a prior appeal for which there was no hearing, the second Order and Notice were invalid. R. P56. Mr. Burton stated that Ms. Lashbrook had reached an agreement with Mr. Koch and

understood it allowed her additional time to comply, which the City either repudiated through its second Order and Notice or alternatively the City needed to honor the agreement which provided Ms. Lashbrook more time to comply. R. P56-57. Mr. Burton also argued that the Order and Notice did not comply with IPMC 107.2.3 as the particular sections of code violated were not cited. R. P56-57. Mr. Burton further argued that the Lashbrooks should be allowed to keep the 'bad' mobile home on the property for storage and that the 'good' mobile home could be repaired for under 10 percent of its replacement value. R. P57.

On September 17, 2012 Ms. Lashbrook wrote to Mr. Floyd stating that she had complied with the original May 7, 2012 Order and Notice by disposing of the adjoining, middle 'hallway' which connected the two homes, separating them, and giving each separate entrances. R. P59. She further stated the older structure did not have connected utilities. *Id.* Her letter states that she had decided to keep the older mobile home as a storage unit and argued she had the legal right to do so under KMC 14.20.240(d). *Id.* She further stated that it was the City's policy to allow abandoned mobile homes to be kept as storage units. R. P60. Her letter concluded that per her settlement agreement, unless advised differently by her attorney, she would schedule an inspection for the better mobile home around the end of September 2012. *Id.*

On September 27, 2012 Ms. Lashbrook filed an Appeal of the August 21, 2012 Enforcement Order and Condemnation Notice. R. P61. Her appeal states under relief sought "[a]s per 6/15/12 Agreement w/ Rick Koch, allow building inspector to re-inspect

'good' mobile home for human habitation so I can rent it. Allow storage of older mobile home (10x50) on my property per mobile home ordinance now that two homes are separated." *Id.* Her appeal further provides that the older mobile home was in the process of being skirted and though she and Mr. Koch agreed to dispose of the older home and re-inspect the newer one, and she confirmed she would do this by the end of September 2012, that Mr. Koch on July 8, 2012 had advanced the relevant dates. R. P62. She stated that she relied on his acceptance of the terms of her settlement letter, but that she then changed her mind with regard to disposing of the older mobile home. *Id.*

On September 28, 2012 Ms. Lashbrook emailed the City and stated that she had previously been allowed to use a condemned mobile home as storage. R. P63. However, this structure was no longer suitable, so she needed the older structure on Space #44 to replace it. *Id.* She stated the older structure on Space #44 was now a standalone structure. *Id.* She offered to remove the other, no longer suitable 'storage mobile home,' instead if the City would agree to certain other conditions stated. *Id.*

III. STANDARD ON APPEAL

The Board Of Adjustment's review of the final decision by an administrative official of the city is *de-novo.*

IV. DECISION AND FINDINGS

The Board of Adjustment may reverse, remand or affirm, wholly or partly, or may modify the order, requirement, decision, or determination, as ought to be made, and to

that end has all the powers of the body from whom the appeal is taken.[2] After reviewing the written record, the arguments of counsel for both parties, and the testimony presented before it, the Board makes the following factual findings:

a. The Enforcement Order and Notice of Condemnation Dated May 7, 2012 was Lifted and the Appeal Filed by Ms. Lashbrook Dated May 24, 2012 was Withdrawn Pursuant to a Valid Agreement between the City Administration and Ms. Lashbrook.

The evidence and testimony presented to the Board shows that both parties agreed that the City would lift its Enforcement Order and Condemnation Notice dated May 7, 2012 pursuant to Ms. Lashbrook's agreement to remove the older mobile home and allow the City Building Official to re-inspect the new mobile home. Mr. Koch's letter dated July 6, 2012 does indicate that the City agreed to withdraw its enforcement action predicated on certain actions by Ms. Lashbrook occurring, however the City administration acted as if the enforcement action dated May 7, 2012 was actually withdrawn by issuing a new enforcement action on August 24, 2012. While certain specific details of the Agreement may not have been reached, there was a meeting of the minds as to the main material issues. Mr. Koch testified that there was an agreement which is consistent with communications and testimony from Ms. Lashbrook and her attorney.

