CASA DE LUZ SUSPENSION AND FIRE WATCH CITY COUNCIL APPEALS

1701 TOOMEY ROAD BACKGROUND INFORMATION

Stuart Harry Hersh Pro Bono Consultant for Owner Since 8/29/13

The owner of the property located at 1701 Toomey Road, known locally as Casa de Luz, is appealing the City staff's and Building and Fire Code Board of Appeals' decisions to (1) suspend validly issued certificates of Occupancy from 1992 and 1997 and (2) to require a Fire Watch when the Building and Standards Commission did not issue an order to vacate the restaurant at the rear of the property or an order for Fire Watch.

Granting of the appeals of the suspension of the certifications of occupancy and the fire watch will allow the completion of the installation of the sprinkler system connections and the restaurant continue to operate.

If the decisions of the City staff and Board are upheld, City staff has notified the owner that the certificates of occupancy will possibly be revoked and utilities disconnected without a public hearing or order from the Building and Standards Commission.

EXECUTIVE SUMMARY

The owner of the restaurant and property known as Casa de Luz has agreed since 2013 to install a sprinkler system in the restaurant to make the building safer. From 2013 until January 14, 2019, City staff refused to accept a building permit application for restaurant sprinklers, claiming that the rear building lacked certificates of occupancy. All City staff finally acknowledged the existence of current certificates of occupancy and allowed a building permit application to be filed.

The current certificates of occupancy, issued in 1992 and 1997, were suspended in May 2019. No building permit for restaurant sprinklers has been issued to date as plumbing review for a required additional sink, drain lines and other plan corrections have not been approved.

To demonstrate good faith in installing sprinklers, the owner closed Casa de Luz for 10 days during Austin City Limits in October 2018 and installed sprinkler pipe in the restaurant while minimizing disruption of the private school building at the

front of the property. In 2019, the owner secured the required structural engineer report; the required asbestos survey demonstrating no asbestos disturbance would occur; the survey of existing improvements on the property; the installation of the tap into the City water supply following tap permit and inspections; and the required plumbing permits and inspections for the pipe connecting the City water supply to the sprinkler pipe in the building.

Here is the most significant information for the City Council to consider along with the backup posted publically prior to the Building and Fire Code Board of Appeals hearing on May 29, 2019 and August 28, 2019:

1. Documentation to Board of Adjustment liaison that 9 boxes of records concerning 1701 Toomey Road had been examined between 8/29/13 and 9/16/15.
2. DENIAL OF BUILDING PERMIT APPLICATION - Owner's agent requests building permit for installation of a sprinkler system for the assembly building located at the rear of the property on 9/2/13. City staff consistently refuses for more than 5 years to accept building permit application until 1/4/19 with City staff claiming that assembly building lacks certificate of occupancy. All City staff agree on 1/4/19 to accept building permit application for sprinkler system.
3. OPEN RECORDS REQUEST - 3/28/18 Assistant Attorney General Jesse Harvey orders the City Attorney to release all requested information to owner's agent. Confidential communication between the City Attorney and her/his clients had not been requested by the owner's agent and was not provided.
4. First certificate of occupancy for rear assembly building issued on 2/5/92. All required City final inspections are listed as "passed ", with Fire Department confirmation date listed as 3/19/02. Copy secured by owner's previous agent on 11/26/08.
5. Occupant load card for restaurant with 85 non-fixed seats issued 2/3/97.
6. Second certificate of occupancy for rear assembly building issued on 6/6/97 following repairs performed after a fire. All required City final inspections are listed as "passed". Copy secured by owner's previous gent on 11/28/08.

7. Owner's engineer prepares sprinkler plans and pays Fire Department plan review fee. A total of 9 comments are provided by the Fire Department on 10/16/13.
8. Owner's engineer revises sprinkler plans and pays Fire Department plan review fee. A total of 9 new comments are provided by the Fire Department on 2/24/14.
9. City staff continues to refuse building permit application even if all review comments are addressed. This refusal continues until 1/4/19.
10. On 1/4/14, city staff provides answers to questions posed during cross examination at Building and Standards Commission in December 2013. These answers demonstrate that the Fire Department has not cited Casa for violations of the Uniform Code for the Abatement of Dangerous Buildings (UCADC) first adopted by the City Council in 1988; the Uniform Code for Building Conservation (UCBC) that governs changes of occupancy in buildings first adopted by the City Council in 1998; or the Unsafe Structures and Equipment (Section 108) of the International Property Maintenance Code (IPMC) first effective in 2010.
11. On 6/3/15, City staff adopts revision to the Building Criteria Manual that include dates that building codes were adopted in Austin. The revision acknowledges that the following rule governing dangerous buildings had been in place since the initial Building Criteria Manual was adopted during adoption of the initial Land Development Code (Chapter 13 of the Austin City Code): "6.6.0 ENFORCEMENT POLICY This rule revision is promulgated to enforce the requirement of the Land Development Code. It is the policy of the Neighborhood, Housing and Conservation Division to hold further action against a violator of the Codes of the City of Austin during the time required for review and approval when applications are submitted by the owner for the following: A. Subdivision or resubdivision application; B. Conditional Use Permit application; C. Re-zoning application; D. Submittal of plans for compliance are awaiting approval...".
12. On 9/16/15, owner's agent acknowledges to Board of Adjustment liaison that 9 boxes of records concerning 1701 Toomey Road have been reviewed to date.
13. On 9/7/18, City staff notifies Casa of staff's intent to suspend existing certificates of occupancy unless a corrected site plan is filed by 3/9/18.

14. Assistant City Attorney Michael Siegel notifies owner's agent that he (Mr. Siegel) is now single point of contact. Mr. Siegel denies the owner's agent has registered with the City of Austin, and denies owner's agent the opportunity to appeal the Notice of Intent to Suspend. Mr. Siegel informs Mr. Hersh of new process for obtaining more recent City records concerning 1701 Toomey Road. Owner's agent requests meeting with Mr. Siegel, Building Official Jose Roig, and Fire Marshall that is held on 2/28/18.
15. On 3/2/18, City staff agrees to issue a site plan exemption for the sprinkler system for the rear assembly building so that Casa's engineer can apply for a building permit for the sprinklers.
16. Mr. Siegel takes leave of absence to run for elective office, and City does not establish new single point of contact.
17. The site plan exemption is not issued until 12/28/18.
18. City staff notifies owner on 3/6/18 that front building lacks certificate of for private school. City staff acknowledges its error when owner's agent produces certificate of occupancy for private school.
19. BUILDING AND STANDARDS COMMISSION - On 11/29/18, City staff notifies owner that Building and Standards Commission may consider an order to vacate or close the restaurant at its 12/12/18 meeting. City staff does not recommend vacating or closing the restaurant at the 12/12/18 meeting, and the Commission does not issue an order to vacate or close. The Commission informed the owner's agent that a special call meeting of the Commission concerning compliance may be scheduled in the future after the owner's agent submits testimony under oath under penalty of perjury. No meeting has been scheduled to date.
20. On 3/25/19, Commercial Zoning approves sprinkler plans.
21. On 4/1/19, Commercial Building approves sprinkler plans.
22. On 4/2/19 Fire Department approves sprinkler plans. On 5/2/19 City staff suspends certificates of occupancy. On 5/2/19, City staff suspends certificates of occupancy from 1992 and 1997.
23. On 5/3/19, City staff posts a Do Not Enter sign on front door of restaurant without an Order to Vacate from the Building and Standards Commission. Owner's agent appeals on 5/3/19 and the sign is removed on 5/3/19.
24. On 5/7/19, owner's agent appeals 5/2/19 suspension of certificates of occupancy.

25. On 5/29/19, the Building and Fire Code Board conducts a public hearing on the owner's agent's appeal of the suspensions of the certificates of occupancy. No mention of Fire Watch occurs prior to or during the public hearing. No Board member moves to deny the appeal or uphold the appeal of the suspension.
26. On 6/3/19, City staff requires Fire Watch.
27. On 6/4/19, owner's agent files appeal of Fire Watch requirement.
28. On 6/10/19, owner's agent files appeal to the City Council on Board's decision to take no action on the appeal on suspension of the certificates of occupancy from 1992 and 1997.
29. On 8/29/19, the Building and Fire Code Board upholds the Fire Watch on a 6-0 quorum vote following City Attorney review of a 21 day deadline issue and a Board member's attempt to move to deny the appeal before the public hearing was conducted.
30. On 9/9/19, owner's agent files appeal to the City Council of Board decision to uphold Fire Watch at 1701 Toomey Road.

Date: Thursday, August 29, 2013 2:46 PM

From: shersh@austin.rr.com

To: Greg.Guernsey@austintexas.gov, Carl.Smart@austintexas.gov, brian.tanzola@austintexas.gov

Subject: Fwd: Authorized agent for Casa de Luz

As you requested yesterday, I am providing an authorized agent letter from the property owner.
Since I was not provided copies of the most recent Building and Standards Commission meeting minutes
and order in response to my previous Open records Request, I have filed a new Open Records request
earlier today for these actions on 6/26/13.
I am in the process of preparing the form and fee payment document that Ralph Castillo sent and earlier today
and the building permit application as well.

--- Forwarded Message ---

Date: Thursday, August 29, 2013 7:34 AM

From: EDUARDO LONGORIA <wayo2@me.com>

To: Stuart Hersh <shersh@austin.rr.com>

Subject: Authorized agent

Untitled.pdf

T 512 535 0105

FROM THE DESK OF
EDUARDO LONGORIA

August 29, 2013

City of Austin

Stuart Hersh is designated as the representative of Shambala Corporation, owner of the property located at 1701 Toomey Road.

Respectfully,

E Longoria

Eduardo Longoria

Manager of Shambala Corporation

1701 TOOMEY ROAD AUSTIN, TEXAS 78704
WWW.CASADELUZ.COM

BUILDING CODE

OF THE

CITY OF AUSTIN,

TEXAS

ORDAINED BY THE CITY COUNCIL

APRIL 30, 1931

Including Amendments

STUART HERSH
MANAGER OF
INSPECTIONS

with the work specified in such notice. A statement of the cost of such work shall be transmitted to the City Council, who shall cause the same to be paid and levied as a lien against the property. Proper service of either such notices shall be by personal service upon the owner of record, if he shall be within the City of Austin. If he is not in the City of Austin, such service may be had upon any person accustomed to collect rents on the property in question who may be in the City of Austin, and in the absence of such a person, upon the tenant of the premises. In the event such premises are vacant, and the owner is not in the City of Austin, such service will be completed when the notice is sent by registered mail to the last known address of the said owner. Whenever the owner, agent or tenant, is a corporation, service may be upon the President, Vice President, Secretary or Treasurer, or in the absence of any of these, the local representative of such corporation.

ALTERNATE MATERIALS AND TYPES OF CONSTRUCTION

Sec. 302. The provisions of this Code are not intended to prevent the use of types of construction or materials offered as an alternate for the types of construction or materials required by this Code, but such alternate types of construction or materilas shall be given consideration and shall be offered for approval, as specified in this Chapter.

Any person desiring to use types of construction or materials not specifically mentioned in this Code, shall file with the Building Inspector authentic proof in support of claims that may be made regarding the sufficiency of such types of construction and materials and request approval and permission for their use.

The Building Inspector may approve such alternate types of construction or materials, and may recommend an amendment to this Code in order to make permissible the use of same. If the evidence and proof are not sufficient, in the opinion of the Building Inspector, to justify approval or recommendation for an amendment, the applicant may refer the entire matter to the Board of Examiners and Appeals as specified in Section 303.

APPEALS

Sec. 303. Any person whose application for a building permit for use of a new material or method of construction has been refused by the Building Inspector, or who may consider that the provisions of this Code do not cover the point raised, or that any particular provision would cause a manifest injury to be done, may appeal to the Board of Examiners and Appeals by serving written notice on the Building Inspector, in which it shall be stated that the applicant desiring to use the alternate materials or types of construction shall guarantee payment of all expenses for necessary tests made or ordered by the Board of Examiners and Appeals. Such notice shall be at once transmitted to the Board, which Board shall arrange for a hearing on the particular point raised.

Such written notice shall be accompanied with the sum of ten dollars ($10.00), payable to the City Manager of the City of Austin, Texas. If the appeal be denied, such fee shall be retained by the City of Austin, Texas, otherwise the fee shall be returned to the appellant.

BOARD OF EXAMINERS AND APPEALS

Sec. 304. In order to determine the suitability of alternate materials and construction, and to permit interpretations of the provisions of this Code there shall be and is hereby created and constituted a Board of Examiners and Appeals, consisting of five (5) members who shall be appointed by the C

Council. One member shall be a practicing architect, one a general building contractor, the City Attorney, one a structural engineer, and one a building materials man, all of whom except the City Attorney shall have had at least ten (10) years' experience in their respective professions. Three members of the above board shall serve for the term ending January 1, 1933, the remaining two members shall serve for the term ending January 1, 1934, and thereafter the terms of such members shall be for a period of two years from the termination of their respective terms. Members of the board may be removed by the City Council by written notice and after public hearing. Vacancies may be filled for the unexpired term of any member whose term becomes vacant from any cause. The Board shall adopt reasonable rules and regulations for conducting its investigations, and shall render all decisions and findings in writing to the Building Inspector with a duplicate copy to the appellant, and may recommend to the City Council such new legislation as is consistent therewith.

The Board of Examiners and Appeals may interpret the provisions of this Code in a special case, if it appears that the provisions of this Code do not cover the point raised, or that manifest injustice might be done, provided that every such decision shall be by unanimous vote of the Board of Examiners and Appeals. Decisions as to the use of alternate materials and/or types of construction shall be by majority vote, and if not covered by this Code shall become effective only when authorized by an amendment to this Code.

VIOLATIONS AND PENALTIES

Sec. 305. It shall be unlawful for any person to erect, construct, enlarge, alter, repair, move, remove, demolish, convert, equip, use or occupy, or maintain any building and/or structure or any portion of any building and/or structure in the City of Austin, contrary to or in violation of any pertinent provision of this Code, or to cause, permit or suffer the same to be done.

Any person violating any of the provisions of this Code shall be deemed guilty of a misdemeanor, and each such person shall be deemed guilty of a separate offense for each and every day or portion thereof during which any violation of any of the provisions of this Code is committed, continued or permitted, and upon the conviction of any such violation such person shall be punishable by a fine of not more than Two Hundred ($200.00) Dollars.

The issuance of a permit upon plans and specifications shall not prevent the Building Inspector from thereafter requiring the correction of errors in said plans and specifications, or from preventing building operations being carried on thereunder when in violation of this Code, or of any other ordinances of the City of Austin.

