

**CITY OF HIGH POINT
COMMUNITY DEVELOPMENT & HOUSING DEPARTMENT**

**STAFF REPORT
APPEAL 23-01
April 5, 2023**

| Request | |
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| <p>Applicant: Century Income Inc. c/o John Sanders Dallas III, Sr. Vice President Represented by Marsh Prause, Attorney</p> | <p>Owner: Century Income Inc. c/o John Sanders Dallas III, Sr. Vice President</p> |
| <p>Appeal: The Applicant filed an appeal of the Order to Demolish dated February, 22, 2023 (CHP Record No. HV-23-022) issued by the Code Enforcement Division of the City of High Point Community Development & Housing Department.</p> | <p>Relevant Ordinance Section(s): City Code of Ordinances, Title 9 – Development, Chapter 2 – Inspection Regulations, Article E – Minimum Housing Code (Attachment 13):</p> <ol style="list-style-type: none"> 1. Sec. 9-2-100, Minimum standards 2. Sec. 9-2-104, Dwellings unfit for human habitation 3. Sec. 9-2-105, Procedure for enforcement 4. Sec. 9-2-107, Appeal 5. Sec. 12-3-1, Conditions constituting a public nuisance |

| Site Information | |
|--------------------------|---------------------------------|
| Location: | 501 Saunders Place |
| Current Zoning: | Residential Multi-Family, RM-26 |
| Current Land Use: | Duplex Dwelling (Vacant) |

Appeal Statement

The Applicant is appealing the Order to Demolish dated February 22, 2023, CHP Record No. HV-23-022, related to the duplex located at 501 Saunders Place (“Site”). The Order to Demolish was issued by Inspector Charles Diggs (“Inspector”) with the Code Enforcement Division of the City of High Point Community Development & Housing Department.

During a routine inspection of the area on January 9, 2023, the Inspector observed a vacant, unsecured dwelling on the Site. As a result, the Inspector conducted preliminary inspections of the dwelling from January 10 to January 13, 2023, and recorded several violations of the City’s Code of Ordinances.

First, the Inspector determined that one of the two units in the dwelling (“Unit 501-A”) constituted a public nuisance in violation of Section 12-3-1(08) of the City’s Code of Ordinances because it was unsecured and susceptible to vagrancy, trash accumulation, alcohol or illegal drug use, trespassing, prostitution or other criminal activities. As a result, the Inspector issued a Notice of Violation (NOV) to the Applicant on January 12, 2023, which allowed the Applicant to correct the violations by January 25, 2023. The Applicant corrected the public nuisance violations by securing Unit 501-A prior to the deadline provided in the NOV.

Second, while inspecting the unsecured unit (Unit 501-A) on January 11, 2023, the Inspector requested access to the other unit in the dwelling (Unit 501-B) during a phone call with the Applicant. The Inspector noticed from the exterior of the building that Unit 501-B had a broken window and water damage to the ceiling and walls of the dwelling and wanted to conduct further inspections, but Unit 501-B was locked and not accessible. After the Applicant refused access to Unit 501-B, the Inspector obtained an Administrative Inspection Warrant, inspected the dwelling (both units), and determined that the dwelling violated various standards of the Minimum Housing Code. As a result, the Inspector prepared a Housing Investigation Report on January 13, 2023, which detailed the Minimum Housing Code violations. A Complaint and Notice of Hearing was issued by the Inspector to the Applicant on January 17, 2023, which set a hearing on the matter for January 31, 2023. The Applicant’s attorney requested a continuance of the hearing, which was granted, and a new hearing date of February 15, 2023, was set.

At the hearing before the Code Enforcement Manager, Lori Loosemore, and the Inspector, both the City and the Applicant presented testimony and evidence on the Minimum Housing Code violations. Attorney Marsh Prause represented the Applicant at the hearing and the Interim City Attorney, Meghan Maguire, represented the City.

After the hearing, based on the inspections of the dwelling, and the evidence and information received during the hearing, the Inspector issued an Order to Demolish on February 22, 2023, stating his determination that the costs to repair, alter, or improve the dwelling to comply with the Minimum Housing Code are in excess of sixty-five percent (>65%) of the value of the dwelling. The Order to Demolish provided a compliance date of March 22, 2023, and was served by certified and regular mail. A copy was also emailed to counsel for the Applicant, Marsh Prause, by counsel for the City, Nick Tosco, on February 27, 2023.