Further, the evidence and testimony shows that the parties began performing pursuant to the Agreement. The only terms that appear to have been unresolved are the specific time of performance and allocation of transportation and disposal costs. Despite

[2] KMC 14.20.290(f)(2)

Ms. Lashbrooks testimony that she never withdrew her appeal, the Board finds to the contrary that her communications to the City effectively withdrew her appeal, as she stated that there was no need for the Clerk to distribute the appeal packet and waste everyone's time. R. P141. The City Clerk responded to Ms. Lashbrook thanking her for the withdrawal of her appeal and Ms. Lashbrook never replied to the contrary. *Id.* Further, both parties acted as if the appeal was withdrawn by not participating in the appeal, lifting the Order and Notice and beginning demolition of the older structure and hallway as agreed.

b. The Enforcement Order and Condemnation Notice of August 21, 2012 was Valid.

Ms. Lashbrook argued that the August 21, 2012 Enforcement Order was invalid because the prior Enforcement Order and Notice of Condemnation Notice dated May 7, 2012 was stayed, it was vague and it did not comply with sections of the International Property Maintenance Code (IPMC). As discussed above, the Board finds that the evidence and testimony showed that the May 7, 2012 Order and Notice was not stayed, but instead was lifted pursuant to an agreement between the parties and Ms. Lashbrook's withdrawal of her appeal. Further, while the August 21, 2012 Order and Notice should have contained greater detail of the specific violations of Kenai Municipal Code, the record shows as a whole, that communications between the City administration and Ms. Lashbrook clearly put her on notice as to the specific violations found by Mr. Floyd. Finally, as pointed out in the testimony before the Board, only parts of the IPMC were

adopted by the City. Kenai Municipal Code 4.10.105 specifically deletes Section 111 of the IPMC which Ms. Lashbrook argues was violated by the City's Order and Notice.

c. The Mobile Home on Space #44 Referred to throughout the Record as the 'Bad' or 'Older' or 'Smaller' of the Two Mobile Homes Violates Kenai Municipal Code.

The Parties appear to have agreed that the 'bad' mobile home was a nonconforming structure and as such is governed by KMC 14.20.050. While there was dispute in the written evidence and testimony as to what degree the 'bad' mobile home had fallen into a state of disrepair and how the percentage of destruction should be calculated, the Board finds that the evidence and testimony demonstrate that the 'bad' mobile home had been destroyed to a point that it was valued at less than fifty percent of its replacement cost as provided in KMC 14.20.050(d). The Board finds that the 'bad' mobile home has been stripped to essentially a storage shed. The Board also finds, as stated above, that the there was a mutual agreement to remove this structure and that both parties acted in reliance on this agreement.

Further, the Board finds that the 'bad' mobile home, as a non-conforming structure cannot have its use changed pursuant to KMC 14.20.240(d). In this case the use has been changed from a dwelling to a storage structure.

While Ms. Lashbrook argued that the City's policy has been to allow this specific change in use to occur in the past, she only pointed to one example on Space #17 of her mobile home park. Regardless of whether or not the City's allowance of this to occur in past constitutes a waiver of all future enforcement, the facts pertinent to Space #44 are

distinguishable as described in the testimony, as the structure on Space #17 was a standalone structure and the structure on Space #44 is still attached by a common roof line to the 'good' mobile home. Testimony by the City Planner, Marilyn Kebschull indicated that the intent of KMC 14.20.240(d) was not to allow mobile homes used as dwellings to be converted to storage sheds.