Every permit issued by the Building Inspector under the provisions of this Code shall expire by limitation and become null and void, if the building or work authorized by such permit is not commenced within ninety days from the date of such permit, or if the building or work authorized by such permit is suspended or abandoned at any time after the work is commenced for a period of ninety days. Before such work can be recommenced a new permit shall be first obtained so to do, and the fee therefor shall be one-half the amount required for a new permit.

Evaluation

of the

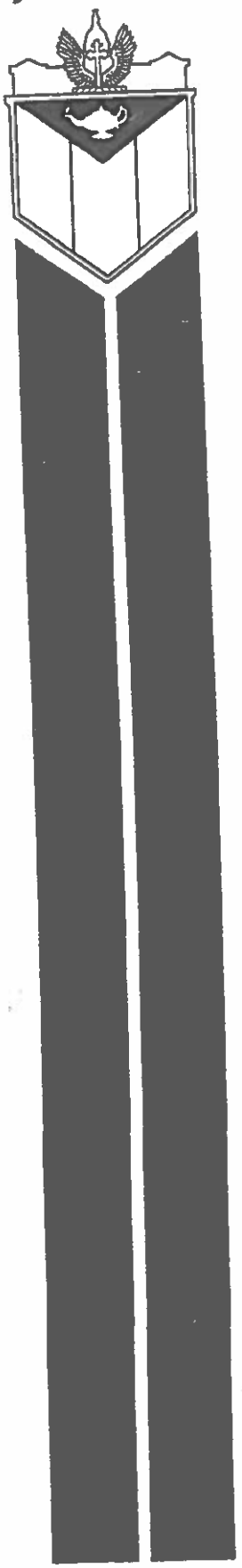
Building Inspection Department 1986

Conducted Under Ordinance No. 84-1004-P
"Program Analysis And Evaluation"

Department of Internal Auditing

City of Austin, Texas

City of Austin



AUSTIN CITY COUNCIL

MAYOR

Frank C. Cooksey

COUNCIL MEMBERS

Mark Rose
Smoot Carl-Mitchell
Sally Shipman
George Humphrey
John Trevino, Jr.
Dr. Charles Urdy

CITY MANAGER

Jorge Carrasco

City of Austin, Texas

Performance Audit of the

BUILDING INSPECTION DEPARTMENT

July 1986

Prepared by the
Internal Auditing Department

Report issued December 1986

Action Summary

Executive Summary

CHAPTER VI
EFFICIENCY AND EFFECTIVENESS OF TWO BOARDS AND ONE COMMISSION CAN BE IMPROVED

CAPSULE SUMMARY

Efficiency and effectiveness of the Building Code Board of Appeals, the Board of Adjustment, and the Building Standards Commission can be improved in a number of ways. To assist inspectors' enforcement efforts and potentially reduce board caseload, the Building Code Board of Appeals should record decisions that clearly establish precedents and communicate these precedents to all interested parties. Members of the Board of Appeals should have an opportunity to review relevant case information prior to the case hearing date.

The Board of Adjustment can improve effectiveness by more strictly adhering to findings of fact and insisting upon thorough and complete information packets for use in hearings. The board can also improve its effectiveness and efficiency by communicating hearing schedules to a larger sector of the interested public, and by providing additional input for expanding and clarifying the new Zoning Ordinance. Administrative services to the board should be upgraded.

The Building Standards Commission's activities are constrained by its decision not to require enforcement of the Housing Code on owner-occupied housing. This decision may limit the scope of the commission's activities and duties. As a result, minimum structural and environmental standards may not be maintained, allowing occupied housing to deteriorate.

BUILDING CODE BOARD OF APPEALS

A comprehensive body of building codes, supported by a coordinated enforcement program, is an essential element of any effort to maintain minimum standards of public health, safety, and welfare. The board serves to render decisions resolving any disagreement on the interpretation of code provisions between the governmental inspector appointed to enforce the code and the person subjected to such enforcement. In addition, the board "may vary the application of any provision of this Code to any particular case when, in its opinion, the enforcement thereof would do manifest injustice, and would be contrary to the spirit

and purpose of the code of public interest."[28] The board consists of five members, qualified by experience and training to resolve matters pertaining to building construction. The board meets monthly to hear all appeals filed at least two weeks prior to the meeting.

Board should identify and communicate precedents established by its decisions.

Precedents established by board decisions should be clearly communicated to all interested parties. The board may establish a precedent when conditions forming the basis of judgement may be common to many other cases. Since the remedy may affect the entire building community, the precedent should be identified and communicated.

Our examination of cases from January 1985 to March 1986 suggests that precedents established by board decisions are not clearly communicated to all interested parties. Our study reveals that a number of appeals are repetitions of prior cases. Such occurrences indicate that the designated building official may not be sufficiently informed or instructed to apply the precedents.

A lack of available information concerning precedents makes the building community potentially vulnerable to inequitable code enforcement. The risk is twofold. First, a lack of clearly stated precedents increases the likelihood that the board may fail to render a decision consistent with prior decisions. Second, without a consistent record, the building community is encumbered with the burden of identifying variations in code interpretations between building officials and the board. Since the building community can only achieve remedial action by initiating appeals on a case-by-case basis, it is possible that individuals may not be sufficiently informed to pursue such a remedy.

This lack of readily available information about precedents is attributable to the fact that board decisions have not been formally outlined or compiled. The board's conditions and reasons for specific decisions are not clearly stated in the records, nor are records analyzed for precedents.

Adequate and timely information is needed to make decisions.

Adequate and timely case information should be made available to the board members prior to the hearing. The technical nature of cases heard by the board requires prudent care in considering all the facts and weighing alternatives. Complete and timely information is essential to ensure the most efficient use of the board's time.

According to our survey of board members, two of the four respondents indicated that they were dissatisfied with the board's preparati

---

[28] Local amendments to the Uniform Building Code, 1982 edition Section 13-5-204(g)(1).

for meetings, two offered suggestions for additional information, and three of the respondents rated timeliness of the information received lower than information content (level of detail, completeness, or supporting documentation). To address these problems, on July 19, 1985, the board advanced its filing deadline from one week to two weeks prior to meetings so that agenda information could be made available to the members at an earlier time.

Inadequately prepared board members can contribute to unnecessarily lengthy meetings and cause decisions to be delayed. Two respondents made additional written comments to this effect. A number of cases brought before the board have been tabled until a later date. Although it cannot be ascertained whether the delays could have been avoided by better preparation, this potential nevertheless exists.

Expanding the board's authority to include the Fire Code.

As part of the adoption process of the updated Building Code, the Building Inspection Department, Fire Department, and the board are considering a proposal to expand the authority of the Building Code Board of Appeals. The board currently hears and decides appeals pertaining to the Building Code only. This proposal would extend the board's responsibility to the Fire Code, since a board for hearing appeals relating to the Fire Code does not exist at this time.

Because there is some overlap of the provisions of the two codes, the primary benefit to be derived from a consolidated board arises from the opportunity to provide coordinated rulings. However, this potential benefit must be weighed against the possible dilution of expertise derived from code specialization. Additional expertise could be obtained by increasing the size of the board; however, this alternative may sacrifice the manageability inherent in the board's current size.

RECOMMENDATIONS

31. THE BUILDING CODE BOARD OF APPEALS SHOULD, WITH BUILDING INSPECTION DEPARTMENT'S ASSISTANCE, IMPROVE THE AVAILABILITY OF THE INFORMATION ABOUT ITS PRECEDENTS[29].

    The board should (1) establish criteria for what constitutes a precedent, and (2) take steps to assure that records are maintained showing the results of similar cases.

---

[29]Auditors met with Building Code Board of Appeals December 10, 1986 to clarify this recommendation. The board stated that until the board formally advises the Building Official to accept an alternative method of compliance, or until a new code is adopted, no precedent is established by individual board decisions.

BUILDING INSPECTION DEPARTMENT RESPONSE

Full concurrence.

---

32. THE BUILDING CODE BOARD OF APPEALS SHOULD PERFORM A THOROUGH ASSESSMENT OF ITS INFORMATION NEEDS AND MAKE ARRANGEMENTS WITH THE DESIGNATED BUILDING OFFICIAL TO PROVIDE THE NECESSARY PREPARATORY MATERIAL IN A TIMELY MANNER.

BUILDING INSPECTION DEPARTMENT RESPONSE

Full concurrence.

---

33. THE BUILDING CODE BOARD OF APPEALS SHOULD ANALYZE THE COSTS AND BENEFITS OF ADOPTING THE PROPOSAL TO EXPAND ITS AUTHORITY TO INCLUDE THE FIRE CODE.

BUILDING INSPECTION DEPARTMENT RESPONSE

Full concurrence.

BOARD OF ADJUSTMENT

The Board of Adjustment is responsible for deciding on applications for variances or exceptions to the terms of the Zoning Ordinance. In accordance with the general purpose of the Ordinance, the board renders decisions on the following types of cases:

- interpretations of the meaning or intent of the Zoning Ordinance;
- special exceptions for a specific use to develop property; and
- variance from literal enforcement of the Zoning Ordinance in order to achieve reasonable property development.

The Board of Adjustment reviews cases and renders decisions based upon key criteria specified in its rules and regulations. These key criteria include:

- hardship of the applicant,
- weighing of public interest versus private interest,
- uniqueness of the case, and
- maintain character of surrounding area.

The board consists of five members appointed by the City Council. Applicants may request a rehearing before the board, from which appeals are made to District Court. The power to rezone lies with the Planning Commission and the City Council.

Print

Date: Wednesday, September 16, 2015 9:49 AM

From: shersh@austin.rr.com

To: Heldenfels, Leane <Leane.Heldenfels@austintexas.gov>

Subject: Re: 2003, 04 BOA case regarding parking at 1701 Toomey

Thank you for the copy. I have no additional submittals at this time. I have reviewed the 9 boxes of records that I requested from Code, Fire, and Planning since I became involved in 2013 under Open Records requests, and do not intend to submit them as further backup.
---- "Heldenfels wrote:
> Hi Stuart - I looked for this case in the log before the meeting yesterday as I was thinking some older Board members may request it, but couldn't find it in the log. Then Melissa gave me the year to ck under (that helps a lot when search for things not in Amanda) and found the attached decision sheet and info included in a deposition, maybe code case legal proceeding.
> Advise what, if any of it, you'd like to add to your file for 10/12 hearing.
> Take care,
> Leane
>
> -----Original Message-----
> From: OTC01OlmosPark@austintexas.gov [OTC01OlmosPark@austintexas.gov]
> Sent: Tuesday, September 15, 2015 4:31 PM
> To: Heldenfels, Leane
> Subject: Scanned from a COA OTC01OlmosPark
>
>
>
> Please open the attached document. It was scanned and sent to you using a Xerox Multifunction Device.
>
> Attachment File Type: pdf, Multi-Page
>
> Multifunction Device Location: OTC 1st Floor DAC #1
> Device Name: OTC01OlmosPark
>
>
> For more information on Xerox products and solutions, please visit http://www.xerox.com

A GUIDE TO STANDING AND SITTING IN AUSTIN, TEXAS

My name is Stuart Harry Hersh, and like most in Austin, I rent. I worked for the City of Austin for over three decades, for Building Inspection for over two decades, and served as Deputy Building Official for over a decade. I was certified by exam as both a Building Inspector and a Plans Examiner by the International Conference of Building Officials, and as a Building Official by the Council of American Building Officials. I taught Building Codes for the City of Austin; for Austin Community College at Reagan, Anderson, and Riverside campuses; and for the Home Builders Association of Austin. My belief continues to be that many more people would comply with Austin regulations if we would simply translate these codes from code to English or Spanish or some other language that property owners, renters, and business people could understand. This is why I have developed this guide on how to safely accommodate large groups of people who are standing, sitting in chairs in a row, or sitting at chairs at tables.

LOADS

Austin adopted its first building code in 1931, and began to regulate new buildings that were built as well as buildings that were built before there were adopted codes. One of the first concepts that was introduced was the "load", both dead load and live load. A dead load is the weight the building can carry when no one is using it, but the roof, the walls, the ceilings, the floors, and wind and rain are sitting on the foundation (as you can see I am not an architect or engineer). A live load is when people are actually using the building and adding additional weight to the structure. A house is designed for so many people using it; an office with live load; a retail store with a different load; and a building where a lot of people stand or sit has a different load. So if you want to take a building that the City has not issued an Occupant Load Card (that word load again), you need to first have an engineer's report that the City has reviewed verifying that your building can carry the weight that you are planning.

OCCUPANT LOAD CARDS

There are buildings built before Austin had building codes; before Austin adopted a requirement that an Occupant Load Card be issued by the City and posted at the

entrance of any room where 50 or more people would gather; and were built outside the Austin City Limits and later were annexed. The 1931 Building Code and all of the codes that followed established standards for safety when larger numbers of people gathered. For a long time, every new building and every building that has a room where 50 or more people will stand or sit has been required to have a City-issued Occupant Load Card posted at the entrance to the room in a conspicuous location (on the wall of someone's office or in a file draw or folder doesn't count).

The reasoning behind this is that a representative of the owner or tenant who uses the room will count the number of people entering or leaving to make sure that the number of people in the room at any time does not exceed the Occupant Load Card limit at any time. I encourage, but never required, people who have rooms that cannot have 50 or more people present to post a sign on what those limits are. For example, a room above or below the first story of a building may not allow for a gathering of 10 or more people unless there are two exits to the outside, and people using the room need to know that as well.

People in the occupant load count include not only the people standing or sitting. They also include the monitor at the door; people serving people food or drink or checking them in for a conference; people preparing food; and/or people selling other items.

SPRINKLER SYSTEMS

How many people can stand, sit in chairs, or sit in chairs at a table or booth is determined first by whether the building has an automatic sprinkler system that is working and approved by the City. A building must have 2 inches of exit width for every 10 occupants in the room. So a room with 50 occupants must have at least 10 inches of exit width, and a bigger room must have more exit width.

EXIT DOORS

Every exit door must be at least 3 feet wide and at least 6 foot 8 inches tall. So a room with 49 or fewer people and one complying exit door will always meet the exit width requirement even I the building is not sprinklered.

When there are 50 or more people, at least 2 exit doors are required. To figure out where the doors should be located, the design takes a measurement of the diagonal of the room, and places the 2 doors a distance that is at least ½ the diagonal distance apart. This is so if fire or something else blocks one exit door, there is a safe path to the other exit door because the doors are not too close to each other. Whenever there are so many people that at least 3 exit doors are required, the placing the doors becomes more complicated and visiting with review staff is encouraged before a building permit application with actual plans is submitted.

PATH TO THE EXITS

Whether you are standing or sitting with a lot of other people, there should always be a clear exit path at least 3 feet wide to every exit. Most of us call these "aisles" that should be marked by some feature so that no one sits or stands at any point and blocks the exit path.

