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May 2, 2007

Austin City Council
c/o Shirley Gentry
City Clerk
City of Austin
City Hall, 301 W. 2nd Street, Suite 1120
Austin, TX 78701

To the City Council:

I am appealing the improper approval and issuance of a building permit BP-06-1284R (Permit #07004698) relating to the proposed development at 2104 Stamford Lane. The building permit was originally appealed to the Building and Fire Code Board of Appeals ("the Board"), and the Board voted 3 to 1 in favor of my appeal and to revoke the building permit. However, the City Attorney said that all four Board members would have to support the appeal in order to revoke the building permit. Thus, this appeal. At this time, the City Attorney has stated that the time limit for filing a Notice of Appeal has not begun to run because ~~the~~ Board has not yet rendered its decisions and findings in writing. However, out of an abundance of caution, I am filing this preliminary notice of appeal fourteen days after the Board's hearing, and I hereby reserve the right to supplement this notice of appeal once the Board issues its written decision and findings.

The following information is provided in compliance with Section 2-1-132 of the Austin City Ordinance for a Notice of Appeal from the Board.

(1) The name of the person filing the appeal:

Michael Rocco Cannatti
2100 Stamford Lane
Austin, Texas 78703

(2) The background of the case and a summary of the decision from which the appeal is taken:

Background: One day before the interim "McMansion" rules were enacted on Feb. 10, 2006, building permit application no. BP-06-1284R was filed with the City to build a single-family home at 2104 Stamford Lane. The application sought a permit to construct a **3-story, 35 foot tall, 5965 sq. ft. spec home which will extend from setback to setback, setback to setback.** A truly breathtaking structure. Shortly after it was filed, the application was reviewed and rejected for

failing to meet various building code requirements. On Aug. 9, 2006, the application was "deemed to have been abandoned" pursuant to City Code. 2000 Int'l Res. Building Code, R105.3.2 (adopted by City of Austin). Two weeks later, an untimely and improper request for an extension was granted. On Feb. 5, 2007 (the new update deadline), building permit application no. BP-06-1284R was approved administratively by the building official, and on Feb. 12, 2007, building permit no. 07004698 was issued. A timely appeal of the building permit was filed with the Building and Fire Code Board of Appeals, and at a hearing on April 18, 2007, the Board voted 3 to 1 in favor of the appeal and to reverse the issuance of the building permit.

Summary of Decision From Which Appeal Is Taken: At the Board hearing, three of the four Board members voted in favor of my appeal and to revoke the building permit. However, the City Attorney said that all four Board members would have to support the appeal in order to revoke the building permit. Accordingly, I am appealing the decision of the Board to, in effect, affirm the issuance of building permit no. 07004698. The effect of Board's decision is to ignore the requirements of the City Code for obtaining extensions, as well as the impervious cover limitations for single family homes and the disclosure requirements for building permit applications relating to description of dimensions and protected trees plot plans. Thus, the Board's decision violated the requirement of Section 2-1-131(A)(3) of the City Ordinance: "The board shall not be empowered to waive the requirements of the Code."

(3) Statement of Facts:

The building permit BP-06-1284R (Permit #07004698) should be withdrawn and denied because it does not comply with numerous City Code requirements for applications and issued building permits. In particular, the building permit should be denied for any of the following reasons:

The Application Expired: The application expired 181 days after the filing date (on Aug. 9, 2006) because the application did not comply with the City Code requirements. LDC § 25-1-63 and 2000 Int'l Res. Building Code, R105.3.2 (adopted by City of Austin). However, two weeks after the expiration, a third party (Pride of Austin Homes) submitted an untimely request (on Aug 23, 2006) for an extension in violation of LDC § 25-1-88(A) which states that "An applicant may request an extension **by filing a written request and justification with the responsible director before the expiration of the deadline.**" Despite not meeting the Ordinance requirements for filing written extension requests prior to the expiration, the City granted the extension. This extension was improper and

violated the City Ordinance requirements, and therefore the application by law is expired. The City staff admits that the extension did not comply with the requirements of the City Ordinance, but asserts that the extension was granted pursuant to "City policy."

Failure To Comply With Building Code Requirements: On the February 5, 2007 update deadline (after the improper 180-day extension), the building permit that was approved did not comply with at least the following pre-McMansion building code requirements for applications:

- as admitted by the builder and not disputed by the City Staff, the total impervious coverage for the permitted project exceeds the 45% impervious cover limit when the privacy wall fence shown on the permit application is taken into account;
- as admitted by City Staff and the builder, the permit application **does not show the protected 19-inch diameter trees on the plot plan**, as required for building permit applications;
- the application **does not have the required plot plan dimensions** for the proposed structure, as required for building permit applications; and
- it does not appear from the file that a valid Tree Ordinance Review was obtained prior to approval of the building permit application, as required for building permit applications, and the proposed structure will destroy two protected trees on the lot.

There are additional defects with the issued building permit that are outlined in the Notice of Appeal to the Building and Fire Code Board of Appeals (which is incorporated herein by reference). Though the builder will argue that various after-the-fact adjustments to the plan will bring the project into compliance, the issue presented is whether the approved permit meets the building code requirements. Since it does not, the permit must be denied, and a new application must be filed.

While the Board's written decision and findings have not yet been rendered, the foregoing facts show, beyond a reasonable doubt, that the decision to issue and affirm the building permit was incorrect because of its inconsistency or conflict with City Ordinance, including LDC § 25-1-88 (requiring written extension requests before an expiration deadline), the City Ordinance requirements imposing a 45% impervious cover limit, the City Ordinance disclosure requirements for building permit applications relating to description of dimensions and protected trees plot plans, and the City Ordinance limitations on transferring applications with land ownership.