Most importantly, the Board finds that the evidence, such as the pictures of the structure and the testimony of the City Building Official show that the 'bad' mobile home presents a danger to life and safety. Mr. Floyd testified that due to the distance between the 'bad' and 'good' mobile home and the fact that they share a common roof line, a fire in the 'bad' mobile home could reasonably spread to the 'good' mobile home occupied as a dwelling. Mr. Floyd testified that the proximity of the structures violated the City's fire code. While Ms. Lashbrook disagreed with this, the Board finds Mr. Floyd's testimony more persuasive.

d. The City Building Official Properly Condemned the Improvements on Space #44.

The original Condemnation Order on May 7, 2012 was properly issued. The evidence and testimony showed that the joined mobile homes had a collapsed floor, sagging ceiling, leaking roof, mold, improperly installed gas appliances, unsafe electrical components and more. The two structures were properly treated as one improvement as they shared a common entrance, roof, hallway and utilities. While the testimony indicates that many of these problems had been remedied by the time of the hearing in the 'good' mobile home, such work was completed without a required building permit. As of

the August 21, 2012 Order and Notice, the 'bad' mobile home was still presenting a life safety issue as indicated by Mr. Floyd's testimony, he had not been granted access to inspect the 'good' mobile home for approval of occupancy and it appears from the testimony of the parties that the mobile home was occupied.

The Board makes the following Decisions and Orders:

The August 21, 2012, Enforcement Notice and Condemnation Order is amended consistent with the following:

a. The 'bad' trailer must be removed from the property within sixty (60) days of this decision as it presents a life safety threat and violates the City's planning and zoning code. Other options were considered by the Board, but were dismissed primarily due to the life safety issues presented. Further, this resolution was agreed to by the parties. While the City and Ms. Lashbrook never agreed on a time frame for removal, sixty (60) days from the date of this decision, exceeds her understanding of the agreement and/or the offer expressed and provides a reasonable time frame.[3] The Board finds based on the evidence, testimony and City's past practice that it is reasonable for the City to reimburse up to $250 of the transportation cost to dispose of the 'bad' mobile home and any disposal fees if disposed of at the Kenai Peninsula Borough's Land Fill. Ms. Lashbrook must make all the arrangements for transportation to the land fill, notify the City manger of her plans prior to the transportation and the City shall make arrangements for the disposal and provide reimbursement upon presentation of valid receipts. Ms.

[3] The evidence and testimony indicate that at the most Ms. Lashbrook understood she had until late September 2012 to remove the structure.

Lashbrook may, at her option, remove the 'bad' mobile home to another location outside City limits or some other location consistent with all applicable City Ordinances, without any reimbursement from the City.

b. All fines and/or penalties issued to date are waived as it appears there was justifiable confusion on both Ms. Lashbrook and the City's behalf as to what conditions were agreed to.

c. The 'good' mobile home may remain on Space #44 as long as it is repaired to a condition acceptable to the City's Building Inspector as habitable, is used consistent with its prior use, and the City Building inspector is allowed to inspect the premises within 60 days of the date of this decision. No occupation of the 'good' mobile home is permitted prior to inspection.

DATED this ~~20~~ 4th day of November, 2012

BY: Pat Porter
Pat Porter, Chair

Ryan Marquis, Board Member
Terry Bookey, Board Member
Tim Navarre, Board Member
Brian G. Gabriel, Sr., Board Member

Partial Dissent by Board Member Mike Boyle:

I disagree with the Decision of the Board as to the requirement that the storage unit or 'bad' mobile home be removed from the property. I would prefer to see Ms. Lashbrook able to use the structure as a storage unit as long as it could be used safely

with respect to life safety issues. I don't believe the City should have restricted other persons from moving mobile homes into the Park because of any issues related to Space #44 which may have violated City Municipal Code. I find the situation analogous to not allowing new tenants to move into a unit in an apartment building because of code violations in another unit. I concur with public statements made by Mark Shrag that the City should be more encouraging to small business owners. For then, my personal feelings are that the City should be friendlier to mobile home parks.