If you are sitting in a row of chairs or at a table, there needs to enough space between your chair and the chair in front of you or behind you so that you and other people can easily get in and out of their seats.

If you are setting up rows of chairs, there should be at least 30 inches between the back of one row of chairs and the row of chairs in front or behind you. When there are chairs that are permanent connected to the floor, and alternate width might be acceptable, and this can be determined when you submit for an occupant load card. Some inspectors might walk between a row of chairs and assume that people may be seated or would stand in someone is going to get past them. If the inspector bumps into the chair in front or behind, then the chairs may be too close together.

For chairs behind each other at tables, the 30 inch rule or walk through rule can also work well. We assume that person behind us will not be trying to pull their chair out from under the table at the same time that we would. Our goal

continues to be to get to and from an aisle or exit door whether we are entering or leaving a room with a lot of people.

HOW MANY PEOPLE CAN SIT OR STAND SAFELY

Building codes tell us that if everyone in the room is standing, then there must be at least 7 net square feet of space for each person in the room. So if the room has 500 net square feet of standing room, 71 people can fit if all of the other code requirements are met and the posted occupant load card allows for 71 people.

Building codes require 7 net square feet of space if everyone is sitting in chairs. If the room has 500 net square feet for seating only, then only 71 people can fit in that space if all requirements are met and the posted occupant load card allows for 71 people.

A total of 15 net square feet of space per person would be required if people are sitting at tables. In this situation, the 500 net square feet of space can accommodate only 33 people if all code requirements can be met.

Sometimes there is a combination of standing, sitting in chairs, and sitting at tables. In that circumstance, the net clear space requirement for each standing or seating area must be calculated. Sometimes a room and/or a waiting area outside a room could have a maximum occupant load for the waiting area and separate occupant loads for standing, sitting, and table sitting areas in the larger room. In that circumstance, a posted diagram at the entrance can prove helpful.

ACCESSIBILITY

Newer buildings were designed to comply with federal, state, and local laws governing seating for people with disabilities. Older buildings were often not required to accommodate people with disabilities. Some federal, state or local laws will require some older buildings to provide access for people with disabilities at a level that is different from new construction standards. Some building owners or tenants will re-configure their seating over time, and this may trigger accessibility compliance regardless of when the building was built originally. In general, seating should be designed so that a person in a wheelchair can sit at the end of a row, in the middle of a front row, in the middle of a back row, or at a table with other people who accompany them just like people without disabilities can.

There must be an accessible route for people with disabilities to enter and exit a building and a large room safely, and this route must connect to accessible parking and accessible restrooms.

I have just tried to highlight some requirements for those who invite larger groups of people into larger rooms. Whether you are religious assembly, political assembly, a restaurant, a bar, or a meeting room, these basic rule for people sitting or standing apply. I hope you find this guide helpful, and please contact City officials if you have additional questions since I am no longer a City employee who interprets City codes.

shersh@austin.rr.com

September 2, 2013

Greg Guernsey, Director
Planning and Development Department
505 Barton Springs Road
Austin TX 78704

Re: Temporary Building Permit for Casa de Luz, 1701 Toomey Road

Dear. Mr. Guernsey:

As the authorized agent for Casa de Luz, I request that you authorize the issuance of a temporary building permit for the installation of an automatic sprinkler system at Casa de Luz located at 1701 Toomey Road since 1991 once the Fire Department approves plans.

The owner of Casa de Luz has retained me as their pro-bono agent to assist them in complying with all of the requirements of the adopted International Property Maintenance Code and local amendments. I have provided you a registered agent previously as you requested.

Since my 6/26/13 appearance at the Building and Standards Commission, I have received information from the Code Compliance Department, the Fire Department, and the Planning and Development Review Department. This information will be presented as exhibits to the Commission and City staff for review prior to the 9/25/13 hearing. Based on information made available, it appears that the following facts are not in dispute:

1. The owner has secured a bid to prepare plans needed for an automatic sprinkler system requested by the Fire Department.
2. The owner has paid for the plans to be prepared.
3. The owner has paid for the plans to be reviewed for compliance by the Fire Department.
4. The owner has secured a bid to install the sprinkler system, which can be revised once approved sprinkler plans are available.
5. City staff has stated that it will not issue a permit to perform repairs to bring Casa de Luz in compliance with the Property Maintenance Code until the owner secures an approved site plan.
6. City staff has stated that penalties of $1,000 per week continue while it refuses to issue a permit to perform repairs included in an order from the Building and Standards Commission.
7. This places the owner in a position where they and their contractors would be in violation of City Code if they perform required repairs without a permit or in violation of City Code if they do not perform repairs.
8. As agent of the owner, I have proposed code amendments that, if adopted, would allow the owner and other similarly situated owners to perform repairs as part of the Renter Assistance: An Alternative Approach and Renter Assistance or Rental Registration; Affordability/Safety vs Citations/Collections to both this Commission and the Community Development Commission.
9. Neither the Building and Standards Commission nor the Community Development Commission has placed these proposals that include annual repair permit provisions of the International Existing Building Code and an updated version of Land Development Code Amnesty Certificate

of Occupancy provisions as public hearing items on their respective agendas in July or August, 2013.

10. I provided the City Council during my August 22, 2013 budget public hearing agenda a request to consider these code amendments since the opportunity to consider this proposal during the Property Maintenance Code public hearing scheduled for 8/22/13 did not occur since the Property Maintenance Code public hearing has been postponed until September 26, 2013.
11. These code amendments could have been considered during the Rental Registration public hearing tentatively scheduled for the City Council meeting of August 29, 2013 but postponed until September 26, 2013.
12. The Fire Department Open Records response does not indicate that its staff issued code violation notices pursuant to the International Property Maintenance Code or the predecessor code for Building and Standards Commission orders, the Uniform Code for the Abatement of Dangerous Buildings.
13. City Council Resolution 20130620-054 could potentially create code amendments that would enable Casa de Luz to secure an approved site plan and a building permit to install a sprinkler system, but the June 26, 2013 deliberations did not appear to include this Council action less than a week earlier.

The issuance of a temporary building permit once plans are approved would allow the owner of Casa de Luz to comply with the Property Maintenance Code by making the building safer, while denial of the permit will not allow the owner to install improvements that would make the building safer and end penalties related to an order of non-compliance with the adopted Property Maintenance Code.

Please contact me @ 512-587-5093 or shersh@austin.rr.com if you need additional information.

Stuart Harry Hersh

1307 Kinney Avenue #117, Austin, TX 78704-2279

KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 28, 2018

Mr. Zachary Brown
Assistant City Attorney
City of Austin
P.O. Box 1088
Austin, Texas 78767-8828

OR2018-07118

Dear Mr. Brown:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 708390 (PIR# 40120).

The City of Austin (the "city") received a request for records pertaining to a specified address. You claim submitted information is excepted from disclosure under section 552.107 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.[1]

Section 552.107(1) of the Government Code protects information subject to the attorney-client privilege. When asserting the attorney-client privilege, a governmental body has the burden of providing the necessary facts to demonstrate the elements of the privilege in order to withhold the information at issue. Open Records Decision No. 676 at 6-7 (2002). First, a governmental body must demonstrate that the information constitutes or documents a communication. *Id.* at 7. Second, the communication must have been made "to facilitate

[1]We assume the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

the rendition of professional legal services" to the client governmental body. TEX. R. EVID. 503(b)(1). The privilege does not apply when an attorney or representative is involved in some capacity other than that of providing or facilitating professional legal services to the client governmental body. *In re Tex. Farmers Ins. Exch.*, 990 S.W.2d 337, 340 (Tex. App.—Texarkana 1999, orig. proceeding) (attorney-client privilege does not apply if attorney acting in a capacity other than that of attorney). Governmental attorneys often act in capacities other than that of professional legal counsel, such as administrators, investigators, or managers. Thus, the mere fact that a communication involves an attorney for the government does not demonstrate this element. Third, the privilege applies only to communications between or among clients, client representatives, lawyers, and lawyer representatives. TEX. R. EVID. 503(b)(1)(A), (B), (C), (D), (E). Thus, a governmental body must inform this office of the identities and capacities of the individuals to whom each communication at issue has been made. Lastly, the attorney-client privilege applies only to a confidential communication, *id.* 503(b)(1), meaning it was "not intended to be disclosed to third persons other than those: (A) to whom disclosure is made to further the rendition of professional legal services to the client; or (B) reasonably necessary to transmit the communication." *Id.* 503(a)(5). Whether a communication meets this definition depends on the intent of the parties involved at the time the information was communicated. *Osborne v. Johnson*, 954 S.W.2d 180, 184 (Tex. App.—Waco 1997, orig. proceeding). Moreover, because the client may elect to waive the privilege at any time, a governmental body must explain that the confidentiality of a communication has been maintained. Section 552.107(1) generally excepts an entire communication that is demonstrated to be protected by the attorney-client privilege unless otherwise waived by the governmental body. *See Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein).

You state the submitted information constitutes communications between attorneys in the city's Law Department and city employees that were made for the purpose of facilitating the rendition of professional legal services to the city. You also state the communications were intended to be confidential and have remained confidential. Based on your representations and our review, we find the city may withhold the submitted information under section 552.107(1) of the Government Code.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

Jesse Harvey
Assistant Attorney General
Open Records Division

JH/gw

Ref: ID# 708390

Enc. Submitted documents

c: Requestor
(w/o enclosures)

City of Austin

CERTIFICATE OF OCCUPANCY

BUILDING PERMIT NO. 1991-010757 BP
ISSUE DATE: 02/05/1992

BUILDING ADDRESS: 1701 Toomey Road A .00000
LEGAL DESCRIPTION: Lot: 1 Block: Subdivision: WM. E. SHELTON SUBDIVISION

PROPOSED OCCUPANCY: C-1000 Commercial Remodel
Remodel - Remodel Existing School Kitchen & Eating Area

BUILDING GROUP / DIVISION: A-3

REMODEL BUILDING SQUARE FOOTAGE: 0
SPRINKLER SYSTEM:
CODE YEAR: **CODE TYPE:**
FIXED OCCUPANCY: **NON FIXED OCCUPANCY:**

CONTRACTOR:

********** CERTIFICATE OF OCCUPANCY **********

THIS IS TO CERTIFY THAT THE BUILDING OR STRUCTURE AT THE ADDRESS LISTED ABOVE HAS BEEN INSPECTED FOR COMPLIANCE WITH THE REQUIREMENTS OF THE AUSTIN CITY CODE FOR THE GROUP AND DIVISION OF OCCUPANCY LISTED ABOVE.

NEITHER THE ISSUANCE OF THIS CERTIFICATE NOR THE INSPECTIONS MADE SHALL LESSEN THE RESPONSIBILITY OR LIABILITY OF ANY PERSON, FIRM OR CORPORATION

OWNING, OPERATING, CONTROLLING OR INSTALLING ANY APPLIANCE OR MATERIAL UPON THE PREMISE, OR DOING ANY WORK WHATSOEVER ON SUCH PREMISE.

THE CITY OF AUSTIN DOES NOT ASSUME ANY RESPONSIBILITY OR LIABILITY BY REASON OF THE INSPECTION OR REINSPECTION OF THE PREMISE; OR THE ISSUANCE OF THIS "CERTIFICATE OF OCCUPANCY"; OR BY ANY REASON OF ANY APPROVAL OR DISAPPROVAL.

BUILDING CODE REVIEWER:

For Leon Barba, Building Official

City of Austin
BUILDING PERMIT

ERMIT NO: 1991-010757-BP **Type:** COMMERCIAL **Status:** Final
Issue Date: 11/06/1991 **Expiry Date:** 02/05/1992

01 TOOMEY RD

EGAL DESCRIPTION	SITE APPROVAL	ZONING
ot: 1 Block: Subdivision: WM. E. SHELTON SUBDIVISION		

ROPOSED OCCUPANCY:	WORK PERMITTED: Remodel	ISSUED BY:
emodel Existing School Kitchen & Eating Area		

TOTAL SQFT	VALUATION	TYPE CONST.	USE CAT.	GROUP	FLOORS	UNITS #	OF PARKING SPACES
	Tot Val Rem: $.00		1000		1	1	

TOTAL BLDG. COVERAGE	% COVERAGE	TOTAL IMPERVIOUS COVERAGE	% COVERAGE

Type	Date	Status	Comments	Inspector
101 Building Layout	11/8/1991	Pass	MIGRATED FROM PIER.	
103 Framing	11/21/199	Pass	MIGRATED FROM PIER.	
104 Insulation	11/21/199	Pass	MIGRATED FROM PIER.	
105 Wallboard	12/9/1991	Pass	MIGRATED FROM PIER.	
112 Final Building	2/5/1992 0	Pass	MIGRATED FROM PIER.	
309 Fire	3/19/2002	Pass		

TO SCHEDULE AN INSPECTION, CALL 480-0623

Printed: 11/26/08 9:55

City of Austin
BUILDING PERMIT

ERMIT NO: 1991-010757-BP **Type:** COMMERCIAL **Status:** Final
Issue Date: 11/06/1991 **Expiry Date:** 02/05/1992

01 TOOMEY RD

EGAL DESCRIPTION	SITE APPROVAL	ZONING
ot: 1 Block: Subdivision: WM. E. SHELTON SUBDIVISION		

ROPOSED OCCUPANCY:	WORK PERMITTED: Remodel	ISSUED BY:
emodel Existing School Kitchen & Eating Area		

TOTAL SQFT	VALUATION	TYPE CONST.	USE CAT.	GROUP	FLOORS	UNITS #	OF PARKING SPACES
	Tot Val Rem: $.00		1000		1	1	

TOTAL BLDG. COVERAGE	% COVERAGE	TOTAL IMPERVIOUS COVERAGE	% COVERAGE

Fee Description	Fee Amount	Paid Date
Building Permit Fee	$149.00	11/06/1991
Electrical Permit Fee	$50.00	11/07/1991
Mechanical Permit Fee	$50.00	11/12/1991
Plumbing Permit Fee	$50.00	11/08/1991
Total Fees:	$299.00	

Inspection Requirements
Building Inspection
Electric Inspection
Mechanical Inspection
Plumbing Inspection
Fire Inspection
Health Inspection

Section 25-11-94 EXPIRATION AND EXTENSION OF PERMIT (Active Permits will expire 180 days at 11:59:59 pm after date of last inspection performed.)

See Mechanical, Electrical, Plumbing permits for Related Fees and Inspections.

