

# Minutes

Housing Committee  
Monday, June 18, 2007

6:30 p.m.

Police Training Room, 4<sup>th</sup> Floor  
Municipal Building, Jamestown, New York

MEMBERS PRESENT: Chairperson Stephen Szwejbka, Anthony Dolce, Lillian Ney

MEMBERS ABSENT: Michael Taylor

OTHERS PRESENT: Director of Financial Services/City Clerk James N. Olson,  
Corporation Counsel Marilyn Fiore-Nieves

Chairman Szwejbka called the meeting to order.

The minutes from the May, 2007 meeting were approved.

## NEW BUSINESS

### HOUSING VIOLATION ENFORCEMENT

Ms. Fiore-Nieves: I did some research to make sure that there wasn't any basis for that \$1,000. I couldn't find anything. The only references were in the New York State Constitution that fines – excessive bail shall not be required nor excessive fines imposed. There is a provision under the Penal Law – Section 80.05 – which outlines a series of fines: \$250.00 for a violation; \$500.00 for a Class B misdemeanor; \$1,000 for a Class A misdemeanor; and higher penalty for felonies. This section of the law is a violation, but I don't think it limited the \$250.00 because those are penal law violations and those, in addition to the fines, they carry mandatory surcharge that are imposed by the State which aren't imposed here, so that's why I don't think there's any limit on the maximum on the fine anyways. Because obviously if it was a \$1,000 and this would have been a Class A misdemeanor which it's not, so I think maybe when this was drafted however many decades ago, I think they probably just said "\$1,000 seems to be reasonable with respect to Housing Code violations." If you don't put a maximum in there, then it would just be up to the discretion of the Judge.

Dr. Ney: What has it been historically?

Ms. Fiore-Nieves: Well, historically, there hasn't been a fine imposed more than \$1,000 because there's language in the Code right now...

Dr. Ney: What was the average though? What has been the history? Has there been any fines?

Ms. Fiore-Nieves: Oh yes. There are fines imposed on a daily basis...

Dr. Ney: Do you know approximately what the average would be?  
Sometimes \$50, \$100.00?

Ms. Fiore-Nieves: Well, it depends. Depends on the nature of the violation. I mean sometimes the Judge has imposed \$100.00 a day for as long as the violation endures. That language is in the Code as well. In this particular provision of the Code there's

language in it that says that the fine can be imposed for each day that the property remains in violation. So say for example, if the Judge decides he is going to impose a \$250.00 fine – that fine can be imposed – he could say that fine could be imposed daily. We've had cases in the past where that's happened. We've had a case where the individual just refused to paint the house. For every day there was a \$100 fine or whatever the Judge said in that particular case which was accumulating on a daily basis as long as the violation existed. But there's language in the Code that provides for a term of imprisonment not to exceed 30 days. I don't recall at any time that the Judge actually put anybody in jail for Housing Code violations, obviously because there's more serious violations that occur on the criminal side and so I think he reserves the jail sentences for those individuals so all he's tried to do is get people to comply by imposing higher fines or impose daily fines.

Dr. Ney: So when you say when it said here that it was \$250.00 for a second offense within a 365 day period, that doesn't mean daily, that just means total.

Ms. Fiore-Nieves: No, that's a minimum fine that can be imposed. There's another provision in this chapter that provides for that daily fineage that the Judge would still be able to do that. All this does is this provides a minimum of fine that the Judge can't go below. Like on the first offense, the Judge can't say "well, I'm going to give you a \$50 fine." He's got to give that person at least \$125.00 fine and then if that person comes in again within a year's period of time from the date of the first offense, it's got to be at least \$250...

Mr. Szwejbka: ...irregardless of anything else the Judge may put on him...

Ms. Fiore-Nieves: Right. Regardless of whatever else the Judge might place on him.

Mr. Dolce: Now, if we vote on these, he has to approve them – correct or not?

Ms. Fiore-Nieves: No. This is a very similar nature to the Unnecessary Noise Ordinance provisions. In that the minimum fine on a first offense is \$75.00 and then I believe it's \$150, then \$250.00, so you have the same type of structure under the Unnecessary Noise provision of the Code.

Dr. Ney: Can you see this if it goes forward – could we see this in totality?

Ms. Fiore-Nieves: Sure.

Dr. Ney: Okay. See how it fits into the rest of the...

Ms. Fiore-Nieves: The only provisions basically are the sub-section (a) and then that's divided into four things, the first being, I think, the imprisonment of not more than 30 days; the second which is the fine of not more than \$1,000 (which this would delete that so 2 would be deleted and then (3) is conditional or unconditional discharge and then I think (4) is the provision that gives the Judge the authority to impose the fines on a daily basis for as long as the violation would exist on the property.

Mr. Dolce: Now at the end of the 365 period...

Ms. Fiore-Nieves: ...kind of starts a new one...like if he has a violation say on January 1, 2006 and that's the only time you see that property owner, then the next violation we see him on February 1, 2007, then that again would be a first offense...

Mr. Dolce: What if he hasn't fixed all those things before the year is up? Say he got his third offense for the same thing, but yet it's not completed after the 365 days?