Concurring in Part and Dissenting in Part by Board Member Robert J. Molloy:

I agree with the Board's Decision and Findings in §IV(a), §IV(b), and §IV(d). I agree with some of the Board's findings in §IV(c), disagree with other findings and conclusions in §IV(c), and disagree with some of the Board's orders.

I agree with the findings and conclusions of the Board in §IV(c) that the 'bad' mobile home presented a danger to life and safety, and that its condition violated the Code, at least as of the dates of the original 5/07/12 enforcement order and the 8/21/12 enforcement order. Here, however, Ms. Lashbrook was in the process of abating that condition, which is a goal of the enforcement action, by the work that she was doing on separating the 'bad' mobile home from the hallway joining it to the 'good' mobile home, and repairing both structures. For reasons discussed later below, I agree with the dissent of Mike Boyle, Board Member, where he says that he would allow the 'bad' mobile

home to be used for storage as long as it could be used safely with respect to life and safety issues.

I agree with the Board that Ms. Kebschull, the City Planner, testified that the intent of KMC 14.20.240(d) was not to allow mobile homes used as dwellings to be converted to storage sheds. But the other witnesses' testimony was, and the photographs showed, that Ms. Lashbrook was in the process of tearing out the hallway that joined the 'good' mobile home and the 'bad' mobile home, and was working on repairing the 'good' mobile home so that it would be fit for human habitation. Ms Lashbrook testified that she leveled the 'bad' mobile home, repaired the skirting, painted it, and built a ramp so that she could roll materials up into it. Her appeal documents and her testimony was that she was repairing the 'bad' mobile home so she could store long carpets, long pieces of wood, and other building materials in the repaired 'bad' mobile home. She testified that the 'bad' mobile home would never be used again for residential purposes. Thus, her intent is that the 'bad' mobile home would be "stored outside," as permitted by KMC 14.20.240(d). There was no testimony by Ms. Lashbrook that she was going to demolish parts of the 'bad' mobile home and rebuild it as a storage shed in accordance with Code requirements for sheds.

I disagree with the Board's finding in §IV(c) that the 'bad' mobile home was stripped to essentially a storage shed as of the date of the hearing (10/23/12). To prove the current condition of the 'bad' mobile home, Ms. Lashbrook offered photos into evidence, although late. Upon objection by counsel for the City, the Board Chair denied

admission of the photos without referring the issue to the Board as a whole. However, the Chair's exclusion order and the lack of the photographs is not material to my opinion because I find Ms. Lashbrook's testimony on this point to be credible -- that since the 8/21/12 enforcement order, she had also leveled the 'bad' mobile home, repaired the skirting and painted it, and built a ramp. There was no testimony that she had modified the 'bad' mobile home to be consistent with the smaller dimensions of a storage shed.

In §IV(c), the Board finds and concludes that the 'bad' mobile home, as a non-conforming structure, cannot have its use changed pursuant to KMC 14.20.240(d), and that the use has been changed from a dwelling to a storage structure. I disagree, because KMC 14.20.240(d) does allow an old "grandfathered" mobile home, such as the 'bad' mobile home, to ***be used for residential purposes or be stored outside*** in Highland Pride Trailer Park. When no longer suitable for human habitation, such "grandfathered" or non-conforming mobile home may be "stored outside" pursuant to KMC 14.20.240(d), and property may be stored inside it, because that is an allowed or permitted use under KMC 14.20.240(d).

KMC 14.20.240(d) allows mobile homes installed prior to the effective date of the ordinance "***and used for residential purposes or stored outside***" (emphasis supplied) to have such use continued indefinitely, except that such mobile homes may not be replaced if destroyed or removed. Thus, the Code at §240(d) makes an exception for pre-existing or "grandfathered" mobile homes -- they may continue to be used indefinitely for residential purposes or be stored outside. Obviously, if stored outside, property can be

stored in them. If this is a change in use, this change in use is specifically allowed by KMC 14.20.240(d); or, to put it another way, it is a permitted use for a "grandfathered" mobile home to be stored outside and used for storage when it is no longer suitable for human habitation. Therefore, I conclude that property may be stored in an old grandfathered mobile home that is no longer used for residential purposes because such use is a permitted use under KMC 14.20.240(d), and would modify the enforcement order to grant Ms. Lashbrook's request to do so if she satisfies conditions relating to repairing the 'bad' mobile home so that it no longer presents a danger to life and safety.