The following permits are required as a separate permit:

Comments	Date	User
This Approval Is For A Cafeteria Not A Restaurant/Mech 0 1 Rein Fee/Mech 01 Rein Pd 1/21/9 2*** Snl Oh Lannie Temp Gas Rel To Pat 1/22/92		

BY ACCEPTING OR PAYING FOR THIS PERMIT YOU ARE DECLARING THAT YOU ARE THE OWNER OR AUTHORIZED BY THE OWNER THAT THE DATA SUBMITTED AT THE TIME OF APPLICATION WAS TRUE FACTS AND THAT THE WORK WILL CONFORM TO THE PLANS AND SPECIFICATION SUBMITTED HEREWITH.

TO SCHEDULE AN INSPECTION, CALL 480-0623

Printed: 11/26/08 9:55

CITY OF AUSTIN
DEPARTMENT OF PLANNING AND DEVELOPMENT
PLAN REVIEW DIVISION

OCCUPANT LOAD CARD

ADDRESS/NAME 1701 TOOMEY ROAD RESTAURANT / School

AREA/BUILDING 2980 SQ. FT. TYPE OF CONSTRUCTION 5N

TYPE OF USE: RESTAURANT / cooking School GROUP: A-3

MAXIMUM OCCUPANT LOAD: 85

FIXED SEATING: — NON-FIXED: 85

OTHER:

BY ORDER OF : Tim Langan DATE: 2-3-97
BUILDING OFFICIAL

THIS CERTIFICATE MUST BE DISPLAYED AT ENTRANCE AT ALL TIMES

altered 7/97.

City of Austin

CERTIFICATE OF OCCUPANCY

BUILDING PERMIT NO. 1997-014303 BP
ISSUE DATE: 06/06/1997

BUILDING ADDRESS: 1701 Toomey Road A 00000
LEGAL DESCRIPTION: Lot: 1 Block: Subdivision: WM. E. SHELTON SUBDIVISION

PROPOSED OCCUPANCY: C-1000 Commercial Remodel
Remodel - Remodel Interior Of School Cafeteria

BUILDING GROUP / DIVISION: A-3

REMODEL BUILDING SQUARE FOOTAGE: 0
SPRINKLER SYSTEM:
CODE YEAR: **CODE TYPE:**
FIXED OCCUPANCY: **NON FIXED OCCUPANCY:**

CONTRACTOR:

********** CERTIFICATE OF OCCUPANCY **********

THIS IS TO CERTIFY THAT THE BUILDING OR STRUCTURE AT THE ADDRESS LISTED ABOVE HAS BEEN INSPECTED FOR COMPLIANCE WITH THE REQUIREMENTS OF THE AUSTIN CITY CODE FOR THE GROUP AND DIVISION OF OCCUPANCY LISTED ABOVE.

NEITHER THE ISSUANCE OF THIS CERTIFICATE NOR THE INSPECTIONS MADE SHALL LESSEN THE RESPONSIBILITY OR LIABILITY OF ANY PERSON, FIRM OR CORPORATION

OWNING, OPERATING, CONTROLLING OR INSTALLING ANY APPLIANCE OR MATERIAL UPON THE PREMISE, OR DOING ANY WORK WHATSOEVER ON SUCH PREMISE.

THE CITY OF AUSTIN DOES NOT ASSUME ANY RESPONSIBILITY OR LIABILITY BY REASON OF THE INSPECTION OR REINSPECTION OF THE PREMISE; OR THE ISSUANCE OF THIS "CERTIFICATE OF OCCUPANCY"; OR BY ANY REASON OF ANY APPROVAL OR DISAPPROVAL.

BUILDING CODE REVIEWER:

For Leon Barba, Building Official

City of Austin
BUILDING PERMIT

PERMIT NO: 1997-014303-BP **Type:** COMMERCIAL **Status:** Final
Issue Date: 02/19/1997 **Expiry Date:** 08/06/1997

701 TOOMEY RD

LEGAL DESCRIPTION	SITE APPROVAL	ZONING
Lot: 1 Block: Subdivision: WM. E. SHELTON SUBDIVISION		

PROPOSED OCCUPANCY:	WORK PERMITTED:	ISSUED BY:
Remodel Interior Of School Cafeteria	Remodel	

TOTAL SQFT	VALUATION	TYPE CONST.	USE CAT.	GROUP	FLOORS	UNITS #	OF PARKING SPACES
	Tot Val Rem: $.00		1000		1	1	

TOTAL BLDG. COVERAGE	% COVERAGE	TOTAL IMPERVIOUS COVERAGE	% COVERAGE

Type	Date	Status	Comments	Inspector
101 Building Layout	2/25/1997	Pass	MIGRATED FROM PIER.	Jessie Scott
103 Framing	4/11/1997	Pass	MIGRATED FROM PIER.	Jessie Scott
104 Insulation	3/21/1997	Pass	MIGRATED FROM PIER.	Jessie Scott
105 Wallboard	3/25/1997	Pass	MIGRATED FROM PIER.	Jessie Scott
112 Final Building	6/6/1997 0	Pass	MIGRATED FROM PIER.	Jessie Scott
609 Fire	5/30/1997	Pass		

TO SCHEDULE AN INSPECTION, CALL 480-0623

Printed: 11/26/08 9:56

City of Austin
BUILDING PERMIT

PERMIT NO: 1997-014303-BP
1701 TOOMEY RD

Type: COMMERCIAL **Status:** Final
Issue Date: 02/19/1997 **Expiry Date:** 06/06/1997

LEGAL DESCRIPTION	SITE APPROVAL	ZONING
Lot: 1 Block: Subdivision: WM. E. SHELTON SUBDIVISION		

PROPOSED OCCUPANCY:	WORK PERMITTED: Remodel	ISSUED BY:
Remodel Interior Of School Cafeteria		

TOTAL SQFT	VALUATION	TYPE CONST.	USE CAT.	GROUP	FLOORS	UNITS #	OF PARKING SPACES
	Tot Val Rem: $.00		1000		1	1	

TOTAL BLDG. COVERAGE	% COVERAGE	TOTAL IMPERVIOUS COVERAGE	% COVERAGE

Fee Description	Fee Amount	Paid Date
Building Permit Fee	$610.00	02/19/1997
Electrical Permit Fee	$77.00	02/25/1997
Mechanical Permit Fee	$70.00	03/04/1997
Plumbing Permit Fee	$70.00	02/21/1997
Total Fees:	$827.00	

Inspection Requirements
Building Inspection
Electric Inspection
Mechanical Inspection
Plumbing Inspection
Fire Inspection
Health Inspection

Section 25-11-94 EXPIRATION AND EXTENSION OF PERMIT (Active Permits will expire 180 days at 11:59:59 pm after date of last inspection performed.)

See Mechanical, Electrical, Plumbing permits for Related Fees and Inspections.

The following permits are required as a separate permit:

Comments **Date** **User**
Code By TI*** 1 Gas

BY ACCEPTING OR PAYING FOR THIS PERMIT YOU ARE DECLARING THAT YOU ARE THE OWNER OR AUTHORIZED BY THE OWNER THAT THE DATA SUBMITTED AT THE TIME OF APPLICATION WAS TRUE FACTS AND THAT THE WORK WILL CONFORM TO THE PLANS AND SPECIFICATION SUBMITTED HEREWITH.

TO SCHEDULE AN INSPECTION, CALL 480-0623

Printed: 11/26/08 9:56

AUSTIN FIRE DEPARTMENT - PREVENTION DIVISION
ENGINEERING SECTION
505 Barton Springs Road - Austin, Texas 78707
OFFICE : (512) 974-0160 - FAX: 512-974-0162

City of Austin

Plan Review Comments

Date: **10-16-13** **Reviewed by:** Ralph Castillo
Project: **Casa De Luz**
1701 toomey rd.
Austin, TX
Occupancy: **Restaurant**
System Type: **SPRINKLER**
Contractor: Koetter (design only)

Review Status: **Not Approved** (preliminary design evaluation only).
FYI: Pipe sizes and sprinkler locations are acceptable.

NOTE: Comments are based on submitted plans only. Final approval is contingent upon all comments being satisfactorily addressed and the Final Inspection. All standards reference sections are for the 2010 Edition of NFPA 13.

Number **Comment**

1. **Only 1 copy of the plans were recieved, submit additional copies if redlined and stamped plans are desired. Prior to installatin, resubmittal will be required to address several comments below, and must include at least 2 copies of the plan.**
2. **Antifreeze solution cannot exceed 38% propylene glycol.**
3. **Provide hanger detail showing how upward restraint is provided for pendent sprinklers with more than 100 psi.**
4. **Fire Dept. connection is not required to be within 100' of a hydrant in this case, but will need to be in a location approved by AFD that is close as practical to the Toomey Rd., and will require locking Knox caps.**
5. **Electric alarm bell must be powered and controled by an approved fire alarm panel.**
6. **The 2 ½" backflow preventer (BFP) may not be required if a BFP is provided at the property line, however, due to the antifreeze, a reduced pressure BFP is required.**
7. **Show the antifreeze loop pipe size on the plan.**
8. **Heat trace design must be submitted for approval, if the heat trace system is not Listed for sprinkler use, it will need to be designed by a Registered Engineer.**
9. **If the adjacent deck is combustible, it must be sprinklered underneath, or protected per Sec. 8.15.6.2.**

END OF DOCUMENT

AUSTIN FIRE DEPARTMENT - PREVENTION DIVISION

City of Austin

ENGINEERING SECTION

505 Barton Springs Road - Austin, Texas 78704
OFFICE : (512) 974-0160 - FAX: 512-974-0162

Date: **2-24-14** **Reviewed by:** Ralph Castillo

Project: **Casa De Luz**
1701 toomey rd.
Austin, TX

Plan Review Comments

Occupancy: **Restaurant**
System Type: **SPRINKLER**
Contractor: Koetter (design only)
Review Status: **Not Approved** (preliminary design evaluation only).
FYI: Pipe sizes and sprinkler locations are acceptable.

NOTE: Comments are based on submitted plans only. Final approval is contingent upon all comments being satisfactorily addressed and the Final Inspection. All standards reference sections are for the 2010 Edition of NFPA 13.

Number **Comment**

1. **Prior to final plan approval, submitted plan must be signed by Koetter's RME per State Fire Marshal, and General Note # 1 must be removed.**

2. **Antifreeze solution cannot exceed 38% propylene glycol (same comment on previous review). Note: the 38% limitation is in response to NFPA 13 TIA's restricting the use of anti-freeze due to fire deaths resulting from undocumented mixtures. The Anit-freeze must be factory mixed. Contact the reviewer for additional details if needed.**

3. **Provide hanger detail showing how upward restraint is provided for pendent sprinklers with more than 100 psi. New detail showing Style 300 swing clamp not clear as to how it works. Upward restraint hangers must be of the type shown in Fig. A9.2.3.4.4(b), or submit data sheets to verify compliance.**

4. **Fire Dept. connection piping can be connected directly to the 6" u.g. main per Sec. 8.17.2.4.4 and Fig. A8.16.1.1.4, add note on plan indicating locking Knox caps provided.**

5. **Plans indicate 1/8" scale, but print is not to scale.**

6. **Due to the antifreeze, a reduced pressure BFP is required (same comment as previous review). Indicate make and model of reduced presure BFP on plan, and see comment # 7 regarding 6" BFP at property line.**

7. **Approved Tap plan shows 6" BFP in pit at property line, revise plans to match.**

8. **Remove the heat trace note from the elevation plan.**

9. **Add note indicating exisitng combustible deck to be per Sec. 8.15.6.2, no sprinklers required, to be field verified.**

END OF DOCUMENT

Print

Date: Thursday, January 9, 2014 4:52 PM

From: Moore, Christopher [CCD] <Christopher.Moore2@austintexas.gov>

To: 'shersh@austin.rr.com' <shersh@austin.rr.com>

Subject: Code Compliance's response to Casa de Luz's Questions

Mr. Hersh,

Attached you will find Code's response to your cross-examination questions posed to Code at the December BSC hearing. Please let me know if you have any problems opening the file.

Christopher Moore,
Assistant Division Manager
City of Austin - Code Compliance
P.O. Box 1088, Austin, TX 78767
Phone: 512-974-1974

CASA DE LUZ CROSS EXAMINATION QUESTIONS - Responses.pdf

ANSWERS TO CASA DE LUZ CROSS EXAMINATION QUESTIONS:

1. **Has the City Council adopted the 2012 International Building Code, 2012 International Fire Code, the 2012 International Existing Building Code, and the 2012 International Property Maintenance Code?**

   Yes, to all. The 2012 International Property Maintenance Code did not go into effect until January 2014.

2. **Do each of these codes classify Casa de Luz Located at 1701 Toomey Road as an A-3 assembly occupancy?**

   Currently a restaurant with an occupancy load of 50 persons or more is classified as an A-2.

3. **Do each of these codes allow an A-3 assembly use to be built new or rehabilitated without an automatic sprinkler system?**

   There are thresholds tied to occupant load, building area, and number of stories that trigger sprinklers. Casa De Luz is below these thresholds and thus does not require sprinklers based on occupancy.

4. **Is Casa de Luz required to have an automatic sprinkler?**

   No; however, removing the driveway/parking area prevents compliance with minimum Fire Department access requirements (no more than 150' from the structure) so the automatic sprinkler is a legal alternative.

5. **Since 1991, has Casa de Luz removed site concrete that previously provide Fire Department equipment access and replace this site concrete with an exit path, landscaping, structures that support landscaping, and seating areas that have cumulatively not increased site construction area by 1000 square feet?**

   Date of pavement removal is unknown.

6. **Does section 25-5-2-D exempt construction from site plan approval if the total amount of impervious cover is either decreased or not decreased by less than 1000 square feet.**

   Section 25-5-2-(D) authorizes a site plan exemption for certain construction of less than 1,000 square feet.

7. **Can construction activity eligible for a site plan exemption be in violation of site plan approval code requirements?**

   Question is unclear. Construction requirements are not based on whether a site plan is required; instead the requirements are based on the type of construction activity.

8. **Did Casa de Luz receive an Occupant Load Card for an 85 person A-3 restaurant and cooking school on 2/3/97?**

   Yes, the card was approved by AFD.

9. **Did this Occupant Load Card require the certificate be displayed at the entrance at all times?**

   Yes. International Fire Code Section 1004.3 requires occupant load to be posted, similar requirement was in previous code editions, including the 1994 edition of the Uniform Building Code, which was in effect in 1997 in the City of Austin.

10. **Is the Occupant Load Card currently displayed at the front entrance to Casa de Luz?**

    Yes when last visited by Code Compliance.

11. **Are two exits required from an A-3 assembly occupancy?**

    If the occupant load exceeds 49 persons or the travel distance exceeds 75 feet, a second exit is required.

12. **Does Casa de Luz have three exits from the assembly area that have required exit signs, exit width, and exit hardware?**

    Yes.

13. **Does Casa de Luz have additional exits from the kitchen and each of the attached office areas that lead directly to the outside and do not pass through the assembly area?**

    Yes.