The Applicant filed a timely appeal of the Order to Demolish on March 3, 2023, arguing that the Inspector failed to: 1) sign the Order to Demolish, 2) attach a copy of the Housing Investigation Report to the Order to Demolish, and 3) specify to which of the two dwelling units the Order to Demolish applies. Additionally, the Applicant argues that the Inspector’s decision to issue an Order to Demolish was arbitrary and capricious and contrary to the weight of the evidence.

Unrelated to the Applicant’s violations of the Minimum Housing Code, both the Applicant and the City have previously discussed the City acquiring several of the Applicant’s properties located along Saunders Place, including 501 Saunders Place (“Saunders Place Properties”). On May 13, 2022, an attorney for the Applicant, La-Deidre Matthews, submitted a formal offer to the Deputy City Manager, Greg Ferguson, requesting that the City allocate \$3 million dollars of financial assistance to support the redevelopment of the Saunders Place Properties using American Rescue

Plan Act (ARPA) funds, or purchase the Saunders Place Properties directly, for the development of affordable housing units. The City rejected the Applicant's offer. The following year, on January 17, 2023, the City's Community Development & Housing Director, Thanena Wilson, sent a letter to the Applicant, through its attorney, stating that the City was interested in possibly acquiring the Applicant's Saunders Place Properties. On February 21, 2023, however, the City informed the Applicant that it was no longer interested in purchasing the Saunders Place Properties.

Board of Adjustment Review and Decision

An appeal is the process for an aggrieved party affected by a decision of a City official to determine if the official's decision complies with the requirements of the Minimum Housing Code.

A quasi-judicial hearing shall be conducted by the Board of Adjustment ("Board") on the Applicant's appeal of the Order to Demolish. The Board's decision shall be based on the competent, material, and substantial evidence in the record of the appeal, as supplemented by arguments presented at the hearing. Section 9-2-107 of the Minimum Housing Ordinance states that the Board of Adjustment shall have all the powers of the Inspector and may reverse or affirm, wholly or partly, or may modify the decision or order appealed from, and may make any decision and order that in its opinion ought to be made in the matter. However, the concurring vote of four (4) members of the Board shall be necessary to reverse or modify any decision or order of the Inspector. The Board's Rules of Procedures shall apply to the hearing on the appeal.

Facts, Observations and Circumstances

May 13, 2022 – Applicant's attorney, La-Deidre Matthews, sends a letter to the City's Deputy Manager, Greg Ferguson, requesting that the City allocate \$3 million dollars of financial assistance to support the redevelopment of the Saunders Place Properties using ARPA funds, or acquire the Applicant's Saunders Place Properties directly, for the development of affordable housing units. (Attachment 15)

January 9, 2023 – Inspector observed a vacant, unsecured dwelling on the Site from his vehicle during a routine inspection of the area. (Attachment 2)

January 10, 2023 – Inspector went back to the Site to conduct a cursory inspection and investigate the dwelling because it appeared to be a public nuisance and unfit for human habitation. Specifically, the front unit (Unit 501-A) was missing a door and had broken windows. The back unit (Unit 501-B) was locked and not accessible. The Inspector did, however, observe a broken window and evidence of moisture damage to the ceiling and walls of Unit 501-B. The Inspector took photographs of the exterior of the dwelling and the violations occurring within Unit 501-A. (Attachments 9, 14, and 20)¹

¹ Attachment 14 are all of the photographs the Inspector took of the Site during his preliminary inspections, some of which were shown at the February 15, 2023, hearing (Attachment 9). Attachment 20 are copies of the same photographs taken by the Inspector during his preliminary inspections, but with annotations added to the photographs by the Inspector.

January 11, 2023 – Inspector went back to the Site to conduct further inspections and investigations (and take additional photographs) of Unit 501-A and attempted to once again access Unit 501-B. While at the Site, the Inspector spoke with the Applicant over the phone and asked for permission to enter Unit 501-B, but the Applicant denied the Inspector's request. An email summary of the Inspector's conversation with the Applicant is attached to this Report (Attachments 4, 9, 14, and 20).