The structure of KMC 14.20.240 supports this interpretation of the Code. There are separate paragraphs addressing a prohibition against installation of mobile homes for use [see KMC 14.20.240(a)] and addressing a prohibition against mobile homes "stored outside" [see KMC 14.20.240(b)]. The City Attorney's memorandum dated 11/16/06 on the "Mobile Home Substitute Ordinance" states that it "is not the intent of this ordinance to . . . impose such costs on mobile home parks as to make it economically unfeasible to exist," but to establish minimum housing standards for mobile homes brought into mobile home parks after the effective date of the ordinance [R. at P96]. "Existing mobile homes would not come under the new standards unless they were moved to a new location or had an addition or outbuilding added." [R. at P96]. KMC 14.20.240(d) allows "existing mobile homes" -- the newly non-conforming or "grandfathered" mobile homes -- to be used either for residential purposes or be stored outside, indefinitely.

The majority's decision means that a "grandfathered" or non-conforming mobile home once used for residential purposes ***cannot ever be used for property storage*** when no longer useable for residential purposes, and must be removed even if it can be made safe for property storage. This conclusion ignores the structure of KMC 14.20.240 and edits the "stored outside" option out of KMC 14.20.240(d).

I find persuasive on this point the facts that the City settled a previous issue with Ms. Lashbrook at Space #17 in Highland Pride Mobile Home Park by allowing an old grandfathered mobile home, no longer suitable for human habitation, to be used for storage of her property at Space #17. This Space #17 precedent also supports the conclusion that property may be stored in an old grandfathered mobile home that is no longer used for residential purposes because such use is a permitted use under KMC 14.20.240(d). This precedent is with the same small business owner in the same Park. The City needs to be consistent in its application of its rules to small business owners, especially to the same small business owner.

In §IV(c), the majority of the Board attempts to distinguish the precedent involving the grandfathered mobile home at space #17 by stating that it is a standalone structure whereas the 'bad' mobile home at Space #44 was attached by a common roof line to the 'good' mobile home and therefore was not standalone. But Ms. Lashbrook's testimony is that she intends to separate the 'bad' mobile home and make it into a standalone structure that will be repaired and will no longer be a danger to life and safety. Mr. Floyd, the Building Inspector, testified that this possibly could work, if the 'bad'

mobile home or trailer was separated from the 'good' trailer by removing the common roof, among other things.

Yes, contrary to the agreement in principle or understanding she had made with the City, sometime after the 8/21/12 enforcement order, Ms. Lashbrook changed her mind about removal of the 'bad' mobile home from Space #44; and instead, decided to repair it and store her property in it; and this change of plans was not sufficiently communicated or communicated timely to the City; and the City Administration does not agree to it. But the fact that at one time Ms. Lashbrook had agreed to remove the 'bad' mobile home from the Park is not sufficient to support the order for removal in paragraph a. of the Board's "Decisions," since §240(d) allows a "grandfathered" mobile home to be stored outside in the Park, which also means that property can be stored in it.

Yes, as of the date of the 8/21/12 enforcement order, the 'bad' mobile home presented a life safety threat and violated the Code, as the Board also states in paragraph a. of the Board's "Decisions." However, Ms. Lashbrook ought to be allowed the opportunity to continue to repair the 'bad' mobile home, and to create separation from the 'good' mobile home, so that the 'bad' mobile home is no longer a danger to life and safety, and can be "stored outside" at Space #44 under KMC 14.20.240(d), with her storing her property for her business in it. Otherwise, this small business owner's property is being wasted. The Code should not be interpreted or applied to cause small business owners to waste their property.