14. **Are there a total of seven exits from Casa de Luz?**

    Casa de Luz has three exits from the assembly area that have required exit signs, exit width, and exit hardware.

15. **Has the Fire Department cited Casa de Luz for violating the adopted International Property Maintenance Code or the previously adopted Uniform Code for the Abatement of Dangerous Buildings?**

    No, because AFD does not cite for violations of the International Property Maintenance Code or the previously adopted Uniform Code for the Abatement of Dangerous Buildings.

16. **Based on the answers to the questions above, the Building and Standards Commission ever have jurisdiction to conduct hearings, issues orders, and assess penalties to the owners of Casa de Luz?**

    Yes.

RULE NO.: R161-15.04

ADOPTION DATE: June 3, 2015

NOTICE OF RULE ADOPTION

By: Rodney Gonzales, Director
Development Services Department

The Director of the Development Services Department has adopted the following rule. Notice of the proposed rule was posted on April 2, 2015. Public comment on the proposed rule was solicited in the April 2, 2015 notice. This notice is issued under Chapter 1-2 of the City Code. The adoption of a rule may be appealed to the City Manager in accordance with Section 1-2-10 of the City Code as explained below.

EFFECTIVE DATE OF ADOPTED RULE

A rule adopted by this notice is effective on June 3, 2015.

TEXT OF ADOPTED RULE

Rule R161-15.04 – Revisions to the Building Criteria Manual. The adopted rule deletes obsolete provisions of Section 6-the Housing/Dangerous Building Codes and adds Minimum Life Safety Guidelines.

The adopted rule contains no changes from the proposed rule. A copy of the complete text of the adopted rule is available for public inspection and copying at the following locations. Copies may be purchased at the locations at a cost of ten cents per page:

Development Services Department, located at 505 Barton Springs Road, Suite 575; and

Office of the City Clerk, City Hall, located at 301 West 2nd Street, Austin, Texas.

An affordability impact statement regarding the proposed rule has been obtained and is available for inspection or copying at the address noted in the preceding paragraph.

SUMMARY OF COMMENTS

The Development Services Department did not receive comments regarding the rule adopted in this notice.

AUTHORITY FOR ADOPTION OF RULE

The authority and procedure for adoption of a rule to assist in the implementation, administration, or enforcement of a provision of the City Code is provided in Chapter 1-2 of the City Code. The authority to regulate construction requirements is established in Chapter 25-12 (Technical Codes) of the City Code.

APPEAL OF ADOPTED RULE TO CITY MANAGER

A person may appeal the adoption of a rule to the City Manager. **AN APPEAL MUST BE FILED WITH THE CITY CLERK NOT LATER THAN THE 30TH DAY AFTER THE DATE THIS NOTICE OF RULE ADOPTION IS POSTED. THE POSTING DATE IS NOTED ON THE FIRST PAGE OF THIS NOTICE.** If the 30th day is a Saturday, Sunday, or official city holiday, an appeal may be filed on the next day which is not a Saturday, Sunday, or official city holiday.

An adopted rule may be appealed by filing a written statement with the City Clerk. A person who appeals a rule must (1) provide the person's name, mailing address, and telephone number; (2) identify the rule being appealed; and (3) include a statement of specific reasons why the rule should be modified or withdrawn.

Notice that an appeal was filed will be posted by the City Clerk. A copy of the appeal will be provided to the City Council. An adopted rule will not be enforced pending the City Manager's decision. The City Manager may affirm, modify, or withdraw an adopted rule. If the City Manager does not act on an appeal on or before the 60th day after the date the notice of rule adoption is posted, the rule is withdrawn. Notice of the City Manager's decision on an appeal will be posted by the city clerk and provided to the City Council.

On or before the 16th day after the city clerk posts notice of the City Manager's decision, the City Manager may reconsider the decision on an appeal. Not later than the 31st day after giving written notice of an intent to reconsider, the City manager shall make a decision.

CERTIFICATION BY CITY ATTORNEY

By signing this Notice of Rule Adoption (R161-15.04), the City Attorney certifies that the City Attorney has reviewed the rule and finds that adoption of the rule is a valid exercise of the Director's administrative authority.

REVIEWED AND APPROVED

Date: 5-14-2015

Rodney Gonzales, Director
Development Services Department

Date: 6/1/15

Anne Morgan
Interim City Attorney

SECTION 6 - HOUSING/DANGEROUS BUILDINGS CODE

6.1.0 GENERAL

This section addresses local amendments to the Uniform Housing Code and the Uniform Code for the Abatement of Dangerous Buildings. This section describes the rules governing the codes' enforcement, heating equipment, utility holds, and demolition/relocation requirements for building permits.

6.2.0 HOUSING AND DANGEROUS BUILDINGS CODE ENFORCEMENT

These administrative procedures do not constitute a rule and are provided for informational purposes only. Figure 6-2 in Appendix I of this manual describes the enforcement of this rule.

Step 1: Inspector determines whether the structure is residential or nonresidential (residential accessory buildings are classified as residential).

Step 2a: If it is residential, then the inspector finds that:

- there are no violations; or
- the building is substandard; or
- the building is dangerous.

Step 2b: If it is nonresidential, then the inspector finds that:

- the building is dangerous; or
- the building is not dangerous.

Step 3a: If it is substandard, then a notice to repair is issued to the owner.

Step 3b: If it is dangerous, then a notice is issued to the owner to:

- repair and vacate (includes hotel, motel and rooming house); or
- repair; or
- vacate and demolish (includes hotel, motel and rooming house); or
- demolish; or
- reduce occupancy (includes hotel, motel and rooming house); or
- close and repair (includes hotel, motel and rooming house).

Step 4a: If it is substandard and compliance does not occur, then:

- a notice of intent to file on specified violations; or
- a notice of dangerous condition is sent.

Step 4b: If it is dangerous, then a notice to appear before the Building Standards Board and show cause why building should not be:

- vacated and repaired; or
- repaired; or
- vacated and demolished; or
- demolished; or
- reduced in occupancy load; or
- closed and repaired is sent.

Step 5:

- Standard procedures for filing.
- Standard procedure for executing Building Standard Board orders.

Step 6: Appeal procedures track the requirements of the Land Development Code. Housing Code 25-12-211 Dangerous Buildings Code 25-12-231

6.3.0 HEATING EQUIPMENT

~~This rule is promulgated to administer and implement the Housing Code. Single family and two (2) family dwellings shall have either heating equipment capable of maintaining an inside temperature of 68 F or operable gas utility connections for such equipment in each room of a structure intended for human occupancy.~~
~~Housing Code 25-12-211 Section 701(a)~~

~~6.4.0 UTILITY HOLDS~~
~~This rule is promulgated to administer the Housing Code and the Dangerous Buildings Code.~~
~~A. If a building has been tagged substandard by the building official and it appears that a violation of the Housing Code or Dangerous Buildings Code exists, a hold may be placed on City utilities such that if utility service is disconnected for any reason or the customer of record changes prior to the correction of all violations, the utilities will not be reconnected or released without the approval of the building official.~~
~~B. If a building is inspected for utility reconnect and is found to be in violation of the Housing Code or Dangerous Buildings Code, the electrical inspector shall refer the address to the Neighborhood Conservation Division for inspection before approving a reconnect.~~
~~Housing Code 25-12-211~~
~~Dangerous Buildings Code 25-12-231~~

~~6.5.0 RELOCATION CONTRACTOR REQUIREMENTS~~
~~A. This rule is promulgated to administer relocation contractor insurance and bond requirements adopted in the Housing Code.~~
~~B. A relocation contractor who complied with the bond and insurance requirements of the Housing Code on April 6, 1989 may continue to secure building permits for relocation through December 31, 1989 if the contractor complies with Section 25-12-211-1310(a) or 25-12-211-1310(b) of Ordinance 890406-N.~~
~~C. Since this rule eliminates redundant requirements while an ordinance change clarifying bond and insurance requirements is under review, the proposed effective date is 30 days following the date of this posting.~~
~~Housing Code 25-12-211-1310(a)(b)~~

~~6.6.0 ENFORCEMENT POLICY~~
~~This rule revision is promulgated to enforce the requirement of the Land Development Code. It is the policy of the Neighborhood, Housing, and Conservation Division to hold further action against a violator of the Codes of the City of Austin during the time required for review and approval when applications are submitted by the owner for the following:~~
~~A. Subdivision or resubdivision application.~~
~~B. Conditional Use Permit application.~~
~~C. Re-zoning application.~~
~~D. Submittal of plans for compliance are awaiting approval.~~
~~E. Application for demolition or relocation is submitted.~~
~~F. A valid appeal to the Building Standards Board, the Building and Fire Code Board, the Planning Commission or the City Council, is filed by the owner/occupant/or interested party.~~
~~G. An application for loans or grants (C.D.B.G. funds) are filed by the owner of the structure for rehabilitation of the property.~~
~~H. The case has been filed in Municipal Court and the Judge orders a deferred disposition.~~

~~I. Proof of civil action in which the results would provide for compliance.~~
~~J. During the period of time established by the Building Official for the owner/occupant to submit information which would invalidate the department actions.~~
~~K. Provided dangerous conditions are abated, allowing a reasonable period of time for insurance company investigation of a claim due to fire, wind, flooding, or other disaster.~~
~~Building Code 25-12-1 Sections 105, 106, and 5301(c)~~
~~Electrical Code 25-12-111 Sections 105 106 and 301(c)~~
~~Mechanical Code 25-12-131 Sections 105, 106, and 301(c)~~
~~Plumbing Code 25-12-151 Sections 10.3, 2(d), 2(e), 3(f), 2(g)~~
~~Solar Code 25-12-191 Sections 10.3, 2(d), 2(e), 2(f), 2(g)~~

Print

Date: Wednesday, September 16, 2015 9:49 AM

From: shersh@austin.rr.com

To: Heldenfels, Leane <Leane.Heldenfels@austintexas.gov>

Subject: Re: 2003, 04 BOA case regarding parking at 1701 Toomey

Thank you for the copy. I have no additional submittals at this time. I have reviewed the 9 boxes of records that I requested from Code, Fire, and Planning since I became involved in 2013 under Open Records requests, and do not intend to submit them as further backup.
---- "Heldenfels wrote:
> Hi Stuart - I looked for this case in the log before the meeting yesterday as I was thinking some older Board members may request it, but couldn't find it in the log. Then Melissa gave me the year to ck under (that helps a lot when search for things not in Amanda) and found the attached decision sheet and info included in a deposition, maybe code case legal proceeding.
> Advise what, if any of it, you'd like to add to your file for 10/12 hearing.
> Take care,
> Leane
>
> -----Original Message-----
> From: OTC01OlmosPark@austintexas.gov [OTC01OlmosPark@austintexas.gov]
> Sent: Tuesday, September 15, 2015 4:31 PM
> To: Heldenfels, Leane
> Subject: Scanned from a COA OTC01OlmosPark
>
>
>
> Please open the attached document. It was scanned and sent to you using a Xerox Multifunction Device.
>
> Attachment File Type: pdf, Multi-Page
>
> Multifunction Device Location: OTC 1st Floor DAC #1
> Device Name: OTC01OlmosPark
>
>
> For more information on Xerox products and solutions, please visit http://www.xerox.com

Print

This is an urgent message.

Date: Wednesday, February 7, 2018 9:07 AM

From: Roig, Jose G <Jose.Roig@austintexas.gov>

To: shersh@austin.rr.com <shersh@austin.rr.com>

Subject: Notice of Intent letter for Casa de Luz

Good morning Stuart,

This email is to let you know that the attached letter will be sent today to Mr. Longoria @ Casa De Luz. Please review the letter with Mr. Longoria and let me know if you have any concerns or questions.

Thanks.

José G. Roig, CBO
Building Official
City of Austin Development Services Department
One Texas Center
505 Barton Springs Road, Suite 700
Office: 512-974-9754
Cell: 512-293-1948

De elopment
SERVICES DEPARTMENT
Building a Better and Safer Austin Together

Follow us on Facebook, Twitter &Instagram @DevelopmentATX
We want to hear from you. Please take a few minutes to complete our online customer survey: English Survey
Nos gustaría escuchar de usted. Por favor, tome un momento para completar nuestra encuesta: Encuesta en Español

Inspector's Contact Info
Local Code Amendments
Free Online Access to International Codes
Special Events Information
DSD Fee Schedule

Scheduled Meeting Disclosure Information:
In accordance with City of Austin Ordinance 20160922-005, responsibility of written disclosure is required by visitors when attending a scheduled meeting with a City Official regarding a municipal question as defined within City Code 4-8-2 for compensation on behalf of another person. Development Services Department has elected to implement an electronic survey as the methodology to provide the opportunity to record information as required of the department under Section 4-8-8 (E) of the City Code. Individuals scheduling or accepting a meeting invitation with a City Official are requested to provide responses to the questions included in the department survey available at the following link: DSD Survey. Please note that all information provided is subject to public disclosure via DSD's open data portal.

For more information please visit:
Click here to view City of Austin Ordinance 2016-0922-005
City Clerk's website
City Clerk's FAQ's

Casa_De_Luz-NOI_2-7-2018.pdf

Development SERVICES DEPARTMENT

505 Barton Springs Road Austin, TX 78704 | 512-978-4000 | DevelopmentATX.com

February 7, 2018

Certified: 7017 0190 0000 6805 6040

Eduardo Longoria
President, Shambala Corporation
1701 Toomey Rd.
Austin, TX 78704

RE: Notice of Intent to Suspend the Certificate of Occupancy for the School Cafeteria located at 1701 Toomey Rd. – Reference permit numbers: 1991-010757 (9112598), 1997-014303 (97020140.

Dear Mr. Longoria,

In accordance with City Code Section 25-1-417 (*Notice of Intent to Suspend or Revoke*), this letter is a Notice of Intent to Suspend the School Cafeteria Certificate of Occupancy, which was issued under permits 1991-010757 (9112598) and 1997-014303 (97020140). The City intends to suspend the certificate of occupancy because the building violates the Fire Code, which creates a hazard for this building, adjacent structures, current occupants and emergency responders. The building violates the following provisions of the Fire Code:

- **Section 503.1.1 Buildings and facilities.**
  Approved fire apparatus access roads shall be provided for every facility, building or portion of a building hereafter constructed or moved into or within the jurisdiction. The fire apparatus access road shall comply with the requirements of this section and shall extend to within 150 feet (45 720 mm) of all portions of the facility and all portions of the exterior walls of the first story of the building as measured by an approved route around the exterior of the building or facility.

- **Section 503.2.1 Dimensions.**
  Fire apparatus access roads shall have an unobstructed width of not less than 25 feet (7620 mm), except for approved security gates in accordance with Section 503.6 and the Fire Protection Criteria Manual, and an unobstructed vertical clearance of not less than 14 feet (4267 mm).