January 12, 2023 – Inspector issued a public nuisance Notice of Violation to the Applicant for Unit 501-A, which allowed the Applicant to correct the public nuisance violations by January 25, 2023. (Attachment 3)

January 13, 2023 – Inspector obtained an Administrative Inspection Warrant to gain access to the dwelling for the purposes of conducting a minimum housing inspection. (Attachment 5) Upon obtaining the warrant, the Inspector conducted an inspection of the dwelling (both Unit 501-A and Unit 501-B) and prepared a Housing Investigation Report. (Attachments 6 and 19)² The Report provided a detailed list of violations of the minimum housing standards in the Minimum Housing Code for both units within the dwelling. The Inspector took additional photographs of the violations as well. (Attachments 9, 14, and 20)

January 17, 2023 – Inspector finalizes the Housing Investigation Report.

January 17, 2023 – Based on his inspections and investigations, the Inspector determined that the dwelling (both units) was unfit for human habitation due to violations of the Minimum Housing Code. As a result, the Inspector issued a Complaint and Notice of Hearing, which was served on the Applicant by certified and regular mail. The Complaint and Notice of Hearing set forth the basis for the Inspector's determination, included a copy of Housing Investigation Report with detailed findings of the inspections, and set a hearing date for January 31, 2023. (Attachment 7)

January 17, 2023 – Thanena Wilson, Community Development & Housing Director, sent a letter to the Applicant expressing interest in possibly purchasing the Saunders Place Properties. (Attachment 16).

January 26, 2023 – Inspector inspected Unit 501-A and determined that it was secured by the deadline provided in the Notice of Violation and was no longer in violation of Section 12-3-1(08) of the City's Code of Ordinances. The inspector photographed the outside of Unit 501-A and closed the public nuisance case. (Attachment 18)

January 31, 2023 – Hearing postponed from January 31, 2023, until February 15, 2023, at the request of counsel for the Applicant, Marsh Prause, on behalf of the Applicant.

February 15, 2023 – Hearing held by Code Enforcement Manager, Lori Loosemore, and the Inspector on the Inspector's determination that the dwelling on the Site was unfit for human habitation due to violations of the Minimum Housing Code and should be demolished. Others in

² Attachment 6 is a copy of the Housing Investigation Report that was attached to the Complaint and Notice of Hearing served on the Applicant. Attachment 19 is a copy of the Housing Investigation Report with references to the specific violations of the Minimum Housing Code. Attachment 19 was created by the Inspector after the February 25, 2023, hearing and in preparation for the Board of Adjustment hearing.

attendance included Interim City Attorney, Meghan Maguire, counsel for the Applicant, Marsh Prause, Sanders Dallas, and Elizabeth Dallas Davis. (Attachment 8)

February 21, 2023 – Thanena Wilson sent a letter to the Applicant stating that the City was no longer interested in purchasing the Saunders Place Properties. (Attachment 17)

February 22, 2023 – Inspector Charles Diggs issued an Order to Demolish after determining that the costs to repair, alter, or improve the dwelling on the Site to comply with the Minimum Housing Code would be in excess of sixty-five percent (>65%) of the value of the dwelling. The Order to Demolish set a compliance date of March 22, 2023, and was served by certified and regular mail. A copy was also emailed to counsel for the Applicant, Marsh Prause, by counsel for the City, Nick Tosco, on February 27, 2023. (Attachment 10)

March 3, 2023 – An Administrative Appeal Application was filed with the Planning and Development Department by the Applicant and counsel for the Applicant, Marsh Prause (Attachment 1).

Analysis and Comment

The appeal application makes the following statements or arguments:

1. The determination in the Order to Demolish that “the costs to repair, alter, or improve the dwelling to comply with the Minimum Housing Code are in excess of sixty-five percent (>65%) of the value of the dwelling,” is arbitrary and capricious, and contrary to the weight of the evidence.

Staff Comment: An estimate of repair costs was prepared using the software RS Means Data and presented by City staff to the Applicant at the hearing on February 15, 2023. (Attachment 11) The Guilford County Tax Department has valued the duplex at 501 Saunders Place (Units 501-A & 501-B) at \$10,600.00 (this does not include land value). The estimate for repairs submitted by City staff using the RS Means software totaled \$10,048.78 along with the estimate for using a General Contractor at \$31,531.48, which made the total estimate for repairs at \$41,580.26. Therefore, the total cost for repairs (\$41,580.26) exceeds 65% of the value of the property (\$6,890.00), which warranted the issuance of the Order to Demolish. Additionally, the Applicant informed the Inspector that he had already spent over \$6,000 in repairs on Unit 501-A alone—an amount that is over 56% of the value of the property.