For the above reasons, I disagree with paragraph a. of the Board's Orders. The Board should order that Ms. Lashbrook can keep the 'bad' mobile home as a grandfathered mobile home "stored outside" at Space #44 under KMC 14.20.240(d) and no longer used for residential purposes (like the Space #17 precedent) if she removes the common roof, separates the 'bad' from the 'good' mobile home, and the 'bad' mobile home is no longer a danger to life and safety as determined by the Building Inspector, within 90 days from the date of service by mail of the Decision on Ms. Lashbrook.

In addition, I agree with the dissent of Mike Boyle, Board Member, where he states that the City should not have restricted other persons from moving mobile homes into the Park because of any issues related to Space #44. Ms. Lashbrook did complain about that restriction in the second paragraph of the appeal letter timely filed on her behalf by her counsel. [R. at P7]. This restriction does not appear in the enforcement order itself [R. at P13-P1], but is stated in the third paragraph of the City Planner's letter to Ms. Lashbrook dated 8/30/12 - that "as long as there is an outstanding Enforcement Order on your property, no zoning or building permits will be issued for the property." [R. at P53]. Given the testimony about the extensive and admirable efforts of the City to be flexible in the attempt to work out sensible solutions with Ms. Lashbrook to abate the violations affecting Space #44, it is not necessary to deny a third party the opportunity to apply for a building permit to move a mobile home onto another space in the Park in

order for the City to abate the violations at Space #44.[4] While I understand the City's argument, I don't find anything on point in the Code that specifically bars a third party from submitting an application for a building permit, or bars the City from granting a building permit to a third party to move a trailer onto a different space in the Park even though there is a violation on Space #44. To the extent that discretion is involved, the Board should order that the restriction stated in the third paragraph City Planner's letter dated 8/30/12 is lifted.[5]

I would also add the words "and KMC 14.20.240" to the second and third lines of paragraph c. of the Board's Orders, so that it reads ". . . is used consistent with its prior use and KMC 14.20.240, . . ."

NOTE: This decision constitutes a final order under Alaska Appellate Rule 602. An appeal of this decision to the Alaska Superior Court must be filed within thirty days (30) days of the date of this decision.

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[4] On these efforts: Testimony of Rick Koch, City Manager; testimony of Larry Floyd, Building Official; testimony of Marilyn Kebschull, City Planner; testimony of Ms. Lashbrook, appellant; and correspondence in the record.

[5] Again, it has never been the intent of KMC 14.20.240 "to . . . impose such costs on mobile home parks as to make it economically unfeasible to exist." City Attorney Memorandum [R. at P96].

BEFORE THE BOARD OF ADJUSTMENT FOR THE CITY OF KENAI

IN THE MATTER OF THE APPEAL OF SANDRA LASHBROOK OF ENFORCEMENT ORDER AND CONDEMNATION NOTICE DATED AUGUST 21, 2012	)))))

Case No. BA-12-01

AFFIDAVIT OF SERVICE

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

I, Jacqueline Van Hatten, having been first duly sworn on oath, state:

1. that I am the Legal Administrative Assistant for the City of Kenai;

2. that on this date a copy of the Lashbrook Decision was mailed to the following:

   - Danny W. Burton
     Civil Attorney
     P.O. Box 870770
     Wasilla, Alaska 99687;
   - Sandra Lashbrook
     3750 E. Steven Drive
     Wasilla, Alaska 99654; and,

3. that a copy was given to the City Clerk and the City Planner; and

4. that courtesy copies were provided to all members of the Board of Adjustment.

DATED this 21st day of November, 2012.

JACQUELINE VAN HATTEN
Legal Administrative Assistant
City of Kenai

SUBSCRIBED AND SWORN to before me this 21st day of November, 2012.

KAYLA M. FELTMAN
NOTARY PUBLIC
STATE OF ALASKA

Notary Public for Alaska
My Commission Expires: 7/16/2013

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