To begin efforts to cure these deficiencies, you must submit a corrected site plan on or before March 9, 2018. The corrected site plan must address how you intend to comply with the sections referenced above. More specifically, the site plan must show the required fire access road to the building. In order to fully comply with City Code Requirements, the corrected site plan must be approved before the start of work.

Failure to submit a site plan by the deadline will result in a suspension of the certificate of occupancy.

Please contact me at 512-974-9754 or via email at jose.roig@austintexas.gov if you have any questions regarding the action required under this Notice of Intent.

Respectfully,

José G. Roig, CBO
Building Official
Development Services Department

Cc: Rodney Gonzales, Director, DSD
Denise Lucas, Deputy Director, DSD
Cora D. Wright, Director, ACD
Chief Rob Vires, Fire Marshal, AFD
Richard Anderson, Division Manager, DSD

City of Austin
Law Department
301 West 2nd Street, P.O. Box 1546
Austin, Texas 78767-1546
(512) 974-2268

Writer's Direct Line
(512) 974-2888

Writer's Fax Line
(512) 974-1311

February 16, 2018

Stuart Hersh
6703 Woodhue Drive
Austin, TX 78745

Re: Response to Letters of February 8, 2018; *Notice of Intent to Suspend Certificate of Occupancy (1701 Toomey Road)*

Dear Mr. Hersh:

I am an Assistant City Attorney for the City of Austin and will serve as a point of contact concerning the February 7, 2018 Notice of Intent issued by Building Official Jose Roig and your subsequent letters of appeal to Mr. Roig and the Austin Fire Department. This letter is an attempt to summarize the City's response, incorporating feedback from affected departments including Development Services, Fire, and Code Enforcement.

Response to Letter to Fire Marshal

In your letter to the Fire Marshal, who is AFD Division Chief Rob Vires, you ask for the City to allow placement of a private fire hydrant as an alternate method of compliance, and you also submit requests for public information.

In regard to the fire hydrant question, your proposal fails to provide for access to a fire apparatus, which is distinguished from a fire hydrant. Here, a fire lane is essential so that AFD personnel can: maneuver a fire truck or other apparatus within 150 feet of any building; acquire water (i.e., from a fire hydrant); bring the water through the apparatus to obtain additional pressure to project it through hoses; and attack a fire. To have a fire hydrant closer to the building without the capacity of getting a fire apparatus to it does not meet the Code requirements.

Per the adopted Code, including Section 503 of the Fire Code, a fire apparatus needs to get close enough to the building so that a hose lay of no more than 150 feet would be needed to get to all parts of the building at ground level. In the case of 1701 Toomey Road, putting a hydrant on the property will not achieve the needed fire lane (fire access road) requirement.

In regard to other information you have requested, please submit any requests for public information pursuant to the uniform City policy. Pursuant to the City Manager's memorandum of March 10, 2017, all public information requests should be submitted to public.information@austintexas.gov.

Response to Letter to Building Official

In your letter to Building Official Jose Roig, you seek to appeal the notice of intent as well as a February 2, 2018 notice from the Code Department. You also submit requests for public information.

In regard to your request to appeal the notice of intent, please note that the Land Development Code does not provide for an appeal of a notice of intent to suspend. Under Section 25-1-416, a person may appeal "a stop work order, remove or restore order, revocation, or suspension," but Mr. Roig's notice does not constitute one of those appealable actions. Rather, Mr. Roig's letter gives your client advance notice of the City's intent to conduct enforcement proceedings if a plan is not put in place to remedy health and safety concerns at 1701 Toomey Road.

That said, as Mr. Roig's letter makes very clear, it is the intent of the City to give your client every opportunity to reach a successful resolution of the City's concerns. Please do not hesitate to contact me or Mr. Roig to discuss any of these matters further.

In regard to your request to appeal the February 2, 2018 notice of violation, please note the following requirements for an appeal specified in the notice:

> You may file a written appeal of this Notice of Violation to the Austin Code Department. Refer to the Violation Report attached to review the appeal process as it relates to the specific violation noted. Please reference your case number and how the property is now in compliance with the Austin City Code. An appeal may be delivered in person to our office located at 1520 Rutherford Lane or mailed to: City of Austin Code Department, ATTN: Code Official, P.O. Box 1088, Austin, Texas 78767.

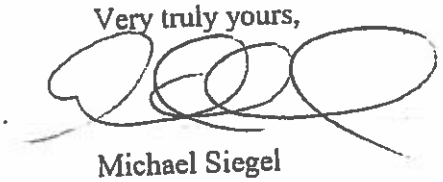
The City has no record of such an appeal being filed. Also, your letter references a "registration as agent" but I have not located any such registration in City records; further, such a registration would need to be filed with the Texas Secretary of State. *See* https://www.sos.state.tx.us/corp/registeredagents.shtml.

That said, the requirement for a permit for the gated entrance at 1701 Toomey Road is located at Section 25-11-32 of the City Code. The list of work exempted from permit requirements is located in the 2015 International Building Code, Section 105.2. The gated entrance at your client's property does not fall within one of these exemptions, and thus requires a permit. If you believe that your

client is in compliance with the City Code, please prepare a written appeal as instructed and I will accept it on behalf of the Code Department.

Finally, in regard to your requests for public information, including construction documents and examples of other permit decisions, please use the standard City procedure by submitting the requests to public.information@austintexas.gov.

Very truly yours,



Michael Siegel
Assistant City Attorney

CC: Cora Wright
Rob Vires
Jose Roig
Eduardo Longoria

Print

This is an urgent message.

Date: Friday, March 2, 2018 10:12 AM

From: Roig, Jose G <Jose.Roig@austintexas.gov>

To: shersh@austin.rr.com <shersh@austin.rr.com>

Cc: Gonzales, Rodney <Rodney.Gonzales@austintexas.gov>, Wright, Cora <Cora.Wright@austintexas.gov>, Vires, Rob <Rob.Vires@ausps.org>, Lucas, Denise <Denise.Lucas@austintexas.gov>, Johnson, Christopher [DSD] <Christopher.Johnson@austintexas.gov>, Siegel, Michael <Michael.Siegel@austintexas.gov>, Anderson, Richard <Richard.Anderson@austintexas.gov>, Siegel, Michael <Michael.Siegel@austintexas.gov>

Subject: 1701 Toomey Rd. - Casa de Luz

Mr. Hersh,

Please review and confirm receipt of the attached letter in response to our meeting on February 28, 2018. Let me know if you have any questions or concerns.

Respectfully,

José G. Roig, CBO
Building Official
City of Austin Development Services Department
One Texas Center
505 Barton Springs Road, Suite 700
Office: 512-974-9754
Cell: 512-293-1948

Logo_DSD Email Signature wTag

Building a Better and Safer Austin Together

Follow us on Facebook, Twitter &Instagram @DevelopmentATX
We want to hear from you. Please take a few minutes to complete our online customer survey: English Survey
Nos gustaría escuchar de usted. Por favor, tome un momento para completar nuestra encuesta: Encuesta en Español

Inspector's Contact Info
Local Code Amendments
Free Online Access to International Codes
Special Events Information
DSD Fee Schedule

Scheduled Meeting Disclosure Information:
In accordance with City of Austin Ordinance 20160922-005, responsibility of written disclosure is required by visitors when attending a scheduled meeting with a City Official regarding a municipal question as defined within City Code 4-8-2 for compensation on behalf of another person. Development Services Department has elected to implement an electronic survey as the methodology to provide the opportunity to record information as required of the department under Section 4-8-8 (E) of the City Code. Individuals scheduling or accepting a meeting invitation with a City Official are requested to provide responses to the questions included in the department survey available at the following link: DSD Survey. Please note that all information provided is subject to public disclosure via DSD's open data portal.

For more information please visit:
Click here to view City of Austin Ordinance 2016-0922-005
City Clerk's website
City Clerk's FAQ's

Casa_de_Luz_Letter to Stuart Hersh.pdf

De elopment
SERVICES DEPARTMENT

505 Barton Springs Road Austin, TX 78704 | 512-978-4000 | DevelopmentATX.com

March 2, 2018

Stuart Hersh
6703 Woodhue Drive
Austin, TX 78745

RE: Approval of a Site Plan Exemption to allow for the submittal and approval of a Building Permit to install a fire sprinkler system at 1701 Toomey Rd (Casa de Luz)

Dear Mr. Hersh,

This letter is in response to our meeting on February 28, 2018 to discuss an agreeable solution for the Fire Code violations at 1701 Toomey Rd., Austin, TX, also known as Casa de Luz.

I have discussed the proposal with staff at the Development Assistance Center. The City will approve a Site Plan Exemption for the installation of the fire sprinkler system with the following conditions:

- Your submittal of a current and accurate site plan layout.
- The exemption is for the sole purpose of installing a fire sprinkler system for a school cafeteria and that it does not constitute and approval of the current site plan or use of the building.

This approval will allow for the submittal of plans for review and the ability to obtain the necessary permits for the installation of the fire sprinkler system as an alternate method of compliance to meet the requirements of the Fire Code.

Completion of that work will suffice to eliminate the life/safety violations. You will have to work separately to obtain approval of the site plan. Other violations related to unpermitted structures, uses and parking will have to be addressed separately from this submittal.

We understand that you will need time to prepare plans, get approval, secure bids, select a contractor and complete the installation. Please submit a reasonable timeline that we can all agree to in order to stop any further actions related to the Suspension of the Certificate of Occupancy.

Please feel free to contact me if you have any questions or concerns.

Respectfully,

José G. Roig, CBO
Building Official
Development Services Department

Cc: Rodney Gonzales, Director, DSD
Denise Lucas, Deputy Director, DSD
Cora D. Wright, Director, ACD
Chief Rob Vires, Fire Marshal, AFD
Richard Anderson, Division Manager, DSD
Christopher Johnson, Division Manager, DSD

FOLDER DETAILS

Permit/Case:	2018-133586 DA
Reference File Name:	DA-2018-0721
Description:	APPROVED EXEMPTION
Sub Type:	Site Plan Determination/Exemption
Work Type:	
Project Name:	1701 TOOMEY ROAD Unit A
Status:	Agreed
Application Date:	Aug 7, 2018
Issued:	Dec 28, 2018
Expiration Date:	
Related Folder:	Yes

FOLDER INFO

Description	Value
Building Permit Required	
Description of Proposed Development	
Fee Applicable	

Print

Date: Tuesday, March 6, 2018 9:47 PM

From: shersh@austin.rr.com

To: Roig, Jose G <Jose.Roig@austintexas.gov>

Cc: Wright, Cora <Cora.Wright@austintexas.gov>, Vires, Rob <Rob.Vires@ausps.org>, Gonzales, Rodney <Rodney.Gonzales@austintexas.gov>, Johnson, Christopher [DSD] <Christopher.Johnson@austintexas.gov>, Anderson, Richard <Richard.Anderson@austintexas.gov>, Lucas, Denise <Denise.Lucas@austintexas.gov>, Siegel, Michael <Michael.Siegel@austintexas.gov>

Subject: Re: 1701 Toomey Rd. - Casa de Luz

I am trying to understand why Lieutenant Kevin Gell visited the site today and told the operator of the school that we needed a change of occupancy from daycare to private school. I am looking at 1991-007232 BP Certificate of Occupancy that reads "Remodel to Create Private Educational Facility and 1996-012053 BP that reads Interior Remodel Exist Bathrooms for Private School".
---- "Roig wrote:
> Mr. Hersh,
>
> Please review and confirm receipt of the attached letter in response to our meeting on February 28, 2018. Let me know if you have any questions or concerns.
>
> Respectfully,
>
> José G. Roig, CBO
> Building Official
> City of Austin Development Services
Department<http://austintexas.gov/department/development-services>
> One Texas Center
> 505 Barton Springs Road, Suite 700
> Office: 512-974-9754
> Cell: 512-293-1948
> [Logo_DSD Email Signature wTag]
> Building a Better and Safer Austin Together
>
> Follow us on Facebook<http://facebook.com/developmentatx>,
Twitter<http://twitter.com/developmentatx> &
Instagram<http://instagram.com/developmentatx> @DevelopmentATX
> We want to hear from you. Please take a few minutes to complete our online customer survey: English
Survey<https://www.surveymonkey.com/r/austin-building-inspections>
> Nos gustaría escuchar de usted. Por favor, tome un momento para completar nuestra encuesta: Encuesta en Español<https://es.surveymonkey.com/r/austin-division-de-inspecciones-de-edificios>
>
> Inspector's Contact Info<http://austintexas.gov/sites/default/files/files/Development_Services/Inspections/BuildingInspections/Inspections_PhoneList_020618.pdf>
> Local Code
Amendments<http://www.austintexas.gov/department/building-technical-codes>
> Free Online Access to International Codes<http://codes.iccsafe.org/>
> Special Events Information<http://www.austintexas.gov/citystage>
> DSD Fee Schedule<http://austintexas.gov/dsdfees>
>
> Scheduled Meeting Disclosure Information:
> In accordance with City of Austin Ordinance 20160922-005, responsibility of written disclosure is required by visitors when attending a scheduled meeting with a City Official regarding a municipal question as defined within City Code 4-8-2 for compensation on behalf of another person. Development Services Department has elected to implement an electronic survey as the methodology to

provide the opportunity to record information as required of the department under Section 4-8-8 (E) of the City Code. Individuals scheduling or accepting a meeting invitation with a City Official are requested to provide responses to the questions included in the department survey available at the following link: DSD Survey<https://www.surveymonkey.com/r/lobbyistordinance>. Please note that all information provided is subject to public disclosure via DSD's open data portal.
>
> For more information please visit:
> Click here to view City of Austin Ordinance 2016-0922-005<http://www.austintexas.gov/edims/document.cfm?id=265293>
> City Clerk's website<http://austintexas.gov/department/lobbyists>
> City Clerk's FAQ's<http://www.austintexas.gov/edims/document.cfm?id=277562>
>

Print

Date:	Tuesday, March 6, 2018 9:23 PM
From:	Kerri Welch <kerri@integrityacademy.org>
To:	EDUARDO LONGORIA <wayo2@mac.com>
Cc:	Stuart Hersh <shersh@austin.rr.com>, Noe Lopez-Menchu <noecasadeluz@yahoo.com>, Candace Hutchens <candace@integrityacademy.org>
Subject:	Re: Integrity

HI Stuart,

Here's what I know:

The fire inspector, Lt. Gell, told us we needed a change of occupancy from Daycare to Private School:

Image Blocked 1701 Toomey unsat.pdf

We got our Fire Alarm System serviced, which seems to have updated our inspection automatically (see email below). I assumed that negated the need for change of occupancy, but Lt. Kevin Gell just wrote to check in about the certificate of occupancy again, and stated that it was unaffected by our inspection status. I believe we need a certificate of occupancy as a private school because we have a private school waiver which means we are not regulated by TXDFPS (TX Dept. Family Protective Services) . I have a letter in to Georgina Mitchell at the Development Office to try to figure out how to change the certificate of occupancy.