Ms. Fiore-Nieves: Usually my experience has been with the Housing Inspectors is once they've been brought into Court, they're pretty good about checking up on the person, making sure that they're coming back and the Judge will reschedule that individual to come back into Court for an update. And then what will happen is if in fact the violation is cured between, say you're in Court on July 1<sup>st</sup>, then the Judge says I'm going to adjourn this matter until August 1<sup>st</sup> to see if you can get the work done, so August 1st comes around, Housing Inspector comes in and says "hey, I went to the house – I'm pulling that item off the Court's calendar so he doesn't have to come back into Court because in addition to the fine remember, there's the \$50 administrative fee that's imposed every time that individual comes into Court. So what the Housing Inspectors will do is if the violation is in fact cured, then they'll come into Court on August 1st and say "went to the house, the violation's been repaired, I'm pulling that matter from the Court's calendar so there's not another \$50 administrative fee imposed and there won't be any additional fineage. But the \$125 would have still been imposed.

Mr. Szwejbka: What's your thoughts? Is this a good move?

Ms. Fiore-Nieves: Yes. I did meet with Judge Panebianco because he is the Judge that's going to be handling Housing Court and he didn't seem to have any concerns. I kind of explained to him the general gist of it and he seemed to be comfortable with that. It's not the first time the Court's seen that because you have a similar fine structure with the Unnecessary Noise charges so it's similar in nature to that – it's a little bit higher but I think there aren't applications of these because of the neighborhoods involved. I think it's understood...

Mr. Szwejbka: Looking down the road, I was wondering, it seems like Judge Panebianco is going to be pretty open to change. If you could maybe make some recommendations to us like the possibility of areas where we could look at in the City Code – other areas where we may like to improve upon...

Ms. Fiore-Nieves: Sure. I understand. And these are minimums. I mean in the case that you just mentioned, he might say "now wait a minute – you were here last year and this is very similar in nature." He might say – "you know, technically this is your first offense this year, but I'm going to fine you \$200 because I'm upset that I'm seeing you again."

Mr. Dolce: Now, this is for the same offense? Correct?

Ms. Fiore-Nieves: Oh no. Any violation.

Mr. Dolce: Just any violation...

Ms. Fiore-Nieves: Same property.

Mr. Dolce: Same property. So if there's one side for painting and the next time it's yard waste...

Ms. Fiore-Nieves: That's a second offense involving the same property so...it doesn't have to be painting, painting, painting, it could be a different offense.

Dr. Ney: I think as we work through this system, he may well find some areas of improvement for us because we don't...when an issue comes up we don't really realize it's not really fine-tuned or something...

Mr. Szwejbka: Right. He's not going to come and tell us this is what you should look at because I think he'll throw us some pretty strong hints...

Ms. Fiore-Nieves: And you guys know, I've talked to the housing inspectors before, people are not brought into Court on the first go-around. I mean the housing inspectors have worked with these people...

Dr. Ney: I think they're very sensitive and reasonable to issues that are out there. They are extremely reasonable.

Ms. Fiore-Nieves: They have told property owners and they say "you tell me – how long is it going to take for you to get this thing fixed?"

Dr. Ney: They are very tuned into someone who's elderly who's not able to do it – they'll tell you so and so had some health problems, and they'll do it when they recuperate.

Ms. Fiore-Nieves: ...and the Judge knows that too. The Judge knows that this is somebody...I mean I've got the housing inspectors who've dealt with, for weeks, possibly months before they come into Court...I know that the housing inspectors are kind of at the end of their ropes or exhausted all their remedies before they've actually written the ticket and brought the person into Court.

Dr. Ney: I mean the people are fortunate here that they have individuals working who are willing to work with the people. In other cities, I bet any money that...

Mr. Dolce: We had a situation with a woman who was not elderly, but she lived alone. She was older than middle-age, and she had a situation – a very nice home – where a porch railing that was missing and had been missing for years and the housing inspector had been on the street, they saw it, they wrote her up, and we're talking about a \$1500-2000 expense to have a railing put around her entire upper porch. She couldn't get a contractor in the allotted time. So, they were – "don't worry about it – you let us know when the contractor is coming. We'll give you "x" number of weeks past that...she was a nervous wreck because she's never been in trouble with the law, she's never had any problems...

Ms. Fiore-Nieves: And I think that's a good point. The biggest thing is if these people communicate with the housing inspectors, they'll give you the time.

Dr. Ney: The other thing they give you is the ideas on how to get things done.

Ms. Fiore-Nieves: They have names, they have referrals.

Mr. Szwejbka: Now Jim, will this be put in resolution form for our July voting?

Mr. Olson: Yes. I'll do the draft tomorrow and I'll send it to everybody so you can look at it and see what you think.

Mr. Szwejbka: Okay. In the meantime, maybe we can think about looking at some other areas because I like Judge Panebianco's approach. I think he's going to be a good thing for housing.

Ms. Fiore-Nieves: I mean I've been in Housing Court when he's been in Court and he does a good job. I think he's very fair with the individuals who come to Court and he's also hard on them.

Dr. Ney: Well, he's consistent, I think.

Ms. Fiore-Nieves: He understands where the housing inspectors are coming from. He understands the concerns the City has.

Mr. Dolce: I know they (Pride Group) meet on Wednesdays – I don't know how that would work, but if it doesn't work for July – because I know it's coming up – I can't remember exactly which Wednesday their on in July, I want to say it's probably the 11<sup>th</sup>, if that doesn't work if they have plans... they want to meet with us so maybe the first one in August...

There being no further business, the meeting was adjourned.

James N. Olson  
Director of Financial Services/City Clerk