2. The Order to Demolish is not certified (signed) by the inspector and the Housing Investigation Report was not attached to the Order to Demolish that was served on the Applicant.

Staff Comment: The Order to Demolish is electronically signed by the Inspector. Further, while a copy of the Housing Investigation Report was not attached to the Order to Demolish, it was attached to the Complaint and Notice of Hearing dated January 17, 2023, which was referenced in the Order to Demolish. Additionally, a copy of Housing

Investigation Report was provided to the Applicant and Marsh Prause at the February 15, 2023 hearing. (Attachments 6, 7 and 10)

3. The Order to Demolish refers to “the dwelling” without identifying which of the two dwellings at the pertinent address it is referring to.

Staff Comment: The Order to Demolish and this code enforcement case apply to the dwelling as whole, not to separate dwelling units (Units 501-A & 501-B). Similarly, the building on the Site is assessed by the Guilford County Tax Department as one dwelling, not separate dwelling units. Nevertheless, the Housing Investigation Report does specifically state for which unit or apartment the Inspector observed the violations. (Attachment 6).

Summary

Based on his preliminary inspections conducted from January 9 to January 13, 2023, the Inspector determined the dwelling located at 501 Saunders Place violated various provisions of the Minimum Housing Code, which were outlined in the Inspector’s Housing Investigation Report. On January 17, 2023, the Inspector served the applicant with the Complaint and Notice of Hearing which included a copy of the Housing Investigation Report. A hearing before the Inspector and Code Enforcement Manager, Lori Loosemore, was held on February 15, 2023, at which both the City and the Applicant presented testimony and evidence on the violations. After the hearing, the Inspector issued an Order to Demolish on February 22, 2023, stating his determination that the costs to repair, alter, or improve the dwelling to comply with the Minimum Housing Code are in excess of sixty-five percent (>65%) of the value of the dwelling. The Order to Demolish provided a compliance date of March 22, 2023.

Unrelated to the Minimum Housing Code violations, both the Applicant and the City have discussed the possibility of the City acquiring the Applicant’s Saunders Place Properties. On May 13, 2022, the Applicant, through its attorney, submitted a formal offer to the Deputy City Manager requesting that the City allocate \$3 million dollars of financial assistance to support the redevelopment of the Saunders Place Properties using ARPA funds, or acquire the Applicant’s Saunders Place Properties directly, for the development of affordable housing units. The following year, on January 17, 2023, the City also expressed interest in possibly acquiring the Applicant’s Saunders Place Properties. However, on February 21, 2023, the City informed the Applicant that it was no longer interested in purchasing the Saunders Place Properties.

Report Preparation

This report was prepared by Lori Loosemore, Code Enforcement Manager, and Inspector Charles Diggs, and reviewed and revised by Nick Tosco and Andrea Liberatore of Poyner Spruill LLP, counsel for the City.

Attachments:

1. Appeal to Board of Adjustment
2. Map of 501 Saunders Place
3. Public Nuisance Notice of Violation for Unit 501-A
4. Email dated January 11, 2023, from Inspector Charles Diggs
5. Administrative Inspection Warrant
6. Housing Investigation Report
7. Complaint and Notice of Hearing
8. Minimum Housing Hearing Record
9. Photographs of 501 Saunders Place presented at the hearing
10. Order to Demolish
11. Guilford County Property Summary and Repair Estimate
12. North Carolina General Statutes 160D, Minimum Housing Code, Article 12
13. High Point Code of Ordinances, Title 9, Art. E – Minimum Housing Code, and Title 12, Section 12-3-1
14. Additional photographs of 501 Saunders Place
15. Letter dated May 13, 2022, to Deputy City Manager from Applicant's attorney
16. Letter dated January 17, 2023, to Applicant from Community Development & Housing Director, Thanena Wilson
17. Letter dated February 21, 2023, to Applicant from Thanena Wilson
18. Photograph of 501-A Saunders Place taken January 26, 2023
19. Housing Investigation Report (with Code Violation References)
20. Photographs of 501 Saunders Place inspections (with annotations by the Inspector)