The other piece is the potential revoking of Casa's certificate of occupancy as operating as a our school cafeteria. For this one it seems a plan must be submitted by Mar 9 . If that certificate gets revoked, what consequences will ensue?

Image Blocked Development.pdf

Thank you for your help!
:)Kerri

---------- Forwarded message ----------
From: **James, Noelle** <Noelle.James@austintexas.gov>
Date: Wed, Jan 3, 2018 at 3:13 PM
Subject: RE: FPS PERMIT ISSUED 1701 TOOMEY RD
To: "ali@integrityacademy.org" <ali@integrityacademy.org>

Hi Ali,

Our FPS program has recently changed. After you have your annual inspections, it is now the responsibility of the inspection company to upload the inspection report to The Compliance Engine website on your behalf. Our system is currently showing that Star Asset Security has uploaded the fire alarm inspection report and your property is in compliance.

Please let me know if you have any questions.

Thank you,

Noelle James
Administrative Specialist
Austin Fire Department-Fire Marshal's Office
505 Barton Springs Road, Suite 200
Austin, Texas 78704
(512) 974-0196

On Tue, Mar 6, 2018 at 4:28 PM, EDUARDO LONGORIA <wayo2@mac.com> wrote:

Dear Stuart,

Kerri Welch, the new school director, has provided me with this information which is new to me. I don't know the significance. Please, would you tell us what it all means?

Thanks,

Wayo

On Mar 6, 2018, at 3:37 PM, Kerri Welch <kerri@integrityacademy.org> wrote:

Hi Wayo,

Have we submitted a corrected site plan for the required fire access?

Integrity Academy's fire inspector just checked in with us regarding the need to change our certificate of occupancy from daycare to a private school. I thought we were in the clear due to our system inspection, but apparently the change of occupancy is an additional piece that we have to accomplish. I have an email in to the building Dept to see how to go about this.

A possible work around for the school could be that students always eat outside (on the deck, or courtyard) or in our classrooms during inclement weather? Though I realize Casa still needs to comply as well.

What is the current status?

:)Kerri

On Tue, Mar 6, 2018 at 12:45 PM, Noe Casa de Luz <noecasadeluz@yahoo.com> wrote:

Please check this.

Noe Casa de Luz
noecasadeluz@yahoo.com

Noe Casa de Luz
noecasadeluz@yahoo.com

Kerri Welch, PhD
Co-Director
Integrity Academy at Casa de Luz, Center for Integral Studies
www.integrityacademy.org

Image Blocked

512.472.7771 cell - 512.535.1277 office

Kerri Welch, PhD
Co-Director
Integrity Academy at Casa de Luz, Center for Integral Studies
www.integrityacademy.org

Image Blocked
512.472.7771 cell - 512.535.1277 office

CASA DE LUZ FIRE WATCH APPEAL 1701 TOOMEY ROAD SEPTEMBER 9 2019

AUGUST 28 2018 DECISION OF BUILDING AND FIRE CODE BOARD OF APPEALS

Stuart Harry Hersh, Pro Bono Consultant for Casa de Luz Since 8/29/13

This appeal of the Fire Watch to the City Council is based on documents obtained prior to and subsequent to the Attorney General of Texas letter of March 28, 2018 concerning public disclosure under the Public Information Act.

On August 28, 2013 the owner of the property located at 1701 Toomey Road notified the City of Austin that I would represent the property owner on compliance issues identified by City of Austin staff.

Based on documents received to date, the rear assembly building at 1701 Toomey Road was not in violation of City Code when certificates of occupancy were issued in 1991 and 1997 and is not in violation of the adopted Property Maintenance Code today.

VOLUNTARY COMPLIANCE AGREEMENT

The property owner has voluntarily agreed to install an automatic sprinkler system to make the building safer. The sprinkler system has been connected to City water through approved tap plans and inspections (e-mail of 5/16/19 from City inspector Gary Darity).

The sprinkler pipe in the building was installed in October 2018 when Casa de Luz vacated the building for 10 days during the Austin City Limits event at Zilker Park. The timing of the pipe installation minimized disruption of the private school building at the front of the property that received its certificate of occupancy in 1991.

The pipe connecting the city supply to the sprinkler piping in the building was installed by July 1, 2019 when I met with City staff to review remaining requirements for issuance of the building permit for the sprinkler system.

BUILDING PERMIT APPLICATION

A building permit is required if an owner chooses to install a sprinkler system to make their building safer. In order to obtain a building permit, an application must be completed and certain fees must be paid.

1. Casa was then told for the first time that it needed a structural engineer's report, and Casa hired a licensed engineer who provided the requested report.
2. Casa was told for the first time that it also needed an asbestos survey, and Casa hired a licensed contractor who supplied the requested report.
3. Casa's design team has passed fire department review, building review and zoning review.
4. The tap to the City water system has been permitted, inspected and approved.
5. The sprinkler piping system inside the building was installed in October 2018 as Casa closed for 10 days to accommodate the installation.
6. The pipe connecting the city water line to the sprinkler system was in the trench as of 5/17/19 and passed visual City inspection on Monday, May 20, 2019.
7. The design team authorized the placing of required sand beneath the pipe and the placement of soil to cover the pipe and tree roots and this was completed by 5/24/19.
8. The next steps involve connecting the pipe in the trench to both the water tap and the sprinkler system; performing all required testing; passing all required inspections; completing the balance of required improvements; and posting all approvals to the City record system.

The requirement for Fire Watch was not proposed by City staff at the December 12, 2018 hearing of the Building and Standards Commission where an order to vacate could have been issued. City staff did not recommend an order to Vacate and the Commission did not issue an Order to Vacate.

On behalf of Casa de Luz, I ask that you reverse the decision to require a Fire Watch on June 10, 2019 if all sprinkler connections are not completed and approved by then. The requirement of a Fire Watch from 7am to 9pm daily or to vacate the rear building is tantamount to requiring the rear building to be vacated without an Order to Vacate from the Building and Standards with evidence being provided under oath and with the appellant having the right to cross-examine City staff as per legislation approved by the Texas Legislature and incorporated into Building and Standards Commission rules.

Please include all backup posted for the May 22, 2019 Special Called meeting of the Building and Fire Code Board of Appeals as well as documents submitted during the public hearing.

Please let me know when the appeal hearing is scheduled.

City of Austin

P.O. Box 1088, Austin, TX 78767

AUSTIN CODE DEPARTMENT

November 29, 2018

Building and Standards Commission
Notice of Hearing
via Certified Mail # 7017 1450 0002 0920 0888

Stuart H. Hersh
6703 Woodhue Drive
Austin, TX 78745

RE: 1701 TOOMEY ROAD, AUSTIN, TEXAS 78704
Legally described as TRT 1 SHELTON WM E SUBD
Zoned as CS

Dear Stuart H. Hersh:

You have been identified as an interested party to the above-referenced property. This letter is to inform you that the City of Austin's Building and Standards Commission (BSC) will hold a public hearing regarding the above-referenced property at City Hall, in the Council Chambers, located at 301 West 2nd Street, Austin, Texas 78701, on December 12, 2018 beginning at 5:30 pm.

What the Building and Standards Commission Does

The law allows the Commission to hear and determine cases concerning alleged violations of the International Property Maintenance Code and other city ordinances. They may hear and render decisions on appeals and issue binding orders to property owner(s) to vacate, close, repair or demolish structure(s) on the subject property. In addition, this Commission may also issue a fine of up to $1,000 per day for any property that is found to be in violation.

An order may be issued even if you are not present at the hearing and is final unless appealed to District Count as provided in Section 54.039 of the Texas Local Government Code.

Where To Get More Information or Assistance

The City of Austin follows the Americans with Disabilities Act. If you require a sign language interpreter to be at the hearing or to ensure mobility access to the meeting room, contact the ADA office 512-974-3256 or email ada@austintexas.gov. If you require translation services at the hearing, contact Melanie Alley at (512) 974-2679 or by email at melanie.alley@austintexas.gov. Please make any requests no later than two days prior to the hearing.

Si tiene preguntas o necesita información adicional o un traductor, por favor póngase en contacto conmigo por teléfono en 512-974-2679.

Sincerely,

Melanie Alley

Melanie Alley, Coordinator
Building and Standards Commission
Austin Code Department
Case CL-2012-069447

CASA DE LUZ STATUS UPDATE 1701 TOOMEY ROAD

BUILDING AND STANDARDS COMMISSION December 12, 2018

My name is Stuart Harry Hersh and I have been since 2013 the pro-bono consultant for Casa de Luz located at 1701 Toomey Road. I have filed my agent letter requested by City staff (copy enclosed) and offer the following comments and questions under oath under penalty of perjury as I have offered all testimony at both the Building and Standards Commission and the Board of Adjustment since 2013.

Previously I requested an opportunity to provide you a status update and supplied you a copy of the Attorney General's response to my Open Records Request earlier this year. I have included a copy of his response and the City's response.

Per the rules of this commission, I request an opportunity to ask a series of questions to City staff and other stakeholders who may testify this evening or to have the Commissioners ask all of these questions.

I am confused as to why I received a different notice for this evening's status update than has been posted on the property (copies enclosed).

I am confused as to why a gated entrance has existed at Casa de Luz since 1993 but the citation for lack of building permit for the gated entrance was issued in 2018 (copy enclosed).

I am confused as to why the City staff rejected fee payment and building permit application for the Serena Room in 2016 after confirming the amount due based on current fee schedule and Casa de Luz's tendering of full fee payment.

Here are the questions that when answered will establish that Casa de Luz is close to complying with all applicable code standards and fees due:

1. Did the Fire Department confirm that a fire equipment access road is not required if the assembly building at the back of the property is sprinklered copy enclosed)?
2. Did the Building Official agree to approve a site plan exemption for the sprinkler system yet the site plan exemption is not approved to date (copy enclosed)?

3. Has Casa de Luz's engineer submit plans for the installation of sprinkler pipe and heads and supervise the installation of the pipe in October 2018 during the Austin City Limits as promised?
4. Are approval of the sprinkler and tap plans still pending approval?
5. Can a building permit for the gated entrance be approved prior to the approval of the building permit and final inspections and connections to the City water supply?
6. Can a building permit for the Serena Room be issued prior to the issuance of the sprinkler building permit?
7. Has the City Attorney agreed to be the single point of contact and then withdrawn this request when assigned staff took a leave of absence?
8. Did District Court Judge Stephen Yelenosky affirm the Board of Adjustment decision to grant a parking variance for two on-site parking spaces despite neighbor opposition at the Board of Adjustment and in District Court?
9. Did the Court's decision confirm that the following uses were allowed: Private Primary Educational Facility, Personal Improvement Service, Restaurant (General), General retail sales (Convenience), Administrative and Business office and Limited Warehouse uses in a "CS" Commercial service zoning district?
10. Did City staff estimate the new annual meter parking revenue on Toomey Road and in front of the ball fields to be $15,888 when neighbors opposed new meter parking in 2013?
11. Did the City staff 5/4/15 response to the Open Records Request on annual meter revenue confirm that $252,855.39 was generated from the Toomey Road area and $69,242 from the Butler Shores lot?

Number	Pre	Street	StreetType	Dir	Unit Type	Unit Number	City	State	Zip	Legal Desc
1701		TOOMEY	RD				AUSTIN	TX	78704	Address

PEOPLE DETAILS

People Type	Name / Address	Phone
Applicant	ALLIANCE SAFETY AND FIRE PROTECTION LP 6 INDIAN MEADOWS DR ROUND ROCK TX 78665	(512) 966-4488
Billed To	ALLIANCE SAFETY AND FIRE PROTECTION LP 6 INDIAN MEADOWS DR ROUND ROCK TX 78665	(512) 966-4488

FOLDER FEES

Fee Description	Fee Amount	Balance
7 Day Review Fee	$1,233.00	$0.00
Commercial Plan Review Application Processing Fee	$72.00	$0.00
Development Services Surcharge	$52.20	$0.00

PROCESSES AND NOTES

Process Description	Status	Start Date	Scheduled End Date	End Date	Assigned Staff	# of Attempts
Coordinating Reviews	Awaiting Update	Mar 25, 2019	Apr 3, 2019		Jennifer Espinosa ((512)974-1667)	3
Commercial Building Plans	Approved	Apr 1, 2019	Apr 2, 2019	Apr 1, 2019	Tera Villaret (512-974-2361)	1
Building Plans - Plumbing	Rejected	Mar 26, 2019	Apr 2, 2019	Mar 26, 2019	William Waters (512-974-2053)	1
Commercial Zoning Review	Approved	Mar 25, 2019	Apr 2, 2019	Mar 25, 2019	Coordinator Reviewers	1
Fire	Approved	Apr 3, 2019	Apr 2, 2019	Apr 3, 2019	Sonny Pelayo (512-974-0194)	1
Plan Review Administration	Open					0

FOLDER ATTACHMENT

Description	Detail	Download
Special Inspections Form	Special Inspections Form	Download

May 3, 2019

On May 3, 2019, an employee of the City of Austin posted a Do Not Enter sign at 1701 Toomey Road without an Order to Vacate from the Building and Standards Commission. This is unlawful under Austin City Code, and the decision is under appeal.

This case is pending before the Building and Standards Commission which agreed in December 2018 to schedule a special called meeting if necessary to discuss outstanding compliance issues and associated penalties.

Given today's actions, I am requesting a special called meeting of the Building and Standards Commission and that the sign be removed until the hearing is held.

Stuart Harry Hersh Pro Bono Consultant

Appeal of Suspension and Revocation of Certificate of Occupancy

1701 Toomey Road

May 6, 2019

Denise Lucas, Interim Director

Development Services

505 Barton Springs Road

Austin TX 78704

As the pro bono consultant for the property located at 1701 Toomey Road since 2013, I am appealing the notice of May 2, 2019 to suspend and/or revoke the certificates of occupancy for 1701 Toomey Road.

On Friday, May 3, 2019, employees of the City of Austin posted a Do Not Enter sign at Casa de Luz located at 1701 Toomey Road. This property does not have an Order to Vacate from the Building and Standards Commission as required by State law and City ordinance. City response to Open Records requests since 2013 reveals that no notice of Public Hearing concerning an Order to Vacate by the Building and Standards Commission have been issued to date (March 8, 2018).