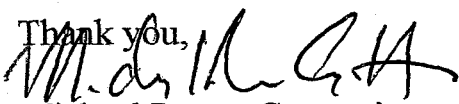
(4) Relief Requested from City Council:

Due to the expiration(s) of the application and other failures to meet the building code requirements for applications, I am here as a property owner to request that you enforce the City code requirements to reverse the decision to issue building permit BP-06-1284 (Permit #07004698) and rule that the application is now "denied" and expired. On this, the Land Development Code is explicit -- "An application that does not comply with the requirement of the City Code on the update deadline is denied. An application that is denied may not be updated. A new application is required." LDC § 25-1-63.

Since the Applicant did not comply with the City Ordinance requirements pertaining to impervious cover and application disclosures, I'm asking you to require compliance. Since the City has admitted that it used "City policy" in extending applications instead of complying with the actual City Ordinance requirements, I'm asking you to require compliance. The only way to achieve the purposes of the City's requirements for building permits here is to enforce the City Ordinance requirements. In this case, this means that the building permit should be denied, and a new application is required.

Applicant's unexcused delay and failure to submit an application meeting the requirements of the City Code should not be rewarded with the approval and issuance of a building permit. Those seeking to game the system should be strictly accountable to the City Ordinance requirements, and any failure to meet those requirements should not be rewarded with a windfall. By denying the permit, you will help ensure that anything that is built now will comply with the current building rules and be more in keeping with the neighborhood.

Thank you,


Michael Rocco Cannatti

2100 Stamford Lane

Austin, Texas 78703

338-9100 (work) and 472-3199 (home)

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cc: Building and Fire Code Board of Appeals

2104 Stamford – Timeline of *Twice Expired and Invalid* Application for Building Permit

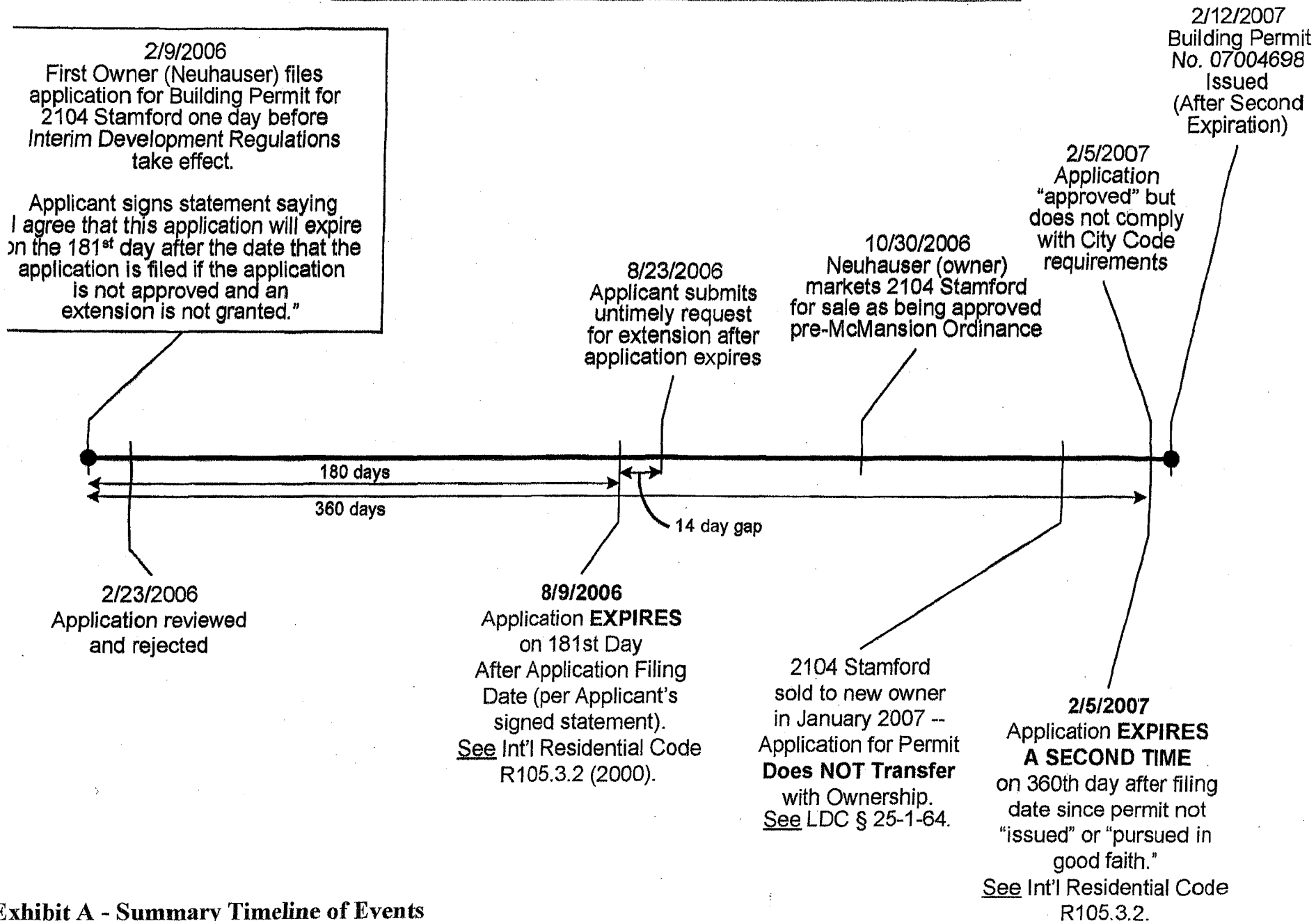


Exhibit A - Summary Timeline of Events