The Building and Standards Commission process allows testimony under oath with penalty of perjury and for owners and their representatives to cross examine City staff and other witnesses. Appeals based on Findings of Fact and Conclusions of Law to the courts are also available if filed timely. Suspending or revoking the existing certificates of occupancy prior to hearings before the Building and Standards Commission, a timely appeal to the Building and Fire Code Board, and/or a timely appeal to the City Council would deprive the owner of Casa de Luz due process rights.

It is my understanding that the remaining violation on the property is not the lack of Fire Department access but that the alternate method of compliance for connecting a sprinkler system to the City water supply has not occurred.

Our engineer reports that they have conducted the required pre-construction site meeting with City staff, notified affected adjacent property owners, and are scheduled to dig out the trench and set up trench safety barrier on May 8, 2019.

The city water line will be cut off the next day and they will cut the 12 inch pipe and install the T as well as a short run on pipe to the Casa de Luz property. Except when weather conditions might prevent completion of the sprinkler system connection and associated inspections and testing, compliance could occur by May 31, 2019.

I request that the decision to suspend or revoke the certificates of occupancy be stayed until the Building and Standards Commission schedules and conducts a public hearing on decides on a proposed Order to Vacate, the Building and Fire Code Board and the City Council conducts appeal hearings if appeals are filed timely.

Stuart Harry Hersh, pro-Bono Consultant for 1701 Toomey Road

6703 Woodhue Drive 78745

512-587-5093

shersh@austin.rr.com

City of Austin

Founded by Congress, Republic of Texas, 1839
One Texas Center, 505 Barton Springs Road
P.O. Box 1088, Austin, Texas 78767

June 10, 2019

Mr. Stuart Hersh
6703 Woodhue Drive
Austin, Texas 78745

Dear Mr. Hersh

At its May 29th Special Called meeting, The Building and Fire Board of Appeals held a public hearing regarding your appeal of the Building Official's decision to suspend the Certificate of Occupancy (CO) at Casa de Luz, located at 1701 Toomey Road. Board members present were outgoing Chairman Frank Haught, new elected Chairman Alan Schumann and board members Bobby Johns, Ben Abzug, Alicia Jones, James Wilsford, Timothy Arndt and Pieter Sybesma.

After hearing your testimony and the testimony of Beth Culver, Building Official, Tom Vocke, Fire Marshal and Matthew Noriega, Austin Code Compliance; Chairman Haught closed the public comment portion of the hearing. Chairman Haught asked the board for a motion in support or denial of the appeal. No motions, either in support or denial of your appeal was made, therefore, the Building Official's decision stands and the suspension upheld.

A person who is aggrieved by a decision of the board may appeal the decision to the city council under City Code § 2-1-121, as attached.

Sincerely,

Mr. Frank Haught
Former Chairman, Building and Fire Code of Appeals

Xc: Building and Fire Board of Appeals board members
Denise Lucas, Interim Director, Development Services Department
Beth Culver, Building Official, Development Service Department
Tom Vocke, Fire Marshal, Austin Fire Department
Rick Holloway, Chief Building Inspector, Development Service Department
Richard Anderson, Division Manager, Development Service Department.

Building and Fire Code Board of Appeals
Draft Minutes

Board Meeting
May 29, 2019

The Building and Fire Code Board of Appeals convened in a Special Called Meeting on May 29, 2019 at the One Texas Center, Conference Room 500, 5th Floor

Vice Frank Haught called the meeting to order at 11:30 a.m.
Board Members in Attendance: Ben Abzug, Frank Haught, Alicia Jones, Pieter Sybesma, Alan Schumann, James Wilsford, Timothy Arndt and Bobby Johns
Board Members Not in Attendance: Aubrey Brasfield and Matt Hart
Staff in Attendance: Rick Arzola (DSD), Richard Anderson (DSD), Beth Culver (DSD), Tom Vocke (AFD) and Matthew Noriega (ACC)

1. **CITIZEN COMMUNICATION:** None

2. **APPROVAL OF MINUTES:** The February 27, 2019 minutes were approved as written by Board member Sybesma motion second by Wilsford for a 7-0 vote. Bobby Johns was a late arrival and did not participate in the vote.

3. **DISCUSSION AND/OR POSSIBLE ACTION**
a. Appeal Hearing- 1701 Toomey Road: Appellant Stuart Hersh met with the Building and Fire Boards to appeal a decision by the Director and Building Official with Development Services Department on the suspension and or revoke of the Certificate of Occupancies at 1701 Toomey Road. Mr. Hersch is asking for the Development Service Department to rescind and not to revoke the suspensions and to refrain from posting "Do Not Enter" signs and cutting off utilities to the establishment until all appeal hearings have been heard.

On February 27, 2019, Development Services Department sent a certified letter to Eduardo Longoria, President of the Shambala Corporation, and giving notice of intent to suspend the Certificate of Occupancy for the school cafeteria for the lack of operable fire sprinklers. DSD included that to avoid suspensions, the applicant will need to make and submit an application to obtain a building permit for the installation of the fire sprinklers inside the school cafeteria. It will be required to pass all necessary inspections from DSD and Austin fire that relates to the installation of the fire sprinklers inside the cafeteria and to complete construction of fire line with all required inspections for plumbing permit 2019-000680.

On March 28, 2019, Development Services issued a second certified letter to Mr Longoria notifying him of additional "other unresolved compliance issues" that were not related to the fire sprinkler system. Those other issues included a Certificate of Occupancy requirement for restaurant use, personal improvement service and the conference facilities and a building permit requirement for work without permit for a covered entrance. Also a Site plan is required for a change of use to the school cafeteria building, education facility and Off Street Parking Facility, as it was not provided for in the current land use.

Then on May 2, 2019, Building Official Beth Culver issued a third certified letter to Mr. Longoria that a suspension of Certificate of Occupancy/Notice to revoke the Certificate of Occupancy for the school cafeteria would take place if the corrections from the February 27 certified letter was not

corrected by June 1, 2019. After the June 1st date, the certificate of occupancy will be revoked and utility connections could be disconnected.
Interim Director of Development Service Department, Denise Lucas upheld the decision by the City of Austin Building Official by sending a Memorandum to Eduardo Longoria thru certified mail on May 10, 2019. Due to "life safety issues which create a hazard for this building, adjacent structures, occupants and emergency responders" were her reasoning's for supporting the Building Official decision.

Mr. Hersh addressed the board indicating he had requested approval of sprinkler plans and a temporary building permit for installation and connection of the sprinkler system. Also added the Commercial Building Plans were approved by DSD on April 1, 2019 , Fire Department approval on April 2, 2019 and Commercial Zoning review were approved on March 25, 2019, however no temporary building permit was ever issued due to plumbing review. But sustain that a plumbing permit was approved for fire line on January 3, 2019. Also in his testament, Mr. Hersh included that a proposed fire tap to an existing 12 inch water line was approved on December 18, 2018 along with required engineer and asbestos reports that were submitted and accepted. Mr Hersh is requesting the reversal of the suspension of the certificate of occupancies and placed on the July 2019 agenda if all sprinklers connections are not completed and approved by then.

After back and forth discussions between Development Services Department staff, the Appellant of Casa de Luz, Stuart Hersh and the Building and Fire Code of Appeals members, Chairman of the board Frank Haught ruled that no action on the appeal will take place as board members did not make a vote to uphold or deny DSD request of the suspension/revoke of the Certificate of Occupancy of Casa de Luz.

b. Nominations of Chair and Vice Chair: Ben Abzug made a motion to nominate Alan Schumann as Chair, Board member Haught second the motion. Motion pass 8-0.
Bobby Johns made a motion to nominate Aubrey Brasfield as Vice Chair, Board member Schumann second the motion, motion pass 8-0.
c. **Audio Files-** DSD staffs informs the board that all audio files from January 1st, 2019 will now be uploaded to the Boards and Commission website for public hearing. Due to recent public information request, City Clerk office has approved that all boards now upload all audio files from this year.

4. **ADJOURN** – Board member Schumann made the motion to adjourn the meeting at 12:42 p.m. Board member Haught seconded the motion. Motion passed 8-0.

CASA DE LUZ APPEAL OF FIRE WATCH NOTICE OF JUNE 3, 2019

June 4, 2019

1701 Toomey Road

Stuart Harry Hersh shersh@austin.rr.com 512-587-5093

I am asking the Building and Fire Code Board of Appeals to reverse the Building Official's decision to require a Fire Watch at 1701 Toomey Road following the Board's May 29, 2019 decision not to uphold the Building Official's decision to suspend the certificates of occupancy on 5/2/19.

The issue before the Board is simple. The Building and Fire Board Code did not have a quorum vote to uphold the Building Official's decision. No Board member moved to uphold the Building official's decision following the closing of the public hearing and questions to the appellant and City staff. Prior to Board decision, Board members asked City staff what would be next steps. City staff informed the Board that City staff would continue to work with the appellant on compliance. There was no mention of requiring a Fire Watch.

If the rear building is not sprinklered, then a fire department access road is required and existing vegetation, fences, gated entrance and other improvements must be demolished. This is not in dispute.

Casa de Luz has been trying to install a sprinkler system since 2013. This requires a building permit.

Casa's attempts to file a building permit application were consistently denied between 9/16/13 and 1/4/19 based on the Building Official stating that Casa did not have a certificate of occupancy for the rear building. If this was true, we would not have had an appeal hearing about suspending two (2) certificates of occupancy.

All City staff present in the 1/4/19 meeting finally agreed to accept a building permit application for sprinklers after Casa' attempting to secure this permit for more than five (5) years.

From 9/2/13 through 1/4/19, City staff refused to accept a building permit application for a sprinkler system for the rear assembly building located at 1701 Toomey Road. The reason for refusal was a City staff claim that the rear building lacked a certificate of occupancy.

SUSPENSION OF CERTIFICATES OF OCCUPANCY

Despite the previous City staff claim that a building permit application for a sprinkler system could not be accepted due to lack of certificate of occupancy, the Building and Fire Code Board of Appeals held a hearing on May 29, 2019 concerning suspension of certificates of occupancy that City staff had previously said did not exist.

No member of the Building and Fire Code Board of Appeals moved to uphold the Building Official's decision to suspend the certificates of occupancy for the rear assembly building, and there was no discussion of a Fire Watch requirement for the property.

NOTICE OF FIRE WATCH BACKGROUND

The Notice of Fire Watch was issued on 6/3/19, less than a week after the Board of Appeals declined to uphold the Building Official's decision.

The property owner's engineer has submitted plans and paid plan review fees for the sprinkler system for the rear building. The reviewers issued their first set of review comments on 10/16/13, and the reviewers issued their second set of comments on the revised sprinkler plans on 2/24/14.

As agent, I asked for permission to submit a building permit application with corrected plans for the sprinkler system. This request continued to be denied until 1/4/19.

On 2/7/18, city staff notified the property owner of its intent to suspend certificates of occupancy that other City staff said did not exist unless corrected site plans were submitted by 3/9/18. When I attempted to appeal the notice of intent to suspend certificates of occupancy that City staff had claimed did not exist, Assistant City Attorney Michael Siegel informed me on 2/16/18, that no appeal was available until the certificates of occupancy were actually suspended. In addition, Mr. Siegel informed me that he was now my single point of contact.

issued an order to vacate, close or demolish. Since this is not the case, please uphold the appeal of the Fire Watch requirement.

CASA DE LUZ FIRE WATCH APPEAL 1701 TOOMEY ROAD SEPTEMBER 9 2019

AUGUST 28 2018 DECISION OF BUILDING AND FIRE CODE BOARD OF APPEALS

Stuart Harry Hersh, Pro Bono Consultant for Casa de Luz Since 8/29/13

This appeal of the Fire Watch to the City Council is based on documents obtained prior to and subsequent to the Attorney General of Texas letter of March 28, 2018 concerning public disclosure under the Public Information Act.

On August 28, 2013 the owner of the property located at 1701 Toomey Road notified the City of Austin that I would represent the property owner on compliance issues identified by City of Austin staff.

Based on documents received to date, the rear assembly building at 1701 Toomey Road was not in violation of City Code when certificates of occupancy were issued in 1991 and 1997 and is not in violation of the adopted Property Maintenance Code today.

VOLUNTARY COMPLIANCE AGREEMENT

The property owner has voluntarily agreed to install an automatic sprinkler system to make the building safer. The sprinkler system has been connected to City water through approved tap plans and inspections (e-mail of 5/16/19 from City inspector Gary Darity).

The sprinkler pipe in the building was installed in October 2018 when Casa de Luz vacated the building for 10 days during the Austin City Limits event at Zilker Park. The timing of the pipe installation minimized disruption of the private school building at the front of the property that received its certificate of occupancy in 1991.

The pipe connecting the city supply to the sprinkler piping in the building was installed by July 1, 2019 when I met with City staff to review remaining requirements for issuance of the building permit for the sprinkler system.

BUILDING PERMIT APPLICATION

A building permit is required if an owner chooses to install a sprinkler system to make their building safer. In order to obtain a building permit, an application must be completed and certain fees must be paid.

1. Casa was then told for the first time that it needed a structural engineer's report, and Casa hired a licensed engineer who provided the requested report.
2. Casa was told for the first time that it also needed an asbestos survey, and Casa hired a licensed contractor who supplied the requested report.
3. Casa's design team has passed fire department review, building review and zoning review.
4. The tap to the City water system has been permitted, inspected and approved.
5. The sprinkler piping system inside the building was installed in October 2018 as Casa closed for 10 days to accommodate the installation.
6. The pipe connecting the city water line to the sprinkler system was in the trench as of 5/17/19 and passed visual City inspection on Monday, May 20, 2019.
7. The design team authorized the placing of required sand beneath the pipe and the placement of soil to cover the pipe and tree roots and this was completed by 5/24/19.
8. The next steps involve connecting the pipe in the trench to both the water tap and the sprinkler system; performing all required testing; passing all required inspections; completing the balance of required improvements; and posting all approvals to the City record system.

The requirement for Fire Watch was not proposed by City staff at the December 12, 2018 hearing of the Building and Standards Commission where an order to vacate could have been issued. City staff did not recommend an order to Vacate and the Commission did not issue an Order to Vacate.

On behalf of Casa de Luz, I ask that you reverse the decision to require a Fire Watch on June 10, 2019 if all sprinkler connections are not completed and approved by then. The requirement of a Fire Watch from 7am to 9pm daily or to vacate the rear building is tantamount to requiring the rear building to be vacated without an Order to Vacate from the Building and Standards with evidence being provided under oath and with the appellant having the right to cross-examine City staff as per legislation approved by the Texas Legislature and incorporated into Building and Standards Commission rules.

Please include all backup posted for the May 22, 2019 Special Called meeting of the Building and Fire Code Board of Appeals as well as documents submitted during the public hearing.

Please let me know when the appeal hearing is scheduled.